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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable Thomas A. Russo, Circuit Court Judge

ANTHONY G. LINTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000793

APPENDIX

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STATE OF SOUTH CAROLINA)
) IN THE COURT
) OF GENERAL SESSIONS
COUNTY OF BEAUFORT)

INDICTMENT NO: 2010-GS-07-0013

STATE OF SOUTH CAROLINA,
Plaintiff,

VS.

ANTHONY G. LINTON,
Defendant.

TRANSCRIPT OF RECORD
VOLUME I

MARCH 29 - 31, 2011
BEAUFORT, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, JUDGE AND A JURY.

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PRETRIAL MOTIONS

THE COURT: I'm ready to entertain motions at this time. If the State could put the case name and caption on the record, please.

MS. BANNON: Certainly, Your Honor. This is Indictment No. 2010-GS-07-13, State of South Carolina versus Anthony Linton for one charge of criminal sexual conduct with a minor in the first-degree.

THE COURT: Very good. We're ready to hear motions at this time.

Yes, sir?

MR. DEYSACH: Thank you, very much, Your Honor, Ian Deysach, representing Anthony Linton in this case. Your Honor, earlier in the week, Counsel and I -- Counsel from the State and I had approached and told you that I may have a continuance motion if this case were called to trial; and I do have that motion, and would ask that you hear it at this time.

THE COURT: Okay. I'll be glad to hear from you.

MR. DEYSACH: Thank you, very much, Your Honor. The basis of the motion is to allow me time to investigate newly-turned-over evidence in this case. And I want to shed some light on both the timeline of my receipt of the evidence, and the nature of the evidence itself, to help you understand why it's important that I

have time to investigate the evidence and to prepare for trial in light of this new evidence.

And so first, I guess I would characterize the evidence. Over the last, I would say since the -- I guess the 8th of this month is when I first became aware of an incident involving somebody other than the victim and alleged to have involved my client with a 12-year-old, named -- well, I guess it's not important to say her name, just will call -- I'll just call her the 12 year-old for right now.

I was -- I got an incident report on that case, like I said, on the 8th of this month, after I had already been noticed for trial at that time. Although, I guess as the solicitor pointed out, she was under no obligation to notice me quite that early since it's the 28th, and she really only has 10 days that she really has to notice me on.

As the weeks passed, new information fleshing out the details of that allegation and possibly others involving that same victim, and other victims, who I now understand the State does not wish to introduce evidence about in the trial -- so the 12-year-old, even though other victims have been revealed to me -- alleged victims have been revealed to me, it turns out that, based on my information as I stand here before you today, that those

will not be subject -- that the State would even try to mention to the jury, to talk to the jury about.

It was the 24th, just Thursday that I got more information about this incident with the 12-year-old and who else was there when the incident occurred and another person who said they witnessed the incident. And as -- as the information has come in, the details of the incident have kind of changed from an allegation of what I would characterize as grooming by my client, into out and out forced slash coercion by my client and then threat of violence if telling, where as when it was first revealed to me it appears thought it was a non-coercive -- I think some of the incident reports refer to it as consensual, but with a 12-year-old victim, we know in this room, that that doesn't make any sense to use that word in that context, Your Honor.

But I would call it non-coercive. And then it was also revealed to me late last week that the parents of this 12-year-old have been, and are being, investigated of other incidences of sexual -- I don't know if it's abuse or misconduct that have occurred in their household that do not involve my client. And so getting to the bottom of that -- and my client himself has provided me with a list of names, just this week, of people who he says have been accused of improper sexual

conduct with this same 12-year-old, and so I haven't had a chance to talk to them about what they've been accused of -- what's happening -- I've tried to contact DSS for any materials that they have, but they won't turn any over with a subpoena without a release from the people who are the subject of the investigations, and so I haven't gotten any information from them as of yet.

And then, just Sunday, over the e-mail, it was revealed to me that there was a prior incident alleged to have occurred with this very victim sometime before. Exactly when, I'm not sure, somewhere in Georgia, but other than that location, unclear. And I have had very limited time to talk to my client about when that -- you know, when -- just any details that would accompany any type of allegation like that.

I know that the prior bad acts that the solicitor talked about introducing were as to the 12-year-old in this case and it's my position, Your Honor, that just finding new information out about that -- those folks as late as Thursday and Friday and needing to investigate that to do my job properly in order to have a meaningful hearing in which the proof of clear and convincing evidence as well as figuring out what truly happened so that we can compare the similarities and dissimilarities to decide whether or not it would be appropriate for the

jury to hear such evidence -- because it's hard to imagine a jury hearing such evidence and not -- that not weighing heavily on their decision. It's a very important piece of evidence.

I'd say certainly in this case with the theory of defense, it would be, probably, quite honestly, fatal to the defense. It's hard to overstate the importance of such a piece of evidence were it to come before the jury. And the new allegation with the current victim, just learning about that Sunday, it's not the subject of any motion by the State to introduce about a prior bad act, but it's hard to imagine having that very victim in front of the jury, who has up until this point, has said this happened one time and not being able to delve into that line of questioning. Certainly it having occurred only one time is perhaps not consistent with many people's idea of sex offenders, if you will, that it's something that usually happens over a period of time, and in fact, that it happened one time may have made the jury think, Hey, just one time, that's not guilty -- that doesn't comport with what I've learned about sex offenders of the past, that it's a compulsion that occurs many times, that it now would be something that happened more than once affects the theory of defense, the ability to prepare to defend my client and having learned about it just this --

just recently, kind of hamstrings me, not having had a lot of time to talk to my client about it and then investigate again whether there would be clear and convincing evidence as to whether or not that had occurred. Because certainly as I reviewed the case law, when you're talking about prior bad acts from different victims, it -- you know, there's many things to evaluate, but when you're talking about a prior bad act with the same victim, whether or not it is a time, scheme or plan, it's more likely to be deemed a common scheme or plan by the courts as I reviewed the case law.

And so those are the basis for my continuance. I need more time based on the newly-revealed evidence to me, and so I certainly don't take this request lightly. I've been receiving information this whole time while I've been preparing for trial and doing my best to get ready to do what I need to do to make sure that Mr. Linton gets a fair trial and I don't go before the Court and ask for more time without -- if I didn't believe I truly needed it, Your Honor.

THE COURT: Okay. Very good. Well, first of all, with regard -- I think one of the main reason for your request for a continuance has to do with this 404(b) prior misconduct with another victim, a 12-year-old victim that is not the victim in this case; is that

correct?

MS. BANNON: That is correct, Your Honor.

THE COURT: Well, don't you think -- is that -- would you say that that is the main reason for your request for a continuance?

MR. DEYSACH: Your Honor, honestly I would say 50/50 between that and the newly discovered incident involving the same victim. Both of those -- really the straw that broke the camel's back was Sunday getting ready for the trial and then getting yet another e-mail that says, and, Yes, there's another incident with this same victim. So honestly, I feel --

THE COURT: For which this defendant has not been indited for.

MS. BANNON: Correct, Your Honor. And I mean, as you're aware, the State has an ongoing duty to disclose as soon as we get that information.

THE COURT: Right.

MS. BANNON: That's what I did. I was preparing for trial. I got new information. These are kids. People ask questions different ways, different information comes out. I think continuing it would actually discourage open communication and open disclosure of evidence.

THE COURT: I'm not real sure that really has

anything to do with what we're here about today, but -- well, first of all, I think it would -- since we have the luxury of time, we aren't going to reconvene until the morning, I think it would probably be good for us to go through analysis of whether it's admissible anyway and I'll be glad to hear from the State.

Why don't we start with the 12-year-old who is not the victim in this case. Let's talk about whether or not it -- first of all whether or not it's relevant and whether or not the introduction of it -- the probative value -- whether or not that -- the probative value of this information outweighs the prejudicial value and the 403 analysis.

And I'll be glad to hear from the State in that regard.

MS. BANNON: Thank you, Your Honor. The 12-year-old, she was disclosed to Mr. Deysach on the 8th, as long as -- as well as her contact information. Basically, skipping ahead is looking at the --

THE COURT: For purposes of the record, this hearing today is taking place on the 29th, so he's had, what, 21 days with this information?

MR. DEYSACH: Twenty-one days is when the information began to come, but it's been being modified --

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THE COURT: I got you.

MR. DEYSACH: -- as time has passed.

THE COURT: Very good. Yes, ma'am?

MS. BANNON: Looking at the factors as stated in Walls and Clasby pursuant to the memorandum I've submitted both to Defense and to the Court, looking at what is -- what the 12-year-old has told us, comparing the two acts between the -- which occurred on the 12-year-old and the 6-year-old, there are a lot of similarities. And they're very particular similarities. And particular to the fact that both the 12-year-old and 6-year-old, Mr. Linton was in a position of power. He was the sole adult responsible for the children when these acts occurred.

He also made -- had a very specific type of sex, both oral and vaginal with both the 12-year-old and the 6-year-old, which they both described. Additionally, at the end of both of these assaults, he threatened to kill both the 12-year-old and the 6-year-old. These are neighbors. They live in the same community.

What happened with the 12-year-old is, it happened while she was on a trip with Mr. Linton to Georgia and then they came back and he continued to sexually assault her once they came back to South Carolina. I have discussed with Mr. Deysach that I would

be seeking to only introduce the assault that happened in Georgia because that's the one that she has given the most details, and seems the most fleshed out. And have agreed not to mention those which occurred in South Carolina. However, I feel for this hearing and these purposes that it's relevant in that one of the factors we look at is where it happened.

It happened in her house. With the 6-year-old, it happened in her house as well. Looking at the manner, the threats, you have a lot of very close similarities where you can see where he's basically following a script for each time he decides to molest a child, he goes through the same pattern. He gets them alone, he has a position of control over them. He then performs oral sex on them, has vaginal sex and then he threatens to kill them to ensure their secrecy. This just helps to flesh out on the 6-year-old case, for which he is being tried this week, more on idea of what his plan is, more of a common scheme that he has in pursuing these victims.

As far as them doing a 403 relevancy balancing test, it does help the jury in determining the guilt of Mr. Linton in that the truthfulness and the voracity of the 6-year-old's testimony will clearly be attacked by the defense and this will certainly be a fact that will help the jury in deciding whether or not the assault on

the 6-year-old more or less was likely to happen.

As far as prejudice, any time you have the allegation of sexual misconduct with a child, be it one or fifty, you have the chance of prejudice -- people have strong feelings about this. Limiting the testimony of the 12-year-old to those one specific set of events, one specific occurrence, and limiting it to the similarities with the attack on the 6-year-old could help reduce the chance of any prejudice, but still have the jury -- aid the jury in deciding guilt or innocence, Your Honor.

THE COURT: Okay. Glad to hear from you. Yes, sir?

MR. DEYSACH: Thank you very much, Your Honor. I think when you first asked the solicitor to respond, I think you mentioned relevance and probative value versus prejudicial impact. I wasn't sure if you really want to start down the road at the 404(b) common scheme or plan, but these are the things I do want the mention. It's hard to -- it's hard to see how this evidence is going to be attempted to be used as something other than propensity evidence, the very type of purpose that a jury would use the evidence that rule 404(b) is supposed to prevent.

There has to be something -- propensity -- you know -- that's the prejudice, is that the -- the

understanding that a jury would use this as propensity evidence. Okay. And so that's why we've gone into the common scheme or plan dialogue or analysis. But I do want to tell you, Your Honor that there are a number of disputes of fact over what the solicitor just represented to you would be the facts in this case. And I think that one of the things that's been difficult to -- made it difficult to prepare, is that what has been alleged -- certainly if -- this is not an allegation that I was made aware of on March 8th.

The allegation that I was made aware of on March 8th was that, that if Fradeshia said that if she didn't have sex with -- sorry. The 12-year-old said that if she didn't have sex with my client that he would take her back home, that she didn't want to go home, so she had consensual sex with him. On the next morning, they went to the mall, not the threat of violence, not the, you know, the manner of sexual battery, you know, whether there's the coercion or -- the location, you know, is also different and really what the relationship was never made clear at that time.

I guess the point that I wanted to make was the allegation has morphed from one that, like I said appeared to be grooming to one that now has turned into one of force, and even if I think an intellectually

honest view of the evidence that has been provided to me leads us to the conclusion that it was a non-coercive -- if it occurred -- the allegation spells out more of a grooming, non-coercive type scenario. There's other witnesses there who say, well Fradeshia -- the 12-year-old begged us not to tell because she was in love with the client. I didn't tell because he was buying stuff for us, and things of that nature.

And so I think when we're analyzing whether it comes in or not and we talk about is there clear and convincing evidence that it occurred, I think we need to have analyzed whether there's clear and convincing evidence over what occurred because there is a dispute of fact as to what truly occurred in this Georgia incident. And so I don't know of any other way to -- you know, analyze it other than to let you see what's in the police reports, what the youngster has told the solicitor and -- as it's evolved.

And so if we want to go into the 404(b) analysis and why they're not at all the same, I think that the case law does shed light on a number of factors that we should use, but I'm not sure if I want ---I've been talking quite a while and I don't want --

THE COURT: I do want to hear you. I want to hear what you have to say about that.

MR. DEYSACH: Okay. The factors that I have picked out of the Wallace case, which is a 2009 Supreme Court case, it's 683, Southeastern 2nd 279, South Carolina Supreme Court from 2009 and it gives a list of factors and although it doesn't say that that's exhaustive list of factors, I think it certainly represents a good starting point for our analysis.

And I'll start with number one, the age of the victims when the abuse occurred. Okay. Twelve versus six. The 12-year-old is therefore twice as old as the 6-year-old and when you're talking about youngsters, years represent a lot of development at that age and the difference between -- six years -- the difference between me and somebody else wouldn't be the same as six years difference between the 6-year-old and a 12-year-old, specifically the change that a body goes through during that time.

THE COURT: Well, let me ask a factual question. And I'll ask it of the State. The 12-year-old victim, was she -- how do I say this. Does she exhibit secondary sexual development?

MS. BANNON: Your Honor, this happened two years ago. Currently she does appear to exhibit that. However, at that time, I can't state that, Your Honor, because I did not know her at that time.

THE COURT: So we don't know that.

MS. BANNON: No, we don't.

THE COURT: All right. Very good.

MR. DEYSACH: And I think that's where I was headed, Your Honor, whether or not it's kind of -- whether the change --

THE COURT: It's a different animal is what you're saying.

MR. DEYSACH: Yes, sir. And I think even if you look into the DSM IV and you see the definition of pedophilia versus something else that -- and I think that our law recognizes it and that's why it's separated under 11 versus -- over 11, why 11 years of age is the cut off between CSC second degree and first-degree, Your Honor. And so, it is -- you know, I would characterize the 12-year-old as, in many ways a biological and so the research I've done, you know, and when onset of puberty would occur, that's a different animal.

Location is the next factor.

THE COURT: How about relationship with the victim and the perpetrator?

MR. DEYSACH: The relationship to the victim and the perpetrator. In this case that has been called to trial, the relationship is daughter of girlfriend. You know, the two are alleged to have lived together when

this occurred and whether or not -- I don't think you would go as far as saying stepdaughter because there is not a marriage there, but it's -- boyfriend's -- mother's boyfriend. The case with the 12-year-old is, the relationship is -- as I was able to glean it because it's not -- that wasn't made a hundred percent clear. I see brothers, cousins, stepsister -- okay.

That the -- that the stepsister was introduced, as I understand from the solicitor, was introduced to my client through his half brother -- okay. So the intermediary between -- and then there's yet another step before you get to the stepsister of the brother's cousin's friend. You know, it's -- when you try and diagram it, it becomes somewhat convoluted, but there's certainly not the romantic relationship between this victim's mother or anything like that.

The 12-year-old victim's mother that would kind of be the hallmark of similarity in such a situation. And so I'm not exactly sure whether the position of power thing other than just being an adult versus a child comes in, but the relationship does not seem to be the same at all.

THE COURT: Okay. How about the location of the abuse?

MR. DEYSACH: The location in the case before you

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is supposed to -- is alleged to have been either the bedroom of the little girl or the couch of the home where they all lived. The alleged location of the case that she is talking about is a hotel room in Dublin, Georgia while they're on a trip to Dublin, Georgia. So I would say that's a difference.

THE COURT: Right. How about the use of coercion and threats? Apparently, that was a centerpiece of -- what she said was different about that is that the 12-year-old appears to be more of a romantic, consensual relationship to the extent a 12-year-old could consent. We know she can't do that as a legal proposition, but you're saying that there's a difference there; is that correct.

MR. DEYSACH: That's what I'm saying, that there's a dispute of fact. If you take what my side of the facts are that there is a coercion-less assault. The solicitor stood up and told you that, you know, she believes that use of force and coercion was used as well as threats. There is different -- the child says different things at different times. But the biological adult, I'll call her, the 12-year-old, says different things at different times as to whether or not that happened.

THE COURT: All right. And the manner of

occurrence. Apparently with regard to the present case, there's an allegation of anal intercourse; and in this case, there's not. Is that really the essence of the difference?

MS. BANNON: Yes, Your Honor. And also the performance of oral sex on the defendant by the child in this case where -- with the 12-year-old case, that doesn't happen.

THE COURT: Okay. Say that again.

MS. BANNON: In the 12-year-old and the 6-year-old case, the defendant performed oral sex on the girls and then had vaginal sex with them. In the case of our 6-year-old, he had oral sex with the victim, vaginal sex, anal sex, and then had her perform oral sex upon him.

THE COURT: Okay. So there is a -- somewhat -- as far as acts --

MS. BANNON: There are two different acts, yes, Your Honor.

THE COURT: Okay. Two different acts that are different?

MS. BANNON: That are in addition to on the 6-year-old --

THE COURT: Okay.

MS. BANNON: -- versus the 12-year-old.

THE COURT: Okay. All right. What does the State have to say about these very real differences. And I think we all can see that there are some differences. And normally when you -- I think when you start talking about the Latin term motus operandi, generally you're talking about a signature of a crime. And wouldn't you concede that these differences really don't rise to the level of a motus operandi or like would warrant the introduction of this type evidence?

MS. BANNON: I understand the defense's point, Your Honor, and your point. However, it's also classification. Generally you can paint broader strokes versus more narrow strokes. As far as the relationship between the victims and the perpetrator, it's not that he was an adult. It was rather he was the sole caretaker for --

THE COURT: Right.

MS. BANNON: -- both the 12-year-old and the 6-year-old at that time.

THE COURT: Right.

MR. DEYSACH: Additionally, they have a familial relationship. It might not be in blood, the victim's mother as well as Mr. Linton were married to separate people, but they were living together for a year before this happened. He was -- he shared responsibilities with

the 6-year-old's mom for providing daycare, he was the de facto father figure in this home.

With the 12-year-old, he took her out of state. He had permission to take her from her parents and be the guardian while they were gone. So he -- in both of these instances, he's the sole person in charge of them. Another thing is that in both, with the 12-year-old and the 6-year-old, he had witnesses. From the other victims where the State has agreed not to attempt to introduce them at trial, that seems to be his MO, Your Honor. It's a very unique signature, usually molestation and sex acts are something conducted in the privacy of one's home or where there are no other witnesses.

Here it is unique. We have the position, we have the witnesses, we have the sex acts, and we have the use of coercion. Granted, initially the 12-year-old did say it was consensual. However, in talking with her and, as I'm sure y'all know with rape victims, especially when fear and threats are made, it's not surprising, no follow up was ever done with this police report that was made in 2008, that she never disclosed this. It was only through talking with her, explaining the safety and various other opportunities for counselling available to her that she then made this disclosure.

Her cousin, the one that -- I'm sorry, her

stepsister, the cousin Mr. Linton -- that Mr. Deysach disclosed was the one who saw her get raped in Georgia; and that cousin did not say anything. She stated that because of that, why would she tell.

So I think that that even goes more to the 403 weighing, in that it's something that Mr. Deysach can impeach the 12-year-old with. It's something that he can say, you know what, we don't have to believe you because you have made prior inconsistent statements. So in weighing that balance, it's actually in favor of the defense that he does have something impeachable to argue.

THE COURT: One of the things that -- let me ask you -- and I want your thoughts on this. Typically -- of course, he's being accused of a specific criminal act here for which he's going to be tried, and then when you start introducing other unrelated conduct, it almost requires you to have a trial within a trial. And I know that the rules require that I make an independent finding with regard to whether or not there's clear and convincing evidence in order for it to be put before the jury, but what do you say about the fact that there are very real differences between these, and how that would affect the fairness of this trial when the jury is going to hear this evidence; and how much do you think that will go towards unfair prejudice because they look at it

as establishing the evidence of propensity?

MS. BANNON: And I think that is a very real concern, Your Honor. However, the State would offer to prove what happened to Fradeshia only by calling the 12-year-old. There would not be multiple witnesses to that point, it would merely be the 12-year-old coming and saying this happened. If Your Honor so wishes, he could have an in-camera hearing to see what her testimony would be and see what the State would elicit.

And I think that Mr. Deysach has done a good job of saying how it's been separate, which then, I think, the jury could say, well, it's not propensity. This is -- they're a different age. You know, it seems like there is some issue of consent. That they would then be willing themselves to separate the propensity evidence from not. Just the unique markers go to the probative value so much so that they're so unique, and it goes to the truthfulness of the prior testimony and the consistency of his acts on his victims that it would be able to help the jury and Mr. Deysach being able to cross exam the witness on her inconsistencies and the differences, I think, would help in the 403 balance to help prevent the propensity argument coming in, but rather going to MO.

THE COURT: Have you ever known of a case to be

reversed where this evidence was kept out? That's a trick question.

MS. BANNON: Your Honor, that would be on the defendant to appeal it normally. The State does not that often appeal it. We would -- it would have to -- I guess we would have to ask for a stay on the trial, do an interlocutory appeal and then come back to it. But, no, to my knowledge, I do not know of such a case.

THE COURT: All right. Anything further in that regard?

MR. DEYSACH: No, Your Honor. I think, you know, -- the responses I have -- certainly when you mention that trial within the trial, that's where I find my concern about being prepared for the trial within the trial. That's what my concern is.

THE COURT: And, of course, the State says that they're only going to bring one witness, which I'm not sure that makes it more fair or less fair. I'm not real sure.

MR. DEYSACH: I don't like the way it sounds, to be honest with you, Your Honor. You know, I mean, to say, Well, oh, I can impeach this witness about some other incident that may have occurred somewhere in Georgia, that is -- that is not what I want -- that is certainly not where I would focus the jury's attention on

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the trial. I want to focus it on the trial itself not on Dublin, Georgia or whatever. But like I said, you know, it is that trial within the trial that has got me scrambling; and so that's why I would ask for the continuance in this case. Not only as to this 12-year-old issue, as well as the new information on this victim here, herself.

I think that she had trouble coming up with the signature when you asked her what was the signature. A person of a position of care, it's hard to imagine a case like this ever occurring where the perpetrator wouldn't be in that position, otherwise how would they do it. The use of witnesses, to me, I think factually, that what's accused of my client in this case is that another child walks in, and he tells him to get out; whereas, the 12-year-old incident occurs in a hotel room, allegedly with two other people there. And so I don't see that as a similarity, but as a difference. That's just the things I needed to add, Your Honor.

THE COURT: Well, I've read the memorandums, I read them prior to coming into the hearing, and I've listened to the arguments of Counsel, and I'm not going to allow it in. Partially, although, this isn't the reason why I'm granting it, it was somewhat late in coming forward, and it has -- based on what the

defendant's represented to the Court and from the State, the allegations have sort of changed, and the State has done a very good job in providing you the information as it's evolved. But given the evolving nature of it; I think that is going to weigh into the ruling.

And I think that the prejudicial value of allowing this information in outweighs its probative value. I'm not real sure that if this were to come in the defendant could get a fair trial with regard to the allegations set forth in this case. I think there are some very real differences. We've got a 12-year-old versus a 6-year-old, the relationship between the victim and the perpetrator are different. We've got the daughter of a girlfriend, which is very similar to a stepdaughter; and we've got -- I'm not sure, the brother of a cousin's stepsister, so I can't really glean from it, but it's not the same type situation.

And the location is completely different, and it certainly doesn't lend itself to any kind of signature with regard to the crime. As far as the use of coercion and threats, that -- there's sincerely a question of fact with regard to that, even from the State's standpoint that there initially was an allegation of consent to the extent a 12-year-old could consent, and then later on coercion and threat sort of have come out. And I think

that clearly if there were a series of occasions where an individual touched a minor in a certain way and it happened in a serial fashion, that would be one thing, but in this case, we've got at least two separate acts -- allegations of sexual acts that are completely different.

And so taking all that in consideration, I'm not going to allow the introduction of the testimony with regard to the 12-year-old. And that would be my ruling with regard to that.

There were some other motions that were put before me.

All right. How about the State's motion to preclude the mention of the victim's possible prior sexual conduct? What is the defense's position? Do you agree that that is something that you ought not get into? If you agree to it, we don't need to really delve into it.

MR. DEYSACH: That there is a possibility that she was abused prior to this, to explain -- I think as she puts in it in her memorandum, the sexual knowledge that a youngster wouldn't already have. Not necessarily through that victim herself eliciting that testimony to make her relive or ask her, Hey, this happened, didn't it, or something like that -- not to somehow traumatize her, but through her mother or through other folks at

Hope Haven who have come in contact with the family in the past.

Certainly, the defense -- you know, one of the aspects is the graphic nature of the allegation, that it may appear that only a child who's been exposed to such things would know to talk about, right? And in an attempt to explain that to show that she may have had a similar experience in the past, not necessarily by using her, but by other witnesses who are on the State's witness list, I think would be certainly appropriate, and I think would be part of a fair trial for my client.

THE COURT: I'll be glad to hear from the State in that regard.

MS. BANNON: Your Honor, as far as I'm aware, there's only been one other investigation by Hope Haven, which actually was -- DSS referred Hope Haven, our rape counseling center to speak with the kids because supposedly they saw their mom having sex. That would be different than a prior molest upon a child. My concern is talking about a prior molest that occurred to Minor . There is nothing to indicate there has ever been a prior molest on Minor . I know in talking with the defense counsel, it has been mentioned the possibility of Howard -- in fact, the defendant, I believe, wrote a note some time ago stating that Howard, this older child,

could have done something. However, there is nothing to indicate this actually happened besides conjecture.

For that to even be admissible, to consider to go around the rape shield law, to go into an alternate source of the victim's sexual knowledge, there has to be something and right now it would be misleading to the jury, the State believes, to offer or even suggest that a prior molestation on Minor , on the 6-year-old occurred because there's nothing indicating that it did.

THE COURT: All right. And you indicated there's no substantiation to this whatsoever?

MS. BANNON: Not to the State's knowledge, Your Honor.

THE COURT: Okay.

MR. DEYSACH: Your Honor, I have police reports that indicate that -- first of all, I know that Howard, an older brother who is no longer in the home at the time that this allegedly occurred had been removed for, what I understand, for -- was sexual abuse; that he was either a victim of abuse or a perpetrator of abuse sometime in the past before Mr. Linton is a part of the household. There is a babysitter --

THE COURT: How long a period of time -- based on what you contend, how long a period of time between the time that he was removed from the home -- or more

specifically from the time of the allegations of sexual misconduct that took place with the brother and the event that we're trying here today? How much time difference.

MR. DEYSACH: Well, I think I can nail it down with some of the records I have in my notes if I could just have a moment.

THE COURT: While he's looking, do you know?

MS. BANNON: I believe it is a year. In talking to Carla Griffin, she stated it had been a year since he had been removed from the home before these allegations occurred.

MR. DEYSACH: There is a Hope Haven report, which is -- I don't know if you have a similar institution in -- it's a forensic interviewing place. I know sometimes different places they have different names, but here it's Hope Haven of the Low Country where Samuel M. , one of the -- the older brother who's alleged to be a witness in this case, goes there in February of '09, and so I would suspect that if shortly after, certainly any type of allegations of this type would have come to light -- this is alleged to have occurred in November of '09 -- so I would say slightly less than a year. And the reason I think it's important is because -- I think just like the solicitor just said, oftentimes, it is with -- the story just don't come immediately as occurred in this

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case, but they come after a period of time has passed; and so if that is in fact the case, that would go some distance in explaining why the disclosure occurred at the time that it did.

THE COURT: Okay. All right. My initial ruling is that you cannot get into this -- I think that it's too far removed. I don't think that there's -- it's been established there's any substantiation to these allegations. You said there's a report. I haven't seen the report and you haven't told me anything about it. What does the report say?

MR. DEYSACH: The report -- well, there's more than one report, Your Honor. Let me put my fingers on them.

There is a report of the -- a Beaufort County Police Report dated September of 2008, which details a babysitter who says that the victim's brother came forward and stated that the children watched mom, boyfriend performing sex acts on each other. And later on in that report, it lists the children in the home and it includes Minor -- the Minor in this case, as well as the brother who claims -- claimed to be a witness. So there's a -- after that happens an investigator goes to Ms. Griffin and advises her not to allow her children to watch her having sex. She denies it at the time, but

that's an allegation that came forward in September of '08.

Later in September --

THE COURT: Let me ask the State, what is your position with regard to the admissibility of evidence with regard to this victim seeing the parents engaging in sexual activity.

MS. BANNON: Your Honor, I don't really see a way I could keep it out.

THE COURT: Okay. I think that probably is, indeed, admissible.

MR. DEYSACH: Yes, I think that's a separate issue than trying to tell the jury that Minor has been a victim of sexual abuse. What -- what is -- basically the inference I would make is that Howard -- let me -- that Minor shares the same home as another victim --

I'm sorry I'm trying to avoid using names -- I know it will come out during the trial anyway -- but the 6-year-old shares the same home as another victim of sexual abuse that occurred at a time that couldn't have been done by Mr. Linton; and so I think that from what we know about sexual abuse is that -- and actually, there is -- I believe I remember seeing that a new babysitter had told Carla, the mother, that Howard had said that some of the children are performing sexual acts on each

other. That's in the police report from September of 2008. And so that Howard, the victim of sexual abuse that lives in the same home as Minor has reported to a babysitter that the children are performing sexual acts on each other. And the report goes on to list this child as one of the children in the household.

As far as saying her name as somebody who's engaging in a such an act on itself, I think it's definitely important for the jury to hear what kind of a household this was before Mr. Linton even appeared.

THE COURT: All right. Tell me why I ought not allow that in.

MS. BANNON: Your Honor, I actually have the Hope Haven report that Mr. Deysach is referring to that you asked about, and it actually was out of that police report. It sounds like Mr. Deysach is using secondhand hearsay for any basis. The children were all interviewed because of that police report, interviewed by Hope Haven in February of the following year it happened. The allegation happened in September of '08, and they were interviewed in March '09 and they all said that nothing had happened.

Howard is severely mentally and emotionally disturbed, and who knows why he said it, maybe it just happened to him. However, the children were individually

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interviewed, and Samuel stated no abuse had occurred to his knowledge, to him or his siblings. If Your Honor would like to review the report, I can hand it up.

THE COURT: Yes.

MR. DEYSACH: Your Honor, I would say that if allegations had came out of the home that were unfounded then I should be able to get into those also.

THE COURT: I don't -- I think that might be true if the victim in this case had made an unfounded allegation against someone, but that's not the case here, is it?

MS. BANNON: No, it's not, Your Honor.

THE COURT: All right. My ruling is that -- my preliminary ruling is that it's inadmissible. If there's something that would come up at trial that might shed a different light on it -- it's kind of hard to make these rulings in a vacuum; however, it does appear as if the allegation with regard to sexual misconduct are based on this report, Hope Haven of the Low Country, Inc., seems to indicate that there was indeed no sexual misconduct going on in the home.

I'm going to make this a part of the record for appellate review as Court's Exhibit 1. I don't know if you need to make a copy of it or not; but based on that, my preliminary ruling is it is inadmissible. However, if

something comes up in the trial where you think it would shed a different light on the ruling, I'd be happy to entertain it. But you understand there will be no mention of that until such a time as it's addressed outside the presence of the jury. Does that sound fair?

(Court's Exhibit No. 1 was marked for evidence.)

MR. DEYSACH: Absolutely, Your Honor. I wouldn't dream of saying something that you've told me not to talk about without -- in front of the jury. My mind automatically goes to -- I know that there's going to be an expert from Hope Haven to come here and probably tell me that, you know, her opinion is that the allegation is -- I don't know how they put it -- or consistent with somebody's that's been abused or something along those lines. I can already hear myself asking the question, Well, would that be the same if you knew that there had been other unfounded allegations that came out of the same home. And I guess you're telling me I can't ask that question.

THE COURT: Okay. When that expert gets on the stand and if the spirit moves you to proffer that type of evidence, I would ask that you ask that the jury be taken out of the courtroom, that you can proffer it and then we'll make a ruling on it at that time. If you feel compelled to proffer that evidence, it needs to be done

outside the presence of the jury. Then we'll have a record to review on appeal.

MR. DEYSACH: Yes, Your Honor.

THE COURT: Very good. All right. Anything else?

MS. BANNON: I believe that there is just a Jackson v. Denno hearing.

MR. DEYSACH: I believe that the -- that any prior statement by the victim in this case would need to be -- if the State intends to introduce it, would need to be analyzed under the same prior bad-act analysis that we do with other victims. I think this case law shows that a prior bad act with -- an uncharged prior bad act alleged to have occurred with the same victim does have to undergo that analysis.

If she doesn't intend on introducing it, that is fine, but if something like that is elicited from the State, I don't see anything I can do but ask for a mistrial at that point; and so I kind of want to either figure out are they going the attempt to elicit it or not, and if they're not, let them know that -- I can't imagine it coming out and me not being in a position to have to ask for a mistrial.

THE COURT: Okay. What's the State's position in that regard?

MS. BANNON: Your Honor, I've discussed this with Mr. Deysach and stated that I did not intend on eliciting testimony from the 6-year-old concerning the prior event. It honestly came up as an aside during witness preparation --

THE COURT: Yeah.

MS. BANNON: Did he ever touch you before? Oh, yeah, once in Georgia.

THE COURT: Okay.

MS. BANNON: To me, I'm not getting into it, I don't think it would be helpful. I think it would just be a whole other can of worms.

THE COURT: Okay. Very good. Well, she indicates that she doesn't intend to get into that information. We're going the try this case on the indictment, and I think properly so.

Anything else?

MR. DEYSACH: I think other pretrial issues that could be dealt with are the Jackson v. Denno. There certainly is that that could be dealt with today.

THE COURT: How does you're motion for continuance stand?

MR. DEYSACH: You know, I had asked for -- you know, I am a little bit -- you know, the reason I asked for the continuance, you are not letting that information

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go in front of the jury.

THE COURT: Right.

MR. DEYSACH: And so it changes it. Not to say that, you know, it hasn't been a little frustrating chasing my tail for the last three weeks trying to get ready for the case on the indictment, and then being given information about, not just this other victim, but about other bad acts. But, you know, I -- I would always like more time, to be honest with you, Your Honor, but the basis that I asked for the continuance on has been addressed, I believe. I don't know that I can stand before you and say, well, you know, I don't know what else to say. I guess --

THE COURT: Okay. Very good. I understand you're not moving for a continuance.

MR. DEYSACH: No, Your Honor, I guess you got me.

THE COURT: Okay.

MR. DEYSACH: You got me to say it.

THE COURT: Okay. Very good. All right. Well, we will indeed proceed forward with the Jackson v. Denno matter. And the State is recognized.

JACKSON V. DENNO HEARING

MS. BANNON: Thank you, Your Honor, the State calls Deputy Misty Clevinger.

THE COURT: Yes, ma'am, if you could come forward

and place your left hand on the Bible and raise your right hand as the Clerk administers the oath.

THEREUPON,

CORPORAL MISTY CARTER CLEVINGER,

after being duly sworn, testified as follows:

THE COURT: Have a seat in the witness stand here. And I'm going to ask, if you could, to pull up real close to that microphone -- actually, that chair won't slip up. Have a seat. Just sit in the chair. We're going to ask you to position the microphone. I was here last week and we had doctors pulling on that chair. I kept telling them to pull up close to the microphone, and it's nailed to the floor.

THE WITNESS: Wow.

THE COURT: Very good. I'm going to ask you to speak loudly, clearly, and slowly.

Yes, ma'am, you're recognized.

MS. BANNON: Thank you, Your Honor.

DIRECT EXAMINATION - IN CAMERA

By Ms. Bannon:

Q Where do you work?

A Beaufort County Sheriff's Office.

Q And how long have you worked there?

A A little over five years.

Q And what do you do there?

A Currently, I work in the Warrants Division. I serve warrants.

Q And what did you do there during November 2009?

A Served warrants.

Q And are you familiar with your department's investigation of an Anthony Linton into a CSC with a minor?

A Yeah.

Q And is that memorialized in a report No. 2009-11-29636?

A It is.

Q And could you briefly describe what your role is in that investigation?

A Well, primarily what I did was, it was assigned to the Warrants Division. If we were made aware of an individual that's been located through our efforts or road patrol, or investigations has a warrant, what we'll do is, we'll locate the warrant, we'll verify it through general sessions, magistrate or family court, and then we make contact with that person and place them under arrest for that warrant, and take the individual into custody.

Q And did you come in contact with Mr. Anthony Linton in the course of performing your duties?

A I did.

Q And once you made -- did he have an actual

warrant out for his arrest?

A Yes, he did. I made contact with him somewhere in the area I believe around [redacted] Talbert Lane, I believe is what it is. There was some contact made by Beaufort City with him. At that point, our agency was notified that there was an active arrest warrant for him. I contacted the magistrate's office, confirmed that it was active, went to that location, met with the city officers, made contact with Mr. Linton. They verified it, had it in hand, and I placed him under arrest at that time.

Q Do you know when that happened?

A December 9th of '09.

Q Okay. And when you placed him under arrest, did you Mirandize him?

A I did not Mirandize him at that time. What I did was, after I placed him under arrest, I brought him to the Beaufort County Detention Center. At that time I read him his Miranda Rights, and I completed the paperwork.

Q Did you ask him any questions?

A No.

Q Did you threaten him at any point?

A No.

Q Did you coerce him?

A No.

Q Did you intimidate him?

A No.

Q Once you read him his rights, did he indicate that he had understood?

A Yes, he said -- part of the paperwork, the form, he is asked to read the rights and initial to the side that he understands his rights; and he did that.

Q Did you then ask him any questions after that?

A No.

Q What did you do after that?

A I finished filling out my county ticket and once the booking process was complete with the booking officers, I left.

Q Are you also known by the name of Misty Carter?

A I am.

Q Is that your maiden name?

A Yes.

MS. BANNON: Permission to approach?

By Ms. Bannon:

Q This has been identified, marked for identification as Court's Exhibit 2. Do you recognize this?

A I do.

Q And what is it?

A It's our Miranda Rights form that we do with general sessions level offenses. It's part of our packet that we have to do when we serve an arrest warrant.

Q And is that your signature at the bottom?

A Yes, it is.

Q And is that Mr. Linton's?

A Yes, it is.

Q Did you witness Mr. Linton sign that form?

A I did.

Q And does that look to be in the same condition as when that was originally made?

A Yes, ma'am.

MS. BANNON: At this point, the State would move what's been identified as Court's 2 into evidence, Your Honor.

THE COURT: All right. Any objection from the defense?

MR. DEYSACH: No, Your Honor.

THE COURT: All right. That's in evidence without objection from defense for purposes of this hearing.

MS. BANNON: Thank you. No further questions at this time.

THE COURT: Cross-examination?

MR. DEYSACH: Thank you, Your Honor.

CROSS-EXAMINATION - IN CAMERA

By Mr. Deysach:

Q Lance Corporal Clevinger?

A It's Corporal Clevinger.

Q Corporal Clevinger. You were the person who placed Mr. Linton in handcuffs out on Talbert Street or no?

A No, when I arrived there, Beaufort City officers had him detained at the time, waiting on verification on that warrant and my arrival. I'm not sure who initially did that. But once I arrived on scene, I placed him under arrest and put my handcuffs on him.

Q Okay. He already had other handcuffs on him at the time?

A Yes.

Q Was he -- he was locked in the patrol car?

A No, he was standing outside with another individual, another man.

Q How many police officers were standing around him?

A I don't remember the exact number.

Q Okay. About five, about three, about...

A I would say -- I don't know the exact number, but I would say I believe I remember two for sure.

Q When you filled out the Miranda form that's been

made a court's exhibit, where was that? Where were you when you did that?

A Beaufort County Detention Center, in the booking area.

Q In one of the little rooms or out in the open?

A Out in the open.

Q Was there anybody else with you when you did it?

A No.

Q Was the defendant handcuffed at the time?

A No, he was -- his handcuffs were removed.

Q Did you read him the form or did you just ask him to read it and initial?

A I do not remember. I usually -- I do one of two things. I read it out loud to them or I ask them to read it and then initial beside each one.

Q Did -- do you usually put a date and time when you fill this out?

A Usually, I do.

Q Okay. Is -- I'm going to show you --

MR. DEYSACH: If I might approach, Your Honor?

By Mr. Deysach:

Q Court's exhibit -- I guess this is 2. Is there a date and time on this?

A No, just the month of twelve.

Q So you remember exactly what date and time it was

when you did it?

A Based off of my report that I had to complete for it, a supplemental report, that's how I know the date and the time.

Q And what is the date and time?

A I believe it was December 9th, 2009, and I do not know the time. It would be on the top of my supplemental report, a booking report that was submitted with my supplemental report. It would have a date and time of arrest.

Q Okay. So you don't particularly remember, but could it possibly have been the 3rd of December? I guess I'll let you look at your report.

A I'd have to refresh, unfortunately.

MR. DEYSACH: May I approach, Your Honor?

By Mr. Deysach:

Q Is that your report?

A Yes, it was.

Q What day was it?

A December the 3rd.

Q Okay.

A 2009.

MR. DEYSACH: That's all I have, Your Honor.

THE COURT: Very good.

All right. Any redirect examination?

MS. BANNON: No, Your Honor.

THE COURT: All right.

Did you actually participate in the interrogation or the taking of the statement?

THE WITNESS: No, sir.

THE COURT: Okay. Very good. You may step down.

You may call your next witness.

MS. BANNON: State calls Master Sargent Brian Baird.

THE COURT: Sargent Baird, if you could come forward and place your left hand on the Bible and raise your right hand as the clerk administers the oath.

THE WITNESS: Certainly.

THEREUPON,

MASTER SARGENT BRIAN BAIRD,

after being duly sworn, testified as follows:

THE CLERK: You may be seated, please.

THE COURT: Have a seat in the witness chair. Situate yourself in front of that microphone. I'm going to ask you to speak loudly, clearly, and slowly; and I'm going to ask that you start with your name.

THE WITNESS: Yes, sir. It's Brian Mark Baird, B-a-i-r-d.

THE COURT: Very good.

Yes, ma'am?

DIRECT EXAMINATION - IN CAMERA

By Ms. Bannon:

Q Where do you work?

A I work with the Beaufort County Sheriff's Department.

Q And what do you do there?

A I am the master sargent in charge of the Special Investigations Unit, which includes polygraph and internal affairs, officer professional responsibility, currently.

Q And what did you do in December of 2009 at the sheriff's office?

A I was the assistant supervisor over the Northern Investigation Section, I also handled my own case load at that time.

Q So you were an investigator?

A That is correct.

Q Are you familiar of the investigation into an alleged criminal sexual conduct with a minor of one Anthony Linton?

A Yes, ma'am, I am.

Q How are you familiar with that?

A I was the case investigator assigned to that case.

Q And did you have an opportunity to talk with

Mr. Linton?

A Yes, ma'am, I did.

Q Prior to talking to him, did you advise him of his Miranda Rights?

A Yes, ma'am, I did.

Q And how so?

A I used our standard Beaufort County Sheriff's Office Miranda Rights form to do it. I read the form to him as he read along with me, and then I had him initial each of the five individual rights, and I had him sign that he understood those. I had him initial that he understood what he was doing. He said he could read and didn't have any issues with the reading, so the second paragraph down there on the form didn't pertain. I then had him read the one paragraph to himself, thus illustrating that he could indeed read.

I had him explain it to me what it meant to him. He said it meant that he was freely doing -- talking to me, and that he wasn't threatened and it was his choice to do so.

Q All right. So in your opinion, he understood the Miranda advisement?

A Yes, ma'am.

Q And after you read it, he read it, what did y'all do with the form?

A He signed the form, and then I signed the form, and he also indicated his -- on the bottom of the form, there's a place to indicate highest level of education completed, and he signed again there.

Q Do you recall what was his highest level of education was?

A I believe it was 12th.

MS. BANNON: Permission to approach, Your Honor.

THE COURT: Yes.

By Ms. Bannon:

Q Master Sargent, I'm showing you what's been labeled for identification as Court's Exhibit 3. Do you recognize it?

A Yes, ma'am, this is the Miranda Rights form I used to advise Mr. Linton of his rights in our December 3rd interview.

Q And is that a fair and accurate copy of the form that you were discussing?

A Yes, ma'am, it is.

Q All right.

MS. BANNON: At this point, the State would move what's been labeled for identification as Court's Exhibit 3 into evidence.

THE COURT: Okay. Any objection from defense?

MR. DEYSACH: No, Your Honor.

THE COURT: All right. It's into evidence for purposes of this hearing.

By Ms. Bannon:

Q Did you have the opportunity to interview Mr. Linton?

A Yes, ma'am, immediately following this, we went into an interview.

Q Did you threaten him?

A No, ma'am.

Q Did you make any promises?

A No, ma'am.

Q Did you bribe him?

A No, ma'am.

Q Did you intimidate him in any way?

A No, ma'am.

Q What was the content of your interview?

A It was in reference to the allegations that were made against him that he had sexually molested Minor , a minor child. And he initially -- well, he stated he did not do it. He basically started the interview by saying that the children had some issues, some problems that they all told many lies. He, I believe, during the interview he stated that he didn't think Carla Griffin, the mother was a good parent. And he denied the allegations against him.

Q And did you initiate -- was the -- were these statements made in response to questions or did he initiate the scenario?

A After the Miranda Rights form was completed, I believe the first thing I said to him was, so what to you have to tell me. And then he started telling me that. Later after he went through his version, then I began to ask him specific questions.

Q Okay. Was one of those questions about ways his semen got on various items in the house?

A That is correct.

Q Did he bring that up or did you suggest that?

A Well, he told -- I had asked him where they had sexual -- he said that he and Carla Griffin, the mother of the child, had sexual relations in various places in the house, to include the sofa area, which is one of the areas that we were focussing on for this particular incident. And when I asked him how his semen could have gotten onto the sofa, he gave me several different versions, but he said that that was normally where he and Carla would have sexual relations.

He said they would tell the children to stay in the bedrooms and then engage in sexual relations on the sofa. He said he would -- when he was done, sometimes he would ejaculate in her, sometimes he would pull out and

ejaculate onto the sofa. He indicated that had Carla would normally take something and clean up the sofa afterwards. He told me initially that he would normally use his shirt or a wash rag to clean himself off.

Q And so all these details were coming from him voluntarily?

A That's correct, ma'am.

Q Did you then discuss the potential of his DNA being found on the victim's underwear?

A Yes, ma'am. I asked him -- after his many different explanations, at one point I believe he said he thought she may have sat on the sofa where there could have been semen that wasn't cleaned up. I asked him, well, how could he explain it being on the inside of her underwear, not on the outside and then he offered a different explanation then.

Earlier he had stated that he would use his t-shirt or a wash rag. At that point he said, well, maybe the panties were laying on the floor, he thought they were Carla's panties so he would have used those to clean himself at that point. He said then he would have thrown them back onto the floor and he thought maybe the victim would come along and put those back on at a later time.

Q And did he at another point state that he

confused the 6-year-old's underwear with that of her mother's?

A That's what I was just referring to in that he said that he may have used the panties, thinking that they were Carla Griffin's panties to wipe himself off when in fact, possibly they were -- they could have been Minor a's panties, the child.

Q Did y'all discuss potential sources of DNA on a washcloth?

A Yes, we discussed that. He then opined, or stated that maybe the washcloth would have been there, he could have used it to clean himself off, and then the child may have bathed with it at a later time or the child could have bathed with it first then -- and he could have used it to wipe off.

Q At some point, did you confront him with the victim's disclosure?

A Yes, I did.

Q And did he have a reaction to that?

A He said it wasn't true.

Q Overall, what was his demeanor throughout his conversation with you?

A He was very relaxed, just answered my questions, told me -- you know, his free recall initially, telling me his version of the story and then sat back, relaxed,

and answered questions.

Q All right. Thank you. That's all the questions I have.

THE COURT: Cross-examination.

MR. DEYSACH: Thank you very much, Your Honor.

CROSS-EXAMINATION - IN CAMERA

By Mr. Deysach:

Q This conversation took place at the detention center; correct?

A Yes, sir, it did.

Q While Mr. Linton was in custody; correct?

A Yes, sir.

Q Did it take place in one of those little rooms?

A Yes, sir, it did.

Q Was he handcuffed at the time?

A No, sir, he was not.

Q Did you -- did you tell him that you didn't believe what he was saying?

A I believe I told -- the way I told it to him, I think I told him at that point, I would have reason to believe the children because they had no reason to be lying; and because he was offering a defense for himself, obviously, he was accused of a crime, he would have a reason to lie.

Q I'm not really asking you if you thought he was

lying, I'm more asking whether you told him you thought he was lying. Do you remember?

A I believe I said I believed the children. I don't think I said I thought he was lying.

Q Right. But you couldn't believe the children and believe Mr. Linton at the same time, could you?

A Not in my opinion.

Q Did you -- did you indicate to him that his semen was found on Minor during the statement -- during your questioning?

A At one point, I asked him how he could explain it being on her -- inside her panties and I believe I said inside her buttocks area, which would have been inside the panties.

Q But there was no -- at that time, there was no semen or DNA on her buttocks area that was found, right?

A Not at that time, no, sir.

Q And you knew that she hadn't been examined in that way, didn't you?

A I believe the examination -- there was an examination that had already occurred.

Q Of her body? A rape kit?

A It wasn't -- they didn't actually do a rape kit, but there was a forensic medical examination done on her.

Q One in which any fluids were collected?

A I don't believe they collected any fluids.
Q But yet, you led Mr. Linton to believe that they had when you asked him that question?
A You'd have to ask Mr. Linton what he was lead to believe. I don't know what he was -- what he believed.
Q The question was how can you explain your semen on her buttocks area?
A Yes, sir, I think.
Q Did you offer to set him up with a polygraph examiner?
A Yes, sir.
Q Did you ever follow up on that?
A He elected to seek legal counsel at that point. I couldn't have any further contact with him. It would be up to him to -- to have proper counsel with us.
Q At what point did he seek counsel?
A The next morning, sir.
Q Did you ever contact me or anybody -- any lawyer of his about doing the polygraph?
A No, sir, I did not.

MR. DEYSACH: I have no more questions, Your Honor.

THE COURT: Any redirect?

MS. BANNON: No, Your Honor.

THE COURT: All right. You may step down. You

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may call your next witness.

MS. BANNON: That's all the witnesses the State has, Your Honor.

THE COURT: All right. Be glad to hear summary from both sides, if you feel compelled to do so.

MS. BANNON: Your Honor, the standard is pretty low on the admissibility of statements. Here, it was testified to several people gave Miranda, nothing was elicited prior to the administration of Miranda, no force, threats or coercion were used and the defendant freely, willingly, and voluntarily made all the statements. In fact, signed so in writing twice.

THE COURT: Very good. I'll be glad to hear from defense.

MR. DEYSACH: Courts indulgence, Your Honor.

Your Honor, I would say that the -- that the kind of misinformation about the semen on the buttocks, a lie had rendered the questions after that involuntary. That's the only response I'd have.

THE COURT: What do you think about the general proposition of the law that says trickery is allowed.

MR. DEYSACH: I think that it's not fair. Personally, I think -- you know, I think that we don't get to pick and choose whether we get to -- when he get to lie, and that --

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THE COURT: Well, the United States Supreme Court says you can lie to them doesn't it?

MR. DEYSACH: Well, you know, those decisions can all be revisited. I think it -- it's not just whether you lie, it's whether the lie renders the -- the statement involuntary. I mean in this case, it is a denial. It's not an admission, a confession. There may be some inculpatory things that he says, but it isn't really -- I wouldn't call it a confession at all.

THE COURT: Okay. Very good.

All right. Based on all the testimony that's been presented here today, I do indeed find that he was under arrest and subject to Miranda Rights. However, they were rendered to him on two separate occasions. They were explained to him in great detail, he initialled indicating that he understood those. There -- with regard to there's been no evidence to establish exactly what his age is, but clearly he's beyond the age of majority from looking at him here in the courtroom. He appears to be an advanced age, certainly not a youth.

And with regard to his education, he's gone to the 12th grade, clearly he can read and write. There's been no evidence offered with regard to any substandard IQ. There have been mention -- or at least the defense eluded to the fact that he may have been overwhelmed by

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the numbers of law enforcement officers I think at one time there were two officers around him. Clearly, based on the presentation, there was no coercion, there was no threats, there was no punishment offered, no promise of reward. There was no evidence indicating that the particular -- this particular interrogation process lasted for a particularly long time.

I do specifically find on the record that the statement was given pursuant to Miranda; Miranda was given and he voluntarily and knowingly gave this statement. Therefore, it's admissible.

Anything further from the State?

MS. BANNON: No, Your Honor.

THE COURT: Anything from defense?

MR. DEYSACH: Just briefly, Your Honor. I asked the officer about the polygraph and of the offer that was accepted but never consummated. I do believe that is a relevant question to ask him. I know that polygraph results are something that a jury should hear about, but I believe that an offer to take a polygraph is something that would be admissible, and I just wanted to mention that before I did it without having addressed it.

THE COURT: Okay. I'll be glad to hear from the State in that regard.

