

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Maite Murphy, Circuit Court Judge

JOHNNY TAMAR BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000738

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON 2013-GS-10-06760

STATE OF SOUTH CAROLINA	)	TRANSCRIPT OF RECORD
-vs-	)	
JOHNNY TAMAR BROWN,	)	June 24, 2014
Defendant.	)	Charleston, South Carolina

B E F O R E:

The Honorable Roger M. Young, Judge.

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

Shannon Elliott, Assistant Solicitor
Attorney for the State

Brian Byrd, Esquire
Attorney for the Defendant

Reported By:

Amanda Kelly Haffenden, RPR, CRR
Circuit Court Reporter for the
Ninth Judicial Circuit

1 (June 24, 2014.)

2 MS. ELLIOTT: Johnny Brown. This is a
3 rejection on a plea.

4 THE COURT: All right. What do we have?

5 MS. ELLIOTT: This is Johnny Brown. He is
6 charged with two counts of criminal sexual conduct with a
7 minor in the first degree, and due to the fact he has
8 already been deemed a sex offender due to a 1996 prior
9 conviction for CSC with a minor in the first degree, the
10 State was offering that he plead to one count of CSC with
11 a minor in the first degree. We would recommend 20
12 years.

13 He is rejecting that offer. One of the
14 reasons we're asking that this be put on the record is he
15 is now eligible for LWOP.

16 THE COURT: He will be?

17 MS. ELLIOTT: He will be, Your Honor.

18 THE COURT: All right. You're Johnny Tamar
19 Brown?

20 THE DEFENDANT: Yeah. Yes, sir.

21 THE COURT: All right. Mr. Brown, the State
22 has offered you a plea to 20 years to these two charges.
23 I'm told that you are not interested; is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. And you understand

1 that it is very likely that the State will seek a life
2 without parole sentence if you are convicted?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Have you talked this
5 over with your lawyer?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Well, y'all be ready for
8 trial then, because they're going to try it.

9 MR. BYRD: Thank you, Your Honor.

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(Whereupon, the proceedings were concluded.)

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I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 24th of June 2014.

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

November 29, 2017

Circuit Court Reporter

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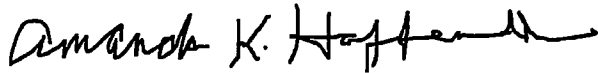
AMANDA K. HAFFENDEN, RPR, CRR
Circuit Court Reporter
P.O. Box 424
Summerville, SC 29484
ahaffenden@sccourts.org

November 29, 2017

TO: Jennifer Jennison
Office of the Attorney General
Rembert C. Dennis Building
PO Box 11549
Columbia, SC 29211-1549

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DATE: November 29, 2017
TRANSCRIPT OF PROCEEDINGS
BEFORE: Honorable Roger M. Young

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Amanda K. Haffenden, RPR, CRR

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STATE OF SOUTH CAROLINA) GENERAL SESSIONS
COUNTY OF CHARLESTON) CASE NO. 2013-GS-10-06759

STATE OF SOUTH CAROLINA,)
Plaintiff,) Transcript of Record
vs.)
JOHNNY TAMAR BROWN,) Date: April 13-15, 2015
Defendant.)

* * * * *

B E F O R E:

THE HONORABLE DEADRA JEFFERSON

* * * * *

Denise J. Lauder, RPR

Ninth Judicial Circuit

1 A P P E A R A N C E S

2

3 REPRESENTING THE STATE OF SOUTH CAROLINA:

4 SHANNON ELLIOTT, ASSISTANT SOLICITOR

5 DEBBIE HERRING-LASH, ASSISTANT SOLICITOR

6 Ninth Circuit Solicitor's Office

7 101 Meeting Street, Suite 400

8 Charleston, SC 29401

9

10

11 REPRESENTING THE DEFENDANT:

12

13 CHARLES COCHRAN, PUBLIC DEFENDER

14 CHARLESTON COUNTY PUBLIC DEFENDER'S OFFICE

15 101 Meeting Street

16 Fifth Floor

17 Charleston, SC 29401.

18

19

20

21

22

23

24

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1 (The following proceedings were had
2 April 13, 2016, Charleston County Circuit, 12:35
3 p.m.)

4 THE COURT: Ladies and gentlemen,
5 you've been selected for the case of the State of
6 South Carolina versus Johnny Tamar Brown. I need
7 to speak with the lawyers very briefly to hammer
8 out some scheduling details for the remainder of
9 the day. I suspect we may break for lunch, but I
10 need to get -- we have some matters of law to deal
11 with and I need to get an idea of how long that
12 will take us and when we will be returning from
13 lunch.

14 We appreciate your patience. Please do
15 not discuss the case in any manner whatsoever.
16 Please don't speculate about what you think it may
17 or could be about. If you would go with the
18 Bailiffs, please. We appreciate your patience.

19 (Jury panel out, 12:35 p.m.)

20 THE COURT: Okay. Is the Rape Shield
21 really an issue?

22 MR. COCHRAN: No, Your Honor.

23 THE COURT: So that's moot then,
24 correct?

25 MR. COCHRAN: Yes, Your Honor.

1 THE COURT: Is there going to be any
2 motion to sequester witnesses? I did not see one,
3 but I just wanted to ask.

4 MR. COCHRAN: We will move for that,
5 Your Honor.

6 THE COURT: Any exception from the
7 State?

8 MS. ELLIOTT: None from the State, Your
9 Honor.

10 THE COURT: Okay. The witnesses will
11 be sequestered except for the case agent and the
12 Minor .

13 MS. ELLIOTT: Thank you, Your Honor.

14 THE COURT: All right. That then
15 leaves us with -- is there going to be any Boiter
16 evidence, Mr. Cochran?

17 MR. COCHRAN: No, Your Honor.

18 THE COURT: That issue is moot as well?

19 MR. COCHRAN: Yes, Your Honor.

20 THE COURT: And then that leaves us
21 with the State's motion in support of other bad
22 acts. I assume you object to that.

23 MR. COCHRAN: We do, Your Honor.

24 THE COURT: In a nutshell -- let me
25 look at this right quick. I apologize.

1 What type evidence are you seeking to
2 introduce, Ms. Elliott?

3 MS. ELLIOTT: Your Honor, we expect
4 that the **Minor** would testify that approximately
5 starting at the age of six until the defendant --
6 we would limit this to give you full disclosure of
7 the facts -- that starting at about the age of six,
8 the defendant would sexually assault her in a like
9 manner to what she will testify to this incident at
10 her grandmother and great-grandmother's house, that
11 great-grandmother being the defendant's
12 grandmother.

13 This would typically happen in a
14 bedroom across a bed, which are similar to the
15 facts in this case, and that it only ended when he
16 went and started serving his active sentence for
17 burglary. She knows not to say that he's off in
18 jail. In fact, we have a stipulation saying that
19 he's -- that the defense agreed to saying that he's
20 gone out of Charleston for that length of time, but
21 that's when it stopped.

22 So, Your Honor, our greatest argument
23 is that this is in fact a continuous course of
24 conduct because it resumed again within six weeks
25 of him being released from SCDC.

1 THE COURT: How old was she when he
2 went to SCDC?

3 MS. ELLIOTT: She would have been -- it
4 was two months before her ninth birthday.

5 THE COURT: And how old was she when
6 this allegedly resumed?

7 MS. ELLIOTT: Thirteen. But he could
8 not have any contact because he was continuously in
9 SCDC custody during that time.

10 THE COURT: What's your exception to
11 the admission?

12 MR. COCHRAN: Your Honor, we would
13 argue that that's too long of a time to establish a
14 common scheme or plan. I would also like to note
15 that I really only had notice that this had
16 happened on one occasion. She alleged it happened
17 on one occasion sometime around the time she was
18 six. This is the first I'm hearing, I believe, of
19 a continuing pattern of conduct for three years.

20 THE COURT: How many times are you
21 going to elicit -- in other words, how many times
22 will she be testifying that this happened before he
23 left South Carolina, left the home?

24 MS. ELLIOTT: She can describe three
25 discrete incidences, but will say that this

1 happened continually during that time. And this
2 was laid out in a motion that we provided to him on
3 Friday, Your Honor. And we talked about it before.

4 THE COURT: Do you have a copy of the
5 motion?

6 MR. COCHRAN: Yes, Your Honor.

7 THE COURT: What I would prefer to
8 do -- I don't like ruling in limine, because I need
9 to hear the testimony. What I would instruct
10 you-all to do is not go into it in opening
11 argument. Do not ask her any questions about that
12 on direct. When you reach that point when you want
13 to question her about that, we'll excuse the jury
14 and I'll hear it in camera and then I'll hear
15 argument and we'll go from there.

16 Any exception from the State?

17 MS. ELLIOTT: None, Your Honor.

18 THE COURT: From the defense?

19 MR. COCHRAN: No, Your Honor.

20 THE COURT: Are there any other motions
21 that we need to take up that I haven't been given?

22 MR. COCHRAN: Well, Your Honor, I
23 believe that the State was also seeking to admit a
24 prior conviction.

25 THE COURT: I didn't get a motion on

1 that.

2 MS. ELLIOTT: Judge, that prior
3 conviction is an element of the crime and so we're
4 not -- we're not seeking to -- we're not seeking to
5 say --

6 THE COURT: An element of an
7 enhancement or an element of the crime?

8 MS. ELLIOTT: An element of the crime.
9 To be charged with criminal sexual conduct in the
10 first degree when the **Minor** is over the age of 11,
11 you have to show that he has a conviction under --
12 and I'm not going to say that right without looking
13 at it --

14 THE COURT: You have to show -- under
15 which statutory provision are you alleging that?
16 Are you contending that you have to show a prior
17 conviction?

18 MS. ELLIOTT: Under -- well, it's under
19 -- the statute is 16-3-655(A)(2). And we have to
20 actually show it under section -- it has to show
21 the information under 16-23-430, the sex offender
22 registry. So we have to show that he's on the sex
23 offender registry. We don't intend to go into the
24 details of what that conviction is, simply that he
25 has a conviction that puts him on the sex offender

1 registry.

2 THE COURT: I'm going to have to look
3 at my -- because my question becomes, can you meet
4 -- I just off the top of my head can't remember the
5 elements of CSC first, but I don't ever recall
6 instructing a jury that a prior offense under that
7 section was an element of the offense of CSC first.

8 MS. ELLIOTT: Your Honor, it's quite
9 parallel to the burg first statute.

10 THE COURT: I will ask have to look at
11 that over lunch to see because I think that's an
12 element of enhancement. I'm not certain it's --
13 what's your position, Mr. Cochran?

14 MR. COCHRAN: Your Honor, it is -- it's
15 a -- it's different from burg first in that the CSC
16 first degree with a minor that he's charged with is
17 fundamentally different than CSC first degree with
18 a minor under its normal prosecution where the
19 **Minor** is under 11 years old, it carries 25 to
20 life. He is charged with CSC first degree with a
21 minor, carries 10 to 30; it is a different offense.
22 It involves the penetration of somebody under the
23 age of 16. We would ask that if the State can
24 prove their case by establishing that there was
25 penetration --

1 THE COURT: Well, my question becomes
2 though, do you agree or disagree that that's an
3 element of proof for them?

4 MR. COCHRAN: Disagree.

5 THE COURT: And you're saying it's not
6 -- I have never instructed that. I will have to go
7 back and research that over --

8 MS. HERRING-LASH: Your Honor, I have
9 -- we never got a motion regarding that, but I have
10 prepared a Memorandum that I can give you.

11 THE COURT: That would be helpful.

12 MS. HERRING-LASH: It is a fairly new
13 statute in that it was passed in 2006 and it -- but
14 I do have a --

15 THE COURT: That's not really new.

16 MS. HERRING-LASH: Well, it just
17 doesn't come up a lot. It only makes it first
18 degree -- normally, the child would have to be
19 under 11. This is first degree only if the State
20 proves that the defendant was on the sex offender
21 registry, but I will give you our motion in
22 support.

23 THE COURT: Thank you, that would be
24 helpful.

25 MS. HERRING-LASH: The main citation

1 for the burglary statutes, because there hasn't
2 been -- I know of several cases, but they haven't
3 been published regarding this.

4 THE COURT: Yeah. I would imagine if
5 it is applicable I would have to give some form of
6 limine instruction, but I'm going to study it over
7 the lunch break, Mr. Cochran. Because if it is
8 akin to the burglary statute, then I can't restrict
9 them in their proof. Even if they can prove CSC
10 without this other conviction, I can't restrict
11 them in proving an element of the offense.

12 I think I would be -- I would be
13 constrained to give a limiting instruction that it
14 is offered only to prove this element, but not as
15 proof of guilt and -- and that it's not character
16 evidence and you can't hold it against him. But I
17 will study it and then we'll -- but don't elicit
18 any of that testimony until we can take it up in
19 camera.

20 MS. HERRING-LASH: The one thing, Your
21 Honor, that we did put in the motion, we do not
22 intend to prove what he was convicted of, simply
23 his status. His status makes him eligible for that
24 element, and the status -- we would just have
25 someone that knows he's on the sex offender

1 registry. He's on there for criminal sexual
2 conduct with a minor in the first degree. We would
3 not elicit that.

4 MR. COCHRAN: And I do object to that,
5 Your Honor, but I would also like clarification
6 from the State because the victim of that 1996
7 conviction is on their witness list. And I'm
8 guessing they have --

9 THE COURT: Well, what you would do is
10 you would call a records custodian with a copy of
11 the certified -- somehow you could do it or you
12 could do it by stipulation, I guess --

13 MS. HERRING-LASH: Actually --

14 THE COURT: -- that person couldn't
15 come testify to the event.

16 MS. HERRING-LASH: We would just call
17 the person that handles the registry just to say
18 that Johnny Brown is a registered sex offender.

19 THE COURT: Okay. Well -- and when it
20 gets on the sex offender registry. You know --
21 semantics, but it does have a different impact.
22 Okay. I'll look at that over lunch.

23 Now, my other question becomes -- is
24 there anything else, Mr. Cochran?

25 MR. COCHRAN: Your Honor, I do have a

1 few matters I would like to take up with the court.
2 I don't know if you want to do them now or when we
3 come back.

4 THE COURT: Well, it depends on how
5 long they are. What is it?

6 MR. COCHRAN: Well, Your Honor, my
7 client has been served with notice of life without
8 parole and the State is seeking life without parole
9 in this case, and we are moving for the State to
10 withdraw that based on the defendant having been
11 16 years old during his previous conviction.

12 THE COURT: Was he represented?

13 MR. COCHRAN: He was represented, yes,
14 Your Honor.

15 THE COURT: Was it in family court?

16 MR. COCHRAN: No, Your Honor, in
17 general sessions.

18 THE COURT: Okay. So he was an adult.

19 MR. COCHRAN: Yes, Your Honor. And he
20 was 16 years old. And we're making this motion
21 under the -- not under the holding in Byars vs.
22 Aiken, but under the spirit of that holding I would
23 say.

24 Your Honor, I don't believe that that
25 issue is directly ruled on. I may be incorrect on

1 that, but we also do not have anything other than
2 the conviction, the sentencing sheet, and the prior
3 indictment. We don't have anything in terms of a
4 transcript from that guilty plea --

5 THE COURT: Well, you wouldn't because
6 they only have to keep them so long and if it was
7 never requested and it was never appealed --

8 MR. COCHRAN: Yes, Your Honor.

9 THE COURT: -- it's probably been
10 destroyed.

11 MR. COCHRAN: And, Your Honor, we would
12 contend there is a possibility that during the plea
13 colloquy, if the judge had failed to notify
14 Mr. Brown of the future potential consequences of
15 life without parole, that he would not have
16 received --

17 THE COURT: I don't think back then he
18 would have and I don't think there was any
19 requirement for a judge back then to have.

20 MR. COCHRAN: And, Your Honor, if that
21 were the case, then we would argue that he did not
22 receive prior notice back then at that time and --

23 THE COURT: I think the rulings in
24 those cases are not retroactive. They are
25 prospective. You know, as the law develops, you

1 can't be held accountable for something that could
2 not have been foreseen. I'm trying to think of an
3 analogous situation, but I can't think of any
4 precedent that would support that, that train of
5 thought.

6 MR. COCHRAN: Yes, Your Honor. We also
7 would move to withdraw the notice of life without
8 parole based on the South Carolina -- based on the
9 lack of guidance from the statute and from the
10 legislature to the Solicitor's Office. The
11 Solicitor's Office is given wide latitude in this
12 decision-making and is given basically no guidance
13 in how to make that decision.

14 And I would also like to note for the
15 record that Mr. Brown did receive an offer of a --

16 THE COURT: I was going to cover that
17 on the PCR questions.

18 MR. COCHRAN: Yes, Your Honor. He was
19 given an offer of a negotiated 20-year sentence,
20 which I think would show that the Solicitors do
21 have discretion in this decision-making, and I
22 would just note that the statute and the
23 legislature does not provide guidance on how to
24 make that decision, and we would contend that that
25 is unconstitutional.

1 THE COURT: Okay. Would the State like
2 to respond?

3 MS. ELLIOTT: Your Honor, I think our
4 simple response would be that it is discretionary
5 within the Solicitor's Office. We did give him an
6 offer with the warning if he rejected it, he would
7 face LWOP at the time. He rejected this offer I
8 believe -- he rejected our initial offer on
9 June 24th, at which time he was advised by the
10 judge that this -- the offer of 20 years was off
11 the table and that he would be facing LWOP after
12 that time. He was well aware of what all the
13 potential exposure was and that that should be
14 sufficient.

15 THE COURT: Anything further?

16 MR. COCHRAN: Yes, Your Honor. Pending
17 your ruling, the State's motion to admit evidence
18 of his status as a registered sex offender in his
19 prior conviction, if Your Honor does grant their
20 motion to publish that to the jury, we would ask
21 that the jury be informed that he is facing
22 mandatory life.

23 THE COURT: Punishment is irrelevant,
24 it is not for the jury's consideration. Jury has
25 to make a decision about a person's -- it's really

1 not guilt or innocence, whether they're guilty or
2 not guilty, based on whether the State has met the
3 elements of -- proving the elements beyond a
4 reasonable doubt and unpersuaded by passion,
5 prejudice -- anything that would appeal to their
6 emotion.

7 And talking about sentencing appeals to
8 people's emotion, because they may think that
9 somebody's guilty, but they really don't want to --
10 they think the sentence is disproportionate.
11 That's a legislative matter and it's not something
12 that they should consider.

13 They are only to look at the facts of
14 the case, determine the facts, and apply the law to
15 those facts. Otherwise, it removes -- they're
16 supposed to make a dispassionate decision, and to
17 talk about punishment is clearly against precedent
18 and is not something that is allowed. Juries in
19 South Carolina cannot determine a person's
20 sentence.

21 MR. COCHRAN: And, Your Honor, my other
22 argument to that effect would be that the juries in
23 South Carolina are notified of sentences, the State
24 seeking the death penalty in this case. And that
25 that would violate my client's rights --

1 THE COURT: I'm sorry, you lost me.
2 Say that one more time.

3 MR. COCHRAN: That juries in South
4 Carolina are made aware of the State seeking the
5 death penalty in this case and that my client, his
6 right to --

7 THE COURT: They're not seeking the
8 death penalty in this case.

9 MR. COCHRAN: My argument would be that
10 client's right to equal protection under the laws
11 would be violated by the jury not being made aware
12 that they're seeking life without parole.

13 THE COURT: Novel, but no merit. It's
14 denied.

15 MR. COCHRAN: Your Honor, there is --
16 my client was served this morning with an
17 Indictment for criminal sexual conduct with a minor
18 in the third degree. The State is doing that, I've
19 been informed, because it's not a lesser included
20 under the statute and that they are concerned that
21 the jury may find that a sexual assault took place,
22 but penetration was not accomplished; however, it's
23 indicted as a separate offense.

24 Your Honor, we would move to dismiss
25 that Indictment based on excessive pre-indictment

1 delay. Mr. Brown was arrested on June 26, 2013, so
2 we're coming up on two years and the State has not
3 indicted him or served him with that until this
4 morning.

5 THE COURT: Do any of the facts come as
6 a surprise to you?

7 MR. COCHRAN: I'm sorry?

8 THE COURT: Do any of the facts in the
9 indictment come as a surprise to you?

10 MR. COCHRAN: Your Honor --

11 THE COURT: You knew they were alleging
12 -- I mean, penetration -- touching is a precursor
13 to penetration. You don't penetrate without
14 touching, so you had to be aware that was part and
15 parcel of what's being alleged.

16 MR. COCHRAN: Not necessarily.

17 THE COURT: Well, the purpose of an
18 indictment is to put you on notice. If you're
19 telling me that you're not prepared to go to trial,
20 the remedy is not to dismiss the indictment. The
21 remedy is to give you time to prepare.

22 MR. COCHRAN: And, Your Honor, I would
23 just cite State v. Lee in this case, which does --
24 and the cite on that is 653 SE2d 259, which does
25 address the issue of pre-indictment delay. And

1 excessive pre-indictment delay can be grounds for a
2 dismissal or is grounds for dismissal where the
3 State has -- where the State has the intention of
4 serving somebody with an indictment, and in that
5 case there was a number of years that were -- where
6 there was a delay.

7 The case also cites a Fourth Circuit
8 opinion where I believe there was only a six-month
9 delay. In this case, we have almost a two-year
10 delay, and I would cite those cases for the court,
11 Your Honor, and assert that this indictment has
12 been subject of an inexcusable delay.

13 MS. HERRING-LASH: Your Honor, in State
14 v. Lee the defense would have to prove they have
15 lost witnesses and they have lost documents that
16 would be material to their defense due to the
17 pre-indictment delay, and there are no new material
18 or no new witnesses that this indictment would
19 bring about so State v. Lee would not apply in this
20 situation.

21 THE COURT: Anything further?

22 MR. COCHRAN: Your Honor, I would --

23 THE COURT: On that issue?

24 MR. COCHRAN: On that issue, no.

25 THE COURT: I'm inclined to agree with

1 the State that State v. Lee doesn't support your
2 posture on the case, and that motion is denied. If
3 you need additional time to prepare, you need to
4 make me aware of that. Lee does not change the
5 fact that an indictment is simply a notice
6 document. It's to put you on notice to what you
7 need to refute, what you need to defend.

8 I'm hard-pressed to believe that you
9 weren't aware of the allegations before now,
10 because you've already indicated that you knew of
11 at least one. And, generally, touching is a
12 precursor to intrusion, however slight. I'm a
13 little hard-pressed to -- it's just -- I mean, that
14 it would come as any surprise to you. But if you
15 need additional time to prepare, that would be the
16 remedy, not the dismissal of the Indictment.

17 MR. COCHRAN: Your Honor, I don't know
18 that the State is necessarily alleging separate
19 facts in the case.

20 THE COURT: I don't think they have to.
21 I think they can all be separate events. And the
22 jury can -- when you instruct the jury, you tell
23 them that each of them is different, each of them
24 has separate elements, they have to consider each
25 one of them independently, they can acquit or

1 convict on any or all.

2 They could conceivably convict him on
3 one and acquit him on two. They could do one of
4 two -- I mean, there are a lot of options. Or they
5 could acquit him on all of them.

6 MR. COCHRAN: And, Your Honor, my
7 contention would be that the reason the State has
8 indicted him for criminal sexual conduct, third
9 degree, is under the same logic as charging the
10 lesser included, and under that logic you could not
11 convict him of both. It's either or.

12 THE COURT: The Rules allow you to do
13 it.

14 MR. COCHRAN: Yes, Your Honor.

15 THE COURT: That's strategically how --
16 it's up to you to determine how you want to handle
17 it. Sometimes people take the position that
18 certain lesser includeds don't apply. I mean, I'll
19 have to take that up at charge -- at the time once
20 I have heard all of the facts of the case to see if
21 any lesser includeds are available to you.

22 MR. COCHRAN: Yes, Your Honor.

23 THE COURT: Factually, whether they're
24 supported factually.

25 MR. COCHRAN: Yes, Your Honor. We

1 would also move to withdraw notice of life without
2 parole is cruel and unusual punishment.

3 THE COURT: Our Supreme Court and the
4 U. S. Supreme Court has already ruled on that,
5 haven't they?

6 MR. COCHRAN: Yes, Your Honor. We
7 would also renew the Rule 5 Brady motions and renew
8 our motion for any potential impeachment evidence
9 under Riddle v. Osman. It's my understanding that
10 the State has had pretrial meetings with their
11 witnesses, and any inconsistent or new statements
12 or information that they have gotten from their
13 witnesses we would be entitled to, Your Honor.

14 THE COURT: Have you provided them with
15 all of your discovery?

16 MS. HERRING-LASH: We have, Your Honor.

17 THE COURT: Okay.

18 MR. COCHRAN: That's all I have, Your
19 Honor.

20 THE COURT: And have you gotten -- when
21 was your client offered the 20-year sentence?

22 MS. ELLIOTT: He rejected it on the
23 record --

24 THE COURT: I got that part. When was
25 it offered?

1 MS. ELLIOTT: I'd have to look that up.

2 THE COURT: Do you know how long ago
3 your client was offered that, Mr. Cochran?

4 MR. COCHRAN: I believe it was sometime
5 in the spring of 2014.

6 THE COURT: So he had more than a
7 couple of months to consider that?

8 MR. COCHRAN: Yes.

9 THE COURT: Did you fully go over that
10 with him?

11 MR. COCHRAN: Yes, Your Honor.

12 THE COURT: Did you full go over with
13 him the consequence of life without the possibility
14 of parole?

15 MR. COCHRAN: I did, Your Honor.

16 THE COURT: And did you -- did he
17 accept or reject the offer with or against your
18 advice?

19 MR. COCHRAN: Your Honor, I did not
20 advise him specifically as to whether or not he
21 should accept that offer. He made the decision on
22 his own.

23 THE COURT: Does he have any other
24 record?

25 MR. COCHRAN: Your Honor, he has

1 burglary convictions and the prior CSC.

2 THE COURT: You said burglary
3 convictions, like plural?

4 MR. COCHRAN: Yes, Your Honor, i
5 believe.

6 THE COURT: How many burglaries does he
7 have? Well, why don't you give me his record real
8 quick.

9 MS. ELLIOTT: He has a '96 CSC --

10 THE COURT: I need you to slow down.
11 '96 CSC minor, first degree.

12 MS. ELLIOTT: And a 2006 sex offender
13 registry violation; 2007, a DUS, possession of a
14 stolen motor vehicle, and burg second nonviolent;
15 2008, a burg second, nonviolent.

16 THE COURT: And the judge already on
17 the 24th went over with him his rejection of the
18 offer.

19 MR. COCHRAN: Yes, Your Honor.

20 THE COURT: Do you know which judge
21 that was?

22 MR. COCHRAN: I believe it was Judge
23 Houston.

24 MS. ELLIOTT: I actually thought it was
25 you.

1 THE COURT: It is possible. Do you
2 feel the need for me to question your client for
3 PCR purposes, Mr. Cochran, any further, or do you
4 believe that the record from the 24th is
5 sufficient? I'm referring to June 24th.

6 MR. COCHRAN: I believe that record is
7 sufficient.

8 THE COURT: Is there anything else? Do
9 you all have any pre-marked exhibits or anything?

10 MS. ELLIOTT: We have not yet, Judge.

11 THE COURT: And when I say premarked, I
12 mean that you've agreed upon.

13 MS. ELLIOTT: Oh, we have not discussed
14 that, Your Honor.

15 MR. COCHRAN: Your Honor, if I could
16 just -- since you're deciding this over the lunch
17 break, if I could give you a few cites of arguments
18 in support of the -- not introducing Lyle evidence.

19 THE COURT: Give me one second.

20 MR. COCHRAN: Your Honor, State v.
21 Fonseco, which is 393 SC 229. I would also cite
22 for Your Honor State V. Tutton, which is 580 SE2nd
23 186, and State v. McClellan, 283 SC 389.

24 MS. ELLIOTT: And, Judge, just to
25 clarify, you do have a copy of our full motion?

1 THE COURT: I do.

2 MS. ELLIOTT: Thank you, Judge.

3 THE COURT: Anything else we need to
4 take up before we excuse the jury for lunch and you
5 go to lunch?

6 MR. COCHRAN: Not from me, Your Honor.

7 MS. ELLIOTT: Nothing from the State.

8 THE COURT: I would also ask that if
9 you have any exhibits that need to be marked, that
10 you take that up with the court reporter. She has
11 a system, and I would appreciate it if your system
12 was consistent with hers so that she doesn't have
13 to remark anything.

14 If there is anything that you have
15 agreed upon, I would appreciate you providing her
16 with that list so that those exhibits can be marked
17 and admitted prior to us beginning the trial. Is
18 that acceptable to the State?

19 MS. ELLIOTT: It is, Your Honor.

20 THE COURT: To the defense?

21 MR. COCHRAN: Yes, Your Honor.

22 THE COURT: All right. If you could
23 bring -- is an hour and 15 minutes good for lunch?

24 MS. ELLIOTT: Yes, Judge.

25 MR. COCHRAN: Yes, Your Honor.

1 THE COURT: Please bring in the jury.

2 And I'm appointing number 73 as the foreperson.

3 (Jury in, 1:01 p.m.)

4 THE BAILIFF: All jurors present.

5 THE COURT: Ladies and gentlemen, we
6 appreciate your patience. We actually were able to
7 go through the majority of the matters of law in
8 this case so that after lunch we will be able to
9 begin with opening instruction and opening
10 arguments and begin testimony in this case.

11 I'm going to release you for lunch
12 until 2:15. You will come directly to your jury
13 room after that. Please do not have any contact
14 with anyone in or about the courthouse. Please do
15 not watch, read, or listen to any media accounts
16 about this case, if there are any.

17 Please do not make any comments about
18 your status on any social networking sites. That
19 includes Facebook, Instagram, and otherwise. You
20 would be amazed the people who are not on the jury,
21 who spend their whole day on these social
22 networking sites and call the jury coordinator very
23 happy to let us know what you say. And they don't
24 know you. Isn't that a little startling? I find
25 it to be. But it happens. And so it requires us

1 to go through a whole other process if that
2 happens.

3 I think the best way to avoid that is
4 just not to say anything because people tend to
5 want to believe the worst of the statement than the
6 best of them.

7 When you return to the courthouse,
8 please don't have any contact with anyone in or
9 about the courthouse that you do not recognize to
10 have a juror sticker on.

11 If you would stand for me please so
12 that the clerk can administer your oath to you.

13 THE JURY,
14 being first duly sworn, testified as follows:

15 THE CLERK: Thank you. You may be
16 seated.

17 THE COURT: I hope you have a wonderful
18 lunch. See you at 2:15.

19 (Jury out, 1:04 p.m.)

20 THE COURT: Anything before we break
21 for lunch?

22 MS. ELLIOTT: No, Judge.

23 MR. COCHRAN: No, Your Honor.

24 THE COURT: See you-all at 2:15. Have
25 a good lunch.

1 (A luncheon recess transpired.)
2 (PLF. EXH. 1, Photograph, was marked in
3 evidence.)
4 (PLF. EXH. 2, Photograph, was marked in
5 evidence.)
6 (PLF. EXH. 3, Photograph, was marked in
7 evidence.)
8 (PLF. EXH. 4, Photograph, was marked in
9 evidence.)
10 (PLF. EXH. 5, Photograph, was marked in
11 evidence.)
12 (PLF. EXH. 6, Photograph, was marked in
13 evidence.)
14 (PLF. EXH. 7 Photograph, was marked in
15 evidence.)
16 (PLF. EXH. 8, Bag of clothing, was
17 marked for identification.)
18 (PLF. EXH. 9, Buccal swab, was marked
19 for identification.)
20 (PLF. EXH. 10, Sexual Assault Kit, was
21 marked for identification.)
22 (PLF. EXH. 11, Underwear, was marked
23 for identification.)
24 (PLF. EXH. 12, MUSC Evidence Bag, was
25 marked for identification.)

1 THE COURT: Anything before we proceed
2 with opening instruction and opening argument?

3 MS. ELLIOTT: Judge, I was wondering if
4 you had made a conclusion as to whether the motion
5 for the registry was part of the element just
6 because that --

7 THE COURT: I don't think you need to
8 argue that in opening.

9 MS. ELLIOTT: I was just going to go
10 through the elements.

11 THE COURT: Then you might want to stay
12 away from that one until I can come to some
13 consensus about it. You should be able to prove
14 your case without it, right? Don't you have the
15 elements of it without that at some point?

16 MS. ELLIOTT: Well, Your Honor, the
17 State would argue that it is an element. I think
18 that would be quite --

19 THE COURT: The purpose of opening
20 argument is only to show -- to explain to the jury
21 what the evidence will show. It's not to explain
22 the law. We give a lot of latitude in allowing you
23 to do that, but the elements of criminal sexual
24 conduct in the first degree -- give me one second,
25 criminal sexual conduct with a minor in the first

1 degree, you have to prove the sexual battery, that
2 the **Minor** was at least 11, and of course you don't
3 have to -- consent cannot be a defense.

4 I don't -- I think based on what I --
5 and I deliberately left that out when I was
6 publishing the Indictments to the jury. I think
7 that you can explain what the evidence will show in
8 this case without making reference to that at this
9 point, because if I exclude it, I can't un-ring
10 that bell, and it's grossly prejudicial to him.
11 And I don't see how you're prejudiced by not going
12 into it in opening.

13 MS. ELLIOTT: All right.

14 THE COURT: And I'm assuming that the
15 defense has no exception.

16 MR. COCHRAN: No objection, Your Honor.

17 THE COURT: Is there anything that the
18 defense needs to cover before we start with opening
19 instruction and opening argument?

20 MR. COCHRAN: No, Your Honor.

21 THE COURT: Okay. And I expect you-all
22 to stand when addressing the Court. I don't take
23 speaking objections. If you have an objection you
24 should simply state, objection. I will ask the
25 grounds for the objection, which you should be able

COURT'S PRELIMINARY REMARKS

1 to state succinctly, and if I need argument I will
2 ask for it outside of the presence of the jury or
3 at the bench. Our bench conferences are recorded.
4 Not that it's a requirement, but I prefer that.

5 If I need extended argument, I will
6 excuse the jury and take it up outside their
7 presence, and either way I will rule
8 contemporaneously on the objection.

9 You can bring in the jury. Number 73
10 is the foreperson.

11 (Jury in, 2:36 p.m.)

12 THE BAILIFF: Jurors are present, Your
13 Honor.

14 THE COURT: Ladies and gentlemen,
15 you've been selected for the case of the State of
16 South Carolina v. Johnny Tamar Brown.

17 Mr. Cochran, I apologize, I meant to
18 ask this earlier, am I pronouncing your client's
19 middle name correctly?

20 MR. COCHRAN: Yes, Your Honor.

21 THE COURT: There are three Indictments
22 in this case, which have already been published to
23 you; however, I will go over that at the end of the
24 case regarding the elements of the offenses. The
25 purpose of an opening instruction is to advise you

COURT'S PRELIMINARY REMARKS

1 how we will be proceeding in this case so that you
2 will better understand court procedure.

3 You will be given the opportunity to
4 take notes during the course of this trial. The
5 bailiffs are going to pass out some notebooks to
6 you, along with pens. There is a sticker on the
7 front of each notepad. If you would place your
8 juror number on that sticker so you will be able to
9 identify which notepad belongs to you. I will give
10 you general instructions regarding note-taking near
11 the conclusion of this instruction.

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

22 Just so that you know, when I use the
23 word, charge, that's a legal term of art that
24 simply means instruction. So charge and
25 instruction are interchangeable words.

COURT'S PRELIMINARY REMARKS

1 The defendant has been charged by three
2 Indictments filed with this court with the crimes
3 of criminal sexual conduct with a minor, first
4 degree, and criminal sexual conduct with a minor,
5 third degree, the elements of which I will explain
6 to you at the conclusion of the case before you
7 retire to deliberate regarding this cause.

8 The Indictments, ladies and gentlemen,
9 are simply the charge by which the case is brought
10 into court and they are not in any sense evidence
11 of any of the allegations they may contain.

12 The defendant has pled not guilty to
13 the Indictments. The State, therefore, has the
14 burden of proving each of the elements of each
15 Indictment beyond a reasonable doubt. And it will
16 be your duty, ladies and gentlemen, to decide if
17 the State has met that burden or not.

18 Did you need something, sir?

19 A JUROR: Yes; this pen doesn't work.

20 THE COURT: If you all could get him
21 another pen, please.

22 Is everybody else's pens working or do
23 we need -- thank you very much.

24 Your purpose as jurors is to find and
25 determine the facts. You are the sole judges of

COURT'S PRELIMINARY REMARKS

1 the facts in this case. If at any time I make any
2 comment regarding the facts, you must disregard it.
3 The constitution of our state does not allow a
4 trial judge to have any opinion about the facts in
5 a case before a trial jury.

6 You are to determine the facts from the
7 testimony you hear and the other evidence that will
8 be introduced during the course of this trial. It
9 is up to you to determine the inferences which you
10 feel may be properly drawn from the evidence. It
11 is especially important that you perform your duty
12 of determining the facts diligently and
13 conscientiously, because ordinarily there is no way
14 to correct an erroneous determination of fact made
15 by a trial juror.

16 On the other hand, and with equal
17 emphasis, the same law that makes you the judges of
18 the facts makes me the judge of the law. The law
19 as given by the Court is the only law you may
20 consider. You must accept and follow it, even
21 though you may disagree with it. The Court cannot
22 tell you what the facts are and you cannot disagree
23 with the Court about what the law is or what the
24 law should be.

25 Your responsibility, ladies and

COURT'S PRELIMINARY REMARKS

1 gentlemen, is to take the law as it is instructed
2 and apply it to the facts as you find them from the
3 testimony of the sworn witnesses that will testify
4 in this case and any other evidence that is
5 introduced into the record. After doing that, you
6 will render your verdict, a true and just verdict,
7 under the solemn oath that you've taken as jurors
8 in this case.

9 Until I advise you to begin your
10 deliberations, you must not discuss this case with
11 anyone. That includes your fellow jurors, your
12 friends, your family members or anyone else
13 involved in the case. After the case is submitted
14 to you, you must discuss it only in the jury room
15 with your fellow jurors.

16 The attorneys and the parties have been
17 advised they should not speak with you at all, so
18 if you should see them about the courthouse, in the
19 garage, the restroom or even the elevator and they
20 don't speak with you, please don't think they're
21 being rude or untoward. They're simply following
22 the Court's instructions. We would not want an
23 innocent conversation to be observed and
24 misinterpreted.

25 During the trial, you are not to read,

COURT'S PRELIMINARY REMARKS

1 listen to or watch any news reports about this
2 case. That includes anything that is on the
3 television, in the newspaper, radio or Internet,
4 and you are not to do any independent research of
5 any type regarding any issue or matter involved in
6 this case on the Internet.

7 We know that there is a lot of
8 information available via the internet, but under
9 your oath you were sworn to decide this case
10 according to the testimony that you will hear from
11 the lips of the sworn witnesses and the other
12 evidence. And that means you are restricted from
13 considering anything that you may have heard
14 outside of the courtroom regarding the facts and
15 issues in this case.

16 It is essential that you maintain an
17 open mind and not decide any issue in this case
18 until all of the evidence has been presented, the
19 parties have made their closing arguments and I
20 have instructed you on the law applicable to this
21 case.

22 It is your solemn responsibility to
23 determine the guilt or innocence of the defendant.
24 And your verdict must be based solely on the
25 evidence as it is presented to you in this trial

COURT'S PRELIMINARY REMARKS

1 and on the law as I will instruct you during and at
2 the close of this trial.

3 In just a moment, the Solicitor will
4 make what is called an opening statement in which
5 she will explain to you what the issues are in this
6 case. Or at least what she believes the issues to
7 be in this case. We often call that the attorneys
8 arguing or explaining to you what they believe the
9 evidence will show in the case. The attorney for
10 the defendant may make an opening statement,
11 although he is not required to do so.

12 Keep in mind, ladies and gentlemen,
13 that what the attorneys say during their opening
14 statements is not evidence in this case. It is
15 only their contention as to what they believe the
16 evidence will show in this case. The evidence in
17 this case will be presented to you by the testimony
18 of sworn witnesses from the witness stand and/or by
19 exhibits that will be introduced into evidence.

20 From time to time during the trial, you
21 will hear the attorneys say, Your Honor, I object.
22 Just as in sports, business, or any other
23 structured activities, there are certain rules that
24 we must obey in the presentation of evidence.
25 These rules have a definite purpose. They ensure

COURT'S PRELIMINARY REMARKS

1 that you receive the most trustworthy and reliable
2 evidence available.

3 An objection is the procedure that an
4 attorney uses to call a possible violation of these
5 rules to my attention as the judge of this court.
6 For this reason you should never hold an attorney's
7 objection against them, nor should you conclude
8 from the Court overruling or sustaining an
9 objection that I favor one side or the other.

10 In fact, in any good trial there should
11 be many objections and many rulings, so you should
12 expect that. And, again, you should not conclude
13 from the Court's ruling that I favor one side or
14 the other.

15 Also, from time to time, you may hear
16 the attorneys say something like, Your Honor, we
17 have a matter of law to discuss. They may ask to
18 approach the bench. I may ask them to approach the
19 bench, or it may even be necessary that we exclude
20 you from the courtroom for a short while while we
21 discuss matters of law. The reason we do this is
22 because you are the finders of the fact. And
23 sometimes when I'm discussing matters of law with
24 the attorneys, it might be necessary for me to make
25 some comment about the facts in connection with

COURT'S PRELIMINARY REMARKS

1 ruling whether an evidentiary rule, or statute, or
2 procedural rule applies. And for this reason, we
3 exclude you from the courtroom so that in no way
4 will you be influenced by anything that the Court
5 will say or do in connection with the facts of the
6 case.

7 In determining what the true facts are
8 in this case, you must decide whether or not the
9 testimony of a witness or witnesses is believable.
10 It is my responsibility to rule as a matter of law
11 as to whether testimony is admissible at all or
12 not, but once it's admitted, ladies and gentlemen,
13 whether or not you believe it is a matter solely
14 for you to determine.

15 In deciding whether to believe a
16 witness, you have the right to consider the
17 interest of any witness, the bias of any witness,
18 the prejudice of any witness, the opportunity for
19 the witness to have seen the matters about which
20 the witness may testify, and the way the witness
21 acts on the witness stand, something we commonly
22 refer to as their demeanor.

23 You have the right to consider anything
24 that is in the record that will help you evaluate
25 the testimony of the witness. That means, ladies

COURT'S PRELIMINARY REMARKS

1 and gentlemen, that it is your duty to pay close
2 attention to the witnesses, to observe them, to
3 listen to them, and to pay close attention to the
4 attorneys and the Court.

5 Although I know it is very difficult,
6 please do not allow your thoughts to wander, but
7 give strict attention to the testimony so that at
8 the end of the testimony, after the arguments of
9 the lawyers, and the charge on the law given by the
10 Court, you will then be in a position to determine
11 what the true facts are and apply the law to those
12 facts and render a true and just verdict in this
13 case.

14 During the course of this trial, you
15 will be allowed to take notes. Note-taking is a
16 privilege that you may choose to exercise or choose
17 not to exercise. Please don't feel you're required
18 to take notes. Not everyone finds note-taking
19 helpful to them. If you should decide to take
20 notes, please don't try to record everything that
21 is said. The average person speaks at over 200
22 words a minute. So you can imagine that's a lot of
23 words and it would be almost impossible for you to
24 take it down verbatim; and even if you thought you
25 were, it still probably wouldn't be accurate.

COURT'S PRELIMINARY REMARKS

1 The Court Reporter is trained in a very
2 sophisticated and complex form of shorthand. Even
3 with her ability to take down things phonetically,
4 she still has a backup tape that she listens to, a
5 digital recording of the proceedings, to make sure
6 what she takes down is accurate. So please don't
7 try to record everything that is said.

8 As I have explained, you are the
9 finders of the fact which means you must rely on
10 your powers of observation. Please do not allow
11 note-taking to become a distraction to you. You
12 may want to keep an outline of the main points that
13 are being made, the main arguments that are being
14 made so that when you retire to deliberate you may
15 use your notes to refresh your memory.

16 During breaks and recesses your notes
17 will be left in your seats. And that's to make
18 sure that we eliminate any potential for premature
19 deliberations in the case. And please know that we
20 will secure your notes during evening recesses and
21 your privacy will be maintained.

22 I would remind you, ladies and
23 gentlemen, that your notes are for your specific
24 and individual purposes. They are not to be shared
25 with anyone else. You should not consider anyone

COURT'S PRELIMINARY REMARKS

1 else's recollection or notes anymore -- in other
2 words, you should not consider anyone's notes more
3 reliable than someone's memory. Someone else's
4 memory should be considered just as reliable as
5 notes that may have been taken by a fellow juror.

6 It is your added duty, Madame Forelady,
7 to fill out the verdict form and sign the
8 Indictment once the jury has reached a verdict, but
9 I will give you further instruction regarding that
10 at the conclusion of the case.

11 Ladies and gentlemen, the foreperson is
12 an administrative function. That person does not
13 have any greater vote or voice than any other
14 juror. It is a purely random process that the
15 Court employs when selecting a foreperson so that a
16 cross-section of the community is represented in
17 that capacity.

18 Again, I emphasize that that person
19 does not have any greater vote or voice than any
20 other juror. It is just that we need to have
21 someone to fill out the verdict forms and to sign
22 the Indictments and advise the Bailiff of
23 communication with the jury.

24 In order to preserve everyone's rights,
25 I'm going to give the attorneys the opportunity to

OPENING STATEMENT - STATE

1 take exception to anything that the Court has said
2 by way of opening instructions.

3 Are there any exceptions from the
4 State?

5 MS. ELLIOTT: No, Your Honor.

6 THE COURT: From the defense?

7 MR. COCHRAN: No, Your Honor.

8 THE COURT: Ladies and gentlemen, I
9 would ask that you give counsel your undivided
10 attention in opening argument.

11 You may proceed, Ms. Elliott.

12 MS. ELLIOTT: Thank you, Judge.

13 THE COURT: You're welcome.

14 MS. ELLIOTT: So, you know, at first
15 glance [Minor] might look grown, but she's far
16 from it. And two years ago when she was 13, she
17 was faced with a terrible situation that she didn't
18 know how to handle, she didn't know how to respond
19 to.

20 It's June 20th of 2013, [Minor]
21 is spending a simple summer day at home at [Redacted]
22 [Redacted] on James Island. Now, that day before
23 her mother had to go off to work, [Minor] broke the
24 family rule; she let Johnny Brown in the house.
25 But he's family. Couldn't be that big of a

OPENING STATEMENT - STATE

1 problem. Her mother, Latwanna [REDACTED] confronted
2 him and said, what are you doing here? What do you
3 want?

4 At first Johnny Brown said he wanted
5 something to eat. Well, she said, we don't have
6 anything, sorry. Well, do you think you can give
7 me a ride to North Charleston? Well, Latwanna
8 couldn't do that either because she had to be at
9 work, and going all the way to North Charleston
10 when she worked on Maybank, she just wasn't going
11 to be able to make that time.

12 But she told him, before I leave for
13 work I'll call you and I will take you as far as
14 Maybank and then maybe somebody can take you from
15 there. He seemed all right with that and he left.

16 Just before she left for work about
17 3:00, she called Johnny Brown and said, hey, I'm
18 leaving, are you ready to go? And he said, I don't
19 need the ride anymore. No one else can pick me up
20 from there. I don't need it. So Latwanna gathered
21 her things and left for work leaving [REDACTED] Minor, her
22 13-year-old, in charge of her two-year-old, [REDACTED] Minor.
23 Now that wasn't uncommon, but if she had known what
24 was going to happen next that day, she would have
25 never left the house.

OPENING STATEMENT - STATE

1 After her mother left, [Minor] locked
2 the door. There are three locks on their house
3 door and they always just locked the middle one.
4 The bottom one's been acting funny, and mom can't
5 get in through it, and the top one is a chain, and
6 Mom certainly can't get in when she comes home from
7 work after that.

8 So [Minor] takes her little sister into
9 the back bedroom and they start watching some TV.
10 And then [Minor] like most two-year-olds, started
11 getting hungry so [Minor] went to the kitchen,
12 cooked her sister something up, and came back into
13 the kitchen and was feeding her. And that's when
14 she heard it. She heard the knock on the door, but
15 she remembered the rule this time. Her mom had
16 reminded her, you don't open the door for anybody
17 when I'm not here.

18 She ignored it. She's in the back
19 bedroom, and the next thing she sees is the
20 defendant, Johnny Brown, in their house. But she
21 knows him as Squirt, that's what the family calls
22 him. And she says, what are you doing here? Oh,
23 the door was open. This is odd to her.

24 He comes closer and starts tickling
25 her, messing with her. She doesn't like it. She

OPENING STATEMENT - STATE

1 tells him to, stop, leave her alone, but the next
2 thing she knows, she's bent over the bed. The
3 defendant is on top of her back. She's wearing
4 some loose shorts and some panties. He pushes
5 aside the shorts, he pushes aside the panties, and
6 it starts to hurt. It hurts in her anus, it hurts
7 in her vagina, but anus and vagina are probably not
8 the words you're going to hear [Minor] use. Those
9 are the words of lawyers and doctors and nurses,
10 not 13-year-olds.

11 She's probably going to use words like,
12 butt and tootsie. The words that she can slowly
13 come to find to use. The defendant is going back
14 and forth, and when he's done, he steps up and he
15 goes to the bathroom, and then he leaves. When he
16 leaves, [Minor] gets up and she goes back to that
17 door. The door that she didn't realize that that
18 lock was broken, that somebody could just push it
19 open. So she puts the chain in. She has to keep
20 him out, even if that means her mom can't get in
21 right away when she gets home.

22 She wants to keep him out, because
23 guess what? Johnny Brown comes back later again
24 knocking on the door, banging on the door saying, I
25 left my ID in there. But she doesn't have to face

OPENING STATEMENT - STATE

1 him. He goes away. And now she's got to fill her
2 time. Scared 13-year-old and her two-year-old
3 sister all alone in the house.

4 So she decides she's going to bathe her
5 sister. She gives **Minor** a bath. Not surprising,
6 she bathes herself and changes her clothes. To
7 fill the time she starts trying to clean her room.
8 She doesn't get very far. She starts crying and
9 crying, so much so she's not able to stop. So much
10 so that when her mom comes home and tries to open
11 that door and can't get in with the chain --
12 **Minor** still crying -- she rushes to the door,
13 opens it, and goes straight back to her bedroom.

14 Well, at this point, Momma knows
15 something's up. She followed **Minor** into her
16 bedroom and says, what's wrong? What happened?
17 Why are you crying? She keeps questioning her and
18 finally enough comes out that Latwanna knows she's
19 got to take her little girl to the doctor.

20 She takes her to MUSC Pediatric ER.
21 While there **Minor** has a rape protocol exam, and in
22 the vaginal swab the bacteria for gonorrhea is
23 found. The same bacteria that is found in a sample
24 taken from the defendant, Johnny Brown, six days
25 later, gonorrhea.

OPENING STATEMENT - STATE

1 Through the police investigation and as
2 time has gone on, [Minor] has been seen by an MUSC
3 nurse, Kathy Fabrizio, law enforcement officers,
4 she's been interviewed by somebody at the Dee
5 Norton Lowcountry Children's Center.

6 You're going to get to meet all of
7 these people through the process of this trial, and
8 they are going to paint a picture for you of a
9 scared child who struggles to find the words to
10 describe what happened to her.

11 You're also going to meet JoAnn Root,
12 who is a school nurse at Fort Johnson Middle
13 School, and you will hear how she stumbled across a
14 sobbing little girl who was trying to deal with the
15 toll of the crimes that occurred on her months
16 later, August, at the beginning of the school year.

17 Now, the Judge has given you a little
18 bit of instruction on the law and she will go into
19 detail at the end of this case, but one of the
20 things you don't need to look for in this case is
21 consent. Consent is not a defense. You also don't
22 really have to look for force because that's not
23 necessary either.

24 Now, I appreciate the time and
25 attention that you have already invested in this

OPENING STATEMENT - DEFENSE

1 case and I'm confident that after you have heard
2 all of the testimony in this trial and after you
3 have seen all of the evidence, you will know beyond
4 any reasonable doubt that the defendant, Johnny
5 Brown, is guilty of criminal sexual conduct of a
6 minor in the first degree, both for anal
7 penetration and vaginal penetration, and criminal
8 sexual conduct with a minor in the third degree.
9 Thank you.

10 THE COURT: Mr. Cochran, you may
11 proceed.

12 MR. COCHRAN: Thank you, Your Honor.
13 May it please the Court.

14 THE COURT: You're welcome. You may
15 proceed.

16 MR. COCHRAN: My name is Charles
17 Cochran and I'm proud to represent Johnny Brown.

18 This case is going to be very difficult
19 to listen to. The accusations that you're going to
20 hear are the type that nobody wants to hear about.
21 These kind of accusations tend to make people very
22 angry. They make people want to punish the person
23 who is accused of it. They want to hold them
24 accountable.

25 But what's most important in a case

OPENING STATEMENT - DEFENSE

1 like this is we take a step back and remember that
2 the seriousness of these kinds of accusations
3 demand that we hold them up under a microscope, up
4 to a light, and examine them and hold them to the
5 burden of proof that you must hold the State to in
6 a case like this, because these accusations from
7 Minor are an attempt to paint my client
8 Johnny Brown as a rapist. And that's serious.

9 Now, the State told you one piece of
10 evidence that they're going to present to you, that
11 Minor was tested for gonorrhea and she
12 tested positive and that Johnny Brown also tested
13 positive for that same infection.

14 And they're going to present this to
15 you as though it were some kind of DNA evidence,
16 something that proves that he must have done this.
17 And the reason that they're going to focus on that
18 so much is because given Minor story that she
19 told police that day, and given the factual
20 evidence that should be in this case, those two
21 things do not match up.

22 What I mean by that, Minor says
23 that on September 20th, 2013, she was -- or, I'm
24 sorry, June 20, 2013, she was violently raped,
25 anally and vaginally. She was on her period at

OPENING STATEMENT - DEFENSE

1 that time, started her period that day. She was
2 raped on a bare mattress she will allege. She was
3 examined by a doctor that exact same day.

4 There is no DNA evidence in this case.
5 There was no trauma during the anal exam or the
6 vaginal exam found by doctors. She was examined
7 the exact same day. The mattress that she says
8 this happened on was not collected for evidence.
9 The mattress that she said this happened on had
10 absolutely no indication that she had been raped
11 while on her period on that bare mattress, no
12 blood, no DNA collected, nothing.

13 The evidence that would have been there
14 if this happened is not there, and that's why
15 you're going to hear so much about this sexually
16 transmitted infection because the State is going to
17 try to treat that as though it substitutes those
18 pieces of evidence that truly demonstrate that this
19 type of thing occurred.

20 Vaginal trauma, injuries, torn
21 clothing, blood, anal trauma according to her
22 accusations, blood on the mattress; not one of
23 those things will be presented to you and that is
24 because Johnny Brown did not rape Minor
25 Johnny Brown is innocent.

Minor - DIRECT EXAM BY MS. HERRING-LASH

1 THE COURT: You may proceed.

2 MS. HERRING-LASH: The State would call

3 Minor

4 Minor

5 being first duly sworn, testified as follows:

6 THE WITNESS: I swear.

7 THE CLERK: Okay. Take a seat and
8 state your name into the microphone and spell your
9 first and last name for the record.

10 THE WITNESS: Okay.

11 MS. HERRING-LASH: Minor, spell your
12 first and last name.

13 THE WITNESS: Minor

14 THE COURT: You may proceed.

15 DIRECT EXAMINATION

16 BY MS. HERRING-LASH:

17 Q. How old are you?

18 A. 15.

19 Q. What is your birth date?

20 A. /2000.

21 Q. So you were born on

22 A. Yes, ma'am.

23 Q. And where do you live?

24 A.

25 Q. And try to speak into that microphone a

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 little more so that the people can hear you. Okay?

2 A. (Nodding)

3 Q. And who lives in the house with you
4 now?

5 A. My mom, my sister, and my grandma.

6 Q. Now, back in June of 2013, did your
7 grandma live there?

8 A. No, ma'am.

9 Q. And when did she move in?

10 A. In December.

11 Q. And why did she move in with you-all?

12 A. Because December 25th she had two
13 strokes.

14 Q. Now, Minor, what school do you go to
15 now?

16 A. James Island Charter High.

17 Q. And what grade are you in now?

18 A. I'm in ninth grade.

19 Q. Back in 2013, what school did you go
20 to?

21 A. Fort Johnson Middle.

22 Q. What grade were you in that year?

23 A. Eighth.

24 Q. And what do you like to do for fun,

25 Minor

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 A. I like to sing, play tennis, and dance.

2 Q. Where do you sing?

3 A. At church.

4 Q. And what about where do you dance?

5 A. At church.

6 Q. And what do you call your dance at

7 church?

