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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

J. C. Nicholson, Circuit Court Judge

2010-GS-10-07730

2010-GS-10-07731

Appellate Case No. 2013-000179

State of South Carolina Respondent,

v.

Venancio Diaz Perez Appellant.

RECORD ON APPEAL VOL I
(Pages 1-500)

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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28 May 2014

FILED

2012 DEC -4 AM 11:14

JULIE J. ARMSTRONG
CLERK OF COURT

BY *JD*

STATE OF SOUTH CAROLINA)
COUNTY OF ~~BERKELEY~~ *Charleston*)
STATE OF SOUTH CAROLINA)

vs.

VENANCIO DIAZ-PEREZ

Defendant

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT
STATE'S MOTION IN SUPPORT
OF
OTHER BAD ACTS

INDICTMENT #'s: 2010GS1007730;
2010GS1007731

CHARGES: Criminal Sexual Conduct with
a Minor, 1st Degree; Lewd Act Upon a
Minor

The defendant, Venancio Diaz-Perez, is currently charged with Criminal Sexual
Conduct With a Minor 1st Degree and Lewd Act Upon *Minor 1* She was eight (8)
and nine (9) years old. Her date of birth is The time frame of indictments are
March 1, 2010 to July 10, 2010. She was in the defendant's home because his wife was
her babysitter. The defendant is also charged with Criminal Sexual Conduct With a
Minor 1st Degree and Lewd Act Upon a *Minor 2* She was eight (8) years old.
Her date of birth is und time frame of indictments are May 1, 2010 to July 1,
2010. She was at the defendant's home because his wife was her babysitter. The State
will call the case regarding 2010-GS-1007731 Lewd Act and 2010-GS-1007730 Criminal
Sexual Conduct With a Minor 1st Degree. The victim in this case is *Minor 1* The
State moves to offer evidence of the crimes against *Minor 2* pursuant to Rule
404 (b), SCRE and precedent dating back to 1911.

The State contends that the sexual abuse upon *Minor 2* by the defendant is directly related to abuse upon *Minor 1* and meets the factors cited in cases to show common scheme or plan. Evidence of other crimes, wrongs, or prior bad acts may be admissible to show "motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE. See *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923).

Based on precedent dating to 1911, South Carolina courts have consistently applied the common scheme or plan exception to sexual assault crimes. The State relies on extensive South Carolina case law in support of the introduction of the evidence: *State v. Adams*, 504 S.E.2d 124 (1998), *State v. Blanton*, 446 S.E. 438 (1994), *State v. Henry*, 432 S.E.2d 489 (1993), *State v. McClellan*, 323 S.E.2d 772 (1984), *State v. Hallman*, 379 S.E.2d 115 (1989), *State v. Wingo*, 403 S.E.2d (1991), *State v. Bell*, 393 S.E.2d 364 (1990), *State v. Mathis*, 597 S.E.2d 872 (2004), *State v. Weaverling*, 523 S.E.2d 787 (1999), and *State v. Edwards*, 644 S.E.2d 66 (2007), *State v. Wallace*, 683 S.E.2d 275 (2009), *State v. Hubner*, 683 S.E. 2d 279 (2009), *State v. Clasby*, 682 S.E. 2d 892 (2009).

The State seeks admission of this evidence pursuant to the South Carolina Rules of Evidence, Rule 404(b), as other bad acts on the part of the defendant. The admissibility of such evidence was first addressed in *State v. Lyle*, 125 S.C. 406, 118 S.E.2d 803 (1923). In *Lyle*, the Court held that clear and convincing evidence of other crimes that is logically relevant to prove intent is admissible if its probative value outweighs its prejudicial effect. See *Bell*, supra. Evidence is admissible if "logically

relevant: to establish a material fact or element it need not be 'necessary' to the State's case in order to be admitted: *State v. Sweat*, 606 S.E.2d 508 (2004)."

In *State v. Henry*, 432 S.E.2d 489 (1993), the Court ruled that the exclusion of such *Lyle* evidence significantly impaired the State's case, and thus reversed a pre-trial court order that had suppressed the evidence. Like *Henry*, the cases of *Blanton*, *Wingo*, *Hallman*, *McClellan*, *Adams*, *Wallace*, *Hubner*, and *Clasby* all supra, deal with admitting testimony from other sexual abuse victims under the *Lyle* exception. In *Wallace*, supra the court stated "Bad act evidence that is not subject to a conviction must be shown by clear and convincing evidence and should be reviewed under an "any evidence standard" on appeal *State v. Wilson*, 345 S.C.1."

Numerous South Carolina decisions uphold evidence of other bad acts concerning child sexual abuse. For example, in *State v. Hallman*, 298 S.C. 172, 379 S.E.2d 115 (1989), the defendant was convicted of sexual offenses against a foster child committed when she was seven to nine years old. The State introduced evidence of the defendant's sexual abuse of two female foster children when they were six to twelve and seven to thirteen years old. The crimes against the prior victims began seven years before the first assault of the primary victim. The Court upheld admission of the prior acts, noting that each victim was a foster child, the victims were of similar age when the abuse occurred, the abuse began in the same manner, and the abuse happened under similar circumstances (while in a barn or riding a tractor). The State will show that Venancio Perez had the same relationship: husband of babysitter and the girls were ages eight (8) and eight (8) and nine (9). There were multiple assaults all in the defendant's home.

The state would refer specifically to, *State v Wallace*, 683 S.E. 2d 275(2009). The Wallace case list several similarities that establish the required connection between the other acts and states no further "connection" must be shown for admissibility. These similarities were the defendant's relationship to the victims, abuse beginning at about the same age also occurring in family home when mother was not home and admonishment not to tell. The Wallace case also addresses the issue of how to address the assaults upon 404(b) victim's more extensive abuse. The court noted the proper way to deal with this would be to redact the different acts. Here both girls were fondled and *Minor 1* was digitally penetrated while abuse to *Minor 2* progressed to intercourse. Under the Wallace case the State would not have *Minor 2* testify about the sexual intercourse. For the foregoing reasons, the State contends the evidence of the assaults upon *Minor 2* are extremely probative and relevant to the existence of a "common scheme or plan" in connection with the sexual abuse upon *Minor 1*.

Many additional cases describe other acts of sexual abuse admitted to show a common scheme or plan. See *State v. McClellan*, 238 S.C.2d 772 (1984) (acts against other daughters admissible); *State v. Adams*, 332 S.C. 139, 504 S.E.2d 124 (Ct. App. 1998) (sexual abuse of victim's sister admissible); *State v Blanton*, 316 S.C. 31, 446 S.E.2d 438 (Ct. App. 1994) (sexual abuse of other children admissible); *State v Henry*, 313 S.C. 106, 432 S.E.2d 489 (Ct. App. 1993) (prior acts against victim's sister admissible); *State v. Wingo*, 304 S.C. 173, 403 S.E.2d 322 (Ct. App. 1991) (prior sexual abuse of victim's cousin admissible).

Proof of a conviction for the other crimes is not required. *State v. Blanton*, 316 S.C. 31, 32, 446 S.E.2d 438, 440 (Ct. App. 1994); *State v. McClellan*, 283 S.C. 389, 323 S.E.2d 772 (1984) (prior bad acts unreported prior to the case in question).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Debbie Herring-Lash".

Debbie Herring-Lash

Assistant Solicitor

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

J. C. Nicholson, Jr., Circuit Court Judge

INDICTMENT NOS.: 2010GS1007730, 2010GS1007731 D.I.
WARRANT NO.: I104929

 THE STATE, ... RESPONDENT,

v.

VENANCIO DIAZ PEREZ, ... APPELLANT.

NOTICE OF APPEAL

Venancio Diaz Perez appeals his convictions and sentences in this case. The sentence was imposed by the Honorable J. C. Nicholson, Jr., on January 18, 2013.

January 25, 2013



Andrew D. Grimes
Christina D. Parnell
Attorneys for Appellant
O. T. Wallace County Office Building
101 Meeting Street
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(843) 958-1850

Other counsel of record are:
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Assistant Solicitor
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Attorney for Respondent

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JAN 28 2013
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

J. C. Nicholson, Jr., Circuit Court Judge

INDICTMENT NOS.: 2010GS1007730, 2010GS1007731 D.I.
WARRANT NO.: 1104929

THE STATE, ...RESPONDENT,

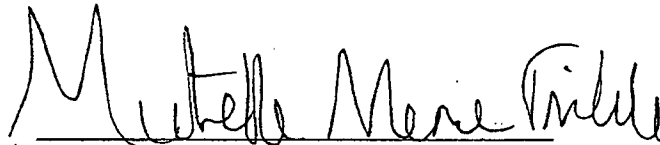
v.

VENANCIO DIAZ PEREZ, ... APPELLANT.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Deborah Herring-Lash, Assistant Solicitor for Charleston County, by hand delivering a copy of it to the Charleston County Solicitor's Office at 101 Meeting Street, Charleston, South Carolina 29401, on January 25, 2013.

January 25, 2013



Michelle Moore Trimble
Assistant to Andrew D. Grimes
Attorney for Appellant
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RECEIVED

JAN 28 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
 STATE VS.
VENANCIO DIAZ PEREZ
 AKA:
 Race: WHITE Sex: M Age: 46
 DOB: 05-18-1966 SS#:
 Address: 5601 ATTAWAY STREET
 City, State, Zip: NORTH CHARLES, SC 294060000
 DL#: 20658293 SID#: SC01953676

INDICTMENT/CASE#: 2010GS1007730
 A/W#: 1104929
 Date of Offense: 4/1/2010
 S.C. Code §: 16-03-0655(A)(1)
 CDR Code #: 0385

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: ABHAN/Assault and Battery of High & Aggravated Nature - Retired 06/22/2010

☒ CONVICTED OF or ☐ PLEADS

in violation of § 17-25-0030/CL of the S.C. Code of Laws, bearing CDR Code # 0013
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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.

ATTORNEY Deborah Herring-Lash SC Bar# 15083 Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 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: 7731
☒ 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. CREDIT SINCE 7/15/2010
☐ 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 PTUP
 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) \$300 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$
 § 50-21-114 (BUI Breath Test Fee) \$30 \$
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 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:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Callal

Court Reporter: Sharon Vizen-HAWKS

SCCA/217 (03/2011)

Presiding Judge J. J. White
 Judge Code: 217
 Sentence Date: 4/18/13

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
OF THE NINTH JUDICIAL CIRCUIT
INDICTMENT NO.: 2010-GS-10-7730

STATE OF SOUTH CAROLINA)

vs.)

VERDICT FORM

VENANCIO DIAZ PEREZ,
Defendant.)

As the charge of Criminal Sexual Conduct with a Minor, 1st Degree:

We, the jury, by unanimous consent find the Defendant:

☐ Guilty of Criminal Sexual Conduct with a Minor, 1st Degree.

☒ Not Guilty.

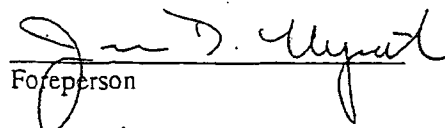
IF YOU FIND THE DEFENDANT NOT GUILTY OF CRIMINAL SEXUAL
CONDUCT WITH A MINOR, 1ST DEGREE THEN AS TO THE LESSER INCLUDED
OFFENSE

We, the jury, by unanimous consent find the Defendant

☒ Guilty of Assault and Battery of a High and Aggravated Nature.

☐ Not Guilty.

Please sign and date.


Foreperson

January 18, 2013

Please let the bailiff(s) know when you have finished your deliberations

HER20100703829

WITNESSES

Ronald Lacher

North Charleston Police Department

AGENCY CASE NUMBER

2010029513

ARREST WARRANT NUMBER

1104929

DATE OF ARREST

July 15, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JAN 09 2010

VERDICT

NOT Guilty as to
CSC 12 w/minor & Guilty
AS ABHAY 1/18/13

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010GS1007730

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November Term 2010

THE STATE

vs.

10-3816 (01)

VENANCIO DIAZ PEREZ

DOB: 1966-05-18

W/M

Indictment for

Criminal Sexual Conduct with a Minor, 1st
Degree

ABHAY LESSER
included - SEE
ATTACHE VERDICT forms

John D. Bryant

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

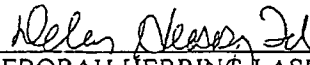
INDICTMENT

At a Court of General Sessions, convened on November 8, 2010 the Grand Jurors of Charleston County present upon their oath:

Criminal Sexual Conduct with a Minor, 1st Degree

That VENANCIO DIAZ PEREZ, DOB 5/18/1966, did in Charleston County between March 1, 2010 and July 10, 2010, engage in sexual battery upon *Minor 1* DOB , to wit: digital penetration. This is in violation of Section 16-3-655 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEBORAH HERRING LASH
ASSISTANT SOLICITOR

ARREST WARRANT

I-104929

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

North Charleston

2010029513

THE STATE

against

Venancio Diaz-Perez

Address: 5601 Attaway Street

North Charleston, SC 29406

Phone:

SSN

Sex: M

Race: H

Height: 5

Weight: 145

DL State:

DL #:

20658293

DOB: 5/18/1966

Agency ORI #:

Prosecuting Agency: North Charleston Police Department

Prosecuting Officer: R Lacher #224

Offense: Criminal Sexual Conduct with a Minor 1st degree

Offense Code: 00385

Code/Ordinance Sec: 16-03-0655(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Venancio Diaz-Perez

7-15-10 @ 1300

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

North Charleston Municipal Court

2500 City Hall Lane

North Charleston, SC 29406

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

North Charleston

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 118

Personally appeared before me the affiant R Lacher #224

who

being duly sworn deposes and says that defendant Venancio Diaz-Perez

did within this county and state on 04/01/2010

violate the criminal laws of the

State of South Carolina (or ordinance of

☐ County/☒ Municipality of

North Charleston

in the following particulars:

DESCRIPTION OF OFFENSE:

Criminal Sexual Conduct with a Minor 1st degree 16-03-655(1)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

PLEASE SEE ATTACHED AFFIDAVIT

OCA #: 2010029513

LEB

ORIGINAL

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

North Charleston

Affiant's Address 2500 City Hall Lane

North Charleston, SC 29406

Affiant's Telephone (843)554-5700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 04/01/2010

defendant Venancio Diaz-Perez

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/☒ Municipality of

North Charleston

) as set forth below:

DESCRIPTION OF OFFENSE:

Criminal Sexual Conduct with a Minor 1st degree 16-03-655(1)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 07/15/2010

David C. Bowers

(L.S.)

Signature of Issuing Judge

Judge Code 013

Judge's Address 2500 City Hall Lane

North Charleston, SC 29406

Judge's Telephone (843)740-2601

Issuing Court

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

ORIGINAL

OCA# 2010029513

Personally appeared before me, a magistrate of this County, one Det. Lacher who, first being duly sworn, deposes and says that

VENANCIO DIAZ-PEREZ

did within this County and State between April of 2010 through May of 2010, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

VIOLATION OF SECTION 16-3-655A

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That between April of 2010 and May of 2010, while at 5611 Attaway Street, lot F, which is located in the City of North Charleston, County of Charleston and State of South Carolina, the defendant, **VENANCIO DIAZ-PEREZ**, did commit the offense of **CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE**, in violation of Section 16-3-655A of the South Carolina Code of Laws of 1976, annotated. In that the defendant did willfully, unlawfully and feloniously fondle the victims breasts, buttocks and vagina. The eight year old victim, to be identified in court, was fondled on more than one occasion.

The facts to establish the aforesaid are on July 12th, 2010, at approximately 9:00 a.m., the juvenile victim was brought to the North Charleston Police Department in reference to being sexually assaulted by a known male. The victim was brought by her mother, Alejandra Solis Jiminez, after her daughter disclosed being sexually assaulted by the defendant.

On July 12th, 2010 at 1:00 p.m. the victim was seen at the Low Country Children's Center and a forensic interview was conducted by Jessica Credeur. The victim disclosed between April of 2010 and May of 2010, she was taken to 5611 Attaway Street, lot F, to be watched by a baby sitter (Angelica Carmona). While at the residence the defendant, who is Carmona's boyfriend, touched the victims "cola" (vagina), "boobies" (breasts) and "pompis" (buttocks) with his hand. The defendant put his hand underneath her clothing and underwear when he touched her vagina and buttocks. The victim disclosed the sexual assault happened multiple times. The victim disclosed the suspect showed her his penis and on more than one occasion the suspect would try to bribe the victim by telling her he would give her money. The victim disclosed on one occasion the defendant bit her breast and left a bite mark. The sexual assaults took place when the defendant was alone with the victim and Angelica was with her biological children in the front yard of the residence or in another room.

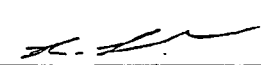
This information is based upon the investigation of Det. R. Lacher of the North Charleston Police Department. Jessica Credeur of the Low Country Children's Center and the victim are witnesses to prove the same. All done against the law, peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me

this 15th day of July
2010.

David C. Bowers

Signature of Judge


AFFIANT

Address: 2500 CITY HALL LANE
N.CHAS S.C. 29418
Phone: 554-5700

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.Venancio Diaz Perez

AKA: _____

Race: _____ Sex: _____ Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____ SID#: SC01953676*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: LEWD ACT UPON A MINOR

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS1007731A/W#: DIRIND1258Date of Offense: 11/9/2010S.C. Code §: 16-15-0140CDR Code #: 2468

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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.

ATTES

Herring-Lash, Deborah

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 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: 7/230☒ 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. CREDIT SINCE 7/15/2010☒ 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 PTUP

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 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: Sharon Vizan-Hanks

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2118Sentence Date: 1/18/13

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
OF THE NINTH JUDICIAL CIRCUIT
INDICTMENT NO.: 2010-GS-10-7731

STATE OF SOUTH CAROLINA)

vs.)

VERDICT FORM

VENANCIO DIAZ PEREZ,
Defendant.

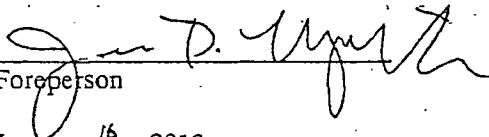
As the charge of Lewd Act Upon a Minor:

We, the jury, by unanimous consent find the Defendant:

☒ Guilty of Lewd Act Upon a Minor.

☐ Not Guilty.

Please sign and date.


Foreperson

January 16, 2013

Please let the bailiff(s) know when you have finished your deliberations

HER20100703829

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2010029513

ARREST WARRANT NUMBER

DIRIND1258

DATE OF ARREST

November 8, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: NOV 09 2010

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010GS1007731

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November Term 2010

THE STATE

vs.

VENANCIO DIAZ PEREZ

DOB: 1966-05-18

W/M

Indictment for

Lewd Act Upon a Minor

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on November 8, 2010 the Grand Jurors of Charleston County present upon their oath:

Lewd Act Upon a Minor

That in Charleston County, South Carolina, between March 1, 2010 and July 10, 2010, the Defendant, VENANCIO DIAZ PEREZ, a person over fourteen years of age, willfully and lewdly did commit or attempt to commit a lewd or lascivious act upon the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: *Minor (* with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, in violation of Section 16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEBORAH HERRING-LASH
ASSISTANT SOLICITOR

State of South Carolina) In the Court of General Sessions
County of Charleston) Ninth Judicial Circuit

State of South Carolina) Transcript of Record
) 2010-GS-10-07730
) 2010-GS-10-07731
Venancio Diaz Perez,)
) Defendant.)

January 14-18, 2013

Charleston, South Carolina

B E F O R E:

The Honorable J. C. Nicholson, Judge; and a jury.

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

Deborah Herring-Lash, Assistant Solicitor

Jennifer McCoy, Assistant Solicitor

Attorneys for the State

Andrew D. Grimes, Assistant Public Defender

Christina Parnell, Assistant Public Defender

Attorneys for the Defendant

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

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E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.

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1 - Chart		-178	
2 - Copy of Warrant		-397	
3 - Note from Foreman		-439	
4 - Defendant's Charge Request		-600	
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6 - Note from Jury		-604	

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5 - Photograph			-215
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9 - Forensic Interview (DVD)			-436
10 - Photographic lineup/Form			-364
11 - Story "The Babysitter"			-259
12 - Photograph	-300		-301
13 - Photograph	-300		-301
14 - Photograph	-300		-301

EXHIBITS

NO.	DESCRIPTION	ID.	EVD.

For the Defendant:

1 - Story "The Babysitter"	-245		
2 - Dr. Abel's Report		-425	

**COURT REPORTER'S NOTE: Unless otherwise indicated,
exhibits were premarked for Identification.

1 believe you said the Lyle hearing first; is that correct?

2 MS. HERRING-LASH: Yes, Your Honor. Could I have
3 one moment to run to the restroom?

4 THE COURT: Yes, ma'am. Do you all want to take a
5 short break? We'll take about a five, ten-minute break?

6 (WHEREUPON, a brief recess was taken.)

7 THE COURT: All right. I believe we are going to
8 proceed on the motion to suppress any bad acts that was
9 filed on behalf of the defendant; is that correct?

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

11 THE COURT: And before we get to that we had a
12 conference before we started trial at the bench and I
13 want to sort of bring it up to date. On the motion for
14 admission of the out-of-court statement of the child, I
15 believe we redacted two parts of that. The defendant is
16 in agreement to allow that in; is that correct, the two
17 redactions that we talked about? I don't remember
18 specifically what they were.

19 MR. GRIMES: Yes, sir. Apart from the redacted
20 statement we have no objection -- other objections.

21 THE COURT: Can you technically redact those?

22 MS. HERRING-LASH: Your Honor, what we --
23 Mr. Grimes and myself met in here a week before last and
24 what we agreed on was to mute that part.

25 THE COURT: Okay.

1 MS. HERRING-LASH: So and we will go back on the
2 second one that we didn't put the exact seconds down and
3 look at that and decide where to mute that.

4 THE COURT: Okay.

5 MS. HERRING-LASH: I think the only difference that
6 would be is that the jury would not be able to take it
7 back since it won't be off of the video. It will just be
8 muted. If they wanted to look at it again they just have
9 to come out.

10 THE COURT: Okay. All right. And the second thing
11 about the prior sexual conduct, the defendant informed
12 the Court that they would not plan on going into any of
13 that; is that correct?

14 MR. GRIMES: Yes, sir.

15 THE COURT: And let me see. So that leaves the
16 issue about the visa, the prior statement of the -- is it
17 Minor 2 ?

18 MS. HERRING-LASH: Yes, Your Honor, and ^{Minor 1} --

19 THE COURT: Her prior statement, who is another
20 alleged victim --

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

22 THE COURT: -- in the crime committed by the
23 defendant; is that correct?

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

25 THE COURT: So that's what we're going to hear on

1 the bad act?

2 MS. HERRING-LASH: Yes, Your Honor. I have the
3 victim here to talk about her -- what happened to her,
4 and the witness also here.

5 THE COURT: Okay. It's your motion, and I think
6 the burden is going to shift to the State at that time.

7 MR. GRIMES: That's my understanding, Your Honor.

8 THE COURT: Okay. Be glad to hear you.

9 MS. HERRING-LASH: Your Honor, we would call Minor 1
10

11 Minor 1
-----, after having been duly sworn,
12 testified as follows:

13 THE CLERK: Can you speak into this mic and say
14 your name, please.

15 THE WITNESS: Minor 1

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MS. HERRING-LASH:

19 Q. Minor 1, what is your birth date?

20 A. My birth date is

21 Q. And where do you live?

22 A. I live in Hanahan, South Carolina.

23 Q. Minor 1, for right now I am going to just skip
24 through and go right to ask you about the things that you
25 have talked about. Did you go to a babysitter before?

1 A. Yes, ma'am.

2 Q. How old were you when you went to the babysitter?

3 A. Around seven.

4 Q. And do you remember who the babysitter -- what the
5 babysitter's name was?

6 A. Angelica.

7 Q. And who else was in Angelica's family?

8 A. She had two daughters whose name was ^{Minor 3} and
9 ^{Minor 4}.

10 Q. ^{Minor 3} and ^{Minor 4} And did any other person live in
11 the house?

12 A. There was only one other man who lived in the house
13 which I guess was a friend of the babysitter's husband.

14 Q. And, Minor 1 do you still go to that babysitter?

15 A. No, ma'am.

16 Q. And why do you not go to that babysitter anymore?

17 A. Because the babysitter's husband has hurt me.

18 Q. And when he hurt you where were they living?

19 A. They had two locations where they were living.

20 They were living in one trailer and a house.

21 Q. And did they live in the trailer first or the house
22 first?

23 A. The trailer first.

24 Q. And did he hurt you one time or more than one time?

25 A. More than one time.

1 Q. And was it one time in the trailer or more than one
2 time?

3 A. I would say more than one time.

4 Q. Okay. Can you tell the Judge about one time when
5 he hurt you at the trailer -- in the trailer, and speak
6 into the microphone if you can, Minor 1

7 A. One time I was trying -- I was -- me and Minor 3 were
8 outside playing, playing with their bikes, with Minor 3 --
9 with Minor 3 and Minor 4's bikes. Minor 4's bike was too
10 small for me or Minor 3 to get on so we tried to share
11 Minor 3's bike, which unfortunately was only one bike.

12 So I -- since she told me that she would be getting
13 a PSP first, which is a little portable game, I went
14 inside to go and get mine. As I went inside my brother
15 was sleeping inside on the couch in living room, and I
16 went inside to Minor 3's room because that's the place
17 where I left it. I was sitting there on the bed
18 harmlessly then all of a sudden I felt -- I felt grabbed
19 into the closet.

20 Q. And what happened in the closet?

21 A. He started to abuse me.

22 Q. And what do you mean by that?

23 A. He started to rape me.

24 Q. And what do you mean by that?

25 A. He started to sexually touch me.

- 1 Q. Well, tell us exactly what happened.
- 2 A. He put his hands under my clothes and stuck his
- 3 finger inside of me, inside of my front.
- 4 Q. Your front what? Do you have a --
- 5 A. My front private.
- 6 Q. And what do you do with that private?
- 7 A. I use the bathroom.
- 8 Q. And did he say anything to you?
- 9 A. No, ma'am.
- 10 Q. And what happened after that?
- 11 A. After that I -- after that he let me go and I
- 12 quickly ran outside to join Minor³ and Minor⁴, which
- 13 unfortunately I had forgotten my PSP.
- 14 Q. And did anything else happen at the trailer?
- 15 A. Yes, ma'am.
- 16 Q. Can you tell us about that?
- 17 A. Me and my brother was inside.
- 18 Q. Let me stop you one second. How old was your
- 19 brother at that time?
- 20 A. He was around two.
- 21 Q. So he was a baby?
- 22 A. Yes.
- 23 Q. Go ahead. I'm sorry.
- 24 A. Me and my brother were inside. My brother was
- 25 sleeping and I was trying to go to sleep. Minor³ and

1 Minor 4: and their brother went outside to go into this
2 food truck which came around every once in a while loaded
3 with food such as lettuce and tomatoes and things like
4 that, and they went outside to go buy some. And he -- I
5 guess he was inside in the room that they all slept in,
6 and I was trying to go to sleep. I was over there. My
7 brother was there, and he grabbed me as I tried to get my
8 PSP from -- from the room. He grabbed me back into the
9 closet.

10 Q. And what happened?

11 A. And he started to touch me again.

12 Q. And how did he touch you this time?

13 A. He still put his hand under my clothes but he
14 didn't put his finger into my front part of it.

15 Q. Did he touch you anywhere else on your body besides
16 your front private?

17 A. In my bottom.

18 Q. And by your bottom, what do you mean?

19 A. My behind private.

20 Q. And did he say anything to you?

21 A. No, ma'am, not that I recall.

22 Q. Pardon me?

23 A. Not that I recall.

24 Q. Did you say anything?

25 A. No, ma'am.

- 1 Q. What did you do?
- 2 A. I just felt frightened and tried to push my way out
- 3 of the closet.
- 4 Q. And what did you do when you got out of the closet?
- 5 A. I quickly ran -- I quickly just went into the
- 6 living room and went with my brother.
- 7 Q. And this was in the trailer you said?
- 8 A. Yes, ma'am.
- 9 Q. How many bedrooms were in the trailer?
- 10 A. Two.
- 11 Q. And which bedroom was this in?
- 12 A. This was in the bedroom farthest from the front
- 13 door.
- 14 Q. And did anything else you remember happen to you in
- 15 the trailer?
- 16 A. No, ma'am, not that I recall.
- 17 Q. And do you remember when they moved to the house?
- 18 A. Not the exact date.
- 19 Q. Did you still go over there when they moved?
- 20 A. Yes, ma'am.
- 21 Q. And did anything else happen when they moved to the
- 22 house?
- 23 A. Yes, ma'am.
- 24 Q. Can you tell us about -- well, once or more than
- 25 once?

1 A. More than once.

2 Q. Can you tell us about that, about that time.

3 A. Minor³ and Minor⁴ were playing as if they were
4 superstars and I was sitting there as Minor³ kept
5 encouraging me to go up to the TV and play along but of
6 course I didn't. I refused to because I did not want to
7 embarrass myself.

8 Q. What do you mean by playing like superstars?

9 A. They were playing in front of the TV as if they
10 were doing Karaoke or acting famous.

11 Q. Oh.

12 A. And at that time he didn't really touch me but he
13 showed off his private.

14 Q. And did you see his private?

15 A. Excuse me?

16 Q. Did you see his private?

17 A. Yes, ma'am.

18 Q. And was there a time at the house where he touched
19 you?

20 A. Yes, ma'am.

21 Q. Can you tell us about that?

22 A. Minor³ and -- well, Minor³ was playing with her PSP
23 because at that time I think she would have got hers, and
24 I was playing with mine as well. He asked for one of us
25 if they could help him fix the wall there, fix the wall

- 1 in the bathroom because the paint was starting to peel
2 off and you could see the color, you can see the
3 background color. And so I went inside to help him.
4 I didn't realize until later that he had locked the
5 door behind me when I got in. He gave me a bucket of
6 nails to hold as he tried to fix up the wall. When he
7 was done -- when he was done I tried -- I wanted to go.
8 I tried to go outside but I couldn't because the door was
9 locked. And in there he tried to -- he touched me.
10 Q. Where did he touch you?
11 A. He touched me on my front, on my breasts, which is
12 in my -- he touched me on my breast and my front, I
13 believe.
14 Q. And what did he touch you with?
15 A. Just his hands.
16 Q. Did he touch you on your breast with anything else?
17 A. He bit me which left a little temporary mark.
18 Q. Where did he leave the mark?
19 A. On my breast.
20 Q. Do you remember any other instances at the house?
21 A. I can't remember more of where he's touched me but
22 times when he had tried to touch me.
23 Q. Tell me about that.
24 A. I don't know happened but *Minor 3* and *Minor 4* and
25 everybody else went outside to go do something. I guess

1 they were playing. Well, I stayed inside with my little
2 brother playing -- well, I stayed inside with my little
3 brother. My little brother was sleeping and I was
4 sitting there watching Toy Story, and I guess he had come
5 home. He had come home later during the end of the
6 movie. Little did I realize that he would try to chase
7 me around the house.

8 And after he was -- after he had chased me most of
9 the house I had got the idea of going under the bed that
10 my brother was sleeping, under the bed that I was sitting
11 on to hide from there. He couldn't reach from there
12 because he was too large to go under the bed. I didn't
13 realize that I could easily call 911 from the phone that
14 I had but I had no service.

15 Q. Where had you been laying when you were watching
16 Toy Story?

17 A. I was laying on Minor 3's bed which was also next to
18 -- in the middle of the kitchen and the living room.

19 Q. And did anything happen in any other room, any
20 other room of that house?

21 A. Yes, ma'am.

22 Q. And what room was that?

23 A. In the closet that the other man usually slept in?

24 Q. And what was that?

25 A. Me and Minor 3, I guess, were playing. We were

- 1 playing hide and go seek and I had gotten the idea to
2 hide in the closet while Minor 3 tried to find me. I
3 didn't realize that the man was in there, and I didn't
4 realize that he was in there and he grabbed me and he
5 started to touch me.
- 6 Q. Where did he touch you?
- 7 A. He touched me on my front.
- 8 Q. And on your skin or on your clothes?
- 9 A. On my skin.
- 10 Q. And what did he touch you on your skin with?
- 11 A. Just his hands.
- 12 Q. Was it inside your clothes?
- 13 A. Yes, ma'am.
- 14 Q. Do you remember any other times today, Minor 1?
- 15 A. No, ma'am.
- 16 Q. Did you eventually tell your mom about this?
- 17 A. Yes, ma'am.
- 18 Q. And at some point after telling her did you go to
19 the police station?
- 20 A. Yes, ma'am.
- 21 Q. And when you went to the police station did the
22 police show you some pictures?
- 23 A. Yes, ma'am.
- 24 Q. And who showed you those pictures?
- 25 A. Minna.

1 Q. And who is Minna?

2 A. Minna is one of the police officers there.

3 Q. And before she showed you the picture did she
4 explain what she was going to do?

5 A. She told me that one of these picture -- she told
6 me that one of the pictures there was the man but since
7 they didn't know who it was they showed me the pictures.

8 Q. And did she use, like, a form to read to you?

9 A. Yes, ma'am.

10 Q. And did she have you read that?

11 A. Yes, ma'am.

12 Q. And when you read it what did you do to show that
13 you had read it, do you remember?

14 A. I put my initials on there.

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

17 THE COURT: Yes, ma'am.

18 BY MS. HERRING-LASH:

19 Q. Minor (, I'm going to show you what has been marked
20 for ID as State's Exhibit Number 10. Do you recognize
21 that? If you touch that it makes a mark. I'm sorry. Do
22 you recognize that?

23 A. Yes, ma'am.

24 Q. And what is that?

25 A. That is the sign -- that is the sheet that I put my

- 1 initials on.
- 2 Q. And did you read each of those sentences?
- 3 A. Yes, ma'am.
- 4 Q. And did you understand what they said?
- 5 A. Yes, ma'am.
- 6 Q. And what happened after you read those sentences?
- 7 A. After I read those sentences -- after I read those
- 8 sentences I gave it back to Minna and then the ladies
- 9 over there went out with the pictures and the form.
- 10 Q. And did anybody tell you which picture to choose?
- 11 A. No, ma'am.
- 12 Q. Did anybody try to help you choose the picture?
- 13 A. No, ma'am.
- 14 Q. And did you hold the pictures?
- 15 A. Yes, ma'am.
- 16 Q. And were they, like, single pictures or a big page
- 17 of pictures?
- 18 A. Single pictures.
- 19 Q. And let me show you. Would you look at these
- 20 pictures that are attached.
- 21 (PAUSE.)
- 22 A. Yes, ma'am.
- 23 Q. Are those the pictures you saw?
- 24 A. Yes, ma'am.
- 25 Q. Do they look like they looked the day that you saw

1 them?

2 A. Yes, ma'am.

3 Q. And did you pick any of those pictures out?

4 A. Yes, ma'am.

5 Q. Which picture did you pick out?

6 A. Number three.

7 Q. And did you write anything on the back?

8 A. On the back I wrote 90 percent sure, and on the
9 front I circled the number and put my initials on it.

10 Q. And what did you write on the form?

11 A. On the form I put my initials on it. On the form I
12 put I my initials on it on all seven lines and I believe
13 it was Minna who wrote down --

14 Q. Did she write down what you said?

15 A. Yes, ma'am.

16 Q. And what was that?

17 A. I'm pretty sure it's him, number three. He is the
18 father of *Minor 3* and *Minor 4*. He is the babysitter's
19 husband. I'm nine on a scale of ten, of one to ten
20 that's him.

21 Q. Thank you.

22 MS. HERRING-LASH: Court's indulgence for one
23 minute.

24 THE COURT: Yes, ma'am.

25 (PAUSE.)

1 MS. HERRING-LASH:

2 Q. *Minor 1*, those are all the questions I have for this
3 part. Mr. Grimes or Ms. Parnell will have some questions
4 for you, okay?

5 THE COURT: Mr. Grimes?

6 MR. GRIMES: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. GRIMES:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. What would you like for me to call you --

12 A. Excuse me?

13 Q. *Minor 1* ? How would you like me address you, *Minor 1*
14 or Ms. *Minor 1*?

15 A. *Minor 1* would be fine.

16 Q. Now, *Minor 1* you've answered a lot of questions that
17 Ms. Debbie has asked you today; is that fair to say?

18 A. Uh-huh.

19 Q. I'm sorry. You may need to say yes for the court
20 reporter.

21 A. Yes, ma'am -- yes, sir.

22 Q. And are you telling Ms. Debbie everything that had
23 happened?

24 A. Um, yes, sir.

25 Q. And did you leave anything out or add anything from

1 before?

2 A. No, sir.

3 Q. And so is it fair to say you've been able to tell
4 Ms. Debbie everything that you say Mr. Perez did to you?

5 A. Yes, sir.

6 Q. Now, Ms. Debbie asked you a little bit after you
7 told your mom about what happened. You were taken down
8 to the police station?

9 A. Yes, sir.

10 Q. And after the police station they took you down to
11 see Ms. Jessica?

12 A. Yes, sir.

13 Q. And she helped make a movie?

14 A. No, sir. Not a movie, a story.

15 Q. Okay. You say -- do you remember being in a little
16 room where she told you there was a camera?

17 A. Yes, sir.

18 Q. And when you were talking to her there is that the
19 story you were taking about?

20 A. That was mostly just a video.

21 Q. Okay. That's why I was saying about a movie. So
22 you made a movie with Ms. Jessica?

23 A. Uh-huh.

24 Q. And when you talked to her did you tell her
25 everything that had happened?

- 1 A. Yes, sir.
- 2 Q. And then you saw Ms. Jessica a lot after that,
- 3 didn't you?
- 4 A. Yes, sir.
- 5 Q. And then I guess you wrote a story for her?
- 6 A. Yes, sir.
- 7 Q. And you did a lot of work in writing that story,
- 8 didn't you?
- 9 A. Uh-huh. Yes, sir.
- 10 Q. You read that story -- at the end you were going to
- 11 read that story to your mom?
- 12 A. Yes, sir.
- 13 Q. And I think to your stepfather?
- 14 A. Yes, sir.
- 15 Q. And everything you put in that story was going to
- 16 be used -- you were going to put everything that happened
- 17 to you in that story, correct?
- 18 A. Yes, sir.
- 19 Q. And then you also met Ms. Debbie, right?
- 20 A. Excuse me?
- 21 Q. You've also met Ms. Debbie several times?
- 22 A. Yes, sir.
- 23 Q. And you've talked to her?
- 24 A. Excuse me?
- 25 Q. And you've talked to her about this case?

- 1 A. Yes, sir.
- 2 Q. And you've told her what's happened?
- 3 A. Yes, sir.
- 4 Q. Now, I know it's been a long time since you first
- 5 saw Ms. Jessica and made that video. Have you had an
- 6 opportunity to watch the video and remember what was on
- 7 there?
- 8 A. Yes, sir.
- 9 Q. Now, on the video Ms. Jessica asked you if
- 10 Mr. Perez put his finger inside you; do you remember
- 11 that?
- 12 A. Yes, sir.
- 13 Q. And you told her no, he didn't?
- 14 A. Because I was confused in which part, which story I
- 15 was telling her.
- 16 Q. You were confused which story you were telling her?
- 17 A. She didn't -- I didn't know which story she was
- 18 taking about.
- 19 Q. Okay. And were you confused at all when you were
- 20 writing the story for your mother?
- 21 A. No, ma'am. I mean, no, sir.
- 22 Q. So you put everything in there that happened to
- 23 you?
- 24 A. Yes, sir.
- 25 Q. And you weren't confused when you were testifying a

- 1 few minutes earlier, were you?
- 2 A. No, sir.
- 3 Q. If you are confused by anything let me know. I
- 4 don't want to -- want to make sure there's no confusion
- 5 going on, okay?
- 6 A. Yes, sir.
- 7 Q. And you are saying, if I remember right -- I want
- 8 to ask you a few questions about when some of these
- 9 actions happened, okay?
- 10 A. Yes, sir.
- 11 Q. Do you remember when you were first brought over to
- 12 Ms. Carmona's house to be babysat?
- 13 A. The first time I do not remember.
- 14 Q. Do you know if it was in March or April?
- 15 A. I believe it was sometime in the summer.
- 16 Q. Sometime during December?
- 17 A. No, summer.
- 18 Q. Oh. Were you still in school or were you out of
- 19 school?
- 20 A. Out of school, from what I can remember.
- 21 Q. And do you remember what time you would go over
- 22 Ms. Carmona's house in the morning?
- 23 A. Usually around the time when my mom would go to
- 24 work.
- 25 Q. Could you repeat what you said for the court

- 1 reporter.
- 2 A. Around the time that my mother would go to work.
- 3 Q. I know it's been, again, a long time ago. Do you
- 4 know if that was like eight o'clock in the morning, ten
- 5 o'clock in the morning, or was it in the afternoon?
- 6 A. I don't remember.
- 7 Q. And would you be over there the whole day?
- 8 A. She would usually come -- yeah. Yes, sir. She
- 9 would -- my mother would come pick me up at night.
- 10 Q. Do you remember what time at night she would pick
- 11 you up?
- 12 A. I would say around seven or eight.
- 13 Q. And where was Mr. Perez at when you were over
- 14 there?
- 15 A. Sometimes he was at his job and not be there at all
- 16 but usually he will be there at night when he came home.
- 17 Q. And do you remember what time he may have come home
- 18 at?
- 19 A. No, sir.
- 20 Q. Did he usually come home before you left or was it
- 21 sort of at the same time you were leaving?
- 22 A. Before I left.
- 23 Q. And do you know how long he was home before you
- 24 left?
- 25 A. No, sir.

- 1 Q. And when he did these bad things to you is this at
2 nightttime, or after he came home from work, or was it
3 before he went to work?
- 4 A. He came home from work.
- 5 Q. And do you remember the second day that you were
6 being babysat over there?
- 7 A. Yes, sir.
- 8 Q. Did anything happen to you that day?
- 9 A. Yes, sir.
- 10 Q. And what happened to you on the second day?
- 11 A. Mr. Perez hurt me.
- 12 Q. You said Miss or Mister?
- 13 A. Mister.
- 14 Q. What did he do to you on the second day?
- 15 A. On the second day he raped me.
- 16 Q. I know rape is a pretty big word. What do you mean
17 by rape?
- 18 A. He sexually abused me.
- 19 Q. Again, like Ms. Debbie, sexually abuse covers a lot
20 of stuff. I don't mean to pry but what exactly did he
21 do?
- 22 A. He put his finger inside of me and started to touch
23 me.
- 24 Q. And that was on the second day?
- 25 A. Yes, sir.

- 1 Q. And that was in the closet?
- 2 A. Yes, sir.
- 3 Q. When he did that to you did he threaten you with a
- 4 weapon in any way?
- 5 A. No, sir.
- 6 Q. Did he threaten you at all --
- 7 A. No, sir.
- 8 Q. -- in any way? Did he promise you anything?
- 9 A. Excuse me?
- 10 Q. Did he promise you anything?
- 11 A. Not that I remember.
- 12 Q. And where was *Minor 3* at in this house?
- 13 A. On which day?
- 14 Q. When you were in the closet do you remember where
- 15 *Minor 3* was at?
- 16 A. I was in the closet two times in the trailer.
- 17 Q. I apologize. On the second day that this happened
- 18 -- excuse me, on the second day that you were being
- 19 babysat.
- 20 A. On the second day *Minor 3* was outside with her bike.
- 21 Q. And do you know where *Minor 4* was at?
- 22 A. She was -- *Minor 4* was with *Minor 3*
- 23 Q. And where was Ms. Carmona at?
- 24 A. I don't remember.
- 25 Q. And you said there was another man that lived in

- 1 the house?
- 2 A. Yes, sir.
- 3 Q. Was his name Samuel?
- 4 A. Yes, sir.
- 5 Q. And where was he at?
- 6 A. I believe he was at work.
- 7 Q. Do you remember Brittany Jordan?
- 8 A. No, sir.
- 9 Q. Were there any other children there who Ms. Carmona
- 10 may have been babysitting?
- 11 A. I remember Minor 2 and couple of other little
- 12 children.
- 13 Q. And where was Minor 2 at?
- 14 A. Sometimes -- usually when I was, Minor 2 wasn't
- 15 there.
- 16 Q. On the second day that you were at Ms. Carmona's
- 17 house and you were in the closet do you remember if
- 18 Minor 2 was there that day?
- 19 A. No, sir.
- 20 Q. Do you know if there were any other children?
- 21 A. On the second day, no, I don't remember.
- 22 Q. I want to ask you about the second time that you
- 23 say Mr. Perez did something. Do you know how long after
- 24 that that happened from the first time?
- 25 A. Excuse me?

1 Q. I'm sorry. I probably need to word my question

2 right. Do you know how much time passed between the

3 first and second time something happened to you?

4 A. No, sir.

5 Q. Would you say it was like a week, a couple weeks, a

6 month, or a couple days?

7 A. I don't remember.

8 Q. And what happened on the second time?

9 A. On the second time *Minor 3* and *Minor 4*, and their

10 brother were outside to go to this food truck which came

11 around every so often. My brother was inside sleeping

12 and I was -- and I was with him trying to go to sleep

13 eventually and could not get to sleep. I tried to get my

14 PSP from the whole family's room.

15 Q. Okay. And do you know, was this after work?

16 A. I would think so.

17 Q. Again, was there -- do you know if Mr. Perez -- did

18 he use any weapons during this time?

19 A. No, sir.

20 Q. Did he threaten to use a weapon?

21 A. No, sir.

22 Q. Did he make any threats to you?

23 A. No, sir.

24 Q. And did he offer you any -- make any promises to

25 you?

- 1 A. Sometimes he would bribe me with money.
- 2 Q. And you said sometimes he would bribe you with
- 3 money. Did he bribe you with money on this time?
- 4 A. Excuse me?
- 5 Q. On this second time did he bribe you with money?
- 6 A. I don't remember.
- 7 Q. And this was at the trailer?
- 8 A. Yes, sir.
- 9 Q. And if I remember your testimony right there were
- 10 only two incidents, two things that happened at the
- 11 trailer?
- 12 A. That I can remember of.
- 13 Q. And the next thing that happened was at the house?
- 14 A. Yes, sir.
- 15 Q. And how long after that they moved from the trailer
- 16 to the house did the next incident happened?
- 17 A. I don't remember.
- 18 Q. And what happened the first time at the house?
- 19 A. The first time at the house, I would think it was
- 20 -- I don't really -- not sure which time is first.
- 21 Q. What was the worst thing that happened to you at
- 22 the house?
- 23 A. When I was in the bathroom.
- 24 Q. That's when he -- you went into the bathroom to
- 25 help him with the walls?

- 1 A. Yes, sir.
- 2 Q. Were you going in there to paint the walls or was
- 3 it to put nails in the walls?
- 4 A. Yes, sir.
- 5 Q. Both or...
- 6 A. I would think he was putting some wall paper up or
- 7 something.
- 8 Q. Is that the time he bit you on the breast?
- 9 A. Yes, sir.
- 10 Q. You said he left a mark then?
- 11 A. A little temporary mark.
- 12 Q. And how long from when he bit you until you told
- 13 your mom, how much time had passed then?
- 14 A. I would say at least a month.
- 15 Q. And do you know when he moved to the house?
- 16 A. Excuse me?
- 17 Q. Do you remember what month he may have moved to the
- 18 house, whether it was July or June?
- 19 A. When who moved to the house?
- 20 Q. Mr. Perez.
- 21 A. I don't remember.
- 22 Q. Now, you said -- I want to ask you about I guess
- 23 when *Minor 3* and *Minor 4* were sort of playing like and you
- 24 said Mr. Perez came and kind of showed you his private
- 25 area.

- 1 A. Yes, sir.
- 2 Q. Where was *Minor 3* and *Minor 4* at when he showed you
- 3 his private area?
- 4 A. *Minor 3* was sitting on the other side of the couch
- 5 from where I was sitting and *Minor 4* was at the TV
- 6 playing.
- 7 Q. You said *Minor 3* was on the other side of the couch
- 8 from where you were sitting?
- 9 A. Yes, sir.
- 10 Q. And then *Minor 4* was -- you said she was playing
- 11 with the TV or...
- 12 A. She was playing in front of the TV.
- 13 Q. I think another time you testified about he was
- 14 chasing you around the house?
- 15 A. Yes, sir.
- 16 Q. And then you went under the bed?
- 17 A. Yes. I went under *Minor 3's* bed.
- 18 Q. Under where?
- 19 A. *Minor 3's*
- 20 Q. And did he touch you at that time or just kind of
- 21 scare you?
- 22 A. Scare me.
- 23 Q. And where was *Minor 3* at when he was chasing you
- 24 around the house?
- 25 A. I would say everybody was outside doing some kind

1 of special event.

2 Q. Do you happen to remember what type of special
3 event it was?

4 A. No, sir, I was not outside.

5 Q. Was it someone's birthday or...

6 A. No. They might have just gone to collect tea
7 leaves from the bush.

8 Q. Collect what?

9 A. They had -- in front of the house they had a tea
10 leaf bush. They might have just gone to go get some
11 leaves.

12 Q. And I think you also testified about another time
13 in the closet when you and Minor³ were playing hide and go
14 seek?

15 A. Yes, sir.

16 Q. I was a little confused. You said that you went to
17 hide in the closet?

18 A. Yes, sir.

19 Q. And there was a man in there?

20 A. Yes, sir.

21 Q. Was the man in the closet or was he just in the
22 room?

23 A. I don't know how he got into the closet or why he
24 went into the closet. I just went into the closet and he
25 was in there.

- 1 Q. Okay. And then that man grabbed you?
- 2 A. Yes, sir.
- 3 Q. Was that Samuel?
- 4 A. No, sir.
- 5 Q. And I think after that you ran outside?
- 6 A. After that I went outside of the room.
- 7 Q. Where was Minor 3 at, at that time?
- 8 A. She was out trying to look for me, trying to figure
- 9 out where I was in the house.
- 10 Q. Okay. Was Minor 4 around?
- 11 A. I don't recall. She might have been taking a nap.
- 12 Q. And what about Minor 4's mom? You know where she
- 13 was at?
- 14 A. No. No, sir.
- 15 Q. Now, I want to ask you a few questions I guess
- 16 about what happened at the police station.
- 17 A. Okay.
- 18 Q. I think you said that Ms. Minna told you that one
- 19 of the pictures that she was going to show you was the
- 20 man who did this?
- 21 A. Yes, sir.
- 22 Q. And then she gave you a form to read?
- 23 A. Yes, sir.
- 24 MR. GRIMES: May I approach the witness, Your
- 25 Honor?

1 THE COURT: Yes, sir.

2 BY MR. GRIMES:

3 Q. Do you have that form that Ms. Debbie left up here?

4 THE COURT: I think the solicitor has got it.

5 (PAUSE.)

6 MR. GRIMES: With the Court's permission I'm going
7 to unstaple the pictures.

8 THE COURT: Yes, sir.

9 MR. GRIMES: Thank you, Your Honor.

10 BY MR. GRIMES:

11 Q. So Ms. Minna asked you to kind of read the form and
12 you read it and made initials to it?

13 A. Yes, sir.

14 Q. And then she showed you the pictures?

15 A. Yes, sir.

16 Q. Did she just sort of give you the pictures like
17 this and ask you to look through them or...

18 A. Just gave me the pictures and asked me to look
19 through them.

20 Q. So kind of like this here?

21 A. Uh-huh. Yes, sir.

22 Q. She didn't do like this?

23 A. No, sir.

24 Q. Okay. And how long did it take for you to choose
25 the person who you said did this?

- 1 A. I would say around 10 minutes.
- 2 Q. And that's from when you start looking at the
3 pictures?
- 4 A. Excuse me?
- 5 Q. I'm sorry. I just want to clarify. When I asked
6 you how long, does that include reading the form or just
7 looking at the pictures?
- 8 A. I was -- that was for I guess the full time, for
9 reading the form and looking at the pictures.
- 10 Q. Let me see if I can ask you a better question.
11 After Ms. Minna gave you the pictures do you know how
12 long it took you to pick out the person who you said did
13 this?
- 14 A. I would say around five minutes.
- 15 Q. And after you identified somebody what did
16 Ms. Minna say?
- 17 A. She just took up the pictures and went and gave
18 them to the ladies.
- 19 Q. I'm sorry. What was that?
- 20 A. She took up the pictures that I was holding with
21 the sheets, with the form that I put my initials on, and
22 she asked me if -- are you sure that that is the man that
23 did this to you?
- 24 Q. And what did you tell her?
- 25 A. I told her that I am 90 percent sure that that's

1 him.

2 Q. And what did she tell you after that?

3 A. She told me nothing and went out the door with the
4 sheet -- the sheet and the pictures, and the other ladies
5 also in the room.

6 MR. GRIMES: All right.

7 May I have one moment, Your Honor?

8 THE COURT: Yes, sir.

9 (PAUSE.)

10 MR. GRIMES: Thank you, Your Honor. Thank you. I
11 have no further questions.

12 THE COURT: Anything on redirect?

13 MS. HERRING-LASH: Yes, Your Honor, just briefly.

14 REDIRECT EXAMINATION

15 BY MS. HERRING-LASH:

16 Q. Minor 1, when you were telling Mr. Grimes that she
17 was thinking about a different story what do you mean
18 when you say story?

19 A. I meant a different time.

20 Q. And did Mr. Perez go to work every day?

21 A. No -- well, not that I recall.

22 Q. Were there days that he was there all day?

23 A. Yes, ma'am.

24 Q. And did you go on weekends sometimes, also?

25 A. Usually just on Saturdays.

1 Q. And would your -- if it was summertime would you be
2 there more than if it was during school? Like would you
3 be there the whole day rather than at school?

4 A. Yes, sir. I mean, yes, ma'am.

5 Q. That's okay. And when you were talking about the
6 man's closet whose room was that in?

7 A. I believe that was Samuel's room.

8 THE COURT REPORTER: I'm sorry?

9 Q. Tell her whose room.

10 A. Samuel.

11 Q. Samuel. The English Samuel. And who was the man
12 that came into the closet or was in the closet?

13 A. I guess that was Mr. Perez.

14 Q. And when you say you guess, what do you mean?

15 A. That it was Mr. Perez.

16 Q. How did you know him at the time?

17 A. I do not know his name. I can only recognize by
18 his face.

19 Q. And how did you know -- who was he related to that
20 you knew?

21 A. He was related to ^{Minor 3} and ^{Minor 4}.

22 Q. And what was his relation to them?

23 A. That's their father.

24 MS. HERRING-LASH: That's all the questions I have.

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

1 very much.

2 MS. HERRING-LASH: I'm sorry. Minor 1, you can come
3 down.

4 THE COURT: You can come down.

5 (PAUSE.)

6 THE CLERK: This way, please. This way right up
7 here.

8 Minor 2, after having been duly
9 sworn, testified as follows:

10 THE CLERK: Now, speak into this mic, please, and
11 say your name.

12 THE WITNESS: My name is Minor 2

13 DIRECT EXAMINATION

14 BY MS. HERRING-LASH:

15 Q. And what is your last name, Minor 2

16 THE COURT: Minor 2 spell your first name, too, if
17 you would, please.

18 A. Minor 2

19 Q. And spell your last name, also.

20 A. Minor 2

21 Q. And how old are you, Minor 2

22 A. I'm 10 years old.

23 Q. And when is your birthday?

24 A.

25 Q. So in just a few weeks you'll be 11?

- 1 A. Uh-huh. No. I don't know.
- 2 Q. How old are you now?
- 3 A. Ten.
- 4 Q. On your birthday you'll be 11?
- 5 A. Uh-huh.
- 6 Q. And, *Minor 2* did you used to go to a babysitter?
- 7 A. Yes.
- 8 Q. And do you know what the babysitter's name was?
- 9 A. No.
- 10 Q. Do you know if he had children?
- 11 A. Yes.
- 12 Q. And what were the children's names?
- 13 A. *Minor 3*, and another little girl.
- 14 Q. Was the other little girl younger than *Minor 3*?
- 15 A. She was little.
- 16 Q. Little?
- 17 A. Uh-huh.
- 18 Q. And were there other little children there, also?
- 19 A. Uh-huh.
- 20 Q. Do you still go to that babysitter?
- 21 A. No..
- 22 Q. And when you went to the babysitter were you
- 23 friends with *Minor 3*
- 24 A. Not that much.
- 25 Q. When you started going there were you?

- 1 A. Well, a little.
- 2 Q. And do you still go to that babysitter?
- 3 A. No, ma'am.
- 4 Q. And why do you not go there?
- 5 A. I don't know.
- 6 Q. Do you know why you stopped going there?
- 7 A. Uh-uh.
- 8 Q. You have to say yes or no.
- 9 A. No.
- 10 Q. After you stopped going there did you tell your mom
- 11 about something that happened?
- 12 A. No.
- 13 Q. Did you wait a long time?
- 14 A. Yes.
- 15 Q. And did you eventually tell your mom? Did you ever
- 16 tell your mom?
- 17 A. Yes.
- 18 Q. And where were you when you told her?
- 19 A. At a store.
- 20 Q. At a store?
- 21 A. Yes.
- 22 Q. And what did you tell her about?
- 23 A. I told her what happened.
- 24 Q. And where were you when something happened?
- 25 A. The babysitter's house.

- 1 Q. And where at the house were you?
- 2 A. In the room by the kitchen.
- 3 Q. And do you know whose room was the room by the
- 4 kitchen?
- 5 A. Another man's room.
- 6 Q. Another man that lived there?
- 7 A. Uh-huh.
- 8 Q. And did something happen at the house once or more
- 9 than once?
- 10 A. I didn't get the question.
- 11 Q. Oh. Did something happen to you one time or more
- 12 than one time at the house?
- 13 A. More than one time.
- 14 Q. And you said the man -- in the man's room. Was
- 15 there any other room that something happened?
- 16 A. In the living room.
- 17 Q. Can you tell us about what happened in the living
- 18 room?
- 19 A. I was watching some type of program and I had
- 20 fallen asleep for a little while.
- 21 Q. Do you remember what the program was?
- 22 A. High School Musical Three.
- 23 Q. What?
- 24 A. High School Musical.
- 25 Q. High School Musical?

- 1 A. Yes.
- 2 Q. All right. Then you fell asleep, and what
3 happened?
- 4 A. The man came behind me and he had touched me.
- 5 Q. Where did he touch you, Minor 2?
- 6 A. In my front private.
- 7 Q. And was it under your clothes or on top of your
8 clothes?
- 9 A. I don't remember.
- 10 Q. Did you say anything?
- 11 A. No, ma'am.
- 12 Q. Did he say anything to you?
- 13 A. No.
- 14 Q. And did you tell your mommy?
- 15 A. No, ma'am.
- 16 Q. And did anything else happen in the living room?
- 17 A. No, ma'am.
- 18 Q. You said something happened in another room?
- 19 A. Uh-huh.
- 20 Q. Tell us about that.
- 21 A. It was in the room by the kitchen and the man had
22 touched me there, in my front privates and my back
23 privates.
- 24 Q. And where in the room were you?
- 25 A. On the bed.

- 1 Q. And do you know where the other people that lived
2 there were, like Minor? and her sister, and the momma?
- 3 A. I don't remember.
- 4 Q. Did he say anything to you?
- 5 A. No, ma'am.
- 6 Q. Did you say anything, Minor 2
- 7 A. No, ma'am.
- 8 Q. Was there any other room that anything happened to
9 you in?
- 10 A. The wife's room.
- 11 Q. And what was that?
- 12 A. He had accused me there.
- 13 Q. What do you mean accused?
- 14 A. I mean, that he had told me that if I tell somebody
15 he will keep doing -- he'll keep being mean to me, and if
16 I tell nobody he'll stop being mean to me.
- 17 Q. And did you tell anybody?
- 18 A. No, ma'am.
- 19 Q. You said that eventually you did tell your mom at
20 the store?
- 21 A. Uh-huh.
- 22 Q. After you told your mom did you go to the police
23 department?
- 24 A. I don't remember.
- 25 Q. Do you remember going and somebody showing you some

Minor 2

(IC) - DIRECT BY MS. HERRING-LASH

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1 pictures?

2 A. Yes, ma'am.

3 Q. And do you remember who it was or did you know who
4 it was that showed you the pictures?

5 A. A police officer.

6 Q. A police officer. And before they showed you the
7 pictures did they show you a form?

8 A. Like what type of form?

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

11 THE COURT: Yes, ma'am.

12 BY MS. HERRING-LASH:

13 Q. *Minor 2* just look at this and see if you recognize
14 it.

15 A. Yes, ma'am.

16 Q. And what is that, *Minor 2*?

17 A. That's a form they had given me at the police
18 station.

19 Q. And were you able to read that?

20 A. No, ma'am.

21 Q. Did somebody have to help you?

22 A. Uh-huh. Yes, ma'am.

23 Q. And who helped you? Do you remember their name?

24 A. No, ma'am.

25 Q. Was it a police officer?

- 1 A. I think so.
- 2 Q. Did she have to -- or did she explain what it was
- 3 saying to you?
- 4 A. Yes.
- 5 Q. Did she tell you what picture that you had to pick
- 6 out?
- 7 A. No.
- 8 Q. Did anybody in the room tell you which picture to
- 9 pick out?
- 10 A. Like, I don't get the question.
- 11 Q. Did they show you pictures?
- 12 A. Yes.
- 13 Q. And when they showed you the pictures did they say
- 14 pick this person?
- 15 A. No.
- 16 Q. Did you look at the pictures?
- 17 A. Yes, ma'am.
- 18 Q. And after you looked at the pictures did you pick
- 19 out somebody?
- 20 A. Yes.
- 21 Q. And what did you say when you picked them out?
- 22 A. I don't remember.
- 23 Q. Did you write something on it, or do you remember?
- 24 A. I don't remember.
- 25 MS. HERRING-LASH: May I approach the witness, Your

- 1 Honor?
- 2 THE COURT: Yes, ma'am.
- 3 BY MR. HERRING-LASH:
- 4 Q. Look at each of these and see if you recognize
- 5 these pictures, okay?
- 6 (PAUSE.)
- 7 A. Yes, ma'am.
- 8 Q. And what are those pictures of?
- 9 A. Men.
- 10 Q. Okay. And are those the pictures that the police
- 11 officer showed you?
- 12 A. Yes, ma'am.
- 13 Q. And did you pick out the person that hurt you?
- 14 A. Yes, ma'am.
- 15 Q. And what did you write on it? Can you see on
- 16 there?
- 17 A. My name.
- 18 Q. And when you picked that person out were you sure
- 19 that it was the person?
- 20 A. Yes, ma'am.
- 21 Q. And do you know which one you picked out?
- 22 A. Number four.
- 23 Q. Do you remember who all was in the room when you
- 24 picked out the pictures?
- 25 A. No, ma'am.

1 Q. Did you write a date on the picture, also?

2 A. Yes, ma'am.

3 Q. What was the date that you picked it out?

4 A. 2-3-12.

5 Q. Okay. 2-3-12?

6 A. (Nodded).

7 Q. Minor 2, those are all the questions I have. If
8 you'll answer any that Ms. Parnell has.

9 CROSS-EXAMINATION

10 BY MS. PARNELL:

11 Q. Hi, Minor 2. My name is Christina Parnell. I'm
12 one of the attorneys for Mr. Perez. If I refer to a
13 young girl named Minor 1 [sic] do you know who I'm talking
14 about?

