

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED
JUN 15 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JEFFEREY LANCE WHITSETT,

APPELLANT

APPELLATE CASE NO 2017-001498

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
COURT'S EXHIBIT #1 FROM PRE-TRIAL HEARING TRANSCRIPT DATED JUNE
23, 2017; STATE'S EXHIBIT # 25 (CD); STATE'S EXHIBIT #26 (UN-REDACTED
VERSION FORENSIC INTERVIEW); STATE'S EXHIBIT #27 (REDACTED VERSION
FORENSIC INTERVIEW) FROM THE TRIAL**

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

COURT OF GENERAL SESSIONS

DOCKET NO. 2016-GS-08-1369

2016-GS-08-1370

2016-GS-08-1371

2016-GS-08-1372

2016-GS-08-1373

2016-GS-08-1374

2016-GS-08-1375

STATE OF SOUTH CAROLINA)

vs.)

JEFFEREY LANCE WHITSETT)

Defendant)

TRANSCRIPT OF RECORD

June 23, 2017

Moncks Corner, S. Carolina

B E F O R E:

THE HONORABLE KRISTI LEA HARRINGTON, JUDGE

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

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[All exhibits pre-marked prior to start of trial unless otherwise indicated in transcript]

[All exhibits are for Jackson v Denno hearing purposes only]

STATE

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
1	Miranda Warning	18
2	C.D.	18

COURT

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
1	Thumb Drive	9
2	Misc. Information packet	9

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1 PROCEEDINGS

2 THE COURT: Good afternoon. Counsel for the record
3 if you will state your name and the party you represent?

4 MS. WILLIAMS: Anne Williams. I represent the
5 state of South Carolina in the case of the State versus
6 Jefferey Whitsett.

7 MS. SZYMCZYNSKA-SAS: Kamila Szymczynska-Sas, S-Z-Y-
8 M-C-Z-Y-S-K-A hyphen S-A-S for the State.

9 MR. SCHWACKE: David Schwacke, S-C-H-W-A-C-K-E
10 representing my client who is present with us today, Mr.
11 Jefferey Whitsett. His last name is spelled W-H-I-T-S-E-
12 T-T.

13 MS. TOLLEY: I'm Juan Tolley. I'm with the Public
14 Defender's office representing Jefferey Whitsett; T-O-L-
15 L-E-Y.

16 THE COURT: Thank you. We're here on indictment
17 numbers 2016-GS-08-1369, 1370, 1371, 1372, 1373, 1374,
18 and 1375. Is that correct, Ms. Williams?

19 MS. WILLIAMS: It is, Your Honor.

20 MR. SCHWACKE: Yes, ma'am.

21 THE COURT: And the purpose of today's hearing we
22 are scheduled for a date certain to begin Tuesday, June
23 27th. We are not beginning the 26th because of a
24 previously scheduled conflict with the Solicitor's
25 office. And what is before me here today?

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1 MS. WILLIAMS: Your Honor, the State has filed
2 several motions most of which are contained in our trial
3 brief. We have filed several motions in limine. One for
4 compliance with the Rape Shield, which is 16-3-659(1);
5 one to exclude evidence of other sexual assaults; one for
6 the admission of out of court statements by the victim
7 pursuant to 17-23-175; and one to exclude evidence of
8 third party guilt.

9 My understanding is that the defendant is
10 challenging the statement given by the defendant under
11 Denno. And also he filed a motion yesterday asking that
12 the court admit evidence of the child's prior assault by
13 a different person contrary to the Rape Shield Statute.

14 THE COURT: Mr. Schwacke, you've filed also motions
15 -- you filed something yesterday; is that what I
16 understand?

17 MR. SCHWACKE: I did. Basically one is to exclude
18 the child's video and audio recorded I call it a forensic
19 interview. The others deal with essentially a
20 combination of Rape Shield versus evidence allowed in by
21 in sort of contravention of Rape Shield to explain other
22 things such as a fund of knowledge and on what basis does
23 the victim have information to be able to come and
24 testify to it is another source. And so that would be
25 one of the motions as well.

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1 THE COURT: All right.

2 MR. SCHWACKE: We also -- well, I'll stop at that
3 at this point.

4 THE COURT: So you have witnesses?

5 MS. WILLIAMS: We do, for the Jackson v Denno
6 hearing, Your Honor. We do have Detective Fenton here.

7 THE COURT: And what other motions will require
8 witnesses?

9 MS. WILLIAMS: We were just discussing that, Your
10 Honor. Because I got Mr. Schwacke's motions so late
11 yesterday it was difficult for me to secure the 11 year
12 old victim for a motion about the prior sexual assault.
13 My contention is that not only does she recount the whole
14 prior sexual assault on the tape that we all have that
15 Your Honor has reviewed but I also have the sentencing
16 sheet where that defendant pled guilty. And I also have
17 the CAFTA, which is a summary of the prior tape. I have
18 not seen that tape and I don't think Mr. Schwacke has
19 either.

20 I would ask that the court make the decision based
21 on that evidence. I can proffer to the court that I've
22 asked the child about the prior episode and she tells me
23 exactly what she says on the tape that Your Honor has
24 reviewed and that Mr. Schwacke has reviewed. I would
25 hate to drag her into court for a completely separate

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1 hearing. If the court wants that child to testify
2 outside the presence of the jury in order to make that
3 decision I would just ask that we do it at the time of
4 her testimony. That's going to create some logistical
5 problems because we're trying to redact all these tapes
6 to reflect the court's rulings but whatever Your Honor
7 decides we will make it work.

8 THE COURT: So my inclination is to begin with the
9 Jackson v Denno hearing since we have witnesses here and
10 present and ready to go. Mr. Schwacke, do you anticipate
11 any of your motions requiring witness testimony?

12 MR. SCHWACKE: Again, my motions I don't believe
13 are going to be able to be addressed until we are in
14 trial and we reach a point where obviously I know I can't
15 step across that line. And at that point we could take
16 up individual matters with regard to it. The only other
17 one that I believe we do need to have a hearing on would
18 be the child's statement.

19 I believe the court has to make a determination that
20 the information there is truthful, that the child is
21 aware of what could happen in the event of a lie, that
22 the child because of its age is not automatically
23 presumed to be a competent witness under South Carolina
24 law. So, each of those things would require the court to
25 make a determination. And based on the fact that there

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1 are no questions asked during the actual interview with
2 regard to understanding what is right and what is wrong,
3 what is truthful and what is not truthful; none of those
4 questions are present. The child is now two years older.

5 At this point in order for the State to be able to
6 present that video at trial now they would have to be
7 able to show the fact that the child is in fact a
8 competent witness under South Carolina law. That didn't
9 happen at the time and I would object to it being able to
10 happen now since the statement was given at a time where
11 there is no clarification that she understands the
12 difference between right and wrong.

13 THE COURT: And just for the record I was given a
14 transcript, two transcripts of the forensic interview and
15 the defendant's interview; a copy of both of those on a
16 thumb drive. And I have reviewed all of that
17 information. I understand Ms. Williams when you sent the
18 email you did copy Mr. Schwacke?

19 MS. WILLIAMS: I did, Your Honor.

20 THE COURT: And Mr. Schwacke you had no objection
21 to me reviewing the forensic interview and the
22 defendant's interview prior to today's hearing, is that
23 correct?

24 MR. SCHWACKE: I've had no problem viewing those.
25 In fact we've been working on trying to edit those things

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1 down. So that's correct; I do have those recordings.

2 THE COURT: So I am going to mark just for purposes
3 of this hearing the thumb drive as court's 1 and then the
4 remaining everything else that was in the packet given to
5 me as court's 2.

6 [Whereupon, court's exhibit numbers 1 and 2 are
7 marked by the court reporter for purposes of this hearing
8 only]

9 THE COURT: Just to let you know Mr. Schwacke, I
10 had difficulty playing the thumb drive and Ms. Williams
11 and Ms. Sas did come up to my office yesterday just for
12 the purposes of showing me how to play it. Call your
13 first witness.

14 MS. WILLIAMS: Your Honor, just for clarification
15 for the record that is not South Carolina law as far as
16 competency. Children are presumed competent ---

17 THE COURT: --- we're here on the Denno. He was
18 just making -- yes ---

19 MS. WILLIAMS: --- but that is not true.

20 THE COURT: We're going now on the Denno. Thank
21 you.

22

23

24

25

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Jackson v Denno Hearing-Brian Fenton-Direct Examination by Ms. Sas
June 23, 2017

1 MS. SZYMCZYNSKA-SAS: The State calls Lieutenant
2 Brian Fenton.

3 [Whereupon, Lieutenant Fenton comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]

8 CLERK OF COURT: Please be seated. State your full
9 name and spell your last name for the record.

10 THE WITNESS: My name is Brian Lawrence Fenton.
11 The last name is spelled F, as in Frank, E-N-T-O-N.

12 - - - - -

13 BRIAN FENTON,

14 Having been first duly sworn,

15 Was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. SAS:

18 Q. Good afternoon, Lieutenant Fenton. Where are you
19 currently employed?

20 A. I am employed with the Berkeley County Sheriff's
21 Office.

22 Q. And how long have you been employed there?

23 A. Just a little over 11 years.

24 Q. And what is your previous experience before joining
25 law enforcement?

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1 A. Before joining law enforcement I used to manage a
2 hardware store in Moncks Corner. I was also a military
3 police officer in the Army National Guard for about six
4 years.

5 Q. And what is your current position there and job
6 responsibilities?

7 A. I am a Lieutenant in our Community Services
8 Division. I supervise our school resource officers and
9 our community action team.

10 Q. Were you in the same position back in June of 2015?

11 A. I was not.

12 Q. Okay. What position were you in back then?

13 A. I was a detective in the Criminal Investigations
14 Division.

15 Q. Did you have an occasion to interview defendant
16 Jefferey Whitsett?

17 A. I did.

18 Q. And when was that?

19 A. June 10, 2015.

20 Q. And who was present during that questioning?

21 A. It was myself, Detective Cook and Mr. Whitsett.

22 Q. And where did that questioning take place?

23 A. It took place in an interview room at the Berkeley
24 County Sheriff's Office.

25 Q. And what time of the day was that?

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1 A. It was just before 11 o'clock a.m.

2 Q. Okay. Do you recall the total length approximately
3 of the interview?

4 A. It's almost two hours including about a 15 minute
5 break.

6 Q. Did the defendant appear to be under the influence
7 of any drugs or alcohol to the extent that it would
8 impair his ability to understand your questions?

9 A. He did not.

10 Q. Did he appear to have any physical or mental
11 disability that would impair his ability to understand
12 your questions?

13 A. He did not.

14 Q. Did he ask at any time for food, water, or a
15 bathroom break?

16 A. He didn't ask but we offered. We gave him water
17 before the interview even started and then during the
18 break we gave him some chips and he used the bathroom.

19 Q. Did you promise the defendant anything in return for
20 making a statement?

21 A. I did not.

22 Q. Did you coerce him into making a statement with any
23 threats or actions?

24 A. I did not.

25 Q. To the best of your knowledge was the defendant's

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1 statement freely and voluntarily given?

2 A. I believe it was.

3 Q. And was he under arrest at the time the statement
4 was taken from him?

5 A. He was.

6 Q. Was he under arrest for the charge for which he is
7 on trial this week?

8 A. He was.

9 Q. Was the defendant advised of why you were there to
10 question him?

11 A. Yes, concerning his arrest.

12 Q. Okay. Did you advise him of his constitutional
13 rights pursuant to Miranda?

14 A. I did.

15 Q. And at which point in the questioning did you do
16 that?

17 A. Prior to any questioning about the incident.

18 Q. And did you advise him verbally or in writing or
19 both?

20 A. Both; verbally and in writing.

21 MS. SZYMCZYNSKA-SAS: Your Honor, permission to
22 approach the witness?

23 THE COURT: You may.

24 Q. [Ms. Sas] I'm going to show you what has been
25 premarked as State's exhibit number 1 for Denno purposes

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- 1 only.
- 2 [Whereupon, the witness is shown document]
- 3 Q. Can you tell us what that is?
- 4 A. That's a Berkeley County Sheriff's Office Miranda
- 5 Advisement form.
- 6 Q. Is it the standard form used by your office?
- 7 A. It is.
- 8 Q. Okay. And is that the form that was used during
- 9 the interview?
- 10 A. It is.
- 11 Q. How do you know that?
- 12 A. I recognize my signature and Detective Cook's and
- 13 Mr. Whitsett's signature that he signed it that day.
- 14 Q. Is there a date on that form?
- 15 A. There is not.
- 16 Q. How many interviews did you conduct with the
- 17 defendant?
- 18 A. It was one interview and about halfway through we
- 19 took about a 15 minute break.
- 20 Q. So only on that particular date?
- 21 A. Yes, only on June 10th.
- 22 Q. So you know that form comes from that particular
- 23 day?
- 24 A. Yes, ma'am.
- 25 Q. Okay. And can you please state what rights you

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1 gave the defendant and how you went about giving those
2 rights to him.

3 A. Yes, ma'am. I read it along with him. The first
4 right says you have the absolute right to remain silent
5 and do not have to answer any questions or give a
6 statement. And this fact cannot be used against you.

7 The second one says if you do answer questions or
8 give a statement anything that you say can and will be
9 used against you in a court of law.

10 The third says you have the absolute right to
11 consult with a lawyer of your choice before you answer
12 questions or give a statement and also to have him
13 present while you are being questioned.

14 The fourth says if you wish to talk to a lawyer or
15 have them present but are unable to afford to hire a
16 lawyer one will be appointed to represent you free of
17 charge.

18 The fifth says if you decide to answer questions or
19 give a statement without having a lawyer present
20 representing you, you have the absolute right during this
21 interview to stop answering questions and remain silent.

22 And then I asked him if he understood what it all
23 meant and I read the line that says I have read this
24 Miranda form and my signature below represents my
25 understanding of the contents within. He signed it and

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1 then I asked him to sign if he agreed to speak with us.
2 And I read I hereby understand the above listed rights
3 and would like to speak to an investigator at this time.

4 Q. Did the defendant appear to have the ability to
5 understand the written and spoken English?

6 A. He did.

7 Q. Okay. Did the defendant's answers to your
8 questions appear to be rational or was he emotional and
9 give you any concern regarding his ability to understand
10 your questions?

11 A. He didn't appear too emotional to understand what
12 was going on.

13 Q. Did he respond when you asked him whether he wanted
14 an attorney?

15 A. He responded by signing the form but he never
16 initially mentioned wishing to have an attorney.

17 Q. Did he mention an attorney any time during that
18 interview?

19 A. Later on through the interview the question about a
20 polygraph examination came up. He indicated that he
21 would like to have an attorney prior to submitting to a
22 polygraph examination but that he was still willing to
23 speak with us about the incident without an attorney.

24 Q. So did you continue to question him up to that
25 comment?

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1 A. We did.

2 Q. Did the defendant at any time during the questioning
3 change his mind about the attorney and ask you and did
4 you stop the interview at that point?

5 A. He did. Towards the end almost two hours in he
6 indicated that he would like an attorney.

7 Q. Did the defendant then make verbal and written
8 statements to you?

9 A. He made a verbal statement.

10 Q. Okay. Did he make a written statement as well?

11 A. He did no.

12 Q. Was the verbal statement audio or video recorded?

13 A. It was both audio and video recorded.

14 MS. SZYMCZYNSKA-SAS: Your Honor, permission to
15 approach?

16 THE COURT: You may.

17 Q. [Ms. Sas] I'm going to show you what has been
18 premarked as State's exhibit number 2 for Denno purposes
19 only.

20 [Whereupon, the witness is shown exhibit]

21 Q. Do you recognize what that is?

22 A. I do.

23 Q. What is it?

24 A. It's a C.D. containing the audio video recording of
25 the interview with Mr. Whitsett.

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1 Q. And how do you know that?

2 A. I initialed it and placed the date that I last
3 reviewed it.

4 Q. And you watched that interview?

5 A. I did in its entirety.

6 Q. And is it a complete interview as it took place that
7 day?

8 A. It is.

9 MS. SZYMCZYNSKA-SAS: Your Honor, at this time the
10 State would like to enter into evidence for purposes of
11 Denno hearing only State's exhibit number 1 and 2.

12 THE COURT: Mr. Schwacke?

13 MR. SCHWACKE: No objection, Your Honor.

14 THE COURT: For purposes of this hearing 1 and 2.

15 [Whereupon, State's exhibit numbers 1 and 2 are
16 entered into evidence by the court for purposes of this
17 hearing only]

18 MS. SZYMCZYNSKA-SAS: Your Honor, at this time I'm
19 not sure if Your Honor would like us to play the
20 recording. Certainly we would seek to admit most of the
21 statements from the interview minus the redacted portions
22 and we can put that on the record which portions have
23 been redacted. We based it mostly on the redactions from
24 the actual transcript. I know that the other motions
25 that Ms. Williams will be arguing ---

State v Jefferey Lance Whitsett

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1 MS. WILLIAMS: --- I don't think we can agree to
2 the redactions until we get Your Honor's rulings but we
3 could certainly for purposes of Denno ask to admit the
4 tape since Your Honor has already watched it.

5 MS. SZYMCZYNSKA-SAS: We did not intend to play the
6 recording, Your Honor, at this time.

7 MR. SCHWACKE: I don't think there is any need to
8 play it. I've heard it, they've heard it, you've heard
9 it, my client has heard it in it's as is situation so I
10 don't think we need to do that.

11 THE COURT: So the one that you've admitted is not
12 redacted, correct?

13 MS. SZYMCZYNSKA-SAS: Correct. It is a complete
14 version unredacted, yes Your Honor.

15 THE COURT: Any further questions for this witness,
16 Your Honor.

17 MS. SZYMCZYNSKA-SAS: No further questions for this
18 witness, Your Honor.

19 THE COURT: Mr. Schwacke?

20 MR. SCHWACKE: Just a few.

21

22

23

24

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State v Jefferey Lance Whitsett
Jackson v Denno Hearing-Brian Fenton-Cross- Examination by Mr. Schwacke
June 23, 2017

1 CROSS-EXAMINATION

2 BY MR. SCHWACKE:

3 Q. So what has been marked for identification as

4 exhibit 1 is that a form that is currently in use with

5 the Berkeley County Sheriff's Office?

6 A. It's a form that was in use at that time. I'm not

7 sure if they have amended the form. There have been some

8 changes within the Sheriff's Office and I'm no longer in

9 criminal investigations so I'm not really sure what they

10 use now.

11 Q. Are there different types because that says I wish

12 to speak to an investigator and not everybody in the

13 Berkeley County Sheriff's Office is going to be

14 classified as an investigator?

15 A. Well, initially every police officer is an

16 investigator. What your official job title is might be

17 different but we all have the obligation to investigate

18 crime.

19 Q. So what time -- do you know what time this process

20 began?

21 A. It was just before 11 o'clock.

22 Q. In the morning?

23 A. Yes, sir.

24 Q. And were you present when Mr. Whitsett was arrested?

25 A. I was not.

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- 1 Q. Were you made aware that he had been arrested?
- 2 A. I was.
- 3 Q. When were you made aware that he was arrested?
- 4 A. Just prior to him coming up to the Sheriff's Office.
- 5 I think the gentleman that arrested him had given us a
- 6 phone call.
- 7 Q. And you don't know again what time he actually went
- 8 into custody?
- 9 A. I don't.
- 10 Q. So the interview room is located at the Sheriff's
- 11 Department?
- 12 A. It is.
- 13 Q. North Live Oak?
- 14 A. Yes, 223 North Live Oak Drive.
- 15 Q. And there is recording equipment in there that you
- 16 inform the people as they come in?
- 17 A. Yes, I believe so.
- 18 Q. And did you inform Mr. Whitsett he was being
- 19 recorded?
- 20 A. I believe so.
- 21 Q. That would be on the tape if it didn't happen?
- 22 A. It should be on the video.
- 23 Q. It's not tape anymore, it's on the disk. So do you
- 24 know -- did you have any conversations with Mr. Whitsett
- 25 about how much sleep he had had the night before?

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1 A. I don't really remember specifically having that
2 conversation with him.

3 Q. And any conversation about when he last ate?

4 A. During the interview I said I don't know when you
5 last ate and I offered him food. But at the beginning of
6 the interview I let him know to let me know if he needed
7 food or not.

8 Q. And this is a two-part recording?

9 A. For whatever reason the machine split the file up.

10 Q. That would probably be because of the length of the
11 interview?

12 A. I would assume so.

13 Q. So what happens on -- there is a time that everyone
14 leaves the interview room; everyone including Mr.
15 Whitsett. What is happening at that point off camera?

16 A. I think there is a statement at the very end where I
17 ask for some 17's. That's police code for an item, which
18 I assume would have been handcuffs to place him in
19 handcuffs so we can transport him to the detention
20 center.

21 Q. But this break didn't last -- you're saying at the
22 end of the second recording?

23 A. Yes, at the end of the overall recording.

24 Q. Okay. I'm asking what happens during ---

25 A. --- oh, during the break ---

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1 Q. --- the break between part one and part two?

2 A. There is a restroom. I mean several feet away from
3 the interview room. He would have went and used the
4 restroom and then we would have went and sat him back
5 down inside the interview room. And I think I went and
6 got him a bag of chips. He had already had some water.

7 Q. So about how far is that restroom from where that
8 interview was?

9 A. Well, you would walk down a hall and then take a
10 right so I would say it be from here [indicates] to maybe
11 that last chair over there [indicates] in the corner.
12 And you would walk down one hall and then take and
13 immediate right and its right there.

14 Q. Is there any conversation that takes place?

15 A. I don't recall.

16 Q. Now on the recordings there is some discussion about
17 the Steinberg Law Firm?

18 A. There is.

19 Q. What is that about?

20 A. Towards the end of the interview he indicated that
21 he might be represented. He never really gave a direct
22 answer. He said he had to call his friend to find out if
23 he was represented.

24 Q. And he was asking for his phone so he could get a
25 number?

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1 A. At the end, yes.

2 Q. And y'all didn't provide that to him?

3 A. I didn't document in the report that I provided it
4 to him but I wouldn't assume that I would lie to him. I
5 wouldn't have that number off the top of my head. I'd
6 have to Google it or something like that.

7 Q. So the discussion about the Steinberg Law Firm that
8 was in connection with representation or a legal issue or
9 what?

10 A. At the end when he indicated that he would like to
11 speak to an attorney he mentioned Steinberg Law Firm.

12 Q. Was that in context with any particular type of law
13 enforcement? I mean you mentioned a polygraph.

14 A. Yes. I don't remember if he specifically mentioned
15 Steinberg during the polygraph conversation but he did at
16 the end of the interview.

17 Q. And so how do you know when to quit asking questions
18 when there is a request for representation?

19 A. Normally when somebody asks or says I don't want to
20 speak anymore I want to speak to an attorney.

21 Q. What is supposed to happen at that point?

22 A. We're supposed to cease the interview or any
23 questions about the actual incident. We can still ask
24 questions about booking procedures and things like that.

25 Q. So he was informed about those kinds of things

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1 you're going to jail and that sort of stuff?

2 A. He knew he was going to jail.

3 MR. SCHWACKE: One moment, Your Honor.

4 THE COURT: Take your time.

5 [Whereupon, Mr. Schwacke and Ms. Tolley confer]

6 MR. SCHWACKE: Thank you, Your Honor. Those are
7 all the questions I have.

8 MS. SZYMCZYNSKA-SAS: No further questions of this
9 witness, Your Honor.

10 THE COURT: You may step down. But you are not
11 free to leave.

12 [Whereupon, the witness is excused and exits the
13 witness stand]

14 THE COURT: Call your next witness.

15 MS. SZYMCZYNSKA-SAS: Your Honor that was the only
16 witness the State was prepared to call in reference to
17 the Denno hearing.

18 THE COURT: All right. Do you have any witnesses,
19 Mr. Schwacke?

20 MR. SCHWACKE: Your Honor, just one second.

21 THE COURT: Take all the time you need.

22 [Whereupon, Mr. Schwacke and Ms. Tolley confer]

23 MR. SCHWACKE: Thank you, Your Honor. We don't
24 have any witnesses.

25 THE COURT: All right. Arguments?

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1 CLOSING ARGUMENT

2 BY MS. SAS:

3 Your Honor, the purpose of the Denno hearing as the
4 court is aware is to determine whether or not the
5 defendant's statement was freely and voluntarily given
6 and after advisement of Miranda warnings. Based on the
7 testimony of Lieutenant Fenton here today as well as the
8 recorded interview which was admitted for purposes of the
9 Denno hearing as State's 2 the State would argue that we
10 have satisfied each of these elements.

11 The defendant was inside the interview he was
12 advised why law enforcement was there. He was provided
13 with water and snacks. He was given a bathroom break
14 when he needed one. Your Honor, the interview did not
15 take an extensive amount of hours. He was there I
16 believe under two hours in the interview room. He was
17 given his Miranda warnings not only verbally but in
18 writing. He initialed by each of the warnings
19 individually and then acknowledged that he wanted to
20 speak to the investigator without an attorney being
21 present.

22 The only time the attorney came up is when they
23 began to talk about the polygraph. That is when he
24 actually indicates that if there is a polygraph that is
25 when he would like to have counsel. He is very clear in

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1 it. Your Honor on the recording you can hear him say
2 when Detective Fenton asks him do you want an attorney at
3 this time he says not at the moment; only if there is a
4 polygraph. They continue with the questioning. He
5 engages them in the conversation. When he finally asks
6 for an attorney and indicates that he wants an attorney
7 at this time they stop the questioning.

8 They ask him questions that I believe Detective
9 Fenton -- Lieutenant Fenton now testified that they were
10 for booking purposes only. It's the address, his social
11 security number; those are used for booking purposes
12 only. Your Honor based on that the State would argue
13 that we have satisfied the elements of the freely and
14 voluntarily given statement with the Miranda warnings.

15 THE COURT: Mr. Schwacke?
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CLOSING ARGUMENT

BY MR. SCHWACKE:

Your Honor, what is concerning is the Miranda
advisement is not dated and timed but other than that we
have no other argument.

THE COURT: Okay. Any response?

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CLOSING ARGUMENT RESPONSE

BY MS. SAS:

Your Honor, in response to that I believe Lieutenant Fenton testified that was the only time that he interviewed this defendant, the only time he would have prepared that form for this defendant.

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RULING

THE COURT: Based upon the testimony presented here today and my review of the video of the hearing I do find that the statement was voluntarily and freely given. There was an indication based upon my review of the video that Mr. Whitsett understood his rights, that he understood that he could answer any questions, he could stop any questions at any time, that he could consult with an attorney before answering questions.

And based upon the length and the place of the detention I do not find that it was unnecessarily long. There was no indication of any threats of violence or any promises of leniency. I do find that the statement was voluntary and taken in compliance with Miranda. All right. Next hearing? Next motion?

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1 MS. WILLIAMS: Mr. Schwacke is asking me and I
2 think we are going to come to some agreement on the
3 redactions to make the trial go smoother next week but my
4 contention is I'm not sure that we can really do that
5 until we know Your Honor's ruling on the prior abuse
6 because the defendant goes into at length description to
7 the detectives about the fact that the child had been
8 abused before by his friend.

9 So again I think we can go forward with that hearing
10 today, Your Honor because you've seen the child on tape
11 describing the prior event. I suppose then you can -- if
12 that's not sufficient we would have to wait until the
13 child testifies. And I just don't know if Mr. Schwacke
14 has an objection to you making a decision based on the
15 child's prerecorded telling of what happened before.
16 I've asked her and it's exactly the same as what she says
17 in the tape and I can proffer that to the court today.
18 It's always been the same.

19 THE COURT: So what is our next motion that we need
20 to address?

21 MS. WILLIAMS: So the next motion would be the
22 State's motion in limine to limit any testimony of the
23 prior sexual abuse of the victim by the defendant's
24 friend two years prior. That defendant's name was
25 Christian Prochaska; I'm sure I'm butchering his name.

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1 He went to prison after pleading guilty to that
2 particular event. The State has addressed this issue in
3 our motion in limine for compliance with Rape Shield, our
4 motion in limine to exclude evidence of other sexual
5 assaults, our motion in limine to exclude evidence of
6 third party guilt and in our extensive reply to the
7 defendant's motion to allow testimony in in violation of
8 Rape Shield. And I'm happy to address that if Your Honor
9 is ready to go forward with that without having the child
10 here.

11 THE COURT: Mr. Schwacke, is there a reason that
12 the child needs to be here?

13 MR. SCHWACKE: Your Honor, I would submit that
14 because of the circumstances of this particular interview
15 where the examiner does not go into questioning as to the
16 child witness's competency, whether she can differentiate
17 right from wrong, truth from dishonest. That's normally
18 in those interviews. It is not in this interview. She
19 did not do it in either stage one or stage two.

20 THE COURT: Do you agree with that, Ms. Williams?

21 MS. WILLIAMS: I do not agree with that. They
22 never do that anymore and the reason is State v Kromah
23 and all of the progeny of cases that came out of State v
24 Kromah. State v Kromah was overturned because the court
25 said those forensic interviewers were making a comment on

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1 the veracity of the children. So lots of things changed
2 because of that. Rule 602 ---

3 THE COURT: --- hold up. My question was was there
4 any questioning in the forensic interview that indicated
5 whether the child knew the difference between the truth
6 or a lie, or that there was a punishment or something of
7 that nature?

8 MS. WILLIAMS: I would say that wasn't done and
9 that isn't done anymore. And I would also say that the
10 court can look at the length of the interview and
11 determine whether that child is -- understands what she
12 is doing and whether she understands the difference
13 between a truth and a lie.

14 I also would point Your Honor to Rule 602. There is
15 a presumption of competency for all witnesses; not just
16 children. This child was nine years old and there is no
17 reason to think that she wouldn't know that what was done
18 was wrong or that she wouldn't know that telling the
19 truth was right.

20 So I'm not sure what in the record would overcome
21 that presumption of competency. We're not dealing with a
22 three year old. We're dealing with a nine year old
23 child. So I've not had any case in the last three years
24 where we've seen a forensic interview where they go
25 through that line of questioning. It just isn't done

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1 anymore.

2 THE COURT: You're asking me to make some decisions
3 based upon an interview that I don't know what the rules
4 were for her. So that's the position that I think Mr.
5 Schwacke is making is he doesn't know if she understood
6 that she had to tell the truth, that there was no oath or
7 affirmation given that would have been given to her if
8 she is appearing in court. Is that the crux of your...

9 MR. SCHWACKE: Exactly, Your Honor, did she
10 appreciate the consequences of being dishonest.

11 THE COURT: And the forensic -- I understand what
12 you're saying and I'm not saying that the forensic
13 interviewer should have or must do that, but the rules of
14 engagement are different in a forensic interview that if
15 she is here so to speak, correct?

16 MS. WILLIAMS: And I understand that, Your Honor.
17 And respectfully what I would say if I was interviewed on
18 tape and that was somehow admissible through. ---

19 THE COURT: --- I'm sorry?

20 MS. WILLIAMS: If I was interviewed on tape, an
21 adult, and that was somehow admissible in court through
22 some rule that the legislature put through we wouldn't be
23 sitting here arguing about whether I knew the difference
24 between a truth and lie because there is a presumption of
25 competency. So I am not sure why there is an extra

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1 standard being applied to this child in this interview
2 when it has never been done before. These tapes are
3 admitted routinely. She's also asked a few other
4 questions like on page 3 of the transcript she says: So
5 you agree to tell the truth today? And she says: Uh
6 Huh. And she said: So part of that means that ---

7 THE COURT: --- so that was my initial question to
8 you Ms. Williams was there anywhere in the interview that
9 she indicated she was going to tell the truth. So there
10 is?