8 A. Praise dance.

9 Q. What?

10 A. Praise dance.

11 Q. Try to speak into the microphone.

12 Okay, Minor

13 And, Minor where do you live now?

14 A. [REDACTED]

15 MS. HERRING-LASH: Your Honor, may I

16 approach the witness?

17 THE COURT: Yes.

18 BY MS. HERRING-LASH:

19 Q. Minor, I'm going to show you what has
20 been marked into evidence as State's Exhibit Number
21 1 without objection. Do you recognize that?

22 A. Yes, ma'am.

23 Q. And what is that, Minor

24 A. My house.

25 Q. And is that the house that you live in

Minor - DIRECT EXAM BY MS. HERRING-LASH

1 now?

2 A. Yes, ma'am.

3 Q. And is that the house that you lived in
4 -- it will come up on your screen in just a moment
5 when they turn it on, Minor.

6 And is that the house that you lived in
7 the summer of 2013?

8 A. Yes, ma'am.

9 Q. And the summer of 2013, did something
10 happen to you that was upsetting?

11 A. Yes, ma'am.

12 Q. Do you know about when that was, what
13 month or day?

14 A. I -- June -- I don't remember the date.

15 Q. And was your mom at home that day for
16 most of the day?

17 A. Yes, ma'am.

18 Q. And did she go to work that day?

19 A. Yes, ma'am.

20 Q. Do you know if she went to work in the
21 morning or afternoon?

22 A. I don't know.

23 Q. Pardon?

24 A. I don't know.

25 Q. Okay. While she was there -- well, let

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 me ask you this: Was your little sister there all
2 day or did she go to day care?

3 A. I don't remember.

4 Q. While your mom was there, did -- or did
5 your mom leave that morning for some reason?

6 A. Yes, ma'am.

7 Q. While your mom was gone, did someone
8 come to your home that morning?

9 A. Yes, ma'am.

10 Q. And who was that?

11 A. My mom's cousin, Squirt.

12 Q. Your mom's cousin what?

13 A. Squirt.

14 Q. Is that his nickname?

15 A. Uh-huh.

16 Q. And tell me about that.

17 A. My mom went to the store -- well, we
18 were cleaning up our house that day and she went to
19 the store. And I told her I was tired before she
20 left so she told me to go lay down. And my bed
21 wasn't cleaned up so I had to go lay down in my
22 closet.

23 And I heard a knock at the door; I
24 didn't really know who it was. So I opened the
25 door and then he came in. And then I went back in

Minor - DIRECT EXAM BY MS. HERRING-LASH

1 my room, and then he followed me in and he tried --
2 he tried to sit me down on his lap, but I kept
3 pulling away, and that's when my mom came back.

4 Q. And when your mom came back, did Squirt
5 stay or did he leave?

6 A. Stayed.

7 Q. And did your mom leave to go to work
8 that day?

9 A. Yeah.

10 Q. When she left to go to work, was Squirt
11 home -- or at your house or was he gone?

12 A. Gone.

13 Q. And when your mom left to go to work,
14 who was there with you?

15 A. My little sister.

16 Q. And how -- what's your little sister's
17 name again?

18 A. Minor

19 Q. And back then, how old was Minor ?

20 A. She was two.

21 Q. And what did you and Minor do after
22 your mom went to work?

23 A. I went to go fix us something to eat,
24 then we went in my mom's room, and I was feeding
25 her and we was watching TV.

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 Q. Do you remember what you were feeding
2 her that day?

3 A. Squash and rice.

4 Q. Okay. And you were in your mom's room?

5 A. Yes, ma'am.

6 Q. And did somebody come in?

7 A. Yes, ma'am.

8 Q. Tell us about that.

9 A. We were watching TV on the bed and I
10 heard a knock -- wait. Before my mom left, she
11 told me not to open the door for anybody, so I
12 locked all the doors. And I heard -- I heard a
13 knock at the door. I didn't answer it, I just
14 ignored it. And then me and my sister was watching
15 TV and then he came in there. And I asked him how
16 he got in the house. And he said the door was
17 unlocked and it was not.

18 Q. Do you know which door he came in?

19 A. No, ma'am.

20 Q. Okay. How many doors are there to come
21 into your house?

22 A. Three.

23 Q. So you don't know which one of those
24 exactly?

25 A. Huh-uh.

Minor

DIRECT EXAM BY MS. HERRING-LASH

1 Q. Which door do most people use? Is it
2 that door or another door?

3 A. Another one.

4 MS. HERRING-LASH: May I approach the
5 witness?

6 THE COURT: You may.

7 BY MS. HERRING-LASH:

8 Q. I'm going to show you what has been
9 entered into evidence as State's Exhibit Number 6.
10 Do you recognize that?

11 A. Yes, ma'am.

12 Q. And what is that?

13 A. The back of my house.

14 Q. Okay. Now, are those two doors at the
15 back of your house?

16 A. Yes, ma'am.

17 Q. Which one of those doors do people use
18 to come in and out?

19 A. The one right there. (Indicating)

20 Q. Okay. Earlier that day when you let
21 him in, which door did you let him in?

22 A. That one.

23 Q. Is the picture on there for you?

24 (Screen turned on.)

25 Q. Now, I think you can point and the jury

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 will be able to see where you're pointing to
2 easier.

3 A. Right here. (Indicating)

4 Q. So where that little red mark is? Do
5 you want to circle it a little more so they can see
6 it from where they are?

7 A. (Complies)

8 Q. Now, Minor you said that you were in
9 your mom's bedroom and he came in. And then what
10 happened?

11 A. He started tickling my sister and then
12 he started tickling me and I told him to stop. And
13 then I fell back on the bed and then that's when he
14 got up on top of me and then that's when he started
15 moving back and forth.

16 Q. First of all, let me ask you, when you
17 said he came back, what was his name that came
18 back?

19 A. Squirt.

20 MS. HERRING-LASH: Your Honor, may I
21 approach?

22 THE COURT: You may.

23 BY MS. HERRING-LASH:

24 Q. Minor first, I'm going to show you
25 State's Exhibit Number 2. Do you recognize that?

Minor - DIRECT EXAM BY MS. HERRING-LASH

1 A. Yes, ma'am.

2 Q. And what is that a picture of, Minor

3 A. My mom's room.

4 Q. And is that the bed that was in your
5 mom's room that day?

6 A. No, ma'am.

7 Q. Now, I'm going to show you what has
8 been marked as State's Exhibit Number 3. Do you
9 recognize that?

10 A. Yes, ma'am.

11 Q. And what is that?

12 A. My bed.

13 Q. And where was your bed back in June of
14 2013?

15 A. In my mom's room.

16 Q. Do you want to talk a little bit more?

17 A. In my mom's room.

18 Q. So when you said that he tickled you
19 and you fell back, show us where you fell back.

20 A. Right here. (Indicating)

21 Q. Okay. And how did you fall? Where
22 would your head end up?

23 A. I fell on my stomach and my head was
24 right there. (Indicating)

25 Q. And you were on your stomach?

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 A. Uh-huh.

2 Q. And then what happened?

3 A. He got on top of me and then he started
4 moving back and forth.

5 Q. Now, when he got on top of you, were
6 your clothes on or off or something else?

7 A. Something else.

8 Q. And what was that?

9 A. It was pulled to the side.

10 MS. HERRING-LASH: Your Honor, may I
11 approach the witness?

12 THE COURT: You may.

13 BY MS. HERRING-LASH:

14 Q. I'm going to show you what has been
15 marked as State's Exhibit Number 8, for ID only.
16 Would you look in this bag? And do you recognize
17 those clothes?

18 A. Yes, ma'am.

19 Q. And what are those clothes?

20 A. The clothes I had on.

21 Q. These are the clothes you had on that
22 night?

23 A. Yes, ma'am.

24 MS. HERRING-LASH: Your Honor, at this
25 time the State would offer into evidence State's

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1 Exhibit Number 8.

2 THE COURT: Any objection?

3 MR. COCHRAN: I would object to chain,
4 Your Honor.

5 THE COURT: Please approach.

6 (Bench conference.)

7 MS. HERRING-LASH: There was no tests
8 done on the clothes.

9 THE COURT: You're still seeking to
10 admit them.

11 MS. ELLIOTT: They don't need a chain
12 if they're readily available.

13 MS. HERRING-LASH: She identified them
14 as the clothes she had on and they have not been
15 tested. They have been put in the bag.

16 THE COURT: Basis of the objection?

17 MR. COCHRAN: Chain of custody.

18 THE COURT: How -- why do they need to
19 do that because there was no testing and she can
20 identify them?

21 MR. COCHRAN: Because they did go to
22 Evidence and they were in different possession.

23 THE COURT: I think that becomes an
24 impeachment issue if you want to, but then somehow
25 the only reason that becomes relevant and germane

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1 is if some test or if the clothes were altered.

2 MS. HERRING-LASH: We can to
3 demonstrate the size, where they were pulled over,
4 and it's readily available. You can look at the
5 clothes and see they could be pulled to the side
6 because of their size.

7 THE COURT: You need to establish the
8 foundation to establish they were her clothes and
9 they are in the same or similar condition as they
10 were that night. But you may still need to call
11 another chain witness to establish where they
12 were --

13 MS. HERRING-LASH: We have a person but
14 she wouldn't be here until tomorrow.

15 THE COURT: Marked for ID until you
16 call the person.

17 MS. HERRING-LASH: Your Honor, can I
18 show them to her?

19 THE COURT: Yes, as long as you can
20 establish the foundation.

21 (End of bench conference.)

22 By MS. HERRING-LASH:

23 Q. Minor can you look at these clothes?

24 And are these the clothes you had on that night?

25 A. Yes, ma'am.

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- DIRECT EXAM BY MS. HERRING-LASH

1 Q. Minor I just want you to look at them
2 and see if these clothes look like they looked that
3 night?

4 A. Yes, ma'am.

5 Q. What about the shirt, does it look like
6 it looked that night?

7 A. Yes, ma'am.

8 Q. And did you tell the people at the
9 hospital what the clothes looked like that you had
10 on?

11 A. Yes, ma'am.

12 MS. HERRING-LASH: Your Honor, I think
13 she's established those are the clothes she had on
14 that night and they are in the same condition that
15 they were that night.

16 THE COURT: I've instructed that you
17 can use them for demonstrative purposes, but they
18 are marked for ID only subject to --

19 MS. HERRING-LASH: The chain. Okay.

20 BY MS. HERRING-LASH:

21 Q. Minor I'm going to pull these out and
22 those are the shorts. Can you describe those?

23 A. It's white short pants with blue
24 flowers.

25 Q. And what shirt did you have on?

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1 A. A black shirt.

2 Q. And is this the shirt, Minor

3 (Indicating)

4 A. Yes, ma'am.

5 Q. And have you seen these clothes since
6 that evening?

7 A. No, ma'am.

8 Q. Minor you said that he pulled your
9 pants to the side and was on top of you. What
10 happened when he was on top of you?

11 A. He was moving back and forth.

12 Q. And what was he doing?

13 A. (No answer)

14 Q. Do you need some water, Minor

15 MS. HERRING-LASH: Your Honor, may I
16 approach?

17 THE COURT: Uh-huh.

18 BY MS. HERRING-LASH:

19 Q. Minor can you look at me?

20 Was a part of your body hurting?

21 A. Yes, ma'am.

22 Q. What part was hurting?

23 A. My butt and my tootsie.

24 Q. Your what?

25 A. My butt and my tootsie.

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- DIRECT EXAM BY MS. HERRING-LASH

1 Q. And what happened after that? Did you
2 move at all?

3 MR. COCHRAN: Your Honor, may we
4 approach?

5 (Bench conference.)

6 MR. COCHRAN: Judge, can we take a
7 recess?

8 THE COURT: Yes.

9 (End of bench conference.)

10 THE COURT: Madame Forelady, ladies and
11 gentlemen, we're going to take a brief recess.
12 During the break, please do not discuss the case
13 and please leave your notepads in your seats. We
14 appreciate your patience.

15 (Jury out, 3:18 p.m.)

16 THE COURT: You may be seated. We will
17 be at ease for about ten minutes. You can help her
18 collect herself, but please do not discuss her
19 testimony.

20 (A recess transpired.)

21 THE COURT: Are we ready to go forward?

22 We can't move that microphone, it's in
23 a fixed position, but I need her to speak more
24 loudly. If you-all could assist her in pulling her
25 a little closer to that microphone.

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1 Young lady, I need for you to speak up
2 a lot more so everybody can hear you. Okay?

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Now, I have looked at
5 16-3-655, and it does appear that -- pursuant to
6 subsection (A)(2), that it is an element of CSC
7 with a minor first. And I've got a little -- I've
8 gotten the words a little convoluted, I apologize.
9 Subsection 2 reads, the actor -- well, subsection
10 (A), a person is guilty of criminal sexual conduct
11 with a minor in the first degree if: The first
12 subsection is the actor engaged in a sexual battery
13 with the victim who is less than 11 years of age,
14 which we know is not the situation in this case; or
15 the actor engaged in a sexual battery with a victim
16 who is less than 16 years of age, and the actor has
17 previously been convicted of, plead guilty, or nolo
18 contendere to, or adjudicated delinquent for an
19 offense listed in section 23-3-430 (C), which is --
20 I don't know why my -- which is basically the
21 sexual -- the list of sexual offenses, which CSC
22 first would fall under that category, or has been
23 -- of course now it wants to cooperate with me.
24 23-3-430 is sex offender registry;
25 convictions and not guilty by reason of insanity

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1 findings requiring registration. And CSC in the
2 first degree is listed under subsection C. Well,
3 what would be the offense you all have contended
4 that he was --

5 MS. HERRING-LASH: He was convicted of
6 criminal sexual conduct with a minor in the first
7 degree.

8 THE COURT: And that would be under
9 subsection 4, (C) (4) --

10 MS. HERRING-LASH: Yes, Your Honor.

11 THE COURT: -- of 23-3-430, or has been
12 ordered to be included in the sex offender registry
13 pursuant to section 23-3-430(D). And that is sex
14 offender registry convictions and not guilty by
15 reason of insanity findings requiring registration.

16 So, clearly, he would fall under the
17 first portion of that statute, which is
18 23-3-430(C), and it is clearly an element of the
19 offense as defined by the legislature.

20 They apparently determined
21 classification of ages, and she does not meet the
22 first element of that; however, she does meet the
23 second element which is the actor engages in sexual
24 battery with the victim who is less than 16 years
25 of age and the -- and, the actor has previously

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- DIRECT EXAM BY MS. HERRING-LASH

1 been convicted of or plead guilty, et cetera, to
2 one of the enumerated offenses in 23-3-430(C).

3 This Court is required to interpret
4 statute, not my prerogative to write statute. That
5 is the legislature's prerogative. I've not seen
6 anything that would indicate that there has been
7 any ruling by any court of competent jurisdiction
8 that the statute is unconstitutional or invalid.

9 And the State is correct that it is
10 very similar and analogous to the statutory
11 framework in -- when you're dealing with certain
12 classifications of burglary, it would require a
13 limiting instruction, but it's clearly an element
14 of what the State is required to prove.

15 So the motion regarding exclusion of
16 that -- they can't prove the CSC second with a
17 minor -- CSC first with a minor under the
18 subsection of that statute without proving that
19 element. And so at the appropriate time when we
20 deal with charge conference, they would -- the
21 defendant would clearly be entitled to a limiting
22 instruction regarding that and I would craft one
23 similar to the ones we already use.

24 There was something else I was going to
25 make an observation about, but it left me. But I

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1 assume they can't elicit that through this witness,
2 but I just wanted to let you all know that I had
3 thought about it a little bit more. I don't see a
4 way around it.

5 MR. COCHRAN: If I may, the -- if Your
6 Honor intends to allow testimony as to him being on
7 sex offender registry, we would simply ask that we
8 bifurcate the trial with the jury determining that
9 postconviction if --

10 THE COURT: They can't decide it. They
11 can't convict him without the State meeting the
12 elements, and the legislature in its wisdom has
13 determined that's one of the elements of CSC first.

14 MR. COCHRAN: And, Your Honor, I would
15 just request that we bifurcate the determination
16 that the sexual battery occurred and that she's
17 under the age of 16 and then --

18 THE COURT: You can't separate the two.
19 They have to prove two of those things to meet the
20 element of subsection (A)(2).

21 MR. COCHRAN: Yes, Your Honor.

22 THE COURT: Subsection (A)(1) only
23 requires a sexual battery. Subsection (2) has
24 three requirements; the battery, the age and
25 another offense.

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1 MR. COCHRAN: Yes, Your Honor. And
2 just for purposes of the record, we would contend
3 that -- that the jury being informed of that, of
4 him being on the sex offender registry does prevent
5 his right to -- prevents him having a fair trial
6 and his right to due process --

7 THE COURT: You've articulated that
8 before and the Court has already ruled. I'm not
9 taking any additional argument, but I would allow
10 you all to articulate your arguments prior to me
11 considering it.

12 MR. COCHRAN: Yes, Judge. If I may,
13 one additional point?

14 THE COURT: Yes, sir.

15 MR. COCHRAN: Is that, under their
16 allegations, they have used this to enhance to CSC
17 first degree with a minor what would normally be a
18 CSC second degree with a minor given of her age.
19 And I would contend that the -- that moving forward
20 on CSC first degree with a minor under this
21 enhancement would be arbitrary and capricious given
22 the fact that they're seeking life without parole
23 anyway, so if they're trying for a criminal sexual
24 conduct second degree, we avoid this issue and
25 still get --

1 THE COURT: They don't have to do that.
2 It's within their prerogative how they charge and
3 who they charge. The constitution has given the
4 Solicitor that ability. She's a constitutional
5 officer, she delegates her authority to her
6 employees. However they decide to charge someone,
7 even though they could have charged it differently,
8 they're not required to.

9 And, again, the legislature, I'm
10 certain if I had time to read the legislative
11 history, had a reason for doing that. They
12 intended to build that enhancement in, and it's no
13 different than enhancements that are in other
14 states. Now, there is some negative history about
15 it because some other states have felt it's not a
16 valid statutory framework.

17 Our courts have not addressed it and
18 the states that have indicated that are very
19 different from South Carolina, and I really don't
20 know what their statutes say verbatim. So it's not
21 really anything that I could look to for guidance.
22 But, in any event, if the statute is going to be
23 invalidated, the Supreme Court is going to do it,
24 not me.

25 Because based on precedent, it's valid.

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1 It's no different than when you're charging an
2 enhancement on a burglary or establishing a
3 burglary first.

4 Get the jury for me, please.

5 MS. HERRING-LASH: Minor be sure and
6 talk into the microphone.

7 (Jury in, 3:36 P.M.)

8 THE COURT: Ladies and gentlemen, we
9 appreciate your patience. We will resume
10 testimony. The State may proceed.

11 BY MS. HERRING-LASH:

12 Q. Minor you had shown us on here where
13 your head was and how you were laying. Did your
14 position change at some point?

15 A. Yes, ma'am.

16 Q. What happened to change your position?

17 A. He pulled my legs down and then he was
18 behind me moving back and forth.

19 Q. Can you -- where were your legs on
20 there?

21 A. Right here. (Indicating)

22 Q. And when you say he was behind you,
23 where was he?

24 A. Like my butt was right here and he was
25 right there. (Indicating)

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- 1 Q. Okay. And what did he do then?
- 2 A. He was moving back and forth.
- 3 Q. And what about your clothes?
- 4 A. They were still pushed to the side.
- 5 Q. And what happened when he was moving
- 6 back and forth?
- 7 A. My butt and my tootsie was hurting.
- 8 Q. And, Minor is there another name for
- 9 your tootsie?
- 10 A. I don't know.
- 11 Q. What do you do with your tootsie?
- 12 A. I pee.
- 13 Q. Okay. And what about in your butt,
- 14 what -- was it inside or outside of your butt?
- 15 A. Inside.
- 16 Q. And how do you know it was inside of
- 17 your butt?
- 18 A. Because I felt it.
- 19 Q. Was it inside or outside of your
- 20 tootsie?
- 21 A. Inside.
- 22 Q. And how do you know?
- 23 A. Because it hurt and I felt it.
- 24 Q. What part of him was inside?
- 25 A. His private parts.

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1 Q. What does a boy do with his private
2 part?

3 A. Pee.

4 Q. Did you say anything when this was
5 happening?

6 A. No.

7 Q. Did Squirt say anything to you?

8 A. No.

9 Q. What happened -- well, let me ask you
10 this: Where was your sister, Minor

11 A. On the bed.

12 Q. And where on the bed was she?

13 A. Right here. (Indicating)

14 Q. And what happened when he was finished?

15 A. He tried to offer me \$20, and then he
16 went into the bathroom and he left --

17 Q. Let me stop you for one second. When
18 this was happening, do you know if his clothes were
19 on or off or something else?

20 A. I don't know.

21 Q. Could you see?

22 A. No.

23 Q. Did you feel his private in you?

24 A. Yes, ma'am.

25 Q. Now, you said he left, and then what?

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1 A. He sent my cousin Solomon to give me
2 some candy, but I didn't take it. And then that's
3 when I went to take a shower. And then after I got
4 out of the shower I took my sister to take a bath.
5 And then she was in my mom's room watching TV and I
6 went into my room cleaning up a little bit and then
7 I started crying.

8 Q. Let me show you --

9 MS. HERRING-LASH: May I approach the
10 witness, Your Honor?

11 THE COURT: You may.

12 BY MS. HERRING-LASH:

13 Q. Minor I will start to show you what
14 has been marked as State's Exhibit Number 4. Do
15 you recognize what that is?

16 A. Yes, ma'am.

17 Q. And what is that?

18 A. My bathroom.

19 Q. And now you said you took what?

20 A. A shower.

21 Q. And what about your sister?

22 A. She took a bath.

23 Q. And did you take your clothes off?

24 A. Yes, ma'am.

25 Q. And were those the clothes that you

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1 showed us earlier?

2 A. Yes, sir.

3 Q. Where did you put them?

4 A. Right here. (Indicating)

5 Q. Were those objects there then?

6 A. No, ma'am.

7 Q. And you laid your clothes there?

8 A. Yes, ma'am.

9 Q. And I think you said you started to

10 cry?

11 A. Yes, ma'am.

12 Q. And then what happened?

13 A. My mom came home like an hour or two
14 hours later, and then I ran to the door, then I
15 went back in my room.

16 Q. Why did you run to the door?

17 A. Because I had to open the door for her.

18 Q. You had locked it?

19 A. Uh-huh.

20 Q. Okay.

21 A. And then I went into my room and I was
22 crying. And she came and she was like, what's
23 wrong? And I wouldn't tell her. I would just
24 point to the bed, and I wouldn't tell her. Then
25 that's when like 30 minutes later she set me down

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1 to the table. And my little sister, Minor she
2 was like --

3 MR. COCHRAN: Objection.

4 THE COURT: Basis?

5 MR. COCHRAN: Hearsay.

6 THE COURT: Sustained, hearsay.

7 BY MS. HERRING-LASH:

8 Q. Don't say anything anybody said.

9 You-all sat at the table?

10 A. Uh-huh.

11 Q. What did you do after sitting at the
12 table?

13 A. My mom took my sister to my grandma's
14 house and she took me to the hospital.

15 Q. Let me go back for a second. When you
16 took your shower, did you lay your panties where
17 your clothes were?

18 A. Yes, ma'am.

19 MS. HERRING-LASH: Your Honor, may I
20 approach the witness?

21 THE COURT: You may.

22 BY MS. HERRING-LASH:

23 Q. Minor earlier today did you look at
24 the two pairs of panties in this bag?

25 A. Yes, ma'am.

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1 Q. And could you remember or not, were
2 these the panties that you had on or do you know?

3 A. I don't remember.

4 Q. Okay. Now, you said you went to the
5 hospital. What happened at the hospital?

6 A. They -- they tested me and then we
7 left. And then we were like almost to our house
8 and they called back and said that my ketones were
9 over a thousand. And that's when my mom took me
10 back to the hospital and then they said that I have
11 Type II Diabetes and I stayed. They admitted me to
12 the MUSC hospital and I stayed in the hospital for
13 three days.

14 Q. And did -- did you know about your
15 diabetes before that?

16 A. Yes, ma'am.

17 Q. But that -- what -- do you know what
18 ketones are? You may not know.

19 A. Yes, ma'am.

20 Q. What is that?

21 A. It's -- it's when you pee in a cup and
22 you stick the little stick thingy in it to see if
23 you have moderate ketones or something else.

24 Q. But they were high that night?

25 A. Uh-huh.

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1 Q. How long did you stay in the hospital?

2 A. For three days.

3 Q. While you were at the hospital, did
4 police come and talk to you?

5 A. Yes, ma'am.

6 Q. And now after you got out of the
7 hospital, did you go and talk to a lady, Ms. -- do
8 you know her name?

9 A. Yes, ma'am.

10 Q. What was her name?

11 A. Miss Michelle Scott.

12 Q. And how were you feeling about all of
13 this?

14 A. Sad and embarrassed.

15 Q. Did you tell anybody at school?

16 A. Yes, ma'am.

17 Q. Who?

18 A. My nurse, Miss Root. And my guidance
19 counselor, Miss Loris.

20 Q. Now, Minor you said when your mom got
21 home you were crying and she questioned you?

22 A. Yes, ma'am.

23 Q. If your mom had not questioned you,
24 would you have told her?

25 A. Probably not.

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1 Q. Probably what?

2 A. Probably not.

3 Q. Why not?

4 A. Because, like, it's embarrassing and I
5 was kind of scared.

6 MS. HERRING-LASH: Your Honor, at this
7 point we would have the matter of law that we spoke
8 about earlier.

9 THE COURT: Madame Forelady, ladies and
10 gentlemen, I have a brief matter of law to take up
11 with the attorneys. During this break, please do
12 not discuss the case and please leave your notepads
13 in your seats. We appreciate your patience.

14 (Jury out, 3:46 p.m.)

15 By MS. HERRING-LASH:

16 Q. Minor had anything like this ever
17 happened to you before?

18 A. Yes, ma'am.

19 Q. And who was that person?

20 A. Squirt.

21 Q. And how old were you, if you remember?

22 A. Six or seven.

23 Q. And where were you?

24 A. At my grandma's house.

25 MS. HERRING-LASH: And, Your Honor?

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1 Indicating)

2 THE COURT: Uh-huh.

3 BY MS. HERRING-LASH:

4 Q. I'm going to show you State's Exhibit
5 Number 5. What is that a picture of?

6 A. My grandma's house.

7 Q. Which one of those is your grandma's
8 house?

9 A. This one. (Indicating)

10 Q. And now who lives next door to your
11 grandma in the other house?

12 A. My great-grandma.

13 Q. And is your great-grandma related to
14 Squirt?

15 A. Yes, ma'am.

16 Q. And how so?

17 A. That's his grandma.

18 Q. So you were at your grandma's house?

19 A. Yes, ma'am.

20 Q. Did you stay with your grandmother
21 some?

22 A. Yes, ma'am.

23 Q. And what about Squirt, did he -- where
24 did he stay some?

25 A. I don't know.

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1 Q. Tell us about what happened at your
2 grandmother's house.

3 A. I was in my grandma's bed sleeping, and
4 I woke up to him on top of me and that's it.

5 Q. Okay. What was he doing?

6 A. Moving back and forth.

7 Q. And were you -- what position were you
8 in?

9 A. I was on my stomach.

10 Q. And when you said moving back and
11 forth, what was he doing?

12 A. (No response)

13 Q. Minor what was he doing when he was
14 moving back and forth?

15 A. He put his private parts inside of me.

16 Q. In what part inside of you?

17 A. My butt.

18 Q. And did he say anything?

19 A. No, ma'am.

20 Q. Did that happen -- where were other
21 people?

22 A. My grandma would be at work and my
23 cousin would be outside playing.

24 Q. Who was your cousin?

25 A. Solomon.

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- 1 Q. Is he older or younger?
- 2 A. Older.
- 3 Q. Was he babysitting?
- 4 A. Yes, ma'am.
- 5 Q. But he would be outside?
- 6 A. Yes, ma'am.
- 7 Q. Now, did anything else happen at your
- 8 grandma's house?
- 9 A. No, ma'am.
- 10 Q. What about did anything happen at your
- 11 great-grandma's house?
- 12 A. Yes.
- 13 Q. What was that?
- 14 A. The same thing.
- 15 Q. Where were you at your great-grandma's
- 16 house?
- 17 A. In one of the bedrooms.
- 18 Q. What happened?
- 19 A. The same thing.
- 20 Q. Well, were you in the bed or on the
- 21 bed?
- 22 A. In the bed.
- 23 Q. And what position were you in?
- 24 A. On my stomach.
- 25 Q. And do you know if Squirt spent the

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1 night there sometime?

2 A. I don't know.

3 Q. But he was there?

4 A. Yes, ma'am.

5 Q. And did you tell your mom about any of
6 that?

7 A. No, ma'am.

8 Q. And you said it started when you were
9 about six or seven?

10 A. Yes, ma'am.

11 Q. And did it -- do you know why it
12 stopped?

13 A. No, ma'am.

14 Q. Do you know if Squirt left Charleston?

15 A. No, ma'am.

16 Q. Did you see -- was there a long time
17 when you didn't see him?

18 A. Repeat the question again.

19 Q. Was there a long time when you didn't
20 see Squirt?

21 A. Yes, ma'am.

22 Q. And do you know about how long before
23 June -- June 2013 you had seen him?

24 A. No, ma'am.

25 Q. Was it days, months, or years between

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1 when you saw him when you were at your grandma's
2 house and when you saw him at your house in June of
3 2013?

4 A. Years, I guess. I don't know.

5 MS. HERRING-LASH: Okay. Your Honor,
6 that would be all the questions we would have about
7 the prior assault by Mr. Brown upon her.

8 THE COURT: Is there any exception to
9 that line of questioning?

10 MR. COCHRAN: Yes, Your Honor, we would
11 object.

12 THE COURT: What is the basis of that
13 objection?

14 MR. COCHRAN: Your Honor, we would
15 object on the basis that it does not fit under
16 404(b) in the common scheme or plan exception.
17 Remote at the time is something that the Court has
18 to consider in addition to the simple prejudice
19 that would be inflicted on Mr. Brown's defense.

20 It does not go to prove either his
21 identity -- I don't believe that's an issue in this
22 case. It does not go to prove motive in this case;
23 motive is self evident in this kind of charge, and
24 those are really the only things that any of these
25 exceptions in 404 (b) really go to or are meant to

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1 prove.

2 Your Honor, there are significant
3 differences between the two cases. We're talking
4 about a six-year-old versus a 13-year-old. We're
5 talking about acts that are separated by a
6 significant prison sentence. They're in a
7 different location, and they are under the
8 supervision of a different person as babysitter and
9 apparently a different guardian as well.

10 So we would point to those differences
11 in the fact scenarios, but also focus on the
12 extreme prejudice that will occur if this is
13 allowed, coupled with the remoteness in time
14 between the two allegations.

15 THE COURT: Would you like to respond?

16 MS. HERRING-LASH: Yes, Your Honor. I
17 think there are many cases that have addressed the
18 remoteness in time not being dispositive. I think
19 the Hoovner case actually go -- there was maybe --
20 maybe 20 years difference in time, and there are
21 other cases that there are eight years difference,
22 but the reason for this amount of time is Mr. Brown
23 was incarcerated December 5th, 2008, and did not
24 get out of prison until May 1, 2013.

25 And I think Mr. Cochran earlier had

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1 mentioned Cutin and Fonseca. And they talk about
2 separation that -- they distinguish continuous
3 course of conduct by separation, but within that
4 time of the first assault and the second assault,
5 there was continuous contact with no additional
6 assault.

7 In this case, there was no continuous
8 conduct. We would argue it was a continuous course
9 of conduct in that as soon as he had access to her
10 again, he assaulted her. Both were in family
11 homes. Her guardian did not change. She was
12 simply staying over at her grandmother's house, she
13 still lived with her mother. And the common scheme
14 or plan, it was the exact -- she was laying on her
15 stomach, it was the same battery, penetration of
16 her tootsie and her butt, it hurt her, he was
17 coming from behind her, she did not say anything,
18 he made no threats to her, the behavior stopped, he
19 left, and they obviously without stating it,
20 they're the same relation because they're the same
21 two people. So it is under the continuous course
22 of conduct.

23 I think that the eight-year case -- I
24 know Hoovner is a huge amount of time between, and
25 there are different -- even in Hoovner there are

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 different victims and huge amount of time between
2 the two. And I think Blanton, Your Honor, was --
3 the time was significant between the two also.

4 THE COURT: For what purpose are you
5 offering it?

6 MS. HERRING-LASH: Just under the
7 common scheme or plan. I think the case law says
8 that the more similar two acts under 404(b), the
9 more probative. If they are similar in fact, that
10 makes them more probative than prejudicial. The
11 Court is to look at and compare similarities to
12 dissimilarities.

13 THE COURT: How are these similar?

14 MS. HERRING-LASH: It was the same
15 batteries, both anal and vaginal penetration. She
16 was in the same position, he was in the same
17 position. They were both in a family home on a bed
18 each time, one in the grandmother's house in a bed,
19 one at the great-grandmother's house in a bed, all
20 family locations in bed. They were alone in the
21 home with -- I think the presence of either others
22 -- if there were any other people there, small
23 children, and there were no threats made in either
24 case, and all of those are similarities.

25 The dissimilarity is the amount of time

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 and the fact that she had grown in age, but that is
2 due to his absolute inability to have any contact
3 during that time because he's incarcerated. And I
4 think it is significant that he was not released,
5 Your Honor, until May 1st, and this assaultive
6 behavior begins again June 20th of the same year
7 he's released.

8 THE COURT: Anything further from the
9 State?

10 MS. HERRING-LASH: No, Your Honor.

11 THE COURT: Anything further from the
12 defense?

13 MR. COCHRAN: Your Honor, my only
14 argument to what Ms. Herring-lash said was to say
15 that it's probative because it goes to common
16 scheme or plan, it falls one step short. Common
17 scheme or plan has to be probative to some
18 important element in their case, identity, motive,
19 something to that effect. It doesn't go to prove
20 any of those things.

21 The only reason it's being offered to
22 this jury is to say, he did it before, look how bad
23 of a person he is. I'll bet he did it this time,
24 too. It's piling on acquisitions that are not
25 charged.

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 MS. HERRING-LASH: Your Honor, I do
2 think the 404 (b) sets out different areas to look
3 at and identity is separate from common scheme or
4 plan. Common scheme or plan is its own separate
5 exception. And the court has said you look at
6 similarities as opposed to the dissimilarities.

7 MR. COCHRAN: Your Honor, if I could
8 just add one other thing. I would use as an
9 example as to what I'm trying to get across, State
10 v. McClellan addresses this. When you're talking
11 about things like common scheme or plan, the
12 purpose of that exception is to allow the
13 prosecution to present a pattern of events that
14 possess some kind of unique fact.

15 You know, the classic would be like a
16 cat burglar that leaves some kind of a calling
17 card. The example as to why -- as to what was
18 cited in McClellan was that the defendant in that
19 case was quoting Bible verses to his victim as he
20 sexually assaulted them. That's an extremely
21 unique fact that allowed the State to get into
22 prior bad acts under 404 (b).

23 You know, to say that these are so
24 similar and unique because they were -- they
25 involved intercourse on a bed, I can't think of any

Minor

DIRECT EXAM BY MS. HERRING-LASH

1 two sets of allegations that would be more basic
2 than that. If that --

3 THE COURT: Well, I don't know. I've
4 heard about people doing that in a lot of different
5 places. I've been doing this a long time. Beds
6 are usually not the common element.

7 MR. COCHRAN: Yes, Your Honor. But in
8 terms of a common experience of a sex act being on
9 a bed, involving vaginal penetration, to say that
10 those are unique facts that create a common scheme
11 or plan that goes to prove something at issue in
12 this case is -- I don't think it's valid.

13 MS. HERRING-LASH: For his point,
14 McClellan is a 1994 case. And the Wallace case,
15 even in addressing Tuten, really said that the
16 Tuten court had taken it too far in that it
17 required more than a similarity, and Wallace
18 brought us back to the point that all that's
19 required is a comparison of similarities and the
20 dissimilarities.

21 MR. COCHRAN: If I could address one
22 other thing that Ms. Herring-Lash argued to the
23 Court saying that common scheme or identity are two
24 separate elements. 404 (b) is based in Lyle, it's
25 based on --

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 THE COURT: It has all the same
2 elements. Common scheme and plan and motive,
3 they're not all lumped together. They're different
4 things. He didn't fall into any one of those five
5 categories.

6 MR. COCHRAN: And, Your Honor, I would
7 just cite the language from Lyle, which says,
8 whether such a crime is committed as part of a
9 common plan or system is wholly immaterial unless
10 proof of such system would serve to identify the
11 defendant as the perpetrator. And that's from
12 Lyle.

13 THE COURT: Yeah, but I think our
14 Supreme Court has articulated what their position
15 is on Lyle and how it's being interpreted. And I
16 would say expanded it to some extent, especially
17 when it deals with common scheme and plan.

18 The defense's motion to exclude the
19 testimony is denied. The testimony will be allowed
20 pursuant to the precedent established by our court
21 in State v. Fonseca, State v. Wallace.

22 And for purposes of the record and the
23 analysis that is required, I would find for the
24 record that the evidence is not being offered to
25 prove the character of the defendant or to show

Minor - DIRECT EXAM BY MS. HERRING-LASH

1 action and conformity therewith.

2 It's being offered to show one of the
3 exceptions required under 404 (b), which is either
4 motive, identity, the existence of a common scheme
5 or plan, the absence of a mistake or accident, or
6 intent. And it arguably falls under two
7 exceptions, that being the existence of a common
8 scheme or plan as well as intent.

9 When the Court is looking at whether
10 evidence is admissible as a common scheme or plan,
11 the Court has to analyze the similarities and
12 dissimilarities between the crime charged and the
13 bad act evidence to determine if there is a close
14 degree of similarity, and whether that close degree
15 of similarity outweighs the dissimilarities.

16 The Court must look to the following
17 factors in determining whether a close degree of
18 similarities exist: The age at which the Minor
19 has alleged the abuse to have occurred, the
20 relationship between the Minor and perpetrator,
21 the location where the abuse is alleged to have
22 occurred, the use of coercion or threats, the
23 manner of the occurrence, referring to the type of
24 sexual battery.

25 That list our courts have determined is

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 not exhaustive but may be relevant in determining
2 whether the similarities outweigh the
3 dissimilarities.

4 MR. COCHRAN: Is it all right if I make
5 my objection on the record now, Your Honor?

6 THE COURT: You've already made your
7 objection and I've heard your argument. I'm not
8 entertaining any further argument as the Court has
9 ruled.

10 MR. COCHRAN: I'm only asking if I
11 can --

12 THE COURT: Oh, I'm going to let you --

13 MR. COCHRAN: Do I have to object when
14 the --

15 THE COURT: No, because we've already
16 preserved it for the record contemporaneously.

17 MR. COCHRAN: Yes Your Honor.

18 THE COURT: And, again, the Court has
19 to look to whether the similarities outweigh the
20 dissimilarities. In looking at this case, there is
21 what could be termed as compelling example of
22 continued illicit conduct that fits within the
23 common scheme or plan exception. And when we look
24 at the reasoning behind that exception, it is
25 exactly what that exception was intended to cover.

Minor

DIRECT EXAM BY MS. HERRING-LASH

1 Looking at the similarities in this
2 case, the Minor has testified -- and I apologize
3 for -- I should refer to her by her last name --
4 Ms. [REDACTED] has testified that it was the same
5 individual, that being the defendant, that it took
6 place at a time when an adult was not present such
7 that he could overcome her, that it was the same
8 type of physical assault, in other words, that he
9 would -- when she was most vulnerable, he would
10 avail himself of her in a certain way that their
11 bodies were situated, that it took place at a
12 relative's home.

13 And even though there is what could be
14 argued as a disparity in her age at the time she
15 alleged this is first to have happened as to when
16 it resumed, I think the State has a valid point in
17 that he was incarcerated during this interim time
18 period and that arguably, based on what has been
19 testified to, absent this interruption the behavior
20 would have continued and I guess arguably would
21 have come to light long before -- or maybe not,
22 depending on her age of when this is alleged to
23 have happened.

24 And our courts have recognized in
25 Wallace that an interruption of the abuse before it

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 could escalate does not diminish the similarities
2 between the incident. And I think that would
3 apply. Even though it's not articulated in that
4 context in Wallace, I think it similarly could be a
5 part of the analysis in this case, that being the
6 interruption and him going -- being incarcerated
7 and her age, in other words, her growing and
8 becoming older. And, also, the similarity that it
9 appears that he took advantage of times when adults
10 weren't present.

11 So the Court would find for purposes of
12 the record that the similarities outweigh the
13 dissimilarities; therefore, meeting the common
14 scheme or plan exception. The Court would also
15 find that the testimony is more probative than
16 prejudicial, and I will give a limiting
17 instruction, but the evidence is being offered to
18 show common scheme or plan, but not character or --
19 or conformity, or acting in conformity with what is
20 alleged -- what could be arguably his character.
21 And I believe the State would be clear to know they
22 could not argue that.

23 Are we ready to proceed? From the
24 State?

25 MS. HERRING-LASH: Yes, Your Honor.

Minor - DIRECT EXAM BY MS. HERRING-LASH

1 THE COURT: From the defense?

2 MR. COCHRAN: Yes, Your Honor.

3 THE COURT: Please bring in the jury.

4 (Jury in, 4:13 p.m.)

5 THE COURT: Ladies and gentlemen, we
6 appreciate your patience. We will now resume
7 testimony.

8 By MS. HERRING-LASH:

9 Q. Minor had anything like this ever
10 happened to you before?

11 A. Yes, ma'am.

12 Q. And who did this to you before?

13 A. Squirt.

14 Q. And when was that?

15 A. When I was six or seven.

16 Q. And where did that happen at?

17 A. At my grandma's house.

18 Q. I want to show you what has been marked
19 in evidence as State's Exhibit Number 5. What is
20 that a picture of?

21 A. My grandma's house.

22 Q. Which one of those is your
23 grandmother's house?

24 A. This one. (Indicating)

25 Q. And who lives in that other house

1 connected?

2 A. My great-grandma.

3 Q. And is your great-grandma related to
4 Squirt?

5 A. Yes, ma'am.

6 Q. What is that relation?

7 A. His grandma.

8 Q. Okay. Would you spend the night with
9 your grandma sometimes?

10 A. Yes, ma'am.

11 Q. And tell us what happened. You said
12 something happened. What was that?

13 A. I was sleeping, I felt -- well, I'm
14 really a heavy sleeper so I don't feel anything. I
15 woke up to him on top of me and --

16 Q. And what?

17 A. And he was moving back and forth with
18 his private part inside of me.

19 Q. His private part what?

20 A. Inside of me.

21 Q. Where was it inside?

22 A. In my butt.

23 Q. Was it only your butt?

24 A. Yes, ma'am.

25 Q. And what did you do?

Minor

DIRECT EXAM BY MS. HERRING-LASH

1 A. I didn't do anything.

2 Q. And what did he do?

3 A. I don't know.

4 Q. What?

5 A. I don't know.

6 Q. Did you tell anyone about that?

7 A. No, ma'am.

8 Q. Where were the other people?

9 A. My grandma was at work and my cousin
10 Solomon was outside playing.

11 Q. And what about your mom, do you know
12 where she was?

13 A. Work.

14 Q. And did anything happen at your
15 great-grandmother's, Squirt's grandmother's house?

16 A. Yes.

17 Q. And tell the jury about that.

18 A. Basically, it was the same thing.

19 Q. You need to tell them.

20 A. It was in one of the bedrooms in my
21 great-grandma's house. He was on top of me with
22 his private part in me and he was moving back and
23 forth and -- and I did not tell anybody.

24 Q. And what? Did he say anything?

25 A. No, ma'am.

Minor - CROSS EXAM BY MR. COCHRAN

1 Q. And was there a time when Squirt was
2 not around in Charleston for a long time?

3 A. Yes, ma'am.

4 Q. Do you know if it was months or years?

5 A. Years.

6 Q. Why didn't you tell anybody back then,

7 Minor

8 A. Because I didn't know any better. I
9 was only six or seven.

10 Q. What? You have to speak into the
11 microphone.

12 A. I didn't know any better. I was only
13 six or seven.

14 MS. HERRING-LASH: Those are all the
15 questions I have, Minor

16 THE COURT: You may proceed.

17 MR. COCHRAN: Thank you. May it please
18 the Court?

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. COCHRAN:

22 Q. Minor you had mentioned that you were
23 sure that after your mom left for work on -- back
24 in 2013, a couple of years ago, that you locked the
25 door?

Minor - CROSS EXAM BY MR. COCHRAN

1 A. Uh-huh.

2 Q. And that she gave very specific
3 instructions to you not to let anybody in?

4 A. Uh-huh.

5 Q. And earlier that day, I guess before
6 she went to work, she was at the store?

7 A. Uh-huh.

8 Q. And you said that your cousin Squirt
9 came over to the house?

10 A. Uh-huh.

11 Q. Okay. And you let him into the house
12 at that point?

13 A. Uh-huh.

14 Q. Okay. And at that time, you're saying
15 that he years ago had abused you back then, too?

16 A. Yes.

17 Q. Okay. But you let him in the door on
18 that day in 2013, right?

19 A. Uh-huh.

20 Q. And then your mom said later on that
21 day not to let anybody in the house?

22 A. (Nodding head)

23 Q. And so after she went to work, you were
24 sure to lock all three doors?

25 A. Uh-huh.

Minor - CROSS EXAM BY MR. COCHRAN

1 Q. Okay. And then you went into the back
2 bedroom and you were feeding your sister?

3 A. Uh-huh.

4 Q. Okay. And then he came back to the
5 house and knocked on the door?

6 A. Yes.

7 Q. Okay. And you said he knocked for
8 awhile?

9 A. Uh-huh.

10 Q. But then he was in your bedroom?

11 A. Uh-huh.

12 Q. But you don't know how he got into the
13 bedroom and you don't know how he got into the
14 house?

15 A. Uh-huh.

16 Q. You do know or you don't know?

17 A. I don't know.

18 Q. And you were -- were you living with
19 your grandma or living with your mom back when you
20 were six or seven?

21 A. My mom.

22 Q. But you were staying with your grandma
23 sometimes?

24 A. Yes.

25 Q. And they live close together?

1 A. Yes.

2 Q. Okay. And do you know Squirt's mom?

3 A. Yes.

4 Q. And do you remember a few days after
5 you said this happened in 2013, do you remember
6 going to a cookout that she was having?

7 A. Yes.

8 Q. Okay. And was Squirt there?

9 A. Yes.

10 Q. And were his sisters there?

11 A. Yes.

12 Q. Okay. And this was after this happened
13 in 2013?

14 A. Before.

15 Q. Okay. Are you sure about that?

16 A. Yes, I'm pretty sure.

17 Q. Okay. And then a few days after this
18 happened in 2013, was there another cookout that
19 his mom had?

20 A. Nope.

21 Q. And you said that your cousin Solomon
22 was over at your house in 2013?

23 A. Yes.

24 Q. And he was -- you said he was older
25 than you?

Minor - CROSS EXAM BY MR. COCHRAN

1 A. Uh-huh.

2 Q. Do you know how much older?

3 A. He's two years older than me.

4 Q. So he was only 15 back then?

5 A. I don't know. He's -- he's three years
6 older than me.

7 Q. Okay. So he might have been like 16
8 back then?

9 A. Uh-huh.

10 Q. And you said that after your mom went
11 to work and after Squirt came into the house
12 Solomon came over too?

13 A. Uh-huh.

14 Q. Okay. Did you have to let him in or
15 was the door not locked?

16 A. I did not let him in.

17 Q. You didn't let Solomon in either?

18 A. Uh-huh.

19 Q. Okay. How did he get in?

20 A. He did not get in.

21 Q. Okay. How did you -- did you talk to
22 him?

23 A. Yeah. We have a blind in our window.

24 Q. Okay. So you talked to him through the
25 window while he was outside?

Minor - CROSS EXAM BY MR. COCHRAN

1 A. Uh-huh.

2 Q. Did you tell him what happened?

3 A. No.

4 Q. Was Squirt standing there too?

5 A. No.

6 Q. Where did Squirt go to?

7 A. I don't know.

8 Q. Okay. And you said that Squirt had
9 sent Solomon to the store?

10 A. Uh-huh.

11 Q. Okay. And Solomon tried to give you
12 candy?

13 A. Uh-huh.

14 Q. But you didn't take it from him?

15 A. (Shaking head)

16 Q. Okay. And Solomon is also your cousin?

17 A. Uh-huh.

18 Q. Was he still there when your mom came
19 home?

20 A. Who?

21 Q. Solomon.

22 A. No.

23 MR. COCHRAN: Beg the Court's
24 indulgence? No more questions. Thank you.

25 THE COURT: Any redirect of the

Minor

- REDIRECT EXAM BY MS. HERRING-LASH

1 witness?

2 MS. HERRING-LASH: Just one or two.

3 REDIRECT EXAMINATION

4 BY MS. HERRING-LASH:

5 Q. Minor when Solomon came to your
6 house, did you let him in or not let him in?

7 A. Not let him in.

8 Q. How did you talk to him?

9 A. Through the window.

10 Q. And did he have anything in his hand?

11 A. Yes.

12 Q. What?

13 A. Dollar General bag of candy.

14 Q. And did he give you that candy or did
15 he leave?

16 A. He left.

17 MS. HERRING-LASH: Those are all the
18 questions I have.

19 THE COURT: Ma'am, you may step down.

20 Would Counsel approach for me, please?

21 (Bench conference.)

22 THE COURT: Who is the next witness?

23 MS. ELLIOTT: The Minor's mother.

24 THE COURT: How long is she going to
25 be?

LATWANNA [REDACTED] - DIRECT EXAM BY MS. ELLIOTT

1 MS. ELLIOTT: I would expect direct to
2 take about 20 minutes.

3 THE COURT: How long on cross? Do you
4 want to break it at cross or break now and start in
5 the morning?

6 MR. COCHRAN: Either one is fine.

7 MS. ELLIOTT: I don't have a
8 preference.

9 (End of bench conference.)

10 THE COURT: Okay. Call your next
11 witness.

12 State may proceed.

13 MS. ELLIOTT: The State calls Latwanna

14 [REDACTED]

15 LATWANNA [REDACTED],

16 being first duly sworn, testified as follows:

17 THE CLERK: Go ahead and take a seat.
18 Please state your first and last name into the
19 microphone and spell your first and last name.

20 THE WITNESS: Latwanna [REDACTED]

21 L-A-T-W-A-N-N-A, [REDACTED].

22 THE COURT: You may proceed.

23 DIRECT EXAMINATION

24 BY MS. ELLIOTT:

25 Q. Thank you, Ms. [REDACTED] Where do you

LATWANNA [REDACTED] - DIRECT EXAM BY MS. ELLIOTT

1 live?

2 A. I live at [REDACTED]

3 Q. Can you speak up a little bit more?

4 A. I live at [REDACTED]

5 Q. Is that in Charleston County?

6 A. Yes.

7 Q. How long have you lived at that
8 residence?

9 A. Almost five years.

10 Q. And where are you from originally?

11 A. James Island.

12 Q. And what do you do for a living?

13 A. I work at the school in the cafeteria.

14 Q. Which school?

15 A. James Island Middle.

16 Q. Do you have any children?

17 A. Yes.

18 Q. What are their names?

19 A. [REDACTED] Minor and [REDACTED] Minor

20 Q. How old is [REDACTED] Minor ?

21 A. [REDACTED] Minor is four.

22 Q. And [REDACTED] Minor, what is her date of birth
23 and how old is she now?

24 A. [REDACTED] Minor date of birth is [REDACTED]/2000 and
25 she is 15.

LATWANNA [REDACTED] - DIRECT EXAM BY MS. ELLIOTT

- 1 Q. Do you know the defendant?
- 2 A. Yes.
- 3 Q. How do you know him?
- 4 A. That's my cousin.
- 5 Q. Do you know about how old he is?
- 6 A. He's about 36, 35.
- 7 Q. What's his name?
- 8 A. Johnny Brown.
- 9 Q. Does he have a nickname?
- 10 A. Yes.
- 11 Q. What is that?
- 12 A. Squirt.
- 13 Q. Okay. Would you point him out and
- 14 describe something that he's wearing?
- 15 A. He's right there and he's got on a
- 16 white shirt.
- 17 Q. Now you told us that you work in a
- 18 middle school cafeteria. Is that the kind of work
- 19 you were doing June of 2013?
- 20 A. I was working at Dollar General also.
- 21 Q. Okay. And which Dollar General?
- 22 A. On Maybank and Folly Road.
- 23 Q. Do you remember the day of June 20th
- 24 2013?
- 25 A. Yes.

LATWANNA [REDACTED] - DIRECT EXAM BY MS. ELLIOTT

1 Q. Who all was living with you at that
2 time?

3 A. Me, [REDACTED] Minor and [REDACTED] Minor.

4 Q. And how old would [REDACTED] Minor have been?

5 A. Thirteen.

6 Q. And how old would [REDACTED] Minor have been?

7 A. Two.

8 Q. And that was still at that [REDACTED] [REDACTED]
9 [REDACTED] address?

10 A. Yes.

11 Q. Do you remember how that day was
12 supposed to go?

13 A. I was supposed to take [REDACTED] Minor to day
14 care and come back home and then, you know, take a
15 nap and get ready to go to work.

16 Q. When you came home from taking [REDACTED] Minor
17 to daycare, who was at your house?

18 A. Squirt.

19 Q. Just Squirt?

20 A. And [REDACTED] Minor

21 Q. And had Squirt ever been to your house
22 before?

23 A. I don't think so, no.

24 Q. Where was he in the house?

25 A. He was in [REDACTED] Minor room.

LATWANNA [REDACTED] - DIRECT EXAM BY MS. ELLIOTT

1 Q. Do you know what he was doing there?

2 A. He said he came to get something to eat
3 and he asked me for a ride.

4 Q. Okay. Did you give him something to
5 eat?

6 A. No.

7 Q. Did you give him a ride?

8 A. I told him I would take him when I go
9 to work. He asked me to take him to North
10 Charleston. I told him I would take you as far as
11 Dollar General when I go to work.

12 Q. What time were you supposed to go to
13 work?

14 A. I think I was supposed to be there at
15 4:00.

16 Q. So did you call to give him a ride?

17 A. I did.

18 Q. And what happened when you did that?

19 A. He said he wasn't going because his
20 cousin was going to come and pick him up from the
21 Dollar General.

22 Q. So about what time did you leave that
23 day for work?

24 A. I think I left about 3:00.

25 Q. And when you left the house, who was at

LATWANNA [REDACTED] - DIRECT EXAM BY MS. ELLIOTT

1 your house?

2 A. [REDACTED] Minor and [REDACTED] Minor .

3 Q. So [REDACTED] Minor back from day care?

4 A. Yes.

5 Q. Did you get any phone calls from [REDACTED] Minor
6 while you were at work that day?

7 A. No.

8 Q. And what time did you finish with work?

9 A. We close at nine. So we probably got
10 out of there about 9:30, 9:45.

11 Q. And do you remember about what time you
12 got home?

13 A. Probably a little bit before 10 or a
14 little bit after 10.

15 Q. And tell me about when you got home,
16 what happened?

17 A. When I got home, I had to knock on the
18 door because the door was locked.

19 Q. Was that normal?

20 A. No.

21 Q. Describe that door for me. How many
22 locks are on it?

23 A. There is two locks and a chain.

24 Q. And were all of those functional?

25 A. No.

LATWANNA [REDACTED] - DIRECT EXAM BY MS. ELLIOTT

1 Q. I'm going to show you a picture --

2 MS. ELLIOTT: May I approach, Your

3 Honor?

4 THE COURT: You may.

5 BY MS. ELLIOTT:

6 Q. This has been entered as State's

7 Exhibit 7. Do you know what that's a picture of? ✓

8 A. Yes.

9 Q. What is it a picture of?

10 A. The door jamb.

11 Q. And describe for me kind of what was
12 going on with those locks.

13 A. The bottom lock somebody had stuck
14 something in the keyhole, so I wasn't able to lock
15 it from the -- I mean, unlock it from the outside,
16 but we could lock it from the inside. The top
17 lock, we just locked it -- I could lock it from the
18 outside with a key.

19 Q. Okay. So -- that didn't make a lot of
20 sense to me. The bottom lock, what was wrong with
21 that?

22 A. Somebody stuck something in the keyhole
23 from the outside.

24 Q. So could you open it from the outside?

25 A. No. No.

LATWANNA [REDACTED] - DIRECT EXAM BY MS. ELLIOTT

1 Q. Could you lock it from the inside?

2 A. Yes.

3 Q. What was wrong with the second lock?

4 A. The second lock at that time I thought
5 everything was fine, but come to find out it
6 wasn't.

7 Q. What happened with that? What was
8 wrong with it?

9 A. You could just push the door and it
10 would come open.

11 Q. Okay. And what -- around the time of
12 June 20th, 2013, what was your family's habit for
13 how you would lock that door when you would go to
14 work?

