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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

Appeal from Greenville County Court of General Sessions
The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2017-001016

State of South Carolina,.....Respondent.

v.

Gabriel Betancourt Jr., ...Appellant.

RECORD ON APPEAL
VOLUME ONE

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INDEX

Trial Index.....	2-5
Trial Transcript.....	6-640
a. Pretrial Motions.....	6-40
b. Opening Statements	
-Opening Statement by Solicitor Sustakovitch.....	46-53
-Opening Statement by Mr. Goldstein.....	54-59
c. Testimony	
i. Caitlin Sauer	
-Direct by Solicitor Sustakovitch.....	60-67
-Cross by Mr. Goldstein.....	67-75
ii. William Amendolare	
-Direct by Solicitor Sustakovitch.....	76-79
-Cross by Mr. Surratt.....	79-81
iii. Casey Page	
-Direct by Solicitor Clark.....	81-85
-Cross by Mr. Goldstein.....	85-89
iv. Claire Burnette	
-Direct by Solicitor Clark.....	89-94
-Cross by Mr. Goldstein.....	94-99
-Redirect by Solicitor Clark.....	99-100
v. David Picone	
-Direct by Solicitor Sustakovitch.....	102-131
-Cross by Mr. Surratt.....	131-140
-Redirect by Solicitor Sustakovitch.....	141
vi. Jenna Toney	
-Direct by Solicitor Clark.....	142-171

vii. Minor	
-Direct by Solicitor Sustakovitch.....	172-195
-Cross by Surratt.....	195-200
-Redirect by Solicitor Sustakovitch.....	200-201
viii. Erica Van Wagner	
-Direct by Solicitor Sustakovitch.....	201-220
-In Camera Testimony Direct by Solicitor Sustakovitch....	221-230
-Direct by Solicitor Sustakovitch.....	231-237
ix. Minora McDaniel	
-Direct by Solicitor Sustakovitch.....	237-260
-Cross by Mr. Sarratt.....	261-271
-Redirect by Mr. Sarratt.....	271-284
x. Mary Fran Crosswell	
-Direct by Solicitor Sustakovitch	285-300
-Cross by Mr. Sarratt.....	300-315
-Redirect by Solicitor Sustakovitch.....	316-319
xi. Robin Smith	
-Direct by Solicitor Sustakovitch	319-326
xii. Linda Hutton	
-Direct by Solicitor Sustakovitch	326-331
-Cross by Mr. Goldstein.....	331-358
xiii. Linda Hutton (recalled)	
-Direct by Solicitor Sustakovitch.....	376-388
-Cross by Mr. Goldstein.....	388-391
-Redirect by Sustakovitch.....	392-408
xiv. Betancourt (Defendant)	
-Direct by Mr. Sarratt.....	408-419
-Cross by Solicitor Sustakovitch.....	419-435
xv. David Picone (recalled)	
-Direct by Mr. Sarratt.....	435-442
xvi. David Price (In Camera)	
-Testimony Direct by Mr. Goldstein.....	443-462
-Testimony Cross by Solicitor Sustakovitch.....	462-475
-Testimony Redirect by Solicitor Sustakovitch.....	476-495
xvii. David Price	
-Direct by Mr. Goldstein.....	495-518

-Cross by Solicitor Sustakovitch.....	518-528
xviii. Ray Meyers	
-Direct by Mr. Sarratt.....	529-534
-Cross by Solicitor Sustakovitch.....	534-539
xix. Casey Page	
-Direct by Solicitor Sustakovitch.....	540-543
d. Closing Arguments	
-Closing Argument by Solicitor Sustakovitch.....	549-571
-Closing Argument by Mr. Sarratt.....	572-594
e. Jury Charges.....	595-624
f. Verdict.....	625-634
g. Sentencing.....	635-640
Indictments & Corresponding Sentencing Sheets.....	641-658

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE)

State of South Carolina,)
)
 v.) Case No. 17-GS-23-1209 *et. al.*
)
Gabriel Betancourt, Jr.,)
)
Defendants.)

TRANSCRIPT OF JURY TRIAL

The within JURY TRIAL in the above-captioned matter was held on March 20-24, 2017, before The Honorable Donald Hocker in Courtroom 6 of the Greenville County Courthouse, 305 East North Street, Greenville, South Carolina; attended by counsel as follows:

APPEARANCES:

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...Appearing for State of South Carolina

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INDEX

Index of Testimony	3
Index of State's Exhibits	4
Index of Defense Exhibits	5
Index of Court's Exhibits	5
Jury Qualification	6
Pretrial Motions	55
Jury Sworn	88
Welcome by The Court	90
Opening Statement by Solicitor	95
Opening Statement by Defense	103
Motion to Strike Testimony/Curative	277
Directed Verdict Motion	442/592
Examination of Defendant	451
Discussion re: 16-3-655	593
Charge Conference	In Chambers
Closing Argument by Solicitor	598
Closing Argument by Defense	621
Charge by The Court	644
Verdict	674
Sentence	683
Certificate of Court Reporter	689

INDEX OF TESTIMONY

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Caitlin Sauer	109	116		
William Amendolare	125	129		
Casey Page	130	134		
Recalled	589			
Claire Burnette	138	143		148
David Picone	151	180		190
Jenna Toney	191			
Minor	221	244		249
Erica VanWagner	250/280			
Proffer	270			
Recalled	322	324		
Minora McDaniel	286	310		320
Mary Fran Croswell	334	349		365
Robin Smith	368			
Linda Hutton	375	380		
Recalled	425	437		440
Gabriel Betancourt, Jr.	458	468		
David Picone	484			
David Price				
Proffer	492	511		525
David Price	544	568		
Ray Meyers	578	583		

INDEX OF STATE'S EXHIBITS

No.	Description	Reference
1-16	Photographs	166
17	Photograph of bathtub	170
18	Photograph of bunk beds	171
19	Photograph of dresser	172
20	Photograph of dresser	171
21	Photograph of aquarium	ID Only
22	Photograph of trailer in snow	166
23	Photograph of trailer	166
24	Julie Valentine slide presentation	195
25	PTSD Index of Julie Valentine Center	ID Only
26	Interview Notes of Julie Valentine Center	ID Only

INDEX OF DEFENSE EXHIBITS

(None Entered)

INDEX OF COURT'S EXHIBITS

No.	Description	Reference
1	Jury Note requesting date evidence collected	665
2	Jury Note requesting dinner during deliberations	668
3	Jury Note requesting to view forensic interview video	668

1 video that we discussed. And back in
2 chambers it was indicated that there's, I
3 think, some agreement as to some portions
4 being redacted. That there's some agreement
5 not to redact. So I don't know if y'all
6 could maybe write that out for me so as I'm
7 viewing the video I'll know what to really
8 hone in on as far as those areas that you're
9 not in agreement on or that you are in
10 agreement on. So if you could maybe write
11 that out before y'all take your lunch break,
12 okay? All right. Thank you very much.

13 (LUNCH RECESS)

14 (DEFENDANT PRESENT)

15 THE COURT: Okay. We're on the
16 record and I have had an opportunity to view
17 the forensic interview that was done.

18 Let me first ask the attorneys, are
19 we in agreement that 17-23-175 has been
20 complied with. So there's not an issue with
21 respect to that?

22 SOLICITOR SUSTAKOVITCH: Correct.

23 THE COURT: Mr. Sarratt, I see you
24 shaking your head.

25 MR. SURRATT: Well, Your Honor,

1 I ---

2 THE COURT: Do you agree that the
3 statute related to the playing of this video,
4 that that's not in issue or do I have to take
5 some testimony? I mean, I've already
6 reviewed the video so I can certainly make
7 some findings. But do I need to listen to
8 the interviewer, make sure that she's
9 qualified or is the statute stipulated to?

10 SOLICITOR SUSTAKOVITCH: Your
11 Honor, we have not stipulated to that, but we
12 certainly, I guess, could. If I could pass
13 up and make a part of the record the written
14 motion for admission under 17-23-175.

15 THE COURT: Right.

16 SOLICITOR SUSTAKOVITCH: And I
17 don't know -- I've never had someone
18 stipulate to it. I've generally just put up
19 the forensic interviewer for just laying a
20 foundation, and then Your Honor would make a
21 ruling. But whatever you feel is
22 appropriate.

23 THE COURT: I think certainly that
24 if defense were willing to stipulate -- they
25 may not, you know, be willing to. But I've

8

1 had cases where the statute has really not
2 been at issue. Certainly, I realize that
3 there are portions of the video that are in
4 disagreement. But I'm just going to leave it
5 up to defense if we need to get into, and I
6 can certainly make findings on the record
7 after we hear from the interviewer. I can
8 certainly do that. Or if you stipulate that
9 17-23-175 has been complied with -- I'm going
10 to leave that up to the lawyers.

11 MR. SURRATT: I certainly don't mind
12 stipulating to that.

13 THE COURT: Excuse me?

14 MR. SURRATT: I don't mind
15 stipulating to that.

16 THE COURT: Okay. All right.
17 Okay. All right. So I really don't need
18 to take any in-camera testimony from the
19 interviewer.

20 SOLICITOR SUSTAKOVITCH: Okay.
21 Thank you, Your Honor.

22 THE COURT: Okay. All right.
23 Very good.

24 All right. So now let me make sure
25 I understand those portions of the video that

1 are in disagreement, trying to glean it from
2 the e-mail chain, the three areas that are in
3 disagreement is one where Minor is told to be
4 truthful; second, a suicide reference; and
5 third, Troy, which I understand is the
6 biological father sexually abusing her. Are
7 those the three areas in disagreement?

8 SOLICITOR SUSTAKOVITCH: Yes,
9 sir.

10 THE COURT: Okay.

11 MR. SURRATT: Yes, Your Honor.

12 THE COURT: Okay. All right.
13 Well, let me hear some argument on those
14 points?

15 SOLICITOR SUSTAKOVITCH: May it
16 please the Court, Your Honor.

17 As to the first one, I don't believe
18 that the interviewer in that very brief
19 reference is in any way trying to vouch for
20 the veracity of the victim. She's just
21 setting a rapport building moment at the
22 beginning, to try to set the parameters by
23 which they're now operating in the interview
24 room. And she's basically going through her
25 book and asking her different questions

1 related to, you know, the name of her dog and
2 things like that that would be standard. I
3 would say that that should be left in there
4 because it's not vouching.

5 THE COURT: All right. Okay. Mr.
6 Sarratt?

7 MR. SURRATT: Sure. And, Your
8 Honor, with the timestamps we've provided,
9 there's a part where she's actually going
10 though general information. We really don't
11 take issue with that part.

12 Mainly, it's just a very brief clip,
13 a section where she says "we only have one
14 rule in this room, is that is that we only
15 talk about things that really happened."

16 Looking at *Croma*, you know, it gives
17 advice -- the advice in that case of an
18 interviewer. We believe that sets forth, by
19 example, the kinds of statements that a
20 forensic interviewer should avoid at trial.
21 And the very first is that the child was told
22 to be truthful. I think that fits pretty
23 squarely with what was told the child here.

24 THE COURT: Yes, it does. And I
25 typically have routinely not allowed that in

1 when there's been some discussion of some
2 sort about truthfulness and that sort of
3 thing. It's a, I think in some respects,
4 maybe a close issue because I've had lawyers
5 argue -- 'well, when you're sworn in as a
6 witness at trial, you're swearing to tell the
7 truth, the whole truth, and nothing but the
8 truth so help you God.'

9 You know, -- but I think under these
10 set of circumstances I'm going to rule in
11 favor of the defense on this point and have
12 that redacted.

13 SOLICITOR SUSTAKOVITCH: Thank
14 you, Your Honor.

15 THE COURT: And then the second, I
16 think Defense wants the suicide reference to
17 be redacted as well?

18 SOLICITOR SUSTAKOVITCH: Yes,
19 sir, if I could make a -- I pointed out that
20 one. There is an agreed upon -- there are
21 two references to her wanting to hurt herself
22 in this interview. At 59:50 we've agreed to
23 take out -- or excuse me. At 58:29, "I
24 almost tried to kill myself 'cause I didn't
25 want to live anymore. I tried to hold my

1 breath. Almost tried hanging myself."

2 That portion at the very end of the
3 interview is because she kind of leaps back
4 around to talking about, just in general how
5 she felt.

6 The State is in agreement to take
7 that one out. And I just wanted to point out
8 the difference in that one, which we're
9 agreeing to take out and then the one that
10 they are also asking to have taken out.

11 It's at timecode 58:40 and it's a
12 portion in the interview where she's
13 basically describing having to masturbate the
14 defendant. And she states -- and the
15 interviewer asks what he did. 'How did he do
16 that?' 'What did he say?' And then Minor
17 says, "well, he said like you got to do it up
18 and down not side to side." And she started
19 doing her hand in an up and down motion. "He
20 said it's like you're shaking a milk bottle."
21 And then the interviewer said and "what would
22 happen when you did that?" And she said, "it
23 got slimy." Robin said, "It got slimy, okay.
24 Did you do that one time or more than one
25 time?" And she said more than once. Okay.

1 "He did it to you and how did that
2 make you feel?"

3 "Well, really nasty. He wanted me
4 to -- I didn't want to live anymore. I
5 wanted to kill myself because I didn't want
6 it to happen anymore."

7 I believe that reference is so
8 specifically tied as she's describing having
9 to masturbate him, that it is going to the
10 state of mind of the victim during the sexual
11 assault.

12 I would juxtapose the difference in
13 those two for why the State is in agreement
14 to take out the second one, that kind of
15 loops back around and it's repetitive. But
16 we would respectfully ask the first one be
17 left in for that reason.

18 THE COURT: All right. Mr.
19 Sarratt?

20 MR. SURRATT: To be quite honest
21 here, I think they are a little bit
22 different. The main reason that we ask that
23 that first one also be taken out is simply
24 under a 403 prejudice analysis. We just fear
25 that it may invite the jury to decide this

1 case based on emotion. Certainly, that would
2 provoke a very visceral response in the
3 response in the jury to have such a young
4 child talking about these things. But
5 essentially under 403 we argue that could be
6 improperly prejudicial.

7 THE COURT: You know, I tend to
8 agree with the State on this one that it goes
9 towards her state of mind at the time it was
10 allegedly happening as opposed to saying
11 'well, as a result of all this, you know, I
12 attempted suicide.' So I'm going to rule
13 with the State on this one and not redact.

14 SOLICITOR SUSTAKOVITCH: Thank
15 you, Your Honor.

16 THE COURT: And then the third one
17 is references to Troy sexually abusing her.
18 Now, correct me if I'm wrong, did she not
19 state somewhere in the video that she was
20 one-year old at the time this allegedly
21 happened?

22 SOLICITOR SUSTAKOVITCH: Yes,
23 sir.

24 THE COURT: Okay, so how would --
25 if she was one, then how would she remember

1 -- assuming it happened, how would she
2 remember that it did happen if she was one-
3 year old?

4 SOLICITOR SUSTAKOVITCH: I don't
5 have the answer to that. I don't. We've
6 asked -- essentially, I think what happened
7 here, the mother, as I was describing before,
8 had an issue with how he changed the child's
9 diaper.

10 THE COURT: Right.

11 SOLICITOR SUSTAKOVITCH: And
12 believed that he shouldn't be doing that and
13 that somehow he had sexually abused the
14 child. I do believe, based on interviews
15 with the child -- and you can hear in the
16 forensic interview. But Robin, the
17 interviewer asked her, 'do you know that or
18 did someone tell you that?' And at first she
19 says -- she says it both ways. She says
20 first her mom or maybe it's second -- she
21 heard it from her mom. And then, Your
22 Honor's right that she says that she can
23 remember that from when she's one.

24 When you ask her now, she's not
25 saying it did or didn't happen. She's saying

1 she didn't know. Her mom had told her that
2 happened and she believed that to be why her
3 dad's not around.

4 I think what's happening here, Your
5 Honor, if I may, I think the analysis needs
6 to be under *State v Boiter*, which would be
7 essentially -- the defense wants it out
8 because they are trying to say that she has
9 made a prior false allegation. And under
10 *State v Boiter*, they would need to make a
11 showing on that point. That's 396 SE2d 364.

12 This kind of dovetails into the rape
13 shield Motion that the State is making, which
14 I'll go ahead and pass up. I don't mean to
15 convolute it but there's a standard rape
16 shield Motion in this case.

17 But I think to think about Troy and
18 talk about it, we'd have to look at or I
19 would just suggest we do so under a *Boiter*
20 analysis, which says if the defense tries to
21 admit a prior false allegation made by the
22 victim the judge must, one, determine if the
23 prior report was in fact false, step one.
24 And two, if so, if the prior report was too
25 remote. Then, three, consider the factual

1 similarity between the prior and the present
2 allegations to determine the relevancy.

3 So when I looked at that, to me what
4 they're wanting it in for is to basically say
5 that she has made some prior false
6 allegation. And I don't -- I don't know what
7 Troy did or didn't do to her. I know that
8 her mother told me that the way he changed
9 her diaper was inappropriate. And she was
10 told that's the reason why her biological
11 father was no longer in the picture. But I
12 think the defense needs to make some showing
13 that that is a prior false allegation, Your
14 Honor.

15 THE COURT: All right. Okay. Mr.
16 Sarratt?

17 MR. SURRATT: I think that
18 statement could fit in a couple of boxes,
19 mainly the rape shield. But, again, I don't
20 think it fits there.

21 The other possibility could be
22 *Boiter*, but the reason that we intend to
23 offer that is to show her memory and capacity
24 for recall. This is likely something that
25 she's been told. But in that interview, she

1 very distinctly describes a memory. And in
2 fact she says, "I can remember looking down
3 and seeing his hand go into my diaper. And
4 he was giving me a bath." To me, this is a
5 memory that has almost been created in her
6 mind.

7 And I think that goes to -- well,
8 and they touch on credibility. It's not that
9 'she's a liar because she's lied before.'
10 It's more that this child may have issues
11 with her memory and recall and capacity to
12 understand things that happened at the age of
13 one.

14 SOLICITOR SUSTAKOVITCH: And,
15 Your Honor, I would just -- the difference
16 I would say is that, we have one isolated
17 incident where the child was told by her
18 mother that occurred versus a five-year old's
19 memory of abuse between the ages of five and
20 ten in very, very specific matters. And so I
21 would -- I think it does go back to the prior
22 false allegation as why -- the effect of it
23 is that it would come in as a prior false
24 allegation made by the victim. And when it's
25 a credibility case, I think it just has to

1 comply with *Boiter* to come in.

2 THE COURT: Okay. All right.

3 Well, everybody at-ease for just a moment and
4 let me take a look at *Boiter*.

5 (BRIEF RECESS)

6 THE COURT: Okay. After ---

7 MR. SURRETT: Well, the *Boiter*
8 analysis that Your Honor would look at under
9 that framework. I would like ---

10 THE COURT: Yeah. Yeah.

11 MR. SURRETT: I'd like to be heard
12 on that.

13 THE COURT: Okay. Glad to hear
14 from you.

15 MR. SURRETT: So, again, if you
16 are going to analyze it under *Boiter* where
17 three factors and that the State stated those
18 correctly ---

19 THE COURT: Right.

20 MR. SURRETT: The first, if it was
21 false -- I mean, I agree. I think it's
22 probably that what happened is that the
23 mother told her that, you know, her father
24 was doing inappropriate things.

25 But what the mom considered to be

1 inappropriate was changing her diaper. So I
2 -- I mean, there's certainly the question
3 mark on that issue. I can't really say if
4 it's false or not. But -- because if she
5 wasn't actually molested, based on the
6 information that we have, that would come out
7 in trial. Second, the remoteness in time.
8 You know, she was one when that is alleged to
9 have happened and she's five and then
10 disclosed at ten, about ten years old.

11 I believe that the timeframe you
12 look at is when the actual allegation is
13 made, unless I'm wrong.

14 And in this case, the allegations
15 are essentially simultaneous. When she first
16 -- she first disclosed at school to her
17 teachers. And in that very conversation she
18 mentions 'my birth father has done this to me
19 as well.' So to me it's a contemporaneous
20 allegation. They're both at the same time.

21 And then three, they are very
22 similar. You know, this is a father or
23 father figure. My client was her stepfather,
24 who moved in very shortly after the birth
25 father moved out, remained in the household

1 as her stepfather the entire time. So I
2 believe that they're very similar. And so,
3 again, if you're inclined to analyze this
4 under *Boiter* we would ---

5 THE COURT: Okay. Thank you, Mr.
6 Sarratt.

7 Anything further, Solicitor?

8 SOLICITOR SUSTAKOVITCH: No, sir.

9 THE COURT: Okay. I'm going to
10 require that it be redacted. While it, you
11 know, may very well be false, you know, I
12 think remoteness -- I think you have to look
13 at when the activity allegedly occurred as
14 opposed to when it was recorded; as you
15 argued, Mr. Sarratt.

16 And we've got a one-year-old versus
17 a five to ten years old. And I think the
18 remoteness -- and I think that there's not a
19 sufficient factor similarity to get it in.
20 So under the *Boiter* case I'm going to order
21 that it be redacted, okay?

22 All right. Anything else as it
23 relates to the forensic interview? Let me
24 just go ahead and say that I typically -- if
25 the forensic interviewer testifies, she can

1 say, 'I interview children at XYZ Agency.' I
2 don't allow the use of the word "forensic"
3 and certainly don't allow her to get into her
4 methodology. It's already been stipulated to
5 under the statute concerning the reliability
6 of her methodology. So it's really bare
7 bones when she testifies and she can
8 authenticate, 'yes, this is an accurate video
9 of the interview that took place with Minor
10 on such and such date' and leave it at that.

11 SOLICITOR SUSTAKOVITCH: Would
12 Your Honor like us to call it -- you said
13 interview, not forensic?

14 THE COURT: Yeah. Right. Don't
15 use the word forensic.

16 SOLICITOR SUSTAKOVITCH: Okay.

17 THE COURT: Okay. Anything else
18 with respect to the video?

19 MR. SURRATT: Nothing from
20 Defense, Your Honor.

21 THE COURT: Okay.

22 SOLICITOR SUSTAKOVITCH: Nothing
23 from the State, Judge.

24 THE COURT: All right. What's our
25 next issue?

Case No. 17-GS-23-1209 et al
Jury Trial of March 20-24, 2017
Pretrial Motions

1 SOLICITOR SUSTAKOVITCH: Well,
2 Your Honor, I think I kind of a little bit
3 when we were talking about Troy. My next
4 motion was rape shield.

5 THE COURT: Okay.

6 SOLICITOR SUSTAKOVITCH: And then
7 to go into what I believed was going to be a
8 *Boiter* Motion where they were going to try to
9 get in the Troy mentions, but I think Your
10 Honor's just handled all of that.

11 THE COURT: Right.

12 SOLICITOR SUSTAKOVITCH: And so
13 that would be what we have.

14 THE COURT: Okay. All right. So
15 other than the reference to Troy in the
16 video, which I've now excluded, did you have
17 some other evidence, potential evidence on
18 this point about whether or not Troy abused
19 her?

20 MR. SURRATT: Well, yes, Your Honor.
21 I believe, she didn't get it under *Boiter* but
22 under rape shield type analysis, we would
23 also be introducing that evidence to show an
24 alternate source of common knowledge. And I
25 believe there's going to be testimony to how

1 would she know about all of this and we
2 believe that one source of that is that her
3 mom, again, told her that she was molested.
4 So that may just be one additional ground.

5 THE COURT: Well, I tell you,
6 let's do this. As it relates to any other
7 evidence because you may very well -- if I
8 don't allow it, you may very well want to
9 proffer it. And so why don't we wait until
10 the time and then we can get into that and
11 make a determination whether anything else
12 would come in on this one particular point.

13 SOLICITOR SUSTAKOVITCH: Your
14 Honor, if I'm understanding correctly, with
15 the Troy references, I appreciate Your Honor
16 ruling with the State on that. I would say,
17 you know, if Your Honor's inclined to let in
18 references about her knowledge, I think the
19 tape explains pretty well what happened.
20 When she was one her mom told her about
21 something and she believed it to be true.

22 What I'm afraid is, if we redact
23 that out of the interview and then there's --
24 it's allowed to be discussed, then it might
25 be confusing to the jury exactly what

Case No. 17-GS-23-1209 et al
Jury Trial of March 20-24, 2017
Pretrial Motions

1 happened. I don't know. If we're inclined
2 to letting more about Troy and the
3 possibility that he abused her at one, then
4 we might want to revisit whether to just let
5 in what's on the video. I guess I would look
6 for direction on what, if anything, Your
7 Honor would let in on that point.

8 THE COURT: Maybe I'm a little
9 confused. Now, wasn't there some discussion
10 in chambers about mom's history as conveyed
11 to Minor?

12 SOLICITOR SUSTAKOVITCH: Yes,
13 sir. The mom ---

14 THE COURT: And is that what --
15 I mean, is that what you were kind of just
16 alluding to and wanting to get in. I guess
17 be able to cross-examine mom about her
18 history and what she told Minor?

19 MR. SURRATT: Yes. And I believe
20 those are ---

21 THE COURT: Right.

22 MR. SURRATT: --- two alternate
23 sources of information. One, the mother
24 telling the child that the child was
25 molested.

State of South Carolina v Gabriel Betancourt
Case No. 17-GS-23-1209 et al
Jury Trial of March 20-24, 2017
Pretrial Motions

75

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1 THE COURT: Right.

2 MR. SURRATT: But then again, yes,
3 as we discussed in chambers. The second area
4 that we would want to talk about was in terms
5 of alternate knowledge.

6 Sources of common knowledge would be
7 the mother telling the child that the mother
8 herself was molested, the mother of this
9 child.

10 THE COURT: Right.

11 MR. SURRATT: So we don't intend
12 to talk about that in opening. If that's
13 something you'd rather just take up when it
14 happens, we can but we just thought we'd
15 address that since we mentioned it in
16 chambers.

17 THE COURT: Okay. All right. So
18 that, I think we can lay that to the side for
19 the time being and then you can argue that.
20 And if I allow it, I allow it. If I don't
21 allow it, you'll certainly have the right to
22 proffer that.

23 Is the defense still wanting to get
24 into Troy, the issue about Troy for some
25 other basis or some other reason or are you

1 willing to leave Troy alone? Just help me
2 understand.

3 MR. SURRATT: Sure. In terms of
4 pretrial motions today, we've addressed Troy.

5 THE COURT: Okay. All right.
6 Very good.

7 SOLICITOR SUSTAKOVITCH: Your
8 Honor, I apologize. I was trying to under-
9 stand the parameters. I would agree with the
10 defense that it's certainly appropriate if
11 they want to ask the mom 'did you tell Minor
12 that you (sic) were abused?

13 THE COURT: Sure.

14 SOLICITOR SUSTAKOVITCH: You
15 know, if that goes to her knowledge and her
16 state of mind, then the State has no issue
17 with that. I think what I was trying to get
18 clarity on is Your Honor ruled under *Boiter*
19 to take out the references to Troy in the
20 forensic interview.

21 THE COURT: Right.

22 SOLICITOR SUSTAKOVITCH: Would
23 they also be taken out from other points in
24 the case because what we wouldn't want to see
25 is that to pop up and be out of context. I

1 think in the forensic interview, it's pretty
2 clear what's happened here as far as
3 articulating that properly. I just didn't
4 want it to kind of back-door in at some later
5 time.

6 THE COURT: Okay. Now, again, if
7 I'm understanding the defense correctly, and
8 you can correct me if I'm wrong, you're
9 willing to leave Troy alone; correct?

10 MR. SURRATT: In terms of the video,
11 yes.

12 THE COURT: All right. Then let's
13 do -- you want to be able to cross-examine -
14 I guess your only means to get in Troy, other
15 than the video, to get in Troy, mom's history
16 in through cross-examination; correct?

17 MR. SURRATT: Correct.

18 THE COURT: Okay. So let's wait
19 until it's time to cross-examine mom and then
20 you can raise that, proffer whatever you need
21 if I were to rule against you, okay?

22 MR. SURRATT: All right.

23 THE COURT: Is that ---

24 SOLICITOR SUSTAKOVITCH: Yes,
25 sir. I just ---

1 THE COURT: But you've got a
2 concern that if I allow it under cross and I
3 haven't allowed it under the video, then
4 you've got some concern there?

5 SOLICITOR SUSTAKOVITCH: I do
6 because the victim, when she's being
7 interviewed she's very contemporaneously
8 answering questions. She's not appearing to
9 hide any ball. You know, she's talking to
10 the forensic interviewer. She says, 'has
11 anybody else touched you?' And that's when
12 she goes into Troy. I would hate to have it
13 taken out of the forensic ---

14 THE COURT: Yeah.

15 SOLICITOR SUSTAKOVITCH: --- based
16 on a *Boiter* analysis that it's a prior false
17 allegation?

18 THE COURT: Right..

19 SOLICITOR SUSTAKOVITCH: But then
20 have it back-doored in through testimony
21 where it's out of context.

22 THE COURT: Well, is there a
23 distinction between -- is there a distinction
24 -- one, you've got Minor saying, 'yeah, Troy
25 molested me' versus mom.

1 'Did you tell Minor that mom [sic]
2 molested you? Did you tell her about your
3 past history?'

4 Is there not a distinction there?
5 I'm not trying to prejudge necessarily what
6 they're wanting to get in but more along the
7 lines of addressing what your concern is.

8 SOLICITOR SUSTAKOVITCH: I think
9 that if you're going to get into the Troy
10 issue, you know, for us it either comes in or
11 it comes out. Because if they're allowed to
12 cross-examine and get into that, the jury's
13 going to be left holding the bag, 'well, what
14 is this whole Troy reference?'

15 If we take it out of the forensic,
16 it's sanitized for that purpose and then they
17 get to come and start asking questions about
18 him through the mom's testimony, it's going
19 to be this big blank hole as far as, "Wait a
20 minute. Did Troy abuse her or did he not?'

21 And it's the same effect as if you
22 let in a prior false allegation, which it is
23 handled -- I may not be articulating it
24 properly but do you see ---

25 THE COURT: But it's - mom telling

1 her, 'hey, your dad abused you' is not a
2 false allegation under the *Boiter* case.
3 The false allegation comes from the alleged
4 victim. So the Defense is going to argue
5 'mom, you packed your child's head full of
6 stuff.' And so isn't there a deference
7 between, 'Mom, didn't you tell your daughter
8 that your [sic] dad abused you (sic)' versus
9 a false allegation coming from the -- from
10 Minor, vis-a-vis the video?

11 SOLICITOR SUSTAKOVITCH: Right.

12 THE COURT: Or have I really
13 muddled the water?

14 SOLICITOR SUSTAKOVITCH: Yeah. I
15 just -- I go back to -- I see what Your
16 Honor's saying. I think I just -- I go back
17 to under rape shield, specific instances of
18 contact with other individuals should be
19 excluded from a sexual assault prosecution.

20 THE COURT: Right.

21 SOLICITOR SUSTAKOVITCH: Generally
22 speaking, unless they can comply with *Boiter*,
23 which is their -- I go back to, you know,
24 it's a prior sexual assault allegation and it
25 needs to be examined under rape shield. And

1 I just would say that it comes in to confuse
2 the issue in this case, the ultimate issue of
3 whether this Defendant sexually abused the
4 victim over five years, Your Honor. And I
5 just go back to the word of rape shield,
6 which would be 16-3-659 where it states the
7 State -- it should be prohibiting any
8 reference by counsel regarding prior sexual
9 knowledge and/or sexual activity concerning
10 the victim with any other person, other than
11 the defendant.

12 Now, the defense is correct to say
13 -- and it says the exclusion shall include
14 but be not limited to any inquiry by counsel
15 and/or any reference by counsel in summation,
16 argument or witness examination, which
17 alleges any specific instances of prior
18 sexual activity.

19 The victim, as I mentioned in this
20 case, one of the charges is dissemination of
21 harmful material. And there's pornography
22 that was in the home that the victim says she
23 was shown. So as far as sexual knowledge
24 that's coming into the case, the defense can
25 argue her sexual knowledge is based on

1 exposure to graphic pornography.

2 THE COURT: Right.

3 SOLICITOR SUSTAKOVITCH: We're
4 not taking that away from them as an argument
5 on why the child has the sexual knowledge
6 that she does. I just think that when you go
7 back to rape shield, Troy should either be in
8 or not and my fear is that if we take it out
9 of the forensic interview but then allow
10 Minor and the mom to be cross-examined about
11 it, it'll be misinterpreted as far as that
12 set of facts.

13 THE COURT: Okay. Mr. Sarratt?

14 MR. SURRATT: So first I just want
15 to -- he pled not guilty to all charges
16 including the dissemination of obscene
17 material to a minor, so we're not going to
18 admit to that and say that that's how she
19 knows these things.

20 I believe we have the opportunity
21 and the obligation to argue common knowledge
22 source and common knowledge outside of the
23 allegations. So quoting from *State v Young*
24 which is a 2000 Court of Appeals case, 34 SC
25 210, the Court held -- and I'm just quoting

34

1 from it. The Court that the rape shield
2 statute would not provide exclusion of
3 evidence concerning the alternative sources
4 of a child victim's sexual knowledge. And
5 that in the case -- and then indicates such
6 reference is relevant to demonstrate the
7 defendant was not necessarily the source of
8 the victim's ability to testify about the
9 sexual conduct. And it also included danger
10 of unfair prejudice.

11 Furthermore under *Finley*, which is
12 300 S.C. 196, a 1989 Supreme Court case,
13 State Supreme Court case, it said the Court
14 has, including *Finley*, that the rape shield
15 statute did not bar evidence of the victim's
16 sexual conduct if the evidence was offered
17 for a purpose, other than to attack the
18 victim's morality. And, again, we're
19 certainly not offering this to attack the
20 child's morality. It goes back to her
21 memory, her recall and the source of the
22 child's common knowledge that's outside of
23 the average.

24 THE COURT: Okay. Let's do this.
25 Let me take this point under advisement and

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1 I'll look at it after we've concluded this
2 afternoon and we can, first thing in the
3 morning, I can go ahead and let you know how
4 I'm going to go on that. Okay. Any other
5 pretrial issues?

6 SOLICITOR SUSTAKOVITCH: That
7 would be it for the State, Your Honor.

8 THE COURT: Okay. All right. How
9 about the Defense?

10 MR. SURRATT: That's all, Your
11 Honor.

12 THE COURT: Okay. I thought there
13 was more out there. Y'all threw more at me
14 in chambers.

15 MR. SURRATT: We had mentioned the
16 PTSD thing, again ---

17 THE COURT: Yeah.

18 MR. SURRATT: --- but I believe we
19 cleared it all back in chambers. I'll say it
20 for the record that we did discuss that the
21 State perhaps would call a treating therapist
22 that would talk about behavioral
23 characteristics and also rape trauma
24 evidence. We did discuss in chambers that
25 that's a proper witness but we just don't

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1 want to get into a type of vouching scenario
2 where the therapist says, 'well, she has PTSD
3 because these things happened'?

4 THE COURT: Right.

5 MR. SURRATT: The State, you know,
6 said that they did not intend to ask that
7 question. They understand that's a fine line
8 and we're comfortable with where we left that
9 in chambers.

10 THE COURT: Okay. All right.
11 Very good. Thank you for y'all's hard work
12 and we'll start back at 10:00 in the morning.

13 For a scheduling matter -- this
14 doesn't need to be on the record, Deb.

15 COURT REPORTER: Okay.

16 (COURT IN RECESS)

17 (TRANSCRIPT CONTINUED NEXT PAGE)

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MARCH 21, 2017

10:00 A.M.

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(DEFENDANT PRESENT)

4

THE COURT: You wanted to talk

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about the interview, I think?

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SOLICITOR SUSTAKOVITCH: That

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alluded to Troy in the interview; yes, sir.

8

THE COURT: I haven't had a chance

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to look at that yet but certainly will. And

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once I do, then I can announce my ruling

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concerning what we discussed yesterday as it

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relates to the rape shield act and whether or

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not the Defense is going to be entitled to

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cross-examine the mom about what she may have

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told the child. I'll let you know what my

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ruling is, but I want to take a look at what

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you e-mailed me first.

18

SOLICITOR SUSTAKOVITCH: Yes,

19

sir. Our first five witnesses do not include

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21

THE COURT: Okay. So we've got --

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we have time then?

23

SOLICITOR SUSTAKOVITCH: Yes,

24

sir.

25

THE COURT: Okay. Very good. All

1 right. Let's bring the jury out so we can
2 get started.

3 SOLICITOR SUSTAKOVITCH: Your
4 Honor, if I could just for clarification,
5 that we are not mentioning Troy until Your
6 Honor rules on that; is that correct?

7 THE COURT: That's right.

8 SOLICITOR SUSTAKOVITCH: Okay.

9 THE COURT: That's right.

10 (JURY IN @ 10:10 A.M.)

11 THE COURT: All right. Let the
12 record reflect the jury is back in. Good
13 morning, ladies and gentlemen.

14 JURORS: Good morning.

15 THE COURT: I hope everybody's
16 doing well, had a good restful night and
17 ready to get to work.

18 There are a couple of housekeeping
19 matters that we need to tend to. First of
20 all, we need to swear you in as the trial
21 jury. So Madam Clerk can you handle that for
22 me, please?

23 (WHEREUPON, JURY SWORN)

24 THE COURT: The second house-
25 keeping matter is that I need to appoint a

1 foreperson of the jury. Now, if it is a
2 male, it's a foreman, makes sense; right?
3 If it is a female, it a forelady.

4 Now, let me explain to you the role
5 of a foreperson of the jury. First of all,
6 the vote -- when you begin your deliberations
7 in order to reach a verdict in this case, the
8 vote of the foreperson carries no greater
9 weight than that of the other eleven members
10 of the jury. But I need someone to wear
11 several hats.

12 One, I need someone to serve as
13 spokesperson between the jury and the Court.
14 If there's an issue or concern that arises
15 that needs to be brought to the Court's
16 attention, then I need someone to serve in
17 that capacity.

18 Secondly, I need someone to serve or
19 to ensure, rather, that all my instructions
20 are being followed, even though that's really
21 the responsibility of all of you.

22 And thirdly, when I do tell you to
23 begin your deliberations, I need someone to
24 get those deliberations started and to
25 organize and to oversee those deliberations.

1 Now, I'm confident that all
2 fourteen of you would make excellent fore-
3 persons of the jury. However, I can only
4 appoint one. So Ms. Thomason, you are the
5 forelady of the jury. Now, when you come
6 back in after our first break this morning,
7 you will maintain that seat or take that
8 seat, first seat, front row, and that will be
9 your seat throughout the entire proceeding.

10 Now, let me explain to you the
11 alternates, the two alternates right here.
12 You will maintain those two seats throughout
13 this proceeding. The role of the alternate
14 is very, very important. It's not unusual
15 during the course of a trial -- and as I
16 understand this trial will take several days
17 -- that for whatever reason, emergency at
18 home, illness, that I have to excuse one of
19 the twelve. And consequently I need someone
20 to fill those shoes, someone who has sat
21 through the entire proceedings up that point
22 where I have to excuse one of the twelve.
23 And so I want you to understand that your
24 role is very important. If I do not have to
25 excuse one of the twelve and the

1 deliberations begin, of course, you would
2 not participate in the deliberations. So you
3 maintain those two seats..

4 Madam Forelady, you maintain that
5 seat and the rest of you can sit wherever you
6 like. Now, it's been my experience since
7 I've been on the bench, that the majority of
8 jurors they like to keep or stay in the same
9 seat. And that's fine. That's totally up to
10 you. It's kind of like at church, you always
11 maintain the same seat, same pew. But that's
12 totally left up to you how you want to handle
13 that..

14 Now, I'm going to give you some
15 preliminary instructions before the lawyers
16 make their opening statements to you. It's
17 very, very important that you be very
18 attentive throughout this entire proceeding.
19 There's going to be a lot of information
20 given to you and you're not permitted to take
21 notes. Consequently, that's why you need to
22 be attentive so when you begin your
23 deliberations, you'll have a good memory of
24 -- certainly not everything that was
25 presented to you, but certainly the vast

1 majority. So be clear minded and alert.

2 That's why it's so important to get
3 a good night's rest. There's nothing worse
4 for a judge to be - and I look at the jury
5 throughout the entire proceeding and see
6 someone with their eyes closed or nodding off
7 or not paying attention. That's not good.
8 So please be attentive.

9 Your role in this case -- you are
10 the sole judge of the facts. You determine
11 what the facts are, no one else does that.
12 Certainly lawyers present information and
13 facts to you, but it's for you to determine
14 and no one else what the correct facts are in
15 this case.

16 And the same law that makes you the
17 sole judge of the facts, makes me the sole
18 judge of the law. I determine what the law
19 is applicable to the facts in this case. And
20 if you have some notion or some idea of what
21 you think the law is and it does not coincide
22 with what I tell you the law is, and that
23 will be done at the conclusion of the case,
24 then you must abandon your idea and go with
25 what I tell you the law is.

1 I told you when you were still in
2 the jury panel stage, before we actually
3 picked the jury, that Mr. Betancourt has been
4 indicted, charged with six separate offenses.
5 And, again, I repeat and reiterate and
6 emphasize the fact that Mr. Betancourt has
7 been indicted in this case is not evidence in
8 this case whatsoever. The indictments serve
9 one function and that is to put him on notice
10 of the charges and bring this case into trial
11 where we are today.

12 As I told you yesterday, you are to
13 have no discussions as far as discussion
14 among yourselves about this case, no
15 discussion with anybody that you come into
16 contact with during a lunch break or an
17 evening break.

18 I also told you about not doing any
19 independent research into anything related to
20 this case. Your decision, your verdict has
21 to be based one hundred percent on what is
22 brought out into this courtroom. And if you
23 start doing some independent research on your
24 own, while you may end up getting wrong
25 information, then you would have information

44

1 that the others would not have. And that's
2 not proper. So that's why you need to, at
3 least with respect to this case, stay from
4 the internet, stay away from social media
5 because your verdict, once again, has to be
6 based one hundred percent of what is brought
7 out into this courtroom.

8 You will hear throughout this
9 proceeding that the State has the burden of
10 proof in this case. A defendant who is
11 charged with a criminal offense in South
12 Carolina is never required to prove himself
13 or herself innocent of the crimes that they
14 are charged with. It is up to the State, it
15 is their burden of proof to prove each and
16 every element of each offense charged beyond
17 a reasonable doubt standard. Now, when I
18 charge you on the law at the conclusion of
19 this case, I'll certainly explain to you what
20 the 'beyond a reasonable doubt standard'
21 means. But just keep in mind throughout this
22 proceeding that the Defendant does not have
23 to prove anything to you. It's up to the
24 State to prove the charges to you.

25 There may be times where one of the

1 lawyers may say, 'Judge, I have an objection'
2 or 'Judge, I have a matter of law.' And
3 while I try to handle that particular issue
4 with what we call a sidebar conference where
5 the lawyers come up and we'll either talk
6 over here or over here.

7 There may be times where I'll have
8 to actually send you to your jury room in
9 order to deal with a particular issue that
10 has arisen. And one of the main reasons for
11 sending you outside the courtroom is I may
12 need to discuss the facts with the lawyers in
13 order to make a proper ruling on the legal
14 issue raised. I don't want to be discussing
15 the facts in your presence because, again,
16 you and you alone are the sole judge of the
17 facts in this case.

18 And lastly, ladies and gentlemen, it
19 is so important that you keep an open mind
20 throughout this entire case and not reach any
21 conclusions until all of the evidence has
22 been presented, the lawyers have made their
23 closing arguments to you, and I have
24 instructed you on the law.

25 Does the State have any objections

46

1 to the Court's preliminary charge?

2 SOLICITOR SUSTAKOVITCH: None

3 from the State, Your Honor.

4 THE COURT: Thank you. Defense?

5 MR. SURRETT: None from Defense.

6 THE COURT: Ladies and gentlemen,

7 the lawyers will now make their opening

8 statements, opening arguments to you. I will

9 tell you that they're not -- whatever they

10 say is not evidence in this case. It's just

11 what they believe this case will show and

12 what their respective positions are in this

13 case.

14 Solicitor, are you ready?

15 SOLICITOR SUSTAKOVITCH: Yes,

16 sir. Your Honor.

17 THE COURT: Okay. Very good. You

18 may proceed.

19 SOLICITOR SUSTAKOVITCH: Thank

20 you, Judge. May it please the Court?

21 THE COURT: Yes, ma'am.

22 OPENING STATEMENT

23 BY SOLICITOR SUSTANKOVITCH:

24 Good morning. When Minor was

25 five years old, she was like most young

47

1 girls. She went to school. She loved
2 playing with her friends. She liked recess.

3 But the evidence in this case will
4 show that Minor's life changed at the young
5 age of five or six when her mother's boy-
6 friend began sexually abusing her. Minor was
7 just a little girl then and this is the man,
8 Gabriel Betancourt, who sexually abused her
9 for almost five years.

10 My name is Christy Sustakovitch and
11 this is Candace Clark. We're Assistant
12 Solicitors with the Greenville County
13 Solicitor's Office. And as prosecutors it's
14 our job to present to you evidence in this
15 case, to prove to you beyond a reasonable
16 doubt that this defendant committed these
17 crimes against Minor.

18 He's charged with three counts of
19 criminal sexual conduct with a minor in the
20 first degree; lewd act on a minor; and,
21 criminal sexual conduct third degree, which
22 you'll find is almost the same charge, just
23 changed names. And then also dissemination
24 of harmful material to a minor.

25 I want to tell you from the

48

1 beginning that this is an ugly crime. The
2 words that we have to use in this courtroom,
3 you're going to find offensive. Some of the
4 things you're going to hear are going to be
5 hard to hear. Some of the images you're
6 going to see are not going to be what you
7 want to see. And, unfortunately, it's what
8 we have to bring to you to help you be able
9 to understand the evidence in this case and
10 then render a true verdict which speaks the
11 truth about what happened to Minor.

12 You're going to hear more about the
13 law at the end of this case, but as I briefly
14 mentioned, this defendant is charged with
15 criminal sexual conduct on a minor in the
16 first degree. And so that you can understand
17 as you hear the evidence what that means, it
18 is when you have a child under the age of
19 eleven and somebody commits a sexual battery
20 on them. A "sexual battery" can be many
21 different things. It can be oral sex with
22 the victim. It can be having the victim
23 perform oral sex on the defendant. It can be
24 anal penetration, putting the fingers inside
25 a child's anus or trying to put his penis

49

1 inside a child's anus. It can be vaginal
2 penetration, however slight, the effort to
3 put your penis into a child's vaginal area.
4 That would be what generally criminal sexual
5 conduct with a minor in the first degree is.

6 Criminal sexual conduct with a minor
7 in the third degree and lewd act -- I
8 mentioned that the law changed names, but
9 it's essentially the same crime. It's what
10 it sounds like. It's when somebody uses both
11 hands to touch a child or have the child
12 touch them in a lewd and lascivious manner,
13 to arouse the passions or desires of that
14 person.

15 The final charge in this case is
16 dissemination of harmful materials to a
17 minor. In this case, the child disclosed
18 that this defendant showed her pornography.
19 That would be the substance of that charge.

20 Ladies and gentlemen, from the
21 outset there's lots of different forms of
22 evidence in criminal cases. There's direct -
23 - there's circumstantial evidence. That's
24 where you can have a set of facts lead you to
25 an inference that tells you something. You

1 also have physical evidence. While you may
2 watch TV, a crime show, and you see a murder
3 and there's a gun and there's bullets.

4 That's physical evidence. But so often in
5 those shows you'll see circumstantial
6 evidence.

7 Also there's direct evidence. And
8 what direct evidence is evidence that comes
9 right from here. It's when a witness is
10 sworn under oath. They come into this court-
11 room, they sit up here and they tell you what
12 happened. They give you direct evidence.

13 And what you will be told at the end
14 of this case, no one form of evidence is
15 better than the other. They're all equally
16 significant. What that would lead you to,
17 ladies and gentlemen, is the essential
18 question that you're going to be asked to
19 answer at the end of this case: 'Was Minor
20 sexually abused by this Defendant for
21 a period of almost five years?'

22 You're going to hear -- I'm going to
23 walk you through the evidence you're going to
24 hear. You're going to hear the background of
25 this child and her mother and this Defendant.

1 Mr. Betancourt knew the child's
2 mother. They dated for eight years. He
3 moved into the home or they lived together
4 rather and they moved to different locations.
5 Over the course of five years, they moved to
6 four different locations. Finally ending up
7 in a mobile home that I believe belonged to
8 his mother.

9 You're going to also hear from Minor.
10 She's going to tell you herself
11 about the years of abuse that she suffered at
12 the hands of this Defendant. She will tell
13 you the different forms of abuse that she
14 suffered. And you're going to hear how she
15 kept it a secret for many, many years, five
16 years approximately until the evidence will
17 show she was at Blythe Academy in fifth
18 grade. And the evidence will show the Julie
19 Valentine Center came over and they did a
20 program on good touch, bad touch. And they
21 basically explained to the children one of
22 the ways that grownups are supposed to touch
23 kids and one of the ways that they're not
24 supposed to touch kids. And you will hear
25 how at the end of that program Minor finally

52

1 disclosed. She had the courage. She felt
2 safe enough to disclose. You'll hear from
3 the teacher that she disclosed to, Caitlin
4 Sauer. She'll tell you Minor's demeanor.
5 She'll tell you how that interaction went
6 down.

7 You'll hear about how the investiga-
8 tion began at that point and Minor's abuse
9 ended. You'll hear how police went to this
10 defendant's home. They conducted a search
11 warrant. They found various items
12 corroborating details of abuse that Minor had
13 told about during her interview at the Julie
14 Valentine Center. They found a dress that
15 she specifically talked about having to wear
16 during some of the assaults. They found
17 pornography in the home. They found -- Minor
18 said she had to watch her mother and the
19 Defendant have sex. The evidence will show
20 she told them 'I had to watch through a hole
21 in the door' to her parents' room. And there
22 was the hole in the door.

23 What is this case about? And the
24 final thing you will hear is you will hear
25 her detailed interview at the Julie Valentine

1 Center that was taken two years ago when this
2 case first happened.

3 Ladies and gentlemen, what is this
4 case about? It's about a young girl who was
5 abused by a man who should have been there
6 protecting, not sexually assaulting.

7 Now, I believe this case will be
8 relatively short compared to some things you
9 see. We should finish in the next couple of
10 days. But keep in mind these crimes don't
11 happen on private streets. They happen
12 behind closed doors.

13 I want to tell you what not to
14 expect in this case. There will be no DNA.
15 The evidence will show that this Defendant's
16 DNA was not found on several potential items
17 they collected and tested to see if it was
18 there, but it was not. You will not have
19 complicated medical evidence. You'll hear
20 from the doctor who conducted a medical exam
21 on her. But you, at the end of the day, will
22 have to come back to the essential question
23 when you look at all the evidence, do you
24 believe Minor was the victim of sexual
25 abuse?

1 And what I'm going to say to you
2 right now and I'm going to say it to you at
3 the end of this case, keep your eye on the
4 ball. There will be some theory. There will
5 be what I always call a rabbit trail that you
6 will be lead down or attempted to, to take
7 your eye off that ball. And what I would ask
8 you to do as you take this evidence with a
9 clear heart and a clear mind, guided with
10 justice is to not take your eye off the ball.
11 And at the end of this case render a verdict
12 that speaks justice. Thank you.

13 THE COURT: Thank you, Solicitor.
14 Mr. Sarratt, are you ready? Mr. Goldstein?

15 MR. GOLDSTEIN: Thank you, Your
16 Honor.

17 THE COURT: Thank you.

18 OPENING STATEMENT

19 BY MR. GOLDSTEIN:

20 Ladies and gentlemen, this is a case
21 about a series of questions that never got
22 answered. And they went unanswered because
23 the State never bothered to ask them in the
24 first place. They never followed up on
25 leads. They never bothered to look at the

1 evidence with a critical eye.

2 The fact that an accusation was made
3 was enough. I want y'all to think about that
4 for a moment. On January 14th, 2015, three
5 words from the mouth of a child ended
6 Gabriel's life. "He touched me." Now, that
7 accusation was all the State needed to hear.

8 They arrested Gabriel before they
9 performed a single medical exam on the child
10 to back up her story. They didn't need
11 forensic evidence. They didn't need DNA.
12 They had her words. But serious charges
13 require serious proof. And as this case
14 progresses the unanswered questions and the
15 doubt raised by this story is going to grow.
16 And when it happens, remember this. It is
17 not your job to fill in the blanks for them.
18 The State has the burden of proof in this
19 case. That means they have to prove each and
20 every element of the charged crimes beyond a
21 reasonable doubt. They can't shift that
22 burden to you. They can't shift that burden
23 to Gabriel.

24 Now, I'll put it to you as honestly
25 and as simply as I know how. You can't

1 accuse this man of a horrific crime, you
2 can't challenge his integrity as a father and
3 as a human being without proving it. Gabriel
4 is presumed innocent until proven guilty.
5 That means something. That means you can't
6 drag him into this courtroom and say 'we've
7 accused you of a serious crime now clear your
8 name, prove that you didn't do it.'

9 Thankfully, that is not how our
10 country works... The rule of law is an
11 important thing. It's the cornerstone on
12 which this country was built. In our country
13 we say this, before you can convict someone
14 of a serious crime, a crime based on
15 allegations this horrific and this shocking,
16 you'd better have the facts to back it up.
17 You'd better prove it before Gabriel can be
18 convicted and deprived of his liberty; to us,
19 that is something sacred.

20 So what will the evidence and the
21 actual facts of this case show?

22 How did Gabriel end up getting
23 accused of a crime that never even happened?

24 First, I want y'all to consider the
25 accusation. You will hear that on January

1 14th, 2015, Minor accused Gabriel of sexual
2 abuse. I want you guys to pay close
3 attention to the story at each retelling.
4 Like most stories, it changes over time. But
5 in order to know whether someone is telling
6 the truth or not, you have to pay attention
7 to the details, okay?

8 Second, consider the allegations of
9 physical abuse and beatings. Now, these
10 beatings inflicted during violent sexual
11 assaults are central to Minor's story. It
12 either happened or it didn't. But in
13 considering that evidence, you need to ask
14 the difficult questions that investigators
15 either did not ask or didn't want answered.

16 If this child had been severely
17 beaten, wouldn't someone around her have
18 notice?

19 She went to school, right?

20 Did anyone ever report anything like
21 that happening?

22 Is there any evidence to show that
23 these beatings actually took place?

24 Third, ask where this knowledge of
25 sexual activity came from.

1 Now, I want you guys to pay
2 attention to the allegations that are made
3 at school and watch the video where she's
4 videotaped later on. Ask yourself if there
5 was another possible source of that
6 knowledge. And if so, if investigators ever
7 followed up on it.

8 Fourth, consider the complete lack
9 of physical and scientific evidence to back
10 up these claims.

11 Now, during the trial you will learn
12 that according to Minor's story there were
13 three items associated with sexual abuse.
14 There was a tank top, the bed sheets and the
15 red dress. These items were secured from
16 inside the house, brought to the crime lab
17 and tested for any trace of forensic evidence
18 that would have been left behind. The
19 evidence will show that Gabriel's DNA was
20 never found on a single item that they
21 tested.

22 Finally, I want y'all to consider
23 the quality of investigation itself. And
24 this is where we come back to the idea of
25 unanswered questions. Ask yourself if the

1 State truly did everything in its power to
2 investigate this case, to pursue not only the
3 avenues that lead to guilt but those that
4 lead to innocence as well.

5 Now, this trial is as serious as it
6 gets. You deserve to know what really
7 happened. Gabriel deserves his day in court.
8 Ladies and gentlemen, that is why you have
9 been called to decide this case. Remember,
10 justice is not about doing the easy thing.
11 Justice isn't about doing the popular thing.
12 Justice is about doing the right thing.

13 At the end of this case the State is
14 going to hand you a story with more questions
15 than it answers and they're going to ask you
16 to convict Gabriel. But an investigation
17 that ignores the possibility of innocence
18 does not pass the test. There is just too
19 much at stake.

