

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM HOWARD HEATH,

APPELLANT.

APPELLATE CASE NO. 2018-000938

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803) 734-3727

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit
Lexington Judicial Center
205 E. Main Street
Lexington, SC 29072
(803) 785-8352

ATTORNEYS FOR RESPONDENT

RECEIVED

SEP 10 2019

SC Court of Appeals

RECEIVED

SEP 10 2019

SC Court of Appeals

INDEX

INDEX	i
TRANSCRIPT OF TRIAL HELD MAY 7 – 11, 2018	12
OPENING STATEMENT BY MS. USRY	12
OPENING STATEMENT BY MR. FLOYD	18
TESTIMONY	
NIKKI RODGERS	
Direct Examination by Ms. Mayes	20
Cross-Examination by Mr. Spangler.....	29
TIMOTHY FRANKLIN	
Direct Examination by Ms. Usry	37
Cross-Examination by Mr. Spangler.....	53
CHARLES ROBERT LINT, JR.	
Direct Examination by Ms. Mayes	85
Cross-Examination by Mr. Floyd	99
Redirect Examination by Ms. Mayes.....	101
COMPLAINANT	
Direct Examination by Ms. Mayes	104
Cross-Examination by Mr. Floyd	146
Redirect Examination by Ms. Mayes.....	164
Recross-Examination by Mr. Floyd.....	168
SHAUNA GALLOWAY WILLIAMS	
Direct Examination by Ms. Mayes	170
Cross-Examination by Mr. Floyd	195
Redirect Examination by Ms. Mayes.....	203
Recross-Examination by Mr. Floyd.....	204
BRIGITTE DEGUZMAN	
Direct Examination by Ms. Mayes	207
Cross-Examination by Mr. Floyd	229
Redirect Examination by Ms. Mayes.....	235
Recross-Examination by Mr. Floyd.....	239

MARGIE BRANHAM	
Direct Examination by Ms. Usry	243
MOTION FOR MISTRIAL	255
TESTIMONY (CONTINUED)	
MARGIE BRANHAM	
In-Camera Examination by Ms. Usry	263
Cross-Examination by Mr. Floyd	267
CALEB BLACK	
Direct Examination by Ms. Usry	270
TRIAL JUDGE'S RULING ON OBJECTION TO HEARSAY	275
TESTIMONY (CONTINUED)	
CALEB BLACK	
Direct Examination by Ms. Usry	277
Cross-Examination by Mr. Floyd	280
MARLO MCCANN	
Direct Examination by Ms. Mayes	281
Cross-Examination by Mr. Floyd	300
COURTNEY THOMPSON	
Direct Examination by Ms. Mayes	301
Cross-Examination by Mr. Spangler	316
Redirect Examination by Ms. Mayes	329
Recross-Examination by Mr. Spangler	331
DONNA MONEY	
Direct Examination by Ms. Mayes	332
Cross-Examination by Mr. Spangler	350
Redirect Examination by Ms. Mayes	354
Recross-Examination by Mr. Spangler	356
MICHAEL PHIPPS	
Direct Examination by Ms. Usry	357
TRIAL JUDGE'S RULING ON OBJECTION TO ADMIT PHOTOS	369
COURT'S RULING ON MOTION FOR MISTRIAL	374
TESTIMONY (CONTINUED)	

MICHAEL PHIPPS	
Direct Examination by Ms. Usry	375
Cross-Examination by Mr. Spangler.....	400
Redirect Examination by Ms. Usry.....	405
Recross-Examination by Mr. Spangler.....	408
MOTION FOR DIRECTED VERDICT.....	409
COURT'S RULING	414
RENEWAL MOTIONS FOR MISTRIAL AND DIRECTED VERDICT	416
COURT'S RULING	416
COLLOQUY REGARDING DEFENDANT'S RIGHT TO TESTIFY	417
TESTIMONY	
SELMA HEATH	
Direct Examination by Mr. Floyd.....	428
Cross-Examination by Ms. Mayes.....	433
Redirect Examination by Mr. Floyd	438
SECOND RENEWAL OF MOTIONS FOR MISTRIAL AND DIRECTED VERDICT	448
COURT'S RULING	449
CLOSING ARGUMENT BY MS. MAYES	461
CLOSING ARGUMENT BY MR. FLOYD	476
CLOSING ARGUMENT BY MS. MAYES	491
JURY CHARGE	495
VERDICT	517
DEFENDANT'S MOTION REGARDING SENTENCING	523
SENTENCING	530
INDICTMENTS	534

CERTIFICATE OF COUNSEL 542

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**STATE'S EXHIBIT NOS. 22 (PHOTO), 34 (DATA FILE), 35 (POSTER), 36
(SCREENSHOT), 37 (DATA FILE), 38 (SCREENSHOT).**

State of South Carolina
County of Lexington

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	2016-GS-32-02097
	)	2016-GS-32-02097A
William H. Heath	)	2016-GS-32-02098
	)	2016-GS-32-02100
<u>Defendant.</u>	)	

May 7 - 11, 2018
Lexington, South Carolina

B E F O R E:

The Honorable R. Knox McMahon, Judge; and a
jury.

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

Suzanne Mayes, Deputy Solicitor
Kate Usyr, Assist. Solicitor
Attorneys for the State

Wayne Floyd, Esquire
Colin Spangler, Esquire
Attorneys for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

	I N D E X	
1	<u>WITNESS</u>	<u>PAGE</u>
2		
3	<u>MARLO MCCANN</u>	44
4	IN-CAMERA EXAMINATION	45
5	BY MS. MAYES	
6	IN-CAMERA EXAMINATION	57
7	BY MR. FLOYD	
8	IN-CAMERA EXAMINATION	60
9	BY MS. MAYES	
10	IN-CAMERA EXAMINATION	61
11	BY MR. FLOYD	
12	<u>NIKKI RODGERS</u>	156
13	DIRECT EXAMINATION	156
14	BY MS. MAYES	
15	CROSS-EXAMINATION	165
16	BY MR. SPANGLER	
17	<u>TIMOTHY FRANKLIN</u>	173
18	DIRECT EXAMINATION	173
19	BY MS. USRY	
20	CROSS-EXAMINATION	189
21	BY MR. SPANGLER	
22	<u>CALEB BLACK</u>	195
23	DIRECT EXAMINATION	195
24	BY MS. USRY	
25	IN-CAMERA EXAMINATION	203

1	BY MS. USRY	
2	CONTINUED DIRECT EXAMINATION	209
3	BY MS. USRY	
4	CROSS-EXAMINATION	215
5	BY MR. FLOYD	
6	complainant	220
7	DIRECT EXAMINATION	220
8	BY MS. MAYES	
9	IN-CAMERA EXAMINATION	232
10	BY MR. FLOYD	
11	IN-CAMERA EXAMINATION	241
12	BY MS. MAYES	
13	IN-CAMERA EXAMINATION	245
14	BY MR. FLOYD	
15	<u>COURTNEY THOMPSON</u>	255
16	IN-CAMERA EXAMINATION	256
17	BY MS. MAYES	
18	IN-CAMERA EXAMINATION	258
19	BY MR. FLOYD	
20	DONNA MONEY	258
21	IN-CAMERA EXAMINATION	259
22	BY MS. MAYES	
23	IN-CAMERA EXAMINATION	260
24	BY MR. FLOYD	
25	<u>MARLO MCCANN</u>	265

1	IN-CAMERA EXAMINATION	265
2	BY MS. MAYES	
3	IN-CAMERA EXAMINATION	271
4	BY MR. SPANGLER	
5	IN-CAMERA EXAMINATION	273
6	BY MS. MAYES	
7	IN-CAMERA EXAMINATION	274
8	BY MR. SPANGLER	
9	<u>CHARLES ROBERT LINT, JR.</u>	276
10	IN-CAMERA EXAMINATION	276
11	BY MS. USRY	
12	IN-CAMERA EXAMINATION	280
13	BY MR. SPANGLER	
14	<u>CHARLES ROBERT LINT, JR.</u>	285
15	DIRECT EXAMINATION	285
16	BY MS. MAYES	
17	CROSS-EXAMINATION	299
18	BY MR. FLOYD	
19	REDIRECT EXAMINATION	301
20	BY MS. MAYES	
21	TIMOTHY FRANKLIN	304
22	IN-CAMERA EXAMINATION	304
23	BY MS. USRY	
24	IN-CAMERA EXAMINATION	308
25	BY MR. SPANGLER	

1	complainant	331
2	DIRECT EXAMINATION	331
3	BY MS. MAYES	
4	CROSS-EXAMINATION	373
5	BY MR. FLOYD	
6	REDIRECT EXAMINATION	391
7	BY MS. MAYES	
8	RECROSS-EXAMINATION	395
9	BY MR. FLOYD	
10	SHAUNA GALLOWAY WILLIAMS	397
11	DIRECT EXAMINATION	397
12	BY MS. MAYES	
13	CROSS-EXAMINATION	422
14	BY MR. FLOYD	
15	REDIRECT EXAMINATION	430
16	BY MS. MAYES	
17	RECROSS-EXAMINATION	431
18	BY MR. FLOYD	
19	<u>BRIGITTE DEGUZMAN</u>	433
20	DIRECT EXAMINATION	434
21	BY MS. MAYES	
22	CROSS-EXAMINATION	456
23	BY MR. FLOYD	
24	REDIRECT EXAMINATION	462
25	BY MS. MAYES	

1	RECROSS-EXAMINATION	466
2	BY MR. FLOYD	
3	<u>MARGIE BRANHAM</u>	470
4	DIRECT EXAMINATION	470
5	BY MS. USRY	
6	IN-CAMERA EXAMINATION	490
7	BY MS. USRY	
8	CONTINUED DIRECT EXAMINATION	491
9	BY MS. USRY	
10	CROSS-EXAMINATION	494
11	BY MR. FLOYD	
12	<u>CALEB BLACK</u>	497
13	DIRECT EXAMINATION	497
14	BY MS. USRY	
15	CONTINUED DIRECT EXAMINATION	504
16	BY MS. USRY	
17	CROSS-EXAMINATION	507
18	BY MR. FLOYD	
19	<u>MARLO MCCANN</u>	508
20	DIRECT EXAMINATION	508
21	BY MS. MAYES	
22	CROSS-EXAMINATION	527
23	BY MR. FLOYD	
24	<u>COURTNEY THOMPSON</u>	528
25	DIRECT EXAMINATION	528

1	BY MS. MAYES	
2	CROSS-EXAMINATION	543
3	BY MR. SPANGLER	
4	REDIRECT EXAMINATION	556
5	BY MS. MAYES	
6	RE CROSS-EXAMINATION	558
7	BY MR. SPANGLER	
8	<u>DONNA MONEY</u>	559
9	DIRECT EXAMINATION	559
10	BY MS. MAYES	
11	CROSS-EXAMINATION	577
12	BY MR. SPANGLER	
13	REDIRECT EXAMINATION	581
14	BY MS. MAYES	
15	RE CROSS-EXAMINATION	583
16	BY MR. SPANGLER	
17	<u>MICHAEL PHIPPS</u>	584
18	DIRECT EXAMINATION	584
19	BY MS. USRY	
20	CONTINUED DIRECT EXAMINATION	602
21	BY MS. USRY	
22	CROSS-EXAMINATION	627
23	BY MR. SPANGLER	
24	REDIRECT EXAMINATION	632
25	BY MS. USRY	

1	RECROSS-EXAMINATION	635
2	BY MR. SPANGLER	
3	<u>WILLIAM HEATH</u>	644
4	<u>SELMA HEATH</u>	655
5	DIRECT EXAMINATION	655
6	BY MR. FLOYD	
7	CROSS-EXAMINATION	660
8	BY MS. MAYES	
9	REDIRECT EXAMINATION	665
10	BY MR. FLOYD	
11	<u>WILLIAM HEATH</u>	672
12	Certificate of Reporter	761
13	Opening Statement by Ms. Usry.....	148
14	Opening Statement by Mr. Floyd.....	154
15	Closing Argument by Ms. Mayes.....	688
16	Closing Argument by Mr. Floyd.....	703
17	Closing Argument by Ms. Mayes.....	718
18	Jury Charge.....	722
19	Verdict.....	744
20	Sentence.....	758
21		
22		
23		
24		
25		

E X H I B I T S				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	<u>STATE'S</u>			
1	1	CAD report	161	163
2	2	Photo	178	179
3	3	Photo	178	179
4	4	Photo	178	179
5	5	Photo	178	179
6	6	Photo	178	179
7	7	Photo	178	179
8	8	Photo	178	179
9	9	Photo	178	179
10	10	Photo	178	179
11	11	Photo	178	179
12	12	Photo	178	179
13	13	Photo	178	179
14	14	Photo	178	179
15	15	Photo	178	179
16	16	Poster	180	181
17	17	iPad Mini	185	370
18	18	Consent form	211	293
19	19	Consent form	211	293
20	20	Photo	213	214
21	21	Photo	213	214
22	22	Photo	227	359
23	23	Photo	227	359
24	24	Photo	227	359
25	25	Photo	242	620

1	23	Underwear	370	370
2	24	Poster	448	448
3	25	Assault kit	455	455
4	26	Rights form	520	520
5	27	Buccal swabs	536	536
6	28	Cutting	539	539
7	29	Poster	568	568
8	30	Disc	ID ONLY	
9	31	Extraction	604	604
10	32	Poster	606	606
11	33	Web history	608	608
12	34	Data file	620	620
13	35	Poster	620	620
14	36	Screenshot	620	620
15	37	Data file	613	613
16	38	Screenshot	614	614

17 **DEFENDANT'S**

18	1	SANE report	672	672

19 **COURT'S**

20	1	Victim Statement	43	
21	2	Victim Statement	43	
22	3	(Made State's Exh. 26)	52	
23	4	DNA Analysis	247	
24	5	Serology Analysis	247	
25	6	Data Files	247	

1 7 CV. of Galloway-Williams 403
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Number two, if you need a break, you're
2 probably not the only one of 14 people on the jury
3 panel that needs a break. So please let me know,
4 get my attention; y'all will take y'all's break and
5 we will take our break. Thank you very much, ladies
6 and gentlemen.

7 Any objection to anything I've told the jury
8 panel, Solicitor?

9 MS. MAYES: Nothing from the State, Your Honor.

10 THE COURT: Mr. Floyd?

11 MR. FLOYD: Nothing from the Defense, Your
12 Honor.

13 THE COURT: Ladies and gentlemen, if you'd
14 please give the attorneys your complete and
15 undivided attention.

16 Solicitor, you may address the jury.

17 MS. USRY: Thank you, Your Honor. May it
18 please the Court?

19 THE COURT: Yes, ma'am.

20 MS. USRY: Love, security, protection, the
21 basic pillars of a parental-child relationship, the
22 basic pillars of a father-daughter relationship.
23 But what happens when that love is distorted and
24 that security is manipulated and that protection is
25 violated? What happens when that father begins

1 touching that daughter; touching her with his hands,
2 and his mouth on her privates in her bedroom in
3 secrecy?

4 And what happens when, over time, that father
5 has that daughter start touching him with her hands
6 and with her mouth on his privates behind closed
7 doors and in secrecy? Ladies and gentlemen, that's
8 what happened in this case, that's what happened to
9 **complainant** at the hands of her father.

10 When she was in second grade, her father
11 started coming in her bedroom at night when her mom
12 was asleep and when her mom was at work, and he
13 began touching her and violating her, violating that
14 protection, that basic pillar of a father-daughter
15 relationship.

16 And it happened for years, until April 26th of
17 2015 when she told, when she was home alone with her
18 father, her mother was at work, and her aunt texted
19 to check up on her. Her aunt, who had no prior
20 knowledge of sexual abuse, but knew that **Complainant**
21 didn't like being alone at home with her father at
22 night when her mom wasn't there, just texted to
23 check in.

24 And over the course of that text conversation,
25 **Complainant** told her that her father was sexually

1 harassing her and that he was abusing her. And that
2 aunt took that information and contacted [Complainant]'s
3 mother and [Complainant]'s mother contacted law
4 enforcement. And they responded that night and
5 [Complainant] told law enforcement what had happened to
6 her and what had been happening to her for ten
7 years.

8 Ladies and gentlemen, that's criminal sexual
9 conduct, criminal sexual conduct with a minor. Our
10 legislature has denoted a specific set of statutes
11 involving criminal sexual conduct. They all involve
12 sexual battery. And sexual battery is defined by
13 our legislature as a specific part of the statute.

14 And as the judge mentioned in his opening to
15 you, you'll hear more about the law and specifics of
16 the law from him later in this case. But a sexual
17 battery is any intrusion, however slight. A sexual
18 battery with your hand or with your mouth onto the
19 victim or sexual battery by the defendant placing
20 his privates in the mouth or privates of the victim.

21 A sexual battery is broken -- there are
22 multiple indictments in this case, and it's broken
23 down over the course of time. You'll hear different
24 age ranges, different ages the victim was, and
25 that's because it was over a ten-year period. And

1 the statutes progress over time and they designate
2 certain ages for the victim when sexual batteries
3 would have occurred.

4 You've also heard from the judge that the State
5 has the burden of proof in this case. And we
6 welcome that burden, we welcome proving that burden
7 beyond a reasonable doubt, and we plan to do that
8 from that witness stand this week.

9 Reasonable doubt -- and again, you'll hear the
10 Judge discuss it more later. It's when -- proof
11 beyond a reasonable doubt is proof that leaves you
12 firmly convinced, firmly convinced of the
13 defendant's guilt.

14 And what will you hear during this case?
15 You'll hear from law enforcement officers who
16 responded that night to the scene. You'll hear that
17 they found the defendant home smelling of alcohol.
18 They entered the house and they found **Complainant** in her
19 bedroom. No one else was present. When they
20 entered that bedroom, she was crying and she was
21 upset and she disclosed to them the abuse she had
22 suffered that night and that she had been suffering
23 at the hands of her father. And you'll hear about
24 how that protection was violated.

25 You'll hear from investigating officers who

1 responded and conducted an investigation of this
2 case. You'll hear from what we commonly refer to as
3 the SANE nurse, or Sexual Assault Nurse Examiner,
4 because that night, law enforcement had **Complainant** go
5 get what is commonly referred to as a rape kit. She
6 reported to Lexington Medical Center and submitted
7 to telling her story again and then being poked and
8 prodded and swabbed. You'll hear from that nurse
9 examiner.

10 You'll also hear from SLED, or State Law
11 Enforcement Division, analysts who took that rape
12 kit and analyzed it. And when they did, from the
13 evidence collected from the body, from the person of
14 **complainant**, they found two hairs. The DNA
15 matched the defendant in this case. Hairs that were
16 collected from combings of her pubic hair, hairs
17 that were collected from swabs of her private area.

18 And you'll also hear from the SLED analysis
19 that the cutting from the victim's underwear, from
20 **complainant**'s underwear, came back positive for
21 saliva, and that saliva came back positive for DNA
22 from the defendant.

23 You'll hear from a computer analyst. The night
24 law enforcement responded to this incident, they
25 took into custody an iPad. And when **Complainant**

1 disclosed, she disclosed that during the sexual
2 assault, her father was watching sexually explicit
3 material on that iPad. And you'll hear from the
4 analyst who found sexually explicit material on that
5 iPad during the time the assault was said to be
6 committed.

7 And, ladies and gentlemen, you're also going to
8 hear from this witness stand an expert in child
9 sexual abuse. And that expert will also discuss
10 delayed disclosures. And they're going to discuss
11 for you why children don't tell. In many cases,
12 children don't tell.

13 And most importantly, ladies and gentlemen,
14 you're going to hear from **complainant**. She's
15 going to take the stand and tell you about things
16 that happened to her, sexual experiences that
17 happened to her at the hands of her father in
18 secrecy behind closed doors.

19 And, ladies and gentlemen, you'll hear
20 throughout this case how her father repeatedly
21 violated one of the most important pillars of a
22 parent-child relationship, this protection. And I
23 submit to you, at the close of the evidence you'll
24 find, beyond a reasonable doubt, that the defendant
25 is guilty of all counts of criminal sexual conduct.

1 Thank you.

2 THE COURT: Thank you, Solicitor.

3 Mr. Floyd? Mr. Spangler?

4 MR. FLOYD: Thank you, Your Honor.

5 Ladies and gentlemen of the jury, this man is
6 William Howard Heath, William Heath, the defendant
7 in this case. He's a man about whom you'll make one
8 of the most important decisions you'll ever make
9 about anybody and just now saw him, because you're
10 going to decide whether or not he should be branded
11 a criminal. And not just any criminal, but a
12 criminal guilty of one of the most despicable acts
13 in our society, whether or not a father has sexually
14 abused his daughter. So the decision you make about
15 William Heath will follow him for the rest of his
16 life.

17 Now, if you've never served on a criminal jury
18 before, you may have to set aside human nature
19 because you may have a thought in your mind -- after
20 hearing all the stuff the solicitor says, you may
21 have a thought in your mind, well, William Heath
22 must be guilty; he's been charged, they arrested
23 him, certainly has, now sits before you to be
24 judged. You may have a thought in your mind, well,
25 he must be guilty.

1 But if you've got that kind of thought, you've
2 got to erase it completely out of your mind,
3 completely out of your heart, because when William
4 Howard Heath sits there before you to be judged,
5 sits there right now to be judged by you, you must
6 say in your mind and in your heart, William Heath is
7 innocent.

8 He's got the same rights we've all got. One of
9 the most important rights is what we call the
10 presumption of innocence. So when you look at
11 William Heath, when you hear everything these people
12 are going to say about it, you've got to say in your
13 heart and in your mind, I've heard that, but William
14 Heath is innocent. And William Heath remains
15 innocent unless the State proves his guilt to each
16 one of your satisfactions beyond a reasonable doubt.

17 Now, let me tell you something. You may not
18 know this, but you can be arrested simply because
19 somebody says something about you. And just because
20 they say something about you, that doesn't make it
21 true. That's why we have a jury trial, because you,
22 the jury, have to analyze what's being said. And
23 what's being said must convince you beyond a
24 reasonable doubt of the guilt of the defendant.

25 Now, this is an important day in the life,

1 important week -- because it's going to go beyond
2 today -- important week in the life of William
3 Heath. All we can ask is that you keep an open
4 mind. Don't make it up simply because of what
5 you've heard, what someone has said, because people
6 don't always tell the truth. Hold their feet to the
7 fire, make them convince you of the guilt of William
8 Heath beyond a reasonable doubt.

9 I think if you do that and you hold the
10 evidence to that standard, when this case is all
11 said and done, you'll conclude that the only fair
12 and just verdict is one of not guilty. We thank you
13 very much for your attention.

14 THE COURT: Thank you, Mr. Floyd. You may call
15 your first witness.

16 MS. MAYES: Thank you, Your Honor. The State
17 calls Nikki Rodgers.

18 NIKKI RODGERS

19 being first duly sworn, testified as follows:

20 THE WITNESS: I do.

21 THE CLERK: If you'll have a seat, please, and
22 state your name, spelling your last for the record.

23 THE WITNESS: Nikki Rodgers, R-O-D-G-E-R-S.

24 DIRECT EXAMINATION

25 BY MS. MAYES:

1 Q. Can you tell us a little bit about yourself,
2 Ms. Rodgers? Where are you employed?

3 A. I am employed with Lexington County 911
4 Communications.

5 Q. In what capacity?

6 A. I am the chief communications officer there.

7 Q. All right. Tell us a little about the
8 communications center, what type of work you do
9 there.

10 A. Lexington County Communications is the 911
11 center for Lexington County. We dispatch for all
12 emergency services within the borders of Lexington
13 County, except for Cayce Public Safety and
14 Batesburg-Leesville Police Department and West
15 Columbia Police. Everybody else is dispatched
16 within us. We process all the 911 calls coming
17 within there that needs fire, EMS, or law
18 enforcement response.

19 Q. And who has access to such records at the
20 communications center?

21 A. I am the custodian of the records.

22 Q. Is it the regular practice of the Lexington
23 County Communications Center to maintain these
24 records?

25 A. Yes, ma'am.

1 Q. Does that include audio recordings?

2 A. Audio recordings and computer-aided dispatch
3 reports.

4 Q. All right. So you just mentioned the word
5 computer-aided dispatch report, also known as a CAD.

6 A. Yes, ma'am.

7 Q. What is that?

8 A. That is the dispatch record. It's actually
9 the -- if you want to call it a records management
10 system that has all of our calls for service, who
11 calls them in, the phone number they call from,
12 where we send the officers or EMS or fire service.

13 Q. And do you have with you today that
14 computer-aided dispatch record that pertains to a
15 call on [REDACTED]?

16 A. Yes, ma'am.

17 Q. Did you receive a subpoena in this case to
18 collect a record from [REDACTED]?

19 A. Yes, ma'am.

20 Q. And do you have that record with you today?

21 A. I do.

22 Q. Can you tell us whether or not it's maintained
23 in the ordinary course of business?

24 A. Yes, ma'am, it is.

25 Q. So I want to start, Ms. Rodgers, by asking you

1 a little bit about that record. Where specifically
2 on [REDACTED] was --

3 MR. SPANGLER: Your Honor, may we approach?

4 THE COURT: Yes, sir.

5 (Sidebar conference.)

6 BY MS. MAYES:

7 Q. I believe I asked you specifically about the
8 maintaining of records there at the Lexington County
9 Communication Center.

10 A. Yes, ma'am.

11 Q. I want to ask you a little bit more about that.
12 When a computer-aided dispatch record is made, how
13 is that -- how is the record actually recorded for
14 posterity?

15 A. Our computer-aided dispatch system, the calls
16 come in for service, and this is where the
17 call-taker and dispatcher enter all of the
18 information who request and who we dispatch to that
19 call for service.

20 Q. Can you tell us, when taking that call, are
21 data entries made by the dispatcher
22 contemporaneously with the call?

23 A. Yes. They're in actual time.

24 Q. And then all of those entries that you've
25 noted, are they maintained as part of that

1 computer-aided dispatch or CAD report?

2 A. Yes, ma'am, they are.

3 Q. Now, that CAD report, I was asking you earlier,
4 but just to clarify, is that a record maintained in
5 the regularly conducted activity of the Lexington
6 County Communications Center?

7 A. Yes, it is.

8 Q. And are you a person with knowledge of such
9 records?

10 A. Yes, I am.

11 Q. Can you tell us whether or not pursuant to a
12 subpoena you obtained a record regarding [REDACTED]
13 Road?

14 A. Yes, I did.

15 Q. And what is the date of the record that you
16 retrieved?

17 A. April 26th, 2015.

18 MS. MAYES: Your Honor, at this time, pursuant
19 to South Carolina Rules of Evidence, Rule 803(6),
20 the State does offer this CAD report as evidence.

21 THE COURT: Mr. Spangler?

22 MR. SPANGLER: Your Honor, we do object to
23 hearsay. There are statements within this document
24 that qualify as hearsay within hearsay, although the
25 document itself might qualify for 803(6), so

1 statements within the document are hearsay.

2 THE COURT: All right. May I see the document,
3 please?

4 Step out, ladies and gentlemen. Do not discuss
5 the case during this recess. Thank you very much.

6 (The jury exits the courtroom at 12:50 PM.)

7 THE COURT: Would you mark this for
8 identification purposes only, Solicitor?

9 (State's Exhibit No. 1 marked for
10 identification.)

11 THE COURT: And this is -- what number is it?

12 MS. MAYES: It is State's No. 1 for ID only at
13 this time, Your Honor, State's No. 1. And the
14 document that the witness is holding is the one
15 that's marked and it is not highlighted.

16 THE COURT: All right. And what part of
17 State's ID No. 1 are you referring to, Mr. Spangler?

18 MR. SPANGLER: Your Honor, just to confirm, we
19 have a three-page document that we received from the
20 State.

21 Is that the same one we're looking at?

22 MS. MAYES: It is.

23 MR. SPANGLER: So on the first page of that
24 document, we're looking at the notes tab. Halfway
25 down there, there's a statement that says vitals.

1 And then there's a question: What is the reason for
2 the welfare check? And it says: Advised that her
3 sister called her and advised caller's husband is
4 drunk and molesting their daughter.

5 That's a statement from the caller to the 911
6 dispatcher relaying information that a third party
7 gave to the caller. The statement, just from the
8 caller to the 911 dispatcher, is hearsay. And it
9 has that further level of hearsay that a third party
10 told the caller that the defendant was drunk and
11 molesting the daughter. It's hearsay and there is
12 no exception for it.

13 MS. MAYES: Your Honor, we have no objection to
14 a redaction of that portion regarding both the
15 question, what is the reason for the welfare check,
16 and the response. We have no objection to a
17 redaction of that. But that is not a statement that
18 I was eliciting from this witness during her
19 testimony.

20 THE COURT: All right. You may redact it.

21 MR. SPANGLER: And, Your Honor, with that
22 redaction, we have no objection to the document
23 coming into evidence.

24 THE COURT: All right. Bring us our jury,
25 please.

1 MS. MAYES: We will substitute the redacted
2 version, Your Honor, at a later time.

3 THE COURT: All right. Thank you.

4 (The jury enters the courtroom at 12:55 PM.)

5 THE COURT: All right. Thank you,
6 Mr. Spangler.

7 Thank you, Solicitor. You may continue.

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

9 BY MS. MAYES:

10 Q. Now, do you have that computer dispatch report
11 with you that is marked as State's Exhibit No. 1 for
12 ID?

13 A. Yes.

14 Q. All right. I'm also going to ask you whether
15 or not that's identical to the record that you
16 brought with you today.

17 A. It is. Yes.

18 Q. Does this appear to be the same record that is
19 generated as part of the Lexington County
20 Communications Center regularly conducted business?

21 A. Yes, ma'am.

22 MS. MAYES: And, Your Honor, I believe 1 is now
23 in evidence.

24 (State's Exhibit No. 1 admitted into evidence.)

25 BY MS. MAYES:

1 Q. I'm going to ask you specific questions,
2 Ms. Rodgers, about that call. You mentioned
3 previously that everything is recorded
4 contemporaneously.

5 A. Yes, ma'am.

6 Q. What was the date of that call?

7 A. April 26th, 2015.

8 Q. What was the time of the call, the time it
9 would have been received by dispatch?

10 A. The time received was 2320, which is 11:20 PM.

11 Q. Okay. In layperson's terms 11:20 PM?

12 A. Yes, ma'am.

13 Q. And then what was the location in which
14 assistance was requested?

15 A. [REDACTED].

16 Q. Now, what was the nature of the call?

17 A. It was a welfare check.

18 Q. All right. And that welfare check was on who?

19 A. [REDACTED] complainant.

20 Q. Does the record indicate the time in which the
21 first officer arrived there at the scene at [REDACTED]

22 [REDACTED]?

23 A. Yes, ma'am. That's 2330, which is 11:30 PM.

24 Q. 11:30 PM?

25 A. Yes, ma'am.

1 Q. So they arrived there within ten minutes?

2 A. Yes, they did.

3 Q. Now, does the record also indicate who made the
4 call?

5 A. The caller was Rose Heath.

6 Q. And does it indicate what number the caller was
7 calling from?

8 A. Yes. [REDACTED].

9 MS. MAYES: Nothing further at this time, Your
10 Honor.

11 THE COURT: Thank you, solicitor.

12 Mr. Spangler?

13 MR. SPANGLER: Yes, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. SPANGLER:

16 Q. Good morning, Ms. Rodgers.

17 A. Good morning.

18 Q. A couple questions for you. You said that
19 call, it was from Rose Heath; is that right?

20 A. Yes.

21 Q. And that was at, what, 11:20 PM on April 26th?

22 A. Correct.

23 Q. Now, do you have any records showing that

24 [REDACTED] complainant actually called 911 or dispatch that
25 night?

1 A. I do not have anything with me that would say
2 that or indicate that.

3 Q. Do you have any records saying that [Complainant]
4 [REDACTED] called y'all at any point on that day?

5 A. I could research it, but I do not have anything
6 with me right now.

7 Q. No evidence that she actually called 911 and
8 made any complaints?

9 A. No, sir.

10 MR. SPANGLER: Thank you.

11 No further questions, Your Honor.

12 THE COURT: Redirect, Solicitor?

13 MS. MAYES: Nothing further, Your Honor.

14 THE COURT: Thank you, Ms. Rodgers. Thank you
15 for being with us. You may step down.

16 Any objection to Ms. Rodgers being excused?

17 MR. SPANGLER: No, Your Honor.

18 MS. MAYES: None from the State.

19 THE COURT: Thank you.

20 How long is your next witness, Solicitor?

21 MS. MAYES: Twenty minutes.

22 THE COURT: Let's send the jury on to lunch.
23 Let's do that.

24 Ladies and gentlemen of the jury panel, I've
25 held you since 9:30 this morning. It's midday.

1 Perhaps now would be a good time to take your
2 luncheon recess.

3 I must remind you, at each recess and
4 throughout the course of this trial, you may not
5 discuss this case with others, including other
6 jurors, lunchmates, or anyone else. And y'all will
7 be able to repeat this back to me, probably, as we
8 march on through or press on through the week.

9 You may not read, listen to, or watch any news
10 reports about the case, past, present, should there
11 have been any, or if there are any. You may not use
12 your computer, cellular phone, or other electronic
13 device with communication capabilities or any other
14 method to obtain or disclose information about the
15 case when you're not in court.

16 Information about the case, which is
17 prohibited, include but it is not limited to the
18 following: Information about a party, a witness, an
19 attorney, or a court officer, news accounts about
20 the case in the past, if there were any, or
21 presently, any information collected through juror
22 research on any topics raised or testimony offered
23 by any witness or information collected through
24 juror research on any topics that the juror might
25 think would be helpful in deciding the case.

1 As you recall, I indicated to you that you
2 decide the case based on the evidence and testimony
3 presented before you by the witnesses testifying
4 under oath in this courtroom, any physical items of
5 evidence, exhibits or the like, and any reasonable
6 inferences you think may properly be drawn from the
7 evidence.

8 And, basically, what it's saying in the use of
9 your phone or computers and all, you can't do any
10 research outside of the courtroom on the internet or
11 otherwise. You cannot do any independent research
12 either as far as you can't do that research, as I
13 say, on a party, a court officer, a witness, or an
14 attorney or in any other manner.

15 With that being said, why don't we take our
16 luncheon recess until, let's say, 2:30? I have a
17 hearing at 2:00. And that will give you an extra, I
18 don't know, 15 or 20 minutes to sit in traffic
19 around the courthouse, which you'll be delighted to
20 do, I'm sure. I hope you have a pleasant lunch.
21 See you back promptly at 2:30. Thank you very much.

22 (The jury exits the courtroom at 1:02 PM.)

23 THE COURT: Anything further, Solicitor?

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

25 THE COURT: Mr. Floyd? Mr. Spangler?

1 MR. FLOYD: Nothing at this time, Your Honor.

2 THE COURT: All right. I want to address

3 Mr. Heath's bond, please.

4 All right. Mr. Floyd?

5 MR. FLOYD: Thank you, Your Honor. As you're
6 aware, we provided you a letter from the bonding
7 company agreeing he could remain on his bond
8 throughout the trial, so we would ask Your Honor to
9 consider that fact and leave him out. He's on
10 electronic monitoring, has been since 2015, and has
11 been such a good, I guess you call it, bondee or
12 bond person that this company is willing to remain
13 on his bond throughout his trial. So he's certainly
14 shown them he's a stable and reliable individual.

15 THE COURT: Solicitor.

16 MS. MAYES: Yes, sir, Your Honor. He has only
17 been on with this bondsman, I believe, less than ten
18 days. The State had a motion to revoke his bond, I
19 believe, the previous Monday, would have been last
20 Monday. And that was because he had not paid GPS
21 fees for a significant amount of time and he could
22 not be traced or tracked. And, long story short,
23 that bondsman is no longer on the GPS monitor and
24 the new bondsman is.

25 I realize that he's been in compliance since

1 he's been on the new GPS system, however, it's not
2 an alarm; it doesn't signal or alert anyone if he
3 cuts it off. I mean, they will be able to track it
4 eventually, but I've been in a situation before
5 where someone removed the bracelet and had already
6 fled before we were notified that the bracelet had
7 been tampered with. And, ultimately, that person
8 made it to Florida and it took a significant amount
9 of time to locate them and to get them back.

10 As for the zone, there is a zone to protect the
11 victim. However, again, that is not an alarm and no
12 one is aware of it if it happens off-hours or in the
13 middle of the night. It's something that's only
14 checked after the fact if someone is monitoring
15 their GPS when it's requested after the fact. But
16 there's no one watching the monitor 24/7 to alert
17 anyone if he violates.

18 MR. FLOYD: Your Honor, first of all, he's been
19 under the same bonding company ever since 2015.

20 THE COURT: Well, why am I hearing different?

21 MS. MAYES: It's a different GPS provider, Your
22 Honor. That's my mistake.

23 MS. FLOYD: The GPS provider, there were a lot
24 of questions with that GPS provider. And the only
25 question with the GPS provider was he didn't keep

1 the unit charged up sufficiently. But he's been
2 with the same bonding company since 2015, so why are
3 we all of a sudden now, three years later, changing
4 it?

5 THE COURT: Who's got a copy of the bond? I'm
6 trying to find it.

7 MS. MAYES: It may be in the one indictment we
8 did not call, Your Honor. It was a bond previously
9 set by Judge Griffith back in 2015 that required the
10 GPS tracking. I'm not sure if Judge Griffith issued
11 a written order after our hearing last week, but it
12 was stated on the record that he would change
13 providers and the zone would be in place. So I'm
14 going to pass this information forward.

15 THE COURT: Is criminal sexual conduct with a
16 minor first degree a violent offense?

17 MS. MAYES: It is, Your Honor, and carries a
18 potential sentence of life.

19 THE COURT: Is criminal sexual conduct with a
20 minor second degree a violent offense?

21 MS. MAYES: It is, Your Honor.

22 THE COURT: Is criminal sexual conduct third
23 degree a violent offense?

24 MS. MAYES: It is not classified as violent,
25 Your Honor.

1 THE COURT: And tell me again the potential
2 sentences on first degree.

3 MS. MAYES: Twenty-five to life. The 25 is
4 mandatory, that's 85 percent. As for the criminal
5 sexual conduct second degree, that is up to 20, also
6 85 percent.

7 THE COURT: The case has been called for trial,
8 the jury has been sworn, there's two violent crimes.
9 I'm a little unsure of the status of the electronic
10 monitoring. Even if I were, I would still revoke
11 his bond. He's in the custody of the Lexington
12 County Detention Center throughout the course of the
13 trial. Thank you. Thank you very much. The court
14 will be in recess until 2:30.

15 (Luncheon recess 1:08 PM - 2:39 PM.)

16 THE COURT: Anything before we bring in our
17 jury, Solicitor?

18 MS. MAYES: Nothing from the State, Your Honor.

19 THE COURT: Mr. Floyd? Mr. Spangler?

20 MR. FLOYD: Nothing from us, Judge.

21 (The jury enters the courtroom at 2:40 PM.)

22 THE COURT: Welcome back, ladies and gentlemen.
23 I hope y'all had a pleasant lunch. We're continuing
24 the trial of the case by the presentation of
25 evidence and testimony by the State in its case in

1 chief. If you would, please continue to give the
2 parties your complete and undivided attention.

3 Solicitor, you may call your next witness.

4 MS. USRY: Thank you, Your Honor. The State
5 calls Deputy Tim Franklin.

6 THE COURT: All right. Deputy Franklin, if you
7 would come around and join us, please.

8 TIMOTHY FRANKLIN

9 being first duly sworn, testified as follows:

10 THE WITNESS: I do.

11 THE CLERK: Thank you. If you'll have a seat,
12 please, and state your name, spelling your last for
13 the record.

14 THE WITNESS: My name is Timothy Franklin, last
15 name, F-R-A-N-K-L-I-N.

16 DIRECT EXAMINATION

17 BY MS. USRY:

18 Q. Deputy Franklin, where are you employed?

19 A. Lexington County Sheriff's Department.

20 Q. In what current capacity are you employed with
21 the Lexington County Sheriff's Department?

22 A. I am south region patrol deputy, master deputy.

23 Q. How long have you been with the sheriff's
24 department?

25 A. Five years.

1 Q. And what other positions have you held with the
2 sheriff's department in those five years?

3 A. FTF patrol and regular deputy starting out.

4 Q. Do you have law enforcement experience prior to
5 the sheriff's department?

6 A. I do not.

7 Q. Were you working on April 26th of 2015?

8 A. I was.

9 Q. And in what role were you working on that date?

10 A. I was FTF on the shift that I was assigned to,
11 road patrol that day.

12 Q. Did you receive a call while working that night
13 [REDACTED]?

14 A. I did.

15 Q. Is that location in Lexington County?

16 A. It is.

17 Q. At what time did you receive that call?

18 A. I received the call over the radio at 11:22 PM.

19 Q. How was the call dispatched to you?

20 A. It was dispatched as a welfare check for
21 complainant at the residence.

22 Q. Did you respond to the residence?

23 A. I did.

24 Q. Do you recall what time you arrived at the
25 residence?

1 A. At 11:30 PM.

2 Q. Were you the only one to respond to that
3 location?

4 A. I was not.

5 Q. Who else responded to that location?

6 A. Sergeant Black, Master Deputy Ashley, as well
7 as I had a trainee at the time, Deputy Geitz.

8 Q. Did y'all all arrive at different times or the
9 same time?

10 A. We all arrived at the residence at the same
11 time.

12 Q. What did you do upon arrival?

13 A. We approached the residence and knocked on the
14 door attempting to make contact with the residents
15 inside.

16 Q. Who actually knocked on the door?

17 A. I did.

18 Q. Were you able to make contact with someone
19 inside the residence?

20 A. Yes. William Heath opened the door, answered
21 the door.

22 Q. What did you observe about his appearance at
23 that time?

24 A. I observed that William was wearing only a pair
25 of blue plaid boxer shorts, his underwear, and a

1 T-shirt.

2 Q. And what did you do upon him answering the
3 door?

4 A. I advised him that we were there for a welfare
5 check for [complainant] and asked him where she was
6 in the residence.

7 Q. Did he give a response?

8 A. He pointed down the hallway.

9 Q. What did you do next?

10 A. We then entered into the residence and I made
11 contact -- maintained contact with William. And
12 Sergeant Black went down the hallway to try to make
13 contact with [Complainant].

14 Q. You said you entered into the residence. Did
15 Mr. Heath allow you into the residence?

16 A. He did.

17 Q. Did he at any point indicate that he did not
18 want you come into the residence?

19 A. He did not.

20 Q. You said you went in and were with him. And
21 where did Sergeant Black go?

22 A. He went down the hallway to the direction that
23 William pointed, which was believed to be [Complainant]'s
24 bedroom.

25 Q. And what did you do next?

1 A. I then maintained contact with William in the
2 living room of the residence.

3 Q. Did you remain in the living room?

4 A. We did not. William, he asked to put some
5 pants on, so I then followed William back into his
6 bedroom and he put on a pair of khaki cargo shorts.
7 And then we walked back out into the living room.

8 Q. Did anything else happen in the bedroom while
9 y'all were back there?

10 A. No, it did not.

11 Q. And when you were in the living room, tell me
12 what happened next.

13 A. While speaking with William, I could smell the
14 odor of alcoholic beverage on his breath, just kept
15 talking with him, just maintained conversation with
16 him.

17 Q. Tell me, what was your role at that time?

18 A. My role was to make sure that I provided scene
19 security in the event that a crime was committed on
20 scene, we determined that to be the case, and to
21 make sure William stayed calm and just have
22 generalized conversation with him.

23 Q. When you say generalized conversation, were you
24 asking specific questions about that night?

25 A. I was not. I was just speaking about random

1 things.

2 (State's Exhibit Nos. 2-12 marked for
3 identification.)

4 Q. I'm going to back up a bit, Deputy. Deputy
5 Franklin, I'm going to show you what's been marked
6 as State's Exhibits 2 through 12. Just briefly
7 review these photographs for me, please.

8 A. Okay.

9 Q. You recognize these pictures?

10 A. I do.

11 Q. What, in general, do they depict?

12 A. The exterior of the residence, the interior of
13 the residence, and the living room area. Then the
14 remainder of the pictures lead down the hallway to
15 the left through the kitchen into William's bedroom.

16 Q. Do these pictures fairly and accurately
17 represent the incident location the night that you
18 responded?

19 A. They do.

20 Q. Do they appear to have been changed in any way?

21 A. No, ma'am.

22 MS. USRY: Your Honor, the State moves State's
23 2 through 12 into evidence.

24 MR. SPANGLER: No objection, Your Honor.

25 THE COURT: State's 2 through 12 is in evidence

1 without objection.

2 (State's Exhibit Nos. 2 through 12 admitted
3 into evidence.)

4 MS. USRY: Permission to have the witness step
5 down, Your Honor?

6 THE COURT: Yes, ma'am.

7 You may step down, Officer. Keep your voice
8 up, please.

9 BY MS. USRY:

10 Q. Deputy Franklin, I'm showing you what's been
11 marked as State's Exhibit 2. Can you tell me what
12 you see in this picture?

13 A. That is the front door of the residence.

14 Q. Is this the door that you responded to on the
15 night of the 24th?

16 A. Yes, ma'am, it is. That's the door that I made
17 contact with William at.

18 Q. Then I'm showing you State's 3 through 6.
19 State's 3, what does that depict?

20 A. That is the living room sofa in the living room
21 of the residence.

22 Q. And State's 4?

23 A. Same sofa in the living room of the residence.

24 Q. And is this living room -- can you describe for
25 me where in the home you were located with the

1 defendant while you're talking with him?

2 A. Just inside the front door of the residence.

3 Walk right into the living room, coffee table and

4 sofa right there in front of you.

5 Q. Where is Mr. Heath during this time exactly?

6 A. Before or after?

7 Q. After you go to the bedroom to put his shorts

8 on?

9 A. After he puts his shorts on, we then return to

10 the living room and he sits on the sofa right here

11 next to the green blanket beside the red -- looks

12 like a red pillow. I'm not sure.

13 Q. State's 5 and 6?

14 A. That's the hallway leading to William's bedroom

15 from the living room through the kitchen.

16 Q. And while you're up here, I'm going to show you

17 one more.

18 A. All right.

19 (State's Exhibit No. 13 marked for

20 identification.)

21 Q. And, Deputy Franklin, briefly, I'm showing you

22 what's been marked as State's Exhibit 13. Do you

23 recognize that?

24 A. I do.

25 Q. What is that?

1 A. That's the layout of the residence.

2 Q. Does that appear to accurately reflect the
3 layout of the residence that you responded to on the
4 26th?

5 A. It does.

6 MS. USRY: Your Honor, State moves State's 13
7 into evidence.

8 MR. SPANGLER: No objection, Your Honor.

9 THE COURT: State's 13 is in evidence without
10 objection.

11 (State's Exhibit No. 13 admitted into
12 evidence.)

13 BY MS. USRY:

14 Q. So we can clarify a little bit more about what
15 you're talking about, what area you were in, can you
16 point to the door you entered that night?

17 A. Right here.

18 Q. So when we refer to State's 2, the outside of
19 the residence, that's the door you went in?

20 A. Yes, ma'am.

21 Q. Let's walk down here and do that one more time.

22 A. Okay.

23 Q. So what door did you enter?

24 A. Right here.

25 Q. Then when you're talking about the couch that's

1 in the pictures, where is that in this?

2 A. Right here along these two walls.

3 Q. So kind of this L-shaped area in the middle?

4 A. Uh-huh.

5 Q. And when you indicate Mr. Heath wanted to go
6 put his pants on, where did he go in this residence?

7 A. We walked through the dining room area, down
8 this hallway, into the master bedroom right here.

9 Q. And when you first started testifying and you
10 were talking about Sergeant Black went and saw

11 **complainant**, where did he go?

12 A. He went down this hallway.

13 Q. Back to this area? You didn't quite finish.

14 A. It's one of those two bedrooms.

15 Q. Did you ever go down there?

16 A. I never went down that hallway.

17 Q. Thank you. You can return to your seat.

18 A. (Witness complies.)

19 Q. Deputy Franklin, did you ever explain to
20 Mr. Heath why you were there?

21 A. I advised him we were there for a welfare check
22 for **Complainant**. And that's the most that I explained
23 to him there.

24 Q. Why did you not explain anything further?

25 A. Because my role on scene was to maintain

1 contact with William, keep him calm, and maintain
2 scene security.

3 Q. And did you remain with him the entire time?

4 A. I did.

5 Q. And when you're referring to William, you're
6 referring to William Heath?

7 A. William Heath, yes.

8 Q. Did anyone else ever respond after you and the
9 initial deputies who got on scene responded?

10 A. Yes, they did. Major crimes did.

11 Q. And who with major crimes responded?

12 A. Detective Marlo McCann and Detective Robbie
13 Lint.

14 Q. And tell me what happened after that.

15 A. I maintained contact with William while they
16 continued the investigation on the scene.

17 Q. And during your contact with Mr. Heath, did he
18 ever appear to not understand what you were talking
19 about?

20 A. No. He -- we maintained affluent conversation.
21 It was never a question as to whether he understood
22 what we were talking about.

23 Q. And I believe you indicated earlier, when you
24 responded you smelled alcohol about his person?

25 A. Uh-huh.

1 Q. Was there anything about your interactions with
2 him during that night that indicated he was so
3 inebriated he didn't understand what was happening?

4 A. No, ma'am.

5 Q. Did Mr. Heath ever leave the residence that
6 night?

7 A. During the course of the investigation, he did
8 walk outside accompanied by officers at one point.

9 Q. And when he went outside, what did you do?

10 A. I maintained contact with him and walked with
11 him.

12 Q. Was he ever allowed to roam freely about the
13 house that night?

14 A. He was not.

15 Q. Was any other individual besides law
16 enforcement wandering freely throughout the house
17 that night?

18 A. They were not.

19 Q. Was a decision that night ultimately made to
20 arrest William Heath?

21 A. A decision to arrest him, yes.

22 Q. Who made that decision?

23 A. Detective McCann.

24 Q. About how -- do you recall how long you were on
25 scene prior to that decision being made?

1 A. I don't recall the exact time frame, but I do
2 know that I notified dispatch one in custody at 3:30
3 in the morning.

4 Q. So you notified -- who executed the arrest?

5 A. I placed handcuffs on William at the direction
6 of Detective McCann.

7 Q. And what -- for criminal sexual conduct?

8 A. Yes. That was what she advised me.

9 Q. And once you did that, what did you do next?

10 A. I then searched William incident to arrest, I
11 obtained a Samsung cell phone from his pocket along
12 with a white iPad Mini from the bed in his master
13 bedroom for evidence. I also obtained a blue
14 snowflake-print robe at the direction of major
15 crimes on scene for evidence from the sofa in the
16 living room.

17 (State's Exhibit No. 14 marked for
18 identification.)

19 Q. Deputy Franklin, I'm going to show you what's
20 been marked as State's Exhibit 14 for evidence as
21 well as State's 8 through 12 that's already been
22 entered into evidence. State's 8 through 12, what
23 do those depict?

24 A. Those depict the location of the iPad Mini on
25 William's bed.

1 Q. And you say on William's bed. Is that the room
2 you pointed to earlier?

3 A. It is.

4 Q. And the location of that iPad Mini that you
5 took into evidence, was that where it remained that
6 night? Had the location changed?

7 A. No.

8 Q. When you took the picture of the bed, it hadn't
9 been moved to that location?

10 A. I know that nothing was messed with in the
11 bedroom when William obtained his shorts and that
12 nobody else went into the bedroom until I was
13 directed to do so after the arrest.

14 Q. And then on State's 14, do you recognize that
15 item?

16 A. I do.

17 Q. How do you recognize that item?

18 A. Well, there's my handwriting both on the front,
19 right here, and on the back, right here, how I
20 tagged it into evidence. This is the iPad Mini that
21 I collected and entered into evidence.

22 Q. When you collected that iPad Mini from that
23 time, when did you turn it in to evidence?

24 A. It was a little bit later on. It was after I
25 completed booking him in at Lexington County

1 Detention Center. I then -- by this time it was
2 April 27th because we're going into the next
3 morning, being the same shift. And then once I
4 completed that arrest and turned him over to a
5 booking staff is when I turned the iPad Mini in to
6 evidence.

7 Q. I've removed State's Exhibit 14. Can you
8 review that item for me and tell me if that is what
9 you took into custody that night?

10 A. It is.

11 Q. Does it appear to be changed or altered
12 externally in any way?

13 A. No, ma'am.

14 MS. USRY: I beg the Court's brief indulgence,
15 Your Honor.

16 THE COURT: Yes, ma'am.

17 BY MS. USRY:

18 Q. Deputy Franklin, just to clarify, while you
19 were on scene, does the defendant continue to
20 consume alcohol?

21 A. At no point once we arrived on scene was he
22 allowed to drink any more alcohol.

23 Q. So between the time of your arrival around
24 11:20 up until he's in custody at 3:00 AM, he does
25 not consume any alcohol?

1 A. No, ma'am.

2 Q. I'm going to show you State's 8 through 12.

3 State 8, describe for me what you see in that
4 picture.

5 A. That's William's bedroom inside the residence.

6 Q. This is what's referred to as the master
7 bedroom?

8 A. Master bedroom, yes, ma'am.

9 Q. And State's 9?

10 A. Same room.

11 Q. What is located on the bed of that?

12 A. That is the white iPad Mini that I collected
13 into evidence.

14 Q. Is that the location you collected it from?

15 A. Yes, ma'am, it is.

16 Q. And State's 10, what's in that picture?

17 A. Same bedroom.

18 Q. Same bedroom, different angle?

19 A. Different angle.

20 Q. State's 11?

21 A. Same iPad, just up close with it on top of the
22 bed.

23 Q. And finally, State's 12, what is that?

24 A. I believe that's just a sofa on the right-hand
25 side of the room.

1 Q. That's still in the same --

2 A. In the same bedroom.

3 Q. Thank you. Please answer any questions the
4 Defense may have.

5 THE COURT: Thank you, Solicitor.

6 Mr. Spangler?

7 MR. SPANGLER: Yes, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. SPANGLER:

10 Q. Good afternoon, Officer Franklin. I want to
11 talk with you first a little bit about what happened
12 when y'all actually got to the scene that night.

13 A. Uh-huh.

14 Q. So you said y'all arrived at 11:30 PM?

15 A. Yes.

16 Q. And it was you and -- how many officers
17 actually showed up there?

18 A. A total of four.

19 Q. So four officers. And you said you all arrived
20 at the same time?

21 A. Yes.

22 Q. Where did y'all go when you first pulled up in
23 front of the Heath residence?

24 A. To the front door. Knocked on the front door
25 and tried to make contact with the residents inside.

1 Q. Okay. So all four of y'all went to the front
2 door then?

3 A. Yes.

4 Q. And Bill Heath then came to the front door?

5 A. He did.

6 Q. Now, you agree with me that looking at this
7 diagram we've got here, there's actually two main
8 doors to that trailer. We've got the front door
9 here; is that right?

10 A. Uh-huh.

11 Q. There's actually a back exterior door.

12 A. Okay.

13 Q. Do you agree with me that's a back exterior
14 door?

15 A. Yes, yes, yes.

16 Q. Now, when y'all went to the front door, Bill,
17 he met you there, didn't he?

18 A. Uh-huh.

19 Q. He didn't try to run out that back door and get
20 away from you?

21 A. He was completely cooperative the whole time.

22 Q. There was no one stopping him, there was no
23 officers at the back door, was there?

24 A. No, sir.

25 Q. If he wanted to run out that back door, there

1 wouldn't have been anyone there to stop him?

2 A. You could say so.

3 Q. So after you made contact with him at the front
4 door, you said you engaged in conversation with him?

5 A. Uh-huh.

6 Q. In that conversation, what did y'all talk
7 about?

8 A. After -- what part of the conversation?

9 Q. I think your phrase was you engaged him in
10 general conversation. Do you remember what you
11 spoke about?

12 A. We talked about his tree-cutting career, we
13 talked about his pet squirrel, we talked about the
14 weed eater that he had purchased, the box that you
15 could see laying on the floor in the pictures that
16 were already submitted into evidence, just random
17 conversations.

18 Q. Did you at all discuss his daughter, **Complainant**

19 **██████**?

20 MS. USRY: Objection, Your Honor, self-serving
21 hearsay.

22 THE COURT: I'm sorry. What was it?

23 MS. USRY: Objection to self-serving hearsay,
24 Your Honor.

25 THE COURT: I will allow the answer.

1 BY MR. SPANGLER:

2 Q. During those discussions with Mr. Heath, did
3 you discuss his daughter, **complainant**?

4 A. Just out of statements that he made to me. I
5 didn't direct any questions towards him that I
6 recall.

7 Q. Did he mention his daughter during that
8 conversation?

9 A. Yes, he did.

10 Q. And what was the mention of her?

11 THE COURT: No, sir.

12 Step out, please, ladies and gentlemen. Do not
13 discuss the case during this brief recess.

14 (The jury exits the courtroom at 3:09 PM.)

15 THE COURT: Tell me where this is headed now,
16 Mr. Spangler.

17 MR. SPANGLER: Your Honor, during State's
18 direct examination, they went into this
19 conversation; they didn't go into the exact
20 statements, but they said a conversation took place.
21 The defendant made certain statements during that
22 conversation regarding **complainant**; what he and
23 the alleged victim had been doing that night, chores
24 he had given her to do.

25 Because the State opened the door to that

1 conversation taking place, we should be able to go
2 through that door and offer the specific statements.

3 THE COURT: I'll allow the question that he
4 made statements about his daughter. I will not
5 allow the substance of that statement. That's
6 self-serving hearsay under State vs. Sweet.

7 Anything further?

8 MR. SPANGLER: No, Your Honor.

9 (The jury enters the courtroom at 3:10 PM.)

10 THE COURT: Thank you, Mr. Spangler. Thank
11 you, Solicitor.

12 You may continue, Mr. Spangler.

13 MR. SPANGLER: Yes, Your Honor.

14 BY MR. SPANGLER:

15 Q. Now, Officer Franklin, I think you said on
16 direct examination that you learned where **Complainant**

17 actually was in the house, that he pointed you
18 down a hallway.

19 A. Uh-huh.

20 Q. At any point while you were in the trailer, did
21 Mr. Heath try to prevent you from speaking to his
22 daughter?

23 A. No, he did not.

24 Q. In fact, what you told us was he voluntarily
25 showed you where her bedroom was?

1 A. Uh-huh.

2 Q. He wasn't under arrest at that point, was he?

3 A. No, he was not.

4 Q. Now, we've looked at a lot of pictures of the
5 residence, and we don't need to go back through all
6 of them. But did it appear that there had been a
7 struggle inside the residence that night?

8 A. I don't recall anything being out of place.

9 Q. Just general messiness or clutter you might
10 find in a house?

11 A. Yes.

12 Q. No broken glass?

13 A. You can say that, yes.

14 Q. No broken items around?

15 A. No.

16 Q. At any point, did Mr. Heath tell y'all to
17 leave, that he wasn't going to speak with you?

18 A. No, he did not.

19 Q. Thank you.

20 MR. SPANGLER: No further questions, Your
21 Honor.

22 THE COURT: Redirect, Solicitor?

23 MS. USRY: Nothing further for this witness,
24 Your Honor.

25 THE COURT: Thank you. Thank you very much,

1 Deputy Franklin. You may step down.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Solicitor, you may call your next
4 witness.