15 A. No.

16 Q. Okay. Do you know a young girl named Minor 1

17 A. Yes.

18 Q. And she was also being babysat by the same
19 babysitter?

20 A. Yes.

21 Q. Do you know that Minor 1 is here today because she
22 says that Mr. Perez also did some things to her?

23 A. Yes.

24 Q. Do you know what she says he did to her?

25 A. No, ma'am.

1 Q. Have you ever talked to Minor1 about the things that
2 she says that Mr. Perez did to her?

3 A. No, ma'am.

4 Q. Do you remember an interview at the Lowcountry
5 Children's Center where they asked you questions?

6 A. Uh-huh.

7 Q. And they had a video that they were recording
8 everything?

9 A. Well, they didn't tell me that they were recording
10 it. I just remember that I went to talk with the lady
11 and that's all.

12 Q. Do you remember seeing anything in that interview
13 about what Minor1 was saying that Mr. Perez had done to
14 her?

15 A. No, ma'am.

16 Q. So you don't remember saying anything about Minor1
17 being raped by the same man?

18 A. No, ma'am. I don't remember.

19 Q. Minor1 reported that Mr. Perez had done some bad
20 things to her before you did, right?

21 A. (There was no response.)

22 Q. Was she the first one that said something about
23 Mr. Perez?

24 A. Like, I don't get question.

25 Q. Did Minor1 tell her parents that something bad

1 happen to her before you did?

2 A. Yes, ma'am.

3 Q. And when she did report that did she report it to
4 her parents?

5 A. I don't know.

6 Q. Did you say anything at that time?

7 A. No, ma'am.

8 Q. Did you tell anyone that he had done anything to
9 you at the time that she reported being abused by
10 Mr. Perez?

11 A. No, ma'am.

12 Q. And did anyone ask you if anything had happened to
13 you?

14 A. Yes, ma'am.

15 Q. Who asked you?

16 A. My mom.

17 Q. And did you tell your mother that anything had
18 happened to you?

19 A. No, ma'am.

20 Q. Okay. The first time that you did tell your mother
21 something had happened to you was in a grocery store?

22 A. Yes, ma'am.

23 Q. And that was at the end of 2011?

24 A. I don't remember.

25 Q. Okay. Was it maybe about a year after you remember

- 1 these things happening?
- 2 A. I don't really remember.
- 3 Q. Would you say it was sometime afterwards?
- 4 A. Yes, ma'am.
- 5 Q. It didn't happen at the same time?
- 6 A. I don't really get question again.
- 7 Q. I can rephrase it better. Was there a time period
- 8 between when you remember these things happening and when
- 9 you first told someone?
- 10 A. (There was no response.)
- 11 Q. Did you wait to tell somebody?
- 12 A. Yes.
- 13 Q. And at the time when you told your mother you were
- 14 upset in the grocery store, weren't you?
- 15 A. Yes, ma'am.
- 16 Q. Were you upset with your mother?
- 17 A. Yes, ma'am.
- 18 Q. I want to talk to you a little bit more about the
- 19 interview that you did at the Lowcountry Children's
- 20 Center, okay? Now, you said in that interview that
- 21 Mr. Perez had touched you in a bad way more than one
- 22 time?
- 23 A. Yes, ma'am.
- 24 Q. And you said that happened all summer long?
- 25 A. I don't remember.

- 1 Q. Okay. Do you remember saying that you thought that
2 Mr. Perez was in love with you?
- 3 A. Yes, ma'am.
- 4 Q. Do you remember telling them about one time that
5 you believe he waited for you to get home from school?
- 6 A. Yes, ma'am.
- 7 Q. Okay. And when you were describing that time you
8 said that he tried to touch you when Ms. Carmona was
9 outside of the home?
- 10 A. Yes, ma'am.
- 11 Q. And you said that one of these incidents occurred
12 in another man's room?
- 13 A. Uh-huh.
- 14 Q. Was that another man that was living with the
15 babysitter?
- 16 A. Yes, ma'am.
- 17 Q. Okay. So that was not Mr. Perez?
- 18 A. I don't get the question.
- 19 Q. Was the room Mr. Perez's room?
- 20 A. No, ma'am.
- 21 Q. Was it Samuel's room?
- 22 A. I don't know who he is.
- 23 Q. In that interview you also described being raped by
24 Mr. Perez; is that correct?
- 25 A. I don't, like -- I don't know what -- I don't get

1 the question.

2 Q. Okay. I can ask another one. When the interviewer
3 first asked you about rape and if anything like that had
4 ever happened to you, you said no; is that right?

5 A. Yes, ma'am.

6 Q. And then she told you she was going to leave the
7 room for a little while and she was going to let you draw
8 with the markers on the marker board?

9 A. Uh-huh. Yes, ma'am.

10 Q. Then when she came back she asked you some more
11 questions; is that right?

12 A. Yes, ma'am.

13 Q. At that point in time did you then tell her that
14 you had actually been raped by Mr. Perez?

15 A. I don't remember.

16 Q. Did you tell her that he -- did you tell her some
17 more things that he had done to you?

18 A. Yes, ma'am.

19 Q. And I know this is going to be difficult. Was one
20 of the things that you described happening that he
21 actually put his private part inside of you?

22 A. Yes, ma'am.

23 Q. And that would be his penis?

24 A. I don't want to talk about that, ma'am.

25 Q. Okay. Is that the only private part on a man, that

1 they would put inside a woman?

2 A. Yes, ma'am.

3 Q. Did you say that that went inside your butt?

4 A. Yes, ma'am.

5 Q. And I'm going to apologize here because I was a
6 little confused about this. I would like to show you a
7 diagram and just get you to clarify for us what you meant
8 by that, okay?

9 THE COURT: Yes, ma'am. You may approach.

10 MS. PARNELL: Thank you, Your Honor. And I can
11 also do this on our new technology here.

12 THE COURT: Pardon?

13 MS. PARNELL: If Your Honor would like I can also
14 do this on our Elmo right here, and I believe it will
15 show up for her.

16 BY MS. PARNELL:

17 Q. It should show up on your screen. Now,

18 Minor 2 c], you should have some technology where you
19 actually touch that diagram and you can draw on it, okay?
20 So what I'm going to ask you to do for me is would you
21 show on here the front of the female or the back of the
22 female where exactly the butt was that he went in?

23 A. Yes, ma'am. (Indicated).

24 Q. Okay. Thank you, Minor 2 c].

25 MS. PARNELL: May I approach to get that document,

~~Minor 2~~ (IC) - CROSS BY MS. PARNELL

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1 Your Honor?

2 THE COURT: Yes, ma'am.

3 BY MS. PARNELL:

4 Q. Now, *Minor 2*, you described him going up and
5 down once he got inside of you?

6 A. Yes, ma'am.

7 Q. And did you say that he had threatened you to come
8 into that room with him?

9 A. Yes, ma'am.

10 Q. Okay. And he threatened you with a knife?

11 A. No, ma'am.

12 Q. What did he threaten you with?

13 A. I don't remember.

14 Q. Okay. But you said that he did not threaten you
15 with a knife?

16 A. Yes, ma'am.

17 Q. Do you recall saying anything in your interview
18 about him using a knife to threaten you?

19 A. No, ma'am.

20 Q. Did you say in the interview that this happened in
21 the middle of the night?

22 A. No, ma'am.

23 Q. Okay. Did you describe it happening sometime
24 really late, around 1:00 a.m.?

25 A. I don't, like -- I don't get it.

1 Q. What time of the day or night did this happen?

2 A. In the -- it happened during the morning.

3 Q. And when you say morning, do you mean morning like
4 when people are getting up going to work or morning when
5 people are still sleeping?

6 A. Morning when people are about to get -- like, when
7 it's almost like close to one o'clock.

8 Q. I'm sorry?

9 A. Close to one o'clock.

10 Q. Close to one o'clock. So one o'clock in the middle
11 of the day -- I mean, the middle of the night?

12 A. No, like, in the middle of the day.

13 Q. So one o'clock closer to lunchtime?

14 A. Yes, ma'am.

15 Q. Did you also say in the interview that there were a
16 number of other people in the house when this particular
17 thing happened?

18 A. No, ma'am. I don't remember.

19 Q. Do you remember who else was in the house when this
20 happened?

21 A. No.

22 Q. Do you remember if Ms. Carmona or her children were
23 there?

24 A. I don't remember exactly.

25 Q. Do you think you were alone in the house with

1 Mr. Perez?

2 A. Yes, ma'am.

3 Q. Do you recall saying anything in the interview
4 about the other people in the house sleeping when he put
5 his penis inside of you?

6 A. I think so.

7 Q. Okay. So you think you might have told the
8 interviewer that there were people in the house sleeping?

9 A. Yes, ma'am.

10 Q. Do you know who those people might have been?

11 A. The babysitter, the babysitter's daughter, and my
12 sister, I think.

13 Q. And the babysitter has two daughters; is that
14 correct?

15 A. Uh-huh. Yes, ma'am.

16 Q. And was the other man that lived in the house there
17 as well?

18 A. No, ma'am.

19 Q. Did you cry out, or scream, or yell, or anything
20 when this happened?

21 A. I just cried in silence.

22 Q. So you didn't scream out loud?

23 A. No, ma'am.

24 Q. In the interview you didn't say anything about him
25 trying to bribe you with anything, did you?

- 1 A. No, ma'am.
- 2 Q. So he didn't offer to give you money, or gifts, or
3 anything like that to let you touch him?
- 4 A. No, ma'am.
- 5 Q. Or to let him touch you, he didn't offer you
6 anything?
- 7 A. No, ma'am.
- 8 Q. And did you say anything in the interview about him
9 trying to bite you anywhere?
- 10 A. No, ma'am.
- 11 Q. Did he ever bite you on your breast or any part of
12 your body?
- 13 A. No, ma'am.
- 14 Q. And when these things happened were you generally
15 alone?
- 16 A. I don't get the word generally.
- 17 Q. When these things happened were you alone with
18 Mr. Perez?
- 19 A. Not that I remember.
- 20 Q. Were there other people around?
- 21 A. I don't remember who.
- 22 Q. You don't remember if there were other people
23 around when he did these things?
- 24 A. Yes, ma'am.
- 25 Q. I'd like to ask you a few questions about when you

- 1 did see those photos and when you picked a photo out,
2 okay? Do you recall what any of the people looked like
3 that gave you that photo lineup?
- 4 A. I don't get the question.
- 5 Q. Do you remember if it was a man or a woman that
6 showed you that photo lineup?
- 7 A. Yes, ma'am.
- 8 Q. Was it a man?
- 9 A. It was a man and a woman.
- 10 Q. But you don't remember their names?
- 11 A. No, ma'am.
- 12 Q. Do you remember what they said to you when they
13 handed you that lineup?
- 14 A. They had told me they had -- to pick a picture.
- 15 Q. Did they tell you why?
- 16 A. No, ma'am.
- 17 Q. What were you looking for in those pictures?
- 18 A. To see the man who did something wrong to me.
- 19 Q. But they didn't tell you that?
- 20 A. Huh?
- 21 Q. They didn't say anything about that?
- 22 A. I don't get it.
- 23 Q. They didn't tell you what you were looking for in
24 those pictures.
- 25 A. They had told me that -- to find the man who had

1 did something wrong to me.

2 Q. Do you remember about how long it took you to look
3 through those picture and pick one?

4 A. No, ma'am.

5 Q. Would you be able to guess if it was maybe more
6 than five minutes or less than five minutes?

7 A. No, ma'am.

8 Q. And do you remember what you said when you picked
9 out that picture?

10 A. No, ma'am.

11 Q. Okay. Do you remember anything that they said to
12 you after you picked out that picture?

13 A. Not that I remember.

14 MS. PARNELL: Court's indulgence?

15 THE COURT: Yes, ma'am.

16 BY MS. PARNELL:

17 Q. Just a few more questions, *Minor 2* Do you
18 remember any of these events happening when you were
19 playing games with another kid?

20 A. No, ma'am.

21 Q. And do you remember Mr. Perez ever doing anything
22 bad to you when you were helping him?

23 A. Like, I don't get it.

24 Q. Do you remember him ever asking you to help him
25 with anything as far as fixing up the house or the yard?

- 1 A. Yes, ma'am.
- 2 Q. And do you remember any of these bad things ever
3 happening during those times?
- 4 A. Like, I don't get it.
- 5 Q. Did he ever do anything bad to you when you were
6 helping him?
- 7 A. Yes, ma'am.
- 8 Q. Okay. And which one of the bad things was it that
9 he did?
- 10 A. He had touched me.
- 11 Q. Okay. And is this something that you've already
12 told us before when you were being asked questions by
13 Ms. Herring-Lash?
- 14 A. No, ma'am.
- 15 Q. Okay. This is something else?
- 16 A. Yes, ma'am.
- 17 Q. Okay. And what were you helping him with?
- 18 A. Fix a doorknob.
- 19 MS. PARNELL: That's all I have, Your Honor. Thank
20 you.
- 21 THE COURT: Any redirect?
- 22 MS. HERRING-LASH: Yes, Your Honor.
- 23 REDIRECT EXAMINATION
- 24 BY MS. HERRING-LASH:
- 25 Q. Do you know *Minor 2* if there were any other

1 people in the room, the same room when any of these
2 things happened?

3 A. No, ma'am.

4 Q. And when you said one o'clock, is one o'clock in
5 the morning, dark or light outside?

6 A. Light outside.

7 Q. Do you know the words a.m. or p.m.? Do you know
8 what those mean?

9 A. A.m. is at night and p.m. is in the morning.

10 Q. That's all the questions I have.

11 A. Thank you.

12 THE COURT: Okay. You may step down. Thank you
13 very much.

14 Any other witnesses?

15 MS. HERRING-LASH: No, Your Honor. Now, I do have
16 some others with the Neil V. Biggers hearing but if you
17 wanted to handle this separately.

18 THE COURT: All right. Let me just ask you one
19 question. I probably missed it. What was the time frame
20 as when Mr. Perez was there with his wife that was
21 babysitting the children? How long did that -- it may
22 not have been brought out. How long was that process
23 ongoing?

24 MS. HERRING-LASH: With the first child, *Minor 1*, she
25 started going there, I think in maybe December, January

1 of 2010. No. Excuse me, 2009, or somewhere around
2 there, and she continued to go there until July of 2011
3 -- or 10.

4 THE COURT: Ten.

5 MS. HERRING-LASH: Then the other child went there
6 in May of 2010 to around the beginning or so of July of
7 2010.

8 THE COURT: May of 2010 to July of 2010.

9 MS. HERRING-LASH: Yes, Your Honor. It overlapped
10 for those few months.

11 THE COURT: So it was just three months with the
12 second child?

13 MS. HERRING-LASH: Yes, Your Honor. Her mother can
14 testify about the time frame better.

15 THE COURT: I understand. So the victim in the
16 case, *Minor*, was from December '09 to July of '10; is
17 that correct?

18 MS. HERRING-LASH: Some time around there, yes.
19 She was in the trailer and in the house.

20 THE COURT: Okay. All right. You going to make an
21 argument or you want me to read your cases?

22 MR. GRIMES: I think we do have one thing about
23 the --

24 THE COURT: Do you want to offer any testimony?

25 MR. GRIMES: We want to offer some evidence.

1 THE COURT: Pursuant to your motion?

2 MR. GRIMES: Yes, sir.

3 THE COURT: Okay.

4 MR. GRIMES: Ms. Parnell, as you noticed, asked
5 Minor2 a lot of questions about the LCC interview and
6 what she said there and what she was saying today, and I
7 thought it might be easier for the Court just to watch
8 the video. It's being highlighted, but it would go in
9 Court's discretion. But there's a lot of inconsistencies
10 between what was said by Minor2 during the LCC interview
11 and what she testified to today. I think that's relevant
12 to show whether the State has met its burden by proving
13 clear and convincing evidence that incidents that Minor2
14 is even taking about -- talking about even happened.

15 THE COURT: I'm not going to look at the video.
16 Just tell me what you think is conflicting or not
17 conflicting.

18 MR. GRIMES: Well, during the video -- I'll let
19 Ms. Parnell address that.

20 THE COURT: What do you view is conflicted in her
21 testimony today?

22 MS. PARNELL: The first thing, Your Honor, was in
23 the very beginning. I asked her if she recalled any of
24 the bad things that Minor1 [sic] had said that
25 Mr. Perez had done to her and she said, No.

1 I asked her if she mentioned anything in the
2 interview about things that had happened to *Minor* as well
3 and she said, No.

4 I then asked her specifically, Do you remember
5 saying that *Minor* may have been raped by Mr. Perez, and I
6 believe that I finally got an, I might remember that from
7 her.

8 The next thing, Your Honor, was that during the
9 interview she specifically says that she believed that
10 she had actually been physically raped by Mr. Perez, and
11 she did go into detail with some of that with me but I
12 noticed that during the direct testimony the words that
13 she actually used were that he touched her front and back
14 parts when she was on the bed.

15 THE COURT: Well, I think the solicitor had agreed
16 not to go into that.

17 MS. HERRING-LASH: I purposely did not ask about
18 that.

19 THE COURT: She personally did not go into that.

20 MS. PARNELL: Okay. The next thing, Your Honor,
21 was that when I asked her if she'd ever been threatened
22 in any way, and she said, No.

23 I asked her if she'd ever been threatened with her
24 life, and she said, No.

25 She does go into length in the video about saying

1 that the particular encounter that she was describing in
2 detail regarding him actually penetrating her; when she
3 says that he put his penis in her, she describes him
4 having a knife in his pocket that he used to threaten her
5 and force her to come into that room.

6 The next thing, Your Honor, was inconsistency about
7 the time of day. We may have straightened that up but we
8 had the impression from what she said in the interview
9 that it happened at nighttime, and the reason we do
10 believe that she intended to say that it --

11 THE COURT: Were they babysitting at night? I
12 thought the babysitting was during the day. I assume she
13 said 1:00 p.m., right?

14 MS. HERRING-LASH: Well, she doesn't know a.m. and
15 p.m.

16 THE COURT: She said it was daylight. Obviously
17 that's going to be p.m.

18 MS. HERRING-LASH: Right. In the video she says
19 one in the morning but when you ask her if morning is day
20 or light she says day, but there is one part of the video
21 that kind of explains that. She says her mom -- they say
22 how do you know, and she says my mom had dropped my off
23 at 10 o'clock, and her mom drops her off at 10:00 in the
24 morning --

25 THE COURT: I assume the babysitting is while

1 people are working --

2 MS. HERRING-LASH: Right.

3 THE COURT: -- during the day, not at 0-130. You
4 all need to use 1300 and 0-130, or 0-100.

5 MS. HERRING-LASH: I know. It's very confusing
6 because she thinks, as she just said, that p.m. is in the
7 night one o'clock and she just doesn't know. But she
8 will say it was -- morning is daylight, is her --

9 THE COURT: All right.

10 MS. PARNELL: That takes me to the next
11 inconsistency we have with the video. I asked her if she
12 had cried out at all or screamed, asked for help, and she
13 said there, no, she just cried in silence.

14 In the video she does describe having screamed out
15 for help. And when the interviewer asked her, you know,
16 Do you know why anyone didn't respond, she says, Well, I
17 think everyone was sleeping.

18 And she goes on to say that there were a number of
19 people in the house. That was another thing on the stand
20 she said, that she thought that she was in the house
21 alone with Mr. Perez.

22 In the video she described being in a house and
23 Ms. Carmona being there, her children being there, but
24 once again said that she believed that everyone was
25 sleeping and that's why no one responded to her. Your

1 Honor, that's the only inconsistencies I have between the
2 video and her.

3 THE COURT: Thank you very much.

4 MR. GRIMES: Thank you, Your Honor. And it may
5 show that the State has not established what *Minor 2* is
6 testifying happened by clear and convincing evidence.
7 There's no physical evidence anything happened to her and
8 if she had been penetrated or might have been, long delay
9 in reporting, these initial denials...

10 THE COURT: Whether it's admissible or not doesn't
11 have anything to do with whether physical evidence or not
12 physical evidence. I mean, you well know it can be or
13 cannot be. Just because there's not any physical
14 evidence doesn't mean it didn't occur.

15 MR. GRIMES: That would be relevant of clear and
16 convincing.

17 THE COURT: I don't think that has anything to do
18 with whether it was a common scheme and plan, whether or
19 not the logical relevance between the two situations,
20 okay?

21 MR. GRIMES: I agree on that part but the clear and
22 convincing part I think would be relevant to that.

23 THE COURT: Okay. All right.

24 MR. GRIMES: And assuming that the State has met
25 its burden by showing that clear and convincing evidence

1 that these acts happened we still don't believe that they
2 are admissible under Rule 404(b) as in common scheme and
3 plan.

4 THE COURT: Tell me why not. Just let me ask you a
5 question because I want you to address what I'm thinking,
6 okay? Here we have a man, Perez, the defendant, Perez,
7 whose wife was babysitting for young girls. And those
8 young girls are being dropped off at their house for
9 babysitting purpose, whether it's daylight or dark,
10 whatever, okay, and he's having sex with them, whatever
11 you want to call it, oral sex, digital penetration,
12 intercourse, whatever you want to call it, but he's
13 having elicited relationships with these children in that
14 house under the same circumstances. Why isn't that
15 logically relevant to the charge we are facing with here?

16 Now, the case you gave me about where the child
17 said she had sex with him four or five years earlier was
18 an entirely different situation. I mean, the yardstick
19 is whether there's a pattern, whether there's a general
20 plan and whether to me the plan was he's there, the
21 children are there, there's a ready supply of young girls
22 his wife is babysitting for, and the conduct according to
23 the testimony from both parties was basically the same.

24 I'm not addressing the issue of the clear and
25 convincing. I'm talking about the second prong --

1 MR. GRIMES: I understand.

2 THE COURT: -- the logical relevance and whether
3 it's clearly perceived, and from where I sit it seems to
4 be clearly perceived and very logically relevant of the
5 prior conduct on this particular case.

6 MR. GRIMES: With all due respect --

7 THE COURT: You know, if it happened in another
8 house, in another situation with someone else around but
9 here we are with a man that's abusing children, are in
10 his wife's home that she's babysitting. How can that not
11 be any more relevant?

12 MR. GRIMES: Your Honor, the way you framed it is
13 simply propensity evidence.

14 THE COURT: How else you going to frame it? That's
15 what I'm asking you.

16 MR. GRIMES: That's why 404(b) is designed to keep
17 out propensity evidence.

18 THE COURT: It is, and the law says you don't let
19 the bad acts in unless the reason I'm giving you.

20 MR. GRIMES: Well, when you look at page four of
21 the Tutton case talking about -- the last paragraph --

22 THE COURT REPORTER: I'm sorry?

23 THE COURT: You taking about the Tutton case?

24 MR. GRIMES: Yes, sir.

25 THE COURT: Where are you reading from?

1 MR. GRIMES: On page four, the left-hand column,
2 the last paragraph.

3 THE COURT: You talking where simply -- Lyle simply
4 because sexual crimes are involved it's admissible?

5 MR. GRIMES: No, in --

6 THE COURT: Is that what you're talking about?

7 MR. GRIMES: Just because sexual crimes are
8 involved it doesn't lower the bar.

9 THE COURT: Yeah, I agree with that. I don't
10 disagree with that. I agree with that.

11 MR. GRIMES: And --

12 THE COURT: But look, read up the next paragraph
13 above it says, A pattern of continuous elicited conduct,
14 and that's what I'm referring to. It's a pattern.

15 MR. GRIMES: What we have here is the pattern -- I
16 would agree with the Court if he was playing games like
17 every time *Minor 2* was playing hide and seek with *Minor 3*
18 that he would take advantage of that opportunity to
19 sexually abuse her.

20 THE COURT: Okay.

21 MR. GRIMES: He's not. In this case she's saying
22 that she's in a room sleeping and he comes up to her.
23 He's not asking her to help him out, to come and fix a
24 board. At most it's maybe something about a doorknob
25 which was never testified to until the very end, and all

1 she said there was touching. We don't know if it's
2 touching on the shoulder, touching on the breast area,
3 touching a private part, or any other type of sexual
4 conduct involving that touching.

5 And there's -- I mean, we have sort of whether it's
6 nighttime or daytime on this one o'clock issue. You
7 know, basically he's going there and grabbing her and
8 kind of stalking her --

9 THE COURT: Well, you keep going back to clear and
10 convincing argument.

11 MR. GRIMES: Well, I'm saying basically the pattern
12 with Sureima, he's kind of stalking her --

13 THE COURT: Let me clear up the clear and
14 convincing argument. I find that the testimony is clear
15 and convincing, and that's within my discretion --

16 MR. GRIMES: Yes, sir.

17 THE COURT: Based upon observing the witness and
18 listening to the witness I find it's clear and
19 convincing. Now, let's go to the second argument.
20 That's where I have a problem. Okay?

21 MR. GRIMES: Well, as Tutton goes -- and I guess
22 the Court may balance it just like the solicitor is
23 balancing it --

24 THE COURT: We haven't even talked about 403 yet,
25 okay?

1 MR. GRIMES: I understand. You have sort of very
2 egregious conduct, which it sounds like the solicitor is
3 not going to go into, involving the one o'clock assault.
4 With the other assaults on *Minor 1* you have sort of just
5 touching and digital penetration. And then arguably you
6 have threats of a knife, according to LCC video, and
7 there are no threats, no promises involved with *Minor 2*
8 so it's different --

9 THE COURT: But you keep --

10 MR. GRIMES: He's getting the girls in a different
11 way.

12 THE COURT: But you keep harping on the conduct.
13 What I'm harping on is -- what my concern is the pattern,
14 the availability with the girls, and the pattern of the
15 abuse of the two girls in the care of this mother.
16 That's the plan and scheme. You keep harping on the act
17 itself. And tell me if I'm wrong. I'm trying to tell
18 you what I'm thinking, give you a chance to change my
19 mind.

20 MR. GRIMES: Just because the girls are available
21 doesn't make it a pattern.

22 THE COURT: Okay.

23 MR. GRIMES: It's just a bad person, it's just
24 propensity evidence.

25 THE COURT: Okay.

1 MR. GRIMES: The pattern is how can I get this girl
2 so I can have sexual conduct with her and get away with
3 it; is it me asking her to come to the bathroom and she
4 can help me out here and I could lock the door?

5 THE COURT: So you're saying there's got to be a
6 pattern in how he elicits sex?

7 MR. GRIMES: Exactly, Your Honor.

8 THE COURT: Okay.

9 MR. GRIMES: And when she's playing with *Minor 3* and
10 they are playing hide and seek and she's hiding and she's
11 alone then I can take advantage of her, and that's the
12 type of pattern I think the courts are looking for and
13 demand to allow this evidence in.

14 Just the fact that someone is going around and
15 having sexual conduct with minor girls itself is not a
16 pattern, regardless of if he does it once, twice, a
17 hundred times with people anywhere. Just like dealing
18 drugs. Just because I go sell drugs to Tom, Dick and
19 Jane down the street doesn't mean they can bring in every
20 sale I've ever done.

21 And in this case there is no real pattern. How
22 he's manipulating the situation to get the girls alone, I
23 think there needs to be a pattern there, and there's
24 nothing in common between how he does that with
25 *Minor 2* --

1 THE COURT: The pattern has got to be limited to
2 behavior.

3 MR. GRIMES: Yes, sir, and --

4 THE COURT: Okay. All right. Solicitor, what's
5 your view on that issue?

6 MS. HERRING-LASH: Your Honor, I guess --

7 THE COURT: I was explaining a pattern of
8 availability and taking advantage of the availability of
9 the children. He thinks it's got to be a pattern of
10 actual behavior.

11 MS. HERRING-LASH: I do not think it is. I think
12 the Wallace case, which is the most recent case, lists
13 several things to look at; the age of the victims -- I do
14 have a chart that --

15 THE COURT: Mr. Grimes, I didn't want to cut you
16 off. I'll listen to you. I just want to hear her
17 response to your argument --

18 MR. GRIMES: I understand.

19 THE COURT: -- while it was fresh on my mind.

20 Okay. Go ahead, Solicitor.

21 MS. HERRING-LASH: Your Honor, that's the chart I
22 have, but the one thing as far as the Tutton case, the
23 Wallace case, which is the South Carolina Supreme Court
24 case from 2009, distinguishes and talks about Tutton. If
25 I may, it says, the Court of Appeals in Tutton which

1 appears to require a connection be on a degree of
2 similarity in the details of the crime charged and the
3 bad act evidence we find this interpretation to be an
4 overly restricted view of our case law requiring a
5 connection between the crime charged and the bad act.
6 Evidence is simply that the two be factually similar and
7 do not -- and does not add any additional layer of
8 analysis.

9 So they say that Tutton went too far.

10 THE COURT: Factually similar is what they say?

11 MS. HERRING-LASH: They say factually similar, and
12 they list in the Wallace case age, the relationship
13 between the victim and the perpetrator, the location
14 where the abuse occurred, the use of coercion, the manner
15 of occurrence, which is the type of battery.

16 The Wallace case, like this case, one of the
17 victims there was sexual intercourse, and that was the
18 Lyle victim, and the way the Court said to handle that
19 was to redact the part that had to do with the more
20 egregious behavior, which is why I purposely did not ask
21 this child about the intercourse.

22 In this case, we have they were both eight and
23 *Minor* had been nine for about a month. It was the
24 babysitter's husband, so it was the same relationship
25 between the victim and the defendant. It happened in his

1 home in several different areas in his home, the same
2 general time frame. *Minor 2* s time frame is inclusive in
3 *Minor 1*'s time frame. At different places in his house.

4 They were both described being fondled on the top
5 and the bottom and *Minor 1* described digital penetration.
6 They both -- one was watching a Toy Story and one was
7 watching High School Musical and they were laying down
8 and he approached them. It was over and under their
9 clothing. They were both there during this time frame.
10 The relationship was the same.

11 And, Your Honor, I think that it is extremely
12 similar and for it to be -- just to address the
13 propensity argument. If we were trying to get in, for
14 example, a 16 or a 15-year-old girl that he met and
15 assaulted in a different location, or a male that he
16 assaulted, say, that was 13 years old, or if we were
17 trying to get in an assault that occurred from a
18 different relationship at a different time, those would
19 be simply for propensity but this is --

20 THE COURT: Do you have this in writing?

21 MS. HERRING-LASH: Yes.

22 THE COURT: The similarities?

23 MS. HERRING-LASH: I do. I have a chart.

24 THE COURT: I can't see that from the glare, the
25 glare on the screen. Maybe I can see it over there.

1 Okay. Thank you. All right. Go ahead.

2 MS. HERRING-LASH: But I think that the Wallace --

3 THE COURT: So in short, in answering my question
4 about conduct or situations is taking the total
5 circumstances and the similarity in all the circumstances
6 involved in both alleged crimes.

7 MS. HERRING-LASH: I think you look at all the
8 similarities. The Wallace case listed a few but it said
9 obviously this is not the entire list but those were
10 something to go by.

11 One of the cases that I described in my brief there
12 were, I think four foster children, and it was a
13 different -- lots of different assaults that went on and
14 the Court allowed all of those in because he was the same
15 relationship to those kids. They were there because he
16 was the foster father, and this is very similar in that
17 they were there because this was the babysitter's
18 husband.

19 THE COURT: Okay.

20 MS. HERRING-LASH: And there were some differences
21 in the batteries in the Hallmon case also but by and
22 large they were very similar, enough to have shown a
23 pattern, and the case says that similarity establishes
24 the required connection between the two acts.

25 THE COURT: Do you have the Wallace case so I can

1 take a look at it?

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

3 THE COURT: If you'll hand it up.

4 MS. HERRING-LASH: I have part of it highlighted
5 but --

6 THE COURT: I don't care. I can read through your
7 highlight.

8 (A document was handed to the Court.)

9 THE COURT: Thank you very much.

10 All right. She's addressed that one issue. I'll
11 be glad to hear whatever else you have to say on the
12 issue, if there's anything else you want to add.

13 MR. GRIMES: I would agree with Ms. Lash that the
14 Wallace case is probably the most recent case in our
15 South Carolina Supreme Court and lists five explicit
16 factors and three would weigh in favor of the State, the
17 age of the victim, the relationship between the victims
18 and the defendant and the location of the abuse. The
19 four factors they list, the use of coercion or threats --

20 THE COURT REPORTER: I'm sorry?

21 MR. GRIMES: The use of coercion of threats -- let
22 me rephrase myself. Access to *Minor 1* and according to
23 the LCC interview was present with *Minor 2*. And the
24 manner of occurrence began -- I know that's being
25 redacted, one was more egregious, the one with *Minor 2*,

1 and I think *Minor 2*'s other say touching. I believe made
2 nothing specific about how she was touched.

3 And when you look at other factors that's where I
4 was emphasizing about the manner of how he would take the
5 access of the girls to get the sexual -- commit the
6 sexual battery, no -- not playing games.

7 THE COURT: These five items here, I mean, that's
8 just what they are asking for to look at. There's other
9 possible similarities. Similarity will change case by
10 case.

11 MR. GRIMES: Yes, sir.

12 THE COURT: Right.

13 MR. GRIMES: And so can dissimilarities, and again,
14 in this case, you know, how he arguably seduced -- well,
15 not seduced, gained access to *Minor 1* --

16 THE COURT: Well, let me ask it in reverse. What's
17 the dissimilarities between the occasions?

18 MR. GRIMES: One is that when he was going to be
19 with *Minor 1* he would sort of manipulate her to get her
20 alone by through, like, asking her to help repair the
21 wall, playing games, you know, waiting for someone to be
22 outside, and I think just the general time frame, and
23 time frame as in time of day. And the evidence that's
24 been before the Court at this time, *Minor 2* never
25 testified as to when it really occurred, said maybe one

1 o'clock, either a.m. or p.m.

2 THE COURT: She said it was in the daylight.

3 MR. GRIMES: And then --

4 THE COURT: 1300 is in the day, 0-100 is at night.

5 MR. GRIMES: Yes, sir. And *Minor 1* just kept saying
6 it was after Mr. Perez got home from work. And *Minor 2*
7 was never playing any type of games or doing anything
8 that would -- he never manipulated her to get her alone.
9 Seemed like he would try to -- if she was alone he would
10 try to follow her and take advantage of her that way or
11 sort of predatory and was with *Minor 1*. So I think when
12 you look at those differences then there is no logical
13 reference. It's just mere propensity.

14 THE COURT: Okay.

15 MR. GRIMES: Thank you, Your Honor.

16 THE COURT: Anything else?

17 MR. GRIMES: No, sir.

18 THE COURT: All right. Solicitor, anything else
19 you want to add to your argument?

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

21 THE COURT: Mr. Grimes, you finished? I'm not
22 trying to hurry you.

23 MR. GRIMES: No. I was just making sure.

24 THE COURT: Okay. All right.

25 MS. HERRING-LASH: Just to address some of the

1 issues. I think that one of the things I didn't have on
2 the chart because I didn't know that he had actually
3 asked her to help him one time with doing something and
4 touched her vagina. I never asked her directly as
5 Christina did so I didn't know that but that would be
6 another similarity.

7 And as far as manipulating *Minor1*, most of the time
8 she talked about he didn't manipulate her. He just
9 happened to be there. She says she went in to get her
10 PSP from the bedroom and he was there. Another time she
11 was falling asleep watching a movie. As *Minor2* says,
12 she had fallen asleep watching High School Musical, with
13 *Minor1* it was Toy Story. The other time *Minor1* talks about
14 there was no him manipulating her she went into the
15 closet to hide and he came there.

16 I think those are similar in that what he did was
17 just take advantage of each situation. I don't know that
18 there was, I'm going to get her in this room. She's in
19 that room and I'm going take advantage of this, or the
20 other one may be in this room and I'm going to take
21 advantage of this.

22 I don't think there was this set, you know, getting
23 one alone and not the other. But he did, both of them
24 say, that he touched them on the top and on the bottom
25 privates. And they both say that he touched them on

1 their privates inside of their clothes, and on the
2 outside of their clothes.

3 The part that is not similar is the -- the extent
4 of one, which I think Wallace addresses clearly on how
5 the Court is to handle that, just to not -- just to
6 redact that, and that's all I have.

7 THE COURT: All right. While you are addressing,
8 while you are talking, and I'll listen to Mr. Grimes
9 rebuttal here shortly, let me hear you on 403. Why do
10 you think -- obviously, it's prejudicial to the
11 defendant.

12 MS. HERRING-LASH: Right.

13 THE COURT: So why do you think balancing the 403
14 analysis the Court should allow it in, assuming your
15 arguments are correct on similarities?

16 MS. HERRING-LASH: I think that --

17 THE COURT: It meets the Lyle exception.

18 MS. HERRING-LASH: Right. What the case law points
19 out is that what you look at to decide whether it is more
20 probative than prejudicial is the degree of similarity.
21 The more similar the more probative, and I think that
22 State V. McClellin talks about courts must weigh
23 probative value of evidence of prior bad acts against the
24 prejudicial effect. Such evidence is inadmissible unless
25 the close similarity of the crimes charged and the

1 previous act enhances the probative value by their
2 similarities.

3 THE COURT: So you're really making same Wallace
4 argument as far as Lyle.

5 MS. HERRING-LASH: Yes, Your Honor. I think the
6 McClellin is an old case and it just sets out --

7 THE COURT: Other than just bolstering your case
8 why do you need it?

9 MS. HERRING-LASH: I think that --

10 THE COURT: As far as proving your case.

11 MS. HERRING-LASH: There is a case that says it
12 doesn't have to be necessary, I have that cite, in order
13 for it to be admitted. And I think that it really is --
14 State V. Sweat says to establish material fact or element
15 it need not be necessary to the case in order to be
16 admitted.

17 It isn't absolutely necessary but my feeling is
18 that when the jury hears that he's babysitting all these
19 children and they hear from one of them and hear about
20 the other children they are going to make the assumption
21 that there was no other victim, which is an incorrect
22 assumption. It's kind of like a falsity to the jury.

23 And the case law says that if it is similar then
24 you can use it to prove it. As an example, if he tries
25 to maybe through testimony elicit the fact that this man

1 was always at work so he could not have done these
2 crimes, well that helps.

3 THE COURT: Couldn't you reply to that?

4 MS. HERRING-LASH: Well, not unless he does it in
5 the closing argument I couldn't.

6 THE COURT: Okay. All right.

7 MS. HERRING-LASH: But that's kind of been
8 inferred, and it is probative. It helps in the -- to
9 paint the scene, and I guess that's why this line of case
10 law has developed and established because the degree of
11 similarity between one assault and another heightens the
12 probative value of it such that it becomes credible
13 evidence, and I know that it's prejudicial and that is
14 what we have to weigh, and what the courts have said is
15 you weigh that by looking at the similarities.

16 THE COURT: Okay. All right. Thank you so very
17 much.

18 All right. Let me hear your rebuttal on the bad
19 act then let me hear you on the 403 argument, or you can
20 combine the two. It really doesn't matter to me.

21 MR. GRIMES: I don't think I have any form of
22 rebuttal on the bad act. I stated my position probably
23 as well as I can.

24 Under rule 403, I think the Court hit it exactly.
25 I mean, it's prejudicial, it's unfairly prejudicial. The

1 State does not need this to prove its case and beyond
2 that it's used to bolster the State's case on an improper
3 basis. Unfair prejudice has undue tendency to suggest a
4 decision on an improper basis. That's exactly what's
5 going on here is --

6 THE COURT: Well, what about her argument about
7 insinuation that there were a bunch of children there and
8 this is the only child that's made any allegations?

9 MR. GRIMES: Well, that can be handled by us not
10 making that argument. I'll be happy not to make that
11 argument.

12 THE COURT: I don't know if you are or not.

13 MR. GRIMES: I mean, we can balance the entire
14 record. I mean, our theory of the defense is, you know,
15 this never happened. Okay. She's making it up for
16 whatever reason, don't know why, and he did not do any of
17 this, and he will be testifying.

18 THE COURT: I mean, if that's going to be his
19 argument that makes it even more probative; is that
20 correct or incorrect?

21 MR. GRIMES: I think it's incorrect.

22 THE COURT: Why do you think it's incorrect? From
23 the State's standpoint that makes it even more probative.
24 He going to say, Hey, I didn't do this. She's got
25 testimony of somebody else that he did basically the same

1 thing.

2 MR. GRIMES: Well, that's what makes it -- gives
3 them a reason, for the jury to make a decision on an
4 improper basis. They may say, Well, one girl makes me
5 wonder but if it's two girls why would they be saying
6 this. You know, it just heightens the prejudice against
7 Mr. Perez and his ability to get a fair trial.

8 THE COURT: That sets the prejudice. I mean, I
9 acknowledge that.

10 MR. GRIMES: You know, the question is does the
11 prejudice outweigh the probative value? What is the
12 probative value of adding in another allegation? It does
13 nothing but bolster their case and gives an emotional
14 element to the case when you have two young girls coming
15 in and basically, you know, painting a horrible picture
16 of Mr. Perez.

17 They have one girl. They have their investigators.
18 They've done -- you know, if they are not confident in
19 their case -- they should be confident enough to go
20 forward on it without bringing in *Minor 2*

21 THE COURT: Okay. Thank you so very much.

22 MR. GRIMES: Thank you, Your Honor.

23 THE COURT: All right. I'm going to mark this
24 chart on the similarities as Court's Exhibit Number 1 as
25 to the motion, and I'm going to think about it.

1 (WHEREUPON, Court's Exhibit Number 1, a Chart, was
2 marked and made a part of the record.)

3 THE COURT: Let's move forward with the -- what
4 else we got to do on the Biggers?

5 MS. HERRING-LASH: I have the witness here that
6 showed the photo lineup to *Minor* (

7 MR. GRIMES: May I have one moment, Your Honor. I
8 may not --

9 THE COURT: I asked you the same question at the
10 bench.

11 MR. GRIMES: I think I'll short circuit this.

12 THE COURT: Pardon?

13 MR. GRIMES: I may be able to short circuit this
14 given what we've heard already.

15 THE COURT: I mean, does the Court -- unless
16 whether the process was unduly suggestive, didn't
17 exercise whether out of court is admitted reliable -- I
18 mean, tell me what you are objecting to, okay. Talk to
19 your client.

20 MR. GRIMES: Yeah. If I could have a couple
21 minutes I think I may be able to withdraw that motion.

22 THE COURT: Okay. All right.

23 (WHEREUPON, a private conversation took place at
24 the defense table.)

25 MR. GRIMES: Your Honor, I think we can withdraw

1 the Biggers motion.

2 THE COURT: You're not going to request a Biggers?

3 MR. GRIMES: Yes, sir, based on what we've heard
4 already --

5 THE COURT: All right. Does your client understand
6 that through the interpreter?

7 MR. GRIMES: Yes, sir.

8 THE COURT: All right. Is there anything else we
9 need to hear this afternoon?

10 MR. GRIMES: I guess maybe the U-Visa motion. I
11 know we talked a little bit about it at the bench.

12 THE COURT: The visa motion I understand. What I'm
13 going to do on the visa motion, I'm going to listen to
14 that in-camera when it comes up and I'll make a decision
15 then whether I'm going to allow it or not because I
16 really want to listen to testimony about that.

17 MR. GRIMES: Okay.

18 THE COURT: So I'm just going to take that under
19 advisement, and the solicitor says she will let me know
20 when that's coming up and I'll do it in-camera.

21 MS. HERRING-LASH: I don't plan on asking him about
22 it unless it's coming in but I think that it would be
23 coming up for cross of the mother, so we can let you
24 know.

25 MR. GRIMES: At least the mother.

1 MS. HERRING-LASH: And the only thing I would ask
2 is that --

3 THE COURT: When would it come up, Mr. Grimes? Do
4 I need to go ahead and call the mother and let's go into
5 it now, or is she here?

6 MS. HERRING-LASH: The mother is here but I also
7 have the victim advocate that actually told the mother
8 about the process, and she is here to explain how that
9 occurred, if the Court wants to hear it.

10 MR. GRIMES: I think it's undisputed that they got
11 a U-Visa.

12 MS. HERRING-LASH: Right.

13 THE COURT: Right.

14 MS. HERRING-LASH: I don't think they have it yet.
15 They've applied.

16 MR. GRIMES: And that they are applying for it and
17 Ms. Herring-Lash has wrote a letter to help them.

18 THE COURT: From what you all told me when we had a
19 bench conference my inclination was it's going to be
20 admissible, it goes to the weight of it, and I don't have
21 any problem with it coming in. You just have to respond
22 to it however you think is appropriate.

23 MS. HERRING-LASH: And I guess that was my main
24 issue, Judge. If you are going to let it in I just
25 wanted to know then I would bring it up with the witness,

1 obviously, rather than wait until cross.

2 THE COURT: My inclination is to let it in. I
3 mean, from what I understand what you all told me at the
4 bench conference was that when there's a crime being
5 committed they can apply for a visa and it can be granted
6 if the prosecutor requests it, that certain requirements
7 got to be met. Your people explained that to the mother
8 and then she applied for the visa and got it.

9 MS. HERRING-LASH: It wasn't quite that. She
10 didn't want to get it, and the victim advocate kept
11 explaining to her why it was necessary and even took her
12 to help start the process because she did not want it,
13 but eventually she did. You're right.

14 THE COURT: And his argument was that's the reason
15 they prosecuted the case, but they didn't know about it
16 then after the case started -- but that could be a reason
17 they proceeded with the case. So I think it goes to the
18 weight and sufficiency. I think it's probably admissible
19 and I'll allow it in.

20 MS. HERRING-LASH: And if that's your ruling I just
21 want to know so I can ask them about it myself.

22 THE COURT: Yeah. Yeah.

23 MS. HERRING-LASH: That was the main thing I wanted
24 to --

25 THE COURT: I'm going to rule that it's admissible,

1 assuming I hear something during the trial, you know,
2 unless something changes. Okay?

3 MR. GRIMES: All right.

4 THE COURT: Anything else? I'll let you know first
5 thing in the morning about this Lyle business.

6 MR. GRIMES: And I guess the only other thing would
7 be --

8 THE COURT: I just want to sleep on it and get a
9 clear head. You all have confused my head.

10 MR. GRIMES: I do my best, your Honor.

11 THE COURT: Both of you have done a good job with
12 it.

13 MR. GRIMES: I guess the only other thing would be
14 *Minor's* testimony about -- I think you said you might
15 hear it in-camera. She had asked was she afraid of
16 Mr. Perez or why didn't she report sooner, about her
17 being afraid he might come do something to her.

18 THE COURT: I mean, I think I said -- made the
19 comment she can ask her was she afraid. If she says yes,
20 then why she was afraid, and that's what you have an
21 objection to.

22 MR. GRIMES: For some reason I thought you said you
23 might take that up in-camera.

24 THE COURT: I'll be glad to.

25 Solicitor, you want to take it up in-camera?

1 MS. HERRING-LASH: You want me just to bring her up
2 and ask her --
3 THE COURT: No, I'm talking about during the trial.
4 MS. HERRING-LASH: Oh, yes.
5 THE COURT: Will that be okay?
6 MS. HERRING-LASH: That's fine.
7 THE COURT: It won't take very long.
8 MS. HERRING-LASH: That's fine.
9 THE COURT: All right. Anything else?
10 MR. GRIMES: I think that's it, Your Honor.
11 THE COURT: All right. Thank you all. I'll see
12 you in the morning at 9:30.
13 MR. GRIMES: Thank you, Your Honor.
14 (WHEREUPON, the trial of this case was recessed for
15 the day.)

16 Tuesday, January 15, 2013

17 THE COURT: All right. We're still waiting on a
18 juror, so I want to go ahead and tell you my decision so
19 you all can be getting ready for opening statements.
20 Under the State V. Wallace case, which is 683
21 S.E.2d 275, the Court finds that based upon the Court's
22 Exhibit Number 1 there's a close degree of similarity
23 between the bad acts and the ages of the victim,
24 relationship between the victim and the perpetrator, the
25 location where the abuse occurred, the manner of the

1 occurrence, such as type of sexual battery, and I'm not
2 sure about the coercion and threats but these are the
3 factors for the Court to consider, and the Court finds
4 that because of the similarity the Court will allow the
5 prior bad act in.

6 Now, under the 403 analysis the Court is of the
7 opinion if the similarity under Wallace has been met and
8 then looking at it I think the probative value because of
9 those similarities outweighs the prejudice value under
10 403, and the Court will allow it in.

11 Is there anything else that we need to take up
12 before opening statements? We are still waiting.
13 There's still one juror that's not here.

14 Anything from the State?

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

16 THE COURT: Anything from the defense?

17 MR. GRIMES: Just to clarify. My understanding
18 that the State would not be offering details of the
19 alleged intercourse between Mr. Perez and *Minor 2*?

20 THE COURT: Right, because that doesn't meet the
21 criteria. She's not going to go into that. As a matter
22 of fact, I'll prohibit her from going into the
23 intercourse with the second child.

24 MS. HERRING-LASH: And due to that, Judge, I may
25 need to lead her a little bit --

1 THE COURT: Okay.

2 MS. HERRING-LASH: -- when we get around that just
3 because the truthful answer --

4 THE COURT: I understand.

5 MS. HERRING-LASH: I have to kind of lead her away
6 with that. I'll try to do that like I did yesterday
7 without --

8 THE COURT: Before you call her I'll give you an
9 opportunity to talk in private and get that straight,
10 okay?

11 MS. HERRING-LASH: Okay.

12 THE COURT: Anything else?

13 MR. GRIMES: And when that evidence is introduced
14 we would just ask the Court to issue, I guess a
15 cautionary instruction or a limited instruction that bad
16 act was only used to show this occurred in a common
17 scheme of plan and not for evidence of --

18 THE COURT: All right. If you will get me what
19 instruction you would like to have I'll be happy to give
20 it, okay?

21 MR. GRIMES: Thank you, Your Honor.

22 THE COURT: If you'll get your handy assistant to
23 get something available that you prefer I would be happy
24 to do that, okay?

25 MR. GRIMES: Thank you, Your Honor.

1 THE COURT: All right. The interpreter, I
2 understand if you need -- you're going to be by yourself
3 today. So I understand we're going to have to probably
4 take more breaks than usual. Whenever you need a break
5 just stand up and we'll take a break, okay?

6 THE INTERPRETER: Thank you very much, Your Honor.

7 THE COURT: All right. If you'll just stand up
8 that will get my attention and we'll take a break.

9 THE INTERPRETER: Okay. Thank you.

10 THE COURT: All right. We'll stand at ease while
11 we're waiting on the next juror. I'll let you know when
12 the juror gets here and we'll get started at that time.

13 Mr. Grimes, I assume this testimony will be a while
14 before we get there so you got some time to get --

15 MR. GRIMES: I think I have one drafted but I left
16 it at the office.

17 THE COURT: Okay. Well, you're welcome to go get
18 it.

19 MR. GRIMES: I can run back there real fast and get
20 it, if it's okay.

21 THE COURT: Well, whatever. When you going to be
22 calling the -- Solicitor, when you think you're going to
23 be calling her?

24 MS. HERRING-LASH: She'll be the third witness.

25 THE COURT: Okay. So you got some time for

1 somebody to go get it or whatever, okay?

2 MR. GRIMES: All right.

3 (WHEREUPON, a brief recess was taken.)

4 THE COURT: Is the State ready to proceed?

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

6 THE COURT: The defense ready to proceed?

7 MR. GRIMES: Yes, sir.

8 THE COURT: All right. Bring us the jury, please,

9 sir.

10 (WHEREUPON, the jury enters the courtroom at

11 approximately 10:07 a.m.)

12 THE BAILIFF: The jury is all present, Your Honor.

13 THE COURT: All right. Thank you.

14 Ladies and gentlemen of the jury, I'm going to

15 explain to you very briefly the procedure we're going to

16 go through during the trial. Very shortly the attorneys

17 will make opening statements and in the opening

18 statements they will tell you what they are planning on

19 proving during the course of this trial.

20 After the opening statements the State will have an

21 opportunity to present witnesses to prove their case, and

22 the State would have that witness on direct examination,

23 and the defense would have the witness on

24 cross-examination. The basic difference between direct

25 and cross-examination is on direct you cannot lead. You

1 cannot ask leading questions. A leading question is a
2 question that suggests an answer.

3 After the State has presented all their testimony
4 then the defense will have an opportunity to present
5 testimony if they so choose.

6 If the defense presents testimony then the State,
7 after that testimony, will have an opportunity to reply
8 to that testimony if they so choose.

9 Now, if the defense does offer testimony then the
10 roles will reverse. The defendant would have the
11 witnesses on direct examination and the State would be on
12 cross-examination.

13 During a criminal trial the defense never has to
14 prove their innocence. It's the State's burden and the
15 State's responsibility to prove the defendant guilty
16 beyond a reasonable doubt.

17 A defendant does not have to offer any testimony,
18 if they do not choose, and that's strictly up to the
19 defendant. And at this point in time I do not know
20 whether they will offer testimony or not but as the trial
21 proceeds we'll see.

22 After all of the testimony has been introduced then
23 we will have closing arguments and each attorney will
24 make arguments as to why you should find on their
25 client's behalf, for the State or for the defense. After

1 the closing arguments I will give you a charge on the law
2 and the law as applicable as to the case.

3 My role in the trial is basically a referee between
4 the attorneys, making sure the trial is conducted
5 according to the rules of evidence and rules of court.

6 And anything that I may say or do during the trial,
7 please disregard. The attorneys may make objections.
8 They are making the objections because they believe that
9 the testimony is not admissible under the rules of
10 evidence. Please do not consider how I rule -- if I use
11 the word overrule that means I disagree with the
12 attorney. It is admissible. If I use the word sustained
13 that means that I agree with the attorney and it is not
14 admissible under the rules of evidence.

15 And I would ask you to pay attention to the
16 testimony, listen to the attorneys. And I will ask you,
17 does anybody want to take notes? If you do, raise your
18 right hand.

19 All right. The clerk will provide those to you,
20 and after he provides you those the clerk will swear you
21 for this trial.

22 One other thing I want to tell you. We have an
23 interpreter. Yesterday we had two interpreters and they
24 were switching off. It's right fatiguing for the
25 interpreter and we may have to take more breaks during

1 this trial today because she's by herself and whenever
2 she needs to take a break I'm going to have to
3 accommodate her and take a break.

4 (WHEREUPON, notebooks and pens were passed out to
5 the jury.)

6 THE COURT: All right. Is there anybody that
7 doesn't have a notebook or pad that wants to take notes?
8 Now, as far as your notes, write your name inside the pad
9 and the clerk and the Court will keep possession of those
10 notes during the trial, and in conclusion of the charge
11 and when you begin your deliberations in the trial, at
12 that time you'll be able to take your notes to the jury
13 room.

14 Mr. Clerk, if you'll please swear the jury.

15 (WHEREUPON, the jury was given their oath.)

16 THE COURT: Solicitor?

17 MS. HERRING-LASH: May it please the Court?

18 THE COURT: Yes, ma'am.

19 MS. HERRING-LASH: Alejandra Jimenez is like any
20 other mother. She wanted the best childcare situation
21 possible for her child. She, her husband, her daughter,
22 *Minor P*, and her young infant son, *Minor S*, moved to
23 Charleston, South Carolina, and not long after moving
24 here she got a job at a store on Remount Road.

25 One of the customers of that store, Angelica

1 Carmona, mentioned to Ms. Jimenez that she was going to
2 take care of children in her home. She is the wife and
3 lived in the home with Mr. Perez, the defendant. She
4 mentioned this to Ms. Jimenez while also explaining that
5 they had a daughter who was *Minor 3*, who was eight years of
6 age at the time. This was the same age of *Minor 1*

7 Ms. Jimenez was very excited about this thinking
8 not only will my child have childcare near the store
9 where I work but she will also have another child there
10 that's around her age so that she won't be just stuck
11 with babies, and have someone to be a friend with.

12 So she began to babysit for both *Minor 5* and *Minor 1*
13 And in the home also was Mr. Perez, and *Minor 4*, a young
14 child of theirs, and *Minor 3* their daughter. *Minor 5* was
15 there more because *Minor 1* obviously, went to school. She
16 would be there after school sometimes, and in the summer
17 she would be there much more, obviously, because there
18 was no school, and some weekends her mom had to work.

19 Ms. Jimenez did at some point notice that there was
20 -- there were some behavioral changes, grades dropped.
21 *Minor 1* began to not want to sleep alone and Ms. Jimenez
22 would have to sleep with her. She noticed that when she
23 did sleep with her she would grind her teeth to the point
24 that she asked the dentist about it and was just told,
25 Well, that could be stress.

1 Well, she thought what does an eight year old have
2 to be stressed about? So one evening in mid July of 2010
3 they were in the bedroom. This was a Sunday evening.
4 She was brushing *Minor 1*'s hair and she decided to ask her
5 just some safety questions that she had randomly asked
6 throughout her life; is anyone bothering you, is anything
7 bothering you? If so, you can always tell mommy.

8 With no expectation actually of any information she
9 was shocked and saddened and surprised by what *Minor 1* told
10 her. *Minor 1* told her that in fact *Minor 3*'s dad, the
11 babysitter's husband, she did not know his name at that
12 time, had been touching her.

13 Well, Ms. Jimenez tried to keep her composure and
14 just asked a few questions. Told *Minor 1*, You lay down and
15 go to sleep. She goes out and loses control, calls her
16 husband who's very upset.

17 The next day they go to the North Charleston Police
18 Department. The officers take them around so they can
19 find the location because they know where it is. She
20 knows where it is but not the exact address. They are
21 referred to the Lowcountry Children's Center, which is a
22 child advocacy center here in Charleston. They do
23 forensic interviews of children on videotape. They also
24 perform medical exams of children.

25 Now, this was back in July of 2010, as I have said.

1 At that point, *Minor* was nine. Her birthday is May the
2 31st. She had just turned nine like a month and a half.
3 Today she is 11 and a half.

4 *Minor* will take the stand and explain to you what
5 happened to her the best that she can. These are things
6 that she's tried to forget. She went through counseling,
7 and after the counseling just wanted to put this behind
8 her. But now, two and a half years later, through no
9 fault of her own, we are in trial and she will have to
10 explain to you.

11 I submit to you that it will be difficult for her
12 to remember exactly the sequence of events, exactly how
13 many times, how much time between the events, and she
14 will not be able to tell you this happened on this exact
15 date. We really wouldn't expect that of any child.

16 But there are certain events that may stand out to
17 her that were a little different that she will be able
18 maybe to give you more details about. Really, that's
19 just how all of us remember.

20 When I think of this I think of the example, not to
21 minimize it, but an example of what my coworkers do. She
22 and her family go to Outback Steakhouse every Friday
23 night. Now, she could not tell you about a specific
24 night and what happened except the night that the waiter
25 dropped all their food on them and the table. Now, she

1 can remember that and tell you.

2 I do not mean in any way to suggest that child
3 abuse becomes routine but when it is repetitive it does
4 become hard to distinguish events. This child may talk
5 about events in here today she's never mentioned before
6 because some particular question may trigger a memory
7 that she hasn't recalled in a while. And she may give
8 you some details that are very specific.

9 She, as I said, was just nine. She's now 11 and
10 half. She's in a whole nother developmental stage. She
11 will attempt to be composed and self assured as an 11 and
12 a half year old but you will be able most likely to see
13 the nervousness behind that.

14 You will also hear from different professionals;
15 police officers, and therapists, interviewers.

16 Mr. Perez in this case is charged with criminal
17 sexual conduct with a minor. I'll go over the elements
18 briefly with you of what that is. The elements are the
19 part of the crime that the State must prove to you.

20 A person is guilty of criminal sexual conduct in
21 the first degree if the actor, which would be the
22 defendant, engages in a sexual battery, in this case the
23 sexual battery is digital penetration, which is the
24 finger inside of the vaginal area, and the victim is
25 less than 11.

1 Now, you may look at this and think and see, well,
2 this is a sexual assault. Where does it talk about the
3 force, and the coercion, and, you know, violence? Well,
4 that is not one of the elements because the element of a
5 child being under the age of 11 does not require force
6 because of the age and the disparity in the ages of the
7 actor, who is much older.

8 He is also charged with lewd act upon a minor, and
9 that is the defendant being over the age of 14 willfully,
10 lewdly commits or attempted any lewd or lascivious act on
11 or with the body or any member thereof a child under 16
12 with the intent of arousing, appealing to or gratifying
13 sexual desires. This is what you would normally think of
14 as child molestation, touching and rubbing on the genital
15 or private areas of a child without penetration.

16 You will hear the evidence in this case from the
17 witness stand and it will be the testimony of the
18 witnesses. This is not a case where you will have
19 technical scientific testimony like DNA.

20 You'll hear from the length of time that it took
21 Minor / to tell what happened, which is very common in
22 cases of child sexual assault but it does inhibit the
23 collection of any evidence, which would be evidence left
24 on a body from an assault. If it's been an amount of
25 time there's no way that can still be there. There's

1 been baths and, you know, showers, and changing clothes.

2 So you will not have that kind of scientific evidence.

3 You will also hear from Dr. Abel, the doctor that
4 examined *Minor* at the children's center, that her exam
5 was normal. Dr. Abel will explain due to the time frame
6 and the details of what happened she would expect a
7 normal exam.

8 There were no eyewitnesses, except perhaps a two
9 year old, so you won't have that in the testimony. But
10 you will have the testimony of *Minor* explaining to you
11 what happened.

12 We will ask after you hear all of this testimony
13 that you reach a verdict that speaks the truth about
14 Mr. Perez sexually assaulting and molesting *Minor*
15 Thank you.

16 THE COURT: Mr. Grimes?

17 MR. GRIMES: Thank you, Your Honor. May it please
18 the Court?

19 THE COURT: Yes, sir.

20 MR. GRIMES: Morning, ladies and gentlemen of the
21 jury. We are here today because Venancio is innocent of
22 these charges, and he's waited two and a half years to
23 have his day in court to tell you that he is innocent.

24 Now, like Ms. Herring-Lash, we're asking you to
25 return a verdict that speaks the truth, that Venancio is

1 not guilty.

2 This is essentially a case about what some may call
3 nightmares, in dealing with maybe a parent or an older
4 brother you find out your little sister, or your
5 daughter, your little brother, your son came to you and
6 said someone had been touching him improperly, or her
7 improperly, or abusing them in any way. It would be
8 greatly upsetting and would cause you nightmares,
9 probably like it would cause a child nightmares.

10 It's also a nightmare someone accuses you of doing
11 that and you are completely innocent of that. It's also
12 a nightmare to that person's child to watch the police
13 come in, arrest them and take them off to jail not
14 knowing anything of what is going on.

15 What makes this case a nightmare for Venancio is
16 that he is innocent. You will hear he's never been
17 arrested for anything in his life. You'll hear he came
18 to the United States to make a better life for his
19 family, provide support for them, work hard.

20 You'll hear how he loves his children, how he loves
21 his daughters, and how he could never do anything to
22 someone else's daughters. And you will hear all this
23 from Venancio. At the end of State's case he will take
24 the stand and he's going to tell you what happened.

25 Now, I wish we could tell you why these allegations

1 are being made. I don't know. And it's very hard to
2 explain that because when you see *Minor* she comes across
3 as a credible witness. She doesn't seem to have any big
4 motives, not like a classic divorce case where someone is
5 fighting over child custody, or a case where somebody is
6 a celebrity and they are trying to get money from
7 somebody.

8 I'm not a child psychologist. I don't know why
9 *Minor* would make these allegations, but she has made
10 these allegations and is going to come to court and
11 repeat them. And Venancio is going to tell you that he
12 didn't do this.

13 Now, as Judge Nicholson told you, Venancio is
14 presumed innocent and the State has to prove him guilty
15 beyond a reasonable doubt.

16 The evidence in this case will show from day one
17 that Detective Lacher assumed Venancio was guilty.
18 Arrested him, took him to the Charleston County Detention
19 Center, booked him with really no follow-up
20 investigation. Never even talked to Venancio to find out
21 his side of it.

22 He didn't talk to Venancio's wife, who stands by
23 him and will be in court to testify that he was really
24 never alone with *Minor*. Didn't talk to *Minor*, who *Minor*
25 says is one of her best friends who would play with her.