20 In the end, the facts and the
21 evidence of this case will point to what has
22 been true from the very beginning -- Gabriel
23 is not guilty of these crimes. Thank you,
24 guys.

25 THE COURT: Thank you, Mr.

60

1 Goldstein.

2 Solicitor, are you ready to call
3 your first witness?

4 SOLICITOR SUSTAKOVITCH: Yes,
5 sir, Your Honor. The State calls Caitlin
6 Sauer.

7 (WITNESS TAKES STAND)

8 CAITLIN SAUER, having been duly sworn to
9 tell the truth and nothing but the truth,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR SUSTKOVITCH:

13 Q. Good morning, Ms. Sauer?

14 A. Good morning.

15 Q. Where do you work?

16 A. I currently for Oconee County School
17 District. I am a sixth grade social studies
18 teacher.

19 Q. I'm sorry. Which school district
20 did you say?

21 A. Oconee County.

22 Q. All right. What's your position
23 there?

24 A. I'm a sixth grade social studies
25 teacher.

1 Q. And how long have you been in that
2 position?

3 A. About a year and a half. This will
4 be the end of my second year.

5 Q. Where did you get your teaching
6 degree from?

7 A. Clemson University.

8 Q. And when did you graduate from
9 Clemson?

10 A. I graduated in May of 2015.

11 Q. All right. I want to take you back
12 to January of 2015. Where were you working
13 or were you working in January 2015?

14 A. So that would have been the very
15 last of my teaching enrollment at Clemson and
16 I was doing my student teaching at Blythe
17 Academy off of Augusta Road.

18 Q. And as a student teacher, what did
19 your duties entail? Were you in a teacher's
20 classroom all day long or how did that work?

21 A. It was. I arrived just like any
22 other teacher. I had morning duties, just as
23 any other teacher. I was in the classroom.
24 I made relationships with the kids and made
25 sure they got from Point A to Point B. I

62

1 tutored and I also taught lessons. And then
2 about midway through I took over the entire
3 classroom for a two-week period.

4 Q. All right. And so as far as January
5 14th, 2015, how long were you in that
6 classroom?

7 A. I'd been in there for about two
8 weeks.

9 Q. Two. Whose classroom was it? Who
10 was the primary teacher?

11 A. Casey Page.

12 Q. All right. Do you know a child by
13 the name of Minor?

14 A. I do.

15 Q. And how do you know her?

16 A. She was one of the students in Ms.
17 Page's class at the time.

18 Q. And how old was Minor in January or
19 January 14th, 2015?

20 A. She was about eleven years old or a
21 fifth-grader or ten years old.

22 Q. She was ten.

23 A. Oh, sorry.

24 Q. That's okay. Do you recall having
25 contact with Minor while you were a student

1 teacher that has led you to have to come to
2 court today and testify?

3 A. Yes, ma'am.

4 Q. And could you recall what Ms. Page
5 was doing that day when you were, I guess --
6 were you in charge of the class at that time?

7 A. I was. Yes, ma'am.

8 Q. So tell me about that?

9 A. So we were having a seminar that
10 day. We, as fifth grade teachers, had all
11 come together and brought in the Julie
12 Valentine Center. And they were doing a
13 presentation, a talk about touching. Just
14 kind of understanding as your bodies are
15 changing, what's going to happen and what's
16 appropriate and what's not. At that time,
17 Casey had a little girl who was sick so she
18 was actually out for the first part of the
19 class so I was in charge with another
20 teacher. And then Casey returned.

21 Q. And the program from the Julie
22 Valentine Center, is that a usual program
23 that comes to Blythe Elementary School, I
24 guess for educational purposes?

25 A. Yes, ma'am.

1 Q. All right. So the kids watched this
2 program. Where did they watch the program?

3 A. It was in Ms. Page's classroom. We
4 separated the boys from the girls and so it
5 was a girls seminar and then we would switch
6 and have a boys seminar.

7 Q. Right. And after the program, what,
8 if anything, happened related to Minor?

9 A. So we switched about halfway
10 through. And Minor pulled me aside and said
11 she needed to speak with me. And I said,
12 'okay, just one moment.' And so we decided
13 to switch and then I waited until the class
14 had fully settled down and then I took her
15 into the hallway and then we had our
16 conversation.

17 Q. Can you describe for the jury
18 Minor's demeanor when she approached you and
19 wanted to talk to you privately?

20 A. She was very timid and scared and
21 seemed like there was something holding her
22 back, that she -- almost kind of like 'can I
23 say this, can I not say this?' And it was a
24 very apprehensive, just scared.

25 Q. Scared then?

1 A. (Affirmative nod).

2 Q. All right. Without saying the name
3 of the perpetrator if she gave one, did Minor
4 report to you whether or not she'd been the
5 victim of sexual assault?

6 A. Yes, ma'am.

7 Q. And did she report to you the place
8 or places where the assault occurred?

9 A. Yes, ma'am. She reported at home.

10 Q. And did she report to you a time
11 frame where the assaults took place?

12 A. Yes, ma'am. She had said it had
13 happened when she was five years old.

14 Q. And then how old was she then at the
15 time she was talking to you?

16 A. Ten years old.

17 Q. All right. When Minor told you this
18 information, what, if anything did you do?

19 A. I talked to her about saying how
20 brave she was to tell me such a thing. I
21 can't imagine how scared she would have been.
22 She had approached me and said that she was
23 scared at the time but now, after seeing the
24 presentation, she knew she had to tell
25 someone. And then afterwards, I told her

66

1 that we, as adults, can take care of her. We
2 can protect her. And then I went through the
3 proper channels and reported the allegation.

4 Q. Well, what is the protocol? If the
5 child discloses sexual abuse to a teacher at
6 school, what is the protocol at that point
7 that you would follow?

8 A. So it's basically to keep things as
9 normal as possible, not to bring any
10 attention to the child. That's a very scary
11 time. So I went to my teacher and then she
12 went to the guidance counselor and then two
13 of them at one point took Minor on their own
14 and had a conversation, just to kind of get a
15 little bit more information on their own.
16 And then eventually it was reported to the
17 police.

18 Q. Did you personally end up speaking
19 to the police related to the disclosure that
20 Minor made to you?

21 A. Yes, ma'am.

22 Q. And when was that?

23 A. That would have been about lunch-
24 time. So I was in charge of the kids and
25 then I went at lunchtime and spoke with them

1 in the guidance counselor's office.

2 Q. And did you give them a written
3 statement as far as what you recall?

4 A. Yes, ma'am.

5 Q. Is that what you've testified to
6 today?

7 A. Yes, ma'am.

8 Q. After taking Minor to the guidance
9 counselor, did you have any further contact
10 with the police related to this case?

11 A. Not after that day; no, ma'am.

12 Q. And have you talked with Minor
13 further about the disclosure that she made to
14 you?

15 A. No, ma'am.

16 Q. Please answer any questions Defense
17 counsel has?

18 A. Yes, ma'am.

19 THE COURT: Mr. Goldstein.

20 MR. GOLDSTEIN: Thank you, Your
21 Honor.

22 CROSS-EXAMINATION

23 BY MR. GODSTEIN:

24 Q. Good morning, Ms. Sauer?

25 A. Good morning.

1 Q. I just have a couple of questions
2 for you, okay?

3 A. Sure.

4 Q. All right. So just to nail it down,
5 that morning Minor disclosed to you -- or I
6 suppose late morning, okay?

7 A. (Affirmative nod).

8 Q. And she said that she'd been touched
9 inappropriately; correct?

10 A. Yes, sir.

11 Q. She said that her dad touched her.

12 SOLICITOR SUSTAKOVITCH: Your
13 Honor, can we approach? We can't go beyond
14 time and place under the law. So could we
15 approach and discuss this?

16 THE COURT: Sure.

17 SOLICITOR SUSTAKOVITCH: Okay.
18 Thank you.

19 (OFF RECORD BENCH CONFERENCE)

20 THE COURT: Madam forelady and
21 ladies and gentlemen of the jury, it's one of
22 those situations I explained to you earlier
23 that I need to have you go back to the jury
24 room. Hopefully, it won't take too long but
25 I need to deal with a particular legal issue

1 with the lawyers. Again, remind you don't
2 begin any discussions among yourselves. And
3 hopefully, we'll get you back out shortly.
4 Okay?

5 (JURY OUT @ 10:45 A.M.)

6 THE COURT: All Right. Solicitor,
7 go ahead and let's get on the record your
8 objection and then give me the Rule again
9 that limits the child abuse cases to time and
10 place?

11 SOLICITOR SUSTAKOVITCH: Yes,
12 sir. Generally, in these child abuse cases
13 under Rule 801(d)(1)(d), and it's also under
14 case law under *State v Schumpert*, witnesses
15 are not allowed to identify the perpetrators
16 name. That's reversible error. And they're
17 limited to talking about the time and the
18 place that the victim disclosed the abuse
19 happened. What I'm afraid that we're about
20 to barrel into is defense counsel trying to
21 cross-examine witnesses on hearsay from the
22 victim outside the bounds of 801(d)(1)(d) and
23 *State v Schumpert*.

24 And the proper way to do this would
25 be when the victim testifies to cross-examine

1 her, ask her 'what did you say to Caitlin
2 Sauer?' 'Did you tell Caitlin Sauer' --
3 blah, blah, blah. And if something is at
4 issue there, then they could potential under
5 Rule 613 call Ms. Sauer back if they want, if
6 it's substantive enough.

7 But it's not okay to -- because we
8 couldn't -- this has happened to me before
9 where we're not allowed to go and say, 'Ms.
10 Sauer, read your statement to the jury, say
11 what this child said.' And yet that's what
12 they're trying to do.

13 And so the State is limited ---

14 THE COURT: Right.

15 SOLICITOR SUSTAKOVITCH: --- to
16 time and place with no identification. And
17 then they're trying to go outside the bounds
18 of that. And I feel like it's inappropriate
19 because it is not accurate ---

20 THE COURT: Go ahead and put on
21 the record, Mr. Goldstein, your position?

22 MR. GOLDSTEIN: Well, Your Honor,
23 I think that we should be able to cross-
24 examine the witness as to the statement as it
25 was related to her and that we shouldn't be

1 limited to that extent. At the same time I
2 understand the legal position of the State
3 and I have no problem with constraining my
4 cross-examination.

5 THE COURT: All right. Okay.
6 Yeah, I mean, I pretty much have to feed both
7 sides here out of the same spoon. And it's
8 pretty clear that insofar as what Minor said
9 it's limited, so I've got to apply that both
10 ways. I don't have a problem, Mr. Goldstein,
11 if you want to just get the -- Ms. Sauer to
12 acknowledge, without going into the
13 statement, that 'this is what you claim Minor
14 told you.' So then if Minor when she
15 testifies says something different, then you
16 would have some foundation in order to recall
17 Ms. Sauer if necessary. So without going
18 into the contents of that, you just want to
19 establish that for the record, okay?

20 SOLICITOR SUSTAKOVITCH: Your
21 Honor, I apologize. I didn't understand the
22 limits to that. Is he going to be able to go
23 outside the time and place?

24 THE COURT: No, no, no.

25 SOLICITOR SUSTAKOVITCH: Okay.

1 All right.

2 THE COURT: He's going to be
3 limited as the State is limited insofar as
4 what Minor told Ms. Sauer. My whole point is
5 is that if he wants to get Ms. Sauer to
6 acknowledge that she gave a written
7 statement, even show her, without going into
8 the contents of the written statement, 'is
9 this the statement that you gave?' So then
10 if Minor says something different as far as
11 what she told Ms. Sauer, then he would have
12 some foundation in order to recall Ms. Sauer.

13 SOLICITOR SUSTAKOVITCH: Sure.
14 Okay. Okay.

15 THE COURT: Yeah. That's ---

16 SOLICITOR SUSTAKOVITCH: Okay.
17 That's fine. Thank you, Your Honor.

18 THE COURT: All right. We clear?
19 Everybody clear?

20 MR. GOLDSTEIN: Yes, Your Honor.

21 THE COURT: Okay. All right.
22 Thank you.

23 All right. Let's bring the jury
24 back out, please.

25 (JURY IN AT 10:50 A.M.)

1 THE COURT: All right. Let the
2 record reflect the jury is back in the
3 courtroom.

4 Mr. Goldstein, we were in your
5 cross.

6 CROSS-EXAMINATION CONTINUED

7 BY MR. GOLDSTEIN:

8 Q. Okay. Ms. Sauer, Minor said that
9 she was scared to tell anyone about this
10 before the talk about touching program; is
11 that right?

12 A. Yes, sir.

13 Q. Okay. But now she knew she needed
14 to tell someone?

15 A. Correct.

16 Q. After watching the program?

17 A. Correct.

18 Q. Okay. And so that morning the
19 students there watching the program, it's a
20 program about sexual abuse; right?

21 A. That and just improper touching?

22 Q. Okay. And correct me if I'm wrong,
23 these kids are in fifth grade at the time;
24 right?

25 A. Correct.

1 Q. So do you know, were their parents
2 given advanced notice that they were going to
3 see this program?

4 A. Yes.

5 Q. What kind of notice?

6 A. As far as I know it was a permission
7 slip at the home.

8 Q. Okay. All right. And at the time,
9 you worked as a school teacher; right?

10 A. Yeah.

11 Q. You were a student teacher?

12 A. Uh-huh, (affirmative nod).

13 Q. And now you work as a school
14 teacher?

15 A. Correct.

16 Q. So that makes you a mandatory
17 reporter under the law; right?

18 A. Absolutely.

19 Q. Meaning that if you observe signs of
20 physical abuse or neglect in a child, I mean,
21 you have to report it; right?

22 A. Correct.

23 Q. How long did you know Minor
24 personally?

25 A. About two weeks.

1 Q. Okay. In that time, you didn't
2 observe any signs that she'd been physically
3 beaten; right?

4 A. No, sir.

5 Q. You never saw any bruising on her
6 face; right?

7 A. Correct.

8 Q. You never saw any black eyes,
9 anything like that?

10 A. No, sir.

11 Q. Okay. How about on January 14th,
12 2015 when she made the disclosure, you didn't
13 observe any signs that she'd been physically
14 beaten on that day; right?

15 A. Correct.

16 Q. Okay. And just to clarify, I mean,
17 in the past you never made any reports at all
18 that this child had been physically beaten?

19 A. Correct.

20 Q. And police after this day, after you
21 give your written statement on January 14,
22 2015, they never spoke with you again; right?

23 A. Correct.

24 Q. Okay.

25 MR. GOLDSTEIN: No additional

76

1 questions, Your Honor.

2 THE COURT: Any redirect?

3 SOLICITOR SUSTAKOVITCH: None
4 from the State.

5 THE COURT: Okay. Thank you,
6 ma'am. If you'll step down.

7 (WITNESS STEPS DOWN)

8 SOLICITOR SUSTAKOVITCH: Your
9 Honor, may this witness be excused?

10 THE COURT: She can be excused
11 subject to possibly being recalled.

12 SOLICITOR SUSTAKOVITCH: Okay.
13 Thank you, Your Honor.

14 SOLICITOR CLARK: Your Honor. The
15 State calls William Amendolare.

16 (WITNESS TAKES STAND)

17 WILLIAM AMENDOLARE, having been duly
18 sworn to tell the truth, and nothing but the
19 truth, testified as follows:

20 DIRECT EXAMINATION

21 BY SOLICITOR CLARK:

22 Q. Officer, where do you work?

23 A. Greenville County Sheriff's Office.

24 Q. How long have you been doing that?

25 A. Six years.

77

1 Q. And can you explain to the jury what your
2 duties with the Sheriff's Office is?

3 A. Respond to calls for service and patrol
4 neighborhoods.

5 Q. Where you working in that capacity back
6 in January of 2015?

7 A. Yes, I was.

8 Q. Were you on duty on January 14th, 2015?

9 A. I was.

10 Q. Did you response to a call at 100 Blythe
11 Drive in Greenville?

12 A. Yes, I did.

13 Q. What is that location?

14 A. Blythe Elementary School.

15 Q. What county is that in?

16 A. Greenville County.

17 Q. What time did you respond to that call?

18 A. Between 1:00 and 1:30, around 1:30 I
19 believe.

20 Q. What kind of call was it?

21 A. A call for service regarding possible
22 criminal sexual conduct towards a child.

23 Q. Okay. Who did you first meet with?

24 A. The school counselor.

25 Q. Did you ever meet with the victim in this

1 case, Minor?

2 A. No, ma'am.

3 Q. Why not?

4 A. When they called, several adult employees
5 were telling me the same thing that the child
6 had reported and rather than speaking with
7 the child, I got a understanding of what was
8 going on from the adults.

9 Q. In general, when you respond to a
10 possible sexual assault report, do you try to
11 interview a child victim?

12 A. Generally not if there is an adult that
13 is aware of what is going on. My role as
14 uniformed patrol is to notify my supervisor
15 and an investigator who is trained in the
16 proper response.

17 Q. And is that what you did?

18 A. Yes, ma'am. I did.

19 Q. Where was the victim when you arrived at
20 the school?

21 A. She was in another room and I never had
22 any contact with her.

23 Q. Did you take any statements in this case?

24 A. (Affirmative nod), I did from the
25 counselor and the teachers that were present.

1 Q. Please explain that process to the jury.

2 Q. It's standard procedure to separate all
3 parties and ask them each to write down their
4 statement, so that we can verify and cross-
5 reference, check the stories.

6 Q. You said you notified your supervisor.

7 A. Yes, ma'am, Officer Picone.

8 Q. And did he arrive on the scene?

9 A. He did.

10 Q. Did he take over the investigation at
11 that point?

12 A. Yes, ma'am.

13 Q. Did you have any further involvement
14 after his arrival?

15 A. No, ma'am.

16 SOLICITOR CLARK: Please answer any
17 questions that Defense counsel may have for
18 you.

19 WITNESS: Yes, ma'am.

20 THE COURT: Okay. Defense.

21 CROSS-EXAMINATION

22 BY MR. SARRATT:

23 Q. Officer Amendolare, how are you?

24 A. Doing well, sir. And yourself?

25 Q. Doing well. I have just a couple of

1 very brief questions for you. So, again,
2 you first spoke with the guidance counselor
3 at school?

4 A. Yes, sir.

5 Q. And did not speak to Minor?

6 A. No, sir.

7 Q. But you did take a couple of written
8 statements; right?

9 A. Yes.

10 Q. And so those written statements were
11 taken from Caitlin Sauer?

12 A. Yes.

13 Q. Did you also take a statement from
14 Casey Page?

15 A. Yes.

16 Q. Okay. And then do you recall you
17 took a statement from Claire Burnette, was
18 another ---

19 A. Yes.

20 Q. Okay. And then finally, Valerie
21 Tomes was another teacher. Do you recall
22 taking a statement from her?

23 A. I believe so.

24 Q. Okay. So in total four written
25 statements from either teachers or guidance

81

1 counselors at the school?

2 A. I believe - yeah, I think there were
3 four of them there, yes, sir.

4 Q. Okay.

5 MR. SURRATT: No further questions,
6 Your Honor.

7 THE COURT: Okay. Anything on
8 redirect?

9 SOLICITOR CLARK: No further
10 redirect, Your Honor.

11 THE COURT: Okay. All right.
12 Thank you, sir. You can step down.

13 WITNESS: Thank you, sir.

14 (WITNESS STEPS DOWN)

15 THE COURT: You're free to leave
16 the courthouse or you're welcome to remain
17 with us.

18 WITNESS: Thank you, sir.

19 SOLICITOR CLARK: The State calls
20 Casey Page.

21 THE COURT: Okay.

22 (WITNESS TAKES STAND)

23 CASEY PAGE, having been duly sworn to
24 tell the truth, and nothing but the truth,
25 testified as follows:

DIRECT EXAMINATION

BY SOLICITOR CLARK:

Q. Good morning, Ms. Page?

A. Hi.

Q. Where do you work?

A. Blythe Academy of Languages.

Q. What do you do there?

A. I'm a fifth grade teacher.

Q. How long have you been a teacher?

A. I've been a teacher for -- this is my fifteenth year.

Q. Okay. But you were at Blythe Academy for the last how many years?

A. Twelve years.

Q. Ms. Page, I want to take you back to January 2015. Were you teaching at Blythe Academy at that time?

A. Yes.

Q. And what grade were you teaching?

A. Fifth grade.

Q. Did you know a child by the name of Minor?

A. Yes.

Q. And Ms. Page, do you remember her having any specific injury during that year

1 that she was in your class?

2 A. She did break her arm that year.

3 Q. Do you happen to recall which
4 semester her broken arm occurred?

5 A. I think it was earlier in the year,
6 before Christmas, maybe the fall.

7 Q. So more specifically, Ms. Page, were
8 you at work on the day of January 14th, 2015?

9 A. I was, but I came in late. I took a
10 half-day. So I came in halfway through the
11 day, about 11:15.

12 Q. And when you arrived around 11:15
13 that morning, what happened when you arrived?

14 A. I had a student teacher, Caitlin
15 Sauer. And she was in the classroom that day
16 and she approached me when I came in and told
17 me that she had been approached by Minor who
18 gave her some information that she needed to
19 talk to me about immediately.

20 Q. And after speaking with Ms. Sauer,
21 what did you do next?

22 A. So I approached Miss Minor, who also
23 told me that she needed to speak to me at the
24 same time. And before Minor could tell me
25 the information, I went to speak with our

84

1 school counselor, Claire Burnette. And then
2 I took Minor down to Ms. Burnette with me.

3 Q. Did you and Ms. Burnette speak with
4 Minor together at some point?

5 A. Yes. In Ms. Burnette's office we
6 spoke with Minor.

7 Q. Was there anyone else in the room
8 with you all?

9 A. No.

10 Q. And without stating the identity of
11 the perpetrator, did Minor report to you
12 whether she had been the victim of a sexual
13 assault?

14 A. Yes.

15 Q. And, again, without stating the
16 identity of the perpetrator if she named one,
17 did she report to you the place or places of
18 the assault?

19 A. Yes.

20 Q. Where did she say that they
21 occurred?

22 A. At her house.

23 Q. And did she report the time frame
24 that the assault took place?

25 A. Yes.

85

1 Q. What was that timeframe?

2 A. She said that they had occurred
3 since she was five years old.

4 Q. And how old was she at the time of
5 this conversation?

6 A. Ten years old.

7 Q. And later in the day did you speak
8 with police regarding that conversation that
9 you had with Minor?

10 A. Yes, we did.

11 Q. And did you give a written statement
12 documenting that conversation?

13 A. Yes.

14 Q. And, Ms. Page, after January 14th,
15 2015, did you have any further involvement in
16 this case?

17 A. No.

18 Q. Please answer any questions that
19 Defense counsel may have for you?

20 THE COURT: Defense?

21 MR. GOLDSTEIN: Thank you, Your
22 Honor.

23 CROSS-EXAMINATION

24 BY MR. GOLDSTEIN:

25 Q. Good morning, Ms. Page. How are you

84

1 doing?

2 A. Hi.

3 Q. Okay. So your testimony, you
4 arrived at the school at about 11:20 that
5 morning; is that right?

6 A. (Affirmative response).

7 Q. Okay. Just after your students had
8 finished watching the talk about touching
9 program; correct?

10 A. Approximately.

11 Q. And, again, this is a program that's
12 about sexual abuse; right?

13 A. It's about Stranger Danger, watching
14 out being around strangers mostly. And then
15 being aware of what's appropriate in close
16 relations and touching.

17 Q. Okay. And due to the content of
18 this program, am I correct the parents were
19 given advanced notice that the students were
20 going to see this?

21 A. Yes.

22 Q. Okay. What kind of advanced notice
23 were they given, do you recall?

24 A. It's in a letter form.

25 Q. Okay. So that letter was sent home

1 to Minor's mom?

2 A. Yes.

3 Q. And, Ms. Page, you testified you've
4 been working as a school teacher for twelve
5 years; right?

6 A. At Blythe Academy, (affirmative
7 nod).

8 Q. At Blythe Academy. Okay. How long
9 have you been a teacher?

10 A. Fifteen.

11 Q. Fifteen. Being a teacher, that
12 makes you a mandatory reporter under South
13 Carolina law; correct?

14 A. Yes.

15 Q. Meaning that, I mean, if you observe
16 signs of physical abuse or neglect to a
17 student, I mean, you have to report it;
18 right?

19 A. Yes.

20 Q. Now, on direct examination Ms. Clark
21 asked you about a broken arm; is that right?

22 A. Yes.

23 Q. Did you report that broken arm to
24 authorities?

25 A. I didn't because I knew that it had

1 happened at a skating party.

2 Q. Okay.

3 A. And that it was an accident and I
4 had that confirmed by other students and
5 Minor's mom and Minor.

6 Q. Okay. Ms. Page, how long have you
7 personally known Minor?

8 A. Since August of 2014.

9 Q. Okay.

10 A. August of that school year. '13.
11 I'm sorry.

12 Q. It's fine. And you were her
13 teacher; is that correct?

14 A. Yes.

15 Q. In that time that you knew Minor
16 that you were her teacher, you never, you
17 know, reported that she'd been physically
18 beaten; right? To authorities?

19 A. No.

20 Q. And not to be redundant here, but I
21 mean, you never observed any facial injuries
22 to her?

23 A. No.

24 Q. How about on January 14th, 2015, the
25 day she discloses. You didn't observe any

1 physical injuries to her on that date;
2 correct?

3 A. No.

4 Q. Okay. And just to clarify -- and I
5 mean, I could be wrong here -- but after
6 January 14, 2015, the police have never
7 spoken to you about this case again; correct?

8 A. No.

9 Q. Okay. Thank you, Ms. Page. I
10 appreciate it.

11 A. Thank you.

12 THE COURT: Any redirect?

13 SOLICITOR CLARK: No, Your Honor.

14 THE COURT: Thank you, ma'am. You
15 may step down.

16 (WITNESS STEPS DOWN)

17 THE COURT: You're free to leave
18 the courthouse or you're welcome to remain
19 with us.

20 SOLICITOR CLARK: The State calls
21 Claire Burnette.

22 THE COURT: Okay.

23 (WITNESS TAKES STAND)

24 CLAIRE BURNETTE, having been duly sworn
25 to tell the truth, and nothing but the truth,

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MS. CLARK:

4 Q. Ms. Burnette, where are you
5 currently employed?

6 A. I work at Blythe Academy.

7 Q. And how long have you been working
8 there?

9 A. This is my twenty-second year.

10 Q. So you were there in 2015, I take
11 it?

12 A. Yes.

13 Q. And what exactly is your job title
14 at Blythe Academy?

15 A. I'm the school counselor.

16 Q. So what types of responsibilities
17 are involved with being a counselor?

18 A. There are many. I work with
19 students individually. I also teach
20 classroom lessons on character education.
21 I work with small groups of students with
22 issues. And I coordinate programs for our
23 school.

24 Q. Are there protocols in place at
25 Blythe Academy regarding disclosure of

1 potential criminal sexual conduct?

2 A. Yes, there are.

3 Q. Do you mind telling me a little bit
4 about those?

5 A. Well, by law we, all the staff are
6 mandated reporters. Meaning if a child
7 discloses abuse or neglect, we are required
8 by law to report. Even if we have reasonable
9 cause to believe that abuse or neglect has
10 occurred, we report it.

11 Q. Okay. Ms. Burnette, I'm going to
12 take you back to January of 2015. Were you
13 at work on the day of January 14th, 2015?

14 A. I was.

15 Q. And was a talk about touching
16 presentation held that day?

17 A. Yes.

18 Q. What grade was given that
19 presentation?

20 A. That was fifth grade on that day.

21 Q. And after that talk about touching
22 presentation, did you meet with the victim in
23 this case, Minor?

24 A. Yes, I did.

25 Q. And how did that come about?

1 A. I was approached by Minor's teacher,
2 Casey Page. She had heard a concern from the
3 student teacher right after the presentation.

4 Q. And so did you speak with Minor?

5 A. I did, with Ms. Page.

6 Q. And where were you when you spoke
7 with her?

8 A. We were in my office.

9 Q. And other than you and Ms. Page, was
10 anyone else in the room with you at that
11 time?

12 A. Not at that time.

13 Q. And without stating the identity of
14 the perpetrator, did Minor report to you
15 whether she had been the victim of a sexual
16 assault?

17 A. Yes, she did.

18 Q. And, again, without stating the
19 identity of the perpetrator, did she report
20 to you the place or places of the assault?

21 A. Yes.

22 Q. And where were those place or
23 places?

24 A. She stated that they occurred at her
25 home.

1 Q. And did she report to you the time
2 frame that those assaults took place?

3 A. She did. She referenced that it had
4 occurred since age five and was still
5 continuing. And I believe she was ten at the
6 time.

7 Q. Okay. And what was her demeanor at
8 the time of this conversation?

9 A. She was shaken. She was not calm
10 and relaxed as she normally would be.

11 Q. And when you were speaking with
12 Minor, were you acting in a law enforcement
13 capacity during that conversation?

14 A. No. I'm not trained to be an
15 investigator of any kind. I was just taking
16 the information and reporting it, as I'm
17 required to do.

18 Q. And, in fact, what did you do after
19 Minor reported to you the sexual assault?

20 A. Immediately after, I notified our
21 school principal, as is protocol. And then
22 you make a report to DSS at that time.

23 Q. And was a call made to law
24 enforcement that day?

25 A. Yes.

1 Q. And did deputies arrive at Blythe
2 Academy sometime later that afternoon?

3 A. They did.

4 Q. And when they arrived, did you give
5 a statement to police about the conversation
6 you'd had with Minor?

7 A. Yes, I did.

8 Q. Did Minor speak with law enforcement
9 at school that day?

10 A. She did.

11 Q. And did you happen to stay with her
12 while she spoke to those officers?

13 A. Yes.

14 Q. And after January 14th, 2015, Ms.
15 Burnette, have you had any further
16 involvement with this case?

17 A. I have not.

18 Q. Thank you, Ms. Burnette. Please
19 answer any questions that Defense counsel may
20 have for you.

21 THE COURT: Cross-examination.

22 MR. GOLDSTEIN: Thank you, Your
23 Honor.

24 CROSS-EXAMINATION

25 BY MR. GOLDSTEIN:

1 Q. Good morning, Ms. Burnette. How are
2 you doing?

3 A. Fine.

4 Q. Okay. I just have a few questions.
5 Okay. So you personally heard Minor tell her
6 story on two different occasions; right?

7 A. Yes.

8 Q. Okay. Once to you and to Ms. Page
9 her teacher?

10 A. Uh-huh.

11 Q. And another time to law enforcement?

12 A. Uh-huh.

13 Q. Back in the conference room at the
14 school; right?

15 A. (Affirmative nod).

16 Q. Okay.

17 THE COURT: Please verbally
18 respond for the record.

19 WITNESS: Yes, that's correct.

20 THE COURT: Thank you.

21 CROSS-EXAMINATION CONTINUED

22 BY MR. GOLDSTEIN:

23 Q. Thank you, Ms. Page. I'm sorry.

24 Ms. Burnette. So you're back in the
25 conference room. You were back there with

1 Minor; right?

2 A. Right.

3 Q. With Investigator Perry?

4 A. Correct. I do not recall the name,
5 but, yes.

6 Q. With Investigator Picone?

7 A. Yes.

8 Q. And with a Greenville County DSS
9 caseworker. I don't know if you recall her
10 -- name, Amberlin White; right?

11 A. Uh-huh. Yes, sir.

12 Q. Okay. And Investigator Picone
13 actually stayed during the interview;
14 correct?

15 A. Yes. Well, I believe Minor -- if
16 I'm not mistaken, I believe Minor was given
17 the option ---

18 Q. Okay.

19 A. --- if she felt comfortable going
20 forward with someone there. It's not typical
21 that I would sit in in a conference room, but
22 I was asked to that day.

23 Q. Okay. I understand that. I mean,
24 this is a pretty unusual event; correct?

25 A. Right.

1 Q. I mean, it's not every day that a
2 student makes an allegation like this; right?

3 A. Correct.

4 Q. And it's not every day that the
5 investigators would ask you to actually stay
6 during the interview; right?

7 A. Correct.

8 Q. Okay. I want to ask you -- you work
9 as a guidance counselor at Blythe Academy;
10 correct?

11 A. That's right.

12 Q. How long have you been in that role
13 at the school?

14 A. This is my fourteenth year as a
15 school counselor; before that, as a teacher.

16 Q. Okay. So being a teacher and then
17 subsequently being a guidance counselor, that
18 makes you a mandatory reporter under South
19 Carolina law; correct?

20 A. Correct.

21 Q. Meaning that if you observe signs of
22 physical abuse or neglect to a student, you
23 have to report it; right?

24 A. That's right.

25 Q. Okay. Ms. Burnette, how long have

1 you personally known Minor?

2 A. I knew Minor the previous school
3 year. That year it was fifth grade. And she
4 -- I believe, if I'm not mistaken, she came
5 to our school the year before in fourth
6 grade.

7 Q. Okay. And in that time that you
8 personally knew Minor, you never observed any
9 signs that she'd been physically beaten;
10 correct?

11 A. I have not.

12 Q. Okay. You never observed any
13 facial, like facial bruising or black eyes or
14 anything of that nature; correct?

15 A. Correct.

16 Q. Okay. How about on January 14th,
17 2015, that's the day that she disclosed this
18 abuse?

19 A. Uh-huh.

20 Q. You did not observe any signs of
21 physical beatings on that date; correct?

22 A. That's correct.

23 Q. Okay. And aside from the
24 allegations made in this case, you've never
25 reported whatsoever to authorities that she'd

99

1 been physically beaten or neglected;
2 correct?

3 A. I had not prior to that day.

4 Q. Okay. And just to clarify, I think
5 that this was touched on during the direct
6 examination, but after January 14th, 2015, law
7 enforcement never followed up with you again
8 about this case; correct?

9 A. Correct.

10 Q. Okay. Thank you. I appreciate your
11 time.

12 A. Thank you.

13 THE COURT: Any redirect?

14 SOLICITOR CLARK: Brief redirect,
15 Your Honor.

16 THE COURT: Okay.

17 REDIRECT EXAMINATION

18 BY SOLICITOR CLARK:

19 Q. Ms. Burnette, for clarification, is
20 the reason you sat in on Minor's conversation
21 with law enforcement because she was scared
22 or nervous?

23 A. Yes. She was given that option, I
24 believe, and she chose to have someone with
25 her. She knew me and I think she was

1 comfortable with my presence.

2 Q. Thank you, Ms. Burnette.

3 SOLICITOR CLARK: No further
4 questions of the witness.

5 THE COURT: Any recross?

6 MR. GOLDSTEIN: No, Your Honor.

7 THE COURT: Thank you, ma'am. You
8 may step down.

9 (WITNESS STEPS DOWN)

10 THE COURT: You're free to leave
11 the courthouse or you're free to -- you're
12 welcome to remain with us.

13 Solicitor, is the next witness a
14 relatively short witness or ---

15 SOLICITOR SUSTAKOVITCH: Your
16 Honor, I do believe this next one is going to
17 take some time.

18 THE COURT: Okay. Well, let's
19 take a morning break.

20 Madam Forelady and ladies and
21 gentlemen of the jury, go back, take about
22 fifteen minute morning break. And then we'll
23 bring you back out and we'll continue with
24 the trial. I again remind you no discussion
25 among yourselves about anything you've heard

1 or anything related to this case. And we'll
2 see you shortly.

3 (JURY OUT @ 11:10 A.M.)

4 THE COURT: All Right. We'll take
5 about a fifteen-minute break.

6 (BRIEF RECESS)

7 (DEFENDANT PRESENT)

8 THE COURT: Please bring in the
9 jury.

10 (JURY IN @ 11:30 A.M.)

11 THE COURT: The jury's back in the
12 courtroom. Solicitor, you want to call your
13 next witness?

14 SOLICITOR SUSTAKOVITCH: Thank
15 you, Your Honor. Your Honor, at this time
16 the State is moving to admit State's Exhibit
17 Number 2 by stipulation with the defense.
18 For the record, it is two documents from
19 Greenville County Schools outlining when
20 Minor came and left different schools.

21 THE COURT: Okay.

22 SOLICITOR SUSTAKOVITCH: It is
23 under seal, Your Honor.

24 THE COURT: Okay. All right.
25 What says the Defense?

1 SOLICITOR SUSTAKOVITCH: We are
2 fine stipulating to that.

3 THE COURT: Okay. All right.

4 SOLICITOR SUSTAKOVITCH: Thank
5 you, Your Honor.

6 THE COURT: We have Number 2 into
7 evidence for the State.

8 (SO ENTERED AS STATE'S EXHIBIT 2)

9 SOLICITOR SUSTAKOVITCH: The
10 State calls Investigator David Picone.

11 (WITNESS TAKES STAND)

12 DAVID PICONE, having been duly sworn to
13 tell the truth, and nothing but the truth,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY SOLICITOR SUSTAKOVITCH:

17 Q. Good morning.

18 A. Good morning.

19 Q. What is your position, Investigator?

20 A. Currently assigned to the homicide
21 unit for the sheriff's office.

22 Q. And which sheriff's office do you
23 work with?

24 A. Greenville County Sheriff's Office.

25 Q. How long have you been a homicide

1 investigator?

2 A. I was assigned to the unit January
3 this year.

4 Q. All right. Prior to being a
5 homicide investigator with Greenville County,
6 what was your position with Greenville
7 County?

8 A. Well, I started off in uniform
9 patrol and I was there for several years.
10 And then I moved on to property crimes
11 investigator. From property crimes
12 investigator, I went on to sex crimes
13 investigator, and now I'm with homicide.

14 Q. And how long have you been in law
15 enforcement?

16 A. For ten years this past February.

17 Q. Thank you. Going back to sex crimes
18 and your time as a sex crimes investigator,
19 could you tell the jury how -- what are the
20 different ways that allegations of sexual
21 assaults could come to you as an
22 investigator? Meaning, how did it come to
23 the sheriff's office?

24 A. All right. There's usually about
25 three different ways. Uniform patrol will

1 usually respond to a scene and they might
2 take a report. And then if it's something
3 that's not immediately handled at that
4 moment, they would write a report and forward
5 it on to investigation and then a sergeant
6 would assign the investigator to the case.

7 Then we have people who would walk
8 in, just out of the, you know, blue and want
9 to make a report.

10 And then we have, a lot of times,
11 DSS referrals or DHEC referrals, things like
12 that.

13 Q. All right. Are you familiar with
14 this defendant, Gabriel Betancourt?

15 A. Yes.

16 Q. And how are you familiar with him?

17 A. Through the investigation that I
18 conducted.

19 Q. And when did you become involved in
20 the investigation related to Gabriel
21 Betancourt?

22 A. January 14th of 2015.

23 Q. Where did you respond that day,
24 Investigator?

25 A. Blythe Academy, which is an academy

1 in Greenville.

2 Q. What was the nature of the call that
3 you responded to?

4 A. I was asked to respond out there in
5 reference to a possible criminal sexual
6 conduct with a minor.

7 Q. When you arrived on the scene, what
8 did you observe?

9 A. Well, there was several different
10 people there. Uniform patrol was on scene.
11 I kind of talked with them briefly and
12 gathered a summary of what they had already
13 -- information they had obtained. There was
14 several different teachers there as well.
15 And then the victim in this case, she was
16 held off in another conference room.

17 Q. Now, when you got to the scene, did
18 you speak to Deputy Amendolare?

19 A. I did.

20 Q. And did you, from talking to him,
21 find out what he had done related to the
22 investigation?

23 A. Yes.

24 Q. And I think you just stated, the
25 victim, where was she when you arrived?

106

1 A. She was in a different conference
2 room. They had several different conference
3 rooms within the main office. So she was a
4 different office.

5 Q. All right. When you got to the
6 scene, you spoke with Claire Burnette, the
7 counselor of the school?

8 A. Yes.

9 Q. And several other teachers -- Casey
10 Page, I believe, Caitlin Sauer?

11 A. Yes.

12 Q. Did you take statements from them?

13 A. Yes. They actually gave handwritten
14 statements.

15 Q. All right. What's the mother's name
16 of Minor?

17 A. Minora McDaniel.

18 Q. Okay. And when you arrived, was she
19 on the scene?

20 A. I don't remember if she was there
21 right when I got there, but she arrived after
22 I had already been there or she was already
23 at the school. I don't remember which one it
24 was.

25 Q. All right. Why was she contacted to

1 come to the school?

2 A. Because of the allegations that were
3 made. I needed to actually, you know, talk
4 with her about what was going on and explain
5 the process to her, what we were going to do.

6 Q. All right. When she arrived at the
7 school, did you observe her demeanor when she
8 arrived at the school?

9 A. Not at first. But once I'd had a
10 conversation with her, I did.

11 Q. And what was your conversation? Did
12 you relate to her the allegations that had
13 been made?

14 A. Yes. I gave her a brief summary of
15 what her daughter had told me. She was very
16 shocked, extremely mad.

17 Q. And when you talk about shock and
18 extremely mad, who was she mad at?

19 A. The perpetrator.

20 Q. This defendant?

21 A. Yes.

22 Q. Okay. Did she verbally articulate
23 that to you? Was it something she was saying
24 that led you to believe that?

25 A. Yes.

1 Q. All right. So what did you next,
2 did you tell her to wait?

3 A. Yeah. After I conducted my
4 interviews that I did at school, I explained
5 to her that, you know, from here on out her
6 daughter would be referred for interview the
7 following day. And I asked her, you know,
8 please don't discuss this with her daughter.
9 You know, it's already traumatic enough on
10 the children. I usually ask the parents not
11 to ask any questions because when they -- for
12 an interview, we want them to, you know, the
13 information they provide to come from their
14 mouth and not be given by the parents.

15 Q. Right.

16 A. With that, you know, I explained to
17 her I would be in contact with her and let
18 her know when the interview was.

19 Q. When you stated she appeared upset
20 and didn't know what was going on, did she
21 make any alarming statements in that period
22 of being upset related to any harm she might
23 do to this defendant?

24 A. Yeah. This time and then another
25 time that I had a conversation with her, she

1 threatened to harm him. And I asked her
2 several different times, 'please let me
3 investigate the case and let me handle it.'

4 Q. All right. Going back to the victim
5 in this case, when did you talk with her?

6 A. I talked to her that day out at the
7 school on the 14th of January.

8 Q. And where did you talk with her?

9 A. In the conference room.

10 Q. Who was present in the conference
11 room?

12 A. Myself, one of my partners,
13 Investigator Perry, a DSS case worker and
14 Minor and the school guidance counselor.

15 Q. And just to help the jury under-
16 stand, with a sexual assault investigation --
17 well, what's the Julie Valentine Center?
18 Could you tell them what that is?

19 A. Yeah. The Julie Valentine Center,
20 they're a center for -- well, we send
21 children there for interviews under the age
22 of twelve when they disclose sexual abuse.

23 Q. Right. What I'm getting at is you
24 are the lead officer on the case. You came
25 into this conference room. When you talked

1 with Minor, was your goal to get in some
2 detailed conversation with her about all the
3 allegations at that point?

4 A. No. We always -- if they're under
5 twelve years old for interview, our main goal
6 is to get a very brief synopsis of what's
7 going on so we can kind of figure out where
8 our investigation is going to lead us and who
9 we possibly might need to interview before
10 the actual interview she goes to.

11 Q. So it's not your role to be like the
12 interviewer at the Julie Valentine Center; is
13 that correct?

14 A. No, it's not.

15 Q. All right. So you get this general
16 information from her to figure out where the
17 investigation is going. That's what you just
18 testified to. Without stating the name of
19 the perpetrator, if she gave you one, did she
20 report to you whether she was the victim of
21 sexual assault?

22 A. She did.

23 Q. And did she report a place or places
24 where the assault occurred?

25 A. Yes. She stated that it happened at

1 her house.

2 Q. And did she give you a time frame of
3 when the abuse took place?

4 A. Yes. She stated it started around
5 five years old and went up to, I think, it
6 was a couple weeks prior to having reported
7 this.

8 Q. All right. How old was she again on
9 January 14, 2005 [sic]?

10 A. Ten years old.

11 Q. All right.

12 SOLICITOR SUSTAKOVITCH: I beg
13 the Court's indulgence.

14 THE COURT: Sure. Take your time.

15 DIRECT EXAMINATION CONTINUED.

16 BY SOLICITOR SUSTAKOVITCH:

17 Q. All right. So we've just -- you've
18 talked with the victim and got generally what
19 she was stating had occurred. What did you
20 do at that point? Did she end up going home
21 with her mom or how did she leave the school?

22 A. Yeah. She went home with her mom.
23 You know, I - obviously, like I said, I
24 wasn't going to get into a detailed interview
25 with her right there. So I get the basic

1 information I need to write a report and for
2 the referral. And she went home with her
3 mom.

4 Q. And speaking of that referral, what
5 did you do at that point in the investigation
6 as far as a referral to the Julie Valentine
7 Center?

8 A. The following morning I sent a
9 referral over to the Julie Valentine Center
10 requesting the interview for Minor.

11 Q. All right. And did you have any
12 further contact with Minora McDaniel after
13 you made that referral to the Julie Valentine
14 Center?

15 A. Yes. Well, after I made the
16 referral, she didn't have an operating
17 cellphone or a phone so I had to drop the
18 card off to her. I believe it was on the 26th
19 of January she contacted me.

20 Q. She contacted you?

21 A. Yes.

22 Q. Did she have additional information
23 she wanted to give you?

24 A. Yes.

25 Q. Oh, I'm sorry.

1 A. She did, yes.

2 Q. Did you take a statement from her?

3 A. I did.

4 Q. What was her demeanor during that
5 interaction when you took that statement?

6 A. Extremely, extremely mad. To the
7 point where, like I said, she wanted, I mean,
8 to kill him. And I explained to her please
9 let me continue the investigation.

10 Q. Okay. Going to the Julie Valentine
11 Center interviews, what date again? It was
12 February 3rd, you said, 2015?

13 A. That was when the interview was,
14 yes.

15 Q. And did Minor -- did a sibling of
16 hers also get referred for an interview?

17 A. Yes.

18 Q. And who was that?

19 A. It was her brother.

20 Q. Why was he referred for an
21 interview?

22 A. Typically, if you have one child who
23 has been sexually assaulted within the
24 household, it's not uncommon for another one.
25 So to make sure that that child wasn't

1 sexually assaulted as well, we had him do an
2 interview to see if we need to investigate on
3 his behalf.

4 Q: All right. And did he disclose any
5 abuse by this defendant?

6 A. He did not.

7 Q. All right. Is it standard protocol
8 for a child in Greenville County under twelve
9 to then go to the Julie Valentine Center for
10 this more extended interview?

11 A. Yes, it is.

12 Q. And did you observe -- while Minor
13 was having the interview, did you observe her
14 while that was happening?

15 A. I did.

16 Q. Were you present in the actual
17 interview room?

18 A. I was not.

19 Q. Where did you observe it from?

20 A. The way they do it at the facility
21 is you have the interviewer with the child
22 and then law enforcement or DSS, who's on
23 scene watching the interview, will be in a
24 separate room watching it live on a TV while
25 it's being recorded.

1 Q. In general, when investigators watch
2 these interviews, do you sometimes find out
3 additional information from listening to what
4 the child is disclosing in more detail that
5 leads you further in your investigation?

6 A. Yeah. I would probably say almost
7 every time just because it's more detailed
8 than what kind of conversation I had with
9 her.

10 Q. All right. As a result of that
11 conversation, what did you do next in this
12 investigation?

13 A. She disclosed some things during the
14 interview so we went to the residence after
15 the interview was over to see if we could
16 find these items that she talked about.

17 Q. All right. Did you take any
18 photographs at the residence?

19 A. Yes.

20 Q. I'm showing you what's marked as
21 State's Exhibit 4; 4, 5, 6, 7, 8, 13 --
22 they're a little bit out of order -- 11, 12,
23 9, 10, 14, 15, 16, 17, 18, 19, 20, and 21 and
24 23. Would you take a look at those,
25 Investigator Picone?

116

1 COURT REPORTER: We have twenty-one
2 (21) here.

3 SOLICITOR SUSTAKOVITCH: Oh, I'm
4 sorry. 22 and 23.

5 COURT REPORTER: Thank you.

6 DIRECT EXAMINATION CONTINUED
7 BY SOLICITOR SUSTAKOVITCH:

8 Q. Just take a look through those if
9 you will. Look at all of them?

10 A. Yeah. I did. I looked at those
11 two.

12 Q. Take your time.

13 A. All right.

14 Q. And do these photographs appear to
15 be in the same condition as when you took
16 them?

17 A. Yes, they do.

18 Q. Do they appear to be altered in any
19 way?

20 A. No.

21 Q. All right.

22 SOLICITOR SUSTAKOVITCH: Your
23 Honor, the State moves to admit these
24 photographs?

25 THE COURT: What says the Defense?

1 SOLICITOR SUSTAKOVITCH: Without
2 objection.

3 THE COURT: Without objection,
4 State's Exhibit 4 through 22?

5 COURT REPORTER: 23 except for 21.

6 THE COURT: Okay. And that is for
7 the State.

8 (SO ENTERED AS STATE'S EXHIBIT 4)

9 (SO ENTERED AS STATE'S EXHIBIT 5)

10 (SO ENTERED AS STATE'S EXHIBIT 6)

11 (SO ENTERED AS STATE'S EXHIBIT 7)

12 (SO ENTERED AS STATE'S EXHIBIT 8)

13 (SO ENTERED AS STATE'S EXHIBIT 9)

14 (SO ENTERED AS STATE'S EXHIBIT 10)

15 (SO ENTERED AS STATE'S EXHIBIT 11)

16 (SO ENTERED AS STATE'S EXHIBIT 12)

17 (SO ENTERED AS STATE'S EXHIBIT 13)

18 (SO ENTERED AS STATE'S EXHIBIT 14)

19 (SO ENTERED AS STATE'S EXHIBIT 15)

20 (SO ENTERED AS STATE'S EXHIBIT 16)

21 (SO ENTERED AS STATE'S EXHIBIT 17)

22 (SO ENTERED AS STATE'S EXHIBIT 18)

23 (SO ENTERED AS STATE'S EXHIBIT 19)

24 (SO ENTERED AS STATE'S EXHIBIT 20)

25 (SO ENTERED AS STATE'S EXHIBIT 22)

118

1 (SO ENTERED AS STATE'S EXHIBIT 23)

2 SOLICITOR SUSTAKOVITCH: I beg
3 the Court's indulgence one moment.

4 THE COURT: Sure. Take your time.

5 SOLICITOR SUSTAKOVITCH: I'm
6 having a little issue with (ELMO) ---

7 THE COURT: All right.

8 SOLICITOR SUSTAKOVITCH: Your
9 Honor, I apologize here.

10 SOLICITOR CLARK: Your Honor, I'm so
11 sorry.

12 SOLICITOR SUSTAKOVITCH: We might
13 need a brief break so I can fix that.

14 (COURT AT-EASE)

15 SOLICITOR SUSTAKOVITCH: I'm
16 sorry, Your Honor.

17 THE COURT: That's all right.

18 SOLICITOR SUSTAKOVITCH: I'm
19 having a little technical problem.

20 THE COURT: Never works when you
21 want it to.

22 SOLICITOR SUSTAKOVITCH: No, sir.
23 I'm sorry.

24 (COURT AT-EASE)

25 SOLICITOR SUSTAKOVITCH: Your

1 Honor, I'm going to try this now.

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR SUSTAKOVITCH:

4 Q. Investigator Picone, I'm going to
5 take you through some photographs. And you
6 stated that you observed the forensic
7 interview; correct?

8 A. Yes.

9 Q. And you went -- did you have a
10 search warrant when you went out to this
11 Defendant's home?

12 A. I don't believe we actually had a
13 search warrant.

14 Q. Did you get entry by consent?

15 A. Yes.

16 Q. All right. I want to take you into
17 a few of these. I'm showing you this
18 picture. What is that a picture of?

19 A. That is a picture of a bedroom door.
20 I believe it's the door to the mother and the
21 defendant's/perpetrator's bedroom?

22 Q. Right.

23 A. And that is a hole where the door
24 handle is supposed to be.

25 Q. Right, this is an empty hole right

1 here.

2 A. That's it, yeah.

3 Q. There's no door handle or anything
4 there?

5 A. No, you can see straight through.

6 Q. And I show you?

7 COURT REPORTER: And that's Exhibit
8 Number?

9 THE COURT: Solicitor, state the
10 Exhibit Number each time you show it to him?

11 SOLICITOR SUSTAKOVITCH: Yes,
12 Your Honor. Yes, sir.

13 DIRECT EXAMINATION CONTINUED
14 BY SOLICITOR SUSTAKOVITCH:

15 Q. This is State's 14, Investigator
16 Picone, again. You stated this was the door
17 leading to this defendant's and Minor's mom's
18 room; correct.

19 A. That's right.

20 Q. All right. And the significance to
21 this picture is that based on statements that
22 she made during her forensic interview?

23 A. That is correct.

24 Q. All right. Next I'm showing you
25 State's Exhibit 15. What are we looking at

1 here?

2 A. It's hard to see, but you see that
3 is me standing right there. This is the
4 actual outline of the -- where the door
5 handle is supposed to be. And that was a
6 hole where the doorknob would be. So we're
7 taking a picture through the hole and you can
8 see me. And the bed would be right behind
9 it.

10 Q. Is that down on the floor? Is that
11 the bed down on the floor?

12 A. Yeah. It's like a little frame.

13 Q. Oh.

14 A. You can see the bed.

15 Q. All right. Now I'm showing you
16 State's Exhibit 16. What is this a picture
17 of?

18 A. The bathroom inside the residence.

19 Q. Okay. And did you take pictures of
20 this based on statements that were made in
21 the forensic interview?

22 A. Yes.

23 Q. All right. Also State's Exhibit 17?

24 A. That is the bathtub in the bathroom.

25 Q. Is it standard when you go into a

1 home in an investigation like this, to take
2 multiple photographs?

3 A. It is, yes.

4 Q. Okay. What are we looking at in
5 State's Exhibit 18?

6 A. That is a picture of Minor's bed.

7 Q. Minor's?

8 A. It's a bunk bed and that's her bed.

9 Q. All right. We're going to come back
10 to that one. But let me show you State's
11 Exhibit 20. What am I looking at here?

12 A. That's a dresser within her bedroom
13 and that is a red dress on top of the
14 dresser.

15 Q. That looks like a slip-type dress?

16 A. Yes.

17 Q. And where was that dress' located?

18 A. In a bottom dresser drawer within
19 the bedroom.

20 Q. Of Minor's room?

21 A. Yes.

22 Q. When you were on scene, did you try
23 to find out who that dress belonged to?

24 A. Yes. Originally, it was her
25 mother's dress. I believe it was like a

1 Halloween costume.

2 Q. Okay. And did you know whether the
3 mother ever used that dress or wore that
4 dress?

5 A. She told me she tried it on one time
6 but it didn't fit, so she put into a closet
7 within the bedroom. She hadn't seen it
8 since.

9 Q. And it was found in Minor's room;
10 correct?

11 A. That's correct.

12 Q. All right. And I want to show you
13 this picture, State's Exhibit 19.

14 A. Uh-huh.

15 Q. You said it was the bedroom. It was
16 found down here in the dresser?

17 A. Yeah. I would say down here. Right
18 at the bottom, right here is where it was
19 located. And once again there's the dress.
20 It's right there.

21 Q. And based on her interview, why did
22 you take photographs of this item?

23 A. To document that it was located
24 within the bedroom.

25 Q. Okay. I'm also showing you ---

1 SOLICITOR SUSTAKOVITCH: -- and,
2 Your Honor, the next photographs are going to
3 have some pornographic nudity. I just wanted
4 to advise the Court of that.

5 THE COURT: Okay.

6 SOLICITOR SUSTAKOVITCH: By
7 stipulation the State and Defense have agreed
8 that the actual CDs of porn are not going to
9 be admitted into evidence.

10 THE COURT: Right.

11 SOLICITOR SUSTAKOVITCH: But we
12 are -- defense has stipulated to the fact
13 that what was on the CD was porn.

14 THE COURT: Is that correct, Mr.
15 Sarratt?

16 MR. SARRATT: That is correct, Your
17 Honor.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR SUSTAKOVITCH:

20 Q. All right. I'm now showing you
21 what's marked as State's Exhibit 8. What is
22 that?

23 A. That is an issued Social Security
24 Card.

25 Q. And can you tell whose name is on

125

1 it?