5 MS. USRY: Thank you, Your Honor. The State
6 calls Sergeant Caleb Black.

7 THE COURT: All right. Sergeant Black, if you
8 would come around and join us, please.

9 CALEB BLACK

10 being first duly sworn, testified as follows:

11 THE WITNESS: I do.

12 THE CLERK: Thank you. Have a seat, please,
13 state your name for the record, spelling your last.

14 THE WITNESS: My name is Caleb James Black,
15 B-L-A-C-K.

16 DIRECT EXAMINATION

17 BY MS. USRY:

18 Q. Thank you, Sergeant Black. Where are you
19 employed?

20 A. I have been employed at the sheriff's
21 department in Lexington County since April of 2000.

22 Q. And in what capacity have you been employed
23 with the sheriff's department?

24 A. Deputy, master deputy, and I've been a patrol
25 sergeant since 2005.

1 Q. So were you a patrol sergeant in 2015?

2 A. Correct. Yes, ma'am.

3 Q. Prior to working with the sheriff's department,
4 were you employed in law enforcement?

5 A. I was. I spent right at a year at the City of
6 Columbia.

7 Q. And prior to the City of Columbia?

8 A. Criminal justice at USC.

9 Q. So were you working on April 26th of 2015?

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

11 Q. Were you involved in responding to a call at
12 [REDACTED]?

13 A. Yes, ma'am, I did respond to that house.

14 Q. Is that location in Lexington County?

15 A. It's in the Red Bank area of Lexington County.
16 Yes, ma'am.

17 Q. About what time did you receive that call?

18 A. I heard other units dispatched there. We're
19 able to look at the call on the computer. So I
20 self-dispatched myself about 11:25, a couple minutes
21 after the other officers had already been sent that
22 way.

23 Q. How did the call come out over dispatch?

24 A. It came out as a welfare check on a juvenile,
25 on [REDACTED] complainant.

1 Q. On [REDACTED] complainant?

2 A. Uh-huh.

3 Q. About what time do you recall arriving at the
4 scene?

5 A. I don't remember where we were at ahead of
6 time, but we all got there about 11:30 PM. We all
7 arrived pretty much the same time.

8 Q. When you got to the scene, what did you do?

9 A. We got out of our cars and the four of us, one
10 of them being a trainee riding with Franklin, walked
11 to the front of the house.

12 Q. What happened at the front door of the house?

13 A. Franklin knocked on the door of the house and
14 it was answered by the defendant.

15 Q. And what did you do at that point?

16 A. Franklin explained our reason for being there,
17 and after the defendant pointed out where [REDACTED] Complainant's
18 bedroom was at, I walked down the hallway to where
19 her door was at.

20 Q. Did you go by yourself down the hallway?

21 A. Justin Ashley was the corporal, our master
22 deputy at the time. He actually initially walked
23 with me down the hallway.

24 Q. And tell me, when you got down the hallway,
25 what happened next?

1 A. When I got to where the defendant pointed out
2 -her bedroom was, the door was shut, so I knocked on
3 the door and **Complainant** opened the door.

4 Q. Describe for me what you saw at that point.

5 A. As soon as she answered the door, I could see
6 her eyes were red. It was obvious she had been
7 crying.

8 Q. When you saw that, what did you do?

9 A. He and I both went into the room. The relative
10 distance is not very far, so we went into the room
11 and talked to her.

12 Q. And let's talk about that real quick. Do
13 you --

14 MS. USRY: Your Honor, permission for the
15 witness to step down?

16 THE COURT: You may step down.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Keep your voice up, please, when
19 you're away from the microphone.

20 THE WITNESS: Yes, sir.

21 BY MS. USRY:

22 Q. So State's 13, can you describe again, what
23 door did you come to?

24 A. Front door of the house.

25 Q. The front door of the house is right here?

1 A. The front door is right here, so that's where
2 we entered. I didn't enter until it was already
3 pointed out the direction of her bedroom. So my
4 role was directly in the front door, directly to the
5 door right here.

6 Q. So the end of the hallway is the bedroom that
7 you responded to?

8 A. That's the victim's bedroom. Yes, ma'am.

9 Q. Is this a long distance?

10 A. Not very far, no, ma'am.

11 Q. Where is defendant Heath located at the time
12 you go down the hallway?

13 A. Everything happens, seems like, instantaneously
14 sometimes. When I was going this way, they were
15 going to, I assume, sit on the couch.

16 Q. Did he remain in the house, as far as you're
17 aware, at that point?

18 A. As far as I know, yes, he did.

19 Q. And then was there anyone else in the home when
20 you arrived?

21 A. Just the defendant and the victim.

22 Q. Thank you. You can --

23 A. Yes, ma'am.

24 Q. When you encountered the victim, what did you
25 do?

1 A. Under calls like this, I try to always do
2 things the same way. I introduce myself, and I
3 don't remember the specific question, but something
4 along the lines of what happened, are you okay.

5 Q. Did she respond?

6 A. She did.

7 Q. What did she say to you?

8 MR. FLOYD: Objection to hearsay, Your Honor.

9 THE COURT: Sustained.

10 BY MS. USRY:

11 Q. Sergeant Black, describe for me when you asked
12 the question and responded the emotional state of
13 the victim at that time?

14 A. She was crying, visibly upset. At that time,
15 it was almost 16 years of me being a police officer,
16 I could tell something had happened.

17 Q. And you indicated the defendant was still in
18 the residence at that point?

19 A. Yes, ma'am.

20 Q. And can you tell me again about how long it
21 took you to respond to the scene after the call came
22 out?

23 A. The call come in 11:22-ish and I arrived on
24 scene 11:30-ish.

25 Q. Did you wait a long time outside the door

1 before approaching the residence?

2 A. We didn't. As soon as we got there, we walked
3 up to the front door.

4 Q. And you indicated you described to Miss compl
5 why you were present. And then what was your
6 question to her?

7 A. It's the same question every time. It's either
8 what happened or are you okay. Since it was a
9 welfare check, the two general questions.

10 Q. Did she give you an immediate response?

11 A. She did.

12 Q. And what was her response at that time?

13 MR. FLOYD: Your Honor, objection; hearsay.

14 MS. USRY: Your Honor, we would argue under
15 Rule 803 --

16 THE COURT: Step out, ladies and gentlemen. Do
17 not discuss the case during this brief recess.

18 (The jury exits the courtroom at 3:20 PM.)

19 THE COURT: All right. Solicitor, I'll be glad
20 to hear from you.

21 MS. USRY: Thank you, Your Honor. The State
22 argues that the testimony that we're attempting to
23 elicit falls under Rule 803(2) as an excited
24 utterance. The officer has put on the record that
25 he responded -- the victim was emotional and upset,

1 that he responded after receiving the call regarding
2 a welfare check on the victim.

3 Within ten minutes to the scene, they
4 immediately entered the house. While on scene, the
5 only other person present is the defendant, the
6 offender in this case. And based on those
7 circumstances, we would argue that the victim is
8 under the stress of the incident still when making
9 statements to law enforcement officers.

10 THE COURT: Thank you, Solicitor.

11 Mr. Floyd?

12 MR. FLOYD: Thank you. Your Honor, this would
13 not be an excited utterance under Rule 803. There's
14 been a minimum of ten minutes since this alleged --
15 since they got the call and they arrived on the
16 scene, so it's still not an excited utterance
17 because it wouldn't be something in the heat of the
18 moment. It's not a statement while someone is
19 experiencing something that gives rise to the
20 excited utterance, so it's not qualified under
21 803(2).

22 THE COURT: Thank you, Mr. Floyd.

23 What will the officer testify to as to
24 Ms. **compl**'s response? Can I hear that, please?

25 MS. USRY: Yes, sir, Your Honor. Would you

1 like me to proffer that testimony?

2 THE COURT: Yes, ma'am.

3 IN-CAMERA EXAMINATION

4 BY MS. USRY:

5 Q. Sergeant Black, upon asking that question, how
6 did Miss **compl** respond?

7 A. She immediately responded without hesitation.
8 I actually put it in quotation marks in my report.
9 She said her father, and then in quotes, made me do
10 things that I did not want to do.

11 Q. And did she describe or did she indicate a time
12 frame of when those things happened to you [sic]?

13 A. When she said he made her do things that she
14 did not want to do, I asked her what she meant. And
15 then she went on to describe the alleged assault.

16 Q. And what did she describe?

17 A. She said that he had rubbed his penis on her.
18 At that point she asked that Master Deputy Ashley
19 leave the room. She said she would be more
20 comfortable speaking to just one person. And he
21 left.

22 I asked her if any sex act had taken place
23 between she and her father. She told me in the past
24 he physically forced her to perform oral sex on him
25 and that she used her mouth on his penis tonight.

1 Q. So she did say that evening? She described to
2 you the times when the assault happened?

3 A. Right. Yes, ma'am.

4 Q. Did she describe anything else besides she put
5 her mouth on his penis that night?

6 A. At that point, I knew it was going to be a call
7 where the detectives needed to come out. I got
8 Master Deputy Ashley to actually notify major crimes
9 to respond. I try not to make it a habit of having
10 victims answer questions repeatedly, so at that
11 point I got her statement form and went from there.

12 THE COURT: Anything further, Solicitor?

13 MS. USRY: Your Honor, the State would also
14 cite State v. Dennis involving an excited utterance
15 case under a similar situation where --

16 THE COURT: What county was that in?

17 MS. USRY: Sir?

18 THE COURT: What county was that case tried in?
19 Sumter?

20 MS. USRY: Sumter, yes, sir.

21 THE COURT: May I see it, please?

22 MS. USRY: Yes, sir.

23 THE COURT: Mr. Floyd?

24 MR. FLOYD: Thank you, Your Honor. That
25 testimony takes it out of the excited utterance

1 phase because she was responding to a question.
2 When you're responding to a question, it's not an
3 excited utterance anymore. And according to what we
4 just heard from the stand, she was just answering
5 questions postured to her by the detective. She was
6 not making an excited and spontaneous admission of
7 any type.

8 THE COURT: The issue, as I see it, based on
9 the record before the Court now when I read Dennis
10 in more detail and another case, I think it's
11 Stahlnecker, 690 S.E.2d 565, Dennis cites Jolly vs.
12 State, 443 S.E.2d 566, and advises the court that
13 the rule against hearsay prohibits the admission of
14 evidence of an out-of-court statement to prove the
15 truth of the matter asserted unless an exception to
16 the rule applies.

17 The first, of course, is -- I thought it was
18 Outten, but it's the outcry testimony, which is
19 limited to time and place in a criminal sexual
20 conduct case. The second, the res gestae or excited
21 utterance exception allows corroborative rape
22 testimony without time and place. And the third, I
23 do not think is relevant here at this time. But
24 they all address corroborative testimony.

25 For example, in Dennis, the judge did allow the

1 emergency room nurse who allowed the victim -- who
2 examined the victim to read her commentary regarding
3 what the victim told her. The victim testified in
4 detail about the incidents, robbery, abduction,
5 sexual assault, the judge then allowed the nurse to
6 read from her notes. And also, the res gestae or
7 excited utterance exception allows corroborative
8 rape testimony.

9 So at this stage in this record, this isn't
10 corroborative. It may become corroborative. I
11 don't know. But it is not corroborative at this
12 time. So my ruling is that it's not hearsay, but
13 it's not corroborative.

14 Anything before I bring the jury back in?

15 Yes, sir, Mr. Floyd?

16 MR. FLOYD: Your Honor, I'm not sure I quite
17 understood that.

18 THE COURT: Sir?

19 MR. FLOYD: Did you say it's admissible or not
20 admissible?

21 THE COURT: I said it's not hearsay, but at
22 this point in this record, it's not corroborative.
23 The sergeant's testimony is not corroborating any
24 prior testimony. If you take res gestae and you go
25 back to Copeland and whoever Copeland's codefendant

1 was, it was a death penalty case out of Berkeley
2 County many years ago, where this testimony is
3 admitted at this time and it's not hearsay, it's --
4 it's offered for the truth of the matter asserted,
5 therefore, it's evidence -- I don't know if you call
6 it direct or circumstantial, but it's evidence that
7 the offense occurred.

8 I think this type of evidence, among other
9 requirements that have to be met for it to be res
10 gestae, has got to be offered as corroboration.
11 From what I've heard, what's in the record from the
12 witnesses, Ms. Rodgers, Deputy Franklin, and
13 Sergeant Black, it's not corroborative at this time.
14 It may become corroborative upon the testimony of a
15 party in which the State is attempting to
16 corroborate.

17 Judge Timmerman would probably rule, well, you
18 can't prove everything on a pencil point. And
19 that's true. But at the same time, I can predict
20 anything but the future. I don't know who is or is
21 not going to testify. And whoever that witness may
22 be, whether it's Ms. **complainant** or someone else.
23 But testifies -- well, I can't make an anticipatory
24 ruling either.

25 But I think given the right -- well, I can't

1 make an anticipatory ruling. That's my ruling at
2 this time.

3 Anything before I bring in the jury?

4 MS. USRY: We'll do it in front of the jury, as
5 well, but we'll reserve the right to recall Sergeant
6 Black.

7 THE COURT: Thank you.

8 (The jury enters the courtroom at 3:42 PM.)

9 THE COURT: Thank you, ladies and gentlemen.
10 As you recall, I told you there will be times that I
11 may have to discuss a matter of law; the attorneys
12 could bring it to my attention or, on my own, I
13 might think it's something that I need to attend to.
14 And I hear those matters outside of your presence to
15 give me time to reflect as to the admissibility or
16 inadmissibility of a particular item of evidence.

17 So you will get some limited amount of exercise
18 going back and forth and back and forth. I know
19 that is annoying. I understand that. But that's
20 the method we use to have to protect the record, so
21 to speak, and make sure what I allow in evidence is
22 admissible and, at the same time, what I disallow is
23 not admissible and should be disallowed. So thank
24 you very much for your patience with the Court.

25 Solicitor, you may ask your next question.

1 MS. USRY: Thank you, Your Honor.

2 CONTINUED DIRECT EXAMINATION

3 BY MS. USRY:

4 Q. Sergeant Black, just bringing us back to where
5 we left off, you were in the room talking with
6 Ms. [REDACTED] and describing why you were there.
7 When you described why you were there, did she seem
8 to understand?

9 A. She did.

10 Q. During the course of your conversation, without
11 going into specifics, did she disclose a crime to
12 you at that time?

13 A. She did.

14 Q. Did she disclose where that crime had occurred?

15 A. She did. Yes, ma'am.

16 Q. What location?

17 A. The one that we were at, [REDACTED].

18 Q. And did she disclose a time frame in which that
19 had occurred?

20 A. Yes, ma'am, she did.

21 Q. What was that time frame?

22 A. That very night.

23 Q. And upon talking with her and getting those
24 details from her, what did you do?

25 A. When I obtained enough information that I knew

1 major crimes would be required, I got the corporal
2 on the shift to go ahead and call major crimes,
3 which for us, that's the detectives that respond to
4 the scene.

5 Q. And once you did that, describe for me what
6 happened next.

7 A. Once that determination was made to call them,
8 I try not to make people answer the same questions
9 repeatedly. I got a statement form and handed it to
10 her. She started writing it and she cried into a
11 pillow while we were doing it.

12 Q. Describe her demeanor.

13 A. Visibly upset. She cried into a pillow part of
14 the time while we were sitting in there waiting. I
15 waited in the room with her until the detectives got
16 there.

17 Q. And when the detectives arrived, what did you
18 do?

19 A. When Detective McCann got there, I introduced
20 both of them to each other and I exited the room.

21 Q. What was your next role in this response?

22 A. At that point, I walked outside to the yard
23 away from everybody else. So I removed myself from
24 the house at that time for a short period.

25 Q. Other than responding in the initial

1 interaction at the doorway, did you ever observe
2 Mr. Heath again?

3 A. I did.

4 Q. Tell me about that.

5 A. I was present when Detective McCann read him
6 his Miranda rights. He acknowledged them and he
7 willfully spoke with her.

8 Q. And did you participate -- and during your
9 interaction with defendant Heath, did he appear
10 intoxicated?

11 A. You could tell he had been drinking. But, no,
12 he was cognizant, he could speak fine.

13 Q. Did he ever indicate that he did not want you
14 in his home that night?

15 A. He was completely cooperative the whole time.
16 No, ma'am.

17 Q. Did he appear to appropriately respond to your
18 questions during that time?

19 A. Absolutely. Everything he said made sense.

20 (State's Exhibit Nos. 15 and 16 marked for
21 identification.)

22 Q. I'm showing you what's been marked as State's
23 Exhibit 15.

24 A. Yes, ma'am.

25 Q. Can you tell me, do you recognize that item?

1 A. I do.

2 Q. How do you recognize that item?

3 A. It was a sheriff's department form, a consent
4 to voluntary search explained by, at that time,
5 Sergeant Lint and witnessed by me.

6 Q. And what was that form regarding?

7 A. The residence at [REDACTED]. And it
8 was signed by Rosemarie Heath.

9 Q. Who is Rosemarie Heath?

10 A. The victim's mother.

11 Q. And about what time was that form signed?

12 A. 1:37 AM, indicated on the form.

13 Q. And were you present for this consent form to
14 be signed?

15 A. I was.

16 Q. Who else was present for that?

17 A. At that time, Sergeant Lint.

18 Q. And what was the consent form for?

19 A. To search the residence at [REDACTED].

20 Q. And then I'm showing you State's Exhibit 16.
21 Can you identify that document for me?

22 A. This is another consent, to search form signed
23 by Lint and myself as a witness. William Howard
24 Heath signed this one for consent to provide buccal
25 swabs.

1 Q. What time was that form signed?

2 A. 3:04 AM.

3 Q. Were you present for the signing of that?

4 A. I was.

5 Q. And how do you -- do you have independent
6 recollection of being present for that?

7 A. Well, I can tell you that's my signature and I
8 remember being there. Yes, ma'am.

9 Q. And when that form was being signed, was there
10 any indication that Mr. Heath was unwilling to sign
11 that form?

12 A. No. He was completely cooperative. He was
13 willing to sign it.

14 (State's Exhibit Nos. 17 and 18 marked for
15 identification.)

16 Q. I'm showing you what's been marked as State's
17 17 and 18. Do you recognize those items?

18 A. I do.

19 Q. Do they appear to accurately reflect their
20 content as when you responded to the incident
21 location that night?

22 A. Yes, ma'am, they do.

23 Q. And what area of the home do they reflect?

24 A. **Complainant**'s bedroom.

25 MS. USRY: State moves State's 17 and 18 into

1 evidence at this time, Your Honor.

2 MR. FLOYD: No objection.

3 THE COURT: State's 17 and 18 in evidence
4 without objection.

5 (State's Exhibit Nos. 17 and 18 admitted into
6 evidence.)

7 BY MS. USRY:

8 Q. Sergeant Black, I'm showing you State's 18.

9 It's a little dark. But you indicated this is
10 Complainant's bedroom?

11 A. Correct.

12 Q. When you were talking with her that night,
13 where was she located in this room?

14 A. She was sitting on the bed.

15 Q. And when -- you indicated earlier after you
16 finished talking to her, she was crying into her
17 pillow?

18 A. Yes, ma'am.

19 Q. Is that what's depicted in this picture?

20 A. I don't remember which pillow it would be, but
21 I do remember her -- and I notated in my report that
22 she was crying into a pillow.

23 Q. At that time, was she on her bed?

24 A. Yes.

25 MS. USRY: Your Honor, no further questions at

1 this point for this witness. The State reserves the
2 right to recall this witness, Your Honor.

3 THE COURT: Thank you, Solicitor.

4 Mr. Floyd?

5 MR. FLOYD: Thank you, Your Honor. Just a few
6 questions.

7 CROSS-EXAMINATION

8 BY MR. FLOYD:

9 Q. How are you doing today, sir?

10 A. I'm okay. Yourself?

11 Q. Good.

12 A. Good.

13 Q. Just a couple things in your testimony. I
14 understand you got there around 12:30 or so.

15 A. 11:30.

16 Q. I'm sorry, 11:30.

17 A. Yes, sir.

18 Q. And Mr. Heath was present; is that correct?

19 A. He was. He answered the door. Yes, sir.

20 Q. And, in fact, when he answered the door, he
21 freely let you inside, did he not?

22 A. He did.

23 Q. He did not try to resist you coming in at all,
24 did he?

25 A. Not at all.

1 Q. Fully cooperative, would you say that?

2 A. The time I dealt with him, yes, sir.

3 Q. And he showed you where [Complainant]'s bedroom was?

4 A. Yes, sir.

5 Q. And when you went there, that's where [Complainant]
6 was; is that correct?

7 A. It was.

8 Q. So he didn't try to keep her away from you?

9 A. No.

10 Q. He didn't try to go in there and interfere with
11 your interaction with her, did he?

12 A. No, sir.

13 Q. Now, were you present when he was arrested?

14 A. I was still on scene. Was I standing beside
15 him or the other officers? I don't know.

16 Q. Where was he when he was arrested?

17 A. I don't recall. It was on the property there
18 on [REDACTED] Road, though.

19 Q. You don't recall what room he was in or
20 anything like that?

21 A. Sir?

22 Q. You don't recall the room he was in?

23 A. I don't. It would either be the living room or
24 outside, one of the two.

25 Q. Either the living room or outside?

1 A. Yes, sir.

2 Q. Okay. And did you take any of the pictures or
3 that was somebody else's job?

4 A. I did not take pictures.

5 Q. Okay. But no question he always cooperated
6 with you in every way?

7 A. Yes, sir.

8 Q. Didn't try to run from you?

9 A. No, sir.

10 Q. Didn't try to interfere with you?

11 A. No, sir.

12 Q. And he freely gave you a buccal swab; is that
13 correct?

14 A. Yes, sir.

15 Q. What's a buccal swab?

16 A. A test for DNA. It's a DNA sample or test for
17 DNA.

18 Q. And he didn't have to give you that, did he?

19 A. No, sir.

20 Q. But he gave it to you, didn't he?

21 A. He did.

22 Q. And he wasn't intoxicated, was he?

23 A. No, sir.

24 Q. So he did that of his own free consciousness --
25 conscious will, correct?

1 A. He did, yes, sir.

2 Q. Thank you. No further questions.

3 THE COURT: Redirect?

4 MS. USRY: No further questions at this time,
5 Your Honor. But, again, we reserve the right to
6 recall him.

7 THE COURT: Thank you, Sergeant. You may step
8 down.

9 THE WITNESS: Yes, sir.

10 THE COURT: You are subject to recall.

11 All right. Solicitors?

12 MS. MAYES: May we approach?

13 THE COURT: Yes, ma'am.

14 (Sidebar conference.)

15 THE COURT: Ladies and gentlemen, I have a
16 matter to take up outside of y'all's presence again.
17 I can predict anything but the future. I can't
18 predict how long it may take. A conservative
19 estimate is about 30 to 45 minutes. That's
20 conservative. And then my sometime conservative is
21 not realistic. And I really get sideways when I
22 have to hold a jury captive because they're the last
23 great American drafties of our country. Then if I
24 get 45 minutes into it and it takes longer, then I
25 still have my jury back there for an hour, hour and

1 wait before the jury and then take a break.

2 THE COURT: Do y'all have objections to that
3 procedure?

4 MR. SPANGLER: No objection, Your Honor.

5 THE COURT: Then are you ready for the jury?

6 MS. USRY: Yes, sir, Your Honor.

7 (The jury enters the courtroom at 12:28 PM.)

8 THE COURT: What's your occupation, sir?

9 JUROR: General manager with Best Buy.

10 THE COURT: And your number?

11 JUROR: 144.

12 THE COURT: 144?

13 JUROR: Yes, sir.

14 THE COURT: I just had an election. I'm
15 appointing you to serve as foreperson of the jury.
16 There's no recount, no recall. I appreciate you
17 volunteering for that. I'll explain to you your
18 duties and responsibilities. You will be the jury's
19 spokesperson here in the courtroom and you're
20 responsible for writing and signing the verdict.
21 And, as I say, I'll explain your duties in more
22 detail. Thank you very much.

23 THE FOREPERSON: Yes, sir.

24 THE COURT: And I didn't say this earlier: I
25 need to keep up with 14 people. Our fine alternates

1 over here, our foreperson, if y'all will always
2 maintain those seats. I have found over the course
3 of sitting up here that jurors are somewhat like me,
4 you may not like hearing that, but I'm very
5 territorial. Some jurors like to sit in the same
6 seat each and every time, they want the same view of
7 the courtroom. That is fine. I like it. I like to
8 have the same view.

9 You may sit -- the other 11 of you may sit
10 wherever you would like in the jury box or you may
11 maintain the same seat. Either way is fine with me.
12 If you maintain the same seats, perhaps towards the
13 end of the trial I'll get to know at least your
14 number. I have a list of folks' occupations. Not
15 that -- I don't know for whatever weight and value
16 that gives to me in performing my judicial duties.

17 I hope you all had a pleasant evening. Welcome
18 back. I understand the clerk has made arrangements
19 for your lunch. Upon its arrival, she will let me
20 know and I will pass that on to you.

21 All right. Solicitor, you may call your next
22 witness.

23 MS. MAYES: The State calls Lieutenant Robbie
24 Lint.

25 THE COURT: Lieutenant, come around and be

1 sworn for us, please.

2 CHARLES ROBERT LINT, JR.

3 being first duly sworn, testified as follows:

4 THE WITNESS: I do.

5 THE CLERK: Thank you. If you'll have a seat,
6 please. State your name and spell your last for the
7 record.

8 THE WITNESS: My name is Charles Robert Lint,
9 Jr. Lint is L-I-N-T.

10 DIRECT EXAMINATION

11 BY MS. MAYES:

12 Q. Lieutenant Lint, tell us a little bit about
13 yourself. Where are you currently employed and in
14 what capacity?

15 A. I am currently employed with Lexington County
16 Sheriff's Department. I'm the lieutenant over the
17 narcotics division.

18 Q. Before you became a lieutenant in narcotics,
19 what division were you working in?

20 A. I was working in the major crimes unit as a
21 sergeant over a team.

22 Q. How long were you a sergeant in the major
23 crimes division?

24 A. From July of 2011 until October 2016.

25 Q. Can you tell us what is included in major

1 crimes?

2 A. Major crimes is an investigative unit that
3 handles everything from assaults, sexual assaults,
4 armed robberies, and homicides.

5 Q. Can you tell us, Lieutenant Lint, whether you
6 have any specific training in the investigation of
7 sexual assaults?

8 A. I have.

9 Q. Does that include sexual assault of children?

10 A. Yes, ma'am.

11 Q. Can you tell us what role you played in this
12 investigation at [REDACTED]?

13 A. I received a phone call shortly before midnight
14 or right around midnight on April 26th of 2015. I
15 believe I received it from Justin Ashley, who was a
16 master deputy on the road. He said they were on
17 scene at [REDACTED] in reference to a
18 welfare check that now has turned into a possible
19 sexual assault.

20 Q. Can you tell us whether or not [REDACTED] complainant
21 was present at the scene?

22 A. Yes. Master Deputy Hicks informed me that the
23 victim was still on scene, as well as the subject.

24 Q. All right. Now, who is Rose Heath?

25 A. Rose Heath is the mother of [REDACTED] complainant and

1 would be the wife of Mr. William Heath.

2 Q. Can you tell us, based upon your information
3 and knowledge of this investigation, whether that
4 was a marital home?

5 A. Yes, it was.

6 Q. All right. And can you tell us whether or not
7 Rose Heath has belongings in the home?

8 A. She does.

9 Q. And as a result, did you take any action to
10 obtain consent to search that home?

11 A. I did.

12 Q. And how did you go about doing that?

13 A. I arrived shortly after 12:30, which would have
14 been April 27th, 2015, at the residence. I had
15 Detective McCann at the time, who is now a sergeant,
16 she -- I had her go to the scene originally as lead
17 investigator to handle the alleged assault.

18 Once I got there shortly after midnight, I
19 believe she was inside conducting an interview with
20 the victim. She stepped back inside and informed me
21 of where she was at with the investigation and what
22 she had done.

23 Ms. Rose Heath was on scene at the time as
24 well. I made contact with her and asked that she
25 would give consent for us to be inside the residence.

1 for any search or photographs we needed to take.

2 Q. And can you tell us whether or not that is
3 routine in such investigations?

4 A. Yes, ma'am, it is.

5 Q. All right.

6 MS. MAYES: Beg the Court's indulgence?

7 THE COURT: Yes, ma'am.

8 MS. MAYES: May I approach?

9 THE COURT: Yes, ma'am.

10 BY MS. MAYES:

11 Q. I'm going to show you what is State's 15 and
12 ask you whether or not you recognize that item.

13 A. I do, ma'am.

14 Q. And how so?

15 A. It is a Lexington County Sheriff's Department
16 form. It is a form for consent to search. At the
17 beginning of the form it states that I, and as I
18 handwrote, Rosemarie Heath have been informed by,
19 myself at the time, Sergeant Lint and Sergeant Caleb
20 Black, who made proper identification, as authorized
21 law enforcement officers of the Lexington County
22 Sheriff's Department of my constitutional rights not
23 to have a --

24 THE COURT: You may have to slow down. When
25 witnesses read, they tend to speed up.

1 THE WITNESS: I have a bad habit of that. I
2 apologize.

3 THE COURT: Thank you, Lieutenant.

4 THE WITNESS: Yes, sir.

5 Of my constitutional rights not to have a
6 search made of this premise and the property owned
7 by me and/or under my care, custody, and control
8 without a search warrant.

9 Knowing of my lawful right to refuse to consent
10 to such a search, I am willing to give my permission
11 to the above-named officers to conduct a complete
12 search of the premise, the property, including all
13 buildings and vehicles, both inside and outside of
14 the property located at [REDACTED],
15 Lexington, South Carolina 29073, which I handwrote.

16 The above-said officers further have my
17 permission to take from my premise any property,
18 letters, papers, materials, and other property or
19 things which they desire as evidence for criminal
20 prosecution in this case or cases under
21 investigation.

22 This written permission to search without a
23 search warrant is given by me to the above officers
24 voluntarily and without threats or promises of any
25 kind. And the time is at 1:37 AM on April 27th

1 day -- I'm sorry, on the 27th day of April, 2015, at
2 [REDACTED], Lexington, South Carolina 29073.

3 And it has Rosemarie Heath's signature on it,
4 my signature, and Caleb Black's signature as
5 witnesses.

6 BY MS. MAYES:

7 Q. And Caleb Black was the Sergeant Caleb Black
8 who testified yesterday?

9 A. Yes, ma'am.

10 Q. Now, at any point in time did you get any
11 indication that either Rose Heath or the defendant
12 in this case, her husband, William Heath, withdrew
13 that consent to search the residence?

14 A. No, ma'am, they did not.

15 Q. Or openly objected?

16 A. No, ma'am, they did not.

17 Q. What about to your presence at the scene?

18 A. No, ma'am.

19 Q. Or the presence of any officer at the scene
20 that you observed?

21 A. Not that I'm aware of, no, ma'am.

22 Q. Now, that was at 1:37 AM. I'm going to move
23 forward and ask you whether you also had the
24 opportunity to pursue any type of swab evidence in
25 this case.

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

2 Q. And what is a suspect standard?

3 A. A standard? It would be his DNA profile taken
4 from his person.

5 Q. All right. Now, as part of your training in
6 such investigations, can you tell us whether or not
7 this is routine to request a swab from any suspect
8 in a sexual assault case?

9 A. It has been in the past. Yes, ma'am.

10 Q. I'm going to show you an item and ask you
11 whether or not you recognize it.

12 A. Yes, ma'am. This would be a swab kit that I
13 keep in my vehicle at all times for such things. It
14 is a kit that's provided to the sheriff's department
15 to use as evidence.

16 Q. All right. And on this particular night, can
17 you tell us whether or not you approached the
18 defendant, Bill Heath, about providing a buccal swab
19 or buccal swabs?

20 A. I did.

21 Q. And how did you go about approaching him?

22 A. I had a brief conversation with Mr. Heath. He
23 was obviously aware of the situation, why we were
24 there, with the interview conducted by Sergeant
25 McCann. I asked if he would be willing to provide a

1 buccal swab of his person and of his penis area

2 based on the allegations that were made.

3 Q. Now, had Sergeant McCann advised him of his
4 Miranda rights?

5 A. She had.

6 Q. And that's something you had knowledge of?

7 A. I did.

8 Q. I'm going to ask you to look to your left. Do
9 you recognize that document?

10 A. Yes, ma'am. It's the same Lexington County
11 Sheriff's Department form. It's a consent to search
12 form.

13 Q. And who actually went over that search -- that
14 consent to search form with the suspect in this
15 case, Bill Heath?

16 A. I did.

17 Q. Does it contain his signature in any location?

18 A. It has his signature at the bottom. It's the
19 same consent form that I just read earlier involving
20 the search of the residence, the same verbiage. I
21 handwrote Mr. Heath's name at the top, along with my
22 name and Sergeant Black's name, who was present.

23 It also describes the residence of [REDACTED]
24 [REDACTED], and also additionally handwritten in
25 there for a buccal swab from Mr. Heath.

1 Q. And did he agree to provide a suspect standard?

2 A. He did at 3:05 AM. It's dated the 27th day of
3 April, 2015, at the residence of [REDACTED]
4 with his signature at the bottom.

5 Q. All right.

6 MS. MAYES: And, Your Honor, at this time the
7 State would offer items 15 and State's Exhibit 16 as
8 evidence. I believe they were previously marked,
9 but not offered as evidence.

10 THE COURT: Mr. Floyd? Mr. Spangler?

11 MR. FLOYD: No objection, Your Honor.

12 THE COURT: State's 15 and 16 in evidence
13 without objection.

14 (State's Exhibit Nos. 15 and 16 admitted into
15 evidence.)

16 BY MS. MAYES:

17 Q. Now, Lieutenant Lint, in addition to that
18 written form, did he ever give consent for an
19 additional swab?

20 A. No.

21 Q. Well, what were the swabs that you took?

22 A. The swab kit that we conducted inside the
23 residence, we walked back inside the residence, me,
24 him and Sergeant Black, so we could conduct it in a
25 somewhat private area. We walked inside the

1 residence into the living room.

2 There was a table between the living room and
3 the kitchen. I sat there at the table, opened up
4 the buccal swab kit, filled out the necessary
5 information on the outside of the kit. I put gloves
6 on. And I had two swabs inside the kit. I asked
7 him permission to -- he agreed to do was his inner
8 mouth and of his penis area.

9 Q. Okay. So both of those swabs he agreed to
10 verbally?

11 A. Correct.

12 Q. And at any point in time did he withdraw
13 consent or object?

14 A. No, ma'am, he did not.

15 Q. Were you present when both of those swabs were
16 conducted?

17 A. I was.

18 Q. You indicated that you had on gloves.

19 A. Correct.

20 Q. Did anyone else touch those DNA swabs other
21 than the Defendant himself, Bill Heath?

22 A. No, ma'am.

23 Q. And who actually put the swab into his mouth?

24 A. He did. I provided him one buccal swab. He
25 did a swab of the interior of his mouth, he handed

1 it back to me while I still had gloves on. The
2 swabs are about this long, so in order to fit inside
3 the kit, you have to break the ends of them off and
4 just put the swab part that was in the mouth. I
5 broke that end piece off, stuck the swab in a --
6 it's a plastic envelope. I stuck it inside it.

7 I handed him the second swab the same way while
8 the gloves were on. He then proceeded to pull down
9 his -- I believe he had shorts on. I can't
10 remember. I think they were tan color. I don't
11 recollect exactly. But he pulled them down and then
12 he did a swab area of his entire penis area, handed
13 the swab back to me, still with gloves on. I broke
14 the end piece off of the buccal swab. The swab part
15 was also inserted in the kit and then I sealed the
16 kit up myself.

17 Q. Did you immediately seal the kit?

18 A. Yes, ma'am.

19 Q. And were you wearing gloves when you sealed the
20 kit?

21 A. Gloves were on at all times.

22 Q. Did you actually observe both swabs come from
23 the body of William Heath?

24 A. I did.

25 Q. Was anyone else present to interfere with those

1 swabs between him taking them from his body and
2 handing them to you while you were gloved and you
3 placing them into the sealed kit?

4 A. No, ma'am, there was not.

5 Q. And the sealed kit that you mention, I'm going
6 to --

7 MS. MAYES: Your Honor, if we could go ahead
8 and cut the seal on this?

9 THE COURT: Yes, ma'am.

10 BY MS. MAYES:

11 Q. Lieutenant Lint, I'm going to ask you if
12 there's any markings on the outside of that item to
13 indicate the agency who handled that evidence.

14 A. Yes, ma'am, there is. There is a case number
15 written on the front of the envelope, which is --
16 it's LCSD number. That is my handwriting for the
17 case number of 15007478. That is the case number
18 that this incident was written under -- the report
19 it was written under.

20 Q. And you mentioned that you recognized the
21 handwriting. What was the next action that you took
22 after you sealed those suspect standards that came
23 directly to you from William Heath?

24 A. Yes, ma'am. Once I sealed the kit up, I
25 maintained control of this evidence packet

1 completely in my care at all times. I then left the
2 scene. I traveled to the Lexington County Sheriff's
3 Department where I filled out the proper paperwork
4 and entered it into evidence in our evidence room.

5 Q. When you enter it into evidence in the evidence
6 room, is that something that everyone has access to?

7 A. Yes, ma'am, there is.

8 Q. What do you mean by that?

9 A. Well, I mean, it's a general area where they
10 have computers set up where you can type in the
11 necessary information on the form that you need to
12 enter it into evidence and then place it in a secure
13 location.

14 Q. Once inside the actual evidence room, who are
15 the people that have access to that area?

16 A. The only people who have access to the evidence
17 room are the evidence custodians.

18 Q. And in this particular case, did that item
19 remain sealed from the time it came into your
20 custody there at the scene with William Heath until
21 when you put it in an evidence locker?

22 A. Yes, ma'am.

23 Q. Was it marked in any way to prevent tampering?

24 A. There is a sealed -- on the package, it's
25 covered up right now, but there's a sealed package

1 on here that says the kit -- I place the seal on
2 that package to show if it would be tampered with or
3 not.

4 Q. Did it remain un-tampered as it went into the
5 evidence room there at Lexington County Sheriff's
6 Department?

7 A. Yes, ma'am, to the best of my knowledge.

8 MS. MAYES: Beg the Court's indulgence?

9 THE COURT: Yes, ma'am.

10 BY MS. MAYES:

11 Q. Now, that night, did the Defendant appear to be
12 of sound mind?

13 A. He did.

14 Q. Was he able to communicate?

15 A. He was.

16 Q. Can you tell us whether or not he appeared to
17 be intoxicated or overly impaired?

18 A. He did not appear to be over-impaired. I do
19 note I did smell an odor of alcohol about his
20 person. I was informed that he was drinking earlier
21 that night, but he did not appear to be impaired, by
22 my standards of judging him. He answered all my
23 questions, he stated that he understood all my
24 questions, and he seemed of sound mind and body to
25 me.

1 Q. Were his answers rational in a response to the
2 questions that were posed to him?

3 A. Correct.

4 MS. MAYES: Nothing further, Your Honor.

5 THE COURT: Thank you, Solicitor.

6 Mr. Floyd?

7 MR. FLOYD: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. FLOYD:

10 Q. Lieutenant Lint?

11 A. Yes, sir.

12 Q. Mr. Heath certainly cooperated with you that
13 night, did he not?

14 A. He certainly did, yes, sir.

15 Q. And you're of the opinion that he was not
16 impaired?

17 A. Based on my opinion, yes, sir.

18 Q. He understood everything?

19 A. He did.

20 Q. And he fully cooperated?

21 A. He did.

22 Q. Now, your first involvement with him was the
23 buccal swab?

24 A. Correct.

25 Q. And I believe you said that was -- what time

1 was that?

2 A. That was right around 3:00 in the morning. It
3 was 3:05 when we filled it out and he signed it.

4 Q. And that form that you had signed, that was for
5 the buccal swab, wasn't it?

6 A. Correct. Yes, sir.

7 Q. He then cooperated and gave you a buccal swab?

8 A. He did, yes, sir.

9 Q. I think you also said you then requested a
10 penal swab; is that correct?

11 A. Yes, sir. That's the discussion we had before
12 he signed the consent.

13 Q. Now, your consent form doesn't say anything
14 about the penal swab, does it?

15 A. No, sir, it doesn't. It just said buccal swab.

16 Q. And that's what it was for, a buccal swab?

17 A. Correct.

18 Q. Now, did Mr. Heath live there also?

19 A. Yes, sir.

20 Q. So he had his own personal property there, did
21 he not?

22 A. Yes, sir, to my knowledge. Yes.

23 Q. However, your consent to search the house was
24 only signed by Rose?

25 A. Correct.

1 Q. Now, what time did Rose sign the consent to
2 search the house?

3 A. I believe it was at 1:37 AM.

4 Q. And at that point in time Mr. Heath was still
5 present, was he not?

6 A. Correct. I believe he was in the interview
7 with Sergeant McCann.

8 Q. Did you ever have Mr. Heath sign a consent to
9 search the property?

10 A. No, sir, I didn't.

11 Q. But he was there?

12 A. He was there, correct.

13 Q. No question Mr. Heath cooperated with you?

14 A. Fully cooperated, yes, sir.

15 MR. FLOYD: Thank you, Lieutenant Lint.

16 No further questions.

17 THE COURT: Redirect, Solicitor?

18 MS. MAYES: Yes, sir, Your Honor, briefly.

19 REDIRECT EXAMINATION

20 BY MS. MAYES:

21 Q. Did William Heath verbally agree to provide
22 both swabs?

23 A. Verbally, yes, ma'am, he did.

24 MS. MAYES: Nothing further.

25 THE COURT: Recross?

1 MR. FLOYD: Nothing further, Your Honor.

2 THE COURT: Thank you, Mr. Floyd.

3 Thank you, Lieutenant. You may step down.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: All right. Solicitor, another
6 witness?

7 MS. MAYES: May we approach?

8 THE COURT: Yes, ma'am.

9 (Sidebar conference.)

10 THE COURT: Ladies and gentlemen, time-wise,
11 we've had some fits and starts in this case. That's
12 neither usual nor unusual in the trial of a case.
13 Our next witness to be called will be rather
14 lengthy. I don't like to break up direct, I like
15 direct to be completed. And if there's a certain
16 period of time where the jury, I think, needs a
17 break or if the jury indicates to me they do need a
18 break after direct, I will take that break between
19 direct and cross or try to press on if the jury does
20 not indicate to me that they would need a break.

21 I don't want to just get started on this
22 witness and stop for your lunch. I think your
23 reporting time was 11:30, and we didn't get started
24 really until a few minutes after 12:00 as far as
25 with the jury. No fault of the jury whatsoever. If

1 MS. USRY: Your Honor, nothing as far as
2 motions. We did want to bring to Your Honor's
3 attention, I did mention to Defense counsel, and I
4 think your law clerk, regarding potentially working
5 late tonight if it does suit the jury. We'd request
6 to work past 5:00, if possible. We do have some
7 scheduling issues with witnesses, so we'd like to go
8 later, if possible.

9 THE COURT: Is that suitable to y'all,
10 Mr. Spangler?

11 MR. SPANGLER: Yes, sir.

12 THE COURT: Anything further?

13 MR. SPANGLER: Nothing from the Defense, Your
14 Honor.

15 (The jury enters the courtroom at 2:21 PM.)

16 THE COURT: Welcome back, ladies and gentlemen.
17 I hope y'all had a pleasant lunch. We'll continue
18 the trial of the case by the presentation of
19 testimony and evidence by the State in its case in
20 chief. If you'll continue to give the parties your
21 complete and undivided attention as you have done
22 throughout the trial of the case. Thank you. Thank
23 you very much.

24 Solicitor, you may call your next witness.

25 MS. MAYES: The State calls **complainant**.

1 THE COURT: All right. Miss [REDACTED], if you
2 would come around and join us, please.

3 [REDACTED] complainant
4 being first duly sworn, testified as follows:

5 THE WITNESS: I do.

6 THE CLERK: If you'll have a seat over here,
7 please. State your name, speaking loud and clear,
8 and spell your last for the record.

9 THE WITNESS: [REDACTED] complainant, [REDACTED] Complainant.

10 DIRECT EXAMINATION

11 BY MS. MAYES:

12 Q. [REDACTED] Complainant, tell us a little bit about yourself.

13 How old are you today?

14 A. I'm 20 years old.

15 Q. And I want to start by asking you how is it
16 that you know the Defendant in this case, William
17 Heath?

18 A. He's my father.

19 Q. When you say he's your father, is he your
20 biological father?

21 A. Yes.

22 Q. [REDACTED] Complainant, where are you currently attending
23 school?

24 A. Midlands Technical College.

25 Q. Prior to that, where did you attend high

1 school?

2 A. Lexington High School.

3 Q. And tell us a little bit more about yourself.

4 Are you currently working?

5 A. Yes.

6 Q. And where is that?

7 A. I work at the Shoe Department in Ballentine.

8 Q. I'm going to take you back and ask you where
9 you were living in 2015, specifically the spring of
10 2015.

11 A. I was living with my parents at [REDACTED]

12 [REDACTED] in Lexington.

13 Q. And when you say your parents, who is your
14 mother?

15 A. Rosemarie Heath.

16 Q. Is she your biological mother?

17 A. Yes.

18 Q. Were your parents married?

19 A. Yes.

20 Q. Were they always together?

21 A. Yes.

22 Q. Do you have any siblings?

23 A. Yes; I have a brother.

24 Q. Where is he now?

25 A. He is in South Korea. He's in the military.

1 Q. What's his name?

2 A. [REDACTED].

3 Q. Can you tell us a little bit about the age
4 difference between you and [REDACTED]?

5 A. We have a three-year age gap. He's four school
6 years ahead of me.

7 Q. Any other siblings in the home growing up?

8 A. No; it was just me and him.

9 Q. Are you the only daughter?

10 A. Yes.

11 Q. Where was it you lived prior to the spring of
12 2015?

13 A. We lived on [REDACTED] in Lexington.

14 Q. And then prior to that?

15 A. [REDACTED] in Lexington or Gilbert.

16 Q. Now, what are the schools that you attended
17 growing up, starting with elementary?

18 A. I attended four elementary schools: Leaphart
19 Elementary, Lexington Elementary, Lake Murray, and
20 Pleasant Hill Elementary.

21 Q. And after that?

22 A. Pleasant Hill Middle School and then Lexington
23 High School.

24 Q. So you were in the same middle school all
25 years?

1 A. Yes.

2 Q. And tell us about Lexington High School. You
3 were there until your graduation?

4 A. Yes.

5 Q. And we'll talk a little bit more about that
6 later. In the family home as you were growing up,
7 [REDACTED] Complainant, did anything ever happen that made you feel
8 uncomfortable?

9 A. Yes.

10 Q. What was that?

11 A. I was made to do sexual things with my father
12 by my father.

13 Q. Do you remember how old you were when that
14 first started?

15 A. Seven or eight.

16 Q. What grade would you have been in then?

17 A. Second grade.

18 Q. What house was that you were living in when it
19 first started happening?

20 A. That was on [REDACTED] Drive.

21 Q. Can you tell us one of your first memories of
22 this?

23 A. It was a night where I sleeping and my mother
24 was working. My father came into my room and
25 just -- you know, he used his mouth on me and then

1 he left and that was it.

2 Q. I want to ask a little bit more about that.

3 You said your mom was working. Where was your mom
4 working when you were a child?

5 A. I knew she worked at Burlington Coat Factory.
6 And during that second grade year, I believe she
7 switched over to Lowe's.

8 Q. Would she ever work after-school hours?

9 A. Yes.

10 Q. Would she ever work evening hours?

11 A. Yes.

12 Q. And who was normally home alone with you after
13 school or evenings if your mom was working at
14 Burlington or Lowe's?

15 A. My father.

16 Q. What kind of work did he do?

17 A. I think at the time he might have already been
18 working at Food Lion.

19 Q. What did he do after Food Lion?

20 A. He would come home -- or are you talking about
21 work?

22 Q. Yes.

23 A. He restarted his tree cutting business that he
24 had before that.

25 Q. So when he was working at Food Lion, about how

1 old were you then?

2 A. I'm not exactly sure when he started, but I
3 might have been six or seven. And that lasted maybe
4 until I was in middle school.

5 Q. Did you always have your own room?

6 A. Yes.

7 Q. Even at [REDACTED] Drive?

8 A. Yes.

9 Q. So the first time that you told us about when
10 you said that he came into the room, can you tell us
11 exactly what you recall?

12 A. That first time?

13 Q. Yes.

14 A. I just remember I woke up to him coming in
15 there and then he just told me to go along with it.
16 I mean, he used his mouth on me and then told me not
17 to tell, and then that was it.

18 Q. So I need to ask you a little bit more about
19 that.

20 A. Uh-huh.

21 Q. When you say that he used his mouth on you,
22 what part of your body are you talking about?

23 A. My lower region, private parts.

24 Q. Would that have been inside your clothes or
25 outside your clothes?

1 A. Inside.

2 Q. Was his mouth touching your skin?

3 A. Yes.

4 Q. And I'm going to have to ask you specifically
5 for the record. When you say private parts, what
6 part of your body are you talking about?

7 A. Like, the name physically, my vagina.

8 Q. You said that he told you not to tell?

9 A. Yes.

10 Q. How did you respond to that?

11 A. I just knew not to tell at that point.

12 Q. Did that happen one time or more than one time
13 on [REDACTED]?

14 A. More than one time.

15 Q. You said you were in second grade?

16 A. Yes.

17 Q. Can you tell us whether or not this activity
18 progressed into something else?

19 A. Yes.

20 Q. What was that?

21 A. He would use his lower region private parts to
22 rub against mine or he would use his fingers as
23 well.

24 Q. Did that happen while you were at [REDACTED]?

25 A. Yes.

1 Q. And you said that he would use his fingers as
2 well. So I'm going to have to ask you, what part of
3 his body would he touch with his fingers?

4 A. Vaginal region.

5 Q. Do you know whether or not his fingers ever
6 went inside your vaginal region?

7 A. Yes, it did.

8 Q. Where would your mom be when these things would
9 happen?

10 A. She would either be asleep in the other room or
11 she would be at work.

12 Q. And at that point in time, **Complainant**, did you
13 tell your mom what was happening?

14 A. No.

15 Q. Why or why not?

16 A. I was told not to tell. And I knew something
17 would happen to me if I did.

18 Q. How is it that you knew something would happen
19 to you?

20 A. I've had prior experiences with -- where if I
21 told somebody something and he would find out, he
22 would get angry with me or he'd threaten to kill me
23 or other things.

24 Q. And specifically about this type of activity,
25 sex acts with you as a child, did you ever resist or

1 try to resist?

2 A. Yes.

3 Q. And what occurred?

4 A. He would hit me or try and pull me to do it
5 anyway.

6 Q. When you say that he would try and pull you to
7 do it anyway, what do you mean by that?

8 A. Like, if I didn't want to go to his room or
9 something, he would just try and pull me there. And
10 he would pull my hair or my arm or something like
11 that.

12 Q. What did you learn from that experience?

13 A. Not to resist.

14 Q. Where else in the house at [REDACTED] do you
15 remember something happening?

16 A. Just in my bedroom or his bedroom.

17 Q. When you say his bedroom, did that happen at
18 [REDACTED]?

19 A. Yes.

20 Q. Was your mom ever present for any of those
21 incidents where she was awake and a witness to it?

22 A. No.

23 Q. Where did you live after [REDACTED]?

24 A. We lived on [REDACTED].

25 Q. About what grade were you in when you moved to

1 [REDACTED]?

2 A. It was the second half of my second grade
3 school year.

4 Q. So third grade was in what house?

5 A. [REDACTED] Road.

6 Q. While you were at [REDACTED] Road, did these
7 things continue to happen?

8 A. Yes.

9 Q. Did anything happen more than what you've told
10 us already?

11 A. Yes.

12 Q. What was that?

13 A. He would have me use my mouth on his private
14 parts as well.

15 Q. Did that happen at [REDACTED] [REDACTED] Road?

16 A. Yes.

17 Q. Were you still at [REDACTED] [REDACTED] at the end of
18 middle school?

19 A. Yes.

20 Q. And at the beginning of high school?

21 A. Yes.

22 Q. When you were 14 and 15?

23 A. Yes.

24 Q. What do you remember happening when you were
25 that age?

1 A. Basically everything I said has happened,
2 happened there as well, just at different times.

3 Q. When you said that you would have to use your
4 mouth on him, did that happen while you were 14 and
5 15 years of age at [REDACTED] [REDACTED]?

6 A. Yes.

7 Q. Were there ever times that you were asleep when
8 this occurred?

9 A. Yes. Sometimes I would be asleep and then he
10 would come into my room and then I'd eventually wake
11 up.

12 Q. Do you recall any specific time when something
13 occurred while you were sleeping?

14 A. Yes.

15 Q. What is that?

16 A. He would -- well, like I said, the same stuff
17 just, you know, my mouth on him, his mouth on me, he
18 would rub himself against me, that stuff.

19 Q. Would that happen even if you weren't fully
20 awake and complying?

21 A. Yes.

22 Q. What about any part of your body besides his
23 mouth? Did any other part of your body touch his
24 body?

25 A. My hand.

1 Q. How do you recall that happening?

2 A. He would come in while I was sleeping. And
3 sometimes he wouldn't even just keep me fully awake
4 for me to do anything, he would just hold my hand
5 there and move himself.

6 Q. With your hand while you were --

7 A. Yes.

8 Q. -- half asleep?

9 A. Yes.

10 Q. Do you know whether or not he ever ejaculated?

11 A. Yes, he did.

12 Q. Where do you recall witnessing that?

13 A. Like, where exactly? Like, on parts of my
14 body?

15 Q. Yes.

16 A. On my hand. Depending on the position, maybe
17 on my back or in his hand or into a napkin of some
18 sort.

19 Q. Anywhere else on your body?

20 A. In my mouth sometimes, if I used my mouth.

21 Q. When you were in high school, **Complainant**, did you
22 ever tell a teacher?

23 A. No.

24 Q. When you went to the doctor, did you ever tell
25 a doctor or a nurse?

1 A. No.

2 Q. Why or why not?

3 A. Because I knew if I did, he would hurt me.

4 Q. Had he ever made any specific statements about
5 what would happen if you told about the sex acts?

6 A. Yes.

7 Q. What would he say in that regard?

8 A. He said he would kill me or my mother, shave my
9 hair off. Sometimes he didn't seem to care if I
10 threatened to tell, just say, yeah, tell people what
11 I do for you or that they would take me away from my
12 mother if I did.

13 Q. What do you mean when he said tell people what
14 I do for you?

15 A. Just that, you know, seems as if he was proud
16 of it. Just that specific, like, what he was doing,
17 tell people that he was doing that.

18 Q. Did you ever tell?

19 A. No.

20 Q. Where was your mom working your last year of
21 high school?

22 A. She was working at Lowe's.

23 Q. I want to ask about your last year of high
24 school.

25 A. Yes.

1 Q. How many years did you attend high school?

2 A. I attended for three years.

3 Q. So you graduated early?

4 A. Yes.

5 Q. How did you graduate high school early?

6 A. I wanted to get out of the house as soon as
7 possible.

8 Q. Why is that?

9 A. I wanted to be away from him.

10 Q. When do you recall talking to a guidance worker
11 about possibly graduating early from Lexington High
12 School?

13 A. Yes.

14 Q. When would you have done that? What year of
15 school?

16 A. I did that my sophomore year.

17 Q. Did that allow you to graduate as a junior?

18 A. Yes.

19 Q. Did you have plans for college?

20 A. Yes.

21 Q. Where was your plan to attend college?

22 A. I planned to go out of state to Texas,
23 specifically.

24 Q. Why did you choose Texas?

25 A. My best friend at the time was moving back over

1 there and his family said that if I wanted to come
2 with them that I could.

3 Q. So your junior year of high school, did you
4 apply to college?

5 A. Yes.

6 Q. Did that include a college in Texas?

7 A. Yes.

8 Q. Were you accepted?

9 A. Yes.

10 Q. So you made plans as a junior to graduate early
11 and you were accepted to college?

12 A. Yes.

13 Q. What if anything else do you remember about
14 that last year of high school, in the fall between
15 August and October?

16 A. I stayed with my aunt for a bit.

17 Q. Which aunt was that?

18 A. My Aunt Margie, my mother's sister.

19 Q. When you say you stayed with her for a bit,
20 what prompted that to happen?

21 A. My mother was going to leave my father.

22 Q. Was there a period of time when she did
23 actually leave the house?

24 A. Yes, from about August to October.

25 Q. And where did she stay?

1 A. She stayed with us at my aunt's house most of
2 the time.

3 Q. So during that period of time where your mom
4 had left him between August and October, did any
5 assaults occur during that time?

6 A. No.

7 Q. Were you in regular contact with your father
8 during that time?

9 A. No.

10 Q. And what happened to change that situation?

11 A. My mother went back to him and I eventually was
12 brought back as well.

13 Q. When you say your mom went back to him, was
14 that the first time she had left the marriage and
15 then returned?

16 A. No.

17 Q. When do you recall having witnessed that occur
18 between the two of them before?

19 A. Multiple times.

20 Q. Did your mom always go back to him?

21 A. Yes, she did.

22 Q. I want to take you to the night of April 26th,
23 your last year of high school. You were a senior,
24 but really a junior. Tell us about what you
25 remember about that night.

1 A. My mother already went to work, so I was
2 already worried about what would happen because I
3 was alone with him. And he did try to get me to do
4 stuff with him, but I just -- I resisted as long as
5 I could.

6 Q. When you say you resisted as long as you could.

7 A. Uh-huh.

8 Q. Tell us what tactics you had to try and resist.

9 A. When I would keep saying no, he'd come up with
10 stuff for me to do, so I would do those things
11 because he thought I wouldn't want to and would give
12 in, but I would do them anyway.

13 Q. And that night, what were some of those things?

14 A. He was having me clean up, like, the dishes or
15 the tables, taking stuff outside.

16 Q. Did you do all of those things?

17 A. Yes.

18 Q. Had he been drinking that night?

19 A. Yes.

20 Q. Is this the first night he had been drinking?

21 A. No.

22 Q. What can you tell us about your father when
23 he's drinking?

24 A. When he drinks, to that specific situation, it
25 takes a lot longer, so I'm a lot more fearful of how

1 he's going to react to it. He gets a lot angrier
2 easier when he's drunk too.

3 Q. When you say it takes a lot longer, what do you
4 mean by that?

5 A. The things that he has me do with him in the
6 bedroom.

7 Q. When you say he gets angrier, what do you mean
8 by that?

9 A. When I say no, he's a lot faster to raise his
10 voice or get violent.

11 Q. When you say get violent, has he been
12 violent -- has there ever been a time in your life
13 that he's been violent with you if you resisted a
14 sexual advance he made?

15 A. Yes.

16 Q. Have you ever been harmed because of that?

17 A. Yes.

18 Q. In what way?

19 A. He would hit me in the face or pull my hair
20 really hard.

21 Q. When you say hit you in the face, with a closed
22 fist or was it open hand?

23 A. Open hand.

24 Q. Did that happen one time or more than one time?

25 A. More than one time.

1 Q. And on this night, could you tell whether or
2 not he had been drinking?

3 A. Yes, I could.

4 Q. What happened after you said he asked you to do
5 some chores?

6 A. I did them. And whether I was still doing them
7 or whether I finished doing them, he would just keep
8 asking me to do what he wanted me to do before.

9 Q. Was anyone else in the house other than the two
10 of you?

11 A. No.

12 Q. And, [REDACTED] Complainant, at this point in time, did you
13 have a vehicle?

14 A. No. I didn't even have a license.

15 Q. What tone of voice did he use when he was
16 asking that night?

17 A. Well, at first it sounded really desperate.
18 But then as I kept saying no, he would get angrier,
19 so it would be really forceful, kind of so that I'd
20 know that eventually I'd have to give in otherwise
21 something bad would happen.

22 Q. What house were you living in at this point in
23 time, [REDACTED] Complainant?

24 A. The one on [REDACTED] Road.

25 Q. And in that house on that night, on April 26th,

1 what's the first location in that house where
2 something happened that made you uncomfortable?

3 A. I'm sorry. Can you repeat that?

4 Q. What is the location in the house where that
5 night on April 26th something happened that made you
6 feel uncomfortable first?