MS. BANNON: Your Honor, the State would actually

object to that question because it would basically be commenting on the defendant's silence and his lack of -- because clearly the answer would be, Well, he got a lawyer, and the lawyer didn't let him do it. I think that would be an inappropriate comment coming from a State's witness that I could get -- it would be an appealable issue. So I would ask that Mr. Deysach not be allowed to ask that question.

THE COURT: I think the polygraph as a general rule is inadmissible and is -- it's determined as a matter of law to be unreliable. It's neither here nor there and I'm not going to allow you to address the issue of polygraph. I'm not -- what are you -- I mean, what are you to gain -- what's to be gained by that?

MR. DEYSACH: It certainly is not the results from the polygraph.

THE COURT: Well, I think the inference to be drawn from that is that since he was willing to take a polygraph, clearly he was telling the truth.

MR. DEYSACH: Right.

THE COURT: But the polygraph, in my mind -- the reason why it's inadmissible is, it's a worthless piece of technology.

MR. DEYSACH: But --

THE COURT: But by your interjecting in the

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polygraph, it seems to indicate the polygraph is something that's reliable and it's not.

MR. DEYSACH: I think that whether it's reliable or not isn't the issue. Whether somebody offers to take one -- it's whether the person who he is offering to take it thinks it's reliable. I think many people do believe that it's reliable. I think --

THE COURT: But what you're trying to do is trying to get the jury to believe that because he offered to take it, then he was telling the truth.

MR. DEYSACH: It is that, and I'm also trying to get the jury to believe that the -- I think you can kind of see it by the questions, that the investigator immediately said he didn't believe my client, offered to give him a polygraph, when my guy, my client accepted, didn't follow up on it; and so that the investigation from the get-go, from the beginning, has always been weighted towards credibility to the children and not my client.

That's just a little fact in there that goes to that. Because like I said, he tells him in the beginning I believe the children over you, asked the guy to take a polygraph; he accepts it, and then never bothers to follow up -- he never follows up. That's what I was trying to show and I think it goes to show that, one, not

only what you said, that he's telling the truth or else he wouldn't offer to take a polygraph, but also that the investigator himself didn't want to hear the truth from my client because he was already predisposed to believing the children.

THE COURT: Okay. You're protected on the record in that regard, but I'm specifically ruling there be no mention of the polygraph. Any statements that are offered, that needs to be redacted out of them.

PRETRIAL MOTIONS

THE COURT: Anything further?

MS. BANNON: Not by the State.

MR. DEYSACH: Just, I would ask that the -- when we start tomorrow that the witnesses be sequestered. Certainly there's differences -- the way the facts in this case have kind of come to light, there have been many differences. I would hate for -- certainly the two young children involved to be able to sit and watch. I think that there's a number of people who -- each other. I mean, I think the victim in the case has the right to be here. I'm not sure if that would be their choice, but beyond the victim and the investigating officer, I would ask that everybody be sequestered. It's kind of a he said/she said type of a scenario in these cases and that's why.

THE COURT: All right. What's the State's position on sequestration?

MS. BANNON: The State doesn't oppose it, Your Honor, as long as it applies to the defense too.

THE COURT: Okay. Does the defense, at this juncture, anticipate calling witnesses?

MR. DEYSACH: There is that possibility.

THE COURT: Okay.

MR. DEYSACH: But --

THE COURT: Well, in view of that, I'm going to grant the request for sequestration. It applies to the State, as well as the defendant.

In addition to that, I'm going to ask both of y'all to instruct all of your witnesses that they are not to come into the courtroom, and I'm going to ask someone from your team to make sure that no one does come into the courtroom and the sequestration order also provides that the witnesses are not to discuss their testimony with one another. Not only are they not to be present, but they're not to discuss it with one another. I'm going to ask both of y'all to give the witnesses instructions in that regard.

Anything further from the State?

MS. BANNON: No, Your Honor.

THE COURT: Anything from defense?

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MR. DEYSACH: No, Your Honor.

THE COURT: All right. Very good. We'll stand adjourned with regard to this matter. We will indeed reconvene -- Let's be here a little bit before 9:30 in case there are any problems that come up and we can address that, but we want to go right into selecting the jury right at 9:30.

MR. DEYSACH: I do have some voir dire, Your Honor.

THE COURT: Okay. We can address those in the morning. After I get done, if there's anything in addition, I will allow you the opportunity to submit those.

MR. DEYSACH: Okay. After you've already asked the questions.

THE COURT: Yeah, most of the time, what I ask is covered in there and if there's anything that isn't, I'll address it at that time.

MR. DEYSACH: The only thing I think that I have that's any different is just whether or not a relative or -- you or a relative or close friend has ever been the victim of sexual abuse. Is that something that you were planning on asking?

THE COURT: I generally ask a question very similar to that. I do.

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MR. DEYSACH: Okay.

THE COURT: You know, I'm not real sure I'm going to ask that question.

What's the State's position on that? I'm not going to ask somebody --

MS. BANNON: We object to that question.

THE COURT: Pardon?

MS. BANNON: We would object to the defendant's request --

THE COURT: I'm not sure if I ought to ask the jury panel whether or not they've been sexually molested.

MR. DEYSACH: Well, or if -- I mean, they can come up and ask. Really, I would hate to be in a position where we found out later that we had a jury with one or two people who had an experience with that and the possibility that they would make a decision based on emotion as opposed to the law.

THE COURT: Well --

MR. DEYSACH: The problem in these cases is that it's such a horrendous accusation that sometimes you worry that the burden of proof or that listening to the facts and the evidence gets lost in that, and I would hate for somebody with too much background in the subject to be placed on my jury.

THE COURT: Well, I tell you what I'll do, I'll

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ask in about forty-two different ways whether they can be fair and impartial, and that would include that. But I'm not going to ask somebody to stand up and disclose whether or not they have been a victim of sexual abuse, that's something that's very personal. There are a lot of people that reach adult years that go through terrible depression with regard to that.

It's a terrible thing and I'm not going to ask somebody to stand up in a public forum to disclose that. However, I will be very adamant in my questions regarding whether or not they can be fair and impartial.

MR. DEYSACH: I understand.

THE COURT: But you're protected on the record. But I'm not going to ask the question whether or not they have been a victim of sexual abuse.

MR. DEYSACH: Well, just the last thing I want to mention on that score is --

THE COURT: You ever saw that --

MR. DEYSACH: -- they don't have to answer in public, they could walk up and tell us privately.

THE COURT: Okay. Have you ever -- do you try a bunch of these.

MR. DEYSACH: A bunch -- gladly, no, not a bunch.

THE COURT: Have you ever had a judge ask that question.

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MR. WALKER: If I could, Your Honor, I had a trial in front of Judge Mullen -- Matthew Walker, from the public defender's office -- it's been a year and a half, two years ago, the question was asked in the jury voir dire. A woman didn't answer, then in deliberation she disclosed and brought that up to the other jurors that she had an experience like that, and we had to declare a mistrial.

THE COURT: Okay. That can be a problem, but I'm not inclined to do it, and I'll stand on my decision. In the event I'm reversed, I'll accept responsibility for that. I'm just simply not going to ask that question.

MR. DEYSACH: I understand, Your Honor. What about whether or not a victim of a crime generally?

THE COURT: Well, let me back up on that. The fact that the lady didn't stand up in public, probably goes to the -- well, why should I ask it if people are not going to answer it? For the same reason that I'm talking about.

MR. DEYSACH: That's just that person, you know, I mean, I would -- you know, you expect people to certainly answer truthfully. They're under oath when they're asked that question. I think the fear that somebody would come back and say, Well, look this was my experience of being -- I mean, how are you going to find

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somebody charged with sexually molesting somebody not guilty when another victim is staring you in the face saying I've been molested and maybe I think he's done it, or this is exactly how it happens. You know, I just hate to think what could happen in that jury room with a victim like that; and I just think it's better to avoid that.

You know, I think that what you're saying is that the problem could be avoided if you don't even ask the question, but if they're asked if they've ever been a victim of a crime, I think the failure to answer --

THE COURT: That's what I'm saying is asking the question, I don't think is going to cure the problem.

MS. BANNON: Your Honor, his question doesn't even go to the crux. The issue is impartiality.

It's designed -- you can be a victim of whatever crime you want to be, but if you can say you can still be fair and impartial, you're still eligible to be sat as a juror; and I believe that that is what the judge is stating that his questions are designed to do. Your proposed voir dire doesn't even get to impartiality or possible prejudice as a result of being a victim.

MR. DEYSACH: Yes, but I could use a peremptory strike just like if -- for a non-race or gender reason for somebody in a sex abuse case, who's been a victim of

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sex abuse, I would certainly use the strike. I could imagine -- I can tell you that.

THE COURT: Well, how about if I ask if anyone's ever been a victim of a crime? How about that?

MR. DEYSACH: Your Honor, I would hope -- I already kind of have that question, you know, a victim of a -- I usually ask --

THE COURT: How is that not a crime if they're a victim of child abuse?

MR. DEYSACH: It is a crime.

THE COURT: Okay. Well I think that's inclusive. Don't you agree?

MR. DEYSACH: It does include it, yes, Your Honor.

THE COURT: Well, how about that?

MR. DEYSACH: I still would like you to ask the sexual abuse question. I'm not going to withdraw that request. I understand your ruling, but I do think that it's important for you to -- because oftentimes it's -- the person doesn't get charged and the person -- the jury might be thinking, well nobody -- I've never been the victim of a crime, I was a victim of sexual abuse, and nothing ever happened to the guy. You know, it's like a tree falling, you know, it's not a crime until we get charged with a -- charged with it.

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THE COURT: Okay. All right. Very good. Anything further?

MS. BANNON: No, Your Honor.

THE COURT: Anything from defense?

MR. DEYSACH: No, Your Honor.

THE COURT: All right. We'll stand aside with regard to this case until 9:30 in the morning.

(WHEREUPON court was in recess until the following morning.)

STATE OF SOUTH CAROLINA)
) IN THE COURT
) OF GENERAL SESSIONS
COUNTY OF BEAUFORT)

INDICTMENT NO: 2010-GS-07-0013

STATE OF SOUTH CAROLINA,)
Plaintiff,)
)
)
VS.) TRANSCRIPT OF RECORD
) VOLUME II
)
ANTHONY G. LINTON,)
Defendant.)

MARCH 29 - 31, 2011
BEAUFORT, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, JUDGE AND A JURY.

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

MEREDITH BANNON, ASSISTANT SOLICITOR
FOR THE STATE

CARRA HENDERSON, ASSISTANT SOLICITOR
FOR THE STATE

IAN DEYSACH, ESQUIRE
ATTORNEY FOR THE DEFENDANT

MATTHEW WALKER, ESQUIRE
ATTORNEY FOR THE DEFENDANT

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THE COURT: Ms. Bannon, is the State proceeding forward on both of the indictments?

MS. BANNON: No, Your Honor. It was re-presented effected last Thursday, March 24th, and that's the one. They have the same indictment number.

THE COURT: Okay. Very good.

MS. BANNON: Your Honor, I'm also passing up to your law clerk a copy of the State's potential witness list. Copies have already been provided to Mr. Deysach.

THE COURT: I think I may already have this list. Is that the same list?

MS. BANNON: Yes, Your Honor.

MR. DEYSACH: I added for -- for the edification, I guess, of the solicitor, I added Jeff Light of the Beaufort County Sheriff's Office on that list, handwritten, and Orlando Smith as other possible witnesses that -- for you to call.

THE COURT: Very good.

MR. DEYSACH: My understanding is I have ten strikes and the State has five.

THE COURT: Strikes are five and ten. Five and ten.

MS. BANNON: Also, Your Honor, I believe there are three witnesses where competency of the witnesses need to be determined. Would you like to do that prior

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to the jury or at the time the witnesses are called?

THE COURT: Probably when the witnesses are called. Let's do it that way.

(WHEREUPON the jury panel entered the courtroom.)

JURY VOIR DIRE

THE COURT: Good morning, ladies and gentlemen of the jury panel. Thank you so much for being here. I know that this has been an inconvenience for you. We're very conscious of that. We're going to select the jury in the next case, the State of South Carolina versus Anthony Linton, Indictment No. 2010-GS-07-0013. I anticipate it will take us, perhaps, 45 minutes to select this jury and with the exception of the fourteen that will be participating in this trial, the balance will be allowed to go along your way, and you'll be required to call back this afternoon to determine whether -- when and if you have to come back.

So bearing that in mind, I'm going to ask if you could stand while the clerk administers the oath once again.

(WHEREUPON the jury venire was sworn.)

THE COURT: Mr. Deysach, I'm going to ask if you can stand with your client, Mr. Linton, and turn around and face the jury panel and -- if you could, please.

All right. This is Mr. Anthony Linton. Is

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anyone related by blood or marriage, do you have a close social or business relationship with Mr. Linton? If so, please stand.

(WHEREUPON there was no response from the jury venire.)

THE COURT: All right. You may be seated. Thank you.

All right. I'm going to list a number of potential witnesses, and I'm going to ask if any of you are related by blood or marriage to any of these witnesses, if you have a close social, business, or personal relationship with any one of them, pay very close attention as I give you the names.

Corporal Todd Kaminski, Beaufort County Sheriff's Office; Samuel M. , Beaufort, South Carolina; Minor , Beaufort, South Carolina; Robert Townsend, Beaufort County Sheriff's Office; Corporal Keith Gregg, Beaufort County Sheriff's Office; Kristin Dalton or Dalton, Beaufort Pediatrics; Brian Baird, Beaufort County Sheriff's Office; Carla Griffin, South Carolina Department of Corrections; Mary Beth Hefner, Hope Haven; Corporal Misty Carter Clevinger; Eileen Rios or Rios; Jean Roberts; Sargent Ramona Cooper; Lori Giles or Giles, G-i-l-e-s, Amanda Webb; Jeff Light; Orlando Smith.

Once again, are you related by blood or marriage,

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do you have a close social, business, or personal relationship with any of these witnesses? If so, please stand.

Yes, sir, if you could come forward.

Counsel, feel free to come forward.

Yes, sir, your name and number?

THE JUROR: Coleman Wentworth, 225.

THE COURT: Juror No. 225. Yes, sir?

THE JUROR: I know Brian Baird.

THE COURT: All right. Okay. And how do you know him?

THE JUROR: I trained him in CID. I've known him for --

THE COURT: What is CID.

THE JUROR: Criminal Investigation Division.

THE COURT: Okay. If called upon to serve on this jury, if he was called as a witness, by virtue of your relationship, would you have a tendency to believe what he says more so than any other witness?

THE JUROR: Oh, absolutely. I don't believe he would lie.

THE COURT: Okay. All right. And do you have the power of arrest now?

THE JUROR: No.

THE COURT: Out of an abundance of caution, I'm

going to excuse you for the purposes of this trial. Thank you so much.

Mr. Deysach, could you stand up, identify yourself and the members of your office.

MR. DEYSACH: My name is Ian Deysach and I represent Anthony Linton.

THE COURT: Okay. The members of your office?

MR. DEYSACH: With me may be Matthew Walker or Gary Riley, but they're not in the courtroom right now, Your Honor.

THE COURT: Okay. Could you, if you could, give us a list of the people in your office.

MR. DEYSACH: Okay. Traci Campbell, Gene Hood, Kimberly Jordan, Lauren Caraway, Helen Roper, James Bell.

THE COURT: Very good. Thank you, Mr. Deysach.

Is anyone related to Mr. Deysach or any of the lawyers in his office? Do you have a close social, business, or personal relationship with any of these lawyers? It might be that some of these lawyers were in private practice at a particular point in time. Have you ever been represented by them in the past or presently? If so, please stand.

All right. No response.

Ms. Bannon, if you could stand and identify yourself and the members of your office.

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MS. BANNON: Okay. Thank you, Your Honor.

I'm Meredith Bannon. Sitting with me is Carra Henderson, also with my office, and Master Sergeant Brian Baird. And other members of my office are the head solicitor, Duffy Stone, Sean Thornton, Angie Tanner, Jim Bannon, Mary Jordan Lempesis, Greg Collins, Bill Shipley, Reid Evans, Casey Renken and Francine Morris.

THE COURT: Very good. Thank you, Ms. Bannon.

Is anyone related by blood or marriage, have a close business, social, or personal relationship with any of these lawyers. Have you ever been represented by them in the past or presently? If so, please stand.

No response.

Has any member of the jury panel formed or --

MS. BANNON: Your Honor, excuse me, we have --

THE COURT: Okay. Very good. If you could come forward, please, sir.

THE JUROR: Juror No. 92. I had a credit card stolen about two years ago, a year and-a-half ago.

THE COURT: All right.

THE JUROR: And I have been in contact with the solicitor's office, but the exact party that I was dealing with, I can't recall the names. It could be anyone.

THE COURT: All right. This does not involve

financial at all. And could you -- if called upon to serve on this jury, could you set aside that life's experience and give both the State and the defendant a fair and impartial trial?

THE JUROR: Yeah, I guess so.

THE COURT: Okay. You know, in life, in conversations, we don't have to qualify what we say. We say we guess on a lot of things and whatever. These are matters where we have to deal with absolutes.

THE JUROR: Uh-huh.

THE COURT: My question to you is, if called upon to serve on this jury, could you base your decision on the evidence in this case or the lack thereof and the law as I charge it to you, and give both the State and the defendant a fair and impartial trial?

THE JUROR: Uh-huh, yes.

THE COURT: Very good. You're qualified to serve, thank you.

Ms. Bannon, you're recognized.

I understand Ms. Bannon has two other members of her office that slipped her mind. If you could give the names of those lawyers.

MS. BANNON: Hunter Swanson and Patrick Hall.

THE COURT: Okay. I'm sure they feel bad about being left out.

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Is anyone related by blood or marriage, have a close social, business, or personal relationship with either of these lawyers? If so, please stand.

Thank you, Ms. Bannon, y'all may be seated.

Once again, has any member of the jury panel formed or expressed an opinion about any issue or matter involved in this case? If so, please stand.

(WHEREUPON there was no response from the jury venire.)

THE COURT: I want to tell you a little bit about this case. This is a case where Mr. Linton has been accused -- and I hold in my hand an indictment and this indictment has absolutely no evidentiary value, it's simply the document that starts the criminal proceeding. And the allegations in this case evolve around an incident that allegedly took place on November 29, 2009. It involves allegations of criminal sexual conduct.

Having been armed with the basic knowledge of the accusations, does anyone know anything about this case or have you formed an opinion about this case? If so, please stand.

No response.

Is any member of the jury panel aware of any bias or prejudice towards either the State or the defendant? If so, please stand.

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No response.

Is any member of the jury panel a former law enforcement officer and have -- or had a family member who is a member of law enforcement? If so, please stand.

If you could come forward, each of you could come forward, we'll talk with you up here.

THE BAILIFF: Mr. Grossman, No. 92, Your Honor.

THE JUROR: I have a brother who's a federal agent.

THE COURT: Okay. What does he do?

THE JUROR: Primarily involved in drug trafficking, things like that.

THE COURT: Okay. Well, this case does not involve anything having to do with drugs. If called upon to serve on this jury, could you set aside that relationship and give both the State and the defendant a fair and impartial trial?

THE JUROR: Yes.

THE COURT: You're qualified to serve, thank you.

THE BAILIFF: Mr. Parker, No. 160, Your Honor.

THE COURT: How you doing?

THE JUROR: I'm not sure if this matters, but my sister-in-law is a retired South Carolina Highway Patrol employee.

THE COURT: Well, it counts because your

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sister-in-law is in the family.

THE JUROR: I was just wondering.

THE COURT: Very good. If called upon to serve on this jury, could you set aside the fact that one of your in laws is involved in law enforcement and give both the State and the defendant a fair and impartial trial?

THE JUROR: Yes, sir.

THE COURT: You're qualified to serve.

THE JUROR: All right. Could I ask you a question or give you information about this week. I had scheduled a meeting for -- I had spoken to your clerk on Monday. She said --

THE COURT: I'm sure if you serve on this jury, we could set aside an hour or two, but to tell you.

THE JUROR: She said speak to the bailiff or something.

THE COURT: We will -- indeed -- does it have to -- is it set at a particular time?

THE JUROR: Yes, sir.

THE COURT: What time.

THE JUROR: Ten o'clock.

THE COURT: All right. We will make arrangements -- in the event you're selected, we'll make arrangements for that.

THE JUROR: Thank you, Your Honor.

THE BAILIFF: Ms. Joss, No. 112, Your Honor.

THE COURT: Good morning. Yes, ma'am?

THE JUROR: I don't know if this is relevant. My son's an investigator at CCR in New York City.

THE COURT: What is CCR?

THE JUROR: Civil Criminal Review. It has something to do with --

THE COURT: He has the power of arrest, obviously.

THE JUROR: No, I don't think he does.

THE COURT: Okay. But nonetheless, in the event that he is involved in some form of law enforcement, would you set that aside if called upon to serve on this jury and base your decision on the evidence that's presented in this case or the lack thereof and the law as I charge it to you, and give both the State and the defendant a fair and impartial trial?

THE JUROR: Yes, sir.

THE COURT: You're qualified to serve, thank you.

All right. Ladies and gentlemen of the jury, having been armed with the basic allegations that's set forth in this case, has anyone heard, seen or read anything about this matter? If so, please stand.

(WHEREUPON there was no response from the jury venire.)

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THE COURT: All right. Is there any member of the jury panel who is a member or a contributor of an organization whose primary concern is the promotion of law enforcement or victim's rights? We talked about this earlier. Examples of that would be Mothers Against Drunk Driving, Students Against Drunk Driving, CAVE, Citizens Against Violent Crime, any -- any number of sheriff's department organizations. I think the highway patrol has some. Is anyone a member or a contributor of these organizations? If so, please stand.

I'm just going to ask if each of you can identify yourself by name and number and tell us what organization you contribute to.

THE JUROR: Linda Joss, Juror 112, and it's MADD.

THE COURT: Very good.

THE JUROR: Gwen Johnson, Juror 95, I'm a member of a sexual assault response team.

THE COURT: Okay. Why don't I come forward, please, ma'am.

Counsel, feel free to come forward.

Gwen Johnson, Juror No. 95.

Tell us what you're affiliation is with that organization.

THE JUROR: Well, I'm currently not doing it. I was involved with it two years ago, I was a member.

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THE COURT: Two years ago.

THE JUROR: I was an advocate for victims and would go to out of state with them when they went there. I've been a witness in a simple assault.

THE COURT: Due to the subject matter of this case, out of an abundance of caution, I'm going to excuse you for the purpose of this trial. Thank you very much.

She's excused for purposes of this trial. For purposes of this trial only.

Yes, sir, your name and number?

THE JUROR: Thomas Parker, 160.

THE COURT: All right. And which organization?

THE JUROR: South Carolina Highway Patrol.

THE COURT: Very good.

THE JUROR: Maebell Allen, Juror No. 5, State Troopers Association.

THE COURT: Very good.

THE JUROR: Roy Grossman, Juror No. 92. MADD.

THE COURT: Very good.

THE JUROR: Juror 103, MADD and CODA.

THE COURT: Okay. Very good.

Yes, ma'am, if you could come forward, I would like to speak with you a little bit more if you could.

Counsel feel free to come forward.

You mentioned CODA. Tell me a little bit about

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that.

THE JUROR: They deal with women who are in abusive situations at a facility here in Beaufort County and if they're having any domestic abuse they have a safe house to go to.

THE COURT: And for the record your number is Juror 103.

If called upon to serve on this jury, could you set aside any -- the fact that you're involved in an organization that advocates for victims and base your decision on the evidence that's presented in this case or the lack thereof and the law as I charge it to you?

THE JUROR: Yes.

THE COURT: You're qualified to serve. Thank you.

Ladies and gentlemen of the jury, this is a case that involves allegation of criminal sexual conduct with a minor, first-degree. And the question I'm going to ask -- I'm going to ask a general question and although it might be somewhat personal in nature, I'm going to ask if you could respond to it, and respond to it truthfully.

Have you or any member of your immediate family ever been involved in allegations that involved sexual misconduct? If so, please stand.

Very good. If you could come forward.

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THE BAILIFF: Ms. Gorman, No. 85, Your Honor.

THE COURT: Yes, ma'am. These involve very sensitive matters. I hate to have to ask that, but this is an occasion where someone's been accused of a very serious crime and we want to insure that we have -- we want to be sure that you can be very impartial. Could you -- would you mind sharing with me what your particular situation was.

THE JUROR: I had a daughter that was raped when she was 13 years old.

THE COURT: All right.

THE JUROR: I don't know that you want me on this jury.

THE COURT: And I appreciate your being honest with me. And I understand your situation. If I were in your situation I would probably be the same. So if you were -- in your particular situation, I'm going to excuse you for the purposes of this trial only. Thank you.

THE BAILIFF: No. 160, Mr. Parker.

THE COURT: Yes, sir, your name?

THE JUROR: Thomas Parker, 160.

THE COURT: And I know this is an awfully personal situation, and I asked the question of a personal nature because this is a case where a person is accused of a very serious crime and we want to make sure

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that everybody can be very impartial. Could you -- would you mind sharing with me what your situation was or is?

THE JUROR: It was basically an assault on myself I guess you'd call it; assault when I was 14.

THE COURT: Okay. All right. And it was sexual in nature?

THE JUROR: Yeah.

THE COURT: In view of the nature of this case, I'm going to excuse you for purposes of this trial only. I thank you for being honest with the Court. Thank you, sir.

THE BAILIFF: No. 136, Ms. Linton.

THE COURT: Yes, ma'am, your name and number?

THE JUROR: Emily Linton, 136.

THE COURT: Juror No. 136, Ms. Linton. Yes, ma'am?

This is an awful personal thing to ask, but the reason why I'm asking is this defendant is being accused of a very serious offense and we're wanting to make sure that everybody can be impartial and I hate to ask you, but would you mind telling me about your situation?

THE JUROR: I was in high school, I was sexually assaulted.

THE COURT: Were charges brought?

THE JUROR: They were filed but nothing came of

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it. My mom just took me out.

THE COURT: I understand. All right. In view of the nature of this trial, I'm going to excuse you for purposes of this trial. Thank you for being truthful with me.

THE BAILIFF: No. 221, Ms. Williams.

THE COURT: This is Ms. Williams, No. 221.

How do you say your name.

THE JUROR: I'm not going to tell you.

THE COURT: Okay. It's Dalceda.

THE JUROR: You got it.

THE COURT: Dalceda.

THE JUROR: I don't get offended anymore.

THE COURT: I hear you.

I know this is a very personal question I asked, but could you tell me what your situation is?

THE JUROR: As a little girl, a family friend kind of played with me and --

THE COURT: I got you.

THE JUROR: Yes.

THE COURT: That's what we wanted to know. And given the nature of this case, we want to make sure that you're going to be fair and impartial. In light of that, we're going to excuse you for purposes of this trial at this time.

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THE JUROR: Okay.

THE COURT: Thank you for your cooperation.

THE JUROR: Okay. Do I sit back down?

THE COURT: Just have a seat and just wait.

THE JUROR: Okay.

THE COURT: Does any member of the jury panel know of any reason whatsoever why you could not serve as a juror in this case, with particular emphasis being placed on whether or not you could be fair and impartial to both the State and the defendant in this case?

No response.

Any additional questions from the State, Ms. Bannon?

MS. BANNON: No, Your Honor.

THE COURT: Mr. Deysach?

MR. DEYSACH: Your Honor, I would ask if you would inquire as to whether the jury panel's been victims of other types of crimes also.

THE COURT: Okay. I don't -- we have asked the most appropriate question and also asked in great detail whether or not they could be fair and impartial and I think that will cover it.

MR. DEYSACH: Thank you.

THE COURT: All right. We're going to begin the jury selection process. The strikes are five and ten.

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JURY SELECTION

Ladies and gentlemen of the jury panel, if you would when your name is called, I'm going to ask that you bring your personal belongings, come stand in between these two chairs right here in front of this microphone, face the back of the courtroom and the lawyers will pass upon your selection.

And it's going to take us just a moment for the computer to engage in its random selection.

Madame Clerk, when you're ready, we may begin the jury selection process.

THE CLERK: Juror No. 145, Michael Miller.

(White male.)

THE CLERK: What says the State?

MS. BANNON: Please present this juror.

THE CLERK: What says the defense?

MR. DEYSACH: Please seat the juror.

THE CLERK: Juror No. 92, Roy Grossman.

(White male.)

THE CLERK: What says the State?

MS. BANNON: Please present this juror.

THE CLERK: What says the defense?

MR. DEYSACH: Please excuse this juror.

THE CLERK: Juror No. 1, Paul Aaron.

(White male.)

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THE CLERK: What says the state?
MS. BANNON: Please present this juror.
THE CLERK: What says the defense?
MR. DEYSACH: Please excuse this juror.
THE CLERK: Juror No. 93, Adrienne Guenther.
(White female.)
THE CLERK: What says the State?
MS. BANNON: Please present this juror.
THE CLERK: What says the defense?
MR. DEYSACH: Please excuse this juror.
THE CLERK: Juror No. 175, Michelle Rizzo.
(White female.)
THE CLERK: What says the State?
MS. BANNON: Please present this juror.
THE CLERK: That says the defense?
MR. DEYSACH: Please excuse this juror.
THE CLERK: Juror No. 119, Sheila Kennedy.
(Black female.)
THE CLERK: What says the State?
MS. BANNON: Please present this juror.
THE CLERK: What says the defense?
MR. DEYSACH: Please seat this juror.
THE CLERK: Juror No. 122, Fredrica King.
(Black female.)
THE CLERK: What says the State?

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MS. BANNON: Please present this juror.
THE CLERK: What says the defense?
MR. DEYSACH: Please seat the juror.
THE CLERK: Juror No. 16, Judy Baker.
(White female.)
THE CLERK: What says the State?
MS. BANNON: Please present this juror.
THE CLERK: What says the defense?
MR. DEYSACH: Please excuse this juror.
THE CLERK: Juror No. 43, Dawn Cavegn.
(White female.)
THE CLERK: What says the State?
MS. BANNON: Please present this juror.
THE CLERK: What says the defense?
MR. DEYSACH: Please seat this juror.
THE CLERK: Juror No. 110, Pamela Joiner.
(Black female.)
THE CLERK: What says the State.
MS. BANNON: Please present this juror.
THE CLERK: What says the defense?
MR. DEYSACH: Please excuse this juror.
THE CLERK: Juror No. 29, Alfred Boni.
(White male.)
THE CLERK: What says the State?
MS. BANNON: Please present this juror.

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THE CLERK: What says the defense?
MR. DEYSACH: Please seat the juror.
THE CLERK: Juror No. 138, James May.
(White male.)
THE CLERK: What says the State?
MS. BANNON: Please present this juror.
THE CLERK: What says the defense?
MR. DEYSACH: Please seat the juror.
THE CLERK: Juror No. 77, Yon Foppe.
(White male.)
THE CLERK: What says the State?
MS. BANNON: Please present this juror.
THE CLERK: What says the defense?
MR. DEYSACH: Please excuse this juror.
THE CLERK: Juror No. 182, Loretta Saunders.
(White female.)
THE CLERK: What says the State?
MS. BANNON: Please present Ms. Saunders.
THE CLERK: What says the defense?
MR. DEYSACH: Please seat this juror.
THE CLERK: Juror No. 214, Lional Ward.
(White male.)
THE CLERK: What says the State?
MS. BANNON: Please present this juror.
THE CLERK: What says the defense?

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MR. DEYSACH: Please seat the juror.
THE CLERK: Juror No. 160 Thomas Parker.
THE CLERK OF COURT: Diane, he excused this juror.
You excused this juror, didn't you?
THE COURT: Yes. You're excused for purposes of this trial. Thank you, sir.
THE CLERK: Juror No. 5, Maebell Allen.
(Black female.)
THE CLERK: What says the State?
MS. BANNON: Please present Ms. Allen.
THE CLERK: What says the defense?
MR. DEYSACH: Please excuse this juror.
THE CLERK: Juror No. 140, William Mayhall.
(White male.)
THE CLERK: What says the State?
MS. BANNON: Please present this juror.
THE CLERK: What says the defense?
MR. DEYSACH: Please seat the juror.
THE CLERK: Juror No. 204, Larry Tarlton.
(White male.)
THE CLERK: What says the State?
MS. BANNON: Please present this juror.
THE CLERK: What says the defense?
MR. DEYSACH: Please seat the juror.

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THE CLERK: Juror No. 87, Kathleen Gray.
(White female.)
THE CLERK: What says the State?
MS. BANNON: Please excuse this juror.
THE CLERK: Juror No. 85, Ann Gorman. Oh, she's excused.
Juror No. 149, Ashley Moore.
(White female.)
THE CLERK: What says the State?
MS. BANNON: Please present Ms. Moore.
THE CLERK: What says the defense?
MR. DEYSACH: Please excuse this juror.
THE CLERK: Juror No. 155, Dwayne Nelson.
(White male.)
THE CLERK: What says the State?
MS. BANNON: Please excuse this juror.
THE CLERK: Juror No. 103, Sherry Hirsch.
(White female.)
THE CLERK: What says the State?
MS. BANNON: Please present this juror.
THE CLERK: What says the defense?
MR. DEYSACH: Please excuse this juror.
THE CLERK: Juror No. 27, Tyler Boardman.
(White male.)
THE CLERK: What says the State?

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MS. BANNON: Please present this juror.
MR. DEYSACH: Please seat this juror.
THE CLERK: Juror No. 38, Luther Capers.
(Black male.)
THE CLERK: He was excused.
Juror No. 112, Linda Joss.
(White female.)
THE CLERK: What says the State?
MS. BANNON: Please present Ms. Joss.
MR. DEYSACH: Please seat the juror, Your Honor.
THE COURT: Get two alternates. Strikes are one and two, on each.
THE CLERK: Juror No. 12, Janet Andrews.
(White female.)
THE CLERK: What says the State?
MS. BANNON: Please present this juror.
THE CLERK: What says the defense?
MR. DEYSACH: Please excuse this juror.
THE CLERK: Juror No. 133, Andrew Layton.
(White male.)
THE CLERK: What says the State?
MS. BANNON: Please present this juror.
THE CLERK: What says the defense?
MR. DEYSACH: Please seat the juror.
THE CLERK: Juror No. 188, Alessandr Brunelli.

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(White female.)

THE CLERK: What says the State?

MS. BANNON: Please present this juror.

THE CLERK: What says the defense?

MR. DEYSACH: Please excuse this juror.

THE CLERK: Juror No. 10, Jody Anderson.

(White male.)

THE CLERK: What says the State?

MS. BANNON: Please excuse Mr. Anderson.

THE CLERK: Juror No. 171, Ginger Ramirez.

(White female.)

THE CLERK: What says the State?

MS. BANNON: Please present this juror.

THE CLERK: What says the defense?

MR. DEYSACH: Please seat the juror.

THE COURT: Is there any objection with regard to the jury selection process from the State, Ms. Bannon?

MS. BANNON: No, Your Honor.

THE COURT: From the defense, Mr. Deysach?

MR. DEYSACH: No, Your Honor, other than the question that I asked be asked.

THE COURT: Very good. And you're protected on the record in that regard.

Ladies and gentlemen, the balance of the jury panel, you're released for the day. We would ask that

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you call back to the clerk's office -- we're going to ask that you call back on the number that's been provided to you to determine when you need to come back. Call back after six o'clock p.m. Thank you so much for your time and your patience.

THE BAILIFF: Jury pool is clear, Your Honor.

THE COURT: Mr. Tarlton, I'm going to ask, if you could, to exchange chairs with this gentleman right here.

(WHEREUPON the jurors swapped seats.)

THE COURT: Very good. We've got close quarters in there.

Mr. Tarlton, I'm going to appoint you as the foreman of this jury. You, like everyone else when it comes time to deliberation, will have one vote. However, you're going to be given an additional responsibility in that you're to preside over the deliberation process. That means that you're to insure that everybody's vote and voice is heard and preside over the deliberation process.

During the process of the trial, there might be questions or concerns that develop amongst the jurors and if that happens, we'll ask that y'all communicate that to the foreman. He can reduce it to writing and give it to the bailiff. If it's something I can help you with, I certainly will do that.

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I'm going to ask each of you if you could stand as the clerk administers the oath. Stand and raise your right hand.

(WHEREUPON the jury panel was sworn at ten o'clock a.m.)

THE COURT: Mr. Foreman, throughout the trial of this case, there are going to be times where we have to take care of legal matters outside your presence and I'm going to ask that you enforce the rule there be absolutely no discussion about this case. You can't talk about the lawyers, you can't talk about the witnesses, you can't talk about anything about this case. You can talk about the Water Festival, Carolina, Clemson, the weather, anything you want to talk about, but it would be inappropriate to talk about this case in any way, shape or form until after you've heard all the evidence, and I've charged you the law and tell you to begin deliberations. I'm going to ask that you enforce that rule.

Mr. Foreman, I'm going to ask if you could, take your jury to the jury room. Everyone remain seated as the jury exits the courtroom.

(WHEREUPON the jury left the courtroom at 10:35 a.m.)

THE COURT: Anything from the State before we

proceed?

MS. BANNON: No, Your Honor.

THE COURT: Anything from the defense?

MR. DEYSACH: Your Honor, my client and I could also use a comfort break. Is that possible right now?

THE COURT: Absolutely. We will do that. We will stand at ease for five minutes.

MR. DEYSACH: Thank you, very much.

THE COURT: What exactly is a comfort break?

MR. DEYSACH: It's to use the restroom.

THE COURT: All right. Very good. I was just checking.

MR. DEYSACH: I've heard more experienced attorneys than me call it that and I thought it sounded so good, I thought it sounded good.

THE COURT: All right. Very good. We'll stand at ease for five minutes.

(WHEREUPON a short break was observed.)

THE COURT: Anything from the State before we proceed?

MS. BANNON: No, Your Honor.

THE COURT: Anything from defense?

MR. DEYSACH: No, Your Honor.

THE COURT: All right. We're ready.

(WHEREUPON the jury entered the courtroom at

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10:49 a.m.)

THE BAILIFF: Jury is entering.

Jury is present.

OPENING REMARKS BY THE COURT

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, we're about to begin the trial of the case of the State of South Carolina versus Anthony Linton, 2010-GS-07-0013. Mr. Linton is being accused and has been indicted for criminal sexual conduct with a minor first degree. I hold in my hand this indictment. As I mentioned to you earlier, this indictment has absolutely no evidentiary value. This is just an accusation that starts the criminal process.

To this allegation, Mr. Linton has pled not guilty. As Mr. Linton sits there at the defense counsel, he's presumed to be just as innocent as me or you. That's the frame of reference that we start from. In the United States of America, that's a constitutional safeguard that belongs to each of us as American citizens. We're presumed to be innocent of a criminal offense. He has pled not guilty to this offense and that places the burden on the State to prove each and every element of criminal sexual conduct with a minor, first-degree on the State. They have to prove each and every element of this offense. And there's a reason for

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that.

Our forefathers said that we live in a free and democratic society and when the government tries to curtail your liberty, they're required to prove their case. And in a criminal situation, they're required to meet the highest burden of proof known to our judicial system, proof beyond a reasonable doubt. The reason why the State has the burden of proof is that they have all the ability to do that. They have law enforcement, they have SLED, they have the ability to investigate it. They're the ones that have to provide the proof; and there's also some theoretical reasons behind that because we live in a free and democratic society, and sometimes it's absolutely impossible to prove your innocence. We all know that in our everyday lives we can be accused of something, and it's impossible to prove our innocence.

But in the United States of America, the defendant is not required to do that. He doesn't have to present any evidence, he doesn't have to testify. The State has the burden of proof. It rests on their shoulders. Once again, they have the highest burden of proof known to our judicial system. Imagine with me, if you will, the scales of justice where the lady is blindfolded from all bias and all prejudice, and she's holding the scales of justice in her hands.

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When the case starts, whether it be civil or criminal, the scales are even. In a civil case, if we were here in a medical malpractice case and the plaintiff alleges that the doctor did something wrong and the patient was entitled to money, at the end of the trial if the scale tips ever so slightly in favor of the plaintiff, then they would prevail. That's called more likely than not, the preponderance of the evidence.

In that case, after all, you're only talking about money. In this case we're talking about very important civil liberties and our constitution requires that in order for someone to be found guilty of a crime, they have to meet the highest burden of proof. Imagine with me, if you will, the scales of justice. The proof beyond a reasonable doubt, as I envision it, is it locking up the scales. It's the highest burden of proof known to our judicial system.

I want to tell you that little bit about how this proceeding is going to take place. Many of you have learned that from civics class, many of you have seen it on TV or movies, and many of you probably have served on a jury before. The way it's going to proceed is, Ms. Bannon, who represents the State, is going to stand up before you and give an opening statement. She's going to talk to you a little bit about what criminal sexual

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conduct with a minor, first-degree is, what the law is to a certain extent, and tell you about what evidence she has to prove this case. She'll go through that in summary fashion.

Then Mr. Deysach, who represents the defendant, is going to be given the opportunity to give an opening statement as well. He can set forth his view of the facts of the evidence, or the lack thereof, and present that to you in a summary fashion. Of course, the defendant doesn't need to give an opening statement because they don't have any burden of proof, but if they elect to do so, they'll be given the opportunity to give an opening statement.

Then we'll start taking the evidence in the case; and the State goes first with regard to evidence. They will call witnesses that they want to present to you to attempt to prove this case beyond a reasonable doubt, and they will call witnesses to the witness stand. And the evidence takes many forms. It takes the form of oral testimony, which will be the vast majority of the evidence that you get to hear. I'm going to ask that you pay very close attention as the witnesses testify. Evidence can take a number of different forms. It can take the form of documents, photographs, stipulations of counsel, documentary evidence. Pay very close attention

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as the witnesses testify.

After the State concludes their case, then the defendant is going to have an opportunity to present evidence if they choose to do so. Once again, they're not required to under the Constitution of the United States and the laws of the State of South Carolina. They're not required to do that. They'll be given an opportunity to do so if they would like.

Throughout this proceeding, you'll often hear lawyers stand up and say, I object, or I would like to take up a matter of law outside the presence of the jury. And I want to tell you about that from the very beginning, from the very outset so you'll know what we're doing. This is a proceeding governed by the rules of evidence and the rules of criminal procedure and it's my job as the trier of law to determine which evidence you get to hear and quite often when they make an objection, I have to determine -- make a decision in that regard. And quite often when I'm making that decision it requires that I comment on the facts; however, the law doesn't allow me to have an opinion about the facts. So those conversations will take place outside of your presence.

And at the conclusion of the case, if there is a particular point of law that you're interested in and I can remember what it was, I'll be happy to share it with

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you after the rendering of a verdict. It would be inappropriate to do that during the trial because of what I've just stated. Sometimes these conversations will take place outside of your earshot over here; sometimes if it requires there be more detailed discussion, I'll allow you to return to your jury room and we'll take these matters up outside of your presence.

Ladies and gentlemen of the jury, you are the triers of the fact. You're the ones who get to hear the evidence, and in every trial that's ever tried in the United States of America, there's a conflict with regard to the facts and you're going to be called upon to resolve those issues in your collective wisdom. You are the sole and exclusive triers of the fact. The law doesn't even allow me to have an opinion about the facts. That's completely your province to do that. I can't invade that province.

Likewise, I'm the trier of the law. I'm the one who determines what evidence you get to hear and I charge you the law at the conclusion of the case. And, likewise, you can't invade that province. You have to accept and apply the law exactly as I state it to you throughout the trial of this case in fulfilling your constitutional role as the trier of fact. You're going to be called upon to determine the believability of

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witnesses. This is an important case. This is an important case to the State of South Carolina, it's an important case to the defendant and you need to pay very close attention as the witnesses testify.

You know, that seems like to be a very difficult thing to evaluate the believability and credibility of witnesses, but it's something we do every day. You need to ask yourself when the witnesses testify, What opportunity they had to observe the things to which they're testifying. Ask yourself whether or not they have an interest or bias or prejudice. In addition to that, use your good common sense. You know, if any of you have teenage children like myself. Sometimes it's important to listen to what they say, but sometimes it's just as important to pay attention to how they say it.

The law allows you to do that, to take into consideration the demeanor of a witness when they take the witness stand. I'll tell you from the outset, you can believe one witness against many. You can believe many against one. You can believe all of what a witness says or a portion thereof. That's completely within your province and your collective wisdom to make those determinations.

In the presentation of evidence, the State goes first, the defendant's going to have an opportunity. If

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the defendant presents evidence, then the State under certain circumstances, they'll present a reply. Then at the conclusion of that, the lawyers are going to have an opportunity once again to stand before you in summary fashion and give closing statements. It's very similar in form to opening statements because they're summary in fashion. But at that time they are truly argumentative in nature because at that time, you'll have heard all of the evidence, and these lawyers can point to the evidence or the lack of evidence that supports their relative position. What they have to say is not evidence, but it will be very important because they've lived with this case. They understand the case. They understand the nuances of the case and it will aid you immensely in the deliberation process.

I want to admonish you from the very beginning that you have a very important role in this case to be the triers of the fact. And it's an important case. It's important to the State, it's important to the defendant, and it's important to you because it's a very -- it's an awesome responsibility that you have. You're actually participating in the government. You are the government now. You're the one that's going to render a verdict in this case and your job as the trier of fact is very, very, very important.

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You know, if I make an error in what evidence you get to hear or if I charge the law wrong, those errors can quite often can be corrected. However, if there's error in the findings of fact, quite often that can't be corrected. So it's very important for you to pay very close attention as the witnesses testify. At the conclusion of the closing statements, I will charge you the law.

Once again, Mr. Foreman, I'm going to ask that you enforce the rule that there be no discussion about the case whatsoever throughout the trial of this case until such time as I give you instruction to begin deliberations.

Given the nature of the case, the length of the case, and the subject matter of the case, I'm going to order and instruct that you not take notes. The reason for that is some people take good notes, some people don't, and you need to recall the evidence, listen to the evidence, and recall it as you heard it; and so it's going to require that you pay very close attention and be armed with the knowledge of the facts as you go into the deliberation process. Do not take notes.

You're participating in a time-tested system. You've taken a solemn oath to listen to the evidence and render a verdict that speaks the truth. And I'm

confident that you'll do that.

Ms. Bannon, you're recognized.

OPENING STATEMENTS

MS. BANNON: May it please the Court?

THE COURT: Yes.

MS. BANNON: Anthony Glenn Linton is a wolf and dating and living with Carla Griffin, he found his prey. He lulled the family into a false sense of security and safety. Anthony and Carla lived with five kids in a packed trailer over in Grays Hill. By all counts, Carla Griffin is not the world's best mom. Just like a wolf, Anthony Glenn Linton is an opportunist; and on November 29th, 2009, that opportunity came to him.

Earlier that evening Minor , she's six years old, her brother had a seizure. Her mom took him to the hospital. Anthony was left with the children. He sent them all to bed, except for Minor He took the opportunity to molest Minor , to have forced sex on Minor . While he is raping Minor , Minor 's eight-year-old brother walks in the room and sees Anthony Glenn Linton raping his kid sister. Once Anthony Glenn Linton finished molesting Minor , he had to take the one last bit of safety she had, her last sense of security. Once he was finished having sex with that six-year-old, he told her and threatened her that he would kill her if

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she ever told anyone what he had done.

Right now, the wolf's teeth and claws are dulled, threats of fear and lack of safety have no power in the courtroom. You, the jury, is the one who has the power in the courtroom. And at the end of the presentation of all the evidence, you will not hesitate to find that Anthony Glenn Linton had sex with a six-year-old in violation of the criminal sexual conduct with a minor statute.

Thank you.

THE COURT: Thank you, Ms. Bannon.

Mr. Deysach, you're recognized.

MR. DEYSACH: Thank you very much, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. DEYSACH: Ladies and gentlemen of the jury, you know, the first thing I want to do is thank you because I think everybody in this courtroom recognizes that the subject matter that we're dealing with is something that we would rather not think about. And so to ask you to sit here and listen to the details of the evidence and what the police are saying happened, and piecing it all together is not a pleasant job. I think everybody knows that and everybody appreciates that, and I wanted to acknowledge that for everybody here because

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sometimes I think we can just start throwing evidence up in front of the jury and expect you guys to just look at it as if you're in some sort of a lab; and I think knowing what I know about people who have to watch such things, that we're not in a lab and that people's emotions and -- really their emotions can come into play. But really, the way the solicitor opened this case really kind of highlights what it is that I want to talk about, which is, I felt like it was an attempt to demonize, to arouse emotion and passion and to try and get you to make a decision on that basis. And that wouldn't be appropriate. The judge, when he was talking to you actually said a lot of the same things that I was going to say, so I'm not going to belabor the points about, I guess your independence -- he said you're part of the government, and I would say you're independent from the government; the burden of proof and everything like that, that this is important issues of civil liberties are at stake here, and things like that.

I guess the first thing -- there's a lot of things I want the say and I want to figure out the right order. Anytime anybody is arrested, a person in my position worries that just because there is an arrest, a group of people who are passing judgment are going to assume that they're guilty, right? That is -- that's

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really one of the reasons why the judge went through his -- I believe, he can tell you different -- but that's one of the reasons I believe he went through his speech to you in the beginning because we're not supposed to assume that somebody is guilty just because they were arrested. In fact, we're supposed to do the opposite, to assume that they're not guilty when they're arrested, that you're not a rubber stamp for the police.

I know we all want to trust the police; and I'm not here to say, Oh the police are making all kinds of mistakes here and to bash the police; but I want I to recognize that the police are made up of people, and all people can make mistakes. And when the police are making an arrest, they're not making an arrest because they've proven somebody guilty beyond a reasonable doubt so much as they have probable cause to make the arrest. And so this is not a, I hate the police type of speech, it's just, I want you to recognize they're made up of people, and all people can make mistakes, and you're not a rubber stamp for the police, or for the solicitor's office.

It is your independence that really -- it's one of the things that kind of separates our court system from those in other countries where just judges or just members of the government can basically rubber stamp an accusation like this, and I don't think I have to tell

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anybody in here how high the stakes are; that the types of things that a conviction for a crime like this would mean. I know that there is -- the crime of murder is out there, but it's hard to imagine a more serious offense to be charged, and although murder is out there, there's something a little bit more objectionable about the subject matter that we're dealing with here than even really with the loss of a life in certain cases; that there are some people who react more emotionally to this type of a circumstance than you would to even the loss of a life.

And so I'm pointing out that the stakes are high. Anybody -- anytime anybody is arrested, there is, I believe, an assumption that they got the guy, that we've got to put that aside. And I want to point out that in this time of case -- a criminal sexual conduct with a minor case is the type of case where that could -- that effect could be amplified. That the objectionability, the objectionableness of the subject matter can kind of make your fear of letting a person accused of this -- finding him innocent, acquitting him, may outweigh the fear of wrongfully convicting somebody who is accused of this.

And that's really what this is about is -- I think the judge mentioned, it was one of the things I was

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going to say, that the mistakes I make, other mistakes that are made out in front of the court reporter can be reviewed, checked on, corrected quite often. Mistakes that are made in the jury room where there is no court reporter, where it's just you guys, where you're deciding how to appropriately evaluate the facts and apply the burden of proof, those cannot be corrected. And the worst thing that can happen in this room, really I think in any courtroom, is a wrongful conviction. And that's really what you're here to avoid. And I'll -- that's -- the judge is going to give you the road map to avoid the wrongful conviction, and I think he's already started by doing that.

I think the first thing is to avoid making a decision based on passion or emotion and, you know, I can already tell that the solicitor may be appealing to that, so I'm warning you that's not evidence. You know, to kind of make you hate my client. That's not a reason to make a decision. It's based on the evidence and the facts. It's easy to make people look bad, especially when they're sitting -- when they're standing accused; and so that's not the appropriate basis for a decision or verdict in this case.

The road map to avoid the wrongful conviction is the burden of proof that lies with the State. You've got

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to -- like I said before, we're worried about the fear of letting somebody accused of this go versus the fear of wrongfully convicting somebody and the stakes couldn't be higher. And you know, I've written down the word witch hunt in my notes to make sure that it doesn't become that, a group of people that kind of just based on an allegation make sure -- the allegation takes on an evidentiary value of it's own; and to avoid that, and that's all I can do. You know, I think that -- all anybody can ask when they're standing accused is a fair trial. And so that's what we're here to ask of you first. I know that at the end of this case that I'm going the come back here and I'm going to ask you to find him not guilty because I want you to avoid that wrongful conviction which would occur in the case of a guilty verdict in this case.

Okay. That in order to do that, you do have to honor the burden of proof, and you have to accept your independence from both the police and the solicitor's office; and I want you to -- I'm not going the sit here and tell you what the evidence is going to show.

You've heard the allegation. And what I'm going the attempt to show you is how the evidence that the State is presenting, where parts of their position which you wouldn't want to believe because it's not based on

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solid evidence, and for the stuff that isn't in dispute, other reasons why those facts could be -- could exist and my client still be innocent. And so the reasonable possibility exists that he didn't do it, and if you find somebody guilty with that condition then the result is a wrongful conviction and that's not something we can tolerate in this courtroom.

So that's really the plea I'm making right now, honoring the burden of proof and your independence; and thank you very much for what you're about to do.

THE COURT: Thank you, Mr. Deysach.

Ms. Bannon you're recognized. You may call your first witness.

MS. BANNON: Thank you, Your Honor, the State calls Deputy Todd Kaminski.

THE COURT: Deputy Kaminski, if you could come forward, I'm going to ask you to place your left hand on the Bible, and raise your right hand as the clerk administers the oath.

THEREUPON,

DEPUTY TODD KAMINSKI,

after being duly sworn, testified as follows:

THE CLERK: Please be seated, state your name for the Court, please.