1 Nobody talked to her to she if she ever saw them alone
2 together.

3 Never talked to the people Venancio worked with,
4 such as Luis Diaz who'd say he'd pick him up early in the
5 morning, would go to various job sites, usually in the
6 Mount Pleasant area, work, come home at seven o'clock,
7 sometimes as late as 11 o'clock. Did a lot of
8 construction work. He would work Monday through Saturday
9 and take Sundays off. That was his general routine.

10 And as Ms. Herring-Lash said, he's not going to be
11 able to say, well, on Wednesday, March 27th I worked at
12 this specific location, this time, these hours. He can
13 tell you his general habits and routine, and so can his
14 wife, and his daughter, and Luis.

15 And you'll hear certain allegations made by
16 potential witnesses who the State could have interviewed
17 such as a sort of food salesman who would come by, and I
18 don't think there was any investigation to find out who
19 that salesman was to see if he may have been a possible
20 witness.

21 As Ms. Herring-Lash noted, there is no physical
22 evidence in this case, there are no witnesses in this
23 case. Somebody could be potential witnesses if the State
24 would have followed up. They didn't talk to any
25 potential witnesses. We've talked to them and we would

1 call them.

2 The only evidence of corroboration that the State
3 has in this case, they are going to call one of *Minor 3's*
4 friends -- excuse me, *Minor's* friends, and she's going to
5 make some similar allegations.

6 Now, her demeanor is going to be a lot different
7 than *Minor 1's* demeanor. A lot of times she may say, I
8 don't remember, I don't know. She kind of goes back and
9 forth and initially says nothing happened, then something
10 did happen. That's essentially all the State has, is two
11 children saying Mr. Perez did something.

12 And the State cannot presume that Venancio was
13 guilty. They could have talked to some of the other
14 children that Ms. Carmona babysits to see if Venancio did
15 anything to them, went and talked to the other potential
16 witness and done an in depth investigation rather than
17 write a one-page report and throw Venancio in jail for
18 two and a half years.

19 We're asking you to end the nightmare, to find
20 Venancio not guilty and not make the nightmare worse by
21 convicting an innocent man. Thank you.

22 THE COURT: If you would call your first witness,
23 please.

24 MS. HERRING-LASH: The State would call *Minor 1*
25

Minor

- DIRECT BY MS. HERRING-LASH

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1 *Minor* , after having been duly sworn,
2 testified as follows:

3 THE CLERK: Now, say your full name and spell your
4 name, please, okay?

5 THE WITNESS: My last name?

6 THE CLERK: Spell your first name and then spell
7 your last name.

8 THE WITNESS: Yes, sir.

9 THE CLERK: Okay. Go right ahead.

10 THE WITNESS:

11 THE COURT: Will you spell your first name, please.

12 THE WITNESS:

13 THE COURT: Thank you so very much. Lean forward
14 and speak into the microphone, okay?

15 THE WITNESS: Yes, sir.

16 THE COURT: If you don't understand the question
17 let me know and I'll get it repeated for you, okay?

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you. Please proceed.

20 DIRECT EXAMINATION

21 BY MS. HERRING-LASH:

22 Q. *Minor* what is your date of birth?

23 A.

24 Q. And where do you live?

25 A. Hanahan, South Carolina.

- 1 Q. And who lives with you?
- 2 A. My mother, my father, little brother, and uncle.
- 3 Q. How old is your little brother now?
- 4 A. My brother is four.
- 5 Q. And where do you go to school, *Minor 1*?
- 6 A. Hanahan, Middle School.
- 7 Q. And what grade are you in?
- 8 A. Sixth grade.
- 9 Q. Do you like school?
- 10 A. Yes, ma'am.
- 11 Q. What do you like best about school?
- 12 A. E-L-A.
- 13 Q. What is E-L-A?
- 14 A. Mostly reading steps, things like that.
- 15 Q. And do you have any special activities that you do?
- 16 A. Yes, ma'am.
- 17 Q. And what are those?
- 18 A. Chorus and band.
- 19 Q. Do you like that?
- 20 A. Yes, ma'am.
- 21 Q. *Minor 1*, does your mom work?
- 22 A. Yes, ma'am.
- 23 Q. And where does she work?
- 24 A. She works at a Mexican store called the Rincon
- 25 Latino.

- 1 Q. And do you know, do her hours change or are they
2 always the same?
- 3 A. Always the same.
- 4 Q. And what are they?
- 5 A. Nine a.m. to nine at -- to nine at night.
- 6 Q. And what about your dad? Does he work?
- 7 A. Yes, ma'am.
- 8 Q. And what does he do?
- 9 A. He's a construction worker.
- 10 Q. Are his hours more flexible?
- 11 A. Yes, ma'am.
- 12 Q. And do you go to a babysitter now?
- 13 A. Sometimes.
- 14 Q. Who do you go to?
- 15 A. Mostly I go to an after school program when I have
16 homework, and when I don't I just go to my home.
- 17 Q. What is your after school program?
- 18 A. It's called Latchkey.
- 19 Q. And how long do you get to stay at Latchkey?
- 20 A. Until my mother comes and picks me up.
- 21 Q. Is that nine o'clock at night?
- 22 A. No. Usually, sometimes my father comes and picks
23 me up or my mom takes a break from work to come and pick
24 me up and leave me at the house.
- 25 Q. And back in 2010, did you go to a babysitter then?

- 1 A. Yes, ma'am.
- 2 Q. And did that babysitter have children?
- 3 A. Yes, ma'am.
- 4 Q. Who were those children?
- 5 A. Minor 3 and Minor 4.
- 6 Q. And how old was Minor 3?
- 7 A. Minor 3 was about my age. I would say around 10.
- 8 Q. Now, back in 2010, were you 10 then?
- 9 A. I was nine.
- 10 Q. And you were -- you turned nine in 2010?
- 11 A. Yes, ma'am.
- 12 Q. And that was May 31st?
- 13 A. Yes, ma'am.
- 14 Q. And what about Minor 4? Do you know her age?
- 15 A. I would say she was around five.
- 16 Q. And do you remember the babysitter's name?
- 17 A. Angelica.
- 18 Q. Did they have a dad in the house?
- 19 A. Yes, ma'am.
- 20 Q. Do you know his name?
- 21 A. No, ma'am.
- 22 Q. Did Angelica babysit for other children?
- 23 A. Yes, ma'am.
- 24 Q. Do you remember any of them?
- 25 A. Only Minor 2

- 1 Q. And what age was Minor 2
- 2 A. Around my age.
- 3 Q. What about were there other little children there?
- 4 A. Usually little babies or infants.
- 5 Q. Were most of the other children there young?
- 6 A. Yes, ma'am.
- 7 Q. Like how old when you first started going there, do
- 8 you know how old your little brother was?
- 9 A. Around two or one.
- 10 Q. And was Minor 3's dad ever at home when you were
- 11 there?
- 12 A. Sometimes.
- 13 Q. Did he have a job?
- 14 A. Yes, ma'am.
- 15 Q. And did he go to his job sometimes?
- 16 A. Yes, ma'am.
- 17 Q. Did you also go there during the summer?
- 18 A. Yes, ma'am.
- 19 Q. When you first went to the babysitter's home where
- 20 did they live?
- 21 A. They lived in a trailer.
- 22 MS. HERRING-LASH: Your Honor, may I approach the
- 23 witness?
- 24 THE COURT: Yes, ma'am.
- 25 BY MS. HERRING-LASH:

1 Q. Minor I'm going to show you what has been marked
2 for ID as State's Exhibit Number 1, Number 2 and Number
3 3.

4 A. Yes, ma'am.

5 Q. Would you look at Number 1 and tell us what that
6 is.

7 A. That is the trailer they used to live in.

8 Q. And would you look at Number 2 and tell us what
9 that is.

10 A. Number 2 is a picture of the other man who lived
11 there, Samuel. It's a picture of the room that he used
12 to live in.

13 Q. And would you look at Number 3 and tell us what
14 that is.

15 A. That is the room the whole family used to sleep in.

16 Q. When you say whole family, what do you mean?

17 A. I mean, the mother, the two children, and their
18 father.

19 Q. And mother, Angelica?

20 A. Uh-huh. Yes, ma'am.

21 MS. HERRING-LASH: Your, Honor at this time we
22 would move into evidence State's Exhibit 1, 2 and 3.

23 THE COURT: What is 1?

24 MS. HERRING-LASH: The picture of the trailer.

25 THE COURT: I'm sorry, what?

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1 MS. HERRING-LASH: The picture of the trailer.

2 THE COURT: Okay.

3 MS. HERRING-LASH: Number 2 is the front, living
4 room and bedroom.

5 THE COURT: Living room, okay.

6 MS. HERRING-LASH: And number 3 is the bedroom, the
7 back bedroom.

8 THE COURT: Okay. Any objection?

9 MR. GRIMES: No, sir.

10 THE COURT: All right. One, 2 and 3 admitted
11 without objection.

12 (WHEREUPON, State's Exhibit Numbers 1 through 3,
13 Photographs, were admitted into evidence.)

14 BY MS. HERRING-LASH:

15 Q. *Minor 1*, when you look in front of you do you see the
16 picture?

17 A. Yes, ma'am.

18 Q. And is that the picture where the babysitter lived?

19 A. Yes, ma'am.

20 Q. Now, who all lived in that trailer?

21 A. Angelica -- Angelica, Mr. Perez, *Minor 3*, and *Minor 4*,
22 and the other man there, Samuel.

23 Q. Now, you said Mr. Perez. So you know his name
24 today?

25 A. Yes, ma'am.

- 1 Q. But back in 2010 when you were eight and nine did
- 2 you know his name?
- 3 A. No, ma'am.
- 4 Q. And did you know the other man who lived there?
- 5 A. That was Samuel.
- 6 Q. Samuel?
- 7 A. Yes, ma'am.
- 8 Q. Let me show you the next picture. And what is that
- 9 a picture of?
- 10 A. This is a picture of Samuel's room.
- 11 Q. Which one? Can you touch Samuel's room?
- 12 A. (Indicated).
- 13 Q. And let me show you the next picture. And what is
- 14 that of?
- 15 A. That's a picture of the back bedroom where the
- 16 family would live in.
- 17 Q. And is that circled in the same place?
- 18 A. The -- can you repeat that question, please.
- 19 Q. Let me erase that circle for you. Maybe you don't
- 20 know how to use this.
- 21 And can you make a mark for the jury on where
- 22 Samuel's room was?
- 23 A. Samuel's room was in the back bedroom.
- 24 Q. Okay. And what about the family's bedroom?
- 25 A. The family's bedroom was here (indicated).

- 1 Q. Now, do you still go to Ms. Angelica, the
2 babysitter?
- 3 A. No, ma'am.
- 4 Q. And why did you stop going there?
- 5 A. Because her husband has hurt me.
- 6 Q. And did that happen while they lived in the trailer
7 or not?
- 8 A. They lived in two time -- they lived in two places.
- 9 Q. Okay. And the first was what?
- 10 A. The trailer, and the second was a house.
- 11 Q. Let's talk about the trailer first. Is that okay?
- 12 A. Yes, ma'am.
- 13 Q. You said that Mr. Perez or *Minor 3*'s dad touched you?
- 14 A. Yes, ma'am.
- 15 Q. And did it happen one time or more than one time in
16 the trailer?
- 17 A. More than one time.
- 18 Q. Can you tell the jury about one time that you
19 remember.
- 20 A. One time on the second day, I believe, me and *Minor 3*
21 were outside playing with their bikes, with *Minor 4* and
22 her bikes. I went inside to go get my PSP from *Minor 3* and
23 -- had told me that she was getting a PSP herself, which
24 is a portable game station.
- 25 So I went inside to go get my PSP, and as usual my

1 brother sleeping on the couch. So as I passed him I went
2 into the room to get my PSP harmlessly sitting on the
3 couch -- on the bed in the back.

4 Q. Which bed?

5 A. On the bed where the family slept.

6 Q. Is that the bed in the picture in front of you?

7 A. Yes, ma'am.

8 Q. Go ahead.

9 A. I didn't realize that Mr. Perez was in the room
10 with me and he quickly grabbed me into the closet.

11 Q. And what happened in the closet?

12 A. In the closet then he started to touch me.

13 Q. And what do you mean by started to touch you?

14 A. I mean, that he was starting to rape me.

15 Q. Can you explain what -- exactly what he did.

16 A. He put his hand under my clothes and stuck his
17 finger inside of me.

18 Q. And how did that feel?

19 A. It felt very awkward.

20 Q. Were your clothes on or off?

21 A. On.

22 Q. And how did he get his hand in your clothes?

23 A. He put his hand under my clothes by -- can you
24 simplify that question, please?

25 Q. Did he take your clothes down or were they still

- 1 on?
- 2 A. They were still on.
- 3 Q. And did he put his -- how did he get his hand
- 4 inside your clothes?
- 5 A. He slipped his hand inside.
- 6 Q. And do you remember if you had on a dress or pants
- 7 or...
- 8 A. Pants.
- 9 Q. And did he say anything?
- 10 A. No, ma'am.
- 11 Q. Did you say anything?
- 12 A. No, ma'am.
- 13 Q. What were you thinking?
- 14 A. I was thinking that I should get out of there very
- 15 soon.
- 16 Q. And where were, if you know, *Minor 3* and *Minor 4*?
- 17 A. They were outside.
- 18 Q. What about Angelica?
- 19 A. I do not remember.
- 20 Q. Now, you said it happened -- something happened
- 21 more than one time in the trailer?
- 22 A. Yes, ma'am.
- 23 Q. Can you tell us about another time at the trailer,
- 24 if you remember.
- 25 A. Another time, I do not know the specific date, but

1 me and my little brother were inside while Angelica,
2 Minor3 and Minor4 were outside going to this food truck
3 that came around every once in a while. I wanted to go
4 get my PSP from Angelica's room, which is where the whole
5 family slept, and my brother was sleeping. So I went to
6 go get my PSP, and when I went to go get it he grabbed me
7 back into the closet.

8 Q. And what happened in the closet?

9 A. In the closet he started to touch me again.

10 Q. Did he touch you the same way?

11 A. Yes, ma'am.

12 Q. What exactly did he do?

13 A. He touched my front and my bottom.

14 Q. Your front and what?

15 A. My front and my bottom.

16 Q. Did he just touch you that time or did he do
17 anything?

18 A. Excuse me?

19 Q. You said last time he put his finger in you. Did
20 he do that this time or just touch?

21 A. Just touch.

22 Q. Do you remember if he said anything?

23 A. No, ma'am.

24 Q. Did you say anything?

25 A. No, ma'am.

1 Q. What did you do -- well, let me ask you. You said
2 that the family was at the food truck?

3 A. Yes, ma'am.

4 Q. What did you do when that ended?

5 A. I went back to -- to the living room to stay with
6 my little brother.

7 Q. Do you remember if there were any other people in
8 the house at that time?

9 A. No.

10 Q. Do you remember anything else that happened while
11 you were at the trailer?

12 A. Not that I recall.

13 Q. Do you know, *Minor*, how many times that something
14 happened to you there?

15 A. No, ma'am.

16 Q. You don't have any idea how many times?

17 A. Not that -- I don't remember.

18 Q. Now, you said that they also lived in a house?

19 A. Yes, ma'am.

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

22 THE COURT: Yes, ma'am.

23 MS. HERRING-LASH: To show her what has been
24 previously marked for ID as State's Exhibit Number 4,
25 Number 5, Number 6, Number 7, and Number 8.

1 BY MS. HERRING-LASH:

2 Q. Minor1 would you look at those pictures.

3 A. Yes, ma'am.

4 Q. And what is the first one, Number 4?

5 A. A picture of the house that they used to live in.

6 Q. Okay. And what is Number 5?

7 A. The living room at their house.

8 Q. And is there any furniture in that room now?

9 A. Not that -- right now how I'm looking at it there
10 is no furniture just a door, a couple things that looks
11 like to renovate the house.

12 Q. Okay. When they lived there did they have
13 furniture in there?

14 A. Yes, ma'am.

15 Q. And do you remember where in that room the
16 furniture was?

17 A. I would say by the window.

18 Q. You can show us in a moment when the jury gets to
19 see it, okay, but do you remember?

20 A. Yes, ma'am.

21 Q. And would you look at State's Exhibit Number 6.

22 And what is that?

23 A. That's a picture, I believe taken -- taken from
24 the living room of the room that was next to it, that was

25 Minor3 room.

Minor 1

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1 Q. And would you look at Number 7 and explain what
2 that is.

3 A. Number 7, I think it was a picture -- a picture of
4 the room that was next to the bathroom by *Minor 3*'s room.

5 Q. And is the bathroom in that picture a little bit?

6 A. Yes, ma'am.

7 Q. And the next one, Number 8?

8 A. I think it is the other side of *Minor 3*'s room.

9 MS. HERRING-LASH: Your Honor, at this time the
10 State would offer into evidence 5 through 8.

11 THE COURT: Five through 8 in? Any objections?

12 MR. GRIMES: No objection.

13 THE COURT: You said 5 through 8?

14 MS. HERRING-LASH: Yes, sir.

15 THE COURT: All right. Five through 8 admitted
16 without objection.

17 (WHEREUPON, State's Exhibit Numbers 5 through 8,
18 Photographs, were admitted into evidence.)

19 BY MS. HERRING-LASH:

20 Q. Just explain to the jury what that is, *Minor 1*. They
21 didn't see it when you were looking at it before.

22 A. That is the house that they used to live in.

23 Q. And did they move to that house during the time you
24 were going there?

25 A. Yes, ma'am.

- 1 Q. And who all moved to live in that house?
- 2 A. Everybody who was in the trailer did.
- 3 Q. And did that include Samuel?
- 4 A. Yes, ma'am.
- 5 Q. Now, *Minor* when you -- going back to what happened
- 6 in the trailer, are you sure that that was *Minor's*
- 7 father?
- 8 A. Yes, ma'am.
- 9 Q. Are you sure that it was not Samuel?
- 10 A. Yes, ma'am.
- 11 Q. Was Samuel -- did he look different from *Minor's*
- 12 father?
- 13 A. Yes, ma'am.
- 14 Q. How did he look different?
- 15 A. Samuel looked younger than Mr. Perez.
- 16 Q. And when Mr. Perez was in the room in the trailer
- 17 did you get to look at him? Did you see him?
- 18 A. Can you explain that to me, please?
- 19 Q. How do you know it was Mr. Perez?
- 20 A. Because most -- usually when he did this Samuel was
- 21 not in the room or he was out working.
- 22 Q. And did you -- how do you know it was Mr. Perez?
- 23 A. Because sometimes I could tell by the way his face
- 24 looks.
- 25 Q. By looking at him?

- 1 A. Yes, ma'am.
- 2 Q. And so in the house how many rooms did the family
- 3 have?
- 4 A. In the house I would say there was --
- 5 Q. How many bedrooms? Let me ask you that.
- 6 A. Well, if you wouldn't count -- if you'll include
- 7 *Minor 3's* bedroom there would be three.
- 8 Q. And who stayed in each of the rooms?
- 9 A. *Minor 3* -- well, Angelica and Mr. Perez would stay in
- 10 the bedroom closest to the TV. *Minor 3* and *Minor 4* would
- 11 sleep -- would sleep in *Minor 3's* room, and Samuel would
- 12 have a room to himself.
- 13 Q. Where was his room?
- 14 A. His room was the room closest to the kitchen.
- 15 Q. And you said that -- let me ask you. Did anything
- 16 happen to you when you were in the house?
- 17 A. Yes, ma'am.
- 18 Q. And did something happen in the house to you one
- 19 time or more than one time?
- 20 A. More than one time.
- 21 Q. Can you tell us about one time that you remember?
- 22 A. One time that *Minor 3* and *Minor 4* were -- were by the
- 23 TV playing as if they were superstars or famous.
- 24 Q. What do you mean playing like they were superstars
- 25 or famous?

- 1 A. That they were acting, really. And I was -- while
2 *Minor 3* was sitting on the other side of the couch -- *Minor 3*
3 was sitting on the other side of the couch and *Minor 4* was
4 at the TV, as I believe she was singing. And I was -- I
5 was next -- well, I wasn't really next to *Minor 3* I was
6 on the right side of the couch, I believe.
- 7 Q. Let me show you what is State's Exhibit Number 6.
8 Is that the living room?
- 9 A. Yes, ma'am.
- 10 Q. Can you mark for the jury where the couch was.
- 11 A. The couch was around here (indicated).
- 12 Q. And you say that -- and where was the TV that they
13 were --
- 14 A. Over here (indicated).
- 15 Q. And so where was *Minor 3*
- 16 A. *Minor 3* was sitting over here (indicated).
- 17 Q. And where were you?
- 18 A. Over here (indicated).
- 19 Q. And then what happened?
- 20 A. Since *Minor 3* was sitting on this side of the -- of
21 the other side of the couch, farthest from the divider
22 here (indicated).
- 23 Q. That divider. Okay. Good.
- 24 A. They could not see that Mr. Perez was sticking out
25 his private and neither could *Minor 4* who was at the TV

- 1 playing (indicated).
- 2 Q. Where was Mr. Perez?
- 3 A. Mr. Perez was over here (indicated).
- 4 Q. And is that a wall there?
- 5 A. A divider, I believe.
- 6 Q. And what did he do?
- 7 A. He stuck out his private.
- 8 Q. And what do you mean by stuck out his private?
- 9 A. He -- at first he was just flexing which I thought
- 10 was a bit funny because they had loud music playing and
- 11 everybody was just messing around, just something to keep
- 12 the kids busy, I guess.
- 13 Q. What does flexing mean?
- 14 A. He was showing off his muscles.
- 15 Q. And then what happened?
- 16 A. Since I was sitting on the other side of the couch
- 17 Minor 3 and Minor 4 couldn't see that -- that Mr. Perez was
- 18 sticking out his private.
- 19 Q. Did you say anything to Minor 3 and Minor 4 about what
- 20 you saw?
- 21 A. All I said to Minor 3 is that -- that her father was
- 22 weird.
- 23 Q. Let me erase that for you. Can you figure it?
- 24 That's good. You can probably figure it out better than
- 25 I can.

1 Now, can you tell us, did anything else ever happen
2 in that house?

3 A. Yes, ma'am.

4 Q. And what was that?

5 A. Minor 3 and Minor 4 were out doing something. I
6 didn't know what. They were in the living room, I guess
7 playing while I was -- while I was just sitting there and
8 Mr. Perez asked for one of us to hold the wall while he
9 was fixing up the bathroom.

10 Q. What do you mean by hold the wall?

11 A. I guess he was fixing up like the background color
12 or the wallpaper.

13 Q. And what room was that in?

14 A. The bathroom.

15 Q. Okay. And what happened?

16 A. And so I went -- I went in the bathroom over there
17 to help him and while he was in the bathroom I was
18 holding a bucket of nails. And so when he finished --
19 well, I didn't realize when I went inside that he -- that
20 he closed the door behind me and locked the door. So
21 then when I was finished I couldn't really figure out how
22 to open the door because I was rushing.

23 Q. And what happened?

24 A. He starts to touch me again.

25 Q. And where did he touch you?

- 1 A. On my breast and my front.
- 2 Q. And what did he touch your front with?
- 3 A. Just his hands.
- 4 Q. And when you say front, what do you do with that
- 5 part you call front?
- 6 A. I use the bathroom.
- 7 Q. And you said he also touched your breast?
- 8 A. Yes, ma'am.
- 9 Q. What did he touch your breast with?
- 10 A. His hand and his mouth.
- 11 Q. What did he do with his mouth?
- 12 A. He bit me.
- 13 Q. He what?
- 14 A. He bit me.
- 15 Q. Did he say anything to you?
- 16 A. Not that I recall.
- 17 Q. What did you do?
- 18 A. I tried to go outside of the room but I couldn't.
- 19 But when he was finished he unlocked the door and I
- 20 quickly ran outside.
- 21 Q. Did he remove your top, or what happened to your
- 22 top when he bit your breast?
- 23 A. He just pulled my shirt up.
- 24 Q. Did you have on a bra, or did you wear one?
- 25 A. I wasn't wearing one at the age.

- 1 Q. And did you tell Minor 3, or MINDY 4 or Angelica, or
2 anybody about this?
- 3 A. No, ma'am.
- 4 Q. Do you remember if there were any other children
5 around?
- 6 A. Only Minor 2 and the few infants.
- 7 Q. And did you tell Minor 2?
- 8 A. No, ma'am.
- 9 Q. Do you remember any other room or time at the house
10 where something happened?
- 11 A. When Minor 3 and Minor 4 and me were playing hide and
12 go seek and so -- and so it was up to Minor 3 to find me
13 and Minor 4. I was hiding in the closet. Little did I
14 realize that Mr. Perez was in there.
- 15 Q. Which room were you in?
- 16 A. I was in Samuel's room.
- 17 Q. Let me show you what is State's Exhibit Number 8.
18 Can you see Samuel's room in that picture?
- 19 A. Yes, ma'am.
- 20 Q. Where is it?
- 21 A. Right here (indicated).
- 22 Q. And you were in the closet?
- 23 A. Yes, ma'am.
- 24 Q. And what happened?
- 25 A. He started to touch me again.

- 1 Q. And where did he touch you?
- 2 A. Just my front and my -- and my bottom.
- 3 Q. And how did he touch you?
- 4 A. He touched me with his hands.
- 5 Q. And did he touch you on the outside or the inside?
- 6 A. On the inside of my clothes.
- 7 Q. What about of your body?
- 8 A. No, ma'am.
- 9 Q. What do you mean, no, ma'am?
- 10 A. That he didn't.
- 11 Q. Didn't what?
- 12 A. Didn't touch me on the inside of my body.
- 13 Q. And do you know, like, was Minor 3 looking for you or
- 14 did she come in there?
- 15 A. She was looking for me, I think, but she never
- 16 found me.
- 17 Q. What did he, if anything, say while you were in the
- 18 closet?
- 19 A. Because I was hiding from Minor 3 since we were
- 20 playing hide and go seek.
- 21 Q. Did he say anything?
- 22 A. Not that I recall.
- 23 Q. Did you say anything?
- 24 A. No, ma'am.
- 25 Q. How did you get away?

1 A. I tried to open the closet door and eventually I
2 did and I was able to escape.

3 Q. When you got out what did you do?

4 A. I just nonchalantly went back to the couch and
5 started playing with my PSP.

6 Q. Do you know where or if there were any other
7 children besides babies or infants there?

8 A. No, ma'am.

9 Q. And do you remember anything else that happened at
10 the house?

11 A. Minor 3 -- Minor 3 and everybody went outside the door
12 because I guess they were celebrating something, some
13 kind of special event because it wouldn't happen often
14 where they would just be getting tea leaves in the bush
15 outside.

16 Q. Tell us about what you mean by tea leaves from the
17 bush.

18 A. They had a tea bush in front, in front of the house
19 in which if you showed a picture of the house you would
20 see the bush.

21 Q. Okay.

22 (A picture was handed to the witness.)

23 A. Right here, the bush (indicated).

24 Q. And they got those leaves sometime?

25 A. Yes, ma'am.

- 1 Q. And you said they were outside getting the leaves?
- 2 A. Yes, ma'am.
- 3 Q. And where were you?
- 4 A. I was inside, my little brother was sleeping. I
- 5 guess he was sleeping and he's a very -- cannot be waken
- 6 up very -- by a lot of much things so I was sitting -- I
- 7 was sitting on the bed with him in Minor 3's room.
- 8 Q. And let me see, is this Minor 3's room?
- 9 A. Yes, ma'am.
- 10 Q. Now, where was -- can you erase those things?
- 11 (The board was erased by the witness.)
- 12 A. This is where -- I was sitting here (indicated).
- 13 The TV was here (indicated). This is where I was
- 14 sitting. This is where my brother was sleeping
- 15 (indicated). And I guess he -- he got into the house to
- 16 put something away and he saw me there. He came around
- 17 the end of the movie --
- 18 Q. What movie were you watching?
- 19 A. Toy Story.
- 20 Q. All right. Go ahead.
- 21 A. And he came around the end of the movie and he
- 22 started to chase me around the house in which I quickly
- 23 realized I could go under the bed that my little brother
- 24 was sleeping under. Since he could not reach me under
- 25 there I stayed under there until he left or until

- 1 everybody came back into the house.
- 2 Q. Do you remember who besides Minor 4, and Minor 3, and
- 3 Angelica were there that day?
- 4 A. Um, no.
- 5 Q. Did he ever talk about money to you?
- 6 A. Yes, ma'am.
- 7 Q. What was that about?
- 8 A. Sometimes he would bribe me with money.
- 9 Q. What do you mean by that?
- 10 A. He would give me -- he would say that he would give
- 11 me money if he could let me -- if I kept letting him
- 12 touch me.
- 13 Q. And how did he say that?
- 14 A. He would tell me in Spanish.
- 15 Q. Can you say that in Spanish.
- 16 A. He would tell me a certain kind of -- a certain
- 17 number of money. So if he would tell me \$20 it would
- 18 sound like (spoke in Spanish).
- 19 Q. And did he ever give you \$20?
- 20 A. No, ma'am.
- 21 Q. And did you ever ask him for \$20?
- 22 A. No, ma'am.
- 23 Q. Now, Minor 1, during the time this was going on were
- 24 you -- did you ever talk to Minor 2 about this?
- 25 A. No, ma'am.

- 1 Q. Or Mindy?
- 2 A. No, ma'am.
- 3 Q. What about when you went home? Did you ever tell
- 4 your momma?
- 5 A. One day she asked me why -- why Mr. Perez would
- 6 always hug me when I went.
- 7 Q. Before that though had you ever told her?
- 8 A. No, ma'am.
- 9 Q. And why didn't you tell her?
- 10 A. Because I was nervous.
- 11 Q. What were you nervous about?
- 12 A. I thought that she would not believe me.
- 13 Q. And why did you think that?
- 14 A. Because I was young.
- 15 Q. And you said there came a time when you did tell
- 16 her?
- 17 A. Yes, ma'am.
- 18 Q. And what happened after you told her? What did you
- 19 do?
- 20 A. After I told her -- um -- after I told her she
- 21 quickly -- um -- she quickly called the police and I went
- 22 into my room to sleep and grab as many toys as I could
- 23 and slept.
- 24 Q. And did you go to the police station?
- 25 A. Yes, ma'am.

- 1 Q. Do you remember if you went to the police station
2 one time or more than one time?
- 3 A. I don't remember.
- 4 Q. Did you go anywhere else to talk to people?
- 5 A. I went to -- I went to the therapy place for
6 Jessica.
- 7 Q. And when you went with Jessica did you talk with
8 her?
- 9 A. Yes, ma'am.
- 10 Q. And when you talked with Jessica, did they make a
11 video of that?
- 12 A. Yes, ma'am.
- 13 Q. And do you remember going to the police department
14 and looking at some pictures?
- 15 A. Yes, ma'am.
- 16 Q. Who showed you those pictures?
- 17 A. Minna.
- 18 Q. And who is Minna?
- 19 A. Minna is one of the police officers who works
20 there.
- 21 Q. And when she showed you the pictures did she read a
22 form to you?
- 23 A. Yes, ma'am.
- 24 Q. And what did you do with the form?
- 25 A. I initialled my -- I initialled my name on there.

- 1 Q. And did you understand what she was reading?
- 2 A. Yes, ma'am.
- 3 Q. And then did she show you pictures?
- 4 A. Yes, ma'am.
- 5 Q. How did she give them to you?
- 6 A. She gave them to me -- she gave them to me in a
- 7 stack and I went through them.
- 8 Q. And did you pick someone out?
- 9 A. Yes, ma'am.
- 10 Q. And who was that?
- 11 A. I picked out number three.
- 12 Q. And who was number three?
- 13 A. Mr. Perez.
- 14 Q. At that time did you say, This is Mr. Perez?
- 15 A. No, ma'am. I didn't know his name.
- 16 Q. How did you describe him; do you remember?
- 17 A. I just -- I called him nothing. I just called him
- 18 by him.
- 19 Q. Did you call him by his relation to anybody?
- 20 A. By his relation to Minor 3 and Minor 4.
- 21 Q. And what was that?
- 22 A. Father.
- 23 Q. Do you see Mr. Perez today in the courtroom?
- 24 A. Not right now.
- 25 Q. How long has it been since you've seen him?

1 A. A few years.

2 Q. And when you picked him out of the pictures did you
3 say you were a hundred percent, or ten percent, or five
4 percent?

5 A. Ninety percent sure.

6 Q. And let me show you --

7 MS. HERRING-LASH: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes, ma'am.

10 BY MS. HERRING-LASH:

11 Q. I'm going to show you what has been previously
12 marked State's Exhibit Number 10. Do you recognize that?

13 A. Yes, ma'am.

14 Q. And what is that?

15 A. This is the form and the pictures that Minna had
16 given me.

17 Q. And are those pictures the same way that they
18 looked the day you saw them?

19 A. Yes, ma'am.

20 Q. And did you write on there?

21 A. Yes, ma'am.

22 Q. What did you write?

23 A. I wrote on my initials.

24 Q. And after your initials what did you write?

25 A. After I wrote my initial on there Minna gave me the

- 1 pictures and I started to look through them.
- 2 Q. And what did you write at the bottom?
- 3 A. At the bottom of what?
- 4 Q. On the paragraph. Did you write that or did you
- 5 say that and somebody write it for you?
- 6 A. I said that and I believe Minna wrote it down.
- 7 Q. And what is it?
- 8 A. That is the paragraph that I said about the
- 9 picture.
- 10 Q. What does it say?
- 11 A. I'm pretty sure it's him, number three. He is the
- 12 father of Minor 3 and Minor 4. He is the babysitter's
- 13 husband. I'm nine on a scale to one to ten that that's
- 14 him.
- 15 Q. And are you sure that the person was Minor 3 and
- 16 Minor 4's father?
- 17 A. Yes, ma'am.
- 18 Q. Now, how often was Minor 2 there at the babysitter;
- 19 all the time, or some of the time, or do you know?
- 20 A. While I was there it wasn't very often that Minor 2
- 21 was there.
- 22 Q. Would there be some days that you didn't go?
- 23 A. Yes, ma'am.
- 24 Q. And did you know her before you ever went to the
- 25 babysitter?

- 1 A. No, ma'am. Sometimes I would see her since her
2 mother worked as a hairdresser at the same store as my
3 mother.
- 4 Q. At the same store?
- 5 A. Yes, ma'am.
- 6 Q. Is that how you all knew her?
- 7 A. Yes, ma'am.
- 8 Q. Do you still know Minor 2?
- 9 A. Yes, ma'am.
- 10 Q. Do you still see her?
- 11 A. Not much.
- 12 Q. Does she go to your school?
- 13 A. No, ma'am.
- 14 Q. Does she live in your neighborhood?
- 15 A. No, ma'am.
- 16 Q. Have you ever talked to her about this?
- 17 A. No. No, ma'am.
- 18 Q. Now, Minor 1 did you go to counseling?
- 19 A. Yes, ma'am.
- 20 Q. And who did you go to see?
- 21 A. Ms. Jessica.
- 22 Q. And do you still go there?
- 23 A. No, ma'am.
- 24 Q. Do you remember how long ago that you stopped going
25 to your counseling?

1 A. About a year and a half.

2 MS. HERRING-LASH: Court's indulgence for one
3 moment.

4 (PAUSE.)

5 BY MS. HERRING-LASH:

6 Q. ~~Minor 1~~ those are all the questions that I have. If
7 you will erase that, and just answer any questions that
8 Mr. Grimes has.

9 A. Yes, ma'am.

10 THE COURT: Mr. Grimes, cross-examination.

11 MR. GRIMES: Thank you, Your Honor. May it please
12 the Court?

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. GRIMES:

16 Q. Morning.

17 A. Morning.

18 Q. My name is Andrew. We talked a little bit
19 yesterday.

20 A. Yes, sir.

21 Q. You say it's okay for me to call you ~~Minor 1~~?

22 A. Yes, sir.

23 Q. And if I ask you any questions or use any words
24 that you don't understand will you let me know that?

25 A. Yes, sir.

- 1 Q. Thank you. Now, you've testified about a lot this
- 2 morning.
- 3 A. Yes, sir.
- 4 Q. You understand everything Ms. Debbie asked you?
- 5 A. Yes, sir.
- 6 Q. And you were telling the truth?
- 7 A. Yes, sir.
- 8 Q. And you know the difference between the truth and a
- 9 lie?
- 10 A. Yes, sir.
- 11 Q. Between the truth and a story?
- 12 A. Yes, sir.
- 13 Q. And if you're telling the truth you have nothing to
- 14 regret, do you?
- 15 A. Yes, sir.
- 16 Q. I want to ask you some questions about the time
- 17 frame of what was going on, okay?
- 18 A. Okay.
- 19 Q. I think you first met Ms. Carmona in 2010?
- 20 A. Yes, sir.
- 21 Q. And you were at that time eight years old?
- 22 A. Around nine.
- 23 Q. And you said you were born on
- 24 A. Yes, sir.
- 25 Q. And when did you first stop being babysat by

- 1 Ms. Carmona? Was it before your birthday or after your
- 2 birthday?
- 3 A. I would say after my birthday.
- 4 Q. And was it before school was out or after school
- 5 was out?
- 6 A. I believe I went there some time during the
- 7 springtime, when I started to go there, and when I ended
- 8 I would say some time in Summer.
- 9 Q. I'm sorry. I'm just a little confused. Do you
- 10 consider May to be spring or summer?
- 11 A. I would consider May to be spring.
- 12 Q. And you started going there after your birthday or
- 13 do you think it may have been a little bit before your
- 14 birthday?
- 15 A. A little bit before.
- 16 Q. Okay. Now, I want to ask you a few questions about
- 17 you going to school.
- 18 A. Yes, sir.
- 19 Q. I'm a little confused. Did you go to second grade
- 20 in Harnett County?
- 21 A. No, sir.
- 22 Q. Was that in Hanahan you went to the second grade or
- 23 at North Charleston?
- 24 A. I went to North Charleston.
- 25 Q. I believe one of your teachers was Ms. Tallman?

- 1 A. Yes, sir.
- 2 Q. And I guess at that time when you were getting
- 3 grades they didn't have like A, B, C. They had sort of
- 4 C's for being -- doing stuff consistently?
- 5 A. Yes, sir.
- 6 Q. And when you were in second grade that was like the
- 7 school year of 2008, 2009?
- 8 A. Yes, sir.
- 9 Q. And you were making sort of all C's or what would
- 10 be like A's; is that correct?
- 11 A. Yes, sir.
- 12 Q. And you went to third grade in North Charleston?
- 13 A. Yes, sir.
- 14 Q. And one of your teachers was Ms. Jones?
- 15 A. No, sir. Ms. Carr.
- 16 Q. Ms. Carr. And I guess North Charleston has sort of
- 17 a quarter system. First quarter would be, you know, I
- 18 guess the fall of 2009?
- 19 A. Yes, sir.
- 20 Q. And you'd have the second quarter through the
- 21 Winter of 2009?
- 22 A. Yes, sir.
- 23 Q. Third quarter was Spring of 2009?
- 24 A. Yes, sir.
- 25 Q. Well, late with winter, early spring?

- 1 A. Yes, sir.
- 2 Q. And the fourth quarter would be through the end of
- 3 the school year?
- 4 A. Yes, sir.
- 5 Q. And the forth quarter it looks like your lowest
- 6 grade was in the 90's?
- 7 A. Yes, sir.
- 8 Q. And your other grades were in the 98's?
- 9 A. Yes, sir.
- 10 Q. So in things for behavior you were making -- I
- 11 think the highest score you could make was a three?
- 12 A. Yes, sir.
- 13 Q. And you were making all threes?
- 14 A. Yes, sir.
- 15 Q. And you were doing pretty well in school the fourth
- 16 quarter of 2010?
- 17 A. Yes, sir.
- 18 Q. And I believe on some of your report cards the
- 19 teacher said you made great progress?
- 20 A. Yes, sir.
- 21 Q. And they had a little nickname for you. She called
- 22 you her little dulcita.
- 23 A. Yes, sir.
- 24 Q. Now, you've testified today that in July of 2010 --
- 25 I believe you testified today that in July of 2010 your

- 1 mom had asked you does Mr. Perez hug you every day?
- 2 A. Yes, sir.
- 3 Q. And your mom had seen him hugging you?
- 4 A. Yes, sir.
- 5 Q. And she's the one who asked you about that?
- 6 A. Yes, sir.
- 7 Q. And then after that she started asking you some
- 8 other questions about Mr. Perez?
- 9 A. Yes, sir.
- 10 Q. And you told her he was touching you?
- 11 A. Yes, sir.
- 12 Q. And after that you've spoken to a lot of people,
- 13 haven't you?
- 14 A. Yes, sir.
- 15 Q. And when you spoke to those people were you
- 16 confused about anything or...
- 17 A. No, sir.
- 18 Q. You were telling them everything that you
- 19 remembered that happened?
- 20 A. Yes, sir.
- 21 Q. Just like you told the jury today?
- 22 A. Yes, sir.
- 23 Q. I believe maybe the first people you may have
- 24 spoken to may have been Kelly Spears, one of the police
- 25 officers, or did she even talk to you?

- 1 A. I believe I was talking to Minna first.
- 2 Q. Okay. Did you ever talk to Detective Lacher?
- 3 A. Yes, sir.
- 4 Q. And then I think you spoke to Ms. Jessica?
- 5 A. Yes, sir.
- 6 Q. And that was at the Lowcountry Children's Center?
- 7 A. Yes, sir.
- 8 Q. And you were there for about four hours that day,
- 9 correct?
- 10 A. Yes, sir.
- 11 Q. And there was another police officer there besides
- 12 Detective Lacher and Ms. Minna, correct?
- 13 A. Yes, sir.
- 14 Q. Did you speak with him? I think Detective
- 15 Hallwell?
- 16 A. Um, yes, sir.
- 17 Q. Do you remember speaking with him or her?
- 18 A. Um, no, sir.
- 19 Q. And when this first happened your mom told you to
- 20 be quiet and don't talk with anybody about this, correct?
- 21 A. Yes, sir.
- 22 Q. Then later on you talked to other children about
- 23 this, haven't you?
- 24 A. Other children?
- 25 Q. Yes, ma'am.

- 1 A. Only my friend.
- 2 Q. Okay. Who is that?
- 3 A. That's only my best friend, Minor 6.
- 4 Q. Minor 6?
- 5 A. Yes, sir.
- 6 Q. That was at the after school program?
- 7 A. Well, at school and after school. We are still in
- 8 the same class.
- 9 Q. And you told Ms. Debbie that you never talked to
- 10 Minor 2 about this?
- 11 A. No, sir.
- 12 Q. But you were worried about her, correct?
- 13 A. Yes. Yes, I was.
- 14 Q. You told Ms. Jessica about that, that you were
- 15 worried about her, a couple times?
- 16 A. Yes, sir.
- 17 Q. And said your mom kind of works in the same store
- 18 as Minor 2's mom?
- 19 A. Used to. Minor 2's mom, I don't know what happened
- 20 to her but she doesn't work there anymore.
- 21 Q. And after you spoke to Ms. Jessica, at some point
- 22 you started talking to Ms. Debbie, too, correct?
- 23 A. Yes, sir.
- 24 Q. And did you ever speak to Ms. Jennifer?
- 25 A. Yes, sir.

- 1 Q. And Ms. JoAnna?
- 2 A. Yes, sir.
- 3 Q. And they kind of helped you get ready for court
- 4 today?
- 5 A. Yes, sir.
- 6 Q. They give you your little stuffed animal or was
- 7 that your own?
- 8 A. (There was no response).
- 9 Q. Did you bring that from home or did Ms. Debbie or
- 10 Ms. JoAnn give that to you?
- 11 A. I brought it from home.
- 12 Q. But they said you could have that up here?
- 13 A. Yes, sir.
- 14 Q. Now I want to ask you a few questions about your
- 15 testimony today. I think you told Ms. Debbie that
- 16 Mr. Perez touched you a lot, correct?
- 17 A. Yes, sir.
- 18 Q. But only one time did he put his finger inside of
- 19 you?
- 20 A. Yes, sir.
- 21 Q. And that was when you were in the closet?
- 22 A. In the trailer.
- 23 Q. At the trailer, on the second day that you were
- 24 being babysat by Ms. Carmona?
- 25 A. Yes, sir.

1 Q. Now, when you were talking to Ms. Jessica back in

2 July of 2010, Ms. Jessica asked you if anyone -- if

3 Mr. Perez had put his finger inside of you, correct?

4 A. Yes, sir.

5 Q. You told her no, that he did not.

6 A. Because I was confused in which time he had touched

7 me.

8 Q. Okay. But when she asked whether he put anything

9 inside you, you didn't tell Ms. Jessica that you were

10 confused, did you?

11 A. No, sir.

12 Q. And you didn't -- you told her no, that he didn't

13 put his finger inside you, right?

14 A. Yes, sir.

15 Q. Now, you also helped -- when you were seeing

16 Ms. Jessica, you've seen her about 10 or 12 times?

17 A. Yes, sir.

18 Q. And for each time you would see her it would be

19 over an hour, correct?

20 A. Yes, sir.

21 Q. Sometimes an hour and 15 minutes to an hour and a

22 half?

23 A. Yes, sir.

24 Q. And part of that, you were, I guess, writing what

25 you said was a story for her?

- 1 A. Excuse me?
- 2 Q. I think yesterday you said you were writing a story
- 3 for her?
- 4 A. Yes, sir.
- 5 Q. That you would read to your mom?
- 6 A. Yes, sir.
- 7 Q. And your stepfather?
- 8 A. Yes, sir.
- 9 Q. And in that story you were kind of telling
- 10 everything that happened?
- 11 A. Yes, sir.
- 12 Q. And you worked on that story for a long time,
- 13 correct?
- 14 A. Yes, sir.
- 15 Q. And at the end when you finished your counseling
- 16 you had a graduation party?
- 17 A. Yes, sir.
- 18 Q. A ceremony?
- 19 A. Yes, sir.
- 20 Q. And your mother and stepfather were there?
- 21 A. Yes, sir.
- 22 Q. I believe your brother was there?
- 23 A. No. He was at daycare.
- 24 Q. And you put everything that happened to you in that
- 25 story, correct?

- 1 A. Yes, sir.
- 2 Q. Now, in your story you talked about the second day
- 3 that you were at Ms. Carmona's house; remember that?
- 4 A. Yes, sir.
- 5 Q. And in that story on the second day you didn't say
- 6 anything about being in the closet, did you?
- 7 A. No, sir. I don't believe so.
- 8 Q. You said -- you didn't say anything about Mr. Perez
- 9 touching you or putting his finger inside of you, did
- 10 you?
- 11 A. I don't think so.
- 12 Q. And if you don't remember let me know. I have a
- 13 copy of your story. I can show it to you if you want me
- 14 to.
- 15 A. Yes, sir.
- 16 Q. You want me to show you a copy or...
- 17 A. No. That's all right.
- 18 Q. And, in fact, you said Minor 3 and Minor 4 came into
- 19 the room before anything could happen.
- 20 A. I don't remember that ever happening.
- 21 Q. But that's what you put in your story, correct?
- 22 A. No, sir.
- 23 MR. GRIMES: May I approach the witness, Your
- 24 Honor?
- 25 THE COURT: Yes, sir.

1 MR. GRIMES: I'll have this marked as Defendant's
2 Exhibit Number 1 for identification.

3 (WHEREUPON, Defendant's Exhibit Number 1, a
4 Document, was marked for identification only.)

5 BY MR. GRIMES:

6 Q. Now, Minor 1. I want to show you --

7 THE COURT: Let me look at it real quick, please,
8 sir.

9 (WHEREUPON, Defendant's Exhibit Number 1 was handed
10 to the Court.)

11 THE COURT: Let me see the attorneys up here just a
12 second.

13 (WHEREUPON, a bench conference was had.)

14 THE BAILIFF: Judge, the jury wants a break.

15 THE COURT: Well, can you last -- how much longer
16 you going to be on cross? They haven't lasted as long as
17 the interpreter. How much longer?

18 MR. GRIMES: I'd say at least 15 minutes.

19 THE COURT: Can you all wait 15 minutes?

20 (A juror answered in the affirmative.)

21 THE COURT: All right. Please proceed.

22 MR. GRIMES: I'll try to hurry up.

23 THE COURT: Is the interpreter good for 15 minutes?

24 THE INTERPRETER: I'm okay.

25 THE COURT: Okay.

1 BY MR. GRIMES:

2 Q. All right. Minor 1, I'm going to show you a part
3 about your story that talks about the second day. I'll
4 let you review that.

5 (PAUSE.)

6 A. This must have been another time, not the second
7 day though.

8 Q. On the first line of that page it says, When it was
9 my second day going to Angelica's house I felt happy
10 because I could play with Minor 3, correct?

11 A. Yes, sir, but I must have gotten confused. This is
12 wrong.

13 Q. And this is a story that you wrote with
14 Ms. Jessica?

15 A. Yes, sir. But I must have gotten confused with my
16 memories. There was so many times that I must have
17 gotten confused with one or another.

18 Q. And you wrote this back in November of 2010?

19 A. Yes, sir.

20 Q. After working with Ms. Jessica for over 20 hours?

21 A. Yes, sir.

22 Q. And on that page you did say, Before he could put
23 his hand under my underwear Minor 3 and Minor 4 came in the
24 room so I got really lucky.

25 A. But it's still wrong. This is wrong and this must

- 1 have been one of the other times. This might have been
2 the third day or the first day.
- 3 Q. But that's what you said?
- 4 A. But I got confused with my memories because there
5 was so many times, like I said.
- 6 Q. So you are saying now this might now have been the
7 first day or the third day?
- 8 A. Yes, sir.
- 9 Q. But nonetheless, that's what you told Ms. Jessica
10 and that's what you wrote, correct?
- 11 A. Yes, sir.
- 12 Q. That's what you were going to have read to your
13 mom?
- 14 A. Yes, sir.
- 15 Q. And stepfather?
- 16 A. Yes, sir.
- 17 Q. Now, when you testified today you said that he did
18 put his finger inside you on the second day?
- 19 A. Yes, sir.
- 20 Q. And in your story to Ms. Jessica you don't ever say
21 anything about him putting his finger inside you on any
22 day, do you?
- 23 A. Because I must have forgotten.
- 24 Q. But you don't say anything at all in your story
25 about putting his finger inside you when you were

- 1 speaking with Ms. Jessica?
- 2 A. Like I said, there was so many times I could have
- 3 forgotten.
- 4 Q. Now, today you testified about an incident in the
- 5 house where you were -- Mr. Perez was chasing you around
- 6 the house and you ran under the bed.
- 7 A. Yes, sir.
- 8 Q. Do you remember that?
- 9 A. Yes, sir.
- 10 Q. Are you confused about that in any way?
- 11 A. No, sir.
- 12 Q. And that's the first time we've heard that,
- 13 correct?
- 14 A. Um, no, sir.
- 15 Q. It's not in your trauma narrative or your story, is
- 16 it?
- 17 A. I believe so.
- 18 (PAUSE.)
- 19 I simply just must have forgotten.
- 20 Q. And it's not on the video when you talked to
- 21 Ms. Jessica, was it?
- 22 A. I don't believe so. It doesn't mean that I'm
- 23 making it up. It just means that I could have forgotten.
- 24 Q. And you also testified about an incident happening
- 25 when everybody was outside at the food truck; do you

1 remember that?

2 A. Yes, sir.

3 Q. I think you told that to Ms. Jessica on the video;
4 is that correct?

5 A. Yes, sir.

6 Q. But you didn't write that down in your story, did
7 you?

8 A. No, sir. Like I said, I could have forgotten.

9 Q. And today you've testified about Mr. Perez biting
10 you on your breast area.

11 A. Yes, sir.

12 Q. And I believe you told that to Ms. Jessica when you
13 talked to her on the video?

14 A. Yes, sir.

15 Q. But you didn't put that in your story, did you?

16 A. No, sir.

17 Q. And I think today --

18 THE FOREMAN: He has to go to the bathroom.

19 THE COURT: All right. We'll take a break. We'll
20 take about a 15, 20-minute break. The whole jury take a
21 break. Okay. Don't discuss the case among yourselves.

22 (WHEREUPON, the jury leaves the courtroom at
23 approximately 11:35 a.m.)

24 THE COURT: All right. We'll take a morning break.

25 Okay. Thank you.

1 You may step down, okay.

2 THE WITNESS: Thank you.

3 THE COURT: During the break don't talk about the

4 case with anybody, okay?

5 THE WITNESS: Yes, sir.

6 (WHEREUPON, a brief recess was taken.)

7 THE COURT: You ready to proceed?

8 MR. GRIMES: Yes, Your Honor.

9 THE COURT: Bring us the jury, please.

10 (WHEREUPON, the jury enters the courtroom at

11 approximately 12:07 p.m.)

12 THE BAILIFF: The jury is present, Your Honor.

13 THE COURT: Okay. Thank you very much.

14 Mr. Grimes, if you'll continue, please, sir.

15 MR. GRIMES: Sir?

16 THE COURT: Please continue.

17 MR. GRIMES: Thank you, sir.

18 BY MR. GRIMES:

19 Q. Morning.

20 A. Morning.

21 Q. I think the last set of questions I asked you about

22 was your testimony that Mr. Perez bit you on your chest

23 area.

24 A. Yes, sir.

25 Q. And I think you told that to Ms. Jessica?

- 1 A. Yes, sir.
- 2 Q. But you didn't put that in your story?
- 3 A. Yes, sir.
- 4 Q. Now, I want to ask you some questions today. You
- 5 testified today -- I apologize if this seems a little
- 6 personal, but that you weren't wearing a bra or you
- 7 weren't old enough to wear a bra back when this happened?
- 8 A. Yes, sir.
- 9 Q. And in your story in one of these incidents you
- 10 said you were wearing a bra. Do you remember telling
- 11 Ms. Jessica that you left a bra in the closet?
- 12 A. Yes, sir.
- 13 Q. And that's the time when you said you were wearing
- 14 a blue shirt?
- 15 A. Yes, sir.
- 16 Q. And I think today you also testified that your mom
- 17 asked you about Mr. Perez hugging you every day?
- 18 A. Yes, sir.
- 19 Q. And I was a little confused on that. Going to your
- 20 story, also mentioned in there that you told my mom, and
- 21 says -- said she told me, So ~~Minor 3's~~ dad hugged you every
- 22 day?
- 23 A. Yes, sir.
- 24 Q. Did you tell her initially that he was hugging you
- 25 or did she ask about it?

1 A. She asked about it because every day when she went
2 to go drop me off at Minor3's home if he was there -- if
3 he was there he would come -- he would come and ask me to
4 hug him.

5 Q. Okay. Now, I'm going to ask you a little bit about
6 sort of the time frame of when you were at Mr. Perez's
7 house. You're talking about every time your mom would
8 drop you off he would ask you to hug him?

9 A. Yes, sir.

10 Q. What time would she usually drop you off at?

11 A. Sometimes around nine.

12 Q. Nine?

13 A. Nine or 8:30.

14 Q. Okay. And was Mr. Perez home every day then?

15 A. No, not -- sometimes he would be home, other times
16 he wouldn't.

17 Q. And when he was home it's your testimony that he
18 would give you a hug or ask you for a hug?

19 A. Yes, sir.

20 Q. And if he wasn't home what time would he usually --
21 excuse me. If he wasn't home when you were dropped off,
22 when you were being picked up, was he there when you were
23 being picked up?

24 A. Yes, sir.

25 Q. And that would be after he got home from work?

- 1 A. Excuse me?
- 2 Q. That would be after he got home from work?
- 3 A. Yes, sir.
- 4 Q. And now you may not know the time and dates of all
- 5 these incidents but do you know if they happened in the
- 6 morning, afternoon or in the evening?
- 7 A. No, sir.
- 8 Q. I believe yesterday you testified that it would
- 9 happen usually after he got home from work?
- 10 A. After who would get home from work?
- 11 Q. I think yesterday you testified that Mr. Perez
- 12 would commit these acts against you after he got home
- 13 from work.
- 14 A. Yes, sir.
- 15 Q. And I'm going to ask you a little bit about Minor 4
- 16 okay?
- 17 A. Okay.
- 18 Q. And that was Minor 3's sister?
- 19 A. Yes, sir.
- 20 Q. And I think you told Ms. Jessica that Minor 3 was
- 21 your best friend?
- 22 A. Yes, sir.
- 23 Q. And you told Ms. Jessica that Minor 4 had a nickname
- 24 as the destroyer?
- 25 A. Yes, sir.

- 1 Q. And if she did something wrong and her dad got
- 2 upset he would have no mercy on her?
- 3 A. Yes, sir.
- 4 Q. And he would hit her in the mouth?
- 5 A. Uh-huh. Yes, sir.
- 6 Q. And you saw that?
- 7 A. Yes, sir.
- 8 Q. And you're sure about that?
- 9 A. Yes, sir.
- 10 Q. You're not confused about that in any way?
- 11 A. No, sir.
- 12 Q. And when these incidents happened was Samuel
- 13 working or was he at home, too?
- 14 A. Usually he was working.
- 15 Q. Do you know if he worked with Mr. Perez?
- 16 A. No, sir.
- 17 Q. And they had different schedules?
- 18 A. I guess so.
- 19 Q. And when you were taken down to the police station
- 20 and they showed you some pictures did they ever show you
- 21 a picture of Samuel?
- 22 A. No, sir.
- 23 MR. GRIMES: May I have a moment, Your Honor.
- 24 THE COURT: Yes, sir.
- 25 MR. GRIMES: Thank you, Your Honor. We have no

1 further questions.

2 THE COURT: Okay. Redirect?

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

4 REDIRECT EXAMINATION

5 BY MS. HERRING-LASH:

6 Q. Minor!, during the time that you were going to the
7 babysitter's house were you also going to school during
8 that time?

9 A. Yes. Since I started to go there during the
10 springtime, not necessarily half but I would say a
11 quarter of the time I was in school I was also going to
12 Angelica's.

13 Q. Okay.

14 A. But usually on Saturdays I would go.

15 Q. Go to Angelica's?

16 A. Yes, ma'am. Yes, ma'am.

17 Q. And you said that your mom asked you about
18 Mr. Perez?

19 A. Yes, ma'am.

20 Q. And why did you tell her when she asked you?

21 A. Because she was curious and she wants to know.
22 She's my mother. I must answer.

23 Q. Why did you not tell her before?

24 A. Because I believe she would not -- I believe she
25 wouldn't -- um, she wouldn't believe me.

1 Q. And you told Mr. Grimes that you had been worried
2 about Minor 2?

3 A. Yes, sir. I mean, yes, ma'am.

4 Q. And why were you worried about Minor 2?

5 A. Because I know the same thing was happening to her
6 as well.

7 Q. How did you know?

8 A. I didn't know. I mostly guessed.

9 Q. And why did you guess?

10 A. Because I always see him -- me and her being as if
11 he was picking favorites between his own daughters and
12 two other girls that weren't even related to her -- to
13 him.

14 Q. And to other girls that what?

15 A. He was -- he seemed like he liked me more. Me --
16 and to him more than his own two daughters.

17 Q. And what did he do that made you think that?

18 A. Well, he starts to touch us, of course, and --

19 Q. But did you know he was touching Minor 2?

20 A. No, ma'am.

21 Q. What did you see that made you think that?

22 A. I would always see him hugging Minor 2 and me.

23 Q. And Mr. Grimes asked you about your story.

24 A. Yes, ma'am.

25 Q. And what was that -- how did you do that story?

1 A. Jessica was typing on her computer -- excuse me,
2 while I would tell her what happened.

3 Q. Did she ask you questions?

4 A. I don't remember.

5 Q. And Mr. Grimes asked you about a lots of different
6 parts of your narrative?

7 A. Yes, ma'am.

8 MS. HERRING-LASH: Your Honor, at this time, we
9 would offer to move in the entire narrative under the
10 Rule of Completeness. Mr. Grimes questioned her about
11 it.

12 THE COURT: You're talking about on the story?

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

14 THE COURT: I don't think he's offered it into
15 evidence.

16 MS. HERRING-LASH: I don't think he has.

17 MR. GRIMES: No, Your Honor, we haven't.

18 THE COURT: You going offer it into evidence?

19 MS. HERRING-LASH: I would offer it into evidence.

20 THE COURT: Okay. Any objection?

21 MR. GRIMES: Yes, sir, because it's bolstering.

22 THE COURT: Pardon?

23 MR. GRIMES: Yes, sir, bolstering, improper
24 redirect.

25 THE COURT: But you brought out certain elements of

1 it now she's talking about she wants the jury to see the
2 completeness of it. I don't know of any other way of
3 doing that other than putting it into evidence. Do you
4 have any problems with the authenticity of the document?

5 MR. GRIMES: Not authenticity.

6 THE COURT: Then what is your legal objection?

7 MR. GRIMES: It constitutes improper hearsay. We
8 offered it for impeachment and now she's offering it to
9 show prior consistent statements, and there would be no
10 allegation of improper --

11 THE COURT: So your legal objection is what?

12 MR. GRIMES: Hearsay. We don't believe the State
13 has met the requirements for introducing a prior
14 inconsistent statement under the rules.

15 MS. HERRING-LASH: Your Honor, the rule I was
16 offering it under was Rule 106, which is Rule of
17 Completeness, which is when a part of a document has been
18 offered, and in fairness to the victim the parts of the
19 document that is needed to explain the document.

20 THE COURT: All right. I'm going to allow it into
21 evidence. I either got one of two choices. Let it go in
22 evidence or sit here and read it to the jury. Which do
23 you want to do, Solicitor?

24 MS. HERRING-LASH: I'll just offer it into
25 evidence.

1 THE COURT: All right. I'm going to overrule the
2 objection and allow it into evidence. That will be
3 Plaintiff's Exhibit Number what, 11, or do you want to
4 just mark it as Defense Exhibit Number 1?

5 What do you want to do, Mr. Grimes? Do you want to
6 keep it marked as Number 1 or make it plaintiff's
7 number --

8 MR. GRIMES: Well, since we're not offering it into
9 evidence, to preserve our record or impeach matters, I
10 think it needs to be marked as a state's exhibit.

11 MS. HERRING-LASH: I think it's 11.

12 THE COURT: All right. State's Exhibit 11,
13 admitted with objection.

14 (WHEREUPON, State's Exhibit Number 11, a Narrative,
15 was marked and admitted into evidence.)

16 BY MS. HERRING-LASH:

17 Q. Minor I, those are all the questions that I have.
18 Thank you.

19 THE COURT: Any recross?

20 MR. GRIMES: No, sir.

21 THE COURT: Okay. You may step down. Thank you so
22 very much. Be careful stepping down.

23 Call your next witness, please.

24 MS. MCCOY: Your Honor, the State would call
25 Lieutenant Kelly Spears Washburn.

1 KELLY A. WASHBURN, after having been duly
2 sworn, testified as follows:

3 THE CLERK: Please state your full name for the
4 record and spell your last name.

5 THE WITNESS: Kelly A. Washbush, W-a-s-h-b-u-r-n.

6 DIRECT EXAMINATION

7 BY MS. MCCOY:

8 Q. Good afternoon, Lieutenant Washburn.

9 A. Good afternoon.

10 Q. Can you tell the jury where you work.

11 A. I work for the North Charleston Police Department.

12 Q. And how long have you been with North Charleston?

13 A. A little over 19 years.

14 Q. And what are your duties right now with North
15 Charleston Police Department?

16 A. I'm a lieutenant assigned to Office of Professional
17 Standards, which is internal affairs, and I also serve as
18 the accreditation manager for the Police Department.

19 Q. And did you receive any training or education to
20 assist you with your duties that you've had during your
21 years at North Charleston Police Department?