11 MS. WILLIAMS: There is. Not exactly what Mr.
12 Schwacke recited. There is no longer this thing in the
13 beginning where they say if I said Mickey Mouse was here
14 in this room or if I said that was purple; they don't go
15 through that. But they do go through some questioning of
16 the child where she is told to tell the truth and that
17 can be found on page 3 of the transcript.

18 THE COURT: Okay. Mr. Schwacke, do you think
19 there is a different standard or that there should have
20 been a different line of questioning?

21 MR. SCHWACKE: I think there is no statement. I
22 think that the child is getting the benefit of this
23 because there is no requirement that she be -- that the
24 child witness under our current process because obviously
25 in objecting to this coming in I would request the

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1 opportunity to cross her prior to the statement being
2 played to the jury because that then gives you the full
3 picture as to whether she appreciates what is being
4 testified to, what she is testifying to and to the
5 circumstances and what would happen and to the entire
6 process of a trial where someone is on trial for 25 to
7 life. Obviously I'm not going to ask her that question
8 but I think it's clear, first off Kromah doesn't say you
9 can't ask that question. It says you can't express an
10 opinion of the child being truthful.

11 And that's easy to keep out. That has nothing to do
12 with the interview process. But the interview process
13 requires certain findings by Your Honor before you can
14 admit it and I don't believe you have the opportunity now
15 having just watched a recording from two years ago to
16 know whether the child then and even now appreciates the
17 requirement to be truthful in her answers.

18 And that requires you to do that in an in camera
19 setting and that's why I would ask for this not just be
20 blanketed admitted today, that you are going to require
21 some questioning as to whether or not the child can even
22 participate in this process because you get to the point
23 where she can't participate in the process and we've
24 already admitted the statement. Well then where is the
25 defendant left to do but object and ask for a new trial

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1 in those sorts of circumstances?

2 THE COURT: We are at this point here on the
3 State's motion in limine to first of all comply with Rape
4 Shield, is that correct?

5 MS. WILLIAMS: Yes, Your Honor.

6 THE COURT: And so the initial question is whether
7 or not based only upon the video that you think we can
8 proceed and it is your position that we cannot.

9 MR. SCHWACKE: It is my position that the court
10 should conduct an in camera interview or allow
11 questioning by the State of the witness and that would
12 include cross-examine by me before making the
13 determination.

14 MS. WILLIAMS: And Your Honor I stand corrected on
15 my original point. I think we should redact this
16 information based on Kromah. But they actually go into a
17 very detailed questioning of this child between the truth
18 and a lie; something I haven't seen in a lot of these
19 lately but this is from 2015.

20 And I don't know whether Mr. Schwacke has read this
21 portion but at the bottom of page 3 she not only asks
22 her: If I asked you what kind of car do I drive what
23 would you say? And Angela says: I don't know. And she
24 says: Right; another thing is that if I ask you a
25 question and my question is confusing or if I use a word

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1 that you don't understand you are ---

2 THE COURT: --- I think we're -- I'm trying to keep
3 this as simple as I can. I think you're getting a little
4 far off my question.

5 MS. WILLIAMS: I thought he was looking at a
6 competency argument.

7 THE COURT: Right. Well let me -- he may or may
8 not be. I'm just trying to focus on and to make rulings
9 today to expedite the trial. If I don't have enough
10 witnesses or testimony today then we can't proceed today.
11 All I'm trying to do is make a determination. It seems
12 to me what you want is to exclude the prior incident that
13 the child was involved in, correct?

14 MS. WILLIAMS: That's correct.

15 THE COURT: All right. I don't know -- tell me
16 then -- it's your burden, correct? This is your burden
17 to introduce it ---

18 MR. SCHWACKE: --- I'm required to put everyone on
19 notice that I may seek to introduce it. That's part of
20 that statute. So that's what I've done. I don't know at
21 what point what I'm proposing or in the back of my mind
22 I'm representing the client that unless evidence develops
23 a certain way from the witness stand -- and I know well
24 enough to not cross a line. If the court tells me I have
25 to comply I'm not to ask a question and I'm supposed to

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1 stop when I get to that point I'm perfectly willing to do
2 that.

3 THE COURT: At this point I'm not sure how it's
4 going to come in. Do you agree, Mr. Schwacke?

5 MR. SCHWACKE: I understand that -- I mean Ms.
6 Williams has limited some of this discussion about prior
7 acts that may have an impact here. So there -- the case
8 that she has described with the digital touching at least
9 that is a god son of a grandfather who lived in the
10 house. That happened to our same victim in this case.
11 There have also been previous allegations of sexual
12 assaults in that house by Mr. Myers who is the father of
13 this victim.

14 And so there is going to be matters that just pop up
15 whether it's by the victim, whether it is by another
16 witness that I may need to seek at that point permission
17 of the court to violate -- well, not to violate but use
18 the advantage that it gives me that sometimes there are
19 things that are admissible despite the Rape Shield
20 statute.

21 THE COURT: But at this time Mr. Schwacke based
22 upon just my review of both tapes that's all I know about
23 this case. The defendant's interview as well as the
24 child's interview; that's all I really know about this
25 case. Tell me are you in agreement that at this point

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1 based upon what you believe the State is presenting that
2 those allegations that there should be no discussion
3 about the prior incident with the god son?

4 MR. SCHWACKE: Absolutely.

5 THE COURT: All right. So simple, right?

6 MS. WILLIAMS: Mr. Schwacke has now conflated like
7 three of my motions in his argument and I just need some
8 clarity on whether we're arguing those because we have
9 filed a motion to comply with Rape Shield. So my
10 understanding of that is that at this point he is not to
11 say anything about the prior event in opening or in
12 questioning unless the jury is excused?

13 THE COURT: Correct.

14 MS. WILLIAMS: Okay. I've also filed a motion to
15 exclude evidence of third party guilt. And there were
16 sort of some arguments being ---

17 THE COURT: --- I'm not ready on third party guilt
18 yet.

19 MS. WILLIAMS: He was arguing it so I was ---

20 THE COURT: --- I haven't heard any third party
21 guilt because I'm making in my mind there is a
22 distinguished feature between third party guilt and
23 knowledge that she may have gained from other sexual
24 assaults.

25 MS. WILLIAMS: That's it, Your Honor. As long as

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1 we're staying -- Mr. Schwacke is ---

2 THE COURT: --- y'all I keep it -- I'm slow; I try
3 to keep this as simple as I can so one step at time ---

4 MS. WILLIAMS: --- I would just like to keep it one
5 motion at a time ---

6 THE COURT: --- but Mr. Schwacke is -- Mr.
7 Schwacke's umbrella motion to allow evidence normally
8 prohibited under the Rape Shield statute from what I've
9 heard is premature at this time. What he's saying is we
10 know that there are some things out there. Perhaps there
11 would be something that would open the door to allow
12 those to come in but at this time he agrees he is going
13 to comply with the Rape Shield statute.

14 MR. SCHWACKE: . And I'm required to provide written
15 previous notice and that's what we're going to do.

16 THE COURT: . At this time the door has not been
17 opened and we all agree. So we will then tweak the
18 evidence as we need to do it. If at some point he has
19 now put everybody on notice that we all know that this
20 information is out there then we will handle that at the
21 appropriate time. So we don't need to have the victim
22 testify at this point; we don't need her here. But at
23 some point as the evidence unfolds we may need to have an
24 in camera hearing, correct?

25 MR. SCHWACKE: Yes, ma'am.

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1 THE COURT: All right.

2 MS. WILLIAMS: Okay. Then I would ---

3 THE COURT: --- so that addresses your motion for
4 compliance with Rape Shield statute, your motion to
5 exclude evidence of other sexual assaults, and the
6 defense's motion to allow evidence normally prohibited
7 under the Rape Shield statute.

8 MS. WILLIAMS: Okay. That would leave two
9 motions.

10 THE COURT: All right.

11 MS. WILLIAMS: One is for the admission of the
12 video tape pursuant to 17-23-175. My mistake I thought
13 that was what Mr. Schwacke was arguing with reference to
14 the competency issue that the child was not given -- was
15 not questioned about the difference between a truth and a
16 lie on the tape and therefore he was saying that we
17 shouldn't be using the tape. But maybe I misunderstood
18 his argument.

19 MR. SCHWACKE: May we approach?

20 THE COURT: Okay.

21 [Whereupon, an off the record in chambers conference
22 is held]

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1 THE COURT: Thank you. So counsel we had in
2 chambers conference to discuss really how the trial is
3 going to proceed. I think everyone wants to not expedite
4 because we will take as long as we need to but with the
5 understanding that we do not have the availability all
6 day Monday for hearings. And it's my understanding that
7 the forensic interviewer is at a conference and would not
8 be available until Tuesday morning is that correct, Ms.
9 Williams?

10 MS. WILLIAMS: Yes, Your Honor. We'll have her
11 here at 9 o'clock sharp.

12 THE COURT: So based upon my review of the statute
13 and the current case law in South Carolina the forensic
14 interviewer's C.V., which is now part of court's 2
15 package I find preliminarily and we will have her here
16 available at 9 a.m. on Tuesday, is that correct?

17 MS. WILLIAMS: Yes, Your Honor.

18 THE COURT: Then Mr. Schwacke will be able to
19 question -- and I have forgotten her name.

20 MS. WILLIAMS: Her name is Elizabeth Pilcher.

21 THE COURT: I had written down Beth but I knew she
22 had -- so it's Elizabeth. She will be available for
23 questioning as well as the victim will be available as
24 needed.

25 MS. WILLIAMS: Would you like the victim here at

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1 9:00? We were going to have her here to begin testimony
2 Tuesday afternoon. She's our first witness and I know
3 that we had discussed earlier that we were going to go
4 right into testimony after choosing a jury.

5 THE COURT: As to the forensic interviewer you'll
6 be able to question her but I understand the State needs
7 to redact some portions of the forensic interview in
8 order to comply. Based upon my reading of the statute I
9 do find that the video would be admissible. The
10 statements were given in response to questioning. There
11 was the audio and visual recording. The child as I
12 understand would testify and is available for cross-
13 examination. And that based upon the totality of the
14 circumstances there were particularities guarantees of
15 trustworthiness.

16 I have reviewed the C.V. of the interviewer and find
17 that she has been trained in conducting the investigative
18 interviews of children. There was extensive opportunity
19 for the victim to correct the interviewer. The leading
20 questions -- the statement questions were not leading.
21 The statement did represent a detailed account of the
22 alleged events. It had internal coherence.

23 So based upon that preliminarily at this stage in
24 order to allow the State time I am finding that the
25 statement is admissible and ordering the State to redact

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1 the video as appropriate. We will then -- if anything
2 during argument Mr. Schwacke in no way will that
3 influence my ruling after we have had questioning of the
4 forensic interviewer on Tuesday morning. Do you
5 understand my ruling, Ms. Williams?

6 MS. WILLIAMS: I do, Your Honor.

7 THE COURT: Mr. Schwacke?

8 MR. SCHWACKE: I do, Your Honor.

9 THE COURT: Any additional -- anything additional
10 concerning the videotape now so that the State has an
11 opportunity to redact it appropriately?

12 MS. WILLIAMS: No, Your Honor. Mr. Schwacke and I
13 will get together and make sure that we make those
14 redactions in agreement.

15 [Whereupon, Ms. Williams and Mr. Schwacke confer]

16 MS. WILLIAMS: We've provided Mr. Schwacke with
17 transcripts of the tapes, all the tapes. And so we've
18 agreed now that anything we redact we would just make
19 those amendments together.

20 THE COURT: And so what I understand is that leaves
21 your motion Ms. Williams to exclude evidence of third
22 party guilt. We briefly touched upon that as I
23 understand that there is some indication that in the DNA
24 there is trace evidence of another male donor, is that
25 correct?

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1 MS. WILLIAMS: Yes, Your Honor, there is. So the
2 panties that belonged to the child victim her blood is
3 found on the panties and Mr. Whitsett's DNA is found on
4 the panties. There is not enough of a profile for them
5 to identify semen or saliva so there is no indication yet
6 whether that or there never will be whether that is just
7 touch DNA or whether it was semen or saliva. And there
8 just wasn't enough there to determine that. There is
9 another male profile but what the SLED scientist will
10 testify to that is such a weak profile that really could
11 be anybody else in the home. It could be the person that
12 put the panties in a plastic bag at the factory. There's
13 really no way to determine that.

14 The State's third party guilt motion talks about the
15 prior sexual abuse of [Minor] by Christian
16 Prochaska. We've already discussed that. But also back
17 in 2013 [Minor] biological father was accused of
18 molesting her older sister. He has never been accused of
19 molesting [Minor]. She has never alleged that he molested
20 her.

21 At the time that Mr. Whitsett was alleged to have
22 molested [Minor] Mr. Myers was not living in the home, was
23 not around the home. So, again based on the third party
24 guilt standard, which has been adhered to over and over
25 again and begins with Gregory basically the court says

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1 evidence offered by accused as to the commission of the
2 crime by another person must be limited to such facts
3 that are inconsistent with his own guilt and to such
4 facts that raise a reasonable inference or presumption to
5 his own innocence. Evidence which can have no other
6 effect than to cast the bare suspicion upon another or to
7 raise conjectural inference as to the commission of the
8 crime by another is not admissible.

9 Nothing about the fact that there is another male
10 profile on the panties negates the fact that Mr.
11 Whitsett's DNA is on the panties. And nothing about the
12 fact that Mr. Myers may or may not have molested another
13 child negates the fact that this child alleges that Mr.
14 Whitsett molested her.

15 So we would just point the court to all of the cases
16 cited in our motion. There is very consistent case law
17 on this issue and there is nothing about the other
18 allegation that negates the guilt of Mr. Whitsett and we
19 would ask you to exclude any reference to that evidence.

20 THE COURT: Any reference to?

21 MS. WILLIAMS: To Mr. Myers alleged molestation of
22 another child in the house. Quite frankly those are the
23 only two we know about which are Mr. Prochaska and Mr.
24 Myers. We would ask that ---

25 THE COURT: --- you're not asking Mr. Schwacke not

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1 to inquire or Ms. Tolley not to inquire about ---

2 MS. WILLIAMS: --- anybody else ---

3 THE COURT: --- the SLED results, the DNA results?

4 MS. WILLIAMS: No, I think the SLED results come
5 in.

6 THE COURT: All right.

7 MS. WILLIAMS: I think that that is fair game. I
8 think that for them to sort of throw out that it could
9 have been somebody else would be improper and we would
10 ask that they not do that with regard to Mr. Myers, Mr.
11 Prochaska or anybody else that they can think up without
12 at least putting that before the court outside the
13 presence of the jury.

14 THE COURT: Mr. Schwacke, any further -- we had a
15 brief conversation about this. I think the law is clear
16 as to what can be or cannot be introduced as to third
17 party guilt.

18 MR. SCHWACKE: Yes, ma'am. I still -- the DNA
19 result is the only thing that I don't feel is limited by
20 the arguments regarding third party guilt. But I'm not
21 sure to what extent I can go too far with that. I guess
22 that's what I'm asking is that you're not ruling at this
23 time that I can't mention that to the jury.

24 THE COURT: Can't mention what to the jury?

25 MR. SCHWACKE: Just the DNA results?

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1 THE COURT: Oh, I think the DNA results is what the
2 DNA results it. I think the case law is clear that you
3 can't just have the conjecture as to who it may be
4 because the evidence offered by the accused as to the
5 commission of the crime must be limited to such facts
6 that are inconsistent to your client's own guilt. So I
7 think the fact that what the DNA results are are the DNA
8 results. I don't think you are excluded by my granting
9 the State's motion to exclude evidence of third party
10 guilt.

11 MR. SCHWACKE: Thank you, Your Honor.

12 THE COURT: So your motion is granted. So that's
13 all that is on my sheet.

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1 MS. WILLIAMS: Just for some housekeeping issues,
2 Your Honor.

3 THE COURT: Okay.

4 MS. WILLIAMS: First of all Ms. Sas really wants to
5 know how you spell Jefferey Whitsett because Jefferey has
6 been spelled three different way in all of our -- so out
7 of respect for the defendant and to make sure that it is
8 correct is it J-E-F-F-E-R-Y?

9 MR. SCHWACKE: E-R-E-Y.

10 MS. WILLIAMS: Okay.

11 THE COURT: E-R-E-Y?

12 MR. SCHWACKE: There is an additional E.

13 MS. WILLIAMS: Okay. We will try to get that
14 right and we apologize.

15 THE COURT: So the indictment number 2016-GS-08-
16 1374 is spelled correctly.

17 MS. WILLIAMS: Okay. I think it's just on some of
18 the motions. Also, Your Honor with regard to the chain
19 of custody we can probably eliminate ten witnesses if we
20 can eliminate some of the less important people in the
21 chain. We would refer the court to State v Hatcher 392
22 S.C. ---

23 THE COURT: --- which item are we talking about in
24 the chain?

25 MS. WILLIAMS: Okay. So, on the panties in the

1 Rape Shield kit which has the victim's buccal swab and
2 also the defendant's buccal swab we would have the person
3 that collected it. We would have the person that took it
4 from evidence up to SLED and we would have the person
5 that tested it. And every one of those people would
6 testify as to the condition it was in when they got it
7 and that they didn't tamper with it.

8 As Your Honor knows and Mr. Schwacke knows these
9 things are sealed in such a way that if someone had
10 unsealed them it would be obvious to the person that
11 tested it and they would probably testify that they would
12 then not test it. We have everybody in the chain but we
13 would like to eliminate the person that signs them in at
14 SLED and then signs it out at SLED. There are sometimes
15 two or three people involved in that.

16 With regard to the panties we have the person that
17 took the cuttings, we have the person that did the
18 serology testing and we have the person that did the DNA
19 testing. We have the person that drove the stuff up to
20 SLED and we have the person that did the Rape Shield --
21 I'm sorry, the rape kit; that nurse. We have the person
22 that did the buccal swab on the defendant and we have the
23 person that did the buccal swab on the victim. We would
24 just like to eliminate some of those people with the
25 Department of Public Safety at MUSC and at SLED so those

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1 administrative people -- so that we can probably
2 eliminate a half day's worth of witnesses. And we would
3 use State v Hatcher as support for that request.

4 THE COURT: Mr. Schwacke, I don't know that the
5 rules require you to stipulate to that.

6 MR. SCHWACKE: And on behalf of my client I can't.

7 MS. WILLIAMS: I guess we can just deal with that
8 if Mr. Schwacke objects to the admission of the evidence
9 without those people. And if the court rules that it
10 can't be admitted at that time then we will have those 12
11 people file into court and we'll try again.

12 THE COURT: I'd just have your 12 people here.

13 MS. WILLIAMS: Okay.

14 THE COURT: I think that arguing about it just
15 slows it down so just have them here and then the record
16 is complete.

17 MS. WILLIAMS: Oh we'll have them here. But I
18 think that the law is pretty clear on the fact that it is
19 admissible without every single person in the chain. And
20 some of those people are coming from Columbia and we
21 would just admit it with the necessary people involved in
22 the chain because the law says we do not have to have
23 every single link in the chain so.

24 THE COURT: Is there any indication Mr. Schwacke
25 there was any tampering?

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1 MR. SCHWACKE: There were some questions about sort
2 of the origin of some of those items so.

3 THE COURT: But not as to the transportation chain?

4 MR. SCHWACKE: Yes, ma'am.

5 THE COURT: All right.

6 MR. SCHWACKE: If they can convince you that they
7 have created a chain as practical as possible from
8 beginning to end then you'll admit it and that's your
9 decision. But if not and they don't do it then they need
10 to have the people here.

11 MS. WILLIAMS: Just for the record we ---

12 THE COURT: --- I don't know the chain. I don't
13 know the witnesses ---

14 MS. WILLIAMS: --- I understand, Your Honor. But
15 there is one piece of evidence that originates with lay
16 people and we are going to have every link of that chain.
17 So other than that it's really just buccal swabs. So we
18 will make sure that we have everybody available if Your
19 Honor requires that.

20 THE COURT: All right. What else?

21 MS. WILLIAMS: That's everything that we have, Your
22 Honor. We will be working on the redactions so it will
23 be ready for Tuesday.

24 THE COURT: Okay. So Tuesday morning the forensic
25 interviewer will be here at 9 a.m., is that correct?

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1 MS. WILLIAMS: Yes, Your Honor.

2 THE COURT: And we will have that very brief
3 hearing or as long as you need but I don't anticipate it
4 will take very long. Are there any other matters that
5 you anticipate that we will have?

6 MS. WILLIAMS: I do not.

7 MR. SCHWACKE: No, Your Honor.

8 THE COURT: All right. So let's talk about, and
9 it won't be applicable but I just need to know. I have
10 the signed order for him to remain out on bond. Bennett
11 Bail Bonding will remain on bond. What's the State's
12 position?

13 MS. WILLIAMS: We would object to him being out on
14 bond during the trial. We would ask that after the
15 Tuesday trial begins that he be taken into custody.

16 THE COURT: Has there been any issues or violations
17 of the bond at this time, Ms. Williams?

18 MS. WILLIAMS: I'm not aware of any.

19 MR. SCHWACKE: No, Your Honor.

20 THE COURT: All right.

21 MR. SCHWACKE: In fact when the State sought the
22 additional indictments he was cooperative in that
23 process.

24 THE COURT: I am not -- he is still out on bond and
25 he will remain out on bond until we begin the trial. I

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1 haven't signed the order because I want to date it at the
2 appropriate time but I just wanted to have that
3 understanding. Let's swear Mr. Whitsett.

4 [Whereupon, the defendant is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: Please state your full name and
7 spell your last name for the record.

8 MR. WHITSETT: My name is Jefferey Lance Whitsett.
9 My last name is spelled W-H-I-T-S-E-T-T.

10 [JEFFEREY LANCE WHITSETT, having
11 been first duly sworn testified as follows:]

12 THE COURT: Thank you. You may put your hand down
13 but please remain standing. Sir, do you understand we
14 are going to begin the trial of your case at
15 approximately 9 a.m. on Tuesday, June 27th?

16 MR. WHITSETT: Yes, Your Honor.

17 THE COURT: And do you know what will happen to you
18 if you choose not to appear?

19 MR. WHITSETT: I believe so, Your Honor.

20 THE COURT: So tell me what you believe will happen
21 if you do not appear.

22 MR. WHITSETT: I believe either a bench warrant
23 would be put out for my arrest or some form of law
24 enforcement would be sent to my current location where
25 I'm living.

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1 THE COURT: And both of those things will likely be
2 true but it's more important at this time that you
3 understand that we are going to begin the trial of the
4 case on Tuesday, June 27th at 9 a.m. If you choose not
5 to appear this case will proceed in your absence, do you
6 understand?

7 MR. WHITSETT: Yes, Your Honor.

8 THE COURT: Do you understand what that means?

9 MR. WHITSETT: Yes, Your Honor. I could be found
10 guilty without me being here.

11 THE COURT: Correct. The trial will proceed. Mr.
12 Schwacke will be seated exactly where he is and Ms.
13 Tolley will be seated exactly where she is but there will
14 be an empty chair and the trial will proceed without you,
15 do you understand?

16 MR. WHITSETT: Yes, Your Honor.

17 THE COURT: And if the jury finds you guilty I will
18 seal the verdict and the sentence until you are picked up
19 on a bench warrant, do you understand?

20 MR. WHITSETT: Yes, Your Honor.

21 THE COURT: Do you know why I go over this with
22 you?

23 MR. WHITSETT: To make sure I understand the gravity
24 of my not appearing.

25 THE COURT: Correct. Often times defendants

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1 believe if they don't show up the trial will not proceed.
2 But I assure you sir we will proceed in your absence. Do
3 you understand?

4 MR. WHITSETT: Yes, Your Honor.

5 THE COURT: Thank you. You may have a seat.

6 [Whereupon, the defendant is seated]

7 THE COURT: Anything further?

8 MS. WILLIAMS: No, Your Honor.

9 THE COURT: Anything further?

10 MR. SCHWACKE: No, Your Honor.

11 THE COURT: I will be here on Monday absent some
12 other issues or attending something else but as of now I
13 will be here. So if anything arises I will have a court
14 reporter available so if something were to happen I
15 understand the Solicitors will be out of county is my
16 understanding. But if something emergency were to arise
17 pursuant to the trial I am happy to accommodate even via
18 conference call. If there is nothing further we are at
19 ease until Tuesday at 9 a.m. Thank you.

20 MS. WILLIAMS: Thank you, Your Honor.

21 MR. SCHWACKE: Thank you, Your Honor.

22 *****END OF TRANSCRIPT OF RECORD*****
23
24
25

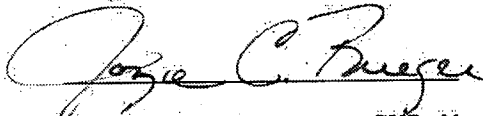
State v Jefferey Lance Whitsett
Certificate of the Court Reporter
June 23, 2017

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Berkeley County, South
Carolina on the 23rd day of June, 2017.

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

July 27, 2017


Joyce C. Rueger, CVR-M
Court Reporter

Certified Transcript provided to SCCID, Appellate Defense
Division

1st
59
(1-12)

State v. Jeffery Lance Whitsett

Law Enforcement Agency: Berkeley County Sheriff's Office

Detective Brian Fenton

Person Interviewed: Minor

Dorchester Children's Center BETH PILCHER:

Elizabeth "Beth Pilcher"

Defendant: Jeffery Lance Whitsett.

Date of Interview: June 3, 2015

Transcribed By: Always On Time

1 BETH PILCHER: Do you have a favorite color?

2 Minor: Yeah.

3 BETH PILCHER: What's your favorite color?

4 Minor: Pink.

5 BETH PILCHER: Pink. I don't have pink. Do you have a
6 second favorite color?

7 Minor: Green.

8 BETH PILCHER: [inaudible] So, the first thing I'm going
9 to write up here is for you, that's my name. My name is Beth.
10 Can I get you to write your name over here?

11 Minor: Uh huh.

12 BETH PILCHER: All right. And, how old are you?

13 Minor: 9.

14 BETH PILCHER: 9, do you go to school?

15 Minor: Uh huh.

16 BETH PILCHER: What school do you go to?

17 Minor: [inaudible 00:39]

18 BETH PILCHER: [inaudible] What grade are you in?

19 Minor: Third.

20 BETH PILCHER: Third? How do you like third grade?

21 Minor: It's fun. It's fun like Monday, the last
22 day I was there, I got to build this cool structure out of
23 marshmallows and toothpicks.

24 BETH PILCHER: That sounds fun.

25 Minor: And I got to eat half of it.

1 BETH PILCHER: Cool. Was Monday the last day of school?

2 Minor: No. It was Thursday.

3 BETH PILCHER: Thursday is the last day?

4 Minor: Yesterday I was in MUSC.

5 BETH PILCHER: Okay. Well, before we start talking today,
6 I'm going to first tell you a little bit about my job and some
7 things about this room. So, it's my job to talk to kids. I talk
8 to kids every day and ask lots of questions. It's my job to help
9 make sure kids are staying safe.

10 I call this room my safe room. That's because I'll ask
11 questions about safety, but also because we can talk about
12 anything in this room and you're not going to get in any trouble
13 with me for anything that we talk about in here today.

14 See that right there, that is a camera. While we're
15 talking today, I'm going to be making a recording of us. That's
16 just because what you say is really important and I want to make
17 sure I don't forget anything. The only people that see that DVD
18 are people that need to see it to help them do their jobs. So
19 like, if there's someone helping your family, they might be able
20 to see it.

21 Minor: Yeah.

22 BETH PILCHER: Okay. We have one important rule in this
23 room and that's that we only talk about the truth. So, things
24 that actually happened.

25

1 Minor : That was like, yesterday when I was at
2 MUSC, the doctor said I was actually really honest.

3 BETH PILCHER: The doctor said you were really honest
4 yesterday? Okay, good.

5 Minor : I was.

6 BETH PILCHER: And today, that's all that I'll for you to
7 be today too, is just honest and only talk about things that
8 really happened. So, you agree to tell the truth today?

9 Minor : Uh huh.

10 BETH PILCHER: So, part of that means that if I ask you a
11 question and you know the real and true answer, I want you to do
12 your best to tell me everything you know about it. If I ask you
13 a question and you don't know the answer, you don't have to make
14 anything up or make any guesses, it's okay to just tell me that
15 you don't know.

16 So, if I asked you, what kind of car do I drive? What
17 should you say

18 Minor : Uh, I don't know.

19 BETH PILCHER: Right. Another thing is that if I ask you
20 a question and my question is confusing or if I use a word that
21 you don't understand, you don't have to try to guess what I mean,
22 it's okay to just tell me that you don't understand.

23 So, if I ask you, is there a chronometer in this room, what
24 should you say?

25 Minor : I don't understand.

1 BETH PILCHER: Perfect. So, I can try to ask you in a
2 better way. Is there a clock in this room?

3 Minor: No.

4 BETH PILCHER: And then another thing, is if I say
5 something when we're talking today that sounds wrong or mixed up,
6 I want you to correct me. I want to make sure that I get
7 everything that you told me right.

8 So, if I said, Minor, I remember you told me that you were
9 in first grade. What should you say?

10 Minor: I'm in third grade.

11 BETH PILCHER: Third grade. All right. And, I think I
12 already asked you this, but how old did you say you were?

13 Minor: 9.

14 BETH PILCHER: 9. We'll put 9 up there. All right. So,
15 what kinds of things do you like to do for fun?

16 Minor: I like to go in the pool with my friends.

17 BETH PILCHER: Okay.

18 Minor: Because like, my friend, she lives all the
19 way in St. Matthews, she's going to come down here and spend the
20 summer with me. So, we'll have lots of swimming.

21 BETH PILCHER: That will be fun. Do you have a pool at
22 your house?

23 Minor: Yeah. It's a big pool.

24 BETH PILCHER: Nice. What else do you like to do for fun?

25 Minor: I like to draw.

1 BETH PILCHER: Draw? What kind of things do you draw?
2 Minor: Big cats.
3 BETH PILCHER: Big cats?
4 Minor: Yeah.
5 BETH PILCHER: What's your favorite kind of cat?
6 Minor: A leopard.
7 BETH PILCHER: A leopard, all right. That's cool. Do you
8 take art in school?
9 Minor: Yeah.
10 BETH PILCHER: Is that your favorite class?
11 Minor: Uh huh. My grandpa, he's thinking about
12 putting me in a private art school.
13 BETH PILCHER: Wow, that would be cool. How do you feel
14 about that idea?
15 Minor: Great.
16 BETH PILCHER: Yeah? Awesome. Do you have any fun plans
17 for the summer?
18 Minor: I'm going to go back to Myrtle Beach
19 because I've been there one time. And I think my uncle might
20 take me for a few weeks, I guess.
21 BETH PILCHER: Okay. What do you like to do in Myrtle
22 Beach?
23 Minor: I like to stay in the fancy hotel rooms and
24 I'm going to think about—because last time we went there, it was
25

1 in Spring Break, so we couldn't get in the pool, but I'm thinking
2 about jumping in that big pool.