THE COURT: I'd ask you to situate yourself in

front of the microphone there. I ask you to speak loudly, clearly, and slowly in order that we can hear everything that you've got to say. I'm going to ask that you start with your full name, please, sir.

THE WITNESS: Corporal Todd Kaminski.

THE COURT: Very good.

DIRECT EXAMINATION

By Ms. Bannon:

Q And where do you work?

A Beaufort County Sheriff's Office.

Q And how long have you worked there?

A Six years.

Q And what do you do there?

A I'm on our southern road patrol.

Q So you're a road deputy?

A Yes, ma'am.

Q Were you working for the Beaufort County Sheriff's Office on November 29th, 2009?

A Yes, ma'am.

Q And what were you doing then?

A Road patrol.

Q The south end or the north end?

A The north end, north of the Broad.

Q So that covers the Beaufort City area?

A Yes, ma'am.

Q And were you called out to [redacted] [redacted]?

A Yes, ma'am.

Q And why were you called out there?

A I was called out, it was a -- I believe the call had originally came out as a domestic with a male that left -- jumped out of a car, originally.

Q Okay. And that address where you were called to, where is that?

A [redacted] off [redacted].

Q And is that in Beaufort County?

A Yes, ma'am.

Q Once you got to that location, did you meet with anyone?

A Yes, ma'am, I met with -- I forgot her name at the time -- or right now -- but I met with somebody outside the trailer -- the trailer number that you stated earlier.

Q Did you draft an incident report in regards to this call?

A Yes, ma'am.

Q And is that memorialized in BCSO Report No. 2009-11-290636?

A Yes, ma'am.

Q And looking at this report, would that help refresh your memory to the woman's name?

A Yes, ma'am.

MS. BANNON: Permission to approach, Your Honor?

THE COURT: Yes.

By Ms. Bannon:

Q Please let me know when your memory's been refreshed.

Has it been refreshed?

A Yes, ma'am, Carla Griffin.

Q Okay. Can I have it back?

A There you go.

Q What was the name of the woman you met?

A Carla Griffin.

Q And did you work last night?

A Yes, ma'am.

Q All right. Have you gotten to be able to sleep since you started working?

A A few hours.

Q Are you feeling tired now?

A Yes, ma'am.

Q So you met with Carla Griffin?

A Yes, ma'am.

Q And why did you meet with Ms. Griffin?

A I met with Ms. Griffin -- she stated that her

live-in boyfriend or husband at the time --

MR. DEYSACH: I would object to the hearsay. I feel like he's about to give a hearsay statement.

THE COURT: We'll ask you to rephrase the question.

And you can't say what other people said.

THE WITNESS: Okay.

THE COURT: Yes, ma'am, you may rephrase your question.

By Ms. Bannon:

Q Did you establish her relationship with Minor [redacted]?

A Yes, ma'am.

Q And who is that?

A Her daughter.

Q And was this investigation into an criminal domestic violence?

A It turned into a -- I wouldn't say, no, it wasn't. It turned into a criminal sexual conduct.

Q Against who?

A Linton, Mr. Linton.

Q And who was the alleged Minor ?

A Minor .

Q So Carla Griffin's daughter?

A Yes, ma'am.

Q Did you speak with Minor ?
A No, ma'am, I did not.
Q Why not?
A I'm not trained to -- in dealing with CSC cases, I'm not trained to interview children.
Q And there's a special process for that?
A Yes, ma'am. Hope Haven. They're -- for those individuals that we form our investigations and they set up a date and time to meet with Hope Haven representative.
Q And was Mr. Linton present?
A No, ma'am, he was not.
Q What -- after you met with Ms. Griffin, did you advise her of anything?
A I advised her to take her child to Beaufort Memorial Hospital just to make sure that she was okay; and also advised her of the Hope Haven procedures.
Q All right. And did you do anything further that night?
A No, ma'am. Other than search the area for Mr. Linton.
Q And were you able to find Mr. Linton?
A Unfort -- no. The several deputies that were looking in the area were unable to locate him.
Q Thank you. I'd ask that you answer any questions

that Mr. Deysach has for you.

THE COURT: Mr. Deysach, cross-examination.

MR. DEYSACH: Thank you, Your Honor.

CROSS-EXAMINATION

By Mr. Deysach:

Q Good morning, Officer Kaminski.

A Good morning.

Q Okay. You said that you were -- reported -- that you went out on a call of a person jumping out of a car?

A Correct.

Q And that report was made by Carla Griffin?

A Correct.

Q And so you reported to her residence?

A Correct. At [redacted].

Q And [redacted] is not in Grays Hill, correct?

A No, ma'am -- or no, sir. I'm sorry about that.

Q Okay. It's in -- is it in Burton? Or is it in Beaufort?

A It's right off -- I don't know whether it's -- it's Beaufort.

Q Okay. When you got to [redacted] to Lot No. [redacted], did you observe a car?

A I was not looking for a car, no.

Q You did not observe the car that the person was

supposed to have jumped out of?

A No.

Q Okay. But you observed the person who made the report?

A Yes, sir.

Q Okay. Now, you said that you looked for Mr. Linton; is that correct?

A I did not. Several other deputies that were in the -- on my shift were in the process of looking for him.

Q They looked for him because they were told that he had jumped out of a car, correct?

A Correct. When the original call came out, it came out as a domestic dispute.

Q And they were looking for him in the area of the [redacted] to Mink Point Road?

A Correct.

Q But, of course, nobody ever found Mr. Linton then, did they?

A No.

Q Okay. Did you ever get a description of the car that he was supposed to have jumped out of?

A We did, but I don't recollect it.

Q You -- did you record it in your report?

A No, no, sir.

Q Do you know whose car it was?
A No, sir.
Q Do you know who was driving the car?
A Ms. Griffin, apparently, was driving the vehicle.
MR. DEYSACH: Court's indulgence.
By Mr. Deysach:
Q What was the time that you were requested to go out to [redacted]?
A I don't recollect the exact --
Q Is it in your report?
A Yes, sir.
Q Would it help you if I let you look at your report?
A Yes, sir.
Q Is that your report?
A Yes, sir.
Q Were you dispatched at 2258?
A Correct.
Q On the date of November 29th, 2009?
A Yes, sir.
Q And you arrived at 2311?
A Correct.
Q Can you give kind of the regular vernacular times? What is 2258?
A It's 10:58.

Q And 2311 is what?

A 11:11.

Q So you arrived at 10:58 and left at 11:11?

A I arrived at 11:11.

Q Okay. And then you departed at 11:29?

A Yes, sir.

Q So you were there for about 18 minutes?

A Correct.

Q Okay.

MR. DEYSACH: That's all I have, Your Honor.

THE COURT: Any redirect examination?

MS. BANNON: No, Your Honor.

THE COURT: Very good. You may step down.

You may call your next witness.

MS. BANNON: Permission to approach, Your Honor?

(WHEREUPON, there was a bench conference out of the hearing of the jury and the Court Reporter.)

MS. BANNON: State calls Tierra Johnson.

THE COURT: Might counsel approach the bench while she's...

(WHEREUPON, there was a bench conference out of the hearing of the jury and the Court Reporter.)

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, we need to take up a matter of law outside of your presence. I'm going to ask that you retire to your

jury room, but do not discuss the case.

(WHEREUPON the jury left the courtroom at 11:23 a.m.)

THE BAILIFF: Jury is clear, the door is closed, Your Honor.

THE COURT: Yes, ma'am, I'm going to ask if you could place your left hand on the Bible and raise your right hand as the clerk administers the oath.

THEREUPON,

TIERRA JOHNSON,

after being duly sworn, testified as follows:

THE CLERK: Please be seated.

THE COURT: Ms. Bannon, you're recognized.

MS. BANNON: Thank you, Your Honor.

DIRECT EXAMINATION - IN CAMERA

By Mr. Bannon:

Q Ms. Johnson, please state your name.

A Tierra Johnson.

Q And do you know Anthony Glenn Linton?

A Yes.

Q How do you know him?

A That's my husband.

Q How long have y'all been married?

A At the present moment now, three years.

Q Do y'all live together?

A No.

Q How long have y'all been separated?

A Over two years.

Q And does he go by anything other than Anthony Linton?

A Glenn.

Q Do you call him Glenn?

A Yes.

Q And did you talk to him about his pending charges with the six-year-old, Minor ?

A No.

Q When the police were looking for him, did he make any statements to you?

A Well, that was with my sister Bria at the present moment and he also -- he said that if she didn't have anything against him within 24 to 48 hours, they didn't have anything on him.

Q Okay. Did he say that in regards to Minor , the six-year-old?

A No, that was from Bria.

Q All right. Thank you.

MS. BANNON: No further questions.

THE COURT: Any cross-examination?

MR. DEYSACH: I do not, Your Honor. I think -- it appears, I think there's a misunderstanding whether

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she was referring to the case at trial or one of the other prior bad acts that we dealt with yesterday.

THE COURT: Okay. Which one does the State contend that she was talking about?

MS. BANNON: It was my understanding before just now that he was talking about Minor . The testimony appears to be he was talking about Bria, so the State would not offer that at trial.

THE COURT: Very good. We're ready for the jury. She can stay right there.

THE BAILIFF: Jury is entering.

(WHEREUPON the jury entered the courtroom at 11:59 a.m.)

THE BAILIFF: Jury is present.

THE COURT: Ms. Bannon, you're recognized.

I remind you that you're still under oath, ma'am.

MS. BANNON: The State has no questions for this witness.

THE COURT: Okay. You may step down. Thank you.

MS. BANNON: The State would call Kristin Dalton.

THE COURT: Yes, ma'am, if you could, please come forward. I'm going to ask you to place your left hand on the Bible and raise your right hand as the clerk administers the oath.

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THEREUPON,

KRISTIN DALTON,

after being duly sworn, testified as follows:

THE CLERK: Please be seated and state your name for the Court, please.

THE COURT: Ms. Dalton, if you'd have a seat in the witness chair. We're going to ask that you situate yourself in front of the microphone, and ask you to speak loudly, clearly, and slowly, in order that we can hear everything that you've got to say. We're going to ask that you start with your full name.

THE WITNESS: Ann Kristin Dalton.

THE COURT: Thank you.

Ms. Bannon, you're recognized.

MS. BANNON: Thank you.

DIRECT EXAMINATION

By Ms. Bannon:

Q Ms. Dalton, do you go by your first name, Ann?

A No, I go by Kristin.

Q And where do you work?

A Beaufort Pediatrics and Hope Haven Children's Advocacy Center.

Q And what do you do at Beaufort Pediatrics?

A I'm a pediatric nurse practitioner and I see children for all their primary health-care needs, well

visits, and sick visits.

Q And what do you do at Hope Haven?

A I see children who are alleged victims of maltreatment or sexual abuse, physical abuse, and negligent.

Q And you said that you're a nurse practitioner?

A Yes.

Q What is that?

A A nurse practitioner is an advanced practice nurse who's received graduate degree in a specialty area and in my case, it's in pediatrics.

Q And so you have your graduate degree, do you have your undergraduate degree?

A Yes.

Q And where did you get that?

A My BSN, Bachelor's of Science in Nursing is from the University of Virginia.

Q Okay.

A And I have my master's from Indiana University.

Q And when did you obtain your masters?

A In 1994.

Q So have you been a certified nurse practitioner since that time?

A I have.

Q And when did you start working for Hope Haven?

A In 2003.

Q And is there any special training that comes along with examining children for alleged sexual assault?

A Yes, it's rather extensive training. The people in our state who do these exams have to do a certain number of exams with somebody who is already qualified to do the exams. We have to attend multiple continuing education conferences across the country, which I have done and we have to continue to attend conferences in child maltreatment on an annual basis.

Q So any -- is anyone who is a nurse practitioner, can they -- are they qualified to be -- do what you do?

A No, no, definitely not.

Q Have you done forensic sexual assault exams?

A Yes, I've done close to 450 since I started in 2003.

Q And what area do you serve?

A I serve the entire 14th Judicial Circuit, so it's Beaufort, Allendale, Jasper, Colleton, Hampton.

Q Is there anyone else who does these types of examinations?

A No. I'm the only one in this circuit.

Q Do you know how many examiners there are in the state?

A There are sixteen of us.

Q And do you have to be a doctor to be certified as an examiner?

A No, we're probably about two-thirds medical doctors and two-thirds nurse practitioners.

Q And now you say that you've done over 400 forensic exams?

A Yes, I have.

Q And do you find evidence of injury in all these exams?

A In the sexual abuse exams, it's incredibly rare. Just to give some statistics, it's about 5 percent of sexual abuse cases that you will find -- this is nationwide -- that you will find any signs of injury. The closer the time is to the alleged assault, the more likely, but even within 24 hours of the assault, the national rate is about only 23 percent of children will have evidence; and if it's been within 72 hours of the assault, you have only a 13 percent chance of finding any injury.

Q Have you previously been qualified as a pediatric medical specialist?

A Yes, I have.

Q In general sessions?

A Yes.

Q Do you remember how many times?

A About five.

MS. BANNON: At this point, the State would offer Ms. Kristin Dalton as a pediatric medical expert.

THE COURT: Any query with regard to her qualifications, Mr. Deysach?

CROSS-EXAMINATION

By Mr. Deysach:

Q What -- what types of opinions --

MR. DEYSACH: Yes, Your Honor, I do.

THE COURT: Okay. Very good.

By Mr. Deysach:

Q What types of opinions does your training allow you to offer?

A I am allowed to make medical diagnoses.

Q Even though you've not been to medical school?

A Yes, our state law, as most states in the nation, allow nurse practitioners to make medical diagnoses.

Q When you make a diagnoses --

MR. DEYSACH: I don't have anymore questions.

THE COURT: Okay.

Mr. Foreman, ladies and gentlemen of the jury, ordinarily a witness cannot give opinion testimony. They have to testify as to what they saw, heard or felt. There's an exception to that with regard to expert witnesses. And they're allowed, because of their

training or because of their education, they're allowed to give expert opinion within their field of expertise. And this witness has been tendered, and I qualify her as a pediatric medical expert. She's allowed to give opinions in this area of expertise.

Just by virtue of the fact that an individual witness is qualified as an expert does not mean that you have to accept their opinion. You evaluate it like you would any other evidence, give it weight you think it deserves.

Yes, ma'am, Ms. Bannon, you're recognized. She's qualified as an expert in a area of pediatric medical -- as a pediatric medical expert.

Yes, ma'am.

DIRECT EXAMINATION

By Ms. Bannon:

Q When you conduct these exams, is there a specific process you go through?

A Yes. It's a very specific, rather lengthy process. All medically based on trying to gather the most information you can so that we can make a good determination about the case.

So we begin by getting a social history in these cases to find out whether the family has had previous involvement with law enforcement and social services;

whether there's domestic abuse, substance abuse in the home. Then I obtain a behavioral history about the child to see about any behavioral problems that have been noted in school or at home. I take a medical history with specifics to any type of injuries -- especially in sex abuse cases whether there's been any history of anal or genital injuries.

Then we find out some general things about whether the child has been taking any medications or had any chronic diagnoses like ADHD or asthma, that kind of thing.

Q Why is that relevant in your physical examination?

A Well, it's very important to make good judgment to know things about what's been happening in the family, and more specifically what kinds of things have been going on with the child because when you're looking at a child, you're looking at somebody who's developmental behavior is very different than that of an adult.

So oftentimes, they are unable to verbally communicate clearly what they're trying to say. So we have to know a lot about their developmental abilities, whether there's delay, and to know something about what their behavior has been like, especially in cases of chronic abuse where it might have been going on for

years, to ascertain if there have been signs and symptoms of a problem.

Q And after you get that history, what's the next step?

A What I usually do is -- I get the history from the non-offending caretaker without the child being in the room. Then I ask the non-offending caretaker to leave the room and I'll interview the child briefly unless a forensic interview hasn't already been performed.

A forensic interview is usually done before I see a child, but if it's an acute case as this one was, I need to do the -- a more extensive interview myself. So I interview the child without the parent present, and then I give the child the option of having the non-offending caretaker to come back in the room while I do the physical exam.

Q And now this interview with the child, do you use their responses in forming your expert opinion?

A It's very important for me to, in all cases of medical care, ask the patient what happened to them in cases of injury, in order to decide what's going on. So, yes, I do use what the child explains -- her description of what happened -- his or her description of what happened to form an opinion.

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Q And after you meet with the child, what's the next step?

A I do a head-to-toe exam. The last part of that exam being an exam of the genitals. I use a very high powered piece of equipment called a colposcope, and this has an ability to magnify from about three to fifteen times. The colposcope has a very expensive LED light on it that provides not only wonderful magnification but very good lights. I use that during part of the exam, and then depending on the age, if it's an older child, a teenager or someone who's already been sexually active, I will use a speculum, but that is not done on prepuberal children.

Q So if they're prepubescent, it's not like an adult exam with the speculum?

A Not at all. It's just -- I use traction and separation of the labia to look at the opening of the vagina and the anus.

Q And what is the purpose of this exam?

A To look for signs of trauma.

Q Do you also use it as a mechanism for collecting physical evidence?

A Yes. Depending on when the alleged assault occurred, we know that there is a time window when we can get DNA from a victim's body. Unfortunately prepubescent

children, their body's hold onto DNA for a shorter period of time than adults, so we have about a 24-hour window to get DNA from the body, the skin.

Q And you earlier stated that outside DNA, you don't always find physical evidence in all exams?

A Right. It's very rare to find physical evidence.

Q Is there a scientific reason for that?

A Yes, the genitalia is similar to the inside of your mouth. The tissue there is mucosal tissue that has a high blood flow, blood supply, and it heals rapidly. If you think about maybe biting your cheek when you're eating and it might be very painful and your cheek might bleed, probably a week later if you look at your cheek in the mirror, you're not going to have any idea where that injury was. And it's the same thing in the vagina, the tissue in the front of the vagina and the anus.

Q And on November 30, 2009, did you meet with a Carla Griffin?

A Yes, I did.

Q Did you also meet with her daughter?

A Yes.

Q And what's her daughter's name?

A Minor .

Q And do you know how old Minor was at that time?

A I believe she was six.

Q And was anyone else present for y'all's meeting?

A There was a victim advocate from Hope Haven, who is always present when I do the exams. I'll have to remember which one it was. I can't remember her name. Vanessa Vasquez.

Q Were there any other children present?

A Yes, Carla brought her two younger children to the exam with her. I don't think she had anyone else to watch them.

Q And were you able -- did you go through the process that you just described to us?

A Yes.

Q And so what was the first thing you did with --

A Minor ? Well, I did a full physical, head to toe, examining the mouth for signs of injury because of what she described to me, I needed to examine her mouth. I also checked her ears and her nose, listened to her heart, checked her lungs, felt her abdomen. Did a complete skin head-to-toe evaluation; and then at the very end, I did the evaluation of her genitalia with a colposcope.

Q Prior to that, did you speak with Carla Griffin?

A Yes.

Q And were you able to obtain a social history?

A Yes, I was.

Q And what did you understand the reason for your examination to be?

MR. DEYSACH: I would object to the hearsay. I think she's just trying to elicit what Carla Griffin told her the reason was for.

THE COURT: I'll sustain the objection.

MS. BANNON: Your Honor, I believe there's an exception to that.

THE COURT: All right. Might counsel approach the bench.

(WHEREUPON, there was a bench conference out of the hearing of the jury and the Court Reporter.)

MR. DEYSACH: I would like my objection to the hearsay noted for the record, Your Honor.

THE COURT: And it's overruled, and due to the fact that she's an expert, experts rely on hearsay testimony; and your objection is overruled, and she's allowed to testify in that regard. In addition to that, this particular witness will be subject to cross-examination at a later date and time.

Yes, ma'am.

By Ms. Bannon:

Q Ms. Dalton, what did -- why did they come to see you?

A Carla's mother -- Minor 's mother, Carla

Griffin, told me that she had been in the emergency department with her three-year-old son. He was having seizures and she was there for several hours on November 29th; that she didn't get home until around 8:40 in the morning. She said that evening when she was preparing dinner, her six-year-old daughter, Minor told her that she had been sexually assaulted by the man that she calls dad, Anthony Linton.

She came up to Ms. Griffin and said, I got something to tell you. Dad got on top of me. Then she told her mother that he had covered her mouth because she was screaming. She disclosed that her nine-year-old brother Samuel had witnessed part of the assault, but was told to go back to bed.

Ms. Griffin said she finished cooking dinner; and after she finished that, she took her daughter and examined her genitalia, noticed purple and black bruising, and swelling, so she called 9-1-1.

The police recommended that she take her daughter to MUSC where they have on-call people that can do these exams, but she was unable to transport her there. So she ended up coming to see me at two o'clock the next afternoon, which was the first available time I had.

Q And did you use that information in developing your expert opinion?

A Yes, I did.

Q Did you talk to Minor ?

A I did.

Q And now, you stated that if the child has previously been forensically interviewed that would change how you question the child?

A Correct. We try to reduce the number of interviews because studies show it's traumatic to have to keep telling your story over and over again when you've been abused. So usually what happens is I get a copy of the forensic interview so I know what the child has disclosed, and I can ask some very specific information about what went where and what body part might have hurt. But in this case, I had to be a little more extensive.

Q So Minor had not been forensically interviewed when you saw her?

A Correct.

Q And did you have the opportunity to talk with Minor ?

A I did.

Q And what did she tell you?

MR. DEYSACH: I would object on hearsay grounds. Same objection, Your Honor.

THE COURT: All right. Might counsel approach the bench one moment?

(WHEREUPON, there was a bench conference out of the hearing of the jury and the Court Reporter.)

MR. DEYSACH: May I put my objection on the record?

THE COURT: Yes, you may.

MR. DEYSACH: I object to testimony by this witness as to what Minor said on the basis of hearsay. I also object to it on the basis of the child-video-taping statute, which requires hearsay statements made by an alleged victim in cases such as these -- before a hearsay statement is able to be presented to the jury, requires the judge to make a finding of particularized guarantees its trustworthiness, and I don't think that's been done in this case before she testified.

THE COURT: Okay. Mr. Foreman, ladies and gentlemen of the jury, I'm going to ask if you could retire to the jury room for just one moment. Do not discuss the case.

(WHEREUPON the jury left the courtroom at 11:51 a.m.)

THE BAILIFF: Jury is clear, door is closed, Your Honor.

THE COURT: Okay. Very good.

Yes, sir, I'll be glad to hear you.

MR. DEYSACH: I'm sorry I stood up before the jury was out. I know I should remain seated, and I apologize for that.

I hope I'm not being too pushy, but I did want to point out the authority that I wanted to cite for the objection that I made, which is the South Carolina Code, Section 16-23-175, which covers the admissibility of out-of-court statements of a child under 12: Determination of trustworthiness, notice to adverse party -- those are the -- that's the title of the code section I want to read to you, what I believe is the relevant portion.

It's F -- out-of-court statements made by a child in response to questioning during an investigative interview that is visually and auditorily recorded will always be given preference. If, however, an electronically unrecorded statement is made to a professional in his professional capacity by a child victim or witness regarding an act of sexual assault or physical abuse, the Court may consider the statement in a hearing outside of the presence of the jury to determine the necessity of the video recording equipment -- if the necessary video recording equipment was unavailable, the circumstances surrounding the making of the statement, the relationship of the professional to the child, and

No. 4, if the statement possesses particularized guarantees of trustworthiness.

After considering these factors and additional factors, if the Court deems important, the Court will make a determination as to whether the statement is admissible pursuant to the provisions in this section.

My position is that this law applies in this situation.

THE COURT: I'll be glad to hear from the State.

MS. BANNON: Your Honor, he read from the subsection of something that's not an issue at this point. I feel that that's a premature argument and that law that Mr. Deysach just stated does not apply. I am asking these questions from Ms. Dalton to establish the basis of her expert opinion and find out what information she did garner in forming that expert opinion.

THE COURT: Okay. Yes, sir?

MR. DEYSACH: Just briefly, the title of the law is Admissibility of Out-of-Court Statements of Child Under 12. This is what we're dealing with, an out-of-court statement by a child under 12.

THE COURT: All right. I'm going to -- where is -- when -- is the child here?

MS. BANNON: Yes, Your Honor, and she is actually slated -- one more witness and then she's going to be

called.

THE COURT: Okay. All right. We're going to recess for lunch and we'll reconvene at two o'clock. I need to speak with counsel in chambers for just one moment.

Under these circumstances, ma'am, I'm going to ask that you be back at two o'clock and not to discuss the case with either of the lawyers.

THE WITNESS: Okay.

THE COURT: Very good. Thank you so much.

THE WITNESS: Yes, sir.

THE COURT: Let's bring the jury back in.

You may be excused. We'll see you back at two. I'm sorry for the inconvenience.

THE WITNESS: Okay. Thank you.

THE BAILIFF: The jury is entering.

(WHEREUPON the jury entered the courtroom at 11:56 a.m.)

THE BAILIFF: The jury is present.

THE COURT: Thank you, ma'am.

Mr. Foreman, ladies and gentlemen of the jury, we're going to recess until two o'clock. Once again, do not discuss the case amongst yourselves or with anyone else. I promise you that when you go back and you speak with co-workers, family members or friends, they're going

to say, Well, tell me what's going on in the courthouse. I'm going to instruct, order, and demand that you not discuss it with them. It might be that these people have an opinion about this type litigation.

Of course, you've taken a solemn oath to base your decision on what transpires here in the courtroom. I'm going to ask you, if you could, to wear these very handsome juror badges outside of the courtroom as you're leaving. And when you get out of the car, I'm going to ask you to display them when you come back in the courthouse. And the reason for that is, there are witnesses in the courthouse that are involved in the case, and there lawyers, and it might be that they are talking about it in the hallway or in the courthouse somewhere and if they know and can see that you're a juror, they will quit talking and avoid the appearance of impropriety, or the fact that you might overhear one of their conversations.

Once again, you need to base your decision on what transpires in this courtroom. There's not anything in this world that we can't look up on the internet now. Do not do any independent investigation about the subject matter or the facts of this case in any way, shape, or form. You've heard to some extent where this event took place. Don't do any independent investigation looking at

where this thing might or might not have taken place and I ask that you be back at two o'clock, two o'clock sharp. Thank you so much.

(WHEREUPON the jury left the courtroom at 11:59 a.m.)

THE BAILIFF: Jury is clear, door is closed, Your Honor.

THE COURT: Counsel, if I could see you in chambers.

(WHEREUPON a recess was observed.)

THE COURT: Yes, ma'am, you may come and resume your chair.

While the jury is out, I wanted to -- objections have been made with regard to the testimony and I wanted to sort of go over the parameters of your testimony. You are going to be able to testify as to the test that you performed. You're able to testify as to any medical history that you took, and medical history includes hearsay. You can rely on hearsay with regard to education, with regard to behavior, with regard to school records and anything that a doctor would rely upon getting a medical history.

However, with regard to the incident itself, you're going to be restricted to testimony with regard to when the report was made, the place the alleged incident

took place and the manner. For instance, there are allegations of oral, anal, and vaginal intercourse. You can say that there was a report made at a certain time at a certain place, and it involves this type of sexual activity. But you can't go into the details.

I think there was -- inadvertently there was some testimony with regard to, Who would you describe on top, and Who was on -- and the manner of the allegations itself. That type hearsay testimony has -- is inadmissible, and that type information needs to come from the victim herself. So you can testify that yes, a report was made and you took that as part of the history. The report was made at such and such a time. The allegations were that it took place at the certain place and the general allegations about vaginal, anal, and oral intercourse, but you can't identify the individual.

I think inadvertently you mentioned that it was this defendant. Although identity is not really a question in this case, you can only make reference to the perpetrator or the alleged perpetrator. You can't make reference to who the individual was. And you can also testify as to your findings with regard to the test. You conducted certain tests, you talked about a specific instrument and what you saw. You can testify as to that. You can also render your opinions as to the clinical

findings and what you have concluded as a result of that, whether or not there was sexual -- whether it's consistent with sexual trauma or the like.

Do you have any questions in that regard?

THE WITNESS: I don't think so.

THE COURT: Okay. Any objections with regard to the instructions I've given from the State, Ms. Bannon?

MS. BANNON: No, Your Honor.

THE COURT: Any from defense?

MR. DEYSACH: No, Your Honor.

THE COURT: All right. Very good. Anything further from the State before we proceed?

MS. BANNON: No, Your Honor.

THE COURT: Anything further from defense?

MR. DEYSACH: No, Your Honor.

THE COURT: Very good we'll bring the jury in.

THE BAILIFF: The jury is entering.

(WHEREUPON the jury entered the courtroom at 1:59 p.m.)

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, thank you so much for being here, and thank you for being here on time.

Ms. Bannon, you're recognized.

MS. BANNON: May it please the Court?

THE COURT: Yes.

By Ms. Bannon:

Q Ms. Dalton, in talking with Minor , was the disclosure of sexual abuse made?

A Yes.

Q And what acts were disclosed.

A Penile-vaginal penetration, penile-anal penetration, and oral -- penile-oral penetration.

Q And in meeting with Minor , did she appear normal for a six-year-old?

A No, she did not. She had a very flat affect.

Q Did she seem to understand your questions?

A Yes.

Q After you speak with her, did you begin your examination?

A Yes.

Q And what did you find?

A I found traumatic injury in the genital area to include abrasions on her inner lips and outer lips which are called the labium, and abrasions in the vaginal introitus, which is the area right in front of the vaginal opening and the hymen.

Q And --

A I'm sorry, there was one more finding -- a cut at the mons pubis, which is on top of the -- it's right above the urethral opening.

Q And are the abrasions normally found on a six-year-old?

A No.

Q How about the cut?

A No.

Q How did you find these on --

A I could see them even without my colposcope, but I could clarify the size and appearance using the colposcope.

Q Did you note anything about Minor 's urethra?

A Yes. Her urethra was reddened and swollen.

Q You said that she had abrasions and cuts. In your opinion is that consistent with anything?

A It's consistent with blunt penetrating trauma.

Q Could you put a time on when these occurred?

A I would say they certainly were very fresh. Probably no more than two to three days. Most injuries with heal within three days.

Q And did you conduct a DNA swab?

A I did not collect DNA from her because the time span from the alleged incident, it was too late.

Q Earlier you had said that you have to collect it within 24 hours?

A Correct, for DNA from the skin, yes.

Q And so when you examined Minor , it was outside

that window?

A Yes. I examined her sometime between 30 and 36 hours after the incident.

Q Did you notice anything about Minor a's hymen?

A Her hymen appeared normal.

Q Is that surprising to you?

A Not at all.

Q Why?

A The hymen is a piece of tissue that is very stretchy and elastic. And I think a good way to describe it is if you had a bag full of rubber bands and you pulled a rubber band out and you stretched it and put it back in the bag of rubber bands, you would not be able to see which one had been stretched. So this is a very elastic piece of tissue, and, you know, like what most people believe it is not commonly found to have injuries after penetration or attempted penetration.

Q So you could have penetration, but still have no injuries to a hymen?

A Absolutely. There are many numbers of studies of proof, children, teenagers, who are pregnant who are examined by experts and they're hymens are completely normal.

Q So this finding about Minor a's hymen was not inconsistent?

A Not at all.
Q Earlier you stated that this was consistent with blunt penetrative trauma?
A Yes, such as with forced vaginal penetration, penile vaginal penetration.
Q In your training and experience, is that consistent with self-infliction?
A No, definitely not.
Q Why?
A The degree of injury, if somebody accidentally cut themselves when they're -- with their finger when they're showering, they would immediately stop and not further injure themselves. I have seen very few genital injuries, and I have examined close to a 100,000 children; and genital injury that is not inflicted usually has a very clear explanation. The child's insignificant pain can tell an adult immediately what's happened to them.
Q So in your opinion is this consistent with self-infliction?
A No.
Q If it is -- if blunt penetrative trauma, would that be painful to the child?
A Yes, most definitely. It's more likely to be painful when you are penetrated vaginally when you're not

aroused. Arousal causes secretions to be produced by the body and the secretions act as a lubricant, and if there is no arousal then there are no secretions, and so it's very likely that you'll find abrasive injuries.

Q Consistent with those you found in Minor ?

A Consistent with what I found.

Q Did you collect anything from Minor ?

A I collected her panties and a pair of jeans that she had still been -- she had reportedly not changed.

Q And what did you do with those?

A I gave them to Officer Brian Baird.

Q And did you meet Minor again after that day?

A I did. I asked her to come back for a follow up so I could assess whether the findings had gone away, had healed.

Q And do you remember when you met with her again?

A It was about two weeks later. I can tell you the exact dates in just a second. January 22, 2010.

Q So it's like a month later?

A Yeah.

Q And what did you do on that follow-up visit?

A I did another genital exam.

Q And were you able to observe the same areas that you observed on November 30th?

A Yes.

Q And did you note anything about this injury?

A I noted that all the injuries had healed. There were no further findings.

(State's Exhibit 1 was marked for identification.)

MS. BANNON: Permission to approach the witness?

THE COURT: You may.

By Ms. Bannon:

Q Ms. Dalton, I'm showing you what's been labeled for identification as State's Exhibit 1. I put some gloves down there, I thought you might want to put those on. And here's a pair of scissors.

If you wouldn't mind opening those two bags and looking at the items contained within and let me know if you recognize them.

A This is my handwriting on the bag.

Q For identification if we could just go ahead and label these just so the record's clear, what are you talking about?

A This is the bag that I put the outer clothing into. It's got my handwriting on it.

(State's Exhibit 1-A was marked for identification.)

By Ms. Bannon:

Q And that's being labeled for identification as

State's Exhibit 1-A.

A These are the jeans that the victim was wearing when I saw her.

Q Okay. And that's being labeled for identification as State's Exhibit 1-B.

(State's Exhibit 1-B was marked for identification.)

By Ms. Bannon:

Q And are they in the same or substantially the same condition as when you took them from the victim?

A Yes, they are.

Q Okay.

MS. BANNON: At this time the State would move State's Exhibit 1-B into evidence.

THE COURT: Any objection from defense?

MR. DEYSACH: That's the jeans, Your Honor?

THE COURT: Yes.

MR. DEYSACH: 1-B is the jeans? No objection, Your Honor.

(State's Exhibit 1-B was entered into evidence.)

THE COURT: All right. The jeans are into evidence without objection from defense.

THE WITNESS: I recognize this as the second bag that I used to collect evidence and it has my handwriting on it.

MS. BANNON: And for identification it is being identified as State's 1-C.

(State's Exhibit 1-C was marked for identification.)

THE WITNESS: And these are as described in my report, her panties.

By Ms. Bannon:

Q Were they like that when you collected them?

A No, they were not cut like this. They were in one piece.

Q Okay.

MS. BANNON: I'm sorry, so we're on 1-D now?

THE COURT REPORTER: Yes.

(State's Exhibit 1-D was marked for identification.)

By Ms. Bannon:

Q And for identification we're labeling that 1-D. And those you collected from Minor ?

A I did.

MR. DEYSACH: Your Honor, I don't think they've been moved into evidence yet and I don't think it's appropriate to publish them to the jury.

THE COURT: All right. They have not been published. She is marking them for identification purposes.

By Ms. Bannon:

Q And you previously stated they were all in one piece when you collected them?

A Yes.

Q Did you note anything about them when you collected them?

A I don't recall if I noted anything in them. I know --

Q Okay. You don't recall?

A I don't recall.

MS. BANNON: One moment, please, Your Honor. Permission to approach, Your Honor?

THE COURT: Certainly.

(State's Exhibit 4 was marked for identification.)

By Ms. Bannon:

Q All right. I'm showing you what's been labeled for identification as State's Exhibit 4. Would you mind opening these bags, please, and let us know if you recognize what's contained there within.

A These are two hairs. I do not recall -- this is taped.

Q Okay.

A This is pubic hairs, and these are the rest of her panties.

Q Okay. So item 1-D, is that the crotch that went along with those panties?

A Those panties, yes.

Q Okay. And it was all part of one when you --

A Yes.

Q And besides being cut up does that appear to be in the same condition as when you turned them over?

A It does, yes.

MS. BANNON: All right. And State would like the label that for identification as 1-E.

THE COURT: You can mark the bag.

(State's Exhibit 1-E was marked for identification.)

By Ms. Bannon:

Q If you wouldn't mind putting those back in that bag. All right. Thank you. That's all the questions I have for you Ms. Dalton, if wouldn't mind answering anything Mr. Deysach might ask of you.

THE COURT: Cross-examination.

MR. DEYSACH: Thank you, Your Honor.

CROSS-EXAMINATION

By Mr. Deysach:

Q Good afternoon Nurse Dalton?

A That's fine, yes.

Q I think you said that you were an active member

of the 14th Judicial Circuit Multidisciplinary Child Abuse Response Team; is that correct?

A That is.

Q And that is a group of people that works very closely with police and prosecution; ain't it?

A Yes.

Q Okay. And you would describe what you do as -- in part a law enforcement function?

A Well, I think it assists law enforcement. I like to think it might be helpful to them.

Q Thank you. Now, the day -- the date and time that you met with Minor that was the 30th of November; did you say it was two o'clock?

A Two p.m.

Q Two p.m. And when she arrived, she arrived with her mother, Carla; correct?

A That's correct.

Q You said that you had actually a protocol or a form that you fill out so that you make sure that when you do these types of evaluations, you do them basically the same way every time; is that correct?

A Yes.

Q That one of the -- and you did that in this case, correct?

A Yes, the two main kinds of evaluations -- there

are the acute ones, when you're looking for DNA; and then there's the chronic ones so there's a slight difference in the exam when you're collecting DNA.

Q Right. So what you're saying is if you're doing an acute examination, you don't follow the same procedure that you do in a chronic examination?

A Right. It's slightly varied.

Q Okay. That in this situation you were doing what's called an acute evaluation?

A Yes.

Q And even though you were doing -- all right. Let me -- I'll go in order here. One of the -- one of the first things you do is you get a social history, correct?

A Yes.

Q And you said you got that from the mother?

A Yes.

Q And that's Carla Griffin in this case?

A Yes.

Q And when you get that history, is Minor in the room with her?

A No, she's not.

Q Where is Minor at this time? In another room?

A She would probably be in the waiting room.

Q And this all occurred at the office of Beaufort Pediatrics, correct?

A Correct. That's where I do the evaluations.

Q And that's a doctor's office also where there's -- many pediatricians practice?

A Yes.

Q And there were -- there were doctors there that day, correct?

A Yes.

Q But no doctors ever saw Minor , correct?

A No.

Q It is important to get the social history of the person who is coming to be evaluated, correct?

A Yes.

MR. DEYSACH: Your Honor, I would like to approach on a matter of law.

THE COURT: Okay.

(WHEREUPON, there was a bench conference out of the hearing of the jury and the Court Reporter.)

By Mr. Deysach:

Q All right. Thank you for your patience. I was asking you about whether or not collecting a social history from the family in one of these evaluations was part of the protocol, correct?

A Correct.

Q And in collecting that history, you found out that there was prior DSS involvement in the family due to

severe behavior problems with an eight-year-old brother in this case?

A Yes, that's what Carla told me.

Q Okay. Do you have a copy of your, I guess you call it the --

A Child Maltreatment Protocol?

Q Yeah. Child Maltreatment Protocol.

A I do.

Q On page 3 of 13, is that where you record the social history?

A Yes.

Q In collecting the social history, you wanted to find out about prior law enforcement contact between the family?

A That's part of it. It's law enforcement, social services, and domestic violence, that --

Q So you asked about the DSS involvement, and you found out that that had occurred involving an eight-year-old brother or an older brother in the home, correct?

A (Witness nodded head.)

Q And you tried to find out about law enforcement contact, and Carla denied to you any prior involvement, correct?

A Correct.

Q But the police told you that there had been multiple incidents of law enforcement contact, correct?

A Correct.

Q So you had conflicting information from Carla versus the police department in this case?

A Yes, I did.

Q All right. Now, you -- it is later that you moved to the physical evaluation, correct?

A Yes.

Q And it is on page 9 of your protocol that you make those notations, correct?

A That's one of the pages.

Q Okay. What's another page?

A Page 8, down at the bottom under comments on the left.

Q Right. I want to talk to you a little bit about -- well, let me ask you this question that you -- turning to page 9, you check kind of the -- I don't know, the genital area. I guess you referred to it as a ana-genital area of the child, correct?

A Uh-huh.

Q And I think on direct testimony, you talked about the area of the labia and the vagina, correct?

A The area of the labia, yes.

Q Uh-huh. And the vagina and a hymen, correct?

You testified to your findings in regards to those parts of the body?

A Right. That there were no findings in the hymen or the vagina.

Q All right. The -- as far as the -- I guess we'll call it the anus, you did not find evidence of any trauma back there, did you?

A No, I did not.

Q Now, you explained that you would not expect to see an injury to the hymen, correct?

A Well, it's not so much that I wouldn't expect it as -- it's infrequent.

Q Okay. So if -- you check the hymen, but if you -- if you don't see an injury to it, it doesn't really mean that much to you, I guess is what you're saying?

A Not seeing an injury in a certain part of the genitals doesn't mean that what was described to me didn't happen. I think one of the thing that's important to understand is that a six-year-old's interpretation of penetration is not necessarily the same as an adult female who's experienced consensual intercourse and understands what it means to have a penis inside the vagina.

Q I understand what you're saying, that you're

talking to children and children are definitely different than adults, correct?

A Right.

Q And that's why you have a child maltreatment protocol here, it's not an adult maltreatment protocol, correct?

A Correct.

Q Because -- and you're meeting this child for the first time, correct?

A Yes.

Q And you're gathering your social history and your family history, but you've only got a limited amount of time to gather that history, correct?

A I can take all the time I want to --

Q Well how much --

A -- to gather that information. Sometimes it takes me four hours to do these exams, and sometimes it takes me an hour.

Q How long did this one take?

A I think this one was about two hours from start to finish.

Q Okay.

A It may have been a little less than that.

Q And so it was within that time that you got all your findings, correct?

A Yes.
Q Right. Okay. And your sources of information are somewhat limited when you're trying to find out about the family history or whatever -- you're only able to ask the mother in that situation?
A In all pediatrics, yes. That's always the case. We can only interview the caretaker and the child. We don't have law enforcement with us and we can't do anything more than our best and --
Q I mean, I understand. I'm not asking you to do something you can't do. I'm just trying to explain to the jury what the limitations are of what you do.
A I see.
Q And I mean it would be nice, I suppose, if a six-year-old had an intellect of an adult and were able to speak to you in such a way it would make your job easier, correct?
A Absolutely.
MS. BANNON: Objection. Form of the question.
THE COURT: Sustained.
MR. DEYSACH: Okay.
By Mr. Deysach:
Q But the point is just that the only -- you're stuck talking to a child in this situation; isn't that right?

A Yes.

Q Okay. And with children, you have to be careful of they're -- they're perception of reality is different than that of adults; is that correct?

A At -- I'm not sure I really like that phrase. Their interpretation of things may be limited in they're description. They're able to describe things.

Q They're understanding -- they have a vivid -- a more vivid imagination than adults do; is that correct?

A Probably, yes.

Q That they have more trouble than adults do at determining the difference between reality and imagination, correct?

A Yes.

Q Okay. And they are different than adults in understanding the importance of telling the truth and lies, correct? Or do you know?

A Well, it's my opinion that adults lie much more frequently than children.

Q Okay.

A In my experience.

Q That -- I wasn't asking -- I'm not going to disagree with that.

A Okay.

Q But that when -- that the -- the question is

whether or not the children understand the seriousness of lying the way adults do. Do you have an opinion on that?

A It depends on their development age. There's a particular age where children are extremely black and white about that and much less likely to tell lies because of their developmental stage. They -- as I said it's black and white. They're less likely to lie.

Q So you are more likely to believe a child than an adult?

A That is completely circumstantial.

Q Okay.

A You can't put that into general terms.

Q Sometimes you would be more likely to believe the adult, sometimes more likely to believe the child?

A I guess there are instances where I think adults are telling the truth and instances when I think they're not and the same with children.

Q Were you worried that Carla wasn't telling the truth when you found out that she wasn't up front about law enforcement contact with the family?

A I believe I didn't find out that until after the exam when I spoke with the sargent.

Q Okay. Did that information affect your findings at all?

A No. Unfortunately, it seems to happen with some

frequency that people are unwilling to admit during the medical exam that they've had some social problems in the past. I certainly have seen it many times before.

Q Not the first time that's happened to you; is that correct? That the parent as lied.

A Correct.

Q Okay. You would agree that children are more suggestible than parents; wouldn't you? Than adults, wouldn't you?

A What do you mean suggestible?

Q That -- let me ask you this. I'll ask it this way: When you're doing interviews, you are concerned about parental coaching, aren't you?

A Yes.

Q Okay. You have seen cases in your experience where parental coaching has occurred?

A Yes. Every case I've seen where parental coaching has occurred is with the parent encouraging or coaching the child to lie about the actuality of being abused.

Q Got you.

A Meaning they were abused and made the disclosure and the parent or caretaker tells them not to tell what happened to them.

Q So the only time you've ever seen a child lie

is -- you all see the abuse as having occurred, correct?

A No. The only times I've had concerns about what the child is saying to me has been in that reverse situation, where it seems untruthful.

Q Okay.

A When the child uses terms that are out of their vocabulary range -- there's certain manners in which children can speak that are -- especially, you can ask a forensic interviewer about what those red flags are, when you can --

Q And you're not a forensic interviewer are you?

A No, I'm not. I've taken a lot of courses in it, but I'm not certified as that.

Q All right. I want to change gears to your collection of the clothing that you talked -- that you testified about.

Now, you're saying that these clothes were worn into the office?

A Yes.

Q That it was -- you understood what you were looking at to have occurred greater than 24 hours ago, correct?

A Yes.

Q And yet, the same clothing was being worn?

A I'm sorry, I'm going to need to amend that. I

unfortunately do many of these cases, and I'm not going to be able to recall if she was wearing it when she walked in or if they brought it in a bag. It happens both ways. Most often, law enforcement will tell them, either don't change; or at the hospital, they'll tell them don't change or to put the clothes they were wearing in a bag; and I have to say I don't remember exactly.

Q So you don't know who you got the clothing from, right?

A It could have been that it was brought with law enforcement in the bag, but I think I took it off the child, that she stood on a piece of paper and we took it off of her.

Q Okay. You don't have a note that indicates which?

A No.

Q And the possibilities that exist are the child wearing it and then taking it off and giving it to you, that's one possibility, correct?

A Yes.

Q That the mother had brought the clothes in a bag and handed it to you in a bag? Is that a possibility?

A I suppose if law enforcement asked the mother to do that.

Q Well, who did you give the clothes to?

A To law enforcement.
Q So why would law enforcement come in to give you the clothes just for you to give them back to law enforcement?
A I guess for me to examine them and see if there are any signs of trauma, bleeding, that kind of thing.
Q Okay. So it's possible that law enforcement walks in with them and law enforcement walks out with them?
A Yes.
Q And it's possible that the mother delivers them to you?
A Correct.
Q And you're not sure which one this is?
A Or whether the child had them on.
Q Right, that was -- possibility number one was the child having them on as a possibility?
A Yes.
Q Okay. Now, you indicated that you did not do the so-called sexual assault kit where you would attempt to collect possible DNA material from the skin of [redacted], correct?
A Yes.
Q And you said the reason that you didn't do that was because 24 hours had passed?

A Yes.
Q Correct? And you would never attempt to collect DNA from somebody after that 24 hours had passed; is that correct?
A No, it's not.
Q Okay. So sometimes you would try to collect that after 24 hours?
A Yes.
Q In this case, you did not?
A Correct.
Q Because of the youth of the child?
A Yes.
Q Because with a younger child -- you said DNA on the skin would what? Dissipate?
A Correct.
Q Okay.
A It's much -- studies show it's much less able to collect DNA off the skin of a prepuberal child than it is --
Q Correct?
A -- from an adolescent or adult.
Q Right. But you did not testify about the vaginal cavity, about whether or not DNA remains in that area for longer than 24 hours, did you?
A No, but it's the same.

Q It's exactly the same for DNA on the skin as it is for in the cavity?

A Yes.

Q Now, you helped put together the -- you followed the Child Maltreatment Protocol, correct?

A Uh-huh.

Q Isn't -- isn't one of the directions for evaluations of acute sexual assaults less than 72 hours from the incident to please use the SLED Sexual Assault Evidence Collection Kit?

A That's for people who are not prepuberal, and it's up to the medical expert to make that determination, whether they need to be collecting it or not.

Q Okay. So you decided?

A Yes. I made the decision based on the history that it would not be beneficial in this case.

MR. DEYSACH: Begging the Court's indulgence. Nothing further, Your Honor.

THE COURT: Redirect examination?

MS. BANNON: Thank you, Your Honor. Just briefly.

THE COURT: All right. As a matter of procedure -- judges handle it differently, but the way the examination is direct, cross, and redirect examination, and you have an obligation to object to

anything that she brings up in redirect examination that was not covered in cross. There will be no recross. That goes for all witnesses.

You're recognized.

MS. BANNON: May it please the Court.

REDIRECT EXAMINATIONS

By Ms. Bannon:

Q Ms. Dalton, the doctors you work with, are they trained to do these forensic medical exams on children?

A No, they're not.

Q And when you said that these injuries are consistent with blunt penetrative trauma -- now, this may be a stupid question. Does that mean that something went in the vagina?

A Something went into the genitalia, into the genital area. So you have the outer lips, the inner lips and then the opening; and then what we call like the doormat, which is like right in front of the hymen. Then you have the hymen, then you have the vagina. So there's a lot of different body parts to go through.

Q So what a layperson would refer to as a vagina in general is what you're referring to as genitalia?

A Yes.

Q Okay. And so the injuries are consistent with something going into that area?

A Something either going in --

MR. DEYSACH: I'm going to -- leading -- I'm objecting to the leading on that question.

THE COURT: I'll sustain the objection. Ask a direct question.

By Ms. Bannon:

Q What were your findings?

A The injuries are consistent with what we call blunt penetrating trauma. So not something like a sharp stick or a nail or a picket fence going into the genitalia; something that is not sharp.

Q Is a penis sharp?

A A penis is not sharp.

Q So could a penis fall within that description?

A Absolutely.

Q Mr. Deysach went into the difference between the truth and a lie and children making that distinction.

A Yes.

Q In your opinion did Minor understand --

MR. DEYSACH: I would object to that. I don't think she's qualified to offer that opinion.

THE COURT: The question was what again?

MS. BANNON: Your Honor, Mr. Deysach brought up about the truth and lie distinction and children being able to tell that. It was merely if Ms. Dalton believed

that Minor understood that.

THE COURT: Well, certainly. That is objectionable. That is for the jury to decide, not for this witness to testify to. It's outside her field of expertise, in addition to that.

By Ms. Bannon:

Q And how long was the exam you performed on Minor ?

A It was somewhere around 90 minutes to 2 hours.

Q And --

A That means from the moment I started interviewing the mother to the completion of the exam and when they left the office.

Q Is that a long time span for a six-year-old?

A You mean to sit through that? Yes.

Q And you stated that you didn't find injury on Minor 's anus?

A Correct.

Q Does that mean that no penetration occurred on her anus?

MR. DEYSACH: I would object to the leading.

By Ms. Bannon:

Q Let's -- does that change your opinion about penetration occurring on the anus?

A No, I look at it as there are two possibilities.

One -- given the nature of my understanding of what happened during the assault, an attempt at penetration was made. Now --

MR. DEYSACH: I object again. I believe she's now testifying to the details --

THE COURT: Well, first of all, when you object, state the grounds for your objection, and if anything further you need to approach the bench.

What is the grounds for your objection?

MR. DEYSACH: It is hearsay, Your Honor.

THE COURT: All right. Ask that you rephrase the question.

By Ms. Bannon:

Q Because you did not find injury, is that consistent with penetrative?

A No.

Q Thank you, that's all I have.

THE COURT: All right. Any objection to this witness being excused?

MS. BANNON: Not by the State.

MR. DEYSACH: No, Your Honor.

THE COURT: All right. You're free to leave. Thank you, ma'am.

Mr. Foreman, ladies and gentlemen of the jury, we're going to take a brief recess and allow you to

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refresh yourselves and -- do not discuss the case.

Everyone remain seated as the jury exits the courtroom.

(WHEREUPON the jury left the courtroom at 2:47 p.m.)

THE BAILIFF: Jury has left the courtroom.

THE COURT: Very good. We'll stand at ease for five minutes.

MS. BANNON: Your Honor, my next witness is actually an in-custody witness. She's with SCDC. Could we bring her in and have her seated before the jury gets back?

THE COURT: Yes, that would be good if we could do that.

We'll stand at ease for about five minutes.

(WHEREUPON a short break was observed.)

THE COURT: We're ready for the jury.

THE BAILIFF: Jury is entering.

(WHEREUPON the jury entered the courtroom at 2:56 p.m.)

THE BAILIFF: Jury is present.

THE COURT: Very good.

Ms. Bannon, I'm going to ask -- Madame Clerk, if you could come forward and administer the oath.

Place your left hand on the Bible and raise your

right hand as the clerk administers the oath.

THEREUPON,

CARLA GRIFFIN,

after being duly sworn, testified as follows:

THE CLERK: Would you state your name for the Court, please.

THE WITNESS: Carla Yvette Griffin.

THE COURT: I'm going to ask, if you could, to speak loudly, clearly, and slowly in order that we can hear everything that you've got to say. Thank you, ma'am.

Ms. Bannon, you're recognized.

MS. BANNON: May it please the Court?

THE COURT: Yes.

DIRECT EXAMINATION

By Ms. Bannon:

Q Ms. Griffin, how many kids do you have?

A Six.

Q And who is your oldest?

A Samuel.

Q And how old is he now?

A Ten.

Q And so in 2009 -- in November of 2009, how old was he?