22 A. Yes, sir, I have.

23 Q. Tell us a little bit about that, if you will.

24 A. Criminal investigation training, interviews
25 training, various. Over 19 years it's been extensive.

- 1 Interviews, tactics, crisis negotiations.
- 2 Q. And what were your duties in July of 2010?
- 3 A. July of 2010 I was a sergeant in charge of Juvenile
- 4 Investigations Unit.
- 5 Q. And what do you do as the supervisor of the
- 6 Juvenile Investigations Unit?
- 7 A. I supervise the detectives assigned to the unit.
- 8 I review cases and assign them as necessary to
- 9 investigators, assist in whatever direction the
- 10 investigators need in the cases. I also review the
- 11 affidavits, the case folder once the investigation is
- 12 completed.
- 13 Q. Okay. And in that capacity, did you have an
- 14 opportunity to assist an investigation involving
- 15 Ms. *Minor* in 2010?
- 16 A. Yes, I did.
- 17 Q. Okay. And how were you first introduced to this
- 18 case?
- 19 A. Initially, I was a sergeant working. It was a day
- 20 shift and a parent had responded to the duty officers
- 21 desk and wanted to file a report for a sexual assault.
- 22 Due to the nature of the allegation those reports have to
- 23 be taken by either a police officer or a detective.
- 24 Q. Okay.
- 25 A. I was the only one available at that time so I had

1 the duty officer and the parent come down to the
2 detective division where I took the initial report.

3 Q. Okay. And was it the young girl's -- when you stay
4 parent, was it her mother, father?

5 A. It was a mother.

6 Q. And did you speak with her mother?

7 A. Yes, I did.

8 Q. Okay. What did she reveal to you at that time?

9 A. She had stated that her daughter who was a minor
10 child had stated that she had been sexually assaulted or
11 touched in a manner that would elude to be a sexual
12 assault?

13 Q. Okay. And where did she say these incidents took
14 place?

15 A. At that point she didn't give us an exact address.
16 She did state that they were off of the Sumner Avenue but
17 she didn't have the exact address.

18 Q. Okay. And so how did you go about finding out the
19 address at that point?

20 A. She stated to me that she could identify the
21 address by pointing it out. So I then escorted her to
22 the locations where she pointed out the address. I
23 obtained the numerical address and then ensured that it
24 was within North Charleston's jurisdiction because
25 depending on which side of the street it could be

- 1 Charleston County or Hanahan's jurisdiction.
- 2 Q. Okay. And would that depend on which police
- 3 agency, I guess, actually took care of this, right?
- 4 A. Correct.
- 5 Q. And did you determine it was under North
- 6 Charleston's jurisdiction?
- 7 A. Yes. It was in North Charleston and Charleston
- 8 County.
- 9 Q. Okay. And when you say you escorted her, how did
- 10 you do that?
- 11 A. I have an unmarked -- or at that time it was an
- 12 unmarked police car where she rode in the front seat and
- 13 I drove following the directions that she told me to go
- 14 in, and then as she pointed out the addresses I wrote
- 15 them down and went back to the police department.
- 16 Q. And were both these addresses also located in
- 17 Charleston County?
- 18 A. Yes, they were.
- 19 Q. Can you tell the jury what you did next.
- 20 A. From that point, I explained to the mother that we
- 21 do not interview children for the case of the fact that
- 22 they are children and we don't have the capability of
- 23 videotaping and audio taping the interview and explained
- 24 to her that she would need to take her child to the
- 25 Lowcountry Children's Center, LCC, where they would do a

- 1 forensic interview and they would follow up also with
2 medical for any type of signs of sexual abuse.
- 3 Q. Okay. And then who did you assign this case to
4 within your unit?
- 5 A. Detective Ron Lacher.
- 6 Q. Detective Lacher. Did you have any other
7 involvement with this investigation?
- 8 A. Generally, no, not at that point. He followed
9 through with the investigation. Just as we had -- were
10 wrapping up the investigation and not being able to have
11 identities for a warrant, you know, date of birth,
12 correct name, we did respond to the defendant's
13 residence.
- 14 Q. Okay. You did with Detective Lacher?
- 15 A. Yes.
- 16 Q. And what happened then?
- 17 A. At that point, the defendant was there. We asked
18 for identification so that we could have the correct
19 information; date of birth, correct spelling for a name,
20 correct address, and establish that he did live at that
21 residence for us to obtain an arrest warrant.
- 22 Q. Okay. And what time of day was it when you all
23 went to the address when the defendant was present?
- 24 A. It was daytime, afternoon. It was after lunch,
25 maybe two or so.

1 Q. Okay. And do you remember who all was present in
2 the home when you arrived there?

3 A. The defendant was there, there was a female, which
4 I believe was his spouse, another male, and some
5 children.

6 Q. Okay. And after you left that day did you have any
7 further involvement in the case?

8 A. No direct involvement, except for reviewing the
9 case file after it was completed.

10 Q. Okay. Part of your supervisory duties?

11 A. Yes, ma'am.

12 Q. Thank you very much. Please answer any questions
13 Mr. Grimes has.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MS. PARNELL:

17 Q. Lieutenant Washburn, you took the initial report
18 involving *Mindy*

19 A. Yes, ma'am.

20 Q. And there was someone else who was designated as
21 the actual investigating officer?

22 A. Yes, ma'am.

23 Q. Did you have any other investigative duties
24 involving this case other than what you already told

25 Ms. McCoy?

- 1 A. No, ma'am.
- 2 Q. Did you participate in any kind of identification?
- 3 A. Only the time that we went to the residence where
- 4 we got his identification.
- 5 Q. Okay. And did you speak with [Minor] yourself?
- 6 A. No, I did.
- 7 Q. So you only spoke with her mother?
- 8 A. Yes.
- 9 Q. And that was over the phone?
- 10 A. No. It was at the detective division at the North
- 11 Charleston Police Department, City Hall.
- 12 Q. Did you also speak to her when she called in?
- 13 A. I may have on a time or two but nothing that was
- 14 significant in the investigation.
- 15 Q. Okay. And this initial incident report, that's
- 16 based on the information that you were able to gather?
- 17 A. That was based on the information that the parent
- 18 provided to me when she responded to file the police
- 19 report.
- 20 Q. Okay. And you would have been careful to put any
- 21 information that she had given you in that report?
- 22 A. Correct.
- 23 Q. And if the report seems somewhat brief or lacking
- 24 in detail would that be just because that was all the
- 25 information you got from her?

- 1 A. Correct.
- 2 Q. Now, the report references that *Minor 1*
- 3 said that she was touched by Mr. Perez?
- 4 A. Miss -- that would be the parent?
- 5 Q. *Minor 1*.
- 6 A. Okay. That would be the parent or the child?
- 7 Q. *Minor 1* would be the child?
- 8 A. Okay, the child. That was the information that the
- 9 mother stated.
- 10 Q. If you had been told that anything else had
- 11 happened you would have put that in your report?
- 12 A. Correct.
- 13 Q. Now, the report also notes that *Minor 1's* mother did
- 14 not want to question her any further?
- 15 A. We stated that we did not want her to question her
- 16 any further, that she would be interviewed at Lowcountry
- 17 Children's Center. If the child wanted to speak out to
- 18 listen to the child but not to question, to remain as
- 19 calm as possible, even though information may be
- 20 shocking, in order not to startle or hinder anything that
- 21 would come out of an investigation.
- 22 Q. So would you normally try to interview a child in a
- 23 situation like this?
- 24 A. No, I would not.
- 25 Q. And you would normally turn them over to a place

1 like the Lowcountry Children's Center?

2 A. They go to -- all of our cases involving juveniles
3 within the Charleston County jurisdiction go to the
4 Lowcountry Children's Center.

5 Q. And the interview that's being done there is for
6 forensic purposes?

7 A. Yes.

8 Q. And that's why you would not be doing it yourself?

9 A. Correct.

10 Q. Because you are not trained in the special
11 procedures as far as --

12 A. We don't have the ability to do the forensic
13 interviews, to have them videotaped and audio taped to
14 show that there was no leading or suggestions given to
15 the victim.

16 Q. And is that because when you're dealing with a
17 child victim you have to undergo special procedures to be
18 careful you don't taint --

19 A. Yes.

20 Q. -- the testimony?

21 A. Yes.

22 MS. PARNELL: If I could have a moment, Your Honor.

23 THE COURT: Yes, ma'am.

24 (PAUSE.)

25 BY MS. PARNELL:

1 Q. Thank you, Lieutenant Washburn. That's all I have.

2 THE COURT: Any redirect?

3 MS. MCCOY: No, Your Honor.

4 THE COURT: Okay. You may step down. Than you
5 very much.

6 THE WITNESS: Thank you, sir.

7 THE COURT: Call your next witness, please.

8 MS. HERRING-LASH: Alejandra Jimenez.

9 Your Honor, may Ms. Washburn be excused?

10 THE COURT: Yes. Thank you very much.

11 THE WITNESS: Thank you, sir.

12 ALEJANDRA JIMENEZ, after having been duly
13 sworn, testified as follows:

14 THE CLERK: State your full name and then spell
15 your last name for the record, okay.

16 THE COURT: Please spell your first name and your
17 last, please, ma'am.

18 THE WITNESS: My full name is Alejandra Jimenez and
19 I spell A-l-e-j-a-n-d-r-a J-i-m-e-n-e-z.

20 DIRECT EXAMINATION

21 BY MS. HERRING-LASH:

22 Q. Ms. Jimenez, where do you live?

23 A. In Hanahan.

24 Q. And who is in your family?

25 A. My husband, my two kids, and right now my brother

- 1 is staying there.
- 2 Q. And who was your daughter?
- 3 A. My daughter is Minor | Minor | for the
- 4 family members.
- 5 Q. Minor |?
- 6 A. Yeah, that's how we call her at home.
- 7 Q. So at home you call her Minor |, but she goes by
- 8 Minor | at school.
- 9 A. At school and everything else.
- 10 Q. And where do you work?
- 11 A. A grocery store on Remount Road called the Rincon
- 12 Latino.
- 13 Q. Would you spell that.
- 14 A. R-i-n-c-o-n L-a-t-i-n-o.
- 15 Q. Thank you. What hours do you work?
- 16 A. I work shifts of 12 hours at a time and I have
- 17 different days of the week. So I work from nine to nine
- 18 on the days I work.
- 19 Q. And do you get off the same days every week or does
- 20 that vary?
- 21 A. Oh, no, it changes. It depends on the schedules
- 22 for all the employees.
- 23 Q. And right now does Minor | go to a babysitter?
- 24 A. She is going to an after school program. It's a
- 25 Latchkey in Highland Baptist Church in Hanahan.

- 1 Q. And what happens after that closes?
- 2 A. Oh, she goes right back home. My husband goes and
3 picks her up and then takes her home.
- 4 Q. Are his hours more flexible?
- 5 A. They are more stable than I -- and he gets off
6 because he works at construction, so he gets off at 3:40,
7 4:30. So by the time she gets off he can pick her up.
- 8 Q. Now, back in 2010 did ~~Minor~~ go to a babysitter?
- 9 A. Yes.
- 10 Q. And who was that?
- 11 A. Her name is Angelica. I don't know her last name.
- 12 Q. Pardon me?
- 13 A. I don't know her last name.
- 14 Q. How did you find the babysitter, Angelica?
- 15 A. Back then I was working at the store and she was a
16 customer. She started coming to the shop and as any
17 other customer I was talking to them while I was at the
18 register, and that's how I met her. She would come and
19 buy stuff in the store.
- 20 Q. And do you know when it was that ~~Mindy~~ started
21 going to Ms. Angelica's house?
- 22 A. Was in April of 2010.
- 23 Q. So in the Spring of 2010?
- 24 A. Right. Yeah, because it was right before summer
25 started.

- 1 Q. And do you know who was in Angelica's family?
- 2 A. I knew her husband and there were two more people
- 3 in the -- her two daughters. That's her husband, the two
- 4 daughters. There was a person that was there visiting
- 5 when I met her but then I didn't know anything about
- 6 anybody else there.
- 7 Q. Do you remember her daughter's names?
- 8 A. *Minor 3* and *Minor 4*.
- 9 Q. And what age was *Minor 3*; do you remember?
- 10 A. She was basically my daughter's age. That was the
- 11 reason why they started getting along very well when she
- 12 was going there because the age.
- 13 Q. Because she was only eight?
- 14 A. She was the same age.
- 15 Q. And when she first went to Angelica's house did
- 16 they live in a trailer or a home?
- 17 A. Oh, no. They were living in a trailer right on
- 18 Attaway Street.
- 19 THE COURT REPORTER: I'm sorry, what street?
- 20 A. Attaway, A-t-t-a-y-a -- I'm sorry, w-a-y.
- 21 Q. And did they stay there or move?
- 22 A. No. They moved from the trailer to the house.
- 23 Q. When she first started -- or when she went there to
- 24 the house were there other children that Angelica babysat
- 25 for?

1 A. Yes. Yes.

2 Q. Do you know who any of those children were?

3 A. There were a couple of babies that I never knew
4 their names, and there was Minor 3 and her little sister
5 that they were all babysat by her.

6 Q. And was there any other child around Minor 1's age
7 that was babysat?

8 A. There was Minor 2. That's her name. That's the
9 other girl. The three of them, they were the same age,
10 basically.

11 Q. Now, how would Minor 1 get to Angelica's house?

12 A. I will take her, like, on the days that I have to
13 go work and she was off from school because of a holiday
14 or because my schedule was, you know, in the middle she
15 would go there, or if I have to work on Saturday then I
16 would have to take her when my husband was working.

17 Q. So she went various times, actually?

18 A. Yeah, she didn't have a specific schedule. My son
19 went more often on the regular basis than her but then
20 when school was over she'll have to go every day I have
21 to go to work.

22 Q. I guess your son was too young to go to school?

23 A. He was a baby. Well, he's still a baby.

24 Q. And when you dropped Minor 1 off did you ever see Mr.
25 -- well, did you know the husband of Angelica's name?

- 1 A. I didn't know his name. We barely had any contact.
2 I knew he was there when -- I'm sorry. What was the
3 question again?
4 Q. Did you know if he was there or not?
5 A. Oh, yeah. There was times where I will drop them
6 off in the morning and he will be there, or by the time I
7 was getting off from work, like on Saturday afternoon he
8 would be there.
9 Q. Was he there every time?
10 A. Several times. There were times where she was just
11 by herself with the kids but I remember noticing that he
12 was there. I could hear his voice. Even that I wasn't
13 looking at him because I was at the entrance of the house
14 I could hear his voice.
15 Q. Were there ever times that you actually saw him?
16 A. Maybe a couple of times, but not very often. But,
17 yes, I did see him.
18 Q. And did you ever see him when you picked Minor 1 up?
19 A. Yes.
20 Q. Did you see him more then when you picked her up?
21 A. I will say that it maybe was the more occasions
22 that I saw him, when I was picking her up.
23 Q. And you mentioned that a child named Minor 2 also
24 went there?
25 A. Yes.

1 Q. Do you know how Minor 2's family found out about
2 this babysitter?

3 A. Because of me. Her mom used to work at the store
4 and she asked me if I knew any place around. Where these
5 people live is very close to where the store is at, so it
6 was convenient because it was around the area. And I
7 mentioned to her where my daughter and my son were
8 staying sometimes. That's how she found out about the
9 lady.

10 Q. And that's when she started to --

11 A. Yes, took both of them. Well, the little girl more
12 often but the other one was at school so...

13 Q. Now, did there come a time when Minor 2 stopped
14 going to the babysitter?

15 A. Yes. All of a sudden one day I went to drop my
16 kids off and they weren't there. So I met the lady at
17 the store and she said that they were not going to go
18 there anymore.

19 Q. And did you know why?

20 A. She gave me an excuse, something about the kids'
21 lies or something in their head.

22 Q. Now, when you say the lady are you talking about
23 Minor 2's mother?

24 A. Minor 2's mom, yes.

25 Q. And you said you worked with her?

- 1 A. Yes, at the store.
- 2 Q. Are you still friends with her?
- 3 A. No.
- 4 Q. Do you all still speak at all?
- 5 A. Not at all.
- 6 Q. This have anything to do with this or something
7 else?
- 8 A. There were -- there was a misunderstanding at work
9 right after, way after she stopped taking the kids there
10 and that end up more sort of arguments, then she stopped
11 working at the store and we never spoke again.
- 12 Q. And did there come a time that Minor I stopped going
13 there?
- 14 A. Yes.
- 15 Q. And explain how that occurred.
- 16 A. She stopped going there after I have a conversation
17 with her a Sunday afternoon that something was happening.
- 18 Q. Do you remember when that was?
- 19 A. It was a Sunday afternoon. I don't remember the
20 exact day.
- 21 Q. That's okay.
- 22 A. It should be -- there were vacation. I can't
23 remember the date but it was -- we were in the house and
24 she -- it was an afternoon so it had to be a Sunday
25 afternoon. That wasn't -- that week was the very last

1 time that we went back there.

2 Q. And did you have a conversation with her?

3 A. Yes, I did.

4 Q. And where were you when you had that conversation?

5 A. In my house.

6 Q. And where in your house?

7 A. In my bedroom.

8 Q. And what were you all doing in the bedroom?

9 A. We came in from playing outside and I gave my baby
10 son a bath and he went right to sleep, then she took a
11 bath, too, and I was doing her hair and we were just
12 laying down on the bed and watching TV looking at -- I
13 can't remember what was on the TV while I was doing her
14 hair.

15 Q. And did you question her?

16 A. Something came on the TV, and we have had this
17 conversation before as preventative, I guess, way to see
18 if she was okay. And I did ask her if she ever felt like
19 someone had touched her.

20 Q. And after you asked her that, without saying what
21 she said, did she tell you about an assault?

22 A. Yes.

23 Q. Did she tell you when it had happened?

24 A. Yes.

25 Q. When did she say?

- 1 A. When she was at the babysitter's.
- 2 Q. Did she tell you where it had happened?
- 3 A. She mentioned different places and occasions.
- 4 Q. What places?
- 5 A. In the trailer she mentioned a bathroom, in the
- 6 house she mentioned closet. She mentioned the living
- 7 room. She mentioned a bedroom.
- 8 Q. Did you ask her for a lot of details on that
- 9 evening?
- 10 A. No.
- 11 Q. When you were having this conversation what was
- 12 your reaction?
- 13 A. I was shocked. I didn't know what to do. I asked
- 14 her why she didn't say anything before and she just said
- 15 she was afraid.
- 16 MR. GRIMES: Objection, hearsay. Move to strike.
- 17 THE COURT: Pardon? What's your legal objection?
- 18 MR. GRIMES: Hearsay. Move to strike.
- 19 THE COURT: Overruled. Go ahead.
- 20 BY MS. HERRING-LASH:
- 21 Q. What did ~~Minor~~ do after you had that conversation?
- 22 A. I didn't know how to react and I just told her that
- 23 -- I try to compose myself and I told her just stay here
- 24 and watch the baby for me, okay. I just need to go
- 25 outside. I need to make a phone call. And she laid on

1 the bed and I walked out of the room.

2 Q. Did you ask her about any hugs during that
3 conversation?

4 (The witness appears to be upset and crying.)

5 A. Yeah.

6 Q. You can't say what she exactly said but did you ask
7 her about the hugs after she had told you something about
8 what had happened?

9 A. She might have mentioned something. I was just too
10 shocked. I didn't know what to tell her and what to
11 question her, what -- I was -- I was blank. I was just
12 trying to hold myself together because she was looking at
13 me. She was trying to read my reaction.

14 Q. Going back a little, had you noticed any changes in
15 Minny before this?

16 A. (Nodded).

17 Q. What was that that you observed?

18 A. At school her grades went down really bad. She had
19 been always an honor roll girl, and I didn't understand.
20 I was going back to the house when I was working and she
21 hadn't finished her homework, she was distracted, she
22 didn't understand nothing.

23 Q. What school was she going to?

24 A. She was going to Hanahan. And she started asking
25 me to sleep with her at night, and I noticed that she was

1 grinding her teeth really bad, so loud that you could
2 hear when she was laying in the bed, and I didn't
3 understand why.

4 I asked the doctor, her dentist, on the next visit
5 why was she doing that, maybe because of retainers she
6 was wearing. And the doctor said usually that's the
7 signal of a stress. And I asked myself, what kind of --

8 MR. GRIMES: Objection. Hearsay.

9 MS. HERRING-LASH: Just what you observed.

10 THE COURT: I'll sustain the objection, okay.

11 BY MS. HERRING-LASH:

12 Q. What happened the next day?

13 A. We went to Hanahan Police Department.

14 Q. What happened there?

15 A. We were sent over where the jail is at and sent
16 over to North Charleston Police Department.

17 Q. And when you got to North Charleston Police
18 Department did you talk to the police officers there?

19 A. Yes. We were at the entrance and the police
20 officer took us upstairs to speak to an officer.

21 Q. And did they refer you anywhere?

22 A. Yes. He asked me a few questions and then they
23 took us to the Lowcountry Children's Center downtown.

24 Q. And what happened there?

25 A. She had to talk to someone. She got examined by a

1 doctor, and while I was waiting she got interviewed. And
2 I was taken to -- because I didn't know the exact address
3 of the house and the trailer, to show a police officer
4 the location.

5 Q. Of where this happened?

6 A. Where the house and the trailer were.

7 Q. Did you also have to take Minori to the police
8 department to look at a photo lineup or pictures?

9 A. Yes. After we went to -- we were out of the
10 children's center, we went back to the police department
11 and Minna and the detective.

12 Q. Did you participate in that in any way?

13 A. No. The police officer stayed outside and Minna
14 was seated right at the desk with my daughter. I just
15 sit on the side.

16 Q. And did you also take Minori to counseling?

17 A. Yes.

18 Q. And who did she see for counseling?

19 A. Her name is Jessica Credeur. She worked at the
20 children's center. We went there for several sessions.

21 Q. And during that counseling was part of the
22 counseling for Minori to prepare a narrative for you?

23 A. Yes.

24 Q. And did you get to take that home?

25 A. Yes, I did.

1 Q. And where did you keep it?

2 A. She kept it for a while in her bedroom, and then
3 one day she was cleaning her room and doing some stuff
4 there and she came to me and she said, I think it's
5 better for you to keep it. And then I just put it away.

6 Q. Now, have you -- did there come a time when
7 **Minor 2**'s family tried to contact you? Would you talk to
8 them at all?

9 A. No. Her mom called the store and I was off from
10 work that day, and left a message with a girl in the
11 store. The girl called me right away because the message
12 was really strange. So she told me --

13 Q. And you won't be able to say what anybody said, but
14 did you speak to them about it?

15 A. No. When she gave me the message I told her that
16 they have to just go to the police. I didn't want to
17 talk to them. So I didn't even cross a word with her, so
18 I don't know.

19 Q. Now, did you meet with Minna on another occasion,
20 also?

21 A. Yes. We met -- we have met more times since the
22 case or since this is happening.

23 Q. Do you know what Minna's position is at the North
24 Charleston Police Department?

25 A. Yes. She is a victim advocate.

- 1 Q. And did Minna ever mention to you something called
2 U-Visa?
- 3 A. Not until we went one day to talk to her, because
4 we were planning to move away from the area.
- 5 Q. And did she explain to you at that point about a
6 U-Visa?
- 7 A. She mentioned that there was -- I don't remember
8 the word she used, but she said that it was for victims.
- 9 Q. Did you know about this before she told you?
- 10 A. No. No. I can't honestly remember how she said it
11 but I didn't know anything about that.
- 12 Q. What was your reaction?
- 13 A. The idea to me to think that there was a gain --
14 THE COURT REPORTER: I'm sorry. I'm having trouble
15 understanding her, Your Honor.
- 16 Q. A gain?
- 17 A. Yes. I didn't want to think that I was gaining
18 anything out of this.
- 19 Q. Did you eventually go through an application?
- 20 A. (Nodded).
- 21 Q. Did Minna go through that with you?
- 22 A. Yes. She took me to -- she took me to see the
23 lawyer and she explained to me how this worked and the
24 reason why they allow these visas, too.
- 25 Q. So did you end up going through with that?

1 A. Yes. We did it. We filed an application later on.

2 MS. HERRING-LASH: Court's indulgence for one
3 moment.

4 (PAUSE.)

5 BY MR. HERRING-LASH:

6 Q. Ms. Jimenez, those are all the questions I have.
7 Mr. Grimes may --

8 THE COURT: Cross-examination.

9 MR. GRIMES: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. GRIMES:

12 Q. Good afternoon, Ms. Jimenez. I'm sorry if I
13 pronounced your name wrong.

14 A. That's fine.

15 Q. I want to ask you a few questions about what
16 Ms. Herring-Lash was asking you, okay? First I want to
17 ask you a little about ~~Minor~~ 1's performance in school.
18 You told Ms. Herring-Lash that she used to be an honor
19 roll student?

20 A. Yes.

21 Q. Then her grades started falling off?

22 A. Yes.

23 Q. You said that she was failing?

24 A. She wasn't failing but she was always A, B, always.

25 She had been always mentioned by the teachers that she

1 was a great student, and she started getting bad results
2 on tests. She couldn't finish homework. She was not
3 concentrating.

4 Q. What did her grades fall to?

5 A. D, E, somewhere around there. It was really bad.
6 It got my attention because it wasn't what she was used
7 to.

8 Q. And when were they falling down?

9 A. I can't remember the exact dates but it didn't
10 affect her final grades at the end because we started
11 working really hard because she -- she was -- she looked
12 like -- she looked, like, disappointed. That's the word.
13 I'm sorry. She felt -- I think she felt like she was not
14 doing her best.

15 Q. Now, you said she started going to Mr. Perez's
16 house in April 2010?

17 A. Yes, it's about the time when she started going
18 there.

19 Q. Do you know when the fourth quarter started at
20 North Charleston Elementary School?

21 A. North Charleston?

22 Q. Yes, ma'am. Let me step back. Was she going to
23 school in Hanahan or North Charleston?

24 A. Well, she -- we were switching from schools but she
25 wasn't going -- she wasn't going to North Charleston when

1 -- she went to North Charleston for a while but then we
2 went to -- she had -- we moved from one house to another
3 and then she had to switch to Hanahan Elementary. So I
4 don't remember when the fourth quarter started.

5 Q. So you switched to Hanahan in the Summer of 2010 or
6 July of 2010, correct?

7 A. No. We lived in Hanahan before that.

8 Q. Do you remember filling out a registration form
9 dated July 7th, 2010?

10 A. Yeah, but we had moved to Hanahan before I let her
11 stay in North Charleston. I'm sorry. I didn't switch
12 her from one school to the other.

13 Q. But she finished the year 2010, the Summer 2010 she
14 was going to school in North Charleston, even though you
15 might have lived in Hanahan?

16 A. Yes.

17 Q. Okay. And are you familiar with her grades from
18 North Charleston for the year 2009, 2010?

19 A. Yes, I did check. I can't remember the exact
20 grades but...

21 Q. If I showed you a copy of her report card would
22 that will refresh your memory?

23 A. Sure.

24 (A document was handed to the witness.)

25 Q. Now, for the first quarter in reading she was

- 1 making a 99?
- 2 A. Yes.
- 3 Q. And the second quarter in reading she was making a
- 4 hundred?
- 5 A. Yes.
- 6 Q. And the third quarter her grade fell to 79?
- 7 A. Yes.
- 8 Q. And the fourth quarter her grade rose to 98?
- 9 A. Yes.
- 10 Q. And then in language arts the first quarter she was
- 11 making 99?
- 12 A. Yes.
- 13 Q. And then the second quarter her grade fell to 81?
- 14 A. Yes.
- 15 Q. And the third quarter her grade was 79?
- 16 A. Yes.
- 17 Q. And fourth quarter her grade rose to 98?
- 18 A. Yes.
- 19 Q. And in math it looks like she pretty much had all
- 20 -- went to a 91, 97, 90, and 98; is that correct?
- 21 A. Yes.
- 22 Q. And in science her grades were an 88, 96, 90, and
- 23 98?
- 24 A. Yes.
- 25 Q. And in social studies her grades 95, 88, 90, and

- 1 90?
- 2 A. Yes.
- 3 Q. So in those five classes her lowest grade in the
- 4 fourth quarter was a 90?
- 5 A. I'm sorry. Would you ask me that again?
- 6 Q. In those five classes, the reading, language arts,
- 7 mathematics, science, social studies her lowest grade
- 8 from the fourth quarter was a 90?
- 9 A. That's what it looks like.
- 10 Q. In art she made a hundred in the fourth quarter?
- 11 A. Correct.
- 12 Q. And music, P. E. she had A's?
- 13 A. Yes.
- 14 Q. And I think on the next page it talks about
- 15 personal and social development. Do you see that?
- 16 A. Yes.
- 17 Q. Looks like the high -- looks like a three is
- 18 classified as excellent and two is satisfactory?
- 19 A. Correct.
- 20 Q. And in the fourth quarter she had threes in
- 21 cooperates with others. You see that?
- 22 A. Correct.
- 23 Q. Demonstrates responsibility?
- 24 A. Yes.
- 25 Q. And basically had threes in everything from

1 personal and social development, work habits, correct?

2 A. Correct.

3 Q. And you are aware of sort of the progress notes she
4 had from teachers?

5 A. I'm sorry?

6 Q. Are you aware of the progress notes she had from
7 her teachers?

8 A. Well, I was aware that we never got called for
9 conversations or any issues on her final grades but the
10 change we noticed were at home. That's where I noticed
11 that on regular assignments she got she couldn't
12 concentrate. She wasn't getting good grades on the
13 regular basis. That's why I say that we worked really
14 hard to get them back on the track on the grades that she
15 had before.

16 Q. Well, do you have any of those tests or anything
17 showing where those grades fall?

18 A. No.

19 Q. So the only evidence we do have today shows
20 actually her grades were doing really good the fourth
21 quarter?

22 A. Yes. I guess that depends on how the teacher
23 evaluates what she did.

24 Q. And, I mean, you obviously love your daughter?

25 A. Of course.

- 1 Q. You want to protect her?
- 2 A. Always.
- 3 Q. And you didn't witness any of this, did you?
- 4 A. No.
- 5 Q. And just like any parent you are going to believe
- 6 what your child tells you, right?
- 7 A. Right away, sir.
- 8 Q. And the last thing I want to ask you about is this
- 9 U-Visa. I guess it's my understanding the way a U-Visa
- 10 works is if you come here without the proper paperwork
- 11 you can get deported if the police or ICE was to come and
- 12 detain you for some reason; is that correct?
- 13 A. Will you ask me that again?
- 14 Q. If you don't have proper paperwork, so the green
- 15 card or regular visa, and you get arrested or stopped you
- 16 could get potentially deported and sent back to Mexico,
- 17 correct?
- 18 A. That is if you had applied for the visa?
- 19 Q. If you hadn't applied. If you're here without
- 20 documentation you could be deported?
- 21 A. Yes. That's how it's happening right now.
- 22 Q. And when you get a U-Visa you're allowed to stay in
- 23 the Country?
- 24 A. Yes.
- 25 Q. And you're allowed to get other regular benefits

1 such as food stamps?

2 A. Yes.

3 Q. And you receive food stamps, too, didn't you, at
4 the time?

5 A. I don't think it had anything to do with it.

6 Q. I understand but after this happened you applied
7 for a U-Visa and now once that goes through you're
8 allowed to stay in the United States without fear of
9 being deported?

10 A. Yes.

11 Q. And that would prevent you from being sent back to
12 Mexico, correct?

13 INTERPRETER GAINER: Your Honor, the interpreter is
14 having trouble hearing.

15 If you will speak up a little.

16 MR. GRIMES: I apologize.

17 BY MR. GRIMES:

18 Q. And that would prevent you from being sent back to
19 Mexico if you have a U-Visa, correct?

20 A. Yes.

21 Q. And since your daughter was born here that would
22 prevent you from being split up from your family,
23 correct?

24 A. If I ever had to go back to Mexico she wouldn't
25 stay here. If I had been deported my kids will go with

1 me, and if you want to take the visa you can take it. I
2 don't care. If you can give my daughter that time that
3 she went through --

4 (The witness appears to be upset and crying.)

5 MR. GRIMES: Your Honor, I would ask to strike the
6 last comment as being unresponsive.

7 THE COURT: Pardon?

8 MR. GRIMES: I would ask to strike the witness's
9 last comment as being unresponsive.

10 THE COURT: Overruled. Go ahead.

11 BY MR. GRIMES:

12 Q. Do you need a moment?

13 A. (There was no response).

14 THE COURT: All right. Mr. Foreman, ladies and
15 gentlemen of the jury, we'll take a short break. Please
16 leave your notepads in your chair and please don't
17 discuss the case amongst yourselves. I'll get you back
18 very shortly.

19 (WHEREUPON, the jury leaves the courtroom at
20 approximately 1:07 p.m.)

21 (WHEREUPON, the foreman was brought back into the
22 courtroom.)

23 THE COURT: Mr. Foreman, I think what we'll do,
24 it's one o'clock, we'll break for lunch.

25 THE FOREMAN: Okay.

1 THE COURT: And if the jury -- you all be back in
2 the jury room at 2:30. All right? And we'll reconvene
3 at 2:30.

4 THE FOREMAN: All right.

5 THE COURT: All right, sir?

6 THE FOREMAN: Yes, sir.

7 THE COURT: If you'll tell the members of the jury
8 when you get to the jury room.

9 THE FOREMAN: Will do. Thank you.

10 THE COURT: All right. We'll break for lunch.

11 MR. GRIMES: Thank you, Your Honor.

12 THE COURT: Thank you very much.

13 MR. GRIMES: 2:30, Your Honor?

14 THE COURT: Yes, 2:30.

15 (WHEREUPON, a lunch break was taken.)

16 THE COURT: Anything from the State before we bring
17 the jury?

18 MS. HERRING-LASH: Judge, there's one thing that we
19 just may need your guidance. With *Minor 2* the Lyle
20 victim, my understanding is that --

21 THE COURT: Wait until she gets hooked up so the
22 defendant can hear.

23 All right. You were telling me something about
24 *Minor 2*

25 MS. HERRING-LASH: Right, Your Honor, that we are

1 strictly limited to just her talking about what happened
2 and we are not allowed to ask the police, did you
3 investigate this, and go into any of that?

4 THE COURT: No.

5 MS. HERRING-LASH: That's what I do not plan on
6 doing that. I think the dilemma comes in that they want
7 to ask her questions about the interview that the police
8 sent her for which would --

9 THE COURT: Well, if they want to open that door
10 then you can go into it in redirect, if they want to open
11 it. I'm limiting the State as to what transpired with
12 her.

13 If you all want to go into it that's fine but I'm
14 going to let her recapture whatever she wants to
15 recapture on redirect. I don't know what that would be
16 because I don't know what you all's case is.

17 MR. GRIMES: I think our plan is to impeach her
18 with some of the stuff she said during the forensic
19 interview.

20 THE COURT: If you impeach her then she can come
21 back and whatever you impeach her with under the rules
22 put the whole thing in, just like I did this morning.

23 MR. GRIMES: Well, I don't know the whole thing
24 would go in under --

25 THE COURT: Well, I don't know. I don't know the

1 details yet but I'm just trying to tell you that if you
2 all open the door then I'm going to give the State the
3 latitude to go into it, but not on direct.

4 MR. GRIMES: Yeah, we understand that, that it
5 could go into the forensic interview, but I don't know if
6 that would allow them to go into the full investigation
7 of the case.

8 THE COURT: Well, I'll just have to listen to it
9 and see.

10 MS. HERRING-LASH: And, Judge, just for the record.
11 I did not put in the entire trauma narrative. I just put
12 in the part that Mr. Grimes -- the completion of the
13 parts he asked her about.

14 THE COURT: Right. You didn't put in the whole
15 thing.

16 MS. HERRING-LASH: I didn't put in the whole thing.
17 You want me to have the witness retake the stand?

18 THE COURT: Please.

19 (The witness returned to the witness stand.)

20 THE COURT: Solicitor, have you had an opportunity
21 to talk with the witness about the intercourse issue?

22 MS. HERRING-LASH: Not yet, Your Honor.

23 THE COURT: Will you have an opportunity to do it
24 before you --

25 MS. HERRING-LASH: I can do it right now.

1 THE COURT: Please do that.

2 (PAUSE.)

3 THE COURT: Who is going to be cross-examining this
4 witness?

5 MR. GRIMES: Which witness is that, ~~Mindy~~ 2?

6 THE COURT: I instructed the State, she's talking
7 to her right now, about this child not talking about
8 penetration or intercourse, okay? Now, if you all open
9 up the door and make any type of insinuations concerning
10 any type of penetration then on redirect I'll let the
11 State go into that.

12 MS. PARNELL: Thank you, Your Honor.

13 THE COURT: I just want you to understand.

14 MS. PARNELL: Yes, Your Honor.

15 (PAUSE.)

16 MS. HERRING-LASH: Your honor, I did have the
17 opportunity to speak with her and tell her that just as
18 she did yesterday she is not allowed to talk about the
19 penis and she said --

20 THE COURT: I did tell the defense counsel that if
21 they opened the door and insinuated there was not any
22 penetration or anything such as that that I was going to
23 allow you to go into that on redirect, while you were out
24 of the room. I just wanted to tell you that since you
25 weren't in the room.

1 MS. HERRING-LASH: Thank you.

2 THE COURT: Anything else before we bring the jury?

3 MR. GRIMES: No, sir.

4 THE COURT: Bring us the jury, please.

5 (WHEREUPON, the jury enters the courtroom at
6 approximately 2:50 p.m.)

7 THE BAILIFF: The jury is present, Your Honor.

8 THE COURT: All right. Thank you very much.

9 If you'll call your next witness, please.

10 MR. GRIMES: Your Honor, I think we were still on
11 cross-examination.

12 THE COURT: I'm sorry. We were still on
13 cross-examination. Excuse me. Go ahead.
14 Cross-examination.

15 MR. GRIMES: Thank you, Your Honor.

16 BY MR. GRIMES:

17 Q. Ms. Jimenez, I believe before when we took a break
18 I was asking you a few questions about the U-Visa?

19 A. Yes.

20 Q. I want to ask you to step back a little bit. When
21 did you come to the United States?

22 A. In 2000.

23 Q. And when you came to United States you didn't have
24 a visa or any other proper paperwork that allowed you to
25 enter?

- 1 A. No, sir.
- 2 Q. And a U-Visa is the only document that will allow
3 you to stay in the United States legally, correct?
- 4 A. Correct.
- 5 Q. And if you don't have that you would be subject to
6 being deported?
- 7 A. Unless I get in jail for any infraction or any
8 crime, yes. But other than that, I don't have any
9 criminal record that will put me to jail and get
10 deported.
- 11 Q. Yeah. No one is saying that you do either. I'm
12 saying but without a U-Visa you'd be considered to be
13 here illegally, correct?
- 14 A. Correct.
- 15 Q. And I think like you said before you do love your
16 daughter?
- 17 A. I do.
- 18 Q. And you'd do anything for her?
- 19 A. Yes.
- 20 Q. And you believe what she told you?
- 21 A. Yes, I do.
- 22 MR. GRIMES: May I have one moment, Your Honor.
- 23 THE COURT: Yes, sir.
- 24 (PAUSE.)
- 25 BY MR. GRIMES:

1 Q. Thank you, Ms. Jimenez. I have no further
2 questions.

3 THE COURT: Do you have any redirect?

4 MS. HERRING-LASH: No, Your Honor. I have none.

5 THE COURT: You may step down. Thank you very
6 much.

7 Call your next witness, please.

8 MS. HERRING-LASH: The State would call Minor 2

9
10 Minor 2, after having been duly
11 sworn, testified as follows:

12 THE CLERK: Could you please state your full name,
13 say your full name and then spell your first and last
14 names.

15 THE WITNESS: Minor 2

16

17 DIRECT EXAMINATION

18 BY MS. HERRING-LASH:

19 Q. Minor 2, what is your date of birth?

20 A.

21 Q. And how old are you now?

22 A. Eleven -- ten, I meant.

23 Q. And what school do you go to?

24 A. North Charleston Elementary.

25 Q. And what grade are you in, Minor 2 ?

- 1 A. Fifth grade.
- 2 Q. Do you like school?
- 3 A. Yes, ma'am.
- 4 Q. And where do you live?
- 5 A. In Sumner Avenue.
- 6 Q. What avenue?
- 7 A. Sumner Avenue.
- 8 Q. Sumner?
- 9 A. Yes, ma'am.
- 10 Q. And who lives with you, Minor 2 ?
- 11 A. My mom, my daddy, my sister.
- 12 Q. How old is your sister?
- 13 A. Five years old.
- 14 Q. And do you go to a babysitter now, Minor 2 ?
- 15 A. No, ma'am.
- 16 Q. Did you used to go to a babysitter?
- 17 A. Yes, ma'am.
- 18 MS. HERRING-LASH: Your Honor, may I approach the
- 19 court reporter? I haven't had the opportunity to have
- 20 the marked.
- 21 THE COURT: Okay.
- 22 (WHEREUPON, State's Exhibit Numbers 12 through 14,
- 23 Photographs, were marked for identification only.)
- 24 MS. HERRING-LASH: May I approach the witness?
- 25 THE COURT: Yes, ma'am.

1 BY MS. HERRING-LASH:

2 Q. Minor 2, I'm going to show you some pictures to
3 look at. I'm showing you what has been marked as State's
4 Exhibit Number 12. Do you recognize that, Minor 2?

5 A. Yes, ma'am.

6 Q. And what is that?

7 A. The babysitter's house.

8 Q. And I want to show you what has been marked as
9 State's Exhibit Number 13. Do you recognize that,
10 Minor 2?

11 A. Yes, ma'am.

12 Q. And what is that?

13 A. That's, like, the living room.

14 Q. And I'm going to show you what has been marked as
15 State's Exhibit Number 14. Do you recognize that?

16 A. Yes, ma'am.

17 Q. What is that?

18 A. That's the room by the kitchen.

19 MS. HERRING-LASH: Your Honor, at this time the
20 State would offer into evidence 12, 13, and 14.

21 THE COURT: Any objection?

22 MS. PARNELL: No, Your Honor.

23 THE COURT: Number 12, 13, 14, admitted without
24 objection.

25 (WHEREUPON, State's Exhibit Numbers 12 through 14,

- 1 Photographs, were admitted into evidence.)
- 2 BY MS. HERRING-LASH:
- 3 Q. Minor 2, do you see a picture in front of you?
- 4 A. Yes, ma'am.
- 5 Q. And what is that?
- 6 A. The babysitter's house.
- 7 Q. And is that the babysitter that you went to?
- 8 A. Yes, ma'am.
- 9 Q. Do you know when you went there, Minor 2?
- 10 A. I think over the summer.
- 11 Q. And do you know who all lived with the babysitter
- 12 in their house?
- 13 A. The babysitter's husband, the babysitter, and two
- 14 other little girls.
- 15 Q. Do you remember the girls' names?
- 16 A. Minor 3, and I don't remember the other one.
- 17 Q. Was Minor 3 close to age with you?
- 18 A. I don't remember.
- 19 Q. You said the summer, Minor 2. Do you remember
- 20 which summer?
- 21 A. No, ma'am.
- 22 Q. When you went to the babysitter did the
- 23 babysitter's husband work sometimes?
- 24 A. Yes, ma'am.
- 25 Q. And was he home sometimes?

- 1 A. Yes, ma'am.
- 2 Q. Did the babysitter ever leave and go anywhere while
- 3 you were there?
- 4 A. Yes, ma'am.
- 5 Q. Where did she go?
- 6 A. Well, sometimes she went to pick up Minor 3, and
- 7 sometimes she went to pick up a cup of sugar.
- 8 Q. And did anything bad happen to you at the
- 9 babysitter's house?
- 10 A. Yes, ma'am.
- 11 Q. And what was that?
- 12 A. The babysitter's husband had touched me.
- 13 Q. And did you know his name?
- 14 A. No, ma'am.
- 15 Q. Do you know he was her husband?
- 16 A. Yes, ma'am.
- 17 Q. Did this happen in the house?
- 18 A. Yes, ma'am.
- 19 Q. And how many rooms were in the house; do you know?
- 20 A. Three rooms.
- 21 Q. Three bedrooms?
- 22 A. Yes, ma'am.
- 23 Q. What was one of the rooms where something happened
- 24 to you?
- 25 A. In the room by the kitchen.

- 1 Q. The room by the kitchen?
- 2 A. Yes, ma'am.
- 3 Q. Do you see that picture?
- 4 A. Yes, ma'am.
- 5 Q. And what is that?
- 6 A. That's the room by the kitchen.
- 7 Q. Can you make a mark on that room.
- 8 A. Uh-huh.
- 9 Q. Can you touch where that room is.
- 10 A. (Indicated).
- 11 Q. Whose room was that, *Minor 2*?
- 12 A. Another man's room.
- 13 Q. Do you know who that man was?
- 14 A. No, ma'am.
- 15 Q. Was that man the babysitter's husband?
- 16 A. No, ma'am.
- 17 Q. And how do you know that?
- 18 A. Because he wasn't barely there most of the time.
- 19 Q. Where in that room were you when something
- 20 happened?
- 21 A. On the bed.
- 22 Q. And where was the man?
- 23 A. On top of me.
- 24 Q. And what happened?
- 25 A. He --

- 1 Q. Did he touch you?
- 2 A. Yes, ma'am.
- 3 Q. Where did he touch you?
- 4 A. On my top privates and on my bottom privates.
- 5 Q. And did he touch you on your skin or on your
- 6 clothes?
- 7 A. On my skin.
- 8 Q. Did he say anything?
- 9 A. No, ma'am.
- 10 Q. Did you say anything to him?
- 11 A. No, ma'am.
- 12 Q. What did you do?
- 13 A. I cried in silence.
- 14 Q. After that what did you do?
- 15 A. My mom had picked me up.
- 16 Q. Did anything happen in another room?
- 17 A. Yes, ma'am.
- 18 Q. What room was that?
- 19 A. In the room -- in the living room.
- 20 Q. And what happened in the living room?
- 21 A. I was watching this TV show and I fell asleep and
- 22 the man came behind me and touched me.
- 23 Q. What TV show were you watching?
- 24 A. High School Musical.
- 25 Q. What was it?

- 1 A. High School Musical.
- 2 Q. And where did you fall asleep?
- 3 A. On the couch.
- 4 Q. Can you show us -- well, first of all, what is that
- 5 that you see?
- 6 A. The living room.
- 7 Q. And you said you were on the couch?
- 8 A. Yes, ma'am.
- 9 Q. Can you show us where the couch was?
- 10 A. (Indicated) right here.
- 11 Q. And you said you fell asleep on the couch?
- 12 A. Yes, ma'am.
- 13 Q. And then what happened?
- 14 A. The man came behind me and touched me.
- 15 Q. And where did he touch you?
- 16 A. On my top privates.
- 17 Q. Did he say anything to you, Minor 2
- 18 A. No, ma'am.
- 19 Q. Did you say anything?
- 20 A. No, ma'am.
- 21 Q. What did you do?
- 22 A. I got up and -- well, actually the man walked away
- 23 and I just got up and went outside.
- 24 Q. When this happened do you know where Minor 3 or her
- 25 sister, or the babysitter's wife were?

- 1 A. I don't remember.
- 2 Q. Were there any other children there that were being
- 3 babysat?
- 4 A. Yes, ma'am.
- 5 Q. Who was that?
- 6 A. Minor 1 and other little children.
- 7 Q. Another little what?
- 8 A. Minor 1 and other people.
- 9 Q. Were the other people -- what age were the other
- 10 people?
- 11 A. I don't really know, ma'am.
- 12 Q. Were they older or younger?
- 13 A. I think little.
- 14 Q. Little?
- 15 A. Yes, ma'am.
- 16 Q. Were they people that could walk or not walk?
- 17 A. People could walk.
- 18 Q. Do they go to school?
- 19 A. I don't know, ma'am.
- 20 Q. And who is Minor 1?
- 21 A. Minor 1 is another little girl. My mom used to work
- 22 with her mom.
- 23 Q. Do you know if she has another name?
- 24 A. No, ma'am.
- 25 Q. Did the first time when you were taking about when

- 1 you were in the another man's room, do you know where the
2 other people were at that time?
- 3 A. I don't remember, ma'am.
- 4 Q. When you got home from either of these did you tell
5 your mom?
- 6 A. No, ma'am.
- 7 Q. Why not?
- 8 A. I was too scared.
- 9 Q. What were you scared of?
- 10 A. My mom getting mad at me.
- 11 Q. What did you think would happen?
- 12 A. That the man will try to do something bad to me.
- 13 Q. Did anything else happen at the house?
- 14 A. In the wife's room he had accused me.
- 15 Q. In the what room?
- 16 A. In the wife's room.
- 17 Q. Do you know what her name was?
- 18 A. No, ma'am.
- 19 Q. Was she ~~Minor~~ 3's mother?
- 20 A. Yes, ma'am.
- 21 Q. Are you sure?
- 22 A. Yes, ma'am.
- 23 Q. What do you mean by accused you?
- 24 A. He had told me if I told somebody he'll do
25 something bad to me and if I talk to nobody he'll leave

- 1 me alone.
- 2 Q. What did you do after that?
- 3 A. Huh?
- 4 Q. What did you do after that?
- 5 A. Well, he got out of the room and left me there and
- 6 I got out of the room and we went outside.
- 7 Q. Mindy 2, did you ever tell your mom about what
- 8 happened?
- 9 A. Yes, ma'am.
- 10 Q. Do you know -- did you wait a long time to tell
- 11 her?
- 12 A. Yes, ma'am.
- 13 Q. Do you know how long?
- 14 A. About a year or so.
- 15 Q. And where were you when you told her?
- 16 A. At the store.
- 17 Q. At what store, do you know?
- 18 A. Doscher's.
- 19 Q. And what happened at Doscher's to make you tell
- 20 her?
- 21 A. I was really sad and nervous and I felt that I
- 22 couldn't keep it in no more.
- 23 Q. And when you told her who all was there?
- 24 A. My mom, my dad, and my sister.
- 25 MS. HERRING-LASH: Court's indulgence for one

1 moment.

2 THE COURT: Yes, ma'am.

3 (PAUSE.)

4 BY MS. HERRING-LASH:

5 Q. Minor 2, those are all the questions I have today.

6 Would you answer any that Ms. Parnell has.

7 THE COURT: Ms. Parnell?

8 MS. PARNELL: At this time, Your Honor, can we
9 renew our objections to the 404(b)?

10 THE COURT: Pardon?

11 MS. PARNELL: At this time, can we renew our
12 objections to 404(b) and 403?

13 THE COURT: Okay.

14 MS. PARNELL: And also ask that a limited
15 instruction be given.

16 THE COURT: Yes, ma'am. I'll give the instruction.

17 MS. MCCOY: Thank you, Your Honor.

18 THE COURT: After you finish your cross at the end
19 of the testimony.

20 CROSS-EXAMINATION

21 BY MS. PARNELL:

22 Q. Hi, Minor 2. Now, can you tell us how you know

23 Minor 1?

24 A. Her mom. I met her mom before and my mom used to
25 work with her mom.

- 1 Q. Okay. And do you know where this was that your mom
- 2 and her mom worked together?
- 3 A. A Mexican store.
- 4 Q. Okay. How long have you known Minor 1?
- 5 A. I don't know.
- 6 Q. And your mother and her mother are friends from the
- 7 store?
- 8 A. I don't know, ma'am.
- 9 Q. And do you know another little girl who's your age
- 10 named Minor 3?
- 11 A. Yes, ma'am.
- 12 Q. And her mother is Ms. Carmona?
- 13 A. I don't know.
- 14 Q. Did her mother babysit you?
- 15 A. Yes, ma'am.
- 16 Q. And she babysat you for a few months?
- 17 A. I couldn't hear you.
- 18 Q. She babysat you for a few months?
- 19 A. I think so.
- 20 Q. Okay. And she was babysitting you because your
- 21 mother was working, right?
- 22 A. Yes, ma'am.
- 23 Q. And you were about eight years old when she was
- 24 your babysitter?
- 25 A. I think.

- 1 Q. Now, these bad things that you said that Mr. Perez
2 did to you, they happened during the Summer of 2010?
- 3 A. I don't remember, ma'am.
- 4 Q. Did they happen more than a year ago?
- 5 A. I think so.
- 6 Q. And around that same time do you remember your
7 friend, Minor 1's parents going to the police?
- 8 A. I don't remember, ma'am.
- 9 Q. Do you remember hearing about Minor 1 saying that
10 Mr. Perez had done some bad things to her?
- 11 A. I don't get the question.
- 12 Q. Do you recall Minor 1 saying that Mr. Perez did some
13 bad things to her as well?
- 14 A. My mom had told me that something had happened to
15 Minor 1 but I don't know what happened to her.
- 16 Q. Did you ever find out what had happened to her?
- 17 A. Yes, ma'am.
- 18 Q. Okay. And did Minor 1 tell you what happened to her?
- 19 A. I don't remember.
- 20 Q. And what did you find out had happened to Minor 1?
- 21 A. Huh?
- 22 Q. What did you find out happened to Minor 1?
- 23 A. My mom had told me after a while.
- 24 Q. Okay. Did Minor 1 tell her parents that Mr. Perez
25 had done some bad things to her before you told your

- 1 parents in the grocery store?
- 2 A. Yes, ma'am.
- 3 Q. Okay. And when you told your parents in the
- 4 grocery store that would have been about the end of 2011?
- 5 A. I think so.
- 6 Q. And when Minor 1 told her parents that some bad
- 7 things had happened to her she didn't go to the
- 8 babysitter's house anymore, did she?
- 9 A. No, ma'am.
- 10 Q. But you and Minor 3 were still friends after that?
- 11 A. No, ma'am.
- 12 Q. You were not?
- 13 A. Uh-uh.
- 14 Q. Did you ever see Minor 3 after that?
- 15 A. Yes, ma'am.
- 16 Q. And do you remember ever going to a party at the
- 17 house where Minor 3 and the babysitter and family were
- 18 staying?
- 19 A. Yes, ma'am. Yes, ma'am.
- 20 Q. And do you remember ever driving by the
- 21 babysitter's house after Minor 3's father had been
- 22 arrested?
- 23 A. I don't get it. I don't get the question.
- 24 Q. Do you remember going with your family to the
- 25 babysitter's house and being in the car a couple weeks

- 1 after Minor 3's father, Mr. Perez, was arrested?
- 2 A. No, ma'am.
- 3 Q. You don't remember that?
- 4 A. No, ma'am.
- 5 Q. Do you remember ever saying anything to Minor 3 or
- 6 the babysitter, or their family --
- 7 A. Yes, ma'am.
- 8 Q. Okay.
- 9 A. All right.
- 10 Q. And you remember saying something about the things
- 11 that Minor 1 was saying had happened to her from Mr. Perez?
- 12 A. No, ma'am.
- 13 Q. You don't remember that?
- 14 A. No.
- 15 Q. Do you remember ever saying anything about Minor 1
- 16 making things up?
- 17 A. No, ma'am.
- 18 Q. Do you remember ever saying anything about Minor 1
- 19 being crazy?
- 20 A. No, ma'am.
- 21 Q. When Minor 1 did tell her parents that Mr. Perez had
- 22 done some bad things to her did you say anything about
- 23 anything that had happened to you at that time?
- 24 A. No, ma'am.
- 25 Q. Okay. And your parents probably asked you some

- 1 questions, right?
- 2 A. Yes, ma'am.
- 3 Q. And they were probably worried about if anything
- 4 had happened to you?
- 5 A. Yes, ma'am.
- 6 Q. And when your parents asked you questions then did
- 7 you tell them that Mr. Perez had done anything to you?
- 8 A. No, ma'am.
- 9 Q. And when you did say something in the grocery store
- 10 that would have been about a year after they asked you
- 11 those questions?
- 12 A. I think so.
- 13 Q. Now, if I refer to Ms. Herring-Lash, the solicitor
- 14 here, you know who I am referring to?
- 15 A. No, ma'am.
- 16 Q. I'll move out of the way here.
- 17 You know Ms. Herring-Lash here?
- 18 A. Yes, ma'am.
- 19 Q. Okay. And do you know Ms. McCoy who's sitting next
- 20 to her?
- 21 A. Yes, ma'am.
- 22 Q. And have you met with them before today?
- 23 A. No, ma'am.
- 24 Q. You never spoken with them before today?
- 25 A. Well, I did speak to Miss -- I forget her name.

- 1 Q. You spoke to one of the ladies here at the table?
- 2 A. Yes, ma'am.
- 3 Q. And they probably helped you prepare a little bit
- 4 for today, right?
- 5 A. Yes, ma'am.
- 6 Q. And did they help you as far as preparing you for
- 7 any questions that might be asked today?
- 8 A. No, ma'am.
- 9 Q. And did they talk to you a little bit about how you
- 10 should dress for court or how you should act in court?
- 11 A. No, ma'am. Before I came in here?
- 12 Q. Yes, ma'am.
- 13 A. Well, they didn't before I ever came here, like
- 14 three or five weeks ago. They had told me that I should
- 15 be like -- like, I shouldn't be so nervous.
- 16 Q. Uh-huh. And they probably told you you needed to
- 17 tell truth today?
- 18 A. Yes, ma'am.
- 19 Q. And they probably explained to you why that's so
- 20 important that you tell the truth here today?
- 21 A. Yes, ma'am.
- 22 MS. PARNELL: If I could have a moment, Your Honor?
- 23 THE COURT: Yes, ma'am.
- 24 BY MS. PARNELL:
- 25 Q. Minor 2, have you ever spoken to anyone other than

- 1 your parents about these things that you say Mr. Perez
2 did to you?
- 3 A. Yes, ma'am.
- 4 Q. And have you told them about some other traumatic
5 things that you've experienced in your life?
- 6 A. I don't get the question.
- 7 Q. Have you had some other traumatic things that have
8 happened in your life?
- 9 A. No, ma'am.
- 10 Q. Have you ever told anyone about seeing a body of a
11 man that was covered in blood?
- 12 A. Yes, ma'am.
- 13 Q. Did you see a body of a man that was covered in
14 blood somewhere?
- 15 A. Yes, ma'am.
- 16 Q. And was that person living or dead?
- 17 A. I don't remember, ma'am.
- 18 Q. And did you say that you thought there was an
19 explosion at the same time?
- 20 A. No, ma'am.
- 21 Q. And that was probably something that was pretty
22 traumatic to you?
- 23 A. Yes, ma'am.
- 24 Q. Did you ever talk to your parents about that?
- 25 A. No, ma'am.

1 Q. Did you ever talk to anyone at school about that?

2 A. No, ma'am.

3 MS. PARNELL: Your Honor, that's all the questions
4 that I have.

5 THE COURT: Thank you very much.

6 Any redirect?

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

8 REDIRECT-EXAMINATION

9 BY MS. HERRING-LASH:

10 Q. When your mom asked you if the babysitter's husband
11 had ever done anything to you, you said you told her no?

12 A. Yes, ma'am.

13 Q. Why did you tell her no?

14 A. I was so scared.

15 Q. And you changed your mind later?

16 A. Yes, ma'am.

17 Q. And why did you change your mind?

18 A. Because I felt that I couldn't keep it in and I
19 felt I couldn't keep not telling her.

20 MS. HERRING-LASH: Those are all the questions I
21 have.

22 THE COURT: Any recross?

23 MS. PARNELL: No recross, Your Honor. Thank you.

24 THE COURT: **Minor 2** you may step down. Thank you
25 very much.

1 All right. Mr. Foreman and ladies and gentlemen of
2 the jury, I want to charge you on the testimony you just
3 heard. You've heard evidence that the defendant has
4 committed a bad act not the subject of a conviction,
5 other than the one for which the defendant is now on
6 trial. This testimony, if you conclude it is true, can
7 only be considered by you on the question of common
8 scheme or plan and for no other reason and for no other
9 purpose. You may give this evidence the weight and
10 value, if any, which you find it should have on the sole
11 issue of common scheme or plan. You must not consider
12 this evidence -- you must not consider this testimony as
13 evidence of the commission of another bad act not the
14 subject of the conviction as proof of the defendant's
15 guilt of the charge we are trying today.

16 Call your next witness.

17 And for the record, your prior objection when we
18 started the testimony is overruled. Okay?

19 MS. HERRING-LASH: Just for the information of the
20 interpreter, this next witness is the witness that does
21 not speak English.

22 THE COURT: Okay.

23 MS. HERRING-LASH: Her name is Amanda Maldonado.

24 THE COURT: Do you want to come around?

25 INTERPRETER GAINER: Yes, sir.

1 THE COURT: And who's going to interpret to the
2 witness and who is going to interpret to the defendant.

3 INTERPRETER GAINER: Ms. Hernandez says she'll do
4 the witness stand.

5 INTERPRETER HERNANDEZ: I'll do the witness stand
6 and she'll do the simultaneous translations.

7 THE COURT: Okay. What's the witness's name?

8 MS. HERRING-LASH: Amanda Maldonado,
9 M-a-l-d-o-n-a-d-o.

10 AMANDA MALDONADO, after having been duly
11 sworn, testified as follows:

12 THE COURT: From the interpreter's standpoint,
13 where do you want to position yourself where the jury can
14 hear the interpretation?

15 INTERPRETER HERNANDEZ: I think I can stand right
16 here.

17 THE COURT: Do you want to stand there? Do you
18 want a --

19 INTERPRETER HERNANDEZ: A chair would be nice.

20 THE COURT: Do you want a chair?

21 INTERPRETER HERNANDEZ: Yeah. Thank you.

22 THE COURT: Do we have a microphone that she could
23 use?

24 THE CLERK: Yes, sir, we do.

25 THE COURT: Can you get her a microphone, please.

1 THE CLERK: If you'll get close to the microphone
2 and state your full name, and spell your first and last
3 name.

4 INTERPRETER HERNANDEZ: Amanda Maldonado,
5 A-m-a-n-a-d-a M-a-l-d-o-n-a-d-o.

6 THE COURT: All right, Solicitor. If you would
7 with each question give the interpreter time to respond
8 so the witness understands the question, okay?

9 MS. HERRING-LASH: Okay.

10 DIRECT EXAMINATION

11 BY MS. HERRING-LASH:

12 (Through the interpreter.)

13 Q. Ms. Maldonado, I'm going to call you Amanda, if
14 that is okay.

15 A. Yes.

16 Q. Where do you live?

17 A. In North Charleston.

18 Q. Who is in your family?

19 A. Minor 2, Minor 7 and Minor 9.

20 Q. Can you spell Minor 7?

21 A. Minor 7

22 Q. Are Minor 7 and Minor 2 your daughters?

23 A. Yes.

24 Q. How old is Minor 2?

25 A. She's about to be 11.

- 1 Q. How old is Mindy?
- 2 A. She's going to be six.
- 3 Q. Do you work now?
- 4 A. Yes.
- 5 Q. Where do you work?
- 6 A. At home.
- 7 Q. And what do you do there?
- 8 A. I cut hair.
- 9 Q. Back in 2010 where did you work?
- 10 A. A Mexican store.
- 11 Q. And how long did you work there?
- 12 A. One year.
- 13 Q. What hours did you work?
- 14 A. From nine in the morning until eight at night.
- 15 Q. Did you work every day, or four days, or five days,
- 16 or six days?
- 17 A. I was off Tuesdays and Wednesdays.
- 18 Q. And did your husband work then?
- 19 A. Yes.
- 20 Q. And did your children go to a babysitter?
- 21 A. Yes.
- 22 Q. Who was the babysitter?
- 23 A. Angelica.
- 24 Q. And who lived in her home?
- 25 A. Angelica, her two daughters, and her husband.