2 A. It's hard to see.

3 Q. Let me give you another -- this is
4 State's Exhibit 7. Oops, sorry. Can you see
5 better there whose name's on it?

6 A. Yes, I can see it.

7 Q. And whose name is that?

8 A. It says Gabriel Betancourt.

9 Q. All right. And so this Social
10 Security Card is basically down in the sleeve
11 of the photograph of the CD?

12 A. That is correct; it is.

13 Q. Where -- and I just need to do the
14 rest of these?

15 A. All right.

16 Q. These are covers from the porn CDs?

17 A. Uh-huh.

18 Q. That we stipulated to. This is
19 State's 13?

20 A. Yes.

21 Q. State's Exhibit 11. This is the
22 State's Exhibit 12, the back cover. And
23 finally, the next porn CD is State's Exhibit
24 9. And the back cover is State's Exhibit 10.
25 Is that accurate?

126

1 A. That is accurate.

2 Q. All right. Where did you find that
3 pornographic material?

4 A. When we got consent to go in the
5 house -- when we left her interview, we went
6 straight to the house. We went straight to
7 the house. We met Minor and her mother at
8 the residence. And Minor's mother allowed us
9 to come inside. I had mentioned to her while
10 we were at the house if she'd ever seen any
11 kind of pornographic material in that house
12 or if she owned it? She said no. I
13 explained that, you know, we were looking to
14 see if there was any there. And she started
15 looking around in her bedroom while we were
16 standing in there. As you can see the
17 picture of me in here in the bedroom. And
18 when she went to the closet, she was
19 rummaging through the top of the closet and
20 these two DVDs fell down to the ground.

21 Q. And that is the mother's, Minora's,
22 and this defendant's bedroom; correct?

23 A. That's correct.

24 Q. And did she state whose porn that
25 was?

127

1 A. She says it was not hers.

2 Q. We just looked at several photo-
3 graphs. When you went through the house did
4 you collect any items for DNA testing?

5 A. I did.

6 Q. What were those items?

7 A. The red dress. I believe a
8 bedsheet, a tank top.

9 Q. And what turned out from testing
10 those items?

11 A. There was no DNA present from the
12 Defendant on any of those items.

13 Q. Talk to me about, as an
14 investigator, when you go into a home and you
15 try to collect evidence, is it often that you
16 turn in evidence and DNA does not come back?

17 A. All the time.

18 Q. All right. I want to go back to
19 Minor. Was she ever referred for a medical
20 exam in this case?

21 A. Yes, she was.

22 Q. And who was the doctor who saw her?

23 A. I believe it was Dr. Crosswell.

24 Q. All right. Thank you. So much.

25 I'm sorry. We've got a couple more

1 questions.

2 I'm going to take you back to the time
3 line just a little bit and nail it back down
4 a little. Did Minor - going back to -- did
5 she state -- well, let me phrase it this way.
6 What was the time line again that she stated
7 the abuse took place?

8 A. Around five years old to ten years
9 old.

10 Q. All right. And she never stated to
11 you actual years. She just told you from
12 this age to this age; correct?

13 A. That is correct.

14 Q. Did you try to figure out the
15 locations where she lived during this time
16 frame?

17 A. Yes.

18 Q. All right. And did the family, from
19 the time Minor was five until the time she
20 was ten, did they stay in one location or did
21 they move?

22 A. They are movers.

23 Q. Okay. Showing you what's marked as
24 State's Exhibit 4. Do you recognize that?

25 A. I do.

1 Q. And what is that a photograph of?

2 A. That is a picture of a house I took.
3 I believe it's Number Address One. That
4 is in the County of Greenville.

5 Q. In the County of Greenville?

6 A. Yes.

7 Q. Is this a location where they lived,
8 this Defendant, the mother and the child?

9 A. Yes.

10 Q. Let's show you what's marked as
11 State's Exhibit 5.

12 A. This is a picture of a mobile home
13 park. If you look back here, this is the one
14 I'm taking a picture of, in particular this
15 trailer right here. This is Address Two.
16 It's in County of Greenville and
17 this was a residence where they'd lived..

18 Q. All right. Thank you, Investigator.
19 And I'm showing you State's Exhibit Number 6,
20 which is a tighter shot here of what we just
21 looked at it? Can you see what I'm focusing
22 on?

23 A. Yeah. This is a particular trailer
24 I'm looking at. It's lot number one. It's
25 hard to -- you can't really see on there but

1 it was labeled number one, somewhere right
2 there.

3 Q. All right. So from your investiga-
4 tion they lived at Address One first?

5 A. Yes.

6 Q. Then you testified -- what is this
7 address?

8 A. Address Two.

9 Q. And did -- who lived at this
10 location together?

11 A. Minora, Minor and the Defendant.

12 Q. And then after this location, did
13 they move to another location?

14 A. They did.

15 Q. And what was that one?

16 A. I believe it was Address Four ---

17 Q. If you can go back to the photo-
18 graphs we just looked at?

19 A. Okay.

20 Q. The incident location where you
21 arrived, what was that?

22 A. I think it's Address Three
23 Drive.

24 Q. All right. Is that where they lived
25 when Minor disclosed the abuse?

1 A. Yes.

2 Q. And is that where you just testified
3 all those inside pictures came from?

4 A. That is correct.

5 Q. Now, all these locations, what
6 county are they in?

7 A. The County of Greenville, South
8 Carolina.

9 Q. All right. Investigator Picone,
10 please answer any questions Defense counsel
11 has?

12 A. Yes, ma'am.

13 CROSS-EXAMINATION

14 BY MR. SARRATT:

15 Q. Investigator Picone, how are you?

16 A. Okay. How are you, sir?

17 Q. Doing well. All right. I want to
18 ask you a couple of questions. You stated
19 that prior to the Julie Valentine Center
20 interview, Minor's mother, Minora came to
21 your office to bring you some information; is
22 that right?

23 A. That is correct.

24 Q. Okay. Now, before that, on the day
25 that Minor made this allegation on January

1 14th, you had told Minor's mother not to talk
2 to Minor about what happened; is that right?

3 A. That's right.

4 Q. Without getting into what Minora
5 said, Minor's mother, when she came to your
6 office subsequent to that, you learned that
7 she had, in fact, talked to Minor; is that
8 right?

9 A. And let me rephrase that. When I
10 say I asked her not to talk to her about it
11 -- now, I didn't know that if she'd brought
12 something up to her about it, you know. If
13 Minor said something to her, then I explained
14 to her that's fine, but try not to ask her
15 questions about it unless she brings them up.

16 Q. And that's, again, as you stated
17 because you want all the information to come
18 from that child and not from anybody else?

19 A. That's right.

20 Q. So you talked about at the house,
21 you went in and you had consent to go in
22 there?

23 A. That's right.

24 Q. Minora gave you consent?

25 A. That's right.

1 Q. Now, you found in the bottom drawer,
2 you said, of Minor's bedroom a red dress?

3 A. That's right.

4 Q. That red dress had been mentioned
5 previous to that; correct?

6 A. Prior to me going there?

7 Q. Yes?

8 A. Yes.

9 Q. And that was at the Julie Valentine
10 Interview?

11 A. Yes.

12 Q. You also found, I believe you
13 mentioned at a tank top?

14 A. Yes.

15 Q. Was that a purple tank top?

16 A. I believe it was purple.

17 Q. And then you also mentioned that you
18 saw the hole in the door?

19 A. Yes.

20 Q. In the bedroom door leading into
21 Minora's bedroom?

22 A. That's right.

23 Q. And Gabriel's?

24 A. Yes.

25 Q. So they shared a bedroom in that

1 house?

2 A. Yes.

3 Q. You also, as we saw pictures, found
4 some pornographic DVDs; is that right?

5 A. I did.

6 Q. Okay. Now, you said that you did
7 not have a search warrant prior to go in the
8 house, but you had consent?

9 A. That's right.

10 Q. When you were asking about these
11 pornographic DVD's Minor said that she had
12 never seen them before?

13 A. That's right.

14 Q. And, again, she's the one that went
15 into the closet to start looking for them; is
16 that right?

17 A. Yes, she did.

18 Q. And, in fact, you made a note
19 because, again, you didn't have a search
20 warrant. It was all consensual but you said
21 'I did not tell her to go into that closet';
22 right?

23 A. I did not. Right.

24 Q. Okay. So she, on her own, went
25 there and started going through, I believe

1 you said -- was it on the shelf?

2 A. Yeah. This was on a shelf. It was
3 a small closet, like pull-back up top?

4 Q. Okay. And that's where the
5 pornographic DVDs were found; right?

6 A. Yes, that was.

7 Q. Okay. So you mentioned that those
8 items, the red dress, purple tank top and bed
9 sheets, those were all collected from the
10 house; right?

11 A. They were.

12 Q. And those were collected on the
13 Julie Valentine interview; correct?

14 A. Yes.

15 Q. And that was, again, February 3rd?

16 A. I believe it was February 3rd.

17 Q. Okay. So when you went to collect
18 those items, you collected them for the
19 purpose of doing further investigation and
20 analysis on them; correct?

21 A. Yes.

22 Q. Well, and also to produce them in
23 Court and collect them in evidence. But you
24 said that you had ordered DNA testing done on
25 those items; correct?

1 A. That is correct.

2 Q. All right. So you ordered a DNA
3 test done on the red dress?

4 A. Yes.

5 Q. The purple tank top?

6 A. Yes.

7 Q. And the bedsheets?

8 A. Yes.

9 Q. All right. Now, of all those items,
10 Gabriel's DNA was not found on the red dress?

11 A. That's correct.

12 Q. And it was not found on the purple
13 tank top?

14 A. That's correct.

15 Q. And his DNA was not found on the
16 bedsheets?

17 A. Correct.

18 Q. Now, after that, you also obtained
19 DNA samples from Minor; is that correct?

20 A. That's correct.

21 Q. All right. And you tested those
22 against the items that you collected;
23 correct?

24 A. (Affirmative response).

25 Q. And you did find Minor's DNA on the

1 purple tank top; is that right?

2 A. I believe so.

3 Q. Okay. And I believe you found it on
4 the bedsheet as well?

5 A. Yes. I'd have to -- if we have a
6 copy of that, if I could get that and tell
7 you more accurately?

8 Q. Sure.

9 A. I don't want to say something
10 without. ---

11 Q. Well, mine's all marked up. Let me
12 give you a fresh copy of the report. Would
13 it help you refresh your recollection?

14 A. Yeah. If I could see the DNA
15 report, I'll be able ---

16 Q. (Tenders).

17 A. Okay.

18 Q. That's not the DNA results that ---

19 A. Okay.

20 MR. SARRATT: I beg the Court's
21 indulgence one moment.

22 THE COURT: Sure.

23 SOLICITOR SUSTAKOVITCH: Your
24 Honor, we'd stipulate that her DNA is not
25 found on the red dress if that's what they're

1 trying to get to.

2 THE COURT: Okay.

3 CROSS-EXAMINATION CONTINUED

4 BY MR. SARRATT:

5 A. I don't have it document in my
6 report. It isn't on the DNA report that came
7 from the crime labs?

8 Q. Right.

9 A. So I don't -- I can't say for
10 certain.

11 MR. SARRATT: Well, I believe the
12 Solicitor's just offered to stipulated that
13 Minor's DNA was not found on the red dress.

14 SOLICITOR SUSTAKOVITCH: That's
15 no problem.

16 THE COURT: Okay. And on the
17 other two items, is that also stipulated to?

18 SOLICITOR SUSTAKOVITCH: That's
19 fine, Your Honor. Yeah.

20 MR. GOLDSTEIN: Okay.

21 THE COURT: Okay. All right. So
22 stipulated to.

23 MR. SARRATT: Your Honor, I have
24 several more questions I'd like to ask of
25 this witness. But the witness have yet to

1 testify. Can I reserve the right to recall
2 this witness? I don't want to get ahead of
3 where we are in the trial.

4 THE COURT: Okay.

5 SOLICITOR SUSTAKOVITCH: Could we
6 approach briefly?

7 THE COURT: Sure.

8 SOLICITOR SUSTAKOVITCH: Thank
9 you.

10 (OFF RECORD BENCH CONFERENCE)

11 THE COURT: You may proceed.

12 CROSS-EXAMINATION CONTINUED

13 BY MR. SARRATT:

14 Q. All right. So you were present,
15 again, at the school when Minor first made
16 the disclosure; correct?

17 A. Yes.

18 Q. And, again, we're not going to talk
19 about what that disclosure was. But as a
20 result of that and before she gave her
21 interview at the Julie Valentine Center,
22 nothing she said caused your investigation to
23 lead you back to the school to talk to any
24 more of the teachers; correct?

25 A. It did not.

1 Q. Okay. And nothing that was said
2 caused you to do any further investigation,
3 until after the Julie Valentine interview;
4 right?

5 A. That's right.

6 Q. All right. And you did not sign any
7 arrest warrants after the initial disclosure.
8 You waited to wait until more came in?

9 A. That's true.

10 Q. All right. Because again you said
11 -- and I understand. The initial disclosure
12 is pretty much a summary. You want the
13 videotaped interview to be the full
14 disclosure of all the details in the child's
15 own words; right?

16 A. Sure.

17 Q. And so -- well, again, you did do
18 some more investigation after the Julie
19 Valentine interview, but you did not make any
20 arrests before then?

21 A. That's correct.

22 MR. SARRATT: No further questions
23 at this time, but I do reserve the right to
24 recall him.

25 THE COURT: Sure. Any redirect,

1 Solicitor?

2 SOLICITOR SUSTAKOVITCH: Just

3 briefly.

4 REDIRECT EXAMINATION

5 BY SOLICITOR SUSTAKOVITCH:

6 Q. To clarify at the school, again, you
7 -- without stating the name of the
8 perpetrator, she did disclose that she was
9 sexually abused; correct?

10 A. That's right.

11 Q. And she gave you the timeframe?

12 A. Yes.

13 Q. And the locations where it occurred?

14 A. Yes. Not the exact locations, but
15 yes, at her house.

16 Q. At her house.

17 SOLICITOR SUSTAKOVITCH: I have
18 no further questions.

19 THE COURT: Okay. Thank you.
20 Thank you, sir. You can step down.

21 WITNESS: Thank you, sir.

22 (WITNESS STEPS DOWN)

23 THE COURT: All right. Solicitor,
24 do we have any other witnesses we can put up
25 before our lunch break?

1 SOLICITOR SUSTAKOVITCH: We have
2 one more or we could wait and bring her after
3 lunch. It's not a terribly lengthy one, but
4 it's not super short. So kind of in the
5 middle.

6 THE COURT: Right in the middle.
7 Of course, not knowing how long Defense
8 cross-examination will take, you think we
9 could be finished by 1:00 with that witness?

10 SOLICITOR SUSTAKOVITCH: Probably
11 so.

12 THE COURT: Okay. All right.
13 Well, let's give it a good try.

14 SOLICITOR SUSTAKOVITCH: Okay.

15 THE COURT: Work on a little bit.
16 I think we can all live with that okay. All
17 right.

18 SOLICITOR CLARK: Jenna Toney.

19 (WITNESS TAKES STAND)

20 JENNA TONEY, having been duly sworn to
21 tell the truth, and nothing but the truth,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR CLARK:

25 Q. Ms. Toney, where are you currently

1 employed?

2 A. The Julie Valentine Center.

3 Q. And what is your job title there?

4 A. Education Specialist.

5 Q. And how long have you been doing
6 that job?

7 A. For three years since January.

8 Q. And what exactly do you do?

9 A. One of the responsibilities I have
10 is to provide prevention education in
11 elementary schools, through a talk about
12 touching program.

13 Q. And what ages do you give those
14 programs to?

15 A. Second, fourth, and fifth grades.

16 Q. And how often are you in schools
17 giving those programs?

18 A. On a weekly basis, I'm in a
19 different school.

20 Q. And what's the purpose of that
21 program?

22 A. It's a personal safety program.

23 Q. And Ms. Toney, did you give a
24 program to students at Blythe Academy on
25 January 14th, 2015?

144

1 A. Yes, I believe I did.

2 Q. And what grade did you give that
3 presentation to?

4 A. Fifth grade.

5 Q. Ms. Toney, I'm going to show you
6 what's been marked as State's Exhibit Number
7 1. Do you recognize this?

8 A. I do.

9 Q. What is it?

10 A. It's a copy of my talk about
11 touching program presentation.

12 Q. And how do you recognize it?

13 A. I made this.

14 Q. Are your initials on there?

15 A. They are, yeah. They are my
16 initials.

17 Q. Does this appear to have been
18 changed or altered in any way?

19 A. No.

20 Q. And is that presentation on the CD a
21 fair and accurate representation of the
22 program you gave to fifth graders at Blythe
23 Academy on January 14, 2015?

24 A. Yes.

25 SOLICITOR CLARK: Your Honor, at

145

1 this time, we move to enter State's Exhibit
2 Number 1 into evidence.

3 THE COURT: Okay. And what says
4 the Defense?

5 MR. SARRATT: Without objection.

6 THE COURT: Without objection,
7 Number 1 for the State into evidence.

8 (SO ENTERED AS STATE'S EXHIBIT 1)

9 SOLICITOR SUSTAKOVITCH: Your
10 Honor, permission to publish to the jury?

11 THE COURT: Certainly.

12 SOLICITOR CLARK: I beg the Court's
13 indulgence.

14 THE COURT: Sure. Take your time.

15 COURT REPORTER: State's Exhibit 24
16 for identification.

17 (SO MARKED AS STATE'S EXHIBIT 24)

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR CLARK:

20 Q. Let's try this, Ms. Toney?

21 A. Okay.

22 Q. Do you recognize that?

23 A. I do.

24 Q. What is it?

25 A. It's my talk about touching

146

1 presentation.

2 Q. Okay. And how do you recognize it?

3 A. I created it.

4 Q. And does that appear to be changed or
5 altered in anyway? Please flip through the
6 slides for me?

7 A. That's all of them. That's good.

8 Q. Is that a fair and accurate
9 representation of the program you gave on January
10 14th, 2015 at Blythe Academy?

11 A. It is.

12 SOLICITOR CLARK: Your Honor, at this
13 time we would move to enter State's Exhibit
14 Number 24 into evidence.

15 MR. SARRATT: Without objection.

16 THE COURT: Okay. Exhibit 24 into
17 evidence for the State.

18 (SO ENTERED AS STATE'S EXHIBIT 24)

19 SOLICITOR SUSTAKOVITCH: Your Honor,
20 we're having a little technical difficulty. I
21 apologize.

22 THE COURT: That's fine.

23 SOLICITOR SUSTAKOVITCH: The CD that's
24 been entered is not playing, so we're going to go
25 through slides that are now entered into

1 evidence.

2 THE COURT: Okay.

3 SOLICITOR SUSTAKOVITCH: And I'm going
4 to hand this witness a copy of her presentation
5 as we go through them. Thank you, Ms. Clark.

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR CLARK:

8 Q. Ms. Toney, will you please, for the
9 jury, go through your presentation and briefly
10 summarize the presentation that you gave at
11 Blythe Academy.

12 A. Yes.

13 Q. I apologize for the unclear images.

14 A. So basically I'll give an introduction
15 about what I do. I tell the students that I go
16 around to elementary schools in Greenville County
17 and provide a personal safety program and that's
18 exactly what I'm here to do with the students
19 today.

20 And I explain that personal safety is all
21 about practicing ways to keep yourself safe. And
22 the way that we do that is I'm going to go
23 through a couple of pretend, potentially
24 dangerous situations so that we can practice the
25 best way to stay safe.

1 So the first scenario we put them through is
2 a little of a Stranger Danger scenario. We tell
3 them, you know, sometimes mom, dad, or grandma,
4 whoever we stay with, sometimes they have to stop
5 and get gas. And mom asks us to wait in the car
6 while mom goes and pays for gas. And shortly
7 after she goes into the store a car pulls up next
8 to mom's car. So the person in the car that
9 pulls up next to mom's car, have been identified
10 them as someone we don't know, so that makes them
11 a stranger. And, you know, we go through this
12 funny feeling that we get sometimes whenever
13 strangers try to talk to us or do something
14 unsafe. And sometimes it feels like the
15 butterflies or the willies, like a nervous, uh-oh
16 feeling we get in our tummies sometimes. And I
17 told them we get that feeling whenever this
18 stranger tries to talk to us because mom, dad and
19 grandma always tell us not to. And I have them
20 repeat back to me, "We don't talk to strangers,
21 right?" So we turn away from him because we're
22 not going to talk to him and he sees that. So he
23 gets out of his car and he starts to walk toward
24 the doors of the store. And then I say but he
25 changes his mind and he starts to walk back

1 towards your mom's car. So I ask them what they
2 think they should do to practice personal safety
3 in the situation. So we work through that
4 situation. What we come to is locking the doors,
5 rolling up the windows and then we say honk the
6 horn. Now, the purpose of honking the horn is to
7 draw attention to ourselves. That way, it lets
8 mom or dad or grandma, whoever we stay with, in
9 the gas station know that they're in trouble and
10 they need some help. But also let's other adults
11 know in the parking lot that they need some help.
12 And I tell them that this is really, really
13 important because I have a special word for the
14 stranger. I call this person a tricky person.
15 So we define tricky people as those do not want
16 other adults to know what they're trying to do.
17 So we draw attention to ourselves to let other
18 adults know that we're in trouble, needed some
19 help, and it would probably scare that tricky
20 person away because they don't want to get in
21 trouble.

22 So we move on to the next situation, which
23 has to do with staying at home. I tell them, you
24 know, mom's got to run down to Ms. Margaret's, a
25 neighbor who lives two doors down from us and we

1 ask if we stay at home and watch our favor TV
2 show. And so I ask. Mom says okay. Whenever
3 she leaves, she locks the door behind her. After
4 she's been gone for a few minutes we hear a knock
5 at the door. It's the mailman. And so we walk
6 through how we should handle that situation when
7 we're at home by ourselves. We teach them to
8 ignore the door. Call mom or dad or grandma,
9 whoever they stay with or a trusted adult anytime
10 they have a question on how to handle a situation
11 or what they should do. And then I say, you
12 know, what do we do if someone's at our house and
13 they start to do something they're not supposed
14 to do, something scary, something dangerous,
15 something like someone's trying to break in,
16 someone's banging on the door, someone's peeking
17 into our windows. We teach them to call 9-1-1.

18 So you can move on to the next thing.

19 Q. (Displays next slide)

20 A. And so I'll have them read out this
21 word, which is instinct. And I ask them do you
22 know what instinct is? So a lot of them may not
23 know what instinct means, but I'll go ahead and
24 tell them. I'll say the way I define instinct is
25 it's our bodies warning system. It's like an

1 alarm that goes off anytime we are in a tricky or
2 dangerous situation. And I'll say we actually
3 already talked about our instinct today.

4 Do you all remember being at the gas
5 station? They'll say, yes. Do you remember how
6 that stranger tried to talk to us? They'll says
7 yes. And we'll ask them what feeling we got
8 whenever that stranger tried to talk to us? We
9 got that nervous uh-oh feeling in our tummies.
10 And I said yeah, right. And that nervous uh-oh
11 feeling was our instinct trying to help keep us
12 safe in that situation.

13 So just like that, I tell them about -- I
14 show them a picture, tell them to have sharp eyes
15 because there's something in this picture that's
16 kind of tricky or dangerous. And so I'll have
17 them, you know, raise their hand if they see
18 anything kind of weird or strange. And
19 obviously, they'll say, you know, the girl looks
20 like she's by herself. And I'll say right. The
21 girl's by herself, but does she look happy? No,
22 she doesn't look happy. She looks kind of
23 nervous, maybe kind of scared. And I'll say
24 there's something in this picture that's kind of
25 making her nervous or scared. Do you see it?

1 Well, there's actually a man sticking his head
2 out the window, trying to get the girl's
3 attention. And I'll say let me tell you a story
4 about this picture. Go to the next slide.

5 Q. (Next slide)

6 A. And so I'll say so this man, he tells
7 the little girl, 'Hey, hey, kid. I know you
8 don't know me but I promise I'm safe. See, I
9 just moved in down the street and I was hoping
10 you could help me. I just lost my dog and I made
11 all these posters. And I was wondering if you
12 could maybe pass these around and help me find
13 him. See, I'm giving out a fifty dollar reward
14 for anyone who helps me. So do you think you
15 could take these posters?' And I'll ask them,
16 what do you guys think we should do.. And they'll
17 say no don't take the posters. And I'll say
18 right we don't take the posters because the
19 person trying to give them to us is a stranger.
20 And say right.

21 Strangers should never ask a kid for help.
22 They should only ask adults for help. Really, a
23 stranger should never even try to give a kid
24 something without their parents' permission
25 first. So I'll ask them what they think they

1 should do to stay safe in this situation. What
2 we get to is ignore the man, run to trusted
3 adults. We identify trusted adults near where we
4 live. So I wanted to hear them to say, you know,
5 we were at home. We run to a trusted neighbor's
6 house. If they are close to school, they could
7 run back to school if it's right after school or
8 a fire station, police department. If you see
9 police officer, things like that. So we learn
10 the trusted adults.

11 And I'll say what do we do while we're
12 running to draw attention to ourselves? Once
13 again that whole concept of a trick person, we
14 want to draw attention to ourselves so scream.
15 We scream as loud as we can. We could scream
16 stranger danger. We can scream that's not my dad
17 or that's not my mom and scream help. But we
18 scream to draw attention to ourselves.

19 So the first three scenarios really have to
20 do with stranger danger scenarios leading into
21 tricky people. And I'll say tricky people use
22 three things to get kids to do things that are
23 not safe or things they would not normally do.

24 And I'll say, can you guys help me read
25 these words? And the first word is bribes. I

1 define bribes as things that tricky people say to
2 kids to get them to do something they're not
3 supposed to do. They may say if you do what I'm
4 asking you to do, there's a reward in it for you,
5 whether that's candy, money, games, prizes, or
6 toys, things that kids like.

7 The next word is tricks. And I'll tell them
8 tricks can be kind of like bribes. You know,
9 someone may say if you do what I'm asking you to
10 do, there's a reward in it for you except does
11 that kid get the reward? And they'll say no. So
12 right, a trick is the same thing is a lie.

13 And the last word is threats. I'll ask them
14 do threats make us feel happy or do they make us
15 feel kind of scared. And they'll say they make
16 us feel scared. And I say right because threats
17 are anytime a tricky person says if you don't do
18 what I'm asking you to do, there's going to be a
19 terrible price to pay. I'm going to hurt you or
20 I'm going to hurt someone or something you care
21 about. So you'd better do it or else.

22 I'll say that's exactly what tricky people
23 use to get kids to do things that are not safe or
24 things they would not normally do. And I'll
25 repeat one more time, bribes, tricks and lies.

1 And so then we move on to the next of the
2 part of the presentation. And I'll tell them so,
3 I'm here today to talk to you about a certain
4 type of trick person. And I call that tricky
5 person a child molester. And those are people
6 who touch kids on the private parts of their body
7 or they'll try and get that kid to touch them on
8 their private parts. And they tell them to keep
9 the touching a secret. And I'll say you guys are
10 big kids now and you're not little kids anymore.
11 You already know the private parts of your body
12 are covered by your clothing and your bathing
13 suits. And no one should ever touch a kid on
14 their private parts of their body and tell them
15 to keep it a secret because it's against the law
16 and it's really unsafe for kids.

17 So I'll ask them why do you think that
18 person tells a kid to keep the touching a secret?
19 And a lot of times you'll hear kids say 'well,
20 they don't want to get in trouble.' And they say
21 'right, they don't want to get in trouble.' What
22 happens to adults who get in trouble when
23 something's against the law? What could happen
24 to them? They could go to jail. Right. And
25 I'll say child molesters do not want to go to

1 jail. They do not want to get in trouble. They
2 do not want other adults to know what they are
3 trying to do. So they tell that kid to keep the
4 touching a secret.

5 So the next part I'll say I'm curious. I
6 want to know what you guys think a child molester
7 might look like? What kind of hair do you think
8 they have? What kind of clothes do you think
9 they'd wear? And so before we put up this
10 picture, actually I'll have them kind of describe
11 to me what they think a child molester looks
12 like. And so a lot of students will describe
13 what you would think of is like your classic
14 robber that you see on TV, someone who's wearing
15 a mask over their face, someone who's wearing
16 camouflage and jumps out of vehicles to grab
17 kids. That's what most kids picture a child
18 molester to look like. And so the whole purpose
19 of this next exercise is to classify that child
20 molesters look like normal people, they can be
21 anybody. So I'll say okay, so I'm going to show
22 you a couple of pictures. And I want to know
23 what you think about these pictures. So I'm
24 going to describe them to you and then I'm going
25 to ask you to vote. You can only vote one time

1 for each picture. I'll ask them to raise their
2 hand if they think this person could be a child
3 molester, someone who makes bad decisions about
4 touching kids on the private parts of their body.
5 And then I'll ask them to put their hands down.
6 And then I'll ask them to raise their hand if
7 they think this person is probably not a child
8 molester, someone who does not make bad decisions
9 about touching kids. And so the way I've
10 described the person, I'll say, okay, so this man
11 right here -- and he's stretching -- he's
12 stretching because he's on a track team and he
13 runs miles and miles every single day. Boys and
14 girls as you know, stretching is really important
15 for our bodies to keep our muscles healthy. And
16 oh, before I forget, this man right here he
17 doesn't eat just a few of his fruits and
18 vegetables, he eats all of them. He's a really
19 healthy guy. So now that we know that about this
20 person, raise your hand if you think this person
21 could be a child molester, someone who makes bad
22 decisions about touching kids on the private
23 parts of their body. And I'll tell you most kids
24 do not raise their hand for this person. Maybe
25 you'll have one or two. I'll ask them to put

1 their hands down. And then I'll ask them to
2 raise their hand if they think this person is
3 probably not a child molester, someone who does
4 not make bad decisions about touching kids. Most
5 kids raise their hand for that option. They
6 don't think this person would make bad decisions
7 about touching kids. And then I'll say, okay,
8 this next picture I'm going to show you is of a
9 man who just lost his job. And he doesn't take
10 very good care of himself. He's got a really
11 dirty room, wears really dirty clothes and he's
12 even smoking a cigarette. So now that you know
13 that about this person, raise your hand if you
14 think this person could be a child molester? And
15 I'll say, you know, someone who makes bad
16 decisions about touching kids on the private
17 parts of their body. And I would say about a
18 hundred percent of the time it is mostly - mostly
19 all hands are raised for this person. They think
20 this person right here is definitely a child
21 molester. And then I'll ask them to put their
22 hands down. And then I'll say raise your hand if
23 you think this person is probably not a child
24 molester, someone who does not make bad decisions
25 about touching kids and we'll pretty much have

1 nobody that raises their hand for that. And then
2 I'm going to move onto the next slide.

3 Q. (Next slide)

4 A. And so I say based on what you guys,
5 while you're responding, it seems like what
6 you're trying to tell me is you think that this
7 person right here on the left is more likely to
8 be a child molester than this person on the
9 right. And you'll hear them say yeah, that's
10 what we're trying to tell you. And I'll say
11 okay, explain this to me. Why do you guys think
12 that? I need you to break it down for me. Why
13 do you think that this person right here is more
14 likely to be a child molester than this person
15 right over here. And so they'll name off we'll
16 he's got a really dirty room. He's wearing
17 really dirty clothes. He smokes cigarettes.
18 This guy over here, he's really healthy. So that
19 means he would not make bad decisions about
20 touching kids. He's probably too busy running
21 track, things like that. And I'll say okay. So
22 I've got a few questions for you all. And if you
23 agree with me, raise your hand and I'll answer
24 these questions too. And I'll say so by a show
25 of hand, how many of you here have ever had a

1 dirty room before? Raise your hand. And I'll
2 raise my hand with them. And most of them raise
3 their hand. And I'll say by a show of hand, how
4 many of you in here have ever worn dirty clothes?
5 Like when you play outside, we help mom and dad
6 in the yard, we play sports? I raise my hand.
7 They raise their hand too. Most of them do. And
8 then I'll say, by a show of hands -- boys and
9 girls, I don't want to hear any comments, but a
10 show of hand how many of you in here know someone
11 who's ever smoked a cigarette before? Most of
12 them will raise their hand for that. I'll say
13 okay. Put your hands down. What I'm trying to
14 say is just because someone has a dirty room or
15 has dirty clothes, that doesn't make them a bad
16 person. It certainly doesn't make them a tricky
17 person. It doesn't make them a child molester.
18 Just because someone smokes a cigarette does not
19 make them a child molester either. Now, you guys
20 know and I know that smoking cigarettes is not
21 good for us. It's not healthy. It's not good
22 for our bodies, but it does not make someone a
23 child molester. And I'll say I've got a question
24 for you all. Just because someone's really
25 healthy does that make them a good person? Does

1 that make them a safe person? No. The only way
2 we can know whether someone is a good person, a
3 bad person, a tricky person or even a child
4 molester is by their actions, by their behavior
5 and by the things that they do. By using one,
6 two or three things to get kids to do things that
7 are not safe or things they would not normally
8 do. And I'll have them repeat those three things
9 back to me, bribes, tricks and threats. And I'll
10 say right. Child molesters will use bribes,
11 tricks and threats to get kids to keep secrets
12 they're not supposed to keep and get them to do
13 things they're not supposed to do. And I'll say
14 do you all want to know what a child molester
15 actually looks like? And they'll say yeah. They
16 look like a normal person. They have normal
17 hair. They wear normal clothes. They could be
18 anybody. It could be someone that a kid knows
19 and trust, even someone a kid loves and cares
20 about. And so after that I'll say so could a
21 woman be a child molester? Yes. What about an
22 older person? Yes. What about a teenager? Yes.
23 What about someone a kid knows and trust like a
24 neighbor? Yes. What about someone in a kid's
25 family like an uncle or an auntie or a cousin?

1 Yes. I'll say boys and girls I've got a really
2 hard question for you. Could a mom or a dad be a
3 child molester? Yes. And I say you'll only know
4 by their actions, by their behavior and by the
5 things that they do. And I'll even go so far as
6 to say I want to make sure I want to make sure
7 that I have all eyes on me and all of your ears
8 open because this next part's really important.
9 I don't want there to be any confusion because
10 sometimes we get sick and mom, dad and the
11 doctor, well, they do have to check us out on the
12 private parts of our body to make sure that we
13 are healthy and make sure that we are safe. So
14 as long as mom, dad and the doctor, they are not
15 telling that kid to keep the touching a secret
16 and they are not trying to get that kid to touch
17 them on their private parts, they're probably not
18 doing anything wrong. They just want to make
19 sure that you're healthy and make sure that
20 you're safe.

21 So then I give them safety rules they can
22 use. If anyone ever tries to give them a secret
23 unsafe touch, or tries to do something tricky or
24 dangerous, the first one is to say no to them, a
25 strong and firm, no. The second one is to try

1 and get away. If you can't get away just scream.
2 And the third one is to tell someone. Now,
3 whenever I say tell someone, I tell them about a
4 support system. A support system is defined as
5 someone that -- a group of people that care about
6 us the most. And I have them define those
7 people. So a lot of them will say mom, dad,
8 grandma, grandpa, aunts and uncles, brothers and
9 sisters, cousins. And I'll say absolutely your
10 family cares a lot about you. But I want to know
11 who else besides family we can tell. Who else
12 besides family cares a lot about us. And so we
13 say teachers, school counselors, principals,
14 police officers. And I have them name those
15 people in their school that care a lot about
16 them. And I'll say right. So it sounds like you
17 guys have really big support systems. And so
18 I'll say -- these students were in fifth grade so
19 I'll say I've got a sixth grade question for you
20 guys. What can we do if we tell someone in our
21 support system about a secret unsafe touch or a
22 tricky or dangerous situation and they say no, I
23 don't believe you. I don't think so and so would
24 do that to you. You're lying. Stop lying to me.
25 What can we do then to keep ourselves safe. And

164

1 I want to hear them say tell someone else. And
2 I'll say right. We tell somebody else and we
3 keep telling until someone believes us because
4 you guys deserve to be safe.

5 And I'll say I want you to know before I go
6 that it is never ever a kids fault for a secret
7 unsafe touch. It is always the child molester's
8 fault. It's never ever the kid's fault. And
9 it's never too late to tell someone about a
10 secret unsafe touch. It doesn't matter if it
11 happened a week ago, a month ago or even years
12 ago. It's never too late to tell someone because
13 like I said you guys deserve to be safe. So
14 that's my talk about touching presentation.

15 Q. Now, Ms. Toney, during your
16 presentation, did you talk specifically about
17 vaginas or penises?

18 A. No.

19 Q. Did you talk about penetration?

20 A. No.

21 Q. Did you talk about oral sex?

22 A. No.

23 Q. And finally, Ms. Toney, do you remember
24 having any contact with the victim in this case,
25 Minor?

165

State of South Carolina v Gabriel Betancourt

214

Case No. 17-GS-23-1209 et al

Jury Trial of March 20-24, 2017

Testimony of Jenna Toney - Direct Examination

1 A. No.

2 Q. Please answer any questions Defense
3 counsel may have for you.

4 THE COURT: Cross-examination?

5 MR. SARRATT: No questions for this
6 witness, Your Honor.

7 THE COURT: Okay. Thank you, ma'am.
8 You can step down.

9 (WITNESS STEPS DOWN)

10 THE COURT: Okay. Madam Forelady
11 and ladies and gentlemen of the jury, it's a
12 little after 12:30. Now would be a good time to
13 take a break for lunch. And we'll start back at
14 2:00. So hopefully an hour and a half will be
15 enough time for you to get some lunch and do
16 whatever you need to do over that time period.
17 Again, anybody that you come into contact with,
18 no discussion about this case. And we'll see you
19 back at 2:00. Have a good lunch.

20 (JURY OUT @ 12:35)

21 THE COURT: All right. We'll be in
22 recess until 2:00. Have a good lunch.

23 SOLICITOR SUSTAKOVITCH: Your Honor, we
24 have more information for the Court. The next
25 witnesses would have testimony about the mother

166

1 coming up after lunch.

2 THE COURT: Okay. Let's go ahead
3 and deal with that now. I'm prepared to rule on
4 that so let's go ahead and do that now. Of
5 course, now, my ruling with respect to the
6 forensic interview remains the same insofar as
7 redacting that portion that the child indicated
8 the vouch for it. However, I'm going to allow
9 the Defense to cross-examine the mom as anybody
10 else, but specifically the mom was discussed
11 under the *Grovenstein* and *Findley* cases. I think
12 it's pretty clear that the rape shield statute
13 would not be applicable to the cross-examination
14 -- and I'm using the mom as an example because
15 it's been alleged that the mom told Minor certain
16 things about her history and about Troy. And so
17 we're not -- that is not attacking the character
18 or the morality of Minor. That is pretty much
19 the focal point of the rape shield statute. And
20 the Defense is going to claim that there was -
21 this being a false accusation, that the child had
22 knowledge of this type of behavior potentially
23 from another source. So I'm going to allow that.
24 Even doing a 403 analysis I think the probative
25 value on behalf of the defense would certainly

1 outweigh any prejudice to the State, so I'm going
2 to allow the Defense to cross-examine, again,
3 using mom as the example concerning what she may
4 or may not have told the child as it relates to
5 Troy, her mom's sexual history and that sort of
6 thing, or her sexual abuse history.

7 SOLICITOR SUSTAKOVITCH: Would the
8 child be allowed to be asked about it? I'm just
9 trying to ---

10 THE COURT: Yeah. I think as far
11 as, you know, did your mom ever tell you
12 whatever. Yeah, I think the child would be
13 subject to cross-examine too. You know, under
14 these two cases, I think it's pretty clear that
15 it would be prejudicial error for the Defense to
16 be hamstrung and not be allowed to cross-examine
17 or to try to develop their theory of fabrication
18 in this case. But the video, the reason why I
19 redacted the video was because that is an
20 accusation coming from the victim herself, that
21 when I was one year old my dad, Troy, did
22 whatever. So I think that we've got two
23 different situations here, okay?

24 You look perplexed, Solicitor. It might be
25 because of my inartful way of stating my ruling

1 and I accept that.

2 SOLICITOR SUSTAKOVITCH: No, Your
3 Honor. I understand. I'm just trying to
4 mentally figure out whether we can even redact
5 the video at this point. I'm trying to figure
6 out how it will come in and how it's going to be
7 perceived by the jury. Because the mother in
8 this case is not going to say, 'I told Minor she
9 was sexually assaulted.' She's going to say, 'I
10 didn't like the way that Troy changed her diaper'
11 and the child must have inferred that. You know,
12 it just gets confusing.

13 THE COURT: Right.

14 SOLICITOR SUSTAKOVITCH: She's not
15 going to say, 'I out and out told her she was
16 abused.' She's just going to say I thought it
17 was weird.

18 THE COURT: Right. Right.

19 SOLICITOR SUSTAKOVITCH: And the child
20 can't remember now anyway.

21 THE COURT: Well, I think one of the
22 primary reasons why I wanted that portion
23 redacted because she was one year old and I think
24 it's pretty much sense a one-year-old's not going
25 to remember. Or a ten-year-old's not going to

1 remember what happened to them as a one-year-old.

2 Therefore, she based her statement, her
3 accusation against the dad based upon what mom
4 told her. So that was, you know, under the
5 Boiter case, I think that was, in my mind, a
6 proper ruling to redact that portion of the
7 forensic interview.

8 SOLICITOR SUSTAKOVITCH: Well, she does
9 state, I would say to Investigator Picone, she
10 stated Gabriel had been with her mother for eight
11 years. She also mentioned her real dad Troy
12 touched her when she was two years old.
13 That's what Minor said at the school. And so,
14 you know, if we're taking it out of the video but
15 it's still going to be -- I don't know if defense
16 counsel plans to ask her about that. But it's
17 the same effect almost, asking her about a prior
18 allegation.

19 THE COURT: Right. Okay. Now, of
20 course, this is the first -- which is fine, but
21 this is the first time I've heard that now Minor
22 says 'well, when I was two Troy did something.'
23 This is the first time that I've heard of that.
24 And now you say that comes into her statement at
25 the school to the investigator?

170

1 SOLICITOR SUSTAKOVITCH: Right. It's
2 very brief. But she mentioned that to her one,
3 or two are kind of the same thing. But she
4 mentioned that. I'm just trying to figure out if
5 she's going to be cross-examined about that. You
6 know, does it fall under the *Boiter* analysis a
7 prior false allegation? Have they met their
8 burden for that or what?

9 THE COURT: Well, let me ask Mr.
10 Sarratt. What are your intentions as far as
11 trying to get the two-year-old incident out?
12 What was your plan on that?

13 MR. SARRATT: Well, to be quite
14 honest, my intent is that that was the same
15 incident.

16 SOLICITOR SUSTAKOVITCH: It is.

17 MR. SARRATT: That she just was
18 mistaken about how old she was.

19 THE COURT: Oh, okay.

20 SOLICITOR SUSTAKOVITCH: I think it is,
21 Your Honor. She's one - she's saying one or two.
22 I mean, I don't think there's anything about two
23 different incidents. It's just the whole issue
24 with Troy, did he touch her inappropriately some
25 time when she was one or two.

1 THE COURT: Well, I mean, I think
2 again, you know, the cross-examination of the
3 mom, you know, did you ever tell Minor whatever,
4 age one or two. So, I mean, I think it's still
5 within the realm there of what you're going to be
6 allowed to cross-examine the mom about.

7 MR. SARRATT: So just to make sure I
8 understand that. Basically, I can ask about this
9 whole information going to Minor, I just can't
10 talk about Minor ---

11 THE COURT: Right. Because it's --
12 the victim or alleged victim is making the
13 accusation. And that's different from you trying
14 to support your theory of the case, that there
15 may have been some knowledge that Minor may have
16 had to perpetrating whatever fabrication that may
17 have been.

18 MR. SARRATT: Yes, sir.

19 SOLICITOR SUSTAKOVITCH: Thank you,
20 Your Honor.

21 THE COURT: Okay. All right. Do
22 it. All right. We'll see you back at 2:00.
23 Have a good lunch.

24 MR. SARRATT: Thank you, Judge.

25 SOLICITOR SUSTAKOVITCH: Thank you.

1

(LUNCH RECESS)

2

(DEFENDANT PRESENT)

3

(WITNESS TAKES STAND)

4

MINOR, having been duly

5

sworn to tell the truth, and nothing but the

6

truth, testified as follows:

7

DIRECT EXAMINATION

8

BY SOLICITOR SUSTAKOVICH:

9

Q. How old are you, Minor?

10

A. Twelve.

11

Q. Where do you live?

12

A. Uh, I don't remember the address.

13

Q. Tell me where you go to school.

14

A. Gettys Middle.

15

Q. Could you do me one favor? I know you're

16

nervous. Could you -- the jury has got to be

17

able to hear you, Sweetie. Could you scoot up

18

just a little bit?

19

A. (Complies).

20

THE COURT: It is real important that

21

you speak into the microphone -- you don't have

22

to get right on it but speak into it so that they

23

can hear ---

24

SOLICITOR SUSTAKOVICH: --- what you're

25

saying.

1 WITNESS: Okay.

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR SUSTAKOVICH:

4 Q. When is your birthday?

5 A. July 18th.

6 Q. All right. Do you have any brothers or
7 sisters?

8 A. Two brothers...

9 Q. What are their names?

10 A. Brandon and Shawn.

11 Q. Do you have any sisters?

12 A. No, ma'am.

13 Q. How old are your brothers?

14 A. Almost eighteen, and thirteen.

15 Q. And you just said that you're in middle
16 school. Tell me the name of that again?

17 A. Gettys Middle.

18 Q. And you are in what grade?

19 A. Seventh.

20 Q. Is there anything about seventh grade that
21 you really like?

22 A. I get to learn about the heart, and when I
23 grow up I want to be a cardiologist.

24 Q. I'm sorry, I couldn't hear you.

25 Q. I want to be a cardiologist.

1 Q. Are you nervous right now?

2 A. Yes, ma'am.

3 Q. If I say something that you don't understand
4 or if defense counsel does, would you just ask
5 that we repeat it?

6 A. Yes, ma'am.

7 Q. It's important that we can understand what
8 you are saying.

9 A. Okay.

10 A. I want to go back -- you told me, but how
11 old are you right now?

12 A. Twelve.

13 Q. I want to go back some years. Can you
14 remember where you went to kindergarten?

15 A. Grove Elementary.

16 Q. Grove Elementary.

17 A. (Affirmative nod).

18 Q. And when you were -- going back a couple of
19 years, when you were in kindergarten, who were
20 you living with?

21 A. My mom, my brothers and Gabriel.

22 Q. Look over here, is this the Gabriel that
23 you're talking about?

24 A. (Affirmative nod).

25 THE COURT: Minor, when you answer you

1 need to give a verbal response and not just a nod
2 of the head. I know that sometimes we all do
3 that. But when you answer, it needs to be a
4 verbal response whatever your response is. Okay?

5 WITNESS: Yes, ma'am.

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR SUSTAKOVICH:

8 Q. So you said that you lived with your mom,
9 Gabriel and who else?

10 A. My brother, Brandon.

11 Q. How old were you when you were in
12 kindergarten?

13 A. Four or five.

14 Q. Minor, do you know why you're in court
15 today?

16 A. Yes, ma'am.

17 Q. Has anybody ever touched you in a way that
18 you didn't like?

19 A. Yes, ma'am.

20 Q. Who has touched you in a way that you didn't
21 like?

22 A. Gabriel.

23 Q. And do you see him in the courtroom today?

24 A. Yes, ma'am.

25 Q. Can you point to the defendant?

176

1 A. (Complies).

2 SOLICITOR SUSTAKOVICH: Your Honor, let the
3 record reflect that she identified the defendant.

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR SUSTAKOVICH:

6 Q. How old did you live with Gabriel?

7 A. Since I was two.

8 Q. When you lived with him, did you call him
9 "Dad"? Did you think of him as your dad at that
10 point?

11 A. Not really.

12 Q. He was your stepdad?

13 A. Yes, ma'am.

14 Q. Your mom was not married to him, is that
15 right?

16 A. No, ma'am.

17 Q. How old were you when Gabriel began touching
18 you in a way that you didn't like?

19 A. About five or six.

20 Q. Do you remember anything about where your
21 mom might have been when your stepfather, or
22 Gabriel, started touching you that way?

23 A. At work or at the store.

24 Q. Okay. Do you remember your mom ever getting
25 arrested and going to jail around the time that

177

1 this started?

2 A. Yes, ma'am.

3 Q. Do you know why your mom went to jail?

4 A. She broke someone's femur. That's all that
5 I can remember.

6 Q. She broke someone's femur? Is that what you
7 said?

8 A. Yes, ma'am.

9 Q. All right. So Gabriel started touching you
10 when you were five.

11 A. Yes, ma'am.

12 Q. When did it stop? How many years did it go
13 on?

14 A. About five.

15 Q. How old were you when it stopped?

16 A. Ten years old.

17 Q. Ten years old?

18 A. (Affirmative nod).

19 Q. Okay, I want to make sure that we understand
20 body parts for the jury -- and some of these
21 questions, I know, are uncomfortable but you just
22 have to explain them. What do you call your
23 private part where ---

24 A. My wrong spot.

25 Q. Where -- on the front of a girl, what do you

1 call that?

2 A. My wrong spot.

3 Q. Your wrong spot?

4 A. (Affirmative nod).

5 Q. Is that -- is there another term for it
6 besides "wrong spot". I'm talking about this
7 area of a girl (indicating).

8 A. Yes.

9 Q. What is that?

10 A. A vagina.

11 Q. The vagina?

12 A. (Affirmative nod).

13 Q. But your word is "wrong spot"?

14 A. (Affirmative nod).

15 Q. What do you call the back side of a girl?

16 A. The butt.

17 Q. Do you know what the front part of a male is
18 called?

19 A. Yes, ma'am.

20 Q. What is that called?

21 A. Penis.

22 Q. And what is your term for it?

23 A. The wrong spot.

24 Q. I want to go back. You said that Gabriel
25 touched you in ways that he shouldn't have.

179

1 A. (Affirmative nod).

2 Q. Has Gabriel ever put his mouth near your
3 wrong spot during those years, between five and
4 ten?

5 A. Yes, ma'am.

6 Q. Can you tell the jury a little bit about
7 what happened when he did that?

8 A. I don't remember, I just know that it
9 happened.

10 Q. Let me show you what has been previously
11 entered as State's Exhibit 4. Minor, do you
12 recognize this?

13 A. Yes, ma'am.

14 Q. And let me show it to the jury.

15 A. It was 8Address One.

16 Q. Do you recognize that house?

17 A. Yes. 8Address One.

18 Q. Did you live in this house with Gabriel?

19 A. Yes, ma'am.

20 Q. Did -- looking at this house, I see that it
21 has bricks on it, was this a two-story house or a
22 one-story house?

23 A. Two stories.

24 Q. Angle, where was your bedroom in this house?

25 A. My bedroom was the top floor.

1 Q. If you can turn around and just look to
2 where I am pointing. Was your bedroom here (left
3 upper window), here (middle upper window) or here
4 (right-hand upper window)?

5 A. The last one.

6 Q. This one?

7 A. Yes, ma'am.

8 SOLICITOR SUSTAKOVICH: I would like for
9 the record reflect that she is pointing to the
10 top right window.

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR SUSTAKOVICH:

13 Q. Did Gabriel ever lick your wrong spot,
14 meaning your vagina, in this house?

15 A. No, ma'am.

16 Q. No, ma'am?

17 A. (No verbal response).

18 Q. Okay.

19 Q. Let me show you -- as far as this house, can
20 you remember in what way Gabriel touched you that
21 you didn't like?

22 A. No, ma'am.

23 Q. You cannot?

24 A. I cannot.

25 Q. That's fine. I want to show you what has

1 been marked as State's Exhibit 5. Do you
2 recognize this?

3 A. Yes, ma'am.

4 Q. Okay. And then State's Exhibit 6, what is
5 this?

6 A. Address Two.

7 Q. So at Address Two -- before we leave
8 this house right here, can you remember any way
9 that Gabriel touched you that you didn't like in
10 this house? Whether it was with his fingers in a
11 way that you didn't like, with his mouth, in any
12 way that you didn't like being touched?

13 A. Yes.

14 Q. Okay.. What can you recall?

15 A. I can't -- I know that it happened but I
16 just don't remember at that house.

17 Q. I'm sorry. You've got to speak a little
18 louder.

19 A. I can't remember right now.

20 Q. I want to go to State's Exhibits 5 and 6,
21 you said that this was Address Two?

22 A. Yes, ma'am.

23 Q. In this house, did Gabriel touch you in a
24 way that you didn't like?

25 A. Yes, ma'am.

182

1 Q. Did Gabriel -- Minor, it's very important
2 that you only testify to what you can remember
3 today.

4 A. Yes, ma'am.

5 Q. All right. Has Gabriel ever put anything in
6 your butt? You described your butt. Meaning,
7 did he ever put his fingers, his penis or
8 anything inside your butt that you didn't like?

9 A. Yes, ma'am.

10 Q. Okay.

11 THE COURT: Was that a "Yes, ma'am"? Was
12 that your answer, "Yes, ma'am."

13 WITNESS: Yes, sir.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR SUSTAKOVICH:

16 Q. All right. Tell the jury, did that
17 happen at -- do you remember Gabriel putting
18 anything in your backside at this house?

19 A. No, ma'am.

20 Q. Do you remember it happening at this
21 house, this is ---

22 A. Not that I can recall.

23 Q. Minor, I am hitting you with a lot of
24 locations, but in 2015 -- let's just go back to
25 this. Do you remember 2015?

1 A. Yes, ma'am.

2 Q. Where were you in school?

3 A. Blythe Middle -- Bythe Elementary.

4 Q. Do you remember telling that Gabriel
5 had been touching you in way that you didn't
6 like?

7 A. Yes, ma'am.

8 Q. Can you tell the jury when you told
9 about Gabriel touching you in ways that you
10 didn't like?

11 A. They were having a program because they
12 -- they were telling how it was wrong for people
13 to be touching kids, and I thought maybe I should
14 tell them what had been going on. So I told the
15 student teacher, who told my teacher, who told
16 the guidance counselor.

17 Q. Minor, when you saw that talk, do you
18 know where you were living at that point?

19 A. Yes, ma'am.

20 Q. Where were you living at that point?

21 A. Address Three.

22 Q. What was it?

23 A. Address Three.

24 Q. Your family moved a lot from the time
25 you were five to ten; is that right?

1 A. Yes.

2 Q. Is it hard to remember all the
3 addresses that you moved to?

4 A. Yes, ma'am.

5 Q. Do you remember Address Three
6 pretty clearly?

7 A. Yes, ma'am.

8 Q. Was that the last address that you
9 lived at before you told what was going on?

10 A. Yes, ma'am.

11 Q. The jury has to be clear about what
12 Gabriel did to you. You said that he licked your
13 wrong spot. Did that happen at Address Three?

14 A. Yes, ma'am.

15 Q. And I asked you if Gabriel ever put his
16 penis in your wrong spot, did that ever -- and
17 you said 'yes.' Did that ever happen at address
18 Three?

19 A. Yes, ma'am.

20 Q. Did he ever put his finger in your
21 behind at Address Three?

22 A. No, ma'am.

23 Q. You don't recall that?

24 A. No, ma'am.

1 Q. All right. I want to show you what has
2 previously been entered into evidence as State's
3 Exhibit 19 and 20 -- sorry, I can't show it to
4 you, I've got to show it to the jury. Minor,
5 looking at State's Exhibit 20, can you turn
6 around and look at that?

7 THE COURT: All right. What we are
8 going to need to do, Minor, if you're going to
9 answer questions as you are looking at the screen
10 you've got to position yourself close to that
11 microphone.

