

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Saluda County

Honorable Eugene C. Griffith, Circuit Court Judge

ORIGINAL
RECEIVED
SEP 17 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANTONIO KENYARDO POSEY,

APPELLANT

APPELLATE CASE NO. 2017-000500

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**STATE'S EXHIBIT #26 (INDEX CARDS),
STATE'S EXHIBIT #33 (CD MINOR INTERVIEW REDACTED),
STATE'S EXHIBIT #34 (CD SISTER INTERVIEW REDACTED).**

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		)	Of General Sessions
2	County of Saluda	)	Indictment No.: 2015-GS-41-048
		)	
3	State of South Carolina,	)	
		)	
4	Plaintiff,	)	
	vs.	)	Transcript of Record
5		)	
	Antonio Kenyardo Posey,	)	
6		)	
	Defendant.	)	
7	_____	)	

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February 13 through 17, 2017
Saluda, South Carolina

BEFORE:

The Honorable Eugene C. Griffith, Junior,
Judge, and Jury

APPEARANCES:

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Sutania Radlein, Assistant State Solicitor
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1 occurrence. I don't know that person's name but I know
2 the face is familiar to me. It's Ms. Kinard, right?

3 CARRIE KINARD: Yes.

4 THE COURT: Pretty good memory, right?

5 CARRIE KINARD: Yes.

6 THE COURT: So for the record, Ms. Kinard was, I
7 think, the last juror seated. I know that person's face
8 but not their name. She said I may know a witness that's
9 sitting here in the courtroom. While y'all were in
10 there, the lawyers and I talked and all the witnesses
11 except for the parties that have to be in here are not in
12 the courtroom so they don't get the benefit of hearing
13 each others' testimony. That's called sequestration.
14 That's a legal word for they're in another room. They'll
15 be called in here one at a time except for the chief
16 investigator, the victim and Mr. Posey. They're all
17 here. They get to hear but the others have to stay
18 outside the courtroom. That's why I wanted to make
19 certain we handled it that way. The witnesses are not in
20 here. With that clarification the jury is under oath.
21 Ms. Radlein.

22 MS. RADLEIN: Thank you, Your Honor. May it please
23 the Court.

24 THE COURT: Yes, ma'am.

25 MS. RADLEIN: This is a case about broken trust.

1 Trust broken in the worst way imaginable. This is a
2 serious case about the defendant Antonio Kenyardo Posey
3 violating his little girl in the worst way about the
4 defendant specifically sexually assaulting daddy's little
5 girl. About that man breaking little [Minor]'s trust
6 forever. [Minor] during the most impressionable years
7 of her life, her life was filled with secrecy and shame.
8 A burden that should never have been hers to carry
9 because of the actions of the defendant when he chose
10 that it was okay to have sex with his daughter. That's
11 what this case is about. Broken trust.

12 Now, throughout the course of this trial you will
13 hear from several witnesses. You will hear from [Minor]
14 little sister [Sister]. She will talk to you about some of
15 the things she witnessed daddy doing to [Minor]. But
16 before then you will get to hear from [Minor]. [Minor],
17 she's brave. She's full of courage. She will take this
18 witness stand and tell you how on Tuesday, December 2nd
19 of 2014 she finally had the courage the tell. To tell
20 that secret that he wanted her to keep. That secret that
21 he never thought she would have the courage to tell.

22 She will tell you how she was able to disclose to
23 her mother what daddy had been doing when mom wasn't
24 around. She will tell you how she wrote it on index
25 cards and gave it to her mom. You will get to see those

1 index cards, when she told her that daddy was putting his
2 private in her private and then daddy would put his mouth
3 on her private.

4 You will get to hear from law enforcement who acted
5 promptly, quickly in this case when they realized that
6 the last assault was the night before she finally was
7 able to tell. So little **Minor** was taken to Palmetto
8 Health so she could be examined by a sexual assault
9 nurse. They collected evidence. They took her underwear
10 that she was wearing during the time of the examination
11 and they sent that to the State Law Enforcement Division,
12 what we call SLED, for it to be tested. Along with that
13 kit of evidence, swabs from her body. They also sent a
14 second pair of underwear. The underwear that she would
15 have been wearing, that she was wearing when he assaulted
16 her for the last time. You will get to hear from the
17 SLED analyst when they take this witness stand. And do
18 you know what they're gonna tell you? That saliva was
19 found in **Minors** vagina. That saliva was found in the
20 crotch of the underwear she was wearing during the
21 assault, that last assault and that saliva was found in
22 the crotch of the underwear that she was wearing during
23 that evidence collection. And do you know whose DNA that
24 saliva belongs to each and every sample? Antonio
25 Kenyardo Posey.

1 You heard when my co-counsel called this case that
2 he's charged with criminal sexual conduct with a minor in
3 the first degree. That's what South Carolina call that
4 law. That's just the name of it. But what it
5 essentially is is sexual battery on a child under the age
6 of 11. It's that simple.

7 We submit to you, ladies and gentlemen, that by the
8 end of this case the State would have met its burden of
9 proving the defendant guilty beyond a reasonable doubt.
10 We thank each and every one of you for your service here
11 today and throughout the trial of this case. We thank
12 you for paying attention and we submit to you that you
13 will find that man guilty for what he's done. **Minor**
14 sits here today now 12 years old along with law
15 enforcement seeking justice. Each and every one of you
16 will play an important part in their pursuit of justice
17 and hold Antonio Posey responsible. Thank you.

18 THE COURT: Mr. Scott.

19 MR. SCOTT: Thank you, Judge.

20 Ladies and gentlemen, on behalf of Antonio Posey, my
21 client, on behalf of myself and my colleagues at the
22 defense table, I just want to thank you all for your
23 service. Jury service is very important and in this case
24 you have to presume that Antonio Posey is innocent. He
25 is innocent of everything that Ms. Radlein just said.

1 That presumption of innocence stays with him throughout
2 this trial. Just because -- What Ms. Radlein just said
3 is not evidence and what you are gonna hear from me is
4 not evidence. What I'm gonna implore you to do and what
5 the Judge has asked you to do is to keep an open mind
6 about this. Don't pre-judge Antonio Posey and don't find
7 him guilty until the State meets its burden of proving
8 him guilty. I submit to you they will not be able to
9 meet that burden of proving him guilty.

10 By way of background Mr. Posey, Antonio, was
11 involved with Brandi Nye, [Minor] 's mother and they
12 had a long running relationship. They lived together out
13 in Ward. Ms. Nye, Brandi Nye, [Minor], [Sister],
14 who is Antonio's child by Brandi, the four of them lived
15 together out in Ward. This household I'm assuming like
16 any other household was not without conflict. There were
17 fusses and fights. Brandi and Antonio would get into
18 fusses and fights. Of course, the children would get in
19 fusses and fights. There were allegations of infidelity
20 by Antonio. Those would lead invariably to fights. He
21 would move out, come back. Brandi would take him back
22 in. That's not what he's up here for. He's up here
23 charged with what I can only imagine is one of the most
24 heinous things that you can be charged with. But when
25 you listen to the evidence, when you listen to the story

1 that the State is gonna tell you and when you listen very
2 closely to the testimony of the witnesses, it's not gonna
3 add up.

4 What the State is trying to do is they're trying to
5 pour water into a colander and trying to make that
6 colander hold water and it's not gonna hold the water.
7 Pay close attention. Everything, as far as meets the eye
8 everything in this house was fine until December 2nd.

9 **Minor** was a student at Hollywood Elementary School. She
10 was a great student by all accounts. She was in the
11 gifted and talented program. She made straight A's. I
12 think she said that her lowest grade was a 95.

13 She starts getting in trouble somewhere around
14 November of 2014. On the second day of December her
15 mother is called to pick her up at school. She's been in
16 trouble at school again. She tells, for the first time
17 she tells her mother for the first time daddy has raped
18 me. But she doesn't say this happened just a day ago or
19 just a week ago or just two weeks ago. She says this has
20 been going on for two or three years yet for those prior
21 two or three years she's been making fine grades. She
22 hasn't been acting up in class. I don't think that's
23 gonna be contradicted. Nobody is gonna stand up here and
24 tell you she was misbehaving prior to that.

25 But when she makes that revelation to her mother in

1 the car on December 2nd, what does her mother do? Does
2 her mother call the police? No. She doesn't call the
3 police. Does her mother confront Antonio Posey and say
4 what are you doing with my daughter? She doesn't do
5 that. Does her mother do what maybe some of us might do
6 and go get a gun and put a couple holes in him or three
7 holes in him? She doesn't do that. She calls her
8 friend. She calls her friend Pooh. Jennifer Murphy. I
9 suppose she had to get a second opinion. But even that
10 wasn't enough. After she talks to Pooh, she talks to
11 Pooh's husband Tim, and only after getting a second
12 opinion and a third opinion does she then contact the
13 police.

14 When she contacts the police, they take her to
15 Richland. The police told her to take her to Richland
16 for a rape exam. They perform a rape exam. You're gonna
17 hear from the nurse who performed the rape exam. This
18 exam was performed some 26 to 28 hours after the last
19 allegation of sexual assault. So it was a very thorough
20 exam. I know when I go to the doctor it takes about 10
21 minutes. He maybe puts his stethoscope on me and let's
22 me go. This was a very thorough exam. Vaginal exam.
23 The nurse that examined her found no abnormalities. No
24 physical abnormalities with the child. There were no
25 bruises. There was no redness. There was no tearing.

1 There was no bleeding. It was a benign exam. It was
2 performed shortly after within, again within 26 to 28
3 hours after the last sexual assault.

4 What I'm gonna ask you to do and what my colleagues
5 are gonna ask you to do is use your common sense that you
6 walked into this room with today. And you're gonna hear
7 a lot of stuff. You're gonna hear a lot of allegations,
8 but run those allegations through your common sense
9 meters if you will, and I think if you listen to all that
10 evidence and what I'm asking for you to do is what the
11 Judge asked you to do just a few minutes ago and don't
12 pre-judge this case. Don't make a decision after you
13 just hear from one or two of the State's witnesses. Wait
14 until you hear all of the evidence and I think once you
15 hear all of the evidence you're gonna conclude that
16 Antonio Posey didn't do these things.

17 I would remind you what the Judge said. He doesn't
18 have to prove anything. He doesn't have to prove he
19 didn't do anything. The State bears the burden, a
20 hundred percent of the burden to prove that he did these
21 terrible, terrible things they allege against him. I
22 think if you keep an open mind and if you listen to the
23 inconsistencies in the stories that they tell, if you
24 listen to some of the incredible things that are gonna
25 come out of the witnesses' mouths from this witness stand

1 right here, you're gonna conclude that there's no way,
2 there's no way under the sun that this happened.

3 Again, I want to thank y'all for your service. This
4 is the - trial by jury is the greatest mechanism ever
5 invented by the human species to determine truth from
6 fiction. You're going to hear a lot of fiction in here
7 over the next two or three days. What I'm asking you to
8 do, what I'm asking you to do now is to keep an open
9 mind. Antonio Posey is not guilty. He loves **Minor** He
10 loves **Sister**. He loved them in December of 2014 and he
11 loves them now.

12 But if you will keep that open mind and listen and
13 listen to the inconsistencies and listen to the things
14 that don't add up, I think you will find that he's not
15 guilty. A colleague, it might be me, it might be one of
16 my colleagues, they're gonna come at the end when the
17 trial is all over and we're gonna stand before you again
18 and we're gonna ask you to come back with a verdict that
19 reflects the truth and that is that Antonio Posey did not
20 do these terrible things that he is charged with doing.

21 I thank you for your attention. I thank you for
22 your willingness to serve in this capacity. Thank you.

23 THE COURT: Ms. Mayes.

24 MS. MAYES: May it please the Court. Your Honor,
25 the State calls **Minor**.

1 Thereupon,

2 [Minor], a minor

3 after having been first duly sworn, testified as follows,

4 DIRECT EXAMINATION

5 BY MS. MAYES:

6 Q. I'll ask you to state your full name for the
7 reporter.

8 A. [Minor].

9 Q. How old are you today?

10 A. 12 years old.

11 Q. How are you feeling today?

12 A. Okay.

13 Q. [Minor], what school do you currently go to?

14 A. [Redacted] Middle School.

15 Q. What grade are you in right now?

16 A. Seventh.

17 Q. All right. I want to ask you a little bit about
18 school. What are some of the things that you are involved in
19 in school?

20 A. Gifted and talented, Beta Club and project based
21 learning.

22 Q. All right. What is project based learning?

23 A. It's when students take over the classroom and
24 become task masters and working with the special needs.

25 Q. All right. Do you play any sports?

1 A. Softball.

2 Q. What softball team do you play for?

3 A. [REDACTED] Middle School.

4 Q. What are some of the positions you play for your
5 softball team?

6 A. First and catcher.

7 Q. Now, Minor, I want to take you back to when you
8 were 10 years old.

9 A. Yes, ma'am.

10 Q. Where were you living at that point in time?

11 A. [REDACTED]
12 [REDACTED].

13 Q. So that's the actual address. You said [REDACTED]
14 [REDACTED]?

15 A. Yes, ma'am.

16 Q. And that's in the Ward area?

17 A. Yes, ma'am.

18 Q. Do you know whether or not that's in Saluda
19 County?

20 A. No, ma'am.

21 Q. All right. While you were living at that address
22 when you were 10 years old, who all lived in the house
23 with you?

24 A. Uhm, my little sister Sister and my mom and
25 Antonio.

1 Q. All right. How is it, Minor, that you know the
2 defendant in this case Antonio Posey?

3 A. Uhm, he's my stepfather and my little sister's
4 biological father.

5 Q. All right. You say he's your stepfather. About how
6 old were you when he first came into your life?

7 A. Three months.

8 Q. Three months. So you were a baby. Do you know how
9 long he lived with you and your family as your stepfather?

10 A. Forever.

11 Q. All right. Forever to you?

12 A. (Witness nodding head.)

13 Q. So up until the time you were 10 years old?

14 A. (Witness nodding head.)

15 Q. And I'll need you to actually give an answer so the
16 court reporter here can write down everything that you say.

17 A. Yes, ma'am.

18 Q. Even though you may want to nod your head, we'll
19 need you to say yes or no.

20 A. Okay.

21 Q. You mentioned your sister Sister. Is she older than
22 you or younger than you?

23 A. Younger.

24 Q. How much younger?

25 A. Two years and four months.

1 Q. All right. What I'm going to do is ask you to tell
2 us a little bit about your family. We can write here on this
3 board. Can you see this from where you are?

4 A. Yes, ma'am.

5 Q. All right. Now, Minor, you are currently 12 years
6 old?

7 A. Yes, ma'am.

8 Q. What is your actual date of birth?

9 A. /04.

10 Q. , 2004. That's ?

11 A. Yes, ma'am.

12 Q. And Sister, do you know her date of birth?

13 A. Yes, ma'am.

14 Q. What is that?

15 A. /06.

16 Q. 2006. How old is she right now?

17 A. 10.

18 Q. All right. So she's 10 right now. All right. So
19 what we're gonna do is we're gonna go back to the time period
20 of 2014 when you were 10 years old and you're living at
21 . You said in your house was you, Minor,
22 your sister, Sister. Now, what is your mother's name?

23 A. Brandi.

24 Q. All right. And what is her last name?

25 A. Nye.

1 Q. Brandi Nye. And your little sister, her last name
2 is what?

3 A. [REDACTED].

4 Q. All right. And her biological father is?

5 A. Antonio Posey.

6 Q. All right. And you said Antonio also lived there?

7 A. Yes, ma'am.

8 Q. Was it just the four of you or did anyone else live
9 there too?

10 A. Just the four of us.

11 Q. All right. Okay. While you were living there, did
12 you have your own room?

13 A. Yes, ma'am.

14 Q. What about Sister, did she have her own room?

15 A. Yes, ma'am.

16 Q. How many bedrooms were in the home?

17 A. Three.

18 Q. Okay. And where did your mom and Antonio stay?

19 A. In my mom's room.

20 Q. All right. So all three of the bedrooms were
21 occupied?

22 A. Yes, ma'am.

23 Q. Minor, during the time that y'all lived together in
24 the year 2014, can you tell us whether or not anything ever
25 happened that made you feel uncomfortable?

1 A. Antonio used to touch me and put his privates in
2 me.

3 Q. Okay. I'll ask you a little more about that, okay?
4 Did that happen one time or more than one time?

5 A. More than one time.

6 Q. Where in the house did that happen at, Minor?

7 A. In my room.

8 Q. Okay. Do you know about how old you were the first
9 time something happened that made you uncomfortable?

10 A. The last time?

11 Q. The first time when it first started about how old
12 were you?

13 A. Late seven, early eight.

14 Q. About seven or eight?

15 A. (Witness nodding head.)

16 Q. Was it happening when you were nine years old?

17 A. Yes, ma'am.

18 Q. And when you were 10 years old?

19 A. Yes, ma'am.

20 Q. How, if at all, did the touching change over time?

21 A. When it first started, all he did was kiss me but
22 then he started touching me and then he would put his mouth on
23 my private parts and then it turned into his putting his
24 private part in me.

25 Q. Okay. Can you tell us whether or not when you say

1 that he put his mouth on your private parts, did that happen
2 one time or more than one time?

3 A. More than one time.

4 Q. Did it happen when you were 10 years old?

5 A. Yes, ma'am.

6 Q. When you were nine years old?

7 A. Yes, ma'am.

8 Q. And you said he put his private in your private?

9 A. Yes, ma'am.

10 Q. I'm going to ask you to show us what you mean by
11 that. I'm going to show you first this diagram of a girl.
12 This is marked as State's exhibit 4. Would you take a look at
13 this from the top of the girl's head all the way down to the
14 bottom of her feet. Do you see the location her on her body
15 that you are calling your private part?

16 A. Mm-hmm.

17 Q. Can you show us where you're referring to?

18 A. (Witness complies.)

19 MS. MAYES: I'll come around here, Your Honor, okay?

20 THE COURT: Yes.

21 BY MS. MAYES:

22 Q. That would be the front private part?

23 A. Yes, ma'am.

24 Q. Minor, I'm gonna show you this which is State's
25 exhibit 5 and ask you to take a look at this diagram of a man

1 and it's from the top of the head all the way down to the
2 bottom of the feet. Can you show us the place that you are
3 referring to as the private part?

4 A. (Witness complies.)

5 Q. Okay. Minor, looking at this diagram, what part or
6 parts of his body, Antonio's body touched your private part?
7 What you showed us was the front private part.

8 A. Can I circle it?

9 Q. If you could, you could circle that.

10 A. (Witness complies.)

11 Q. Okay. You circled the hand. What part or parts of
12 the hand touched your front private part?

13 A. His finger.

14 Q. When you say that his finger touched your private
15 part, do you know whether or not it ever went inside your
16 private part?

17 A. Yes, ma'am.

18 Q. Can you tell us whether or not?

19 A. Yes, ma'am. It went in.

20 Q. Okay. And you circled the front private part. Can
21 you tell us whether or not his private part ever went in your
22 private part?

23 A. Yes, ma'am. It went in.

24 Q. Okay. And you circled the mouth. Where on your
25 body did he put his mouth?

1 A. On my vagina.

2 Q. Is this what you are referring to as the vagina on
3 State's exhibit 4?

4 A. Yes, ma'am.

5 MS. MAYES: Your Honor, this will be State's
6 exhibits 4 and 5 for evidence.

7 THE COURT: Any objections?

8 MR. SCOTT: No, Your Honor.

9 THE COURT: All right. They're admitted.

10 Ms. Mayes, have her speak into the microphone so the jury
11 can hear and everybody can hear.

12 BY MS. MAYES:

13 Q. Does that chair move forward?

14 A. No.

15 Q. It does not. I need you to move forward just a
16 little bit.

17 A. (Witness complies.)

18 Q. Minor, when this was going on up until the time of
19 December of 2014, had you told your mother?

20 A. No, ma'am.

21 Q. Why or why not?

22 A. I was too scared and whenever I was little, Antonio
23 was like always my favorite, I guess, and he was, I guess, my
24 dad and I guess I was his favorite too and I just didn't want
25 him to get in trouble.

1 Q. All right. Did he ever say anything to you about
2 whether or not it was okay to tell someone?

3 A. He wanted me to keep it a secret because he told me
4 he would go to jail.

5 Q. How did that make you feel?

6 A. I didn't want him to go to jail because like I said
7 he was like a father figure.

8 Q. When you say that you did not tell your mom, what
9 are some of the thoughts you had about people finding out?

10 A. I was scared that people would judge me and I didn't
11 want my little sister to grow up without a father or me and I
12 thought my mom was happy so I didn't want to tell.

13 Q. Okay. And so while you are living in the home and
14 this is going on, what are some of the places that your mom
15 would be when something would happen?

16 A. My mom is a smoker and so she would be outside
17 either smoking or talking to a family member or friend and
18 either in the bathtub or watching TV.

19 Q. Okay. I'm gonna show you another exhibit and ask
20 you whether or not you recognize this and this is State's
21 exhibit 6. Do you recognize what is shown in this diagram?

22 A. That's our house.

23 Q. Okay. And when you say your house, you're referring
24 to your house at what address?

25 A. [REDACTED].

1 Q. Okay. Looking at this can you see your room?

2 A. Yes, ma'am..

3 Q. What about **Sister**'s room?

4 A. Yes, ma'am.

5 Q. What about your mom and Antonio's room?

6 A. Yes, ma'am.

7 Q. Now, when y'all lived together, what did you call
8 Antonio?

9 A. Dad.

10 Q. Can you show us here, write your name on your room
11 and **Sister**'s name on her room if you will.

12 A. (Witness complies.) Do you want me to write my
13 mom's?

14 Q. If you will, please.

15 A. (Witness complies.)

16 Q. Okay. And you mentioned that your mom would smoke.
17 Would she smoke in the house?

18 A. No, ma'am.

19 Q. Where would she normally go to smoke?

20 A. Either at the picnic table or under the metal
21 carport.

22 Q. Do you see the metal carport and the picnic table on
23 here?

24 A. Yes, ma'am.

25 Q. Can you write an X where they are?

1 A. (Witness complies.)

2 Q. Okay.

3 MS. MAYES: Your Honor, this would be State's
4 exhibit for evidence. This is actually pre-marked as
5 exhibit 6.

6 THE COURT: Any objection?

7 MR. SCOTT: No, Your Honor.

8 THE COURT: All right. State's 6 without
9 objection.

10 BY MS. MAYES:

11 Q. Minor, we'll need you to speak up just a little bit
12 more into the microphone.

13 A. Okay.

14 Q. Looking here at this diagram, this is your room.
15 This is Sister's room on the end. And then you wrote mom and
16 dad. You said that you called Antonio dad when y'all lived
17 together when you were 10?

18 A. Yes, ma'am.

19 Q. And were you also living in the same house when you
20 were nine?

21 A. Yes, ma'am.

22 Q. And where in the house do you remember something
23 happening to you that you described?

24 A. In my room.

25 Q. So that would be right here in your room?

1 A. Yes, ma'am.

2 Q. This is the picnic table that you've identified as
3 the carport you said where your mom would go to smoke
4 sometimes?

5 A. Yes, ma'am.

6 Q. If she would watch TV, what room would she normally
7 watch TV in?

8 A. In the living room or in her room.

9 Q. We see her room here. And then what room is this?

10 A. The living room.

11 Q. Okay. Now, did your mom usually at night take a
12 bath or shower?

13 A. She usually took a bath.

14 Q. All right. And where on this diagram is the
15 bathroom where she would normally take a bath?

16 A. Across from my room.

17 Q. Okay. So this bathroom here?

18 A. Yes, ma'am.

19 Q. Minor, was there ever a time that someone else saw
20 something happening with Antonio?

21 A. Uhm, my little sister whenever, one time I was
22 helping her with homework, uhm, Antonio, he got the rolling
23 chair and he rolled it into the kitchen where we were at and
24 he put his hand on my vagina and Sister saw him and she asked
25 him what he was doing and, uhm, he said he was just tickling

1 me and I didn't want her to know or him to get in trouble so I
2 just said, yes, he's tickling me.

3 Q. What room did that happen in?

4 A. The kitchen.

5 Q. All right. And this is the kitchen here?

6 A. Yes, ma'am.

7 Q. What is this area here called?

8 A. I guess the kitchen too.

9 Q. Okay. What is actually shown right here?

10 A. The table.

11 Q. Okay. Is that, when you said dining room, you're
12 referring to what part?

13 A. The table, wherever.

14 Q. The kitchen? This part here?

15 A. Yes, ma'am.

16 Q. I'm gonna show you this photograph and ask you
17 whether or not you recognize it. This is State's exhibit 2.
18 Do you recognize this photograph?

19 A. Yes, ma'am.

20 Q. What is shown in this photograph?

21 A. My kitchen.

22 Q. Is this a fair and accurate representation of how
23 your dining room/kitchen, the table appeared in December of
24 2014?

25 A. Yes, ma'am.

1 MS. MAYES: Your Honor, the State would offer this
2 as evidence. This is State's exhibit 2.

3 MR. SCOTT: Judge, I would like to see it before
4 it's moved into evidence.

5 THE COURT: All right.

6 MR. SCOTT: No objection.

7 THE COURT: State's exhibit 2, the diagram is
8 admitted without objection.

9 BY MS. MAYES:

10 Q. Looking here at this, **Minor**, first of all, I want
11 to ask, do you know who is sitting there at the dining room
12 table in this photograph?

13 A. A police officer.

14 Q. A police officer. Okay. So this photo was taken
15 before you told somebody what happened or after?

16 A. After.

17 Q. Okay. And is this how the dining room appeared
18 during the instance that you told us about a few moments ago
19 that **Sister** saw?

20 A. Yes, ma'am.

21 Q. I'm going to ask you to show us exactly what you're
22 referring to. I'm gonna move this up.

23 A. Okay.

24 MS. MAYES: Your Honor, request permission for the
25 witness to step down briefly.

1 THE COURT: She may.

2 BY MS. MAYES:

3 Q. Okay. And so, Minor, we're looking here at the
4 table. Who do you remember being in this room when that
5 incident happened that you just told us about?

6 A. Me, my little sister, Antonio.

7 Q. Okay. Where were you at?

8 A. I was sitting in this chair.

9 Q. Okay. And where was Antonio?

10 A. He had got the rolling chair from over here and sat
11 right here beside me.

12 Q. I'll need you to speak up a little bit more. You
13 said there was a rolling chair?

14 A. Yes, ma'am.

15 Q. Where was the rolling chair?

16 A. It was to the left of me, I think.

17 Q. Okay. And you said he got it out of another room?

18 A. Yes, ma'am.

19 Q. Okay. And so did the rolling chair move?

20 A. Yes, ma'am.

21 Q. All right. And where was Sister seated?

22 A. She was sitting in this chair.

23 Q. All right. You may return.

24 A. (Witness complies.)

25 Q. What kind of touch or touching happened on that

1 occasion, **Minor**?

2 A. Antonio put his hand in my pants.

3 Q. All right. And when his hand went in your pants,
4 what kind of touch was that?

5 A. Uhm, he used his finger.

6 Q. Do you know whether or not his finger went in your
7 private part?

8 A. I don't remember to be honest.

9 Q. Okay. Was he touching on the outside of your
10 clothes or the inside of your clothes?

11 A. Inside.

12 Q. And at that point in time is that happening over the
13 table or under the table?

14 A. Under.

15 Q. All right. And do you know where your mom was on
16 that occasion?

17 A. She was in the kitchen but I don't think she could
18 see it because it was under the table and she was behind the
19 cabinet that hangs down so she couldn't see.

20 Q. Okay. And can you tell us where **Sister** was
21 looking?

22 A. She was looking at her homework but I guess she
23 looked up and I guess she saw something was wrong.

24 Q. Did you hear Antonio say anything to **Sister**?

25 A. Uhm, after **Sister** had asked him what he was doing,

1 he had said that he was tickling me.

2 Q. All right. Do you know whether or not there were
3 ever any other times where **Sister** was in the room?

4 A. Uhm, one night me and **Sister** were laying in my bed
5 and he had came in there and got aside me and me and **Sister**
6 were watching TV and he tried to do stuff but I was scooting
7 away from him and **Sister** had noticed because she said that she
8 was about to fall off the bed so he got out.

9 Q. When you say you were scooting away, why were you
10 scooting away?

11 A. Because I didn't want him to do it.

12 Q. And so who was in the middle?

13 A. Me.

14 Q. What do you remember him doing that time?

15 A. He tried to put his hands in my pants but as I said
16 I was scooting away so he couldn't.

17 Q. Okay. Was **Sister** asleep or awake?

18 A. She was awake.

19 Q. I'm gonna show you what is State's exhibit 3 and ask
20 you whether or not you recognize it?

21 MR. SCOTT: Without objection.

22 THE COURT: Number 3 will be admitted without
23 objection.

24 BY MS. MAYES:

25 Q. And, **Minor**, what are we looking at here?

1 A. This is my bed.

2 Q. All right. Can you tell us whether or not that is
3 the way that your bed appeared during the time frame that you
4 are talking about?

5 A. Yes, ma'am.

6 Q. And does that include the time that you just told us
7 about where **Sister** was in the bed also?

8 A. Yes, ma'am.

9 Q. Looking here where were you at on the bed?

10 A. I was in the middle.

11 Q. Okay. Where was **Sister** ?

12 A. Right here.

13 Q. And where was the defendant Antonio Posey?

14 A. He was on this side.

15 Q. All right. And when you say you started scooting,
16 what do you mean by that?

17 A. I started scooting towards **Sister** so I could get
18 away from him.

19 Q. Over time, **Minor**, did you ever resist Antonio in
20 any way?

21 A. Uhm, that time and he - he asked me in the morning
22 did I want him to do it again and did it feel good. But I
23 would have to say yes because if he didn't - if I didn't, he
24 would get mad and he would show me in ways that he would get
25 mad.

1 Q. Okay. So you said he would ask you if you liked
2 it?

3 A. (Witness nodding head.)

4 Q. Back then what did you say to him in response?

5 A. Yes.

6 Q. Okay. Why did you say that?

7 A. Because I was to scared because he would take it out
8 on my little sister if I said no because he would get mad.

9 Q. I want to ask you, Minor, if you remember the last
10 time that anything occurred?

11 A. Yes, ma'am.

12 Q. Okay. Do you know what day of the week that was?

13 A. A Monday.

14 Q. Do you know what day of the week it was when you
15 finally told somebody?

16 A. Tuesday.

17 Q. Was it the next day that you finally told
18 somebody?

19 A. Yes, ma'am.

20 Q. Let's talk about the last time. Where did that
21 happen at?

22 A. In my bedroom.

23 Q. The same bedroom that we just looked at here in
24 State's exhibit 3?

25 A. Yes, ma'am.

1 Q. Tell us what happened the last time.

2 A. I was going to bed and I was just about to fall
3 asleep but I heard what I usually heard every night that he
4 would say that he was going to the restroom or I would hear
5 the toilet flushing and him walking and he came in and then I
6 was laying this way but then he turned me so my head was that
7 way and my feet were here and he stood over me.

8 Q. Okay. And I'm gonna need for you to slow down just
9 a little bit so that you can show us exactly what you are
10 talking about. When he came into the room, which way was your
11 body positioned?

12 A. My head was here and my feet were there.

13 Q. Head at the top, feet down here?

14 A. Yes, ma'am.

15 Q. Which way did he normally come in?

16 A. Uhm, through the door right here.

17 Q. Okay. And what happened next?

18 A. Uhm, he would come right here and stand and then he
19 would turn me until my head would be right there where that
20 orange square is and my feet would be here.

21 Q. All right. When you say that he would turn you, how
22 was he able to turn you?

23 A. He would just tell me to turn and I would listen
24 because I was scared and then he would physically turn me
25 too.

1 Q. Okay. So once you're turned and your head is here
2 and your feet are there, what happened next?

3 A. Uhm, he used his finger and he put it inside of me
4 and then he took it out and he put his mouth on my vagina and
5 then after he did that, he put his private in me and then
6 after he did that, he put his mouth on my vagina again.

7 Q. Okay. All right. And that last time do you
8 remember how you were dressed when he first came into the
9 room?

10 A. Uhm, I had a shirt on, pants and panties.

11 Q. What happened to your clothes?

12 A. He took them off and threw them on the ground.

13 Q. Okay. And what were you wearing underneath your
14 pants?

15 A. Shorts and underwear.

16 Q. Okay. And the shorts and underwear that you were
17 wearing, what happened to them?

18 A. Uhm, he just told me to pull them aside while he did
19 it.

20 Q. Let me ask you about that. When you say pull them
21 aside, from what part? What part was pulled to the side?

22 A. Like what's covering my vagina.

23 Q. Okay. So that would be the leg part?

24 A. Mm-hmm. Yes, ma'am.

25 Q. When the leg part was pulled to the side, was

1 anything covering you down there?

2 A. No, ma'am.

3 Q. Okay. You said that he put his mouth on you and
4 then he put his private part in your private part?

5 A. Yes, ma'am.

6 Q. Do you know if his mouth actually touched your
7 vagina?

8 A. Yes, ma'am.

9 Q. And do you know at that time whether or not anything
10 came out of his private part?

11 A. No, ma'am.

12 Q. And did he have anything with him?

13 A. No, ma'am. Oh, he had a tissue.

14 Q. Do you know what -- Could you see what he did with
15 it?

16 A. He wiped me and he wiped his self.

17 Q. Okay. When you say he wiped you, what part or parts
18 of your body did he wipe?

19 A. He wiped my vagina.

20 Q. Was that underneath your clothes or with your
21 clothes on?

22 A. Underneath my clothes.

23 Q. That time, Minor, where was your mom?

24 A. Uhm, in the bathtub.

25 Q. Now, when your mom is in the bathtub, back to that

1 diagram, what bathroom is she in again?

2 A. The one across from me.

3 Q. This one right here. Now, you have lived in this
4 house for years?

5 A. Yes, ma'am.

6 Q. When someone is running a bath in this bathroom, can
7 you hear it in your room?

8 A. Yes, ma'am.

9 Q. When someone is draining a bathtub or that bathtub
10 in this room, can you hear it in your room?

11 A. Yes, ma'am.

12 Q. That night when Antonio -- Let me go back a little
13 bit. What time of day was this?

14 A. At night time.

15 Q. Okay. When that was happening and it was just you
16 and Antonio in the room, was there any noise?

17 A. Yes, ma'am.

18 Q. What was making noise?

19 A. My mom in the bathtub when she was running the
20 water.

21 Q. Okay. And what about in your room?

22 A. My bed was squeaking.

23 Q. When you say your bed was squeaking, do you know how
24 long that went on?

25 A. I can't say the exact time.

1 Q. What was causing the bed to squeak?

2 A. Antonio.

3 Q. Where was he at that point that the bed started
4 squeaking?

5 A. He was on the side of my bed like bending down.

6 Q. I'll show you again State's exhibit 3. Where are
7 you referring to?

8 A. He was standing here and lying over my bed.

9 Q. Okay. Can you tell us whether or not he ever got on
10 the bed?

11 A. Some - sometimes he would put his knees on the bed
12 but that's it.

13 Q. Okay. As that was going on what, if anything, else
14 did you hear from the bathroom where your mom was?

15 A. Whenever she was getting out, I heard the water
16 draining out of the bathtub.

17 Q. When the water started draining out of the bathtub
18 what, if anything, happened with Antonio?

19 A. Uhm, he, I guess he started wiping and because I
20 guess he was done, he started wiping me and he left.

21 Q. All right. And that time again did you actually see
22 anything come out of his private?

23 A. No, ma'am.

24 Q. You say he left. By that You mean he left your
25 room?

1 A. Yes, ma'am.

2 Q. Did anyone come in your room after that?

3 A. My mom.

4 Q. Where were you when your mom came in?

5 A. I was under my covers in bed.

6 Q. Did you tell your mom then what had happened?

7 A. No, ma'am.

8 Q. What did you tell her?

9 A. She asked me why was my bed squeaking and why was I
10 still up. I told her that I got hot and that I took my pants
11 off and put them in my drawer.

12 Q. So you told your mom that you were taking your pants
13 off and that caused the bed to squeak?

14 A. Yes, ma'am.

15 Q. And you said that was a Monday night?

16 A. Yes, ma'am.

17 Q. Looking here at this calendar for December of 2014,
18 I'm gonna take you to Tuesday, December 2nd. Do you remember
19 that day?

20 A. Yes, ma'am.

21 Q. Did you go to school that day?

22 A. Yes, ma'am.

23 Q. Okay. What was that day in relation to this last
24 time that you described being a Monday night?

25 A. It was the day I told.

1 Q. Okay. Was it the next day?

2 A. Yes, ma'am.

3 Q. You went to school?

4 A. Yes, ma'am.

5 Q. All right. When you got up that morning, did you
6 still have your underwear on?

7 A. No, ma'am. I -- Well, when I got up, I still had
8 them but I had put my old ones and the ones I had that night,
9 I had put them on the bathroom floor and I had got a new
10 pair.

11 Q. When you say you put them on the bathroom floor,
12 what's your normal routine?

13 A. Uhm, sometimes my mom will make us take a bath or
14 just put like our dirty clothes or our pajamas in the bathroom
15 but I really don't remember what happened that morning. I
16 just remember that my panties ended up on the bathroom
17 floor.

18 Q. Do you remember specifically whether or not you took
19 a shower that morning?

20 A. No, ma'am.

21 Q. But you took your panties off and left them on the
22 bathroom floor?

23 A. Yes, ma'am.

24 Q. And put a new pair on?

25 A. Yes, ma'am.

1 Q. Is that the pair you wore to school?

2 A. Yes, ma'am.

3 Q. Then once you got to school, did you go about your
4 day ordinarily?

5 A. Yes, ma'am.

6 Q. Up until this point in time, Minor, how important
7 had school been to you?

8 A. It had been really important. I have always wanted
9 to be an anesthesiologist. It was important that I kept up my
10 grades.

11 Q. Did you have a goal of being a doctor?

12 A. Yes, ma'am.

13 Q. Because of that you have good grades?

14 A. Yes, ma'am.

15 Q. Had anything happened where your school work started
16 to be affected by what was happening in your home?

17 A. Yes, ma'am.

18 Q. How so?

19 A. I started acting out but it was because I was being
20 frustrated and I wanted it to stop so I just tried to get my
21 mom's attention that let her know something was up so that she
22 would realize that it wasn't normal.

23 Q. So you tried to let your mom know something was
24 up?

25 A. Yes, ma'am.

1 Q. Did that include your school?

2 A. Yes, ma'am.

3 Q. What happened with your school work specifically
4 around that time December 2nd?

5 A. In my science class we had a homework assignment and
6 I wrote on the papers that I don't know and I don't care and I
7 had got a write up recently before that.

8 Q. Okay. So let me stop you right there. You said you
9 had gotten a write up recently before that?

10 A. Yes, ma'am.

11 Q. And what was the write up for?

12 A. Uhm, I trashed a girl's lunch.

13 Q. Okay. You messed up somebody's school lunch?

14 A. Yes, ma'am.

15 Q. Okay. And then did you get in trouble for that?

16 A. Yes, ma'am.

17 Q. You got a detention notice or slip for that?

18 A. Yes, ma'am.

19 Q. And then you wrote on your homework assignment in
20 science class I don't know and I don't care?

21 A. Yes, ma'am.

22 Q. Was that usual or unusual for you?

23 A. Unusual. I always did my homework right.

24 Q. What teacher was that?

25 A. Ms. Morse.

1 Q. That was what grade?

2 A. Fifth grade.

3 Q. At what school?

4 A. Hollywood Elementary.

5 Q. Fifth grade Hollywood Elementary you wrote that on
6 your paper. Did you turn that paper into Ms. Morse?

7 A. Yes, ma'am.

8 Q. Okay. And up until this time had you ever actually
9 said the words to your mom about what was going on in your
10 home?

11 A. No, ma'am.

12 Q. Your little sister [REDACTED], had she told anybody to
13 your knowledge --

14 A. No, ma'am.

15 Q. -- about what she saw?

16 A. No, ma'am.

17 Q. And so how did you get home from school that day on
18 Tuesday, December 2nd?

19 A. My mom, she picked me up from the car lot.

20 Q. From the car lot. Now, you were in fifth grade.
21 What grade was [REDACTED] Sister ?

22 A. Third grade.

23 Q. Did [REDACTED] Sister also ride home with y'all?

24 A. Yes, ma'am.

25 Q. Did your mom pick her up in the same car?

1 A. Yes, ma'am.

2 Q. Who all was in the car on the way home from the
3 school?

4 A. Me, **Sister** and my mom.

5 Q. What time did the school bell ring?

6 A. 3:00.

7 Q. What happened on the way home?

8 A. Uhm, my mom, she had asked me about the thing I had
9 wrote on my homework in Ms. Morse's class and I told her I
10 didn't want to talk about it and she asked me if anything was
11 going wrong in school or at the house and I told her I didn't
12 want to talk about it again and she said you can just whisper
13 to me and I said no because **Sister** is in the house, or in the
14 car and she said just write it on a piece of paper. So I
15 wrote on index cards that I had been raped and she asked me by
16 whom and I said daddy and then she - and then I told her that
17 it was happening for a long time and that he had stuck his
18 private parts in me.

19 Q. Okay. So you let her know this in the car by
20 writing it on index cards?

21 A. Yes, ma'am.

22 Q. What was your mother's reaction to hearing that?

23 A. She slammed on the brakes and pulled off the side of
24 the road and then once I got finished writing on the index
25 cards, she called my aunt Pooh.

1 Q. Called your aunt Pooh?

2 A. Yes, ma'am.

3 Q. What is aunt Pooh's actual name?

4 A. Jennifer Merchant Mason.

5 Q. She's your aunt on what side of the family, your
6 family or Antonio's family?

7 A. Antonio's.

8 Q. So she's your aunt on Antonio's side?

9 A. Mm-hmm. Yes, ma'am.

10 Q. Did you go somewhere to meet with aunt Pooh?

11 A. We went to Saluda Tiger Stadium.

12 Q. Why did y'all go there?

13 A. Because she's a school technician and that's where
14 they go to meet.

15 Q. All right. So your aunt was working there at the
16 Saluda Tiger Stadium?

17 A. Yes, ma'am.

18 Q. Did you tell aunt Pooh?

19 A. Yes, ma'am. My mom, she didn't - she didn't want me
20 to tell her because she, I guess she couldn't bear to hear it
21 and so she told me to tell aunt Pooh. I didn't tell her all
22 of it. I just told her the basic stuff.

23 Q. All right. And did anyone else come down there to
24 the stadium?

25 A. My uncle Tim which is Antonio's uncle and her

1 husband.

2 Q. So aunt Pooh's husband which is Antonio's --

3 A. Uncle.

4 Q. And what's his name?

5 A. Tim Mason.

6 Q. Then when he came down there, did you tell him
7 anything?

8 A. Yes, ma'am. I told him the same thing that I had
9 told aunt Pooh.

10 Q. Okay. What happened next?

11 A. Uhm, we went - uhm, they told us to go to the
12 police. We were already gonna go but we just stopped there
13 first and they told us to go to the police station and just
14 tell them and after that we went to the hospital.

15 Q. Okay. When you say you went to the police, you went
16 to the Sheriff's Department?

17 A. Yes, ma'am.

18 Q. All right. Did you talk with a female officer
19 there?

20 A. I think it was a male.

21 Q. All right. So you did talk to a police officer
22 there?

23 A. Yes, ma'am.

24 Q. And then you said you went to the hospital?

25 A. Yes, ma'am.

1 Q. Is this all the same night, the night of Tuesday --

2 A. Yes, ma'am.

3 Q. -- December 2nd? Who took to you the hospital?

4 A. Nicole Maffett.

5 Q. Who did she work for?

6 A. The Saluda department, I guess.

7 Q. Is she police?

8 A. No, ma'am. She's the victim advocate.

9 Q. Okay. Victim advocate with the Sheriff's
10 Department?

11 A. Yes, ma'am.

12 Q. And you actually rode with her to the hospital?

13 A. Yes, ma'am.

14 Q. Which hospital was this?

15 A. I don't know. I don't.

16 Q. We're going back in time. You were 10 years old. I
17 realize you were 10 at the time but when you went to the
18 hospital, was anyone else in the car with you and Nicole?

19 A. Yes, ma'am. My little sister.

20 Q. Okay. And was your mom also in the same car?

21 A. No, ma'am. Her and my aunt Pooh drove separate.

22 Q. So your mom is driving separately and on the way to
23 the hospital did you know what you were going there for?

24 A. Uhm, Miss Nicole just told me that it was going to
25 be okay and she had told me earlier in the office when I was

1 by myself that they were going to have to do something with my
2 private parts.

3 Q. So you did go to the hospital?

4 A. Yes, ma'am.

5 Q. Did you meet with a nurse there at the hospital?

6 A. Yes, ma'am.

7 Q. And did she take anything from your body?

8 A. She took my underwear and then she performed the
9 rape kit.

10 Q. Okay. And when you say, mentioned the rape kit,
11 what are we talking about exactly? What was used to collect
12 evidence from your body?

13 A. Uhm, she used swabs. She swabbed my mouth and, uhm,
14 my boobs and my vagina.

15 Q. Your vagina, your front private part that you
16 pointed to on the diagram?

17 A. Yes, ma'am.

18 THE COURT: Ms. Mayes, you've got some more
19 questions?

20 MS. MAYES: Yes, Your Honor.

21 THE COURT: We've been going about an hour and 15
22 minutes. Let's take a short break, about 10 minutes.
23 Step to the jury room. Don't discuss the case. Have you
24 back in here shortly.

25 (Whereupon, the jury entered the jury room at 2:30

1 p.m.)

2 THE COURT: All right. Ma'am, you can step down but
3 you can't discuss your testimony with anybody, those
4 lawyers or Ms. Mayes. You have got to just kind of go to
5 the bathroom if you can and don't talk about your
6 testimony until we come back, okay?

7 (Short break.)

8 MS. SCOTT: Judge, before we bring the jury in, the
9 positioning of the tape or the live testimony, that will
10 happen after the tape, right?

11 THE COURT: What I said was that the State can call
12 anyone they wanted because I didn't want to hem them in
13 in having to call her in but once the video is played,
14 you can have the Court recall her to cross examine her
15 after the presentation or you can do it after the
16 cross.

17 MS. SCOTT: All right. I just wanted to make sure.

18 THE COURT: All right. I don't expect the full
19 cross examination by that time either.

20 MS. SCOTT: I understand.

21 THE COURT: After we see the video.

22 MR. SCOTT: Yes, sir.

23 THE COURT: We ready?

24 MS. MAYES: Yes, Your Honor.

25 THE COURT: Bring in the jury please.

1 (Whereupon, the jury entered the courtroom at 2:43
2 p.m.)

3 THE COURT: All right. Ms. Mayes, your witness.

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

5 BY MS. MAYES:

6 Q. Now, Minor, you were talking about the series of
7 events that occurred right here on Tuesday, December 2nd so
8 I'm going to highlight this day and this is the day you told
9 us about that you wrote on the index cards on the way home
10 from school?

11 A. Yes, ma'am.

12 Q. And the last incident had been according to your
13 testimony this night before which would be Monday?

14 A. Yes, ma'am.

15 Q. And I believe right before the break you were
16 testifying about the medical examination that was done at the
17 hospital where they took swabs from your body?

18 A. Yes, ma'am.

19 Q. Okay. And the underwear that you had on at the
20 hospital were the underwear that you put on when?

21 A. Tuesday morning.

22 Q. All right. While you were getting that medical
23 exam, what happened to those underwear?

24 A. They took'em.

25 Q. When you say they took'em, you mean who?

1 A. The nurse.

2 Q. Okay. I'm gonna show you an item and ask you
3 whether or not you recognize it?

4 A. Yes, ma'am.

5 Q. All right. How do you recognize that item?

6 A. Those are the underwear that I had on at the
7 hospital.

8 MS. MAYES: Your Honor, that's for ID only at this
9 time.

10 THE COURT: What number is that identified as?
11 What's it marked?

12 MS. MAYES: This one is unmarked, Your Honor.

13 THE COURT: Okay. Do we want to mark it for
14 identification or not?

15 MS. MAYES: Not at this time, Your Honor.

16 THE COURT: Okay. Very well.

17 BY MS. MAYES:

18 Q. And I show you some additional photos and ask you
19 whether or not you recognize them. This is State's exhibits
20 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21.

21 MR. SCOTT: Without objection, Your Honor.

22 THE COURT: State's 10 through 21 all admitted
23 without objection.

24 BY MS. MAYES:

25 Q. And I want to start by showing you State's exhibit

1 12. Minor, what are we looking at here?

2 A. My house.

3 Q. That's the house at, what's the street?

4 A. [REDACTED].

5 Q. And then States exhibit 11?

6 A. That's my metal carport.

7 Q. What's there on the carport? What's nearby the
8 carport?

9 A. The picnic table.

10 MS. MAYES: Your Honor, if I may publish?

11 THE COURT: Yes, ma'am.

12 BY MS. MAYES:

13 Q. This is State's 12 and 11 and that is the home on
14 [REDACTED]?

15 A. Yes.

16 Q. This is the same house you lived in when you were
17 nine and 10?

18 A. Yes, ma'am.

19 Q. That you told us about where these things
20 occurred?

21 THE COURT: Let me make sure. Those photographs Ms.
22 Mayes is showing y'all, y'all see them. They're in
23 evidence. You will have them in the jury room and get to
24 look at them as long as you want although she's just
25 holding them up. Y'all will have another opportunity to

1 review them as long as you like. Don't worry about not
2 having them in your hand. You will have that chance.

3 BY MS. MAYES:

4 Q. I'll show you this collection of photographs and ask
5 you what is depicted in that series of photographs?

6 A. This is my room.

7 Q. Speak up a little bit.

8 A. This is my room.

9 Q. Okay. All right. When you say your room, is that
10 the same room in which this bed is located?

11 A. Yes, ma'am.

12 Q. All right. Now, I'm gonna show you the final series
13 of photographs which are 13, 14, 15, and 16 and ask you what
14 is depicted in this group of photographs?

15 A. This is the bathroom and mine and my little sister's
16 clothes are in here.

17 Q. All right. Tell me a little more about that. I'm
18 gonna ask you specifically about State's exhibits 13 and 14.
19 You said that is the bathroom. I'm gonna go back to this
20 diagram of your home which is State's exhibit 6. Is this the
21 same bathroom that you told us about before?

22 A. Yes, ma'am.

23 Q. And you testified previously that when you got up
24 that morning on Tuesday morning up for school, what do you
25 recall doing when you were in the bathroom?

1 A. I took off my underwear and put on a new pair.

2 Q. All right. And I'm going to ask you what is
3 actually depicted in these two photographs 13 and 14?

4 A. My underwear, my little sister's shirt, my little
5 sister's underwear and her socks.

6 Q. Okay. Which color are your underwear?

7 A. The white and blue ones.

8 Q. Do you see them in this photograph?

9 A. Yes, ma'am.

10 Q. All right. State's exhibit 13, we're looking at
11 items here on the floor. Where are your underwear in that
12 photograph?

13 A. Here.

14 Q. And State's exhibit 14?

15 A. Here.

16 Q. All right. Those white underwear. Now, these
17 underwear you had worn on what night?

18 A. Monday night.

19 Q. On Monday night before you told?

20 A. Yes, ma'am.

21 Q. Were you still wearing these underwear after Antonio
22 left your room?

23 A. Yes, ma'am.

24 Q. Were these the underwear that you were wearing --
25 Can you tell us whether or not these are the underwear that

1 you were wearing when Antonio put his mouth on you?

2 A. Yes, ma'am. They were.

3 Q. Okay. And again, if you could explain how he was
4 able to touch or reach your private part, your vagina while
5 your underwear were on?

6 A. He told me to pull them to the side.

7 Q. Okay. And when you say pull them to the side,
8 you're talking about what part of the underwear got pulled to
9 the side?

10 A. This part right here where the legs are.

11 Q. Where your legs are?

12 A. (Witness nodding head.)

13 Q. I'm gonna show you - this is unmarked. It's only
14 for identification at this time. I'm going to ask you whether
15 or not you recognize what is in this bag.

16 A. Yes, ma'am.

17 Q. When you say yes, ma'am, you mean what?

18 A. Those are my underwear that I was wearing Monday
19 night.

20 Q. Okay. Same underwear that are shown in this
21 photograph?

22 A. Yes, ma'am.

23 Q. Now, Minor, you had testified earlier about being
24 in the car ride home from school?

25 A. Yes, ma'am.

1 Q. And your mom confronts you basically about what?

2 A. Uhm, my acting out and because I was a straight A
3 student and never got in trouble so I guess it was just
4 unusual.

5 Q. Okay. And it was that time on the ride home from
6 school that you told your mother how?

7 A. Uhm, on the index cards there.

8 Q. I'll show you these and ask you whether or not you
9 recognize them and if so, how?

10 A. Uhm, these are mine. They were -- I recognize them
11 because that's my handwriting.

12 Q. I'll ask you to speak up a little bit so the court
13 reporter can hear everything that you're saying.

14 A. Yes, ma'am.

15 Q. You said these are mine?

16 A. Yes, ma'am.

17 Q. Whose handwriting do you recognize on those cards?

18 A. Mine.

19 Q. All right. Do you remember where you had gotten the
20 index cards from?

21 A. Out of my book bag.

22 Q. Which one did you write to your mother first?

23 A. "I have been raped."

24 Q. It says, "I have been raped." And what was your
25 mother's reaction to that?

1 A. That was when she slammed on the brakes and pulled
2 on the side of the road.

3 Q. Pull over on the side of the road?

4 A. Yes, ma'am.

5 Q. And what did you respond next?

6 A. She asked me who and I told her daddy.

7 Q. Do you recognize the handwriting here?

8 A. Yes, ma'am.

9 Q. Whose handwriting is that?

10 A. Mine.

11 Q. What was your response to her when she said who?

12 A. I wrote daddy.

13 Q. What else?

14 A. Uhm, nothing. That's later.

15 Q. Okay. That's later?

16 A. Yes, ma'am.

17 Q. Okay. What happened next?

18 A. Uhm, she asked me what he did and I said he would
19 lick my private part and then on this one I said he would
20 slide his private part in mine.

21 Q. He would lick my private and he slid his private in
22 mine?

23 A. Yes, ma'am.

24 Q. Now, are you saying the words at all to your mom
25 at this point?

1 A. No, ma'am.

2 Q. You're only telling her by writing it down?

3 A. Yes, ma'am.

4 Q. Why were you writing it?

5 A. Because I didn't want my little sister to hear.

6 Q. Where were you at in the car?

7 A. I was in the passenger seat.

8 Q. Where was [REDACTED], your little sister?

9 A. In the back seat.

10 Q. What, if anything, else did you write?

11 A. Uhm, whenever she was just talking, I told her that
12 it was a long time.

13 Q. A long time?

14 A. Mm-hmm. Yes, ma'am.

15 Q. What did you mean by that when you wrote a long
16 time?

17 A. That he had been doing it for a long time.

18 Q. How did you feel after you wrote all of this down?

19 A. I kind of felt relieved that I had finally told
20 someone.

21 Q. What was your mom's physical reaction? What was she
22 doing?

23 A. Driving and talking on the phone.

24 MS. MAYES: Your Honor, this would be a series of
25 items as one exhibit. It is not pre-marked but she has

1 identified it as hers and it would be marked as evidence
2 at this time.

3 THE COURT: Any objection to marking it as one
4 exhibit and sub marking it exhibit A, B, C, D, whatever
5 that --

6 MR. SCOTT: No objection, Your Honor.

7 THE COURT: No objection. Steve, just for clarity
8 whatever the next number is it will be the next number
9 and then next A, B, C, D on the list for each card.

10 (Whereupon, State's exhibit #26 A, B, C, D marked
11 for identification and admitted into evidence.)

12 BY MS. MAYES:

13 Q. Now, at the point in time that all of this came out
14 on Tuesday, December 2nd, was Antonio still living with you
15 and your family?

16 A. Yes, ma'am.

17 Q. And once you told your mom and it all came out and
18 you said y'all went to the police station, where did y'all go
19 to stay that night after you left the hospital?

20 A. At my grandmother's.

21 Q. And about how long did you stay at your
22 grandmother's?

23 A. A week.

24 Q. Okay. Did you ever go back to live in the house
25 with your dad Antonio?

1 A. Mmm-mmm.

2 Q. If you could just answer yes or no.

3 A. No, ma'am.

4 Q. You said before that he is the biological father of
5 **Sister** but not your biological father?

6 A. Yes, ma'am.

7 Q. Do you remember about how old you were when you
8 found out that he wasn't your biological father?

9 A. Seven.

10 Q. About seven?

11 A. (Witness nodding head.)

12 Q. And how, if at all, did your relationship with
13 Antonio change when you eventually learned he was not your
14 biological father?

15 A. Uhm, after my aunt had told me that he wasn't,
16 that's when all of this started a couple weeks later.

17 Q. When you say all of this, you mean what?

18 A. Started kissing me, touching me.

19 Q. Did you still call him dad?

20 A. Yes, ma'am.

21 Q. To people on the outside, **Minor**, how did your
22 relationship with Antonio, your dad appear?

23 A. I guess good, uhm.

24 Q. What do you mean by that?

25 A. I guess we were - we looked as a happy family

1 because like I said, he was my favorite and any time I was
2 feeling bad, he would cheer me up by taking me to the store
3 and getting me my favorite candy.

4 Q. All right. And in addition to that being your
5 feelings towards him, can you tell us based on your
6 observations did he appear to have positive feelings for
7 you?

8 A. I guess.

9 Q. How so?

10 A. He was nice to me whenever it wasn't happening.

11 Q. After you left the hospital and you were staying
12 with your grandmother, did there come a time when you went for
13 an interview in Aiken?

14 A. Yes, ma'am.

15 Q. With a lady in Aiken who interviews children?

16 A. Yes, ma'am.

17 Q. Did you talk about some of the things you have told
18 us today?

19 A. Yes, ma'am.

20 Q. Do you recall whether or not there was a time that
21 your mom wasn't home at all?

22 A. Uhm, yes, ma'am. She, uhm, went over to my, uhm,
23 other side grandfather's. He lives down like a mile down the
24 road and she had to go get the lawnmower and my little sister
25 went with her and it was just me and Antonio at the house.

1 Q. When you say she had to go get the lawnmower, who
2 had the lawnmower?

3 A. My granddad.

4 Q. Had she borrowed the lawnmower from your granddad
5 one time or more than one time?

6 A. More than one time.

7 Q. You say that Sister went with her to get the
8 lawnmower?

9 A. Yes, ma'am.

10 Q. And it was just you and Antonio at the house?

11 A. Yes, ma'am.

12 Q. What do you recall occurring on that event?

13 A. Uhm, I was -- I'm a light sleeper Saturdays and
14 stuff and he came in my room after they had left because I had
15 just woke up.

16 Q. What day of the week was that?

17 A. Saturday.

18 Q. All right. So this is a Saturday morning?

19 A. Yes, ma'am.

20 Q. And what occurred?

21 A. Uhm, he came in my room and he gave me, I guess, a
22 good morning kiss and, uhm, he touched me on my legs and stuff
23 and then he told me to pull up my pants and lay back and, uhm,
24 and he put my legs up and then that's when he put his mouth on
25 my private place.

1 Q. Okay. The bed that is shown in this photograph,
2 State's exhibit 3, what size bed was that?

3 A. A queen.

4 Q. Queen size bed?

5 A. Yes, ma'am.

6 Q. Between when this all came out and you talked to the
7 police and you went to the hospital and they took swabs from
8 you, between that time and when you went to talk to the lady
9 in Aiken, did anything change concerning your bedroom?

10 A. Yes, ma'am. Uhm, the bed I had then, my grandma had
11 the idea that maybe a new environment would help me because I
12 started having nightmares and stuff and so she put my queen
13 size bed in her second floor in her house and then she gave me
14 the bed that was up there.

15 Q. All right. So you switched out beds?

16 A. Yes, ma'am.

17 Q. Okay. So the bed in that photograph you don't have
18 anymore?

19 A. No, ma'am.

20 Q. And you didn't have it when you went to the
21 interview in Aiken?

22 A. No, ma'am.

23 Q. So from the time you left the police station that
24 night and went off to the hospital and they did the exam and
25 then you went to stay with your grandmother, have you ever had

1 any contact with Antonio Posey since that night?

2 A. No, ma'am.

3 Q. Minor, what you have described when he put his
4 private part in your private part, did that happen when you
5 were under the age of 11?

6 A. Yes, ma'am.

7 Q. Did that happen when you were 10 years old during
8 the year 2014?

9 A. Yes, ma'am.

10 Q. And his mouth on your private part?

11 A. Yes, ma'am.

12 MS. MAYES: Nothing further, Your Honor.

13 THE COURT: Ms. Jordan.

14 MS. JORDAN: May it please the Court.

15 THE COURT: Yes, ma'am.

16 CROSS EXAMINATION

17 BY MS. JORDAN:

18 Q. Minor, I'm going to ask you some more questions
19 about this just to kind of clarify. If you can't hear me or
20 anything, let me know. I'll probably remind you to speak up
21 so everybody can hear what you're saying, okay?

22 A. Okay.

23 Q. Have you ever testified in court before?

24 A. No, ma'am.

25 Q. Have you ever been in this courtroom before?

1 A. Yes, ma'am.

2 Q. Did you come in here for any reason other than
3 what's related to this case?

4 A. No, ma'am.

5 Q. Did you come in here to get ready for court?

6 A. Yes, ma'am. I came in here to get comfortable.

7 Q. Did you practice your testimony?

8 A. No, ma'am.

9 Q. Did you talk to anyone to prepare for your
10 testimony?

11 A. I talked to Ms. Suzanne and Ms. Sutania.

12 Q. Okay. And what grade are you in now did you say?

13 A. Seventh.

14 Q. So two years ago you were in fifth grade; is that
15 correct?

16 A. Yes, ma'am.

17 Q. But you are at a different school now?

18 A. Yes, ma'am.

19 Q. What school were you going to previously?

20 A. Hollywood Elementary School.

21 Q. Now you're at the middle school here in Saluda?

22 A. Yes, ma'am.

23 Q. Okay. What size clothes do you wear currently?
24 What size pants do you wear?

25 A. I don't know really.

1 Q. You don't know. Okay. I want you to help clarify
2 for me about the panties you were talking about, which pair
3 you had on on the night before and which pair you had on on
4 the day of, okay?

5 A. Yes, ma'am.

6 MS. MAYES: Your Honor, may we approach?

7 THE COURT: Yes, ma'am.

8 (Side bar off the record.)

9 THE COURT: We'll mark this 27 for ID.

10 (Whereupon, State's Exhibit #27 marked for
11 identification.)

12 BY MS. JORDAN:

13 Q. Okay. Now, this pair of panties is the pair that
14 you had on the night that the last incident occurred or the
15 pair that you wore to the hospital?