15 A. [REDACTED] Minor would just put the middle lock
16 on, put the top lock on so I could be able to get
17 back into the house.

18 Q. Would she normally set the chain?

19 A. No.

20 Q. And I think you said this but I just
21 want to check, did you know about the problem with
22 the door on June 20th?

23 A. No.

24 Q. So [REDACTED] Minor had to let you in because of
25 the chain. What happened once you got into the

LATWANNA [REDACTED] - DIRECT EXAM BY MS. ELLIOTT

1 house?

2 A. She unlocked the door and she ran back
3 to her room.

4 Q. And did you ask [REDACTED] Minor where [REDACTED] Minor
5 was?

6 MR. COCHRAN: Objection.

7 THE COURT: Basis?

8 MR. COCHRAN: Calls for hearsay.

9 THE COURT: She's not asking her what
10 she said. She's simply asking did she in fact ask
11 the question. Overruled. It's not being offered
12 for its truth.

13 She cannot say what someone else has
14 said.

15 MS. ELLIOTT: Yes, Your Honor.

16 THE COURT: Mr. Cochran, when
17 addressing the Court you need to stand.

18 MR. COCHRAN: Yes, Your Honor. I
19 apologize.

20 THE COURT: You may proceed, Ms.
21 Elliott.

22 By MS. ELLIOTT:

23 Q. Where was [REDACTED] Minor

24 A. In her room.

25 Q. Did you go and check on her?

LATWANNA [REDACTED] - DIRECT EXAM BY MS. ELLIOTT

1 A. Yes.

2 Q. And what was she doing when you went
3 and found her?

4 A. She was crying.

5 Q. And did you ask her why she was crying?

6 A. Yes.

7 Q. As a result of what [REDACTED] Minor said, what
8 did you do?

9 A. I took her to the hospital.

10 Q. What did you do with [REDACTED] Minor ?

11 A. I took her to my mom's house.

12 Q. Did you have any words about taking her
13 to your mom's house?

14 A. No.

15 Q. Why?

16 A. Because I ain't told my mom what
17 happened.

18 Q. What was [REDACTED] Minor demeanor like at the
19 hospital?

20 A. She was very scared and she was still
21 crying.

22 Q. At the hospital were you with her
23 during her exam in the exam room?

24 A. Yes.

25 Q. And what was her demeanor like then?

LATWANNA [REDACTED] - DIRECT EXAM BY MS. ELLIOTT

1 A. She was real scared and she was
2 squeezing my hand.

3 Q. Did they question her during that exam?

4 A. Yes, a little bit.

5 Q. Now, I don't want you to tell me what
6 she said, but what were her responses like? What
7 was the process by which she was communicating the
8 answers?

9 A. She was nodding and shaking her head.

10 Q. How long were you at the hospital that
11 night?

12 A. A long time.

13 Q. What happened when you left?

14 A. We got almost home and they called us
15 back.

16 Q. Who is they?

17 A. The hospital.

18 Q. And why was that?

19 A. Because they found ketones in her
20 urine, so they called us back.

21 Q. What are ketones related to?

22 A. Diabetes.

23 Q. While you were at the hospital the
24 first time, did law enforcement come?

25 A. Yes.

LATWANNA [REDACTED] - DIRECT EXAM BY MS. ELLIOTT

1 Q. What, if any, interaction did you have
2 with law enforcement?

3 A. I spoke to them and they took my
4 statement.

5 Q. Do you know what happened to [REDACTED] Minor
6 clothes from that night?

7 A. They went to go get them.

8 Q. Who is they?

9 A. The officers.

10 Q. Did a detective become involved?

11 A. Yes.

12 Q. After [REDACTED] Minor got out of the hospital,
13 did you have to take her somewhere?

14 A. Yes.

15 Q. Where?

16 A. I had to take her to LCC.

17 Q. What is LCC?

18 A. Lowcountry Children's Center.

19 Q. And what did she have to do there?

20 A. She had to talk to somebody.

21 Q. After this incident did your daughter
22 experience any behavioral changes?

23 A. Yes.

24 Q. Like what?

25 A. Her grades were bad. She -- I had to

LATWANNA [REDACTED] - DIRECT EXAM BY MS. ELLIOTT

1 switch her out of one of her classes because she
2 had a male teacher and she couldn't function.

3 Q. What was [REDACTED] Minor attitude about
4 staying home alone after this?

5 A. She didn't want to.

6 Q. Did you have to make any changes in
7 your life because of this?

8 A. Yes. I had to cut down my hours at
9 work and make sure that my mom was able to keep

10 [REDACTED] Minor

11 Q. Did there come a time when Johnny Brown
12 left Charleston?

13 A. Yes.

14 Q. Before he left Charleston, where was he
15 staying most the time?

16 A. At my grandma's house.

17 Q. I will show you a picture that's been
18 previously admitted as State's Exhibit 8 (sic).
19 Take a look at State's Exhibit 8. What is that a
20 picture of?

21 A. My grandmother's house.

22 Q. Can you circle the part that is your
23 grandmother's house?

24 A. (Indicating) That part.

25 Q. Is your grandmother related to Johnny

LATWANNA [REDACTED] - DIRECT EXAM BY MS. ELLIOTT

1 Brown?

2 A. Yes.

3 Q. How so?

4 A. That's his grandmother.

5 Q. And that building next to it, who lived
6 there?

7 A. My mother.

8 Q. Would [REDACTED] Minor stay over at your mother's
9 house during the time that Johnny Brown would stay
10 at his grandmother's house?

11 A. Sometimes, yes.

12 Q. Do you know who Solomon [REDACTED] is?

13 A. Yes.

14 Q. Who is that?

15 A. That's my nephew.

16 Q. Where was Solomon living back then?

17 A. With my mother.

18 Q. Do you know how long Johnny Brown had
19 been back in Charleston before June 20th, 2013?

20 A. I think about a month.

21 MS. ELLIOTT: Court's indulgence, Your
22 Honor?

23 THE COURT: Uh-huh.

24 BY MS. ELLIOTT:

25 Q. Ms. [REDACTED], I want to take you back to

LATWANNA [REDACTED] - DIRECT EXAM BY MS. ELLIOTT

1 what's marked as State's Exhibit 7. Can you circle
2 the lock that you were not using on June 20th?

3 A. (Marking)

4 Q. Why were you using that one?

5 A. I think somebody stuck something in the
6 keyhole.

7 Q. Can you put a box around the lock that
8 you thought was working and everybody was using?

9 A. (Marking)

10 Q. Where would the chain have been?

11 A. On the top.

12 Q. I'm going to show you what I believe is
13 marked as State's Exhibit Number 6. What is that a
14 picture of?

15 A. My back yard.

16 Q. And which door was the door with these
17 locks on it? Can you circle that for me, please?

18 A. This one. (Indicating)

19 Q. You came home and the chain was on and
20 that was unusual, correct?

21 A. Yes, ma'am.

22 Q. And you went and found [REDACTED] Minor where?

23 A. In her room.

24 Q. Was she very forthcoming with you at
25 first?

LATWANNA [REDACTED] - CROSS EXAM BY MR. COCHRAN

1 A. No.

2 Q. Were you in there awhile?

3 A. Yes.

4 Q. And what was her demeanor during that
5 time?

6 A. She just kept crying.

7 MS. ELLIOTT: I don't have anything
8 further at this time, Your Honor.

9 THE COURT: Anything further for the
10 witness from the defense?

11 MR. COCHRAN: Oh, in terms of breaking
12 or --

13 THE COURT: You can proceed on cross.

14 CROSS-EXAMINATION

15 BY MR. COCHRAN:

16 Q. You said you believed your shift was
17 about seven to eight hours that day?

18 A. No. I went to work about 3:30.

19 Q. 3:30?

20 A. And we close at nine.

21 Q. Okay. But you have to stay and close
22 up for --

23 A. Yeah. We probably get out of there
24 like 9, 9:30.

25 Q. And you believe you got home around

LATWANNA [REDACTED] - CROSS EXAM BY MR. COCHRAN

1 10:00?

2 A. Yes.

3 Q. Was Solomon at your house when you got
4 home?

5 A. No.

6 Q. And now earlier in the day before you
7 went to work, you said you had gone to the store?

8 A. Yes.

9 Q. And you had left [REDACTED] Minor home with her
10 sister at that point as well?

11 A. No.

12 Q. You did not?

13 A. No.

14 Q. They went to the store with you?

15 A. No. [REDACTED] Minor was at home. I went to
16 take [REDACTED] Minor to the babysitter.

17 Q. Okay. I see. And when you got home
18 your cousin Johnny was at the house?

19 A. Yes.

20 Q. And [REDACTED] Minor didn't make any complaints
21 about Johnny at that time?

22 A. No, she wasn't there.

23 Q. I'm sorry, [REDACTED] Minor

24 A. No.

25 Q. Did not make any complaints about

LATWANNA [REDACTED] - CROSS EXAM BY MR. COCHRAN

- 1 Johnny at that time?
- 2 A. No.
- 3 Q. She didn't complain about him acting
- 4 inappropriate?
- 5 A. No.
- 6 Q. Or making her feel uncomfortable?
- 7 A. No.
- 8 Q. And you said that she had let him into
- 9 the house at that time?
- 10 A. No.
- 11 Q. Before -- I'm talking about before you
- 12 went to work.
- 13 A. No, I didn't ask her how he got in.
- 14 Q. Okay. You didn't ask her. So you
- 15 didn't kind of give her a talking to about not
- 16 letting people into the house?
- 17 A. I talked to her after. I told her to
- 18 not open the door for anybody. I did talk to her
- 19 before, but I reiterated after when I got back and
- 20 he was in our house. I told her, do not open the
- 21 door for nobody.
- 22 Q. And so she had to open the door for him
- 23 the first time?
- 24 A. I don't know.
- 25 Q. Okay. And you did not see anything

LATWANNA [REDACTED] - CROSS EXAM BY MR. COCHRAN

1 inappropriate going on between the two of them?

2 A. Well, when I came in the house, his
3 hand was like in her face.

4 Q. In what way?

5 A. He was doing like this (Indicating),
6 and I asked him what was he doing there.

7 Q. And did you tell the police that?

8 A. Yes.

9 Q. You told police that --

10 A. Yes, that he was at my house.

11 Q. -- that he had his hand in her face?

12 A. Yes.

13 Q. And you gave an audio-recorded
14 statement to the police?

15 A. Yes.

16 Q. And he asked you for a ride to North
17 Charleston?

18 A. Yes.

19 Q. But you were not able to drive him out
20 there because you had to go to work?

21 A. Yes.

22 Q. And you were living on James Island?

23 A. Yes.

24 Q. And he wanted to ride to North
25 Charleston?

LATWANNA [REDACTED] - CROSS EXAM BY MR. COCHRAN

1 A. Yes.

2 Q. Okay. Do you have other relatives
3 there, other friends there, or something?

4 A. Where?

5 Q. In North Charleston.

6 A. No.

7 Q. Okay. And so you told him that you
8 could not give him a ride, and then he left the
9 house?

10 A. Yes.

11 Q. Okay. Did he ever come into the Dollar
12 General later that day?

13 A. No.

14 Q. Did you remember Solomon coming into
15 the Dollar General later that day?

16 A. No. Solomon couldn't get there. I
17 don't work at [REDACTED]. I work on Maybank and Folly.

18 Q. Okay. So two different Dollar
19 Generals?

20 A. Yes.

21 Q. One further down the road?

22 A. Yes, sir.

23 Q. And when you went in to talk to [REDACTED] Minor
24 after you got home from work, you said she was
25 crying and she ran to her own room or to your

LATWANNA [REDACTED] - CROSS EXAM BY MR. COCHRAN

1 bedroom?

2 A. To her room.

3 Q. Okay. And then later on you became
4 aware of what she was saying Johnny did?

5 A. Yes.

6 Q. Okay. And the police asked you to
7 collect her clothes and things like that from the
8 house?

9 A. Yes. Well, they went to get it.

10 Q. Did you direct them to where the
11 clothes would be?

12 A. Yes.

13 Q. And they did collect some clothing from
14 your house, from the bathroom?

15 A. Yes.

16 Q. And that was based on what [REDACTED] Minor told
17 you?

18 A. Yes.

19 Q. And it was your understanding that what
20 [REDACTED] Minor was saying happened, happened in your
21 bedroom?

22 A. Yes.

23 Q. And the mattress was bare at that time?

24 A. Yes.

25 Q. There were no sheets or comforters on

LATWANNA [REDACTED] - CROSS EXAM BY MR. COCHRAN

1 it?

2 A. No.

3 Q. And did you look at the mattress after
4 to see if there was anything on it?

5 A. No.

6 Q. Did you direct the police to it?

7 A. I told them where she said it happened.

8 Q. So when the police came to collect the
9 evidence, you told them --

10 A. I wasn't there. I was at the hospital.

11 Q. Okay. So before they left to go
12 collect evidence, you told them where it was at?

13 A. Yes.

14 Q. And they did not take the mattress out
15 of the house?

16 A. No.

17 Q. Did they cut anything out of the
18 mattress?

19 A. No.

20 Q. Do you remember -- now, so Johnny's
21 mother is your sister?

22 A. My aunt.

23 Q. Your aunt?

24 A. Uh-huh.

25 Q. Do you remember a few days after taking

LATWANNA [REDACTED] - CROSS EXAM BY MR. COCHRAN

1 [REDACTED] Minor to the hospital her having a cookout, his
2 mother having a cookout?

3 A. Yes.

4 Q. And you went to the cookout?

5 A. Yes.

6 Q. And Johnny's sisters were there at the
7 cookout?

8 A. Yes.

9 Q. And you took [REDACTED] Minor to the cookout as
10 well?

11 A. Yes.

12 Q. And this is before Johnny had been
13 arrested?

14 A. No. He was arrested.

15 Q. So you recall him being arrested?

16 A. Yes.

17 Q. This was a few days after [REDACTED] Minor went
18 to the hospital?

19 A. Yes.

20 Q. How old is Solomon?

21 A. Right now he's 18.

22 MR. COCHRAN: Beg the Court's
23 indulgence?

24 THE COURT: Uh-huh.

25 BY MR. COCHRAN:

LATWANNA [REDACTED] - CROSS EXAM BY MR. COCHRAN

1 Q. So you sat with and spoke with your
2 daughter, [REDACTED] Minor because she was crying after you
3 got home from work?

4 A. Yes.

5 Q. And she had changed clothes at that
6 point --

7 A. Yes.

8 Q. -- from what she had been wearing
9 before you went to work?

10 A. Yes.

11 Q. And did you get -- did she tell you the
12 full story of what had happened?

13 A. No.

14 Q. So you just -- you took your youngest
15 daughter to your mother's house?

16 A. Yes.

17 Q. And then took [REDACTED] Minor to the hospital?

18 A. Yes.

19 Q. Okay. And your mother and your
20 grandmother live next door to each other?

21 A. Yes.

22 Q. In adjacent buildings?

23 A. Yes.

24 Q. And at that point who was Johnny living
25 with?

LATWANNA [REDACTED] - REDIRECT EXAM BY MS. ELLIOTT

1 A. Excuse me?

2 Q. Who was Johnny living with at that
3 point?

4 A. I don't know.

5 Q. Did you know whether or not he was
6 staying at your grandmother's house?

7 A. He would be there sometimes, but I
8 don't think he slept there.

9 Q. Okay. So it was possible that he was
10 staying at your grandmother's house that night?

11 A. No, I don't think so.

12 Q. But do you know?

13 A. No.

14 MR. COCHRAN: No more questions.

15 THE COURT: Any redirect of the
16 witness?

17 MS. ELLIOTT: Court's indulgence, Your
18 Honor?

19 REDIRECT EXAMINATION

20 BY MS. ELLIOTT:

21 Q. Your mother's house is next to your
22 grandmother's house?

23 A. Yes.

24 Q. Are they -- can you gain entrance
25 between the two houses without going outside?

LATWANNA [REDACTED] - REDIRECT EXAM BY MS. ELLIOTT

1 A. No.

2 Q. When you left [REDACTED] Minor at your mother's
3 house, did you tell her what all had happened?

4 A. Yes.

5 Q. Did the police ever show you the
6 clothes they collected out of your mother's house?

7 A. No.

8 Q. Was anyone in your family at your house
9 when the police went to gather evidence?

10 A. No.

11 Q. When you told the police what to look
12 for at your house, had [REDACTED] Minor told you the full
13 story of what had happened yet?

14 A. A little bit -- no.

15 Q. But not the full story?

16 A. No.

17 Q. The mattress that was in your room, how
18 old was it then?

19 A. Maybe three years.

20 Q. Were you the first person to have ever
21 owned it?

22 A. Yes.

23 MS. ELLIOTT: Nothing further, Your
24 Honor.

25 THE COURT: Any objection to the

1 witness being excused? From the State?

2 MS. ELLIOTT: No, Your Honor.

3 THE COURT: From the defense?

4 MR. COCHRAN: No, Your Honor.

5 THE COURT: Ma'am, you're excused.

6 Madame Forelady, ladies and gentlemen,
7 we are going to take advantage of this break in
8 testimony to take our evening recess. During the
9 break please do not discuss the case among
10 yourselves or with anyone else.

11 Please do not watch, read, or listen to
12 any media accounts about this case if there are
13 any. And, again, please do not make any comments
14 about your status regarding your jury service on
15 any social networking sites.

16 The clerk's office has arranged for you
17 to be able to park next door in the parking garage.
18 They will have some information for you to place in
19 your window, and they will show you the designated
20 areas where you are to park in the morning so you
21 will not have to walk from Cumberland down to the
22 courthouse in the morning.

23 We will resume at 9:30. Again, please
24 come directly to your jury room at that time. As
25 soon as you-all have arrived, we will resume

1 testimony. And, again, please do not have any
2 contact with anyone around the courthouse.

3 Stack your notebooks up on the ledge
4 and we will secure those during the recess. Have a
5 wonderful evening and we will see you in the
6 morning at 9:30.

7 (Jury out, 4:48 p.m.)

8 THE COURT: Is there anything from the
9 State before we adjourn for the evening?

10 MS. ELLIOTT: No, Your Honor.

11 THE COURT: From the defense?

12 MR. COCHRAN: No, Your Honor.

13 THE COURT: Have a good evening. I'll
14 see you in the morning at 9:30.

15 If you have any requests to instruct, I
16 would ask that you hand those up to me in the
17 morning so I can have adequate time to look at
18 them.

19 MR. COCHRAN: Yes, Your Honor.

20 MS. ELLIOTT: Yes, ma'am.

21 (These proceedings were recessed at
22 4:49 p.m., to be resumed at 9:30 the following
23 morning.)

24

25

1 (The following proceedings were had
2 April 14, 2015, Charleston County Circuit Court, at
3 9:45 a.m.)

4 THE COURT: You may be seated. State
5 ready to proceed?

6 MS. ELLIS: Yes, Your Honor.

7 THE COURT: Defense ready to proceed?

8 MR. COCHRAN: Yes, Your Honor.

9 THE COURT: Please bring in the jury.

10 Mr. Julius, would you spread the
11 notepads on the railings so when they come in they
12 can pick theirs up?

13 MS. ELLIOTT: Our first witness is a
14 bit out of order. She's a chain witness that is
15 just out of order.

16 THE COURT: That's fine.

17 MS. ELLIOTT: And I will be reading a
18 stipulation that we've agreed to into the record
19 before we get started.

20 THE COURT: Uh-huh.

21 (Jury in 9:47 a.m.)

22 THE BAILIFF: Jurors are all seated.

23 THE COURT: Thank you. Does everybody
24 have their notebooks? You might want to pass them
25 around and see who doesn't have one yet. Okay.

SONYA JOHNSON - DIRECT EXAM BY MS. HERRING-LASH

1 Morning, ladies and gentlemen. I hope
2 you had a pleasant and restful evening. We are
3 going to resume testimony.

4 State may proceed.

5 MS. HERRING-LASH: To begin with, the
6 State and the defense have reached a stipulation
7 that I'll read into the record.

8 THE COURT: You may proceed.

9 MS. HERRING-LASH: The State and
10 defense agree and stipulate that Johnny Tamar Brown
11 was not in Charleston County between May 5th of
12 2008 and May 1st of 2013.

13 The State would call Sonya Johnson.

14 SONYA JOHNSON,
15 being first duly sworn, testified as follows:

16 THE CLERK: Have a seat please, and I
17 would ask you to raise your voice a little bit.

18 THE WITNESS: Okay.

19 THE CLERK: Give us your full name and
20 spell your last, please.

21 THE WITNESS: My name is Sonya Brown
22 Johnson, J-O-H-N-S-O-N.

23 THE COURT: You may proceed.

24 DIRECT EXAMINATION

25 BY MS. HERRING-LASH:

SONYA JOHNSON - DIRECT EXAM BY MS. HERRING-LASH

1 Q. Ms. Johnson, where do you work?

2 A. I work at MUSC, Medical University of
3 South Carolina.

4 Q. And how long have you worked there?

5 A. I've been there since 1980, 35 years.

6 Q. And what is your job there?

7 A. My job title is medical technologist
8 and I work in the microbiology laboratory.

9 Q. And what are your duties at the
10 microbiology laboratory?

11 A. Okay. My duties are to process
12 specimens that come into the lab. We check in the
13 specimens and we also have to process it as far as
14 making sure the patient's name matches with the
15 order that is sent with the specimen. We also
16 process and log in specimens, we do gram stains,
17 and we print out results. Basically, that's mainly
18 what we do.

19 Q. When you say process, is a lot of that
20 the paperwork that you do?

21 A. Yes.

22 Q. And in the job that you do there at the
23 lab, you don't actually do testing or do anything
24 with the actual samples, you are processing
25 paperwork; is that correct?

SONYA JOHNSON - DIRECT EXAM BY MS. HERRING-LASH

1 A. Processing paperwork. As far as the
2 job, we process paperwork for labs that goes --
3 specimens that go to other labs, such as molecular
4 pathology. We log it in and we have a rack where
5 we place their specimens for the techs to pick it
6 up the next -- the following morning to perform
7 their test. The tests for microbiology we are
8 responsible for, as far as performing our duties
9 there.

10 Q. Okay. So some tests may go to
11 microbiology, but many go to molecular pathology?

12 A. Yes.

13 Q. Were you working on the evening and
14 early morning hours of June 20, 2013, up until the
15 morning hours of June 21, 2013?

16 A. I worked the first shift, night shift.
17 My hours are from 9:30 to 8:00 a.m.

18 Q. So that's pretty much all night?

19 A. Yes.

20 Q. Is that your normal hours?

21 A. Yes.

22 Q. And that evening -- would you have
23 received all of the specimens that were turned in
24 that evening?

25 A. Yes.

SONYA JOHNSON - DIRECT EXAM BY MS. HERRING-LASH

1 Q. And how would a vaginal swab come to
2 you? Would it be in a bag or -- explain to the
3 jury how it -- what -- how it's contained.

4 A. All specimens that we receive in the
5 lab, they're placed in a biohazardous bag with a
6 requisition.

7 Q. And a requisition is a piece of paper?

8 A. Right. We receive the swab and the
9 paper and they are sealed in like a Ziploc bag. If
10 they transport that in the pneumatic tube, that
11 specimen will be in the bag sealed to take it to
12 the laboratory. Once it gets to the laboratory, I
13 then would retrieve that tube, open it, and we take
14 out the specimen.

15 Q. And you're not opening the bag?

16 A. We open the tube first, and then take
17 the specimen out of the tube, and then I'll go
18 ahead and open the biohazard bag to remove the
19 specimen and the requisition for that specimen.

20 Q. Just to be clear, when you're talking
21 about a tube, you're talking about the vacuum tube
22 that it comes in?

23 A. Right.

24 Q. Through the --

25 A. The pneumatic tube is where you have a

SONYA JOHNSON - DIRECT EXAM BY MS. HERRING-LASH

1 chute, wherever the tube station is that it's
2 coming from. And they would tube it to 88, which
3 is our tube station number, and it comes directly
4 to our laboratory.

5 Q. And then you process through the
6 paperwork?

7 A. What we do is we process the specimen
8 by opening the bag. The specimens are all labeled
9 with the patient's information. We compare that
10 specimen that is already labeled with the order for
11 that test, then we log it into the computer where
12 it would log the specimen as being in the lab.

13 Once we log it in, it's logged in for
14 either the microbiology lab or we log it in for
15 other labs such as molecular pathology laboratory.
16 We make sure the code is logged in for their
17 specific lab. Once it's logged in, we place the
18 specimen on the rack for the microbiology lab.

19 Q. And microbiology would pick up the
20 specimens for molecular pathology?

21 A. Molecular pathology will pick up their
22 rack when they come in the morning.

23 Q. Just so maybe the jury understands,
24 when you're talking about that first tube system,
25 is that kind of like the tube at the bank when you

SONYA JOHNSON - DIRECT EXAM BY MS. HERRING-LASH

1 go through the drive-thru teller at the bank?

2 A. Right, that's correct.

3 Q. It's kind of like that kind of tube?

4 A. Yes.

5 Q. And any samples that came late evening,
6 early morning you would have dealt with?

7 A. Yes.

8 Q. And when you're working third shift,
9 you're there alone?

10 A. Yes.

11 Q. And other shifts have different people,
12 but that shift you were there by yourself?

13 A. Yes. My -- when I come in, I still
14 overlap with the evening shift.

15 Q. Okay.

16 A. From 9:30 until 8:00, anything that
17 comes in between that time I will process.

18 MS. HERRING-LASH: Court's indulgence?

19 THE COURT: Yes, ma'am.

20 By MS. HERRING-LASH:

21 Q. Would you be able to look at the
22 paperwork to remind you that you handled the
23 samples of Minor ?

24 A. I wouldn't know if they called the lab
25 to request cancellation of that specimen. And once

SONYA JOHNSON - DIRECT EXAM BY MS. HERRING-LASH

1 I receive that phone call, I have to get the
2 patient -- I mean, the -- whoever called, the name
3 of the person that called me to cancel that test.

4 Q. Have you looked at paperwork to let you
5 know that you were the one that handled that
6 sample?

7 A. I will. Once it's cancelled, I would
8 see that in the computer.

9 Q. Was anything cancelled in this case?

10 A. It would be cancelled if I was notified
11 and I would cancel it. Then after that, I would
12 see that it's been cancelled by a doctor's request.

13 Q. But in this case nothing was cancelled?

14 A. I have no knowledge of that as far as,
15 you know, beforehand. I mean, unless I got a phone
16 call saying that it was cancelled, they requested
17 cancellation.

18 THE COURT: May I approach the
19 witness, Your Honor?

20 THE COURT: Uh-huh.

21 BY MS. HERRING-LASH:

22 Q. I am showing you what is the laboratory
23 worksheet from that evening. Is there anything on
24 this worksheet that let's you know that you handled
25 this particular sample for Minor or that you

SONYA JOHNSON - DIRECT EXAM BY MS. HERRING-LASH

1 received it?

2 A. I see that I received that specimen.

3 Q. Okay.

4 A. Looking at the worksheet at the -- I
5 don't see, as far as beforehand, a test was
6 cancelled.

7 Q. It wasn't, I don't think.

8 A. Right.

9 Q. This paperwork, is this is for someone
10 in molecular biology to explain?

11 A. That's correct.

12 Q. But you received Minor sample?

13 A. Yes.

14 MS. HERRING-LASH: That's all the
15 questions I have, Ms. Johnson. Thank you.

16 THE COURT: Any questions for the
17 witness?

18 MR. COCHRAN: No, Your Honor.

19 THE COURT: Any objection to the
20 witness being excused? From the State?

21 MS. ELLIOTT: No, Your Honor.

22 THE COURT: From the defense?

23 MR. COCHRAN: No, Your Honor.

24 THE COURT: Ma'am, you're excused.
25 You may call your next witness.

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 MS. ELLIOTT: You can step down.

2 THE COURT: Yes, ma'am, you're
3 excused.

4 MS. ELLIOTT: The State calls Katherine
5 Fabrizio.

6 KATHERINE FABRIZIO,
7 being first duly sworn, testified as follows:

8 THE CLERK: Have a seat, please. I
9 need you to please give us your full name and spell
10 your last name.

11 THE WITNESS: Katherine Fabrizio,
12 F-A-B-R-I-Z-I-O.

13 DIRECT EXAMINATION

14 BY MS. ELLIOTT:

15 Q. Morning, Ms. Fabrizio. Where do you
16 work?

17 A. I work at the Medical University of
18 South Carolina here in Charleston.

19 Q. And what do you do for MUSC?

20 A. I'm a nurse practitioner and I work
21 with abused children.

22 Q. Can you tell us what type of training a
23 nurse practitioner has to go through?

24 A. My training was that I went to get a
25 Bachelor's of Science Degree from the University of

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 North Carolina, Chapel Hill, and I came here to
2 MUSC School of Nursing and I got my Master's
3 Degree. I then did a year-and-a-half of
4 post-master's work at Emory University, and I then
5 become certified as a family nurse practitioner.

6 Q. How long have you been a nurse
7 practitioner?

8 A. About 25 years.

9 Q. What are your duties and
10 responsibilities as a nurse practitioner for MUSC?

11 A. I see children every day in clinic, I
12 examine them. We see -- the children that come to
13 us, there are concerns that maybe there is some
14 type of abuse going on, and I see them to determine
15 if there is abuse or not abuse. And it's all types
16 of abuses that I see.

17 Q. Can you give us some examples of what
18 types of abuse you might see?

19 A. Physical, sexual allegations, medical
20 neglect, physical neglect, exposure to domestic
21 violence and substance abuse.

22 Q. And in dealing with allegations of
23 sexual abuse, do you have a specific -- a special
24 title that allows you to work in that area?

25 A. I actually did once I started this job.

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1 When I started this job, I spent the first six
2 months becoming credentialed as a pediatric sexual
3 assault nurse examiner, PSANE.

4 Q. And do you have to go through special
5 training for that?

6 A. Yes. Upon completion of didactic
7 training, we are required to perform so many exams
8 on small children, prepubescent as well as
9 pubescent children. After you complete all of the
10 requirements, then you're able to sit for an exam,
11 which I sat for and I passed.

12 Q. Do you have any special certifications
13 or professional affiliations related to that?

14 A. Well, my affiliation is with the
15 International Forensic Nursing Association, IFNA.
16 That's who credentials me as a PSANE.

17 Q. Is there a specific type of exam that
18 you do as a PSANE?

19 A. I do genital exams to check for acute
20 sexual assault.

21 Q. What is an acute sexual assault?

22 A. An acute sexual assault is an assault
23 which by history has occurred within 72 hours, and
24 so we see all what we call acute cases. If we get
25 a call on the phone, usually from a hospital or a

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1 doctor or the emergency room, and they say we have
2 a child here, they give me the history, there's
3 been a possible assault within 72 hours, we call
4 that an acute sexual assault and we come into MUSC
5 Pediatric Emergency Room and do a sexual assault
6 kit and collect evidence.

7 Q. Did you have occasion to see Minor

8 [REDACTED]

9 A. I did.

10 Q. When was that?

11 A. It was the night of 6/20 -- I'm sorry,
12 6 -- I'm nervous. I think it was 6/20 of 2013. I
13 came in that night about 10 or 11:00, I think, and
14 I was there through the night until the next
15 morning. It was early in the morning when -- when
16 I had completed my exam.

17 Q. And where did you see her?

18 A. I saw her at MUSC Pediatric Emergency
19 Room.

20 Q. Can you, in general terms, tell us what
21 you do in a pediatric sexual assault exam?

22 A. Well, I see the patient and the
23 caregiver, who is a guardian. I'll, first of all,
24 get consent to do the exam and to collect all the
25 evidence that I need to collect. Once I get all

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1 the -- all the consent forms signed, then I get a
2 kit that is there in the hospital. We keep several
3 of them on the floor.

4 Q. What is that kit?

5 A. The kit is an acute sexual assault kit
6 provided by SLED. And we get a kit and we open
7 that, and that has inside of it all of the
8 materials that we need in order to collect evidence
9 for -- to see if there -- to try to collect
10 evidence or to collect circumstantial evidence for
11 the sexual assault.

12 Q. And what type of evidence are you
13 looking for?

14 A. We are looking for mainly bodily
15 fluids, DNA evidence. If you listen to TV you've
16 probably heard it. Basically, bodily fluid is --
17 if an alleged offender has assaulted a child, then
18 sometimes there can be -- you can find evidence
19 from bodily fluids on or in that person.

20 Q. Is this kit done exclusively for
21 investigative purposes?

22 A. No. No, we do them to make sure that
23 the child is safe and that they are not injured,
24 because that's the first thing that you're going to
25 do is to make sure that the child is safe. If she

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1 has an injury, we will treat that. We treat for
2 potential exposure to infections. While you're
3 doing your exam, you collect evidence at the same
4 time. You're sort of doing them simultaneously.

5 Q. You're looking for bodily fluids. How
6 do you do that?

7 A. With -- usually we swab different
8 areas. We will swab the mouth, we will swab the
9 vaginal area, and we will swab the rectal area. We
10 collect fingernail-- any debris underneath the
11 fingernails, and we collect clothing if they
12 haven't changed their clothing.

13 We collect anything that we would see
14 on the body that looked like a foreign body. We
15 would collect that, which I don't remember seeing
16 on Minor

17 Q. You mentioned looking for DNA evidence.
18 Where would you be looking for it?

19 A. The alleged offender. If a child comes
20 in and said somebody attacked her or assaulted her,
21 what I'm hoping to find is his DNA evidence or
22 bodily fluids on her, and -- and -- what was your
23 -- ask the question again?

24 Q. I think you've covered all the parts of
25 my question.

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1 I think you said you took a history in
2 this case?

3 A. I did.

4 Q. Who do you get the history from?

5 A. Normally, I get the history really from
6 both the caregiver, if they know something, and the
7 child. And that helps you get sort of a full
8 understanding of what happened.

9 Q. And does that history kind of form the
10 treatment that you give for the child?

11 A. It does give me indications of what I'm
12 looking for as far as maybe evidence or injury, but
13 I do -- I do a full exam no matter what is said to
14 me. If the child said, he kissed me and he fondled
15 me, or touched my breast, and that's all he did, I
16 will still collect evidence from head to toe
17 because children sometimes are scared.

18 Sometimes they are traumatized,
19 sometimes they don't remember. There are lots of
20 reasons why they might forget to tell you
21 something. And this is your one opportunity to
22 collect all the evidence that is possibly still
23 there so we do an exam from head to toe.

24 Q. Like using the example that the child
25 said someone fondled their breast, would you do a

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1 vaginal and rectal exam as well?

2 A. Yes; if they can tolerate it.

3 Q. Talking specifically about Minor

4 exam, do you know what time or --

5 approximately, what time you started the exam?

6 A. I think it was between 11 -- 11 and

7 12:00 that night.

8 Q. And what was her demeanor like when you
9 first met her?

10 A. She seemed very quiet, very tearful,
11 very much in shock. She just had this -- she --
12 she could make eye contact for a short period of
13 time, but she was in complete despair. She would
14 look at me and tears would start coming down her
15 eyes. And then she would look down and look at me,
16 and tears would be coming down her eyes, and then
17 she would look down.

18 She was, basically -- nonverbal was
19 what I put in my report. She would shake her head
20 yes and shake her head no, and shrug her shoulders,
21 and she cried.

22 Q. Was she able to give you a history?

23 A. By asking specific questions, that's
24 sort of the way I did her history that night. And
25 when a child is extremely traumatized, this is one

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 way to get it, is to ask yes or no questions like,
2 did he touch your breasts? Or did he kiss you?
3 And -- and she was -- she was pretty -- I felt like
4 she was pretty consistent with her shaking her head
5 yes and no. She didn't shake yes to everything or
6 no to everything. That can happen sometimes and
7 then you can't really -- you don't know what is
8 true and what is not true.

9 MR. COCHRAN: Objection.

10 THE COURT: Basis?

11 MR. COCHRAN: Bolstering.

12 THE COURT: Sustained.

13 BY MS. ELLIOTT:

14 Q. Were you able to complete a sexual
15 assault kit for Minor ?

16 A. I did.

17 MS. ELLIOTT: May I approach the
18 witness, Your Honor?

19 THE COURT: You may.

20 BY MS. ELLIOTT:

21 Q. I'm going to show you what's been
22 marked for identification purposes as State's
23 Exhibit 10. Do you recognize that?

24 A. I do.

25 Q. What do you recognize that to be?

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 A. I recognize my handwriting and I
2 recognize this to be the sexual assault evidence
3 collection kit I used the night that they came into
4 the emergency room.

5 Q. What all goes into that kit?

6 A. The first thing, if they haven't
7 changed their clothes, clothing goes in here, but
8 she had changed. I didn't collect -- I did collect
9 the underwear because the underwear had some fluids
10 on it. I dried the underwear and collected that.

11 I collected swabs from her mouth,
12 vagina, and her rectum. I collected fingernail
13 scrapings. When you swab the mouth and vaginal
14 area and rectal area, you take two swabs. And what
15 you use to swab are like Q-tips.

16 You swab the area and you have a little
17 glass slide that would be used later to look at the
18 specimen under the microscope, and you smear the
19 Q-tip on the slide, and that's a smear. And so you
20 get two swabs for each area and you smear the
21 secretions on the slide.

22 All of that goes into envelopes. I put
23 her name on each one of the envelopes and the time
24 that I collected it. And then all of those little
25 envelopes that contain each of those specimens is

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1 placed into the box.

2 Q. Now, you've given us a lot of
3 information, so let's slow it down a little bit.
4 Of the evidence that you collected that night, the
5 stuff you put in the box, where does it go?

6 A. Well, like, for instance, if I swab the
7 mouth, I would use two Q-tips to swab the mouth,
8 and then I will get two Q-tips and I will swab her
9 vaginal area, and then I will get two Q-tips and
10 swab the rectal area, and then the fingernail
11 scrapings, and then the underwear. And anything
12 that is wet, in order to preserve the evidence, you
13 have to put into a dryer.

14 And so I took it to -- after I finished
15 collecting the kit, we have a stand that we put all
16 of the Q-tips in and I take that to a dryer. And
17 then the dryer has a lock on it, so I lock the
18 dryer. And you leave them in there for about
19 30 minutes to dry. When they're dry, you take all
20 the evidence back out -- and I put her underwear in
21 there too because it was wet -- and each of the
22 areas that was swabbed go into one single envelope
23 that I put my initials on and everything -- and her
24 name on, the time I collected it.

25 So they go into individual envelopes

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1 and then the individual envelopes and then the
2 slides go into one major envelope that had the
3 evidence collection kit on it that I initialed to
4 make sure that the -- like the red sticker, like
5 this. (Indicating)

6 Q. You seal it up?

7 A. You seal it up.

8 Q. And you put it inside the box?

9 A. Yes.

10 Q. And what do you do with the box?

11 A. After I finish the box, I put tape here
12 and tape here, (Indicating) and I sign my name so
13 that it is sealed. And then I call Public Safety
14 at MUSC and MUSC Public Safety comes and they will
15 sign underneath me, the second person. So that's
16 me on top, and then the person that I hand it to
17 will come and they will document the time that they
18 pick up the box from me. And I give it to them and
19 they take it back over to their office.

20 Q. And you do that in all cases?

21 A. On every case.

22 Q. And why do you go through all of that,
23 that very detailed process?

24 A. Well, it's called chain of custody so
25 that you make sure that the evidence that you

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1 collected is secure, and you don't -- you don't
2 ever let it out of your sight. And so you have
3 complete chain of custody with you that nobody
4 could have tampered with the information, and then
5 it's sealed so that the seals aren't broken when I
6 give it to the next person.

7 Q. So in Minor exam, let's talk about
8 what you did for her. Who was in the room with her
9 during that time?

10 A. Her mom.

11 Q. And did you ask her any questions about
12 post-assault hygienic activities that might have
13 affected your collection of evidence?

14 A. She told me -- we ask this to
15 everybody; have you showered, bathed, had anything
16 to drink, gone to the bathroom? Have you had --
17 have you urinated? Have you had a bowel movement?
18 You ask all of these questions because any of those
19 activities can actually degrade evidence that
20 you're trying to find and bodily fluids. And --
21 and so I asked her the questions.

22 And one significant thing that I
23 remember her telling me --

24 MR. COCHRAN: Objection.

25 THE COURT: Basis?

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1 MR. COCHRAN: Outside time and place.

2 THE COURT: Please approach.

3 (Bench conference.)

4 MS. ELLIOTT: Judge, she's going to say
5 that she took a shower and she used soap.

6 THE COURT: Basis of the objection?

7 MR. COCHRAN: Outside time and place.

8 The **Minor** --

9 THE COURT: It wasn't made for its
10 truth, whether the assault occurred. She treated
11 her, so it would be a complete statement made for
12 diagnosis or treatment. It affects how she took --
13 how she completed her exam. Overruled.

14 (End of bench conference)

15 THE COURT: The objection was
16 overruled. The statement is not being offered for
17 the truth of whether the assault occurred or not.
18 It's being offered for the purpose of diagnosis and
19 treatment and, therefore, the objection is
20 overruled.

21 You may proceed.

22 BY MS. ELLIOTT:

23 Q. What post-hygenic activities had she
24 done?

25 A. I think she had urinated, she had also

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1 changed her clothes, she had taken a bath. She
2 told me she used soap, so that could wash away
3 evidence that I would be looking for otherwise,
4 which is why I didn't collect her clothes.

5 Q. Is it common for people to take a bath
6 after an assault?

7 A. Very, very common. Unfortunately, most
8 do wash and change their clothes and come in really
9 clean-looking.

10 Q. Why do you care if the **Minor** changes
11 clothes?

12 A. Because the offender's evidence could
13 be on the clothes. Fibers could be on her clothes
14 from him. Hair -- his hair could be on her body
15 from an assault, bodily fluids could be on her
16 body.

17 Q. If she was wearing the same clothes as
18 she had on that night, would you be the one to
19 collect them?

20 A. I would be the one to collect them.

21 Q. But I believe you said you didn't
22 collect any clothes.

23 A. I collected the underwear only. And
24 the only reason I collected the underwear is
25 because it had drainage on it from her body, and I

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1 was thinking that maybe there were secretions
2 inside of her that through drainage come out.

3 Q. What type of secretions did you observe
4 or -- or can you observe secretions?

5 A. They were just wet. Her panties looked
6 dark and so...

7 Q. Did you take a medical history from the
8 **Minor** as well?

9 A. I did take a medical history.

10 Q. Would you please tell us the medically
11 pertinent portion of the history she gave you?

12 A. You know, all I remember is she said
13 that there were no major medical problems, not
14 allergic to anything.

15 Q. So after you talked to her and gathered
16 a history, what did you do then?

17 A. Then I proceeded with the examination
18 and collection of evidence.

19 Q. What is the first part of the body that
20 you start to exam?

21 A. Normally, I start with swabbing the
22 mouth.

23 Q. And I think you said before you do two
24 swabs of the mouth. Why two swabs?

25 A. Well, it's -- that's in case you don't

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1 get it with the first swab you attempt to get it
2 with the second swab. It's the way the kit is set
3 up, you get two swabs from every area.

4 Q. What are you swabbing for?

5 A. I'm swabbing for two things. I'm
6 swabbing for the kit, I'm swabbing for evidence
7 like his -- if he left any fluid, any bodily fluids
8 on her, I'm wanting to collect this. And then I'm
9 also collecting for any type of infections, because
10 sometimes when a child is assaulted, they can --
11 they can get an infected material in them from
12 that.

13 So when I swab her mouth, for instance,
14 I'm swabbing for gonorrhea and I send that to the
15 molecular pathology lab to check for gonorrhea, and
16 then I swab around the teeth and under the tongue
17 where his secretions might settle in her mouth or
18 get sort of held there under her tongue.

19 I -- so I swab around her gums and
20 around underneath her tongue. And that goes into
21 -- goes into the kit for the forensic evidence
22 collection.

23 Q. After you have done that, do you do any
24 other swabs?

25 A. I ask the victim to swish and swallow

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1 with water to clean it out, and 15 minutes later I
2 swab the inside of her cheeks, and that's a buccal
3 swab. And that's how we collect DNA evidence. It
4 used to be that you had to draw blood to get DNA
5 evidence. Now you can do a circular-type movement,
6 about ten circles for each cheek, and that collects
7 DNA.

8 Q. What do you do after you examine the
9 mouth?

10 A. I clean her fingernails and then I
11 start the genital part of the exam. During the
12 genital part of the exam, I call the nursing staff
13 in and ask for somebody to be my chaperone. There
14 would have been a chaperone in the room during the
15 exam. And that's the only part I bring someone in
16 for and that's just protocol for the hospital and
17 for my practice.

18 And then I collect the vaginal swabs, I
19 take pictures --

20 Q. Well, let's talk about collecting swabs
21 from the vaginal area. Are there different types
22 of swabbing that you can do in the vaginal area?

23 A. There are different types; I've done
24 two types. And there are basically two types that
25 are recommended. One is you can do a speculum exam

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1 where a speculum, an instrument, goes into the
2 vaginal canal and it opens up so that you have
3 really very perfect sort of visualization of the
4 inside of the vagina and the cervix. And so that
5 is -- that is highly recommended.

6 Q. And that would be -- that would be
7 similar to what the ladies in the courtroom would
8 know to be like a pap smear?

9 A. Like a pap smear. When you're having a
10 pap smear done, the doctor puts a speculum into the
11 vagina and opens up the tissue so you have good
12 visualization. A lot of children can't tolerate
13 that because they've been traumatized. First of
14 all, they're in pain, they have tenderness.

15 The next alternative is called a blind
16 high vaginal swab, which is what I used on her
17 because she was having tenderness with the vaginal
18 exam. In performing the blind high vaginal exam,
19 you put the Q-tips inside the vagina and swab
20 around, and it's blind. You don't see what you're
21 swabbing, but you're trying to get to the highest
22 part of her vagina.

23 Q. Please correct me if I'm wrong, with a
24 high vaginal swab are you able to -- are you able
25 to reach all the fluids in the cervix?

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1 A. You don't get to the cervix. And so if
2 something is in the cervix or you go through what
3 you call the hole or the os, O-S, the os of the
4 cervix, you can't get into it blindly. It's not
5 possible.

6 Q. What are you swabbing for in the
7 vagina?

8 A. Swabbing for bodily fluids. If he left
9 any bodily fluids from his body and put them in
10 her, I'm swabbing for those bodily fluids.

11 Q. Are you looking for anything else?

12 A. In looking for infection. So you
13 always are swabbing for evidence, like DNA
14 evidence, bodily fluids evidence, and bodily fluids
15 sometimes contain diseases like gonorrhea. The
16 common ones we always test for every time is
17 gonorrhea, chlamydia, and vaginal trichomonas
18 because many times -- that's rampant in the area.

19 Those diseases, particularly gonorrhea
20 and chlamydia, we see that often. So we're
21 checking for that infection in case the alleged
22 offender had that in his body and put it in her
23 body.

24 Q. Could you see any of the things that
25 you are swabbing for?

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1 A. No.

2 Q. Even if you were using a speculum?

3 A. No. Usually it's -- you're -- I mean,
4 sometimes you can see secretions. Like, with her,
5 she had some bleeding that night and the bleeding
6 could have been from an injury or it could have
7 been -- she had noted that she was on her period
8 prior to this incident, but she could have just
9 started her period when I started to examine her.

10 So I don't know if the blood was from
11 an injury, because she was having tenderness, or if
12 it was from her period. When I saw her back in
13 follow-up, she told me she started her period that
14 night, but I will never know the answer to that. I
15 don't know if it was an injury or she was slightly
16 bleeding from her period that night. She didn't
17 have any major hemorrhaging that would have
18 required her to have surgery.

19 Q. Did you observe any trauma in her
20 vaginal area?

21 A. I did not.

22 Q. In her anal area?

23 A. No.

24 Q. How can you account for that?

25 A. It's very well-documented in the

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 literature that you rarely see injury to the
2 vaginal area or to the rectal area. In fact, the
3 statistics are that about 95 percent of children
4 that are known to have been sexually assaulted,
5 even with penetrative injuries, have normal exams.

6 And so this is -- and when I say, it's
7 well documented, what happened is in the 1980s they
8 did a very -- the sexual abuse community did a very
9 good job of standardizing what you consider normal
10 and abnormal. That is why you go to those six
11 months of classes and do all those exams is because
12 you're having to learn what's normal and what's not
13 normal and -- so that you're considered to be an
14 expert in that area.

15 Q. Does puberty have any affect on the
16 genital exam?

17 A. Puberty does have an effect on the way
18 the genital area looks. Minor would be considered
19 a pubescent child. She had started her period and
20 been having it for a couple of years. Her tissue
21 was very spongy -- it's very thin. When you're
22 prepubescent, it becomes -- the hymenal tissue
23 becomes very fluffy, very thick, very stretchy.
24 It's rare that that gets injured.

25 The same thing with the vaginal -- the

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 anal area. It has mucosal tissue that is designed
2 to expand and contract. The vagina is designed for
3 intercourse and so it's designed to expand and then
4 go back to the original size. When something goes
5 into it, it expands. When it comes out, it goes
6 back to normal size. Same thing for the anal area.
7 It's very rare that you see an injury to the anal
8 tissue.

9 And if an injury does occur, that tissue
10 is --it's very well documented that that tissue
11 heals very quickly and -- and then if it's healed,
12 that tissue also has this very special
13 characteristic that it does not scar very easily.
14 If someone was sexually assaulted in the past and
15 injured, you would not necessarily see scar tissue.
16 It would be rare to see scar tissue.

17 Q. If she suffered some kind of trauma to
18 her genital area when she was six, would you expect
19 to see any healing or scarring?

20 A. Very rare.

21 Q. The hymen -- is the hymen an opening?
22 Is it a piece of tissue -- explain it to us a
23 little bit.

24 A. That is probably one of the biggest
25 teachings -- the most teaching that I do for almost

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 all families. Families come in with the conception
2 or understanding that the entrance to the vaginal
3 canal has a covering of some type of tissue and
4 it's called the hymen. And the first time there is
5 intercourse or something goes into the hymen, the
6 tissue called the hymen breaks and ruptures and
7 there is bleeding. And this is not the way the
8 human body is designed at all.

9 The way I explain to my families is
10 that the hymen is like a donut with a hole in the
11 center, and the hymen is actually the bread part of
12 the donut and the vaginal canal is the hole in the
13 middle, the opening. And so when you just first
14 look at somebody, you can't see the opening, but
15 then you hold both sides of her vaginal area and
16 sort of pull it towards you, that's called
17 retraction, it opens up and you can see the opening
18 to the hymen. You can see the opening to the hymen
19 and the covering, which is the introitus, the
20 hymenal opening, which is the circle of tissue. Is
21 that clear?

22 Q. I think so. You talked in great detail
23 about the swabs of the genital area. What other
24 areas did you take swabs from?

25 A. Her rectal area.

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 Q. And was that the same process you would
2 have used for the vaginal area?

3 A. So, no, you don't do a high swab of the
4 rectal area. You mainly just enter right just
5 about an inch into the rectal area and turn the
6 Q-tip to try to collect any secretions or bodily
7 fluids that are in the rectal area, and then you do
8 the smear. You put that in the kit, and then you
9 do two more swabs, and then you send it to the lab
10 to check for infection.

11 And for the rectal area I would be
12 checking for gonorrhea, chlamydia, and vaginal
13 trichomonas.

14 Q. When you say the swabs are sent to the
15 lab, you're talking about the MUSC lab?

16 A. Yes.

17 Q. Talk to me about that process. How
18 does that work?

19 A. Okay. So the swabs will go to the
20 drier. And I take the swabs that I put into the
21 test tubes for the mouth, the vagina, and the
22 rectum and urine, and I put labels on them that
23 have her name and date of birth and all her
24 information. So they were labeled and then I put
25 my initials on them to let them know I'm the one

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 that collected them. And I put them in a plastic
2 bag that has biohazard on it.

3 And I give that to -- I will usually go
4 to the nurses' station and I will say, these need
5 to go to the lab. And they will say, so-and-so is
6 going to make the run tonight. And so they will
7 choose like a patient care technician that's
8 available, and I will hand those to her and she
9 will take them to the lab.

10 Q. What lab tests were done that night on
11 the swabs?

12 A. I ordered gonorrhea. The way we order
13 is probably important too. We have a little card
14 of all the labs that we can order, and then I check
15 which ones I want ran. And so for the mouth it
16 would have been gonorrhea, the vaginal area would
17 have been gonorrhea, chlamydia, vaginal
18 trichomonas, and for the rectal swab it would be
19 gonorrhea, chlamydia, and vaginal trichomonas.

20 And I check everything that I want, and
21 I hand it to the resident, the doctor working with
22 me on that case that night.

23 That child, that patient, would have
24 been assigned to a particular doctor, and I'm
25 coming in as a consult. And so she would have

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 entered the labs in the computer for me.

2 Q. That doctor is dealing with the orders,
3 not the samples?

4 A. That's correct.

5 Q. The samples were sent with the runner
6 down to the lab?

7 A. Correct.

8 Q. In a sealed envelope?

9 A. Yes.

10 Q. Within a plastic bag -- sealed plastic
11 bag?

12 A. Correct.

13 Q. Were any organisms found on the swab?

14 A. On her vaginal swab, gonorrhea was
15 found.

16 Q. And how did you learn about the
17 results?

18 A. It came back on my -- we get on her
19 computer, they will send us alerts. They send us
20 the results of our -- of the specimens. So I
21 checked my computer and then when I checked for
22 her, she was positive for gonorrhea of the vaginal
23 swab.

24 Q. Did you wait for the results to come
25 back before you treated her for that?

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 A. No. When somebody -- a pubescent child
2 is sexually assaulted, it's -- if the person had
3 gonorrhea or chlamydia, they could easily transfer
4 that germ to her body. Because of that, you
5 prophylactically treat for that so they never get
6 the disease. So we treated her with Rocephin, that
7 treats for gonorrhea; we treated her with
8 Azithromycin, that treats for chlamydia; and we
9 treated her with Flagyl for trichomonas, and then
10 we also gave her the Plan B pill.

11 And that's not an abortion pill, but a
12 pill that would prevent impregnation so that a
13 pregnancy wouldn't occur from the assault. She got
14 all of the medicines and they also gave her Zofran
15 to try to give her something to keep from throwing
16 up. Taking all of that medicine at one time can
17 make you really sick.

18 Q. Now, you have given us a lot of good
19 information about the SLED kit that's been marked
20 for identification as State's Exhibit 10. Tell me
21 about when you put the swabs in the dryer. How are
22 you packaging those? Are they put in there
23 together?

24 A. No. I open the dryer and I bring --
25 and I set them up for each area of the body. Like

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 for the two swabs from the mouth, I put in an oral
2 swab envelope. It's a small envelope that will fit
3 just the size of those swabs. And I seal that with
4 her sticker that has her name and date of birth and
5 her MR number and all of that.

6 And then for the fingernail clippings
7 -- we don't do clippings, but scrapings, we scrape
8 underneath the fingernail, that goes in the -- in a
9 separate envelope. The vaginal swabs -- the two
10 vaginal swabs go into a vaginal swab envelope, and
11 the rectal swabs go into the rectal swab envelope,
12 and the three smears go into a little plastic
13 container.

14 So then you have all of those little
15 envelopes, plus the plastic smear container, and
16 then there's a larger envelope that you put all of
17 those inside, and then you seal that with one of
18 the red stickers like this. (Indicating)

19 And then you initial it to make sure
20 that that evidence can't be tampered with until the
21 appropriate person is there to open it.

22 Q. And did you tamper with any of the
23 evidence inside of it?

24 A. No.

25 Q. Did you allow anyone to have access to

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 tamper with it?

2 A. No.

3 Q. Once you sealed the box --

4 A. And I put in her underwear. It goes
5 into a separate bag from everything else, and it
6 was dried because you don't want it to mold or
7 something if you leave it wet. It was dried and I
8 put it into a separate envelope and that would have
9 gone into the box, too.

10 Q. And once you sealed that box, who did
11 you give it to?

12 A. I gave that box to Public Safety at
13 MUSC.

14 Q. Do you know who that man's name was?

15 A. No. I can read it.

16 Q. Is it on the box?

17 A. Yeah, it's on the box. Engin Suhner.

18 MS. ELLIOTT: Court's indulgence?

19 THE COURT: Yes, ma'am.

20 MS. ELLIOTT: Your Honor, may I
21 approach the witness?

22 THE COURT: You may.

23 (PLF. EXH. 12, Evidence bag, was marked
24 for identification.)

25 BY MS. ELLIOTT:

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 Q. Ms. Fabrizio, I'm showing you what was
2 marked for identification purposes as State's
3 Exhibit Number 12. Do you recognize that?

4 A. Yes. This would have looked like --
5 this is the size envelope her underwear would have
6 gone into.

7 Q. And that would have gone into which
8 kit?

9 A. Inside this kit. (Indicating)

10 Q. When --

11 A. Actually, normally, the underwear --
12 the underwear bag, now that I'm looking at this
13 more closely, the underwear bag is smaller than
14 that. I had to use the debris collection bag. I
15 just scratched that out and put, underwear, on top
16 because it's a little bit larger bag.