12 (MICROPHONE ADJUSTED)

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR SUSTAKOVICH:

15 Q. Minor, do you recognize the red dress in
16 that picture?

17 A. Yes, ma'am.

18 Q. How do you recognize the red dress in that
19 picture?

20 A. Gabriel made me wear it.

21 Q. He made you what?

22 A. Wear it.

23 Q. Is that your red dress? Or is that from
24 somebody else?

25 A. It's my mom's Halloween costume.

1 Q. Can you talk a little louder, Sweetie?

2 A. Yes, ma'am.

3 Q. It was your mom's Halloween costume?

4 A. Yes, ma'am.

5 Q. All right. Did your mom wear that dress?

6 A. No, she had a change of plans.

7 Q. When you say that he made you wear it, did

8 he ever -- when you had to wear that, what

9 happened when you had to wear that?

10 A. I would have to wear it without anything on

11 underneath.

12 THE COURT: Speak up, Minor, please.

13 WITNESS: Yes, sir. I had to wear it

14 with nothing underneath.

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR SUSTAKOVICH:

17 Q. You had to wear it with nothing underneath?

18 A. (Affirmative nod).

19 Q. And when you had to wear it with nothing

20 underneath, what if anything did Gabriel do at

21 that point?

22 A. I can't remember.

23 Q. Not that you can remember?

24 A. No.

25 Q. Do you recall saying previously that he had

1 tried to sexually assault you during wearing
2 that?

3 MR. SARRATT: Objection, Your Honor,
4 leading.

5 SOLICITOR SUSTAKOVICH: I was just trying
6 to remind her of her previous statement.

7 THE COURT: Sustained.

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR SUSTAKOVICH:

10 Q. Minor, when you wore that red dress, did
11 Gabriel ever strike you or hit you?

12 A. Yes, ma'am.

13 Q. Did you say "Yes, ma'am"?

14 A. (Affirmative nod).

15 Q. Can you tell the jury what happened there?

16 A. Well, I had a loose tooth and I wore shorts
17 under it and he hit me.

18 THE COURT: I can't hear her. Let's do
19 this, let's take a short break.

20 (JURY OUT)

21 (BRIEF RECESS)

22 (MICROPHONE ADJUSTED)

23 (JURY IN)

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR SUSTAKOVICH:

1 Q. Minor, going back, are you nervous being
2 here right now?

3 A. Yes, ma'am.

4 Q. Is it hard testifying in court?

5 A. Yes, ma'am.

6 Q. Going back to Address Three, you
7 testified previously that you told your teacher
8 at Blythe Elementary that Gabriel had been
9 abusing you for five years?

10 A. Yes, ma'am.

11 Q. I want to go back to the house that you lived
12 in right before you told what Gabriel was doing?

13 A. Yes, ma'am.

14 Q. Can you tell the jury how Gabriel was
15 touching you in ways that you didn't like at Address
16 Three?

17 A. He was putting his wrong spot in my wrong
18 spot and his hands in my wrong spot.

19 Q. He was putting his wrong spot in your spot?

20 A. (Affirmative nod).

21 Q. And his hands --- do you mean fingers?

22 A. Yeah, (affirmative nod).

23 Q. --- in your wrong spot?

24 A. Yes, ma'am.

25 Q. And you've testified that's your vagina?

1 A. Yes, ma'am.

2 Q. Did he ever put his wrong spot, his penis,
3 in your -- I think you testified previously --
4 backside?

5 A. I can't remember.

6 Q. You can't remember that?

7 A. (No verbal response).

8 Q. Did he ever do that at any of the other
9 houses that you lived? You lived at -- that we
10 have already talked about? This house? This
11 trailer?

12 A. Yes, ma'am.

13 Q. Was there a time when Gabriel put his wrong
14 spot in your backside?

15 A. No, ma'am, not in those houses.

16 Q. Okay. Did he ever do that?

17 A. Not that I can remember.

18 Q. Do you remember him ever putting anything in
19 your backside?

20 A. Fingers.

21 Q. Fingers?

22 A. Yes, ma'am.

23 Q. How did it feel when Gabriel put his fingers
24 in your backside?

25 A. Bad.

1 Q. Besides it feeling "bad", can you describe
2 it in any other way?

3 A. No, ma'am.

4 Q. Did you ever see anything come out of
5 Gabriel's wrong spot, his penis, when he tried to
6 put it in your wrong spot or tried to put his
7 fingers in your wrong spot or your backside?

8 A. Yes, ma'am.

9 Q. What did you see come out of his wrong spot?

10 A. Pus-looking kind of stuff.

11 Q. And, again, when you say his "wrong spot"
12 you are saying his penis; right?

13 A. Yes, ma'am.

14 Q. The pus-looking stuff, did you know when you
15 were younger -- do you know what that is?

16 A. Yes, ma'am.

17 Q. Can you explain what that is?

18 A. Sperm.

19 Q. When you were younger did you know what that
20 was?

21 A. No, ma'am.

22 Q. Has Gabriel ever shown you -- the things
23 that Gabriel did to you, have you ever seen
24 videos of ---

25 A. Yes, ma'am.

1 Q. Describe the videos?

2 A. It was showing naked girls and naked guys.

3 Q. Where would Gabriel show you those videos?

4 A. In my room, on my TV.

5 Q. In your room?

6 A. (Affirmative nod).

7 Q. On your TV?

8 A. (Affirmative nod).

9 Q. Would the girls and guys have their clothes
10 on or off, or something else?

11 A. Clothes off.

12 Q. Do you know why Gabriel wanted you to watch
13 that?

14 A. No, ma'am.

15 Q. Minor, I am showing you -- do you recognize
16 what that is?

17 A. Yes, ma'am.

18 Q. What is that?

19 A. That is my mom's room.

20 Q. Did anybody else sleep in that room?

21 A. Just my mom and Gabriel.

22 Q. Which house is that that we're looking at
23 right there?

24 A. Address Three.

25 Q. Did you -- looking at this right here, what

1 is that right here?

2 A. That is where the doorknob was supposed to
3 be.

4 Q. Did you ever look through that?

5 A. Yes, ma'am.

6 Q. Tell us about that.

7 A. He told me to look through it while he and
8 my mom ---

9 Q. You've got to talk louder. Sorry.

10 A. He made me look through it while he and my
11 mom ---

12 Q. You first said that he told you and then you
13 said that he "made me" look through that, to see
14 what?

15 A. Them having intercourse.

16 Q. Did you want to look through there?

17 A. No, ma'am.

18 Q. Minor, you testified that he put his fingers
19 in your butt?

20 A. Yes, ma'am.

21 Q. Did he ever put his wrong spot in your mouth
22 or anything like that?

23 A. Yes, ma'am.

24 Q. Can you describe to the jury what that was?

25 A. I don't know how to describe it.

1 Q. What did you have to do when he did that?

2 A. Get down on my knees.

3 Q. And what did you have to do -- can you
4 describe what you had to do with your mouth?

5 A. Lick his wrong spot.

6 Q. Did you see anything come out of his wrong
7 spot when you had to lick it?

8 A. Not that I remember.

9 Q. Minor, when this was happening to you, what
10 were you thinking or feeling when this was
11 happening to you?

12 A. Gross.

13 Q. Did you understand what was happening to
14 you?

15 A. No, ma'am.

16 Q. Did you tell your mom when it was happening?

17 A. No, ma'am.

18 Q. What didn't you tell your mom?

19 A. He told me not to.

20 Q. Because he told you not to?

21 A. Yes, ma'am.

22 Q. What kind of things did he say to tell you
23 not to?

24 A. That he would, like, lock me up in a room.

25 Q. Can you talk a little louder? I'm sorry.

1 A. He said he would lock me in a room?

2 A. Lock you in a room?

3 A. Yes, ma'am.

4 Q. Did you want to tell your mom?

5 A. Yes.

6 Q. What made you feel like you could tell your
7 teacher at school what was happening on that day
8 in January of 2015?

9 A. I just felt like it was time that it should
10 stop happening.

11 Q. You felt like it was time that it should
12 stop happening?

13 A. Yes.

14 Q. Minor, do you want to be here to testify
15 today?

16 A. No, ma'am.

17 Q. Why do you feel that it is important for the
18 jury to hear from you?

19 A. To make sure they know the truth.

20 Q. Are you testifying truthfully to this jury?

21 A. Yes, ma'am.

22 Q. Is there any person in this world that could
23 make you come in here and say these things if
24 they were not true?

25 A. No, ma'am.

1 Q. How do you feel about Gabriel now?

2 A. I feel it is just horrible that he has done
3 that.

4 SOLICITOR SUSTAKOVICH: Please answer any
5 questions that defense counsel has.

6 WITNESS: Yes, ma'am.

7 CROSS EXAMINATION

8 BY MR. SARRATT:

9 Q Hi Minor. You remember when you broke your
10 arm?

11 A. Yes, sir.

12 Q. That was when you were in the fifth grade,
13 right?

14 A. Yes, sir.

15 Q. And you broke your arm roller skating?

16 A. Yes, sir.

17 Q. Now, were you nine years old when that
18 happened or ten?

19 A. Ten.

20 Q. Do you remember what time of year that was?

21 A. It was December 15th.

22 Q. Of?

23 A. 2014.

24 Q. Now, you first told what happened at your
25 school, right?

1 A. Yes, sir.

2 Q. And you said that you told the student
3 teacher, who then told Ms. Page, who then told
4 the guidance counselor?

5 A. Yes, sir.

6 Q. Do you remember being in a room with
7 Investigator Picone sitting over there, and you
8 told him too?

9 A. Yes.

10 Q. Now, at that time you only told them that
11 Gabriel had been touching you. Is that right?

12 A. Yes, sir.

13 Q. Now eventually you went to the Julie
14 Valentine Center, do you remember that?

15 A. Yes, sir.

16 Q. And at that time they wanted you to tell
17 them a lot more about what had happened, right?

18 A. Yes, sir.

19 Q. So you told them a lot more at the Julie
20 Valentine Center, right?

21 A. Yes, sir.

22 Q. But before that you told your mom some of
23 the things that had happened?

24 A. No, sir.

25 Q. You didn't?

197

1 A. (Negative gesture).

2 Q. So she didn't know anything about what you
3 said at the Julie Valentine Center?

4 A. No, sir.

5 Q. Okay. Now, once you got to the -- well, let
6 me put it this way. You testified that Gabriel
7 made you wear the red dress?

8 A. Yes, sir.

9 Q. And that that was your mom's Halloween
10 costume?

11 A. Yes, sir.

12 Q. So that was the Halloween the year before
13 you told?

14 A. Yes, sir.

15 Q. So that would have been October 31, 2014?

16 A. Yes, sir.

17 Q. When you were at the Julie Valentine Center,
18 do you remember if they asked when was the last
19 time you had to wear that red dress?

20 A. Yes, sir.

21 Q. You told them that it was "a few weeks ago".

22 A. Yes, my mom got the dress back in August.

23 Q. That was before you told what happened at
24 school?

25 A. Yes, sir.

1 Q. Was it in January of that same year?

2 A. Yes, sir.

3 Q. One time when he made you wear the red
4 dress, and I know that this is difficult to talk
5 about, but he hit you?

6 A. Yes, sir.

7 Q. That is what you told, right?

8 A. Yes, sir.

9 Q. And you would testify that he hit you hard,
10 right?

11 A. Yes, sir.

12 Q. Knocked a tooth out?

13 A. (Indicating).

14 Q. Which one? Is it the one right beside your
15 big tooth ---

16 A. The third tooth.

17 Q. The pointy one?

18 A. Yes, sir.

19 Q. So that time when he knocked your tooth out
20 you were wearing the red dress; right?

21 A. Yes, sir.

22 Q. I only have just a couple of other
23 questions. There was another time when you were
24 in the shower, is that right?

25 A. Yes, sir.

1 Q. Is that the time when you had to put your
2 arms on the counter?

3 A. I can't recall. Sorry.

4 Q. That's all right. Do you remember that time
5 if you had to wear a blindfold?

6 A. Yes.

7 Q. All right. Now, there's only one more time
8 that I want to ask you about. There was another
9 time and you said that it happened in the tub,
10 right?

11 A. Yeah, but I can't remember.

12 Q. Is there a time when you said that he
13 slipped and hurt you?

14 A. I can't remember.

15 Q. I know this is tough. When is the last time
16 that you can remember it happening?

17 A. About a week before I told.

18 Q. Was that time when you were wearing the red
19 dress?

20 A. No, sir.

21 Q. Was that the time when you were in the
22 shower?

23 A. No, sir.

24 Q. Okay. But it was after you broke your arm?

25 A. Yes, sir.

1 Q. The time that he knocked your tooth out,
2 when was that?

3 A. I can't remember, I just remember it
4 happening.

5 Q. But it was in the red dress?

6 A. Yes, sir.

7 THE COURT: Solicitor, anything on
8 redirect?

9 SOLICITOR SUSTAKOVICH: Just briefly.

10 REDIRECT EXAMINATION

11 BY SOLICITOR SUSTAKOVICH:

12 Q. Defense counsel asked you about wearing the
13 red dress and you told him that you did and that
14 Gabriel struck you in the face and knocked which
15 tooth -- this pointy tooth?

16 A. Yes, ma'am.

17 Q. Do you remember having any bruises or
18 anything like that on your face?

19 A. No, ma'am.

20 Q. Did you tell your mom what happened after
21 that?

22 A. I told her that my tooth came loose, so I
23 pulled it out.

24 Q. So she knew that your tooth came loose but
25 she didn't know that Gabriel smacked you?

1 A. Right.

2 Q. I have no further questions. Thank you.

3 THE COURT: Okay. Solicitor, you
4 can call your next witness please?

5 SOLICITOR SUSTAKOVITCH: Thank you,
6 Your Honor. The State calls Erica Van Wagner.

7 (WITNESS TAKES STAND)

8 ERICA VAN WAGNER, having been duly sworn to
9 tell the truth, and nothing but the truth,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR SUSTAKOVITCH:

13 Q. Good afternoon, Ms. Van Wagner. What's
14 your occupation, ma'am?

15 A. Mental health therapist.

16 Q. And what's the focus of your practice?

17 A. I primarily treat children who have
18 experienced trauma.

19 Q. Okay. What type of background do you
20 have to do your job as a mental health provider?

21 A. I've got a bachelor's and master's
22 degree in social work. And I have a LISW or
23 independent license in social work.

24 Q. Where did you get your degrees from?

25 A. I graduated from Winthrop in '99 with

1 my BSW. And then in 2002 graduated from USC.

2 Q. And just for the people who don't know,
3 BSW stands for?

4 A. Bachelor of social work. Sorry.

5 Q. Just give us laymen's terms.

6 A. Sorry.

7 Q. Okay. So you got your bachelors. Do
8 you have any licenses for the work that you do?

9 A. Yes, I have a, what's called an LISW, a
10 licensed independent social work.

11 Q. And what is a licensed independent
12 social work?

13 A. It is a -- it's basically a license
14 that allows me to be able to work independently
15 so I can have a private practice. But it just
16 required that I go through two years of clinical
17 supervision and being able to pass a licensing
18 board.

19 Q. All right. What is your employment
20 experience? Could you relay that to the jury?

21 A. Sure. I have worked for the department
22 of mental health for seventeen years. I worked
23 for about eight years in Columbia at The Columbia
24 Area Mental Health Center. And then have been at
25 the Greenville Mental Health Center since 2008.

203

1 Q. And as a mental health therapist, what
2 types of clients do you see?

3 A. I see -- I work with children or
4 adolescents anywhere from around three years up
5 to about eighteen or nineteen years. And I, at
6 Greenville Mental Health Center supervise our DSS
7 program. So the majority of clients that are
8 referred to me are involved with DSS in some form
9 or fashion.

10 Q. Do you treat children when there's a
11 concern of sexual abuse?

12 A. Yes, I do.

13 Q. And approximately how many children
14 have you counseled through the years who has a
15 concern?

16 A. Over the course of my career, somewhere
17 close to probably six hundred and fifty clients
18 or so.

19 Q. Do you have occasion to consult with
20 other professionals in your field related child
21 abuse?

22 A. I do. I participate as a member of the
23 multidisciplinary team. And I participate in
24 interagency team staffings with other agencies.

25 Q. And that goes into my next question

1 about trainings and seminars. Can you tell the
2 jury about some of those that you've attended in
3 the area of child abuse?

4 A. Sure. I attend the Sarah Schuh
5 conference. I have attended general health
6 conferences, some in Charleston that have taken
7 place. I am required to get up to forty hours
8 every two years in continuing education credits.
9 And primarily those are related to trauma-based
10 interventions.

11 Q. And that was what I was going to ask
12 you next about your continuing education in your
13 field. How many did you say you do a year?

14 A. It's supposed to be forty hours every
15 two years, which is as long as the process is,
16 about twenty a year.

17 Q. Are there any articles, journals, other
18 studies that you review to keep you abreast of
19 issues related to child abuse and child sexual
20 dynamics?

21 A. Yeah. The Child Welfare Review or the
22 APSAC Journal, which is the -- it's abuse and
23 neglect.

24 Q. Have you ever been qualified as an
25 expert in courts of law related to an area where

1 children, there's a concern of sexual abuse?

2 A. Yes.

3 Q. Have you been qualified as an expert in
4 the area of dealing with children where there's a
5 concern about trauma?

6 A. Yes.

7 Q. Which courts have you testified in?

8 A. I've testified in General Sessions
9 Court as well as Family Court.

10 Q. And how many times would you estimate?

11 A. Approximately ten between General
12 Sessions and Family Court.

13 Q. All right.

14 SOLICITOR SUSTAKOVITCH: You Honor, at
15 this time the State moves to admit this witness
16 as an expert in the area of dealing with - of the
17 treatment of children of sexual abuse and trauma?

18 THE COURT: Does the Defense have
19 any questions of this witness concerning
20 qualifications?

21 MR. SARRATT: No, Your Honor.

22 THE COURT: Okay. Is there any
23 objection to the State's request to have this
24 witness found to be an expert in the area of
25 dealing with children and criminal sexual

1 conduct?

2 MR. SARRATT: No, Your Honor.

3 THE COURT: Okay. Without
4 objection. Would you state again exactly,
5 because I think I did not state it.

6 SOLICITOR SUSTAKOVITCH: I think I may
7 have garbled it a bit, but in the treatment of
8 children where there's a concern of sexual abuse
9 and children experiencing trauma.

10 THE COURT: Okay. Allegations
11 concerning those?

12 SOLICITOR SUSTAKOVITCH: Yes.
13 Allegations concerning that.

14 THE COURT: Right. Okay. So found
15 to be an expert in that area. You may proceed.

16 DIRECT EXAMINATION CONTINUED
17 BY SOLICITOR SUSTAKOVITCH:

18 Q. Ms. Van Wagner, do you know the victim
19 in this case, Minor?

20 A. Yes.

21 Q. And how do you know her?

22 A. She was referred to me by the Julie
23 Valentine Center.

24 Q. When did she first come to you for
25 treatment?

1 A. In March of 2015.

2 Q. And how many -- she started in March
3 2015?

4 A. Correct.

5 Q. How was she referred? She was referred
6 by the Julie Valentine Center. Was there
7 anything urgent about her being referred to you?

8 A. Yes. During a NDT staffing they had
9 explained that she -- there were concerns about
10 her being suicidal or having a pretty extreme
11 reaction after having made her disclosure. So
12 they asked if I could see her.

13 Q. So you began counseling sessions in
14 March 2015?

15 A. Correct.

16 Q. How many sessions did you have with
17 Minor?

18 A Over the course of treatment there were
19 probably close to twenty times that we met
20 altogether.

21 Q. And did Minor have any specific goals
22 when she met with you?

23 A. Yeah. Her treatment goal was to forget
24 about what had happened.

25 Q. So she starts out in therapy March of

1 2015 with the goal to forget what happened?

2 A. Correct.

3 Q. Has she completed her therapy that she
4 came to you for?

5 A. She did not complete treatment with me,
6 no.

7 Q. And you said she had twenty sessions.
8 Why did she end up not coming anymore?

9 A. Essentially, they just quit coming in
10 for treatment. We were kind of in the middle of
11 the course of treatment and lost contact.

12 Q. And how many months? It started March
13 until when that she saw you over those twenty
14 sessions?

15 A. I want to say it was sometime in
16 September that I ended up closing her case.

17 Q. So it was around five months of
18 therapy?

19 A. So yes.

20 SOLICITOR SUSTAKOVITCH: I beg the
21 Court's indulgence one moment.

22 THE COURT: Certainly.

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR SUSTAKOVITCH:

25 Q. Ms. Van Wagner, are you as a licensed

1 independent social worker, within that position,
2 do you have occasion to treat people who have
3 suffered trauma of different types that happened
4 in their lives?

5 A. Yes.

6 Q. And when you talk about -- going back
7 to Minor before we get into the trauma. Did you
8 have a specific treatment plan for her, with her?

9 A. Yes.

10 Q. Tell us about that?

11 A. So, I meet with the client. I have the
12 client identify her treatment goal. And based on
13 the symptoms presented and the client's goal, we
14 set up a treatment plan to meet for weekly
15 services. And we would doing a treatment called
16 trauma focused cognitive behavioral therapy.

17 Q. Did you find anything, you know, when
18 she wants her goal to be forget what happened.
19 Again, is that a common thing that happened or is
20 that normal for kids to want to forget sexual
21 abuse?

22 A. Yes, that is common.

23 Q. What is TF -- and I'm going to use an
24 acronym, TFCBT? Can you talk about that?

25 A. Sure. TFCBT, that stands for trauma

1 focused cognitive behavioral therapy. And it's
2 an evidence based treatment that is used for
3 children ages three to seventeen who present with
4 signs or symptoms of PTSD that have history of
5 trauma. And it is a series of interventions that
6 work to decrease stress or the stress related to
7 an experience of trauma.

8 Q. Can you give an example of how the
9 TFCBT, how that is evidence based?

10 A. There's been, I think, approximately
11 eleven research studies done where they've
12 explored the effectiveness of the treatment. So
13 they have done empirical studies to show that
14 this is an effective course of treatment for
15 someone who has experienced trauma.

16 Q. And let's talk about trauma. Can you
17 give a definition of what trauma is? Just how
18 would you define that?

19 A. So trauma is an experience that happens
20 whether your life or the life of someone close to
21 you is threatened or perceived to be threatened
22 that can have lasting impacts on a person.

23 Q. Okay. What is the acronym PTSD, what
24 does that stand for?

25 A. PTSD stands for post-traumatic stress

1 disorder.

2 Q. All right. What are symptoms that one
3 might see in a child who has experienced a
4 traumatic event, such as sexual abuse?

5 A. Just common symptoms could be fear,
6 anxiety. Oftentimes there is what's called
7 avoidance or trying not to think about, or
8 avoiding people or places or things that reminds
9 them of that event that happened, depression,
10 anger, irritability. There are lots of common
11 symptoms of ---

12 Q. And what, if any, trauma symptoms did
13 Minor have when you were treating her, specific
14 to he?

15 MR. SARRATT: Objection, Your Honor.
16 May we approach?

17 THE COURT: Sure.

18 (OFF RECORD BENCH CONFERENCE)

19 THE COURT: Madam Forelady and
20 ladies and gentlemen of the jury, I have a legal
21 issue that I need to take up with the lawyers.
22 So if you'll be so kind as to go back to the jury
23 room again. No discussion about this case among
24 yourselves. Hopefully we'll get you back out
25 shortly.

1 (JURY OUT @ 3:05 P.M.)

2 THE COURT: Okay. At the time the
3 Defense requested a sidebar conference, I thought
4 this witness was asked general symptoms that were
5 shown by children who are victims of sexual
6 abuse. And then the Solicitor asked her what
7 symptoms, if any, did Minor display during the
8 course of the counseling sessions. At that time,
9 a sidebar conference was requested. So Mr.
10 Sarratt, I'll be glad to hear from you.

11 MR. SARRATT: Thank you, Your Honor.
12 And this touches on the conversation we had
13 pretrial in chambers.

14 THE COURT: Refresh that memory
15 about that conversation we had yesterday in
16 chambers?

17 MR. SARRATT: I just generally was
18 wanting to bring up the fact that I anticipated
19 this witness would be called. That she is not a
20 blind -- she's not a blind expert. She did treat
21 the child.

22 THE COURT: Right.

23 MR. SARRATT: So given that she was
24 going to testify as to behavioral characteristics
25 of victims of sexual trauma and sexual abuse, I

1 was aware that we were going to get close to what
2 Croma prohibits and that is vouching for the
3 victim, if not directly then indirectly through
4 essentially confirming that she was, in fact,
5 abused because she shows these symptoms of PTSD.
6 And not just PTSD of any kind of trauma generally
7 but sexual trauma specifically. I believe that
8 the question preceding the one I objected to was
9 more about sexual trauma and the characteristics
10 of that. And I thought I should object there,
11 but until it was tied to Minor, I let it go. As
12 soon as she was asked Minor's symptoms, that one
13 I thought may cross the line and essentially be
14 vouching for the fact that -- I thought they
15 would put forth as a fact that Minor was, in
16 fact, molested.

17 THE COURT: Okay. All right.

18 SOLICITOR SUSTAKOVITCH: Your Honor,
19 that's not intent. Ms. Van Wagner was going to
20 testify just that Minor was showing changes in
21 mood -- excuse me. That she was having
22 nightmares, trouble sleeping, things like that,
23 like in the therapy sessions. And then she was
24 going to testify that Minor has PTSD. She was
25 not going to say the PTSD is because she was

1 sexually assaulted. I had advised defense
2 counsel that if they went down that road, this
3 witness is going to say that her chief complaint
4 was being sexually assaulted. And so I was
5 trying to warn them that if they went there,
6 that's what this witness is going to say.

7 THE COURT: Right.

8 SOLICITOR SUSTAKOVITCH: But we just
9 planned to go those two next questions. And then
10 we were going to go into some previous health
11 records with this child.

12 THE COURT: Well, and again, we all
13 know and recognize that *Croma* and the progeny of
14 cases after *Croma* all prohibit certain witnesses
15 vouching for the credibility and truthfulness of
16 the alleged victim. I'm just trying to figure
17 out how this witness has been declared an expert
18 in the area of treatment of children who have
19 been abused or suffered trauma. And comparing
20 the general symptoms to the symptoms of Minor,
21 how that would be vouching for Minor's
22 credibility. Let me just refresh my memory a
23 little bit about what *Croma* says. Of course, we
24 have to remember now *Croma* dealt with a forensic
25 interviewer and not a mental health counselor who

1 has already been declared an expert. So we need
2 to make sure that we're aware of that
3 distinction.

4 SOLICITOR SUSTAKOVITCH: Your Honor, if
5 I remember *Croma* correctly, the two big no-no's
6 in that case were the State did qualify the
7 forensic interviewer. And then also the forensic
8 interviewer testified that she found the
9 disclosure to be compelling.

10 THE COURT: Right.

11 SOLICITOR SUSTAKOVITCH: And that's
12 where the court just said there's no time that
13 they can ever imagine seeing a forensic
14 interviewer be qualified as an expert.

15 THE COURT: Right.

16 (COURT AT EASE)

17 SOLICITOR SUSTAKOVITCH: Would you mark
18 this for identification?

19 COURT REPORTER: Sure. That's
20 State's Number 25.

21 (SO MARKED AS STATE'S EXHIBIT 25)

22 (COURT AT-EASE)

23 SOLICITOR SUSTAKOVITCH: Your Honor,
24 I've got something in my eye. May I step outside
25 ---

216

1 THE COURT: Sure. That's fine.

2 (COURT AT EASE)

3 THE COURT: All right. We're back
4 on the record. *State v. Shumpert* is pretty close
5 on point, which would allow this witness to
6 testify to the general symptoms of children who
7 have been abused and to testify as to Minor's
8 symptoms. Certainly she can't say that her
9 symptoms are caused the sexual abuse. But under
10 *State v Schumpert* that would -- the Court would
11 allow that. Basically also found that the
12 probative value of this evidence would certainly
13 be outweighed -- not outweighed by any prejudice.
14 And I don't find where, even though it's a close
15 line, I don't find where he being allowed to
16 testify to that would be vouching for the
17 credibility of Minor pursuant to *Croma*.

18 And lastly, I think we can make some
19 analogy with *State v Brown*, which allows for a
20 blind expert to come in and testify as to reasons
21 for delayed reporting. In *Brown* it was in
22 evidence that child had some period of time for
23 reporting the abuse. And the expert was allowed
24 to come in to say 'okay, this is the reason why',
25 in general terms, why delayed reporting takes

1 place. So I'm going to overrule that defense
2 objection.

3 SOLICITOR SUSTAKOVITCH: Thank you,
4 Your Honor.

5 MR. SARRATT: May I just proffer ---

6 THE COURT: Sure. Yeah. You sure
7 can.

8 MR. SARRATT: Okay. I understand Your
9 Honor's ruling but I think the key difference is
10 that in *Brown* we're dealing with a blind expert.

11 THE COURT: Oh, I understand that.

12 MR. SARRATT: Right.

13 THE COURT: But my point being -- I
14 may be stretching the analogy somewhat, but if
15 you have an expert, regardless of whether --
16 let's just forget for a second that that was a
17 blind expert, had no involvement with the child.
18 But delay reporting, that's in evidence as it
19 relates to the child and here are the general
20 reasons for children in general to delay
21 reporting. Here we've got symptoms of Minor,
22 general symptoms of children who are victims of
23 abuse. I think there can be some analogy made.
24 And maybe not a strong analogy, but some analogy.
25 But I'm primarily relying on *State v Schumpert*

1 that was dealing with the same situation, a
2 mental health counselor being allowed to testify
3 along these same lines. But go ahead, Mr.
4 Sarratt.

5 MR. SARRATT: Thank you, Your Honor.
6 My only fear is that the only conclusion that the
7 jury's going to be left with is that the reason
8 that she has these characteristics is because
9 what she said happen did happen. Otherwise,
10 she'd have no behavioral characteristics. So
11 while it's not, you know, it's not an expert
12 witness saying I found her to be credible or I
13 believe she says ---

14 THE COURT: Right.

15 MR. SARRATT: It's not directly
16 vouching. I think it is indirectly vouching.

17 THE COURT: Okay.

18 MR. SARRATT: Because, again, there
19 could be no other conclusion, other than she has
20 these symptoms because she was sexually
21 assaulted.

22 THE COURT: All right.

23 MR. SARRATT: If there had been other
24 reasons why she had trauma -- that's why I sort
25 of let it go a little bit further. Once that was

1 tied to sexual assault and not just trauma
2 generally, again, that's why I think we're
3 getting close to that.

4 THE COURT: All right. And I
5 recognize this is a pretty important issue in the
6 case. I don't mind giving you some time to try
7 to come up with some other cases, even though I
8 think you're going to find *State v Schumpert*
9 pretty close on point.

10 I don't mind -- and I'm not advocating that
11 we drag our feet and not move forward with
12 getting this case tried, but if you need some
13 time to ---

14 SOLICITOR SUSTAKOVITCH: Your Honor.

15 THE COURT: --- to do a little
16 research, I'm willing to give it to you.
17 Recognizing that this is an important issue.

18 MR. SARRATT: Thank you.

19 SOLICITOR SUSTAKOVITCH: I'm sorry.

20 MR. SARRATT: I mean, yeah, I don't
21 want to take the rest of the afternoon by any
22 means, but just take a afternoon -- mid-afternoon
23 break, fifteen, twenty minutes. Is that ---

24 THE COURT: Yeah. I mean, let's
25 take a little time. And certainly, I would

1 expect the State to do the same thing. And let's
2 see if we can find something else that possibly
3 can be more persuasive for your position.

4 SOLICITOR SUSTAKOVITCH: And, Your
5 Honor, thank you for your ruling. I would say if
6 Your Honor wanted me to proffer just what the
7 next few questions were, it might be getting us
8 out of this territory that's so concerning here.
9 I do believe that her testimony about Minor's
10 symptoms would be admissible as a mental health
11 counselor. And I certainly can clear this up or
12 clean it up.

13 THE COURT: Okay.

14 SOLICITOR SUSTAKOVITCH: If we wanted
15 to go ahead and finish with this witness. I'm
16 not trying to rush us at all. After this
17 witness, I'd be fine with ---

18 THE COURT: Well, I mean, I don't
19 mind if you want to go ahead and -- basically,
20 she testified as to the general symptoms of
21 children who have been victims of sexual abuse.
22 And then when you got into asking her Minor's
23 symptoms, that's when Mr. Sarratt objected.

24 SOLICITOR SUSTAKOVITCH: Right.

25 THE COURT: Now, if you want to go

Case No. 17-GS-23-1209 et al
Jury Trial of March 20-24, 2017
Proffer Testimony of Erica Van Wagner

1 ahead and proffer the remainder of this part
2 of her testimony, maybe Mr. Sarratt will change
3 his opinion. I don't know. But if you want to
4 go ahead and do that, you think maybe that will
5 clear things up, let's do that. And see where we
6 are.

7 SOLICITOR SUSTAKOVITCH: Right now?

8 THE COURT: Yeah. All right. So
9 we're outside the presence of the jury. You may
10 proceed.

11 (WITNESS TAKES STAND)

12 ERICA VAN WAGNER, having been sworn to tell
13 the truth, and nothing but the truth, testified
14 as follows:

15 PROFFER DIRECT EXAMINATION

16 BY SOLICITOR SUSTAKOVITCH:

17 Q. Ms. Van Wagner, I was just going to ask
18 you specific to Minor and your treatment with
19 her, can you -- you discussed trauma earlier in a
20 broad sense. Can you again remind the Court what
21 the term trauma means?

22 A. Basically, when there's an event,
23 whether it's, you know, a person's own life is
24 being threatened or perceived to be threatened or
25 someone close to them, either in proximity or

1 relationship, experiences something that it can
2 have lasting effects on a person.

3 Q. What, if any, trauma symptoms did Minor
4 have when you began the treatment of her?

5 A. Minor reported having symptoms, re-
6 experiencing symptoms, which would be things like
7 flashbacks and intrusive thoughts. She also had
8 avoidance symptoms, which is working to not think
9 about the event, avoiding people who are close to
10 this or activities that remind her of the event,
11 as well as having trouble with sleep; difficulty
12 sleeping, irritability, anger.

13 Q. Okay. I show you what's marked for
14 identification only as State's Exhibit 25. Do
15 you recognize these documents?

16 A. Yeah.

17 Q. Okay. You've got a copy. And in
18 talking about all those symptoms of trauma that
19 you just went through, did you -- you testified
20 previously of PTSD. Did you get a diagnosis in
21 this case related to Minor whether she had PTSD?

22 A. Yes. She was diagnosed with PTSD.

23 Q. And when you look at this -- how do you
24 go about diagnosing somebody with PTSD?

25 A. So a diagnosis of PTSD occurs when

1 there are enough symptoms endorsed in three sub-
2 categories. One, there has to be an identifier
3 of -- well, trauma. And then in each of those
4 subcategories, that would be re-experiencing
5 symptoms, avoidance symptoms, and then increased
6 arousal symptoms. And if there is enough -- if
7 there are enough symptoms in each category
8 endorsed, then they meet full criteria for PTSD.

9 Q. All right. And based on Minor's score
10 with her PTSD index, how would you rate her PTSD
11 level?

12 A. It was a high score for PTSD. There
13 was no question about whether or not she met the
14 full criteria for PTSD.

15 SOLICITOR SUSTAKOVITCH: Your Honor,
16 that would be basically -- well, and at the end I
17 was going to ask ---

18 PROFFER DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR SUSTAKOVITCH:

20 Q. Other than diagnosing Minor with PTSD
21 and reviewing your records, do you see any other
22 diagnoses for her that were present at the time
23 that you saw her?

24 A. At the time that I saw her she also got
25 a diagnosis of ADHD.

1 Q. Right.

2 SOLICITOR SUSTAKOVITCH: And, Your
3 Honor, I would note Ms. Van Wagner diagnosed her
4 with sexual abuse. We recognize she cannot
5 testify to that.

6 THE COURT: Right.

7 SOLICITOR SUSTAKOVITCH: That that
8 would be improper.

9 PROFFER DIRECT EXAMINATION CONTINUED
10 BY SOLICITOR SUSTAKOVITCH:

11 Q. And then was she progressing through
12 treatment ---

13 A. Yes, she was.

14 Q. --- with her symptoms? Go ahead.

15 A. Yes. She was making progress in
16 treatment.

17 Q. All right.

18 SOLICITOR SUSTAKOVITCH: That would be
19 gist of that.

20 (PROFFER CONCLUDED)

21 THE COURT: All right. Okay. All
22 right. Mr. Sarratt, you still maintain your same
23 position your same position insofar as the basis
24 for your objection?

25 MR. SARRATT: We do. We still

1 maintain the objection.

2 THE COURT: Okay. All right. Well,
3 let's take a little longer break now and give you
4 an opportunity to do whatever research. And
5 we'll get back together and go from there.

6 SOLICITOR SUSTAKOVITCH: Thank you,
7 Your Honor.

8 MR. SARRATT: About how long?

9 THE COURT: Well, I mean, I'm not
10 going to hold your feet to the fire directly, but
11 let's try to see if you can come up with
12 something in twenty minutes or so?

13 MR. SARRATT: Yes, sir.

14 THE COURT: Okay.

15 MR. SARRATT: Thank you.

16 (WITNESS STEPS DOWN)

17 (COURT IN RECESS)

18 (DEFENDANT PRESENT)

19 THE COURT: All Right. Mr. Sarratt,
20 have you come across anything that would be of
21 some benefit to your cause?

22 MR. SARRATT: I believe so. After
23 having some time to go back over and make sure we
24 understood everything, the consensus is --
25 unfortunately there was questions asked about

1 what the treatment plan, the ultimate plan for
2 Minor specifically. And the witness said that
3 the goal was to forget what happened. I think
4 that was vouching right there. Of course, to
5 forget what happened, I think the only thing she
6 could be talking about is to forget that the
7 sexual assault happened. Based on that, and I
8 don't do this lightly but I have to ask for the
9 remedy of a mistrial. That that was
10 inappropriate vouching that can't be cured at
11 this point in any other way.

12 THE COURT: I remember the ---

13 SOLICITOR SUSTAKOVITCH: Your Honor,
14 there was no objection at the time.

15 THE COURT: Right. I'm just trying
16 to ---

17 SOLICITOR SUSTAKOVITCH: It was a very
18 direct question.

19 THE COURT: Right.

20 SOLICITOR SUSTAKOVITCH: And it was not
21 intended to vouch for the credibility of the
22 victim at all.

23 THE COURT: Right. I mean, I agree
24 with you. I'm just trying to look to see about
25 what point in her testimony. I think the part

Case No. 17-GS-23-1209 et al
Jury Trial of March 20-24, 2017
Proffer Testimony of Erica Van Wagner

1 where they had twenty sessions, did not complete
2 the treatment, it was kind of in that section
3 where the goal was to forget what happened. And
4 there was not any objection at that time.
5 Testimony continued for some period of time. So
6 -- go ahead.

7 MR. SARRATT: I don't mind your saying
8 that, and I do feel obligated and you're correct.
9 I did not object timely to that question.

10 But also, in light of denying the
11 Motion for a mistrial move to strike that
12 testimony from the record, that underlying
13 question. And I understand that I did not
14 object at that time. I would object now to any
15 further testimony at this point that would
16 inappropriately vouch. The way we now see it
17 after having some time to think about this --
18 essentially this testimony, in my opinion, it can
19 only be put up for one or two reasons. Either
20 one, it's to say that Minor has PTSD because she
21 was sexually assaulted. And the counselor
22 believed what she was telling her and that's why
23 she made the diagnosis.

24 Assistant Solicitor Sustakovitch said
25 that's not the reason why she's putting her and

1 does not intent to ask any further questions
2 relating to sexual assault. I think at that
3 point then it becomes a question of relevance.
4 If she was not here to connect those to the
5 sexual assault, then what is the relevance of
6 this testimony?

7 You know, if it's just supposed to be
8 vague. Well, perhaps she has PTSD because of a
9 car accident or some other incident, then it's
10 just irrelevant testimony.

11 THE COURT: All right. What I'm
12 going to do, I'm going to deny your motion for
13 mistrial in light of the fact that there was not
14 a contemporaneous objection. I will go ahead and
15 order that the answer as to any goals of
16 treatment be stricken and a curative instruction
17 will be given to the jury.

18 However, on that issue -- once that
19 toothpaste comes out of the tube, it's kind of
20 hard to put it back in. But I will go to that
21 extent. And I want to go back just to cover the
22 record insofar as the initial objection about
23 this expert witness testifying as to the symptoms
24 that Minor displayed. And I think *State v*
25 *Schumpert* is on point. There's also a case,

1 *State v Berry*. Now, let me just kind of explain
2 a little bit about that. The Court of Appeals
3 gave an analysis of a mental health expert
4 testifying as to general symptoms of PTSD and the
5 victim in that case having that PTSD diagnosis.
6 And they specifically found that was not
7 bolstering or vouching for the credibility of the
8 victim's testimony. Now, that case went on
9 appeal on a writ to the Supreme Court. The
10 Supreme Court vacated the Court of Appeals
11 analysis, but only on procedural grounds.

12 So the point being is that I think the
13 Court of Appeals analysis on the merits of that
14 particular issue would be instructive and helpful
15 in my ruling on this issue. And also lastly,
16 *State v Weaverling*, W-E-A-V-E-R-L-I-N-G is also
17 on point. All of those cases provided support
18 for me to deny the objection. Insofar as defense
19 objection to the expert's testimony as to the
20 symptoms of Minor.

21 So, so long as the State goes through
22 the balance of the testimony as what was done per
23 in camera testimony, then I think we're ---

24 SOLICITOR SUSTAKOVITCH: Yes, sir. And
25 we mentioned this in chambers but *State v Henry*

1 as well is on point with PTSD from the Court of
2 Appeals, along the same of line of reasoning as
3 *State v Berry* that would allow that testimony in.

4 THE COURT: All right. Very good.
5 But when the jury comes out, I've already ordered
6 that that -- the goal of the treatment has been
7 stricken from the record. I will give the
8 curative instruction when the jury comes out,
9 okay?

10 SOLICITOR SUSTAKOVITCH: Your Honor,
11 one last thing. Ms. Van Wagner is going to be
12 questioned further about some other issues
13 related to Minor, but it won't be going into
14 anything outside of what we proffered on PTSD.

15 THE COURT: Okay. All right. And
16 if -- I'm confident that if defense counsel has
17 an issue with that, then they will certainly make
18 an appropriate objection. Let's bring the jury
19 out, please.

20 (JURY IN @ 4:05 P.M.)

21 THE COURT: Let the record reflect
22 that the jury is back in the courtroom. Ladies
23 and gentlemen, I appreciate your patience. I've
24 had you back there for probably forty-five
25 minutes or longer. Some additional issues came

1 up that I had to deal with. I oftentimes
2 tell juries that when I have good lawyers in a
3 case, then they'll work me pretty hard. And
4 they've raised legal issues, legitimate legal
5 issues that I have to rule on. And so it's
6 necessary sometimes to keep juries back in the
7 jury room longer than we all would like.

8 There's one point I need to bring to
9 your attention. There was some previous
10 testimony from this witness concerning goals of
11 the treatment. I'm instructing you at this time
12 to disregard that bit of testimony concerning the
13 goal of treatment with Minor. And I've already
14 ordered that to be stricken from the record.

15 Now, with that said, Solicitor, I turn
16 it over to you, ma'am.

17 SOLICITOR SUSTAKOVITCH: Thank you,
18 Your Honor.

19 DIRECT EXAMINATION RESUMED

20 BY SOLICITOR SUSTAKOVITCH:

21 Q. Ms. Van Wagner, going back to -- you stated
22 that you treated -- you had Minor for counseling
23 from March 2015 until September, I believe you
24 testified to?

25 A. Correct.

1 Q. I wanted to go back to during those months
2 of counseling with Minor, what trauma symptoms,
3 if any, did Minor have while you were treating
4 her?

5 A. So at the assessment phase of
6 treatment, we do an assessment to explore what
7 sort of symptoms she was presenting with. And
8 she described having symptoms of flashbacks,
9 nightmares, she had trouble sleeping. She was
10 having irritability and anger. There was a high
11 score for avoidance symptoms, which is working to
12 avoid things that remind her of trauma. People,
13 places, events, things that would remind her of
14 the event that happened. So that was another
15 symptom that she presented with.

16 Q. Did you make any diagnosis of Minor
17 during your treatment of her?

18 A. I diagnosed her with PTSD. And she
19 also had ADHD.

20 Q. Okay. And first as to PTSD, can you
21 again relay what that is?

22 A. So PTSD is post-traumatic stress
23 disorder. And in order to get a diagnosis of
24 PTSD, then a client has to meet criteria in three
25 sub categories of symptoms, that being increased

1 arousals and difficulty sleeping, concentrating,
2 irritability, symptoms related to avoidance and
3 then symptoms related to the experience in
4 symptoms, which would be like those flashbacks or
5 nightmares or intrusive thoughts.

6 Q. Okay. I'm showing you what's marked
7 for identification purposes as State's Exhibit
8 25. Do you recognize that?

9 A. I do.

10 Q. Okay. And what is that?

11 A. This is the -- it's called the UCLA
12 PTSD Index.

13 Q. All right. And with that index -- was
14 this administered to Minor?

15 A. It was.

16 Q. And what did her score end up being on
17 this assessment?

18 A. Her total score was a fifty-four. And
19 a score of thirty-two or higher would be
20 considered clinically significant.

21 Q. For PTSD?

22 A. For PTSD.

23 Q. All right. Going back in your
24 treatment of Minor, did you review whether -- had
25 Minor been in mental health prior to 2015?

1 A. She had been a client at the Community
2 Mental Health Center in 2010. And had not re-
3 engaged in treatment until March of 2015.

4 Q. Do you know what, if any diagnoses that
5 Minor had, previously ever -- from 2010?

6 A. I believe at the time she was diagnosed
7 with ADHD and oppositional defiant disorder or
8 ODD.

9 Q. And what is -- first, ADHD, what is
10 that?

11 A. ADHD is attention deficit hyperactivity
12 disorder.

13 Q. And ODD?

14 A. ODD is oppositional defiant disorder.

15 Q. And what is -- can you describe what
16 ODD is?

17 A. ODD is - it's symptoms that involves
18 being defiant or argumentative, not following
19 rules, anger, or irritability issues. It's
20 essentially just, you know, opposing authority or
21 being defiant to rules.

22 Q. All right. And that would be -- I'm
23 sorry. Are you aware of when in 2010 she was
24 seen?

25 A. I believe it was June of 2010.

1 Q. Okay. And then how long she was seen
2 in 2010?

3 A. Her case was open from June of 2010
4 until June of 2011. And it's my understanding
5 there was a period of time where she was not
6 receiving treatment prior to her case actually
7 getting closed.

8 Q. All right. And so when you saw her
9 after the abuse was disclosed in 2015, did you
10 have any -- when you were meeting with her during
11 those four or five months, besides the PTSD, did
12 you see any present symptoms of ODD at that time?

13 A. No.

14 Q. Did you say that she did have ADHD at
15 that time?

16 A. Correct. She was diagnosed with ADHD
17 as well.

18 Q. All right. So it was ADHD and PTSD
19 that you diagnosed her with?

20 A. Correct.

21 Q. During your treatment sessions without
22 saying the name of the perpetrator, if she gave
23 you one, did she disclose that she had been
24 sexually abused?

25 A. She did.

1 Q. And did she disclose the place or
2 places where it occurred?

3 A. Yes, she did.

4 Q. And where was that?

5 A. In her house.

6 Q. And then did she give you a time frame,
7 the time or time frames that it occurred?

8 A. She told me that she was abused from
9 ages five to ten.

10 Q. Did Minor progress from when you first
11 started seeing her in March until her case was
12 closed, did she progress in therapy as far as the
13 flashbacks and the symptoms that she was having?

14 A. She did. She was making significant
15 progress while she was in treatment.

16 Q. All right. During treatment, who
17 brought her to the sessions?

18 A. For the first two sessions her mom
19 brought her. And then after that session, she
20 had gone to live with a family friend or the
21 stepmother to her brother. So that caregiver was
22 the one that brought her in for subsequent
23 sessions.

24 Q. Okay. And during your treatment of
25 Minor, did you have any concerns of self-harm

1 with her initially?

2 A. There were initial concerns about self-
3 harm. That was part of the referral concern was
4 that she had made some statements about self-harm
5 and that was something that we addressed early on
6 in treatment.

7 Q. As she progressed in treatment, did
8 that lessen?

9 A. It did.

10 Q. All right. Please answer any questions
11 Defense counsel has.

12 MR. SARRATT: Your Honor, I have no
13 questions of this witness.

14 THE COURT: Okay. All right. Thank
15 you very much. You may step down.

16 (WITNESS STEPS DOWN)

17 THE COURT: Okay. Solicitor?

18 SOLICITOR SUSTAKOVITCH: Yes, sir.

19 THE COURT: The State calls Minora
20 McDaniel.

21 (WITNESS TAKES STAND)

22 MINORA MCDANIEL, having been duly sworn to
23 tell the truth, and nothing but the truth,
24 testified as follows:

25 DIRECT EXAMINATION

1 BY SOLICITOR SUSTAKOVITCH:

2 Q. Good afternoon, Ms. McDaniel. Where do
3 you live, Ms. McDaniel?

4 A. At the current time?

5 Q. Yes?

6 A. I live at 106 Coconut in Easley, South
7 Carolina.

8 Q. And do you have any children?

9 A. Yes, ma'am. I do.

10 Q. Can you give us their names?

11 A. I have Minor, Brady Henry

12 Hansen, and Shawn ---

13 Q. So Minor is your child?

14 A. Yes, ma'am.

15 Q. And do you know this defendant, Gabriel
16 Betancourt?

17 A. Yes, ma'am. I do.

18 Q. I want to start -- how do you know him?

19 A. We had gotten together about ten years
20 ago now.

21 Q. All right. Going back before you met
22 Gabriel -- Minor's father, were you ever married
23 to him?

24 A. Yes, I was.

25 Q. And how long were you married to him?

Case No. 17-GS-23-1209 et al
Jury Trial of March 20-24, 2017
Testimony of Minora McDaniel - Direct
Examination

1 A. About -- we got married in 2005 and the
2 divorce was finalized in 2009.

3 Q. In what year was ---

4 A. 2009.

5 Q. And why did you divorce him?

6 A. He was in a -- a difference of opinion
7 and he was physically abusive.

8 Q. All right. And when you mean
9 physically abusive, was that to you and Minor or
10 just you or what?

11 A. To me mostly, it was. I disagreed with
12 a lot was that he did with Minor, he was rougher
13 with her when she would cry.

14 Q. Did you ever tell Minor that you didn't
15 like the way her biological dad changed her
16 diaper?

17 A. What I told her was that -- she had
18 asked me why I had left him. I told her because
19 there was a difference -- because I don't think a
20 guy should change a little girl's diaper.

21 Q. You personally think a guy shouldn't
22 change a little girl's diaper?

23 A. No, I don't.

24 Q. Okay. Why is that?

25 A. Because when I was younger I was raped.

1 Q. Okay. You understand that it is okay
2 for a man to change a child's diaper?

3 A. Not for me.

4 Q. Okay. So you told Minor that you
5 didn't want him changing her diaper. Wait a
6 minute. How old would she have been when you
7 split up?

8 A. About two.

9 Q. About two. All right. So he leaves
10 and then how do you meet this Defendant?

11 A. I was a dancer at a nightclub.

12 Q. You were a dancer at a nightclub.

13 A. Yes, ma'am. You met him out at the
14 nightclub?

15 A. At the nightclub, (affirmative nod).

16 Q. And then y'all started dating?

17 A. Yes, ma'am.

18 Q. How long before you -- well, did you
19 end up moving in together?

20 A. Yes, I admit it.

21 Q. And how from when you met him to when
22 you moved in together was that?

23 A. About five to six months.

24 Q. So where was the first place you moved
25 in together?

1 A. Was on Grove Road.

2 Q. All right. And how old would Minor
3 have been when y'all moved in together?

4 A. Just -- I think almost two o'clock
5 [sic]. About two.

6 Q. About two?

7 A. Yeah.

8 Q. How was the relationship between Minor
9 and this defendant when she was two?

10 A. It was just normal child relationship,
11 they would play and everything was fine.

12 Q. All right. But you weren't married.
13 Y'all were living together. After Grove Road,
14 where did you move?

15 A. We moved to Armstrong Apartment in
16 Fountain Inn.

17 Q. All right. And after Armstrong
18 Apartments, where did you move?

19 A. We moved to Address Four.

20 Q. All right. And after Address Four,
21 how old would Minor have been about that
22 time?

23 A. She would have been in third grade,
24 would have been Alexander, would have been 2009.
25 She would have been about seven years old.

1 SOLICITOR SUSTAKOVITCH: I beg the
2 Court's indulgence one moment.

3 THE COURT: Sure.

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR SUSTAKOVITCH:

6 Q. I know going back in time is hard. So
7 looking at State's Exhibit 2, so you know where
8 she went to kindergarten?

9 A. In kindergarten, she went to Grove
10 Elementary.

11 Q. All right. And when she went, she
12 would have gone to kindergarten some time in 2009
13 or so?

14 A. Yeah.

15 Q. All right. And when she went to Grove
16 Elementary, you guys lived -- I'm sorry. Where
17 did you say, Address Four?

18 A. We lived at Address Four.

19 Q. All right. Then after Address Four
20 where did you move?

21 A. We moved to Address One.

22 Q. You moved to Address One?

23 A. Uh-huh. That's right.

24 Q. All right. And when you lived at 10
25 Address One, did you have a job or anything like

1 that?

2 A. I was working at the Hyatt as a -- I
3 guess you call them like a, a waitress for the
4 banquets.

5 Q. Okay. And who would take care of Minor
6 when you'd be at work?

7 A. Gabriel.

8 Q. Gabriel would. What were your hours
9 that you would work when you worked at the Hyatt?

10 A. There was different hours. We would do
11 weddings. Like morning weddings, it would be
12 anywhere between 6:00 in the morning I have to
13 be, a wedding. And it'd last four to six hours
14 for a reception. There were times when I'd have
15 to go in at 4:00 in the afternoon. I wouldn't
16 get home until 2:00 in the morning.

17 Q. Did you have any issue with leaving
18 Minor? When she was five, you were living at, I
19 guess, Address Four. Did you have any issue
20 with leaving her with Gabriel?

21 A. No, not at all.

22 Q. All right. After she went to
23 kindergarten -- do you remember where she went to
24 first grade?

25 A. First grade would have been -- probably

1 would have been when we lived at Address One.

2 Q. All right.

3 A. That would have been Alexander.

4 SOLICITOR SUSTAKOVITCH: I beg the
5 Court's indulgence one moment.

6 THE COURT: Okay.

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR SUSTAKOVITCH:

9 Q. You guys moved a lot; is that accurate?

10 A. Yes, ma'am. It is.

11 Q. All right. I'm showing you what's
12 marked as State's Exhibit 4. Can you see that
13 photograph?

14 A. Yes, ma'am.

15 Q. And what is that a photograph of?

16 A. That's Address One.

17 Q. All right. And you guys lived here for
18 -- I mean, it doesn't have to be -- just an
19 approximate. How long do you think you lived
20 there?

21 A. Probably about two years.

22 Q. About two years. And when you lived
23 there where was -- do you remember where your
24 bedroom was?

25 A. My bedroom was all the way in the very,

1 very back.

2 Q. And did Gabriel live or stay in that
3 bedroom with you?

4 A. Yes, ma'am. He did.

5 Q. And do you recall where Minor's bedroom
6 was?

7 A. During the winter months, because it
8 was cold and we didn't have heating, her bedroom
9 was right beside ours. The bedroom itself had
10 like a built-on nursery.

11 Q. Okay.

12 A. And during the summer months Minor and
13 Brandon and Shawn would stay in there.

14 Q. Okay. And then did she end up having a
15 bedroom upstairs in the other room?

16 A. She had a bedroom upstairs on the
17 corner on this side.

18 Q. All right. After Address One, do
19 you recall where you moved then?

20 A. We moved to Address Two, Lot 1.

21 Q. I'm showing you what's marked as
22 State's Exhibit 5 previously entered. Do you
23 recognize that?

24 A. Yes, ma'am.

25 Q. What is that?

1 A. If you turn left there, that is where
2 Address Two is.

3 Q. All right. And that will be -- show
4 you a little bit closer. I show you what's
5 marked as State's Exhibit 6. Is this that?