A Eight.

Q And who is your oldest daughter?

A Minor .

Q And how old is she now?

A She just turned eight.

Q And in November of 2009, how old was she?

A Six.

Q And in November of 2009, who lived with you?

A Five -- four of my children, Minor , Samuel, Savannah, Salena, and Anthony Linton.

Q And do you know what grade Minor is currently in?

A Second.

Q And who is Minor 's father?

A Samuel Darnell Mears.

Q And who is Samuel's father?

A Samuel Darnell Mears.

Q And what is his relationship to you?

A Husband.

Q And during 2009, where was your husband?

A Incarcerated.

Q And where do you currently live?

A Now? The correctional hall.

Q So you're in prison?

A Yes.

Q And what are you in prison for?

A Unlawful neglect of a child.

Q What child?

A child .

Q And how old is child ?

A He's four.

Q And who prosecuted you? Was I your prosecutor?

A Yeah, I think so.

Q Okay. And how long have you been in the Department of Corrections?

A Six months.

Q And who's currently watching your children?

A My mother.

Q And -- so your mom is watching Minor and Samuel?

A Yes.

Q You earlier stated that Anthony Linton lived with y'all in 2009?

A Yes.

Q Do you see him here in the courtroom?

A Yes.

Q Could you please describe what he's wearing?

A Plaid shirt with -- blue, plaid shirt.

MS. BANNON: May the record reflect that she's identified the defendant?

THE COURT: I think the record reflects that.

By Ms. Bannon:

Q Did you call Anthony Linton Anthony?

A Yes.

Q What did your kids call him?

A Daddy.

Q Have you ever heard Mr. Linton go by the name Glenn?

A Yes.

Q How about Meat?

A Yes.

Q How did you meet Mr. Linton?

A He was the cashier at the Shell Station in Grays Hill and I was the cook at the KFC in Grays Hill.

Q Is that Shell Station where the KFC is connected to it?

A Correct.

Q And it's out by the air station?

A Correct. It's on Trask Parkway.

Q Do you remember when you first met him?

A I'd like to say the end of '08, early part of '09.

Q And do you remember when he moved in with you?

A Probably around August, somewhere in there -- of '09.

Q And where did y'all live?

A First off it was in Grays Hill, Charles Drive and then I moved to Shady Oaks, which is the -- by where the old Rambling Rose is in Burton. So I moved there..

Q Is that where Mr. Linton lived with y'all?

A Correct.

Q And could you describe the house y'all lived in for us?

A It was a single wide. I think it was a three bedroom, two bath.

Q All right. So you had a lot of people in this house. So where did everybody sleep?

A At the bedroom at the front end of the trailer -- there were two bedrooms at the far-right end of the trailer. The girls was in the back bedroom, and then the boys in the middle, which is right past the bathroom, then the front room, kitchen, master bedroom, which included a bathroom.

Q Okay. And who stayed in the master bedroom?

A Myself and Linton.

Q How would you describe Minor ?

A Outgoing. She's a good student in school, you know, very well-behaved child.

Q Have you ever had any problems with her?

A No, not at all.

Q How would you describe Minor a's relationship

with Mr. Linton?

A They was pretty okay with him. Helped with the school homework, like any meetings at the school, take them fishing, things like that.

Q So they had a close relationship?

A Right.

Q How would you describe your relationship with Mr. Linton?

A Same. It got to be a little rocky. It was pretty okay at the beginning.

Q Prior to this allegation, how would you describe your relationship with him?

A Don't want nothing to do with him.

Q But y'all were still together romantically in November of 2009?

A In the beginning of November 2009, yes.

Q And do you remember November 29, 2009?

A Yes.

Q What sticks out about it for you?

A It's the day that my daughter was raped.

Q And did something happen to another of your children earlier that day?

A The day before, yes.

Q Okay. So November 28th?

A Uh-huh.

Q Could you just explain to us what happened?

A My son, child , had a seizure. He stopped breathing and I called 911 kind of panicked about it because he wasn't breathing at all. The ambulance came out and got him to breathing. He vomited. And I was asked to go to the hospital with him so when he goes in and out of his consciousness I would be present. It would be easier for them.

Q What did you do with the other kids?

A Left them in the care of Mr. Linton.

Q Was that normal?

A Yes.

Q Would he take care of the kids?

A Yes.

Q When you were at work who would watch the kids?

A Linton.

Q So he had watched the kids before that night?

A Yes.

Q When did you get home from the hospital?

A Probably like 8, 8:40, 8:30, somewhere up in there.

Q In the morning?

A In the morning.

Q So in the morning of the 29th?

A I had a double trip, right. I had just gotten

back with child and had to turn right back around and go with Minor .

Q And did you notice anything about Minor 's behavior?

A Uh-huh.

Q What?

A She wasn't talking much. She stayed balled up in a ball. They hadn't eat breakfast. Upon me arriving to the house, Linton was dressed to leave. He said he would be back, but it got to be dusk dark and he still didn't return.

Q And when did Minor disclose her abuse to you?

A She kept watching the front door and stuff as if she was waiting on Linton to return and I was preparing something for them to eat and she came up and said, Mom my -- I have something to tell you.

Q And did she make a disclosure of abuse?

A Yes.

MR. DEYSACH: I think that that is a leading question, and I think it's also asked more hearsay.

THE COURT: Okay. I will sustain the objection with regard to the fact that it's leading and ask counsel to approach the bench.

(WHEREUPON, there was a bench conference out of the hearing of the jury and the Court Reporter.)

By Ms. Bannon:

Q Ms. Griffin, after you had a discussion with Minor , what did you do?

A I dialled 911.

Q Immediately?

A Well, first I spoke to Anthony Linton before dialing 911.

Q Did you examine Minor at any point?

A Yes.

Q What did you do?

A She -- I asked her to, like, remove her pants or whatever. And she was like purple all around her vaginal area.

Q So her skin was purple?

A Right.

Q Do you remember what color pants she was wearing?

A I think it was red.

Q And so after you examined her, you said you talked to Mr. Linton?

A Correct.

Q And what did he tell you?

A He said that she wanted a bag of chips; and that she was lying, and we needed to discuss this further.

Q And did y'all?

A I told him that I was going to call 911, and I

was going to speak to the officers. He'd asked me not to do that, to contact them. But I did anyway.

Q Did he say why he did not want you to contact law enforcement?

A No.

Q Did you do anything after you told him that?

A He called back a little later to the house and spoke to me. He said that he was in the area that he was watching the house or whatever, so...

Q Okay. And what did you do with that?

A I made sure the doors were locked, and I called law enforcement.

Q And after you called the police what happened?

A They said that they would have someone out like watching the house.

Q Did someone come out and talk to you?

A Yes.

Q Did you -- when did you take Minor to the Beaufort Memorial Hospital?

A Later on that night she went.

Q And then at some point did you go to Beaufort Pediatrics?

A Yes.

Q And what did you do there?

A They did a forensic kit on Minor .

Q And did -- what happened to Minor a's clothes?
A Officer Baird -- Detective Baird picked it up.
Q From Beaufort Pediatrics?
A He came out to my home and picked up her clothes and her blanket.
Q So he came out to your home at some point and collected evidence?
A Right.
Q And have you had -- have you had sex with the defendant on the couch?
A Not that -- not during that week, no.
Q Did you have sex with the defendant that night?
A No.
Q Have you ever known the defendant to clean up after sex with Minor a's underwear?
A No, no, never.

MS. BANNON: Beg the Court's indulgence.

By Ms. Bannon:

Q I'm sorry, one more question. When you were saying where y'all's mobile home was, was it at [redacted] or at Shady Oaks Mobile Home?
A [redacted].
Q Pardon me?
A It was in [redacted].
Q Thank you. Nothing --

A When this happened it was [redacted].

Q So previously y'all lived at Shady Oaks?

A Right.

Q And then y'all moved to [redacted]?

A Well, Shady Oaks is like when I first met him. When he moved in I was in Shady Oaks. I actually went to Atlanta and came back from Atlanta and resided in [redacted]'s.

Q Okay. So when this happened, you were living at [redacted]'s?

A Right.

Q All right. Please answer any questions Mr. Deysach might have for you.

THE COURT: Cross-examination, Mr. Deysach.

MR. DEYSACH: Thank you very much, Your Honor.

CROSS-EXAMINATION

By Mr. Deysach:

Q Good afternoon, Ms. Griffin?

A Hello.

Q My name is Ian Deysach, and I'm Anthony Linton's attorney.

A Okay.

Q You are in jail right now for unlawful negligent of a child?

A Correct.

Q And you said that your sentence was how long?
A I have three years and three years on probation.
Q When did you go to court for that?
A In September.
Q That was for conduct that occurred when?
A March -- I think March 7th.
Q March the 7 of 2010? 2011?
A 2010.
Q 2010, I'm sorry. We haven't been there yet for 2011. It would be too soon.

And that is not something that happened with child , correct?

A Correct.
Q And he is your three-year-old son?
A He's four.
Q He's four now?
A Correct.
Q And he is the child that you said you took to the hospital on November 28 for the seizure?
A Correct.
Q And you're in prison because you gave him an alcoholic mixed drink?
A I did not give him an alcoholic-mixed drink.
Q Is that the conduct that you're in prison for?
A Correct.

Q And you're saying you're in prison for something you didn't do?

A Correct.

Q Okay. And you had a jury trial?

A Correct.

Q Okay. So as you stand before these jurors today, you maintain that you are not a child abuser?

A Correct.

Q That you've never -- you've never told any of your children that if you touch anything over there I'm going to break your finger?

A No, I did not.

Q You never told them to, Come get me a belt?

A No, I did not.

Q Now, you said that when you returned home from the hospital with child , your three-year-old son, that Anthony left the house, correct?

A Correct.

Q That you talked to him later?

A Correct.

Q That was over the phone, correct?

A Correct.

Q Did he ever return to your home?

A No, he did not.

Q Did you ever tell the police that he was riding

in a car with you around Mink Point, and when you confronted him about this, he jumped out of the car?

A He was riding in a car, but he was not with me.

Q Did you tell them that he was riding with you?

A No, I did not.

Q Did you tell them that he jumped out of the car?

A Yes, I did.

Q And you were talking to him on a cell phone?

A Correct.

Q All right. Now, you testified that you took Minor to Beaufort Hospital?

A Correct.

Q And they told you that they couldn't see Minor ?

A Incorrect.

Q What did they do?

A The doctor came in, asked her what happened to her --

Q I don't want you to testify to what she said, but tell me what happened?

A A doctor came in, observed her, she told him what happened to him, and I was told that if I drove down there that I wouldn't be able to leave the hospital driving back because I'd been up prior -- the night before.

Q So you were told if you drove to the hospital you

wouldn't be able to leave; is that correct?

A They didn't want -- they thought it would have been better if somebody picked me up because I'd been up all the night before with my son, child . And plus I was up with Minor .

Q Okay. Now, this is a conversation that you had with the hospital over the phone or in person?

A No, I took her to the hospital, and I was there in person.

Q You took her, and then you drove off without them doing whatever it was that they were going to do to her?

A Incorrect. Law enforcement were called at the emergency room, and they found out that I had already reported what had happened to my daughter.

Q And so law enforcement was there, and they wouldn't give you a ride home?

A No, I'm not saying that. What I'm saying is, they asked me if I drove down there to the hospital. I did drive to the hospital, but they were saying that if I did drive down there that they would prefer for me to have somebody pick me up because I had been up prior to that. But law enforcement were called because the hospital had to report what had happened to my daughter.

Q And what you're explaining right now is why Beaufort Memorial didn't see Minor that night?

A They saw Minor that night.

Q But they didn't see her for as long as you would have liked? I mean --

A What do you mean?

Q The doctor did or didn't see Minor ?

A They saw Minor .

Q And when they saw Minor , they told you you're not allowed to drive home tonight?

A No, that was afterwards.

Q After they had done an examination?

A Yes.

Q Okay. Did anybody ever tell you, you needed to go to MUSC for an examination?

A Me?

Q Yes.

A No.

Q And you never told them, well you don't have a car so you couldn't go to MUSC?

A I didn't have transportation at the time, so they came and picked me and Minor -- me, Minor , and Samuel up so that she could have a forensic kit done.

Q At the hospital or at Beaufort Pediatrics?

A At Beaufort Pediatrics.

Q Who gave you the ride?

A I'm not sure what her name is.

Q When you went to Beaufort Pediatrics, was Minor wearing the clothes that were collected?

A Correct.

Q It was more than 24 hours after the incident would have occurred, correct?

A It was the day after, yes.

Q And how long had Minor been wearing those clothes?

A Two days.

Q Now, you -- I think you testified you had four children in the home at that time?

A Yes.

Q And you were living there, correct?

A Yes.

Q And Mr. Linton was living there?

A Yes.

Q And so that's a lot of laundry; isn't it?

A It is.

Q Did you have trouble keeping up with the laundry?

A No, I didn't.

Q You had a washer and a dryer?

A Correct.

Q Now, you were describing the home, and you said that it was a single wide with three bedrooms and two bathrooms. Is that the home in Shady Glenn or is that

the home in [redacted]'s?

A That was the home in Shady --

Q Describe the home in [redacted]'s?

A The home in [redacted]'s was, I think a three bedroom, one bath.

Q You're not sure?

A I think it was a three bedroom.

Q You think it was?

A Yes.

Q Okay. And so when the policeman came to collect the evidence, he would have seen all three bedrooms, right?

A He didn't go in the bedrooms.

Q Now, were you saying that the policeman collected the clothes from Minor at that time or was that at Beaufort Pediatrics?

A He came out to the house and collected the clothes that she had on.

Q All right. I'll ask you this question. When did you say that your relationship began with Mr. Linton?

A Like the end of '07, beginning part of '08, something like that.

Q And at what time did you guys move in together?

A Probably like August.

Q Of '09?

A '08.
Q '08?
A Somewhere in there.
Q All right. Now, in -- your boyfriend before Anthony Linton was Troy Jenkins, correct?
A Somewhat, yeah.
Q All right. And when that relationship broke down, you called the police on him, didn't you?
A On Troy?
Q Yes.
A For?
Q For counterfeiting checks?
A No, not counterfeiting checks, making checks or whatever.
Q Correct.
A Yeah, I did.
Q Okay. And that wasn't true, was it?
A Yes, it was true.
Q Did he ever get in trouble for that?
A No.
Q Did the police ever respond to that?
A I have no idea.
Q Wasn't it true that that allegation against Troy Jenkins was of a vindictive nature?
MS. BANNON: Objection, Your Honor.

THE COURT: I'll sustain the objection.

MR. DEYSACH: What are the grounds, Your Honor.

THE COURT: Well, I sustain the objection. It's an improper question. Rephrase the question and move on. It's argumentative.

By Mr. Deysach:

Q What were your intentions when you called the police on Troy Jenkins?

A What was my intentions?

Q Yeah.

A I didn't have intentions, I just -- me and him had fell out, and he was still coming around and whatever and, you know, I was reported to DSS saying that my kids didn't have beds. My kids did have beds. So...

Q So then you reported Troy Jenkins?

A Yeah, I did.

Q Okay. And was that because Troy Jenkins was cheating on you?

A I didn't care about that.

Q But he was cheating on you?

A I have no idea.

Q It's possible that he was?

A Could be.

Q Okay. All right. You said that -- I think you told the solicitor that after this -- after Minor

talked to you on the 30th, that you didn't want anything to do with Anthony Linton?

A Correct.

Q Isn't it true that on December 6 and December 7 of 2009, after this allegation had already been made, that you spoke to him on the telephone for six hours?

A He'd been calling, not wanting the kids to speak to investigators and leading to pick questions and stuff like that.

Q For six hours?

A He wanted me to come down there and try to get him out. So...

Q Isn't it true that when he called you, you told him to, Tell me about this girl in the park that you've been F'ing with?

A No, I already knew that.

Q But you didn't say that over the phone on December 6?

A I don't recall that.

Q Okay.

MR. DEYSACH: Your Honor, begging the Court's indulgence.

MS. BANNON: May we approach, Your Honor?

THE COURT: Yes.

(WHEREUPON, there was a bench conference out of

the hearing of the jury and the Court Reporter.)

(Mr. Deysach is preparing a CD to be played to the jury.)

MR. DEYSACH: I wish it was faster, Your Honor.

THE COURT: You need some help driving that thing? It can be kind of slow.

(Recording of phone conversation being played to the jury.)

By Mr. Deysach:

Q Is that your voice?

A I don't know what that is.

Q I'll play more.

MS. BANNON: Objection, Your Honor. He asked and she answered.

THE COURT: Well, she hasn't -- I haven't heard anything come out of the machine yet. Let's hear what the voice is.

(Playing recording.)

By Mr. Deysach:

Q Is that your voice?

A Yes.

Q Is that Mr. Linton that you're talking to?

A Yes.

MS. BANNON: Again the State would object on the basis of lack of foundation for the introduction of this

evidence.

THE COURT: All right. Well, the objection is overruled. He's asked the question. I suppose that this is to impeach her statement in that regard. She has identified his voice and her voice, and I think it's admissible and your objection is overruled, but you're protected on the record.

(Playing the recording some more.)

THE COURT: See if you can turn that thing up.

By Mr. Deysach:

Q All right. That's your voice, correct?

A Right.

Q So you're talking to Mr. Linton and you had to accept the charges. You had to accept that phone call in order to talk to him, correct?

A His phone line.

Q So is that a yes or a no?

A Yes.

Q Okay. And instead of talking to him about what you reported to the police or what was reported to the police, you're talking to him about some other girl in the park?

A I spoke to him about what happened to my daughter.

Q When did you do that?

A I did that when I called him on the phone as soon as my daughter told me what happened to her.

Q But there's not a recording of that is there?

A No, it's not because it wasn't -- he wasn't incarcerated. That's why.

Q And there's not a phone record of that, is there?

A If you look back, I'm sure it is.

Q Okay. But, even after a warrant had been served, your concern at that point is you being upset about him cheating on you, correct?

A First of all, that wasn't the only conversation. I noticed you picked that out, but did you pick anything else out?

Q Okay. Let me ask you --

THE COURT: All right. The rules of the proceeding are he asks the questions. You provide the answers. You can't ask him questions. It's not a conversation.

THE WITNESS: Okay.

THE COURT: He asks the questions, you provide the answers. If you don't understand the question, ask him to clarify.

THE WITNESS: Okay.

THE COURT: Yes, sir?

MR. DEYSACH: I'm sorry.

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Carla Griffin - Cross-Examination by Mr. Deysach

By Mr. Deysach:

Q But that's not the only time you talked to him about this girl in the park, is it?

A I don't know.

Q Okay.

A I don't know.

Q All right. And while you're on the phone, you can be heard yelling at your kids, can't you?

A I don't know.

Q You can be heard telling them don't touch anything over there, but I'm going to break your finger, correct?

A I don't recall that.

Q And I'm going to knock your teeth out if you don't shut up?

A I don't recall that.

Q And you talked to him about dropping the charges, didn't you?

A He'd asked me to drop the charges.

Q And you said you were going to didn't you?

A Yeah, I did.

Q Okay. And you were there -- and you were on the phone with him in those two days for about six hours, correct?

A I don't know how many hours.

Q Is it possible it was six hours?
A Could have been.
Q Okay. And you still want this jury to believe that at that time you believed -- you thought Anthony Linton had done something wrong?
A To my daughter?
Q Yeah.
A Yes.
Q But what you were upset about was him cheating on you.
A No.
Q You weren't upset about that?
A I knew about that prior to this right here. I knew about that.
Q And so you -- before Minor made any type of report you knew about his cheating, correct?
A I'm not going to say he cheated because I didn't see it, but I knew that he told me that there was a girl somewhere out in the park or something like telling or whatever, and then there was one night that he didn't come home. So, I don't know.
Q So you pretty much knew then?
A I already knew, yeah.
Q You already knew.
A Yeah.

MR. DEYSACH: Begging the Court's indulgence.

By Mr. Deysach:

Q Isn't it true that at that home in [redacted]'s that you would sleep on the couch?

A I'd sleep on the couch?

Q Correct.

A Every now and then.

Q Why would you do that?

A Because it was in the front room, and that's where the TV was.

Q Isn't it -- isn't it true that there was only two bedrooms in that house? Correct?

A Two or three.

Q And you have both boys and girls as children, correct?

A Correct. I had one boy at the time and three girls.

Q And the boys and the girls did not share a room, did they?

A No.

Q But the girls shared a room, correct?

A Yes.

Q And that is Shaneka, Minor and Savannah?

A Correct.

Q And then Samuel had a room by himself?

A Well -- let me see. Well, not really, no.
Q So Samuel wasn't by himself?
A No.
Q Who was in Samuel's room?
A The other three girls.
Q Okay. So the boys and the girls did share a room?
A Correct.
Q And so then that left another room for you and Anthony to share?
A Correct.
Q Did you ever use that room to do your laundry?
A No.
Q To help dry your clothes?
A No.
Q Okay. So why would you sleep on the couch?
A Like I said, I sleep on the couch every now and then.
Q Because of the TV?
A Because the TV was there.
Q And you testified that you and Anthony had had sex on the couch, but that it hasn't been recently, correct?
A Correct.
Q And you know of times actually when the children

had seen you two having sex; isn't that correct?

A No.

Q Were you ever warned by police not to allow your children to see you have sex with a boyfriend?

A I had -- when that happened, I was -- I was in Gray's Hill, I was living on Carolina, and there was a report made or whatever and I did speak to an officer about that.

Q Okay.

A In regards to that.

Q And it was with a different boyfriend?

A It was Troy; but I was not with Troy at the time. But I know who made the call.

Q Okay. In fact, this is something that occurred before you even met Anthony, correct?

A Way before.

Q Way before. And that was in September of 2008, wasn't it?

A Somewhere up in there.

Q On those phone calls, did you talk about marrying Anthony Linton?

A I don't know.

Q It's possible that you did?

A Uh-huh.

MR. DEYSACH: That's all I have, Your Honor.

THE COURT: Any redirect examination?

MS. BANNON: Yes, briefly, Your Honor.

REDIRECT EXAMINATION

By Ms. Bannon:

Q Is Anthony Linton married?

A Yes.

Q To you?

A No.

Q You know who he's married to?

A I never met his wife, but I know he's married.

Q When y'all were living together was he married?

A Yes.

Q And you were married?

A Yes.

Q So y'all knew that y'all were married to other people when you were living together?

A Yeah.

Q The first time Minor was examined did that happen at Beaufort Pediatrics?

A Yes, but she did go to the hospital.

Q You took her to the hospital, but Kristin Dalton was the first one to examine her?

A Correct.

MR. DEYSACH: I object to the leading.

THE COURT: Sustained.

By Ms. Bannon:

Q And did you create the injuries sustained by Minor ?

A No, I did not.

Q Did you tell Minor --

MR. DEYSACH: I object. This is not anything that I cross-examined about.

THE COURT: I'll sustain the objection. It's new material.

By Ms. Bannon:

Q Did you instruct your children to make up a story?

A No, I did not.

Q Are you exacting a vendetta against Mr. Linton?

A Like out to get him or something?

Q Yeah.

A No, I'm not.

MS. BANNON: Thank you, no further questions.

THE COURT: Very good. Any objection to this witness being excused?

MS. BANNON: Not by the State.

MR. DEYSACH: No, Your Honor.

THE COURT: You're free to leave. Thank you, ma'am.

THE WITNESS: Thank you.

THE COURT: You may call your next witness.

While we're getting this witness, why don't we stand up and stretch just a little bit while this witness is coming.

Yes, sir, please come forward. I'm going to ask if you could to come forward and place your left hand on the Bible and raise your right hand as the clerk administers the oath.

THEREUPON,

SAMUEL M. ,

after being duly sworn, testified as follows:

THE CLERK: Okay. You may have a seat right up there.

THE COURT: All right. I'm going to ask you to pull up -- kind of lean toward that microphone. I want you to state your full name for the record. Just say your full name.

THE WITNESS: Samuel M. , [redacted].

THE COURT: Okay. I'm going to ask you to speak up just a little bit. How about that.

THE WITNESS: Samuel M. , [redacted].

THE COURT: Very good. How old are you.

THE WITNESS: Ten.

THE COURT: All right. How far have you gone in school so far, fourth grade maybe?

THE WITNESS: Yes, sir.

THE COURT: All right. You making good grades?

THE WITNESS: Yes, sir.

THE COURT: All right. Do you understand the difference between a truth and a lie?

THE WITNESS: Yes, sir.

THE COURT: Do you understand that when you put your hand on that Bible that you swore you would tell the truth here today.

THE WITNESS: Yes, sir.

THE COURT: Do you know the difference between a truth and a lie.

THE WITNESS: Yes, sir.

THE COURT: Do you understand that you're to tell the truth here today?

THE WITNESS: Yes, sir.

THE COURT: Okay. Well, I do indeed find he's competent.

Ms. Bannon, you're recognized.

MS. BANNON: Thank you, Your Honor.

DIRECT EXAMINATION

By Ms. Bannon:

Q Hey Samuel, how you doing?

A Great.

Q All right. Who do you live with?

A My grandma.
Q Okay. And any brothers or sisters?
A Yes, ma'am.
Q Who do you live with?
A I live with my grandma, Shaneka, Savannah, Minor , child , and me; that's all.
Q And who's your closest sister in age?
A Minor .
Q And how old is Minor ?
A She's eight.
Q So you're the big brother?
A Yes, ma'am.
Q Okay. And do you remember the night that child went to the hospital?
A Yes, ma'am.
Q Is that a while ago or did it happen recently?
A It happened a while ago.
Q Do you remember what happened that night?
A Yes, ma'am.
Q Would you mind telling us?
A I was watching Anacondas that night; and me, my mother, child , Minor and Shaneka and Savannah was sitting down watching that movie. And my mom was by me, and then I went to check on my baby brother. I turned him around after I tried to wake him up and he wouldn't

wake up. So I turned him around and then I saw his eyes were in back of his head, and then I looked and called my mom.

She said, Call 911, in a panic and so we got the phone, called 911. He went to the hospital with my mother because my mother didn't want him to go by himself, so she went.

And then the next minute I got a boiled egg. I went in my room, shut the door and that's when my sister was on the couch sleeping.

Q Hold up a second, Samuel. So -- I know you have a lot to tell us. Okay? But when your mom went to the hospital with your brother, was there an adult who stayed with y'all?

A Yes, ma'am.

Q Who's that?

A Meat.

Q All right. Do you see Meat in this courtroom?

A No, ma'am.

Q Could you please --

MS. BANNON: Permission to ask the witness to step down from the stand.

THE COURT: Yes. You can -- just stand up where you are and you can take a look around the room.

Very good.

THE WITNESS: Him.

By Ms. Bannon:

Q All right. The person you called Meat, do you see him in the courtroom?

A Yes, ma'am.

Q Okay. Could you tell the Court what color shirt he's wearing?

A He's wearing like a blue and a type of green and black.

Q Okay.

MS. BANNON: May the record reflect he's identified the defendant?

THE COURT: Very good.

By Ms. Bannon:

Q You can sit back down, Samuel. Now, did Meat live with y'all or did he come over after your mom left?

A He lived with us.

Q And what was your relationship with Meat?

A It was kind of good.

Q Yeah? Did y'all get along?

A Uh-huh.

Q Did you like him?

A Uh-huh.

Q So you said that you got an egg, and then you went to your bedroom?

A Yes, ma'am.

Q What happened next?

A Then my sister, Minor , was sleeping then --

Q Where was your sister? Where was she sleeping?

A She was in the living room.

Q Okay. On the couch?

A Yes, ma'am.

Q Okay. And then -- so she was sleeping. Then what happened?

A Then Meat took off her clothes. He took off his. He got on top of her, and then he started doing it. Then he went to the room with her and she was screaming and crying that time, and he did it up in there. And then he said if you tell your mother I will kill her and you. And then she went -- she was still crying and then she went into the living room, got back on the couch and went to sleep.

Q Okay. When you said that he was doing it, what do you mean?

A He was like on top of her, going up and down, up and down.

Q And did he have his clothes on when that happened?

A No, ma'am.

Q Where were you standing?

A I was in my room, looking under the door.
Q And what was Minor doing?
A She was up in there screaming, trying to get him off of her.
Q And at some point you said they switched locations, they left the couch?
A Uh-huh, into my mother's room.
Q Okay. Could you see what happened in there?
A I went by the refrigerator.
Q And could you see in the room then when you went by the refrigerator?
A Uh-huh.
Q And what did you see?
A I saw him put a suitcase full of clothes right on the floor, put her hand on top of it and he started going up and down, up and down again.
Q Okay. And what did you hear Minor saying when this was happening?
A Nothing but screaming and crying.
Q Where were your other sisters when this happened?
A They were still in the bed.
Q In their bedroom or the same bedroom?
A Same bedroom like me. Got one bedroom on the other side and like a small bed like close to the closet.
Q And when you first saw Meat and your sister on

the couch, why were you awake?

A Because I didn't want to go to bed at that time. I was scared.

Q Why were you scared?

A Because my little brother had had a seizure, and I was afraid he was going to die.

Q And did Meat see you when you saw them?

A No, ma'am.

Q After he stopped, what happened?

A He said if you tell your mother, I will kill you and her.

Q And who did he say that to? You or Minor ?

A Minor .

Q And then what happened?

A Then the next morning, my mother came home with child . She found -- I mean -- she fed him Spaghetti O's. He ate that. Then when Meat left the house to go with his cousin, she sat there and then me and Minor came over to her and told her the story. She called 911. He was at the airport at that time and then she said I know where you at now, and then she called 911 and tried to get them after they came down to the airport and arrested him.

Q Okay.

MS. BANNON: Beg the Court's indulgence.

By Ms. Bannon:

Q All right. Samuel, I appreciate you answering my questions. Mr. Deysach is going to ask you a couple now. So if you wouldn't mind, answer him, okay?

THE COURT: Mr. Deysach, you're recognized.

MR. DEYSACH: Thank you very much, Your Honor.

CROSS-EXAMINATION

By Mr. Deysach:

Q Good afternoon, Samuel.

A Good afternoon.

Q My name is Ian Deysach. I'm going to ask you a couple of questions. Is that okay?

A Yes, sir.

Q Okay. Thanks. When you were just explaining what it was you saw, I was trying to figure out where you were when you saw it. Did you just tell everybody that when you saw Minor and Mr. Linton -- what do you call him Glenn or --

A I call him Meat.

Q Meat. When you saw them on the couch, where were you?

A I was in my room with the door shut and the lights off.

Q Okay. And you were able to see them because you were looking under your door?

A Yes, sir.
Q Even though it was closed?
A Yes, sir.
Q Okay. And from underneath the door you were able to see them go into another room?
A Yes, sir.
Q And from underneath your door you were able to see what was going on, on the couch?
A Yes, sir.
Q The -- what room did you -- are you saying that you saw -- what room did you see them go into next?
A I saw them go into my mother's room.
Q Who all sleeps in that room?
A My mother and him.
Q Did they go into the room where your other sisters sleep?
A No, they went in the room that him and my mother sleep in.
Q How many bedrooms are in that -- in the house?
A Two.
Q Whose bedroom do you sleep in?
A I sleep in my sisters, inside my own bed with my little baby brother.
Q Okay. And so how many beds are in that bedroom?
A Two.

Q And is that the bedroom where Minor normally sleeps?

A Yes, sir.

Q Okay. And so it's from inside of that room that you saw Meat and Minor go into your mother's room?

A Yes, sir.

Q Did they close the door?

A No, sir.

Q Left the door open?

A Yes, sir.

Q And you were able to see into that room?

A Yes, sir.

Q Where is -- how far away was that room from where you were lying?

A It was from the living room to the kitchen, through the bathroom, and that's where the room was right there.

Q Did you ever leave your room?

A Yes, sir.

Q Where did you go?

A To the kitchen.

Q Did you see into that bedroom from the kitchen?

A Yes, sir.

Q Did they see you?

A No, sir.

Q How do you know?

A Because he was on top of Minor . He wasn't paying no attention. So when I saw that, I ran back in my room as quitely as I could and shut the door back and wait until my mother came home.

Q So when they went into the bedroom then, the door was open?

A Yes, sir.

Q They didn't close the door?

A No, sir.

Q Okay.

MR. DEYSACH: I don't have anything further, Your Honor.

THE COURT: Very good.

All right. Any redirect examination?

MS. BANNON: Briefly, Your Honor.

THE COURT: Yes.

REDIRECT EXAMINATION

By Ms. Bannon:

Q Samuel, you said you were looking underneath your bedroom door?

A Yes, ma'am.

Q Was it right against the carpet? Was there a gap? Like, how could you see under the door?

A A gap.

Q So you could see enough to see out from underneath your door.

A Yes, ma'am.

Q All right. Thank you.

MS. BANNON: That's all I have.

THE COURT: All right. You may step down.

Any objection to this witness being excused?

MS. BANNON: Not by the State.

MR. DEYSACH: No, Your Honor.

THE COURT: You're free to leave. Thank you, sir.

All right. You may call your next witness.

MS. BANNON: State calls Minor .

THE COURT: Yes, ma'am, if you could come forward. I'm going to ask if you could to place your left hand on the Bible and raise your right hand as the clerk administers the oath.

THEREUPON,

Minor ,

after being duly sworn, testified as follows:

THE COURT: Very good. I'm going to ask if you could, if you could come have a seat in the witness chair here.

Yes, ma'am. I'm going to ask you to pull up real close to that microphone. Could you state your full

name? Could you tell us what your full name is.

THE WITNESS: Minor .

THE COURT: You're doing real good. Could you speak up a little bit for me.

THE WITNESS: Minor .

THE COURT: Very good. Minor , how old are you.

THE WITNESS: Eight.

THE COURT: All right. And does that put you in what, about the second of third grade now.

THE WITNESS: Second --

THE COURT: What grade are you --

THE WITNESS: Second grade.

THE COURT: Second grade. Okay. You making good grades?

THE WITNESS: (Witness nodded head.)

THE COURT: All right. Can you read a little bit and write a little bit.

THE WITNESS: (Witness nodded head.)

THE COURT: You need to answer up yes or no for me.

THE WITNESS: Yes.

THE COURT: Okay. Do you understand what telling the truth is.

THE WITNESS: (Witness nodded head.)

THE COURT: You need the answer up for me, yes or

no.

THE WITNESS: Yes.

THE COURT: You understand what a lie is?

THE WITNESS: Yes.

THE COURT: And do you understand that when you put your hand on the Bible that you're compelled to tell the truth. You understand that, don't you?

THE WITNESS: Yes.

THE COURT: All right. And you understand that telling a lie is bad, and it can cause trouble for a lot of people.

THE WITNESS: Yes.

THE COURT: All right. Will you tell us the truth here today?

THE WITNESS: Yes.

THE COURT: All right. You're competent to stand trial -- I mean to testify.

Yes, ma'am?

MS. BANNON: May it please the Court.

DIRECT EXAMINATION

By Ms. Bannon:

Q Minor , how old are you?

A Eight.

Q And who do you live with?

A My grandma.

Q Do you have any brothers or sisters?
A Yes.
Q And who lives with you?
A My sisters and brothers.
Q Okay. What are their names?
A Shaneka, Savannah, and child .
Q Does Samuel live with you?
A (Witness nodded head.)
Q And now, are you older or younger than Samuel?
A Younger.
Q Okay. You said that you were in second grade. Do you have a favorite subject?
A (Witness nodded head.)
Q What's that?
A Science.
Q Okay. Minor , do you recognize what this chart is?
A (Witness nodded head.)
Q What's it a picture of?
A A boy.
Q All right.

MS. BANNON: Permission to ask the witness to step down, Your Honor?

THE COURT: Yes.

///

By Ms. Bannon:

Q Minor , would you mind coming down here with me.

All right. Now, I know that you're old enough to know this, but I just want to go through it really quickly. What do you call this body part?

A Eyes.

Q Okay. How about this body part?

A Mouth.

Q What do you call this body part on a boy?

A Chest.

Q How about this body part?

A Belly button.

Q Okay. How about this body part on a boy?

A Butt.

Q And what about this body part?

A Pee pee.

Q Okay. Do you recognize what this is?

A A girl.

Q It's a picture of a girl?

A (Witness nodded head.)

Q All right. What's this called on a girl?

A Eyes.

Q And this part?

A Mouth.

Q How about this part on a girl?

A Tannies.
Q Tannies?
A (Witness nodded head.)
Q Okay. What about this part on a girl?
A Crotch.
Q How about this part?
A Butt.
Q Okay. Would you like to take your seat again?
Minor , who's your mama?
A Carla.
Q Who's your daddy?
A Sam.
Q And do you know who Anthony Linton is?
A No.
Q Do you know who someone called Meat is?
A (Witness nodded head.)
Q All right. Who is Meat?
A A man.
Q A man? Did Meat used to live with you?
A (Witness nodded head.)
Q Do you see Meat here in the courtroom? If you want to stand up and step down and look around you can.
(The witness is looking around.)
By Ms. Bannon:
Q Minor are you feeling okay?

A (Witness nodded head.)
Q Are you feeling a little scared?
A (Witness nodded head.)
Q All right. Can you tell me, do you see Meat in the courtroom? You can get down and stand right here if you would like to. Do you see the guy that you call Meat here?
A (Witness shook head.)
Q Remember we have to answer yes or no with our words. Minor are you feeling okay?
A (Witness nodded head.)
Q Can you use your big girl words for me?
A (Witness nodded head.)
Q Can you answer my question about if you see Meat here?
A (Witness nodded head.)
Q Yes, you think you can?
A (Witness nodded head.)
Q Do you see Meat here?
A (The witness does not answer.)
Q You want to come back to it?
A (Witness nodded head.)
Q Okay. Why don't you go back and take your seat and we'll talk about some other stuff. Okay.
Minor , do you remember the night that child

had to go to the hospital?

A (Witness nodded head.)

Q Would you mind telling us a little bit about that night?

A My brother had a seizure, and his eyes rolled in the back of his head after he done puked because my mama told me to check on him. And when I checked on him, he was shaking.

Q Okay. And then what did your mom do?

A She said, Call the police.

Q And so did she go to the hospital with child ?

A (Witness nodded head.)

Q Where did you go?

A I stayed at the house.

Q Okay. Did Samuel stay with you or did he go to the hospital?

A Stayed with me.

Q Did y'all have an adult staying with y'all?

A (Witness nodded head.)

Q Who stayed with you?

A Meat.

Q And was Meat your mama's boyfriend?

A (Witness nodded head.)

Q And so where did your sisters go?

A They stayed home.

Q Okay. So after your mom and child went to the hospital, what did y'all do?

A We went to bed.

Q Okay. Where did you go to bed?

A In the bedroom.

Q Did you fall asleep on the couch at all?

MR. DEYSACH: I would object to the leading, Your Honor.

THE COURT: I'm -- given the age of the witness, I'm going to allow her some leeway with regard to leading.

By Ms. Bannon:

Q Did you fall asleep on the couch at all?

A (Witness shook head.)

Q Did something wake you up that night?

A (Witness nodded head.)

Q What woke you up?

A Meat.

Q What do you mean Meat woke you up?

A Because I was sleeping on the floor.

Q You were sleeping on the floor?

A (Witness nodded head.)

Q And he woke you up? How did he wake you up?

A By touching me.

Q What was he touching you with?

A His hands.
Q And where was he touching you?
A On my back.
Q Okay. And then what did he do?
A He started to do nasty stuff.
Q Okay. I know it might be uncomfortable, but would you mind telling me what the nasty stuff is? After he touched you on your back, what did he do?
A Told me to get up.
Q Okay. And did you get up?
A (Witness nodded head.)
Q And what did he do? Minor , what did he do after he told you to get up? Did he continue touching you with his hand?
A (Witness shook head.)
Q Did he touch you with some other body part?
A (Witness nodded head.)
Q Remember we have to use words here. So did he touch you with some other body part?
A Yes.
Q What part of his body did he touch you with? Minor ?
A His mouth.
Q Where did his mouth touch on you? Do you want to point on the picture where his mouth touched you?

MS. BANNON: Permission to ask the witness to step down, Your Honor?

THE COURT: Yes.

By Ms. Bannon:

Q Minor , why don't you come down here with me. This is the picture of the girl we looked at earlier, right?

A (Witness nodded head.)

Q So where on your body did Meat touch you with his mouth?

A Right there.

MS. BANNON: May the record reflect she pointed to the crotch.

THE COURT: Very good.

By Ms. Bannon:

Q After Meat touched you with his mouth on your crotch, what happened? Did he touch you somewhere else?

A (Witness nodded head.)

Q Where did he touch you?

A Right there.

MS. BANNON: May the record reflect that she pointed to the butt on the illustration.

THE COURT: Very good.

By Ms. Bannon:

Q What part of his body did Meat touch your butt

with? Did Meat touch your butt with his hand?

A (Witness shook head.)

Q Did Meat touch your butt with his mouth?

A (Witness shook head.)

Q Remember we have to use yes or no words.

A No.

Q Did Meat touch your butt with his penis?

MR. DEYSACH: Objecting to the leading, Your Honor.

THE COURT: I'll allow some leading in that regard.

By Ms. Bannon:

Q All right. You shook your head, so does that mean yes or no?

A Yes.

Q So Meat touched your butt with his penis, with his pee pee?

A Yes.

Q After that, did he touch you again?

A (Witness nodded head.)

Q Where did he touch you? You can just point on the picture where he touched you. Did -- what did he touch you with Minor ? On his body? Did he use his hand to touch you after that?

A (Witness shook head.)

Q Did he use his mouth to touch you?
A (Witness shook head.)
Q Did he use his pee pee to touch you?
A (Witness nodded head.)
Q And where -- that was a yes, he used his pee pee?
A Yes.
Q And after he used his pee pee, where on your body did he touch you with his pee pee?
A Point.
Q Besides your crotch and your butt, did he touch anywhere else on your body?
A (Witness shook head.)
Q He didn't touch your chest?
MR. DEYSACH: Your Honor, it is leading, and she has already answered the question.
THE COURT: All right. I'm going to allow her some leeway in that regard.
By Ms. Bannon:
Q Did Meat's pee pee touch your mouth?
A (Witness nodded head.)
Q You have to answer yes or no.
A Yes.
Q So Meat's pee pee touched your mouth?
A Yes.
Q And what did it feel like? Do you remember what

it felt like?

A (Witness nodded head.)

Q Yes? Would you mind telling us what it felt like?

A Mushy.

Q What did it look like?

A Brown.

Q It's brown. What were you doing when he was touching you? Minor , what were you doing when Meat was touching you?

A Laying down.

Q You were laying down?

A (Witness nodded head.)

Q Were you saying anything?

A (Witness nodded head.)

Q What were you saying?

A Stop.

Q Were you crying?

A (Witness nodded head.)

Q Is that a yes?

A Yes.

Q Did you see anything come out of Meat's pee pee?

A (Witness nodded head.)

Q You have to use yes or no words.

A Yes.

Q And where did that go?
A Right there.
Q On you? It went on your crotch?
A (Witness nodded head.)
Q Okay. Did he do anything when it came out of his pee pee?
A Wiped it off.
Q Do you know what he wiped it off with?
A A shirt.
Q He used a shirt? Minor , do you remember the clothes you were wearing that night?
A (Witness shook head.)
Q No?
A (Witness shook head.)
Q After he wiped it off, did he say anything to you?
A (Witness nodded head.)
Q Yeah? What did he tell you?
A He told me "shhh."
Q So he told you to be quiet?
A (Witness nodded head.)
Q Did he tell you anything else?
A (Witness shook head.)
Q Did he say he'd do anything to your mom?
Minor ? Do you remember if he said anything like that?

A Huh?
Q Did Meat say he'd do something to you if you told?
A (Witness nodded head.)
Q What did he say?
A He would kill me.
Q He said he'd kill you if you told anyone what he did?
A (Witness nodded head.)
Q Okay. So after -- did you see Samuel when this was happening?
A (Witness shook head.)
Q No?
A No.
Q After he was done, what did you do? Minor , after he was done touching you, what did you do?
A Pulled my pants up.
Q You pulled your pants up?
A (Witness nodded head.)
Q Were you wearing panties that day?
A (Witness nodded head.)
Q So you pulled those up too?
A (Witness nodded head.)
Q After you got dressed, what did you do?
A Went back to bed.

Q Okay. When he was touching you, were you in your bedroom, the living room, or somewhere else?

A In the bedroom.

Q But he first woke you up and you were in the living room?

A (Witness nodded head.)

Q You have to answer yes or no?

A Yes.

Q And was he -- were you in your bedroom or your mom's bedroom or the boy's room? Whose bedroom were you in?

A My mom's.

Q Okay. So after he finished, you went back to your bedroom?

A (Witness nodded head.)

Q And then what did you do?

A Went to sleep.

Q And physical -- are you okay standing here talking to me? Do you feel okay?

A (Witness nodded head.)

Q After you went to sleep, what did you do?

A Woke back up the next morning.

Q Okay. And what did you do then?

A I went to the door to open it for my mom.

Q Okay. And so your mom came home?

A (Witness nodded head.)
Q And what did you do then?
A She fed us and then at night she told me what happened.
Q What do you mean what happened?
A She told me what happened that night.
Q Are you saying me or Meat?
A Meat.
Q Meat?
A (Witness nodded head.)
Q So she didn't tell you what happened, she told Meat what happened?
A No, she told me.
Q What do you mean?
A She told me what happened.
Q To who?
A Me.
Q What do you mean she told you?
A She said what happened and I told her.
Q Oh, so she asked you what happened while she was at the hospital?
A No. She came back home.
Q Okay. So she came back home and asked you what had happened?
A (Witness nodded head.)

Q And what did you tell her?
A That what he done.
Q And what did she say?
A She said that she would call the police.
Q And where was Samuel when you told your mom this?
A He was in the kitchen eating.
Q And did he talk to your mom?
A (Witness shook head.)
Q You don't think so? So did your mom call the police?
A (Witness nodded head.)
Q And do remember going and seeing Kristin at Beaufort Pediatrics?
A (Witness nodded head.)
Q All right. I'm going to show you something that's already been admitted into evidence. Okay? Minor , I'm showing you what has been labeled as State's Exhibit 1-B and previously been entered into evidence. Do you recognize these?
A (Witness shook head.)
Q Do you think they could be your pants?
A (Witness nodded head.)
Q You have to answer yes or no?
A Yes.
Q So do you have a pair of pants that looks like

this?

A (Witness nodded head.)

Q Okay. Do you remember giving these pants to Ms. Dalton at Beaufort Pediatrics?

A (Witness nodded head.)

Q And did you give them to Ms. Dalton?

A (Witness nodded head.)

Q You have to use yes or no words.

A Yes.

Q And what about your panties? What did you do with those?

A Gave them to her.

Q All right. Would you mind taking a seat back up there?

MS. BANNON: Beg the Court's indulgence, Your Honor.

By Ms. Bannon:

Q Minor , when Meat put his pee pee in your mouth, did it taste like anything? Minor ? Would you mind answering the question for me? Do you remember if it tasted like anything?

A (Witness shook head.)

Q You don't remember?

A (Witness shook head.)

Q All right. Remember you have to answer with your

yes or no words.

A No.

Q You don't remember?

A No.

Q Okay. Well, I don't have anymore questions for you, but Mr. Deysach has a couple, so I'd appreciate it if you could answer them for me. Okay?

A Okay.

Q Thank you.

THE COURT: Mr. Deysach.

MR. DEYSACH: Thank you very much, Your Honor.

CROSS-EXAMINATION

By Mr. Deysach:

Q Just a couple of questions, Minor Thanks for being here.

When you fell asleep that night when child went to the hospital, where were you?

A In the living room.

Q Were you on the floor?

A (Witness nodded head.) Watching TV.

Q Who else was in the living room?

A My mom and my brothers and sisters.

MR. DEYSACH: Your Honor, I don't have any other questions.

THE COURT: Any redirect examination examination?

MS. BANNON: No, Your Honor.

THE COURT: All right. You may step down. Thank you, ma'am.

You may call your next witness.

MS. BANNON: The State calls Misty Carter.

THE COURT: Yes, ma'am.

THEREUPON,

MISTY CARTER CLEVINGER,

after being duly sworn, testified as follows:

THE CLERK: Please be seated and state your name for the Court.

THE COURT: Have a seat in the witness chair and speak loudly, clearly, and slowly in order that we can hear everything that you've got to say. And start with your full name, please, ma'am.

THE WITNESS: Corporal Misty Clevinger.

THE COURT: Very good.

Yes, ma'am?

DIRECT EXAMINATION

By Ms. Bannon:

Q Corporal Clevinger, is that your married name or your maiden name?

A My married name.

Q What's your maiden name?

A Carter.

Q And where do you work?
A Beaufort County Sheriff's Office.
Q And are you familiar with your department's investigation of Anthony Linton?
A Somewhat, yes, ma'am.
Q And did you have an occasion to arrest Mr. Linton?
A Yes, ma'am, I did.
Q And do you know the date that you arrested him?
A December 3rd, 2009.
Q And when you arrested him, what did you do?
A Initially I was contacted by dispatch that Beaufort City was out with an individual that had active arrest warrants with Beaufort County. I contacted the magistrate's office and confirmed that that warrant was good. I went to the location, which I believe was [redacted] Tailbird Road, met with the individual and placed him under arrest for the arrest warrant.
Q And the arrest warrant was for Anthony Linton?
A Yes, ma'am.
Q And do you see that person that you placed under arrest present in the courtroom today?
A Yes, ma'am.
Q And could you please identify him for the record?
A The gentleman seated at that table right there.

Q Would you please describe what he's wearing.
A Dark blue t-shirt, stripes.
MS. BANNON: May the record reflect Corporal Clevinger has identified the defendant.
THE COURT: Very good.
By Ms. Bannon:
Q After you placed him under arrest, what did you do?
A After I placed him under arrest, I transported him to the Beaufort County Detention Center. At that time I read him his Miranda Rights. He completed the Miranda Rights form. I completed a county ticket and the booking officer took over after that.
Q Prior to administering the Miranda Rights, did you ask Mr. Linton any questions?
A No, ma'am.
Q And you said you administered the Miranda Rights. How did you do that?
A We have a standard form that we have, and we put in a packet, a general sessions packet, and it says Beaufort County Miranda Rights Form. I ask the individual to read over it. I read to them. At that point they initial beside every one of the blocks as they go down, stating that they do understand the rights.
Q And did you read this form to Mr. Linton?

A I cannot remember if I read it to him or if he read it himself.

Q Did he appear to understand this form?

A Yes, ma'am.

Q And after going through Miranda, what did you do?

A He didn't make any statements to me. He read the form and put his initials beside each one of the blocks. At that point, the booking officers took over continuing to do what they needed to do, and I completed the county tickets.

Q Did you -- does he sign the form?

A Yes.

Q So after you administer Miranda did you ask him any questions?

A No.

Q Okay.

MS. BANNON: Permission to approach the witness?

THE COURT: Yes.

By Ms. Bannon:

Q Corporal Clevinger, I'm showing you what's been labeled as State's Exhibit 10 for identification. Do you recognize this?

A Yes, ma'am.

Q What is it?

A That's our statement of Miranda Rights form.

Q And is that your signature at the bottom?

A Yes, ma'am.

Q And is that the defendant's signature?

A Yes, ma'am.

Q And is that the same form that you just testified about?

A Yes, ma'am.

MS. BANNON: At this point, the State would move State's Exhibit 10 into evidence.

THE COURT: Any objection from defense?

MR. DEYSACH: No, Your Honor.

THE COURT: State's Exhibit 10 is into evidence without objection from defense.

By Ms. Bannon:

Q And so after he was booked into the jail, did you have any further involvement in this case?

A No, ma'am.

Q Thank you.

MS. BANNON: I don't have any further questions.

THE COURT: Cross-examination?

MR. DEYSACH: Just a few, Your Honor.

CROSS-EXAMINATION

By Mr. Deysach:

Q When you took Mr. Linton into custody, that was at [redacted] Tailbird Road in Beaufort, correct?

A Yes, sir.

Q This may sound silly, it's not near the airport is it?

A No, sir.

Q Thank you.

THE COURT: Any redirect examination?

MS. BANNON: No, Your Honor.

THE COURT: You may step down.

You may call your next witness.

MS. BANNON: State calls Master Sargent Brian Baird.

THEREUPON,

Sargent Brian Baird,

after being duly sworn, testified as follows:

THE CLERK: Please be seated and state your name for the Court, please.

THE COURT: Have a seat in the witness chair. Speak loudly, clearly, and slowly in order that we can hear everything that you've got to say. We're going to ask that you start with your full name, Officer Baird.

THE WITNESS: Brian Mark Baird, B-a-i-r-d.

THE COURT: Thank you Officer Baird.

Ms. Bannon, you're recognized.

MS. BANNON: Thank you, Your Honor.

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DIRECT EXAMINATION

By Ms. Bannon:

Q Where do you work?

A Beaufort County Sheriff's Office.

Q And what rank do you have there?

A I'm a Master Sargent.

Q And how long have you worked there?

A Nine and a half years.

Q Prior to working at the Beaufort County Sheriff's Office, where did you work?

A I was an active-duty marine, but I was working with the Naval Criminal Investigative Service.

Q And how many years were you in the Naval Criminal Investigative Service?

A I worked with NCIS for approximately 10 years.

Q And prior to that what was your role in the marines?

A I worked with the Criminal Investigative Division, prior to that, Military Policeman.

Q And all total how many years have you spent in law enforcement?

A Twenty-nine years.

Q And what is your current position at the Beaufort County Sheriff's Office?

A I'm Master Sargent over the Special

Investigations Unit, which comprises Internal Affairs Investigations, our own personnel as well as any county employee. I also administer polygraph examinations, as well as I do special investigations as assigned by the sheriff from time to time.