7 A. Besides him asking, it first happened on the
8 couch.

9 Q. What room was the couch in?

10 A. The living room.

11 Q. And what was it that happened there?

12 A. He had me use my mouth on his private parts.

13 Q. And how long did that go on?

14 A. He said it would only be three minutes, but it
15 lasted a lot longer than that. I'm not really sure.

16 Q. He told you that it would only be three
17 minutes?

18 A. Yes.

19 Q. Where were you seated?

20 A. I was on the couch.

21 Q. And where was he in position to you?

22 A. He was standing in front of me.

23 Q. After that, what happened?

24 A. He had me do more chores because I kept -- he
25 wanted me to go into the bedroom, but I kept saying

1 no, so then he had me do more stuff.

2 Q. Whose bedroom did he want to go in?

3 A. His.

4 Q. And after you did more stuff, what happened?

5 A. He kept telling me to go in there and I kept
6 saying no.

7 Q. And based upon your past experiences, what
8 happened next?

9 A. I had to -- I had to go in there.

10 Q. Where in the room were the two of you?

11 A. On the bed.

12 Q. Whose bed was this?

13 A. His.

14 Q. Is this a room that he shares with your mother?

15 A. Yes.

16 Q. Did he have anything with him?

17 A. He had his iPad with him.

18 Q. What was he doing with the iPad?

19 A. He was watching porn on it.

20 Q. Is that the first time that had happened with
21 the iPad?

22 A. No.

23 Q. Had it happened previously?

24 A. Yes.

25 Q. And do you remember about when he first used

1 that iPad with you?

2 A. Whenever he first got it.

3 Q. Do you think that was middle school or high
4 school?

5 A. High school.

6 Q. When you say that there was porn on it, I'm
7 going to have to ask you specifically, was it
8 apparent to you whether there were any sex acts
9 taking place?

10 A. Yes, there were.

11 Q. And did that go on during this time in the
12 bedroom?

13 A. Yes.

14 Q. Who took your clothing off or down?

15 A. He did.

16 Q. How so?

17 A. He just pulled my pants and underwear down to
18 my knees.

19 Q. And what happened next?

20 A. He like straddled my legs and then he would
21 just rub his private parts against mine from the
22 back.

23 Q. Okay. I just want to ask you a little bit more
24 about that.

25 A. Uh-huh.

1 Q. How were you on the bed?

2 A. I was lying on my front facedown.

3 Q. So you're facedown on the bed?

4 A. Uh-huh.

5 Q. And who instructed you to get in that position?

6 A. He did.

7 Q. You said he would straddle your legs. Can you
8 explain what you mean by that?

9 A. He would sit on the back of my thighs and sit
10 up kind of like that.

11 Q. Okay. And did any other part of his body touch
12 you when you were in that position on the bed?

13 A. Just his private parts and whatever touched me
14 when he was sitting on me.

15 Q. And what else do you recall him doing?

16 A. Besides that, he -- at some point he used his
17 fingers, and then he used his mouth on me from
18 behind as well.

19 Q. I want to ask you about that. When you say
20 that he used his mouth on you --

21 A. Uh-huh.

22 Q. -- there on the bed?

23 A. Yes.

24 Q. What position were you in when he used his
25 mouth on you?

1 A. I was in the same position.

2 Q. So his mouth is touching what part or parts of
3 your body at this point?

4 A. My behind.

5 Q. Is that why your underwear and pants had been
6 pulled down?

7 A. Yes.

8 Q. And you said in addition to that, what part of
9 his body touched yours?

10 A. His fingers and his private parts.

11 Q. And when you say his private parts, just to
12 clarify, were his clothes on or off?

13 A. They were off.

14 Q. And that included his underwear and pants?

15 A. Yes.

16 Q. So how long -- if you had to estimate, how long
17 do you think his private part was rubbing against
18 your private part while you were facedown?

19 A. I'd say about 20 minutes.

20 Q. And do you know whether he ejaculated that
21 night?

22 A. He didn't.

23 Q. And why is that? What happened?

24 A. At one point he wanted me to roll over so that
25 he could finish, but I got up and left instead and

1 locked myself in my room.

2 Q. When you say that you got up and left, when you
3 left, what room was he in?

4 A. He was in his bedroom.

5 Q. Does his bedroom have a bathroom?

6 A. Yes.

7 Q. Do you know what happened after you left?

8 A. No.

9 Q. So do you know whether or not he ever
10 ejaculated that night?

11 A. No.

12 Q. Do you know whether or not he ever wiped off
13 that night?

14 A. No.

15 Q. [REDACTED] Complainant, at some point that night were you in
16 communication with anyone?

17 A. Yes; I was talking to my aunt.

18 Q. Is that the same aunt you referred to
19 previously that you lived with at one point in time?

20 A. Yes.

21 Q. How is she related to you?

22 A. She's my mother's sister.

23 Q. And her name is?

24 A. Margie.

25 Q. Did you, at this point in time, make a

1 decision?

2 A. Yes.

3 Q. What was that decision?

4 A. I decided to tell her what was going on.

5 Q. And you did that in what form?

6 A. I texted her.

7 Q. And you can't say what she said back to you.

8 But did you make it clear that something of a sexual
9 nature had occurred between your father and you?

10 A. Yes.

11 Q. And based on that, do you know whether she took
12 any action form of notifying anybody else?

13 A. Yes, she did.

14 Q. As a result, do you know if the police were
15 notified to come to your home?

16 A. They were.

17 Q. Tell us what you remember when the police got
18 there.

19 A. I was just in my bedroom. So the only thing I
20 know is that they came to my door eventually, and
21 that was it. And then my mother got here.

22 Q. Now, at this point in time, **Complainant**, did your
23 mother seem supportive?

24 A. Yeah, at first she did.

25 Q. Did she seem supportive of you there at the

1 scene when law enforcement was present?

2 A. Yes.

3 Q. And, ultimately, did you go on to the hospital
4 that night for a sexual assault exam?

5 A. Yes. I went with my mother.

6 Q. And who directed that your mother take you to
7 the hospital for a sexual assault exam?

8 A. I don't remember who exactly.

9 Q. It was police officers?

10 A. Uh-huh.

11 Q. Did that happen while they were still there at
12 the scene?

13 A. Yes.

14 Q. And when you were at the hospital, did your
15 mother seem supportive?

16 A. Yes.

17 Q. Do you have any relationship with your mother
18 right now?

19 A. No.

20 Q. Are your mother and father still romantically
21 involved?

22 A. Yes.

23 Q. How long was it after the police came to your
24 house that your mom and he began having contact
25 again, communication again?

1 A. Pretty much right away whenever he started
2 calling the house.

3 Q. Where did you go to live after the police
4 became aware of this?

5 A. Um...

6 Q. When you were finishing that last year of high
7 school?

8 A. Oh, I stayed with her for a bit before I
9 graduated, then I moved straight on to Mississippi
10 and then Texas.

11 Q. All right. And how long did you attend college
12 in Texas?

13 A. For half a school year.

14 Q. And then, ultimately, did you relocate here to
15 Lexington for the rest of your college education?

16 A. Yes.

17 Q. Who are you living with now?

18 A. I'm living with my Aunt Margie.

19 Q. Same person --

20 A. Yes.

21 Q. -- that you disclosed to?

22 A. Yes.

23 Q. I'm going to show you some photographs,

24 **Complainant**, and ask you whether or not you recognize
25 them. These photographs are marked 19, 20, and 21

1 and they're all for identification only at this
2 time.

3 A. Uh-huh.

4 Q. Do you recognize what's shown in 19?

5 A. Yes.

6 Q. And what's shown in 20?

7 A. Yes.

8 Q. And what's shown in 21?

9 A. Yes.

10 Q. Are these a fair and accurate representation of
11 the homes that you lived in?

12 A. Yes.

13 MS. MAYES: Your Honor, this would be 19, 20
14 and 21 for evidence.

15 MR. FLOYD: No objection, Your Honor.

16 THE COURT: State's 19, 20, 21 in evidence
17 without objection.

18 (State's Exhibit Nos. 19, 20, and 21 admitted
19 into evidence.)

20 BY MS. MAYES:

21 Q. [REDACTED] Complainant, what house are we looking at here?

22 A. It's the one on [REDACTED].

23 Q. And, again, what grade do you remember being in
24 when you resided here?

25 A. Second grade.

1 Q. And you testified before about the first time
2 you remember something happening?

3 A. Yes.

4 Q. What house was that?

5 A. That was in [REDACTED].

6 Q. This house here?

7 A. Yes.

8 Q. Then you said that in elementary school you
9 moved to a new location. I want to show you this
10 photograph, which is State's Exhibit 20, and ask if
11 you recognize it.

12 A. Yes.

13 Q. How so?

14 A. That's the house on [REDACTED].

15 Q. And you lived in this house in what school
16 years?

17 A. Second half of second grade through most of my
18 senior year.

19 Q. You were living here when you were eight and
20 nine?

21 A. Yes.

22 Q. And the things that you talked about before,
23 did they happen in this home when you were eight and
24 nine?

25 A. Yes.

1 Q. Did that include him putting his mouth on you?

2 A. Yes.

3 Q. About how old were you the first time he had
4 you put your mouth on his private part?

5 A. I'd say middle school about.

6 Q. Okay. And what house do you remember him
7 putting his finger in your private part?

8 A. You said what house? [REDACTED] Road.

9 Q. This house here?

10 A. Yes.

11 Q. Do you know if that was happening by the time
12 you were eight and nine?

13 A. Yes.

14 Q. What about when you were 14 and 15? Did he put
15 his -- did he have you put your mouth on his private
16 part at that age?

17 A. Yes.

18 Q. Did that happen one time or more than one time?

19 A. More than one time.

20 Q. This is State's Exhibit 21. Which home is
21 this?

22 A. This is the house on [REDACTED] Road.

23 Q. Okay. And when did you move in here?

24 A. Around February of my senior year.

25 Q. You say senior year, but your last year of high

1 school?

2 A. Uh-huh.

3 Q. Okay. That last incident that you told us
4 about where you texted your aunt?

5 A. Uh-huh.

6 Q. What house was that in?

7 A. The one on [REDACTED] Road.

8 Q. Right here?

9 A. Yes.

10 Q. State's 21 -- I want to go back to this one for
11 a moment, State's 20, the [REDACTED] Road house.

12 When is about the last time you remember anything
13 happening there?

14 A. It was around his birthday in that same senior
15 year.

16 Q. And when you say around his birthday, what was
17 it that made you remember it may be around his
18 birthday?

19 A. He asked me to do it for his birthday.

20 Q. Do you know the exact day that it was in
21 relation to his birthday?

22 A. His birthday is on the [REDACTED] of [REDACTED]. It
23 could have been that or after midnight on the same
24 day.

25 Q. Okay. On that night, the last time you

1 remember something happening in this house, did he
2 use anything that time?

3 A. He used his -- like, his iPad that time too.

4 Q. All right. And how do you remember him
5 touching you on this occasion?

6 A. I think it was the same as it always was; I was
7 lying on my front and he was just rubbing himself
8 against me.

9 Q. And who instructed you to lie in that position?

10 A. He did.

11 Q. And do you know whether his hands touched you
12 that night?

13 A. Yes.

14 Q. And do you know whether or not that would have
15 been on the inside of your private?

16 A. Yes, it was.

17 Q. Let me show you this item and ask you whether
18 or not you recognize it.

19 A. Yes.

20 Q. You've seen that before? How do you recognize
21 that?

22 A. It's his iPad.

23 Q. When you told us that in this house around his
24 birthday he had an iPad, do you know whether or not
25 it's that same iPad?

- 1 A. Yes, it was.
- 2 Q. Is that the same iPad you referred to
- 3 previously as being used on multiple occasions?
- 4 A. Yes.
- 5 Q. When you say he used it, what was playing on
- 6 it?
- 7 A. He was watching porn on it.
- 8 Q. Would that happen during the actual assault?
- 9 A. Yes.
- 10 Q. Now I want to move back to this house, the last
- 11 house you lived in, State's Exhibit 21. Do you
- 12 recognize that photograph?
- 13 A. Yes.
- 14 Q. What area of the home is that?
- 15 A. It's the -- either the front or the back door
- 16 of the house on [REDACTED].
- 17 Q. Okay. Do you know whether or not the police
- 18 took photographs when they came to your house that
- 19 night? Are you aware of whether or not photographs
- 20 were taken?
- 21 A. Yes.
- 22 Q. You've had a chance to review those photos?
- 23 A. Yes.
- 24 Q. I'm going to show them to you just briefly.
- 25 That's State's 10, 8, 3, 6, 7, 11, 9, 12, 4 and 5.

1 Do you recognize that location?

2 A. Yes.

3 Q. What residence is that?

4 A. [REDACTED].

5 Q. I'm also going to show you 17 and 18.

6 MS. MAYES: Your Honor, we would offer all of
7 these as evidence now. I believe that most of them
8 are already in. I believe 17 and 18, Your Honor,
9 would be entered at this time. These were the
10 photographs of the bedroom.

11 MR. FLOYD: No objection to those, Your Honor.

12 THE COURT: All right. And you're adding two
13 right there at the end, Solicitor. Those had not
14 been introduced or --

15 MS. MAYES: The 17 and 18, Your Honor, we are
16 introducing them at this time. And I believe the
17 others are already in evidence.

18 THE COURT: All right. State's 17 and 18 in
19 evidence without objections. Others that have been
20 enumerated in the record at this time are also in
21 evidence, previously offered without objection.

22 (State's Exhibit Nos. 17 and 18, admitted into
23 evidence.)

24 BY MS. MAYES:

25 Q. What are we looking at here, [REDACTED] Complainant?

- 1 A. It's the living room.
- 2 Q. And here, 5?
- 3 A. It's the kitchen.
- 4 Q. And here, 9?
- 5 A. It's my parents' bedroom.
- 6 Q. The location that you told us about previously
- 7 where this happened, do you see that bed in this
- 8 photograph?
- 9 A. Yes.
- 10 Q. Is that the bed?
- 11 A. Yes.
- 12 Q. And what's on the bed?
- 13 A. His iPad.
- 14 Q. When you last left that room, you testified
- 15 about getting up and leaving that room. Where was
- 16 the iPad when you got up and left?
- 17 A. It was with him, either in his hands or sitting
- 18 on the bed.
- 19 Q. And State's 11, still the same iPad?
- 20 A. Yes.
- 21 Q. I'm going to show you what is 22 for
- 22 identification at this time.
- 23 A. Uh-huh.
- 24 Q. Do you recognize that?
- 25 A. Yes.

1 Q. Where had you seen that image?

2 A. It was on his iPad.

3 Q. Were you paying close attention to the acts
4 that were occurring on the iPad?

5 A. No.

6 Q. Do you recognize -- you recognize that image?

7 A. Yes.

8 Q. Do you know whether that was a photo or a
9 video?

10 A. It was a video.

11 Q. When had you seen that video before?

12 A. He would place the iPad on the pillow near my
13 head sometimes so I would see it.

14 Q. And do you recall that image from that night,
15 the last night?

16 A. Yes.

17 Q. Now, you testified that when you were in the
18 bedroom and -- were y'all on the bed or under the
19 covers?

20 A. On it.

21 Q. That your clothing had been pulled down?

22 A. Yes.

23 Q. The underwear that you were wearing that last
24 time on the bed, did you keep them on after you left
25 the room?

1 A. Yes.

2 Q. What about when you went back into your own
3 room?

4 A. Yes.

5 Q. What about when Sergeant Black came and knocked
6 on your door, the door to your bedroom?

7 A. Yes.

8 Q. Did you still have those same underwear on?

9 A. Yes.

10 Q. And where were you in your bedroom that night?

11 A. Sitting on my bed.

12 Q. When he came and knocked on your door, what
13 happened?

14 A. Who?

15 Q. Sergeant Black?

16 A. I opened the door and let him in.

17 Q. And while the police were there, was a decision
18 made about whether you should go to the hospital?

19 A. Yes.

20 Q. And did you go?

21 A. Yes.

22 Q. I think you testified previously that your
23 mother drove you there?

24 A. Yes.

25 Q. Did you change clothes before you went to the

1 hospital or keep the same clothes on?

2 A. I kept the same clothes on.

3 Q. I'll show you an item and ask you whether or
4 not you recognize it.

5 A. Yes.

6 Q. Who do those belong to?

7 A. Me.

8 Q. And after you went to the hospital, did someone
9 take your underwear?

10 A. Yes.

11 Q. Who took your underwear?

12 A. The lady who did the examination thing.

13 Q. Okay.

14 THE COURT: Speak up a little for me, please.

15 THE WITNESS: Okay.

16 BY MS. MAYES:

17 Q. Can you answer that again?

18 A. The lady who did the examination thing, she
19 took them.

20 Q. Did they come right off your body? You were
21 wearing them at the time they were taken during the
22 examination?

23 A. Yes.

24 MS. MAYES: Your Honor, this would be State's
25 23 for evidence.

1 MR. FLOYD: No objection, Your Honor.

2 THE COURT: State's 23 is in evidence without
3 objection.

4 (State's Exhibit No. 23 admitted into
5 evidence.)

6 MS. MAYES: And, Your Honor, I believe that the
7 iPad, State's 14, has been identified as well. I
8 believe it's for identification only at this time,
9 but is offered as evidence at this time, 14.

10 MR. FLOYD: Your Honor, that would be subject
11 to our previous objection.

12 THE COURT: State's 14 is in evidence subject
13 to Defense's previous objection.

14 (State's Exhibit No. 14 admitted into
15 evidence.)

16 BY MS. MAYES:

17 Q. You mentioned that you told your aunt in what
18 format or in what way?

19 A. Text message.

20 Q. I'll show you an item and ask you whether or
21 not you recognize it.

22 A. Yes.

23 Q. Okay. What is that?

24 A. It's the text messages I sent her from my
25 phone.

1 Q. Did law enforcement obtain photographs of those
2 text messages?

3 A. Yes.

4 Q. What is your date of birth, [REDACTED] Complainant?

5 A. [REDACTED], [REDACTED].

6 Q. Now, that night after Sergeant Black came and
7 knocked on your door and came in your room, did you
8 have a chance also to meet with this detective,
9 Detective McCann?

10 A. Yes.

11 Q. Ultimately, did you give a statement to them
12 right there that night at the house?

13 A. Yes.

14 Q. When you were talking to them, were you in
15 contact with your father?

16 A. No.

17 Q. Could you see him at any point in time?

18 A. No.

19 Q. Is this the first time you had ever told an
20 adult about what had happened?

21 A. Yes.

22 Q. Did you tell every single thing in that first
23 statement?

24 A. Almost every single thing.

25 Q. Okay. Did you tell them that this had been

1 going on since you were a child?

2 A. Yes.

3 Q. And then when you got to the hospital, did you
4 talk with the nurse examiner there?

5 A. Yes.

6 Q. Did she ask you more detailed questions?

7 A. Yes.

8 Q. And, specifically, is there something that you
9 told her that you were telling for the first time?

10 A. Yes.

11 Q. What was that?

12 A. It was one of the things that he did that night
13 that I left out on the first statement.

14 Q. When you say he did that night, are you
15 referring to that night on the bed with the iPad?

16 A. Yes.

17 Q. What was that?

18 A. That he used his mouth on my behind at one
19 point.

20 MS. MAYES: Nothing further at this time, Your
21 Honor.

22 THE COURT: Thank you, Solicitor.

23 Mr. Floyd?

24 MR. FLOYD: Thank you, Your Honor.

25

CROSS-EXAMINATION

1

2

BY MR. FLOYD:

3

Q. Miss [REDACTED] Complainant, you said this first happened when
you were seven or eight?

4

5

A. Yes.

6

Q. Is that correct?

7

A. Yes.

8

Q. And you were living on [REDACTED] Drive at that
time, were you not?

9

10

A. Yes.

11

Q. Were you living there -- is that your mother
there sitting behind us?

12

13

A. Yes.

14

Q. Was she living there also?

15

A. Yes.

16

Q. The other lady sitting next to her, who is she?

17

A. My grandmother.

18

Q. And where was your grandmother living at that
time?

19

20

A. She was living in Gilbert away from us.

21

Q. And wasn't there a period of time right before

22

[REDACTED] where you lived with your grandmother?

23

A. Yes.

24

Q. How long was that?

25

A. For the second half of my first-grade school

1 year.

2 Q. And then by the time you got to second grade,
3 that's when you moved over to [REDACTED]?

4 A. Yes.

5 Q. And that's when you moved back with your mom
6 and dad; is that correct?

7 A. Yes.

8 Q. Now, during that time when your mom and dad
9 were separated and you were living with your
10 grandmother, you had a lot of counselors you talked
11 to, didn't you?

12 A. Yes.

13 Q. DSS got involved, did it not?

14 A. Yes.

15 Q. And Dr. Luberoff, you remember him?

16 A. Yes.

17 Q. Guidance counselors, do you remember them?

18 A. Not really.

19 Q. Remember any social workers?

20 A. Yes.

21 Q. And all these people that you were dealing with
22 then, did you ever tell them any of this happened?

23 A. No.

24 Q. Okay. Did you ever tell them that your dad had
25 been physically abusive to you, striking you in the

1 face and pulling your hair?

2 A. No.

3 Q. When you were nine years old, did you tell
4 anybody then that your dad was sexually abusing you?

5 A. No.

6 Q. Did you tell anybody then that he would hit you
7 in the face?

8 A. No.

9 Q. Did you tell anybody then that he pulled your
10 hair --

11 A. No.

12 Q. -- when you were ten years old?

13 A. No.

14 Q. Did you tell anybody that your dad was sexually
15 abusing you?

16 A. No.

17 Q. Did you tell anybody that he hit you in the
18 face?

19 A. No.

20 Q. Did you tell anybody he pulled your hair?

21 A. No.

22 Q. When you were 11 years old, did you tell
23 anybody your dad was sexually abusing you?

24 A. No.

25 Q. Did you tell anybody that he struck you in the

1 face?

2 A. No.

3 Q. Did you tell anybody that he pulled your hair?

4 A. No.

5 Q. When you were 11 years old, did you tell
6 anybody that your dad was sexually abusing you?

7 A. No.

8 Q. Did you tell anybody that your dad struck you
9 in the face?

10 A. No.

11 Q. Did you tell anybody that he was pulling your
12 hair?

13 A. No.

14 Q. When you were 12 years old, did you tell
15 anybody your dad was sexually abusing you?

16 A. No.

17 Q. Did you tell anybody that your dad struck you
18 in the face?

19 A. No.

20 Q. Did you tell anybody that your dad pulled your
21 hair?

22 A. No.

23 Q. When you were 13 years old, did you tell
24 anybody that your dad was sexually abusing you?

25 A. No.

1 Q. Did you tell anybody that your dad struck you
2 in the face?

3 A. No.

4 Q. Did you tell anybody that your dad pulled your
5 hair?

6 A. No.

7 Q. When you were 14 years old, did you tell
8 anybody that your dad was sexually abusing you?

9 A. No.

10 Q. Did you tell anybody that your dad struck you
11 in the face?

12 A. No.

13 Q. Did you tell anybody that your dad was pulling
14 your hair?

15 A. No.

16 Q. When you were 15 years old, did you tell
17 anybody that your dad was sexually abusing you?

18 A. No.

19 Q. Did you tell anybody that your dad struck you
20 in the face?

21 A. No.

22 Q. Did you tell anybody that your dad pulled your
23 hair?

24 A. No.

25 Q. When you were 16 years old, did you tell

1 anybody that your dad was sexually abusing you?

2 A. No.

3 Q. Did you tell anybody that your dad struck you
4 in the face?

5 A. No.

6 Q. Did you tell anybody that your dad was pulling
7 your hair?

8 A. No.

9 Q. And you say this all started when y'all lived
10 on [REDACTED]; is that correct?

11 A. Yes.

12 Q. Who lived in the house?

13 A. Me, my mother, father, and brother.

14 Q. And your brother is [REDACTED] ^{Older Brother}, I believe; is
15 that correct?

16 A. Yes.

17 Q. And he was three years older than you and four
18 grades; is that what you were telling us?

19 A. Yes.

20 Q. So he was your big brother?

21 A. Yes.

22 Q. In fact, didn't he have a bedroom right next to
23 yours?

24 A. Yes.

25 Q. And so all these times you're telling us that

1 your dad came into your room at night, [REDACTED] [REDACTED]

2 would have been right next door?

3 A. Yes.

4 Q. Is that correct?

5 A. Yes.

6 Q. And [REDACTED] [REDACTED], he would have been then what --
7 if you were seven or eight, he would have been 11 or
8 12?

9 A. Yes.

10 Q. And did he ever come in?

11 A. No.

12 Q. Did he ever say anything to you about your dad
13 coming into your room?

14 A. No.

15 Q. Did you ever say anything to [REDACTED] [REDACTED]?

16 A. No.

17 Q. [REDACTED] [REDACTED] continued to live with your family,
18 did he not, until he left to go into the Army?

19 A. Yes.

20 Q. What year would that have been?

21 A. 2012.

22 Q. So that would have been up until you were 13,
23 14?

24 A. Uh-huh.

25 Q. And was his bedroom always fairly close to

1 yours?

2 A. Yes.

3 Q. Always right next to it, wasn't it?

4 A. Yes.

5 Q. And so all these times when you say all this
6 happened, you would have been right next to him in
7 his bedroom; is that correct?

8 A. Most of the times.

9 Q. Were there times that he didn't have a bedroom
10 next to yours?

11 A. No.

12 Q. So your testimony is at no time was he ever
13 awakened by all this going on?

14 A. He may have been awake, but just unaware. I
15 wouldn't know.

16 Q. Because you never told him?

17 A. No.

18 Q. You used to like to write stories, didn't you?

19 A. Yes.

20 Q. In fact, you were very creative, writing
21 stories from an early age, weren't you?

22 A. Uh-huh.

23 Q. You used to put them on the computer?

24 A. Yeah.

25 Q. And everyone was always kind of amazed at your

1 vivid imagination, weren't they?

2 A. Uh-huh.

3 Q. Let's go to the night where the police got
4 involved in this situation. Y'all were living on

5 [REDACTED] at that time; is that correct?

6 A. Yes.

7 Q. So as a result of a text you sent your aunt --
8 oh, by the way, your aunt, that's the same aunt that
9 you lived with for a while earlier that year, wasn't
10 it?

11 A. Yes.

12 Q. Because there was a period of time -- this
13 would have been early -- maybe during the summer of
14 before your senior year -- or your junior/senior
15 year?

16 A. It was the beginning of the school year.

17 Q. The beginning of that school year?

18 A. Uh-huh.

19 Q. And you and your mom moved in with your aunt?

20 A. Yes.

21 Q. And at that point in time, you thought they
22 were going to get a divorce; is that correct?

23 A. Yes.

24 Q. And that's what you wanted?

25 A. Yes.

1 Q. How long did y'all stay there before y'all
2 moved back?

3 A. We stayed there from some of August through
4 part of October.

5 Q. Okay. A couple months or so, two or three
6 months. Now, at that point in time, you thought
7 that your mom and dad were getting a divorce?

8 A. Yes.

9 Q. So at that point in time, did you tell your
10 mom, you know, he's been abusing me all these years?

11 A. No.

12 Q. Well, there would be no reason to be afraid of
13 him. Y'all weren't even living there.

14 A. Huh-uh.

15 Q. But you didn't say anything about it?

16 A. No.

17 Q. Even though you know she wanted a divorce and
18 you wanted a divorce?

19 A. Right.

20 Q. You didn't say anything to her about it?

21 A. No.

22 Q. So, anyway, eventually they moved back in. So
23 you're back now living with your mom and your dad.
24 And, of course, **older** is gone, he's in the Army
25 now?

1 A. Yes.

2 Q. So it's just the three of you; is that correct?

3 A. Yes.

4 Q. And before you moved back in, did you say
5 anything to your mom about, hey, you know, Dad's
6 been doing this and watch out for me, anything like
7 that?

8 A. No.

9 Q. In fact, right before the police were called,
10 isn't it true that you had a conversation with your
11 father in which he told you how you were going to
12 have to do a lot more around the house, talking
13 about housework, because your mom was working full
14 time and he was busy with his business?

15 A. I don't remember anything like that.

16 Q. You don't remember him telling you how you had
17 to pitch in more around the house?

18 A. No.

19 Q. Now, your plan was to go to Texas with your
20 friend; is that correct?

21 A. Yes.

22 Q. And his name was Chris, I believe?

23 A. Yes.

24 Q. Now, in fact, Chris also was graduating early,
25 wasn't he?

1 A. Yes.

2 Q. Isn't that where you got the idea to graduate
3 early?

4 A. No. I was already planning to graduate early
5 before he was.

6 Q. I gotcha. So then his family was moving to
7 Texas and you were going to move with them?

8 A. Yes.

9 Q. And how long did you stay out there?

10 A. For about half a year.

11 Q. And lived with them?

12 A. Yes.

13 Q. You still have contact with them?

14 A. Not really anymore.

15 Q. Okay. So let's go to that night when the
16 police were called to the scene. Did you tell them
17 everything that happened that night?

18 A. Everything as in what?

19 Q. Everything your dad did to you?

20 A. Yes.

21 Q. You told them everything?

22 A. Yes.

23 Q. Well, now, wait a minute. You just admitted
24 that you didn't tell them one thing, didn't you?

25 A. In general, that night.

1 Q. Okay. Did you tell them everything that night?

2 A. I had not written it down. I still went to the
3 hospital and then I elaborated more on that.

4 Q. Okay. Because you didn't tell the police
5 anything about him licking your anus, did you?

6 A. No. I spoke more about the bigger things, not
7 something that happened for a very short amount of
8 time.

9 Q. Well, did you tell the police about baby oil?

10 A. Not in the statement. I don't think so.

11 Q. You didn't tell them, did you?

12 A. No.

13 Q. So that was another thing that you left out
14 that you told the SANE nurse later?

15 A. Uh-huh.

16 Q. Is that correct?

17 A. Yes.

18 Q. So there were some things you told the police
19 and there was some different things you told the
20 SANE nurse; is that correct?

21 A. Yes.

22 Q. Miss **compl**, you mentioned that there was one
23 other incident -- well, before I go into that other
24 incident, let's go to the April incident.

25 Now, I believe your testimony was that -- did

1 it start out on the couch? Is that what you said?

2 A. Yes.

3 Q. And we had a picture of the couch. Have you
4 identified that?

5 A. Yes.

6 Q. Is that the couch area?

7 A. Yes.

8 Q. And that's where you say it happened?

9 A. Yes.

10 Q. When it started?

11 A. Yes.

12 Q. Would you tell me again just how that
13 particular incident started?

14 A. After making me do chores, instead, when I kept
15 saying no, he said I could just do that, use my
16 mouth on him on the couch.

17 Q. And I think you said he stood up in front of
18 the couch; right?

19 A. Yes.

20 Q. And you were seated on the couch?

21 A. Yes.

22 Q. Now let me back up. So, basically, he first
23 told you you had to do chores; is that correct?

24 A. Yes.

25 Q. And he knew you didn't like to do chores?

1 A. I didn't want to leave my room when he was
2 there.

3 Q. Now, this is the couch, where you say it
4 happened?

5 A. Yes.

6 Q. And you say he stood up in front of you?

7 A. Yes.

8 Q. And then you gave him oral sex?

9 A. Yes.

10 Q. Is that what you're saying happened?

11 A. Yes.

12 Q. How long did that last?

13 A. I don't know how long it lasted exactly.

14 Q. But I think you said he did not ejaculate; is
15 that correct?

16 A. Yes.

17 Q. And so then you left. Did you leave the room
18 after a period of time?

19 A. No. I kept doing more chores after that.

20 Q. But you had to walk away from him it at some
21 point; right?

22 A. Yes.

23 Q. And when you walked away from it, where did you
24 go first?

25 A. I don't know exactly where I went first, I just

1 continued doing the chores that he wanted me to do
2 before.

3 Q. Okay. So then you say you then went to his
4 bedroom?

5 A. Eventually.

6 Q. And you mentioned that he sat down on the back
7 of your legs, rubbed his genitals against the back
8 of yours?

9 A. Yes.

10 Q. Is that correct?

11 A. Yes.

12 Q. And he did not ejaculate then either, did he?

13 A. No.

14 Q. And then there was a period of time where you
15 finally got up and left; is that correct?

16 A. Yes.

17 Q. And you went and locked yourself in your
18 bedroom?

19 A. Yes.

20 Q. He didn't bother you anymore, did he?

21 A. No.

22 Q. The question I've got for you is, if it was so
23 easy, after you got up from there and went to do the
24 chores, why didn't you just go lock yourself in the
25 bedroom then?

1 A. Because he was still persistent about me going
2 into the bedroom.

3 Q. But he was still persistent back then,
4 according to you, that he wanted you to turn over;
5 is that correct?

6 A. Yeah, but he was almost done anyway, what it
7 seemed, so I just left.

8 Q. You just went and locked yourself in the
9 bedroom, and he didn't bother you anymore, did he?

10 A. No.

11 Q. Now, you said there was one other time when
12 this happened on [REDACTED].

13 A. One other time, no.

14 Q. No? It didn't happen another time on [REDACTED]?

15 A. No.

16 Q. When did y'all move to [REDACTED]?

17 A. February 2015.

18 Q. Oh, you just moved there?

19 A. Yes.

20 Q. I'm sorry. You said there was another time it
21 happened back in December?

22 A. Yes.

23 Q. That would have been on [REDACTED]?

24 A. Yes.

25 Q. And what date was that, that that occurred?

1 A. On or around his birthday in [REDACTED].

2 Q. When you say on or about, do you know what
3 date? Was it on his birthday?

4 A. Most likely, yeah.

5 Q. On his birthday, [REDACTED] [REDACTED]?

6 A. Yes.

7 Q. And are you saying pretty much the same thing
8 that happened in April happened then?

9 A. Yes.

10 Q. And at that point in time, you were 17 years of
11 age?

12 A. Yes.

13 Q. Did you tell anybody about that?

14 A. No.

15 Q. Did you have a guidance counselor you were
16 dealing with because of your early graduation?

17 A. Yes.

18 Q. So you had regular meetings with her?

19 A. I never really met with her very often.

20 Q. But you didn't tell her or any of your other
21 teachers?

22 A. No.

23 Q. Didn't tell your aunt that you had lived with
24 for a while?

25 A. No.

1 Q. Did you tell your grandma that you once lived
2 with?

3 A. No.

4 Q. Thank you, Miss [REDACTED] Complainant. No further questions.

5 THE COURT: Redirect?

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

7 REDIRECT EXAMINATION

8 BY MS. MAYES:

9 Q. [REDACTED] Complainant, is this something you wanted people at
10 school to know about?

11 A. No.

12 Q. Did you even want your closest friends to know
13 about this?

14 A. No.

15 Q. Mr. Floyd was asking you about DSS being
16 involved with your family as a child. Why was that?

17 A. Some issues between my parents. I don't
18 really -- I wasn't exactly told why in specifics.

19 Q. Had nothing to do with you?

20 A. No.

21 Q. And that was issues between your parents, you
22 said?

23 A. Yes.

24 Q. He was asking you about wanting to see your
25 parents divorced. Did you want to see your mother

1 leave him?

2 A. Yes.

3 Q. Why was that?

4 A. Because I didn't want to be around him and I
5 knew that she shouldn't be around him either.

6 Q. What do you mean by that?

7 A. He wasn't exactly the greatest person. Because
8 of what he was doing to me, I wanted to be away from
9 him.

10 Q. Did your mother ever stay away from him longer
11 than a few weeks or a month?

12 A. No.

13 Q. How did you feel about confiding any of this to
14 your mother?

15 A. I didn't really want to tell her because of her
16 going back constantly. I figured if I told her, she
17 wouldn't do anything.

18 Q. And you did tell her eventually that night?

19 A. Yes.

20 Q. And she's back with him now?

21 A. Yes.

22 Q. Who does she depend on financially?

23 A. Him.

24 Q. Does she work with his business as well?

25 A. I believe so.

1 Q. Mr. Floyd was asking you about a grandmother.

2 Whose mother is that?

3 A. It's his.

4 Q. So the grandmother that you lived with as a
5 small child when DSS intervened with your family is
6 his mother?

7 A. Yes.

8 Q. Did you feel comfortable telling her what was
9 happening?

10 A. No.

11 Q. Mr. Floyd was asking you about the lock in your
12 room. Had you locked him out of your room before?

13 A. Yes.

14 Q. What happened?

15 A. He would use a knife to unlock it.

16 Q. Describe what you mean by that.

17 A. He would slide the knife between the door and
18 the door frame and push back.

19 Q. Has that happened one time or more than one
20 time?

21 A. More than one time.

22 Q. You knew the knife in between the door and the
23 door frame --

24 A. Yes.

25 Q. -- pushes the lever back?

1 A. Yes.

2 Q. Did locking the door ever keep him out if he
3 wanted in?

4 A. No.

5 Q. How would he behave towards you if you locked
6 him out?

7 A. He would still act very persistent. He would
8 try and break the door down.

9 Q. He was asking you about your brother who lived
10 in that residence at [REDACTED] and also [REDACTED]
11 when y'all were children. Did you ever make any
12 noise and scream out during the night?

13 A. No.

14 Q. And why or why not?

15 A. Because if I did, then someone else would hear
16 and then I'd get in trouble.

17 Q. When you say get in trouble, get in trouble by
18 who?

19 A. My father. He would hit me if I tried to be
20 loud.

21 Q. Telling people when you were a child that you
22 had been hit, did that seem like a smart decision?

23 A. No.

24 Q. Why or why not?

25 A. Because I would get in trouble with him if I

1 did.

2 Q. Do you think you'd be hit again?

3 A. Yes.

4 MS. MAYES: Nothing further.

5 THE COURT: Recross, Mr. Floyd?

6 RE CROSS-EXAMINATION

7 BY MR. FLOYD:

8 Q. Did you ever go to school and one of your
9 teachers say, [REDACTED], looks like somebody has hit
10 you in the face?

11 A. No. If I looked like that, I'd have to stay
12 home.

13 Q. How often did that happen?

14 A. I'm not sure how many times. It's happened
15 more than once.

16 MR. FLOYD: No further questions, Your Honor.

17 THE COURT: Thank you, Miss [REDACTED]. You may
18 step down.

19 MS. MAYES: The State calls Shauna
20 Galloway-Williams.

21 THE COURT: I'm going to take a break.

22 We'll take about a 20-minute break, ladies and
23 gentlemen. Please do not discuss the case during
24 this brief recess; however, I would like to work a
25 little later tonight. If the jury would be

1 agreeable with that, I would like to. Y'all may
2 discuss that and if somebody has an issue or
3 something like that and bring it to my attention,
4 but I would like to work a little bit later tonight.
5 Thank you very much. You may now go to your jury
6 room.

7 (The jury exits the courtroom at 3:59 PM.)

8 THE COURT: We'll take about a 20-minute
9 recess. Thank you.

10 (Short break.)

11 THE COURT: Anything before we bring in our
12 jury from the State?

13 MS. MAYES: Nothing from the State, Your Honor.

14 (The jury enters the courtroom at 4:03 PM.)

15 THE COURT: Welcome back. Are you willing to
16 work a little late?

17 THE FOREMAN: What we talked about was about
18 6:00 due to daycare concerns and diabetic concerns.

19 THE COURT: Oh, yeah, I remember those days.
20 Sure, I understand that.

21 All right. Solicitor, call your next witness,
22 please.

23 MS. MAYES: The State calls Shauna
24 Galloway-Williams.

25 THE COURT: Ms. Galloway-Williams, would you

1 come around and be sworn for us, please.

2 SHAUNA GALLOWAY WILLIAMS,

3 being first duly sworn, testified as follows:

4 THE WITNESS: I do.

5 THE CLERK: If you'll have a seat over here,
6 please. State your name and spell your last for the
7 record.

8 THE WITNESS: Shauna Galloway-Williams.

9 DIRECT EXAMINATION

10 BY MS. MAYES:

11 Q. And tell us a little about yourself. Where are
12 you currently employed?

13 A. I'm the executive director of Julie Valentine
14 Center.

15 Q. And what is the Julie Valentine Center?

16 A. It's the child abuse and sexual assault
17 recovery center that serves Greenville and Pickens
18 Counties. We provide education and prevention
19 services, intervention services, treatment services
20 to anyone who's been impacted by child abuse and
21 sexual assault.

22 Q. And how long have you been working there in the
23 capacity as executive director?

24 A. I've been executive director for nine years.
25 I've been employed with the center for 11 years now.

1 Q. All right. Now, you've mentioned child
2 advocacy. Can you tell us whether or not that deals
3 with the treatment of children who are sexually
4 abused?

5 A. Yes, that deals with the assessment and
6 treatment of children who may have been sexually
7 abused, physically abused, neglected.

8 Q. And what, if any, clinical experience do you
9 have in that regard?

10 A. I'm a licensed professional counselor. I do
11 not currently provide any individual counseling. I
12 do a lot more training now and education. But I
13 previously provided individual and family and group
14 therapy to children and adults and their families
15 who have been impacted by childhood maltreatment or
16 some type of trauma.

17 I began providing counseling services in 2000,
18 so that's now been 18 years ago. I also provide
19 assessments of children and have been providing
20 those assessments for 14 years out of that time.

21 Q. When you say assessments, does that include
22 interviewing of children where there may be child
23 abuse?

24 A. Yes. That's what I was referring to.

25 Q. And I want to also ask you about the clients

1 that you had previously. I know you said child
2 maltreatment. Just to clarify, would child
3 maltreatment, that include sexual assault?

4 A. It does. It includes any type of abuse or
5 neglect that a child may have experienced. Most of
6 my background experience has been specifically
7 related to the area of child abuse and sexual
8 assault, sexual abuse of children and sexual assault
9 of adults as well.

10 Q. In addition to your own work as a licensed
11 professional counselor and at the child advocacy
12 center in Greenville, are you also familiar with the
13 literature in that regard concerning child sexual
14 abuse?

15 A. Yes. As part of my licensure, I'm required to
16 obtain at least 14 hours of continuing education
17 over a two-year period of time. I also am an
18 instructor. I'm an adjunct faculty member at
19 USC-Upstate's child advocacy studies program. So I
20 have to stay up to date with the current research
21 and literature in order to prepare for my classes
22 and my students.

23 Q. Ms. Williams, can you tell us whether you have
24 testified previously as an expert in the field of
25 child sexual abuse?

1 A. Yes, I have.

2 Q. Can you tell us whether or not that includes
3 delayed reporting among child sexual abuse victims?

4 A. Yes.

5 Q. Is it possible to estimate how many such times
6 you've been previously qualified?

7 A. I've been qualified in general sessions over 30
8 times. I don't know the exact number of times that
9 I've been qualified.

10 Q. And in those times have you touched on the
11 topic of delayed reporting among victims of child
12 sexual abuse?

13 A. Yes, I have.

14 Q. Is that part of your clinical experience as
15 well, your knowledge of that topic?

16 A. Yes.

17 Q. Is that part of the literature and research
18 that you've obtained throughout the years as a child
19 abuse professional?

20 A. Yes. It's well-documented in the research.

21 MS. MAYES: Your Honor, at this time the State
22 would offer Shauna Galloway-Williams as an expert in
23 the field of child abuse assessment and treatment,
24 and that includes delayed reporting.

25 THE COURT: Thank you, Solicitor.

1 Any voir dire, Mr. Floyd? Mr. Spangler?

2 MR. FLOYD: Your Honor, we would object. We
3 don't understand why there should be expert
4 testimony on delayed reporting. That's up to the
5 jury to decide whether or not --

6 THE COURT: No, sir, I don't want to hear
7 factual arguments in front of the jury. If you want
8 me to hear it outside of the presence of the jury,
9 I'd be delighted to do so.

10 MR. FLOYD: Well, we would have some motions to
11 make at this time.

12 THE COURT: All right. Step to your jury room,
13 ladies and gentlemen. Do not discuss the case
14 during this brief recess.

15 (The jury exits the courtroom at 4:10 PM.)

16 THE COURT: Yes, sir. I'd be glad to hear from
17 you, Mr. Floyd.

18 MR. FLOYD: Your Honor, we object to this type
19 of testimony. It's our position that this type of
20 testimony is just an attempt to bolster the
21 testimony of the alleged victim in this case and,
22 actually, invades the province of the jury.

23 The only reason that we offer this type of
24 testimony is to try to explain to the jury or give
25 the jury an alternative for the fact that someone

1 waited 10 or 15 years to report something. They're
2 trying to say, well, that's okay, that's common,
3 and, therefore, you should believe it, you should
4 discount the fact that they didn't report it back
5 then.

6 So we think it's just an effort to bolster the
7 testimony of the victim, and also to invade the
8 province of the jury who has to make a decision on
9 the credibility of the victim's testimony.

10 THE COURT: Thank you, Mr. Floyd.

11 Solicitor?

12 MS. MAYES: Ms. Galloway-Williams is a blind
13 expert. This type of testimony has been ruled upon.
14 One of the most recent cases is State vs. Damon T.
15 Brown, South Carolina Court of Appeals, 411 S.C.
16 332, 2015. And Ms. Galloway-Williams was, in fact,
17 the blind expert in that case, as well as being
18 offered as a blind expert by the State in this case,
19 Your Honor.

20 THE COURT: I would agree with Mr. Floyd that
21 an expert -- if one is accepted as an expert, her
22 testimony or his testimony could not be used to
23 bolster or corroborate the testimony or comment on
24 the credibility of the alleged victim in the case.

25 A blind expert, as I understand it, is an

1 expert who has not interviewed the alleged victim,
2 reviewed any reports on the case or law enforcement
3 reports, or otherwise talked with any family members
4 whatsoever, but goes to the issue of delayed
5 reporting.

6 Is that correct, Solicitor? Is that the issue?

7 MS. MAYES: It does, Your Honor. And as
8 addressed in Brown, the factors that played into
9 delayed reporting.

10 And she is, in fact, a blind expert who has had
11 no contact with the victim, has not reviewed any
12 statements, and doesn't know any specific details of
13 the case.

14 Your Honor, I also would like to mark as a
15 Court's Exhibit the CV of Shauna Galloway-Williams
16 since it is contested here in voir dire. And we've
17 previously provided this CV to Mr. Floyd.

18 THE COURT: Do you have any objection to that
19 for purposes of this hearing, Mr. Floyd?

20 MR. FLOYD: No, Your Honor. And they did
21 provide this to us earlier.

22 THE COURT: May I see it, please, once it's
23 marked?

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

25 (Court's Exhibit No. 7 marked for

1 identification only.)

2 MS. MAYES: Court's 7, Your Honor.

3 THE COURT: Anything further, Mr. Floyd, you
4 would like me to consider?

5 MR. FLOYD: Your Honor, it's our position that
6 this type of testimony is not simply needed nor is
7 it appropriate for expert testimony. All of our
8 jurors have either raised children, been around
9 children, know children. It's not --

10 THE COURT: We know that? We know that from
11 voir dire?

12 MR. FLOYD: No, Your Honor. But I'm just
13 saying we can look at their ages. And they all were
14 children at one time, so --

15 THE COURT: So are we assuming that, that they
16 all have chaps?

17 MR. FLOYD: No, we're assuming they all were
18 children at one time.

19 THE COURT: Well, I assume everybody in here
20 was a child at one point in time. I was too.

21 MR. FLOYD: That's correct, Your Honor. So
22 I --

23 THE COURT: That would not --

24 MR. FLOYD: I think it's common knowledge what
25 children do and don't do. So it's not something you

1 need expert testimony for.

2 THE COURT: So if you were a child at one time
3 or a patient of a doctor at one time, you wouldn't
4 need any expert medical testimony or anything to do
5 with a child? I'm not -- that's an interesting
6 point, I'm just not tracking. I guess I need an
7 expert to explain to me why we need experts.

8 MR. FLOYD: Your Honor, we're not talking about
9 some type of analysis, we're not talking about
10 somebody who is making a diagnosis. All we're
11 talking about -- what I assume she's going to say is
12 that children often don't report things that happen
13 to them right away.

14 THE COURT: Well, we can't assume that members
15 of the jury panel were victims of sex abuse and
16 would know, because I think we parsed all that out
17 by voir dire, and having been victims, would know
18 why they did or didn't report timely, whatever that
19 word timely means.

20 Any other -- anything further?

21 MR. FLOYD: No, Your Honor, nothing further
22 than that.

23 THE COURT: All right. Thank you, Mr. Floyd.
24 Yes, Solicitor?

25 MS. MAYES: Yes, sir, Your Honor. I would just

1 add that it is probative in this case because the
2 record is replete with questions to this -- with the
3 previous witness about the delayed reporting or
4 failure to report.

5 THE COURT: Thank you, Solicitor.

6 Obviously, this type of testimony has been
7 admissible in the past through this witness,
8 Ms. Galloway-Williams, offered as an expert in that
9 field the 30 periods of time she has been qualified
10 as an expert. I think there was one case she
11 testified before me in Greenville County and was
12 qualified as an expert in that case in this field.

13 Further, I note, with some degree of interest,
14 Judge Welmaker's case of the State vs. Brown that
15 the Solicitor handed me up, and I would follow up
16 that lead somewhat. The circuit court allowed the
17 testimony in this Brown case and based partially on
18 the jurors' qualifications and their responses to
19 questions during voir dire.

20 And it had to do somewhat with, obviously, the
21 occupations of the empaneled jurors as they would
22 not have any prior knowledge from family members or
23 otherwise as to sex abuse directly.

24 Further, having seen that, I reviewed the juror
25 list of occupations. We have a title clerk, a data

1 processor, Palmetto Health maintenance, a librarian,
2 insurance, Lexington Medical Center respiratory,
3 land surveyor, financial planner, personal trainer,
4 Best Buy manager, who is our foreperson, department
5 of transportation, salesman, a business owner, part
6 of a husband-and-wife team that own an HVAC
7 business, an office manager, a dental hygienist, an
8 engineer, we do have a retired nurse as an
9 alternate, and an individual employed with U.S.
10 Foods.

11 Reviewing Ms. Galloway-Williams' CV and also
12 her testimony before the Court and referring back to
13 Rule 702, the scientific, technical, or other
14 specialized knowledge will assist the trier of fact
15 to understand the evidence or to determine a fact in
16 issue. A witness qualified as an expert, knowledge,
17 skill, experience, training or education may testify
18 thereto in the form of an opinion or otherwise. I
19 think this is not in the field of common knowledge
20 for jurors in general and our empaneled jurors
21 specifically, therefore, would be of assistance to
22 them.

23 Further, as I pointed out, she would not be
24 allowed to give any opinion as to the credibility or
25 believability of the expert witness. And being a

1 blind witness, she would have no basis for doing
2 that anyway. So it is admissible.

3 Anything further before I bring in the jury?

4 MS. MAYES: Briefly, Your Honor, our
5 understanding is that the Defense has stipulated to
6 chain of custody on the buccal swab kit and the
7 sexual assault protocol kit and, as a result, that
8 would allow us to release two witnesses who are here
9 this afternoon for chain of custody. Just need to
10 put that on the record.

11 THE COURT: Is that correct, Mr. Floyd?

12 MR. FLOYD: That's correct, Your Honor.

13 THE COURT: Thank you, Mr. Floyd.

14 Anything further?

15 MS. MAYES: No, sir, Your Honor.

16 (The jury enters the courtroom at 4:26 PM.)

17 THE COURT: Thank you, Mr. Floyd.

18 Thank you, Solicitor. You may ask your next
19 question, Solicitor.

20 MS. MAYES: Yes, sir, Your Honor. We, at this
21 time, offer Shauna Galloway-Williams as an expert in
22 the field of child abuse assessment and treatment.

23 THE COURT: All right. Ladies and gentlemen of
24 the jury panel, normally a person cannot testify as
25 to opinion testimony; normally when a person

1 testifies, they have to testify as to either what
2 they saw, heard, sensed by smell, or something of
3 that nature, something within the realm of our human
4 senses.

5 However, an individual may testify to opinion
6 testimony if that individual has knowledge,
7 training, experience, education in a particular
8 field, science, art, or profession. This witness,
9 Shauna Galloway-Williams, will be qualified as an
10 expert in the field of child sex abuse and delayed
11 reporting.

12 Is that what you're offering
13 Ms. Galloway-Williams for, Solicitor?

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

15 THE COURT: To testify to that subject
16 matter -- the opinions she holds is in regards to
17 that subject matter and the basis of those opinions.

18 Ladies and gentlemen, just because a witness
19 testifies as an expert, whatever weight and value
20 you place to those opinions or those -- bases of
21 those opinions is solely up to you, the jury, to
22 place that weight and value whatever you deem
23 appropriate.

24 So with that being said, Solicitor, you may
25 continue.

1 MS. MAYES: May it please the Court?

2 THE COURT: Yes, ma'am.

3 BY MS. MAYES:

4 Q. Ms. Galloway-Williams, do you have any
5 pre-existing relationship with the victim in this
6 case, **complainant** ?

7 A. No.

8 Q. Have you ever met her or counseled her?

9 A. I haven't.

10 Q. Do you have any pre-existing bias or personal
11 interest in this case?

12 A. I don't.

13 Q. You're testifying as an expert based on your
14 clinical experience and the research in the field?

15 A. Yes.

16 Q. Please explain what is meant by the term
17 delayed reporting or delayed disclosure in child
18 abuse cases.

19 A. Well, it's a term to describe what we see very
20 often in child abuse cases, specifically in child
21 sex abuse cases when a child does not tell right
22 away after something occurs. And many times when
23 something happens to a child, they will notify an
24 adult or tell someone else when something happens.

25 That's not always the case with child sexual

1 abuse. Most times, children delay reporting; it may
2 be days, weeks, years, months. And, in many cases,
3 many of the adults that I've interacted with have
4 waited their entire adult lives before they have
5 reported or never reported.

6 Q. In your training and experience, how common is
7 delayed reporting among victims of child sexual
8 abuse?

9 A. It's very common. In my experience and in the
10 research, we see that it happens very often. You
11 know, as I said, delayed reports can be days, weeks,
12 years, and, in many cases, reports are never made.

13 Q. And what are the recognized factors that may
14 play a role in a child's delayed reporting of sexual
15 abuse?

16 A. Right. So one of the main reasons that
17 children don't report right away is because of fear.
18 They may be afraid that something is going to happen
19 to them, they may be afraid of something that's
20 going to happen to the person that has done this to
21 them, they may be afraid of what's going to happen
22 to their family or others.

23 Other of the other primary reasons for delayed
24 reporting is that most times children are abused by
25 someone they know, they love, and they trust, or at

1 least someone that is known, loved, and trusted by
2 their family and, many times, the community as well.
3 Those relationship dynamics can be a powerful force
4 in a child not reporting.

5 Some children are too young to really have the
6 verbal skills to report. So depending on the age of
7 the child, they may not have the ability to use
8 words to describe what's happened to them.

9 Sometimes children have been threatened.
10 They've been told that if they tell, something will
11 happen to them. Those threats can be direct or
12 indirect, and those, again, can keep a child from
13 telling what's happened to them.

14 Children may have come to feel that the
15 behavior that they're experiencing is sort of
16 normalized. The person that's doing this to them
17 may have been doing this to them for a long period
18 of time or may have sort of groomed them or led them
19 to believe that what's happening is normal behavior
20 between the child and the person that's doing this.

21 Q. Okay. So I want to ask you if you've testified
22 previously as an expert concerning each of these
23 factors?

24 A. I have.

25 Q. Fear, child's age, threats, and then the

1 behavior becoming normalized?

2 A. Uh-huh.

3 Q. All of these factors, have you seen previously
4 in your own clinical experience?

5 A. I have.

6 Q. When you talk about normalized behavior, can
7 you expound on that further and tell us how
8 something like sexual abuse can become normalized to
9 a child?

10 A. Sure. There are multiple ways, but sometimes
11 children are introduced to sexual material prior to
12 being abused, so that's one way of grooming or
13 normalizing this experience. That may be through
14 sexual jokes, it may be through magazines, movies,
15 other materials. It may also be through touch that
16 may be sort of confusing. The touch may not
17 necessarily be sexual touch, it may not be perceived
18 as sexual, it may be a touch on the outside of the
19 clothes that then proceeds to something more
20 specific.

21 But in those ways, the behavior becomes
22 something that's more commonplace and more accepted.
23 If these behaviors are performed or these jokes are
24 made or these materials are shared in front of other
25 people, particularly other adults that are

1 caregivers for the child, the child may come to
2 believe that this is normalized behavior because
3 other people are okay with it.

4 Repeated sexual abuse may also normalize the
5 behavior. So if, you know, a child is abused
6 chronic -- experiences chronic abuse where the abuse
7 is happening more than once, where it's happening
8 over a period of time and there are multiple
9 incidents, it may become more normalized.

10 Children -- if they respond -- if they do
11 actually tell someone and nothing happens or if they
12 make a report or make a disclosure and there's no
13 response to end the abuse, that may also lead a
14 child to feel as if this is something normal that
15 other people are accepting of, not just the person
16 that is committing the act.

17 Q. You mentioned also grooming. What is meant by
18 that term grooming?

19 A. Grooming is really preparing a child or
20 developing a trusting relationship with a child.
21 It's really about doing things and trying things to
22 see if a child is going to trust them enough to not
23 tell or how the child is going to respond to certain
24 behaviors.

25 Examples of grooming could be giving a child

1 special attention, giving a child gifts and treats,
2 you know, giving a child money, giving them extra
3 time on -- I've seen children who have gotten extra
4 time on the Xbox or TV or could stay up later.

5 Grooming can also be those things that I talked
6 about before where you're exposing a child to
7 sexualized materials and behavior that slowly
8 introduces the child to behaviors that they may not
9 have been exposed to previously.

10 Q. Can that include pornography?

11 A. Yes. That's what I mean by sexual materials:
12 Books, magazines, movies, anything on social media
13 that may be related to that.

14 Q. So you mentioned grooming when it involves
15 favors or special attention. What about the other
16 end of the spectrum, when threats are involved? Can
17 you elaborate as to how threats can play a role in a
18 child's delayed reporting?

19 A. Right. So children may be told if they tell
20 that something will happen to them. They may be
21 told if they tell, you know, something will happen
22 to someone that they love. They may be told that if
23 they tell, they may have to leave their home, their
24 family may not have somewhere to live. They may be
25 told that they're going to get in trouble for what

1 happened.

2 And those threats can also be indirect -- so,
3 those would be direct threats if someone tells you
4 something might happen if you do this. An indirect
5 threat would be if a child is living in a household
6 where the person that's committing this act is a
7 violent or aggressive person and they've seen that
8 person act out violently or aggressively to someone
9 else, the child may internalize or see that as an
10 indirect threat. They may be afraid of that person.
11 If I tell, then something may happen to me, this may
12 happen to me if I tell.

13 Q. And the threats or coercion as you've
14 described, can you tell us whether or not that's
15 supported in the literature as well?

16 A. Yes, it is.

17 Q. Is that something you've observed in your own
18 clinical experience with victims of sexual abuse?

19 A. Yes, I have.

20 Q. Now, what if the perpetrator is a family member
21 or is a person in a position of authority? How may
22 that affect a child's delayed report?

23 A. Right. As I said before, that's one of the
24 primary reasons why children may delay reporting or
25 not report at all. Because many times children are

1 abused by someone that they know, they love, and
2 they trust, and oftentimes this is someone that's
3 also known, loved, and trusted by their caregivers,
4 their family, their friends, their community.

5 So oftentimes children have a very complex
6 relationship with this person. This may be someone
7 that they love, but they just don't like what's
8 happening to them or this may be someone that they
9 know, you know, other people love in their family.
10 That may discourage a child from telling. They may
11 feel they're going to betray that person by telling
12 what's happened. They may feel that they're going
13 to betray other members of their family or their
14 community if that's happening.

15 They may also fear that they're going to be
16 believed. If this is a person that has power and
17 authority over them or in their community or in
18 their family, they may fear that that person's power
19 and control would inhibit others from believing the
20 child if they were to tell.

21 Q. Now, what about a situation -- what type of
22 support system would need to be present for a child
23 to make a disclosure, based on your own information
24 and clinical experience, as well as the research?