6 A. That is also Address Two.

7 Q. So a closer picture of it?

8 A. That is the master bedroom. On that
9 side, that is the master bathroom.

10 Q. All right. After you lived at Address
11 Two, where did you guys move?

12 A. From Address Two we have moved to
13 Address Three.

14 Q. All right. Do you have any idea when
15 you moved there?

16 A. Not exactly, but it would have been
17 about 2014.

18 Q. I'm going to show you what's previously
19 been entered into evidence as State's Exhibit 23
20 -- 22 and 23. Do you recognize that?

21 A. Yes, ma'am, I do.

22 Q. What is that?

23 A. That is Address Three.

24 Q. Address Three?

25 A. Yes, ma'am.

1 Q. All right. And then do you recognize
2 that?

3 A. That's a more recent picture of it.

4 Q. So I see the color painting - the paint
5 color changed. Did you guys paint the trailer or
6 ---

7 A. That was shortly after we had moved in
8 because we were renting it from his mother. She
9 had actually paid to have it painted, but when
10 they got the paint they actually painted an ugly
11 color.

12 Q. So when you moved in, it was this
13 color?

14 A. Yes, ma'am, it was.

15 Q. And then it became ---

16 A. Yes, ma'am.

17 Q. Okay. I want to go back to when you
18 lived at Address One.

19 A. Yes, ma'am.

20 Q. Did you ever get arrested when you
21 lived at Address One?

22 A. I was arrested in Address Four

23 Q. Oh, I'm sorry. You got arrested at
24 Address Four?

25 A. That's right.

1 Q. You know the dates on that?

2 A. I was arrested September 29th and I was
3 released from Greenville County on the 18th of
4 October.

5 Q. And when you got arrested, who was
6 taking care of Minor?

7 A. Gabriel Betancourt.

8 Q. All right. Any other adult in the home
9 while you were in jail?

10 A. No.

11 Q. You got out. And then after you got
12 out of jail, where did you move to then?

13 A. That is when we had moved to Address One.
14 That was about November of 2009.

15 Q. Did you get convicted on those charges?

16 A. No, ma'am, I did not. They were
17 dismissed.

18 Q. Okay. But then you ended up moving
19 where? I'm sorry?

20 A. To Address One.

21 Q. All right. I want to go back to -- and
22 I know that was a lot of different locations.
23 Were all of those locations in Greenville County?

24 A. Yes, ma'am. They were.

25 Q. And when you lived at those different

1 locations, I believe you testified you worked at
2 the Hyatt?

3 A. Yes, ma'am.

4 Q. Which one was the Hyatt?

5 A. It was the one right down here off of
6 Main Street.

7 Q. I'm sorry. Not a good question. Which
8 house were you living at when you worked at the
9 Hyatt?

10 A. It was Address One.

11 Q. All right. And then at Address Two, did
12 you have a job there?

13 A. I did not.

14 Q. All right. Were there times that you
15 would leave Minor in the care of this Defendant?

16 A. Yes, ma'am. There was.

17 Q. And what types things would you do to
18 leave her in the care of this Defendant?

19 A. Because I was doing -- home schooling
20 the kids and having three kids and not having
21 internet, I would have to go down to Greenville
22 Library and do things like that. And I would
23 take either, you know, Shawn and Brandon or Minor
24 and Brandon or Shawn and Minor. Because it's
25 just hard for one person to deal with three kids

1 in a small room, is a lot.

2 Q. Were there other times that you went
3 out, say a friend. You wanted to go out with
4 friends or other people and you left Minor with
5 Gabriel?

6 A. The only time I'd ever done any of that
7 was when I would go out with his sisters.

8 Q. With his sisters?

9 A. Yes, ma'am.

10 Q. Okay.

11 A. And that was only like twice.

12 Q. I'm sorry?

13 A. That was only like twice.

14 Q. Now, I want to go to January 14th, 2015.

15 Did you receive a phone call from Blythe
16 Elementary that day or from law enforcement
17 related to your daughter?

18 A. I did not receive a phone call. They
19 actually came to my house because I did not have
20 a phone.

21 Q. Okay. Thank you for correcting me. So
22 when they came to your house, what was the nature
23 of that call or that visit?

24 A. That I needed to go down to the
25 elementary school because something's wrong with

1 my children.

2 Q. Now, when the police came to your house
3 then, did you have any clue why they were there?

4 A. No, I had no clue.

5 Q. And do you recall walking into the
6 school that day?

7 A. Yes, ma'am, I do.

8 Q. What did you think was going on?

9 A. I thought that maybe my daughter had
10 fallen or they had gotten into a fight or
11 something.

12 Q. Did you speak with Investigator Picone
13 that day?

14 A. Yes, ma'am. I did.

15 Q. And did he relate to you the nature of
16 the concern that you'd been called to the school
17 about?

18 A. Yes, ma'am. He did.

19 Q. And what as your reaction?

20 A. I was hurt and angry and confused that
21 someone could do something like that.

22 Q. Did you actually make statements you
23 wanted to kill him?

24 A. Yes, I did.

25 Q. Okay. Was that out of anger that you

1 said that?

2 A. Yes, it was.

3 Q. All right. Did you get to take Minor
4 home that day after coming to the school?

5 A. Yes, ma'am.

6 Q. And I want to take you to -- so when
7 you're at the school, were you separated when
8 police were interviewing Minor and talking to
9 her?

10 A. Yes, sir. I'm separated.

11 Q. All right. When you took Minor home
12 that day, what did you do?

13 A. I had went next door and I had talked
14 to his sisters and his mother.

15 Q. All right. And without getting into
16 those conversations, as far as this defendant on
17 that date, did you have any contact with him
18 after you brought Minor home that day?

19 A. Yes, I did. He came to get his stuff
20 that night while the kids were in school -- while
21 the kids were in church because it was Wednesday.

22 Q. And when he came to get his stuff, can
23 you tell the jury about that interaction?

24 A. Yes, ma'am. I had told him earlier
25 that day when the investigator had talked to him

1 to, you know, not go around the children. And I
2 had told him to come by there that night to pick
3 up his stuff. He said, 'All right, that's fine.'
4 The kids were at church. It was probably about
5 7:30 and he had showed up at the house. And I
6 had his clothes ready and sitting on the couch in
7 bags. And I told him 'your stuff is right here.'
8 He said, 'I'm going to go back into the room to
9 see if there's anything else I need to pick up.'
10 I said all right. Fine. And I had walked back
11 there with him. He went back there and I looked
12 him in his face and I asked him "did you do it?"
13 And he started crying and he said yes. And I
14 said, "Why?" And he could not give me an answer
15 why. He said, "I don't know."

16 Q. All right. Did he admit - when you
17 said did you do it? Did he admit to the forms of
18 sexual conduct that he had with her?

19 A. He said that he had touched her was all
20 that he had told me.

21 Q. All right. Did you ask how long it had
22 been going on?

23 A. I did. And he didn't answer me. He
24 said a while. That's all he said.

25 Q. All right. You had this exchange with

1 him. Were you angry during this?

2 A. Yes, I was.

3 Q. And what was the Defendant doing during
4 this time?

5 A. He was crying.

6 Q. And you testified he said he didn't
7 know why this happened?

8 A. He said, "I don't know."

9 Q. All right. Did you have any more
10 contact with him after you confronted him that
11 night?

12 A. No. I called his phone the next day
13 and I left a message saying you need to go turn
14 yourself in because he didn't answer. And that
15 was the last thing. That was it.

16 Q. And you said for him -- you called to
17 see if he turned himself in?

18 A. Uh-huh. And I had called his phone and
19 left a message on -- it wasn't his phone it was
20 the work phone that the job he was in, they had
21 given him. I called it and told him he needed to
22 turn himself in. That was the last thing I ever
23 said to him.

24 Q. Okay. After Minor disclosed this
25 abuse, whose trailer were you living in? This

1 Address Three, whose trailer was that?

2 A. His mother's.

3 Q. And after you - you had this
4 confrontation and you confronted him about the
5 abuse, did you get to stay in the trailer or did
6 you have to move out?

7 A. There was an eviction notice taken out
8 on me and my kids.

9 Q. So were you kicked out of that trailer?

10 A. Yes, ma'am, I was.

11 Q. And do you know who kicked you out?

12 A. Yes, ma'am. The eviction notice was
13 signed by Petra.

14 Q. Who is Petra?

15 A. His mother.

16 Q. All right. So once you lost your home
17 after Minor disclosed, where did you go live
18 then?

19 A. I moved down the street for a couple of
20 days and my kids went to go stay with their dad's
21 father -- their father's father. And I didn't
22 see my kids for six months because I lived on the
23 streets.

24 Q. Okay. And is this upsetting to you to
25 testify?

1 A. It was upsetting because I lost my
2 children because of this.

3 Q. All right. Ms. McDaniel, let me --
4 when you say you lost your children because of
5 this, did the kids ---

6 A. DSS was involved and they were taken
7 out of my custody.

8 Q. Okay. I'm showing you what is marked
9 as State's Exhibit 19, 20, and then 14 and 15.
10 Can you take a look at these pictures?

11 A. (Review)

12 Q. Okay. Do your recognize them?

13 A. Yes, ma'am.

14 Q. We're going to talk through them real
15 quickly. A little hard to see. What am I seeing
16 in this photograph right here?

17 A. That is a dress that many people had
18 picked out for me after -- at the Halloween sale
19 and they bought it Walmart. It was half-off and
20 it didn't fit.

21 Q. This red dress didn't fit you?

22 A. No.

23 THE COURT: What exhibit number is
24 that, Solicitor?

25 SOLICITOR SUSTAKOVITCH: It's Number

1 20, Your Honor.

2 THE COURT: Okay.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR SUSTAKOVITCH:

5 Q. So did you, in fact, try this dress on?

6 A. Yes, I did.

7 Q. And it didn't fit you?

8 A. No.

9 Q. Do you know where the dress went after
10 you tried it on?

11 A. I put it in the bottom drawer in my
12 room.

13 Q. Okay. But you didn't wear this dress?

14 A. No. It didn't fit. I couldn't get it
15 over my shoulders.

16 Q. All right. And is there any reason why
17 Minor should have had this dress?

18 A. No.

19 Q. I'm showing you what's marked as
20 State's Exhibit ---

21 SOLICITOR SUSTAKOVITCH: --- 14, Your
22 Honor.

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR SUSTAKOVITCH:

25 Q. Do you recognize this?

1 A. Yes, ma'am.

2 Q. What is that?

3 A. That was the bedroom. That was my
4 bedroom.

5 Q. And who, if anyone, slept in that
6 bedroom with you?

7 A. Me and Gabriel.

8 Q. All right. What am I seeing here with
9 this?

10 A. He later got a doorknob.

11 Q. So there was a hole in the door?

12 A. Yes, ma'am.

13 Q. And now I'm showing you State's Exhibit
14 15. That, I guess, looking through the hole.

15 What am I seeing back here?

16 A. That is my closet on my side. And on
17 this side, in the middle piece is where the bed
18 would have been.

19 Q. Okay. And your bed is behind
20 Investigator Picone?

21 A. Yes, ma'am.

22 Q. Is he the gentleman standing there?

23 A. Yes, ma'am.

24 Q. All right. As far as pornographic
25 materials in the home, did you watch pornography

1 with this Defendant?

2 A. No.

3 Q. You did not?

4 A. No.

5 Q. All right. And were you aware that he
6 had pornography in the house?

7 A. No, I wasn't. I was aware that he
8 would watch it.

9 Q. I'm sorry. Say it again.

10 A. I was aware that he would watch it, but
11 I never knew that he had it in the house.

12 Q. So what does that mean? You thought he
13 watched it where?

14 A. Like on the phone or anything like
15 that.

16 Q. Got it. Okay. But you didn't -- I'm
17 showing you what's - well, State's Exhibit 9.
18 I'll just show you one of these. As far as
19 pornographic CDs, your testimony is that you
20 didn't know they were in the house?

21 A. No.

22 Q. All right. I want to go to the day
23 that Investigator Picone came to your house. Did
24 you let him in voluntarily?

25 A. Yes, ma'am. I did.

1 Q. And did you -- were you the one that --
2 let me ask it this way. Did you locate that
3 pornography in the closet?

4 A. Yes, ma'am. It was in his closet.

5 Q. All right. How did you get involved
6 with trying to help locate it?

7 A. Because his father's ashes were up
8 there. It was right behind his father's ashes.

9 Q. Okay. And you were looking through
10 stuff and those fell out?

11 A. They fell out. And I had moved his
12 father's ashes and I went to get the paper that
13 was also behind it. And when I had moved them
14 down, everything came down.

15 Q. All right. You said that you lost the
16 kids. Once Minor disclosed, DSS got involved.
17 Have you since gotten them back?

18 A. Yes, I have.

19 Q. All right.

20 SOLICITOR SUSTAKOVITCH: I beg the
21 Court's indulgence.

22 THE COURT: Sure. Take your time.

23 SOLICITOR SUSTAKOVITCH: Please answer
24 any questions Defense counsel has?

25 THE COURT: Cross-examination by the

1 Defense.

2 CROSS-EXAMINATION

3 BY MR. SARRATT:

4 Q. Minora, how are you?

5 A. Okay.

6 Q. So you testified you have three
7 children; correct?

8 A. Yes, sir.

9 Q. And Minor's the youngest?

10 A. She's my youngest, yes.

11 Q. Now, of course, you love your daughter;
12 right?

13 A. Uh-huh.

14 Q. And before all of this, Gabriel wanted
15 to raise your children as his own; right?

16 A. Yes, he did.

17 Q. And y'all had been together for eight
18 years?

19 A. Yes, we were.

20 Q. Now, you testified that the police came
21 to your door on January 15th. No, I'm sorry. It
22 was the 14th; right?

23 A. It was the 14th. And you heard what,
24 you know, Minor had said at school?

25 A. Uh-huh.

1 Q. And you'd do anything to protect her?

2 A. (Affirmative nod).

3 THE COURT: You need to give a
4 verbal response and not just a nod of the head.

5 WITNESS: I'm sorry.

6 THE COURT: That's okay.

7 WITNESS: Yes.

8 CROSS-EXAMINATION CONTINUED

9 BY MR. SARRATT:

10 Q. And when you heard the news, you were
11 shocked?

12 A. Yes, I was.

13 Q. Okay. So if Minor had showed any signs
14 of abuse before that, then you would have done
15 something; right?

16 A. Yes, I would.

17 Q. Okay. So prior to the 14th, you didn't
18 have any concerns that she was being abused?

19 A. No, I didn't.

20 Q. Okay. Now, you mentioned that you were
21 sexually assaulted; correct?

22 A. Uh-huh. Yes, I was.

23 Q. And it was twice actually?

24 A. Yes, it was.

25 Q. And I'm not trying to like rehash all

263

State of South Carolina v Gabriel Betancourt

312

Case No. 17-GS-23-1209 et al

Jury Trial of March 20-24, 2017

Testimony of Minora McDaniel - Cross Examination

1 these details. But once when you were nine and
2 once when you were fourteen?

3 A. Yes, sir.

4 Q. And was it two different people?

5 A. Yes, sir.

6 Q. Okay. So the only reason I ask that is
7 that you had told Minor that that had happened to
8 you; correct?

9 A. Yes, I did.

10 Q. Prior to all of this?

11 A. Yes, to when all of this had happened.

12 Q. After all this had happened or before?

13 A. After it happened I actually went into
14 detail with her and explained to her that it was
15 not her fault, there's nothing that she could
16 have done to prevent it.

17 Q. Okay. But you never told her about
18 that before she ---

19 A. I never went into detail with her. I
20 had told her, you know, you have to watch out for
21 people.

22 Q. Okay?

23 A. You know, because not everybody in this
24 world is good.

25 Q. But you did tell her about your -- I

1 mean, without detail you told her your
2 experience?

3 A. Yes, I did.

4 Q. Okay. Now, you also testified that you
5 told Minor about you didn't like the way that
6 Troy had changed her diaper; right?

7 A. Uh-huh. Yes, sir.

8 Q. Okay. Now, did you characterize that
9 as sort of abuse for you personally?

10 A. The way that I had said it was that,
11 you know, I didn't want you know, your father to
12 change your diaper. I don't think it's right.
13 I don't want something to happen. You know,
14 because always in the back of my mind every
15 single person that walks by has the capability to
16 do something grotesque. It's whether or not they
17 act on it.

18 Q. Okay. Now, again, I'm not asking you
19 this just to smear you. But you've been
20 diagnosed with schizophrenia and bipolar
21 disorder?

22 A. Yes, sir. I have.

23 Q. Okay. And those are, for you,
24 treatment resistant?

25 A. Yes, sir.

1 Q. Okay. You were diagnosed when you were
2 nine with schizophrenia?

3 A. With -- I had partial schizophrenia,
4 which means that I see shadows.

5 Q. And when you were twelve you were
6 diagnosed with bipolar disorder?

7 A. I got diagnosed Bipolar 1.

8 Q. Now, you also told Minor that she was
9 schizophrenic and bipolar; is that right?

10 A. When I was taking her to the doctors
11 down in Greenville Mental Health, the doctor had
12 told me that there could be a possibility ---

13 SOLICITOR SUSTAKOVITCH: Your Honor,
14 I'm just going to object to the hearsay on this.
15 She's testifying as ---

16 THE COURT: Yeah, you can't repeat
17 what someone told you.

18 WITNESS: Okay.

19 CROSS-EXAMINATION CONTINUED

20 BY MR. SARRATT:

21 Q. Well, yeah. Without saying what
22 anybody said, did you tell Minor that she was
23 schizophrenic or possibly schizophrenic and
24 bipolar?

25 A. I told her that she could -- it could

266

1 be a possibility of that when she gets older.

2 Q. Okay. And we haven't had the testimony
3 yet, but you also told some of the doctors who
4 did exams on her after she disclosed that Minor
5 was schizophrenic and bipolar?

6 A. That it was a possibility, yes.

7 Q. Now, as part of that, you would say --
8 and I'm not asking you to repeat what she said.
9 There are times where Minor would rage; is that
10 correct?

11 A. Yes, there was.

12 Q. And then after she raged, she would
13 crash?

14 A. Uh-huh.

15 Q. And those are part of the symptoms that
16 you felt could be schizophrenic or bipolar?

17 A. Could be bipolar, yes.

18 Q. Now. I want to change gears a little
19 bit. As far as the timeline, you lived at Address
20 Three when Minor made the allegation;
21 correct?

22 A. Uh-huh. Yes, sir.

23 Q. All right. And just prior to that, the
24 allegations made in January. In November of
25 2014, your sister was living with you?

1 A. My aunt.

2 Q. I'm sorry, your aunt. Is that Mary
3 Engle?

4 A. Yes, sir.

5 Q. Now, in November -- I'm sorry. No.
6 She moved in, in November. In January 2015, is
7 it not true that your aunt tried to commit
8 suicide?

9 A. Yes, it is. And that night that she
10 tried to do it, she was no longer allowed in my
11 household.

12 Q. And Minor was present for that?

13 A. Yes. Because I was out on a girl's
14 night with his sister.

15 Q. Okay. And my last question with that
16 is the police came out as a result of that?

17 A. No, the police did not come out. The
18 fire department and the ambulance had come out.

19 Q. Okay. All right. So you said that,
20 you know, you were very angry with Gabriel. And
21 our of that anger said that you wanted to kill
22 him; correct?

23 A. Yes, I did.

24 Q. Okay. Now, after Minor said what she
25 did at school, Investigator Picone told you not

1 to initiate any communication with Minor about
2 it?

3 A. No, sir. They said do not talk to her
4 about it. If she wants to talk about it, let her
5 talk about it.

6 Q. Right. And she did, didn't she?

7 A. Yes, she did.

8 Q. With you? And she talked to you about
9 it before she went to the Julie Valentine Center
10 for her interview; correct?

11 A. That was on January 14th when we had got
12 home and after I had went in to tell two of his
13 sisters and his mother. I was sitting in my room
14 and I was upset. And she's like, you know,

15 'Mama, I want to tell you, okay?'

16 'What do you want to tell me?'

17 She said, 'Oh, you know, how you turn a
18 light switch on and off?'

19 And I said 'yeah, baby that's how. Yeah, I
20 know how to do.'

21 She was like, 'well that's what he did.'
22 And she got up and she walked away.

23 Q. Okay. So with this information you
24 took that to Investigator Picone; correct?

25 A. Yes, I did. The next day when he was

1 in his office I went down there. And I told him
2 what his sisters and his mother said to me. And
3 I told him what I had said and what my daughter
4 had said.

5 Q. Okay. And again, that was before the
6 Julie Valentine; right?

7 A. Yes.

8 Q. Okay. Now, you - well, I don't want to
9 ask you this question so -- I just hate to ask
10 it. But were you -- you were at the Julie
11 Valentine Center; right?

12 A. Yes, I was.

13 Q. Were you able to see the interview, the
14 video?

15 A. No, I wasn't.

16 Q. Okay. But did you talk to Minor about,
17 you know, what she said? Are you aware now of
18 what she said at the Julie Valentine Center?

19 A. No, I'm not.

20 Q. Okay. Well, again, in the statements
21 that she did make to you before the Julie
22 Valentine Center, she didn't go into any extreme
23 detail about the red dress and her tooth being
24 knocked out or anything like that; right? That
25 all came out at the Julie Valentine?

1 A. I didn't know about that until probably
2 about three months ago.

3 Q. Okay. All right. So just to recap
4 real briefly, you're the one that found the DVDs
5 of the pornography?

6 A. Yes.

7 Q. In Gabriel's closet?

8 A. Uh-huh.

9 Q. Okay. And you confirmed the hole in
10 the door?

11 A. Yes.

12 Q. Where the doorknob was missing. And
13 you testified that when you tried on the red
14 Halloween dress and it didn't fit, that you left
15 it in your bedroom?

16 A. Yes, I did. I put it in my drawer
17 because eventually I was hoping I could lose
18 weight and get into it.

19 Q. Okay. And that's the last time that
20 you saw it?

21 A. Yeah. That's the last time I saw it.

22 Q. Okay.

23 MR. SARRATT: I beg the Court's
24 indulgence for one moment.

25 THE COURT: Sure.

1 MR. SARRATT: No further questions,
2 Your Honor.

3 THE COURT: Any redirect, Solicitor?

4 MR. SARRATT: Yes, sir. Very briefly.

5 REDIRECT EXAMINATION

6 BY SOLICITOR SUSTAKOVITCH:

7 Q. Ms. McDaniel, I just want to be clear.
8 Defense counsel was asking you about any
9 conversation you would have had with Minor after
10 she disclosed on January 14th between there and
11 when she went to the Julie Valentine Center. Did
12 I understand your testimony to be all she talked
13 about to you was that -- how did she say it? You
14 know, 'mom, it's like when you switch a light
15 switch on.' Can you explain that to me again?

16 A. She had told me that she wanted to tell
17 me something. And that was the day that
18 everything had come out.

19 Q. And just the light switch part is what
20 I'm talking about.

21 A. 'You know how you turn a light switch
22 on and off?'

23 'Yeah.'

24 'Well, that's what he did.'

25 Q. To what?

State of South Carolina v Gabriel Betancourt
Case No. 17-GS-23-1209 et al
Jury Trial of March 20-24, 2017
Testimony of Minora McDaniel - Redirect Examination

321

272

1 A. To her "no no".

2 Q. To her what?

3 A. To her "no no" spot.

4 Q. You mean ---

5 A. Her vagina, yes.

6 Q. To her vagina. Okay. So apart from
7 her offering that to you, did you have any other
8 conversation with her in detail between when she
9 disclosed and when she went to the Julie
10 Valentine Center?

11 A. No, I did not.

12 Q. And you testified that you had been
13 sexually assaulted twice in your life?

14 A. Yes.

15 Q. I'm sorry. But in your telling Minor
16 about that previously, that you'd been sexually
17 assaulted, did you ever discuss specifics like
18 what semen taste like?

19 A. No.

20 Q. Did you ever discuss with her what a
21 penis in your rectum feels like?

22 A. No.

23 SOLICITOR SUSTAKOVITCH: I have no
24 further questions.

25 THE COURT: Okay. Any recross?

1 MR. SARRATT: No, Your Honor.

2 THE COURT: You can step down,

3 ma'am.

4 WITNESS: Thank you.

5 (WITNESS STEPS DOWN)

6 SOLICITOR SUSTAKOVITCH: May we

7 approach, Your Honor?

8 THE COURT: Sure.

9 (OFF RECORD BENCH CONFERENCE)

10 SOLICITOR SUSTAKOVITCH: Your Honor,

11 we'd briefly recall one witness for clarity.

12 THE COURT: Okay.

13 SOLICITOR SUSTAKOVITCH: The State

14 recalls Erica Van Wagner.

15 THE COURT: Okay.

16 (WITNESS TAKES STAND)

17 THE COURT: Ms. Van Wagner, I just

18 remind you, you are still under oath from

19 earlier?

20 WITNESS: Yes.

21 ERICA VAN WAGNER, having been previously

22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR SUSTAKOVITCH:

25 Q. Thank you, Ms. Van Wagner. Just a

1 couple of things I want to clarify based on what
2 was just presented. As far as Minor, you
3 testified that her diagnosis was PTSD and ADHD;
4 correct?

5 A. Correct.

6 Q. And at the time you saw her in 2015,
7 did she have any presentation of ODD or any of
8 that that she previously had had in 2010?

9 A. No.

10 Q. And as far as -- you looked at her
11 mental health records; correct?

12 A. Correct.

13 Q. Does Minor have any diagnosis of being
14 schizophrenic?

15 A. No.

16 Q. Does she have any diagnosis by any
17 medical health provider of being bipolar?

18 A. No.

19 Q. All right. And that information --
20 well, thank you.

21 SOLICITOR SUSTAKOVITCH: That's all,
22 Your Honor.

23 THE COURT: Any cross?

24 MR. SARRATT: Just briefly?

25 THE COURT: Sure.

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CROSS-EXAMINATION

BY MR. SARRATT:

Q. So -- okay, right. She's not
schizophrenic and she's not bipolar; correct?

A. Correct.

Q. Okay. But she had been diagnosed with
oppositional defiant disorder?

A. Yes.

Q. And I mean, I don't want to ask you to
speculate but the mother is confused. Did the
mother say anything to you about maybe she's
schizophrenic and you looked at the records and
realized, oh, no it's not schizophrenia. It's
oppositional defiant disorder?

A. I did not diagnose her with
oppositional defiant disorder.

Q. Right. Right. But was the
understanding that maybe Minora thought that she
had been diagnosed with schizophrenia or bipolar
when, in fact, it was oppositional defiant
disorder or did she never talk to you about that?

A. The mother mentioned to me that she
herself had been diagnosed with bipolar and
schizophrenia, but did not attribute that to
Minor.

1 Q. Okay. All right.

2 MR. SARRATT: No further questions.

3 THE COURT: Okay. Thank you, ma'am.
4 You can step down.

5 (WITNESS STEPS DOWN)

6 THE COURT: Solicitor, any further
7 witnesses for this afternoon?

8 SOLICITOR SUSTAKOVITCH: Your Honor, I
9 think that -- we could present another, but I
10 think it would run too long.

11 THE COURT: Okay. All right. Very
12 good. We can go ahead and break for the evening.

13 SOLICITOR SUSTAKOVITCH: Thank you.

14 THE COURT: Madam Forelady, and
15 ladies and gentlemen of the jury, we're going to
16 go ahead and break for the day. And we're going
17 to start back at 9:30 in the morning. We started
18 at 10:00, but we're going to start at 9:30 in the
19 morning. So I ask that you be prompt and
20 certainly give yourself enough time to get to the
21 courthouse so we can get back to work.

22 So again, I remind you no discussion
23 among yourselves or with anybody that you come
24 into contact with about the case.

25 No research into the case and we'll see

Case No. 17-GS-23-1209 et al

Jury Trial of March 20-24, 2017

Testimony of Minora McDaniel - Redirect Examination

1 you bright and early at 9:30 in the morning.

2 Have a good evening.

3 (JURY OUT @ 4:50 P.M.)

4 (COURT IN RECESS)

5 (TRANSCRIPT CONTINUED NEXT PAGE)

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State of South Carolina v Gabriel Betancourt
Case No. 17-GS-23-1209 et al
Jury Trial of March 20-24, 2017
Testimony of Minora McDaniel - Redirect Examination

327

278

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MARCH 22, 2017

9:30 A.M.

3

4

(DEFENDANT PRESENT)

5

SOLICITOR SUSTAKOVITCH: Your

6

Honor, there is one brief pretrial matter I

7

wanted to ask.

8

THE COURT: Sure.

9

SOLICITOR SUSTAKOVITCH: Our next

10

witness is Dr. Mary Fran Croswell. And I

11

wanted to make a Motion *in limine* related to

12

the mother of the victim that -- she brought

13

the child to see Dr. Croswell.

14

There are two hearsay statements

15

that I would move to not allow defense

16

counsel to try to elicit from her. The

17

mother of the victim told Dr. Croswell that

18

the child had schizophrenia. It's on page

19

five.

20

THE COURT: Didn't the mother

21

admit to that when she testified yesterday

22

that she ---

23

SOLICITOR SUSTAKOVITCH: The

24

mother admitted that to -- that, I believe it

25

came out in Erica Van Wagner's testimony.

1 I would just say at this point that
2 it's hearsay. It's already been in the
3 record and I don't think it should be able to
4 be put back in the record again. It's the
5 very same statement from the mom related to
6 the child. And we already had testimony that
7 she doesn't have schizophrenia and she's not
8 bipolar. So on the basis that those
9 statements are not from the child, they're
10 from the mother, I don't think that they
11 should come in through Dr. Croswell.

12 THE COURT: Right. But again, and
13 I don't want to belabor the point -- but the
14 mother herself, did she not testify under
15 cross that she thought that possibly the
16 child is or would develop some sort of mental
17 illness such as schizophrenia or bipolar?

18 SOLICITOR SUSTAKOVITCH: Yeah,
19 because she's schizophrenic and she's wrong.
20 But the medical professionals that have
21 testified have said that that is not a
22 medical diagnosis for the child. And so I
23 just feel like it's already in the record at
24 this point. To have it put in again when we
25 know it's a hearsay statement that's

1 inaccurate, is prejudicial under Rule 403.

2 THE COURT: All right. Mr.

3 Sarratt, what's your position?

4 MR. SURRATT: My position, Your
5 Honor, is that while we do intend to elicit
6 that testimony again, I believe it has
7 already been brought out and we're not
8 offering it for the truth of the matter
9 asserted. We're not going to try to claim
10 that Minora is schizophrenic or that she was
11 misdiagnosed and she is schizophrenic. It's
12 just ---

13 THE COURT: Going to the state of
14 the mind on the part of the mother?

15 MR. SURRATT: Well, more to show
16 the effect that it had on Dr. Crosswell.
17 Certainly that would be information that may
18 impact her analysis and affect her opinion.
19 In fact, she does make comments. I mean it's
20 on her ---

21 SOLICITOR SUSTAKOVITCH: And what
22 Dr. Crosswell would say is she thought that
23 the mother saying that was very odd and that
24 children that age don't get diagnosed with
25 schizophrenia.

1 THE COURT: Right.

2 SOLICITOR SUSTAKOVITCH: And so
3 the bottom line is she thought the mom was
4 giving inaccurate information.

5 So my point would be it's just too
6 prejudicial to have it repeated again when
7 you know it's not accurate and it's hearsay
8 from mom.

9 MR. SURRATT: And, Your Honor,
10 what I would really intend to show in my
11 cross-examination again is now how it is.
12 But in the doctor's diagnosis and
13 conclusions, at the end of her medical exam,
14 she states that the mother -- again, the
15 mother described the patient as having been
16 diagnosed bipolar and schizophrenic, which
17 diagnoses are unusual in a patient this age.

18 She is not currently seeking
19 treatment. Further information regarding
20 prior mental health assessment and diagnosis
21 would be needed. Certainly there should be
22 medical records supporting these diagnoses
23 and she should be under the care of a
24 psychiatrist.

25 And then under her recommendation

1 she says I'd like to review any information
2 available that can be obtained regarding the
3 patient's previous mental health diagnosis
4 and treatment. It's my understanding that
5 she never did receive any mental health
6 documents, and I do intend to ask her about
7 that.

8 THE COURT: All right. The child
9 was taken to Dr. Croswell for what purpose,
10 to do a physical examination?

11 SOLICITOR SUSTAKOVITCH: Yes,
12 sir.

13 THE COURT: Okay. All right.

14 SOLICITOR SUSTAKOVITCH: Now, Dr.
15 Crosswell is not a mental health specialist.

16 THE COURT: Right. Right.

17 SOLICITOR SUSTAKOVITCH: At that
18 point she went to Erica Van Wagner, who we
19 heard testimony from yesterday. And her
20 diagnosis was PTSD and ADHD.

21 I know defense counsel is saying
22 they're not trying to say she's schizophrenic
23 and bipolar, but just getting it back out
24 there when you know it's not true, is putting
25 it back in front of this jury. And it's

1 just, what we know to be hearsay, inaccurate
2 testimony.

3 MR. SURRATT: Just briefly. And
4 the point I'm making in attempting to
5 introduce that testimony does not cast any
6 doubt on the victim, on her mental state.
7 It's more to cast doubt on the accuracy of
8 the investigation.

9 SOLICITOR SUSTAKOVITCH: I don't
10 know if I need to repeat ---

11 THE COURT: He responded.

12 SOLICITOR SUSTAKOVITCH: Your
13 Honor, I just stated that's not Dr.
14 Croswell's role. She does a medical exam on
15 the child. She gets her findings, which are
16 going to be testified to.

17 And in every case, she gets history
18 from the parent. A lot of that history is
19 hearsay. We don't get to put it in. When it
20 helps us we don't get to put it in. So I
21 definitely think that when we're talking
22 about things as prejudicial as batting around
23 the idea that your victim is schizophrenic
24 and bipolar again, when we know that she's
25 not, is nothing but in a Rule 403 analysis

1 more prejudicial than probative with Dr.
2 Croswell. But that would be my argument on
3 it.

4 THE COURT: I understand. Well,
5 I think it's important the fact that the mom
6 has already testified. It's already in the
7 record.

8 I realize, Solicitor, you don't want
9 it in again, but she's already testified that
10 she believed that the child was schizophrenic
11 or bipolar or something to that effect.
12 That's not a verbatim statement of her
13 testimony. The fact that she's already
14 testified to that, I'm going to allow the
15 Defense, if it so chooses to question Dr.
16 Crosswell about that. Anything else before
17 we bring the jury out?

18 All right. If you'll bring the jury
19 out, please?

20 (JURY IN @ 9:40 A.M.)

21 THE COURT: Let the record reflect
22 the jury is back in the courtroom. Good
23 morning ladies and gentlemen. I hope you're
24 doing well and ready to get back to work
25 today. Solicitor, you ready to call your

1 next witness?

2 SOLICITOR SUSTAKOVITCH: Yes,
3 sir. Thank you, Your Honor. May it please
4 the Court. The State calls Mary Fran
5 Crosswell.

6 THE COURT: Okay.

7 (WITNESS TAKES STAND)

8 MARY FRAN CROSWELL, having been duly
9 sworn to tell the truth, and nothing but the
10 truth, testified as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR SUSTAKOVITCH:

13 Q. Good morning, Dr. Crosswell. How
14 are you?

15 A. I'm doing well. Thank you.

16 Q. What's your occupation, ma'am?

17 A. I am a child abuse pediatrician at
18 the Greenville Health System.

19 Q. And how long have you been a child
20 abuse pediatrician?

21 A. I have been employed in that
22 position for ten years.

23 Q. Can you describe your work
24 experience in that position?

25 A. As part of my job I evaluate

1 children when there's a concern for the
2 possibility of child abuse or neglect. I
3 evaluate children in the hospital for
4 injuries. I evaluate children who come into
5 foster care, do foster care assessments.

6 And I evaluate children on an out-patient
7 basis at the Julie Valentine Center.

8 Q. And can you tell the jury about some
9 of your licenses and other board certifica-
10 tions that you have?

11 A. Yes. I am licensed to practice
12 medicine in the State of South Carolina. I
13 hold board certifications in both general
14 pediatrics and in child abuse pediatrics.

15 Q. And going to -- you just mentioned
16 child abuse pediatrics. Can you talk more
17 about your particular training in the field
18 of sexual assault, child sexual assault and
19 abuse?

20 A. I have attended and continue to
21 attend annually continuing medical education
22 courses solely focused on the evaluation of
23 all types of child abuse and neglect.

24 Q. All right. And that was -- my next
25 question was, have you had occasion to

1 perform exams on children where there is a
2 concern of sexual abuse?

3 A. Yes.

4 Q. Can you estimate how many different
5 examinations you have done on children where
6 there's a concern of abuse over your ten
7 years?

8 A. I would estimate close to a thousand
9 cases of sexual abuse.

10 Q. Have you testified in courts of this
11 state in the area of pediatric and child
12 sexual abuse?

13 A. Yes, I have.

14 Q. How many times have you testified?

15 A. I would estimate approximately forty
16 times.

17 Q. And in which courts have you
18 testified?

19 A. Both in family court and in criminal
20 court.

21 Q. Have you been qualified as an expert
22 in the courts of this state in the area of
23 pediatrics and child sexual abuse?

24 A. Yes, I have.

25 Q. Your Honor. At this time the State

1 moves to admit Dr. Mary Fran Crosswell as an
2 expert in the area of pediatrics and child
3 sexual abuse.

4 MR. SURRATT: Without objection.

5 THE COURT: All right. Without
6 objection, Dr. Crosswell is found to be an
7 expert in the area of child abuse pediatrics.

8 Ladies and gentlemen of the jury, I
9 failed to mention yesterday because I believe
10 we had another expert testify yesterday.

11 Normally, the rules do not permit witnesses
12 to render opinions. Typically, witnesses are
13 only allowed to testify as to what they have
14 seen, heard and that sort of thing.

15 However, we have one exception to
16 the rule. When someone by virtue of their
17 experience, education and training has
18 expertise in a particular field, the rules
19 allow for that person to give opinions
20 related to their particular field of
21 expertise. And I have just found Dr.
22 Crosswell to be an expert in the area of child
23 abuse pediatrics. So she'll be allowed to
24 render opinions in her field.

25 However, just because I have found

1 Dr. Crosswell to be an expert in that area,
2 that does not mean that you have to give her
3 testimony more weight than you would give the
4 testimony of other witnesses. It is up to
5 you and you alone to give the weight of each
6 and every witness, the weight that you
7 believe is appropriate and proper in this
8 particular case.

9 Solicitor, you may proceed.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR SUSTAKOVITCH:

12 Q. Dr. Crosswell, did you perform an
13 exam on a child that's led to you having to
14 come to Court today and testify?

15 A. Yes, I did.

16 Q. And can you tell the jury the name
17 of the child?

18 A. Her name was Minor.

19 Q. And when did you perform that exam?

20 A. It was on February 4th, 2015.

21 Q. How did the child get referred to
22 you?

23 A. The child was referred to me by law
24 enforcement.

25 Q. And how old was Minor on February

1 4th, 2015?

2 A. She was ten years old.

3 Q. Who brought Minor to the exam?

4 A. Her mother, Minora McDaniel.

5 Q. All right. Dr. Crosswell, are there
6 different types of exams in child sexual
7 assault cases?

8 A. Yes, there are.

9 Q. And what are the exams that are
10 conducted in child sexual assault cases?

11 A. So there is an acute exam, which
12 occurs when a child has disclosed the abuse
13 less than seventy-two hours after the abuse
14 has occurred. When that exam takes place, it
15 is done in the emergency room because the
16 purpose is to gather evidence from that
17 victim.

18 After seventy-two hours, it's known as a
19 chronic exam and there's lower likelihood to
20 have any forensic evidence on the child at
21 that time. So we do it in a more child-
22 friendly setting at the child advocacy
23 center. And the purpose of that is to do a
24 good physical exam as well as to assess for
25 the need for sexually transmitted infections

1 as well as making recommendations based on
2 the evaluation that is done.

3 Q. And in your ten years of experience
4 as a pediatric physician, is one type of exam
5 more common than the other?

6 A. The chronic exam is much more common
7 because children don't -- for many reasons
8 may not disclose the abuse until much later.

9 Q. Can you describe for the jury
10 exactly what's entailed when a child has to
11 come in and -- well, what was entailed with
12 this exam with Minor that you performed on
13 her? What does the child have to do?

14 A. Okay. So the child is first greeted
15 by a child life specialist who brings the
16 child back to our exam room and allows the
17 child to go through the entire evaluation
18 with an anatomically correct doll so that
19 they have an understanding of what will take
20 place that day.

21 Then I typically take the caregiver out
22 of the room to obtain a medical history from
23 them. In this case, it was her mother.

24 Next, I will try to obtain a history, a
25 medical history directly from the child. So

1 I will ask the caregiver to step out.

2 Following that history portion, I do a
3 complete medical exam from head to toe. So
4 looking at the eyes, the ears, the nose, the
5 mouth, listening to the heart and the lungs,
6 assessing the skin, and then the final piece
7 is the genital exam.

8 With the female genital exam, the child
9 is positioned at the end of an exam table.
10 Either they'll have their feet in leg
11 stirrups, like a typical gynecologic visit.
12 Or if the child is young enough, their feet
13 are put together. And then I have a piece of
14 medical equipment called a colposcope. A
15 colposcope serves several different
16 functions. There's a bright light source, a
17 magnification system and the ability to photo
18 document and take pictures of any physical
19 findings that I might have. And so then I
20 evaluate both the genital and vaginal area as
21 well as her anal area.

22 Q. Okay. And we're going to get to
23 each one of those. But in doing the vaginal
24 exam you stated she'd have to have her legs
25 up in stirrups and things like that?

1 A. Correct.

2 Q. And then for the anal exam, how does
3 the child have to be positioned?

4 A. It is in the same position.

5 Q. Okay. And you looked through the
6 colposcope at both of the areas?

7 A. That's correct.

8 Q. All right. You mentioned getting a
9 medical history. I wanted to clear up, you
10 got that from the mother? You talked to her
11 outside?

12 A. Yes.

13 Q. Did the mother give you any medical
14 history about herself relating to her mental
15 health?

16 A. Yes, she did.

17 Q. What was that?

18 A. The mother's mental health?

19 Q. Yeah?

20 A. Okay. The mother advised that she
21 was both bipolar and, quote, "mild schizo-
22 phrenic", had mild schizophrenia, unquote.

23 Q. Okay. And did the mother ever
24 advise whether those were concerns for Minor
25 or not?

1 A. Let's see. She said that she
2 thought Minor was diagnosed as bipolar
3 and ---

4 Q. I'm just looking at page five and
5 four. What I'm getting at is, did the mom
6 tell you that she thought maybe Minor was
7 bipolar or had mild schizophrenia?

8 A. Yes. She told me that she had been
9 diagnosed with bipolar disorder and, quote,
10 "mild schizophrenia" when she was six.

11 Q. Okay. And that's from the mom who's
12 schizophrenic; correct?

13 A. That's correct.

14 Q. And was there anything to indicate
15 that Minor was schizophrenic or bipolar?

16 A. Not during my evaluation.

17 Q. Thank you. I want to go back to the
18 exam. So as part of your exam of her, what
19 were the chief medical complaints that you
20 were trying to follow-up on during this
21 chronic medical exam?

22 A. So the information -- I was aware of
23 the information from her interview that had
24 taken place at the Julie Valentine Center and
25 was aware that she had disclosed digital

1 vaginal penetration, fondling, penile anal
2 contact or penetration, penile vaginal
3 contact or penetration, as well as the
4 alleged offender's oral contact with the
5 child's genitalia.

6 Q. And why is it important to know what
7 the medical complaint is as far as what the
8 contact is with the child when you're doing
9 the medical exam?

10 A. Well, it guides the areas of most
11 concern when I am, you know, doing my
12 physical exam as well as it is helpful to
13 know what types of sexually transmitted
14 infections that she could be at risk for.

15 Q. Okay. Without stating the name of
16 the perpetrator, if she gave you one, did she
17 disclose to you being the victim of sexual
18 abuse?

19 A. Yes, she did.

20 Q. And did she indicate the place or
21 places where the assaults took place?

22 A. She told me that it happened in her
23 mom's room, her room and in the bathroom.

24 Q. Okay. Dr. Crosswell, I want to first
25 go to the medical complaint of anal

1 penetration, either by a penis or by a
2 finger. When you looked at Minor's anus,
3 what did you observe?

4 A. She had a normal exam.

5 Q. And when you say she had a normal
6 exam, can a finding of a normal exam still be
7 consistent with a medical history -- with the
8 medical history that was provided for her?

9 A. Yes, it can.

10 Q. Can you explain that?

11 A. So first of all, the nature of the
12 abuse may not leave an injury or if there's
13 was an injury that occurred, it can heal very
14 rapidly without leaving any signs or scarring.
15 Specifically, in the anus, the anatomy of the
16 anus there is a muscle at the entrance of the
17 anus, the anal sphincter. And this muscle,
18 by design, relaxes and expands to pass large
19 objects with bowel movements. And the same
20 thing could occur with objects entering into
21 the anus.

22 Q. All right. So if there were a
23 history of having penile contact with the
24 anus, digital contact with the anus, having
25 that finding that you had could still be

1 consistent with the disclosure; correct?

2 A. That's correct.

3 Q. And as far as you mentioned, the
4 opening of the anus, you called it a muscle.
5 It expands and contracts?

6 A. Correct.

7 Q. All right. I next want to talk
8 about oral contact. When the complaint is
9 oral genital contact -- I'm talking about
10 oral sex, in just a normal term. Would you
11 expect to have any medical findings where
12 there's a complaint of oral sex between a
13 perpetrator and a child?

14 A. I would not expect it unless there
15 was something unusual about the history that
16 would suggest otherwise.

17 Q. Okay. But just the oral contact of
18 the mouth on the vagina or the anus, but
19 those areas just would not leave medical
20 findings; correct?

21 A. That's correct.

22 Q. As far as the vaginal genital
23 contact with a girl -- well, first -- let me
24 take that back. Can you describe to the jury
25 the anatomy of the genital area of a child, a

1 female?

2 A. The genital anatomy of a female is
3 more complex than we, you know, actually
4 think about. There are multiple layers of
5 tissue. The first layer of the tissue that
6 we get to is a very fatty layer called the
7 labia majora. When you separate those, you
8 see another layer of tissue called the labia
9 minora.

10 Deep to that is the entrance to the
11 vagina, which in any young girl is either --
12 it is partially covered by a thin layer of
13 tissue called the hymen.

14 Q. Okay. And with Minor's medical
15 exam, what were the findings in her vaginal
16 area, genital area?

17 A. It was a very normal exam.

18 Q. All right. And can you, in a
19 situation -- well, can you explain to the
20 jury -- when you have a disclosure of vaginal
21 penile contact and have a normal medical
22 exam, can that still be consistent with
23 penile vaginal contact?

24 A. Yes. So there was a study looking
25 at doctors kind of knowing where the vagina

1 starts or not. And a large portion of
2 doctors couldn't even establish where it
3 starts or stops. And the penis can contact
4 any layer or any portion of those tissues and
5 still have contact and perceived penetration,
6 though it may not be full penetration as an
7 adult may think of. And, again, there can
8 be, you know, small tears that can heal very
9 rapidly without leaving any signs or
10 findings.

11 Q. So if the child had a small tear
12 that did heal, could there be bleeding at
13 some point, but then that tear could heal and
14 you wouldn't be able to find it on a medical
15 exam?

16 A. That's correct.

17 Q. Finally, what's the term "tear
18 staging" mean?

19 A. "Tear staging" is a way that doctors
20 can describe the state of pubertal
21 development that a child is going through.
22 In females, it's based on their -- the stage
23 of their breast development and/or the stage
24 of their pubic hair development.

25 Q. And could you tell the jury what

1 stage Minor was?

2 A. She was in stage three.

3 Q. Can you describe what that means?

4 A. So in stage three she would have had
5 development of small breasts and she would
6 have had the presence of pubic hairs over her
7 mons pubis, which is an area, you know, just
8 anterior to the genital area.

9 Q. That's the covering area?

10 A. That's correct, yes.

11 Q. On top of the labia and all of that?

12 A. Anterior to that. And then as
13 puberty progresses, then you see the
14 extension of pubic hair throughout the
15 genital area.

16 Q. And you observed -- you saw her?

17 A. Yes, she did.

18 Q. Okay. Please answer any questions
19 Defense counsel has.

20 THE COURT: Okay. Cross-
21 examination, Mr. Sarratt.

22 CROSS-EXAMINATION

23 BY MR. SARRATT:

24 Q. Good morning, Dr. Crosswell.

25 A. Good morning.

1 Q. How are you?

2 A. I'm doing well.

3 Q. So you mentioned that you are a
4 child abuse pediatric; correct?

5 A. I'm a child abuse pediatrician.

6 Q. Pediatrician. I'm sorry. And that
7 means that you are trained to deal with
8 people/children who complain of sexual
9 assault; correct?

10 A. That's correct.

11 Q. All right. And although you're not
12 a law enforcement officer, your job is not
13 necessarily to investigate in order to bring
14 charges; correct?

15 A. That's correct.

16 Q. All right. But it is important, you
17 know, obviously to gather information from
18 the patient; you'd agree?

19 A. It's important for me to get a
20 history from my patient. Yes, sir.

21 Q. And as you said, that information
22 can help to medically treat the child?

23 A. Correct.

24 Q. And also, I mean, the information
25 could be valuable to collecting evidence

1 later on, but you're not involved in that
2 part; correct?

3 A. That's correct.

4 Q. All right. But as a result, you're
5 very careful when you're doing this exam?

6 A. Yes.

7 Q. And you take as much time as you
8 need?

9 A. Yes.

10 Q. Okay. And you include all the
11 important details in your report?

12 A. I try to.

13 Q. Now, again, sometimes -- not all the
14 time but sometimes this information can be
15 passed on to other agencies: DSS, Department
16 of Social Services?

17 A. That's correct.

18 Q. The Julie Valentine Center perhaps?

19 A. That's correct.

20 Q. And police?

21 A. Correct.

22 Q. And prosecutors?

23 A. Yes.

24 Q. Okay. So you testified that you
25 have done approximately a thousand sexual

1 exams, sexual assault exams; correct?

2 A. Yes.

3 Q. So it's important to write down in
4 your report the particular details about a
5 patient; right?

6 A. Yes.

7 Q. Because you've done a lot of these
8 and I'm sure since you've performed this
9 exam, you've done countless more; is that
10 right?

11 A. That's correct.

12 Q. All right. So, again, by putting
13 all this detailed information carefully and
14 accurately into your report, it allows you to
15 look back at your records after time has
16 passed to get a better memory of what
17 happened; is that right?

18 A. That's correct.

19 Q. Okay. So, again, the referral date
20 is not necessarily for your medical exam but
21 I understand it was on the intake form that
22 you would have reviewed, but the referral was
23 made January 15th, 2015; is that right?

24 A. That's correct.

25 Q. Okay. And I believe you indicated

1 that at that point the referral was just for
2 touching of the private parts?

3 A. That's correct.

4 Q. Okay. So by the time that you
5 actually performed your exam, I believe you
6 testified that you had got a little bit more
7 background history information; is that
8 right?

9 A. That's correct.

10 Q. More than just what was checked on
11 that initial intake?

12 A. Right. That's correct.

13 Q. So, again, you understood that you
14 were potentially looking for signs of more
15 than just touching, that there could be some
16 penetration, those type of signs?

17 A. That's correct.

18 Q. All right. So when you're going
19 through the history and looking -- you know,
20 I understand it's limited based on what you
21 have, but would you agree that in looking
22 over that history, you could be looking for
23 inconsistencies in terms of severities and
24 the types and locations of injury?

25 A. Can you clarify what ---

1 Q. Well, would you, as part of forming
2 your medical opinion and doing this exam, and
3 looking at the history that was taken from
4 the child, would you look for any changes in
5 that story and would that cause any red flags
6 in your mind?

7 A. It really depends on the age of the
8 child and the nature of the disclosure so
9 it's hard for me to answer that with a yes or
10 no.

11 Q. Okay. All right. So, again, you
12 testified that you got the history and you
13 put all the important details in your report.
14 Do you recall in speaking with Minor and
15 getting the history personally from Minor,
16 that she told you that she talked about a
17 time that Gabriel had backhanded her so hard,
18 it knocked her tooth loose?

19 A. Yes.

20 Q. Okay. And that she said that she
21 pulled it out the next day?

22 A. Yes.

23 Q. Now, when she told you that, what
24 did you notice about the tooth that she
25 claims came out? Well, let me just rephrase

306

1 it. That was too open-ended. Did she have
2 all of her teeth in her mouth?

3 A. Yes, she did.

4 Q. Okay. So she wasn't missing any
5 teeth?

6 A. Correct. And she had told me that
7 it had since grown back in.

8 Q. Okay. And you asked her which tooth
9 it was, to locate the tooth?

10 A. That's correct.

11 Q. And you put in your report that it
12 was the right lateral incisor?

13 A. That's correct.

14 Q. Okay. Now, I'm not a dentist, but
15 the right lateral incisor, as I understand,
16 is the tooth next to the big tooth?

17 A. That's correct.

18 Q. All right. And just for the juries
19 purposes and clarification, the tooth next to
20 the right lateral incisor is the canine
21 tooth?

22 A. That's correct.

23 Q. And that would be sort of the pointy
24 tooth?

25 A. That's correct.

1 Q. All right. All right. You made
2 that addition to your notes, but otherwise
3 you testified that this was basically a
4 normal exam; is that right?

5 A. That's correct.

6 Q. And, again, you said that that's not
7 uncommon to have a normal exam?

8 A. Correct. That is, less than three
9 percent of the time that you have specific
10 findings.

11 Q. Okay. And, again, you're not always
12 going to find physical signs of abuse
13 depending on the type of injury or abuse
14 complained about; right?

15 A. That's correct.

16 Q. Okay. And whether or not there is
17 penetration or attempted penetration. I
18 believe you alluded to that?

19 A. That's correct.

20 Q. Also, it can vary on cases of sort
21 of chronic assault over a long period of time
22 or just a few instances, that could make a
23 difference. Would you agree?

24 A. Again, it's more on the nature of
25 the contact that would make the most

1 difference.

2 Q. Okay. Now, you would agree that,
3 you know, merely fondling or oral sex, I
4 believe, you testified, very rarely will
5 leave any signs of physical harm or injury;
6 correct?

7 A. That's correct.

8 Q. All right. Now, you've already
9 testified -- I'm not going to go over this
10 in exhaustive detail, but you did have
11 information from Minor's mother that she had
12 been diagnosed bipolar and schizophrenic?

13 A. Correct.

14 Q. And -- well, let me back up before
15 we get there. You testified that in looking
16 for any other physical signs, you're not just
17 doing a genital exam; you're looking over the
18 whole body; correct?

19 A. That's correct.

20 Q. And you said that, you know, you did
21 a full physical before you got to the general
22 exam and that included eyes, ears, mouth,
23 nose, throat, abdomen, head to toe; right?

24 A. That's correct.

25 Q. And you did not note any outstanding

1 or remarkable injuries to her body?

2 A. She had had surgical findings on her
3 feet, but nothing that would indicate any
4 acute injury or scarring from an injury.

5 Q. Right. I mean, she certainly didn't
6 have bruises on her face or her body or
7 anything?

8 A. That's correct.

9 Q. All right. And there were no other
10 miscellaneous symptoms or findings, I believe
11 you reported?

12 A. That's correct.

13 Q. And what mean by that no sexually
14 transmitted diseases, nothing of that nature?

15 A. Correct. I did test her for
16 sexually transmitted diseases and they were
17 negative.

18 Q. Okay. I want to talk just briefly
19 about -- not the history from the mother, but
20 the history from Minor herself. You asked
21 her, you know, what was hurting her, if
22 anything, that day. And I believe the
23 response she gave was that her knee was
24 hurting?