16 A. The night of the last incident.

17 Q. Okay. And can you tell us what size panties those
18 are?

19 A. 16.

20 Q. 16. Okay. And did you -- Let me wrap this back up.

21

22 THE COURT: While you're doing that let's put a
23 sticker on that.

24 (Whereupon, States' Exhibit #28 marked for
25 identification)

1 BY MS. JORDAN:

2 Q. And these are your panties that you wore to the
3 hospital; is that correct?

4 A. Yes, ma'am.

5 Q. Okay. And can you tell me what size panties these
6 are?

7 A. 10.

8 Q. So the night before you were wearing a 16 and the
9 next day you put on a 10?

10 A. Yes, ma'am.

11 Q. And you testified earlier that your mom would
12 normally take a bath at night, correct?

13 A. Yes, ma'am.

14 Q. What time did you normally go to bed at night?

15 A. 8:00, 8:30.

16 Q. Did you take your baths at night before you went to
17 bed or would you normally take a bath the next morning before
18 you went to school?

19 A. We took them at night and sometimes in the morning
20 but not usually in the morning.

21 Q. Say that again.

22 A. We would take them at night before we went to bed
23 and then sometimes in the morning but not usually.

24 Q. Okay. And would you think that your memory about
25 everything that happened is better now or was better several

1 days after that last incident?

2 A. I guess several days after it.

3 Q. Okay. And did you testify earlier that you took a
4 bath or a shower between the incident and the time you went to
5 the hospital or you did not?

6 A. I said I didn't remember.

7 Q. Okay. And if I told you that you told the nurse the
8 day after at the forensic interview - at the physical
9 interview that you took a bath, would you think that would be
10 correct?

11 A. Yes, ma'am. I know it is.

12 Q. Okay. All right. So you testified - you told the
13 nurse that you took a bath in between this last incident and
14 the time you saw her, correct?

15 A. Yes, ma'am.

16 Q. Okay. And you were testifying earlier about when
17 these incidents would happen that your mom would be outside
18 smoking?

19 A. Yes, ma'am.

20 Q. Do you remember telling the person that did your
21 forensic interview anything about your mom being outside
22 smoking when this would happen?

23 A. No, ma'am.

24 Q. Have you watched that tape of your forensic
25 interview?

1 A. Yes, ma'am.

2 Q. You have watched it. Okay. Did you ever tell that
3 person that you were afraid that your daddy or Antonio would
4 go to jail if you told about this?

5 A. Yes, ma'am.

6 Q. You think you did. Okay. When you were testifying
7 earlier, you said that you told your mom on the way home from
8 school, correct?

9 A. Yes, ma'am.

10 Q. And then you told Pooh?

11 A. Yes, ma'am.

12 Q. And then you told Tim?

13 A. Yes, ma'am.

14 Q. You actually went to Tim's house, correct?

15 A. No. I don't think so.

16 Q. Okay. You didn't go to Tim's house that night?

17 A. No.

18 Q. Okay. Then you went to the police station and you
19 talked to a police officer?

20 A. Yes.

21 Q. You talked to Miss Nicole?

22 A. Yes.

23 Q. And Nicole took you to the hospital?

24 A. Yes, ma'am.

25 Q. You were able to talk to her about it while you were

1 riding to the hospital?

2 A. No, ma'am. We didn't talk about it in the car
3 because my little sister was in there.

4 Q. Did you testify a little bit ago that Miss Nicole
5 was telling you about the rape kit and that they were gonna
6 test your body and things like that?

7 A. She told me that whenever we were in the office.

8 Q. Here in the Sheriff's department?

9 A. Mm-hmm.

10 Q. Okay. Then you told the nurse, correct?

11 A. Yes, ma'am.

12 Q. So you had -- And that night you went home and spent
13 the night with your grandmama?

14 A. Yes, ma'am.

15 Q. And you talked to your grandmother?

16 A. I told her just a little bit but I didn't like go
17 into great detail because it was really like late.

18 Q. Okay. All right. So you had an opportunity to talk
19 to these I think it was seven different people before you
20 actually had your forensic interview; is that correct?

21 A. Yes, ma'am.

22 Q. How long was it in between the day you told your
23 mama and the day you had your forensic interview, do you
24 remember?

25 A. 10 days.

1 Q. 10 days. So it was the next week? I think she had
2 a calendar up here. The end of this week?

3 A. Yes, ma'am.

4 Q. Did you go back to school any of this week?

5 A. No. Oh, wait. Yeah. I did. I did. I did.

6 Q. You were out of school this week of the 2nd through
7 the 5th?

8 A. Yes.

9 Q. But you went back to school the next week?

10 A. I'm pretty sure.

11 Q. You were testifying earlier that you hadn't really
12 gotten in trouble much at school --

13 A. Yes, ma'am.

14 Q. -- up until this incident where you, I think you
15 said you trashed a girl's lunch?

16 A. Yes, ma'am.

17 Q. You actually did that in retaliation to something
18 that child did to you, correct?

19 A. Yes, ma'am.

20 Q. So that really wasn't because of anything going on
21 at home with your parents, was it?

22 A. I guess you could say that.

23 Q. Okay. So that child kicked you or did something to
24 you and then you messed with her school lunch, correct?

25 A. Yes, ma'am.

1 Q. Okay. You testified earlier that there was an
2 incident where you were in the kitchen. I think there's a
3 picture of the kitchen. This is the one you identified as the
4 kitchen, correct?

5 A. Yes, ma'am.

6 Q. Would you agree this is really more like a picture
7 of y'all's hallway and a little piece of your kitchen table?

8 A. Yes, ma'am.

9 Q. So in relation to this picture where is the like
10 sink and the stove and the kitchen cabinets and things like
11 that? Is it down here or back where we can't see?

12 A. It's where you can't see it but it's like behind the
13 police officer.

14 Q. Back behind this guy right here?

15 A. Yes, ma'am.

16 Q. You're sitting in this chair right here?

17 A. Yes, ma'am.

18 Q. And **Sister** is sitting right here?

19 A. Yes, ma'am.

20 Q. Where was your mother?

21 A. She was in the kitchen.

22 Q. So she was standing right back behind where this guy
23 is?

24 A. Yes, ma'am.

25 Q. You testified that Antonio pulled up a chair near

1 you?

2 A. Yes, ma'am.

3 Q. Was he here in between you and your sister or was he
4 over here beside the police officer?

5 A. He was over there beside the police officer.

6 Q. So he's over here?

7 A. Yes, ma'am.

8 Q. And then your mother is standing right over here
9 behind the police officer?

10 A. Yes, ma'am.

11 Q. Do you recall what you were wearing on that day?

12 A. No, ma'am.

13 Q. Do you recall if it was hot or cold outside?
14 Whether you had on shorts or pants?

15 A. Hot.

16 Q. It was hot. Okay. And so you testified that he
17 actually put his hand down in your pants right here,
18 correct?

19 A. Yes, ma'am.

20 Q. But your mom couldn't see it standing closer to him
21 than where **Sister** was sitting, right?

22 A. Yes, ma'am.

23 Q. And there's a conversation that goes on between you
24 and **Sister** where she says, daddy, what are you doing?

25 A. Yes, ma'am.

1 Q. And he says?

2 A. He was tickling me.

3 Q. And at any point in time did your mama say what's
4 going on over there? Or come over to see what y'all were
5 doing? Where was your mom? What was she doing?

6 A. She was washing the dishes but she had like just
7 walked in so I don't know if she heard her saying that or she
8 just thought that it was like a family thing.

9 Q. Okay. And do you actually recall just a few minutes
10 ago you testified that she was behind the cabinets? So was
11 she washing the dishes or was she behind the cabinets?

12 A. Like there's a cabinet hanging down from the ceiling
13 and she was washing. It's like behind the cabinet there's a
14 sink.

15 Q. About how long did this happen with him having his
16 hand in your pants while your mom is in the kitchen and your
17 sister is sitting right there?

18 A. Not long.

19 Q. Okay. You testified earlier -- Well, first of all,
20 tell me about your relationship with your mom. What is it
21 like?

22 A. It's good.

23 Q. I'm sorry. I didn't hear you.

24 A. It's good.

25 Q. It's good. Do you trust your mom?

1 A. Yes, ma'am.

2 Q. You feel like she would protect you?

3 A. Yes, ma'am.

4 Q. You said earlier that you started acting out in
5 school?

6 A. Yes, ma'am.

7 Q. And to try to get your mom's attention. Did it ever
8 occur to you just to talk to your mom?

9 A. I was too scared that she would not, I guess, trust
10 me or that she didn't believe me because like this may sound
11 weird but like a few days earlier I had a dream that I had
12 told her but she didn't believe me so...

13 Q. So you had a dream about it a few days earlier?

14 A. Yes.

15 Q. Okay. On the day that you told your mom, did the
16 school contact your mom that day with concerns about your
17 behavior?

18 A. Ms. Morse had told, she had called my mom saying
19 that I had wrote on my homework "I don't know and I don't
20 care."

21 Q. When you testified that when you get up and change
22 clothes or take a shower, you leave your dirty clothes in the
23 bathroom, correct?

24 A. Yes, ma'am.

25 Q. There was a picture that you identified some of your

1 sister's panties as well. What here is your sister's?

2 A. This is my sister's shirt and that is my panties and
3 her two socks and her underwear.

4 Q. Was that normal for y'all just to leave your clothes
5 there on the floor?

6 A. Yes, ma'am.

7 Q. Your mom or your dad or somebody would come get them
8 and wash them?

9 A. Yes, ma'am.

10 Q. Who normally did y'all's laundry?

11 A. If he got home early, he would do it but mostly my
12 mom.

13 Q. Your mom did it most of the time?

14 A. Yes, ma'am.

15 Q. What would your mom and your dad do with their dirty
16 clothes? Because that was the only shower and bathtub in your
17 house, correct?

18 A. Yes. They had like a basket, a clothes basket they
19 put their dirty stuff in.

20 Q. Okay. So even though your mom would go into that
21 bathroom to take a shower, she would take her clothes out?

22 A. (Witness nodding head.)

23 Q. Okay. You testified -- Well, let me ask you this:
24 You said that around the age of seven or eight is when all of
25 this started happening?

1 A. Yes, ma'am.

2 Q. Then you also said that that was about the same time
3 that you learned that Antonio was not your biological dad,
4 correct?

5 A. Yes, ma'am.

6 Q. Did you ever have a discussion with him about him
7 not being your dad? Did you ask him, hey, somebody told me
8 this? Was there ever any conversation about that?

9 A. Uhm, the day that my aunt had told me we were on the
10 way to Antonio's uncle Tim's house and, uhm, I guess they had
11 told him that day that she had told me and he just acted
12 normal but...

13 Q. Because he already knew, correct?

14 A. Yes, ma'am.

15 Q. So there was no difference for him. It was just
16 maybe did you perceive him differently?

17 A. No. He was still my dad because up until now I
18 never really called my biological dad dad because I still
19 called Antonio dad.

20 Q. So y'all continued to have that father/daughter
21 relationship even though someone gave you that information?

22 A. Yes, ma'am.

23 Q. Okay. All right. So you said you were in your late
24 sevens is or early eights when these things started
25 happening?

1 A. Yes, ma'am.

2 Q. And then at some point in time you said it changed
3 from being kissing and touching to he was putting his private
4 in your private, correct?

5 A. Yes, ma'am.

6 Q. How often was that happening?

7 A. Uhm, when it first started, he would put his mouth
8 on my private and his private in my private it would be every
9 night but then closer to when it got, whenever I told, he only
10 did it like every other night, every two nights.

11 Q. Okay. So when you told was December of 2014 so you
12 were 10 years old?

13 A. Yes, ma'am.

14 Q. So from the time you were eight and a half to over a
15 year he was doing this to you every night or every other
16 night?

17 A. Yes, ma'am.

18 Q. Okay. And this was always taking place in your
19 home, the home that they have got the pictures of and the
20 diagram of?

21 A. Yes, ma'am. And whenever we were in his car, he
22 would just like kiss me and rub on me and stuff.

23 Q. Okay. In the vehicle he would. Would anybody ever
24 be in the vehicle with you?

25 A. No, ma'am.

1 Q. Okay. All right. And when y'all are in your home
2 at night and this is happening, you said your mom is - what's
3 she doing?

4 A. Uhm, she is either in the bathtub, uhm, or
5 downstairs watching TV or talking on the phone outside.

6 Q. Okay. When you say downstairs, is your home a
7 traditional staircase, two levels or just one step down,
8 correct?

9 A. Like one step down.

10 Q. So it's pretty much all the same level except for
11 one step?

12 A. Mm-hmm.

13 Q. Okay. How long would these nights when he's in your
14 room, how long would that be going on? How long would he be
15 in your room?

16 A. I can't tell you the exact time. To me it felt like
17 a long time.

18 Q. Okay. And you said your mom normally did the
19 laundry at your house?

20 A. (Witness nodding head.)

21 Q. Was your mom never up walking around in the house
22 putting up clothes or getting ready for the next school day or
23 picking up toys?

24 A. Whenever if she did, he would just run out of the
25 room.

1 Q. He would just run out of the room and she never
2 questioned why he was in you room? Was the door open or
3 shut?

4 A. Open.

5 Q. So the door was open?

6 A. (Witness nodding head.)

7 Q. He's in there putting his private in your private,
8 your mom is in the house walking around or watching TV and she
9 doesn't realize what's going on?

10 A. I guess not.

11 Q. Okay. You talked about an incident where -- I'm
12 sorry. [REDACTED], your little sister, right, she's younger than
13 you?

14 A. Yes, ma'am.

15 Q. -- was in the bed with you and your father comes in
16 there. Did you say she was awake or asleep?

17 A. She was awake.

18 Q. Okay. And did she ask you what's going on?

19 A. Uhm, like whenever I started scooting away from him,
20 she would just whenever because she was about to fall off the
21 bed and she had her toys, she told me to scoot back over and
22 then he had got in the bed - or got out of the bed and left.

23 Q. And when he left, did she ask you anything?

24 A. No.

25 Q. Did y'all talk about it?

1 A. No.

2 Q. Were you crying or was she upset?

3 A. No, ma'am.

4 Q. Did you ever ask **Sister** to get your mom or to tell
5 mom anything?

6 A. (Witness shaking head.)

7 Q. Did you ever give any hints to **Sister** that there was
8 something wrong?

9 A. No, ma'am.

10 Q. Before this started happening between you and your
11 father, did you ever see any TV shows or movies with people
12 having sex?

13 A. No, ma'am.

14 Q. When you reported this on December 2nd, 2014, had
15 you ever watched any soap operas or movies with men and women
16 having sex or a man putting his mouth on a woman's vagina or
17 anything like that?

18 A. No.

19 Q. On the night of the last incident before you
20 reported this I believe you said that you had taken or either
21 you took your pants off or Antonio took your pants off; is
22 that correct?

23 A. Yes, ma'am.

24 Q. Okay. And at some point in time you said your mom
25 let the water out of the tub, correct?

1 A. Yes, ma'am.

2 Q. And then she comes into your bedroom?

3 A. Yes, ma'am.

4 Q. Okay. Where was your dad when your mom came into
5 the bedroom?

6 A. He was already in the kitchen. Like he had left.

7 Q. And why did he leave out of your room that night?

8 A. Because he heard the water draining from the
9 bathtub.

10 Q. And where were your pants at that point in time?

11 A. Under my bed.

12 Q. Your pants were under your bed and your mom didn't
13 question you why you didn't have your pants on? And you may
14 not have slept in pants. I don't know. But did she question
15 that?

16 A. She asked me why my bed was squeaking and I told her
17 that I had took my pants off and put them up in my drawer and
18 she just told me to go to bed.

19 Q. And you went to school the next morning; is that
20 correct? Tuesday morning?

21 A. Yes, ma'am.

22 Q. What kind of grades do you make now?

23 A. Straight A's.

24 Q. Straight A's. Good student?

25 A. Yes.

1 Q. Still planning to be an anesthesiologist?

2 A. Yes, ma'am.

3 Q. You've got a lot of school. Have you ever kept a
4 notebook or a journal?

5 A. No, ma'am.

6 Q. You have never kept a notebook?

7 A. No, ma'am.

8 Q. You don't have any journal that you wrote about any
9 of this in?

10 A. No, ma'am.

11 Q. Okay. Tell me about your mom and your dad's
12 relationship. How would you describe it?

13 A. I mean, I guess it was okay but they would fight all
14 the time.

15 Q. They fought a lot?

16 A. Yes, ma'am.

17 Q. Would they yell at each other and holler? How did
18 that make you feel?

19 A. Sad.

20 Q. Sad. And for a little bit when you were about seven
21 years old your parents split up for a little while, right?

22 A. Yes, ma'am.

23 Q. And your mom was dating somebody else and your dad
24 was dating somebody else?

25 A. Yes, ma'am.

1 Q. Did you continue to see both parents? Which one did
2 you live with when they were split up?

3 A. My mom.

4 Q. Did you get to continue to see your dad some?

5 A. The only time we saw him was when we went up to my
6 uncle Tim's and that was like once.

7 Q. So in that time frame you only saw your dad once?

8 A. Yes, ma'am.

9 Q. And then they got back together?

10 A. Yes, ma'am.

11 Q. Did they continue to fight and cheat on each other
12 and fuss all the time?

13 A. Yes. I guess.

14 Q. And you didn't like that, did you?

15 A. No, ma'am.

16 Q. You liked it better when they weren't together?

17 A. No.

18 Q. You liked it better when they were together?

19 A. Yeah.

20 Q. You did. And other than your mom, did you ever tell
21 anyone else about this before December 2nd, 2014?

22 A. No, ma'am.

23 Q. And she was the first person you told?

24 A. Yes, ma'am.

25 Q. You never discussed it with **Sister**?

1 A. No, ma'am.

2 Q. You never discussed it with Pooh?

3 A. No, ma'am.

4 Q. Or any school teachers or any friends at school?

5 A. No, ma'am.

6 Q. Just a couple more questions then I'll be finished.

7 You talked one time about it happened in the daytime?

8 A. Yes, ma'am.

9 Q. When your mom was gone to get the lawnmower?

10 A. Yes, ma'am.

11 Q. Do you recall how often this would happen in the
12 daytime?

13 A. Uhm, not very much.

14 Q. Do you recall the very first time anything happened
15 between you and your father when you were talking about
16 initially it started with the kissing and the touching? Do
17 you recall that very first time?

18 A. Yes, ma'am.

19 Q. How old were you then?

20 A. Like my late sevens, early eights.

21 Q. Do you recall what you were wearing the first time
22 he actually put his private in your private?

23 A. No, ma'am.

24 Q. The week before this December 2nd, 2014 date, this
25 was the day you reported, correct?

1 A. Yes, ma'am.

2 Q. And this was the last time that you say it
3 happened?

4 A. Yes, ma'am.

5 Q. And do you recall if it happened any the week right
6 before this?

7 A. Uhm, I know it had been Saturday, Friday, Thursday
8 and Tuesday.

9 Q. So Saturday, Friday, Thursday, Tuesday and Monday.
10 So five of the seven days before you reported this and before
11 you had a physical exam it happened all five of those seven
12 days?

13 A. Yes, ma'am.

14 MS. JORDAN: Nothing further.

15 REDIRECT EXAMINATION

16 BY MS. MAYES:

17 Q. Any of those times, Minor, did you ever see
18 anything actually come out of his private part?

19 A. No, ma'am.

20 Q. Now, she was asking you about when you went for the
21 examination at the hospital and you spoke with the nurse. Do
22 you remember that?

23 A. Yes, ma'am.

24 Q. Do you remember a nurse asking you about whether you
25 bathed, showered or washed?

1 A. Yes, ma'am.

2 Q. All right. And what did you say to her?

3 A. I took a bath.

4 Q. Do you remember what you said to her?

5 A. No.

6 Q. Okay. Do you remember whether you took a bath?

7 A. No.

8 Q. Or a shower?

9 A. No.

10 Q. Or washed?

11 A. No.

12 Q. Okay. So if there's a question about bath, shower
13 or wash, that could also be washing up or showering,
14 correct?

15 A. Yes, ma'am.

16 MR. SCOTT: Objection, Your Honor.

17 THE COURT: I'll allow it. She's clarifying Ms.
18 Jordan's questions.

19 BY MS. MAYES:

20 Q. All right. And so you don't actually recall that
21 morning whether it was a bath, shower or otherwise, correct?

22 A. Yes, ma'am.

23 Q. And the underwear that were on the mat, do you have
24 any doubt at all whose underwear those are?

25 A. No. They're mine.

1 Q. Okay. And how come sometimes the sizes of your
2 underwear are different?

3 A. Sometimes I like them big.

4 Q. I need you to speak up a little bit more, Minor,
5 because your voice is kind of drifting off now.

6 A. Sometimes I like them big on me.

7 Q. What about when you're sleeping at night in your
8 bed?

9 A. I like them big.

10 Q. Okay. As opposed to wearing them to school with
11 jeans on or something?

12 A. Yes, ma'am.

13 Q. She was asking you about whether or not you have
14 ever been in this courtroom before. Have you ever been in the
15 courtroom before?

16 A. Yes, ma'am.

17 Q. How come?

18 A. Uhm, I came here with you and Miss Sutania to get
19 comfortable with the courtroom.

20 Q. How did you feel about having to come to court and
21 testify about these things?

22 A. I was nervous.

23 Q. How does seeing the courtroom ahead of time help you
24 with that?

25 A. I guess okay.

1 Q. She was asking you about on the ride to the hospital
2 with Ms. Nicole Maffett, the victim advocate?

3 A. Yes, ma'am.

4 Q. Did you talk about any of the details about what
5 happened in front of Sister ?

6 A. No, ma'am.

7 Q. And then she was asking you about here in the dining
8 room where your mom was. I'm gonna use this diagram right
9 here and ask you if you can show us what cabinets you're
10 talking about in the kitchen. This would be State's exhibit
11 6.

12 MS. MAYES: Your Honor, may I approach the
13 witness.

14 THE COURT: You may.

15 BY THE WITNESS:

16 A. This cabinet has a cabinet that hangs from the
17 ceiling over it.

18 Q. Can you just scoot forward just a little bit more?

19 A. This cabinet right here has a cabinet that hangs
20 over it.

21 Q. All right. So there's a cabinet that hangs over it
22 and that is close to what part of the body?

23 A. Your head.

24 Q. Okay. And then where is that in relation to where
25 you would have been at with the defendant in that rolling,

1 where he had that rolling chair and you were seated next to
2 him? Where would that be on this?

3 A. Right here.

4 Q. Okay. And when he was touching you at the table
5 shown here in State's exhibit 2, is that over the table or
6 under the table?

7 A. Under the table.

8 Q. All right. And she was asking you a little bit
9 about how you had done in school.

10 A. Yes, ma'am.

11 Q. And the fact that you had the incident with the
12 lunch. Was that incident with the lunch where you were
13 written up for detention, was that usual or unusual for you?

14 A. Unusual.

15 Q. She asked you if your mom trusted you and you
16 trusted your mom. How come you didn't tell your mom before
17 that day in December?

18 A. I was scared and Antonio asked me not to and he,
19 since he was my father, I just didn't and I didn't want my
20 sister without a father and as long as my mom was happy.

21 Q. How did that make you feel when he told you not to
22 tell?

23 A. Scared and like I trusted him that it was right not
24 to.

25 MS. MAYES: Nothing further.

1 MS. JORDAN: Just real quickly.

2 THE COURT: Yes.

3 RECROSS EXAMINATION

4 BY MS. JORDAN:

5 Q. Minor, does this picture better show the kitchen
6 area and the cabinets and the table?

7 A. Yes, ma'am.

8 Q. And this is the cabinet that you are talking about
9 in the diagram?

10 A. Yes, ma'am.

11 Q. And is your mom taller or shorter than me?

12 A. I don't know.

13 Q. Close?

14 A. Yeah.

15 Q. Probably on the short side for women? We're --

16 A. Yes, ma'am.

17 Q. -- fairly short.

18 A. Yes, ma'am.

19 Q. Is her head higher than this cabinet right here?

20 A. I don't know.

21 Q. Okay. All right. But this is what you're talking
22 about, right?

23 A. Yes, ma'am.

24 MS. JORDAN: We'll mark this as defendant's exhibit

25 1.

1 THE COURT: Any objection, Ms. Mayes?

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

3 THE COURT: All right. Admitted as defendant's 1 in
4 evidence.

5 (Whereupon, Defendant's Exhibit #1 marked for
6 identification and entered into evidence.)

7 BY MS. JORDAN:

8 Q. Your attorney - or the State's attorney was asking
9 you about the bath. You don't know right now if you took a
10 bath or a shower or washed, is that what you're telling us?

11 A. Yes, ma'am.

12 Q. But you do know that the day after it happened your
13 memory was better then than it is now, correct?

14 A. Yes, ma'am.

15 Q. And if you told them that you took a bath or you
16 showered or you washed, that's probably accurate?

17 A. Probably.

18 MS. JORDAN: Nothing further.

19 THE COURT: You may step down. Time for a break.
20 Step into the jury room. Don't discuss the case. We'll
21 have you back in here shortly.

22 (Whereupon, the jury entered the jury room at 3:35
23 p.m.)

24 (Short break.)

25 BAILIFF: All rise.

1 THE COURT: Thank you. Please be seated. Everybody
2 ready?

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

4 THE COURT: Bring in the jury please.

5 (Whereupon, the jury entered the courtroom at 3:50
6 p.m.)

7 THE COURT: Ms. Radlein, your next witness.

8 MS. RADLEIN: Thank you, Your Honor. The State
9 calls Nicole Maffett.

10 Thereupon,

11 NICOLE MAFFETT

12 after having been first duly sworn, testified as follows,

13 DIRECT EXAMINATION

14 BY MS. RADLEIN:

15 Q. Ms. Maffett, were you employed by the Saluda County
16 Sheriff's Office back in 2014?

17 A. Yes, ma'am.

18 Q. And can you go ahead and tell the jury what exactly
19 you did for the Saluda County sheriff's Office?

20 A. I was a victim advocate for the Saluda County
21 Sheriff's Office for nine years.

22 Q. I didn't catch that last part of what you said.

23 A. For nine years.

24 Q. Okay. As a victim advocate what exactly are your
25 job responsibilities?

1 A. Primarily to keep the victims informed of court or
2 also protect them throughout the process.

3 Q. I want to speak specifically about this case. Do
4 you recall assisting in this case back on December 2nd,
5 2014?

6 A. Yes, ma'am.

7 Q. What, if any, involvement did you have in this
8 case?

9 A. Uhm, when they came into the Sheriff's Office, uhm,
10 the parents met with investigators and I just kind of had the
11 victim in my office.

12 Q. Okay. And you mentioned the victim was in your
13 office?

14 A. Yes.

15 Q. What's the purpose of doing that?

16 A. Just so law enforcement can speak to the parents
17 separately from the victim.

18 Q. Okay. Would you say whether or not, can you tell
19 the jury whether or not that's standard protocol?

20 A. Yes.

21 Q. Okay. After that point what, if anything, did you
22 do after separating the kid from the victim, from her mom?

23 A. Uhm, really nothing until law enforcement came back
24 and gave us more details so we knew what the next step was.

25 Q. What was the next step?

1 A. Straight to the hospital for the exam by the SANE
2 nurse.

3 Q. Okay. You said SANE nurse. What exactly is a SANE
4 nurse?

5 A. Sexual assault nurse examiner.

6 Q. And again, would this have been standard protocol?

7 A. Yes.

8 Q. Why in this case would that be standard protocol?

9 A. There's a window and if an assault has occurred
10 within 72 hours, we take them to see the SANE nurse.

11 Q. And the purpose of doing that would be what?

12 A. Collect evidence.

13 Q. And in terms of collecting evidence, what type of
14 evidence?

15 A. Uhm, bodily fluids. Pictures, if there was
16 bruising, markings on the body.

17 Q. Okay. So you mentioned going to the hospital. What
18 hospital was that?

19 A. Richland Memorial. Is that the correct name of it?
20 Children's Richland in Columbia.

21 Q. Palmetto Health?

22 A. Palmetto Health. Thank you.

23 Q. You said in Columbia?

24 A. Yes.

25 Q. Okay. Would you have taken your vehicle or driven

1 with the victim?

2 A. County vehicle.

3 Q. Okay. Who would have been in your vehicle?

4 A. The victim and in this case the victim and her
5 younger sister rode with me.

6 Q. Can you tell the jury whether or not you discussed
7 the case with the victim at that point?

8 A. No. We do not discuss the case. I do not question
9 the victim. I am not the investigator. My job is to just
10 basically take care of her, keep her calm and take her to the
11 hospital.

12 Q. Just to clarify, was there any point in time that
13 you asked her about the facts of the case?

14 A. No.

15 Q. Did she - can you tell the jury whether or not she
16 discussed the facts of the case with her sister while in the
17 car?

18 A. No.

19 Q. Once you got to Palmetto Health, what role did you
20 play at all in the initial interview?

21 A. Uhm, I'm just there basically for the victim. Uhm,
22 once we found out that it's been within the 72 hour window
23 period, she's considered evidence so I stay in her presence.
24 Once we get to the hospital the SANE nurse takes over and I'm
25 just there with her.

1 Q. Okay. Can you tell me whether or not you would have
2 been actually in the room when she met with the nurse?

3 A. Yes.

4 Q. Okay. What, if anything, did **Minor** disclose about
5 the history of the assault in your presence?

6 A. Uhm, most recent was the night before and that this
7 had been going on since about the age of seven or eight.

8 Q. Okay. During this initial interview what, if
9 anything, did you observe **Minor** demonstrate while speaking
10 with the nurse?

11 A. At one point she - we were sitting on the couch in
12 the SANE nurse's office and she slid down and got on her back
13 and pulled her knees to her shoulders and said this is how he
14 positioned her.

15 MS. RADLEIN: Okay. I'm gonna show you this box.

16 I'll have it marked for ID only as State's exhibit 29.

17 (Whereupon, State's Exhibit #29 marked for
18 identification.)

19 BY MS. RADLEIN:

20 Q. I'm going to ask you if you recognize that item?

21 A. Yes, ma'am.

22 Q. What do you recognize that to be?

23 A. That is the rape kit.

24 Q. Okay. And rape kit, would that also be considered
25 the evidence collection kit?

1 A. Yes.

2 Q. How do you recognize that to be a rape kit?

3 A. Uhm, this is the box that they use when you get to
4 the hospital. It's sealed. Uhm, the nurse opens it and uses
5 all the items within it to do her examination.

6 Q. Okay. Is this a box that you are familiar with?

7 A. Very.

8 Q. Okay. Can you tell the jury whether or not you
9 recognize this to be the rape kit associated with this case?

10 A. Yes. Because it has my name on it.

11 Q. Okay. Nicole, if you don't remember this, that's
12 fine. Do you remember approximately what time you arrived at
13 Palmetto Health after leaving Saluda that day?

14 A. I would say it was around 7:00.

15 Q. Okay. Looking at that kit do you know approximately
16 what time you took that item into custody?

17 A. December 3rd at 12:31 a.m.

18 Q. Okay. So is it fair to say you would have been at
19 Palmetto Health from approximately 7:00 to midnight?

20 A. Yes.

21 Q. And this would have been entirely for the purpose of
22 the sexual assault exam and evidence collection?

23 A. Yes, ma'am.

24 Q. Okay. In terms of your additional involvement in
25 this case what, if anything, else did you schedule for the

1 girls?

2 A. Immediately following the exam we also follow
3 through with a forensic exam.

4 Q. What exactly are you referring to?

5 A. An interview. It's an interview.

6 Q. An interview. Okay. Why are such interviews
7 important?

8 A. They're conducted by trained people that this is all
9 they do all day long, talk to kids about what has occurred to
10 them.

11 Q. Okay. And again, can you tell the jury if that's
12 standard protocol in these cases?

13 A. Yes. It is. When you're involving children 18 and
14 under, we always schedule forensic interviews.

15 Q. Okay. And was only one interview scheduled in this
16 case or two?

17 A. No. Two. Also her younger sister was
18 interviewed.

19 Q. Can you tell the jury what was the purpose of
20 scheduling an interview for her younger sister?

21 A. Uhm, at one point when we were at the hospital she
22 made comments that she could have witnessed some events so we
23 wanted to make sure that she was interviewed also.

24 Q. And these comments would have been made to you?

25 A. Yes.

1 Q. Okay. Just to clarify, when you said she would have
2 been making the comments, who was making these comments? /Was
3 it **Sister** or **Minor**?

4 A. **Sister**.

5 Q. That would be the younger sister?

6 A. Correct.

7 MS. RADLEIN: No further questions at this time,
8 Your Honor.

9 CROSS EXAMINATION

10 BY MR. SCOTT:

11 Q. Ms. Maffett, you don't work as a victim advocate in
12 Saluda anymore, do you?

13 A. No, sir.

14 Q. Who replaced you? Who took your position?

15 A. Melinda Reaves.

16 Q. At any time while you were still employed as a
17 victim advocate, did you come into possession of any search
18 warrant photographs related to this case?

19 A. Yes.

20 Q. When was that?

21 A. Uhm, it would have been within a day or two after.
22 I don't remember the exact date.

23 Q. Do you know who gave you the search warrant photos
24 or how you received them?

25 A. Corporal Kenny Clark did.

1 Q. Is that something that's normal for you? Do you
2 normally get photographs of search warrant evidence?

3 A. Usually they will bring me photos to download to a
4 CD for them.

5 Q. And do you remember what happened to those photos
6 after Kenny Clark brought them to you?

7 A. We had issues with our camera and with the card
8 itself not being able to download so I think it just got left
9 in my desk for a while.

10 Q. Did you ever try to download them?

11 A. Yes. We did.

12 Q. What happened?

13 A. Uhm, we couldn't. For some reason my computer would
14 not allow me to transfer them from the SIM card to a disk.

15 Q. Did you try more than once or did you try once? How
16 many times did you try?

17 A. I would say more than once.

18 Q. Now, you mentioned the interview. I think it was at
19 Children's Advocacy Center in Aiken; is that correct?

20 A. Correct.

21 Q. Did you attend that interview? Were you present
22 when both the girls gave their interviews?

23 A. Correct.

24 Q. Was anybody else from Saluda County Sheriff's
25 Department, Sheriff's Office present as well?

1 A. I believe Officer Kenny Clark was.

2 Q. Did y'all view the interviews? Did you watch
3 them?

4 A. Simultaneously. Yes, sir. As the interview is
5 going on, we're in another room viewing.

6 Q. Like closed circuit TV or something like that?

7 A. Yes.

8 Q. You and Kenny Clark in a room watching as **Minor** is
9 giving her interview and then subsequently you and Kenny Clark
10 in a room watching as **Sister** gave her interview?

11 A. Correct.

12 Q. And you were just in another room in the building?

13 A. Correct.

14 Q. But watching simultaneously. It wasn't a taped
15 delay or anything like that. Did **Minor** or **Sister** ever
16 mention to you that they had any notebook or journal or diary
17 that they wrote things in, recorded events that happened in
18 their lives in?

19 A. No.

20 Q. They never mentioned that to you?

21 A. It was not mentioned that they had a book. The
22 question was can I write it in a book and take it with me to
23 the forensic interview.

24 Q. Did they do that? Did they write in a book and take
25 it with them?

1 A. No, sir. They prefer for them to tell what occurred
2 to them.

3 Q. Did you help Officer Clark prepare the notes that he
4 was making? That's a bad question. Did you notice whether or
5 not Officer Clark was taking notes while y'all were watching
6 the interview together?

7 A. Yes. Officer Clark and there was an employee of the
8 Children's Advocacy Center who also types some up as it's
9 going on.

10 Q. So there was somebody typing them but Officer Clark
11 was writing them out in handwritten long form or whatever?

12 A. Correct.

13 Q. I hand you that and see if you have ever seen that
14 piece of paper before? Or that's a photocopy obviously. Have
15 you ever seen the original of that piece of paper?

16 A. No, sir.

17 Q. You have never seen that before?

18 A. Not the original. No, sir.

19 Q. But you were with him when he was in the room?

20 A. Yes, sir.

21 Q. But you didn't see him writing those down?

22 A. I saw him writing them down but he was on the
23 opposite side of the room. I know he keeps notes but I did
24 not view his notes after he wrote them.

25 Q. So you can't identify that?

1 A. No. No, sir.

2 Q. And it's your sworn testimony that you don't know
3 anything about a journal or a diary or a notebook that either
4 one of these young ladies kept?

5 A. No. No, sir. Again, the question was, uhm, can she
6 write a journal and take that in with her to the forensic
7 interview.

8 Q. That would have been something that would not have
9 been in existence before December the 12th of 2014?

10 A. Correct. Correct.

11 Q. To your knowledge?

12 A. Right. She wanted to write something to take in
13 with her to the forensic interview, not something that was
14 already existing.

15 MR. SCOTT: I don't have any further questions.

16 THE COURT: Anything further?

17 MS. RADLEIN: None, Your Honor.

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

19 MS. MAYES: The State calls Jennifer Nguyen.

20 Thereupon,

21 JENNIFER NGUYEN

22 after having been first duly sworn, testified as follows,

23 DIRECT EXAMINATION

24 BY MS. MAYES:

25 Q. Good afternoon, Ms. Nguyen. Where are you employed

1 and in what capacity?

2 A. I work at Palmetto Health in Columbia, South
3 Carolina. I serve as a forensic nurse examiner.

4 Q. All right. And what is meant by the term forensic
5 nurse examiner?

6 A. Forensic nurse examiner, we specialize in sexual
7 assaults at the hospitals that I work with and also domestic
8 violence.

9 Q. All right. When you say we specialize in sexual
10 assault, do you have specific training as to the evidence
11 collection portion of that examination?

12 A. Yes, ma'am. We work with the International
13 Association of Forensic Nursing where we get our training. We
14 do a 40 hour didactic course in adults and pediatrics,
15 separate 40 hour courses as well as clinical experience as
16 well after we're done with the 40-hour course.

17 Q. Can you tell us whether or not that involves
18 swabbing victims of alleged sexual assault for potential DNA
19 evidence or for things of that nature?

20 A. Yes, ma'am.

21 Q. During the course of your examination, can you tell
22 us whether or not you also attempt to determine whether or not
23 an adult or child victim has been subjected to bodily fluids
24 from a perpetrator?

25 A. We do have a questionnaire that we do ask the

1 victim.

2 Q. Why is that necessary for your medical diagnosis and
3 treatment?

4 A. It's to indicate as far as all the medical
5 standpoint what needs to be determined in their medical care
6 and where to collect actual evidence from.

7 Q. All right. And do you have an actual form that you
8 go by and that you utilize in that regard?

9 A. Yes, ma'am.

10 Q. What is meant by the term sexual assault kit?

11 A. A sexual assault kit is a sexual assault evidence
12 collection kit. Inside of there there will be a series of
13 envelopes and swabs where you would swab from the actual
14 victim to collect DNA.

15 Q. Is that kit pre-formatted?

16 A. Yes.

17 Q. By that I mean does it come to you and does it come
18 to the hospital already put together?

19 A. It's already packaged and sealed and then we open it
20 up and we will put the evidence inside of it.

21 Q. All right. Does that include gloves for you to
22 wear?

23 A. No, ma'am.

24 Q. All right. Do you wear gloves?

25 A. Yes, ma'am.

1 Q. Does that include swabs to collect evidence from the
2 victim?

3 A. Yes, ma'am.

4 MS. MAYES: Your Honor, may we approach?

5 THE COURT: Sure.

6 (Side bar off the record.)

7 BY MS. MAYES:

8 Q. During the course of the examination, how do you go
9 about determining actually from the victim and whether it's an
10 adult or a child what they were exposed to and how you need to
11 go about treating what may have occurred?

12 A. Initially when we go in we ask the patient about
13 their medical history. Then we also get an assault history
14 from the patient as well. Based on the information that is
15 provided, then we'll go through a physical exam where I will
16 check them from head to toe and determine where I will collect
17 the evidence from.

18 Q. Okay. I'm gonna take you to the night of Tuesday,
19 December 2nd. Do you have with you any records relating to a
20 patient by the name of **Minor**?

21 A. Yes, ma'am.

22 Q. How old was **Minor** on the date of her examination?

23 A. **Minor** was 10 years old.

24 Q. Okay. And you can take as much time as you need to
25 to refer to your documents and to your report. Do you

1 actually prepare that yourself?

2 A. We have a data base that prints out our forensic
3 report.

4 Q. And the information contained therein comes from
5 who?

6 A. Come from me that I type in.

7 Q. What time is noted for the arrival or admission of
8 the child there at the hospital for purposes of this evidence
9 collection process?

10 A. She arrived to the hospital at 7:06 p.m.

11 Q. Okay. All right. So beginning at 7:06 p.m. do you
12 have an opportunity to actually speak with **Minor** yourself,
13 the 10 year old?

14 A. Yes, ma'am.

15 Q. And do you do that in the presence of her mother or
16 any care givers or outside of their presence?

17 A. She is in there alone with me and the advocate.

18 Q. When you say the advocate, you're referring to the
19 law enforcement victim advocate in this case?

20 A. Correct.

21 Q. Nicole Maffett?

22 A. Yes, ma'am.

23 Q. Why, if at all, did you take the opportunity to
24 interview a patient even when one as young as nine or 10
25 alone?

1 A. It allows the patient to be able to verbalize what
2 they need to say without the parents being in the room and to
3 be able to be more open with the nurse and for me to be able
4 to build a rapport with her.

5 Q. Why do you need to know for purposes of medical
6 diagnosis and treatment whether or not a child may have been
7 exposed to bodily fluids such as saliva or semen or blood or
8 anything of that nature?

9 A. It will be necessary in order for me to determine
10 for DNA evidence collection purposes as well on the medical
11 side of whether or not I need to test her for any type of STDs
12 or do any other labs for her.

13 Q. Was [Minor] tested for sexually transmitted
14 diseases?

15 A. Yes, ma'am.

16 Q. Was that part of her treatment process?

17 A. Yes, ma'am.

18 Q. And is there a specific checklist where you
19 determine whether or not she may have been exposed to
20 saliva?

21 A. Yes, ma'am.

22 Q. Where is that noted in your document?

23 A. On page 8 of 15 on the forensic report.

24 Q. All right. And specifically on that report what
25 type of contact did you question [Minor] about regarding

1 whether or not she was exposed potentially to saliva?

2 A. As far as saliva goes one of the questionnaires was
3 was there any type of oral sex exchange to the patient or to
4 the actual assailant and she said yes, that she had - the
5 assailant had performed oral sex on her.

6 Q. And just to clarify, that would be what part of the
7 assailant's body to what part of the child's body?

8 A. It would be the assailant's mouth to her vagina.

9 Q. Did you have an opportunity to actually swab **Minor**
10 for any potential evidence that may be consistent with that?

11 A. Yes, ma'am.

12 Q. Specifically what part or parts of her body were
13 swabbed?

14 A. I swabbed bilaterally her nipples. Are you
15 regarding just referring to the oral swab?

16 Q. Correct.

17 A. And a vagina swab.

18 Q. Okay. And why was the breast area swabbed?

19 A. Because she had indicated that he had licked her
20 nipple.

21 Q. Okay. And what was the other body part that you
22 said was being swab?

23 A. The vaginal area and the bilateral labia majora.

24 Q. I will ask you a little more about that. I'm gonna
25 show you this diagram and ask you number 1, whether or not you

1 recognize it and secondly if so, how?

2 MR. SCOTT: No objection, Your Honor.

3 THE COURT: All right.

4 MS. MAYES. This is State's exhibit 1 I believe it
5 is.

6 BY MS. MAYES:

7 Q. Do you recognize this?

8 A. Yes, ma'am.

9 Q. Okay. And what part of the body is that?

10 A. The vaginal area.

11 Q. Okay. So it's a female anatomical diagram?

12 A. Yes, ma'am.

13 Q. For demonstrative purposes at this time I'm going to
14 ask whether or not you can show us what you are referring to
15 as having been swabbed. You mentioned two areas. So I'm
16 gonna move this forward a little bit. That will allow you to
17 keep your voice up so that the court reporter can take down
18 your testimony.

19 A. So the vaginal area, the bilateral labia majora
20 would be this area right here and in the vaginal area would be
21 this right here in the opening. With children that are young
22 that are premenarchal meaning they have not had their period
23 yet, we did not swab all the way on the inside but right here
24 at vaginal opening at the introitus.

25 Q. When you say introitus, you're referring to the area

1 of the vaginal opening?

2 A. Correct.

3 Q. Can you tell us whether or not anything else was
4 noted regarding your visual examination of the vaginal area of
5 **Minor** when you did this examination?

6 A. Uhm, she had some white cloudy discharge noted on
7 the labia majora on both sides.

8 Q. And you termed that discharge as what type of
9 discharge?

10 A. It was a vaginal discharge.

11 Q. Vaginal discharge. Again, just for clarification,
12 vaginal discharge comes from what area of the body or what
13 specific anatomical area?

14 A. In the vaginal opening right in the introitus
15 area.

16 Q. So it actually comes from the vagina and then flows
17 out to where you can visualize it?

18 A. Correct.

19 Q. All right. You may return to your seat.

20 A. (Witness complies.)

21 Q. And the vaginal discharge, can you tell us whether
22 or not that was also noted on your report?

23 A. It was. On page 12 of 15.

24 Q. In addition to those areas of the patient's body
25 which were swabbed, was there any other item of evidence that

1 was collected directly from [Minor] ?

2 A. We also collected underwear from her.

3 Q. I'm gonna show you this item and ask you whether or
4 not you recognize it and if so, how?

5 A. Yes, ma'am. Because my initials are on there and my
6 name.

7 Q. This is currently marked as State's exhibit 28. You
8 said you recognize your name on the outside of the envelope?

9 A. Yes, ma'am.

10 Q. Does that mean you were the first person to package
11 and seal this?

12 A. Correct.

13 Q. What are we looking at here?

14 A. We're looking at a child's underwear.

15 Q. In this case State's exhibit 28 came directly from
16 [Minor] body?

17 A. That is correct.

18 Q. Packaged and sealed by you and then placed where
19 once it's packaged and sealed?

20 A. Once it's package and sealed it's placed inside the
21 sexual assault evidence collection kit.

22 Q. Let's take a look at that. This box here which is
23 actually labeled sexual assault evidence collection kit, is
24 this is the pre-formatted kit you spoke of a moment ago?

25 A. Correct.

1 Q. Do you see your name anywhere on this kit?

2 A. Yes.

3 Q. Where so?

4 A. Right up at the top of the chain of command.

5 Q. What time is it by the point that the exam is
6 actually completed and you have completely sealed the kit and
7 are ready to hand it off to law enforcement?

8 A. 12:30.

9 Q. So 12:30. So at this point we're in the early
10 morning hours of December 3rd?

11 A. Correct.

12 Q. And inside this kit in addition to the underwear
13 what else is contained?

14 A. There's other swabs that are placed in envelopes in
15 there as well.

16 Q. All right. And can you tell us whether or not that
17 includes the vaginal swabs that you spoke up?

18 A. Yes. It does.

19 Q. And the swabs of the labia majora, the outer area of
20 the vagina that you spoke of?

21 A. That's correct.

22 Q. Do you also take what we call a buccal swab sample
23 from the patient herself?

24 A. That's correct.

25 Q. That comes from what area of her body?

1 A. Inside the cheek area.

2 Q. Inside the cheek?

3 A. Yes, ma'am.

4 Q. And that's collected or taken for what purpose?

5 A. To identify her DNA.

6 Q. So you take so that when it's sent to the crime lab,
7 they'll have a record of her own DNA from inside her cheek?

8 A. Correct.

9 Q. In addition to that you're swabbing other areas of
10 her body for potential evidence from the assailant?

11 A. That is correct.

12 Q. If you could please identify those envelopes and
13 tell us whether or not you see your signature on them?

14 A. This is the outer clothing bag and my name and my
15 initials are labeled on it. This is a collection bag and my
16 name and initials are on this as well.

17 Q. Were each of those items packaged and sealed
18 individually by you?

19 A. Correct. Yes, ma'am.

20 Q. All right. So when you go in her cheek to get her
21 own DNA sample, that's maintained individually?

22 A. Yes, ma'am.

23 Q. When you take the vaginal swab sample, is that mixed
24 with any other swab samples?

25 A. No, ma'am.

1 Q. It's maintained individually?

2 A. Yes, ma'am.

3 Q. What about the underwear?

4 A. That's maintained individually as well.

5 Q. I don't know if you can see through this or not. If
6 not, we'll cut it.

7 A. This is the envelope that contains all the swabs and
8 that has my name and my initials on it as well.

9 Q. You see your name and your initials on there?

10 A. Yes, ma'am.

11 Q. And you saw that it contains all the swabs?

12 A. Yes.

13 MS. MAYES: Your Honor, if we would ask permission
14 at this time to unseal this package.

15 THE COURT: Any objection?

16 MR. SCOTT: No objection to unsealing it, Your
17 Honor.

18 THE COURT: All right.

19 BY MS. MAYES:

20 Q. So is your initials on the outside of this
21 package?

22 A. Yes, ma'am.

23 Q. So inside these individual packages what are we
24 looking at?

25 A. Inside these packages we have an oral swab, a

1 suspected body fluid swab, a buccal swab which is the
2 patient's DNA, a suspected saliva swab, fingernail scrapping
3 swab, a rectal swab, pubic hair combing, a vaginal swab and an
4 envelope for any type of miscellaneous swabs.

5 Q. Please pull out the vaginal swabs.

6 A. (Witness complies.)

7 Q. This packet is containing the vaginal swabs and also
8 initialed by you?

9 A. Yes, ma'am.

10 Q. Was it sealed by you in this envelope?

11 A. Yes, ma'am.

12 Q. After you collected it from **Minor** body?

13 A. That's correct.

14 Q. Again, you're wearing gloves at the time?

15 A. Yes, ma'am.

16 Q. Once it's sealed by you and placed into this kit,
17 who is this kit given to?

18 A. To the victim advocate with the Saluda County
19 Sheriff's Department.

20 Q. All right.

21 A. Nicole Maffett.

22 Q. So when you signed this off at 12:30 a.m. and it's
23 properly packaged and sealed, you hand it directly to her?

24 A. Correct.

25 Q. At any point in time after your collection of the

1 vaginal swabs and your sealing them individually in this
2 envelope, did you tamper with this envelope in any way?

3 A. No, ma'am.

4 Q. Did you maintain proper chain of custody throughout
5 the process concerning the collection of those vaginal
6 swabs?

7 A. Yes, ma'am.

8 Q. What about the collection of the underwear from
9 **Minor** ?

10 A. I maintained the custody and then I collected the
11 underwear from her and I placed it directly in the envelope or
12 the bag that it comes in and I sealed it and signed it as
13 well.

14 MS. MAYES: Your Honor, at this time we would mark
15 for identification the vaginal swabs and buccal swabs of
16 **Minor** and previously marked is the underwear of
17 **Minor**. I believe that is State's exhibit 28. That
18 has also been identified by this witness.

19 THE COURT: This will be 30 and 31 for ID purposes
20 on these two swab individual packages.

21 (Whereupon, State's Exhibit #30 and #31 marked for
22 identification.)

23 BY MS. MAYES:

24 Q. What time is noted for **Minor** eventually leaving
25 the hospital that night?

1 A. 12:30 a.m.

2 Q. During the course of the history collection that
3 you're undertaking where you are determining whether or not
4 the alleged assailant had contact with the child's vagina, who
5 is that information coming directly from?

6 A. [REDACTED] Minor .

7 MS. MAYES: Nothing further.

8 THE COURT: Mr. Scott.

9 CROSS EXAMINATION

10 BY MR. SCOTT:

11 Q. During your exam, you also took a number of
12 photographs of [REDACTED] Minor ; is that correct?

13 A. That is correct.

14 Q. I believe it was 27 digital photographs?

15 A. That is correct.

16 Q. In addition, you asked her, is it true that you
17 asked her several questions about what is going on since the
18 alleged sexual assault?

19 A. If I can refer back to my questionnaire. I asked
20 her how long has this been going on.

21 Q. I'm specifically asking you about page 3 of 15,
22 assuming I have the same thing you have and the bottom of that
23 page post assault hygiene/activity?

24 A. Yes, sir.

25 Q. Is the answers that are set forth there would have

1 been provided by [Minor] ?

2 A. Correct.

3 Q. And correct me if I'm wrong, but it indicates that
4 she had urinated?

5 A. That is correct.

6 Q. It indicates that she had had a bath/shower/wash?

7 A. That is correct.

8 Q. And that she had changed clothing?

9 A. That is correct.

10 Q. And then ate or drank is marked yes, correct?

11 A. Yes, sir.

12 Q. She had not defecated?

13 A. No, sir.

14 Q. She had not used genital or body wipes?

15 A. No, sir.

16 Q. She hadn't brushed her teeth?

17 A. No, sir.

18 Q. She hadn't used mouth wash?

19 A. No, sir.

20 Q. You would have accurately transcribed them in this
21 form from the answers that [Minor] would have told you?

22 A. Yes, sir.

23 Q. You asked her these questions and she answered them
24 and you wrote down what she said?

25 A. That's correct.

1 MR. SCOTT: Your Honor, permission to approach the
2 witness?

3 THE COURT: Sure.

4 BY MR. SCOTT:

5 Q. Does this appear to be the first photograph that you
6 took?

7 A. Correct.

8 Q. It has a label on it identifying [Minor], the
9 time and your name?

10 A. That's correct.

11 Q. That's also a photo that you took?

12 A. That's correct.

13 Q. Also a photo that you took?

14 A. Yes, sir.

15 Q. Is that also a photo that you took?

16 A. Yes, sir.

17 Q. That one?

18 A. Yes, sir.

19 Q. That one?

20 A. Yes, sir.

21 Q. That one?

22 A. Yes, sir.

23 Q. That one?

24 A. Yes, sir.

25 Q. That one?

1 A. Yes, sir.
2 Q. That one?
3 A. Yes, sir.
4 Q. That one?
5 A. Yes, sir.
6 Q. That one?
7 A. Yes, sir.
8 Q. That one?
9 A. Yes, sir.
10 Q. That one?
11 A. Yes, sir.
12 Q. That one?
13 A. Yes, sir.
14 Q. That one?
15 A. Yes, sir.
16 Q. That one?
17 A. Yes, sir.
18 Q. That one?
19 A. Yes, sir.
20 Q. That one?
21 A. Yes, sir.
22 Q. That one?
23 A. Yes, sir.
24 Q. That one?
25 A. Yes, sir.

1 Q. That one?

2 A. Yes, sir.

3 Q. That one?

4 A. Yes, sir.

5 Q. That one?

6 A. Yes, sir.

7 Q. That one?

8 A. Yes, sir.

9 Q. That one?

10 A. Yes, sir.

11 Q. We're back to number 1. That's the first one we
12 started with, right?

13 A. Yes, sir.

14 MR. SCOTT: Your Honor, I ask that she identify
15 these - identify the disk containing these photographs
16 that she just testified she took on the night of 12/2.

17 BY MR. SCOTT:

18 Q. Correct?

19 A. Yes, sir.

20 THE COURT: I think she's properly identified them.
21 You want to introduce them?

22 MR. SCOTT: Not at this time, Your Honor.

23 THE COURT: The witness has identified them.

24 MR. SCOTT: This is defendant's number 2, I think.

25 THE COURT: Does that DVD only contain those 27

1 pictures or so?

2 MR. SCOTT: It does, Your Honor.

3 THE COURT: How many photographs are there?

4 MR. SCOTT: 27 pictures.

5 THE COURT: Defendant's number 2, the CD for ID.

6 (Whereupon, Defendant's Exhibit #2 marked for
7 identification.)

8 BY MR. SCOTT:

9 Q. Those photos, I know we went through them pretty
10 quickly, but did you, if they were in your report or in those
11 photos, did you notice any bruising?

12 A. No, sir.

13 Q. Did you notice any tearing?

14 A. No, sir.

15 Q. Did you notice any redness?

16 A. No, sir.

17 Q. Did you notice any swelling?

18 A. No, sir.

19 Q. Did you notice any bleeding?

20 A. No, sir.

21 Q. Did you notice anything that would not be considered
22 a benign exam if you know what I mean by that?

23 A. I noticed discharge.

24 Q. Apart from that, did you notice anything else?

25 A. No, sir.

1 Q. In your report you say that **Minor** had
2 fimbriated hymen?

3 A. Correct.

4 Q. I think that your diagnosis or conclusion was. Can
5 you define for me what you mean by that?

6 A. A fimbriated hymen is when you're looking at the
7 hymen and we're describing morphology meaning the shape of the
8 hymen and it's more of in a description wise it would be in
9 most cases annular meaning circular but this one looked like
10 it was a little bit closed off.

11 Q. Is it considered an intact hymen?

12 A. Yes, sir.

13 Q. If a regular sized penis, adult penis was inserted
14 into this vagina, would you expect it to have an intact
15 hymen?

16 MS. MAYES: Objection, Your Honor. That calls for
17 opinion.

18 THE COURT: She's not been offered as an expert; is
19 that right?

20 MS. MAYES: Correct, Your Honor.

21 THE COURT: I believe that would be an expert
22 opinion so I'll sustain the objection.

23 BY MR. SCOTT:

24 Q. Do you present yourself, do you consider yourself an
25 expert in sexual assault nursing examinations?

1 A. I have been certified as an adult and adolescent
2 examiner. I have not been certified as a pediatric examiner
3 yet.

4 Q. Is there any additional training or education you
5 would have to go through to be certified as an adolescent or
6 pediatric?

7 A. I would need to take the certification board.

8 Q. Have you ever testified in court as an expert in
9 pediatric examinations?

10 A. No, sir.

11 MR. SCOTT: I don't have any further questions, Your
12 Honor.

13 THE COURT: Any redirect?

14 REDIRECT EXAMINATION

15 BY MS. MAYES:

16 Q. Just to follow up, is there any other type of
17 medical examiner that a referral is made to following a SANE
18 exam or the type of exam you did?

19 A. Yes, ma'am. Once the patient is seen by the
20 forensic nurse examiner, we do a referral or the victim
21 advocate from the Sheriff's Department would do a referral to
22 a child advocacy center based on what county the child lives
23 in.

24 Q. Would that normally include an examination by a
25 pediatric specialist?

1 A. That's correct.

2 Q. Are you familiar with Kate Chappell?

3 A. Yes. I am.

4 Q. Is she a pediatric specialist in that regard?

5 A. She is.

6 MS. MAYES: Nothing further.

7 MR. SCOTT: Nothing further, Your Honor.

8 THE COURT: You may step down. Thank you.

9 MS. MAYES: The State calls Kelly Morse.

10 Thereupon,

11 KELLY MORSE

12 after having been first duly sworn, testified as follows,

13 DIRECT EXAMINATION

14 BY MS. RADLEIN:

15 Q. Ms. Morse, where are you currently employed?

16 A. I teach at Hollywood Elementary School, fifth
17 grade.

18 Q. What specific subject do you teach?

19 A. Currently this year I teach all subjects. I'm self
20 contained but for the previous 10 years it's been science and
21 social studies.

22 Q. I want to speak about 2014, December of 2014. Would
23 you have been teaching fifth grade back then at Hollywood?

24 A. Yes, ma'am.

25 Q. Specifically do you know **Minor** ?

1 A. Yes, ma'am.

2 Q. How do you know her?

3 A. She was in my class for science and social
4 studies.

5 Q. This would have been in fifth grade?

6 A. Yes.

7 Q. Okay. I want to talk about specifically a time
8 period probably around the middle of the school year. Do you
9 recall anything out of the ordinary happening with **Minor** that
10 prompted you to call her mother?

11 A. I do remember about, you know, a couple of weeks
12 before I called her mother her behavior seemed a little off.
13 She seemed a little, I don't know, just not her typical self
14 and so when I took up an assignment, she had a note on there
15 that said, "I don't know and I don't care." That was very
16 unusual for her behavior so I did call mom to let her know
17 what was going on. I said, you know, she didn't write
18 anything necessarily bad but it was just out of character for
19 her.

20 Q. Okay. On around this particular time you mentioned
21 it was out of character and you called mom, do you recall if
22 maybe not that specific day but whether or not **Minor** returned
23 to class the next day?

24 A. I do remember that it was a couple of days after she
25 had not returned because I did start to get a little concerned

1 after she didn't come back the next day.

2 Q. Okay. I just want to make sure some things are
3 clear. When you mentioned calling her mom, do you know her
4 mother's name?

5 A. Brandi Nye.

6 Q. Would that be Brandi Nye sitting in the courtroom
7 today?

8 A. Yes, ma'am.

9 Q. On this particular day that you called her mother,
10 do you recall around the time of day that would have been?

11 A. I know it was after school and I usually leave
12 around 4:00 or 4:30 so it would have been 3:00, 4:00,
13 somewhere around there.

14 Q. You mentioned 3:00. Why does 3:00 sound like the
15 time frames between 3:00 and 4:00 to you?

16 A. Because students would have been dismissed so I try
17 to take care of those kind of things right after the students
18 leave.

19 Q. Do you recall back then what time school would have
20 been dismissed?

21 A. 3:00.

22 MS. RADLEIN: Thank you, Ms. Morse. No further
23 questions at this time.

24 MS. JORDAN: Briefly, Your Honor.

25 THE COURT: Yes, ma'am.

1 CROSS EXAMINATION

2 BY MS. JORDAN:

3 Q. Ms. Morse, was it your testimony that you called Ms.
4 Nye after, you just said you called her after the end of the
5 school day?

6 A. Yes, ma'am.

7 Q. And kind of take us through what the end of your
8 school day is with the children being released. I know
9 sometimes maybe teachers have bus duty or car line duty or
10 whatever. What does the end of your day look like before you
11 have an opportunity to make that call in?12 A. The students leave at 3:00. We rotate bus duty.
13 Then we also have a specific day of our car duty so I really
14 couldn't tell you, it's been a while, I couldn't tell you what
15 day I had bus duty or car duty.16 Q. Okay. So there would have been some period of time
17 between the end of the school day and the students leaving
18 before you had an opportunity to call Ms. Nye?19 A. Not necessarily. I mean, as soon as the students
20 leave, whatever teacher is on duty is in charge of the
21 student's care so if I didn't have duty, I could have
22 immediately went to the office and made the call. But if I
23 did have duty, it may have been 15 or 20 minutes.24 Q. You said **Minor** missed some time in school?

25 A. She did.

1 Q. When she came back to school, how was her demeanor,
2 her behavior, her grades following her return to school?

3 A. I really don't remember.

4 Q. Okay. Do you remember having, do you remember if
5 there was a change between the couple weeks before and after
6 she came back to school?

7 A. I don't remember after. Mmm-mmm.

8 MS. JORDAN: Nothing further. Thank you.

9 THE COURT: All right.

10 MS. RADLEIN: No further questions, Your Honor.

11 THE COURT: Ms. Morse, you're free to go.

12 MS. RADLEIN: Your Honor, may we approach.

13 THE COURT: Sure.

14 (Side bar off the record.)