Q And were you working for the sheriff's offices in November 2009?

A Yes. At that time I was the assistant supervisor over the investigation section. I was also working a case load at that time.

Q So you were a detective?

A That's correct.

Q And have you had any training on child sex crimes?

A Yes, ma'am, through the Marine Corps and later NCIS and then later through the sheriff's office and the Criminal Justice Academy. I've been through numerous courses on child sexual abuse.

Q How about interviewing children?

A Yes, I've gone through both the Finding Words and Finding Words Advanced Seminars, a week long each here in South Carolina. It is the format we teach to do child forensic interviews in South Carolina.

Q And is interviewing children different than adults?

A Absolutely.
Q Are you familiar with your department's investigation into a criminal sexual conduct involving Anthony Linton?
A Yes, I am. I was also the actual case investigator assigned to this case.
Q And did you create a report?
A Yes, I did.
Q And does that have a report number?
A Yes, it does.
Q And is that 2009-11-29-0636?
A Yes, ma'am.
Q And how did you become involved in investigating this case?
A A report was filed by a patrol deputy. The next morning the reports arrive at the investigation section. One of the things I've been trained in is child sexual abuse, so I've worked a lot of the child sexual abuse investigations out of our investigations unit. The case came in. It was assigned to myself, and at that point, I began to follow up on it.

My first actual contact, I wasn't able to get in touch with anybody at the house. It wasn't until later I discovered that there was nobody at the house because the mother had taken Minor over to Beaufort Pediatrics and

I was contacted by Kristin Dalton. She was actually my first contact.

Q Okay. So you tried to get in touch with them on November 30th?

A That's correct.

Q And are you aware of a time frame when the molest was alleged to have occurred?

A I believe it happened the night of the 28th, leading into the 29th.

Q Okay. And if you were to take a child to be sexually examined at Beaufort Memorial Hospital in the middle of the night, can they do that?

A Not Minor a's age. The hospital will not examine a child for us under the age of fourteen. Fourteen to sixteen is a case-by-case basis. Beaufort Memorial will not look at a child under the age of fourteen.

Q So who examines children at the age of fourteen?

A Under the age of fourteen?

Q Yes.

A Kristin Dalton, a nurse practitioner. She is who we actually use to examine all children here. There is a way you can have the child brought to the Medical University of South Carolina. They also have the ability to do it. That's the next closest agency locally.

Q And that's up in Charleston?

A Right. But locally, it's Kristin Dalton.
Q And is it standard practice to wait for Kristin Dalton's availability?
A Yes, unfortunately, we have to wait because she has a private practice as well. So we have to find an opportunity to bring the child there.
Q You said that your first contact in this case was Kristin Dalton?
A That's correct.
Q Why?
A As I mentioned, I was unable to locate the family at that point. Once I received the report and started looking into it, Kristin Dalton contacted me as one that handles the majority or as the one that handles the majority of these cases was out of the office, so she called me direct, and asked me if I was aware of the investigation.

I said yes, I've been trying to find Carla Griffin and the family. She said that they were there. She had just completed a medical examination on Minor , and that she had a pair of pants and a pair of underwear that she felt needed to be released over to us because it could have physical evidence.

Q Where did these come from?
A As I recall, I believe -- I don't believe she

told me if the child wore them in or if the mother brought them in to her. But they were brought in at the time of the medical exam.

Q So they were taken from Minor at the time of the medical exam?

A That's correct.

Q And so did you pick those up from Kristin?

A Yes, I responded to Beaufort Pediatrics. I had Kristin Dalton sign a document releasing the underwear and the pants to myself. She related that Carla had already taken the children back to the house, and I proceeded to the house from there.

Q Okay. And what did you do once you got to the house?

A Met with Carla, spoke briefly with her. She showed me the sofa area where she said part of the assault occurred. She told me that she had already -- there was a sheet and a blanket that's normally on the sofa. She said she had rolled them up and placed them off to the side. I then seized the sheet and blanket. She also said that there's some discussion that a wash rag could have been used after the incident.

I looked. There was some dirty clothes around the washing area, like a basket with some clothes. I looked through that. I couldn't find a wash rag. At

that point Carla said she may have already actually put it through a load of wash, so we were unable to recover a wash rag if it was pertinent to the case.

Q You said you took a sheet and a bedspread?

A Yes.

Q Did you submit that for a DNA analysis?

A No, unfortunately, the State Law Enforcement Division -- at the time of this case our own DNA lab at the sheriff's office was not operational yet. We were still in the process of opening it. Unfortunately, the State Law Enforcement Division at the time we had to submit all DNA requests, they were so backlogged that they had severely restricted anything we could submit to them and request DNA analysis. Therefore, they would not look at sheets. They would only look at clothing items and such at the time. If they were not able to recover evidence off something else, then you could request -- and it would be a case-by-case basis that they may consider examining something else once they had finished whatever items were already submitted.

Q Did you submit some items for analysis in this case?

A Yes, I ended up submitting the panties and the pants, along with what we call buccal swabs. It's -- you may have seen it on TV where they -- you take swabs and

rub them around the inside of the mouth, and you put them in a container; and basically that's how we obtain DNA samples.

I got a sample from Minor herself, and eventually obtained a sample from Mr. Linton as well. And eventually -- they were all submitted. Initially all I could do was submit the panties and the pants, and I believe the buccal swab for Minor was sent up and asked them to analyze to see if there was any evidence such as semen or DNA evidence.

Q And so you looked for the wash rag, you looked for the bedspread, so you took items out of the house when you went to meet with them?

A Yes, I did.

Q And did you talk to Minor at that point?

A At that point she was there. I briefly spoke to her. I didn't ask her any details. It's our policy that children of that age, we try not to submit them to any more interviews about incidents like this than we have to. I had already contacted Hope Haven and they were already in the process of scheduling an interview for me, a forensic interview at Hope Haven.

Q Did you see Samuel?

A He was at the house as well, yes.

Q Did you interview him?

A Spoke to him briefly. Again, we were planning to do a forensic interview with him as well.
Q What -- when you were interacting with Carla, what would you say her demeanor was?
A She was slightly upset. I wouldn't say she was, you know, enraged or anything like that, but she was definitely upset that this had happened to her daughter.
Q And after you went to the house and seized that evidence, what did you do?
A I took it all back, bagged it up properly, sealed it and submitted it to your evidence division.
Q And what point did you swear out an arrest warrant?
A I don't recall the date I actually obtained an arrest warrant. It would probably say it on the document.
Q You discussed earlier about Minor and Samuel being forensically interviewed?
A That's correct.
Q Were they interviewed forensically?
A Yes, they were at Hope Haven of the Low Country, which is our child advocacy center here in Beaufort County.
Q Do you know when?
A I believe it was the following week, early the

next week. I want to say it was about -- probably around December 3rd or 4th.

Q And were you present for those interviews?

A Yes, I was.

Q Were you able to observe the children?

A Yes, I was.

Q And how did they come across?

A Minor was a little shy like she was here today; however, she clearly described what happened to her. She was able to identify all the body parts like she was -- it was a much smaller picture they use at Hope Haven, just smaller, basically. And she was able to explain --

MR. DEYSACH: I would object to this testimony. I think he's testifying what he watched on the video, not what he actually observed.

THE COURT: I'll sustain the objection. We'll move forward.

By Ms. Bannon:

Q At some point were you informed by Corporal Clevinger that the defendant was arrested?

A Yes, I was.

Q All right. And was that the same day as the 911 call went out?

A The --

Q When the initial report was made?

A No.
Q Do you remember when you had the opportunity to speak with Mr. Linton?
A After Corporal Clevinger transported him to the jail I then went to the jail and interviewed him that night shortly after he was placed there.
Q And did you administer the Miranda Rights to Mr. Linton?
A Yes, I did because there had been a break from the time he had been advised before I came in to speak to him. I went ahead and advised him again.
Q And how did you do that?
A I used a Miranda right -- Beaufort County Sheriff's Office Miranda Rights form that we have at the investigations unit. I read him that document, had him read along with me as I was reading it to him and then questioned him as to whether he understood the rights. He initialled off on the form saying that he understood each of his rights.

I asked him if he was willing to talk to me. He said yes. He signed the document saying he was doing that freely and voluntarily. I then asked him if he could read. That's one of the blocks that you have to actually ask the person. He said that he could read fine, which means that that block doesn't pertain. It

only pertains if you can't read and have to have the form read to you.

And then the next block, to ensure what they're telling me is correct, I always make them read that block to themselves; and then before they sign it, I ask them to explain to me what it meant that he just read. And what he stated was that he was doing it freely of his own free will; he wasn't being threatened, he was willing to talk to me. At that point he signed the form. He also signed the bottom of the form saying he had completed the 12th grade in school and signed that as well.

Q And he appeared to understand this?

A Yes, he did.

MS. BANNON: Permission to approach, Your Honor?

THE COURT: Yes, you may.

By Ms. Bannon:

Q Master Sargent Baird, I'm showing you what's been labeled for identification as State's Exhibit 11. Do you recognize that?

A Yes, ma'am, this is the Miranda Rights form that I used to advise him at the jail that day.

Q And is that your signature at the bottom?

A Yes, ma'am, it is.

Q And is Mr. Linton's signature anywhere on it?

A Yes, it's on there twice.

Q And is that in the same condition it was on the day you gave it to him?
A Yes, other than -- now it has a couple of staple holes up here, and these circle holes weren't there that day. Other than that, it's the same form.
Q Do you know what the circle holes are from?
A It's -- they were punched in there, and placed in some kind of file.
Q Does that change the content of the form?
A Not at all.
MS. BANNON: At this point, State would move State's Exhibit 11 into evidence.
THE COURT: Any objection from defense?
MR. DEYSACH: No, Your Honor.
THE COURT: State's Exhibit 11 is into evidence without objection from defense.
By Ms. Bannon:
Q After y'all filled out this form, what happened?
A Basically when done filling out the form, I said what do you have to tell me. And at that point he started talking. He told me many things. He said that the children were bad kids, they lie; they were always getting into trouble; they were prone to exaggeration. He told me that he didn't do anything wrong that they were making this up; they were lying about what they were

saying happened to them.

Q Did he make any statement about their mental capabilities?

A He led me to believe that they were of diminished capabilities, they did poorly in school, they were behind where they should be mentally at that point in their lives?

Q Now were those assertions consistent with your own personal observations?

A Not at that point.

Q So after he said -- he made these statements about the children, what did he say?

A Again, he said he did not engage in any activity like this. He didn't have sex with Minor . He said that the kids were lying about what had actually happened.

Q Did he make any statements regarding talking to Carla?

A I believe he said he tried to talk to her, but she was insistent on calling the police.

Q And now while he's telling you all this, is this in response to questions and answers like we're doing or something else?

A At that point, he was just talking and I wasn't asking any questions. Generally when I conduct an

interview, what I like to do if it's possible, is I'll just ask someone to tell me what they have to say. Once they are done talking, then at that point I'll go back and ask direct questions that will -- to try and determine information that I had already received or to question them about the accusations that have been stated, elements of the crime and such.

Q Now, what was Mr. Linton's demeanor when --

A He was extremely calm. He just sat back in the chair and talked. He seemed very relaxed.

Q Are you aware of any other names Mr. Linton goes by besides Anthony?

A He goes by Glenn Linton as well.

Q Are you aware of any street names for him?

A No. I have heard the children refer to him as Meat before this -- before today and today as well.

Q So when they're talking about Meat, they're talking about Anthony Linton?

A That's correct.

Q The man that you interviewed, identified as Anthony Linton about this case, do you see him here today?

A Yes, he's sitting next to Mr. Deysach wearing the blue plaid shirt.

MS. BANNON: May the record reflect that the

witness has identified the defendant.

THE COURT: Very good.

By Ms. Bannon:

Q So after he makes these statements, do you then ask him questions?

A Yes, at that point, I started going back and asking him questions. I asked him about, you know, any sexual activity on the sofa. He had claimed that he and Carla Griffin generally had sex on the sofa. He said that they would tell the children to go to their bedrooms, and then they would engage in sexual relations on the sofa; and they would just take it for granted that the children would stay in their rooms.

He said he believed the kids had seen them having sex before. He told me that when he and Carla would have sex on the sofa, he would either ejaculate in her or ejaculate onto her or sometimes even onto the sofa itself. He said Carla would generally be responsible for cleaning the sofa, and he told me he would generally clean up himself. He said generally -- normally he would use his t-shirt or shirt to wipe himself off.

Q Did you suggest the location of the sex or did he?

A I believe he was the one that brought up the sofa to begin with, and that's one of the questions I had for

him. I had planned to ask if they had ever engaged in sex on the sofa. He brought it up first.

Q He brought it up first?

A Yes.

Q Did he state the last time he'd had sex with Carla?

A He claimed that they had had sex earlier that night on the sofa. He believes he ejaculated onto her and possibly onto the sofa that night.

Q So on the night of November 28th, 2009?

A Yes, that would be the night he'd be referring to.

Q And when he was explaining to you about cleaning up with the t-shirt, did you suggest that or did he bring it up?

A He brought up the t-shirt later while I was talking to him because there was some talk of this wash rag. I asked him if there was any reason why his DNA and Minor a's DNA would be mixed together on a wash rag. And at that point -- then he changed his story from he had used a t-shirt to wipe himself, he said at that point it was possible that he had used a wash rag to wipe himself off. And he said it's possible that Minor had used that wash rag before, and that he just picked it up and used it to wipe himself off; or possibly after he used it

to wipe himself off, maybe then she had used it after that. And that was his explanation for why the DNA could be mixed on the wash rag.

Q Did y'all talk about other places his DNA could be found?

A I also asked him at one point, almost at the end of the interview -- I asked him if -- how could he explain his DNA being located on the inside of Minor 's underpants or panties. And at that point, then he changed his story yet again. This time he stated that he may have used the panties to wipe himself off. He said that it's possible he saw some panties on the floor and he thought they were Carla Griffin's panties.

So he said that he may have used those to wipe himself off after the sexual act. He said he would have discarded them back onto the floor after he wiped himself off. He said that maybe they were actually Minor a's panties and not Carla 's and maybe Minor came back and put them back on afterwards. So at that point he had given me several explanations.

Q Did that strike you odd about the confusion of the panties?

A Being the size of Carla and the size of Minor and the panties as you've been able to see as well today, clearly they were not an adult's panties.

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Q Prior to talking about him wiping himself off, did y'all discuss about possibly finding DNA inside the panties?

A Initially, I said how could his DNA be on the panties at all. And his -- his first explanation was it's possible that he had ejaculated onto the sofa, and maybe the child came along and sat in the semen and that's how it got onto the panties. And at that point I said, well that would explain how it got on the outside of the pants. How can you explain how it got inside the panties.

And that's when he offered the other explanation that possibly they could have been Carla's panties and he wiped himself with them.

Q So each time y'all discussed potential sources of evidence, his story changed?

A Yes. Every time I brought up a new question to him, he would change his answers and provide a different explanation.

Q At some point, did you confront him with Minor 's statement?

A Yes, I did. I specifically told him that Minor said that he had engaged in vaginal, anal, and oral sexual relations with her to include the fact that she stated after he put it in her butt that --

MR. DEYSACH: I'm objecting to the hearsay. I think this is hearsay.

THE COURT: I'll sustain the objection. Move forward.

By Ms. Bannon:

Q So you confronted him with her statement?

A Yes, I did.

Q And what was his response?

A He just said it wasn't true.

Q Did he appear upset in this denial?

A Not at all. He was extremely calm, sat there and didn't get upset by the allegations at all.

Q After that, what did you do?

A We finished the interview. I left.

Q So he didn't make any other statements?

A No, I had requested a buccal swab from him, but he declined to provide one at the time.

MR. DEYSACH: Objection, Your Honor.

THE COURT: Might counsel approach the bench.

(WHEREUPON, there was a bench conference out of the hearing of the jury and the Court Reporter.)

THE COURT: Mr. Foreman, and ladies and gentlemen of the jury, the last question with regard to the request for a buccal swab was improper. The question and the answer are stricken from the record.

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You may proceed.

MS. BANNON: Permission to approach, Your Honor?

THE COURT: Yes.

MS. BANNON: The witness.

By Ms. Bannon:

Q Investigator Baird, I'm showing you what's been labeled for identification as State's Exhibit 1-E. Do you recognize this?

A Yes. This is a cutting from the crotch area of the panties that I recovered from Kristin Dalton that were recovered from Minor .

Q And on the --

MR. DEYSACH: Your Honor, I would object. I think they're being published to the jury right now and they haven't been entered into evidence.

THE COURT: All right. I will indeed sustain that objection. I'm going to ask they be placed into the -- remain in the envelope until they're introduced into evidence.

By Ms. Bannon:

Q And that's been -- I believe there's a sticker on it identifying that?

A One-E. Echo.

Q Okay. You took that from Kristin Dalton?

A Yes.

Q And what did you do with it?

A Ended up entering it into our evidence depository, later submitted it to SLED for a DNA analysis.

Q Okay. What did -- did it look like that when you entered it?

A No. When I entered it into our repository, it was a complete pair of little girl's panties.

Q Do you know how it got in that condition?

A Yes. What SLED does is when they go to analyze something, they will take a cutting of the fabric out of the area where there appears to be DNA evidence present. They can't submit the entire piece, so what they'll do is they'll cut a small portion away, and then they'll cut little pieces off of this smaller section and that is what they actually analyze at the SLED lab.

Q So does it surprise you that it's been cut up?

A No. Every time I ever got clothing back from SLED after we've had a DNA analysis done, it always has pieces cut out of it.

Q And what about the discolorations on that piece of evidence that you looked at?

A Well, like I said, they did some analysis --

Q Keep it in the envelope. Sorry.

A They do analysis as well as there's bodily

secretions on it as well.

Q And those secretions were present when you collected those from Kris Dalton?

A That's correct.

Q How about item No. -- is there anything else in that bag?

A Yes, there's another envelope marked SLED, where SLED removed a couple of pieces of hair -- what appear to be either SLED removed it or actually, I believe Kristin Dalton would have removed it from the panties, and placed it in some type of envelope. Once SLED receives it, they place it in their own envelope there.

Q So you took custody of that?

A That's correct. This was with the panties and SLED separated them out.

Q Okay. And so that is Item No. 1? Just for the record to keep it clean.

A There doesn't appear to be a mark on this envelope.

Q Okay.

A On the outside of the major bag -- the bag it was in, the small bag, is marked 4.

Q Okay. So that's a component of Item No. 4?

A The largest bag is marked Item No. 4.

Q Correct?

A Then it has a smaller bag marked No. 4, which has this envelope as well as the panty envelope.

Q Okay. So Let's mark that one 1--- you said it was in bag 4?

A Yes, it's in the small bag No. 4.

Q 4-A. For identification?

(State's Exhibit 4-A was marked for identification.)

MR. DEYSACH: Your Honor, may I approach with a matter of law?

THE COURT: You may.

(WHEREUPON, there was a bench conference out of the hearing of the jury and the Court Reporter.)

By Ms. Bannon:

Q So all those items we just talked about, the hair and the cuttings from the panties, you got from the panties from Kristin Dalton, entered into evidence?

A Yes.

Q Who did you enter them into evidence at -- with?

A I believe it was Eileen Rios, one of our evidence technicians.

Q Okay. And is there anything else in that bag?

A There is two small tubes that are just by product of the -- of the DNA analysis itself and that's -- excuse me, that's just byproduct of the examination done by SLED

at the lab.

Q And that is from those items that you just discussed in the envelope?

A That is correct.

Q All right. I am now showing you what has been entered into evidence as State's Exhibit 1-B and 1-A. Do you recognize those items?

A Yes, this is the outer-clothing bag that Kristin Dalton used to put the pants -- Minor a's pants into and these are the pants that I recovered from Kristin Dalton. Some of the marks -- the actual writing is what the SLED people do when they're trying to analyze it, whether it's under an alternate light source or any number of other ways they have of analyzing such.

And what they'll do is they'll circle anything that they may want to look at, at a later time. So that's how the markings and such are actually placed on the pants. They weren't there when I received the pants from Kristin Dalton.

Q Okay.

MS. BANNON: And now, at this point, the State would move what's been identified for identification, States 1-A, the external bag, into evidence.

THE COURT: Any objection from the defense?

MR. DEYSACH: Just to the bag being placed into

evidence; is that what I understand.

MS. BANNON: It's the outer bag, yes.

MR. DEYSACH: No objection.

THE COURT: It's into evidence without objection from the defense.

(WHEREUPON State's Exhibit 1-A was entered into evidence.)

THE WITNESS: And then the smaller bag is actually marked underwear bag and that's the bag that Kristin Dalton originally put the complete, whole pair of children's underwear in, and there's still a portion of it in there.

THE COURT: Once again, this is the item that was introduced.

MR. DEYSACH: It's the --

MS. BANNON: It's the underwear.

MR. DEYSACH: That has not been moved into evidence yet.

THE COURT: Okay. Well, Let's not publish that until it is.

By Ms. Bannon:

Q You reck -- does that have a sticker on it?

A The bag has a sticker 1-C, Charlie.

Q And within that bag, do you recognize the item contained therein?

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A Yes, those are the panties that I received from Kristin Dalton and she received them from Minor .

Q And when you collected them they were whole with item 1-E, correct?

A That is correct.

Q Once you got those from Kristin, what did you do with them?

A Took them both -- bagged them into our evidence bags, placed them into our evidence repository and later submitted them to SLED and asked them to analyze them for the presence of DNA.

Q Could you please put those back in the bag. I'll take that back from you.

All right. I am now showing you what's been labeled for identification and previously shown to defense counsel as State's Exhibit 2. Do you recognize that?

A Yes, this is one of our evidence bags. The brown bag inside the outer bag is a SLED bag. But the brown bag inside is one of the paper evidence bags we use. And what -- the bag itself is the baggie I filled out. You can still feel the container inside the bag.

Q Would you mind opening that?

A This indeed is the bag. It has my signature. Ms. Rios received it from me as the information that -- I

recovered this on August 8th 2010 at 11:10, where I recovered it from Minor . This is just a container that we place our buccal swabs in, inside there.

Q Please just inspect it, not within the view of the jury.

A Okay. There's two buccal swabs inside which I collected from Minor on that day.

Q So is that in the same condition as when you submitted it into evidence?

A Yes.

Q Okay. And how did you collect those buccal swabs from her?

A I actually met with her at her grandmother's house and just told her that I wanted to rub these swabs around inside her mouth. She literally said "ah", like she was going to the dentist, and I rubbed them inside her mouth between the cheek and the gum area. We just place them in and just rub them back and forth on each side to get a good sample.

MS. BANNON: At this point, the State would move State's Exhibit 2 into evidence.

MR. DEYSACH: I think that needs to make it to the lab in order to be -- the chain of custody to be established.

THE COURT: I agree.

MR. DEYSACH: So I would object on those grounds.

THE COURT: Very good.

By Ms. Bannon:

Q All right. I'm now showing you what's previously been shown to defense and labeled for identification as State's Exhibit 3. Do you recognize that?

A Yes, again, this is an outer SLED bag and a Beaufort County Sheriff's Office bag inside, and it shows where I recovered this on July 29, 2010 at 1635 in the afternoon, 4:35. It's where I recovered two swabs from Anthony Linton.

Q So those are buccal swabs?

A Yes, these are buccal swabs.

Q From the defendant?

A Yes.

Q If you won't mind opening them and making sure, without showing the jury the contents.

A Those appear to be the same buccal swabs that I recovered from him.

Q And are they in the same or substantially the same as when you collected them?

A Yes.

Q And after you collected them from Anthony Linton, what did you do with them?

A I submitted them to our evidence division to Ms. Eileen Rios, our evidence technician, and requested that they be sent to SLED to the DNA lab for analysis.

Q Okay. Can I have that back, please?

MS. BANNON: Beg the Court's indulgence, Your Honor.

No further questions for Investigator Baird.

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, we're going the recess for the evening. I'm going to ask that you be back at 9:30 sharp in the morning. We'll be ready to proceed.

Master Sargent Baird, under these circumstances, which are somewhat unusual, you're not allowed to speak with either counsel with regard to your testimony. You be back here in the courtroom, 9:30, in the witness chair and we'll be ready to proceed.

THE WITNESS: Thank you, sir.

THE COURT: Do you understand those instructions?

THE WITNESS: Absolutely, sir.

THE COURT: Very good.

Mr. Foreman, ladies and gentlemen of the jury, once again, do not discuss the case with anyone. Do not do any independent investigation. Proudly wear those badges back in the morning and we'll see you at 9:30, 9:30 sharp.

(WHEREUPON the jury left the courtroom at 5:07 p.m.)

THE BAILIFF: Jury is clear, door is closed, Your Honor.

THE COURT: Anything from the State before we recess for the evening?

MS. BANNON: No, Your Honor.

THE COURT: Anything from defense?

MR. DEYSACH: Just briefly, Your Honor. On that point that we approached you on, the comment, his refusal to give a buccal swab. I wanted to add a couple more -- I wanted to put on the record that I had asked you up there for a mistrial. I think that request was denied. A curative instruction was the remedy that you deemed appropriate. What I did want to put on the record is that I listened to the tape of the statement between Staff Sargent Baird and Anthony Linton. Nowhere do I hear where a buccal swab is requested and rejected. It's not in one of reports. As I talked to Mr. Linton, he -- I remember when we were having the Schmerber Hearing, and he was like asking me, why am I not just turning this piece of DNA over, and I believe that he actually would have given a DNA swab if it had been requested.

Instead what the jury has heard, one that he didn't request it, and it wasn't until July or so that

they were able to get one. So I'm also concerned about the misinformation that's been given on that score.

THE COURT: Well, these are your options. You can -- you can cross-examine this witness about -- I imagine it's within the realm of possibility that the question could have been asked outside the ear shot of the tape recorder before or after it was turned on. That's one explanation for it, but you could ask him that. And I'll give you free reign to cross-examine this officer with regard to that if you would like.

MR. DEYSACH: I understand your ruling, Your Honor. And just lastly, at this point, I haven't decided if I would do such or not. I have to think about it, so we'll see. If those are my only options, I think I already stated what my request was. That in the light of what was elicited about the buccal swab that it's even more unfair that my client not be able to ask the -- or that I not be able to ask him about my client's offer to take the polygraph and how that never --

THE COURT: We've already talked about the polygraph.

MR. DEYSACH: I wanted to make that request again, Your Honor.

THE COURT: Okay. Very good.

Anything further from the State?

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MS. BANNON: No, Your Honor.

THE COURT: All right. We'll stand adjourned until 9:30 in the morning.

(WHEREUPON court was adjourned until the following morning.)

STATE OF SOUTH CAROLINA)
) IN THE COURT
) OF GENERAL SESSIONS
COUNTY OF BEAUFORT)

INDICTMENT NO: 2010-GS-07-0013

STATE OF SOUTH CAROLINA,)
Plaintiff,)
)
)
VS.) TRANSCRIPT OF RECORD
) VOLUME III
)
ANTHONY G. LINTON,)
Defendant.)

MARCH 29 - 31, 2011
BEAUFORT, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, JUDGE AND A JURY.

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

MEREDITH BANNON, ASSISTANT SOLICITOR
FOR THE STATE

CARRA HENDERSON, ASSISTANT SOLICITOR
FOR THE STATE

IAN DEYSACH, ESQUIRE
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THE COURT: Anything from the State before we proceed?

MS. BANNON: No, Your Honor.

THE COURT: Anything from defense?

MR. DEYSACH: No, Your Honor.

THE COURT: And I think the direct examination is concluded, if I recall correctly, and we're starting the cross-examination.

All right. We're ready for the jury when you are.

THE BAILIFF: Jury entering, Your Honor.

(WHEREUPON the jury entered the courtroom at 9:31 a.m.)

THE BAILIFF: Jury is present, your Honor.

THE COURT: Good morning. Everybody looks refreshed, ready to proceed forward. Thank y'all for being here and being here on time.

Mr. Deysach, you're recognized.

MR. DEYSACH: Thank you very much, Your Honor.

THE COURT: And I'll remind you, Master Sargent Baird, that you're still under oath.

THE WITNESS: Yes, sir.

CROSS-EXAMINATION

By Mr. Deysach:

Q Good morning, Investigator Baird.

A Good morning, sir.

Q All right. I guess the first thing I wanted to talk to you about was your contact with Beaufort Pediatrics. At Beaufort Pediatrics, that's where you picked up a couple pieces -- a couple items from Nurse Dalton, correct?

A Correct, sir.

Q And those were the pants and the underpants that had been delivered to her, correct?

A That's correct.

Q And it was after that that you went by the trailer, Lot [redacted] at [redacted], correct?

A Yes, sir.

Q And that was Carla Griffin's residence?

A Yes, sir.

Q Okay. And when you're there, you meet with Carla, correct?

A Yes, sir.

Q You enter the home at this time, correct?

A Yes, sir.

Q And she gave you bedding from off of the couch, is that what you testified to?

A Yes, sir, she -- prior to my arrival she had actually rolled a sheet and a blanket together, and she said that that was the sheet and blanket that were on the

sofa, the couch that night.

Q Okay.

A I took those.

Q So your understanding when you took it was that there was a sheet, a blanket on the couch that night. Like stuff somebody would sleep on?

A It was a sheet and a blanket, yes, sir.

Q Okay. Did you go into any other rooms?

A Just down the hallway to where the washing machine and the dryer were.

Q Okay.

A Looked around that area to see if I could find a washcloth.

Q Were there dirty clothes there?

A There were some, yes, sir.

Q Did you ever go into any of the bedrooms?

A No, sir.

Q Did you know how many bedrooms there were?

A From what I could see walking around the living room and the one hallway, it appeared there were two bedrooms.

Q Were you aware of any reason why you should go into one of the bedrooms?

A Not at that time.

Q Did you ever go into one of the bedrooms?

A No, sir.
Q How many bedrooms were there?
A I believe there was two.
Q Two. How many bathrooms? Do you remember?
A I don't know, sir. I don't know.
Q All right. Now, it is December 2nd that you decide to -- or that you go to the magistrate and you swear out a warrant?
A If I could see the warrant sir, I could make sure the date is correct. I don't recall what the date was.
Q Is that a copy of the warrant?
A Yes, sir, it is.
Q Okay. And in order to obtain a warrant, you have to make a statement under oath, correct?
A Yes, sir.
Q All right. And that's what you did in this case, correct?
A Yes, sir.
Q And in the warrant, you only allege anal intercourse and oral sexual relations, but not vaginal intercourse, correct?
A That's the information I had at that time, sir.
Q Okay. And this -- it's after that that you go -- and obviously the warrant is served and you talk to Mr. Linton, correct?

A I believe it was the following day, possibly.
Q Well, would it be right if it was -- so it's maybe 24 hours between you actually apply for the warrant and the warrant being served on Mr. Linton?
A If my recollection is correct, yes, sir.
Q Do you want to -- would you like to look at your report to help you recollect?
A It would help, sir.
Q Is that your report?
A Yes, sir, it is. It's a copy of it. I received the -- applied for and received the warrant on 12/2/2009, and then on 12/3/2009, so it was the next day, sir, is when I came in contact with Mr. Linton.
Q And that's the same day that the warrant was served, just one day later?
A That's correct, sir.
Q All right. Now, you spoke yesterday evening about the conversation that you had with Mr. Linton, correct?
A Yes, sir.
Q I think you made the comment that you thought it was -- well, I'll go into some specifics of what was said. First of all, he did tell you that the children do exaggerate, he did tell you that?
A Yes, sir.

Q He told you that they were mentally challenged, correct? Or they have a problem mentally, correct?

A That's what he told me, yes, sir.

Q He told you that they were due to be psychologically tested, you remember that?

A He may have said that, sir. I don't recall offhand. He very well may have said that.

Q And you asked him the question and you talked about it yesterday, Any reason why Minor a's DNA is going to be mixed with your DNA on a rag, correct?

A Yes, sir.

Q You asked him that question even though you knew at the time that you had no rag?

A That's correct, sir.

Q So that was a trick you were trying to play on Mr. Linton; is that correct?

A You can call it a trick if you'd like to.

Q What do you call it?

A I would refer to it as an investigative technique that we use.

Q Do you call it a lie?

A I don't call it a lie, but I suppose you could consider it one.

Q Okay. And his response is, On a rag? There's no -- she bathes and the kids use the same rags. That's

his response, isn't it?

A I don't recall his exact response, sir, but it could have been something to that effect.

Q Okay. And you go on to say, But I'm talking about it's your semen mixed with her DNA on a rag.

A Yes, sir.

Q And at that time you knew that you had no rag with semen or Minor 's DNA on it?

A That's correct, sir.

Q So that's another trick, correct?

A If you care to call it that, sir.

Q Or I can call it a lie?

A If you care to, yes, sir.

Q Okay. And his response is -- his response is, Is there any reason why the DNA would be there, his response is, No. That could have been one of the rags we had used. Know what I'm saying? Because we were washing clothes. Is that his response?

A I can't say that that's verbatim, but it was something to that effect.

Q So I think yesterday you were indicating that he was giving you a story that was somehow evolving, but what you left out was that at first he would say, No, this couldn't be there, and then his mind would go to a possibility -- a possible way it could be there. Is that

the way the conversation went?

A Again, sir, I can't say for certain.

Q Okay.

A It all occurred over a year and a half ago, but it's possible he said no, first. I don't recall.

Q And, in fact, throughout the whole conversation, I mean, he -- this is not a confession. He's denying what's being accused, correct?

A Yes, sir, he denied it the whole time.

Q And even when you confront him with evidence that you don't have, he continues to deny it, correct?

A He denied it the whole time, sir.

Q And he gives you responses as if he believes that you actually do have this evidence that's being described, correct?

A I can't say for certain what he believed, but it's possible.

Q And when he's talking about the rag and how DNA could possibly be on that rag, what he's talking about is using a rag to clean up after him and Carla have sex that the children have used to wash their face before that; isn't that what he's talking about?

A I don't recall him saying anything about washing a face, but that's the way I understood it, was that he was inferring that he would use the rag to clean himself

after sex with Ms. Griffin and then either the kids would have used it before or after.

Q So it could have been before that the kids were using the rags. I think yesterday you may have indicated that the kids could have -- would have used the rag after he had used it to clean up after sex. It could have been before, correct?

A I suppose it's possible it could have been before.

Q And you know, you've developed the report and I'm letting you look at a copy of it and -- all right. You -- you've been an investigator for how long, Investigator Baird?

A I first moved into investigations in 1984.

Q So --

A I've been an investigator only with the sheriff's offices for the last 9 years.

Q So quite a while, correct?

A Yes, sir.

Q And throughout that whole time, you've been writing reports about your investigations, correct?

A Yes, sir.

Q And so you understand the importance of putting everything in a report that is important to the investigation, correct?

A Obviously, I would say so, sir.
Q And in your report you put contact with Kristin Dalton, you make a notation of that, correct?
A Yes, sir.
Q And the contact that you had with Carla Griffin, you made the notation of that, correct?
A Yes, sir.
Q And you notate -- you note the interview that you had with Anthony Linton?
A I did, sir. I didn't detail it to much of an extent, in that the --
Q Because the interview it lasted about how long? Is it about 20 minutes?
A I would say somewhere in that area, yes, sir.
Q And the area that he used to make a note on is about a half a page in your report?
A I believe so, yes, sir.
Q And you actually did make a tape of the conversation correct?
A Yes, sir, that's why I didn't detail the interview at too great a --
Q Did you listen to the tape before trial?
A About a week ago I listened to it, sir.
Q Okay. You told the jury yesterday that you had a level of experience in child sexual abuse cases; is that

correct?

A Investigating them, yes, sir.

Q Okay. Have you ever had experience in a case with a delayed disclosure?

A Yes, sir.

Q Is that rare?

A No, sir, not at all.

Q Is it common?

A I would say it is.

Q Isn't it common for a child to disclose sexual abuse well after it occurs, correct?

A Each child is different, but many children do disclose much later.

Q And it is normally as time passes that more details emerge, correct?

A Again, each child is different, but on some cases, yes, more detail does come out later.

Q And when you're talking about later, how late are you talking? How late could it be?

A I had a case a couple of years ago when the lady disclosed for her first time.

Q But in this case the disclosure or the story came immediately, didn't it?

A Yes, the disclosure was made the next afternoon.

Q Had you had prior law enforcement with Carla

Griffin?

A Yes, sir.

Q So you already knew who she was?

A Yes, sir.

Q Did she already know who you were? Do you know?

A I don't know that she recalled me by name, but I think she would have recognized me from prior dealings.

MR. DEYSACH: Begging the Court's indulgence, I don't have anything further, Your Honor.

THE COURT: Redirect?

MS. BANNON: May it please the Court?

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

By Ms. Bannon:

Q Master Sargent Baird, in your years of experience in investigating child sexual abuse crimes, have you ever had cases other than this one where there was immediate disclosures of abuse?

A Absolutely.

Q Is that uncommon?

A No.

Q Thank you. That's all I have.

THE COURT: All right. You may step down.

THE WITNESS: Thank you.

THE COURT: You may call your next witness.

MS. BANNON: State calls Eileen Rios.

THE COURT: Ms. Rios, if you could come forward, please ma'am. I'm going to ask if you could come forward and place your left hand on the Bible and raise your right hand as the clerk administers the oath.

THEREUPON,

EILEEN RIOS,

after being duly sworn, testified as follows:

THE COURT: Yes, ma'am, please come forward. Take a moment to situate yourself there in front of the microphone. I'm going to ask that you speak loudly, clearly, and slowly in order that we can hear everything that you've got to say, and we're going the ask that you start with your full name.

THE WITNESS: Eileen Rios.

THE COURT: All right. Spell that last name for me.

THE WITNESS: R-i-o-s.

THE COURT: Very good. Thank you.

DIRECT EXAMINATION

By Ms. Bannon:

Q Where do you work?

A Beaufort County Sheriff's Office, in the Evidence Division.

Q And how long have you worked there?

A Fifteen years.
Q And that whole time in the Evidence Division?
A Correct.
Q And what are your job responsibilities?
A Receive and maintain evidence for the sheriff's office.
Q And are you familiar with BCSO Investigation in case No. 2009-1129-0636?
A Yes.
Q And who's that concern?
A It concerns one Anthony Linton.
Q And did you take any evidence in regards to this case?
A Yes, I did.
Q And do you maintain an evidence list?
A Yes, I do.

MS. BANNON: Permission to approach?

THE COURT: Yes.

By Ms. Bannon:

Q I am showing you what's been labeled as State's Exhibit 1. Without showing the jury, could you please examine it, and let me know if you recognize it.
A Yes, I do.
Q All right. And what is it?
A It came in -- it was a sealed, brown evidence bag

containing a clothing bag of a pair of girl's jeans and a bag, a pair of girl's panties.

Q And who did you receive it from?

A Brian Baird.

Q And it was sealed?

A Correct.

Q So were you able to see inside of it?

A No, I was not.

Q And what did you do once you received it?

A Once evidence is submitted into our division, it is packaged up and locked up in our evidence vault.

Q And do you know where it went after it went to your evidence vault?

A It stays there until such time as they want further processing.

Q And I'm now showing you what's been labeled State's Exhibit 2. Do you recognize this item?

A Yes.

Q And what is it?

A It was two Swabs that were collected from Minor .

Q And what was that name the swabs are in?

A It looks like S-h-a-n-n-o-n -- no -- Minor .

Q Okay. So Minor ?

A Yes.

Q And who did you receive that from?
A Also received it from Investigator Baird.
Q And what was the condition of this packaging?
A This one right here, it was also sealed.
Q So anything that was removed from that bag was in that bag when you received it from Investigator Baird?
A Correct.
Q And what did you do with the swabs?
A Also once I put it into our system, it's locked up in the evidence room.
Q And does it look to be in the same or substantially the same condition as when you received it from Investigator Baird?
A Correct.
Q I'm now showing you what's been labeled for identification as State's Exhibit 3. Do you recognize that?
A Yes.
Q What is it?
A Two swabs in a holder collected from Anthony Linton.
Q And who did you receive that from?
A Also Investigator Baird.
Q And how did you receive it?
A It came in on the 30th of July, 2010, as a sealed

brown paper evidence bag.

Q So, again, you were not able to examine the contents?

A Correct.

Q But if it was -- if the bag was open, it was assumed it was in them when you got them from Baird?

A Correct.

Q Okay. And what did you do with that?

A Also logged into the computer system and secured it.

Q And does that appear to be in the same or substantially the same condition when you received it from Master Sargent Baird?

A Yes.

MS. BANNON: Beg the Court's indulgence. No further questions.

THE COURT: Cross-examination, Mr. Deysach?

MR. DEYSACH: Thank you, Your Honor.

CROSS-EXAMINATION

By Mr. Deysach:

Q Good morning Ms. Rios.

A Good morning.

Q Those items that you just testified about, what do you do to make sure that there's not any contamination?

A They're brought in sealed. The investigator or the deputy will sign across the seal, and we package it up and it's put in the evidence lockup until such time further processing is requested.

Q Does anyone else have access to those items besides you?

A Yes.

Q If somebody were to open one of the items, would there have to be a note taken about it?

A If they're open, I'd see where the tape would have been tampered with.

Q Uh-huh.

A And if they're opened, they'll also put any note in our computer system when it was opened.

Q When you handle this evidence, do you handle it with gloves?

A When it -- when it first came in, no.

Q The -- and the swabs are inside plastic bags that are sealed?

A Well, depending on -- these were in brown paper bags.

Q Brown paper bags that are sealed?

A Correct.

Q Okay. And so you make sure that you don't allow those swabs to come into contact with anything else,

correct?

A Correct.

Q So that you can avoid contamination, correct?

A Yes, sir.

MR. DEYSACH: I don't have any further questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

By Ms. Bannon:

Q Ms. Rios, you stated that other people have access.

A You mean who else has access?

Q Yes, who are these people?

A There's two other individuals that work in evidence. At the present time, Captain Keogh, who is on leave and Sargent Ramona Cooper.

Q So these are employees of the sheriff's office?

A Right. They work in evidence. And also Corporal Jimmy Pageant.

Q And he also works in evidence?

A Correct.

Q Thank you?

MS. BANNON: No further questions.

THE COURT: You may step down. You may be excused.

THE WITNESS: Thank you.

THE COURT: Thank you, ma'am.

You may call your next witness.

MS. BANNON: State calls Jean Roberts.

THE COURT: Ms. Roberts, please come forward. I'd ask if you could come forward, and place your left hand on the Bible, and raise your right hand as the clerk administers the oath.

THEREUPON,

JEAN ROBERTS,

after being duly sworn, testified as follows:

THE CLERK: Please be seated.

THE WITNESS: Thank you.

THE COURT: Take your time, and situate yourself in front of the microphone. Speak loudly, clearly, and slowly in order that we can hear everything that you've got to say; and I'm going to ask you to start with your full name, please, ma'am.

THE WITNESS: My name is Jean Roberts.

THE COURT: Thank you, Ms. Roberts.

DIRECT EXAMINATION

By Ms. Bannon:

Q And where do you work?

A I work for the Beaufort County Sheriff's Office.

Q And what do you do there?

A Right now a victim assistant.

Q And how long have you worked with the Beaufort County Sheriff's Office?

A Fourteen years.

Q What did you do prior to being a victim assistant?

A I was the evidence -- I was an evidence technician in Hilton Head.

Q And in November of -- when did you become a victim assistant?

A September of last year.

Q Okay. So prior to September 2010, you were in evidence?

A I was.

Q And are you familiar with your department's investigation into Case Number 2009-1129-636?

A Yes, ma'am.

Q And that's an investigation regarding Anthony Linton?

A Yes, ma'am.

Q And did you have any role in the evidence collection in this case?

A Yes, ma'am. I was working in the Beaufort office one afternoon and I received a CD and a DVD from Staff Sargent Baird.

Q Also, part of your duties as an evidence tech, is

it bringing items up to SLED?

A It is.

Q And on --

MS. BANNON: Permission to approach?

THE COURT: Yes.

By Ms. Bannon:

Q I'm going to show you what's been labeled for identification as State's Exhibit 1. Do you recognize this? There are items inside if you would like to examine them without showing the jury.

A Yes, ma'am, I do.

Q All right. And did you transport those?

A Yes, ma'am, I did transport them to SLED.

Q All right. And so when you say you transport it, what do you do?

A We take the sealed -- or the item that is submitted to us, and we drive them to SLED, and give them to the investigate -- to the forensic team at SLED.

Q All right. So when you checked this item, Item 1, out of evidence, was it sealed or unsealed?

A It was sealed.

Q And when you delivered it to SLED what was its condition?

A Sealed.

Q And so you picked it up sealed, and accepted it

sealed?

A Correct.

Q All right. I'm now showing you what's been labeled for identification as State's Exhibit 2. Do you recognize this?

A I do recognize it.

Q Okay. And did you transport that up to SLED?

A No, ma'am. Sargent Cooper transported this one.

Q Okay. And --

MS. BANNON: One moment, Your Honor.

By Ms. Bannon:

Q I'm now showing you what's been labeled State's Exhibit 3. Do you recognize this?

A It's also an item of evidence, ma'am.

Q And did you take that up to SLED?

A No, ma'am. Sargent Cooper also took this one.

Q All right. Thank you. So the only item that you took up is items contained in State's Exhibit 1?

A Yes, ma'am.

Q All right. Thank you. No further questions.

THE COURT: Cross-examination, Mr. Deysach?

MR. DEYSACH: No questions, Your Honor.

THE COURT: You may step down.

You may call your next witness.

MS. BANNON: State calls Ramona Cooper.

THE COURT: Yes, ma'am.

THEREUPON,

RAMONA COOPER,

after being duly sworn, testified as follows:

THE CLERK: Please be seated, and state your name for the Court, please.

THE COURT: Situate yourself in front of that microphone, please, ma'am. I'd ask you to speak loudly, clearly, and slowly, in order that we can hear everything that you've got to say. Let's start with your full name.

THE WITNESS: Yes, ma'am. It's Ramona Sue Cooper.

THE COURT: Very good.

DIRECT EXAMINATION

By Ms. Bannon:

Q And where do you work?

A Beaufort County Sheriff's Office.

Q And what rank are you?

A Sargent.

Q And how long have you worked with Beaufort County Sheriff's Office?

A Twelve years.

Q And what do you do there?

A I'm an evidence technician and the evidence manager.

Q And how long have you worked in evidence?
A Six years.
Q So you were working there from six years ago on?
A Yes.
Q And are you familiar with your department's investigation into report number 2009-1129-636?
A Yes.
Q And is that the investigation into Anthony Linton?
A Yes.
Q And did you do anything with the evidence in this case?
A The only thing that I did with the evidence is I transported two pieces of evidence from Beaufort County to SLED.
Q Do you know what those pieces of evidence were?
A Yes, ma'am, we had oral swabs collected from Mr. Linton, and oral swabs collected from Minor .
Q And when you say transported them, what do you mean?
A I collected the bags of evidence from our facility, and I transported them, drove them up to Columbia, and then submitted them to evidence personnel there.
Q And what was the condition of these bags when you

took them out of your evidence?

A They were sealed paper bags.

Q And what was the condition of the bags when you got up to SLED?

A They were sealed in their evidence bags, which are plastic bags, and then they took them into their facility.

Q So they did not open the paper bags?

A No.

MS. BANNON: Permission to approach?

THE COURT: Certainly.

By Ms. Bannon:

Q Sargent Cooper, I'm showing what's been labeled for identification as State's Exhibit 2. Do you recognize it?

A Yes.

Q And what is it?

A It is the sealed paper bags with oral swabs from Minor .

Q And do they appear to be in substantially the same condition as when you transported them?

A They appear to have been open by forensic personnel at SLED.

Q All right. And I'm now showing you what's been labeled for identification as State's Exhibit 3. Do you

recognize that?

A Yes, ma'am.

Q What is it?

A It is the swabs collected from Mr. Linton.

Q And does that appear to be in the same or substantially the same condition?

A Except for being open by SLED personnel.

Q And those -- both items 2 and 3 are the items that you transported up to SLED?

A Yes.

Q Thank you.

MS. BANNON: I don't have any further questions.

THE COURT: Cross-examination?

MR. DEYSACH: None, Your Honor.

THE COURT: You may step down and you're free to leave. Thank you.

Ms. Bannon, you may call your next witness.

MS. BANNON: State calls Lori Giles.

THE COURT: Yes, ma'am, please come forward. I'm going to ask if you could to place your left hand on the Bible and raise your right hand as the clerk administers the oath.

THEREUPON,

LORI GILES,

after being duly sworn, testified as follows:

THE CLERK: Please be seated, state your name for the Court, please.

THE COURT: Take your time and situate yourself in front of that microphone. I'm going to ask you to speak loudly, clearly, and slowly in order that we can hear everything that you've got to say, and I'm going to ask that you start with your full name, please ma'am.

THE WITNESS: My name is Lori Giles.

THE COURT: Spell that last name for us.

THE WITNESS: G-i-l-e-s.

THE COURT: Thank you.

DIRECT EXAMINATION

By Ms. Bannon:

Q And Ms. Giles, where do you work right now?

A I am unemployed right now. I moved to Alabama recently, the first of the year.

Q Okay. Prior to moving to Alabama where did you work?

A I formerly worked for SLED, South Carolina Law Enforcement Division for two and-a-half-years.

Q And so do you -- when did you begin your employment with SLED?

A It was June of 2008.

Q And when did it end?

A It was January of 2011.

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Q And what were your duties at SLED?
A I worked in the Evidence Processing Department and I processed evidence to be submitted to the DNA department.
Q And when you state that you processed the evidence, what do you mean?
A In the Evidence Processing Department, we look at evidence that's submitted by submitting officers, and we take the evidence and we make sure -- we receive it from the evidence control first, and then we make sure that it has all the seals on it before we even open up the package, and we have the processing room that we look at the evidence for possible body fluids of trace evidence.
Q Okay. And did you receive some items from Beaufort County Sheriff's Office in regards to an Anthony Linton?
A Yes, I did.
Q And did you develop your own SLED case number?
A Yes, I did.
Q Do you recall what that case number is?
A Can I refer to my notes? That Lab No. L1001954.
Q And did you process any evidence in regards to that lab number?
A Yes, I did.
Q And what is that?

A There were two items listed. Item one was a pair of jeans and Item 2 was a pair of panties.

Q Okay. And what did you do with these items?

A I observed them for visual -- I took a visual of the of the items and I also used an alternate light source to see if anything on the evidence would fluoresce and if it did I circled the areas of interest; and I also did a presumptive chemical test on those areas, and I submitted those cuttings to the DNA analyst.

Q And so when you say you're looking for evidence, what type of evidence are you looking for?

A Possible body fluids and trace evidence which would, like I said, fluid -- body fluids would fluoresce under fluorescent lights, alternate light source -- possible hair fibers. We collect things like that that we see.

Q And did you collect any potential items of evidence from Item 1 and Item 2?

MR. DEYSACH: Your Honor, at this point, I don't think she can give the result. I object to that on the basis --

THE COURT: All right. Well, might you approach the bench for a moment.

(WHEREUPON, there was a bench conference out of the hearing of the jury and the Court Reporter.)

THE COURT: You may rephrase the question.

By Ms. Bannon:

Q Did you find potential areas of evidence?

A Yes, I did.

Q Okay. And when you -- when these items came to you, you earlier stated that they were sealed?

A Yes, they were.

Q And so who was the person who opened them?

A Initially it was me. I open the evidence -- Evidence Control does not open the packages from the submitting agency.

Q So you opened the package that was sealed from the submitting agency?

A That's correct.

Q All right. On Item 1, what did you state that you identified as Item 1?

A A pair of jeans.

Q I am showing you what's previously been admitted into evidence as State's Exhibit 1-B. Do you recognize these?

A Yes, I do.

Q And what are they?

A It's a pair of red jeans.

Q And are these the jeans described in Item 1?

A Yes, it is, according to my sheet.

Q And were you able -- those marks on there, you said earlier that you go through and you mark potential sources?

A That's correct.

Q And so were those marks on there when you opened those jeans?

A No, they weren't.

Q Did you find any potential evidence on the jeans?

A On this particular item, there were areas that fluoresced that after chemical testing it proved to be not a positive chemical reaction, so those were not submitted.

Q I am now showing you what is labeled as State's Exhibit 1-C. Do you recognize that item?

A Yes, I do. It has my initials on it and the date, the item number and the lab number also.

Q Okay. And what is that.

A The lab number is L101954, Item 2 and my initials L.A.G. and the date is 2/24/10.

Q Would you mind looking inside that bag, without showing the jury, and let me know if you recognize what that is.

A Okay. There is a wrapped item in here, and it is wrapped in a white paper, and the outside has my initials on it.

Q Okay. And would you look inside that paper?
A Yes, ma'am. It is a pair of panties with the color of pink.
Q And did you examine these?
A Yes, I did.
Q And what is your SLED number for that?
A It's Item No. 2. The lab number is L1001954.
Q And did you conduct any tests on these?
A Yes, I did.
Q And what was that?
A I performed the alternate light source test, which shows areas of fluorescents, and I noted the areas that fluoresced. I did a presumptive chemical test, and it proved to prove positive for presumptive testing.
Q Okay. And when you were doing this, did you alter the state of the panties in any way?
A No, I did not.
Q Did you create any subsections for Item 2?
A I created two -- well, one cutting, 2.1. And that area I cut out for submission to DNA for further testing. I also collected possible hair, which is just the trace evidence that could be possibly hair that they could analyze.
Q I'm showing you what's been labeled for identification as State's Exhibit 1. Do you recognize

that?

A Yes, I do.

Q And what is it?

A It's a heat-sealed package, and it has inside of it an envelope, which I had put the trace evidence and possible hair, and also has envelopes for the cutting I submitted to DNA.