3 BETH PILCHER: Okay.

4 **Minor**: At the hotel.

5 BETH PILCHER: That sounds pretty fun. All right.

6 **Minor**, I want you to do something for now and tell me all about
7 your day today. Starting with when you first woke up until you
8 got here. Go through your day, tell me step-by-step and tell me
9 everything that you did.

10 **Minor**: Okay. Well, I woke up and then, I went
11 into the living room. I sat down for a few minutes in the
12 recliner. My uncle was already awake, my brother was already
13 awake and then my mom woke up. She gave us breakfast and then we
14 got to play, like our tablet for a little bit.

15 BETH PILCHER: Uh huh.

16 **Minor**: Then our dog woke up, our dog Shirley woke
17 up and he has the flu right now, currently. But, we're thinking
18 about—we took him to the vet yesterday. He's taking medicine on
19 a daily basis. So, he woke up and he started looking at him in
20 the face and then he went to lay down again. He's a really
21 sleepy dog.

22 BETH PILCHER: Uh huh.

23 **Minor**: Then, after we finished playing our tablet,
24 momma told us to get changed so we could come here. Then we
25

1 almost went to the place next door, the Pink Dolphin place. We
2 got it mixed up because our GPS told us to go there.

3 BETH PILCHER: Uh huh.

4 Minor: So, I pointed out that it was over here.

5 And basically, when I got here, I started all the way over there
6 at the kitchen set. Then my mom fell asleep and my uncle was
7 playing his phone, like always. Then we had to come here and
8 talk.

9 BETH PILCHER: All right. Well, perfect. Thank you for
10 telling me about that. There might be a time today when we're
11 talking and I ask you to tell me about something and I want you
12 to do it just like that. Just kind of from start to finish, tell
13 me everything that happened, okay?

14 Minor: Uh huh.

15 BETH PILCHER: Okay. One thing I like to do with every
16 kid that I talk to is find out who you live with. I'll draw a
17 little house here and put your name. Who else lives in your
18 house with you

19 Minor: My mom.

20 BETH PILCHER: What's mom's name?

21 Minor: Vicky.

22 BETH PILCHER: And, how old is your mom?

23 Minor: She is ? I don't know.

24 BETH PILCHER: Not sure. Is she a kid, teenager or
25 grownup?

1 **Minor** : Grownup. Oh, and Vicky is a Y.
2 BETH PILCHER: A Y, thank you for correcting me..
3 **Minor** : Okay.
4 BETH PILCHER: And, what else.
5 **Minor** : My aunt.
6 BETH PILCHER: What's your aunt's name?
7 **Minor** : Sylvia.
8 BETH PILCHER: And, how old is your aunt?
9 **Minor** : She is, I don't know.
10 BETH PILCHER: Is she a kid, grownup or teenager?
11 **Minor** : Grownup, almost [inaudible]
12 BETH PILCHER: Grownup, almost what?
13 **Minor** : Senior.
14 BETH PILCHER: Almost a senior?
15 **Minor** : Almost.
16 BETH PILCHER: All right. Who else?
17 **Minor** : My uncle.
18 BETH PILCHER: What is his name?
19 **Minor** : Marco, MARCO.
20 BETH PILCHER: And he is a kid, teenager or grownup?
21 **Minor** : Grownup. And, last but not least, my
22 brother.
23 BETH PILCHER: And, what is his name?
24 **Minor** : Adam. ADAM.
25 BETH PILCHER: How old is he?

1 Minor : He is 7.

2 BETH PILCHER: 7. All right. That's everybody?

3 Minor : Yes..

4 BETH PILCHER: All right. Besides this house, have you
5 ever lived with different people anywhere else?

6 Minor : I've been in the same house but I've been
7 with different people. My mom stayed the same and Adam stayed
8 the same, but like before my aunt and my uncle, they were in
9 Brazil, so like where they came from. I had my dad there, my
10 older sister. So, but my dad end up like, divorcing with my mom
11 and my older sister went to live with my dad.

12 BETH PILCHER: Okay. So you used to have your dad and
13 little sister in there-or, older sister at your house but they're
14 not anymore.

15 Minor : No.

16 BETH PILCHER: How long ago were they there? How old were
17 you when they were there?

18 Minor : My sister was there when I was 7 and my dad
19 was there when I was 6.

20 BETH PILCHER: So, we'll just put his name up here too, so
21 I can remember. What's dad's name?

22 Minor : Adam.

23 BETH PILCHER: And, what's your sister's name.

24 Minor : Elisa.

25 BETH PILCHER: What was that?

1 Minor : Elisa.

2 BETH PILCHER: Elisa?

3 Minor : Uh huh.

4 BETH PILCHER: Do you know how to spell that?

5 Minor : ELISA.

6 BETH PILCHER: Okay. And, how old is Eliza?

7 Minor : She is 17.

8 BETH PILCHER: 17. All right. What do you know about
9 coming here today?

10 Minor : I've been somewhere related to this, like
11 this happened before and now somewhere in Charleston. Like,
12 where I have to talk to somebody.

13 BETH PILCHER: Okay.

14 Minor : But like, their place was bigger and like,
15 an actual building, in Charleston.

16 BETH PILCHER: Okay.

17 Minor : So, I know that there would be some toys
18 and there would be nice painted walls, like the other place.

19 BETH PILCHER: Okay. So, you said that you didn't go to
20 school yesterday because you went to MUSC?

21 Minor : Uh huh.

22 BETH PILCHER: Did I get that right? What did you go to
23 MUSC for?

24 Minor : I had to do my exam for the case.

25

1 BETH PILCHER: When you say 'the case', tell me what you
2 mean.

3 Minor: Hmm, kind of hard to explain. I can't
4 like, [pause] oh yeah, child abuse.

5 BETH PILCHER: Child abuse?

6 Minor: Uh huh.

7 BETH PILCHER: Child abuse to who?

8 Minor: Me.

9 BETH PILCHER: You?

10 Minor: Uh huh.

11 BETH PILCHER: Can you tell me more about that?

12 Minor: Like, when my mom, she goes to work and my
13 uncle, my aunt-well, yeah, my cousin, she lives with me too.

14 BETH PILCHER: What's your cousin's name?

15 Minor: Malyssa. MALYSSA.

16 BETH PILCHER: MALYSSA?

17 Minor: Yes.

18 BETH PILCHER: How old is Malyssa?

19 Minor: She is, I don't know.

20 BETH PILCHER: Is she a kid, teenager, grownup?

21 Minor: Teenager.

22 BETH PILCHER: Okay.

23 Minor: But anyway, my uncle, my aunt and my
24 cousin, they go to the gym and my stepdad is the only one at home
25

1 watching me, but he isn't there anymore. He would like, take me
2 in the bedroom, lock-

3 [end of audio 11:35]

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State v. Jeffery Lance Whitsett

Law Enforcement Agency: Berkeley County Sheriff's Office

Detective Brian Fenton

Person Interviewed: Minor

Dorchester Children's Center Interviewer:

Elizabeth "Beth Pilcher"

Defendant: Jeffery Lance Whitsett

Date of Interview: June 3, 2015

Transcribed By: Always On Time

1

1 **Minor** : [coloring alone in room]

2 BETH PILCHER: [enters room 00:25] All right, I am back.

3 Thank you for being patient.

4 **Minor** : Yeah.

5 BETH PILCHER: All right. Beautiful, is that a tiger?

6 **Minor** : Uh huh.

7 BETH PILCHER: So you do like drawing pictures of big
8 cats, huh?

9 **Minor** : Uh huh.

10 BETH PILCHER: All right. [inaudible], so they won't go
11 out again. All right, so I kind of want to go back to what you
12 were talking about before. You said that, just to make sure I
13 got everything right, that when your aunt and uncle and cousin
14 would go to the gym, your stepdad, he used to--

15 **Minor** : He was the only one that stayed home and
16 watched us. My mom, she went to work. So, he-he told Adam to
17 stay in the living room and play the video games and don't bother
18 us. So, he went into the-he took me into a bedroom and he shut
19 and locked the door, behind him. It's mom and his bedroom. He
20 went in there and he shut the windows. He locked everything so
21 no one was able to see it...

22 So like, then he told me to get on mom's bed. And, I had
23 to take my clothes off. So, like he's an adult, I have to listen
24 to him. So, I was forced to do this.

25 BETH PILCHER: Okay.

1 **Minor** : And, anyways, right. Yeah, told this
2 story too many times. Then he got something out of mom's drawer
3 called Vaseline. I don't know what it is. It's like this white
4 stuff, it's in this can. So, he put some of that stuff on his
5 finger and told me to stand up and just turn around. He then he
6 started, like-I don't know what his thing is called, it-[pause]
7 He has this thing-he put the Vaseline on it.

8 BETH PILCHER: Okay.

9 **Minor** : Then, and hold on. Then, put it inside me
10 and it hurt.

11 BETH PILCHER: And, has that happened one time or more
12 than one time?

13 **Minor** : Lots of times.

14 BETH PILCHER: Lots of times? Okay. So, you said, was
15 it always when your aunt, uncle and cousin were at the gym that
16 it would happen?

17 **Minor** : And my mom went to work.

18 BETH PILCHER: And your mom was at work, okay. So, he
19 would tell your brother to go play a game--

20 **Minor** : He would-he would tell Adam to play video
21 games and leave us alone, not like to ask questions..

22 BETH PILCHER: All right. Then he would take you in the
23 room and would lock the door and would tell you get on the bed,
24 you said? And would tell you to take your clothes off. You said

25

1 you had to listen because he was an adult. Did I get that right
2 or wrong?

3 **Minor**: Right.

4 BETH PILCHER: Then you said that he got Vaseline out of
5 your mom's drawer.

6 **Minor**: [shakes head yes]

7 BETH PILCHER: And he put the Vaseline where?

8 **Minor**: On his thingy.

9 BETH PILCHER: So, I have a picture here that I sometimes
10 use with kids, just to help me understand what they're talking
11 about. Can you show me on this picture where he put the
12 Vaseline?

13 **Minor**: That.

14 BETH PILCHER: Okay. And, what do you call that
15 [inaudible 03:56]

16 **Minor**: I call it a thing.

17 BETH PILCHER: Thing, okay. We'll put your name up here.
18 All right. Then you said that he told you to stand up and put it
19 in you? Did I get that right or wrong?

20 **Minor**: [shakes head yes]

21 BETH PILCHER: So, on this picture, can you point to what
22 part of your body that his thing was touching?

23 **Minor**: This.

24 BETH PILCHER: Okay. What do you call that?

25

1 Minor : It's like, in Brazil they call it a

2 [inaudible 04:31] I just call it a pecky.

3 BETH PILCHER: A pecky?

4 Minor : Yeah.

5 BETH PILCHER: Okay. All right. So, he put the Vaseline
6 on his thing and then told you to stand up and put his thing in
7 your pecky. Did I get that right or wrong?

8 Minor : [shakes head yes]

9 BETH PILCHER: Okay. And then what happened?

10 Minor : He does that for a little bit, pushes it
11 really hard and it starts to hurt. Like, some blood comes out.
12 Then, when he takes it out, white stuff comes out of it.

13 BETH PILCHER: White stuff comes out of?

14 Minor : His thing.

15 BETH PILCHER: His thing, okay. And where does the white
16 stuff go?

17 Minor : He tells me I have to lick it.

18 BETH PILCHER: He tells you that you have to lick it?

19 Minor : [shakes head yes]

20 BETH PILCHER: Okay. What happens after that?

21 Minor : Then he says I can go spit it up in
22 momma's sink. And, then, I can put my clothes back on and I can
23 go outside and act like nothing happened. When the white stuff
24 comes out, he says we can stop.

25

1 BETH PILCHER: When the white stuff comes out, he says
2 you can stop?

3 Minor: [shakes head yes]

4 BETH PILCHER: Okay. So, you said that when you go into
5 your mom's room, he tells you to take off your clothes and get on
6 the bed? How will his clothes be?

7 Minor: His takes his off too.

8 BETH PILCHER: His takes his off, does he take them all
9 the way, part way off or something else?

10 Minor: All the way.

11 BETH PILCHER: And, how about your clothes? Are they all
12 the way, part way off or something else?

13 Minor: All the way.

14 BETH PILCHER: Okay. And, when his thing is in your
15 pecky, how will your bodies be?

16 Minor: Wait, what?

17 BETH PILCHER: So, you said that he put his thing in your
18 pecky, did I get that right?

19 Minor: Uh huh.

20 BETH PILCHER: How will your bodies be? Will y'all be on
21 the bed or standing or something else?

22 Minor: On the bed.

23 BETH PILCHER: On the bed, okay. How will your bodies be
24 on the bed?

25

1 **Minor** : Like, he tells me I have to get on my
2 stomach and just-I can't scream, I can't cry and I can't move.

3 BETH PILCHER: Okay. So, he tells you to get on your
4 stomach and you can't scream and can't cry and can't move.

5 **Minor** : [shakes head yes]

6 BETH PILCHER: And then where is his body?

7 **Minor** : Like, he's standing up, like on his knees
8 on the bed. [inaudible 06:45]

9 BETH PILCHER: Okay. And so, after that you said that
10 the white stuff comes out and you said you have to lick it and
11 you can spit it in the sink. Then he tells you to put your
12 clothes back on because you're done?

13 **Minor** : [shakes head yes]

14 BETH PILCHER: Does he ever say anything else when that
15 happens?

16 **Minor** : [shakes head no]

17 BETH PILCHER: No, okay. Is it-when was the first time
18 that that happened? How old were you the first time?

19 **Minor** : Wait, what?

20 BETH PILCHER: How old were you the first time that
21 happened?

22 **Minor** : I was still 9, it started this year.

23 BETH PILCHER: It started this year?

24 **Minor** : [shakes head yes] Somewhere in March.

25 BETH PILCHER: Somewhere in March?

1 Minor : [shakes head yes]

2 BETH PILCHER: Okay. Does it always happen in your mom's
3 bedroom or has it ever happened anywhere else?

4 Minor : [shakes head no] No. It always happens
5 in the bedroom, when no one's looking.

6 BETH PILCHER: Always in the-when no one's looking. What
7 is your-you said this was your stepdad, did I get that right?

8 Minor : [shakes head yes]

9 BETH PILCHER: What's his name?

10 Minor : Jeff.

11 BETH PILCHER: Jeff.

12 Minor : Well, now I consider him Jerk.

13 BETH PILCHER: Okay. When was the last time it happened?

14 Minor : Saturday.

15 BETH PILCHER: Saturday?

16 Minor : [shakes head yes]

17 BETH PILCHER: This past Saturday?

18 Minor : [shakes head yes]

19 BETH PILCHER: Can you tell me about what happened that
20 time?

21 Minor : Basically the same thing, I mean, they
22 left. Adam was playing video games, as usual. He told him not
23 to bother us. Stay put. And basically the same thing happens
24 every time.

25 BETH PILCHER: The same thing happens every time?

1 Minor : [shakes head yes]

2 BETH PILCHER: Was there ever a time that it was
3 different?

4 Minor : [shakes head no]

5 BETH PILCHER: No? So you said that it's happened a lot
6 of times, does his thing go in your-what did you call it, pecky
7 every time?

8 Minor : [shakes head yes] Uh huh.

9 BETH PILCHER: Okay. And, has his thing ever touched any
10 other part of your body?

11 Minor : Uh, yeah.

12 BETH PILCHER: Okay.

13 Minor : He put it in my mouth.

14 BETH PILCHER: He put it in your mouth?

15 Minor : [shakes head yes]

16 BETH PILCHER: And, is that what you were telling me when
17 you had to lick the white stuff or was that something different?

18 Minor : When I had to lick the white stuff.

19 BETH PILCHER: And has that happened one time or more
20 than one time?

21 Minor : It happens every time.

22 BETH PILCHER: It happens every time, okay. Besides your
23 mouth and your pecky, has his thing ever touched any other part
24 of your body?

25 Minor : Yeah.

1 BETH PILCHER: Okay.

2 Minor : [inaudible 09:22] the picture again.

3 BETH PILCHER: The picture of the boy or the girl?

4 Minor : Girl. He touched that.

5 BETH PILCHER: And what do you call that part of the
6 body?

7 Minor : My bottom.

8 BETH PILCHER: Bottom? So, tell me about a time when
9 his thing touched your bottom.

10 Minor : It was also when I had to lay on my
11 stomach. And, he put it in there. He like, white stuff came out
12 too.

13 BETH PILCHER: And, white stuff came out? Okay, where
14 did the white stuff go that time?

15 Minor : Also in my mouth.

16 BETH PILCHER: In your mouth, okay. And, when his thing
17 touched your bottom, was that on the skin or over clothes?

18 Minor : In the skin.

19 BETH PILCHER: On the skin. And, was that on the inside
20 or on the outside?

21 Minor : Inside.

22 BETH PILCHER: Inside, okay. What did it feel like?

23 Minor : Painful.

24 BETH PILCHER: Painful? Has that happened one time or
25 more than one time?

1 Minor : One time.

2 BETH PILCHER: One time? Okay. Has his thing ever
3 touched any other part of your body?

4 Minor : No.

5 BETH PILCHER: Have you ever had to touch any part of his
6 body?

7 Minor : [shakes head yes] His thing.

8 BETH PILCHER: His thing, okay. Can you tell me about
9 that?

10 Minor : He told me that I had to like, play with
11 it, it was nasty.

12 BETH PILCHER: He told you that you had to play with it?
13 Okay. So, when you had to play with it, what part of your body
14 was touching it?

15 Minor : My hand.

16 BETH PILCHER: Was it touching it on the skin or over the
17 clothes?

18 Minor : On the skin.

19 BETH PILCHER: The skin. What were your hands doing?

20 Minor : Just basically just touching it.

21 BETH PILCHER: Okay.

22 Minor : That's all I did.

23 BETH PILCHER: And then what happened?

24 Minor : Then he put it inside my pecky.

25

1 BETH PILCHER: Then he put it inside your pecky, okay.

2 And, did you have to play with his thing one time or more than
3 one time?

4 Minor : One time.

5 BETH PILCHER: One time, okay. Have you ever had to touch
6 his body-or, have you had to touch his body any other times or do
7 anything else to any other part of his body?

8 Minor : No.

9 BETH PILCHER: Was there ever a time that something
10 happened with Jeffrey that anyone besides your brother was home?

11 Minor : Wait, what?

12 BETH PILCHER: So, you said that your brother would only
13 be the one-be the only other person home when that would happen.
14 Did I get that right or wrong?

15 Minor : Yes.

16 BETH PILCHER: Was there ever a time that anyone else was
17 home?

18 Minor : No.

19 BETH PILCHER: No. Okay. Did you ever tell anybody about
20 what happened with Jeffrey or Jeff?

21 Minor : I told my mom on Monday.

22 BETH PILCHER: On Monday, what did your mom say?

23 Minor : She had a big reaction.

24 BETH PILCHER: Okay.

25

1 Minor : She told him that--leave the house. My
2 brother got sad about it.

3 BETH PILCHER: Okay.

4 Minor : But then my mom called him selfish because
5 he should be wanting to kill him, because what happened.

6 BETH PILCHER: Your mom called your brother selfish--

7 Minor : [shakes head yes]

8 BETH PILCHER: Okay. All right. Just trying to think if
9 I have any more questions to ask you about that. What time of
10 day would it be when that would happen?

11 Minor : Somewhere around 5:00, 4:00.

12 BETH PILCHER: Around 5:00 or 4:00, okay. Did he ever say
13 anything to you, when that was happening?

14 Minor : He threatened me, if I told anyone, that he
15 would shoot me.

16 BETH PILCHER: He said if you told anyone he would shoot
17 you?

18 Minor : [shakes head yes]

19 BETH PILCHER: Okay. Did you ever say anything to him?

20 Minor : [shakes head no]

21 BETH PILCHER: No. Did you ever hear about him doing
22 anything like that to anyone else?

23 Minor : [shakes head no]

24 BETH PILCHER: No. Well, I might have some questions
25 about all that for you in a little bit, okay.

13

1 First, what I'd like to do is finish labeling some things
2 on these diagrams. [pause] What do you call this?

3 **Minor** : Eyes.

4 BETH PILCHER: What's that?

5 **Minor** : Mouth.

6 BETH PILCHER: What do you call that?

7 **Minor** : I don't know.

8 BETH PILCHER: Does your mom have a name for that part of
9 the body? No? You want [inaudible] I don't know? Yeah. What
10 do you call that?

11 **Minor** : Back.

12 BETH PILCHER: All right. [inaudible 14:03] What do you
13 call this?

14 **Minor** : Eyes. [pause] Mouth.

15 BETH PILCHER: Mouth. What do you call that?

16 **Minor** : Hmm. I know I know this. [pause] Body.

17 BETH PILCHER: Body. All right, what do you call that?

18 **Minor** : Back.

19 BETH PILCHER: And that?

20 **Minor** : Bottom.

21 BETH PILCHER: All right. Are there places on the girls
22 body that it's not okay for someone else to touch? Can you put a
23 mark on those places for me?

24 **Minor** : [goes to board] Here.

25 BETH PILCHER: The I don't know.

1 Minor : Here.

2 BETH PILCHER: The pecky. And the bottom, okay. Are
3 there places on the boy's body that it's not okay for someone
4 else to touch?

5 Minor : Right here.

6 BETH PILCHER: The thing.

7 Minor : Here.

8 BETH PILCHER: And the bottom, okay.

9 Minor : [inaudible 15:22]

10 BETH PILCHER: What was that?

11 Minor : [inaudible]

12 BETH PILCHER: So, besides what you already told me with
13 Jeff, has anybody else ever touched you or done something to you
14 on the Pecky?

15 Minor : Yes.

16 BETH PILCHER: Can you tell me about that?

17 Minor : I was at my grandpa's house. They were-
18 well, this was a time where he didn't do this to me, but he was-
19 Jeff was outside with my grandpa, doing some work.

20 BETH PILCHER: Okay.

21 Minor : His-my grandpa's godson, I don't know his
22 name, he was following me around everywhere and giving me strange
23 looks. And, when-this happened when I was 7.

24 BETH PILCHER: Okay.

25

15

1 Minor : I went into his kitchen to go get a kitten
2 to play with. He came over here and I went to go sit down on the
3 couch. Then he put his hands inside my hands.

4 BETH PILCHER: Okay. He put his hands inside your pants?

5 Minor : Uh huh.

6 BETH PILCHER: Okay. You said you were in the kitchen
7 when that happened?

8 Minor : Uh huh.

9 BETH PILCHER: And, you don't remember—it was your
10 grandpa's godson, but you don't remember his name? What was your
11 grandpa's name?

12 Minor : Dean.

13 BETH PILCHER: Dean, and that's whose house you were at?

14 Minor : His house.

15 BETH PILCHER: At Dean's house, okay. And, when he put
16 his hands inside your pants, what part of his body was touching
17 your body?

18 Minor : His hands.

19 BETH PILCHER: His hands, and what part of your body was
20 his hands touching?

21 Minor : Pecky.

22 BETH PILCHER: The pecky. And, was that on the clothes or
23 on the skin?

24 Minor : Skin.

25

1 BETH PILCHER: The skin, all right. And, what was his
2 hand doing?

3 Minor : It was basically just touching it, around
4 and around.

5 BETH PILCHER: Okay. What happened after that?

6 Minor : And then, I said I wanted to go home, to
7 Jeff. He was like, Minor, is something wrong? I was like, no
8 there isn't. You're looking funny. Then I told him that he
9 touched me inside my pants. Then he almost killed that boy.

10 BETH PILCHER: He did?

11 Minor : Yeah.

12 BETH PILCHER: Okay.

13 Minor : He went to jail for it.

14 BETH PILCHER: Okay. When you say 'he almost killed that
15 boy', what did he do?

16 Minor : He was so mad. He like, wanted to strangle
17 him but the police had to hold him back.

18 BETH PILCHER: Okay. Who called the police?

19 Minor : My grandpa.

20 BETH PILCHER: Your grandpa. So, did anybody get hurt
21 that day?

22 Minor : [shakes head no]

23 BETH PILCHER: No? [pause] Has that happened with your
24 grandpa's godson one time or more than one time?

25 Minor : More than one time.

1 BETH PILCHER: More than one time, okay. Can you tell me
2 about a different time?

3 Minor: Not to me but he did it to other people who
4 lived with my grandpa. Like, with their daughters. He got away
5 with it, but-when he did it to me, he didn't get away with it.

6 BETH PILCHER: Okay. How do you know he did it to other
7 people?

8 Minor: Jeff told me that this isn't the first time
9 that he did it to someone.

10 BETH PILCHER: Jeff told you that?

11 Minor: Uh huh.

12 BETH PILCHER: Okay. Besides that, has anybody else ever
13 touched you or done something to you on the pecky?

14 Minor: No.

15 BETH PILCHER: Has anybody besides what you've told me
16 about touched you or done something to you on the bottom?

17 Minor: No.

18 BETH PILCHER: Or, on the I don't know?

19 Minor: No.

20 BETH PILCHER: Has anybody ever asked you, anybody else
21 besides Jeff, ever ask you to touch them or do something to them
22 on the thing?

23 Minor: [shakes head no]

24 BETH PILCHER: Or on the bottom?

25 Minor: [shakes head no]

1 BETH PILCHER: Has a girl ever asked you to touch her or
2 do something to her on the pecky?

3 Minor : [shakes head no]

4 BETH PILCHER: Or on the bottom?

5 Minor : [shakes head no]

6 BETH PILCHER: Or on the I don't know?

7 Minor : [shakes head no]

8 BETH PILCHER: No. I might have already asked you this
9 but you told me about Jeff touching your pecky and your bottom
10 with his thing. Did he ever touch your body in a place that's
11 not okay with any other part of his body?

12 Minor : No.

13 BETH PILCHER: No. Have you ever seen people without
14 clothes on?

15 Minor : Does Jeff count?

16 BETH PILCHER: Jeff-besides Jeff?

17 Minor : No.

18 BETH PILCHER: No. Have you ever seen pictures of people
19 without clothes on in a book or a magazine?

20 Minor : [shakes head no]

21 BETH PILCHER: How about on TV or a movie?

22 Minor : [shakes head no]

23 BETH PILCHER: Have you ever seen people without clothes
24 on on a computer or a cell phone, or a tablet?

25 Minor : No.

1 BETH PILCHER: No. Has anybody ever asked to take
2 pictures of you without clothes on?

3 Minor MYERS: Yeah. I was at MUSC yesterday. They said
4 they were doing some kind of report, so they had to take
5 pictures.

6 BETH PILCHER: Okay. And, who was taking pictures of you
7 at MUSC?

8 Minor : The doctors and the nurses.

9 BETH PILCHER: The doctors, okay. Besides that, any other
10 times anyone has ever taken pictures of you without clothes on?

11 Minor : [shakes head no]

12 BETH PILCHER: I might have some more questions about all
13 that in a little bit but I have some different questions for you
14 now. At your house, who takes care of you?

15 Minor : My mom, my uncle and my aunt.

16 BETH PILCHER: Your mom, your uncle and your aunt. How do
17 they take care of you?

18 Minor : They just watch us. Like, until another
19 one gets home. Like, my mom goes to work. My aunt and my uncle
20 have to watch me. And then my mom comes home and then they can
21 go to the gym.

22 BETH PILCHER: Okay.

23 Minor : Because they don't trust Jeff anymore.

24 BETH PILCHER: Who does the cooking at your house?

25 Minor : My mom and my aunt.

1 BETH PILCHER: Your mom and your aunt. Has there ever
2 been a time at your house when you're hungry and there was no
3 food at all to eat?

4 Minor MYERS: [shakes head no]

5 BETH PILCHER: Ever been a time when the lights or the
6 water didn't work?

7 Minor : Well, one time my mom turned the water off
8 because they were fixing it but I don't know if that qualifies.

9 BETH PILCHER: Besides that, any other times?

10 Minor : No.

11 BETH PILCHER: Do you go to the doctor?

12 Minor : [shakes head yes]

13 BETH PILCHER: How about the dentist?

14 Minor : Yes.

15 BETH PILCHER: And, what about Adam and Malyssa, do they
16 go to the doctor?

17 Minor : Uh huh.

18 BETH PILCHER: They go to the dentist?

19 Minor : Uh huh.

20 BETH PILCHER: Has there ever been a time that any of you
21 needed to go to the doctor or dentist but no one took you?

22 Minor : No.

23 BETH PILCHER: Do you have any rules at your house?

24 Minor : Lots.

25 BETH PILCHER: Lots, what is one rule that you have?

1 Minor : No running.

2 BETH PILCHER: No running. What happens to you if you get
3 in trouble?

4 Minor : We lose games.

5 BETH PILCHER: Lose games. Anything else ever happen to
6 you if you get in trouble?

7 Minor : Sometimes we get sent to our room if it's
8 really bad.

9 BETH PILCHER: All right, you get sent to your room. Are
10 you allowed to leave if it's time to eat?

11 Minor : Yeah.

12 BETH PILCHER: Or if you need to go to the bathroom?

13 Minor : Yeah.

14 BETH PILCHER: Yeah. What happens to Adam if he gets in
15 trouble?

16 Minor : Basically the same thing.

17 BETH PILCHER: Same thing? And how about Malyssa?

18 Minor : I don't know.

19 BETH PILCHER: Don't know. Have you ever seen adults yell
20 or scream at other adults, or name call?

21 Minor : [shakes head yes]

22 BETH PILCHER: Tell me about that.

23 Minor : I've seen that many, many times between my
24 mom and my dad. My mom and my stepdad, they do it sometimes.
25 Like, on Monday was a big fight. So, a lot.

1 BETH PILCHER: What happened on Monday, tell me about
2 that.

3 Minor: Like, when I went to take a shower, my mom,
4 she came to check my hair. I told her, I asked her if she
5 couldn't go to work. She told me, she didn't have a college
6 degree so she had to work. And then, I looked sad and she
7 thought I just looked sad because I miss my mom going to work but
8 I told her, you don't understand, it's really bad when you leave.
9 She was like, why? And then, I don't know, like well, if I have
10 to tell you, Mr. Jeff hurts me when you go to work. And she's
11 like, hurts you? Yeah. And then she says, like how hurts you?
12 Um. [pause] And then I said, really bad. Then she stomped out
13 the door yelling at him, like-and I was like, no, no, no, no.
14 Then she left.

15 BETH PILCHER: Okay. So, they were yelling. Did anything
16 else happen on Monday when they were yelling?

17 Minor: They yelled, screamed. Called them names.
18 They didn't hit each other. Because my dad used to hit my mom.

19 BETH PILCHER: Okay. Tell me about that.

20 Minor: Like, one time they got into a big
21 argument, like the one that got them divorced. My dad hit my mom
22 really hard and she almost ended up in the hospital for it.

23 BETH PILCHER: Did you see that or hear about it?

24 Minor: I heard about it.

25 BETH PILCHER: Heard about it. Who told you about it?

1 **Minor** : My mom, earlier. Like, [inaudible 24:38]
2 she said, I don't like people with anger problems and I was like,
3 why? Because your father hit me and almost put me in the
4 hospital. So, that's how I heard about it.

5 BETH PILCHER: What did he hit her with?

6 **Minor** : His hand. Into a fist.

7 BETH PILCHER: Do you know what part of the body she got
8 hit on?

9 **Minor** : [shakes head no] [inaudible 24:58]

10 BETH PILCHER: Have you ever seen anyone get hurt when
11 your mom and dad were fighting?

12 **Minor** : Feelings were hurt.