15 THE COURT: All right. I talked with the lawyers
16 before we started this morning and they asked me could we
17 start early in the morning. We're kind of at a stopping
18 point. The next witness will be a little lengthier. Can
19 we start at 9:00? Does that suit y'all? They consider
20 that earlier. Y'all may not. Okay. All right. You
21 can't discuss the case. You can't talk to anybody about
22 the case. You can talk to your pets about the case. You
23 can tell anybody that you're on jury duty and Judge
24 Griffith said don't discuss the case and that's where it
25 stops. Don't get on Facebook and say I'm on jury duty.

1 kind of inclined to comply with that order but there's no
2 way those photographs are not available to both sides in
3 this trial and after the trial, they they're to be
4 handled in the appropriate manner. That's what I would
5 assume is the intent of Judge McMahon's order.

6 (Short break.)

7 THE COURT: Y'all ready to bring the jury in?

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

9 THE COURT: Mr. Scott, y'all okay with the
10 photographs? Y'all were looking at them yesterday for a
11 reason so I assumed you were going to use them, too, to
12 some extent?

13 MR. SCOTT: Yes, sir, Your Honor.

14 THE COURT: All right. Bring in the jury please.

15 (Whereupon, the jury entered the courtroom at 9:10
16 a.m.)

17 THE COURT: All right. Folks, we're ready to
18 continue. We had a slight delay. We had to find the key
19 to unlock the drawer. Anyway. Ready to begin. Ms.
20 Mayes, call your next witness.

21 MS. MAYES: The State calls Kate Chappell.

22 THE COURT: Ms. Chappell, come forward and be sworn.
23 Thereupon,

24 KATE CHAPPELL

25 after having been first duly sworn, testified as follows,

1 DIRECT EXAMINATION

2 BY MS. MAYES:

3 Q. Good morning, Ms. Chappell. Can you begin by
4 telling us a little bit about yourself. Where are you
5 currently employed and in what capacity?

6 A. Yes. I am a clinical associate professor at the
7 University of South Carolina College of Nursing. I'm also a
8 pediatric nurse practitioner. As part of my work with the
9 college of nursing I do clinical practice and that's at the
10 Child Advocacy of Aiken where I do forensic medical exams.

11 Q. You stated that you are a certified pediatric nurse
12 practitioner. Tell us a little bit about your job in that
13 capacity. What type of exams you do and what led to your
14 certification in that field?

15 A. So as a pediatric nurse practitioner I am trained to
16 do head to toe well visits, as well as sick visits just like
17 any other provider that you might see whether it's a family
18 medicine office, a pediatric office or an urgent care setting.

19 Q. During your career, have you had the opportunity to
20 treat and assess cases of child sexual abuse?

21 A. Yes.

22 Q. What specific training have you received in order to
23 conduct physical examinations related to child sexual
24 assault?

25 A. So for our state we actually have a statewide

1 network of providers that's physicians, nurse practitioners
2 and physician's assistants and we all go through above
3 standard training for the country so we do a three day
4 national training. There's a national organization for child
5 advocacy centers and then we also do approximately a week of
6 time where we are working with someone who is already a
7 certified professional in this area. So in my case I did that
8 training at MUSC and also Palmetto Health Richland team and we
9 also have our first 150 cases that we see independently peer
10 reviewed by one of those child abuse pediatrics and on an
11 annual basis we go to round tables so that we can do peer
12 review on cases to make sure we are all on the same page with
13 current evidence and based on original findings on research
14 that's known.

15 Q. Tell us about your educational background that led
16 you into the medical field?

17 A. So I have a Bachelor's Degree in nursing and my
18 Master's Degree is in pediatric primary care and then I'm
19 certified for that and then I'm in, again in the state wide
20 network as a certified provider for that network.

21 Q. Is it possible to estimate how many examinations you
22 have done that are related to child sexual assault?

23 A. It's been around 450, close to 500.

24 Q. Have you testified previously in court as an expert
25 related to your findings in such cases?

1 A. Yes. I have.

2 Q. Does that include child sexual assault
3 examinations?

4 A. Yes.

5 Q. Have you had the opportunity to study child sexual
6 abuse findings in the medical literature?

7 A. Yes. Again, as part of your state wide network we
8 do that on an ongoing basis.

9 Q. As well as within a clinical setting?

10 A. Yes.

11 MS. MAYES: Your Honor, at this time the State
12 offers Kate Chappell as an expert in the field of child
13 sexual abuse examination.

14 THE COURT: Any voir dire, Mr. Scott?

15 MR. SCOTT: No, Your Honor. No objection.

16 THE COURT: Ms. Chappell is qualified. Ladies and
17 gentlemen of the jury, so you understand what that means
18 is there are certain witnesses called lay witnesses that
19 can testify to what they see, hear, smell, whatever.
20 More eye witnesses. Expert witnesses have skill,
21 training, experience in a particular field and they can
22 offer opinions in addition to what they saw. In that
23 particular field Ms. Chappell is qualified in the field
24 of sexual assault examination of children; is that
25 correct?

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

2 THE COURT: All right. That would be her field of
3 expertise.

4 BY MS. MAYES:

5 Q. I want to start by asking you in general about the
6 female anatomy. What's meant by the term hymen?

7 A. The hymen is a piece of soft tissue. There's no
8 bone or cartilage or harder piece. That tissue is a soft
9 piece of tissue that basically is kind of right in front of
10 the vaginal opening. So females have two layers of kind of
11 internal tissue so these would be a labium. There's the
12 majora and further inside is the minora and later you have the
13 hymen that's kind of right in front of the vaginal opening.

14 Q. Does the hymen normally have an opening?

15 A. Yes. Even when a baby girl is born, her hymen
16 already has an opening because there has to be a way for that
17 part of the body to clean itself, for things to get out of
18 that vaginal area.

19 Q. Would that include vaginal discharge?

20 A. Yes.

21 Q. Would that include menstrual flow?

22 A. Yes.

23 Q. And that's even for children or early adolescent who
24 are not sexually active?

25 A. Yes. Again, it's open from the time of birth if

1 they're anatomically normal.

2 Q. How does the hymen avoid penetration?

3 A. It's a soft piece of tissue so again it's flexible.

4 That's why something like - sometimes I hear that maybe a

5 tampon would compromise a hymen. It's a soft flexible piece

6 of tissue that can go in and out causing damage or injury.

7 Q. What are some common misconceptions about the
8 hymen?

9 A. Uhm, a lot of times you will hear people say that,
10 you know, it's completely intact until you have sexual
11 intercourse and again it's open from the time of the baby
12 being a new born so, uhm, it's always expected to have some
13 sort of opening to it.

14 Q. Is the term intact even a word that experts in your
15 field use in medical examinations?

16 A. No. It's not an appropriate word because it doesn't
17 really describe the tissue in any way that's productive or
18 helpful.

19 Q. I'm going to show you a document and ask you whether
20 or not you recognize it. State's exhibit 1. Do you recognize
21 what is depicted in this diagram?

22 A. Yes.

23 Q. Can you tell us whether or not this is a fair and
24 accurate representation of the female anatomy?

25 A. Yes.

1 Q. Can you tell us whether or not this is helpful in
2 explaining your testimony in regards to the female anatomy?

3 A. It can be. I'm not sure -- I haven't looked at all
4 those parts with the names on them.

5 MS. MAYES: Your Honor, at this time the State would
6 offer, I believe this is exhibit 1, as evidence.

7 THE COURT: Okay. Any objection?

8 MR. SCOTT: None, Your Honor.

9 THE COURT: Accepted as State's 1 without
10 objection.

11 BY MS. MAYES:

12 Q. Ms. Chappell, I'm going to ask you to step down for
13 a moment.

14 A. (Witness complies.)

15 Q. If you can take us through exactly what we are
16 looking at here and also identify, if you will, the hymenal
17 area.

18 A. I'll use this end, okay?

19 Q. Keep your voice up so the court reporter can get all
20 of your testimony.

21 A. Okay. So as I was explaining earlier, there are,
22 and this is a picture so it makes it a little bit harder
23 because it's flat, but you do have kind of two layers of skin
24 folds that are more on the outside and then if you separate
25 those, you are able to see the hymen which again here is kind

1 of a one dimensional, two dimensional looking piece but it is
2 the soft tissue, kind of everything they have got marked down
3 with these lines and around. So just under the urethra where
4 urine would come out you have got the vagina. The hymen is
5 sort of around or in front of and so you have to think about
6 that three dimensionally but that would be, further back would
7 be the vagina.

8 Q. All right. In terms of the hymenal tissue, can you
9 tell us how it changes over time with puberty or the start of
10 puberty?

11 A. Sure. When a little girl is first born, this little
12 piece of tissue is very vascular. There are a lot of blood
13 vessels going through there so that's why sometimes if a
14 really little girl was to wipe herself really hard, you might
15 hear them talk about, oh, you know, it burns or it stings down
16 there. It's because the really vascular tissue like the
17 inside of your eyelid has gotten rubbed by tissue so that
18 makes sense why that would hurt potentially for them. And
19 then as estrogen shows up so kind of in that prepubertal phase
20 as estrogen shows up in this area, this tissue gets a lot less
21 vascular and a lot more flexible and soft and almost fuller.

22 Q. All right. And can you tell us whether or not with
23 the onset of puberty that allows for more elasticity?

24 A. It does. Again, so just like I was saying that a
25 little girl might accidentally get toilet paper rubbed on

1 there and it would hurt, as you get older things aren't going
2 to necessarily, because there aren't any nerve endings in that
3 hymen tissue, even if something touches it, it's not
4 necessarily going to hurt. It might be unpleasant or
5 undesirable but it's not going to hurt and the tissue itself
6 with that lower vascularity is going to be more flexible and
7 more pliable.

8 Q. Thank you. Please return to your seat.

9 A. (Witness complies.)

10 Q. Now, as we talk about the onset of puberty and how
11 that may allow for more elasticity, can you tell us whether or
12 not you had the opportunity in this case to conduct a medical
13 examination of **Minor** ?

14 A. I did.

15 Q. What was the date of your medical examination?

16 A. That was in January of 2015.

17 Q. You can refer directly to your report.

18 A. Thank you. Yes. That was on January 6th of 2015.

19 Q. Now, how is it that **Minor** ended up with a
20 referral for a medical examination by you?

21 A. So she came for a medical exam after making a
22 disclosure that was reported to law enforcement and then a
23 forensic interview was conducted and from that forensic
24 interview the team also decided that a medical exam would be a
25 good idea.

1 Q. You say a team, but you're referring to other
2 professionals in the field?

3 A. Yes.

4 Q. So she was referred actually by law enforcement or
5 by the professionals at the Aiken Child Advocacy Center?

6 A. By law enforcement.

7 Q. What pubertal stage that you refer to as a Tanner
8 stage was **Minor** at the time of your examination in
9 January?

10 A. So she was a Tanner stage III. You really have two
11 different Tanner stages. So for girls you're going to have
12 breast development and then also the development of the hair
13 in the genital area so it would be two different areas but
14 stage III for both which none of them are hard set and defined
15 so sometimes, you know, you're kind of saying, well, let me be
16 more conservative or let me be less conservative, I guess.

17 Q. So with **Minor** you had noted the onset of puberty?

18 A. Yes. I'm sorry. The other way that I would know
19 that puberty was onset was by her hymenal development.

20 Q. How so?

21 A. It was estrogenized. Again, that tissue started to
22 get very soft and annular.

23 Q. What, if anything, made that indicate regarding
24 elasticity or flexibility?

25 A. So with that tissue being estrogenized less

1 vascularity is going to mean more flexible less likely to
2 bleed with contact or those kinds of things.

3 Q. Would you always expect to find evidence of trauma
4 following sexual intercourse for example?

5 A. Uhm, so part of that is going to depend on the
6 timing of when the exam would occur but, uhm, also it's going
7 to depend upon the forcefulness of the particular assault,
8 uhm, so soft tissue can sometimes show us visible signs of
9 trauma that we can see but a lot of times it does not.
10 Another example of that would be, there are people who are
11 strangled, for instance, you can't always see that on the
12 outside but you're able to see it using other examination
13 techniques.

14 Q. What can you tell us about the specific tissue
15 within the vaginal area, within the introitus, within the
16 vaginal opening, what can you tell us about that type of
17 tissue and it's ability to heal?

18 A. So that tissue can heal very quickly. You know,
19 there are certainly cases where you may even have documented
20 photos or videos that show that intercourse happened and then
21 when they come for an exam, we may not be able to see any
22 signs of that physically.

23 Q. Why is that?

24 A. Because of the nature of the tissue not being,
25 again, as vascular the older a child gets and then also again

1 the nature of the contact can sometimes affect that.

2 Q. Does a penetrating injury necessarily lead to long
3 term injury?

4 A. Typically it does not so they have been gathering
5 evidence and research on this for at least the past 30 years
6 and that has even included some research looking at newborn
7 baby girls and just seeing so what do their hymens look like
8 because they were just born and the variations that they found
9 that are considered to be normal because again they found them
10 in newborn baby girls, 92 percent at least of girls who
11 disclose even a penetrating injury are going to have one of
12 those normal findings after the assault when they come to see
13 me.

14 Q. All right. And what about people who have actually
15 given birth to a child, is there research or literature
16 supporting the appearance of hymenal tissue even after child
17 birth?

18 A. There have some cases where hymenal tissue is still
19 present in what would be considered a normal variant finding
20 after child birth.

21 Q. Having had the opportunity to review the photographs
22 that were taken of [Minor] during the course of her what's
23 known as the SANE exam but the actual sexual assault
24 collection process that was done the night of December 2nd,
25 2014 by Jennifer Nguyen?

1 A. Yes.

2 Q. I'm going to show you these photographs and ask you
3 whether or not you recognize them?

4 A. I apologize. I'm making sure they're all the same
5 file. Appear to be. Yes.

6 Q. Now, in general tell us what is meant by, what's the
7 difference between a SANE exam, a sexual assault evidence
8 collection exam and the type of exam that you do?

9 A. So a sexual assault nurse examination that happens
10 at a hospital in the ER is going to be just in those first
11 couple of days after an alleged assault occurs and the purpose
12 of that exam is primarily to get that acute forensic evidence,
13 things such as DNA or if there were to be some acute injuries
14 that we're able to see visibly. And then in my exam it's
15 typically going to be anywhere from two weeks to it could be
16 even years after an alleged assault or abuse event.

17 So I have see children who have perhaps gone to the
18 ER, had a SANE exam, I see them a few weeks after that to
19 check on their well-being because at the time of the ER exam
20 they are trying to gather that acute evidence so they may not
21 do a full exam. And again, I'm a nurse practitioner compared
22 to a nurse where a nurse is gathering that acute evidence.
23 The goal of my exam is that overall well-being of the child so
24 in that spirit I am getting medical history, I'm talking with
25 whoever has brought the child about any concerning behaviors

1 that they have had that may tell us that there's some trauma
2 response going on but also, as I always tell moms when they
3 bring their kids for check-ups, if I see something else,
4 sometimes I will see some eczema or I'll see an ingrown
5 toenail. That's really common. Little boys like to hide
6 things like that from their parents, we're gonna address that
7 as well. So yes, I'm looking at it from a forensic point of
8 view but I'm also doing a head to toe well check.

9 Q. During the course of your exam do you do evidence
10 collection such as swabbing the body for potential DNA?

11 A. I do not.

12 Q. Why is that?

13 A. Because I'm not seeing them in those initial two to
14 three days after an assault so I would not expect to collect
15 any DNA evidence.

16 Q. All right. So approximately two to three days is
17 the window of time in which the DNA evidence can expect to be
18 retrieved?

19 A. Correct. Depending on which - different ERs have
20 different protocols for how far out they will try to
21 collect.

22 Q. Looking at those photos that I passed up to you can
23 you tell us whether or not those appear to be the photos that
24 you previously reviewed regarding the SANE exam conducted on
25 December 2nd, 2014 at Palmetto Health Richland?

1 A. Yes.

2 Q. These appear to be the photographs associated with
3 Minor ?

4 A. Yes.

5 Q. Have you had the opportunity to review the photos to
6 tell us whether or not there is a photo that actually depicts
7 the hymenal tissue of Minor ?

8 A. There are several photos that show the hymenal
9 tissue.

10 Q. All right. Can you tell us whether or not upon
11 examination of those photos you see one that depicts the
12 actual opening of the hymen?

13 A. So the examiner, when she was taking these photos,
14 did not necessarily pull forward that labial tissue so the
15 opening is not, in any of the photos, is not super visible but
16 I can see where the opening is if that makes sense.

17 Q. All right. And specifically which photo best
18 depicts that?

19 A. The one that's best in focus is that one.

20 Q. Let's take a look at that (proffering.) And looking
21 at that photo can you visualize the area of the hymenal tissue
22 that would account for an opening?

23 A. Yes.

24 Q. And does that include penetration?

25 MR. SCOTT: Objection, Your Honor.

1 THE COURT: Basis?

2 MR. SCOTT: Objection, Your Honor. I don't think
3 she's qualified to say if there was penetration.

4 MS. MAYES: I can rephrase it, Your Honor.

5 THE COURT: Rephrase it.

6 BY MS. MAYES:

7 Q. You're looking at the photograph and you're
8 determining that the hymenal area has an opening; is that
9 correct?

10 A. Yes.

11 Q. All right. And the purpose of that opening within
12 the hymenal tissue is for what?

13 A. So a normal hymen would have an opening because we
14 have to let that area of the body clean itself so there may be
15 discharge that needs to get out of that part of the body and,
16 of course, for menstruation as well.

17 Q. All right. You just mentioned several ways in which
18 the hymen opening allows for fluids and material to be
19 discharged out such as menstrual flow and vaginal discharge?

20 A. Mm-hmm.

21 Q. Can you tell us whether or not that's the hymenal
22 opening that you previously referred to that allows for
23 penetration such as sexual intercourse?

24 A. Correct.

25 Q. Now, moving forward I want to ask you about some

1 other types of sexual contact. You have discussed sexual
2 intercourse and any findings that may relate to that. What
3 about oral sex? Specifically I'm referring to when an alleged
4 perpetrator puts his mouth on the vaginal area of a child,
5 would you expect, to a reasonable degree of medical certainty,
6 would you expect any type of injury from that type of
7 assault?

8 A. Unless the child reported that there was biting or
9 that kind of component to the abuse, you would not expect any
10 kind of injury because you're talking about soft tissue to
11 soft tissue so that's not going to be expected to leave a
12 visible sign of injury.

13 Q. All right. You mentioned before that in addition to
14 doing a physical exam you do an overall examination regarding
15 the well-being of the child?

16 A. Yes.

17 Q. Was that also the case for **Minor** ?

18 A. Yes.

19 Q. What, if anything, can you tell us regarding the
20 cumulative effect of all of the symptoms that are reported to
21 you and that includes physical, emotional, the entire scope of
22 your exam?

23 A. Are you referring to **Minor** exam?

24 Q. Correct.

25 A. Okay. So the physical portion of my exam revealed

1 normal expected findings. Which is again the tissue of the
2 hymen in particular being estrogenized and fimbriated which
3 just means that unlike the hymen in the photo that looked a
4 little bit kind of flatter almost, hers is a little bit more
5 folded and that's probably about a 50/50 proposition for
6 prepubertal or pubertal girls. And then also she had a lot
7 of, there had been a lot of concerns from her mom about
8 different behaviors that had been going on; that she had
9 really some changes in her demeanor towards other people and
10 that she also was having some difficulties hearing certain
11 songs or certain people going to kiss or touch her basically
12 around the time of this disclosure and after where she was
13 saying that things were reminding her of abuse that had
14 occurred so those kind of behavioral trauma symptoms. Any one
15 of those can be due to a lot of different things. We all know
16 kids go through different phases and kind of have different
17 moments where they may be coping or dealing with something or
18 it could just be the pains of growing up but she did have
19 several of those and that was concerning to me.

20 Q. Did you note that in your report?

21 A. I did.

22 Q. All things considered, can you tell us to a
23 reasonable degree of medical certainty, can a normal exam such
24 as the exam you conducted on **Minor** be consistent with her
25 history of sexual abuse?

1 A. Yes. In fact, again, 92 percent of the time the
2 physical exam would be normal and that would not discredit in
3 any way what was disclosed in an interview.

4 MS. MAYES: Nothing further at this time, Your
5 Honor.

6 THE COURT: Mr. Scott.

7 CROSS EXAMINATION

8 BY MR. SCOTT:

9 Q. Good morning. Do I call you doctor or nurse?

10 A. I'm not yet a doctor. I'm working on my Ph.D. I'm
11 not there.

12 Q. I think you have your report that you generated.
13 You have your report in front of you of your examination of
14 Minor ?

15 A. I do.

16 Q. On page 10 of 11 of that report would you turn there
17 with me? Your diagnosis and conclusions, what's the very
18 first thing you wrote on your diagnosis and conclusions?

19 A. Today's anogenital exam revealed normal findings.
20 Normal findings do not contradict FI or forensic interview
21 statement and neither confirm or rule out past abuse or
22 trauma.

23 Q. So would it be safe for me to assume and this jury
24 to assume that you found her exam was normal?

25 A. Her physical exam was normal. Yes.

1 Q. And that your findings did not confirm or rule out
2 past abuse or trauma?

3 A. True.

4 Q. So according to your exam maybe she was, maybe she
5 wasn't abused?

6 A. According to the physical exam we cannot
7 definitively say one way or the other.

8 Q. Okay. You talked about the importance of doing an
9 exam within you said two to three days I believe is what my
10 notes say.

11 A. Optimally that would happen but for some children
12 they're not aware that there's step situations of needing to
13 gather that evidence or they don't even know they have been
14 abused, so a lot of kids, I'm the only person they see because
15 it's been more than three days.

16 Q. But you have heard **Minor** story that she was abused
17 on the 1st, the night of the 1st of December and that she went
18 and had an exam with a nurse Nguyen who was here yesterday on
19 the 2nd of December?

20 A. Correct.

21 Q. And that would have been by my calculation within 26
22 to 28 hours of the last alleged assault; is that correct?

23 A. That's my understanding.

24 Q. And in your experience would you expect -- You found
25 normal findings. Would you expect to find normal findings on

1 a child who was examined 26 or 28 hours after having been
2 sexually abused including penal penetration?

3 A. It is possible. As I discussed earlier because of
4 it being soft tissue and the nature of the abuse can range in
5 its forcefulness so it's possible.

6 Q. So it's possible that you would find abnormalities
7 but it's also possible that you wouldn't; is that correct?

8 A. True. Yes.

9 Q. Would it be likely that you would find
10 abnormalities?

11 A. Uhm, honestly I would hesitate to say it would be
12 likely because there are so many variables to the kind of
13 assault that may have occurred and I wasn't privy to that.

14 Q. So you don't know what she alleged has gone on?

15 A. I have read summaries. Yes.

16 Q. If she alleged that within the last week of this
17 exam on December 2nd, if her allegations were that she had
18 been penetrated by a penis six times within that last week,
19 would you expect those findings to be normal?

20 A. Again, it would really be a variance because it is
21 soft tissue and because if it's been kind of a repeated
22 instance, then it's more likely that that was not forceful
23 particularly with someone who is a trusted person.

24 Q. But you don't know whether it was forceful or not?

25 A. I don't. That's why I can't say.

1 Q. Now, I believe you testified earlier that you had
2 performed 450 to 500 of these exams?

3 A. Correct.

4 Q. How many of those exams have you performed on girls
5 less than 11 years old?

6 A. Uhm, this would be a pure estimate just kind of
7 based on kind of my overall patient demographics. I would say
8 probably -- You said less than 11?

9 Q. Less than 11.

10 A. I would have to guess probably about 150 to 250.
11 Sorry. I have to give a broad range on that.

12 Q. Out of that number do you know how many of that 150
13 --

14 A. 150 to 200 something.

15 Q. -- how many of those alleged chronic sexual abuse?

16 A. The majority of them.

17 Q. And on how many of those did you find normal
18 anogenital exams?

19 A. Uhm, my personal percentage, I quoted the sort of 92
20 percent would be expected to have normal findings. That runs
21 about 92 to 95 on the national studies. My personal
22 percentage I know from the past couple of years because our
23 state wide network does that with our data, my percent runs
24 less than 5 percent that would be abnormal.

25 Q. Would be abnormal?

1 A. Correct.

2 Q. That's when the exam is performed within 24 to 26
3 hours?

4 A. No, sir. I do exams only after the acute injury.

5 Q. But you review those initial exams, correct?

6 A. For the children who have an initial exam if it's
7 available to me. Sometimes the hospital doesn't send it to
8 me.

9 Q. Would that be something you would want to see?

10 A. It's something that I certainly want to see and so
11 we do request the records. We don't always have it available
12 at the time that I'm doing my exam.

13 Q. It's true that your exam of **Minor** was on January
14 6th of 2015?

15 A. Yes.

16 Q. And that would have been 35 days after the last
17 alleged assault?

18 A. To my understanding. Yes.

19 Q. Do you know if **Minor** had started menstruating prior
20 to December 2nd of 2014?

21 A. My understanding from her mother was that she had
22 not and then she went to -- So when she went to have the
23 sexual assault exam, they did give her plan B which is kind of
24 the emergency birth control and mom told me that she did have
25 some bleeding within a week after that and so she was unsure

1 whether or not that was a period or whether it was due to the
2 birth control.

3 Q. Is the onset of menstruation kind of a determinative
4 factor, one of the big determinative factors of the onset of
5 puberty?

6 A. Puberty begins really kind of before that because
7 you have to - everything about the body has to be ready
8 before. Menstruation wouldn't be the first step, I guess.

9 Q. But that is an important step, would you agree?

10 A. Yes.

11 Q. Now, you said sometimes this tissue, this hymenal
12 tissue can heal very quickly?

13 A. Yes.

14 Q. How quickly?

15 A. One comparison is to think about the soft tissue
16 inside of your mouth. So if you were to bite the inside of
17 your mouth, some people may continue to feel that or it may
18 even continue to bleed for a day or two just depending on how
19 deeply they bit it or how repeatedly it's being bothered and
20 then some people may injure something inside their mouth and
21 then it's healing within hours.

22 Q. Is it your testimony that hymenal tissue can heal
23 within an hour?

24 A. Within hours?

25 Q. Within hours.

1 A. Mm-hmm.

2 Q. After repeated sexual abuse?

3 A. It's possible.

4 Q. I think you described the diagram?

5 A. Yes.

6 Q. Do you have the photo up there?

7 A. (Proffering.)

8 MR. SCOTT: Y'all didn't mark this?

9 THE COURT: They did not.

10 MS. MAYES: It has not been marked.

11 MR. SCOTT: Your Honor, could I have this marked?

12 THE COURT: Absolutely. Do you want to mark it as
13 one of your exhibits in chief?

14 MS. MAYES: Absolutely, Your Honor.

15 MR. SCOTT: Yes. No objection.

16 THE COURT: Is that okay, Mr. Scott?

17 MR. SCOTT: Fine with me.

18 THE COURT: That's State's exhibit 32.

19 (Whereupon, State's Exhibit #32 marked for
20 identification and entered into evidence.)

21 THE COURT: Ms. Mayes, are you offering it?

22 MS. MAYES: I did not, Your Honor. I believe it
23 hasn't been published yet.

24 THE COURT: It's up to y'all. It's your case.

25 BY MR. SCOTT:

1 Q. Is that consistent with what you understand nurse
2 Nguyen took of [Minor] ?

3 A. Yes.

4 Q. Of the photograph?

5 A. Mm-hmm. Yes.

6 Q. Is this another photo that you reviewed?

7 A. Yes.

8 MR. SCOTT: And I believe we, Ms. Nguyen identified
9 this yesterday. I ask it be marked as defendant's
10 exhibit 3.

11 (Whereupon, Defendant's Exhibit #3 marked for
12 identification.)

13 BY MR. SCOTT:

14 Q. You have identified that as defendant's exhibit
15 number 3. You have identified that as the anatomy of [Minor]
16 [] ?

17 A. Yes.

18 Q. Is it your opinion that what's depicted in
19 defendant's number 3 right there would accommodate an average
20 sized adult penis?

21 A. So as I mentioned earlier because she's kind of got,
22 in the photo she's got this sort of flattened out, you're not
23 able to see the opening to fully appreciate how much of an
24 opening there is. You can just sort of see the tissue is
25 folded over in front of an opening, uhm, so she definitely has

1 an opening that is within normal variation.

2 Q. What is that normal variation?

3 A. Uhm, we actually quit measuring it in the '80s, in
4 the late '80s because if you shift your position just a little
5 bit, being soft tissue it can vary so they actually quit
6 trying to measure. But what I mean by a normal variance is
7 that it's not a kind of pin hole sized opening and there's
8 still presence of hymenal tissue. Because, of course, if
9 there was no hymenal tissue, that would be another finding
10 altogether.

11 Q. In this State's exhibits 1, is this a fair, in your
12 opinion, is this a fair depiction of a typical hymenal
13 opening?

14 A. It would be one variation so that would be an
15 opening that would be described more as annular because you
16 can see the tissue kind of goes over the top. For **Minor** it
17 would be annular but also fimbriated meaning that it's very
18 folded so things are kind of folded together.

19 Q. So does that mean the opening would be even
20 smaller?

21 A. Not necessarily. Again, it's soft flexible tissue.
22 In my exam I did use a swab or a Q-tip to just kind of barely
23 go just past that tissue and make sure that I had good edges
24 everywhere so it was again within a normal variation of
25 opening size.

1 Q. Would you agree that it's expected -- This
2 statement. It's expected that the introduction of an adult
3 penis into a pre-pubertal child's vagina should produce acute
4 and obvious signs of trauma and result in chronic residual
5 such as transections of healing scar tissue?

6 A. I would not agree with the "should" of that
7 statement.

8 Q. Would you agree with everything else?

9 A. I would agree that those are possible findings.

10 Q. Would you agree that if **Minor** first started
11 being sexually abused by Mr. Posey 20 months prior to the time
12 that you saw her that you would find some scar tissue in the
13 hymen?

14 A. I would not agree with that. Again, 92 percent, 92
15 to 95 percent of kids who disclose penetrating trauma are
16 going to have normal anogenital findings and that's whether
17 it's one time or if it's more chronic because it's just that
18 soft and flexible of tissue.

19 Q. Every night for 20 months --

20 A. Again --

21 Q. -- and still be normal?

22 A. Again --

23 Q. Your testimony is that if she had been sexually
24 assaulted every night or every other night for 20 months, that
25 you would expect this exam to be normal? Is that your

1 testimony?

2 A. As far as I'm aware there isn't a research study
3 that specifically looks at just a subset of children who may
4 have been abused every single night, so it's not really
5 possible for me to say that for kids who are abused every
6 single night for 20 months that that would be the case. But
7 it's possible for me to say what we know and what we know is
8 that chronic abuse can result and is more likely to result in
9 a normal anogenital exam.

10 Q. How do you define normal? You said - you have used
11 that word a lot of times. How do you define that term?

12 A. So it's typically a term that we try to stay away
13 from in physical assessment but the guidelines for sexual
14 abuse concerns do have a category of normal, what we call
15 normal variant findings. By variant it just means that like
16 any other part of the body we can have a range of appearances
17 and these are the appearances that according to the research
18 that's been done can be normal or expected findings in a non
19 abused child if that helps.

20 Q. Would you agree with me that just because there's an
21 opening, doesn't mean there's been penetration?

22 A. Correct. I expect an opening.

23 Q. And you stick by your assessment that you made back
24 in January where you said that your exam did not confirm
25 sexual assault nor did it rule out sexual assault?

1 A. Correct.

2 Q. So it's a coin flip?

3 A. It's definitely not a coin flip. It's being
4 accurate to what I'm able to say. I would never want to over
5 state but then also again head to toe physical exam so
6 behaviors play into how concerned I am for that child's
7 well-being as well.

8 MR. SCOTT: I don't have any other questions, Your
9 Honor.

10 REDIRECT EXAMINATION

11 BY MS. MAYES:

12 Q. Let me follow up a little bit on that last point.
13 Are you looking only at your physical findings?

14 A. No. It's a head to toe exam.

15 Q. And in addition to that the stressors and emotional
16 factors that you previously indicated?

17 A. Yes. Sorry. That's what I mean by head to toe.
18 It's how are they doing in school. How are they copying. How
19 are they getting along with their family. All of those
20 factors I would be interested in for any child's well-being.

21 Q. All right. Now, let's take a look at some of the
22 percentages that you just discussed with Mr. Scott. I believe
23 he was asking you about chronic sexual abuse. What is meant
24 by the term chronic as it relates to sexual abuse?

25 A. Simply that it's not a one time acute assault or

1 even a couple of assaults within a weekend or a short period
2 of time so it could be weeks or years.

3 Q. All right. And does your evaluation of patients
4 throughout your training and clinical experience include
5 evaluations of victims of chronic sexual abuse repeatedly?

6 A. Yes.

7 Q. All right. And in terms of the chronic sexual abuse
8 you spoke of national percentages. What are the national
9 percentages in terms of actually finding evidence of injury as
10 opposed to a normal exam in child sexual abuse examinations?

11 A. Again, it's going to run five to at the broad
12 assessment around seven or eight percent abnormal findings.

13 Q. All right. Five to eight percent?

14 A. Yes.

15 Q. So that would put 92 to 95 percent being normal,
16 correct?

17 A. Correct.

18 Q. And then he questioned you about your own clinical
19 experience from patients that you have examined through the
20 course of your career. What can you tell us in that regard
21 about normal findings and those percentages?

22 A. So because we do quality assurance assessments
23 within our database, I know that for the past couple of years
24 when my medical director first began doing those checks, I
25 know that my personal percentage of normal findings is going

1 to be 95 or higher. It's actually a little bit higher.

2 Q. All right. And you indicated that also in terms of
3 the medical literature and research that includes cases where
4 children are sexually assaulted on video, correct?

5 A. Correct.

6 Q. And I believe some of the literature that you
7 mentioned in talking with Mr. Scott during cross examination
8 included confirmed cases of sexual abuse included in the
9 literature, correct?

10 A. Right. So that the cases that they looked at, it
11 just depends on which research study, but you have guidelines
12 that pull all of that together to better clarify for forensic
13 providers to use.

14 Q. And is the research and literature that you are
15 familiar with in confirmed cases of sexual assault meaning
16 cases with a confession or on video such as you previously
17 mentioned?

18 A. I haven't personally seen a study that separately
19 looks at them in a large enough study for them to confirm.
20 Any time you have a small study we don't want to base anything
21 off of 20 cases or 30 cases but those studies do fall within
22 what has been used in the guidelines for the expectations for
23 national percentages.

24 Q. Where the normal exams are still up to 95 percent?

25 A. Correct.

1 MS. MAYES: Your Honor, I believe regarding the
2 potential exhibit that has now been marked pursuant to
3 state law we would need permission from the Court to
4 publish this image.

5 THE COURT: Does defense have any issue they want to
6 put on the record regarding that?

7 MR. SCOTT: We have no issue publishing it to the
8 jury.

9 THE COURT: All right. The Court will allow
10 permission. The jury should be cautioned they don't have
11 to - they can look at it as they choose. It's evidence
12 received and the Court will allow publication.

13 BY MS. MAYES:

14 Q. Now, in response to that cross examination, I'm
15 going to show you what is State's exhibit 32. And again, why
16 are these photos which are graphic in nature, why are they
17 taken during the course of the medical evaluation?

18 A. So one reason is because we are trying to make sure
19 that if there was something that we were unsure about that we
20 have a photo documentation of it to be able to have another
21 expert look with us rather than having to put that child
22 through an additional exam so that would be one goal.

23 Q. All right. Can you show us looking here at State's
24 exhibit 32 briefly if you can show us what you are referring
25 to as the opening of the hymenal tissue?

1 A. You want me to hold it up?

2 Q. Yes.

3 A. Let me -- Can I get closer?

4 THE COURT: Sure.

5 BY THE WITNESS:

6 A. So I think everybody can see it. So this kind of
7 paler area here, that's all hymenal tissue. This pale area.
8 This darker area looks like more solid tissue, that would be
9 the inner kind of labia minora and then this is the hymenal
10 tissue here.

11 Q. What part is it where the opening would be
12 located?

13 A. So again if she had things pulled forward a little
14 bit more, that opening would likely fall open a little bit
15 more but you can kind of see there is a little bit of a line
16 or a shadow there. That's where the opening is. And again on
17 my exam I did use a Q-tip swab to just kind of confirm that
18 that tissue is just very foldy and it just fell back.

19 Q. You say it just fell back and that is a reference to
20 what stage of elasticity?

21 A. Estrogenized. And estrogenized and again fimbriated
22 just ruffly hymen.

23 Q. Now, do you necessarily have to start your period or
24 start menstruation to have that onset of elasticity?

25 A. Typically you're going to expect the estrogenization

1 to happen before the period happens.

2 Q. All right. And you had noted that **Minor** was Tanner
3 stage III with pubic hair and also breast development?

4 A. Mm-hmm.

5 Q. Can you tell us whether or not that is consistent
6 with that elasticity?

7 A. It is. You begin to see that in stage III and then
8 IV and V it would continue and then you would just have
9 further development in terms of pubic hair and breast
10 development.

11 Q. All right. And finally I want to ask you about some
12 of the questions that Mr. Scott was asking about. Is it
13 likely to leave evidence of injury even after repeated
14 intercourse. Do you necessarily expect to find evidence of
15 injury for a female, adolescent female, adult female who is
16 sexually active on a regular basis?

17 A. Can you restate the question?

18 Q. Right. Do you necessarily expect any evidence of
19 trauma for a sexually active female?

20 A. Again, it would fall within the national
21 percentages. So even if I have, let's say, an older teenage
22 who has had consensual sexual intercourse in addition to
23 seeing them for an abuse situation they are still going to
24 fall within those percentages.

25 Q. All right. And what did you mean in your response

1 to Mr. Scott that there can be a range in forcefulness and how
2 that may relate to the presence of any findings?

3 A. Just to say that there are different perpetrators
4 may be more or less physically forceful. Different
5 perpetrators may, for instance, if they were to use lubricants
6 or if they were to do anything to get the physical body more
7 ready for a sexual encounter, then it would be less forceful
8 on that tissue.

9 Q. Does a lubricant include saliva?

10 A. Yes.

11 MS. MAYES: Nothing further.

12 THE COURT: Any recross, Mr. Scott? Anything else?

13 MR. SCOTT: A little bit. Yes, Your Honor, if I
14 could.

15 THE COURT: Okay. Very briefly.

16 RECROSS EXAMINATION

17 BY MR. SCOTT:

18 Q. Just out of curiosity, if the percentage is so low
19 as you've testified here today, why would you ever put the
20 child through the trauma of an exam to begin with?

21 A. That's a good question. First of all, the exam is
22 not intended to be traumatic so if we had a child who was
23 still in really acute emotional distress, we would not do an
24 exam that day. That's actually one of the things I discuss
25 with the parent before we start is that if the child in any

1 way is like I don't want to do this, I'm worried about doing
2 this part of the checkup, we hit pause and we may come back
3 and do it another day. But the entire reason why my exam as
4 opposed to the SANE exam got started as part of the care for
5 these children is that in the '70s whenever we were really
6 beginning to provide counseling and those kinds of things for
7 victims of sexual abuse, a lot of children were having
8 questions to their counselor about whether they were
9 physically okay because as you can imagine, if you have a
10 physical injury of any type and especially if you're a young
11 child, they can kind of come up with their own ideas about,
12 well, if this is hurting months or years later, that could be
13 because of what happened. So there were a lot of those kinds
14 of questions and counselors definitely were like, well, we
15 don't know the answer to that. So that really is what
16 initiated this follow up medical exam.

17 Q. How many times have you testified in court?

18 A. This is the second time in Saluda. And then three
19 other times in other counties.

20 Q. Five?

21 A. Yes.

22 Q. How many times have you testified for the State?

23 MS. MAYES: Objection, Your Honor. Outside the
24 scope of redirect.

25 THE COURT: Sustain that.

1 MR. SCOTT: I withdraw the question, Your Honor.

2 THE COURT: All right.

3 MR. SCOTT: No other questions.

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

5 MS. MAYES: We ask that the witness be excused.

6 THE COURT: Certainly. All right. Let's take a
7 short break. We have gone a little more than an hour.
8 Step into the jury room. Don't begin discussing the
9 case. We'll have you back in a few minutes.

10 (Whereupon, the jury entered the jury room at 10:10
11 a.m.)

12 (Short break.)

13 BAILIFF: All rise.

14 THE COURT: Y'all be seated. Ready?

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

16 MS. JORDAN: Yes, sir.

17 THE COURT: Bring them in please.

18 (Whereupon, the jury entered the courtroom at 10:20
19 a.m.)

20 THE COURT: All of the jurors keep the same seat.
21 You first four are consistent. The rest mix it up.
22 That's fine. As long as you're comfortable, I'm good.
23 Most people find their space like going to church.
24 That's where they sit. As long as you're comfortable.
25 Ms. Radlein.

1 MS. RADLEIN: Thank you, Your Honor. The State
2 calls [REDACTED] Sister [REDACTED].

3 Thereupon,

4 [REDACTED] Sister [REDACTED], a minor

5 after having been first duly sworn, testified as follows,

6 DIRECT EXAMINATION

7 BY MS. RADLEIN:

8 Q. State your name for us.

9 A. [REDACTED] Sister [REDACTED].

10 Q. Are you comfortable right there?

11 A. Yes, ma'am.

12 Q. All right. I'm going to ask you a few questions,

13 [REDACTED]. Can you go ahead and tell the jury who are the
14 members of your family?

15 A. My mom and my sister.

16 Q. Okay. And what's your mom's name?

17 A. Brandi Nye.

18 Q. What's your sister's name?

19 A. [REDACTED] Minor [REDACTED].

20 Q. Okay. How old is your sister?

21 A. 12.

22 Q. Do you remember her birthday?

23 A. Yes.

24 Q. What's her birthday?

25 A. [REDACTED]/04.

1 Q. How old are you?

2 A. 10.

3 Q. When is your birthday?

4 A. [REDACTED] 2006.

5 Q. You guys are about two years apart?

6 A. Yes, ma'am.

7 Q. Speak up, okay?

8 A. (Witness nodding head.)

9 Q. All right. Do you know the defendant, [REDACTED]

10 A. Yes.

11 Q. What's his name?

12 A. Antonio Kenyardo Posey.

13 Q. How do you know him?

14 A. Because he's my dad.

15 Q. Okay. Is he your biological dad?

16 A. Yes, ma'am.

17 Q. Okay. Do you know how old he is?

18 A. 30 or 40 something.

19 Q. Okay. What grade are you in now, Sister?

20 A. Fifth.

21 Q. Do you know what grade Minor is in?

22 A. Yes.

23 Q. What grade is she in?

24 A. Seventh.

25 Q. What school do you go to?

1 A. [REDACTED] Elementary.

2 Q. What school does Minor go to?

3 A. [REDACTED] Middle School.

4 Q. Okay. Back in 2014 do you remember what school you
5 went to?

6 A. (Witness nodding head.)

7 Q. What school did you go to?

8 A. Saluda Hollywood. No. Saluda Elementary. No.
9 Saluda Hollywood Elementary School in Hollywood.

10 Q. Hollywood?

11 A. Yes, ma'am.

12 Q. Are you a little nervous today?

13 A. Mm-hmm.

14 Q. It's okay. What school did Minor go to back in
15 2014?

16 A. Hollywood Elementary.

17 Q. Do you remember what grade you were in back then?

18 A. Third.

19 Q. In 2014. And do you remember what grade Minor was
20 in?

21 A. Fifth.

22 Q. Okay. I'm going to show you some pictures, okay?
23 I'm going to show you what's been marked and entered into
24 evidence as State's exhibit 12. Do you recognize this?

25 A. Yes, ma'am.

1 Q. What do you recognize this to be?

2 A. My house.

3 Q. Okay. And do you know this address?

4 A. Yes, ma'am.

5 Q. What's your address?

6 A. [REDACTED], [REDACTED]

7 [REDACTED].

8 Q. You said that really fast. Okay. Do you know if
9 that's here in Saluda County?

10 A. Yeah. It is.

11 Q. Okay. Do you live here now?

12 A. Yes, ma'am.

13 Q. Did you live here -- You said you're in fifth grade
14 now. Did you live here in fourth grade?

15 A. Yes, ma'am.

16 Q. Did you live here in third grade?

17 A. Yes, ma'am.

18 Q. Did you live here in second grade?

19 A. Yes, ma'am.

20 Q. Did **Minor** live here in fifth grade, too?

21 A. Yes, ma'am.

22 Q. And fourth grade?

23 A. Yes, ma'am.

24 Q. So back then when you were in second and third
25 grade, did anyone else live here with you?

1 A. Yes, ma'am.

2 Q. Who lived there?

3 A. My dad.

4 Q. Okay. And who else lived there with you?

5 A. My mom and my sister.

6 Q. All right. I'm going to show you State's exhibit 6.

7 I want to try to hold it here so you can really see it. Do
8 you recognize this?

9 A. Yes, ma'am.

10 Q. Maybe I'll stand a little closer. Keep your voice
11 in the microphone, okay? What do you recognize this to be?

12 A. The inside of my house.

13 Q. Do you see your bedroom on here?

14 A. Yes, ma'am.

15 Q. Okay. Let me come around there so you can point to
16 it for the jury.

17 A. Right there (indicating.)

18 Q. Okay. Did you have your own room?

19 A. Yes, ma'am.

20 Q. Where was a Minor room?

21 A. Right here (indicating.)

22 Q. Okay. And what about your parents' room?

23 A. Up there.

24 Q. All right. And what about the bathroom?

25 A. There.

1 Q. Okay. And this is how the house looked back when
2 you were in third grade?

3 A. Yes, ma'am.

4 Q. I want to talk just a little bit about back then.
5 Do you remember back when you were in third or second grade if
6 you ever saw anything between your dad and Minor that made
7 you, I guess, concerned?

8 A. Yes, ma'am.

9 Q. Okay. You want to go ahead and tell the jury what
10 you remember?

11 A. Yeah. Uhm, one day, uhm, when I was in third grade,
12 uhm, we were, uhm, my dad had said do you need help with your
13 homework? We were sitting at the kitchen table and my sister
14 had said yes, and he was telling her what a problem meant and
15 I - my sister was sitting in the middle chair, my dad had
16 pulled a chair up beside her and I had pulled a chair up on
17 the other side of my sister and he started digging in her
18 pants.

19 Q. Okay. And I'm going to ask you a couple questions
20 about that. Now, you said third grade. Now, third grade was
21 2014 when all of this happened. Is that the year you're
22 talking about?

23 A. I think so. Yes.

24 Q. Okay. And it's okay if you don't remember. But you
25 remember this happening, right?

1 A. Yes, ma'am.

2 Q. Okay. And you said digging in her pants. I just
3 want to be clear. This is on the inside or on the outside?

4 A. Inside.

5 Q. Okay. And how were you able to see that?

6 A. Uhm, because my sister had scooted her chair back.

7 Q. Okay.

8 A. A little bit.

9 Q. Okay. And you were sitting next to her?

10 A. Yes, ma'am.

11 Q. Okay. What, if anything, else happened when you
12 noticed what your dad was doing?

13 A. I don't get your question.

14 Q. Okay. It's okay. I'm sorry. Did your dad ever do
15 or say anything after he was digging in her pants?

16 A. No. But I had said, what are you doing? And he
17 said - he said he was rubbing her stomach and then my mom
18 couldn't see because she was washing the dishes.

19 Q. So you asked your dad what he was doing?

20 A. Mm-hmm.

21 Q. When he said he was rubbing her stomach, did you say
22 anything else after that?

23 A. Uhm, yeah. I said, no, you're not. Because her
24 pants were unbuttoned and I saw his hand moving around.

25 Q. And I'm going to ask you to see if you can help me

1 out here. When you said in her pants, what area of the body
2 is that?

3 A. Uhm, her private area.

4 Q. Okay. If I showed you a diagram, would you be able
5 to tell me what you mean by private area?

6 A. Yes, ma'am.

7 Q. Okay. Let me grab it real quick. I'm going to show
8 you what's previously marked as State's exhibit 7. Do you
9 recognize what this is?

10 A. Yes, ma'am.

11 Q. Okay. Go ahead and mark for me what you mean by the
12 private area.

13 A. Circle it?

14 Q. You can circle it.

15 A. (Witness complies.)

16 MS. RADLEIN: Okay. Thank you. At this time, Your
17 Honor, the State seeks to move State's exhibit 7 into
18 evidence.

19 MR. SCOTT: No objection, Your Honor.

20 THE COURT: State's 7 will be admitted without
21 objection.

22 MS. RADLEIN: Permission to publish?

23 THE COURT: Yes, ma'am.

24 BY MS. RADLEIN:

25 Q. And after seeing this happen, did you do anything

1 after that?

2 A. Uhm, I don't think so.

3 Q. Okay.

4 A. I just - I had just gotten back done with my
5 homework but my mom also had almost came to look but then he
6 like pulled his hand out so she couldn't see.

7 Q. So your mom didn't get see what happened?

8 A. No.

9 Q. Is there anything else that you remember that
10 happened that caused you concern between your dad and
11 **Minor**?

12 A. Yes, ma'am. One day I was going to sleep with my
13 sister one night in her room and I was on one side of the bed,
14 she was on the other but my dad had came in and he had got
15 under the covers and he started humping her.

16 Q. When you say humping, what do you mean by humping?

17 A. Like getting up next to her and moving back and
18 forth.

19 Q. Did you do anything when you saw that?

20 A. I had, uhm, sat up but then he told me to lay back
21 down because he didn't want me to see.

22 Q. So did you just lay back down?

23 A. Yes, ma'am.

24 Q. Why did you do that?

25 A. Because he told me to. I was going to go tell mama

1 but then he had told me to lay down so I just did it.

2 Q. And you just went to sleep?

3 A. (Witness nodding head.)

4 Q. Okay. I'm going to show you State's exhibit 3. Do
5 you recognize this?

6 A. Yes, ma'am.

7 Q. What do you recognize this to be?

8 A. My sister's room.

9 Q. Okay. And you just testified that you would have
10 been in her room, you wanted to sleep with her?

11 A. Yes, ma'am.

12 Q. Can you go ahead -- And should I come around the
13 other side?

14 A. Yes.

15 Q. Okay. Can you go ahead and show the jury where you
16 were laying?

17 A. I was laying right here.

18 Q. Okay. Where was your sister **Minor**?

19 A. All the way over there.

20 Q. Okay. And then you said a little bit later your dad
21 came in?

22 A. Mm-hmm.

23 Q. And so where were you laying when he came in?

24 A. I was laying right here. My sister was laying in
25 the middle because he had told her to scoot over and my dad

1 was laying over there.

2 Q. Okay. I think that's all for this one. After that
3 did you ever tell your mom about that night when you saw your
4 dad doing something to Minor?

5 A. No. Because I had got scared.

6 Q. Now, why would you get scared?

7 A. I don't know.

8 Q. So you just don't know?

9 A. (No response.)

10 Q. That's okay. Now, I want to ask you, you may not
11 remember the exact date but back on December 2nd, 2014, that
12 was the day that Minor finally told what happened?

13 A. Yes, ma'am.

14 Q. Do you remember going to school that day that
15 morning?

16 A. We didn't.

17 Q. No. The day on December 2nd.

18 A. Yeah. We did.

19 Q. Okay.

20 A. Because she had told my mom right after school.

21 Q. You said after school. What time does school get
22 out?

23 A. About around 3:00.

24 Q. Okay. And where were you when Minor told your
25 mom?

1 A. We were in the car.

2 Q. Okay. And where were you sitting?

3 A. I was sitting in the back seat.

4 Q. Who was driving?

5 A. My mom.

6 Q. And where was **Minor**?

7 A. On the passenger seat in the front.

8 Q. Was anybody else in the car?

9 A. No, ma'am.

10 Q. All right. I want you to just take me through
11 without necessarily telling me what anyone necessarily said
12 but what you remember seeing, okay? So you're in the car and
13 what happened?

14 A. My sister, uhm, started crying, uhm, and she was
15 telling mama -- Well, she didn't tell her what happened. She
16 just said I can't tell you right now because **Sister** is in the
17 car because she didn't want to hurt my feelings because of
18 what my dad had did and she had wrote it on the index cards
19 and a little while later my mom had called my aunt Pooh and my
20 aunt Pooh said go meet on the back of the football field and
21 so they were talking and I was in the car and my sister and
22 mom and my aunt Pooh were sitting on the bleachers, uhm, and I
23 had read the index cards but I wasn't supposed to.

24 Q. Where did you see the index cards?

25 A. They were, uhm, basically in the glove box.

1 Q. Okay. So your mom didn't know you read them?

2 A. (Witness shaking head.)

3 Q. So I want to back up a little bit. You said **Minor**
4 was crying. What made her cry at that moment? Do you
5 remember what happened right before that?

6 A. Uhm, no.

7 Q. No. So as she's crying, is your mom speaking to her
8 as she's crying?

9 A. Uhm, no and then yes, because my mom was sort of
10 getting angry and mad because she had just found out that my
11 dad had --

12 Q. You can't say exactly what she said, all right?

13 A. All right.

14 Q. But she was upset?

15 A. Yes, ma'am.

16 Q. Okay. Did your mom stop driving or did she continue
17 driving?

18 A. She continued driving because we were in the car.
19 She didn't want to have a wreck and, uhm, kill us or anything.
20 She was just, okay, calming down. She started to pray.

21 Q. Okay. And so after she calmed down, you said she
22 called aunt Pooh?

23 A. Yes, ma'am.

24 Q. Okay. And once you guys went to the football
25 stadium, which football stadium is this?

1 A. Uhm, the one in Saluda like close to Saluda
2 Elementary School.

3 Q. And then after there, do you remember where
4 you went?

5 A. I think we went to go see Ms. Nicole.

6 Q. Who is Ms. Nicole? Where did you see her?

7 A. At the jail place basically where the police
8 officers are.

9 Q. All right. And when you were there, do you remember
10 meeting Ms. Nicole?

11 A. Yes, ma'am.

12 Q. Where were you when you went there? Like what part
13 of the police place did you go to?

14 A. Her office.

15 Q. And then after that, do you remember where you
16 went?

17 A. I think we went to the hospital.

18 Q. All right. Do you remember, how did you get to the
19 hospital?

20 A. Me and my sister and Ms. Nicole drove with Ms.
21 Nicole, me and my sister and my mom and aunt Pooh drove in my
22 mom's car.

23 Q. All right. Do you remember when you got to the
24 hospital if you were there for a little bit or for a long
25 time?

1 A. A really long time.

2 Q. How do you remember that?

3 A. Because it was like 2:00 or 1:00 in the morning.

4 Q. All right. Were you tired?

5 A. Yes, ma'am.

6 Q. Okay. And after that, do you remember where
7 you went?

8 A. Uhm, we went to my grandma's house to spend the
9 night there.

10 Q. Okay. So once you left school you went to the
11 football stadium and then you went to the police station and
12 then to the hospital?

13 A. Yes, ma'am.

14 Q. Did you ever stop back at home before you went to
15 any of these places?

16 A. Yeah. No. Because after the hospital, I think we
17 just went straight to my grandma's house.

18 Q. All right. Okay. I just want to clear up a few
19 things. Back when you talked about that first time you saw
20 something, you said your dad was in a rolling chair. What
21 rolling chair were you talking about?

22 A. From my mom's computer desk.

23 Q. So it's like an office desk type chair?

24 A. Yes, ma'am.

25 Q. It wasn't at - a kitchen table chair?

1 A. Yes, ma'am.

2 Q. Okay. And you said he pulled it up?

3 A. Yes, ma'am.

4 Q. Okay. And then just to clear up, that day when

5 **Minor** gave mom the index cards, do you remember exactly what
6 the first thing your mom did?

7 A. Uhm, no. I don't remember.

8 Q. No. You just remember her being upset?

9 A. Yes, ma'am.

10 Q. Okay. After this, do you remember ever going for an
11 interview in Aiken?

12 A. Yes, ma'am.

13 Q. Okay. Do you remember who that was with?

14 A. Ms. Ann.

15 Q. All right. Did you tell her about what you
16 remember?

17 A. Yes, ma'am.

18 Q. I'm going to go ahead and write this up here and
19 just tell me if I'm wrong about anything I'm writing, okay? I
20 just want to make sure it's clear for the jury. So you left
21 school. You said that was around 3:00 when the bell rang?

22 A. Yes, ma'am.

23 Q. So I'm going to put around 3:00 and then you said
24 you went to where the football stadium is?

25 A. Yes, ma'am.

1 Q. Okay. And then you said you went to the jail place
2 or the police station?

3 A. Yes, ma'am.

4 Q. So I'm going to write police station.

5 A. Mm-hmm.

6 Q. Okay. Then you mentioned you went to the
7 hospital?

8 A. Yes, ma'am.

9 Q. And you said you remember how long you were there.
10 For a really long time?

11 A. Yes, ma'am.

12 Q. And then to grandma's?

13 A. Yes, ma'am.

14 Q. So this picture of **Minor** room, this would have
15 been how it looked when you guys left to go to school that
16 morning?

17 A. Yes, ma'am.

18 Q. Because you never went back home?

19 A. No.

20 Q. Okay. I'm going to show you just a couple more
21 things, **Sister**. This will be State's exhibits 13, 14, 15, 16.
22 I'm going to ask you to take your time to look through this
23 and tell me if you recognize this. What do you recognize
24 State's 16 to be?

25 A. My bathroom.

1 Q. All right. And then 15?

2 A. My clothes and my underwear.

3 Q. Can you point and show which one is yours, what's
4 your clothes?

5 A. All of that.

6 Q. How do you know that's yours?

7 A. Because it's small.

8 Q. Okay. And then what about in this picture?

9 A. My sister's underwear and mine.

10 Q. Okay. How do you know which one is your sister's?

11 A. Because it's bigger.

12 Q. Okay. And it's the same picture?

13 A. Yes.

14 Q. Okay. I'm going to show you one more thing.

15 State's exhibit 26. Do you recognize these?

16 A. Yes, ma'am.

17 Q. Do you recognize the handwriting?

18 A. Yes, ma'am.

19 Q. Whose handwriting is this?

20 A. My sister's.

21 Q. Are these the same index cards you saw?

22 A. Yes, ma'am.

23 Q. That you weren't supposed to look at?

24 A. Yeah.

25 MS. RADLEIN: Well, I thank you, Sister. I

1 think that's all I have for right now, okay?

2 THE COURT: Cross.

3 CROSS EXAMINATION

4 BY MS. JORDAN:

5 Q. Sister, I'm going to ask you a few more questions
6 about those events you were talking about, okay? If you don't
7 understand anything I say, you just let me know, okay? If
8 it's confusing or if I say a word you don't understand, just
9 make sure you let me know. How old did you say you are now?

10 A. Right now I'm 10.

11 Q. A couple years ago you were eight --

12 A. Yes, ma'am.

13 Q. -- when Minor made these reports to your mom and
14 the police?

15 A. Yes, ma'am.

16 Q. Okay. And have you ever been in this courtroom
17 before?

18 A. Yes, ma'am.

19 Q. How many times have you been in here, do you know?

20 A. Three or two times.

21 Q. Two or three times?

22 A. (Witness nodding head.)

23 Q. And when you were talking to the attorney for the
24 State, you said that there was one time where you remember
25 sitting at the table with Minor and your dad, correct?

1 A. Yes, ma'am.

2 Q. I'm going to get a picture to show you so we make
3 sure everybody understands. I'm going to set it up here so
4 everybody can see it together, okay?

5 A. Okay.

6 Q. Is this the table where y'all were sitting at?

7 A. Yes, ma'am.

8 Q. And tell me where you were sitting. Were you
9 sitting or standing?

10 A. I was sitting beside my sister.

11 Q. Okay. Was your sister sitting here, here or here?

12 A. The first one that you pointed to.

13 Q. She was sitting right here?

14 A. Yes, ma'am.

15 Q. Where were you sitting?

16 A. On the other side.

17 Q. This one or this one?

18 A. I pulled that chair that the officer is sitting in
19 and I pulled it over beside her.

20 Q. So you were sitting in this chair beside your
21 sister?

22 A. Yes, ma'am.

23 Q. Where was your father?

24 A. He had pulled my mama's desk chair up and pulled it
25 beside the opposite side of where I was sitting.

1 Q. Right here?

2 A. Yes, ma'am.

3 Q. Okay. All right. So you were sitting right here.
4 I mean your daddy was sitting right here in the rolling chair.

5 **Minor** was right here?

6 A. Yes.

7 Q. And you were right here?

8 A. Yes, ma'am.

9 Q. And was - do you remember if **Minor** was wearing
10 pants or shorts that day?

11 A. Uhm, I don't know if she was wearing pants or
12 shorts.

13 Q. Okay. Did it have a button on them you said?

14 A. Yes, ma'am.

15 Q. And where was your mother?

16 A. Uhm, she was in the, behind the counter washing
17 dishes.

18 Q. And you said that you asked your daddy what are you
19 doing?

20 A. Mm-hmm.

21 Q. What did he say to you?

22 A. He said that he was rubbing her belly but he was
23 actually rubbing her private area or touching her private
24 area.

25 Q. Could you see his hand?

1 A. Not really because it was just inside of her
2 clothes. He was just moving it around.

3 Q. Did your mom come over there to see what was going
4 on?

5 A. Uhm, no. Well, yeah, but then he snatched his hand
6 out.

7 Q. What did she say when he snatched his hand out?

8 A. She didn't say anything. She just came to look..

9 Q. Okay. All right. And when you get ready for school
10 in the morning, do you normally take your bath or shower at
11 night or in the morning?

12 A. At night and sometimes in the morning.

13 Q. Okay. And what time do you go to bed at night?

14 A. 9:00, I think.

15 Q. About 9:00?

16 A. (Witness nodding head.)

17 Q. Okay. Did you go to bed about 9:00 a couple years
18 ago when this happened where you're talking about this
19 happening, when you talk about the hand and pants and the
20 incident?

21 A. Yeah. But I went to sleep at 9:30.

22 Q. So you start laying down about nine but it takes a
23 little bit of time to fall asleep, doesn't it?

24 A. Mm-hmm.

25 Q. Got to get settled in. You said there was one night

1 where you were sleeping with **Minor** ?

2 A. Mm-hmm.

3 Q. Do you have your own separate bedroom?

4 A. Yes, ma'am.

5 Q. You do you like to sleep with your sister?

6 A. Yeah.

7 Q. Makes you feel a little more comfortable?

8 A. Mm-hmm.

9 Q. Do you sleep with her a lot?

10 A. Not really because when she turned, when she turned
11 like about 11, she gets Evel Knievel.

12 Q. Oh, really. So y'all start fussing a little bit?

13 A. Mm-hmm.

14 Q. Okay. I bet that's very true. I know how little
15 sisters can be. When the night you were talking about where
16 you did sleep with her, she was being nice that night?