Q Okay. Without showing the jury, would you mind looking at those, and let me know if they're in substantially the same condition as when you processed them.

A Yes, they are.

Q And after you did the cuttings which are 2.1 and 2.2, what did you do with those items?

A I took them upstairs to a temporary storage drawer which is locked, and it was -- let me look at my notes here to see which drawer. It was a DNA Storage Drawer 6-D.

Q Okay. And did you analyze the buccal swabs that were submitted in this case?

A No, I did not.

MS. BANNON: No further questions.

THE COURT: Cross-examination.

MR. DEYSACH: Just briefly, Your Honor. Let me see if I have any questions.

I do not have any questions, Your Honor.

THE COURT: You may step down and you're free to leave. Thank you ma'am.

THE WITNESS: Thank you.

THE COURT: Ms. Bannon, you may call your next witness.

MS. BANNON: The State calls Amanda Webb.

THE COURT: Yes, ma'am, Ms. Webb, please come forward. I'm going to ask if you could to place your left hand on the Bible, raise your right hand as the clerk administers the oath.

THEREUPON,

AMANDA WEBB,

after being duly sworn, testified as follows:

THE CLERK: Please be seated. State your name for the Court, please.

THE COURT: Ms. Webb, take your time there and situate yourself in front of that microphone. I'm going to ask you to speak loudly, clearly, and slowly in order that we can hear everything that you've got to say, and I'm going to ask that you start with your full name, please ma'am. Take your time getting situated there. It looks like you've got some stuff here.

THE WITNESS: Thank you. My name is Amanda Webb, W-e-b-b.

DIRECT EXAMINATION

By Ms. Bannon:

Q And where do you work Ms. Webb?

A I work for the South Carolina Law Enforcement Division in the Forensic Services DNA Case Work Division.

Q And what do you do there?

A I'm a DNA analyst.

Q And what kind of training do you have to become a DNA analyst?

A Upon being hired at SLED, I trained for a year and a half under a court qualified DNA analyst. I had to observe, and then participate in the practical examinations. I had to run test samples and also I've taken many proficiency tests and competency tests in which I had to get the correct DNA results in order to maintain my independent ness with doing DNA testing.

Q And what kind of education do you have?

A I have a Bachelors of Forensic Chemistry from Marshall University in Huntington, West Virginia; and I also have a Masters of Forensic Science also from Marshall University.

Q And how long have you worked for SLED?

A A little over three years.

MS. BANNON: And at this point, the State would move to qualify Ms. Webb as a DNA -- an expert in DNA

analysis.

THE COURT: Any query with regard to her qualifications?

MR. DEYSACH: No, Your Honor.

THE COURT: All right. She's so qualified. And she will be allowed to render her opinions in the area of DNA analysis. And I've explained to you how to evaluate expert testimony previously, and at the conclusion of the trial, I will charge you in detail with regard to how to evaluate an expert witness's testimony.

Ms. Bannon, you're recognized.

By Ms. Bannon:

Q Ms. Webb, are you familiar with your department's report number L11954?

A Yes, I am.

Q And do you know what that is concerning?

A Yes, that was a sexual assault case with the Minor and suspect Anthony Linton.

Q And did you perform any DNA analysis in this case?

A Yes, I did.

Q What items did you analyze?

A I analyzed a pair of panties from the victim, and also some known standards from the suspect and victim. Known standards meaning when you have a victim or a

suspect you get a known DNA sample from them in order to compare to any DNA profile that might be developed from evidence, and the known standards that are collected are swabs from the inside of the cheek. It gets the cheek cells on a sterile cotton swab, and so we know that that DNA profile belongs to that person and we can compare it to any DNA profiles that have been developed from evidence.

Q Okay. And so you had these two knowns, and did you compare them to anything?

A Yes, I did. I was able to develop a DNA profile from a cutting from the victim's panties and the DNA profile from these panties was a mixture of at least two individuals.

MR. DEYSACH: Your Honor, I'm objecting on the basis -- it's the -- the same basis I made the objection on earlier that the evidence hasn't been admitted.

THE COURT: All right. Might counsel approach the bench for just a moment.

(WHEREUPON, there was a bench conference out of the hearing of the jury and the Court Reporter.)

MS. BANNON: Permission to approach the witness, Your Honor?

THE COURT: Yes, ma'am.

///

By Ms. Bannon:

Q All right. Ms. Webb, I am showing you what's been labeled as State's Exhibit 3. Do you recognize this?

A Yes, I do. It's the buccal swab, the known standard, the swab from inside the cheek, from Anthony Linton, and I can tell because of the labeling on the outside of the packaging; and also it has the SLED case number and the item number, and it also has the date and my initials of when I analyzed this known standard.

Q And does that appear to be in the same or substantially the same condition as when you sealed it?

A Yes, it does.

Q And in your analysis, did you assign that a value of Item 3?

A Yes, that's correct.

MS. BANNON: At this time, the State would move State's Exhibit 3 into evidence.

THE COURT: Any objection from defense?

MR. DEYSACH: No, Your Honor.

THE COURT: All right. It's into evidence without objection from defense.

(State's Exhibit No. 3 was entered into evidence.)

MS. BANNON: Permission to publish?

THE COURT: Yes.

By Ms. Bannon:

Q Would you mind opening that bag and showing us what those are --

A If I may put on some gloves. I brought some gloves with me. I also put on gloves, common practice. It keeps me from getting on the evidence and the evidence from getting on me.

See, this is a common thing that I see in the lab. It's a box, a swab box and it contains cotton swabs. This would be what was used to swab the inside of the cheek to get the DNA sample that I know is from -- for this item it would be from Anthony Linton.

Q I am now showing you what's been labeled for identification as State's Exhibit 2. Do you recognize that item?

A Yes, I do. It is a known standard, buccal swabs from the Minor in the case, Minor . And again, I can tell from the SLED lab number, the item number, date, and initials of when I did the analysis.

Q And would you mind opening that, looking at that and telling us if that's in the same condition as when you received it?

A Yes, it also has an investigator's seal and my seal on each end of the bag. So did the last item. And

again, it's two cotton swabs, again collected from the inside of the cheek of the victim.

MS. BANNON: At this point, the State would move State's Exhibit 2 into evidence.

THE COURT: Any objection from defense?

MR. DEYSACH: No, Your Honor.

THE COURT: It's in evidence without objection from defense.

(State's Exhibit No. 2 was entered into evidence.)

By Ms. Bannon:

Q And did you assign State's Exhibit 2 a lab number for your analysis?

A Yes. That was Item No. 4 from my analysis.

Q Okay. I'm know showing you what's been labeled for identification as State's Exhibit 1. Do you recognize that?

A Yes, I do. I can tell from the notes I have that this is the underwear from the victim. I can tell from the SLED lab number and the container number for this heat-sealed pouch, which the underwear was in. And then also there is another heat-sealed pouch. I did not receive the complete pair of underwear for testing myself. I received a cutting, which the DNA evidence technician, Lori Giles, who just testified, she made the

cuttings, sent the cutting to me, and that's what I received and that's this pouch, which I can see my initials and the date on and it's my Item 2.1.

MS. BANNON: Okay. At this point, the State would move State's Exhibit 1-D into evidence.

MR. DEYSACH: That is the underpants, Your Honor?

MS. BANNON: Yes.

MR. DEYSACH: I do have an objection on chain of custody grounds.

THE COURT: Okay. Might you approach the bench.

(WHEREUPON, there was a bench conference out of the hearing of the jury and the Court Reporter.)

MR. DEYSACH: Your Honor, my objection was based on lack of sufficient chain of custody for this item.

THE COURT: Very good. Your objection is noted but overruled.

Yes, ma'am?

(State's Exhibit No. 1-D was entered into evidence.)

By Ms. Bannon:

Q Would you mind opening what's been labeled for identification and now admitted as State's 1-D, the panties, and showing them to the jury?

A 1-D, you said?

Q 1-D.

A Would you like for me to step down?

Q Yes, ma'am.

(The witness is showing the jury the exhibit.)

THE WITNESS: This was Item 2 that was tested. I got the cutting from the crotch area from my assistant.

By Ms. Bannon:

Q Contained within State's Exhibit 1, do you see the cuttings?

A Yes, I do. It's State's Exhibit 1-E, I believe.

Q And would you open it without showing it to the jury right now and just let me know if it looks to be in the same or substantially the same condition as when you got it?

A Yes, it does.

MS. BANNON: At this point, State would move State's Exhibit 1-E into evidence.

MR. DEYSACH: Your Honor, I would also object to introduction of this item based on back of sufficient chain of custody.

THE COURT: Your objection is noted, but overruled. It's into evidence.

By Ms. Bannon:

Q Would you please show us that?

A This is the area of the underwear that I received for my testing. As you can you see, I cut some holes in

the underwear, and those are the areas that I did my testing.

Q Are there other items within that bag?

A Yes, there are. There is a State's Exhibit 4-A, and that is my item No. 2.2, which is debris from the panties. It's common practice for DNA analysis to also look for hairs that might be in the panties. There's always a possibility of transfer of pubic hairs or head hairs from any potential perpetrator to a victim, so we like to look for hairs.

There were a few hairs found in this instance, but they weren't suitable for DNA analysis and what that means is for my DNA analysis, I'm required to have a root from the hair. You know, when you pull your hair you see that white tissue material, the root. In this instance, none of the hairs had any roots, so I couldn't do a DNA test on it.

Q And looking at that item, does that look to be in the same or substantially the same condition?

A Yes, it does.

MS. BANNON: At this time, State would move State's Exhibit 4 -- is it A?

THE WITNESS: A.

MS. BANNON: -- into evidence.

MR. DEYSACH: Subject to the same objection as to

the chain of custody that I made as to the last two items, Your Honor.

THE COURT: Your objection is noted, but overruled, it's into evidence.

By Ms. Bannon:

Q Ms. Webb, is there a sticker on the outside of that smaller bag?

A Yes, there is. It has the SLED lab number and then also a container number. So the container number is basically everything that's in this heat-sealed pouch. So it would be the hairs, and the cutting from the crotch of the panties is considered to be in Container B in this instance.

Q And is that labeled State's Exhibit 4?

A Yes, it is.

MS. BANNON: At this time the State would move State's Exhibit 4 into evidence.

MR. DEYSACH: Same objection, Your Honor.

THE COURT: Your objection is noted, but overruled.

By Ms. Bannon:

Q Within State's Exhibit 1, do you see a bag labeled 1-C?

A Yes, I do.

Q And what is that?

A That is the whole underwear, not the -- minus the cut that was taken from the crotch, but the underwear itself.

Q So is the bag holding what's been labeled and admitted as 1-D?

A Yes.

MS. BANNON: At this point State would move State's Exhibit 1-C into evidence.

MR. DEYSACH: I understand this is just the bag, Your Honor? Just the bag?

MS. BANNON: Yeah, they're just labeled separately.

MR. DEYSACH: No objection.

THE COURT: It's into evidence without objection.

(State's Exhibit No. 1-C was entered into evidence.)

By Ms. Bannon:

Q All right. So once you have all this evidence, Ms. Webb, what do you do with it?

A Well, in the case of a sexual assault, we often look for body fluids, specifically semen; so that is the first step that I do with any type of sexual assault evidence. And that's what I did for the cuttings from the crotch of the panties and my chemical -- it's just a chemical test. It's a color reaction, and it was

positive for semen; and so then once I get a positive identification for semen, I then attempt to try and develop a male DNA profile.

And I did perform DNA analysis on the cutting from the panties and I was able to develop a DNA profile. I developed a mixture of DNA profile. What that means is that I found more than one person's DNA on that item. I was able to tell that one person had donated more DNA to the item than the other and that's what I call the major contributor. In this instance, the major contributor was the Minor . And that's understandable because it makes sense in that if it's her underwear and she's been wearing them that she would have her own DNA on her underwear.

And then the second individual, I developed a partial DNA profile, meaning I wasn't able to get DNA in every location that we use in forensics. I test sixteen different locations for DNA and if you have a complete profile, that means that I was able to find DNA at all sixteen locations. I wasn't able to find it at all sixteen locations in this instance, but I was able to find enough DNA, male DNA, to confirm a match.

So the minor contributor of DNA to the item, to the panties matched the DNA profile of Anthony Linton.

Q So this mixture of DNA that you found, on what

item did you find that?

A That was from my Item 2.1. I'm sorry, I don't remember the State's Exhibit. It was the crotch of the panties, the cutting that I received.

Q Okay. And so the major contributor was Minor . And could you tell what type of fluid Mr. Linton's DNA came from?

A I can't tell exactly what type of fluid the DNA came from. The only fluid that I did test for the presence of was semen and I did find semen.

Q And so can you tell what type of fluid Minor a's DNA came from?

A No, we don't do any type of testing for like skin cells or anything such as that. It was probably skin cells since she was wearing them, and her skin cells she had on the panties.

Q And you said that you found a mixture of DNA?

A Yes, that's correct.

Q Is it common to get a full profile for the minor contributor?

A Sometimes. It depends on the amount of DNA that's been deposited, the amount of semen that's been deposited. Also, sometimes -- sometimes the major contributor can donate so much DNA that they sort of mask or cover up the minor contributor's profile because they

might share some DNA, so it looks kind of the same; and so it might mask it a little bit, so I might not be able to kind of determine a full profile for the minor contributor.

Q But here you're able to develop a profile?

A Yes, correct.

Q And with the profile you've developed, you're able to come to a conclusion?

A Yes, that's correct.

Q And are there standards by which you come to these conclusions?

A Yes, there are. We're also required to do a statistical analysis any time that we find a match between an individual and any evidence items. And in this case, I was able to say that the minor contributor on these underwear matched Anthony Linton.

And then the statistical value would be the probability of randomly selecting an unrelated individual having a DNA profile matching the minor contributor to this item is approximately one in 60,000. Basically what that means is that if the DNA was left from someone other than the suspect, other than from Anthony Linton, the probability, the chance that you were to go pick someone at random and his DNA just also happened to match the evidence, would be one in 60,000.

The number would have been -- it's basically how rare a person's DNA profile is, is what it is. So if you were -- like I said if his didn't match the evidence, it just so happened -- if someone else had left it, it would be one in 60,000 if you picked someone at random.

Q So that number has nothing to do with how sure you are of the match?

A That's correct. It's more of how rare the profile that I develop from the evidence is.

Q So the profile did match the known standard to Anthony Linton?

A Yes, that's correct.

Q Okay. Thank you.

MS. BANNON: Beg the Court's indulgence.

Please answer any questions Mr. Deysach might have for you.

THE COURT: Mr. Deysach, cross-examination.

MR. DEYSACH: Thank you, Your Honor.

CROSS-EXAMINATION

By Mr. Deysach:

Q Good morning, Ms. Webb?

A Good morning.

Q I want to ask you about what measures you take in the lab -- and this is a lab, correct, that you work in?

A Yes, correct.

Q Is it a sterile environment?

A Yes. We take many precautions as far as cleaning with bleach, bleach/water solution, because bleach will kill any residual DNA -- cleaning with that between each item, each case; wearing gloves like I had on earlier; lab coats; making sure that evidence from one case -- only evidence from one case is opened at one time. I don't have multiple cases out together.

And then we also do a final check between staff DNA profiles, like my profile and my co-workers' DNA profiles. We also check to make sure that we didn't so happenstance to get in the evidence when we were up in the lab.

Q Okay. And so I think you talked about the cleaning, you talked about gloves, you talked about lab coats. Are there any other measures that you take that you haven't mentioned yet?

A Well, the contamination check, checking the staff profiles against it and then also checking any profiles you develop from evidence you were working on at that time, from cross-case comparison to make sure that evidence from one case didn't come into another.

And then also the known standards that we know is from that certain individual, those are worked at a separate time from the evidence. They're worked after.

That way there's no chance to know that you might have accidentally gotten the known standard into the evidence.

Q Right. So you're talking about not having contamination within the same case, that's what you were just talking about right there, right; is that correct?

A Yes.

Q And you also take measures so that evidence from one case doesn't get into the evidence from another case?

A Yes, that's correct.

Q Okay. And what you're concerned about is you getting maybe some of your DNA involved in one of these cases, correct?

A Yes, that's always a concern.

Q Okay. And is it also a concern for the DNA case to get on you?

A Yes. It's also a concern just for safety reasons.

Q Okay. But not for evidence detection reasons?

A Well, it's not good practice to get your evidence around the lab. So we always take measures to contain the evidence in certain areas.

Q When you go from item to item, do you wear the same pair of gloves?

A From item to item in the same case, sometimes.

Q Sometimes? Is there a concern that the DNA from

one item would get on the other item that you handled with the same gloves?

A There's always a concern if that concern is something that would be a common, a common happening for that particular item that you're analyzing, then, yes, I would change gloves in between.

Q Okay. Would -- can you define what secondary transfer is of DNA?

A Secondary transfer is, for instance if someone were to deposit their DNA on a certain surface. Let's go with the example of someone's cut themselves and they're bleeding, and they get their blood on the floor. And then Let's say I come along and don't know it's there and step in it, and then it's on my shoe. So then I walk somewhere else and deposit that blood in a different location. That's an example of secondary transfer. It's -- the DNA wasn't originally deposited there, but it had been moved by some other circumstance and placed in a different location.

Q Is the secondary transfer the blood to the shoe, or the shoe to somewhere else or both?

A Well, both. Secondary I guess would be to the shoe and then tertiary, or third level, to another location.

Q And it is a current concern that you take

precautions in the lab to prevent, correct?

A Yes, that's correct.

Q And when you define secondary transfer, whether or not the person steps in the blood accidentally or intentionally, that's not part of the definition of a secondary transfer, whether it's intentional or unintentional?

A No, that's not part of it.

Q Okay. And whether it's intentional or not, DNA can still be moved?

A Yes, DNA can be moved.

Q Now, when you're doing these tests, you are -- you don't have any background information as to how the evidence was originally collected, do you?

A Sometimes. I do receive incident reports from the investigating officers. So sometimes I do have some -- it depends on the agency and the case whether or not I have any background information as to what is involved with the case and how or where items were collected.

Q Does that impact your test results?

A It's helpful in most cases to have some background knowledge to know where and why items were collected so I know what type of tests to do, so I know what body fluids to look for and what's the best

procedure to use to get a good profile.

Q But there is -- you're not telling this jury that the police have any control over the result that you come to, do they?

A Collection methods could have some control over my results, yes.

Q Okay. I got you.

You testified that you were -- you maintain continuing education to maintain independence? Did you say something like that?

A Yes. Those are the proficiency tests. We get DNA samples sent to us bi-annually from an outside laboratory, and we have to turn our results in and get the correct results in order to maintain our ability to continue to do analysis.

Q And if you mess up on that, then you can't continue doing what your job is, correct?

A That's correct.

Q And you've been passing those tests, obviously, right?

A Yes, that's correct.

MR. DEYSACH: That's all I have, Your Honor.

THE COURT: Any redirect?

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REDIRECT EXAMINATION

By Ms. Bannon:

Q Ms. Webb, did you have any contact with Investigator Baird about this testing?

A Not that I can recall. I do know that I requested -- after I worked the evidence, I requested standards from the victim and the suspect because I didn't have any standards to compare to the evidence, so I know I requested those. I can see that I requested those in the copy of my report. I don't know if I had any phone contact or not.

Q To your knowledge you had no conversation about the direction of your analysis?

A Not that I can recall.

Q And is SLED separate from Beaufort County Sheriff's Office?

A Yes, they are.

Q Thank you.

MS. BANNON: No further questions.

THE COURT: All right. You may step down. And you're free to leave. Thank you ma'am.

THE WITNESS: Thank you.

THE COURT: All right. Mr. Foreman, ladies and gentlemen of the jury, we're going to take a mid-morning break. Once again, do not discuss the case.

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Everyone remain seated as the jury exits the courtroom.

(WHEREUPON the jury left the courtroom at 10:54 a.m.)

THE BAILIFF: Jury is clear and the door the closed, Your Honor.

THE COURT: Ms. Bannon, we have the luxury of time, I'm certainly not rushing. Just for planning purposes, how much longer -- how many more witnesses do you have.

MS. BANNON: Your Honor, I would ask that I have the ability to meet with the court reporter if she would make sure all of our evidence is entered, I believe -- if our records match, that that will be our last witness.

THE COURT: Okay. Very good. What a wonderful time to break. How about that.

All right. And we'll take a break, and Mr. Deysach, I want you to take this time to talk with your client about -- and advise him in great detail with regard to his taking the witness stand. When I come back in, I'm going to engage in a colloquy with him with regard to his right to remain silent and his decision to testify here in this case. If you'll do that.

MR. DEYSACH: Yes, Your Honor. I wonder if it would be the time where we could nail down the

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appropriate convictions that would be -- come into play if he were to testify.

THE COURT: Okay. All right. Why don't we talk about that right now before we break, so that you might have a more effective, informed conversation with your client.

MS. BANNON: Your Honor, I have previously disclosed to Mr. Deysach certified copies of Mr. Linton's convictions. It looks like he has a conviction out of Georgia for robbery by force in 1997; he has another conviction out of Georgia for aggravated assault in 2006; he has another conviction out of Georgia --

THE COURT: What was his sentence on that second one?

MS. BANNON: Two years, concurrent with any sentence currently serving.

THE COURT: Very good.

MS. BANNON: He has another conviction for burglary for which he received five years probation -- ten years suspended to five years probation. It looks like 1997 out of Georgia he has another conviction out of Georgia for burglary, for which it looks like he got a concurrent sentence with the other one in July of 1997 for ten years, suspended to five years probation.

He has another conviction out of Georgia, again,

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July 1997 for burglary with the same sentence. Has another conviction out of Georgia for burglary, again sentence date, July 1997 for the same sentence.

And, Your Honor, I have discussed with Mr. Deysach how comparing Georgia statutes to South Carolina statutes do not appear that these are the same as our burglary second violent or a burglary first, so it does not appear to be life without parole, but you trigger it.

THE COURT: Right.

MS. BANNON: And -- if we reach the sentencing stage.

And I believe his rap sheet shows that he has a contributing to the delinquency of a minor out of Georgia from 1993.

THE COURT: Do we have anything within the past ten years.

MS. BANNON: I believe the aggravated assault's from '06, Your Honor, so that would be within it. And he's, I guess, just finished off serving the sentence on the multiple counts of burglary from Georgia.

THE COURT: Okay. So really we only have one sentenced within the past ten years?

MS. BANNON: Yes, Your Honor.

THE COURT: All right. What is the defense's

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position with regard to the admissibility of these particular convictions.

MR. DEYSACH: Is it's aggravated assault two counts, is that what we have? Everything else is outside of the ten years? I thought it was one aggravated assault that was within the time period.

MS. BANNON: Uh-huh.

MR. DEYSACH: An aggravated assault -- he's charged here with something that is a sexual assault and battery or sexual battery, which is in the same family as assault and aggravator, at least in my mind is indecent liberties of possible aggravator -- it seems like we're a little bit too close in type of crime for that to be admissible. If he were to testify, I think the prejudicial impact would outweigh the probative value, although I think I've mis worded that because in the impeachment part of the rules, it reverses it from Rule 403, making sure that the probative value has to outweigh the prejudicial impact as opposed to the other way around. Not that that's -- it's kind of more a lawyer word technicality kind of thing, but -- I mean if we're talking about for impeachment purposes to tell whether somebody is telling the truth or not, certainly, I don't know what conviction for assault -- an aggravated assault has with truth telling.

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I think what it would be more likely viewed by the jury as propensity evidence. That would be prejudicial for them to make a decision based on that; and for that reason I don't think it should be something that could be delved into if he were to testify.

THE COURT: Okay. What's the State's position?

MS. BANNON: Your Honor, he is convicted of robbery by force. It's a crime of truthfulness, it's a version of theft. Additionally the multiple burglaries and the armed robbery, the date of the ten year window is calculated from the completion of serving the sentence -- ether the release of sentence or the conviction. Here he was under supervision by the State of Georgia for ten years. That would put it at 2007, and that would put all of them within the window of the ten year eligibility for impeachment.

He has a very, very lengthy record, all of which do come up with crimes of truthfulness as impeachment evidence, and the State thinks that they should be admissible as impeachment evidence.

THE COURT: Okay. What is your position with regard to the fact that the time period should be -- should be calculated from the time he finishes his sentence? What's your position on that?

MR. DEYSACH: The -- I think the rule -- it's

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right here, and I think since the date of the conviction or the release of the witness from the confinement imposed for that conviction, so it's not -- as I read the rule -- I'm looking at Rule 609, the time limit, evidence of conviction under this rule is not admissible if more than ten years since the date of conviction or of the release of the witness from the confinement imposed for that conviction. I think what we're saying is he may have been on probation within the last ten years, but not -- I'm taking the word confinement to be incarceration, therefore, it wouldn't stretch into the ten years.

I think there's also some discussion about whether or not these are crimes of dishonesty not subject to the time limit, but Let's not deal with everything all at once, I guess. So I'll just -- we'll just deal with what I just said the time limit. It has to be prison, not the end of probation.

THE COURT: Okay. Well, would -- is there any specific -- do you have any specific case law that says that probation is not confinement?

MR. DEYSACH: I do not.

THE COURT: Well, it does curtail your liberty to some extent, wouldn't you agree?

MR. DEYSACH: You have to get -- I would agree

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that you have to get permission in order to travel.

THE COURT: Right.

MR. DEYSACH: But you do not -- you're not prohibited from doing that.

THE COURT: All right. And my question specifically to you is, is there a case that says probation is not confinement with regard to this particular issue that we're talking about here today about the admissibility of this conviction?

MR. DEYSACH: I'm not aware at this time of a case that says either way.

THE COURT: Okay. And how about the State?

MS. BANNON: Your Honor, probation, you're under state supervision. That's what we call it. If they had meant incarceration, the writers of the rule would have said incarceration. And I'm not aware of a case that says that probation is not custody. So...

THE COURT: All right. Anything further, Mr. Deysach?

MR. DEYSACH: Just briefly in response, I think if the rule writers had meant to say supervision or probation they would have said that. It's kind of a --

THE COURT: So it is an ambiguity so it needs to be interpreted; wouldn't you agree.

MR. DEYSACH: I don't find the word confinement

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to be that ambiguous. I think that the common meaning of the word means locked up, personally, but I think reasonable minds could differ on that point.

THE COURT: Okay. Very good. All right. All of these burglaries, it sounds like they were the same course of conduct, they were all in '97 and there were a series of them?

MS. BANNON: Actually, Your Honor, they all pled -- I was looking at the sentence date when I read that to you. The armed robbery happened -- it happened in July of '97. I think what had happened is he was doing these and then got picked up --

THE COURT: It was all one sentencing event?

MS. BANNON: Exactly, Your Honor. The aggravated assault appears to happen in '05 -- yeah, the burglary happened in March of '97 so he had a bunch of crimes, and I think they just wrapped it up together into one.

THE COURT: All right. What do you think about the argument that the conviction for aggravated assault is too close in -- factually too close to the present crime, and therefore, would be propensity evidence that would be unduly prejudicial? What do you think about that Ms. Bannon?

MS. BANNON: Your Honor, reading the indictment, which again was previously disclosed to Mr. Deysach, it

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looks like he assaulted -- it said Anthony Linton and Kevin McCastle, the County and State of Forsyth, on October 2nd, 2004, did unlawfully make an assault by violent injury upon the person, Antonio Louis. The said used hands and feet as a deadly weapons in the manner used by intentionally hitting and kicking Antonio Louis.

It sounds like they got into a fight. It sounds like it was an adult, so it doesn't sound anything like an assault -- a sexual assault on a six-year-old.

THE COURT: Okay. Well, really the conviction -- we're not going to try the event, we're not going to talk about that, but just by virtue -- what's going to be put before the jury if I were to rule it were to be admissible would just be the charge itself. Once again, what do you think about that being more toward propensity and unduly prejudicial? That's his argument. I'm asking your response in that regard.

MS. BANNON: Your Honor --

THE COURT: You know, I understand what you're saying is not indecent liberties, it's not a criminal sexual conduct which pled down to aggravated assault. The jury is not going to hear that. If I rule that it's admissible, you'll be able to say, Isn't it true that you were convicted of aggravated assault in 2000 -- whatever it is, 2005 or whatever it was.

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MS. BANNON: Your Honor, we could always scrub it to, Isn't it true that you're a convictions felon. We don't even have to get into the details of what he was convicted of. And that would then take away the propensity argument, and just go to the absolute value of the purpose of that, which is impeachment, and go on to show whether or not he's prone to lie.

THE COURT: Okay. All right. What is the defense's position with regard to that? Because I'm really inclined perhaps to not allow the aggravated assault for the propensity issues, however, I'm more inclined to allow the older offenses. I'm going to allow them because he did not complete his probation -- it's within the time period when you take into consideration the probation. What's the defense's position on that? And would the defense -- if I were to -- if that were to be my ruling, would the defense agree and consent to a convicted felon?

MR. DEYSACH: I would not agree and consent to his being referred to as a convicted felon. I think that we look at the crime, and we figure out whether or not it should be admitted or not, it's your decision. I think to call him a convicted felon allows the jury's mind to run wild. And so that, again, I think, would land us in the propensity evidence, the propensity scenario, where

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they might think on the propensity, Oh, he's a felon already; or make a decision on the case somewhere outside the law and the facts because, Oh, well, he's already a felon, because the word felon does have such a stigma to it.

THE COURT: Very good. All right. Ms. Bannon, were regard to the offenses that took place in Georgia, list those again, what they are. There are a number of burglaries and armed robberies; is that correct?

MS. BANNON: Yes, Your Honor. It was an armed robbery that is knocked down to robbery by force.

THE COURT: Right.

MS. BANNON: Then the aggravated assault, which Your Honor knows about.

THE COURT: What I'm asking about are the ones in Georgia.

MS. BANNON: All these are in Georgia.

THE COURT: Oh, every -- all those -- everyone of them are in Georgia. Okay. Very good.

Well, I'm asking about those in the one sentencing event --

MS. BANNON: That would be the armed robbery in the sentencing event, so the robbery by force, it was pled down to; one count of burglary --

THE COURT: And there are a number of burglaries,

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right?

MS. BANNON: Two counts of -- the counts are two, another count, so three burglaries right now; four burglaries -- so four burglaries and a robbery by force is what he pled to that he was on probation for the ten years, Your Honor.

THE COURT: Okay. All right. I'm not going to allow the aggravated assault because I think it's too close factually to what we have here. I think it would be unduly prejudicial. However, I am going to allow -- if he testifies, I'm going to allow the one burglary and one -- whatever the armed robbery was and that will be it. It will be one burglary and one armed robbery, same sentencing event.

Anything further?

MR. DEYSACH: Yes, Your Honor, I did want to clarify. The armed robbery is actually a robbery by force that was pled down. It's my understanding that they would ask about robbery by force and we wouldn't refer to it as the armed robbery.

THE COURT: Right. Very good. Whatever the conviction was.

MR. DEYSACH: Would --

THE COURT: Robbery by force and a burglary.

MR. DEYSACH: Correct. As to the burglary, I

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understand that you're saying, Well, no reason to do all four, it should just be one.

THE COURT: Right.

MR. DEYSACH: That's what your ruling is. I want to put on the record my objection to even that one burglary coming in because the probative value would be outweighed by -- the probative value would not outweigh the prejudicial impact because the idea, you know, burglary is one where the home is violated. This happened in the confines of a home, that's where people's children are and that the understanding that he has a burglary on his record or that he is a burglar would again land into some propensity evidence.

THE COURT: I disagree. And so in the event he testifies -- makes a decision to testify, we'll do the one robbery by force and one burglary, and it would be referred to that way, not armed robbery. All right.

And if you can take this opportunity to discuss with your client his decision to testify and I'll speak with him momentarily.

MR. DEYSACH: Thank you, Your Honor. I am going to run to the restroom.

THE COURT: Very good. We'll stand at ease for five minutes.

(WHEREUPON a recess was observed.)

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THE COURT: I wanted to sort of reiterate my decision with regards to the convictions, and I've taken into consideration the elements that State vs. Howard sets out for whether or not to admit prior criminal history. And one of the things that I've taken into consideration is that clearly the burglary is indeed a crime of moral turpitude, and the armed robbery to some extent is a crime of moral turpitude; and it does indeed have impeachment value and although it took place a considerable amount of time ago, the sentence was not completed until here recently.

In addition to that, although I'm not going to allow the most recent criminal conviction into evidence, it does indicate that the defendant's criminal history is an ongoing criminal history. I've taken into consideration the fact that the burglary is not so close -- the burglary and the robbery by force is not so close in -- so close factually that it would lend itself to propensity evidence; and the other thing is that this is a case that involves credibility, and I think that these crimes do lend themselves to credibility, and I think that it is probative in that particular sense.

So bear with me just one moment.

Mr. Linton, I'm going to ask if you could stand right where you are and let the clerk administer the oath

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defendant.

THEREUPON,

ANTHONY G. LINTON,

after being duly sworn, testified as follows:

QUESTIONING OF THE DEFENDANT

THE COURT: Mr. Linton, at this time I'm going to explain to you certain of your rights. If you do not understand anything I say, please let me know. If you want me to explain anything in more detail, please let me know as well.

Do you understand?

MR. LINTON: Yes, sir.

THE COURT: We have now reached the stage of the trial where you may present your defense. You have the right to claim the protections given to you by the Fifth Amendment to the Constitution of the United States of America, which provides in relevant part, No person shall be compelled in any criminal case to be a witness against himself.

This means that you cannot be required to testify in this case. You have to right the testify in your own behalf, however. However, no one can make you testify. This is a personal right and no one can waive this right except you.

Do you understand that?

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MR. LINTON: Yes, sir.

THE COURT: If you decide to testify, you'll be subject to the same rules that govern other witnesses and you may be examined and cross-examined on any relevant issue in this case. In addition, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than one year and this Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to you, the solicitor will be able to introduce your record to attack your credibility.

We have discussed that in the event you testify, I'm going to allow the State to bring before the jury the fact that you have a conviction for robbery by force and one offense of burglary.

Do you understand that?

MR. LINTON: Yes, sir.

THE COURT: All right. If you decide to testify, this decision on your part must be freely, voluntarily and intelligently made with knowledge of the protection given to you by the Fifth Amendment and the consequences of your decision to testify. If you decide not to testify, I will instruct the jurors that they cannot give the fact that you did not testify any consideration whatsoever and there is to be absolutely no prejudice to

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you because you did not testify.

As a matter of fact, I'm going to instruct the foreman to enforce that rule in the jury deliberation process, that they not even discuss the fact that you did not testify.

It's left entirely up to you whether or not you testify. You may talk with your attorney, your family, friends, or anyone else but the final decision will be left entirely up to you.

Do you understand what I've explained to you, Mr. Linton?

MR. LINTON: Yes, sir.

THE COURT: All right. Do you have any questions about what I've explained to you.

MR. LINTON: No, sir.

THE COURT: Have you discussed with your lawyer whether you should testify or not testify?

MR. LINTON: Yes, sir, I have.

THE COURT: Have you understood all your conversations with him?

MR. LINTON: Yes, sir.

THE COURT: Do you need any additional time to confer with him?

MR. LINTON: No, sir.

THE COURT: All right. Do you wish to testify?

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MR. LINTON: No, sir.

THE COURT: Very good. All right. You may be seated.

All right. We're ready for the jury.

MS. BANNON: Your Honor, in reviewing the items with the court reporter, I note one item has not been admitted. It's labeled 1. It's the bag that contains all the sub items, and they've all been admitted. So the State would ask to move Item 1, the bag, into evidence at this time.

THE COURT: Any objection to --

MR. DEYSACH: I don't have an objection to that.

THE COURT: All right. Very good. That's in evidence without objection from defense.

Ms. Bannon, I'm going to recognize you, and if you're in a position to rest, you can do so and then we'll take a break and then we'll hear motions.

THE BAILIFF: Jury is entering, Your Honor.

(WHEREUPON the jury entered the courtroom at 11:31 a.m.)

THE BAILIFF: Jury is seated, Your Honor.

THE COURT: Ms. Bannon, you're recognized.

MS. BANNON: Thank you, Your Honor. At this time, the State would rest.

THE COURT: Very good.

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Mr. Foreman, ladies and gentlemen of the jury at this time, the State has rested. They have completed all the presentation of their evidence in this case and I am required to take up matters of law outside of your presence. So we're going to ask that you recess for lunch, and be back at 1:30, 1:30 sharp. Do not discuss the case, do not do any independent investigation and proudly wear those badges in and out of the courtroom. Thank you very much.

(WHEREUPON the jury left the courtroom at 11:33 a.m.)

THE BAILIFF: Jury is clear, door is closed, Your Honor.

THE COURT: I'll be glad to hear motions at this time.

MIDTRIAL MOTIONS

MR. DEYSACH: Your Honor, at this time, I would renew any and all objections that I made during the trial and before the trial, the pretrial motions. I would also like to make a motion for a directed verdict in this case. I think when you take the evidence in the light most favorable to the State that they have not produced enough evidence to satisfy the elements of the case, specifically identity in that the -- Minor was unable to identify the perpetrator in court, that she did

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not -- she looked over at Mr. Linton, was asked if she could identify the person who had done this to her, and she was unable to identify him. And so for that reason and any other reason for which the State may not have satisfied their obligations to meet the offense, I move for a directed verdict.

THE COURT: Let me ask you -- you know, there are a number of different occasions where someone is a victim of a crime where they can never identify the perpetrator, and do you think that that's absolutely necessary that the victim be able to identify the alleged perpetrator?

MR. DEYSACH: In every case, obviously not. My position would be that in this case it would be required, that the victim testified that -- you know, in a case where there's a mask or where the victim isn't present, or doesn't have an opportunity to view the perpetrator, that wouldn't be required, but in a case where that hasn't occurred and the victim is to have known and known well the perpetrator and they weren't hiding their identity, I think it would be required.

THE COURT: All right. Well, what do you think about the circumstantial evidence with regard to DNA and the fact that the young victim's brother was able to identify him in the act?

MR. DEYSACH: The -- I know it's not your job to

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weigh in on the weight of the evidence, but the young victim's brother does indicate that he was looking under a door to see this, which seems somewhat implausible. Certainly when you're talking about child witnesses, even though they've been deemed competent to testify, doesn't mean that they're also something that should be relied upon. As for the DNA evidence, it would be one thing if it were collected more simultaneously with when it was supposed to have been deposited there. In this case it was some 24 or so hours later. So I would say it wouldn't rise to the level.

THE COURT: Okay. I'll be glad to hear from the State.

MS. BANNON: Your Honor, under the defense's theory, we could never, never prove a murder beyond a directed verdict. Beyond that, Minor did state "Meat," and we did have other witnesses who identified who Meat was. We had Carla Griffin saying that Mr. Linton was a person who was left in the sole custody and care of the children, and we did have Samuel also saying it. So it overcomes the burden required for a directed verdict.

THE COURT: All right. I do think that it's a factual question for the jury, and taking the evidence in light most favorable to the State without regard to the weight of it, I think that they have met their burden to

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overcome a motion for directed verdict.

Anything further from defense?

MR. DEYSACH: No, Your Honor.

THE COURT: Okay. Might I inquire -- it's not absolutely necessary that you make a decision now, but do you have an idea as to how many witnesses you might call?

MR. DEYSACH: Probably none, Your Honor.

THE COURT: Okay. Very good. Well, all right. And you certainly are going to have the time over lunch to make that decision, and talk with your client about it, but in view of the fact that there's a possibility that we might proceed forward after lunch with closing statements, it might be appropriate for us to entertain requests to charge at this time.

MR. DEYSACH: Yes, Your Honor. Begging the Court's indulgence.

THE COURT: It's not necessary that you submit any, but if you do, I'll be happy to hear from you now.

MR. DEYSACH: And certainly, I think there's always a list of charges that are appropriate in any case where you're talking about direct evidence --

THE COURT: I've got that. I'm just asking if there's anything special you want me to --

MR. DEYSACH: -- different offenses -- you know, I don't think that -- my mind does turn to lewd act, but

I'm not convinced that that's a lesser included in this case. If penetration weren't proven -- if there were evidence that the injuries to Minor were simply surface injuries as opposed to injuries of penetration that that would mean a lewd act would have occurred. But I'm not sure if that's a lesser included, and that's something I would have to make sure of.

THE COURT: Well, if you -- I'll entertain any requests to charge in that regard.

Ms. Bannon, any specific requests to charge on behalf of the State?

MS. BANNON: No, Your Honor.

THE COURT: Well, let me -- now might be an appropriate time for us to have a charge conference. I'm going to tell you essentially what I'm going to charge. I'm going to explain to them in great detail that the indictment is not evidence, can't be considered as evidence. It's merely the document that starts the criminal proceeding.

I'm going to charge in great detail the presumption of innocence. I'm going to charge reasonable doubt and -- it's the longer version of reasonable doubt we're all familiar with. I'm going to charge the duties of the judge and jury, standard stuff; direct and circumstantial evidence, I'm going to charge that. I'm

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going to charge credibility of witnesses, how to evaluate expert witnesses, we've had two expert witnesses testify; the failure of the defendant to testify.

There -- I'm a little bit equivocal in this regard: There does seem to be some instances where there's a prior inconsistent statement. I think there are some questions about that. There was some use of documents with witnesses.

What is the State's position as to whether or not a charge on prior inconsistent statements is appropriate?

MS. BANNON: Your Honor, I do not think it's appropriate. I think it -- I don't even remember -- I remember side conferences talking about some prior inconsistent statements, but I don't remember it coming up in the testimony.

THE COURT: Okay. What is the defense's position?

MR. DEYSACH: Might I hear what the charge would be.

THE COURT: Well, it just says that the jury is to determine whether to believe the prior statement or the one that was given here in court, and it's solely left up to them to make that determination. I think when you were talking with Officer Baird there was some equivocation about whether or not something was

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previously said or questions that were asked.

MR. DEYSACH: Of Mr. Linton?

THE COURT: Right.

MR. DEYSACH: I think that the -- I think that the charge would be appropriate, Your Honor. I would ask that you charge it.

THE COURT: Okay. And is there any objection to my charging that?

MS. BANNON: No.

THE COURT: Very good. All right. I'm going to charge the law with regard to the statement of the defendant that talks about how they're to evaluate the statement of the defendant and explain that I've determined that the statement is admissible, but the ultimate voluntariness of it is left up to the jury to determine, and if they find that it is not freely and voluntarily given, then they are to give it no consideration whatsoever.

I'm going to explain the law with regard to how to evaluate the testimony of a child, and charge first-degree criminal sexual conduct with a minor. My initial impression is that it's either this or it's nothing at all. Either he did it or he didn't. I think the testimony is overwhelming that there was penetration. I think that everyone is -- all the evidence is

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consistent with that. Either he did it or he did not do it. And I think there is battery that was mentioned, and it's unequivocal that there was testimony with regard to penetration. And my initial impression is that I'll only charge first-degree criminal sexual conduct with a minor.

And I'll be happy to entertain any argument with regard to whether or not there is any lesser-included offense that would be appropriate.

And what does the defense say about that?

MR. DEYSACH: Well, lesser included -- my mind first goes to lesser-included offenses to criminal sexual conduct first-degree that exist.

THE COURT: Right.

MR. DEYSACH: You know, and trying to figure out how many of those are there really out there. I think that -- you know, obviously, second degree doesn't really fit because it's just as to the age of the child.

THE COURT: Right.

MR. DEYSACH: I think that when this was charged, before we had -- it was before the new omnibus crime bill. I think that there -- whether or not an assault and battery of a high and aggravated nature is a lesser-included offense is -- I think it is a lesser-included offense, and that the jury could find him guilty of that instead.

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THE COURT: Okay. What's the State's position in that regard?

MS. BANNON: The State would oppose charging the lesser included. It's an all or nothing thing.

THE COURT: All right. Well, why don't y'all -- if he can find any law or any persuasive authority more than you think it's a lesser-included offense and ought to be charged, I'll be happy to entertain that. But as it stands now, my initial idea is that it's first-degree criminal sexual conduct with a minor or nothing. And -- but I will hear from you before we proceed forward with arguments.

And under these circumstances, the State goes first.

MS. BANNON: I have a question about that, Your Honor. The defense did offer impeachment evidence and under State v Pinkard, the Court has stated that any evidence such as a defendant merely showing a tattoo, obviously one cannot enter a tattoo into evidence, does waive last closing to the defense.

THE COURT: I disagree, but you're protected on the record. You'll go first.

And would you like to be heard on that, Mr. Deysach?

MR. DEYSACH: Not if you've already ruled and

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what I would argue for, so I don't think there's a need.

THE COURT: All right. Very good. All right. Can -- anything further from the State?

MS. BANNON: No, Your Honor.

THE COURT: Anything further from defense?

MR. DEYSACH: No, Your Honor.

THE COURT: All right. We'll stand at ease until 1:30.

(WHEREUPON a recess was observed for lunch.)

THE COURT: Anything from the State before we proceed?

MS. BANNON: No, Your Honor.

THE COURT: Anything from defense?

MR. DEYSACH: No, Your Honor.

THE COURT: All right. Mr. Deysach, I'm going to come back in. I'll recognize you and allow you to indicate whether or not you're going to rest or go forward with closing arguments. Then, in the event there is no evidence to be presented, I'll recognize Ms. Bannon. Does that sound fair enough?

MR. DEYSACH: Yes, Your Honor.

THE COURT: Very good. All right. We're ready to proceed.

As far as the length of the closing arguments, I'll let y'all be guided by the spirit of reasonableness.

There will be no limitations, whatever feels appropriate.

THE BAILIFF: Jury is entering, Your Honor.

(WHEREUPON the jury entered the courtroom at 1:32 p.m.)

THE BAILIFF: Jury is seated, Your Honor.

THE COURT: Thank you. Mr. Foreman, ladies and gentlemen of the jury, thank y'all for being here and thank you for being here on time.

Mr. Deysach you're recognized.

MR. DEYSACH: Thank you very much, Your Honor. At this time the defense rests.

THE COURT: Very good. All right.

Mr. Foreman, ladies and gentlemen of the jury, the evidence has been completed in this trial, and at this time, the lawyers are going the have an opportunity to engage in what's called closing arguments. They're very similar in form to the opening statement, however, they're truly argumentative at this point because all the evidence is in.

These lawyers are very fine lawyers and they've spent a lot of time with this case and given it a lot of thought, and they have a lot of insight into the facts and the inferences to be drawn from that.

What they say is not evidence. However, it will aid you immensely in your deliberation process. I'm

going to ask, if you could, to pay very close attention.

Ms. Bannon, you're recognized.

MS. BANNON: May it please the Court?

THE COURT: Yes, ma'am.

CLOSING ARGUMENTS

MS. BANNON: I'm not going the apologize for what we've been talking about for the past two days. Granted it's uncomfortable, but there's a reason we have to talk about it. There's a reason we have to talk about semen being found in a six-year-old girl's panties. There's a reason we have to talk about someone performing sex on a six-year-old, a reason we have to talk about an adult shoving his adult penis in a six-year-old's vagina. And that reason we have to talk about it and feel slightly uncomfortable as adults is because this man, Anthony Linton, decided to do all of those acts on that six-year-old child. So I'm not going the apologize about what we've had to talk about.

Anthony Linton, Anthony Glenn Linton, Meat, Dad, husband, boyfriend, molester. Anthony is a lot of things to a lot of people, but today, he is guilty.

He is truly a wolf in sheep's clothing. He is manipulative and he uses people's emotion and their character against them. He found the perfect target in Carla Griffin. She's not a good mom. Her selfishness

and apparent lack of all motherly motivation made her the perfect target for someone like Anthony Linton. He could come in, be a role model to these kids, gain their trust, have unfettered access to these children.

One thing for all of Carla's faults that Carla did right was call that cop. To call the cop, Investigator Kaminski, that night when her six-year-old child and her eight-year-old child told her what happened. Whatever her motivation was before or after that doesn't matter. For once she did the right thing.

It was posed by the defense that maybe Carla created this whole scheme up to spite. Think about what you heard. Does it sound like she was wanting for male companionship? She is married, has other guys, and she has this guy. Does it sound like Mr. Linton is wanting for companionship? He's married had other girlfriends. Judge her character and what she said. Does it really seem possible that she could create in thought, create physical injuries on her six-year-old child, convince, not one, but two of her children to continue propagating a lie for two years; collect her child's DNA, put it in her child's panties; collect Linton's DNA, mix it around in those panties; then take her to be examined, create those injuries on that six-year-old child; and have all this work out masterfully? Does she really seem like

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someone that focussed on detail and attention to you?

What we've seen over the past few days are two children dealing with adult problems. Samuel explained everything he saw, and has had to process since he saw Anthony Linton rape his sister, take her into another room and continue to violate her. He also heard the defendant threatening his sister with death. What do you think that does to an eight-year-old big brother to hear that, see that, and be helpless, hiding, afraid, knowing your mom's not going to be home, afraid because you know your brother had to be rushed to the hospital.

Think about it. The beauty of the jury is that you get to combine your experiences, common sense and what you hear and you see. Think about a mobile home. Samuel hidden in his room, looking under the gap in the door. You've probably been in a mobile home. The doors aren't flush with the carpet. There's big gaps that lets the air circulate inside the mobile home. Then Samuel, when questioned about it said that he also moved so he had a different perspective.

Think about the details that he was able to provide. The detail that, No, there was no way Linton could have seen me because he was too focussed on raping my sister. Does that sound like something that an eight-year-old child can think up and make up and

propagate for two years? Or does it sound like the truth? And it's the painful truth that he has had to deal with for the past two years.

What would he get out of propagating a lie? Linton's not his dad. Sounds like there was lots of men coming in and going from mom's life. Dad's in prison. Mom, when she's there, she's not very good; and she hasn't even been there for the past six months. What does he get out of coming in this courtroom and saying something that didn't happen. Think about everyone's motivation. He doesn't have one besides to tell the truth. And that's what we tell our children, you've got to tell the truth. He came in here. I guarantee you he was scared. But he sat there and he told the truth.

Think about Minor . This is a tiny child, wrestling with some very large adult concepts that were forced upon her as soon as the defendant shoved his penis inside of her. Actually, it happened before that when he stripped her naked, woke her up from sleeping, took off her clothes. Then he began fondling her with his hand. Then he performed oral sex on her, put his adult lips on her vagina; then put his adult penis in her vagina. That wasn't enough so he had to go and try to put it in her anus, and then at the end he had to try to make her perform oral sex on him.

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One of these acts would have been enough. But not for the defendant. Think about it. Minor is the perfect target. Her dad's in jail. Mom was certainly cruising to be in jail; got all these men coming in. And then here's one that shows kindness, cared for her. It sounds like he was probably the closest thing to an adult figure in her life that she had at that time, but that one person, Mr. Linton, once she had that hope, that hope that we have for all kids that they have some strong figure in their life, he went and he stripped that away from her. He stripped it away just as he stripped her clothes so he could rape her.

He took her comfort, her sense of safety. Even after he had physically and emotionally violated this small child, that wasn't enough for him. He had to make sure he continued to instill fear in that child. I'll kill you. I'll kill your mom. What does that do to a six-year-old? What reason would Minor have to lie? What would she get out of it? Did it look like she was enjoying that? Did it look like she enjoyed standing here being terrified, unable to speak or answer questions?

What would she get out of doing that? Could a six-year-old create such an elaborate lie and consistently tell it for two years, involving the

multitudes of adults and evidence and the creation of consistent evidence? That's not what six-year-olds do. That's not how kids work. Or is she telling the truth? Is she just merely a petrified, parentless child telling us the truth?

This has been an emotional case and that's the beauty of having a jury. You'll get to use your emotions. You get to figure out with your brains and reason and your emotions -- what you think happened, to help us. Think about emotions. Minor felt pain and abandonment when the defendant was molesting her. And she felt terror yesterday as she stood in this courtroom, shaking, unable to speak above a whisper and unable to look at Anthony Linton.

After you go through and analyze everyone's motivations and what you heard them say, think about the evidence. We have Minor 's clothes. We have the panties she was wearing that night, which look like typical six-year-old's panties, the difference though is her panties were covered in her DNA, which Kristin Dalton said looked like dried blood, and also the semen of an adult male. It's gross. And you know why it's gross? Because it was that man that was supposed to be taking care of her and living with her; it was his semen that came out of his penis that got on the inside crotch of

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her panties.

Think whatever physical evidence we have. We've got the abrasions inside on her labia. We've got the bruising, we've got a red, swollen urethra, which Kristin Dalton said were all consistent with blunt, penetrative trauma. Consistent with a penis entering that vagina; and that's what caused those injuries. All these acts that we're talking about are disturbing for adults. They're catastrophic for a child. Do not fault the kids in this situation. They're here, they didn't ask to be born. They were born into it, and they were thrust into this situation. They were forced to testify and forced to talk and tell about all these things that Linton did.

Fault the adults. Carla certainly carries the fault, but she wasn't there that night. She didn't create the DNA evidence, she did not create the injuries, she did not create the recollection of Samuel. She didn't create the recollection of Minor . One person did. One person created that semen. One person created those injuries on Minor . One person raped a six-year-old child who had to retell it to us. And one person forced -- had an eight-year-old watch as he raped his younger sister.

That one person is Anthony Linton and for that reason, the blame and the fault need to fall squarely

upon his shoulders. And I ask that you find him guilty. Thank you.

THE COURT: Mr. Deysach, you're recognized.

MR. DEYSACH: Thank you very much, Your Honor. And thank you jury for listening to it, this case. It's a difficult case. Obviously, you can tell from the delivery that you just heard from the solicitor's office that it's something that everybody takes seriously. You know, I came out here in opening and tried to discourage you from using emotion. And the solicitor has just come out and asked you -- appealed to your emotion. And emotion is not facts, emotion is not law, and it's not something that is an appropriate basis to make a decision on.