25 A. That's correct.

1 Q. Okay. And that she denied she had
2 any worries about her body?

3 A. That's correct.

4 Q. Okay. And then you asked her when
5 was the first time it happened. And she told
6 you ---

7 SOLICITOR SUSTAKOVITCH: Your
8 Honor, can we approach briefly?

9 THE COURT: Sure.

10 SOLICITOR SUSTAKOVITCH: Okay.
11 Thank you.

12 (OFF RECORD BENCH CONFERENCE)

13 SOLICITOR SUSTAKOVITCH: Thank
14 you, Your Honor.

15 THE COURT: You may want to repeat
16 the last question you asked her?

17 MR. SURRETT: Sure.

18 CROSS-EXAMINATION CONTINUED

19 BY MR. SURRETT:

20 Q. I was asking -- she says -- you
21 asked her how old she was the first time it
22 happened; correct?

23 A. I don't remember if I asked her or
24 if she spontaneously stated it but she told
25 me how old she was the first time it

1 happened.

2 Q. And she said she was five?

3 A. Five and a half.

4 Q. Okay. Well, right. I believe she
5 said that she was five at first. And then
6 she said she was five and a half?

7 A. That's correct.

8 Q. You asked her how she remembered
9 that she was five and a half. I mean, that's
10 pretty specific; right?

11 A. Yes. For a ten-year-old, yes.

12 Q. Sure. And the response she gave was
13 that she could remember that she was five and
14 a half because she has perfect memory and
15 perfect vision?

16 A. That's correct.

17 Q. Okay. And she told you that the
18 last time it happened -- and, again, this is
19 in February of 2015, that it was one month
20 ago today is what she said? I believe that's
21 on page three.

22 A. Yes, that's correct.

23 Q. Okay. And that the last time it
24 happened was the day before she told the
25 teachers?

1 A. That's correct.

2 Q. Okay. Now, you'd asked her -- and
3 without getting into what she said about
4 details, but you asked her if she could
5 remember what kind of touching did happen.
6 And she said she can't really ---

7 SOLICITOR SUSTAKOVITCH: Your
8 Honor, I'm just going to object again. We're
9 going outside of time and place. So if this
10 whole interview wants to come in, that's
11 fine. But we're back to the same place we
12 just were.

13 THE COURT: Well, again, based on
14 what we discussed at sidebar, you may
15 proceed.

16 CROSS-EXAMINATION CONTINUED

17 BY MR. SARRATT:

18 Q. So, again, I don't want you to say
19 anything of what she said in detail beyond
20 time and place. But you asked her what kind
21 of touching happened and she said she could
22 not ---

23 SOLICITOR SUSTAKOVITCH: He's
24 stating he doesn't want her to go beyond time
25 and place, but the follow-up question is

1 that. So could we have room to go through
2 all this?

3 THE COURT: You may.

4 SOLICITOR SUSTAKOVITCH: Okay.

5 CROSS-EXAMINATION CONTINUED

6 BY MR. SARRATT:

7 Q. And her response was she can't
8 really remember because she didn't have her
9 glasses on. Is that right?

10 A. That's right.

11 Q. Now, again, we had briefly touched
12 on the fact that Minor's mother presented
13 some information that Minor may have been
14 schizophrenic and bipolar; right?

15 A. That was demonstrated that she did.
16 Yes.

17 Q. Sure. And in your diagnosis and
18 conclusions at the end of your report, you
19 stated that those would have been very
20 unusual diagnoses for a child; correct?

21 A. That's correct.

22 Q. Okay. And that further information
23 regarding the prior mental health assessment
24 and diagnosis would be needed; is that right?

25 A. That's correct.

1 Q. All right. And I believe you add
2 even the -- certainly medical records would
3 support those diagnoses?

4 A. I said certainly medical records
5 that would support those diagnosis would
6 reflect that if so diagnosed by a
7 psychiatrist. My reason for saying that and
8 for requesting those records was my concern
9 for the possibility for medical neglect. If
10 she had -- I mean, I've -- I was asked to see
11 her for sexual abuse. I'm a child abuse
12 pediatrician. So I'm looking for wellness in
13 general and concerns about medical neglect.

14 And if she had such serious diagnoses at
15 this age, and mom was saying that she was not
16 under the care of a psychiatrist, she would
17 need to be or I would need to make a report
18 of medical neglect.

19 Q. Sure. And again, you're not a
20 psychiatrist. Your job in this is not to
21 diagnose the child with any mental illness,
22 but just to gather information about her
23 physical exam; correct?

24 A. To gather information to see if her
25 medical needs are being neglected.

1 Q. Sure. In your recommendations and
2 treatment right below that, you did recommend
3 a mental health assessment and counseling?

4 A. Correct.

5 Q. Okay. And then the last thing you
6 noted was that you would like to review any
7 information available or that can be obtained
8 regarding the patient's previous mental
9 health diagnoses and treatment?

10 A. That's correct.

11 Q. Did you ever receive that informa-
12 tion?

13 A. I did not receive records. However,
14 the Julie Valentine Center is also the home
15 of the multidisciplinary team. So I became
16 aware that she was under the care of
17 Greenville Mental Health.

18 Q. All right.

19 MR. SURRATT: No further questions,
20 Your Honor.

21 THE COURT: Any redirect
22 Solicitor?

23 SOLICITOR SUSTAKOVITCH: Just
24 briefly.

25 REDIRECT EXAMINATION

1 BY SOLICITOR SUSTAKOVITCH:

2 Q. Dr. Crosswell, the child gave you a
3 pretty detailed description of what happened
4 when you interviewed with her; correct?

5 A. That's correct.

6 Q. And I'm going to stay within time
7 and place. But I want to go back to one
8 thing defense counsel was talking about.
9 Minor did, I believe they just said that she
10 stated she was backhanded and it knocked one
11 her teeth loose when Gabriel hit her ---

12 A. That's correct.

13 Q. --- and that she ended up pulling
14 out the next day. And then she said it had
15 since grown back in. You testified to that;
16 right?

17 A. Correct.

18 Q. And then you said the child -- when
19 you asked her which one it was she -- and I'm
20 not a dentist either -- but I'm just looking
21 at my teeth. I've got my front tooth. The
22 one next to it; right?

23 A. Correct.

24 Q. What is that, an incisor? The right
25 incisor?

1 A. Yes.

2 Q. And that one right there, what is
3 that?

4 A. The right canine.

5 Q. Okay. So the incisor here and the
6 canine direct beside each other; correct?

7 A. That's correct.

8 Q. And when you were -- when Minor was
9 pointing at that, is it possible she was
10 pointing at the canine instead of the incisor
11 and you just misinterpreted what she was
12 saying?

13 A. It's possible.

14 Q. Okay. But you wrote down the right
15 lateral incisor as the tooth?

16 A. That's correct.

17 Q. But she did relay to you that she
18 was struck in the face, the tooth did come
19 loose and then it came out the next day;
20 right?

21 A. That's correct.

22 Q. Okay. Thank you.

23 SOLICITOR SUSTAKOVITCH: Nothing
24 further.

25 THE COURT: Solicitor, are you

1 finished with your redirect?

2 SOLICITOR SUSTAKOVITCH: Yes,
3 sir.

4 THE COURT: All right. Recross?

5 MR. SURRETT: No, Your Honor.

6 THE COURT: Thank you, Doctor.

7 You can step down. You're free to leave the
8 courthouse but you're more than welcome to
9 remain with us if you want to.

10 (WITNESS STEPS DOWN)

11 THE COURT: Solicitor, next
12 witness.

13 SOLICITOR SUSTAKOVITCH: Your
14 Honor, out next witness will take -- just
15 advising the court -- about an hour and a
16 half. So if we're good with that.

17 THE COURT: Okay. All right.
18 Yeah, let's go ahead and take a short break
19 before we go to the next witness.

20 Ladies and gentlemen, let's take a
21 ten-minute break because as the Solicitor
22 indicates the next witness is going to be
23 pretty long. So please go to the jury room.
24 Again, no discussion about this case among
25 yourselves.

Case No. 17-GS-23-1209 et al
Jury Trial of March 20-24, 2017
Testimony of Robin Smith

1 (JURY OUT @ 10:20 A.M.)

2 THE COURT: All right. We'll be
3 in about a ten-minute recess.

4 (COURT IN RECESS)

5 (DEFENDANT PRESENT)

6 (JURY IN @ 10:39 A.M.)

7 THE COURT: Let the record reflect
8 the jury is back in the courtroom.
9 Solicitor, you want to call your next
10 witness, please?

11 SOLICITOR SUSTAKOVITCH: Yes,
12 sir. Thank you, Your Honor. The State calls
13 Robin Smith.

14 (WITNESS TAKES STAND)

15 ROBIN SMITH, having been duly sworn to
16 tell the truth, and nothing but the truth,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY SOLICITOR SUSTAKOVITCH:

20 Q. Good morning, Ms. Smith.

21 A. Good morning.

22 Q. Can you state your educational
23 background and training?

24 A. Yes. I have a master's degree from
25 Clemson University in mental health counsel-

1 ing and I'm also a licensed professional
2 counselor.

3 Q. Thank you. Can you give your jury a
4 little bit of your employment background, a
5 little bit information about that?

6 A. Sure. Presently, I'm employed as a
7 counselor at the Center for Wellness.

8 Prior to that, I worked for the Julie
9 Valentine Center. I did individual therapy
10 and group therapy of adults and also did
11 interviews of exhibits.

12 Prior to that, I had a career in law
13 enforcement for twenty-six years.

14 Q. All right. And how many years did
15 you conduct interviews with children?

16 A. For two years.

17 Q. And did you conduct an interview
18 with a child that's led you to have to be in
19 court today?

20 A. Yes, ma'am, I did.

21 Q. Can you tell the jury when a child
22 goes the Julie Valentine Center for an
23 interview, what is that?

24 A. An interview is when a child is
25 brought into a small room. It's, you know,

321

1 what referring to as the safe room, an
2 interview room. And a child is asked
3 questions. And those questions follow
4 certain protocol that you're trained in
5 through the Children's Law Center.

6 Q. Are the guardians or parents of the
7 children allowed in the room when you're
8 conducting the interview?

9 A. No. The only individuals in the
10 room are the interviewer and the child.

11 Q. So in this case that would be you
12 and Minor?

13 A. That's correct.

14 Q. And what type of questions are asked
15 during the interview that you conduct with
16 children in the program?

17 A. The questions that are asked are
18 nonleading, developmentally-appropriate
19 questions.

20 Q. What date did you conduct an
21 interview with the victim in this case, Minor?

22 A. I don't know the date right off.

23 Q. I'm want to show you ---

24 COURT REPORTER: May I mark it
25 for

1 identification? State's Exhibit Number 26
2 for identification.

3 (SO MARKED AS STATE'S EXHIBIT 26)

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR SUSTAKOVITCH:

6 Q. Will you take a look at State's
7 Exhibit for ID 26. You recognize that
8 document?

9 A. I do.

10 Q. All right. And now can you tell the
11 jury what date you interviewed Minor?

12 A. Yes. It was February 2nd, 2015.

13 Q. And how old was Minor at the time?

14 A. She was ten years old.

15 Q. Okay. I'm showing you what's marked
16 as State's Exhibit 3A. Can you tell me what
17 State's Exhibit 3A is?

18 A. Yes. This is a copy of the DVD from
19 the interview of Minor.

20 Q. And subject to any rulings made by
21 the Court, is this a fair and accurate
22 depiction of the interview you conducted with
23 Minor that day?

24 A. Yes, ma'am. It is.

25 SOLICITOR SUSTAKOVITCH: Your

1 Honor. At this time the State moves to admit
2 State's 3A into evidence.

3 THE COURT: Okay.

4 MR. SURRETT: Without objection.

5 THE COURT: All right. Without
6 objection, 3A for the State into evidence.

7 SOLICITOR SUSTAKOVITCH: All
8 right.

9 (SO ENTERED AS STATE'S EXHIBIT 3A)

10 SOLICITOR SUSTAKOVITCH: Your
11 Honor, the State requests at this time
12 permission to publish.

13 THE COURT: Okay.

14 (SO PUBLISHED AS STATE'S EXHIBIT 3A)

15 SOLICITOR SUSTAKOVITCH: Your
16 Honor, I have no further questions for this
17 witness.

18 THE COURT: Okay. All right. Mr.
19 Sarratt?

20 MR. SURRETT: No questions for
21 this witness, Your Honor.

22 THE COURT: Okay. Thank you,
23 ma'am. You may step down.

24 Tw.: Yes, sir.

25 (WITNESS STEPS DOWN)

1 THE COURT: You may call your next
2 witness, Solicitor?

3 SOLICITOR SUSTAKOVITCH: May we
4 approach?

5 THE COURT: Sure.

6 (OFF RECORD BENCH CONFERENCE)

7 THE COURT: All right. Madam
8 Forelady, ladies and gentlemen of the jury,
9 I've got some legal issues I'm going to need
10 to deal with the lawyers on. So I'm going to
11 go ahead and send you on for a little earlier
12 -- not too much -- lunch break. And if
13 you'll be back here at 1:30.

14 And, again, I remind you not to have
15 any discussions among yourselves or anybody
16 you come in contact with over lunch about
17 this case and we'll see you back at 1:30.
18 Have a good lunch.

19 (JURY OUT @ 11:45 A.M.)

20 THE COURT: Okay. We'll take
21 about a ten-minute break.

22 SOLICITOR SUSTAKOVITCH: Thank
23 you, Your Honor.

24 (COURT IN RECESS)

25 (DEFENDANT PRESENT)

1 THE COURT: Okay. We are back on
2 the record. As I understand it the State's
3 last witness is a Linda Hutton. And they
4 have some issues related to her testimony, so
5 we're going to take some in-camera testimony
6 and go from there, okay?

7 Is this Ms. Hutton -- come on up and
8 you'll be sworn in, ma'am.

9 (WITNESS TAKES STAND)

10 (WITNESS WAS DULY SWORN)

11 THE COURT: Let me just make sure
12 so I understand. The defense's objection is
13 as it related to her qualifications to render
14 certain opinions that the State wants to
15 elicit? Is that kind of the issue here that
16 we have to deal with?

17 MR. GOLDSTEIN: Yes, Your Honor.
18 We're requesting additional *voir dire* under
19 Rule 702. I think we may have an objection
20 under Rule 403 as well. But, again, from our
21 perspective this is a threshold issue of
22 qualifications under Rule 702.

23 THE COURT: Okay. All right. And
24 Solicitor, you're offering this witness for
25 what purpose?

1 SOLICITOR SUSTAKOVITCH: Your
2 Honor, I'm sorry. Ms. Linda Hutton is being
3 offered pursuant to *State v Brown* and also
4 *State v Weaverling* as a blind expert in the
5 area of the dynamics of child sexual abuse
6 and treatment.

7 She's never met with the victim in
8 this case and she's basically here to educate
9 the jury about some of the hallmarks of child
10 sexual abuse.

11 THE COURT: Okay. All right.
12 Okay. We'll let's -- if you will examine her
13 concerning her qualifications and certainly
14 the defense can examine her and we'll go from
15 there.

16 SOLICITOR SUSTAKOVITCH: All
17 right.

18 LINDA HUTTON, having been duly sworn to
19 tell the truth, and nothing but the truth,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR SUSTAKOVITCH:

23 Q. Ms. Hutton, please State your full
24 name for the record.

25 A. Linda Gray Hutton.

1 Q. Where are you employed ma'am?

2 A. Bay Laurel Center for Psychotherapy.

3 Q. And where is that located?

4 A. On Main Street in Greenville.

5 Q. And what services are offered at Bay
6 Laurel?

7 A. Psychotherapy services for children
8 and adults.

9 Q. And what is your position there, Ms.
10 Hutton?

11 A. I'm a clinical social worker.

12 Q. How long have you been a clinical
13 social worker?

14 A. A little over forty-two years.

15 THE COURT: What's the first name
16 of this center, ma'am?

17 WITNESS: Bay, B-A-Y, Bay Laurel
18 Center.

19 THE COURT: Bay Laurel, okay.

20 WITNESS: Uh-huh.

21 THE COURT: Thank you.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR SUSTAKOVITCH:

24 Q. Ms. Hutton, going back forty-two
25 years -- I know that's a long time, but I

1 wanted to see if you can relay some of your
2 work experience and training?

3 A. I received a B.A. from the
4 University of Florida with honors in 1972;
5 a master's of social work from Florida State
6 University in '74. As a part of that
7 training, I completed two internships with
8 the Department of Child Psychiatry at the
9 University of Florida Medical Center, Shands
10 Teaching Hospital.

11 Q. Okay. And are you a member of any
12 boards, past or present?

13 A. In the past I was a member of the
14 board of Rape Crisis Counselors.

15 And in the past on the board for the
16 South Carolina Society for Clinical Social
17 Workers.

18 Q. You've just touched on this but as
19 far as your particular licenses in your
20 field, can you relay those?

21 A. I'm a licensed independent social
22 worker clinical practice. License number is
23 96.

24 Q. And in the area specifically of
25 child sexual assault, what specialized

329

1 training have you had over the last some
2 years in that area?

3 A. I started working with sexual abuse
4 around 1982 and I've had training over the
5 years. Most recently, I participated in a
6 year-long training. It was sponsored by the
7 Medical University of South Carolina and the
8 National Crime Victims' Center, on common
9 focused cognitive behavior therapy, which is
10 sort of the gold standard right now. It's an
11 empirically-based treatment.

12 Q. Say that last part again. I'm
13 sorry?

14 A. It's sort of the gold standard right
15 now. It's ---

16 Q. What?

17 A. Common focused cognitive behavior
18 therapy.

19 Q. All right. Have you had occasion to
20 consult with over the years different
21 professionals in your field related to child
22 sexual assault?

23 A. Yes, ma'am.

24 Q. And in the past, can you estimate
25 how many children that you've seen or treated

1 where there's a concern for child sexual
2 abuse?

3 A. I have not kept records, but a
4 conservative estimate would be nine hundred
5 to a thousand kids.

6 Q. Have you ever testified in the
7 courts of this state?

8 A. Yes, ma'am.

9 Q. Which courts have you testified in,
10 Ms. Hutton?

11 A. In General Sessions Court here and
12 up in Pickens. And Family Court in
13 Greenville, Pickens and Laurens County.

14 Q. How many times would you estimate
15 you've testified in those courts?

16 A. Okay. And this is just an estimate.
17 Probably in family court over the years,
18 fifty to seventy-five times. And probably in
19 criminal court maybe fifteen times.

20 Q. And have you ever been qualified as
21 an expert in the courts of this state?

22 A. Yes, ma'am.

23 SOLICITOR SUSTAKOVITCH: Your
24 Honor, at this time the State moves to offer
25 this witness as an expert in the field of the

1 treatment of child sexual abuse.

2 THE COURT: Does the Defense have
3 some questions concerning qualifications?

4 MR. GOLDSTEIN: Your Honor, we do.
5 At this time we're requesting additional voir
6 dire before the Court renders its ---

7 THE COURT: Sure. You may
8 proceed.

9 MR. GOLDSTEIN: Thank you, Your
10 Honor.

11 CROSS-EXAMINATION

12 BY MR. GOLDSTEIN:

13 Q. Good morning, Ms. Hutton. How are
14 you today?

15 A. Very well. Thank you.

16 Q. Just to clarify and narrow down what
17 we're talking about, I know that you're being
18 proffered as an expert in the field of sexual
19 abuse in children. But what are the specific
20 topics within that subject that you're here
21 to talk about today?

22 SOLICITOR SUSTAKOVITCH: I believe
23 that would be a question for me. I haven't
24 gone into that.

25 MR. GOLDSTEIN: Well, then certain

1 ---

2 SOLICITOR SUSTAKOVITCH: Do you
3 want me to keep going with the questions I'm
4 going to ask?

5 THE COURT: Well, I think right
6 now let's get through the issue of
7 qualifications.

8 SOLICITOR SUSTAKOVITCH: Okay.

9 THE COURT: And then ---

10 SOLICITOR SUSTAKOVITCH: The
11 substance would be ---

12 THE COURT: And then we'll try to
13 figure out where to go in that. And then
14 hear the merits of her testimony.

15 MR. GOLDSTEIN: Your Honor, the
16 defense's position on that point would be
17 that we don't have any objection under --
18 there's the three-prong test that's set out
19 in *Watson v. Ford Motor Company*.

20 THE COURT: Right.

21 MR. GOLDSTEIN: We don't have any
22 objections when it comes to the expertise
23 that Ms. Hutton clearly possesses in her
24 field. Our objection/concern lies with the
25 issue of reliability. So more needs to come

1 out on that point.

2 THE COURT: Okay.

3 MR. GOLDSTEIN: We don't have any
4 objections to her expertise.

5 THE COURT: All right. So
6 basically what you're saying, Mr. Goldstein,
7 is that the area of her testimony would not
8 be within the common knowledge of the jury.
9 And, secondly, she possesses sufficient
10 experience, education, etcetera to render
11 opinions. You just do not believe that her
12 opinions would be reliably based; is that a
13 correct summary of the defense's position?

14 MR. GOLDSTEIN: That is correct,
15 Your Honor.

16 THE COURT: Okay. All right.
17 Well, I guess probably then we need to get
18 into the substance of her testimony so I can
19 rule on the reliability.

20 SOLICITOR SUSTAKOVITCH: Yes, sir.
21 And I think I'm going to offer at the Court
22 at this time the case of *State v Brown*. I've
23 handed one to the Defense. This would be the
24 main case we're relying on, if Your Honor
25 would ---

1 THE COURT: Right. I'm certainly
2 familiar with it.

3 SOLICITOR SUSTAKOVITCH: Okay. I
4 do offer her as an expert in the dynamics of
5 delayed disclosure and certain subjects
6 related to child sexual abuse being beyond
7 the ordinary knowledge of the jury. The
8 topics we intend to go into would be --
9 number one, when it's delayed reporting. And
10 is it common or uncommon for children to
11 delay reporting?

12 THE COURT: Okay.

13 SOLICITOR SUSTAKOVITCH: What are
14 the reasons that you've seen in forty-two
15 years of children delaying reporting. We
16 give examples of some of the time frames
17 we've seen as far as delayed reporting.

18 What are some of the reasons
19 children don't tell about abuse?

20 Threats, how those are perceived by a
21 child? Is it common or uncommon for a
22 perpetrator to threaten a child, how they
23 perceive that.

24 The manner of reporting? Is it common or
25 uncommon for a child to report through a

1 triggering event, some event that occurred
2 that makes them feel comfortable reporting.
3 I then would ask her about is it common or
4 uncommon for children that have had chronic
5 abuse to have more specific memories of one
6 incident over another. And when it's chronic
7 abuse over the span of years, do some of the
8 incidents kind of come together where they're
9 not able to delineate exactly when the abuse
10 happened for each event. And that's -- we're
11 getting to the end of it. I just could say
12 is it common or uncommon for an abuser to be
13 somebody in a position of authority that the
14 child trusts.

15 THE COURT: Let's handle it in
16 this fashion. Just examine her and let's
17 kind of do it and let her testify in summary
18 fashion so I can get a kind of a feel for
19 what she's going to say.

20 I don't think we need to go through
21 every question that you intend to ask her in
22 the presence of the jury if that is still
23 allowed.

24 And I think I need that summary
25 testimony in order to rule on the reliability

1 issue. So if we can handle just the in-
2 camera testimony in that fashion. So, Ms.
3 Hutton, don't give us everything that you
4 would ordinarily give. But I just need to
5 get a good handle on the sum and substance of
6 your testimony.

7 WITNESS: Yes, sir.

8 THE COURT: Fair enough?

9 WITNESS: Yes, sir.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR SUSTAKOVITCH:

12 Q. Ms. Hutton, can you educate the
13 Court what the term delayed reporting means?

14 A. Delayed reporting is a common term
15 associated with child sexual abuse, and that
16 is that children very often do not tell right
17 away.

18 Q. And you just -- what are some of the
19 reasons that children delay reporting?

20 A. Well, if the perpetrator has told
21 them not to.

22 There can be several types of threats.
23 A youngster may not -- may be afraid they'll
24 be blamed or they won't be believed.
25 Basically, that's common.

1 Q. You just touched on some of the
2 reason why they don't tell about their abuse?

3 A. The perpetrator tells them not to
4 tell. I mean tell the child that they won't
5 be believed, that they'll be sent to foster
6 care, that they won't be with the family
7 anymore.

8 The child might be told that the mother
9 will be killed. Things like that that would
10 create fear in a child and make it less
11 likely that they would disclose.

12 Q. Is it common or uncommon to have
13 threats?

14 A. Very common.

15 Q. And how do children perceive
16 threats?

17 A. Real.

18 Q. Is it common or uncommon, when you
19 have chronic abuse, for a child to have more
20 specific memories of one incident over
21 another incident?

22 A. If by chronic you mean repeated
23 abuse ---

24 Q. Yes, ma'am?

25 A. --- over a period of time, that is

1 common.

2 Q. Okay. And in instances -- is it
3 common or uncommon for details of the assault
4 with, you know, chronic abuse that spans
5 years, to bury between the times when a child
6 might say this to one person and this to
7 another?

8 A. Yes. You can see some inconsistency
9 here where stories might vary but the core
10 context will be here.

11 Q. All right. In your experience, is
12 it common or uncommon for there to be a
13 familiar link with a person in authority that
14 the child will trust?

15 A. That's one of the hallmarks with
16 child sexual abuse. The coercion is not
17 physical, it's psychological and emotional.
18 So it's typically someone the child knows and
19 trusts.

20 Q. And as far as when a child is
21 disclosing -- I'm trying to think -- well,
22 first let me ask this. In your experience is
23 there a common manifestation of being a
24 victim of sexual abuse to experience
25 nightmares and other things like that?

1 A. Certainly, that could happen. Yes.

2 Q. In your experience is there one set
3 way that a child is supposed to react when
4 they disclose sexual abuse?

5 A. No, there's not one set way.

6 Q. Okay.

7 SOLICITOR SUSTAKOVITCH: Your Honor,
8 that would be the substance.

9 THE COURT: Okay. All right.
10 Mr. Goldstein, would you like to examine Ms.
11 Hutton?

12 MR. GOLDSTEIN: Thank you, Your
13 Honor.

14 CROSS-EXAMINATION

15 BY MR. GOLDSTEIN:

16 Q. Okay. Ms. Hutton, just to clarify
17 the topics that we're going to be talking
18 about today, okay? And I just want to make
19 sure that I have this correct; okay, because
20 it's important. So you're here to talk about
21 delayed reporting, right?

22 A. That's my understanding.

23 Q. Okay. I heard the manner of report-
24 ing, such as a triggering event; is that
25 correct?

1 A. Yes. And/or my conception of what
2 the attorney means by triggering event.

3 Q. I don't know I heard that on direct
4 examination.

5 A. Do you want me to tell you?

6 Q. Sure.

7 A. Okay. A triggering event for
8 disclosure can be things like a parent asks.
9 Parents, these days, are doing a lot of
10 education for children about safety. And so
11 parents will read the books, will talk to
12 their children about disclosures.

13 Also schools put on programs about safety
14 and part of those key into child sexual
15 abuse. I've seen many kids who, I guess,
16 that would be the thing that precipitated the
17 disclosure.

18 Q. Okay. I understand. And you're
19 also here to talk about memories; is that
20 correct? In cases like this?

21 A. Memories?

22 Q. That's what we just had the
23 Solicitor ask.

24 A. Well, I guess, to the extent that
25 you heard, yes.

1 Q. Okay. So that is some children can
2 have memories of one specific event over
3 another; right?

4 A. When abuse happened once or twice,
5 okay, it's much easier for a youngster to
6 explain the event.

7 Q. Sure.

8 A. But when it happens a whole lot of
9 times, things can blur and it's harder to
10 recall specifics.

11 Q. Okay.

12 A. You know, what day did it happen?
13 Where did it happen, that kind of stuff. But
14 usually contextual stuff about what was the
15 action or what was abusive, you get
16 consistence from them.

17 Q. Okay. I think I understand this
18 then. Okay. First, I want to ask you about
19 your daily practice, okay? When you're hired
20 as a therapist in a sexual abuse case, what
21 steps do you usually take to evaluate that
22 case?

23 A. Well, when I'm hired as a therapist
24 in sexual abuse it's for treatment. Okay, so
25 I'm not doing forensic work ---

1 Q. Uh-huh.

2 A. --- which would be to determine
3 whether it would be evidence or not. My
4 focus is on the healing.

5 Q. Okay. And you actually meet with
6 your patients; right?

7 A. Yes.

8 Q. I know that's a basic question, but

9 ---

10 A. Yes, I do.

11 Q. And when you meet with a patient,
12 how long does a typical appointment last when
13 we're talking about a child sexual abuse
14 case?

15 A. Well, it can last up to an hour.

16 Q. Okay. And in a given case in
17 totality, how many hours do you think you
18 spend with an individual patient in an area
19 like this?

20 A. You mean during the whole treatment
21 process?

22 Q. Yes, ma'am.

23 A. Okay. Two things.

24 Q. Okay?

25 A. Typically, when I'm treating a

1 youngster for sexual abuse, I'm also working
2 with the parents so that they can help the
3 healing process at home.

4 Secondly, you know, the duration of
5 treatment can vary and it just depends on a
6 lot of different factors. It can go from a
7 handful of sessions to several months to
8 years.

9 Q. Okay. And circling back to sort of
10 my simple question before. When you meet
11 with patients, I mean, why is that important
12 to actually meet with a patient?

13 A. Why is it important?

14 Q. Yeah. Why is it important to
15 actually meet with a patient in a case like
16 this?

17 A. Oh. Well, if I'm doing the
18 treatment, okay, I have to meet the patient
19 for treatment.

20 Q. It's foundational. It's the first
21 thing you need to do; right?

22 A. When you're treating a particular
23 patient, yes. And then what I'm talking
24 about here is just my clinical experiences
25 and things that I've encountered where I've

1 been treating sexual abuse as part of my
2 practice since 1982. So, you know, you notice
3 trends and commonalities and things like
4 that.

5 Q. Okay. So just to clarify, you did
6 not meet with the child in this case; right?

7 A. Yes, sir.

8 Q. Okay. And if you had met with her,
9 what would you have done?

10 A. Said "hi", I mean ---

11 Q. Beyond the initial greeting?

12 A. If I had met with her, it would have
13 been for treatment. It wouldn't be making a
14 determination of whether these happened or
15 not or for doing a forensic interview.

16 A long time ago, I used to do forensic
17 interviews for a period of time before The
18 Advocacy Center had the one staffed.

19 But my focus is treatment, the healing.

20 Q. I understand that. But what steps
21 would you take if you were preparing to treat
22 this child? You would interview her,
23 presumably.

24 A. Yes.

25 Q. What else would you do?

1 A. I would talk with the parents.

2 I would probably get the forensics from the
3 Julie Valentine Center. If DSS was involved,
4 I'd probably talk with them if needed. And
5 I'd start treatment.

6 Q. Okay. So let's start talking about
7 the specific topics that we mentioned
8 earlier, okay?

9 A. Uh-huh.

10 Q. So when we're talking about delayed
11 disclosure, what period of time between an
12 active sexual abuse and the eventual report
13 from the child constitutes a case of delayed
14 disclosure?

15 A. That is in the eyes of the beholder.
16 You would have to, you know, too many --
17 well, I mean, delayed disclosure would be
18 that a child doesn't tell right away.

19 I've had children who have told, you
20 know, within twenty-four hours; they'll tell
21 another parent.

22 I've had children who wait until three or
23 more years.

24 One of the neat things that has happened
25 due to all the education that's come forth,

1 and all the community awareness over the past
2 decades, is that kids in general are telling
3 more quickly. Back in '82, it was years
4 before they'd tell, if they told at all.

5 Q. Okay. So you said it's in the eyes
6 of the beholder. Is a day-- if a child
7 reports in twenty-four hours, is that delayed
8 disclosure?

9 A. In my mind, no.

10 Q. Okay. How about two days?

11 A. In my mind, no.

12 Q. Let's lengthen the time period. Is
13 a week a case of delayed disclosure?

14 A. Sort of.

15 Q. Sort of?

16 A. Could be.

17 Q. Is a month a case of delayed
18 disclosure?

19 A. One could say that. But what is
20 interesting is that delayed disclosure is
21 such a general term ---

22 Q. Uh-huh.

23 A. Okay. --- that when one would use
24 that, I would say in this specific case that
25 this appeared to be delayed disclosure. The

1 disclosure happened in a specific period of
2 time after the abuse.

3 Q. Okay. So almost every child sexual
4 abuse case that you see in your private
5 practice is a case of delayed disclosure;
6 right?

7 A. A lot of them are, but not all of
8 them.

9 Q. Okay. Well, what percentage of your
10 cases would be ---

11 A. I can't say. I would just have to
12 guess. And the thing, I guess, I want to say
13 is if you got down to the nuts-and-bolts, you
14 know, a lot of times when a crime happens the
15 person tells right away.

16 Q. Yeah.

17 A. You don't necessarily see that for
18 instances of rape or sexual abuse. And it is
19 not a pattern with children. The way that
20 pattern has looked has changed over the
21 decades.

22 Q. How many children approximately are
23 you treating right now that have complained
24 of sexual abuse and you're providing therapy
25 for them?

1 A. Right now, maybe about fifteen.

2 Q. Okay.

3 A. Twelve to fifteen, I think.

4 Q. Okay. So twelve to fifteen. And

5 out of those twelve to fifteen cases, how

6 many of those would you characterize as

7 delayed disclosure cases verse immediate

8 disclosure cases?

9 A. I don't remember.

10 Q. You don't remember? Are any of them

11 immediate disclosure cases?

12 A. I can't recall.

13 Q. Okay. Does your office keep any

14 statistics about delayed disclosures or not?

15 A. No.

16 Q. Okay. Ms. Hutton, what articles,

17 texts or publications are you basing your

18 opinions on today, besides your experience;

19 which I acknowledge you have experience,

20 okay?

21 A. It's mostly on -- it's primarily on

22 my clinical experience. In terms of what

23 I'm, you know, experienced with.

24 Q. Yes, ma'am, I know.

25 A. In terms of the events and giving

1 the answers is based upon clinical experience
2 over the years.

3 Q. Okay. Delayed disclosure is a
4 subject that has been peer-reviewed in your
5 field; right?

6 A. Well, now, what do you mean by peer-
7 review?

8 Q. Meaning that you guys are experts or
9 professionals, it's a subject that's been
10 published on that other people review and
11 they write articles about it as well?

12 A. It has come up in the literature a
13 lot. I don't know if there's been specific
14 studies on percentages, I know that I haven't
15 reviewed or relied on them.

16 Q. So you can't point to any specific
17 studies regarding the topics that you're here
18 to talk about today; right?

19 A. Well, I'm not saying that.

20 Q. Okay. Well, then what studies have
21 you looked at?

22 A. Oh, okay. You mean specific studies
23 where I could cite them?

24 Q. Yes, ma'am.

25 A. None.

1 Q. Okay. What body of research then
2 are you using to support the idea that
3 children usually don't report right away and
4 that that is helpful to know?

5 A. Well, I guess it's helpful to -- for
6 purposes of the court to know, apparently,
7 because I'm being asked. Tell me the
8 question again, please?

9 Q. Yes, ma'am. What body of research
10 have you looked at to support the idea that
11 children usually don't report right away and
12 that that is somehow helpful for us to know?

13 A. I do not have specific research that
14 I can attach that to, just clinical practice.
15 It's common.

16 Q. Okay. Ms. Hutton, would you agree
17 that not every child discloses sexual abuse
18 in the same way?

19 A. I would agree to that.

20 Q. Okay. And children can disclose
21 abuse in the same way, but for different
22 reasons; right?

23 A. I don't know what you mean by
24 different reasons.

25 Q. Well, I can certainly give you an

1 example.

2 A. Okay.

3 Q. So let's talk about a hypothetical
4 scenario, okay?

5 A. Okay.

6 Q. You have two children and they're
7 reporting that they're being sexually abused
8 by a teacher, okay?

9 A. Okay.

10 Q. And in this example they both report
11 the incident to a parent one year after it
12 happens, okay?

13 A. Okay. Both of them do that?

14 Q. Yeah.

15 A. Okay.

16 Q. They're in separate families, okay?
17 But both are being abused by a teacher. Both
18 report one year later to a parent, okay.

19 And one child we can know is objective
20 intent, okay; reveals to a parent because he
21 feels like he has to unburden himself and
22 report it, okay?

23 A. Okay.

24 Q. That is one child.

25 A. Okay.

1 Q. And the other child, just like you
2 talked about before, when we're talking about
3 triggering events, discloses to the parent
4 because the parent asked the child a direct
5 question about it and the child reports it,
6 okay?

7 A. Okay.

8 Q. In that scenario, both children have
9 disclosed in the same way; right? I mean,
10 they both told the parent one year after it
11 happened. Right?

12 A. That -- they verbally did, yes.

13 Q. Yes. But they did it for different
14 reasons. Right?

15 A. There were different precipitants,
16 it sounds like. There were different
17 vehicles -- the Solicitor's office called
18 them a triggering event.

19 So one, from your discussions, sounds
20 like it was an internally motivated by the
21 child.

22 Q. Yes?

23 A. And the other was that the child was
24 responding to a specific question. It sounds
25 like, from what you're saying, the child was

1 responding to a direct question.

2 Q. That is correct. So using the
3 language you just used, there can be
4 different motivations for children to come
5 forward with reports of abuse. Right?

6 A. I wouldn't say motivations. I would
7 say there were different circumstances,
8 because you're not talking litigation here.
9 You're talking precipitant to disclosure.

10 Q. Okay. All right. Ms. Hutton, when
11 you meet with a sexual abuse patient, what
12 specific methods or protocol do you use?

13 A. I use a variation. I tend to mark
14 things as soon as I get a file. But, you
15 know, the most common is trauma-focused
16 cognitive behavior therapy. I use aspects of
17 that. I use whatever I have found has
18 worked.

19 Q. Okay. And you said that kind of
20 fast. I'm sorry. You said trauma-focused
21 cognitive behavioral therapy? Did I get that
22 right?

23 A. Right. That's the one I was talking
24 about through the Medical University of South
25 Carolina.

1 Q. Okay. And Ms. Hutton, if you
2 wouldn't mind, what precisely does that
3 involve? What is that?

4 A. It's generally a ten to twelve
5 sessions, and there's different topics that
6 you work from. It's helping the youngster
7 to master what's happened. And it's a
8 treatment, a treatment method.

9 THE COURT: Ms. Hutton, let me
10 just stop you a minute.

11 Mr. Goldstein, since Ms. Hutton is
12 being offered as what we've been recently
13 referring to these kind of witnesses as blind
14 experts ---

15 MR. GOLDSTEIN: Uh-huh.

16 THE COURT: --- her treatment
17 methods, how would that be relevant to the
18 issue that you're asking me to rule on
19 concerning the reliability of her testimony.
20 Just educate me a little bit there, if you
21 would.

22 MR. GOLDSTEIN: Well, Your Honor,
23 especially since she hasn't met with the
24 child in this case, I want to know more about
25 -- she's rendering opinions today, okay? And

1 how is that helpful to the jury? What is she
2 relying on? What is the basis of her
3 knowledge? And if you look at these cases,
4 even if were talking about non-scientific
5 evidence proffered by a blind expert, I mean,
6 there still has to be that foundational core
7 when we're talking about articles,
8 publications, methods, quality control
9 methods. All those things are pertinent to
10 whether the testimony she's going to render
11 is reliable or not. So that's sort of the
12 direction we're heading in.

13 THE COURT: All right. Solicitor?

14 SOLICITOR SUSTAKOVITCH: Your
15 Honor, Ms. Hutton has testified that she has
16 seen over a thousand children over the span
17 of forty-two years.

18 I would reference *State v Henry* for the
19 fact that Mr. Goldstein is focused on this
20 study thing, this study aspect. Specifically
21 stated in here it says it is not necessary
22 that knowledge of the expert witness be
23 derived solely from academic endeavors. They
24 may also be derived from experience.

25 THE COURT: Right.

1 SOLICITOR SUSTAKOVITCH: Ms.

2 Hutton's experience, over the span of forty-
3 two years with a thousand kids is what is
4 allowing her to say delayed disclosure is
5 common. It is the most common way that kids
6 disclose. And so ---

7 THE COURT: I understand.

8 MR. GOLDSTEIN: And, Your Honor,
9 if I could just briefly respond. I'm almost
10 done with the questions and we have our own
11 legal argument and cases to point to in just
12 a moment.

13 THE COURT: Okay. All right. You
14 can continue.

15 MR. GOLDSTEIN: Okay.

16 CROSS-EXAMINATION CONTINUED

17 BY MR. GOLDSTEIN:

18 Q. Okay. Ms. Hutton, sorry about that.
19 When you're meeting with a patient, what
20 quality control methods do you use to ensure
21 that you're receiving accurate information,
22 if you do?

23 A. I don't think of it as quality
24 control. I told you I'll get information
25 from DSS; often I'll use, real often if I can

1 get the forensic from Julie Valentine Center.
2 I'll be talking with family members, the
3 parents/parent and talking with the child.

4 Q. Okay. In applying the methods that
5 you discussed before in your daily practice,
6 is there any way to determine what your rate
7 of error is?

8 A. Well, in treatment, what I try to do
9 is try to use interventions that would mostly
10 be successful. And so it's just looking at
11 whether those succeed or not.

12 Q. Okay. Have you ever found out that
13 one of your patients, in your experience, was
14 lying about sexual abuse?

15 A. No. I know that it can happen.

16 Q. Okay.

17 A. It's rare for it to happen, but I
18 cannot recall any youngsters that I have
19 treated who it turned out that they were
20 lying.

21 Q. Okay. And can you point to that in
22 your research or articles that state that
23 it's rare for it to happen or that's just in
24 your personal experience?

25 A. From training and all, I cannot give

1 you a specific article or something from a
2 journal.

3 Q. Okay. Does your office keep any
4 statistics on false allegations or you guys
5 wouldn't do that?

6 A. No. You would be talking about a
7 research facility would have that.

8 Q. Yes, ma'am. And Ms. Hutton, the
9 final question. Have you ever testified in a
10 case before where the accused was ultimately
11 acquitted?

12 A. I don't know. Probably.

13 Q. Okay. Thank you, Ms. Hutton. That's
14 all the questions that I have. I appreciate
15 your time.

16 A. Okay.

17 SOLICITOR SUSTAKOVITCH: Your
18 Honor, I did want to make note -- hen I was
19 saying what topics we were covering, I just
20 want to make sure I had two listed down. I
21 want to make sure I said just about the rape
22 trauma, nightmares, manifestations of what a
23 child could experience if they've had that
24 happen. And, also, in her experience over
25 forty-two years has she ever helped when

1 children are preparing to go to court,
2 has she ever seen the impact of that on a
3 child and their ability to testify
4 effectively in Court.

5 THE COURT: I'm sorry, Solicitor.
6 I was looking at this and I didn't hear what
7 you said, I apologize.

8 SOLICITOR SUSTAKOVITCH: I just
9 wanted to make sure that we went through all
10 my topics and I wanted to make sure I covered
11 that nightmares, we were going to mention
12 that, being a manifestation that children can
13 have.

14 And then also in her training and
15 experience in seeing children that she's
16 treated, that'd have to go to court and
17 testify, what are some of the impacts that
18 that could have on their ability to testify
19 effectively. And that would be the last
20 topic.

21 THE COURT: Okay. Give me just a
22 second.

23 SOLICITOR SUSTAKOVITCH: Yes,
24 sir.

25 (COURT AT-EASE)

1 THE COURT: Okay. Let me hear
2 from the defense concerning the reliability
3 issue that you have offered?

4 MR. GOLDSTEIN: Thank you, Your
5 Honor. Our first argument is under Rule 702,
6 reliability.

7 Under the three-pronged test that's
8 set out in *Watson v. Ford Motor Company*, the
9 court has ruled in these situations is the
10 value and the substance of the testimony
11 depending upon whether it's reliable or not.

12 Admittedly, when we're talking about
13 testimony like this in the area of child
14 abuse assessment experts, this kind of
15 testimony is not scientific, Your Honor. But
16 at the same time that does not mean that the
17 *State v. Council* factors have no application
18 and there's state law that said that much.
19 For example, the Supreme Court of South
20 Carolina *State v. Chavis* from 2013. The
21 *State v. Council* factors, Your Honor,
22 publication, peer review, prior application
23 of methods to the type of evidence involved
24 in this case, quality control procedures used
25 to ensure reliability, and consistency of the

361
1 method with recognized procedures.

2 Pointing to that case I just
3 mentioned, Your Honor, *State v. Chavis*, the
4 court conceivably says, you know, there's no
5 formulaic approach when we're talking about
6 foundation requirements for expert testimony
7 in this kind of subject, okay. That's
8 qualification for liability of non-scientific
9 evidence.

10 And yet the court states that
11 evidence of mere procedural does not ensure
12 liability without some evidence demonstrating
13 that an individual expert is able to draw
14 reliable results from the procedures that
15 should consistently apply.

16 So in *State v. Chavis* we have a case
17 where the defendant is convicted of CSC with
18 a minor. The Supreme Court found that the
19 trial court erred in qualifying the
20 prosecution witness as a child abuse
21 assessment expert. Why? Because the
22 reliability requirement was not met. So in
23 that case, the prosecution witness was using
24 the RATAC protocol and testified that she
25 used the RATAC protocol in her interviews

1 with children. And the court stated at the
2 end when the ruled that the trial court had
3 erred in admitting that witness, they said
4 there's simply no evidence in her conclusions
5 or impressions taken from interviews are
6 accurate.

7 When asked if there was any way to
8 discern what her error rate was, she replied
9 no. Her own peer review involved another
10 interviewer reviewing her work that she had
11 used the RATAc protocol. And when asked what
12 her quality control procedures were, she
13 responded, "I use the RATAc protocol every
14 time in the interview room."

15 Here, Your Honor, I asked the
16 witness about articles, texts or publications
17 that she's looked at in formulating her
18 opinions. She couldn't point to any. She
19 said this she's basing her opinions today on
20 experience that she has.

21 When she's talking about topics such
22 as delayed disclosure -- and, again, I
23 understand we're not talking about scientific
24 evidence. I'm pretty sure she said delayed
25 disclosure is in the eye of the beholder.

1 Now, I understand we're not talking about
2 scientific evidence, but -- I mean, what are
3 we really talking about? How is that helpful
4 to the jury? Look at specific methods of
5 protocol she used, she did come to this
6 particular method, this behavioral cognitive
7 therapy that she mentioned.

8 As far as quality control methods,
9 she couldn't point to any.

10 Rate of error? She couldn't point
11 to any. Her office doesn't keep any
12 statistics on that.

13 So, Your Honor, our argument would
14 simply be likening it to the circumstances
15 and *State v. Chavis*. And we understand that
16 this is non-scientific testimony. But if the
17 witness is going to get up here and render
18 these opinions as supposedly beyond the realm
19 of general knowledge and it's helpful to
20 them, and then she can't point to a single
21 study, a single article, a single publication
22 used, I don't think that that meets the
23 threshold requirements for liability.

24 And, Your Honor, if I could -- I
25 don't know if you want to do this one thing

1 at a time. We also have another one under
2 Rule 403.

3 THE COURT: Okay. Well, let me --
4 I'll come back to you.

5 Solicitor, you want any comments
6 related to the liability?

7 SOLICITOR SUSTAKOVITCH: Just
8 very briefly. I believe *State v Chavis* was
9 focused on -- with the RATAAC formula, it was
10 focusing on a forensic interviewer. And so
11 that's different in what we're dealing with
12 here under *State v Brown* and also the progeny
13 of cases under *State v Weaverling*.

14 This witness is being offered as an
15 expert in the area of child sexual abuse and
16 assault. And when Ms. Hutton stated -- I
17 think that -- and just a little bit on
18 delayed disclosure is in the eye of the
19 beholder. I think what she's trying to
20 articulate is that if you want to be really
21 technical, what is delayed disclosure.

22 I'm abused now and I go home and I
23 tell somebody about it seven hours later. Is
24 that window of time a delay or are we talking
25 a week later?

365

1 And what Ms. Hutton testified to is
2 that she's seen kids wait days, weeks, years
3 to delay disclosure. And that that's the
4 majority of what she sees, she gave, in her
5 forty-two years of experience spans. And I
6 think possibly, when she answered that, the
7 witness could answer it better but I think
8 that's possibly where we were going with
9 that.

10 THE COURT: Okay. All right.
11 Thank you.

12 And, Mr. Goldstein, you want to
13 argue 403?

14 MR. GOLDSTEIN: Yes, Your Honor.
15 If I could just briefly respond to that
16 point.

17 THE COURT: Yeah.

18 MR. GOLDSTEIN: If the purpose of
19 Rule 702, if we're having an expert who's
20 going to testify and basically that's going
21 to assist the trier of fact to understand the
22 evidence or determine the fact that's in
23 issue.

24 But, I mean, her testimony is that,
25 you know, it's so general that she can't even

1 elaborate on what that is. "It's in the eye
2 of the beholder." I just don't see how that
3 is helpful to the jury in determining the
4 facts at issue in this case.

5 THE COURT: Okay. All right.

6 Now, let me hear from you on 403?

7 MR. GOLDSTEIN: Okay. Your Honor,
8 under Rule 403 the proffered testimony should
9 be excluded because the probative value of
10 this evidence is substantially outweighed by
11 its prejudicial effect to the defendant.

12 And a substantial danger exist in
13 misleading the jury. So, Your Honor, when
14 we're talking about unfair prejudice, clearly
15 we're not talking about the sheer weight of
16 evidence that results from the legitimate
17 probative force of the evidence. Rather,
18 what we're talking about is evidence that
19 tends to suggest a decision on an improper
20 basis.

21 The danger is this, Your Honor. In
22 a case like this we're pitting the
23 credibility of the defendant against the
24 credibility of the child/victim. Cases like
25 *State v. Croma* stand by the proposition that

1 it's improper for an expert witness to offer
2 an opinion as to the credibility of others.
3 That's particularly true when we're talking
4 about the child sex abuse cases.

5 Here, the State's seeking to avoid
6 that problem by having a blind expert testify
7 who never met with the victim and is
8 rendering opinion about other patients and
9 other cases.

10 In reality, this broad sort of
11 testimony is vouching for the credibility of
12 all child witnesses in cases such as this.
13 This testimony is not helpful to the jury.
14 To the jury, it's not relevant.

15 But beyond that, Your Honor, we run
16 the following risk that the jurors are going
17 to give undue weight to the testimony of
18 someone who the Court has qualified as an
19 expert, that the jurors will adopt and apply
20 this testimony to the expert witness and
21 decide whether the testimony of the child
22 witness is credible or not. This invades the
23 purview of the jury and suggests that the
24 jury render an opinion on an improper basis.

25 THE COURT: All right. Thank you,

1 Mr. Goldstein. Solicitor, do you want to
2 respond?

3 SOLICITOR SUSTAKOVITCH: Just
4 briefly, Your Honor. We rely on *State v*
5 *Brown* where the court looked at Shauna
6 Galloway-Williams who would be qualified
7 similar to Ms. Hutton. They've reviewed the
8 403 argument and ruled that it was not more
9 prejudicial than probative to have her
10 testimony allowed.

11 THE COURT: All right. Thank you.
12 Let me look at something real quickly.

13 (COURT AT-EASE)

14 THE COURT: Okay. Taking
15 everything into consideration, I'm going to
16 find that this witness's testimony is
17 reliable.

18 *State v Brown* is so closely on
19 point. I think the *State v Chavis* case is
20 the facts are so different. That dealt with
21 a forensic interview having been done and
22 another witness comes in and testifies
23 concerning the interview and the RATAC method
24 used by that particular interviewer. So, I
25 mean, the facts are just so different from

1 this case. And I think it goes more towards
2 weight, as opposed to making her testimony
3 unreliable. I'm referring to the *State v*
4 *White* case.

5 And to echo what the Solicitor said,
6 *State v Henry* does say that experience alone
7 can be enough to make the testimony reliable.
8 I don't find that her testimony would in any
9 way be vouching for the credibility or
10 believability of a witness. And I do not
11 believe there's substantial prejudice
12 overriding any probative value.

13 So taking all of that into
14 consideration, I'm going to allow this
15 witness to testify and render the opinions
16 concerning what has been brought out in
17 camera.

18 MR. GOLDSTEIN: Thank you, Your
19 Honor.

20 SOLICITOR SUSTAKOVITCH: Thank
21 you, Your Honor.

22 THE COURT: Okay. Anything else
23 before we take a little lunch break?

24 SOLICITOR SUSTAKOVITCH: No, sir.

25 THE COURT: Okay. All right.

1 Well, we'll try to get back at 1:30. If not
2 exactly at 1:30, we'll be okay.

3 SOLICITOR SUSTAKOVITCH: Okay.

4 MR. GOLDSTEIN: Your Honor, I was
5 going to ask. I believe, you know, this is
6 their last witness and then we will be
7 putting up a case. I know you will examine
8 our client about whether he wants to testify,
9 and I want to speak to him about that. I
10 mean -- and we're going to do the DV and get
11 a break at that point? So I don't know if
12 you want to talk with my client now or after
13 we make our Motion.

14 THE COURT: Right. And I
15 appreciate that offer. I don't like doing
16 that until it's actually time.

17 MR. GOLDSTEIN: Sure.

18 THE COURT: But I appreciate the
19 offer.

20 MR. GOLDSTEIN: Okay. Thank you,
21 Your Honor.

22 THE COURT: Okay. Thank you.
23 Y'all have a good lunch.

24 (LUNCH RECESS)

25 (DEFENDANT PRESENT)

1 MR. GOLDSTEIN: Your Honor, the
2 Defense has just one really brief legal issue
3 that we'd like to bring to the attention of
4 the Court.

5 THE COURT: Sure. And this is
6 with respect to what, Mr. Goldstein?

7 MR. GOLDSTEIN: With respect to
8 before when we were proffering testimony from
9 the expert witness.

10 THE COURT: Of Ms. Hutton?

11 MR. GOLDSTEIN: Regarding that
12 testimony, (affirmative nod). Yes, Your
13 Honor.

14 THE COURT: All right.

15 MR. GOLDSTEIN: Ms. Sustakovitch
16 mentioned that she was going to ask -- when
17 you inquired to certain additional topics,
18 she mentioned rape trauma, in general, and I
19 could be incorrect, but I think Ms.
20 Sustakovitch mentioned the ability to
21 testify. We would just ask that the
22 Prosecutor be limited in that line of
23 inquiry.

24 This expert shouldn't be asked
25 questions about why a witness would be unable

1 to testify on the stand. Commenting on the
2 facts of the case in that manner is indeed
3 the purview of the jury and it's the
4 exclusive realm of the jury to assess the
5 demeanor of the witness ---

6 THE COURT: Yeah.

7 MR. GOLDSTEIN: --- and make the
8 determination of whether the witness is
9 credible or not. And that's in keeping with
10 *State v. Brown*, the case that the State is
11 relying on.

12 THE COURT: Right. Solicitor, did
13 you intend to suggest that you were going to
14 get Ms. Hutton to testify concerning Minor's
15 ability or inability to testify or something
16 akin to that?

17 SOLICITOR SUSTAKOVITCH: No,
18 that's specifically -- I guess perhaps I need
19 to rephrase the question. What I was trying
20 to get at, Ms. Hutton's going to testify that
21 victims of sexual assault, particularly when
22 it's child abuse, vary at how they disclose
23 what the abuse consisted of when they have to
24 relay the story at a different time.

25 THE COURT: Right.

1 SOLICITOR SUSTAKOVITCH: That
2 details can vary. But one thing that she's
3 discussed with me is the fact that also
4 important is the setting in which they have
5 to disclose. So maybe I need to say
6 something along the lines of, you know -- I'm
7 trying to think how to phrase it.

8 I feel like defense counsel is going
9 to possibly try to say that Minor -- Minor
10 was inconsistent with her forensic interview
11 when she testified. I think a large part of
12 that was she couldn't testify in front of
13 this defendant effectively.