17 A. Mm-hmm.

18 Q. Okay. And you said your daddy came in there and got
19 under the covers, right?

20 A. Yes, ma'am.

21 Q. Was the bedroom door open or closed?

22 A. Open.

23 Q. Where was your mom?

24 A. She was in, I think outside.

25 Q. She was outside. How do you know she was outside?

1 A. Because she likes to smoke.

2 Q. Did she go outside a lot?

3 A. Mm-hmm.

4 Q. That's a bad habit, isn't it?

5 A. Mm-hmm.

6 Q. And was **Minor** crying?

7 A. Uhm, a little bit.

8 Q. She was crying?

9 A. Mm-hmm.

10 Q. Did she say anything to you?

11 A. She said go get mama. That's when my dad told me to
12 lay down.

13 Q. So **Minor** said to you to go get your mama?

14 A. Mm-hmm.

15 Q. And she was crying. How did you know she was
16 crying?

17 A. Because I saw tears down her face.

18 Q. You did?

19 A. Mm-hmm.

20 Q. Did you ask your daddy what he was doing?

21 A. No. He just told me to lay back down.

22 Q. He did. And did you tell your mama about this the
23 next day or ask **Minor** why she was crying the next day?

24 A. No. I didn't say anything because I was scared I
25 was gonna get in trouble.

1 Q. Why did you think you would get in trouble for
2 telling your mom your sister was crying?

3 A. I basically thought that my dad was gonna hurt
4 somebody if I told anybody anything.

5 Q. Had your daddy ever hurt you?

6 A. Sometimes. One time, uhm, he whapped me on my hand
7 or pinches and then like he grabs a piece of my skin and
8 twists it or he just grabs my arm.

9 Q. When he whooped you on you your hand, were you
10 getting in trouble or acting out?

11 A. Mmm-mmm. He just done it for no reason.

12 Q. Okay. And did **Minor** ever tell you what was going
13 on?

14 A. No. Until she had wrote the index cards.

15 Q. So did she tell you first or did she tell your mom
16 first?

17 A. She told my mom first.

18 Q. And you were scared to tell your mom she was crying
19 in bed that night. But did you ask her why she was crying in
20 bed that night?

21 A. No.

22 Q. Okay. And did your sister ever write to you a note
23 or in a notebook about wanting to leave your mom and your dad,
24 or your dad?

25 A. No.

1 Q. Y'all never had a conversation about leaving one of
2 your parents?

3 A. Well, she does like a little bit talk not here
4 sometimes but sometimes she says that she wants to go live
5 with mama instead of living with my dad.

6 Q. And then so who would you hear her talking to about
7 that?

8 A. Nobody. She just, like she usually writes it but
9 then sometimes she doesn't write that down.

10 Q. Was she writing that down, did she have a journal or
11 did you have a journal or a notebook?

12 A. (Witness shaking head.)

13 Q. What would she be writing that on?

14 A. A piece of notebook paper and then she would ball it
15 up and throw it in the trash can.

16 Q. Okay. So did y'all write back and forth at one time
17 about leaving your mom or your dad and making a choice?

18 A. (Witness shaking head.)

19 Q. You didn't? She never wrote that to you?

20 A. No.

21 Q. And you never wrote that to her?

22 A. No.

23 Q. Okay. And you said that after **Minor** wrote on the
24 note cards that day and told your momma, y'all went to the
25 police station, correct?

1 A. Yes, ma'am.

2 Q. Who all did you talk to at the police station?

3 A. Ms. Nicole. And my mom talked to another police
4 officer. I just don't know or I don't remember what his name
5 was.

6 Q. So she was talking to someone else?

7 A. Mm-hmm.

8 Q. The only person you talked to was Ms. Nicole?

9 A. Yes, ma'am.

10 Q. Did Ms. Nicole explain to you why you were there?

11 A. Uhm, yes. But then I got a little more talking with
12 Ms. Ann. I got a little more understanding more.

13 Q. So Ms. Ann talked to you in some more detail?

14 A. Mm-hmm.

15 Q. Do you remember what Ms. Nicole told you about why
16 you were all there that day?

17 A. She asked me did I know why we was here and
18 something else I can't remember.

19 Q. And you rode with Ms. Nicole to the hospital that
20 night, is that what you said?

21 A. Yes, ma'am.

22 Q. Did y'all talk about it while you were riding in the
23 car?

24 A. No. Because my sister didn't want me to hear
25 basically.

1 Q. When did Minor tell you about all of this stuff?

2 A. Uhm, well, she didn't tell me. I just remember from
3 Ms. Ann talking and I remember from when she wrote on the note
4 cards.

5 Q. Okay. Did you ever tell your mom that you were
6 worried about Minor?

7 A. Uhm, not that I can remember.

8 Q. Do you - the night that you said that your dad was
9 in the bed, you said that he was humping her. Where did you
10 learn that word humping?

11 A. From my school because they talked about it all the
12 time.

13 Q. Right. Had you ever seen some people on TV humping
14 or doing something that looked like they were humping?

15 A. Uhm, not really until my friends showed me
16 something.

17 Q. Okay. So someone at school told you what humping
18 was?

19 A. Yeah.

20 Q. Okay.

21 A. And I did see it so I -- I don't know what it was.

22 Q. You had seen it somewhere what humping was?

23 A. Mm-hmm.

24 Q. On television maybe?

25 A. Yeah.

1 Q. Did your mom and daddy fuss a lot?

2 A. Yeah. But my mom just wanted to keep it on the down
3 low and, uhm, so because we were in the house and then my dad
4 just wanted to argue and everything in front of us.

5 Q. So then they would end up arguing in front of
6 y'all?

7 A. Mm-hmm.

8 Q. How did that make you feel?

9 A. Mad that my dad had started it but a little sad
10 because I didn't want mom to get hurt or anything.

11 Q. Okay. And was there ever anybody else that lived in
12 the house with y'all? Did y'all ever have an aunt or an uncle
13 or a cousin that stayed with y'all for a little while?

14 A. Are you talking about -- Yeah. My aunt Pooh and
15 cousin Kendall.

16 Q. Okay. When did they live with you? Do you remember
17 how old you were when that happened?

18 A. I think I was in the fourth grade and nine. I can't
19 remember.

20 Q. So that would have been after your daddy left?

21 A. Mm-hmm.

22 Q. Before your daddy left, was there ever anyone that
23 lived with y'all?

24 A. No.

25 Q. You don't ever remember a cousin or an aunt or an

1 uncle staying there with y'all?

2 A. (Witness shaking head) Mmm-mmm.

3 Q. Okay. And did anyone tell you what to say in court
4 today?

5 A. Mmm-mmm. All they said, all they told me to do is
6 tell the truth.

7 Q. Okay. And who did you talk to to get ready for
8 today?

9 A. Ms. Suzanne, Ms. Sutania, but they didn't tell me
10 what to say.

11 Q. Okay. Just a few more questions, okay, **Sister**?

12 A. Yes.

13 Q. Do you remember your mom and daddy splitting up for
14 a period of time before your daddy moved away permanently?

15 A. Uhm, yeah. Because sometimes when they got into
16 arguments, my dad would go outside, sometimes shoot in the air
17 or he would just leave.

18 Q. And one time they split up for a long time and your
19 momma and your daddy they kind of for a little while were
20 living their separate lives, correct?

21 A. Yeah.

22 Q. Do you remember how long that was?

23 A. No, ma'am.

24 Q. You don't remember. Okay. Would it be more than
25 one school grade? Like were you in the third and the fourth

1 grade or would it have been while you were just in one school
2 grade, do you know?

3 A. No.

4 Q. It's a long time ago. It's hard too remember, isn't
5 it?

6 A. Mm-hmm.

7 MS. JORDAN: I don't have anything else. Thank
8 you.

9 THE COURT: Any redirect, Ms. Radlein?

10 MS. RADLEIN: Briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. RADLEIN:

13 Q. Sister, you kept mentioning Ms. Ann. Who is Ms.
14 Ann?

15 A. Uhm, the lady that I went to go talk to.

16 Q. So when you talked to Ms. Ann, this would have been
17 after you spoke to Nicole?

18 A. Yes, ma'am.

19 Q. Like a week later?

20 A. Yeah.

21 Q. Okay. And I just want to clarify some things that
22 she was asking you on cross. When you would spend the night
23 with Minor, you liked being able to do that, right?

24 A. Yeah.

25 Q. Would your mom let you sleep in her bed during the

1 week when you had school in the morning?

2 A. Uhm, no. But sometimes, uhm, I go in there and then
3 when my mom wants to smoke a cigarette, I go in there and when
4 it's actually time for bed, then I have to go to my mom's room
5 or my room.

6 Q. Okay. Now, are you talking about right now?

7 A. Yeah.

8 Q. Okay. So let's talk about back in 2014. So when
9 you were in third grade, by bedtime did you have to be in your
10 bed?

11 A. Yes.

12 Q. Okay. And that's because you had to get up and go
13 to school in the morning?

14 A. Mm-hmm.

15 Q. So when you were talking about watching TV or
16 watching a movie with your sister, would this have been on a
17 weekend?

18 A. Yes, ma'am.

19 Q. Okay. The defense attorney was asking you about
20 when you were sitting at that kitchen table that day, she
21 asked you about not seeing your dad's hands. Can you tell the
22 jury whether or not you knew his hands were actually in her
23 pants?

24 A. Yeah. Because I couldn't basically see it. I
25 couldn't see his hand.

1 Q. Right. So you knew the hand was inside?

2 A. Yes.

3 Q. Okay. And then when she asked you about watching
4 anything at school, if you saw anything, would that - are you
5 talking about now or before this happened?

6 A. Uhm, before this happened.

7 Q. But the video at school would have been before or
8 after this?

9 A. Uhm --

10 Q. Would it be in the fifth grade?

11 A. I don't remember.

12 Q. It's okay. One last thing. Back then when your dad
13 was living with you, didn't you like to have your dad live
14 with you? Didn't you love your dad?

15 A. Yeah. But I didn't know this was going on.

16 MS. RADLEIN: Okay. No further questions.

17 MS. JORDAN: Nothing further.

18 THE COURT: You can step down now.

19 THE WITNESS: Thank you.

20 MS. MAYES: May we approach?

21 THE COURT: You may.

22 (Side bar off the record.)

23 THE COURT: We have to set up a video. Will y'all
24 step in the jury room. We'll have you right back out
25 here. Anybody needs to step outside or anything get some

1 air, let me know or the bailiffs know and then we'll get
2 you back.

3 (Whereupon, the jury entered the jury room at 11:02
4 a.m.)

5 THE COURT: The jury is not present.

6 MS. MAYES: Let's do that. You had, I guess,
7 previously indicated that y'all weren't going to
8 challenge the admissibility of the videotapes. Just
9 trying to get clarification on that so that we'll know
10 what we need to do in camera or not concerning her
11 training, qualifications. She's not offered as an
12 expert.

13 MR. SCOTT: That's right. Y'all just introduced the
14 videotapes.

15 THE COURT: She's just for foundation only. I work
16 here. I did this. This is my interview recorded. Play
17 it.

18 MR. SCOTT: That's right. Absolutely.

19 THE COURT: And the Court has already in camera
20 viewed the entire video. It's consistent generally with
21 the statute that the child understood what was going on,
22 didn't seem to be out of the ordinary and was not led.

23 MR. SCOTT: You weren't part of the prosecution were
24 you to get that tape? Just kidding.

25 THE COURT: Okay.

1 MS. MAYES: We sent an e-mail that we were
2 submitting it to the Court to be reviewed. The statute
3 requires that. And then on the redaction, the redaction
4 is a reference to [Minor] witnessing the domestic violence
5 alleged assault on the mom. I believe she was against a
6 wall. There was a reference to him having a gun or a
7 knife. That's the redaction. Nothing has been redacted
8 from [Sister]'s interview other than in both interviews
9 pursuant to Kromah we have redacted the portion where the
10 interviewer instructs them to tell the truth, something
11 to that effect.

12 MR. SCOTT: Correct. No problem with anything.

13 THE COURT: All right. So can we put on the record
14 that we're gonna stipulate that the interviews now, both
15 of them are properly redacted by agreement?

16 MR. SCOTT: Yes, sir.

17 THE COURT: And can be admissible under code section
18 up there 755 or whatever it is.

19 MR. SCOTT: Yes, Your Honor.

20 MS. MAYES: 17-23-175.

21 THE COURT: 175. Okay.

22 (Whereupon, State's Exhibit #33 and #34 marked for
23 identification and received in evidence.)

24 MR. SCOTT: How do we do this? Do you want to use
25 this TV monitor?

1 I'm also going to have marked as a Court's exhibit a
2 collection of various certifications of the trained
3 interviewer pursuant to the statute and she is Ann Laver
4 of the Aiken Child Advocacy Center.

5 (Whereupon, Court's Exhibit #1 marked for
6 identification.)

7 MS. MAYES: We're ready.

8 THE COURT: Okay. Let's bring the jury in.

9 (Whereupon, the jury entered the courtroom at 11:20
10 a.m.)

11 THE COURT: All right, folks. Ms. Mayes, call your
12 next witness.

13 MS. MAYES: The State calls Ann Laver.

14 Thereupon,

15 ANN LAVER

16 after having been first duly sworn, testified as follows,

17 DIRECT EXAMINATION

18 BY MS. MAYES:

19 Q. Good morning, Ms. Laver.

20 A. Good morning.

21 Q. I'll move this just a little bit back so that we can
22 all see you. Where were you working in 2014?

23 A. I was working at the Child Advocacy Center in Aiken,
24 South Carolina.

25 Q. I need you to pull that microphone to you a little

1 bit closer.

2 A. Yes. I was working at the Child Advocacy Center in
3 Aiken, South Carolina.

4 Q. All right. And what type of experience do you have
5 when it comes to interviewing children?

6 A. Uhm, well, I have conducted about probably 2300,
7 2500 interviews while I was employed there and I have attended
8 numerous trainings both basic and many advanced classes in
9 forensic interviewing conferences.

10 Q. All right. Leading up to 2014 how long had you
11 worked in the field of interviewing children?

12 A. I had been at the advocacy center since about
13 2004.

14 Q. So approximately ten years?

15 A. Correct.

16 Q. And can you tell us in regards to the interviewing
17 of children just an overview of what type of guidelines go
18 into that type of interview?

19 A. The type of guidelines that go into an interview
20 with a child?

21 Q. Yes.

22 A. It's, uhm --

23 Q. In terms of questioning format.

24 A. Right. It would be very open ended questions
25 allowing the child to talk in their own narrative using their

1 own language, non leading questions, that sort of situation.

2 Q. During the time you were at the Child Advocacy
3 Center, did you take referrals from law enforcement in
4 reference to cases of alleged abuse?

5 A. We did. Yes.

6 Q. Did that include sexual abuse?

7 A. Yes. It did.

8 Q. Can you tell us whether or not you had the occasion
9 to interview a child by the name of [Minor] ?

10 A. I did.

11 Q. And what was the date of the interview with [Minor]
12 [redacted] ?

13 A. It was the 12th of December in 2014.

14 Q. All right. And that was at your facility in Aiken?

15 A. Correct.

16 Q. And at the time of the interview with [Minor],
17 how old was she?

18 A. She was 10.

19 Q. And then following your interview with [Minor],
20 did you have an opportunity to interview anyone else in
21 relation to the same case or the same case referral?

22 A. Yes. I did.

23 Q. Who was that person?

24 A. I interviewed, I spoke with her sister.

25 Q. What is the sister's name?

1 A. It is **Sister**.

2 Q. How old was she at the time of the interview?

3 A. She was eight.

4 Q. What was the date of her interview?

5 A. It was the 12th of December 2014.

6 Q. All right. So they were both interviewed on the
7 same date. Now, do you do these interviews with the two
8 children together?

9 A. No. I do it strictly with the one child, uhm, and
10 it's just myself and the child and no one else is present
11 during the interview.

12 Q. Is a parent or caregiver allowed to be in the room
13 during the course of your child interview?

14 A. No. They are not.

15 Q. All right. And do you recall which child you
16 interviewed first?

17 A. I interviewed **Minor** first.

18 Q. Now, what is the - can you give us an overview of
19 what is the general approach to an interview and how you lead
20 up to actually discussing any details of a sexual assault or
21 sexual abuse?

22 A. Well, uhm, when I talk with the child, I do a
23 significant amount of rapport building allowing the child in
24 their own narrative to tell me about things they like to do,
25 about school, about home, their friends, anything, you know,

1 in regards to just having a general dialogue to learn more,
2 about them.

3 Q. Why is building a rapport, why, if at all, is
4 building a rapport part of the interview process?

5 A. It's an essential part. It's very important for me
6 to learn about the child and learn about things she likes,
7 where she lives and learn from her directly about her life.

8 Q. All right. And do you allow the children to call
9 you Ms. Ann?

10 A. I do.

11 Q. Can you tell us whether or not the interviews that
12 you have conducted with children pursuant to a law enforcement
13 referral or a referral from a child advocacy center are
14 recorded?

15 A. They are.

16 Q. In what format are they recorded?

17 A. It's a live wording and it's a part of the national
18 accreditation which we are a part of that all interviews be
19 recorded and so there's a live recording going on while I'm
20 talking with the child.

21 Q. Are those recordings then made available to law
22 enforcement?

23 A. They are.

24 Q. In this particular case can you tell us whether or
25 not there was a law enforcement representative also present

1 and observing the interview?

2 A. There was.

3 Q. From the Saluda County Sheriff's Department?

4 A. Yes.

5 Q. Now, is that person allowed to actually be in the
6 interview room during the course of the interview?

7 A. No.

8 Q. Have you had an opportunity to review the interview
9 process with [Minor] ?

10 A. I have.

11 Q. And can you tell us whether or not the interview
12 that you have reviewed is a fair and accurate representation
13 of your actual interview with [Minor] ?

14 A. It is.

15 Q. Pursuant to the pre-marking in this case, this will
16 be State's exhibit 33. Did you provide that information to
17 the law enforcement representative?

18 A. Yes.

19 MS. MAYES: Your Honor, at this time the State would
20 ask permission to publish the interview with [Minor]

21 [REDACTED]

22 THE COURT: Subject to our hearing.

23 MR. SCOTT: No objection.

24 THE COURT: The interview will be played. Folks,
25 part of the interview and what not, you can come up while

1 I'm talking, the Court has to look at the interview and
2 observe it before so I looked at it Monday. I observed
3 the whole interview to make certain it was done
4 consistent with the statute with regard to children
5 interviewed, it was recorded, done by a qualified
6 interviewer, that sort of thing. I have already seen it.
7 Obviously Ms. Ann has already seen it, too. She was
8 there. But it's lengthy because of the conversations, to
9 get to know the child, the child to get to know her, it's
10 lengthy. My plan is for y'all to watch about half of it,
11 we'll take a break and then see the other half. We may
12 take lunch between there but understanding it's about two
13 hours. I want y'all to be aware of that. So we'll watch
14 it but subject to a break, if you want two breaks. We'll
15 go 40 minutes or 45 minutes, take a break, watch another
16 30. Whatever y'all want. Will you do me a favor? If
17 y'all need a break, get the attention of someone. Just
18 let me know, okay? I took two breaks so to be candid
19 with you. It's important but it's lengthy. Two hours is
20 a long time to sit so y'all let someone know when you
21 need a break, any one of you. If one of you wants one,
22 likely two or three or four of you want one. All right.
23 Go ahead.

24 (Whereupon, State's exhibit #33, video interview of
25 **Minor** played for the jury.)

1 THE COURT: All right. Let's take a break. It's
2 time for lunch. Y'all go eat lunch, grab a bite,
3 whatever you want. Don't talk about the case. You
4 haven't seen all the evidence. Have y'all be back here
5 by 1:30. That's enough time for you to have a good
6 lunch. Everybody else stand at ease.

7 (Lunch recess for the jury.)

8 THE COURT: While we are on break you can't discuss (
9 your testimony with any of the parties. Do what you
10 like.

11 (Lunch break.)

12 BAILIFF: All rise.

13 THE COURT: Please be seated. Let's have the jury
14 back.

15 (Whereupon, the jury entered the courtroom at 1:35
16 p.m.)

17 THE COURT: All right. Folks, we've got everybody
18 back in and ready to start the video back up so...

19 (Whereupon, State's Exhibit #33, video interview of
20 **Minor** continued to be played for the jury.)

21 THE COURT: This is a good time for a break. Step
22 back into the jury room. Take a few minutes break and
23 we'll get you back in here in a minute.

24 (Whereupon, the jury entered the jury room at 2:35
25 p.m.)

1 THE COURT: Ms. Mayes, are you going to play the
2 next one immediately?

3 MS. MAYES: Yes, sir.

4 THE COURT: You play the next video. I don't know
5 whether you're going to call that little girl.

6 MR. SCOTT: Yes, sir, I think so.

7 THE COURT: You want to call her now or play the
8 video? I don't want to say it out loud. I don't want to
9 spook her.

10 MR. SCOTT: Let's do another video.

11 MS. MAYES: It is but if **Sister** is potentially
12 going to be crossed on her video, we would ask that she
13 be allowed to be present for the playing of that video.
14 It is her statement.

15 THE COURT: Sure. Y'all agree to that?

16 MR. SCOTT: Yes.

17 THE COURT: If y'all want her to sit in the
18 courtroom.

19 MS. MAYES: She is. We'll play that one.

20 THE COURT: You tell me. This is my practice. I
21 try to do, my guess is y'all are not gonna go that long
22 with her.

23 MR. SCOTT: I don't think so. No, sir.

24 THE COURT: Nancy.

25 MR. SCOTT: Yes. She's in the bathroom.

1 THE COURT: Ask her before we get the jury back in
2 and let's do it deliberately.

3 MR. SCOTT: Yes, sir.

4 THE COURT: **Sister** will be in here for her video and
5 we'll play that one too.

6 MR. SCOTT: All right.

7 THE COURT: When we get through this, when you get
8 done examining Ms. Laver, then I'll announce that the
9 Court is going to allow **Minor** to be recalled.

10 MS. MAYES: All right. We may be at that stage.
11 Well, what we would do then is --

12 THE COURT: You can say no more questions with her
13 and recall her and then I'll make that announcement
14 because of the procedures.

15 MS. MAYES: Okay.

16 THE COURT: Let's bring the jury in. Are you done
17 with her?

18 MS. MAYES: Subject to recall for the second
19 video.

20 THE COURT: Okay. Let's bring the jury in.

21 (Whereupon, the jury entered the courtroom at 2:45
22 p.m.)

23 THE COURT: All right. While we were on break I
24 spoke with Ms. Mayes and the defense attorneys. Because
25 of the rules in a case of this type -- Ms. Mayes, you're

1 done with Ms. Laver at this time on the video but subject
2 to recalling her?

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

4 THE COURT: Ma'am, you may step down. Part of the
5 rules employed by the Court, I'll allow [REDACTED], I'm
6 sorry, [REDACTED] Minor to be recalled by the Court so the
7 defense counsel can ask her questions about things in the
8 video. So, [REDACTED] Minor, if you will come back up.

9 Thereupon,

10 [REDACTED] Minor
11 after having been previously duly sworn, testified further as
12 follows,

13 THE COURT: I'll remind you that you're still under
14 oath. Have a seat. Ms. Jordan, your witness.

15 MS. JORDAN: Yes, Your Honor.

16 THE COURT: Okay.

17 RECROSS EXAMINATION CONTINUED

18 BY MS. JORDAN:

19 Q. [REDACTED] Minor, I'm going to ask you a few questions about
20 the video, okay?

21 A. Yes, ma'am.

22 Q. I just kind of want to go through it from the
23 beginning to end I think is the best way to do it. In the
24 very beginning of the video when you're talking with Ms. Ann,
25 you ask her, she's telling you there's going to be some people

1 that she works with that can view the video and you
2 specifically ask her if Ms. Nicole was viewing the video. Did
3 you have a concern or why were you asking if Ms. Nicole was
4 viewing your video?

5 A. I don't know.

6 Q. You don't know. Okay. That's fine if you don't
7 know. Do you remember yesterday when you were testifying I
8 asked you do you take a bath or a shower at night or in the
9 morning?

10 A. Yes, ma'am.

11 Q. Do you remember what your testimony was?

12 A. I don't know.

13 Q. Speak into the microphone so everyone can hear you,
14 okay?

15 A. I don't know.

16 Q. You don't know what your testimony was or you don't
17 know --

18 A. I think that's what I said was I don't know.

19 Q. Actually what you said was sometimes at night and
20 sometimes in the morning but usually at night. Does that
21 sound correct?

22 A. Yes, ma'am.

23 Q. In your video there are several times throughout
24 that video you tell Ms. Ann that you shower in the morning
25 before school, correct?

1 A. Yes, ma'am.

2 Q. So is it normal for you to take a shower in the
3 morning before school or was it normal for you to take one at
4 night?

5 A. It was normal for me to take it at night.

6 Q. So what you told Ms. Ann was not true in the
7 video?

8 A. I guess not.

9 Q. When you were talking with Ms. Ann and you're
10 telling her about the first incident, you say he came in
11 there, he started kissing me and touching my privates, but
12 this was the first time. I didn't know what he was doing. I
13 had these black pants and they come down right here and they
14 had the white stuff on my side.

15 A. Yes, ma'am.

16 Q. You're talking about the incident back the very
17 first time he put his private in your private, correct?

18 A. Yes, ma'am.

19 Q. And you were 10 years old at the time you gave the
20 interview with Ms. Ann, correct?

21 A. Yes, ma'am.

22 Q. Based on your testimony yesterday the first time he
23 started putting his private in your private you were in your
24 late eights early nines; is that correct?

25 A. Yes, ma'am.

1 Q. That was about a year and half, two years prior?

2 A. Yes, ma'am.

3 Q. And you were able to remember what pants you were
4 wearing?

5 A. Yes, ma'am.

6 Q. Okay. Do you remember later in your interview with
7 Ms. Ann she's asking you about the first time again and you
8 say you were wearing a pair of blue shorts? Do you remember
9 telling her that?

10 A. I said I was wearing blue shorts the last time.

11 Q. Okay. In your interview with Ms. Ann back when she
12 is again talking about when he would first start sticking his
13 private in your private and you said that your daddy would say
14 just a little bit longer but it would be like ten minutes
15 before he stopped and I would tell him I'm fixin' to go to
16 sleep and then he'd like I'll tell you to go to sleep but he
17 never did until my mom would come inside or something because
18 the only time he did it was when my mom or my little sister
19 would go to my granddad's house. How often did that happen?

20 A. Twice, three times. I don't know.

21 Q. Okay. And then you said or like my mom was watching
22 TV or my little sister was asleep.

23 A. Yes, ma'am.

24 Q. And you said or she would get in the bathtub?

25 A. Yes, ma'am.

1 Q. You never told Ms. Ann that he was doing this while
2 your mom was outside smoking, did you?

3 A. I don't recall.

4 Q. You didn't hear that in the video today while you
5 were sitting in the courtroom, did you?

6 A. I was trying to block it out basically.

7 Q. And your memory would have been better then -- You
8 memory would have been better then than it is now, wouldn't
9 it?

10 A. I guess so.

11 Q. And you were telling Ms. Ann about the very last
12 incident when your mom was in the bathtub and your daddy's in
13 your room, correct?

14 A. Yes, ma'am.

15 Q. And in your video you said in your initial interview
16 the video that we watched, it said my mom heard it so she told
17 me that she bathed real fast and then let the water out and he
18 heard it, but he didn't stop until she opened the door real
19 quick. But yesterday didn't you testify that your dad heard
20 your mom and he stopped and he went into the kitchen?

21 A. I guess so.

22 Q. Okay. And in the video you also in that same part
23 that you are talking about you say she heard me moving around
24 in my bed trying to pull up my pants. When your mother came
25 into your room, were you trying to pull up your pants? Is

1 that what you were saying there?

2 A. I guess I was talking about my shorts.

3 Q. Your bottoms, your pants or your shorts, whatever
4 you had on?

5 A. Yeah.

6 Q. Okay. And yesterday when you testified, wasn't it
7 your testimony that your daddy had thrown your pants under the
8 bed and you put them in your drawer?

9 A. I said I put them in my drawer because that's what I
10 told my mom that he put them under the bed.

11 Q. When you testified yesterday, didn't you say when
12 your mom came into the room, you were pulling up your pants?

13 A. Meaning my shorts?

14 Q. Your bottoms, whatever they were, pants or shorts?

15 A. Yes.

16 Q. But it would have been difficult to pull them up if
17 they had been thrown under your bed, correct?

18 A. I had two -- I had pants under the bed but I had
19 shorts on underneath that I was pulling up.

20 Q. Okay. So you had on a pair of pants and a pair of
21 shorts?

22 A. Yes.

23 Q. Okay. On the day, December 2nd, when you talked to
24 your mom about this stuff and y'all were coming home from
25 school, correct, Hollywood?

1 A. Yes, ma'am.

2 Q. When you come from Hollywood, do you come down, if I
3 said Danny Highway do you know what I'm talking about?

4 A. Yes, ma'am.

5 Q. Is that the way you come home or do you come 378?

6 A. Danny highway.

7 Q. Okay. All right. Where are y'all approximately if
8 you can remember when you say your mom slammed on the brakes
9 and pulled off the side of the road?

10 A. I really can't say.

11 Q. All right. The incident that happened in the
12 kitchen when you say your daddy came up in a rolling chair --

13 A. Yes, ma'am.

14 Q. -- and your testimony was that **Sister** asked him what
15 happened? What are you doing?

16 A. Yes, ma'am.

17 Q. And he responded to her I'm tickling your sister?

18 A. Yes, ma'am.

19 Q. The incident that you testified about the occasion
20 your dad and **Sister**, **Sister** slept with you that night. Do you
21 remember what I'm talking about? Your dad came into the
22 room?

23 A. Yes, ma'am.

24 Q. And you testified yesterday that you didn't say
25 anything to **Sister**, correct?

1 A. Yes, ma'am.

2 Q. And you were not crying?

3 A. Yes, ma'am.

4 Q. Okay. And you're certain of that?

5 A. I'm pretty sure.

6 Q. You didn't say anything to her? You weren't
7 crying?

8 A. No.

9 Q. In your forensic interview that you had with Ms.
10 Ann, you say that your mom was in the bathtub and she can hear
11 what's going on in here. You're referring to she can hear
12 what's going in your bedroom?

13 A. She can hear the bed squeaking.

14 Q. Okay. That's what you're referring to. And your
15 bedroom is right across from the bathroom, correct?

16 A. Yes, ma'am.

17 Q. Were there ever any other times when Antonio was
18 supposedly doing this that the bed was squeaking?

19 A. (Witness shaking head.) I guess.

20 Q. So the bed had squeaked before that very last
21 time?

22 A. (Witness nodding head.) I guess.

23 Q. Okay. Had your mom ever asked you before anything
24 about the bed squeaking or moving around the bed?

25 A. No.

1 Q. I'm sorry. Speak up.

2 A. No.

3 Q. When you're with Ms. Ann again, she asked you about
4 your dad telling you anything and you say to her I would tell
5 him no. But when I would tell him no, he would get an
6 attitude with my mom. I don't know if she told the cops but I
7 think she would tell you - but I'll tell you but she just
8 didn't. I didn't tell her. And then you tell Ms. Ann that
9 you didn't tell your mom because you were scared, correct?

10 A. Yes.

11 Q. Did you ever tell Ms. Ann that your daddy told you
12 he would go to jail if you told anybody?

13 A. I don't know.

14 Q. Do you remember hearing that on the video today that
15 you were scared of your daddy going to jail?

16 A. Like I said earlier, I was trying to block it out.

17 Q. Okay. Do you remember talking in the video to Ms.
18 Ann about a notebook?

19 A. Yeah.

20 Q. Okay. And at one point in time you said like she
21 thought that he was a good man and stuff but, uhm, I knew that
22 wasn't going to happen and like I said I was gonna show you,
23 uhm, in the, uhm, notebook. He used to say, here, I'll just
24 write it so you know. Then you go on to say that you and

25 **Sister** both had a notebook. What notebook are you talking

1 about?

2 A. I don't remember.

3 Q. You don't remember having a notebook?

4 A. No.

5 Q. Okay. You don't remember ever talking to Ms. Ann
6 about a notebook?

7 A. No.

8 Q. Okay. Do you remember -- Hang on. A little bit
9 later in your interview with Ms. Ann you say, and so it's like
10 this, and then she has like that and we were sitting down and
11 she say, uhm, well, that notebook that I was gonna bring, we
12 both have one and hers is like that and she, I don't know how
13 to write with this marker. Ms. Ann says it's okay. You say
14 but she wrote, uhm, who do you want to leave and I, and she
15 had, uhm, she changed colors for some reason but she said dad
16 or mom. I want to take that back because I'm the one who
17 wrote that and then she circled dad.

18 Do you remember having that conversation with Sister
19 in the notebook?

20 A. Now I do.

21 Q. Now you do. Do you remember the notebook?

22 A. I don't remember the notebook. I thought it was on
23 a piece of paper.

24 Q. You don't remember any matching notebooks that you
25 and Sister had?

1 A. No.

2 Q. You don't remember giving that notebook to Ms.
3 Nicole or any of the police officers?

4 A. No.

5 Q. You said and then she wrote back like, she wrote the
6 same thing to you for me and I, and she said dad or mom and
7 then she said why.

8 What was your response to Sister when she asked you
9 dad or mom?

10 A. I remember now because of the video but I don't
11 remember what her response was because that was a long time
12 ago.

13 Q. But you do remember a lot of other details about a
14 long time ago?

15 A. Yes.

16 Q. You've testified to a lot of details from a long
17 time ago, right?

18 A. Yes.

19 Q. And you remember them?

20 A. (Witness nodding head.)

21 Q. Okay. Do you remember telling Ms. Ann again you
22 were scared to tell your mom?

23 A. I don't know.

24 Q. Okay. Do you remember yesterday that you told us
25 you didn't want to tell your mom because you were scared and

1 that you had a dream that she might not believe you?

2 A. Yes.

3 Q. Okay. In your forensic interview that happened back
4 in December of 2014 she is asking you about telling anybody.
5 You said no. I didn't tell anybody, right. And you said, and
6 he said why did you tell Gill. And you talk about writing it
7 on the board a little bit. Then you said, and I said I didn't
8 because I knew she would do way more than cuss him out. I
9 knew my mom would do way more like, uhm, because like, uhm, I
10 knew how they would react because like I said my mom when I
11 first wrote it, she slammed on the brakes.

12 How did you think your mother or your grandmother
13 would react when you're talking about that, I knew how they
14 would react?

15 A. More than just cussing and getting mad.

16 Q. Right. You didn't think that they wouldn't believe
17 you?

18 A. I did at one point in time.

19 Q. Okay. Do you remember talking to Ms. Ann in your
20 interview about what your daddy would say to you. She says
21 tell me about that, what he said. And you said, uhm, I, let's
22 say I had on shorts and he would tell me either to hold my
23 shorts to the side or hold both of them to the side or either
24 just hold my cootie lips to the side so like, uhm, I had on
25 blue shorts. And she says, this is the last time? And you

1 say yeah. So you had on shorts the last time?

2 A. Yes.

3 Q. Not any pants?

4 A. I had them over the shorts.

5 Q. Okay. And she asked you do you remember if it
6 happened any of the week before that and you say uh-huh, every
7 day. It happened every day the week before she asked. And
8 you say I think except the Thursday. Is that the same thing
9 you testified to yesterday?

10 A. I don't know.

11 Q. You don't remember what you testified to
12 yesterday?

13 A. No, ma'am.

14 Q. Okay. And you never told your sister what was
15 happening?

16 A. No.

17 MS. JORDAN: No other questions.

18 THE COURT: All right. Any redirect, Ms. Mayes?

19 MS. MAYES: Yes, sir, Your Honor. She's completed
20 her examination?

21 MS. JORDAN: Yes.

22 REDIRECT EXAMINATION CONTINUED

23 BY MS. MAYES:

24 Q. Okay. **Minor**, I need you to clarify something. I'm
25 going to move this out of the way just for a moment so I can

1 see you. Let's go back to the last time that the attorney was
2 asking you about. I believe your previous testimony was that
3 was December 1st, Monday?

4 A. Yes, ma'am.

5 Q. So what did you normally sleep in? And this is
6 December so we are going to be talking about specifically this
7 night, this Monday night..

8 A. Uhm, that night I slept with pants and shorts and in
9 my forensic interview like I said I slept with a coat, too,
10 because it was cold.

11 Q. All right. Now, what did you normally wear from the
12 waist down? And again, this is going to be Monday night.

13 A. Shorts and pants.

14 Q. All right. Shorts, pants. And when you say pants,
15 does that include pajama pants, jogging pants, sweat pants,
16 things of that nature?

17 A. Yes, ma'am.

18 Q. All, right. And with what about the shorts. Do you
19 remember what color the shorts were?

20 A. Blue.

21 Q. Blue shorts. What, if anything, was underneath the
22 blue shorts?

23 A. My underwear.

24 Q. What color were those underwear?

25 A. White.

1 Q. Okay. I'll show you a photograph and ask you
2 whether or not you recognize it?

3 A. Yes, ma'am.

4 Q. Okay. What is depicted in that photograph?

5 A. Those are the shorts that I wore and that's the
6 underwear.

7 MS. MAYES: We'll marked this as a State's exhibit.

8 (Whereupon, State's Exhibit #35 marked for
9 identification.)

10 BY MS. MAYES:

11 Q. Okay. So, Minor, we are talking about the last
12 time and the attorney was asking you specifically about how
13 your pants got off so we'll start by explaining that. How did
14 your pants get off that night?

15 A. Antonio took them off.

16 Q. And then once your pants were taken off, what were
17 you wearing?

18 A. Shorts.

19 Q. What else?

20 A. My underwear.

21 Q. And when this happened in terms of him placing his
22 mouth on you, what did you have on?

23 A. My shorts and underwear.

24 Q. How was he able to reach your vaginal area with the
25 shorts and underwear on?

1 A. He told me to pull them to the side but then he
2 couldn't get to them so he told me to pull them down.

3 Q. All right. And that's the same shorts shown here in
4 this photograph State's 35?

5 A. Yes, ma'am.

6 Q. Now, I believe she was asking you about the series
7 of events where he is in your room and then shortly thereafter
8 your mom comes into your room but he's gone. I want to ask
9 you what you saw and heard, your own observations. What was
10 it that caused Antonio to leave the room?

11 A. Uhm, like I said, he heard the water, I guess,
12 draining and I guess he heard my mom like open the door.

13 Q. All right. And can you hear footsteps outside your
14 room?

15 A. Yes, ma'am.

16 Q. Can you hear footsteps in the bathroom at certain
17 times?

18 A. Not most of the time.

19 Q. And when Antonio left your room, about how much
20 longer was it before your mom came in there?

21 A. I don't know.

22 Q. All right. And it's fine that you don't know. But
23 I want to ask you this: When your mom came in there, was
24 Antonio there?

25 A. No.

1 Q. Where were your pants?

2 A. Under my bed.

3 Q. All right. So your pants were under your bed and
4 then the following morning when you got up to get ready for
5 school, is it possible for you to remember back to age 10 how
6 many times you took a shower at night versus how many times
7 you took a shower in the morning?

8 A. I guess not.

9 Q. Okay. Is that something that you keep track of on a
10 calendar?

11 A. No, ma'am.

12 Q. Okay. So whatever happened that morning, what was
13 your routine in terms of changing your underwear?

14 A. Uhm, sometimes we would take a bath and I would put
15 a new pair on but I guess just that night or that morning I
16 put them in the bathroom and got a new pair.

17 Q. All right. And again you don't recall whether or
18 not you took a shower that morning, correct?

19 A. Yes, ma'am.

20 Q. Minor, is there any doubt in your mind that the
21 white underwear shown here in State's exhibit 13, is there any
22 doubt in your mind who they belong to and who had worn them up
23 until they ended up on that mat that morning?

24 A. No, ma'am.

25 Q. And who is that?

1 A. Me.

2 Q. And when your mom confronted you the next day about
3 your pants and I believe that's the question that the attorney
4 was asking you about, what was it about your pants that you
5 were being confronted about?

6 A. Uhm, I had told my mom that I had put them in my
7 drawer that night and she asked me why I lied about it because
8 she had found them under my bed.

9 Q. So the pants were found under your bed and not in
10 the drawer with the blue shorts; is that correct?

11 A. Yes, ma'am.

12 Q. Why is it, Minor, that when you're in the interview
13 you're writing on a board like this instead of saying the
14 word?

15 A. It's easier for me to write than it is to talk.

16 Q. When you're talking about the things that happened
17 to your body, is that easier to write or to say?

18 A. To write.

19 Q. When you're talking about the things that he said to
20 you, is that easier to write or to say?

21 A. To write.

22 MS. MAYES: Nothing further.

23 MS. JORDAN: One more question, Your Honor.

24 THE COURT: Brief.

25 RECROSS EXAMINATION CONTINUED

1 BY MS. JORDAN:

2 Q. Minor, this is your bedroom right here, correct?

3 A. Yes, ma'am.

4 Q. This is that bathroom where your mother was?

5 A. Yes, ma'am.

6 Q. I just want to make sure that I understand because
7 your testimony yesterday was different than what was on the
8 video today. But is it your story that your mom drained the
9 water, Antonio - drained the water, came out of this door,
10 Antonio heard it, that he got from here to here without your
11 mom seeing him?

12 A. I guess.

13 MR. JORDAN: That's all I have.

14 THE COURT: You may step down.

15 MS. MAYES: Your Honor, at this time the State
16 recalls Ann Laver.

17 THE COURT: Ms. Laver, come back up.

18 MS. MAYES: She was sequestered, Your Honor.

19 THE COURT: Okay. Ms. Laver, you're still under
20 oath.

21 Thereupon,

22 ANN LAVER

23 after having been previously duly sworn, testified further as
24 follows,

25 DIRECT EXAMINATION CONTINUED

1 BY MS. MAYES:

2 Q. Now, Ms. Laver, you testified about the interview
3 that was done with [Minor], correct?

4 A. Correct.

5 Q. And you also had the opportunity to conduct an
6 interview with [Sister]; is that correct?

7 A. Correct.

8 Q. And can you tell us, I believe you testified earlier
9 it was done in August?

10 A. Correct.

11 Q. Can you confirm for us the age of [Sister] at
12 the time of her interview?

13 A. She was eight.

14 Q. I'm going to show you what's currently marked as
15 State's exhibit 34. Was your protocol and guidelines
16 regarding recording of these interviews followed with [Sister]
17 [redacted]?

18 A. It was.

19 Q. Have you had an opportunity to review what is
20 State's exhibit 34?

21 A. I have.

22 Q. Is it a fair and accurate representation of the
23 interview that was conducted with [Sister]?

24 A. It is.

25 MS. MAYES: Your Honor, at this time we would ask

1 permission to publish.

2 THE COURT: All right. Same protocol, has to go
3 through the parameters. The Court has already viewed the
4 interview. The same thing, it meets the parameters in
5 the court's observation so y'all can now hear the same
6 interview. It's only 45 minutes so not near as long as
7 the other one but it's totally different, the little
8 sister. Okay. Play the tape.

9 (Whereupon, State's Exhibit #34, video interview of
10 Sister played for the jury.)

11 THE COURT: All right. We're all ready for a break.
12 Go back into the jury room. Don't talk about the case.
13 We'll have you back in a few minutes.

14 (Whereupon, the jury entered the jury room.)

15 MS. MAYES: Judge, so the Court is clear, we want to
16 continue questioning at this point. And both videos,
17 they have been published and they are in evidence?

18 THE COURT: Absolutely. They're both in. If
19 they're not, then we're in trouble, but they're in. Do
20 we want to go ahead and deal with the young lady first
21 and then finish with Ms. Laver?

22 MS. MAYES: Yes, sir, Your Honor, just in case any
23 issue may arise.

24 THE COURT: Yeah. Let's do that now. All right.
25 Y'all ready to go? All right. Bring the jury. So Ms.

1 Laver, she'll come back up.

2 MS. MAYES: She is sequestered, Your Honor. We had
3 her taken out.

4 THE COURT: All right. Let's bring in the jury.
5 (Whereupon, the jury entered the courtroom.)

6 THE COURT: All right. We're ready to continue.
7 Just like with the first video, each side has an
8 opportunity to ask the young lady about the video and
9 things in it. So, [REDACTED] Sister, will you come back up
10 please?

11 Thereupon,

12 [REDACTED] Sister (Minor)

13 after having been previously first duly sworn, testified
14 further as follows,

15 THE COURT: Come on up here and hop in your seat.
16 Now, I remind you again you are under oath still, okay?
17 The clerk won't do it again. You're still under oath.
18 Now, Ms. Laver was sequestered during the questioning of
19 the first young lady. Likewise she is not in the
20 courtroom now. She's gonna need to be recalled back for
21 a few additional questions after we get done with [REDACTED]
22 [REDACTED] Sister. All right. Ms. Jordan.

23 MS. JORDAN: Thank you, Your Honor.

24 RECROSS EXAMINATION CONTINUED

25 BY MS. JORDAN:

1 Q. I just have a few questions to ask you about the
2 video we just watched, okay?

3 A. Okay.

4 Q. And make sure you try to talk into the mic so
5 everyone can hear you, okay?

6 A. Okay.

7 Q. If you don't understand or can't hear me, make sure
8 you let me know. In the video after you talked to Ms. Ann and
9 kind of introduced yourself and told her a little bit about
10 yourself, you tell her, you say you're talking about why you
11 are there. She asked you do you know why you are here and you
12 respond that your daddy had raped your sister and that's why
13 you were there. Do you remember that part of it? It's kind
14 of at the very beginning.

15 A. Yes.

16 Q. Okay. And then she says to you, how do you know
17 about that? Were you there when that happened? How do you
18 know that happened? And you say Minor told mama. And then
19 she says okay. And were you there when she told your mom and
20 you nod saying yes. And then she says, where were you guys?
21 And you say, she wrote it on a piece of notebook paper and I
22 was doing my homework but I heard them a little bit.

23 Where were you when you were doing your homework and
24 your mom and sister were having that conversation?

25 A. I meant to say that we were in the car. That was my

1 bad.

2 Q. Okay.

3 A. I meant we was in the car. But when she had wrote
4 on the index card, we were in the car.

5 Q. You were in the car. But you told Ms. Ann that
6 y'all were at home, or that you were doing your homework?

7 A. By accident. Yes, ma'am.

8 Q. Okay. And then a little bit later on in your
9 interview she's asking you about the time where you told her
10 that your daddy was in the bed with you and **Minor**. Do you
11 remember that?

12 A. Yes, ma'am.

13 Q. And you told her that he was humping **Minor**?

14 A. Yes, ma'am.

15 Q. Were his pants off or on?

16 A. They were on.

17 Q. And did you see under the covers or anything like
18 that?

19 A. No.

20 Q. So when you say you looked over at him, what could
21 you really see?

22 A. I could see basically he's moving, like his upper
23 body moving and I saw the covers moving.

24 Q. Okay. And at that same time you said that your
25 sister was faced your way, correct? And you say she was

1 crying. And the interviewer says, she was crying? And you
2 say yes. I'm going to get mom and they said no. And you say
3 she told me don't go get mom and he told me to lay down; is
4 that right?

5 A. No. He told me don't go get mom.

6 Q. He told you don't go get mom and lay down?

7 A. Yeah. He told me to lay down.

8 Q. Okay. And y'all are talking about it again kind of
9 a little bit later in your interview and Ms. Ann says, how did
10 you know she was crying? What was she doing that had you know
11 she was crying?

12 A. Mm-hmm.

13 Q. You said I felt her face. She had wet on it.

14 A. Mm-hmm.

15 Q. You were certain she was crying that night?

16 A. Yes, ma'am.

17 Q. And you're certain she told you to go get your
18 mom?

19 A. Mm-hmm.

20 Q. No question in your mind about that?

21 A. (Witness shaking head.)

22 Q. And then the incident when you're in the kitchen you
23 tell Ms. Ann, she says, Ms. Ann says, okay. All right. Was
24 your mom home when that happened or do you know? And you
25 reply, uh-huh. And the interviewer says, she was, what was

1 your mom doing? And you respond, she was cooking. I was
2 standing right in front of it. What are you talking about
3 when you say in front of it?

4 A. Uhm, that I could, when I had sat up, I could see.
5 But I wasn't standing up. I had sat up and I could see what
6 he was doing.

7 Q. So you told Ms. Ann you were standing but now you're
8 saying you were sitting?

9 A. Yes. That was my fault.

10 Q. Okay. And you also told Ms. Ann that your sister
11 was wearing jeans that day in the kitchen, correct?

12 A. Mm-hmm.

13 Q. She says do you remember or do you know how you said
14 you saw his hand in her pants. Do you remember what she was
15 wearing? Some jeans. Yes. Some jeans; is that correct?

16 A. Mm-hmm.

17 MS. JORDAN: I don't have anymore questions. Thank
18 you.

19 THE COURT: Ms. Radlein, any redirect?

20 MS. RADLEIN: Just briefly, Your Honor.

21 REDIRECT EXAMINATION CONTINUED

22 BY MS. RADLEIN:

23 Q. Sister, when the attorney was asking you about the
24 bedroom incident when your dad was humping Minor --

25 A. Yes, ma'am.

1 Q. -- and she said how could you tell and you said you
2 saw the covers moving?

3 A. Yes, ma'am.

4 Q. Who was moving under the covers?

5 A. Uhm, my dad.

6 MS. RADLEIN: Okay. That's it. I just wanted to
7 clear that up. Thank you, Sister.

8 THE COURT: Young lady, you can step down. Ms.
9 Mayes.

10 MS. MAYES: The State would recall Ann Laver.

11 THE COURT: Ms. Laver, you're still under oath.
12 Thereupon,

13 ANN LAVER
14 after having been previously first duly sworn, testified
15 further as follows,

16 DIRECT EXAMINATION CONTINUED

17 BY MS. MAYES:

18 Q. Ms. Laver, I know you spoke before about the fact
19 that law enforcement is allowed to view the video?

20 A. Correct.

21 Q. But are family members such as parents allowed to
22 view the video?

23 A. No..

24 Q. Or even the interview process?

25 A. No. They are not.

1 Q. And the interview that we watched from start to
2 finish, can you tell us is that the interview that was
3 conducted that day? If there were any other conversations
4 before you went into the interview room or after they came out
5 of the interview room that were pertinent, would you have
6 noted it?

7 A. I would have. Yes.

8 Q. Okay. Was there ever any indication based on your
9 observations that either child **Minor** or **Sister** had
10 any type of interference or influence from any adult present
11 in the facility that day?

12 A. No. There was not.

13 Q. If you had observed anything of that nature, would
14 you have noted it?

15 A. Yes. I would have.

16 MS. MAYES: Nothing further, Your Honor.

17 MR. VIETH: Judge, I have just a couple quick
18 questions.

19 THE COURT: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. VIETH:

22 Q. Ma'am, how are you?

23 A. Good.

24 Q. How long have you been doing what you do? I know
25 you told us earlier but I have forgotten.

1 A. Forever. I think I went to the center in about
2 2004.

3 Q. Are you still doing it?

4 A. No. I'm not.

5 Q. You're out of it now?

6 A. I'm out of it.

7 Q. Moved onto something else. When did you quit there
8 or when did you quit them?

9 A. Well, I got sick and so my illness --

10 Q. I'm sorry. Okay. So was this one of your last
11 interviews?

12 A. Yes, sir.

13 Q. Let me ask you something just on a evidentiary
14 thing. We get -- You know what discovery material is,
15 right?

16 A. Yes, sir.

17 Q. We have got something that said from an officer that
18 discussed a journal going into room. Decided not good for
19 interview and usually don't allow anything in interview room.
20 Do you remember anything about that?

21 A. Not specifically. Sometimes we may. Can I expand
22 on that?

23 Q. Sure.

24 A. Just I think in other circumstances there might be
25 journals that children had or --

1 Q. Like a diary or something?

2 A. Possibly. Or just some writings but I don't recall
3 in this particular case, never seen that.

4 Q. It wasn't mentioned actually in the interview so I
5 don't know if you do recall any communication outside saying
6 about a journal and not bringing it in?

7 A. Sorry. No, sir.

8 Q. No recollection of it?

9 A. No, sir.

10 MR. SCOTT: That's fine. No further questions.

11 Thank you, Your Honor.

12 MS. MAYES: Nothing further, Your Honor. We ask
13 that Ms. Laver be excused.

14 THE COURT: You're excused.

15 MS. MAYES: The State calls Heather Smith.

16 Thereupon,

17 HEATHER M. SMITH

18 after having been first duly sworn, testified as follows,

19 DIRECT EXAMINATION

20 BY MS. MAYES:

21 Q. Good afternoon, Ms. Smith.

22 A. Good afternoon.

23 Q. I'll start by asking you where you are employed and
24 what type of work do you do?

25 A. I work out of two clinics. I work for the State

1 Department of Mental Health at a Child Advocacy Center in
2 Richland County known as the ARC, Assessment and Resource
3 Center. There I provide forensic interviews, training,
4 treatment service coordination, uhm, and some short-term
5 mental health treatment. I also maintain a private practice
6 where I see children and families for therapy and
7 evaluation.

8 Q. All right. When you say that you are in private
9 practice, specifically are you a licensed counselor?

10 A. Yes. I am.

11 Q. What is your educational background and training
12 that led you to become a licensed therapist and licensed
13 counselor?

14 A. So I have a Bachelor's Degree in psychology from the
15 University of South Carolina. I have a Master's in counseling
16 from the University of South Carolina School of Medicine. I'm
17 a licensed professional counselor in the State of South
18 Carolina.

19 Q. How long have you worked in the field of therapy or
20 counseling?

21 A. So approximately 20 years.

22 Q. How much of that time has involved work with
23 children who are victims of abuse, specifically sexual
24 abuse?

25 A. I would say 14. The last 14.

1 Q. Can you tell us, is it possible to estimate how many
2 such victims of child sexual abuse you have worked with
3 through the years as a therapist or counselor?

4 A. It's in excess of 3000.

5 Q. Can you tell us whether or not your training and
6 background also includes interviewing children who are victims
7 of or suspected victims of sexual abuse?

8 A. Yes. One of my main jobs that I do at the South
9 Carolina Department of Mental Health Child Advocacy Center is
10 forensic interviewing children who are suspected of child
11 maltreatment, sexual abuse being the main maltreatment type
12 allegation.

13 Q. You mentioned that you are also involved in
14 counseling or therapy. Does that include among your patients
15 victims of sexual abuse?

16 A. Yes. It does.

17 Q. How do you go about in your therapy practice working
18 with children who are victims of sexual abuse?

19 A. So there are a few evidence based best practice
20 models to use with children who have been sexually abused and
21 so I use those. They are trauma focused models so you're
22 dealing with trauma symptoms, assessing what those symptoms
23 are and working with children and families on how to treat
24 those symptoms.

25 Q. Throughout your experience does your training and

1 education also include knowledge of literature, research and
2 current practices in the field of child sexual abuse
3 assessment and treatment?

4 A. Yes. It does.

5 Q. Have you spoken recently at any seminars in that
6 regard?

7 A. Yes. I did.

8 Q. As recently as last week?

9 A. Yes.

10 Q. Have you testified previously, Ms. Smith, as an
11 expert in the field of child sexual abuse treatment and
12 assessment?

13 A. Yes. I have.

14 Q. Can you tell us whether or not that includes
15 dynamics of sexual abuse such as the disclosure process and
16 delayed reporting?

17 A. Yes. It has.

18 MS. MAYES: Your Honor, at this time the State would
19 offer Heather Smith as an expert in the field of child
20 sexual abuse treatment and assessment and that is to
21 include the disclosure process and dynamics of sexual
22 abuse.

23 THE COURT: Voir dire?

24 MR. SCOTT: Your Honor, can we approach?

25 THE COURT: Sure you may.

1 (Side bar off the record.)

2 THE COURT: Any voir dire?

3 MR. SCOTT: No, Your Honor.

4 THE COURT: Ms. Smith is qualified as an expert in
5 the field of sexual abuse treatment and assessment
6 particularly with the dynamics of behavior and
7 disclosure. Ms. Mayes.

8 BY MS. MAYES:

9 Q. First I want to ask you, Ms. Smith, do you have any
10 pre-existing relationship with the victim in this case **Minor**
11 **██████**?

12 A. Not to my knowledge.

13 Q. Do you have any pre-existing bias or personal
14 interest in this case?

15 A. No. I do not.

16 Q. What is meant by the term blind expert?

17 A. It means that I have no knowledge of the
18 demographics of the case, who the victims are, uhm, any
19 details at all of the case. I haven't reviewed anything,
20 looked at any documents.

21 Q. So how is it that in the field of child sexual abuse
22 there are certain normalities or common understanding about
23 how the disclosure process happens among victims of sexual
24 abuse even when it's a victim you have never met or seen?

25 A. In the field we talk about, we look at retrospective

1 studies where researchers have looked at how children tell
2 over many years. They have looked at, they have interviewed
3 adults who have reported later in life about child abuse,
4 child sexual abuse. They look at children who have been in
5 treatment for in evaluation of child sexual abuse or child
6 abuse. And they ask questions about any type of pattern in
7 telling or not telling. What are some of the dynamics that
8 they experience as part of their reality.

9 Q. In addition to that research and training, can you
10 tell us whether or not you also have clinical experience in
11 that regard?

12 A. Yes. My focus of my clinical practice in the last
13 14 years has been the treatment and assessment of children who
14 have, are suspected of child maltreatment so of those children
15 that I interview or that I have provided treatment services to
16 I also have that experience of those children and families and
17 what they tell me about their experience.

18 Q. All right. And can you tell us whether or not what
19 you have observed personally in your own clinical experience
20 is consistent with the research and the literature for the
21 dynamics of child sexual abuse?

22 A. Yes. It is consistent.

23 Q. Including the disclosure process?

24 A. Yes.

25 Q. What is meant among professionals in your field by

1 the term delayed reporting in child abuse cases?

2 A. So delayed disclosure or delayed reporting is a term
3 that we use to describe the phenomenon of why children who are
4 in abuse or experiencing sexual abuse don't immediately tell
5 about what's going on.

6 Q. In your training and experience how common is
7 delayed reporting among victims of child sexual abuse?

8 A. So in my experience and the research supports a
9 number of about 70 percent of children and then the research
10 supports that adults talk about, about 70 percent of adults
11 either never tell in childhood or they wait to tell.

12 Q. What factors may commonly play a role in a child's
13 delayed report of sexual abuse?

14 A. We look at three different factors. We look at the
15 reasons for the child. We look at the reasons that the child
16 reports concerns about their family. And then we also look at
17 the reasons that children report about the perpetrator.

18 Q. All right. I'm going to follow along as you speak.
19 But again, these would be reasons for delayed reporting and
20 you said that you mentioned three factors that may affect the
21 child and the first is?

22 A. The child. The reasons a child does not report
23 right away.

24 Q. What are some of those reasons that looking at the
25 child's perspective based on your training and experience that

1 a child may not report based on their own fears?

2 A. So in some cases children that are young do not know
3 that it is abuse. Children do not really understand the
4 concept of what we call moral development, what's right and
5 wrong like to them until age ten so they may be told that
6 things are not okay or were inappropriate but that doesn't
7 mean that they understand what is happening is sexual abuse or
8 some type of an inappropriate activity until they are older
9 and then they may understand that.

10 Children also are worried about getting in trouble.
11 Typically child abuse happens with someone that's in a power
12 over them, that has control over them. It's usually a care
13 giver, somebody that they love and trust. 'Someone who is in
14 the home with them. Somebody living in the home.' A close
15 relationship to them and so they are worried about getting in
16 trouble themselves, that they are gonna, someone is gonna get
17 mad at them. Someone is going to punish them and so they are
18 very worried about that.

19 Now, the second factor would be family. Some
20 children have worries about family and what might happen to
21 the family particularly because it happens within a family
22 setting. Research shows that and my experience shows that
23 this happens usually in family settings. It happens in the
24 home where the child resides and so it's usually a person of
25 trust and a person in a caregiving role who is either

1 dependent on that person so they are worried that the family
2 might get separated. They may have to go to foster care.
3 They are worried that the bills might not get paid if it's
4 someone who is paying the bills. They're worried that someone
5 might in the family would also get in trouble, might go to
6 jail. Their siblings might get separated so they have a lot
7 of reasons to not tell to keep the family unit together. For
8 children families are the sole world for a child.

9 It's not until a child reaches late middle school
10 years or high school where they are kind of more outward
11 directed and have relationships with peers and are wanting to
12 get out of the house more. For children their home is their
13 world so they don't want that broken up.

14 And then the third factor that we see that children
15 one of the things that they look at before they decide to tell
16 is what's gonna happen to the perpetrator, someone who they
17 typically have a close relationship to who they love, who may
18 take care of them, so they may get their life sustenance, they
19 may get their food, clothing, shelter from, someone that's
20 taking care of them so they don't want that person to get in
21 trouble. And then going back to some of the reasons for the
22 child, they also may have been told not to tell. So part of
23 it too is they are just doing what they're told to do and
24 following the rules which is don't tell about what's
25 happened.

1 Q. And how, if at all, may a child's own natural
2 feelings of shame and embarrassment play a role?

3 A. So children, you know, very young children are
4 taught private body parts, what parts of their body should not
5 be touched, inappropriate touch, that it's not okay, but
6 simultaneously they may also be taught by someone that it is
7 okay. That this is the way we should love. This is what I
8 have heard children tell me. That they have been told it's
9 okay to do. I'm someone that loves you so I can touch you
10 inappropriately. And so for children they are at a little bit
11 of a disadvantage who should I believe here. And they're
12 gonna believe and they're gonna listen to the person that
13 takes care of them. The person who they are supposed to
14 listen to. So it's very common that we see that children even
15 though they are taught private body parts or they're taught
16 the rules of touch and how you are not supposed to let anyone
17 touch those parts, if it is someone close to them and a care
18 giver, they're getting mixed message so they're gonna try to
19 protect that person in that relationship.

20 Q. All right. And these are, I believe you clarified,
21 reasons that a child may not tell. When it comes to actual
22 secrecy and maintaining secrecy what is meant by the term
23 grooming?

24 A. So what we in the field talk about as grooming
25 behaviors are those that are things that a child was told

1 during the course of a sexual abuse experience and that could
2 be months, could be years. But grooming is basically how
3 something gets started so that children then adapt to it and
4 accommodate it. So a lot of grooming behaviors may start in
5 the bathtub or they may start in the bathroom with toileting
6 or with bathing where touches are taught it's okay to touch
7 that part. I'm helping you. Maybe in the bedroom where it's
8 a nighttime touch so it's okay to do that at night. And so
9 over time it just becomes a part of the child's reality that
10 this happens with this person and it becomes more okay.

11 Q. And as we talk about chronic abuse that is occurring
12 more than one time and I believe you just said it becomes
13 okay, what are some reactions that children may have, physical
14 reactions when adapting to long term abuse?