Of course if this were to happen, it would have been horrible. I could have appealed to your emotion, what would it be like if a man like Anthony Linton is accused of a crime he didn't commit, the worse type of crime he didn't commit, and is found guilty wrongfully even when there is a reasonable possibility that something else occurred. That's the flip side.

When she appeals to your emotion, she's trying to make you angry at Mr. Linton. She's trying to get you to make a decision based on that emotion as opposed to the facts and the law as you heard them. And what it does is

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it reduces the burden. She's trying to get you to think about that instead of the burden of proof beyond a reasonable doubt, the judge's road map to avoiding a wrongful conviction.

Not to think about that, but to think about how awful it would be if you were Minor , or if you were somebody who had been raped. And I'm not saying she has been raped because we've got a lot of things that I want to talk to you about.

You know, I didn't put up any witnesses. I was stuck with -- what I tried to do is I tried to piece together the puzzle of what happened through the witnesses that they called. And we found out a lot of things by doing that. But it didn't go like a Matlock-type of scenario. I was taking a little piece from here and a little piece from there. They're the ones that are in control of the process.

And so when it comes the making -- telling the story and picking what order to put witnesses in, I'm at their mercy. I mean, I think that it is fair to say that this case is about three things. Okay? I think it's about what the kids say. You know, these are a pieces of evidence that deserve the most attention, what the kids say, the condition of the -- the physical condition of Minor and the DNA in the underpants. I mean, beyond

that, we can talk about all the other little things -- oh, you know, Anthony's response to the Investigator Baird's questions about evidence that didn't exist.

Well, you know, when he denied that he did it, he didn't do it in the way that Investigator Baird would have thought was normal or something along those lines. That's not really evidence. That doesn't make any -- there's nothing that Mr. Linton could have said in that situation that the police would not have tried to twist and make it look as if it's something guilty. And I do want for a moment to mention to you a little bit about why Mr. Linton hasn't talked to you during this case.

I'll tell you that he's already pled not guilty. He's already talked to the police, and there's nothing that he can say in that scenario that was not going to be twisted and tried to make -- make to be seen as if some guilty response had been made, even though the whole time he is cooperating and denying what had happened. And there's a legal rule that allows me to have the last word if he doesn't testify, or if I don't put up any evidence. And so that is a decision that we came to together. He's pled not guilty, he told the police he didn't do it and I get the last word and so that was a decision that we came to together.

And so I don't want you to hold it against him.

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The judge is going to say don't hold it against him. But I want you to know right now, just like he's denied it before, he's been consistent for the last two years, I guess, in denying what happened. And I think that we've heard what the children said then and what the children said now. But I would submit that it wasn't consistent and it's not reliable.

But Let's get back to the three things. What the children say, the condition of Minor and the DNA. And the thing about those three pieces of evidence is that they all do come back to relate to Carla Griffin. And I'm not going to blame kids for this. These kids don't deserve to be blamed for anything. They're -- kids are kids. Kids do what kids do. But I'm not going to sit here and pretend like they're well-adjusted kids. I'm not going to sit here and tell you that I think that they're particularly reliable kids because we know what their background is.

We know that both of their parents are in prison. We know that one of their parents is in prison for unlawfully giving alcohol to a three-year-old with a seizure disorder. We know that they move around a lot. We know that DSS has been involved in their home; and we know that there's been multiple law enforcement contact with the house to the extent that Investigator Baird

already knew Carla Griffin before this had even happened.

So this is not -- this is not the type of home -- I mean there's four or five kids, one of whom has been -- one of whom has been removed from the home, but I think four kids at the time living in a tiny little place in an unstable life. And to think that their behavior and their reliability is going to be that great is -- I think it ignores reality. I think it ignores everything we know about children and how they develop. And to say that, you know, these kids have terrible parents but they're normal kids, that's just not the way I've ever seen or -- you can use your experience, if you've ever seen kids -- you know, some kids transcend, but when you're young you're going to have behavior problems and you're not going to be the most reliable of people.

The condition of Minor . You know, I want you to know that Nurse Dalton is not independent. She is a member of the 14th Judicial Circuit Multijudicial Response Team for sexual assaults, and she performs a law enforcement function; that she is a witness for the prosecution, that she is like the police. And so when she comes and tells you things like, you know, you don't expect coaching when a child is making the disclosure. The only time that a child is coached or mostly when a child is coached is when they're coached not to say that

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there's a disclosure; that you can see sexual abuse occurs when there's injury and when there isn't injury; that sexual abuse can be present when there is a broken hymen and when there isn't a broken hymen; and it's hard to figure out the scenario in which what she observes isn't somehow consistent with sexual abuse.

And so, you know, the condition of Minor a's -- the person who's responsible for Minor a's physical condition is Carla Griffin, and if her condition is what it is as a result of carelessness, as a result of wearing the same underpants for -- I mean, they're trying to tell us 24 hours at least and that's if -- you know, that's not even counting from, you know, what about November 29th, what about -- we have no idea -- I mean, who wears underpants for that long? It's not clean, it's not safe, it's not sanitary and, you know, the idea that you would expect to find her perfectly healthy in that area, I think that ignores what we know about the human body -- and that you don't see the injuries in the rear end where you would have expected to see the injuries. But yet, Ms. Dalton tells us that, oh, well, one area is healing faster -- I don't understand how you can have injury in one area healed, and then injury in another area not healed and still have it consistent with what the solicitor just said happened with basically a sexual

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assault of every way that you can imagine.

And we know that what's she's been saying for the last two years hasn't been consistent because Investigator Baird is the one who swears out the warrant and he doesn't say anything about vaginal intercourse.

And, I mean, you know, everybody hates talking about this type of thing, but the manner of the assault has changed; that whether it was just about every type of sexual battery that you can imagine or whether it was just the rear end or whether it was just oral, that has changed because Investigator Baird puts in his warrant what is to the best of his knowledge, and it came on December 2nd after the disclosure, after the child goes to the police, and after the child goes to Nurse Dalton.

So there has been a change. Brian Baird goes to the home, and he doesn't have any reason to go into a bedroom. He doesn't have any reason to check a bedroom because at that time he has no reason to believe that any sexual assault occurred in any one of those bedrooms. But that's what you heard today. So the manner of the sexual assault, the way it occurred, hasn't been consistent for two years, or however long you want to say. And where it happened hasn't been consistent for two years. And for the State to try to explain to you that that's exactly what happened, that isn't what's

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happened. What has happened is that as the State has put together their case, that the story of what has happened has changed to fit it.

Okay. And another thing, the idea that -- I think she testified to, you know, a cut or something like that on Minor , and I don't understand how that was at all consistent with a blunt force trauma caused by a penis, somebody getting cut by a penis doesn't make sense. And so when she's an expert and she uses the words consistent with, it's a very specific word that we say, consistent with. It doesn't mean proof of.

And she -- she can't say that there's proof of a sexual assault. All she can say is consistent with, and I think from what we saw that there's a lot of things that Nurse Dalton, as part of her law enforcement function, would see as consistent with -- consistent with a sexual assault.

Now, the DNA evidence, the semen, the smoking gun on the panties and the crotch of the panties, you know, the piece of evidence that the State finished with, because I think they hold it in such high regard, one in 60,000 people, which, you know, means that, you know, not that Carla has had 60,000 boyfriends or anything like that, but that's too many people to just pick by chance. I mean, I you said that. I don't doubt that that is his

semen that is on those panties.

But what you've got to understand is where did those panties come from? How do the police come into contact with those underpants? And they're delivered by Carla. And, you know, I think that what we're talking about is secondary transfer. The expert from SLED talked about secondary transfer, unintentional secondary transfer. DNA can be moved. It can be moved intentionally, it can be moved unintentionally. They do all these things in the lab to keep that from happening unintentionally, and I'll tell you that [redacted], with four kids and all the laundry and all the mess that has to be in that -- I mean, not anything bad against Carla, anybody's got four kids in a small area is going to have a mess. That is no lab. That is absolutely no lab. And so whether or not there could be unintentional secondary transfer -- but what I'm talking about is intentional secondary transfer.

I think it's probably the same as framing. You know, I'm not going the try and pretend that it's something other than that. And the idea that there could ever be a mother or a person who would either try and control their children, control the Courts or control somebody who they are breaking up with or somebody who's cheating on them, the idea of anybody like that would

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ever exist, seems implausible until you meet Carla Griffin, who has called the police before on the boyfriend who is cheating on her, who has tried to -- you know, anybody who would give their three-year-old child with a seizure disorder an alcoholic beverage would exercise this kind of mind control on a child; who would talk to that person who has been accused of hurting their child in this way over the phone after it's happened, and complain about him seeing other women, not what he's done to the child -- it is not consistent with somebody who believes that it truly happened, for one. And it's not consistent with a sexual abuse actually having occurred because it doesn't make any sense.

She tried to tell you guys at first that, Oh, I had nothing to do with him afterwards. And then she says, Oh, yes, I talked to him on the phone, possibly for six hours over those two days, and we talked about marriage together. I mean, obviously, it's not -- the case isn't about whether or not you believe Carla Griffin and I recognize that. It's not, okay, Carla Griffin is a liar, so this must not have happened.

It is -- is she capable of doing such a thing and does she have a type of character to do it? Absolutely. I think a question that would maybe come up in anybody's mind is does she have the sophistication, and I think

that anybody who has watched any type of CSI on TV or the movie Presumed Innocent with Harrison Ford, that there are instances in the media of intentional secondary transfer of semen. It would be very easy to do. It can be moved.

All we're talking about is whether there's semen on the couch, whether semen could be extracted through manual stimulation -- I mean it'd be easy. Everybody knows -- I mean -- and the fact that the semen ends up in such a spot on the panties from hearing Minor tell her story, it's not exactly clear why the semen would be in that spot necessarily. And so it's almost too perfect -- I mean too perfect of a spot.

The thing that -- you know, it's possible -- it's reasonable -- moving DNA is possible. It can be done. Who would do it? I mean, most people wouldn't. Would Carla Griffin do it? If you found out later on after today that in fact she did that, would you be that shocked that she had the ability or the sophistication or kind of the deviousness to do that? I don't think anybody in here would be shocked at that possibility.

And so I want to go back to what the children say, because I think that the idea of practical suggestibility, coaching a child, is well within the bounds of reasonable possibility, well, within what has

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happened and is not some sort of extravagant concept of coaching.

And with Samuel's story, it was problematic that he is watching something happen on the couch from underneath a doorway, that the State wants to tell you, Oh, there's a big gap in that doorway. Well, do you know what would have been nice is a picture, a picture of this door that has such a big gap that you can see under it. I know what doors look like. Doors go down to the floor. That's what you would expect a door to do. If there was a gap, it would be so tiny you wouldn't be able to see under it. And so the idea that Samuel's able to see what he says he sees from the position that he says he's at isn't reasonable, that if Mr. Baird, Detective Baird, Investigator Baird, if he had known when he went into that home that the only way that Samuel says he saw this happen was underneath a door, he would have taken a picture of that door.

That's the type of investigator I believe Investigator Baird is. That if -- you know, it's something that the State has to address because, you're like, wait a second, under a door? Oh, it's a trailer, that's how the air flows or whatever. Well, maybe so, but maybe not. You know. And it sure would be nice to have a picture because you've got to make a decision

based on what the evidence is, not on what you know about air flow at this trailer that we haven't seen one picture inside of.

And then with Samuel, his perspective kind of changes from inside to outside, you know, I don't think Minor ever said anybody saw what was going on, but his perspective kind of changes. And I kind of see that in the telling of a story by a youngster where, you know, you're kind of -- if you listen to young people tell stories about what they saw and it don't exactly add up a lot of times, it's because they're seeing what they're describing from two different angles, and there's not a very good explanation of how they got from one place to the next.

And then the idea that, okay, well, you know, they go into another room with leaving a door open and I'm standing -- able to see through the doorway. It doesn't seem very plausible, and it also doesn't match up with what Minor said the location of the assault was or anything like that. And so, you know, the solicitor can tell you, Oh, Samuel, he would never lie, he would never tell an untruth. How can you be so sure? How can you be so sure that Samuel wouldn't want some of the attention that he might be getting for telling a story; that, you know, maybe he's been coached by the mother to the point

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where he truly believes that this is what he saw.

If it was true, I think that the stories would match up a whole lot better than what they do. But, you know, there's no telling what the reasons would be for a young man like Samuel who comes from kind of a damaged family like this, what his motivation would be for lying. I don't think that there is anything about Samuel that makes him a particularly reliable kid. There's nothing about that. Okay.

So Minor . You know, she's the one that gives the story. And, you know, it's heartbreaking. You know, whether it was -- even if she's coached to say something, it's heartbreaking. There's no question about it. There's not like a sunny side to this story. You know, no matter if you're the solicitor or no matter if you're me, there's not a sunny side of the story, that's obvious.

But she comes in and she's nervous. Well, is that a sign of telling the truth or is that a sign of lying. You know, it could go either way. You know, I'm not going to say that because she was reluctant to talk that that somehow makes her testimony more credible. There's -- that doesn't make any sense. The State was allowed to lead in her questions from -- to Minor And that was a decision that the judge made. But knowing

what I know or knowing what anybody -- you guys make the decision.

Drawing what you know about child suggestibility, that if you try to get a straight story from a child, you have to ask, not leading questions -- you don't want to ask a child a leading question. If you ask a child a question and you don't get the answer you want the first time, if you want a different answer, all you got to do is ask again because that's how children react.

So, you know, we're standing here, and Minor is saying that when Mom got home from taking child to the hospital for his seizure, a fairly adult word if you ask me, and she told me what happened to me -- and she's like -- the solicitor's like, wait told you what -- told you what happened? And Minor repeated it, yes. Told you what happened to child ? No, told me what happened to me. Told you what happened to Meat? No, told me what happened to me.

And finally after a number of questions, Minor turned the word told to ask, and so as we sit here today, it is not very clear -- it is not clear at all whether Minor was telling us that Carla told her what had happened to her or whether Carla was asking her what had happened to her. Because it was not clear. There was nothing about that back and forth -- it took a number of

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questions to clear this up. And it was just after leading and leading that the solicitor finally got the answer that she wanted, and then she stopped. You know, at that point, she stopped. But when she got the answer that she didn't want, it kept on with the leading, and that's not the way you get reliable testimony out of a child.

And so as we sit here right now, you really can't tell whether or not Minor was telling the truth. And so what we're left with -- and if you want to appeal to emotion, you know -- you know, I think it is -- I think in some ways beneath you guys. I mean everybody has emotions, and we're not going to say, Well, you know, I'm just going to never have emotion again. But you have to be dispassionate, you have to be independent and you want to make your decision based on the law and the facts. And what juries represent is the last stop before a wrongful conviction.

And what kind of happens in a case like this is that when a -- an allegation hits the police department, there is an apparatus. There is an apparatus that Karen (sic) Dalton is part of and that the solicitor's office is part of when they, you know, send the child up in front of you with a stuffed animal -- that the child seemed to be holding like a basketball more than like a

stuffed animal that she wanted -- but it was an attempt to appeal to your sympathies and your emotion; and that can only cover up one thing, and that is weaknesses in the case; you know, when you appeal to emotion.

And I'm not saying it doesn't -- you know, it's a bad set of circumstances, but when this case is done what you want to be sure of is that a wrongful conviction didn't occur. That's -- if we didn't have -- countries that don't have juries, that's what happens. You're the jury and so you're the only ones that can make sure that happens. And the way wrongful convictions occur is when a conviction happens and there's a reasonable possibility that something else happened. And that's what would happen in this case.

If you want to appeal to emotion, the idea of somebody -- you know, Carla seemed like a nice lady when I got involved with her. I was nice to her kids. You know, my eye wondered, I ran into a woman scorned, and before I know it, I've got an officer asking me about, you know, what about your semen on a rag that didn't end up existing, or on the panties and everything like this. And, of course, he didn't freak out because he -- if he was guilty he would have freaked out. If he's innocent, he's like -- figuring that, you know, somebody's going to get to the bottom of it finally. But when it hits that

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apparatus, that law enforcement apparatus that -- it's hypersensitive, a sexual assault case. You know, their heart's are in the right place because, you know, it is -- it isn't -- it's objectionable. Obviously, their hearts are in the right place, but that emotion that they feel sometimes affects their independence, and really in order to make a good decision, you have to be dispassionate. And so that's what I'm asking you to do.

If you really get down to it, the proof isn't there and, you know, we've got a guy that's been described here, Mr. Linton -- Anthony Linton, my client, you know, he's -- I hate to even look over at him to be honest with you. You know, because it kind of -- you know, I get emotional about the prospect of what would happen if, you know, a wrongful conviction occurred and there's no way to reverse it, you know. What if the judge did a good job in this case, what if I did a good job, the solicitor did a good job -- there's nothing to go fix if there's a wrongful --

MS. BANNON: Objection.

THE COURT: It's closing argument. I'll allow him to go forward.

MR. DEYSACH: Okay. I don't want to go down that road. I mean, I'm not trying to, you know -- but, a wrongful conviction is a problem. I don't know how else

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to really say it. And what decision you make -- the decision you make today has this effect of permanence, you know, that it's permanent. And it's not something that you can erase. And so you have to approach it with that kind of mentality. And that what I'm asking you to do -- all anybody can ask for is a fair trial, and I appreciate your patience and I've kind of tried to set the -- you know, make what your role is as I see it, clear. And me and Anthony are just both asking you to do -- to do your best work and not to, you know, look at the subject matter, kind of get grossed out and just like, you know, push it off and not critically look at what really happened in this case and for that, we thank you.

THE COURT: Thank you, sir.

Madame Forelady, and ladies and gentlemen of the jury, we're going to take up a matter of law outside of your presence. We have completed the evidence, we have completed the closing arguments. When you come back in I will charge you the law. Please do not discuss the case.

Everyone remain seated as the jury exits the courtroom.

(WHEREUPON the jury left the courtroom at 2:13 p.m.)

THE BAILIFF: Jury is clear, door is closed.

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THE COURT: Very good. Anything from the State before we recess?

MS. BANNON: No, Your Honor.

THE COURT: Anything from defense?

MR. DEYSACH: No, Your Honor.

THE COURT: Very good. We'll stand at ease for about five minutes, and we'll come back with the charge on the law.

(WHEREUPON a recess was observed.)

THE COURT: All right. We're ready for the jury.

THE BAILIFF: Jury entering, Your Honor.

(WHEREUPON the jury entered the courtroom at 2:33 p.m.)

THE BAILIFF: Jury is seated.

JURY CHARGE

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, when we started this trial, the clerk administered an oath that you would listen to the evidence, deliberate about the facts, determine what the truth is and apply it to the law. I've noticed that throughout the trial of this case when the lawyers would ask a question you would look at the lawyer, and when the witnesses would answer you would look at the witness. Y'all have paid very close attention. Y'all have the wherewithal to fulfill your responsibility with regard to

being the triers of fact, and I'm confident that you can do that.

But that's only half of it. You have to apply the truth as you see it to the law, and there's not an easy way to do that. It's sort of like taking medicine. I know it's the middle of the afternoon, but these are important matters. It is an important matter to the State of South Carolina, it's important to the defendant, it's important to you as jurors. So I want you to perk up, pay very close attention as I charge you the law.

The indictment charges the defendant with criminal sexual conduct with a minor, first degree. I'll remind you that the fact that the defendant was arrested, charged, and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor does it create any presumption of or inference of guilt. This document is simply the formal written instrument which contains the charge against the defendant. It's a formal document by which this case is brought into this court.

The defendant has pled not guilty and that plea puts the burden on the State to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is an important

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rule of law that the defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

This presumption of innocence does not end when you begin your deliberations, but it accompanies the defendant throughout the trial until you reach your verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt. Presumption of innocence is like a robe of righteousness placed about the shoulders of the defendant which remains with the defendant until it's been stripped from the defendant by evidence satisfying you of the defendant's guilt beyond a reasonable doubt.

The presumption of innocence is not a mere legal theory. It's not just a legal phrase. It's a substantial right to which every defendant is entitled unless you, the jury, are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

What is reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. The State has the burden of proving the defendant guilty beyond a

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reasonable doubt. Some of you may have served as jurors in civil cases where you were told that it is only necessary to prove that a fact is more likely true than not true, such as by a greater weight or a preponderance of the evidence. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty. In a criminal case, the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty. If, on the other hand, you think there's a real possibility the defendant is not guilty, you must give the defendant the benefit of the doubt and find him not guilty.

Ladies and gentlemen of the jury, I'll remind you that during this trial, you and I have certain duties to perform. As the trial judge, it's my responsibility to preside over the trial and I also have the duty to rule on the admissibility of evidence. You are to consider only the competent evidence before you. There was testimony ordered stricken from the record in this case

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during this trial. You must disregard that testimony.

Mr. Foreman, I'm going to ask that you enforce that rule.

You're to consider only the testimony which has been presented from this witness stand, any exhibits which have been made a part of the record in this case, and any stipulations of counsel. I have the additional duty to charge you the law applicable to this case. As the presiding judge, I am the sole judge of the facts in this case, and it is your duty as jurors to accept and apply the law as I now state it to you. If you already have any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon this idea because you are sworn to accept and apply the law exactly as I state it to you.

Every case tried before a jury, the jury becomes the sole and exclusive judge of the facts. A trial judge cannot intimate, state, comment on, or make any statement to a trial jury about the facts. Since you, the jury, are the sole judges of the facts, you are not to infer from what I've said during the progress of this trial and ruling upon the admissibility of evidence or otherwise or anything that I say now during the course of this instruction to you that I have any opinion about the facts in this case. The law simply does not allow me to

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have an opinion about the facts in this case. This is a matter solely for you, the jury to determine. As jurors, it is your duty to determine the effect, value, weight and truth of the evidence presented during this trial.

Ladies and gentlemen of the jury, there are two types of evidence which are generally presented during a trial. Direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness, the evidence which immediately establishes the main fact to be proved. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts in which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence; nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in this case. After weighing all of the evidence if you're not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

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Necessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of this truth. To determine believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether any witness has exhibited to you any interest, bias, or prejudice, or other motive in this case. You may also consider the appearance and manner of the witness while on the witness stand, their demeanor.

The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses, a witness who by education or experience has become an expert in some art, science profession or calling may state an opinion as to relevant material matter in which the witness claims to be an expert and may also state the reasons for the opinion.

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You should consider any expert opinion received in evidence in this case like any other evidence. Give it the weight you think it deserves. If you decide that the opinion of an expert is not based on sufficient education and experience, or if you conclude that the reasons given in support of the opinion are not sound, that the opinion is outweighed by other evidence, you may disregard the opinion in its entirety.

An expert witness's testimony is to be given no greater weight that than of other witnesses simply because the witness is an expert. Further, you're not required to accept an expert's opinion even though it is not contradicted.

Ladies and gentlemen of the jury, I instruct you and emphasize that the fact that the defendant did not testify is not a factor to be considered by you in any way in your deliberations and in your consideration on the question of the guilt or innocence of the defendant. It must not be considered by you in any manner whatsoever. A defendant has a constitutional right to remain silent, and the assertion of this right must not be considered by you in your deliberations.

I repeat, under your oath you're to draw no conclusions whatsoever from the fact that the defendant in this case did not testify. The fact that this

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defendant did not testify should not even be discussed in the jury room.

Mr. Foreman, I'm going to ask that you enforce that rule. There will be no discussion about the defendant's failure to testify.

The burden of proof, as I have stated to you, is on the State. The defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

There's been evidence presented that witnesses have made prior statements which are not consistent with the witness's present testimony. You may use this evidence to decide whether to believe the witness. You may also use evidence of the earlier contradictory statement to determine the truth of those statements. It is up to you to decide whether to believe the earlier statements or the testimony given at trial.

If a witness has shown to have knowingly testified untruthfully concerning any material matter, you may consider this in determining whether to trust the witness's testimony as to other matters you may reject all testimony of that witness or give all or part of the testimony the weight you think it deserves.

Ladies and gentlemen of the jury, a statement alleged to have been made by the defendant has been

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admitted into evidence in this case. While the Court has determined that the statement is admissible, I instruct you that you make the ultimate decision of whether or not the defendant made this statement. If the defendant did not make this statement, you must determine -- if the defendant did make the statement, you must determine whether the statement was made by the defendant voluntarily and of his own free will. This means that the statement was not caused by pressure, force, fear, threat, coercion, or intimidation, by hope or of promise of leniency or a reward of any kind.

In determining whether the statement was voluntary, you must consider both the characteristics of the defendant and the details of the questioning. Some of the factors that you must consider are the age of the defendant, the defendant's education or lack thereof, the defendant's mental ability or capacity. The defendant's IQ or intelligence, the defendant's background and environment, place and length of detention, the nature of the questioning, the advice or lack thereof to the defendant of his constitutional rights, including but not limited to the right to remain silent that any statement could be used against him in a court of law, the right to have a lawyer present, that if he could not afford a lawyer, a lawyer would be appointed to represent him

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without any cost and that he could stop making a statement at any time. You must carefully consider all the surrounding circumstances before you give any weight to an alleged statement.

The State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntary. If you determine it was, you may give the statement any further consideration that you deem proper. You must decide what weight, if any, should be given to the alleged statement. If you determine the alleged statement was not the free and voluntary statement of the defendant, you should not consider the statement at all.

During this trial you have heard testimony from a child. Where a witness is a child, you must determine as with any witness whether the testimony is believable. In deciding believability, you may consider not only matters that I have already discussed with you, but you may also consider the age of the child, the child's ability to observe and remember facts, the child's ability to understand and answer questions. Because young children may not fully understand what is the happening here, it is up to you to decide whether the child understood the seriousness of appearing as a witness at this criminal trial, whether the child understood the questions, whether the child has a good memory and whether the child

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understands the difference between lying and telling the truth. In addition, children may be influenced by the way the questions are asked. It is up to you to decide whether the child understood the questions asked.

Ladies and gentlemen of the jury, pay very close attention. I'm going to charge you the substantive law with regard to first-degree criminal sexual conduct with a minor. The defendant is charged with first-degree criminal sexual conduct with a minor. The State must prove beyond a reasonable doubt that the defendant engaged if a sexual battery with the victim.

A sexual battery is sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body of any object into the genital or anal openings or other -- or another person's body -- of another person's body, except when the intrusion is accomplished for medically recognized treatment or diagnostic purposes.

The State must then prove beyond a reasonable doubt that the victim was less than 11 years of age at the time of the sexual battery. Consent, willingness, indifference or ignorance on the part of the minor, if any, as to what was taking place, does not in any way affect the charge of criminal sexual conduct with a minor because an unmarried woman under the age of 14 cannot

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legally consent to sexual intercourse.

Bear with me as I come forward and share with you the verdict form.

Mr. Layton and Ms. Ramirez, the alternates, I'm going to ask when I release the jury to go back to the jury room, that you remain with us as the jury exits the courtroom.

Mr. Foreman, I'm going to ask if you could to stand up and I'm going to go over this verdict form with you. It's fairly simple. It's got the State of South Carolina, County of Beaufort, State of South Carolina versus Anthony G. Linton, in the Court of General Sessions, which is criminal court, 14th Judicial Circuit, and it's got the indictment number here. It's entitled verdict form.

The question is simple, criminal sexual conduct with a minor, first-degree. We, the jury, find by unanimous consent that the defendant, Anthony G. Linton, is, either not guilty or guilty. The questions are simple.

It's got a place for you to sign. The verdict must be unanimous. It can't be eleven to one, six to six, eight to four, everyone has to agree. And when you've reached a verdict, I'm going to ask that you notify the bailiff. You can have a seat.

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I want to talk with you a little bit about the deliberation process. Mr. Foreman, you're to ensure that everybody's voice is heard, the verdict must be unanimous. I'm also going to ask that during the deliberation process, if anyone gets up to use the restroom, stop deliberations. Everyone has to participate in all of the deliberation process. There might be questions that develop during the deliberations, but I'm going to tell you something from the very beginning. The difficult questions in this case, y'all are going to have to answer, the truth of the facts in this case. Factual questions, as I've charged you the law, y'all are the sole and exclusive judges of the facts.

If you have a question about the factual matters in this case, I can't help you there. If there's a question with regard to the law, perhaps I can help you. If there's a question in your mind, whether or not it's a legal question or a factual question, write it down, give it to the bailiff, and I'll be happy to answer it, if indeed the law allows me to do so. However, I don't think there's going to be a need for you to ask any questions because you've heard all the evidence that's come from the witness stand. You've paid very close attention. You've paid very close attention as I've

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charged the law so I don't anticipate there are going the be any questions.

I'm going to -- as you've left the jury room (sic), in the past, I've told you not to begin deliberations. When you leave the jury room (sic) again here, momentarily, I'm going to ask you not to begin deliberations because I'm going to have to talk with these very fine lawyers and ask them if they have any objections or exceptions or additions to the law that I've charged you.

We also have to take this opportunity to gather together the documentary evidence. And after we've done all that, if there's not a necessity to recharge the law or to make a correction or a deletion in that regard, then I'll tell the bailiff to gather up all this documentary evidence. He'll take the documentary evidence, a piece of paper and pencil to aid you in your deliberation process and you can begin deliberation.

But do not begin deliberation until the bailiff gives you instructions to do so. I'm going to ask the alternates if you'll remain with us. Logistically, it might be best if y'all could come on down here and stand perhaps. We've got sort of a close quarters here. And Mr. Foreman, I'm going to ask you to take your jury to the jury room, but do not begin deliberations. Thank you

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very much.

(WHEREUPON the jury left the courtroom at 2:53 p.m.)

THE BAILIFF: Jury is clear, Your Honor.

THE COURT: Mr. Layton and Ms. Ramirez, I want to thank you so much for being here. I think a couple of weeks ago I was down here in Beaufort County and we tried a case, and we had to use one of the alternates. There's a lot of resources that have gone into the trying of this case and particularly in a criminal case, it's very important that you have twelve people deliberate, and quite often people can become sick. Sometimes people discover there's a conflict with regard to a certain witness, sometimes things happen to where a juror cannot complete their service.

You were sort of like our insurance policy and for that I'm grateful. I know that y'all kind of feel like you got invited to a dance and didn't get to dance. But y'all are welcome to stay here with us. You're free to stay. It's a public forum. Certainly you can do that. If you would decide that you'd rather go home, you can certainly call back and check with the clerk's office with regard to any verdict.

What is the State's pleasure with regard to the balance of the jury panel? Is there -- are we going to

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impanel another jury.

MS. BANNON: Your Honor, I do not believe so, but we are double checking right now.

THE COURT: Okay. And just bear with us just one moment. I do not anticipate that we will select another jury, but Let's wait and hear from the solicitor in that regard.

The good news is this, that y'all have earned a three-year exemption. If y'all get a jury summons and are required to come back to this particular courtroom, you can tell them that you've served this term of court. Tell them that I presided over it and it was a term of general sessions. They'll locate that and you can exercise an exemption not to serve. It does not apply to municipal court, and it doesn't apply to magistrate's court, and it doesn't apply to federal court. But if you're subpoenaed to this room, you've earned a three-year exemption.

Y'all will be paid handsomely for your service.

How much is that Madame Clerk? The clerk is not here?

THE BAILIFF: $12.50 a day.

THE COURT: And that is not, not an indication of the value of your service, but hopefully it's a token on the behalf of the State of South Carolina. I told the

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jury from the beginning if there were questions that developed and if you had any questions or concerns, I'll be happy to answer them. Do y'all have any questions?

(WHEREUPON there was no response from the alternate jurors.)

THE COURT: Is this the first jury y'all have ever sat on? It's a very difficult subject matter, but hopefully it has not been too difficult for you. Hopefully it's been a learning experience. You're free to leave for the week, and thank you so much for your service. And the check is in this mail, and excuses will be ready and available from the bailiff.

Thank you so much, you're free to leave at this time.

(WHEREUPON the jurors left the courtroom at 2:52 p.m.)

THE COURT: Any objections with regard to the jury charge from the State?

MS. BANNON: No, Your Honor.

THE COURT: Any from defense?

MR. DEYSACH: No, Your Honor.

THE COURT: All right. I'm going to ask if y'all could come forward and make sure that everything that's in evidence is in this pile right here. Make sure that there's not anything in that pile that's not in evidence.

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Y'all come forward, and I want both of y'all to go through the documentary evidence.

MS. BANNON: Your Honor, can we send a pair of gloves back?

THE COURT: You may.

(WHEREUPON the attorneys are conferring over the exhibits.)

THE COURT: Ms. Bannon, are you convinced that everything that is in this pile is in evidence?

MS. BANNON: Yes, Your Honor.

THE COURT: Is there anything in that pile that is not in evidence?

MS. BANNON: Not to my knowledge.

THE COURT: Mr. -- all right. Well, I want you to look and make sure.

MS. BANNON: No -- yes, Your Honor, I am convinced.

THE COURT: Okay. Very good.

All right. Mr. Deysach, is everything in this pile in evidence?

MR. DEYSACH: Yes.

THE COURT: Is there anything in the pile that is not in evidence?

MR. DEYSACH: This bag is not going back.

THE COURT: Okay. Very good. So everything

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going on the cart is in evidence?

MR. DEYSACH: Yes, sir.

THE COURT: Is there anything in that pile that is not in evidence?

MR. DEYSACH: No, sir.

THE COURT: All right. Very good.

Mr. Bailiff, I'm going to ask if you could, carry the documentary evidence along with a -- some blank pieces of paper and a pencil and tell them to begin deliberations.

(WHEREUPON deliberations began at 2:57 p.m.)

THE COURT: Anything from the State before we stand at ease?

MS. BANNON: No, Your Honor.

THE COURT: Anything from defense?

MR. DEYSACH: No, Your Honor.

THE COURT: All right. Let's stay pretty close in case there's a question so we don't have to run anybody down. If y'all could do that, I would appreciate it. If there's anything y'all need me for I'll be in chambers. We'll stand at ease.

(WHEREUPON a recess was observed while the jury was in deliberations.)

(WHEREUPON a verdict reached at 4:04 p.m.)

THE COURT: I understand that the jury has a

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verdict.

We're ready for the jury.

THE BAILIFF: Jury is entering, Your Honor.

(WHEREUPON the jury entered the courtroom at 4:17 p.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: Very good. Those of you who are in the audience, these things can be somewhat emotional. I don't know who's here supporting which side, but there will be absolutely no outburst with regard to the reading of the verdict, whatever it might be. In the event anyone -- there's any display of emotion or anything, these gentlemen at the back of the room, I'm going to point to you and they're going the take you into custody. So there will be no outburst. Does everyone understand that?

(WHEREUPON there was no response.)

THE COURT: Very good.

VERDICT

THE COURT: Mr. Foreman, have you indeed reached a verdict?

THE FOREMAN: Yes, sir.

THE COURT: Is it unanimous?

THE FOREMAN: Yes, sir.

THE COURT: I'm going to ask, if you could, give

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the verdict form to the clerk.

All right. The verdict form seems to be in order. You may publish the verdict.

THE CLERK: Yes, sir. 2010-GS-07-13, the State of South Carolina vs. Anthony G. Linton, criminal sexual conduct with a minor, first-degree. We the jury find by unanimous consent that the defendant Anthony G. Linton is guilty. Signed by the foreman.

Mr. Foreman, was this the verdict?

THE FOREMAN: Yes, ma'am.

THE CLERK: And if all agree, please raise your right hand.

(WHEREUPON all hands are raised.)

THE COURT: Thank you, Madame Clerk.

THE CLERK: Yes, sir.

THE COURT: Is there any additional request for polling, Mr. Deysach?

MR. DEYSACH: Yes, Your Honor.

THE COURT: All right. Madame Clerk, you can take a moment and we'll ask that you call the roll.

POLLING OF THE JURY

THE CLERK: When I call your name, would you please stand.

Mr. Foreman, Larry Tarlton, was this your verdict?

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THE FOREMAN: Yes, ma'am.
THE COURT: Is it still your verdict?
THE FOREMAN: Yes, ma'am.
THE CLERK: Thank you, sir.
Michael Miller. Was this your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: Is it still your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: Thank you, sir.
Sheila Kennedy. Was this your verdict?
THE JUROR: Yes.
THE CLERK: Is it still your verdict?
THE JUROR: Yes.
THE CLERK: Thank you, ma'am.
Fredrica King. Was this your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: Is it still your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: Thank you, ma'am.
Dawn Cavegn. Was this your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: Is it still your verdict.
THE JUROR: Yes, ma'am.
THE CLERK: Thank you, ma'am.
Alfred Boni. Was this your verdict?

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THE JUROR: Yes, ma'am.
THE CLERK: Is it still your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: James May. Was this your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: Is it still your verdict?
THE JUROR: Yes, it is.
THE CLERK: Loretta Sanders.
THE JUROR: Yes, ma'am.
THE CLERK: Was this your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: Is it still your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: Thank you.
Lionel Ward. Was this your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: Is it still your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: Thank you, sir.
William Mayhall. Was this your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: Is it still your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: Thank you, sir.
Tyler Boardman. Was this your verdict?

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THE JUROR: Yes, ma'am.

THE CLERK: Is it still your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Thank you, sir.

And Linda Joss. Was this your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Is it still your verdict?

THE JUROR: Yes.

THE CLERK: Thank you, ma'am.

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, I want to thank you on behalf of the State of South Carolina for the service that you've rendered this week. How many of you have never served on a jury before?

Hopefully it's been a learning experience. I know that the subject matter has been somewhat difficult to deal with, but I want to thank you for that. Clearly you paid attention to the evidence. You listened to the law. You deliberated conscientiously, and for that I'm grateful. Hopefully it's been, for those of you who have not served before, it's been a learning experience. One thing that makes me feel good as a citizen of the United States is, you know, we're all one breath away from litigation ourself or being accused of a crime. And I feel good that if I were accused of a crime it would be

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twelve citizens from Florence County that would try me. And I feel grateful for that.

And it wouldn't be some judge, it wouldn't be some panel of judges, it wouldn't be some bureaucrat making those decisions, it would be members of the community doing that.

I want to thank you for your time and your consideration. I also want to let you know that y'all have earned a three-year exemption. In the event that you're subpoenaed to participate in this courtroom, this courthouse, you'll -- within the next three years, you can exercise an exemption. Just tell them that you've served this week, that I was presiding and tell them it was general sessions, and they will look it up and you can exercise your exemption.

However, it does not apply toe municipal court. It does not apply to magistrate court. It does not apply to federal court. If you're subpoenaed to this courtroom you earned a three-year exemption. You'll be paid handsomely for your service, $12, $12.50 a day, is that correct?

THE BAILIFF: Yes, sir, plus mileage.

THE COURT: Hardly enough to buy a new frock or a new pair of britches, but it's certainly a small token of our appreciation for your service. We are -- you have

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performed your duty in rendering a verdict in this matter. It's my job as the trier of law to sentence the defendant. And you -- this is a public forum. You have an absolute right to see that if you would like to.

Those of you who would like to be excused, the bailiff will show you out the side door, those of you who would like the see the sentence feel free to go out to the audience out there and you can have a seat and see the sentence. It's not necessary that you do that, however, if you'd like to, you're welcome to. You've participated in the proceeding so far and if you'd like to see the end result, you're welcome to do so.

Y'all have any questions? I told you from the very beginning if y'all had any questions I'd be happy to answer them. Any questions or comments.

(WHEREUPON there was no response.)

THE COURT: All right. Well you're free to leave. Thank you very much.

(WHEREUPON the jury left the courtroom at 4:22 p.m.)

SENTENCE

THE COURT: Mr. Deysach, you may bring the defendant forward.

MR. DEYSACH: Yes, Your Honor.

THE COURT: Ms. Bannon, I'm going to ask that you

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come forward as well. I'll be glad to hear from you with regard to sentencing.

MS. BANNON: Your Honor, if you don't mind, I know they have the courtroom locked, but I need my file folder for sentencing to disclose everything.

THE COURT: All right. Well, we'll sit right here until you get it.

MS. BANNON: I appreciate it. Thank you.

In the meantime, I do have the sentencing sheet, Your Honor.

THE COURT: Okay.

MS. BANNON: I apologize about that, Your Honor.

THE COURT: Madame Clerk, here's the verdict form.

MR. DEYSACH: Do you need me to sign this?

THE COURT: I think it would probably be good to do that.

MR. DEYSACH: My client is not required to sign it, is he?

THE COURT: He's not, but if he'd like to, he's welcome to.

Mr. Deysach, you've explained to your client in great detail that this is indeed a violent offense which adversely affects his custody status and it's a most serious offense subject to the two strike rule?

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MR. DEYSACH: Yes, Your Honor.

THE COURT: All right. And it's my understanding that this is a zero to thirty year sentence is that correct?

MS. BANNON: I believe it's 25 to life, Your Honor, CSC with a minor if the age is 11 or younger.

THE COURT: Okay. Twenty-five years to life?

MS. BANNON: Yes, Your Honor.

THE COURT: Is that your understanding, Mr. Deysach?

MR. DEYSACH: I'm afraid so, Your Honor.

THE COURT: All right. Ms. Bannon, I'll be glad to hear from you with regard to sentencing.

MS. BANNON: Your Honor, per the file, I know we discussed it when we discussed whether or not the defendant was going the take the stand. He does have those priors. I have the certified priors. I'd like to hand them up to Your Honor.

Also the State feels that this is a case where it would be appropriate to depart from the mandatory minimum of 25 and give a little additional time given the prior history of the defendant, the tender age of the victim, as well as the multiple acts committed on the victim. And although the other charges for the victims discovered through the course of prepping this trial have not been

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filed and nor should they be considered in the sentencing phase, it is relevant in that a pattern of abuse of people under the age of 18, against their will, threatening to kill them with witnesses, while getting progressively younger with the victims over time is significant to show a continuing course of conduct and to show the intent.

So we feel that all those factors together require a departure from the mandatory minimum.

THE COURT: Okay. Anything further?

MS. BANNON: No, Your Honor.

THE COURT: All right. Mr. Deysach, I'll be glad to hear from you.

MR. DEYSACH: Thank you, very much, Your Honor. It's tough to stand before you and beg you for 25 years for Anthony or for anybody for that matter. But 25 years is an awful long time. He's 33 right now. You heard what his record was. He had the aggravated assault from, you know, a fight, I guess as the solicitor characterized it. It seemed like it was sometime in the two thousands, but not the most -- something he got two years for. The older charges from the mid-90's that would have put him at about I think about 20 years old at least when they went to court, something like that. Certainly different stage in his life.

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The solicitor mentioned some of the other accusations that have come forward, really in the last, as far as I knew, the last few months. Although she did produce some things from, you know, maybe a little bit longer ago. But there's certainly -- they're uncharged and un-litigated conduct and I don't think that it's fair for just a quantity of people saying bad things about Mr. Linton to substitute for the quality of what those accusations represent; and it kind of felt to us like there was some form of piling on at the end.

But be that as it may, I don't think that 25 years represents any type of a slap on the wrist. I know -- I think everybody who he has listening to me would agree to that. Mr. Linton was working at Home Depot, working toward business management, has three kids of his own and, you know, he's -- his mother live in Georgia. I've known him for the last -- it's been since December of 2009 that I've known him and, you know, you always find -- a lot of times you find a disconnect between the accused conduct and the accused himself, and you can't believe that the two would match up in any way, shape or form and, you know, I respect the jury's verdict.

I don't want you to think that anything that I'm saying right now is anything less than respect for the

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jury's verdict and your function to pass sentence, but I am somewhat concerned about the ability of, you know, individuals to manipulate court in some way. Whether that happened in this case or not, that was -- the jury let us know their opinion on that, and we heard it loud and clear. And I'm not trying to say that there's anything other than respect for what their decision was. You know, I think -- you know, we talk about 25 years, from 33 years old we're talking about a 58-year-old man. I don't think that -- if this did happen and the jury said it did. I understand that, that it's usually something that is perpetrated by victims of abuse themselves. That oftentimes is the case. I don't know that to be the case -- I don't have anything to share with you on that score, Your Honor. But, you know, there's obviously, usually something a little bit amiss in anything that would -- anybody that would do -- you know, engage in this kind of conduct. And so there's an SVP statute out there. You know, that could be triggered.

He understands that before he were to leave prison that he could be reviewed to see whether or not he would be released from custody at that time. And so I don't think, given the existence of that statute and his -- the 85 percent nature of the period of time that

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he would spend, the violent status, the two strikes that you already mentioned, I don't think there's really any need to go beyond the 25 years, whereas -- like you said there used to be zero to 30.

You used to have a lot more -- in a case like this, Your Honor would have a lot more options on the menu and, you know, it's possible that he wouldn't get 25. Who knows if it were you or -- chance plays a role in what the sentence is in a situation like this. And so for -- in Mr. Linton's case, you know, the law changed, I think it was three or four years ago and it makes what he's been convicted of 25 years, and I'd ask that you not go beyond that.

I told him if he's planning on filing an appeal that he probably shouldn't say anything or he shouldn't say anything in this hearing. I know that he wants me to tell you, to plead for you to give him as little time as possible.

THE COURT: All right. One observation that I would like to make is that, you know, when I first started practicing law in 1984, if you killed someone outright they would be eligible for parole at 20 years. That's no longer the case now, but at one point in time, that was the case. Of course, with regard to this sentence, there's a minimum, mandatory 25 years and it's

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a day-for-day sentence. It's a non-parolable offense, which means that under the very best of circumstances he serves 85 percent of it, which is a significant amount of time.

Mr. Deysach, I don't take lightly about why could an individual do something like this and there seems to be a disconnect between this individual and what he's accused of. As a matter of fact, he appears -- you know, quite often when people are tried in this court for crimes like this, they appear to have a very cavalier attitude, but just from the colloquy that I had with regard to whether or not he was going to take the witness stand, he seems to have plenty of manners, he seems to be -- doesn't have the cavalier attitude that quite often accompanies people in this situation. The other thing that I find to be noteworthy is what Mr. Deysach said about why would somebody do something like this. But research indicates that the only reason why an individual would do this would be because they were abused as a child. That's the only reason that would cause somebody's wires to get crossed up in such a way to do something like that.

And, you know, one thing that -- you know, it's easy when somebody's accused of a crime like this to demonize them because of the horrific damage that they do

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to an individual. And I feel that. I understand that. I know that. But on the other hand, there is a -- when I look at that poor little girl as she was testifying, it very well, in all likelihood, he was that individual when he was that age, being abused. It's the only reasonable explanation for what he's done. However, that seems sort of unfair that someone who's a victim later on turns out to be a predator for that very action, but there is a reason for this sentence, is as long as there are people out there who act as predators toward small children, then it's a generational thing. It goes on and on and on and it's got to be stopped.

And sometimes people could question the wisdom of the legislature for such a severe sentence, but in this particular instance, I think that it's warranted. And the reason is, if a person would do something like this, they need to be separated from society to avoid -- to do two things: To send a message to the people out there who are likely situated, that they -- that this type of conduct cannot be tolerated. And in addition to that to protect society from generational criminal conduct in the future. So it's not a very easy situation.

Of all the things that I do as a circuit court judge, this is the most difficult and the least pleasant. So having said that, I'm going to render the following

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sentence. The other thing is that the attorney general, like Mr. Deysach has indicated, before Mr. Linton will be released from jail, I'm certain he will be evaluated under the sexually violent predator act, which to some extent, some people view as being very severe because he can serve every day of this particular sentence and then having paid his debt to society and then they file a civil action against him that -- where they can hold him pursuant to a civil commitment, essentially until the State thinks he gets better. And you have to go through these 12 different steps of proving that you're not a sexually violent predator before you can get out.

And it's really an indeterminate sentence. Who knows whether or not the attorney general will elect to do so in his situation. That's a very real possibility. So taking all those things into consideration this is the sentence of the Court:

Mr. Linton, on indictment 2010-GS-07-0013, criminal sexual conduct with a minor with regard to a victim under the age of 11 years, the sentence of the Court is that you be committed to the State Department of Corrections pursuant -- State Department of Corrections for a period of 27 years. Good luck to you.

MR. DEYSACH: Thank you, Your Honor. Is that -- have you given him credit for his pretrial detention.

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THE COURT: What is that.

MR. DEYSACH: It's been 16 months. He was arrested on December 3rd of 2009.

THE COURT: I'll give him 16 months.

MR. DEYSACH: Thank you, Your Honor.

THE COURT: Good luck to you, Mr. Linton.

* * * * * * * * * * END OF TRANSCRIPT * * * * * * * * * *

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STATE OF SOUTH CAROLINA)
) **CERTIFICATE OF REPORTER**
COUNTY OF AIKEN)

I, THE UNDERSIGNED, Brenda J. Sigwald, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that I reported the proceedings in the captioned case in the Court of General Sessions in and for the State of South Carolina on March 29-30, 2011.

I FURTHER CERTIFY that the foregoing pages, numbered 3 through 442 constitute a true, accurate and complete transcript of said hearing.

I FURTHER CERTIFY that I am neither kin, counsel, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Aiken County, this 10th day of September, 2011.

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.

WITNESSES

Baird - BCSO

ARREST WARRANT NUMBER

M055886

ACTION OF GRAND JURY

Brad Wolfe
Foreperson of Grand Jury
Date: MAR 24 2011

VERDICT

Foreperson of Petit Jury
Date:

INDICT.DOT

DOCKET NO. 2010GS0700013

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

January Term 2010

THE STATE

vs.

Anthony Glenn Linton

Amended Indictment for

Sex / Criminal sexual conduct with minor 1st Degree

SC Code: 16-03-0655(A)(1)
CDR Code:0385

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2010GS0700013

At a Court of General Sessions, convened on March 24, 2011, the Grand Jurors of Beaufort County present upon their oath:

Sex / Criminal sexual conduct with minor – 1st Degree

That in Beaufort County, South Carolina, November 29, 2009, the Defendant, Anthony Glenn Linton, date of birth [redacted], 1976, did commit a sexual battery upon a minor who was less than eleven years of age, to wit: vaginal and/or oral and/or anal sexual intercourse upon [redacted] Minor [redacted] date of birth [redacted], 2003, in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statue in such case made and provided.

Solicitor.

STATE OF SOUTH CAROLINA)
COUNTY OF Beaufort)
STATE VS.)
Anthony Linton)
AKA:)
Race: B Sex: M Age: 34)
DOB: [redacted] SS#: [redacted])
Address: [redacted] Green Street)
City,State,Zip: Beaufort, SC 29902)
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS0700013
A/W#: M055886
Date of Offense: 11/29/2009
S.C. Code § : 16-03-0655(1)
CDR Code #: 0385

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First de 25 - Life
in violation of § 16-03-0655(1) of the S.C. Code of Laws, bearing CDR Code # 0385
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Bannon, Meredith — 77415 SC Bar# — Defendant — Attorney for Defendant — 69463 SC Bar#

WHEREFORE, the Defendant is commited to the ☑ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 27 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 16 months
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100 00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25 00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5 00
§ 44-53-450(C) (Conditional Discharge)	$350	$
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

Certified - A True Copy
Jeri Ann Rosenlau - Clerk of Court
Beaufort County, SC - Kelly Taylor

☐ Condition Discharge § 44-53-450(C) requires $350 be paid to the Clerk prior to case disposition
☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk
Court Reporter: Brenda Sigwald
Presiding Judge
Judge Code: 2145
Sentence Date: 3/31/2011

SCCA/217 (06/2010)

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Anthony Linton, Appellant.

Appellate Case No. 2011-189868

Appeal From Beaufort County
Michael G. Nettles, Circuit Court Judge

Unpublished Opinion No. 2012-UP-595
Submitted October 1, 2012 – Filed October 31, 2012

AFFIRMED

Appellate Defender Elizabeth Anne Franklin-Best, of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Salley W. Elliott, and Staff Attorney Julie Kate Keeney, all of Columbia; and Solicitor Isaac McDuffie Stone, III, of Bluffton, for Respondent.

PER CURIAM: Anthony Linton appeals his conviction of first-degree criminal sexual conduct with a minor, arguing the trial court erred (1) when it did not ask during voir dire whether any juror, or their friends and relatives, was a victim of a violent crime and (2) in allowing inadmissible hearsay testimony by an expert witness. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred when it did not ask during voir dire whether any juror, or their friends and relatives, was a victim of a violent crime: *State v. Vang*, 353 S.C. 78, 89, 577 S.E.2d 225, 230 (Ct. App. 2003) (holding the trial court is not required to ask every voir dire question submitted by the attorneys); *State v. Hill*, 361 S.C. 297, 308, 604 S.E.2d 696, 702 (2004) ("To constitute reversible error, a limitation on questioning must render the trial 'fundamentally unfair.'" (citations omitted)); *State v. Grant*, 275 S.C. 404, 409, 272 S.E.2d 169, 172 (1980) (holding the trial court did not err in refusing to ask each juror whether they were a victim of a crime in the last three years).

2. As to whether the trial court erred in allowing inadmissible hearsay testimony by an expert witness: *State v. Garner*, 389 S.C. 61, 67-68, 697 S.E.2d 615, 618 (Ct. App. 2010) ("[I]mproper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice. Such error is deemed harmless when it could not have reasonably affected the result of the trial, and an appellate court will not set aside a conviction for such insubstantial errors. An insubstantial error is harmless when guilt is proven by competent evidence such that no other rational decision could be reached . . . ." (internal quotations and citations omitted)); *Huggler v. State*, 360 S.C. 627, 634-35, 602 S.E.2d 753, 757 (2004) (holding the trial court did not err by allowing inadmissible hearsay testimony because the evidence of abuse was overwhelming).