25 A. What we know that the initial response when a

1 child discloses can really make or break the healing
2 process for a child. So when a child discloses, if
3 someone is believing and supportive of them, then
4 that is the most helpful, most positive response.

5 If, on the other hand, they're not believed and
6 supportive, that can have a negative response
7 meaning that, you know, if a child has delayed
8 disclosing already, they're finally telling someone
9 and they're not believed, the chances of them
10 telling again becomes lesser and lesser.

11 The child may also come to believe that if I've
12 told someone about this and they're not going
13 anything about it, then maybe I've done something
14 wrong or maybe this is okay and is accepted. And
15 they may come to, again, sort of normalize or accept
16 that this is a situation that they have to live
17 with.

18 Q. And how important, if at all, is it for a child
19 to have a supportive caregiver?

20 A. Particularly if the abuse is happening within
21 the household, having a supportive non-offending
22 caregiver is critically important. Having that
23 caregiver who is supportive and believing of them
24 can make all the difference in the healing process
25 for that child.

1 On the flip side of that, again, if they're not
2 believed and not supported, then the child, again,
3 may come to believe that this is not important to
4 anyone. They may believe that they've done
5 something wrong and feel responsible for it. They
6 may just come to accept that this is my reality and
7 this is what I have to live with.

8 Q. All right. And you mentioned accept. What are
9 the typical responses in a case of repeated or
10 chronic sexual abuse?

11 A. Right. So I think one of the things that
12 people question or what makes this very confusing
13 is, you know, how could a child continue to stay in
14 that situation. But, again, we're talking about
15 children and the fact that they have very little
16 power to remove themselves from those situations.

17 And when they are in an abusive situation,
18 which is a traumatic experience, often children are
19 experiencing the same type of fight-or-flight
20 experience that we would feel if we were in some
21 type of trauma or traumatic event, you know, that
22 desire to either fight back, to do something about
23 what's happening to us, or that flight, to flee, to
24 run away or do something. And then there's also the
25 freeze response, just being there and not being able

1 to do anything about it.

2 Q. Okay.

3 A. And what we know about victims of child sexual
4 abuse and sexual assault is that many of them are
5 frozen in that moment when they're being abused.
6 Some described it as being paralyzed and really not
7 being able to do anything.

8 Q. So those responses are fight, flight?

9 A. Or freeze.

10 Q. Or freeze?

11 A. Uh-huh.

12 Q. And is that freeze response something you've
13 dealt with in your clinical experience as well?

14 A. Oh, yes. I mean, in my clinical experience, in
15 assessing and treating children and adults, many of
16 them have shared the experience that they felt
17 immobilized or paralyzed during that experience.
18 And it's a typical response and a traumatic event.
19 Even nonsexual abuse events, you may feel paralyzed
20 with fear and unable to do anything.

21 Q. Now, in a case of repeated or chronic sexual
22 abuse, as you've described, do you necessarily
23 expect a child to make a full disclosure of all
24 events when they first tell?

25 A. Well, we describe disclosure as a process,

1 meaning that we don't generally expect that a child
2 is going to tell every single detail of every single
3 abuse experience the first time that they tell
4 someone. You know, many times children will make a
5 statement to someone to just test the waters and see
6 if they're going to be believed, to see what's going
7 to happen next.

8 For a child who has been chronically abused and
9 had multiple experiences, when they are describing
10 the events that have happened to them, they may not
11 be describing each individual event, it's going to
12 be based on who's asking them the questions, how the
13 questions are asked of them, and what information is
14 shared based on that. So the answer would be no, I
15 wouldn't expect that a child would be able to tell
16 every single detail.

17 The other thing is children don't always know
18 or usually don't know exactly what it is that we're
19 asking them. You know, like when an interviewer or
20 an investigator or a parent is asking them questions
21 about an abuse scenario, they may not exactly
22 understand what we need to know or what those
23 individuals -- based on their individual role or
24 what their needs are, what we're asking of them.

25 Q. And finally, Ms. Galloway-Williams, based upon

1 your training and experience, is delayed reporting
2 by a child common or uncommon when the perpetrator
3 is a family member?

4 A. It's very common when the perpetrator is a
5 family member, for all of the reasons that we just
6 talked about. But, primarily, those relationship
7 dynamics are very powerful.

8 MS. MAYES: Nothing further of this witness at
9 this time, Your Honor.

10 THE COURT: Thank you, Solicitor.

11 Mr. Floyd?

12 MR. FLOYD: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. FLOYD:

15 Q. Ms. Galloway-Williams, my name is Wayne Floyd.
16 I represent the defendant in this case as to this
17 particular case in which the alleged victim is
18 **complainant**. Do you know anything about it?

19 A. I don't.

20 Q. So you haven't talked with her?

21 A. I have not.

22 Q. You never tested her?

23 A.. No.

24 Q. So anything you're telling us today really has
25 nothing to do with her specifically, does it?

1 A. That's correct, it's not specific to her case.

2 Q. Now, you have testified as a delayed reporting
3 expert on how many occasions?

4 A. I've been qualified as an expert over 30 times.

5 Q. Were all those for delayed reporting?

6 A. Yes. All of those related to child abuse
7 dynamics and delayed reporting would have been a
8 part of that.

9 Q. Have you always appeared for the State?

10 A. In each of those cases, yes, I was subpoenaed
11 by the State.

12 Q. So you've always appeared as a delayed
13 reporting expert for the State on every occasion; is
14 that correct?

15 A. In each of those cases, yes, I was subpoenaed
16 by the State. I appear for whomever I receive
17 subpoenas from. And I have received subpoenas from
18 defense counsel as well.

19 Q. Now, your last statement you made when you were
20 questioned by the Solicitor was that it's where
21 there be delayed reporting in family sexual abuse
22 cases?

23 A. That's correct.

24 Q. Now, that doesn't mean always, does it?

25 A. It does not mean always, no.

1 Q. In fact, oftentimes a child will immediately
2 report suspicious sexual activity by a family
3 member; isn't that true?

4 A. That's not true.

5 Q. They never do?

6 A. You said oftentimes. And it is not true that
7 oftentimes children would report sexual activity
8 involving a family member. That's not true.

9 Q. Do they never?

10 A. No. I didn't say they never. But more
11 often -- it's more common that delayed reporting
12 happens in those types of cases based on my
13 experience as well as the research in this area.

14 Q. And I think you mentioned earlier in your
15 testimony that those that delay, sometimes they
16 delay for a couple of days, some for weeks, some for
17 months, some for years?

18 A. Yes, that's true.

19 Q. So what percentage of those who don't
20 immediately report it, report it within a matter of
21 a month?

22 A. There's not a specific number of those.

23 Q. So there's really not specific research on how
24 long a delay normally is?

25 A. Correct. There's not anything to state that a

1 delayed report, you know, has to be within a month
2 or two years. There are some studies that look at
3 the length of time between reporting and certain
4 factors that played into that.

5 And there are some studies that look at whether
6 family dynamics, age, the other factors that we
7 talked about, whether those impact delayed
8 disclosure or not. And the family dynamic one tends
9 to be a pretty strong factor in delayed disclosure
10 in most of the research.

11 Q. When you say a strong factor, does that mean
12 they never report if it's a family dynamic?

13 A. No. I did not say never. Certainly there are
14 cases where someone would report abuse if it
15 happened without delay.

16 Q. Right. Some report without delay, some might
17 report with a few days' delay. Would you agree with
18 me there?

19 A. Yes. As I said before, some report right away.
20 More cases than not, we see delayed disclosure, and
21 that delay can be days, weeks, years, and never.

22 Q. So just to make sure I've got this correct,
23 even if you have a situation where it's a family
24 dynamic, I think you used that term, a parent upon
25 child, would you agree with me that sometimes the

1 child reports the abuse immediately?

2 A. Yes.

3 Q. Sometimes, the child may report it within a
4 matter of a few days, if not immediately?

5 A. Yes.

6 Q. And sometimes a child might report it, if he
7 doesn't report it immediately, within a month or so?

8 A. Yes.

9 Q. Sometimes a child who doesn't immediately
10 report it may report it within a year?

11 A. Yes.

12 Q. Now, you mentioned certain factors that play in
13 with the delay. And you mentioned about, for
14 example, a child may not want to interrupt their
15 family dynamic, if I'm saying that correctly?

16 A. Well, the child may fear the consequences to
17 the family if they are to report or tell.

18 Q. But now, suppose the child wanted to destroy
19 that family dynamic, would that be a factor to push
20 them to report sooner?

21 A. I'm not sure I understand what you're asking
22 me. Can you rephrase the question for me, please?

23 Q. Let me try it a different way. Suppose the
24 child wants her parents to divorce, wants her mother
25 to leave her father, would that be a factor against

1 delayed reporting?

2 A. So I wouldn't say it -- no. Would that be a
3 factor against delayed reporting? I can't answer
4 the question the way that you're asking me. But I
5 get what you're asking me, I think. Are you asking
6 me can I --

7 Q. Well, I'm just trying to give the opposite -- I
8 think you testified on direct examination that one
9 factor that tends to keep a child from reporting
10 immediately is that they're afraid that it might
11 destroy their family situation.

12 A. Yes. So they may be worried about the impact
13 of their disclosure on the family.

14 Q. The converse of that would be if they don't
15 care, that would not be a delaying factor. If they
16 want their family to be destroyed, that would not be
17 a factor to delay reporting?

18 A. So in my experience, that has not been the
19 case, meaning that when children, for example, want
20 their parents to divorce or don't like something
21 going on in their household, in my experience and in
22 the training and in the research that we have, most
23 children don't then make an outcry or statement
24 regarding sexual abuse with an immediate caregiver
25 or family member as a way of making that happen.

1 And the systems in place, the multidisciplinary
2 team, law enforcement, department of social
3 services, clinicians are in place to assess those
4 things and determine that. So my answer, I guess,
5 is no to your question.

6 Q. I didn't actually ask that question, but I
7 appreciate your response.

8 A. I thought that's where you were going with
9 that.

10 Q. No, I wasn't going there.

11 A. Okay.

12 Q. And maybe I'll ask it a different way. You
13 said that one factor that prevents immediate
14 disclosure or encourages delayed reporting or
15 nonreporting is that the child is afraid to report
16 the incident may disrupt their family situation.

17 A. Yes. They may fear the consequences of their
18 disclosure.

19 Q. Okay.

20 A. And that could mean all different kinds of
21 things. That could mean that they fear they may
22 have to move out of the household, a sibling may
23 have to move out of the household; they may not be
24 able to pay their bills, someone in the house may be
25 upset with them.

1 The other dynamics and relationship between the
2 offender and the other members of the family can be
3 a factor in whether the child is able to tell or not
4 as well. Sometimes a sibling relationship can be
5 one of those factors.

6 Q. But if the child wants the mother to leave the
7 father anyway, that's not a factor then, is it?

8 A. I still can't answer the question the way that
9 you're asking me because they're not -- these are
10 not things that -- these are reasons that explain
11 why a child might not report right away. They're
12 not necessarily like a checklist of things that
13 might say if this is there, the child is going to
14 delay or not.

15 These are -- you know, often we wonder why
16 children don't report something like this right
17 away, because most don't and people wonder why that
18 is. And this is a list of those factors that would
19 help to clarify that.

20 Q. What you're saying is not an exact science, is
21 it?

22 A. No, it's not. We're dealing with humans, and
23 so it is not an exact science. If we could -- yes,
24 it's not.

25 Q. That's why some report it immediately; is that

1 correct?

2 A. Yes.

3 Q. Some report it immediately?.

4 A. Uh-huh.

5 Q. Some may report it within a week or a matter of
6 days?

7 A. Yes.

8 Q. Some may report it within a matter of a month
9 or so?

10 A. Yes.

11 Q. Some may report it within a matter of a year or
12 so?

13 A. Yes.

14 Q. Some may not report it ever?

15 A. Yes.

16 Q. You just can't say?

17 A. That is correct..

18 Q. Okay. Thank you. No further questions.

19 THE COURT: Redirect, Solicitor?

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

21 REDIRECT EXAMINATION

22 BY MS. MAYES:

23 Q. So to follow up on that, Mr. Floyd is asking
24 you about disrupting the family and how that may
25 play a role. How critical is it to have a caregiver

1 who is supportive of a child?

2 A. As I said earlier, it's critically important to
3 have supportive caregivers that believe and support
4 the child. Non-offending caregivers can be the
5 single most important thing in a child being able to
6 tell and being able to get help and to heal from the
7 trauma of sexual abuse.

8 Q. So the non-offending caregiver, the
9 non-offending caregiver --

10 A. Yes.

11 Q. -- is the single most important factor in what
12 happens to that child and their decision to tell?

13 A. Yeah, that person can be the single most
14 important factor.

15 Q. And what if that non-offending caregiver is
16 financially dependent on the perpetrator?

17 A. That certainly can have an impact.

18 MS. MAYES: Nothing further.

19 THE COURT: Recross, Mr. Floyd?

20 RE CROSS-EXAMINATION

21 BY MR. FLOYD:

22 Q. Ms. Galloway-Williams, what if the child was
23 interviewed by a specialist in the area around the
24 time of the alleged perpetration?

25 MS. MAYES: Objection, Your Honor; not

1 responsive to redirect.

2 THE COURT: I'm pretty liberal to Rule 611. I
3 will allow it. I don't stick to that strict rule.

4 Would you restate -- not rephrase, but just say
5 it again.

6 BY MR. FLOYD:

7 Q. Ms. Galloway-Williams, what if the alleged
8 victim, child victim, was interviewed along the time
9 that this supposedly occurred by a specialist in the
10 area of child abuse --

11 A. So what are you asking?

12 Q. -- and they did not disclose to those experts?

13 A. So you're asking me what if a child was
14 interviewed and did not disclose when they were
15 interviewed?

16 Q. Yes.

17 A. Then that was another opportunity for them to
18 disclose when they didn't disclose. And there could
19 be factors that are influencing that. Those same
20 factors that influence the delayed disclosure could
21 impact a child not disclosing in an interview. The
22 non-offending caregiver could also have an impact on
23 that, since we've brought that up.

24 Q. I appreciate you picking up on that. Isn't it
25 also possible because it did not occur?

1 A. So if a child's interviewed and they don't
2 disclose --

3 THE COURT: That's a different issue. We've
4 talked about that outside the presence of the jury,
5 doesn't mean it did or didn't occur. That's the
6 jury's decision on that. I think that bumps up on a
7 different issue.

8 MR. FLOYD: Okay, Your Honor.

9 THE COURT: Anything further, Mr. Floyd?

10 MR. FLOYD: Nothing further, Your Honor.

11 THE COURT: Thank you very much,
12 Ms. Galloway-Williams. Thank you for being with us
13 today. Any objection to the witness being excused?

14 MS. MAYES: Nothing from the State, Your Honor.

15 MR. FLOYD: Nothing from the Defense, Your
16 Honor.

17 THE COURT: Thank you. You may step down. You
18 may be excused.

19 All right. Solicitor, you may call your next
20 witness.

21 MS. MAYES: The State calls Brigitte Deguzman.

22 THE COURT: Ms. Deguzman, come around and join
23 us, please.

24 BRIGITTE DEGUZMAN

25 being first duly sworn, testified as follows:

1 THE WITNESS: I do.

2 THE CLERK: If you'll have a seat, please, and
3 state your name, spelling your last for the record.

4 THE WITNESS: My name is Brigitte Deguzman.
5 It's D-E-G-U-Z-M-A-N.

6 DIRECT EXAMINATION

7 BY MS. MAYES:

8 Q. And tell us a little bit about yourself. Where
9 are you employed?

10 A. I am employed at Palmetto Health Richland as a
11 sexual assault nurse examiner. I've been there a
12 little over 20 years.

13 Q. And when you say sexual assault nurse examiner,
14 tell us what that is.

15 A. We are specially trained nurses. My background
16 is ER. And a SANE nurse is specially trained to
17 be -- have a 40-hour didactic class. And then in
18 addition to that class, we also have clinicals that
19 we have to complete, certain requirements such as
20 watching court hearings, performing so many speculum
21 exams, having another sexual assault nurse examiner
22 watch over our exams to make sure that we're
23 competent.

24 We also have to have continuing education, so
25 we have additional training for this. And I'm

1 certified in both adults and pediatrics, so that's
2 an additional on top of the education.

3 Q. I want to ask you a little bit about the
4 education. Where did you obtain your nursing
5 degree?

6 A. University of South Carolina.

7 Q. And you took a licensing -- or you're licensed
8 as a nurse?

9 A. Yes, ma'am.

10 Q. As a registered nurse?

11 A. Right.

12 Q. And then the sexual assault certification that
13 you mentioned is in addition to your nursing
14 license?

15 A. Correct.

16 Q. Now, how long have you treated patients who --
17 in which you would conduct a sexual assault
18 examination?

19 A. So I started in January of 2011, and I started
20 my training at that time. So on my own, I probably
21 started maybe March or April of that year, so since
22 2011.

23 Q. Is it possible for you to estimate how many
24 sexual assault examinations you've done?

25 A. Probably 400 or 450.

1 Q. Now, can you tell us whether that also includes
2 an evidence collection component?

3 A. Yes. The majority of them include that.

4 Q. So it involves the collection of evidence as
5 well as examining the patient?

6 A. Yes.

7 Q. Is there a specific protocol for that?

8 A. Yes. We do follow protocol. There's a sexual
9 assault protocol by SLED, the State Law Enforcement
10 Division.

11 Q. And you're trained in that protocol as well?

12 A. Yes, ma'am.

13 Q. Now, have you testified previously as an expert
14 sexual assault nurse examiner?

15 A. Yes.

16 Q. And what case was that, the name of the case?

17 A. That was State vs. Nate Martinez.

18 Q. The county?

19 A. Richland County. I believe it was with Judge
20 McMahon, October or November of 2015, I believe.

21 Q. And can you tell us --

22 A. Or 2016.

23 Q. And can you tell us whether or not you
24 testified regarding the findings of the sexual
25 assault examination as well as the

1 evidence-collection process?

2 A. Yes.

3 MS. MAYES: Your Honor, at this time we'd offer
4 Ms. Deguzman in the field of sexual assault nursing
5 examinations.

6 THE COURT: Mr. Floyd?

7 MR. FLOYD: No objection.

8 THE COURT: All right. Again, ladies and
9 gentlemen, y'all have heard my instruction to you
10 concerning opinion testimony, expert testimony.
11 This witness will be qualified as an expert in the
12 field of sexual assault nursing examinations, the
13 results -- finding the results and opinions, and the
14 bases for holding those opinions.

15 Again, whatever weight and value you want to
16 give to any witness' testimony, including an expert
17 witness' testimony, is up to you, the jury, whatever
18 you deem fit and appropriate.

19 Thank you, Solicitor. You may continue.

20 BY MS. MAYES:

21 Q. Now I want to start by asking you a little
22 about the process of a sexual assault nurse
23 examiner. If you're on call, what's the process if
24 you get a call in the middle of the night?

25 A. So we receive our communication from the

1 communication center at Palmetto Health Richland.
2 We're a mobile team, so we go to different hospitals
3 including Palmetto Health Richland, Baptist,
4 Parkridge, and then we go to Lexington and Kershaw
5 County.

6 Once we receive a notification from the
7 communication center at Palmetto Health, they'll let
8 us know who's calling, they connect us with that
9 provider, and then that provider will talk to that
10 person. They will tell me what the history is and,
11 based on that, I go to that hospital and see the
12 patient.

13 Q. All right. I'm going to ask specifically about
14 a patient by the name of **complainant**.

15 A. Uh-huh.

16 Q. So going back to April 26th, 2015, on into the
17 early morning hours of April 27th, 2015, did you
18 receive a call to conduct an examination?

19 A. I did.

20 Q. Do you have notes in that record?

21 A. Yes.

22 Q. Where was the patient -- where did you go to
23 meet the patient?

24 A. I went to Lexington Medical Center Emergency
25 Department.

1 Q. Is there a notation as to what time you
2 arrived?

3 A. Yes.

4 Q. What time was that?

5 A. I arrived at 5:52 in the ER, in the morning.

6 Q. And was the patient already there?

7 A. Yes, ma'am.

8 Q. Where was the patient, according to your notes?

9 A. She was in the ER. I don't know if I have
10 specifically which room she was in.

11 Q. And at what point did you get notified that the
12 patient was already there at the hospital and in the
13 emergency room?

14 A. I received a call at 4:50 AM from the social
15 worker.

16 Q. The patient is already there?

17 A. Yes, ma'am.

18 Q. And what's the next step in the process?

19 A. So once I arrived in the ER, sometimes I touch
20 base with the doctor first or sometimes I'll just go
21 to the nurse and let them know who I am and they'll
22 direct me to the patient.

23 So I talk to the patient and whoever is there
24 with her, if it's a family member or not with her.
25 Specifically, I think she wanted to be alone. So I

1 tell the patient what I -- my role is and what I'm
2 going to do and what to expect. And if they consent
3 to the exam with evidence collection, then I
4 proceed.

5 Q. All right. So I want to go back and ask you if
6 you actually make notes at the beginning of the
7 protocol form. Do you make notes about everything
8 you know about the patient at that point?

9 A. Yes. I start to gather information, medical
10 history, that sort of stuff.

11 Q. What was the date of birth of [REDACTED] complainant?

12 A. [REDACTED].

13 Q. Who fills out the protocol form?

14 A. I do.

15 Q. So this is a form you fill out yourself?

16 A. Yes, ma'am.

17 Q. Does it note the time of arrival of [REDACTED] Complainant
18 [REDACTED] there at the hospital?

19 A. 3:45.

20 Q. So she's there for a significant amount of time
21 before you even make it there?

22 A. Right.

23 Q. So 3:45 AM. And what's the next step once you
24 meet the patient?

25 A. So after I explain everything and obtain

1 consents, I make sure that she's medically cleared
2 or seen by the physician prior to seeing her.

3 Then -- you just want me to go through my protocol?

4 Q. Well, let me ask you this: Do you inquire as
5 to whether or not the patient has changed clothes,
6 for example?

7 A. - So during my protocol I do go through -- it's
8 methodical. So we go through a medical history
9 first and then I asked about pre- and post-assault
10 activity, hygiene activity, that sort of stuff. So,
11 yes, that is included in that.

12 Q. And, specifically, is there a question of
13 whether or not the patient had changed clothes?

14 A. Yes.

15 Q. And what is your protocol form note in that
16 regard?

17 A. She answered no.

18 Q. So still wearing the same clothing from the
19 time of the assault?

20 A. Right.

21 Q. And what exactly is the process of the
22 examination?

23 A. So first, after I talk to her about her medical
24 history and the pre- and post-assault activity, that
25 sort of stuff, during the actual physical exam and

1 evidence collection, I put a hospital sheet down on
2 the floor, then I put a paper sheet, which is what
3 we call a debris sheet, and she steps in the middle
4 of that and undresses. And then I collect the
5 clothing from there and place them in the proper
6 bags or envelopes.

7 Q. Now, for purposes of medical diagnosis and
8 treatment, is it important for you to know whether
9 or not the patient was exposed to any foreign bodily
10 fluids?

11 A. Yes. During her narration of the assault
12 history, she tells me what happened. And based on
13 what happened, I -- that lets me determine what I
14 need to assess, if there's any additional injuries,
15 anything that the doctor needs to assess.

16 And then based on what is -- she's exposed to,
17 what is penetrated, she may also need treatment for
18 sexually transmitted infections or pregnancy, that
19 sort of stuff.

20 Q. Do you also inquire as to whether this was a
21 single event or whether it's been chronic in nature?

22 A. Typically with children, we do ask if this is
23 the first time or if this has happened before.

24 Q. And what is the time or time frame in which
25 **complainant** reported to you that this has been

1 happening?

2 A. She told me that -- ten years.

3 Q. Ten years. And, again, for purposes of your
4 medical diagnosis and treatment of **complainant**

5 that night, did you inquire as to the specific
6 events that had occurred just prior to arriving at
7 the hospital?

8 A. Yes.

9 Q. Do you note that in your report?

10 A. Yes.

11 Q. What did you note in that regard?

12 A. Specifically? Which one are you --

13 Q. As you noted the history of assault. Is that
14 necessary for your medical diagnosis and treatment?

15 A. Yes.

16 Q. Did you note it verbatim as it was reported to
17 you?

18 A. Yes, ma'am.

19 Q. What did you note?

20 A. I can read the whole history?

21 Q. If you could, start at the beginning.

22 A. So this is the history of the assault for her.
23 And typically I ask them just to tell me what
24 happened, and I'm going to try to type everything
25 that they tell me.

1 So she said: My mother left for work and he
2 came to my room and knocked on the door and told me
3 to give him a few minutes. I said no multiple
4 times. After saying no, he threatened to make me do
5 housework, so I did that. He still tried to make me
6 do it anyway. Eventually I gave in at one point,
7 and he said I could just use my mouth because I just
8 wanted to go to my room.

9 I just sat there and he stood up. I just kept
10 my mouth open and he moved himself. He said that
11 after three minutes, he would stop. And after three
12 minutes, I told him he needed to stop, but he
13 didn't.

14 I got up and tried to continue the housework
15 that he wanted me to do. And eventually he ended up
16 having me sit on the couch and he would touch me
17 down there while he did things to himself. After
18 that, I still tried to do the housework instead of
19 him doing that, but eventually he started to sound
20 threatening with his voice raising. So I finally
21 went to his bedroom like he told me to, and I laid
22 down and he got on me and rubbed himself against me.

23 And after maybe 20 minutes, he said that he
24 just wanted to touch me again and finish himself
25 off, but I said no and got out of the room. And

1 that's pretty much it.

2 Q. Do you ask specifically about ejaculation?

3 A. Yes. So after the assault, I go into
4 specifics. And I did ask about ejaculation and she
5 said no.

6 Q. So as to this event, April 27th, 2015, as to
7 your inquiry on this last assault, she reported no
8 ejaculation?

9 A. Correct.

10 Q. Do you also make notations or ask specific
11 questions for purposes of medical diagnosis and
12 treatment about which parts of her body may have
13 been touched?

14 A. Yes.

15 Q. And do you have a specific area of the form
16 which covers that?

17 A. I do.

18 Q. And what, if anything, was reported in that
19 regard concerning any contact by the perpetrator's
20 mouth on **complainant** ?

21 A. She said that -- she stated that her father
22 licked her anus.

23 Q. Do you have a specific question about licking?

24 A. Yes. So when I asked her about if her anus was
25 penetrated -- and I asked specifically was it

1 penetrated by the penis. She said, no, fingers.
2 She said no. And then object, I checked yes,
3 because at this point she said her father licked her
4 anus. So down in the nongenital acts where it says
5 licking, I also stated that she said anus.

6 Q. Do you ask for medical diagnosis -- medical
7 diagnosis purposes, do you ask whether there's been
8 genital-to-genital contact?

9 A. Yes.

10 Q. What did she report in that regard, yes or no?

11 A. Yes for penetration of vagina. She states that
12 he only rubbed his genitals against her genitals,
13 denies that he inserted his penis into her vagina,
14 states --

15 Q. All right.

16 A. Okay.

17 Q. And then do you also ask a question as to
18 whether the patient was exposed to the perpetrator's
19 genitals orally?

20 A. Yes.

21 Q. And what was her response in that regard?

22 A. That he did not put his mouth on her, but she
23 said yes, that he put his mouth -- he put his mouth
24 on her genitals.

25 Q. And what about -- I'm going to refer you to

1 page 5 of 12.

2 A. Yes.

3 Q. What, if anything, was reported about fellatio,
4 or the patient putting her mouth on the assailant's
5 genitals?

6 A. She said yes, that her mouth was on his
7 genitals.

8 Q. And then also reported the licking -- the
9 perpetrator licked her?

10 A. Uh-huh.

11 Q. Now, tell about the evidence collection process
12 regarding **complainant**. Do you have specific
13 notations in your protocol exam in that regard?

14 A. Yes.

15 MS. MAYES: Your Honor, if I may move this
16 forward? I don't want to block your view, so please
17 instruct if I do so.

18 THE COURT: Are you good with that, Mr. Floyd?

19 MR. FLOYD: I didn't hear what she said.

20 THE COURT: Moving the notepad, you good with
21 where it's at?

22 MR. FLOYD: I'm okay with where it's at.

23 THE COURT: Thank you, Mr. Floyd.

24 BY MS. MAYES:

25 Q. I'm going to show you a diagram and ask you

1 whether or not you recognize what's depicted.

2 A. Yes.

3 Q. Is this male or female genitalia?

4 A. Female.

5 Q. Is it a fair and accurate representation of the
6 female genitalia?

7 A. Yes.

8 MS. MAYES: Your Honor, this would be State's
9 24, I believe, for evidence.

10 THE COURT: State's 24. Any objection?

11 MR. FLOYD: Not at this point, Your Honor.

12 THE COURT: State's 24 is in evidence without
13 objection.

14 (State's Exhibit No. 24 admitted into
15 evidence.)

16 MS. MAYES: Beg the Court's indulgence.

17 Your Honor, if the witness may step down?

18 THE COURT: Yes, ma'am, you may step down.

19 Please keep your voice up when you're away from the
20 microphone.

21 BY MS. MAYES:

22 Q. Do you have the copy of **complainant**'s
23 protocol report with you?

24 A. Yes, ma'am.

25 Q. I want to start by having you take us through

1 these steps of how you go about collecting forensic
2 evidence, potential forensic evidence, in such a
3 case. What type of evidence are you looking for?

4 A. Okay. The type of evidence I'm looking for is
5 both DNA and injury. So normally I would start from
6 the top to the bottom. So I would get her DNA from
7 her mouth. But specifically here, I would -- based
8 on her assault history, I swabbed her labia majora
9 and minora, outside here. She said she was not
10 penetrated, so here. And then I would also swab her
11 anus. I also combed her pubic hair, so that would
12 be up here.

13 Q. And do you have a specific swab for each of
14 these things that you mentioned?

15 A. Yes.

16 Q. Is that part of the protocol?

17 A. Yes.

18 MS. MAYES: Your Honor, if there's no
19 objection, I'm breaking the seal at this time.

20 MR. FLOYD: No objection, Your Honor.

21 THE COURT: No objection.

22 BY MS. MAYES:

23 Q. I'm going to ask you, what is this? If you
24 could, explain this to us.

25 A. So this is the evidence collection kit that is

1 provided by SLED. This is normally sealed here. So
2 if it's broken in any way, then I don't use it, I
3 toss it. So I have to open this to make sure it's
4 sealed to ensure the integrity of it. And then
5 inside, there's different envelopes of the different
6 swabs that I take.

7 Q. I'm going to have you read aloud each one of
8 those swabs that you do take along the way of the
9 evidence collection process.

10 A. So they're listed here: Known standard DNA
11 envelope, suspected body fluid envelope, suspected
12 saliva envelope, vaginal swabs envelope, oral swabs
13 envelope, rectal swabs envelope, fingernail
14 scrapings envelope, vaginal, oral, rectal slide
15 holder, pubic hair combings envelope, and
16 miscellaneous materials envelope.

17 Q. And these swabs are routine protocol in each of
18 these sexual assault examinations?

19 A. Right.

20 Q. All right. We see a seal here.

21 A. Uh-huh.

22 Q. Did you seal this after each swab had been
23 collected?

24 A. I did. And my initials are here.

25 Q. Now tell us about the pubic hair combings. I

1 want you to start there by having you explain why
2 pubic hair combings are done and why they may be
3 important.

4 A. So during her assault history she mentioned
5 that he rubbed his genitals on her genitals. So she
6 had pubic hair, so sometimes the pubic hair will get
7 intertwined if they're against each other.

8 Q. And if you can, using this marker, show us
9 where it is you are swabbing the pubic hairs of
10 **complainant**.

11 A. You want me to mark it?

12 Q. Yes.

13 A. So typically it's around this area and then can
14 extend, depending on the person, so I take the comb
15 and I just comb down. There's a sheet here first
16 that I lay down to catch anything that I do comb.
17 And then I comb down probably five or six times.
18 And then after I'm done, then I have her lift up her
19 bottom and collect the sheet that's under there,
20 fold it up, and place it in the envelope.

21 Q. So what are you using to actually scrape the
22 pubic hair?

23 A. So there's a plastic comb already in the
24 envelope that's provided.

25 Q. Okay. And then --

1 A. And the paper is provided as well.

2 Q. So the paper is underneath her, and as you swab
3 her pubic hair, any debris will fall onto the paper?

4 A. As I comb her pubic hair, yes.

5 Q. And do you have any notations as to whether
6 there were any debris or loose pubic hairs when she
7 was combed?

8 A. Typically, if I don't see it, I just say I did
9 it.

10 Q. And in this case, you did it?

11 A. Uh-huh.

12 Q. And tell us about the other swabs that you're
13 conducting along the way.

14 A. I also did an oral swab based on her assault
15 history. So I did a vaginal swab. Like I said, it
16 was here, labia majora and the minora, and probably
17 right here just at the entrance. I did a rectal
18 swab and then her buccal swab for her DNA.

19 Q. Now, does your protocol form make any notes as
20 to any findings or observations that you made during
21 the course of this evidence collection?

22 A. Yes. So when I was swabbing her anus, it does
23 go slightly around and then slightly inside. And I
24 noted that a stray hair from the rectal swab, after
25 swabbing for evidence collection, there was a stray

1 hair on this swab.

2 Q. What do you mean by stray hair?

3 A. Well, it was just a hair. I don't know whose
4 it is, hers or the assailant's, but it's there, so I
5 collected it.

6 Q. And you noted that stray hair while you were in
7 what region?

8 A. Her anus.

9 Q. Each of these swabs that you did, are they also
10 packaged and sealed?

11 A. Yes, ma'am.

12 Q. How so?

13 A. Same way. So there's a seal like this with the
14 envelope. I seal the envelope with a label and then
15 I initial it to show that I did it.

16 Q. And that goes for each and every swab that is
17 collected along the way?

18 A. Yes, ma'am.

19 Q. And is that also the same for the sheet or the
20 paper that you mentioned being underneath her for
21 the pubic hair combings?

22 A. Yes.

23 Q. And then you also mentioned that you take a
24 sample from her cheek, potentially to have her DNA
25 standard?

1 A. Right.

2 Q. Is that routine in these protocol examinations?

3 A. Yes.

4 Q. One more thing. Can you tell us whether, if a
5 patient has not changed clothes since the assault,
6 whether it's routine to collect their under
7 clothing?

8 A. Yes.

9 Q. And does your protocol form tell you whether or
10 not the underwear of [REDACTED] was collected?

11 A. I checked yes and I noted that it was pink.

12 Q. You did note that it was pink?

13 A. Yes, ma'am.

14 Q. I'm going to show you what is State's Exhibit 3
15 and ask you whether you recognize the bag that it's
16 in as well as the seal.

17 A. Yes. It's the underwear bag.

18 Q. Does it contain your initials anywhere?

19 A. On the label, where the patient label is, and
20 then the evidence.

21 Q. As a result, can you identify this item,
22 State's Exhibit -- this State's exhibit as the
23 underwear [REDACTED] was wearing at the time of
24 the examination?

25 A. Yes.

1 Q. And you take it from her body and then package
2 it?

3 A. She takes it off on the sheet and then I
4 collect it.

5 MS. MAYES: I beg the Court's indulgence.

6 You may return to your seat.

7 Your Honor, the underwear, State's Exhibit 23,
8 are already in evidence. At this time the State
9 would offer the sexual assault protocol kit as well
10 as each swab and sample collected from **complainant**
11 on this date and time from Nurse Deguzman.

12 THE COURT: All right. Mr. Floyd?

13 MR. FLOYD: No, objection, Your Honor.

14 THE COURT: State's 25?

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

16 THE COURT: All right. State's 25 in evidence
17 without objection.

18 (State's Exhibit No. 25 admitted into
19 evidence.)

20 BY MS. MAYES:

21 Q. The DNA sample that you took from **complain**
22 **ant**, that's also packaged with this?

23 A. Yes.

24 Q. And properly sealed?

25 A. Yes.

1 Q. And then the box itself, once everything is put
2 inside, is it properly sealed?

3 A. Yes.

4 Q. And maintained there at the hospital until law
5 enforcement retrieves it?

6 A. Yes, ma'am.

7 MS. MAYES: Nothing further of this witness at
8 this time, Your Honor.

9 THE COURT: Thank you.

10 Mr. Floyd?

11 MR. FLOYD: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. FLOYD:

14 Q. Ms. Deguzman, let me first start by asking you
15 what you were about to read before you were stopped
16 by the Solicitor. Page 4 and page 5 of the -- of
17 the report, you see that last sentence?

18 A. Yes, sir.

19 Q. Would you read that one to the jury?

20 A. States he's never inserted his penis into her
21 vagina.

22 Q. Okay. That's what you were going to read, but
23 you got stopped by the Solicitor?

24 A. Right.

25 Q. Okay. Now, she was brought to the hospital by

1 her mother; is that correct?

2 A. That's from what I understand.

3 Q. And when you examined her, did you examine her
4 for any injuries?

5 A. I did.

6 Q. Did you note any injuries?

7 A. There were no injuries.

8 Q. No injuries. No bruising?

9 A. Correct.

10 Q. No hair missing?

11 A. No hair missing?

12 Q. No hair pulled out?

13 A. Correct.

14 Q. Now, also, when you took your history and you
15 read the history and we understood that, didn't you
16 ask him -- ask her has he done anything other than
17 what he did tonight? Has he ever done anything
18 other than what he did tonight, down towards the
19 bottom?

20 A. Yes.

21 Q. What was her answer?

22 A. She answered no. But --

23 Q. Is that what you asked her and that's what she
24 answered?

25 A. Uh-huh.

- 1 Q. Now also go to page 4. Would you agree that
2 when you asked whether -- was she threatened, and
3 was the answer no?
- 4 A. She said yes.
- 5 Q. Pardon?
- 6 A. For verbal threats of harm?
- 7 Q. I'm looking on page 4 of 12.
- 8 A. Right.
- 9 Q. Up at the top, you got weapons, threaten. You
10 have the box marked no for threatened?
- 11 A. Correct.
- 12 Q. Injuries inflicted: No?
- 13 A. Correct.
- 14 Q. Types of weapons: No?
- 15 A. Correct.
- 16 Q. Physical blows: No?
- 17 A. Correct.
- 18 Q. Grabbing, holding, pinching: No?
- 19 A. Correct.
- 20 Q. Physical restraints: No?
- 21 A. Correct.
- 22 Q. Strangulation: No?
- 23 A. Correct.
- 24 Q. Burns: No?
- 25 A. Correct.

1 Q. Other methods: No?

2 Then you've got --

3 A. You missed --

4 Q. No. I'm going further down.

5 A. Oh, okay.

6 Q. The only one you have yes to, it says verbal
7 threats. And would you read us what the answer was
8 to that?

9 A. States no threats of harm, but other types of
10 statements such as do this or I won't pick you up
11 from school or something like that.

12 Q. And that pretty much includes -- concludes --
13 includes everything you're asking her about threats
14 or injuries; is that correct?

15 A. That's correct.

16 Q. Now -- and I think you already published to the
17 jury most of page 5 of 12; is that correct?

18 A. Most of it.

19 Q. But basically you say that there was no
20 penetration of the vagina by a finger or object and
21 that he rubbed his genitals against her but never
22 inserted his penis into the vagina; is that correct?

23 A. Correct.

24 Q. Then as to the anus, states father licked her
25 anus, but no penetration by penis or finger; is that

1 correct?

2 A. Correct.

3 Q. And I think you've got no ejaculation occurred;
4 is that correct?

5 A. Yes, sir.

6 Q. And then you say -- there's one kind of unusual
7 thing. You say he used baby oil when she was on the
8 bed; is that correct? Down at the bottom.

9 A. Right, because I asked about lubricant used.

10 Q. And I think you described her general demeanor
11 as controlled; is that correct? I'm on page 6 now.

12 A. Yes.

13 Q. I want to ask you a couple questions about the
14 specimen collection. Now, if I recall the history
15 correctly, her story was that she was laying
16 facedown on the bed. Is that correct?

17 A.. Well, in my assault history, that was not
18 specified -- oh, you said she was laying down. Just
19 laying down, yes.

20 Q. Okay. I guess what I'm getting at is you say
21 that you combed her pubic hair.

22 A. Right.

23 Q. And you got some hair out of it, which you
24 collected.

25 A. I collected it. And I know that I got a stray

1 hair off the rectal swab. When I combed the pubic
2 hair, I just close it up. Sometimes I can see it,
3 sometimes I can't, so I just close it up.

4 Q. You don't know how it got there or when it got
5 there, do you?

6 A. The pubic hair?

7 Q. Yes.

8 A. If there's pubic hair, I assume it's from when
9 I combed it. I don't know when it got there, no.

10 Q. You don't know when it got there?

11 A. Right.

12 Q. How it got there? How long it had been there?

13 A. Correct.

14 Q. Now, did you send any of the specimens off to
15 the lab for testing for disease?

16 A. Yes.

17 Q. Did you get those lab results back?

18 A. Yeah. The gonorrhea and chlamydia were
19 negative, and her urine, no.

20 Q. How about, didn't they find Gardnerella
21 vaginalis?

22 A. Yes.

23 Q. And that can be transmitted sexually, can't it?

24 A. It's not a sexually transmitted disease.

25 Q. Can it be transmitted sexually?

1 A. Yes, from -- you can get it from having sex,
2 you can get it from douching. There are other ways
3 to do it. The CDC is not sure how it's transmitted,
4 but if you're sexually active, you're more
5 vulnerable to it. But it's not a sexually
6 transmitted disease.

7 Q. I gotcha. But it's one you can get if you're
8 sexually active?

9 A. Yes, and if you're not.

10 Q. And I think she testified -- or she told you
11 that he had never penetrated her vagina with his
12 penis; is that correct?

13 A. That's correct.

14 Q. Didn't she tell you she wasn't sexually active
15 at all?

16 THE COURT: Do what now? I couldn't quite
17 hear. I'm sorry, Mr. Floyd.

18 BY MR. FLOYD:

19 Q. Didn't she tell you she wasn't sexually active?

20 A. She did.

21 Q. Thank you. No further questions.

22 THE COURT: Redirect, Solicitor?

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

24 REDIRECT EXAMINATION

25 BY MS. MAYES:

1 Q. Is part of your questioning whether there's
2 been sexual contact with anybody else other than the
3 perpetrator in a seven-day window?

4 A. Yes. That is standard question for all my
5 patients.

6 Q. And what was her response to that?

7 A. She said no and that she's a virgin. She
8 confirmed she's a virgin and she's never had sex
9 before.

10 Q. And the lab tests that Mr. Floyd was asking
11 about, tell us about that. What is that?

12 A. Bacterial vaginosis. The *Gardnerella vaginalis*
13 is a bacteria. So in the woman's vagina, we have a
14 certain pH, supposed to be more acidic. If the
15 balance of that, of the bacteria in our vaginas are
16 off, it can cause bacterial vaginosis, and one of
17 those bacteria is *Gardnerella vaginalis*.

18 It's not a transmitted infection, it can --
19 someone who is not sexually active can have it.
20 There are certain things that we do that can
21 create -- douching can cause the bacteria to get
22 off-whack, bathing, I've read smoking makes it
23 easier for a woman to get this. So it's --

24 Q. And what about wearing tight clothing or wear
25 ing damp clothing, such as swimwear?

1 A. It can do that too. I mean, anything that
2 promotes -- it's bacteria, the pH or the acidity is
3 off.

4 Q. So just to clarify, is it a sexually
5 transmitted disease?

6 A. No.

7 Q. And is it only found in people who are sexually
8 active?

9 A. No.

10 Q. And someone who is not sexually active, can
11 they get it too?

12 A. Yes.

13 Q. Or can they have that off-balance as well?

14 A. Yes.

15 Q. Now, I believe that Mr. Floyd was asking you
16 about the threats. Did you note whether or not
17 there had been verbal threats?

18 A. When I asked her about the verbal threats, she
19 said yes. And I asked, give me an example.

20 Q. Okay. And again, are you asking about the
21 assault just that night?

22 A. Yes.

23 Q. Okay. So when she disclosed to you this had
24 been going on for ten years, do you try to get the
25 history of everything that's happened to her over

1 the course of that ten years?

2 A. No.

3 Q. And every part of her that's been touched?

4 A. No.

5 Q. So that checklist that you went down that noted
6 the licking and her mouth on the genitals, that was
7 specific to what incident date?

8 A. For when I saw her on the --

9 Q. For the assault that had just occurred?

10 A. Yes.

11 Q. And, in fact, does your protocol form show the
12 estimated time of that assault prior to your
13 conducting the exam?

14 A. Say that one more time.

15 Q. Does your protocol form show when that assault
16 occurred in relation to your exam?

17 A. Yes. She told me that it occurred on the 26th
18 between 9:30 and 11:00 PM.

19 Q. Okay. Between 9:00 and 11:00 PM.

20 Now, you mentioned the stray hair on the rectal
21 swab. You were actually able to visualize that?

22 A. Yes.

23 Q. And then you also mentioned the pubic hair
24 combings in response to Mr. Floyd's questions. Why
25 is pubic hair combings part of this sexual assault

1 evidence collection?

2 A. So that if any of the assailant's pubic hair
3 got intertwined or fell -- or in the process fell in
4 the area, it can show that his pubic hair was there
5 by contact.

6 Q. And did she report specific genital to genital
7 contact on this night?

8 A. Yes.

9 Q. And as part of your training and experience in
10 evidence collection, those pubic hair combings are
11 known to result in intertwined pubic hair combings?

12 A. Yes.

13 Q. Nothing further.

14 THE COURT: Recross, Mr. Floyd?

15 MR. FLOYD: Just a couple questions.

16 RECROSS-EXAMINATION

17 BY MR. FLOYD:

18 Q. Ms. Deguzman, did she report whether or not she
19 was a smoker?

20 A. Let me see. That is one of the questions. No.

21 Q. In fact, didn't she also report that she was on
22 the pill?

23 A. She did.

24 Q. So there's no need for her to douche, was
25 there?

1 A. Those are two different things. You said the
2 pill and douche?

3 Q. Okay.

4 MS. MAYES: Your Honor, I ask the Court's
5 permission to follow up?

6 THE COURT: No, ma'am. No, ma'am.

7 Thank you very much.

8 Any objection to this witness being excused?

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

10 MR. FLOYD: None from the Defense, Your Honor.

11 THE COURT: Thank you, ma'am, for being with us
12 today. You may step down. You may be excused.

13 All right. Perhaps now, ladies and gentlemen,
14 would be the time to take our evening recess. I
15 appreciate your work ethic today and your patience
16 with the Court.

17 I must advise you again -- perhaps you can say
18 it back to me as many times as you've heard it. You
19 may not discuss this case with others; that's your
20 fellow jurors, family, friends, or anyone else. Do
21 not read, watch, or listen to any news reports about
22 the case, do not do any independent investigation or
23 any investigation on matters which are -- or any
24 investigation whatsoever on matters which are
25 prohibited.

1 Matters which are prohibited includes, but is
2 not limited to the following information: About a
3 party, witness, attorney, court officer, news
4 accounts about the case, past, present, should there
5 be or should there have been any; information
6 collected through juror research on any topics
7 raised or testimony offered by any witness, or
8 information collected through juror research on any
9 other topic the jury, you, might think would be
10 helpful in deciding the case. Remember, you decide
11 the case based on the evidence and testimony
12 presented in the courtroom and the law as I tell you
13 the law is.

14 With that being said, you're excused for the
15 evening. I would ask you to please be back promptly
16 at 9:30 in the morning. If you would please be back
17 promptly at 9:30 in the morning. I hope you all
18 have a pleasant evening.

19 (The jury exits the courtroom at 5:47 PM.)

20 THE COURT: Anything from the State, Solicitor?

21 MS. MAYES: No, sir.

22 THE COURT: Defense?

23 MR. FLOYD: No, Your Honor.

24 THE COURT: All right. 9:30 in the morning.

25 Thank y'all very much.

1 (The following proceedings were held May 10,
2 2018.)

3 THE COURT: All right. Anything from the State
4 before we bring in our jury, Solicitor.

5 MS. MAYES: I don't think so at this time, Your
6 Honor. We just need to make sure that we can use
7 all of the equipment as needed.

8 THE COURT: All right. Solicitor, anything
9 before we bring in our jury?

10 MS. MAYES: No, sir, Your Honor.

11 THE COURT: Mr. Floyd? Mr. Spangler?

12 MR. FLOYD: No, Your Honor.

13 (The jury enters the courtroom at 9:38 AM.)

14 THE COURT: Good morning. Welcome back. I
15 hope y'all had a pleasant evening. We're continuing
16 the trial of the case by the presentation of
17 evidence and testimony by the State in its case in
18 chief. If you will please continue to give the
19 parties your complete and undivided attention as you
20 have done throughout the trial of this case.

21 Solicitor, you may call your next witness.

22 MS. USRY: Thank you, Your Honor. The State
23 calls Margie Bränham.

24 THE COURT: Yes, ma'am, if you would just come
25 around here, please.

1 MARGIE BRANHAM

2 being first duly sworn, testified as follows:

3 THE WITNESS: Yes.

4 THE CLERK: Thank you. If you'll have a seat
5 over there, please. State your name and spell your
6 last for the record.

7 THE WITNESS: Margie Branham, B-R-A-N-H-A-M.

8 DIRECT EXAMINATION

9 BY MS. USRY:

10 Q. Thank you, Margie. How do you know **Complainant**

11 **██████**?

12 A. She's my niece. My sister is her mother.

13 Q. Who is your sister?

14 A. Rose Heath.

15 Q. And how do you know William Heath?

16 A. My brother-in-law, married to my sister.

17 Q. Married to Rose?

18 A. Yes.

19 Q. And, Margie, I'm just going to take you
20 directly to April 26th of 2015. Do you remember
21 that date?

22 A. Yes.

23 Q. Did you talk to **Complainant** that date?

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

25 Q. And how did you first talk to her that day?

1 A. I texted her to see how she was doing.

2 Q. Okay. Do you recall about what time of day you
3 would have texted her?

4 A. It was mid-evening maybe.

5 Q. And why did you text her?

6 A. I texted her because I knew her mother was
7 working evenings, a third-shift job, and I knew she
8 didn't like to be at home with her father alone.

9 And so I would text her to check on her and see how
10 she was doing.

11 Q. And when you sent her the text, did she
12 respond?

13 A. Yes.

14 Q. And was it one text between the two of you or
15 multiple?

16 A. Multiple.

17 Q. And did that text conversation take place over
18 a matter of minutes or, like, five minutes? Ten
19 minutes? An hour?

20 A. Ten minutes to an hour probably.

21 Q. So it took place over a period of time?

22 A. Yeah, that evening.

23 Q. During the course of that text conversation,
24 what did you learn?

25 A. Did you say what did I know?

1 Q. Learn.

2 A. Okay. I learned that -- well, she texted me
3 and said --

4 MR. FLOYD: Your Honor, we would object to any
5 hearsay.

6 THE COURT: I will sustain the objection.

7 BY MS. USRY:

8 Q. During the process of reaching out to her, did
9 you have any reason to become concerned?

10 A. Yes.

11 Q. And as a result of that concern, what did you
12 do?

13 A. I kept asking her questions, you know, to try
14 to figure out what was wrong because she kept
15 telling me --

16 MR. FLOYD: Object to hearsay.

17 THE COURT: That would be hearsay. I would
18 sustain the objection.

19 BY MS. USRY:

20 Q. You kept asking further questions to follow up
21 with what was going on?

22 A. Yes.

23 Q. And as you talked to her, what did you do
24 during the course of that text conversation?

25 A. I just kept asking her what was wrong and

1 please tell me what's going on and -- because she
2 was texting me that --

3 MR. FLOYD: Your Honor, I object to any
4 hearsay.

5 THE COURT: That's fine. That's not hearsay.

6 MR. FLOYD: I thought we were getting to it
7 though.

8 THE COURT: Sir?

9 MR. FLOYD: I thought we were getting to it.
10 I'm sorry.

11 THE COURT: Well; we may be. If I was
12 processing correctly, that's Ms. Branham saying what
13 she was doing. I could be misprocessing, Mr. Floyd.

14 You may ask your next question, Solicitor, or
15 rephrase your question.

16 MS. USRY: Beg the Court's brief indulgence.

17 BY MS. USRY:

18 Q. And during the course of this conversation, did
19 you learn whether or not **Complainant** was in danger?

20 A. Yes.

21 Q. And based on that information that you learned,
22 what did you do?

23 A. I called her mother.

24 Q. Where was her mother at this time?

25 A. Work, because she worked third shift, I'm

1 pretty sure, at that time.

2 Q. And the danger that you learned she was in, was
3 that happening at that time or at an earlier time or
4 another time?

5 A. It was happening at the time she texted me.

6 Q. And you called her mother. What, in the course
7 of that conversation, did you disclose to or tell
8 her mother?

9 MR. FLOYD: Objection, if there's any hearsay,
10 Your Honor.

11 MS. USRY: Your Honor, I'm limiting it to what
12 she told the mother, not what -- just told her,
13 limiting it.

14 THE COURT: I think that's hearsay within
15 hearsay. I would sustain the objection.

16 BY MS. USRY:

17 Q. You called her mother. Where was her mother at
18 that time?

19 A. Work.

20 Q. Where were you at that time?

21 A. I was at my home in Chapin.

22 Q. What did you do next?

23 A. After I called her mother?

24 Q. Yes.

25 A. I kept texting with **Complainant** to make sure she

1 was okay.

2 Q. So you maintained contact with [Complainant] during
3 that time?

4 A. Yes. Before the police got there.

5 Q. Where was [Complainant] that night?

6 A. After --

7 Q. During the course of your conversation with
8 her, where was she?

9 A. She was in the living room.

10 MR. FLOYD: I object to hearsay.

11 THE COURT: That would be hearsay unless she
12 had personal knowledge of it, Solicitor.

13 MS. USRY: Yes, sir.

14 BY MS. USRY:

15 Q. Was she with you that night?

16 A. No.

17 Q. Did you go to her that night?

18 A. No.

19 Q. Why not?

20 A. Because her mother was taking care of
21 everything. Her mother called the police, her
22 mother met her at the house --

23 MR. FLOYD: Your Honor, objection. That --

24 THE COURT: Again, that would be hearsay unless
25 she knows of her personal knowledge. I would

1 sustain the objection.

2 MS. USRY: Yes, sir.

3 BY MS. USRY:

4 Q. Did you ever go to see [Complainant] that night?

5 A. No, ma'am.

6 Q. Okay. And I am going to show you -- you
7 indicated you had a text conversation with [Complainant]
8 that night?

9 A. Yes.

10 Q. Did you ever call [Complainant] that night?

11 A. No, I did not.

12 Q. I'm going to show you a number of documents.
13 Please review those.

14 Are those the text messages you sent with
15 [Complainant] that night?

16 A. Yes.

17 Q. Are they accurately reflected in those
18 pictures?

19 A. Yes.

20 Q. Did you have the opportunity to talk to law
21 enforcement about this incident?

22 A. Yes.

23 Q. Was it that night?

24 A. No.

25 Q. Was it at a later time?

1 A. Yes.

2 Q. At what time period were those photographs
3 taken of the text messages?

4 A. Maybe a couple days after.

5 Q. Who took those pictures?

6 A. Detective McCann.

7 Q. And that night during this time when you called
8 Rose, did you advise her of what you had learned?

9 A. Yes.

10 Q. And, Margie, where does **Complainant** currently live?

11 A. She lives with me and my husband.

12 Q. Are you aware of where she lived on August 26th
13 of 2015?

14 A. Yes.

15 Q. Who did she live with at that time?

16 A. August 2015, I think --

17 Q. August 26th of 2015, the same night you're
18 having the text conversation.

19 A. Oh. She was with her parents at that time.

20 Q. Was anybody else living with them at that
21 address of where they lived at that time?

22 A. No. I think it was just them, the three.

23 Q. And I'm going to show you State's Exhibit 20 --
24 excuse me, State's Exhibit 21. Do you recognize
25 that picture?

1 A. Yes.

2 Q. What is that picture of?

3 A. That's the house -- one of their trailers. I'm
4 not sure if it's the [REDACTED] or the [REDACTED]
5 [REDACTED].

6 Q. The [REDACTED] -- what time period did they
7 live at the [REDACTED]?

8 A. Not long, I mean, before [Complainant] came to live
9 with me.

10 Q. And on April of 2015, did they live at [REDACTED]
11 [REDACTED]?

12 A. Yes, I'm pretty sure they did.

13 Q. And the [REDACTED], was that before or
14 after?

15 A. Before.

16 Q. And when they lived at the [REDACTED], who
17 lived with them during that time period?

18 A. They also had a son, [REDACTED], [REDACTED].

19 Q. At times he would live at that residence on
20 [REDACTED]?

21 A. Yes. Then he went into the Army.

22 Q. Have you known [Complainant] her entire life?

23 A. Yes.

24 Q. And during your time knowing her and over the
25 course of the years, did you have an opportunity to

1 become aware of Complainant's feelings about her father?

2 A. Yes.

3 Q. And this was -- can you describe those for me?

4 A. She used to call me all the time --

5 MR. FLOYD: Your Honor, I'm going to object to
6 any hearsay.

7 THE COURT: State that question again. She
8 wasn't asking about a conversation, so state it
9 again for me, please, Solicitor.

10 BY MS. USRY:

11 Q. Margie, over the course of your years knowing
12 Complainant since birth --

13 A. Uh-huh.

14 Q. -- did you have the opportunity to become aware
15 of Complainant's feelings about her father?

16 A. Yes.

17 Q. Based on that --

18 MR. FLOYD: How would she know this? How would
19 she know that?

20 THE COURT: Step out, please, ladies and
21 gentlemen. Do not discuss the case during this
22 brief recess.

23 (The jury exits the courtroom at 9:51 AM.)

24 THE COURT: Tell me your objection again,
25 Mr. Floyd.

1 MR. FLOYD: Your Honor, my objection was I
2 think she's about to get in -- she was asking her
3 how Complainant --

4 THE COURT: Asked what?

5 MR. FLOYD: She was asking how she knew about
6 her feelings towards her father -- Complainant's
7 feelings toward her father, and I don't know how she
8 would know that other than through hearsay.

9 THE COURT: I don't think that was the
10 question.

11 Solicitor, what was the question?

12 MS. USRY: Your Honor, the exact question was,
13 over the course of your years, did you have an
14 opportunity to become aware of Complainant's feelings
15 about her father, and she answered yes. And the
16 followup question would be to tell me about that.
17 And I may have misphrased that. I can keep it more
18 simple.

19 THE COURT: Well, it's become aware -- if
20 Ms. Branham became aware of Ms. compl's feelings
21 about her father, that didn't have -- the foundation
22 of that could be personal knowledge, observation,
23 that she observed, not only that was told to her.
24 She can't testify, well, she told me this.

25 But I can observe and give an opinion about a

1 person's feelings for another person by
2 observations. I could be misperceiving it, but it's
3 my perception. I could be wrong on that. If I see
4 two people that totally avoid each other or two
5 people that never speak to each other or observe two
6 people that every time they do speak to each other,
7 it would be a conversation I would not want to be a
8 part of.

9 So she has to have personal knowledge; can't be
10 based on hearsay statements. So it may be hearsay
11 and you say, well, you thought what she was going to
12 testify to, but it may be some other foundation
13 besides statements to Ms. Branham by Miss **compl**.
14 And I don't know what it is.

15 MS. USRY: Yes, sir, Your Honor. I agree what
16 someone else told her is hearsay. I'll attempt to
17 rephrase the question.

18 THE COURT: Mr. Floyd?

19 And not only -- that's my personal
20 observations. It could also be positive. If I see
21 people interact with each other in a very positive
22 manner, shake hands, hug each other, go to lunch
23 together, you know, you can have an opinion about
24 parties' relationships, one to the other, based on
25 observations. It doesn't have to be she told me.