13 BETH PILCHER: Feelings were hurt.

14 **Minor** : Not physically.

15 BETH PILCHER: Have you ever seen anyone get hurt when
16 your mom and stepdad were yelling?

17 **Minor** : [shakes head no]

18 BETH PILCHER: No. Do you know, besides them, do you know
19 any other-have you ever seen any other grownups yell or scream?

20 **Minor** : [shakes head no]

21 BETH PILCHER: Have you ever seen a grownup hit or kick or
22 punch another grownup?

23 **Minor** : [shakes head yes]

24 BETH PILCHER: Okay, tell me about that.

25 **Minor** : When-it was about my dad and my mom.

1 BETH PILCHER: Okay. But you said you didn't see that,
2 you just heard about it, right?

3 Minor: Oh, wait see.. Oh.

4 BETH PILCHER: No, you've never seen--

5 Minor: I've never seen it but I've heard about it.

6 BETH PILCHER: Okay. Have you heard about that happening
7 with your mom and dad one time or more than one time?

8 Minor: More than one time.

9 BETH PILCHER: Have you ever heard or seen an adult yell
10 or scream at a kid?

11 Minor: [shakes head no]

12 BETH PILCHER: Have you ever seen an adult hit or kick or
13 punch a kid?

14 Minor: [shakes head] My dad used to give us
15 whoopings.

16 BETH PILCHER: Your dad used to give you whoopings? Okay,
17 what would you get whoopings with?

18 Minor: A belt.

19 BETH PILCHER: Belt. What part of the body would you get
20 whoopings on?

21 Minor: Bottom.

22 BETH PILCHER: Bottom. Would that be on your clothes or
23 on your skin?

24 Minor: Clothes.

25

1 BETH PILCHER: Clothes. Did you ever see your skin look
2 different from that?

3 Minor: There was a mark.

4 BETH PILCHER: There was a mark? What did it look like?

5 Minor: It looked red.

6 BETH PILCHER: Red. Would it still be there the next day?

7 Minor: It took a few days but then it would
8 disappear.

9 BETH PILCHER: And, have you seen a mark from that one
10 time or more than one time?

11 Minor: It was one time.

12 BETH PILCHER: Just once? And you said that he would give
13 'us' whoopings, who is us?

14 Minor: Me and Adam.

15 BETH PILCHER: You and Adam. When Adam would get
16 whoopings what would he get a whooping with?

17 Minor: A belt, but he wouldn't have marks because
18 daddy knew that he's younger, he can't take that kind of pain.

19 BETH PILCHER: Okay. So, he wouldn't get marks because
20 your dad knew he couldn't take that kind of pain?

21 Minor: Uh huh.

22 BETH PILCHER: What part of the body would he get a
23 whooping on?

24 Minor: On his bottom.

25

1 BETH PILCHER: On his bottom. And, would that be on the
2 clothes or on the skin?

3 Minor: On the clothes.

4 BETH PILCHER: Clothes. Besides that, any other times
5 you've seen grownups hit or kick or punch kids?

6 Minor [shakes head no]

7 BETH PILCHER: No. Do you know what alcohol is?

8 Minor: [pause] I don't know the definition, but
9 like--

10 BETH PILCHER: Have you heard of beer or wine or liquor?

11 Minor: Yeah.

12 BETH PILCHER: Do you know anybody that drinks any of
13 those?

14 Minor: Yeah. My stepdad's friend but he isn't
15 around us.

16 BETH PILCHER: Okay. But he does drink?

17 Minor: Yeah, he drinks.

18 BETH PILCHER: Have you ever seen him act different after
19 drinking?

20 Minor: Not very drunk, he just drinks.

21 BETH PILCHER: Okay. Do you know what drugs are?

22 Minor: Yeah.

23 BETH PILCHER: Have you heard of weed or crack or cocaine?
24 Or marijuana?

25 Minor: Oh wait, what was that?

1 BETH PILCHER: Have you ever heard of any of this?

2 Minor: No.

3 BETH PILCHER: Do you know anybody who uses drugs?

4 Minor: I was thinking of cigarettes.

5 BETH PILCHER: Okay. Do you know someone who uses
6 cigarettes?

7 Minor: Does e-cigarettes count?

8 BETH PILCHER: Sure.

9 Minor: Yeah, because my stepdad, he uses e-
10 cigarettes inside the house.

11 BETH PILCHER: Who uses e-cigarettes?

12 Minor: Jeff.

13 BETH PILCHER: Jeff. Have you ever seen him act different
14 after using an e-cigarette?

15 Minor: A little meaner.

16 BETH PILCHER: A little meaner? Okay. How is he meaner,
17 what does he do?

18 Minor: He has a little more of a temper.

19 BETH PILCHER: Okay. All right Minor I'm going to take
20 another break, just to see if I have any more questions that I
21 need to ask you. Do you want to keep working on your cat picture
22 for me?

23 Minor: Yeah. I've got to think of more details.

24 BETH PILCHER: You've got to what?

25 Minor: I've got to think of more details.

1 BETH PILCHER: Add some more details, yeah. I'll be back
2 in a minute.

3 Minor: Okay.

4 BETH PILCHER: [leaves room 29:13]

5 Minor [talks to self while coloring]

6 BETH PILCHER: [enters room 36:28]

7 Minor: Hello.

8 BETH PILCHER: Oh, very nice.

9 Minor: Thank you.

10 BETH PILCHER: Beautiful. Well, I had a few more
11 questions for you before we finish up. So, first I wanted to go
12 back to some of what you were telling me about what happened with
13 your stepdad. So, you told me that he said to you that not to
14 tell anybody or if you told anybody that he would shoot you, did
15 I get that right or wrong?

16 Minor: Right.

17 BETH PILCHER: Right, okay. Does your stepdad have a gun?

18 Minor: Oh yeah. It's hidden now.

19 BETH PILCHER: It's hidden. Have you ever seen it?

20 Minor: He showed it to me--

21 BETH PILCHER: He showed it you--

22 Minor: --and not to tell anyone.

23 BETH PILCHER: He showed it to you not to tell anyone?

24 Okay. Where were you when he showed it to you?

25 Minor: In the shed outside in [inaudible 37:22]

1 BETH PILCHER: Was anyone else there?

2 Minor: [shakes head no]

3 BETH PILCHER: What did he say when he showed it to you?

4 Minor: I told you, if you tell anybody, I'm going
5 to use this to shoot you.

6 BETH PILCHER: He said that--

7 Minor: Yeah.

8 BETH PILCHER: --if you tell anybody he's going to use it
9 to shoot you?

10 Minor: [shakes head yes]

11 BETH PILCHER: Was anyone else home when that happened?

12 Minor: No.

13 BETH PILCHER: And then you told me that your stepdad put
14 his thing in your bottom. And that happened one time, did I get
15 that right or wrong?

16 Minor: One time.

17 BETH PILCHER: One time, okay. Then you said that he put
18 his thing in your pecky more than one time and your mouth more
19 than one time? Did I get that right or wrong?

20 Minor: Uh huh. Right.

21 BETH PILCHER: Right, okay. Is there anything else that
22 you think is important for me to know about what happened with
23 your stepdad? Or, anything else that you haven't told me yet?

24 Minor: Yeah. There's something important. He has
25 a hidden video of it on his phone. Like, he said, that's going

1 to be his proof, that he has a hidden video on his phone, of
2 like, you know some of it.

3 BETH PILCHER: He has a hidden video on his phone of some
4 of it.

5 Minor: [shakes head yes]

6 BETH PILCHER: Okay. Did you see him taking a video or
7 did he tell you or something else?

8 Minor: I saw him making it.

9 BETH PILCHER: You saw him making the video, okay. And,
10 did that happen once or more than once?

11 Minor: Once.

12 BETH PILCHER: Do you remember what the video was of?

13 Minor: Like, when we were in the bedroom.

14 BETH PILCHER: Okay. All right. Is there anything else
15 that you think is important for me to know?

16 Minor: [shakes head no] No.

17 BETH PILCHER: No.

18 Minor: [inaudible 39:09]

19 BETH PILCHER: Then I had a few more questions too about
20 what you were telling me about what happened at your grandpa
21 Dean, you said that was his name, at his house with the-his
22 godson. What room were you in when he touched you on your pecky?

23 Minor: In the kitchen.

24 BETH PILCHER: In the kitchen, okay. Was anyone else in
25 the kitchen?

31

1 Minor : No.

2 BETH PILCHER: Or, did anyone else see that happen

3 Minor : [shakes head no]

4 BETH PILCHER: And you said when he touched you, his hand
5 was touching your pecky on the skin. Did I get that right or
6 wrong?

7 Minor : Right.

8 BETH PILCHER: Okay. Was it touching your pecky on the
9 inside or the outside?

10 Minor : The outside.

11 BETH PILCHER: The outside, okay. And you said that it
12 happened to you one time but you know that it happened to other
13 people because Jeff told you? Did I get that right or wrong?

14 Minor : Right.

15 BETH PILCHER: Do you know who any of the other people
16 were that that happened to?

17 Minor : No.

18 BETH PILCHER: Is there anything else that is important
19 for me to know about what happened with him that day?

20 Minor : Uh-uh.

21 BETH PILCHER: You said that was when you were 7, did I
22 get that right or wrong?

23 Minor : Right.

24

25

1 BETH PILCHER: Okay. And you said that your stepdad got
2 really mad when that happened and the police had to come, did I
3 get that right?

4 Minor: [shakes head yes]

5 BETH PILCHER: Okay. Did anybody get arrested that day?

6 Minor: His godson did.

7 BETH PILCHER: His godson did?

8 Minor: [shakes head yes]

9 BETH PILCHER: Okay. And you told me about your mom and
10 stepdad yelling and then your mom and dad yelling. Have the
11 police had to come when any of them were fighting?

12 Minor: No.

13 BETH PILCHER: Have you ever had to talk to the police
14 before?

15 Minor: [shakes head yes]

16 BETH PILCHER: Tell me about that.

17 Minor: Well, like on the first day, when he
18 touched me, some police officers came. They had to know about
19 what happened. So like, I had to explain it to someone and she
20 wrote it down.

21 BETH PILCHER: When your grandpa's godson touched you or
22 when Jeff touched you?

23 Minor: Godson.

24 BETH PILCHER: Godson. So, you had to explain to the
25 police officer what happened, she had to write it down.

1 Minor Uh huh.

2 BETH PILCHER: Okay. Besides that, have you ever had to
3 talk to the police any other times?

4 Minor : No.

5 BETH PILCHER: Have you ever had to talk to a case worker
6 or someone from DSS before?

7 Minor : [shakes head yes]

8 BETH PILCHER: What did you talk to her about?

9 Minor : About the first time I went to that place
10 in Charleston, I told you.

11 BETH PILCHER: Okay.

12 Minor : There was like this lady in this room, she
13 showed me some pictures related to that.

14 BETH PILCHER: Okay.

15 Minor : I had to explain it to her. I had to tell
16 her about what happened and everything.

17 BETH PILCHER: You had to tell her about what happened
18 with what?

19 Minor : Like, when the godson touched me.

20 BETH PILCHER: When the godson touched you. Okay.
21 Besides that, have you ever had to talk to the DSS worker any
22 other times?

23 Minor : No.

24 BETH PILCHER: No. Is there anything that we were
25 supposed to talk about today?

1 Minor : Not that I know of.

2 BETH PILCHER: Is there anything that we're not supposed
3 to talk about today?

4 Minor Also, not that I know of.

5 BETH PILCHER: Okay. Well, I have one last question for
6 you, if anyone else were to ever touch you on your body in a
7 place that's not okay, or do anything to hurt your body, who are
8 some safe grownups you could tell?

9 Minor : My mom and my uncle.

10 BETH PILCHER: Your mom and your uncle?

11 Minor : My aunt can't understand me. She speaks a
12 different language.

13 BETH PILCHER: Okay. So, your mom or your uncle could
14 help. How about at school, is there anyone you could tell?

15 Minor : My teacher and my school counselor.

16 BETH PILCHER: Okay. Well, those are all really good
17 grownups to tell if anything like that ever happens because it's
18 their job to help make sure that you're staying safe. Okay.

19 Well, thank you for talking to me today Minor, we are all done.

20 [end of audio 42:53]

21

22

23

24

25

State v. Jefferey Lance Whitsett

Law Enforcement Agency: Berkeley County Sheriff's Office

Detective Brian Fenton and Detective Shane Cook

Person Interviewed: Jefferey Whitsett

Interviewers: Detective Fenton and Detective Cook

Defendant: Jeffery Lance Whitsett

Date of Interview: June 10, 2015

Transcribed By: Always On Time

1 [start 2:02]

2 DETECTIVE FENTON: Have a seat buddy.

3 JEFFREY WHITSETT: Yes sir.

4 DETECTIVE FENTON: Do you need a bag of chips or
5 anything?

6 JEFFREY WHITSETT: Please.

7 DETECTIVE FENTON: I'll find you something. [leaves
8 room] [enters room] Here's the last two kinds we had. I'm not
9 sure what kind you like. You can throw it right there.

10 JEFFREY WHITSETT: Thank you.

11 DETECTIVE FENTON: Hold tight, okay? Just-[leaves room]

12 DETECTIVE COOK: [enters rooms 13:33] How's it going
13 buddy?

14 JEFFREY WHITSETT: Could be better.

15 DETECTIVE FENTON: Hey, could you give me that password
16 one more time?

17 JEFFREY WHITSETT: Capital U.

18 DETECTIVE FENTON: Capital U.

19 JEFFREY WHITSETT: K

20 DETECTIVE FENTON: K

21 JEFFREY WHITSETT: O

22 DETECTIVE FENTON: O

23 JEFFREY WHITSETT: S

24 DETECTIVE FENTON: S

25 JEFFREY WHITSETT: H

1 DETECTIVE FENTON: H
2 JEFFREY WHITSETT: A
3 DETECTIVE FENTON: A
4 JEFFREY WHITSETT: B
5 DETECTIVE FENTON: B
6 JEFFREY WHITSETT: O
7 DETECTIVE FENTON: O
8 JEFFREY WHITSETT: T
9 DETECTIVE FENTON: T
10 JEFFREY WHITSETT: O
11 DETECTIVE FENTON: O
12 JEFFREY WHITSETT: E
13 DETECTIVE FENTON: E
14 JEFFREY WHITSETT: S
15 DETECTIVE FENTON: S
16 JEFFREY WHITSETT: A
17 DETECTIVE FENTON: A
18 JEFFREY WHITSETT: I
19 DETECTIVE FENTON: I, how do you say it again?
20 JEFFREY WHITSETT: Ukosha Botoesai.
21 DETECTIVE FENTON: Ukosha Botoesai. So, Friday, after
22 work, what time did you leave work at?
23 JEFFREY WHITSETT: Friday, I would've left work around
24 8:00.
25 DETECTIVE FENTON: 8:00? Someone came and got you?

1 JEFFREY WHITSETT: No, I had borrowed a vehicle for the
2 day.

3 DETECTIVE FENTON: Whose car did you borrow?

4 JEFFREY WHITSETT: Robert allowed me to use it.

5 DETECTIVE FENTON: And you went--

6 JEFFREY WHITSETT: I went to work. From work, I went to
7 the bank. From the bank to Harbor Freight. From Harbor Freight,
8 back to where I was staying at the time, well after I had dropped
9 the vehicle off.

10 DETECTIVE FENTON: Well, a little while ago, I thought
11 you said that Carlos was the one that drove you around.

12 JEFFREY WHITSETT: I wasn't there until later on. This
13 would've been--me going there would've been over the weekend.

14 DETECTIVE FENTON: All right. Oh, so Robert did lend you
15 the car.

16 JEFFREY WHITSETT: Yeah, he lent me it once to get to and
17 from work.

18 DETECTIVE FENTON: So, because you got kicked out of the
19 house on Wednesday, is that correct?

20 JEFFREY WHITSETT: I got kicked out on Monday.

21 DETECTIVE FENTON: Monday.

22 JEFFREY WHITSETT: Yes sir.

23 DETECTIVE FENTON: So you still went to work all week,
24 where were you staying?

25

1 JEFFREY WHITSETT: For the beginning few days, I was
2 staying at my Godfather's house.

3 DETECTIVE FENTON: Okay.

4 JEFFREY WHITSETT: He wasn't there at the time. He was
5 [crosstalk]

6 DETECTIVE FENTON: Your Godfather's house that was burnt?

7 JEFFREY WHITSETT: Yeah. He was staying in a hotel, so I
8 stayed there. He's got a wooden shed out in the back that I
9 stayed in.

10 DETECTIVE FENTON: So, you were sleeping in the shed?

11 JEFFREY WHITSETT: Yes sir. He's got all his furniture
12 in it from whatever survived.

13 DETECTIVE FENTON: So, where else did you stay?

14 JEFFREY WHITSETT: Carlos' after the weekend hit, after I
15 went and got my paycheck, I went and asked him if I could stay
16 there until Monday came, if he could take me to work.

17 DETECTIVE FENTON: So, from Monday to Friday you stayed
18 in the shed.

19 JEFFREY WHITSETT: Yes sir.

20 DETECTIVE FENTON: And then, Friday on, you stayed at
21 Carlos'?

22 JEFFREY WHITSETT: Until today.

23 DETECTIVE FENTON: And where were you at today?

24 JEFFREY WHITSETT: Carlos'

25 DETECTIVE FENTON: Did you ever stay at Robert's?

1 JEFFREY WHITSETT: No sir, I didn't stay at Robert's.
2 DETECTIVE FENTON: You just borrowed his car.
3 JEFFREY WHITSETT: Yes sir.
4 DETECTIVE FENTON: Okay. You borrowed his car all week
5 long, Monday through Friday?
6 JEFFREY WHITSETT: No sir--
7 DETECTIVE FENTON: How did you get back and forth to
8 work?
9 JEFFREY WHITSETT: I rode my bike to and from until it
10 crashed, when it crashed is when I asked him to borrow his..
11 DETECTIVE FENTON: What day was that?
12 JEFFREY WHITSETT: It crashed Thursday afternoon when I
13 got back.
14 DETECTIVE FENTON: Okay.
15 JEFFREY WHITSETT: It started spitting and sputtering
16 really, really hard.
17 DETECTIVE FENTON: Okay. Hmm. And you hadn't spoken to--
18 you said you tried to call your wife one time since you got
19 kicked out?
20 JEFFREY WHITSETT: Texted her.
21 DETECTIVE FENTON: Texted her, what did you text her?
22 JEFFREY WHITSETT: I text her, can Dean come--please come
23 and pick up my medicine. I didn't hurt **Minor** I swear. Because
24 she made that accusation, I wanted to make sure she understood
25

1 that I would never hurt her, so she didn't have a leg to stand
2 on.

3 DETECTIVE FENTON: Why would you tell her-if she-if she
4 told you-if your wife told you, get out the house or I'm going to
5 tell that you touched my daughter, why would you have to text
6 her, I promise I didn't touch her?

7 JEFFREY WHITSETT: I said, not touch-I said, I didn't
8 hurt her because I wanted her to understand--

9 DETECTIVE FENTON: Why would you have to convince her
10 though if-if she was telling you that she was going to make it up
11 to begin with.

12 JEFFREY WHITSETT: Because she's strong headed. She's
13 going to push it, what I wanted for her to--

14 DETECTIVE FENTON: No, that doesn't make any sense.

15 JEFFREY WHITSETT: May I please speak, sir?

16 DETECTIVE FENTON: Go ahead.

17 JEFFREY WHITSETT: Thank you. I wanted her to understand
18 that she didn't have a leg to stand on. That I wouldn't hurt
19 **Minor**. So, even if she tried to say that, that my-this would
20 still stand. I wouldn't hurt her.

21 DETECTIVE FENTON: And those text messages are in your
22 phone?

23 JEFFREY WHITSETT: Yes sir.

24 DETECTIVE FENTON: Okay. Just doesn't make any sense to
25 me.

1 JEFFREY WHITSETT: [crosstalk]

2 DETECTIVE FENTON: How someone says, if you don't get out
3 the house, I'm going to tell people that you molest my daughter
4 and then you have to go around and try to convince her that you
5 didn't.

6 JEFFREY WHITSETT: I wasn't trying to convince. I wanted
7 her to understand that there's no way I would do that.

8 DETECTIVE FENTON: Why would you need to let her
9 understand if the whole thing is made up, fictitious to begin
10 with.

11 JEFFREY WHITSETT: Because I don't think the same way you
12 do, sir. My thoughts are different. Like I said, I didn't--

13 DETECTIVE FENTON: So, because you're not really sure if
14 you hurt her or not, because you black out, right?

15 JEFFREY WHITSETT: I don't know.

16 DETECTIVE FENTON: Hm.

17 JEFFREY WHITSETT: When I black out, I don't know what
18 happens when I black out. I only know the beginning and only
19 know the end. Where I started, where I ended.

20 DETECTIVE FENTON: Hm.

21 JEFFREY WHITSETT: I don't remember the in-between.

22 DETECTIVE FENTON: Have you blacked out today?

23 JEFFREY WHITSETT: No sir, but it's not something that
24 happens every single day or every single hour. Like I said, it's
25 random. It doesn't have a set schedule.

1 DETECTIVE FENTON: Well, we're in here, we're trying to
2 give you the opportunity to tell the truth. Right now, I don't
3 feel like you're telling the truth.

4 JEFFREY WHITSETT: I've told you the truth.

5 DETECTIVE FENTON: Hmm.

6 JEFFREY WHITSETT: I've told you, everything-the way I
7 care about the kids.

8 DETECTIVE FENTON: I'm not--

9 JEFFREY WHITSETT: Everything I said--

10 DETECTIVE FENTON: I'm not doubting that you care about
11 the kids, but-but for you to claim that you're having these
12 blackout spells and I'm the first-apparently, I'm the first
13 person to hear about this. You tell people that you have a hard
14 time concentrating. You tell your doctor that you're having
15 these light headed, free falling-

16 JEFFREY WHITSETT: Because if you say-

17 DETECTIVE FENTON: --but I'm the first person you're
18 telling that you have these black out spells.

19 JEFFREY WHITSETT: If I say I have black out spells at
20 work it gets to my boss and then I can't operate--

21 DETECTIVE FENTON: What about other people? What about
22 your-what about your Godfather? What about your father in
23 Georgia? What about your wife, who you're so transparent with.

24 JEFFREY WHITSETT: My wife just calls me a baby.

25 DETECTIVE FENTON: Oh, okay.

1 JEFFREY WHITSETT: She tells me to suck it up.

2 DETECTIVE FENTON: [crosstalk] before? Okay, what about
3 your siblings? Your sister or your brother, you saw your sister-

4 -

5 JEFFREY WHITSETT: I don't talk to them.

6 DETECTIVE FENTON: You saw her at your nephew's birthday.

7 JEFFREY WHITSETT: I didn't go to see her to talk to her
8 about my problems.

9 DETECTIVE FENTON: You got your buddies at work that you
10 say that you have a hard time concentrating, but you don't tell
11 them--

12 JEFFREY WHITSETT: I don't tell them I black out because
13 if I do, it gets back up to my boss and then I may lose my job
14 because I can't do my job well.

15 DETECTIVE FENTON: Have you told anybody besides me and
16 Detective Cook here that you black out?

17 JEFFREY WHITSETT: There's no one I can talk to.

18 DETECTIVE FENTON: Not even your doctor.

19 JEFFREY WHITSETT: My doctor, I assessed the original
20 reason which I have a feeling of falling, right before it kicks
21 in. So, the sensation of falling is what causes to lead up to
22 the event.

23 DETECTIVE FENTON: Okay.

24 JEFFREY WHITSETT: I'm sorry y'all don't believe me or
25 don't understand it but--

1 DETECTIVE FENTON: And your wife--your wife is making up
2 this accusation but then you've got to convince your wife that
3 it's not true.

4 JEFFREY WHITSETT: It was convincing. Convincing was
5 saying, please, please, I beg you, I beg you, I would never have
6 done this, this is something I could've never-[crosstalk]

7 DETECTIVE FENTON: Why would you even have to say that?
8 Why wouldn't you say, why are you making this up?

9 JEFFREY WHITSETT: Because I was hoping--

10 DETECTIVE FENTON: Why wouldn't you confront her about
11 making it up?

12 JEFFREY WHITSETT: Because I was hoping--

13 DETECTIVE FENTON: If that's what the truth is.

14 JEFFREY WHITSETT: I was hoping by saying that, she'd
15 stop. That she wouldn't take it any farther, that she would calm
16 down.

17 DETECTIVE FENTON: Did she tell you that she called the
18 police?

19 JEFFREY WHITSETT: No.

20 DETECTIVE FENTON: She told you she was going to call the
21 police.

22 JEFFREY WHITSETT: Normally--

23 DETECTIVE FENTON: And that's why you hauled butt.

24 JEFFREY WHITSETT: Because I didn't want to have--

25 [crosstalk]

1 DETECTIVE FENTON: Because you didn't want this false
2 accusation to come to light. You decided that it was better for
3 you to run.

4 JEFFREY WHITSETT: I didn't run. I left because she
5 asked me to..

6 DETECTIVE FENTON: But you said she asked you to before,
7 a couple of other times and you decide not to.

8 JEFFREY WHITSETT: Because I was trying to work it out.
9 There's a difference whenever you're trying to work it out from
10 her threatening me. From trying to understand and get things
11 straightened out so we could be fine, to her threatening me with
12 something of that kind of accusations. When someone threatens
13 you with that kind of accusation, you don't stay around to see
14 how it plays out especially when you've watched it play out
15 before..

16 DETECTIVE FENTON: Hm.

17 JEFFREY WHITSETT: You know what the end results are but
18 you don't run either. I wasn't hiding. I was just finding
19 somewhere to go until I could deal with all this, get to and from
20 work, still bring in a paycheck.

21 DETECTIVE FENTON: But you hadn't been to work. You
22 hadn't been to work since Monday.

23 JEFFREY WHITSETT: I hadn't had a way there.

24 DETECTIVE FENTON: Oh, you can borrow a car for one day
25 but--

1 JEFFREY WHITSETT: That's all he gave it to me.

2 DETECTIVE FENTON: [crosstalk]

3 JEFFREY WHITSETT: After the police spoke to him, he
4 wouldn't let me use it no more. My bike is down. Who's going
5 to-nobody allows hitchers these days. How am I supposed to get
6 there? It's all the way here in Moncks Corner. Up 52. CARTA
7 [ph] don't run that far.

8 DETECTIVE FENTON: When did your father die?

9 JEFFREY WHITSETT: He would've died over the weekend.

10 DETECTIVE FENTON: So, that's something we could confirm.
11 How did you find out that he died?

12 JEFFREY WHITSETT: A friend of mine that knows him told
13 me.

14 DETECTIVE FENTON: What's your friend's name?

15 JEFFREY WHITSETT: Jonathan.

16 DETECTIVE FENTON: Is his number in your phone?

17 JEFFREY WHITSETT: No sir.

18 DETECTIVE FENTON: How did he contact you?

19 JEFFREY WHITSETT: He contacted me via email.

20 DETECTIVE FENTON: Okay. What's your email address?

21 JEFFREY WHITSETT: It's UKO-same thing as the password.

22 DETECTIVE FENTON: Okay.

23 JEFFREY WHITSETT: Just not uppercase U.

24 DETECTIVE FENTON: Okay. So, it's UKOSHA BOTOESIA. Or

25 SAI.

1 JEFFREY WHITSETT: SAI.

2 DETECTIVE FENTON: Okay.

3 JEFFREY WHITSETT: And, I couldn't tell you what the
4 password is, I've had to change it so many times, I can't
5 remember.

6 DETECTIVE FENTON: So, it's that at what?

7 JEFFREY WHITSETT: Gmail.com.

8 DETECTIVE FENTON: At Gmail.com. Okay. And this
9 Jonathan person would've emailed you.

10 JEFFREY WHITSETT: Saying that--

11 DETECTIVE FENTON: Saying-so, when we do send the search
12 warrant to Gmail for this address, Jonathan--there's going to be
13 an email saying, hey your dad died.

14 JEFFREY WHITSETT: Yeah.

15 DETECTIVE FENTON: Okay. Hm. Did you tell your coworker
16 that you were going to Florida?

17 JEFFREY WHITSETT: Yes sir.

18 DETECTIVE FENTON: But you didn't.

19 JEFFREY WHITSETT: No sir.

20 DETECTIVE FENTON: Because you didn't even have a car.
21 [pause] How often do you call out sick and you're not really
22 sick?

23 JEFFREY WHITSETT: I don't.

24 DETECTIVE FENTON: So, just this one time?

25 JEFFREY WHITSETT: I go to work, even when I am sick.

1 DETECTIVE FENTON: Or, call out for another reason. Tell
2 you this is the only--

3 JEFFREY WHITSETT: Doctor's appointment. I have to go to
4 St. Francis-[crosstalk]

5 DETECTIVE FENTON: You tell them it was a doctor's
6 appointment though, right?

7 JEFFREY WHITSETT: I tell them it's a doctor's
8 appointment.

9 DETECTIVE FENTON: How many times have you told them one
10 thing and in actuality it was something else?

11 JEFFREY WHITSETT: Once, maybe twice at the max. It's
12 just--it was a day when me and the wife felt like just staying
13 home.

14 DETECTIVE FENTON: Okay. And of course, you don't tell
15 them about your blackout spells because you want to keep a job,
16 no matter how dangerous it is.

17 JEFFREY WHITSETT: I'd tell them if I think I'm at a
18 point to where, you know, I don't need to be on a crane, I'll
19 inform them and say look, I can't be on a crane.

20 DETECTIVE FENTON: That's a decision that you make, after
21 you black out, right? I mean, you said you blacked out on a
22 crane before.

23 JEFFREY WHITSETT: So, after I noticed I've blacked out,
24 I'll tell them I can't be on a crane. I'll go and I'll pick
25

1 metal. I'll help customers, I'll go work the table. I'll do
2 something that's not in the dangerous equipment.

3 DETECTIVE FENTON: Dealing with metal, I think it matters
4 what it is, it's dangerous. I mean, what's to say you're not
5 going to cut your finger off on a piece of metal?

6 JEFFREY WHITSETT: It happens. You can get cut open
7 pretty bad working with metal.

8 DETECTIVE FENTON: Yeah. Sounds to me like you don't-you
9 don't make the best decisions, at least when it comes to work.

10 JEFFREY WHITSETT: I work. I make money to provide for
11 my family. That's the best decision any man can make. Work hard
12 so you can provide for your family. Regardless if it's
13 dangerous, safe or indifferent.

14 DETECTIVE FENTON: It's not just dangerous for you, it's
15 dangerous for other people too, right?

16 JEFFREY WHITSETT: A lot of people it's dangerous for.

17 DETECTIVE FENTON: No, I mean, it's dangerous that you
18 work like that, around other people. Dangerous for other people.
19 What if you were to accidentally pass out or black out, however you
20 want to call it and accidentally hit somebody with a crane?

21 JEFFREY WHITSETT: They'd get seriously hurt.

22 DETECTIVE FENTON: Yeah, that's pretty bad, isn't it?

23 JEFFREY WHITSETT: But, where I'm [crosstalk]
24
25

1 DETECTIVE FENTON: What if you were to black out or pass
2 out or have this white noise and you were to touch your
3 stepdaughter inappropriately, that'd be pretty bad too, right?