17 Q. Did you put any other markings on it?

18 A. I put the date 6/21/13, the time was
19 3:00 a.m., I marked out the debris collection and
20 initialed that and put at the top, underwear, and
21 then I put her sticker on that has date of birth,
22 her name, her admission date, and her MRN number.

23 Q. Do your initials appear anywhere on
24 here?

25 A. (Indicating), and then -- and then this

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 would have them also. I can't actually see it, but
2 I would have put an evidence collection kit like
3 this to seal that also.

4 Q. When we are talking about bodily fluids
5 from a potential suspect, a potential assailant,
6 what type of fluids can those be?

7 A. It could be fluid from his urethra.

8 Q. What types of fluids come out of the
9 urethra?

10 A. It could be urine. If he has an
11 infection in there, infectious bodily fluids would
12 be in there.

13 Q. What bodily fluids would have
14 potentially infection?

15 A. The urine inside the urethra at the
16 bottom part of the ureter, the urethra. There can
17 be an accumulation of infection, trichomonas,
18 gonorrhea, chlamydia, those infections, pus.

19 Q. What about pre-ejaculate?

20 A. Yes.

21 Q. What is the distinction?

22 A. When you have an ejaculation, the sperm
23 actually comes from the testes much higher up in
24 the urinary tract, and it takes a special type of
25 activity for that sperm to actually get all the way

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 down into the -- to the penis, out into the -- out
2 of the body. And so sometimes you have
3 pre-ejaculate, which is just the fluids that are
4 before the sperm comes out.

5 And that's -- actually, any man that
6 has an ejaculation, the first thing that comes out
7 of the urinary tract would be -- that pre-ejaculate
8 has to come out first and then the sperm follows
9 that if you have sperm.

10 Q. So is it fair to say that you could
11 have pre-ejaculate found in an exam, but not sperm?

12 A. Yes. And all of that fluid,
13 ejaculation fluid, 10 percent is -- contains the
14 sperm, 90 percent contains the other body fluids
15 that the sperm can enter into.

16 Q. Did she require follow-up?

17 A. Yes. We saw her back at two weeks --
18 or I saw her back two weeks. When she is
19 discharged from the hospital, our protocol is that
20 we see the sexual assault victims back in two weeks
21 for re-examination and to repeat all the labs.

22 Q. Was that the first time she was seen by
23 any medical professional after her exam?

24 A. I was leaving the hospital that night
25 in the wee hours of the morning and I heard

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 somebody call a lab result over the phone. I heard
2 somebody say there is a glucose -- a urine glucose
3 over 1,000, and I thought I heard [Minor] name.

4 I went back to the nurses' station and
5 I said, who was that, that you were saying had that
6 high glucose? And it ended up being my patient, or
7 my consult. So then I went in and talked with the
8 doctor who -- the resident that was taking care of
9 her with me that night.

10 And I said, you know, mom and [Minor]
11 have already left, and I said, but, she's going to
12 need to come back in. And she said, definitely so.
13 I called mom and asked her to come back to the
14 hospital because her glucose was very high.

15 Q. Do you know what happened as a result
16 of her coming back?

17 A. She had to come back and she was
18 admitted actually for a couple of days until they
19 could get her -- tried to get her glucose more
20 under control.

21 Q. Do you know what the diagnosis was?

22 A. Diabetes mellitus.

23 Q. Now, you talked about how you saw her in
24 follow-up weeks later. Do you see all of your
25 consults in follow-up?

KATHERINE FABRIZIO - DIRECT EXAM BY MS. ELLIOTT

1 A. Yes. No, I don't. Anybody could have
2 seen her that day in clinic, so I don't always.
3 She is not specifically assigned to me for a
4 two-week follow-up. Any provider -- any of the
5 providers that work on our unit would be able to
6 see her. I ended up being the one to see her and
7 that is always nice.

8 Q. How was she doing at that time?

9 A. She was doing -- she seemed to be doing
10 well. She said that she was doing well and she was
11 -- she did tell me she had started her period that
12 night, and so I was thinking maybe the blood from
13 that night was from her period, even though I
14 definitely could not have distinguished it being an
15 injury that night.

16 MS. ELLIOTT: Court's indulgence.

17 Thank you. That's all the questions I
18 have for you at this point.

19 THE COURT: Any questions for the
20 witness?

21 MR. COCHRAN: Yes, Your Honor. May it
22 please the Court.

23 THE COURT: Yes, sir. You may
24 proceed.

25 CROSS-EXAMINATION

KATHERINE FABRIZIC - CROSS EXAM BY MR. COCHRAN

1 BY MR. COCHRAN:

2 Q. You said that even if a patient does
3 not complain of vaginal intercourse during the
4 assault, you would still swab the vagina?

5 A. Yes.

6 Q. Okay. And even if they don't complain
7 of anal intercourse, you do an anal swab, a rectal
8 swab?

9 A. Yes, that's the protocol.

10 Q. But if they tell you that they changed
11 their clothes, you don't bother to collect the
12 clothes?

13 A. Well, I collected her underwear.

14 Q. But you just go based on what the
15 patient tells you in terms of collecting clothing?

16 A. Yes.

17 Q. But not collecting other samples?

18 A. Yes.

19 Q. You did not collect the clothing, other
20 than the underwear, because of what you observed
21 yourself?

22 A. Yes.

23 Q. Was there blood on her underwear?

24 A. Well, I couldn't distinguish if it was
25 blood or not. When I examined the vaginal area,

KATHERINE FABRIZIO - CROSS EXAM BY MR. COCHRAN

1 she had a blood flow coming from the vagina so I
2 assumed that -- I don't know what bodily fluids
3 were on her underwear, which is why I said, if I
4 knew it was just her menstrual blood flow, I
5 probably wouldn't have made a decision to send
6 that. Because I didn't know what was on it, I sent
7 it.

8 Q. Now, this patient, [REDACTED] Minor, did
9 indicate to you that there was vaginal intercourse
10 and anal intercourse?

11 A. She told me -- as I said, she was
12 saying yes and no with head shakes, this way and
13 this way, and I don't know. (Indicating) When I
14 asked her if anybody had gone into her vagina --
15 what I remember from after reading my notes,
16 because I can't necessarily remember exactly what
17 happened from my own memory, but I put yes. And so
18 that would indicate to me that she shook her head
19 yes.

20 When I asked if anybody had put
21 anything in her anus, I documented, no. So she
22 would have shaken her head no.

23 Q. She shook her head no for anal
24 intercourse for you?

25 A. Yes.

KATHERINE FABRIZIO - CROSS EXAM BY MR. COCHRAN

1 Q. For vaginal intercourse she shook her
2 head yes?

3 A. Yes.

4 Q. And you talked about injury --
5 likelihood of injury and we will get to that in
6 terms of trauma, vaginal trauma, but you did not
7 observe any vaginal trauma?

8 A. No.

9 Q. And there are -- during consensual
10 intercourse or sexual assault, trauma can occur to
11 the vagina, correct?

12 A. It's rare.

13 Q. Okay. Can it occur?

14 A. It's rare, but --

15 Q. Can it occur?

16 A. What my understanding is from reading
17 the literature, is that there are acute sexual
18 assault injuries, and I have seen some of these.
19 It's usually less than 5 percent of the cases. So
20 if you have 100 children and -- and I'll tell you
21 the best article -- there is one article discussing
22 a study that was done where over 1,000 children,
23 adolescent children, were evaluated, pregnant
24 teenagers, and over 80 percent of them had normal
25 exams.

KATHERINE FABRIZIO - CROSS EXAM BY MR. COCHRAN

1 You know they've had penetrative
2 injuries and -- or you know that they had
3 penetration and yet none of them -- less than --
4 less than I think it was 83 percent had injuries.

5 Q. Okay. And so getting back to my
6 question, vaginal blunt force trauma can occur both
7 with consensual and nonconsensual sex? It's a yes
8 or no question.

9 A. Yes.

10 Q. 90 percent?

11 A. I don't do a lot of research on
12 consensual sexual intercourse so I wouldn't be able
13 to document an article.

14 Q. You don't conduct the studies?

15 A. No.

16 Q. You noted a study that said 90 percent
17 of nonconsensual intercourse does not occur in any
18 observable trauma?

19 A. Can you say that again?

20 Q. I noted during direct examination you
21 cited a study that indicated that 95 percent --

22 A. This was not -- that wasn't a
23 particular study. That was in what we call the
24 Carole Jenny's book on child abuse and neglect.
25 And in that book -- when you read that book, it

KATHERINE FABRIZIO - CROSS EXAM BY MR. COCHRAN

1 documents many articles, but the summation of all
2 the articles is that 95 percent of the children
3 basically have normal examinations. That's what
4 the book says.

5 Q. That's what the book says?

6 A. Yes.

7 Q. What study says that?

8 A. There is a -- there is a study by --
9 there is a study by Joyce Adams who is very well
10 versed in sexual assault.

11 Q. And that cites 95 percent?

12 A. I think that's the study that they did,
13 "It's Normal to be Normal." The study found that
14 abnormal findings are not common in sexual abuse.
15 It was probably Nancy Kellogg who did the one
16 report on the over 1,000 children that --

17 Q. It probably is her study?

18 A. To be perfectly honest, I can't
19 remember.

20 Q. Did you bring the studies with you
21 today?

22 A. No.

23 Q. Did you reread them to prepare for the
24 testimony?

25 A. I did reread to prepare.

KATHERINE FABRIZIO - CROSS EXAM BY MR. COCHRAN

1 Q. Are you aware that the Department of
2 Justice in the United States did a development and
3 operational guide for assault nurses exams?

4 A. Yes, I have -- yes, I do know that.

5 Q. That's what you called the sexual
6 assault nurse's exam?

7 A. Yes.

8 Q. So would it surprise you that that
9 study by the Department of Justice cites its own
10 study that notes that researchers found that
11 68 percent of rape victims had genital trauma.
12 68 percent. That's pretty different than 5
13 percent, correct? Wouldn't you agree?

14 A. That's not what most of the literature
15 says.

16 Q. That's a study cited by the Department
17 of Justice which you said you were aware of,
18 correct?

19 A. I haven't read that -- that statistic.

20 Q. You have read the development and
21 operational guide?

22 A. Well, if you can show it to me and let
23 me see if that's the --

24 Q. Chapter 11, that's a printout.

25 A. And where are you saying that there

KATHERINE FABRIZIO - CROSS EXAM BY MR. COCHRAN

1 is -- I don't see what you're referring to.

2 Q. The underlined portion. Was that
3 Department of Justice guide and manual used in your
4 training?

5 A. No, we didn't use this in our training.

6 Q. How did you become aware of it?

7 A. Dr. Taylor, when I was preparing for
8 the case, he sent it to me to review.

9 Q. Okay. So in a study that compared the
10 physical exams --

11 A. Yeah, I don't -- I'm not familiar with
12 the study.

13 Q. And you cannot cite with specificity
14 the study that you were giving your statistics
15 from?

16 A. Nancy Kellogg is the one. It's called
17 "It's Normal to be Abnormal."

18 Q. Okay.

19 A. And the book that we use in our
20 division most commonly is Carol Jenny's book.
21 She's very well known in the child abuse literature
22 and she has actually spoken here at MUSC.

23 Q. Now, you noted the characteristics of
24 vaginal walls and why trauma may or may not occur.
25 What about the anus? That has different

KATHERINE FABRIZIO - CROSS EXAM BY MR. COCHRAN

1 characteristics than the vagina, do you agree with
2 that statement?

3 A. It's still mucosal tissue and it's very
4 elastic also. It's designed to expand and contract
5 without injury. Like when you have a bowel
6 movement, you don't normally have injury.

7 Q. Right. So trauma can occur to the
8 anus, to the rectum, during both consensual and
9 nonconsensual intercourse?

10 A. I think that you could have injury to
11 tissue.

12 Q. And there are various different types
13 of injury that can occur to the vaginal wall.
14 There are abrasions, correct?

15 A. You can get abrasions.

16 Q. You can get lacerations --

17 A. Yeah.

18 Q. -- in the back wall? There is a part
19 of the vagina in the back wall referred to as the
20 posterior fourchette, correct?

21 A. It's not the back of the vagina, that's
22 actually the front part. What we're looking at is
23 the opening to the vagina. You're talking about
24 probably the cervical area, the back of the vagina.

25 Q. Okay.

KATHERINE FABRIZIO - CROSS EXAM BY MR. COCHRAN

1 A. What you're talking about, the
2 posterior fourchette, when you're first looking at
3 somebody's vaginal area, you have the clitoris, the
4 labium majora, and then you can open that up and
5 then you see the opening to the vagina, and below
6 that is the tissue where the two labium majora come
7 together. That's the posterior fourchette.

8 Q. That's an area that receives a great
9 deal of the blunt force during intercourse, whether
10 it's consensual or nonconsensual, correct?

11 A. It could.

12 Q. And that's an area where you would
13 commonly find trauma?

14 A. I don't find commonly trauma there, but
15 I have seen trauma there.

16 Q. You noted that you tested for gonorrhea
17 in this case?

18 A. I did.

19 Q. And you tested for gonorrhea, and
20 that's one that you always test for?

21 A. Yes.

22 Q. And to use your own words, you said
23 that gonorrhea is rampant in this area?

24 A. I didn't say rampant. It's common.

25 Q. You said, it's rampant in this --

KATHERINE FABRIZIC - CROSS EXAM BY MR. COCHRAN

1 A. I think I heard somebody say that to me
2 recently. We see gonorrhea and chlamydia probably
3 the most predominantly in our practice.

4 Q. The reason you collect clothing is
5 because cloth material can collect body fluid,
6 correct?

7 A. It can collect debris, can collect
8 hair, it can collect fiber.

9 Q. Just anybody that -- anything from the
10 body that contains DNA could end up on cloth
11 material that's at or near the site of the sexual
12 assault, correct?

13 A. Yes.

14 Q. Okay. So clothing that's worn during
15 the sexual assault could collect DNA evidence?

16 A. Yes. Yes, I would say so.

17 Q. Any type of cloth that would be in
18 contact with the parties engaging in intercourse
19 could collect DNA evidence, correct?

20 A. Yes.

21 MR. COCHRAN: Beg the Court's
22 indulgence?

23 THE COURT: Uh-huh.

24 MR. COCHRAN: No more questions, Your
25 Honor. Thank you.

KATHERINE FABRIZIC - REDIRECT EXAM BY MS. ELLIOTT

1 THE COURT: Any redirect of this
2 witness?

3 MS. ELLIOTT: Court's indulgence, Your
4 Honor?

5 Yes, ma'am.

6 REDIRECT EXAMINATION

7 BY MS. ELLIOTT:

8 Q. Mr. Cochran, showed you Chapter 11 of
9 the DOJ study?

10 A. Yes.

11 Q. Did you note that that was for adult
12 exams?

13 A. I -- I didn't see that part. Dr.
14 Taylor, when I asked him -- I asked him to -- in
15 preparation for this, I used high vaginal swab for
16 the way I collected -- my technique. And so I
17 basically just reviewed like that part of the
18 study. I did not read the whole study and so I'm
19 -- I was not familiar with that chapter.

20 Q. Is there separate training between
21 pediatric sexual assault nurse examiners and sexual
22 assault nurse examiners?

23 A. Yes.

24 Q. And Chapter 11 covers adult exams?

25 A. Yes. That's different. Adults are

KATHERINE FABRIZIO - REDIRECT EXAM BY MS. ELLIOTT

1 different than pediatrics. Thank you for pointing
2 that out. I was a little confused.

3 Q. When you were talking to [Minor] and
4 getting her history, do you know if you used the
5 word, anus, with her?

6 A. I wish that I could remember exactly.
7 I think I might have, which maybe she didn't
8 understand the word. I was having sort of -- I was
9 trying to be so careful with her. She was so upset
10 and I was trying not to ask too many questions and
11 trying to be clear about what her answers were. I
12 could have used anus and she didn't understand the
13 word.

14 Q. Was she clarifying and talking back and
15 forth with you at any point of the exam?

16 A. No, no clarification and she never
17 asked me a question for clarification. Just shook
18 her head yes and no. And I think stomach was the
19 only word she said. I asked if she hurt anywhere,
20 and I think she said stomach.

21 Q. Do you know if a position an assailant
22 has a victim in during a sexual assault, does that
23 affect the potential injuries they could incur?

24 A. Yeah, it could, because when you're --
25 when you're on top, you could have -- I mean, that

KATHERINE FABRIZIC - REDIRECT EXAM BY MS. ELLIOTT

1 part of what I thought maybe was her stomach pain,
2 maybe he was putting a lot of pressure on her
3 abdomen during the assault. But you could also --
4 and, yes, you could have different injuries
5 depending on the position.

6 MS. ELLIOTT: Court's indulgence?

7 THE COURT: Uh-huh.

8 Nothing further, Your Honor.

9 THE COURT: Any objection to the
10 witness being excused from the State?

11 MS. ELLIOTT: No, Your Honor.

12 THE COURT: From the defense?

13 MR. COCHRAN: No, Your Honor.

14 THE COURT: Ma'am, you're excused.

15 THE WITNESS: Okay.

16 THE COURT: Madame Forelady, ladies
17 and gentlemen, we are going to take advantage of
18 this break in testimony for a midmorning recess.
19 Please leave your notepads in your seats. We
20 should be out about ten minutes. If you would go
21 with the Bailiff, please.

22 (Jury out 11:01 a.m.)

23 THE COURT: Is there anything before
24 we take a brief recess? From the State?

25 MS. ELLIOTT: No, Your Honor.

1 THE COURT: From the defense?

2 MR. COCHRAN: No, Your Honor.

3 THE COURT: We'll be out about ten
4 minutes.

5 (A recess transpired.)

6 THE COURT: Is the State ready to
7 proceed?

8 MS. ELLIOTT: Yes, Your Honor.

9 THE COURT: Defense read to proceed?

10 MR. COCHRAN: Yes, Your Honor.

11 THE COURT: Please bring in the jury.
12 Is your witness present?

13 MS. ELLIOTT: Yes.

14 THE COURT: Where?

15 MS. ELLIOTT: (Indicating)

16 THE COURT: Oh, okay.

17 (Jury in, 11:26 a.m.)

18 THE BAILIFF: All jurors present, Your
19 Honor.

20 THE COURT: Thank you.

21 Ladies and gentlemen, I hope you
22 enjoyed your break. We will now resume testimony.

23 MS. ELLIOTT: The State calls Matthew
24 Downing.

25 THE COURT: Sir, if you would come

MATTHEW DOWNING - DIRECT EXAM BY MS. ELLIOTT

1 forward to be sworn.

2 MATTHEW DOWNING,

3 being first duly sworn, testified as follows:

4 THE CLERK: Please have a seat. State
5 your full name and spell your last.

6 THE WITNESS: Matthew Downing
7 D-O-W-N-I-N-G.

8 THE COURT: You may proceed. And if
9 you could, speak directly into the mic.

10 THE WITNESS: Yes, ma'am.

11 DIRECT EXAMINATION

12 BY MS. ELLIOTT:

13 Q. Morning, Detective Downing. Where do
14 you work?

15 A. Charleston County Sheriff's Office.

16 Q. How long have you been working there?

17 A. Going on 13 years.

18 Q. What is your official title with the
19 Charleston County Sheriff's Office?

20 A. I'm a detective.

21 Q. How long have you been a detective?

22 A. Going on four-and-a-half years.

23 Q. What are your duties and
24 responsibilities as a detective?

25 A. We respond to calls to service after

MATTHEW DOWNING - DIRECT EXAM BY MS. ELLIOTT

1 hours and investigate crimes of a lengthy and more
2 complex nature than patrol handles on the road.

3 Q. Is that the position you filled on
4 June 20, 2013?

5 A. Yes, ma'am.

6 Q. How did become involved in this case?

7 A. On the night of June 21st, 2013, about
8 12:30 in the morning, I was contacted by Sergeant
9 Manigault. I was one of the detectives currently
10 on call.

11 Q. And where did you respond to?

12 A. I responded to the MUSC Pediatric
13 Emergency Room.

14 Q. Was anyone with you?

15 A. Detective Muirhead came with me.

16 Q. And who did you meet with while at the
17 MUSC Pediatric ER.

18 A. We met with Ms. Latwana [REDACTED].

19 Q. Who is she?

20 A. She is the mother of Ms. [REDACTED] Minor.

21 Q. Did you meet with [REDACTED] Minor?

22 A. No, ma'am.

23 Q. Did you interview her?

24 A. No, ma'am.

25 Q. Why not?

MATTHEW DOWNING - DIRECT EXAM BY MS. ELLIOTT

1 A. I'm not trained to handle and interview
2 juveniles.

3 Q. Who would normally do that?

4 A. Normally we would have a more
5 experienced detective, somebody trained to handle
6 and interview juveniles, or arrange to meet with
7 the Dee Norton Lowcountry Children's Center who
8 have forensic counselors to interview them and
9 obtain their statements from them.

10 Q. Within the Charleston County Sheriff's
11 Office, are there actual specific detectives for
12 these type of cases?

13 A. Yes, ma'am, there are.

14 Q. Were you able to see her that night?

15 A. Very briefly.

16 Q. Could you describe her demeanor?

17 A. Looking through the door of the room
18 that she was in as she was seated in the bed and I
19 believe she was watching television.

20 Q. Where did you go after the hospital?

21 A. After the hospital, myself and
22 Detective Muirhead went to [Minor] and Ms. [REDACTED]
23 residence at [REDACTED] on James Island.

24 Q. Is that Charleston County?

25 A. Yes, ma'am.

MATTHEW DOWNING - DIRECT EXAM BY MS. ELLIOTT

1 Q. What did you do at the house?

2 A. At the house, Detective Muirhead
3 obtained and he took -- collected some evidence,
4 some clothing that [Minor] believed she had been
5 wearing during the incident.

6 Q. How did you get in?

7 A. Through the side door.

8 Q. Who let you in?

9 A. Ms. [redacted] gave us consent. She signed
10 a consent, waiver form, and gave us permission to
11 enter the residence and collect the clothes.

12 Q. Was there anyone in the house to direct
13 you where to go to get --

14 A. No, ma'am.

15 Q. Did you do any other investigation in
16 this case?

17 A. Outside of interviewing Ms. [redacted], no,
18 ma'am.

19 Q. Why not?

20 A. The case was assigned to Detective
21 Church.

22 Q. And what is -- what was Detective
23 Church's role with the Charleston County Sheriff's
24 Office at that time?

25 A. Detective Church is assigned to the

MATTHEW DOWNING - CROSS EXAM BY MR. COCHRAN

1 special victims unit.

2 MS. ELLIOTT: Beg the Court's
3 indulgence?

4 THE COURT: Uh-huh.

5 MS. ELLIOTT: No further questions.

6 THE COURT: Any questions for the
7 witness?

8 MR. COCHRAN: Briefly, Your Honor.
9 Thank you.

10 THE COURT: You're welcome. You may
11 proceed.

12 CROSS-EXAMINATION

13 BY MR. COCHRAN:

14 Q. So you received information from
15 Ms. [REDACTED] the alleged [REDACTED] Minor's mother, as to what
16 to collect I guess?

17 A. She -- she explained to us that she
18 spoke with her daughter and gave us a description
19 of the clothes she had been wearing.

20 Q. And you noted blue-and-white shorts and
21 a black shirt?

22 A. Yes.

23 Q. And you collected a number of
24 blue-and-white shorts?

25 A. My report states that we collected a

MATTHEW DOWNING - CROSS EXAM BY MR. COCHRAN

1 black shirt and several pairs of blue shorts. We
2 weren't sure which ones she was speaking of.

3 Q. Blue and white shorts. She didn't give
4 you any other indicators of what the clothing
5 looked like?

6 A. No.

7 Q. Did you do any cuttings from the
8 mattress or take it out of the house?

9 A. No, sir.

10 Q. Was the mattress described to you?

11 A. No, sir.

12 Q. Was it indicated that the mattress may
13 be relevant in the case?

14 A. No, sir.

15 Q. Was a crime scene tech sent to this
16 location?

17 A. No, sir.

18 Q. Were you directed to any specific room
19 or part of the house where this clothing might be
20 found?

21 A. Yes. Ms. [REDACTED] said the clothing would
22 be found in the hallway off the -- the hallway.

23 Q. Did you find blue-and-white shorts and
24 black shirt?

25 A. Yes.

MATTHEW DOWNING - CROSS EXAM BY MR. COCHRAN

1 Q. You did find those things?

2 A. Yes, sir.

3 Q. And what about underwear in the
4 bathroom?

5 A. No, sir.

6 Q. Only clothing was collected?

7 A. Only clothing was collected.

8 Q. To your knowledge, was a crime seen
9 tech ever -- was your search of the location ever
10 followed up by a crime scene tech?

11 A. That I do not know.

12 MR. COCHRAN: Thank you. Nothing
13 further.

14 THE COURT: Any redirect of the
15 witness?

16 MS. ELLIOTT: None, Your Honor.

17 THE COURT: Any objection to the
18 witness being excused? From the State?

19 MS. ELLIOTT: None from the State.

20 THE COURT: From the defense?

21 MR. COCHRAN: No, Your Honor.

22 THE COURT: Sir, you're excused.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 Call your next witness.

WILL MUIRHEAD - DIRECT EXAM BY MS. ELLIOTT

1 MS. ELLIOTT: The State would call Will
2 Muirhead.

3 WILL MUIRHEAD,
4 being first duly sworn, testified as follows:

5 THE CLERK: Please give us your full
6 name and spell your last name.

7 THE WITNESS: Will Muirhead, Charleston
8 County Sheriff's Office. Muirhead is spelled
9 M-U-I-R-H-E-A-D.

10 THE COURT: You may proceed.

11 DIRECT EXAMINATION

12 BY MS. ELLIOTT:

13 Q. Detective Muirhead, where do you work?

14 A. I work for the Charleston County
15 Sheriff's Office.

16 Q. How long have you been there?

17 A. Eight years.

18 Q. And what are your duties there?

19 A. I'm a detective in our investigation
20 division.

21 Q. Back in June of 2013, were your duties
22 the same?

23 A. Yes, they were.

24 Q. And were you called out on this case,
25 State v. Johnny Brown?

WILL MUIRHEAD - DIRECT EXAM BY MS. ELLIOTT

1 A. Yes, I was.

2 Q. Where did you go?

3 A. I responded to the pediatric emergency
4 room at MUSC downtown.

5 Q. About what time did you go there?

6 A. It was 12:30 in the morning.

7 Q. And were you assigned this case or were
8 you on-call?

9 A. I was on-call.

10 Q. And when you got to the Medical
11 University, did you talk with anyone?

12 A. I briefly spoke with Ms. [REDACTED] I was
13 also with Detective Downing; he did most of the
14 speaking.

15 Q. By Ms. [REDACTED] you mean Latwana,
16 [REDACTED] Minor mother.

17 A. Latwana, yes. Sorry.

18 Q. Did you attempt to speak to [REDACTED] Minor
19 [REDACTED]

20 A. No, I did not.

21 Q. After leaving the hospital, what did
22 you do?

23 A. Detective Downing and I went to [REDACTED]
24 [REDACTED] where Ms. Latwana [REDACTED] explained where her
25 residence was to collect some evidence.

WILL MUIRHEAD - DIRECT EXAM BY MS. ELLIOTT

1 Q. Okay. I'm going to show you what --
2 first of all, what has been marked as State's
3 Exhibit 1, Detective. Do you recognize this?

4 A. Yes.

5 Q. Is that the home you went to?

6 A. Yes, it is.

7 Q. And how did you enter the home?

8 A. We actually entered the home through
9 the back entrance.

10 Q. I'll show you what has been marked into
11 evidence as State's Exhibit 6. Where did you
12 enter?

13 A. We entered into the -- through the door
14 that -- the screen door is open.

15 Q. Okay. And where did you go once you
16 entered the home?

17 A. Detective Downing explained to me that
18 he was advised some evidence may be in the
19 bathroom. We went to the bathroom in the
20 residence.

21 Q. Okay. I will show you what's been
22 marked as State's Exhibit Number 4. Do you
23 recognize that?

24 A. Yes, ma'am, it's the bathroom.

25 Q. And what did you do in that bathroom?

WILL MUIRHEAD - DIRECT EXAM BY MS. ELLIOTT

1 A. At the time that night, there was a
2 pile of clothing there. We gathered up some -- or
3 excuse me, I gathered up some clothing and secured
4 it in a bag to place into evidence.

5 Q. I'm going to show you what's been
6 marked as ID at this point, State's Exhibit
7 Number 8?

8 MS. ELLIOTT: May I approach the
9 witness?

10 THE COURT: You may.

11 BY MS. ELLIOTT:

12 Q. I ask you to look at this bag and see
13 if you recognize that bag?

14 A. Yes, I do.

15 Q. And what is that?

16 A. This says, black shirt and white
17 panties and blue-and-white shorts. And it's my
18 handwriting.

19 Q. Did you gather those items from that
20 residence that night?

21 A. Yes.

22 Q. What did you do with that bag?

23 A. This bag was placed into a secured lock
24 box in our evidence compound so it could not be
25 tampered with.

WILL MUIRHEAD - CROSS EXAM BY MR. COCHRAN

1 Q. And did you gather other items of
2 clothing that were on the floor?

3 A. Yes.

4 Q. Would it be fair to say that you just
5 picked up all the clothes that were in that
6 bathroom?

7 A. We picked up a portion of the clothing
8 that appeared to be the description we were given.

9 Q. Because the description you had was
10 just of the shorts and shirt?

11 A. As far as I remember, yes.

12 MS. ELLIOTT: Court's indulgence?

13 THE COURT: Yes, ma'am.

14 MS. ELLIOTT: Those are all the
15 questions I have, Detective Muirhead.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Any questions for the
18 witness?

19 MR. COCHRAN: Briefly, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. COCHRAN:

22 Q. Did you write a report in this case?

23 A. No.

24 Q. So you said in the bathroom there was a
25 pile of clothing?

WILL MUIRHEAD - CROSS EXAM BY MR. COCHRAN

1 A. Correct.

2 Q. Okay. But you did not just collect the
3 entire pile --

4 A. No, correct.

5 Q. You just guessed what matched what you
6 were told you were looking for?

7 A. Correct.

8 Q. Okay. The pair of shorts and a shirt;
9 is that right?

10 A. That's what I remember.

11 Q. Did you collect anything from the
12 bathroom?

13 A. Not from the bathroom.

14 Q. Just those items?

15 A. The way the piles were set up, there
16 were clothes on top of clothing. We gathered up
17 some of the clothing. I thought I remembered there
18 being two bags of clothing that I gathered up. I
19 thought.

20 Q. Did you inventory the types of
21 clothing, the description from that pile?

22 A. I didn't want to go through too much
23 and tamper with anything. It was a basic inventory
24 what I could see from outside. I don't know if
25 there was clothing piled up inside.

WILL MUIRHEAD - CROSS EXAM BY MR. COCHRAN

1 Q. You grabbed a portion of the pile of
2 clothing and put it into an evidence bag?

3 A. Correct.

4 Q. Some of the clothing was left on the
5 bathroom floor?

6 A. The clothing that we didn't feel
7 matched the description we were given.

8 Q. Okay. And it was just you and Officer
9 Downing that were in there?

10 A. Yes, sir.

11 Q. And no crime scene technician?

12 A. No, sir.

13 MR. COCHRAN: Thank you, sir. No more
14 questions. Your Honor.

15 THE COURT: Any redirect of the
16 witness?

17 MS. HERRING-LASH: No, Your Honor.

18 THE COURT: Any objection to the
19 witness being excused? From the State?

20 MS. ELLIOTT: No, Your Honor.

21 THE COURT: From the defense?

22 MR. COCHRAN: No, Your Honor.

23 THE COURT: Sir, you're excused. You
24 may call your next witness.

25 MR. COCHRAN: Your Honor, may we

1 approach?

2 THE COURT: Yes.

3 (Bench conference.)

4 MR. COCHRAN: Are these bench
5 conferences on the record?

6 THE COURT: Always.

7 MR. COCHRAN: I just want to place an
8 objection to this witness.

9 THE COURT: Do you need to do it
10 outside of the witness' presence?

11 MR. COCHRAN: Yes.

12 THE COURT: You should have made me
13 aware of that before they called him. Step back.

14 (End of bench conference.)

15 THE COURT: Madame Forelady, I have a
16 very brief matter of law to take up with the
17 attorneys. During the break, please do not discuss
18 the case among yourselves and please leave your
19 notepads in your seats.

20 (Jury out, 11:40 a.m.)

21 THE COURT: You may proceed.

22 MR. COCHRAN: Thank you. I would renew
23 a previously made objection. It's my understanding
24 that this witness will be testifying to my client's
25 placement -- prior placement on the sex offender

1 registry and we would renew our objection to that
2 testimony.

3 THE COURT: Is that the purpose of
4 this testimony?

5 MS. HERRING-LASH: Yes, he has two
6 purposes. He went to collect the urine, but he is
7 now the sex offender registry person and he is the
8 person that I intend to ask if Mr. Johnny Brown was
9 on the sex offender registry for a crime committed
10 under 23-3-430(C); yes or no.

11 THE COURT: The objection is noted.
12 I've ruled on this previously and will incorporate
13 that ruling into this portion of the record. Very
14 clearly the statute articulates that that is one of
15 the elements the State has to meet in order to
16 prove criminal sexual conduct in the first degree
17 with a minor.

18 MR. COCHRAN: If I may, may I also
19 renew my request to inform the jury that my client
20 has been served with life without parole?

21 THE COURT: Why would you ask that of
22 this witness?

23 MR. COCHRAN: That request was made in
24 conjunction with the objection to this testimony
25 coming in. I want --

ROBERT COLSON - DIRECT EXAM BY MS. HERRING-LASH

1 THE COURT: It doesn't make sense to
2 me. It wouldn't come in through this witness. He
3 wouldn't be qualified to testify.

4 MR. COCHRAN: Yes, Your Honor.

5 THE COURT: The request is denied
6 based on the Court's previous ruling.

7 (Jury in, 11:44 a.m.)

8 ROBERT COLSON,
9 being first duly sworn, testified as follows:

10 THE CLERK: Have a seat please. Sir,
11 give us your full name and spell your last.

12 THE WITNESS: Robert Colson,
13 C-O-L-S-O-N.

14 THE COURT: You may proceed.

15 DIRECT EXAMINATION

16 BY MS. HERRING-LASH:

17 Q. Detective Colson, where are you
18 employed?

19 A. Charleston County Sheriff's Office.

20 Q. How long have you been there?

21 A. Eleven years.

22 Q. Back in June of 2013, what were your
23 duties?

24 A. I was assigned to white collar and
25 criminal investigation division.

ROBERT COLSON - DIRECT EXAM BY MS. HERRING-LASH

1 Q. And while -- in June of 2013, while you
2 were with that division, did you assist Detective
3 Sheri Church in this case?

4 A. I did.

5 Q. And what did you do to assist her?

6 A. I assisted her in taking Mr. Brown down
7 to the Medical University and assisted in
8 collecting a urine sample while down there.

9 Q. What part did you play in that
10 assistance?

11 A. I was in the restroom with Mr. Brown at
12 the time.

13 Q. Did you observe him urinate in a cup?

14 A. I did.

15 Q. What did you do with that cup?

16 A. Handed it outside the bathroom door to
17 the waiting nurse.

18 Q. The nurse took that?

19 A. Yes.

20 Q. That's the end of your involvement with
21 that cup?

22 A. Yes.

23 Q. Now what are your duties?

24 A. Sex offender registry.

25 Q. And as part of that, do you work with

ROBERT COLSON - CROSS EXAM BY MR. COCHRAN

1 registering sex offenders?

2 A. Yes, I do.

3 Q. And as of May of 2013, was Johnny Tamar
4 Brown on the sex offender registry for a crime
5 listed in 23-3-430(C)?

6 A. Yes.

7 MS. HERRING-LASH: Those are all the
8 questions I have, Your Honor.

9 THE COURT: Any questions for the
10 witness?

11 MR. COCHRAN: Briefly.

12 CROSS-EXAMINATION

13 BY MR. COCHRAN:

14 Q. Anything notable about collecting the
15 urine sample from Mr. Brown? Was he cooperative --

16 A. Yes.

17 Q. -- and compliant in giving the sample
18 and providing it to law enforcement?

19 A. Yes.

20 MR. COCHRAN: That's all.

21 THE COURT: Any redirect?

22 MS. HERRING-LASH: No, Your Honor.

23 THE COURT: Any objection to the
24 witness being excused?

25 MS. HERRING-LASH: No, Your Honor.

ENGIN SUHNER - DIRECT EXAM BY MS. ELLIOTT

1 THE COURT: From the defense?

2 MR. COCHRAN: No, Your Honor.

3 THE COURT: Sir, you're excused.

4 You may call your next witness.

5 MS. ELLIOTT: Engin Suhner.

6 THE COURT: S-U-H-N-E-R, E-N-G-I-N.

7 ENGIN SUHNER,

8 being first duly sworn, testified as follows:

9 THE COURT: Please give us your full
10 name and spell your first and last name.

11 THE WITNESS: Engin Suhner, E-N-G-I-N,
12 last name S-U-H-N-E-R.

13 THE COURT: You may proceed.

14 DIRECT EXAMINATION

15 BY MS. ELLIOTT:

16 Q. Officer Suhner, where do you work?

17 A. MUSC Public Safety.

18 Q. And how long have you been -- have you
19 worked there?

20 A. Approaching 23 years now.

21 Q. What are your duties and
22 responsibilities at MUSC?

23 A. Service calls, work wrecks, compile
24 reports.

25 Q. In the course of your employment, did

ENGIN SUHNER - DIRECT EXAM BY MS. ELLIOTT

1 you receive any evidence in relation to Minor

2 [REDACTED]?

3 A. I did.

4 MS. ELLIOTT: Your Honor, may I
5 approach?

6 THE COURT: You may.

7 BY MS. ELLIOTT:

8 Q. I will show you what was marked for
9 identification as State's Exhibit 10. Do you
10 recognize that?

11 A. I do, ma'am.

12 Q. How do you recognize that?

13 A. I picked this up.

14 Q. What is it?

15 A. It's a sexual assault collection kit.

16 Q. And how do you know you were the one
17 that picked it up?

18 A. I remember it and also my signature is
19 on there.

20 Q. And who did you receive it from?

21 A. Nurse Fabrizio.

22 Q. When?

23 A. When?

24 Q. Uh-huh.

25 A. At 0445.

ENGIN SUHNER - DIRECT EXAM BY MS. ELLIOTT

1 Q. What date?

2 A. It was 06/21/2013.

3 Q. And was that box sealed when you
4 received it?

5 A. It was.

6 Q. Did it appear to be tampered with or
7 manipulated in any way?

8 A. No.

9 Q. Did you tamper with it in any way?

10 A. No.

11 Q. What did you do with the box once you
12 received it?

13 A. I collected it and brought it into the
14 Public Safety building at 1010 Dowdy Street,
15 Charleston County, 29405. After I completed an
16 evidence sheet, I dropped it into the evidence
17 refrigerator locker.

18 Q. Is that a locker anyone has access to?

19 A. Well, we can drop it in there. We can
20 drop it, but we cannot take it out.

21 Q. And are there other people that have
22 access to remove it?

23 A. Correct, certain individuals.

24 Q. Do you know who removed it from the
25 refrigerator?

ENGIN SUHNER - DIRECT EXAM BY MS. ELLIOTT

1 A. Investigators or the supervisors.

2 Q. In this case, do you know who removed
3 it?

4 A. I do not know.

5 MS. ELLIOTT: Nothing further from this
6 witness, Your Honor.

7 THE COURT: Any questions for the
8 witness?

9 MR. COCHRAN: No, Your Honor.

10 THE COURT: Any objection to the
11 witness being excused? From the State?

12 MS. ELLIOTT: None from the State.

13 THE COURT: From the defense?

14 MR. COCHRAN: No, Your Honor.

15 THE COURT: Sir, you're excused.

16 THE WITNESS: Thank you.

17 THE COURT: You're welcome.

18 You may call your next witness.

19 MS. ELLIOTT: The State calls Dorothy
20 Simmons.

21 DOROTHY SIMMONS,

22 being first duly sworn, testified as follows:

23 THE CLERK: Give us your full name and
24 spell your last, please.

25 THE WITNESS: My name is Dorothy

DOROTHY SIMMONS - DIRECT EXAM BY MS. ELLIOTT

1 Simmons, S-I-M-M-O-N-S.

2 THE COURT: You may proceed.

3 DIRECT EXAMINATION

4 BY MS. ELLIOTT:

5 Q. Am I right in understanding you are a
6 major now?

7 A. That's correct.

8 Q. And where do you work, Major Simmons?

9 A. The Medical University of South
10 Carolina.

11 Q. And in what division?

12 A. Public Safety.

13 Q. And is that where you were employed in
14 June of 2013?

15 A. Yes.

16 Q. What was your role?

17 A. As a captain, evidence coordinator.

18 Q. And what does the evidence coordinator
19 do?

20 A. The evidence coordinator -- we have two
21 other evidence custodians. What we do, when the
22 officer puts the evidence in the evidence
23 refrigerator, we come in in the morning and take it
24 out and put it into the evidence room.

25 Q. Did you receive any evidence in a case

DOROTHY SIMMONS - DIRECT EXAM BY MS. ELLIOTT

1 related to [REDACTED] Minor ?

2 A. Yes.

3 Q. I believe sitting in front of you is
4 what has been marked for identification as State's
5 Exhibit 10. Do you recognize that?

6 A. Yes.

7 Q. What is that?

8 A. This is our evidence sexual assault
9 collection kit.

10 Q. And did you receive that?

11 A. Yes.

12 Q. When?

13 A. The date, June 21, 2013.

14 Q. And where would you have received it
15 from?

16 A. From the evidence refrigerator.

17 Q. Is that a secured refrigerator?

18 A. Yes.

19 Q. It was sealed at that time?

20 A. Yes.

21 Q. Did it appear to be tampered with or
22 manipulated in any way?

23 A. No.

24 Q. Did you tamper with it or manipulate
25 it?

DOROTHY SIMMONS - DIRECT EXAM BY MS. ELLIOTT

1 A. No.

2 Q. What did you do with it?

3 A. I retrieved it out of the evidence
4 refrigerator and placed it into the evidence room,
5 in the refrigerator.

6 Q. There are two refrigerators?

7 A. Correct.

8 Q. Is one more secure than the other?

9 A. Both are secured, but one is more
10 secure because it's behind a locked door.

11 Q. Once it was in the refrigerator in the
12 evidence room, who has access to it?

13 A. Myself and two evidence custodians.

14 Q. And did you add any markings to that
15 kit?

16 A. Yes.

17 Q. What are those?

18 A. That's what I logged into the evidence
19 room and assigned it to a T number.

20 Q. And you did what?

21 A. Assigned a number that's generated from
22 the computer.

23 Q. What is that number?

24 A. T3708.

25 Q. Do you know what happened to that box?

DOROTHY SIMMONS - DIRECT EXAM BY MS. ELLIOTT

1 A. What happened to --

2 Q. Once you put it into the evidence room
3 and into the refrigerator, has anybody taken it
4 out?

5 A. Negative. Besides the agent that
6 picked it up.

7 Q. An agent came and picked it up?

8 A. Yes.

9 Q. Who came and picked it up?

10 A. Charleston County Sheriff's Office.

11 Q. Who released it to the Charleston
12 County Sheriff's Office?

13 A. Lieutenant Thompson.

14 MS. ELLIOTT: No further questions.

15 THE COURT: Any questions?

16 MR. COCHRAN: No.

17 THE COURT: Any objection to the
18 witness being excused? From the State?

19 MS. ELLIOTT: No, Your Honor.

20 THE COURT: From the defense?

21 MR. COCHRAN: No, Your Honor.

22 THE COURT: Ma'am, you're excused.
23 You may call your next witness.

24 MS. ELLIOTT: The State calls Mark
25 Watson.

MARK WATSON - DIRECT EXAM BY MS. ELLIOTT

1 MARK WATSON,

2 being first duly sworn, testified as follows:

3 THE CLERK: Have a seat please. Give
4 us your full name and spell your last.

5 THE WITNESS: Mark Watson, W-A-T-S-O-N.

6 THE COURT: You may proceed.

7 MS. ELLIOTT: Thank you.

8 DIRECT EXAMINATION

9 BY MS. ELLIOTT:

10 Q. Deputy Watson, where are you employed?

11 A. Charleston County Sheriff's Office.

12 Q. What is your role with the Sheriff's
13 Office?

14 A. Forensic investigator.

15 Q. What are your duties and
16 responsibilities in that role?

17 A. I work in the crime scene division.
18 I'm in charge of maintaining custody and control of
19 any evidence that's been logged into our facility.

20 Q. And how do you-all keep track of the
21 evidence that gets logged in through the Charleston
22 County Sheriff's Office?

23 A. Each piece gets logged in by the case
24 number and then assigned an item number, and we get
25 it and assign a location number on that particular

MARK WATSON - DIRECT EXAM BY MS. ELLIOTT

1 item.

2 Q. Let's begin with --

3 MS. ELLIOTT: Your Honor, may I
4 approach the witness?

5 THE COURT: You may.

6 BY MS. ELLIOTT:

7 Q. I'm going to show you what's been
8 marked for identification purposes as State's
9 Exhibit 8.

10 A. Yes, ma'am.

11 Q. Do you recognize that?

12 A. I would have to -- I went through the
13 evidence with you on Friday so I do recognize it,
14 but did I collect it? No.

15 Q. Who collected it; can you tell?

16 A. No, not by looking at the bag. Well, I
17 take that back. Detective Muirhead put the time he
18 collected it.

19 Q. What's the process when a detective
20 submits evidence to your agency?

21 A. They will go to the scene or however
22 they come into possession of the evidence.
23 Sometimes they go to the jail and collect evidence
24 or people come into the office and provide them
25 evidence. They get the evidence and enter it into

MARK WATSON - DIRECT EXAM BY MS. ELLIOTT

1 the computer system and they do it by a case
2 number, and in this particular case it is case
3 number 2013008915. And when they enter that into
4 the computer, it gives them an item number, 139125.

5 They will attach a sheet to it and put
6 it in the evidence locker, or hand deliver it, and
7 we validate it. When we take possession of it we
8 give it a location, and that, at the time, was
9 location bin number 09.

10 Q. So when someone comes in and takes the
11 stuff out you make a log of that?

12 A. We do.

13 MS. ELLIOTT: Your Honor, at this time
14 the State would offer into evidence State's
15 Exhibit 8.

16 THE COURT: Any objection?

17 MR. COCHRAN: Objection to incomplete
18 chain.

19 THE COURT: Please approach.

20 (Bench conference.)

21 THE COURT: What is missing?

22 MR. COCHRAN: The last piece of the
23 chain or however it was brought into the
24 courthouse.

25 MS. ELLIOTT: Judge, I don't think that

MARK WATSON - DIRECT EXAM BY MS. ELLIOTT

1 we need to. This is our investigator.

2 THE COURT: I think they have proven
3 chain as far as practicable. They don't have to
4 prove every single person, especially when it
5 wasn't tested.

6 Objection is overruled.

7 (End of bench conference.)

8 THE COURT: Objection is overruled.

9 The chain has been established as far as
10 practicable. It is admitted without
11 objection.

12 (PLF. EXH. 8 in evidence.)

13 MS. ELLIOTT: Your Honor, may I
14 approach?

15 BY MS. ELLIOTT:

16 Q. I show what has been marked as State's
17 Exhibit 10. Do you recognize that?

18 A. Yes, I do.

19 Q. What is that?

20 A. This is a -- we get our sexual assault
21 kits from SLED and this is a standard kit. We take
22 the empty ones down to MUSC, and when they collect
23 it, it's given to MUSC Public Safety and they
24 secure it and we pick them up. This is one that I
25 picked up personally.

MARK WATSON - DIRECT EXAM BY MS. ELLIOTT

1 Q. You picked up from where?

2 A. MUSC Public Safety.

3 Q. When did you pick it up?

4 A. I picked it up on June 24th, '13 at
5 10:22.

6 Q. Was it sealed?

7 A. It was.

8 Q. Did it appear to be tampered with in
9 any way?

10 A. No, it did not.

11 Q. Did you tamper with it or modify it?

12 A. I did not.

13 Q. What did you do with it once you
14 received it from MUSC Public Safety?

15 A. I took it back to the evidence compound
16 and entered it into the evidence system. And,
17 again, we do it by the CA numbering and it gives it
18 the item number and we gave it a location.

19 Q. And what happened to it after that?

20 A. After that it actually went to SLED,
21 and I actually took it to SLED myself.

22 Q. What happens when you take something
23 like a sexual assault kit to SLED?

24 A. When I take it, I have no idea what
25 type of evidence is in the box. I have a general

MARK WATSON - DIRECT EXAM BY MS. ELLIOTT

1 idea of what they've collected, buccal swabs and
2 anal swabs, vaginal swabs, sometimes pubic hairs.
3 It's all inside the box, I have no idea. When I
4 get to SLED the intake person will open the box,
5 remove the items, place it in a bag and heat seal
6 it, and I initial the heat seal.

7 Q. Do you watch them?

8 A. I do. I did.

9 Q. Do you remember who removed the items
10 from this kit?

11 A. W. R. Yarborough.

12 Q. And you watched her seal up the bags?

13 A. I did.

14 Q. Are those your initials on the bag?

15 A. They are.

16 MS. ELLIOTT: Okay. May I approach,
17 Your Honor?

18 THE COURT: You may.

19 BY MS. ELLIOTT:

20 Q. I'm showing you what's been marked for
21 identification purposes as State's Exhibit
22 Number 10. Do you recognize that?

23 A. I do.

24 Q. What is that?

25 A. This is the sexual assault kit. Once

MARK WATSON - DIRECT EXAM BY MS. ELLIOTT

1 the items are removed from the box and placed into
2 a heat sealed bag, it was heat sealed, I initialed
3 it and dated it the day I took it to SLED,
4 August 7th, 2013.

5 Q. And it was Miss Yarborough who took it
6 out, but you watched her?

7 A. Yes, ma'am.

8 Q. Was it tampered with?

9 A. No, ma'am.

10 Q. Was it manipulated in any way?

11 A. No, ma'am.

12 MS. ELLIOTT: May I approach, Your
13 Honor?

14 THE COURT: You may.

15 BY MS. ELLIOTT:

16 Q. I'm showing you what was marked for
17 identification purposes as State's Exhibit Number
18 9. Do you recognize that?

19 A. This is another item that I took to
20 SLED. This one was taken up on October 2, 2013.
21 It's a buccal swab from Johnny Brown.

22 Q. Did it appear to be altered, tampered
23 with, or manipulated in any way when you took it?

24 A. No, ma'am.

25 Q. And it was sealed inside that bag at

MARK WATSON - DIRECT EXAM BY MS. ELLIOTT

1 SLED?

2 A. Yes, ma'am.

3 Q. This has been marked as State's Exhibit
4 Number 11. Do you recognize those?

5 A. This is all items I took to SLED. This
6 was taken August 7th, 2013.

7 Q. Did these come out of the sexual
8 assault kit?

9 A. I'm not certain.

10 Q. Would looking at some of your internal
11 documentation for chain help you?

12 A. Yes.

13 MS. ELLIOTT: May I approach?

14 THE COURT: You may.

15 THE WITNESS: I know for certain one of
16 these came out of the sexual assault kit that would
17 be 139180, item 1400079.

18 BY MS. ELLIOTT:

19 Q. Don't tell me if it came out of the
20 kit, but if it was sealed in the envelope at the
21 same time the first item was. It had to have come
22 out of the kit.

23 MS. ELLIOTT: May I approach?

24 THE COURT: Yes, ma'am.

25 BY MS. ELLIOTT:

MARK WATSON - DIRECT EXAM BY MS. ELLIOTT

1 Q. You have already testified that what's
2 been marked as State's Exhibit 12 is what came out
3 of the kit.

4 A. Correct.

5 Q. So when these ID numbers -- wouldn't
6 those have been the purple-and-teal panties put in
7 by Kathy Fabrizio?

8 MR. COCHRAN: I would object to
9 leading.

10 THE COURT: Sustained, leading.

11 THE WITNESS: I'm sorry, you were
12 correct.

13 MR. COCHRAN: Object to him responding
14 to that.

15 THE COURT: Rephrase the question.

16 BY MS. ELLIOTT:

17 Q. Where did the teal-and-purple panties
18 come from?

19 A. These were separate items entered not
20 from the sexual assault kit.

21 Q. And those were received by whom at
22 SLED?

23 A. Dottie Yarborough.

24 Q. And I don't think I asked you, the
25 buccal swab marked for identification as State's

MARK WATSON - DIRECT EXAM BY MS. ELLIOTT

1 Exhibit Number 9, who received that into evidence
2 at SLED?

3 A. It's on a different day. I would think
4 it's only a couple of people that deal with it, Amy
5 Stevens and Dottie Yarborough.

6 Q. Is there something that I can show you
7 that would indicate who actually received it?

8 A. If you have the paperwork from the
9 October SLED trip.

10 Q. I do.

11 MS. ELLIOTT: May I approach, Your
12 Honor?

13 THE COURT: You may.

14 BY MS. ELLIOTT:

15 Q. Who received that buccal swab at SLED?

16 A. Amy Stevens.

17 Q. And she would have sealed that in front
18 of you?

19 A. Yes.

20 Q. And your initials appear on it as well
21 as the date?

22 A. Yes, ma'am.

23 MS. ELLIOTT: Court's indulgence?

24 THE COURT: Uh-huh.

25 MS. ELLIOTT: Your Honor, those are all

MICHELLE SCOTT- DIRECT EXAM BY MS. ELLIOTT

1 the questions we have for this witness.

2 THE COURT: Any questions for the
3 witness?

4 MR. COCHRAN: No, Your Honor.

5 THE COURT: Any objection to the
6 witness being excused? From the State?

7 MS. ELLIOTT: No, Your Honor.

8 THE COURT: From the defense?

9 MR. COCHRAN: No, Your Honor.

10 THE COURT: Sir, you're excused.
11 You may call your next witness.

12 MS. ELLIOTT: The State calls Michelle
13 Scott.

14 MICHELLE SCOTT,
15 being first duly sworn, testified as follows:

16 THE CLERK: Have a seat, please. I
17 would ask you to give us your full name and spell
18 your last.

19 THE WITNESS: Michelle Rene Scott,
20 S-C-O-T-T.

21 THE COURT: You may proceed.

22 DIRECT EXAMINATION

23 BY MS. ELLIOTT:

24 Q. Good morning. What is your educational
25 background?

MICHELLE SCOTT- DIRECT EXAM BY MS. ELLIOTT

1 A. I have a bachelor's degree from
2 Limestone College as well as a master's in social
3 work from the University of South Carolina.

4 Q. Where are you currently working?

5 A. For the Department of Mental Health at
6 the Dee Norton Lowcountry Children's Center.

7 Q. What is that?

8 A. That's a child advocacy center that
9 works with children that are abused and/or
10 neglected and provides forensic interviews as well
11 as medical examinations and therapy.

12 Q. How long have you worked for the Dee
13 Norton Children's Center?

14 A. I've been there approximately four
15 years, since 2011.

16 Q. And you said you were -- you were
17 employed by the Department of Health. Have you
18 been with the Department of Mental Health longer
19 than LCC?

20 A. Yes. I started working with the
21 Department of Mental Health approximately 11 years
22 ago, where I worked in various areas, and then I
23 was placed at DNLCC four years ago.

24 Q. What are your duties?

25 A. Forensic interviews for children and I

MICHELLE SCOTT- DIRECT EXAM BY MS. ELLIOTT

1 provide TLC, as well as PCIT and SBCS.

2 Q. Those are different types of therapies?

3 A. Oh, I apologize; yes, they are.

4 Q. Did you have a chance to see Minor

5 [REDACTED]?

6 A. I did. I did a forensic interview with
7 her on June 24th, 2013.

8 Q. Do you know who referred her?

9 A. She was referred by law enforcement.

10 Q. Who accompanied her to the interview?

11 A. Her mother.

12 Q. Was her mother present during the
13 interview?

14 A. No.

15 Q. Did she disclose to you a sexual
16 assault?

17 A. Yes.

18 Q. Did she tell you when it happened?

19 A. Not exactly.

20 Q. Tell me what she told you.

21 A. It was when she came in, I knew that it
22 had been very recent like the day before or -- just
23 due to the fact of her coming in and having been
24 referred from MUSC and law enforcement.

25 Q. Did she tell you where it happened?

MICHELLE SCOTT- DIRECT EXAM BY MS. ELLIOTT

1 A. Yes; at her home. She lived with her
2 mother and sister and it occurred in her mother's
3 bedroom.

4 Q. What was her demeanor like during the
5 interview?

6 A. Minor was very, very tearful and
7 presented as really distraught and all of that was
8 complicated by her being emotional. It was
9 difficult for her to provide information.