- 1 Q. And did you know her husband?
- 2 A. Yes.
- 3 Q. Did you know his name?
- 4 A. No.
- 5 Q. How did you find out about Angelica?
- 6 A. From someone I worked with.
- 7 Q. And do you know when *Minor 2* began to go there?
- 8 A. Not exactly.
- 9 Q. When she went to the babysitter's did they live in
- 10 a house or a trailer?
- 11 A. First they lived in a trailer.
- 12 Q. And did they move to a house?
- 13 A. Yes.
- 14 Q. And did your little daughter go there, also?
- 15 A. To the trailer?
- 16 Q. To either.
- 17 A. Yes.
- 18 Q. And that was *Minor 7*?
- 19 A. I'm sorry. I didn't understand.
- 20 Q. Your daughter, *Minor 7*?
- 21 A. My daughter, : *Minor 7* ..
- 22 Q. And that's *Minor 2's* little sister?
- 23 A. Yes.
- 24 Q. Did they go there all summer?
- 25 A. Yes.

- 1 Q. Why did -- did they eventually stop going there?
- 2 A. Yes.
- 3 Q. Why did they stop going?
- 4 A. Because they had some bugs.
- 5 Q. What bugs?
- 6 A. It's some you get in your scalp like...
- 7 Q. Were there any other children besides Angelica's
- 8 children there?
- 9 A. Yes.
- 10 Q. Do you know any of their names?
- 11 A. No, I don't remember.
- 12 Q. Do you remember the approximate ages of the other
- 13 children?
- 14 A. Three, five, eight years old.
- 15 Q. Did you know one of the children before?
- 16 A. Yes.
- 17 Q. Was she the daughter of your co-worker?
- 18 A. Yes.
- 19 Q. When your children went there was Angelica's
- 20 husband ever there?
- 21 A. Yes.
- 22 Q. Did you see him?
- 23 A. Yes.
- 24 Q. Did you ever go into the house?
- 25 A. Yes.

- 1 Q. And did you see him in the home?
- 2 A. Yes.
- 3 Q. Was he sometimes at work?
- 4 A. I think so.
- 5 Q. Did you ever ask *Minor 2* anything about the
- 6 babysitter's husband?
- 7 A. I didn't understand the question.
- 8 Q. Did you find out that the babysitter's husband had
- 9 been arrested?
- 10 A. Yes.
- 11 Q. Did you ask *Minor 2* then about him?
- 12 A. Yes.
- 13 Q. Did she tell you anything about it?
- 14 A. No.
- 15 Q. Did *Minor 2* ever tell you that something had
- 16 happened to her?
- 17 A. No.
- 18 Q. Did she ever tell you that the babysitter's husband
- 19 had done anything to her?
- 20 A. Yes.
- 21 Q. Where were you when she told you?
- 22 A. In the store called Doscher's.
- 23 Q. Do you know when this was, Amanda?
- 24 A. I don't remember.
- 25 Q. Had you noticed any changes in *Minor 2* before she

- 1 told you?
- 2 A. Yes.
- 3 Q. What?
- 4 A. She would get angry easily.
- 5 Q. How did she act when she told you?
- 6 A. She was crying.
- 7 Q. Did you all go home after that?
- 8 A. Yes.
- 9 Q. What did you do when you got home?
- 10 A. We were asking her about it but she was just
- 11 crying.
- 12 Q. What was your reaction?
- 13 A. I was crying.
- 14 Q. Did *Minor 2* want to talk to you about it?
- 15 A. No.
- 16 MS. HERRING-LASH: Court's indulgence for one
- 17 minute?
- 18 THE COURT: Yes, ma'am.
- 19 (PAUSE.)
- 20 BY MS. HERRING-LASH:
- 21 (Through the interpreter.)
- 22 Q. Those are all the questions I have. Answer any
- 23 Ms. Parnell has.
- 24 THE COURT: Any cross?
- 25 MS. PARNELL: Yes, Your Honor.

1 CROSS-EXAMINATION

2 BY MS. PARNELL:

3 (Through the interpreter.)

4 Q. Senorita Maldonado, you know ~~Minor~~^{Minor's} mother, and
5 that's from work?

6 INTERPRETER GAINER: Your Honor, the interpreter is
7 having trouble hearing counselor.

8 THE COURT: I'm sorry. What?

9 INTERPRETER GAINER: The interpreter is having
10 trouble hearing the counselor's questions.

11 THE COURT: Okay. Speak up, please.

12 INTERPRETER GAINER: Thank you, Your Honor.

13 BY MS. PARNELL:

14 (Through the interpreter.)

15 Q. Do you know ~~Minor~~^{Minor's} mother from work?

16 A. Yes.

17 Q. And where is that work?

18 A. In the store called the Rincon Latino.

19 Q. What are your usual work hours there?

20 A. Me?

21 Q. Yes.

22 A. From nine in the morning until eight at night.

23 THE COURT: Hold on just a second. Can you hear
24 okay?

25 INTERPRETER GAINER: Yes, sir. Thank you.

1 THE COURT: She's talking loud enough?

2 INTERPRETER GAINER: Thank you, Your Honor.

3 THE COURT: Speak up, please.

4 BY MS. PARNELL:

5 (Through the interpreter.)

6 Q. About how long do you think that you worked there
7 with Minor's mother?

8 A. One year.

9 Q. And about how often during the week would you see
10 her?

11 A. We hardly saw each other because she would work in
12 the store and I would be cutting hair in another area.

13 Q. Do you remember approximately when her daughter,
14 Minor said that Mr. Perez had done bad things to her?

15 A. I didn't find out from her mother.

16 Q. Did you ever speak to her mother about that?

17 A. No.

18 Q. Did you ever try to call and speak with her about
19 that?

20 A. No.

21 Q. So you never left a message for her asking for her
22 to call you back to speak about that?

23 A. Yes.

24 Q. So you did try to speak with her about it?

25 A. Much later, after a year.

1 Q. Do you remember driving to the babysitter's house
2 after the babysitter's husband was arrested?

3 A. Can you repeat the question?

4 Q. Yes, ma'am. Do you remember ever driving to the
5 babysitter's house to speak with the family after the
6 babysitter's husband was arrested?

7 A. I don't really remember.

8 Q. Did you ever go to check on the babysitter's
9 family?

10 A. No.

11 Q. Not to check and see how they were doing after he
12 was arrested?

13 A. No.

14 Q. When your daughter did report this in the grocery
15 store to you was this approximately a little more than a
16 year after she says that these bad things happened?

17 A. Yes.

18 MS. PARNELL: One moment, Your Honor.

19 THE COURT: Yes, ma'am.

20 (PAUSE.)

21 BY MS. PARNELL:

22 (Through the interpreter.)

23 Q. Ma'am, do you have legal status to be in this
24 Country?

25 A. No.

1 THE COURT: Let me see the attorneys up here just a
2 second:

3 (WHEREUPON, the following sidebar was reported.)

4 THE COURT: I let you go into the visa and the
5 legal status because she was the mother of the victim.
6 I'm not going there with this witness. That has nothing
7 to do with this case. I don't think it has anything to
8 do with bias or anything and we're not going there, okay?
9 I allowed you to do it with the other witness but there's
10 no reason. I'm not going there with this witness, okay?

11 (WHEREUPON, the sidebar was concluded.)

12 THE COURT: Please disregard that statement about
13 whether she's legal or illegal in this Country.

14 Please proceed, Solicitor. I'm sorry.

15 Ms. Parnell. Excuse me.

16 MS. PARNELL: I have no further questions. Thank
17 you very much.

18 THE COURT: Now, at the appropriate time if you
19 want to proffer some evidence I'll allow you to do it.

20 MS. PARNELL: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. HERRING-LASH:

23 Q. Amanda, just to go back over one point. You made a
24 call and left a message for ~~Minor~~ ^{Minor's} mother?

25 A. Yes.

1 Q. And was that after you found out what Minor 2 told
2 you?

3 A. Yes.

4 MS. HERRING-LASH: That's all questions I have.

5 THE COURT: Any recross?

6 MS. PARNELL: No, Your Honor.

7 THE COURT: All right. Let me see the attorneys up
8 here just a second, please.

9 (WHEREUPON, the following sidebar was reported.)

10 THE COURT: If you want to proffer testimony I'll
11 give you an opportunity to do it right now. Do you want
12 to do that?

13 MR. GRIMES: Yes, sir.

14 (WHEREUPON, the sidebar was concluded.)

15 THE COURT: Mr. Foreman, ladies and gentlemen of
16 the jury, I'm going to have to listen to some testimony
17 out of your presence and make some decisions on some
18 testimony, whether it's admissible or not.

19 I'm not trying to hide anything from you but during
20 the course of the trial I'm not permitted to comment on
21 the facts, since that's your responsibility to determine
22 the facts in the case. But I have to make a
23 determination on what's admissible and what's not
24 admissible, and in an effort do that I may want to ask
25 some questions of the attorneys and make comments on the

1 facts. Since I can't do that in your presence I
2 generally ask you to leave the courtroom.

3 Leave your notepads in your chairs. Please don't
4 discuss the case amongst yourselves. I'll get you back
5 as soon as I can.

6 (WHEREUPON, the jury leaves the courtroom at
7 approximately 3:39 p.m.)

8 THE COURT: All right. Ms. Parnell, you want to
9 proffer some testimony from this witness about her status
10 in this Country? I'll give you an opportunity at this
11 time to do that.

12 MS. PARNELL: Yes, Your Honor. May I have just a
13 very brief moment?

14 THE COURT: Yes, ma'am.

15 MS. PARNELL: Thank you, Your Honor.

16 THE COURT: Do you want to take a break?

17 MS. PARNELL: Yes, Your Honor. If we could have
18 just a very brief break, Your Honor.

19 THE COURT: All right. We'll take about a five or
20 ten-minute break.

21 (WHEREUPON, a brief recess was taken.)

22 THE COURT: You all ready to proceed?

23 MS. PARNELL: Your Honor, I think we're just
24 missing Mr. Grimes. I think he ran to the restroom real
25 quick.

1 THE COURT: Missing who?

2 MS. PARNELL: Mr. Grimes.

3 THE COURT: Well, you're going to be asking the
4 questions.

5 MS. PARNELL: Correct, Your Honor.

6 THE COURT: Go ahead. Proffer what you want.

7 EXAMINATION

8 BY MS. PARNELL:

9 Q. Ms. Maldonado, you've already stated that you don't
10 have legal status to be in this Country?

11 A. No, I don't have.

12 Q. Does this mean that you are at risk for deportation
13 or removal?

14 A. Yes.

15 Q. And do you know what a U-Visa is?

16 A. Yes.

17 Q. And that's a visa that's given to certain victims
18 of crimes or family members?

19 A. I just heard about this recently. I didn't know
20 before about this kind of visa.

21 Q. Did someone with the solicitor's office put you in
22 touch with an attorney who was going to help speak to you
23 about this visa?

24 A. From the solicitor's office, no.

25 Q. But you were put in touch with someone that was

1 going to help you apply for one of these visas?

2 A. Yes.

3 Q. Was it maybe a victim advocate or helper that put
4 you in touch with that attorney?

5 A. No.

6 Q. Do you remember how you came across the name of
7 this attorney that is helping you?

8 A. Can you repeat the question?

9 Q. Yes, ma'am. Do you remember how you came across
10 the name of the attorney that is helping you apply for
11 this visa?

12 A. Yes.

13 Q. And how is that?

14 A. When we went for her to have her questioning and
15 exam they gave us several information sheets and that was
16 one of them.

17 Q. And have you applied then for this U-Visa?

18 A. Yeah, because they recommended that we do it.

19 Q. Have you applied for any other government benefits
20 like food stamps since you applied for this U-Visa?

21 A. No.

22 MS. PARNELL: Your Honor, that's all the questions
23 that I have. That's the only testimony I'd proffer on
24 this?

25 THE COURT: Okay. Mr. Grimes is back here if you

1 want to confer with him.

2 (PAUSE.)

3 MS. PARNELL: Your Honor, that's all the questions
4 I have.

5 THE COURT: Okay. For clarification of the record,
6 during the course of cross-examination the defense
7 counsel asked the question about whether or not the
8 witness was legally in the country or not, illegally in
9 the country, and the Court stopped that testimony based
10 upon Rule 403, Rule 611, State vs. Jennings, 474 S.E.2d
11 812, 1996.

12 I do not think it has anything to do with this
13 particular witness because there's been no testimony
14 about any charges against her daughter, and I don't think
15 it's -- even if it's relevant, it's marginally relevant
16 as to this particular witness. And I allowed you do it
17 with the mother, the victim who is charged in this case
18 but not with this witness.

19 Is that what transpired, Solicitor?

20 MS. HERRING-LASH: Yes, sir.

21 THE COURT: From the defense standpoint, is the
22 that what transpired?

23 MR. GRIMES: Yes, Your Honor.

24 THE COURT: And I gave you an opportunity to
25 proffer the testimony as you were going to offer that the

1 Court stopped you from getting into; is that correct?

2 MS. PARNELL: That's correct, Your Honor.

3 THE COURT: Is there anything else you would like
4 to proffer from this witness?

5 MR. GRIMES: No, sir.

6 THE COURT: Do you have any redirect?

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

8 THE COURT: So as far as this witness we don't have
9 any further testimony?

10 MS. HERRING-LASH: Not from me.

11 THE COURT: Okay. As soon as we get a bailiff, if
12 we can find one, see if the smokers are back. I don't
13 know if the smokers are back yet or not.

14 Bring them on in.

15 Does anybody else need a longer break than what we
16 had, Mr. Grimes?

17 MR. GRIMES: I'm always fine taking a break now.

18 THE COURT: Pardon?

19 MR. GRIMES: We can always take an overnight break,
20 if you want.

21 THE COURT: Well, we just took one. You need
22 another one before we continue?

23 MR. GRIMES: No, sir.

24 THE COURT: Okay. Solicitor?

25 MS. HERRING-LASH: No, Your Honor. I'm fine.

1 THE COURT: Okay. All right. Since the jury
2 smokers are still outside we'll take a break until they
3 get back.

4 (WHEREUPON, a brief recess was taken.)

5 THE COURT: Anything from the State before we bring
6 the jury?

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

8 THE COURT: Anything else from the defendant before
9 we bring the jury back?

10 MR. GRIMES: No, sir.

11 THE COURT: All right. Bring us the jury, please,
12 sir.

13 (WHEREUPON, the jury enters the courtroom at
14 approximately 4:00 p.m.)

15 THE BAILIFF: The jury is all present, Your Honor.

16 THE COURT: Thank you very much.

17 Does the State have any redirect?

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

19 THE COURT: Thank you very much. She may be
20 excused.

21 MS. HERRING-LASH: The State would call Don Elsey.

22 DONALD E. ELSEY, after having been duly
23 sworn, testified as follows:

24 THE CLERK: Please state your full name and spell
25 your last name for the record.

1 THE WITNESS: Donald Edward Elsey.

2 DIRECT EXAMINATION

3 BY MS. HERRING-LASH:

4 Q. Dr. Elsey, what is your educational background?

5 A. I have a bachelors in psychology and sociology. I
6 have a graduate degree in clinical counseling. I have a
7 doctorate in childhood development.

8 Q. And do you have any professional certifications?

9 A. I am a licensed professional counselor and a
10 licensed professional counselor supervisor in South
11 Carolina.

12 Q. What is your professional experience as far as
13 work?

14 A. I have worked in the area of mental health for
15 approximately 30 years. For the past 16 years I've
16 worked at the Dee Norton Lowcountry Children's Center as
17 a clinical director which means I supervise the clinical
18 staff as well as carry a clinical caseload.

19 Q. Do you have any specific training in the area of
20 child sexual abuse?

21 A. Yes. I've been trained through the American
22 Professional Society on the Abuse of Children in Forensic
23 Interviewing Technique. I've also been trained in the
24 Finding Words Protocol here in South Carolina.

25 Q. Have you had ongoing training over the last 16

1 years?

2 A. Yes, I have, as well as conducting training both
3 locally and nationally.

4 Q. And I think you mentioned you supervise other
5 professionals?

6 A. Yes, ma'am.

7 Q. Do you do peer supervision for professionals that
8 work outside of your center?

9 A. Yes. As a licensed professional counselor
10 supervisor I supervise other people who are trying to get
11 their license in that, as well as I'm involved in a
12 national peer review of forensic interviewing we do once
13 a month.

14 INTERPRETER GAINER: Your Honor, the interpreter
15 cannot follow.

16 THE COURT: You want him to slow down?

17 INTERPRETER GAINER: Yes, sir.

18 THE COURT: Can you slow down a little bit. She's
19 interpreting.

20 THE WITNESS: Yes, ma'am. I'm sorry.

21 THE COURT: And slow down a little bit so she can
22 get the interpretation to the defendant.

23 THE WITNESS: Yes, sir.

24 THE COURT: Okay. If you would.

25 INTERPRETER GAINER: Thank you, Your Honor.

1 BY MS. HERRING-LASH:

2 Q. Dr. Elsey, how many children do you estimate that
3 you have seen with concerns of abuse?

4 A. Approximately 5,000.

5 Q. And how many children have you seen in counseling
6 and/or supervision? The same number?

7 A. Well, when you count supervision and all the people
8 I've supervised that would be probably close to 20,000.

9 Q. And have you ever been qualified as an expert in
10 the area of the dynamics of child sexual abuse?

11 A. Yes, ma'am.

12 Q. And in what courts?

13 A. In general sessions court, in family court, in
14 civil court and in federal court.

15 Q. And do you know how many times?

16 A. About 125 times.

17 MS. HERRING-LASH: Your Honor, at this time the
18 State would offer Dr. Elsey as an expert in the area of
19 the dynamics of child sexual abuse.

20 THE COURT: Does the defense have any objection or
21 you want to ask him any questions about his
22 qualifications?

23 MR. GRIMES: Maybe a few questions about
24 qualifications.

25 THE COURT: Okay.

1 MR. GRIMES: Thank you, Your Honor.

2 EXAMINATION

3 BY MR. GRIMES:

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. I'm just a little confused. There's a lot of areas
7 of expertise involving child sex cases. What exactly is
8 dynamics of child sexual abuse?

9 A. The workings of it, what that exactly means, what
10 are some of the processes in child abuse, what are some
11 of the facts about it based on research about child
12 abuse.

13 Q. I mean, as opposed to why someone commits the crime
14 or how it's committed?

15 A. Well, as she said, there are a number of different
16 ways people -- I've been, for example, certified an
17 expert in forensic interviewing which is --

18 THE COURT: Slow down.

19 A. In treatment of child abuse, and I've also been
20 certified in talking about some of the causes or the
21 reasons for child abuse.

22 Q. When you said you've been certified 125 times, was
23 that in the dynamics of child sex abuse or can that be
24 broken down into, like, forensic interviewing, treatment?

25 A. Well, actually, the question was how many times

1 have I testified in court, and that was about 125 times.

2 Not all those times have been as an expert. I've been a
3 fact witness in some of those cases.

4 Q. Have you ever been qualified as an expert in the
5 dynamics child sex abuse?

6 A. Yes, sir.

7 Q. And have you ever been published in that area?

8 A. No, sir.

9 Q. And what are some of the leading journals in that
10 area?

11 A. Deleted journals?

12 Q. Yes, sir.

13 A. I'm not sure what you mean by deleted journals.

14 Q. The leading journals.

15 A. Oh, the leading. I'm sorry.

16 Q. I apologize.

17 A. The American Professional Society on the Abuse of
18 Children publishes a publication which we get at our
19 place and we review each month. The Child Maltreatment
20 is another journal. American Psychologists is another
21 journal. We just got that one today, for example. There
22 are a number of others. Those come to my head,
23 initially.

24 Q. Again, and maybe it's just swimming in my head,
25 when you said dynamics what exactly does that cover?

1 A. It covers, for example, when the child is being
2 abused. There's certain things that we may think are
3 supposed to happen but actually it's the opposite.

4 For example, a lot of people would think a child
5 would tell right away. Well, the research is pretty
6 clear kids do not tell right away. So that's a dynamic
7 of child abuse.

8 Q. Okay. I thought there might be a certain
9 subspecialty may come under forensic interviewing or
10 something.

11 MR. GRIMES: Thank you, Your Honor. I have no
12 further questions.

13 THE COURT: All right. Do you have any objection
14 to his qualifications?

15 MR. GRIMES: No, sir.

16 THE COURT: All right. The Court so finds. Please
17 proceed, Solicitor.

18 DIRECT EXAMINATION

19 BY MS. HERRING-LASH:

20 Q. Dr. Elsey, I would just ask you to be mindful of
21 the interpreter and to try to talk slower. You mentioned
22 this in Mr. Grimes questions; what is delay in reporting?

23 A. That is when there's a period of time between the
24 act happening and the child telling about it.

25 Q. Is this common among victims of child sexual abuse?

1 A. It is extremely common and that's based on my work
2 as well as the research.

3 Q. And why don't kids tell?

4 A. And, again, that's been researched, also. It's
5 embarrassing for children. This is a tough topic to talk
6 about. Also, the child quite often feels it's their
7 responsibility to stop it and they didn't so it's their
8 fault, and most kids don't want to get in trouble.

9 Another reason why kids delay is because they don't
10 understand what happened because in general sexual abuse
11 is a process. It doesn't go from, like, a rape
12 situation. It's a grooming process, and that means
13 preparing the child for more.

14 Other reasons, they may not feel like they will be
15 believed. They may actually have a lack of support in
16 their family or maybe a perception that they wouldn't be
17 believed, and then they may have been threatened. If you
18 tell, X will happen to you or X will happen to someone
19 you love, or something bad may happen to the person who
20 hurt them because in general people who hurt kids is
21 someone they know and even trust on some level.

22 Q. Does the fact that the child may know the person
23 have some influence on the delay in reporting?

24 A. It does. If the child knows that person they
25 generally have more access to that person. And so then

1 they see that person the next day and they may think that
2 person may follow through with the previous threats if
3 they were made. Also, again, there's some fairly new
4 research about the closer the child's relationship is to
5 that --

6 Q. Slow down.

7 A. -- offending person the less likely they are to
8 tell soon.

9 Q. And have you seen this delay in reporting in your
10 clinical experience?

11 A. Yes, ma'am.

12 Q. And do you actually have a group that really
13 demonstrates that?

14 A. I was asked about 10 years ago now to run a group
15 for adult men who were sexually abused as children, and I
16 always ask every new participant roughly how long was it
17 between something happening to you and you telling, and
18 in my group -- and I've had well over 150 people in my
19 group, and it's about 27 years. And these are grown men
20 who certainly have the ability to tell when they were
21 younger, but based on a lot of factors I've already
22 mentioned they did not choose to do that.

23 Q. What may or what are some of the things that may
24 prompt a child to tell?

25 A. They feel safe from that person. For example, they

1 may have moved away. They may have had a class at school
2 that explains what happened was not your fault, for
3 example. I think we tend to think of course this is not
4 a kid's fault but a child may not believe that at all or
5 certainly not been told that. So there's an educational
6 component to that.

7 Perhaps that child is older and they may realize
8 more than when they were younger about some of the
9 attributes of what happened. Perhaps that child has
10 heard that somebody else has come forward and talked
11 about it and they feel that well, gosh, I'm not the only
12 one this has happened to. So there's a number of
13 reasons.

14 Q. Can a child just being asked be a reason?

15 A. That can be that. That can be, yes.

16 Q. And how would that work?

17 A. Well, again, there have been children who have been
18 referred to us from, like, their physician and went in
19 there for a normal checkup and they were asked has anyone
20 ever touched you inappropriately and the child said yes,
21 totally unexpected, and from that they've -- they never
22 thought about it being anything that they should tell
23 anybody. They never understood what it was about. And
24 so in that respect it is.

25 Unfortunately, a lot of the times when kids are

1 asked they tend to say nothing happened initially and
2 there's reason for that, also.

3 Q. And what are some of those?

4 A. Well, some of the reasons I've already spoken
5 about. They may feel like it's their fault. They don't
6 understand. They may think if they tell that they'll get
7 in trouble or they'll be put in foster care, or all these
8 other conceptions that kids can have sometime.

9 Q. Is disclosure of the abuse an event or a process?

10 A. In my experience it's a process and that's also
11 based on the literature. And what I mean by that, often
12 times, as I just said, sometimes children will deny
13 initially. We've seen children, for example, at our
14 place who had medical evidence of abuse, which is pretty
15 rare but it's not zero, and when we've questioned them
16 they said nothing happened to me. And there's research
17 been based on that, also.

18 So if a child may tell -- might say nothing
19 initially, the child may say a little bit, maybe it
20 happened one time or somebody did something that made me
21 feel uncomfortable, and with them feeling safe they can
22 usually tell more, or if they need treatment which
23 teaches them some coping skills they may be able to tell
24 more then.

25 Q. What are some of the goals of treatment that

1 children of child sexual abuse, what are some of the
2 goals of the treatment?

3 A. The overarching goal is for that child to be okay,
4 and that's really important for us to talk to kids and
5 parents about this. A lot of people's perception is when
6 a child has been abused their life is ruined. That's not
7 true. There are ways for kids to get better.

8 The evidence-based treatments that work which we
9 certainly do at our center and other places involve
10 giving the child some education about abuse, the fact
11 that it wasn't their fault, the fact that because they
12 didn't stop it, that wasn't their fault.

13 And then the next is teaching the children some
14 methods to relax. For example, if your head hits the
15 pillow and these horrible images come to your head
16 there's some things you can do to help you relax, whether
17 it's breathing, whether it's some imagery.

18 The other is teaching kids how to properly address
19 their feelings. Some children are confused; am I scared,
20 am I mad, am I confused, and that again may sound simple
21 for us adults but for kids it can be a new concept.

22 And the last thing, to help children understand
23 what they can control and what they can't control, and
24 some of that is -- there's some other words for it, of
25 course, but basically that's what it is, so the children

1 can understand, yes, I may get mad when I think of this
2 but I will have some ways to control that.

3 Q. As part of that therapy do they do a trauma
4 narrative?

5 A. Yes. The initial things I just mentioned are all
6 teaching them coping skills. After they achieve the
7 goals of those skills the therapist works with this child
8 to go through the abuse that happened to them. They may
9 do it through a diary, they may do it through a book or a
10 poem, whatever the median best works for that child.

11 The end result is that that child has control of
12 the trauma versus the trauma having control of the child.
13 And the good news about this, this isn't just my opinion.
14 This has been validated time and time again with trauma
15 focus cognitive behavioral therapy.

16 Q. And is that trauma narrative a forensic type of
17 probing or therapeutic?

18 A. It's therapeutic.

19 Q. What would be the difference?

20 A. Forensic is -- in South Carolina a forensic
21 interview is taped at our center. It's to get details of
22 the actual trauma. In the trauma narrative it is not a
23 tape. It's a therapeutic process. For example, when the
24 child gives details about one of the events the therapist
25 would talk about --

1 Q. Show down.

2 A. The therapist would talk about how did that make
3 you feel and then what happened next after that. And the
4 importance of that, if that child begins to get anxious
5 or actually reliving that trauma again they can use some
6 of those techniques I mentioned early to help them calm
7 down so they can keep moving forward and again get
8 control of their trauma.

9 Q. During that process would the therapist be asking
10 the detailed-type questions like the positions and
11 exactly the type of touching that occurred?

12 A. It depends on the child. There may be some
13 children who are traumatized by the place it happened,
14 for example, and so there may be more detail gathered
15 about that because that's a source of the trauma. And
16 when you do that sometimes you may get more detail of the
17 disclosure, even more disclosure than happened in the
18 forensic interview.

19 Q. And are there different types of disclosures, also?

20 A. There are.

21 Q. And what are some of those?

22 A. For example, with young children disclosures can be
23 accidental. You know, a small child is maybe displaying
24 some sexualized behaviors and the parent asked what
25 happened, how did you learn that? And the child says,

1 Well, so and so did this to me. The was parent not
2 searching for that when they asked that question but that
3 was the disclosure.

4 As children get older the disclosure is more
5 purposeful, whether they are asked, whether they have
6 some education about it, whether they finally choose to
7 tell, and then sometimes disclosures can come out of
8 anger about a whole nother topic but it gives the child
9 the energy to tell, it helps release what they've been
10 holding up.

11 Q. Have you in your clinical work and also in the
12 literature, are you aware of children that continually go
13 back to a location where they are being assaulted?

14 A. Absolutely. I would have to say that's what we see
15 quite often. And again --

16 THE COURT: Hold on just a second. Slow down,
17 please. Okay? Okay. Please proceed.

18 A. Even the way you asked the question, do children go
19 back, children usually don't have a choice where they go.
20 They have to go to school, they have to go to the
21 dentist. And in these cases the family usually doesn't
22 know what's going on. So going to the relatives' house,
23 going to the neighbors' house, why not? Of course they
24 are going to take the child back. And the child gets put
25 in a situation, as we've already said, it's hard to talk

1 about it. And the child is put in a knowing dilemma. If
2 I say am I going to be in trouble? So I can't say so. I
3 have to go back because if I say I don't want to go back
4 is that going to make people question, raise suspicions
5 about it?

6 So the child, from what I've seen and what the
7 research says, just has to go along, and unfortunately
8 that can be going back to the same place where the abuse
9 happened.

10 Sometimes with younger children they may enjoy
11 going back there, that may be like Disneyland. Of
12 course, there's some bad part about that but they don't
13 necessarily understand that.

14 Q. And if a child has had discussions, like, from a
15 parent or another person in their life, you need to tell,
16 remember to tell, and they don't tell the first time,
17 will they get caught up in some kind of cycle where they
18 can't tell?

19 A. Yes. We've done an unfortunate job of talking to
20 children that you need to tell, you need to stop it, it's
21 stranger danger, and unfortunately that puts a lot of
22 pressure on the child. Of course we want our children to
23 tell. A better way to say is tell me and I'll take it
24 from there.

25 But what happens, a child is told by a very loving

1 parent to tell. As we all know they don't then they are
2 stuck in a, well, then I'm going to be in trouble because
3 I didn't tell and mommy or daddy told me to tell. So
4 it's another part of the dynamics of this, is that
5 children well meaning are told to tell and they don't,
6 and then they are stuck.

7 Q. If the child has gone to the location multiple
8 times and there have been multiple events how would that
9 impact their disclosure?

10 A. Well, with children, young children, it's certainly
11 less complicated with older but with young children those
12 occurrences are going to start blurring. For example,
13 with young children time frames are very difficult
14 anyway, with young children how many times something
15 happened. We don't even ask that at our center because
16 we know we may get a million times. So you have to have
17 some knowledge of the developmental issues with children
18 about that.

19 But when children are asked to single out these
20 events not only they may blur but also in their mind they
21 have not thought about this happened then, this happened
22 then. It's all one continuous thing so it's complicated
23 to talk about.

24 Q. Would that be also true for sequencing, like what
25 was first, what was second, what was third?

1 A. Yeah, especially with young children.

2 Q. And if a child is between -- let's say very bright
3 but still relatively young, seven, eight, nine, ten,
4 would they still have these -- some of these issues?

5 A. Yes. The other thing, we're not talking about the
6 number of times they went to the mall. We're talking
7 about trauma. And if it's happened more than one time
8 it's what we call complex trauma, which unfortunately
9 when kids are traumatized, one it's bad, but two, three,
10 four, five are multiplied of that bad. It is worse the
11 more times it happens and more difficult it is for
12 children.

13 Q. And does it become at some point different to
14 distinguish between the occurrences?

15 A. Yes, and the standard in forensic interviewing is
16 really to focus on maybe the first time they remember,
17 maybe the last time it happened. So even in the way you
18 do it by all the research you don't try to get every
19 detail because you're just not going to be able to most
20 of the time.

21 Q. And I think that you perhaps said something
22 important; you focus on the first time they remember as
23 opposed to the first time it occurred, and why is that?

24 A. Because as I mentioned earlier, often times when
25 someone chooses to sexually abuse a child it's a grooming

1 process to be preparing that child and it may be sitting
2 on the person's lap watching a movie. That doesn't sound
3 like a bad thing but it could be. It could start a
4 process and slowly could have gotten that child more and
5 more comfortable to some inappropriate situations.

6 So the first time they remember, which may be the
7 time that it hurt, for example, or may be the time that
8 they have to take their clothes all the way off, for them
9 it was when it started even though there may have been
10 some other times that things were going on
11 inappropriately.

12 Q. And that would kind of be something that would be
13 on an individual child's -- one child may have one thing
14 that seemed worse than another, another thing worse?

15 A. Absolutely.

16 Q. Now, at your center do you know if Minov I came
17 to be in your care?

18 A. She did.

19 Q. And was she interviewed by someone that you
20 supervised at the time?

21 A. Yes.

22 Q. And who is that?

23 A. Jessica Credeur.

24 Q. Does she work at your center any longer?

25 A. No, ma'am.

1 Q. Do you know where she works now?

2 A. The Medical University of South Carolina.

3 MS. HERRING-LASH: The Court's indulgence for one
4 moment?

5 THE COURT: Yes, ma'am.

6 (PAUSE.)

7 BY MS. HERRING-LASH:

8 Q. That's all the questions I have, Dr. Elsey. If you
9 would answer any Mr. Grimes has.

10 THE COURT: Cross-examination.

11 MR. GRIMES: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. GRIMES:

14 Q. Good afternoon, Dr. Elsey.

15 A. Good afternoon.

16 Q. Now, you said -- we can all agree that some
17 children don't report right away?

18 A. That's true. That's true.

19 Q. And some children do report right away?

20 A. A minority do. Yes, sir.

21 Q. And some children may take years to report?

22 A. Yes, sir.

23 Q. And some may take months to report?

24 A. Yes, sir.

25 Q. It all depends on the child, correct?

- 1 A. It depends on the child and some of the situations
2 with the child.
- 3 Q. And their environment?
- 4 A. Yes, sir.
- 5 Q. And for every child their environment could be a
6 little bit different than any other child?
- 7 A. Yes, sir.
- 8 Q. Now, you said Jessica Credeur is the one who
9 interviewed *Minor 1*?
- 10 A. Yes, sir.
- 11 Q. And you supervised her?
- 12 A. I did. Yes, sir.
- 13 Q. Did you supervise her during the actual interview?
- 14 A. Actually while she was doing the interview?
- 15 Q. Yes, sir.
- 16 A. I did not watch her interview live, no, sir.
- 17 Q. Have you reviewed the interview?
- 18 A. I did. Yes, sir.
- 19 Q. And have you reviewed the report she made? I think
20 it's called a CAFTA?
- 21 A. Yes, sir.
- 22 Q. And apart from the CAFTA and the interview have you
23 reviewed any other reports for *Minor 1*?
- 24 A. No, sir.
- 25 Q. Have you ever talked to *Minor 1*

- 1 A. No, sir.
- 2 Q. Ever talked to her mother?
- 3 A. No, sir.
- 4 Q. Her stepfather?
- 5 A. No, sir.
- 6 Q. Ever look into her environment?
- 7 A. Look into her environment?
- 8 Q. Yes, sir.
- 9 A. No, sir.
- 10 Q. Have you ever looked at the police report in this
- 11 case?
- 12 A. No, sir.
- 13 Q. Have you ever talked with Detective Lacher?
- 14 A. No, sir.
- 15 Q. Basically, it's my understanding that you were sort
- 16 of called as a witness to explain the dynamics of
- 17 general, I guess, child sex abuse and why children may
- 18 act as they do?
- 19 A. Yes, sir.
- 20 MR. GRIMES: May I have one moment, please?
- 21 THE COURT: Yes, sir.
- 22 MR. GRIMES: Thank you. I have no further
- 23 questions.
- 24 THE COURT: Any redirect?
- 25 MS. HERRING-LASH: Just one.

1 REDIRECT EXAMINATION

2 BY MS. HERRING-LASH:

3 Q. Dr. Elsey, what you were talking about today is
4 about children in general; is that correct?

5 A. Yes, ma'am.

6 MS. HERRING-LASH: That's all the questions I have.

7 THE COURT: Thank you. Any recross on that one
8 question?

9 MR. GRIMES: No, sir.

10 THE COURT: You may step down. Thank you so much.

11 THE WITNESS: I apologize for my speech.

12 THE COURT: No problem.

13 MS. HERRING-LASH: That State calls Minna Hosseini,
14 H-o-s-s-e-i-n-i.

15 THE COURT: Before we swear is this witness let me
16 ask the jury. One of the bailiffs said one of the jurors
17 possibly had to make some appointment tonight. Is that
18 correct?

19 (A juror shook their head.)

20 THE COURT: No, it's not correct? You've made
21 arrangements? Okay. Thank you very much.

22 Please proceed.

23 MINNA HOSSEINI, after having been duly
24 sworn, testified as follows:

25 THE CLERK: If you'll please state your full name

1 and then spell your last name for the record.

2 THE WITNESS: My name is Minna Hosseini,

3 H-o-s-s-e-i-n-i.

4 DIRECT EXAMINATION

5 BY MS. HERRING-LASH:

6 Q. Minna, where do you work?

7 A. For the City of North Charleston Police Department.

8 Q. And how long have you worked there?

9 A. Around three years.

10 Q. And what are your duties there?

11 A. I'm a victim advocate.

12 Q. And do you specialize in non English speaking
13 victims?

14 A. Yes. I'm the Hispanic victim advocate.

15 Q. Victim advocate. Did you assist Detective Lacher
16 in this case with *Minor 1*

17 A. I did.

18 Q. And how did you assist him?

19 A. I showed the photo lineup.

20 Q. Do you know when it was that you showed that
21 lineup?

22 A. It was the 15th of July 2010.

23 Q. Where were you when you did that?

24 A. I was in the old juvenile office.

25 Q. By old, you mean before you all moved to your new

- 1 or --
- 2 A. Well, previous -- now we are occupying that office
- 3 but it was the juvenile office.
- 4 Q. And who was present when you presented this lineup?
- 5 A. It was myself, Minorl's mother, and Minorl
- 6 Q. And at the time that you presented this lineup did
- 7 you know who the suspect was?
- 8 A. No, not at all.
- 9 Q. Were you given some pictures by the detective?
- 10 A. I was.
- 11 Q. Did you know which picture belonged to the suspect
- 12 in this case?
- 13 A. No, I didn't.
- 14 Q. And how did you go about doing the lineup?
- 15 A. Well, I took the photos and I gave it to Minorl and
- 16 she --
- 17 Q. Let me ask you first. Did you begin with a form?
- 18 A. Oh, yes. It's procedure.
- 19 MS. HERRING-LASH: May I approach the witness, Your
- 20 Honor?
- 21 THE COURT: Yes, ma'am.
- 22 BY MS. HERRING-LASH:
- 23 Q. Minna, I'm going to show you what has been marked
- 24 as State's Exhibit Number 10 for ID. Do you recognize
- 25 that form?

- 1 A. Yes, I do.
- 2 Q. How do you use that form when you do a lineup?
- 3 A. Well, we -- generally we go through it with the
4 victims. Since she was a juvenile I read it to her, and
5 then once you go individually the victim or witness has
6 to initial.
- 7 Q. Did she understand?
- 8 A. Yes, she did.
- 9 Q. Did she have any questions about any of the
10 sentences, that you remember?
- 11 A. Not that I remember.
- 12 Q. And after reading that to her what did you do?
- 13 A. I showed her the series of photos.
- 14 Q. And how did you show them?
- 15 A. She was flipping through them.
- 16 Q. Did you give her them?
- 17 A. I did.
- 18 Q. How many photos are there?
- 19 A. There are six.
- 20 Q. And you said her mom was in the room?
- 21 A. Yes.
- 22 Q. Did her mom do or say anything to suggest or
23 influence?
- 24 A. Absolutely not.
- 25 Q. And had she viewed any kind of physical lineup

- 1 before she went through this?
- 2 A. No.
- 3 Q. And did she select a photo?
- 4 A. She did.
- 5 Q. Do you know who, I mean the name of the person
- 6 whose photo she selected?
- 7 A. I don't know him by name.
- 8 Q. At the time, what photo did she select?
- 9 A. She selected number three.
- 10 Q. And how did she signify that?
- 11 A. Well, she said, This is the man that hurt me, and
- 12 she was instructed to circle the person that she
- 13 identified.
- 14 Q. And do you have those pictures that you used in
- 15 front of you at this time?
- 16 A. I do.
- 17 Q. Are they in the same condition that they were when
- 18 you showed them to *Minor 1*
- 19 A. They are.
- 20 MS. HERRING-LASH: Your Honor, at this time the
- 21 State would move in State's Exhibit Number 10 to include
- 22 the form --
- 23 THE COURT: Is that the lineup and the form?
- 24 MS. HERRING-LASH: Yes, Your Honor.
- 25 THE COURT: Any objection?

1 MR. GRIMES: No, sir.

2 THE COURT: All right. State's Number 10 admitted
3 without objection.

4 (WHEREUPON, State's Exhibit Number 10, a
5 Photographic lineup, was admitted into evidence.)

6 BY MS. HERRING-LASH:

7 Q. Minna, would you please publish that form, which
8 means read to the jury what it says.

9 A. The part where it's written?

10 Q. The part where you read her and she circled that
11 she understood.

12 A. Okay, she said --

13 Q. Each sentence, I guess.

14 A. The sentence. I am pretty sure it's him, number
15 three. He is the father of *Minor 3* and *Minor 4*. He was the
16 babysitter's husband. I am nine on a scale of ten, one
17 to ten, that it is him.

18 Q. What about the sentences before that that she
19 circled her initials?

20 A. Her initials. I am going to show you a series of
21 photographs of individuals or an array of six photos of
22 individuals. Circle the appropriate one. And she --

23 Q. And you read that to her?

24 A. Yes, ma'am.

25 Q. And Minna, the interpreter may need you to go a

1 little bit slower.

2 A. Okay. Moving on to the second one: These
3 photographs may or may not be the person who committed
4 the crime. It is just as important to clear innocent
5 people as it is to identify possible suspects. Whether
6 or not you identify somebody -- someone police will
7 continue to investigate.

8 Number three: After you are done I will not be
9 able to provide you with any feedback or comment on the
10 results of the process.

11 Number four: Do not discuss this identification
12 procedure or the results with other witnesses in this
13 case.

14 Number five: Focus on the event, the place, view,
15 lighting, your frame of mind, etcetera. Take as much
16 time as you need.

17 Number six: People may not appear exactly as they
18 did at the time of the event because features such as
19 clothing style, hair color, hairstyle, etcetera may
20 change, even in a short period of time.

21 This is last one, number seven: As you look at the
22 photographs tell me if you recognize the person in them.
23 If you do, please tell me how you know the person and in
24 your own words how sure you are of the identification.

25 Q. And then that is when she identified?

- 1 A. Yes.
- 2 Q. After that did you -- was that the completion of
- 3 your duties, or what did you do next?
- 4 A. After I showed her the photo lineup I went to get
- 5 Detective Lacher, and he came back in.
- 6 Q. Did this day end your duties with this family?
- 7 A. No. As a victim advocate we continue talking to
- 8 the victim because of explanations of court procedures,
- 9 other services that we provide, etcetera.
- 10 Q. In some families I guess you have to aid in
- 11 translation and whatnot?
- 12 A. Yes. I do that often.
- 13 Q. And with this family did you discuss a U-Visa with
- 14 them?
- 15 A. I did.
- 16 Q. And when did you bring that up to them?
- 17 A. Actually, further on into their case I brought it
- 18 up. It was January 21, 2011.
- 19 Q. And what was the day that you had first met them?
- 20 A. The day I first met them -- I'm sorry. That was
- 21 the referral date. The day I actually spoke to them
- 22 about it was the 24th of January. But the day I met them
- 23 was the 14th of July 2010.
- 24 Q. So it was several months?
- 25 A. Yes.

1 Q. Did you bring this up or did Minor's mom bring it
2 up?

3 A. I brought it up.

4 Q. And is this something that you commonly do?

5 A. I bring the U-Visa up, yes, I do, because it's
6 their right to know.

7 Q. And was she aware of this process before you
8 brought it up?

9 A. To my knowledge, she had no idea of the U-Visa.

10 Q. What was her reaction?

11 A. Well, she was very taken back. She was emotional,
12 she expressed multiple times that she didn't want to
13 benefit from what had happened to her child.

14 Q. Did you encourage her to go through this process?

15 A. I did.

16 Q. What is a U-Visa?

17 A. A U-Visa is an immigration relief that an
18 undocumented person can apply for if they are a victim of
19 a violent crime, and there are a number of crimes listed
20 that classify. Not all crimes can classify for this type
21 of visa.

22 Q. Is this a permanent visa or do you know that?

23 A. It's a temporary visa that you can apply for with
24 assistance of a prosecuting agency or police department.
25 It's not permanent but it has potential to get, I would

- 1 say in basic terms, get your foot in the door.
- 2 Q. Is the, I guess purpose, to make sure that the
- 3 victim may be around for court?
- 4 A. Yes.
- 5 Q. Did you actually have to help Ms. Jimenez go
- 6 through the process?
- 7 A. I did help her. I took her to her appointment.
- 8 She was very reluctant driving there, driving back.
- 9 Q. Is that unusual?
- 10 A. It is very unusual. It's my opinion that I
- 11 encountered so much reluctance because she just didn't
- 12 want -- she kept on saying, I don't want to benefit from
- 13 this, and I had to explain to her that she wasn't
- 14 benefitting, that we needed her to be present if her
- 15 child was going to be a part of the case.
- 16 MS. HERRING-LASH: Court's indulgence for one
- 17 moment.
- 18 THE COURT: Yes, ma'am.
- 19 BY MS. HERRING-LASH:
- 20 Q. Minna, those are all the questions I have. If you
- 21 would answer any that Mr. Grimes has.
- 22 THE COURT: Cross-examination.
- 23 MR. GRIMES: Thank you, Your Honor.
- 24 CROSS-EXAMINATION
- 25 BY MR. GRIMES:

- 1 Q. Good afternoon. I think you have a copy of your
2 report up there?
- 3 A. I'm sorry?
- 4 Q. I saw you referring to your notes. I think you
5 have a copy of your report?
- 6 A. Yeah, my case notes on our victim files. Yes.
- 7 Q. Yes, ma'am. And the purpose of the making case
8 notes is sort of keeping an accurate record of what
9 happened in the case?
- 10 A. Yes, sir.
- 11 Q. Because you never know how long a case may take to
12 come to trial, correct?
- 13 A. Yes. I don't know.
- 14 Q. And a case like this took almost two and a half
15 years to come to trial. Is that fair to say?
- 16 A. Yes, sir.
- 17 Q. So having your notes will give you an accurate
18 ability to testify here in the trial, correct?
- 19 A. Yes.
- 20 Q. I believe on January 6th it looks like Ms. Jimenez
21 came in and you stated in your notes that she was very
22 upset?
- 23 A. January 6th?
- 24 Q. 6th of 2011.
- 25 A. Okay. Yes, I had that in my notes.

- 1 Q. And you spoke to her about what she was going
2 through?
- 3 A. Yes, sir.
- 4 Q. And on January 21st she was referred to a Spanish
5 speaking agency or e-mailed Emily Guerrero to see if she
6 could be eligible to obtain a U-Visa?
- 7 A. Yes, sir.
- 8 Q. So that was about 15 days after she came in being
9 upset?
- 10 A. Yes.
- 11 Q. And in your notes, unless I missed it, I didn't see
12 anything in there about you saying her mom was very
13 reluctant to get a U-Visa?
- 14 A. Well, let me just say this one thing. Our VAM
15 system, which this is totally different and separate from
16 our case agents notes, it's our notes for our victim
17 advocate, there's four of us, so we don't have to
18 necessarily put every detail in our notes. It's just for
19 me to remember and for my supervisor to see that I am
20 actively working with a victim. I don't write everything
21 down, not every conversation.
- 22 Q. I understand that. I'm not writing everything down
23 either. But there's nothing in your notes about her
24 being very reluctant to obtain a U-Visa, is there?
- 25 A. Not that I can see.

1 Q. And I think you described U-Visa as a way for her
2 to get her foot in the door?

3 A. Well, for a person that would apply for a U-Visa,
4 what I was trying to say is that it's not automatic
5 you're getting your U. S. Passport. It's a step in the
6 right direction if that's what you are -- if you want to
7 get that one day. Not all U-Visas turn into permanent
8 residency. You can ask an attorney that does
9 immigration.

10 Q. But you said it's a way for her to get her foot in
11 the door, right?

12 A. No. I said for somebody in her situation that that
13 would some day possibly turn into permanent residency if
14 you were -- if that's what you were doing.

15 Q. Okay. And for her to get the U-Visa the
16 solicitor's office would have to say she was a necessary
17 witness in the case, correct?

18 A. Well, for her to get the U-Visa she would have to
19 submit several pieces of documentation to the Homeland
20 Security, she would have to have recommendation letters,
21 and yes, there is a certified signature that needs to be
22 obtained by either the arresting department or the
23 prosecution department.

24 Without that signature your paperwork can be
25 processed but it's not as likely that you'll get approval

1 by the Homeland Security, and that signature does not
2 guarantee that you would get your paperwork. The
3 ultimate decision is up to Homeland Security.

4 Q. Having the solicitor's signature on it helps,
5 correct?

6 A. It does help.

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

8 THE COURT: Yes, sir.

9 MR. GRIMES: Thank you, Your Honor. I have no
10 further questions.

11 THE COURT: Any redirect?

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

13 REDIRECT EXAMINATION

14 BY MS. HERRING-LASH:

15 Q. Minna, have you got a copy of your notes there that
16 Mr. Grimes was referring to?

17 A. I do.

18 Q. And I think it was on the 24th that you first
19 checked in with the information?

20 A. Yes, ma'am.

21 Q. Of January?

22 A. Yes, ma'am.

23 Q. And how long was it before she actually went to the
24 appointment?

25 A. Oh, our appointment was March 3, 2011.

1 Q. And Mr. Grimes asked you if you mentioned in there
2 about her reluctance, but do you mention in there about
3 her state?

4 A. I do.

5 Q. And what was that?

6 A. My notes specifically say, Went with Ms. Jimenez to
7 Ms. Guerrero's office and she was very emotional. Spoke
8 about what happened to her daughter. Ms. Guerrero gave
9 her a list of documentation that she needs to provide.

10 Q. And you mentioned that you did not write down every
11 note, every contact that you had?

12 A. Yes.

13 Q. Is there any doubt in your mind that when you are
14 talking about this person that was reluctant that you are
15 talking about Ms. Jimenez?

16 A. I don't have any doubt. I know what I remember.

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

19 THE COURT: Recross?

20 MR. GRIMES: No questions, Your Honor.

21 THE COURT: You may step down. Thank you very
22 much.

23 May I see the attorneys up here for a second.

24 (WHEREUPON, a bench conference was had.)

25 THE COURT: Call your next witness, please.

1 MS. MCCOY: Your Honor, the State calls Detective
2 Ron Lacher.

3 RON LACHER, after having been duly sworn,
4 testified as follows:

5 THE CLERK: Please state your full name and spell
6 your last name for the record.

7 THE WITNESS: It's Ron Lacher, L-a-c-h-e-r.

8 DIRECT EXAMINATION

9 BY MS. MCCOY:

10 Q. Officer Lacher, can you tell the jury where you
11 work.

12 A. City of North Charleston Police Department.

13 Q. And what do you do for North Charleston?

14 A. Currently I'm assigned to inquiry resource
15 position, basically investigative, work with any crimes
16 committed within an area. Kind of like act as a liaison.
17 Prior to that I worked for three years in a juvenile
18 investigations unit, and have a total of 12 years law
19 enforcement experience.

20 Q. Okay. And you said you've been with the North
21 Charleston Police for how long?

22 A. Been with North Charleston eight years. Prior to
23 that I had four years with another agency out of state.

24 Q. And what neighborhood are you a resource officer
25 for right now?

- 1 A. Currently I'm in Chicora-Cherokee.
- 2 Q. Did you receive any training or the academy to
- 3 assist you with your duties in North Charleston?
- 4 A. I do.
- 5 Q. Can you tell us about that.
- 6 A. Along my 12 years we have yearly training. I've
- 7 been through interview procedures, I have had a course in
- 8 advanced sexual assault.
- 9 Q. Okay. And did you have an opportunity to assist in
- 10 an investigation involving a young lady named Minor 1
- 11 in July of 2010?
- 12 A. I did.
- 13 Q. Okay. Were you assigned as the detective on that
- 14 case?
- 15 A. Correct.
- 16 Q. And can you tell the jury what you did to
- 17 investigate that case?
- 18 A. When I first got the case file for the sexual
- 19 assault I made sure that the victim was seen at the
- 20 Lowcountry Children's Center where a CAFTA was scheduled,
- 21 which is a Child Advocacy Forensic Trauma Assessment.
- 22 Q. A CAFTA. And again, can you say what that acronym
- 23 stands for again?
- 24 A. It's Child Advocacy Forensic Trauma Assessment.
- 25 Q. Okay. And can you just tell the jury what a CAFTA

1 is in layman's terms?

2 A. It's basically a forensic interview for the child.
3 Due to the victim's age we don't feel it's appropriate
4 nor are we supposed to interview the child. We tend to
5 ask leading questions. This is a non evasive environment
6 where they don't ask direct questions, kind of lead into
7 it. It's basically by trained professionals and that's
8 all they do is interview children. They are trained to
9 get the truth and the correct answers out of the
10 children.

11 MR. GRIMES: Objection, bolstering.

12 THE COURT: Pardon?

13 MR. GRIMES: Bolstering, talking about training to
14 get the truth.

15 THE COURT: Overrule. Go ahead.

16 BY MS. MCCOY:

17 Q. Detective Lacher, did you say you did review that
18 CAFTA report?

19 A. I did.

20 Q. Okay. And what did you do after you read that
21 report?

22 A. Once I reviewed the CAFTA and seen that the victim
23 had disclosure of sexual abuse, at the time did not know
24 the subject's name, I proceeded to go to the residence at
25 5601 Attaway Street, which is in the City of North

1 Charleston, County of Charleston, to see if I could make
2 contact with the residents and possibly get an
3 identification.

4 Q. Okay. You were trying to identify the suspect who
5 did this to the young lady; is that correct?

6 A. Correct.

7 Q. And how did you know what address to go to?

8 A. Sergeant Spears at the time had driven the victim
9 to -- there was two different locations, the first being
10 a trailer, the second one being a residence. She had
11 driven the victim earlier that morning to each location
12 to get a physical numeric address.

13 Q. And once you got there that day, did you knock on
14 door or what happened?

15 A. I did. I got there approximately 2:40 p.m. in the
16 afternoon. When I knocked on the door I was met by a
17 male subject who was later identified as Samuel Flores.

18 Due to the nature of these cases, how sensitive
19 they are, I had explained to Mr. Flores that I was there
20 checking for a possible wanted suspect and provided a
21 name of Pierre Grant, who was a person I've had numerous
22 dealings with over my years that used to frequent near
23 that address and across the street at the Attaway Towers.
24 I told him that I was there to check on Mr. Grant to see
25 if he was there.

1 He stated that that subject no longer lives there.
2 I then asked permission, Do you mind if I just come
3 inside and get everybody's identification so that I know
4 he no longer lives here?

5 I proceeded inside and made contact with a female,
6 Angelica Carmona; Mr. Samuel Flores, who answered the
7 door; the defendant, Venancio Diaz Perez; a **Minor 4**
8 and **Minor 3** which were the two young
9 children.

10 Q. Okay. So the four family members, then Mr. Samuel
11 Flores were present in the home when you arrived; is that
12 correct?

13 A. Correct.

14 Q. And was anybody with you, to accompany you on that
15 trip?

16 A. Sergeant Spears.

17 Q. Okay. Sergeant Spears went with you?

18 A. Correct.

19 Q. And again, you said that was 2:40 in the middle of
20 the afternoon?

21 A. 2:40 p.m.

22 Q. Okay. After you took the names and information of
23 everybody that was at that house what did you do next?

24 A. Once I got everybody's name the only individual
25 that had identification was the defendant. He provided a

1 North Carolina identification card. Once I received
2 everybody's information, I had left, I had contacted the
3 Charleston County Detention Center in an attempt to get a
4 photo lineup comprised based on his driver's license
5 picture.

6 Q. Okay. So he was the only one that had any kind of
7 identification on him at the time; is that right?

8 A. Correct.

9 Q. Okay. And why weren't both male suspects present
10 in the home that day included in the photo lineup?

11 A. The difference in age from the initial description
12 that was provided of the alleged actor was much older,
13 maybe early to mid 40's. There's a 15-year age
14 difference between the two individuals, Mr. Flores and
15 the defendant.

16 Q. Was Mr. Flores younger, older?

17 A. He was younger. I apologize. He was younger. He
18 would have only been 29 at the time, as opposed to the
19 defendant would have been 44.

20 Q. And I don't want to cut you off but how did you
21 know about how old of a person you were looking for? How
22 did you know that?

23 A. That was told to me prior to going there.

24 Q. By whom?

25 A. I believe it was the mother because I never

1 interviewed the child.

2 Q. Right.

3 A. And also when I had spoken to them at the
4 residence, you know, I naturally asked everyone how are
5 we related, and was identified as being Angelica's
6 husband, and based on the earlier incidents where the
7 victim was alleging the actor, the subject who hurt her
8 was the husband of Angelica.

9 Q. Okay. So you knew both age and relationship --

10 A. To Angelica.

11 Q. -- status to make that decision; is that right?

12 A. Correct.

13 Q. Okay. And what kind of identification did he have,
14 did you say?

15 A. It was a North Carolina driver's license.

16 Q. A North Carolina driver's license, and do you know
17 when that was issued or the photo in that ID was made?

18 A. That was issued in May, May 16th of 2000, so it was
19 10 years prior to.

20 Q. Okay. So was the photo of him used in the lineup
21 actually 10 years old then, at that point?

22 A. Correct.

23 Q. And who put together the group of individuals for
24 the photo lineup for you?

25 A. Lieutenant Palmer at the Charleston County

1 Detention Center.

2 Q. Is that the jail?

3 A. Correct, the jail.

4 Q. And do you know the defendant's date of birth?

5 A. I do. It's May 18, '66.

6 Q. Okay. And when was the victim shown the photo

7 lineup?

8 A. On July 15th, 2010.

9 Q. Okay. And who did you have show *Mindy* these

10 pictures?

11 A. Minna.

12 Q. And why is it that you got Minna to show her the

13 pictures?

14 A. She was an impartial party, had no knowledge of who

15 the defendant was. Being as she's our victim's advocate,

16 Spanish liaison she also assists with translation if

17 needed. The victim already had an encounter with her.

18 Q. Okay. And is that part of North Charleston's

19 policy, to have an impartial person conduct these photo

20 lineups?

21 A. It is, someone who has no knowledge or bearing as

22 to the case is supposed to -- is required to show the

23 lineup.

24 Q. Okay. And was a positive identification in fact

25 made that day by *Mindy*?

1 A. It was.

2 INTERPRETER GAINER: Your Honor, may the

3 interpreter ask for the counselor to speak up a little

4 bit and slower. I cannot hear her.

5 MS. MCCOY: I will do that.

6 THE COURT: All right.

7 BY MS. MCCOY:

8 Q. And who did she identify?

9 A. The defendant, Mr. Venancio Diaz Perez.

10 Q. Can you identify him today in court?

11 A. I can. He looks a lot different from when I had

12 seen him but it's the defendant right there (indicated).

13 Q. Okay. Can you say what color jacket he's wearing?

14 A. Looks like a dark blue, navy blue.

15 Q. Okay. And how sure was ~~Minor~~ that day of her

16 identification?

17 A. Nine out of 10.

18 Q. Nine out of 10?

19 A. A nine out of 10.

20 Q. Okay. After she made that identification what did

21 you do next?

22 A. Once the identification was made I proceeded to

23 draw up the warrants to have them signed by a judge, then

24 responded to the residence in an attempt to locate the

25 defendant.

1 Q. Okay. And you say you responded to the residence,
2 did anybody go with you to make that arrest?

3 A. Patrolman Glover and Patrolman Ivy responded with
4 me.

5 Q. Did you take anybody with you to help translate?

6 A. Not when he was first placed into custody.

7 Q. Okay. Okay. And what time did you all go to that
8 house in the middle of the day?

9 INTERPRETER GAINER: I'm sorry, Counselor. What
10 was the last part of the question?

11 Q. In the middle of the day. What time was it? I'm
12 asking the time.

13 A. That was at 12:45 p.m.

14 Q. Okay. And who was present in the home at that
15 point?

16 A. The defendant, his wife, and the two children.

17 Q. Okay. Did you refer the defendant's children for
18 interviews anywhere?

19 A. I did. Once Officer Ivy and Officer Glover had
20 escorted the defendant to the vehicle and left I had
21 Minna respond to the residence to assist me with
22 translation. My main concern at that point was to have
23 those children also referred to the children's center for
24 interview purposes just to make sure that no incidents
25 may have happened to them.

1 Q. And is that something you know to do through your
2 training in this field?

3 A. Correct.

4 MS. MCCOY: One moment, please, Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. MCCOY: That's all at this time. Thank you.

7 THE COURT: Cross-examination.

8 MR. GRIMES: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. GRIMES:

11 Q. How are you doing this afternoon, Detective Lacher?

12 A. Good. How are you, sir?

13 Q. Not too bad. I'm trying to avoid the flu, if I
14 can. Last time we saw each other was over at Regal
15 Cinemas?

16 A. It was.

17 Q. I think it was a stop off, was working there off
18 duty?

19 A. Correct.

20 Q. Seen any good movies lately or any recommendations?

21 A. No.

22 Q. Now, we've had, I guess, quite a few cases
23 together. Is that fair to say?

24 A. That's fair to say.

25 Q. I think we always sort of figure out -- come to

- 1 sort of good results on them. Sometimes we disagree on
2 them?
- 3 A. That's accurate.
- 4 Q. And I guess this is one of the cases that we
5 disagree at, correct?
- 6 A. I guess. Obviously, I am one side, you are on the
7 other side. I assume that's a disagreement.
- 8 Q. Now, I'm going to ask you a few questions about
9 your training, okay?
- 10 A. Okay.
- 11 Q. You said you went to the South Carolina Criminal
12 Justice Academy?
- 13 A. I did.
- 14 Q. And there they sort of teach you the basics on
15 being a police officer?
- 16 A. Correct.
- 17 Q. Maybe weapons training?
- 18 A. Uh-huh.
- 19 Q. Driving?
- 20 A. True.
- 21 Q. Writing reports?
- 22 A. Yes.
- 23 Q. Constitutional law issues and legal issues?
- 24 A. Yes.
- 25 Q. And how to investigate a case?

- 1 A. Yes.
- 2 Q. What kind of evidence is important?
- 3 A. Correct.
- 4 Q. What kind of evidence should be preserved?
- 5 A. Correct.
- 6 Q. And then after you graduate from the academy you
- 7 sort of, like, were assigned to a field training officer
- 8 in North Charleston?
- 9 A. I was.
- 10 Q. And then you learned more sort of hands on there
- 11 about how police work is done, correct?
- 12 A. Yes, sir.
- 13 Q. And then I guess you probably go for various other
- 14 classes, is that --
- 15 A. Yes.
- 16 Q. I know you said you took an advance sexual class?
- 17 A. Uh-huh.
- 18 Q. Interview class?
- 19 A. Correct.
- 20 Q. I used to get -- I don't know if it's Courtney
- 21 (phonetic) Street, legal updates on any case law that
- 22 came out?
- 23 A. Correct.
- 24 Q. Now, I want to ask you a few questions about
- 25 evidence, okay?