4 JEFFREY WHITSETT: [inaudible]

5 DETECTIVE FENTON: Oh, it wouldn't be bad?

6 JEFFREY WHITSETT: I'm not saying any of that. You're
7 trying to lead me into conversation or assumptions.

8 DETECTIVE FENTON: No, I'm trying to--yeah, I am assuming
9 that you're not telling the truth.

10 JEFFREY WHITSETT: So you're not willing to even listen
11 to my side of the story. You're [crosstalk]

12 DETECTIVE FENTON: Your side of the story doesn't make
13 any sense and I don't have a side. My job in this--in this--in
14 this even that we're having right now is to be a fact finder.
15 I'm here to find out the truth.

16 JEFFREY WHITSETT: I'm telling you the truth and you
17 don't seem to listen.

18 DETECTIVE FENTON: The truth is, is that your daughter
19 said you put your--your stepdaughter said that you put your penis
20 inside of her and I think I believe her. Because it's--

21 JEFFREY WHITSETT: I wouldn't do it. I wouldn't hurt
22 her. She--I couldn't ever--

23 DETECTIVE FENTON: I'm not asking if you would, I'm
24 asking if you did.

25 JEFFREY WHITSETT: I didn't.

1 DETECTIVE FENTON: Okay.

2 JEFFREY WHITSETT: I wouldn't hurt her.

3 DETECTIVE FENTON: Okay. And you know what a polygraph
4 is, but you don't want to take one without talking to a lawyer.
5 Even though you know what it is.

6 JEFFREY WHITSETT: I was advised if anything like this
7 happened, not to do it without a lawyer present to guide me.

8 DETECTIVE FENTON: Who advised you?

9 JEFFREY WHITSETT: I can't remember the guy's name but
10 he's part of the Steinberg Law Firm.

11 DETECTIVE FENTON: Hm. Are you represented?

12 JEFFREY WHITSETT: I don't know until I can call Carlos
13 to find out if he got someone or call the law firm.

14 DETECTIVE FENTON: Do you want to talk to them now?

15 JEFFREY WHITSETT: I need my phone to call, I don't have
16 the numbers. That's the whole reason I asked for them to get my
17 phone was because it's got their numbers in it.

18 DETECTIVE FENTON: Do you need to talk to them right now?
19 Do you want to talk to them right now?

20 JEFFREY WHITSETT: I'd like to now since you're not
21 willing to listen.

22 DETECTIVE FENTON: I'm not-I never said I'm not willing
23 to listen.

24 JEFFREY WHITSETT: But you're trying to--

25

1 DETECTIVE FENTON: I'm just-I'm trying to understand-I am
2 trying to understand what the heck you're saying. It doesn't
3 make any sense that you wouldn't do it but then you pass out.
4 Or, you black out, whatever your terminology is.

5 JEFFREY WHITSETT: It's simple. It's me personally. Me
6 aware of all my surroundings and everything I do would never, I
7 don't know what happens when I black out, but it seems like every
8 time I say something you're trying to twist it to make it slam
9 dunk over with.

10 DETECTIVE FENTON: I'm trying to give you the opportunity
11 to do the right thing and admit to your mistake.

12 JEFFREY WHITSETT: And, I'm trying to tell you, I know I
13 have black outs. I don't know what happens anywhere between that
14 but I know the black outs aren't normal. They're not what a
15 normal, healthy human body does.

16 DETECTIVE FENTON: Okay. All right, did you-so, I'm a
17 little confused about the last 30 seconds of the conversation.
18 Did you want to talk to a lawyer before continuing or not?

19 JEFFREY WHITSETT: I would like to sir.

20 DETECTIVE FENTON: All right. And you said-you said you
21 might be represented by the Steinberg Law Firm.

22 JEFFREY WHITSETT: Yes sir. But I need my phone in order
23 to get the number.

24 DETECTIVE FENTON: Okay. All right. Well, your phone is
25 not-you're not going to get your phone back.

1 JEFFREY WHITSETT: Can y'all at least retrieve a number
2 off of it?

3 DETECTIVE FENTON: I'm not really sure. We're going to
4 have to get a search warrant for it, to search it.

5 JEFFREY WHITSETT: It's unlocked, it has no password.

6 DETECTIVE FENTON: Well, we still have to do everything--
7 remember when we sat here and I advised you what your rights
8 were? You know, I told you that we wanted to do everything the
9 right way--

10 JEFFREY WHITSETT: Yes sir.

11 DETECTIVE FENTON: --and make sure everybody is on the
12 same page. Well, doing things the right way, I'm going to have
13 to get a search warrant. I need to explain to a judge why I want
14 to look in your phone.

15 JEFFREY WHITSETT: And I can't even--

16 DETECTIVE FENTON: You can't give me consent.

17 JEFFREY WHITSETT: Is there any way you could figure out
18 what Carlos' number is, it's 914 or--

19 DETECTIVE FENTON: I'll see what I can do but it's not
20 going to be--it's not going to happen until after we get the
21 search warrant for the phone. Because I can't--I can't look in
22 it.

23 JEFFREY WHITSETT: Maybe can I call Robert to see if he
24 has Carlos' number so I can get the Steinberg--
25

1 DETECTIVE FENTON: Do you have Robert's phone number off
2 the top of your head?

3 JEFFREY WHITSETT: [pause] I'm trying to think. [pause]
4 You don't know what the Steinberg number is?

5 DETECTIVE FENTON: We can find it on the internet.
6 What's your date of birth bud?

7 JEFFREY WHITSETT: [REDACTED] [REDACTED].

8 DETECTIVE FENTON: [REDACTED], okay. What's your social?

9 JEFFREY WHITSETT: [REDACTED].

10 DETECTIVE FENTON: [REDACTED]. What's the last address
11 that you lived at? What's on your driver's license?

12 JEFFREY WHITSETT: [REDACTED] [REDACTED] [REDACTED] [REDACTED], Moncks
13 Corner, South Carolina.

14 DETECTIVE FENTON: All right. What we're going to do now
15 is, we're going to go—you're going to go to the booking process
16 and go over to the Detention Center and then they're going to
17 serve you a warrant and you'll have the opportunity to go to Bond
18 Court. The Judge is going to let you know what you've got to do
19 to get out of jail.

20 JEFFREY WHITSETT: Okay.

21 DETECTIVE FENTON: Okay?

22 JEFFREY WHITSETT: Is—you said you can get the number for
23 me?

24 DETECTIVE FENTON: For Steinberg?

25 JEFFREY WHITSETT: Please.

1 DETECTIVE FENTON: Yeah, yeah. I'll write it down on a
2 piece of paper and I'll give it to you. Well, thank you for
3 talking to us.

4 JEFFREY WHITSETT: Thank you for trying to listen.

5 DETECTIVE FENTON: Well, I tried. Like I said, we're
6 fact finders, we don't-

7 JEFFREY WHITSETT: I understand.

8 DETECTIVE FENTON: But sometimes, the facts don't add up.

9 JEFFREY WHITSETT: Well, thank you for your time.

10 DETECTIVE FENTON: All right. Come on. You can leave
11 that there, it's all right.

12 JEFFREY WHITSETT: Okay.

13 [end of audio 33:15]

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State v. Jefferey Lance Whitsett

Law Enforcement Agency: Berkeley County Sheriff's Office

Detective Brian Fenton and Detective Shane Cook

Person Interviewed: Jefferey Whitsett

Interviewers: Detective Fenton and Detective Cook

Defendant: Jeffery Lance Whitsett

Date of Interview: No date given

Transcribed By: Always On Time

1 DETECTIVE FENTON: Right over here man. Go ahead and
2 have a seat in that gray chair. We're going to be right back,
3 okay?

4 JEFFEREY WHITSETT: Yes sir. Yes sir.

5 DETECTIVE FENTON: [leaves room 00:34] [enters room
6 01:06] All right, Mr. Whitsett, there you go. A bottle of
7 water. All right, like I said before, my name is Brian Fenton.
8 I'm an Investigator here at the Sherriff's Office.

9 JEFFEREY WHITSETT: Yes.

10 DETECTIVE FENTON: This is Detective Cook right here.
11 He's my partner. Before we get started, there's some things
12 we've got to go over. We've got to let you know that this room
13 is audio and video recorded. That's mainly for my convenience
14 and also to document what's said.

15 JEFFEREY WHITSETT: Yes sir.

16 DETECTIVE FENTON: You don't want us to say—you know, you
17 don't want us to say that we said something you didn't and vice
18 versa. So, also, we have to make sure we understand what our
19 rights are. This form right here is what we call a Miranda Form.
20 I'm sure you've seen it on TV. You've got the right to remain
21 silent. All that other stuff. That's basically what this is.
22 Okay?

23 What I'm going to do is, I'm going to read it with you.
24 You can go ahead and slide your chair on up.

25 JEFFEREY WHITSETT: Yes sir.

1 DETECTIVE FENTON: I'm going to read it with you. I'm
2 putting these little hash marks on the side. What I'm going to
3 ask you to do, if you understand what this statement means, not
4 that you agree with it, just that you understand what it means--

5 JEFFEREY WHITSETT: Yes sir.

6 DETECTIVE FENTON: --you're going to put your initials
7 there.

8 JEFFEREY WHITSETT: Okay.

9 DETECTIVE FENTON: Okay? When we're done, I'm going to
10 ask you what all--if you understand what all these mean and you're
11 going to sign it there if you understand what it means. And
12 then, if you understand what all that means and you decide that
13 you want to go ahead and talk to us, give us your side of the
14 story or if you have any questions for us or anything like that,
15 you're going to sign under this little thing that says you
16 understand what it is and you want to talk to us, okay?

17 JEFFEREY WHITSETT: Yes sir.

18 DETECTIVE FENTON: So, I'm going to give you the pen. It
19 says that you have the absolute right to remain silent and do not
20 have to answer any questions or give a statement and this fact
21 cannot be used against you. Do you understand what that means?

22 JEFFEREY WHITSETT: Yes.

23 DETECTIVE FENTON: All right. The next line says, if you
24 do answer questions or give a statement, anything that you say
25

Miranda

1 can and will be used against you in a court of law, do you
2 understand what that means?

3 JEFFEREY WHITSETT: Yes sir.

4 DETECTIVE FENTON: You have the right to consult with a
5 lawyer of your choice before answering questions or give a
6 statement and also to have him present while you are being
7 questioned. Do you understand what that means?

8 JEFFEREY WHITSETT: Yes sir.

9 DETECTIVE FENTON: Okay. If you wish to talk to a lawyer
10 or have him present but are unable to afford to hire a lawyer,
11 one will be appointed to represent you free of charge. Do you
12 understand what that means?

13 JEFFEREY WHITSETT: Yes sir.

14 DETECTIVE FENTON: All right. It says, if you decide to
15 answer any questions or give a statement without having a lawyer
16 present representing you, you have the absolute right during this
17 interview to stop answering questions and remain silent. Do you
18 understand what that means?

19 JEFFEREY WHITSETT: Yes.

20 DETECTIVE FENTON: What's that last one mean?

21 JEFFEREY WHITSETT: That means if at any point, I don't
22 feel comfortable answering something I can stop and not have to
23 answer.

24 DETECTIVE FENTON: Okay. The next line says, I have been
25 read this Miranda Form and my signature below represents the

1 understanding the contains within. If you understand what all
2 this means right here, you can sign it right there. Top line.

3 [pause]

4 All right. One more time. It says, I hereby understand
5 the above listed rights and would like to speak to an
6 investigator at this time. If you want to talk to us about why
7 you're here, you're going to sign it right there. [pause]

8 Awesome, you can go ahead and slide your chair back.

9 [pause] All right. Well, before we get started I'm going to let
10 you know a little bit about myself. I've been a police officer
11 about nine years. I've been investigating all kinds of things.
12 For the last five years, I've been in Criminal Investigations.
13 The majority of what I do is investigate sexual assaults and
14 those type cases. So, me telling you that, I want you to know
15 that there's nothing that you can say that's going to embarrass
16 me. I'm sure that nothing that you say I haven't heard before or
17 haven't heard a whole lot worse. So, if you're embarrassed about
18 saying something or you're ashamed about saying something, don't
19 worry about it. I understand, I'm not perfect. You're not
20 perfect. We live in an imperfect world. So, don't worry about
21 telling me anything. I'm not going to judge you one way or
22 another. Detective Cook here is not going to do the same.

23 So, just—we're going to try to make it an easy conversation
24 between two guys, or three guys. I'm not going to jump into you
25 like on TV or anything like that. You know, we don't have a

1 phone book in here or anything like that. So, just kind of try
2 to relax. You've got your water. If you decide you need to use
3 the restroom or anything like that, let us know. If you need a
4 snack or anything—I don't know when the last time you ate was.
5 Let us know and we'll help you out.

6 JEFFEREY WHITSETT: Yes sir.

7 DETECTIVE FENTON: All right. Well, Mr. Whitsett, tell
8 me what you do for a living bud.

9 JEFFEREY WHITSETT: I am a Crane Operator at Charleston
10 Steel. I started from the lowest end of it and worked hard to
11 get my way up.

12 DETECTIVE FENTON: How long have you been working there?

13 JEFFEREY WHITSETT: About a year now.

14 DETECTIVE FENTON: About a year. Start out working there
15 full time or did you start out as a temp?

16 JEFFEREY WHITSETT: Through a temp agency.

17 DETECTIVE FENTON: Temp agency, all right. [pause] Do
18 you like your job?

19 JEFFEREY WHITSETT: Yeah. It wasn't great money but it
20 paid for the bills, it provided for the family. It allowed me to
21 get food on the table and do every-be able to take care of the
22 household. It wasn't the greatest job but it brought in money.

23 DETECTIVE FENTON: What did you do before working at
24 Charleston Steel?

25 JEFFEREY WHITSETT: Concrete work.

1 DETECTIVE FENTON: Concrete. You do that for a long
2 time?

3 JEFFEREY WHITSETT: That and general labor, construction,
4 electrical work. Things like that. You know, stuff that was far
5 more back breaking than operating a crane.

6 DETECTIVE FENTON: Do you like operating a crane?

7 JEFFEREY WHITSETT: Yes sir, it's—it doesn't hurt my back
8 as bad. I don't have to work as hard and it's easier to deal
9 with than lifting 200-300 pound pieces of steel off of a table.

10 DETECTIVE FENTON: Yeah. What kind of stuff to do you
11 for fun?

12 JEFFEREY WHITSETT: Working with motorcycles. Play games
13 with the kids. Like, Mine Craft, building games. Jump on the
14 trampoline with them. Basketball. Pretty much most of what I do
15 for fun is with them and what I do myself is just working on my
16 bikes when I can or playing World of Tanks. I don't do a whole
17 lot for me. I try and do everything I do for my family. I give
18 myself a little time to do things.

19 DETECTIVE FENTON: Uh huh. Do you go out and go drink or
20 anything like that, go out to the bars, clubs or anything like
21 that?

22 JEFFEREY WHITSETT: Until my wife kicked me out, that's
23 the first time I had drank or smoke in four years. When I met
24 her, because the kids and her, I cut it out. I didn't want it to
25 be a problem.

1 DETECTIVE FENTON: How long have you been married?

2 JEFFEREY WHITSETT: Let's see. It was a year January
3 28th, so about a year and a half.

4 DETECTIVE FENTON: How is that relationship going?

5 JEFFEREY WHITSETT: It has its ups and downs. It's
6 arguments. Some arguments far worse than others. Slamming
7 doors, walking out in the backyard, trying to get away from it
8 all and then it gets good. We watch movies together, do stuff
9 with the kids. It's just—it's up and down. A rollercoaster.

10 DETECTIVE FENTON: Your wife is from Brazil?

11 JEFFEREY WHITSETT: Yes sir.

12 DETECTIVE FENTON: So, you get exposed to some of that
13 Brazilian culture, a little bit?

14 JEFFEREY WHITSETT: A little bit.

15 DETECTIVE FENTON: [inaudible 09:09]

16 JEFFEREY WHITSETT: The food is great. The passion for
17 family that's—we don't really like—ever since I was little,
18 something that I wanted because I lost my mom very young, so
19 family meant everything to me. I do anything and everything for
20 my family to keep them together. After my mom passed, my
21 personal family, it fell apart. I couldn't do anything then.

22 DETECTIVE FENTON: You got a lot of family members around
23 here?

24 JEFFEREY WHITSETT: No sir. I've got two--

25 DETECTIVE FENTON: Two?

1 JEFFEREY WHITSETT: A brother and a sister.

2 DETECTIVE FENTON: They live around here?

3 JEFFEREY WHITSETT: My brother lives in Goose Creek and my
4 sister, I don't even know. I haven't been in contact with them.

5 DETECTIVE FENTON: Where does your dad live?

6 JEFFEREY WHITSETT: Georgia.

7 DETECTIVE FENTON: What part of Georgia?

8 JEFFEREY WHITSETT: I think it's around Warner-Robbins.

9 DETECTIVE FENTON: I have no idea where that's at. I
10 know where Savannah and Atlanta is.

11 JEFFEREY WHITSETT: Okay, about 45 minutes to an hour
12 south of Atlanta.

13 DETECTIVE FENTON: Oh, okay.

14 JEFFEREY WHITSETT: And, almost my whole family is there.
15 They all moved from here and went out there. The two I have
16 left, I don't even get to talk to anymore.

17 DETECTIVE FENTON: Somebody—who is Ronald?

18 JEFFEREY WHITSETT: Ronald?

19 DETECTIVE FENTON: Yeah.

20 JEFFEREY WHITSETT: Uh—you got to be more specific.

21 Because my Godfather is named Ronald and my dad is Ronald.

22 DETECTIVE FENTON: Oh, okay. Your Godfather, he lives in
23 Charleston, right?

24 JEFFEREY WHITSETT: Yes sir. He's--

25 DETECTIVE FENTON: Tell me about him.

1 JEFFEREY WHITSETT: He's been a part of the family for a
2 long time. He's helped my mom pass. He looked after me, took
3 care of me. Whenever I had trouble in school, he helped me get
4 through mathematics and everything I needed. He was a
5 therapeutic foster parent, so he took care of kids and helped
6 them and tried to help them. Some of them didn't turn out great.
7 They--they just didn't go the right way. I tried to help waking
8 up at 5:00 in the morning to make sure they'd get up before I
9 went off to work, so he'd have help. He's always been a really
10 good person. He's--took care of people.

11 DETECTIVE FENTON: I guess his house burned down here
12 recently. Did he figure out what happened to it?

13 JEFFEREY WHITSETT: They don't want to say what happened,
14 but it's clear what happened. The--see if I can remember how they
15 put it. The roommate--two roommates upstairs, one of them was a
16 boyfriend of one of his foster kids and the other one guy was
17 really, really Christian, Bible beater, and they got in an
18 argument. The boy was doing, you know, witchcraft or whatever
19 they call it. He didn't like it. Drinking. So, he told the
20 kid, you know, get that shit away from me, I'm going to crucify
21 you.

22 Whenever you go up to--before they started the
23 reconstruction, my Godfather wanted to believe it came from an
24 outlet, but you can see where it burned a spot in the carpet and
25 it cascaded up the wall. Rather than from the outlet. Fire

1 doesn't normally travel down from an ignition point, or at least
2 from what I understand about fire.

3 Like I said, he's a good person. He don't want to believe
4 people are capable of doing evil things.

5 DETECTIVE FENTON: You mentioned your family. How many
6 kids do you have?

7 JEFFEREY WHITSETT: I've got one, my daughter.

8 DETECTIVE FENTON: And, what's her name?

9 JEFFEREY WHITSETT: Dorothy.

10 DETECTIVE FENTON: Dorothy, where is she at?

11 JEFFEREY WHITSETT: With her mother on James Island.

12 DETECTIVE FENTON: [pause] How often do you see her?

13 JEFFEREY WHITSETT: I haven't really. Any time I get the
14 chance. My wife would say, we ain't got the money, we ain't got
15 the time. I've got to go to work, sorry you can't.

16 DETECTIVE FENTON: Uh huh.

17 JEFFEREY WHITSETT: I got to see her two times in the past
18 four years.

19 DETECTIVE FENTON: How old is Dorothy?

20 JEFFEREY WHITSETT: Dorothy is 6.

21 DETECTIVE FENTON: 6. I guess you got some step-kids?

22 JEFFEREY WHITSETT: Yes sir. I don't consider them my
23 step-kids, it's--

24 DETECTIVE FENTON: What are they're names--
25

1 JEFFEREY WHITSETT: --they're as much my kids as my
2 daughter is. It's Minor and Adam.

3 DETECTIVE FENTON: How old is Minor?

4 JEFFEREY WHITSETT: Minor, she'll be turning 10 in
5 September.

6 DETECTIVE FENTON: So, she's 9.

7 JEFFEREY WHITSETT: Yes sir.

8 DETECTIVE FENTON: How old is Adam?

9 JEFFEREY WHITSETT: Adam is 8 years old.

10 DETECTIVE FENTON: You get along with them pretty good?

11 JEFFEREY WHITSETT: Love them to death. They make me
12 laugh. They're reason I get up and go to work. They're the
13 reason I work hard to get what I can. Any time I have extra
14 money from working on a bike and selling it, I buy stuff for
15 them. I like seeing them smile and be happy. It's pretty much
16 what I live for now. I don't get to see my daughter, so I do
17 everything I can for them.

18 DETECTIVE FENTON: All right. [pause] Tell me about
19 what's going on now. I guess you've been staying on James
20 Island, or West Ashley--

21 JEFFEREY WHITSETT: West Ashley sir.

22 DETECTIVE FENTON: Who have you been staying with?

23 JEFFEREY WHITSETT: I stayed the past couple of days with
24 a friend name Carlos. I needed a way to and from work and I was
25 going to ask him and his vehicle went down. So, I offered, if I

1 replaced the alternator for him, if he could get me to work. He
2 agreed upon that.

3 DETECTIVE FENTON: Do you know what Carlos' last name is?

4 JEFFEREY WHITSETT: I'm trying to think of how to
5 pronounce it. It's Acevedo, Acevado. It's Hispanic or a
6 Columbian name.

7 DETECTIVE FENTON: So, where does Carlos stay at?

8 JEFFEREY WHITSETT: He stays in West Ashley.

9 DETECTIVE FENTON: What's the address? Do you know what
10 the name of the road is?

11 JEFFEREY WHITSETT: I know it's in Trailmore.

12 DETECTIVE FENTON: Trailmore? Okay. What about Robert?

13 JEFFEREY WHITSETT: Robert, I knew him way back when,
14 whenever I was out partying. We just got the age to go out
15 drinking, playing pool, hanging out with friends, whenever I got
16 really, really, really drunk, he gave me his number and said, you
17 can call me so you don't have to drive. I can take you home when
18 you're that buzzed and every once in a while, he'd come out when
19 I was out. He'd play a game or two of pool and he'd help me get
20 home.

21 DETECTIVE FENTON: Okay. Did you borrow his car here
22 recently?

23 JEFFEREY WHITSETT: No sir.

24 DETECTIVE FENTON: Who borrowed his car?
25

1 JEFFEREY WHITSETT: It would've been, I can't remember the
2 guy's name. It was someone he knew. He was doing something at
3 the time. The other guy came, picked me up and took me to the
4 bank. I-I didn't know him personally. I have-I've played a game
5 or two of pool with him but not as a friend or--

6 DETECTIVE FENTON: When was the last time you saw Robert?

7 JEFFEREY WHITSETT: That would've been the-gosh, what was
8 it. Last Wednesday. He's--

9 DETECTIVE FENTON: So, it was here recently.

10 JEFFEREY WHITSETT: He saw me walking down the road. He
11 gave me a lift to my Godfather's. That was that.

12 DETECTIVE FENTON: What happened to your truck?

13 JEFFEREY WHITSETT: The truck was my wife's. My
14 motorcycle, it just-it went down really hard. It just-it's not
15 running right. It-it's rough. So, I didn't want to ride it and
16 blow the engine clean out from under it. Because the gas tank is
17 right on top of it. If it blows its tank, it's 4th of July all
18 over again.

19 DETECTIVE FENTON: All right. Has it been the 4th of
20 July before?

21 JEFFEREY WHITSETT: I had one motorcycle that blew up
22 right in my face, but it had a carbon fiber housing so it took
23 most of the impact. It saved my life but it scared the ever-
24 living daylights out of me.

25 DETECTIVE FENTON: Why didn't you go to work on Monday?

1 JEFFEREY WHITSETT: The vehicle that was supposed to take
2 me, the alternator was shot. He couldn't get it to start to get
3 me to work.

4 DETECTIVE FENTON: Did you call into work?

5 JEFFEREY WHITSETT: Yes sir. I had a friend of mine call
6 me out because I just couldn't make it. I texted him.

7 DETECTIVE FENTON: What did you text him?

8 JEFFEREY WHITSETT: My biological father passed away, so I
9 told him that, granted, I didn't get to go see him, but on top of
10 the alternator and that, it was [crosstalk]. -going, but I
11 didn't think I could emotionally handle going to work. Not
12 between my wife kicking me out, biological father dying.

13 DETECTIVE FENTON: You said your biological father lives
14 in Georgia? Where did you tell him you were going?

15 JEFFEREY WHITSETT: My-my adoptive father lives in
16 Georgia. My biological lived in Florida.

17 DETECTIVE FENTON: What's your biological father's name?

18 JEFFEREY WHITSETT: It's Thompson E. Matthews.

19 DETECTIVE FENTON: When was the last time you saw him?

20 JEFFEREY WHITSETT: Saw him seven years ago, right around
21 there.

22 DETECTIVE FENTON: What about your adopted father, what's
23 his name?

24 JEFFEREY WHITSETT: Ronald Lee Whitsett.

25 DETECTIVE COOK: And he lives in Georgia?

1 JEFFEREY WHITSETT: Yes sir.

2 DETECTIVE FENTON: What part of Florida does Mr. Matthews
3 live in?

4 JEFFEREY WHITSETT: Holmsted.

5 DETECTIVE FENTON: You said your wife kicked you out,
6 what's the deal with that?

7 JEFFEREY WHITSETT: We had got in an argument earlier, at
8 my daughter's graduation, my biological daughter. She had--she's
9 always thinking I'm staring at other women, younger women, just
10 anyone other than her. She thought I was doing the same with my
11 ex. I tried to tell her, you know, I'm not. We argued in the
12 truck all the way to the house, from James Island to Moncks
13 Corner. Finally said, you know, I can't argue anymore, let it
14 go. Let it go. Let's sit down and watch something. Then we
15 started getting in another argument. Died it back and she was
16 helping the kids take a shower, getting them ready. She came
17 back and she started flipping out on me again and then, you know,
18 I tried to calm her down. I said, look, let's talk about it.
19 We'll go to a marriage counselor, something to figure out our
20 problems. She didn't want to talk, she didn't want to hear it.
21 She told me, yelling at me, you don't get the hell out of my
22 house, I'll call the cops and say you touched my daughter. I
23 wasn't going there. She said that, okay. No fight. I don't
24 want that. I'll leave. That's too far for me. I didn't want
25 one.

1 I tried calling her, talking to her. She didn't reply to
2 me. So, I just figured there's-I'd wait until she cooled down
3 and talk but apparent she took it a hell of a lot farther.

4 DETECTIVE FENTON: Okay. So, I mean, they told you why
5 you were arrested?

6 JEFFEREY WHITSETT: Just there's [inaudible 21:17]

7 DETECTIVE FENTON: Okay, what did they tell you happened?

8 JEFFEREY WHITSETT: They said, apparently I molested my
9 daughter. [crying] I couldn't hurt her.

10 DETECTIVE FENTON: Okay. So you're saying, you did not
11 molest your daughter?

12 JEFFEREY WHITSETT: [crying] I couldn't. She's-I love my
13 kids too much.

14 DETECTIVE FENTON: What kind of people are you attracted
15 to sexually?

16 JEFFEREY WHITSETT: Brunettes. Women from 20 all the way
17 up to mature women. All-about the body. You know, they've got
18 to have a decent pair on them. They've got to have a firm butt.
19 They've got to have some meat on them. They can't be small or
20 tiny. I just-I never liked that.

21 DETECTIVE FENTON: Okay. Are you attracted to men?

22 JEFFEREY WHITSETT: A little bit. But, nothing like, oh
23 my god, got to have that person. I can admire the physique of
24 another man and be like, that person is really fit, looks really
25 good. Nice muscle tone.

1 DETECTIVE FENTON: Have you ever had a homosexual
2 relationship?

3 JEFFEREY WHITSETT: Yes sir, a long time ago.

4 DETECTIVE FENTON: Okay.

5 JEFFEREY WHITSETT: But not as in a, like dating. It was
6 a bunch of friends getting really, really drunk.

7 DETECTIVE FENTON: Okay. How young is the youngest
8 person that you've ever had sex with?

9 JEFFEREY WHITSETT: That would've been whenever I was 16.
10 Me and my girlfriend and she wasn't far behind me. I turned 16
11 in February. She turned 16 in August.

12 DETECTIVE FENTON: Since you've been an adult, have you
13 ever had sex with somebody that's been underage?

14 JEFFEREY WHITSETT: No sir. It's always been either my
15 age or older, or that small gap like with me and my ex. Nothing
16 major.

17 DETECTIVE FENTON: So, how old are you?

18 JEFFEREY WHITSETT: I'm 25.

19 DETECTIVE FENTON: How old is your wife?

20 JEFFEREY WHITSETT: Victoria is 45.

21 DETECTIVE FENTON: 45. She's about 20 years older than
22 you? [pause] Tell me about your phone. Apparently, you changed
23 numbers here recently?

24 JEFFEREY WHITSETT: I didn't have a choice. I had to have
25 phone for work and my wife cut mine off. I would've kept that

1 number and wouldn't have changed it had she not cut the service
2 on it.

3 DETECTIVE FENTON: Okay. And so you took your phone to
4 what, T-Mobile or-

5 JEFFEREY WHITSETT: Family Mobile.

6 DETECTIVE FENTON: Where is that at?

7 JEFFEREY WHITSETT: That's at in any Wal-Mart, it's the
8 Wal-Mart plan.

9 DETECTIVE FENTON: Okay. And, you just put the-just
10 transferred service?

11 JEFFEREY WHITSETT: Yes sir, I had them open up a new
12 account. That way I could be separate because she was the
13 account holder. I couldn't transfer over my number, which is
14 what I originally tried to do, you know, transfer my number, keep
15 that number and have my own card. They've had problems with
16 that, so I couldn't do it.

17 DETECTIVE FENTON: So, you-so you took-so, the service on
18 your Nokia phone was disconnected.

19 JEFFEREY WHITSETT: Yes sir.

20 DETECTIVE FENTON: You took that Nokia phone to Wal-Mart
21 and they reconnected it.

22 JEFFEREY WHITSETT: Yes sir.

23 DETECTIVE COOK: Okay. Do you have any password on the
24 Nokia phone?

25

1 JEFFEREY WHITSETT: None that I'm aware of, other than my-
2 the Live Account password, but you only need that when you're
3 setting up the phone.