10 Q. Would you have described her as chatty?

11 A. Oh, gosh, no. She was not chatty at
12 all. It was difficult to get information due to
13 the fact that she was crying so much. I would get
14 her a tissue and hand it to her and she was
15 shaking. She presented, like I said, very
16 distraught.

17 Q. Did you see her again after that?

18 A. I saw Minor again for a mental health
19 assessment, which is to help determine what type of
20 treatment, if any, she could possibly need.

21 MS. ELLIOTT: Thank you. Those are all
22 the questions I have.

23 THE COURT: Any questions for the
24 witness?

25 MR. COCHRAN: Yes, ma'am. Briefly,

MICHELLE SCOTT- CROSS EXAM BY MR. COCHRAN

1 Your Honor.

2 THE COURT: You may proceed.

3 CROSS-EXAMINATION

4 BY MR. COCHRAN:

5 Q. The place that Minor talked to you
6 about where this happened, she did specify at her
7 mother's home you said?

8 A. Where she was living at with her mother
9 and sister.

10 Q. And you remember specifically her
11 mother's bed?

12 A. Yes. Based on the interview that I
13 did, that detail was given, yes.

14 MR. COCHRAN: Okay. Thank you, ma'am.
15 No further questions.

16 THE COURT: Any redirect?

17 MS. ELLIOTT: None.

18 THE COURT: Any objection to the
19 witness being excused? From the State?

20 MS. ELLIOTT: Not from the State.

21 THE COURT: From the defense?

22 MR. COCHRAN: No.

23 THE COURT: Ma'am, you're excused.

24 MS. ELLIOTT: Judge, can we approach
25 briefly?

SHERI CHURCH - DIRECT EXAM BY MS. HERRING-LASH

1 THE COURT: Sure.

2 (Bench conference)

3 MS. HERRING-LASH: Just for scheduling
4 purposes, our next witness is going to be the
5 detective and we expect that to take some time.

6 THE COURT: No problem.

7 (End of bench conference.)

8 MS. HERRING-LASH: The State calls
9 Sheri Church.

10 SHERI CHURCH,
11 being first duly sworn, testified as follows:

12 THE CLERK: Have a seat and give us
13 your first and last name and spell your last,
14 please.

15 THE WITNESS: Sheri Church. My first
16 name is S-H-E-R-I, last name is C-H-U-R-C-H.

17 THE COURT: You may proceed.

18 DIRECT EXAMINATION

19 BY MS. HERRING-LASH:

20 Q. Detective Church, where do you work
21 now?

22 A. Charleston County Sheriff's Office.

23 Q. How long have you been there?

24 A. Eleven years.

25 Q. And at this time what are your duties?

SHERI CHURCH - DIRECT EXAM BY MS. HERRING-LASH

1 A. I'm currently a patrol supervisor,
2 sergeant, and I work in the west and south
3 divisions of the county.

4 Q. What area is that?

5 A. That includes James Island, Johns
6 Island, West Ashley, all the way through Ravenel to
7 Edisto Island.

8 Q. And back in June of 2013, what were
9 your duties?

10 A. I was assigned to the investigations
11 division, NSA, child abuse and sexual assault
12 detective.

13 Q. Were you assigned the case of State v
14 Johnny Brown?

15 A. Yes.

16 Q. When were you assigned that case?

17 A. I received it from my supervisor on
18 June 21, 2013.

19 Q. And so it came to you through your
20 supervisor?

21 A. Yes, ma'am.

22 Q. Had any other detectives already been
23 involved?

24 A. Yes, ma'am.

25 Q. And why was that?

SHERI CHURCH - DIRECT EXAM BY MS. HERRING-LASH

1 A. The call initially came in in the
2 nighttime hours, and the on-call detectives rotate
3 call weekly. During that week, it was Detectives
4 Downing and Muirhead.

5 Q. And where -- what is the first thing
6 that you did when you received the case?

7 A. When I received the case, I was given
8 the initial report from patrol, which is basically
9 giving me the [Minor]'s name and mother's name. And
10 Detective Downing let me know that he believed that
11 the [Minor], [Minor] was still at MUSC, that she had
12 been admitted.

13 Q. And so where did you see her?

14 A. I went to MUSC Children's Hospital to
15 interview and talk to [Minor] and her mother,
16 Latwana [redacted]

17 Q. Did you attempt to interview [Minor]

18 A. I did.

19 Q. And were you able to complete that
20 interview?

21 A. No, ma'am.

22 Q. What was her demeanor during that time?

23 A. She was really quiet, very soft spoken,
24 she kept putting her head down. She would not
25 maintain eye contact, tearful, a lot of nodding,

SHERI CHURCH - DIRECT EXAM BY MS. HERRING-LASH

1 just really sad.

2 Q. What stopped the interview?

3 A. When I went in the room to talk to her,
4 she was in the room alone, the mother was out of
5 the room with a younger sister. And during the
6 interview the mother came back, and she could see
7 her through the window. So I stopped the interview
8 to go and talk to the mother. And when I came back
9 in the room, she covered her head with the sheets
10 and was shaking her head, no, she didn't want to
11 talk to me anymore.

12 Q. Did you talk to the mother?

13 A. I did.

14 Q. Did you get a written statement from
15 the mom?

16 A. Yes, ma'am.

17 Q. What is the next thing that you did?

18 A. After I spoke to Minor and her mother,
19 we set up an interview at the Lowcountry Children's
20 Center. And that was a couple of days later,
21 June 24th. And I went to the Children's Center to
22 observe the interview.

23 Q. Is it pretty common for law enforcement
24 to send a child to the Lowcountry Children's
25 Center?

SHERI CHURCH - DIRECT EXAM BY MS. HERRING-LASH

1 A. Yes.

2 Q. And why do you do that?

3 A. The Lowcountry Children's Center is
4 trained to do forensic interviews which we use for
5 evidentiary purposes. They get the information of
6 when, where, what, how. They are counselors, they
7 are able to provide follow-up counselling and
8 therapy if needed. They were able to follow
9 through with the family and provide additional
10 services beyond the investigation.

11 Q. You went and watched; is that correct?

12 A. I did, from another room.

13 Q. You had attempted to interview her at
14 the hospital. Why was that, rather than just
15 waiting?

16 A. Based on the information that I
17 received from the detectives that responded that
18 night and what little bit Minor had said to me, I
19 felt something may have happened.

20 MR. COCHRAN: Objection.

21 THE COURT: Basis?

22 MR. COCHRAN: Bolstering.

23 THE COURT: Please, approach.

24 (Bench conference)

25 THE COURT: What's the question?

SHERI CHURCH - DIRECT EXAM BY MS. HERRING-LASH

1 MR. COCHRAN: She said that based on
2 what was told to her.

3 MS. HERRING-LASH: Based on what the
4 officers told her, she thought something had
5 happened.

6 MR. COCHRAN: And I believe she said
7 based on what she said.

8 MS. HERRING-LASH: Based on what they
9 had told her, she felt something happened that
10 required follow-up.

11 MR. COCHRAN: And what they had heard
12 from the **Minor**.

13 THE COURT: This is about her
14 investigation and how it led to her investigating.
15 She's saying based on what they told her, she
16 needed to do follow-up.

17 Your objection is overruled.

18 (End of bench conference.)

19 THE COURT: Objection is overruled.
20 You may proceed.

21 BY MS. HERRING-LASH:

22 Q. When you went to interview her, she was
23 in the hospital?

24 A. Yes, ma'am.

25 Q. Did you have any idea how long she

SHERI CHURCH - DIRECT EXAM BY MS. HERRING-LASH

1 would be there?

2 A. I did not.

3 Q. And did that impact your decision to go
4 there?

5 A. Yes. I didn't want to wait too long to
6 get information from her. I felt like we needed to
7 do the follow-up sooner rather than later.

8 Q. Have you had forensic training?

9 A. Yes. I went to Finding Words, which is
10 a training class. It's a week-long training class
11 in Columbia put on by the school of law. And it
12 trains detectives and social workers,
13 investigators, how to talk to and interview
14 children.

15 Q. But she was -- I guess she was
16 discharged within a few days?

17 A. Yes.

18 Q. So, therefore, you waited and did not
19 resume your interview?

20 A. I didn't resume because she became very
21 upset and was crying, covered her head. I didn't
22 feel like it was in her best interest to force her
23 to talk if she wasn't ready to talk.

24 Q. After going and observing that
25 interview, what is the next thing that you did?

SHERI CHURCH - DIRECT EXAM BY MS. HERRING-LASH

1 A. After the Lowcountry Children's Center
2 interview, that same day I made contact with the
3 SANE nurse from MUSC, Ms. Fabrizio. And I wanted
4 to touch base with her about the medical exam and
5 what, if anything, [Minor] had said to her about the
6 incident.

7 Q. Now, as a result of the conversation
8 with Nurse Fabrizio, what did you do?

9 A. After getting information from Ms.
10 Fabrizio, I obtained a search warrant for a urine
11 test to be conducted on Mr. Johnny Brown.

12 Q. And what was that urine test for?

13 A. It was to test specifically for
14 gonorrhea.

15 Q. And when did you obtain that search
16 warrant?

17 A. I obtained that on June 26th, 2013.

18 Q. And when was it served?

19 A. It was served on the same day.

20 Q. And what is Mr. Johnny Brown's date of
21 birth?

22 A. [REDACTED] 1979.

23 Q. And how did you go about serving that
24 warrant?

25 A. I met Detective Colson who works with

SHERI CHURCH - DIRECT EXAM BY MS. HERRING-LASH

1 me. He and I went and picked Mr. Brown up and took
2 him to the Medical University where we met with
3 another nurse, Nancy Hall who collected the urine,
4 for lack of a better word, and sent it to the lab
5 to have everything tested.

6 Q. You left the urine with her?

7 A. Yes.

8 Q. As far as your investigation, did you
9 acquire GPS information from an electronic device
10 as to the location of Johnny Brown on the afternoon
11 of June -- June 20, 2013?

12 A. Yes.

13 Q. And are you familiar with this area?

14 A. Yes, ma'am.

15 Q. And are you particularly familiar with
16 it now?

17 A. Yes, ma'am. The area where the
18 incident occurred, the [Minor]'s home, [REDACTED]
19 [REDACTED] is in Charleston County on James Island.
20 That's one of our major areas that we patrol.

21 Q. You are kind of over that area?

22 A. Yes, ma'am.

23 Q. And what did you look at?

24 A. I received a printout or like a ledger
25 of all the different GPS points that Mr. Brown had

SHERI CHURCH - DIRECT EXAM BY MS. HERRING-LASH

1 been to that day, and there were a lot of points
2 that were right in the -- within several feet of
3 the [Minor]'s home in the yard, and they just -- it
4 just pinged in that area for a couple of hours.

5 Q. What time of the day did it mainly ping
6 right around her home?

7 A. There was one time it was about five
8 minutes before 1:00 in the afternoon until 1:24,
9 1:25 in the afternoon. And then he leaves the area
10 and comes back to the area at about 2:44 in the
11 afternoon until right before 5:00 p.m.

12 Q. And does this area have a lot of trees
13 overhanging?

14 A. It does. It's an area of [REDACTED]
15 near Fort Johnson Road, and there are several
16 smaller dirt roads which are really more like
17 driveways, but then they are named dirt roads. So
18 in that area the addresses aren't necessarily in
19 order.

20 So you can have -- like, the [Minor]'s
21 home is on [REDACTED] [REDACTED] but when you
22 drive into her driveway, there is another house
23 with a [REDACTED] address, but it's actually on a
24 dirt road called Jeffrey Drive.

25 Q. It's another house on Jeffrey Drive but

SHERI CHURCH - DIRECT EXAM BY MS. HERRING-LASH

1 it's in her driveway?

2 A. Same driveway. A lot of the houses are
3 all kind of mixed up with the numbering.

4 MS. HERRING-LASH: Your Honor, may the
5 witness step down?

6 THE COURT: Yes.

7 (Witness complies)

8 BY MS. HERRING-LASH:

9 Q. Detective Church, I have an overhead
10 picture of the area we were talking about just for
11 demonstrative purposes. It would be difficult to
12 see. Do you want to come over here and show where
13 on this is the [Minor]'s home?

14 A. This is [redacted] and this is Fort
15 Johnson Road, and the [Minor]'s road is the white
16 part here. You guys can't see it, but it's a
17 concrete driveway. The home is right here, this is
18 [redacted] (Indicating)

19 Q. Just to give the -- there is a scale
20 here. And what does this little yellow piece here
21 indicate?

22 A. It's about -- just under 100 yards.

23 Q. And what is this?

24 A. That's a ball field.

25 Q. And to put this in perspective

SHERI CHURCH - DIRECT EXAM BY MS. HERRING-LASH

1 perhaps --

2 A. It's a baseball field.

3 THE COURT: You might need to switch
4 places so she can talk towards the court reporter.

5 BY MS. HERRING-LASH:

6 Q. Go ahead.

7 A. So the baseball field is approximately
8 100 yards.

9 Q. And this is the --

10 A. And, I'm sorry, not 100 yards, 100
11 feet.

12 Q. And this is the [Minor]'s home?

13 A. Yes, ma'am, this is the [Minor]'s home
14 right here. (Indicating)

15 Q. Where is Jeffrey Drive, the dirt road?

16 A. Jeffrey Drive is right here under the
17 trees behind the second home on the same lot.

18 Q. If we put this here, (Indicating) it's
19 less than a hundred feet from her home?

20 A. Yes, less than 100 feet.

21 Q. And another street, Lemon Street, where
22 is it around that area?

23 A. Lemon Street is another dirt road right
24 up here. (Indicating)

25 Q. And if we use this, how far --

SHERI CHURCH - DIRECT EXAM BY MS. HERRING-LASH

1 A. It's approximately 200 feet from the
2 Minor's home.

3 Q. And so where -- the area he was in
4 Jeffrey, [REDACTED] where her address is, and Lemon Tree
5 --

6 A. The majority of the GPS plots show that
7 he was -- it plotted around the Minor's house and
8 it plotted on Jeffrey Drive and then jumped to
9 Lemon Drive and then comes back to this area.

10 Q. And it's all within 100 feet of her
11 home?

12 A. All within 100 feet of [REDACTED]

13 Q. Thank you, Detective Church. You may
14 take your seat.

15 A. (Complies)

16 Q. Now, during that afternoon, later in
17 the afternoon and earlier in the day, he also
18 showed up in other areas around this community?

19 A. Yes. Between the times from 2:44 until
20 about five minutes to 5:00, he was in the [REDACTED]
21 area, but then there's a time period where he
22 leaves the area and he goes to -- it shows him on
23 Dill Bluff Road; at other times it showed him on
24 Hillman Road and then on Fort Johnson, right at
25 Fort Johnson and [REDACTED].

SHERI CHURCH - DIRECT EXAM BY MS. HERRING-LASH

1 Q. And you were able from the point that
2 you were looking at to distinguish those points
3 from the points at her home?

4 A. Yes, ma'am.

5 Q. And, now, did you also obtain a search
6 warrant for MUSC records?

7 A. I did.

8 Q. And whose records?

9 A. I obtained a search warrant for Mr.
10 Brown's medical records.

11 Q. And when did you obtain that search
12 warrant?

13 A. August 22nd.

14 Q. And why were you obtaining those --
15 that search warrant?

16 A. I needed to get the results of his lab
17 test to put in the file to be compared to the
18 Minor's lab results.

19 Q. Okay. And did you get that?

20 A. I did.

21 Q. And did you do another search warrant a
22 little later?

23 A. In September -- I believe it was
24 September 20th of 2013, I obtained another search
25 warrant for the buccal swabs for Mr. Brown to be

SHERI CHURCH - DIRECT EXAM BY MS. HERRING-LASH

1 sent to SLED so they could be compared to DNA that
2 could be obtained from the [Minor]'s sexual assault
3 kit.

4 Q. Now, what is a buccal swab?

5 A. Where you swab the inside of the cheeks
6 with just a circular motion on the inside of the
7 cheeks.

8 MS. HERRING-LASH: Your Honor, may I
9 approach?

10 THE COURT: You may.

11 BY MS. HERRING-LASH:

12 Q. Detective Church, I'm going to show you
13 what has been marked for ID purposes as State's
14 Exhibit Number 9. From looking at the -- without
15 unsealing it, can you tell by the sticker what that
16 is?

17 A. This is the buccal swab for Johnny
18 Brown.

19 Q. And you obtained that?

20 A. Yes, ma'am.

21 Q. And what do you do once you obtain it?

22 A. Once we obtain it, I print out an
23 evidence sheet. I put the information on there,
24 date and time, identifying information for
25 Mr. Brown, sealed the envelope and put it into the

SHERI CHURCH - CROSS EXAM BY MR. COCHRAN

1 evidence locker.

2 Q. Okay. And you are not the person that
3 would have taken it to SLED?

4 A. No, ma'am. The forensic services unit
5 handle that.

6 Q. And did you also prepare an arrest
7 warrant in this case?

8 A. I did.

9 MS. HERRING-LASH: Detective Church,
10 those are all the questions I have. If you would
11 answer any that Mr. Cochran may have.

12 THE COURT: You may proceed.

13 MR. COCHRAN: Thank you. May it please
14 the Court.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. COCHRAN:

18 Q. During the course of your investigation
19 you became aware of an issue over how Mr. Brown got
20 into this house, whether or not the door was locked
21 or not locked; is that correct?

22 A. Actually, I don't remember hearing
23 about that.

24 Q. Okay. Do you recall both Minor and
25 her mother stating that the door had been locked

SHERI CHURCH - CROSS EXAM BY MR. COCHRAN

1 after [Minor] mother went to work?

2 A. Not while they were talking. [Minor]

3 never told me that when I spoke to her, no. And I
4 don't think her mom told me that.

5 Q. Okay. So neither of them ever
6 mentioned anything to you about a lock on one of
7 their doors being broken?

8 A. I didn't ask and they didn't tell me
9 that, no.

10 Q. Okay. Through the course of your
11 investigation, you became aware that there may be
12 some relevant items of clothing to be collected?

13 A. I was under the impression that
14 Detective Downing and Detective Muirhead had gone
15 to the home and collected shorts, the underwear,
16 and a shirt.

17 Q. Did you meet with them to go over what
18 they collected?

19 A. I talked to Detective Downing and he
20 explained to me what they took and it was found in
21 the bathroom, based on what the mother told them at
22 the hospital.

23 Q. None of those items were ever taken to
24 be shown and confirmed by [Minor]

25 A. I thought that they were. I did not do

SHERI CHURCH - CROSS EXAM BY MR. COCHRAN

1 that though.

2 Q. And you did not send a crime scene tech
3 to this location either?

4 A. No.

5 Q. And throughout the course of your
6 investigation, you became aware that, according to
7 Minor accusations, this took place on a bare
8 mattress in her mother's bedroom?

9 A. I believe she said something about a
10 mattress during her interview at the Lowcountry
11 Children's Center.

12 Q. And that mattress was not -- you did
13 not have anybody go collect a mattress?

14 A. No.

15 Q. And you didn't send the crime scene
16 techs to go test any mattresses or collect any
17 evidence from the mattress?

18 A. No.

19 Q. And cloth and clothing and mattresses
20 can collect DNA evidence; is that correct?

21 A. Yes; but we were told there were no
22 sheets on the bed at the time and we had already
23 gone and collected the clothing.

24 Q. So no sheets on the bed, but a mattress
25 could also be tested, correct?

SHERI CHURCH - CROSS EXAM BY MR. COCHRAN

1 A. I guess so.

2 Q. Okay. And you do have crime scene
3 technicians at your disposal, correct?

4 A. We do have crime scene technicians.

5 Q. And they can go to incident locations,
6 correct?

7 A. They can.

8 Q. And they can test items that might be
9 relevant, correct?

10 A. Yes.

11 Q. They can go try to collect what appears
12 to be body fluid or blood, correct?

13 A. Yes.

14 Q. They can try to collect hairs, correct?

15 A. Uh-huh.

16 Q. And that was not done in this case?

17 A. No.

18 Q. And according to **Minor** this took
19 place on the same day or the same evening as she
20 was taken to the hospital and speaking with law
21 enforcement?

22 A. **Minor** did not speak to law enforcement
23 that night. They spoke to her mother.

24 Q. Okay. And you spoke to her on what
25 day?

SHERI CHURCH - CROSS EXAM BY MR. COCHRAN

1 A. The next day. And she still didn't
2 tell us -- she didn't tell me very much information
3 about it; she was too upset.

4 Q. Okay. Did anybody go -- people were
5 sent to the incident location. We've seen
6 photographs of the house; is that correct?

7 A. Yes.

8 Q. Okay. That was not the same day or the
9 day after?

10 A. I don't believe so.

11 MR. COCHRAN: Okay. Beg the Court's
12 indulgence?

13 THE COURT: Uh-huh.

14 MR. COCHRAN: No more questions, Your
15 Honor.

16 THE COURT: Any redirect?

17 MS. HERRING-LASH: No, Your Honor.

18 THE COURT: Ma'am, you may step down.

19 THE COURT: Counsel, approach for me
20 please.

21 (Bench conference.)

22 THE COURT: Who is the State's next
23 witness?

24 MS. ELLIOTT: Judge, our next witnesses
25 will be coming from SLED and we told them to be

1 here at 2:00.

2 THE COURT: Who is that?

3 MS. ELLIOTT: That is going to be
4 Stephanie Stanley. It's another -- it's the SLED
5 DNA technician.

6 THE COURT: Stephanie?

7 MS. ELLIOTT: Yes.

8 THE COURT: I don't see any Stephanie
9 -- oh, it's under my paperclip.

10 (End of bench conference.)

11 THE COURT: Madame Forelady, ladies and
12 gentlemen, we are going to take advantage of this
13 break in testimony to take our lunch recess. We
14 will resume at 2:00.

15 During the break, please do not discuss
16 this case among yourselves or with anyone else. Do
17 not have any contact with anyone in or about the
18 courthouse. When you return you will come directly
19 to your jury room at which time, once all of you
20 have arrived, we will resume testimony.

21 Please leave your notepads in your
22 seat. I hope you all have a great lunch.

23 (Jury out, 12:35 p.m.)

24 THE COURT: Is there anything before we
25 break for lunch? From the State?

1 MS. ELLIOTT: No, Your Honor.

2 THE COURT: From the defense?

3 MR. COCHRAN: No, Your Honor.

4 THE COURT: Have a good lunch. See
5 you at 2:00.

6 (A luncheon recess transpired.)

7 THE COURT: State ready to proceed?

8 MS. HERRING-LASH: Yes, Your Honor.

9 THE COURT: Defense read to proceed?

10 MR. COCHRAN: Yes, Your Honor.

11 THE COURT: They should be right behind
12 me. Who is the State's first witness?

13 MS. HERRING-LASH: Nancy Caldwell.

14 THE COURT: Is she in the courtroom?

15 MS. HERRING-LASH: I will bring her in.

16 (Jury in, 2:09 p.m.)

17 THE BAILIFF: All jurors are seated.

18 THE COURT: Ladies and gentlemen, I
19 hope you-all had a pleasant lunch recess. We will
20 now resume with testimony.

21 The State may call its next witness.

22 MS. HERRING-LASH: The State calls
23 Nancy Hall.

24 NANCY HALL,

25 being first duly sworn, testified as follows:

NANCY HALL - DIRECT EXAM BY MS. HERRING-LASH

1 THE CLERK: Give us your full name and
2 spell your last name.

3 THE WITNESS: Nancy Hall, H-A-L-L.

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION

6 BY MS. HERRING-LASH:

7 Q. And, Ms. Hall, where do you work?

8 A. Medical University of South Carolina.

9 Q. What is your educational background?

10 A. I have an associate's degree in nursing
11 and I'm certified as a sexual assault nurse
12 examiner for adults.

13 Q. What does it take to become a sexual
14 assault nurse examiner?

15 A. It's a 40-hour classroom training
16 followed by hands-on preceptorship, doing exams
17 under an experienced SANE. And then to become
18 certified you take an exam that is administered by
19 the International Association of Forensic Nurses
20 which is -- kind of signifies your expertise in
21 your field.

22 Q. And as part of your duties as a nurse
23 with that special training, do you use the SLED
24 kits when you do your examinations of patients?

25 A. On victim's, we do, yes, ma'am.

NANCY HALL - DIRECT EXAM BY MS. HERRING-LASH

1 Q. And does SLED also provide a kit for
2 males, to be used on males?

3 A. Yes, they do.

4 Q. And do you sometimes use those kits?

5 A. Yes, ma'am.

6 Q. And in this particular case, the State
7 versus Johnny Brown, did you deal with samples from
8 a male?

9 A. I did.

10 Q. And who was that?

11 A. Johnny Brown.

12 Q. And when did you see him?

13 A. On June 26th, 2013.

14 Q. And who accompanied him to your
15 hospital?

16 A. The Charleston County Sheriff's
17 Department.

18 Q. And what did you assist them in doing?

19 A. For their search warrant, their search
20 warrant was for obtaining urine samples. And so I
21 accompanied the detective and surround to the
22 bathroom while they obtained that sample.

23 Q. And did a male detective actually go
24 into the restroom?

25 A. He actually stood next to him and I

NANCY HALL - DIRECT EXAM BY MS. HERRING-LASH

1 stood in the doorway of the bathroom.

2 Q. And did the male detective give you a
3 cup?

4 A. I gave him a cup and he handed it to
5 Mr. Brown to urinate in the cup, he handed it back
6 to the detective, and he handed it to me.

7 Q. And then what did you do with that cup?

8 A. I transferred the urine from the cup
9 into two tubes. You know, like when you have your
10 blood drawn, test tubes with the rubber topped
11 stoppers on the top of them, I transferred the
12 urine into those tubes, labeled them, date and
13 time.

14 Q. Did you label them with identifying
15 information on whose they belonged to?

16 A. Yes, ma'am, Mr. Brown's patient labels.

17 Q. Did you fill out -- I don't know if
18 it's called a requisition order?

19 A. Yes, a lab requisition.

20 Q. And then what do you do with those
21 tubes and that lab requisition?

22 A. I hand deliver that to the microbiology
23 lab, to the check-in window.

24 Q. Was that the end of your duties in this
25 case?

NANCY HALL - DIRECT EXAM BY MS. HERRING-LASH

1 A. Yes, ma'am.

2 MS. HERRING-LASH: Those are all the
3 questions I have.

4 THE COURT: Any questions for the
5 witness?

6 MR. COCHRAN: No, Your Honor.

7 THE COURT: Any objection to the
8 witness being excused? From the State?

9 MS. HERRING-LASH: No, Your Honor.

10 THE COURT: From the defense?

11 MR. COCHRAN: No, Your Honor.

12 THE COURT: Ma'am, you're excused.

13 THE WITNESS: Thank you.

14 THE COURT: Call your next witness.

15 MS. ELLIOTT: The State calls Stephanie
16 Stanley.

17 STEPHANIE STANLEY,

18 being first duly sworn, testified as follows:

19 THE CLERK: Have a seat please. Once
20 seated, please state your full name and spell your
21 last name.

22 THE WITNESS: My name is Stephanie
23 Stanley, S-T-A-N-L-E-Y.

24 THE COURT: You may proceed.

25 DIRECT EXAMINATION

STEPHANIE STANLEY - DIRECT EXAM BY MS. ELLIOTT

1 BY MS. ELLIOTT:

2 Q. Where are you employed?

3 A. With the South Carolina Law Enforcement
4 Division, which is more commonly referred to as
5 SLED.

6 Q. And what is your job title with SLED?

7 A. I'm a forensic scientist assigned to
8 the DNA casework department; and I'm also the team
9 leader over our evidence processing and serology
10 section.

11 Q. And what is your educational
12 background?

13 A. I have a Bachelor's of Science in
14 biological sciences from Clemson University.

15 Q. Have you had any kind of training that
16 prepares you for your job?

17 A. Yes, I did.

18 Q. What's that?

19 A. I've completed SLED's inhouse training
20 program under the supervision of a qualified
21 analyst. I learned evidence handling, evidence
22 processing, serology, DNA analysis, and statistics
23 as it relates to DNA analysis. I've completed
24 training at Marshall University and the National
25 Forensic Science Technology Center in Florida.

STEPHANIE STANLEY - DIRECT EXAM BY MS. ELLIOTT

1 Q. I'm sorry, I'm not sure if you said
2 this already, how long have you worked with SLED?

3 A. A little over ten years.

4 Q. And I know you went through a lot of
5 your training. What of that is specifically geared
6 towards serology and DNA analysis?

7 A. The National Forensic Science
8 Technology Center, or NFSTC, was a complete
9 serology training; I've completed SLED's inhouse
10 serology training as well.

11 Q. Have you testified as an expert in
12 serology and DNA testing before?

13 A. Yes, I have.

14 Q. How many times?

15 A. Approximately, 24 or 25 times.

16 Q. Can you tell us a little bit about what
17 is serology?

18 A. Serology is the identification of body
19 fluids. Generally those body fluids are blood,
20 semen, and saliva and are used in forensic DNA
21 testing.

22 Q. Are there different tests when you're
23 looking for blood, semen, or saliva?

24 A. There are. We target different
25 substances in each group and perform specific tests

STEPHANIE STANLEY - DIRECT EXAM BY MS. ELLIOTT

1 for those substances.

2 Q. And what type of tests do you use when
3 you're looking for evidence for semen?

4 A. The most common test for semen is for a
5 protein in high concentrations known as P30.

6 Q. When you receive a case to do some
7 analysis on, do you review any facts of the case to
8 help you determine which tests to use?

9 A. We would review the paperwork that's
10 submitted to our laboratory as well as the incident
11 report, the Sexual Assault Nurse Examiner's
12 paperwork and the request by the submitting agency.

13 Q. And, just generally, what are you
14 trying to determine through serology testing?

15 A. Just if there's a body fluid that's
16 present, what the body fluid could be, and would it
17 be useful for DNA testing. If we detect a body
18 fluid, we forward that on for DNA testing.

19 Q. Can you tell us what the steps are
20 involved in testing for semen?

21 A. Generally, when we get evidence into
22 the laboratory, it's in the forms of swabs or
23 cuttings. And cutting is just like a shirt, we
24 would take a smaller portion of that. We would
25 extract it in some chemicals just to try to release

STEPHANIE STANLEY - DIRECT EXAM BY MS. ELLIOTT

1 any potential body fluid, or DNA, from the swab or
2 cutting, and then we perform chemical testing
3 associated with whatever substance we're looking
4 for.

5 Q. And is this chemical testing commonly
6 used when testing for semen?

7 A. It is.

8 Q. What type of safeguards and controls
9 are used at SLED to ensure the integrity of the
10 samples and reliability of the testing procedures?

11 A. All of our testing procedures go
12 through a validation process before we would ever
13 use them on case work. Any chemicals that come
14 into the laboratory, or the agents that we're going
15 to use for evidence testing, would go through a
16 quality control check to make sure they're
17 performing properly prior to being used on any
18 evidence.

19 Samples are logged into our evidence
20 control department, they are brought in by a
21 submitting agency, and we assign a lab number and
22 an item number for every item that comes through
23 our doors so we can track it and tell where it's
24 been in the laboratory.

25 Q. And is there any documentation of that?

STEPHANIE STANLEY - DIRECT EXAM BY MS. ELLIOTT

1 A. Yes. We call that document a chain of
2 custody.

3 Q. And is that chain kept in the regular
4 course of the business at SLED?

5 A. It is, for every case that we have.

6 Q. And do you as one of the analysts have
7 the ability to input information and review the
8 internal chain?

9 A. Yes. My input of information would
10 show when I picked up an item of evidence and when
11 I transferred it to the next person.

12 Q. And are you familiar with the process
13 that it goes from before you would have obtained an
14 item from the time it was checked in all the way
15 until it ends up on your desk?

16 A. Yes.

17 Q. Did you receive evidence in this case?

18 A. I did.

19 MS. ELLIOTT: May I approach the
20 witness, Your Honor?

21 THE COURT: You may.

22 BY MS. ELLIOTT:

23 Q. I show you what's been marked for ID
24 purposes as State's Exhibit Number 10. Do you
25 recognize that?

STEPHANIE STANLEY - DIRECT EXAM BY MS. ELLIOTT

1 A. I recognize this based on the concept
2 of what it is. This wouldn't have actually been
3 the package that I received.

4 Q. If you open it up, would you tell us,
5 is that more of what you're used to seeing?

6 A. Yes, it is.

7 Q. How do you know that?

8 A. When items come into the laboratory, we
9 generate a case number. That case numbers starts
10 with an L and followed by a year and a couple of
11 digits. That is our lab number that we use to
12 associate any evidence for this case. So I
13 recognize that lab number.

14 This is the item number that contains
15 the sexual assault collection kit, and my initials,
16 as well as the date, are on the side of the
17 package.

18 Q. Why are your initials and date on that
19 portion of the package?

20 A. When I receive the package it's intact.
21 The only person that's been in this package is the
22 person at evidence control who sealed the evidence.
23 I actually make a physical cut into this item and
24 would be able to access the items from there.

25 When I finish, I need to seal the

STEPHANIE STANLEY - DIRECT EXAM BY MS. ELLIOTT

1 package to make sure it's still intact, so I would
2 heat seal this plastic and then sign and date for
3 my seal.

4 Q. So do you know who sealed that package?

5 A. This has my initials on it.

6 Q. Do you know who sealed the package
7 initially?

8 A. It should be reflected in the chain of
9 custody. It looks like M-E-W.

10 Q. And what was the date of that?

11 A. I believe 8/7/2013.

12 Q. And just for the record, can you give
13 us what the SLED lab number is?

14 A. L1310070.

15 Q. And based on your knowledge of the
16 internal chain related to this case number, can you
17 tell us how you received that piece of evidence?

18 A. I would have picked up this piece of
19 evidence from our evidence technician, Patricia
20 Crook, in our evidence logging department.

21 Q. And where would she have gotten it
22 from?

23 A. From a storage shelf where we store DNA
24 evidence.

25 Q. And who are your intake technicians

STEPHANIE STANLEY - DIRECT EXAM BY MS. ELLIOTT

1 that initially take it in?

2 A. I believe at this time Patricia Crook
3 worked in the back section where we stored the
4 evidence, and Amy Stevens and Doris Yarborough are
5 the other two that would have been at SLED at that
6 time.

7 Q. When they open up the packaging, who
8 witnessed that?

9 A. They don't actually open it. The
10 police officer opens it in the presence of the
11 log-in technician, and it's sealed in their
12 presence. So the police officer is actually
13 responsible.

14 Q. So you got this package sealed?

15 A. I did.

16 Q. And you opened it. What did you do
17 then?

18 A. I would have taken an inventory of the
19 items and started my analysis.

20 Q. When you received it, did it appear to
21 be -- did it appear to have been tampered with or
22 manipulated in any way?

23 A. No, it did not.

24 Q. Did you perform any serology tests on
25 the items inside?

STEPHANIE STANLEY - DIRECT EXAM BY MS. ELLIOTT

1 A. Yes, I did.

2 Q. Were results obtained from those tests?

3 A. Yes, there were.

4 Q. What were your conclusions?

5 MR. COCHRAN: Your Honor, I would
6 object to this.

7 MR. COCHRAN: Basis?

8 MR. COCHRAN: See hasn't been admitted
9 as an expert yet.

10 THE COURT: He's correct. You need to
11 lay the foundation to qualify her to provide expert
12 opinion.

13 MS. ELLIOTT: Your Honor, at this time
14 the State would offer Stephanie Stanley as an
15 expert in DNA and serology.

16 THE COURT: Any questions or
17 objections?

18 MR. COCHRAN: No, Your Honor.

19 THE COURT: So admitted.

20 BY MS. ELLIOTT:

21 Q. So did you perform serology tests?

22 A. Yes, I did.

23 Q. And what were the tests?

24 A. For the vaginal swabs, which is my item
25 number 1.2, semen was indicated and I forwarded a

STEPHANIE STANLEY - DIRECT EXAM BY MS. ELLIOTT

1 sample to the DNA section. On the oral swab, my
2 item 1.3, no semen was identified; rectal swabs, my
3 item 1.4, no semen was identified; no hair was
4 found from the pubic hair combings, which is my
5 item 1.6.

6 The **Minor**'s buccal swabs, which is
7 just another term for a known standard from the
8 victim, is my item 1.7, and those were forwarded to
9 the DNA section. And item 6, buccal swabs from
10 Johnny Brown, were forwarded to the DNA section.

11 Q. So on what item -- what was your item
12 number that was identified or that had semen
13 indicated?

14 A. Semen was indicated on the vaginal
15 swabs, item 1.2.

16 Q. And what's the difference between semen
17 indicated and identified?

18 A. For a semen indicator result, I
19 received a positive test for that protein, P30, and
20 it indicated that more analysis needed to happen
21 and that analysis being DNA.

22 Q. After you have a positive indication
23 for semen, what's the next step in testing?

24 A. I take a portion of that and forward it
25 for DNA testing.

STEPHANIE STANLEY - CROSS EXAM BY MR. COCHRAN

1 MS. ELLIOTT: Beg the Court's
2 indulgence, Your Honor.

3 THE COURT: Uh-huh.

4 BY MS. ELLIOTT:

5 Q. Who did you forward that package to?

6 A. That package would have been forwarded
7 to Samuel Stewart.

8 Q. And you would have sealed it before you
9 did that?

10 A. Yes, ma'am.

11 MS. ELLIOTT: I have no further
12 questions for this witness.

13 THE COURT: Any questions?

14 MR. COCHRAN: Just briefly, Your Honor.

15 THE COURT: You may proceed.

16 MR. COCHRAN: Thank you.

17 CROSS-EXAMINATION

18 BY MR. COCHRAN:

19 Q. You said that when you -- you said that
20 when you conduct these tests they're from --
21 sometimes they're from the buccal swabs, correct?

22 A. The tests that I performed would not
23 have been from the buccal swab.

24 Q. Okay. You noted two sources, cuttings
25 and swabs as two common sources of things that you

STEPHANIE STANLEY - CROSS EXAM BY MR. COCHRAN

1 test?

2 A. Those are two common, yes.

3 Q. When you say cuttings, would that be
4 typically cuttings of fabric or cloth that are
5 taken from the crime scene?

6 A. It could be cuttings from a pair of
7 panties, it could be cuttings from a towel. It
8 could be anything that is collected as evidence as
9 part of the crime scene.

10 Q. A mattress?

11 A. It could be.

12 MR. COCHRAN: No further questions,
13 Your Honor.

14 THE COURT: Any redirect?

15 MS. ELLIOTT: No, Your Honor.

16 THE COURT: Any objection to this
17 witness being excused? From the State?

18 MS. ELLIOTT: No, Your Honor.

19 THE COURT: From the defense?

20 MR. COCHRAN: No, Your Honor.

21 THE COURT: Ma'am, you're excused.
22 Call your next witness.

23 MS. ELLIOTT: The State calls Samuel
24 Stewart.

25 SAMUEL STEWART,

SAMUEL STEWART - DIRECT EXAM BY MS. ELLIOTT

1 being first duly sworn, testified as follows:

2 THE CLERK: Have a seat please. If you
3 will, state your full name and spell your last
4 name.

5 THE WITNESS: Okay. Samuel Alan
6 Stewart, S-T-E-W-A-R-T.

7 THE COURT: You may proceed.

8 DIRECT EXAMINATION

9 BY MS. ELLIOTT:

10 Q. Good afternoon, Mr. Stewart. Where are
11 you employed?

12 A. South Carolina Law Enforcement
13 Division, more commonly known as SLED.

14 Q. And what is your job title?

15 A. I'm a forensic scientist assigned to
16 the DNA casework department.

17 Q. What are your responsibilities?

18 A. I'm responsible for processing any
19 evidence for DNA. My purpose is to try to
20 determine whether or not the DNA profile developed
21 from the normal standards, which could be from a
22 victim or a subject, can be included or excluded as
23 a possible contributor to the DNA profile from the
24 evidence.

25 Q. Can you tell us about your educational

SAMUEL STEWART - DIRECT EXAM BY MS. ELLIOTT

1 background?

2 A. I received my Bachelor's from Francis
3 Marion University. I also received in-inhouse SLED
4 training under other court-qualified analysts for a
5 year and a half, where I successfully completed a
6 written exam, an oral exam, mock court all for me
7 to be deemed competent as a DNA analyst.

8 Q. How long have you worked for SLED?

9 A. Three years.

10 Q. Have you testified as an expert in DNA
11 testing before?

12 A. Yes.

13 Q. How many times?

14 A. Twice.

15 MS. ELLIOTT: Your Honor, at this time
16 we would offer Samuel Stewart as an expert in DNA
17 testing.

18 THE COURT: Any questions or
19 objections?

20 MR. COCHRAN: No, Your Honor.

21 THE COURT: Admitted without
22 objection.

23 BY MS. ELLIOTT:

24 Q. Explain to us what DNA is.

25 A. DNA stands for deoxyribonucleic acid.

SAMUEL STEWART - DIRECT EXAM BY MS. ELLIOTT

1 It is the genetic material found in every person
2 and is responsible for certain traits such as our
3 eye and hair color. We target certain locations on
4 the DNA known as chromosomes, which are found in
5 any cells in the human body, excluding red blood
6 cells.

7 You receive half of your chromosomes
8 from your mother and the other half from your
9 father. We target certain locations on the
10 chromosomes know as STR, which stands for short
11 tandem repeats. We compile 16 different STR
12 locations that are found on those chromosomes to
13 develop what is known as a DNA profile which we use
14 to identify a person from another person, excluding
15 identical twins.

16 Q. So for any given individual, is the DNA
17 information in one body fluid or tissue, is that
18 the same as the DNA information in other body
19 fluids and tissues of that same individual?

20 A. That is correct. So the DNA we get
21 from your blood would be the exact DNA profile you
22 get from the skin.

23 Q. Is there any dispute in the science
24 community regarding the principle that you have
25 just discussed?

SAMUEL STEWART - DIRECT EXAM BY MS. ELLIOTT

1 A. No, there is not.

2 Q. Is what is known as PCR STR testing
3 performed in your lab?

4 A. Yes, it is.

5 Q. What is that testing?

6 A. PCR stands for preliminary chain
7 reaction. What that is, is just making multiple
8 copies of the DNA of those STR locations that I
9 explained earlier. We need many, many copies of
10 those STR locations to get an accurate DNA profile
11 from the sample.

12 Q. What are the steps involved in the STR
13 testing?

14 A. First we have to extract it, which
15 means we have to take it from the surface that the
16 evidence is given to us. Usually it comes in a
17 swab or cutting. And then we have to quantify that
18 DNA and decide how much DNA we have. This is
19 because the system that we use, we have to have it
20 within a certain concentration range. So once we
21 find out, you know, how much DNA we have, then we
22 have to amplify it, which is the PCR, making the
23 multiple copies. And then we run it on our
24 instrument to get the DNA profile.

25 Q. What safeguards and controls are used

SAMUEL STEWART - DIRECT EXAM BY MS. ELLIOTT

1 to ensure the integrity of the samples and
2 reliability of the testing?

3 A. Everybody uses proper equipment, we
4 make sure that -- make sure all of our work is
5 sterile. During the extraction process, when this
6 is the most likely to have contamination, we
7 separate our standards, the standards from the
8 evidence, to make sure there is no
9 cross-contamination.

10 We use UV lights to clean our areas and
11 we use also controls. We use positive controls to
12 make sure that what is working right is working
13 correctly, and we use negative controls to ensure
14 that there is no contamination, and we use reagents
15 as well. So we go to great lengths to try to make
16 sure that everything is accurate.

17 Q. What about to ensure the samples that
18 you receive are the samples they say they are?

19 A. Everything that comes in has a unique
20 SLED lab number as well as an item number as well.
21 So they are kept on the records to our internal
22 chain of custody.

23 Q. And did you receive evidence in this
24 case?

25 A. Yes, I did.

SAMUEL STEWART - DIRECT EXAM BY MS. ELLIOTT

1 Q. And how did you receive it?

2 A. I received it in a heat-sealed pouch
3 with a unique SLED lab number and item number.

4 Q. I believe you have sitting in front of
5 you what's been marked for identification as
6 State's Exhibit 10. Do you see that? It might be
7 on the box that that is sitting in.

8 A. Yes, I see it.

9 Q. Do you recognize that?

10 A. Yes, I do.

11 Q. What do you recognize that as?

12 A. I recognize this as lab number
13 L1310070. I believe this is the CSC kit from

14 Minor .

15 Q. When did you receive it?

16 A. I received it -- if I can look at my
17 chain of custody?

18 Q. That's fine. That chain of custody is
19 kept in the regular course of business at SLED?

20 A. Yes, it is. I received this in my
21 custody on December 3rd of 2013?

22 Q. And did it appear to have been tampered
23 with or modified in any way when you received it?

24 A. No, it was not.

25 Q. Did you perform PCR testing on this

SAMUEL STEWART - DIRECT EXAM BY MS. ELLIOTT

1 item?

2 A. Yes, I did.

3 Q. What were the results of those items?

4 A. Okay. I did testing on -- I did
5 testing on items 1.2, which were the vaginal swabs.
6 I also did testing on items 1.7, which were the
7 buccal swabs.

8 Q. I need to show you one other thing.

9 MS. ELLIOTT: Your Honor, may I
10 approach.

11 THE COURT: You may.

12 BY MS. ELLIOTT:

13 Q. I'm going to show you what's been
14 marked for identification purposes as State's
15 Exhibit Number 9. Do you recognize that?

16 A. Yes, I do.

17 Q. What do you recognize that to be?

18 A. This is item 6 of that SLED number
19 L1310070. I believe this is the buccal swab from
20 Johnny Brown.

21 Q. When did you receive that?

22 A. I received this into my custody on
23 December 3, 2013.

24 Q. Did it appear to have been tampered
25 with or modified in any way?

SAMUEL STEWART - DIRECT EXAM BY MS. ELLIOTT

1 A. It does not.

2 Q. Who did you receive it from?

3 A. Stephanie Stanley.

4 MS. ELLIOTT: The State would offer
5 into evidence what was marked as State's Exhibit 9
6 and 10.

7 THE COURT: Any objection?

8 MR. COCHRAN: No, Your Honor.

9 THE COURT: Marked and admitted
10 without objection, State's Exhibits 9 and
11 10.

12 (PLF. EXH. 9 in evidence.)

13 (PLF. EXH. 10 in evidence.)

14 BY MS. ELLIOTT:

15 Q. I'm sorry, you were about to go over
16 your results. What were your results on the items
17 that you tested?

18 A. I tested 1.2, which was the vaginal
19 swabs, item 1.7, which was the buccal swab from
20 [Minor], and item 6, which was the buccal
21 swabs from Johnny Brown.

22 Q. And what were your results?

23 A. No DNA profile foreign to [Minor]
24 was developed from item 1.2. If I may explain what
25 that means, is that the only DNA profile I found on

SAMUEL STEWART - DIRECT EXAM BY MS. ELLIOTT

1 the vaginal swab belonged to [Minor], and no Y
2 STR DNA profile was developed on the sperm specimen
3 of item 1.2.

4 If I may explain. We also did Y
5 testing here as well. That is a method that we
6 have at SLED where we only test male DNA that's
7 found on the Y chromosome, but it's only exclusive
8 to male DNA and I did not -- like I said in my
9 report, no Y STR DNA profile was developed.

10 Q. When you did the testing, were you
11 aware that the vaginal had swab indicated positive
12 for semen?

13 A. Yes, I did.

14 Q. The fact that you did not find male DNA
15 in that vaginal swab, does that mean that that
16 wasn't semen?

17 A. No. That means there was still
18 possible semen there. I just did not have any
19 genetic material from the sperm cells which we
20 needed to develop the male DNA profile.

21 MS. ELLIOTT: Court's indulgence, Your
22 Honor?

23 No further questions. Thank you.

24 THE COURT: Any questions for the
25 witness?

SAMUEL STEWART - CROSS EXAM BY MR. COCHRAN

1 MR. COCHRAN: Briefly, Your Honor.

2 THE COURT: You may proceed.

3 MR. COCHRAN: Thank you.

4 THE COURT: You're welcome.

5 CROSS-EXAMINATION

6 BY MR. COCHRAN:

7 Q. To clarify a little bit what we've been
8 going over here, so you had a buccal swab from
9 [REDACTED] Minor, correct?

10 A. That's correct.

11 Q. And a buccal swab from Johnny Brown,
12 that's correct?

13 A. That's correct.

14 Q. And those are what would be your known
15 samples?

16 A. That's correct.

17 Q. So you know that buccal swab is Johnny
18 Brown's DNA and the other buccal swab is [REDACTED] Minor
19 [REDACTED] DNA.

20 A. That's correct.

21 Q. And did you test the substance or --
22 attempted to develop a DNA profile from the vaginal
23 swabs and tested them against the DNA profiles you
24 have from those known samples?

25 A. That's correct.

SAMUEL STEWART - CROSS EXAM BY MR. COCHRAN

1 Q. So you get seminal fluid from the
2 vaginal swab, correct?

3 A. I'm sorry, repeat that again.

4 Q. There was seminal fluid from the
5 vaginal swab?

6 A. Yeah. There was -- I believe there was
7 a positive test with a possible presence of semen
8 was found.

9 Q. Okay. So it's possible that it was
10 semen?

11 A. That is correct.

12 Q. But it's also possible that it was a
13 fluid that would be found in the female body as
14 well?

15 A. That is also possible.

16 Q. And in no way did the testing from the
17 vaginal swab in any way match the DNA profile
18 developed from the known sample for Johnny Brown?

19 A. No, it did not.

20 Q. And DNA testing, as you said, is pretty
21 accurate; is that correct?

22 A. Yes.

23 Q. And when you have what would be, I
24 guess, commonly referred to as a DNA hit, that can
25 be -- that can rule out other sources of that DNA

SAMUEL STEWART - REDIRECT EXAM BY MS. ELLIOTT

1 into the quadrillions, correct?

2 A. It is possible.

3 MR. COCHRAN: No more questions.

4 THE COURT: Any redirect?

5 MS. ELLIOTT: Your Honor, one moment.

6 REDIRECT EXAMINATION

7 BY MS. ELLIOTT:

8 Q. Can you have semen present without
9 sperm being present?

10 A. Yes, that is possible.

11 MS. ELLIOTT: Nothing further.

12 THE COURT: Any objection to the
13 witness being excused? From the State?

14 MS. ELLIOTT: None from the State.

15 THE COURT: From the defense?

16 MR. COCHRAN: No, Your Honor.

17 THE COURT: Sir, you're excused.

18 Call your next witness.

19 MS. HERRING-LASH: The State would call
20 Elizabeth McLaughlin.

21 ELIZABETH MCLAUGHLIN

22 being first duly sworn, testified as follows:

23 THE CLERK: Please give us your full
24 name and spell your last.

25 THE WITNESS: Elizabeth McLaughlin,

ELIZABETH MCLAUGHLIN - DIRECT EXAM BY MS. HERRING-LASH

1 M-C-L-A-U-G-H-L-I-N.

2 DIRECT EXAMINATION

3 BY MS. HERRING-LASH:

4 Q. Ms. McLaughlin, where do you work?

5 A. MUSC in the lab.

6 Q. And how long have you worked there?

7 A. Since 2001.

8 Q. And which lab do you work in?

9 A. Molecular pathology.

10 Q. And what are your duties in the
11 molecular pathology lab?

12 A. Everything, I do it all.

13 Q. And can you give the jury an example of
14 like what you do?

15 A. We run various lab tests, most of it is
16 infectious disease.

17 Q. And were you working on June 21st of
18 2013?

19 A. Yes.

20 Q. And did you deal with vaginal swabs
21 from [REDACTED] Minor ?

22 A. Yes.

23 Q. And how do you first get your swab that
24 you deal with, what do you do?

25 A. I pick it up from microbiology.

ELIZABETH MCLAUGHLIN - DIRECT EXAM BY MS. HERRING-LASH

1 Q. And I think earlier today we heard from
2 Sonja Johnson. Is she a person that works in
3 microbiology?

4 A. Yes.

5 Q. And so do you bring it to molecular
6 pathology?

7 A. Yes.

8 Q. What do you do with it?

9 A. At that point, I make a work list of
10 all the patients that have to be run that day and
11 put them in alphabetical order. And then I go
12 through all the samples and match the name and the
13 medical record number, date of birth, sample type,
14 and put them in order that I have on my work list.
15 And then I put them on the instrument.

16 And the door is locked once I put it on
17 the instrument and it actually punctures the top of
18 the tube and samples it.

19 Q. Now, by puncture the top of the tube,
20 that would mean that until it's locked in the tube
21 it has not been opened?

22 A. Right.

23 Q. And so the instrument that it is locked
24 in actually punctures the tube?

25 A. Yes.

ELIZABETH MCLAUGHLIN - DIRECT EXAM BY MS. HERRING-LASH

1 Q. And what does -- what do you find out
2 from that instrument?

3 A. Gonorrhea and chlamydia.

4 Q. So the instrument is really doing the
5 actual testing?

6 A. Yes.

7 Q. And when you remove the -- do you
8 remove the -- I guess it's the specimen?

9 A. Once it's complete, the doors unlock
10 and you can take them off.

11 Q. And then what do you do?

12 A. We put them in a rack in the same order
13 they were put on the instrument, and they are
14 covered and stored in a walk-in refrigerator.

15 Q. When do you make the notes in your work
16 order, whether they're negative or positive?

17 A. The instrument prints off the data for
18 us and we put -- on our work list, we put if it's
19 gonorrhea positive or chlamydia positive, and we
20 don't put anything if it's negative. And then we
21 give it to a coworker to check that transcription.

22 Q. After you mark it, it's like your
23 co-worker peer reviews --

24 A. Yes, they check it.

25 Q. With Minor samples, was it positive or

ELIZABETH MCLAUGHLIN - DIRECT EXAM BY MS. HERRING-LASH

1 negative?

2 A. Positive.

3 Q. And you have reviewed your results list
4 for that day?

5 A. Yes.

6 MS. HERRING-LASH: That's all the
7 questions I have, Ms. McLaughlin. If you would
8 answer any that Mr. Cochran may have.

9 THE COURT: Any questions for the
10 witness?

11 MR. COCHRAN: None, Your Honor.

12 THE COURT: Any objection to the
13 witness being excused? From the State?

14 MS. HERRING-LASH: No, Your Honor.

15 THE COURT: Ma'am, you're excused.

16 THE WITNESS: Thank you.

17 THE COURT: Call your next witness.

18 MS. HERRING-LASH: Darlene Keenen.

19 DARLENE KEENEN,

20 being first duly sworn, testified as follows:

21 THE CLERK: Have a seat please. Please
22 state your full name and spell your last name.

23 THE WITNESS: My name is Darlene
24 Keenen, K-E-E-N-E-N.

25 THE COURT: You may proceed.

DARLENE KEENEN - DIRECT EXAM BY MS. HERRING-LASH

1 DIRECT EXAMINATION

2 BY MS. HERRING-LASH:

3 Q. And, Ms. Keenen, where do you work?

4 A. I work at MUSC Hospital in the
5 microbiology lab.

6 Q. And how long have you worked there?

7 A. I've been there about
8 two-and-a-half-years.

9 Q. What are your duties?

10 A. I'm a medical technologist. I do
11 anything from intake to processing of cultures.

12 Q. And do you know that if you were
13 working on June 26th of 2013 in that lab?

14 A. Yes, I was.

15 Q. And on that date what would you have
16 been doing?

17 A. I would have been plating cultures.

18 Q. What does that mean?

19 A. That means as we receive the cultures,
20 they go from the front where they're ordered and
21 then to the tray. And I take the tray into the
22 back where I have my lab coat and gloves on and I
23 process them, whether it be to put them into the
24 proper media or the proper transport container.

25 Q. And on that day, did you work with a

DARLENE KEENEN - DIRECT EXAM BY MS. HERRING-LASH

1 tube left there -- left in that lab from Nancy Hall
2 regarding Johnny Brown's urine?

3 A. Yes.

4 Q. And what did you do with it?

5 A. The urine was in a tube and it came to
6 me. I took it back under the hood and I
7 transferred it to a GenProbe tube which has a
8 solution specific for that test.

9 Q. And when you say, hood, it's like a
10 cover over it so that it's --

11 A. It's a cabinet with negative pressure,
12 the air inside, and there's a glass, and we put our
13 hands inside the glass. So it's -- it's -- it
14 gives the best possible sterile technique.

15 Q. And from there, what do you do with the
16 Gen-Probe tube, or did I say that right?

17 A. No, it's correct.

18 Q. Okay.

19 A. Yes. From there, after it's
20 transferred the urine, we make sure it's fully
21 capped and everything matches, the name and
22 everything matches the specimen, then we put it
23 into the rack in the front that says molecular
24 pathology, and it goes with those samples and it's
25 picked up.