AFFIRMED.[1]

HUFF, THOMAS, and GEATHERS, JJ., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

AW
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FORM 5

STATE OF SOUTH CAROLINA)
13 APR 24 PM 4:11 IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
JEAN [illegible] BEAUFORT
BEAUFORT COUNTY, S.C.
CLERK OF COURT
Anthony G. Linton #345516) Case No.: 2013-CP07 1104
Full name and prison number (if any) of Applicant.)
)
v.) **APPLICATION FOR**
)
State of South Carolina) **POST-CONVICTION RELIEF**
)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 McCormick Corr. Inst., 386 Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence Beaufort County Court of General Sessions, Beaufort, SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) 2010-GS-07-0013 - Criminal Sexual Conduct with a Minor 1st Degree
   (b) _____
   (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) March 31, 2011 - 27 years incarceration
   (b) _____

Revised 3/2003

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty XXXXXX

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. AFFIRMED

ii. _____

iii. _____

(c) the date of each such result:

i. October 31, 2012

ii. _____

iii. _____

(d) if known, citation of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No. 2012-UP-595

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not appealing:

(a) N/A

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) See attached Memorandum

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See attached Memorandum

(b) _____

(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. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is the Applicant's first opportunity to present these issues.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. Ian Deysach, Esquire

ii. Matthew Walker, Esquire

iii. Susan B. Hackett, Esquire - Appellate Defense, Columbia, SC 29211

(b) the proceedings at which each such attorney represented you:

i. 18(a)(i) & (ii) represented me at 17(a)(b) & (c)

ii. 18(iii) represented me on 17(d)

iii.

19. State clearly the relief you seek in filing this application:
Sentence and conviction reversed and case remanded for a new trial.

20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of McCORMICK)

I, Anthony G. Linton#345516, 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.

Anthony Linton

SWORN to and subscribed before me this 22 day of April, 2013.

[illegible] (L.S.)
Notary Public

My Commission Expires: 12-16-2019

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Anthony G. Linton #345516, 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.

Anthony Linton
Applicant

SWORN or affirmed to and subscribed before me this 22 day of April, 2013.

JC Hankler
Notary Public

My Commission Expires: 12-16-2019

Revised 3/2003

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
	)	2013-CP-07-1104
	)	
Anthony G. Linton, #345516,	)	
	)	
Applicant,	)	
	)	
v.	)	**RETURN**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed April 24, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. The Applicant was indicted on March 24, 2011 by the Beaufort County Grand Jury for criminal sexual conduct with a minor- first degree. The Applicant was represented by Ian Deysach and Matthew Walker, Esquire.

On March 29-31, 2011, the Applicant proceeded to trial and was convicted. The Applicant was sentenced by the Honorable Michael G. Nettles to confinement for a period of twenty- seven years.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Susan Hackett, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Linton, No. 2012-UP-595 (S.C. Ct. App.

October 31, 2012). The Applicant filed a Petition for Rehearing which was denied on December 19, 2012. The Applicant filed a Notice of Appeal to the South Carolina Supreme Court. By Order dated March 13, 2013, the Supreme Court dismissed the appeal at the Applicant's request. The Remittitur was issued on March 15, 2013.

Attached herewith and incorporated herein are the records of the Beaufort County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
    a. Counsel failed to object, move or mistrial, or request curative instruction due to inflammatory and prejudicial remarks of solicitor during opening and closing argument.

III.

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant 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, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: A R. W/S
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 29, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFROT	)	
	)	
	)	2013-CP-07-1104
	)	
ANTHONY G. LINTON, #345516	)	
	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the abovecaptioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan M. Shaffer, Esquire
Shaffer Law Firm
120 Gantt Street
Lexington, SC 29072

DATED this 6 TH day of JUNE, 2014

Anne Henley

Anne Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OF BEAUFORT	)	FOR THE 14th JUDICIAL CIRCUIT
	)	
Anthony Linton	)	CASE NO.: 2013-CP-07-1104
Applicant	)	
vs.	)	
	)	
State of South Carolina	)	
Respondent,	)	
	)	

AMENDED APPLICATION FOR POST-CONVICTION RELIEF

To; Rutledge Johnson Esq. Office of the Attorney General PO Box 11549 Columbia, SC 29211-1549

Applicant Anthony Linton, by counsel, amends his Application for Post-Conviction relief as follows:

1. Applicant repeats and incorporates his entire Application for Post-Conviction relief filed April 24, 2013.
2. As additional grounds for relief Applicant alleges that trial counsel provided deficient performance in failing to fully investigate the case, and as a result, trial counsel was unable to offer evidence that would have exculpated applicant and which would have impeached the credibility of the State's witnesses.

Respectfully Submitted,

James K Falk
Falk Law Firm
PO Box 1058
Charleston 29402
(843) 606- 6007
(843) 972- 9005 fax
jfalklaw@gmail.com

CERTIFICATE OF SERVICE

Undersigned certifies that a copy of the above was mailed this October 13, 2015 to Rutledge Johnson, Esq. at the above address

James Falk
Attorney for Applicant

In the Court of Common Pleas for the
State of South Carolina, County of Beaufort

Case No.: 2013CP0701104

Anthony Linton,
Plaintiff(s),
vs.
State of South Carolina,
Defendant(s).

POST-CONVICTION RELIEF HEARING TRANSCRIPT

October 12, 2017
Beaufort, South Carolina

BEFORE:
The Honorable Thomas A. Russo

APPEARANCES

REPRESENTING APPLICANT:

James K. Falk, Esquire
PO Box 1058
Charleston, SC 29402
843-606-6007
jfalklaw@gmail.com

REPRESENTING THE STATE:

Ruston Neely, Esquire
Office of the Attorney General
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rneely@scag.gov
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PROCEEDINGS

MR. NEELY: The next case that the State would call is the case of Anthony Linton versus State of South Carolina, Case number 2013-CP-07-1104.

THE COURT: Mr. Falk, Emily had heard back from Judge Cooper and I believe that his response is that if somebody would submit an order to him, he will deny the reconsideration on the other case.

MR. FALK: Okay, thank you.

THE COURT: Emily said if you need some help with that, she will help you with it, giving him a proposed order.

MR. FALK: It'll be nice to be able to try to get it sent to him today.

THE COURT: You'll need a caption, right?

THE LAW CLERK: I have that.

(Off-the-record discussion held.)

THE COURT: All right. Ready to proceed?

MR. FALK: If we could have one more minute, Your Honor?

THE COURT: Yes, that's fine.

(Pause.)

MR. FALK: We're ready, Your Honor.

THE COURT: All right. Mr. Neely.

MR. NEELY: Thank you, Your Honor. Applicant was

indicted on March 24th, 2011, by the Beaufort County grand jury for criminal sexual conduct with a minor in the first degree. Applicant was represented by Ian Deysach.

On March 29th to 31st, 2011, he proceeded to the trial and was convicted. He was sentenced by the Honorable Michael Nettles to confinement for 27 years. He filed a timeliness appeal. The appeal was perfected by Susan Hackett of the Office of the Appellate Defense. Applicant's convictions and sentences were affirmed by the Court of Appeals. He filed a petition for a rehearing, and was denied on September 19th, 2012.

And this appeal was filed with the South Carolina Supreme Court, order dated March 13, 2013. The South Carolina Supreme Court dismissed the appeal and the remitter was issued March 15, 2013.

THE COURT: All right.

MR. FALK: Your Honor, I need another minute.

THE COURT: All right.

MR. FALK: Your Honor, just to make a record. He withdrew his application -- excuse me, he withdrew his appeal.

THE COURT: Right, from the Supreme Court.

MR. FALK: Right. Whether or not to go forward

with cert and decided not to.

THE COURT: Right. That's my understanding.

MR. FALK: Okay. Your Honor, my client -- the issues that we would like to talk about today are problems in the testimony of the witness who evaluated the victim in this case and the impermissible hearsay testimony that was admitted. And I can -- that exceeded the scope of what would have been permissible hearsay testimony. And we also wanted to talk about an objection to the closing argument that was a plea to emotions in closing argument.

THE COURT: All right, sir.

MR. NEELY: Your Honor, I would object --

MR. FALK: May we approach?

THE COURT: Yes.

(Off-the-record discussion held.)

THE COURT: All right. Mr. Falk.

MR. FALK: Sorry, Your Honor. Standing by the grounds that we raised in the original PCR, I filed an amended PCR. There's one issue that we are not going forward with as far as investigation, but I would like at this time to amend his PCR in order to reflect trial counsel's failure to preserve inadmissible hearsay testimony.

THE COURT: Okay. And I think that the State

is -- does not object to that amendment as long as it remains tailored to that issue, the preserving of the objection to the hearsay.

MR. NEELY: The preserving of the objection. And my understanding is the specific language that he's speaking of is when the nurse mentions what the victim told her during her examination the first time. Then it is objected to the second time and upheld on the Court of Appeals. But he's amending it to add that he should have objected the first time as well.

THE COURT: Okay. Is that correct?

MR. NEELY: I'm just trying to make sure we're all clear here.

THE COURT: Yeah.

MR. FALK: My point is, he should have objected. He didn't object. He's not limited to that. It's whether or not he should have gone for a mistrial once it was already done and whether or not he should have asked for a curative instruction. I mean, that's all under the same.

MR. NEELY: On that one statement?

MR. FALK: Yes. I just didn't want to limit it.

THE COURT: I know what you're saying. And you can explore that as to that, that issue.

MR. FALK: Yes, that is -- then there's no --

THE COURT: Yeah, okay, sounds good.

MR. FALK: Since we're doing that, why don't we go right to that language. Oh, no. Okay. I'll call my first witness.

THE COURT: Yes.

MR. FALK: I call Mr. Deysach to the stand.

THE COURT: All right, sir. If you will please come around to be sworn for purposes of this case.

MR. DEYSACH: Yes, Your Honor.

Thereupon,

IAN DEYSACH

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE WITNESS: I do.

THE CLERK: You may be seated.

THE WITNESS: I am Ian Deysach.

DIRECT EXAMINATION

BY MR. FALK:

Q Mr. Deysach, when did you start your representation of Mr. Linton?

A I'm not sure of the appointment date.

Q I mean, just, roughly, how long have you been representing him?

A This case is from November of 2009, so, I believe that he was incarcerated the whole time. I was his only

attorney when I was appointed as his public defender when I was at the public defender's office, so, late 2009.

Q Okay. Do you have a transcript?

A I do not.

Q Let me just try to queue this up to my page in the transcript. I'm kind of jumping into the middle of this, and then I'm going to back out, but I just to make it clear. Here it goes. I'll ask you about Page 147. And you know how to work this, right?

A Okay.

THE COURT: What page and line?

MR. FALK: Page 147, Lines 5 through 14.

THE COURT: Okay.

THE COURT:

BY MR. FALK

Q Can you -- so, I've cited that line and that section of the transcript. Who is testifying at this point in the trial?

A Nurse Kristen Dalton.

Q And, sort of, generally so the Court knows, this is a CSC with a minor case?

A Correct.

Q And what is Kris -- how does Kristen Dalton -- how is she a witness in this case?

A She is a -- she's a nurse, who, I guess, works at

Beaufort Pediatrics. She examined the victim upon the report of a sexual assault having occurred to her.

Q Okay. And what is your extent and -- what is your understanding of the extent of what as far as relaying -- back up. Can you read, sort of, that full sentence that starts on Line 5 through 14 where she talks about -- right after --

A Yes, yes, I'll read it. She said, that evening when she was preparing dinner, her six-year-old daughter told her that she had been sexually assaulted by the man who she calls dad, Anthony Linton.

Q So, that is testimony from -- she's actually -- Dalton is actually relaying a conversation that she had with Carla Griffin, right?

A That's what it appears, yep.

Q Yeah. And actually, right before that question came out, you -- if you go back to the bottom of Page 146?

A Yes.

Q Can you see where you objected?

A I said, I would object to the hearsay. I --

Q So, you see that. So, right in front of that, what was the question that was asked?

A All right. Prior to that, Did you speak with Carla Griffin? Yes. And were you able to obtain a sexual history? And the next question, And what did you understand

the reason for your examination to be? And that's when the objection is uttered.

Q And what was the grounds for your objection?

A Hearsay. I think -- hearsay. I think she's just trying to elicit what Carla Griffin told her the reason was for. Hearsay from Carla Griffin.

Q Okay. And if you sort of scan through there, then what's your recollection of what happened next?

A Well, the objection is sustained. There's a bench -- the solicitor says that there's an exception. I believe there's a bench conference. And it is -- my objection is overruled because experts rely on hearsay testimony and the objection is overruled and she's allowed to testify in that regard.

Q Okay. So, then that's your understanding they're talking about, possibly, South Carolina Rules of Evidence 703 about experts can rely on hearsay testimony?

A Right.

Q And then let's maybe skip ahead to Line 24 on Page 148.

A Yes.

Q So, there you sort of made another objection to hearsay testimony; is that right?

A I did.

Q And you included expanded grounds?

A I have the same objection, then I go on -- I would object to the testimony by this witness as to what the victim, it's now redacted, said on the basis of hearsay. I also object to it on the basis of the child videotaping statute, which requires hearsay statements could be made by an alleged victim in the case, such as these. Before a hearsay statement is able to be presented -- I don't know, do you want me to continue reading?

Q No. Well, I mean, maybe not reading it out loud, but to sort of help you recall procedurally what happened. Then, ultimately, did Judge Nettles decide that there was possibly a problem with that testimony?

A Yes. I mean -- yes.

Q And that the hearsay testimony needed -- the hearsay testimony in these circumstances needed to be confined to time and place?

A Time, place, and manner, right.

Q So, that -- and manner would be that they could say there was penetration, but they couldn't say who it was?

A Correct, identity wouldn't be allowed.

Q Right. Because this would possibly be an identity case here?

A Correct.

Q All right. And so Judge Nettles sort of agreed that -- and he even said that he thought that earlier

testimony was beyond the scope of what they were allowed to say, is that not accurate?

A I believe it is. Yes, it is.

Q Okay. Did you consider trying to do something about the fact that the jury already heard -- I guess now to make it -- so, let's see exactly what the jury heard, if we go back up to that Line 5 on Page 147?

A 147, they heard that Carla Griffin told Kristen Dalton that her six-year-old daughter told her that Anthony Linton sexually assaulted her.

Q And then, if you go all the way down to 14, I think there's another reference that identifies Anthony Linton?

A On 147?

Q Yes.

A Line 14?

Q Or, I'm just saying somewhere in between. If I can approach, I'll find it. So it's not only -- in that section between 9 and 14, it's not only that she identifies dad?

A Right.

Q She means Anthony Linton, but it also has some discussion of more details of the act?

A Correct.

Q He got on top of me, he covered my mouth. All

right. Did you -- once you realized that Judge Nettles was sort of on your same wave length, that that testimony was inappropriate for the jury to hear or exceeding the scope of hearsay under these circumstances, did you think that -- did you make a consideration to ask for a mistrial or --

A I don't remember, certainly, what's going through my head. I didn't make one. As I look at it now, I think I would have -- if I was doing it right now, I believe I would make one. It seems like an appropriate one to make and I didn't make it, but I don't remember what I was thinking.

Q Because, although, you originally objected to the testimony as hearsay -- I know the Attorney General's office argued that you didn't object -- it wasn't adequate grounds to preserve the argument because it's hearsay that's admissible under 703, but it's beyond the scope of what is permitted under these circumstances in that this hearsay has got to be limited to time and place?

A Right. The real objection isn't that it's hearsay, it's that -- well, I would call it hearsay that's not covered by an objection, but I mean, obviously, that may not be how it was viewed by a higher court. So, yes, the real objection is about how to define the exception to hearsay, not just hearsay itself. Is that right?

Q Yes, I think.

THE COURT: Let me interject, so, I'm clear.

Mr. Deysach objected?

MR. FALK: He said hearsay.

THE COURT: Right. Judge Nettles sustained it, but then they had a bench conference. Subsequent to the bench conference -- and I'm just using the record, Mr. Deysach again says that I would like my objection to the hearsay noted for the record, and then the judge overrules it. And then we proceed and we go to this testimony, right?

MR. FALK: Right.

THE COURT: Okay.

MR. FALK: So, once the expert -- once -- my argument would be, once the expert or Nurse Dalton exceeded the scope of what she was permitted to say, there should have been another objection.

THE COURT: You mean the part where --

MR. FALK: The my daddy part.

THE COURT: -- she gives some details?

MR. FALK: The details, the identity details. There needed to be a contemporaneous objection at that point. That is our contention.

THE COURT: All right.

Q So when they -- when she -- when Nurse Dalton sort of expanded what she was allowed to say under the hearsay, because they are allowed to rely on some stuff in order for

the purposes of the diagnosis. Once she crossed the line and said, my daddy did it or my dad did it, you did not object at that point?

A There is not a contemporaneous objection to that.

Q Okay. Okay. And then, once Judge Nettles acknowledged that some of the prior testimony had gone too far, you did not do anything further -- because, actually, the jury at that time didn't even know the testimony went too far?

A Correct.

Q Because the jury actually -- because there's nothing in the record to show that even Judge Nettles was sustaining an objection, so the jury could assume that that was all -- even if they did follow the charge?

A I agree.

THE COURT: You're losing me again. Because all I've got is the record here.

MR. FALK: Yeah. And what I'm saying is that --

THE COURT: It appears that all of this was on the record in front of the jury.

Q You have to go -- can you go down to right after you -- Judge Nettles, then there was the break and then y'all had a conference after that.

A Uh-huh. (Indicating affirmatively.)

Q So what page are you on?

A Right now, I'm looking at 146, that's where my objection was initially sustained and then overruled on 146.

THE COURT: Right. Then there was a bench conference out of the hearing of the jury, correct? Well, that tells me the jury is still in the courtroom, it was just up at the bench.

MR. FALK: Yes, Your Honor. It's about two pages later.

THE COURT: Oh, he does send the jury out on Page 149.

MR. FALK: Then if you look at 149, Line 6, where he's now objecting to the hearsay testimony and then the judge sends the -- the jury exits at two --

THE COURT: Right, then he sends them out.

MR. FALK: Right. And Mr. Deysach sets the grounds for his objection on Line 13 on Page 150 and following.

Q And then, if you could fast forward to page 154, where I believe he's talking with -- they bring Dalton back in after a lunch break or whatever, that's what he --

MR. NEELY: Would it be helpful if I gave him my transcript?

MR. FALK: Yes.

MR. NEELY: May I approach the witness to give him my transcript, Your Honor? That way, Mr. Falk can have

his at the same time.

THE COURT: Yeah. I tell you what, you might need yours. Let me --

MR. NEELY: I've got it on my computer. I'm tracking along on my computer.

THE COURT: Okay, all right. As long as you can track.

So, Mr. Falk, we're on Page 154, is that correct?

MR. FALK: Yes, Your Honor.

Q So, obviously, we weren't part of -- we don't know what -- there's obviously some references to some bench conferences that had transpired, but it would be clear that if you read Page 154, Line 11, where Judge Nettles is then setting forth the parameters. So I mean, it seems to be an acknowledgment that the prior testimony was beyond the parameters of what Nurse Dalton was allowed to say, is that fair?

A Yes.

Q And then it goes on further, if you look on 155, Line 6, that paragraph and the following paragraph where Judge Nettles is acknowledging that it is the testimony -- the identity testimony and that he was on top.

A Yes, he -- he picks out that identity testimony as inadmissible.

Q Okay. Now, the jury is out. Because the line

above it says a recess was observed, so --

A Yes.

Q -- I'm assuming that this conversation with --

A On 154, Line 13, he starts off, While the jury is out, I wanted to. So the jury -- my recollection is the jury is not there and he's giving Nurse Dalton parameters within which to keep her testimony.

Q Right. So I just wanted to make sure that this was clear that that was not any type of curative language that the jury heard?

A The jury was not there, so they didn't hear it.

Q Okay.

MR. FALK: So Your Honor, that's what I was referring to, it is an acknowledgment that the prior testimony was admissible and that the jury's left with -- even if they do follow the instructions that they're supposed to disregard the testimony, they were never even told to disregard the testimony.

THE COURT: Did the child testify in this case?

MR. NEELY: Yes, sir.

THE COURT: Did she identify the defendant as the person?

MR. NEELY: Yes, sir.

THE COURT: Okay.

MR. FALK: If I could, I would like to excuse

Mr. Deysach from the stand and put my client up. I just wanted to sort of put that issue before the Court. And I can go back to my other presentation and then I'll call Mr. Deysach back, if that's okay. I would like to call my client.

THE COURT: All right. Any problem with that, Mr. Neely?

MR. NEELY: No, sir, Your Honor.

MR. FALK: I just thought that it was helpful to sort of lay out before the Court, what, specifically, the amendment to the PCR application was.

THE COURT: All right.

MR. FALK: I'll call Mr. Linton to the stand.

MR. FALK:

Thereupon,

ANTHONY LINTON

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE WITNESS: Yes.

THE CLERK: You may be seated.

DIRECT EXAMINATION

BY MR. FALK:

Q State your name for the record, please.

A Anthony Linton.

Q Thank you. And what grounds are you raising in

your PCR?

A Well, one grounds is to amend the hearsay issue.

Q That's what we just addressed?

A Yes. And also, dealing with the issue that I would like to mention for the record that my lawyer didn't mention, the effect of dealing with the hearsay testimony when the inadmissible bolstering is done. And therefore, when the inadmissible bolstering is done, the victim testimony is not up for impeachment. I would like to add that to the amendment, also.

Q Okay. And then, you had concerns about the closing argument?

A Yes, I did. My lawyer failed to object to the prosecutor telling the jury to use their emotions to decide the case.

MR. FALK: I'm trying to find that line.

Q Do you recall specifically what you were referring to?

A Just when the solicitor told the jury to think about emotions, that the victim felt pain while this was happening, use your emotions to decide the case.

Q So, you're referring to Page 385, possibly, Line 6, where it says, This has been an emotional case, and that's the beauty of having a jury. You get to use your emotions. You get to figure out with your brains and reason

and your emotions what you think happened to help us?

A Yes.

Q Think about emotions. The victim felt pain and abandonment. As the defendant was molesting her, she felt terror?

A Yes.

Q So, it would appear that she's asking the jury not to just think about the facts in this case, but to, you know, the emotional appeal of what anybody would think when they hear allegations of abuse towards a child?

A Correct. I would also put on the record about the perjury from Kristen Dalton.

Q The inconsistent statements between?

A Her report, her medical report and what she said on direct exam and what she said on cross-examination.

Q I'll bring Mr. Deysach back up to explore that.

MR. NEELY: Your Honor, I would object to going into any of that. That's, certainly, not part of his allegations. Obviously, he's not saying it here, he said we will get to it when Mr. Deysach is called?

THE COURT: Okay.

Q Now, how much time did you spend with Mr. Deysach?

A How many times did he visit me --

Q Yeah.

A -- in jail?

DIRECT EXAMINATION OF ANTHONY LINTON BY MR. FALK

Q Were you in custody the whole time?

A Yes, I was. A year and a half, he may have visited me maybe like four times.

Q Okay. Did he go over the statements with you? Did he go over the discovery with you? Did you ever get your Rule 5 from him?

A Yes, but it wasn't complete. I had to write SLED to get my chain of custody.

Q Which parts of it were missing?

A Actually, it was a part where -- it was two months missing where they didn't know where the evidence was. And the part in dealing with that, I had two Schmerber hearings. The detective said that he picked up the evidence. Said the victim went to the Beaufort Memorial Hospital. Then he went to the trailer to pick up the evidence. But then at trial, Nurse Kristen Dalton said that Carla Griffin brought the evidence down to her later on. So there's two completely different statements where the evidence came from.

Q Okay. But my question to you was, what of the Rule 5 did you feel that you did not get?

A The chain of custody.

Q Okay. So, you didn't get the documents that show who had --

A Right.

Q Okay.

THE COURT: You talking about chain of custody of the documents?

MR. FALK: Yes.

Q And that was part of your Rule 5?

A Correct, it was not in there.

Q How do you feel that that affected your hearing?

A It affected me because it showed that where they -- I was not even there. I was in Savannah, Georgia, with another woman. And I can show ill motive because he turned around and said it on the stand, that she was mad at me because I was cheating on her. And that's in the trial transcript.

Q Okay. But as far as not having the chain of custody documents?

A He could have investigated to find out what really -- what went on and where this came from.

Q Okay. Okay. Was there any other part of your discovery that you don't think that he shared with you? Did you get the statements from the victim?

A And all that changed, I forgot about that. Yes, that changed also from the two different forensic interviewers that she went through. She went through one, Mary Beth Heffner, and -- which she did not show up for trial. And Kristen Dalton, who was not even certified to do a forensic interview. And she states that on direct --

cross-examination saying that she's not certified.

Q Was there any discussions with Mr. Deysach about what your defense would be in this case?

A No, not until, I want to say, maybe like during court -- during trial. At the end, he said that he was just trying the Matlock strategy.

Q The what?

A Matlock strategy.

Q What do you think he meant by that?

A I have no idea. He did not even put up any evidence to rebut anything that the nurse was going to say because it's totally different from her medical report.

Q Okay. Was there ever any discussions about a possible plea in this case?

A No. My indictment was also different from the warrant. The elements came out of nowhere, just added on there.

Q What's that?

A Elements of the crime were added onto my indictment that is the different from the warrant. It's also different from the two -- what do we call it, the two interviews, forensic interviews the victim went through, the two, they were different. And elements were added. And then, during trial, when my lawyer asked the detective why didn't he add vaginal penetration and other elements, the

detective just said that was the only information she had at the time.

Q I'd like to call Mr. Deysach back. Is there anything else that you want to add about his representation?

A I can't think of nothing right now.

MR. FALK: Okay. I have no further questions of this witness.

CROSS-EXAMINATION

BY MR. NEELY

Q Mr. Linton, you said that when you spoke with Mr. Deysach that he didn't have a firm strategy to defend your case?

A No, I said he had not. That he just told me he just wanted to see what they had to bring to court, what evidence they going to bring.

Q Did you discuss how to defend the fact that your semen was found inside the victim's panties?

A Talking about the fact of that, we went over that in dealing with the chain of custody and he asked her -- what did he determine about that issue there?

Q I'm sorry, I didn't understand the last part?

A No, explain to me again.

Q I didn't understand the last part. Did you discuss the DNA in her panties and how --

A Yes, we went over that issue and that's what we were trying -- going to figure out where did it come from. Because there was three different testimonies telling about where the evidence came from. They did not get it from Beaufort Memorial Hospital. There was testimony during the preliminary hearing that Detective Beard said he got it from the trailer in a pack of dirty clothes -- pile of dirty clothes. Then, there's also a statement saying that he went to the trailer and got it from Carla herself -- himself. And then, there was testimony from Ms. Bannon -- I'm sorry, not Ms. Bannon, but Ms -- Nurse Kristen Dalton saying that she got the evidence from Carla when she came up to her office.

Q So, Mr. Deysach did discuss it and he did tell you what his defense was and that he was trying to attack where the panties came from; is that correct?

A That's not correct. We --

Q Isn't that what you just said?

A No, what I said was that he -- that came up, but we were trying to figure out where did it come from, the panties came from, but we had to question the expert testimony about the DNA. But he really did not even attack the DNA in the panties, where they came from.

Q Did you discuss how to the defend against the victim's testimony and identification of you?

A No.

Q Did you discuss how to defend against her brother's eye witness testimony that you climbed on top of her and took her clothes off and raped her?

A We have inconsistent testimony dealing his testimony, also, dealing with this case. There was uncorroborated testimony, but there's no need to raise that issue dealing with this type of issue because no testimony is going to be the same because of the age.

Q So, you did discuss it, you discussed there were possible inconsistencies about it?

A Yes, that part, yes, after, afterwards -- no, no, not before. Not before, sorry. But I discussed it with my other lawyer, not Ian Deysach. I'm sorry.

A

Q What lawyer did you discuss it with?

A I discussed this with my direct and I discussed it with my other lawyer, which was Christen Shaffer.

THE COURT: That's appellate counsel?

MR. NEELY: I believe Mr. Shaffer was former PCR counsel.

THE WITNESS: Yes, he was former PCR counsel.

THE COURT: Okay.

Q Did you discuss potential alibi witnesses with Mr. Deysach?

A Yes, I did, but for some reason -- and that was Orlando Smith was an alibi witness, but he -- when I spoke to Orlando, he said that the solicitor gave him the wrong date to show up for trial.

Q Well, you say you discussed it with your attorney. It wouldn't matter what date the solicitor gave him if the attorney is giving the dates?

A Well, that's what Orlando had told me.

Q Okay. And who is Orlando Smith?

A He's my cousin.

Q Okay. Did you discuss how to defend against the visible bruising around the victim's vaginal area?

A Well, if you go to Ms. Kristen Dalton --

Q I'm asking if you all discussed this prior to trial as part of your defense?

A Prior to trial, we discussed it. He asked me about it. I'm like, I don't know nothing about it because I did not do it. I wasn't even there.

Q So, your defense to Ian, to your attorney, was that you weren't there, I don't know anything about it?

A Correct. I told him I did not do it, I'm innocent.

Q And you maintained that posture throughout the representation?

A Yes.

Q And the only witness you gave him to corroborate the fact that you weren't there was Orlando Smith?

A Yes, because he was my ride to Savannah. But if you go back and look at Kristen Dalton, at the trial, she tells you that she did not see any injuries, as she stated. But she said just because she told her doesn't mean that it didn't happen. Those were her words.

Q And you said earlier, there was no discussions of a plea?

A No.

Q But that -- you wouldn't want discussions of a plea, right?

A No.

Q Right?

A Correct.

MR. NEELY: I have no further questions, Your Honor?

THE COURT: Mr. Falk.

MR. FALK: No redirect.

THE COURT: Thank you very much, sir. You may step down.

MR. FALK: I'll call Mr. Deysach back.

THE COURT: Mr. Deysach, if you would come back around and you are still under oath from your previous testimony, sir.

DIRECT EXAMINATION OF IAN DEYSACH BY MR. FALK

Thereupon,

IAN DEYSACH

was re-called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FALK:

Q What discussions did you have about an alibi witness?

A We had some discussions, but I don't -- I don't recall the -- the time of when it was supposed to have happened to have been with, you know, the type of clarity and -- you know what I mean, how -- it wasn't clear when the youngster was supposed -- when this was supposed to have happened to her.

Q Okay.

A So, then, you know, if we're doing an alibi, you don't know what time period -- the trouble is to figure out what time period you're covering.

Q Sure. But did he give you somebody's name?

A He did. I remember talking about Orlando and Savannah and another woman and those issues were discussed.

Q Did he give you contact information for them?

A I'm not recalling contact information.

Q And is it your testimony that you didn't reach out to them because it wasn't going to fit with --

A I don't recall reaching out to them. I'm not -- you know, or making an investigation request to do that. So, I don't recall, you know, so I can't say that I did. But -- because it wouldn't -- if there's not enough -- if there's not that time period that I'm trying to cover, I really don't know what the alibi does, honestly. Other than to say that, you know, Mr. Linton was tom catting around with some other woman, you know, so you have to take the good with the bad on that. But, yeah, that's -- those would be problems with the alibi, not knowing when it was supposed to be. And what he's doing is he's cheating on his wife with another woman. It was a negative light sort of thing.

Q Did you have some concerns about the chain of custody with the child's panties?

A Yes. I mean, the panties are found in the house. I do believe it was among dirty clothes, that they weren't found, I don't think, the first time the police went through, although it was after the allegation had been made. There was the chain of custody issues, though, you know, had to do with, you know, the weight. You know, you have to argue like hey -- I mean, the defense was that, you know, that Carla would have put the DNA there.

Q That's what I'm getting at.

A Yeah, the defense was, you know, Carla would have put the DNA there to make -- to purposely get Anthony in

trouble for this, not that he really did it.

Q Right.

A So, you know, when you find these among dirty clothes, so, you know, is there possible contamination from one piece of clothes to another? The placement of the DNA was in a particularly negative place. I mean, honestly, we discussed, well, okay, you know, sex between Carla and Anthony and would -- you know, after everything is done and, you know, there's dirty clothes available to wipe up, that was discussed. Or just, you know -- or Carla putting DNA there, you know, having sex and being able to put DNA there purposely or just contamination from dirty clothes. These were all possibilities that I know we talked about and, you know, I thought about.

Q Okay. And Nurse Dalton's testimony regarding where the abrasions were or where the damage that she observed on the child. That was different from her initial report, was it not?

A Um --

Q Was there a question about whether or not it was on the front and the back or, you know, it was anal and vaginal or if it was just irritation to the labia?

A And she -- and she changed -- I don't have a specific memory of this, and so --

MR. FALK: May I approach?

THE COURT: Yes.

Q I'm just going to have you look at the incident report and then we'll sort of compare it to her testimony.

A Is there anywhere --

Q I'm sorry, so where did -- first of all, those, what I've shown you, that's part of the discovery in this case?

A It is, it's the incident report from Staff Sergeant Beard, who was the lead investigator on the case.

Q And is it about Dalton -- does it refer to Dalton's examination?

A It does.

Q And is where does -- where does she say, based on her examination, where does she show that there was signs of --

A Dalton reported signs of irritation to Mara's anal area and that Mara disclosed that would penetrate her anus with his erect penis and that it hurt real bad, then made her suck his penis. So, I guess, anal versus vaginal, but she says anal. And this is -- again, this is the pediatrics -- this is Beard's incident report telling what Dalton told him.

Q So, that's not how Dalton testified on the stand, though, because, she referred to vaginal penetration; is that correct?

A She did.

Q She had testimony regarding that the hymen was still intact?

A I believe she did.

Q Now, have you had a -- did you feel that might have been -- could have been an inconsistency in her testimony that you could have exploited to try to discredit Ms. Dalton?

A It was. Now, I actually had a gynecologist that I showed the pictures to that were provided. And the pictures -- that doctor said that the pictures that she had were not of sufficient clarity to show anything and so, she couldn't give me an opinion.

But I did talk to her about that, you know -- as I recall from the disclosure, she was referring to her private parts as her boonky and that when I was talking to the gynecologist that I was using to look at those pictures, it was -- she said that people use the word boonky for both anal and vaginal as far as where it would have occurred. Since she was six years old. That was what we had talked about. Whether or not I was able -- I should have been able to flesh that inconsistency out in front of the jury, you know, I mean, maybe I should have.

Q And there was never a plea offer in this case, so, you were always going to trial?

A There was never a plea offer. Certainly, if there was a reduction -- I mean, Mr. Linton would have been all ears, but I wouldn't say that that would be consistent with him admitting guilt because there certainly would have been an Alford type of a situation that he would have maybe been able to explore, but we never even got there. The solicitor never offered to reduce the charge. The charge has a minimum of 25, so we were always in a trial posture.

Q At the beginning, I read that -- you heard the section from the transcript about the closing argument?

A Yes.

Q And I'll -- do you have volume two of that transcript? It's Line -- it's Page 385?

A I don't have that section.

Q I didn't hand it to you, that's why.

A You said Page 385?

Q Page 385, Lines 6 through 14, that paragraph.

A Got it. Do you want me to read it?

Q No, it's already been read, but do you recall that now?

A I don't. I mean, I know she must have said it. I don't have an independent recollection of it. But it's here.

Q Would it be your opinion looking at it now, that that might be an appeal to emotion in this case?

A Absolutely. I mean, it comes out and says it.

Q Is that something -- obviously, you didn't object to it?

A Correct.

Q Was that a calculated decision?

A No, that was a mistake. I would have to say that's a mistake.

MR. FALK: I have no further questions.

THE COURT: All right. Anything on cross?

MR. NEELY: Thank you, Your Honor.

MR. NEELY:

CROSS EXAMINATION

BY MR. NEELY:

Q Mr. Deysach, if you would turn to Page 387, volume three.

A Yes.

Q You argued pretty extensively about the Solicitor's use of the word emotion. Are you sure that wasn't trial strategy to allow that in so you could argue emotion? Because you argue it pretty strenuously for over just a page.

A No, I mean -- I mean, I think it shows that I recognized that she brought it up and that I had to counter it, but I don't think I would have really wanted to get into that battle of saying, you should use emotion or not use

emotion. I don't see how that helps me, but I do feel like -- it looks like when I stood up, I felt like the first thing I needed to deal with was that appeal to emotion.

Q So, you did recognize what he was arguing and decided to argue against it?

A Correct.

Q And regarding the alleged inconsistency, you've already kind of mentioned the fact you're dealing with a six-year-old using generic words for her genitalia. Do you think that it's a good trial strategy to argue the anal versus vaginal inconsistency?

A I can see why I might not want to, say, hey, you know, he didn't rape her in the vagina, he raped her in the anus. You know, it's like either way, it's bad. So, I can see why I would not be in a hurry to delve into that inconsistency.

Q And you mentioned that it was a very unfortunate location where his DNA was found, were you referring to the fact that there was also her dried blood in the panties as well?

A Really, I was referring -- well, that. Was referring, it was a mixture. It was just the place in the panties that corresponds with the genitalia.

Q If Mr. Linton had been offered a plea deal, would you have recommended that he take it?

A Yeah. Yeah. I mean, it depends on what the deal is, but, yeah, anything that would have gotten away from 25 years, we would have fully discussed it. It's hard to speak in hypotheticals, but, yes.

Q Now, I realize this is kind of a strange question, but the PCR overwhelming evidence is, certainly, something the appellate courts and PCR courts consider. Would you consider this an overwhelming evidence type of case?

A I'm not sure. When you're trying a case, you never feel that way, you know, and so, I'm not prepared to say that, you know, the case was for some reason unwinnable, so I don't think I'm going to -- I don't think I could agree with you on that. But, I mean, the evidence is what it was. It was the child's disclosure and the DNA evidence together were -- made it challenging.

Q And would you say the brother's disclosure made it even more so?

A The brother's disclosure certainly didn't help, although, I think that his -- his disclosure was less compelling than her disclosure. It almost seemed like he was going along with it, but -- I mean, her disclosure was a lot more compelling than his disclosure, I'll say that.

Q When you say, compelling, not just what she said, but how she said it on the stand?

A Well, I mean, she's a six-year-old, so, you know,

you can't -- it's hard to imagine how a six-year-old would behave in that type of a situation. She did have a hesitation at a key moment when it came to saying Mr. Linton's name, but, you know, when -- but, I mean, that didn't make it uncompelling, I guess, apparently, to the jury. I mean, the jury, obviously, agreed with her. But there was a little bit of a hesitation right there at that key moment. But then after a little bit more prodding, she does allocute and say that it was my client who did it.

Q And her brother allocuted as well?

A He did. And I guess -- I had taken the videos from the Hope Haven interview, which, the Hope Haven interviewer never was called to testify, and, actually, shown them to an expert, a psychologist who does -- I guess, a psychologist who was in town at the time, Ela Nolan. And she, after watching it -- and I know we don't have truth-telling experts in this sort of field, but she felt that the -- she was the one who had the opinion based on those interviews that the child victim was more compelling than her brother in those interviews. I'm not sure that the child victim was quite as compelling on the stand as she was in the interview, I guess.

Q So, would you say that it helped your case that she didn't testify and that video didn't come in?

A Which, the Hope Haven?

Q Yes.
A I was happy not to see her.
Q And her -- the victim's testimony and her brother's testimony were both consistent with the -- that the defendant made threats against him that he would kill him if they told anybody?
A I do -- I believe I recall that, yes.
Q When you're making an objection in order to preserve it for appeal, if the Court of Appeals addresses the objection and makes a ruling on it, would you consider they found that objection preserved?
A I would say yes. I mean, I do -- I do find it hard to explain my failure to really ask for a remedy when we were on that objection issue that we were speaking of the first time I was testifying before Mr. Linton. But yes, I mean, if they rule -- if they analyze the objection that I made, if they rule on it, then I guess it was preserved.
MR. NEELY: That's all of the questions that I have, Your Honor.
THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. FALK:
Q There was no -- I just want to make sure, there was no testimony about blood in the panties, right? Didn't an expert testify to that, or do you recall?

A I'm not -- I'm relying on --

Q I'll withdraw the question.

A I don't know. I'm not sure if it was blood. I think -- I'm not sure if it was a mixture. My recollection on it, I don't want to rely on it.

MR. FALK: One moment. I have no further questions.

THE COURT: Anything further?

MR. NEELY: No recross, Your Honor.

THE COURT: Any objection to Mr. Deysach being excused?

MR. NEELY: Not at all.

THE COURT: Thanks for being here, sir.

THE WITNESS: Yes, sir.

THE COURT: All right. Anything further?

MR. FALK: Your Honor, I may be just hung up on this point, but I have concerns about the testimony, the hearsay testimony from Nurse Dalton as far as, you know, with specific information, with identity information, and also, more graphic details that the jury was able to hear. And they certainly were able to the rely on that because there was never any curative instruction for that. And I think that was clearly prejudicial to my client's case.

And I was surprised to see the part of the closing

argument with really such a blank appeal to emotion that we find on Page 385. I mean, I get that this is an emotional case, but I think that really -- solicitors have to be cautious not to -- it's very easy in a case like this, there's a little child hurt, I want to punish somebody for that. And it's very easy to get caught up in the emotions and to focus on the defendant. And really, if the solicitor is doing their job, they have to really make sure that the jury is focusing on the facts of the case and whether or not they've proven their case beyond a reasonable doubt. I mean, the solicitors know they're not allowed to do this and I think they clearly were crossing the line.

Whether or not -- Mr. Deysach, I think, admitted that he did not preserve any type of objection on that and that might have been something that the Court of Appeals could have done something with, had there been an objection to the improper closing. Thank you.

MR. NEELY: Thank you, Your Honor. Just to first address the hearsay issue, it looks like it's pretty clear about the Court of Appeals, that they found that it was admissible hearsay testimony that was allowed in. And they also found evidence of abuse was overwhelming, therefore, there was no prejudice. And as I've argued earlier this week, overwhelming evidence

is a defense in PCR. Other than the CSC cases where the defendant actually videoed himself committing the abuse, I don't think I've seen a CSC case with this much evidence. Terrible.

The reason that the mother took her child to the hospital so quickly was because she looked -- testified to that when she looked at her daughter's vaginal area, there was already bruising, purpling.

So the State would argue this is an overwhelming evidence case. You have not only the victim testifying and identifying the perpetrator, you have the brother testifying and identifying the perpetrator as well. Not just identifying the perpetrator, but in graphic detail. The brother testified that he saw him take her clothes off. That he saw him go up and down on her, that she was crying and screaming. Very convincing testimony by the brother and the type of the testimony that we don't normally have.

In this case, we have medical proof of sexual abuse. Not just medical proof of sexual abuse, we also have a mixture of DNA in the victim's panties, inside the victim's panties. Again, we just argue this is certainly an overwhelming evidence case.

And I think that Mr. Deysach gave us a really good insight into the Solicitor's closing argument and why

he mentioned what he did. At the end of that paragraph where he mentions emotion, on Page 385, the solicitor says, And she felt terror yesterday as she stood in this courtroom, shaking, unable to speak above a whisper, unable to look at Anthony Linton.

And I think what the solicitor is trying to explain to the jury is why they had -- is why, with a six-year-old victim on the stand, there was a pregnant pause whenever she was asked to identify the perpetrator and she hesitated, was the word Mr. Deysach used. And I think the solicitor is trying to explain to the jury why a six-year-old might hesitate to identify her perpetrator while he's sitting not but 20 feet away from her. I certainly don't think he's saying that you should purely use your emotion and decide this case based on your emotion. Certainly, he says you can figure out with your brains and your reason and your emotion what you think happened. And when he says, think about emotions, he's talking about Samara's pain and why she would hesitate on the witness stand.

And, you know, Mr. Deysach, the very first -- the beginning of his closing argument, he came out and made a huge deal about that. How this was not about emotions, this was about facts and, you know, you

shouldn't -- you know, they're asking you to do this, you definitely should not do this. The judge is going to tell you you shouldn't do this and you definitely shouldn't do this. He tries to make a lot of it. And to me, that's certainly part of trial strategy.

If you have a case where everything goes against you and your client, I think you try to find alternate ways -- maybe make arguments you wouldn't normally make. And, you know, that might be an argument that he wouldn't normally make. But in a case like this where there's nothing else as to reasonable trial strategy, you try to attempt that.

But again, I don't think that he was asking the jury to make a decision based on their emotions, he was talking about the pain of the victim there. And again, I would assert that it really doesn't matter because the standard for a PCR case is that there must be a reasonable probability that the results of the case would be different but for the deficiency. And in this case with the evidence brought against Mr. Linton, I can't comprehend that a jury would come back with any verdict but guilty. Thank you, Your Honor.

THE COURT: Mr. Falk.

MR. FALK: In response to something that Mr. Neely said, Carla Griffin who actually came to court that day

from South Carolina Department of Corrections, she was currently incarcerated. And she was incarcerated on charges of child neglect, so, she's not exactly -- you know, they're certainly painting her as the concerned mother. This is the concerned mother who did not take the child immediately in order to get examined. In fact, it was so late, it was beyond the period of time that Dalton could have done a rape kit. That's what Dalton's testimony was, is that it was beyond the period of time to get a rape kit. This is just a specific response to Mr. Neely's comment in the closing.

THE COURT: Okay. This is one I'm going to take under advisement so that I can read the transcripts and the submissions.

MR. FALK: Thank you, Your Honor.

MR. NEELY: Thank you, Your Honor.

THE COURT: So, I'll do that and have a response to you.

MR. FALK: Thank you.

REDIRECT EXAMINATION OF IAN DEYSACH BY MR. FALK

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 14th day of July, 2018.

Mona L. Manley /s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Anthony G. Linton, #345516, Applicant, v. State of South Carolina; Respondent.	Case No. 2013-CP-07-01104 **ORDER OF DISMISSAL**

2018 APR 13 PM 1:26
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The above-captioned matter comes before the Court via an application for post-conviction relief (PCR) filed by Anthon G. Linton on April 24, 2013. This Court convened an evidentiary hearing into the matter on October 13, 2017, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel, Ian Deysach, Esquire (Counsel), and Applicant were both present and testified. This Court had the opportunity to listen to their testimony and rule on their credibility. This Court also had before it a copy of the trial transcript, the records of the Beaufort County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the pleadings in this matter.

I. PROCEDURAL HISTORY

On March 29-31, 2011, Applicant proceeded to trial and was convicted. Applicant was sentenced by the Honorable Michael G. Nettles to confinement for a period of twenty- seven years.

Applicant filed a timely Notice of Appeal. His appeal was perfected by Susan Hackett, Esquire, of the Office of Appellate Defense. Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Linton, No. 2012-UP-595 (S.C. Ct. App. October 31, 2012).

Applicant filed a Petition for Rehearing which was denied on December 19, 2012. Applicant filed a Notice of Appeal to the South Carolina Supreme Court. By Order dated March 13, 2013, the Supreme Court dismissed the appeal at Applicant's request. The Remittitur was issued on March 15, 2013.

II. ALLEGATIONS

Applicant alleged the following grounds in his application:

1. Ineffective Assistance of Counsel
   a. Counsel failed to object, request a mistrial, or request a curative instruction due to remarks made by the solicitor during opening and closing arguments.
   b. Counsel should have objected again when the nurse said the victim told me her father did it and went into details on page 147 of the transcript.

III. SUMMARY OF FACTS

On the night of November 28, 2009, Appellant raped a six-year old girl. (R. 160-162; R. 175-183.) Appellant performed vaginal, oral, and anal penetration on the six-year old victim ("Victim"), who was the biological daughter of Appellant's live-in girlfriend. (R. 92; R. 175-183.)

Before the trial began, Appellant's trial counsel requested that the judge inquire into whether any of the jurors, or their close relatives or friends, had been a victim of sexual abuse. (R. 3.) The State objected to that question. (R. 4.) The trial judge denied Appellant's request. (R. 4-9.)

At trial, Victim's brother ("Brother"), who was eight years old at that time, testified he saw Appellant "doing it" with Victim on the couch. (R. 160-162.) Brother saw Appellant take off his own clothes and Victim's clothes. (R. 160.) Appellant got on top of Victim and started "going up and down, up and down." (R. 160.) Victim screamed and tried to get Appellant off of her. (R. 161.) At some point, Appellant took Victim into the room he shared with her mother. (R. 161.) Appellant

continued to rape Victim. (R. 161.) After Appellant finished raping Victim, Appellant told her that if she told her mother, he would kill both of them (R. 162.)

When Victim's mother got home the next morning, Victim told her what Appellant had done. After learning about the rape, Victim's mother examined Victim's genital area and noticed a purple discoloration. (R. 131.) Thereafter, Victim's mother contacted the police. (R.132.)

Around 2:00 p.m. on November 30, 2009, Victim's mother took Victim to see Kristin Dalton, a nurse practitioner for Beaufort Pediatrics and Hope Haven Children's Advocacy Center. (R. 81.) At trial, the judge qualified Dalton as a pediatric medical expert. (R. 77.) Dalton testified she examined Victim and concluded that she had traumatic injury to the genital area, which included abrasions on her inner and outer labia, abrasions in the vaginal introitus, and a cut above the urethral opening. (R. 92.) In addition, Dalton testified the victim's injuries were consistent with blunt force trauma to the genital area. (R. 93.)

Shortly after Dalton testified, Victim testified against Appellant. (R. 167.) Victim testified Appellant woke her up and "started to do nasty stuff." (R. 176.) Victim testified that Appellant touched her crotch with his mouth and "pee-pee." (R. 177; R. 178-179.) In addition, Appellant touched her buttocks with his "pee-pee." (R. 178.) Furthermore, Victim stated that Appellant's "pee-pee" touched her mouth. (R. 179.) Victim testified that something came out of Appellant's "pee-pee" and landed on her crotch. (R. 181.) Appellant wiped it off with a shirt. (R. 181.)

During the trial, Amanda Webb, a SLED DNA analyst, testified she found semen in the crotch area of the victim's panties. (R. 275-277.) Moreover, she concluded that the DNA found in the victim's panties matched Appellant's DNA. (R. 278.)

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds Applicant has failed to satisfy his burden to prove Counsel's actions were deficient. Applicant also failed to prove he was prejudiced by Counsel's alleged deficiencies. This Court finds Counsel's testimony was credible. This Court finds Applicant's testimony was not credible. This Court finds Counsel properly prepared for Applicant's trial. This Court finds Counsel elucidated valid trial strategies in defending Applicant and preparing for trial. This Court finds Counsel rendered adequate assistance and exercised professional judgment in his decisions at trial. This Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Counsel

In evaluating allegations of ineffective assistance of counsel, the court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668, 669 (1984). First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). "The proper measure of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsels' deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. "[E]very effort be made to eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, courts must be

wary of second-guessing counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

1. Counsel should have objected again when the nurse said the victim told me her father did it and went into details on page 147 of the transcript.

This Court finds there was overwhelming evidence of guilt and this issue was ruled on by the South Carolina Court of Appeals. On direct appeal, Applicant contended, "The trial court judge erred when he allowed a state's witness to testify beyond the hearsay limitations that apply in cases involving criminal sexual conduct." (App. Final Brief p. 8). The issue alleged the nurse's testimony that the victim told her the perpetrator was the victim's father was inadmissible. Counsel objected to the nurse's statements on the basis of hearsay and was overruled on two separate occasions. (Tr. p. 146; 149.) The Court of Appeals did not dismiss the issue for lack of preservation and, instead, ruled, "As to whether the trial court erred in allowing inadmissible hearsay testimony by an expert witness: State v. Garner, 389 S.C. 61, 67-68, 697 S.E.2d 615, 618 (Ct. App. 2010) ("[I]mproper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice. Such error is deemed harmless when it could not have reasonably affected the result of the trial, and an appellate court will not set aside a conviction for such insubstantial errors. An insubstantial error is harmless when guilt is proven by competent evidence such that no other rational decision could be reached . . . ." (internal quotations and citations omitted)); Huggler v. State, 360 S.C. 627, 634-35, 602 S.E.2d 753, 757 (2004) (holding the trial court did not err by allowing inadmissible hearsay testimony because the evidence of abuse was overwhelming). Linton, No. 2012-UP-595. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 670. Based on the transcript,

this Court agrees with the Court of Appeals' ruling and finds the evidence against Applicant was overwhelming and any error of Counsel would not have prejudiced Applicant. Applicant cannot prove prejudice where the evidence against him was overwhelming. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008).

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for not objecting to the expert's testimony because the issue was ruled on by the Court of Appeals. Further, this Court also finds Applicant failed to prove the testimony prejudiced Applicant such that there was a reasonable probability the result of the trial would have been different had it been excluded because the evidence against Applicant was overwhelming. Accordingly, this Court denies and dismisses this allegation.

2. Counsel failed to object, request a mistrial, or request a curative instruction due to remarks made by the solicitor during opening and closing arguments.

Applicant alleges Counsel was deficient for failing to object to the solicitor's comments regarding emotions during her opening and closing arguments. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 670. Based on the transcript, this Court agrees with the Court of Appeals' ruling and finds the evidence against Applicant was overwhelming and any error of Counsel would not have prejudiced Applicant. Therefore, Applicant cannot prove prejudice where the evidence against him was overwhelming. Id.

Further, Counsel used the solicitor's emotional argument in Applicant's defense during his own closing argument. This Court finds Counsel's failure to object was a reasonable trial strategy and will not use the benefit of hindsight to find Counsel's decision at trial unreasonable. "Where

counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). "The question is whether an attorney's representation amounted to incompetence under prevailing professional norms, not whether it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 88, 131 S. Ct. 770, 778, 178 L. Ed. 2d 624 (2011).

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for not objecting to the solicitor's remarks because he strategically used those arguments in his own closing argument. Further, this Court also finds Applicant failed to prove the testimony prejudiced Applicant such that there was a reasonable probability the result of the trial would have been different had it been excluded because the evidence against Applicant was overwhelming. Accordingly, this Court denies and dismisses this allegation.

V. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1g, SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 4th day of April, 2018.

THOMAS A. RUSSO
Presiding Judge
14th Judicial Circuit

Florence, South Carolina