4 DETECTIVE COOK: What's a Live Account?

5 JEFFEREY WHITSETT: Kind of like Microsoft, Microsoft
6 Live.

7 DETECTIVE COOK: Oh, Live. Live. Live, so email. Email.

8 JEFFEREY WHITSETT: Yes sir.

9 DETECTIVE FENTON: Okay. What about on your laptops?

10 JEFFEREY WHITSETT: Laptops, they run Windows 8, so it
11 will be the same as the Lumia phone.

12 DETECTIVE COOK: So, do you have a password or not?

13 JEFFEREY WHITSETT: Yes sir.

14 DETECTIVE COOK: What is the password?

15 JEFFEREY WHITSETT: UKOSHABOTOESAI.

16 DETECTIVE COOK: What does that say?

17 JEFFEREY WHITSETT: It's Ukosha Botoesai.

18 DETECTIVE COOK: What does that mean?

19 JEFFEREY WHITSETT: It's a Japanese word meaning-Ukosha is
20 protector. And, Botoesai is the bearer of the sword.

21 DETECTIVE FENTON: Okay. What about on a tablet?

22 JEFFEREY WHITSETT: The tablet, the only tablet that's
23 mine is an old broken one that don't even work.

24 DETECTIVE FENTON: White?

25

1 JEFFEREY WHITSETT: No, it's a big—a black one, about this
2 big. It's—trying to remember the name for it. E-Tablet, it's
3 got a USB port on the side.

4 DETECTIVE FENTON: Okay.

5 JEFFEREY WHITSETT: I haven't been able to use it so I've
6 been using my phone. The one with the white is Carla's, I've
7 been borrowing it.

8 DETECTIVE FENTON: So, you've been using it?

9 JEFFEREY WHITSETT: Using it for Craigs List, so I can--

10 DETECTIVE FENTON: Does it have a password on it?

11 JEFFEREY WHITSETT: I don't believe so.

12 DETECTIVE FENTON: Okay.

13 JEFFEREY WHITSETT: I used it to be able to post my
14 motorcycle because in its condition, I couldn't do anything. I
15 was going to sell it and get me a car, truck, something I can get
16 to and from.

17 DETECTIVE FENTON: Why didn't you use your laptop to post
18 it?

19 JEFFEREY WHITSETT: It wouldn't upload the photos.

20 DETECTIVE FENTON: Okay.

21 JEFFEREY WHITSETT: And because the tablet has an SD port.
22 I was able to take the SD card put it in there and transfer it
23 that way.

24 DETECTIVE FENTON: So, you used it as a camera.

25 JEFFEREY WHITSETT: No, like a file transfer, kind of.

1 DETECTIVE FENTON: Okay.

2 JEFFEREY WHITSETT: Because the laptop requires the large
3 SD and what I had was the tiny one.

4 DETECTIVE FENTON: Okay. The hard drive, is that thing
5 encrypted?

6 JEFFEREY WHITSETT: That's not even mine.

7 DETECTIVE FENTON: Whose is it?

8 JEFFEREY WHITSETT: That was found at work.

9 DETECTIVE FENTON: Oh, you found it at work?

10 JEFFEREY WHITSETT: Yes sir.

11 DETECTIVE FENTON: But you took it home.

12 JEFFEREY WHITSETT: Yeah, I asked my boss for it because I
13 planned on using it as an expansion, but I could never get it to
14 kick on.

15 DETECTIVE FENTON: Okay.

16 JEFFEREY WHITSETT: That came out of—I think it was an IBM
17 desktop, something like that.

18 DETECTIVE FENTON: It was on the inside of the desktop?

19 JEFFEREY WHITSETT: Yeah, we get computers and laptops and
20 everything.

21 DETECTIVE FENTON: Did you modify it in order to make it
22 an external hard drive?

23 JEFFEREY WHITSETT: Uh-uh. It just—took it out. I hadn't
24 gotten that far. As far as I got was to see if it would power
25 on.

1 DETECTIVE FENTON: What about your flash drive, little
2 thumb drive?

3 JEFFEREY WHITSETT: The little orange thumb drive?

4 DETECTIVE FENTON: I'm not sure what color it is.

5 JEFFEREY WHITSETT: I've got a black and an orange. The
6 black one has a Windows 8 program. It allows me to boot up and
7 try and repair when a system goes down. My orange one has photos
8 of my daughter at Easter, funny pictures, music.

9 DETECTIVE FENTON: Where was your orange--

10 JEFFEREY WHITSETT: That one should've been right there
11 with the laptop.

12 DETECTIVE FENTON: Okay. Why do you have two laptops?

13 JEFFEREY WHITSETT: Ones I found at work, it crashed. I
14 hadn't been able to boot it back up. Last night, I just got the
15 Windows 8 Program on to my thumb drive. So, I was trying to use
16 that to boot that one back up. I rented that laptop so I could
17 get the program to fix mine.

18 DETECTIVE FENTON: Okay. Where did you rent it from?

19 JEFFEREY WHITSETT: Rent-A-Center, Sam Rittenberg.

20 DETECTIVE FENTON: [pause] Your phone, what kind of
21 stuff--what kind of pictures do you have on your phone?

22 JEFFEREY WHITSETT: Pictures of my family, my truck, my
23 bikes and just a couple of porn pics here and there. Nothing
24 major. Just something when you're at work, walk around and be
25 like, hey look at what I found. Show the boys. Nothing more

1 than that. Just pretty simple, boy's-man stuff you do on the
2 yard.

3 DETECTIVE FENTON: Do you have any videos on there?

4 JEFFEREY WHITSETT: Not that I know of. Them playing in
5 between my house and neighbor's house. My daughter's graduation.
6 I think there's one of my cat laying on the floor.

7 DETECTIVE FENTON: Okay.

8 JEFFEREY WHITSETT: No porn videos to my knowledge.

9 DETECTIVE FENTON: Okay. Well, you know, the accusation
10 is that you had some inappropriate contact with your step-
11 daughter. So, are you saying that you did not?

12 JEFFEREY WHITSETT: I'd rather die than hurt her. I'd
13 rather die than hurt any of my kids.

14 DETECTIVE FENTON: I'm not asking you what you would
15 rather do. Did you have any kind of inappropriate contact with
16 her? Anything that might have been misconstrued as being
17 inappropriate?

18 JEFFEREY WHITSETT: A hug. Carry her to bed when she
19 wants to be spoiled.

20 DETECTIVE FENTON: [pause] Has your penis ever touched
21 her?

22 JEFFEREY WHITSETT: No sir. I don't-she doesn't go when
23 I'm using the restroom, she's nowhere near me. I-I don't do
24 that.

25

1 DETECTIVE FENTON: Okay. If, when we check your
2 computers and check your phone, are we going to find any
3 inappropriate pictures of children, any videos of children
4 engaged in sex acts? Anything like that?

5 JEFFEREY WHITSETT: Nothing. I don't have any of that. I
6 don't do that.

7 DETECTIVE FENTON: Okay.

8 JEFFEREY WHITSETT: The only thing close to that is, I
9 watch anime.

10 DETECTIVE FENTON: Okay. Does that portray children
11 having sex?

12 JEFFEREY WHITSETT: Not really. It's normally big boobed
13 girls and fighting mix and things like that. Martial arts. It's
14 not anything like that.

15 DETECTIVE FENTON: Okay. Are you attracted to kids?

16 JEFFEREY WHITSETT: No sir.

17 DETECTIVE FENTON: Not even a little bit? Young girls,
18 anything like that? Barely legal?

19 JEFFEREY WHITSETT: If they ain't-if they ain't got the
20 body or figure of a woman, not interested.

21 DETECTIVE FENTON: Okay. So, when we hook your phone up
22 to our little computer, it's not going to have any kind of
23 deleted videos or deleted images on it that's going to be
24 questionable?

25

1 JEFFEREY WHITSETT: Shouldn't have anything. Because, I
2 don't delete--

3 DETECTIVE FENTON: I'm not asking should it have
4 anything. Has there ever been anything on it that should not
5 have been on there?

6 JEFFEREY WHITSETT: No, I don't delete anything.
7 Everything is there. I had to do that because of my wife. She
8 always wanted access. She always wanted to see everything, so to
9 be truthful with her, I didn't remove anything. I wanted her to
10 see everything as it was.

11 DETECTIVE FENTON: So, she's fine with you having
12 pornography on your phone?

13 JEFFEREY WHITSETT: She knows that I look at porn sites.
14 She has no issues with that. As long as the kids aren't home.
15 As long as I'm by myself.

16 DETECTIVE FENTON: Did the kids ever have access to your
17 phone?

18 JEFFEREY WHITSETT: They've played the computers, they've
19 played the tablets, they've played the phones but I try and lock
20 up all my security to make sure there's things they can't access.

21 DETECTIVE FENTON: How do you do that?

22 JEFFEREY WHITSETT: You can go into your settings,
23 restrict your web access, drop it down. The Lumia, in
24 particular, has something called Kids Corner which allows you to
25 authorize particular things for usage and that's pretty much

1 where it goes from there. I know after the--she was molested by
2 my godfather's foster child. She'd been different, so I tried to
3 spoil her as much as possible to--

4 DETECTIVE FENTON: She was molested by your godfather's
5 foster kid?

6 JEFFEREY WHITSETT: Yes sir.

7 DETECTIVE FENTON: What's your godfather's foster kid's
8 name?

9 JEFFEREY WHITSETT: Christian [inaudible 34:37]

10 DETECTIVE FENTON: When did that happen?

11 JEFFEREY WHITSETT: That would've been when she was 7.

12 DETECTIVE FENTON: What happened with that?

13 JEFFEREY WHITSETT: I had left for a little while to go
14 get some tools from Harbor Freight. They've always spent time
15 with their grandpa, what he is to them. And never had an issue
16 out of Christian like that. I wasn't concerned. I was going to
17 be gone for an hour or two, getting everything I needed so I
18 could work on stuff. My godfather stepped out for 2-5 minutes at
19 the max and he took advantage of her.

20 DETECTIVE FENTON: What happened?

21 JEFFEREY WHITSETT: My understanding is he put his finger
22 in her. He cornered her in the kitchen and stuck his hand down
23 her pants. That's my understanding of it.

24 DETECTIVE FENTON: Was he arrested?

25

1 JEFFEREY WHITSETT: Yes sir. Whenever I got back, she
2 didn't seem herself. She seemed kind of non-talkative, sad. So,
3 I asked her, Angela, what's wrong? She said, I don't want to
4 talk about it, can we go home to mommy? Angela, what's wrong,
5 what happened? I don't feel comfortable talking about it. I
6 said, **Minor** you need to talk to me. It's important, something
7 has happened. She finally broke down and she told me what
8 happened. At that point in time, I went flying out the back door
9 with the intent of beating his ass. My godfather grabbed me and
10 said, what's going on? What's going on? Told him, he called the
11 cops and had the cops come out and removed him from the premises.
12 I called her mother and informed her of everything that was going
13 on.

14 Since then, I-I did everything I can to keep her happy.
15 Spoil her. There's sometimes where I would say, no you can't do
16 this, mommy's already said no. Then she'll look at me sometimes
17 if she really doesn't like it she'll go, well remember what I did
18 to him, I'll do it to you too. I play it off and try to make it
19 a joke or laugh to divert. I don't want her thinking like that.
20 It's not a way to think. I want her to be a kid. To be happy.
21 To play, to draw--

22 DETECTIVE FENTON: So, you and her get along pretty good?

23 JEFFEREY WHITSETT: We were until we had an issue. She
24 kept talking highly of her father and the guy molested her older
25 daughter. So, I tried to let her talk highly and let it go as

1 long as I could and it finally just-it got to me. I looked at
2 her and I said, your dad is not everything you think he is. She
3 kept going on and going on. I should've controlled myself
4 better. I'm an adult, I'm not supposed to give way to that. I'm
5 supposed to let it go. Finally, I broke and I told her exactly
6 what her father had done. She started screaming and yelling at
7 me saying I'm going to make you pay for talking bad about my dad.
8 You're nothing to him, he's my dad. Since then, she didn't
9 really want to talk with me. Junior always has. He's always
10 been a good boy, but after that, she-she, I guess she didn't-I
11 don't know how to explain, but she just-after me saying that, she
12 didn't really want to talk with me much.

13 DETECTIVE FENTON: Okay. I'm not sure if you answered
14 the question. Did Christian get arrested?

15 JEFFEREY WHITSETT: Yes sir.

16 DETECTIVE FENTON: Okay. Was he arrested that day or was
17 it later that he got arrested?

18 JEFFEREY WHITSETT: It was later on. Because we had to
19 take **Minor** down to the Charleston Center, so she could be
20 evaluated. We went from there.

21 DETECTIVE FENTON: Have you talked to Christian since
22 then?

23 JEFFEREY WHITSETT: No sir.

24 DETECTIVE FENTON: What about your godfather?
25

1 JEFFEREY WHITSETT: I talk to him a little bit when I can
2 and have him come up and spend time with the kids. They're
3 pretty much the only grandchildren he's got so try to make him a
4 part of it. I want him to be part of the family.

5 DETECTIVE FENTON: Do you think that Christian did it?
6 Touched her inappropriately.

7 JEFFEREY WHITSETT: I'm believing it because she said it,
8 but I don't know for 100%. I just have to believe her. She's my
9 step-daughter. I can't not believe her.

10 DETECTIVE FENTON: So, if she said that you had touched
11 her inappropriately, would you believe her?

12 JEFFEREY WHITSETT: Because it's me, I couldn't, because I
13 couldn't let myself do that. She's-I [inaudible 39:38] her every
14 day, day in day out, same with Junior, I--

15 DETECTIVE FENTON: So, why would she--you know, somebody
16 that you've had a relationship for four years as a step-daughter,
17 why would all the sudden she say that you had touched her
18 inappropriately?

19 JEFFEREY WHITSETT: The whole time she hasn't been able to
20 see her father. We've been kind of explaining to her, you know,
21 you don't need to be around him. I don't honestly know the
22 answer to that. The only thing I can think is maybe, she's
23 getting revenge on me for being so mean about her father. Or,
24 maybe her mother is doing this. I honestly don't know.

25

1 DETECTIVE FENTON: This is a-you know, this is a pretty
2 extreme kind of thing. Extreme accusation if it's not-I mean, if
3 it's not true. Normally, you know, you get in a fight with your
4 wife, the first thing she does isn't throw out child molestation
5 card. It just doesn't make any sense. Normally, kids don't-they
6 don't make things like this up.

7 JEFFEREY WHITSETT: I don't know what to tell you. I just
8 know that's-that's what happened. She knows how the system
9 works. She's seen it. She's been in it, she knows how the
10 things work. And, I wouldn't ever want to believe **Minor** would
11 do anything like that. She's a very smart girl. I wouldn't ever
12 want to believe she would. That's the only thing I can think of
13 and I've been pondering over things like this. Why would
14 Victoria say that? Why-you know, why hasn't **Minor** been talking
15 to me as much.

16 DETECTIVE FENTON: Is that why you haven't been going to
17 work and been staying in Charleston?

18 JEFFEREY WHITSETT: No sir. I went to work. I just
19 hadn't been able to get to and from work. I had to drive my
20 truck and you know, I went that Friday. I went Tuesday. I
21 think-no, no, no. I went Wednesday, missed Tuesday, Thursday and
22 Friday. [inaudible] when my bike just didn't-it couldn't handle
23 it no more. Going from here to Moncks Corner and back messed up.
24 It just-it totaled it. It couldn't run it no more. The only
25

1 reason I wasn't at work is because I haven't had a way to get
2 there.

3 DETECTIVE FENTON: But then you say that you got to go to
4 Florida to go to your father's funeral.

5 JEFFEREY WHITSETT: Well, they've heard me say, you know,
6 bikes down but it's easier to hear that then go, oh yeah, my
7 vehicle is not working and them going, well why don't you find
8 another vehicle? I can't. I don't have anyone I know that can
9 help. That was the only person that I could rely on to get me to
10 work. That's the only way I could have them not be missed or
11 want to fire me because that was the only way I had. So, that's
12 what I told him in order to make sure I could get the vehicle
13 going so that I could get to work.

14 DETECTIVE FENTON: When did you plan on going back to
15 work?

16 JEFFEREY WHITSETT: As soon as possible. As soon as the
17 vehicle was working I was going to either go directly after it
18 was running or the very next day. Because I want to keep making
19 the money. I help—I even took my last paycheck and I took the
20 little bit of money I had out and I originally left it in the
21 account to just be there and if I needed it, I could take some
22 out of it. If she needed it, she could take some out of it. Of
23 course, she took it all, but I figured in order to have some
24 myself, I need my own account. Put some in that account, put
25

1 some in mine. That way she can't take everything. She can take
2 what she needs but not everything.

3 DETECTIVE FENTON: So, has she ever kicked you out of the
4 house before?

5 JEFFEREY WHITSETT: A long ago. When we first started
6 out. We got in our first large argument.

7 DETECTIVE FENTON: What was that argument about?

8 JEFFEREY WHITSETT: Bills. Losing my job. Not thinking I
9 was taking it seriously to try and find work. It was just
10 stressful and didn't have much money so we decided to knock down,
11 blow down argument. We separated for three days and got back
12 together. I found me a job and that was that. We had our
13 disputes in between but they were never anything more than verbal
14 arguments.

15 DETECTIVE FENTON: It's not making a whole lot of sense,
16 why someone would accuse you of touching their daughter
17 inappropriately, because y'all got in an argument. She's kicked
18 you out of the house before and you left, right?

19 JEFFEREY WHITSETT: Any time she's asked me to leave,
20 unless I really think we need to try and get around it.

21 DETECTIVE FENTON: Why would she--why would she throw that
22 out there?

23 JEFFEREY WHITSETT: Because it was getting really rough.
24 I just--she told me to get out a few times. I didn't want to. I
25

1 wanted to talk. I wanted to discuss it. Try and do like we
2 always do. Completely get around it and not--

3 DETECTIVE FENTON: What were y'all arguing over?

4 JEFFEREY WHITSETT: We were arguing over her thinking I
5 was looking at every woman under the sun. That I was more
6 attracted to other women than her. That I was looking at my ex.
7 That I wasn't able to keep my eyes off my ex and it's-it didn't
8 make no sense. I tried to tell her, you know, my daughter is in
9 front of me. I'm spending time with my daughter. Where do I
10 have time to look at my ex? She just-she went way off with it.

11 Like I said, I don't know why, I just know these were the
12 events. These are what happened. The only thing I know is, other
13 than any of that, have moments of blackout because I have HIV
14 from when I partied and--

15 DETECTIVE FENTON: How did you get HIV?

16 JEFFEREY WHITSETT: A fight.

17 DETECTIVE FENTON: From a fight?

18 JEFFEREY WHITSETT: Yeah. We had gotten really bloody.

19 The guy I was fighting, he was infected.

20 DETECTIVE FENTON: When did this happen?

21 JEFFEREY WHITSETT: This happened five years ago.

22 DETECTIVE FENTON: Does your wife know you have HIV?

23 JEFFEREY WHITSETT: Yes sir.

24 DETECTIVE FENTON: Where did you have a fight at?

25 JEFFEREY WHITSETT: It would've been in West Ashley Park.

1 DETECTIVE FENTON: Were the police called?

2 JEFFEREY WHITSETT: No sir.

3 DETECTIVE FENTON: Do you know the person you got in a
4 fight with?

5 JEFFEREY WHITSETT: It was one of the guys that was
6 brought to the party. There was 20 of us out there.

7 DETECTIVE FENTON: Okay. Do-you didn't get HIV from
8 having some sort of sex act or anything like that?

9 JEFFEREY WHITSETT: No sir.

10 DETECTIVE FENTON: Not from any drug use?

11 JEFFEREY WHITSETT: No sir.

12 DETECTIVE FENTON: What kind of drugs did you used to
13 use?

14 JEFFEREY WHITSETT: Marijuana.

15 DETECTIVE FENTON: Just marijuana? You ever done
16 cocaine, meth, anything like that?

17 JEFFEREY WHITSETT: No sir.

18 DETECTIVE FENTON: Do you still do marijuana?

19 JEFFEREY WHITSETT: I cut it out whenever I got--

20 DETECTIVE FENTON: Since you got kicked out of the house,
21 have you done marijuana?

22 JEFFEREY WHITSETT: Yes sir. I had one hit, nothing--

23 DETECTIVE FENTON: How long ago was that?

24 JEFFEREY WHITSETT: When I got kicked out, to calm my
25 nerves to try and concentrate.

1 DETECTIVE FENTON: Where did you find it at?

2 JEFFEREY WHITSETT: It was given to me. So, I smoked a
3 little bit. It's been so long, I didn't like the way it felt
4 anymore.

5 DETECTIVE FENTON: Okay. When is the last time you
6 drank?

7 JEFFEREY WHITSETT: Would've been last—I want to say last
8 Wednesday or Thursday, somewhere around there. I can't remember
9 the exact day.

10 DETECTIVE FENTON: So, who is your doctor?

11 JEFFEREY WHITSETT: My doctor is Ms. Teresa Dryden.

12 DETECTIVE FENTON: Tryden, T?

13 JEFFEREY WHITSETT: Dryden, with a D.

14 DETECTIVE FENTON: DRIDEN?

15 JEFFEREY WHITSETT: I think DRY, possibly.

16 DETECTIVE FENTON: Where is she out of?

17 JEFFEREY WHITSETT: I'm not sure.

18 DETECTIVE FENTON: Where is she out of?

19 JEFFEREY WHITSETT: West Ashley.

20 DETECTIVE FENTON: She's a family doctor or--

21 JEFFEREY WHITSETT: No, she works at St. Francis. She's
22 part of the Ryan White Program or the Wellness Center, I should
23 say.

24 DETECTIVE FENTON: What kind of drugs do you take for
25 that?

1 JEFFEREY WHITSETT: It's a medicine called Stribild and
2 multi-vitamins to help keep everything up.

3 DETECTIVE FENTON: What is that pill that's in--

4 JEFFEREY WHITSETT: Multi-vitamin.

5 DETECTIVE FENTON: A multi-vitamin?

6 JEFFEREY WHITSETT: Yes sir.

7 DETECTIVE FENTON: Okay. How is your HIV doing, are you
8 keeping it under control?

9 JEFFEREY WHITSETT: Yes sir. It's undetectable. The CD4
10 count is up to 680, so it's all normal range. CD4, undetectable
11 is about the best it can be.

12 DETECTIVE FENTON: Okay. When you have sex with your
13 wife, is it protected sex or unprotected sex?

14 JEFFEREY WHITSETT: It was unprotected for a long time
15 until she contracted it.

16 DETECTIVE FENTON: So, she's got HIV also?

17 JEFFEREY WHITSETT: Yes sir, but she knew the risk and we
18 just--whenever I decide, you know, maybe we should put on a
19 condom, it never felt good. She said she didn't want to do that.
20 She said, if it happens, it happens. So, we just continued from
21 there. They got her on medicine now.

22 DETECTIVE FENTON: Do your step-kids have HIV?

23 JEFFEREY WHITSETT: No sir. They shouldn't at all. I
24 don't believe she had it before she met me or her ex-husband, I
25 don't believe he had it either.

1 DETECTIVE FENTON: Okay. So, both of you guys have the
2 same disease.

3 JEFFEREY WHITSETT: Yes sir.

4 DETECTIVE FENTON: And, she gets mad at you and wants to
5 kick you out. So, she claims that you—she says she's going to
6 tell people that you touched her daughter. When she told you
7 this, she left the house, right?

8 JEFFEREY WHITSETT: I didn't want to fight her anymore.
9 That's not something I'm going to risk.

10 DETECTIVE FENTON: Why would she still report it to the
11 police?

12 JEFFEREY WHITSETT: I don't know. I'm not her. She has
13 her own rhymes, her own reasons.

14 DETECTIVE FENTON: If that was her—if that was the
15 purpose to get you out of the house, have you spoken to her since
16 then?

17 JEFFEREY WHITSETT: I tried to contact her once, to ask
18 her if my godfather could pick up my meds and apparently she let
19 him because I've got them now. But, before that, she tried to
20 say, I have split personality disorder. It's what apparently my
21 step-daughter and her were saying.

22 DETECTIVE FENTON: That you have split personality
23 disorder?

24

25

1 JEFFEREY WHITSETT: Only problem is, I'd like to be able
2 to say, no, no I don't but after the HIV, I get 10-30, even 40
3 minutes of time that I can't recall.

4 DETECTIVE FENTON: So, there's times that you blackout
5 or?

6 JEFFEREY WHITSETT: I can't remember anything from it.
7 It's like somebody took whatever was there and just--

8 DETECTIVE FENTON: Is it possible that maybe while you
9 were having one of these blackout spells that you might have done
10 something inappropriately?

11 JEFFEREY WHITSETT: I don't know. I can't remember
12 anything from it.

13 DETECTIVE FENTON: You don't know.

14 JEFFEREY WHITSETT: All I know is, I'll be outside working
15 on my bike one moment and then, I'll be inside in the restroom or
16 I'll be in the kitchen or--

17 DETECTIVE FENTON: Are there any times that you were ever
18 interacting with the kids that this has happened?

19 JEFFEREY WHITSETT: That I can recall. I was playing
20 video games with them, Mine Craft and I wound up in the bathroom
21 and the master bedroom. I can't really--

22 DETECTIVE FENTON: [crosstalk] When was the last time
23 this happened to you?

24 JEFFEREY WHITSETT: Before all this happened, probably a
25 month ago. I was outside. I was trying to get one of my bikes

1 together, get all the parts ready because I'm trying to restore
2 one and get all my tools sorted out and I wound up in my truck,
3 in the front yard. I don't know how long it was I was--

4 DETECTIVE FENTON: Have you ever been told that you do
5 weird things when these spells happen?

6 JEFFEREY WHITSETT: It started the HIV. After I met my
7 wife.

8 DETECTIVE FENTON: Has your wife or your kids ever said
9 that you've done something weird when this has happened?

10 JEFFEREY WHITSETT: **Minor** has told me that you know, I'll
11 come walking through the room and it will look like I'm not even
12 there. Like my eyes are blank. I tell her, I don't even recall
13 coming through here. It's not--

14 DETECTIVE FENTON: Is it possible that you might have
15 touched your daughter inappropriately or your step-daughter
16 inappropriately--

17 JEFFEREY WHITSETT: I don't-I don't know.

18 DETECTIVE FENTON: You don't know.

19 JEFFEREY WHITSETT: These are moments that I can't-I try
20 to remember, but there's nothing, it's blank. I can remember
21 everything before it, everything after it, but the in between,
22 it's like going to a channel without cable, it's just white
23 noise. I can't see anything.

24 DETECTIVE FENTON: How often does this happen?

25

1 JEFFEREY WHITSETT: Three or four times, five, maybe six
2 times a month.

3 DETECTIVE FENTON: So, quite often.

4 JEFFEREY WHITSETT: But--

5 DETECTIVE FENTON: At least once a week?

6 JEFFEREY WHITSETT: I'm more--I am scared that there's a
7 possibility but I don't know.

8 DETECTIVE FENTON: So, you think you might have
9 accidentally done something while you were blanked out?

10 JEFFEREY WHITSETT: I don't know because I can't recall
11 it.

12 DETECTIVE FENTON: Have you ever been accused of doing
13 something inappropriate when you were in one of these blackout
14 spells?

15 JEFFEREY WHITSETT: Not that I recall. Not--she's--she's
16 never said anything. Never looked different. Never acted
17 different after one of them. After I come back to, she's playing
18 video games or watching TV. Nothing different than normal,
19 standard every day things. Or, I come back in after one of them,
20 she'll ask for a popsicle or a sweet snack or she always seems
21 like the same happy **Minor**. It's not--not whatever is going on
22 now.

23 DETECTIVE FENTON: So, you would say she's pretty used to
24 you blacking out?

25

1 JEFFEREY WHITSETT: If she even realizes I am. I don't
2 know. I just know there's chunks of time that--

3 DETECTIVE FENTON: Just disappear from you.

4 JEFFEREY WHITSETT: I can't place.

5 DETECTIVE FENTON: Does that ever happen to you at work?

6 JEFFEREY WHITSETT: It happens to me at work. It happens
7 when I'm driving.

8 DETECTIVE FENTON: Has anybody ever noticed it or said
9 anything to you about it at work?

10 JEFFEREY WHITSETT: No, it's normally in the crane. I'll--
11 I'll be at my number two pile and we'll runout through all the
12 number two. I'll switch over to busheling but the thing is, I
13 don't recall going from half a pile to running busheling. I'll
14 be halfway in to the busheling and-[crosstalk]

15 DETECTIVE FENTON: Have you ever talked to a doctor about
16 this? Have you ever spoke to somebody about it?

17 JEFFEREY WHITSETT: I talked to Teresa about the sensation
18 I get right before it happens, which is like a free-floating-kind
19 of like a falling sensation, but she can't place what it is. She
20 doesn't know.

21 DETECTIVE FENTON: Is blacking out a symptom of HIV?

22 JEFFEREY WHITSETT: I don't know. I just know that I'd
23 never had it before and now it happens. It happens right after
24 me feeling like I'm free-falling.

25

1 DETECTIVE FENTON: Does it ever happen when you're having
2 sex?

3 JEFFEREY WHITSETT: I don't believe so. It hasn't--it's
4 possible. Me and my wife had one time, we were going at it and I
5 remember laying down beside her trying to figure out, what the
6 hell? Why did we just stop? She claims that we went all the way
7 but to me it felt like we were going at it and then we just, you
8 know, stopped like, okay we're not getting anywhere.

9 DETECTIVE FENTON: Uh huh. [pause]

10 JEFFEREY WHITSETT: A lot of the stuff, I just--I can't
11 recall it. I can't pinpoint it. I can't--

12 DETECTIVE FENTON: So, it's quite possible that you might
13 have done something inappropriate while you blacked out.

14 JEFFEREY WHITSETT: I don't know. Like I said, I can't
15 recall anything. It's--

16 DETECTIVE FENTON: Has there ever been any times that you
17 blacked out and your clothes have been different?

18 JEFFEREY WHITSETT: I've blacked out and I've went from
19 pants to shorts. But, I thought maybe I had just got hot because
20 it was hot out and I changed. I just--slip of memory, just didn't
21 recall.

22 DETECTIVE FENTON: Has there ever been a time that maybe
23 you sent a text message or called somebody or anything like that
24 while you were having one of these spells?

25 JEFFEREY WHITSETT: I don't believe so.

1 DETECTIVE FENTON: You don't think so?

2 JEFFEREY WHITSETT: It's not from the realm of
3 possibility, but I don't think I have.

4 DETECTIVE FENTON: All right. Do you know what a
5 polygraph exam is?

6 JEFFEREY WHITSETT: Yes sir. A polygraph exam tests what
7 your-whether it's truth or not but it's also gauged on an
8 emotional response.

9 DETECTIVE FENTON: It's gauged on the way your body
10 reacts to what you're saying.

11 JEFFEREY WHITSETT: Emotional responses. And, I don't
12 believe I'm in any state to do it. [inaudible 58:27] something
13 for emotional. Losing my family, losing my father, losing
14 everything.

15 DETECTIVE FENTON: I'm not 100% on how a polygraph works.
16 Would you like to talk to the polygrapher and maybe he can
17 explain it to you and you can make a more informed decision on
18 whether or not you want to take one?

19 JEFFEREY WHITSETT: As far as the polygraph goes, I would
20 like to talk with him, but I would also like to have a lawyer's
21 advice because that's more than questioning. I'm fine with it,
22 it's just I want to know more. I want to-I don't want to go in
23 it blind.

24

25

1 DETECTIVE FENTON: Okay. So, are you saying that you
2 want to talk to an attorney before speaking to him or talk to an
3 attorney before making the decision to take a polygraph.