15 A. When you mean physical, are you speaking medical?

16 Q. In terms of the physical reaction?

17 A. So, you know, physically they may, you know,
18 children have to continue on with their lives so they may,
19 they have to go to school everyday, they have to do their
20 activities, so what we talk about in our field is what we call
21 accommodating to the sexual abuse where they may, you know,
22 keep a secret, maintain a secret for the sake of the factors
23 that we talked about. They may also, you know, in some cases
24 children might channel that through acting out behaviors so
25 they may, you may see behaviors where they get in trouble at

1 school or at home for anger or maybe their grades drop. But
2 we also see children on flip side of that who may take kind of
3 what's going on and try to keep it compartmentalized in a
4 place where then they can go and over achieve or try to
5 maintain so rigidly in their other spheres of their life that
6 they excel and so there's really no, in terms of symptom
7 response in that manner, it just really depends on the child
8 and what they can do.

9 Q. What is meant by the fight or flight response?

10 A. So in terms of a traumatic experience we talk about
11 fight or flight. So fight would be doing something about it,
12 to take charge so it doesn't happen. Flight would be running
13 away, making sure that you can get away from it, from an event
14 that is traumatic.

15 Q. And as it relates to child sexual abuse and the
16 dynamics therein how may the fight or flight response be
17 altered in cases of child sexual abuse?

18 A. So for children fight or flight is kind of difficult
19 because particularly if the person who is perpetrating abuse
20 is within their family. They are not able to fight because
21 they're children so they are under the control of an adult.
22 Fleeing or running away is difficult because of all the
23 dynamics that I talked about earlier about keeping the family
24 unit together, not wanting to get in trouble, not wanting to
25 get someone else in trouble and so what they may do is freeze.

1 So what they may do, it's in the literature, trauma response,
2 they may do nothing. They may accommodate to it. They may
3 adapt to it. They may get on with life in other spheres while
4 being under still having sexual abuse happening in the home
5 but being able to go to school, take care of business, a
6 child's business, do their activities and then just find ways
7 to adapt.

8 Q. So in terms of fight or flight where someone might
9 physically resist or flee and run away, with children you
10 mentioned that freeze response and when you talk about
11 freezing, can you tell us in more concise terms what you mean
12 by freezing during a sexual assault?

13 A. Uhm, so it could be during the actual assault, they
14 could just, we have a term that we use sometimes where
15 children just try to forget that it's happening so it will go
16 away in their head. We all do it. Everyone has a term called
17 dissociation. If you are driving long stretches of roads, you
18 may not realize that you are at a certain place, because you
19 have done it so many times or if you have experienced
20 something bad in your life, adults dissociate. They just
21 compartmentalize it. They don't think about it. Children do
22 the same thing. So while something bad is happening to them,
23 they may go away in their mind and find something they can
24 focus on that is not keeping them kind of experiencing what it
25 is that is happening and that's actually really common for

1 children.

2 Q. All right. And, Ms. Smith, in your own clinical
3 experience and clinical one on one dealings with child victims
4 of sexual abuse and I'm talking about children who are too
5 young to run away and buy a bus ticket or too young to have a
6 driver's license and drive away, how common is the freeze
7 response?

8 A. I would say it is the most likely response for
9 children because again as I said earlier they can't fight.
10 They're not allowed to fight with a grown up or disobey and
11 fleeing is impossible if it's happening in the home which is
12 where these sexual abuse typically occurs.

13 Q. Now, when eventually there may be a disclosure or
14 report to an adult or authority, do children always report all
15 details of every sexual abuse event in their history?

16 A. So what we see, what I have seen in my experience
17 and what the research also has seen in the retrospective
18 studies is that children are kind of, will make a tentative
19 disclosure initially so they're gonna tell something and then
20 they're gonna see what happens. They're gonna kind of wait to
21 see what happens because is everybody falling apart. Is my
22 home getting split up. Are people being moved places. And so
23 that could be kind of just a small disclosure. Sometimes
24 children disclose something and the people around them don't
25 even know exactly what they're trying to say. But then over

1 time they may realize, well, maybe it is safe to tell and I
2 can tell more and then they're able to give a lot more detail
3 maybe later on. Sometimes children will say a little bit to
4 someone that's initially asking whether it's a parent or a
5 teacher at school or a guidance counselor or maybe they are
6 being interviewed and then later on they may be in therapy and
7 tell even more because they're in a relationship with a
8 therapist that they feel comfortable with and they can tell
9 more details.

10 Q. Do children necessarily recall all details of
11 chronic sexual abuse that's occurred over the course of months
12 or years?

13 A. So what the memory research shows us in looking at
14 kind of how memories are retained and then retrieved so
15 whenever something happens to you, you retain it and then you
16 try to retrieve it when you're telling about it. What happens
17 over chronic, we're talking years of sexual abuse or any abuse
18 is that those memories become encoded, overlapping and so a
19 lot of times children who have been chronically abused will
20 talk about the abuse as this always happened so he always did
21 this or he always did that or he would do it this way all the
22 time versus being able to talk about one episode. It would be
23 much easier for us, even adults, not just children but adults
24 if one thing happens to you that you have never experienced,
25 you're going to be able to talk about that in much more detail

1 than if it happens many, many times over many years you're
2 gonna lose kind of the fine details of that and so what we see
3 is with the children that have been abused over a long period
4 of time they typically lose some of those details.

5 Q. And based upon your training and experience is
6 delayed reporting by a child common or uncommon where the
7 perpetrator is a family member?

8 A. It's very common.

9 MS. MAYES: Nothing further.

10 CROSS EXAMINATION

11 BY MS. JORDAN:

12 Q. Ms. Smith, I just have a few questions for you.

13 A. Sure.

14 Q. The three factors of delayed reporting that you were
15 talking about up here, the reasons for delayed reporting, the
16 child, the family, the perpetrator, are these reasons, do you
17 see these in situations where a child has been physically
18 abused as well or is this solely limited to your experiences
19 in dealing with children of sexual trauma?

20 A. So it's children who have been abused but literature
21 really does focus on the dynamics of children who have been
22 sexually abused because often time that type of abuse is
23 secretive. It doesn't have - there aren't many witnesses to
24 child sexual abuse whereas physical abuse there are sometimes
25 witnesses.

1 Q. In your private practice in your area do you counsel
2 children from all types of abuse situations or do you solely
3 practice in the area of sexual trauma?

4 A. So in my private practice I work with children and
5 families who have children that have been abused but also
6 children and families that are going through divorce and
7 custody cases.

8 Q. So you work with children who have come from broken
9 homes or had experiences with their parents fussing and
10 fighting, seeing domestic abuse and things like that?

11 A. Yes. I have.

12 Q. And would a child be reluctant to make reports of
13 domestic abuse because they want to keep their family
14 together?

15 A. Yes.

16 Q. So a lot of this stuff about why a child wants to
17 keep their family together and worried about foster care and
18 these things, those can also be examples of things that come
19 from a domestic abuse situation or a family home that has a
20 lot of turmoil in it, correct?

21 A. Yes. Children definitely may not tell outside of
22 the home for domestic violence but again children that are in
23 the home that are experiencing domestic violence may have
24 siblings that are witnessing it with them so it's typically
25 not secretive in that sense of no one else in the home

1 knows.

2 Q. Those children are also kind of inhibited from the
3 fight or flight abilities, correct?

4 A. Right.

5 Q. They may freeze up as well?

6 A. Correct. They're not able to flee or to fight
7 because they're children.

8 Q. How many times have you testified in court before?

9 A. So I have testified in criminal court, family court
10 and also in courts marshal for the federal, for the army, it's
11 been in excess of 50 times.

12 Q. In excess of 50 times. In your criminal court cases
13 do you always testify for the State?

14 A. No. I do not.

15 Q. You testify for the State and the defense?

16 A. I have.

17 Q. Do you know about how many for each?

18 A. It's definitely higher for the State. I would say
19 for the defense I have consulted and had to testify in I would
20 say probably five percent, three percent.

21 Q. Okay. So for the State --

22 A. The State would be --

23 Q. -- 95?

24 A. 95, 96, 97.

25 Q. Have you ever been wrong?

1 A. Yes.

2 MS. JORDAN: I don't have anything further.

3 THE COURT: Any redirect?

4 REDIRECT EXAMINATION

5 BY MS. MAYES:

6 Q. All right. Well, a question like have you ever been
7 wrong is rather vague in general, correct? Through the human
8 experience has everyone been wrong at some point?

9 A. Yes.

10 Q. Now, in terms of what you have testified to today in
11 your own clinical experience are you able to actually observe
12 delayed reporting and the effect of delayed reporting among
13 your own patients?

14 A. Yes.

15 Q. And I believe she was asking you about the
16 differences in secrecy and looking here for the reasons for
17 that secrecy, child assault in the family, assault by the
18 perpetrator. Is there any type of distinction between sexual
19 abuse and physical abuse when we're talking about a child who
20 is being hurt by someone in their home?

21 A. Yes.

22 Q. How so?

23 A. For sexual abuse it's very embarrassing to talk
24 about. It happens in secret. It's not happening with a lot
25 of witnesses, if any, typically just between the child and the

1 perpetrator and it is something where oftentimes because of
2 the grooming process children almost feel like they need to
3 take care of the perpetrator, take care of the sexual needs,
4 take care of what it is that they need so their needs are more
5 important than the child's at times so it makes a big
6 difference. Whereas physical abuse is more out in the open
7 within the family home. Children are typically spanked or
8 beaten too hard. A lot of kids talk about beatings where it
9 is out in the family public space and so the same thing with
10 domestic violence. Sexual abuse usually is very much
11 secretive and only kept in bedrooms at night away from
12 observers.

13 MS. MAYES: Nothing further.

14 MS. JORDAN: Just two real quick.

15 THE COURT: All right.

16 RECROSS EXAMINATION

17 BY MS. JORDAN:

18 Q. You were talking about the children who are
19 chronically abused don't remember a lot of details sometimes,
20 that it can get vague for them?

21 A. Yes.

22 Q. Is the converse also true that some children
23 remember vivid details about sexual abuse?

24 MS. MAYES: Objection, Your Honor. Not in response
25 to redirect.

1 MS. JORDAN: Your Honor, I think it was in response
2 to the last question she asked.

3 THE COURT: I'm going to allow the question.
4 Overruled.

5 BY THE WITNESS:

6 A. Would you mind repeating the question? I'm sorry.

7 BY MS. JORDAN:

8 Q. I'm sorry. You were testifying that children who
9 are chronically abused, their memory can get very vague or it
10 becomes always. They use that all inclusive word. Can the
11 converse be true that they also have vivid recall of the
12 events that happen?

13 A. So the way that typically I see it and the research
14 talks about it is children who have been chronically abused
15 may remember details of how it always happened. So what
16 they're not gonna remember are episodes. So they're not gonna
17 remember to sync incidents like this date at this time this
18 happened and here are all the details. They may remember
19 details of how it typically happened and they'll be able to
20 remember those details but in terms of what we call episodic
21 memory it's very, very vague for them.

22 Q. So it would be unusual for a child to remember the
23 clothes they were wearing every time the abuse occurred over a
24 period of years?

25 A. The way that in my experience and the research also

1 supports is that they could very well do well remembering the
2 last few times so because that's closer in time in their
3 memory than they would when they were really young. It really
4 depends on the length of time. So typically when we are
5 assessing for child sexual abuse, child abuse in general we
6 would want to know more if can they access the memories of the
7 last time something happened versus the first time if that
8 makes sense.

9 Q. Kind of in general I guess we all remember better
10 what happened yesterday rather than six months ago?

11 A. That's correct. That's correct.

12 Q. Just to clarify, I guess my question was vague when
13 I asked you have you ever been wrong. We have all been wrong.
14 Have you ever been wrong in your court testimony?

15 A. Oftentimes I don't know the outcome so I can't
16 answer that.

17 Q. Are there any times that you do know that you were
18 incorrect in a finding or testimony?

19 A. I guess most of the time it wouldn't be - my role is
20 just to educate so I mean that's really left up to the trier
21 of fact.

22 MS. JORDAN: Okay. Thank you.

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

24 MS. MAYES: Your Honor, we ask that the witness be
25 excused.

1 THE COURT: Absolutely.

2 MS. MAYES: May we approach?

3 THE COURT: You may.

4 (Side bar off the record.)

5 THE COURT: We're gonna take one more short witness
6 and adjourn for the day, okay?

7 MS. RADLEIN: The State calls Donovan Shealy.

8 Thereupon,

9 DONOVAN SHEALY

10 after having been first duly sworn, testified as follows,

11 DIRECT EXAMINATION

12 BY MS. RADLEIN:

13 Q. What is your current position?

14 A. Currently lieutenant over road patrol.

15 Q. Where?

16 A. Saluda County Sheriff's Office.

17 Q. All right. How long have you been employed there?

18 A. Employed at Saluda County for 17 years. Been in law
19 enforcement for 21 for Lexington County before coming to
20 Saluda.

21 Q. How long have you been specifically a lieutenant?

22 A. Probably the last eight years or so.

23 Q. Go back to 2014. You would have been a lieutenant
24 at that time?

25 A. That's correct.

1 Q. All right. I want to speak specifically about
2 December 2nd, 2014. Do you recall being on duty that day?

3 A. I was.

4 Q. What, if any, involvement did you have in this case,
5 if you remember?

6 A. I was contacted to help execute a search warrant and
7 we went out and executed a search warrant at a residence.

8 Q. All right. And what residence would that search
9 have been executed on?

10 A. That would have been [REDACTED], [REDACTED],
11 [REDACTED]

12 Q. Would that be here in Saluda County?

13 A. It is.

14 Q. In executing the search warrant what would have been
15 your responsibility on that day?

16 A. We all, when we first enter, we all go in and do a
17 protective sweep of the residence to make sure it's not
18 occupied or animals or anything like that that would be
19 harmful to officers. At this particular instance no one was
20 home so we didn't have to do any detaining or anything like
21 that of anybody. No security reasons. So I assumed the role
22 of what we call scribe. When we go in and execute a search
23 warrant we have certain items of evidence that we collect and
24 as it was collected I sit at the table and made the notes
25 where it was collected from and as the officers brought it to

1 me and then fill out the return on the search warrant.

2 Q. I'll clarify some things you mentioned. Is it a
3 group of you or just you by yourself?

4 A. No. It was several of us like I say we have to take
5 several for security reasons. We never know what we'll
6 encounter but it was at least four I would say, three or four.
7 I think it was four of us.

8 Q. In conducting that protective sweep, would that
9 include the entire residence?

10 A. That's correct.

11 Q. And no one was in the residence when you arrived?

12 A. That's correct.

13 Q. I'm gonna show you a few photographs. Looking at
14 State's exhibit 12, does this --

15 A. That's the residence, exterior of the residence.

16 Q. And State's exhibit 10?

17 A. Same residence.

18 Q. I'm going to show you a few more photographs.
19 Looking at State's exhibit 17 and 18, do you recognize
20 these?

21 A. That's one of the bedrooms on the inside of the
22 residence.

23 Q. Was this bedroom in the same condition as it was
24 when you went in to execute the search warrant as it is in
25 this photograph?

1 A. That's correct.

2 Q. Do you have any knowledge whether these photographs
3 were taken at the time of executing the search warrant?

4 A. They would have been taken at the same time.

5 Q. And at the same time, we are talking about December
6 2nd, 2014?

7 A. That's correct.

8 Q. In executing the search warrant, do you recall
9 approximately or maybe exactly what time the search warrant
10 would have been executed?

11 A. We have 19:55 p.m. which would be 7:55 in the
12 evening.

13 Q. Thank you for saying that. That was going to be my
14 next question. Do you recall on that day when the search
15 warrant was executed whether or not that would have been done
16 after a report was made?

17 A. That's correct.

18 Q. Okay. And again what time would that be?

19 A. I gave you 7:55 p.m. Yes, ma'am.

20 Q. I'll just write that on here. You indicated that
21 you were the scribe?

22 A. Yes, ma'am.

23 Q. Do you recall where exactly you were positioned in
24 the home scribing?

25 A. I sat at the table. I think a kitchen table.

1 Q. I'm going to show you State's exhibit 2 and ask you
2 if you recognize it?

3 A. That's the top of my head of me sitting at the
4 table.

5 Q. So this photograph would have been taken --

6 A. While we were inside the residence executing the
7 search warrant.

8 Q. What does it appear you are doing in this
9 photograph?

10 A. Looks like I'm probably writing.

11 Q. Okay. In executing the search warrant, I'm going to
12 hand you State's exhibit 27. In looking at this bag can you
13 tell the jury what exactly this bag is?

14 A. It's one of our evidence bags. It has my
15 handwriting on it. You want me to read off what it contains
16 and the contents of the bag?

17 Q. If you don't mind.

18 A. It's my handwriting. It's got Saluda County
19 Sheriff's Office as far as the agency. We put item numbers by
20 evidence as we collect it. This particular item is listed as
21 item "G". It's got the case number. It's got the date and
22 time and it's got a description of what's in this bag, panties
23 from bathroom.

24 Q. Okay. And you mentioned it has the date and time.
25 If you don't mind, go ahead and if you can see it, the date

1 and time?

2 A. December 2nd, 2014 at 19:55 p.m. again which would
3 be 7:55 p.m.

4 Q. And you on the line you said location of evidence
5 and what's listed there?

6 A. I have panties from bathroom.

7 Q. And again the panties from the bathroom would have
8 been recovered at the time of executing the search warrant?

9 A. Absolutely.

10 Q. In executing the search warrant what, if anything,
11 would have been done next?

12 A. We would have collected the evidence that we had.
13 We always have to fill out what's called a return you have to
14 leave at the residence or with someone at the residence, a
15 copy of what we took and I filled out the return. We gathered
16 all the evidence and this is my handwriting as well on the
17 return so we filled out the return, collected all the evidence
18 and we placed it in the patrol car and took the evidence back
19 to our Sheriff's Office.

20 Q. Okay. You indicated that the items were placed in a
21 patrol car and they would have been taken back to
22 headquarters. Can you explain to the jury what the policies
23 and procedures are?

24 A. Well, we loaded them up. I think it was - I don't
25 remember if it was the trunk or back seat. Anyway, once we

1 get them back to the Sheriff's Office, we unload them. We
2 finish any kind of labeling that needs to be done, then they
3 are sealed. In this particular incident we have what's called
4 an evidence drop box but our evidence drop box only has a
5 small hole in it for certain smaller items. In this
6 particular instance we had several larger items. They were
7 placed in Captain Horne's office. I have a key to Captain
8 Horne's office. Items that are bigger that won't go in the
9 drop box we secure them in that office.

10 Q. This is standard procedure for Saluda County
11 Sheriff's Office?

12 A. That is correct, for items like I said that won't
13 fit in the drop box.

14 Q. Would you say this was during hours or after hours,
15 the time that you would have put the items in Captain Horne's
16 office?

17 A. It's after the administrative staff hours so we are
18 probably looking on up into the night at this point in time,
19 late evening pushing maybe even midnight. Certainly well
20 after 7:55 so I guess it's probably nine, ten, maybe eleven
21 before it actually got secured in Captain Horne's office.

22 Q. You mentioned that you had a key. Why would you
23 have a key to his office?

24 A. Because I'm the supervisor in instances just like
25 this right here. Instead of hauling them around on various

1 calls that we have to go to, they are much more secure in the
2 office.

3 Q. As supervisor, you mean as lieutenant you would have
4 a key to the office?

5 A. Right.

6 Q. Okay. In conducting the protective sweep of the
7 residence can you go ahead and tell me if you recognize these
8 photographs?

9 A. Appears to be the photographs of the bathroom as we
10 went through. That's pretty much the condition of the
11 bathroom.

12 Q. Okay. So this would have been how the bathroom
13 appeared when you first arrived on scene?

14 A. That's correct.

15 MS. RADLEIN: I think that's it for now. Thank you,
16 Lieutenant Shealy.

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION

19 BY MR. SCOTT:

20 Q. Lieutenant Shealy, do you recall that there were
21 actually two search warrants executed that day?

22 A. There were.

23 Q. The 17:19:55 search warrant that you described, was
24 that the first one or the second one?

25 A. That would have been the first one.

1 Q. What time was the second one, do you recall?

2 A. The second one I have 22:30 which would be 10:30.

3 Q. Do you know why there were two search warrants done
4 on the same residence?

5 A. I think -- I don't know how to answer this. It's
6 not going to be -- We had later evidence that was revealed to
7 us that another bedroom may contain evidence. Another bedroom
8 may contain evidence in this case.

9 Q. Who revealed that information?

10 A. It came through me from Kenny Clark. I guess he
11 would have gotten it from the victim advocate or either the
12 victim.

13 Q. Who contacted you initially to assist in these
14 search warrants?

15 A. Ken Clark.

16 Q. Who is the lead investigator on this case, if you
17 know?

18 A. Kenny Clark.

19 Q. You said you thought there were several people
20 present, three or four. Do your notes indicate who was
21 present?

22 A. I know myself and Captain Eckland and Earl Williams
23 and Kenny Clark for sure. I believe that's -- Mike Rafield
24 might have been there initially but I don't think he went in
25 the house or anything.

1 Q. The photos that you have been shown, do you know who
2 took those photos?

3 A. Kenny Clark.

4 Q. Did you go through the whole house and go into every
5 room in the house? If I asked you about a particular room or
6 photograph, do you think you might identify it?

7 A. I went through on the initial sweep as far as just
8 checking and seeing if anybody or persons or anything like
9 that. As far as detail in the house, no, I wasn't the one who
10 actually searched under beds or pulled off any of the bed
11 clothing or anything like that.

12 Q. Let me show you State's 13, 14, 15, previously
13 entered, I believe. Can you identify number 15?

14 A. That's the bathroom floor of the residence.

15 Q. 13 and 14 does that appear to be the same
16 bathroom?

17 A. I don't know if it had some different - unless it's
18 a different angle. Could be a different angle.

19 Q. Does it not look like the clothes have been moved?
20 Does that look like the same bath mat, same tiling on the
21 floor, the same bath shower?

22 A. I agree with that.

23 Q. And the clothes are moved, not in the same place.
24 Who moved the clothes?

25 A. I don't know, sir.

1 Q. Would that be standard protocol to move the clothes
2 and then take another photo?

3 A. I don't know. I didn't take the photos, sir.

4 Q. I believe you testified that some of the larger
5 items were placed in Captain Horne's office upon your return
6 to the Sheriff's Office?

7 A. Larger items. Probably all these items were. Yes,
8 sir.

9 Q. The one in front of you?

10 A. I would assume so.

11 Q. You said you have a key to Captain Horne's office.
12 Are there any other members of the police department or
13 Sheriff's Department have keys to Captain Horne's office?

14 A. Lieutenant Padgett should.

15 Q. Anybody else that you know of?

16 A. Not that I know of.

17 Q. Is there more than one door in that office?

18 A. More than one door in the Sheriff's Office?

19 Q. In Captain Horne's office?

20 A. No.

21 Q. Only one door?

22 A. Yes, sir.

23 MR. SCOTT: Nothing further, Your Honor.

24 THE COURT: All right. Any redirect?

25 MS. RADLEIN: Briefly, Your Honor.

REDIRECT EXAMINATION

1

2 BY MS. RADLEIN:

3

4

5

Q. Just to clarify. I apologize, I forgot the exhibit number. Just to clarify which search warrant would the underwear have been collected from?

6

7

A. The underwear would have been collected on the first one.

8

9

Q. Okay. Again, what time was that underwear collected?

10

11

A. 19:55 is the time of us being there executing. I think that's the same time I put on the bag. It is.

12

13

MS. RADLEIN: Thank you, Lieutenant Shealy.

14

15

THE COURT: All right. You can step down.

MS. RADLEIN: Your Honor, can Lieutenant Shealy be excused?

16

17

18

19

20

THE COURT: Oh, yeah. All right. We are done for the day. Go home. Enjoy the evening. See you back in the jury room at 9:00. Remember you can't discuss the case. Same rules apply. Don't discuss the case with anybody. See y'all in the morning.

21

22

(Whereupon, court was adjourned for the evening at 5:30 p.m.)

23

24

25

1 with. They were unbeknownst to him connected and
2 everybody in Saluda is connected to some extent. A lot
3 closer than he thought and he felt uncomfortable. I
4 agreed with his thinking. The lawyers did, too, because
5 it was a bad spot for him to be in thus I have excused
6 him. Ms. Mason is sick. I have one alternate left. She
7 is on the jury proper so I have just got the 12 of y'all.
8 That's why I picked two alternates in case things like
9 this come up. You just don't know. I told y'all
10 earlier, sometimes people know names but don't know the
11 face or they know the face and don't know the name. You
12 have to be careful with that kind of stuff. We, the 13
13 of us, the judge and judge of facts have to give
14 everybody a fair trial both the State and Mr. Posey and
15 that's what we're gonna do. All right. Ms. Mayes.

16 MS. MAYES: The State calls Tammy Shore.

17 Thereupon,

18 TAMMY SHORE

19 after having been first duly sworn, testified as follows,

20 DIRECT EXAMINATION

21 BY MS. MAYES:

22 Q. Good morning, Ms. Shore.

23 A. Good morning.

24 Q. Tell us a little bit about yourself. Where are you
25 employed?

1 A. I'm employed as the principal at Hollywood
2 Elementary School.

3 Q. How long have you been the principal at Hollywood
4 Elementary?

5 A. I have been at Hollywood since 1999.

6 Q. So roughly 16 years?

7 A. Yes, ma'am.

8 Q. I want to start by asking you if you were a
9 principal and acting in the role of a head principal during
10 the school year of 2014 through 2015?

11 A. Yes, ma'am.

12 Q. So specifically that's going to cover the fall
13 semester which would be 2014?

14 A. Yes, ma'am. That's correct.

15 Q. Can you tell us whether or not you're familiar with
16 a student by the name of [Minor] from Hollywood Elementary
17 during that school year?

18 A. Yes, ma'am. I know [Minor].

19 Q. What grade was [Minor] in during that school year,
20 the fall of 2014?

21 A. She was in the fifth grade.

22 Q. Do you have with you today the attendance records
23 regarding [Minor]?

24 A. Yes, ma'am. I have them.

25 Q. Specifically for that fall semester --

1 A. Yes, ma'am.

2 Q. -- of 2014? Now, leading up to the day of Tuesday,
3 December 2nd, can you tell us what her status was regarding
4 attendance leading up to December of 2014?

5 A. She had perfect attendance.

6 Q. All right. So she had perfect attendance during the
7 entire fall semester. And then look at Monday, December 1st.
8 Was she in school that day?

9 A. Yes, ma'am.

10 Q. Then Tuesday, December 2nd, was she in school that
11 day?

12 A. Yes, ma'am.

13 Q. Now, on Tuesday, December 2nd was that a holiday or
14 a normal school day?

15 A. It was a normal school day.

16 Q. What time approximately does the bell ring there at
17 Hollywood Elementary?

18 A. The bell rings to dismiss at 3:00.

19 Q. Then once the bell rings to dismiss, tell us a
20 little bit about the car line where parents are in line to
21 pick up their children at the end of the day. About how long
22 does that car line run?

23 A. It can typically last until about 3:20 is when we
24 load the last child around that time. We begin at 3:00.

25 Q. Now, as principal do you oversee any concerns with

1 students that may affect their school work or their attendance
2 and things of that nature?

3 A. Yes, ma'am. I do.

4 Q. As principal can you tell us whether or not you were
5 familiar with an incident where **Minor** had written on a
6 school assignment "I don't know and I don't care"?

7 A. Yes, ma'am. I was aware of that.

8 Q. And how was that matter handled?

9 A. That afternoon Ms. Morse came to my office after
10 school and she said, Ms. Shore, I just want to make you aware
11 of a situation. I have noticed a change in **Minor** attitude
12 and today she wrote on an assignment "I don't know and I don't
13 care" and she said that's very out of character for her. She
14 felt the need to call her mom. She said I called Brandi to
15 let her know that and I just wanted to make you aware of the
16 situation.

17 Q. Following that, and you're referring to the teacher
18 Kelly Morse?

19 A. That's correct.

20 Q. **Minor** fifth grade teacher. Following that
21 conversation, you said that was at the end of the school
22 day?

23 A. Correct.

24 Q. Ms. Brandi Nye, **Minor** mom, had been made aware
25 that day?

1 A. Correct.

2 Q. Following that event can you tell us whether or not

3 **Minor** attended school on Wednesday, December 3rd?

4 A. She was absent.

5 Q. What about Thursday, December 4th?

6 A. She was absent.

7 Q. What about Friday, December 5th?

8 A. She was absent.

9 Q. And during that three days that she was out, can you
10 tell us whether or not Brandi Nye alerted you to that
11 matter?

12 A. Brandi came in the next day and she just shared with
13 me that **Minor** had shared some concerns with her.

14 MR. SCOTT: Objection, Your Honor. Hearsay.

15 MS. MAYES: You can't say what anyone else said to
16 you.

17 THE COURT: Sustained as to hearsay. Thus far the
18 comment is proper.

19 MS. MAYES: Yes, Your Honor.

20 BY MS. MAYES:

21 Q. Were you made aware of the reason, and you can't say
22 what that was, but were you made aware of the reason that
23 **Minor** would be out those three days beginning on December
24 3rd?

25 A. The mom shared with me, told me that --

1 Q. All right. And again that's a rule of court, you
2 can't say what she actually said to you.

3 A. She did. Yes, ma'am.

4 Q. You were alerted to that matter?

5 A. Yes, ma'am.

6 MS. MAYES: Nothing further of Ms. Shore at this
7 time.

8 CROSS EXAMINATION

9 BY MR. SCOTT:

10 Q. Good morning, Ms. Shore.

11 A. Good morning.

12 Q. We met briefly yesterday. I appreciate you being
13 here today. Just a couple of questions. Prior to the
14 incident that you just described, are you aware of any
15 disciplinary matters that involved **Minor** that school
16 year, the fifth grade school year?

17 A. She had two minor infractions at school,
18 referrals.

19 Q. What were those?

20 A. Can I use these documents?

21 Q. Sure.

22 A. One of them was that she had eaten part of, taken a
23 bite off of another child's sandwich in the school.

24 Q. What was the date of that?

25 A. That was on November the 25th.

1 Q. Okay.

2 A. And then on May the 27th --

3 Q. That would have been after this, right?

4 A. Correct. That's after.

5 Q. She was also at Hollywood the prior year; is that
6 correct?

7 A. That's correct.

8 Q. Which would have been fourth grade?

9 A. Correct.

10 Q. During that school year, did she have any
11 disciplinary infractions at least according to your records?

12 A. No, sir. No infractions.

13 MR. SCOTT: No further questions, Your Honor.

14 THE COURT: Okay. Thank you, Ms. Shore.

15 MS. MAYES: Nothing further, Your Honor.

16 THE COURT: You can go back to school. Call your
17 next witness.

18 MS. RADLEIN: Thank you, Your Honor. The State
19 calls Nikita Wigfall Robinson.

20 Thereupon,

21 NIKITA WIGFALL ROBINSON

22 after having been first duly sworn, testified as follows,

23 DIRECT EXAMINATION

24 BY MS. RADLEIN:

25 Q. Good morning, Ms. Wigfall Robinson. It's Ms.

1 Wigfall Robinson; is that correct?

2 A. Yes.

3 Q. Where are you currently employed?

4 A. I am assistant principal at Saluda Middle School.

5 Q. How long have you been the assistant principal
6 there?

7 A. This is my fifth year.

8 Q. How long have you been in education?

9 A. Education, my seventeenth year.

10 Q. I want to ask you just a few questions. Do you know
11 **Minor** ?

12 A. I do.

13 Q. How do you know her?

14 A. Uhm, **Minor** was a sixth grader last year and I saw
15 that I needed some help doing some things in my office early
16 in the morning and I noticed that she got there early with her
17 mother who worked in the cafeteria at the time so I asked her
18 mom if it was okay for her to come to my office and be my
19 assistant and she would come in and the marquee, she would get
20 the letters together for me, any file or anything like that.
21 There were times I would have to leave out of the office and I
22 was very explicit. Just do what I ask you to do. Don't touch
23 anything, whatever. When I came back, whatever I had left for
24 her to do she had accomplished and there was no evidence she
25 had done anything else other than what I told her to do.

1 Q. So if I asked you this, would you be aware of **Minor**
2 **Minor** general reputation for truthfulness?

3 A. Yes.

4 Q. Would you say that's a good reputation or a bad
5 reputation?

6 A. Good reputation.

7 Q. Are you currently the assistant principal?

8 A. I am.

9 Q. Are you missing school to be here this morning?

10 A. I am.

11 MS. RADLEIN: All right. Thank you, Ms. Wigfall.

12 CROSS EXAMINATION

13 BY MS. JORDAN:

14 Q. Real briefly and we'll let you get back to your
15 students. You said you have been at Saluda Middle School for
16 how long now?

17 A. Five years.

18 Q. How long has **Minor** been a student there?

19 A. Two years.

20 Q. She was your assistant you said?

21 A. Last year, sixth grade.

22 Q. Do you live in the Saluda community?

23 A. I do.

24 Q. Okay. Did you know **Minor** before her sixth
25 grade year?

1 A. In fact, I did her mother's home bound when she was
2 pregnant with **Minor** so I have known her since she was a
3 little girl, baby.

4 MS. JORDAN: Okay. Thank you. Nothing further.

5 THE COURT: Anything else?

6 MS. RADLEIN: No redirect.

7 THE COURT: You may step down. How many do you
8 have?

9 THE WITNESS: 470.

10 MS. RADLEIN: The state calls Denise
11 Campbell-Gartrell.

12 Thereupon,

13 DENISE CAMPBELL-GARTRELL

14 after having been first duly sworn, testified as follows,

15 DIRECT EXAMINATION

16 BY MS. RADLEIN:

17 Q. Good morning, Ms. Gartrell. Where are you currently
18 employed?

19 A. I'm employed at Saluda Middle School as a GT teacher
20 and a Google basics teacher and part time counselor.

21 Q. You said GT. What is GT?

22 A. Gifted and talented.

23 Q. And the second thing you said?

24 A. Google basics which is a high school credit class.

25 Q. Okay. I just want to ask you a couple questions.

1 How long have you been in education?

2 A. I have been in education, this is my 23rd year.

3 Q. How long have you been the gifted and talented
4 teacher?

5 A. Ten years.

6 Q. Do you know [Minor] ?

7 A. Yes. I do.

8 Q. How do you know her?

9 A. I have her in GT and she is also in my Google basics
10 class.

11 Q. GT again is gifted and talented. Google basics is
12 you said college?

13 A. It's a high school credit class.

14 Q. Thank you. Just generally would you be aware of
15 [Minor] reputation for truthfulness?

16 A. Yes, ma'am.

17 Q. Would you say that's a good reputation or a bad
18 reputation?

19 A. I think it's a good reputation.

20 Q. Do you have school this morning?

21 A. I do.

22 Q. Are you missing school to be here?

23 A. I am.

24 MS. RADLEIN: Thank you. No further questions at
25 this time.

1 MR. SCOTT: No questions, Your Honor.

2 THE COURT: Thank you very much.

3 MS. RADLEIN: The State calls Captain Toby Horne.
4 Thereupon,

5 TOBY HORNE

6 after having been first duly sworn, testified as follows,

7 DIRECT EXAMINATION

8 BY MS. RADLEIN:

9 Q. Captain Horne, where are you currently employed?

10 A. Saluda County Sheriff's Office.

11 Q. How long have you been employed there?

12 A. Approximately 19 years. I had a short period of
13 when I went to work for EMS as well.

14 Q. How long -- What's your current position?

15 A. Captain over investigations.

16 Q. How long have you been captain over
17 investigations?

18 A. Since 2012. End of 2012.

19 Q. As captain over investigations can you tell the jury
20 exactly what your job responsibilities entail?

21 A. I have a wide range of responsibilities within the
22 Sheriff's Office. Being the captain over investigations is an
23 administrative role as well as I have several people under my
24 umbrella one of them being civil process, victim services.
25 Also I have narcotics, criminal investigations and the school

1 resource officers. I also sit on the South Carolina Attorney
2 General's task force for Internet crimes against students.

3 Q. Over criminal investigations specifically can you
4 explain what exactly would be, for example, your day to day
5 responsibilities in criminal investigations?

6 A. Normally when I come in every morning every report
7 that comes out the night before I check for accuracy and
8 further check the reports to see what's going on the night
9 before and what areas will need to be investigated where we
10 want to assign the force.

11 Q. So would you be responsible for assigning cases as
12 well?

13 A. That's correct.

14 Q. When you get in in the morning, what time do you
15 normally arrive at the office?

16 A. I don't know if I'm crazy. I do it anyhow. I
17 usually get up real early in the morning. I try to be there
18 before anybody gets there. About 7:30 in the morning.

19 Q. How long would your work day be?

20 A. I try to stay until approximately 4:30. Sometimes
21 5:00 in the afternoon.

22 Q. Of course depending on whether there's --

23 A. Depending on what the day is like. Most of the time
24 I try to leave by 4:30.

25 Q. I want to ask you specifically about this case. On

1 December 2nd, 2014, do you recall being on duty that day?

2 A. I do.

3 Q. Do you recall receiving a report as it relates to
4 sexual assault in this case?

5 A. I received a phone call from one of the, my
6 subordinates, my school resource officer who said that he
7 received some information that a sexual assault was coming
8 towards the Sheriff's Office and to be ready, that it's coming
9 there.

10 Q. And when you received that report what, if anything,
11 did you do next?

12 A. Upon finding out from the school resource officer
13 who the subject was coming as well as the other people that
14 was there at the office, I knew I needed to get somebody from
15 the night shift due to the time of day so I contacted one of
16 my night shift guys to be ready actually be enroute to the
17 office.

18 Q. You mentioned the night shift time of day. Do you
19 recall approximately what time of day the report came in or
20 the individuals arrived at the Sheriff's Office that day?

21 A. I remember pretty well because I was actually trying
22 to get out of the office. It was like 4:15 to 4:30. I was
23 trying to get out of there. It was right before I was fixing
24 to leave. I was actually packing my bag. I carry a book
25 sack, my kids school, that's what I had with me, and I was

1 packing it up when he come.

2 Q. In terms of when the individual arrived, do you
3 recall who arrived at the police station that day to make this
4 report?

5 A. Yes, ma'am. Brandi Nye along with her, I think her
6 cousin or aunt, Jennifer Merchant. They would want to come to
7 the lobby of the Sheriff's Office.

8 Q. Do you recall approximately what time they arrived
9 at the Sheriff's Office?

10 A. I'm going to say approximately 4:15, 4:30. I was
11 fixing to leave when he called. It wasn't but about five
12 minutes before they arrived there.

13 Q. I'm going to go ahead and add this to our timeline.
14 You said approximately 4:15?

15 A. That's correct.

16 Q. Or 4:30. Between 4:15, 4:30?

17 A. Between 4:15 and 4:30. It was about time for me to
18 leave and they were coming so it wasn't about five minutes
19 after they called me.

20 Q. Okay. Once Brandi arrived at the police station,
21 what did you do next?

22 A. Once they arrived at the Sheriff's Office, it was
23 Brandi and Jennifer in the lobby. The children I don't even
24 think come in the building at that time. I think Brandi and
25 Jennifer walked into the lobby and initially I made contact

1 with them. I understood what was going on based on what was
2 told to me. I asked them very brief questions of how the
3 disclosure came out and they told me about the index cards.

4 Q. Just briefly about the disclosure, did you receive
5 during the investigation in making that initial contact, did
6 you receive information as to who the perpetrator was?

7 A. I did.

8 Q. Can you tell the jury whether or not you know if the
9 perpetrator and Brandi were married at that time?

10 A. From my personal knowledge and through the
11 community, I have lived here all my life, I knew both of them
12 not to be married.

13 Q. And you mentioned that the disclosure was on index
14 cards. I'm going to hand you State's exhibit 26 and ask you
15 if you recognize the items?

16 A. Yes, ma'am. That's the index cards.

17 Q. How do you recognize those to be the index cards
18 associated with this case and the disclosure?

19 A. During the course of the investigation very early on
20 we knew that this was going to be crucial to corroborate what
21 was being told to us through the disclosure so we had Officer
22 Clark take these into evidence.

23 Q. Okay. And you said they were taken into evidence.
24 When were they stored in evidence?

25 A. They were actually taken that afternoon and

1 they were stored in the evidence room according to my
2 signature the next morning. ,

3 Q. You said your signature. You're referring to your
4 signature where?

5 A. On the outside of the bag. It's my initials.

6 Q. Where have those index cards been for the last two
7 years?

8 A. In the evidence room at the Saluda County Sheriff's
9 Office.

10 Q. In terms of the evidence storage, can you go ahead
11 and explain to the jury the procedure for evidence storage in
12 Saluda County?

13 A. Uhm, in most cases that we have smaller items we
14 have a drop box which is a little larger than the size of a
15 Post Office box but we take the evidence and as soon as we
16 take them, it's stored in a packages, dropped into the drop
17 box inside the squad room and then it's picked up several days
18 later by the evidence custodian and transferred into the
19 evidence room. Any evidence that is too large to go into the
20 drop box is secured in the captain's office by the
21 lieutenants.

22 Q. Okay. Now, back to the day of disclosure when they
23 came into the Sheriff's Office. What, if anything, do you
24 recall taking place after the initial disclosure in terms of
25 Brandi and the victim in this case **Minor** ?

1 A. Immediately upon them entering the Sheriff's Office
2 it's standard for us not to talk with the victim in the case.
3 We made sure that the mother and the children or **Minor** was
4 separated. We actually had Ms. Nicole our victim advocate
5 there. We sent them to Ms. Nicole's office along with Officer
6 Clark himself met with Brandi and Ms. Jennifer in the squad
7 room.

8 Q. You said that you met with Brandi, Ms. Jennifer in
9 the squad room. The children were in Ms. Nicole's office.
10 Why was that done?

11 A. We do that to keep us not having the child disclose
12 the information to us multiple times so we kind of had her
13 separated from us so we did not have anybody tainted what was
14 being told.

15 Q. And this would be standard protocol in these types
16 of cases?

17 A. Ever type case we do that.

18 Q. Okay. Once after the initial interview was
19 completed, what was the next course of action in terms of the
20 victim in this case?

21 A. While we were talking with Jennifer and Brandi or
22 during that course, I think I had actually stepped out, it was
23 discovered that the latest incident possibly occurred the
24 night before so we knew right then, I'm thinking at that
25 moment we notified Ms. Nicole that we would need to facilitate

1 a sexual assault exam at that time in Richland.

2 Q. You indicated that in that time frame of the last
3 assault, why was the exam set up at Palmetto Health? Why was
4 that significant?

5 A. We do that to make sure that we can collect any
6 evidence, anything that could corroborate the victim's
7 disclosure to us and also help us assist in the investigation,
8 any hairs, fiber, DNA, saliva or any other trace evidence that
9 we can find we allow the sexual assault kit and sent them over
10 there for that exam.

11 Q. Did you have any interaction or conversation with
12 **Minor** on that evening?

13 A. I did not.

14 Q. Moving onto your next involvement in this case, were
15 you made aware that a search warrant was executed on the
16 residence?

17 A. Immediately after **Minor** was transported to Palmetto
18 Richland along with Ms. Nicole and then we decided that a
19 search warrant would need to be executed on the residence also
20 to look to see if we had any biological material, DNA, trace
21 evidence within the home.

22 Q. Do you recall when that was done?

23 A. It would have been done that evening.

24 Q. So while **Minor** is going to Palmetto Health, there's
25 a search warrant being drafted and executed upon the

1 residence?

2 A. Shortly thereafter. As soon as they were enroute
3 I'm sure the report was done and a search warrant was drafted
4 and went to the scene.

5 Q. Were you made aware of items collected from that
6 search warrant on the residence?

7 A. I was the next morning. Me speaking with Corporal
8 Clark that the items would be stored probably within my office
9 which is normal in larger cases or cases where we have
10 abundance of evidence we try to store it. That way it's all
11 stored together in the evidence room.

12 Q. What involvement, if any, did you have with the
13 items that were recovered from the search warrant?

14 A. The next morning I come in, all items were within my
15 office secured. I looked over it to make sure that all the
16 items were accounted for. Once I found out it was accounted
17 for, I sorted all the items except for two pieces that was
18 within my office.

19 Q. Why did you mention those two pieces? Why were they
20 not sorted?

21 A. That morning I made contact with South Carolina Law
22 Enforcement Division and I learned that they would only take
23 so many samples for DNA testing so I made the decision and
24 based on my decision and training I learned that you want to
25 collect items, usually the bedding or the items closest to the

1 body for DNA testing since it was such a rapid rate on this
2 case.

3 Q. Do you recall what items you selected for testing in
4 this case?

5 A. I selected underwear that was located within the
6 home as well as a bed sheet.

7 Q. Okay. I'm going to hand you, I believe this is
8 State's exhibit 27 and State's 29. You described the items
9 that you sent. Did that also include State's 29 in this case?

10 A. Yes. SLED said they would take three items of
11 evidence. The three items I felt that was most crucial in
12 this case would have been the rape kit or the sexual assault
13 kit that was collected at Palmetto Richland, the underwear as
14 well as the bed sheet.

15 Q. You mentioned underwear. Which pair of underwear
16 are you referring to?

17 A. The underwear that was located within the home from
18 the bathroom floor.

19 Q. And whose underwear, the white underwear from the
20 home, whose underwear is that?

21 A. We understood it was **Minor**

22 Q. When were those items submitted to SLED?

23 A. As soon as I made my phone call to SLED on December
24 3rd I think it was the next day is when I sent Corporal Wilson
25 to SLED to have them submitted.

1 Q. Corporal Wilson. Who is Corporal Wilson?

2 A. Corporal Wilson is one of my civil process guys and
3 he also serves another guy with many hats in the office. He
4 serves as the evidence custodian within the office.

5 Q. Okay. After these items were submitted, did you
6 have any other involvement in this case?

7 A. Yes, ma'am. I did. Several months later I received
8 a report back from South Carolina Law Enforcement Division, I
9 understood from the DNA area that they had possibly testable
10 material and they were requesting a buccal swab on the
11 defendant.

12 Q. Can you tell the jury whether or not you
13 coordinated efforts to obtain that buccal swab?

14 A. Yes, ma'am. I'm wanting to say it was sometime in
15 January, possibly of 16. 15, 16. I can't remember what date
16 exactly. But I coordinated with our jail staff to have the
17 defendant along with his attorney report to the jail to give a
18 sample.

19 Q. Do you recall who collected that sample from the
20 defendant?

21 A. Uhm, it would have been Doris Morris.

22 Q. That sample, would that have been submitted to SLED
23 for testing?

24 A. Yes, ma'am. I had coordinated it as well with the
25 assistant general administrator to have it transported

1 directly to SLED once the sample was given.

2 MS. RADLEIN: No further questions at this time.

3 CROSS EXAMINATION

4 BY MR. SCOTT:

5 Q. Captain Horne, I think you said you first learned
6 about these allegations from the school resource officer?

7 A. The school resource officer was the one who
8 contacted me.

9 Q. Contacted you?

10 A. Yes, sir.

11 Q. What's the name of the school resource officer?

12 A. Officer Chris Crouch.

13 Q. How did Chris Crouch find out about it as far as you
14 know?

15 A. I have no idea. I think he received a phone call
16 from possibly Jennifer Merchant or Brandi herself.

17 Q. Do you know what time he received that information
18 and that phone call?

19 A. The time I did?

20 Q. The time Chris Crouch did?

21 A. I would assume shortly before he called me probably
22 within minutes because he knows I leave at 4:15, 4:30 everyday
23 as well.

24 Q. There was a little bit of conversation about -- Let
25 me ask you this: Does Saluda County have a standard procedure

1 for conducting search warrants, carrying out search
2 warrants?

3 A. I don't think there's any policy about conducting
4 because every one is different. As far as collecting
5 evidence? Yes. There is.

6 Q. Would that - what would that policy be in general
7 terms?

8 A. What are you getting at? I have no idea what you're
9 asking.

10 Q. What is the Saluda County Sheriff's Office policy
11 for collecting evidence?

12 A. I don't have that right here with me but I'm sure
13 it's a whole written policy. It's probably pretty thick.

14 Q. Does that policy to your knowledge address whether
15 or not potential items of evidence should be moved during the
16 execution of a search warrant?

17 A. They should not.

18 Q. They should not?

19 A. They should not.

20 Q. Do you know who carried out the search in this
21 particular case?

22 A. I can look in the search warrant and tell you but I
23 was not there.

24 Q. You don't know off the top of your head?

25 A. I know Officer Clark and Lieutenant Shealy but I

1 don't know the other ones. I wasn't there.

2 Q. Okay. Are you aware that there were two search
3 warrants executed on this residence?

4 A. I actually learned that the next morning on the 3rd
5 I think it was that a second search warrant was done.

6 Q. Do you know why a second search warrant was done?

7 A. They explained to me that there was something about
8 the child's room and they were going back for other
9 evidence.

10 Q. Did they search like the wrong part of the house
11 when they first searched?

12 A. I have no idea why they actually had to do it.

13 Q. But there was some issue with the search as far as
14 you know with the first search?

15 A. They went back for another room is my
16 understanding.

17 Q. I believe you just testified that items of evidence
18 should not be moved during the execution of a search; is that
19 correct?

20 A. I wouldn't say moved because at some point they're
21 gonna have to be moved into the ID package.

22 Q. Should they not be moved from wherever they're found
23 into one of these packages like we are showing to the jury?

24 A. What do you mean?

25 Q. When is it okay to move an item of evidence?

1 A. Normally during collection. Now, it depends on how
2 many items of evidence you have there that they can move from
3 one spot to another to photograph whatever it may be. If I
4 have a pair of underwear over this or a pair of socks laying
5 on top of it, I may have to move that to see whatever may be
6 under it.

7 Q. We went over this with Mr. Shealy yesterday, I
8 believe. All these three photos appear to show the same part
9 of the house, a bathroom, so it would appear, bath mat, bath
10 curtain, towel is the same and the middle picture is different
11 from the top and the bottom picture?

12 A. Yes, sir. It is.

13 Q. Do you agree with me on that?

14 A. Yes, sir.

15 Q. What's different about it?

16 A. The underwear is exposed in both of them pictures
17 and they are not in that.

18 Q. So somebody had to move those underwear --

19 A. That's correct.

20 Q. -- to take those photos?

21 A. That's correct.

22 Q. Is there any reason that they couldn't have just
23 boxed them up in one of these evidence bags when they found
24 them to your knowledge?

25 A. It looks like they pulled it back to photograph that

1 they were under there.

2 Q. Which one of these photographs do you think was
3 taken first, do you know?

4 A. I would say that one because it's covered.

5 Q. So they were obviously moved before they were
6 collected?

7 A. The underwear?

8 Q. Both of them.

9 A. If you can see with that item is covering the
10 underwear and I would think that they had to uncover them to
11 take the next picture.

12 Q. Not only did they uncover them, they moved them,
13 didn't they?

14 A. I don't know if they did or didn't.

15 Q. Well, the picture show what the picture show. I
16 believe you talked about taking, getting, obtaining Mr.
17 Posey's buccal swab. I don't know how to say that.

18 A. I think it's buccal.

19 Q. I don't know. Whatever. You recall that?

20 A. Yes, sir.

21 Q. Do you recall testifying in Edgefield in front of
22 Judge McMahon when we had the hearing on that and do you
23 recall testifying at that time that there were, in fact, no
24 photos taken of the search?

25 A. I do.

1 Q. Was that your testimony then?

2 A. I don't think I testified that there was no photos
3 of the search.

4 Q. You don't recall testifying that there was no photos
5 of the search?

6 A. No, sir. I had nothing to do with the search
7 warrants so I wouldn't know that.

8 Q. Do you recall the lawyers for the State at that
9 time, the prosecutor for the State at that time affirming
10 positively to the Court at that hearing that there were no --

11 MS. RADLEIN: Objection, Your Honor. He has no
12 personal knowledge of this. He's asking about what
13 prosecutor's made statements on the record.

14 MR. SCOTT: He was at the hearing. He was at the
15 hearing. He heard what was said.

16 THE COURT: All right. He's a witness to what he
17 did. He wasn't part of the search. I don't think it
18 would be proper for him to comment on what he heard in
19 the hearing. If there is a record of it, provide the
20 record of it. I don't know that -- I'm certain there's a
21 record. I don't have a copy of it.

22 MS. RADLEIN: Your Honor, may we approach on this?

23 THE COURT: Sure.

24 (Side bar off the record.)

25 MR. SCOTT: Permission to approach, Your Honor.

1 THE COURT: Sure.

2 MR. SCOTT: I think I approached him before without
3 asking! I apologize.

4 THE COURT: That's all right. I only require one
5 request to approach and then you can approach after that
6 all the time.

7 BY MR. SCOTT:

8 Q. Captain Horne, I direct you to page 11 of the
9 transcript that I just supplied you with.

10 A. That's correct.

11 Q. And that's me doing the questioning. This is on the
12 first page of that is a hearing on January 14th, 2016 in
13 Edgefield, South Carolina. I believe you were placed under
14 oath at the beginning of that hearing and on page 11 I asked
15 you, tell me if I'm wrong, I asked you do you know if any
16 photographs or any videotaping or any type of anything was
17 done to capture the search? Any photographs taken of the
18 search to your knowledge or any videos taken of the search to
19 your knowledge? What was your answer?

20 A. No, sir. That probably was not. No.

21 Q. Sir, you told me a year ago there was no photos of
22 the search?

23 A. That ain't what that says.

24 MS. RADLEIN: That's been asked and answered, Your
25 Honor.

1 BY MR. SCOTT:

2 Q. Is it customary or is it normal procedure for
3 photographs of the search of a crime scene to be given for
4 safe keeping or whatever reason to the victim advocate?

5 A. I think most of the time they try to allow the
6 victim advocate to serve them, upload them to the server. The
7 victim advocate does assist with some of the administrative
8 paperwork or download them and burn them to a disk.

9 Q. And that's standard procedure in all searches?

10 A. In all searches?

11 Q. Yes.

12 A. I wouldn't say it would be all searches.

13 MR. SCOTT: I don't have any other questions, Your
14 Honor.

15 THE COURT: Redirect.

16 MS. RADLEIN: Thank you, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. RADLEIN:

19 Q. When were these photographs discovered?

20 A. During preparation for trial of this case.

21 Q. Okay. Can you explain to the jury what exactly
22 happened with the photographs?

23 A. My understanding and even back to before we had the
24 hearing in Edgefield that defense talks about I was not aware
25 of any photographs. My understanding that possibly they were

1 not there, misplaced, something to that effect. I learned
2 during the prep of this case that y'all wanted us to be sure
3 that there was no photographs so we went back to the office,
4 myself and the victim advocate Reaves and started searching
5 any disk, any SD card, anything that we could find that was
6 possibly involved in this case. We found a CD envelope where
7 it appeared that possibly the pictures was downloaded to. Had
8 a disk in it. It had the case name on it and we assumed that
9 possibly we had found these pictures. Shortly thereafter they
10 were not on there when we looked at the disk. A short time
11 later Melinda Reaves had located an SD card within the former
12 advocate Nicole Maffett's drawer where obviously they were and
13 she had them in a drawer. I guess somehow we was able to
14 extract them.

15 Q. Okay. And then you turned those photographs over to
16 the Solicitor's Office?

17 A. Immediately.

18 Q. Okay. In terms of photographing evidence before
19 they're seized while executing a search warrant, is it
20 standard procedure to photograph the evidence as it is prior
21 to collection?

22 A. That's correct.

23 Q. You testified on direct that the purpose of
24 executing the search warrant was to collect possible testable
25 material. Can you tell the jury whether or not that would

1 include the underwear worn during an assault?

2 A. That or any other suspected underwear during the
3 assault or clothing.

4 Q. So prior to collecting the underwear worn at the
5 time of the last assault, would it be necessary to photograph
6 that underwear uncovered?

7 A. It would.

8 Q. Is this the same underwear -- I'll get you a pair of
9 gloves.

10 A. I have some here.

11 Q. Is that the same pair of underwear in the photograph
12 that was collected during the execution of search warrant
13 one?

14 A. You said search warrant one?

15 Q. Search warrant one.

16 A. The bag labeled first search warrant.

17 Q. Thank you. And the collection time would be 7:55
18 p.m.

19 A. 19:55. That's correct.

20 MR. SCOTT: Your Honor, I object. He wasn't at the
21 search. He can say that they look similar to the ones in
22 the photograph, but he doesn't know if it's the same
23 underwear or not.

24 MS. RADLEIN: That's fine, Your Honor.

25 THE COURT: Rephrase the question. Sustain the

1 objection as to his presence at the search warrant.

2 BY MS. RADLEIN:

3 Q. Please go ahead and open the underwear.

4 A. (Witness complies.)

5 Q. Do the underwear appear similar in nature to the
6 white underwear with blue rim as seen in this photograph?

7 A. They're white and blue the same as in the
8 photographs.

9 Q. In this first photograph where the underwear is
10 covered by another pair of clothes, do you see that underwear
11 or similar natured underwear in this photograph?

12 A. There's white and blue pair of clothing up under
13 there.

14 Q. And again, this would be customary to photograph the
15 evidence before moving and bagging the evidence?

16 A. That's correct.

17 MS. RADLEIN: No further questions, Your Honor.

18 THE COURT: Anything else?

19 RECROSS EXAMINATION.

20 BY MR. SCOTT:

21 Q. Do you know of any other investigations where
22 photographs of alleged to be a crime scene were misplaced or
23 lost for a year --

24 MS. RADLEIN: Objection, Your Honor.

25 BY MR. SCOTT:

1 Q. -- or more?

2 MS. RADLEIN: Outside the scope.

3 MR. SCOTT: She asked him.

4 THE COURT: He's already testified. I don't find
5 that relevant so I'm not going to allow that question.
6 Ask another question.

7 MR. SCOTT: I don't have any other questions, Your
8 Honor.

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

10 MS. MAYES: The State calls Scott Wilson.

11 THE COURT: Wait a minute. Wait a minute. I need a
12 break. That's a pretty quick trigger. Step to the jury
13 room, stretch your legs. They need a break, too.

14 (Whereupon, the jury entered the jury room at 10:30
15 a.m.)

16 (Short break.)

17 BAILIFF: All rise.

18 THE COURT: Be seated. Y'all ready.

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

20 THE COURT: Ready, Mr. Scott.

21 MR. SCOTT: Yes, sir. Your Honor, while the jury is
22 out I would ask the Solicitor not call the victim victim.
23 Can they just call her by her name?

24 THE COURT: You call them whatever you want to.

25 They call them whatever they want to. I don't have a

1, preference on that. I've heard that argument before.

2 MS. MAYES: Your Honor, the SLED reports that will
3 be testified to by SLED, they actually use the word
4 "victim" in their written report. That's how they
5 identified certain objects such as swabs.

6 THE COURT: Let's bring the jury back.

7 (Whereupon, the jury entered the courtroom at 10:45
8 a.m.)

9 THE COURT: Call your next witness, Ms. Mayes.

10 MS. MAYES: The State calls Scott Wilson.

11 Thereupon,

12 MARION SCOTT WILSON

13 after having been first duly sworn, testified as follows,

14 DIRECT EXAMINATION

15 BY MS. MAYES:

16 Q. Good morning. Can you tell us your full name and
17 where you are employed?

18 A. My name is Marion Scott Wilson. I work with the
19 Saluda County Sheriff's Office.

20 Q. In what capacity?

21 A. I am sergeant over civil process and I'm also the
22 evidence custodian with the Sheriff's Office.

23 Q. Let's talk about your role as the evidence custodian
24 at the Saluda County Sheriff's Department. First of all, what
25 is meant by that job description? Tell us what the evidence

1 custodian is responsible for?

2 A. When evidence of a crime is seized, it's taken into
3 custody by the officers and it is deposited into a locked box
4 or other designated area. At that point in time I receive
5 that evidence and I take that evidence and secure that
6 evidence in our evidence room and any evidence that needs to
7 be transported to the SLED laboratory I perform those
8 transport duties.

9 Q. Tell us about your evidence room. How is the
10 evidence room maintained to guarantee the security of any
11 items within the evidence room?

12 A. Well, the evidence room is surrounded by a series of
13 locks. First of all you have to gain entry into the building
14 which is secured. Once you gain entry into the building, then
15 you have to have a key to get into the evidence room. Myself
16 and Captain Horne have evidence keys. He's also an evidence
17 custodian. And then there's a separate key that's kept behind
18 another locked door and a locked desk of our chief's office.

19 Q. Then what about individual items within the evidence
20 room, how are they packaged and sealed to maintain their
21 security?

22 A. However the officers package them and seal them at
23 the scene, when I remove them out of the designated area or
24 out of the evidence drop box or lockers, I take those items of
25 evidence and put them into the evidence room and leave them in

1 those original containers and that's where they remain until
2 the Solicitor asks to review them, the defense attorneys ask
3 to review them or those items are transported to the SLED
4 laboratory.

5 Q. I'm gonna take you to the date of December 2nd, 2014
6 which is the date of the onset of the investigation concerning
7 Antonio Posey and that was for criminal sexual conduct. Are
8 you familiar with that case?

9 A. Somewhat. Yes.

10 Q. Are you familiar with whether or not there were any
11 items maintained, gathered, collected, submitted to your
12 evidence room and maintained as evidence?

13 A. Yes. There was a series of items collected on scene
14 and made their way to our evidence room and/or to the crime
15 lab.

16 Q. All right. I'm gonna start by asking you about the
17 sexual assault kit and that's currently marked as State's
18 exhibit 29. Are you familiar with this item not just in this
19 case but in any type of sexual assault case in which evidence
20 is collected at a hospital by a nurse who specializes in that
21 type of evidence collection?

22 A. Yes, ma'am. I am.

23 Q. Can you tell us whether or not you received an item
24 containing the contents of a sexual assault kit for **Minor**
25 **██████**?

1 A. I did.

2 Q. On what date did you actually receive this item as
3 evidence?

4 A. It looks like it came into my custody on December
5 4th.

6 Q. All right.

7 A. I'm sorry. I take that back. December 3rd.

8 Q. To clarify, is your signature on the box itself?

9 A. Yes. It is. Right here, December 3rd.

10 Q. Who is the person who turned this kit over to your
11 care for placement in the evidence room for transport to
12 SLED?

13 A. Listed above me here it was assigned to my custody
14 from Nicole Maffett. I received that item from the evidence
15 refrigerator - I'm sorry. From the refrigerator in her
16 office. She was our victim advocate at the time. She
17 received the box containing the evidence from the hospital
18 nurse. She brought it back to the Sheriff's Office and put it
19 in her victim advocate refrigerator in her locked office on
20 the 3rd, looks like at 2:00 on the 3rd. I met her in her
21 office, took custody of this sexual assault kit and then I
22 secured it into our evidence refrigerator which is under lock
23 and key.