1 And I agree if it's just she told me she did
2 not have a good relationship with her father or she
3 told me whatever. It depends on the basis of her
4 knowledge.

5 What is the basis of her knowledge, Solicitor?
6 I don't know.

7 MS. USRY: Yes, sir, Your Honor. The basis of
8 her knowledge would be her years and what she's
9 testified to of knowing **Complainant** and observing her
10 behavior over the years. There's a period of time
11 they did live together, that's already in the
12 record, the fall of 2014, as well as simply being an
13 aunt to **Complainant**.

14 THE COURT: Mr. Floyd?

15 MR. FLOYD: Your Honor, could I have just a
16 moment?

17 THE COURT: Yes, sir.

18 MR. FLOYD: It's with reluctance, but I feel I
19 have to move for a mistrial. I think Your Honor has
20 just directed the solicitor how they need to ask the
21 question to get the evidence in.

22 THE COURT: Well, there's a case directly on
23 point tried by the Honorable Alex Macaulay. If you
24 give me a minute, I'll look it up. I'm just trying
25 to understand the basis of knowledge of this

1 witness. Give me a moment to look it up. I can't
2 recall that name. I actually made a copy of it.

3 Do you have any position on the mistrial,
4 Solicitor?

5 MS. USRY: Your Honor, I'm aware of the case
6 you're referring to. I can't remember the name of
7 it. And I believe -- did you say it was Judge
8 Macaulay? I read it, actually, this week or last
9 week in preparation for this case.

10 And in that case, the judge gave specific
11 questions to ask of the witness, and this doesn't go
12 near as far as that case did. And the court, in
13 reviewing that case, found that was not a mistrial
14 or a reason to overturn the case. I just can't
15 remember off the top of my head the name of the
16 case.

17 THE COURT: I want to say it's Nicholson. But
18 these cases rattle around in my brain and bump into
19 each other -- well, not in my brain, but memory.

20 So what is your position then as far as
21 mistrial, Solicitor?

22 MS. USRY: I think it's improper at this point,
23 Your Honor. I don't believe the conversation or the
24 discussion we've had on the record at this point in
25 any way directed our office how to proceed. And,

1 regardless, the case that I can't remember the name
2 of at this point is on point, should that have even
3 happened..

4 THE COURT: That is the case, it's State vs.
5 Nicholson, 623 SE 2d 100. It is a criminal sexual
6 conduct second degree tried in Oconee County by
7 Judge Macaulay.

8 Do you have any other foundation for your
9 motion for mistrial, Mr. Floyd?

10 MR. FLOYD: No, Your Honor.

11 THE COURT: Well, I preface my remarks by
12 saying I have not given any instruction to the
13 solicitor. I was trying to parse out a witness'
14 basis of her knowledge for responding to that
15 question. And if it was based clearly on hearsay,
16 she would not have any personal knowledge.

17 Therefore, lacking personal knowledge, under
18 Rule 602, she would not be competent or would not be
19 allowed to testify in that regard. But it wasn't
20 directed to the solicitor, it was the Court trying
21 to parse out exactly the issue focused on the
22 precise issue I was having to rule on.

23 In this case, Judge Macaulay's is much more
24 precise. During the trial, the solicitor sought to
25 introduce into evidence a composite audiotape

1. recording of conversations between Nicholson, the
2. defendant, and his accuser. It took place 20 and 27
3. December 2001.

4. While the solicitor was attempting to lay a
5. foundation for the admission of the recording, the
6. trial judge, apparently -- I can picture that in my
7. mind too -- dissatisfied with the solicitor's line
8. of questioning, undertook to advise her, the
9. solicitor, outside the presence of the jury, about
10. the particulars that he viewed as necessary steps in
11. the proceedings.

12. Nicholson objected to the, quote, depth and
13. detail, unquote, of the assistance to the State -- of
14. the assistance to the State. After a recess, the
15. solicitor, following the trial judge's advice, made
16. a successful proffer of the State.

17. A grave responsibility rests upon a trial
18. judge.. It is his duty to see to it that justice be
19. done in every case. If it can be done according to
20. the law and if he thinks that the attorney for
21. either party, either from inadvertence or either
22. cause, fails to ask the witnesses the questions
23. necessary and proper to bring out all the testimony
24. which tends to ascertain the truth of the matter
25. under investigation.

1 We can see no legal objection to his, the trial
2 judge, propounding such questions, but, of course,
3 he should do so in a fair and impartial manner and
4 should not, by the form or manner of his questions,
5 express or indicate to the jury his opinion as to
6 the facts of the case and as to the weight or
7 sufficiency of the evidence.

8 In our view, the trial judge did not exceed the
9 limits recognized in Gaskins. The jury was absent
10 from the courtroom when the exchange at issue took
11 place, and, thus, could not have been affected by
12 the trial judge's remarks. Moreover, the trial
13 judge, when explaining to counsel what he required
14 to lay a foundation, did not show any favoritism or
15 otherwise indicate he had an opinion about the case.

16 We, therefore, hold contrary to the defendant's
17 arguments. The instructions did not result in the
18 trial judge's assumption of an adversarial role in
19 the case.

20 I did not give any instructions to the
21 solicitor. I was trying to elucidate in my mind if
22 the witness had personal knowledge, not based on
23 hearsay, that she would not, with a lack of personal
24 knowledge -- as I said previously, she may not
25 testify to the matter unless evidence is introduced

1 sufficiently to support a finding that a witness has
2 personal knowledge of the matter.

3 Quite frankly, I think that shows the Court --
4 not shows the Court. Quite frankly, I try to make
5 sure when I rule I'm focused on the question, the
6 potential answer, the specific objection, and the
7 specific counterargument. I don't want to rule from
8 the hip for or against either of the parties, that
9 being Mr. Heath or the State. I think I would be
10 shirking my judicial responsibilities to rule when I
11 don't have all the circumstances in front of me.

12 If I thought in my mind, well, she can have
13 that personal knowledge from observations and such,
14 that would be inappropriate if it just springs from
15 my mind or if I say, well, her only basis would be
16 hearsay and I ruled on that, I think that would also
17 be inappropriate, so I'm trying to elucidate the
18 boundaries for the objection.

19 If your motion for a mistrial is based on,
20 somehow, in trying to parse out the precise issue
21 that is before the Court, I do not agree. All of
22 this is, of course, conducted outside of the
23 presence of the jury panel.

24 As you know, a mistrial is a drastic remedy
25 based on a manifest necessity of the deprivation of

1 the defendant's or the moving party's -- in this
2 case, the defendant's -- right to a fair trial or
3 somehow violated his constitutional rights. I don't
4 think this rises to such.

5 Further citing Nicholson, in Footnote No. 12,
6 citing People vs. Robertson, 236 Illinois Appellate
7 Court Third, 313, a trial judge may remind the
8 prosecutor of the necessity to prove additional
9 elements, examine witnesses, to clarify material
10 issues, or eliminate confusion and advise counsel of
11 the proper phrasing and questions.

12 Village of Lodi -- L-O-D-I -- vs. McMasters, 31
13 Ohio Appellate Third, 275: During the trial, the
14 judge may, in the interest of justice, act
15 impartially in developing the facts germane to an
16 issue of fact to be determined by the jury.

17 Further, 23 ACJS criminal law Section 1180,
18 noting the trial judge is the, quote, governor of
19 the trial, end quote. And it is therefore, quote,
20 his duty to participate directly in the trial and
21 facilitate its orderly progression and ensure that
22 the issues are clearly presented to the jury.

23 I'm not giving anyone direction, but trying to
24 eliminate confusion both in my mind and,
25 potentially, in the jury's mind and to ensure that

1 the issues are presented to me clearly and presented
2 to the jury clearly. So I would respectfully deny
3 the motion for a mistrial.

4 I would be delighted -- I think I should follow
5 up on this -- since it is a motion for mistrial,
6 consider giving the jury any curative instruction
7 you think that I should give them; however, none of
8 this took place in front of the jury panel. But if
9 you would like for me to consider a curative
10 instruction, although I don't think there's anything
11 to cure, I will be delighted to consider that,
12 Mr. Floyd.

13 MR. FLOYD: No, Your Honor, we don't consider a
14 curative instruction.

15 THE COURT: And I still don't know -- I know
16 what I'm ruling on, but I still don't know the
17 answer to the Court's question to try to rule
18 properly.

19 MS. USRY: Yes, sir, Your Honor.

20 At this time, I would like to proffer the
21 witness' testimony to clarify any issues that we may
22 have before we bring the jury back in.

23 THE COURT: I will allow you to do that. I
24 will also allow the Defense to cross-examine the
25 proffering witness in-camera.

1 You may proceed, Solicitor.

2 MS. USRY: Thank you, Your Honor.

3 IN-CAMERA EXAMINATION

4 BY MS. USRY:

5 Q. Just very briefly on the point that we are now,
6 I'm going to ask the question again, Margie. Are
7 you aware of whether **Complainant** -- excuse me, over the
8 course of your years, did you have the opportunity
9 to become aware of **Complainant**'s feelings towards her
10 father?

11 A. Yes.

12 Q. And did that knowledge play any part, if at
13 all, in reaching out to **Complainant** on April 26th of
14 2015?

15 A. Yes.

16 MS. USRY: Your Honor, that's the extent that
17 I'm going to go into that, and then I'm going to
18 move on to another issue.

19 THE COURT: Mr. Floyd, questions?

20 MR. FLOYD: No questions, Your Honor.

21 THE COURT: Objections, Mr. Floyd?

22 MR. FLOYD: Not to that.

23 THE COURT: That's the extent of the testimony?

24 MS. USRY: On that issue, Your Honor, yes, sir.

25 THE COURT: I think that's admissible.

1 (The jury enters the courtroom at 10:13 AM.)

2 THE COURT: Thank you, Mr. Floyd.

3 Solicitor, you may ask your next question.

4 MS. USRY: Thank you, Your Honor.

5 CONTINUED DIRECT EXAMINATION

6 BY MS. USRY:

7 Q. Margie, over the course of the years and
8 through your observations, did you have an
9 opportunity to become aware of [Complainant]'s feelings
10 towards her father?

11 A. Yes.

12 Q. And did that knowledge and observation play any
13 part, if at all, in your reaching out to her on
14 April 26th of 2015?

15 A. Yes.

16 Q. And prior to April of 2015, did [Complainant] ever
17 live with you?

18 A. Yes.

19 Q. Did Rose Heath ever live with you?

20 A. Yes.

21 Q. Do you know what time frame they would have
22 lived with you during?

23 A. Probably between August and October for about
24 six weeks or so.

25 Q. You say August. Was that previous -- August to

1 October. So --

2 A. 2014. 2014.

3 Q. And did they move back out from living with
4 you? Did they move back out?

5 A. Yes.

6 Q. And where did they reside after moving out from
7 you -- with you?

8 A. [REDACTED]. I think they moved to [REDACTED]
9 right after that.

10 Q. Who lived in the home with them at [REDACTED]
11 [REDACTED] after that?

12 A. Just them three; Rose, Bill, and [REDACTED].

13 Q. Bill is the defendant, Bill Heath?

14 A. Yes.

15 Q. And, Margie, as [REDACTED]'s caregiver, are you
16 aware of whether or not [REDACTED] has had any medical
17 issues with her menstrual cycle?

18 A. Yes.

19 Q. As a result, was she ever prescribed anything?

20 A. Yes.

21 Q. What?

22 A. A birth control pill.

23 Q. And, Margie, as [REDACTED]'s aunt, are you aware
24 of whether DSS was previously involved with

25 [REDACTED]'s family?

1 A. Yes.

2 Q. Did that involvement have anything to do with

3 **Complainant**?

4 A. No.

5 Q. What parties were involved with that DSS?

6 A. Her parents.

7 Q. So that DSS case had to deal with her parents?

8 A. Yes.

9 Q. Or that DSS involvement, I should say?

10 A. Yes.

11 Q. And, Margie, I know **Complainant** currently lives
12 with you.

13 A. Yes.

14 Q. Does Rose currently live with you?

15 A. No.

16 Q. Are you aware of where she currently lives?

17 A. Yes.

18 Q. Who does she currently live with?

19 A. Bill.

20 Q. And that's Bill Heath?

21 A. Yes. Yes.

22 Q. And, Margie, are you aware of the status of the
23 relationship between Rose and Bill at this time?

24 A. They're married.

25 Q. They remain married?

1 A. Yes.

2 Q. And are you aware whether or not your sister is
3 financially dependent upon Bill Heath?

4 A. I think she is because I think she's unemployed
5 at the moment.

6 MS. USRY: Nothing further for this witness,
7 Your Honor.

8 THE COURT: Thank you, Solicitor.

9 Mr. Floyd?

10 MR. FLOYD: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. FLOYD:

13 Q. Ms. Branham, you consider yourself close to
14 **Complainant**?

15 A. Oh, yes.

16 Q. And you've been close to her all her life?

17 A. Yes.

18 Q. And isn't it true that before this time in
19 April of 2015 she never mentioned any kind of sexual
20 abuse by her father?

21 A. Yes.

22 Q. That's true?

23 A. Yes.

24 Q. Now, on this night in question when you were
25 texting with **Complainant**, were you on the phone with

1 someone else?

2 A. No.

3 MR. FLOYD: Excuse me just a minute, Your
4 Honor.

5 BY MR. FLOYD:

6 Q. I want to ask if you can identify something,
7 Ms. Branham.

8 A. Okay. I don't have my glasses with me.

9 THE COURT: You want a pair? I have some.

10 THE WITNESS: Yes, just reading glasses.

11 THE COURT: You want a pair? In fact, I found
12 those this week. I don't even know whose they are.

13 THE WITNESS: Oh, they work good.

14 THE COURT: They were just left somewhere.

15 THE WITNESS: Oh, that's a meeting I go to
16 every Sunday night.

17 BY MR. FLOYD:

18 Q. Pardon?

19 A. That's a meeting I go to every -- support group
20 meeting I go to Sunday evening.

21 Q. Was that the evening of the situation?

22 A. Yes.

23 Q. And what time did it start?

24 A. 7:30. It starts at 7:30 to 9:00.

25 Q. And when was your first text to --

1 A. I don't remember -- to [Complainant]?

2 Q. Uh-huh.

3 A. I'm not sure.

4 Q. It was before 9:00, wasn't it?

5 A. Yeah, I think so. Yeah.

6 Q. So whatever this was, you were involved in this
7 at the same time?

8 A. Yeah.

9 Q. And I think you mentioned that [Complainant] and her
10 mother lived with you and your husband for -- was
11 it, like, August through October or November?

12 A. Yeah, I'm pretty sure.

13 Q. Then they went back to Bill; is that correct?

14 A. Yes.

15 Q. And that was -- includes [Complainant] going back to
16 live with him, didn't she?

17 A. Yes, eventually.

18 Q. Thank you.

19 MR. FLOYD: I have no further questions, Your
20 Honor.

21 THE COURT: Redirect, Solicitor?

22 MS. USRY: Nothing further for this witness,
23 Your Honor.

24 THE COURT: Thank you, Ms. Branham. You may
25 step down.

1 All right. You may call your next witness,
2 Solicitor.

3 MS. USRY: Thank you, Your Honor. The State
4 recalls Sergeant Caleb Black.

5 THE COURT: All right. Sergeant, if you would
6 come back around and join us, please.

7 CALEB BLACK

8 being first duly sworn, testified as follows:

9 THE WITNESS: I do.

10 THE CLERK: Thank you. If you'll have a seat,
11 please.

12 THE WITNESS: Yes, ma'am.

13 THE CLERK: State your name for the record,
14 spelling your last.

15 THE WITNESS: Caleb James Black, B-L-A-C-K.

16 DIRECT EXAMINATION

17 BY MS. USRY:

18 Q. Thank you, Sergeant Black. As you mentioned
19 the day before yesterday when you testified, you
20 were one of the first to respond to this incident on
21 April 26th of 2015?

22 A. Yes, ma'am.

23 Q. And upon arriving on scene, can you remind me
24 how long it took you to arrive on scene?

25 A. The call came in right after 11:20. I

1 self-dispatched about 11:25. We all got there about
2 11:30 PM.

3 Q. And upon arriving on scene, did you approach
4 the door of the residence?

5 A. We did.

6 Q. And when you went to the door of the residence,
7 tell me again who met you at the door.

8 A. Deputy Franklin knocked on the door and the
9 defendant met us at the door.

10 Q. How long was the time between you arrived on
11 scene until you knocked on the door?

12 A. As soon as we got out of our car and walked to
13 the front door. Very short period of time.

14 Q. And then you interacted with the defendant.
15 And what happened next?

16 A. Franklin was the one that actually spoke to
17 him. He pointed down the hallway as being where his
18 daughter's bedroom was at and I walked to her
19 bedroom door.

20 Q. And just remind me again, why had you responded
21 to that incident location?

22 A. Welfare check on **complainant**.

23 Q. And so what was your intention upon approaching
24 the door?

25 A. To check on **Complainant**.

1 Q. And when you went down the hallway to where you
2 were pointed, did you encounter **complainant**?

3 A. I walked down the hall, where he directed her
4 bedroom to be, to her door and I knocked on the
5 door. It was shut.

6 Q. Did anybody answer the door?

7 A. **Complainant** did answer the door.

8 Q. Describe her appearance upon her opening the
9 door?

10 A. Her eyes were red. She was crying. She was
11 obviously upset.

12 Q. Did you explain to her at that point why you
13 were there?

14 A. These type calls, I always introduce myself and
15 start with the opening question, what happened, are
16 you okay. I don't remember which one it was. It
17 would have been one of those two.

18 Q. Did she respond to your question?

19 A. She did.

20 Q. And based on the response to your question, did
21 she indicate, if at all, any criminal activity had
22 occurred?

23 A. She did.

24 MR. FLOYD: I'm going to object to any hearsay.

25 THE COURT: Rephrase your question, Solicitor.

1 MS. USRY: Your Honor, at this point, I'd argue
2 time and place and excited utterance, time and place
3 from previous testimony.

4 THE COURT: Mr. Floyd?

5 MR. FLOYD: Your Honor, number one, I don't
6 think it's an excited utterance. If it is --

7 THE COURT: Step out, please, ladies and
8 gentlemen.

9 (The jury exits the courtroom at 10:25 AM.)

10 THE COURT: All right. Solicitor?

11 MS. USRY: Thank you, Your Honor. As we
12 somewhat started hashing out the other day, the
13 State believes -- first of all, the testimony I was
14 eliciting at this point would be time-and-place
15 information regarding the disclosure of a sexual
16 assault.

17 But while we're at it, I am planning to go into
18 the full information that Miss [Complainant] gave Caleb
19 Black on scene that night, which I would argue would
20 be under the excited-utterance exception. Under
21 Ladner, I believe the statements are going to all
22 fall within the prong test. The statements relate
23 to a startling event; in this case, a sexual assault
24 by the defendant in this case against his daughter,
25 [complainant]. It had just happened that night

1 prior to officers arriving on scene, and that was
2 relayed to Caleb Black.

3 The statement must have been made while the
4 declarant was under the stress of the excitement. I
5 would argue that's absolutely the case in this
6 instance. It's a sexual assault by her father going
7 on over years. This is the first time she's ever
8 talked to law enforcement. It's something that had
9 been going on in her home behind closed doors, and
10 it had happened that night.

11 And the stress of the excitement must be caused
12 by the startling event or condition. And,
13 absolutely, the statements are going to be related
14 to the sexual assault that happened that night.

15 THE COURT: Thank you, Solicitor.

16 Mr. Floyd?

17 MR. FLOYD: Your Honor, there was no kind of
18 testimony the declarant was excited. She was laying
19 on her bed. And this incident, if it did occur,
20 occurred maybe a half hour earlier. So it certainly
21 doesn't come under excited-utterance exception.

22 THE COURT: Thank you.

23 MS. USRY: Your Honor, while this is called an
24 excited utterance, certainly there is testimony
25 about her emotional state that night. She was

1 crying when officers arrived. And there are a
2 number of cases that have held excited utterance can
3 go on, the stress of an incident can go on hours
4 after that incident took place.

5 I believe State v. Blackburn indicates that
6 interval of over one hour up to 11 hours did not
7 necessarily eliminate the stress of the incident
8 that occurred. The State v. Quillian, 263 SC 87
9 concluded that a rape victim's statements to a
10 police when she arrived at the emergency room were
11 admissible. And that was, certainly, after someone
12 gets to the emergency room after a rape, would have
13 been some time after that, among others, Your Honor.

14 THE COURT: Thank you, Solicitor.

15 Anything further, Mr. Floyd?

16 MR. FLOYD: No, Your Honor.

17 THE COURT: I think it's admissible under
18 several exceptions. Looking at State vs. Dennis,
19 321 SC 413, the court indicates: We recognize three
20 exceptions to the rule against hearsay that allows
21 prior consistent statements of a witness to be
22 admitted. First, in criminal sexual conduct cases
23 when the victim testifies, evidence from other
24 witnesses that she complained of the sexual assault
25 is admissible in corroboration limited to the time

1 and place of the assault and excluding details or
2 particulars. That's 401 SE 2d 143.

3 Second, res gestae or excited-utterance
4 exception allows corroborative rape testimony
5 without the time and place exception, State vs.
6 Schumpert, 312 SC 502; third, would not apply in
7 this case, though it would be admissible under res
8 gestae. But, again, Dennis is testimony from a
9 nurse at a hospital remote from the scene of where
10 the incident occurred.

11 Also, 803(1) and 803(2), I find there is
12 testimony of excitement: Red eyes, crying,
13 obviously upset. So it would be admissible.

14 Anything further before we bring in the jury,
15 Solicitor?

16 MS. USRY: Nothing further from the State, Your
17 Honor.

18 THE COURT: Mr. Floyd?

19 MR. FLOYD: Your Honor, we would ask, if it's
20 admissible, that it be limited to just the
21 corroboration of the time and place.

22 THE COURT: That's only under one of the
23 exceptions. That exception does not apply under res
24 gestae or excited utterance based on both case law,
25 State vs. Schumpert, 312 SC 502, and 321 SC 143,

1 Dennis.

2 Anything further?

3 MR. FLOYD: Nothing further, Your Honor.

4 THE COURT: Thank you.

5 (The jury enters the courtroom at 10:32 AM.)

6 THE COURT: Thank you, ladies and gentlemen.

7 Thank you for your patience with the Court.

8 Mr. Floyd, thank you.

9 Solicitor, you may continue.

10 MS. USRY: Thank you, Your Honor.

11 CONTINUED DIRECT EXAMINATION

12 BY MS. USRY:

13 Q. Sergeant Black, you indicated you were talking
14 to **Complainant** and indicating why you were on scene at
15 that time. Did she appear to understand why you
16 were on scene?

17 A. She did.

18 Q. And did you ask her what had occurred that
19 night?

20 A. I did.

21 Q. And did she give you a response?

22 A. She did.

23 Q. Can you tell me what that response was?

24 A. Her first -- the first thing -- her words were
25 her father made me do things that I did not want to

1 do.

2 Q. Did you follow up with that?

3 A. I did. I asked for clarification and what she
4 meant.

5 Q. What did she say?

6 A. At that time she told me that he had rubbed his
7 penis on her.

8 Q. And what happened next?

9 A. At that point, the master deputy was in the
10 room with us, and she asked that he leave because
11 she felt more comfortable with just one person in
12 the room.

13 Q. Did that person leave?

14 A. He did.

15 Q. Did you continue to talk with her?

16 A. I did.

17 Q. Tell me what happened next.

18 A. I asked her if any sexual act had taken place
19 that night.

20 Q. What was her response?

21 A. She told me that in the past her father had
22 physically forced her to perform oral sex on him and
23 that he referred to that as giving him a couple
24 minutes.

25 Q. Did she tell you anything else?

1 A. She told me that that night she had used her
2 mouth on his penis.

3 Q. Was that the extent of what she told you that
4 night?

5 A. At that point I knew that I needed to call
6 major crimes out. I gave her a statement form while
7 we waited on them to come. But, yes, ma'am.

8 Q. Why did you know you needed to call major
9 crimes that night at that point?

10 A. The way the sheriff's department is set up,
11 they're trained to deal with that, that's their
12 full-time priority at the sheriff's department.
13 It's kind of not my purview to deal with it in its
14 entirety in my role at the sheriff's department.

15 Q. When you say deal with it, are you referring to
16 a disclosure of sexual abuse that had just occurred?

17 A. No, I mean the entire followup. The way the
18 sheriff's department works is, road patrol, we go
19 and do the initial investigation, if we can, and
20 then if it's a major incident, we will call the
21 detectives to follow up.

22 Q. So after you called for CSI, what did you do?

23 A. Well, Master Deputy Ashley called for major
24 crimes. I stayed in the room and I provided her a
25 statement form so she could start writing what.

1 happened.

2 Q. Did you ask her personally any further
3 questions at that time?

4 A. I didn't. We just sat in the room, she wrote
5 her statement, and she cried into a pillow.

6 Q. And you stood by, I believe you testified
7 earlier, until Detective McCann arrived on scene?

8 A. Yes, ma'am.

9 Q. Is that also procedure in how you respond to a
10 scene?

11 A. It is.

12 MS. USRY: Beg the Court's brief indulgence?

13 THE COURT: Yes, ma'am.

14 MS. USRY: No further questions, Your Honor.

15 THE COURT: Thank you, Solicitor.

16 Mr. Floyd?

17 MR. FLOYD: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. FLOYD:

20 Q. Deputy Black, did she say anything to you about
21 baby oil?

22 A. No, sir.

23 Q. Did she say anything to you about licking her
24 anus?

25 A. No, sir. My conversation was very limited with

1 her.

2 Q. Thank you. No further questions.

3 THE COURT: Redirect?

4 MS. USRY: Nothing further, Your Honor.

5 THE COURT: Thank you, Sergeant. Thank you for
6 being with us today.

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. Solicitor, you may call
9 your next witness.

10 MS. MAYES: The State calls Sergeant Marlo
11 McCann.

12 THE COURT: All right. Sergeant, would you
13 come around and join us, please.

14 MARLO MCCANN

15 being first duly sworn, testified as follows:

16 THE WITNESS: I do.

17 THE COURT: Thank you. If you'll have a seat,
18 please. State your name and spell your last for the
19 record.

20 THE WITNESS: My name is Marlo McCann,
21 M-C-C-A-N-N.

22 DIRECT EXAMINATION

23 BY MS. MAYES:

24 Q. Can you tell us a little bit about yourself.

25 Where are you employed currently?

1 A. I work for the Lexington County --

2 THE COURT: I thought we already covered all of
3 this --

4 You testified previously in front of the jury?

5 THE WITNESS: Not in front of the jury.

6 THE COURT: That was in-camera?

7 All right. Thank you, Solicitor. I apologize,
8 Solicitor.

9 THE WITNESS: I work for the Lexington County
10 Sheriff's Department and I am currently a sergeant
11 in the major crimes unit.

12 BY MS. MAYES:

13 Q. And how long have you been a major crimes
14 sergeant?

15 A. I've been a major crimes sergeant for about
16 nine months now, but I've been assigned to the major
17 crimes unit for eight years.

18 Q. And when we talk about major crimes within the
19 Lexington County Sheriff's Department, what type of
20 criminal investigations does that entail?

21 A. Major crimes primarily investigates crimes
22 against persons. So it can be robberies, it can
23 homicides, it can be aggravated assaults, simple
24 assaults, sexual assaults. Pretty much anything
25 that doesn't involve somebody stealing your stuff,

1 we investigate that.

2 Q. And so when we talk about sexual assaults,
3 Sergeant McCann, can you tell us whether or not
4 you've received specific training in that regard?

5 A. I have.

6 Q. And what about crimes against children?

7 A. Yes. I worked specifically crimes against
8 children for a few years while I was in major
9 crimes.

10 Q. Tell us what led you to the location of [REDACTED]
11 [REDACTED] on the night of April 26th, 2015?

12 A. At approximately midnight that night, I
13 received a telephone call from my sergeant at the
14 time, who was Robbie Lint who is now lieutenant, to
15 respond to [REDACTED] for a preliminary
16 investigation into a sexual assault.

17 Q. And what occurred once you arrived at the
18 scene?

19 A. When I very first got on scene, I spoke with
20 Master Deputy Ashley, who was out in the front yard.
21 And he kind of back-filled me and briefed me on what
22 had transpired before I got on scene, what they had
23 learned that led up to them calling major crimes to
24 come out.

25 Q. All right. And which officers do you recall

1 already being on the scene once you arrived?

2 A. Master Deputy Ashley, Sergeant Black, Deputy
3 Franklin and his trainee, Deputy Geitz.

4 Q. Now, was the Defendant, William Heath, present
5 at the scene?

6 A. He was inside the residence, yes.

7 Q. And what about [REDACTED] complainant?

8 A. She was in her bedroom with Sergeant Black at
9 that time.

10 Q. Do you recall whether or not the mother of the
11 victim -- the mother, being Rose Heath, was present
12 at the scene?

13 A. She was. She was in the yard waiting in her
14 car. And she's actually the first person other than
15 law enforcement that I made contact with.

16 Q. All right. After you made contact with her,
17 what did you do?

18 A. I asked her a few questions just to kind of get
19 some background. Asked her if she would be willing
20 to provide a statement about what had happened that
21 night, and she did.

22 Once I had finished with Rose, I went to the
23 front door of the residence, knocked on the door,
24 was allowed to come inside, and then I went down the
25 hall to [REDACTED] Complainant's bedroom and met with her and

1 Sergeant Black.

2 Q. Who was in the bedroom with [Complainant] at that
3 time?

4 A. It was just her and Sergeant Black.

5 Q. And that's Sergeant Caleb Black that we just
6 heard from?

7 A. Yes, ma'am.

8 Q. What, if anything, did you observe about the
9 demeanor of [complainant] ?

10 A. When I first walked in, she was sitting on the
11 bed and it was obvious she had been crying. She's
12 kind of fair-skinned. Her face was red, her eyes
13 were red. She was kind of tucked into herself, kind
14 of withdrawn, very quiet, and she seemed scared.

15 Q. And what, if anything, did you do next in terms
16 of this investigation?

17 A. She had already started writing a written
18 statement for Sergeant Black prior to my coming in.
19 When I first got in the room, he introduced us and
20 told me that she had started writing this statement.

21 I told [Complainant], I'm going to read over your
22 statement to kind of get an idea of what you've
23 already told Sergeant Black so I won't need to ask
24 you the same questions over and over. And then I
25 read her written statement. And then I went into

1 some follow-up questions with her to get more detail
2 about some things she had put in her statement.

3 Q. And can you tell us whether or not that's
4 consistent with protocol in such situations?

5 A. It is.

6 Q. Now, what, if anything, did she report about
7 the time or time frame of sexual assault?

8 A. From what --

9 MR. FLOYD: Your Honor, I think we're going to
10 the same -- plowing the same ground here. I think
11 we get into hearsay again, a certain amount excited
12 utterance at this point.

13 MS. MAYES: 801(d)(1)(d), Your Honor.

14 MR. FLOYD: It would just be self-serving
15 bolstering.

16 THE COURT: Step out, please, ladies and
17 gentlemen.

18 (The jury exits the courtroom at 10:42 AM.)

19 THE COURT: You may step down. Do not discuss
20 your testimony with anyone.

21 Court will be in recess ten minutes. Y'all
22 need to tell me what's going to be the objections
23 when you know this is coming. I'm tired of sending
24 the jury in and out. Thank you.

25 (Short break.)

1 MR. FLOYD: Your Honor, I believe we're just
2 getting into request for hearsay testimony, the
3 alleged statement the victim gave the officer.

4 THE COURT: All right. Solicitor?

5 MS. MAYES: Yes, sir, Your Honor. This is
6 limited to time and place under 801(d)(1)(d).

7 THE COURT: Mr. Floyd?

8 MR. FLOYD: If it's limited to time and place,
9 then I think it's admissible.

10 THE COURT: Thank you.

11 Bring us our jury, please.

12 (The jury enters the courtroom at 10:56 AM.)

13 THE COURT: Y'all didn't know this was an
14 exercise class. Thank you again for your patience
15 with the Court.

16 Thank you, Mr. Floyd.

17 Solicitor, you may ask your next question.

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

19 BY MS. MAYES:

20 Q. So, Sergeant McCann, you were in what location
21 of the home?

22 A. Complainant's bedroom.

23 Q. And speaking with whom?

24 A. Complainant.

25 Q. And what, if anything, did she report about the

1 time or time frame of the sexual assault?

2 A. I was able to determine that we were dealing
3 with a very small timeframe window from when the
4 assault had occurred to when law enforcement arrived
5 on scene, and that there were multiple incidents.

6 Q. All right. With the last or most recent being
7 when?

8 A. That night.

9 Q. And what, if anything, did you learn regarding
10 the place or location of that last assault?

11 A. That night it had occurred in the living room
12 and the defendant's bedroom.

13 Q. Right. What, if anything, did you do next --
14 MR. FLOYD: Your Honor, may we approach the
15 bench a moment?

16 THE COURT: Yes, sir.

17 (Sidebar conference.)

18 THE COURT: Thank you, Mr. Floyd.

19 Thank you, Solicitor.

20 BY MS. MAYES:

21 Q. What action did you take next, Sergeant McCann,
22 after your initial conversation with Miss [Complainant]?

23 A. Once I realized that we were dealing with such
24 a small window of time, I decided at that point that
25 I would stop my interview with [Complainant] and meet with

1 her again at a later time because it was very
2 important that she go on ahead to the hospital at
3 that point to get her sexual assault exam done.

4 Q. And when you say that that was very important,
5 what, if anything, can you tell us about that aspect
6 of the investigation?

7 A. The sooner we can get a sexual assault victim
8 to the hospital to have that exam done, the more
9 likelihood we have of recovering evidence that was
10 left behind as a result of a sexual assault. If the
11 victim has had an opportunity to bathe, shower,
12 change clothes, wash their clothes, any of that
13 evidence is going to be gone at that point.

14 Q. All right.

15 A. Since we were dealing with such a small window
16 of time, there was a likelihood that some of that
17 would still be on her person once she got to the
18 hospital, because her body is going to tell us more
19 than anything else at that scene.

20 Q. Did you allow her to change clothes?

21 A. No. She did not change clothes.

22 Q. And what arrangements were made for her to get
23 to the hospital?

24 A. I spoke with Rose and Rose decided to drive her
25 to the hospital instead of having her transported up

1 there by ambulance.

2 Q. All right. And which hospital was this?

3 A. She went to Lexington Medical Center.

4 Q. Now, as she went on to the hospital, did you
5 remain at the scene?

6 A. I did.

7 Q. What happened next?

8 A. Well, prior to her leaving while she was
9 getting her stuff together, because I told her to
10 take a change of clothes and things like that, I
11 went ahead and began my interview with Mr. Heath.

12 Q. And tell us about that. How did you go about
13 approaching him for an interview?

14 A. I asked Sergeant Black and Deputy Franklin to
15 have him step outside to speak with me so Complainant
16 could get out of the house and on her way.

17 Q. And how do you go about doing that?

18 A. As far as my interview?

19 Q. Yes.

20 A. Initially, I introduced myself to Mr. Heath, I
21 asked him a couple questions and then I advised him
22 of his Miranda.

23 Q. I'm going to show you a document and ask you
24 whether or not you recognize it.

25 A. I do. This is a Lexington County Sheriff's

1 Department advice of rights form.

2 MS. MAYES: Beg the Court's indulgence.

3 THE COURT: Yes, ma'am.

4 BY MS. MAYES:

5 Q. Okay. I'm going to show you this document and
6 ask you whether or not you recognize it.

7 A. I do.

8 Q. And how so?

9 A. It is also a Lexington County Sheriff's
10 Department Advice of Rights form. This is the
11 original form that I used that night.

12 Q. Okay. And how is it that you go about advising
13 someone of their Miranda warnings or Miranda rights?

14 A. Typically what I'll do when I get ready to
15 interview somebody is I'll tell them, you know,
16 before we go any further in this interview, I'm
17 going to go ahead and give you your Miranda rights.
18 I'll use this form as kind of a guide.

19 And I'll tell the person, I'm going to read
20 each one of your rights to you, and after I read
21 that to you, make sure you understand what I've just
22 read to you, and if you understand what I have just
23 read, I have them initial out to the side that they
24 understood that right as I read it to them.

25 Q. So I'm going to ask you to read slowly into the

1 record, slow enough for the court reporter to
2 follow, exactly what you advised Bill Heath of that
3 night.

4 A. Okay. Before we ask you any questions, you
5 must understand your rights. You have the right to
6 remain silent. Anything you say can and will be
7 used against you in a court of law. You have the
8 right to talk to a lawyer for advice before we ask
9 you any questions and to have him or her present
10 with you during questioning.

11 If you have no money for lawyer fees, the Court
12 will appoint one to represent you without cost to
13 you if you wish. If you decide to answer questions
14 now without a lawyer present, you will still have
15 the right to stop answering questions at any time.
16 You also have the right to stop answering questions
17 at any time until you talk with a lawyer.

18 And then beneath that, it says: I have read
19 this statement of my rights and I understand what my
20 rights are.

21 Q. And does it contain his signature at any
22 location?

23 A. It does. Down at the bottom under where it
24 says I have read this statement of my rights and I
25 understand what my rights are, his signature

1 appears.

2 MS. MAYES: This would be State's 26 for
3 evidence, Your Honor.

4 THE COURT: Mr. Floyd?

5 MR. FLOYD: No objection, Your Honor.

6 THE COURT: State's 26 in evidence without
7 objection.

8 (State's Exhibit No. 26 admitted into
9 evidence.)

10 BY MS. MAYES:

11 Q. So after he's advised of his rights, where are
12 you exactly located in terms of the scene?

13 A. We were sitting in my vehicle. I was in the
14 driver's seat, he was in the front passenger's seat,
15 and Sergeant Black was sitting in the back seat.

16 Q. At any point in time did you threaten him in
17 order to obtain a statement?

18 A. No.

19 Q. Or was he coerced in any way in order to
20 provide a statement?

21 A. He was not.

22 Q. Was he promised anything in order to obtain a
23 statement?

24 A. No.

25 Q. I'm going to start here at the top. What time

1 is this? .

2 A. 2:02 AM.

3 Q. And as we look here along each of the rights,
4 what are we seeing here?

5 A. Mr. Heath's initials.

6 Q. And where it says I have read this statement of
7 my rights and I understand my rights, whose
8 signature is contained here?

9 A. William Heath.

10 Q. All right. Now, did he appear to understand
11 your communications with him?

12 A. He did.

13 Q. Was there any evidence that he had consumed
14 alcohol?

15 A. I could smell a little bit of alcohol on his
16 breath, but he was coherent, his speech wasn't
17 slurred; I could understand him perfectly fine, he
18 could understand me.

19 Q. Now, in addition to the written waiver, can you
20 tell us whether or not he agreed to speak with you
21 verbally?

22 A. He did.

23 Q. And, verbally, did he waive any rights?

24 A. He did.

25 Q. Do you have with you any notations regarding

1 that communication with him?

2 A. I do. After I gave Mr. Heath Miranda, I
3 informed him of the allegations that had been made
4 against him that night. Mr. Heath said that he did
5 not know why [Complainant] would say something like that.
6 He said he loved both of his children, would never
7 do anything to hurt either of them.

8 He said that night he had talked to [Complainant]
9 about helping out more around the house because she
10 stays shut up in her bedroom. I asked him where
11 they had had that conversation and he said they had
12 been sitting on the couch.

13 I asked him what happened after that. He said
14 he had gone to his bedroom and [Complainant] had gone to
15 her room. I then asked William if he had been
16 watching porn on his iPad that night and he said he
17 does watch porn on the iPad sometimes, but he didn't
18 directly answer me as to whether he had watched it
19 that night or not.

20 Q. Did you ask him specifically as about that
21 night?

22 A. I did.

23 Q. And did he give you a direct answer, yes or no,
24 as to that night?

25 A. No.

1 Q. Now, at any point in time did you have an
2 opportunity to observe an iPad in the residence?

3 A. I did.

4 Q. Where did you observe that?

5 A. On Mr. Heath's bed in his bedroom.

6 Q. Did you have a chance to walk the residence at
7 some point during the night?

8 A. I did.

9 Q. Can you tell us, Sergeant McCann, whether or
10 not this photo, State's Exhibit 9, accurately
11 depicts the scene that night?

12 A. It does.

13 Q. Is that the location you recall seeing the
14 iPad?

15 A. Yes, ma'am.

16 Q. So what action did you take next?

17 A. After I spoke with Mr. Heath was when Sergeant
18 Lint and Sergeant Black got the swabs from him.
19 They went back inside the house with him and they
20 got the swabs from him. I stayed out in the yard
21 with Deputy Franklin.

22 After the interviews with **Complainant** and William
23 and the evidence found on scene that night, a
24 determination was made to place him under arrest.

25 Q. And what happened next?

1 A. Once Sergeant Lint advised that they had
2 completed the collection of swabs, I walked back
3 inside the residence and advised William he was
4 under arrest for criminal sexual conduct.

5 Q. Was he taken into custody at that point in
6 time?

7 A. He was, by Deputy Franklin.

8 Q. Where did you go following that action?

9 A. Into the bedroom where the iPad was.

10 Q. What action was taken next?

11 A. The iPad was seized.

12 Q. That's the same iPad that's been previously
13 discussed in this case as State's Exhibit 14?

14 A. Yes.

15 Q. All right. Now, you mentioned the swabs that
16 were taken of Bill Heath from Lieutenant Lint. Were
17 you familiar with that process as well?

18 A. Yes.

19 Q. Can you tell us whether or not that item, being
20 the suspect's standard swabs from the defendant,
21 were ultimately submitted to the State Law
22 Enforcement Division?

23 A. They were, at my request.

24 Q. What action did you take after leaving the
25 scene?

1 A. I went to the hospital and met with Complainant.

2 Q. And what happened there?

3 A. I basically went in and explained to her pretty
4 much what she could expect next from the exam, told
5 her that, you know, a nurse was going to come in and
6 she was going to ask her a lot of personal,
7 in-detail questions, and she needed to tell the
8 nurse exactly what had happened.

9 Q. Do you remember the type of clothing that she
10 was wearing?

11 A. She had on a pair of black, like, legging-type
12 pants and a gray hoodie. I don't remember what kind
13 of shoes she had on though.

14 Q. So you remember they were leggings of some
15 type?

16 A. Yeah.

17 Q. And, ultimately, that sexual assault
18 examination kit, can you tell us whether or not it
19 was submitted to the Lexington County Sheriff's
20 Department as evidence?

21 A. It was.

22 Q. And that was State's Exhibit 25 that we saw
23 yesterday?

24 A. Yes.

25 Q. Can you tell us whether or not it was submitted

1 to the State Law Enforcement Division for analysis?

2 A. Yes. I actually requested that the sexual
3 assault kit and the swabs from Mr. Heath be sent
4 over together.

5 Q. All right. Now can you tell us -- you
6 mentioned that you spoke with Rose Heath at the
7 scene.

8 A. Yes.

9 Q. Can you tell us whether or not Rose Heath was
10 charged in this investigation?

11 A. Eventually, she was.

12 Q. With what?

13 A. Intimidating a State's witness.

14 Q. I'm going to show you what is State's Exhibit
15 14 and ask you what's contained along with it.

16 A. That's the iPad that we seized off the bed in
17 the house that night, off William's bed, and a
18 search warrant for an extraction on the iPad.

19 Q. All right. And who obtained that search
20 warrant?

21 A. I obtained the search warrant and then I turned
22 it over to Detective Mike Phipps, who is our CSI
23 technician who does all the electronic analysis.

24 Q. Is that something you do yourself?

25 A. The analysis?

1 Q. Right.

2 A. No.

3 Q. You have someone at the sheriff's department
4 trained in that regard?

5 A. Yes. He's been specifically trained on how to
6 do extractions.

7 Q. From electronic devices?

8 A. Yes.

9 MS. MAYES: Nothing further.

10 THE COURT: Thank you, Solicitor.

11 Mr. Floyd?

12 MR. FLOYD: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. FLOYD:

15 Q. Sergeant McCann, you questioned Mr. Heath that
16 night, did you not?

17 A. I did.

18 Q. And after you advised him of his rights?

19 A. Uh-huh.

20 Q. As we saw?

21 A. Yes, sir.

22 Q. And would you agree with me that he denied he
23 did anything criminally wrong?

24 A. He did.

25 Q. And he fully cooperated with you?

1 A. He was cooperative, yes, sir.

2 Q. And he fully cooperated with your request for
3 samples?

4 A. I didn't make that request of him. But he was
5 cooperative and gave them, yes.

6 Q. Thank you. No further questions.

7 THE COURT: Redirect, Solicitor?

8 MS. MAYES: Nothing further, Your Honor.

9 THE COURT: Thank you, Sergeant. You may step
10 down.

11 Solicitor, you may call your next witness.

12 MS. MAYES: The State calls Courtney Thompson.

13 THE COURT: Yes, if you'd come around and join
14 us, please.

15 COURTNEY THOMPSON

16 being first duly sworn, testified as follows:

17 THE WITNESS: I do.

18 THE CLERK: Thank you. If you'll have a seat
19 and state your name, please, for the record.

20 THE WITNESS: My name is Courtney Thompson.

21 DIRECT EXAMINATION

22 BY MS. MAYES:

23 Q. And, Ms. Thompson, tell us where you are
24 employed.

25 A. I'm employed with the South Carolina Law

1 Enforcement Division, also referred to as SLED.

2 Q. I'll need you to speak up just a little bit
3 louder or pull the microphone forward.

4 A. Okay.

5 Q. How long have you worked at the State Law
6 Enforcement Division?

7 A. I've worked there about five and a half years.

8 Q. And, specifically, what type of work do you do
9 at the crime lab at the State Law Enforcement
10 Division?

11 A. I'm a forensic serologist in the DNA casework
12 department.

13 Q. What is your educational background that led
14 you to become a forensic serologist?

15 A. I have a Bachelor's Degree in forensic science
16 from Southern Wesleyan University.

17 Q. And specifically in the field of serology
18 analysis, what type of training have you received?

19 A. I was trained using SLED's inhouse training
20 program under a DNA analyst. They taught me all the
21 methods of testing that I employ, as well as things
22 likes understanding chain of custody, how to
23 properly handle items of evidence, report writing,
24 and courtroom testimony.

25 I was also put through a four-part test before

1 I was certified for independent casework. This
2 included a written exam, an oral exam, a mock case,
3 as well as a mock trial. And all that had to be
4 passed prior to being certified for independent
5 casework.

6 Q. So how many years, Agent Thompson, have you
7 worked specifically in the lab doing either evidence
8 processing or serology analysis?

9 A. It has been five and a half years as when I was
10 in training. I was training with an analyst,
11 actually, working real cases with him.

12 Q. Is it possible for you to estimate how many
13 such cases you have worked as an analyst in the lab?

14 A. I'd say it's probably several hundred at this
15 point. I don't have an exact count by numbers.

16 Q. Have you testified as an expert in serology
17 analysis?

18 A. Yes, I have.

19 Q. Is it possible to estimate how many times
20 you've testified as an expert in the field of
21 serology analysis?

22 A. I've testified approximately 15 times now.

23 MS. MAYES: Your Honor, at this time the State
24 would offer Courtney Thompson in the field of
25 forensic serology.

1 MR. SPANGLER: No objection, Your Honor.

2 THE COURT: Again, ladies and gentlemen, you've
3 heard my charge on expert witnesses. Agent Thompson
4 will be qualified as an expert in the field of
5 forensic serology to give opinion testimony in that
6 field and the basis for holding those opinions,
7 whatever weight and value you deem appropriate that
8 you apply to the facts as you find them to be.
9 Thank you.

10 Solicitor, you may proceed.

11 BY MS. MAYES:

12 Q. Now, specifically as to SLED lab number
13 L15-10454, can you tell us whether or not any
14 evidence was submitted to you for analysis?

15 A. Yes. I did examine some items of evidence in
16 this case. That included a sexual assault kit,
17 several swabs, and then a pair of underwear.

18 Q. I'm going to show you what is State's Exhibit
19 25, being a sexual assault evidence collection kit,
20 and ask you whether or not you recognize this item.

21 A. I'm going to open it and look inside and go
22 through the contents, that's why I like to wear some
23 gloves.

24 Yes. This appears to be the sexual assault kit
25 that I performed serology analysis on.

1 Q. Now, when it is originally submitted to the
2 State Law Enforcement Division, are you aware of the
3 policies and procedures regarding submissions?

4 A. Yes, I am.

5 Q. And how does it originally arrive?

6 A. A sexual assault kit, the way it is packaged is
7 it starts out in this cardboard box, and the reason
8 being, there are several different types of pouches
9 within the box that can contain evidence that might
10 need to go to different sections of the lab.
11 Typically the sections include either DNA analysis
12 or toxicology.

13 And at the time, the evidence is brought into
14 the lab and then an evidence control technician will
15 assist in logging in, basically submitting the CSC
16 kit. In the presence of the submitting officer, the
17 seals on the box will be broken, and the respective
18 pouches are also sealed, and those are separated
19 that way they can go to the correct departments for
20 analysis.

21 And after they are submitted, they are sealed
22 up inside a heat-sealed pouch. Usually this is done
23 by the submitting officer of that agency. And then
24 they are placed in our secure evidence storage
25 location until an analyst is prepared and ready to

1 pick it up and take it into their custody and work
2 it.

3 Q. So you mentioned the seal. Can you show us on
4 the box where the seal is contained?

5 A. On the box, the seal, there's evidence tape
6 here and here.

7 Q. And according to SLED protocol, who actually
8 breaks the seal?

9 A. That should be the submitting officer of that
10 agency.

11 Q. All right. And what happens next?

12 A. After the evidence is logged in and its stored
13 there, it remains sealed and in a sealed state until
14 I take it into my custody, at which point I will
15 ensure that the evidence seals are proper, still
16 proper, and intact. And then I would open up the
17 items of evidence and begin inventorying them just
18 to see what was submitted so I can know how to test
19 it.

20 Q. Now, what's usually contained in a sexual
21 assault kit?

22 A. A normal sexual assault kit, it can actually
23 vary depending on what is collected. The materials
24 that are provided are standardized sets of things
25 like swabs and special paper bags for holding items

1 of evidence such as underwear or clothing.

2 And then we have paper envelopes that can
3 contain swabs or hair, for instance, pubic hair
4 combings. It just depends on what is collected by
5 the sexual assault nurse for each specific assault
6 case. For the most part, it's usually a collection
7 of swabs, and then sometimes a pair of underwear is
8 also submitted.

9 Q. Can you tell us whether or not there was a pair
10 of underwear in this case?

11 A. Yes, there was a pair of underwear submitted.

12 Q. Let me show you an item and ask you whether or
13 not you recognize this? State's 23.

14 A. I do recognize this item. Per our protocols
15 and policies, every time an item of evidence is
16 being handled, an examiner is required to put a
17 unique SLED lab number as well as the item number it
18 was assigned. My initials and then the date that I
19 examined the item on the outer packaging.

20 And then after I've completed looking at a
21 particular item, it's wrapped in the paper that it
22 was actually processed on and it just keeps all our
23 evidence together. And that packaging is also
24 labeled the same way.

25 Q. All right. And can you tell us, in addition to

1 your work with the sexual assault kit or evidence
2 collection kit, do you do any work with suspect
3 standards that are submitted?

4 A. I do. I usually just prep them for DNA
5 analysis, which means I will open them and see what
6 is submitted, and then I will cut them and put them
7 into a small tube so that it will be sent up and be
8 ready for the analyst to take them into custody and
9 start performing their analysis on them.

10 Q. And just to clarify, are they submitted with
11 the sexual assault kit or separately?

12 A. They are, most of the time, submitted
13 separately. In this case, they were submitted
14 separately.

15 Q. Okay. I'm going to show you a buccal swab kit
16 and ask you whether or not you had any contact with
17 this item.

18 A. I did. This is -- I can tell just because I've
19 also sealed it and dated it whenever I took it into
20 my custody. I cut it and then I sealed the evidence
21 back up again to retain its integrity.

22 MS. MAYES: This would be State's 27 for
23 evidence, Your Honor.

24 MR. SPANGLER: No objection.

25 THE COURT: State's 27 is in evidence without

1 objection.

2 (State's Exhibit No. 27 admitted into
3 evidence.)

4 Q. Who is the person whose buccal swabs are
5 contained in this kit?

6 A. Based off the chain of custody that I have,
7 these buccal swabs are attributed to William Heath.

8 Q. Now, how do you go about making any decisions
9 as a forensic serologist about what type of testing
10 you want to do on which items?

11 A. The account from the victim plays a very large
12 role in how we proceed with testing. I will read
13 the scenario that's provided when the victim gives
14 an account at the hospital, and then based off of
15 that and a standardized form that the SANE nurse
16 will fill out, I use that to determine what types of
17 testing appears to be most probative based off the
18 information I know.

19 Q. And in this case did you review the SANE
20 protocol form or report from the nurse, Brigitte
21 Deguzman?

22 A. Yes, I did.

23 Q. And that involved the examination done on
24 **complainant** ?

25 A. Yes.

1 Q. What decision did you make about the type of
2 testing to be done in this case?

3 A. In this case I did screen several sets of swabs
4 for the presence of semen, and then I examined her
5 underwear for the presence of semen as well. And
6 then I also took a cutting from a pair of that
7 underwear and proceeded actually with saliva testing
8 as semen screening was negative.

9 Q. Let me stop you right there. As a serologist,
10 what type of science is that? What do you study?

11 A. The practice of serology is an attempt to
12 identify different kinds of bodily fluids, the
13 reason being is bodily fluids are great sources of
14 DNA. So I'm attempting to locate bodily fluids that
15 could help, basically, be a good source of DNA for a
16 DNA analyst.

17 Q. And semen, as you mentioned it, is contained in
18 what bodily fluid?

19 A. Well, semen is a bodily fluid and sperm cells
20 are located inside semen.

21 Q. Is that present in ejaculate, for example?

22 A. It should be. I mean, there are various
23 factors that could contribute to that but, yes,
24 that's a common product of ejaculation.

25 Q. And then you mentioned in addition to checking

1 for ejaculate or semen, you also checked for another
2 bodily fluid. What was that bodily fluid?

3 A. I screened the underwear also for saliva.

4 Q. I want to show you an item and ask you whether
5 or not you recognize this.

6 A. Yes. This is a cutting from the pair of
7 underwear that I examined in this case.

8 Q. You previously identified State's Exhibit 23.
9 How do you go about making that determination where
10 to do a cutting?

11 A. The process that I went through with processing
12 this pair of underwear is we first -- I first used
13 what is called an alternate light source to help
14 identify areas of fluorescence. The reason I use
15 this is because bodily fluids such as semen and
16 saliva are very florescent under this type of light
17 and it can help me get an idea of where I should be
18 testing.

19 After I find the areas on the underwear that
20 are fluorescent, I then used my semen screening test
21 on it. The areas that I screened for semen were
22 negative; however, I did cut a cutting out here in
23 the rear of the underwear and proceeded with that
24 for saliva testing.

25 MS. MAYES: Your Honor, if we may have

1 permission to break the seal?

2 THE COURT: Yes, ma'am.

3 Any objection?

4 MR. SPANGLER: No objection, Your Honor.

5 BY MS. MAYES:

6 Q. You said previously you recognized this item?

7 A. Yes.

8 Q. Does it contain your signature?

9 A. It does.

10 Q. And this item is a cutting from what article of
11 the clothing?

12 A. This is a cutting from item 4, the underwear.

13 Q. The underwear that we just looked at?

14 A. Yes.

15 MS. MAYES: This would be State's 28 for
16 evidence, Your Honor.

17 MR. SPANGLER: No objection.

18 THE COURT: State's 28 is in evidence without
19 objection.

20 (State's Exhibit No. 28 admitted into
21 evidence.)

22 THE WITNESS: This is the cutting that I took
23 from the rear of the underwear.

24 BY MS. MAYES:

25 Q. Now, are you able to keep track with what would

1 be the interior of the underwear and what would be
2 the exterior of the underwear, meaning which part
3 was against the skin and which part would have been
4 against clothing?

5 A. Yes. When I was using the alternate light
6 source to identify an area of fluorescence, the side
7 of the underwear that I see the fluorescence on is
8 the side where I circled it. Because when I shut
9 the light off, I actually can't see that stain
10 anymore, so I circled the interior rear of the
11 underwear.

12 Q. That would be interior rear of the underwear?

13 A. Yes. That's correct.

14 Q. And you mentioned that you have a screening
15 process for the presence of saliva?

16 A. Yes. It is one of the tests that we have to
17 identify different bodily fluids. And in this case,
18 the presumptive testing for saliva in the cutting --
19 from the cutting of underwear was positive.

20 Q. Positive for the presence of saliva?

21 A. Yes. It tested presumptively positive for the
22 presence of saliva.

23 Q. What do you do next?

24 A. After the testing is complete on the sexual
25 assault kit, I then prepped items of evidence that

1 needed to be forwarded up to the DNA section. And I
2 just take small portions of either the swabs or the
3 cuttings and I put them into a small tube for the
4 DNA analyst. And then I seal up the items of
5 evidence that are moving to the DNA section and then
6 return them to evidence control where they will be
7 securely stored until the DNA analyst is ready to
8 begin their analysis.

9 Q. So specifically as to that screen being
10 positive for saliva, the next step is to have it
11 analyzed to determine what?

12 A. It would be analyzed to, hopefully, determine
13 if a DNA profile can be developed from it.

14 Q. And then in addition you mentioned other
15 components of that sexual assault kit, such as pubic
16 hair combings. Where do they go?

17 A. The pubic hair combings, what I do with them is
18 I evaluate the hair that I found upon opening that
19 envelope up. And I have a special sort of
20 microscope that can actually help me identify hair
21 root. And if a hair has a root attached to it, I
22 will forward the hair up for DNA analysis.

23 The reason why I do this is because the root is
24 where the material is located that the analyst needs
25 in order to develop a profile. If a hair does not

1 have any root attached to it, it cannot be forwarded
2 for DNA analysis.

3 Q. So in this particular case, were the pubic hair
4 combings from [REDACTED] 's exam submitted on to
5 the DNA lab?

6 A. Yes. I sent two hairs from her pubic hair
7 combings on to the DNA section.

8 Q. All right. Now, are you familiar with whether
9 her kit also contained swabs from the genital
10 region, including a rectal swab?

11 A. Yes, a rectal swab was submitted.

12 Q. Can you tell us whether or not you discovered
13 any hair affiliated with her rectal swab?

14 A. I did. Whenever I was examining that swab, if
15 I find hair attached to the swab, I will look at it
16 for presence of root. And if it does have a root
17 attached to it, I will send it on for further
18 analysis.

19 Q. And did you do so in this case?

20 A. Yes, I did.

21 Q. So just to clarify, there was hair from the
22 combings that you sent to DNA?

23 A. Uh-huh.

24 Q. And then also a hair from the rectal swab that
25 was sent to DNA?

1 A. That is correct.

2 Q. Did that complete your involvement in this
3 case, Agent Thompson?

4 A. Yes, it did.

5 MS. MAYES: I think there's nothing further at
6 this time, Your Honor. The cutting, Exhibit 28, is
7 in evidence.

8 THE COURT: Thank you, Solicitor.

9 Mr. Spangler?

10 MR. SPANGLER: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. SPANGLER:

13 Q. Good morning, Agent Thompson.

14 A. Good morning.

15 Q. I want to talk a little bit first just about
16 what you do over at SLED. So your job is actually
17 just to find bodily fluids in the samples that you
18 get?