4 JEFFEREY WHITSETT: To make a decision. I'm fine speaking
5 with him and understanding, that I'm fine, but--

6 DETECTIVE FENTON: Are you asking for an attorney right
7 now?

8 JEFFEREY WHITSETT: Not at the moment. Not until, you
9 know, it's determined to take the polygraph, that's when I would.
10 But, not yet. I want a full understanding of what I'm--

11 DETECTIVE FENTON: Well, the full understanding is that
12 your step-daughter is making an accusation. She's had a forensic
13 interview done.

14 JEFFEREY WHITSETT: Yes sir.

15 DETECTIVE FENTON: She's making the accusation that you
16 stuck your penis inside of her. And a way that we might be able
17 to figure this out, that we might be able to figure this out is
18 if you took a polygraph, right.

19 JEFFEREY WHITSETT: Yes sir, I understand that.

20 DETECTIVE FENTON: I'll tell you what, I've taken more
21 than one polygraph and its never not worked for me. Okay? Our
22 polygraphers polygraph emotional people all the time. Right.
23 People that are in the same situation you are. Right. People
24 that are in different situations than you are. People that are.

25

1 under arrest, people that are not under arrest. They interview-
2 they do polygraph exams on all sorts of people.

3 So, you saying that you're worried because you're
4 emotional, in my opinion, I don't think that's going to be a
5 problem.

6 JEFFEREY WHITSETT: I understand.

7 DETECTIVE FENTON: But, it's definitely your right to
8 talk to a lawyer before taking one, if that's what you decide you
9 need to do.

10 JEFFEREY WHITSETT: I would like that just because, you
11 know, if he says, go ahead it would make me feel more
12 comfortable. I don't want to decline it.

13 DETECTIVE FENTON: Well, I'm telling you right now, we've
14 got one side of the story. Right. You're telling your side of
15 the story that it didn't happen. She's giving a lot of details
16 about what she says happened. Right.

17 JEFFEREY WHITSETT: Yes sir.

18 DETECTIVE FENTON: Okay. Do you think **Minor** is a liar?

19 JEFFEREY WHITSETT: I think she'll do what she wants to
20 get her way. That I do know.

21 DETECTIVE FENTON: Has she ever accused anybody else,
22 other than this Chris person of doing that?

23 JEFFEREY WHITSETT: She never-never took it anywhere with
24 the police, but she's told me that she's had--
25

1 DETECTIVE FENTON: Has she ever told her mother?

2 Somebody other than you?

3 JEFFEREY WHITSETT: Her mother didn't really listen. I
4 mean, she listened but didn't take it on the seriousness.

5 DETECTIVE FENTON: Who did she tell you that had touched
6 her before?

7 JEFFEREY WHITSETT: Not touched her but looked at her in
8 wrong ways and was closer than what she had liked.

9 DETECTIVE FENTON: So, who was that?

10 JEFFEREY WHITSETT: Some guy that worked at Olympia, down
11 on 52, when she was going to the daycare there. Then she had
12 problems with a coach or a bus driver that she didn't like the
13 way they were looking at her.

14 DETECTIVE FENTON: She never accused anybody else of
15 touching her. Other than Chris, and he's been arrested.

16 JEFFEREY WHITSETT: She did at first, until I got her to
17 tell the truth. She said a guy at Olympia [crosstalk]

18 DETECTIVE FENTON: Did you tell her mom about this stuff?

19 JEFFEREY WHITSETT: She begged me not to.

20 DETECTIVE FENTON: Do you think that's a wise decision?
21 You're saying that you're--you keep everything in your phone so
22 that you have transparency with your wife. But then your
23 daughter asks you not to say anything--

24

25

1 JEFFEREY WHITSETT: The way that Victoria yells and
2 hollers at them when she's upset, I didn't want her to have to
3 deal with that.

4 DETECTIVE FENTON: The truth is the truth. So, I mean,
5 you're trying to say that you're transparent with her and giving
6 her access to your phone.

7 JEFFEREY WHITSETT: She has access to everything. She had
8 everything single password of mine that's from Facebook to Google
9 to-[crosstalk]

10 DETECTIVE FENTON: But you're not going to tell her
11 something that's-that's as important as her daughter making a
12 false accusation against somebody. That's some-that's some
13 dangerous stuff.

14 JEFFEREY WHITSETT: Yeah, but if you'd seen how angry
15 Victoria gets towards them, whenever they mess up real bad, I
16 don't want to put **Minor** through that because Victoria screeches
17 and hollers at the top of her lungs.

18 DETECTIVE FENTON: I don't think that's--

19 JEFFEREY WHITSETT: I couldn't do that to her. She didn't
20 deserve to be yelled at like that.

21 DETECTIVE FENTON: So, you don't deserve to be yelled at
22 if you make a false accusation, of something that serious?

23 JEFFEREY WHITSETT: I had already explained to her why it
24 was bad, what the consequences were, why she shouldn't do it. I
25 didn't see the need for Victoria to come in and scream and holler

1 at her after I've already explained to her that it's not a good
2 thing to do.

3 DETECTIVE FENTON: Have you ever videotaped you and your
4 step-daughter having any kind of inappropriate--

5 JEFFEREY WHITSETT: We've never had anything
6 inappropriate.

7 DETECTIVE FENTON: [pause] Still don't understand why--
8 why she would make that up.

9 JEFFEREY WHITSETT: I told you, I don't know.

10 DETECTIVE FENTON: Do you understand how a forensic
11 interview works?

12 JEFFEREY WHITSETT: Kinda.

13 DETECTIVE FENTON: Kinda sort of?

14 JEFFEREY WHITSETT: Somewhat. I was there through the
15 process for the [crosstalk]

16 DETECTIVE FENTON: The child and their parents are not in
17 the same room.

18 JEFFEREY WHITSETT: Yeah.

19 DETECTIVE FENTON: They talk to a counselor one-on-one.
20 They're explained that they don't have to make up anything up.
21 They need to hear the truth.

22 JEFFEREY WHITSETT: I understand--

23 DETECTIVE FENTON: A lot of times we get complaints and
24 the child doesn't disclose anything, right. The child gets in
25 there and says, no that didn't happen. So, I mean, they give

1 them plenty of opportunities to make sure the truth is heard as
2 opposed to whatever the original compliant was. Why would she
3 say that you put your penis inside of her?

4 JEFFEREY WHITSETT: I don't know. I know there's been a
5 few times that I've caught her messing with herself. I've walked
6 into the room to shut off the radio or the fan and the lights or
7 open up the blinds because we don't run the A/C.

8 DETECTIVE FENTON: So, when you say 'messing with
9 herself', what are you talking about?

10 JEFFEREY WHITSETT: I didn't have any direct sight, I just
11 know, I came in, she had her hand in her pants and **Minor**, that's
12 not appropriate, you can't do that. You don't get to stuff like
13 that until you're old enough to be out of the house.

14 DETECTIVE FENTON: Did you tell her mother about this?

15 JEFFEREY WHITSETT: Her mother didn't think nothing of it.
16 I told her, you know, because there was times where there would
17 be porn on my tablet. And I know damn sure I didn't put it on
18 there because I cleared it before I'd given it to the kids. I
19 mean, I went through a full complete clear. From the list, to
20 the cache, the images, everything, before they play. She blamed
21 it on me and I tell her the absolute truth. That wasn't me. I
22 didn't do it. Then of course, the kids would never do it. She
23 didn't believe me when I told her that. It was always me, my
24 fault.

1 DETECTIVE FENTON: So, let me get this straight. I'm
2 just trying to keep this straight in my head because I'm a little
3 confused. So **Minor** [pause] lies. She--

4 JEFFEREY WHITSETT: When it suits her.

5 DETECTIVE FENTON: --makes false accusations, she
6 threatens you that she's going to say you touched her. She looks
7 at porn. She plays with herself. But, you're not sure if you
8 accidentally touched her or inappropriately touched her because you
9 blackout.

10 JEFFEREY WHITSETT: I can't recall anything during those.

11 DETECTIVE FENTON: All right.

12 JEFFEREY WHITSETT: I just know they happen.

13 DETECTIVE FENTON: I'm just trying to keep this straight.
14 It's not making a whole lot of sense.

15 JEFFEREY WHITSETT: And I don't even know if they're
16 relevant to be honest.

17 DETECTIVE FENTON: Listen, listen, listen, listen. If
18 you made a mistake, it's all right. We'll work through this.
19 But you have to take the first step and say, yeah, maybe I made a
20 mistake. Do you understand?

21 JEFFEREY WHITSETT: Yes sir.

22 DETECTIVE FENTON: The consequence is going to be the
23 same either way. You're still being arrested. You're still
24 going to jail. But if you own up to what you did, it's like
25 asking for help. Admitting--the first part of asking for help is

1 admit you had a problem. Right? You can't ask for forgiveness
2 without admitting what you did. That's what we're here to talk
3 about. I'm not trying to put words in your mouth but I don't
4 believe this child is making this up. I don't.

5 It's hard for me to understand when you're saying that you
6 have these blackout spells, that you would know what you did. If
7 you made a mistake, we'll get passed it. Maybe you need some
8 help. Maybe you need counseling. I don't know. The first part
9 of asking for help is to admit that you made a mistake. That's
10 what we're here to talk about.

11 JEFFEREY WHITSETT: I understand that. I'm saying, I
12 didn't do anything. I wouldn't hurt her.

13 DETECTIVE FENTON: You're saying you wouldn't--

14 JEFFEREY WHITSETT: To my knowledge, I wouldn't.

15 DETECTIVE FENTON: You wouldn't hurt her. Sometimes
16 people do things and they don't really mean what the final
17 outcome is. Sometimes people do things and it's like, oh shit,
18 what the hell did I do?

19 JEFFEREY WHITSETT: I will never hurt her.

20 DETECTIVE FENTON: But she's saying you have.

21 JEFFEREY WHITSETT: I don't see how. I love my kids to
22 death.

23 DETECTIVE FENTON: I'm not asking if you love your kids,
24 but sometimes people make dumb decisions. Sometimes people make
25 mistakes. They do things that they don't want to. Sometimes,

1 you know, parents will be disciplining their kid and they might
2 hit their kid just a little too hard. It's not that they don't
3 love their kid, it's that sometimes emotions and things in life
4 just get away from you. Sometimes people touch their kids
5 inappropriately and it's not about having sex with a kid, it's
6 about, I don't know, making a dumb decision. Having a brain
7 fart. It's just the way the world works.

8 JEFFEREY WHITSETT: I wouldn't have done something like
9 that to **Minor**. Not to **Minor** --

10 DETECTIVE FENTON: I'm not asking if you would have done
11 something like that to her, I'm asking you if you did do
12 something like that to her. You know, people say, oh I could
13 never do that. But people do it all the time. People make bad
14 decisions all the time.

15 Let me tell you, when I speed--I wouldn't speed, but guess
16 what, I do it. I probably do it a whole lot more than I should.
17 Right. I say I shouldn't speed. I know I shouldn't speed. But
18 it happens. Right. People make bad decisions all the time. All
19 the time. Does it make them a bad person? I don't know. I'm
20 not calling you a bad person, but I think you made a mistake.

21 JEFFEREY WHITSETT: I don't know. I can recall anything
22 but the blackouts. Anything but the blackouts, I know me. I
23 know what I did. I don't ever look at her that way. I don't
24 think that way. The closest I get to her is a hug.

25

1 DETECTIVE FENTON: So, when we ask your doctor if you
2 ever told her about your blackouts, what is she going to say?

3 JEFFEREY WHITSETT: I never told her about the blackouts,
4 I told her about the free falling. Because I thought maybe if we
5 could assess that, that would answer the why.

6 DETECTIVE FENTON: Why would you not tell her everything?

7 JEFFEREY WHITSETT: Because I figured the free falling and
8 the blackouts were the same thing.

9 DETECTIVE FENTON: Well, if I'm passing out or having
10 blackout spells, I'm going to tell my doctor about it. I'm not
11 going to go talk to her and say—you know, if my foot is hurting,
12 I'm not going to go her and say, oh my big toe. I stubbed my big
13 toe, it's hurting. I'm going to say, hey my foot is hurting.
14 I'm going to give her the whole—the whole problem. That just
15 doesn't make any sense.

16 JEFFEREY WHITSETT: It doesn't make sense to you but
17 that's what I did. In my mind, I thought that by figuring out
18 what that was, that would stop because that's what triggered it.
19 Any time it happened, it came with that free-fall. So, why are
20 you going to try and diagnose something that's caused after the
21 main thing. You figure out the main [crosstalk]

22 DETECTIVE FENTON: The reason is, I'm not a doctor and I
23 don't understand all that stuff, but if there's something wrong
24 with me, I'm going to let the doctor know.

1 JEFFEREY WHITSETT: That's what I thought I was doing.

2 The whole thing that caused me to lose time, to lose memory was
3 that free fall. If that didn't happen I-it wouldn't happen.

4 It's a normal day. That's why I only told her about feeling like
5 I'm just dropping. Like, I can be sitting in a chair like now
6 and when it kicks in--

7 DETECTIVE FENTON: Who else have you told about these
8 blackout spells?

9 JEFFEREY WHITSETT: I told a couple of my friends that,
10 you know, times where I can't focus, I forget things. I can't
11 remember.

12 DETECTIVE FENTON: Have you told any of them that you
13 have blackouts though?

14 JEFFEREY WHITSETT: I told them I have lapses in memory.

15 DETECTIVE FENTON: Who are those people?

16 JEFFEREY WHITSETT: Jeff Rockwood.

17 DETECTIVE FENTON: He works with you?

18 JEFFEREY WHITSETT: Yes sir.

19 DETECTIVE FENTON: That's the person that you texted that
20 you weren't coming to work, right?

21 JEFFEREY WHITSETT: Yes sir.

22 DETECTIVE FENTON: Who else?

23 JEFFEREY WHITSETT: His older brother, Nick Rockwood.

24 DETECTIVE FENTON: Okay.

25 JEFFEREY WHITSETT: And, Travis Richardson.

1 DETECTIVE FENTON: Who is Travis Richardson?

2 JEFFEREY WHITSETT: He is--when I started, me, him and Jeff
3 were running the shaker tables.

4 DETECTIVE FENTON: So, all these three--all three of these
5 people worked at Charleston Steel?

6 JEFFEREY WHITSETT: Yes sir.

7 DETECTIVE FENTON: Well, [pause] Do you think it's very
8 safe to have blackout spells and be operating a crane?

9 JEFFEREY WHITSETT: I didn't want to lose my position
10 because it--

11 DETECTIVE FENTON: And you're going to go to a doctor and
12 say, I have this free-falling sensation but you're not going to
13 tell her you have blackout spells?

14 JEFFEREY WHITSETT: I figured they were caused by the
15 free-falling. They always kick in directly after.

16 DETECTIVE FENTON: And **Minor** is a liar. She made crazy
17 accusations before but you're not really sure if they are crazy
18 accusations now because you have blackout spells.

19 JEFFEREY WHITSETT: I can't remember anything during. You
20 want the truth, that's the truth. I know they happen but I can't
21 remember.

22 DETECTIVE FENTON: So, it's quite possible that you might
23 have accidentally or inappropriately touched--

24 JEFFEREY WHITSETT: I don't know. You know, I just know I
25 can remember that point.

1 DETECTIVE FENTON: You don't know. So, what would cause
2 you to know that that happened?

3 JEFFEREY WHITSETT: [pause] I'm not sure.

4 DETECTIVE FENTON: Would somebody have to tell you that
5 that happened?

6 JEFFEREY WHITSETT: Someone would have to let me know,
7 this is what happened in these events.

8 DETECTIVE FENTON: So, when your step-daughter is letting
9 us know that you stuck your penis inside of her, that's possible
10 that it happened?

11 JEFFEREY WHITSETT: I don't know. I don't know-I just
12 know from where I start and where the end is.

13 DETECTIVE FENTON: How would you feel about yourself if
14 you knew that you stuck your penis inside of her.

15 JEFFEREY WHITSETT: I'd hate myself.

16 DETECTIVE FENTON: You'd hate yourself?

17 JEFFEREY WHITSETT: Would probably kill myself. I
18 wouldn't be able to handle it because I love them too much.

19 DETECTIVE FENTON: Do you want to kill yourself right
20 now?

21 JEFFEREY WHITSETT: [pause] Not particularly because I
22 don't believe I've done anything wrong. But then again, I don't-

23 -

24 DETECTIVE FENTON: But you don't know.

25

1 JEFFEREY WHITSETT: I don't know what happens whenever I
2 can't remember.

3 DETECTIVE FENTON: Hmm. Have you told any of your family
4 members about these spells?

5 JEFFEREY WHITSETT: I haven't had family members to talk
6 to.

7 DETECTIVE FENTON: Not your brother, not your sister, not
8 your dad, not your bio-dad, not your godfather?

9 JEFFEREY WHITSETT: My godfather, I told him I've had
10 problems recalling things. But, he just chopped it up to, you
11 know, just being stressed out but everyone else--the only time I
12 saw my sister was at my nephew's birthday party.

13 DETECTIVE FENTON: When was that?

14 JEFFEREY WHITSETT: I think it was March. Or, it was
15 either mid-February or March. I can't remember distinctly. It's
16 a little jump, trampoline, Sky Zone, whatever place in Mt.
17 Pleasant. The last time we were there, I didn't bring it up
18 because it was a party and I was getting to see my daughter. I
19 wasn't there to think about them, I was there to enjoy the
20 company of the kids. To enjoy being around them. Not to--the
21 only day they've--my step kids and my daughter have actually been
22 able to be together and play and get to know each other in a long
23 time. That was my main focus, making sure they got along.

24 DETECTIVE FENTON: Do you talk to any other girls,
25 besides your wife?

1 JEFFEREY WHITSETT: Not really. I say hi or hello to--

2 DETECTIVE FENTON: You don't have any kind of

3 inappropriate conversations with any other women?

4 JEFFEREY WHITSETT: [crosstalk] No sir. Since I got
5 married to my wife, I haven't--there was no need. I'm married. I
6 don't have any use to go and talk to any other women.

7 DETECTIVE FENTON: But you still watch porn.

8 JEFFEREY WHITSETT: Yeah. It's--I don't really see
9 anything wrong with it. Just because you get married doesn't
10 mean that porn watching needs to stop or it's a--you went fishing
11 previous to getting married, that doesn't mean--

12 DETECTIVE FENTON: Well, when your wife is questioning
13 whether or not you're looking at other women, you think watching
14 porn is the smartest thing to do?

15 JEFFEREY WHITSETT: It's no different than what she does.

16 DETECTIVE FENTON: What does she do?

17 JEFFEREY WHITSETT: She watches porn just as well as I do.

18 DETECTIVE FENTON: She look at other guys?

19 JEFFEREY WHITSETT: She admires other guys. Say oh well,
20 they look good, they're hot. It's no different.

21 DETECTIVE FENTON: Does she touch her children
22 inappropriately?

23 JEFFEREY WHITSETT: I don't think she's the type of person
24 that would do that.

25

1 DETECTIVE FENTON: Do you think you're the type of person
2 that would do that?

3 JEFFEREY WHITSETT: No, I don't.

4 DETECTIVE FENTON: But you're not really sure.

5 JEFFEREY WHITSETT: I don't--as I said, I have memory
6 lapse. I don't know what happens during that.. it'd be as simple
7 as me just kind of like sleep walking, just walking around, but I
8 don't know because I can't remember.

9 DETECTIVE FENTON: I think you do remember. I think
10 you're using--

11 JEFFEREY WHITSETT: I don't.

12 DETECTIVE FENTON: I think that you're using that white
13 noise or black out spell as an excuse because you don't want to
14 believe you're that kind of person. Right. Is that correct?
15 You don't want to believe that kind of person.

16 JEFFEREY WHITSETT: That's not correct because I'm not
17 that kind of person and I really don't remember.

18 DETECTIVE FENTON: But you're not really sure if you're
19 that kind of person because you blackout right?

20 JEFFEREY WHITSETT: Because I don't remember anything in
21 it.

22 DETECTIVE FENTON: Oh.

23 JEFFEREY WHITSETT: That's your truth. You're trying to
24 get anything away from the truth.

25

1 DETECTIVE FENTON: No. No, no. What I'm trying to do is
2 understand the truth. I'm trying to understand. And I don't
3 understand how you can say that you have blackout spells and that
4 you're not sure if you touched her or not. You've never been
5 diagnosed with having any kind of blackout spell, right? You've
6 never told your doctor.

7 JEFFEREY WHITSETT: No sir.

8 DETECTIVE FENTON: You tell your friends that you have
9 lapses in memory, but you don't say you blackout, right?

10 JEFFEREY WHITSETT: I have a hard time focusing.

11 DETECTIVE FENTON: Oh, a hard time focusing. So, when I
12 ask your friends if you ever said that you blacked out, what are
13 they going to say?

14 JEFFEREY WHITSETT: They're going to say that I've had
15 lapses in memory. I've had times when I've stared off into space
16 and I wasn't there.

17 DETECTIVE FENTON: Doesn't make a whole lot of sense.

18 JEFFEREY WHITSETT: I'm telling you the way that it is. I
19 understand-

20 DETECTIVE FENTON: [crosstalk]

21 JEFFEREY WHITSETT: I understand it's not making sense but
22 this is what happens. I wish I had a video that I could play to
23 show you.

24 DETECTIVE FENTON: Have you ever videotaped yourself
25 during these events?

1 JEFFEREY WHITSETT: How would I? I don't have [crosstalk]

2 DETECTIVE FENTON: I don't know, you're saying you don't
3 know what happens during the events.

4 JEFFEREY WHITSETT: I don't but I also don't know when
5 they set in. They're not hey, every 10, every hour, every two
6 days. It's not on a particular time period.

7 DETECTIVE FENTON: It's not making a whole lot of sense.
8 Do you need anything to drink?

9 JEFFEREY WHITSETT: No sir.

10 DETECTIVE FENTON: Do you need to use the restroom or
11 anything?

12 JEFFEREY WHITSETT: Probably restroom.

13 DETECTIVE FENTON: All right. Come on buddy. [leaves
14 room 01:20:50] We'll be back.

15 [end of audio 01:21:17]

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1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
 2 COUNTY OF BERKELEY) CASE NO. 2016-GS-08-1369;
 3 1370, 1371; 1372; 1373;
 4 1374; 1375

5 STATE OF SOUTH)
 6 CAROLINA,)
 7 Plaintiff,) Transcript of Record
 8 vs.)
 9 JEFFREY LANCE) Date: June 27, 2017 -
 10 WHITSETT,) June 29, 2017
 11 Defendant.

12 * * * * *

13 B E F O R E:

14 The Honorable Kristi Harrington

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 21 Denise J. Lauder, RPR
 22 Ninth Judicial Circuit
 23
 24
 25

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2

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12	proceedings.)		

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1 (The following was had 6/27/2017 at
2 9:04 a.m., State v. Whitsett, Berkeley County
3 General Sessions.)

4 (State's Exhibits 1 - 27, were
5 premarked by Solicitor's Office.)

6 MS. WILLIAMS: We have one matter
7 before we begin whatever hearing is necessary for
8 the admission of the tape under 17-23-175.

9 Indictment Number 2016-GS-08-01375,
10 exposing another to HIV virus; because the way the
11 facts are going to unfold, Mr. Whitsett allegedly
12 exposed more than one person to HIV, we would like
13 to amend the indictment to say that he exposed
14 **Minor** to HIV.

15 THE COURT: So what number is that? Do
16 you have a number?

17 MS. WILLIAMS: You mean, what number is
18 the Indictment?

19 THE COURT: No. No. No. You want
20 another person to reflect the name of **Minor**?

21 MS. WILLIAMS: Yes. I'm trying to see
22 where in that paragraph would be the best place.

23 THE COURT: It's under No. 1, No. 2,
24 No. 4, No. 5, and then in some other language.

25 MS. WILLIAMS: Right. So I would say,

1 did knowingly engage in sexual intercourse with
2 another person comma [Minor], without
3 informing that person of his HIV infection, or
4 knowingly -- I'm sorry, No. 4, forcibly engage in
5 sexual intercourse, vaginal, anal or oral, without
6 the consent of the other person comma [Minor].

7 THE COURT: Mr. Schwacke, happy to hear
8 from you about this.

9 MR. SCHWACKE: Well, Your Honor, it
10 alleges -- obviously, there's going to be no proof
11 of No. 2, No. 3, or No. 5, because that's just not
12 within the facts.

13 THE COURT: Do you agree, Ms. Williams?

14 MS. WILLIAMS: Not the facts as I know
15 them. I don't know what evidence Mr. Whitsett is
16 going to give -- or, you know, the defense will
17 give the Court, but our allegations have to do with
18 No. 1 and No. 4.

19 THE COURT: All right. Any objection
20 to only reading 1 and 4 to the jury in the
21 indictment?

22 MS. WILLIAMS: Well, I mean, that's
23 fine as far as the facts as I know them. So, yeah,
24 we don't really have an objection to that.

25 THE COURT: Okay. And then if I only

1 read 1 and 4, is there an objection to adding
2 **Minor** -- do you want it in place of another
3 person, or comma -- another person comma **Minor**
4 **?**

5 MS. WILLIAMS: I think either way would
6 clarify the issue.

7 MR. SCHWACKE: So the defense's
8 understanding is the State wishes to amend their
9 Indictment to include as the forms, I guess, of
10 exposure to be knowingly engaged in sexual
11 intercourse, vaginal, anal or oral, with another
12 person without first informing that person of his
13 HIV infection or, 4, forcibly engage in sexual
14 intercourse, vaginal, anal, or oral, without the
15 consent of the other person, including a legal
16 spouse.

17 THE COURT: So the way I understand
18 Ms. Williams wants it to read is, 1, knowingly
19 engaged in sexual intercourse, vaginal, anal or
20 oral, with another person, to wit: **Minor**
21 without first informing that person of his HIV
22 infection.

23 MS. WILLIAMS: And we're not asking to
24 limit the statute, because it's or this, or that.
25 I think the indictment was fine before, but if

1 Mr. Schwacke wants us to limit it to the two that
2 we expect the testimony to prove, because there's
3 or in between all of those different numbers, we
4 don't have an objection to that.

5 We're just asking to -- in order to
6 create less confusion for the jury, to just add
7 **Minor**, because he also exposed Victoria
8 Whitsett, his wife at the time, to HIV, and we
9 don't know who else. But we know the testimony
10 will bear out that Victoria was also exposed to
11 HIV.

12 THE COURT: The trial today on 1375 is
13 on **Minor**.

14 MS. WILLIAMS: Right.

15 THE COURT: Even though there may be
16 future charges --

17 MS. WILLIAMS: No, just that there will
18 be evidence presented. It's unavoidable, that he
19 also exposed another person, at least one other
20 person, to HIV and this will just -- we are going
21 forward -- and Mr. Schwacke knows this because
22 we've discussed it, that we are going forward for
23 this indictment for the exposure to **Minor**.

24 So, you know, it just creates less
25 confusion for us to allege that in the indictment.

1 MR. SCHWACKE: And so being in the
2 awkward position here, on behalf of the client, I
3 need to object to the one -- the one amendment,
4 which would include the name of the victim, but we
5 would not object to the indictment being amended
6 striking the numbered forms of exposure.

7 Having said that, on behalf of my
8 client I need to object to the amendment with the
9 name. I have to admit with all candor that there
10 have been discussions with the State on that,
11 and I would be on notice that that is the person
12 that they will be seeking to have proof.

13 THE COURT: So you agree, because the
14 indictment is a notice document, that you have
15 notice of the other person -- or another person is
16 **Minor** for trial here today?

17 MR. SCHWACKE: We've had discussions to
18 make the defense aware of that, yes, ma'am.

19 THE COURT: Okay. I don't find it
20 confusing. I'm going to read the indictment as it
21 is indicted. It is the statute in its entirety.

22 MS. WILLIAMS: Thank you, Your Honor.

23 The only other thing I would like to
24 put on the record is that Mr. Schwacke and I have
25 agreed on a redacted version of both the

1 defendant's interview and the child's interview
2 that reflects the Court's ruling, or --

3 THE COURT: Preliminary rulings on --

4 MS. WILLIAMS: Preliminary rulings,
5 yes, Your Honor. And that would include redacting
6 all reference to the prior sexual assault of Minor
7 [REDACTED] by a different person in her interview.

8 We've also asked him and he has agreed to redact
9 any reference to her being honest or telling the
10 truth.

11 And, then, in the defendant's
12 interview, his reference to her prior sexual
13 assault, his reference to polygraph, and any
14 reference to drug use by the defendant in both
15 interviews.

16 THE COURT: Is that correct, Mr.
17 Schwacke?

18 MR. SCHWACKE: To the best of my
19 ability, I have done that.

20 THE COURT: Have you --

21 MR. SCHWACKE: There is no reference to
22 her victimization.

23 THE COURT: Just for the technology,
24 you personally did the redaction?

25 MR. SCHWACKE: I did.

1 THE COURT: I understand that you are
2 amazing at that technology, so I was just
3 inquiring. So you actually did, to the best of
4 your ability with the equipment that you have, you
5 did the redaction?

6 And you have reviewed those,
7 Ms. Williams?

8 MR. SCHWACKE: I don't know if they saw
9 them, but I provided to them on Saturday and then
10 again on Sunday. And then their office did come
11 and pick up a hard copy of that yesterday morning.

12 THE COURT: Okay.

13 MS. WILLIAMS: That's true, Your Honor.
14 And then we would just ask if the tapes are
15 authenticated to the Court's satisfaction and they
16 are admitted, we would just substitute the redacted
17 version in, subject to the Court's ruling, so the
18 jury doesn't hear why those are being substituted
19 in, because that would defeat the purpose.

20 So at the appropriate time, for the
21 purpose of authentication, we have marked the
22 original tape, and then we will mark the redaction
23 version as well. And Mr. Schwacke and I plan to go
24 through all of the evidence to see which items he
25 objects to and which items he doesn't.

1 THE COURT: So just what do you have
2 marked?

3 MS. WILLIAMS: So we have photographs
4 -- well, we have --

5 THE COURT: I'm sorry, as far as the
6 original and the redacted, do you have those
7 numbers already?

8 MS. WILLIAMS: Yes, Your Honor. So the
9 original tapes would be marked State's 25 and 26 --
10 are they on one tape? So Defendant's tape -- Ms.
11 Sas has reminded me that during the Denno hearing,
12 the un-redacted version of the Defendant's
13 statement has been admitted under State's 2. So
14 the redacted version would be State's 25, and the
15 un-redacted version of the forensic interview would
16 be State's 26, and the redacted version of the
17 forensic interview would be State's 27.

18 THE COURT: Madame Court Reporter, does
19 that coincide with what you --

20 THE COURT REPORTER: I have nothing.

21 THE COURT: You have nothing.

22 MS. WILLIAMS: We haven't given her
23 that her yet, Your Honor. We do have all of that
24 premarked and we can do that.

25 THE COURT: I just wanted to make sure

1 for the record that everybody has the same numbers.

2 MS. WILLIAMS: Yes, Your Honor. Those
3 are the ones that we have numbered so far.

4 MR. SCHWACKE: For identification.

5 MS. WILLIAMS: For identification.
6 But we have premarked the exhibits, and most of
7 them are photographs and demonstrative aids.