24 Q. Why are sexual assault kits maintained in an
25 evidence refrigerator?

1 A. Because it could possibly contain DNA samples that
2 are perishable and other type evidence that is perishable.

3 Q. Could you tell us whether or not that is routine in
4 the care and security of sexual assault kits?

5 A. Definitely. Any evidence obtained in a sexual
6 assault kit must be refrigerated.

7 Q. Can you tell us whether or not this sexual assault
8 kit and the contents therein were properly sealed when it was
9 submitted to you?

10 A. They were. When I obtained custody of this sexual
11 assault kit, the seals were intact and I placed it into the
12 evidence refrigerator under lock and key.

13 Q. Was there any evidence of tampering?

14 A. No.

15 Q. Once you collected that item and maintained it under
16 lock and key, on what date was it transported to the State Law
17 Enforcement Division to the state crime lab for DNA testing?

18 A. I took it out of the evidence refrigerator on
19 December 4th and transported it to SLED on that date at 10:25
20 hours.

21 Q. So the following day after you placed it under lock
22 and key it then went to the State Law Enforcement Division for
23 analysis?

24 A. That's correct.

25 Q. Are you familiar as evidence custodian with various

1 rules and restrictions pursuant to SLED policy about the
2 number of items that can be submitted for DNA testing in a
3 criminal case?

4 A. Somewhat.

5 Q. What is the general rule regarding those items and
6 limitations?

7 A. As a general rule their policy is they'll only
8 accept up to three items for analysis initially.

9 Q. DNA analysis?

10 A. DNA analysis. Yes.

11 Q. Can you tell us whether or not this sexual assault
12 kit and the evidence contained therein was considered one of
13 the three items that needed to be analyzed?

14 A. That's right. This is one of the items that they
15 accepted. As a matter of fact, I believe in accordance with
16 their policy that this is the first priority for them to
17 maintain a piece of evidence for them to analyze before
18 they will accept other specimens.

19 Q. Once you took it to the state crime lab, State Law
20 Enforcement Division, what happened in terms of actually
21 unsealing that box?

22 A. Once I get to SLED, I present the evidence to the
23 intake officer there and at that point in time they break the
24 seals and remove the contents, each packet, each sealed packet
25 in here, uhm, and then they put it in a heat sealed package

1 right in front of me. At that point in time they will hand me
2 the heat sealed package and I will put my initials on it and
3 usually put the date on there and then they do that with each
4 piece of evidence and then they put it in a little bin and
5 then I guess after that point in time they send it upstairs to
6 the lab for analysis.

7 Q. And did all of that occur in your presence?

8 A. It did.

9 MS. MAYES: Your Honor, I request permission to
10 approach the witness.

11 THE COURT: Absolutely.

12 BY MS. MAYES:

13 Q. And this box containing evidence items was brought
14 to court by who?

15 A. By myself.

16 Q. Do you have the heat sealed pouch that the kit was
17 originally in?

18 A. I believe I do. It should be right here. Has my
19 initials and it has the date here where it was heat sealed in
20 front of me and this one as well has my initials and the date.
21 And that's not mine there.

22 MR. SCOTT: Your Honor, I didn't hear that.

23 BY THE WITNESS:

24 A. I said that other piece of evidence I didn't take
25 in.

1 BY MS. MAYES:

2 Q. All right. Can you tell us whether or not the
3 sexual assault kit that was broken down by SLED in your
4 presence and had been sealed until that time, can you tell us
5 whether or not that contained vaginal swabs from the victim in
6 this case **Minor** ?

7 A. To the best of my knowledge it did.

8 Q. Can you tell us whether or not that contained the
9 underwear that had been collected by the nurse at the hospital
10 that she was wearing during the exam?

11 A. To the best of my knowledge it did.

12 MR. SCOTT: Object. This is beyond -- He's
13 speculating. He doesn't know what's in there.

14 MS. MAYES: I can rephrase that, Your Honor.

15 THE COURT: Rephrase it because he didn't collect
16 the samples that are sealed in the envelopes so to the
17 extent he knows, he can answer. If he doesn't know, it's
18 an appropriate question on cross.

19 BY MS. MAYES:

20 Q. All of the items contained within this box were
21 submitted to the State Law Enforcement Division?

22 A. That's correct.

23 Q. Then they unsealed this box in your presence?

24 A. Yes.

25 Q. And the remaining contents stayed at the State Law

1 Enforcement Division for analysis?

2 A. Yes.

3 Q. Now, are you aware of whether or not certain items
4 of evidence were collected pursuant to a search warrant at the
5 home [REDACTED] here in Saluda County?

6 A. I'm under the -- I have knowledge that there was a
7 search warrant conducted and items of evidence were collected.
8 Yes.

9 Q. All right. Do you see your initials and a date on
10 this particular item?

11 A. I do. My initials are here. The date is here and I
12 had signed the date and signed it here and dated it with my
13 agency.

14 Q. All right. Contained within this heat sealed pouch
15 is this item, a paper bag previously identified as State's
16 exhibit 27. Can you tell us how, if at all, you are familiar
17 with that item identified by label as panties from the
18 bathroom?

19 A. Yes. This piece of evidence is dated -- Well, it's
20 marked, says first search warrant, so I'm under the assumption
21 that this was items of evidence that was obtained during the
22 first search warrant. It's listed with the case number and
23 the time of the seizure and it also is reflected that it's
24 panties inside of this evidence bag from the bathroom.

25 Q. And how did this come into your custody?

1 A. These items were secured in the office of Captain
2 Horne and I retrieved those items from his office and took
3 them to SLED on December 4th.

4 Q. All right. And you mentioned December 4th. That's
5 the same date that you testified you took the sealed sexual
6 assault kit collected at the hospital from the victim **Minor**
7 **████** to the State Law Enforcement Division; is that correct?

8 A. That's correct.

9 Q. So both of these items were submitted to the State
10 Law Enforcement Division on the same day?

11 A. Yes.

12 Q. Was there any evidence of tampering regarding either
13 of those items?

14 A. No, ma'am.

15 Q. I want to discuss this item. This is an item you
16 previously identified moments ago. It's containing your
17 signature on a heat sealed pouch. This is identified as
18 State's exhibit 28. I'm going to ask you whether or not you
19 recognize this item and how you became, how you came into
20 contact with it. Again, this is State's exhibit 28.

21 A. I know that I had taken this to SLED. It was sealed
22 in my presence again through my initials and the date as well
23 as my name and the date and the agency. I believe this to be
24 the contents of the sexual assault kit.

25 Q. How do you recognize it as such?

1 A. This white paper package here, uhm, is part of the
2 other contents of the sexual assault kit.

3 Q. How is it labeled?

4 A. It's labeled with the victim's name, the patient or
5 patient/victim, her name, the time it appears that the sample
6 or item of evidence was collected, a unit record number, the
7 date and the SANE nurse examiner that obtained the evidence.

8 Q. Specifically what is at the top of the label in
9 terms of identifying that type of item?

10 A. The top of the label here is stated underwear.

11 Q. And this is also part of the items that were broken
12 down in your presence and then sealed in this heat sealed
13 pouch?

14 A. Yes, ma'am.

15 Q. Individually?

16 A. Yes, ma'am.

17 Q. Place it back into the pouch.

18 A. (Witness complies.)

19 Q. And again the date it was submitted to the State Law
20 Enforcement Division?

21 A. December 4th, 2014.

22 Q. As part of this collection kit?

23 A. Yes, ma'am.

24 MS. MAYES: Nothing further of the witness at this
25 time, Your Honor.

1 THE COURT: Cross.

2 CROSS EXAMINATION

3 BY MR. SCOTT:

4 Q. Photographs of the crime scene qualify as evidence
5 that you would take custody of and take care of?

6 A. Not usually. Those items of photographs are usually
7 to the best of my knowledge kept into an evidence file or with
8 the chief investigator. Sometimes evidence of photographs
9 will make their way to the evidence room but not as a general
10 course.

11 Q. What determines whether they do or not?

12 A. Whether they're dropped in the evidence box and
13 submitted to me.

14 Q. Do you know who the -- You said they're normally
15 kept, I believe you said they're normally kept by the chief
16 investigator?

17 A. To the best of my knowledge or whomever is working
18 the case. Yes, sir.

19 Q. Who is the chief investigator in this case?

20 A. I'm not really sure. I can't answer that with
21 certainty.

22 MR. SCOTT: Thank you. No further questions.

23 MS. MAYES: Nothing further, Your Honor.

24 THE COURT: You may step down, sir.

25 MS. RADLEIN: The State calls Doris Morris.

1 Thereupon,

2 DORIS MORRIS.

3 after having been first duly sworn, testified as follows,

4 DIRECT EXAMINATION

5 BY MS. RADLEIN:

6 Q. Good morning, Ms. Morris. Where are you currently
7 employed?

8 A. Saluda Detention Center.

9 Q. Go ahead and tell me, what are your responsibilities
10 / there at the detention center?

11 A. I am the TAC coordinator, terminal agency
12 coordinator. I also do the DNA samples as well.

13 Q. Okay. You said the TAC coordinator. What exactly
14 is TAC?

15 A. Terminal agency coordinator.

16 Q. What exactly are your responsibilities?

17 A. I am responsible for making sure all the employees
18 are up to date as far as NCIC testing, things of that nature.
19 Make sure that they're up to date so that they can do checks
20 through SLED and what have you to see if people are wanted,
21 what have you. That sort of thing.

22 Q. You mentioned you do DNA. Do you mean you collect
23 DNA samples?

24 A. Collect DNA samples.

25 Q. How long have you been collecting DNA samples?

1 A. About four or five years.

2 Q. Tell the jury exactly what is your method of
3 collecting DNA samples.

4 A. Okay. I would take my gloves, put my gloves on, get
5 the buccal swab, take it and put it in ones mouth and swab
6 around their mouth to collect skin cells.

7 MS. RADLEIN: I'm going to go ahead and this item is
8 marked for evidence as State's exhibit 36.

9 (Whereupon, State's Exhibit #36 marked for
10 identification.)

11 BY MS. RADLEIN:

12 Q. I'm going to ask you if you are familiar with this
13 item?

14 A. I am.

15 Q. How are you familiar with this item?

16 A. I did the test.

17 Q. How are you able to recognize this as the test you
18 did?

19 A. That's my handwriting.

20 MS. RADLEIN: Permission to open this item, Your
21 Honor.

22 THE COURT: Yes.

23 BY MS. RADLEIN:

24 Q. Again, I'll ask you if you recognize it again ad if
25 there are any identifying features on it?

1 A. Yes. This is my handwriting.

2 Q. Just to be clear, this would be considered evidence
3 collection?

4 A. Yes.

5 Q. On that kit can you identify whose DNA samples you
6 collected?

7 A. It would be inside the --

8 Q. Do you need gloves?

9 A. Yes. I would. Yeah. What's the question again?

10 Q. Whose DNA sample did you collect?

11 A. Mr. Posey, Antonio Posey.

12 Q. Where did you collect that sample? Where were you
13 when you collected it?

14 A. We were at the Saluda Detention Center in the
15 medical part of the jail.

16 Q. Who would have been present when you collected his
17 DNA sample?

18 A. Myself, Doris Morris, Antonio Posey and his
19 attorney.

20 Q. Do you see the attorney in the courtroom today?

21 A. Yes.

22 Q. Was anyone else present when you collected his
23 sample?

24 A. No.

25 Q. How did you verify his identification when you

1 collected his sample? How did you know it was Mr. Posey?

2 A. I asked him. I know him so I, uhm, asked.

3 Q. So there is no doubt that you collected the DNA
4 sample of Antonio Posey?

5 A. No doubt. No doubt.

6 Q. On what day did you collect that sample?

7 A. January 25th, 2016.

8 MS. RADLEIN: Just for demonstrative purposes I'll
9 have this marked as exhibit 37.

10 (Whereupon, State's Exhibit #37 marked for
11 identification.)

12 BY MS. RADLEIN:

13 Q. I went ahead and started the process for you by
14 cutting it open. Can you go ahead and take the jury through
15 how you would actually collect the defendant's DNA sample in
16 this case?

17 A. Okay. First what I will do is put my gloves on.
18 These are the gloves here. Next what I do is take the
19 collection kit. This involves taking the white part here,
20 putting it into the mouth, swabbing it for about 15 seconds,
21 and then close it and write the person's name that I collected
22 the sample from on there, the name and date. The second would
23 be this is the buccal swab. It's just like a Q-tip with a
24 wooden end on the end, take that, put it into the mouth, swab,
25 turn it around a few times and collect the skin cells.

1 Q. To be clear, when you say into the mouth, are you
2 talking about the inside of the cheek?

3 A. Inside of the cheeks. Yes. Inside of the cheeks.
4 Yes. After I do that, I fill out the envelopes, the subject's
5 name, date of birth and I also would do the fingerprints which
6 involves collecting the left thumb and the right thumb.

7 Q. What's the purpose of collecting the fingerprints?

8 A. SLED requires us to do that for --

9 Q. Identification purposes?

10 A. -- identification purposes. Yes, ma'am.

11 Q. Then what would you do once you have completed the
12 envelope?

13 A. Once I completed that, I would seal each one. Each
14 of the buccal swabs has its own envelope. It would go in the
15 swab envelope, put the subject's name and date of birth and
16 seal it.

17 Q. When you mean by seal it, what's your method of
18 sealing the envelope?

19 A. It has adhesive on the back so I would just take
20 that off and seal it.

21 Q. So at that time the swab would be secured and
22 sealed?

23 A. It's secured and sealed in this envelope. Yes. And
24 the same thing with the easy collect as well. Take it out of
25 here, put it in the envelope and use adhesive to seal it.

1 Q. That would also be secured and sealed at that
2 time?

3 A. Yes.

4 Q. What would be your next step?

5 A. My next step would be to take, each envelope has an
6 additional seal which I will put my, the person who's
7 collecting the sample, which was me, put my initials there and
8 the date and I would put it on the back of the envelope of the
9 appropriate one.

10 Q. So this would be a second seal?

11 A. A second. Yes.

12 Q. Additional seal. And this would be a method of
13 securing the sample, the swab?

14 A. Yes.

15 Q. Okay.

16 A. And then once that's done I will take the actual --

17 Q. Do I need to cut it some more?

18 A. -- take the actual larger envelope here and put
19 everything that's collected inside of there, take the little
20 adhesive off and this red tape would be put over that with my
21 initials and the date.

22 Q. And that's an additional seal?

23 A. An additional seal.

24 Q. Additional seal. And it would be secured?

25 A. Yes.

1 Q. At that point, so let's go back to the actual
2 defendant's kit, separate the bag. Do you see the seal that
3 you described on this envelope with your initials and date on
4 it?

5 A. Yes. I do.

6 Q. And what date is on each of those seals?

7 A. January 25th, 2016.

8 Q. After you finish securing the item and placing it in
9 the larger envelope, what did you do with the evidence
10 collection?

11 A. I gave it to Captain Loraine Kelly.

12 Q. To the best of your knowledge what was her
13 responsibility?

14 A. She was to take the kit to SLED.

15 MS. RADLEIN: No further questions at this time.

16 MR. SCOTT: Very briefly, Your Honor.

17 THE COURT: Sure.

18 CROSS EXAMINATION

19 BY MR. SCOTT:

20 Q. Ms. Morris, do you remember if Ms. Kelly was in the
21 room when the collections were performed?

22 A. She wasn't.

23 Q. Are you sure of that?

24 A. She was not there.

25 Q. Before you put the swabs in the envelopes, did you

1 put them in there while they are wet or wait until they're
2 dry?

3 A. I put them in there immediately.

4 Q. So they were still wet?

5 A. Yes.

6 MR. SCOTT: I don't have any other questions, Your
7 Honor.

8 MS. RADLEIN: No further questions.

9 THE COURT: You may step down.

10 MS. RADLEIN: The State calls Loraine Kelly.

11 Thereupon,

12 LORAIN KELL

13 after having been first duly sworn, testified as follows,

14 DIRECT EXAMINATION

15 BY MS. RADLEIN:

16 Q. Good morning, Ms. Kelly. Where are you currently
17 employed?

18 A. Saluda County Detention Center.

19 Q. What are your job responsibilities there?

20 A. I'm the captain.

21 Q. As captain what exactly do you do?

22 A. I oversee and run the detention center and the
23 operation of it.

24 Q. Okay. On January 25th, 2016 were you tasked with
25 transporting this item to SLED? I'm handing it to you and see

1 if you recognize it.

2 A. Yes.

3 Q. Who did you get that item from?

4 A. On the 25th?

5 Q. Yes.

6 A. I dropped it off.

7 Q. Who gave you the item?

8 A. Who gave me the item?

9 Q. Yes.

10 A. I'm sorry. It was Doris Morris.

11 Q. What did you know that item to be?

12 A. A DNA sample.

13 Q. Looking at the kit, how do you recognize it as being
14 in your possession?

15 A. Standard DNA kit.

16 Q. How do you know that that's the one that you had in
17 your possession?

18 A. My signature is on the front.

19 Q. Okay. When you received the kit, do you recall it
20 to be sealed and secured?

21 A. Yes.

22 Q. On January 26th, 2016 do you recall taking that kit
23 to evidence intake at SLED?

24 A. Yes.

25 Q. What was the procedure when you dropped it at

1 evidence intake on January 26th, 2016?

2 A. I handed it to a SLED agent and then we had to do
3 some paperwork and she dropped it in the bag and sealed it in
4 front of me.

5 Q. You said in the bag. Would that be the bag in front
6 of you?

7 A. That's the bag in front of me.

8 Q. You said it was sealed in your presence?

9 A. It was sealed in my presence.

10 Q. Go ahead and point to your signature on that page
11 for the jury?

12 A. (Indicating.)

13 MS. RADLEIN: At this point, Your Honor, the State
14 wishes to move item 36 into evidence.

15 MR. SCOTT: No objection, Your Honor.

16 THE COURT: All right. 37?

17 MS. RADLEIN: Is it? I apologize.

18 THE COURT: 37 was the one marked. It was the kit.

19 MS. RADLEIN: This is the defendant's actual kit so
20 this is 36.

21 THE COURT: All right. 36 is the actual one. 37
22 was the demonstrative. Any objection to 36?

23 MR. SCOTT: Could I question the witness, Your
24 Honor, before it's moved into evidence?

25 THE COURT: Sure. About that issue?

1 MR. SCOTT: Yes. About that issue.

2 THE COURT: Okay.

3 VOIR DIRE EXAMINATION

4 BY MR. SCOTT:

5 Q. You testified that you took that to SLED on January
6 26th of '16?

7 A. I did.

8 Q. Did you previously take it on January 25th?

9 A. I did.

10 Q. What happened on the 25th? What happened to that?

11 A. I took it and dropped it off at the DNA box.

12 Q. And then what happened?

13 A. That's a locked box inside of SLED. And then I went
14 back on the 26th and met with the lady that's over that,
15 Rhonda Fields. She opened the box, gave me the kit back, and
16 I took it to the lady that's there for evidence and entered it
17 into evidence at SLED.

18 Q. Why did all of that take place, do you know?

19 A. That's our normal protocol for DNA kits when we do
20 them at the detention center. So that DNA was collected at
21 the detention center so I did not think it was different so I
22 took it there then like in that case. And then I found out
23 the next day that it should have went into evidence so we went
24 back and opened the box in front of me and she did because
25 it's a locked black box there and she took it out, handed it

1 to me and we took it over to evidence.

2 Q. So, in fact, you first took it to SLED on the 25th
3 of January?

4 A. Yes.

5 Q. And then you went and retrieved it from SLED
6 yourself?

7 A. I couldn't retrieve it. I didn't have a key but I
8 was there when it was retrieved.

9 Q. So you went from Saluda --

10 A. I went twice.

11 Q. From Saluda to Columbia?

12 A. Yes.

13 Q. And you got it back?

14 A. I got it back standing inside that building.

15 Q. Was that because it had not been properly submitted
16 the first time?

17 A. Correct.

18 Q. They didn't bring it to you. You went to them?

19 A. I went to them. Yes. I went back into the SLED
20 building to where the box is located.

21 Q. So you can't testify where it was, where that item
22 was, from the 25th until the 26th you don't know where it
23 was?

24 A. I do. I put it in a locked box, a black box which
25 has a lock. There's only one way to put things in. You can't

1 get anything out.

2 Q. Somebody can get them out, can't they?

3 A. I'm sure somebody at SLED has that key.

4 Q. So you can't testify that somebody didn't take it
5 out between the time you put it in there on the 25th --

6 A. No. I wasn't in that building.

7 Q. -- and the time you went back and got it out on the
8 26th?

9 A. Correct.

10 Q. You don't know?

11 A. I do not know.

12 Q. So somebody could have?

13 A. I don't work there. I just dropped it off.

14 Q. Have you ever seen me before today?

15 A. No.

16 Q. Were you in the room with Ms. Morris when she
17 collected Mr. Posey's buccal swab?

18 A. No.

19 MS. RADLEIN: Your Honor, are we still on the
20 admissibility of the item or are we moving onto cross
21 examination?

22 MR. SCOTT: I'm done, Your Honor.

23 THE COURT: Okay. You have an opportunity to come
24 back.

25 MS. RADLEIN: So is item 36 in evidence?

1 THE COURT: Any objection?

2 MR. SCOTT: I object to it coming into evidence.

3 She just testified that she doesn't know what happened
4 with it between the 25th and the 26th.

5 MS. RADLEIN: I can lay some more foundation, Your
6 Honor.

7 THE COURT: Lay more foundation.

8 DIRECT EXAMINATION CONTINUED

9 BY MS. RADLEIN:

10 Q. On January 25th where did you place the items?

11 A. In a black DNA lock box inside the SLED building.

12 Q. When you received the item from Doris Morris, can
13 you tell the jury whether or not the kit was sealed and
14 secured?

15 A. It was sealed and secured with my initials on it.

16 Q. With your initials?

17 A. Initials and signature.

18 Q. When you went back to SLED on January 26th prior to
19 placing it in evidence intake, did you have an opportunity to
20 look at that kit?

21 A. Yes. I had it in my hand. She handed it back to
22 me. It was still sealed with Doris' signature and initials on
23 the back.

24 Q. Okay. When you said they handed it to you, it was
25 from the exact box you just dropped it in the day before?

1 A. That is correct.

2 Q. And then at that point you took it to evidence
3 intake and logged it into the evidence --

4 MR. SCOTT: Object to leading question. She's
5 testifying.

6 MS. RADLEIN: I apologize.

7 BY MS. RADLEIN:

8 Q. What did you do next?

9 THE COURT: Sustained as to leading. Go ahead.

10 BY MS. RADLEIN:

11 Q. What did you do next?

12 A. When I went back, she handed, the lady handed it to
13 me. I handed it to another lady in evidence and then she had
14 the paperwork for me to do, put it in that bag and sealed it
15 in my presence.

16 Q. Once it was sealed in your presence, can you tell
17 the Judge whether or not you signed the item?

18 A. I signed the item. That's my signature on the
19 front.

20 MS. RADLEIN: At this time, Your Honor, the State
21 seeks to move exhibit 36 into evidence through this
22 witness.

23 MR. SCOTT: Your Honor, I still object. We don't
24 know who the lady was that gave it to her. There's been
25 no testimony or evidence who gave it to her on the 26th.

3 THE COURT: I think it goes to weight so I'm going
4 to admit it. You can argue that. Her testimony seems to
5 be consistent as to her behavior retrieving it from the
6 same place she dropped it off the day before. It goes to
7 weight so I'm gonna admit it subject to your objection.

8 MR. SCOTT: Thank you, Your Honor.

9 MS. RADLEIN: Thank you, Your Honor.

10 BY MS. RADLEIN:

11 Q. Just one final question. Whose DNA sample did you
12 submit to SLED?

13 A. Antonio Posey.

14 MS. RADLEIN: Thank you.

15 CROSS EXAMINATION

16 BY MR. SCOTT:

17 Q. Do you know who the person who gave it back to you
18 at SLED on the 26th was? Do you know that person's name?

19 A. Rhonda Fields.

20 Q. Do you know if anybody else had possession of that
21 in the meantime in between the time you dropped it and --

22 A. No.

23 Q. You don't know or no?

24 A. No. I do not know.

25 MR. SCOTT: You do not know. That's all the

1 questions I have, Your Honor.

2 THE COURT: Anything else?

3 MS. RADLEIN: Nothing from this witness, Your Honor.

4 THE COURT: You may step down.

5 MS. RADLEIN: Thank you. The State calls Courtney
6 Thompson.

7 Thereupon,

8 COURTNEY THOMPSON

9 after having been first duly sworn, testified as follows,

10 DIRECT EXAMINATION

11 BY MS. RADLEIN:

12 Q. Agent Thompson, where are you employed?

13 A. I'm employed with the South Carolina Law Enforcement
14 Division commonly referred to as SLED.

15 Q. How long have you worked at SLED?

16 A. I've worked there for a little over four years
17 now.

18 Q. What is your job there?

19 A. I'm a forensic serologist in the DNA case work
20 department.

21 Q. What is your educational background?

22 A. I have a bachelor's degree in forensic science from
23 Southern Wesleyan University.

24 Q. Do you have any other training in regards to
25 serology analysis?

1 A. Yes. While being employed at SLED I have had the
2 opportunity to complete master's level course work in
3 biological evidence screening and serology from the University
4 of Florida.

5 Q. Have you testified as an expert in serology analysis
6 before?

7 A. Yes. I have.

8 Q. How many times?

9 A. Approximately ten times.

10 MS. RADLEIN: Your Honor, at this time the State
11 seeks to introduce Agent Courtney Thompson as an expert
12 in the field of serology analysis.

13 THE COURT: Any voir dire?

14 MR. SCOTT: No, Your Honor. No objection.

15 THE COURT: Stipulated to the qualifications as an
16 expert in the field of DNA analysis and the field of
17 serology.

18 MS. RADLEIN: Thank you, Your Honor.

19 BY MS. RADLEIN:

20 Q. Can you go ahead and explain to the jury what
21 exactly is serology?

22 A. Forensic serology falls under the umbrella of DNA
23 analysis. Specifically it is the identification of body
24 fluids and specifically body fluids that are good sources for
25 DNA such as blood, semen and saliva.

1 Q. For examples of a body fluid, would that be exactly
2 what you just stated, blood, semen and saliva?

3 A. Yes. Those are the most common bodily fluids that
4 we look at due to the fact that they are great sources for
5 DNA.

6 Q. Why is serology analysis or the study of body fluids
7 performed for criminal investigations?

8 A. In relation to serology analysis and criminal
9 investigations, body fluids can provide great sources for DNA
10 as I stated earlier and so when those body fluids are
11 potentially left behind with certain incidents, I can go
12 behind them and test to see if they are present and let
13 basically whoever is above me, a DNA analyst know, hey, this
14 particular body fluid is present. This could be a good source
15 of DNA for you.

16 Q. So you just testified that the purpose is to see if
17 you can develop samples to pass onto DNA. Is that standard
18 practice?

19 A. Yes. Yes. That is the goal of serology.

20 Q. I'm going to talk about this particular case which
21 is SLED lab number 1415051. Were you requested to perform
22 analysis for serology evidence in this case?

23 A. Yes. I was.

24 Q. How many items did you receive for testing?

25 A. With this particular case I received, uhm, it

1 appears that I received four items for testing.

2 Q. Can you tell the jury whether or not there is a
3 SLED policy in terms of the amount of items submitted per
4 case?

5 A. There is. SLED has evidence submission guidelines.
6 Based on the type of incident that occurred can determine the
7 number of items that are allowed for testing at our lab with
8 the initial submission. In sexual assault cases it tends to
9 be three, although if there are sexual assault cases involving
10 minors, there is some flexibility with that hence the reason
11 four items were submitted in this particular case. And then
12 after the analysis is complete, if no probative results are
13 developed, agencies are allowed to submit additional items if
14 necessary.

15 Q. You mentioned if there aren't any probative results.
16 In cases that there are probative results, is it customary to
17 send items for testing?

18 A. No. That is actually not typically our policy.
19 What we would say is that if a probative result has been
20 developed, there's a good correlation that is basically
21 helpful to the investigating agency, we consider our part at
22 the lab to be completed unless there are extenuating
23 circumstances.

24 Q. In terms of case load and I'm sure that plays into
25 part in terms of the limit on items submitted, what exactly is

1 the typical case load for you?

2 A. For me, I can work anywhere between, it depends, 10
3 to maybe even 20 cases a week just depending on how many items
4 are submitted in the case and what the case is about and that
5 doesn't include leaving to sometimes testify as well as
6 participating and sometimes having to do rush analysis for
7 cases that sometimes end up taking priority over other cases
8 just due to their circumstances so it fluctuates heavily. I
9 would say 10 to 20 cases a week is fairly regular for me.

10 Q. In this case are you aware of when the items were
11 submitted for testing?

12 A. Yes. Would you like me to answer when they were
13 submitted?

14 Q. Yes. Thank you, agent.

15 A. It appears they were submitted to the lab on
16 December 4th of 2015.

17 Q. Can you explain to the jury in this case, we know
18 it's a sexual assault case so a sexual assault kit was
19 submitted. What exactly is the evidence submission process
20 with such kits?

21 A. When a csc kit which is a shorter term for a sexual
22 assault kit is collected, the investigating agency will bring
23 it to SLED for submission to the lab for it to be screened.
24 Before it is brought to the lab it has seals all around it.
25 But when it is brought into evidence control which is our

1 department that takes the time to manually basically log in
2 and accept all that evidence and kind of decide what needs to
3 happen with it, where it goes and evidence control is also our
4 long term storage facility that's secured to store evidence so
5 they take that kit in the presence of the submitter and break
6 open that seal and then just kind of look inside the box to
7 see what has been submitted and, if necessary, they will
8 separate out particular components. Sometimes things are
9 submitted that need like drug or toxicology testing and just
10 go into a separate location and then usually the underwear
11 that was collected at the assault is separated away from the
12 kit at that same time as well and then all those things are
13 sealed up into a secured heat sealed pouch. The submitter has
14 to sign them and then the evidence control technician places
15 them in a secured storage facility until they are ready to be
16 picked up by whoever is assigned to work that case.

17 Q. I'm going to hand you the kit in this case which is
18 State's exhibit 29 along with State's exhibit 28, 30, 31.

19 MS. RADLEIN: I'm going to have to go ahead and have
20 this marked as 38 for ID.

21 (Whereupon, State's Exhibit #38 marked for
22 identification.)

23 BY MS. RADLEIN:

24 Q. And ask you if you recognize these items?

25 A. This is item 1 which is the sexual assault kit. I

1 recognize it because at the time of submission a unique lab
2 number and then item number is assigned and so I recognize
3 this lab number as well as the item number and then this seal
4 right here is my initials and the date because I was the
5 person who broke into the pouch to actually screen the
6 serology kit. This is the actual box that is submitted at the
7 time, uhm, that the submitting agency brings it in and logs it
8 in with evidence control. And these two envelopes right here,
9 I'm going to handle them with a glove as they are considered a
10 biological specimen. These two envelopes right here I
11 recognize in the same fashion as I have attached a SLED lab
12 number with a unique item number, and then I have initialed
13 and dated each envelope so that lab number and item number
14 matches what I have on my report and has been in my custody so
15 I do recognize both of those items. Then I recognize this to
16 be item 4 from this case. I have my initials and the date on
17 it as well and the lab number and item number I also
18 recognize.

19 Q. When you were describing earlier the evidence
20 submission process and the kit being broken down by the
21 submitter, does that appear to have been done in this case?

22 A. Yes. It does.

23 Q. Item 4 that you referenced, State's exhibit 28,
24 would that be the underwear that was submitted in the kit?

25 A. Yes. It was. It's packaged in a special

1 standardized material that is provided inside the sexual
2 assault kits so that's how I can identify it as having come
3 out of the kit itself as well.

4 Q. I'm going to hand you one more item which is State's
5 exhibit 27. I'm going to ask you if you recognize it?

6 A. This appears to be item 3 from this same lab number
7 and I can recognize it also because it's been cut, but my
8 initials are clearly here along with the date that I sealed up
9 the pouch.

10 MS. RADLEIN: Your Honor, the State seeks to move
11 what's been previously ID'd as State's exhibit 27, 28,
12 30, and 31 into evidence.

13 THE COURT: Any objection?

14 MR. SCOTT: I don't have any objection to 30 or 31
15 but I don't think they have established a complete chain
16 for the other two.

17 THE COURT: Let's do this, I'll put the jury in the
18 jury room. I have to put something on the record real
19 quick. Step to the jury room. I'll have you right back
20 out here. Don't discuss the case.

21 (Whereupon, the jury entered the jury room at 11:40
22 a.m.)

23 THE COURT: All right. Ms. Radlein, I've been
24 keeping up with -- Tell the Court so I can follow you
25 from the time it was collected via DNA collection or

1 THE COURT: Okay. We can bring the jury back in and
2 you can go on. We have proffered one. As long as the
3 others are consistent. If something comes up that's
4 inconsistent, we can go back and have additional in
5 camera hearing. Bring in the jury please.

6 (Whereupon, the jury entered the courtroom at 11:55
7 a.m.)

8 DIRECT EXAMINATION CONTINUED

9 BY MS. RADLEIN:

10 Q. Agent Thompson, I'm going to pick up from where we
11 left off. Looking at State's exhibit 27, SLED item number 3.
12 Based on the records that you have from SLED, can you tell me,
13 tell the jury when that item was submitted?

14 A. Based off of my electronic chain of custody it was
15 submitted to the SLED laboratory on December 4th, 2014 by
16 Marion Wilson of Saluda County Sheriff's Office.

17 Q. And when the item was submitted to SLED, where was
18 it stored?

19 A. Before it was stored, it passed into the custody of
20 Jennifer Acock who then carried it to our secure location
21 where it was placed onto a shelf to await analysis.

22 Q. On what day was that done?

23 A. That was done also on December 4th of 2014.

24 Q. Okay. After it was placed on that shelf, where did
25 the item go from that point?

1 A. It stayed there until it was ready to be picked up
2 for analysis.

3 Q. What do you mean by picked up for analysis? Would
4 that be by you?

5 A. Yes..

6 Q. And on what day was the item picked up for
7 analysis?

8 A. On July 7th, 2015 this item was picked up from its
9 secure location by evidence control technician Doris
10 Yarborough who then placed that item into my custody on the
11 same day July 7th, 2015.

12 Q. Now, referring to SLED item 4, state's exhibit 28,
13 this would to be the underwear from the sexual assault kit,
14 can you go ahead and tell the jury when that item was
15 submitted to SLED?

16 A. Item 4 was also submitted on December 4, 2014 by
17 Marion Wilson of the Saluda County Sheriff's Office.

18 Q. Was that item stored in the same manner by Jennifer
19 Acock?

20 A. That is correct.

21 Q. And at that point when it was ready for analysis,
22 who removed that item from the shelf?

23 A. On July 7th, 2015 Doris Yarborough removed it from
24 the shelf and placed it into my custody.

25 Q. Now, regarding both items, when they were placed in

1 your custody, were the items sealed and secured?

2 A. Yes. They were.

3 Q. Would that be in the SLED heat sealed pouch?

4 A. Yes. It was.

5 Q. Was there any evidence of tampering?

6 A. No. There wasn't. If there had been, we have
7 direct policy to not proceed with any analysis if it appears a
8 package has been opened or tampered.

9 Q. Regarding State's exhibits 30 and 31, you previously
10 testified that you recognize those items?

11 A. That is correct.

12 Q. And I'm going to hand you what's been marked for ID
13 as State's 38, item 1 and State's 30 is item 1.2 and State's
14 30 is item 1.5. Can you go ahead and tell me if you recognize
15 those items again?

16 A. Yes. I do recognize item 1, item 1.2 and 1.5 based
17 off of their unique SLED lab number and the fact that I
18 initialed and dated each individual envelope, the seal on the
19 heat sealed pouch and then the actual kit itself contains my
20 information as well.

21 Q. Okay. Just to be clear, we are referring to SLED
22 item 1 which would have been the contents of the sexual
23 assault evidence collection kit?

24 A. That's correct.

25 Q. Based on your SLED chain of custody, when was that

1 item submitted to SLED?

2 A. Item 1, the sexual assault kit was submitted to SLED
3 December 4th, 2014 by Marion Wilson from Saluda County
4 Sheriff's Office.

5 Q. Was that item similarly stored by Jennifer Acock?

6 A. Yes. It was. It was placed into her custody on the
7 same day and then it was placed onto a shelf to wait
8 analysis.

9 Q. When was analysis ready for this item?

10 A. I requested this item and it was passed into my
11 custody by Amy Stephens on July 14th, 2015.

12 Q. When you received item 1, did it appear to be
13 tampered with in any way?

14 A. No. It was not.

15 Q. Was it still sealed in the SLED heat sealed pouch?

16 A. Yes. It was.

17 MS. RADLEIN: Your Honor, at this time the State
18 seeks to move State's exhibits 27, 28, 30 and 31 into
19 evidence.

20 THE COURT: State's 27, 28, 30 and 31 are admitted
21 subject to the objection regarding the sufficient
22 chain.

23 MR. SCOTT: Thank you, Your Honor.

24 BY MS. RADLEIN:

25 Q. In terms of item 1 which would be the sexual assault

1 evidence collection kit, can you tell the jury whether or not
2 you received the sexual assault nurse examiner's report with
3 this case?

4 A. Yes. At the time of submission the report that was
5 referred to is contained inside of the box that the kit was
6 collected in and it is scanned in and then it's digitally
7 transferred onto our evidence management software and that way
8 I can basically have a digital version that I can read of
9 it.

10 Q. Can you tell the jury what's the purpose of you
11 actually reviewing that report?

12 A. The purpose of me having access to that report is
13 that it contains very pertinent information as to how I would
14 handle each item of evidence that is submitted. It contains
15 detailed account of the incident as well as just other
16 important information regarding post assault activity and
17 things like that that can affect how I go about screening each
18 item of evidence.

19 Q. In terms of reviewing this particular case, was
20 there anything in the report that impacted the method that you
21 used in screening the evidence, the item?

22 A. Yes. It did. Based off of the incident that I read
23 about it indicated to me that with this particular incident
24 that saliva testing would be pertinent to perform per the
25 account given by the victim.

1 Q. Just to be clear, you would be receiving that report
2 information from the actual report from the kit that you
3 reviewed?

4 A. That's correct.

5 Q. I want to ask you specifically about the items
6 before you which would be item 1.2 and 1.5 from SLED, item 3
7 and 4. Can you describe to the jury how this case was
8 processed and analyzed?

9 A. The way that I go about processing especially sexual
10 assault cases is first what I will do is take the larger items
11 of evidence which are considered the pairs of underwear that
12 were submitted and I will screen them for the presence of
13 semen and, if necessary, I'll take cuttings to do additional
14 testing as the assault history would indicate is necessary and
15 then after I have completed screening larger items, I will
16 move onto the actual sexual assault kit itself. I inventory
17 it which means that I break the seal on my kit and I look to
18 see what all is submitted. I assign each envelope its own
19 item number. That way I can keep track of each sample that
20 I'm dealing with and then based off of what's collected I
21 decide what types of testing needs to be performed. I perform
22 those tests and then if the results indicate that items need
23 to move on further for DNA analysis, I prep them for DNA
24 analysis and send them back on their way to the DNA section
25 and then I prepare a report with my findings.

1 Q. You mentioned that you broke the seal. Just to be
2 clear, these items were still sealed when you received them?

3 A. Yes. They were.

4 Q. Okay. I want to speak specifically about, we'll
5 start with item 4. Can you go ahead and open up item 4?

6 A. (Witness complies.)

7 Q. Which would be State's exhibit 28.

8 A. You would like me to -- You want it outside of its
9 processing paper as well?

10 Q. Yes. Do you recognize that processing paper?

11 A. Yes. I do. This writing right here is the lab
12 number, item number, my initials and the date that I processed
13 that item.

14 Q. You mentioned earlier that you obtained cuttings.
15 Is that standard protocol for serology analysis on this pair
16 of underwear? On the underwear I guess.

17 A. Yes. If it's indicated that I need to make cuttings
18 from the underwear, I will take them because we don't need to
19 work with a very large sample, like a whole pair of underwear
20 for serological testing so I will cut the areas of interest
21 and only test those specific areas instead of the entire set
22 of underwear as a whole.

23 Q. And what area of the underwear did you actually
24 test?

25 A. So with this particular pair I tested the crotch

1 area of the underwear for the presence of semen as well as a
2 spot in the rear of the underwear for the presence of semen.

3 Q. That spot you're referring to, was that based on you
4 observing the item or did you just -- What made you decide to
5 cut that particular part of the underwear?

6 A. So when I'm processing a pair of underwear, I will
7 put what is called an alternate light source onto the
8 underwear and in the presence of this light biological body
9 fluids can cause a fluorescence and that fluorescence can be
10 indicative of something being there that is biological so I
11 will go ahead and test that area to see if it tests positive
12 for the presumptive presence of semen and if it is, I will go
13 ahead and possibly necessary cut it and then do some more
14 testing on it to see if it's actually that body fluid.

15 Q. In terms of the crotch area that you testified
16 cutting, just to be clear, what part of the body does the
17 crotch area of the underwear cover?

18 A. The crotch area of a pair of female underwear would
19 cover the vaginal and external genitalia area of a female.

20 MS. RADLEIN: I'm going to hand you -- I'm gonna get
21 this marked.

22 (Whereupon, State's Exhibit #39 marked for
23 identification.)

24 BY MS. RADLEIN:

25 Q. I'm going to hand this to you. Tell me if you

1 recognize that item?

2 A. Yes. I do recognize this item. I actually made
3 this particular heat seal pouch myself because my name and the
4 date is placed on it. The cutting that I took off of the
5 underwear I placed into a secured heat sealed pouch and sealed
6 them up with my initials and the date and, uhm, if necessary
7 this pouch would move onto DNA analysis if my findings would
8 indicate it needed further testing.

9 Q. Earlier you -- I'm gonna go ahead and have you --

10 MS. RADLEIN: Permission to open this pouch?

11 THE COURT: Yes.

12 BY MS. RADLEIN:

13 Q. Can you remove the cuttings associated with that
14 pair of underwear for the crotch area? I believe it's 4.1.

15 A. This is the cutting.

16 Q. How do you recognize that item?

17 A. I put the item number on it and then this coin
18 envelope that I made contains all the identifying information
19 that would be needed about this cutting such as the item
20 number, lab number, what it is and its description.

21 Q. Okay. Does that item still appear the same as it
22 was when you performed the cutting?

23 A. It does. Yes.

24 MS. RADLEIN: At this time, Your Honor, the State
25 seeks to move 4.1 into evidence.

1 THE COURT: Same objection?

2 MR. SCOTT: Same objection.

3 THE COURT: Subject to the same objection State's
4 exhibit 39 is in evidence.

5 BY MS. RADLEIN:

6 Q. In terms of item 4.1 on your report what did you
7 describe that item to be?

8 A. On my report this item 4.1 is described as a cutting
9 from crotch of underwear.

10 Q. Is there a color or what color did you label item 4?

11 A. The item 4 which is where the cutting came from is
12 labeled as blue underwear.

13 Q. Okay. I'm going to go ahead and write this up here.
14 Just to be clear, this would be the underwear from the sexual
15 assault kit?

16 A. (Witness nodding head.)

17 Q. Okay. Tell the jury what were your findings in
18 terms of what were your results for the presence of saliva?

19 A. For?

20 Q. Item 4.1.

21 A. For item 4.1 presumptive testing for saliva was
22 positive so the item was forwarded onto the DNA section for
23 further testing.

24 Q. Blue underwear. So saliva was present on item 4.1.
25 Now, referring to SLED item 3 which is State's exhibit 27, I

1 want you to explain to the jury again your method and
2 procedure in terms of testing that item.

3 A. Would you like me to unwrap item 3?

4 Q. Yes. Unwrap item 3. I'll move item 4 out of your
5 way. Do you recognize the wrapping on that as well?

6 A. I do. This is the same series of information that I
7 put on item 4 except it has a different item number. It's the
8 lab number, item number, my initials and the date I processed
9 it.

10 Q. And again, did you also cut this pair of underwear
11 in the same manner?

12 A. I did go about the same processing procedures that I
13 did for item 4. I screened it for presumptive presence of
14 semen and I made a cutting in the crotch area of the underwear
15 and forwarded it for further testing.

16 Q. Again, in talking about the crotch area of this
17 underwear, what part of the body would this crotch area be
18 covering?

19 A. It would be covering the genital area of a female.

20 Q. Okay. Can you also identify the cutting from this
21 item?

22 A. This is item 3.1 which is cutting from the crotch of
23 the underwear. I put the item number 1, the cutting itself
24 and then my envelope that I packaged it in contains the case
25 information such as the item number and the lab number and I

1 initialed and dated it on the back.

2 Q. Does the cutting appear to be in the same condition
3 it was when you performed the cutting?

4 A. Yes.

5 MS. RADLEIN: Your Honor, at this time the State
6 seeks to move this item into evidence, item 3.1.

7 THE COURT: That's exhibit 40?

8 MS. RADLEIN: That's correct, Your Honor. State's
9 exhibit 40.

10 MR. SCOTT: Object to the chain of custody.

11 THE COURT: Subject to the same objection, chain of
12 custody, over objection it's admitted as State's exhibit
13 40.

14 (Whereupon, State's Exhibit #40 marked for
15 identification and received in evidence.)

16 BY MS. RADLEIN:

17 Q. Looking at you report for item 3.1, I believe you
18 labeled it as white underwear, can you tell the jury what were
19 your results for the presence of saliva for item 3.1?

20 A. Presumptive testing for saliva was positive. The
21 item was forwarded to the DNA section.

22 Q. Agent Thompson, can you tell the jury why saliva was
23 tested in this case to begin with?

24 A. Yes. Based off of the incident of basically the
25 assault history that was provided by the victim on the medical

1 report it indicated that saliva might be present in her
2 vaginal area and so if that is indicated, that is a test that
3 we typically will perform.

4 Q. Again, why test the saliva? What can it tell us
5 about the sexual assault in this case?

6 A. Saliva is a good source of DNA so if saliva were to
7 be there, there's the possibility that whoever left the saliva
8 could be there as well.

9 Q. I'm gonna go ahead and write it up here. So for the
10 white underwear, I'm gonna write that saliva present. You can
11 go ahead and wrap those items up, Agent Thompson. Just to be
12 clear, if the assault here that you reviewed on the SANE
13 report, the sexual assault nurse examiner's report indicated
14 that oral sex was performed, so that means the perpetrator's
15 mouth would have been on the victim's vagina, what item in
16 this case would you have likely tested for the presence of
17 saliva?

18 A. With this case I would have tested any items that
19 were submitted that would have come into contact or were taken
20 from her vaginal area.

21 Q. Such as underwear?

22 A. That is correct.

23 Q. In terms of the sexual assault kit, can you tell the
24 jury whether or not vaginal swabs were submitted to you for
25 testing?

1 A. Yes. They were submitted for testing.

2 Q. What item number on your SLED report would that
3 be?

4 A. Item 1.2.

5 Q. Is 1.2 before you there?

6 A. Yes. It is.

7 Q. I believe it's been previously admitted into
8 evidence as State's exhibit 30. We have previous testimony
9 that those vaginal swabs were taken from the victim **Minor**
10 in this case by the SANE nurse. Can you go ahead and tell the
11 jury what were your results for the presence of saliva?

12 A. Presumptive testing for saliva was positive so the
13 item was forwarded to the DNA section for further analysis.

14 Q. So I'm gonna go ahead and write this up here. So
15 the vaginal swabs saliva present. In looking at it as an
16 expert of bodily fluids, looking at those vaginal swabs item
17 1.2 on your report, what does the evidence suggest regarding
18 the transfer of saliva into the victim's vagina?

19 MR. SCOTT: She hasn't -- Your Honor, I don't know
20 that she has expertise to answer that question.

21 THE COURT: Let me see you over here.

22 (Side bar off the record.)

23 THE COURT: For the record, I'll sustain defense
24 counsel's objection to the last question. Ask your next
25 question, I guess.

1 BY MS. RADLEIN:

2 Q. Regarding saliva, what type of substance is
3 saliva?

4 A. Saliva is considered to be a body fluid.

5 Q. Okay. And what exactly is a body fluid?

6 A. A body fluid is pretty straightforward. It is
7 literally a fluid that has come out of the human body and it
8 is found in the human body.

9 Q. And fluid, is it liquid or solid?

10 A. It's going to be something that is liquid or another
11 phrase would be like wet.

12 Q. You mentioned the word wet. Is there a difference
13 between wet saliva and dry saliva?

14 A. There is. Yes. Wet saliva is something as you said
15 before liquid and so it is moveable and transferrable and it
16 has different properties. Whereas dry saliva it's very stable
17 and so it tends to stay put in one place.

18 Q. When you say dry saliva is very stable and stays put
19 in one place, what exactly would that mean in terms of
20 transferring dry saliva from one surface to the next?

21 A. Because of the fact that when saliva is dry, it
22 doesn't really have any ability to move on its own as it is
23 solid essentially and so because of that it will typically not
24 move from one thing to the next. In order for saliva to
25 properly transfer, it would need to be reconstituted basically

1 re-wetted again. Only a liquid state could really transfer
2 from one area to another.

3 Q. Okay. So it's safe to say that the saliva would
4 have been in that form to be transferred?

5 A. In my opinion, yes.

6 Q. Okay. As an expert in bodily fluids looking at item
7 3.1 which we described as the cuttings from the white
8 underwear in this case, you testified earlier that the cutting
9 was from the vaginal area of a female. Would this area,
10 sounds like a basic question, be considered the area closest
11 to the female vagina?

12 A. Yes. In manner of clothing it is.

13 Q. Okay. And the same thing with item 4.1 which we
14 described as the blue underwear in this case, the same
15 question, would that also be the area closest to the female
16 vagina?

17 A. Yes. It would.

18 Q. When you reviewed the report, can you tell the jury
19 whether or not you noticed that there was any indication of
20 vaginal discharge in this case?

21 A. When I reviewed the report that was completed by the
22 nurse who collected the kit, she did note that there was a
23 vaginal discharge or secretion.

24 Q. Would the cuttings that you made on item 4.1, the
25 underwear from the kit, would this area of the underwear be

1 less likely or more likely to be the area where vaginal
2 discharge would gather?

3 A. It would be the area that is more likely as the
4 crotch of the underwear which is item 4.1 that lies directly
5 under the female vagina.

6 Q. As an expert in the field of bodily fluids you have
7 testified that saliva be transferred in a wet state since it's
8 a fluid. In your expert opinion can saliva travel in vaginal
9 discharge?

10 A. In my opinion I believe it can. Yes.

11 Q. Why is that?

12 A. If in an instance where saliva were to be deposited
13 in the vagina, eventually gravity takes its toll and whatever
14 type of secretions that might come out of the vaginal area
15 will eventually make its way out of the vagina and onto
16 whatever surface it is next closest to which for many
17 individuals would be their underwear.

18 Q. Earlier you testified that you tested for semen in
19 this case. On any of the items tested did you indicate
20 semen?

21 A. As in do you mean I tested positively for semen?

22 Q. Yes.

23 A. After reviewing my report briefly, no. I did not
24 find the presence of semen anywhere.

25 Q. Upon reviewing the sexual assault nurse's report,

1 were you expecting to find semen in this case?

2 A. It was something that I tested for as the victim
3 indicated in the assault history that she had been penially
4 penetrated but it can vary as to whether or not semen would
5 still be there just based off of her post - excuse me, what
6 she did after the assault happened and that kind of thing, it
7 can affect whether or not semen would have been there so it
8 was not necessarily something that I would have expected to
9 have been there at the time.

10 Q. Okay. And can you explain to the jury in cases of
11 sexual assaults when items are sent to you for testing and
12 there isn't a presence of semen what, if anything, can explain
13 that?

14 A. If there is no semen present but penile penetration
15 was indicated, it could very well be that the subject did not
16 ejaculate or if he did, he did not ejaculate inside of the
17 victim. Maybe onto something else around them or in some
18 cases it could be that if the victim has bathed and those
19 kinds of things, it can remove any type of residual semen that
20 might have been there.

21 Q. Okay. And so in a case where, for example, the
22 perpetrator is interrupted in the act and doesn't actually
23 ejaculate, would you expect to find any semen present?

24 A. I would not. No.

25 Q. What, if anything, would impact -- You mentioned

1 showering. How about washing any items with laundry
2 detergent, how would that impact the ability to find semen?

3 A. Detergents that are used to wash your laundry can
4 degrade DNA and semen so it can affect whether or not I would
5 find any semen on any item of clothing.

6 Q. In this case we already have it up here that you
7 indicated on the presence of saliva and you testified that you
8 work hand in hand with DNA analysis. What did you do with the
9 items next?

10 A. After I completed all my testing, the items that I
11 deemed needed to be screened further were prepped for DNA and
12 then were sent to the DNA section.

13 Q. And the importance of sending it to the DNA
14 analysis?

15 A. The importance would be so that the analyst assigned
16 to that case would go ahead and analyze samples I sent and see
17 if they can develop any results that are probative or
18 important to the investigation.

19 MS. RADLEIN: Thank you, Agent Thompson. No further
20 questions at this time.

21 CROSS EXAMINATION CONTINUED

22 BY MR. SCOTT:

23 Q. Agent Thompson, I think you testified earlier that
24 when you first reviewed or looked at the underwear, that you
25 used an alternate light source?

1 A. That is correct.

2 Q. Did you make any notations in your file or in your
3 report that you used an alternate light source?

4 A. I did not, but whenever we screen or I screen for
5 semen on sexual assault cases, it is almost always used. It's
6 our protocol actually that we are required to use an
7 alternative light source to identify areas of fluorescence.

8 Q. Would the SLED procedures suggest or require you to
9 indicate in your report when you use an alternative light
10 source?

11 A. No. We are not required to.

12 Q. Do you know of other labs that require technicians
13 to document when they use alternative light source?

14 A. I have seen it on other worksheets that other
15 analysts take but it's usually at the serologist's or
16 analyst's discretion to note.

17 Q. How about when you took the cuttings that you
18 described earlier from 3 to 3.1, 4 to 4.1, did you make any
19 documentation of that? Did you make any diagrams? Take any
20 photographs? Was there anything you did to document that?

21 A. No. No other notations were made other than just
22 that I took the cutting and it is available on my bench notes.
23 Those are notes that I'm actively taking at the time of
24 analyzing the case.

25 Q. You just mentioned bench notes. Did you provide all

1 your bench notes to the prosecution in this case?

2 A. Yes. They are my work sheets.

3 Q. How many pages of bench notes do you have, do you
4 know?

5 A. Yes, sir.

6 Q. How many?

7 A. Three pages.

8 Q. Would that be the last three pages (proffering)?

9 A. Yes. They are.

10 Q. You testified earlier, I believe, that you performed
11 a presumptive test for saliva; is that correct?

12 A. That is correct.

13 Q. What is a presumptive test? Explain to the jury
14 what a presumptive test is.

15 A. A presumptive test means that the test that I
16 performed indicates that saliva may be present but that the
17 test itself can only say that the fluid is present and so
18 further analysis needs to be performed in order to basically
19 positively identify the source of that possible saliva.

20 Q. So you said it means it may be present, not that it
21 is present?

22 A. That is correct. It is indicative in nature so it
23 can say that, the test can say that saliva may be there but it
24 cannot confirm its presence.

25 Q. Did you do a confirmatory test in this case?

1 A. No. I did not. SLED does not have one.

2 Q. So when this says saliva is present, it really means
3 that saliva may be present?

4 A. In my opinion as a serologist that would be my exact
5 wording on the report. Yes. That is why we say it's
6 presumptive.

7 Q. May be?

8 A. Yes, sir.

9 Q. And that would apply to all of this?

10 A. That's correct, sir. I did the same test on every
11 item.

12 Q. Now, the presumptive test that you do for saliva,
13 you're testing for an enzyme, aren't you?

14 A. That is correct.

15 Q. What enzyme is that?

16 A. The enzyme is known as alpha amylase.

17 Q. Is amylase present in other bodily fluids?

18 A. It can be found in very low levels in other body
19 fluids.

20 Q. Urine?

21 A. It can be found in, uhm, I believe in like feces or
22 anything like that as well as breast milk.

23 Q. And urine? Can it be found in urine?

24 A. I believe that in my opinion I am not familiar with
25 it being found in urine but I would have to probably consult

1 some scientific literature to confirm that.

2 Q. So you don't know whether or not it can be found in
3 urine?

4 A. Not to my knowledge, it can't be found in urine but
5 like I said, I would have to consult some more literature on
6 that subject in order to give an affirmative opinion.

7 Q. But you did say it can be found in feces?

8 A. That is correct.

9 Q. What would be, if you found feces on a pair of
10 underwear, where would you expect to find feces on a pair of
11 underwear?

12 A. Typically it would be found in the back of a pair of
13 underwear.

14 Q. In the crotch area?

15 A. No. Not typically I would not expect it to be found
16 there.

17 Q. Not to get too graphic but where feces comes from is
18 not very far from the crotch, is it?

19 A. That is correct. It's not.

20 Q. That's common sense, isn't it? Now, let's just
21 assume for this question that your presumptive test which
22 tested positive for amylase but you did not confirm for
23 saliva, that it was saliva. Can you tell this jury whose
24 saliva that was?

25 A. No. That is outside of my expertise.

1 Q. Could have been anybody's saliva?

2 A. In my testing I cannot say who deposited the
3 saliva.

4 Q. Ms. Radlein talked to you about no semen being
5 present and what could be some causes that you didn't find any
6 semen on any of this stuff that you were looking at. Another
7 explanation for why no semen was present that you didn't find
8 was because there was no sexual assault, correct?

9 A. That could be an explanation. I do not offer
10 conjectures like that. It's just my job to just test the
11 evidence and offer up my results.

12 Q. But you conjectured when she asked you questions?

13 A. That is true and I did agree that it could be that
14 because there is no sexual assault, it's just that I can't
15 tell if it's not present why it's not present.

16 MR. SCOTT: No further questions, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. RADLEIN:

19 Q. Just to clear up some things. Can saliva be
20 quantified?

21 A. As far as the amount?

22 Q. That's correct.

23 A. Uhm, not exactly. Our tests does not. The test
24 that I performed does not say exactly what amount of saliva
25 was present. No.

1 Q. How about the components of the saliva?

2 A. It does not indicate that. No.

3 Q. Does it have different levels to it in terms of low
4 level or high level of enzymes present in the saliva?

5 A. Uhm, human saliva contains very, very high levels of
6 the enzyme or the component that my test looks for and, uhm,
7 this test is specific to that enzyme and it does typically
8 pick up higher concentrations of it but it's not, the
9 chemistry of it is not exact.

10 Q. But in terms of the higher concentration of it would
11 indicating of saliva and what I'm referring to is a
12 presumptive positive finding of saliva, based on that high
13 level of the enzymes present would that be consistent with
14 saliva and not any other fluid?

15 MR. SCOTT: Your Honor, object to her testifying
16 differently from what she just testified to on cross
17 examination.

18 THE COURT: On cross examination the issue of the
19 enzymes or which enzymes wasn't brought up and so to that
20 extent she can redirect but narrow it.

21 MR. SCOTT: She's re-classifying the saliva again.

22 THE COURT: Rephrase your question, Ms. Radlein.

23 MS. RADLEIN: Your Honor, I definitely said
24 presumptive positive for saliva. He's mischaracterizing
25 what I just said.

1 THE COURT: Ask your question again.

2 BY THE WITNESS:

3 A. Can you repeat the question please?

4 BY MS. RADLEIN:

5 Q. Based on that high level of classification that you
6 said about the presence of the enzymes in saliva, would your
7 findings be consistent with saliva in this case and not any
8 other fluid?

9 A. As to the finding of saliva in this case and not any
10 other fluids I can't really offer a complete opinion on that
11 matter as to the fact that our system that we use for this
12 test, it is presumptive in nature. It is something though
13 that is indicative of saliva and that is why my protocol would
14 indicate that further testing needs to be performed because
15 it's indicating the presence of it.

16 Q. What do you mean by further testing?

17 A. That would mean that I need to forward it onto DNA
18 analysis to let an analyst go ahead and perform their
19 screening on it and see if they can develop a profile from
20 it.

21 Q. Okay. And I know that SLED doesn't have a
22 confirmatory test as you have indicated for what you do in
23 terms of testing for saliva but when you testify that you
24 forward it onto DNA, is that because your department serology
25 and your findings go hand in hand with the DNA findings?

1 A. That is mostly correct in the sense that my findings
2 will basically pave the way for what needs to be tested in DNA
3 and it can determine, my findings determine what is tested for
4 DNA analysis and what the analyst will try and develop
5 profiles from in that specific evidence and then the analyst
6 would be able to provide their opinions on their own
7 results.

8 Q. Okay. One more thing. Why does your report list
9 presumptive presence positive, I think presumptive positive
10 for saliva and not presumptive positive for feces or breast
11 milk?

12 A. That is because this test is a test that we use for
13 the testing of the presence of saliva.

14 MS. RADLEIN: Okay. Thank you, Agent Thompson.

15 MR. SCOTT: Just a few, Your Honor.

16 THE COURT: Brief.

17 RECROSS EXAMINATION

18 BY MR. SCOTT:

19 Q. But you didn't test for feces; is that correct?

20 A. No, sir. I didn't test for feces. I test for
21 saliva based off of the assault history that was provided by
22 the victim.

23 Q. And amylase is in feces?

24 A. That is correct. It can be found in lower levels in
25 feces.

1 MR. SCOTT: Permission to approach, Your Honor.

2 THE COURT: Yes.

3 BY MR. SCOTT:

4 Q. I got a little bit confused during the redirect
5 about concentrations or something like that. I'm going to
6 hand you what you previously identified as some of your bench
7 notes anyway, on number right there at the top right at 1.2 in
8 the comment section it says very weak saliva.

9 A. That is correct. It says that.

10 Q. What does that mean?

11 A. Basically it's a note that can indicate to me the
12 strength of the positive result that I looked at so the result
13 of the test was positive but the strength of the test of the
14 positive result was not super strong. Basically it was not a
15 very strong positive saliva but it was positive.

16 Q. When you say positive saliva, you mean positive
17 alpha amylase?

18 A. Positive for the presumptive testing of saliva.
19 Yes. That's correct.

20 Q. But you were testing for alpha amylase; is that
21 correct?

22 A. Yes, sir. Yes. I was.

23 MR. SCOTT: No further questions, Your Honor.

24 THE COURT: You may step down.

25 MS. MAYES: May we approach?

1 THE COURT: Yes.

2 (Side bar off the record.)

3 THE COURT: The State has one more witness before
4 lunch or after lunch. I'm kind of hungry. Y'all want to
5 do it after lunch?

6 (The entire jury agrees.)

7 THE COURT: It's 12 minutes to one. Is 2:00 enough
8 time, just before 2:00 to start back at 2:00 sharp. All
9 right. Can't discuss the case. Be back here before
10 2:00. We'll try to start at 2:00 sharp. Five minutes
11 till would be great.

12 (Lunch break.)