DARLENE KEENEN - DIRECT EXAM BY MS. HERRING-LASH

1 Q. You-all call molecular pathology mole
2 pat for short, don't you?

3 A. Yes.

4 Q. So after you've done that, mole pat
5 would pick it up?

6 A. Yes, ma'am.

7 MS. HERRING-LASH: Those are all the
8 questions I have. Answer any Mr. Cochran may have.

9 THE COURT: You may proceed.

10 MR. COCHRAN: No questions, Your Honor.

11 THE COURT: Any objection to the
12 witness being excused? From the State?

13 MS. HERRING-LASH: No, Your Honor.

14 THE COURT: From the defense?

15 MR. COCHRAN: No.

16 THE COURT: Ma'am, you're excused.

17 THE WITNESS: Thank you.

18 THE COURT: Call your next witness.

19 MS. HERRING-LASH: The State would call
20 Allen Johns.

21 ALLEN JOHNS,

22 being first duly sworn, testified as follows:

23 THE CLERK: Give us your full name and
24 spell your last.

25 THE WITNESS: Allen Thomas Johns,

ALLEN JOHNS - DIRECT EXAM BY MS. HERRING-LASH

1 J-O-H-N-S.

2 THE COURT: You may proceed.

3 DIRECT EXAMINATION

4 BY MS. HERRING-LASH:

5 Q. Mr. Johns, where do you work?

6 A. Medical University of South Carolina.

7 Q. And what -- do you work in a lab there?

8 A. Yes, I do.

9 Q. Which lab do you work in?

10 A. I work in the molecular pathology lab.

11 Q. How long have you been in the molecular
12 pathology lab?

13 A. This is my 19th year.

14 Q. And what are your duties at the
15 molecular pathology lab, Mr. Johns?

16 A. Well, we handle patient specimens. We
17 essentially receive...

18 Q. If you will speak into the microphone.

19 A. Oh, yes. We receive patient specimens,
20 we log them in when we get them. We perform viral
21 load testing and some quantitative testing, which
22 means it's yes or no, they do or do not have the
23 disease.

24 Q. So you mainly use an instrument that
25 tests for the presence of infectious diseases?

ALLEN JOHNS - DIRECT EXAM BY MS. HERRING-LASH

1 A. Yes, we do.

2 Q. And were you working on June 26th of
3 2013 in the molecular pathology lab?

4 A. Yes, I was.

5 Q. And on that day, did you receive or go
6 and pick up a Gen-Probe tube regarding Johnny
7 Brown?

8 A. Yes.

9 Q. And where did you pick it up from?

10 A. I picked it up from micro,
11 microbiology.

12 Q. And after you picked it up from micro,
13 what do you do with it?

14 A. I would take it directly back to the
15 testing area.

16 Q. And then once you get back there, what
17 do you do?

18 A. Well, before I go get it, I print up my
19 work list, and then I line up my specimens,
20 matching them to my work list. Then we put them in
21 alphabetical order and we also number them for the
22 location, and then we would put them on the rack to
23 put them onto the analyzer.

24 Q. So all of these have names and
25 accession numbers to match up?

ALLEN JOHNS - DIRECT EXAM BY MS. HERRING-LASH

1 A. Yes. They -- we -- we have a lot of
2 information, but, yes, the accession numbers and
3 MRN is there and the individual number they gave --
4 trying to think -- and the name would all be there
5 to match up.

6 Q. What do you do with it after you get it
7 all lined up and you're assured that the patient is
8 lined up with the work order?

9 A. Well, we -- when we -- as we line it
10 up, we would also put it on the rack that goes on
11 the analyzer. And then after we have those all
12 lined up properly, we place them on the analyzer.

13 Q. And then what do you do with it?

14 A. Well, we lock it down and it would scan
15 them in. And then if there were any bar codes it
16 could not read, it would tell us.

17 Q. The machine -- the instrument?

18 A. Yes.

19 Q. So it's doing a lot of work in there?

20 A. Yes. Yes. It pretty much does all of
21 the analyzing work.

22 Q. What do you call that?

23 A. At that point you're using the Tigress.

24 Q. The Tigress?

25 A. Yes.

ALLEN JOHNS - DIRECT EXAM BY MS. HERRING-LASH

1 Q. And then does the Tigress lock down?

2 A. Yes, it does.

3 Q. And what happens after that?

4 A. After it's locked -- well, when you put
5 the specimen on and it locks down, it will take
6 them around and read them all. And then after
7 everything is read and it's happy, it would start
8 to analyze the specimens.

9 Q. And then does it give you the results?

10 A. Yes, it does.

11 Q. Okay. And then do you get a sheet with
12 the results?

13 A. Yes, we do.

14 Q. And do you match those up?

15 A. Well, what we do is -- it tells us --
16 it would tell us how many positive results we have
17 and how many positive TTs we have, and how many
18 positive GCs, which is gonorrhea and chlamydia.
19 And we would go through and transpose them onto our
20 work list, matching up the positive accession
21 numbers with the accession number on the worksheet
22 and the results there.

23 And after we're done, we give it to one
24 of the other techs, and they go behind us to make
25 sure that we transposed it accurately, and then the

ALLEN JOHNS - DIRECT EXAM BY MS. HERRING-LASH

1 results would go into the Discerner System and
2 verify the results, print out a daily activity
3 report that we would give to another technician to
4 check and make sure that the information we put
5 into the Discerner System is correct.

6 Q. Did you get results on this urine that
7 you put in from Johnny Brown?

8 A. Yes, I did.

9 Q. And what was that?

10 A. It was positive.

11 Q. Positive for what?

12 A. That I cannot remember.

13 Q. Okay. Should I -- can I show you
14 the --

15 A. Yes, you can.

16 MS. HERRING-LASH: Your Honor, may I
17 approach?

18 THE COURT: You may.

19 BY MS. HERRING-LASH:

20 Q. I want to show you the results sheet.

21 A. That would be it. That would be
22 positive for gonorrhea.

23 MS. HERRING-LASH: Okay. Those are all
24 the questions I have, Mr. Johns. Answer any
25 questions that Mr. Cochran would have.

FREDERICK NOLTE, M.D. - DIRECT EXAM BY MS. HERRING-LASH

1 THE COURT: You may proceed.

2 MR. COCHRAN: No questions.

3 THE COURT: Any objection to the
4 witness being excused? From the State?

5 MS. HERRING-LASH: No, Your Honor.

6 THE COURT: From the defense?

7 MR. COCHRAN: No, Your Honor.

8 THE COURT: Sir, you're excused.

9 THE WITNESS: Thank you.

10 THE COURT: You're welcome.

11 Call your next witness.

12 MS. HERRING-LASH: The State would call
13 Dr. Fredrick Nolte.

14 FREDRICK NOLTE, M.D.,
15 being first duly sworn, testified as follows:

16 THE CLERK: Have a seat please. Give
17 us your full name and spell your last.

18 THE WITNESS: Fredrick S. Nolte,
19 N-O-L-T-E.

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION

22 BY MS. HERRING-LASH:

23 Q. What is your educational background,
24 Dr. Nolte?

25 A. I have a Bachelor's of Science in

FREDERICK NOLTE, M.D. - DIRECT EXAM BY MS. HERRING-LASH

1 biology from the University of Cincinnati, Phd in
2 Medical Microbiology from Ohio State University,
3 and then post-doctoral fellowship training in
4 medical microbiology and public health microbiology
5 at the University of Rochester, Rochester, New
6 York.

7 Q. And at this time do you work at the
8 Medical University of South Carolina?

9 A. I do.

10 Q. And what are your duties there?

11 A. There are multiple duties. I'm
12 professor and vice chair of pathology and
13 laboratory medicine. My specific responsibilities
14 have to do with the laboratory medicine division of
15 clinical laboratories. My administrative role is
16 medical director for the clinical laboratories. In
17 addition to that, I have some smaller roles within
18 the clinical laboratories, one of them is director
19 of our molecular pathology lab.

20 Q. Is your title -- are you a molecular
21 pathologist? Or what is your title for what your
22 professional expertise is?

23 A. I have --

24 Q. If you have one.

25 A. I have several. Medical microbiology

FREDERICK NOLTE, M.D. - DIRECT EXAM BY MS. HERRING-LASH

1 and molecular pathology are two areas within lab
2 medicine that I have special expertise.

3 MS. HERRING-LASH: Your Honor at this
4 point, I would offer Dr. Nolte as an expert in
5 medical biology and molecular pathology.

6 THE COURT: Any objections or
7 questions?

8 MR. COCHRAN: No, Your Honor.

9 THE COURT: So admitted without
10 objection. You may proceed.

11 BY MS. HERRING-LASH:

12 Q. Now, up until this point, Dr. Nolte, we
13 have heard testimony regarding specimens from
14 Minor and Johnny Brown that were transported
15 to molecular pathology for testing. Does your
16 molecular pathology lab take precaution to ensure
17 that samples are handled accurately and to prevent
18 contamination?

19 A. Yes, we do.

20 Q. Why is that important?

21 A. Well, it's important to maintain the
22 integrity of samples and to maintain the integrity
23 of the results because at the end of every test
24 result is a patient.

25 Q. And patient care is your lab's main

1 focus?

2 A. Yes, it is.

3 Q. And the testing is done -- I guess
4 we've heard the infectious disease, STD -- STI is
5 it now called? What is that?

6 A. Well, STD stands for sexually
7 transmitted diseases. STI stands for sexually
8 transmitted infection. Both terms are suitable or
9 usable.

10 Q. What does that mean?

11 A. Those are a series of diseases or
12 infections that are transmitted primarily by sexual
13 contact.

14 Q. Is gonorrhea one of those?

15 A. Yes, it is.

16 Q. And is gonorrhea transmitted sexually?

17 A. Yes, it is.

18 Q. Now, addressing the samples that we've
19 heard about, there was a vaginal swab tested on

20 Minor What kind of testing would be done
21 for that?

22 A. There were three tests that were done
23 on that vaginal swab for three different sexually
24 transmitted infections, Neisseria gonorrhoeae,
25 chlamydia trichomonas, and trichomonas vaginitis.

FREDERICK NOLTE, M.D. - DIRECT EXAM BY MS. HERRING-LASH

1 Q. Did she test positive for one of those?

2 A. Yes, she did.

3 Q. And what was that?

4 A. Neisseria gonorrhea.

5 Q. And after this testing is done, are the
6 results posted for a medical provider to access?

7 A. Yes. They're posted to the electronic
8 medical record.

9 Q. And was testing also done in your
10 molecular pathology lab for Johnny Brown?

11 A. Yes, ma'am.

12 Q. And what kind of sample was used for
13 that?

14 A. That was a urine.

15 Q. Why would one be a swab and one be
16 urine?

17 A. The preferred specimen for a male for
18 testing for gonorrhea and chlamydia is a urine.

19 Q. Is that mainly for comfort of the male?

20 A. It's for the comfort of the male versus
21 a urethra swab. Also, there's no difference in the
22 analytical sensitivities between a urethral swab
23 and a urine sample in men.

24 Q. What were the results of his urine
25 testing?

FREDERICK NOLTE, M.D. - DIRECT EXAM BY MS. HERRING-LASH

1 A. It was positive for Neisseria
2 gonorrhea.

3 Q. So would you say to a reasonable degree
4 of medical certainty that both [Minor] and
5 Johnny Brown had the sexually transmitted -- or
6 tested positive for the sexually transmitted
7 disease of gonorrhea?

8 A. Yes, ma'am.

9 Q. Now, when your lab is working with this
10 material, you don't receive any information
11 regarding the facts about the cases, do you?

12 A. Well, I mean, other than patient
13 demographic information, age, location, medical
14 record number. Those sorts of things.

15 Q. And you don't know if these two people
16 have ever had contact?

17 A. Certainly not.

18 Q. You're just simply doing the lab
19 testing? Well, not simply, but doing the lab
20 testing?

21 A. Yes.

22 MS. HERRING-LASH: Court's indulgence?

23 THE COURT: Yes, ma'am.

24 MS. HERRING-LASH: I think those are
25 all the questions I have, Dr. Nolte. Thank you.

FREDERICK NOLTE, M.D. - CROSS EXAM BY MR. COCHRAN

1 THE WITNESS: Thank you.

2 THE COURT: Any questions for the
3 witness?

4 MR. COCHRAN: Just briefly.

5 THE COURT: You may proceed.

6 CROSS-EXAMINATION

7 BY MR. COCHRAN:

8 Q. I believe the Solicitor touched on
9 this. If somebody tests positive, if you just look
10 at their positive test for an infection like
11 gonorrhea, there's no way of determining how they
12 contracted that infection or the source of that?
13 Other than sexual intercourse generally?

14 A. The general way that Neisseria
15 gonorrhea is transmitted is via sexual contact, but
16 we have no -- we have two tests that are positive.

17 Q. Okay. You can't determine the source
18 of where that person contracted it? Who gave it to
19 them?

20 A. No.

21 MR. COCHRAN: Okay. Thank you. No
22 more questions.

23 THE COURT: Any redirect?

24 MS. HERRING-LASH: No, Your Honor.

25 THE COURT: Any objection to the

JOANN ROOT - DIRECT EXAM BY MS. ELLIOTT

1 witness being excused? From the State?
2 MS. HERRING-LASH: None, Your Honor.
3 THE COURT: From the defense?
4 MR. COCHRAN: No, Your Honor.
5 THE COURT: Sir, you're excused.
6 THE WITNESS: Thank you.
7 THE COURT: You're welcome.
8 You may call your next witness.
9 MS. ELLIOTT: The State calls Jo Ann
10 Root.

11 JO ANN ROOT,
12 being first duly sworn, testified as follows:
13 THE CLERK: Have a seat please. Give
14 us your full name and please spell your last.
15 THE WITNESS: Jo Ann Root, R-O-O-T.
16 THE COURT: You may proceed.

17 DIRECT EXAMINATION

18 BY MS. ELLIOTT:

19 Q. If you would please speak up a little
20 bit more.
21 A. Sure.
22 Q. What do you do for a living?
23 A. I'm a registered nurse, a school nurse
24 right now.
25 Q. And at what school?

JOANN ROOT - DIRECT EXAM BY MS. ELLIOTT

1 A. I work at Fort Johnson Middle School.

2 Q. What are your duties and
3 responsibilities as a school nurse?

4 A. I'm in charge of the health, safety and
5 health management of the study body. I'm a first
6 responder for accidents or incidents that occur at
7 school and I'm in charge of wellness for staff and
8 students.

9 Q. And in the course of your employment,
10 did you have cause to meet with [Minor] ?

11 A. I did.

12 Q. Why did she come in to see you?

13 A. I had paperwork that [Minor] was
14 diagnosed with Diabetes Type II from the Medical
15 University, and it's protocol that I need to meet
16 with her and her guardian or parent to set up an
17 individualized healthcare plan for her at school.

18 Q. Why would that information be
19 important?

20 A. That would be important because she --
21 I would -- I am in charge of managing her diabetes
22 care and collaborating with her physicians and
23 family and with [Minor] on monitoring her insulin,
24 blood sugar and making sure that the staff is aware
25 of her diagnosis in case there is an emergency.

JOANN ROOT - DIRECT EXAM BY MS. ELLIOTT

1 Q. So you said you developed a health
2 plan. How do you do that?

3 A. You take the information that the
4 physician gives you and you develop a time and a
5 place that the student will come based on their
6 healthcare needs to check their blood sugar
7 throughout the school day to give them -- help them
8 get their insulin, to count up how much they eat,
9 and you actually type up a healthcare plan that has
10 to be signed by the parent, and you have to have
11 the physician's documentation of the healthcare
12 plan and it has to be reviewed with the teachers
13 and staff.

14 Q. What was Minor reaction to how she
15 was first diagnosed with diabetes?

16 A. She looked down. She put her head down
17 and tears started streaming down her face. She --
18 she wouldn't look up. She was talking very
19 quietly.

20 Q. Did she disclose to you a sexual
21 assault?

22 A. She did.

23 Q. Did she tell you where it happened?

24 A. At her home.

25 Q. And did she tell you when it happened?

JOANN ROOT - DIRECT EXAM BY MS. ELLIOTT

1 A. She told me it happened in the summer.

2 Q. When did this conversation take place?

3 A. This conversation took place within the
4 first week of school.

5 Q. So that would have been around mid
6 August?

7 A. Around August 21st.

8 Q. And can you describe her demeanor
9 throughout the time when she was talking about the
10 assault?

11 A. Very quietly talking, tears just
12 streaming down her face. She had' her head down.
13 She had her hands -- she was kind of twisting her
14 hands in her lap, very sad, very sad.

15 Q. What did you do as a result of the
16 conversation?

17 A. The first thing that I did was I called
18 Lowcountry Children's Center and spoke with Amy
19 Shaw who is the Charleston County liaison and asked
20 if it had been reported. And she verified that it
21 had been reported. Then I called Minor mother
22 and asked her to come in and talk to me about the
23 situation.

24 Q. And the reason you made the phone call
25 because you're a mandatory reporter?

JOANN ROOT - DIRECT EXAM BY MS. ELLIOTT

1 A. Exactly, yes.

2 Q. Did you ever have any reason to meet
3 with her again to discuss the matter?

4 A. I had to meet with Minor three times a
5 day every day, at a minimum, just to check her
6 blood sugar and to manage her diabetes. She came
7 much more often than that because she frequently
8 cried in the classroom, put her head down, sucked
9 her thumb, wouldn't lift her head, and I was often
10 called to the classroom to check whether it was the
11 blood sugar. And many times she disclosed that she
12 was thinking -- she would say --

13 MR. COCHRAN: Objection.

14 THE COURT: Sustained.

15 BY MS. ELLIOTT:

16 Q. What did you do, if anything, because
17 of Minor behavior, the crying and upsetness when
18 she would come to you?

19 A. I met with the guidance counselor and
20 her mother and called Lowcountry Children's Center
21 back to see if the counselling was set up for her.
22 She said group counseling had been set up. She had
23 not attended at that time. I called the Medical
24 University Outreach, community Outreach, and asked
25 if counseling could be brought into the school.

JOANN ROOT - DIRECT EXAM BY MS. ELLIOTT

1 Q. And are you aware if she engaged in
2 counselling in the school?

3 A. She engaged in counselling in the
4 school in the office right next to mine.

5 Q. And once she engaged in that, did you
6 notice any change in her behavior or demeanor or
7 appearance?

8 A. Absolutely. She began making eye
9 contact. There was less crying, more smiling, she
10 began to dress more feminine, in dresses, and
11 fixing her hair and less sucking her thumb and less
12 wanting to stay in the nurse's office than she had
13 the months before.

14 MS. ELLIOTT: Court's indulgence?

15 THE COURT: Uh-huh.

16 MS. ELLIOTT: Those are all the
17 questions I have. Please answer any Mr. Cochran
18 might have.

19 THE COURT: Any questions for the
20 witness?

21 MR. COCHRAN: No, Your Honor.

22 THE COURT: Any objection to the
23 witness being excused? From the State?

24 MS. ELLIOTT: No, Your Honor.

25 THE COURT: From the defense?

1 MR. COCHRAN: No, Your Honor.

2 THE COURT: Ma'am, you're excused.

3 THE WITNESS: Thank you.

4 THE COURT: Madame Forelady, we are
5 going to take advantage of this break in testimony.
6 During the break, please do not discuss the case
7 and leave your notepads in your seats. Go with the
8 bailiffs please.

9 (Jury out, 3:06 p.m.)

10 THE COURT: Is there anybody on the
11 list the State does not intend to call?

12 MS. ELLIOTT: Your Honor, at this point
13 the State is done, so anyone remaining on the list
14 we do not intend to call.

15 THE COURT: Does the State rest?

16 MS. ELLIOTT: We do.

17 THE COURT: The State has rested. Are
18 there any motions?

19 MR. COCHRAN: Yes, Your Honor. Just to
20 renew all motions and objections previously made
21 and to move for a directed verdict. Your Honor, we
22 would note for the record that there was no DNA or
23 physical evidence to support the accusation of the
24 case, and we would like to point out for the record
25 that I do not believe Minor ever identified

1 here in court my client. She never pointed to him
2 as her assailant and did not otherwise identify
3 him, other than by using a nickname.

4 THE COURT: Anything further?

5 MR. COCHRAN: No, Your Honor.

6 THE COURT: Would the State like to
7 respond?

8 MS. ELLIOTT: Your Honor, there needs
9 to be -- for the matter of directed motion, there
10 needs to be no corroborating evidence other than
11 the **Minor**'s allegation. She did identify the
12 defendant as Squirt and her mother pointed out who
13 Squirt was by a nickname. And also --

14 THE COURT: Can you repeat that
15 nickname again please?

16 MS. ELLIOTT: Squirt.

17 THE COURT: Okay. Thank you.
18 Anything further?

19 MS. ELLIOTT: That's all, Your Honor.

20 THE COURT: When considering a motion
21 for directed verdict, the Court is concerned with
22 the existence or nonexistence of evidence and not
23 its weight. The Court is not the fact finder. I
24 only need to determine whether the State has
25 established evidence sufficient -- direct evidence

1 as well as substantial circumstantial evidence
2 reasonably tending to prove the defendant's guilt
3 regarding the elements of the criminal sexual
4 conduct in the first degree with a minor as well as
5 in the third degree with a minor.

6 As a preliminary matter, code section
7 16 through 651, as well as 657, provides that there
8 need not be any corroboration in any way, other
9 than the victim's word in a criminal sexual conduct
10 case. So the grounds on that basis are denied as
11 there is not necessitated corroboration of her
12 story, nor is it required. The legislature has
13 determined in its province it is not necessary.

14 As regards to the elements of criminal
15 sexual conduct in the third degree, as well as in
16 the first degree, there has been direct as well as
17 substantial circumstantial evidence reasonably
18 tending to prove the defendant's guilt and,
19 therefore, the motion is denied. And all of the
20 previous -- renewal of any previous objections
21 made, the Court will simply incorporate its
22 previous rulings for purposes of the record.

23 All right. Is there any record the
24 State would be seeking to introduce to impeach the
25 defendant's credibility?

1 MS. ELLIOTT: He has two prior
2 burglaries, Your Honor, and we would seek to admit
3 those.

4 THE COURT: What years?

5 MS. ELLIOTT: They are 2007 and 2008.
6 Verifying that -- yes, 2007 and 2008.

7 THE COURT: Burglary in what?

8 MS. ELLIOTT: Second degree,
9 nonviolent.

10 THE COURT: Do they involve a theft?

11 MS. ELLIOTT: They do, Your Honor.

12 THE COURT: What are the allegations?
13 Did he plead guilty or was he found guilty by a
14 jury?

15 MS. ELLIOTT: He pled guilty in both
16 cases.

17 THE COURT: What's alleged to have
18 occurred?

19 MS. ELLIOTT: Your Honor, I do not have
20 that off of the top of my head. If you can give me
21 a minute, I can pull it up on the computer I
22 believe.

23 MS. HERRING-LASH: I can get the files.
24 They're on my desk. I can run next door and get
25 the burglary files.

1 THE COURT: Okay.

2 MR. COCHRAN: Your Honor?

3 THE COURT: Yes.

4 MR. COCHRAN: My client and I have not
5 come to a decision as to whether he wants to
6 testify. Should we use this time --

7 THE COURT: I need to question him
8 first and then I'll give you a break to talk to
9 him. I need to know the substance of these
10 burglaries so I can make a decision as to whether
11 they would be admissible to impeach him so you can
12 have a meaningful conversation.

13 MR. COCHRAN: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 MS. ELLIOTT: Your Honor, would you
16 like me to read them?

17 THE COURT: I need to know the
18 substance of the allegations.

19 MS. ELLIOTT: Yes, Your Honor.

20 He also has a possession of a stolen
21 motor vehicle from that time as well.

22 THE COURT: It would have to involve a
23 theft as well. What year was that?

24 MS. ELLIOTT: That is '07. I want to
25 make sure that these numbers coordinate with the

1 sentencing sheets that I'm reading.

2 As to the warrant number K259434, date
3 of offense was 8/10/07, in which he entered a
4 guilty plea on 12/21/07. So the defendant did
5 enter the residence by forcing open the front door.
6 Once inside he did steal, take, or carry away a
7 camcorder, Master Card credit card, some mail and
8 some -- a car and car keys.

9 THE COURT: Is that the 2007 or 2008?

10 MS. ELLIOTT: That is the 2007, Your
11 Honor.

12 THE COURT: You said 2007?

13 MS. ELLIOTT: Yes, Your Honor.

14 THE COURT: What is the one for 2008?

15 MS. ELLIOTT: Judge, I believe that the
16 2008 allegations were coming out of the City of
17 Charleston. And they were that on March 3, 2008,
18 the defendant entered the victim's residence with
19 the intent to steal and did carry off -- he kicked
20 in the door and then carried off a Sony PlayStation
21 2 -- a Sony PlayStation 3, two PlayStation wireless
22 controllers, and ten Sony PlayStation video games,
23 a laptop, and an 8 gig iPod. And that warrant
24 number is K153992.

25 THE COURT: You would actually need an

1 indictment number for both of those. To impeach
2 him, you would need certified copies of the
3 conviction. What did he -- when he pled, what was
4 the sentence he received on each of them?

5 MS. ELLIOTT: On the '07, it was a
6 suspended sentence, and it was two years with
7 restitution, suspended on two years of probation.

8 THE COURT: And what year was his
9 probation to end?

10 MS. ELLIOTT: By my math, it would have
11 been December of '09.

12 As to the 2008, per his rap sheet, a
13 ten-year active sentence.

14 THE COURT: When was he released from
15 confinement?

16 MS. ELLIOTT: May 1, 2013.

17 THE COURT: What are the circumstances
18 of the possession of a stolen motor vehicle?

19 MS. ELLIOTT: That on 8/10/07, at 8:30
20 in the morning at Cross Creek Drive, the defendant
21 was located driving a 2004 Toyota 4Runner valued at
22 \$2300. The vehicle was located due to the fact
23 that the victim of the burglary interrupted the
24 burglary in process and that the defendant fled the
25 scene in this stolen car. They located the car --

1 THE COURT: I'm confused. Is this in
2 connection with one of these burglaries that you
3 have already indicated? Because when you said fled
4 -- I'm trying to figure out --

5 MS. ELLIOTT: Your Honor, looking at
6 this warrant, this would not -- he was
7 appropriately charged and pled to possession of a
8 stolen motor vehicle. They could not prove at that
9 time that he had stolen the vehicle.

10 THE COURT: Okay. Do you want to be
11 heard on the impeachment that the State would seek
12 to use against your client, Mr. Cochran?

13 MR. COCHRAN: Your Honor, we would just
14 argue that they would be unduly prejudicial and not
15 probative. Possession of a stolen vehicle --

16 THE COURT: I'm sorry, I didn't hear
17 you.

18 MS. ELLIOTT: We would object to all
19 three, Your Honor.

20 THE COURT: They're not seeking to
21 introduce the possession of a stolen vehicle. They
22 concede they can't prove it involved a theft.

23 MR. COCHRAN: Your Honor, we would
24 still object to the two burglaries as not being
25 probative to this case and being unduly

JOHNNY BROWN - EXAM BY THE COURT

1 prejudicial.

2 THE COURT: Sir, stand for me and raise
3 your right hand to be sworn.

4 JOHNNY TAMAR BROWN,
5 being first duly sworn, testified as follows:

6 THE DEFENDANT: Yes, ma'am.

7 EXAMINATION

8 BY THE COURT:

9 Q. You can put your hand down. State your
10 full name for the record.

11 A. Johnny Brown.

12 Q. Do you have a middle name?

13 A. Johnny Tamar Brown.

14 Q. I need you to speak up a little bit
15 more for me. Can you speak a little louder?

16 A. Johnny Tamar Brown.

17 Q. Sir, at this time I'm going to explain
18 certain of your rights. If you do not understand
19 something I say, please let me know. If you need
20 me to repeat or explain something in more detail,
21 let me know.

22 A. Yes, ma'am.

23 Q. We have reached the stage of the trial
24 where you may present your defense. You have the
25 right to claim the protections given to you by the

JOHNNY BROWN - EXAM BY THE COURT

1 Fifth Amendment of the Constitution of the United
2 States. And that Amendment states in part that no
3 person shall be compelled in any criminal case to
4 be a witness against himself.

5 This means that you cannot be required
6 to testify in this case. You have the right to
7 testify on your own behalf; however, no one can
8 make you testify. This is a personal right and no
9 can waive that right except you?

10 If you decide to testify, you will be
11 subject to the same rules that govern other
12 witnesses and you may be examined and
13 cross-examined on any relevant issue in this case.
14 In addition, if you have any convictions involving
15 dishonesty or false statement or for crimes
16 punishable by imprisonment for more than one year
17 and this court determines that the probative value
18 of admitting this evidence outweighs the
19 prejudicial effect to you, the Solicitor will be
20 able to introduce your record to attack your
21 credibility.

22 If you decide to testify, this decision
23 on your part must be made freely, voluntarily, and
24 intelligently with knowledge of the protections
25 given to you by the Fifth Amendment and the

JOHNNY BROWN - EXAM BY THE COURT

1 consequence of your decision to testify.

2 If you decide not to testify, I will
3 instruct the jury that they cannot consider that
4 fact in any manner whatsoever. There is to be no
5 prejudice to you whatsoever and that they cannot
6 discuss the fact that you did not testify in any
7 manner whatsoever.

8 I'll further instruct them that you
9 have no burden of proof in this case, that the
10 burden of proof remains on the State to prove each
11 and every element of the offense beyond a
12 reasonable doubt and that you have -- you do not
13 have to prove your innocence.

14 Sir, it is left entirely up to you
15 whether or not you testify. You may speak with
16 your attorneys, your family members, friends, or
17 anyone else, but the final decision is left
18 entirely up to you.

19 Sir, I will advise you that pursuant to
20 Rule 609, which is impeachment for crimes under our
21 Rules of Evidence, the 2007 and 2008 burglaries
22 will be admissible against you for the purposes of
23 impeaching your credibility as they involve theft
24 and they would be considered crimes of dishonesty.

25 I've determined that their probative

JOHNNY BROWN - EXAM BY THE COURT

1 value is -- that their prejudicial effect is
2 outweighed by their probative value. As this is a
3 credibility case and credibility is central to this
4 case; therefore, the matters -- the questioning in
5 that regard would be probative, and it would be of
6 consequence as it regards your credibility and it
7 is within the ten-year time limit, and the court
8 will allow the State to impeach you with those
9 offenses.

10 As regards the possession of a stolen
11 motor vehicle, there's no evidence in the record
12 that it involved a theft and the State concedes
13 that and it would not be admissible to impeach your
14 credibility.

15 Sir, have you understood your rights as
16 I've explained them to you?

17 A. Yes, ma'am.

18 Q. Do you need to ask me about anything
19 we've been over as it regards your rights as I've
20 explained them?

21 A. No, ma'am.

22 Q. Sir, I'm going to give you an
23 opportunity to talk with your lawyers and we will
24 be at ease for about ten minutes. And, then, at
25 that time, I will complete questioning you. Do you

JOHNNY BROWN - EXAM BY THE COURT

1 understand?

2 A. Yes, ma'am.

3 THE COURT: Okay. We'll be at ease.

4 MR. COCHRAN: Thank you, Your Honor.

5 You're welcome.

6 (A recess transpired.)

7 THE COURT: You may be seated.

8 Well, actually, I need you to stand.

9 Have you discussed with your lawyer whether you
10 should or should not testify?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you need to speak to
13 him any further at this time?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: And, sir, do you wish to
16 testify?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Okay. Now you can take
19 your seat.

20 Mr. Cochran, do you have any other
21 witnesses?

22 MR. COCHRAN: No, Your Honor.

23 THE COURT: So does the defense rest
24 as well?

25 MR. COCHRAN: Yes, Your Honor.

1 THE COURT: Are there any motions now
2 that the defense has rested?

3 MR. COCHRAN: I would just renew all
4 motions and objections previously made and
5 especially the motion for directed verdict.

6 MS. ELLIOTT: Your Honor, we have no
7 new arguments from those previously stated.

8 THE COURT: I've marked the motions as
9 renewed and deny them based on the previous ruling.

10 What we will do is I will bring the
11 jury back in and let the State rest in their
12 presence, let you rest in their presence, and then
13 we'll have charge conference. We'll close and
14 charge in the morning. Any exceptions from the
15 State?

16 MS. ELLIOTT: No, Your Honor.

17 THE COURT: From the defense?

18 MR. COCHRAN: No, Your Honor.

19 THE COURT: Please bring in the jury.

20 And, also, I meant to tell you-all, any
21 motions that you filed that you handed me a copy
22 of, you need to make sure that they were filed
23 because I don't file them.

24 One of the last ones that
25 Mrs. Herring-Lash gave me was the original.

1 MS. HERRING-LASH: I will get it filed.

2 (Jury in, 3:45 p.m.)

3 THE BAILIFF: All jurors present, Your
4 Honor.

5 THE COURT: Ladies and gentlemen, we
6 appreciate your patience. We had some matters of
7 law to take up before we resumed proceeding.

8 State may proceed.

9 MS. ELLIOTT: Your Honor, at this time
10 the State rests.

11 THE COURT: The defense may proceed.

12 MR. COCHRAN: Your Honor, the defense
13 rests.

14 THE COURT: Madame Forelady, ladies
15 and gentlemen, we have now reached the stage of the
16 trial where we will have closing argument and
17 instruction; however, there's some matters of law
18 that the attorneys and I need to take up that will
19 take us the remainder of the afternoon. We will
20 have closing argument and instruction in the
21 morning. And we will resume at 9:30 with closing
22 argument and instruction.

23 While you have heard all of the
24 evidence in this case, you have not heard closing
25 arguments or the Court's instruction. So it is

1 absolutely essential that you maintain an open mind
2 and that you not discuss this matter with anyone or
3 among yourselves.

4 I know it might seem simple to discuss
5 what you've heard, but to discuss what you've heard
6 requires you to process that information and draw
7 conclusions based upon it and you are only allowed
8 to do that once you have heard closing argument and
9 instruction, and then after that you're only to do
10 that in your jury room in your deliberative process
11 among your 12 jurors. So I would ask that you be
12 even more diligent in the court's instructions in
13 that regard.

14 Please do not post your status to any
15 social networking sites and have no contact with
16 anyone in or about the courthouse when you return
17 in the morning. I'm not aware of any media reports
18 about the case, but if there are any, please do not
19 watch, read, or listen to them and do not do any
20 independent research on the Internet.

21 As I've explained, as the fact finders
22 in this case, you are bound to decide the case
23 according to the testimony that you have heard from
24 the sworn witnesses and other evidence that has
25 been introduced.

1 We appreciate your patience. If you
2 would just stack your notepads on the bench as you
3 leave so we can secure them for the evening, and
4 we'll see you in the morning at 9:30.

5 Have a good evening.

6 (Jury out, 3:47 p.m.)

7 THE COURT: Okay. I will give the
8 jury a general instruction regarding their
9 responsibility and my responsibility, how they are
10 to judge witness credibility and believability. I
11 will give them a general instruction on expert
12 witness testimony.

13 I will give them a general instruction
14 regarding direct and circumstantial evidence -- you
15 know what I completely forgot? I printed some
16 things and left them on the printer. Bear with
17 me -- circumstantial evidence, that would include
18 the additional language on circumstantial evidence
19 that we're all familiar with.

20 I will give a general instruction that
21 the charge, the arrest, and the indictment is not
22 evidence, as well as presumption of innocence. I
23 will charge Victor versus Nebraska on reasonable
24 doubt, and I will also instruct regarding the
25 defendant not testifying, that it will not be held

1 against him in any manner whatsoever and it is not
2 to be discussed, that he has no burden of proof in
3 this case.

4 I will then instruct the elements of
5 criminal sexual conduct with a minor in the first
6 degree which is 16-3-655 (A)(2). I will then
7 instruct regarding multiple counts of criminal
8 sexual conduct, which means that each is a separate
9 count and each is not the same but a separate
10 occurrence.

11 And then I will instruct on multiple
12 charges, which is that each indictment charges
13 something separate, that they each must be proven
14 beyond a reasonable doubt, and that he can be
15 acquitted or convicted on any or all of the
16 offenses.

17 In regards to instructing first degree
18 criminal sexual conduct with a minor, I will
19 instruct 15-3-655 (A) in its totality. I will
20 instruct that the State must first prove a sexual
21 battery. Then I will instruct that the State must
22 prove beyond a reasonable doubt that the victim was
23 less than 16 years old and that the defendant has
24 previously been ordered to be included in the sex
25 offender registry pursuant to South Carolina Code

1 Annotated 23-3-430(D) at the time of the sexual
2 battery.

3 I will further instruct that evidence
4 that the defendant has been ordered to be included
5 in the sex offender registry pursuant to SC Code
6 Annotated 23-3-430(D) was not offered to prove that
7 the defendant has a bad character or to prove that
8 the defendant committed criminal sexual conduct on
9 this occasion. This prior registration may be
10 considered by you only for the purpose of
11 determining whether or not the State satisfies that
12 element of the offense that makes it first degree
13 criminal sexual conduct with a minor.

14 Before you can consider the evidence of
15 the defendant's prior registration, you must first
16 find that the State has proven beyond a reasonable
17 doubt that a sexual battery was committed by the
18 defendant. If you find beyond a reasonable doubt
19 that the sexual battery was committed, then you may
20 consider evidence of the prior registration as
21 evidence of the element, which would make the
22 criminal sexual conduct first degree -- criminal
23 sexual conduct with a minor. I think I may have --
24 with a minor first degree. I put my words in the
25 wrong place. No, actually that's the way I meant

1 to say it.

2 As evidence of the element which would
3 make the criminal sexual conduct first degree
4 criminal sexual conduct -- I think I'll just switch
5 because it's confusing. I know what I meant to say
6 but -- which would make the criminal sexual conduct
7 with a minor first degree.

8 If you do not find beyond a reasonable
9 doubt that the defendant has been ordered to be
10 included in the sex offender registry pursuant to
11 South Carolina Code Annotated Section 15 --
12 23-3-430(D), then you cannot return a verdict of
13 first degree criminal sexual conduct with a minor.

14 Consent, willingness, indifference, or
15 ignorance on the part of the minor as to what was
16 taking place does not in any way affect the charge
17 of criminal sexual conduct with a minor because an
18 unmarried woman under the age of 14 cannot give her
19 consent. I don't know that that's applicable under
20 these circumstances. The State is not proceeding
21 under the first part of the statute.

22 MS. HERRING-LASH: The part that we
23 were -- there are two parts --

24 THE COURT: There are two parts.

25 MS. HERRING-LASH: And we went under C

1 and not D because he -- C is where the whole list
2 of the crimes are and D is --

3 THE COURT: I deliberately did not
4 include that.

5 MS. HERRING-LASH: Okay.

6 THE COURT: The only thing you entered
7 into the record was registration pursuant to the
8 statute. There's no contention he had to register.
9 The testimony you presented was that he was
10 registered and was ordered to register.

11 MS. HERRING-LASH: But I did -- I did
12 ask if he was ordered to register under C.

13 THE COURT: I understand that, but I'm
14 not instructing C because C is that whole laundry
15 list of why you have to register.

16 MS. HERRING-LASH: Oh, okay. I wasn't
17 asking you to give the list.

18 THE COURT: I don't know if it's
19 necessary to say that because they don't know what
20 I'm referring to anyway. The germane one is that
21 he was ordered to register.

22 MS. HERRING-LASH: I just didn't want
23 it to look --

24 THE COURT: And out of an abundance of
25 caution I put in the statute, but I think to them

1 it ain't going to make a difference because they're
2 not going to know what I'm referring to anyway. So
3 I deliberately left out that other portion because
4 all it does is make a reference to what you're
5 required to register for. It was superfluous and
6 under these circumstances -- because we haven't
7 told the jury why he had to register, and I think
8 once you say that then you introduce something
9 that's not in evidence.

10 MS. HERRING-LASH: I did want it to be
11 clear that we weren't suggesting that it was under
12 D, when he would have been ordered by a court for
13 another crime that wasn't under C.

14 THE COURT: I will look at the statute
15 again, but I took the language from the statute
16 from that subsection that you went under. Bear
17 with me just one moment please.

18 And then I will instruct the elements
19 of third degree criminal sexual conduct with a
20 minor. And then I'll instruct them on the form of
21 the verdict and unanimity of the verdict.

22 Any exception to the charges? From the
23 State?

24 MS. HERRING-LASH: No exceptions, but I
25 don't know if you just didn't go over this, but I

1 think we did need a limiting instruction on both
2 Lyle and --

3 THE COURT: You know, I completely
4 eliminated that, and I apologize.

5 MS. HERRING-LASH: And the expert.

6 THE COURT: I did include expert
7 testimony.

8 MS. HERRING-LASH: I'm sorry.

9 THE COURT: But I didn't do a Lyle and
10 I will include that because that was my intention,
11 I just overlooked it.

12 MS. HERRING-LASH: And you did the
13 limited instruction on the sex offender registry.

14 THE COURT: I read it to you.

15 MS. HERRING-LASH: I thought so.

16 THE COURT: That's okay. Bear with me
17 one second.

18 I will give a limiting instruction
19 regarding that he committed a bad act not the
20 subject of a conviction other than for which he's
21 on trial, they can only consider it for the limited
22 purpose of common scheme or plan, and no other
23 purpose, and not to consider it evidence of the
24 commission -- may not consider evidence of the bad
25 act as proof of the defendant's guilt of the charge

1 we're trying today.

2 MS. HERRING-LASH: Thank you, Your
3 Honor.

4 THE COURT: Any exceptions from the
5 defense?

6 MR. COCHRAN: None, Your Honor. Other
7 than to make sure that I request that the language
8 on direct versus circumstantial be from Logan.

9 THE COURT: That's what I told you.

10 MR. COCHRAN: And I believe you said
11 that you had the fact that he didn't testify in
12 there.

13 THE COURT: I do.

14 MR. COCHRAN: Thank you.

15 THE COURT: You're welcome. And
16 there's no request for lesser included
17 instructions, right?

18 MR. COCHRAN: No, Your Honor.

19 THE COURT: And if you would -- I will
20 have to show you the verdict forms in the morning;
21 I'm without a clerk and I didn't get to it. I
22 don't want you to wait so I will show you in the
23 morning.

24 Anything else before we break for the
25 afternoon? From the State?

1 MS. ELLIOTT: No, Your Honor.

2 THE COURT: From the defendant?

3 MR. COCHRAN: No, Your Honor.

4 THE COURT: Have a good evening. If
5 you would make sure that the Court Reporter has all
6 the exhibits and they are all accounted for. If
7 you are going to use any technology in your closing
8 arguments, please test it today to make sure that
9 it's good so we don't have any snafus in the
10 morning.

11 MS. ELLIOTT: Yes, Your Honor.

12 (These proceeding were recessed at 3:59
13 p.m. to be continued April 15, 2015.)

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1 (The following proceedings were held
2 April 15, 2015, at 9:54 a.m., Charleston County
3 Circuit Court.)

4 THE COURT: Are there any exceptions to
5 the forms of the verdict from the State?

6 MS. ELLIOTT: None from the State.

7 THE COURT: From the defense?

8 MR. COCHRAN: Your Honor, our only
9 exception would be that we feel CSC third with a
10 minor should be a lesser included --

11 THE COURT: I asked you that yesterday,
12 and you said you didn't have any request for any
13 lesser included.

14 MR. COCHRAN: Right. Well, this would
15 be, I guess, in connection with our pretrial motion
16 to dismiss the CSC third, and if it is included --

17 THE COURT: You've already made that
18 objection and it's already been preserved. I need
19 to know if there is any objection to the form in
20 which the verdict is stated?

21 MR. COCHRAN: Judge, just that it isn't
22 listed as a separate and distinct --

23 THE COURT: That's not an objection to
24 the form of the verdict. That's your earlier
25 objection.

1 MR. COCHRAN: Yes, ma'am.

2 THE COURT: I need to know if you have
3 any objection to the verdict -- the form of the
4 verdict?

5 MR. COCHRAN: No, Your Honor.

6 THE COURT: Okay. Thank you.

7 I've ordered the jury's lunch. It will
8 be here at noon. Our last juror was late, but I
9 went ahead and had Paige get their lunch orders so
10 that we wouldn't have to stop to do that.

11 Is there anything else before we begin
12 with closing argument?

13 MS. ELLIOTT: There is one thing.

14 Neither Mr. Cochran nor I could remember whether or
15 not you were going to charge that a sexual assault
16 victim's testimony need not be corroborated.

17 THE COURT: I didn't include that. I
18 don't usually include it unless it's requested.

19 MS. ELLIOTT: Your Honor, we would
20 request that.

21 THE COURT: Okay. I will instruct it.
22 Any exception from the defense?

23 MR. COCHRAN: We object to that, Your
24 Honor.

25 THE COURT: I'll note your exception.

1 And that is in 16-3-657, which the
2 testimony of the victim need not be corroborated,
3 and section 16-3-651 defines the victim as the
4 person alleging to have been subjected to criminal
5 sexual conduct. The Rayfield case supports the
6 court instructing that. While it is a legal
7 standard, it is generally employed as a directed
8 verdict. Our courts have indicated that it is not
9 inappropriate to give that instruction as it is an
10 appropriate statement of statute and current in
11 prevailing case law.

12 Is there anything else we need to take
13 up before we proceed with closing arguments? From
14 the State?

15 MS. ELLIOTT: No, Your Honor.

16 THE COURT: From the defense?

17 MR. COCHRAN: No, Your Honor.

18 THE COURT: And I assume, Madame Court
19 Reporter, that you have all of the exhibits.

20 THE COURT REPORTER: I do, Judge.

21 THE COURT: Do you have all of your
22 motions filed?

23 MS. HERRING-LASH: Yes, Your Honor. I
24 filed the one that we had not filed.

25 THE COURT: What you handed up to me

1 was a motion to exclude other sexual assault, which
2 was moot, which was the Boiter case, a rape shield
3 motion, which was moot, and a Lyle motion, which I
4 ruled upon, and the -- charging the elements of
5 registration, which was the motion pursuant to
6 16-3-655 (A)(2). And that is the extent of what I
7 had, other than the oral motions made by the
8 defense. Is that accurate?

9 MS. HERRING-LASH: Yes, Your Honor. I
10 have a copy of that filed Memorandum --

11 THE COURT: Oh, I don't need it. I
12 just wanted you-all to be clear that whatever you
13 gave me I didn't file it. I didn't want you to be
14 under any misapprehension that I had.

15 I assume the defendant will be
16 exercising last argument?

17 MR. COCHRAN: Yes, Your Honor.

18 THE COURT: Okay. You can get the
19 jury.

20 (Jury in, 10:00 a.m.)

21 THE BAILIFF: Jurors are all present.

22 THE COURT: Ladies and gentlemen, I
23 hope that everyone had a pleasant and restful
24 evening. I understand that some of you were
25 delayed due to the weather. I'm glad that everyone

CLOSING ARGUMENT - STATE

1 arrived safely..

2 As we indicated on yesterday, both the
3 State and the defense have rested their cases. We
4 have now reached the stage of the trial where we
5 will have closing argument and the Court's
6 instruction.

7 I've also had the clerk order your
8 lunch and it will arrive by noon so you will know
9 that for planning purposes. If we are not done
10 prior to that, we'll break and allow you to eat and
11 then we'll resume the proceedings. I would ask
12 that you give the attorneys your undivided
13 attention.

14 You may proceed.

15 MS. ELLIOTT: Thank you, Your Honor.

16 [Minor] may look grown, but she's
17 far from it and now you are well acquainted with
18 that fact.

19 On June 20, 2013, this 13-year-old
20 child was raped both anally and vaginally. With
21 these penetrations came touches that were clearly
22 willful and clearly intended to gratify the
23 defendant's sexual desires.

24 How do we know this? We had the words
25 of [Minor], ladies and gentlemen. In the

CLOSING ARGUMENT - STATE

1 State of South Carolina that's all you need. Her
2 statement need not be corroborated.

3 [Minor] told you how that day started
4 off normal, just like any other. She and her
5 mother were friendly and while her mother ran out
6 to run an errand, she let the defendant, Johnny
7 Brown, into the house. I don't know what the
8 defense is going to say in his closing. He may
9 point out that that might be strange to you,
10 because subsequently [Minor] told you that when she
11 was younger, Johnny Brown sexually assaulted her.
12 We don't know why she let him.

13 Remember, it had been five years that
14 he was away from the Charleston area. He had left
15 the area in December of 2008 and returned May 1st,
16 2013. She hadn't seen him. Maybe she thought she
17 was old enough that he wouldn't bother her. Maybe
18 she thought that she was bigger and it wouldn't
19 happen again.

20 When Johnny Brown showed up in the
21 house that day, he was able to gain some important
22 information. Information about when her mother
23 would leave to go work. Now, I have to caution you
24 for a moment. I'm going to talk about some -- I'm
25 going to talk some about the allegations that

CLOSING ARGUMENT - STATE

1 Minor said happened to her when she was younger.

2 Now you cannot use that evidence to
3 convict him of this crime, cannot be used as truth,
4 but it can be used to show his common plan or
5 scheme for Minor During those times when he
6 would sexually assault her would be when her mother
7 was away at work. So when he returned to her house
8 on June 20th asking for that ride, saying that --
9 finding out that he would get a phone call when
10 momma left for work that day, he was setting up the
11 perfect victim. The perfect victim who he knew
12 would keep his secret because she had already kept
13 it for five years.

14 He never thought she would tell that he
15 came in the house that day when he entered that
16 door that Minor and her mother both thought were
17 locked. They later found out it was broken and
18 just with a push could be opened.

19 Beyond Minor story what else do we
20 have to corroborate her statements? We have the
21 clothes from that night. We have her T-shirt, we
22 also have her shorts. We do not have her
23 underwear. Now, I wish we had her underwear, but
24 Minor didn't remember which underwear she was
25 wearing that night, and when Detective Muirhead and

CLOSING ARGUMENT - STATE

1 Downing went into the house, they were just blindly
2 looking for things. So we don't have it. Is that
3 disappointing? Yes. Is it something we have to
4 have to prove this case? No.

5 Now, I expect that when the defense
6 talks to you they are going to -- he's going to
7 talk to you about how the defense -- or sorry, the
8 police didn't gather enough evidence, physical
9 evidence; that if they had gathered enough stuff,
10 surely there would have been DNA in that house
11 somewhere. But we already know that he'd been in
12 the house earlier that day leaving some DNA when
13 everyone knows he was there when he was asking for
14 that ride.

15 Also, ladies and gentlemen, this is not
16 CSI. I love that show, but it's not reality. And
17 in this case, the collection of forensic evidence
18 was complicated when Minor took that bath
19 washing away that very important evidence. And I
20 want you to know that I've never finished a case
21 where I didn't wish that the police officers had
22 done more work, that they had collected more
23 evidence.

24 You know, we had -- we had three
25 officers in this case, two of whom got on the stand

CLOSING ARGUMENT - STATE

1 and pretty much said, well, I thought the other guy
2 was going to do it. But we don't punish victims
3 because the police officers don't do everything we
4 want them to do. I wish that the underwear had
5 been collected. You know another thing that
6 complicated that, neither [Minor] nor her mother
7 could be at the house when the police got there.
8 They couldn't be there for several days because
9 [Minor] was sitting in the hospital.

10 DNA is great, but it's not the
11 requirement for a conviction. The clothes we have,
12 they can speak for [Minor]. She tells how the
13 defendant pushed them to the side so that he could
14 get access to her anus and vagina. And you can see
15 how stretchy and moveable and flexible they are.
16 They support her story.

17 We don't have DNA in this case, but we
18 do have both the [Minor] and the defendant with the
19 same sexually transmitted disease, gonorrhea. Am I
20 trying to say that's as good as DNA? No. But it
21 is a lot more than a coincidence that this child
22 who could barely describe what her vagina is used
23 for happened to have the same sexually transmitted
24 disease that the defendant did.

25 And just because there was no sperm

CLOSING ARGUMENT - STATE

1 found in her vaginal swab doesn't mean there was no
2 semen present. Remember, we had that presumptive
3 test for semen. Those vaginal swabs that Kathy
4 Fabrizio obtained, they were high vaginal ones used
5 without the aid of the speculum. So they were
6 completely blind. She inserted something like a
7 Q-tip and swabbed around hoping to gather evidence
8 and hoping to get things that can't be seen with
9 the naked eye. She did the best she could, but
10 like any good nurse she wasn't going to subject
11 this child that was already traumatized to pain on
12 the chance she would get more evidence.

13 Like Ms. Fabrizio explained to you,
14 there are bodily fluids excreted before
15 ejaculation, those would not contain sperm. And
16 that gonorrhea could have been the defendant's
17 pre-ejaculate secretion without ever leaving a
18 trace of sperm. And that sperm is what SLED
19 analyst, Samuel Stewart, needed for a DNA
20 comparison.

21 And let's not forget what happened
22 after the attack. She said that she doesn't know
23 why, but Johnny Brown went into the bathroom after
24 he got off of her. Ladies and gentlemen, we can
25 use our common sense. How likely is it that's

CLOSING ARGUMENT - STATE

1 where he ejaculated?

2 You may be asking yourself if the
3 defendant penetrated the **Minor** like she said he
4 did, why wasn't there any trauma? I will direct
5 your mind back to Monday afternoon, something the
6 defense said. He said that this was a violent
7 rape. I know the word rape brings up -- brings
8 upon itself a whole lot of different images, but it
9 doesn't have to always be violent. I know that
10 it's always traumatizing and we think of people
11 lurking in dark shadows and setting out to hurt
12 people, but that's not the case, especially when
13 it's a child and when the assailant knows the
14 child.

15 Did **Minor** paint the picture of a
16 violent rape? Did she talk about kicking and
17 screaming and fighting? No. Did she say the
18 defendant was hitting her, slapping her? No. I
19 don't want to be indelicate; did she even describe
20 that he was thrusting or pounding her? No. She
21 described him just going back and forth. Would we
22 expect to see massive trauma when there was no
23 massive struggle? No.

24 Remember what Kathy Fabrizio told us,
25 the majority of the time there is no trauma. The

CLOSING ARGUMENT - STATE

1 parts of the female body, they're designed for
2 penetration. Estrogen makes them elastic. And
3 that's another thing about Minor the short time
4 she was on the stand, I think you all probably
5 realized that she's pretty compliant. The
6 defendant didn't have to use force. He didn't have
7 to be violent with her because she was scared and
8 she simply complied.

9 I want to highlight something else
10 about this trauma issue for you. Remember the
11 research that Kathy Fabrizio cited? Now, remember,
12 Kathy Fabrizio has been a nurse practitioner with
13 25 years of practice. She also has specialized
14 training as a pediatric sexual assault nurse
15 examiner called PSANE. She cited that about
16 95 percent of childhood sexual assault exams showed
17 no signs of physical trauma.

18 But then the defense got up there and
19 tried to trip her up and twist those statistics by
20 flashing a study related to adults skipping the
21 entire chapter on pediatric sexual assault nurse
22 examiners. That's an example of how the defense
23 may in his closing try to take one fact and turn it
24 just a little bit, like using adult protocols when
25 we're talking about a pediatric case.

CLOSING ARGUMENT - STATE

1 The defense gets to talk to you last
2 and I'm not going to be able to get up here and
3 correct any of those twists. But, ladies and
4 gentlemen, you know this case. I mean, you've
5 spent hours yesterday having to listen to our chain
6 witnesses. And I know that is not fun, but it's
7 important. It's important for you to know that the
8 professionals that are involved in this, in the lab
9 and the processing, they do their best to protect
10 the integrity of the evidence that we do have.

11 What else do we have to corroborate
12 Minor story? We have that GPS. From about 2:45
13 until 5:00 p.m., the defendant is in basically what
14 I consider this triangle, to Lemmon Tree
15 to Jeffrey. ends at Fort Johnson and
16 that's up here. For about two hours and 15 minutes
17 that's where the defendant is.

18 Minor didn't just get lucky in picking
19 the right person who was in the area of her house
20 during the time that her mother was away and that
21 has exactly the same sexually transmitted disease
22 that she was diagnosed with during her sexual
23 assault exam. You know this case. You know what
24 the witnesses said. You know what the evidence
25 shows, and you know the defendant is guilty, but

CLOSING ARGUMENT - STATE

1 let's go over for just a minute the law in the
2 case.

3 Now, the judge is going to give you a
4 full instruction on the law, but I just want to
5 basically run over the elements. The defendant is
6 charged with two counts of criminal sexual conduct
7 with a minor in the first degree. That requires
8 that the State show a sexual battery.

9 A sexual battery can include sexual
10 intercourse, cunnilingus, fellatio, anal
11 intercourse, or the intrusion, however slight, into
12 any part of a person's body or of any object into
13 the genital or anal openings of another person.
14 Johnny Brown is facing two counts of criminal
15 sexual conduct with a minor in the first degree
16 because of penetration to the anus and because of
17 penetration to the vagina.

18 We have to show that the **Minor** is
19 younger than 16. The year she was born was 2000.
20 She is not 16 yet, so she certainly wasn't 16 in
21 2013.

22 And we have to tell you that the
23 defendant is on the Sex Offender Registry, which
24 Detective Colson told you. Force is not an
25 element, consent is not a defense.