19 A. Yes, that is mostly what I do. And then I also
20 look at items of evidence that are even larger than
21 swabs, such as underwear, for possible bodily
22 fluids. And if a case is in need of other services,
23 such as collection of different types of DNA off of
24 larger items, I can do that. I can process larger
25 items of evidence for possible ownership or touch

1 DNA. I did not do that in this case, but that is a
2 part of my routine job duties.

3 Q. Those three major bodily fluids that we're
4 talking about typically are blood, semen, or saliva;
5 is that right?

6 A. That is correct.

7 Q. And you have specific tests that you do for
8 each of those things, each of those bodily fluids?

9 A. Yes.

10 Q. In this case, we're just dealing with testing
11 for semen or saliva?

12 A. Yes, that's correct.

13 Q. The testing for semen, there are different
14 things you can do. You can do the acid phosphate
15 test?

16 A. Yes, acid phosphate test. Yes.

17 Q. Or you can do what's called a p30 test,
18 correct?

19 A. That is correct.

20 Q. And both of those tests would indicate a
21 positive result for -- it's looking for a sperm; is
22 that right?

23 A. Both of those tests test for components that
24 are found in very hard concentrations of male
25 seminal fluid. And, ultimately, the goal is to

1 identify semen. After a p30 test is performed, we
2 also do what's called a microscopic examination of
3 samples that are submitted and we try and look to
4 identify sperm cells as well.

5 Q. And that's when you actually take the sample
6 and put it under the microscope and you're looking
7 at the slide?

8 A. That's correct. Essentially, a small amount of
9 the sample is loaded onto a smear. And then this
10 little stain -- I'm sorry. This little piece of
11 glass, it's stained with two different types of
12 stain. And the only thing that it does is it helps
13 color sperm heads so that they're more easily
14 identified under a microscopic examination.

15 Q. Now, we're talking about semen and sperm. But
16 these tests can also show pre-ejaculate fluid; is
17 that right?

18 A. There is a possibility of that. The components
19 that we test for, they can also be found in
20 pre-ejaculate.

21 Q. So just to confirm, that p30 test and the acid
22 phosphate test sometimes can show you, even if a
23 person didn't ejaculate, it would still give you a
24 positive result?

25 A. It is possible for that to happen.

1 Q. Now, when we're dealing with saliva, it's a
2 different type of testing, right?

3 A. That's correct.

4 Q. Then we're dealing with what's called alpha
5 amylase testing?

6 A. That's correct, alpha amylase.

7 Q. And what you're doing in that test, you're
8 actually taking the swab, you put it on a gel, an
9 iodine gel; is that right?

10 A. Our method is actually a little bit different.

11 Q. Okay. Tell us about your method.

12 A. The method that is used at SLED, it is the same
13 component. We are testing for the component alpha
14 amylase; however, what I do is a small part of the
15 swab that is submitted, it will be cut, and then we
16 do what's called, basically, an extraction where we
17 let it soak. And it just helps release what is
18 trapped on that swab that dried there.

19 And then there is a test, basically, that we
20 use -- we call it a card-based test. And the way
21 that it works is -- it looks similar to a pregnancy
22 test. The chemistry behind it is different, but in
23 the way it reads results is, a certain number of
24 lines indicates a positive test and a certain number
25 of lines indicates a negative test, and based off

1 the number of lines that appear after we put that
2 extraction onto this card test, it will give us our
3 results. And then we make decisions from there
4 based off the results.

5 Q. So just to be clear, when you do have something
6 you think is saliva, you don't actually put the item
7 of evidence in the testing machine; what you do is
8 extract a piece, put it on that card, and then the
9 card runs through the machine?

10 A. Yes. The card doesn't even actually have to
11 run through a machine. It just runs -- when I say
12 runs, it just -- the liquid travels up the test
13 strip. And then as the -- basically, as the
14 chemistry that is created in this test is working,
15 lines will develop that will indicate a positive or
16 negative result.

17 Q. Now, Agent Thompson, you talked a little bit
18 before about this. But there is something called
19 touch DNA. That's something you can look for in
20 certain cases?

21 A. It's something that I can collect, essentially.
22 I don't look for it since I'm not the DNA analyst.
23 But I can process items of evidence for touch DNA
24 collection if it is requested or is probative to a
25 case.

1 Q. And what we're talking about when we're talking
2 about touch DNA is the difference between a direct
3 transfer of saliva or semen or an indirect transfer
4 of saliva or semen; is that right?

5 A. Touch DNA is, what we refer to it, actually, is
6 more about how items of evidence are handled; for
7 instance, handling a cell phone. When you handle
8 that cell phone, you could potentially shed skin
9 cells and that can be left behind. And then if that
10 cell phone is submitted as evidence, it could be
11 swabbed and possibly run to see if, you know, the
12 person who handled said cell phone, if you can
13 develop a possible profile from it. It doesn't have
14 to do with bodily fluids.

15 Q. Okay. So when we're talking about bodily
16 fluids, then we're talking about direct or indirect
17 transfer of those fluids?

18 A. Yes.

19 Q. So you would agree with me there's a difference
20 between direct transfer of saliva or semen and
21 indirect of those fluids?

22 A. That is possible, yes.

23 Q. So an example of direct transfer of saliva is
24 if you kiss somebody, your saliva would likely go
25 onto their lips or their mouth?

1 A. Yes.

2 Q. Indirect transfer of saliva would be, say, I
3 sneeze on this podium, Mr. Floyd comes up and leans
4 on it, my saliva could end up on his jacket,
5 couldn't it?

6 A. Yes, that is a possibility.

7 Q. It could also be found if people are, say,
8 living in the same house. Maybe somebody sneezes or
9 coughs on a couch. If somebody sits down on it,
10 they could stand up and have that saliva on them?

11 A. That's correct. The transfer would have to be
12 rather quick as once a stain or bodily fluid has
13 dried, it's very stable and unlikely to have been
14 moved from where it was placed. So if any transfer
15 would occur, it would probably need to be while the
16 fluid is still in more of a wet state.

17 Q. But it is possible for fluid -- let's say I
18 sneezed on a couch, somebody sits down 10 or 15
19 minutes later, they could have my saliva on them?

20 A. That's possible.

21 Q. And in that case, I never touched that person,
22 did I?

23 A. No. It would be considered an indirect
24 transfer.

25 Q. And that's something that would show up -- when

1 we're talking about your testing, presumptive
2 positive for saliva, you can't tell the difference
3 between direct or indirect transfer, can you?

4 A. I cannot. That's not anything that I am out to
5 determine. I am merely testing to see if a bodily
6 fluid is present.

7 Q. All right. Now, Agent Thompson, I want to go
8 through the items that you actually tested here.
9 The first things -- I'm not sure if they're the
10 first ones you tested. But the first ones that we
11 talked about were the mouth swabs from both **Complainant**
12 **██████████** and Bill Heath; is that right?

13 A. Are you referring to the buccal swabs from
14 **complainant** ?

15 Q. I do. I think it's called a buccal swab?

16 A. Uh-huh.

17 Q. And that's when, I guess, a law enforcement is
18 handing the individual a swab, they put it in their
19 mouth, they pull it out, you'll test it?

20 A. I will just prep it for DNA. There's not
21 really any testing that I need to do on a standard,
22 so I would just cut it and forward it on to the DNA
23 analyst.

24 Q. But those are things you would expect to find
25 saliva on because we said it would be a direct

1 transfer by being put in another person's mouth?

2 A. Yes. But standards are not typically tested
3 for saliva because it is an item of evidence that
4 you would expect saliva to be there.

5 Q. So in this case, what we're dealing with, the
6 things that you did test for saliva, we talked about
7 that underwear..

8 A. Yes.

9 Q. And what we refer to as -- you said the
10 interior rear of the underwear; is that right?

11 A. That's correct.

12 Q. That's where you said you took that cutting
13 from?

14 A. Yes, I did.

15 Q. Now, you would agree with me, those underwear,
16 it's a piece of fabric?

17 A. It is.

18 Q. And what you testified to is that you located
19 saliva on the part of the fabric that would be
20 closest to the body?

21 A. That's correct. That's the way -- when I took
22 the cutting, that's the side that -- the area of
23 florescence and things like that, it was oriented
24 towards that part of the underwear.

25 Q. So what you're saying is there was no

1 florescence on the outside of the underwear?

2 A. Well, it's not necessarily that there wasn't
3 any florescence, but a lot of times when I'm looking
4 at an item of evidence under an alternate light
5 source, it is fairly easy to identify which side,
6 whether it be interior versus exterior, that the
7 stain originates from just because, typically, the
8 side that it originates from, it usually glows much
9 more forcibly. So while it might also be florescent
10 on the opposite side, it's not usually nearly as
11 strong and as bright.

12 Q. What about in the case of, let's say, a
13 liquid-like saliva soaking through a fabric? When
14 you test it, put it on your light, would it show
15 florescence on, say, the interior and exterior?

16 A. That's possible for it to do that.

17 Q. So what we're saying is that when you test
18 specifically a piece of fabric, it's hard to tell
19 whether it originated from the interior or the
20 exterior?

21 A. Sometimes it's difficult. But, honestly, just
22 how long I've been doing this job and how many pairs
23 of underwear I've looked at and how often I use an
24 alternate light source, it's not uncommon for me to
25 sometimes notate whether a stain, I believe, appears

1 to have originated from the inside or the outside.

2 Q. Now, that specific piece of underwear that
3 we're talking about, what you found on it, you said,
4 was saliva; is that right?

5 A. It tested presumptively positive for saliva.

6 Q. You don't know how that saliva got there, do
7 you?

8 A. No. That's outside the scope of my job.

9 Q. You don't know how long that saliva had been on
10 there, do you?

11 A. That's correct.

12 Q. Was the saliva dry or wet when you tested it?

13 A. It was dry. The items of evidence, most of the
14 time, are in a dried state when we process them in
15 the lab because wet items of evidence, they have the
16 possibility to mold and start decaying more quickly.

17 So we ask that all evidence, if possible, be
18 submitted to the lab for testing in a dried state.

19 Q. So you get a dried sample of underwear that has
20 saliva on it, but you can't tell the jury how long
21 that saliva had been there?

22 A. That's correct, I can't say that.

23 Q. Now I want to talk about some other testing
24 that you did. You said you tested swabs from the
25 vaginal area of **complainant** ?

1 A. Yes, I did.

2 Q. Did those tests come back for any signs of
3 semen?

4 A. They did not. I was not able to identify
5 semen.

6 Q. How about pre-ejaculate fluid?

7 A. We don't have any way to distinguish between
8 that. The tests that I would have used in this
9 would have been the same regardless of whether it
10 was known to me whether or not it was pre-ejaculate
11 or just regular ejaculate. The battery of tests
12 that we use do not change.

13 Q. The test you did on it for semen, whether it's
14 pre-ejaculate or ejaculate, came back negative?

15 A. Yes, it was negative.

16 Q. Did you test that for saliva?

17 A. I did not.

18 Q. You didn't test the vaginal swabs to see if
19 Bill Heath's DNA was down there?

20 A. I did not. And the reason why I did not is I
21 tested based off of the scenario that was provided
22 in the SANE report. And so, basically, in the
23 testing series that I do, I chose to test for semen
24 first on those just based off of the scenario that I
25 had available to me. And they were negative for

1 that. And it is our policy at SLED that we cannot
2 do two types of testing, so I would have had to have
3 chosen. And in this case, I chose to do the semen
4 testing.

5 Q. So that's a choice that you made was to just
6 not test for the saliva?

7 A. Yes.

8 Q. So you can't tell the jury whether saliva was
9 down there or not?

10 A. No, I can't say that.

11 Q. Now, Agent Thompson, you would agree with me
12 that if a person licked another person is a pretty
13 good way to transfer saliva?

14 A. Yes, it is.

15 Q. That would be a direct transfer of saliva?

16 A. It is, yes.

17 Q. Now, you had swabs from the rectal area and, I
18 think, the anus of **complainant**; is that correct?

19 A. Yes. I had rectal swabs that were submitted.

20 Q. Did you test those rectal swabs for saliva?

21 A. I did not. I tested them for semen.

22 Q. So you can't tell us whether there was saliva
23 down there or not?

24 A. No. However, based off of the case scenario,
25 because I can't test for both bodily fluid, I tested

1 for semen. And then based off the case scenario, I
2 thought that maybe they should still go forward for
3 DNA analysis, so I did cut them and send them for
4 DNA.

5 Q. But the job that you did, the testing that you
6 did, you did not look at the swabs from the rectal
7 area or the anus for saliva?

8 A. No, I did not.

9 Q. Thank you. No further questions, Agent
10 Thompson.

11 THE COURT: Redirect, Solicitor?

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

13 REDIRECT EXAMINATION

14 BY MS. MAYES:

15 Q. Does your testing procedure always show the
16 presence of pre-ejaculate?

17 A. It does not. Pre-ejaculate can be a mixture,
18 basically, of different types of components, and so
19 it's not standardized from male to male what exactly
20 is in pre-ejaculate. So while components that I
21 test for could possibly be in there, they may also
22 not be present.

23 Q. And as a serologist, is pre-ejaculate always
24 present with an erection?

25 A. No. That is not necessarily, biologically

1 speaking, what's going to happen every time an
2 erection happens. There may not be pre-ejaculate.

3 Q. Now, you were asked a question a few moments
4 ago about a transfer of bodily fluids, in this case
5 being saliva. And I think the example given was a
6 sneeze. Your response was it would have to be very
7 quick and in a wet state. What do you mean by that?

8 A. What I mean by that is once a bodily fluid
9 dries, it really doesn't move from where it was
10 originally placed. So for it to be in a wet state,
11 I essentially am saying that it would need to have
12 been transferred to another individual rather
13 quickly for it to have actually adhered to whatever
14 it was, whether it be their clothing or their
15 person.

16 Q. Would have to be very quick while the substance
17 is still wet?

18 A. Yes.

19 Q. And to a reasonable degree of scientific
20 certainty, what side of those underwear did that
21 saliva stain originate from?

22 A. Based on my experience as a forensic
23 serologist, I believe the stain originated from the
24 interior of the underwear.

25 MS. MAYES: Nothing further.

1 THE COURT: Recross?

2 MR. SPANGLER: Briefly, Your Honor.

3 RECROSS-EXAMINATION

4 BY MR. SPANGLER:

5 Q. Agent Thompson, you told us before when you put
6 that cutting of underwear under your light it showed
7 florescence on both sides; is that right?

8 A. I do not recall exactly. But what I meant is
9 that it can be florescent on both sides. I look at
10 so many pairs of underwear that I don't have an
11 exact knowledge of this specific stain.

12 Q. Let's go back. You don't recall whether the
13 interior or the exterior was florescent?

14 A. I'm sorry. What I meant was that I don't
15 recall whether the exterior was as florescent as the
16 interior, but if I noted it on my case files like I
17 did with this type of cutting, my observation at the
18 time was that the interior appeared to be the side
19 of the origination of the stain. It could have been
20 florescent on the outside, but if it was, it was
21 much weaker.

22 Q. But you have no, I guess, quantitative figure
23 for how bright it was on the inside versus the
24 outside?

25 A. I do not have any way to actually quantify

1 that. That's based off my observations and
2 experience.

3 Q. Thank you.

4 MR. SPANGLER: No further questions, Your
5 Honor.

6 THE COURT: Thank you, Agent Thompson. You may
7 step down. Thank you for being with us today.

8 Call your next witness, please, Solicitor.

9 MS. MAYES: The State calls Donna Money.

10 DONNA MONEY

11 being first duly sworn, testified as follows:

12 THE WITNESS: I do.

13 THE CLERK: Thank you. If you'll have a seat,
14 please, and state your name for the record.

15 THE WITNESS: Donna Money, M-O-N-E-Y

16 DIRECT EXAMINATION

17 BY MS. MAYES:

18 Q. Good morning, Agent Money. Can you tell us a
19 little bit about yourself? Where are you employed
20 and in what capacity?

21 A. I am an analyst in the DNA casework department
22 at the South Carolina Law Enforcement Division, also
23 know as SLED.

24 Q. And how long have you been a DNA analyst?

25 A. Approximately five and a half years.

1 Q. Can you give us some information regarding your
2 educational background?

3 A. I received a Bachelor's Degree in forensic
4 science from Pennsylvania State University.

5 Q. And what training do you have specifically in
6 the field of forensic DNA analysis?

7 A. When I started my employment at SLED, I
8 underwent approximately a year-and-a-half-long
9 training program under a court-qualified senior DNA
10 analyst. During training I ran practice samples,
11 straining samples, competency samples, underwent
12 competency testing, oral, written exams,
13 report-writing exams, and mock court.

14 Q. Is it possible to estimate how many DNA tests
15 or specific testing procedures you have conducted
16 while you've been at the State Law Enforcement
17 Division?

18 A. A couple thousand.

19 Q. Have you testified in court previously?

20 A. Yes.

21 Q. Does that include previous testimony as an
22 expert in the field of DNA identification testing?

23 A. Yes.

24 Q. Is it possible to estimate how many such times?

25 A. Twenty-three.

1 Q. And are you still in active standing as a
2 forensic DNA analyst at the State Law Enforcement
3 Division?

4 A. Yes.

5 MS. MAYES: Your Honor, at this time the State
6 would offer Agent Donna Money as an expert in the
7 field of forensic DNA identification testing.

8 MR. SPANGLER: No objection.

9 THE COURT: Again, ladies and gentlemen, y'all
10 have heard my instructions to this. Agent Money
11 will be qualified as an expert in the field of
12 forensic DNA analysis. She may give opinion
13 testimony in that field and the bases for holding
14 those opinions.

15 Thank you, Mr. Spangler.

16 Thank you, Solicitor. You may proceed.

17 BY MS. MAYES:

18 Q. All right. Take us through the process as a
19 DNA analyst once a sexual assault kit is submitted
20 to you for follow-up analysis, once a cutting from
21 the underwear is submitted to you for DNA analysis,
22 and once you receive suspect standards, in this
23 case, being the suspect standards of William Heath.

24 A. So DNA analysis is a four-step process. The
25 first step is you extract the DNA from the

1 substrate, whether it be a swab or a cutting from a
2 piece of clothing. From there, we determine how
3 much DNA is present. After that, we will amplify or
4 make copies of the DNA to allow us to have more to
5 work with. And from there, that sample is run
6 through an instrument that will separate the DNA
7 based on size. And that information is then
8 translated into what is known as a DNA profile.

9 Q. I'm going to start by asking you what is meant
10 by the term DNA or -- go ahead and explain to us
11 what DNA is.

12 A. DNA is a chemical found throughout the human
13 body. Essentially, it is a person's genetic
14 blueprint. You get half of it from your biological
15 mother and half of it from your biological father.

16 Q. Does DNA, when you have a sufficient profile,
17 also tell you whether the person is a male or a
18 female?

19 A. Yes.

20 Q. And so what was the next step in the process?

21 A. I'm a little unclear.

22 Q. What was the next step once you received those
23 items?

24 A. Once I go through the four-step process of
25 developing a DNA profile, I will then do the same

1 for any known standards. And from there, I will
2 look at the profiles developed, conduct comparisons,
3 write up a report, calculate any statistics
4 necessary, and make a finding on behalf of the
5 report.

6 Q. All right. So I want to start by asking you
7 about the cutting from the interior of the
8 underwear. Is that noted on your report?

9 A. Yes. That is SLED Item 4.1.

10 Q. State's Exhibit 28 in this particular case.

11 If you could look at this and then just confirm
12 whether or not you did an analysis on that cutting
13 from the underwear.

14 A. Yes. This is the item I received. It has the
15 SLED lab number present on the heat-sealed pouch in
16 addition to the envelope in which the cutting was
17 stored, and then my initials and the date in which I
18 accessed this pouch along with the seals when I
19 entered the pouch and then I resealed the pouch.

20 Q. And how -- do you have a copy of your DNA
21 analysis report with you?

22 A. Yes.

23 Q. How is that cutting identified on your report?

24 A. It's SLED item 4.1 as cutting from interior
25 rear of underwear.

1 Q. Now I want to ask you about clothing as a DNA
2 analyst. Is clothing something where DNA can be
3 recovered?

4 A. Yes.

5 Q. And when we're talking about clothing such as
6 underwear that's worn next to the skin, for example,
7 the clothing that we're wearing right now, including
8 undergarments, to a reasonable degree of scientific
9 certainty, do you expect the wearer or the person
10 wearing the clothing to leave some form of DNA
11 behind on their undergarments?

12 A. Yes, it's expected.

13 Q. Why is that?

14 A. When you're wearing a piece of clothing, it's
15 rubbing up against your skin, and skin cells are a
16 source of DNA. So if you're coming into contact
17 with those skin cells, it is expected that some of
18 those cells may be left behind on that piece of
19 clothing if it's removed from the body.

20 Q. Can you give us some examples of what it is
21 about wearing clothing, especially directly against
22 the body, that would cause our own DNA to be left
23 behind on it?

24 A. Typically clothing comes in close contact with
25 the human body. It's something that someone wears

1 for a long period of time. If it's something that
2 you sit on, you're applying some pressure which
3 could, essentially, rub some skin cells off.

4 Q. So the act of even sitting on clothing could
5 result in the wearer leaving their own DNA behind?

6 A. Yes.

7 Q. Now, in addition, are you also able to
8 determine if there's foreign DNA on clothing?

9 A. We are able to determine that.

10 Q. How so?

11 A. When we run an evidence sample through our
12 four-step process and a profile is developed,
13 sometimes we come across what is called a mixture,
14 which is two or more individuals' DNA being present.

15 Q. All right. And did you do an analysis on the
16 interior cutting from the rear of the underwear that
17 we're looking at right there, the underwear from

18 [REDACTED] complainant ?

19 A. Yes.

20 Q. What, if anything, did you determine?

21 A. May I read from my report?

22 Q. Yes.

23 A. The DNA profile developed from item 4.1, which
24 was the cutting from the interior rear of the
25 underwear, is a mixture of at least two individuals.

1 The main contributor to this mixture matched the DNA
2 profile of William Heath.

3 Q. All right. Let me stop you right there. So
4 there's a major contributor. What does that mean?

5 A. When we are looking at mixtures, sometimes
6 there's a situation where one person may have
7 contributed more DNA than another person in that
8 mixture. In that instance, we are able to determine
9 that individual is a major contributor versus the
10 other person being a minor. Other times in some
11 mixtures, when we're dealing with four, five, six or
12 more people, we're unable to determine that.

13 Q. All right. And when we talk about a major
14 contributor, are you -- can you tell us whether or
15 not a major contributor is a full DNA profile?

16 A. Major contributor profiles can be partial or
17 full. Essentially, it is a single-source profile.

18 Q. And in this case were you able to determine a
19 single source or full DNA profile on the major
20 contributor?

21 A. Yes.

22 Q. Who was that person?

23 A. That profile matched that of William Heath.

24 Q. And from that are you able, in the DNA analysis
25 department, to go any further in the actual

1 calculation as to a degree of certainty to that
2 identification of William Heath?

3 A. Yes. When we state that an evidence profile
4 matches that of a known standard, we have to apply a
5 statistical calculation for weight. In this case,
6 the probability of randomly selecting an unrelated
7 individual having a DNA profile matching that of a
8 major contributor is approximately 1 in 57
9 quintillion.

10 Q. One in 57 quintillion?

11 A. Yes.

12 Q. What's a quintillion?

13 A. It has 18 zeroes.

14 Q. Eighteen zeroes behind it?

15 A. Yes.

16 Q. Are there even a single quintillion amount of
17 people on the planet right now?

18 A. No.

19 Q. So that deals with the actual cutting from that
20 underwear?

21 A. Yes.

22 Q. Do you also utilize any type of chart when
23 you --

24 A. Historically, there would be a chart with our
25 reports that would just show the DNA profiles

1 developed from the evidence items of the known
2 standards.

3 Q. In this particular case, does your report
4 contain a chart that's generated as well?

5 A. Yes.

6 Q. From that can you tell us whether or not you
7 wrote down the actual DNA profile that you're
8 looking at?

9 A. Yes. If there's a major contributor in a
10 mixture, we will bold it in order to make it easier
11 to highlight which is the major contributor and
12 which is not.

13 Q. All right. Do you have a copy of your chart
14 with you?

15 A. Yes.

16 Q. I'll show you this item and ask you whether or
17 not this is a true and accurate duplicate of your
18 chart that was generated as part of your report.

19 A. Yes.

20 MS. MAYES: Your Honor, this would be State's
21 29 for evidence.

22 MR. SPANGLER: No objection.

23 THE COURT: State's 29 is in evidence without
24 objection.

25 (State's Exhibit No. 29 admitted into

1. evidence.)

2. MS. MAYES: Your Honor, if I could ask
3. permission for the witness to stand down?

4. THE COURT: Yes, ma'am, you may step down.

5. Please keep your voice up when you're away from the
6. microphone.

7. BY MS. MAYES:

8. Q. I'm going to ask you to step on this side so
9. the court reporter can hear you better. I want to
10. start by asking what we're looking at here where we
11. see the names **complainant** and William Heath. How
12. are these DNA profiles developed across the board?

13. A. SLED items 1.7 and 3 are known DNA standards
14. that were collected from these individuals. And
15. these items underwent that four-step process.

16. Q. So when you say known items, you're talking
17. about the actual buccal swabs where an officer or,
18. in **Complainant**'s case, nurse actually takes it directly
19. from their body?

20. A. Yes.

21. Q. And that's done for the purpose of you knowing
22. what their DNA is going to be, sort of as a base for
23. you to work from?

24. A. Yes.

25. Q. And from those swabs, were you able to develop

1 full DNA profiles on both [complainant] and William
2 Heath?

3 A. Yes..

4 Q. Now, what are we looking at right here in this
5 very last column? What does that tell us?

6 A. This is a gender identification. This
7 determines whether or not that individual is
8 biologically male or female.

9 Q. Okay. And so we see just an X for [Complainant].
10 Why is that?

11 A. Females are X and males are XY.

12 Q. And then what are we looking across the board
13 here for these various locations?

14 A. These are an individual's DNA types, the fourth
15 step of the process I explained where DNA is
16 separated by size. Based on those sizes, these are
17 the numerical values that were assigned.

18 Q. Okay. So I want to go here to 4.1 that you've
19 just told us about, that's the interior rear of the
20 underwear. What are we looking at here? And how
21 did you develop or determine William Heath's full
22 DNA profile from the interior of the underwear?

23 A. As you can see, this is the DNA profile for
24 item 4.1. And at three different locations you can
25 see there are more than two DNA types present, and

1 this is the indication that this was a mixture.
2 When looking at the profile as a whole, we can
3 calculate, based on ratios, if a major contributor
4 is present. And then those DNA types will be bolded
5 to identify that at this location, these are the DNA
6 types that belong to the major contributor, and then
7 we do it across the board.

8 Q. All right. And, ultimately, from the interior
9 rear of the underwear, what was the gender of the
10 major contributor?

11 A. Male.

12 Q. Now, you mention that it's a mixture. Were you
13 able to determine anything else about the other --
14 the minor contributor?

15 A. No. There was not enough information present
16 to make any type of determination.

17 Q. Could you even tell if it was male or female,
18 for example?

19 A. No.

20 Q. And you indicated previously that you would
21 expect someone wearing underwear to have some type
22 of DNA profile left behind.

23 A. Yes, there is an expectation.

24 Q. I'm going to ask you, what are we looking at
25 with the individual numbers here that are associated

1 with [REDACTED] complainant ?

2 A. Those are her DNA types at those different
3 locations.

4 Q. And what are we looking at in terms of the
5 mixture? If you could, show us where you saw a
6 mixture and the presence of a minor contributor.

7 A. This location here.

8 Q. Let me stop you for a moment. What is the
9 number of the allele?

10 A. It would be the 10. It's bolded.

11 Q. So the 10 is the allele?

12 A. Then at the second location, it would be this
13 12 that's not bolded.

14 Q. Okay.

15 A. And then the third location here, which is that
16 15, which is not bolded.

17 Q. So that's all you were able to get from the
18 minor contributor?

19 A. Yes.

20 Q. And does [REDACTED] complainant have a 10 at that
21 location?

22 A. She does.

23 Q. Does [REDACTED] complainant have a 12 at that location?

24 A. Yes.

25 Q. Does [REDACTED] complainant have a 15 at that location?

1 A. Yes.

2 Q. And other than that, could you get anything
3 else from the DNA profile of that minor contributor?

4 A. It's partial and no association can be made
5 with any individual for that profile. Essentially
6 there's just not enough there for us to say it's
7 from one person over another.

8 Q. Okay. And you may return to your seat.

9 A. (Witness complies.)

10 Q. Aside from the minor contributor, you were able
11 to develop the full profile of William Heath?

12 A. Yes.

13 Q. To a mathematical degree of certainty of 1 in
14 57 quintillion?

15 A. Yes.

16 Q. Now, did any other items come to you for DNA
17 analysis from **complainant**'s sexual assault kit?

18 A. Yes; I received five other items forwarded for
19 DNA.

20 Q. Were you able to develop a full DNA profile for
21 any of those?

22 A. I was able to do so for four of the five.

23 Q. And what were the results?

24 A. The DNA report developed from SLED items 1.4.1,
25 which was a rectal swab --

1 Q. Let me stop you right there.

2 A. -- was consistent with the DNA profile of
3 **complainant**.

4 Q. All right.

5 A. The DNA profile developed from SLED item 1.5.1,
6 which was a hair from the pubic hair combing, was
7 consistent with the DNA of **complainant**. The DNA
8 profile developed from SLED item 1.5.2 --

9 Q. Let me stop you right there. The two items
10 that you've mentioned, the actual swab, the actual
11 rectal swab, and then the pubic hair combings,
12 elicited DNA from **complainant**; correct?

13 A. Yes.

14 Q. From her own body?

15 A. Yes.

16 Q. Now, is DNA contained in your hair?

17 A. Yes.

18 Q. And your skin cells?

19 A. Yes.

20 Q. And your saliva?

21 A. Yes.

22 Q. And your other bodily fluids?

23 A. Yes.

24 Q. So you're going to have your own DNA?

25 A. Yes.

1 Q. Now, in addition to that, do you have a
2 notation as to whether there was a hair collected
3 from a rectal swab that was also submitted to you?

4 A. There were actually two hairs collected from
5 the rectal swab.

6 Q. Did any belong to [complainant]?

7 A. SLED item 1.4.2, which was a hair collected off
8 of the rectal swab, was a partial profile and was
9 consistent with [complainant].

10 Q. So there's one hair that's consistent with
11 [complainant]. What about the second hair?

12 A. SLED item 1.6, which was a miscellaneous hair
13 from rectal swab, matched that of the DNA profile of
14 William Heath.

15 Q. Was that a full DNA profile?

16 A. Yes.

17 Q. Were you able to determine to any degree of
18 mathematical certainty that that is, in fact, the
19 hair of William Heath on that rectal swab?

20 A. Yes.

21 Q. What is that degree of mathematical certainty?

22 A. The probably of randomly selecting an unrelated
23 individual having the DNA profile matching this item
24 is approximately 1 in 57 quintillion.

25 Q. Quintillion?

1 A. Yes.

2 Q. Now, in addition to a hair from the rectal
3 swab, did you examine the hairs from the pubic hair
4 combings? And you're familiar with that process as
5 a DNA analyst?

6 A. Yes.

7 Q. So we're talking about the hair collected along
8 the way when the pubic hair is combed?

9 A. Yes.

10 Q. You did analysis on those?

11 A. Yes. There are two hairs submitted; as I
12 stated earlier, one was consistent with that of
13 **complainant** and then the second hair that was
14 collected matched that of the DNA profile of William
15 Heath.

16 Q. Once again I'm going to ask you, were you able
17 to determine the identification of that hair
18 belonging to William Heath to a reasonable degree of
19 mathematical certainty?

20 A. Yes.

21 Q. And what is that number?

22 A. The probability of selecting another --
23 randomly selecting an unrelated individual having a
24 DNA profile matching this item is approximately 1 in
25 57 quintillion.

1 Q. So to clarify, you developed a DNA match to
2 William Heath from that cutting from the interior of
3 her underwear?

4 A. Yes.

5 Q. From a hair collected from a rectal swab?

6 A. Yes, for item 1.6.

7 Q. And from hair that came from the pubic combings
8 from **complainant** during her sexual assault
9 examination?

10 A. Yes, item 1.5.2.

11 MS. MAYES: Nothing further at this time, Your
12 Honor.

13 THE COURT: Thank you, Solicitor.

14 Mr. Spangler?

15 CROSS-EXAMINATION

16 BY MR. SPANGLER:

17 Q. Good morning, Agent Money. I want to talk to
18 you a little bit about something we didn't really
19 cover in the direct examination; it's direct and
20 indirect transfer of either hair, saliva, or semen.
21 Are you familiar with that?

22 A. Yes.

23 Q. So what that means is saliva, semen, hair can
24 be transferred either directly from somebody, like
25 touching another person --

1 A. Yes.

2 Q. -- or it can be transferred indirectly?

3 A. Yes.

4 Q. And an indirect transfer of, let's say, hair,
5 would occur if I scratch my head, my hair gets on
6 this, somebody else picks it up on their sleeve. Is
7 that an example of indirect transfer of hair?

8 A. That's an example.

9 Q. What about if folks are sharing the same
10 bathroom, a piece of hair is on the toilet seat,
11 somebody else sits down, they pick it up on their
12 backside. Is that indirect transfer?

13 A. It's a possibility.

14 Q. And that's something that actually happens in
15 real life?

16 A. It's a possibility.

17 Q. How about sharing towels? If you take a
18 shower, take a bath, one individual uses a towel on
19 their body hair, pubic hair, somebody else comes in
20 and uses that towel, is it possible hair could
21 transfer that way?

22 A. Yes, it's possible.

23 Q. Now I want to talk about the hair that you
24 tested in this case. Now, you can't tell us how
25 long that hair was actually on **complainant** for?

1 A. That's correct.

2 Q. You can't tell us how the hair got there?

3 A. That's correct.

4 Q. Most importantly, you can't tell us whether it
5 came from somebody else's head?

6 A. No. I can't determine the source of the hair
7 from a person's body.

8 Q. So it could have been hair from somebody else's
9 head?

10 A. It's possible.

11 Q. Could have been body hair?

12 A. It's possible.

13 Q. Could have been pubic hair?

14 A. It's possible.

15 Q. Now, can you actually see those hairs that
16 you're testing or are they microscopic?

17 A. The hairs can be visualized with the naked eye.

18 Q. These hairs, could they be visualized?

19 A. I was not the one who did the hair
20 visualization for this case. I was forwarded a hair
21 in a tube.

22 Q. When it was in the tube, could you see it?

23 A. It would have been small, but I would not have
24 required a microscope to see it.

25 Q. Okay. So you could see it with your naked eye?

1 A. Yes.

2 Q. Now, the saliva that you were talking about,
3 you can't tell us how long that saliva had actually
4 been on the underwear?

5 A. My report doesn't refer to saliva.

6 Q. I'm sorry. The DNA that was found in the
7 underwear, you can't tell us how long that DNA was
8 on there?

9 A. That's correct.

10 Q. Can't tell us how that DNA got there?

11 A. That's correct.

12 Q. Now, we pulled up the chart and talked about --
13 I believe it's item 4.1. That's the underwear
14 itself?

15 A. That is a cutting from the underwear.

16 Q. And that's the one you tested that came back as
17 a mixture of two individuals?

18 A. At least two, yes.

19 Q. At least two individuals? So you were able to
20 obtain a DNA match for Bill Heath?

21 A. For the major contributor, yes.

22 Q. And you can't tell us how many other
23 contributors there are to that mixture?

24 A. It's at least two.

25 Q. At least two, could be three?

1 A. It's possible.

2 Q. Six?

3 A. It's possible.

4 Q. Ten?

5 A. It's possible.

6 Q. You have no way of identifying who those
7 individuals are, can you?

8 A. I cannot identify the minor contributor in this
9 case.

10 Q. No idea who that minor contributor is?

11 A. It was just not enough information for me to
12 make that determination.

13 MR. SPANGLER: Thank you..

14 No further questions, Your Honor.

15 THE COURT: Redirect?

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

17 REDIRECT EXAMINATION

18 BY MS. MAYES:

19 Q. You cannot identify the minor contributor;
20 correct?

21 A. That's correct.

22 Q. He was asking you about touch DNA.

23 A. Yes.

24 Q. That includes the wearing of clothing?

25 A. Yes.

1 Q. By the wearer?

2 A. Correct.

3 Q. Would that result in a DNA transfer?

4 A. It's one way of DNA being transferred.

5 Q. All right. And he's asking about trying to
6 age how long the pubic hairs had been there and how
7 long the hair on the rectal swab had been there and
8 how long the DNA profile had been on the underwear.

9 Why is it that sexual assault examinations are
10 done freshly after a sexual assault and not weeks
11 later?

12 A. Typically they're done to allow for the best
13 chance of collecting any evidence if there is any
14 present.

15 Q. All right. If someone has bathed or showered,
16 would you still expect that evidence to be there?

17 A. When an individual bathes or showers, it may
18 affect the likelihood of something being left
19 behind. It does not automatically discount the
20 possibility of something being left behind.

21 Q. What about when someone launders clothing with
22 detergent?

23 A. Again, it could affect whether or not something
24 is there or not there.

25 Q. All right. And your examination is from those

1 items from a sexual assault kit done on the same
2 date of the alleged sexual assault; correct?

3 A. Yes.

4 MS. MAYES: Nothing further.

5 THE COURT: Recross?

6 MR. SPANGLER: Briefly, Your Honor.

7 RECROSS-EXAMINATION

8 BY MR. SPANGLER:

9 Q. That kit was collected on the -- I guess, the
10 day after the sexual assault was reported. When did
11 you actually test these items?

12 A. May I consult my chain of custody?

13 Q. Yes.

14 A. A sealed CSC kit was received by SLED on July
15 30th of 2015, it was received in our serology
16 department in April of 2016, and then I personally
17 received it in May of 2016.

18 Q. So that testing we're talking about wouldn't
19 have taken place until May of 2016?

20 A. That's correct.

21 Q. That's over a year after April 26th of 2015.

22 A. Yes.

23 MR. SPANGLER: Thank you.

24 Nothing further.

25 THE COURT: Thank you, Agent Money. Thank you

1 for being with us today. You may step down and be
2 excused.

3 All right. Solicitor, you may call your next
4 witness.

5 MS. USRY: Thank you, Your Honor. The State
6 calls Mike Phipps.

7 THE COURT: All right. Detective Phipps, if
8 you would come around and be sworn for us, please.

9 MICHAEL PHIPPS

10 being first duly sworn, testified as follows:

11 THE WITNESS: I do.

12 THE CLERK: Thank you. If you'll have a seat,
13 please. State your name and spell your last for the
14 record.

15 THE WITNESS: Michael Phipps, P-H-I-P-P-S.

16 DIRECT EXAMINATION

17 BY MS. USRY:

18 Q. Thank you, Detective Phipps. Can you tell me
19 where you're employed?

20 A. With the Lexington County Sheriff's Department.

21 Q. And what's your current position there?

22 A. I'm a full-time task force officer with the
23 South Carolina Electronic Crime Task Force.

24 Q. Tell me a little bit more about that task
25 force. What is that?

1 A. The task force is administered by the Secret
2 Service. It's established to provide local law
3 enforcement the capacity and the ability to test
4 electronic evidence.

5 Q. How long have you been a part of that task
6 force?

7 A. Probably six years now.

8 Q. And what other positions have you held in law
9 enforcement?

10 A. Like most people that start with the sheriff's
11 department, I started out on the road as a deputy,
12 worked about a year as a corporal supervisor on the
13 road, and then I transitioned over to our crime
14 scene unit, worked approximately 14 years in the
15 crime scene unit.

16 Q. So as part of your current position, do you --
17 what does that position entail? What type of work
18 do you do?

19 A. We take in and examine all forms of digital
20 devices, whether it's a computer, a cell phone,
21 fitness device, GPS device, to try to extract
22 evidence pertaining to an investigation.

23 Q. Do you have specific training and education in
24 this field?

25 A. I do.

1 Q. Can you tell me a little bit about that?

2 A. My training started back in 2005. Since then
3 I've attended approximately ten courses that were
4 specific to dealing with digital evidence and
5 recovering that evidence. And it amounts to about
6 590 hours of instruction.

7 Q. And have you previously performed forensic
8 examinations of digital devices?

9 A. Yes, quite frequently.

10 Q. Do you have a rough estimate of how many of
11 those examinations you've done?

12 A. I don't have an exact record, but a
13 conservative estimate would be more than 800.

14 Q. And have you -- are you a member of any
15 professional organizations as part of your field?

16 A. Yes. IASUS is a professional organization that
17 I'm subscribed to. I'm also certified on the
18 hardware that we use, which is Cellebrite. I'm a
19 certified Cellebrite operator.

20 Q. And have you previously been qualified as an
21 expert concerning forensic examinations of digital
22 devices?

23 A. I have.

24 Q. About how many times have you been qualified as
25 an expert?

1 A. Eight times.

2 MS. USRY: Your Honor, at this point the State
3 would offer Detective Phipps as an expert in
4 forensic examinations of digital devices and digital
5 evidence.

6 MR. SPANGLER: No objection, Your Honor.

7 THE COURT: All right. Again, ladies and
8 gentlemen, you've heard my charge several times.
9 This officer, Detective Phipps, will be authorized
10 to give opinion testimony in the area of forensic
11 examination of digital devices and the bases for
12 holding those opinions. Whatever weight and value
13 to be given to this testimony will be up to the jury
14 as far as whatever the jury deems fit and
15 appropriate.

16 Thank you, Mr. Spangler.

17 Solicitor, you may continue.

18 MS. USRY: Thank you, Your Honor.

19 BY MS. USRY:

20 Q. And, Detective Phipps, could you just explain
21 to us, what does taking a -- doing a forensic
22 examination of a digital device, what does that
23 entail?

24 A. It varies depending, of course, on the device.
25 In this case, it was an iPad. Of course we sign the

1 device out from our evidence unit where it's
2 maintained, we'll do a visual inspection.

3 One of the first things we want to do is make
4 sure it powers up and we want to make sure it
5 doesn't connect to any type of network or phone
6 home, so to speak, so we'll put it into a condition
7 where we make sure it's either in airplane mode or
8 all Wi-Fi connectivity is turned off and it's safe
9 to handle in a powered-up state so that nothing
10 changes.

11 Q. And you did that in this case?

12 A. I did.

13 Q. And I'm going to show you -- you've already
14 mentioned an iPad. I'm going to show what's been
15 marked as State's 14. It's previously been opened.
16 Do you recognize that item?

17 A. Yes, I do.

18 Q. And how do you recognize that item?

19 A. One of the evidence seals has my initials on
20 it.

21 Q. Can you describe to me how that item would have
22 been submitted to you?

23 A. In this instance I received a search warrant
24 from Sergeant McCann to examine this device. Upon
25 receiving the search warrant, I went and signed out

1 the device.

2 Q. Where would you have signed it out from?

3 A. Our evidence unit at 521 Gibson Road.

4 Q. And how would that item have been packaged upon
5 your signing it out?

6 A. It's like -- you see this outer packaging here?
7 It's in an envelope, has a label and a barcode. It
8 would have the tamper-proof evidence seals visible
9 on the exterior of the envelope.

10 Q. Did -- at the time of your signing out that
11 envelope, did it appear to have been tampered with,
12 that packaging, at all?

13 A. It did not.

14 Q. And what's the next step in your process?

15 A. Once we get it into a condition that we can
16 actually work with it, we will connect it to -- in
17 this case, we use hardware manufactured by a company
18 called Cellebrite. And we connect that to the
19 device. And as part of that, it produces a backup
20 of certain items that are on the device. Those
21 items are then processed further in software.

22 Q. And do you recall about what date and time you
23 would have done this?

24 A. The examination was August 23rd, 2016.

25 Q. Did you ultimately perform your forensic

1 extraction of that iPad device?

2 A. Yes.

3 Q. Was it successful?

4 A. Yes.

5 Q. And tell me what was generated as part of that
6 extraction.

7 A. As you might imagine, the normal things you
8 would find on certain devices: Call logs, text
9 messaging, internet history, account information,
10 ownership information, a multitude of artifacts that
11 you would find on either a cell phone or a tablet.

12 Q. And is there a report generated as part of that
13 extraction?

14 A. Yes. We generate a PDF report that has those
15 artifacts listed.

16 Q. And how is that report ultimately stored?

17 A. It's burned to a disc.

18 Q. And in this case did you burn that extraction
19 report to a disc?

20 A. I did.

21 Q. I'm going to show you what's been marked as
22 State's Exhibit 30. Do you recognize that item?

23 A. I do.

24 Q. How do you recognize that?

25 A. It has my initials and the date that I created

1 it.

2 Q. What do you recognize that item to be?

3 A. It's a CD containing the PDF report of the
4 artifacts recovered from the iPad in this case.

5 Q. What date did you create that CD?

6 A. August 24th, 2016.

7 Q. Is that the date you performed the extraction
8 in this case?

9 A. The extraction or examination of the device
10 started the day before and culminated the next day.

11 Q. It was completed on the 24th?

12 A. Correct.

13 Q. And have you had an opportunity to review that
14 extraction report?

15 A. I have.

16 Q. Does it remain in the form you put it on the
17 disc as?

18 A. It does.

19 Q. Has not been changed in any way?

20 A. Has not.

21 MS. USRY: Your Honor, the State would offer
22 State's 30 in evidence at this time.

23 THE COURT: Yes, sir?

24 MR. SPANGLER: We do object, Your Honor. May
25 we approach?

1 THE COURT: Yes, sir.

2 (Sidebar conference.)

3 THE COURT: All right. Ladies and gentlemen --

4 And, Detective Phipps, you can remain seated
5 there.

6 I understand your lunch is here. I think we'll
7 allow you to take your luncheon recess and I'll
8 continue to take up this matter. It would be a
9 little more efficient with time. It has nothing to
10 do with the attorneys in that regard.

11 I'll say maybe we can start back at 1:15.
12 That's about 35 minutes. You're welcome to take a
13 walkabout, if you would like. If you need a few
14 minutes longer, you just let me know. We're not
15 going anywhere. Do not discuss the case during this
16 brief recess.

17 (The jury exits the courtroom at 12:41 PM.)

18 THE COURT: Let me see if I'm tracking.

19 MR. SPANGLER: Yes, sir.

20 THE COURT: Your objection to -- at least I'm
21 hearing, is to State's 30 based on relevance?

22 MR. SPANGLER: Yes, Your Honor.

23 THE COURT: But the focus is on the subject
24 matter pornography.

25 MR. SPANGLER: Yes, sir.

1 THE COURT: And all that other is not relevant.
2 You're not even offering bank statements and search
3 histories except as it may relate to the subject
4 matter of pornography; is that correct?

5 MS. USRY: That is correct. Now, just for
6 clarification, so you know exactly where I'm going
7 and for your ruling, I will discuss -- as part and
8 within the report, there's a summary page of the
9 report, specifically within the report, the user
10 account page, so who the iPad belonged to.

11 THE COURT: Sure. You don't object to that?

12 MR. SPANGLER: No, Your Honor.

13 MS. USRY: Excellent. And then there's a
14 section, web history report, that I specifically
15 plan to discuss. And that's regarding the incident
16 date of 4/26, the web history of 4/26 of '15. And
17 then there's data files images that I plan to
18 discuss from 4/26 of '15 and December 2nd of 2015.

19 THE COURT: And if I recollect some of the
20 testimony correctly, [REDACTED] is Mr. Heath's
21 birthday and there was some testimony from the
22 victim concerning that.

23 MS. USRY: Yes, sir.

24 THE COURT: All this is subject matter as to
25 pornography; is that correct?

1 MS. USRY: Yes, sir, absolutely. Yes.

2 THE COURT: Well, tell me what your objection
3 is now that I'm kind of tracking.

4 MR. SPANGLER: Yes, Your Honor. What we're
5 objecting to is there's no relevance in pornography,
6 web history, anything like that recovered from the
7 iPad for days that are not on the alleged offense
8 date. So if it's not on [REDACTED] of 2014, as
9 alleged in the indictment, or April 26th, 2015,
10 those aren't relevant to the crimes charged.

11 THE COURT: Thank you.

12 What about that, Solicitor?

13 MS. USRY: We plan to focus on the dates in
14 question. And there are -- the victim has testified
15 that the iPad was used during the sexual assaults
16 and pornography would have been playing on the iPad,
17 so that's what we're going towards, is any
18 relevant information on the dates that we're
19 discussing from this extraction.

20 Oh, [REDACTED]. The victim testified the
21 assault went into, potentially, December 2nd, so
22 there is some extraction report from December 2nd we
23 plan to go into, Your Honor.

24 MR. SPANGLER: And, Your Honor, if I may
25 proffer?

1 THE COURT: Sure.

2 MR. SPANGLER: Yes, Your Honor. The specific
3 date they're talking about, the specific piece of
4 evidence, it's not in the wee morning hours of
5 December 2nd referencing a continued act between
6 [REDACTED] and December 2nd. We're talking about
7 an entry at 10:00 PM on December 2nd of 2014.
8 That's nowhere close to [REDACTED], the alleged
9 offense date.

10 THE COURT: Hand me the indictments, Madam
11 Clerk, please.

12 So as far as your motion -- let me just back up
13 a minute. 26 April '15, you don't have an objection
14 to that?

15 MR. SPANGLER: Not to the relevance of it. We
16 have another objection to actually displaying --

17 THE COURT: Just tell me what your objections
18 are.

19 MR. SPANGLER: Your Honor, we're objecting to
20 the relevance of the other dates --

21 THE COURT: I'm just saying you don't have --
22 I'm sorry. Perhaps that was an imprecise question.
23 You have no objection as to 26 April '15?

24 MR. SPANGLER: Not under relevancy, Your Honor.

25 THE COURT: So there are other objections?

1 What are the other objections on 26 April '15?

2 MR. SPANGLER: Your Honor, it's under Rule 403,
3 that actually displaying to the jury the
4 pornographic images could only unfairly prejudice
5 the jury against the Defendant. They're going to
6 hear that it's present on the iPad, it's on the web
7 history, but actually displaying the pornographic
8 images that were viewed is just not necessary. It's
9 not probative.

10 THE COURT: Well, I think it has a high degree
11 of probability. Unless there are other witnesses in
12 the case, the only -- the primary direct testimony
13 is the testimony of Miss compl. It corroborates the
14 testimony of Miss compl, so it has a high degree of
15 probability.

16 It is prejudice, all evidence should be
17 prejudice. 403 is only unduly prejudicial. I rely
18 on the elucidation of that term under State vs.
19 Collins. So I find 26 April '15 is relevant and
20 deny the motion as far as it being unduly
21 prejudicial. That is admissible.

22 The other indictment, of course, includes on or
23 about [REDACTED] 2014. I assume you have a 403
24 analysis. I would find that it is relevant; that
25 based on my previous ruling, that it is not in

1 violation of the standard of 403. It is highly
2 probative, it's not unduly suggestive. As far as
3 the timing, that would go to the weight and not the
4 admissibility.

5 So that as I understand it, that's the only two
6 dates, time -- that's the only two times that the
7 State is offering that testimony?

8 MS. USRY: Yes, sir, Your Honor.

9 MR. SPANGLER: Yes, Your Honor, as long as it's
10 limited to those two dates, we have no further
11 objection.

12 THE COURT: And when you say two dates, as I
13 say, on or about 1 December 2014, you're saying
14 10:00 PM at night on 2 December 2014, I'm still
15 allowing it. As I say, that goes to the weight and
16 not the admissibility.

17 MR. SPANGLER: Yes, sir.

18 THE COURT: Anything further you can think of
19 with this witness, Mr. Spangler? Solicitor?

20 MR. SPANGLER: Not at this time.

21 MS. USRY: No, Your Honor.

22 MR. FLOYD: Your Honor?

23 THE COURT: Yes, sir.

24 MR. FLOYD: Would you like me to address on the
25 record now the motion for mistrial earlier?

1 THE COURT: I'll do it at 1:15. Is that all
2 right?

3 MR. FLOYD: Yes, sir.

4 THE COURT: Detective Phipps, you may certainly
5 step down and refresh yourself during this recess.
6 Do not discuss your testimony.

7 Court will be in recess until 1:15.

8 (Luncheon recess 12:49 PM - 1:33 PM.)

9 THE COURT: Mistrial? You have a motion
10 pending?

11 MR. FLOYD: Yes, Your Honor. Your Honor, just
12 for the record, during the testimony of Sergeant
13 McCann, it came up about a statement given by the
14 alleged victim. And at that time the Court allowed
15 the questioning of the witness as to that statement
16 pursuant to Rule 801(d) about a prior statement of
17 the witness. And pursuant to the provisions of
18 801(d)(1), that testimony is allowed, however, it's
19 limited to the time and place of the incident.

20 However, when Sergeant McCann testified about
21 the alleged statement, instead of limiting it to the
22 time and place of the incident, she testified to the
23 fact that it happened multiple times in the past,
24 words to that effect. That's outside of the
25 provisions of 801(d)(1) and was improper bolstering

1 of the victim's alleged statements -- or alleged
2 victim's statements. And, accordingly, we would
3 move for a mistrial at this time.

4 THE COURT: Thank you, Mr. Floyd.
5 Solicitor?

6 MS. MAYES: Yes, Your Honor. So pursuant to
7 801(d)(1)(d), the time and place in a criminal
8 sexual conduct prosecution, the testimony is
9 admissible as corroboration of the time and place of
10 the assault or assaults. And here we have multiple
11 indictments.

12 The State's position is the detective would
13 have been allowed under the rule to testify to the
14 time and place of each assault that was disclosed to
15 her. What was disclosed to her in that bedroom that
16 night was that it had occurred multiple times over
17 the past 10 years, since the second grade, which
18 would be the time or time frame. She didn't go that
19 far and we didn't elicit the specific information
20 about [REDACTED] Road, which was also disclosed to
21 her.

22 Under 801(d)(1)(d), the time and place is
23 admissible of the criminal sexual conduct
24 prosecution. And here, we've got the four separate
25 indictments, two of which are ongoing in nature. So

1 I just wanted to distinguish for the record that
2 this rule is a complete exception to hearsay from
3 excited utterance or something of that nature where
4 it is all in relation to the most recent assault
5 with the freshness of the assault. This rule would
6 allow any witness to give corroborating testimony as
7 to time and place.

8 So the State's position is that Detective
9 McCann would have been allowed to testify to all of
10 those locations, going back to [REDACTED] Road, that
11 was disclosed to her and the time frame involved.
12 She did do so, we did not elicit that information.
13 But that is the State's position pursuant to Rule
14 801(d) (1) (d).

15 THE COURT: Thank you, Solicitor.

16 Mr. Floyd, anything further?

17 MR. FLOYD: Nothing further, Your Honor.

18 THE COURT: Looking at Rule 801(d) (1) (b),
19 Statements which are not hearsay: A statement is
20 not hearsay if the declarant testifies at trial or
21 hearing and is subject to cross-examination
22 concerning the statement and the statement is, B,
23 consistent with the declarant's testimony and is
24 offered to rebut an expressed or implied
25 charge against the declarant -- excuse me, and is

1 offered to rebut an expressed or implied charge
2 against the declarant of recent fabrication or
3 improper influence or motive provided. However --
4 I'm reading the wrong provision -- (d)(1) -- it's
5 (d)(1)(d), is it not, not (d)(1)(b)?

6 MS. MAYES: (d)(1)(d), Your Honor.

7 THE COURT: Consistent with the declarant's
8 testimony in a criminal sexual conduct case or
9 attempted criminal sexual conduct case where the
10 declarant is the alleged victim, that is correct
11 here, and the statement is limited to the time and
12 place of the incident. That's what we have here.

13 It's not limited as is 803 because those are
14 just exceptions to the hearsay rule. This says that
15 this testimony is not an exception. The victim has
16 testified. And it's limited to the time and place
17 of the incidents. And that's what it was.

18 I mean, it's -- it doesn't matter.. It's not
19 outcry. It doesn't matter when the sergeant talked
20 to her, it matters that she testified at trial. And
21 it is limited in that regard under that rule. So I
22 would respectfully deny the motion for a mistrial.

23 Anything further before we bring in our jury?
24 Anything further, Mr. Floyd?

25 MR. FLOYD: No, Your Honor. I do note that the

1 rule is in the singular, not the plural.

2 THE COURT: I understand. I don't think that
3 has any substantive value whatsoever whether it's
4 singular or plural. But I do note that. I noted
5 that in here. I think the purpose of the rule is
6 where it is limited and cannot go into details -- if
7 there were additional details given, they cannot go
8 into those details. It's limited to -- the fact
9 that the declarant testifies and then it's limited
10 to time and place. But I do note that the incident
11 is a plural noun.

12 Solicitor, anything further?

13 MS. USRY: Nothing further, Your Honor.
14 Pursuant to your prior rulings, we'll leave State's
15 30 for ID in the record and continue with the other
16 exhibits that I have premarked during this break.

17 THE COURT: Thank you.

18 (The jury enters the courtroom at 1:43 PM.)

19 THE COURT: Welcome back, ladies and gentlemen.
20 I hope you had a pleasant lunch. We're continuing
21 the trial of the case by the continuing direct
22 examination of Detective Phipps by the Solicitor.

23 Solicitor, you may continue.

24 MS. USRY: Thank you, Your Honor.

25 CONTINUED DIRECT EXAMINATION

1 BY MS. USRY:

2 Q. Detective Phipps, as we previously discussed,
3 you performed an extraction on the iPad in this
4 particular case; is that correct?

5 A. That's correct.

6 Q. And the extraction resulted in an extraction
7 report?

8 A. Yes.

9 Q. And I believe we've already discussed that
10 report is contained in State's 30 for ID purposes.

11 A. It is.

12 Q. And you testified that that extraction report
13 is of a full nature and has not been changed in any
14 way since you completed that extraction?

15 A. Yes, that's correct.

16 Q. I'd like to talk about the report itself. I'm
17 going to show you State's Exhibit 31. Do you
18 recognize this item?

19 A. Yes. This would be the title page, cover page
20 to the report.

21 Q. And does it appear as it was recorded as part
22 of your report?

23 A. It is.

24 MS. USRY: Your Honor, I'd like to enter
25 State's 31 into evidence.

1 MR. SPANGLER: No objection to State's 31, Your
2 Honor.

3 THE COURT: State's 31 in evidence without
4 objection..

5 (State's Exhibit No. 31 admitted into
6 evidence.)

7 MS. USRY: Thank you, Your Honor. And just
8 very briefly -- permission to publish, Your Honor?

9 THE COURT: All right.

10 BY MS. USRY:

11 Q. Just very briefly, on the extraction report,
12 what does this extraction report cover page
13 essentially tell you?

14 A. The very top section under summary, it lists
15 the case number, the evidence number, specifically
16 referencing this specific iPad, the PR number listed
17 there outside the evidence number, of course my name
18 indicating that I was the one that performed the
19 extraction and the report.

20 And below that, it kind of breaks down the two
21 different acquisitions that we made on the device;
22 one starting on the 23rd and then continuing on the
23 24th.

24 Q. And what, just in general, does source
25 extraction mean to you?

1 A. At the time, we had two different methods to
2 take data off of that device and bring it into our
3 software. And we performed both of those processes,
4 just validate that one wasn't showing something the
5 other wasn't.

6 Q. Is the extraction report a compilation of both
7 of those together?

8 A. It is.

9 Q. So all data that was extracted as part of that
10 process is included in this report?

11 A. It is, yes, ma'am.

12 Q. And as part of the extraction report, a user
13 account page, is that included?

14 A. Yes. It attempts to identify any accounts that
15 are present on the device, whether for a particular
16 service or website.

17 Q. Did you have one in this particular case?

18 A. Yes, there were.

19 Q. And I'm showing you State's 32.

20 A. Yes.

21 Q. Is that the user account page associated with
22 this iPad?

23 A. It is, yes.

24 MS. USRY: Your Honor, State offers State's
25 Exhibit 32 into evidence.

1 MR. SPANGLER: No objection to State's 32.

2 THE COURT: State's 32 is in evidence without
3 objection.

4 (State's Exhibit No. 32 admitted into
5 evidence.)