13 BAILIFF: All rise.

14 THE COURT: Everybody seated and ready to go?

15 MS. MAYES: Yes, sir. Your Honor, there's one
16 matter. Agent Paul Meeh from the State Law Enforcement
17 Division, he conducted the DNA analysis in this case. I
18 had previously covered with him whether he had any photos
19 in his case jacket and bench notes. He did not. He had
20 no photos that related to the testing procedure or policy
21 but he did bring with him today three photos of the
22 external package of the suspect kit. It just shows the
23 documents that it was sealed but because we did not have
24 those, I'm gonna go ahead and provide those to the
25 defense at this time. They can have those photographs

7 MR. MEEH: No, sir.

10 THE COURT: What Ms. Morris collected.

14 THE COURT: Ready to go, Ms. Mayes?

15 MS. MAYES: Yes, sir.

16 THE COURT: Bring them in.

17 (Whereupon, the jury entered the courtroom at 2:05
18 p.m.)

19 THE COURT: All right. Ms. Mayes.

20 MS. MAYES: The State calls Agent Paul Meeh.

21 Thereupon,

22 PAUL MEEH

23 after having been first duly sworn, testified as follows,

24 DIRECT EXAMINATION

25 BY MS. MAYES:

1 Q. Good afternoon.

2 A. Good afternoon.

3 Q. Can you begin by stating your full name for the
4 record.

5 A. Yes. My name is Paul Meeh.

6 Q. Agent Meeh, where are you employed and in what
7 capacity?

8 A. I work for SLED in Columbia, South Carolina, and I'm
9 a forensic scientist in the DNA department.

10 Q. When we talk about DNA, deoxyribonucleic acid, tell
11 us what exactly that term means?

12 A. Well, it's a sugar. It's in every cell in your
13 body. It's the blueprint for what you are. It's what makes
14 you you. It's passed down. You get half from your father,
15 half from your mother. We use it to determine to whom things
16 belong.

17 Q. Tell us some information regarding your educational
18 background and training.

19 A. I got my biology degree which was an undergrad
20 degree from the University of South Carolina in 2001. I got
21 my master's degree in 2003, and that was in part from the
22 medical school from the University of South Carolina. Then I
23 did three years of Ph.D. work at the University of South
24 Carolina but I didn't finish that. I was hired away by SLED
25 in my third-year so I did not complete my Ph.D.

1 Q. How long have you been within the DNA department at
2 the State Law Enforcement Division?

3 A. I've been there for nine years now. That includes
4 one and a half years of training under a certified analyst.
5 When I was initially hired, I had to work with another analyst
6 for one and a half years to learn their methodology and
7 everything.

8 Q. Within the scientific community has the study of DNA
9 science been generally accepted and/or recognized?

10 A. Yes. Very much so. Yes.

11 Q. Have you been offered as a witness specifically as
12 an expert in the field of DNA analysis?

13 A. Yes. I have. I have been classified as an expert
14 in serology and in DNA analysis in the past.

15 Q. Does that include statistical calculations
16 associated with DNA results?

17 A. It does.

18 Q. Can you tell us whether or not you also have a
19 background in serology?

20 A. I do.

21 Q. How so?

22 A. The same training. The one and a half years of
23 training included serology which is the identification of body
24 fluids which we use cards and different methods to try to
25 identify body fluid such as semen and blood.

1 Q. Have you testified previously as an expert regarding
2 serology findings?

3 A. Yes. Many times.

4 MS. MAYES: Your Honor, at this time the State
5 offers Agent Paul Meeh as an expert in the filed of DNA
6 analysis, statistical calculations and serology.

7 THE COURT: Any voir dire?

8 MR. SCOTT: None, Your Honor. No objection.

9 THE COURT: All right. Without objection Agent Meeh
10 is qualified as expert for DNA analysis, statistical
11 calculation as well as serology.

12 BY MS. MAYES:

13 Q. Agent Meeh, I want to start by asking what is unique
14 about the components between human individuals? Specifically
15 what is unique about our own DNA make up?

16 A. Each person has their own DNA except for identical
17 twins. Even identical twins would have small differences in
18 their DNA. The vast majority of you DNA though, 99 percent,
19 98, 99 percent is the same between every single person. The
20 way we can tell the differences in people is that there are
21 little repeats that's just made up of four base pairs. So DNA
22 is made up of C, A, T and G. And all I study in this example
23 is to try and tell a person from another person is I study
24 those repeats and it's just the length of them. You get one
25 set from your dad, one set from your mom and imagine railroad

1 tracks or something so if it's a 10 that you got from your
2 mother and a 12 you got from your father, in that example you
3 would be a 10/12 in my report which you will get a copy of, I
4 assume.

5 Q. So in speaking in terms of DNA, how is it identified
6 and then studied for purposes of forensic analysis such as
7 criminal cases?

8 A. So we isolate the DNA which means just pull it out
9 of cells. We amplify the DNA which means we just make many
10 copies of it and then we put it onto an instrument that
11 measures the different lengths of those segments. We test a
12 bunch of those segments. In this case I think we tested 16.
13 We can move up and do in some cases test 20 sometimes. But in
14 this case we tested 16 different areas of the genome and
15 that's plenty. It usually generates a really nice statistic,
16 you know, in the billions. In this particular example we used
17 something called YDNA profile which means that you only get
18 that from your father so that's what makes a man a man is that
19 he gets an X from his mother and a Y from his father. In this
20 case we tested the Y chromosome. A female we get an X from
21 the mother and an X from the father. Would not have a Y
22 chromosome.

23 Q. When we talk about specifically DNA and submissions
24 to your crime lab for analysis, what type of bodily fluids
25 contain DNA that you can actually identify?

1 A. Everything but red blood cells we can identify
2 DNA.

3 Q. Does that include saliva?

4 A. It does. Yes.

5 Q. Now, do you actually perform the DNA analysis
6 yourself?

7 A. I do.

8 Q. I want to start by asking you whether or not you had
9 the opportunity to conduct DNA analysis in what has been
10 identified as SLED, a lab number L1415051?

11 A. I did.

12 Q. All right. And who is listed as the victim in that
13 case?

14 A. **Minor**.

15 Q. So specifically as to this case regarding **Minor**
16 I want to start by asking you what items were submitted to
17 your department, the DNA analysis department for further
18 testing?

19 A. From what I understand a sexual assault evidence
20 collection kit was submitted to the lab. I didn't personally
21 process that kit. I did receive cuttings from it. Some
22 underwear. Looks like two sets of underwear and some buccal
23 swabs. Buccal swabs are the standard so that means that it's
24 just from your cheek and that's a way we can use that DNA to
25 compare against evidence and see so you have to have a

1 standard by which to compare to the evidence to make sure that
2 it belongs to that person.

3 Q. I want to ask you a little more about that. With
4 the buccal swabs that are needed for comparison analysis, if
5 you have a suspect in the case, a suspected perpetrator, how
6 do you go about breaking down his DNA to compare to whatever
7 evidence came from the child's body or from the crime scene?

8 A. It's usually the same procedure. We just extract
9 the DNA. This is called a buccal epithelium and that's the
10 only reason it's called a buccal swab. It's a complicated
11 word for the cells inside of your mouth. They come off really
12 easily. The cells right inside of your mouth are constantly
13 shedding and so you just take a swab and swab the inside of
14 there. We isolate the DNA from there which is detergents.
15 Really a pretty simple procedure. Everything that we do is
16 rather simple. And we didn't do any differential extraction
17 in this case.

18 Q. I'm gonna show you what is State's exhibit 36
19 already in evidence and ask you whether or not you recognize
20 that item and if so, how?

21 A. I did work on this item. You can see my initials
22 and the date where I would have cut this open and then
23 resealed it and this is item 5.

24 Q. All right. And who actually unsealed that item for
25 the first time at the State Crime Lab?

1 A. I did.

2 Q. So when it arrived to you, was there any evidence of
3 tampering?

4 A. No.

5 Q. Was there any evidence that the seal had been
6 previously broken?

7 A. No. I wouldn't work -- If the evidence had been
8 tampered with, if that seal had been broken, I wouldn't work
9 on it because I have to protect myself. We have to constantly
10 check in the laboratory for things like contamination or
11 crossed up samples and so if there was a case where that
12 evidence had been messed up or somebody else's buccal swab was
13 put in there, I would get in trouble for it so I wouldn't have
14 worked it.

15 Q. Specifically what is that item that's contained in
16 that item that I just handed to you?

17 A. It's item 5. It's a buccal swab from Antonio
18 Posey.

19 Q. All right. Antonio Posey. So that is his DNA
20 sample. Is that a fair way to term that?

21 A. Correct.

22 Q. And when you received that DNA sample from that
23 buccal swab that had been taken from his cheek, were you able
24 to develop a DNA profile?

25 A. Yes.

1 Q. All right. So you then had a record in your lab of
2 what his DNA profile was like?

3 A. Correct.

4 Q. Now, moving on, once you have for your comparison
5 analysis his DNA, are you able to compare that to any other
6 submissions there at the crime lab?

7 A. Yes. We compare it to everything. In this case
8 every other sample. We even compared it to the other items
9 that are in the batch because we want to make sure there's no
10 contamination in the batch.

11 Q. Did you have the opportunity to test an item that
12 was submitted as cuttings from the crotch of white
13 underwear?

14 A. Yes. I was. However, I don't know if the white is
15 item 3.1 or 4.1. It's not listed, the colors are not listed
16 on my report. I think 4 was blue perhaps.

17 Q. Okay. And these submissions come to you from what
18 department?

19 A. The serology department. I'm a serologist also but
20 just to make things go more quickly, it's kind of like a
21 factory. We have an entire serology department that takes in
22 these kits and breaks them down and goes ahead and processes
23 them so I can just do the DNA part. It's just sort of like
24 splitting up the thing into like a factory job kind of.

25 Q. I'm gonna show you an item and ask you whether or

1 not you recognize what type of document that is?

2 A. Yes. This is a serology report. It's complete and
3 it is by Courtney Thompson.

4 Q. All right.

5 A. That's the white underwear would be item 3. I'm
6 sorry.

7 Q. White underwear is item 3. And specifically from
8 the white underwear there was a cutting from what area of that
9 underwear that was submitted to you for further analysis?

10 A. The crotch.

11 Q. All right. Were you able to then develop a DNA
12 profile from the crotch of the white underwear?

13 A. Yes.

14 Q. What did you determine?

15 A. The DNA profile developed from item 3.1 matched the
16 DNA profile of **Minor** and the probability of random
17 selective and unrelated individual having a DNA profile
18 matching that item was approximately one in 12 quintillion.

19 Q. All right. So the underwear, the white underwear
20 looking here at item 27, the white underwear, do those
21 underwear have a crotch?

22 A. Not any longer.

23 Q. Okay. All right. And is there anything that
24 indicates to you that the crotch of this pair of white
25 underwear is the same that would have been submitted to you

1 for analysis?

2 A. Yes. Courtney put the case number and also the item
3 number she wrote on them.

4 Q. All right. So these white underwear had the DNA
5 profile of [Minor]?

6 A. Correct.

7 Q. Can you tell us whether or not that is consistent
8 with [Minor] wearing these underwear?

9 A. I would think so. Yes.

10 Q. Were any other DNA profiles developed from the
11 crotch of the white underwear?

12 A. No YSTR DNA profile was developed but I was able to
13 develop a YSTR profile which is like I said that's a male
14 specific and the YSTR DNA profile from that item matched the
15 DNA, the YSTR DNA profile from Antonio Posey and the
16 probability of randomly selecting an unrelated male individual
17 having a YSTR DNA profile matching that item was approximately
18 one in 3300. And paternal relatives of Antonio Posey may not
19 be excluded as the contributor to that profile. What that
20 means is that so his father has that same YSTR DNA profile so
21 he and his bothers and his grandfather would also. Now, it
22 does mutate over time. I mean, if you went back ten
23 generations, it might be one or two different. But in this
24 example it matched in every position. In the case of 3.1 the
25 positions that did generate a profile matched Antonio Posey.

1 Q. All right. So the cutting of the crotch from the
2 white underwear is a DNA match to Antonio Posey?

3 A. And any of his paternal relatives. Correct.

4 Q. What other items were submitted to you for DNA
5 analysis?

6 A. I also got item 1.2 which was vaginal swabs which
7 was from a sexual assault evidence collection kit.

8 Q. Just to clarify, those vaginal swabs would come
9 directly from whom?

10 A. [Minor].

11 Q. All right.

12 A. And I was able to generate a regular STR profile
13 that matched [Minor] which we completely expect. We just
14 need to make sure that it came from her and there weren't any
15 mix ups. I was also able to develop a full YSTR DNA profile
16 from that sample and that YSTR DNA profile also matched
17 Antonio Posey but I got more positions. I was able to develop
18 a more full profile. The statistic was the probability of
19 randomly selecting unrelated male individual having a YSTR DNA
20 profile matching that item is approximately one in 8600.

21 Q. So when you talk about vaginal swabs that are taken
22 directly from the vaginal opening, would you normally expect
23 to find the DNA of [Minor] if they are from her vaginal
24 opening?

25 A. Yes.

1 Q. What, if anything, is significant about the fact
2 that you also found male DNA that matched Antonio Posey?

3 A. It's not to be expected especially not from vaginal
4 swabs. The vagina itself, things constantly move out. They
5 don't tend to move in no matter what sort of fluid you put in
6 there it tends to come out given gravity, showering,
7 urination, things like that. I wouldn't have expected to see
8 this given daily interaction.

9 Q. What other items were submitted to your DNA
10 department specifically to you as a analyst for comparison
11 analysis?

12 A. Item 1.6 which is called suspected saliva swabs and
13 that was also from the sexual assault evidence collection
14 kit.

15 Q. Were you able to develop a DNA profile?

16 A. I was not. I got a partial DNA profile. It wasn't
17 -- I don't think --

18 Q. Now, you mentioned that there was a sexual assault
19 evidence collection kit. Do you know whether or not underwear
20 from a victim is normally taken at the hospital directly from
21 their body?

22 A. Yes. They are.

23 Q. I'm gonna show you what is currently marked as
24 State's exhibit 28 and ask you whether or not you're familiar
25 with the packaging of that type of item?

1 A. This is a very common package that underwear would
2 come in from a sexual assault evidence collection kit.

3 Q. Can you tell us whether or not there's a crotch to
4 this underwear?

5 A. There no longer is.

6 Q. What, if anything, indicates that this item was
7 handled by your lab?

8 A. The lab number is written on it. The item number is
9 written on it as well as the analyst's initials where they
10 worked on it.

11 Q. What label of item would this be and how was it
12 coded in terms of color in reference to your reports?

13 A. That would be item 4. The cuttings would be 4.1
14 and 4.2. The serology report says blue underwear.

15 Q. All right. So that's the blue underwear that we're
16 gonna be referring to directly from the hospital, the sexual
17 assault kit. You have indicated that the crotch area was cut
18 and submitted to you for further analysis?

19 A. Correct.

20 Q. What, if anything, did you determine once you
21 analyzed the crotch area from the blue underwear?

22 A. The regular STR DNA profile was a mixture of two
23 individuals. Minor was the major contributor to that
24 mixture but the minor contributor, there wasn't enough
25 there for me to tell to whom that belonged to, the minor

1 contributor. I couldn't analyze it so I took it onto a YSTR
2 DNA testing and that also matched Mr. Antonio Posey and that
3 would be item -- Excuse me.

4 Q. All right. So again, the fact that a DNA profile
5 for **Minor** was developed from those underwear would
6 indicate what, if anything?

7 A. That she wore them.

8 Q. Okay. All right. And then you say that there's one
9 more DNA profile that you were able to develop and that's a
10 match to who?

11 A. Antonio Posey. The YSTR DNA profile also matched
12 Antonio Posey. That was a full profile for 8600 was the stat
13 for that.

14 Q. And that was a full profile match?

15 A. Correct. A full YSTR DNA profile.

16 Q. What, if anything, is significant about that finding
17 in terms of it being in the crotch of the underwear?

18 A. I wouldn't expect to find them. I have three
19 daughters and I often do the laundry and I wouldn't expect to
20 find that in any of my children's underwear.

21 Q. Now, I want to also have you address due to your
22 serology background as well as your current position as a DNA
23 analyst what, if anything, can you tell us about the
24 distinction between DNA that's left behind, for example, touch
25 DNA, if I were to reach out and touch someone as opposed to

1 DNA that's left behind from a bodily fluid?

2 A. Bodily fluids leave much more DNA than touch does.
3 Touch DNA, for example, if one of the jurors had a pen and we
4 passed it around, I probably wouldn't be able to tell you to
5 whom -- I probably would be able to pick out to whom it
6 belongs. I would be able to say it's your pen but I couldn't
7 tell you who else touched it. Just touching things doesn't
8 pass along a tremendous amount of DNA. As a matter of fact,
9 there are entire industries that are dedicated to this. This
10 is called an EMFAC system which things like kidnapping, you
11 know, a subject may grab a kidnap victim by the shoulder or by
12 the shirt and drag them around. We have the system to try to
13 retrieve touch DNA from those and it doesn't work very often.
14 You just don't leave that much and so how it relates to this
15 case I just don't think that just touching or handling the
16 underwear would have given us enough to complete a full YSTR
17 DNA profile.

18 Q. What, if anything, does the fact that you have a DNA
19 profile developed from the crotch of two pairs of underwear
20 and then a full DNA profile developed from vaginal swabs what,
21 if anything, does that indicate about the presence of a
22 foreign bodily fluid such as from the perpetrator of a sexual
23 assault case?

24 A. Especially on the vaginal swabs, that's a surprising
25 finding because I have worked many, many cases and I don't

1 mean to sound incentive, but even in obvious cases of sexual
2 abuse for children, if there's just digital penetration with
3 just a hand or something, we don't normally get anything. And
4 that's coming from a medical doctor tells me specifically that
5 this child has obvious signs of sexual abuse, digital
6 penetration is reported by the child age six and up and we
7 don't get enough to get a YSTR or even close to a full YSTR
8 DNA profile. So I would think that there would have to be
9 extensive contact with the vaginal canal to generate this
10 profile personally.

11 Q. To a reasonable degree of scientific certainty can
12 you tell us whether or not these findings suggest that a
13 bodily fluid from a foreign perpetrator was deposited into the
14 vaginal opening of **Minor**?

15 A. In my opinion, yes. It does indicate that.

16 Q. Can you tell us whether or not that bodily fluid is
17 consistent with saliva?

18 A. It could be. It's possible. Yes. It could have
19 also been -- I'm just trying to think in general terms. It
20 could have also been sex. Sex is slightly different than just
21 digital penetration. It causes a lot more friction and would
22 have left, it could have left enough DNA to create this
23 scenario. Perhaps putting saliva on your fingers or to try to
24 lubricate them could possibly have lead to this type of
25 scenario. So I can think of a couple of scenarios that would

1 have led to these results but it's consistent with extensive
2 contact. Yes.

3 MS. MAYES: Nothing further at this time, Your
4 Honor.

5 CROSS EXAMINATION

6 BY MR. SCOTT:

7 Q. Good afternoon, Mr. Meeh.

8 A. Good afternoon.

9 Q. Looking at the results of your test and you said
10 this several times and I appreciate it, I would just like for
11 you to explain it a little bit more, if you would. In every
12 one of your positive matches, that comes with a caveat that
13 paternal male relatives of Antonio Posey may not be excluded
14 as a contributor of this profile; is that correct?

15 A. That is correct.

16 Q. And that's correct because every paternal male
17 relative to Antonio Posey has that same YSTR DNA; is that
18 correct?

19 A. Yes, sir. That is correct.

20 Q. And that would be his father. And that would be if
21 he has male children, that would be his male children, his
22 grandfather, uncles?

23 A. Yes.

24 Q. All the males on that side of his family?

25 A. Correct.

1 Q. So unlike the, if I mispronounce this, you tell me,
2 unlike the autosomal DNA, this is not, YSTR DNA is not
3 uniquely identifying?

4 A. That's correct.

5 Q. I think you testified early on that everything
6 except red blood cells contain DNA?

7 A. Correct.

8 Q. Skin cells contain DNA?

9 A. Yes, sir.

10 Q. When you do your analysis like you did in this case,
11 can you distinguish, when you develop a DNA profile, can you
12 distinguish DNA from saliva as opposed to DNA from epithelial
13 cells or skin cells?

14 A. No. We cannot.

15 Q. They're exactly the same?

16 A. Yes, sir.

17 Q. And can DNA transfer from the skin of a person to an
18 object such as clothing assuming the person touched that
19 object of clothing?

20 A. It can.

21 Q. And if that happens, if my DNA transfers to this pen
22 or transfers to my jacket or something like that and then
23 someone else puts, handles this pen or puts this jacket on,
24 could it possibly happen that my DNA would then be transferred
25 to the person who handled this pen or who wore my clothing?

1 A. Yes.

2 Q. In this particular case do you know exactly what,
3 not to get too graphic here, but what part of the vagina the
4 vaginal swabs were collected from?

5 A. No, sir.

6 Q. I think there was a question earlier about where the
7 Solicitor said the vaginal canal but you don't know if it was
8 collected from the vaginal canal; is that correct?

9 A. That's correct.

10 Q. So it could have actually been on the exterior of
11 the vagina?

12 A. It's possible but the kits that are submitted to us,
13 they normally contain several envelopes that are labeled and
14 so if they were the external genital, we have an external
15 genitalia swab in there and an envelope that's labeled for
16 that. So usually the vaginal swab is for the vaginal opening
17 and inside.

18 Q. Do you know in this case?

19 A. No, sir.

20 Q. Now, you also said, I think you said that **Minor**
21 likely wore these underwear, but you can't say for sure that
22 she wore these underwear, can you?

23 A. Given the full DNA profile, given the amount of DNA
24 I got from the underwear, I would, in my opinion she would
25 have had to have worn them. I can't say for certain. She

1 could have done other things with them that would have left a
2 tremendous amount of DNA on them but I assume wearing them
3 would be the most normal of those activities, if that makes
4 sense.

5 Q. Let me maybe give you a hypothetical. If she had
6 maybe her clothes were in a pile with some other clothes and
7 maybe her clothes were wet from sweat perhaps and maybe wet
8 from urine or wet from vaginal discharge and they were in a
9 pile of clothes, would it be possible that her clothes, that
10 those other clothes could pick up her DNA and her clothes
11 could pick up that other DNA?

12 A. I see what you mean. I would expect given that
13 scenario if we were going to transfer to someone else's
14 clothes --

15 Q. And I apologize for interrupting you. If you could
16 just give me a yes or no answer and then you can explain.

17 A. Well, then no.

18 Q. Is it possible?

19 A. Is it possible? Not in this example I don't feel
20 it's possible. In my opinion no because of the amount.
21 Again, going back to the amount of DNA, if that were the case,
22 we would expect to see a mixture of the person to whom the
23 clothes actually belonged and then on top of that we may see
24 some of **Minor**'. But again going back to that, there's an
25 entire industry that's dedicated to trying to pick up traces

1 of someone else's DNA from things like this. From secondary ,
2 transfer. It's just difficult for DNA to move that way. It's
3 possible, but I don't feel that it would work in this example.

4 Q. Is it possible for DNA to be planted on evidence?

5 A. Yes.

6 Q. Give me an example of how DNA can be planted on
7 evidence.

8 A. If I had your blood or I had a saliva sample from
9 you, a liquid, I could take it and put it onto clothe or onto
10 a door handle or anything.

11 Q. If you had, for instance, if you had my wet
12 toothbrush, could you take my wet toothbrush and transfer my
13 DNA onto an object that I never came in contact with?

14 A. Yes, sir.

15 Q. If you had clothing of mine that perhaps I had
16 ejaculated in, could you then use that pair of clothing and
17 transfer that ejaculant to another pair of clothing?

18 A. That would be more difficult than a toothbrush but,
19 yes, it is possible, and you would have to wet it because the
20 dry stains are pretty stable or very stable in my opinion and
21 so you would have to moisten it somehow to transfer it.

22 Q. Suppose it was still damp or wet?

23 A. Yes. If the ejaculant were still wet. Yes, sir.

24 Q. It would be a lot easier?

25 A. Yes, sir.

1 Q. And you don't know how many paternal male relatives
2 Antonio Posey has?

3 A. No. I do not.

4 Q. And you don't know how many he has in the Saluda
5 area?

6 A. No, sir.

7 MR. SCOTT: I don't have any further questions, Your
8 Honor.

9 THE COURT: Any redirect?

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

11 REDIRECT EXAMINATION

12 BY MS. MAYES:

13 Q. Okay. So to follow up, I believe he was asking you
14 about the white underwear. You previously identified this
15 white underwear as which item number?

16 A. 3.

17 Q. All right. That white underwear item number 3?

18 MR. SCOTT: I don't recall asking him specifically
19 about the white underwear.

20 MS. MAYES: I'll clarify that then. I'll cover both
21 underwear.

22 THE COURT: You asked about a lot of clothing.

23 MR. SCOTT: I didn't specifically ask about these
24 clothing.

25 MS. MAYES: I believe, Your Honor, I can rephrase

1 that.

2 THE COURT: You both talked about clothing so I'm
3 going to allow some latitude on redirect.

4 BY MS. MAYES:

5 Q. He was asking you about clothing items that were
6 underwear and what, if any, indication did you have that
7 Minor actually wore those underwear. And so I'm going to ask
8 you about both pair of underwear, the white underwear and the
9 blue underwear. What indication do you have that Minor wore
10 those underwear and not some other random female?

11 A. The DNA matched. The autosomal DNA matched her
12 perfect for both.

13 Q. Was that a full DNA match to Minor?

14 A. Both.

15 Q. All right. On both pair of underwear. Was any
16 other unidentified DNA from another female found on either of
17 those underwear?

18 A. On the blue underwear there was an indication, there
19 was a little bit, a tiny smudge of DNA from someone else but I
20 can't say who that belongs to, male or female.

21 Q. And that's on the blue underwear?

22 A. Correct.

23 Q. And the blue underwear just to clarify came from her
24 sexual assault kit, correct?

25 A. Correct.

1 Q. So those came directly off her body?

2 A. Correct.

3 Q. As we're talking about the DNA match to Antonio
4 Posey, was there ever any indication of any other male other
5 than the, what you have identified as the Y match to Posey or
6 a direct paternal relative?

7 A. There was no other DNA other than Mr. Posey or a
8 direct paternal relative.

9 Q. Now, he was asking you about evidence being planted.
10 For example, hypothetical evidence is somehow planted onto
11 underwear, into someone's vagina. What can you tell us in
12 terms of dry stains versus wet stains and what it would take
13 to actually deposit someone's DNA behind?

14 A. As I was saying, when he was referring to that, a
15 dry stain would be very difficult to plant evidence with. I
16 don't know that you could do it. If it had dried up, you
17 could try to rub things together and it wouldn't transfer very
18 well. Even if you and I put blood on each of our own shirts
19 and tried to rub those together to try to make a mixture, it
20 might do some but I definitely would be able to tell that it
21 was your blood on your shirt and then there would be some of
22 mine. Now, wet stain, you could plant evidence really well
23 with wet stain or with a wet toothbrush. You could. In
24 reference to just general planting I don't know. I could
25 think of a lot of things. But do you want more scenarios of

1 planting evidence?

2 Q. I would just like you to clarify, if you could,
3 whether or not that would require that it be wet at the time
4 of the transfer or deposit?

5 A. It really probably would. Yes.

6 Q. And in terms of that type of deposit, a wet transfer
7 or wet deposit, can you tell us whether or not that's
8 consistent with the act of oral sex, placing a mouth on a
9 vagina for example?

10 A. I'm sorry. Could you repeat that please?

11 Q. Can you tell us whether or not wet transfer that you
12 referred to is consistent, whether that's consistent or
13 inconsistent with active oral sex?

14 A. It's inconsistent. I mean, I'm not sure I
15 understand the question. Because if you are attempting to
16 plant evidence of oral sex --

17 Q. I'm sorry. Let me rephrase. Not in terms of
18 planting. In terms of the act, the act of placing a mouth on
19 a vagina, can you tell us whether or not that may leave DNA
20 behind?

21 A. Yes. I mean, putting a mouth on a vagina would
22 definitely leave DNA behind.

23 Q. Now, finally I want to ask you about the scenario
24 that Mr. Scott was asking you about and that was someone
25 touching someone's clothing, someone reaching out and touching

1 the clothing or handling the clothing.

2 A. It wouldn't be consistent with the results in this
3 case just because of the amount of DNA we got. I wouldn't
4 expect to get a full YDNA profile from just handling clothing
5 like that.

6 Q. Would you expect that the handling of clothing would
7 leave a full DNA profile in the vaginal area?

8 A. Definitely not. That's indicative of, like I said,
9 more extensive contact with the vagina because digital
10 penetration just doesn't leave enough behind. The result from
11 the vaginal swab is indicative of more than just passing
12 content.

13 MS. MAYES: Nothing further.

14 THE COURT: Any recross?

15 MR. SCOTT: Nothing further.

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

17 MS. MAYES: We ask that Agent Meeh be excused.

18 THE COURT: Any objection to that?

19 MR. SCOTT: None, Your Honor.

20 THE COURT: Very well. He's excused.

21 MS. MAYES: Your Honor, at this time the State will
22 rest.

23 THE COURT: Very well. All right. I have got to
24 put a few things on the record and speak to the attorneys
25 a little bit so y'all need to step into the jury room.

1 violated his rule. It must be the seat two rule. Judge
2 Moore kind of had the same rule. He had this seat before
3 Judge Johnson. All right. Bring in the jury.

4 (Whereupon, the jury entered the courtroom at 3:02
5 p.m.)

6 THE COURT: All right. Folks, now it's the
7 opportunity for Mr. Posey's table to present any evidence
8 they wish for you to consider. They have indicated they
9 are going to call some witnesses so when y'all are
10 ready.

11 MR. SCOTT: Your Honor, is the floor mine?

12 THE COURT: It is.

13 MR. SCOTT: We call Dr. Wayne Burrows.

14 MS. MAYES: Your Honor, may we approach?

15 THE COURT: You may.

16 (Side bar off the record.)

17 Thereupon,

18 WAYNE BURROWS

19 after having been first duly sworn, testified as follows,

20 DIRECT EXAMINATION

21 BY MR. SCOTT:

22 Q. Dr. Burrows, would you introduce yourself to the
23 jury and tell them a little bit about yourself, particularly
24 your education.

25 A. Okay.

1 Q. And your profession.

2 A. My name is Wayne Burrows. I went to MUSC Medical
3 School '78 to '82. Did a residency in OB-GYN at Emory
4 affiliated hospitals in Atlanta '82 to '86 and I was in the
5 Air Force for a while, then I did a fellowship in high risk
6 pregnancy in maternal fetal medicine at Case Western and I
7 have been practicing OB-GYN up until about 2006 I think I
8 quit.

9 Q. Okay. And as part of your -- Were you licensed to
10 practice medicine by any state licensing board?

11 A. South Carolina, Georgia, Ohio, Illinois.

12 Q. Where are you currently located?

13 A. Well, I live in Illinois but I gave up my license.
14 You're supposed to give up your license when you retire. I
15 actually did. I think I'm the only person alive who did.

16 Q. As part of your obstetrics and gynecology practice,
17 did you have occasion to examine victims and alleged victims
18 of sexual abuse?

19 A. Yes. That was something that I considered very
20 important.

21 MR. SCOTT: Your Honor, I would based on education
22 and experience I would present him to the Court as an
23 expert in obstetrics and gynecology.

24 MS. MAYES: Your Honor, if I may inquire further?

25 THE COURT: I will allow you some voir dire.

1 VOIR DIRE EXAMINATION

2 BY MS. MAYES:

3 Q. And you stated that you are currently a licensed
4 physician where?

5 A. No. I do not have a license. That's what I said.
6 I gave up my license. That was -- I guess nobody else in the
7 world did but I did.

8 Q. Okay. You gave up all of your medical licenses?

9 A. Yes.

10 Q. So you're not a licensed physician anywhere
11 anymore?

12 A. Not anymore. No.

13 Q. All right. When is the last time that you did an
14 exam in a case for sexual assault or sexual abuse?

15 A. Approximately 2003.

16 Q. 2003. 14 years ago?

17 A. Yes.

18 Q. And that was in what state?

19 A. Illinois.

20 Q. All right. And when I say did an exam, I'm saying
21 you actually saw that patient to assess for --

22 A. Yes. Full rape exam with a rape kit.

23 Q. So you were collecting evidence?

24 A. Yes, ma'am.

25 Q. All right. In terms of conducting examinations for

1 signs of chronic sexual abuse, when was the last time you did
2 that type of exam, if ever?

3 A. Oh, very often, but I don't remember exactly when.

4 Q. It would have been prior to 2003?

5 A. Probably. Yes.

6 Q. All right. Have you done such an exam on a child?

7 A. Everything from a two week old baby up to an 80 some
8 year old lady.

9 Q. But I'm asking about for chronic sexual abuse?

10 A. Yes.

11 Q. So I'm distinguishing between an evidence collection
12 exam such as when someone arrives at the hospital and you're
13 taking swabs and underwear from their body, I'm asking about
14 actually seeing a victim of sexual abuse that's been going on
15 for some time?

16 A. Yes. A lot of the children especially claim that
17 they had been abused over a period of months, sometimes
18 years.

19 Q. Where did you see them at?

20 A. Georgia, Ohio, Illinois.

21 Q. But under what type of setting?

22 A. Mostly --

23 Q. Or in the hospital? In your office?

24 A. Oh, I see. Sometimes I would see them in the
25 office. They would come in and make a complaint and I would

1 try to assess whether or not a kit was necessary. Sometimes I
2 would see them in the hospital. It would depend.

3 Q. All right. Let me clarify again then. In terms of
4 actually evaluating for chronic child sexual abuse --

5 A. Yes.

6 Q. -- have you ever been qualified as an expert in that
7 field?

8 A. Yes. In court you mean?

9 Q. You have been qualified as an expert in chronic
10 child sexual abuse?

11 A. As far as I know, you know.

12 Q. So you're really not sure?

13 A. I have testified in cases where, involving chronic
14 child sexual abuse.

15 Q. All right. In what state?

16 A. Well, one was in the Air Force. That was in
17 Florida. Georgia. Several in Illinois. I don't think --

18 Q. What year?

19 A. Well, let's see. I was in Florida in the Air Force
20 '82 to '86. I was in Ohio -- I'm sorry. Florida in the Air
21 Force '86 to '90. I was in Ohio '90 to '92. I did not do any
22 exams at that time. I was at the University South Carolina
23 from '92 to I believe it was '95, '96 and I did some exams
24 here at that time.

25 Q. I'm asking when was the last time you actually

1 testified in court and were qualified as an expert regarding
2 chronic child sexual abuse?

3 A. Probably would have been before 2003.

4 Q. It would have been definitely been before 2003 based
5 on the scenario you just gave; is that correct?

6 A. That's correct.

7 Q. And backing up even further, I believe you said the
8 last time you testified about the results of a child exam was
9 in the Air Force?

10 A. No. It was in 2003.

11 Q. It was in 2003?

12 A. Yes.

13 Q. You actually saw that child?

14 A. Oh, yes.

15 Q. So the last time you gave any expert opinion in a
16 court it was a court of what state in 2003?

17 A. Illinois.

18 Q. All right. And what year did you give up your
19 medical license?

20 A. Well, let's see. I quit practicing around 2005,
21 2006 and whenever it came due, I don't know exactly when, I
22 just said I retired. I didn't want to renew it. It might
23 have been 2007, something like that.

24 Q. Did the board request you to release your license?

25 A. No, ma'am.

1 Q. You did that voluntarily?

2 A. Yes, ma'am.

3 Q. And so with that being the case since 2005 or 2006
4 you haven't actually even seen any patients because you're not
5 a practicing physician?

6 A. No.

7 Q. All right. So over 11 or 12 years since you haven't
8 seen a lot of patients in terms of actually doing an
9 examination?

10 A. In terms of practicing in any way, yes.

11 Q. And you were licensed in what specific area?

12 A. OBG -- Well, I don't know if --

13 Q. So let me follow up on that. But you at one point
14 had a medical degree?

15 A. Yes.

16 Q. From what medical school?

17 A. MUSC in Charleston.

18 Q. And once you become or receive an M.D., you can then
19 follow up with specific board certification?

20 A. Yes.

21 Q. What fields did you actually take the board
22 certification in, actually take the examination and were
23 qualified or certified in?

24 A. OB-GYN.

25 Q. You were certified as an OB-GYN?

1 A. Board-certified.

2 Q. In what year?

3 A. Oh, my. I don't recall. I'm going to guess '88.

4 Q. Okay. Almost 30 years ago. Okay. So

5 board-certified OB-GYN and then what happened to that board
6 certification?

7 A. It lapses after ten years so I don't remember
8 exactly what year it was. It was like the year 2000 or
9 something it lapsed.

10 Q. Okay. According to your resume, you spent a lot of
11 time in the field of management?

12 A. No. That's something I just got into recently.

13 Q. Okay. Health field management?

14 A. Yes. It's health information management. Medical
15 records basically.

16 MS. MAYES: Your Honor, if I could just clarify,
17 what is the specific field that he was offered as an
18 expert in?

19 THE COURT: Obstetrics and gynecology, I believe.

20 MR. SCOTT: Correct.

21 BY MS. MAYES:

22 Q. And you have testified as an expert in the field of
23 OB-GYN how many times?

24 A. Oh, I'm going to guess 75 to a hundred maybe.

25 Q. That's a guess?

1 A. Yes.

2 Q. Did any of those include the State of South
3 Carolina?

4 A. Yes.

5 Q. And the last time you would have testified was
6 2003?

7 A. Yes.

8 MS. MAYES: Nothing further at this time, Your
9 Honor.

10 THE COURT: All right. The Court will qualify him
11 as an expert in the field of obstetrics and gynecology.

12 MR. SCOTT: Thank you, Your Honor.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. SCOTT:

15 Q. Now, doctor, you understand what we are here for
16 today?

17 A. Yes.

18 Q. The State versus Antonio Posey?

19 A. Yes.

20 Q. At my request did you review certain materials?

21 A. Yes.

22 Q. What do you recall reviewing in this case?

23 A. Oh, let's see. There were some examinations of the
24 two siblings on a disk.

25 Q. The interviews?

1 A. Yes.

2 Q. The Children's Advocacy Center interviews?

3 A. Yes. And the exams.

4 Q. The SANE exam that was performed on [Minor] ?

5 A. Yes.

6 Q. On December 2nd, 2014?

7 A. Yes.

8 Q. As well as the 27 photographs taken by Nurse
9 Jennifer Nguyen performed contemporaneous with what
10 examination?

11 A. Yes.

12 Q. So you're familiar with the allegations being raised
13 against Mr. Posey?

14 A. Yes.

15 Q. Which are of chronic sexual abuse of his
16 stepdaughter [Minor] ?

17 A. Yes.

18 Q. Now, I think, I believe you said a little bit
19 earlier that you think you testified 75 or 80 times?

20 A. Roughly. I didn't really keep track but that seems
21 about right.

22 Q. Were the majority of those cases criminal cases like
23 we are here for today?

24 A. Yes.

25 Q. Were all of them criminal cases?

1 A. No. No. Sometimes I would make my opinion
2 available to attorneys, civil, criminal, either side. I
3 didn't care. They could either use it or forget it if they
4 wished.

5 Q. Can you tell me how many criminal cases you have
6 testified in as an expert?

7 A. 40. 50.

8 Q. Out of those 40 or 50 how many times did you testify
9 on behalf of the defendant?

10 A. Only one other time.

11 Q. So this would make the second time that you have
12 ever testified on behalf of a defendant?

13 A. Yes.

14 Q. I think you said you gave up your, you gave up your
15 medical license in '05?

16 A. '05. '06. Somewhere around there.

17 Q. The last state that you were licensed to practice in
18 was Illinois?

19 A. No. The last state I was licensed in was South
20 Carolina. That's the one I renewed last.

21 Q. I'm sorry. Since you gave up your medical license,
22 have you kept current with medical literature on the subject
23 of obstetrics and gynecology?

24 A. Some areas. Not like I did when I was practicing
25 but I have kept up some, some areas.

1 Q. Are you aware of any changes in the female anatomy
2 in the last 14 years?

3 A. No.

4 Q. Tell the jury, if you would, what a normal 10 year
5 old child's hymen might appear like in your experience?

6 A. There are many, many ways it can appear. Obviously
7 if a young lady is going to have menstrual periods, there has
8 to be some sort of hole or holes in the hymen. Some have like
9 very tiny holes all around. Some have like one large central
10 hole. Some have multiple holes. It just varies from one
11 young lady to the next.

12 Q. Let me show you what's already been marked by the
13 State as State's exhibit number 1. Now, this was represented
14 as a --

15 A. It's a pretty good depiction of a vagina.

16 Q. Yeah.

17 A. Here is the hymen here and here is the hymenal
18 orifice or opening here so that's a fairly common situation.

19 Q. Okay. Now, did you notice then Nurse Nguyen's exam
20 she said **Minor** had a fimbriated hymen?

21 A. Right.

22 Q. What does that mean?

23 A. Can I make a drawing?

24 Q. Yes.

25 A. Fimbriated just means fingers so it means it's just

1 got indentations.

2 Q. You can come over here and just draw on the board if
3 you want?

4 A. (Witness complies.) So the fimbriated hymen would
5 look like that as opposed to the one on the cartoon that was
6 perfectly round. That's the only difference.

7 Q. You can go back over there.

8 A. (Witness complies.)

9 Q. So just maybe my word, not yours, but like serrated
10 edges or something like that?

11 A. Exactly. That's a good way to put it. I hadn't
12 thought of that.

13 Q. You testified again you can use serrated edges?

14 A. Yes, sir.

15 Q. Help you out. There have been some photos put into
16 evidence. Now you previously viewed all of the photos?

17 A. Yes, sir. Everything I received I reviewed.

18 Q. From the SANE exam. And you're aware of the
19 allegations?

20 A. Yes.

21 Q. That this was -- That this is something that - this
22 sexual assault happened every night or every other night or
23 maybe every three nights for --

24 A. A long time.

25 Q. -- almost two years?

1 A. Yes.

2 Q. Which would, if true, would be hundreds and hundreds
3 of --

4 A. Yes.

5 Q. -- penetrations? Here are two of the exams marked
6 as State's exhibit 32 and defendant's exhibit 3. Just take a
7 look at that.

8 A. Sure.

9 Q. Do you recall --

10 A. Yes.

11 Q. -- those were at least among the photos that I
12 provided to you?

13 A. That's right.

14 Q. Is the anatomy depicted in these two pictures as
15 well as the other 22 odd pictures conducted, taken by the SANE
16 nurse, are they consistent with a nine or 10 year old female
17 who has been sexually assaulted hundreds of times?

18 A. No. There's no evidence of penetration that it
19 occurred.

20 Q. What would you expect if there had been even 50
21 penetrations?

22 A. May I?

23 Q. Sure.

24 A. Again, please pardon my art work. So typically
25 instead of seeing the hymen, you would see little remnants of

1 it around the edges of the vaginal orifice or opening.

2 Q. Now, you agree that hymenal tissue has the ability
3 to regenerate?

4 A. Not that I'm aware of.

5 Q. It doesn't?

6 A. No.

7 Q. If these photos are not consistent with a child
8 having been penetrated 50 times over the last year and a half,
9 would they be consistent with a child having been penetrated
10 six times --

11 A. No.

12 Q. -- over the last week before the exam was performed?

13 A. No. Those photographs suggest that the child has
14 never been penetrated. Strongly suggests I guess I should
15 say.

16 Q. Would you classify or would you define that as an
17 intact hymen?

18 A. That's not exactly a medical term but yes.

19 Q. To the extent there can be one?

20 A. Yes.

21 Q. There has to be something for discharge to come out,
22 for menstruation to come out?

23 A. Exactly. Yes.

24 Q. Would the timing of the exam, if the exam were, if
25 the physical exam and the photos were taken within a day or so

1 of the last contact, would that make it more likely that you
2 would find physical evidence of the assault?

3 A. Sure. Especially in a young girl. I would be
4 looking for more traumatic problems. Bruising, tears. What
5 that they call micro tears sometimes. I used to use what's
6 called a colposcope, like a microscope to examine them to look
7 for those. I would expect in someone of that age where an
8 adult was involved, I would expect to find some sort of
9 evidence of trauma.

10 Q. How about if there had been digital penetration,
11 would you expect there to be more trauma than you see on these
12 photos?

13 A. Probably unless somebody really knew the anatomy
14 really well.

15 Q. Maybe if they had a really tiny finger?

16 A. No. Like I used to have very like tiny speculums,
17 ladies that was important to them but they wanted to have an
18 exam but I had to be very careful of putting it in and taking
19 it out but I didn't disturb the natural tissue so...

20 Q. Is it is your opinion to a reasonable degree of
21 medical certainty that these photos and the other photos that
22 you observed are inconsistent with the allegations that are
23 being made against Mr. Posey?

24 A. Yes, sir. That's what my opinion is.

25 MR. SCOTT: Thank you. I don't have any further

1 questions.

2 CROSS EXAMINATION

3 BY MS. MAYES:

4 Q. All right. Now, you are now Mr. Burrows, not Dr.
5 Burrows, correct?

6 A. I don't care. Either way.

7 Q. All right. And I think in follow up to some of the
8 voir dire questions that I had for you it looks like according
9 to your resume online you left the medical field due to mental
10 and physical exhaustion, correct?

11 A. No. That's why I left USC. They had me in charge
12 of so many different things, I couldn't stand it. I was
13 getting no sleep.

14 Q. And you left to re-assess your goals, correct?

15 A. I'm sorry. I did not hear that.

16 Q. You left to re-assess your goals?

17 A. Yes. I didn't know if I wanted to stay in academics
18 or just go into private practice.

19 Q. But you didn't go into private practice?

20 A. I actually ended up working for other people for a
21 while. I ended up in private practice at the very end of my
22 practice.

23 Q. All right. And the last time that you actually
24 treated a patient as a physician was what year?

25 A. Oh, let's say 2005.

1 Q. That's the year you gave up your license?

2 A. No. It was the year after like 2006 I started
3 giving up licenses.

4 Q. All right. So over a decade ago since you last saw
5 a patient?

6 A. Yes, ma'am. That's correct.

7 Q. Now, one of the questions that was presented to you
8 during direct examination was whether or not you still keep up
9 with the literature and you said quote "in some areas" --

10 A. Yes.

11 Q. "Since 2003". But --

12 A. Since 2005. Yes.

13 Q. But there are some areas where you haven't been
14 keeping up with the literature, correct?

15 A. That's correct.

16 Q. And one of those would be in the field of chronic
17 sexual abuse of children, correct?

18 A. No. That's something actually that would catch my
19 attention that I would be interested in.

20 Q. So have you keep up with the leading article on
21 normal exam in child sexual abuse victims which is entitled
22 "Examination Findings In Legally Confirmed Child Sexual Abuse.
23 It's Normal To Be Normal", an article published by Dr. Adams,
24 Dr. Harper, Sandra Knudson and Juliette Revilla?

25 A. No. But I'm aware of similar articles published

1 previously.

2 Q. Okay. Well, this one is from the Journal of
3 Pediatrics. I'm gonna go ahead and submit it to you.

4 A. Sure.

5 Q. Now, this being a leading article in the filed of
6 chronic sexual abuse examination of children, you're not
7 familiar with it, are you?

8 A. No. I'm not familiar with this particular one.

9 Q. Okay. Let's take a look at this. So according to
10 the Journal of Pediatrics in legally confirmed cases of child
11 sexual abuse only 14 percent have abnormal findings.

12 A. That's not been my experience.

13 Q. It's not your experience but it's the experience
14 that is noted by your peers in the medical field specifically
15 in the Journal of Pediatrics and by pediatricians who
16 specialize in chronic child sexual abuse?

17 A. They're my peers still. As you were saying I'm Mr.
18 Burrows.

19 Q. All right. So 14 percent have abnormal. That's
20 going to leave 86 percent that are within the description of
21 normal. And again according to this published article
22 recognized not only by your peers but by experts in this field
23 these are legally confirmed cases of sexual abuse?

24 A. Mm-hmm. I have seen cases where there was no
25 anatomic abnormality but I was sure there was abuse.

1 Q. So you acknowledge that there are certainly
2 situations where children can be sexually abused were there is
3 any intrusion however slight and it doesn't leave behind long
4 lasting scars or changes to the hymenal opening, correct?

5 A. That's correct.

6 Q. And then you would also be familiar with recognized
7 findings in published articles --

8 THE COURT: Hang on, Ms. Mayes. I was speaking to
9 him about the lid and being careful. Rephrase your
10 question please. That lid has caused people in the
11 courtroom during this case to get a big gush of water.

12 THE WITNESS: I appreciate it.

13 THE COURT: All right. Ms. Mayes, reask that entire
14 question.

15 MS. MAYES: Yes, Your Honor.

16 BY MS. MAYES:

17 Q. Are you also familiar with articles published
18 regarding physical examination in child sexual abuse by
19 Doctors Herrmann, Banaschak, Csorba, Navratil and Dettmeyer?

20 A. I don't know. I know I have read something by
21 Banaschak but I don't recall exactly what.

22 Q. All right. Well, it acknowledges that normal
23 findings include hymenal openings and that the size of the
24 hymenal opening, the width of the hymenal opening has no
25 bearing whatsoever on whether or not that child was abused.

1 Would you like to see that?

2 A. Sure.

3 Q. (Proffering.) All right. So the size of the
4 hymenal opening has no bearing whatsoever on whether that exam
5 should be termed normal or abnormal?

6 A. Well, that's not exactly what they're saying.
7 They're saying if your hymenal opening is extremely wide, that
8 that could be from other things besides sexual abuse. But
9 you're point is well taken I think that there are cases of
10 sexual abuse, I'm absolutely certain of it, and you have a
11 normal exam.

12 Q. Right. Okay. So for example, would it surprise you
13 to learn that there is a case right here in this circuit with
14 a two year old who was penetrated on video and had a normal
15 exam?

16 A. I wouldn't be that shocked. It depends on the
17 circumstances.

18 Q. All right. So that doesn't shock you?

19 A. No. Well, nothing shocks me.

20 Q. All right. So, Mr. Burrows, you are now residing in
21 what state?

22 A. Illinois. That's my permanent residence. I'm
23 living in Boston, my job.

24 Q. How is it that you were sought out in this case as a
25 defense witness?

1 A. I have no idea.

2 Q. You don't now how you were contacted?

3 A. I was contacted by the attorney presumably I would
4 imagine. My son is an attorney in Charleston. I told him I
5 was glad to help anybody that wanted help either side criminal
6 or civil.

7 Q. Okay. So you made yourself available as a potential
8 witness in terms of your son being an attorney and you believe
9 that's how you were contacted?

10 A. I believe.

11 Q. All right. But it's certainly not because you're
12 still practicing --

13 A. No.

14 Q. -- or keeping up with the literature or --

15 A. Not like I used to. No.

16 Q. Okay. All right. Especially in terms of child
17 abuse, correct?

18 A. Well, child abuse is one of the things, like I said,
19 that interests me. I read a lot. Not like I did when I was
20 practicing.

21 Q. You acknowledge though that you are not familiar
22 with the leading article on normal exams where 86 percent of
23 confirmed child abuse cases result in normal examination?

24 A. I'm not familiar with that article nor does my
25 experience support it.

1 Q. All right. Your experience doesn't support that.
2 So your testimony is that you had findings in child abuse
3 cases that you went to court and testified in and you had
4 findings in over 14 percent of those cases?

5 A. Yes.

6 Q. And I believe your testimony was that you would
7 expect some type of bruising to **Minor**; is that correct?

8 A. Yes. In a child dealing with an adult very, very,
9 very frequently you will find some sort of bruising or some
10 evidence of trauma. Like I said micro tears in the wall of
11 the vagina. Things of that nature.

12 Q. Micro tears in the wall of the vagina. Mr. Burrows,
13 in the photos that were submitted, we don't have photos of the
14 wall of the vagina, do we?

15 A. You're not able to see it. But yes. They are not
16 able to see that. Correct.

17 Q. So I just want to clarify that to avoid any type of
18 confusion. The photos that you're looking at, that's the
19 external?

20 A. That's external. That's right. Yes.

21 Q. That's external. So when we are talking about any
22 type of lacerations, bruising, contusion or redness to the
23 inside of the vagina, we have no idea what that looked like on
24 **Minor**, do we?

25 A. We have no idea. I will not be particularly shocked

1 to find bruising externally but you can't always go by that
2 but...

3 Q. And the reason you can't always go by that is
4 because in cases of child sexual abuse if the perpetrator is
5 someone who is a care giver, for example, they may use forms
6 of abusing the child that don't result in force or violence,
7 correct?

8 A. That can happen. Yes.

9 Q. All right. And included in that would be the use of
10 lubricants, correct?

11 A. Well, I'm sure. Yes.

12 Q. That could also prevent any type of external
13 injury?

14 A. Depends on a lot of things but that could be
15 possible. Yes.

16 Q. And saliva, for example, is a lubricant, isn't it?

17 A. Very much so.

18 Q. Okay. And when we talk about oral sex, a
19 perpetrator placing his mouth on the vagina of a child, as
20 long as there's no biting you're not going to see any external
21 evidence of that, are you?

22 A. Not a bit. Not a bit.

23 Q. All right. So you find evidence of that type of
24 exam this way, correct, through the collection of a sexual
25 assault kit?

1 A. You hope.

2 Q. You hope?

3 A. Yes.

4 Q. You would hope in that scenario that the perpetrator
5 may have left traces of saliva behind?

6 A. Yes. Yes. Uhm, that's what you are hoping for in
7 that kind of exam.

8 Q. In the photos that you were submitted again that
9 collection of photos is of the external genitalia of **Minor**
10 **██████**?

11 A. Yes. That's correct.

12 Q. There was no colposcope used --

13 A. No.

14 Q. -- which would be a camera placed inside the vaginal
15 cavity?

16 A. Right. It's like a little magnification camera.
17 You can use a microscope you can use to find those minor
18 tears.

19 Q. In fact, in those pictures we don't have photos
20 where the nurse actually pulls the labia majora apart to truly
21 visualize the hymen in its complete form, do we?

22 A. I didn't see a good photo of it. No.

23 Q. Right. So we just don't really have a good photo of
24 how the hymen appeared, do we?

25 A. Well, you can see that it's, if you will pardon the

1 expression, intact but you don't know how intact at that
2 point.

3 Q. I'm gonna follow up on that because you just used
4 the word intact.

5 A. Yes.

6 Q. You know full well as an expert, you were qualified
7 as an expert, that word intact --

8 A. It's a social term.

9 Q. It's a social term. That's why we don't want to use
10 it in the courtroom because it could be misleading, couldn't
11 it?

12 A. Mm-hmm. I guess so. I don't want to mislead you.

13 Q. All right. The term intact hymen is not used by
14 experts in the field?

15 A. No. For millennia it was and it was abused by
16 experts, supposed experts in the field and that's why it's not
17 a medical term at all.

18 Q. Right. And we certainly wouldn't want to use it in
19 the courtroom.

20 A. That's fine.

21 Q. Okay. All right. So a few moments ago when you
22 used the word intact, that word has no value whatsoever.

23 **Minor** 's hymenal tissue has an opening just like every
24 other hymen, doesn't it?

25 A. Almost every other.

1 Q. Okay. It would be a deformity that would need to be
2 corrected?

3 A. You would have to correct that.

4 Q. Right.

5 A. Yes.

6 Q. Okay. So acknowledging that this is a child who
7 can bleed from the vagina, that has vaginal discharge, there's
8 no reason to think that she has a defective or imperforate
9 hymen --

10 A. No.

11 Q. -- correct?

12 A. That's correct.

13 Q. Okay. So we know that her hymen had an opening,
14 correct?

15 A. Yes.

16 Q. And as you just acknowledged a moment ago, you
17 really don't have a good picture of that hymen or how it
18 appeared, do you?

19 A. Not as good as I would prefer..

20 Q. Right. Because normally to really reach a true
21 medical opinion with value they would normally use their
22 fingers, the examiner would to pull the labia apart so that
23 you can fully visualize the hymen?

24 A. That would have been preferable just to see.

25 Q. Okay. And if that's done by a proper medical

1 examiner when the labia is pulled apart, in a sexually active
2 person the hymenal tissue will just fall back?

3 A. The hymenal tissue will have remnants if someone has
4 been sexually active usually. I have to put that in. But
5 you're right about that.

6 Q. And so then that tissue just appears to fall back
7 and you can visualize?

8 A. Right. You can see just little bits of it.

9 MS. MAYES: Nothing further.

10 THE COURT: Any redirect?

11 MR. SCOTT: Briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. SCOTT:

14 Q. Does this article, I don't know if you had time to
15 review it at all, but this article dated September 3rd, 1994,
16 is there any indication in there of the time of the exam
17 versus the time of the alleged sexual assault?

18 A. I don't know. Your exam is always better as close
19 as you can have it to the time of the alleged assault. You
20 always find more evidence in it's there. You always find
21 better evidence if it's there if it's close to the time of the
22 sexual assault. I have done exams on ladies who came into the
23 last week, it's very rare to find anything useful.

24 Q. Typically if you do it within 72 hours that's --

25 A. Preferably within 24.

1 Q. -- the idea? Preferably 24?

2 A. Yes.

3 Q. Did anything the Solicitor asked you during her
4 cross exam change your opinion, your medical opinion that
5 there is -- nothing you have seen, any physical evidence of
6 penile penetration of [Minor] ?

7 A. No. There's no penetration. I think her point was,
8 well, could it happen anyway. Yes. But I didn't see any
9 evidence of penetration.

10 Q. So there's no evidence of it?

11 A. No.

12 MR. SCOTT: Thank you.

13 RECROSS EXAMINATION

14 BY MS. MAYES:

15 Q. All right. So to follow up on that, I think he was
16 asking you about the closeness in time --

17 A. Yes.

18 Q. -- to the assault, whether it's acute meaning within
19 hours as opposed to chronic happening sometime before. Are
20 you familiar, again I know you have said you haven't been
21 keeping up with the literature?

22 A. Not like I used to. No.

23 Q. But are you familiar with at least three articles
24 that have found that normal findings are the rule not the
25 exception, normal findings are the rule in victims of child

1 sexual abuse whether chronic or acute?

2 A. No. And like I side, in my experience that's not
3 the same.

4 Q. But it's supported by the literature, correct?

5 A. I'm sure if you say so.

6 Q. And I believe your testimony just moments ago there
7 was that you always would look for something close in time to
8 the assault, correct?

9 A. Preferably. It's always better.

10 Q. That includes not just physical findings but
11 forensic findings?

12 A. Yes.

13 Q. Such as DNA left behind by the perpetrator,
14 correct?

15 A. Correct. Because if the person has washed or
16 changed clothes and so forth and so on, enough time has gone
17 by, the DNA evidence is gone with it.

18 Q. Yeah. After 72 hours you might not find anything at
19 all?

20 A. Might not find anything.

21 Q. Right. So that DNA really only has about a 72 hour
22 window?

23 A. That's it. I would say that's generous too.

24 MS. MAYES: Nothing further.

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

1 MR. SCOTT: Can the witness be excused?

2 THE COURT: Absolutely. You want a short break?

3 MR. SCOTT: We are ready, Your Honor. The defense
4 calls Antonio Posey.

5 Thereupon,

6 ANTONIO K. POSEY,
7 after having been first duly sworn, testified as follows,

8 DIRECT EXAMINATION

9 BY MR. SCOTT:

10 Q. Antonio, would you please introduce yourself to the
11 jury. Tell them a little bit about where you are from. Where
12 you went to school. Where you have been employed.

13 A. My name is Antonio Posey. I live in Saluda County.
14 I've been here 20 some years. I used to work at Premier
15 Country Club back in 1994 to 2004. I'm currently employed at
16 SCDOT for ten years. Well known to the community. Family's
17 well known, Mason family. I have been, like I said I've been
18 in Springville 20 some years. Family very oriented. Good
19 person. I'm very well known.

20 Q. How far did you go in school?

21 A. I got my GED. I went to high school for a while and
22 I went to Aiken Academy and got my GED.

23 Q. What's the last school you went to?

24 A. Aiken Academy.

25 Q. What's the last grade you completed?

1 A. I got my GED.

2 Q. When did you work at SCDOT?

3 A. I started there in 2004 to 2014.

4 Q. Some of your family here in the courtroom today?

5 A. Yes, sir.

6 Q. Including your - have you seen - during the course
7 of this trial you have seen your daughter **Sister**?

8 MS. MAYES: Objection, Your Honor, to relevance.

9 MR. SCOTT: I withdraw, Your Honor.

10 THE COURT: Fair enough.

11 BY MR. SCOTT:

12 Q. At some point you met Brandi Nye; is that correct?

13 A. Yes, sir.

14 Q. When was that?

15 A. Oh, I would say been probably about 2000 maybe 4, 3.
16 Maybe a little earlier than that.

17 Q. Describe your relationship with Brandi. Y'all start
18 dating?

19 A. Well, I had been known her for a while before we
20 started dating. She was a good friend of mine before we
21 started dating. We started talking more and started getting
22 closer and closer so we started eventually dating and stuff so
23 I became to know Brandi Nye.

24 Q. At some point did you live with Brandi Nye?

25 A. Yes, sir. I did.

1 Q. Do you remember when you moved in with her?

2 A. Oh, I can't quite recall the year or the time,
3 around the time frame but I would say maybe 2002, 2003. When
4 I first dated her, we were living in Greenwood. Me, her and
5 her friend or cousin Jennifer. We lived in Greenwood for like
6 a year and moved from Greenwood to Saluda maybe like the
7 following year, 2004 maybe, somewhere, I guess. After that we
8 moved to in town Saluda County behind the detention center.
9 Stayed there for a while and actually moved to where everybody
10 was living at where she at right now.

11 Q. Do you go to church?

12 A. Yes, sir. I do.

13 Q. Where do you go to church?

14 A. Mayberry Baptist.

15 Q. Do you go regularly?

16 A. I have. Yes, sir. I did.

17 Q. You and Brandi have a child together; is that
18 correct?

19 A. Yes, sir. We do. **Sister**.

20 Q. How old is **Sister**?

21 A. She's 10 now.

22 Q. When you moved in with, started living with Brandi,
23 was **Minor** already born or not?

24 A. Yes, sir. She was. She was - actually she was
25 three months old when me and Brandi got involved. She was

1 three months old at the time.

2 Q. So from the time she was three months until the time
3 of these charges you have been her father?

4 A. Yes, sir. Yes, sir. That's my daughter.

5 Q. Now, tell me, if you would, a little bit about the
6 kind of the nature of your relationship with Brandi?

7 A. The relationship me and Brandi had was love/hate
8 relationship. We had our ups and downs. She cared for me. I
9 cared for her. We would get and I would leave. Come back for
10 a little while. Leave again. I mean, it was just one of them
11 love type, hate relationships. I should have left but I
12 didn't because I loved her and I knew she loved me but the
13 whole 11, 12 years we have been together have been like a
14 rollercoaster relationship. Love/hate relationship.