CLOSING ARGUMENT - STATE

1 The defendant is also charged with
2 criminal sexual conduct with a minor in the third
3 degree. We have to show that the defendant is over
4 the age of 14, and that there was a willfully and
5 lewdly committed or attempted to commit a lewd or
6 lascivious act on or with the body, or parts of a
7 child; that the **Minor** is under 16 and with the
8 intent to arouse, appeal to, or gratify the lust,
9 passions or sexual desires of the defendant or the
10 child.

11 And then it goes on to define what
12 willfully is, which means he meant to do it; lewd,
13 which means obscene, lustful, indecent, and
14 lascivious, which means to entice lust, lewd,
15 indecent, obscene or tending to deprave the morals
16 in respect to sexual relations.

17 Ladies and gentlemen, when he started
18 touching her in preparation of that penetration,
19 that's when those lewd acts were committed. Those
20 are the elements of the offenses, ladies and
21 gentlemen.

22 And what this case boils down to and
23 what most sexual assault cases boil down to is
24 credibility, the credibility of **Minor**. The
25 gonorrhea evidence helps; it supports her story.

CLOSING ARGUMENT - STATE

1 The GPS evidence supports her story as do the
2 clothes, but it comes down to, do you believe that
3 what [Minor] said happened happened that day?

4 And judging credibility is something
5 that you're incredibly well equipped to do. You do
6 it every day. When you're deciding whether or not
7 to give \$5 to that person on the street asking for
8 it. When you're deciding whether or not your
9 five-year-old is truthful after he ate that last
10 cookie, or whether you're going to believe what
11 that co-worker said he overheard in the break room.

12 You use those skills every day to
13 determine whether or not somebody is telling you
14 the truth. And we expect and trust that those are
15 the same skills that you bring as competent jurors,
16 your common sense and your past experience.

17 Now, when evaluating someone's
18 credibility we often look for the motive in saying
19 what they said. What could [Minor] motive be to
20 make this up? There is none. You heard her. This
21 made her embarrassed. She tried to go the rest of
22 the day acting like nothing happened. She was
23 going to keep the defendant's secret even longer
24 until the trauma and emotion overtook her and all
25 she could do was sob.

CLOSING ARGUMENT - STATE

1 She has no reason to point the finger
2 at Johnny Brown except that he's the man that
3 assaulted her. And think about her demeanor, the
4 demeanor that was observed by all those
5 professionals who met her after her assault, and
6 her demeanor on the stand. Was it consistent with
7 what you would expect of a child in a similar
8 circumstance? She sobbed. The only thing she
9 could do to calm herself down during the second
10 half of that testimony was doodling, coloring.

11 Was that someone who wanted to take the
12 stand? Was that someone who wanted to talk about
13 the worst day of her life? Was that someone who
14 was lying? No. She was exactly what I told you
15 she would be, a girl who may look grown, but is
16 still very much a child using childish words and
17 trying to accustom herself to the very adult
18 situation in the courtroom.

19 So that's the question, ladies and
20 gentlemen. Do you believe her beyond a reasonable
21 doubt? What is a reasonable doubt? A reasonable
22 doubt is a doubt that will cause a reasonable and
23 rational person to pause in making a major life
24 decision. It doesn't require that you have no
25 doubt. There's virtually nothing in this life that

CLOSING ARGUMENT - STATE

1 we can know without any doubt. I mean, honestly,
2 the only example I can think of is that my mother
3 loves me. There is nothing else that I have no
4 doubt about, but that's not the requirement.
5 Beyond a reasonable doubt just means that you are
6 firmly convinced.

7 And when you go back in that
8 deliberation room, I want you to take your time and
9 go back over all of the evidence and testimony that
10 you have heard in the last few days. Question
11 people's motives and weigh the corroborating
12 evidence that you've been shown.

13 What I don't want you to go back into
14 the jury room and do is confuse contemplation with
15 hesitation. No verdict should be a knee-jerk
16 reaction, but just because you're considering
17 something doesn't mean that you have a reasonable
18 doubt. You know this case; you've heard the
19 evidence. And now I'm confident that you know
20 beyond a reasonable doubt that the defendant is
21 guilty of criminal sexual conduct with a minor in
22 the first degree, both counts, and that he's guilty
23 of criminal sexual conduct with a minor in the
24 third degree, and that you will return a verdict of
25 guilty on all charges.

CLOSING ARGUMENT - DEFENSE

1 THE COURT: Mr. Cochran.

2 MR. COCHRAN: May it please the Court.

3 THE COURT: You may proceed when you're
4 ready.

5 MR. COCHRAN: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 MR. COCHRAN: Like I said at the
8 beginning of this case, the State is going to use
9 this sexually transmitted infection of gonorrhea,
10 the positive diagnosis for both Johnny Brown and
11 Minor, as something like DNA evidence,
12 something that somehow proves their case.

13 They also used GPS because they know
14 that people like to hear things like that when
15 they're making decisions. They like to hear what
16 seems like proof. Well, let's think about whether
17 or not those things are actually proof, actually
18 evidence.

19 The GPS location of my client, Johnny
20 Brown, in the area where the State's own witnesses
21 said his family was, where he lived at times, their
22 grandmother, their great-grandmother, who he lived
23 with, was nearby. Minor used to stay with her in
24 the summers and her mother simultaneously, going
25 back and forth from house to house. It's one small

CLOSING ARGUMENT - DEFENSE

1 area on James Island. That GPS means absolutely
2 nothing. That he's walking around in his own
3 neighborhood, that he's going to his own house, it
4 means absolutely nothing. She saw him that day.
5 He was at his cousin's house. Of course the GPS
6 puts him there.

7 The sexually transmitted infection, you
8 heard from their expert witness that there is no
9 way to determine who infected a person. There's no
10 way of looking at that, but what was another
11 extremely important piece of testimony that you
12 received? On direct examination, the nurse who
13 examined Minor she said that they always
14 test for gonorrhea.

15 And I used her word when I repeated her
16 statement to her, they always test for gonorrhea
17 because gonorrhea is rampant in this area. And
18 what did she do? This woman who is supposed to be
19 offering to you scientific medical testimony,
20 unbiased testimony, she proved to you while she was
21 on the witness stand her bias, her prejudice in
22 this case, that she has a score to settle in this
23 case.

24 Because when I got up and
25 cross-examined her, I repeated back to her what she

CLOSING ARGUMENT - DEFENSE

1 had just said to you under oath, that gonorrhea is
2 rampant in this area. And what did she say? No, I
3 didn't say that. She had just said that. The
4 Court Reporter took it down. You all heard it. It
5 was her words, rampant in this area. She wanted to
6 deny everything that I asked her.

7 And she comes up with these studies
8 that she can give you no specific sites for. She
9 just rattled off author's names admitting that she
10 doesn't know that they are actually the authors of
11 these studies. She doesn't bother to bring them to
12 court. This is Johnny Brown's life we're talking
13 about, and she doesn't even bother to bring these
14 case studies to court to demonstrate to you, prove
15 to you. And when I did bring a study that directly
16 contradicted what she was contending to you -- she
17 was contending to you that 95 percent of rape
18 victims have 0 trauma, 0 vaginal trauma, only 5
19 percent showed up.

20 The Department of Justice cited a study
21 that a majority, 68 percent, of rape victims show
22 vaginal trauma. And what is the State's response
23 to that? That study is cited by the Department of
24 Justice in the chapter on adult sexual assault, not
25 pediatric. Well, let's think about that logic for

CLOSING ARGUMENT - DEFENSE

1 a second. So it's more likely that an adult woman
2 will receive vaginal trauma when being sexually
3 assaulted than a child? They're asking you to
4 suspend your common sense. They're asking you to
5 ignore your common sense. That is bogus.

6 And what is so troubling about this is
7 that that witness was supposed to get up on the
8 stand and give you unbiased scientific medical
9 testimony, and she showed how biased she is. And
10 what they are doing is trying to exploit your
11 instinct. They're trying to exploit the instinct
12 that we all have to protect children from sexual
13 assaults, from sexual molestation, because they
14 know that the evidence that should and would be
15 there if it actually happened wasn't there. So
16 they have to say to you, just believe us, just take
17 our word for it.

18 No evidence is still evidence to these
19 people. And where else did we see that in this
20 case? The lead investigator; the lead investigator
21 in this case goes and talks to a girl who is still
22 in the hospital, says she was sexually assaulted.
23 She has law enforcement contact within hours after
24 she says this happened, and no CSI is done at the
25 house.

CLOSING ARGUMENT - DEFENSE

1 This isn't television, but you heard
2 her admit, we have crime scene techs, we have CSI,
3 we go to crime scenes, we go collect evidence. And
4 she did not send a crime scene tech, did not do any
5 CSI at this house. Are you kidding me? They say
6 that he sexually assaulted her on a bare mattress
7 which their own DNA analyst said they typically get
8 fabric cuttings to test for DNA.

9 Nobody went to this mattress -- the
10 mother never said, you know, after hearing what
11 happened, she says it happened on this mattress,
12 you guys might want to come look at it. There's
13 blood on it, looks like there's pubic hair on it,
14 come collect something off of it. None of that
15 ever happened.

16 And I'm not saying that the police were
17 negligent so you should find him not guilty. I'm
18 saying that there was no evidence on that mattress,
19 and if there was, they would have collected it.
20 And if this happened, it would have been there,
21 that evidence would have been there.

22 But in this case, no evidence is
23 evidence to the State. No evidence is still
24 evidence. A bare mattress, a sexual assault of a
25 13-year-old-girl, who is on her period; no evidence

CLOSING ARGUMENT - DEFENSE

1 on this mattress. No evidence on a white pair of
2 shorts that were not even removed during this
3 supposed sexual assault. None. It's not that the
4 police were negligent, they were in going and just
5 picking up some clothes from the bathroom. It's
6 not just that they were negligent, Minor is saying
7 those are the clothes that I was wearing, zero
8 evidence, zero evidence.

9 They want you to look at things to
10 exploit your sense of protecting a child, your
11 instinct to protect a child. That's why they're
12 piling on these accusations saying, oh, this didn't
13 just happen this time, it had been happening years
14 ago, years ago. So he sexually assaulted a
15 six-year-old-girl and that comes to light, but the
16 State decides not to indict him for those offenses
17 as well. Never charges or arrests him for sexually
18 assaulting a six-year-old-girl in the past.

19 It's because they don't have any
20 evidence. It's because they don't have anything to
21 support those allegations. They're just piling
22 them on for you to paint him as a monster, so that
23 you get that emotional reaction, so that you ignore
24 your common sense, so that you ignore your demand
25 for proof, for proof of evidence.

CLOSING ARGUMENT - DEFENSE

1 Something is going on with Minor I
2 think that was clear from her testimony. Something
3 is going. Something that is causing her real pain.
4 She is not putting on an act, but what she is
5 saying Johnny Brown did simply could not have
6 happened.

7 This is a girl who has potentially
8 life-threatening Type II Diabetes, according to
9 their medical testimony. This is a girl who has a
10 sexually transmitted infection. This is a girl who
11 seems to have a lot of things going on with her,
12 something that is causing her pain. But this
13 difficulty that she's feeling in her life is being
14 directed unjustly at Johnny Brown.

15 This is a girl who makes these
16 accusations to her mother, to law enforcement, to
17 doctors and nurses, but then, as you heard from her
18 mother, only a few days later goes to a family
19 cook-out, a cook-out put on by Johnny's mother and
20 sister. They go to this cook-out.

21 And you heard from the investigator
22 that it took days before this warrant was issued
23 and Johnny Brown was arrested in this case.
24 Something is going on here. There is no question
25 that Johnny Brown has a sexually transmitted

CLOSING ARGUMENT - DEFENSE

1 infection, gonorrhea, and that [Minor] has the exact
2 same transmitted infection. A rampant infection in
3 this area, according to their own witness.

4 But there were two things in this case
5 that were extremely significant, subtle but
6 extremely significant. What happened in this case?
7 Or what didn't happen in this case? When [Minor]
8 [] took the stand, she never, not once, never
9 pointed at Johnny Brown sitting at the table and
10 said, that's the man that did this to me. She
11 didn't bring herself to do it because he didn't do
12 it.

13 What was the other even more
14 significant aspect of this case? All this
15 testimony about sexually transmitted infections
16 we're hearing from doctors, nurses, people that
17 have [Minor] medical history for sexual
18 assault, not one witness contended to you that
19 there's no question that she did not have this
20 infection before June 20, 2013. Not one witness
21 said that was the case. And certainly no witness
22 said that she had had this sexually transmitted
23 disease untreated since the time she was six years
24 old. That is significant.

25 No one put their hand on the Bible and

JURY CHARGE

1 swore to you that she did not have this infection
2 before June 20, 2013, and nobody put their hand on
3 the Bible and swore to you that it's possible or
4 even remotely possible that she had this sexually
5 transmitted disease from the time she was six that
6 went untreated and unnoticed. It's because she had
7 that infection before June 20th, 2013, and that it
8 had not been some long-ago thing she had contracted
9 from Johnny when she was six years old. Not
10 possible. Know that.

11 They are trying to tell you that no
12 evidence is still evidence, but the evidence that
13 would have been there wasn't there. What she is
14 saying Johnny Brown did could not have happened.
15 He is innocent. I ask you to find him not guilty.

16 THE COURT: During this trial, ladies
17 and gentlemen, you and I have certain duties to
18 perform. As the trial judge, it is my
19 responsibility to rule upon or pass upon the
20 admissibility of evidence that is offered during
21 the course of this trial. You are to consider only
22 the competent evidence that is before you and you
23 are to disregard and disabuse from your mind any --
24 any testimony that may have been stricken from the
25 record in this case during the progress of this

JURY CHARGE

1 trial.

2 You are only to consider the testimony
3 which has been presented from the witness stand,
4 together with any exhibits which have been made
5 part of the record in this case, and also any
6 stipulations that have been made a part of the
7 record by counsel.

8 I instruct you that a stipulation is an
9 agreement between the parties and it requires no
10 further proof.

11 I have the additional duty to charge or
12 instruct you on the law applicable to this case.
13 As the presiding judge, I'm the sole judge of the
14 law in this case, and it is your duty as jurors to
15 accept and apply the law as I now state it to you.

16 If you have a pre-conceived idea as to
17 what the law is or what the law ought to be in a
18 case, or in this case, and it should not agree with
19 what I now tell you the law is, you are obligated
20 under your oath to abandon this preconception on
21 your part because you are sworn to accept the law
22 and apply the law as I now state it to you.

23 In every case tried in this court
24 before a jury, the jury becomes the sole and
25 exclusive judges of the fact. You, the jury, are

JURY CHARGE

1 the judges of the facts in this case. The Court is
2 the judge of the law.

3 The constitution of our state has
4 declared that a trial judge shall not intimate,
5 state, comment upon, or make any statement to a
6 trial jury about the facts in a case. Since you
7 the jury are the sole judges of the facts in this
8 case, you are not to be infer anything from what I
9 have said during the progress of this trial in
10 ruling upon the admissibility of evidence or
11 otherwise, or anything that I say now to you during
12 the course of this instruction, that I have any
13 opinion about the facts in this case. The law does
14 not permit me to have an opinion about the facts.

15 This is a matter solely for you, the
16 jury, to determine. As jurors, then, it is your
17 duty as I've instructed you to determine the
18 effect, the value, the weight and truth of the
19 evidence presented during this trial. Necessarily,
20 you must assess the credibility of witnesses who
21 have testified in this case.

22 Credibility is simply a legalistic term
23 meaning believability. It becomes your duty as
24 jurors to analyze and to evaluate the evidence and
25 determine that evidence which convinces you of its

JURY CHARGE

1 truth.

2 Some of the things you may consider as
3 you decide whether or not to believe a witness's
4 testimony about a particular matter include; what
5 was the manner and appearance of the witness who
6 testified? Was he or she straightforward or
7 hesitant in answering? Was the testimony of a
8 witness consistent or inconsistent? How did the
9 witness come to know about the facts that he or she
10 testified to or what was his or her ability to know
11 these facts? Is there some reason a witness would
12 want to give testimony that would help or hurt one
13 side or the other; in other words, was the witness
14 biased or prejudiced? And was the testimony of a
15 witness strengthened or weakened by other testimony
16 or evidence?

17 I further instruct you that in
18 determining the question of the credibility or
19 believability of witnesses who have testified, that
20 you may believe one witness as against several
21 witnesses or several witnesses as against one
22 witness. You may believe a part of the testimony
23 of a witness and reject the remaining part of the
24 testimony of that same witness. If you have a good
25 and sound reason, you may believe the testimony of

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1 a witness in its entirety or reject the testimony
2 of a witness in its entirety.

3 You may consider the demeanor of a
4 witness, that is the manner and appearance of the
5 witness from the witness stand. You can believe as
6 much or as little of each witness's testimony as
7 you think proper. Throughout this process, ladies
8 and gentlemen, you have but one objective, to seek
9 the truth regardless of its source.

10 Our rules of evidence ordinarily do not
11 permit witnesses to testify to opinions or
12 conclusions. An exception to this rule exists for
13 witnesses we call expert witnesses, a witness who
14 by their education, training and experience has
15 become an expert in some art, science, or
16 profession, or calling may state an opinion as to
17 relevant and material matters in which the witness
18 claims to be an expert and may also state the
19 reasons for the opinion.

20 You should consider any expert opinion
21 received in evidence in this case like any other
22 evidence. Give it the weight you think it
23 deserves. If you decide that the opinion of an
24 expert witness is not based on sufficient
25 education, training, and experience, or if you

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1 conclude that the reasons given in support of the
2 opinion are not sound, or that the opinion is
3 outweighed by other evidence, you may disregard the
4 opinion entirely. An expert witness's testimony is
5 to be given no greater weight as that of other
6 witnesses simply because the witness is an expert.

7 Further, you are not required to accept
8 a witness's opinion even though it is not
9 contradicted.

10 I instruct you, ladies and gentlemen,
11 that you have heard evidence that the defendant
12 committed a bad act not the subject of a conviction
13 other than the one for which he's now on trial.
14 This testimony, ladies and gentlemen, if you
15 include it is true, may only be considered by you
16 on the question of common scheme or plan and for no
17 other reason and no other purpose. You may give
18 this evidence the weight, value and effect, if any,
19 which you find it should have on the sole issue of
20 common scheme or plan.

21 You must not consider evidence of the
22 commission of another bad act not the subject of
23 the conviction as proof of the defendant's guilt of
24 the charge we are trying today. It is like any
25 other evidentiary fact, you are to give it the

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1 weight value and effect you decide it should
2 receive.

3 There are two types of evidence
4 generally presented during a trial, direct evidence
5 and circumstantial evidence. Direct evidence is
6 the testimony of a person who asserts or claims to
7 have actual knowledge of a fact, such as an
8 eyewitness. Circumstantial evidence is proof of a
9 chain of facts and circumstances indicating the
10 existence of a fact. The law makes absolutely no
11 distinction between the weight or value to be given
12 to either direct or circumstantial evidence. Nor
13 is a greater degree of certainty required of
14 circumstantial evidence than of direct evidence.
15 You should weigh all of the evidence in this case.

16 As I've already instructed, there are
17 two types of evidence, that is direct evidence and
18 circumstantial evidence. Direct evidence directly
19 proves the existence of a fact and does not require
20 deduction. Circumstantial evidence is proof of a
21 chain of facts and circumstances indicating the
22 existence of a fact.

23 Crimes may be proven by circumstantial
24 evidence. Again, the law makes no distinction
25 between the weight, value or effect to be given to

JURY CHARGE

1 either direct or circumstantial evidence; however,
2 to the extent the State relies on circumstantial
3 evidence, all of the circumstances must be
4 consistent with each other, and when taken
5 together, point conclusively to the guilt of the
6 accused beyond a reasonable doubt.

7 If these circumstances merely portray
8 the defendant's behavior as suspicious, the proof
9 has failed. The State has the burden of proving
10 this defendant guilty beyond a reasonable doubt.
11 This burden rests with the State regardless of
12 whether the State relies on direct evidence,
13 circumstantial evidence, or some combination of the
14 two.

15 After weighing all of the evidence,
16 ladies and gentlemen, if you are not convinced of
17 the guilt of the defendant beyond a reasonable
18 doubt, you must find the defendant not guilty.
19 Conversely, if you are convinced of the guilt of
20 the defendant beyond a reasonable doubt, then you
21 must find him guilty.

22 I instruct you, ladies and gentlemen,
23 that the fact that the defendant was arrested,
24 charged, and indicted is not evidence in this case
25 and cannot be considered by you as evidence of

JURY CHARGE

1 guilt in this case, nor does it create any
2 presumption or inference of guilt. This
3 documentation is simply the formal written
4 instrument or instruments which contain the charge
5 or charges made against a defendant. They simply
6 serve as the formal documentation by which the case
7 is processed or brought into this court.

8 The defendant has pled not guilty to
9 the Indictments and that plea cast the burden on
10 the State to prove the defendant guilty because a
11 person charged with committing a criminal offense
12 in South Carolina is never required to prove
13 himself innocent. I instruct you that it is a
14 cardinal and important rule of the law of evidence
15 that the defendant in a criminal trial, no matter
16 what the seriousness of the charge or charges made
17 against him may be, will always be presumed to be
18 innocent of the crime for which he is indicted
19 unless his guilt has been proven by evidence
20 satisfying you of that guilt beyond a reasonable
21 doubt.

22 This presumption of innocence does not
23 cease when you retire, but it accompanies the
24 defendant from the time of his appearance
25 throughout the trial until you reach your verdict

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1 in this case. Our Supreme Court has said the
2 presumption of innocence is like a robe of
3 righteousness placed about the shoulders of the
4 defendant and it remains with him and assigns him
5 to that class, the innocent, until that presumptive
6 robe of righteousness has been struck from his
7 person by evidence satisfying you of that guilt
8 beyond a reasonable doubt.

9 The presumption of innocence is not
10 mere legal theory. It is not just a legal phrase.
11 It is the substantial right to which every
12 defendant is entitled unless you, the jury, are
13 satisfied from the evidence of his guilt beyond a
14 reasonable doubt.

15 The State has the burden of proving the
16 defendant guilty beyond a reasonable doubt. Some
17 of you may have served as jurors in civil cases
18 where you were told that is only necessary to prove
19 that a fact is more likely true than not true such
20 as by the greater weight or preponderance of the
21 evidence.

22 In criminal cases, the State's proof
23 must be more powerful than that. It must be beyond
24 a reasonable doubt. Proof beyond a reasonable
25 doubt is proof that leaves you firmly convinced of

JURY CHARGE

1 the defendant's guilt. There are very few things
2 in this world that we know with absolute certainty,
3 and in criminal cases the law does not require
4 proof that overcomes every possible doubt.

5 If based upon your consideration of the
6 evidence you are firmly convinced that the
7 defendant is guilty of the crime charged you must
8 find the defendant guilty. If, on the other hand,
9 you think there is a real possibility that the
10 defendant is not guilty, you must give the
11 defendant the benefit of that doubt and find him
12 not guilty.

13 I instruct you and emphasize that the
14 fact that the defendant did not testify is not a
15 factor to be considered by you in any way
16 whatsoever in your deliberation and in your
17 consideration of the question of the guilt or
18 innocence of the defendant. It must not be
19 considered by you in any manner whatsoever.

20 A defendant has the constitutional
21 right to remain silent and the assertion of this
22 right must not be considered by you in your
23 deliberations. I repeat, under your oath, you are
24 to draw no conclusion whatsoever from the fact that
25 the defendant in this case did not testify. The

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1 fact that this defendant did not testify should not
2 be discussed in any manner whatsoever during your
3 jury deliberations in the jury room.

4 The burden of proof as I have stated to
5 you is on the State. The defendant is not required
6 to prove his innocence. The burden of proof
7 remains on the State to prove guilt beyond a
8 reasonable doubt.

9 The defendant is charged with first
10 degree criminal sexual conduct with a minor. The
11 State must prove beyond a reasonable doubt that the
12 defendant engaged in a sexual battery with the
13 **Minor**. A sexual battery is sexual intercourse,
14 cunnilingus, fellatio, anal intercourse or any
15 intrusion, however slight, of any part of a
16 person's body, or of any object into the genital or
17 anal openings of another person's body except when
18 the intrusion is accomplished for medically
19 recognized treatment or diagnostic purposes.

20 The State must prove beyond a
21 reasonable doubt that the **Minor** was less than 16
22 years old at the time of the sexual battery. The
23 State must then prove beyond a reasonable doubt
24 that the defendant has been ordered to be included
25 in the sex offender registry pursuant to South

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1 Carolina Code Annotated Section 23-3-430 (d) at the
2 time of the sexual battery.

3 I instruct you that evidence that the
4 defendant has been ordered to be included in the
5 sex offender registry pursuant to Code Section
6 23-3-430 (d) was not offered to prove that the
7 defendant has a bad character or to prove that the
8 defendant committed criminal sexual conduct on this
9 occasion. This prior registration may be
10 considered by you only for the purpose of
11 determining whether or not the State satisfied that
12 element of the offense that makes it first degree
13 criminal sexual conduct with a minor.

14 Before you can consider the evidence of
15 the defendant's prior registration, you must first
16 find that the State has proven beyond a reasonable
17 doubt that a sexual battery was committed by the
18 defendant. If you find beyond a reasonable doubt
19 that the sexual battery was committed, then you may
20 consider evidence of the prior registration as
21 evidence of the element which would make the
22 criminal sexual conduct first degree criminal
23 conduct with a minor.

24 If you do not find beyond a reasonable
25 doubt that the defendant has been ordered to be

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1 included in the sex offender registry pursuant to
2 South Carolina Code Annotated Section 23-3-430(b),
3 then you cannot return a verdict of first degree
4 criminal sexual conduct with a minor.

5 Consent, willingness, indifference or
6 ignorance on the part of a minor, if any, as to
7 what was taking place does not in any way affect
8 the charge of criminal sexual conduct with a minor
9 first degree because an unmarried woman under the
10 age of 14 cannot legally consent to sexual
11 intercourse.

12 The defendant is charged with third
13 degree criminal sexual conduct with a minor. The
14 State must first prove beyond a reasonable doubt
15 that the defendant was over the age of 14. Next,
16 the State must prove that the defendant willfully
17 and lewdly committed or attempted to commit a lewd
18 or lascivious act upon, or with the body or its
19 parts of a child under the age of 16 years with the
20 intent to arouse, appeal to, or gratify the lust,
21 passions or sexual desires of the defendant or the
22 child.

23 Willfully means voluntarily and
24 intentionally with the specific intent to do
25 something the law forbids. Lewd means obscene,

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1 lustful, indecent, or lecherous. Lascivious means
2 intending to insight lust, lewd, indecent, obscene
3 or attempting to deprave the morals and respect of
4 sexual relations.

5 I instruct you, ladies and gentlemen,
6 that South Carolina Code Section 16-3-657 provides
7 that the testimony of the victim need not be
8 corroborated and Code Section 16-36-51 defines
9 victim to mean the person alleging to have been
10 subjected to criminal sexual conduct.

11 The defendant is charged with two
12 counts of criminal sexual conduct with a minor
13 first degree and one count of criminal sexual
14 conduct with a minor third degree. When two or
15 more acts of criminal sexual conduct are alleged to
16 have occurred at or about the same, each alleged
17 act is a separate crime rather than one continuing
18 crime.

19 Ladies and gentlemen, there are several
20 Indictments in this case and they are as follows:
21 Indictment 2015-GS-10-2362 and -- actually, I went
22 in reverse order, I apologize. Indictment
23 2013-GS-10-759, 760, and 2363, which are criminal
24 sexual conduct with a minor first degree, criminal
25 sexual conduct with a minor first degree, and

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1 criminal sexual conduct with a minor third degree.

2 Each indictment charges a separate and
3 distinct offense. You must decide each indictment
4 separately on the evidence and the law applicable
5 to it uninfluenced by your decision as to any other
6 indictment. The defendant may be convicted or
7 acquitted on any or all of the offenses charged.
8 You are to write a separate verdict of guilty or
9 not guilty for each indictment.

10 Ladies and gentlemen, there are two
11 possible verdicts for each indictment, and you
12 don't have to write this down because the
13 indictments as well as the verdict forms will come
14 into the jury room with you. I instruct you that
15 there is absolutely no significance whatsoever to
16 the order in which I state the potential verdicts,
17 it's just that one must be stated first.

18 And they are as follows as to each
19 indictment: That first being Indictment 2013-6759,
20 we, the jury, by unanimous consent find the
21 defendant guilty of criminal sexual conduct with a
22 minor first degree, or not guilty.

23 As to Indictment 2013-6760, we, the
24 jury, by unanimous consent, find the defendant
25 guilty of criminal sexual conduct with a minor

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1 first degree, or not guilty.

2 And Indictment 2015-2362, we, the jury,
3 by unanimous consent, find the defendant guilty of
4 criminal sexual conduct with a minor third degree,
5 or not guilty.

6 Again, there is no significance
7 whatsoever to the order in which I state these
8 potential verdicts. It is simply that one must be
9 stated first.

10 Ladies and gentlemen, your verdict must
11 be unanimous, which means all 12 of you must agree
12 in order to reach a verdict in this case.

13 Madame Forelady, when the jury has
14 reached a verdict, it will be your responsibility
15 to fill out the verdict forms, to sign and date the
16 forms, and knock on the door and advise the Bailiff
17 that the jury has reached a unanimous verdict.

18 Also, if you have any questions, it's
19 your responsibility to write out the questions and
20 also follow the same procedure by knocking on the
21 door and advising the bailiff that the jury has a
22 question.

23 Ladies and gentlemen, please know if
24 you have any questions during deliberations, there
25 will be a delay in our response and that is because

1 there is a procedure we must follow in answering a
2 question. So if you have a question, expect a
3 delay. Please don't think we're ignoring you, we
4 are simply following that procedure.

5 Again, ladies and gentlemen, your
6 verdict must be unanimous which means that all 12
7 of you must agree.

8 I'm going to ask that you return to
9 your jury room, but do not begin deliberation. I
10 have some brief matters of law to take up with the
11 attorneys that may require further instruction or
12 clarification of an instruction. If there is no
13 further instruction, we will send in the evidence,
14 the verdict forms at that time, and your notepads,
15 we will excuse the alternates, and you will be
16 allowed to begin your jury deliberations. If you
17 will go with the Bailiff. Please leave your
18 notepads in your seat and do not begin your
19 deliberations.

20 (Jury out, 10:54 a.m.)

21 THE COURT: Any exceptions from the
22 State?

23 MS. ELLIOTT: None from the State, Your
24 Honor.

25 THE COURT: From the defense?

1 MR. COCHRAN: No, Your Honor.

2 THE COURT: All right. Will you-all
3 make sure that all the evidence is there before the
4 Bailiff takes it back?

5 Bring in the alternates for me please.

6 I need the defendant. I'm excusing the
7 alternates.

8 (Alternates in)

9 THE COURT: Ladies, we want to thank
10 you for your time and attention to this case. We
11 know that being an alternate is thankless, but it
12 is so very necessary to the process. I hope this
13 has been educational for you. You're welcome to
14 hang around if you would like to see what the
15 verdict is. We can put you in a room for your
16 comfort. I would ask that you remain with us until
17 your lunch arrives, which will probably be in about
18 30 minutes, and then you're welcome to leave if you
19 would like.

20 You were welcome to discuss the case,
21 if would like, but I would ask that you wait to do
22 that until after Friday when the entire panel has
23 been released. I wish I could release you for the
24 week, but Judge Young and I are picking juries
25 tomorrow. I need you to call the jury information

1 line after 6:00 this evening.

2 You have both been attentive and
3 diligent in your duties and I just wanted to thank
4 you on behalf of counsel of the defendant and the
5 Court. I will turn you into the capable hands of
6 the Bailiff and they will bring you your lunch when
7 it arrives.

8 Thank you so much.

9 (Alternates out.)

10 THE COURT: All right. The record
11 should reflect the jury began its deliberations at
12 10:58 a.m. Stay close for me until their lunch
13 comes.

14 (A recess transpired.)

15 THE COURT: You may be seated.

16 As I understand it from the evidence,
17 the gonorrhea tests were the results of a blood
18 test, correct? A blood workup? How was the
19 gonorrhea test determined?

20 MS. HERRING-LASH: The **Minor**'s was a
21 vaginal swab and the defendant's was a urine test.

22 THE COURT: Okay. I got it. And who
23 testified regarding the positive results from the
24 vaginal swab?

25 MS. HERRING-LASH: Dr. Nolte and also

1 Kathy Fabrizio and also I think Elizabeth
2 McLaughlin.

3 MR. COCHRAN: I don't think Fabrizio
4 testified to the positive test, but she did testify
5 to testing for it.

6 THE COURT: She said she was aware it
7 was positive.

8 MR. COCHRAN: Oh, did she?

9 MS. HERRING-LASH: And I think
10 McLaughlin who was the -- who did the instrument
11 did and then Dr. Nolte did.

12 THE COURT: It was from a vaginal swab,
13 correct?

14 MS. HERRING-LASH: Yes, Your Honor.

15 THE COURT: Were anal swabs taken of
16 the **Minor**?

17 MS. HERRING-LASH: Yes.

18 THE COURT: Who testified regarding
19 that?

20 MS. HERRING-LASH: No one, because they
21 did not --

22 THE COURT: They did not test them.

23 MS. HERRING-LASH: They tested them,
24 but they did not test positive.

25 THE COURT: Was that testimony elicited

1 from any witness?

2 MS. HERRING-LASH: Not regarding the
3 anal swab, no.

4 MR. COCHRAN: Well, the SANE nurse
5 testified that she took the swab.

6 THE COURT: But there was no testimony
7 as to the results of any testing?

8 MR. COCHRAN: Correct.

9 MS. HERRING-LASH: No.

10 MR. COCHRAN: Other than DNA testing
11 not being -- not resulting --

12 THE COURT: But there was no testimony
13 that they testified the anal swabs and what the
14 results were.

15 MS. HERRING-LASH: Not regarding the
16 MUSC lab with gonorrhea.

17 THE COURT: Okay. The question -- the
18 jury has submitted a question and it reads as
19 follows: And it will be marked as a Court's
20 Exhibit. The jury would like to know the results
21 of any rectal swab tests. Were there traces of
22 gonorrhea? We would like to know any, and that's
23 underlined, relevant results.

24 THE COURT: My response would be as
25 follows: Madame Forelady, ladies and gentlemen of

1 the jury, all of the evidence in this case has been
2 presented to you. The Court cannot answer factual
3 questions. You must only consider the testimony in
4 evidence that has been submitted into the record
5 for purposes of your deliberations.

6 You cannot conduct your own independent
7 investigation or fact-finding outside of the
8 evidence and the testimony presented to you during
9 the course of this trial. You are not to speculate
10 or draw any inferences or conclusions from this
11 response to your inquiry during your deliberations.

12 If you desire to have the testimony of
13 any witness replayed or rehear any portions of the
14 law, please advise the Bailiff and we will
15 accommodate your request immediately.

16 Any exception from the State?

17 MS. ELLIOTT: None, Your Honor.

18 THE COURT: From the defense?

19 MR. COCHRAN: No, Your Honor.

20 THE COURT: If you would just give me
21 one second, I'm going to attach that to the note
22 and have the Bailiff take it back into the
23 jury.

24 (COURT EXH. 1, Jury note, was marked
25 for identification.)

1 (A recess transpired.)

2 THE COURT: You may be seated. We need
3 the defendant.

4 (Defendant in open court.)

5 THE COURT: All right. We have another
6 question. May we have a printed copy of Kathy
7 Fabrizio's testimony. My response would be as
8 follows: Madame Forelady, and ladies and gentlemen
9 of the jury, our technology does not allow us to
10 immediately produce a transcript of the
11 proceedings; however, we can replay the testimony
12 for you. If you desire to have the testimony
13 replayed, please advise the Bailiff and we will
14 accommodate your request.

15 Any exceptions from the State?

16 MS. ELLIOTT: None, Your Honor.

17 THE COURT: From the defense?

18 MR. COCHRAN: No, Your Honor. Would
19 they listen to it in here or --

20 THE COURT: In their jury room. Yeah,
21 I heard it the first time.

22 MR. COCHRAN: My only motion would be
23 that if they listen to it, they listen to it in its
24 entirety.

25 THE COURT: They'll listen to as much

1 as they want to. What I will do, if they want to
2 listen to it, I will send in the Court Reporter,
3 she will have it cued up, a Bailiff will go in
4 there. They will be instructed that they are not
5 to deliberate while she's in there. If they want
6 something rewound, they can tell her that. And if
7 they say that's all we want to hear, then that's --
8 she's going to take her direction from them. We
9 will cross that bridge when we come to
10 it.

11 (COURT EXH. 2, Jury note, was marked
12 for identification.)

13 (A recess transpired.)

14 THE COURT: You may be seated. Can we
15 get the defendant, please?

16 (Defendant in open court.)

17 THE COURT: The jury has indicated they
18 would like to rehear the testimony of Kathy
19 Fabrizio. They placed their request on the very
20 same note so I don't want to remark it.

21 Any exception from the State?

22 MS. HERRING-LASH: No, Your Honor.

23 THE COURT: From the defense?

24 MR. COCHRAN: Just that they listen to
25 the testimony in its entirety.

1 THE COURT: The Court stands by its
2 earlier ruling. The jury is not required to listen
3 to the whole testimony. They are only to hear what
4 they've asked to hear and we will follow whatever
5 directions they give. If they indicate at some
6 point that's all they want to hear, the reporter is
7 instructed to stop playing the testimony.

8 I will instruct the jury -- well, the
9 Bailiff to instruct them not to deliberate while
10 the Court Reporter is in there replaying the
11 testimony. And the Bailiff will be present as well
12 to take make sure that the instructions are abided
13 by since the testimony is about an hour. I would
14 suggest that you go to lunch and return by 1:15.

15 (Whereupon, a recess transpired while
16 the requested portion was played for the jury in
17 their jury room.)

18 THE COURT: The jury has reached a
19 verdict. Anything before we bring in the jury from
20 the State?

21 MS. ELLIOTT: No, Your Honor.

22 THE COURT: From the defense?

23 MR. COCHRAN: No, Your Honor.

24 (Jury in, 1:33 p.m.)

25 THE COURT: Madame Forelady, is it

VERDICT

1 correct that the jury has reached a verdict?

2 THE FOREPERSON: Yes.

3 THE COURT: Don't fold them. Just give
4 them to the Bailiff.

5 Thank you.

6 Sir, if you would stand while the clerk
7 publishes the verdict.

8 THE CLERK: In the Court of General
9 Session for the Ninth Judicial Circuit, Indictment
10 Number 2013-GS-10-6759, State of South Carolina,
11 County of Charleston, State of South Carolina
12 versus Johnny Tamar Brown, the defendant, we, the
13 jury, by unanimous consent find the defendant
14 guilty of criminal sexual conduct with a minor
15 first degree. Signed, Forelady of the Jury,
16 April 15th, 2015.

17 In the Court of General Sessions for
18 the Indictment 2013-GS-10-6760, State of South
19 Carolina versus Johnny Tamar Brown, the defendant,
20 we, the jury, by unanimous consent find the
21 defendant guilty of criminal sexual conduct with a
22 minor, first degree. Signed Forelady of the Jury,
23 April 15, 2015.

24 In the Court of General Session for the
25 Ninth Judicial Circuit, Indictment Number

VERDICT

1 2015-GS-10-2362, State of South Carolina versus
2 Johnny Tamar Brown, the defendant, we, the jury, by
3 unanimous consent find the defendant guilty of
4 criminal sexual conduct with a minor, third degree.
5 Signed Forelady of the Jury, April 15, 2015.

6 Ladies and gentlemen of the jury, if
7 this is your verdict please raise your right hand.

8 THE JURY: (Raised hands)

9 THE COURT: You may be seated. Thank
10 you.

11 Is there any request to poll the jury?
12 From the State?

13 MS. ELLIOTT: Not from the State.

14 THE COURT: From the defense?

15 MR. COCHRAN: Yes, Your Honor.

16 THE COURT: Madame Clerk, if you would
17 proceed to poll the jury.

18 THE CLERK: Ladies and gentlemen, I'm
19 going to call your juror number, and when I do I
20 will ask you two questions. I will ask you if this
21 is your verdict, where you will answer yes or no.
22 And then I will ask you is this still your verdict,
23 where you will answer yes or no.

24 Starting with Juror Number 73, is this
25 verdict?

VERDICT

1 A JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 A JUROR: Yes.

4 THE CLERK: Juror 193, is this your
5 verdict?

6 A JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 A JUROR: Yes.

9 THE CLERK: Juror number 44, is this
10 your verdict?

11 A JUROR: Yes.

12 THE CLERK: Is this still your verdict?

13 A JUROR: Yes.

14 THE CLERK: Juror number 200, is this
15 your verdict?

16 A JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 A JUROR: Yes.

19 THE CLERK: Juror number 3, is this
20 your verdict?

21 A JUROR: Yes.

22 THE CLERK: Is this still your verdict?

23 A JUROR: Yes.

24 THE CLERK: Juror number 326, is this
25 your verdict?

VERDICT

1 A JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 A JUROR: Yes.

4 THE CLERK: Juror number 294, is this

5 your verdict?

6 A JUROR: Yes.

7 THE CLERK: Is this still your verdict?

8 A JUROR: Yes.

9 THE CLERK: Juror number 330, is this

10 your verdict?

11 A JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 A JUROR: Yes.

14 THE CLERK: Juror number 183, is this

15 your verdict.

16 A JUROR: Yes.

17 THE CLERK: Is this still your verdict?

18 A JUROR: Yes.

19 THE CLERK: Juror number 22, is this

20 your verdict?

21 A JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 A JUROR: Yes.

24 THE CLERK: Juror number 231, is this

25 your verdict?

VERDICT

1 A JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 A JUROR: Yes.

4 THE CLERK: And juror number 300, is
5 this your verdict?

6 A JUROR: Yes.

7 THE CLERK: Is this still your verdict?

8 A JUROR: Yes.

9 THE CLERK: Thank you.

10 THE COURT: The jury has been polled
11 and the verdict stands.

12 Madame Forelady, ladies and gentlemen,
13 we want to thank you for your time and attention to
14 this case. I say it in jest -- well, not really in
15 jest, I really mean it, but people think I'm saying
16 it in jest when I say during jury qualification
17 that real court is nothing like Judge Judy, Judge
18 Joe Brown, the People's Court and all these other
19 court shows that we see on TV. While they're
20 incredibly entertaining, they are nothing like the
21 real process.

22 I hope that you all know how valuable
23 you are to us. In Charleston County, which is one
24 of the busiest circuits in the State, we hold jury
25 trials every week with the exception of holidays.

1 We generally have four trial courts operating. So
2 you can well imagine -- although there are many
3 things we do in what is called a non-jury capacity
4 where the judge acts as the jury, the majority of
5 what we do we require juries. Without your
6 willingness to participate, to really give us your
7 time, we would not be able to dispose of much of
8 the courts' business.

9 You were welcome to stay for sentencing
10 if you would like. You were welcome to leave as
11 well. If you need a work excuse, you can get those
12 on the first floor from any of the deputy clerks on
13 the circuit court side of the courthouse. Any of
14 the deputy clerks can give you a work excuse,
15 otherwise, we will mail those to you along with
16 your checks.

17 I will need you to call the jury
18 information line after 6:00 this evening. Both
19 Judge Young and I will be picking cases in the
20 morning unless something changes, and each of those
21 are one-day cases. So we anticipate that we will
22 begin those and, at the latest, finish those on
23 Friday morning.

24 I wish I could release you for the rest
25 of the week but, unfortunately, I won't be able to

1 do that. Again, you are welcome to stay for
2 sentencing if you like. Please make the Bailiffs
3 aware of it and -- let me do it his way. How many
4 of you would like to stay for sentencing? If you
5 would raise your hands.

6 THE JURY: (None)

7 THE COURT: Okay. So that is nobody.

8 You're free to leave at this time. I
9 will hear post-trial motions and sentencing in a
10 moment.

11 Thank you, and you are excused with the
12 Court's profound thanks.

13 I need some sentencing sheets.

14 What is his full record?

15 MS. ELLIOTT: His full record, Your
16 Honor --

17 THE COURT: Wait one second for me.
18 Full record.

19 MS. ELLIOTT: Full record is 1996,
20 criminal sexual conduct with a minor in the first
21 degree; 2006, sexual offender registry violation;
22 2007, driving under suspension, possession of a
23 stolen motor vehicle, and burg second nonviolent,
24 and a 2008 burg second, nonviolent.

25 THE COURT: I assume the first CSC with

1 a minor was the first strike.

2 MS. ELLIOTT: That's correct.

3 THE COURT: And this would be the most
4 serious strike.

5 MS. ELLIOTT: Yes, Your Honor.

6 THE COURT: Okay. Anything from the
7 State?

8 MS. ELLIOTT: Your Honor, we served
9 Defendant Johnny Brown with life without parole
10 notice with him being convicted of this, that is
11 the sentence that he should be receiving.

12 THE COURT: Anything from the defense?

13 MR. COCHRAN: Your Honor, we would
14 renew our objection to life without parole --
15 mandatory life without parole. We would note for
16 the record that he was 16 at the date of offense on
17 his prior, and we have not determined whether or
18 not he would have received notice at that time as
19 to the nature of the serious and most serious
20 offenses and the possibility of life without
21 parole.

22 THE COURT: I'm trying to figure out
23 how that would formulate some constitutional
24 challenge to our statutory framework which has
25 already been approved by our Supreme Court.

1 MR. COCHRAN: We would argue, Your
2 Honor, that given his age on the prior, that this
3 would constitute cruel and unusual punishment.

4 THE COURT: But the United States
5 Supreme Court has already said cruel and unusual
6 punishment is a life sentence -- well, it's death
7 under 18. It has not articulated that a life
8 sentence for somebody 18 and over is cruel and
9 unusual punishment, although there's some argument
10 that there's some case that may be heard this year
11 regarding that.

12 But he would not have been LWOP
13 eligible at 16, that might have been a valid
14 argument -- what's his age?

15 MR. COCHRAN: He's in his 30s now, Your
16 Honor.

17 THE COURT: And he was charged as an
18 adult at 16, correct?

19 MR. COCHRAN: That's correct.

20 THE COURT: And he was represented by
21 counsel at that time?

22 MR. COCHRAN: As far as I know.

23 THE COURT: And that was in the circuit
24 court, correct?

25 MR. COCHRAN: Yes, Your Honor.

1 THE COURT: And there have been no
2 attempts to contact his attorney or to contact the
3 Court Reporter to get a copy of that transcript?

4 MR. COCHRAN: No, Your Honor.

5 THE COURT: The Court will note the
6 objection and note that it cannot -- has not been
7 able to discern any precedent or any statutory
8 framework that would constitute a valid argument
9 against the State seeking life without the
10 possibility of parole.

11 MS. ELLIOTT: I'm making sure that they
12 are all right, Your Honor. We started a new
13 system.

14 THE COURT: Uh-huh.

15 THE COURT: Anything further from the
16 defense or the State?

17 MS. HERRING-LASH: Your Honor, I have
18 talked to the **Minor** and I think neither of them
19 want to address the Court.

20 MR. COCHRAN: Nothing from the defense,
21 Your Honor.

22 MS. ELLIOTT: May I approach, Your
23 Honor?

24 THE COURT: Yes, ma'am.

25 MS. ELLIOTT: Here's the sentencing

1 sheets.

2 THE COURT: What is the range of
3 penalty on a CSC third? Because that was not a
4 strike and that would not be a life sentence.

5 MS. ELLIOTT: Zero to 15, Your Honor.

6 THE COURT: And what's the maximum on a
7 CSC first if LWOP has not been noticed?

8 MS. ELLIOTT: Ten to 30.

9 MR. COCHRAN: We do -- we would just
10 request a ten-year sentence on each of those.

11 THE COURT: But you do not contest that
12 your client was served with life without parole
13 notice?

14 MR. COCHRAN: Correct.

15 THE COURT: And he was offered a
16 20-year sentence prior to proceeding to trial,
17 correct?

18 MR. COCHRAN: Correct.

19 THE COURT: Which he rejected?

20 MR. COCHRAN: Yes, Your Honor.

21 THE COURT: How many days has he served
22 pre-detention?

23 MR. COCHRAN: Your Honor, it's -- he is
24 two months under two years.

25 THE COURT: Okay. So about 22 months?

SENTENCING

1 MR. COCHRAN: Roughly, Your Honor, yes.

2 THE COURT: Sir, if you would stand for
3 sentencing. As I'm sure you're aware and your
4 attorneys have explained to you, the Court is left
5 with no sentencing discretion in this matter, as
6 you were served appropriately under the statute to
7 life without the possibility of parole notice prior
8 to the commencement of trial. So upon conviction
9 and having received another most serious offense,
10 the Court has no discretion in the sentencing under
11 the statutory framework; therefore, on
12 2013-GS-10-6759 and 6760, which are criminal sexual
13 conduct with a minor first degree, you are
14 sentenced to the State Department of Corrections
15 for a period of life.

16 On the criminal sexual conduct with a
17 minor third degree, you are sentenced to 15 years.
18 These sentences to run concurrently with another.
19 You'll get credit for any time that you've served
20 to be calculated and applied by the Department of
21 Corrections pursuant to 24-13-40.

22 Now, does he need any treatment in the
23 ATU?

24 MR. COCHRAN: I don't believe so.

25 THE COURT: I'm just asking in case I

SENTENCING

1 need to designate that on the sheets.

2 MR. COCHRAN: I don't believe so, Your
3 Honor.

4 THE COURT: Okay. Thank you very much.

5 MR. COCHRAN: Thank you.

6 THE COURT: Thank you. You-all have a
7 good rest of the week. We will start back at 9:30.

8 (These proceedings were concluded at
9 1:50 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 13th day of August, 2016 at
13 Charleston, Charleston County, South Carolina.

14

15

16

17 S/Denise Lauder
18 Carol Denise Lauder
19 Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

20

21

22

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25

FORM 5

STATE OF SOUTH CAROLINA

County of Charleston

Full name and prison number (if any) of Applicant

Shanny Brown 244979

State of South Carolina

2016-CP-10-1587
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2016 MAR 29 PM 2:23
J. ARMSTRONG
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correction Institution
2. Name and location of Court which imposed sentence Charleston County Court house
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) CSC 1 CSC 3 2013A1010203522
 - (b) 2013A1010203523

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 16 2015
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel failed to do so
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Consel failed to file appeal
- (b) Consel was Ineffective Not objecting
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Consel was Ineffective Not Investigating
- (b) Consel did not appeal
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. N/A
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. N/A
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. N/A
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. N/A
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. N/A
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. N/A
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. N/A
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

N/A

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? NO
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Charles Cochran

 ii. _____

 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentencing

 ii. _____

 iii. _____

19. State clearly the relief you seek in filing this application:

Vacate Conviction

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

County of

Lee

VERIFICATION

I, John Bran, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

John Bran

SWORN to and subscribed before me this

23

day of

March

2016

Debra Eastin
Notary Public

(L.S.)

My Commission Expires:

3/3/2024

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Johnny Brown, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Johnny Brown
Applicant

SWORN or affirmed to and subscribed before me this
23 day of March, 2010.

Debra Eastwood
Notary Public

My Commission Expires: 3/3/2026

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Johnny Brown, #244979,

2015-CP-10-1587

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on March 29, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. Applicant was indicted by the November 2013 term of the Charleston County Grand Jury for two (2) counts of Criminal Sexual Conduct with a Minor, First Degree (2013-GS-10-06759, -06760). Charles Cochran, Esquire, represented him. On April 15, 2015, Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Deadra L. Jefferson sentenced Applicant to confinement for life on each count. The sentences run concurrently.

II.

In his application for post conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Consel (sic) failed to file appeal"
2. "Consel (sic) was ineffective not objecting (sic)"

3. "Consel (sic) was ineffective not investigating (sic)"

For the purpose of this Return, Respondent incorporates the Clerk of Court records and the South Carolina Department of Corrections' records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's allegations as alleging ineffective assistance of counsel. Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In

other words, where ineffective assistance of counsel is alleged as a ground for relief, Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, Respondent requests an evidentiary hearing solely for the purpose of determining whether Applicant's trial counsel was ineffective and whether Applicant's appellate counsel was ineffective.

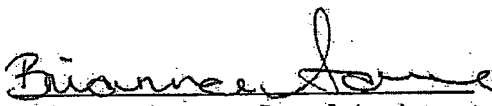
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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2015-CP-10-1587
	)	
JOHNNY BROWN, #244979	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
 Falk Law Firm, LLC
 Post Office Box 1058
 Charleston, South Carolina 29402

DATED this 23rd day of June, 2016.


 Brianna Arnone, Legal Assistant
 For Respondent

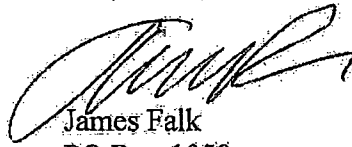
STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE 9th JUDICIAL CIRCUIT
	)	
Johnny T Brown 244979	)	
Applicant	)	2016-CP-10-1587
Vs.	)	
State of South Carolina	)	AMENDED APPLICATION FOR
Respondent	)	POST CONVICTION RELIEF

TO: Megan Jameson, Esq., Office of SC Attorney General, PO Box 11549, Columbia, SC
29211-1549.

Applicant Johnny T Brown by counsel amends his application for Post-Conviction Relief. In addition to those grounds set forth in his initial application, Johnny T Brown hereby states that trial the following deficiencies by trial counsel support his allegation that trial counsel provided ineffective assistance of counsel.

1. Trial Counsel should have objected to the testimony uttered by Katherine Fabrizio. Ms. Fabrizio's testimony on pages 173, 183, and 186 was beyond the scope permissible from a non-expert witness. There is no showing on the record that the Court was asked to permit Katherine Fabrizio to testify as an expert. Moreover, even if the court were to admit her as an expert in the field of pediatric sexual assault evaluations, her testimony on page 183 line 10 through page 184 line 15 exceeded the scope of that area of expertise.
2. Trial Counsel should have sought a curative instruction after the court sustained his objection to Katherine Fabrizio's bolstering testimony found on page 159 line 23 through page 160 line 8.
3. Trial counsel should have objected to Katherine Fabrizio's testimony on page 173 lines 18-23 as hearsay and in violation of defendant's right to confront the state's witnesses.
4. Trial counsel was ineffective by not perfecting applicant's right to appeal the jury's verdict in this case.

Respectfully Submitted,



James Falk
PO Box 1058
Charleston, SC 29402
(843) 606 6007
jfalklaw@gmail.com

CERTIFICATE OF SERVICE

Undersigned certifies that on December 3, 2017 a copy of the above was both mailed and emailed to Megan Jameson, Esq. at the address listed above.



James Falk
Counsel for Applicant

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of Common Pleas
3 _____) Case No. 2016-CP-10-1587
4 JOHNNY BROWN)
5 Applicant,)
6 vs.) Transcript of Record
7 STATE OF SOUTH CAROLINA,)
8 Respondent.) DATE: January 31, 2018
9 _____)

10 B E F O R E:

11 THE HONORABLE MAITE D. MURPHY
12

13 A P P E A R A N C E:

14 JAMES KRISTIAN FALK
15 Attorney for the Applicant

16 MEGAN HARRIGAN JAMESON
17 Attorney for the Respondent

18
19 Karen V. Andersen, RMR, CRR
20 Circuit Court Reporter
21
22
23
24
25

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EXAMINATION

Witness Name

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CHARLES COCHRAN

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1 MS. JAMESON: May it please the Court. This is the
2 matter of Johnny Brown vs. The State of South Carolina,
3 Docket No. 2016-CP-10-1587.

4 In November of 2013, the Charleston County Grand
5 Jury indicted Mr. Brown for two counts of first-degree
6 criminal sexual conduct with a minor. The Charleston County
7 Grand Jury later indicted him for third-degree sexual
8 conduct with a minor as well.

9 He was represented by Assistant Public Defender
10 Charles Cochran. On April 13th, 2015, he proceeded to a
11 jury trial before Judge Jefferson. On the 15th, the jury
12 found him guilty as indicted on all three offenses.

13 Judge Jefferson sentenced Mr. Brown to life
14 imprisonment for both first-degree criminal sexual conduct
15 with a minor convictions and to 15 years for the
16 third-degree criminal sexual conduct conviction, with all
17 sentences to serve concurrently.

18 He did not pursue direct appeal. He did, however,
19 file a timely application for post-conviction relief on
20 March 29th, 2016, alleging various grounds of ineffective
21 assistance of trial counsel, including failure to file an
22 appeal, failure to investigate and failure to object.

23 The State made its return on June 23rd, 2016.

24 Mr. Brown is represented by James Falk, who filed
25 an amended application on December 3rd, 2017, alleging the

1 following specific allegations: Ineffective assistance of
2 counsel for failing to object to testimony of State's
3 witness Katherine Fabrizio as beyond the scope of nonexpert
4 testimony; ineffective assistance of counsel for failing to
5 seek a curative instruction to Ms. Fabrizio's bolstering
6 testimony; ineffective assistance of counsel for failing to
7 object to Ms. Fabrizio's testimony as bolstering and
8 violation of a confrontation clause; and ineffective
9 assistance of counsel for failing to file notice of appeal.