- 1 A. Yes, sir.
- 2 Q. For example, if you went to respond to a crime
3 scene and there was blood there you would want to
4 preserve that, correct?
- 5 A. Yes.
- 6 Q. To keep that from being contaminated in any way?
- 7 A. Yes.
- 8 Q. Possibly test for DNA or anything else, correct?
- 9 A. Yes, sir.
- 10 Q. And I guess you might compare that to a child's
11 memory, that's both can be kind of fragile, correct?
- 12 A. A child's memory and a crime scene?
- 13 Q. Well, you wouldn't want to contaminate a child's
14 memory, would you?
- 15 A. No.
- 16 Q. That's maybe one reason why children are referred
17 to LCC rather than being interviewed by regular patrol
18 officers?
- 19 A. Correct.
- 20 Q. Because it takes sort of a special set of skills to
21 interview a child properly?
- 22 A. Correct.
- 23 Q. That's one reason why you didn't talk to the child,
24 correct?
- 25 A. Correct.

- 1 Q. Because you're not as trained as the people at LCC?
- 2 A. Correct.
- 3 Q. And just like you're not a chemist at SLED who can
- 4 analyze blood you wouldn't conduct a DNA test on evidence
- 5 you find at a crime scene, would you?
- 6 A. No.
- 7 Q. And you wouldn't talk to a child to avoid
- 8 contamination, correct?
- 9 A. Correct.
- 10 Q. Now, before you swore out the warrant in this case
- 11 you have a little background information on what the
- 12 child was saying, correct?
- 13 A. Correct.
- 14 Q. And then the child was taken to LCC and interviewed
- 15 by Ms. Jessica Credeur?
- 16 A. She was taken to LCC originally, initially.
- 17 Q. Okay.
- 18 A. Then I received the information from LCC, which
- 19 that's what I base my warrant on, was her statement
- 20 there.
- 21 Q. Okay. And I want to ask you a few questions about
- 22 your warrant. And to get a warrant you need what they
- 23 call probable cause that a crime was committed and that
- 24 Mr. Perez committed a crime, correct?
- 25 A. Correct.

1 Q. And if you charge someone with criminal sexual
2 conduct you have to have probable cause that a sexual
3 battery was committed?

4 A. Correct.

5 Q. And in South Carolina law defines a sexual battery
6 as any type of penetration?

7 A. Correct.

8 Q. And in your warrant I don't believe you allege that
9 Mr. Perez committed any type of penetration?

10 A. I don't have the actual warrant in front of me. If
11 I recall, I believe it was his hand down the front of her
12 parents, underneath her underwear --

13 Q. If I showed you a copy of the warrant would that
14 refresh your memory?

15 A. Yes, sir.

16 MS. MCCOY: Objection, Your Honor.

17 THE COURT: What's your legal objection?

18 MS. MCCOY: We're here on the indictment not
19 warrant.

20 THE COURT: What's the relevancy of the warrant?
21 The warrant is presented, the arrest is made, the
22 solicitor presents the indictment to the grand jury, a
23 true bill is returned. We're here on the indictments.
24 If you want to talk to him about the indictments that's
25 fine but what's the relevancy of the warrant? That

1 doesn't have anything to do with this trial.

2 MR. GRIMES: It goes to -- for impeachment, Your
3 Honor.

4 THE COURT: Pardon?

5 MR. GRIMES: For impeachment to show there was no
6 actual penetration.

7 THE COURT: Well, then get to the point of
8 impeachment, okay, because the warrant doesn't have
9 anything to do with trial.

10 Ladies and gentlemen, for your information, the
11 process is a warrant is issued by the magistrate. That
12 warrant is -- someone's arrested. That warrant is sent
13 to the solicitor's office. The solicitor's office
14 presents the indictment to the grand jury. The grand
15 jury returns a true bill, and we are here today on two
16 true bills.

17 Now, this is not evidence of the defendant's
18 innocence or guilt. It's just merely the means by which
19 the defendant is brought before the Court for trial, but
20 it's not evidence nor is the warrant evidence.

21 Please proceed.

22 MR. GRIMES: Thank you, Your Honor.

23 BY MR. GRIMES:

24 Q. Now, on the indictment you were listed as a witness
25 before a grand jury, correct?

1 A. Correct.

2 Q. And when you testify for a grand jury you take an
3 oath the same as you take today, correct?

4 A. Correct.

5 Q. And before a grand jury you testified that there
6 was digital penetration by Mr. Perez upon Mindy is that
7 correct?

8 A. Correct.

9 Q. Now, in your warrant, you were under oath there,
10 correct?

11 A. Correct.

12 Q. And you swore to the magistrate judge grounds to
13 arrest Mr. Perez on criminal sexual conduct?

14 A. Correct.

15 Q. And in the warrant you never alleged there was
16 digital penetration by Mr. Perez, did you?

17 A. This is just a synopsis but it does say --

18 THE COURT: Mr. Foreman, ladies and gentlemen of
19 the jury, I'm going to ask you to go to the jury room.
20 Please leave your notepads in the chairs and don't
21 discuss the case among yourselves.

22 (WHEREUPON, the jury leaves the courtroom at
23 approximately 5:02 p.m.)

24 THE COURT: All right. Mr. Grimes, the objection
25 has been made about the relevancy of the warrant and you

1 told the Court that you were going to impeach this
2 witness. That's fine. I have no problem with you
3 impeaching the witness, but impeachment is where they
4 made a different statement at some point in time
5 different from what they made in court today. I haven't
6 heard this gentleman talk at all about digital
7 penetration. So what are we doing, other than playing
8 games?

9 MR. GRIMES: We are not playing games, Your Honor,
10 we're trying to get --

11 THE COURT: Well, that's where you're headed. You
12 are talking about what he did at the grand jury, what he
13 did at the warrant. That's not impeachment. Impeachment
14 is a statement he made that's different from what he
15 testified to under oath in court. Now, tell me where
16 this gentleman has talked about digital penetration today
17 in court. And tell me if I'm wrong. I want to give you
18 an opportunity to tell me what you're trying to do.

19 I know you're trying to say, well, his testimony at
20 the grand jury is different from what he put in the
21 warrant, but that's not impeachment. Impeachment is
22 based on his testimony today in court and some prior
23 inconsistent statement.

24 MR. GRIMES: I believe impeachment is broader than
25 that, Your Honor. I think any time he's under oath and

1 giving a statement about what happened in this case and I
2 can show that he's given a prior inconsistent statement
3 about what's happened in this case I'm allowed to bring
4 that out to the jury to show that there was not digital
5 penetration in this case.

6 THE COURT: Well, he hasn't alleged digital
7 penetration. This witness hasn't.

8 MR. GRIMES: Well, he alleged it in the warrant and
9 the indictment, Your Honor, and now I'm trying to show
10 what he alleged in the indictment and did not allege in
11 the warrant.

12 THE COURT: So what? I mean, so what?

13 MR. GRIMES: Well, it's a crucial fact of this
14 case.

15 THE COURT: I mean, the indictment is not his
16 statement.

17 MR. GRIMES: He swore under oath. He's a witness
18 on the indictment, Your Honor, and he testified to that.

19 THE COURT: So you think that you can take any
20 statement that anybody made anywhere and impeach them on
21 some statement outside the courtroom when they didn't
22 make it in the courtroom? Is that what you're telling
23 me?

24 MR. GRIMES: When it goes to the elements of the
25 charge against my client, yes, sir.

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

2 What's the State's position?

3 MS. MCCOY: Your Honor, it's irrelevant to his
4 testimony here today in court, and you are absolutely
5 right, he hasn't testified at all as to any penetration
6 or any specifics of the sexual assault at all on direct.
7 Apart from that --

8 THE COURT: You'll have to refresh my memory. Did
9 the child say there was digital penetration in her
10 testimony?

11 MS. MCCOY: Yes. Your Honor, yes, she did.

12 THE COURT: Pardon?

13 MS. MCCOY: Yes, Your Honor.

14 THE COURT: Okay. Do you agree with his
15 interpretation of impeachment?

16 MS. MCCOY: I don't. The State does not. I don't
17 think he can take --

18 THE COURT: I am going to stop today to give you an
19 opportunity to give me a case that tells the Court that
20 you can impeach on statements that happened outside the
21 courtroom and that's proper impeachment, okay?

22 MR. GRIMES: Thank you, Your Honor.

23 THE COURT: I'll give you tonight to do that. So
24 I'm going to give you an opportunity to show me that I'm
25 wrong, okay? But impeachment is when an individual makes

1 a statement on the witness stand and then you stand up
2 and say when you took this deposition, when you got this
3 warrant issued under oath you didn't say the same thing
4 you said today; is that correct? That's impeachment.

5 You are trying to say there's a difference between
6 what he said at the grand jury versus the warrant and
7 they are both different animals. All they had to do on
8 the warrant was digital -- excuse me, probable cause for
9 the CSC first with a minor, and digital penetration
10 didn't have anything do with that. All they had to do
11 was allege a sexual battery.

12 Then you're trying to say he went to the grand jury
13 and alleged digital penetration, and he acknowledges
14 that, but what's that got to do -- that's not necessarily
15 inconsistent. He didn't have to allege digital
16 penetration to get the warrant of CSC First with a minor.
17 He had to allege the age with sexual battery. Isn't that
18 correct or not?

19 MR. GRIMES: That's correct.

20 MS. MCCOY: Which he did, Your Honor, in the
21 warrant.

22 THE COURT: Pardon?

23 MS. MCCOY: He did. He did do that in the warrant.

24 THE COURT: Right. I understand.

25 MR. GRIMES: There is not sexual battery in the

1 warrant, Your Honor. There is no --

2 THE COURT: Well, let me see the warrant. Let me
3 see the warrant.

4 MR. GRIMES: The most it's fondling, and it's
5 clearly a lewd act.

6 MS. MCCOY: Right here it says the victim
7 disclosed --

8 THE COURT: The victim disclosed on one occasion
9 that the defendant bit her breast and left a bite mark.
10 The sexual assault took place. Okay.

11 MS. MCCOY: Before that, too. Sexual assault
12 happened multiple times.

13 THE COURT: Where is that?

14 MS. MCCOY: I think it was two sentences before you
15 just read it.

16 MR. GRIMES: Well, sexual assault would include a
17 lewd act.

18 THE COURT: The victim disclosed the sexual assault
19 happened multiple times. Go ahead and mark the warrant
20 as Court's Exhibit Number 2. I'll give you the evening
21 to find a case that says you can do what you're trying to
22 do.

23 MR. GRIMES: Thank you, Your Honor.

24 THE COURT: We'll adjourn until 9:30 in the
25 morning.

1 Will you bring the jury in, please.

2 Sir, don't talk with anybody about the case
3 overnight, okay?

4 THE WITNESS: Yes, sir.

5 (WHEREUPON, Court's Exhibit Number 2, a Copy of a
6 Warrant, was marked and made a part of the record.)

7 THE COURT: Yeah, bring them on in.

8 (WHEREUPON, the jury enters the courtroom at
9 approximately 5:10 p.m.)

10 THE BAILIFF: The jury is all present, Your Honor.

11 THE COURT: Thank you very much.

12 Mr. Foreman, ladies and gentlemen of the jury, if
13 you'll leave your notepads in the chairs. We're going to
14 stop for the evening. It's a little after five, so you
15 all can join the traffic herds out on 26 or elsewhere.

16 So please don't discuss the case among yourselves
17 or with anyone else. Please don't read anything in the
18 paper or watch anything on television, and don't do any
19 electronic research on the case. I want you to make a
20 decision on what you heard in the courtroom, same thing I
21 told you yesterday.

22 I'll see you in the morning at 9:30. Everybody get
23 their car working properly. See you in the morning at
24 9:30. Have a good evening.

25 (WHEREUPON, the jury leaves the courtroom at

1 approximately 5:12 p.m.)

2 THE COURT: All right. Mr. Grimes, I'm not trying
3 to fuss or complain, and if I'm wrong, I'm wrong. I'm
4 going to give you an opportunity to show me I'm wrong.
5 I'm going to give you overnight to do that, okay?

6 MR. GRIMES: Thank you, Your Honor.

7 THE COURT: And I'll be happy to listen to you. If
8 I'm wrong, I'm wrong, but I do want to give you that
9 opportunity, okay?

10 And, Ms. McCoy, if you have anything you would like
11 to add I'll be happy to hear from you also, okay?

12 MS. MCCOY: Thank you, Your Honor.

13 THE COURT: All right. Thank you all very much.
14 See you tomorrow morning at 9:30.

15 Do you want to come a little bit earlier to discuss
16 this issue before 9:30 since the jury is going to get
17 here at 9:30, about 9:15?

18 MS. MCCOY: Sure.

19 MR. GRIMES: That's fine.

20 THE COURT: That be okay?

21 MR. GRIMES: Yes, sir.

22 THE COURT: All right. We'll adjourn until 9:15 in
23 the morning. Thank you so much. See you all in the
24 morning. Thank you so much.

25 MR. GRIMES: Thank you, Your Honor.

1 (WHEREUPON, the trial of this case was recessed for
2 the day.)

3 Wednesday, January 16, 2013

4 THE COURT: All right. Mr. Grimes, I believe we
5 just got our last juror. They are sitting in there
6 waiting, and I'll give you the opportunity to address the
7 issue of impeachment.

8 Let me clarify something. I'm not saying you can't
9 ask questions on the warrant and what he has testified to
10 at the grand jury, if it's relevant. I'm not trying to
11 limit that. My problem was you were trying to insinuate
12 that that was different testimony than what he'd offered
13 in court and I don't think that's true impeachment, but
14 I'll be glad to hear you.

15 MR. GRIMES: Your Honor, I looked at Mr. Collins'
16 book last night and I think your understanding is
17 correct. I think my interpretation was a little bit
18 broader, and I think I can get to the same point I was
19 trying to get through a different way.

20 THE COURT: I mean, you can ask about the warrant
21 and the indictment but I don't think you can use those to
22 impeach him with what he testified to today.

23 MR. GRIMES: I agree with Your Honor.

24 THE COURT: Now, as far as getting information
25 about the warrant and the indictment, that's fine. I

1 don't have a problem with that.

2 MR. GRIMES: And I think after thinking about it
3 and looking at it --

4 THE COURT: Assuming it's a relevant question.

5 MR. GRIMES: Yes, sir. I think I can withdraw that
6 line of questioning about the impeachment.

7 THE COURT: I'm not trying to shut you down here.

8 MR. GRIMES: I know.

9 THE COURT: I gave you an opportunity overnight to
10 convince me otherwise.

11 MR. GRIMES: And I didn't see any cases on point
12 one way or another. Just reading Mr. Collins' book he
13 talked about some need to testify at trial before you can
14 impeach them or make an omission. Like, if he did
15 testify to something at trial then maybe I could impeach
16 him by admission but --

17 THE COURT: Right. I have no problem with that but
18 you were using two statements outside of the court for
19 impeachment.

20 MR. GRIMES: Yes, sir.

21 THE COURT: And that was the Court's objection.
22 That's misleading to the jury in the Court's opinion.

23 MR. GRIMES: Yes, sir. And I think I may have done
24 something similar in the past but may have probably just
25 been trial testimony or where people kind of -- their

1 stories evolving, which to me goes to credibility. I
2 think I can understand your ruling or your concerns and I
3 think I can accomplish what I want to accomplish in
4 asking questions in a different way.

5 THE COURT: I mean, that's fine. I mean, so we are
6 sort of on the same wavelength then?

7 MR. GRIMES: Yes, sir.

8 THE COURT: Okay. All right. Anything from
9 Solicitor McCoy?

10 MS. MCCOY: Your Honor, that's my understanding as
11 well, is that the prior inconsistent statements are
12 generally used to impeach somebody's present testimony
13 and since, as we discussed, he hasn't given any present
14 testimony as to assault at all -- in fact, he can't
15 because it would be hearsay, that that was not
16 appropriate, but I'll just make any objections I see fit
17 during the rest of his questioning.

18 THE COURT: Okay. All right.

19 MS. MCCOY: Thank you.

20 THE COURT: If you'll come around and have a seat,
21 please, sir.

22 (Detective Lacher resumed the witness stand.)

23 THE COURT: Anything else before we bring in the
24 jury?

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

1 THE COURT: Anything from the defense?

2 MR. GRIMES: No, Your Honor.

3 THE COURT: Okay. Bring us the jury, please.

4 (WHEREUPON, the jury enters the courtroom at
5 approximately 9:46 a.m.)

6 THE COURT: You may continue cross-examination, if
7 you would, please, sir.

8 MR. GRIMES: Thank you, Your Honor.

9 Morning.

10 CROSS-EXAMINATION

11 BY MR. GRIMES:

12 Q. Morning, Detective Lacher.

13 A. Morning.

14 Q. When we broke yesterday I was kind of asking you a
15 little bit about warrants and indictments. I'm going to
16 move on a little bit from that right now, okay?

17 A. Okay.

18 Q. I hope to ask a couple things that we can agree on.
19 You would agree that everyone when they are charged is
20 presumed innocent of the charge against them, correct?

21 A. Correct.

22 Q. And as a police officers part it's an important job
23 of yours to do a full investigation of the case?

24 A. Correct.

25 Q. And have a fair investigation of the case?

- 1 A. Correct.
- 2 Q. Having a full and fair investigation helps assure
- 3 that the guilty are convicted?
- 4 A. Correct.
- 5 Q. And that anyone who is innocent is set free?
- 6 A. Correct.
- 7 Q. Because an innocent person going to jail by itself
- 8 is bad enough, correct?
- 9 A. Yes.
- 10 Q. And also a guilty person to stay out?
- 11 A. Correct.
- 12 Q. And when you do a full and fair investigation you
- 13 would want to talk to all the witnesses you could in the
- 14 case?
- 15 A. Correct.
- 16 Q. Want to examine all -- any physical evidence you
- 17 could find?
- 18 A. Yes.
- 19 Q. Any -- not circumstantial evidence but forensic
- 20 evidence?
- 21 A. Correct.
- 22 Q. That could include anything from DNA to text
- 23 messages, cell phones?
- 24 A. Correct.
- 25 Q. Include doing search warrants of someone's house?

- 1 A. Yes, sir.
- 2 Q. And when you talk with witnesses you -- depending
- 3 on each witness, but usually like to get a statement from
- 4 the witness?
- 5 A. Yes.
- 6 Q. And make sure the witness when they are giving you
- 7 a statement they will give you a full and fair account of
- 8 what happened?
- 9 A. Yes.
- 10 Q. For example, if someone was in the hospital after a
- 11 gunshot wound you might wait a few days for them to
- 12 recover before getting a statement?
- 13 A. Correct.
- 14 Q. And in the cases of minors you may refer them to a
- 15 more professional interviewer to conduct them so the
- 16 interview is done properly, correct?
- 17 A. Yes.
- 18 Q. And then you also write reports of what you do in
- 19 your case, correct?
- 20 A. Correct.
- 21 Q. I mean, because documentation is very important?
- 22 A. Yes.
- 23 Q. For example, in this case it's taken almost two and
- 24 a half years for the case to come to court and obviously
- 25 you investigated a lot of cases in that time, haven't

- 1 you?
- 2 A. Yes, sir.
- 3 Q. And good documentation, you can have your memory
- 4 refreshed?
- 5 A. Correct.
- 6 Q. And make sure you're testifying accurately?
- 7 A. Yes, sir.
- 8 Q. Now, I want to ask you a little bit about the
- 9 arrest process. Initially, before you make an arrest,
- 10 you somehow get a call, maybe a 911 call or someone may
- 11 see something happening, like an officer may drive by and
- 12 see something, happening, or a citizen may come into the
- 13 police?
- 14 A. Yes.
- 15 Q. And then an officer is sent to investigate, maybe
- 16 the patrol officer, the detective, depending on the type
- 17 of call?
- 18 A. Correct.
- 19 Q. And during that investigation if the officer finds
- 20 there's probable cause that a crime is committed it may
- 21 go to the magistrate judge and get the warrant?
- 22 A. Yes.
- 23 Q. And probable cause is a much lower standard than
- 24 beyond a reasonable doubt, correct?
- 25 A. Correct.

1 Q. And to get a warrant you need evidence on every
2 element of the crime?

3 A. You would need probable cause to get a warrant.

4 Q. But if you, for example, get a warrant on a murder
5 case you would have to have a death. If someone survived
6 you couldn't get a murder warrant, could you?

7 A. No.

8 Q. Because there would be no evidence on the death
9 element?

10 INTERPRETER GAINER: Your Honor, sorry for the
11 interruption. May I ask the counselor to speak up a
12 little bit. It's hard to hear him back here.

13 THE COURT: Who needs to speak up, Mr. Grimes or --

14 INTERPRETER GAINER: Mr. Grimes. Mr. Grimes.

15 THE COURT: Mr. Grimes, speak up, please, sir.

16 MR. GRIMES: Thank you, Your Honor.

17 INTERPRETER GAINER: Sorry for the interruption,
18 Your Honor.

19 THE COURT: Okay.

20 BY MR. GRIMES:

21 Q. For example, murder, for someone to be convicted of
22 murder or be arrested there has to be -- someone has to
23 die?

24 A. Correct.

25 Q. And if no one has died you can't get an arrest

- 1 warrant for murder?
- 2 A. Correct.
- 3 Q. In a sexual conduct case there has to be a sexual
- 4 battery?
- 5 A. Correct.
- 6 Q. And the law defines sexual battery as any type of
- 7 penetration?
- 8 A. Correct.
- 9 Q. So if someone was to fondle someone's breast area
- 10 that would not be criminal sexual conduct?
- 11 A. Correct.
- 12 Q. That might be a lewd act?
- 13 A. Yes.
- 14 Q. Or assault and battery?
- 15 A. Correct.
- 16 Q. Or an aggravated assault?
- 17 A. Correct.
- 18 Q. Now, going -- you, I think, swore out the warrant
- 19 on July 15th of 2002 -- I mean, 2010?
- 20 A. Correct.
- 21 Q. And I think the call came in July 12, 2010?
- 22 A. Yes.
- 23 Q. And from July 12th to July 15th you never talked
- 24 with *Mindy* did you?
- 25 A. No.

- 1 Q. You referred her to Lowcountry Children's Center to
- 2 be interviewed there?
- 3 A. Correct.
- 4 Q. And they interviewed her, I believe, on July 12th?
- 5 A. Yes.
- 6 Q. And they made a videotape of that?
- 7 A. Correct.
- 8 Q. And Detective Hallwell was there?
- 9 A. I believe so.
- 10 Q. But you weren't there, were you?
- 11 A. No.
- 12 Q. Before you swore out the warrant did you watch the
- 13 video?
- 14 A. No. No.
- 15 Q. I'm sorry. You did not?
- 16 A. No.
- 17 Q. You talked to Detective Hallwell?
- 18 A. I did not.
- 19 Q. You talked to Ms. Jessica Credeur?
- 20 A. I did.
- 21 Q. And did Jessica Credeur tell you -- give you any
- 22 information that both ~~Minor~~ told her that Mr. Perez had
- 23 penetrated her --
- 24 A. In the CAFTA she had stated that he had touched her
- 25 vagina, breast and buttocks with his hands, and that when

1 he touched her vagina it was under her pants and under
2 her underwear, skin-on-skin.

3 Q. Did she tell you that she specifically asked Minor
4 if he had went inside her?

5 A. I don't recall.

6 Q. And have you watched the video since then?

7 A. No.

8 Q. In two and a half years you haven't watched the
9 video?

10 A. I haven't watched it recently. I don't have in my
11 notes that I watched it. I don't believe I watched hers.

12 Q. Okay. And after she was interviewed by Ms. Credeur
13 she was seen by Dr. Anne Abel at MUSC?

14 A. Correct.

15 Q. And that report was also done on July 12, 2010?

16 A. Correct.

17 Q. And in that report there's no indication of
18 penetration, was there?

19 A. No.

20 Q. And when you swore out a warrant you swore out a
21 warrant for criminal sexual conduct rather than a lewd
22 act, correct?

23 A. Correct.

24 Q. Because you believed there was penetration?

25 A. I believe it was inferred, you know --

1 Q. By touching?

2 A. By touching the vagina. I mean, anyone that's
3 going to stick their hand down the front of an eight year
4 old's pants, underwear, touch skin-on-skin, from my
5 experience the majority of the cases I've worked it's
6 inferred that you're going to penetrate the lips of the
7 vagina touching skin-on-skin.

8 Q. But you made an assumption?

9 A. I made an assumption that it's probably happened,
10 yes, based on my experience in the fact that he did touch
11 skin-on-skin, and a lot of times with these children they
12 don't necessarily come forward with the exact details
13 right away. It takes a few counseling sessions.

14 I've also had with my experience when these -- the
15 forensic interviewers are very good with the children
16 however they are more of a therapeutic aspect where they
17 are trying to help the child, also counsel them, whereas
18 if I was conducting the interview on an adult if the
19 adult had said to me the individual stuck his hand down
20 my pants underneath my underwear and touched skin
21 obviously my follow-up question directly would be, Did he
22 insert his fingers, and things like that.

23 Q. But you haven't seen the video, have you?

24 A. No.

25 Q. And you don't know if Ms. Credeur asked that

1 follow-up question, do you?

2 A. I don't.

3 Q. And if she did ask that follow-up question and

4 ~~Minor~~ said no, he never penetrated her, he never went

5 inside of her then your assumption would be wrong,

6 wouldn't it?

7 A. Not necessarily. Like I stated, with these kids

8 it's multiple incidents. Dr. Elsey even elaborated on

9 that, that they get confused. They are wrapping numerous

10 issues, numerous issues into what they have in their head

11 right there one day. Like I stated, with the hand in the

12 pants it's inferred that you are going to penetrate the

13 lips of the vagina if you're touching skin-on-skin.

14 Q. Now, so you never watched the video?

15 A. No. I said that twice.

16 Q. All right. And did you read Dr. Abel's report

17 before you swore out the warrant?

18 A. I don't believe I had access to her actual report.

19 I have read it. I didn't -- it usually takes a few days

20 for them to document everything and get the report

21 prepared.

22 Q. All right. Now, in doing your full and fair

23 investigation did you learn a potential witness of a food

24 salesman?

25 A. No.

- 1 Q. Never made any efforts to try to find a food
- 2 salesman who might have been a witness?
- 3 A. I had no knowledge of a food salesman.
- 4 Q. Did you ever talk with Ms. Carmona?
- 5 A. His wife?
- 6 Q. Yes, sir.
- 7 A. Briefly on that day.
- 8 Q. Did you take a statement from her?
- 9 A. I did not. She was clearly upset due to us coming
- 10 to the house and arresting her husband. When she was
- 11 informed as to why we were there and why we had to do
- 12 what we had to do and arrest him she was very denying,
- 13 obviously spoke highly of him that he would never do such
- 14 a thing. She was very denying on what we were saying as
- 15 alleged to have happened so, no, I did not take a
- 16 statement. She was there by herself, and her two
- 17 children were there. It wasn't a pleasant place to be.
- 18 Q. Obviously, the children were upset, too?
- 19 A. Clearly, yes.
- 20 Q. And they were crying?
- 21 A. I believe his oldest daughter was crying.
- 22 Q. Did you ever talk with his oldest daughter?
- 23 A. No. I referred her to the children's center, due
- 24 to her age.
- 25 Q. Now, you said Ms. Carmona was denying this

- 1 happened?
- 2 A. Correct.
- 3 Q. You take any steps to talk to her the day after or
- 4 a couple days after --
- 5 A. No --
- 6 Q. -- when she calmed down?
- 7 A. I did not, based on her demeanor that day. She
- 8 also had went to the store that the victim's mother
- 9 worked at, I believe it was the following day, created a
- 10 scene in a store to where the victim's mother actually
- 11 called the police to have the defendant's wife escorted
- 12 out of the store.
- 13 So based on, you know, the trauma of merely being
- 14 there and placing her husband under arrest, her being
- 15 very denying that he would do that and then to go to the
- 16 store and confront the victim's mother in a public place
- 17 and create a scene I didn't feel it would be best to try
- 18 to obtain a statement from her.
- 19 Q. Talking about creating a scene, she went to the
- 20 store?
- 21 A. Correct.
- 22 Q. You were concerned about her children, right?
- 23 A. Yes.
- 24 Q. And she may have been concerned about her children?
- 25 A. Possibly.

- 1 Q. And she's the babysitter and may have been
- 2 concerned about ~~Minor~~ 1
- 3 A. Possibly.
- 4 Q. And find out what happened?
- 5 A. Possibly.
- 6 Q. Now, we've talked about documentation in the case.
- 7 You prepared a report in this case?
- 8 A. I'm sorry. Did I what?
- 9 Q. You prepared a report in this case?
- 10 A. My notes.
- 11 Q. Is that about one page long?
- 12 A. Two.
- 13 Q. Which one is the second page? Do you have them up
- 14 there? Is it two pages?
- 15 A. Uh-huh.
- 16 Q. And Lieutenant Washburn did a little report?
- 17 A. Who?
- 18 Q. Lieutenant Washburn?
- 19 A. Yeah. I apologize. Sergeant Spears. She got
- 20 remarried. Yes.
- 21 Q. That was sort of the initial report?
- 22 A. Correct.
- 23 Q. And it was about maybe a page long?
- 24 A. Four with the supplement from the arrest but --
- 25 Q. But the narrative section is about maybe a page?

1 A. Roughly, yeah. I mean, it starts on the first page
2 and ends on the second.

3 Q. So we have about three pages or four pages of
4 reports?

5 A. Correct.

6 Q. And the videotaped statement of **Minor**

7 A. Correct.

8 Q. The last thing I want to ask you about is a full
9 and fair investigation. Did you ever try to talk to
10 Mr. Perez and get his side of what happened.

11 A. I did not.

12 MR. GRIMES: May I have one moment, Your Honor.

13 THE COURT: Yes, sir.

14 MR. GRIMES: Thank you, Your Honor. I have no
15 further questions.

16 THE COURT: Okay. Any redirect?

17 MS. MCCOY: Briefly, Your Honor.

18 THE COURT: Yes, ma'am.

19 MS. MCCOY: Thank you.

20 REDIRECT EXAMINATION

21 BY MS. MCCOY:

22 Q. Good morning, Detective.

23 A. Morning.

24 Q. Just a few follow-up questions on some things
25 Mr. Grimes asked you about in your investigation.

1 A. Yes, ma'am.

2 Q. When you receive the information about sexual
3 assaults -- you discussed the lips of somebody's vagina.
4 That is an internal organ; is that correct?

5 A. Correct.

6 Q. And you know that based on your sexual assault
7 training?

8 A. Correct.

9 Q. And experience in the field?

10 A. Yes.

11 Q. And were you aware of any evidence about a food
12 salesman entering a home at any point?

13 A. No.

14 Q. Okay. And then in fact as part of your
15 investigation you did in fact go back with Ms. Minna; is
16 that correct, to the home and ensure that the wife and
17 the children were referred to the Lowcountry Children's
18 Center for forensic interviews?

19 A. Correct.

20 MS. MCCOY: Okay. Thanks. That's all.

21 THE COURT: Okay. Any recross?

22 MR. GRIMES: No, sir.

23 THE COURT: Okay. You may step down. Thank you
24 very much.

25 Call your next witness, please.

1 MS. HERRING-LASH: The State would call Dr. Anne
2 Abel.

3 DR. ANNE ABEL, after having been duly sworn,
4 testified as follows:

5 THE CLERK: Doctor, if you will please state your
6 full name and then spell your last name for the record.

7 THE WITNESS: Yes. Dr. Anne Abel. The last name
8 is spelled A-b-e-l.

9 DIRECT EXAMINATION

10 BY MS. HERRING-LASH:

11 Q. Dr. Abel, where do you work?

12 A. Medical University of South Carolina.

13 Q. And what is your position there?

14 A. I'm an associate professor of pediatrics.

15 Q. And what is your educational background?

16 A. I went to medical school at Indiana, at
17 Indianapolis. I did my residency in Indiana and then I
18 finished it in Columbia, South Carolina in pediatrics,
19 three years. Then I did a fellowship in child and
20 adolescent psychiatry at Hall Institute in Columbia,
21 South Carolina, then I worked a number of years, and then
22 I did a fellowship in forensic pediatrics at Brown
23 University in Providence, Rhode Island.

24 Q. And what is forensic pediatrics?

25 A. That was the name of the fellowship. That is a

1 field that they had to choose the name for it. The name
2 for the field is child abuse pediatrics and it's a field
3 of -- a subspecialty of pediatrics. To do this you have
4 to be a board certified pediatrician. So then you do
5 extra training and it's the examination and management
6 when there's concern of possible abuse or neglect of
7 children or teenagers.

8 Q. Is that a relatively new area of expertise?

9 A. Yes, it is.

10 Q. And you actually went through a fellowship in that
11 area?

12 A. Yes. And then there's a sub board test and I took
13 it and I passed the test, so I'm board certificated as a
14 child abuse pediatrician.

15 Q. And have you testified as an expert in the area of
16 child abuse pediatrics?

17 A. Yes.

18 MS. HERRING-LASH: Your Honor, at this time I would
19 offer Dr. Abel as an expert in the area of child abuse
20 pediatrics.

21 THE COURT: Any objection? Any questions?

22 MR. GRIMES: No, sir. No objection.

23 THE COURT: Thank you very much.

24 BY MS. HERRING-LASH:

25 Q. Dr. Abel, did you see *Minor 1*

- 1 A. Yes, I did.
- 2 Q. And when did you see her?
- 3 A. In the Summer of 2010.
- 4 Q. And where did you see her?
- 5 A. At the Dee Norton Lowcountry Children's Center in
- 6 the medical suite in that facility.
- 7 Q. And I think you said that you work at the Medical
- 8 University. Do you have, like, an office there at the
- 9 Lowcountry Children's Center?
- 10 A. Yes. The division I work with has offices in --
- 11 one in Summerville, one at the Dee Norton, one at
- 12 Rutledge Tower, and we serve the hospitals. We are in
- 13 multiple locations.
- 14 Q. And what kind of exam did you perform on **Minor** I
- 15 mean, as opposed to chronic or acute, or if you use some
- 16 other terminology?
- 17 A. Well, **Minor** her exam was the kind we do when the
- 18 allegation of mistreatment is more than three days, it's
- 19 beyond three days since the time of the alleged event.
- 20 Q. And what is the difference in the exam that you
- 21 would do three days after an event as opposed to, say,
- 22 immediately?
- 23 A. Yes. If we are -- may I ask something?
- 24 Q. Uh-huh.
- 25 A. Are we referring to alleged sexual abuse, sexual

1 maltreatment?

2 Q. Yes.

3 A. All right. So in cases of alleged sexual
4 maltreatment of children and minors within three days we
5 follow a statewide protocol. It's called the acute
6 protocol, and that means it's within three days and we do
7 what they consider the rape kit. It's an evidence
8 collection kit with DNA collection as well as checking
9 for sexually transmitted diseases, as well as examining
10 the child and ordering the prophylactic antibiotic and
11 treatment. So that's what you do in three days -- within
12 three days.

13 After that, the examination is done in the -- the
14 physical part of the examination is the same but DNA is
15 not collected after the three days. If there is any
16 concern for sexually transmitted diseases we do still
17 test for that and treat if needed.

18 Q. And why do you not swab the body for trace evidence
19 to find DNA after three days?

20 A. Because DNA is on the surfaces or inside the
21 openings of the body but it naturally gets washed away
22 or, like, if it's inside the vagina there's normal
23 secretions that drain outward and so any DNA that's there
24 gets washed away. It doesn't last forever.

25 Q. I guess it's kind of common sense that if you bathe

1 what's on your skin is washed off?

2 A. That's right, but the body has its own way of
3 handling that, too. Like we swallow and things in our
4 mouth go into our stomach. In our vagina things drain
5 outward. In our anus things drain outward, and that's
6 normal.

7 Q. So on Mindy's exam you did just the physical exam
8 and no swab?

9 A. Correct.

10 Q. And did you take a history from her or had she
11 already been interviewed?

12 A. She had had an interview with the forensic
13 interviewer that day and I needed the content of that
14 information. I believe I talked to her very briefly
15 about physical symptoms she may have had and I referenced
16 the interview but I didn't go into detail because it had
17 just been done?

18 Q. Right, and that's kind of purposeful that you don't
19 re-interview the child right after?

20 A. Re-interviewing, going over the same material is
21 not good for the victim if it's done unnecessarily, and
22 we are a team and we work in the same building so we try
23 not to repeat unnecessarily.

24 Q. Do you recall if there was any medically pertinent
25 history that you got from her?

1 A. The important thing I got was that she told me that
2 there had been no blood from her private parts at the
3 time of the alleged event, and I can't remember her exact
4 words but I did document she said there was no blood.

5 Q. And did you do a physical exam of her, also?

6 A. Yes, I did.

7 Q. And what were the results of physical exam?

8 A. Well, she was nine years old at the time, and
9 seemed normal height and weight, and I went head to toe
10 and her physical examination was normal. In general
11 terms, you know, heart, lungs abdomen, skin, back,
12 everything, and then I did a genital exam looking
13 carefully at the external genitalia of her private parts
14 and looked at her anus and it all seemed to be quite
15 normal.

16 Q. And would a normal finding rule out a sexual
17 penetration?

18 A. No, it would not.

19 Q. Can you explain why to the jury.

20 A. There's much experience in my field and in
21 published literature on cases where there's proven
22 penetration due to videotape or other means and then the
23 medical exam is done and the child in the great majority
24 of the cases has a normal exam. So it's well documented
25 and it also is my experience, we have a very low

1 percentage of children that are examined due to sexual
2 abuse that have actual findings we can see with our eyes.

3 The exception would be if we saw them in the
4 emergency room immediately after a forceful penetration
5 we are more likely to see signs then. But that part of
6 the body heals very quickly, has a wonderful blood supply
7 and we usually don't see physical signs.

8 Q. And I think you mentioned this but the time frame
9 between assault and exam is very important in making --
10 in ruling in or out; is that true?

11 A. Yes. Yes. The time frame and also the type of
12 maltreatment. There are some types of sexual
13 maltreatment that don't include physical bodily injury
14 and yet they are illegal and emotionally harmful.

15 Q. Would most commonly, I know there's always
16 exemptions, but would a digital penetration, a finger be
17 expected to cause less damage than a larger object
18 penetrating?

19 A. Yes, and that's in the literature, also.

20 Q. Now, Dr. Abel, did you also do some lab work for

21 *Minor*

22 A. Yes. I just did a screening test for gonorrhea and
23 chlamydia using a urine specimen.

24 Q. And is that common?

25 A. Yes. It's common to do that, and it was negative.

1 There was no sign of those infections.

2 Q. And is that your only involvement with Minor?

3 A. Yes.

4 MS. HERRING-LASH: Court's indulgence for one
5 moment.

6 (PAUSE.)

7 BY MS. HERRING-LASH:

8 Q. Dr. Abel, those are all the questions I have. If
9 you would answer any that Mr. Grimes may have.

10 CROSS-EXAMINATION

11 BY MR. GRIMES:

12 Q. Morning, Dr. Abel.

13 A. Good morning.

14 Q. A normal physical exam is also consistent with no
15 abuse, correct?

16 A. Correct.

17 Q. And you prepared a report in this case?

18 A. Yes, I did.

19 Q. If I may show you what's been marked Defendant's
20 Exhibit 2. Is this a copy of your report?

21 A. Yes.

22 Q. And that was done, I think, around July 12, 2010?

23 A. Yes.

24 Q. In the normal course of your duties?

25 A. Yes.

1 MR. GRIMES: Your Honor, at this time I would move
2 to introduce Defendant's Exhibit Number 2 evidence.

3 MS. HERRING-LASH: Without objection, Your Honor.

4 THE COURT: All right. Defendant's 2 admitted
5 without objection.

6 (WHEREUPON, Defendant's Exhibit Number 2, a Report,
7 was admitted into evidence.)

8 MR. GRIMES: Your Honor, at this time I have no
9 further questions.

10 THE COURT: Okay, any redirect?

11 MS. HERRING-LASH: No, Your Honor. We just ask
12 that Dr. Abel be excused.

13 THE COURT: Doctor, thank you so very much. You
14 may be excused.

15 MS. HERRING-LASH: Jessica Credeur.

16 JESSICA CREDEUR, after having been duly
17 sworn, testified as follows:

18 THE CLERK: Please state your full name and spell
19 your last name for the record.

20 THE WITNESS: Jessica Lynn Credeur, C-r-e-d-e-u-r.

21 DIRECT EXAMINATION

22 BY MS. MS. HERRING-LASH:

23 Q. Jessica, what is your educational background?

24 A. I have my bachelor's degree in international trade
25 in Spanish and a master's degree in social work.

1 Q. And what is your job experience?

2 A. I started off working at the local child advocacy
3 center here in 2009. I worked there for two years and
4 then started a job at the local children's hospital in
5 2011, and I've been at the children's hospital since
6 then.

7 Q. What do you do at the children's hospital?

8 A. I'm a social worker in the pediatric endocrinology
9 clinic.

10 Q. And do you have any specialized professional
11 training?

12 A. I do.

13 Q. And what is that?

14 A. I went through the training for forensic interviews
15 in the State of South Carolina, the Cornerhouse RATAC
16 training. I'm licensed in the State of South Carolina
17 and then as part of my licensure I'm required to keep
18 continuing education.

19 Q. And have you done that?

20 A. I have.

21 Q. And you mentioned that you worked at the advocacy
22 center. What is that?

23 A. Child advocacy centers are child focused centers
24 that are set up to help children any time there's an
25 alleged allegation of abuse or neglect. It's a safe

1 place. It's a place that's therapeutic for children
2 where individuals who speak with children are trained to
3 understand the child's development and trained in a way
4 to question children in a way that's child focused and
5 objective.

6 Q. When you say child focused, is understanding the
7 developmental level of the child that you are questioning
8 extremely important in asking the questions?

9 A. Very much.

10 Q. And is one of those reasons because children are
11 often very concrete?

12 A. Yes.

13 Q. Can you explain to the jury what that means.

14 A. So an example might be if I were interviewing a two
15 or three year old I wouldn't ask them how many times
16 something happened because I know developmentally they
17 can't give me an accurate response. They might say a
18 million times or they might feel pressured to give me an
19 answer even though we know at that age they can't
20 quantify something like that.

21 Q. And even as they get older are you -- is it kind of
22 difficult to ask dates and number of events?

23 A. It is. It's difficult for adults. It's especially
24 difficult for children.

25 Q. And I guess if it has been ongoing is that even

1 more difficult?

2 A. Yes.

3 Q. Now, as far as -- what were your duties when you
4 were at the Lowcountry Children's Center?

5 A. I completed forensic interviews and I also did
6 family and individual treatment.

7 Q. And what do you mean by forensic interviews?

8 A. A forensic interview is a specific type of
9 interview used with children and adolescents that is
10 focused. We have a semi-structured protocol that we have
11 to use in South Carolina and it also is considered a fact
12 finding interview. It's not a treatment assessment.
13 It's a fact finding structured interview.

14 Q. And I guess there's an acronym, RATAC, for that
15 interview that you do. Explain to the jury what that is.

16 A. So RATAC is an acronym that we use when we are
17 talking about interviews. It's essentially the order of
18 the forensic interview. R stands for rapport. We start
19 off an interview with a child by talking about neutral
20 topics. Tell me about your family, do you go to school.
21 We also want to see if they developmentally can talk, are
22 they able to engage, can they answer age-appropriate
23 questions.

24 The A is for anatomy identification. We use
25 anatomical drawings with children to come up with a

1 common language for body parts. We use whatever language
2 children use. We don't teach them any names, we don't
3 teach them any anatomy. We want to use whatever terms
4 that children are familiar with.

5 With T stands for touch inquiry. This is where we
6 ask questions about potential touches, both positive and
7 negative.

8 The A is for abuse scenario, which is where if the
9 child does disclose something we ask them to go into more
10 detail about this.

11 And then C is for closure. We end the interview by
12 talking about safety with children, ensuring that they
13 know adults that they can talk to, and we also let them
14 ask questions at the end if they have questions for us.

15 Q. And have you also had specialized training in
16 trauma focused behavioral cognitive therapy?

17 A. I've have trained in child focused cognitive
18 behavioral therapy.

19 Q. And what is that?

20 A. We call that TFCBT, is the acronym --

21 THE COURT: Slow down just a little bit.

22 THE WITNESS: Okay.

23 THE COURT: Plus we have an interpreter back here
24 and we need to go a little bit slow for her because she
25 has to say everything you have to say before you say

1 something else.

2 THE WITNESS: Okay.

3 THE COURT: Thank you very much.

4 A. So we refer to it as trauma focused cognitive
5 behavioral therapy or TFCBT. This is a type of treatment
6 that we use with children who have been through some type
7 of trauma and it is a short-term evidence based type of
8 treatment that's used to teach children how to talk about
9 trauma, how to cope with trauma symptoms, and how to move
10 forward with their lives.

11 Q. And does it include, I guess you said the coping
12 skills?

13 A. Uh-huh.

14 Q. And is part of it also called exposure?

15 A. There is a gradual exposure component?

16 Q. And what is that?

17 A. Gradual exposure is when we allow children to talk
18 about the trauma in a therapeutic gradual process. We
19 don't ask children to divulge everything in one
20 appointment in treatment. We go through what has
21 happened to them at their own pace and we also are able
22 to take breaks and use some other relaxation skills that
23 we taught the children if they become very overwhelmed
24 when talking about the trauma.

25 Q. And as part of that exposure treatment, does that

1 include a trauma narrative?

2 A. It does.

3 Q. And what is that?

4 A. The trauma narrative is something that the child
5 creates as part of the culmination of treatment. We
6 allow the children to select the format of their
7 narrative. Some children have written songs, some
8 children do books, some children make posters. The child
9 elects how they want to tell their story.

10 They gradually throughout treatment sessions write
11 their story. Some kids speak and have the therapist be
12 the secretary and write it for them. Then at the end of
13 treatment they share the story with their caregiver.

14 Q. And in that narrative does the therapist do any
15 probing questions about that?

16 A. Typically it's not as probing as a forensic
17 interview, no.

18 Q. Is it more frequent recall?

19 A. It is, and it's more therapeutic. We are allowed
20 to take breaks and talk about emotions where we would not
21 do that in an interview format.

22 Q. Now, going back I guess to your work at the
23 Lowcountry Children's Center, did you see Minor I

24 A. I did.

25 Q. When did you see her?

1 A. July 2010.

2 Q. And did you see the mom first?

3 A. I did.

4 Q. And why was that?

5 A. We meet with all caregivers of children before we
6 meet with the child for a forensic interview. Caregivers
7 are usually the experts in their children. They are able
8 to tell us developmental history about their child, give
9 us some history as to why they might be at the child
10 advocacy center, and we also use this opportunity to
11 explain to the caregiver what we are going to do with
12 their child. Because we are going to be alone in a room
13 with their child we want them to feel comfortable and
14 know what types of questions we are going to ask their
15 child, why we are going to ask those questions and help
16 the parent feel a little bit more comfortable with the
17 process.

18 Q. And what was the purpose of your first visit with
19 Odaly Solis?

20 A. Her very first visit was solely a forensic
21 interview.

22 Q. And during the interview did you see her alone?

23 A. I did.

24 Q. And was your interview taped?

25 A. It was.

- 1 Q. And did you do follow up with Minor I
- 2 A. I did.
- 3 Q. And did that follow up include the trauma focused
- 4 cognitive behavioral therapy?
- 5 A. We did discuss that at the follow up.
- 6 Q. And did you then complete that therapy with her?
- 7 A. I did.
- 8 Q. And during that therapy did you tape the therapy?
- 9 A. No.
- 10 Q. And why not?
- 11 A. Therapy is very different from a forensic
- 12 interview. Again, we take pauses during therapy, we
- 13 allow children to become upset, to experience those
- 14 emotions because we want them to know that they won't
- 15 stay that anxious and we allow them to use some of
- 16 therapeutic tools that we teach them in therapy. It's
- 17 private and it's important to allow the child to be able
- 18 to feel those emotions in a safe place where they don't
- 19 feel like they are being recorded or taped.
- 20 Q. And are there different purposes to the forensic
- 21 interview and the therapy?
- 22 A. There are.
- 23 Q. And what are the differences?
- 24 A. An interview is a fact finding -- fact finding
- 25 formate. If a child becomes upset in an interview I

1 wouldn't suggest relaxation skills to them or teach them
2 different tools. I would just sit with them.

3 Therapy is for the child. It's child focused.
4 Children lead the sessions and we move at their own pace
5 to figure out what type of tools we need to put in place
6 to help them cope.

7 Q. And in your therapy with Minor I did you prepare or
8 did she and you together prepare a trauma narrative?

9 A. She did.

10 Q. And how did she elect to prepare hers?

11 A. She wanted to do a book and she asked that I be the
12 secretary. So we would sit at the computer together and
13 she would dictate and I would type. In trauma narratives
14 with children we don't correct them. If their grammar is
15 poor or if they have run-on sentences we would never stop
16 them and let them know that that's not okay. So trauma
17 narratives are very much in her voice.

18 Q. And is it more than one appointment?

19 A. Yes. It's gradual.

20 Q. Now, I want to show you what has been marked as
21 State's Exhibit Number 9 for ID.

22 MS. HERRING-LASH: May I approach the witness, Your
23 Honor.

24 THE COURT: Yes, ma'am.

25 BY MS. HERRING-LASH

- 1 Q. Do you recognize this?
- 2 A. I do.
- 3 Q. And what is that?
- 4 A. It's the tape of my forensic interview.
- 5 Q. And have you reviewed that?
- 6 A. I have.
- 7 Q. And was it a true and accurate depiction of your
- 8 interview?
- 9 A. It was.
- 10 Q. And how do you know that that is the tape that you
- 11 reviewed?
- 12 A. I initialled it and dated it.
- 13 Q. And what was the date that you initialled it and
- 14 viewed it?
- 15 A. December 4th, 2012.
- 16 MS. HERRING-LASH: Your Honor, at this time the
- 17 State would offer into evidence State's Exhibit Number 9,
- 18 the forensic interview of Minor 1.
- 19 MR. GRIMES: Apart from what we've discussed
- 20 pretrial --
- 21 THE COURT: I understand with the redactions we've
- 22 already made.
- 23 MR. GRIMES: Yes, sir.
- 24 THE COURT: Do you have any objection --
- 25 MR. GRIMES: No other objection.

1 THE COURT: -- in addition with the redactions we
2 made?

3 MR. GRIMES: No other objections.

4 THE COURT: Okay. All right. State's Exhibit
5 Number 10 [sic] admitted with the prior objections, which
6 the Court has redacted.

7 (WHEREUPON, State's Exhibit Number 9, a Forensic
8 Interview, was admitted into evidence.)

9 MS. HERRING-LASH: And, Your Honor, at this time we
10 would offer to publish this.

11 THE COURT: Okay.

12 MS. HERRING-LASH: And, Your Honor, Ms. McCoy will
13 mute for the redactions that we have agreed on.

14 THE COURT: I'm sorry. What now?

15 MS. HERRING-LASH: Ms. McCoy will control the
16 volume and she will mute when the redactions --

17 THE COURT: Okay. That's fine. I understand.

18 Ladies and gentlemen of the jury, the Court has
19 reviewed it and the Court had decided some of the
20 statements that were made are not admissible under the
21 rules of evidence and basically what we are going to do
22 is Ms. McCoy is going to mute that and turn the volume
23 down when we get to that redacted portion. We haven't
24 really taken it out of the tape itself.

25 Please proceed.

1 (Technical difficulties.)

2 MS. HERRING-LASH: Your Honor, they turned this
3 camera on before the people come in the room. That's why
4 we'll have maybe a minute or so or just blank time.

5 (Technical difficulties.)

6 MS. HERRING-LASH: We may need to use the other
7 computer since we can't figure out this --

8 THE COURT: Do we need to excuse the jury and you
9 all can get it straight?

10 MS. HERRING-LASH: Maybe so.

11 MS. MCCOY: That would be a good idea.

12 THE COURT: All right. What we'll do, it's 10:30,
13 we've been going about approximately an hour so we'll
14 take our morning break at this time and let them get
15 their technology straight.

16 Now, please don't discuss the case. Leave your
17 notes in the chair. I'll get you back. And the smokers,
18 they'll take you to the appropriate place to smoke.

19 (WHEREUPON, the jury leaves the courtroom at
20 approximately 10:32 a.m.)

21 THE COURT: As soon as you all get it working we'll
22 take a morning break, okay?

23 MS. HERRING-LASH: Thank you, Your Honor. Sorry.

24 (WHEREUPON, a brief recess was taken.)

25 THE COURT: Let me see the attorneys up here.

1 (WHEREUPON, a bench conference was had.)

2 THE COURT: We're on the record. I have a note
3 from the jury foreman, and juror number 102 informed the
4 jurors this morning that he had done some research on the
5 visa kits or visa situation. And I have repeatedly asked
6 them not do that, ordered them not do that, and the note
7 from the foreman also says that he did not tell the other
8 jurors what information he had obtained. I am going to
9 excuse him and put on the alternate.

10 Now, I understand the parties agree to choose the
11 first alternate that was chosen, which was Kelli
12 Garrison, juror number 53. Is that correct from the
13 State?

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

15 THE COURT: Is that correct from the defendant?

16 MS. HERRING-LASH: Your Honor, I think we decided
17 that Mr. Grimes would look at the order and then make a
18 decision.

19 THE COURT: Okay.

20 MS. HERRING-LASH: That's what he wants to do.

21 THE COURT: Which at the bench conference I gave
22 the attorneys a choice of putting the three in and
23 drawing it out again or drawing in the choice that -- in
24 the order they were drawn.

25 And, Mr. Bailiff, would you go bring in juror

1 number 102, Mr. Rodd Heinlen, and please just -- you got
2 a room back here you can put him in? Put him in one of
3 those rooms back there and just tell him to sit tight,
4 okay?

5 (PAUSE.)

6 THE COURT: You got him isolated? Tell him to sit
7 tight and we'll talk with him in a little while, okay?
8 All right. Bring us the remaining jurors, if you would.

9 How do you want to draw them?

10 MR. GRIMES: We're fine with the first alternate,
11 Your Honor.

12 THE COURT: Juror Number 53, Kelli Garrison?

13 MR. GRIMES: Yes, sir.

14 THE COURT: Okay. All right.

15 Will you mark this a court's exhibit?

16 (WHEREUPON, Court's Exhibit Number 3, a Note From
17 the Foreman, was marked and made a part of the record.)

18 (WHEREUPON, the jury enters the courtroom at
19 approximately 11:12 a.m.)

20 THE COURT: All right. Mrs. Garrison? Kelli
21 Garrison?

22 FEMALE JUROR: Yes, sir.

23 THE COURT: If you'll take this seat on the front.
24 You are now on the jury. You are no longer an alternate.

25 You may proceed.

1 MS. HERRING-LASH: Your Honor, at this time we'll
2 publish the video.

3 THE COURT: All right.

4 (WHEREUPON, State's Exhibit Number 9 was played for
5 the jury.)

6 BY MS. HERRING-LASH:

7 Q. Jessica, after viewing the tape did you see any
8 questions that you failed to follow up on?

9 A. I did.

10 Q. What were those?

11 A. I definitely don't think I did a good job towards
12 the end of the interview when she started to describe
13 multiple times. I didn't follow up with penetration
14 questions, which usually in a forensic interview we would
15 ask inside, outside or something else. And I didn't ask
16 sensory questions towards the end, feeling, sensation,
17 smells, etcetera.

18 Q. You just asked the inside or outside question when
19 she talked about the food truck incident?

20 A. Uh-huh, towards the beginning.

21 Q. And not the others?

22 A. Yes.

23 Q. Now, I want to ask you about some other interviews.

24 Did you also see *Minor 4* and *Minor 3*

25 A. I did.

- 1 Q. And why did you see them?
- 2 A. At child advocacy centers any time a child makes a
3 report of a type of alleged abuse that happens in the
4 home DSS and law enforcement and child advocacy centers
5 recommend that all children in that home be interviewed,
6 so they were referred to our center.
- 7 Q. And when did you see them?
- 8 A. On July 22nd, 2010.
- 9 Q. And did you interview Minor 4?
- 10 A. I did not complete an interview with Minor 4.
- 11 Q. And why not?
- 12 A. She was four at the time and when I was doing the
13 rapport section with her she couldn't answer basic
14 questions about parts of a face, colors. She couldn't do
15 that in English or Spanish, so we would not ask any type
16 of forensic questions in children that can't do that.
- 17 Q. Like not even what an eye was?
- 18 A. Correct. Uh-huh.
- 19 Q. And did you interview Minor 3?
- 20 A. I did.
- 21 Q. And did she give you any history of an assault?
- 22 A. She did not.
- 23 Q. Did you note any factors that may have impacted the
24 interview?
- 25 A. Yes.

1 Q. And what were those factors that may have impacted
2 your interview?

3 A. When I met with Minor 3's mother before I spoke with
4 her, her mom was very upset, very anxious and verbalized
5 that she was worried DSS would remove the children from
6 her home, and sometimes children pick up on that and seem
7 worried about it. Her mom also disclosed to me that
8 Minor 3 saw her father being arrested and her mom said this
9 was very devastating for Minor 3

10 Q. Had she also witnessed her mother and Minor 1's
11 mother in a confrontation?

12 A. Yes.

13 Q. Those are all the questions that I have. If you'd
14 answer any that Mr. Grimes may have. Thank you.

15 THE COURT: Mr. Grimes, cross-examination.

16 MR. GRIMES: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. GRIMES:

19 Q. Good morning.

20 A. Morning.

21 Q. I may have mispronounced your name. Is it
22 Ms. Credeur?

23 A. Uh-huh.

24 Q. I believe you testified that you sort of follow a
25 protocol when you are interviewing children?

- 1 A. Yes.
- 2 Q. And that's to make sure children are capable of
3 giving full disclosure -- or that was to answer your
4 questions truthfully?
- 5 A. Yes.
- 6 Q. And they'll give an accurate picture to the best of
7 their ability of what happened?
- 8 A. Yes.
- 9 Q. And I understand disclosure is sort of an ongoing
10 process but part of the protocol is to try to get all of
11 the important facts out as soon as you can?
- 12 A. Yes.
- 13 Q. I believe you said this is sort of the
14 investigative stage part of this?
- 15 A. Correct.
- 16 Q. And you followed that protocol with *Minor 1*
- 17 A. I did.
- 18 Q. And you followed it with *Minor 3*
- 19 A. I did.
- 20 Q. Now, you've met with *Minor 1* several times, haven't
21 you?
- 22 A. Uh-huh. I did.
- 23 Q. How many times do you think you've met with her?
- 24 A. I did the forensic interview, and then we do
25 follow-up appointments with all children that come

1 through forensic interview. So I met with them those two
2 times, and then her family elected to receive their
3 trauma focus counseling at our center. So she probably
4 came for -- I would say about 15 appointments for that.

5 Q. Okay. And I believe the first appointment was on
6 July 12th at a forensic interview?

7 A. It was.

8 Q. And you believe that lasted -- that process lasted
9 about four hours?

10 A. Usually, yes.

11 Q. And then next the appointment was July 20th?

12 A. Yes.

13 Q. And that lasted about 75 minutes?

14 A. Yes.

15 Q. And the next appointment is on July 27th?

16 A. I'm going to look through my notes if you don't
17 mind.

18 Q. Yes, ma'am.

19 A. That's correct, the 27th.

20 Q. And in there she talked openly -- and that
21 appointment lasted about 75 minutes, too?

22 A. Yes.

23 Q. And in that appointment you noted ~~Mindy~~ I talked
24 openly about the sexual abuse?

25 A. Yes.

- 1 Q. And then when you met the mother you sort of
2 encouraged her to keep a discipline schedule?
- 3 A. Uh-huh. I did.
- 4 Q. Apparently, I guess Minor's stepfather and mother
5 had different parenting skills or different parenting
6 values?
- 7 A. They mentioned that before.
- 8 Q. Okay. And the next appointment was August 3rd,
9 2010?
- 10 A. It was.
- 11 Q. And that was also for 75 minutes?
- 12 A. Correct.
- 13 Q. And that would show that Minor went to a water park
14 with Mr. Perez and his family?
- 15 A. Yes, I see that.
- 16 Q. And the next appointment is August 10th, 2010?
- 17 A. Yes.
- 18 Q. That was also for 75 minutes?
- 19 A. Correct.
- 20 Q. And I think the next appointment is August 24th,
21 2010?
- 22 A. Yes.
- 23 Q. And that was for 90 minutes?
- 24 A. Yes.
- 25 Q. Looks like again there was some discussion of

- 1 parenting techniques?
- 2 A. That's actually part of the trauma focused
- 3 cognitive behavioral therapy protocol, you talk about
- 4 parenting and being consistent after a trauma, and
- 5 letting parents know it's okay to keep the same rules
- 6 that they had in the house after an event.
- 7 Q. And talked about the parents need to adopt?
- 8 A. November the 24th?
- 9 Q. Yes, ma'am.
- 10 A. That they need to adopt? Is that what you said?
- 11 Q. Maybe --
- 12 A. Adapt?
- 13 Q. I'm sorry.
- 14 A. Adapt to behaviors.
- 15 Q. And again, that's also, like you said, make sure
- 16 punishment is consistent?
- 17 A. Correct.
- 18 Q. Because they had some different parenting styles?
- 19 A. Mainly, I was reenforcing the fact that after a
- 20 trauma we want children to maintain consistency in the
- 21 home. So we don't want parents to feel as though they
- 22 can't tell their child they have to do homework or if a
- 23 child breaks a rule we don't want them to treat them as
- 24 if they are fragile or different.
- 25 Q. Then August 31st was the next meeting?

- 1 A. Yes, it was.
- 2 Q. And that was also for 75 minutes?
- 3 A. Yes.
- 4 Q. And then the meeting after that was September 7th,
5 2010?
- 6 A. Yes.
- 7 Q. And that was again for 75 minutes?
- 8 A. It was.
- 9 Q. I think in there you made some notes that *Minor 1*
10 added some information about a sexual assault?
- 11 A. Let me review it.
- 12 (PAUSE.)
- 13 Yes. I do see a note about that.
- 14 Q. And then you praised her for the work she was
15 doing?
- 16 A. Uh-huh.
- 17 Q. And I think you maybe also had a discussion about
18 how they had been meeting with the solicitor and
19 discussed the case with the solicitor?
- 20 A. Yes. That's correct.
- 21 Q. And the next meeting was on September 22nd, 2010?
- 22 A. Correct.
- 23 Q. And that was for 90 minutes?
- 24 A. Yes.
- 25 Q. Again, I think the other time you met was you

- 1 labeled the victim's mother's paramour.
- 2 A. Uh-huh.
- 3 Q. As her stepfather?
- 4 A. I did.
- 5 Q. And said that him and the mother did not agree on
- 6 parenting styles?
- 7 A. Yes.
- 8 Q. And, again, you discussed a need for consistent
- 9 discipline?
- 10 A. Uh-huh.
- 11 Q. Looks like the next meeting was on October 5th,
- 12 2010?
- 13 A. It was.
- 14 Q. And, again, that was for 90 minutes?
- 15 A. Yes.
- 16 Q. And at that point I think you showed Minor's mom
- 17 the work and draft of the trauma narrative?
- 18 A. I did.
- 19 Q. Just to follow up a little bit on the trauma
- 20 narrative, that's an ongoing process?
- 21 A. It is.
- 22 Q. And the next meeting was October 12th, 2010?
- 23 A. Yes.
- 24 Q. And that was also for 90 minutes?
- 25 A. Uh-huh.