15 Q. Would it be fair to say that both of you were
16 jealous of the other?

17 A. Yes, sir. That would be fair to say that. At times
18 where she would call and talk with **Minor** biological father I
19 didn't like it. And there were times she caught me text
20 messaging other women. I have always been accused for talking
21 to other women. Just talking to them. I was always accused
22 of dating Mona, one of my cousin's friends. Everyone I came
23 in contact with I was always accused of dating and being with
24 that woman all the time.

25 Q. Sometimes you really were seeing other women, were

1 you not?

2 A. Yes, sir. That's around the time frame me and
3 Brandi wasn't together but she would always come around. I
4 mean, if I wasn't with her, there was Brandi Nye. It was
5 always causing confusion with me and my other significant
6 other so there was always a problem.

7 Q. So when you broke up, you would always get back
8 together?

9 A. Yes, sir. We would.

10 Q. Do you love **Sister**?

11 A. I love her to death and I love both of them. I love
12 **Minor** too.

13 Q. You have been sitting here I guess since Tuesday.
14 You have heard all of the testimony and all the evidence
15 that's come in the case?

16 A. Yes, sir.

17 Q. I mean, is there any of that related to what you're
18 charged with, criminal sexual conduct, is any of that true?

19 A. No, sir.

20 MS. MAYES: Object, Your Honor, to the way the
21 question is phrased. It would result in pitting.

22 THE COURT: No pitting. Don't pit the witnesses.
23 You can ask him again.

24 BY MR. SCOTT:

25 Q. Did you ever sexually assault --

1 A. No, sir.

2 Q. -- **Minor** ?

3 A. That's not my nature. She was a baby when I raised
4 her. She was like a daughter to me and she still is. I never
5 addressed her as being a stepchild of mine. She was always my
6 daughter. People ask me how many kids do I have. I always
7 tell them five because basically she's my daughter. She is my
8 daughter right now today. I love her right now today
9 regardless of what she say and what **Sister** say. They're my
10 kids and I love them and I can't stop loving them.

11 Q. With that said, there were occasions when you would
12 discipline **Minor**, correct?

13 A. Yes, sir. I would. Both of them.

14 Q. How would you discipline them when they needed
15 disciplining?

16 A. Well, I would pop them with my hand on the leg or
17 something or take a belt and still just pop them. But I never
18 grabbed them or tried to, no type of harsh, harsh physical
19 treatment or discipline. I never did that to them at all.

20 Q. Did you ever put your hand down **Minor** pants?

21 A. No, sir. Never.

22 Q. Did you ever climb into the bed with **Minor** and
23 **Sister** and do anything of a sexual nature to **Minor** ?

24 A. No, sir. Never have.

25 Q. Did you ever get in bed with the two of them, just

1 the two of them and you ever, period?

2 A. No, sir. Never.

3 Q. Were there occasions when all four of y'all, and I'm
4 talking about Brandi and the two girls get into bed and then
5 watch movies and things like that?

6 A. Yes, sir. There have been times Brandi had been
7 coming to me. Sometimes they would lay across the bed and
8 watch movies. I would always be downstairs in the living room
9 watching TV myself and she would always ask me to come watch
10 --

11 MS. MAYES: Objection to hearsay.

12 THE COURT: Mr. Scott, make sure he understands
13 hearsay.

14 BY MR. SCOTT:

15 Q. You can't say what somebody else said. You say what
16 you saw.

17 THE COURT: For the record, sustained as to hearsay
18 just to make sure. Repeat the question, sir. You can
19 guide him along on hearsay, Mr. Scott, if you will.

20 MR. SCOTT: I'm sorry.

21 THE COURT: Guide him along so he does not testify
22 to hearsay.

23 BY MR. SCOTT:

24 Q. I think I asked you if you would watch movies
25 together in bed on occasions all four of you?

1 A. Yes, sir.

2 Q. For the most part was it a happy normal family?

3 A. Yes, sir. It was.

4 Q. You heard about stories about you going out and
5 shooting guns up in the area. Did you ever go out in the yard
6 and shoot guns up in the air?

7 A. Yes, sir. I have.

8 Q. Why would you go out and shoot guns in the air?

9 A. We used to have stray dogs coming in the yard and we
10 had a pet rabbit out there in the yard and something tore it
11 to pieces and I ran out there to see what was going on. I
12 heard a lot of noises. I come out there, it was like a fox or
13 coyote or something so yes, I did shoot in the air a couple
14 times to scare stray dogs or whatever is in the yard that
15 shouldn't be in the yard to scare them away. Yes. I did
16 that.

17 Q. It wasn't something that you did out of anger. It
18 was something you did to get rid of stray dogs?

19 A. No, sir. I never shot out of anger. Never.

20 Q. Have you ever put your penis in **Minor** vagina?

21 A. No, sir. Never have.

22 Q. Have you ever put your mouth on her vagina?

23 A. No, sir. Never have.

24 Q. Have you ever put your finger in her vagina?

25 A. No, sir. Never have.

1 Q. Do you remember a good bit of talk about Monday,
2 December the 1st and the night of Monday, December the 1st and
3 Brandi taking a bath. Do you remember, tell the jury what you
4 remember about going on, what happened that night. What do
5 you remember?

6 A. The only thing I can remember, I know I was
7 downstairs watching TV and I heard Brandi asking what she was
8 doing. What was going on in her bedroom and **Minor** told her
9 that she was hot and she was, couldn't sleep or something she
10 was telling Brandi. And she had went back to ask her what was
11 going on. She was kind of fussing with her. And she said,
12 Brandi said she heard her bed moving when she came out of the
13 bathroom and so I just went on, let Brandi and **Minor** handle
14 that and so that she could talk to her to see what was going
15 on. Normally I stayed out if it. She asking her a couple
16 questions or whatever was going on. So I tried stayed out of
17 it and just let her handle it and if she needed me, I would go
18 back there and see what was going on on occasion.

19 Q. Now, as between you and Brandi, when it came to the
20 girls who was primarily the disciplinarian?

21 A. I was. Well, actually both but I was more so the
22 aggressive one. Brandi is more so a friend instead of being
23 a parent and I was more so the parent instead of being their
24 friend. I mean, I believe in discipline. I don't believe in
25 disrespect, children talking back. I don't believe in that

1 and [Sister] and -- Well, [Sister], she rarely did. [Minor] did at
2 times. But I was more so the one that did a lot of
3 discipline.

4 Q. How long did you live at the [REDACTED] what's the street
5 again?

6 A. [REDACTED].

7 Q. How long did you live there?

8 A. I can't recall. I would say maybe four, five years
9 maybe. Maybe a little more. Maybe a little less.

10 Q. But that wasn't one stretch of time. It was
11 actually a pretty substantial break in that, was there not?

12 A. One time there was.

13 Q. You moved out. Did another man move in?

14 A. I can't recall whether or not another man moved in
15 or not.

16 Q. Do you have personal knowledge of Brandi seeing who
17 I think has been called Little Larry? Do you know who Little
18 Larry is?

19 A. Yes, sir. That's my second cousin.

20 Q. What's his name?

21 A. Larry Holloway, Junior.

22 Q. Did they have a romantic thing at some point?

23 A. Yes, sir. They did.

24 Q. Approximately when was that?

25 A. I want to say maybe the end of 2012 maybe. Along in

1 there somewhere.

2 Q. How long did that last, if you know?

3 A. Uhm, probably six months maybe or maybe a little
4 longer or a little less.

5 Q. Where did you live during that period of time?

6 A. I was with my grandfather George Mason.

7 Q. You're familiar with the house at [REDACTED] well enough to
8 identify photos of the inside?

9 A. Yes, sir. I am.

10 Q. What does that appear to be?

11 A. That's the hallway. The first bedroom on the left
12 is [REDACTED] Minor The second room on the right is the bathroom,
13 closet. Straight ahead last room on the left is [REDACTED] Sister's and
14 the room on the right was mine and Brandi's.

15 Q. So let's do this. This is State's exhibit 6. Was
16 this the door you normally used to come in and out of the
17 house?

18 A. Yes, sir.

19 Q. This is the living room?

20 A. Yes, sir.

21 Q. When you talk about downstairs your really mean just
22 down this one step?

23 A. Yes, sir.

24 Q. It wouldn't be a two story house. It's a one story
25 house?

1 A. Yes, sir.

2 Q. About how big was this house do you know, square
3 foot wise?

4 A. I'm going to say maybe like 1200 maybe square
5 feet.

6 Q. So this photo you can identify that?

7 A. Yes, sir. I can.

8 Q. And that's this house?

9 A. Yes, sir.

10 Q. Would I be correct that the photographer, whoever
11 took that picture was probably somewhere in here shooting back
12 this way?

13 A. Yes, sir. Right in here.

14 Q. And the hallway we see in this photo would be this
15 hallway back in the back?

16 A. Yes, sir.

17 MR. SCOTT: Your Honor, I would like to mark this as
18 defense exhibit 4.

19 THE COURT: It will be marked as defense exhibit
20 4.

21 (Whereupon, Defendant's Exhibit #4 marked for
22 identification.)

23 BY MR. SCOTT:

24 Q. But you would agree that this is a fairly accurate
25 depiction of the house?

1 A. Yes, sir. It is.

2 Q. Living room here. Wash room here with washing
3 machine, washer and dryer in here, right?

4 A. Yes, sir.

5 Q. Kitchen?

6 A. Yes, sir.

7 Q. Now, this depicts the kitchen table over here. As
8 you recall at least while you were living there was the
9 kitchen table here or was it somewhere else?

10 A. The kitchen table was right here.

11 Q. It was more --

12 A. It was right there.

13 Q. Closer to the step?

14 A. Yes, sir.

15 Q. All right. What was this room?

16 A. Like another living room.

17 Q. And this was **Minor** room, the first bedroom on the
18 left as you go down the hall?

19 A. Yes, sir.

20 Q. This was **Sister**'s room, the last bedroom on the
21 left. This was the only full bath in the house, correct?

22 A. Yes, sir. It was.

23 Q. And almost directly across from **Minor** room?

24 A. Yes, sir.

25 Q. This is where you and Brand stayed and slept and you

1 had a half bath in there?

2 A. Yes, sir.

3 Q. I know this is hard to see. Looking down the
4 hallway whose bedroom was this right here that you can barely
5 see the door open?

6 A. That's **Minor**

7 Q. Where would the bathroom be?

8 A. Right across from her. Maybe two or three feet
9 across from her room.

10 Q. How wide do you reckon that hall is?

11 A. Say maybe two and a half, three feet wide. Three
12 feet wide. Maybe not that wide.

13 Q. Had Brandi ever been, ever an occasion when Brandi
14 was in here taking a bath or taking a shower or whatever and
15 you had been in **Minor** room and Brandi came out of the
16 bathroom while you were still in **Minor** room, is there
17 any way you could have gotten down the hallway and into the
18 kitchen or the living room without Brandi seeing you?

19 A. No way at all. She would have saw me.

20 Q. And you have heard, you've been here and you've
21 heard the testimony about the night of the bed squeaking?

22 A. Yes, sir.

23 Q. Did you become involved in that conversation between
24 Brandi and **Minor** and all?

25 A. No, sir. I didn't.

1 Q. And you were where?

2 A. Downstairs watching TV. Well, in the living room
3 watching TV.

4 Q. Was Brandi protective of the children?

5 A. Both of us.

6 Q. Both of you?

7 A. Yes, sir.

8 Q. Did Brandi ever confront you or accuse you of doing
9 anything inappropriate with **Minor**?

10 A. No, sir. She never have.

11 Q. If she suspected you of that, what do you think her
12 reaction would have been?

13 A. She probably try to kill me.

14 MS. MAYES: Objection. Calls for speculation.

15 THE COURT: He can't speculate. Ask him what he
16 did. Sustained.

17 BY MR. SCOTT:

18 Q. Did you ever do anything to make her angry where she
19 reacted against you with physical violence?

20 A. Well, she went through my phone several times and
21 seen where I was text messages this female Danielle Forman.
22 There were times she went on Facebook and seen me and watching
23 other women and yes, she got very upset.

24 Q. What did she do to you?

25 A. Oh, she would come and slap me upside the head

1 sometimes and I would try to walk away but sometimes it gets
2 to the point where when I try to walk away, she get to
3 grabbing me and want to hit me and I just can't, you know, I
4 try to walk away from it but there have been times when we
5 had, actually had physically had some physical altercations on
6 certain circumstances.

7 Q. Would those be caused by her finding out about you
8 maybe talking to another woman or were there other incidents
9 that caused her to react that way?

10 A. Talking to other women.

11 Q. All because of other women?

12 A. Yes, sir.

13 Q. Did she ever tell you to get out because you were
14 seeing other women?

15 A. Yes, sir. That's all the time. I mean, I would
16 leave for a couple weeks, maybe a couple months. We would
17 talk. She would always come around the family. Uhm, we
18 wouldn't be together but she would always bring the kids
19 around the family. She was always hanging around the family.
20 We end up talking again and getting back together again and
21 here come four, five months later same thing. Like a
22 rollercoaster. Same thing over and over again. Like I say it
23 was a love/hate relationship.

24 Q. When you were living together as a nuclear family I
25 guess, did y'all split up chores? Did you do some of the

1 household chores or did Brandi do all the household chores?

2 A. We both chipped in. I washed clothes. She washed
3 clothes. She did mainly the mopping. I never did it because
4 did it better than I did. But we all chipped in in house
5 cleaning.

6 Q. You mean y'all, you mean the children too?

7 A. Yes, sir.

8 Q. Did they have chores to do?

9 A. Well, not necessarily but they offered to help. You
10 know, we would tell them what to do and they would do it but
11 they was always ready to offer to help mom and dad.

12 Q. What kind of student was **Minor** at school?

13 A. Say again.

14 Q. What kind of student was **Minor** at school?

15 A. She was very smart. Very smart. Very intelligent.
16 I mean she is very smart.

17 Q. What kind of grades did she make?

18 A. A's, B's. Mainly A's. But she is very, very smart.

19 **Sister** as well.

20 Q. **Minor** is in the gifted and talented class?

21 A. Yes, sir.

22 Q. Did she ever, while you were living with them, ever
23 exhibit, did she ever have any disciplinary problems at school
24 as far as you knew?

25 A. No, sir. Not that I know of.

1 Q. Get in trouble at school?

2 A. No, sir. Not that I know of. Not that I can
3 recall.

4 Q. Ever got suspended?

5 A. Never got suspended.

6 Q. Have attention sometime?

7 A. I know she probably be like, sometimes they do
8 colors. Maybe we she get like a blue or maybe like a red or
9 something for bad or yellow. Something like that. Then she'd
10 get caught. And sometimes, you know, I would talk to her and,
11 you know, tell her everything will be all right. Sometimes
12 Brandi would fuss at her but I would fuss at her, too. But
13 she was very, very good. She's very smart. She hardly ever
14 got in trouble.

15 Q. And **Sister** too?

16 A. **Sister** on the other hand she was a little
17 firecracker. I mean, she's good in school too. She never got
18 in school but she's more talkative and more sensitive than
19 **Minor** is.

20 Q. **Sister** ?

21 A. They both good kids.

22 Q. **Sister** gets that from you?

23 A. Probably both.

24 Q. How would you describe yours and Brandi's sex life
25 while y'all were living together?

1 A. It was - it was - it was excellent. It was good.

2 Q. On an average week how many times do you reckon
3 y'all would have sex?

4 A. Two or three times. Sometimes maybe twice a day.

5 Q. Two or three times a week or more than that?

6 A. Yes, sir. About.

7 Q. Two or three times a week or more than that?

8 A. It could be two to three times a week.

9 Q. Do you remember the last time you and Brandi had
10 sex?

11 A. Yes, sir. I do.

12 Q. When was it?

13 A. December the 1st on Monday that night.

14 Q. About what time did y'all have sex?

15 A. It was pretty late. I want to say between 10:30,
16 11:00 that night.

17 Q. Where were the girls when y'all had sex?

18 A. They was supposed to have been in bed sleeping.

19 Q. Where did y'all have sex?

20 A. On the couch.

21 Q. Did y'all ever have sex in front of the children?

22 A. No, sir.

23 Q. Is it possible that y'all were having sex and maybe
24 the children accidentally --

25 MS. MAYES: Objection. Asked and answered.

1 BY MR. SCOTT:

2 Q. -- walked in?

3 MS. MAYES: And calls for speculation.

4 MR. SCOTT: I don't think I have asked it before.

5 THE COURT: Make sure it doesn't include any
6 speculation.

7 BY MR. SCOTT:

8 Q. Do you know whether they ever saw you having sex?

9 A. I - I - I can't recall. Sometimes they would be
10 sneaky. Sometimes they would walk quietly. Especially
11 **Minor**. But I don't recall her ever seeing us ever having
12 sex. They normally be in bed when we have sex. I don't
13 recall them ever catching us having sex. We always try to,
14 you know, keep it and make sure they were sleeping or
15 something before we had sex.

16 Q. But you're positive you had sex with Brandi on
17 Monday night, December 1st?

18 A. Yes, sir. Positive.

19 Q. That was on the couch in the living room that you
20 just pointed out to us?

21 A. Yes, sir. That's correct.

22 Q. You heard all of these allegations against you over
23 the last three days. Are you guilty of that? You understand
24 what you're charged with, right?

25 A. Yes, sir. I do.

1 Q. Are you guilty of that?

2 A. No, sir. I'm not.

3 MS. MAYES: Objection. Asked and answered.

4 THE COURT: I'm going to let him answer that one.

5 BY MR. SCOTT:

6 Q. Are you guilty of that?

7 A. No, sir. I'm not,

8 Q. Any of it?

9 A. None of it.

10 MR. SCOTT: I don't have any another questions.

11 THE COURT: All right. Ms. Mayes.

12 CROSS EXAMINATION

13 BY MS. MAYES:

14 Q. All right. I want to start by asking you about the
15 comment that you made just a few moments ago about both **Minor**
16 and **Sister**. You said they're good kids?

17 A. Yes, ma'am.

18 Q. They're good kids, aren't they?

19 A. Very loveable. Yes, ma'am.

20 Q. They are good kids who loved you?

21 A. Yes, ma'am.

22 Q. And I believe your testimony on direct examination
23 was that to any outsider that looked at your family, you and
24 Brandi, and the girls, you looked like a perfectly happy
25 family, didn't you?

1 A. Yes, ma'am.

2 Q. And if anybody saw the girls with you, they would
3 have thought everything appeared normal because the girls
4 looked up to you, didn't they?

5 A. They did. They loved me. I loved them.

6 Q. And the girls rarely, rarely disobeyed you or caused
7 problems in the house, did they?

8 A. Oh, they - they dissed me a pretty good bit. They
9 dissed both of us.

10 Q. And the girls had no problems in school, did they?

11 A. No. No, ma'am. They're good.

12 Q. And I believe your testimony just a little while ago
13 about **Minor** was that she's always been smart. She's always
14 been in or categorized I guess you could say as gifted and
15 talented, included in that program in your school system,
16 correct?

17 A. Yes.

18 Q. And she's worked hard for her grades, hasn't she?

19 A. Oh, yes. Very smart.

20 Q. Even from the time she was a small child she worked
21 hard for that, didn't she?

22 A. (Witness nodding head.)

23 Q. And **Minor** loved you enough to be considered by
24 anyone who were friends of the family or a relative of the
25 family as daddy's little girl, didn't she?

1 A. I don't understand the question.

2 Q. Didn't the family call her daddy's little girl?

3 Talking about **Minor**.

4 A. Well, they - **Minor** she loved me. Loved being
5 around me all the time. She did. She did. She loved me.

6 Q. Okay. And to the people who were watching, family,
7 relatives anything that you needed from **Minor** or asked **Minor**
8 to do she wanted to comply and tried to comply with not just
9 what you wanted but with what her mom wanted too, didn't she?

10 A. She always listened.

11 Q. Now, when we talk about the night of December 1st,
12 2014, that's that Monday night and your attorney was asking
13 you about that night just a few moments ago and if I
14 understood your testimony correctly regarding this Monday,
15 December 1st, just a few moments ago you stated that you heard
16 or saw Brandi confront **Minor** about the fact that her bed was
17 squeaking. Wasn't that your testimony?

18 A. That's after -- He was questioning me and asking me
19 that question.

20 Q. Right. Right. So I want to follow up on that. So
21 your testimony is that you were there and witnessed Brandi
22 Nye, the mother of **Minor** go into her room and confront her
23 about the fact that her bed had been squeaking, right?

24 A. I heard her.

25 Q. Okay. But you do know that is what the

1 confrontation was about?

2 A. What confrontation?

3 Q. When Brandi went into **Minor** room it was because
4 her bed was squeaking, correct?

5 A. She asked her what she was doing.

6 Q. All right. And do you remember a part of that
7 confrontation was because **Minor** pants weren't on?

8 A. I don't recall that.

9 Q. But you do know that Brandi had been in the bathroom
10 taking a bath, correct?

11 A. I think she was.

12 Q. Okay. And **Minor** was in her room, correct?

13 A. As far as I know she was.

14 Q. Okay. So what drew you, your testimony was that
15 your somewhere else in the house --

16 A. I was right there watching TV.

17 Q. -- watching TV?

18 A. Yes, ma'am.

19 Q. So your testimony is you were here. What drew you
20 to this confrontation where Brandi has had to come out of the
21 bathroom and go into **Minor** room to confront her about the
22 fact that the bed is squeaking?

23 A. I heard her when she was yelling. She started
24 yelling at her. I heard that.

25 Q. Okay. So whatever has gone on in **Minor** room is

1 significant enough to cause Brandi to get out of her bathtub,
2 put a towel on, come out of the bathroom and then go into
3 **Minor** room and according to you she is actually confronting
4 her by yelling, correct?

5 A. Yes. She yelled at her.

6 Q. Because her bed was squeaking, right?

7 A. She asked her what she was doing. Yes, ma'am.

8 Q. All right. And you know full well, Mr. Posey having
9 just testified a few moments ago that the hallway is right
10 outside of **Minor** room and it takes two steps to come out of
11 **Minor** room into that hallway, doesn't it?

12 A. Yes. It does.

13 Q. All right. So you actually see the confrontation
14 right there outside of **Minor** room, don't you?

15 A. I heard her.

16 Q. So your testimony is you heard the conversation?
17 You didn't see it?

18 A. Yes. I heard it. That's right.

19 Q. Now, moving on. That is the December 1st. The next
20 morning is December 2nd and **Minor** hasn't missed a school day
21 all year long, correct?

22 A. As far as -- She hardly ever missed school.

23 Q. Right.

24 A. She hardly missed school.

25 Q. Right. She doesn't ever miss school. She had

1 perfect attendance right up until that day of Tuesday,
2 December 2nd. And on that day she goes to school like normal
3 and then after school Brandi and the girls don't come home, do
4 they?

5 A. I wasn't home. I was at work and when I got out of
6 work, I called Brandi to let her know I'm off work to see
7 where they at so I text her and text her and text. I called
8 and called and she never did respond to my calls so I didn't
9 know what was going on.

10 Q. Okay. So everything, according to your testimony
11 everything is fine Monday and then all of a sudden there's
12 some confrontation where Brandi confronts **Minor** in her room
13 because the bed is squeaking. Y'all go to bed, wake up the
14 next morning, the girls go to school. You go to work but
15 ordinarily after work you come home every evening, don't
16 you?

17 A. Yes, ma'am.

18 Q. You come home every evening and the four of you live
19 there as a family?

20 A. Yes, ma'am. That's right.

21 Q. On this particular day, this Tuesday all of a sudden
22 you're testing Brandi and you're not getting any response at
23 all, are you?

24 A. No, ma'am.

25 Q. And no matter how many times you text her, she

1 doesn't text back?

2 A. No, ma'am.

3 Q. And then ultimately I believe your uncle Tim, Tim
4 Mason made you aware that Brandi and the girls had gone to the
5 police station because of **Minor** disclosing?

6 A. That was after the fact because when I tried to call
7 Brandi and text her, I didn't get a response. I called her
8 mom and asked her have you talked to Brandi. She told me no.
9 I haven't heard anything from her so I called her stepfather
10 which is Glen Miller. I asked him the same question. He said
11 he hadn't talked with Brandi. I didn't have any contact while
12 I was at work. All day, I mean, I work until 4:30 every day.
13 I didn't know what was going on until I got off work, then I
14 called her stepfather. I went home first and they wasn't
15 there so I tried to call from the house phone and I didn't get
16 no response. So I went to my uncle Tim's. Maybe they might
17 be up there or something. So I went up there for a while.
18 That's when I discovered all this was going on.

19 Q. All right.

20 A. I ain't know nothing.

21 Q. So on that day Tuesday, December 2nd, you ordinarily
22 get off work at DOT at what hour?

23 A. 4:30.

24 Q. 4:30. All right. And unbeknownst to you at 4:30
25 Brandi has actually taken **Minor** to the police station, the

1 Sheriff's Department here in Saluda County and then is sent on
2 immediately to the hospital for a sexual assault examination
3 of **Minor** You didn't know that. You're texting and you
4 don't get a response, right?

5 A. Right.

6 Q. So when you don't get a response and we are now
7 talking after 4:30 because your off work, you go onto your
8 uncle Tim's house, correct?

9 A. I went home first.

10 Q. You went home first and they weren't there?

11 A. No, ma'am.

12 Q. And that's highly unusual, isn't it?

13 A. Well, sometimes she be home and she wouldn't answer
14 the phone or sometimes she doing something and she wouldn't
15 answer the phone so that's why I call first and go to my uncle
16 Tim's house.

17 Q. But when you get home, there's no sign of the
18 children or Brandi so you go onto your uncle Tim's house?

19 A. Right. I tried to call her from the house phone and
20 then went to my uncle Tim's.

21 Q. And when you go to your uncle Tim's house, uncle Tim
22 just to clarify is married to Jennifer Mason?

23 A. Yes, ma'am.

24 Q. Also known as aunt Pooh?

25 A. Right. Yes, ma'am.

1 Q. So when there's been talk in this case about aunt
2 Pooh, that is Jennifer Mason, the wife of your uncle Tim?

3 A. Yes, ma'am.

4 Q. And it turns out that Jennifer was actually with
5 **Minor** and **Sister** and Brandi at the hospital, correct?

6 A. I just found out later on after the fact. Like I
7 said, I didn't know what was going on. I didn't know what was
8 going on.

9 Q. Okay. But Jennifer, aunt Pooh wasn't at the house
10 when you got there. It was just uncle Tim, correct?

11 A. My cousin was there as well.

12 Q. And that's when you became aware of all of this?

13 A. Exactly.

14 Q. And Brandi herself never confronted you about it,
15 did she?

16 A. I ain't know anything.

17 Q. Okay. So there's been talk I believe during your
18 direct examination of Brandi through the years of your
19 relationship and I believe you say it dates back to when
20 **Minor** was just three months old so years and years you guys
21 have been on and off?

22 A. Yes, ma'am.

23 Q. And in the past if there was some type of
24 disagreement there would be a confrontation about it, wouldn't
25 there?

1 A. Yes, ma'am.

2 Q. And this time there's no confrontation at all and
3 there's no response at all, is there?

4 A. No, ma'am. She's done it before. I mean, it's just
5 something that she normally does. I mean, I just thought that
6 she was doing something that she didn't have no business doing,
7 just in my mind I was thinking. I mean, she just recently
8 just stopped, you know, seeing my cousin so I was - it might
9 have been --

10 Q. When you say it's something she's done before,
11 **Minor** has never, ever, ever, until that day December 2nd ever
12 made any allegation against you, correct?

13 A. I'm talking about Brandi.

14 Q. Okay. But there's never been any allegation against
15 you until December 2nd?

16 A. Yes, ma'am.

17 Q. Okay. So in this particular situation you don't get
18 a response and you find out from uncle Tim what's happened and
19 ultimately the police are at your house later that night
20 executing a search warrant, correct?

21 A. I have no idea.

22 Q. And you never --

23 A. I wasn't there.

24 Q. You never went back to that house to live since
25 then, correct?

1 A. I was told not to.

2 Q. All right. And just to clarify, that is a house of
3 Brandi's. It's in Brandi's family, correct?

4 A. Yes, ma'am.

5 Q. All right. So the fact that you left the house,
6 that's not unusual. You had arguments in the past with Brandi
7 when y'all were off, be on and off and you would leave the
8 house, correct?

9 A. Yes, ma'am.

10 Q. All right. So because it's her house or her
11 family's house, it's just a matter of telling you to leave if
12 she wanted you to leave, didn't she?

13 A. Yes, ma'am.

14 Q. All right. And in the past if she wanted you to
15 leave because of this or that or another woman or whatever it
16 may be, she would ask you to leave and you would leave?

17 A. If she did. Yes. I would. Sometimes I left on my
18 own.

19 Q. And it's that simple?

20 A. Yes, ma'am.

21 Q. It's that simple. If she wanted or needed you to
22 leave, all she's got to do is say this is my house. Leave,
23 correct?

24 A. Yes, ma'am.

25 Q. You guys weren't married, right?

1 A. No, ma'am.

2 Q. So as simple as asking you to leave, there's
3 absolutely no reason whatsoever for Brandi to report this to
4 the police other than what **Minor** told her on December 2nd,
5 correct?

6 A. I don't understand your question.

7 Q. All right. If she wanted you to leave, you would
8 have left, right?

9 A. If she wanted me to go, yes. I would have. I would
10 have.

11 Q. Okay. Just like it's happened in the past. Now,
12 you have no other paternal -- First of all, you don't have an
13 identical twin, do you, Mr. Posey?

14 A. No, ma'am.

15 Q. And you don't have any other paternal relatives who
16 lived in the house, do you?

17 A. No, ma'am.

18 Q. And by paternal I mean relatives on your dad's side,
19 right?

20 A. Right.

21 Q. And I believe there's been testimony about the girls
22 having contact or friendship with your uncle Tim. Your uncle
23 Tim is your uncle on your mom's side, right?

24 A. Yes.

25 Q. He's not a paternal relative, correct?

1 A. Yes.

2 Q. I believe, is Marcus your cousin or nephew?

3 A. That's my cousin.

4 Q. Your cousin?

5 A. Yes, ma'am.

6 Q. I believe there's also been testimony about Marcus
7 having a friendship with the girls or the girls being
8 acquainted with your cousin Marcus. Again, Marcus is a
9 relative on your maternal side, right?

10 A. Yes.

11 Q. On your mom's side. He's not a paternal relative.
12 So on that day according to your testimony, on this day of
13 Tuesday, December 2nd everything seemed normal other than that
14 confrontation that you heard the night before because **Minor**
15 bed had been squeaking, right?

16 A. Everything - everything - everything was fine.

17 Q. Okay. There was no reason whatsoever to need to
18 force you out of the house, was there?

19 A. I didn't - she didn't tell me to leave.

20 Q. Right and you would have left. It would have been
21 as simple as leave. It's your time to go and you would have
22 packed your bags and left, right?

23 A. If she wanted me to, yes. I would have.

24 Q. This item here, State's exhibit 36, these are buccal
25 swabs that are placed inside the cheek to take a DNA sample.

1 Those are your buccal swabs, aren't they, Mr. Posey?

2 A. As far as I know. I don't see no name on it. My
3 name is not on it that I can see.

4 Q. Okay. What about now?

5 A. Yes, ma'am.

6 Q. That's your name, Antonio Posey?

7 A. Yes, ma'am.

8 Q. And this says swab envelope?

9 A. Yes, ma'am.

10 Q. Do you recall the day that Doris Morris put the
11 buccal swab in your cheek to take your DNA sample, don't
12 you?

13 A. Yes. I do.

14 MS. MAYES: Nothing further.

15 THE COURT: Redirect.

16 REDIRECT EXAMINATION

17 BY MR. SCOTT:

18 Q. Now, the Solicitor asked you a number of times about
19 the bed squeaking and the confrontation in between Brandi and
20 **Minor** on the night of the 1st, do you remember?

21 A. Yes, sir.

22 Q. And you were watching television in this room?

23 A. Yes, sir.

24 Q. And you just heard the confrontation between Brandi
25 and **Minor** ?

1 A. Yes, sir.

2 Q. Did you know what it was about?

3 A. No, sir.

4 Q. Did you know she was asking her about her bed
5 squeaking?

6 A. She was asking her what are you doing? Why you keep
7 moving your bed. That's what she asked her.

8 Q. And you heard that?

9 A. Yes, sir.

10 Q. But you didn't go up there and have any interaction
11 with that?

12 A. No, sir. I did not.

13 Q. She didn't pass you in the hallway as she was coming
14 out of the bathroom running into **Minor** room?

15 A. No, sir.

16 MR. SCOTT: I don't have any other questions.

17 THE COURT: All right.

18 RECROSS EXAMINATION

19 BY MS. MAYES:

20 Q. This door to this room with just a living room in
21 between, how many steps is that? That's less than from here
22 to that door, isn't it?

23 A. Yes, ma'am.

24 Q. Less distance than from here to that door, isn't
25 it?

1 A. Yes, ma'am. It is.

2 MS. MAYES: Nothing further.

3 THE COURT: Okay. Step down.

4 MR. SCOTT: Your Honor, we have just a brief
5 witness. Natasha Mason.

6 MS. MAYES: Your Honor, may we approach?

7 THE COURT: Sure.

8 (Side bar off the record.)

9 THE COURT: I don't want an oral answer. I want a
10 showing answer. Raise your hand if this is affirmative.
11 Natasha Mason, is that the name?

12 MR. SCOTT: Mason Jackson.

13 THE COURT: Natasha Mason Jackson.

14 MR. SCOTT: Yes, sir.

15 THE COURT: Natasha Mason Jackson was not among the
16 potential witnesses that I read when I qualified y'all as
17 a group. Is there any member of these 12 related by
18 blood, marriage, close personal friends to Ms. Jackson?
19 If so, please raise your hand.

20 THE COURT: Good enough. Sometimes you don't know
21 who is going to be called.

22 MS. MAYES: Thank you, Your Honor.

23 THE COURT: I need to put on the record none of the
24 jurors raised their hands.

25 Thereupon,

1 NATASHA MASON JACKSON

2 after having been first duly sworn, testified as follows,

3 DIRECT EXAMINATION

4 BY MR. SCOTT:

5 Q. Ma'am, if you would just state your name for the
6 jury please.

7 A. Natasha Mason Jackson.

8 Q. Ms. Jackson, where do you live?

9 A. Aiken.

10 Q. And do you work or are you retired?

11 A. I work.

12 Q. Where do you work?

13 A. Tri Development Extension.

14 Q. Do you know Antonio Posey?

15 A. Yes. I do.

16 Q. How do you know him?

17 A. He's my nephew.

18 Q. So have you known him his entire life?

19 A. Yes.

20 Q. Without going into much about the relationship just
21 tell me how is the relationship between you Antonio?

22 A. Well, I'm maybe like three years older but he's
23 pretty much - we're close.

24 Q. Okay. And do you know where was employed?

25 A. Yes.

1 Q. South Carolina Department of Transportation?

2 A. SCDOT. Yes.

3 Q. Do you know friends, relatives, neighbors that have
4 been around Antonio in your lifetime with his relationships?

5 A. Yes.

6 Q. You do?

7 A. I do.

8 Q. Do you know his reputation in the community for
9 truthfulness and honesty?

10 A. Yes. I do.

11 Q. And is that reputation good or bad?

12 A. Good.

13 Q. In that event would you believe him under oath?

14 A. Most definitely. Yes.

15 MS. SCOTT: If you would, answer any questions the
16 Solicitor may have. Thank you for being here.

17 CROSS EXAMINATION

18 BY MS. RADLEIN:

19 Q. Ms. Mason, you're the defendant's aunt, correct?

20 A. Yes.

21 MS. RADLEIN: No further questions, Your Honor.

22 THE COURT: All right. You may step down. That was
23 a short witness. Okay. Anything else?

24 MR. SCOTT: We would like to qualify one more.

25 MS. RADLEIN: Your Honor, may we approach.

1 THE COURT: Yes.

2 (Side bar off the record.)

3 THE COURT: Identical questions. Another witness,
4 potential witness that was not presented. Any member of
5 this jury, these 12, related by blood, marriage, close
6 personal friends to Ms. Savannah Springs? If so, raise
7 your hands.

8 UNKNOWN JUROR: I went to school with her.

9 UNKNOWN JUROR: I went to school with her. I know
10 of her but...

11 MR. SCOTT: We won't call her.

12 THE COURT: Fair enough. That's all I need. I
13 don't want to create an issue I can't undo and that's
14 good enough for me. You both have knowledge. So for the
15 record, two jurors said they went to school with her so
16 the defense has elected to not call her.

17 MR. SCOTT: No, Your Honor. No problem with that,
18 Judge. The defense rests.

19 THE COURT: All right. That's all you got?

20 MR. SCOTT: Yes, sir.

21 THE COURT: Will y'all step into the jury room for a
22 couple minutes. I've got to talk to the lawyers. I may
23 have you back out here, one more thing and we may be done
24 for the day and come back in the morning. Step in the
25 jury room. You can't discuss this case quite yet.

1 THE COURT: So it's up or down. That's kind of what
2 I thought. I always think it's lesser included. I'm
3 still not used to the new rule. All right. Do y'all
4 have anything with particularity you want in the
5 instructions? I didn't notice anything odd. I mean, my
6 reasonable doubt charge, so y'all know, a reasonable
7 doubt will cause a reasonable person to hesitate to act.
8 You must be firmly convinced. It has that language. I
9 instruct both ways. If y'all want more than that, every
10 reasonable doubt is resolved in the favor of the
11 defendant. Circumstantial evidence. All circumstances
12 must be consistent and point to the guilt of the
13 defendant when considered together. I give that
14 instruction.

15 MS. MAYES: We do ask for direct and circumstantial
16 evidence.

17 THE COURT: That's generally given just so y'all
18 know that. Any other queries as to what instructions I
19 give.

20 MR. SCOTT: Opening first.

21 THE COURT: Yes. I'll do that. The Eleventh
22 Circuit has already adopted the rule. They did it
23 without bating an eye.

24 MR. SCOTT: You can consider the truth asserted on
25 the stand.

1 THE COURT: I really never said it. I gave you what
2 I normally do in my opening comments. That's how I
3 normally have done it. I didn't really give it much
4 thought. So anything in particularity that y'all want
5 instructed other than straight CSC, expert witness,
6 direct, circumstantial, credibility?

7 MS. MAYES: Sexual battery definition.

8 THE COURT: Sexual battery definition.

9 MR. SCOTT: Not believe more witnesses over one
10 witness.

11 THE COURT: That's in my normal charge. One over
12 many. Many over one. Expert witness considered in light
13 of training. Disregard all of it, some of it, whatever.
14 Believe part of a witness' testimony. Disbelieve the
15 balance of it. You know. I've got all that. There's
16 nothing what I would consider crazy in my instructions of
17 the law. Very vanilla and straight forward. If y'all
18 want anything specific, put it on the charge and I'll
19 consider it but I don't consider my instructions any half
20 a different than most judges. It's what you see in the
21 charge book online. That's about what it's gonna be.
22 And likewise, Ms. Mayes, i've been talking with them and
23 these three have not appeared in from of me. You and Ms.
24 Radlein have appeared in front of me several times. If
25 you have anything special you want instructed, I would be

1 glad to consider that also. I generally use a verdict
2 form rather than the indictment.

3 MS. MAYES: No objection.

4 THE COURT: I'll have it printed out and you can use
5 it in closing, if you like. Now, I did in a civil case
6 one time, the lawyer wrote on it the verdict he wanted,
7 the amount. Don't do that. You can see the form but
8 don't write on it. I thought that was a pretty good
9 trick. I had to print another one. All right. We're
10 off the record.

11 (Whereupon, court was adjourned for the day at 5:00
12 p.m.)

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1 part of the record and at least be entitled to note that
2 that's the first person who was alerted and we had no
3 opportunity to ask him.

4 THE COURT: Okay. Your objection is noted. As I
5 understood it it was a call made to Crouch. Crouch made
6 a call to the chief investigator who was about to depart
7 the office but because of the call waited and within
8 moments the two women, mother and aunt entered the police
9 department and the investigation ensued from there so it
10 seems to be an unnecessary witness. He didn't perform
11 any investigation. Just received a call because he had a
12 relationship in a small community with the aunt whose
13 disclosure was not made. It was made by the mother. The
14 mother made the disclosure to the aunt and that's one of
15 those problematic disclosures passing along information.
16 The aunt would be a good witness. She was the firsthand
17 person to receive the disclosure other than its time and
18 place so I don't find any problem. Your objection is
19 noted. You've got protection on that. Anything else?

20 MR. SCOTT: Nothing, Your Honor.

21 THE COURT: Okay. Bring in the jury please.

22 (Whereupon, the jury entered the courtroom at 9:10
23 a.m.)

24 THE COURT: All right. Ms. Gallman, ladies and
25 gentlemen of the jury, it's the opportunity now for each

1 side to summarize their respective cases and position and
2 what they believe the evidence has shown. Now, I'll tell
3 you they'll probably make this comment that what they say
4 is not evidence. What y'all heard from the witness stand
5 and the evidence received is evidence. That's what y'all
6 are gonna weigh in the jury room to make your decision.
7 The lawyers are giving you their view, each side.

8 Now, I'm in charge, and I told y'all this earlier,
9 I'm in charge of giving you the instructions on the law
10 in South Carolina as it currently stands. And I'll tell
11 you this: That between Christmas and New Years the law
12 changed as to procedures and so we are under a new
13 procedure now and these parties haven't tried very many
14 cases with the new rule and the new rule requires the
15 State to present its argument in full and then they get
16 to come back up and have an opportunity to respond to
17 some of the things that the defense says. So Ms. Mayes
18 will go first and she will summarize her case and make
19 comments on the law.

20 Mr. Scott, are you arguing?

21 MR. SCOTT: Mr. Vieth.

22 THE COURT: Mr. Vieth is arguing for the defense and
23 he will summarize his client's position and then either
24 Ms. Mayes or Ms. Radlein will have an opportunity to
25 respond to that portion of their argument. So that's a

1 new rule. It used to be different. It used to be in a
2 different order. But rules change and we go by the new
3 rules. With all that in mind, give your careful
4 attention to Ms. Mayes.

5 MS. MAYES: May it please the Court.

6 THE COURT: Yes, ma'am.

7 MS. MAYES: Trust. That's what this case is still
8 about from beginning to end. There is no greater trust,
9 no greater bond than that between a parent and a child
10 and when that trust is broken, when it's betrayed in the
11 most terrible way, it leaves with it an aftermath of
12 destruction, of emotional pain, scars, mentally not
13 physically, and confusion for that child. It leaves a 10
14 year old lost and drowning in her own world in silence
15 that she's been made to keep, in shame, shame that's
16 taken over her own thoughts, and in fear of what's to
17 come. That was the life of Minor in December of
18 2014. And for this child school had always been her
19 refuge. Something she took pride in and something that
20 was her own. Something that she excelled at and
21 something that took her mind away from that man right
22 there. And in December of 2014 even her school work
23 couldn't be a refuge anymore because that secret was
24 weighing on her. Her fears were weighing on her. And
25 like any child she could only take so much and eventually

1 she cracked under that pressure and weight under this
2 burden.

3 So she writes on her school paper "I don't know and
4 I don't care." That was a cry for help. A message to
5 someone on the outside that something is wrong. Her
6 teacher Kelly Morse, she knows **Minor** She knows that
7 child. She knows something is wrong and in that moment
8 when Kelly Morse reached out and made that call and told
9 her mother there's something about **Minor**, that moment
10 carried with it however small the possibility of hope.
11 And for so long hope had been the only weapon that she
12 had. The only weapon against him. The only way to
13 protect herself.

14 So when her mom picks her up from school and lays
15 into her, what is this now? What is this now? You're
16 changing. You're acting out. And now you're writing on
17 your school papers, "I don't know and I don't care."
18 That's the moment she had been waiting for for so long.
19 She saw that chance and she took it. She let go of the
20 secrecy that had bound her, the fears that contained her
21 and she never looked back and that's what has brought us
22 here today. That's what brought **Minor** into this
23 courtroom two years waiting for her chance at justice.
24 Her chance to hold this man accountable. The man she
25 loved. The man she trusted. And he knew it and he took

1 advantage of it and that's how he maintained her silence.

2 So when we talk about proof in criminal cases, and
3 when I'm done speaking and the defense attorney has done
4 his argument before you, the Judge will charge you on the
5 law and specifically it's going to cover direct evidence,
6 circumstantial evidence, and exactly what that means.

7 Direct evidence is evidence that someone sees with
8 their own eyes. It's something they hear with their own
9 ears. It's direct proof. In this case there's **Sister**
10 **██████**. Out of the mouths of babes comes the truth. It's
11 not easy for **Sister** to take that stand and talk about
12 what she saw her dad do to her sister. Probably the
13 hardest thing she's ever had to do in her young life.
14 Her job as a witness as she told you was to tell the
15 truth. She said it was right in front of me. Right in
16 front of me. I saw it with my own eyes.

17 You heard her forensic interview where she talked
18 about it always made her nervous because daddy always
19 went to **Minor** side, **Minor** side of the bed and little
20 **Sister** was only seven, maybe eight when that happened.
21 She knew. She could sense something terrible was going
22 on. Something wrong was happening to her sister. She
23 said it always made me nervous because he always went to
24 her side and I thought he was hurting her. She couldn't
25 see it but she could sense it. That is direct evidence

1 under the law.

2 But it goes beyond direct evidence in this case.
3 Beyond the testimony of [Minor] who took the stand and
4 told you exactly what happened to her. It goes beyond
5 what [Sister] saw with her own eyes. It's direct
6 evidence in the form of DNA, forensic science that cannot
7 be refuted. One thing we know with absolute certainty,
8 his DNA was in [Sister]'s (sic) crotch, on [Sister]'s (sic)
9 underwear she was wearing the night of this assault and
10 left on that bathroom mat. How much did we hear in this
11 case about whether or not she took a shower. She's 12
12 years old today. She was 10 years old then. That's the
13 least of her concerns whether or not she took a shower
14 that morning, whether she is right or wrong about taking
15 a shower. She said in the forensic interview she took a
16 shower and if she told the nurse that she had showered or
17 washed, then she did. But the part of a body of a 10
18 year old that they're not gonna bother washing is inside
19 the vagina.

20 So no matter how much evidence was washed away from
21 her body, his saliva is still in her vagina. So it's in
22 the underwear that she slept in after the assault and
23 left on that bathroom mat. It's in the new pair of
24 underwear that she puts on and wears to school. You
25 heard the testimony from Jennifer Nguyen, the SANE nurse

1 at Palmetto Health Richland who talked about the evidence
2 collection process. She noted both in her records and
3 from her visual exam and in her testimony on the stand
4 that **Minor** had a vaginal discharge and you may have
5 wondered, well, what's the significance of that? What
6 does it matter that she had a vaginal discharge? It's
7 because that discharge that she saw 24 hours later on the
8 night of the 2nd while they are up at the hospital doing
9 that exam, that vaginal discharge is in her underwear and
10 also in the crotch of that underwear is saliva. And
11 guess whose DNA is in the crotch of that underwear?
12 Antonio Posey.

13 As the serologist from the crime lab, the state
14 crime lab explained it's a force of gravity. So as that
15 vaginal discharge flows from the vagina, it carries with
16 it the contents, the fluid, saliva. So that's how his
17 saliva ended up once again and his DNA in the crotch of
18 her underwear. And as the nurse explained when they do
19 the actual vaginal swab, she goes right here to what she
20 called the introitus, the opening of the vagina. That's
21 where she took the vaginal swab. That's where she
22 pointed to and made clear to all of us that's where she
23 is actually collecting the vaginal swab and those swabs
24 contain saliva, what is presumptively positive for
25 saliva, and the DNA, a full DNA match, a full DNA profile

1 that matches Antonio Posey.

2 MR. SCOTT: Your Honor, I object I don't think that
3 testimony was not a full DNA match.

4 THE COURT: She can argue that and you can argue the
5 evidence. Everybody needs to confine their arguments to
6 the presented evidence as previously noted.

7 MS. MAYES: If there's any testimony that you have
8 any questions about, the value of having a court reporter
9 in the courtroom is that the court reporter can play back
10 that testimony and clear up any questions that you have
11 about it.

12 Agent Paul Meeh, a serologist, a DNA expert at the
13 State Law Enforcement Division testified that it's a DNA
14 match in the white underwear crotch, a DNA match in the
15 blue underwear crotch, and a DNA match to Antonio Posey
16 from the vaginal swabs.

17 Let's talk a little bit about this, about how it all
18 unfolded. Antonio Posey took the stand and he said they
19 were a happy family. He and Brandi got along according
20 to his testimony well enough to have been sleeping in the
21 same bed the night before. He said if he ever was asked
22 to leave by Brandi, he would leave. And, in fact, that
23 had happened in the past. **Minor** he said loved him and
24 trusted him. That much is absolutely undisputed in this
25 case. Even **Minor** testified to that.

1 So look at the time line of how this all unfolded.
2 **Minor** has no motive. No reason whatsoever to say
3 this about her dad other than it's true. It's true.
4 Throughout everything we have heard this week in this
5 courtroom one thing stands like stone. He did it.
6 There's no other explanation for what's brought us here.
7 There's no other explanation for this. Daddy, a long
8 time. He would slide his private in mine. He would lick
9 my private. Words that she can't even say from her own
10 mouth in front of that little sister that she would
11 protect over everything and those fears that we talked
12 about before weighing on her that bound her. It's more
13 than just herself. It's more than just her own shame.
14 It's more than just the embarrassment. It's wondering
15 what's going to happen if I do tell? What happens to my
16 family? What happens to **Sister**? She even worried about
17 what would happen to him because he made it clear to her
18 his skin mattered the most. Don't tell.

19 She discloses in that car to her mom on those index
20 cards and it had been a long time coming but finally
21 Brandi Nye sees what had been in front of her. You heard
22 in the forensic interview **Minor** said her mom told her
23 aunt, you know what I was thinking might be going on?
24 It's going on. So with that Brandi Nye goes to the
25 Sheriff's Department. From there they're immediately

1 sent to the hospital where that rape kit is done, where
2 that evidence is collected from her vaginal opening where
3 that underwear, the blue underwear is taken off of her
4 body and then while they're at the hospital law
5 enforcement is at their house executing a search warrant.
6 He's not there. Nobody had any idea that law enforcement
7 would go to that house and execute a search warrant.
8 Nobody got a heads up on that and there's the underwear
9 laying right there on the mat next to **Sister**'s clothes
10 exactly where **Minor** left it. Even he had been at the
11 house and said he saw no sign of them so he left and went
12 to uncle Tim's house and that's where he found out
13 they were at the hospital.

14 But in this timeline it flows as naturally as it
15 should. **Minor** had no motive whatsoever to make up
16 anything on him. In the course of this entire process
17 beginning in December of 2014 until now she's been the
18 one who has lost and sacrificed so much. Her own
19 personal privacy. She's had photos shown and displayed
20 in this courtroom that no one, none of us should ever
21 even have to know about and her own personal dignity in
22 having to take that stand and testify in front of you 12,
23 13, 14 strangers about the most shameful events of her
24 life and in front of that man. Think about that as the
25 price she's paid for justice and give it to her.

1 When we talk about the medical exam, I submit to you
2 the best part about being on a jury is that you don't
3 have to leave your common sense behind. That same common
4 sense that you rely on every single day in your ordinary
5 daily lives. That's the same common sense we all bring
6 into this courtroom and you as jurors can rely on in the
7 jury room.

8 This witness that they called from Illinois to come
9 in here and say that he's looked at some photos of her
10 external genitalia and based on those photos there's no
11 evidence that she was ever penetrated. That's not how it
12 works. You heard the testimony from Kate Chappell, an
13 expert in child sexual assault examination who is working
14 now seeing patients now working in this field on a daily
15 basis, keeping up with the literature. She explained
16 exactly how it works. That when a child reaches puberty
17 as **Minor** had, she was in stage III of puberty, the
18 hymenal tissue becomes more flexible, more elastic and
19 allows for penetration, repeated penetration and you
20 heard her explain that when she actually took a Q-tip and
21 pulled the labia apart which is part of her exam, that
22 the hymenal tissue as she described it just fell back.

23 Well, none of that is visible in any of those photos
24 that this witness they brought from Illinois looked at.
25 He's never even seen **Minor**. That's not reasonable

1 doubt. Again, you get to rely on your own common sense.
2 As Agent Meeh, Agent Paul Meeh from the State Law
3 Enforcement Division Crime Lab explained, that DNA
4 evidence in her vagina, it came from direct contact. I
5 submit sexual contact. His mouth on her vagina is the
6 only explanation for this evidence. The only
7 explanation. As he stated, I have three daughters.
8 You're never going to find my DNA on their vaginal swabs.
9 It does not happen. That's not how DNA works. This was
10 a direct contact exactly as **Minor** described it.

11 Right here on this index card on the afternoon of
12 December 2nd, he would lick my private. She goes to the
13 hospital for that examination and then outright tells the
14 nurse that he has put his mouth on her vagina. How is it
15 that the very act that she is describing is the exact act
16 that is confirmed, absolutely confirmed by the DNA
17 science and evidence in this case? Saliva present on the
18 vaginal swabs, a match to his DNA.

19 Let's take a look here at what the evidence is in
20 this case and I submit to you when you have got two
21 children and you take them to let's stay, for example,
22 Disney World and you have a great trip and it's a
23 positive, positive, happy memory that they want to
24 remember, you're still never gonna hear it described the
25 same way. One child will say I rode Space Mountain. It

1 was the best rollercoaster I ever rode. Another child
2 will say I went to the Magic Castle, I went to the Magic
3 Kingdom and saw Cinderella. They both were at Disney
4 World but they remember two different events, they
5 remember things separately and then two weeks later you
6 can ask them tell me again about your trip to Disney
7 World and they'll remember It's A Small World and riding
8 it around. That's how the minds of children work. No
9 two people are ever going to remember the same thing
10 exactly the same way but neither one of them have any
11 motive to say this about dad other than it's the truth.

12 [REDACTED] Sister [REDACTED], we know that she is an eyewitness to
13 these events. What [REDACTED] Sister remembers seeing, that can't
14 be faked. That can't be manufactured. Not only did she
15 say it on this witness stand, she described it in full
16 detail in that forensic interview. She saw daddy with
17 his hands in [REDACTED] Minor pants. How did she know his hands
18 were in her pants? Because she saw it moving. Whether
19 it was shorts, whether it jeans, whether it was jean
20 shorts, none of that mattered. His hand was in her
21 pants. She's looking at this part up. She's not looking
22 at the length of her pants, no matter what.

23 And again, because I'm going first I have no idea
24 what the defense attorney will say to you but you get to
25 rely on your own common sense when it comes to children

1 and what they perceive.

2 Child sexual abuse. This crime is the very essence
3 of secrecy. You know, sometimes in these cases there's
4 no evidence at all. There's not DNA. There's not
5 anything because the child is too afraid to tell within
6 24 hours of the last assault and so they never get to the
7 hospital in time. But that's what makes these cases so
8 much different than saying armed robbery for example.
9 For prosecuting an armed robbery case you might have a
10 videotape that's set up there in the convenience store
11 and it captures it all on film or a burglary case, for
12 example, where someone breaks into a home and leaves
13 their fingerprints behind. Rarely if ever do you have
14 that in a child sexual abuse case because it is all built
15 around secrecy.

16 But even their witness said you hope, you always
17 hope that if a child gets to the hospital in time, you
18 can get that evidence and that's what happened here. So
19 as the agent with the State Law Enforcement Division
20 explained, the serologist Courtney Thompson, she had the
21 test that is presumptively positive for saliva and it was
22 done not only on the crotch of the white underwear but
23 also on the crotch of the blue underwear and also on the
24 vaginal swabs directly from the vaginal opening. All of
25 those were confirmed as presumptive positive on her test.

1 She gave you an explanation for exactly why in her
2 opinion to a reasonable degree of scientific certainty
3 she believed it to be saliva. That's what the test is
4 for.

5 Now, it goes beyond just that. You know, there was
6 a point in time when there was no DNA science, no DNA
7 evidence available at all. Things have changed through
8 the years and now it's more than just saying there's
9 another bodily fluid there and we believe it's saliva.
10 We believe it's saliva on the vaginal swab. We believe
11 it's saliva in the blue underwear. We believe it's
12 saliva in the white underwear. Now you can do DNA.
13 Well, guess what? It's not just **Minor** DNA on the
14 underwear exactly where it should be and it's not just
15 **Minor** DNA on the vaginal swab from her vaginal opening,
16 Antonio Posey's DNA is also there where it should never
17 be. There's only one explanation for that.

18 The law in this case is actually quite simple.
19 Criminal sexual conduct with a minor in the first degree
20 and the Judge will charge you on this momentarily. But
21 these are the elements that the State must meet, it's
22 burden of proof and prove beyond a reasonable doubt. The
23 first is that an act of sexual battery occurred with a
24 minor, and I'll come back to that, who was less than 11
25 years of age. Well, we know that **Minor** was. We know

1 that **Minor** was 10 years old when all of this came out.
2 We know that **Minor** was 10 years old the last time she
3 was abused by him the night before she told on December
4 1st. We see here her date of birth is [REDACTED], 2004
5 so that leaves us here. This is the only other element
6 to be proven beyond a reasonable doubt. Sexual battery
7 with a minor. So what does that mean?

8 The Judge is gonna give you this definition
9 momentarily about what sexual battery means, but it
10 includes placing the mouth on the vagina. That's it.
11 It's that simple. That crime has been proven beyond a
12 reasonable doubt not just because **Minor** told us it
13 happened and she did. This tells us that it happened
14 (indicating.) It proves that it happened.

15 Okay. So let's look at sexual battery and how it's
16 defined under the law. Sexual battery means sexual
17 intercourse, cunnilingus, fellatio or any intrusion
18 however slight of any part of a person's body or any
19 object into the genital opening of another person's body.
20 It can be any of these things. So there's been all of
21 this talk and all of this discussion and they have got a
22 witness who comes in from Illinois who hasn't treated
23 patients in over 12 years for the entire length of **Minor**
24 [REDACTED] life but all of this is done to somehow establish
25 whether or not there's definitive proof of sexual

1 intercourse? The law doesn't require any of that. The
2 law doesn't require proof of sexual intercourse. I
3 submit to you it absolutely did happen just as **Minor**
4 described it and just as Kate Chappell, the sexual
5 assault examiner explained that it happened.

6 But the only thing that we have to prove as the
7 State of South Carolina under the statute, the only thing
8 that we have to prove is that one act right there. The
9 Latin word cunnilingus but in effect placing the mouth on
10 the vagina. That's it. One time. One time that that
11 man puts his mouth on that child, her vaginal opening,
12 that act is proven beyond a reasonable doubt and that is
13 proof beyond a reasonable doubt of criminal sexual
14 conduct with a minor in the first degree.

15 Finally, I want to say that as you hear **Minor** talk
16 about what happened you see the innocence in her and
17 you see how that innocence has been stolen from her. As
18 she talks in that forensic interview about him having a
19 paper towel and wiping her with the paper towel but she
20 hasn't been able to tell mom yet about the paper towel,
21 she talks about how he would use his fingers on her and
22 his mouth on her, all those details that she was able to
23 give, there is no 10 year old anywhere that can make
24 anything like that up. She's describing it because
25 that's how it happened.

1 But beyond just that you see that innocence of a 10
2 year old she could never get back. And then as she takes
3 this stand as a 12 year old and she's grilled about
4 whether or not she took a shower on the morning after she
5 was abused as if that's something she was taking notice
6 of, that's an insult to that child. It's an insult to
7 any victim of sexual abuse. It's reprehensible. Because
8 the last thing on her mind was to take notes. This
9 wasn't a trip to Disney World like I talked about a few
10 moments ago. This isn't anything she wants to remember.
11 As she explained, she was doing her best to block it out.
12 She's laying there on that bed. She knows he's using a
13 paper towel because she can feel it. She knows he's got
14 his mouth on her because she can feel it. She knows he's
15 got his finger in her because she can feel it. But the
16 last thing she's worried about is what color her shorts
17 are when he tells her to pull them to the side and in her
18 mind she's floating to another place and another time
19 somewhere else. She doesn't have to live with that.

20 That's what it all comes down to. All that trust
21 she had in him broken and betrayed came down to one
22 thing. She just wanted it to stop. You have before you
23 the most noble of opportunity. A chance to strike back
24 against injustice and deliver a verdict that speaks the
25 truth. Let this be the last time a child feels unsafe

1 with him. Let this be the last time he hurts a child in
2 this county. The past can't be undone. What happened to
3 **Minor** can't be changed. It's never really over for her.
4 It never will be. It's too late to change that. But
5 it's not too late for justice. It's never too late for
6 justice. Let this be the last time. It must be the last
7 time. The correct verdict in this case is guilty of
8 criminal sexual conduct with a minor in the first degree.
9 Thank you.

10 THE COURT: Mr. Vieth.

11 MR. VIETH: May it please Your Honor.

12 THE COURT: Yes, sir.

13 MR. VIETH: Madam Forelady, ladies and gentlemen of
14 the jury, I haven't had an opportunity to speak with you
15 very much. I introduced myself to you Tuesday which I'm
16 sure to some of y'all is about two months ago now. But
17 I'll introduce myself to you. My name is Rick Vieth.
18 I'm an attorney up in the Greenville/Spartanburg area and
19 I have been very fortunate along with Nancy and David to
20 get to represent Antonio Posey in this very difficult
21 case. I have made the trip down her everyday from my
22 home in Greenville and you think about things when you're
23 driving after a case like this. When I'm not playing in
24 a courtroom or practicing law, once in a while I try to
25 get out and play a little golf, been a nice day to do it

1 today, but we are doing a very serious case.

2 The reason I bring that up is simply because in
3 cases like this I'll maybe be playing golf one weekend
4 with my buddies and someone will say, Rick, you have any
5 interesting cases you have been asked to get involved in
6 lately? I'll say, yeah. I got to ask represent a fellow
7 or a lady charged with having sex with a minor. I don't
8 think in my career as a lawyer I have had one of those
9 golfers or one of those people walking down the street
10 say anything except, how can you represent someone like
11 that? How can you represent someone like that? So you
12 know what that tells me? It tells us that the
13 presumption of innocence doesn't apply in criminal sexual
14 conduct cases. He almost has to prove he's innocent and
15 that's unfortunate because that's not the rule of the
16 law. That's not what our constitution says. But I
17 guarantee you if you go walking down the street and just
18 say that I'm representing a lady or a guy charged with
19 having sex with a minor, they're not gonna say, that
20 lying female or that lying kid. They're gonna say, how
21 can you represent someone like that?

22 We picked you as jurors through a lot of effort.
23 You saw us huddling. We looked at the jury list before
24 this trial ever happened to pick people on this jury that
25 we thought would put aside that presumption of guilt.