10 THE COURT: Mr. Falk.

11 MR. FALK: Thank you, Your Honor.

12 We call Mr. Cochran to the stand.

13 THE COURT: Mr. Cochran, come on up.

14 CHARLES COCHRAN,

15 having been duly sworn, testifies as follows:

16 THE CLERK: Spell your first and last name for the
17 record.

18 THE WITNESS: Charles Cochran, C-o-c-h-r-a-n.

19 DIRECT EXAMINATION

20 BY MR. FALK:

21 Q. Mr. Cochran, you are with the public defender's
22 office?

23 A. Yes.

24 Q. Is that how you became my client's counsel at
25 trial?

1 A. Yes.

2 Q. And were you counsel from the beginning to end in
3 this case?

4 A. Yes.

5 Q. Do you know about how many times you spoke with him
6 while he was in custody?

7 A. I would have to -- I did not get a chance to pull
8 the file from archives. From my recollection, he was
9 incarcerated around two years or over two years. I would
10 try to see every client at least once every 60 days.

11 Q. Let's just get this point issue out of the way
12 first. At the end of the trial, was there any discussion
13 about him wanting to file an appeal?

14 A. I don't believe we ever discussed it directly. I
15 mean, it was understood that he was convicted and received a
16 life sentence. That would be understood that we would
17 appeal that.

18 Q. So do you contend that he wanted to have an appeal
19 or --

20 A. Oh, yeah. I'm sure he wanted to have an appeal,
21 yes.

22 Q. And it was just an oversight by your office to file
23 the notice?

24 A. Yes, totally unexcused oversight.

25 Q. Okay. I think the rest of my testimony is going to

1 focus on Katherine Fabrizio.

2 A. Okay.

3 Q. Or Fabrizio?

4 A. I'm not sure.

5 Q. But can you just explain to the Court what her role
6 was in this case?

7 A. Looking at the transcript, she was a SANE nurse.
8 So she administered the --

9 Q. And that's P-S-A-N-E or is it --

10 A. S-A-N-E, sexual assault nursing exam. She
11 administered that, I believe, directly with the alleged
12 **Minor** in the case. So she examined her and then testified
13 about the allegations, the time and place, and then about
14 her role in a medical capacity.

15 Q. What was the age of the **Minor** in this case?

16 A. I believe she was 15, 14.

17 Q. I'm just bouncing back and forth. At one time, she
18 claimed that she was P-S-A-N-E, which I assume means
19 prepubescent sexual assault, but it doesn't matter.

20 A. Right. I don't think she was prepubescent. This
21 was a first-degree because of an enhancement from a prior,
22 not because of the age of the **Minor**.

23 Q. Got it. Got it. Okay. Let me just ask you
24 about -- do you have a copy of the transcript?

25 A. I do, yeah.

1 Q. If you could look at page 159.

2 A. Okay.

3 Q. And if you could read through that testimony
4 starting on line -- just to yourself, read through the
5 testimony starting on line 23 and going through right to
6 your objection that you made on page 160, line 8.

7 A. Okay. Okay.

8 Q. Can you just sort of summarize what that testimony
9 was about?

10 A. Yeah. I mean, it's hard to say what the witness
11 was trying to do. I think what the witness was -- in
12 context, I think what she was trying to do was explain to
13 the jury that she was accepting nonverbal responses from the
14 patient. So when she was saying "consistent", that, you
15 know, raises red flags. And when she starts talking about
16 things being consistent or true or not true, that's clearly
17 objectionable. And that was why I objected, because she's
18 not allowed to comment on the believability of another
19 witness.

20 Q. Did you consider at that time asking for a curative
21 instruction for the jury?

22 A. I might have. I'm guessing that I never did. And
23 I don't know, maybe I probably should have. That certainly
24 is something that you would typically do, I guess. The only
25 thing I could say is that in the moment, sometimes you don't

1 want to draw more attention to it with that curative
2 instruction. And in my experience, curative instruction
3 could be of limited utility.

4 Also, reading it, I mean, I think at the time I was
5 sort of confused about her. I mean, I think she wasn't
6 saying that the Minor was being consistent or that she was
7 being truthful. She was explaining why she was accepting
8 nonverbal responses. And so I probably didn't think it was
9 that big of a deal, because, to me, she wasn't telling the
10 jury, I think, that this witness was telling the truth. So
11 I didn't want -- I wouldn't have wanted the judge to then
12 point that out to the jury and talk about the nurse maybe
13 making a claim of truthfulness, when that's not what she was
14 even doing.

15 Q. Okay. Let's sort of back up. What was the basis
16 for Katherine Fabrizio's testimony in the first place? Was
17 she offered as an expert?

18 A. She was not, which is sort of inexplicable. My
19 guess is that -- I mean, it was clearly an oversight on the
20 prosecutor's part because she went through her
21 qualifications and then did not ask for her to be an expert.
22 And, I guess, the time I should have objected would have
23 been once she started providing expert testimony, which she
24 did. Once she started saying things that were outside of
25 her scope of a lay witness, I should have objected. And it

1 was just an oversight on my part, and I guess the judge's
2 and the prosecutor's as well.

3 Q. Because you will admit that she was providing
4 testimony that she was not qualified to give unless she was
5 admitted as an expert.

6 A. Absolutely, yeah.

7 Q. And would you assume that that testimony would have
8 been prejudicial?

9 MS. JAMESON: Your Honor, I would object. I think
10 that's your determination to make whether it's prejudicial
11 or not.

12 THE COURT: Please rephrase.

13 BY MR. FALK:

14 Q. What role did her testimony play in this case? She
15 testified for several pages. Was she a significant witness
16 for the State?

17 A. Yeah. In any CSC case, the SANE nurse would be. A
18 lot of times is the most significant witness besides the
19 **Minor**. They are very significant ones, yes.

20 Q. That's really the only witness here who
21 corroborates any of the **Minor**'s allegations?

22 A. Yes. They serve a number of purposes. They
23 corroborate accusations, because there's a lot of testimony
24 to time and place of the accusation that they are allowed
25 when they are admitted as an expert to provide, a certain

1 amount of medical testimony about evidence gathering,
2 presence of injuries, presence of fluids, you know, any kind
3 of evidence that's collected, and to a certain extent, I
4 guess, the science behind it.

5 Q. In the closing argument, the State certainly
6 highlighted her testimony in the closing argument, did they
7 not?

8 A. Yes, they always would.

9 Q. Now, let's just sort of assume for the sake of
10 argument that she was admitted as an expert. Could you look
11 at the testimony on pages 172, starting about line 25, going
12 on through 173, line 15.

13 A. Starting on 172, what line?

14 Q. Line 25.

15 A. Okay.

16 Q. Is it safe to assume that at some point in this
17 trial, there was possibly -- the State was trying to respond
18 to the fact that there was not significant damage to the
19 hymen of the **Minor**?

20 A. Yes.

21 Q. And part of the SANE, P-S-A-N, whatever, was to
22 explain why -- that you could still have a sexual assault
23 without having damage to the hymen; is that correct?

24 A. That's correct, yes.

25 Q. So her testimony under the sections that I gave

1 you, what is the basis for that testimony? Is she relying
2 on studies?

3 A. She purports to be without citing them directly.

4 Q. Now, of course, as a lay witness, she has no
5 business testifying to these studies?

6 A. Correct.

7 Q. Assuming that she were qualified as an expert
8 witness, did the State provide any foundation whether or not
9 it was reasonable for an expert to be relying on these
10 studies? Because this is clearly hearsay testimony, is it
11 not?

12 A. It is. I mean, no, they did not establish a
13 foundation for a learned treatise exception or anything like
14 that.

15 Q. So this is all coming in under, like, Rule 703. I
16 think that's the rule. As far as -- again, we are assuming
17 that she was admitted as an expert. And had she been
18 admitted as an expert, experts are allowed to rely on
19 hearsay testimony; is that right? I'm terrible on my rule
20 numbers.

21 A. Yeah.

22 Q. But before we can do that, doesn't foundation have
23 to be laid that those would be the type of studies that an
24 expert in those fields would rely on?

25 A. Yes.

1 Q. And there was no foundation laid for that testimony
2 either?

3 A. No.

4 Q. And I'm going to let you go to page 178.

5 MR. FALK: Your Honor, when I filed amended PCR
6 application, in my numerical paragraph 3, I referred to this
7 testimony, but I gave the wrong page number.

8 THE COURT: Okay.

9 MR. FALK: I should have said page 178, lines 18
10 through 23, but instead, I said 173. So he's now looking at
11 page 178. And I guess it really backs up further than
12 that.

13 BY MR. FALK:

14 Q. Really starting at line 13 through the end of that,
15 what was the result of the swabs that were --

16 A. The **Minor** tested positive for gonorrhea.

17 Q. Okay. But was there a medical report offered for
18 that?

19 A. Yes. In discovery?

20 Q. In the trial.

21 A. Oh. I don't recall whether or not it was offered
22 as evidence.

23 Q. Because the testimony -- because if -- right here,
24 this is, again, hearsay testimony that's coming in through
25 the expert -- through the nonexpert?

1 A. Right. I mean, if she's not -- well, yeah, I guess
2 you could make an argument that that's hearsay. I mean,
3 it's medical treatment, if she's an expert, if she's a
4 medical professional. But, yeah, I guess, technically, it
5 would be hearsay.

6 Q. What significance in the trial was there that the
7 Minor tested positive for gonorrhea?

8 A. That the defendant also had gonorrhea.

9 Q. And so that --

10 A. So they were alleging that he transmitted the
11 gonorrhea to her.

12 Q. And that would also be some -- also corroborating
13 the fact that he was the actual perpetrator?

14 A. Right.

15 Q. And you didn't object to the introduction of that
16 testimony through the witness?

17 A. I did not. Doesn't look like I did.

18 Q. Was that based on trial strategy?

19 A. You know, the facts -- the fact that she tested
20 positive for gonorrhea and that he tested positive for
21 gonorrhea was going to come in through other witnesses. So
22 those things were going to be established. We had our
23 response to it. And so, you know, a lot of times, I would
24 err on the side of not objecting, to not calling more
25 attention to it or to not appear to be trying to hide

1 something from the jury or over objecting. So, yeah, you
2 could say it was trial strategy.

3 Q. Would you have objected to Katherine Fabrizio, had
4 they moved her as an expert? Had the prosecution moved to
5 have her admitted as an expert, what would you have done?

6 A. I'm surprised I didn't object to her being admitted
7 as an expert in -- it is routine for a SANE nurse to get
8 admitted as an expert. So I wouldn't have objected,
9 necessarily, to her flatly being admitted as an expert.

10 But the problem with SANE nurses as witnesses, in
11 my experience, is that they tend to get close to going out
12 of bounds, and often do go out of bounds. So a lot of
13 times, I will move to limit their testimony to time and
14 place and to their expertise. They are experts in
15 administering the actual exam. But they go out of bounds in
16 instances of talking about 90 percent of -- you know, those
17 kinds of things. There's some case law to support that that
18 is not within their expertise. So I'm surprised that I
19 didn't object to that.

20 Q. Okay. So you would admit that if any of her
21 testimony that went beyond time and place, really is
22 beyond --

23 A. Well, she's not an expert in time and place -- you
24 know, she's not an expert in receiving assault history. The
25 courts usually admit them as experts in administering the

1 exam, collecting evidence, checking for injuries, for the
2 absence of injuries, looking for marks, fluids, things like
3 that. You know, that's why most of their qualifications
4 have to do with how many tests they've done. So they are
5 experts in that sense. They are not just general medical
6 experts in sexual assault treatment. And a lot of times,
7 they are presented as such.

8 And in this case, kind of seems like she was used
9 as such. And, you know, if I put fault on myself, I would
10 probably say that I did not object to maybe the scope of her
11 testimony as it related to her expertise. But her -- I
12 mean, in my experience, they are always admitted as experts
13 in administering the exams and talking to victims about
14 their assault history.

15 MR. FALK: I have no further questions.

16 THE COURT: Cross-examination.

17 MS. JAMESON: It's likely going to take more than
18 15 minutes. Can we come back in the middle?

19 THE COURT: Yes. And I understand.

20 Your cross-examination, you are still under oath.
21 So please don't discuss your testimony with anyone. We will
22 go ahead and take our lunch break. There's another matter
23 scheduled that Mr. Falk needs to attend. So we will be at
24 recess.

25 How long do you think, Mr. Falk, two o'clock?

1 MR. FALK: Yes.

2 THE COURT: Okay. We will be at recess until two
3 o'clock.

4 (Whereupon, a recess transpired.)

5 THE COURT: You may proceed with your questioning.

6 MS. JAMESON: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. JAMESON:

9 Q. Mr. Cochran, how long have you been practicing
10 law?

11 A. Since I was sworn in in 2008, so almost 10 years.

12 Q. And at the time of your representation, you were at
13 the public defender's office?

14 A. Yes.

15 Q. Do you recall when you were appointed to this case?

16 A. I would have been appointed at or around the time
17 of his arrest, which I believe was on the 24th of June,
18 2013. So probably within seven to ten days of that day.

19 Q. Can you briefly review the allegations as presented
20 by the State, what Mr. Brown was alleged to have committed?

21 A. Mr. Brown had a -- some type of familial or
22 friendship relationship with the alleged **Minor**'s mother.
23 He had been at their house with her consent at some point
24 that day. And at some point was alone with the alleged
25 **Minor**.

1 The allegation is that he sexually assaulted her
2 with intercourse and gave her gonorrhea, and that he was
3 wearing an ankle bracelet or a GPS monitor of some sort
4 because of his status as a sex offender. She reported, it
5 looks like, that day. And he was arrested a few days later.

6 Q. Do you recall what specific acts he's alleged to
7 have committed on -- and I believe it was his 13-year-old
8 second cousin?

9 A. Yeah. He was alleged -- I'm referring to his
10 arrest warrant. One count was for anal intercourse. One
11 count was vaginal intercourse. I believe that was it. I
12 believe he was indicted on both those counts.

13 Q. And you testified, I believe, that the 13-year-old
14 **Minor** reported pretty soon thereafter?

15 A. Yes, I believe so.

16 Q. And both the minor **Minor** and Mr. Brown tested
17 positive for gonorrhea, correct?

18 A. Correct.

19 Q. Was there any physical evidence found from either
20 her vaginal or anal swabs that were collected during her
21 assault examination?

22 A. My recollection from looking at the transcript,
23 there was fluid found during her vaginal exam that did not
24 have traceable semen in it that they could test for DNA.

25 Q. Was it that there wasn't -- they couldn't determine

1 DNA because there wasn't sperm but there was semen found?

2 A. I'm sorry, yes.

3 Q. Did she also report to anyone else other than her
4 mother?

5 A. She reported to the SANE nurse. She reported to
6 Lowcountry Children's Center, and maybe to another family
7 member, but I don't remember that.

8 Q. If the record reflects that she also reported to a
9 school counselor, would you agree with that?

10 A. Yeah, that rings a bell.

11 Q. You testified briefly about the GPS monitoring.
12 Can you describe that for the Court, what evidence the State
13 presented in regards to the GPS monitoring?

14 A. From my recollection, they basically established
15 his presence at the [Minor]'s home at the time she says this
16 happened.

17 Q. Do you recall whether there were any offers in this
18 case?

19 A. I believe there was an offer that was rejected on
20 the record for 20 years. And I remember discussing that
21 with Mr. Brown.

22 Q. Did you review the discovery materials with him?

23 A. Yes.

24 Q. Did you discuss his version of the facts?

25 A. Yes.

1 Q. What defenses were you able to glean from those
2 discussions?

3 A. He didn't testify, I don't believe. And so we
4 didn't have any affirmative defenses. I believe this was a
5 case where we were putting the State up to its burden and
6 trying to establish reasonable doubt for the jury.

7 Q. Did he give you any potential witnesses or leads to
8 investigate?

9 A. I spoke pretty extensively with his sister, who
10 offered herself and some other family members as potential
11 character witnesses against the [Minor]. Presenting any kind
12 of character witnesses for Mr. Brown would have been
13 problematic because of his record.

14 Q. What was his prior record?

15 A. He was a registered sex offender at the time. He
16 had a prior conviction for CSC with a minor for, I think, a
17 different cousin, had gone to prison, been put on the
18 registry, got out. And then this arrest was made probably
19 within a couple of years of his release, I think.

20 Q. Did the State seek to -- were there any allegations
21 that he had previously sexually assaulted the [Minor] in this
22 case?

23 A. She made the disclosure. I think that was
24 unsubstantiated. And then might have been contradicted
25 because he was in prison when she -- she estimated it

1 happened when she was something like six years old. And he
2 was in prison at the time, something like that. But, yeah,
3 I believe she did accuse him of having assaulted her in the
4 past that she did not report at the time.

5 Q. And the State sought to introduce that evidence,
6 correct?

7 A. Yes.

8 Q. And you challenged the admission of that?

9 A. Yeah, I believe I objected to all of the -- any
10 prior bad acts that they tried to introduce.

11 Q. And Judge Jefferson ultimately allowed that
12 testimony in?

13 A. Yes.

14 Q. Regarding Ms. Fabrizio's testimony -- well, I
15 guess, let's just start out. You testified before that the
16 SANE or the PSANE nurse is often the most significant
17 witness presented, other than the **Minor** by the State,
18 correct?

19 A. Yes, a lot of times.

20 Q. Because she corroborates the testimony, I believe
21 is what you testified to?

22 A. Yeah. I mean, there are other witnesses that
23 corroborate testimony, interview by counselors and things,
24 but the nurses provide that testimony in addition to medical
25 testimony. And jurors tend to think medical testimony is

1 very persuasive. So those are usually very important
2 witnesses.

3 Q. But in this case, the [Minor] was interviewed by
4 forensic interviewer, correct?

5 A. Yes.

6 Q. And she testified?

7 A. Yes.

8 Q. And a school counselor that she had disclosed to
9 testified?

10 A. Right.

11 Q. And her mother testified that she reported the
12 sexual assault within hours of it happening, correct?

13 A. Right.

14 Q. And a SLED expert testified to the semen that was
15 found on the vaginal swab, correct?

16 A. Correct.

17 Q. And two different pathologists from M.U.S.C.
18 testified that the [Minor] and the defendant both had
19 gonorrhea, correct?

20 A. Correct.

21 Q. So this wasn't just a straight corroboration of the
22 [Minor]'s testimony case?

23 A. No.

24 Q. So I believe you testified you didn't object to the
25 expert-type testimony because it was just overlooked,

1 correct?

2 A. To her being qualified as an expert, yes. That
3 must have just been an oversight on my part. It was pointed
4 out to me in our previous discussions that the same
5 oversight had been made by the prosecutor for a different
6 witness where I caught it. So, you know, my -- I don't
7 hardly remember trying this case at all, to be honest with
8 you. But I don't see anything from the transcript to say
9 why I would not have objected to her testifying to expert
10 testimony without having been qualified.

11 Q. And when you are referring to the portion of
12 another witness, I believe you are talking about Stephanie
13 Stanley on page 277 where you object that she hasn't been
14 admitted as an expert; do you recall that?

15 A. Yes.

16 Q. What happened at that time?

17 A. Then the prosecutor was allowed to then admit her
18 as an expert after laying a foundation.

19 Q. Do you have a copy of the transcript up there?

20 A. Yes.

21 Q. If you will start at the beginning of Katherine
22 Fabrizio's testimony, which is 152 and 153. If you will
23 look over those two pages. I have questions about her
24 qualifications for you.

25 A. Okay.

1 Q. She had a bachelor of science from M.U.S.C.,
2 correct?

3 A. Right.

4 Q. And then she had a master's in nursing from
5 M.U.S.C., correct?

6 A. Right.

7 Q. And a year and a half of postmaster's work at Emory
8 University?

9 A. Right.

10 Q. And she was a certified family nurse
11 practitioner?

12 A. Correct.

13 Q. She had been a nurse practitioner for 25 years?

14 A. Yes.

15 Q. She testified that she worked with abused children
16 daily, including sexual abuse victims, physical abuse
17 victims, medical neglect victims, and exposure to domestic
18 violence and substance abuse, correct?

19 A. Correct.

20 Q. And she testified that she had six months of
21 intensive training to become a pediatric sexual assault
22 nurse examiner, correct?

23 A. Correct.

24 Q. Including sitting for and passing an exam on that
25 specific topic?

1 A. Yes.

2 Q. Do you think if the qualifications as presented in
3 the record --

4 MR. FALK: Your Honor, isn't that calling for
5 speculation?

6 THE COURT: Can you finish the question?

7 BY MS. JAMESON:

8 Q. Based on the transcript we have here, do you think
9 she would have been qualified as an expert if the State had
10 so moved?

11 A. In my experience doing CSC with minor cases or CSC
12 cases in general, a SANE nurse with those qualifications
13 would be admitted as an expert in conducting exams.

14 Q. Certainly. Do you see any possible benefit from
15 her not being admitted as an expert in this trial?

16 A. For the defense?

17 Q. Uh-huh.

18 A. No. Well, oh --

19 Q. There were other experts that were duly qualified
20 in this trial, correct?

21 A. Right, yes.

22 Q. And the court gave an expert instruction to the
23 jury, correct?

24 A. Correct.

25 Q. In your experience, do juries give heightened

1 attention to expert testimony?

2 A. Yes.

3 Q. If you will look at page 183 to 184, I believe this
4 is the portion of her testimony where Mr. Brown has alleged
5 that she exceeded the scope of her nonexpert testimony.

6 A. Okay.

7 Q. Most of this testimony is dealing with bodily
8 fluids, correct?

9 A. Right.

10 Q. Is there a reason you didn't object?

11 A. Well, I was operating under the assumption that she
12 was an expert, which would have been mistaken. So she
13 should not have been testifying to any of this if she was
14 not called as an expert. But assuming she had been, she is
15 talking about bodily fluids in terms of evidence collection.
16 And that, in my experience, is what the SANE nurse is
17 typically qualified to testify to as an expert, because
18 their training in what they are doing every day has to do
19 with identifying potential samples of identifiers for a
20 suspect. And that's what she's doing there.

21 In my opinion, that would not be outside of her
22 expertise based on what courts have ruled in cases that I've
23 been involved in and my reading of case law.

24 Q. Did evidence of bodily fluids from either Mr. Brown
25 or the **Minor** come in through other properly admitted

1 experts or witnesses?

2 A. I believe so, at least to establish the presence of
3 an STD in both of them.

4 Q. If you will look at page 159 to 160, and I believe
5 the allegation is you failed to move for a curative
6 instruction to bolstering. You did -- does the record
7 reflect you did properly object to bolstering testimony?

8 A. Yes, at some points, I did object to be
9 bolstering.

10 Q. I believe you testified before that you believed
11 she was just describing how the [Minor] had responded during
12 her examination, which is pretty nonverbal?

13 A. Right. Yeah, I mean, even if she's not an expert,
14 she's allowed to testify to the demeanor of another person
15 that she witnessed.

16 Q. Had the [Minor] already testified at this point in
17 time?

18 A. Yes, I believe she testified first.

19 Q. Were any of these characteristics that she
20 describes, the nervousness, timidity or upsetness, had that
21 already been -- what was the [Minor]'s demeanor on the
22 stand?

23 A. The [Minor]'s demeanor was timid, sometimes
24 nonverbal, head shaking yes or no, quiet, looking down. And
25 what the prosecutor is doing here is, like, as a typical

1 prosecutor strategy, which would be to explain -- have a
2 witness, like a nurse, explain what they call flat affect
3 for a sexual assault victim, to basically just explain to --
4 I guess the concern is that a jury would expect a sexual
5 assault victim to be crying or hysterical or, you know,
6 whatever. And this is just to, I guess, explain without
7 explaining why their behavior or demeanor might be like
8 that.

9 Q. Do you recall any of your cross-examination of Ms.
10 Fabrizio?

11 A. I don't recall it at all other than by looking at
12 the transcript.

13 Q. And the allegation again here was both vaginal and
14 anal penetration, correct?

15 A. Right.

16 Q. Were you able to elicit testimony from Ms. Fabrizio
17 that the [Minor] had reported she hadn't been anally
18 penetrated?

19 A. Right. I believe -- yes, I believe the [Minor]
20 denied anal penetration in the SANE exam.

21 MS. JAMESON: Your Honor, that's on page 188, for
22 the record.

23 BY MS. JAMESON:

24 Q. And during Ms. Fabrizio's direct examination, she
25 said that it was normal not to have any sort of physical

1 signs of abuse if you've been sexually assaulted, correct?

2 A. Right.

3 Q. Did you challenge her on cross-examination about
4 that with other studies?

5 A. Yeah. After looking at the transcript, I believe
6 she cited a study that said 95 percent of confirmed sexual
7 assaults did not have any kind of a physical injury. And I
8 believe I cited a study that she was unaware of from the
9 Department of Justice about that number, statistic, that
10 would be more favorable to the defense.

11 Q. What was her response to this?

12 A. I believe she just said that she was not aware of
13 the study, but I can't remember specifically.

14 Q. Do you recall the State bringing up Ms. Fabrizio's
15 testimony during its closing argument?

16 A. Yes.

17 Q. How did they portray her testimony to the jury?

18 A. Well, I mean, I don't remember specifically.

19 Q. If you will look at 354, that might help to refresh
20 your recollection.

21 A. They kind of reviewed her credentials, basically
22 making the point to the jury that she would be a reliable
23 witness. I tried to twist her up with statistics by
24 flashing a study related to adults, basically trying to make
25 the argument that I was trying to trick her, I guess, with

1 the study.

2 Q. When you were cross-examining Ms. Fabrizio, did she
3 appear to be confused when you brought up this other study?

4 A. From my recollection, I think she maybe was caught
5 off guard by it.

6 Q. Did you mention Ms. Fabrizio in your closing
7 argument?

8 A. I believe so.

9 Q. Do you recall how you characterized her testimony
10 to the jury? 362 and 363 may be good reference points.

11 A. If I'm looking at 362, I'm talking about the nurse.
12 I believe I was making the argument that she was not
13 unbiased as a scientific witness should be; that gonorrhea
14 is rampant in the area was something that she said during
15 direct examination, but then sort of backed away from.

16 Q. Was that a defense strategy, to say that the
17 gonorrhea came from someone else other than your client?

18 A. That it could have, yeah. We did not have any
19 specific evidence, you know, in terms of specific possible
20 source, alternative source. But the fact -- the argument we
21 were making to the jury is that the presence of an STD in
22 both people is not the same as DNA evidence, is not an
23 identifier. It's circumstantial evidence.

24 Q. And there was no DNA here.

25 A. Right. And then it looks like I talk about the

1 study that she cites and then the study that I cite.

2 Q. And regarding the failure to file an appeal, that's
3 something you just forgot to do?

4 A. Yep. This was April 2015. That was, I believe, a
5 period of time -- that was, like, right in the middle of a
6 12-month period where I had something like 10 jury trials,
7 you know, couple of murder trials, rape trial, armed robbery
8 trials. And this was a case that I would have, you know,
9 done at closing argument, gotten a verdict, and then was
10 probably in court the next morning or later that afternoon.
11 And just completely forgot. And my paralegal -- must have
12 been an oversight with her too. Never happened to me
13 before, but, yeah, unexplained error.

14 MS. JAMESON: Thank you. No further questions,
15 Your Honor.

16 THE COURT: Any redirect?

17 REDIRECT EXAMINATION

18 BY MR. FALK:

19 Q. The only testimony regarding -- for an explanation
20 as to how you could have penetrative sexual contact without
21 rupturing the hymen came from Ms. Fabrizio, is that not
22 correct?

23 A. Right. Yes. I think she was the only --

24 Q. That was the only witness that was offered,
25 correct?

1 A. Yes.

2 Q. And her testimony on that was based on studies that
3 she cited too, is that correct?

4 A. Right.

5 Q. And there was no foundation laid for those
6 studies?

7 A. That's correct.

8 Q. And you could have certainly challenged those
9 studies with a *Wyatt vs. State* review at the beginning or
10 counsel hearing, whatever it would be, at the beginning of
11 the trial, right?

12 A. Yes.

13 Q. Because you could not only challenge the expert,
14 but you can also challenge the science that they are going
15 to testify to?

16 A. Right.

17 Q. It sounds from your testimony that you've done a
18 lot of sexual assault cases, possibly with juveniles?

19 A. Yes.

20 Q. Is it fair to say that for a good period of time,
21 nobody even challenged whether or not a forensic interviewer
22 was considered an expert up until the decision in *Kromah*?

23 A. Yeah, yeah.

24 Q. And is it your understanding that if you do not
25 preserve an issue as to the qualification of an expert or

1 challenge it, there's no way it can be addressed on appeal?

2 A. That's right.

3 Q. So whether or not -- so appellate defense has no
4 opportunity to challenge whether or not this particular
5 expert is an expert, whether somebody is certified as a
6 PSANE, what the scope of that expert testimony could be?

7 A. Yeah. If I fail to object, it's not preserved and
8 cannot be reviewed.

9 Q. Right.

10 MR. FALK: I have no further questions.

11 THE COURT: You may step down, sir. Thank you.
12 You may call your next witness.

13 MR. FALK: We have no further witnesses.

14 THE COURT: Anything from the State?

15 MS. JAMESON: No, the State does not have any
16 witnesses.

17 THE COURT: Parties care to give summation?

18 MR. FALK: Your Honor, it's taking a big assumption
19 that this witness would be qualified as an expert. She may
20 have been. She may not have been. Only thing we know for
21 sure is she was not qualified as an expert in this trial.
22 She testified. She gave expert opinions. So she was a
23 nonexpert testifying to stuff that was beyond her scope as a
24 nonexpert witness. This issue was totally unpreserved for
25 appeal.

1 You know, I think attorney general would like the
2 Court to assume that this is no harm, no foul because she
3 probably would have been qualified anyway, but we don't know
4 if she would have been qualified anyway. And what I tried
5 to make the point with my cross-examination regarding the
6 *Kromah* decision, for a long time, public defenders and
7 defense counsel and solicitors all took for granted that
8 these forensic interviewers were considered experts that
9 could give expert testimony. They right up until *Kromah*
10 said that they weren't.

11 So the fact that this is an issue that's not
12 preserved, whether or not the scope of this testimony they
13 were, if they were bleeding beyond the scope, is something
14 that we are not going to be able to review based on this
15 case. And I think it's pretty -- I think you would assume
16 that testimony -- you would assume that in any case where
17 the forensic -- the sexual assault interviewer is going to
18 have to testify on behalf of the State that the hymen is
19 attached, and you've got an allegation of penetrative sexual
20 contact, that, you know, the jury is going to want to know
21 an explanation. And the explanation came from -- through
22 some testimony regarding surveys. It's hearsay. The
23 testimony was not challenged. There was no foundation for
24 this testimony. And I think under the facts in this case,
25 that was extremely prejudicial to this case.

1 So, I mean, without waiving my other issues, I
2 think asking for the curative instruction, that is something
3 that we feel would have made the difference in this case.
4 And, of course, I don't think there's really an issue
5 whether or not he's entitled to relief under the law.

6 THE COURT: Thank you, sir.

7 MS. JAMESON: Thank you, Your Honor. If the State
8 had properly moved to introduce Katherine Fabrizio as an
9 expert, I submit based on the qualifications here, she would
10 have been qualified. She has extensive qualifications. We
11 went over that in detail during Mr. Cochran's direct
12 examination. But she's someone who has been doing this for
13 20-something years, certified PSANE nurse, had properly sat
14 for and passed the examination after six months of intensive
15 training. So the State submits that although she was not
16 admitted as an expert, she would have been.

17 It's an oversight. It's an unfortunate oversight.
18 But she would have been qualified based on her extensive
19 qualifications that luckily are all in the record before
20 this Court.

21 Moreover, the testimony she gave was within the
22 scope of permissible testimony for an expert, if she had
23 been found duly qualified.

24 I appreciate opposing counsel's comparisons to
25 Kromah, but this is a different situation than Kromah and

1 forensic interviewers. While *Kromah* did explicitly say this
2 sort of testimony was not to be expert testimony, our courts
3 have long cautioned against using forensic interviewer
4 testimony as experts. So that's a different situation than
5 we have here where the courts haven't been or appellate
6 courts haven't been cautioning the bench and the bar against
7 this testimony repeatedly as happened in *Kromah*.

8 Additionally, there's overwhelming evidence of
9 Mr. Brown's guilt here. We have the GPS coordinates that
10 track him to the house at the specific times, that the
11 **Minor** said she was orally and anally penetrated by him.
12 She reported to her mother as soon as her mother came home,
13 within a few hours she got off work, and she instantly
14 reported to her mother.

15 Both the **Minor** and applicant tested positive for
16 gonorrhea. Semen was found on the vaginal swab that was
17 taken from her. She also reported to a school counselor.
18 She reported to a forensic interviewer. And evidence was
19 admitted of a prior CSC on the same **Minor** at age six.

20 And the record will reflect that these acts were
21 committed less than a month after Mr. Brown returned from
22 the Department of Corrections. And they only ceased when he
23 went to the Department of Corrections to start. So there's
24 overwhelming evidence of guilt to affirm these convictions.

25 As to the failure to file notice of appeal, the

1 State would leave that in the Court's discretion. I
2 understand that Mr. Cochran just forgot to file it. And I
3 leave that to the Court's discretion

4 THE COURT: Thank you, counsel. I will take the
5 matter under advisement and notify you.

6 (Whereupon, proceedings are adjourned.)
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

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FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

2018 APR 18 10:42 AM
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Johnny Brown, SCDC # 244979,

JULIE J. ARMSTRONG
CLERK OF COURT Case No.: 2016-CP-10-1587

Applicant,

BY

v.

State of South Carolina,

Respondent.

**ORDER GRANTING BELATED
APPELLATE REVIEW PURSUANT TO
WHITE v. STATE AND DENYING ALL
REMAINING ALLEGATIONS**

This matter comes before the Court by way of an application for post-conviction relief filed on March 29, 2016, and amended on December 3, 2017, by Johnny Brown (Applicant). On June 23, 2016, the State (Respondent) filed its return requesting an evidentiary hearing. An evidentiary hearing into the matter was convened January 31, 2018, at the Charleston County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire. Senior Assistant Deputy Attorney General Megan Harrigan Jameson from the South Carolina Attorney General's Office appeared on behalf of the State. Following the evidentiary hearing, this Court grants Applicant a belated review of direct appeal issues pursuant to White v. State¹ and denies all remaining grounds in the application. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In November 2013, the Charleston County Grand Jury indicted Applicant for two counts of first-degree criminal sexual conduct with a minor (2013-GS-10-6759, 2013-GS-10-

¹ 263 S.C. 110, 208 S.E.2d 35 (1974).

6760). In 2015, Charleston County Grand Jury later indicted Applicant for third-degree criminal sexual conduct with a minor (2015-GS-10-2362). Assistant Public Defender Charles Cochran of the Charleston County Public Defender's office represented Applicant. Assistant Solicitors Debbie Herring-Lash and Shannon Elliott of the Ninth Circuit Solicitor's Office prosecuted the case.

On April 13, 2015, Applicant appeared in the Charleston County Court of General Session and proceeded to trial before the Honorable Deadra Jefferson, circuit court judge. On April 15, 2015, the jury convicted as indicted on all three offenses. Judge Jefferson sentenced Applicant to life imprisonment for both first-degree criminal sexual conduct with a minor convictions and to fifteen years for the third-degree criminal sexual conduct conviction, with all sentences to be served concurrently.² Applicant did not file a direct appeal.

SUMMARY OF FACTS ADDUCED AT TRIAL

On June 20, 2013, Applicant's cousin lived on [REDACTED] in Charleston County with her two daughters, a thirteen-year-old daughter and a two-year-old daughter. (Tr. 58-59, 116-20). In the late afternoon, Applicant's cousin left for work, leaving her two daughters at home as she typically did while she worked (Tr. 118-20). While she was gone, Applicant came over to the house. (Tr. 64). Applicant began tickling the girls, starting first with the two-year-old child and eventually tickling the thirteen-year-old child. (Tr. 66-7). Applicant then pushed the thirteen-year-old child's clothing to the side and penetrated her vagina and anus with his penis. (Tr. 68-

² On June 24, 2014, Applicant appeared before the Honorable Roger M. Young, Sr., where he rejected the State's plea offer for a recommended sentence of twenty years imprisonment. Applicant was advised the State would seek life without parole pursuant to S.C. Code § 17-25-45 based on his prior conviction for first-degree criminal sexual conduct with a minor. Thereafter, the State served Applicant with notice of its intent to seek life without parole.

72, 80-82). This was not the first time Applicant had sexually assaulted her—Applicant had annually penetrated her when she was six-years-old. (Tr. 106-08).

When Applicant finished assaulting the thirteen-year-old child, he attempted to pay her twenty dollars, went into the bathroom, and left the house. (Tr. 82). Applicant later sent his other cousin, Solomon, to the home to try to give the thirteen-year-old child some candy, which she refused. (Tr. 82-83). Once Applicant left, the thirteen-year-old child took a shower then gave her two-year-old sister a bath. (Tr. 83). She then began to cry and cried until her mother came home a few hours later. (Tr. 83-84). When her mother arrived home, **Minor** disclosed the abuse to her mother, who took her to the hospital for evaluation. (Tr. 84-88, 123-25).

At the hospital, the thirteen-year-old child was evaluated by Katherine Fabrizio (Fabrizio), a nurse practitioner and pediatric sexual assault nurse examiner (PSANE). (Tr. 152-55). Fabrizio started her examination of the thirteen-year-old child between 11:00 p.m. and 12:00 a.m. on the day of the assault. (Tr. 159). Fabrizio described the child's demeanor as "very quiet, very tearful, very much in shock." (Tr. 159). Fabrizio collected swabs from the child's mouth, vagina, and rectum, as well as collected fingernail scrapings. (Tr. 161). Fabrizio did not observe any trauma to the child's vaginal or anal area. (Tr. 172-173). The collected swabs were sent to the laboratory for analysis, where the vaginal swab tested positive for gonorrhea. (Tr. 176-79, 293-95, 308-10). A urine sample taken from Applicant also tested positive for gonorrhea. (Tr. 301-04, 308-10). Additional testing also detected semen on the vaginal swabs, although a DNA profile was not able to be developed from the swab. (Tr. 278, 286-90).

The thirteen-year-old child's mother also took her to Lowcountry Children's Center, where she again disclosed her sexual assault to a forensic interviewer. (Tr. 126, 240-241). She also disclosed her sexual assault to the nurse at her school. (Tr. 312-14).

Applicant, who was a registered sex offender based on a prior conviction for first-degree criminal sexual conduct with a minor, was required to wear an ankle monitor that tracked his location at all times with GPS data. (Tr. 219). This GPS data established Applicant was at the thirteen-year-old child's home during the times she reported her sexual assault. (Tr. 251-55).

ALLEGATIONS RAISED

In his application and amended application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel for failing to object to testimony of State's witness Katherine Fabrizio, including
 - a. testimony was beyond the scope of permissible non-expert testimony
 - b. testimony amounting to bolstering and a violation of the Confrontation Clause
2. Ineffective assistance of counsel for failing to move for a curative instruction following bolstering testimony from Katherine Fabrizio
3. Ineffective assistance of counsel for failing to perfect a direct appeal

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant called his trial counsel, Charles Cochran (counsel), to testify. Counsel testified he has been practicing law since 2008 and was appointed to represent Applicant while employed at the Charleston County Public Defender's Office. Counsel testified he was appointed shortly after Applicant's arrest and represented him for approximately two years. He testified he tried to meet with Applicant at least once every sixty days.

He testified the allegations as presented by the State were that Applicant had orally and annually penetrated his thirteen-year-old second cousin. He testified the evidence including the following: Applicant and the thirteen-year-old child both testified positive for gonorrhea; the thirteen-year-old child's disclosure to her mother within hours of the assault; the thirteen-year-old child's disclosure to a forensic interviewer and a school nurse; semen was found on the vaginal swabs taken from the thirteen-year-old child; and GPS tracking data established Applicant was at the thirteen-year-old child's home during the times she reported her abuse. Counsel testified he received discovery from the State and reviewed the discovery with Applicant. He testified he and Applicant discussed the elements of the indicted offenses and what the State would be required to prove at trial. Counsel testified Applicant was charged with first-degree criminal sexual conduct with a minor based on his prior conviction for first-degree criminal sexual conduct with a minor. He testified the defense strategy was to vigorously challenge the State's evidence and make the State meet its burden of proof. He elaborated there were not any affirmative defenses. He testified he met with Applicant's family members, including his sister with whom he met extensively and who offered to be a character witness on her brother's behalf.

Counsel testified he neglected to object to the testimony of PSANE Fabrizio when the State failed to qualify her as an expert witness. He was unsure why the State failed to tender Fabrizio as an expert and he was also unclear as to why he did not object, but speculated it was a mere oversight on his part. He testified he does believe Fabrizio would have been properly qualified as an expert witness had the State tendered her as an expert and he would not have objected to her qualifications as an expert in pediatric sexual assault examination based on her

qualifications, which include: a Bachelor's of Science Degree from UNC-Chapel Hill, a Master's Degree from MUSC School of Nursing, a year-and-a-half post-Master's work at Emory University, a certification as a family nurse practitioner, twenty-five years as a nurse practitioner working with abused children (sexual abuse, physical abuse, medical neglect, exposure to domestic violence and substance abuse), and six months of intensive training to becoming a PSANE (including passing a specialized examination). He testified because the State failed to introduce Fabrizio as an expert witness, it is possible the State did not give any heightened attention to her testimony, which juries commonly do.

When questioned as to why he did not object to Fabrizio's testimony regarding the thirteen-year-old child's demeanor during her examination, Counsel testified he did object to this line of questioning based on bolstering. See Tr. P. 159-160. He testified he did not ask for a curative instruction when his objection was sustained and that he possibly could have asked the court to give a curative instruction. However, he testified he did not want to highlight this testimony again to the jury and that he believes curative instructions in this type of situation are of limited futility based on his experience. Counsel testified he also believes this testimony was not intended to bolster the **Minor**'s testimony or vouch for her credibility, but rather was Fabrizio explaining why she accepted non-verbal responses from the thirteen-year-old child. Moreover, he testified the child has already testified and exhibited this demeanor on the stand, so the testimony was not highly probative to any issue and likely did not have any impact. When questioned as to why he did not object when Fabrizio testified regarding sexual assault studies as bolstering and in violation of the Confrontation Clause, Counsel testified he vigorously challenged Fabrizio on these studies during his cross-examination. When questioned why he did

not object to Fabrizio's testimony that the thirteen-year-old child tested positive for gonorrhea, Counsel testified he strategically did not object to this testimony because he wanted to elicit testimony from her on cross-examination that gonorrhea was rampant in the Charleston area. He also noted this information came in through other witnesses, so any objection would not have had an impact on the case.

Counsel testified he does not recall if he ever discussed appellate rights with Applicant or whether Applicant wanted him to file an appeal following his convictions. He testified he is sure Applicant wanted to appeal his conviction and life sentence and it was a complete oversight on his part for failing to file an appeal on Applicant's behalf.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence

required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant is entitled to a belated review of direct appeal issues pursuant to White, but has failed to carry his burden in regards to his remaining allegations of ineffective assistance of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant.

Allegation: counsel was ineffective for failing to object to testimony of State's witness Fabrizio

Applicant asserts counsel was ineffective for failing to object to testimony of the PSANE nurse presented by the State, Katherine Fabrizio. Specifically, Applicant contends portions of Fabrizio's testimony went beyond the scope of permissible from a non-expert witness. Additionally, Applicant contends Fabrizio's testimony regarding studies and literature she relied upon in her field was inadmissible hearsay and violated the conformation clause. This Court

finds Applicant has failed to establish his requisite burden of proof as to these allegations pertaining to Fabrizio's testimony, which must be denied and dismissed with prejudice.

As to Applicant's first allegation that Fabrizio's testimony went beyond the scope of permissible for non-expert witnesses, this Court finds Applicant cannot establish any resulting prejudice for several reasons. First, this Court finds Fabrizio would have been qualified as an expert witness had counsel objected.

"Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge." Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). "Expert testimony differs from lay testimony in that an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions." Id. at 445-46, 699 S.E.2d at 175. "The qualification of a witness as an expert falls largely within the discretion of the trial judge." State v. Myers, 301 S.C. 251, 255, 391 S.E.2d 551, 554 (1990).

Pursuant to the South Carolina Rules of Evidence, expert testimony is admissible under the following circumstances:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCORE; see also State v. Irick, 344 S.C. 460, 465, 545 S.E.2d 282, 285 (2001) (explaining an expert's testimony is admissible where "it is relevant and based on some factual

predicate in the record”). Before admitting expert testimony, the trial court must find (1) the expert’s testimony will assist the trier of fact; (2) the expert has the required knowledge, skill, experience, training, or education; and (3) the testimony is reliable. State v. Martin, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011); see also State v. Jones, 343 S.C. 562, 572, 541 S.E.2d 813, 819 (2001) (“Scientific evidence is admissible under Rule 702, SCRE, if the trial judge determines: (1) the evidence will assist the trier of fact; (2) the expert witness is qualified; (3) the underlying science is reliable, applying the factors found in State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979); and (4) the probative value of the evidence outweighs its prejudicial effect.”).

A witness can properly be qualified as an expert where “the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury’s good judgment and common knowledge.” State v. Henry, 329 S.C. 266, 273, 495 S.E.2d 463, 467 (Ct. App. 1998). In determining whether a witness’s knowledge, skill, training, or experience qualifies the witness as an expert, no mandatory set of qualifications is required. Henry, 329 S.C. at 274, 495 S.E.2d at 467; see State v. Peer, 320 S.C. 546, 554-555, 466 S.E.2d 375, 380 (Ct. App. 1996) (“The criteria for admitting the testimony of an expert is not whether the expert holds a degree in the specialty field he seeks to testify about, but whether he has such expertise in a business, profession, or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.”). Instead, an expert can become sufficiently skilled or knowledgeable to be able to provide an opinion helpful to the

jury in a multitude of ways. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 556, 658 S.E.2d 80, 86 (2008).

From its review of the record, it appears to this Court that the State merely forgot to formally tender Fabrizio as an expert witness, as the State put Fabrizio's qualifications on the record as traditionally precedes tendering an expert witness. See Tr. 152-154. This also happened at another portion of the trial, counsel objected to the expert testimony, and the expert was quickly tendered and accepted as an expert. See Tr. 277. Although counsel did not object to Fabrizio's testimony before she was tendered as an expert as he did later in the trial with another witness, it is clear from the record that Fabrizio would have been qualified as an expert witness based on her training, education, and experience, which includes: a Bachelor's of Science Degree from UNC-Chapel Hill, a Master's Degree from MUSC School of Nursing, a year-and-a-half post-Master's work at Emory University, a certification as a family nurse practitioner, twenty-five years as a nurse practitioner working with abused children (sexual abuse, physical abuse, medical neglect, exposure to domestic violence and substance abuse), and six months of intensive training to becoming a PSANE (including passing a specialized examination). Counsel testified he would not have objected to Fabrizio's as an expert in pediatric sexual assault examination based on the information provided above. Therefore, Applicant cannot establish any requisite prejudice from counsel's failure to object to Fabrizio's testimony when such testimony would ultimately have been properly admitted as expert testimony.

Moreover, Applicant cannot establish any resulting prejudice from Fabrizio's testimony based on the overwhelming evidence of his guilt, including voluminous evidence wholly independent from Fabrizio's testimony, including: Applicant and the thirteen-year-old child both

testified positive for gonorrhea; the thirteen-year-old child's disclosure to her mother within hours of the assault; the thirteen-year-old child disclosures to a forensic interviewer and a school nurse; semen was found on the vaginal swabs taken from the thirteen-year-old child; and GPS tracking data established Applicant was at the thirteen-year-old child's home during the times she reported her abuse. Based on the overwhelming evidence in this case establishing Applicant's guilt as to the indicted offenses, this Court finds Applicant cannot establish the result of his proceeding would have been different absent Fabrizio's testimony.

As to Applicant's second allegation that Fabrizio's testimony regarding studies and literature she relied upon in her field was inadmissible hearsay and violated the conformation clause, this Court similarly finds Applicant cannot establish any requisite prejudice. As discussed previously, this Court finds Fabrizio would have been properly admitted as an expert in pediatric sexual assault examination. Therefore, as a properly admitted expert witness, Fabrizio would have been permitted to testify about studies and literature she relied upon pursuant to Rules 703 and 705, SCRE. Additionally, as discussed above, there is a multitude of evidence establishing Applicant's guilt, and therefore, there is no reasonable likelihood any perceived deficiencies pertaining to Fabrizio's testimony had any impact on the verdict. Therefore, this Court finds these allegations must be denied and dismissed with prejudice.

Allegation: counsel was ineffective for failing to move for a curative instruction following bolstering testimony of Fabrizio

Applicant asserts counsel was ineffective for failing to move for a curative instruction after the trial court sustained his objection to Fabrizio's testimony on the basis of bolstering. The specific testimony pertained to the demeanor of the thirteen-year-old child during her

examination, where Fabrizio described the child as “very quiet, very tearful, very much in shock.” See Tr. P. 159-160.

Counsel testified he did object to this line of questioning based on bolstering, which was sustained by the trial court, but that he did not ask for a curative instruction as he did not want to highlight this testimony again to the jury and that he believes curative instructions in this type of situation are of limited futility based on his experience. Counsel testified he also believes this testimony was not intended to bolster the **Minor**’s testimony or vouch for her credibility, but rather was Fabrizio explaining why she accepted non-verbal responses from the thirteen-year-old child. Moreover, he testified the child has already testified and exhibited this demeanor on the stand, so the testimony was not highly probative to any issue and likely did not have any impact. This Court agrees and finds Applicant has failed to establish any resulting deficiency or prejudice. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation: counsel was ineffective for failing to file a direct appeal

Applicant asserts counsel was ineffective for failing file a direct appeal on his behalf and asserts he wanted to appeal his convictions and life sentence. In response to this allegation, counsel testified he believes Applicant wanted an appeal filed on his behalf following his trial and it was merely an oversight on his behalf that an appeal was not filed.

“Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal.” Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (internal citations omitted). “In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967).” Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (internal citation omitted). “To

waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.” Simuel, 390 S.C. at 271, 701 S.E.2d at 740 (citing Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004) (internal citation omitted).

In the present case, there is no evidence that Applicant made a knowing and intelligent decision not to pursue a direct appeal. Therefore, since Applicant did not knowingly and intelligently waive his right to appeal, he is entitled to a belated appellate review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

CONCLUSION

Based on all the foregoing, this Court finds Applicant did not knowingly and intelligently waive his right to a direct appeal and, as such, he may petition the Supreme Court of South Carolina pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). See also Davis v. State, 388 S.C. 390, 342 S.E.2d 60 (1986) (setting forth procedures for a White appeal, prohibiting other forms of relief on this basis). Additionally, this Court finds and concludes Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application on the remaining issues.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel’s assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant’s behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Applicant is granted belated appellate review of direct appeal issues pursuant to White v. State;
2. All other allegations for post-conviction relief are be denied and dismissed with prejudice; and
3. Applicant Johnny Brown shall remain in the custody of the State.

AND IT IS SO ORDERED this 9th day of April, 2018.

Maite Murphy
MAITE MURPHY
Presiding Judge
Ninth Judicial Circuit

St. George, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APR 23 2018

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable Maite Murphy Circuit Court Judge

S.C. SUPREME COURT

Case No.: 2016-CP-10-1587

Johnny Brown #244979.....Petitioner

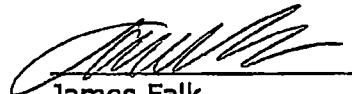
v.

State of South Carolina.....Respondent

NOTICE OF APPEAL

The Petitioner Johnny Brown appeals the Honorable Maite Murphy's April 9, 2018 Order Granting Belated Appellate Review Pursuant to White v State and Denying All Remaining Claims. Undersigned counsel received notice of entry of the order on April 18, 2018. A copy of the order on appeal is attached to this notice.

Respectfully submitted



James Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402
Attorney for Petitioner

April 18, 2018

Megan Harrigan Jameson
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

APPEAL FROM CHARLESTON COUNTY

APR 23 2018

Court of Common Pleas

S.C. SUPREME COURT

Honorable Maite Murphy., Circuit Judge

Case No.: 2016-CP-10-1587

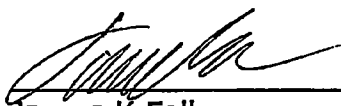
Johnny Brown 244070.....PETITIONER

V.

State of South Carolina.....RESPONDENT

CERTIFICATE OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Megan Harrigan Jameson Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this April 18, 2018.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

SEL20130604894

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2013008915B

ARREST WARRANT NUMBER

2013A1010203522

DATE OF ARREST

June 27, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

NOV 12 2013

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1006759

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November Term 2013

THE STATE

vs.

JOHNNY TAMAR BROWN

DOB: [REDACTED]

B/M

Indictment for

Criminal Sexual Conduct With A Minor, 1st Degree

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

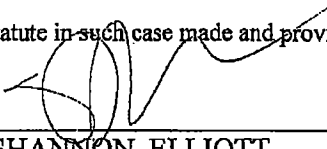
INDICTMENT

At a Court of General Sessions, convened on November 12, 2013 the Grand Jurors of Charleston County present upon their oath:

Criminal Sexual Conduct With A Minor, 1st Degree

That in Charleston County, South Carolina, June 20, 2013, the Defendant, JOHNNY TAMAR BROWN, date of birth [REDACTED] 1979, did engage in sexual battery with a [REDACTED] Minor, [REDACTED], date of birth [REDACTED], who was less then (16) years of age; to wit: anal penetration, and the Defendant has previously been convicted of, plea guilty or nolo contendere to, or adjudicated delinquent for an offense listed in S.C. Code of Laws Section 23-3-430(C), in violation of Section 16-3-655(a)(2), Code of Laws of South Carolina (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SHANNON ELLIOTT
ASSISTANT SOLICITOR

SEL20130604894

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2013008915B

ARREST WARRANT NUMBER

2013A1010203523

DATE OF ARREST

June 27, 2013

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

NOV 12 2013

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1006760

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November Term 2013

THE STATE

vs.

JOHNNY TAMAR BROWN

DOB: [REDACTED]
B/M

Indictment for

Criminal Sexual Conduct With A Minor, 1st
Degree

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

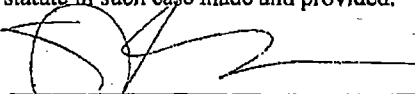
INDICTMENT

At a Court of General Sessions, convened on November 12, 2013 the Grand Jurors of Charleston County present upon their oath:

Criminal Sexual Conduct With A Minor, 1st Degree

That in Charleston County, South Carolina, June 20, 2013, the Defendant, JOHNNY TAMAR BROWN, date of birth [REDACTED] 1979, did engage in sexual battery with a [REDACTED] Minor [REDACTED], date of birth [REDACTED], who was less than (16) years of age; to wit: sexual intercourse, and the Defendant has previously been convicted of, plea guilty or nolo contendere to, or adjudicated delinquent for an offense listed in S.C. Code of Laws Section 23-3-430(C), in violation of Section 16-3-655(a)(2), Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SHANNON ELLIOTT
ASSISTANT SOLICITOR

SNE/0228175/20130604894

WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2013008915B

ARREST WARRANT NUMBER

2015-GS-10-02362

DATE OF ARREST

04/06/2015

ACTION OF GRAND JURY

TRUE BILL

Nancy McKeown
Foreperson of Grand Jury

APR 6 2015

VERDICT

GUILTY

Jim S. Proctor
Foreperson of Petit Jury

4/15/15
Date:

DOCKET NO. 2015-GS-10-02362

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

APRIL TERM 2015

THE STATE

VS.

JOHNNY TAMAR BROWN

B/M DOB: [REDACTED]-1979

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR, THIRD DEGREE

SC Code: § 16-03-0655(C)

CDR Code: 3661

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

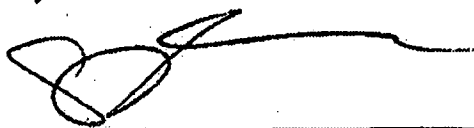
INDICTMENT

At a Court of General Sessions, convened on April 6, 2015, the Grand Jurors of Charleston County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, THIRD DEGREE

That in Charleston County, South Carolina, on or about June 20, 2013, the defendant, Johnny Tamar Brown, date of birth [REDACTED], 1979, who was over fourteen (14) years of age, did wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or its parts, of Minor, date of birth [REDACTED], 2000, a child under sixteen years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the defendant or the child. That, in addition, if the defendant was over 18 years of age and the child victim was at least 14 years of age, said lewd or lascivious conduct was non-consensual; in violation of Section 16-3-655(C), South Carolina Code of Laws, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SHANNON ELLIOTT
ASSISTANT SOLICITOR