6 MS. USRY: Permission to have the witness step
7 down from the stand, Your Honor?

8 THE COURT: Yes, you may step down, Detective.
9 Yes.

10 BY MS. USRY:

11 Q. Detective Phipps, explain to me what we see on
12 this user account page.

13 A. It's summarizing, in this instance, six user
14 accounts that have been identified, two of which are
15 attributed specifically to a Twitter account and a
16 Facebook account.

17 Q. How are user accounts created on an iPad, just
18 simply?

19 A. Of course when you create either an account or
20 whatever, some of that information is stored locally
21 on the device, so when you go to log back in, it
22 repopulates some of those fields.

23 Q. In this case, under the user account column,
24 what names are associated with the user accounts?

25 A. Some of them are just a coded number; in this

1 instance, several letters and a date, 1962. When we
2 get down to the Twitter and Facebook account,
3 specifically, one was a Bill Heath, number one,
4 and then on the Facebook account, Bill Heath.

5 Q. Bill Heath number 1 is in relation to number 4?

6 A. Which is a Twitter account.

7 Q. And then you said the Facebook account, Bill
8 Heath?

9 A. Correct.

10 Q. And that's number 5 on the user account?

11 A. Yes.

12 Q. And what about number 6 on the user account?

13 A. It's another reference to a Facebook account,
14 Bill Heath.

15 Q. Thank you. You can return to your seat.

16 A. (Witness complies.)

17 Q. And, Detective Phipps, you indicated there is a
18 Facebook account noted on the user account page.

19 Did you have an opportunity to look and determine
20 whether the defendant, William Heath, has a Facebook
21 page?

22 A. Yes, he does.

23 Q. You confirmed he does have a Facebook page?

24 A. I did, yes.

25 Q. And as part of this extraction report, do you

1 obtain any web history from the digital device?

2 A. Yes, we do.

3 Q. Did you obtain it in this particular case?

4 A. Yes. There was web history.

5 Q. And I'm showing you State's 33.

6 A. Yes.

7 Q. Do you recognize that?

8 A. I do.

9 Q. And, in particular, do you recognize the date
10 associated with that page or that --

11 A. Yes, listing web history for April 26th, 2015.

12 Q. And does it appear as it appeared in your
13 report?

14 A. Yes.

15 MS. USRY: State offers State's 33 in evidence,
16 Your Honor.

17 MR. SPANGLER: No objection to State's 33.

18 THE COURT: State's 33 is in evidence without
19 objection.

20 (State's Exhibit No. 33 admitted into
21 evidence.)

22 BY MS. USRY:

23 Q. So looking at State's 33, web history, is this
24 the full web history associated with this device?

25 A. It's the complete web history for that period.

1 of time, yes.

2 Q. And -- well, I guess I'm looking at -- as far
3 as the extraction report, are there pages of web
4 history?

5 A. Yes.

6 Q. And what we're looking at with regard to this
7 particular exhibit is the web history related to
8 4/26/15?

9 A. Correct.

10 Q. The type is so small. Let me see if I can zoom
11 it in a little bit more. So when we're looking at
12 the web history, in what order is this web history
13 captured in your extraction report?

14 A. The top of the table is the most recent entry,
15 and it goes back in time from there.

16 Q. So number 1 indicates the most recent entry.
17 When you say most recent, is that the last time a
18 web history would have been done prior to your
19 extraction?

20 A. Correct.

21 Q. That's number 1. And then it goes back. As we
22 go 2, 3, 4, it gets later in time, further back?

23 A. That is correct.

24 Q. What was the last -- and what does web history
25 signify? What action is taking place on a digital

1 device for a web history to be created?

2 A. In this instance, these are artifacts from the
3 Chrome web browser. So as you surf the internet,
4 Chrome is logging the particular sites you go to.
5 You can see off to the right-hand-side column under
6 source, it's listing Chrome as the identifying
7 parent for all those artifacts.

8 Q. Is a Chrome browser original to an iPad? When
9 you receive an iPad brand new from an Apple store,
10 is a Chrome browser included?

11 A. It is not. It's not an Apple product, but it
12 can be added later as an app.

13 Q. And do you know the time of this last web
14 history listed as number 1 in your report?

15 A. That's correct. If I'm seeing it correctly,
16 April 26th, 2015, at 11:19 PM in the evening.

17 Q. And the one number 2, what is the time of that
18 web history?

19 A. The same date. I would probably have to
20 approach to see that. My eyes aren't so good
21 anymore.

22 Q. I will hand you the exhibit.

23 A. The second down from the top, April 26th at
24 6:45 PM in the evening.

25 Q. Again, tell me when the device would have

1 captured this information or recorded it on the
2 device.

3 A. Well, the date and time listed there is the
4 last visited time for that particular entry, so it's
5 probably exiting that site, going to the next entry,
6 is when it records the date and time.

7 Q. And is this information and how you know the
8 answers to my question part of your training and
9 experience?

10 A. That's correct. Yes.

11 Q. And, moving forward, as part of your extraction
12 report, were there data files that were obtained?

13 A. Yes. It categorizes various artifacts under a
14 heading, and they have files. And in this instance,
15 there were some images that were recovered.

16 Q. And tell me about the images. How would they
17 have been created?

18 A. They can be created any number of ways. It
19 just looks at the device as a whole and collects all
20 the images. And those images could be actual
21 photographs taken by the device, it could be cached
22 data from a web site you visit. And we also
23 recovered some artifacts that were a particular
24 behavior of how the operating system works.

25 Q. I'm going to show you State's 37 and 38.

1 A. Yes.

2 Q. Do you recognize those items?

3 A. I do.

4 Q. Are they part of the image files that were
5 created in that data report section of your report?

6 A. They were.

7 MS. USRY: Your Honor, State offers State's

8 37 -- before I do that, Your Honor, let me --

9 BY MS. USRY:

10 Q. Can you tell me what date and times these
11 images were captured on?

12 A. The artifacts span a range of November 27th,
13 2014, at 12:55 PM through December 8th, 2014 at
14 2:49 PM.

15 Q. Does this page of your report cover activity on
16 [REDACTED] and December 2nd of 2014?

17 A. It does. December 2nd, there's an entry. Yes.

18 Q. There's one entry from December 2nd?

19 A. Yes, there is, at 9:10 PM.

20 MS. USRY: And, Your Honor, at this time the
21 State would offer State's 37 into evidence.

22 MR. SPANGLER: Your Honor, as for State's 37,
23 your earlier ruling were only specific dates could
24 be shown. Sounds like it's outside of the specific
25 dates we discussed earlier.

1 THE COURT: All right. Step up here, please.

2 (Sidebar conference.)

3 THE COURT: What happened to 34, 35, and 36?

4 How did we go from 33 to 37?

5 MS. USRY: Your Honor, I have those and I plan
6 to get to them next.

7 THE COURT: All right. Thank you, Solicitor.

8 BY MS. USRY:

9 Q. I'm showing you what's been marked State's
10 Exhibit 37. Do you recognize that item?

11 A. I do, yes.

12 Q. And is that what we have been discussing, an
13 image from your review of the iPad from December 2nd
14 of 2014?

15 A. It is.

16 MS. USRY: At this point the State offers this
17 exhibit into evidence, Your Honor.

18 MR. SPANGLER: No further objection, Your
19 Honor.

20 THE COURT: Thank you, Mr. Spangler.

21 Thank you, Solicitor.

22 State's 37, in its redacted form, is in
23 evidence without objection.

24 (State's Exhibit No. 37 admitted into
25 evidence.)

1 BY MS. USRY:

2 Q. Now, Detective Phipps, I know that this is
3 unclear. I'm going to hand 37 back to you so you
4 can discuss it, and at the same time I'm going to
5 show you State's 38 and ask if this relates to
6 State's 37.

7 A. Yes; it's an enlargement of the image.

8 Q. It's an enlargement of the image that we see in
9 State's 37?

10 A. It is, yes.

11 MS. USRY: Your Honor, the State would offer
12 State's 38 into evidence at this time.

13 MR. SPANGLER: Your Honor, pursuant to our
14 earlier objection, we reincorporate that objection,
15 but no further objection at this time.

16 THE COURT: What is that item? I'm not
17 tracking.

18 MS. USRY: Your Honor, I can hand it up for
19 reference. It's the image that was enlarged from
20 State's 37.

21 THE COURT: All right. State's 38 is in
22 evidence subject to previous objection.

23 (State's Exhibit No. 38 admitted into
24 evidence.)

25 BY MS. USRY:

1 Q. State's 37 is a digital file included in the
2 digital data section of your report. How would such
3 a digital file be created, Detective Phipps?

4 A. In this instance, it's an image file similar to
5 an image you would take with a camera, except here
6 you can see a path that's listed on the left-hand
7 column. And that's just telling you where on the
8 device that image was actually physically located.
9 And in the path you can see references to Google
10 Chrome, and then there's also a reference to
11 automatic snapshot.

12 And, initially, I didn't know what that meant,
13 so I had to research it myself. What happens is, on
14 an Apple device, when you have an app or something
15 full-frame on the screen and you hit the home
16 button, there is a feature that gives a visual
17 effect that looks like the item on the screen is
18 shrinking down back into the icon that created it.
19 So it's sort of an animation, just a visual effect,
20 eye candy that Apple wanted because they thought it
21 looks good.

22 But what happens is, when you hit that home
23 button to create that animation, it's creating a
24 still shot of what's on the screen. So the person
25 isn't doing it intentionally, it's the behavior of

1 the operating system and the function that -- it's
2 creating this animation for you to visually enhance
3 your browsing experience.

4 So when you hit that home button and force an
5 item to the background or bring your desktop to the
6 foreground, however you want to look at it, that
7 shrinking effect that you see is created by the
8 device actually taking a screen shot and saving it.
9 And this is where that image is coming from.

10 Q. So this is something that you had to actually
11 research to find out how the system worked?

12 A. Correct.

13 Q. So this is something maybe the common user may
14 not have knowledge of --

15 A. Right.

16 Q. -- that when you hit your home button on your
17 iPad screen, an image is captured or created? Can
18 you explain that to me again?

19 A. Right. There's no way you could have held that
20 iPad in your hand and looked through it and found
21 that image. That image is embedded deep within the
22 operating system that Apple creates.

23 And, again, it's done as a visual enhancement.
24 When you hit the home button, you've got something
25 there and you want to bring your desktop back up.

1 And when you see that thing that looks like it's
2 drawing back down into the screen, it accomplishes
3 that by creating a snapshot of the screen at that
4 moment in time.

5 Q. So if something had been on a computer for some
6 time, an image would not be saved in this manner
7 unless someone hit the home screen?

8 A. Right. Hitting the home button is what
9 initiates this to be saved within the system.

10 Q. Does that -- do you have any ability to tell
11 how long an image had been on the home screen prior
12 to the button being pushed?

13 A. I do not.

14 Q. And in this particular case, when was this
15 image captured?

16 A. The modified date and time that is displayed
17 there is when the image is created, which is when
18 the snapshot is created, which is, in turn, when the
19 home button was pressed.

20 Q. And for this one, what was the date and time?

21 A. This was December 2nd, 2014, at 9:10 PM.

22 Q. And, again, this one was created at the
23 pressing of the home button. The image could have
24 been on the computer for some time?

25 A. Yes.

1 Q. And I'm going to show you State's 38, which is
2 the image included in State's 37. Just confirm for
3 me, is that the image included in State's 37?

4 A. It is, yes.

5 Q. Can you tell me what the image says at the
6 bottom of the screen? It's hard to read.

7 A. It's a watermark image that reads IncestTV.com.

8 Q. Do you have any knowledge of what IncestTV.com
9 is?

10 A. Yes. It's a website that caters to videos of a
11 particular type.

12 Q. What do you mean by that?

13 A. The videos that are hosted on that website all
14 deal with incest in some form. It's more of adult
15 role-playing type. All the images are people of
16 legal age, consenting age. They're categorized
17 three categories; there's a category for mother-son,
18 father-daughter, and brother-sister.

19 Q. Is this a free website or a paid website?

20 A. It's primarily a paid website. They do have a
21 public base site that allows you to go in and see a
22 sample of the videos that they host there. So you
23 could actually go to the website and see clips of
24 videos without having to pay or set up an account.

25 Q. Across the top of this video, there's a bar.

1 What, if any, significance does that bar have to
2 you?

3 A. It's a progress bar for the video where it is
4 in its start-to-finish time period.

5 Q. And that's where it is in its start-to-finish
6 time period when the home button is pressed?

7 A. That's correct.

8 Q. Creating this digital data file?

9 A. So a snapshot in time. Yes.

10 Q. I'm going to show you State's 34, 35, 22, and
11 36.

12 A. Yes.

13 Q. Do you recognize these items?

14 A. I do.

15 Q. Are they related to your extraction report?

16 A. Yes, they are.

17 Q. Do they appear to have changed in any way since
18 you have completed your extraction report?

19 A. They have not.

20 Q. And can you tell me -- I'll hand you 34
21 again -- what date this information was created by
22 the user?

23 A. The images in this table start on April 26th,
24 2015 and run through April 26th, 2015, same day.

25 Q. So the -- excellent.

1 MS. USRY: Your Honor, the State moves State's
2 35, 36, 37, and 22 into evidence at this time.

3 MR. SPANGLER: Your Honor, no objection, we
4 just note our prior objections.

5 THE COURT: I thought 27 was already in.

6 MS. USRY: Yes, Your Honor. I think I meant
7 34, Your Honor.

8 THE COURT: 34, 35, 36, and 22?

9 MS. USRY: Yes, sir, Your Honor.

10 THE COURT: In evidence, subject to previous
11 objection. I reaffirm my previous prior ruling.

12 (State's Exhibit Nos. 34, 35, 36, and 22
13 admitted into evidence.)

14 BY MS. USRY:

15 Q: So, Detective Phipps, you mentioned this
16 occurred -- the data that we're looking at now was
17 generated in your extraction report and relates to
18 April 26th of 2015?

19 A: It does, yes.

20 Q: And the State's Exhibit you hold in your hand
21 now, what -- can you tell me the time period that
22 that report relates to specifically?

23 A: Starts at 12:25 AM, just after midnight on the
24 morning of the 26th --

25 THE COURT: And what number is that?

1 THE WITNESS: 34.

2 THE COURT: 34? All right. Thank you.

3 THE WITNESS: Just after midnight on the
4 morning of the 26th, and runs through 11:21 PM on
5 the 26th.

6 BY MS. USRY:

7 Q. And, again, are these the data files that are
8 created as part of the extraction report?

9 A. Yes. They are images that it found on the
10 device.

11 Q. Then I'm going to ask you step down from the
12 witness stand again and discuss State's 35. How
13 does State's 35 relate to State's 34?

14 A. 35 is just one page of the most recent images
15 that were carved out for the day of the 26th.

16 Q. And so tell me again how these images were
17 created.

18 A. And if you look at the path on -- all of these
19 were in the Chrome library under snapshot and some
20 of them indicating automatic snapshot. So all of
21 these images would have been created as a function
22 of the user hitting the home button at some point in
23 time or the point in time it's listed.

24 Q. And as far as the numbers, how do they -- I
25 guess, how were they organized in your report?

1 A. It lists the most recent entry here and then
2 going back in time as you go down the page.

3 Q. And can you tell me the date and time of the
4 most recent entry.

5 A. April 26th at 11:21 PM.

6 Q. So that particular data file image that was
7 created on April 26th at 11:21 PM, that was the last
8 data image captured on the iPad device prior to you
9 doing your extraction report?

10 A. It is, yes.

11 Q. And looking down at number 5, when was that
12 particular image created, at what time?

13 A. 10:39 PM on the evening of the 26th.

14 Q. And how would that particular image have been
15 created?

16 A. Again, it's a function of the automatic
17 snapshot which is created when the user hits the
18 home button.

19 Q. And the image right after that, what time was
20 that created?

21 A. 11:19 PM.

22 Q. Can you tell me where that image or that path
23 to that image may relate to? Are you able to, per
24 this report?

25 A. It's still part of the Chrome library. In this

1 instance, it appears to be an auto parts website.

2 Q. And what date and time again? I'm sorry.

3 A. The 26th at 11:19 PM.

4 Q. All right. You can return to your seat. Thank
5 you.

6 A. (Witness complies.)

7 Q. I'm going to hand you back State's 34 and show
8 you State's 36.

9 How is State's 36 related to State's 34?

10 A. States's 36 is a blowup of an image that was
11 logged in the chart of State's 34 for the 26th at
12 9:39 PM.

13 Q. 9:39 PM? Let me see on State's 36. So you
14 indicated -- what was the time that this image was
15 created on the device?

16 A. At 9:39 PM on the 26th.

17 Q. 9:39 PM on the 26th. And tell me how this
18 image would have been captured.

19 A. Again, this is the Google Chrome library under
20 automatic snapshots, so it would have been a
21 function of someone hitting the home button and
22 creating that snapshot.

23 Q. And, finally, State's 22. How is this related
24 to the State's exhibit that you hold in your hand?

25 A. It's, again, another image that was logged

1 April 26th at 10:39 PM.

2 Q. And, again, can you read for us what is on the
3 bottom of the screen?

4 A. That one has a watermark of
5 daughterdestruction.com.

6 Q. And are you familiar with that page,
7 daughterdestruction.com?

8 A. Yes. The website -- there is an active website
9 with that address; however, those videos have been
10 evidently sold to multiple porn-related websites
11 that can be found on various services on the
12 internet.

13 Q. Is that paid subscription or free or do you
14 know?

15 A. As far as daughterdestruction.com, the website
16 itself, there isn't currently an existing website
17 that's a paid service. Those videos that are
18 watermarked that way are on various websites that
19 offer, again, sort of sample videos and, also, a
20 paid service that goes on.

21 Q. And do you know if this particular image or the
22 daughterdestruction.com is pornographic in nature?

23 A. All the daughterdestruction.com videos that I
24 researched were all pornographic in nature or what
25 you would consider hardcore porn.

1 Q. So just to clarify for me, from the report that
2 you have in your hand, tell me the date and time
3 that this image was captured on the iPad.

4 A. This image was captured on April 26th, 2015, at
5 10:39 PM.

6 Q. And then the other pornographic image that was
7 indicated in State's 36 that you discussed in -- I
8 believe you have State's 34 in your hand. What was
9 the date and time of that image?

10 A. Again, April 26th, 2015, at 9:39 PM.

11 Q. Were both of these images created by that
12 function of pressing the home button?

13 A. They were.

14 Q. And then if you can step down for me one more
15 time, Detective Phipps.

16 A. (Witness complies.)

17 Q. Just clarifying time and progression on these
18 images and creation dates, we mentioned the one that
19 we have up on the screen now was created at
20 10:39 PM.

21 A. Correct.

22 Q. What -- thank you. That's number 5 on State's
23 35.

24 What was the next data image file created on
25 that device?

1 A. Well, the next one that we have any record of
2 going forward would be the auto parts store at
3 11:19 PM.

4 Q. And how would that image have been created?

5 A. That, again, is under the snapshots for Chrome,
6 so a function of hitting the home button.

7 Q. And, in fact, images 1 through 4, what do they
8 relate to?

9 A. They're all auto parts store web browsing
10 activity.

11 Q. And then prior to number 5, the image that was
12 captured at 10:39, what was prior to that?

13 A. There's an image. It's more of a filler-type
14 image, but the path of it relates specifically to
15 Facebook activity. And, again, it's auto snapshot,
16 so it's created by the function of hitting the home
17 button.

18 Q. And then as part of your investigation in this
19 case, you did determine that the defendant has a
20 Facebook page?

21 A. Yes, we did.

22 Q. Thank you. You can return to your seat.

23 A. (Witness complies.)

24 MS. USRY: Nothing further of this witness,
25 Your Honor.

1 THE COURT: Thank you, Solicitor.

2 Mr. Spangler?

3 MR. SPANGLER: Yes, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. SPANGLER:

6 Q. Agent Phipps, do you have State's Exhibit 33 up
7 there on the stand with you?

8 A. (Tenders document to counsel.)

9 Q. Thank you, sir. Now, Agent Phipps, I want to
10 talk to you just a little bit about when you
11 generate one of these reports, what you actually
12 get. What you're looking for is, in this specific
13 case, websites that the defendant had been on; is
14 that right?

15 A. We get a lot of different artifacts. When
16 reviewing those artifacts, it became apparent that
17 there was potentially artifacts that related to this
18 case. So, yes, we started looking at web artifacts.

19 Q. And there's different places actually on the
20 iPad that you looked at to look for those artifacts?

21 A. Right.

22 Q. One of them is the web history or browser
23 history?

24 A. Correct.

25 Q. And that is something like a log, that any time

1 you go to a website, it's logged into that browser
2 history?

3 A. Right.

4 Q. And what that gives you is the URL, the WWW dot
5 of that website?

6 A. Uh-huh.

7 Q. And it gives you the time that the person
8 accessed it?

9 A. Yes.

10 Q. And there's something else you get in your
11 report, and that's called the search history? Is
12 that a yes?

13 A. Yes, there is a search history.

14 Q. Now, the search history, that tells you -- in
15 addition to the time that a search was made, it
16 tells you the key words that were searched for?

17 A. Correct.

18 Q. And sometimes you can even get a URL code, a
19 website that was visited?

20 A. Correct.

21 Q. So we have the browser history, the search
22 history, and then there's something else with kind
23 of a funny name, but they're called cookies?

24 A. Correct.

25 Q. Now, cookies are any time a computer visits a

1 website, that website sends pieces of data back to
2 the computer? Is that a yes?

3 A. Yes, it is.

4 Q. Just for the record, could you give verbal
5 answers? Those cookies are just tiny little files
6 that will be stored on the computer?

7 A. Yes.

8 Q. And that's something you have access to as
9 well?

10 A. Yes, sir.

11 Q. And you looked at all three of those things in
12 this case?

13 A. Yes.

14 Q. You looked at them for April 26th of 2015?

15 A. Yes.

16 Q. And on [REDACTED], December 2nd of 2014?

17 A. Yes.

18 Q. Now I want to talk a little bit about State's

19 33. Now, this is that web history that we were
20 talking about?

21 A. Correct.

22 Q. This is a log of all the websites that iPad
23 visited using Chrome?

24 A. Using Chrome, yes.

25 Q. Can you point out on that document where a porn

1 site is listed?

2 A. I cannot.

3 Q. These are all from that night, April 26th of
4 2015; is that right?

5 A. Yes, sir.

6 Q. And what we're actually looking at here is a
7 site about a 2001 Ford truck fuel filter; is that
8 right?

9 A. Yes, sir.

10 Q. If we go all the way down to the bottom, we're
11 searching for the best pellet handgun?

12 A. Yes, sir.

13 Q. No mentions of incest in that web history?

14 A. There are none, no.

15 Q. No mentions of pornography in that web history?

16 A. Are none.

17 Q. Now, we talked a little bit about the search
18 history. The search history for that iPad doesn't
19 show any porn sites, does it, on April 26th of 2015?

20 A. Does not.

21 Q. The cookies, the little pieces of data that get
22 sent back, no cookies sent from porn sites?

23 A. That's correct.

24 Q. The only porn sites were found, I think we
25 refer to them as an app snapshot?

1 A. That is correct.

2 Q. Now, that snapshot, it tells you what time, you
3 said, the home button was pressed?

4 A. Correct.

5 Q. Can it tell you what time the site was actually
6 visited?

7 A. No.

8 Q. It cannot tell you what time someone actually
9 typed in incest TV and went to it?

10 A. No.

11 Q. So you have no idea when those sites were
12 actually accessed by the defendant?

13 A. That is correct.

14 Q. And, to be honest, you don't even know if it
15 was the defendant accessing those websites?

16 A. I have no idea who pushed the home button.

17 Q. Was there a password on that iPad?

18 A. Was not.

19 Q. Anybody could have accessed it?

20 A. Yes.

21 Q. Thank you.

22 MR. SPANGLER: No further questions, Your
23 Honor.

24 THE COURT: Redirect, Solicitor?

25 MS. USRY: Yes, sir, Your Honor.

REDIRECT EXAMINATION

BY MS. USRY:

Q. Now, Detective Phipps, the images that were captured as part of the data file images, they were captured by pushing the home button?

A. That's correct.

Q. Did those images have to be playing from a web address to be captured?

A. Did not.

Q. How would someone potentially play a video on an iPad? What are various methods of doing that?

A. You're accessing, potentially, a file that you've downloaded previously. If you have a home network, that could be streaming off your home network; if you had a Cloud account and you were logged into it, could be streaming off of that.

Q. So in this case, is there any doubt, at the time the home button was pressed, that these images were on the screen?

A. No, there's not.

Q. And just -- they just -- let me rephrase my question.

Did they necessarily have to be playing from the internet at that time to capture the image?

A. They do not.

1 Q. Does a lack of internet history or searches for
2 any pornographic materials on the date and time in
3 question mean pornography materials were not
4 accessed through different means?

5 A. That's correct. Chrome, specifically, has a
6 feature called incognito which allows you to turn on
7 and turn off a feature which allows you to browse
8 anonymously, so that would be one explanation why
9 someone could go to a particular website and not
10 have those things logged in the system.

11 Q. And then as far as web history is concerned,
12 I'm going to bring you this, State's 33, so you can
13 actually see it. Can you tell me what type of
14 searches were done on 4/26 of '15?

15 A. On the very top entry there under the URL, it's
16 specifically for autozone.com. And it's showing
17 keywords were entered fuel filters as far as a
18 keyword search within their website at 11:19 PM on
19 the 26th.

20 Q. And then let's continue backwards. So it looks
21 like the next one prior to that we've already talked
22 about was 6:45 on 4/26?

23 A. Correct.

24 Q. What search was done then?

25 A. That particular entry, the next entry down is

1 showing the Gameo website, which is a website that
2 deals with pellet rifles, BB guns, that type of
3 thing.

4 Q. Are there any internet activity or web history
5 prior to that dealing with that same subject?

6 A. The entry below that, it shows some keyword
7 searches for semi-automatic pellet handgun.

8 Q. So does the lack of web history between the
9 range, I guess, of items on this list, for lack of a
10 better reference, 1 and 2, so you had entered the
11 truck and then the Gameo, or the pellet gun, the
12 lack of activity between there, does that mean
13 nothing was happening on that iPad during that time
14 frame?

15 A. Does not. It just means that nothing was
16 logged in the regular Chrome browser history.

17 Q. Are there other things that you can do on your
18 iPad besides searching on the internet through
19 Chrome?

20 A. Certainly.

21 Q. Can you watch videos on your iPad?

22 A. You can.

23 Q. Can you access videos that are not on the web
24 from your iPad?

25 A. You can.

1 MS. USRY: Nothing further, Your Honor.

2 THE COURT: Recross?

3 MR. SPANGLER: Yes, Your Honor.

4 RE CROSS-EXAMINATION

5 BY MR. SPANGLER:

6 Q. Now first, Agent Phipps, we talked about those
7 app snapshots. And the way you were able to tell it
8 was a snapshot from the app was by looking at that
9 root file?

10 A. Yes, sir.

11 Q. That root file is just a bunch of letters,
12 numbers, some words all put together?

13 A. It's showing the path back to where the image
14 resides. Yes, sir.

15 Q. And the path for those pornographic images said
16 Chrome in it, didn't it?

17 A. Yes, it did.

18 Q. But it's not reflected in that web browser
19 history, is it?

20 A. It is not.

21 Q. Now, there's even a column on this web browser
22 history where you can tell if somebody deletes
23 something all the way over there to the right; is
24 that right?

25 A. Yes, sir.

1 Q. Thank you.

2 MR. SPANGLER: No further questions, Your
3 Honor.

4 THE COURT: Thank you. Thank you very much,
5 Detective Phipps. You may step down.

6 All right. Solicitor, you may call your next
7 witness.

8 MS. MAYES: At this time, Your Honor, the State
9 will rest.

10 THE COURT: Thank you, Solicitor.

11 Ladies and gentlemen, I'm going to give you
12 about a 20-minute recess. Please do not discuss the
13 case during this brief recess. Thank you very much.

14 (The jury exits the courtroom at 2:34 PM.)

15 THE COURT: Motions, Mr. Floyd? Mr. Spangler?

16 MR. FLOYD: Yes, Your Honor. Are you ready for
17 us to do them right now?

18 THE COURT: Yes, sir.

19 MR. FLOYD: Thank you, Your Honor.

20 At this time, the Defense would move for a
21 directed verdict on all counts. It's our position
22 that the State has failed to establish the guilt of
23 the defendant, even taking the evidence in the light
24 most favorable to the State, which I know you must
25 do at this time.

1 Your Honor, I'd like to go through each one of
2 the indictments with you.

3 THE COURT: Yes, sir.

4 MR. FLOYD: First, as to criminal sexual
5 conduct with a minor first degree, Your Honor, this
6 is the one that claims that sometime between
7 September the 16th of 2004 and September 15, 2007,
8 he allegedly committed the offense of criminal
9 sexual conduct with a minor first degree.

10 Your Honor, there is simply no evidence to
11 establish that offense. The only evidence that I
12 recall in this case is totally unsubstantiated
13 evidence that -- supposedly, that he awoke the
14 victim one night with his mouth on her genitals.
15 It's our position, that that's not established a
16 sexual battery, which will be required for such an
17 offense.

18 Your Honor, the second one talks about criminal
19 sexual conduct with a minor second degree, September
20 2011 through September of 2013. And, Your Honor,
21 there was no evidence whatsoever of any kind of
22 offense that happened during that particular time
23 frame. We heard some testimony that it happened
24 periodically over a ten-year period, but there was
25 no evidence whatsoever of any offense happening

1 between those specific times and at some specific
2 place during those specific times. So there's no
3 evidence to support that allegation whatsoever.

4 Your Honor, as to the remaining two counts,
5 which are two criminal sexual conducts in the third
6 degree, in these cases there is no evidence
7 whatsoever that any force or coercion was used to
8 commit these alleged offenses and, accordingly, the
9 proof falls short on those charges also.

10 For all these reasons, we believe all four
11 charges should be dismissed.

12 THE COURT: Thank you, Mr. Floyd.

13 Solicitor?

14 MS. MAYES: Yes, sir, Your Honor. May it
15 please the Court.

16 As to the charge of criminal sexual conduct
17 with a minor first degree, the victim testified that
18 the first event she recalled occurred at the
19 residence on [REDACTED] when she would have
20 been seven or eight. That included an act of oral
21 sex and would certainly meet the definition of
22 sexual battery.

23 Beyond that, she testified that in third grade
24 they had moved to [REDACTED] and the acts
25 continued at ages eight and nine and that it, again,

1 included oral sex, and she also described digital
2 penetration beginning within that time frame, all
3 being sufficient for an act of sexual battery
4 whether at [REDACTED] or [REDACTED].

5 Your Honor, the time frame of the criminal
6 sexual conduct with a minor second degree indictment
7 covers the ages of 14 and 15. The victim
8 specifically was questioned about that age range
9 during direct examination. The residence at [REDACTED]
10 [REDACTED] was on the overhead.

11 She had described she was in middle school when
12 the act of fellatio was occurring. She specifically
13 said that occurred when she was 14 and 15 years of
14 age while residing at [REDACTED], as well as
15 acts of digital penetration.

16 Your Honor, as to the charge of criminal sexual
17 conduct third degree, the requirement is not force
18 and coercion, it's force or coercion, and it is not
19 aggravated coercion. So there has certainly been
20 sufficient evidence in the record that she feared
21 him, that he had been abusive in the past.

22 We know that he is in the role of a parent, of
23 an authority figure. She is a minor juvenile in his
24 care. We know that under these circumstances, she
25 testified that she repeatedly said no, but that he

1 raised his voice and became insistent and,
2 ultimately, her description is one of coercion,
3 albeit without circumstances of aggravation, yet
4 still consistent with criminal sexual conduct in the
5 third degree.

6 And that covers the event that occurred in
7 December in the home at [REDACTED], as well as
8 that final event, which occurred on April 26th, 2015
9 at the residence on [REDACTED].

10 THE COURT: Thank you, Solicitor.

11 Mr. Floyd, anything in reply?

12 MR. FLOYD: No, Your Honor. We don't think it
13 requires -- the statute is clear it's force or
14 coercion, and we don't think there was any proof of
15 those factors in the two CSCs.

16 THE COURT: As to the standard of review, I
17 look at State vs. Parker, State vs. Pearson, and the
18 like. When the State fails to produce direct and/or
19 a combination of substantial circumstantial evidence
20 that the defendant committed a particular crime, the
21 defendant is entitled to a directed verdict in cases
22 where the State has failed to present evidence.

23 Further, when the State relies on both direct
24 and circumstantial evidence, the trial judge is
25 concerned with the existence or nonexistence of the

1 evidence, not its weight. I look at this as
2 directed by the courts and the rule in the light
3 most favorable to the nonmoving party.

4 As to the charge of indictment -- criminal
5 sexual conduct with a minor in the first degree
6 alleges dates between '04 and '07. I tracked the
7 age of the victim, the grade the victim was in, the
8 school she went to, and the residence that -- or
9 residence that she alleges this occurred at. I find
10 there is sufficient direct evidence from the
11 testimony of the victim herself. I would deny the
12 motion for directed verdict as to that indictment as
13 to criminal sexual conduct with a minor first
14 degree.

15 As to criminal sexual conduct with a minor
16 second degree between 17 September '11 and 15
17 September '13, again, the testimony of the victim as
18 to her age, based on her date of birth, she would
19 have been at least 14 years of age, but less than 16
20 years of age. I tracked it both by location and by
21 school grade and school of attendance. Further, the
22 indictment alleges the defendant is older than the
23 victim. That's testimony that is also in evidence
24 based on his date of birth as compared to her date
25 of birth.

1 As to the indictments for criminal sexual
2 conduct in the third degree, both as 1st -- on 1
3 December 2014, I tracked that by the testimony of
4 the alleged victim. Further, there is corroborative
5 testimony through Detective Phipps. There's also
6 corroborative testimony through Sergeant McCann as
7 far as the statements that were testified to in
8 evidence concerning Sergeant McCann's conversation
9 as to time and place and the time frame of a
10 ten-year period of time concerning this.

11 As to the issue of force or coercion, looking
12 at the totality of the evidence presented under the
13 charge, it does require the use of force or
14 coercion, which means to make the victim follow a
15 prescribed and dictated course, to inflict or impose
16 or to force one's will on someone. That's clearly
17 an issue of fact for the jury to determine based on
18 the testimony that's been presented.

19 Further, as to the other criminal sexual
20 conduct third degree indictment, 26 April 2015, both
21 the testimony of the victim, the testimony of
22 Sergeant McCann, the testimony of Sergeant Black,
23 the forensic findings of Agent Thompson, the
24 forensic findings of Agent Money, the SANE exam by
25 Nurse Deguzman, I think there's both direct and

1 substantial circumstantial evidence. The totality
2 of the circumstances is clearly a jury issue as to
3 whether there was force or coercion used under those
4 terms of art in the charge of criminal sexual
5 conduct third degree. So motions for directed
6 verdict as to all charges are denied.

7 Any other motions, Mr. Floyd?

8 MR. FLOYD: Other than we renew all our motions
9 made during the presentation of the case, including
10 our two motions for mistrial.

11 THE COURT: Thank you, Mr. Floyd. I would
12 renew all my previous trial rulings, both
13 evidentiary and otherwise, and my rulings as to
14 mistrial.

15 Mr. Floyd, will you have your client come
16 around to the podium, please?

17 MR. FLOYD: Yes, Your Honor. And I was going
18 to ask Your Honor for some time to talk with him
19 because we are not sure yet whether or not he wants
20 to testify. If we could have a little time to talk
21 with him about that.

22 THE COURT: Would you have him come around,
23 please?

24 MR. FLOYD: Yes, sir.

25 THE COURT: Madam Clerk, would you place

1 Mr. Heath under oath for me, please?

2 WILLIAM HEATH

3 being first duly sworn, testified as follows:

4 THE DEFENDANT: I do.

5 THE COURT: Mr. Heath, I need to go over some
6 things with you. I do this with everyone who is on
7 trial. I need your responses to be under oath,
8 that's why I had our clerk place you under oath.

9 We've reached the stage of the trial where the
10 State has rested and your side, the Defense, now has
11 the opportunity to present evidence for the jury to
12 consider. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: In that regard, you may, as part of
15 your defense, call witnesses to testify on your
16 behalf and you may testify for yourself. Do you
17 understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: No one can force you to testify.
20 You have the absolute right to remain silent, and if
21 you choose not to testify, I will tell this jury
22 that they cannot hold your silence against you in
23 any way. I will tell them that they are not to even
24 discuss the fact that you did not testify in the
25 jury room. Do you understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Floyd, Solicitor, the next part
3 of my colloquy with Mr. Heath concerns the closing
4 argument. I think that has been made moot by State
5 vs. Beaty.

6 Do you agree, Mr. Floyd?

7 MR. FLOYD: My understanding is the way it
8 would work now is that the State would open fully,
9 then we would respond, and they would -- they could
10 respond only to new matters brought up. Is that --

11 THE COURT: That's right. The State would open
12 in full, you would then -- the State would do its
13 closing argument first, followed by your closing
14 argument, and then they would have a right to a
15 brief reply to any new material you bring up,
16 irrespective of whether evidence or witnesses are
17 presented by the Defense. Is that your
18 understanding?

19 MR. FLOYD: Well, we understand that's what
20 everybody is doing now. I'm not positive that Beaty
21 is solid law yet.

22 THE COURT: Well, it just got a rehearing.

23 MR. FLOYD: Did it get the rehearing?

24 THE COURT: Yes, sir. And that opinion was
25 issued last -- not yesterday last, but Wednesday a

1 week ago.

2 MR. FLOYD: Oh, okay.

3 THE COURT: And there was a new opinion by
4 Justice James. I believe Judge James wrote the
5 opinion. So I guess what I'm saying is, for
6 purposes of speaking to your client, the offer and
7 acceptance of evidence by the Defense does not
8 affect whether or not the Defense gets the last
9 closing argument. You agree with that?

10 MR. FLOYD: I agree with that.

11 THE COURT: You agree with that, Solicitor?

12 MS. MAYES: Your Honor, our understanding is
13 that with no evidence presented, the State does not
14 then have the right to rebut. The right to rebut
15 exists when there is evidence presented, but when
16 there is no evidence presented, resort back to the
17 old rule that's always been there, we do not rebut.

18 THE COURT: With that being said then, if you
19 did not present evidence, Solicitor -- excuse me, if
20 the defendant did not present evidence, the State
21 would lose its right to reply; is that correct?

22 MS. MAYES: That's our understanding. It is
23 somewhat murky, but our understanding is that with
24 no evidence presented, it's last argument and that's
25 final for the Defense.

1 THE COURT: All right. Discuss that, I know
2 you will, among other issues, Mr. Floyd.

3 MR. FLOYD: I will, Your Honor.

4 THE COURT: Does Mr. Heath have any prior
5 criminal history that would subject him to
6 impeachment under Rule 609?

7 MS. MAYES: Your Honor, under 609, it does
8 cover crimes for which he would have still been
9 under confinement or under that sentence. He has
10 2004 convictions for ABHAN, threatening the life of
11 a public official, and resisting arrest. It looks
12 like the ABHAN was 10 years with two years'
13 probation. So it appears that we'd be just outside
14 of that.

15 He has more recent convictions, Your Honor,
16 including DUI, that would not be subject to
17 impeachment.

18 THE COURT: Are you saying the ABHAN is?

19 MS. MAYES: I believe it would be just outside.
20 It's 10 years and two years' probation. The
21 conviction date on that is May 2004.

22 THE COURT: So you do not intend to use that?

23 MS. MAYES: I believe it would be outside.

24 THE COURT: Therefore, he has no convictions
25 that would subject him to impeachment under Rule

1 609?

2 MS. MAYES: That is correct, Your Honor.

3 THE COURT: Then we don't have to address that
4 issue.

5 You agree, Mr. Floyd?

6 MR. FLOYD: Yes, Your Honor.

7 THE COURT: Mr. Heath, the decision about
8 whether you testify or not is your decision to make,
9 your call, yours and yours alone. Do you
10 understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: I expect that you have conferred
13 with your attorneys or with others, perhaps whose
14 opinions you value on life's very important
15 decisions. But, again, the decision about whether
16 you testify or not is your decision to make and
17 yours alone. Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Has anyone exercised any undue
20 influence over you to get you to choose to testify
21 or not testify?

22 THE DEFENDANT: No.

23 THE COURT: Today are you under the influence
24 of any medication, drugs, alcohol, or anything that
25 negatively affects your thinking ability?

1 THE DEFENDANT: No.

2 THE COURT: Do you suffer from any mental,
3 emotional or physical problems that negatively
4 affect your thinking today?

5 THE DEFENDANT: No.

6 THE COURT: Do you have any questions at this
7 time that you would like to ask me about your
8 decision to testify or not testify?

9 THE DEFENDANT: I'd just like to talk to my
10 attorney in private.

11 THE COURT: I'm going to get to that. Yes,
12 sir. I think I've done that in every case I've ever
13 tried. But as far as asking me any questions about
14 the decision to testify or not?

15 THE DEFENDANT: No, sir.

16 THE COURT: You have no questions to ask me at
17 this time?

18 THE DEFENDANT: No, sir.

19 THE COURT: And you understand your right to
20 testify or not testify?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: All right. I will, of course, give
23 you further opportunity -- I say further. I don't
24 know if you've discussed it in the past or not. But
25 I will give you further opportunity to discuss that

1 right with your attorney. You may return to your
2 seat, Mr. Heath.

3 Mr. Floyd, can you tell me what time you would
4 think would be appropriate for you and Mr. Spangler
5 and your client to discuss that issue as far as the
6 right to testify or not testify?

7 MR. FLOYD: My guess is -- because we've done
8 some discussion with him, my guess is it may take us
9 a half hour.

10 THE COURT: Let me ask you this, Mr. Floyd:
11 Does the Defense intend to -- not talking about
12 Mr. Heath. Does the Defense intend to present any
13 evidence or testimony of other witnesses?

14 MR. FLOYD: We do not anticipate that. If by
15 chance there were any other witnesses, they'd be
16 very, very brief.

17 THE COURT: So you're asking me -- which I'm
18 going to grant, but I want to make sure I understand
19 what you're asking me -- to give you 30 minutes to
20 talk with Mr. Heath?

21 MR. FLOYD: Yes, sir. I think we can have you
22 an answer by then. And whether you want us to go
23 ahead and go then or wait until the morning --

24 THE COURT: Sir?

25 MR. FLOYD: Whatever you want to do from there.

1 THE COURT: Well, that will take us to about
2 3:30. I'm just looking at the timing at 3:30.
3 Okay.

4 MR. FLOYD: I know you don't like to break it
5 up.

6 THE COURT: I don't like to break it up. And
7 I'm trying to decide if I wait till 3:30 -- well,
8 let's see what happens. I can predict anything but
9 the future. So at 3:30, we'll reconvene.

10 Solicitor, anything further? I'm sorry.

11 MS. MAYES: Yes, sir, Your Honor. Do you have
12 a copy of the charge yet or does your law clerk have
13 that available yet?

14 THE COURT: I have my general charge that I
15 always use. I have criminal sexual conduct with a
16 minor first degree, criminal sexual conduct with a
17 minor second degree, and criminal sexual conduct
18 third degree. But you need a copy of my general
19 charge?

20 MS. MAYES: No, sir. I thought there might be
21 one available via email.

22 THE COURT: I'll see if we can get it
23 completely together.

24 Are there any requests to charge I should
25 consider? Well, I've denied the motion for directed

1 at this stage. Are there any requests to charge,
2 Mr. Floyd?

3 MR. FLOYD: No, Your Honor, just the standard.

4 THE COURT: Solicitor?

5 MS. MAYES: Your Honor, other than the
6 testimony on -- the charge on expert witnesses
7 and --

8 THE COURT: I charge that.

9 MS. MAYES: And, potentially, on voluntary
10 intoxication.

11 THE COURT: There's nothing in the record, in
12 my opinion, as to voluntary intoxication at this
13 time. And that's not a defense, is it? Voluntary
14 intoxication is not a defense to --

15 MR. FLOYD: I don't think it is, Your Honor.

16 THE COURT: I don't think it is either. Be
17 that as it may, we'll be in recess until 3:30.

18 Thank you, Mr. Floyd.

19 Thank you, Solicitor.

20 (Short break.)

21 THE COURT: Mr. Floyd?

22 MR. FLOYD: Thank you, Your Honor. We're still
23 doing some talking in that regard, but we do have a
24 short witness to put up this afternoon. And I'd
25 like to continue speaking to Mr. Heath on that

1 question.

2 THE COURT: All right. So you want --

3 MR. FLOYD: We're going to put up some
4 testimony. I have a brief witness.

5 THE COURT: All right.

6 MR. FLOYD: In fact, it's his mother.

7 THE COURT: So you want the overnight hours to
8 speak to Mr. Heath?

9 MR. FLOYD: Yes, sir, as to whether or not he's
10 going to testify.

11 THE COURT: Do you have other witnesses besides
12 the brief witness or do you know?

13 MR. FLOYD: All we have, Your Honor, is his
14 mother and potentially him.

15 THE COURT: All right. Anything, Solicitor?

16 MS. MAYES: No, sir, Your Honor.

17 THE COURT: As far as timing, my court reporter
18 has a doctor's appointment in the morning and I have
19 always been and will continue to be very
20 accommodating to my court reporter, as I would to
21 anyone, so I don't think we can start before noon
22 tomorrow. All right?

23 So I'll release the -- after the testimony
24 today, I'll release the jury until that time.

25 (The jury enters the courtroom at 3:42 PM.)

1 THE COURT: Welcome back, ladies and gentlemen.
2 Again, I apologize for the delay. It had nothing to
3 do with the work ethic of the attorneys in any form
4 or fashion.

5 As you recall prior to our break, the State has
6 rested. You've heard all the evidence and all the
7 testimony you're going to hear from the State in its
8 case in chief.

9 A criminal defendant in South Carolina is
10 always presumed to be innocent. Regardless of
11 whatever serious nature a charge may be, it never
12 has any burden to prove himself or herself innocent.
13 A criminal defendant in South Carolina may present
14 evidence and testimony if he or she chooses to do
15 so. Again, no burden whatsoever to prove himself or
16 herself innocent.

17 So we'll turn our attention to Mr. Floyd and
18 ask does Mr. Heath intend to present any evidence or
19 testimony?

20 MR. FLOYD: Yes, Your Honor, we'll be putting
21 up some testimony.

22 THE COURT: All right. Would you call your
23 first witness, please.

24 MR. FLOYD: We'd call Ms. Heath.

25 THE COURT: If you'd come around, please;

1 Ms. Heath and be sworn.

2 SELMA HEATH

3 being first duly sworn, testified as follows:

4 THE WITNESS: I do.

5 THE CLERK: If you'll have a seat over here,
6 please. Make sure you speak loud and clear. State
7 your name for the record.

8 DIRECT EXAMINATION

9 BY MR. FLOYD:

10 Q. State your name for the record.

11 A. Selma Heath, H-E-A-T-H.

12 Q. And, Selma, do you know the Defendant, William
13 Heath?

14 A. Yes, I do.

15 Q. How do you know him?

16 A. He's my son.

17 Q. And how about [REDACTED] complainant?

18 A. She's my granddaughter.

19 Q. Now, where do you live, Selma?

20 A. [REDACTED], Gilbert.

21 Q. And that's in Lexington County?

22 A. Right.

23 Q. Have you always been close to [REDACTED] Complainant?

24 A. Yes, I have.

25 Q. And are you -- you're familiar with the

1 relationship Bill and [Complainant] had with each other?

2 A. Yes, I am.

3 Q. How often did [Complainant] stay with you?

4 A. She stayed with me from the time she was six
5 weeks old until she was -- until she went to school.

6 Started school when she was five or six and she
7 stayed there every day. We picked her up, we took
8 her home. And then she stayed with us in the
9 summertime. I had her Christmastime. I had her for
10 six months when DSS removed them.

11 Q. And when --

12 A. And then I've had her since then, not really
13 living there, but she's been there on the weekends
14 sometimes.

15 Q. And how often would you see her -- since she
16 last lived with you, how often would you see her in,
17 say, a month?

18 A. In a month?

19 Q. Uh-huh.

20 A. I haven't seen her much lately. But she was
21 coming about every -- I had her -- well, I used to
22 get her on the weekend when she was in high school
23 because I used to pick her up on Friday and take her
24 to the house. And then she moved to Texas. And
25 then when she came back from Texas, you know, she

1 was there more frequently, but I haven't seen her.

2 I probably seen her -- well, I haven't seen her in
3 over a month and I don't know why.

4 Q. Let's back up to when she was in high school.
5 Okay?

6 A. Right.

7 Q. How often would you see her in high school?

8 A. I'd say at least six to eight days out of the
9 month.

10 Q. And would Bill be present sometimes when you
11 saw her?

12 A. Yeah, I think he was.

13 Q. Have you ever known [Complainant] to be afraid of
14 him?

15 A. I haven't seen her be afraid of him, no.

16 Q. And that was even back through high school, her
17 high school years?

18 A. Right.

19 Q. And how about before high school, did you ever
20 notice her to be afraid of him?

21 A. No. No, she didn't seem to be.

22 Q. Okay. Now, back years ago when DSS got
23 involved with the parents, do you recall how old
24 they were then, the kids?

25 A. I believe that -- well, [Complainant] was in first

1 grade. She was in first grade. **older** was in fifth
2 grade, I believe.

3 Q. Okay. And back then they stayed with you for a
4 while; is that correct?

5 A. Right. About six months, I think it was.

6 Q. And during that time, were they also getting
7 counseling through DSS and so forth?

8 A. They were. They were getting counseling with
9 Shelby Strobe and Dr. Ucaze, they went and talked to
10 him. They had -- they had two guardians -- well,
11 two guardian ad litem at that time.

12 Q. And there were no allegations at all of any
13 kind of sexual abuse, were there?

14 A. No. No, there weren't.

15 Q. Now, once the children moved back in with Bill
16 and Rose, did they continue to come see you on a
17 frequent basis?

18 A. They did. Well, they didn't immediately
19 because when DSS first put them back into the home,
20 they told my husband and I that we should kind of
21 stay away from them for a little while and let them
22 get accustomed to being with their parents again.
23 And then they were coming to the house quite
24 frequently and I --

25 Q. So you got to observe the family dynamics

1 between the four of them?

2 A. Yes, I did.

3 Q. And did you see any type of fear or distrust or
4 anything like that between the parents and the
5 children?

6 A. No. They appeared to be okay. The only
7 problem that I had was that they weren't -- they
8 weren't continuing with their doctor, things that
9 they were supposed to be going to. And, you know,
10 we did step in a little bit there.

11 Q. But as far as the interaction between the
12 parents and the children, you didn't see anything
13 unusual there?

14 A. No, it appeared to be okay.

15 Q. And you remained close with **Complainant** all through
16 high school?

17 A. Yes, I did.

18 Q. So were you shocked when you heard about these
19 charges?

20 A. Yeah, I was. Yeah, I was. And I -- and I was
21 shocked that she didn't -- you know, that she didn't
22 tell us. She didn't tell us. Rose called us. And
23 when I asked **Complainant** -- I asked **Complainant** what
24 happened --

25 MS. MAYES: Objection to hearsay.

1 THE COURT: Sustained.

2 BY MR. FLOYD:

3 Q. You can't say what Complainant told you. That's
4 hearsay.

5 A. Okay.

6 Q. Up until that point in time when you heard
7 about Bill getting arrested, had Complainant ever said
8 anything to you about any kind of sexual abuse?

9 A. No, she didn't. In fact, I was concerned one
10 time about him bathing her when she was -- you know,
11 when she was younger, I was concerned about that and
12 I asked her -- she said -- she told me something --

13 THE COURT: Again, she can't testify as to what
14 she said.

15 Q. Can't say what she said.

16 A. Okay. I'm sorry.

17 Q. Thank you, Ms. Heath. Answer any questions the
18 prosecutor may have.

19 THE COURT: Thank you, Mr. Floyd.

20 Solicitor?

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

22 CROSS-EXAMINATION

23 BY MS. MAYES:

24 Q. Good afternoon, Ms. Heath.

25 A. Good afternoon.

1 Q. One of the things Mr. Floyd was just asking you
2 about is did you have any concerns about Complainant
3 going back home even when she was a young child.

4 A. When she was young, I had some concerns that
5 they had some medical issues and -- but DSS really
6 let them down there. You know, DSS removed them
7 from the home, and when they put them back in the
8 home, they didn't follow through, so the children's
9 medical needs weren't met. And my husband and I
10 went back to court for that. We went to court over
11 that.

12 Q. So let's go back then. DSS intervenes because
13 of issues between your son, Bill, and his wife,
14 Rose; correct?

15 A. Well, yeah -- well, actually, they
16 intervened -- it had something to do with [REDACTED].

17 Q. All right. So again though, that wasn't a
18 sexual abuse investigation; correct?

19 A. No, it wasn't.

20 Q. And treatment was ordered for both Bill Heath
21 and Rose Heath; correct?

22 A. Right.

23 Q. And during that time, Complainant was not allowed
24 to live with them; correct?

25 A. Right.

1 Q. And so DSS placed her with you?

2 A. Right, her and [REDACTED] both.

3 Q. And as you stated, back when she was seven in
4 November of 2004, there were concerns about some
5 medical issues; correct?

6 A. Right.

7 Q. And you recall taking [REDACTED], as a
8 seven-year-old, to a doctor reporting that she had
9 burning urination and blood?

10 A. No, I didn't take her to that. I didn't take
11 her to that. That was Dr. Luberoff. I never took
12 her to Dr. Luberoff.

13 Q. So the report of burning urination that states
14 that the reporter or the historian present with the
15 child is the grandmother. That would not be you?

16 A. I -- that was Dr. Luberoff, right? I never
17 took her to Dr. Luberoff. I don't know why my name
18 would be there, but I didn't take her there.

19 Q. Okay. This is Dr. Soto at Lexington Urgent
20 Care. Do you recall reporting to a doctor that she
21 had blood in her urine?

22 A. No, I don't, because I didn't.

23 Q. She didn't have any other grandmother that she
24 was living with at that point in time as a
25 seven-year-old, did she?

1 A. No, she wouldn't have.

2 Q. So moving forward to where we are now, you have
3 been in regular contact with your son since his
4 arrest on these charges; correct?

5 A. Right.

6 Q. And even beyond that, you've been in regular
7 contact with Rose as well, correct, [REDACTED]'s
8 mother?

9 A. I have.

10 Q. And you've been here in the courtroom every
11 day; correct?

12 A. Yes, I have.

13 Q. So there's no doubt you love your son?

14 A. Yes, I do.

15 Q. And, Ms. Heath, you were not living with the
16 family on [REDACTED], were you?

17 A. No, I wasn't.

18 Q. And you weren't living with the family on [REDACTED]
19 [REDACTED], were you?

20 A. No, I wasn't.

21 Q. And you weren't at the residence on the night
22 of April 26th, 2015 on [REDACTED], were you?

23 A. No, I wasn't. And she could have called me. I
24 was 15 minutes from her.

25 Q. She could have called you, Ms. Heath, and said

1 what? And said that she was being molested by your
2 son?

3 A. Yes, she could have.

4 Q. Okay. And --

5 A. I've stood up to my son before. I've taken him
6 to court, him and his wife both.

7 Q. And yet you're aware of the charges and you've
8 been here all week in court with him; correct?

9 A. I have. I still love him. I mean, it don't
10 matter. Okay?

11 Q. And just to follow up on that, you say you
12 wonder why **Complainant** wouldn't tell you?

13 A. That's right.

14 Q. Even though you're here to support your son
15 because you still love him no matter what; correct?

16 A. I do. And you know what? And you know I -- I
17 was -- I'm sorry. I love them both.

18 Q. And you don't know what your son had on his
19 iPad, do you?

20 A. No, I don't.

21 MS. MAYES: Nothing further.

22 THE COURT: Thank you.

23 Anything -- redirect, Mr. Floyd?

24 MR. FLOYD: Just briefly.

25

typically I tell juries, and I believe I told y'all this Tuesday, as far as not just this trial, but any trial that I preside over, the importance of the case, the importance of the case to both Mr. Heath and to the State as far as this case is concerned.

1 And I consider a trial a marathon, not a sprint,
2 because the stakes are high, quite frankly, so I
3 make sure both parties have full and complete
4 opportunity to present any admissible evidence that
5 they intend to offer.

6 I realize the manner in which it affects your
7 personal and professional lives. And, again, I
8 thank y'all for being here, because matters couldn't
9 be resolved, whether civil or criminal, without
10 y'all's participation.

11 So I should be more like -- I have two favorite
12 artists, musical artists, neither one of which y'all
13 will say, well, so what, we don't care to listen to
14 that. One of my favorites is Alicia Keys, and one
15 of her songs is don't make me read between the
16 lines, tell me like it is. And I'm the best
17 misquoter in the world.

18 But be that as it may, how it is, is we're not
19 going to be able to finish this trial this evening.
20 I'm not going to require the Defense to rest at this
21 time, I'm going to give them the opportunity -- the
22 overnight evening hours, and we'll start back in the
23 morning.

24 There may be more evidence and testimony
25 presented, there may not. If there is not, we'll go

1 into closing and charging. There will be closing
2 arguments by the attorneys and instruction on the
3 law by the Court.

4 I have another issue also as far as timing is
5 concerned. I can't start, not because of my
6 schedule, but because of others, before noon
7 tomorrow. And I realize that's additionally
8 disruptive to your personal and professional lives,
9 but I cannot start until noon tomorrow.

10 So I'm going to release you from your jury
11 service for the remainder of the evening, ask you to
12 please be back at noon tomorrow. And thank you,
13 once again, for your participation and work ethic
14 and focus and attention and graciousness to all the
15 parties in the trial of this case.

16 Thank you very much. You are now released for
17 the evening. If you would please be back at noon
18 tomorrow.

19 (The jury exits the courtroom at 4:03 PM.)

20 THE COURT: Anything further, Mr. Floyd?

21 MR. FLOYD: No, Your Honor.

22 THE COURT: Solicitor?

23 MS. MAYES: No, sir, Your Honor.

24 THE COURT: All right. Did y'all get the
25 charge?

1 MS. MAYES: We did.

2 THE COURT: If you have any objections, just
3 email us.

4 Mr. Floyd, I would ask this: By the time in
5 the morning, say, 11:00 AM, if you would notify the
6 Solicitor's Office if you intend to present any
7 evidence or testimony. I know there's two
8 solicitors, both very capable, but I don't like
9 making -- and I'd do the same for you. I don't like
10 making someone prepare for cross-examination
11 continuing the trial of the case and closing. It's
12 kind of two fronts that they have to face.

13 Also, Solicitor, if you think you have any
14 evidence or testimony or if you're going to present
15 any evidence or testimony in reply, if you would
16 also notify Mr. Floyd.

17 MS. MAYES: Yes, sir. We have Detective
18 Phipps, who is present in the courtroom, who will
19 remain in the courtroom, he'll be back tomorrow,
20 unless we hear otherwise. We also anticipate some
21 potential reply regarding jail calls, so we'll make
22 arrangements for that as well.

23 THE COURT: Thank you very much. Pleasure
24 being with y'all today. Court will be in recess
25 until noon.

1 (The following proceedings were held May 11,
2 2018.)

3 THE COURT: Mr. Floyd, does the Defense intend
4 to present any other evidence or testimony.

5 MR. FLOYD: Your Honor, we do not intend to
6 present any more testimony as to evidence. We would
7 ask Your Honor to admit into evidence a copy of the
8 SANE examination. It was identified during the
9 State's case. Portions of it were presented to the
10 jury. We intend to argue from it and we think it
11 would be helpful to the jury for them to have a copy
12 of it.

13 THE COURT: All right.
14 Solicitor?

15 MS. MAYES: Your Honor, I guess it comes down
16 to whether or not the portion they intend to argue
17 was something that the witness was questioned on.
18 It's a document that's probably 15 pages long, so
19 they certainly would have had an opportunity to
20 question her about the content of it and then,
21 potentially, offered it at that time.