14 So, Ms. Hutton does have experience
15 and has told me multiple different incidents
16 where she's had to treat children who either
17 couldn't testify in court because of their
18 fear of being in the courtroom ---

19 THE COURT: Right.

20 SOLICITOR SUSTAKOVITCH: --- or
21 they just -- they had a very difficult time.
22 And just the dynamic of having to be in front
23 of the offender, based on the thousand kinds
24 she's seen victims testify that there is a
25 difference. So that's all I was trying to --

1 want to bring out.

2 THE COURT: Well, I would not want
3 her to bring out anything related to
4 testimony. I think Mr. Goldstein is correct
5 in the fact that it's up to the ---

6 SOLICITOR SUSTAKOVITCH: Correct.

7 THE COURT: --- jury to consider
8 -- and this is, you know, standard charge,
9 the demeanor of the witness. And so that's
10 up to the jury to determine.

11 Certainly, you can ask as far as --
12 I'm looking at my notes here -- that victims
13 of child abuse sometimes details vary
14 depending on the circumstances of the
15 disclosure and that details will vary in
16 chronic abuse cases. Memory lacking in
17 certain areas, that sort of thing.

18 SOLICITOR SUSTAKOVITCH: Okay.

19 THE COURT: If the jury then wants
20 to equate what she says as it relates to
21 Minor's testimony or during the interview,
22 that's going to be up to them. I just don't
23 want your witness to make any reference to
24 testimony.

25 SOLICITOR SUSTAKOVITCH: Okay.

1 THE COURT: Because then I think
2 you would be invading the provence of the
3 jury. Does that touch on what your concern
4 was, Mr. Goldstein?

5 MR. GOLDSTEIN: Yes, Your Honor.

6 THE COURT: Okay. All right.

7 SOLICITOR SUSTAKOVITCH: Thank
8 you, Your Honor. And I do want to -- I don't
9 believe I told this witness -- where is Ms.
10 Hutton. If the word in your testimony -- the
11 Court has advised us not to say forensic.
12 'Just call it the interview or interviewing.
13 Okay?'

14 THE COURT: Right. And you did a
15 good job with that as far as with the
16 interview in following my instructions.

17 SOLICITOR SUSTAKOVITCH: Yes,
18 sir.

19 THE COURT: Okay. Let's bring the
20 jury out, please?

21 (JURY IN @ 1:55 P.M.)

22 THE COURT: All right. Let the
23 record reflect the jury is back in the
24 courtroom. Ladies and gentlemen, I hope you
25 had a good lunch and are ready to get back to

1 work this afternoon. Solicitor, you may
2 call your next witness.

3 SOLICITOR SUSTAKOVITCH: Thank
4 you, Your Honor. The State calls Linda
5 Hutton.

6 THE COURT: Come around, please,
7 ma'am.

8 (WITNESS TAKES STAND)

9 LINDA HUTTON, having been duly sworn to
10 tell the truth, and nothing but the truth,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR SUSTANKOVITCH:

14 Q. Good afternoon, Ms. Hutton. Where
15 are you employed, ma'am?

16 A. In Greenville at Bay Laurel Center
17 for psychotherapy.

18 Q. And what services are offered at Bay
19 Laurel?

20 A. Therapy services for children,
21 adolescents, adults.

22 Q. What is your position at Bay Laurel?

23 A. I'm a clinical social worker.

24 Q. And can you explain to the jury,
25 what does a clinical social worker do?

1 A. I do psychotherapy with families,
2 children, teenagers mostly. I do see some
3 adults individually if it's within my area of
4 competence.

5 Q. And how many years have you been a
6 clinical social worker?

7 A. A little over forty-two.

8 Q. Can you explain to the jury some
9 about your work experience and where you went
10 to college and work experience?

11 A. University of Florida. I graduated
12 in 1972 with honors with a B.A. degree.

13 I received a master's in social work from
14 Florida State University in 1974. As a part
15 of that training, I completed two internships
16 or interim placements in the Department of
17 Child Psychiatry at Shands Teaching Hospital
18 at the University of Florida.

19 Q. What particular licenses do you have
20 as a clinical social worker?

21 A. Well, I have an LISWCP through South
22 Carolina. And that stands for licensed
23 independent social worker clinical practice.

24 Q. All right. That's a long acronym.
25 Are you a member of any boards past or

1 present?

2 A. In the past I've been on the board
3 of Rape Crisis Council of Greenville. And in
4 the past I was on boards, South Carolina
5 Society of Clinical Social Workers.

6 Q. Do you have any special training in
7 the area of the treatment of suspected child
8 suspected assault?

9 A. Yes, ma'am. My emphasis is on
10 treatment. And over the years I've had a lot
11 of training going to in-state seminars, out-
12 of-state seminars.

13 In the last few years, the Medical
14 University of South Carolina, along with the
15 National Crime Victims' Center sponsored
16 trauma focused cognitive behavior therapy.
17 That was a year-long training targeted to
18 clinicians throughout the State.

19 Q. Could you explain trauma-based
20 cognitive behavior therapy a little more to
21 the jury?

22 A. It's all, you know, based on helping
23 a youngster heal and help their family heal
24 when parents help the youngster.

25 A lot of times -- it's so that in the

1 end, the fact that the youngster has been
2 sexually abused, it does not become the
3 organizing feature of their life. That they
4 can get on with life, that they can know that
5 what happened is not their fault, for them to
6 be able to work through and be able to talk
7 about the abuse.

8 But there's usually a lot of cognitive
9 distortions that need to be cleared up. Just
10 for them to heal.

11 Q. In the past forty-two years, can you
12 estimate how many children that you've either
13 seen or treated where there's a concern of
14 child sexual abuse?

15 A. Okay. I do not keep data/numbers.
16 But the estimate, conservative estimate,
17 would be nine hundred to a thousand, probably
18 more.

19 Q. Okay. Have you ever testified in
20 the courts of this state?

21 A. Yes, ma'am.

22 Q. And how many times would you
23 estimate that you've testified?

24 A. Altogether, in Family Court probably
25 from fifty to seventy-five; Criminal Court,

1 probably between ten and fifteen, something
2 like that.

3 Q. All right. Have you ever been
4 qualified as an expert in the courts of this
5 State?

6 A. Yes, ma'am.

7 SOLICITOR SUSTAKOVITCH: Your
8 Honor, at this time, the State moves to admit
9 this witness as an expert in the field of the
10 treatment of child sexual abuse.

11 THE COURT: Defense?

12 MR. GOLDSTEIN: Your Honor, we
13 would just renew our previous objection.

14 THE COURT: Certainly. So noted
15 for the record.

16 I do find that Ms. Sutton is an
17 expert in the area of the treatment of child
18 sexual abuse cases.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR SUSTAKOVITCH:

21 Q. Ms. Hutton, I want to just get a
22 couple of things cleared for the jury. You
23 don't know Minor; correct?

24 A. No, ma'am, I don't.

25 Q. You've never met the victim in this

1 case?

2 A. I have not.

3 Q. You don't know the parties to this
4 case?

5 A. (No verbal response).

6 Q. Do you know the parties to this
7 case?

8 A. No, ma'am.

9 Q. Do you know this Defendant?

10 A. No.

11 Q. Okay. And the purpose of being here
12 today is it to provide general background on
13 child sexual abuse?

14 A. My understanding is to provide
15 common features of child sexual abuse based
16 on my clinical experience.

17 Q. Thank you, ma'am. Can you educate
18 the jury what the term delayed reporting
19 means?

20 A. It just means within the context of
21 child sexual abuse, that the child does not
22 tell right away.

23 Q. And is it common or uncommon in your
24 experience for children who have been abused
25 to delay reporting?

1 A. Yes, ma'am. It's common.

2 Q. What are some of the reasons in your
3 experience and treatment that children will
4 delay reporting?

5 A. Common to my experience that the
6 perpetrator will tell the child to keep it a
7 secret. And sometimes there will be threats
8 associated with that. The purpose being that
9 the perpetrator would be less likely to be
10 found out if the child doesn't tell, because
11 the perpetrator's not going to tell.

12 Another thing that I hear very, very
13 commonly from kids is that they're afraid
14 that they'll be in trouble. When it's
15 delayed reporting, they might think -- they
16 might have worried they were going to be in
17 trouble because they didn't tell earlier.

18 And they could be afraid that they won't
19 be believed.

20 So these all play in. Those are the
21 common reasons I see.

22 Q. Ms. Hutton, can you give the jury
23 some examples of the timeframes that you've
24 seen with delayed report, the various cases
25 through the years that you've had?

1 A. I started working with child sexual
2 abuse cases in 1992. And back then, it was
3 just beginning to become known or realized
4 that this really happens to the extent it
5 does. And it was very common to see kids
6 where they hadn't told in years, three, four,
7 five years. I'd even have adults coming in
8 in their forties and saying, 'I was abused as
9 a child.'

10 What's happened since then, in the last
11 couple of decades, is that there's been more
12 education throughout the country about this,
13 that it does happen. So what I have seen the
14 general trend in that the delay in reporting
15 is not generally as long. What used to be
16 years, more often these days is like months
17 or weeks or something like that. And it's
18 because of the parents are educating their
19 kids now more. There's a lot of books for
20 kids about touching problems and all of that.
21 And then also, the schools and the churches
22 do program.

23 Q. And as far as the -- in your
24 training and experience with the different
25 ranges though, does that just vary based on

1 the child as far as days, months, years, that
2 kind type of thing, as far as the delay in
3 reporting?

4 A. That's been my experience.

5 Q. And would it be common for a child
6 to delay years in reporting?

7 A. I still see that but not as much as
8 I did in the past. Kids generally report
9 when they feel safe enough to and are able
10 to.

11 Q. Okay. What are some of the reasons
12 that children don't tell about their abuse?

13 A. Well, part of it's repetitive. You
14 know, a child's worries they won't be
15 believed or they're going to be blamed.

16 The person who does the, who's the
17 perpetrator of child sexual abuse there's a
18 lot of psychological coercion. And children
19 are threatened or told 'not to tell or your
20 mom's going to leave' or 'you're going to
21 have to leave and go to foster care.' The
22 abusers are going to make statements so the
23 child or children are not going to want to
24 tell because they're too afraid.

25 Q. All right. Going to this topic, as

1 far as threats, is it common or uncommon for
2 a perpetrator to try to silence a child by
3 threatening them?

4 A. Yes.

5 Q. That that is what would happen if
6 they do tell that they're being abused?

7 A. Yes, it's common.

8 Q. And how do, in your experience,
9 children interpret those threats?

10 A. My experience has been they take
11 them seriously.

12 Q. In your experience, is it common or
13 uncommon for there to be some form of
14 triggering event that happens, to have a
15 child come about exposing?

16 A. I guess I didn't think of it as a
17 triggering event, maybe a precipitant.

18 Q. Okay. Can you describe that?

19 A. A child can -- a parent may have
20 brought the child a book about okay touching
21 or not-okay touch. Uh, (pause) -- sorry, I'm
22 nervous. I'm blanking.

23 Q. Are you nervous?

24 A. Just a tad.

25 Q. And you've testified fifty times.

1 A. I know. But still -- I lost my
2 train of thought. There's programs in
3 schools now. There's programs at churches.
4 Sometimes parents will ask. Sometimes kids
5 will tell peers and the peers will tell their
6 parents and disclosure starts then.

7 Q. All right. Is it common or uncommon
8 for children who suffer chronic abuse - and
9 when I say the term "chronic abuse", what
10 does that mean to you?

11 A. To me it means repetitive abuse,
12 that it wasn't just a one-time occurrence.
13 That it happened multiple times over a period
14 of time.

15 Q. All right. And could chronic abuse
16 span years in your experience?

17 A. Yes, it can.

18 Q. So in the children who've suffered
19 chronic abuse over a period of years, in your
20 experience do they sometimes have more
21 specific memories over others?

22 A. Oh, yes, ma'am.

23 Q. And is it common or uncommon for
24 children not to tell the full scope of what's
25 happened to them when they first disclose?

1 A. That's common.

2 Q. Is it common or uncommon when
3 children are the victims of chronic abuse to
4 have details buried when they have to tell
5 the account of what happened?

6 A. Typically what you look for is that
7 the core details remain pretty consistent,
8 remain consistent. Some of the peripheral
9 stuff may not be consistent, but the core is.

10 Q. Okay. Is it common or uncommon for
11 children who've had chronic abuse to block
12 out some of the details of the abuse after
13 they've disclosed?

14 A. To what now?

15 Q. Block out some of the details of
16 what occurred, over time?

17 A. What do you mean by blocking out?

18 Q. Meaning not recall.

19 A. It can happen, yes. Yes.

20 Q. In your experience, is it common or
21 uncommon for children who are abused to have
22 members of authority, family members of
23 authority be the abuser?

24 A. Typically children who are abused,
25 sexually abused, are abused by someone who

1 they know and trust and someone in
2 authority.

3 Q. And what effect, if any, does that
4 have on a child and their ability to tell?

5 A. It makes it difficult.

6 Q. Okay. And finally, in your
7 experience over the last forty-two years, is
8 it common or uncommon for children who've
9 been abused to have physical manifestations
10 such as nightmares, things like that?

11 A. That can happen. Uh-huh.

12 Q. All right. Please answer any
13 questions Defense counsel has.

14 A. Okay.

15 THE COURT: Okay. Defense?

16 MR. GOLDSTEIN: Thank you, Your
17 Honor.

18 CROSS-EXAMINATION

19 BY MR. GOLDSTEIN:

20 Q. Good afternoon again, Ms. Hutton.
21 Okay. So just to clarify, you never actually
22 met with Minor; right?

23 A. No, sir. I didn't.

24 Q. Okay. You never reviewed her
25 medical records?

1 A. No, sir. I didn't.

2 Q. You never looked at her school
3 records?

4 A. No, I didn't.

5 Q. And you never met with any members
6 of her family; right?

7 A. No, sir. I didn't.

8 Q. So your knowledge of this specific
9 case, whatever that may be, is limited to
10 your discussions with the prosecutor; right?

11 A. Yes, sir.

12 Q. Okay. So the opinions you gave
13 before, just now on direct examination, are
14 opinions about other cases; right?

15 A. Opinions based on the cases I have
16 worked on over the years, nonspecific to this
17 particular one case.

18 Q. Okay. So just to use what you said
19 before, based on your clinical experience
20 with other patients; is that fair?

21 A. Yes, sir.

22 Q. Okay. Ms. Hutton, you work as a
23 therapist; right?

24 A. Yes, sir.

25 Q. I mean, you're not a doctor; right?

1 A. I'm not.

2 Q. And you're not a psychologist?

3 A. No, sir.

4 Q. And your practice, it's not focused
5 exclusively on children; right?

6 A. I'm known as a child and family
7 therapist. That's how most people see me.
8 And as I said, I do some work with adults if
9 it's within my area of competence.

10 Q. Okay. And I know -- this is going
11 to be a really obvious question. But when
12 you provide therapy to your patients, you
13 actually meet with your patients; right?

14 A. Yes, sir. I do.

15 Q. And you can't evaluate a client's
16 case unless you actually meet with them?

17 A. I would not feel comfortable. I
18 would want to meet with them if a specific
19 client, yeah.

20 Q. I understand. And if you were going
21 to provide therapy to a client, certainly, --
22 I mean, you'd have to meet with them; right?

23 A. Yes, sir.

24 Q. Ms. Hutton, I believe that you've
25 testified before in criminal cases about ten

1 to fifteen times; is that right?

2 A. That's my estimate. Yes, sir.

3 Q. Of those times, Ms. Hutton, how many
4 times did you testify on behalf of the State,
5 on behalf of the prosecution?

6 A. All of those times.

7 Q. All those times. So you've never
8 testified on behalf of a defendant before?

9 A. Have never been asked to.

10 Q. Ms. Hutton, would you agree with me
11 that not every child tells the truth?

12 A. In general?

13 Q. Yes, ma'am?

14 A. Yes, sir.

15 Q. Okay. And not every child discloses
16 sexual abuse in the same way; right?

17 A. Yes, sir.

18 Q. Okay. And certainly there have been
19 cases before where children have made false
20 allegations of sexual abuse; correct?

21 A. That's my understanding. Yes, sir.

22 Q. Okay. Thank you, Ms. Hutton.

23 MR. GOLDSTEIN: I don't have any
24 further questions.

25 SOLICITOR SUSTAKOVITCH: Just

1 briefly.

2 REDIRECT EXAMINATION

3 BY SOLICITOR SUSTAKOVITCH:

4 Q. Ms. Hutton, have you been offered
5 any money or anything for your testimony to
6 come testify?

7 A. No, ma'am. I did this as a
8 courtesy.

9 Q. All right. Defense counsel asked
10 you if there were cases where allegations of
11 abuse have been made up and you said -- what
12 did you state there?

13 A. I have never run across one in my
14 own practice.

15 Q. Okay.

16 A. False accusations.

17 SOLICITOR SUSTAKOVITCH: I have
18 no further questions.

19 THE COURT: Okay. Any recross?

20 MR. GOLDSTEIN: No additional
21 questions, Your Honor.

22 THE COURT: Okay. Thank you,
23 ma'am. You can step down.

24 (WITNESS STEPS DOWN)

25 THE COURT: Any further witnesses

1 from the State?

2 SOLICITOR SUSTAKOVITCH: No, Your
3 Honor. The State rests.

4 THE COURT: Okay. All right.
5 Madam Forelady, and ladies and gentlemen of
6 the jury, there will be a few matters that I
7 will need to discuss with the lawyers, so if
8 you'll go back to the jury room, we'll get
9 you back out just as soon as we can.

10 (JURY OUT @ 2:15 P.M.)

11 THE COURT: Give me just a minute
12 before I entertain any Motions.

13 (COURT AT EASE)

14 (DEFENDANT PRESENT)

15 THE COURT: Okay. Does the
16 defense have any Motions at this time?

17 MR. SURRATT: We do, Your Honor.

18 THE COURT: Okay.

19 MR. SURRATT: At this time the
20 defense would make a motion for directed
21 verdict. Taking the evidence in light most
22 favorable to the State, I believe the State
23 has failed to meet its burden, to produce
24 evidence as to each and every element of this
25 offense.

1 The victim in this case did testify.
2 However on her direct exam and on cross-
3 examination she denied several allegations
4 that she had previously made at her school in
5 those indictments.

6 I believe specifically the first
7 indictment, which covers the time periods
8 from 2009 to 2011 -- I apologize Your Honor.
9 I believe she was asked if anything happened
10 at the house, the two-story house on Address One
11 and she denied any conduct taking place
12 at that house. As to that charge, I mean, we
13 would move for a directed verdict. And as to
14 all charges left.

15 THE COURT: Okay. All right.
16 Solicitor?

17 SOLICITOR SUSTAKOVITCH: Your
18 Honor, I admit the witness had difficulty
19 testifying, but I do believe that all the
20 indictments should go back to the jury.

21 I certainly think defense counsel
22 can make arguments in closing about her
23 inconsistencies. But when she testified --
24 well, first of all, there's evidence in the
25 record from her forensics about each one of

1 those locations that sexual abuse happened;
2 very specifically at each one of those
3 locations.

4 She did testify as to the dis-
5 semination charge that goes to the weight of
6 the evidence.

7 Before they go back to deliberate,
8 defense counsel in argument will be correct
9 in bringing up where she was inconsistent
10 when she testified in court.

11 But I think as far as being any
12 evidence in the record as far as all the
13 elements of those offenses, I believe it's in
14 the record.

15 THE COURT: Now, you put into
16 evidence, Solicitor, I think some school
17 records which would indicate the dates of
18 where they lived. Was that the purpose for
19 that particular record, Exhibit 2?

20 SOLICITOR SUSTAKOVITCH: Yes,
21 sir. And that was by stipulation.

22 THE COURT: Right.

23 SOLICITOR SUSTAKOVITCH: It
24 basically was synching up with the forensic
25 interview and the mother's testimony of

1 trying to link up these different locations.
2 Time has not really been an issue in this
3 trial. We've already discussed that
4 pretrial, but that was the purpose of that
5 stipulated document was to try to help us
6 piece together where she went to
7 kindergarten, first, second, third, fourth
8 and fifth grade, up to when she disclosed on
9 January 14th, 2015. That documents shows the
10 date she entered a school, left a school.

11 And if you listen to the forensic
12 interview she'll talk about being at a
13 particular school, Sterling or Alexander when
14 certain abuse took place. So it just lays on
15 top the different time lines in the case for
16 us.

17 THE COURT: But the school record
18 does not indicate their address?

19 SOLICITOR SUSTAKOVITCH: No, sir.

20 THE COURT: It just indicates
21 school location and the day of enrollment
22 into each school?

23 SOLICITOR SUSTAKOVITCH: Yes,
24 sir.

25 THE COURT: Of course, certainly

1 I can consider not only her testimony but
2 also what was brought out in the forensic
3 interview. Her testimony, according to my
4 notes, she does not recall what happened or
5 didn't happen at Address One and at Address
6 Two. And then there are numerous
7 instances of some
8 sexual abuse but the time and the location is
9 never established in her testimony.

9 SOLICITOR SUSTAKOVITCH: Right.

10 THE COURT: What I'm going to have
11 to do is try to piece her testimony with the
12 -- what she said in her forensic interview to
13 see if each indictment gets supported by some
14 evidence. Because the three first-degree
15 indictments are time specific and address,
16 location specific.

17 So what I'm going to have to do is -
18 - and even if, say, one indictment may fail,
19 I'm not suggesting that the others would fail
20 too.

21 But I'm going to have to go through
22 with what she testified to and what she
23 stated on the forensic interview to see if
24 there's any evidence of first degree sexual
25 battery to support those indictments, as well

1 as the third degree and the lewd act.

2 So what I'm going to do is, I'm
3 going to deny your Motion, but certainly it
4 can be -- it could be resurrected at the end
5 of the case. And hopefully at that time I
6 can go through and feel comfortable whether
7 or not there is evidence to support each
8 indictment.

9 Let me throw this out. So, I'm
10 going to deny it at this time, but we can
11 certainly revisit it.

12 The statute, the current CSC with a
13 minor statute was, I think, the current one
14 was put into effect around 2012. And if you
15 have different dates for that, you need to
16 tell me that. That's just what we think. Is
17 there any -- without having the old CSC with
18 a minor statute in front of me, was there any
19 significant change or was the 2012 changes
20 dealing with the death penalty and life
21 imprisonment and all that bulk of
22 information, but the offense itself remained
23 the same. Is that ---

24 SOLICITOR SUSTAKOVITCH: Well,
25 Your Honor, CSC with a minor first did not

1 change in 2012. It was previous to that,
2 what it is here.

3 THE COURT: Okay.

4 SOLICITOR SUSTAKOVITCH: What I
5 believe Your Honor's referring to is CSC with
6 a minor third?

7 THE COURT: Right.

8 SOLICITOR SUSTAKOVITCH: It used
9 to be lewd act.

10 THE COURT: Same thing. And
11 basically is the same elements. I just
12 wanted to make sure that the first degree did
13 not change.

14 SOLICITOR SUSTAKOVITCH: No. The
15 CSC first has been the same. And then as
16 Your Honor points out, CSC third and lewd act
17 -- they're the same charges. Their elements
18 are different than CSC first, as Your Honor
19 knows.

20 THE COURT: Right.

21 SOLICITOR SUSTAKOVITCH: I put
22 the date in there as January 18th, 2012. From
23 a legal standpoint, that's when the
24 Legislature changed the name of it from lewd
25 act to CSC third.

1 THE COURT: Right. But it's
2 close, though. It's pretty close elements
3 between the old lewd act and the third
4 degree?

5 SOLICITOR SUSTAKOVITCH: Right..
6 They're almost the exact same thing.

7 THE COURT: I got it.

8 SOLICITOR SUSTAKOVITCH: Okay.
9 I might have misunderstood. Yes, sir.

10 THE COURT: But I was pretty much
11 just honing in on the first degree. I wanted
12 to make sure that -- I didn't think that
13 there had been any change, but wanted to make
14 sure. Because if there had been, then, of
15 course, that would affect my jury charge.

16 SOLICITOR SUSTAKOVITCH: Yes,
17 sir.

18 THE COURT: Okay. All right.
19 Very good.

20 SOLICITOR SUSTAKOVITCH: Your
21 Honor, one thing I would add as far as time
22 lines and it's the mother in this case.

23 Also, we asked questions related to
24 when they lived at different locations. And
25 that is part of what we were trying to

1 establish. I mean, defense counsel and I had
2 agreed that time was not going to be
3 something that we were terribly fighting over
4 here. This indictment in this case initially
5 covered a five-year time frame and we broke
6 it up into three, doing the best we could as
7 far as when they moved.

8 THE COURT: Right.

9 SOLICITOR SUSTAKOVITCH: But as I
10 was explaining to Your Honor, you know, we
11 don't -- they didn't know the exact date that
12 they moved from here to here to here.

13 What we need to be able to show is
14 that there was a period of time that's in the
15 record, either through the child, the mom,
16 the forensic interview or those school
17 records where each one of those locations
18 this defendant, the mom and the child all
19 lived. And I believe that should be in the
20 record.

21 THE COURT: Right. Well, I've
22 just got to make sure that we're clear on
23 that. So that's why I wanted the opportunity
24 to review my notes and to make sure.

25 Okay. Let me advise the Defendant

1 concerning his right to testify or not
2 testify.

3 Okay. Mr. Betancourt, if you'd
4 please stand, sir.

5 DEFENDANT: Yes, sir.

6 THE COURT: And Madam Clerk, would
7 you swear Mr. Betancourt in, please?

8 (DEFENDANT DULY SWORN)

9 THE COURT: Okay. Mr. Betancourt,
10 at this time I'm going to explain to you
11 certain of your rights. And if you do not
12 understand anything that I say, please let me
13 know that. If you want me to explain
14 anything in more detail, please let me know
15 that as well. Do you understand that, sir?

16 DEFENDANT: Yes, sir.

17 THE COURT: Okay. We've now
18 reached the stage of the trial where you may
19 present your defense. You have the right to
20 claim the protections given to you by the
21 Fifth Amendment to the Constitution of the
22 United States. And this amendment states in
23 part that no person shall be compelled in any
24 criminal case to be a witness against
25 himself. This means that you could not be

1 required to testify in this case.

2 You have the right to testify on
3 your own behalf. However, no one can make
4 you testify. This is a personal right. No
5 one can waive this right except you, sir.

6 If you decide to testify, you'll be
7 subject to the same rules that govern other
8 witnesses and you may be examined and cross-
9 examined on any relevant issue in this case.

10 In addition, if you have any
11 convictions involving dishonesty or false
12 statement or for crimes punishable by
13 imprisonment for more than one year, and this
14 Court determines that the probative value of
15 admitting this evidence outweighs its
16 prejudicial effect to you, the Solicitor
17 would be able to introduce your record to
18 attack your credibility.

19 If you decide to testify, this
20 decision on your part must be freely,
21 voluntarily, and intelligently made with
22 knowledge of the protections given to you by
23 the Fifth Amendment and the consequences of
24 your decision to testify.

25 If you decide not to testify, of

1 course, that decision must also be
2 voluntarily and freely and intelligently
3 made. I would instruct the jurors that they
4 could not give the fact that you did not
5 testify any consideration whatsoever. And
6 that there's to be absolutely no prejudice to
7 you because you elected not to testify.

8 It is left entirely up to you
9 whether or not you testify. You have the
10 right to discuss this with your attorneys,
11 your family, friends or anyone else, but the
12 final decision will be left up to you.

13 Do you understand what I've
14 explained to you, sir?

15 DEFENDANT: Yes, sir.

16 THE COURT: Do you have any
17 questions about what I've explained to you?

18 DEFENDANT: No, sir.

19 THE COURT: Okay. Have you had
20 ample opportunity to discuss this matter with
21 your attorneys and your friends and family
22 members?

23 DEFENDANT: What do you mean
24 discuss it?

25 THE COURT: Have you had enough

State of South Carolina v Gabriel Betancourt
Case No. 17-GS-23-1209 et al
Jury Trial of March 20-24, 2017
Testimony of Linda Hutton (recalled) - Redirect Examination

1 time to ---

2 DEFENDANT: Oh.

3 THE COURT: --- discuss this issue
4 about your testifying. Have you had enough
5 time to discuss this issue with your
6 attorneys and with your family members,
7 friends?

8 DEFENDANT: Yes, sir.

9 THE COURT: Have you made a
10 decision at this time whether or not you will
11 testify?

12 DEFENDANT: Yes, sir.

13 THE COURT: And what is that
14 decision?

15 DEFENDANT: I'll testify.

16 THE COURT: You will testify?

17 DEFENDANT: Yes, sir.

18 THE COURT: Is that decision to
19 testify made freely, voluntarily and
20 intelligently made?

21 DEFENDANT: Yes, sir.

22 THE COURT: Okay. Thank you very
23 much, sir.

24 DEFENDANT: (Seated).

25 THE COURT: Does anyone need a

1 short little break before we start into the
2 Defense case?

3 MR. SURRATT: Yes, Your Honor.

4 THE COURT: Okay.

5 MR. SURRATT: I'd like to speak with
6 my client briefly before he begins
7 testifying.

8 THE COURT: Okay.

9 MR. SURRATT: And I'd also -- I
10 don't want to be premature, but we may have a
11 scheduling issue. One of the witnesses we
12 intend to call -- we've already talked about
13 it, Dr. Price.

14 THE COURT: Right.

15 MR. SURRATT: I think that's going
16 to be a pretty long proffer of him.

17 THE COURT: Okay.

18 MR. SURRATT: And then some
19 argument and then his testimony. I think he
20 would likely be our last witness. If he's
21 possibly going to testify today, he's going
22 to go ahead and come up here and we're going
23 to pay him for all the time he is here. And
24 it may be we have to send him home and bring
25 him back in the morning.

1 THE COURT: Okay.

2 MR. SURRATT: Could we possibly
3 put him up in the morning and that'd be the
4 last witness. I need to go ahead and let my
5 witness ---

6 THE COURT: Okay. What is your
7 plan? I know we discussed this a little bit
8 yesterday in chambers. You plan to put up
9 anyone other than Dr. Price -- I think you
10 said you had a couple other witnesses?

11 MR. SURRATT: I think we might
12 recall Investigator Picone. Then we have a
13 character witness.

14 THE COURT: Okay.

15 MR. SURRATT: And then potentially
16 one other, Scott Meyers. So I think we're
17 going to go tomorrow more than likely or at
18 least ---

19 THE COURT: Okay. All right.
20 Solicitor?

21 SOLICITOR SUSTAKOVITCH: Your
22 Honor, I have no opinion on it. Whatever
23 Your Honor wants to do.

24 THE COURT: Okay. Well, you know,
25 it looks like to me we can at least fill up

1 an hour and a half maybe two hours, something
2 like that. So I don't have a problem with
3 you having Dr. Price up here first thing in
4 the morning. And don't have to pay him for
5 sitting in the courtroom and observing. I
6 understand. I understand how that works.

7 MR. Surratt: All right.

8 THE COURT: Okay. All right.

9 Well, let's take about a ten-minute break and
10 then we'll start with the Defense case.

11 (BRIEF RECESS)

12 (DEFENDANT PRESENT)

13 THE COURT: All Right. Defense
14 ready?

15 MR. Surratt: We are, Your Honor.

16 THE COURT: Okay. All right.
17 Let's bring the jury out, please?

18 (JURY IN @ 2:50 P.M.)

19 THE COURT: All right. Let the
20 record reflect the jury's back in the
21 courtroom.

22 Is the Defense ready to proceed, Mr.
23 Sarratt?

24 MR. Surratt: We are, Your Honor.

25 THE COURT: Okay. Very good.

409

1 MR. SURRATT: The Defense calls
2 Gabriel Betancourt.

3 (WITNESS TAKES STAND)

4 GABRIEL BETANCOURT, having been duly
5 sworn to tell the truth, and nothing but the
6 truth, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SARRATT:

9 Q. How are you? All right. I'm going
10 to stand back here, if that's all right.

11 Will you please tell me -- can you hear me?

12 A. Yes, I can hear you.

13 Q. Okay. So, all right. Gabriel, tell
14 the jury, how old are you?

15 A. I'm thirty-five.

16 Q. And where were you born?

17 A. In Texas. Houston, Texas.

18 Q. Tell me, how far did you go in
19 school?

20 A. I got to ninth grade, half a year in
21 ninth grade and then I dropped out of that
22 and got me a full-time job and started
23 working after ninth grade.

24 Q. What kind of job did you get?

25 A. I worked at a store bagging food and

410

1 stuff like that, right here in Greenville.

2 And then I moved from that to a Hardees,

3 working at Hardees.

4 Q. Well, now, let's back up a second.

5 How did you make your way from Texas to

6 Greenville?

7 A. We moved from Texas when I was

8 young, about six or seven years; I believe

9 we moved to Atlanta.

10 And after living in Atlanta for a couple

11 of years, a few years, my parents, my mom and

12 dad started a church ministry right here in

13 Greenville. We started a church ministry

14 with another pastor, another family. So from

15 Atlanta we moved to Greenville and started

16 that church ministry there, right here in

17 Greenville.

18 Q. What year did you move to

19 Greenville?

20 A. I couldn't hear you. Sorry?

21 Q. What year did you move to

22 Greenville?

23 A. That was '96.

24 Q. Okay. And you've been here ever

25 since?

1 A. Yes.

2 Q. So aside from helping out with your
3 church ministry, what other employment have
4 you had in Greenville?

5 A. I've had -- painting. I started
6 painting and stuff like that. Painting
7 different houses, restaurants, stuff like
8 that with my father. And I went from that to
9 working in construction, you know, to
10 different jobs. And then, you know, try to
11 find just a job that would suit me the best.

12 Q. Outside of work, what kind of
13 activities? Did you have any hobbies?

14 A. Yes. I started volunteer fire-
15 fighting in Laurens County. And I did that
16 for about two years, two and a half years.
17 Got my first responders certification. Got
18 my basic interior firefighting
19 certifications, four certificates. And I was
20 in the process of getting my firefighter one.
21 And I forgot the name of the - auto
22 extractions and stuff like that. I was in
23 the process of starting my classes when we
24 moved from Laurens County from that fire
25 department to Greenville because it was too

412

1 far of a distance so I couldn't -- I couldn't
2 really couldn't travel that far anymore, so I
3 had to do it in -- we started attending
4 Belmont, the Belmont Fire Department in
5 Clemson.

6 Q. Okay. So when did you meet Minora?

7 A. I met her, I believe, if I'm not
8 mistaken it was in 2007.

9 Q. How did you meet?

10 A. I'm sorry. It was like, the year
11 was in 2006. 2006. I'm sorry.

12 Q. That's all right. So how did you
13 two meet?

14 A. We met at a nightclub. She was a
15 dancer, an exotic dancer in a nightclub.

16 Q. Okay. Well, tell us about your
17 relationship?

18 A. Well, the first two years were, you
19 know, decent. Just normal, you know, getting
20 to know each other and all. And then after
21 that we just sort of ---

22 Q. I'm sorry. Hang on. Let me stop
23 you right there. Where were you living or
24 where was she living?

25 A. Well, at the time that I met her,

1 she was living with her mother and her
2 husband.

3 Q. Okay. And did y'all eventually move
4 in together?

5 A. Yeah. She moved into -- if I'm not
6 mistaken, it's Grove Road. That's where I
7 was living at, roommates with my sister and
8 me and her lived in the same place. And she
9 moved in. She moved in at that time, five or
10 six months after we met.

11 Q. All right. Now, was Minor living
12 with you at that time?

13 A. Yes, sir.

14 Q. Okay. Tell me about -- well, you
15 moved several times; correct?

16 A. Yes.

17 Q. Tell me about how your relationship
18 progressed. You don't have to go through the
19 years, but as you moved, how did the
20 relationship go?

21 A. It just started getting rough.
22 After a while it started, you know, we just
23 -- we weren't compatible. We were just two
24 different type of personalities, two
25 different people. So, you know, my way of

414

1 living and her way of living were really,
2 really different, you know.

3 Q. Now, when you say rough, you talking
4 about fighting with each other?

5 A. No, not physical altercations, just
6 arguments. By arguments I mean, there was
7 one time where it got physical where she did
8 hit me. She slapped me in the face. That
9 was over an argument we had. But other than
10 that it was just -- there was just -- there
11 was just arguments all the time, disagree-
12 ments about the condition of the house and
13 different stuff.

14 Q. Okay. Now you've been here
15 throughout the trial obviously?

16 A. Yes, sir.

17 Q. You've heard all the testimony?

18 A. Yes, sir.

19 Q. I want to ask you just a couple of
20 things. What, if anything, can you tell me
21 about the pornographic videos that we've seen
22 this week?

23 A. Well, she knew that I had them. She
24 knew I had them. We'd watched them together
25 before. At the time the movies -- at the

1 time of the purchase, I mean she was with me.

2 Q. So you bought them together?

3 A. Yes, we bought them together and
4 that wasn't the first time that we had bought
5 stuff together.

6 Q. Okay. And I believe she also
7 mentioned something about you watching
8 pornography on your phone. Can you tell me
9 anything about that?

10 A. Yes. I never did. I never had a
11 phone that I could download stuff like that
12 with. I had a flip phone, which was my
13 company phone.

14 I had another phone but that wasn't pre-
15 activated. That was just, you know, for
16 music use and stuff like that at work.

17 But other than that, the flip phone that
18 I had was a company phone. It was a flip
19 phone that the company used, company use
20 only.

21 Q. All right. So you've been here.
22 Again, you've heard the allegations that are
23 made ---s

24 A. Yes.

25 Q. When you found out what Minor had

416

1 said at school, what did you do? Tell me
2 about that? How did you ---

3 A. I was at work. We were doing some
4 excavating, water line and stuff like that.
5 And I was on the machine when I got the phone
6 call from Detective Picone. And he called me
7 and told me that he was at the school. That,
8 you know, some allegations had come up,
9 something happened. And, you know, that I
10 couldn't -- I couldn't be around the kids,
11 you know, or anything else. You know, he
12 just went on explaining, you know, there was
13 a situation. And so I told him 'alright'
14 that that's - you know, he had my number
15 already. So if anything else that he needed,
16 I was, you know, willing to cooperate with
17 whatever; you know, anything that he needed
18 from me.

19 I was at work at that time. I
20 didn't get off work until about 6:00, 7:00
21 maybe. And pretty much he just let me know
22 that I couldn't, you know, be around them
23 because the law said. So just -- it was a
24 quick, short conversation.

25 Q. And how did that make you feel,

1 knowing what Minor said?

2 A. It hurt. It hurt.

3 Q. Tell me about what happened the day
4 that she did say what she said? You know,
5 there's been testimony that you were back at
6 the house. You want to tell us about that?

7 A. Yes. I got a -- when I was getting
8 off work, I got a text from Minora on my
9 phone, on the company phone. It said to come
10 around -- come to the house about 7:30, 7:00
11 or 7:30 and pick up some clothes.

12 I was still at work, so I went to work --
13 went to the office and dropped off my company
14 truck that I was driving and picked up my car
15 and went back to the house, picked up my
16 clothes, picked up, you know, my stuff and,
17 just the little bit of stuff I had and headed
18 out the door.

19 Q. Okay. Now, did you talk to Minora?

20 A. Yes.

21 Q. Obviously, I assume that she wanted
22 to talk to you about the allegations; right?

23 A. Yes.

24 Q. Okay. How was your demeanor when
25 you confronted you with this?

1 A. No -- I was crying.

2 Q. You?

3 A. I was crying.

4 Q. And why are you crying?

5 A. I was crying because I was hurt,
6 like I've already said. I was confused. I
7 didn't know, you know, what was going on,
8 like I just said. So the whole way home I
9 was crying. I picked up my stuff. I went
10 in, you know, had walked into the room to see
11 if there was anything else I needed to get.
12 And, you know, she's -- you know, we kept
13 talking and stuff like that. She'd go, you
14 know, she asked me 'did you do it?' And how
15 can I say yes to something I didn't do.

16 Q. So did you confess to anyone?

17 A. No, sir, I did not.

18 Q. Did you tell her that you had done
19 these things?

20 A. No, sir. I couldn't tell her that
21 if I didn't do it, you know.

22 Q. Now, you've heard obviously not only
23 from Minora, but you've heard the testimony
24 of Minor. Did you do any of the things? Did
25 you rape Minor?

1 A. No, sir. I didn't.

2 Q. Did you do any of the things that
3 Minor said that you did on the witness stand?

4 A. No, sir, I didn't.

5 Q. Did you do any of the things that
6 Minor said that you did on that video?

7 A. No, sir, I didn't.

8 MR. SURRATT: Beg the Court's
9 indulgence.

10 THE COURT: Sure. Take your time.

11 MR. SURRATT: No further questions,
12 Your Honor.

13 THE COURT: Okay. Cross-
14 examination, Solicitor?

15 SOLICITOR SUSTAKOVITCH: Yes,
16 sir. May we briefly approach on one matter?

17 THE COURT: Sure.

18 (OFF RECORD BENCH CONFERENCE)

19 SOLICITOR SUSTAKOVITCH: Thank
20 you, Judge.

21 CROSS EXAMINATION

22 BY SOLICITOR SUSTAKOVITCH:

23 Q. Good afternoon, Mr. Betancourt.

24 A. Good afternoon.

25 Q. I want to go back to when you met

420

1 Minora?

2 A. Yes, ma'am.

3 Q. You stated that she was an exotic
4 dancer and you met her at a -- where did you
5 say?

6 A. At a nightclub.

7 Q. Okay. What was the name of it?

8 A. Paradise.

9 Q. And was that basically a strip club?

10 A. Yes.

11 Q. So she was a stripper in a strip
12 club and you met her there; is that correct?

13 A. Yes.

14 Q. All right. When you met her that
15 night, did you guys immediately start dating
16 or how did that work out?

17 A. No. We started talking. We were
18 friends for a couple of weeks.

19 Q. Okay. And then you started dating?

20 A. Yes. After a couple of weeks, after
21 -- I'm not sure of the exact time. But,
22 yes, it was a short time after that.

23 Q. I want to just go back to - you guys
24 have moved a lot once you moved in together;
25 correct?

1 A. Yes.

2 Q. And I think you stated first that
3 you moved in you living on Grove Road, is
4 that ---

5 A. Yes.

6 Q. And then Minora moved in with you?

7 A. Yes.

8 Q. All right. I want to go to --
9 remember when Minora went to jail?

10 A. Yes.

11 Q. And that was the fall of 2009, would
12 that be correct?

13 A. 2009 would be correct, I believe.

14 Q. Okay. And you were living at
15 Address Four when Minora went to jail?

16 A. Yes.

17 Q. Now, when Minora went to jail you
18 just testified that things got rocky in the
19 relationship and one time she smacked you in
20 the face. Was that related to that incident
21 when she struck you?

22 A. No.

23 Q. Okay.

24 A. This was more recently when we had
25 first got together.

422

1 Q. Okay. So it wasn't related to you
2 being with another woman that she went to
3 jail?

4 A. No. Oh, I'm sorry. I'm sorry. I
5 misunderstood your question.

6 Q. When Minora went to jail was it over
7 another woman ---

8 A. Yes.

9 Q. --- she was mad about?

10 A. Yes.

11 Q. Yes. And so she found out you were
12 in a car with another woman and that's where
13 that whole incident occurred; right?

14 A. Yes.

15 Q. So she goes to jail for eighteen
16 days ---

17 A. Yes.

18 Q. --- in the Fall of 2009?

19 A. Yes.

20 Q. And at that point you were living at
21 Address Four; correct?

22 A. When she went to ---

23 Q. When she went to jail?

24 A. When she went to jail, yes. It was
25 Address Four.

1 Q. All right. And then when Minora
2 went to jail, what did you think? I mean,
3 you had to be responsible for the kids and
4 that's a lot to handle.

5 A. Yeah. I mean, I was devastated. I
6 really was hurt and devastated and somewhat
7 depressed.

8 Q. And that was probably a lot on you
9 to have to watch a bunch of kids by yourself;
10 right?

11 A. Not necessarily. I had a brother
12 and his girlfriend -- Minora's brother and
13 his girlfriend were staying with us for a few
14 days through all that time.

15 Q. Did they help you those few days?

16 A. And, yes, they were helping. And a
17 friend of mine, also was going to the house.
18 They -- sometimes there'd be other people
19 helping us, you know, helping clean the house
20 or cook or doing stuff like that. So there
21 were plenty of us to look after the kids.

22 Q. But generally, when she was in jail,
23 though, you were in charge, the man on deck;
24 correct?

25 A. Uh-huh. Pretty much, (affirmative

424

1 nod).

2 Q. Okay. Can I show you what's been
3 entered as State's Exhibit 4. You recognize
4 that?

5 A. Yes.

6 Q. So after Minora went to jail, she
7 gets out. You guys get back together;
8 correct?

9 A. Correct.

10 Q. And then this would have been -- you
11 correct me if I'm wrong here. About November
12 2009 she gets out of jail around there?

13 A. Around that time. I believe so.

14 Q. And is it true that you guys moved
15 here to Address One; is that right?

16 A. That's correct.

17 Q. Number Address One; right?

18 A. Address One; that's correct.

19 Q. Let me ask you this. So, in this
20 house, where was your bedroom, was it on this
21 floor?

22 A. Yes, it was on the first floor.

23 Q. Using my pen to show where it was,
24 was right here or is it over here?

25 A. It was on the right side of the

1 house.

2 Q. This side? So your bedroom's back
3 here?

4 A. Yes.

5 Q. And then Minor's room -- I think
6 Minora testified the kinds kind of slept in
7 two locations? Is that accurate? Like
8 depending on the weather?

9 A. Yes.

10 Q. Something about heat?

11 A. Yes.

12 Q. Tell me about that?

13 A. Well, the house didn't have much
14 heat so we were working on trying to get the
15 heat working in the house and everything so
16 we had just regular heaters, regular plug-in
17 heaters.

18 Q. Gotcha. And so when there was heat,
19 though, Minor's room was upstairs; correct?

20 A. Whose?

21 Q. Minor's.

22 A. Minor's? Yes.

23 Q. Okay. So ---

24 A. Can you point back to where you ---

25 Q. Right here?

1 A. No. That's incorrect. That was
2 Brandon's room. And Minor's room was there.

3 Q. Okay. But you guys lived here from,
4 I guess, November 2009.

5 A. Uh-huh.

6 Q. And you stayed there for some time.
7 Minor was in first grade at that point?

8 A. I don't really don't recall the
9 grade or things.

10 Q. Well, you guys -- let me move past
11 this. So you guys moved and you moved to a
12 different location. Do you recognize State's
13 Exhibit 5?

14 A. Yes, ma'am.

15 Q. And what is that?

16 A. Yes, we lived there.

17 Q. Would that be Address Two?

18 A. Address Two. Yes.

19 Q. Okay. And I'm going to show you a
20 closer picture. Is that the trailer you guys
21 lived in?

22 A. Yes, ma'am.

23 Q. All right. And then you guys moved
24 again; right?

25 A. Yes, ma'am.

1 Q. Do you know roughly about what time
2 you lived here at Address Two?

3 A. (No verbal response).

4 Q. Would it have been 2011, '12,
5 somewhere around in there?

6 A. I don't remember the year.
7 Honestly, I don't remember.

8 Q. That's fine. It's hard with that.
9 But ultimately you ended up moving to -- let
10 me show you this. Do you recognize this?

11 A. Yes.

12 Q. What is that?

13 A. That is Address Three.

14 Q. And that's the last location you
15 lived together; correct? When these
16 allegations came out?

17 A. Correct.

18 Q. And whose trailer was this, Mr.
19 Betancourt?

20 A. My mom owns that trailer.

21 Q. Your mom owns that trailer?

22 A. (Affirmative nod).

23 Q. So when you and Minora moved into
24 it, your mom lived right around in here
25 somewhere, up here?

1 A. Next door.

2 Q. Next door is over here or over here?

3 A. (No verbal response).

4 Q. You said next door?

5 A. Yeah. I'm trying to see if that's
6 -- if that's the front door, then she lives
7 on the left side.

8 Q. Just across there. Okay.

9 A. Yes.

10 Q. And then -- so I see it's painted
11 that color over there. You guys ended up
12 painting it this Smurf blue color? Did you
13 paint that or who painted that?

14 A. We painted that.

15 Q. Okay. And you guys moved there some
16 time in 2012 until the disclosure? Would
17 that be it?

18 A. 2012 -

19 Q. -- '13 somewhere ---

20 A. -- '13, somewhere along there.

21 Q. And you lived in this up until the
22 point that Minor came forward and said that
23 you sexually abused her; correct?

24 A. Correct.

25 Q. Okay. I just wanted to get that

1 straight in my mind. As far as the
2 pornography, Mr. Betancourt, it was in --
3 where did you keep it?

4 A. Usually, I hid it, I hid it in my
5 drawers. I mean, I wouldn't keep up with it
6 because usually, I was at work. So, you
7 know, but the last time that I've had it, it
8 was in my drawer.

9 Q. And you like to keep your Social
10 Security Card in the cover? Why did you do
11 that?

12 A. No. My Social Security Card was
13 always in a folder with the titles of my two
14 vehicles.

15 Q. Okay. So you're saying you didn't
16 put your Social Security card in the cover?

17 A. That's correct. I didn't put it
18 there.

19 Q. Okay. Let's go back to a couple of
20 things about the locations that you guys
21 lived.

22 At Address One, and we just looked at
23 that photograph, when Minora worked at the
24 Hyatt -- do you remember when she worked at
25 the Hyatt?

State of South Carolina v Gabriel Betancourt
Case No. 17-GS-23-1209 et al
Jury Trial of March 20-24, 2017
Testimony of Defendant Betancourt - Cross Examination

479

430

1 A. Yes, ma'am.

2 Q. What did she do at the Hyatt?

3 A. She was -- from what she told me
4 they were doing just -- I don't know the
5 name, the description of the job, but it was
6 like waitressing, I guess.

7 Q. She was waitressing?

8 A. Or something with parties. Doing
9 parties, weddings and parties and stuff.

10 Q. And this is -- I'm going back down
11 to Address One when you lived here. We
12 talked about when Minora was in jail. She
13 worked at the Hyatt when you guys lived here;
14 correct?

15 A. Yes. That's correct.

16 Q. And how did you feel about watching
17 the kids when she went to work at the Hyatt?
18 Was that difficult or no?

19 A. What do you mean by difficult?

20 Q. Did you mind watching the kids while
21 she worked at night?

22 A. No, I didn't because I wouldn't have
23 watched them alone. Shawn would have helped
24 me watch them, because he lived at that
25 address also. Had his own room.

1 Q. So you didn't mind taking care of
2 Minora -- or Minor, rather, -- and that was
3 something you didn't mind doing?

4 A. No, I didn't mind taking care of the
5 kids.

6 Q. I want to go to a couple more
7 things. Let's talk about -- looking at this,
8 this is State's Exhibit 20. Tell me about
9 when Minora -- this was her dress,
10 originally; right?

11 A. I believe so. But that dress, I
12 don't recall it being at the house, at my
13 house.

14 Q. So you don't recall Minora not being
15 able to wear it?

16 A. I don't recall us having that dress.

17 Q. You don't?

18 A. That's correct.

19 Q. Okay.

20 A. That dress is not familiar to me.

21 Q. So you think -- this dress, you're
22 aware that it was found in Minor's room?

23 A. The dress that you're saying they
24 found in Minor's room but ---

25 Q. Uh-huh.

1 A. --- I have never seen it in the
2 house.

3 Q. Okay. So you didn't buy it after
4 Halloween?

5 A. No.

6 Q. Okay. I'm looking at State's
7 Exhibit 14. Do you recognize this?

8 A. Yes.

9 Q. This is 180 -- oh, I'm sorry. What
10 address is that?

11 A. That is Address Three ---

12 Q. Address Three?

13 A. Address Three.

14 Q. And you guys had -- whose room is
15 back here?

16 A. That's our bedroom.

17 Q. All right. And then looking here,
18 this is through the empty keyhole, or where
19 the door knob would be; right?

20 A. Yes, ma'am. That's correct.

21 Q. And the bed's back here?

22 A. Yes, ma'am. In the center of the
23 room.

24 Q. And you guys -- this was just open;
25 correct?

1 A. Yes.

2 Q. All right. I want to go back to
3 when -- well, a few more things. You said
4 you lived across from your mom at Address
5 Three?

6 A. That's correct.

7 Q. You would go out and hang out with
8 your mom and sisters sometimes; right?

9 A. Yes.

10 Q. And you would drink a beer or two
11 sometimes; right?

12 A. Sometimes, depending on the
13 occasion, yes.

14 Q. You like vodka sometimes?

15 A. No.

16 Q. No, no. Never liked vodka?

17 A. No.

18 Q. All right. But you like beer?

19 A. I drank beer, (affirmative nod).

20 Q. Okay. I want to move to the date
21 that Minor said that you sexually assaulted
22 her over the span of five years. Do you
23 remember January 14th, 2015?

24 A. January 14th, I remember.

25 Q. When Investigator Picone called you?

1 A. I remember.

2 Q. And do you remember you said you
3 came back to the house that night to get your
4 stuff?

5 A. Uh-huh, (affirmative nod).

6 Q. And do you remember coming in and
7 Minora confronting you and asking you why you
8 did it?

9 A. I remember that.

10 Q. You remember her being so mad she
11 wanted to kill you?

12 A. I remember she was mad.

13 Q. She was mad at you?

14 A. Yeah.

15 Q. And you didn't understand why;
16 right?

17 A. I just understood what was said by a
18 detective ---

19 Q. But she did say, "I want to kill
20 you" or something along those lines because
21 she believed that you had abused Minor;
22 right?

23 A. She didn't tell me that at the time.
24 She was -- I mean, she was just asking why.

25 Q. She asked you why you did it.

1 A. She asked me, 'Why you did it? Did
2 you do it? Why did you do it?'

3 Q. Okay. And isn't it a fact that you
4 started crying, Mr. Betancourt ---

5 A. I was already crying.

6 Q. Okay. And isn't it a fact that you
7 told her you did not know what you did it?

8 A. That is not a fact. I didn't ---

9 Q. All right.

10 SOLICITOR SUSTAKOVITCH: I have
11 no further questions, Judge.

12 THE COURT: Okay. Redirect?

13 MR. SURRATT: None, Your Honor.

14 THE COURT: You can step down,
15 sir?

16 WITNESS: Thank you.

17 (WITNESS STEPS DOWN)

18 THE COURT: Defense may call its
19 next witness?

20 MR. SURRATT: The Defense recalls
21 Investigator Picone.

22 (WITNESS TAKES STAND)

23 DAVID PICONE, having been sworn to tell
24 the truth, and nothing but the truth,
25 testified as follows:

436

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DIRECT EXAMINATION

BY MR. SARRATT:

Q. I just wanted to ask you a couple more questions, Investigator.

A. All right.

Q. You were watching the interview at the Julie Valentine Center with Minor, on the closed circuit monitor, that took place on February 3rd, 2015?

A. Yes, sir.

Q. That same day, you went to the house after the interview and collected the items that have previously been talked about: the red dress, the videos, ---

A. That's right.

Q. And after collecting those items is when you secured the arrest warrant?

A. It was fairly close to that time. It may not have been the same day but fairly close in time.

Q. In addition to the arrest warrant, you also got a search warrant?

A. Yes, sir.

Q. And a warrant for the DNA?

A. Yes, sir.

1 Q. Once you had him in custody is when
2 you have him the search warrant, is that
3 correct?

4 A. The search warrant?

5 Q. I'm showing you the search warrant
6 which has been marked for identification as
7 Defendant's Exhibit 1.

8 A. Okay.

9 Q That was the search warrant for the
10 DNA from the defendant?

11 A. It's the search warrant.

12 Q. As the testimony here has developed
13 you've heard that it was just touching,
14 right?

15 A. Yes.

16 Q. But during the interview at the
17 Julie Valentine Center she alleged it was
18 much more than just touching?

19 A. That's correct.

20 Q. She alleged that she was slapped or
21 backhanded, knocked unconscious, was hit so
22 hard that her tooth fell out?