- 1 Q. Again, you showed mom the updated trauma narrative?
- 2 A. I did.
- 3 Q. And Minor1 practiced reading it out loud?
- 4 A. She did.
- 5 Q. Still working on it at that time?
- 6 A. It looks like it. Yes, she was.
- 7 Q. And the next meeting was October 19 of 2010?
- 8 A. Yes.
- 9 Q. And it was also for 75 minutes?
- 10 A. It was.
- 11 Q. And I think it looks like you were preparing Minor1
- 12 to read the trauma narrative to the mother?
- 13 A. Yes.
- 14 Q. And apparently a discussion with Minor1 about
- 15 talking about what happened to her with other children?
- 16 A. Yes.
- 17 Q. And the next meeting was October 26 of 2010?
- 18 A. It was.
- 19 Q. And that was for 75 minutes?
- 20 A. Yes.
- 21 Q. And looks like the last meeting was on November 9
- 22 of 2010?
- 23 A. It was.
- 24 Q. And that was for 75 minutes?
- 25 A. Yes.

- 1 Q. And at that point she completed the therapy?
- 2 A. Yes, she had.
- 3 Q. And she felt -- Minor | felt happy about that?
- 4 A. She -- the way that we kind of measure how they are
- 5 doing after therapy is to give them a metric that we call
- 6 the UCLA Posttraumatic Stress Disorder Index, so we use
- 7 that before treatment, in the middle of treatment and
- 8 after treatment to show progress and any changes in
- 9 trauma symptoms.
- 10 Q. Okay. I'm sorry I misspoke. Minor | felt happy
- 11 about completing the treatment?
- 12 A. She was happy but somewhat nervous.
- 13 Q. And you have your notes on November 9th, 2010?
- 14 A. I do.
- 15 Q. You want to review that first paragraph?
- 16 A. Yes.
- 17 Q. And you have happy in quotation marks for that.
- 18 A. I do, and I also have that she expressed some
- 19 sadness over her last day there as well, kind of
- 20 conflicted.
- 21 Q. Would it be fair to say that you and her sort of
- 22 have a little bond at that time?
- 23 A. I think we had a rapport. I had a rapport as her
- 24 therapist.
- 25 Q. And at that time they were having the graduation

- 1 ceremony?
- 2 A. They were.
- 3 Q. And ~~Minor~~ I wanted to return to LCC for future
- 4 appointments, correct?
- 5 A. She verbalized some anxiety over not coming back
- 6 which was very common with kids at the end of treatment.
- 7 Q. But she asked about returning to LCC for future
- 8 appointments, correct?
- 9 A. She did.
- 10 Q. And if my math is right I guess total amount of
- 11 time that you met with her would be about 1,275 minutes?
- 12 A. These billing numbers also include time spent on
- 13 paperwork as well for writing notes, but yeah, I would
- 14 say that was accurate.
- 15 Q. Okay. And that's about 21 hours?
- 16 A. Yeah. That sounds right.
- 17 Q. Now, I think Ms. Herring-Lash asked you a few
- 18 questions about questions you could have done better or
- 19 followed up on more in your interview.
- 20 A. She did.
- 21 Q. And I think you said something about asking about
- 22 penetration?
- 23 A. I did.
- 24 Q. When you took that break there, was Detective
- 25 Hallwell there?

- 1 A. He was.
- 2 Q. Did you go and talk with him?
- 3 A. I did.
- 4 Q. And discuss any concerns or anything that he may
5 want you to follow up on?
- 6 A. I don't remember exactly what I talked to him about
7 but the norm is if there is a detective present we check
8 with them and ask them if they would like us to clarify
9 anything. He had not been present for the duration of
10 the interview, so I noted in my report that he was only
11 present for -- I think for the end of the interview.
- 12 Q. Okay. And I guess I'm getting old with my memory
13 bit I think the bite marks or the bite, did that come at
14 the beginning of the interview?
- 15 A. Which part?
- 16 Q. When you were first taking with ~~Minor~~ about her --
17 about Mr. Perez allegedly biting her on her breast?
- 18 A. Towards the beginning because the anatomy
19 identification is the second step in the interview.
- 20 Q. And was Detective Hallwell there for that point?
- 21 A. I don't believe he was. I don't remember but I
22 don't believe he was.
- 23 Q. And after you talked with him you came back in and
24 asked ~~Minor~~ some more questions?
- 25 A. I did.

1 Q. And it was about being bit on the breast?

2 A. Yes.

3 Q. Had you told that to Detective Hallwell?

4 A. Usually when we meet with them we tell them what
5 the child has already said, if they haven't been to the
6 center for the first part of the interview.

7 Q. Okay. And you never asked any follow-up questions
8 about penetration after talking with Detective Hallwell,
9 did you?

10 A. I did not.

11 MR. GRIMES: Thank you, Your Honor. I have no
12 further questions.

13 THE COURT: Okay. Thank you so very much.

14 Any redirect?

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

16 REDIRECT EXAMINATION

17 BY MS. HERRING-LASH:

18 Q. When you were taking about the amount of time that
19 you spent in these appointments I think you mentioned or
20 Mr. Grimes mentioned that on the 12th there was four
21 hours but did you spend four hours with ~~Minor~~?

22 A. No. That includes the total amount of time that
23 the family is at the center. That includes paperwork
24 they fill out when they get there, meeting with the
25 therapist, meeting with the child, and then sometimes if

1 they have a medical exam they are also at the center for
2 that.

3 Q. So the time that you spent with Minor that day was
4 captured in the video?

5 A. Yes.

6 Q. Now, as far as your therapy not only is it the
7 paperwork but also do you meet with the parents at
8 appointments?

9 A. You do.

10 Q. I think Mr. Grimes asked you, I think it was on the
11 day that something about -- I think it was October the
12 5th where he asked you something about going to the water
13 park with the Perez family. It's on the second page
14 about halfway down, October 5th.

15 A. I don't see the second page here. I have the first
16 page. I think I misplaced the second page.

17 Q. Do you want me to give you my copy?

18 A. Sure.

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

20 THE COURT: Yes, ma'am.

21 BY MS. HERRING-LASH:

22 Q. Just kind of mark this paragraph here.

23 A. Okay.

24 Q. She had not been to the water park with the Perez
25 family during this therapy, had she?

1 A. No. This was her talking about something that
2 happened in the past.

3 Q. What was that about the water park?

4 A. She remembered that when they went to the water
5 park that his family saw where she resided, where she
6 lived, and part of her trauma symptoms were that she was
7 continuing to have fears that he would come into her home
8 and find her. And so that was something that she put
9 together and thought that there was an increased risk for
10 that.

11 Q. Throughout the therapy notes do you all continue to
12 deal with sleeping and nightmare issues?

13 A. We do.

14 Q. And did she have nightmares and sleeping issues
15 during her therapy?

16 A. She did.

17 MR. GRIMES: Your Honor, outside the scope of
18 redirect.

19 MS. HERRING-LASH: Your Honor, I'm referring to
20 some of the notes on the dates that he asked her about,
21 but I will go on.

22 THE COURT: All right. I'll sustain the objection.
23 I don't remember any cross on sleeping patterns.

24 BY MS. HERRING-LASH:

25 Q. Mr. Grimes asked you about -- I think this is on

- 1 the 19th, about **Minor** having an issue with talking about
2 this to other children?
- 3 A. Which month? The 19th of --
- 4 Q. I think October the 19th?
- 5 A. Okay. Yes, I see that.
- 6 Q. And what was the issue that he was referring to in
7 his cross?
- 8 A. She told another child at school and that child let
9 the teacher know what had happened.
- 10 Q. And she told that other child what?
- 11 A. In my notes I have that she had been sexually
12 abused, is what she disclosed to the child.
- 13 Q. So it was one other child that she told?
- 14 A. Yes.
- 15 Q. And was the treatment with **Minor** pretty consistent
16 with your treatment with most children?
- 17 A. I followed this --
- 18 MR. GRIMES: Objection, Your Honor, relevance.
- 19 THE COURT: Overruled. Go ahead. Overruled. Go
20 ahead.
- 21 BY MS. HERRING-LASH:
- 22 Q. Mr. Grimes asked you about her feelings about
23 therapy and the termination. Explain that to the jury in
24 her feelings.
- 25 A. So it's very common for children to feel anxious at

1 the end of trauma focus treatment because it's usually
2 the first time that they've talked in extensive detail
3 about what's happened to them. They feel safe. They
4 learn a lot of skills. So typically when we talk about
5 the end and leaving they have some anxiety about that.

6 They are excited and proud of the work that they
7 did but it's not uncommon for them to make comments about
8 what do you mean I won't be coming back here, or what do
9 I do if something happens in the future?

10 So part of the model that we use has a stage called
11 the enhancing safety model, which is one of the last
12 sessions that we do with the mom, the caregiver and child
13 together to talk about tools that they can use from their
14 tool bag in the future if the child has symptoms again or
15 there start to be some recurring issues.

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

18 THE COURT: Recross?

19 MR. GRIMES: Briefly, Your Honor.

20 RECROSS-EXAMINATION

21 BY MR. GRIMES:

22 Q. Ms. Herring-Lash asked you about any anxiety that
23 Minor I had when she was leaving the therapy. I think in
24 your notes you talk about the family to follow up at the
25 Dee Norton Lowcountry Children's Center if they needed

1 additional service?

2 A. Uh-huh.

3 Q. Do you remember if they followed up after that?

4 A. They did not in the time that I was there. I
5 worked there through the Summer of 2011.

6 Q. All right. Thank you.

7 A. You're welcome.

8 THE COURT: You may step down. You may be excused.
9 Thank you so very much.

10 MS. HERRING-LASH: Your Honor, we'd just ask that
11 this witness be excused.

12 THE COURT: I thought that's what I just said, she
13 may be excused.

14 MS. HERRING-LASH: Oh. I'm sorry.

15 THE COURT: You may be excused. Thank you very
16 much.

17 Call your next witness.

18 MS. HERRING-LASH: Your Honor, the State rests.

19 THE COURT: All right. Ladies and gentlemen --
20 first of all, let me see the attorneys up here just a
21 second.

22 (WHEREUPON, a bench conference was had.)

23 THE COURT: Mr. Foreman, ladies and gentlemen of
24 the jury, I've got to hear motions at this time and I've
25 got another civil matter I got to hear at one o'clock.

1 It's 12:20. It's going to take probably 15, 20 minutes
2 to do what I need to do here. So you be back in the jury
3 room at two o'clock and we'll get started at that time.
4 Please don't discuss the case among yourselves. Leave
5 your notepads in the chair and don't do any type of
6 research in the case. I'll see you at two o'clock.

7 (WHEREUPON, the jury leaves the courtroom at
8 approximately 12:25 p.m.)

9 THE COURT: All right. Motions from the State?

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

11 THE COURT: Any from the defendant?

12 MR. GRIMES: Yes, sir. We would move for a
13 directed verdict based on the case, first, I don't
14 believe there's been sufficient evidence to identify
15 Mr. Perez as the person who allegedly committed these
16 acts. When the solicitor asked Minor 1 whether Mr. Perez
17 was in the courtroom she could not identify him.

18 THE COURT: I think she asked her do you see him in
19 the courtroom and I think that podium was sitting there.
20 I don't know if that interfered with what she saw or not
21 but go ahead. I'm listening to you. I do think she
22 asked is he in the courtroom, but do you see him in the
23 courtroom.

24 MR. GRIMES: Well, however they tried to identify
25 Mr. Perez as being the person, they have not identified

1 him and we think that's grounds for directed verdict.

2 And based on the CSC charge, we would move for a
3 directed verdict on that. Dr. Abel's reports showed no
4 penetrating trauma. You have ~~Minor 1's~~ own words herself
5 saying there was no penetration. It wasn't until after
6 apparently she had some time went by that she came up
7 with this allegation.

8 And why normally that might be enough for a case to
9 go forward, when you look at all the evidence in the case
10 we just don't believe the State has produced enough
11 evidence for the case to go forward on the CSC charge.

12 And on the lewd act charge, we think given the
13 difference between what she said, testified, and what's
14 in the trauma narrative, the impeachment there show
15 there's not enough evidence for the case to go forward
16 and we would ask for the Court to direct a verdict.

17 THE COURT: Okay. Solicitor?

18 MS. HERRING-LASH: Your Honor, first of all, as far
19 as the ID issue, I think that I did ask her if she saw
20 him and she said, Not right now, and the podium very well
21 could have been in the way.

22 But I do think that he was identified anyway in
23 that she picked him out of a photo lineup and she said
24 that the person who assaulted her was ~~Minor 3's~~ father,
25 ~~Minor 4's~~ father, the babysitter's husband, he lived in

1 the home that she pointed out that this gentleman lived
2 in, that the police went to. She pointed out the trailer
3 that he lived in.

4 So she identified him in numerous ways and had
5 ample time to see him during all the months that she
6 spent at his home. So she identified him both through
7 the lineup and through describing who he was as far as
8 the identification of him.

9 As far as the criminal sexual conduct with a minor
10 charge, she testified that he put his finger inside of
11 her on the occasion that she described.

12 In the tape the occasion that she described where
13 the food truck came and Jessica asked her, Did he put his
14 finger inside, she said, No.

15 When she described the incident when the food truck
16 came, in the courtroom, and I asked her, Did he put his
17 finger inside that time, she said, No.

18 So she definitely in the tape on the one time that
19 Jessica asked her, Did he put he is finger inside, she
20 said, No. She consistently says that. She told us about
21 a time when he did and she told Jessica about other times
22 and she was not asked, Did his finger go inside or not?

23 And I think from the observation of her she tried
24 to just say he sexually abused me. That's a detail she
25 didn't want to talk about but she did. So there is

1 evidence in the record. Looking at the evidence in the
2 light most favorable to the State there's certainly
3 evidence enough to go to the jury for them to make the
4 decision on her credibility.

5 THE COURT: Okay. Motion denied.

6 Mr. Perez, would you please stand. Through the
7 interpreter I'm going to ask you some questions. You
8 understand?

9 INTERPRETER HERNANDEZ: Yes.

10 THE COURT: You have the right to remain silent
11 under the Fifth Amendment of the Constitution; do you
12 understand?

13 INTERPRETER HERNANDEZ: Yes, sir.

14 THE COURT: That is a personal right and no one can
15 take that right away from you; do you understand?

16 INTERPRETER HERNANDEZ: Yes, sir.

17 THE COURT: You have the right to testify or not to
18 testify; do you understand?

19 INTERPRETER HERNANDEZ: Yes, sir.

20 THE COURT: If you decide not to testify I will
21 instruct the jury they cannot consider that in any manner
22 in their deliberations; do you understand?

23 INTERPRETER HERNANDEZ: Yes, sir.

24 THE COURT: If you elect to testify you will become
25 a witness; do you understand?

1 INTERPRETER HERNANDEZ: Yes, sir.

2 THE COURT: If a question is asked you will have to
3 answer it if it's appropriate under the rules of
4 evidence; do you understand?

5 INTERPRETER HERNANDEZ: Yes, sir.

6 THE COURT: You can't take the Fifth Amendment to
7 one question and then answer another question; do you
8 understand?

9 INTERPRETER HERNANDEZ: Yes, sir.

10 THE COURT: It's not like television; do you
11 understand?

12 INTERPRETER HERNANDEZ: Yes, sir.

13 THE COURT: You either take the Fifth Amendment and
14 don't take the stand or you take the stand and answer the
15 questions; do you understand?

16 INTERPRETER HERNANDEZ: Yes, sir.

17 THE COURT: All right. Do you need more time to
18 talk to your attorney about whether you want to testify
19 or not testify?

20 INTERPRETER HERNANDEZ: I need more time.

21 THE COURT: He needs more time. Okay. I will give
22 you that time, okay?

23 INTERPRETER HERNANDEZ: Yes, sir.

24 THE COURT: We're going to take a break and after
25 the break when we come back at two o'clock I'm going to

1 ask you if you want to testify or not testify. Would
2 that give you sufficient time to talk to your lawyers
3 about testifying?

4 INTERPRETER HERNANDEZ: Yes, sir.

5 THE COURT: Okay. Have you understood what I have
6 explained to you?

7 INTERPRETER HERNANDEZ: Yes, sir.

8 THE COURT: Okay. All right. I will ask you for
9 your decision when we reconvene at two o'clock.

10 INTERPRETER HERNANDEZ: Yes, sir.

11 THE COURT: Thank you. All right. Anything else
12 from the State before we take a break?

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

14 THE COURT: Anything from the defense?

15 MR. GRIMES: No, Your Honor.

16 THE COURT: All right. We'll adjourn until two
17 o'clock. Thank you very much.

18 (WHEREUPON, the trial of this case was recessed for
19 lunch.)

20 THE COURT: All right. Mr. Perez, if you'll stand
21 up. As soon as we get interpreter ready to go --

22 INTERPRETER GAINER: Yes, Your Honor.

23 THE COURT: You ready?

24 INTERPRETER GAINER: Yes, sir.

25 THE COURT: Before lunch I advised you of your

1 rights to testify or not testify; is that correct?

2 INTERPRETER GAINER: Yes, sir.

3 THE COURT: And you wanted additional time to talk
4 with your attorney. Have you had an opportunity to talk
5 with your attorney?

6 INTERPRETER GAINER: Yes, sir.

7 THE COURT: What is your decision?

8 THE DEFENDANT: I want to give my testimony.

9 THE COURT: Okay. All right. Has anybody forced
10 you or threatened you to make you arrive at this
11 decision?

12 INTERPRETER GAINER: No, sir.

13 THE COURT: It's your decision and no one else's
14 decision; is that correct?

15 INTERPRETER GAINER: Yes, sir.

16 THE COURT: Thank you so very much.

17 All right. Is there anything else from the State
18 before we get started?

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

20 THE COURT: Anything from the defense?

21 MR. GRIMES: If I could have five minutes to use
22 the bathroom.

23 THE COURT: Yeah.

24 (WHEREUPON, a brief recess was taken.)

25 THE COURT: Mr. Grimes, you ready to proceed?

1 MR. GRIMES: Yes, sir. I think the court security
2 had an issue with whether --

3 THE COURT: I'm sorry. What now?

4 MR. GRIMES: The court security had an issue with
5 Mr. Perez's youngest child to be in the courtroom.

6 THE COURT: That's fine, if they want the child in
7 the courtroom. I mean, if they want the child in the
8 courtroom that's fine. Now, if the child starts crying
9 and carrying on you ask them to leave or take the child
10 out, okay?

11 MR. GRIMES: Yes, sir.

12 THE COURT: If he starts being unruly and -- I
13 don't want to say unruly but disturbing the jury, okay?

14 MR. GRIMES: Yes, sir.

15 THE COURT: Anything else before we bring the jury
16 in?

17 MR. GRIMES: No, sir.

18 THE COURT: Bring the jury, please.

19 (WHEREUPON, the jury enters the courtroom at
20 approximately 2:15 p.m.)

21 THE BAILIFF: The jury is all present, Your Honor.

22 THE COURT: Thank you very much.

23 Mr. Grimes, if you'll call your first witness,
24 please.

25 MR. GRIMES: Thank you, Your Honor. We call

1 Venancio Perez.

2 VENANCIO DIAZ PEREZ, after having been duly
3 sworn, testified as follows:

4 THE CLERK: Mr. Perez, please state your full name
5 and spell your first and your last name.

6 INTERPRETER GAINER: Venancio Diaz Perez. It's
7 V-e-n-a-n-c-i-o D-i-a-z P-e-r-e-z.

8 DIRECT EXAMINATION

9 BY MR. GRIMES:

10 (Through the interpreter.)

11 Q. Buenos tardes, Senor Perez?

12 A. Hello, sir.

13 Q. Venancio, we have heard a lot of allegations
14 against you during this trial.

15 A. Yes, sir.

16 Q. And now is your opportunity to respond to these
17 allegations.

18 A. Yes, sir.

19 Q. Have you ever touched ~~Minor 1~~ in an improper or
20 inappropriate manner?

21 A. No, sir. Those things are repugnant me.

22 Q. Tell the jury if you ever bit her on her breast.

23 A. No, sir.

24 Q. And tell jury if you ever rubbed her in her vaginal
25 area.

- 1 A. No, sir.
- 2 Q. And have you ever touched her around her butt?
- 3 A. No, sir.
- 4 Q. And during this trial we've also heard some
- 5 allegations that you abused a girl named Minor 2.
- 6 A. No, sir.
- 7 Q. Have you ever done anything improper or
- 8 inappropriate with Minor 2?
- 9 A. No, sir.
- 10 Q. And please tell the jury why you would never do
- 11 anything like this to a child.
- 12 A. Since I was little my parents taught me to respect
- 13 people, whether they are minors or adults. That respect,
- 14 I've always carried it with me since I was little. I
- 15 have my daughters and I love them a lot and I'm not one
- 16 of the people that would harm anybody like this child.
- 17 Q. And is your youngest daughter in court today?
- 18 A. Yes, sir.
- 19 Q. Is she sitting on the front row?
- 20 A. Yes, sir.
- 21 Q. And is that Minor 4?
- 22 A. Yes, sir.
- 23 Q. Now, Venancio, I want to ask you some questions
- 24 about your background.
- 25 A. Yes, sir.

- 1 Q. Please tell the jury how old you are.
- 2 A. I'm 46 years old.
- 3 Q. And where were you born at?
- 4 A. In Mexico.
- 5 Q. And what part of Mexico are you from?
- 6 A. From a town names Quitlagual.
- 7 THE COURT REPORTER: Can you spell that?
- 8 INTERPRETER GAINER: Interpreter spelling, Your
- 9 Honor?
- 10 THE COURT: Please, if you would spell it for the
- 11 court reporter.
- 12 INTERPRETER GAINER: Phonetically is
- 13 Q-u-i-t-l-a-g-u-a-l.
- 14 THE COURT: Thank you very much.
- 15 INTERPRETER GAINER: You're welcome, Your Honor.
- 16 BY MR. GRIMES:
- 17 (Through the interpreter.)
- 18 Q. And please tell the jury a little bit about the
- 19 town where you are from.
- 20 A. It's a very small town because we belong to the
- 21 State of Veracruz.
- 22 Q. Venancio, I want to ask you a few questions about
- 23 your family.
- 24 A. Yes, sir.
- 25 Q. What are the names of your parents?

- 1 A. My mother, her name is Phillipa Perez. My father,
2 he no longer lives.
- 3 Q. And what was his name?
- 4 A. Carlos Diaz.
- 5 Q. Before your father passed what kind of work did he
6 do?
- 7 A. My work has always been the fields.
- 8 Q. And what did you do in the fields?
- 9 A. He was working in the fields without the culture.
- 10 Q. And what type of work did your mother do?
- 11 A. She was a homemaker, my mother.
- 12 Q. And does your mother still live in Mexico?
- 13 A. Yes, sir.
- 14 Q. Now, at the beginning of your testimony you told
15 the jury that one of the reasons why you could never do
16 these acts was because of the way your parents raised
17 you.
- 18 A. Yes, sir.
- 19 Q. You can take this opportunity and explain to the
20 jury exactly how your parents raised you and what values
21 they taught you.
- 22 A. My parents, as I said earlier, they taught me a
23 pretty education -- nice. They taught me to be honorable
24 when I work and that respect was the most important thing
25 in life.

- 1 Q. Venancio, I want to ask you some more questions
2 about your family.
- 3 A. Yes, sir.
- 4 Q. Do you have any brothers and sisters?
- 5 A. Yes, sir.
- 6 Q. And how many brothers do you have?
- 7 A. It's five of us total.
- 8 Q. And how many sisters do you have?
- 9 A. There are four sisters.
- 10 Q. And where do you fall in the age range? Are you
11 one of the oldest or one of the youngest children?
- 12 A. One of the youngest.
- 13 Q. Now, I want to ask you a little bit about your
14 educational background.
- 15 A. Yes, sir.
- 16 Q. Can you tell the jury how far you went in school
17 while you were in Mexico?
- 18 A. I studied through the sixth grade.
- 19 Q. And after sixth grade what did you do?
- 20 A. I dedicated myself to working.
- 21 Q. And where were you working at?
- 22 A. In Mexico in the fields.
- 23 Q. And do you remember what the last subjects you
24 studied in school were?
- 25 A. Of course I do.

- 1 Q. And what were they?
- 2 A. Well, Spanish. I remember that Spanish was where I
- 3 was the best at. Math, I was pretty dumb for math.
- 4 Q. You're not the only one.
- 5 A. Thank you.
- 6 Q. Venancio, do you remember telling the jury that you
- 7 would never hurt a child because you are a father and
- 8 because of your daughters?
- 9 A. Yes, sir.
- 10 Q. Could you take this opportunity to explain to the
- 11 jury a little bit more about what you meant by that and
- 12 how as a father you would never do anything to a child.
- 13 A. There are three aspects in which I would never harm
- 14 a little girl. The first one, there are my daughters, so
- 15 there's my family. Second my parents, third my work.
- 16 Q. How many daughters do you have, Venancio?
- 17 A. I have two daughters.
- 18 Q. And what are their names?
- 19 A. Minor 3. and Minor 4
- 20 Q. And how old is Minor 3
- 21 A. Minor 3 is 11 years old.
- 22 Q. And how old is Minor 4?
- 23 A. Six.
- 24 Q. And do they live with their mother now?
- 25 A. Yes, sir.

1 Q. And when was the last time you saw Minor 3 and

2 Minor 4

3 A. Well, the last time I saw them, it was when I was
4 arrested. From then on they would come to visit me right
5 here at the jail where I'm staying.

6 Q. Now, Venancio, we've heard some allegations during
7 the trial that you would hit Minor 4 as a way of
8 disciplining her.

9 INTERPRETER GAINER: Counselor, would you repeat
10 the question for the interpreter, couldn't hear.

11 MR. GRIMES: I apologize.

12 BY MR. GRIMES:

13 (Through the interpreter.)

14 Q. Venancio, we've heard some allegations during the
15 trial that you would hit Minor 4 as a way to discipline
16 her.

17 A. Yes, sir.

18 Q. Have you ever struck Minor 4 in any way?

19 A. No, sir.

20 Q. If Minor 4 did something that was wrong and needed
21 to be disciplined how would you discipline her?

22 A. Well, I'm not one of those parents that harms their
23 children, hits their children because the children also
24 do mischief. I'm one of the parents that loves very much
25 my daughters and always spoken to them first.

1 Q. Do any stories stand out or specific instances
2 stand out of how you would discipline Minor 4 and how she
3 would react to you?

4 A. If I was angry about something I would first, like,
5 just kind of look at them and I would talk to them, but I
6 would pretend that I am angry.

7 Q. And how did Minor 4 react to that?

8 A. I remember one time we went to a store to -- by the
9 market. She asked me for two quarters to get out a
10 little gift that you get from a machine, like two little
11 eggs. So I told her -- well, I gave her two quarters,
12 and to my older child I gave her two quarters. I
13 remember that my oldest girl, she got a little sticker,
14 and she got a little mustache toy.

15 So also, if I would -- I noticed that whenever I
16 would get angry I would pretend that I'm angry and she
17 would, like, look angry. And so that she would listen to
18 me and do what I said I would just look at her, and since
19 I could tell that she was, like, observing me and
20 checking me. And so one time I remember she had a mess
21 with all her toys and I talked to her. I was watching TV
22 so she took the little mustache toy and saved it in her
23 room. And at one point she sat right by my feet and then
24 she put the mustache on.

25 I remember that she would stare at me and she would

1 see me that I was serious, and I could see her face was
2 serious and I'd remember she would say to me, I am
3 Venancio Diaz and I am very angry. She told me two times
4 and, well, it made me laugh about what she said. And so
5 I would hug her and then when she saw that I smiled she
6 could tell that I was no longer angry.

7 That was my anger, the way I got angry or that was
8 my punishment at the way I got angry at them, that way.
9 But at no time I would be one of those parents that would
10 hit them, always because I love them too much and I also
11 look after them. They are the reflection of my life
12 through which they've always had everything from me when
13 they need it.

14 Q. All right. So you've never struck her in the mouth
15 if she misbehaved any way, have you?

16 A. No, sir.

17 Q. Now, I want to ask you a few questions about when
18 you moved from Mexico to the United States.

19 A. Yes, sir.

20 Q. Do you remember when you first came to the United
21 States?

22 A. Yes, sir.

23 Q. And when was that?

24 A. Twelve and a half years ago.

25 Q. And what city did you move to?

1 A. I arrived to the City of Charlotte.

2 Q. And how did you -- why did you move to Charlotte
3 for?

4 A. Well, I got there because I had a family member. I
5 had a niece that was there and she gave me help and
6 that's why I went to stay with them, with that family.

7 Q. And when you were in Charlotte did you work?

8 A. Yes, sir.

9 Q. And what kind of work did you do?

10 A. My work was always construction.

11 Q. Was it residential construction or commercial, or a
12 little bit of everything?

13 A. Well, a little bit of everything.

14 Q. And what would you do in the construction field?

15 A. Well, we would make foundations, we would build
16 houses, apartments, a little bit of everything.

17 Q. And what was, like, a typical work day for you
18 like? What time would you go to work, what time would
19 you get home?

20 A. Well, a typical day for me was -- there was very
21 little work. So when we didn't have work we would be off
22 and so that would be a typical day.

23 Q. And when you lived in Charlotte did Ms. Carmona
24 work any?

25 INTERPRETER GAINER: Did Ms. Carmona? For the

- 1 interpreter. I'm sorry.
- 2 Q. Work.
- 3 A. Yes, sir.
- 4 Q. And what did she do?
- 5 A. She was always taking care of children.
- 6 Q. And when you lived in Charlotte did any children
- 7 ever complain about how you treated them?
- 8 A. No, sir.
- 9 Q. Now, when did you move from Charlotte to South
- 10 Carolina?
- 11 A. Yes, sir.
- 12 Q. And when did you move from Charlotte to the
- 13 Charleston area?
- 14 A. I lived in Charlotte eight years.
- 15 Q. And why did you move from Charlotte to Summerville?
- 16 A. It was a time where work was scarce in several
- 17 states and Charlotte was one of those states where there
- 18 was very little work, and I have my nephews that work
- 19 here in painting and that's why I came here.
- 20 Q. And what are your nephews' names?
- 21 A. My nephews' name is her Geraldo and Luis.
- 22 Q. And when you first moved to Summerville who did you
- 23 work with?
- 24 A. With Geraldo, my nephew.
- 25 Q. And how long did you work with him for?

- 1 A. For one year.
- 2 Q. And when did Ms. Carmona, and ~~Minor 3~~ and ~~Minor 4~~
- 3 come down from Charlotte to live with you?
- 4 A. It had been about six months since I had been
- 5 working here in this State when they came here.
- 6 Q. And how long did you live in Summerville before you
- 7 moved to the North Charleston area?
- 8 A. I lived there about a year, about a year and a few
- 9 months.
- 10 Q. And when Ms. Carmona moved to Summerville did she
- 11 work any?
- 12 A. No, sir.
- 13 Q. And why did you move from Summerville to North
- 14 Charleston area?
- 15 A. Because it was too far away and I don't know how to
- 16 drive, so I was looking for the way that I was closer to
- 17 my job.
- 18 Q. And if you didn't know how to drive how would you
- 19 get to work and get to your jobs?
- 20 A. Well, my nephews would give me a ride. They have a
- 21 special van to give rides to people.
- 22 THE INTERPRETER: Your Honor, at this time may the
- 23 interpreter take a break?
- 24 THE COURT: All right, you all may switch.
- 25 (WHEREUPON, the interpreters switched places.)

- 1 BY MR. GRIMES:
2 (Through Interpreter Hernandez.)
3 Q. Do you recall when you moved to the North
4 Charleston area?
5 A. I don't think I can remember very well.
6 Q. And when you moved to North Charleston did you live
7 in a trailer or a house?
8 A. In a trailer.
9 Q. And was that off of Attaway Drive?
10 A. Yes, sir.
11 Q. And that was the pictures that we've seen
12 introduced in court?
13 A. Yes, sir.
14 Q. Now, I want to jump ahead from March and talk about
15 from March of 2010 to July of 2010.
16 A. Yes, sir.
17 Q. Can you tell the jury a little bit about your work
18 schedule during those about four months; March, April,
19 May, June -- five, and July.
20 A. I didn't have a regular work schedule about when I
21 would go to work or when I would get off work.
22 Q. And to the best you can remember what was the
23 general time that you would leave to go to your jobs in
24 the morning?
25 A. Well, there were times when we would go as late as

- 1 nine to work because if it was outside work we had to
2 make sure there was enough light.
- 3 Q. What time would you usually come home after work?
- 4 A. Seven or eight at night we would get back.
- 5 Q. And what part of town did you work in?
- 6 A. We work -- when I worked with my nephew we were
7 mostly working in area of -- areas around Mount Pleasant
8 and Rivertowne and Waverly.
- 9 Q. And were you working with Luis or your other --
10 Geraldo, you said first?
- 11 A. Luis.
- 12 Q. And would he drive you to these jobs?
- 13 A. Yes, sir.
- 14 Q. And would you generally work Monday through Friday,
15 or Monday through Saturday, or Monday through Sunday?
- 16 A. My normal days were Monday through Saturday, and
17 some Sundays I would work and sometimes I would not work
18 on Sundays.
- 19 Q. Now, I want to ask you a few questions about
20 Ms. Carmona and the children she babysat.
- 21 A. Yes, sir.
- 22 Q. Do you remember her babysitting Minor?
- 23 A. Yes, sir.
- 24 Q. Do you recall when she started to babysit her?
- 25 A. I wouldn't know because, well, I was working, so I

1 don't really know.

2 Q. Do you ever remember being alone with *Minor 1* for any
3 extended period of time?

4 A. No, sir.

5 Q. And how can you be so sure of that?

6 A. Well, the way my work schedule was there were days
7 that I would get home at five, or seven, or eight and
8 many times she wasn't there when I got home.

9 Q. And if she was there would she be -- what would she
10 be doing?

11 A. She was watching TV or playing with my daughters
12 there around the living room.

13 Q. And where would Ms. Carmona be?

14 A. She was there with them.

15 Q. And do you remember when Ms. Carmona started to
16 babysit *Minor 2*

17 A. No. Really, I don't remember.

18 Q. Do you remember ever being alone with *Minor 2* ?

19 A. No, sir.

20 Q. And, again, can you tell the jury why -- how do you
21 know you weren't alone with her?

22 A. Well, when I would have my work hours at nine or
23 later that I'd go in the morning, then I'd come back I
24 would be living -- enjoying times with my family and with
25 the other children that were there.

- 1 Q. Now, in July 2010 do you recall being arrested?
- 2 A. Yes, sir.
- 3 Q. On the day that Detective Lacher came out and
- 4 arrested you did he have an interpreter with him?
- 5 A. No, sir.
- 6 Q. Did you know why he was arresting you?
- 7 A. No, sir.
- 8 Q. Tell the jury when you first found out what you
- 9 were being charged with.
- 10 A. I found out about three days later when they
- 11 brought me to Leeds Avenue.
- 12 Q. And what was your reaction when you learned what
- 13 you were being charged with?
- 14 A. Well, I felt really, really bad because they were
- 15 accusing me of something I had not done.
- 16 Q. And did you ever get a chance to talk to Detective
- 17 Lacher and tell him you didn't do it?
- 18 A. No, sir.
- 19 Q. Did he ever come to read you your rights?
- 20 A. No, sir.
- 21 Q. Did he ever give you a chance to explain your side
- 22 of what happened?
- 23 A. No, sir.
- 24 Q. He just locked you up and threw away the key?
- 25 A. Yes, sir.

1 Q. Now, to summarize a few things, have you ever done
2 anything improper to *Minor 1*

3 A. No, sir.

4 Q. Have you ever done anything improper to *Minor 2*

5 A. No. No, sir. As I said before, those things are
6 disgusting to me.

7 Q. Are you guilty of these charges?

8 A. No, sir. I am innocent.

9 Q. Thank you. Please answer any questions the State
10 may have for you.

11 A. Yes, sir.

12 THE COURT: Cross-examination.

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

14 CROSS-EXAMINATION

15 BY MS. HERRING-LASH:

16 (Through the interpreter.)

17 Q. Mr. Perez, you know *Minor 1*

18 A. Yes, ma'am.

19 Q. How did you meet her?

20 A. Because she would come to the house for
21 babysitting.

22 Q. And she was there often at your house, wasn't she?

23 A. Yes, ma'am.

24 Q. And she played with your children?

25 A. Yes, ma'am.

- 1 Q. She played inside your house a lot, didn't she?
- 2 A. Yes, ma'am.
- 3 Q. And when she was playing inside your house you
- 4 would be there sometime, wouldn't you?
- 5 A. Sometimes when I would get home from work they
- 6 would still be there.
- 7 Q. You testified just before this you knew that she
- 8 played in your house a lot.
- 9 A. Yes, ma'am.
- 10 Q. So you were there?
- 11 A. As I said before, when they were still there
- 12 sometimes when I would get home from work she would be
- 13 there with my daughters.
- 14 Q. Who do you mean, Mr. Perez, by they?
- 15 A. They were my daughters. They were there watching
- 16 TV.
- 17 Q. Excuse me. I meant when you said sometimes when
- 18 you got home from work they would still be there.
- 19 A. Yes, ma'am.
- 20 Q. And who was they?
- 21 A. Well, I was referring to my daughters, ~~Minor~~4 and
- 22 ~~Minor~~3, and wife, and another guy that lived with us.
- 23 Q. And they all lived there, didn't they?
- 24 A. Yes.
- 25 Q. Your wife babysat for many children, didn't she?

1 A. Yes, ma'am.

2 Q. How many children?

3 A. Well, I don't remember exactly because most of the
4 time when I would come home from work they had already
5 been picked up.

6 Q. Mr. Perez, were you ever at your home during the
7 day?

8 A. Well, sometimes it was late, like as late as ten
9 that we were starting to work, or sometimes it was rainy
10 and they would stop the work because it couldn't be done
11 well in rainy weather.

12 Q. The work that you were doing was a lot of the time
13 outside work?

14 A. Well, it depends. If there was rainy weather and
15 there was no possibility of doing outside work we would
16 do inside work, if there was inside work to do, and in
17 those cases we would go as early as seven in the morning
18 and come back at late as ten at night.

19 Q. And the days it was raining and there was no
20 outside work to do you would be home?

21 A. Yes. Sometimes because let's say if it was raining
22 around three or four, we would leave the worksite and go
23 home because we couldn't do anything else.

24 Q. And if it was a day that it was not raining you
25 were never at home?

- 1 A. No, ma'am.
- 2 Q. You were never at home?
- 3 A. No, ma'am.
- 4 Q. But you did not have a regular work schedule?
- 5 A. No, ma'am.
- 6 Q. And, in fact, on July the 13th at 2:40 in the
- 7 afternoon you were at home, weren't you?
- 8 A. Yes, ma'am.
- 9 Q. What was different about that day?
- 10 A. Well, sometimes if we were working close to where
- 11 we lived they would give us an hour for lunch and it was
- 12 time to go home for lunch.
- 13 Q. So there were times that you were home during the
- 14 day, unlike what you said a moment ago?
- 15 MR. GRIMES: Objection, Your Honor.
- 16 THE COURT: What's your legal objection?
- 17 MR. GRIMES: Mischaracterizing.
- 18 THE COURT: Overruled. Go ahead. Overruled.
- 19 INTERPRETER HERNANDEZ: The interpreter requests
- 20 repetition of the question.
- 21 BY MS. HERRING-LASH:
- 22 (Through the interpreter.)
- 23 Q. Unlike how you testified a moment ago there were
- 24 times that you were at home during the day?
- 25 A. Yes, ma'am.

- 1 Q. And on July 15th at 12:45 you were at home?
- 2 A. Yes. That was a time when there wasn't much work,
- 3 and when there wasn't much work we would have time to go
- 4 home and spend some lunch time with our family.
- 5 Q. So there were days when you would be there?
- 6 A. Occasionally.
- 7 Q. Mr. Perez, **Minor 1** was a sweet child, wasn't she?
- 8 A. Yes, ma'am.
- 9 Q. And you liked **Minor 1**, didn't you?
- 10 A. I didn't really get to know her much because my
- 11 work didn't allow for that.
- 12 Q. How long was she at your house?
- 13 A. Truthfully, I really don't know.
- 14 Q. Were most of the children that your wife babysat
- 15 for very young children?
- 16 A. Yes, ma'am.
- 17 Q. Like under the age of three?
- 18 A. Yeah, young children. Sometimes four or five.
- 19 Q. **Minor 1** was one of the only ones that was on around
- 20 **Minor 3's** age?
- 21 A. Yes, ma'am.
- 22 Q. And another child named **Minor 2** was at your house?
- 23 A. Yes, ma'am.
- 24 Q. And you knew **Minor 2**, didn't you?
- 25 A. Yes, ma'am.

1 Q. Minor2 was a very quiet child?

2 A. Yes, ma'am.

3 Q. Can you describe Minor2 to us, how she acted.

4 A. I would have not much to say because I really
5 didn't have the opportunity to get to know the kids.

6 Q. And you didn't know enough about Minor1 to describe
7 her to us either?

8 A. Well, like I said before, neither case did I really
9 get to know these girls because often times when I would
10 get home they were gone.

11 Q. And it would be late?

12 A. Yes, ma'am.

13 Q. Would your children be in bed?

14 A. Well, my daughters even though I would get home
15 late sometimes they would wait to have supper with me.

16 Q. We're talking nine o'clock at night?

17 A. Yes.

18 Q. And Minor4 was three?

19 A. Yes, ma'am.

20 Q. And she would have dinner at nine o'clock at night?

21 A. Yes. My daughter has always been very close to me
22 and she would wait up for me.

23 Q. We're talking about the little one?

24 A. Yes, ma'am.

25 Q. What about Minor3

1 A. Since Minor3 was in school she had to go to bed
2 early.

3 Q. So she didn't wait up for you?

4 A. No.

5 Q. I was a little bit confused before. Were you angry
6 at Minor4 or did you just pretend to be angry at Minor4?

7 A. It was more like I was acting angry because I
8 wanted to make sure she understood that I was addressing
9 some mischief that she'd been into and I wanted to make
10 sure she took me seriously and didn't think I was joking
11 around.

12 Q. So did you ever get angry at your children?

13 A. No, ma'am.

14 Q. Never?

15 A. Well, I would want to make sure I would call her
16 attention to the misbehavior. It was my duty as a parent
17 to do that because I love my kids, and we have to correct
18 them. It's our duty as parents who love their children.

19 Q. But they never made you angry?

20 A. No, ma'am.

21 Q. Do you remember the day that you were arrested?

22 A. Yes, ma'am.

23 Q. You remember it well?

24 A. Yes, ma'am.

25 Q. You said Detective Lacher did not ask you any

- 1 questions?
- 2 A. No, ma'am.
- 3 Q. Isn't it true that he didn't ask you any questions
- 4 because you were too intoxicated?
- 5 A. No, ma'am.
- 6 Q. You had not been drinking that day?
- 7 A. No, ma'am.
- 8 Q. You're sure?
- 9 A. Sure.
- 10 Q. Now, you said before you would not harm or you had
- 11 respect because you would not harm your daughters?
- 12 A. Yes, ma'am.
- 13 Q. And you would not harm your family?
- 14 A. No, ma'am.
- 15 Q. And you did not want to harm your work?
- 16 A. No, ma'am.
- 17 Q. And that was it?
- 18 A. Yes, ma'am.
- 19 MS. HERRING-LASH: Court's indulgence for one
- 20 moment.
- 21 (PAUSE.)
- 22 MS. HERRING-LASH: That's all the questions I have.
- 23 THE COURT: Do you have any redirect?
- 24 MR. GRIMES: No, sir.
- 25 THE COURT: Pardon?

1 MR. GRIMES: No, sir.

2 THE COURT: Okay. Tell him he may step down.

3 Call your next witness, please.

4 MR. GRIMES: We call Luis Diaz.

5 LUIS DIAZ, after having been duly sworn,
6 testified as follows:

7 THE CLERK: Have a seat, please. Please say your
8 full name and then spell your first name and your last
9 name for the record, please.

10 INTERPRETER GAINER: Luis Diaz. The name right?
11 It's L-u-i-s. Diaz, D-i-a-z-s [sic].

12 DIRECT EXAMINATION

13 BY MS. PARNELL:

14 (Through the interpreter.)

15 Q. Thank you, Mr. Diaz, for taking some time off work
16 to be here today. Can you tell this jury, in what part
17 of Charleston do you live?

18 A. I live in Summerville on College Park Road, lot
19 one.

20 Q. And what do you do for work here?

21 A. I work in painting.

22 Q. And do you work for another company or do you have
23 your own company?

24 A. I work for myself.

25 Q. And what is your company called?

- 1 A. Diaz Painting.
- 2 Q. And how long have you been doing painting,
- 3 Mr. Diaz?
- 4 A. Well, doing this myself about 12 years.
- 5 Q. And did Mr. Diaz Perez ever work for your company?
- 6 A. Yes.
- 7 Q. And he's your nephew; is that correct?
- 8 A. No, my uncle.
- 9 Q. Thank you. And what did he do for your company?
- 10 A. We would wash houses, paint them, and that was all.
- 11 Q. And did you have a lot of workers other than
- 12 Mr. Diaz Perez working for you?
- 13 A. I had two others.
- 14 Q. And do you remember about how long he worked for
- 15 your company?
- 16 A. Since he arrived from Charlotte until he was
- 17 arrested.
- 18 Q. Okay. So he was working for your company when he
- 19 was arrested in 2010?
- 20 A. Yes.
- 21 Q. And can you tell me about your usual work schedule.
- 22 A. Sometimes we would start at eight, sometimes we
- 23 would start and seven. We really didn't have a set hour
- 24 when we would leave.
- 25 Q. And what days of the week did you normally work?

- 1 A. From Monday through Saturday.
- 2 Q. And did you sometimes have to work very late
- 3 nights?
- 4 A. Yes. When the owners of the houses would allow us
- 5 sometimes we would work until about ten.
- 6 Q. Would you start later in the day if it was a rainy
- 7 day?
- 8 A. If it was outside, yes, but if it was inside it
- 9 didn't matter the job.
- 10 Q. So generally your normal day of rest during each
- 11 week was -- generally speaking your normal day of rest?
- 12 A. Sunday.
- 13 Q. Would you say that your business is doing pretty
- 14 well?
- 15 A. Yes. It's just that -- well, right now I have two
- 16 or three people only and we just repaint.
- 17 Q. Are you generally able to find enough work or jobs
- 18 to keep you busy between Monday and Saturday?
- 19 A. Right. I don't have any problems.
- 20 Q. How often did Mr. Diaz Perez take a day off because
- 21 he was sick or because he wanted to rest?
- 22 A. The day he was arrested was the only day that he
- 23 didn't come, and one day that he was sick, because we
- 24 were going to wash a house.
- 25 Q. Do you know approximately when Mr. Diaz Perez would

1 arrive at or leave each job site?

2 A. No, because I would take him myself to work.

3 Q. So are you saying that you do know when he would
4 arrive or leave?

5 A. Yes, because I would take him.

6 Q. And why did you take him to work with you?

7 A. Because he doesn't have a car and he doesn't drive.

8 MS. PARNELL: If I may have a moment, Your Honor.

9 (PAUSE.)

10 BY MS. PARNELL:

11 Q. Gracias, Senor Diaz. I don't have any more
12 questions for you. If you would just answer any
13 questions of Ms. Herring-Lash.

14 A. Okay.

15 CROSS-EXAMINATION

16 BY MS. HERRING-LASH:

17 (Through the interpreter.)

18 Q. Mr. Diaz?

19 A. Diaz.

20 Q. Your business is washing houses?

21 A. And paint.

22 Q. Do you paint inside?

23 A. Yes.

24 Q. And outside, or just inside?

25 A. Outside and inside.

- 1 Q. And you give Mr. Perez rides to work?
- 2 A. Yes.
- 3 Q. And you would give him rides home for lunch?
- 4 A. No, because we would work all the way in Mount
- 5 Pleasant.
- 6 Q. So no lunch?
- 7 A. Sometimes we would come by to eat if we were
- 8 working in Summerville, we would go to Mount Pleasant.
- 9 Q. If you were working in Summerville he would go home
- 10 for lunch?
- 11 A. We would go to eat there because he would treat me.
- 12 Q. How often would that be?
- 13 A. Only about two times only.
- 14 Q. Two times only ever?
- 15 A. I don't remember.
- 16 Q. When were those two times?
- 17 A. I don't remember.
- 18 Q. You said the day he got arrested was the only day
- 19 he had been off work except for a day he was sick?
- 20 A. Yes.
- 21 Q. How long did he work for you?
- 22 A. Well, he started -- he arrived from Charlotte --
- 23 what would it be? I don't remember.
- 24 Q. Was it over a year?
- 25 A. Yes.

- 1 Q. A year and a half?
- 2 A. I really don't remember because when he came from
- 3 Charlotte he worked for my cousin then he worked for me.
- 4 Q. And when was the day that he was out sick, if you
- 5 remember?
- 6 A. I really don't remember.
- 7 Q. You remember the day that he got arrested?
- 8 A. Yes. What I do remember is that it was a Thursday.
- 9 Yes, it was a Thursday.
- 10 Q. And he was off that day for the only time in over a
- 11 year?
- 12 A. Yes.
- 13 Q. It just happened to be that day?
- 14 A. Well, it's just that sometimes we would go to work
- 15 then we would come back. So we would just come back.
- 16 But we were there all the time.
- 17 Q. But this day he was not at work?
- 18 A. Right. Yes.
- 19 Q. And just one other day?
- 20 A. Yes.
- 21 Q. And Mr. Perez is your uncle?
- 22 A. Yes.
- 23 Q. Is he your father's brother or your mother's
- 24 brother?
- 25 A. My dad.

1 MS. HERRING-LASH: That's all the questions I have.

2 THE COURT: Okay. Any redirect?

3 MS. PARNELL: No, Your Honor.

4 THE COURT: Okay. Tell him he may step down.

5 Thank you very much.

6 All right. Mr. Foreman, ladies and gentlemen of
7 the jury, we'll take an afternoon break at this time.

8 Please leave your notepads in the chairs. Please don't
9 discuss the case amongst yourselves, and I'll get you
10 back in about 15, 20 minutes.

11 (WHEREUPON, the jury leaves the courtroom at
12 approximately 3:23 p.m.)

13 THE COURT: All right. We'll take about a
14 20-minute recess.

15 (WHEREUPON, a brief recess was taken.)

16 THE COURT: Is the State ready to proceed?

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

18 THE COURT: Is the defense ready?

19 MR. GRIMES: Yes, Your Honor.

20 THE COURT: Bring us the jury, please, sir.

21 (WHEREUPON, the jury enters the courtroom at
22 approximately 3:45 p.m.)

23 THE BAILIFF: The jury is present, Your Honor.

24 THE COURT: Thank you so very much.

25 If you'll call your next witness, please.

1 MS. PARNELL: The defense calls its next witness,
2 Mrs. Angelica Carmona.

3 ANGELICA CARMONA, after having been duly
4 sworn, testified as follows:

5 THE CLERK: Please state your full name and spell
6 your first and last names.

7 INTERPRETER HERNANDEZ: I don't know how to spell.

8 THE COURT: All right. Would you get her to tell
9 you her name and you spell it for us, please, the
10 interpreter.

11 INTERPRETER HERNANDEZ: Yes, Your Honor.

12 Angelica Carmona. The interpreter's spelling is
13 A-n-g-e-l-i-k-a C-a-r-m-o-n-a.

14 THE COURT: Thank you very much.

15 DIRECT EXAMINATION

16 BY MS. PARNELL:

17 (Through the interpreter.)

18 Q. Thank you, Ms. Carmona. I'm going to ask you to
19 tell the jury a little bit about yourself.

20 A. Okay.

21 Q. Where did you grow up?

22 A. Mexico.

23 Q. And in what part of Mexico?

24 A. Quitlaqual, De La Cruz.

25 Q. And is that the same area that Mr. Diaz Perez is

- 1 from?
- 2 A. Yes.
- 3 Q. Did you know each other back in Mexico?
- 4 A. Yes, of course.
- 5 Q. And did you and Mr. Perez come to the United States
- 6 together?
- 7 A. Yes, of course.
- 8 Q. About how many years ago was that?
- 9 A. It's been 13 years.
- 10 Q. And how many children do you have with Mr. Perez?
- 11 A. Three.
- 12 Q. How many daughters?
- 13 A. Two.
- 14 Q. And what are their names?
- 15 A. *Minor 10* , *Minor 3* , and *Minor 4* .
- 16 Q. And can you tell me a little bit about *Minor 3*
- 17 A. Yes.
- 18 Q. What kind of child is she?
- 19 A. She's a well-behaved calm girl. She's not a show
- 20 off.
- 21 Q. And *Minor 4* , what kind of child is Brenda?
- 22 A. Same.
- 23 Q. What is the first city that you remember living in
- 24 with Mr. Perez in the United States?
- 25 A. Charlotte.

- 1 Q. And is that in North Carolina?
- 2 A. Yes.
- 3 Q. And how many years did you live in Charlotte?
- 4 A. Maybe five years.
- 5 Q. Do you remember what Mr. Perez did for work there?
- 6 A. As a painter he worked.
- 7 Q. And what did you do for work in Charlotte?
- 8 A. Taking care of children.
- 9 Q. Do you remember how many kids you took care of in
- 10 Charlotte?
- 11 A. Sometimes eight or nine.
- 12 Q. Did you ever have any complaints in the families of
- 13 those children about Mr. Perez?
- 14 A. No, nothing.
- 15 Q. Do you remember about how many years ago you came
- 16 to the Charleston area?
- 17 A. It must be about five years.
- 18 Q. And what kind of work do you do here in the
- 19 Charleston area?
- 20 A. Me?
- 21 Q. Uh-huh.
- 22 A. Taking care of children.
- 23 Q. In all those years in Charlotte and Charleston
- 24 taking care of children do you know about how many
- 25 different kids you cared for?

- 1 A. With Charlotte and Charleston?
- 2 Q. Yes, ma'am.
- 3 A. In Charleston -- in Charlotte, eight or nine, and
- 4 here seven or eight, in Charleston. Maybe even nine.
- 5 Q. What does Mr. Perez do for work here?
- 6 A. Painter.
- 7 Q. And do you know who he was working for when he was
- 8 arrested?
- 9 A. For Luis Diaz.
- 10 Q. And do you remember what his regular schedule was?
- 11 A. There was no special schedule because in the
- 12 painting job field there isn't a special schedule.
- 13 Q. Do you remember what days of the week he typically
- 14 worked?
- 15 A. Mondays through Saturday. Some Saturdays he would
- 16 have off, or if it was rainy he might be at home.
- 17 Q. How often did he stay home on those days that he
- 18 normally worked?
- 19 A. In the weekdays or it might have been he would go
- 20 for lunch at home if he was in that nearby area working.
- 21 Q. Do you remember how often there was a rainy day and
- 22 he had to leave the house late?
- 23 A. I don't remember.
- 24 Q. And how often was Mr. Perez at home when the
- 25 children that you were babysitting were over?

- 1 A. It wasn't that usual. A lot of times because he
2 would be coming home they would be picking up the
3 children, the mothers would.
- 4 Q. How closely do you watch the children that you are
5 babysitting?
- 6 A. Oh, right there because I'm in the same house.
- 7 Q. Do you ever take a nap or go to sleep while those
8 children are over?
- 9 A. No. I don't sleep in the daytime.
- 10 Q. Do you ever leave the house when the children
11 you're babysitting are inside the house?
- 12 A. No.
- 13 Q. Do you have a car?
- 14 A. No.
- 15 Q. I'm going to ask you about a girl named Minorl
16 She's also known as Minorl
- 17 A. Yes.
- 18 Q. Do you know who I'm talking about?
- 19 A. Yes, more or less.
- 20 Q. You know who Minorl is?
- 21 A. Yes.
- 22 Q. And how often did you watch Minorl
- 23 A. I didn't watch her that often because she would go
24 to school. Sometimes I would have her on a Saturday,
25 sometimes.

- 1 Q. When you were watching her what kind of activities
2 did she like to do?
- 3 A. She would play Nintendo, watch cartoons. She's a
4 very bright girl.
- 5 Q. And was she and your daughter, Minor³, friends?
- 6 A. Yes.
- 7 Q. How often did they play together?
- 8 A. They are about the same age and size and they would
9 play together all the time.
- 10 Q. Did you ever see Minor¹ alone with Mr. Perez?
- 11 A. No, never.
- 12 Q. How often was it that Mr. Perez was at home when
13 Minor¹ was over?
- 14 A. Not much because he was hardly ever at home. It
15 was unusual.
- 16 Q. Was it usual that Minor¹ would go into another room
17 of the house by herself?
- 18 A. I don't know.
- 19 Q. How did Mr. Perez act around Minor¹ when he did see
20 her?
- 21 A. I didn't see anything unusual. He was fine.
- 22 Q. Did you ever see him act in a way that was strange
23 or inappropriate around Minor¹?
- 24 A. No. I didn't see anything unusual.
- 25 Q. And how did Minor¹ act if she saw Mr. Perez?

- 1 A. I saw her fine. She seemed fine and content and
2 she would give me hugs.
- 3 Q. Did she ever act scared of or nervous of Mr. Perez?
- 4 A. I didn't see anything unusual.
- 5 Q. I want to ask you about another girl named Minor 2 .
- 6 A. Okay.
- 7 Q. And do you know who I'm talking about?
- 8 A. Yes.
- 9 Q. And how often did you watch Minor 2 ?
- 10 A. She would come from time to time when her parents
11 maybe didn't have work.
- 12 Q. Did Minor 2 also play with your daughter, Minor 3
- 13 A. Yes.
- 14 Q. And did she like to play with the other kids as
15 well?
- 16 A. Yeah, they all played well together.
- 17 Q. And how often was Mr. Perez in the house when
18 Minor 2 was over?
- 19 A. From time to time.
- 20 Q. Do you believe that he ever had opportunities to be
21 alone with her for any length of time?
- 22 A. Not that I noticed.
- 23 Q. How did Mr. Perez act when Minor 2 was around?
- 24 A. When I saw him he would act like he always acts,
25 normal.

- 1 Q. And how did **Minor 2** act when Mr. Perez was around?
- 2 A. She was just fine playing with **Minor 3** and **Minor 1**
- 3 Q. Did **Minor 2** ever act scared or afraid of Mr. Perez?
- 4 A. No. I didn't see anything like that.
- 5 Q. Did Mr. Perez normally work on Sundays?
- 6 A. Not all Sundays but every now and then there would
- 7 be a Sunday where there was work and he would go.
- 8 Q. How often did you babysit either **Minor 1** or **Minor 2**
- 9 on a Sunday?
- 10 A. I didn't take care of them on Sundays. I don't
- 11 work on Sundays taking care of any children because
- 12 that's a day I dedicate to my daughters.
- 13 Q. I want to ask you a few more questions about
- 14 Mr. Perez.
- 15 A. Okay.
- 16 Q. How many years have you known Mr. Perez?
- 17 A. I know I got to know him when I was 13 or 14 years
- 18 old then later we fell in love.
- 19 Q. What kind of person do you know Mr. Perez to be?
- 20 A. He's good person.
- 21 Q. Do you believe that he could have done the things
- 22 that these girls are accusing him of doing?
- 23 A. I don't know what to say. God knows.
- 24 Q. When Mr. Perez was arrested did the police want you
- 25 to take your daughters anywhere?

- 1 A. Yes, of course.
- 2 Q. And where was that?
- 3 A. They wanted to take them to a medical clinic to do
- 4 a medical exam.
- 5 Q. Did they do an interview on your daughters?
- 6 A. I think so.
- 7 Q. And was that --
- 8 A. But I don't remember.
- 9 Q. Would that have been with both of your daughters?
- 10 A. The little one was still very small.
- 11 Q. Were they trying to find out if Mr. Perez had done
- 12 anything to your daughters?
- 13 A. I don't know. They just told me to go take them
- 14 for a medical exam.
- 15 Q. Why did you cooperate with the police after they
- 16 just arrested your husband?
- 17 A. I had to -- for respect of the police.
- 18 Q. Do you believe that Mr. Perez would ever harm
- 19 either one of your daughters?
- 20 A. Of course not.
- 21 Q. Thank you very much. I'm just going to ask that
- 22 you remain and answer any questions --
- 23 MS. PARNELL: I'm sorry, Your Honor. May I have
- 24 just a moment?
- 25 THE COURT: Yes, ma'am.

1 (PAUSE.)

2 BY MS. PARNELL:

3 Q. Pardon me, Ms. Carmona. I do have two more
4 questions. Do you know if Mr. Perez has ever been -- do
5 you know if Mr. Perez has any kind of criminal record
6 before he was arrested in 2010?

7 A. He's never had any problem with going to jail or
8 anything.

9 Q. And did one or both of the solicitors that's here
10 today come by your house this year to ask to speak with
11 you?

12 A. I don't really remember.

13 Q. Do you remember if anyone from the solicitor's
14 office came by your house to ask you some questions
15 before Mr. Grimes and I did?

16 A. I don't remember.

17 Q. Have you ever cooperated with -- Ms. Carmona,
18 that's all I have for you. Thank you very much. If
19 you'll just answer any questions that Ms. Herring-Lash
20 has, please.

21 THE COURT: Cross-examination.

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

23 CROSS-EXAMINATION

24 BY MS. HERRING-LASH:

25 (Through the interpreter.)