22 If there was something on there that the
23 witness wasn't questioned about, then the State's
24 position is that that opportunity has been lost and
25 we don't now have an opportunity to recall that

1 witness on that matter to clarify it further.

2 So we would oppose its admission at this time
3 because it was not properly authenticated as a
4 business record and offered when that witness was on
5 the stand and could be questioned thoroughly about
6 its contents.

7 THE COURT: You have no objections then to that
8 part of the SANE report that the witness was -- that
9 the witness, Ms. Deguzman testified to, either
10 through direct testimony, questioned by the State,
11 or cross-examining testimony by Mr. Floyd?

12 MS. MAYES: That's right, Your Honor.

13 THE COURT: Is that what I understand?

14 MS. MAYES: There is a portion where the
15 patient gave the history, and her testimony as to
16 that portion was that it was necessary for medical
17 diagnosis and treatment. And she did read that
18 portion in its entirety, so that's in the record.
19 We have no objection to that. It's just a 15-page
20 document. So I'm not sure what aspects of it
21 they're attempting to offer, but she certainly
22 wasn't questioned about the document in its
23 entirety.

24 THE COURT: I understand. But she was
25 questioned about a series of questions that

1 Ms. Deguzman asked Miss compl --

2 MS. MAYES: That's right.

3 THE COURT: -- by Mr. Floyd. And, you know,
4 other areas, I think she was questioned
5 concerning -- I won't call it an infection. I'm not
6 sure of the terminology of that. Don't know if
7 that's in the report or not. But my question is, do
8 you have any objections as to either the part you
9 questioned her on or the part that Mr. Floyd
10 questioned her on?

11 MS. MAYES: As long as it's something that's in
12 the record, Your Honor, I do not have an objection.

13 THE COURT: Then y'all decide what's in the
14 record. I mean, my only other choice, since it's
15 not authenticated, is to get Ms. Deguzman back here.
16 That does not seem to be very efficient, however, I
17 will do that if I have to.

18 MR. FLOYD: Your Honor, after conferring with
19 Ms. Mayes, I think she's okay with the whole thing
20 coming in.

21 THE COURT: Okay. So that would be Defendant's
22 1?

23 MR. FLOYD: That would be Defendant's 1, Your
24 Honor.

25 THE COURT: All right. In evidence without

1 objection; correct, Solicitor?

2 MS. MAYES: Correct, Your Honor.

3 THE COURT: Thank you, Mr. Floyd.

4 Thank you, Solicitor.

5 (Defendant's Exhibit No. 1 admitted into
6 evidence.)

7 THE COURT: Given that fact, is there any other
8 evidence or testimony the Defense intends to
9 present, Mr. Floyd?

10 MR. FLOYD: No, Your Honor.

11 THE COURT: Would you have Mr. Heath come
12 around, please?

13 WILLIAM HEATH

14 being first duly sworn, testified as follows:

15 THE DEFENDANT: I do.

16 THE COURT: Mr. Heath, you recall I questioned
17 you yesterday around 2:30 or so concerning your
18 right to testify or not testify?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And yesterday afternoon I gave you
21 approximately 35 or 40 minutes to discuss the right
22 to testify or not to testify with your attorney. Do
23 you recall?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And then yesterday evening your

1 attorney asked me if he could have the overnight
2 hours to talk with you further concerning your right
3 to testify or not to testify; is that correct?

4 THE DEFENDANT: Yes.

5 THE COURT: Did you have the opportunity to
6 speak with your attorney about that?

7 THE DEFENDANT: I did.

8 THE COURT: Do you understand intelligently and
9 knowingly your right to testify or not testify?

10 THE DEFENDANT: I do.

11 THE COURT: Do you understand if you were to
12 choose not to testify, I will tell the jury they
13 cannot hold the fact that you did not testify
14 against you in any manner?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And could not even discuss that
17 issue in the jury room?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions you'd
20 like to ask me about your right to testify or not
21 testify?

22 THE DEFENDANT: Not at this time.

23 THE COURT: Have you made a decision to testify
24 or not testify?

25 THE DEFENDANT: Yes, I have.

1 THE COURT: And whatever decision you have
2 made, is it made of your own free will and accord?

3 THE DEFENDANT: Yes, it is.

4 THE COURT: And you understand it's your call
5 to make?

6 THE DEFENDANT: Yes.

7 THE COURT: And what is your decision?

8 THE DEFENDANT: Not to testify.

9 THE COURT: Thank you, Mr. Heath. You may
10 return to your seat.

11 So the Defense now is in a position to rest,
12 Mr. Floyd?

13 MR. FLOYD: That's correct, Your Honor.

14 THE COURT: Do you object if I hear any motions
15 you may have prior to bringing the jury out?

16 MR. FLOYD: No, Your Honor.

17 THE COURT: I'll be happy to hear your motions.

18 MR. FLOYD: Thank you. Your Honor, at this
19 time, we renew our motions made at the close of the
20 State's case. We move for a directed verdict on all
21 counts.

22 It's our position that the State has failed to
23 establish the four offenses, even taking the
24 evidence in the light most favorable to the State.
25 And specifically the two CSC third counts, the State

1 has failed to establish, put forth any evidence of
2 force or coercion, as required by the statute.

3 We also renew all of our motions made during
4 the trial as to mistrial and as to our motion to
5 suppress certain items of evidence, including the
6 iPad. We renew those motions with you also.

7 THE COURT: Thank you, Mr. Floyd.

8 Solicitor?

9 MS. MAYES: Your Honor, I believe, as you ruled
10 at the middle of this trial, there was testimony
11 replete on the record from the victim about the
12 various ages and elements. Each were met. And as
13 to coercion and forcing of one's will on another, we
14 believe there's been sufficient evidence from
15 Miss [Complainant] on the record in that regard as to the
16 charges of criminal sexual conduct third degree.

17 THE COURT: Thank you.

18 Madam Court Reporter, will you hand me the SANE
19 report, please? Thank you.

20 All right. I have reviewed Defense 1, the SANE
21 nurse report. At this stage I take into account all
22 evidence and testimony both by witness and by
23 Defense 1 into evidence in my consideration of the
24 directed verdict motion at the close of all the
25 evidence.

1 I reaffirm, taking those into account, my
2 rulings, and respectfully deny the motions for
3 directed verdict both the criminal sexual conduct
4 with a minor first degree, criminal sexual conduct
5 with a minor second degree, and criminal sexual
6 conduct third degree, 1 December 2014 and criminal
7 sexual conduct third degree 20 April 2015. Motions
8 are denied.

9 As to the other motion, both as to mistrials
10 and previous evidentiary trial rulings, I reaffirm
11 my previous rulings both as to evidence and as to
12 mistrial, as previously stated in the record.

13 Any other motions, Mr. Floyd?

14 MR. FLOYD: One other matter, which I guess it
15 would be the appropriate time to bring up, Your
16 Honor, as to jury charge.

17 THE COURT: Yes, sir.

18 MR. FLOYD: I appreciate you providing us with
19 what you did. Our comment on that would be we'd ask
20 Your Honor to -- your charge about force and
21 coercion.

22 THE COURT: Yes, sir.

23 MR. FLOYD: We'd ask Your Honor to use the
24 statutory definition of aggravated force and
25 coercion and take out the aggravated language.

1 THE COURT: I thought I directed my law clerk
2 to do that and just put in sexual battery. Now, I'm
3 not exactly sure -- I'm not charging without any
4 aggravating circumstances. Defendant used force or
5 coercion to accomplish the sexual battery.

6 Using force or coercion means to make the
7 victim follow a prescribed or dictated course to
8 inflict or impose or to force one's will on
9 somebody. I'm not charging that language without
10 any aggravating circumstances.

11 MR. FLOYD: Your Honor, what we were asking,
12 for example, when the statute defines aggravated
13 force, means that the act used is physical force or
14 physical violence of a high and --

15 THE COURT: What statute -- you talking about
16 the definitional statute?

17 MR. FLOYD: Yes, sir, 16-3-651.

18 THE COURT: Right.

19 MR. FLOYD: Definition statute.

20 THE COURT: Yes, sir.

21 MR. FLOYD: We're asking Your Honor to charge
22 the way it reads, except use that -- leave out the
23 term aggravated and leave out the high and
24 aggravated nature. But otherwise --

25 THE COURT: I don't -- I don't think I have

1 high and aggravated nature in there.

2 MR. FLOYD: You don't, Your Honor. You don't.
3 What we're asking is -- it's our position your force
4 and coercion instruction is not -- doesn't require
5 the type of evidence that we feel the statute would
6 require.

7 For example, yours says using force and
8 coercion means to make the victim follow a
9 prescribed and dictated course, to inflict or impose
10 or force one's will on someone. I think the statute
11 contemplates when it talks about aggravated force, I
12 think it's just stepping up force. And what they --
13 the legislature obviously intended means there
14 should be some physical force, maybe not an
15 aggravated nature in the force, and a threat of
16 force or violence is not of a high and aggravated
17 nature in the coercion part.

18 THE COURT: The statute in the indictment which
19 the defendant is charged, the third degree,
20 16-3-654, criminal sexual conduct in the third
21 degree, a person is guilty of criminal sexual
22 conduct in the third degree if the actor engages in
23 sexual battery with the victim and if any one or
24 more of the following circumstances are proven: the
25 actor uses force or coercion to accomplish the

1 sexual battery in the absence of aggravating
2 circumstances. That is basically the charge of 654.
3 When I go to 651, there is no definition of an
4 aggravating circumstance.

5 MR. FLOYD: Yes, Your Honor. Our objection
6 only goes to the use of the -- to the CSC third
7 offenses.

8 THE COURT: That's what I just read, the 654.
9 And when I go to the definition of circumstances,
10 there's no -- the definitional statute, there's no
11 definition of aggravating circumstances, nor is
12 there of force or coercion.

13 MR. FLOYD: Your Honor, we're asking you just
14 to use the aggravated coercion and aggravated force
15 definitions, just eliminate the high and aggravated
16 nature in terms of using it.

17 MS. MAYES: Your Honor, that would --

18 THE COURT: I'm sorry. Maybe I'm not tracking.
19 Where in my charge --

20 Yes, Solicitor?

21 MS. MAYES: Your Honor, the State's position is
22 that those definitions of aggravated force and
23 aggravated coercion were meant to be definitions
24 used exclusively for the charges of criminal sexual
25 conduct first degree and criminal sexual conduct

1 second degree. When it's third degree, those
2 definitions would not apply. And so --

3 THE COURT: That's what I was trying to say,
4 obviously not very clearly.

5 Tell me what you're asking me to take out of
6 this charge third degree, Mr. Floyd. Maybe I'm not
7 tracking.

8 MR. FLOYD: Well, maybe I need to explain it
9 better. Your Honor, the statute nowhere defines
10 force or coercion.

11 THE COURT: Correct.

12 MR. FLOYD: However, the statutes do define
13 aggravated force and aggravated coercion.

14 THE COURT: The definitional statute does.
15 16-3-654 doesn't even mention aggravated force or
16 aggravated coercion.

17 MR. FLOYD: But it uses the terms force and
18 coercion.

19 THE COURT: Correct.

20 MR. FLOYD: So we're asking Your Honor to go to
21 the definitional section where it defines aggravated
22 coercion and aggravated force, use those
23 definitions, just take out the phrase of high and
24 aggravated nature.

25 MS. MAYES: That would be a complete

1 misstatement of the law. Those definitions, which
2 include physical force and violence, it goes beyond
3 just the high and aggravated nature reference.

4 THE COURT: Let me see what you're referring
5 to, Mr. Floyd. Maybe we're looking at two different
6 items. Maybe that's where I'm missing the mark.

7 MR. FLOYD: What we're arguing, Your Honor, you
8 see how it defines aggravated force and aggravated
9 coercion?

10 THE COURT: I don't see that in my charge.

11 MR. FLOYD: That's true.

12 THE COURT: And I don't see --

13 MR. FLOYD: What we're asking is that the
14 charge be changed to include language similar to the
15 language that's in these definitions, but take out
16 the high and aggravated part of the statutory
17 definition.

18 THE COURT: I don't think aggravated force and
19 aggravated coercion apply to 16-3-654, if I'm
20 tracking.

21 MR. FLOYD: I understand what you're saying
22 there. What we're saying though is if you take this
23 statute and look at it and just take out high and
24 aggravated nature, we think force -- the legislature
25 certainly intended force to mean physical force or

1 physical violence --

2 THE COURT: They haven't written that.

3 MR. FLOYD: Well, if you just take out of a
4 high and aggravated nature then just use their
5 statute, then you would have physical force or
6 physical violence.

7 THE COURT: I don't think that's required for
8 criminal sexual conduct third degree.

9 MR. FLOYD: There's nothing that says it's not
10 required.

11 THE COURT: Well, there's one thing that says
12 it's not required, and that's me.

13 MR. FLOYD: I agree with you. Nothing the
14 statute says.

15 THE COURT: And I don't see it written. And I
16 wasn't trying to be glib or short, I didn't mean it
17 like that. But when I look at that definitional
18 statute, I don't see a definition of force or
19 coercion. This is a standard charge used in
20 criminal sexual conduct third degree.

21 As I recall, I thought criminal sexual conduct
22 third degree was somewhat of a codification of lewd
23 act, I thought. I could be wrong about that. And
24 it changed it because there was a certain charge on
25 lewd act that didn't convert the language to

1 criminal sexual conduct third degree.

2 But I will decline to charge aggravated force
3 and aggravated coercion generally, specifically, and
4 particularly to remove or redact part of those full
5 definitions. So I'll charge this. Okay?

6 MR. FLOYD: Thank you, Your Honor. Just to be
7 clear for the record, what we're asking is that you
8 include the term revoke, coercion, and force, that
9 it includes either the use of violence or the threat
10 to use force or violence both in coercion and in
11 force.

12 THE COURT: All right.

13 Solicitor, anything you'd like to address?

14 MS. MAYES: Yes, sir, Your Honor. Of course we
15 oppose because if there were such facts, he wouldn't
16 be charged with criminal sexual conduct third
17 degree, it would be first degree or second degree.
18 And that's why we have the difference in statutes.

19 Your Honor, can you clarify, looking at your
20 charge, if that portion of the bottom -- what
21 portions of the bottom would be read, is it read in
22 its entirety? There are some parts in italics and
23 some parts not in italics.

24 THE COURT: I thought that was redacted as far
25 as without any aggravating circumstances. Now, if

1 you and Mr. Floyd want me to charge that, I will.
2 There is no definition, no mention in 651 of that
3 term.

4 Now, I'm going to read the statute: The actor
5 uses force or coercion to accomplish a sexual
6 battery in the absence of aggravated circumstances.

7 MS. MAYES: Yes, sir, Your Honor. And --

8 THE COURT: I'll just read the statute and then
9 I'm going to read the definition of force or
10 coercion that's been used in other cases in the
11 past.

12 MS. MAYES: Okay. Thank you, Your Honor. I
13 just needed clarification on that.

14 One other matter, if we may approach?

15 THE COURT: Yes, ma'am.

16 (Sidebar conference.)

17 THE COURT: Anything further, Solicitor?

18 MS. MAYES: No, sir, Your Honor.

19 THE COURT: Mr. Floyd?

20 MR. FLOYD: Nothing further, Your Honor.

21 THE COURT: I tried to review Beaty this
22 morning. I did review it. April 25th, 2018 is the
23 opinion on rehearing. The last paragraph -- next to
24 last paragraph of this opinion says: In cases in
25 which a defendant introduces evidence, trial judges

1 clearly have the authority to require the State to
2 open in full on the facts and the law and have the
3 authority to restrict State's reply argument to
4 matters raised by the Defense.

5 So that is the position I'm taking. The State
6 can open in full on the facts and the law. In their
7 closing argument the Defense will have its closing
8 and the State may reply to matters raised by the
9 Defense in its closing. Do y'all understand?

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

11 THE COURT: Do you understand, Mr. Floyd?

12 MR. FLOYD: Yes, Your Honor.

13 THE COURT: Anything further before I bring in
14 the jury?

15 MS. MAYES: Nothing from the State, Your Honor.

16 MR. FLOYD: Nothing from us, Your Honor.

17 (The jury enters the courtroom at 12:30 PM.)

18 THE COURT: Good afternoon, ladies and
19 gentlemen. Welcome back. Hope y'all had a pleasant
20 evening. We're continuing the trial of the case.
21 Let's direct our attention to Mr. Floyd.

22 Mr. Floyd, does the Defense intend to present
23 any additional evidence or testimony?

24 MR. FLOYD: Your Honor, the Defense does offer
25 into evidence the SANE report.

1 THE COURT: All right. And that is without
2 objection, Solicitor?

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

4 THE COURT: And that has now been marked as
5 Defendant's Exhibit No. 1, the report of the SANE
6 nurse, Ms. Deguzman.

7 Anything additional?

8 MR. FLOYD: Nothing further, Your Honor. The
9 Defense rests.

10 THE COURT: All right. Does the State have any
11 evidence or testimony in reply?

12 MS. MAYES: No, sir, Your Honor.

13 THE COURT: Ladies and gentlemen, you've now
14 heard all the evidence and all the testimony you're
15 going to hear in the trial of the case from both of
16 the parties. You're now at the stage of the closing
17 arguments by the attorneys. The procedure followed
18 in this case is that the State will present its
19 argument on both the law and the facts in full
20 first. That will be followed by the closing
21 argument by Mr. Floyd or Mr. Spangler on behalf of
22 their client, Mr. Heath.

23 Thereafter, under our law, the State has the
24 right to reply argument on any new matter that may
25 be brought up by Mr. Floyd or Mr. Spangler in their,

1 closing argument. So the State first, Defense
2 second, State has reply. And remember, the State is
3 the party bearing the burden of proving its case
4 beyond a reasonable doubt.

5 You heard me originally say what the attorneys
6 tell you is not evidence. Closing arguments are
7 different from opening statements; they may argue
8 the law and the facts. It's an important part of
9 the process in the trial of the case. So I'd ask
10 you to please give the parties your complete and
11 undivided attention as you have done throughout the
12 trial of the case.

13 I'd advise those in the gallery, I don't want
14 anyone moving about while the attorneys are
15 addressing the jury. If you want to leave between
16 the arguments, you certainly may do so. You can't
17 come back in until after that argument is completed.
18 If you want to leave after all the arguments are
19 completed before I charge the jury, you may
20 certainly do so. I just don't like moving about
21 when the attorneys are addressing the jury or when
22 I'm addressing the jury in their instructions.
23 Thank you very much.

24 Solicitor, you may address the jury.

25 MS. MAYES: Your Honor, may it please the

1 Court.

2 THE COURT: Yes, ma'am.

3 MS. MAYES: Time always reveals the truth. No
4 matter what efforts he took to conceal it, no matter
5 the threats, no matter how many times that little
6 girl was too afraid to speak, the evidence in this
7 case is undeniable, it's overwhelming. And you, as
8 members of the jury, you follow the evidence to
9 reach your verdict. It's the evidence that lights
10 the path and leads the way.

11 The reality of sexual abuse is that it doesn't
12 happen in front of witnesses, it happens behind
13 closed doors in secrecy and in darkness, just like
14 **Complainant** described, just like she experienced that
15 first time in her room at Drive. That's
16 the reality of sexual abuse.

17 And when the truth is laid bare, as I submit
18 has occurred this week in this courtroom, the
19 reality of sexual abuse is harsh and it's ugly, a
20 clear and present evil. That's the life that
21 **complainant** lived for ten years until she finally
22 broke that silence and found the courage to come
23 before us all.

24 And those years for **complainant**, hope was the
25 only weapon that she could hold because she knew

1 that her mother would never protect her, never
2 support her, would never leave him. Instinctively,
3 even as a child, she knew that truth, so she clung
4 to hope because finally, at age 17, she had just
5 three months left, three months until early
6 graduation, three months until she could leave and
7 go to college in Texas, three months until she could
8 finally be free and physically leave that house
9 behind, physically leave that house behind.

10 But it's not that simple, because even when
11 you're gone physically, the heart and the mind will
12 never be free until the truth comes to light. And
13 that's where fate comes in. Because fate, like hope
14 and like truth, is not something that's seen with
15 the eyes. Fate is just something that you feel.
16 Fate is that moment in time when you realize that
17 you are exactly where you were always meant to be.
18 And for **complainant**, it was fate that led her
19 here. She was always meant to have this day in this
20 courtroom. It's fate that brought her here and
21 justice will soothe her wounds.

22 Just the same for William Heath is his moment
23 of fate, fate that he so richly deserves. Fate is a
24 consequence of his actions over and over again. It
25 took years to get here, for a daughter to find the

1 courage to walk this path. But that's the thing
2 about justice; justice isn't measured by time and
3 it's never too late.

4 As I stated, the evidence in this case is
5 overwhelming and undeniable. And we're going to
6 take a look at that now. When we talk about the
7 evidence in this case, we start with the physical
8 evidence, the forensic evidence in this case.

9 As Sergeant McCann explained, the number-one
10 goal and number-one priority is to immediately get
11 that victim to the hospital as soon as possible.
12 And why is that? Because as soon as her clothes are
13 washed or as soon as she takes a bath or she takes a
14 shower, that evidence is gone. But here, right
15 away, Sergeant McCann sent her on to the hospital.

16 You heard she was still wearing the same
17 underwear that she had worn when she was in his
18 bedroom when he pulled her pants down, those black
19 leggings and those underwear. And there, on his
20 bed, after fellatio had been performed, she's
21 facedown on the bed, he puts his mouth, as she put
22 it, on her behind. And then he rubbed himself on
23 her, his genitals to her genitals repeatedly, what
24 seemed a long, long time.

25 And then, as she stated to that SANE nurse, he

1 wanted to keep going and said something to the
2 effect of, she could finish him off. She leaves.
3 We know he's got a bathroom in his room. From
4 there, she doesn't know what happened. She never
5 described ejaculation, just everything up to that
6 point.

7 So she goes in for that SANE exam. And as the
8 nurse described, the reason they take the hair from
9 the pubic combings during that sexual assault
10 examination is because it's anticipated that when
11 there is some type of friction, genitals to
12 genitals, that an assailant's pubic hair can be
13 intertwined with the victim's. And that is exactly
14 what happened here. We know that from her pubic
15 hair combings was a DNA match to a hair from William
16 Heath.

17 And then we had heard the nurse describe that.
18 in addition to that, she takes a swabs; she actually
19 takes a swab and swabs it around the rectal area.
20 And when she did so, the nurse visualized, could
21 physically see a hair, so she packaged it along with
22 that and it was sealed. And we know that hair from
23 that rectal swab is also a DNA match to William
24 Heath.

25 And when we're talking about a DNA match, it's

1 not just, well, it could be him; there's no doubt
2 whatsoever. One in 57 quintillion is the numerical
3 match. And then as the serologist explained, the
4 DNA match from [Complainant]'s underwear is also a DNA
5 match to the defendant. But that's not the only
6 thing that's significant about it.

7 That cutting from the underwear came from the
8 exact location that her underwear would have been
9 against her body with him having placed his mouth on
10 her behind, as she explained; same underwear she's
11 wearing at the time, that's the location of the
12 cutting.

13 And then, as you see, there are no markings
14 here on the outside of these underwear, no markings
15 there. The markings from the serologist are all on
16 the interior, inside of those underwear, because
17 that's where the stain was so obvious to her, on the
18 inside of the underwear. And as she made that
19 marking, it's positive for saliva. And when she
20 makes that finding that it's positive for saliva,
21 she makes this cutting so it can go to DNA.

22 Courtney Thompson explained that after years of
23 experience as an expert in forensic serology, she
24 knew right away that that stain originated from the
25 interior of [complainant]'s underwear, the stained

1 part that would have been pressed against her body
2 as she pulls these underwear up and goes back to her
3 room after that assault. There is so much of his
4 DNA on those underwear, they couldn't even find her
5 DNA.

6 So think about that for a moment: Sitting
7 here, we're all wearing clothes. We would certainly
8 expect to find our own DNA on our clothes, but
9 especially on our undergarments. Her DNA can't even
10 be traced. Yeah, there's three alleles that all
11 match her from her chromosome markings, but there's
12 not even enough of her DNA left, I submit, to
13 identify her own DNA because that's how much DNA he
14 left behind with that saliva stain that it
15 overlapped her own DNA. There is no other
16 explanation for that event than him placing his
17 mouth on her exactly as she described when she's
18 facedown on his bed.

19 The act of sexual battery that occurred is him
20 placing a finger in her vagina, him making her put
21 her mouth on his genitals. Proof beyond a
22 reasonable doubt, sexual battery occurred.

23 So now we talk about the iPad. So the thing
24 about the use of the iPad here is that it's not
25 enough for him anymore, apparently. It's not enough

1 for him anymore to have sex with his daughter. Sex,
2 I mean any act of sexual battery, oral sex, putting
3 a finger in her private part; no, he's got to take
4 it a step further. He's bringing in porn, which she
5 described he's been doing since he got this iPad,
6 pretty much, but definitely the event in December
7 and the event that final night on April 26th, 2015.

8 You heard the testimony of Shauna
9 Galloway-Williams: Part of the actions of a
10 perpetrator in a case like this is to normalize the
11 behavior and try and make the victim go along with
12 it and think that this is all normal behavior. So
13 using the sexually explicit materials with her and
14 around her is part of his sick, twisted way of doing
15 that.

16 So that night on [REDACTED] -- that was his
17 birthday -- into the early morning hours of December
18 2nd, she described there was also an assault that
19 night. She knew that it was on or about his
20 birthday because he said do this for my birthday.
21 She remembered that specifically as something that
22 he said. She wasn't sure of the exact time because
23 it could have gone into the next day.

24 State's 37 shows all the images captured for
25 December 2nd, it's one. There's only one image that

1 shows up at all December 2nd, and it's the following
2 later that night. Well, why is that? Well, as you
3 see, the enlarged version of that image in State's
4 38, the little arrow, the arrow is not when it's
5 playing.

6 And the good thing about being jurors is you
7 get to rely on your common sense, the same common
8 sense you use every day in your daily life. The
9 arrow is there when something has been paused so you
10 can go back and then press play. When something is
11 playing, you see the pause button so you can press
12 pause if needed. So this image has been paused,
13 that much we know. It's paused. It's about midway
14 in. And you'll be able to see the full length of
15 that video when you examine this image. But it's
16 been playing for quite a while, and then it's been
17 paused.

18 So you know part of your ordinary experiences,
19 what happens after an image is paused and then the
20 device is just left there. Maybe he just walked
21 away, maybe he went and took a shower. Who knows
22 what he did when he left that iPad in sleep mode.
23 When a device such as that is in sleep mode, what do
24 you do? What do you do to get it out of sleep mode?
25 You hit the home button. And then the home button

1 is going to show whatever you were doing when you
2 last left that session.

3 The night before, the mid-early morning hours,
4 when he pressed that home button on December 2nd, it
5 captured that image exactly as he left it as that
6 video was midway through playing and that video had
7 been paused.

8 And this video isn't just a pornographic video,
9 as if showing that to the child wasn't enough, this
10 is incest TV. And you heard the testimony from
11 Detective Phipps about exactly what incest TV is.
12 Incest TV has three channels, one of which is having
13 sex between fathers and daughters. This didn't just
14 randomly end up captured on his iPad. This is the
15 pornography, the image she described him using in
16 December with that assault.

17 Then we move on to the final assault. Make no
18 mistake -- and I don't get another chance, most
19 likely, to get back up after the Defense has
20 addressed you, so I have no idea what they might
21 say. Maybe they're going to say, well, somebody
22 else could have used the computer. Well, the only
23 two people home was this defendant and **Complainant**. So
24 nobody else is using this computer.

25 We know it's not the mom because he's still

1 using it even after he visits these sites and after
2 the assault is over. In fact, about three minutes
3 before law enforcement gets the call to come out
4 there, he's on the Auto Zone site. He was on the
5 Auto Zone site, at 11:19 PM that night. So even
6 after the assault he's still got his iPad, he's
7 still using it, and it's right there on the bed
8 exactly where law enforcement found it.

9 But we know he was doing some searches for
10 pellet guns and then later Auto Zone. And what's
11 interesting is all these pornographic videos that
12 he's watching and showing to **Complainant** don't show up
13 in his search history. And as Detective Phipps, an
14 expert in forensic analysis of electronic devices,
15 explained, the most likely explanation is because he
16 had those videos already saved. So they're not just
17 something he has to search for on the internet, he
18 has them; they're on a cloud or they're some other
19 alternative network that he can watch through his
20 home network Wi-Fi system.

21 And we know he hits the home button and this
22 image is captured at 9:30. And then **Complainant** herself
23 identified this image when she testified, which is
24 State's 22, having seen this on his video on his
25 iPad. She described it as a video, this one called

1 daughter destruction. Again, this isn't a guy who's
2 looking at naked women on Playboy or the Playboy
3 channel or something of that nature, this is someone
4 with a unique and distinct twisted obsession with
5 having sex with his daughter. We know that he
6 admitted to Sergeant McCann that he uses his iPad
7 for porn.

8 And then, finally, we know those images were
9 captured during the time of the assault. And as I
10 previously indicated, the one discovered on December
11 2nd had been paused. He comes back to it, hits that
12 home button, and there it is left over from his
13 previous session.

14 Now I want to address the law. When I'm done
15 speaking, Your Honor will address you on the law in
16 much more detail than I can do now. But the law is
17 actually quite simple. It is unlawful to have any
18 sexual contact with a child under the age of 11, and
19 the reasons for that are self-evident. There would
20 never be any scenario to justify these actions.

21 As **Complainant** described to you, she was living in
22 this house when she was seven years old, second
23 grade, on **Drive**. She remembered the first
24 time he came into her room and put his mouth on her
25 in an act of sexual battery, even that first night,

1 second grade. He told her not to tell.

2 As she described, there were threats from very
3 early on, threats not only not to tell, but what
4 would happen if she did; he would kill her, hurt
5 her, her mother, or she would be sent away, taken
6 away.

7 And you know what? That threat is true. That
8 threat is true, because when a child tells, they are
9 taken away. She wouldn't have been left with him,
10 she'd also lose her mom, she'd also lose her
11 brother. To a seven-year-old child, there's no
12 greater threat.

13 State's 20, the residence they lived in on
14 [REDACTED] in third grade and fourth grade.
15 She described these assaults continued, him coming
16 in her room, or now, making her go into his room,
17 putting his mouth on her, putting his hands --
18 finger in her private. Sexual battery includes what
19 we call penetration of the vagina, doesn't have to
20 be intercourse. It can be with a finger or a tongue
21 or anything else.

22 Next, this is called oral sex. And that's him
23 putting his mouth on her or having her put her mouth
24 on him with a child who is less than 11 years of
25 age. Here, these indictments cover when she's

1 seven, eight, nine; as she described, ongoing
2 behavior that really never stopped. And here you
3 have her date of birth. All of these elements have
4 been proven in this case.

5 Now, criminal sexual conduct with a minor
6 second degree, again, sexual battery with a minor
7 who is at least 14 years of age but who is less than
8 16 years of age. This covers her when she's 14 and
9 15. As she described, she was still living in this
10 house on [REDACTED] Road, now in middle school and
11 in her early years at Lexington High School. And
12 now he's having her put her mouth on his private
13 parts. The only additional one is here he must be
14 older than the victim. Well, we know that he is and
15 that he's her father.

16 So in the context of these crimes, the criminal
17 sexual conduct with a minor first degree and the
18 criminal sexual conduct with a minor second degree,
19 I submit it is inconceivable that the first and only
20 sexual assault of [REDACTED] complainant would have been that
21 final night in April where she was sent for the
22 sexual assault exam. And we've got the overwhelming
23 forensic evidence and we know that it happened.
24 That makes no sense whatsoever.

25 Everything that happened to [REDACTED] complainant that

1 night was the result of years and years of abuse, an
2 ongoing pattern of abuse he had built up through
3 threats and coercion and her fear of him. She
4 described he hit her and he made threats. And after
5 a while, as she described, you just give in, you
6 learn not to resist.

7 So that takes us to the very final charge, and
8 that is what we call criminal sexual conduct third
9 degree. Criminal sexual conduct third degree,
10 again, requires a sexual battery, whether that's
11 oral sex, whether that's digital penetration, use of
12 a finger, with force or coercion. So this would be
13 those final two events in December and April,
14 because now she's 17 years old. And then here, as
15 Your Honor will charge, it occurs in the absence of
16 aggravating circumstances.

17 So when we talk about force or coercion, let me
18 make clear, we are not required to prove that he had
19 a weapon or that he threatened use of a weapon. If
20 he did, it would be a completely different charge, a
21 completely different type of charge. When someone
22 uses a weapon or when someone holds you down and
23 chokes you, all of those are different crimes. This
24 crime, force or coercion in the absence aggravating
25 circumstances, such as a weapon, physical violence.

1 So what is coercion? As Your Honor will charge
2 you momentarily, coercion means making the victim
3 follow a prescribed or dictated course to inflict
4 one's own will on another. And I submit there's no
5 better description for what has occurred to [Complainant]
6 [REDACTED] for all these years than him inflicting his
7 will on her.

8 And above all, I submit, do not let them attack
9 the victim, do not let them assail [Complainant]'s
10 character as if she's done something wrong. You
11 heard them ask her about when she was a child, did
12 she, like other children, write stories, did she use
13 her imagination. And I submit that must have been
14 the only escape that child had from reality.

15 But what we won't see again, ever again, is
16 that girl that Sergeant Black described when he
17 rescued her in her bedroom that final night in 2015.
18 That girl is long gone, that girl that cried in her
19 pillow. And in her place has come someone new with
20 strength and will and fortitude.

21 And that's the girl you saw on that witness
22 stand look him in the eye after all these years.
23 These indictments before you, they cover all these
24 years, the hours, the days, the months spent waiting
25 and hoping.

1 That seven-year-old girl in her room, scared to
2 death, that's the criminal sexual conduct with a
3 minor first degree. That 14-year-old that couldn't
4 find the words, who, in fact, choked on her own
5 words, criminal sexual conduct with a minor second
6 degree. And finally, that 17-year-old that had
7 enough and brought the truth to light is criminal
8 sexual conduct third degree.

9 Now, he will be held accountable for his
10 actions, for the pain, the fear and the long
11 agonizing fight to be free. That's his payment.
12 Let this be the last time he puts his hands on that
13 child or any child in the future. Let this be the
14 last time. The correct verdict in this case is
15 guilty. Thank you.

16 THE COURT: Thank you, Solicitor.

17 Mr. Floyd?

18 MR. FLOYD: Thank you, Your Honor.

19 Mr. Foreman, ladies and gentlemen of the jury,
20 this portion, as you know, is called closing
21 argument. And before I get into that, I'd like to
22 thank you for your presence and your attention. As
23 I told you in the beginning, this is the most
24 important day in the life of William Heath.

25 And the decision you make about him is going to

1 affect him for the rest of his life, because you're
2 going to decide today whether or not he should be
3 branded a child abuser, a child sexual abuser, a man
4 who sexually abused his daughter for years. That's
5 one of the most important decisions anybody could
6 ever make about anybody.

7 Now, let me explain something to you. And I'll
8 probably be repeating myself a little bit, but it's
9 hard because it's so important because it goes to
10 what you decide. You see, William Heath has the
11 same rights we all have. One of those most
12 important rights is what we call the presumption of
13 innocence. So when you look at William Heath, you
14 must say in your mind and in your heart William
15 Heath is innocent. And William Heath remains
16 innocent unless the State proves his guilt to each
17 one of your satisfactions beyond a reasonable doubt.

18 What I mean by that, a lot of people define
19 reasonable doubt as that doubt which would cause a
20 reasonable person to hesitate to act. That doubt
21 which would cause a reasonable person to hesitate to
22 act.

23 So if you take all the evidence you've heard in
24 this courtroom and put it in the shape of this piece
25 of paper and because of one piece of that evidence

1 or the lack of a piece of evidence, you would
2 hesitate before you vote to brand him a criminal for
3 this action, your obligation as a juror is to return
4 a verdict of not guilty, even if there's other
5 evidence in the case that makes you suspicious of
6 guilt. Because when you vote guilty or not guilty,
7 you're not voting on whether or not you think he did
8 it, what you're voting on is whether or not this
9 proves his guilt beyond a reasonable doubt.

10 Now, let's talk about the evidence a little
11 bit. Remember what I told you: You know, someone
12 can just say something about you, they can just
13 accuse you of doing something and the police can,
14 based upon that, arrest you. You can be handcuffed,
15 you can be carried to jail, and you could some day
16 be forced to go to court strictly because someone
17 accused you of doing something. That's what
18 happened in this case.

19 Now, remember this: That's why in order to
20 convict someone, you can't just go on somebody's
21 accusation, you have to be able to prove it beyond a
22 reasonable doubt.

23 Now, let's talk about how this all supposedly
24 started. The story you've been told is that when
25 **complainant** was seven or eight years old, that

1 William Heath came into her room and performed oral
2 sex on her. That's how this whole thing supposedly
3 started.

4 Now, think about this: When you're trying to
5 decide whether or not that happened, what are the
6 factors to look at? Number one, she didn't tell
7 anybody; number two, she didn't tell anybody when
8 she was nine, she didn't tell anybody when she was
9 ten, she didn't tell anybody when she was 11, she
10 didn't tell anybody when she was 12, she didn't tell
11 anybody when she was 13, 14, 15, or 16. Ten years,
12 never told anybody. Does that not make you
13 hesitate?

14 Now they want to argue to you, she didn't have
15 anybody to tell because she couldn't trust her
16 mother to protect her. Ladies and gentlemen, what
17 did her mother do when she first heard about some
18 type of accusation? She called the police right
19 away. The night this supposedly occurred on April
20 26th, who called the police? Rose Heath. Who took
21 her to the hospital for the SANE examination? Rose
22 Heath.

23 And they're trying to tell you, oh, just forget
24 about the fact it took ten years. The reason it
25 took ten years is because she couldn't trust her

1 mother to take care of her, to protect her. See,
2 that doesn't make any sense. She took steps to
3 protect her as soon as she heard the accusation.
4 Whether she believed it or not, she took steps to
5 protect her.

6 Now, let's forget about the fact -- how do you
7 think this went on all those years and nobody knew
8 about it? **Complainant** had an older brother. I believe
9 he was -- was he four years ahead of her? Three or
10 four years ahead of her. By the way, if I say
11 something to you about the facts of this case and
12 they are different than the way you remember them,
13 you go by your memory of them because you're the
14 only one that can judge the facts of the case.

15 And we lawyers, sometimes we make mistakes
16 because we're over here taking notes and talking to
17 our client, so maybe we hear something differently
18 than the way you heard it. So if you remember
19 something differently than I speak, you go by your
20 memory.

21 Now, think about that. They lived in a small
22 trailer. The brother had the bedroom right next to
23 the sister. And he never said anything. Does that
24 not make you doubt whether or not all this was going
25 on? I mean, he's a big man. I imagine him moving

1 around the house at night probably shakes the house.
2 You really think all this went on; if it did go on,
3 that brother wasn't aware of it, wouldn't have heard
4 those doors opening and closing? We never hear
5 anything from him, do we? You really think it could
6 have been kept a secret all these years?

7 Now, you notice the Defense, we asked that the
8 SANE report be entered into evidence because we want
9 you to have it. Because I'm going to tell you
10 something, it goes to the very heart of this case.
11 Sometimes when you're telling something, it's hard
12 to keep your stories straight if you're not telling
13 the exactly what happened.

14 Page 3 of 12, that's where the nurse took the
15 history. And she asked, has he done anything other
16 than what he did tonight? Has he done anything
17 other than what he did tonight? She answered no.
18 And what did she say he did that night? She said --
19 her claim was that he would have her -- had her
20 perform oral sex on him, that he then laid down on
21 top of her and touched her genitals while she lay on
22 her stomach. That's what she said. Okay?

23 Then asked -- oh, and he licked her anus. She
24 said that. She didn't tell the police that, she did
25 tell the SANE nurse that. Has he done anything

1 other than what he did tonight? She answered no.

2 Now, what's missing? According to the way this
3 story supposedly begins, he goes into her bedroom
4 when she's seven or eight years old and he places
5 his mouth upon her genitals. I think the scientific
6 term is cunnilingus. There's no allegation he did
7 cunnilingus on the night this exam was done. So the
8 whole story starts with a story by a little girl who
9 likes to write stories. What do you think about
10 that?

11 Not only do you have to think about whether or
12 not you believe it because she didn't say anything
13 about it for ten years, whether you don't want to
14 believe it or whether it doesn't prove it beyond a
15 reasonable doubt to you, nobody ever heard it, her
16 brother didn't hear it, her mother didn't hear it,
17 in this small house for ten years.

18 How about the fact what she tells the SANE
19 nurse, the SANE professional nurse? And this is,
20 like, 5:00 in the morning, I think, or sometime
21 after that. So sometime while she's had time to
22 think about this whole thing, think about the
23 history, and yet she tells the nurse he never did
24 anything to me before other than what he did
25 tonight.

1 Now -- by the way, y'all will have this in
2 evidence. Another thing I just want to mention,
3 because unless I had heard it wrong, I believe the
4 Solicitor argued to you that on this night of April
5 26th, that he digitally penetrated her, or maybe I
6 misheard that. But she's asked whether she was
7 penetrated by the finger, she says no. And he's
8 never inserted his penis into her vagina. But y'all
9 will have it back there.

10 Now, another aspect of this report I want to
11 discuss with you a moment: She asked about threats.
12 Okay? And you heard the Solicitor argue he hit her
13 in the face, pulled her hair, threatened to kill her
14 mama, threatened to kill her. Remember the night of
15 April 26th? What was the threat she talked about?
16 Well, he was going to make me do the dishes. That
17 was the threat.

18 He was going to make her do work. Wasn't
19 anybody hitting anybody, wasn't pulling anybody's
20 hair, wasn't anybody hitting anybody in the face.
21 When asked about threats, she says no. Then they
22 asked about verbal threats of harm. States no
23 threats of harm, but other types of statements, such
24 as do this or I won't pick you up from school or
25 something like that. It's what's in the report.

1 Now, they're going to try to argue they're
2 talking about the night of April 26th. That's not
3 accurate, because they're talking about the night of
4 April 26th here and she's answering it as if it was
5 the night of April 26th, she would have said about
6 doing housework. So she's giving her the history
7 here of their relationship. No threats of harm,
8 other types of statements such as do this or I won't
9 pick you up from school or something like that.

10 Let me talk about a couple other little
11 matters. If I can find -- I apologize. I'm having
12 trouble finding the one I wanted to show you. Here
13 we go. Let's talk about that story a minute, the
14 one that supposedly occurred on April 26th. If I
15 can recall correctly, it supposedly started on the
16 couch where he asked her -- where supposedly he
17 stood -- maybe I'll show you a picture of that too,
18 where supposedly he stood up and she gave him oral
19 sex in this area.

20 Y'all will have all these pictures, by the way.
21 Supposedly, he just stood up and she did it for a
22 while, no ejaculation. And they proceed to -- end
23 up in the bedroom where supposedly he had her lay
24 down on the bed and he laid on top of her. That
25 bed. Does it look like somebody has been rolling

1 around on this bed? Looks pretty neat, doesn't it?

2 Now, what happens after the police are called?

3 They come to the house. And how does Mr. Heath
4 react? He's fully cooperative. He opens the door
5 to them. Says they're there for a welfare check on
6 **Complainant**. He points out where she is, does not try
7 to hide from them, does not try to interfere with
8 them in any way.

9 They ask for a buccal swab, he gives it to
10 them. They ask for penal swab, he gives it to them.
11 He fully cooperates with them, talks to them. Of
12 course he denies anything criminal has happened.
13 Wasn't any of this, oh, I can't talk to you now or
14 anything like that. They all said he was fully
15 cooperative. Does that sound like a man who's got
16 something to hide or does it sound like a man who
17 has nothing to hide?

18 Now, they go into this forensic stuff. They
19 say they've got a hair, they got some saliva. You
20 heard the DNA people. If people live together,
21 their DNA is going to be everywhere. Their DNA is
22 going to be everywhere. What's kind of interesting
23 about it, they took a penal swab. What wasn't on
24 the penal swab? **Complainant**'s DNA. If she had oral sex
25 with him, wouldn't her saliva be on his penis? So

1 wouldn't her DNA be on his penis?

2 They had a penal swab, they sent it to SLED.

3 Did you hear anybody say, hey, we got **Complainant**

4 **██████████**'s DNA off of William Heath's penis? Nobody

5 said that, did they? Nobody said that. Does that

6 not make you hesitate? Does that not make you

7 wonder whether or not you're getting a full complete

8 story here? And it's such a complete piece of

9 evidence.

10 Now, let me address just a moment because I

11 don't understand this computer stuff. All that come

12 about past my youth. So y'all will probably know a

13 lot more about it than I do. And I didn't really

14 understand it. I did hear them talking about, well,

15 I couldn't find anything on the browser and I

16 couldn't find anything on the -- what was the

17 other thing -- search history.

18 One thing I would take issue with, I believe

19 the Solicitor mentioned that he had porn saved on

20 his iPad, but I don't think that's what the expert

21 said. I think he said there was no porn on the

22 iPad. There was some, what they call, links or

23 something that you would see where some internet

24 sites had been accessed. Of course, they couldn't

25 tell us when they were accessed, they couldn't tell

1 us who accessed them, they couldn't tell us how long
2 they had been accessed.

3 Another thing you got to kind of look at,
4 you'll see in the indictment this offense that
5 allegedly occurred on his birthday. You'll see in
6 the indictment that they claim it happened on
7 ██████ the █████, which was his birthday. Okay? Of
8 course, when they got here in front of you, the
9 jury, and sat up there and testified, they kind of
10 hemmed and hawed a little bit.

11 And they say, well, maybe the 1st, maybe the
12 2nd. Why? Don't you think you're going to remember
13 whether or not it's the birthday or not? Why they
14 hem and haw? Why did she all of a sudden say, well,
15 maybe it was the 2nd? Let me tell you why.
16 Because, you see, they allegedly found a porn
17 viewing on the 2nd, not on the 1st.

18 Now, they tried to argue with you, well, maybe,
19 you know, the night of the 1st, morning of the 2nd.
20 It was 9:30 PM on the 2nd. They had to try to make
21 their evidence coincide. Doesn't that make you
22 hesitate? Doesn't that make you doubt what's going
23 on here?

24 This is the browser history. This is State's
25 Exhibit 33, the night of this alleged April 27th

1 incident -- or was it the 26th? Whatever day it
2 was. Look at it. Tractors, car stuff, pellet gun
3 stuff. You know what there isn't? There's no porn
4 stuff. That's another piece of evidence you'll have
5 back there in the jury room.

6 Okay. I'm about to shut up and sit down. I
7 see you suppressing those sighs of relief. I know
8 I've been talking a long time, and I apologize for
9 that. But, you see, the way the system works, when
10 I shut up, I've got to go sit down there next to
11 Bill and Ms. Mayes will get up behind me and she'll
12 get to talk to you.

13 The State gets to go first and last because,
14 you remember, they got the burden of proof. They
15 got to prove it to you beyond a reasonable doubt.
16 So that's why the system allows them to go last.
17 And I never know what she's going to say. And she's
18 very good at her job.

19 All we can ask is if she brings up something
20 different that we overlooked, when you get back in
21 that jury room, just think how we could have
22 responded to it if we had had the opportunity. And
23 when you go back there and do your vote, remember
24 what I said to you. The vote is not whether or not
25 you think he did it or that you're suspicious he

1 might have done it. When you vote, you vote on
2 whether or not the State has proven his guilt beyond
3 a reasonable doubt.

4 When you go pondering on that point, we ask
5 that you, at least, think about the things we
6 brought up to you. I want you to think about the
7 thing"-- remember that SANE report? I want you to
8 look at that SANE report. We put it in evidence,
9 not them, because we wanted you to see, what did she
10 say?

11 What did she say? He's never done anything
12 other than this before. And there was no
13 cunnilingus before that night. And supposedly --
14 also, there was no penetration that night. And, all
15 of a sudden, they want to tell you overlook that,
16 forget that, he came in my room when I was seven or
17 eight and put his mouth on my genitals, although
18 when she had a chance to talk to the professional
19 nurse, she didn't say anything about that.

20 All of a sudden, they come up with these new
21 charges when she was -- from ten years ago. There's
22 absolutely no proof. Nobody even said anything
23 about it for ten years. And she told the
24 professional that he had never done cunnilingus on
25 her. And that's what she claims happened when she

1 was seven and then what was the other time for the
2 CSC second, was it ten -- ten to 14.

3 And then the CSC third -- and the judge will
4 tell you the law about it once we finish. The CSC
5 third, that requires force and coercion. Okay? So
6 she's got first. And remember, there's no
7 cunnilingus, remember what she says. First,
8 supposedly there was cunnilingus and she was seven
9 or eight. The second degree one is cunnilingus and
10 she might have said penetration. But you look at
11 that report from the SANE nurse; no penetration, and
12 no penetration that night, and he had never done
13 anything different from before. So how can you not
14 hesitate on those two?

15 And when you go to the last two, the CSC
16 thirds, she was 17. Well, in order to be guilty
17 then, there's got to be force and coercion. Anybody
18 hear about any force or any coercion? Any threats?
19 So without that, there's no crime.

20 I am going to leave now, and I mean it this
21 time. I want to thank you again for your attention.
22 Remember what I told you at the outset: A person
23 can accuse you of something just by saying you did
24 it. And as a result of that, you can get arrested,
25 and as a result of that, you go to trial sometimes

1 or you face significant penalties if you're
2 convicted.

3 The only way you can be convicted, and thank
4 goodness for this, is by a jury of your peers. So
5 the only way you can be convicted is if 12 members
6 of the community unanimously agree that the evidence
7 proves your guilt beyond a reasonable doubt. So we
8 feel comfortable placing William Heath in your
9 hands. Thank you.

10 THE COURT: Thank you, Mr. Floyd.

11 Solicitor?

12 MS. MAYES: Yes, sir, Your Honor. May it
13 please the Court.

14 This will be brief as I'm limited to only
15 respond to issues that were raised by Mr. Floyd that
16 weren't addressed in my previous discussion.

17 So when we talk about that SANE exam, the
18 nurse's protocol exam, as Mr. Floyd indicated, it is
19 in evidence, the Defense has placed it in evidence.
20 And why did they do that? Why did they do that?
21 Because that SANE nurse is focused on that final
22 assault. That's the whole point of that exam. It
23 doesn't matter to that nurse whether it's happened
24 one time or 100 times. She's got to know what
25 happened to **Complainant** that night to know exactly where

1 to swab and what clothing items to take.

2 But in the course of that exam, [Complainant] tells
3 her this happened over ten years. Now, it is not
4 that nurse's job to start questioning her on tell me
5 every single part of your body that he touched and
6 let's go back that whole ten years. This is an exam
7 about that night. And what [Complainant] told them that
8 night is that he made her perform oral sex on him
9 and she said eventually he started to sound
10 threatening with his voice raising.

11 So Mr. Floyd poses to you that that's not a
12 threat, that's not coercion. And again, this is
13 someone who has already been hit, who's already seen
14 the worst of him and learned not to fight back
15 because his will takes precedence in that house.
16 That's the very definition of coercion.

17 And then, as she told Sergeant Black, he made
18 me do things I did not want to do. And again, that
19 was that night. So the assertion that there's not
20 coercion is without merit.

21 He also talked about why is her DNA not on him?
22 We know from her description he was finishing off.
23 The last words he said to her, he was going to
24 finish off. Clearly, we all know what that means.
25 He's going to wipe, he's going to clean. But she

1 didn't get that chance, his evidence is on her.

2 He spoke about Rose Heath, that she is somehow
3 a supportive mother because she called 911 that
4 night. Well, I submit, what other choice did she
5 have? Because her sister had made it abundantly
6 clear she was going to take matters in her hands
7 because she knew **Complainant** was in danger. So Rose
8 Heath calls 911 and takes her to the hospital.

9 The next day, as you heard from Sergeant
10 McCann, she's already back in contact with him.
11 Over and over and over again they'd separate and she
12 would always go back. And, as you've heard, she's
13 charged with intimidation of a witness in this case.
14 That's not a supportive parent.

15 Mr. Floyd said that anyone sharing a house is
16 going to share DNA. What I submit, I can guarantee,
17 is that no parent's saliva is going to be in the
18 inside of their child's underwear because, as that
19 serologist said, it requires a quick transfer and
20 the stain has to be wet.

21 Sharing a house is not going to do that.
22 Sitting on a couch after he sneezed is not going to
23 get his saliva inside the back of her underwear
24 where he had put his mouth on her.

25 You talk about oral copulation of the genitals

1 versus, as she put it, him licking my behind. What
2 difference does any of that make? Because to a
3 17-year-old, he put his mouth on me. Why isn't that
4 a good enough description of that sex act? Why does
5 she have to break it down to every part of her
6 anatomy after she's been up all night long?

7 We talk about the iPad. I'll say only this in
8 response to Mr. Floyd: With the Cloud, videos, the
9 evidence is not saved to the iPad, it's not saved to
10 the physical device; it's saved and it can be
11 accessed via home network or via the Cloud without
12 physically being present on the iPad.

13 Your Honor will charge you momentarily on
14 reasonable doubt. Mr. Floyd spoke about reasonable
15 doubt including a doubt that causes one to hesitate
16 to act. But beyond that, as Your Honor will charge
17 you, proof beyond a reasonable doubt is proof that
18 leaves you firmly convinced, firmly convinced of his
19 guilt. The law does not require proof that
20 overcomes every possible doubt. If you are firmly
21 convinced, that is proof beyond a reasonable doubt.

22 In this case, how much proof, how strong is the
23 proof beyond a reasonable doubt? It's 1 in 57
24 quintillion. That, I submit, is proof beyond a
25 reasonable doubt. Thank you.

1 THE COURT: Thank you, Solicitor.

2 Mr. Foreman, ladies and gentlemen of the jury,
3 if you'll please give me your complete and undivided
4 attention, I would like to press on with my
5 instructions to you. It should take about 30
6 minutes.

7 The way I instruct the jury is I give the
8 general criminal law that applies to all criminal
9 cases in South Carolina. Thereafter, I will
10 instruct you on the specific charges in each
11 indictment. And thereafter, I will instruct you on
12 the form of the verdict and review the verdict form
13 with you. I will try to change the tone and
14 inflection in my voice. Further, I will give you a
15 caption of the subject matter that I cover. When I
16 go from one subject to the next, I will alert you in
17 that regard.

18 Charge, arrest, indictments, not evidence. The
19 indictment charges the defendant with criminal
20 sexual conduct with a minor in the first degree,
21 criminal sexual conduct with a minor in the second
22 degree, criminal sexual conduct third degree, two
23 separate indictments. So there are four
24 indictments.

25 I remind you that the fact that the defendant

1 was arrested, charged and indicted in this case is
2 not evidence in this case and cannot be considered
3 by you as evidence of guilt, nor does it create any
4 presumption or inference of guilt. These documents,
5 these indictments are simply the formal written
6 instruments which contains the charges made against
7 a defendant. They are the formal documents by which
8 this case is brought before the Court.

9 Presumption of innocence. The defendant has
10 pled not guilty to these indictments. This plea
11 puts the burden of proof on the State to prove the
12 defendant guilty. A person charged with committing
13 a criminal offense in South Carolina is never
14 required to prove himself or herself innocent.

15 I instruct you that it is an important rule of
16 the law that a defendant in a criminal trial, no
17 matter what the seriousness of the charge may be,
18 will always be presumed to be innocent of the crime
19 or crimes for which the indictments were issued
20 unless guilt has been proven by evidence satisfying
21 you, the jury, of that guilt beyond a reasonable
22 doubt.

23 This presumption of innocence does not end when
24 you begin your deliberations, but it accompanies --
25 it accompanies the defendant throughout the trial of

1 this case until you reach a verdict of guilt based
2 on the evidence satisfying you of that guilt beyond
3 a reasonable doubt.

4 The presumption of innocence has been said to
5 be like a robe of righteousness placed about the
6 shoulders of the defendant which remains with the
7 defendant until it has been stripped from the
8 defendant by evidence satisfying you of the
9 defendant's guilt beyond a reasonable doubt.

10 The presumption of innocence is not a mere
11 legal phrase, not a mere legal theory; it is a
12 substantial right to which every defendant is
13 entitled unless you, the jury, are satisfied from
14 the evidence of the defendant's guilt beyond a
15 reasonable doubt.

16 There are multiple indictments in this case.
17 Each indictment should be reviewed separately and
18 distinctly. You may find the defendant guilty as to
19 one, two, three, four, not guilty as to one, two,
20 three, four, or any combination thereof depending on
21 your view of the evidence as to that particular
22 indictment.

23 Reasonable doubt. What is reasonable doubt in
24 the law? Reasonable doubt is the kind of doubt that
25 would cause a reasonable person to hesitate to act.

1 The State has the burden of proving the defendant
2 guilty beyond a reasonable doubt. Some of you may
3 have served as jurors in civil cases in the past
4 where you were told that it is only necessary to
5 prove that a fact is more likely true than not true,
6 which is known as the greater weight or the
7 preponderance of the evidence. In criminal cases,
8 the State's proof must be more powerful than that,
9 it must be beyond a reasonable doubt.

10 Proof beyond a reasonable doubt is proof that
11 leaves you firmly convinced of the defendant's
12 guilt. There are very few things in this world that
13 we know with absolute certainty. And in criminal
14 cases, the law does not require proof that overcomes
15 every possible doubt.

16 If, based on your consideration of the
17 evidence, you are firmly convinced that the
18 defendant is guilty of the crime or crimes charged,
19 you must find the defendant guilty. If, on the
20 other hand, you think there is a real possibility
21 that the defendant is not guilty, you must give the
22 defendant the benefit of the doubt and find him not
23 guilty. That is to each separate and distinct
24 indictment.

25 Duties of trial jury and trial judge. I remind

1 you that during the trial of this case, you and I
2 have certain distinct duties to perform. As the
3 trial judge, it is my responsibility to preside over
4 the trial of the case. And I also have the duty to
5 rule on the admissibility of evidence offered during
6 the trial. You are to consider only the competent
7 evidence before you. If there was any testimony
8 ordered stricken from the record in this case during
9 the trial, you must disregard that testimony. You
10 are to consider only the testimony which has been
11 presented from this witness stand, any exhibits
12 which have been made part of the record in this
13 case.

14 I have the additional duty to instruct you the
15 law applicable to this case. As the presiding
16 judge, I am the sole judge of the law of this case.
17 And it is your duty as jurors to accept and apply
18 the law as I now state it to you. If you already
19 have any idea as to what the law is or what the law
20 ought to be and it does not agree with what I now
21 tell you the law is, you must set it aside, you must
22 abandon your idea, because you are sworn to accept
23 the law and apply the law exactly as I state it to
24 you.

25 In every case tried in this court before a

1 jury, the jury becomes the sole and exclusive judge
2 of the facts in a case. A trial judge cannot
3 intimate, state, comment on, or make any statement
4 to a trial jury about the facts in a case. Since
5 you, the jury, are the sole judge of the facts in
6 the case, you must not infer from what I have said
7 during the progress of the trial in ruling upon the
8 admissibility of the evidence or otherwise or
9 anything that I say now during the course of this
10 instruction to you that I have any opinion about the
11 facts in this case. The law does not allow me to
12 have an opinion about the facts in this case. That
13 is a matter solely for you, the jury, to determine.

14 As jurors, it is your duty to determine the
15 effect, the value, the weight, the truth of the
16 evidence presented during this trial. There are two
17 types of evidence: Direct and circumstantial
18 evidence. There are two types of evidence which are
19 generally presented during a trial: Direct
20 evidence, circumstantial evidence.

21 Direct evidence is the testimony of a person
22 who claims to have actual knowledge of a fact, such
23 as an eyewitness or an ear witness. It is evidence
24 which immediately establishes the main fact to be
25 proved.