23 A. Yes.

24 Q. Did you conduct any follow-up that
25 would have substantiated her claims of being

1 backhanded ---

2 A. No, because during the interview she
3 doesn't have any marks that were present or
4 visible on her face or body, and nothing was
5 reported to anyone that I could have asked
6 about it.

7 Q. You also heard that she claims that
8 a tooth was knocked out? Did you obtain
9 anything to prove or disprove that
10 allegation?

11 A. I don't know that she went to a
12 dentist, but I didn't have any way to
13 substantiate that.

14 Q. And finally you heard that there is
15 a lot of testimony from the medical doctor, a
16 lot of stuff that got injected into this
17 narrative that Minor may have schizophrenia
18 or ---

19 A. From statements that were made,
20 (affirmative nod).

21 SOLICITOR SUSTAKOVITCH: I object
22 here, Your Honor. There were statements by
23 the mother that she did have schizophrenia
24 but there was no ---

25 THE COURT: The mother stated that she,

1 herself, had schizophrenia, so I will
2 overrule the objection at this time.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. SARRATT:

5 Q. Did you ever do anything to subpoena
6 or obtain a court Order to obtain those
7 mental health records of Minor?

8 A. No.

9 MR. SARRATT: That's all, Your
10 Honor.

11 THE COURT: Cross-examination?

12 SOLICITOR SUSTAKOVITCH: Nothing,
13 Your Honor.

14 THE COURT: You may step down.

15 (WITNESS STEPS DOWN)

16 THE COURT: Ladies and gentlemen,
17 as I understand it, there might be one more
18 witness today for the Defense, maybe not.
19 There's definitely going to be, I think, for
20 one in the morning. At least that's what
21 been told to me. Things can always change.
22 So we're not ready to adjourn. We might
23 adjourn early today. We're not ready to do
24 that but I need for you to go back to the
25 jury room. I told Mr. Sarratt that I would

State of South Carolina v Gabriel Betancourt
Case No. 17-GS-23-1209 et al
Jury Trial of March 20-24, 2017
Testimony of David Picone (recalled) - Direct Examination

489

440

1 give him a few minutes to see if he could
2 locate the potential next witness. So if
3 you'd go back to the jury room. And
4 hopefully we won't be too long, okay?

5 (JURY OUT @ 3:20 P.M.)

6 THE COURT: Okay. We'll be at-
7 ease for a few minutes.

8 MR. SURRATT: Thank you, Your Honor.

9 (BRIEF RECESS)

10 (DEFENDANT PRESENT)

11 MR. SARRATT: Your Honor, if we
12 could start in the morning, our witnesses
13 will be ready.

14 THE COURT: Okay. Bring the jury
15 in and we'll recess for the evening.

16 (JURY IN @ 3:45 P.M.)

17 THE COURT: Let the record reflect
18 that the jury is back in the courtroom.

19 Ladies and gentlemen, for scheduling,
20 we are going to adjourn early today and start
21 back at 9:30 in the morning.

22 We anticipate that if all goes as
23 planned that we will get this case to you for
24 your deliberation by tomorrow afternoon.

25 So have a good evening and we will see

1 you at 9:30 in the morning. Remember, there is
2 to be no discussion about the case, no research.
3 See you in the morning at 9:30. Have a good
4 evening.

5 (JURY OUT @ 3:50 P.M.)

6 THE COURT: Anything from the State
7 before we recess?

8 SOLICITOR SUSTAKOVITCH: No, Your Honor.

9 THE COURT: From the defense?

10 MR. SARRATT: No, sir. Thank you, Your
11 Honor.

12 THE COURT: See you in the morning at
13 9:30.

14 (COURT IN RECESS)

15 (TRANSCRIPT CONTINUED NEXT PAGE)

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State of South Carolina v Gabriel Betancourt
Case No. 17-GS-23-1209 et al
Jury Trial of March 20-24, 2017
Testimony of David Picone (recalled) - Direct Examination

491

442

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2 MARCH 23, 2017

9:30 a.m.

3
4 (DEFENDANT PRESENT)

5 THE COURT: Let the record reflect that
6 that the jury is back in the courtroom. Good
7 morning, ladies and gentlemen. We've got, as
8 we have had throughout this case, some legal
9 issues that I am going to have to deal with
10 outside your presence. I anticipate that we
11 are going to be involved in that for the next
12 forty-five minutes.

13 I did not want you sitting back in the
14 jury room wondering what was going on. So I
15 wanted to take this opportunity to bring you
16 out and explain to you that we are going to
17 be working on several issues for approximate-
18 ly forty-five minutes, maybe even an hour.

19 With that explanation, I appreciate your
20 continuing patience with us. This is all
21 necessary things that we have to do outside
22 your presence.

23 So if you'll go back to the jury room, we
24 will do our very best to get you back out as
25 soon as possible. Thank you.

1 (JURY OUT @ 9:50 A.M.)

2 (DEFENDANT PRESENT)

3 THE COURT: Mr. Goldstein, I think you
4 wanted to call Dr. David Price.

5 MR. GOLDSTEIN: Yes, Your Honor.

6 THE COURT: We are going to take his
7 testimony in-camera and then determine what,
8 if any, objections that the State may have
9 concerning Dr. Price. You may proceed.

10 MR. GOLDSTEIN: Thank you, Your Honor.
11 The Defense calls Dr. Price to the stand.

12 (WITNESS TAKES STAND)

13 PROFFER OF TESTIMONY

14 (outside presence of the jury)

15 DAVID RICHARD PRICE, having been to tell
16 the truth, and nothing but the truth,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. GOLDSTEIN:

20 Q. Good morning, Dr. Price.

21 A. Good morning.

22 Q. Let's begin today by learning about
23 the education and the training that you
24 received to become a psychologist. Where did
25 you attend college?

444

1 A. I received my bachelor's degree from
2 Clemson University. I received my masters
3 and doctorate degree in clinical psychology
4 from Auburn University.

5 Q. Dr. Price, after graduation did you
6 have to take a national board examination?

7 A. I had to take an examination in
8 order to be licensed in the state of South
9 Carolina.

10 Q. All right. Did you take that test,
11 sir?

12 A. I have, (affirmative nod).

13 Q. So you are currently licensed to
14 practice in South Carolina?

15 A. I've been licensed to practice in
16 South Carolina since 1982.

17 Q. Are you licensed in a specific area
18 or specialty of psychology?

19 A. When I was initially licensed, I was
20 licensed in clinical psychology because the
21 State at that time had a specialty license.
22 Since that time the State has moved to a
23 general license, so you -- so I am a licensed
24 psychologist. I was originally a licensed
25 clinical psychologist and now I am a licensed

1 psychologist.

2 Q. Dr. Price, what are the continuing
3 education requirements in your field?

4 A. We are required to get twenty-four
5 hours of continuing education credits every
6 two years.

7 Q. Have you satisfied those require-
8 ments, Dr. Price?

9 A. I have.

10 Q. Dr. Price, where do you currently
11 work?

12 A. I currently work here in Greenville.
13 I have a practice called Forensic Network and
14 then a private practice.

15 Q. How long have you been in those
16 positions?

17 A. Since 1990.

18 Q. Can you please describe the type of
19 work that you do at those positions?

20 A. I have essentially a forensic
21 practice where I evaluate children, adults
22 and adolescents for various reasons ranging
23 from disability, fitness for duty, criminal
24 proceedings, personal injury, things of that
25 nature.

446

1 Q. What other clinical positions have
2 held in the past?

3 A. Well, I was a principal in
4 Behavioral Resources, which was at that time
5 one of the largest clinical consulting
6 practices in South Carolina, in the '80s.

7 Prior to that I was at the Admissions
8 unit at the South Carolina state hospital.

9 I did my internship at the Western
10 Psychiatric Institute clinic at the VA
11 hospital in Pittsburg, Pennsylvania.

12 I was the administrator for psychological
13 services at the Lee County Head Start.

14 Also was a neuropsychologist at the
15 Tuskegee VA.

16 Q. Dr. Price, have you held any
17 academic positions in the past?

18 A. I have. I've had a number of
19 academic positions, (affirmative nod).

20 I taught at Auburn University while I was
21 there.

22 I've taught continuing education courses
23 for Limestone College.

24 I've taught at USC Upstate, which at that
25 time was USC-Spartanburg.

1 I established the forensic psychiatry
2 program for the Medical University of South
3 Carolina.

4 Q. Have you ever published any articles
5 in the area of Psychology?

6 A. I've published a number of articles
7 and have made a number of professional
8 presentations, (affirmative nod).

9 Q. Approximately how many articles have
10 you published?

11 A. I, uh, it's over twenty. I can't
12 remember the exact number. I've had over
13 twenty articles and over two hundred
14 professional presentations.

15 Q. In those articles that you have
16 published, what topics have you written
17 about?

18 A. Conceptualizing psychological injury
19 claims; post-trauma stress disorder; uh,
20 false claims of sexual abuse against clergy;
21 brain injury; malingering. Things of that
22 nature.

23 Q. Okay, Doctor, let's turn to your
24 actual experience treating patients. How
25 many years have you been practicing

1 psychology again?

2 A. I have been licensed since 1982.
3 Prior to that, on the internship I performed
4 a couple of thousand hours of supervised
5 experience and then while at Auburn I had in
6 excess of four thousand hours of supervised
7 experience treating patients.

8 Q. During that time, about how many
9 patients have you treated?

10 A. (Chuckles).

11 Q. Is it over ---

12 A. Thousands.

13 Q. Okay. Have you treated child
14 patients before?

15 A. I have.

16 Q. Have you treated children with
17 behavioral disorders before?

18 A. I have.

19 Q. Have you treated children with
20 oppositional defiance disorder before?

21 A. I have. Two of the most common --
22 well, three of the most common children
23 psychological disorders that you find in
24 treating are attention deficit/hyper-
25 activity, oppositional defiance disorder and

1 conduct disorder.

2 Q. Doctor, are behavioral disorders a
3 subject that you learn about in your training
4 to become a psychologist?

5 A. Yes, and I had particular focus
6 training when I was directing psychological
7 services for the two years at Head Start.

8 Q. Dr. Price, have you testified before
9 as an expert witness in criminal cases?

10 A. I have.

11 Q. Approximately how many times?

12 A. I've probably testified a dozen
13 times a year. Since 1982, that would be a
14 number of times.

15 Q. Dr. Price, do you always testify for
16 the defense?

17 A. No.

18 Q. Are you being compensated to appear
19 as a witness here today?

20 A. I am.

21 Q. Does the fact that you are being
22 paid to testify in any way affect your
23 opinion?

24 A. No, it does not.

25 MR. GOLDSTEIN: Your Honor, at this

1 time we'd offer Dr. Price as an expert in
2 Psychology, particularly as an expert in
3 behavioral disorders such as oppositional
4 defiance disorder. That's what we would
5 proffer.

6 THE COURT: I will find him to be an
7 expert for the purposes of this in-camera
8 proceeding. But does the State -- do you
9 intend to ask him any questions concerning
10 qualifications?

11 SOLICITOR SUSTAKOVITCH: Just a few
12 follow-ups on ODD.

13 THE COURT: Okay. Well, I will just
14 wait until -- if there is any issue with
15 direct examination, then -- I was just
16 wondering if there was going to be ---

17 SOLICITOR SUSTAKOVITCH: Not much,
18 Your Honor.

19 THE COURT: All right.

20 SOLICITOR SUSTAKOVITCH: I'm sorry,
21 what was the -- how was that phrased? An
22 expert in psychology and ---

23 THE COURT: Behavioral disorders.

24 MR. GOLDSTEIN: Specifically
25 oppositional defiance disorder.

1 SOLICITOR SUSTAKOVITCH: I would have
2 a few more questions on that.

3 THE COURT: Okay. Just wait until he
4 is finished. Since we're in-camera, we'll do
5 it a little bit different.

6 SOLICITOR SUSTAKOVITCH: Yes, sir.

7 THE COURT: You may proceed, Mr.
8 Goldstein.

9 MR. GOLDSTEIN: Thank you, Your Honor.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. GOLDSTEIN:

12 Q. Dr. Price, earlier in this case we
13 heard testimony about oppositional defiance
14 disorder. What is an oppositional defiance
15 disorder?

16 A. Well, oppositional defiance disorder
17 is a disorder found in children and
18 adolescents. It's really characterized by
19 three major things: one of those is an
20 irritable or angry mood, the second is
21 defiant behavior, and the third is
22 vindictiveness.

23 Generally these children -- when we get
24 to see them, generally it's because of the
25 anger and irritable mood and unmanageability

1 of their behavior.

2 Q. Doctor, how is oppositional defiance
3 disorder diagnosed in children?

4 A. You have to diagnose it by getting
5 information from secondary sources because
6 the child may not necessarily appear to be
7 oppositional to you on the first meeting, or
8 the first couple of times that you meet them.

9 Oftentimes the oppositional behavior
10 occurs within the home and within the school
11 setting because those are the structured
12 settings that they will have rules that they
13 will defy and react to.

14 Generally we do rating scales that are
15 conducted with parents and with teachers or
16 daycare workers. We may even actually go
17 visit them in school.

18 Q. Doctor, if a child is diagnosed with
19 oppositional defiance disorder, is that
20 disorder likely to resolve on its own without
21 treatment?

22 A. Generally not. The problem with an
23 oppositional defiance disorder is that they
24 generally have a comorbid disorder of
25 attention deficit/hyperactivity disorder.

1 They may also have a comorbid disorder of a
2 conduct disorder. They have "predisposition
3 to have anxiety and depression as well. So
4 generally when you treat an ODD kid it's a
5 multifaceted treatment program, because
6 generally you have more than one thing to
7 manage.

8 Q. Dr. Price, what are the symptoms
9 that a child with ODD might exhibit?

10 A. Generally they exhibit anger, they
11 exhibit irritability, they defy rules, they
12 may have vindictiveness or want to "get even"
13 with other people. I can give you the actual
14 diagnostic criteria if that's what you want.

15 Q. Certainly.

16 A. The specific criteria is that they
17 have one of the following, and this again is
18 what I was talking about: anger, irritable
19 mood, they often lose their temper, they may
20 be touchy or easily annoyed, or they are
21 often angry and resentful.

22 The second heading is that they are
23 argumentative, defiant behavior, often argue
24 with authority figures -- not so much with
25 children, just with adults. They often

1 actively defy or refuse to comply with
2 requests of authority figures or with rules.
3 They often deliberately annoy others. They
4 often blame others with his or her mistakes.
5 Then the vindictiveness, having been spiteful
6 or vindictive at least twice in the past six
7 months.

8 Q. Dr. Price, if you could, could you
9 please describe the dynamics between a child
10 diagnosed with ODD and someone, an adult, in
11 a position of authority.

12 A. Well, that's who they react to.
13 They may be defiant to rules. They show
14 anger. They may act out. They may do
15 passive aggressive things. I mean, there's
16 a number of different things that they could
17 do with someone in authority.

18 Q. Do psychologists consider parents to
19 be authority figures?

20 A. We do. And they may act out within
21 the home but not necessarily within another
22 setting.

23 Q. For example, a child could exhibit
24 more symptoms with family members, exhibit
25 fewer apparent symptoms in other settings?

1 A. Well, generally they will exhibit --
2 as I stated earlier, most ODD kids show their
3 ODD acting out more within the home or the
4 school setting because that's where they
5 spend most of their time in structured
6 settings.

7 Q. Dr. Price, I'd like to ask you one
8 or two hypothetical questions. Suppose a
9 child reports having been sexually abused by
10 an adult and the child had a previous
11 diagnosis of oppositional defiance disorder.
12 The child is then interviewed about the
13 allegations. Would the previous diagnosis of
14 oppositional defiance disorder be an
15 important factor for the interviewer to know?

16 A. Well, it would be important to know
17 about the oppositional defiance disorder
18 because, again, if you have an oppositional
19 defiance disorder you're likely to have an
20 attention deficient/hyperactivity disorder,
21 have a predisposition to anxiety and
22 depression.

23 Then the other issue is that ODD kids
24 oftentimes also have a conduct disorder or
25 evolve into a conduct disorder.

456

1 There are two diagnoses in the DSM-5 that
2 list deceitfulness as a diagnostic criteria,
3 that being conduct disorder and an antisocial
4 personality disorder. So if you knew that
5 someone had a oppositional defiance disorder
6 you'd want to explore that to make sure that
7 they had solely ODD or solely ODD and ADHD to
8 make sure that they didn't have a conduct
9 disorder. So you would really want to know
10 that.

11 To do a comprehensive evaluation, you
12 want to know everything about a person. That
13 includes the history of past mental health
14 issues.

15 Q. Yet would it be obvious to the
16 interviewer, necessarily, that the child had
17 an oppositional defiance disorder?

18 A. No.

19 Q. In your opinion, can an interviewer
20 properly interview a child if a child had a
21 diagnosis of oppositional defiance disorder
22 and the interviewer did not know about it?

23 A. Well, you would want to know about
24 so as to verify the veracity of the
25 complaints.

1 Q. Okay. Dr. Price, I want to turn
2 briefly now to the relationship between
3 oppositional defiance disorder and post-
4 traumatic stress disorder. Doctor, would it
5 be possible for a child to have both PTSD and
6 oppositional defiance disorder at the same
7 time?

8 A. It would. You have to -- the
9 problem with diagnosing PTSD in someone with
10 ODD is PTSD is a trauma-induced disorder but
11 it is also an anxiety disorder. In fact, up
12 until the DSM-5 it was listed under the
13 Anxiety Disorders.

14 Because of the predisposition of anxiety
15 disorders found in ODD kids and depression,
16 you'd really have to rule out that the
17 anxiety was not a pre-existing condition and
18 not necessarily PTSD. It could be a comorbid
19 disorder.

20 Q. All right. Just like with
21 oppositional defiance disorder, is there a
22 specific diagnostic test to test for PTSD?

23 A. Most people like to use the check
24 list from the Center for Post-Traumatic
25 Stress Disorders out of Washington, D.C.

1 The reason for that is because there
2 are a number of what we call potentially
3 traumatic events that can cause PTSD.

4 Generally for adults, an adult male has
5 had approximately five (5) potentially
6 traumatic events and an adult female about
7 four-point-eight (4.8). So you'd want to
8 rule out exactly what stressor caused the
9 PTSD, because that is extremely important in
10 the treatment of PTSD.

11 Q. Doctor, if a mental healthy care
12 professional was treating a child for PTSD
13 and saw that the child had been diagnosed in
14 the past with oppositional defiance disorder,
15 would it be best practice for that
16 professional to do a diagnostic test to see
17 if the child still had an oppositional
18 defiance disorder?

19 A. Well, you know, you want to treat
20 the whole person. A comprehensive treatment
21 plan identifies every condition any
22 individual has and then develops a treatment
23 plan for that.

24 Now, you don't -- you wouldn't go into
25 your general practitioner's office with a

1 huge laceration on your forearm and poison
2 ivy on your right arm and just ask for
3 treatment for the poison ivy. You'd want to
4 have everything wrong with you treated.

5 That's the same with mental health. You
6 want to identify all comorbid disorders and
7 develop a treatment plan for them.

8 Q. Dr. Price, what is an attention
9 deficit disorder?

10 A. An attention deficit disorder is a
11 disorder that should be diagnosable by the
12 age of six. It's a diagnosis that involves
13 the inability to have sustained concentration
14 persistence really.

15 Q. And, Dr. Price, what is the
16 relationship between attention deficit
17 disorder, ADD, and an oppositional defiance
18 disorder?

19 A. Actually they often co-occur.
20 There's a cohort of individuals that will
21 have ADHD and an oppositional defiance
22 disorder or -- and then a conduct disorder.

23 The problem with kids that have ADHD
24 is that it really causes them, socially and
25 academically, problems because of their

1 inability to sustain attention and
2 concentration and they annoy or bother other
3 people.

4 Q. Doctor, can you please explain the
5 pattern that a diagnosis of oppositional
6 defiance disorder usually follows with
7 children?

8 A. Generally the pattern that happens
9 is that they get in trouble for their
10 irritable and angry mood, then the defiant
11 behavior.

12 Q. And if a child were to present with
13 both attention deficit disorder and an
14 oppositional defiance disorder, what
15 diagnoses might you expect in the future?

16 A. Well, it could just be attention
17 deficit disorder and the oppositional
18 defiance disorder.

19 If they truly have ADHD, you'd expect
20 that to continue into adulthood.

21 Oppositional defiance disorders tend to
22 get better in late adolescence. But if you
23 treat it -- it generally takes about a year
24 to treat -- uh, the research would show that
25 about seventy percent of them are symptom

1 free after about three years, if treated.

2 Q. Doctor, are you familiar with the
3 research in your field about false
4 allegations and sexual abuse?

5 A. I've actually written an article
6 about false allegations or sexual abuse
7 against clergy members. I am familiar with
8 it.

9 Q. Dr. Price, what is your opinion
10 about relationships between behavioral
11 disorders such as oppositional defiance
12 disorder and allegations of sexual abuse by
13 children?

14 A. Well, any time you have a behavior
15 disorder that includes vindictiveness and
16 anger, you have to be concerned about that.
17 You also have to be concerned with attention
18 deficit disorder and a hyperactivity
19 disorder. When you have false claims of
20 sexual abuse in children, it's rarely one --
21 it can be deliberate lying and fabrication,
22 that does happen; but that's not common.
23 It's generally been a disruption in the
24 registration of the memory or the mental
25 collection of memory.

1 Q. Doctor, did you rely on any articles
2 in forming your opinion today?

3 A. I relied on my own article and then
4 I reviewed an article that I already had in
5 my file about children's allegations of
6 sexual abuse for forensic assessment.

7 Q. Okay. Doctor, what does that
8 article say about oppositional defiance
9 disorder and false allegations of sexual
10 abuse by children?

11 A. Well, you have to be concerned again
12 about prior mental health issues and that
13 there may be another reason for not telling
14 the truth or distorting the truth.

15 Q. Thank you, Doctor. That's all the
16 questions that I have.

17 THE COURT: Solicitor?

18 SOLICITOR SUSTAKOVITCH: Thank you,
19 Your Honor.

20 CROSS EXAMINATION

21 BY SOLICITOR SUSTAKOVITCH:

22 Q. Good morning, Dr. Price.

23 A. Good morning.

24 Q. Good to see you again. How are you?

25 A. I've been good. It's good to see

1 you again.

2 Q. I wanted to go back to the
3 qualifications really quickly. You obviously
4 -- I wouldn't object to your being qualified
5 as an expert in Psychology, at all. Clearly
6 you are that. I wanted to ask a few more
7 questions about issues relating to children.

8 Dr. Price, you've been a psychologist, I
9 think you said, since 1982.

10 A. Yes, ma'am.

11 Q. Now, there are certain psychologists
12 in your field that specialize just in
13 children, like pediatric psychology, for
14 instance; is that right?

15 A. That's right.

16 Q. And those psychologists see children
17 day in, day out. That's all that they do.
18 Is that correct?

19 A. That's right.

20 Q. And you, Dr. Price, don't do that.
21 You see a wide range of people, is that
22 correct?

23 A. That's correct.

24 Q. Since 1982 -- in your practice how
25 many children would you say that you are

464

1 currently seeing right now, that you are
2 treating, currently providing treatment for
3 at this moment? How many?

4 A. I do more evaluations than anything
5 but I probably see four to five children a
6 week.

7 Q. Okay. Are you treating them in
8 actual therapy with you? Are you a
9 therapist, or -- no?

10 A. No, I'm actually evaluating them for
11 disability, for disability purposes.

12 Q. All right. So as far as going back
13 over these years, you testified that you are
14 not a pediatric psychologist. Is there a
15 difference in a pediatric psychologist who is
16 specialized in dealing with disorders when
17 children are very young -- I'm talking five
18 years old -- and maybe what you do on a daily
19 basis?

20 A. Well, I was trained as both a child
21 psychologist and as an adult psychologist, so
22 I don't think that there is much difference.
23 I treated -- when I was administering the
24 psychological services at Head Start, I
25 treated twenty children a week with special

1 needs and special handicaps. I continued
2 when I was in private practice, up to about
3 1990 when I published more on forensics, the
4 bulk of my practice was with adolescents and
5 children who had behavioral and conduct
6 disorders.

7 Q. Specifically -- thank you, Dr.
8 Price. Specifically in the area of children
9 where there is a concern of sexual assault,
10 since 1982 how many children have you treated
11 where there is a concern of sexual assault?

12 A. In the hundreds.

13 Q. And in that, are you providing
14 therapy or what are you providing in those
15 instances?

16 A. I'm providing therapy.

17 Q. And in those instances, how often
18 would you say that you have false
19 allegations? You just testified that it was
20 rare, but I'm just wondering could you put a
21 number on that?

22 A. Uh, ---

23 Q. Or can you recall from memory at all
24 -- you said it was in the hundreds. Of the
25 hundred, would you say it was like one or two

1 or what are you thinking?

2 A. I would think probably between one
3 and five percent.

4 Q. Okay.

5 A. But that's just a ballpark guess.

6 Q. Going back to oppositional defiance
7 disorder, I'm no expert on that so I would
8 like for you to help me on that. My under-
9 standing is -- well, hypothetically, I want
10 to go to, say, a five-year-old child who
11 presents with ODD. From reading the
12 research, my understanding is that that is
13 young to diagnose a child with ODD. Would
14 that be accurate?

15 A. That would not be young to diagnose
16 a child with an attention deficit hyper-
17 activity disorder. It is on the younger side
18 of ODD.

19 Q. Okay. Then just to break down what
20 we're talking about with ODD, because that
21 term sounds kind of scary. You know, it
22 sounds "big." But isn't that something as
23 simple as a kid that bites -- a five-year-old
24 that bites her siblings? Could that be part
25 of ODD?

1 A. It could be part of a number of
2 things, ODD being one of them.

3 Q. Okay. Well, I am just saying that
4 part of giving that diagnosis, some of the
5 things that you look at age five to give that
6 kind of diagnosis, could biting siblings be
7 one of them?

8 A. It could be.

9 Q. And would eating meals and not
10 cleaning their face up at school be one?
11 Eating at school and not cleaning their face
12 up at school, defying a teacher?

13 A. I don't think not cleaning your face
14 by itself would be one, no.

15 A. Could ---

16 Q. Because you look at three dimen-
17 sions: the anger or irritable mood, the
18 defiance and then vindictiveness.

19 Q. So if a child at five, the issues
20 were biting her siblings, not listening to
21 mom and not cleaning her face at school,
22 would those be terribly concerning to you in
23 diagnosing ODD?

24 A. The defiance to the mom and the
25 biting would be more concerning to me than

1 not cleaning their face.

2 Q. All right. And if that child, at
3 age five, went stated -- general in trying to
4 diagnose ODD you're getting information from
5 the caregiver or people at school. Correct?

6 A. That's correct.

7 Q. Because maybe the clinician -- the
8 first meeting the child is not showing out to
9 then, not biting the therapist. Is that
10 right?

11 A. That's correct.

12 Q. So you're getting this secondary
13 information from them.

14 A. That's correct.

15 Q. If you are not getting any
16 information other than that the child biting
17 other children, defiant to the mom, and
18 having food issues, then goes to therapy --
19 several months of therapy -- would that be a
20 form of ODD for a child five years old, who
21 is acting like that?

22 A. I am not clear of the question.

23 Q. I guess I -- you testified that when
24 children get treatment that it usually takes
25 about a year for them to be treated for ODD

1 such that they no longer have it. Right?

2 A. That's correct.

3 Q. Okay. So in a situation where a
4 child went through treatment for those kinds
5 of problems and accomplished their goals:
6 was no longer biting siblings, no longer not
7 cleaning up a school, biting siblings, things
8 like that; would that matter to you as far as
9 thinking that maybe that problem had resolved
10 as far as ODD in that child?

11 A. Generally with ODD, in my experience
12 with treating ODD, you have to have a school-
13 based program treating it. You have to have
14 home-based -- you have to teach the parents
15 to parent differently. Then you have to work
16 with the child in therapy. So I would look
17 to info from the school and other caregivers
18 -- not necessarily the mother, but any other
19 caregivers.

20 Q. Okay. I am just trying to under-
21 stand. With a child that young, you know,
22 what are the things -- what does it really
23 break down as? What does it look like?

24 You take that child and hypothetically
25 fast-forward five years, so that now they are

1 ten. That child has no disclosures of being
2 defiant at school from any teachers, no
3 disclosures from parents of being defiant to
4 them. The only thing that has happened there
5 is that they've disclosed sexual abuse.

6 Now, in that span of time between 2010
7 and 2015, would you -- what would lead you to
8 believe that ODD was still an issue at that
9 point, with no other secondary information
10 being given to you that that was a problem?

11 A. I would have evaluated to see if
12 that was a problem. I would have contacted
13 the school and the parent about that. I
14 would verify if in fact that was true.

15 Q. I gotcha. That makes sense. Then,
16 as the clinician, if the child went through
17 therapy -- say, six months of therapy -- and
18 was not having any of those behaviors, if the
19 only main concern was that they were sexually
20 abused, would that lead you to believe that
21 the child still suffered from ODD?

22 A. Again, I would look at it more
23 comprehensively than that. Perhaps not.

24 Q. Okay. Now I want to show you -- let
25 me just ask you this. You don't know the

1 evidence in this case.

2 A. (Negative gesture).

3 Q. You mentioned PTSD, right?

4 A. Right, I don't know anything about
5 this case.

6 Q. That's fine. Let me -- I want to
7 make sure that I am not misspeaking. That if
8 a kid had ODD and PTSD at the same time, you
9 mentioned something about the questionnaire.
10 Can you tell me that again, that a lot of
11 clinicians will give a questionnaire but you
12 felt that wasn't enough to delineate PTSD
13 from ODD? Or maybe I misunderstood.

14 A. I think you did misunderstand. In
15 diagnosing post-trauma stress disorder, I
16 would use the life event questionnaire from
17 the national center for post-trauma stress
18 disorder; I would use the post-trauma stress
19 disorder checklist; and I would use the
20 structured interview for PTSD in order to
21 establish that they had a post-trauma stress
22 disorder.

23 Q. All right. In these checklists that
24 the UCLA PTSD index, they rate what is
25 bothering them the most. If a child lists

1 different things and then says, 'I was
2 sexually abuse by my stepfather' as the
3 biggest stressor, would that weigh into your
4 analysis on PTSD related to sexual abuse?

5 A. Well, you can certainly have PTSD
6 related to sexual abuse. It is one of the
7 life events that can cause PTSD, but there
8 are others that I would want to rule out.

9 I would want to verify exactly what it
10 was because when you develop a treatment plan
11 for PTSD, the treatment plan is the emotional
12 reaction to whatever the potentially
13 traumatic event was, so you want to identify
14 it. If it is one or if it is two, you want
15 to identify those for the treatment plan.

16 Q. All right. And in going back to the
17 oppositional defiance disorder, if you had a
18 five-year-old ago, I think you testified that
19 the DSM-5 -- and I think I have a copy, but
20 you can tell me if this is it, correct
21 (displaying)? The criteria for oppositional
22 defiance disorder?

23 A. That would be it, (affirmative nod).

24 Q. You have a five-year-old. I'm
25 trying to understand what this means: loses

1 their temper, is often easily angered or
2 annoyed, touchy, angry or resentful. Now,
3 vindictiveness. Has been spiteful or
4 vindictive within the past six months. When
5 you're five, what does that mean? Does it
6 mean pinches a sibling in the car? Does it
7 mean not listening to their parent? Does it
8 mean at school? What kind of things are we
9 talking about?

10 A. It could mean different things. It
11 could be breaking somebody else's toy or
12 damaging something that they value. It could
13 be hurting -- these are just things that I
14 have seen previously. It could be hurting
15 somebody's pet that they love. It could be
16 flushing somebody's goldfish down the toilet.
17 There are lots of different kinds of
18 vindictiveness but those are just some
19 examples that I have personally seen and
20 treated.

21 Q. Okay. And you would agree that
22 lying, though, is not in the DSM-5 as one
23 of the diagnostic criteria of being a part of
24 ODD. Correct?

25 A. That's correct.

1 Q. And you stated -- you cited a study
2 between ODD and false claims. Could I see
3 that?

4 A. It's not just between ODD and false
5 claims, but you certainly can -- (tendering).

6 Q. What is it about?

7 A. It's about a model of things that
8 you have to look at and evaluate with
9 allegations of sexual abuse.

10 Q. So this is just about whether kids
11 make stuff up, in general?

12 A. It's not that simple.

13 Q. Does that specifically relate to the
14 prevalence or the relationship, if any,
15 between ODD and false claims?

16 A. Between mental disorders and false
17 claims.

18 Q. But specifically about ODD and
19 making a false claim, does this relate to
20 that?

21 A. It relates to me but I don't think
22 it specifically says ODD.

23 Q. It does not say ODD?

24 A. (No verbal response).

25 Q. Okay. And, I'm sorry, that was

1 written by?

2 A. It was written by William O'Donohue,
3 Lorraine Venadue (phonetic) and Matthew
4 Frenette (phonetic).

5 Q. Okay. Dr. Price, would having ODD
6 give a child any specialized knowledge in
7 what semen tastes like?

8 A. No.

9 Q. Would having ODD give a child any
10 specialized knowledge in what anal
11 penetration feels like?

12 A. No.

13 Q. It's correct that all children can
14 lie, right?

15 A. That's true.

16 Q. And whether a child had ODD or not,
17 all children can lie?

18 A. That's correct.

19 Q. It is not your testimony that kids
20 with ODD are more prone to lying; is it?

21 A. No.

22 Q. Okay. So an ODD kid could be just
23 like any 'ole kid in the classroom because
24 it's not part of the criteria in the DSM-5?

25 A. It is not.

1 SOLICITOR SUSTAKOVITCH: Your Honor, I
2 don't have any other questions.

3 THE COURT: Mr. Goldstein, do you have
4 anything in follow-up?

5 MR. GOLDSTEIN: Yes, Your Honor, brief
6 redirect.

7 REDIRECT EXAMINATION

8 BY MR. GOLDSTEIN:

9 Q. Dr. Price, you testified that you
10 reviewed an article prior to rendering your
11 opinion today?

12 A. That's right.

13 Q. Did you rely on that article in
14 forming your opinion?

15 A. It contributed to my opinion.

16 Q. All right. And is that journal,
17 *Psychological Injury and Law*, a reliable
18 publication?

19 A. It is.

20 Q. Do psychologists rely on that
21 publication in their field?

22 A. They do.

23 Q. Dr. Price, I would ask you to read
24 this section -- I'm showing you Page 149 of
25 that article. Under the subheading of Model

1 of Pathways to False Allegations of Child
2 Sexual Abuse and under the heading The Child
3 is Lying, please read the highlighted
4 section.

5 A. (Reading): "Children do not always
6 tell the truth. It is not the case that
7 there are special topics, such as their own
8 abuse, in which children are incapable of
9 lying. As a field, we know little about the
10 variables that cause children to lie or tell
11 the truth. Researchers have since suggested
12 personality variables, habit, a developing
13 central nervous system, a congenitally
14 acquired defect in the central nervous
15 system, the presence of an emotional
16 disturbance, the desire to please others,
17 and behavioral disorders such as conduct
18 disorders and an oppositional defiance
19 disorder may contribute to a child lying,
20 resulting in invalid information."

21 Q. Thank you, Dr. Price. What is your
22 expert opinion on the excerpt that you just
23 read?

24 A. That all those things could be
25 factors and should be considered.

State of South Carolina v Gabriel Betancourt
Case No. 17-GS-23-1209 et al
Jury Trial of March 20-24, 2017
Testimony of David Price - Redirect Examination on Proffer

527

478

1 Q. Thank you, Dr. Price.

2 MR. GOLDSTEIN: No additional
3 questions.

4 THE COURT: Solicitor, any follow up?

5 SOLICITOR SUSTAKOVITCH: No, sir.

6 Thank you.

7 THE COURT: Dr. Price, let me ask you.

8 To a reasonable degree of certainty as
9 concerns your area of expertise, a child that
10 was diagnosed with ODD at the age of five,
11 can that child still have ODD at the age of
12 ten?

13 DR. PRICE: Yes, sir.

14 THE COURT: Thank you, Dr. Price. You
15 can go ahead and get off of the witness stand
16 for right now.

17 (WITNESS STEPS DOWN)

18 THE COURT: Solicitor, any arguments as
19 it relates to Dr. Price being allowed to
20 testify in this case?

21 SOLICITOR SUSTAKOVITCH: Yes, sir.

22 THE COURT: Okay.

23 SOLICITOR SUSTAKOVITCH: I believe
24 that his testimony goes essentially to the
25 ultimate issue before this jury, whether this

1 child is telling the truth or not. He is
2 given the auspices of being an expert to cite
3 articles saying 'children lie.' Yet he just
4 testified and said that a child with ODD lies
5 no more than any other child.

6 My question would be, how in the world
7 is that helpful and probative to a jury? It
8 is so prejudicial under Rule 403 to allow
9 that and have this jury misunderstand what
10 ODD is and the relationship to lying.

11 He testified that lying is not in the
12 criteria. It is not in the criteria for ODD.
13 So what we have in the record is that he has
14 testified -- what we know in the record is
15 that this child presented at five with some
16 symptoms of ODD and was given that diagnosis.
17 Had treatment, got finished with the
18 treatment and ---

19 THE COURT: Let me just stop you.

20 SOLICITOR SUSTAKOVITCH: Yes, sir?

21 THE COURT: While you were getting in
22 -- while you were questioning Dr. Price
23 concerning treatment, I don't ---

24 SOLICITOR SUSTAKOVITCH: Yes, sir.

25 THE COURT: --- remember at any time in

1 the record that there was any evidence of
2 treatment for a several month span of time as
3 you alluded to in your question. I might
4 have missed that.

5 SOLICITOR SUSTAKOVITCH: Well, ---

6 THE COURT: I don't remember that. All
7 I remember is that at age five she was
8 diagnosed with ODD. Period.

9 I can't remember what witness that came
10 from but it's in the record.

11 SOLICITOR SUSTAKOVITCH: And I ---

12 THE COURT: If it's in the record
13 that there were several months of treatment,
14 then I certainly stand corrected.

15 SOLICITOR SUSTAKOVITCH: All right.
16 Well, perhaps you are right. I believe Your
17 Honor is correct on that. I'm thinking back
18 on Erica Van Wagner. The child did receive
19 several months of treatment and I guess I
20 should have asked that follow up question.

21 I still go back to that what's in the
22 record is when, from a relevant standpoint,
23 we have this issue in 2010; then she presents
24 in 2015, after alleging sexual abuse, and we
25 have no indicator that she is suffering from

1 ODD at this point.

2 I feel like to allow him to opine on
3 specifically this article that I've never
4 read that says that kids with ODD can make
5 false claims up, that is so prejudicial.

6 THE COURT: I apologize for cutting you
7 off but he said it's so little, ---

8 SOLICITOR SUSTAKOVITCH: Yes, sir.

9 THE COURT: --- like one to five
10 percent. It's not common for there to be
11 deliberate lying.

12 SOLICITOR SUSTAKOVITCH: Correct.

13 THE COURT: One to five percent of
14 false allegations by children with ODD, --
15 now, since we are outside the presence of the
16 jury, I'm not so certain how that helps the
17 defense. But nevertheless they want to call
18 Dr. Price and they have the right to make
19 that attempt, so -- but it would seem like to
20 me that that part of his testimony would be
21 in favor of the State, the way I view it.
22 But, go ahead.

23 THE COURT: Your Honor, I just -- I
24 believe that the substance of his testimony,
25 under Rule 702, he -- lying is not a symptom

1 of ODD. It's being woven into it by
2 implication. That's what is happening here.
3 By implication they are trying to say, 'this
4 kid had ODD, she's a big fat liar.'

5 Maybe that's not what he is saying
6 specifically but that is what the inference
7 will be and that is what will be told to the
8 jury. That is the only purpose for which
9 that testimony could be used.

10 I think it goes back to credibility of
11 this victim is an ultimate issue for the
12 jury, as to whether or not she is telling the
13 truth. On that basis, I would ask -- Your
14 Honor, I do believe that there is a temporal
15 issue here as far as relevance, where we
16 don't have anything in the record to indicate
17 that she had any symptoms of ODD in 2015.
18 That's the biggest thing for me, that she had
19 (sic) any issues with the interviewer; she
20 was compliant in the interview. She -- we
21 took this out of the forensic interview but
22 she was asked to tell the truth, she said
23 that she will -- naturally that is not part
24 that goes to the jury but what feels so
25 unfair about it is that that interaction with

1 the interviewer is taken out, where she is
2 compliant. If you're suffering from ODD,
3 with someone in authority like a forensic
4 interviewer, you're not going to comply.
5 You're not going to be in that interview
6 answering questions. That's been taken out.

7 For those reasons, I would ask Your
8 Honor not to allow the testimony.

9 THE COURT: Thank you, Solicitor. Mr.
10 Goldstein, do you want to respond?

11 MR. GOLDSTEIN: Yes, Your Honor. In
12 brief response, I think that Dr. Price just
13 testified that the symptoms of oppositional
14 defiance disorder might not necessarily be
15 apparent in the setting of a clinical
16 interview.

17 Secondly, under Rule 704, Your Honor,
18 testimony in the form of an opinion otherwise
19 admissible is not objectionable because it
20 embraces the ultimate issue to be decided by
21 the trier of fact.

22 Going to our larger argument, Your
23 Honor, Rule 702 says in pertinent part that
24 scientific or other specialized knowledge
25 that will assist the trier of fact to

1 understand the evidence or determine the fact
2 in issue, that a witness qualified as an
3 expert who by knowledge, education,
4 experience or training may testify in the
5 form of an opinion or otherwise.

6 That being said, Your Honor,
7 oppositional defiance disorder is already in
8 evidence. The Solicitor asked the child's
9 treating therapist, Erica Van Wagner, on
10 direct exam if Minor was diagnosed with
11 oppositional defiance disorder. Erica Van
12 Waggoner confirmed that diagnosis and even
13 proceeded to give a brief summary of what
14 oppositional defiance disorder is to this
15 jury. That fact is already in evidence and
16 the defense has a right to respond to that.

17 Secondly, Your Honor, because
18 oppositional defiance disorder is a mental
19 disorder, the subject matter is beyond the
20 ordinary knowledge of the jury; thus
21 requiring, under the Rules, and enabling us
22 to present an expert to explain to the jury
23 what that disorder is.

24 Now, the State has already submitted
25 expert testimony in this case for the exact

1 same purpose, to have a treating expert,
2 Erica Van Wagner, to testify regarding PTSD
3 and sexual abuse trauma allegations.

4 They had an expert, Linda Hutton,
5 testify regarding delayed reporting, sexual
6 abuse dynamics and memories of chronic abuse.

7 If those subjects are beyond the
8 ordinary knowledge of jurors, thus requiring
9 and enabling the State to call an expert,
10 then certainly oppositional defiance
11 disorder, the dynamic between a child with an
12 oppositional defiance disorder and an
13 interviewer and the dynamic between a child
14 with an oppositional defiance disorder and an
15 authority figure, -- including adults,
16 teachers, interviewers, law enforcement, the
17 defendant in this case -- then certainly that
18 is beyond the ordinary knowledge of the jury
19 as well.

20 Your Honor, Dr. Price is not directly
21 commenting on the credibility of the child's
22 credibility in this case. Dr. Price is being
23 offered as a blind expert. We have complied
24 with all the requirements of *State v. Brown*,
25 the case cited enabling their expert(s) to

1 testify.

2 Dr. Price never met with the child
3 victim. His knowledge of the case is limited
4 to discussions with defense counsel. In
5 spite of the line of questioning from the
6 Solicitor, he has not reviewed the medical
7 records in this case. He did not diagnose
8 that child, although it appears that the
9 State is asking him to diagnose that child
10 now with limited information.

11 He is not commenting on the credibility
12 of the minor victim in this case. He is not
13 expressing an opinion or belief about the
14 veracity of claims made by children more
15 generally. He is giving a narrowly-tailored
16 opinion that is caveated by his experience
17 and his training, discussing allegations of
18 abuse made by children with behavioral
19 disorders.

20 To the extent that he offers his expert
21 opinion regarding oppositional defiance
22 disorder and behavioral disorders and the
23 effect that that could have in producing a
24 false statement, again that's based on his
25 expert opinion, his years of experience in

1 the area.

2 In the view of the defense, it is the
3 function of the jury to determine the facts,
4 weigh the credibility of the witnesses and
5 their testimony in this case. Any objections
6 by the State on that point goes to weight and
7 not to admissibility.

8 Finally, Your Honor, if I could briefly
9 just address the chronology concerns. The
10 fact is that Minor had a confirmed diagnosis
11 of oppositional defiance disorder prior to
12 making the allegations in this case. We --
13 she was treated, she was diagnosed with ODD.
14 We don't know what happened thereafter but I
15 know that the treatment wasn't ongoing
16 because her mother stopped bringing her for
17 treatment.

18 Again, the State offered two experts who
19 gave testimony on subjects that occurred
20 after the allegations in this case. PTSD was
21 diagnosed after the allegations of the
22 alleged abuse occurred. Delayed disclosure,
23 by its very definition, is dealing with
24 subject matter after happenings.

25 If these subjects are relevant when they

1 occurred after the fact then a diagnosis of
2 a mental disorder prior to the allegations
3 being made in this case is more relevant in
4 terms of chronology.

5 Finally, Dr. Price testified again that
6 ODD is not readily apparent in clinical
7 settings and that ODD is not likely to
8 spontaneously resolve, without treatment, on
9 its own. You need a carefully choreographed
10 treatment plan involving parents -- and we
11 know that the mother didn't bring her for
12 treatment; including teachers, which I
13 haven't seen any evidence of the school being
14 involved in that treatment plan. He just
15 stated to Your Honor that to a reasonable
16 degree of medical certainty it would be
17 possible for a child to be diagnosed with ODD
18 at age five and still have the disorder at
19 age ten. Therefore, I think the chronology
20 argument is baseless.

21 For those reasons, Your Honor, we would
22 ask that Dr. Price be able to render his
23 testimony under Rule 702.

24 THE COURT: Okay. Thank you very much.
25 I am going to allow Dr. Price to testify. I

1 believe that areas of his testimony would aid
2 the jury in this case. I find that Dr. Price
3 is very well-qualified and experienced in the
4 stated area and that his testimony is
5 reliable.

6 It certainly goes to the weight of his
7 testimony, as far as the arguments that the
8 State has made, in addition to the court's
9 question about to reasonable degree of
10 certainty in his expertise, that a child
11 diagnosed at age five could still have an
12 oppositional defiance disorder at the age of
13 ten, it goes to the weight.

14 I think that there is certainly a lot
15 of room for cross-examination by the state
16 of Dr. Price but I'm going to allow him to
17 testify.

18 Let's take a short break before we bring
19 the jury out.

20 SOLICITOR SUSTAKOVITCH: Your Honor,
21 could I just ask one quick -- I want a
22 clarification on how far is he going to be
23 allowed to testify regarding false
24 allegations, with the article that he
25 presented that really had nothing in it

1 related to ODD and false allegations?

2 THE COURT: Right. You can certainly
3 cross-examine him. Again, I hate to beat Dr.
4 Price over the head with this but he's
5 already said that it's uncommon for someone
6 with ODD, for there to be deliberate lying;
7 one to five percent of false allegations in
8 child sexual abuse cases. That's -- so I
9 would expect him to testify to what he's
10 already testified to in-camera.

11 SOLICITOR SUSTAKOVITCH: Thank you,
12 Your Honor.

13 THE COURT: Thank you, Solicitor. All
14 right, let's take a short break and then we
15 will start back.

16 (BRIEF RECESS)

17 (DEFENDANT PRESENT)

18 MR. SARRATT: Judge, if we could
19 have just another minute. Dr. Price is
20 moving his car to avoid getting a ticket.
21 He should be back very soon.

22 THE COURT: That's fine.

23 (BRIEF RECESS)

24 (DEFENDANT PRESENT)

25 MR. SARRATT: Thank you, Your Honor.

491

1 We're ready.

2 SOLICITOR SUSTAKOVITCH: I do have one
3 pretrial matter that I thought about during
4 the break that I need to take up.

5 THE COURT: Okay. Solicitor?

6 SOLICITOR SUSTAKOVITCH: Yes, sir.
7 The witness, Dr. Price, read from an article
8 a little statement. The State has not been
9 provided that article. We would just object
10 to him reading directly from that. The line
11 of questioning, we're clear on where that is
12 going and what they are going to ask but we'd
13 ask that he not be allowed to just stand
14 there and read an article that we've not been
15 given. There is no reliability for that
16 article. There's been no testimony to
17 support the fact that the research in that
18 article is in any way reliable. That would
19 be our request.

20 THE COURT: Mr. Goldstein?

21 MR. GOLDSTEIN: Your Honor, I think it
22 is pretty clear that the Rules, particularly
23 Rule 803.18, (reading): "An expert can read
24 statements from published treatises,
25 articles..." -- so on -- if the articles relied

1 upon by the expert is an article established
2 as a reliable authority. Again, my
3 foundational questions, just like I did in my
4 proffer, I asked Dr. Price 'is this reliable
5 in your field', 'do you rely on it and do
6 other psychologists rely on it.' That
7 establishes the threshold area right there.
8 So under the Rule he is allowed to read that
9 article into evidence. If they want to ask
10 him to produce the entire article, they can
11 do that on cross-examination. The Rules
12 allow for that, as well.

13 SOLICITOR SUSTAKOVITCH: Your Honor,
14 the State can't put up an expert and have
15 them go read snippets about how children
16 never lie, hardly ever lie, and present it to
17 a jury. I mean, it just -- I don't think the
18 rule envisions that or allows that. It goes
19 to the ultimate issue of fact.

20 MR. GOLDSTEIN: Your Honor, an opinion
21 isn't objectionable because it goes to an
22 ultimate issue.

23 The Rules allow an expert to render
24 opinion(s) on items that not necessarily
25 admissible in evidence. That's Rule 703.

1 Rule 705 allows on cross-examination for
2 the opposing party to get into the underlying
3 articles and things that they relied on and
4 to require them to produce those things on
5 cross-examination.

6 Again, Rule 803 is clear that if you've
7 relied on and it is relied on in your field,
8 you can read it into evidence. You can't
9 submit it into evidence but you can read it
10 into evidence. The Rules allow for this,
11 Your Honor.

12 SOLICITOR SUSTAKOVITCH: Your Honor,
13 the final thing I would say, under the
14 progeny of *Croma* and that line of cases that
15 state that the State cannot vouch for the
16 veracity of a victim in that manner.

17 When we present a blind expert witness
18 in a sexual assault, we are not allowed to do
19 that under *Croma*. This is reverse vouching,
20 if you will, and it goes ultimately to the
21 main issue in this case before the jury.

22 I would just ask Your Honor to restrict
23 him from reading that excerpt to the jury.

24 THE COURT: Well, again he's not, -- I
25 think in chambers you used the term "reverse

1 vouching", maybe.

2 SOLICITOR SUSTAKOVITCH: Yeah, I just
3 made it up.

4 THE COURT: Well, it's a pretty good
5 term. His testimony is not related or
6 directed at Minor in this case. That's what
7 *Croma* prohibits, is the veracity or the
8 believability of the actual child victim in
9 the case. So that's why blind experts are
10 allowed to come in and render opinions that
11 may be related in some fashion to the
12 believability or the lack thereof of the
13 victim, but it is not directed towards the
14 victim. It's to people in similar situations
15 in general. So the State was allowed to put
16 in blind experts, and the defense will be
17 allowed to as well.

18 As it relates to the article, if the
19 proper foundation is made, 'is this a
20 reliable article', 'is it reasonably relied
21 upon by experts in your field', 'do you rely
22 on it in your field of practice', then you
23 know he can refer it. So I deny your Motion.

24 SOLICITOR SUSTAKOVITCH: Thank you,
25 Your Honor.

1 THE COURT: Let's bring the jury out.

2 Solicitor, do you anticipate any rebuttal

3 case?

4 SOLICITOR SUSTAKOVITCH: Yes, sir, we
5 do.

6 THE COURT: Okay.

7 SOLICITOR SUSTAKOVITCH: Probably two
8 or three witnesses.

9 THE COURT: That's fine, just wanted a
10 heads-up.

11 (JURY IN @ 10:55 A.M.)

12 THE COURT: Let the record reflect
13 that the jury is back in the courtroom.

14 Mr. Goldstein, are you ready to call
15 your next witness?

16 MR. GOLDSTEIN: Yes, Your Honor. At
17 this time the defense would call Dr. Price to
18 the stand.

19 THE COURT: Come around, please, sir.

20 (WITNESS TAKES STAND)

21 DAVID RICHARD PRICE, having been sworn
22 to tell the truth, and nothing but the truth,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. GOLDSTEIN:

496

1 Q. Good morning, Dr. Price.

2 A. Good morning.

3 Q. Dr. Price, let's begin by learning
4 about the training and experience that you
5 received to become a psychologist. Where did
6 you attend college?

7 A. I received my bachelor's degree from
8 Clemson University.

9 I received my master's and doctoral
10 degree in clinical psychology from Auburn
11 University.

12 I was licensed by the State in 1983.

13 I did my internship at University Drive
14 Veterans Administration Hospital, Western
15 Psychiatric Institute, in Pittsburgh,
16 Pennsylvania.

17 Q. Dr. Price, did you have to pass a
18 test to become licensed in South Carolina?

19 A. You do. You have to pass both a
20 written and an oral examination.

21 Q. Did you take and pass that test?

22 A. I did.

23 Q. Dr. Price, what are the continuing
24 education requirements in your field?

25 A. We are required to get twenty-four

497

1 continuing education units every two years.

2 Q. Sir, have you satisfied those
3 requirements?

4 A. I am well in advance of them.

5 Q. Dr. Price, can you tell the jury
6 where you currently work?

7 A. I currently work here in Greenville,
8 South Carolina. I have a forensics practice
9 and a private practice.

10 Q. And how long have you held those
11 positions, approximately?

12 A. I've been practicing in Greenville
13 since 1983.

14 I previously was practicing in what at
15 that time was called Behavior Resources,
16 which was the largest clinical consulting
17 practice.

18 In 1990, I narrowed my practice down to
19 forensic issues.

20 Q. Dr. Price, can you please describe
21 the type of work that you do at your
22 practice?

23 A. The majority of my work involves
24 forensic work. I consult in civil cases,
25 criminal cases, Probate Court cases and an

1 occasional Family Court case but not very
2 often.

3 I do fitness-for-duty evaluations for
4 most of the area, major companies in the
5 area.

6 I do disability evaluations.

7 I do consultation(s) with employees who
8 may have difficulty at work, resolving them.

9 I used to -- and I tapered off of this --
10 would evaluate special developmental needs
11 children, mostly autism.

12 Then I have a small treatment practice as
13 well.

14 Q. Dr. Price, I know you've been
15 working in the area for a while but could you
16 tell the jury what other clinical positions
17 that you've held in the past?

18 A. I was the Director of Psychological
19 Services for Head Start in Lee County,
20 Alabama for two years while attending Auburn
21 University.

22 I was a neuropsychologist for the
23 Tuskegee VA for two years while attending
24 Auburn University.

25 I was trained on my internship in

1 Pittsburgh at the Western Psychiatric
2 Institute Clinic.

3 I worked for the South Carolina
4 Department of Mental Health.

5 Then I've been in private practice since
6 1983, first at Behavior Resources and now at
7 my practice called the Forensic NETWORK.

8 Q. Dr. Price, have you held any
9 academic positions in the past?

10 A. I have. I taught at Auburn
11 University while I was there.

12 I've lectured for Limestone College.

13 I had taught at USC Upstate -- which was
14 then USC-Spartanburg.

15 I established the forensic psychiatry
16 program at the Medical University of South
17 Carolina in Charleston.

18 Q. Dr. Price, have you ever published
19 any articles in the area of Psychology?

20 A. I've published over twenty articles
21 in the area of Psychology, (affirmative nod).

22 Q. Have you given any professional
23 presentations?

24 A. I've given over two hundred
25 professional presentations.