1 Q. Ms. Carmona, how many children did you babysit when
2 you and Mr. Perez lived in the trailer?

3 A. In the trailer?

4 Q. Yes.

5 A. Let me remember. From five to six kids.

6 Q. And what were their ages?

7 A. There was Minor 1, and her little brother, and Minor 8
8 (phonetic).

9 THE COURT REPORTER: I'm sorry. I'm having trouble
10 hearing.

11 A. Minor 8 and her sister, Minor 1 and her little
12 brother, and a child who was like a month and a half old.

13 Q. And how old was the little brother?

14 A. Minor 1's little brother?

15 Q. Yes.

16 A. He was small. I think it was when he was first
17 learning to walk.

18 Q. And what about Minor 7

19 A. Minor 2

20 Q. Minor 7. Minor 2's sister.

21 A. I don't remember exactly. I think around three.
22 She was walking well.

23 Q. And then you had your two children there?

24 A. Yes.

25 Q. So you had a one-month old, a one-year old, a

- 1 three-year old. How old was Minor4?
- 2 A. Minor4 was three when her father got arrested, and
- 3 she was about four after that. She went to school and
- 4 now she's about six.
- 5 Q. But we are talking back when you were at the
- 6 trailer would have been early 2010.
- 7 A. In the trailer she would have been three, almost
- 8 four.
- 9 Q. So you had a one-month old, a one-year old,
- 10 three-year old, three-year old, and three eight-year
- 11 olds?
- 12 A. Yes.
- 13 Q. To watch?
- 14 A. Yes.
- 15 Q. With the one-month old, and the one-year old, and
- 16 the three-year old, would they have to take naps?
- 17 A. The little ones would sleep but not for very long.
- 18 naps.
- 19 Q. You had to do diapers?
- 20 A. Yes.
- 21 Q. Feed them more than the others?
- 22 A. Yes, of course.
- 23 Q. Did the three-year olds and the eight-year olds
- 24 ever like to play outside?
- 25 A. Sometimes they would play outside, sometimes inside

- 1 with **Minor 4**
- 2 Q. How did you make the decision whether to stay
3 inside with the babies or go outside with the others?
- 4 A. I would be outside and inside. I would go outside
5 to make sure that they were okay, didn't fall down or
6 anything.
- 7 Q. So you'd leave them outside alone?
- 8 A. No. I would stay outside with them all the time
9 but if they were outside and I would run inside if they
10 wanted some water or some juice, something, and get it.
11 And **Minor 1's** little brother would follow me around and a
12 lot of times wanted me to be carrying him.
- 13 Q. Were there ever a time that some children wanted to
14 play inside and others outside?
- 15 A. No. I wouldn't allow that.
- 16 Q. What about the one month old?
- 17 A. I would take him in his portable carrier.
- 18 Q. That must have been a hard job?
- 19 A. Yes, it was for me.
- 20 Q. Taking care of all of those children.
- 21 A. Yes, and especially with the little baby.
- 22 Q. Did **Minor 1**, **Minor 1** like to play her game and read?
- 23 A. She would read, she would play, she would watch
24 cartoons. She was always contented [sic].
- 25 Q. She liked to play inside with reading more than be

- 1 outside, didn't she?
- 2 A. Minor 3 would like to be outside with the bikes and
- 3 she loves to play outside, and then they would go inside,
- 4 and back and forth.
- 5 Q. You said that Minor 1 was comfortable, content?
- 6 A. Yes.
- 7 Q. Did she cry when she was dropped off at your house
- 8 sometimes?
- 9 A. No. I never saw her arrive and crying. She seemed
- 10 contented and happy. And she would say, What are we
- 11 going to have to eat? And I would say, Rice and chicken,
- 12 and she would be very happy.
- 13 Q. Do you remember David Watson, myself, Ms. McCoy,
- 14 and Ms. Faulkner coming to your home to talk to you?
- 15 A. I was, I think, remembering one of you but I'm not
- 16 real sure.
- 17 Q. You told us about Minor 1 crying when she was dropped
- 18 off.
- 19 A. Sometimes she would come in and she would be happy
- 20 then sometimes she would be sitting there and not look
- 21 too happy, and I'd say, What's the matter? I got
- 22 punished or mom took away my game.
- 23 And I would tell her, Don't worry about it. You
- 24 probably did something that you weren't obedient and she
- 25 had to take it away but I'm sure she'll give it back and

- 1 everything will be okay.
- 2 Q. And you told us she came to your house crying.
- 3 A. Sometimes she would get there that way but it was
- 4 always about that game.
- 5 Q. The game that she liked to sit in the house --
- 6 A. Nintendo.
- 7 Q. You said that you never saw any unusual behavior
- 8 from Mr. Perez?
- 9 A. I never saw anything unusual.
- 10 Q. It was normal?
- 11 A. Yes. For me it was normal.
- 12 Q. What is normal?
- 13 A. He would come in and they would be going out to
- 14 play with **Minor 3**
- 15 Q. What would you call unusual?
- 16 A. I don't know.
- 17 Q. You said that you went to take your children to the
- 18 center out of respect for the police?
- 19 A. And I took them because they told me I should take
- 20 them and I said, I'll do it because you're telling me to.
- 21 Q. And that you said was for the police?
- 22 A. Yes, out of respect for the police. If the police
- 23 were telling me to do that I had to obey.
- 24 Q. Isn't it true that the Department of Social
- 25 Services came to your house and told you you had to or

- 1 the children would be removed?
- 2 A. Yes.
- 3 Q. And your children knew that, didn't they?
- 4 A. They kind of heard it but not that much. I didn't
- 5 really want them to hear about all that.
- 6 Q. But they heard?
- 7 A. Not totally.
- 8 Q. How do you know?
- 9 A. My oldest daughter never said anything about it.
- 10 Q. She never said anything?
- 11 A. She never said anything like, Mommy, they are going
- 12 to take me away, and I said, Nothing bad is going to
- 13 happen, and they said, But dad is in the jail.
- 14 Q. But she knew the Department of Social Services was
- 15 there talking about removing them?
- 16 A. And when they were there they first took me off
- 17 into a room and talked to me, then they took her off into
- 18 a room and talked to her.
- 19 Q. And you took her to confront ~~Minor 1's~~ mother?
- 20 A. ~~Minor 3?~~
- 21 Q. ~~Minor 1.~~
- 22 A. Where?
- 23 Q. To the store.
- 24 A. In the moment that they took their father to be
- 25 arrested they said, Where are they taking him? It was

1 all in English and I only speak Spanish. They told my
2 oldest daughter that they would come back with someone
3 who spoke Spanish.

4 Q. And did they come back with Minna Hosseini?

5 A. Yes, Ms. Minna. She explained it.

6 Q. And my question was, did you take your daughter to
7 the store to confront Minor's mother?

8 A. I'm explaining about that so -- because I didn't
9 know why they took him. And so then Minna came and she
10 explained to me that they had arrested him, and they said
11 something about an eight-year-old girl. And I said to my
12 daughters, Which eight-year-old girl are they talking
13 about?

14 And she said, I think Minor is eight. I believe
15 it's eight. And so my daughter said, Let's go talk to
16 Minor's mom. Maybe she knows what's going on. Maybe she
17 can tell us.

18 Q. So it was your daughter's idea?

19 A. Yes. So my daughter said, Mommy, they are talking
20 about an eight-year-old girl and she's an eight-year-old
21 girl. Let's go find out.

22 And so my daughter was just insistent that we
23 should go to the store.

24 And I said, Well, why should we go?

25 And she said, Let's please just go to the store.

1 And I said -- and we went to the store and I said
2 to the lady, How are you?

3 And she said, I'm fine. How are you?

4 And we were just standing there but we were crying
5 about what had happened. And then a policeman came and
6 told us we had to leave there, and we left the store.

7 Q. Minor 2 was eight also, correct?

8 A. I don't know how old she was.

9 Q. You continued to be friends with Minor 2's family
10 after this?

11 A. Yeah. When I run into them they would say hello.

12 Q. Until their daughter told them what happened?

13 A. I don't know because when I would run into them
14 they would always say hello.

15 Q. Just one more issue. When you were at the house,
16 how many children were there?

17 A. Are you talking about the trailer or the house?

18 Q. The house where you were at during the summer?

19 A. There was Minor 1 -- there was Minor 1, there was
20 Minor 2, there was Minor 3 (verbatim), and the little
21 brother of Minor 1 and my two daughters, Minor 3 and Minor 4.

22 Q. You stopped babysitting any other children?

23 A. The month-and-a-half-year old little girl.

24 Q. So the same amount of children were at the house?

25 A. Yeah.

1 Q. And this was the summers?

2 A. As in the trailer. Yes, at the house.

3 Q. And in the summer Minor 1 and Minor 2, would be there
4 Monday through Friday?

5 A. They would be from time to time but not always
6 because the father of Minor 8 -- I'm not sure. Her father
7 wasn't always working.

8 MS. HERRING-LASH: Court's indulgence for one
9 moment.

10 THE COURT: Yes, ma'am.

11 BY MS. HERRING-LASH:

12 (Through the interpreter.)

13 Q. You mentioned that you had a son, Minor 10

14 A. Yes.

15 Q. Where is he?

16 A. In Mexico.

17 Q. So he doesn't live here?

18 A. No.

19 MS. HERRING-LASH: That's all the questions I have.

20 THE COURT: Any redirect?

21 MS. PARNELL: Yes, Your Honor, briefly.

22 REDIRECT EXAMINATION

23 BY MS. PARNELL:

24 (Through the interpreter.)

25 Q. Ms. Carmona, Ms. Herring-Lash just mentioned when

1 you spoke with people from the Department of Social
2 Services -- and to your knowledge, was that case by the
3 Department of Social Services closed against Mr. Perez?

4 A. Yes.

5 Q. And did -- to your knowledge, did they find that
6 any claims that he'd abused your daughter were unfounded?

7 A. They said there was no proof.

8 MS. PARNELL: One moment, Your Honor.

9 THE COURT: Yes, ma'am.

10 MS. PARNELL: Your Honor, may I?

11 (Counsel approached the witness.)

12 BY MS. PARNELL:

13 Q. Ms. Carmona, do you ever recall seeing any of the
14 documents that were involved in the Department of Social
15 Services case?

16 A. I do believe I have a document. It's at home, and
17 I think it had to do with closing the case.

18 MS. PARNELL: And, Your Honor, may I approach the
19 witness?

20 THE COURT: Yes, ma'am.

21 MS. PARNELL: Thank you.

22 BY MS. PARNELL:

23 (Through the interpreter.)

24 Q. Ms. Carmona, I'm going to show you a document. It
25 is in English so the interpreter may have to assist.

1 Please take your time and look at it and tell me if you
2 recognize this document.

3 A. I don't really remember. I have it at home. What
4 is this about?

5 INTERPRETER HERNANDEZ: Your Honor, do you --

6 THE COURT: Hold on just a second.

7 MS. PARNELL: Your Honor, may I grab this document
8 real quick? Thank you.

9 THE COURT: Yes, ma'am. Did you hear what she
10 said?

11 MS. PARNELL: I didn't.

12 THE COURT: She said she didn't recall what it is
13 about.

14 BY MS. PARNELL:

15 (Through the interpreter.)

16 Q. Thank you, Ms. Carmona. That's all the questions I
17 have?

18 THE COURT: Any redirect?

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

20 THE COURT: Tell her she may step down.

21 Call your next witness.

22 MR. GRIMES: We call Brittany Jordan.

23 THE COURT: I'm sorry, who?

24 MR. GRIMES: Brittany Jordan.

25 BRITTANY JORDAN, after having been duly

1 sworn, testified as follows:

2 THE CLERK: Ms. Jordan, please speak into the mic,
3 and please state your full name and spell your last name
4 for the record.

5 THE WITNESS: Yes, sir. My name is Brittany
6 Jordan. Last name, J-o-r-d-a-n.

7 DIRECT EXAMINATION

8 BY MR. GRIMES:

9 Q. Good afternoon, Ms. Jordan.

10 A. Good afternoon, sir.

11 Q. I'm going to ask you a few questions about your
12 background.

13 A. Yes, sir.

14 Q. How old are you?

15 A. I'm 26.

16 Q. And where are you from?

17 A. I'm from the State of Virginia.

18 Q. And how far did you go in school in Virginia?

19 A. I was attending college when I came.

20 Q. What college were you attending?

21 A. Well, I attended Piedmont Virginia Community
22 College and I also attended a semester at the University
23 of Virginia.

24 Q. And what were you studying there?

25 A. Criminal justice.

1 Q. And I'm going to ask you a few questions about your
2 work history.

3 A. Yes, sir.

4 Q. What kind of jobs have you held in the past?

5 A. Well, when I lived in Virginia I was doing my
6 internships for my criminal justice program and I was a
7 dispatcher in the State of Virginia.

8 Q. And what were you doing as a dispatcher? Is that
9 for EMS, the police department, fire department?

10 A. Well, in the area that I live it's all in one, so
11 EMS, fire, and police department.

12 Q. Okay. How long did you have that internship for?

13 A. For more than a year, sir.

14 Q. And have you had any other jobs in Virginia besides
15 that one?

16 A. Yes, sir. I also worked for a dining company in
17 Virginia, a law school.

18 Q. What was that? I'm sorry.

19 A. The law school doing fine dining.

20 Q. Okay. At UVA?

21 A. Yes, sir. At Darwin Graduate School.

22 Q. And when did you move from Virginia to South
23 Carolina?

24 A. In the year 2008, sir.

25 Q. And what brought you down here?

- 1 A. Well, I wanted to study cosmetology and the program
2 was very expensive in Virginia, and I wanted to travel so
3 I came here and I enrolled in cosmetology school.
- 4 Q. How did you make the switch from criminal justice
5 to cosmetology?
- 6 A. Well, as you know, college is quite expensive so
7 it's not -- I'm not finished but I just wanted to take a
8 break and, you know, maybe have some fun with my career
9 before I proceed.
- 10 Q. And do you know Venancio?
- 11 A. Yes, sir.
- 12 Q. And how long have you known Venancio?
- 13 A. I've known him for a period of four years.
- 14 Q. And how did you come to know him?
- 15 A. At one point in time I resided with Mr. Perez.
- 16 Q. And could you explain to the jury how -- were you a
17 roommate? I mean, I don't think you've gone out with
18 him.
- 19 A. No, sir.
- 20 Q. How did you come to reside at his place?
- 21 A. Well, their family is a very respectable Hispanic
22 family from here and when I came here someone in the
23 community, the Hispanic community suggested that I should
24 rent a room with them.
- 25 Q. And do you speak Spanish?

1 A. Yes, sir.

2 Q. And in the four years that you've known Venancio
3 how well have you gotten to know him?

4 A. I would say pretty well. When you reside on a
5 day-to-day basis with people you know them, you get to
6 know them?

7 Q. And how long did you reside with him or at his
8 residence?

9 A. I would say somewhere -- eight months. Somewhere
10 in there.

11 Q. Okay. And where did you move to after you left his
12 residence?

13 A. Closer to my school on Dorchester Road.

14 Q. And do you still go by their residence?

15 A. Yes, sir. As a matter of fact, I now reside with
16 his wife again.

17 Q. Okay. And when did you start living with her?

18 A. Maybe about four months ago.

19 Q. Okay. Now, sort of the Spring of 2010 or Summer of
20 2010, were you residing with Venancio in his residence at
21 that time?

22 A. No, sir.

23 Q. Okay. Do you know a girl named **Minor 1**

24 A. No, sir. Not that I'm aware of.

25 Q. Do you know a girl named **Minor 2**.

1 A. No, sir.

2 Q. And during that four years that you've known

3 Venancio what kind of person would you describe him as?

4 A. Well, he's hardworking. He's a family man.

5 Q. And you said he's hardworking. What kind of work

6 schedule would he have?

7 A. Well, he's a painter so there's not really ever an

8 hour to painting, but they go to work in the morning and

9 they stayed until six, seven o'clock, sometimes, in the

10 evening. If they had indoor painting they could stay all

11 the way in the evening until 10:00 or 11:00.

12 Q. And in the four years that you've known him have

13 you formed an opinion as to Venancio's honesty?

14 A. Yes, sir.

15 Q. And what is your opinion of his character for being

16 honest?

17 A. I believe he's an honest man, sir.

18 Q. And why is that?

19 A. I just never had anything -- any of his behavior to

20 tell me that he's not an honest person.

21 Q. And in the four years that you've known him do you

22 have any opinions as to whether he could commit any type

23 of violent act against a child?

24 A. No, sir, I do not believe so.

25 Q. And why is that?

Minor 3

A -- DIRECT BY MS. PARNELL

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1 A. Because he's a family man and I don't believe that
2 he would do anything that he wouldn't want done to his
3 own family.

4 Q. Thank you, Ms. Jordan. Please answer any questions
5 the solicitor might have for you.

6 THE COURT: Cross-examination?

7 MS. HERRING-LASH: I have no questions.

8 THE COURT: Thank you. You may step down. Thank
9 you very much.

10 THE WITNESS: Thank you, sir.

11 THE COURT: Call your next witness.

12 MR. GRIMES: We call Minor 3 .

13 Minor 3 after having been duly
14 sworn, testified as follows:

15 THE CLERK: Please say your full name and then
16 spell both your first and your last names, please.

17 THE WITNESS: Minor 3

18

19 DIRECT EXAMINATION

20 BY MS. PARNELL:

21 Q. Thank you, Minor 3 How old are you today?

22 A. Eleven.

23 Q. And what day is your birthday?

24 A.

25 Q. Did you grow up here in South Carolina?

1 A. Yes.

2 Q. I'm going to ask you to tell me a little bit about
3 you family, okay. Who are your parents?

4 A. Venancio Diaz Perez and Angelica Carmona Perez.

5 Q. And how many siblings do you have?

6 A. I didn't understand that.

7 Q. How many brothers or sisters do you have?

8 A. One sister and one brother.

9 Q. Okay. And what's your sister's name?

10 A. Minor 4

11 Q. And is she younger than you or older?

12 A. Younger than me.

13 Q. And what's it like to be a big sister?

14 A. It's fun because I get to play with my sister.

15 Q. Do you also look out for your little sister?

16 A. Yes.

17 Q. Tell me about school. What school do you go to?

18 A. Morningside Middle School.

19 Q. And what grade are you in at Morningside?

20 A. Sixth.

21 Q. And what kind of activities do you do in school?

22 A. I do math, E-L-A, and social studies, and science.

23 Q. Do you do any activities outside of classes with
24 the school?

25 A. Sometimes, and projects.

- 1 Q. And do you do any kind of after school activities,
2 like sing or dance, or anything like that?
- 3 A. Sometimes I dance on my Wii.
- 4 Q. I'm sorry?
- 5 A. Sometimes I dance on my Wii.
- 6 Q. And what does your father, Mr. Perez, do for work?
- 7 A. He paints.
- 8 Q. Do you know if he normally works long hours during
9 the day?
- 10 A. He didn't had [sic] an hour.
- 11 Q. He doesn't have a regular schedule?
- 12 A. Uh-huh.
- 13 Q. What does your mother do for work?
- 14 A. She babysits.
- 15 Q. And does that mean that you get to play with some
16 of the kids that she's babysitting?
- 17 A. Not a lot because they are small, like babies.
- 18 Q. Did she used to babysit some kids that were about
19 your age?
- 20 A. Yes.
- 21 Q. Do you remember one of those kids who was named
22 Minor 1,
- 23 A. Yes.
- 24 Q. Is she also called Minor 1 ?
- 25 A. Yes.

1 Q. And did you ever get the chance to play with her
2 when she was over?

3 A. Yes.

4 Q. Did she usually play around with you and the other
5 kids or did she like to hang out by herself?

6 A. She played around with me and the other kids.

7 Q. And how often was your father at home when Minor
8 was around?

9 A. He was home when he got sick or on Sundays.

10 Q. If he was at home was he ever doing things around
11 the house, like fixing things or painting things?

12 A. Yes.

13 Q. Did he ever ask you or your sister to help him with
14 any of that stuff?

15 A. Sometimes, yes.

16 Q. Did he ever ask any of the kids that your mother
17 would babysit for to help him?

18 A. If he asked me I used to ask them to help me with
19 it but mostly, no.

20 Q. Okay. Do you remember your father ever being alone
21 with Minor?

22 A. No.

23 Q. Do you remember him ever doing anything
24 inappropriate with Minor?

25 A. No.

- 1 Q. How did Minor 1 act around your father?
- 2 A. Like if it was a normal person, not afraid or
- 3 nothing.
- 4 Q. And I also want to ask you some questions about
- 5 another girl that your mother used to babysit named
- 6 Minor 2. Do you remember Minor 2?
- 7 A. Yes.
- 8 Q. And were you friends with Minor 2?
- 9 A. Yes.
- 10 Q. How close friends?
- 11 A. Like almost best friends.
- 12 Q. And what kinds of things would almost best friends
- 13 do together?
- 14 A. Play outside, play games, stuff like that.
- 15 Q. Was she also about the same age as you?
- 16 A. Yes.
- 17 Q. And so when she was over at the house did she
- 18 generally play around with you and the other kids?
- 19 A. Yes.
- 20 Q. How often do you remember your father being at the
- 21 house when Minor 2 was over?
- 22 A. The same, like he was sick or other stuff, like on
- 23 Sundays.
- 24 Q. So that would be when he was not working?
- 25 A. Uh-huh.

- 1 Q. Do you remember ever seeing your father alone with
2 Minor 2?
- 3 A. No.
- 4 Q. How did your father act when he was around Minor 2?
- 5 A. Normal.
- 6 Q. Did you ever see your father do anything
7 inappropriate around your friend, Minor 2?
- 8 A. No.
- 9 Q. Did you ever see Minor 2 act like she was scared or
10 nervous of your father?
- 11 A. No.
- 12 Q. Do you remember approximately when your dad was
13 arrested?
- 14 A. Yes.
- 15 Q. And did your mother -- was your mother still
16 babysitting Minor 2 after your dad was arrested?
- 17 A. I don't remember.
- 18 Q. Do you remember seeing Minor 2 or her family after
19 your father was arrested?
- 20 A. Yes.
- 21 Q. Do you remember them ever coming by your house
22 after your father was arrested?
- 23 A. Yes.
- 24 Q. And did Minor 2 say anything to you about the
25 accusations that Minor 1 was making against your father?

- 1 A. Yes.
- 2 Q. And did she say anything to you that would indicate
- 3 that she thought that ~~Minor 1~~ was lying?
- 4 A. Yes.
- 5 Q. Do you remember who else was with her at the time?
- 6 A. Her dad and her sister.
- 7 Q. And were they in your house or outside your house?
- 8 A. Outside my house.
- 9 Q. And were they walking or were they standing on the
- 10 sidewalk?
- 11 A. They were in their car.
- 12 Q. What kind of father do you think that your dad is?
- 13 A. A good father, and a fun father.
- 14 Q. And how does your dad discipline you and your
- 15 sister if he gets upset with you?
- 16 A. He just talks to us and say, This is important,
- 17 just leave it right there, some kind of toy, or just
- 18 talk.
- 19 Q. Has your father ever hit you?
- 20 A. No.
- 21 Q. Has your father ever struck ~~Minor 4~~ .
- 22 A. No.
- 23 Q. Do you know of any reason why ~~Minor 1~~ or ~~Minor 2~~
- 24 would say these things about your father?
- 25 A. No.

1 Q. Do you believe that your father would ever hurt
2 another child?

3 A. No.

4 MS. PARNELL: One moment, Your Honor.

5 (PAUSE.)

6 BY MS. PARNELL:

7 Q. Minor 3, I'm going to back up for a moment and ask
8 you a question, okay?

9 A. Uh-huh.

10 Q. On that day after your father was arrested when you
11 saw Minor 2 and her family.

12 A. Yes.

13 Q. Can you tell us what Minor 2 said to you?

14 A. She told me she was crazy, but I don't know why she
15 said that.

16 Q. She told you that who was crazy?

17 A. Minor 1

18 MS. PARNELL: That's all the questions that I have,
19 Your Honor.

20 THE COURT: Okay. Cross-examination.

21 CROSS-EXAMINATION

22 BY MS. HERRING-LASH:

23 Q. Minor 3 you were good friends with Minor 1?

24 A. Yes.

25 Q. And she was coming to your house when she was eight

- 1 and you were eight?
- 2 A. Yes.
- 3 Q. And you said that you played with her a lot?
- 4 A. Yes.
- 5 Q. What kind of things would you all play?
- 6 A. Like sometimes we would play outside or play on
- 7 games.
- 8 Q. Did you play with your bike?
- 9 A. Yes.
- 10 Q. Did you play hide and go seek?
- 11 A. Yes.
- 12 Q. Did she play with her PSP?
- 13 A. Yes.
- 14 Q. Did she let you play with her PSP sometimes?
- 15 A. Yes.
- 16 Q. And did you dance around the TV sometimes and play
- 17 dance?
- 18 A. I don't remember.
- 19 Q. You said you danced with your Wii?
- 20 A. Yes.
- 21 Q. Do you use that on the TV?
- 22 A. Yes.
- 23 Q. And does Minor 4 dance around with you, too?
- 24 A. Yes.
- 25 Q. You had said that you did not know if your dad was

1 ever alone with Minor 1?

2 A. Yes.

3 Q. When Minor 1 was at your house was she ever out of
4 your sight?

5 A. No.

6 Q. Never?

7 A. No.

8 Q. How long did she come to your house?

9 A. Like almost -- like, from Monday to Saturday,
10 sometimes Saturdays.

11 Q. Oh, okay. And all day?

12 A. Yes.

13 Q. In the summer?

14 A. Uh-huh.

15 Q. And after school during the year?

16 A. Yes.

17 Q. And I'm sorry. I didn't make it really clear but
18 at first when I said how long I meant like a year, or a
19 matter of months, if you know.

20 A. Like a matter of months.

21 Q. And in all that time she was never -- you were
22 never out of her sight?

23 A. No.

24 Q. You go to the bathroom with her?

25 A. No.

- 1 Q. So was she out of your sight then?
- 2 A. Yeah.
- 3 Q. Did you ever play outside and she have to go
- 4 inside?
- 5 A. Only if she had to go to the restroom, yes.
- 6 Q. Did you go to the fair with Minor 2 ?
- 7 A. I don't remember.
- 8 Q. Did you go to the fair with Minor 1
- 9 A. I don't remember.
- 10 Q. Have you ever been to the fair?
- 11 A. Yes.
- 12 Q. When was that?
- 13 A. Like, I went to the fair this year and last year.
- 14 Q. Did you go to the fair in 2010?
- 15 A. Yes.
- 16 Q. And when you went to the fair in 2010 you don't
- 17 remember if you went with Minor 2 or Minor 1
- 18 A. No.
- 19 Q. Do you remember ever having a conversation with
- 20 Minor 2 about your dad?
- 21 A. No, I don't remember.
- 22 Q. Never? Do you remember -- you don't remember
- 23 talking to her at the fair?
- 24 A. No.
- 25 Q. Now, you also said that Minor 2 and her family

1 continued to be friends with your family after your dad
2 was arrested?

3 A. Yes.

4 Q. Did they continue to be friends with your family
5 after Minor 2 said your dad molested her?

6 A. I don't remember.

7 Q. Do you know when that was?

8 A. No.

9 Q. Do you remember going to the children's center to
10 be interviewed?

11 A. Yes.

12 Q. And were you a little bit afraid?

13 A. Yes.

14 Q. Some scary things had happened to you?

15 A. Yes.

16 Q. When you went there were you a little bit afraid to
17 talk?

18 A. Yes.

19 Q. Minor 3., do you -- you love your dad?

20 A. Yes.

21 Q. And you do what your parents tell you to do and
22 obey your parents?

23 A. Yes.

24 MS. HERRING-LASH: Those are all the questions I
25 have.

1 THE COURT: Okay.

2 MS. PARNELL: Thank you, Your Honor. Just very
3 briefly.

4 THE COURT: Yes, ma'am.

5 REDIRECT EXAMINATION

6 BY MS. PARNELL:

7 Q. Minor 3, are you afraid to answer questions for us
8 today?

9 A. Kind of.

10 Q. Are you telling us the truth to all of our
11 questions today?

12 A. Yes.

13 Q. And has anyone told you what you need to say to
14 these questions today?

15 A. No.

16 MS. PARNELL: That's all I have, Your Honor.

17 THE COURT: Any recross?

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

19 THE COURT: You may step down.

20 Call your next witness.

21 MR. GRIMES: Your Honor, at this time the defense
22 would rest.

23 THE COURT: Okay. Let me see the attorneys up
24 here, please.

25 (WHEREUPON, a bench conference was had.)

1 THE COURT: All right. Mr. Foreman, ladies and
2 gentlemen of the jury, if you would be back in the jury
3 room at 10 o'clock and we'll have closing arguments and
4 the charge after the closing arguments. I think that's
5 the culmination of all the testimony.

6 Please don't discuss the case amongst yourselves or
7 read anything or do any electronic research about the
8 case. All right. I'll see you in the morning at
9 10 o'clock. Have a good evening.

10 (WHEREUPON, the jury leaves the courtroom at
11 approximately 4:51 p.m.)

12 THE COURT: All right. We'll adjourn until nine
13 o'clock. We got that juror coming at nine. As far as
14 the lawyers are concerned, I'll see you all at 9:30. See
15 you in the morning. Thank you very much.

16 (WHEREUPON, the trial of this case was recessed for
17 the day.)

18 Thursday, January 17, 2013

19 THE COURT: Solicitor, do you have any motions?

20 MS. HERRING-LASH: No, Your Honor, I don't.

21 THE COURT: Does the defense have any motions?

22 MR. GRIMES: Yes, sir. We have two motions. First
23 we would renew our motions for directed verdict of
24 acquittal based on the same arguments of yesterday.

25 THE COURT: All right. That motion is denied.

1 MR. GRIMES: The second, we would again renew our
2 motion. I think we argued pretrial and during the trial
3 about admissibility of Minor 2's testimony under rules
4 404(b) and 403. I believe that was inadmissible and not
5 proved by clear and convincing evidence, did not fit a
6 common scheme or plan and we'd ask the Court at this
7 stage for a mistrial based upon admitting that evidence
8 and because it should not have been admitted in the
9 first place.

10 THE COURT: All right. The Court acknowledges that
11 was made pretrial but during the course I believe
12 co-counsel made the motion, renewed the same motion,
13 however I did not simultaneously at that time overrule
14 the objection but I think I did later in the record
15 overrule that objection. But that motion is denied.

16 MR. GRIMES: Thank you, Your Honor. My
17 understanding that's protected for any future appellate
18 purposes?

19 THE COURT: I'm sorry, what?

20 MR. GRIMES: That should cover us for any future
21 appellate purposes?

22 THE COURT: Well, yes, I think so. The Court
23 acknowledges the fact that you throughout the trial have
24 raised the issue of Lyle and it was not a bad act, it did
25 not comply with the law and the Court should not have

1 admitted it, and I think other than when co-counsel made
2 the objection when the testimony was getting ready to
3 start, I believe on cross, I don't think I simultaneously
4 overruled but I think for the record I did later. If
5 it's not clear the Court acknowledges that defense did
6 preserve that objection throughout the trial.

7 MR. GRIMES: Thank you, Your Honor.

8 THE COURT: Okay. Anything else?

9 MR. GRIMES: No, sir.

10 THE COURT: All right. Bring us the jury, if you
11 would, please, sir.

12 (WHEREUPON, the jury enters the courtroom at
13 approximately 10:54 a.m.)

14 THE BAILIFF: All jurors present, Your Honor.

15 THE COURT: Thank you very much.

16 Mr. Foreman, ladies and gentlemen of the jury, as I
17 said yesterday we're going to have closing arguments and
18 charge. Now, during the closing arguments the
19 interpreter is over in the corner to your right, and
20 she's going to be interpreting the English to the Spanish
21 for the defendant with the headphones that he has on. If
22 her taking bothers anyone during the process please raise
23 your hand and I'll move her back in another place. Just
24 raise your hand and I'll have her move so she's no longer
25 disturbing you as far as talking and doing the

1 interpretation process.

2 Solicitor?

3 MS. HERRING-LASH: May it please the Court.

4 Counsel.

5 Morning, ladies and gentlemen. I will have just a
6 few moments to go over the law with you again then
7 Mr. Grimes will do his closing argument and then I will
8 do my closing argument after that. I explained the law
9 to you on Monday but since it is a foreign concept I want
10 to go over it once more, and I don't think it would hurt
11 for anybody.

12 The defendant is charged first with criminal sexual
13 conduct with a minor. He is guilty of criminal sexual
14 conduct with a minor in the first degree if the actor
15 engages in a sexual battery with the victim who is less
16 than 11 years of age.

17 So the element, there is that the defendant engaged
18 in sexual battery and the child was under the age of 11
19 at the time of the sexual battery.

20 Sexual battery is defined under the law as
21 intercourse, cunnilingus, fellatio, anal intercourse, or
22 what we are concerned with here is any intrusion, however
23 slight, of any part of a person's body or any object in
24 to the genital or anal openings of another person except
25 for medical purposes.

1 What we have here is digital penetration, the child
2 saying that a finger was inserted into the genital
3 opening; the genital opening being between the lips of
4 genital opening.

5 With this charge, let me go over for a second, this
6 charge has what under the law is called a lesser included
7 charge. The way you consider a lesser included charge is
8 you look first to see if the State has proven to you
9 beyond a reasonable doubt that the defendant committed a
10 sexual battery, that there was penetration, however
11 slight. If you find that the State did not prove that
12 there was penetration, however slight, then you look to
13 the lesser included charge which is assault and battery.

14 Assault and battery is indecent liberties with a
15 female but with no penetration. So you consider the
16 criminal sexual conduct, and if you find that that did
17 not happen then you consider the lesser charge of assault
18 and battery.

19 He also is charged with lewd act upon a minor. The
20 defendant is over the age of 14 years, is one of the
21 elements. You heard someone give the birthday. He
22 willfully and lewdly committed or attempted any lewd or
23 lascivious act on or with the body or any member thereof
24 of a child under the age of 16, and this was done with
25 sexual intent or with -- for sexual gratification. This

1 is what you would normally think of as fondling, touching
2 and rubbing the genital areas; the buttocks, the breast,
3 kissing. That is lewd act upon a minor. The Judge will
4 define for you lewd and lascivious but in layman's terms
5 it is child molestation or fondling.

6 There is another charge that the Court will give
7 you on how to look at this evidence that I wanted to take
8 just a moment to explain. It is called a charge of
9 unanimity. The Judge will charge you that you must find
10 unanimously for any of the verdicts, and that means all
11 12 people must agree on the verdict.

12 Now, in this particular case, unlike some cases,
13 you have a time period of the indictment and you have a
14 series of events that have been talked about by the
15 child. In order for you to find the defendant guilty you
16 all 12 must agree on at least one of those instances.

17 Some of you may agree that one thing happened,
18 others may agree another thing happened. That would not
19 be enough. You all have to agree on at least one event.
20 Similarly, you all may agree on one incident that she
21 talked about. There are other things that eight of you
22 may agree on you, two of you may agree on. Those you
23 cannot convict. But if all of you just agree on one that
24 would be enough. You could all agree on all, or you
25 could none agree on any, but if you all agree on one that

1 would be enough to convict.

2 Those are all the -- I have to say right now about
3 the law. I'll come back when Mr. Grimes is finished and
4 do my closing argument. Thank you.

5 THE COURT: Mr. Grimes?

6 MR. GRIMES: Thank you, Your Honor. May it please
7 the Court?

8 THE COURT: Yes, sir.

9 MR. GRIMES: Good morning, ladies and gentlemen of
10 the jury. First I want to thank Ms. Lash for giving you
11 a little summary of the law. I probably would have said
12 the exact same things Ms. Lash said. It was a very fair
13 and impartial statement of law, and we agree with it.

14 Now I want to talk about this case. You heard in
15 my opening statements we talked about nightmares, and
16 this is what this case is about. It's one huge
17 nightmare. Imagine being at home, whether it's for a
18 lunch break or because of the weather, or you are coming
19 to see your family.

20 At home with your daughters and your wife and all
21 of a sudden you get a knock at the door and it's a police
22 officer accompanied with other people there, doesn't
23 speak your language, and then comes in the house or takes
24 you out of the house, puts you in handcuffs, takes you,
25 puts you in the police car.

1 No one tells the family what's happening. You seen
2 your child crying, they are upset. You have no idea
3 what's happening. And you're taken down to the police
4 station, basically put in a cell, you are booked, put in
5 jail population. You still don't know why you're there.

6 One day goes by, no one has come to talk to you.
7 Two days go by, still haven't seen a judge, no one has
8 come to talk to you. Three days go by, you finally learn
9 why you are in jail, and you are in jail based on some
10 allegations that are totally repugnant to you, that you
11 could never imagine yourself committing. This is what
12 this case is about.

13 Venancio has waited for two and a half years to
14 have his day in court to tell you his side of what
15 happened, to tell you why he's not guilty, and he did
16 that.

17 Now I'm going to do something that I don't think
18 I've ever done before. I'm going to ask you not to find
19 him not guilty. I want you to find him innocent because
20 he did not commit these crimes.

21 Simply put, Venancio is not the type of person who
22 breaks the law, much less someone who would hurt a child.
23 You heard that he's 46 years old, has never been arrested
24 before. Unlike me, he's never even received a speeding
25 ticket. No record of any type of drug arrest, alcohol

1 related charges, nothing.

2 And you will hear Judge Nicholson tell you about
3 good character and how someone's good character is a
4 factor you can consider in determining whether they are
5 guilty or not guilty.

6 And that good character charge and that philosophy
7 has deep roots. The book of Job talks about it and
8 Venancio has talked about his life. He's told you about
9 where he's born, his parents, how he was raised. His
10 family, how he loves his children, how he works. He's
11 put the whole record of his life as part of his defense
12 for you to consider.

13 Now, Venancio has not had an easy life and he's not
14 taking any shortcuts to get ahead. He hasn't gone out
15 selling drugs, living off government programs, doing
16 anything like that. He works very, very hard, and the
17 reason he works so hard is to provide for his family, to
18 make sure that his children have a better life than him,
19 that they don't have to drop out of school in the sixth
20 grade and go work in the fields, and that get an
21 education and become somebody.

22 Now, we've heard some allegations about how he
23 would hit MINOR A That's why I was asking the story
24 about how MINOR A would react in disciplining her. And I
25 think some of you may have been lost in the translation

1 but do you really think that Minor 4 would buy the little
2 thick mustache, put it to her face and say, So I,
3 Venancio Perez, and make fun of her dad if he was the
4 type of person to beat her? It just defies common sense
5 to think that someone has two beautiful daughters and has
6 worked so hard in their life to throw it all away by
7 doing something like this.

8 Now, I want to talk about a couple of comparisons
9 that come to mind as I've represented Venancio. And the
10 reason why I can say that is because I've known him for
11 long time now. Venancio has become a new friend. He's
12 someone who's taught me a lot, helped me do a lot of soul
13 searching.

14 And when I have a bad day at work or something goes
15 wrong, if I miss -- get caught in a red light, or someone
16 cuts me off, or I'm running late, or have bad result at
17 trial, I feeling sorry for myself I think about what
18 Venancio is going through and realize that the worst day
19 of my life would be a great day for him. It just helps
20 you put the big picture of where you fit in there, and I
21 want to thank him for helping teach me that.

22 The analogies I want to make are to two ladies.
23 The first lady is someone that you probably all know.
24 She tells us and the world the following, and if you've
25 have you ever been to Ellis Island you know who I'm

1 talking about.

2 And the second lady is someone you probably don't
3 know. Like Venancio, she was raised on a farm. She was
4 born in a small town in County Clare Ireland. Like
5 Venancio her dad, Martin, who was a farmer, and like
6 Venancio, her mom married, was a housewife. She had a
7 younger sister, Hannah, two brothers, Patrick and John.

8 Like Venancio, she left school early, went to work
9 on the farm, and when she was 17 she moved to London, the
10 big city. And probably like Venancio she encountered
11 some discrimination because of her religion, her national
12 heritage, and worked a lot of entry level jobs, got some
13 good opportunities at the hotels she worked at, being
14 able to stay there before they made it big. Met Cassius
15 Clay before he changed his name.

16 Then she met a sailor who was in the Navy, married
17 him, been married to him for over 40 years and has two
18 sons. And like any loving mother she calls him, probably
19 sometimes too much, saying come over for dinner on
20 Sundays, make sure they get a hot meal. And bear with me
21 a little bit. I want to finish the story.

22 And the thing that really shows how she loved her
23 family, about nine and a half years ago one morning she
24 woke up, had a very terrible headache. And she had gone
25 to school when she was in Mississippi for nursing and

1 knew something was wrong, and luckily her husband was
2 there, work was slow. She told him she wasn't feeling
3 good. He was going to take her. She said, No. You need
4 to call 911 to get an ambulance. An ambulance came and
5 they ended up taking her to the ER, Trident.

6 Now, her oldest son was in Columbia for work and
7 got a call from his dad sometime that morning and made it
8 to the Columbia from Charleston in a four-cylinder car
9 probably about as fast as anyone on NASCAR. Got to the
10 hospital, saw the priest, the last rights had been given.
11 Got there right before his mother went to go in surgery.
12 And the last thing she was saying to him before she went
13 in surgery was, If your brother calls finally from
14 Oklahoma make sure his room is made up for him. There's
15 food in the frig for him.

16 Luckily, she survived. Surgery was successful.
17 She's been fine ever since, but based on that moment and
18 all she was thinking about is that her son have enough
19 food and his bed made up shows me how much she loves her
20 children, and somebody that loves their children that
21 much cannot harm any other child.

22 Now, I think Venancio loved his children that much.
23 You saw *Minor 3* How she loves him is very obvious. You
24 heard the circumstances are the best. How his wife
25 testified she loves him. Don't you think if he was

1 abusing somebody she would be right over here with
2 Ms. Lash asking him to go to jail?

3 And the next reason I want to talk about why
4 Venancio is innocent is the testimony of Mindy. It's
5 pretty much undisputed she's a very smart girl. You
6 heard what kind of grades she made, and you heard some of
7 the vocabulary she used.

8 And quite honestly, sometimes it was better than my
9 vocabulary. You remember her saying about how my X-box
10 was laying harmlessly in the entertainment center. And
11 apart from talking about her testimony to Christina, I
12 don't remember the last time I used the word nonchalant.

13 She came across very confident and assertive. She
14 didn't come across as someone who's easily confused. And
15 when I first started questioning her I asked her about
16 that to make sure that she wasn't confused given that she
17 is 11. And I didn't want anyone to think I was trying to
18 trick her, take advantage of someone who was young. And
19 that's why I asked her when she met Ms. Credeur was she
20 confused then. She said, No.

21 But when she was working on her story for several
22 months was she confused about that? She said, No. And
23 she came across as very, very well prepared for her
24 testimony. She may, in fact, have practiced her
25 testimony as much as she practiced her story.

1 She was very precise on why people would not see
2 what Venancio was allegedly doing. An example, the story
3 of the couch where ~~Minor~~3 was kind of playing as a
4 superstar and ~~Minor~~4 was watching TV. Venancio just
5 happened to be at a certain angle and no one else could
6 see it. She was pretty clear in her testimony it was all
7 on the couch, and when you watch the video she's talking
8 about she was sitting in a rocking chair.

9 What kind of man is going to show his private parts
10 to someone when his child is five, six feet from that
11 person? It's sickening, a criminal, someone who plays
12 the system, not someone like Venancio.

13 But going back to ~~Minor~~1's testimony. When I
14 started questioning her about some of the inconsistencies
15 between her story and her testimony then she became
16 confused and, you know, I'm not sure why that is, maybe
17 it's honest confusion.

18 We've heard a lot of testimony from Dr. Elsey
19 about a child's memories, problems they have remembering
20 stuff; or it could be the way she was prepared in
21 practicing. Can't answer, can't handle, or it's hard,
22 say you are confused.

23 Now, I'm not going to go through all the
24 inconsistencies. You will have time to do that when you
25 deliberate but there were sort of two I want to talk

1 about a little bit. And you heard testimony on Tuesday
2 she was very confident the first time these occurred was
3 on her second day at Venancio's house. Yet in her story
4 she gave a completely different account the second day.

5 Then when I asked her about that a little bit she
6 first denied even saying anything like this. Then when
7 I showed her the paperwork then she said she was
8 confused. I imagine Ms. Lash tried to explain those
9 inconsistencies by relying on Ms. Credeur's testimony or
10 Dr. Elsey's testimony.

11 Ms. Credeur's testimony is a bit problematic. One
12 reason that jumps out at me is a clarification issue.
13 She talked to her for a while, at least half an hour,
14 then went back out, talked to the detective for at least
15 five minutes, came back and asked for clarification on
16 the being bitten on the breast, nothing about
17 penetration.

18 Then Ms. Credeur said, Well, maybe I messed up. I
19 should have done that. Well, if that's the case why not
20 have a second forensic interview? I didn't hear anything
21 about protocols for that. For example, what if during
22 counseling there had been some new allegation? For
23 example, maybe Samuel did something and the police wanted
24 to investigate Samuel. Logically, they would have to
25 have a second forensic interview.

1 And there's another thing that jumped out at me
2 going through Ms. Credeur's testimony. When I asked her
3 about if you received any new information about alleged
4 sexual abuse, I think that occurred about a week after
5 Minor met with the solicitor's office, according to
6 Ms. Credeur's testimony, and we don't know what that new
7 information was, no details about it. Maybe it was
8 penetration, maybe it was something else.

9 Now, I want to talk a little bit about Dr. Elsey's
10 testimony. Obviously, he's much smarter than me, studies
11 this area a lot. He's an expert in the area, but a
12 couple things jumped out at me from his testimony.

13 He testified something about the children can
14 remember the first time, and he may be confused about
15 what the first time was when he's talking about the
16 grooming process, sitting on the lap may be considered
17 the first time by law enforcement but not first time by a
18 child. In this case there was no issue of when.

19 Mr. Perez is not a family member. There's no
20 testimony he tried to watch movies with her, or play with
21 her, give her candy. Apart from these bribes there's
22 really no evidence of grooming. I don't -- no bribes
23 even constitute evidence of grooming.

24 And we know Mr. Perez worked a lot. Obviously, we
25 don't know the exact time and days of his work schedule,

1 but she was very certain that it occurred on the second
2 day that she was there. So that would be the first time.
3 And maybe she felt weird the first day but she was -- in
4 her story she always assumes it's first day, second day.

5 And you seen her on the video. If she was confused
6 about something she said so. If she didn't know
7 someone's name she said so. When they asked about what
8 happened she gave answers to that.

9 The picture that the prosecution is painting is
10 basically a picture of a monster, someone whose wife is
11 babysitting and he molests the child the second day that
12 child is there in the house, probably essentially the
13 first chance he gets. We've heard Venancio testify.
14 We've heard his family testify, and he's not a monster.
15 He's not someone who would do something like this.

16 And another important part about ~~Minor 1's~~ testimony
17 is her allegation that Venancio hit ~~Minor 4~~. They can't
18 explain that story away by saying some type of confusion
19 or mistake, and if Venancio was beating on ~~Minor 4~~ like
20 that do you think the family court matter with DSS would
21 have been dropped? Don't you think maybe they would have
22 charged him with maybe at least assault and battery or
23 unlawful neglect of a child? Do you think ~~Minor 3~~ is going
24 to let someone beat up on her little sister?

25 Now, the prosecutor's only real evidence in this

1 case is Minor 1's testimony. Now, you may wonder, well,
2 Mr. Grimes, what about Minor 2 ? But Judge Nicholson told
3 you that's not evidence of guilt. That's evidence to
4 show that there's some type of pattern going on.

5 Now, as I said in my opening statement, I don't
6 know why Minor 1 would make these allegations. And in
7 trying to prove Venancio's innocence sometimes it feels
8 like we're proving a negative, which is very difficult.
9 But that's not the law. The law is that the prosecutor
10 has to prove the elements of this case beyond a
11 reasonable doubt and overcome the presumption of
12 innocence.

13 Now, I listened to the testimony and I was trying
14 to think of some possible reasons that might explain why
15 Minor 1 might have done this. Could it be a cry for
16 attention? You heard she had a younger brother two years
17 old. A lot of us parents know younger children can get a
18 little bit more attention. Was she a little bit jealous?

19 We heard from Ms. Credeur about the parents had
20 different parenting styles. There were several things
21 about the need for punishment to be consistent. We
22 didn't hear from the stepfather. Is this a way maybe for
23 her to avoid punishment at home, or maybe something did
24 happen but with someone else and she's transferring the
25 blame to Venancio?

1 We've heard a lot about Samuel, stuff occurring
2 in his room. Detective Lacher never even talked to
3 Samuel, never even showed her a picture of Samuel. Where
4 is Samuel?

5 We heard some testimony yesterday from Ms. Carmona
6 that sometimes **Minor I's** mom would be upset, would punish
7 her, take away her games. Then Ms. Carmona would say,
8 Well, it's going to be okay. She's just doing this.
9 Maybe **Minor I's** mom thought she was undermining her
10 authority, or maybe **Minor I's** mom is looking to gain legal
11 status in this Country.

12 There's been a lot of debate about immigration.
13 You've seen stuff from Arizona. In 2010 Governor Haley
14 started working on making South Carolina's laws on
15 immigrations tougher in line with Arizona. And that
16 certainly is going to cause people to worry about being
17 deported, and her mom said she would do anything for
18 **Minor I**

19 Now, **Minor I** is obviously very smart and engaging,
20 and living in the United States she can probably grow up
21 and do anything she wants, whether it's being a lawyer,
22 doctor, an engineer, politician, anything in her mind she
23 can accomplish whatever she wants. What mother wouldn't
24 want her to have those opportunities? Wouldn't you do
25 anything to keep your child from having to go back to

1 Mexico to work in the fields?

2 The third reason we'll talk about for Venancio's
3 innocence is the lack of police investigation in this
4 case. Detective Lacher testified that everyone is
5 presumed innocent. When you look at the facts of this
6 case this is like a steamroller. It's a rush to judgment
7 based on what he said, inferences, what I say were
8 assumptions, but either way there has to be evidence.
9 That's what Judge Nicholson will tell you. You can't
10 base a decision based on inferences or assumptions.

11 An example of how there was a rush to judgment is
12 the process used to obtain the arrest warrant. This is a
13 very series charge. At the time he swore out the arrest
14 warrant July 15, 2010 there was no evidence that there
15 was penetration. You saw on the video, specifically
16 asked if there was any penetration and she said no.

17 You have Dr. Abel's report. Right here, digital
18 penetration less than 72 hours, three days, ten days,
19 over ten days, undetermined. It's all blank. What's
20 checked? Fondling. There at the bottom if you read
21 that, date of evaluation 7-12-2010, and you'll have a
22 copy of this back in your jury room. I apologize if I
23 cut anyone short on that.

24 And the prosecutor recognizes the difference
25 between fondling and penetration. That's why they did

1 the direct indictment for lewd act upon a minor, because
2 they know rubbing is not penetration. They know that
3 rubbing you cannot infer penetration. That's why they
4 charged that charge.

5 And that so-called investigation was poor. The
6 lead investigator probably spent more time in court this
7 week than he has in the investigation of this case. For
8 example, he's a lead investigator that didn't go to the
9 Lowcountry Children's Center to observe the interview.
10 He didn't say that he had any type of exigent
11 circumstances, wasn't investigating a murder, wasn't in
12 trial, something that prohibited him from being there.

13 And why is it important for him to be there? To
14 see what the child says. See if there is follow up
15 needed. The case is two and half years old and I don't
16 think he's ever watched the video until probably
17 yesterday. Never talked to the key witness in the case.
18 Never asked to do any type of follow-up forensic
19 interview, and the officer he did send to go observe the
20 interview showed up late. I don't think he even reviewed
21 the trauma narrative of what happened.

22 Another example of the poor investigation, why
23 wasn't Samuel put in any type of lineup? He says
24 something about Samuel was 10 years younger than
25 Venancio, the age difference, it couldn't of been him.

1 Well, what picture did it show or use in a lineup? It
2 was a 10-year-old picture from North Carolina DMV. Well,
3 if 10 years is too much of a difference why you putting
4 that 10-year-old picture into the lineup?

5 What does Samuel look like? Is there any
6 resemblance? Normally I might not ask those type of
7 questions but when the solicitor asked ~~Minor 1~~ if she saw a
8 person in the courtroom that was present in the courtroom
9 she said, I don't see him. She never made any kind of
10 identification in the courtroom. Now, if Samuel may have
11 been in the courtroom who knows what she may have said.

12 There was no follow-up investigation because there
13 was a rush to judgment and presumption of guilt by
14 Detective Lacher. He totally discounted what Ms. Carmona
15 had to say. He totally discounted what ~~Minor 3~~ had to say.

16 He never tried to talk to anyone who lived at the
17 residence. There was one potential witness, the food
18 salesman. He didn't even know about the salesman, no
19 indication of a salesman being a potential witness. Why
20 was that? He never even watched the video, apparently
21 never even talked to the prosecutors.

22 Told us about how documentation is important. The
23 report is only five pages long. He talked a lot about
24 contamination and did the analogy with DNA and a child's
25 memory. You saw ~~Minor 1~~ has had at least 14 sessions with

1 Ms. Credeur. No telling how many sessions she's had with
2 Ms. Herring-Lash, Ms. McCoy. No telling how many times
3 she's talked to her mother about the case or other
4 children.

5 And we know children can make stuff up. We've
6 heard **Minor 2** saying, you know, that she found a dead
7 body but yet there is nothing to corroborate that,
8 nothing like she ever reported it to police or just
9 talked to as a witness.

10 And, you know, **Minor 2**, she had -- I'm not sure why
11 she would make something up either. The thing that kind
12 of stands out to me, I believe, was that her mom was
13 upset with her. She knew about **Minor 1** and the allegations
14 there and all she had to was say, well, the same guy who
15 did this to **Minor 1** did it to me, and she was out of any
16 trouble she was in. Finally, Detective Lacher never even
17 tried to talk to Venancio and read him his rights.

18 Now, Judge Nicholson is going to talk to you a
19 little bit about what's evidence and what's not evidence.
20 Lawyers questions are not evidence. Normally I don't
21 talk about this too much but Ms. Herring-Lash asked a
22 question yesterday and I was just hoping she was going to
23 re-call Detective Lacher. She goes, Well, isn't it --
24 when she was cross-examining Venancio, Well, isn't it
25 true that you were drunk and that's why you couldn't talk

1 to Detective Lacher?

2 I would have asked Detective Lacher, show me one
3 word in your report that says drunk, or alcohol, or
4 inebriated. And if he was drunk don't you think he would
5 have said that when I was questioning him about that?
6 You just can't come in court and make stuff up about why
7 people may not have done stuff, and that's probably why
8 they didn't re-call Detective Lacher because that story
9 would have just not held up.

10 The real reason he probably didn't talk to
11 Mr. Perez is either he's assuming he's guilty or maybe he
12 just didn't want to take the time to get an interpreter.
13 A he said, she said case and no physical evidence. You'd
14 want to get a confession, you'd want to get some type of
15 statement to try to incriminate the person.

16 Now, certainly you can't force him to talk because
17 he has a right to remain silent but they always try to
18 get confessions from people. They never even gave him a
19 chance to talk.

20 Next I want talk about the common sense. Now, I
21 think the big thing is sort of the schedules. You know
22 Minor I probably started going to be babysat sometime in
23 late April, sometime in May. She was in school at that
24 time so she wouldn't be there a lot during the weekdays.
25 You know Mr. Perez worked a lot, so he was there a very

1 limited time.

2 During the school year if there was going to be any
3 opportunity it would have been -- I think Minor1 testified
4 would be in the evening after he got home from work. But
5 your children are around playing with each other, mom was
6 there. When is the opportunity to do anything?

7 And there's this story about playing hide and seek
8 and she went in the closet and the man was already in the
9 closet. That just makes no common sense.

10 Now I want to talk a little bit about some of the
11 questions that Ms. Herring-Lash asked our witnesses.

12 First, you know, she was cross-examining Minor3 about
13 whether she was ever alone or whether she could see
14 whether Minor1 was ever alone, were they always together.

15 Well, you know, Minor3 said no. Then she asked
16 about the bathroom, and of course she's alone in the
17 bathroom. There has been no testimony that Minor1 ever
18 was going to go use the bathroom and then got abused.

19 The only testimony about the bathroom was when
20 Minor1 claims that Venancio called her in there to help
21 fix something in there, and that doesn't really make
22 common sense -- pass the common sense test either. If
23 someone is abusing you and you're out in a safe place and
24 the person abusing you says, well, come in here in this
25 little room, why walk in there?

1 Then Ms. Herring-Lash when she was questioning
2 Ms. Carmona made some good points about how Ms. Carmona
3 probably has trouble juggling all her duties of all the
4 children. I know my mom had a hard time just watching me
5 and my brother when we were younger. Never mind watching
6 six, seven kids.

7 We don't know the time frames when all those babies
8 were there. Were they there when Venancio got home from
9 work or had they already been picked up? There's really
10 no allegation anything occurred in the middle of the day.
11 It was always after work.

12 And there's a lot of testimony about whether
13 Venancio was home for lunch, home during when it was
14 raining, but then again, ~~Minor~~ I says the time after he got
15 home from work in the afternoons, so lunchtime in the
16 morning just wouldn't apply.

17 Next I want to talk a little bit about reasonable
18 doubt and what is reasonable doubt. Judge Nicholson at
19 the same time will give you two definitions. The
20 simplest one is reasonable doubt is a doubt that would
21 cause a reasonable person to hesitate to act.

22 Now, before I started working at the Public
23 Defender's Office I was a part-time judge in the City of
24 Hanahan, and I would hear a lot of traffic court cases,
25 running stop signs, speeding, and I remember I had this

1 one when I first started to me was a really tough case
2 and just sticks out in my mind.

3 Sergeant Cope was testifying about it was an
4 elderly lady who ran a stop sign. And Sergeant Cope
5 testified well, credible. And then the defendant, the
6 elderly lady, testified well and credible. And I asked
7 Sergeant Cope. I'm like, Well, how could the State meet
8 its burden beyond a reasonable doubt when you have two
9 credible witnesses? How do I break the tie?

10 She was quite candid and said, Well, you really
11 can't. I don't have it on video or any other witnesses.
12 And based upon that I found her not guilty, and that's
13 probably what you have in this case. Minor comes across
14 as credible, and Venancio and his witnesses come across
15 as very credible. How do you break the tie? I don't
16 know. That's probably the hardest job of anyone in this
17 courtroom, and that's your job.

18 Judge Nicholson will tell you that that standard,
19 beyond a reasonable doubt, applies to those stop sign
20 cases, misdemeanors, felonies, even death penalty cases.
21 The law is the same for any type of crime.

22 Now, the solicitor may argue just because you
23 deliberate that doesn't mean there's a hesitation to act,
24 and I agree with that. When 12 people get together,
25 whether it's to decide where to go for lunch, what to do

1 after work, or in a criminal case there's going to be a
2 debate. No one is going to all agree right away.

3 But after all of you look at the evidence, voice
4 your concerns, why you believe one part, disbelieve
5 another part, give your reasons, and go through
6 everything very carefully and respecting everyone's
7 opinions, having a good civil debate back there and you
8 can't reach a unanimous decision then that would be a
9 hesitation to act.

10 Now, in conclusion I'm going to talk a little bit
11 about nightmares and I imagine Ms. Lash is probably going
12 to incorporate that into her argument and ask you to end
13 ~~Minor~~ 's nightmare by finding Mr. Perez guilty. But by
14 doing that you're going to continue the nightmare for
15 Venancio and his family if you were to do that.

16 Quite candidly, create another nightmare. Me and
17 Ms. Parnell were talking about this last night. It's
18 like defense attorney's worst nightmare having an
19 innocent man go to prison then wondering what you could
20 have done differently to prevent that.

21 We tried our hardest to give you everything we can,
22 be respectful of everyone in the process and I know you
23 have a hard job to do. We want you to do it carefully,
24 correctly and to put an end to this nightmare once and
25 for all and find Venancio innocent. Thank you.

1 THE COURT: Solicitor?

2 MS. HERRING-LASH: Child sexual assault is not like
3 other crimes. Most crimes you hear about are very
4 different than child sexual assault. As an example, in a
5 case of a physical assault you may have a physician come
6 in here and show you an x-ray of a broken bone. What's
7 broken inside isn't visible. What's broken inside of a
8 child is not visible.

9 You may have a robbery, perhaps, where the officers
10 can go out and recover the items and bring them in and
11 show you. What's stolen here is the innocence, and
12 that's something that can't be brought into the courtroom
13 and shown. Or not like a DUI case where citizens may see
14 the driving that is impaired or an officer.

15 The perpetrator decides when to start. He decides
16 on the opportunity that gives him the access and it is
17 most often in the secrecy of the home.

18 Also in child sexual assault cases your primary
19 witness is the victim who by definition is a child. And
20 unfortunately this process is intimidating and formal
21 even for all of us, and for a child that is just
22 magnified. They don't sometimes understand everything
23 that may be in there that is important for you to know.
24 They don't have the ability to understand all of the
25 intricacies that may come up. A lot of people don't, but

1 children in particular have difficulty with this.

2 They are so concrete. If they are not asked
3 specifically you most likely will not get the answer,
4 where an adult would say yes, but this is what I was
5 thinking or this is what happened. You don't get that
6 from children just by the nature of the fact that they
7 are children.

8 You are the judges of the credibility of the
9 witnesses. You do this every day when you judge
10 somebody's believability. You do it in your everyday
11 life. There are a lot of things that you use in judging
12 credibility. I'll go over some of them.

13 Let's start with motive. When we judge credibility
14 you often think what bias does someone have, what reason
15 do you they have to make this up, or to lie about or to
16 say this? I would ask you to look at what possible
17 motive this child could have to make this up. What did
18 she have to gain by this? It has not been pleasant. She
19 has absolutely nothing to gain by saying this.

20 As a matter of fact, if she had not been asked by
21 her mother that evening when her mother just did the
22 safety questions that she had done who knows if she would
23 have ever told or when she would have told, or if she
24 would have told. The mom said after **Minor** told her about
25 what happened she didn't remember all the conversation

1 about the hugs but her mind was just racing and she
2 couldn't say for sure about that happening after Minor 1
3 first told her.

4 I guess that the defense wants you to believe that
5 the motive in this case is a U-Visa. I submit to you
6 that that is a desperate grasp.

7 First of all, Minor 1 made this allegation. She was
8 a child that had just turned nine. In order for you to
9 believe that the motive in this case was a U-Visa you'd
10 have to believe that she somehow, I guess, had done legal
11 research and knew about this process that her mother
12 didn't even know about it. And she knew that not only
13 would she have to say something but what nature of the
14 crime she would have to allege to make it fit into this
15 process. All of these steps, you'll have to believe, if
16 you believe that was the motive.

17 And I will ask you on your own, think about, you
18 know, assess, assess what you believe Ms. Jimenez did.
19 When she heard this information she did the right thing.
20 She called the police station and she reported it.
21 That's what a mom or a family member or even a
22 professional is supposed to do when they hear this
23 information.

24 She did not know. She said that and Minna, the
25 victim advocate, said she had to tell her about it. She

1 had no idea that this process existed, and when she did
2 bring it up there was reluctance and hesitancy. I think
3 that Ms. Jimenez probably said it best when she said, You
4 can have that back if you can make this have not happened
5 to my daughter. I don't want it if that's what has to
6 happen for me to get it.

7 Think it out. It doesn't make any sense. Often
8 the defense will just throw up issues to confuse you,
9 which is their job, but think about it as a reasonable
10 juror, does it make any sense?

11 Another way that we judge credibility of witnesses
12 is to look at what they say, how they say it, their
13 demeanor when they say it, the way that -- the reasons
14 they have to say it.

15 I will ask you to look at the details that **Minorl**
16 did give you. She did not say he touched me, he put his
17 finger in my private, he showed me his private, he tried
18 for me to touch his private. She gave you details about
19 each of those instances.

20 One of the hardest things about preparing for
21 closing argument is deciding not to say too much to tire
22 you but to not leave out something that would be
23 important. I'll just leave some of the details to you
24 all rather than going over them ad nauseam, but a few,
25 like she was watching Toy Story, she had to use the nails

1 to help him fix the wall that the paper had came down,
2 him flexing his muscles, biting. Those kind of things
3 aren't the kind of details that you just make up if you
4 are just thinking I'm just going to say somebody touched
5 me. Just think about it. You have a lot of other
6 details. I won't go over all of those.

7 In this case in particular, and maybe unusually,
8 you have three different statements. You have the
9 statement that was given in court, and that is one of the
10 statements that you have that was in response to
11 questions. You have the statement that was given on the
12 tape that you saw, which was also in response to
13 questions. And then you have -- you have not seen yet,
14 but you have her trauma narrative where she does just a
15 free recall of her memory of the different things that
16 happened.

17 That, the trauma narrative, the statement in court,
18 and the statement on the tape have some similarities,
19 some differences. Some of them are about different
20 events, you have some of them the same three -- she talks
21 about each event three times, some one time, some two
22 times. Kind of like what Dr. Elsey explained as when the
23 instances blend or blur together, and when it becomes
24 difficult to distinguish some from the other. That's
25 just how our memories work when we have had lots of

1 different things that are similar happen.

2 You will have the trauma narrative to look at and
3 you will see in the trauma narrative that she talks about
4 sexual abuse; He sexually abused me, he sexually abused
5 me. She is not asked in the trauma narrative, well, what
6 do you mean by sexual abuse, because that's not one of
7 the statements that there are any questions.

8 But if you remember in court when she was taking
9 about the time in the closet she said, He sexually abused
10 me.

11 I had to say, What does that mean?

12 Well, he touched me.

13 How did he touch you?

14 He put his finger inside of me.

15 She talks about being sexually abused a lot in the
16 trauma narrative but she's not asked, well, what does
17 that mean on that occasion?

18 Another confusing thing about the trauma narrative
19 is you'll see it's almost like there's one incident, then
20 another, then back to the other because it's stream of
21 consciousness and it's not controlled.

22 The tape, as Dr. Elsey explained, what they attempt
23 to do in a tape is not get every incident that happened
24 but maybe the first, maybe the last, maybe the one that
25 the child remembers the best, maybe the one that had the