8 THE COURT: Okay. Let's begin with our
9 hearing.

10 Mr. Schwacke.

11 MS. WILLIAMS: My understanding of
12 where we left it was, we had provided everything
13 pursuant to the statute, but the interviewer which
14 is required to be made available, she is here and
15 is available for any questions that Mr. Schwacke
16 wants to ask her with regard to the admission of
17 that tape and her qualifications. She is here.

18 THE COURT: Okay. Are you calling, Ms.
19 Pilcher?

20 MR. SCHWACKE: I am, Your Honor.

21 THE COURT: Ms. Pilcher, please come
22 forward and be sworn.

23 ELIZABETH PILCHER,

24 being first duly sworn, testified as follows:

25 THE CLERK: Please state your full name

1 and spell your last.

2 THE WITNESS: Elizabeth Ann Pilcher,

3 P-I-L-C-H-E-R.

4 THE COURT: Mr. Schwacke.

5 MR. SCHWACKE: Thank you.

6 THE COURT: And, just for the record,
7 on Friday I marked Court's 2 as the packet with her
8 CV in it. So the Court has already reviewed the CV
9 and it's part of the Court's record.

10 DIRECT EXAMINATION

11 BY MR. SCHWACKE:

12 Q. Ms. Pilcher, you are employed by the
13 Dorchester Children's Center?

14 A. Yes.

15 Q. And how long have you been employed
16 with them?

17 A. A little over three years.

18 Q. And what are your responsibilities
19 there?

20 A. I'm a forensic interviewer, so I do
21 forensic interviews of the child, and I'm a family
22 therapist.

23 Q. How many of those have you done?

24 A. Forensic interviews? As of yesterday,
25 445.

1 Q. And you had occasion to do an interview
2 on Minor [REDACTED] ?

3 A. Yes.

4 Q. And when was that?

5 A. That was June 3, 2014, I believe.

6 Q. And that --

7 A. 2015, I'm sorry.

8 Q. And that took place at the Dorchester
9 Children's Center?

10 A. Yes.

11 Q. Were other members -- other persons
12 present?

13 A. For the interview?

14 Q. Well, present in the building let's
15 say.

16 A. Yes.

17 Q. And do you remember who any of those
18 people might have been?

19 A. That were present in the building?

20 Q. Connected to this interview. Family
21 members, did you meet any family members?

22 A. I know that her mother brought her to
23 the interview. That's the only person I remember.

24 Q. Did you have any discussions or
25 meetings with her?

1 A. Prior to the interview, I met with her
2 briefly to get a medical history and to find out if
3 there were any developmental or learning
4 disabilities.

5 Q. And you have more than one room over
6 there, correct? For these types of interviews?

7 A. Right now we have four. At the time of
8 **Minor** interview, we had only three.

9 Q. And each of those have recording
10 devices?

11 A. Yes.

12 Q. Audio and video?

13 A. Yes.

14 Q. And those are pointed out at the very
15 beginning of any interview?

16 A. Yes.

17 Q. During the course of your interview
18 with **Minor**, there's a break. Can you tell me
19 about that?

20 A. The power went out very briefly, and so
21 when the power goes out, our equipment a lot of
22 times doesn't work properly and it has to reboot.
23 And so when the power went out, I left the
24 interview to make sure that the recording equipment
25 was working and have it start recording before I

1 went back into the room to continue.

2 Q. And so you left **Minor** in the room?

3 A. Uh-huh.

4 Q. The power just snapped?

5 A. Yeah. It was probably off for a matter
6 of seconds, I don't know exactly how long, but it
7 was back on when I left the room. I didn't leave
8 her in the dark room.

9 Q. Okay. And she remained in the room and
10 didn't talk with anyone?

11 A. No.

12 Q. There's times in the interview that you
13 take breaks. You asked -- you say, I need to leave
14 for a second, I'll be right back. What happens at
15 those times?

16 A. I typically take a break towards the
17 end of an interview just to check -- we have
18 someone observing a lot of times, an intern or
19 someone else in the center, just to make sure there
20 was nothing that I forgot to ask about or anything
21 that was confusing and needed clarification.

22 Q. Has the process of these evaluations
23 changed since you first started doing them?

24 A. No.

25 Q. There have been interviews with

1 children where there are various scenarios that are
2 set out to the child where they're asked, is this
3 the truth or is this a lie? You didn't do that in
4 this interview?

5 A. No. That is something that has not
6 been -- that's practiced in forensic interviewing
7 in this State since before I was trained in
8 forensic interviewing. It's not anything that I
9 have ever done.

10 Q. Nothing that you have ever done?

11 A. Right.

12 Q. And how old was **Minor**?

13 A. She was nine at the time of the
14 interview.

15 Q. Do you communicate with any medical
16 doctors prior to these evaluations?

17 A. If a child comes in for a forensic
18 interview and he or she has had an acute sexual
19 assault kit, a lot of times we will have the report
20 from that in our file. I don't recall if I had it
21 for **Minor** or not, but other than that, prior to
22 the interview, we don't communicate with them,
23 unless the medical professional is the one that
24 made the referral.

25 Q. And then you would see that on the

1 forms?

2 A. That they were the one that made the
3 referral, yes.

4 Q. So in this case she had actually been
5 seen I think the day or -- she -- was the day
6 before?

7 A. Right.

8 MR. SCHWACKE: One moment, Your Honor.

9 THE COURT: Take your time.

10 MR. SCHWACKE: That's all the questions
11 I have, Your Honor.

12 THE COURT: Ms. Sass.

13 MS. SZYMCZYNSKA-SAS: Thank you, Your
14 Honor.

15 CROSS-EXAMINATION

16 BY MS. SZYMCZYNSKA-SAS:

17 Q. Ms. Pilcher, I just want to go back a
18 little bit to your educational background. I know
19 your CV has been admitted as Court's Exhibit 2.

20 Can you tell the Court what your
21 educational background is?

22 A. I received my Bachelor's in Psychology
23 from the College of Charleston in 2012, and then my
24 Master's in Social Work from the University of
25 South Carolina in 2014.

1 Q. Okay. And do you have any licenses?

2 Are you licensed in any area?

3 A. I'm a licensed Master Social Worker.

4 Q. And what about the forensic interviews,
5 have you taken any courses or seminars to obtain
6 that training?

7 A. So I completed the Initial Child First
8 South Carolina 48 Hours Interview training that was
9 conducted by the University of South Carolina
10 Children's Law Center, and then our center also
11 participates in annual state-wide peer reviews and
12 special topics training, as well as quarterly peer
13 reviews and nationwide peer reviews once a month
14 with other CSCs throughout the country.

15 Q. Are you affiliated with any
16 professional organizations as well?

17 A. Yes. The APSAC, the association of
18 professionals -- it's an association for child
19 abuse professionals.

20 Q. Okay.

21 A. I can't remember exactly what the
22 acronym stands for.

23 Q. How many years have you been conducting
24 forensic interviews?

25 A. Three years.

1 Q. Currently, at the time of the interview
2 with **Minor**, how long?

3 A. I had been -- it was about a year.

4 Q. And can you estimate how many
5 interviews at that point you would have conducted?

6 A. I'm not sure.

7 Q. Okay. Are there any specific
8 guidelines for the interview that the child would
9 be informed of?

10 A. We let the child know at the beginning
11 of the interview that the interview is being audio
12 and video recorded. And we also ask the child to
13 only talk about things that are real and true.

14 And then we go through and do examples
15 with the child and ask them to correct us if we get
16 something wrong, let us know if they don't
17 understand the question or they don't know the
18 answer to a question.

19 Q. So do you recall for this interview
20 that you discussed with **Minor** what the true answer
21 is, what truth is?

22 A. I didn't discuss with her what truth
23 is. I asked her to agree to only tell the truth in
24 the interview.

25 Q. Okay. Do you recall during the

1 interview, and we can play that if that's something
2 that you would like, asking her -- giving her
3 examples? I believe you talked about I think --

4 MS. SZYMCZYNSKA-SAS: Court's
5 indulgence?

6 BY MS. SZYMCZYNSKA-SAS:

7 Q. I think you gave her a question, if I
8 ask you about confusing questions, like, is there a
9 chronometer in the room, and you don't understand,
10 to say that she doesn't under; is that correct?

11 A. Yes.

12 Q. And then you asked her if there's a
13 clock in the room. So did you explain to her if
14 she is confused about the questions to explain
15 that?

16 A. Right.

17 Q. Did you also ask her if she agreed to
18 tell the truth today --

19 A. Yes.

20 Q. -- that day of the interview?

21 And did you ask her -- if you ask her a
22 question and she doesn't know the answer, she
23 doesn't have to make up anything or guess, just to
24 tell the truth?

25 A. Yes.

1 Q. You did talk about telling the truth?

2 A. Right. We didn't discuss the
3 difference between truth versus lies specifically.

4 Q. Did she appear to understand what
5 telling the truth is?

6 A. Yes.

7 Q. Okay. And I believe you talked a
8 little bit about the break in the interview. How
9 would you have known that you had to reset the
10 system and step out of the room?

11 A. Our system is old and doesn't continue
12 recording if the power goes out, and I have known
13 from the past whenever there are storms and there
14 are power outages and we'd come in in the morning,
15 a lot of the times the equipment wouldn't be
16 working and we would have to reboot it.

17 It was really -- even if I wasn't
18 positive that it wasn't still recording, I wanted
19 to take a break and leave the room and make sure
20 that it was before I continued interviewing **Minor**

21 Q. Did you have any conversation with
22 **Minor** a about the case or any of the questions that
23 you previously asked her during the period of time
24 when there was no recording?

25 A. No.

1 Q. What would you have talked to her
2 about? Would you have any conversation with her
3 when you step out of the room or when the power
4 went out?

5 A. All I would have said probably was for
6 her to color for a minute while I left the room to
7 make sure that everything was okay before we
8 continued.

9 MS. SZYMCZYNSKA-SAS: Court's
10 indulgence?

11 THE COURT: Take your time.

12 MS. SZYMCZYNSKA-SAS: No further
13 questions, Your Honor.

14 MR. SCHWACKE: Just a few.

15 THE COURT: Take your time. Ask as
16 many as you want.

17 REDIRECT EXAMINATION

18 BY MR. SCHWACKE:

19 Q. So in terms of the lie/truth, there was
20 no discussion between the difference between
21 telling the truth and telling a lie?

22 A. No.

23 Q. And so you don't know whether she
24 understands that there can be a consequence from
25 telling a lie versus telling the truth?

1 A. That's not something that we discussed
2 in the interview.

3 Q. In the interview there is the chart and
4 there are some diagrams. Do you have those?

5 A. I have them in the -- the chart. It's
6 back there.

7 Q. You did save those?

8 A. Uh-huh.

9 THE COURT: Do you need to review
10 those, Mr. Schwacke?

11 MR. SCHWACKE: I haven't seen them and
12 the State says they haven't seen them --

13 THE COURT: Do you want to take a
14 moment?

15 MS. WILLIAMS: I don't think --

16 THE COURT: Do you mind stepping down?

17 THE WITNESS: No problem.

18 (Brief pause)

19 MS. SZYMCZYNSKA-SAS: Your Honor, I do
20 have one question.

21 RE CROSS-EXAMINATION

22 BY MS. SZYMCZYNSKA-SAS:

23 Q. Do you recall during the interview
24 asking **Minor** what kind of car you drive?

25 A. Yes.

1 Q. And did she have an answer to that?

2 A. She said she didn't know.

3 Q. Was that to establish whether or not
4 she understood how to tell the truth if she doesn't
5 know something?

6 A. It was -- yes. So part -- the way we
7 describe it is, part of telling the truth is to say
8 they don't know the answer to it if they don't
9 know. And that's part of why we do that example.

10 MS. SZYMCZYNSKA-SAS: No further
11 questions, Your Honor.

12 EXAMINATION

13 BY THE COURT:

14 Q. Ms. Pilcher, you said that -- I believe
15 Mr. Schwacke asked you the question, did you ask
16 the question do you know the difference between a
17 truth or a lie? And so many, many years ago I went
18 through that finding where that's what we were
19 taught, and it seems to be the traditional -- if I
20 told you that I was wearing a pink robe, would that
21 be the truth or a lie?

22 And you indicated that you haven't done
23 that in your training. And so do you -- can you
24 tell me why that is?

25 A. So they -- and I don't know all of the

1 background and research, but the training that I
2 went through, they have not done what they call the
3 truth/lie book in a long time because they found
4 that it really didn't have any benefit.

5 And so now instead of going through and
6 spending time, you know, doing all these examples,
7 asking the child whether they understand is this
8 true or is this true, we simply ask the child to
9 agree to tell the truth. And then as kind of a
10 subset of that, ask them to tell us that they don't
11 understand if they don't understand, they don't
12 know if they don't know, and correct us if we get
13 something wrong. And then we do the examples with
14 younger children.

15 Q. So in a younger child, how would you
16 verify that they understand the concept?

17 A. Well, so, a lot of times very young
18 children when we ask them, you know, what kind of
19 -- we have a little picture that we use sometimes
20 with young children. And we ask them, what's the
21 puppy's name. And a lot of times they will make up
22 a name no matter how many times we say, say I don't
23 know if you don't know the puppy's name. And I'll
24 come up with a name.

25 And so that let's us know that they

1 might not be able to tell us they don't know if we
2 ask them a question that they really don't know the
3 answer to.

4 Q. And were you trained using the truth
5 book?

6 A. No.

7 THE COURT: Based upon my questions,
8 any questions, Mr. Schwacke?

9 MR. SCHWACKE: No, Your Honor.

10 THE COURT: Ms. Sas?

11 MS. SZYMCZYNSKA-SAS: No, Your Honor.

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

14 I don't know procedurally what you're
15 doing as far as testifying, so please don't leave
16 until either Ms. Sas or Mr. Schwacke tell you that
17 you may leave.

18 THE WITNESS: Okay.

19 THE COURT: Thank you.

20 Mr. Schwacke, do you have any
21 additional witnesses?

22 MR. SCHWACKE: I do not, Your Honor.

23 THE COURT: And do you have any
24 additional argument?

25 MR. SCHWACKE: I would stand again on

1 the argument that there's no indication within the
2 video that helps establish that the child being
3 interviewed appreciates the differences between
4 right and wrong, and that her competency as a
5 witness is not established by the video, that that
6 is a video that was taken -- made more than two
7 years -- or two years ago, and the -- as it is
8 being sought to be introduced by the State that it
9 doesn't clearly establish coherently that Ms. Myers
10 understands the differences between right and
11 wrong, and because of that it should be excluded.

12 THE COURT: Ms. Sas, any additional
13 argument?

14 MS. SZYMCZYNSKA-SAS: No, Your Honor.
15 We would just like to place on the record our
16 previous argument that she certainly is presumed
17 competent. There is nothing in the video to
18 indicate that she doesn't understand these
19 concepts.

20 There is specifically the questioning
21 and examples about whether she knows what car Ms.
22 Pilcher drives, she answers no. There is the other
23 example about what you're supposed to say if you
24 don't understand something. She seems to clearly
25 understand -- not understand the chronometer

1 question, and she replies, I don't know what that
2 is. That's kind of the analysis that Ms. Pilcher
3 goes through with her.

4 She's, Your Honor, nine years old at
5 the time of the interview, and I think the Court
6 can evaluate her competency based on the entire
7 length of the interview, her age, as well as the
8 questions that Ms. Pilcher has asked of her during
9 the interview.

10 THE COURT: Anything further? Any
11 further argument, Mr. Schwacke, regarding this
12 issue? There may be other issues, but regarding
13 this issue, anything?

14 MR. SCHWACKE: Other than, I think I
15 had also argued previously that it -- in the
16 process, we kind of put the cart before the horse
17 where there's not been an opportunity yet by the
18 defense to cross-examine the child to see whether
19 or not there can be meaningful cross-examination
20 that would serve to qualify the victim as being
21 present and available for cross-examination.

22 THE COURT: The child is present and
23 available for cross-examination, correct?

24 MS. WILLIAMS: Yes; she is going to be
25 the first witness.

1 THE COURT: I don't know that the law
2 requires meaningful cross-examination, Mr.
3 Schwacke, just the availability for you to have
4 cross-examination. So with no further argument,
5 again, and this was my preliminary ruling, but as
6 we've had Ms. Pilcher articulate, I ruled -- under
7 17-23-175, I do find that the statements given were
8 in response to questioning conducted during an
9 investigative interview; they were preserved by
10 videotape; there was an explanation as to the power
11 going off why there was two separate segments.

12 The child at this time, based upon
13 statements and assertions by the State -- and I
14 have no reason to believe that she would not be
15 available to testify during trial and would be
16 subject to cross-examination of the elements of the
17 offense and the making of the out-of-court
18 statement.

19 The totality of the circumstances
20 surrounding the making of the statement do provide
21 guarantees with trustworthiness. In consideration
22 of the final factor of the guarantees of
23 trustworthiness, the Court did look to the
24 interview, which I did review, as well as Ms.
25 Pilcher's statements here today in court, that she

1 asked her to tell the truth and only tell the
2 truth.

3 The fact that the current education and
4 training conducting investigative interviews in
5 children does not articulate the difference between
6 the truth or a lie, or as previously talked about
7 the truth lie book, the agreement to tell the truth
8 was something that she has now been trained to do.

9 The statement was not elicited by
10 leading questions. The child was given the
11 opportunity to contradict or explain any questions
12 and the opportunity to clarify. The statement did
13 represent a detailed account of the alleged offense
14 and this statement did possess internal coherence.

15 Ms. Pilcher has received training and
16 has been trained in conducting investigative
17 interviews of children and, as of today's date,
18 she's conducted 445 interviews. I find that the
19 statements were made in compliance with 17-23-175,
20 and as such will be admissible in the trial of the
21 case.

22 Note your exception to my ruling, and
23 if it does become an issue that the child does not
24 testify, please renew and we will take that up
25 outside the presence of the jury.

1 can't at this point agree to it. 22 is a
2 photograph; I guess once relevance is established
3 for that I will be able to consent.

4 THE COURT: Okay.

5 MR. SCHWACKE: There is a diagram of
6 the trailer, Number 23, I've had a chance to review
7 that with my client. We will not object to that.

8 THE COURT: State's 23 into evidence
9 without objection.

10 (STATE EXH. 23 in evidence.)

11 MR. SCHWACKE: Number 24 is a part of
12 the Medical University Medical Assessment Report
13 diagram. At the appropriate time, whatever witness
14 they call on that, we may be able to agree, but at
15 this point I cannot.

16 THE COURT: Okay.

17 MR. SCHWACKE: 24 -- 25, 26, and 27 are
18 all tapes. They are both redacted and un-redacted
19 versions. At this point, I can't agree -- I need
20 to object for the record, but I can't agree.

21 MS. WILLIAMS: I think what we
22 discussed is, Mr. Schwacke has to make his
23 objection to the admission of statements in
24 general, but once the Court makes a ruling, if that
25 ruling is that the statements are coming in, we

1 have an agreement to a redacted version of that
2 statement.

3 THE COURT: All right. Are there any
4 other -- you have 25 -- 27 exhibits?

5 MS. WILLIAMS: At this point, there's
6 27. The only thing, there will be several other
7 exhibits that we will look at over lunch which are
8 physical items, the sexual assault kit, underwear,
9 things like that. I don't anticipate more than
10 three or four other items.

11 THE COURT: All right. Your client
12 waives formal arraignment?

13 MR. SCHWACKE: He does, Your Honor.

14 THE COURT: Bring in the jury.

15 (Jury panel in 10:27 a.m.)

16 THE COURT: Morning, ladies and
17 gentlemen. I'm Judge Kristi Harrington. I'm your
18 resident judge for Berkeley County. I have the
19 pleasure this week of presiding over a term of
20 general sessions, otherwise known as criminal
21 court.

22 Ladies and gentlemen, we must
23 administer an oath to you, take role, and then I
24 have a series of questions to determine your
25 general qualifications to serve as jurors. Ladies

COURT'S OPENING

1 Mr. Williams, you have been selected as
2 the foreperson in this case. And so what that
3 means is, you are the jury spokesperson. So if at
4 any time you or any of the other jurors need an
5 additional break or have any concern, please let
6 your foreperson know. Mr. Williams will always be
7 seated there and we will have a bailiff right next
8 to you so we will address that as quickly as we
9 can.

10 You are also responsible for writing
11 the verdict, but I will give you further
12 instructions when I instruct you on the law
13 applicable to this case. So I always need you to
14 sit there. Can you do that for me?

15 THE FOREPERSON: No problem.

16 THE COURT: To my two alternates, those
17 are your assigned seats. You may alternate with
18 each other, but those are the only two seats that
19 you may occupy. The rest of you may sit, with the
20 exception of those three seats, wherever you choose
21 to.

22 You may have noticed this time the
23 attorneys and the parties involved in this case and
24 members of the audience were standing. This is out
25 of respect for your new position as judges of the

COURT'S OPENING

1 facts. So please come in, take your seat as
2 quickly as you can because they are going to stand
3 until all 14 of you are seated.

4 I have provided you notepads. That
5 means you may take notes throughout the progress of
6 the trial. Please remember, some of us are better
7 note-takers. One juror's notes are no more correct
8 or accurate than another juror's notes. Please be
9 mindful that while you are taking notes, as I do, I
10 have a tendency to look down, you may actually miss
11 something that is happening in front of you during
12 the presentation of the witnesses and the
13 testimony.

14 There will be exhibits that will be
15 made part of the record of this case. You may not
16 have an opportunity to view those, but once they're
17 made a part of the record, those exhibits go back
18 with you to the jury room when you retire to
19 deliberate. Don't be concerned if you don't have
20 an opportunity to view them to your satisfaction.
21 You will be given an opportunity to view all the
22 exhibits that are made part of the record in this
23 case.

24 If at any time during your
25 deliberations you would need some testimony played

COURT'S OPENING

1 back, we will bring you back into the courtroom, or
2 my court reporter will go to the jury room and play
3 that testimony back to you. So don't feel that you
4 need to take notes word for word as to what's
5 happening. There is the availability for us to
6 play testimony back for you.

7 Ladies and gentlemen, the case that we
8 are about to try is the case of the State versus
9 Jeffrey Whitsett, Defendant. What I now say is
10 intended to serve as an introduction to the trial
11 of this case. These remarks are not a charge on
12 the law in this case.

13 I will instruct you on the law
14 applicable to this case at the end of the trial
15 before you retire to consider the verdict. This is
16 an explanation of the procedures that we will
17 follow so that you are in a better position to
18 understand what is happening here today.

19 The defendant is charged with seven
20 indictments -- I read those to you during the
21 general qualifications -- filed in this court with
22 the crimes of criminal sexual conduct with a minor
23 in the first degree, five counts; one count of
24 criminal sexual conduct with a minor, third degree;
25 and one count of exposing another to HIV virus.

COURT'S OPENING

1 I will explain the elements of each of
2 those crimes at a later time. Please remember the
3 indictment is simply the charge by which this case
4 is brought into court. It is not in any sense
5 evidence of the allegations it contains.

6 The defendant has pled not guilty to
7 each indictment. The State, therefore, has the
8 burden of proving each of the elements of the
9 indictments beyond a reasonable doubt. It is your
10 duty, ladies and gentlemen, to decide whether the
11 State has met its burden. Your purpose as jurors
12 is to find and determine the facts.

13 You are the sole judges of the facts in
14 this case. If at any time I make any comment
15 regarding the facts in this case, you must
16 disregard that comment. You are to determine the
17 facts from the testimony you hear and the other
18 evidence that is introduced in court. It is up to
19 you to determine the inferences which you feel may
20 be properly drawn from the evidence.

21 It is especially important that you
22 perform your duty in determining the facts
23 diligently and conscientiously because ordinarily
24 there is no way to correct an erroneous
25 determination of the facts by a jury.

COURT'S OPENING

1 On the other hand and with equal
2 emphasis, the same law that makes you the judges of
3 the facts makes me the judge of the law. The law
4 as given by this court is the only law you may
5 consider. You must accept it and follow it, even
6 if you don't agree with it.

7 I cannot tell you what I think the
8 facts are, and you cannot disagree with me about
9 what the law is or what the law should be. Your
10 job is to take the law as I give it to you, apply
11 it to the facts as you find them from the testimony
12 of the witnesses and other evidence that is
13 introduced, and after doing that, you will render
14 your verdict, a verdict under the solemn oath that
15 you just took as jurors.

16 Until I tell you that you may begin
17 your deliberations, you must not discuss this case
18 with anyone. That includes your fellow jurors, but
19 it also includes your friends, your family members,
20 or anyone else. It includes any face-to-face
21 discussions, any handwritten note discussions, any
22 social media, any texting, blogging, anything of
23 that nature.

24 Time does not permit me to tell you how
25 not to do it, so the simple answer is, you may not

COURT'S OPENING

1 discuss this case with anyone in any format until I
2 tell you otherwise.

3 You must not do any independent
4 investigations. You either -- or experiments of
5 this kind. You must not read, watch, or listen to
6 any news accounts regarding this case should there
7 be any. You must decide this case based solely on
8 the evidence presented here in this courtroom.
9 That means, again, you must not conduct any
10 independent research about this case, the facts of
11 this case, the evidence presented in this case, or
12 the people or organizations involved in any way in
13 this case.

14 Please do not try to find out any
15 information from any source outside of the
16 courtroom.

17 Ladies and gentlemen, it is your
18 obligation to follow the Court's rules.

19 Ladies and gentlemen, please do not
20 read, watch, listen to any news accounts regarding
21 this case. It is important that you are not
22 influenced by anything that you have seen or heard
23 outside of this courtroom. It is important, if you
24 become aware of another juror's violation, that you
25 report that violation to me immediately.

COURT'S OPENING

1 It is important that you keep an open
2 mind and not decide any issue in this case until
3 all of the evidence has been presented, the parties
4 made their closing arguments, and I have instructed
5 you on the law applicable to this case.

6 It is your sole responsibility to
7 determine the guilt or innocence of the defendant,
8 and your verdict must be based solely on the
9 evidence as it is presented to you in this trial
10 and on the law as I instruct you throughout the
11 trial and at the close of the trial before you
12 retire to consider your verdict.

13 In just a moment, the Solicitor is
14 going to make what is called an opening statement
15 in which the Solicitor will explain to you the
16 issues in this case, or at least what the Solicitor
17 believes the issues to be. The attorney for the
18 defendant may also make an opening statement,
19 although he's not required to do so at this time.

20 Please remember what the attorneys tell
21 you in their opening statements, as well as in
22 their closing arguments, is not evidence in this
23 case. It is only their contention as to what the
24 evidence will show you.

25 The evidence in this case will be

COURT'S OPENING

1 presented to you by the testimony of sworn
2 witnesses from that witness stand, as well as the
3 exhibits that will be introduced into evidence.

4 From time to time throughout the trial,
5 you may hear an attorney state an objection, and I
6 may ask for the attorneys to approach the bench or
7 I might find it necessary to excuse you from the
8 courtroom for a short while. If I do have the
9 attorneys approach the bench, do not try to
10 overhear us or read their lips.

11 Please do not think we were trying to
12 hide anything from you. The reason that I do this
13 is because sometimes it is necessary for me to make
14 a comment regarding the facts in order to issue a
15 ruling on the law. So I may excuse you so that in
16 no way anything I say or do throughout the progress
17 of this trial influences you of your findings of
18 the facts.

19 In determining what the facts are in
20 this case, you must decide whether or not testimony
21 of the witnesses is believable. It is my
22 responsibility to determine as a matter of law as
23 to whether certain testimony is admissible. Once
24 it's admitted, whether or not you believe it is for
25 you to determine.

STATE'S OPENING

1 In deciding whether to believe a
2 witness, you have the right to consider interest of
3 a witness, the bias of a witness, the prejudice of
4 a witness, the opportunity for the witness to have
5 seen the matters and things about which the witness
6 testifies, as well as the way the witness acts on
7 the witness stand. You have the right to consider
8 anything in the record that will help you evaluate
9 the testimony of the witnesses.

10 That means it's your duty to pay close
11 attention. Please do not let your thoughts wander
12 or shut your eyes for just a brief moment. It's
13 your responsibility to listen to the witnesses, pay
14 close attention to the attorneys and to the Court
15 so at the end of this case, after you have heard
16 closing arguments on behalf of counsel and I have
17 instructed you on the law applicable to this case,
18 you will be in a position to determine the facts
19 that you have found and apply those facts to the
20 law as I give it to you and render your verdict.

21 Ladies and gentlemen, please give your
22 strict attention to Ms. Williams -- Ms. Sas.

23 MS. SZYMCZYNSKA-SAS: Thank you, Your
24 Honor.

25 She was nine. She went swimming, she

STATE'S OPENING

1 hung out with her friends, she liked the color
2 pink, she loved drawing, especially cats. He was
3 25. He was the adult she was supposed to listen
4 to. He was her stepfather. She is **Minor**
5 and she is the victim in this case.

6 He is the defendant, Jeffrey Whitsett,
7 sitting here in the courtroom.

8 In the month leading up to May 30th,
9 2015, in a place which was supposed to be her safe
10 haven and her home, in her mother's own bedroom,
11 **Minor** was sexually assaulted by this defendant.
12 Multiple times. Anally, vaginally, with his penis,
13 with his fingers. He made her perform oral sex on
14 him and he performed oral sex on her.

15 This happened time after time after
16 time when her mother was away at work, when her
17 aunt and uncle and her cousin were out of the
18 house, when her little brother was playing video
19 games.

20 And as if this was not bad enough, this
21 defendant was HIV positive. He was aware of the
22 fact that he was HIV positive, and he exposed her
23 to the HIV virus.

24 Now, you will hear a lot of things this
25 week and see a lot of things which will probably be

STATE'S OPENING

1 very uncomfortable. Things that you will hear and
2 see that probably do not go with a nine-year-old
3 child and are not mentioned when you talk about a
4 nine-year-old child.

5 Based on all of these individual acts,
6 the defendant has been charged with five counts of
7 criminal sexual conduct with a minor in the first
8 degree; one count of criminal sexual conduct with a
9 minor, third degree; and exposing another to HIV.

10 And Judge Harrington will later
11 instruct you on the law that you are to follow and,
12 certainly, you defer to her. We wanted to briefly
13 show you the elements that the State has the burden
14 of proving.

15 Now, criminal sexual conduct, which we
16 commonly refer to as CSC, with a minor, third
17 degree, what we have to prove is that the victim
18 was over the age -- the defendant was over the age
19 of 14, the defendant willfully and lewdly
20 committed, or attempted any lewd or lascivious act
21 upon, on or with the body or any parts of the
22 members thereof, the child under the age 16, with
23 the intent of arousing, appealing to or gratifying
24 the lust or passions or sexual desires of such a
25 person or of such a child.

STATE'S OPENING

1 The criminal sexual conduct of a minor,
2 first degree, we have to prove that the actor
3 engages in a sexual battery and that the victim was
4 less than 11 years old at the time.

5 What is a sexual battery? That's what
6 he's charged with, five counts of criminal sexual
7 conduct, first degree, for each count of sexual
8 battery. Sexual battery is defined as sexual
9 intercourse, cunnilingus, fellatio, anal
10 intercourse, or any intrusion, however slight, of
11 any part of a person's body or of any object into
12 the genital or anal openings of another person's
13 body except when such intrusion is accomplished by
14 medically recognized treatment or diagnostic
15 purposes.

16 He's also charged with exposing others
17 to human immunodeficiency virus, commonly referred
18 to as HIV. Under that statute we have to prove the
19 following elements: That it's unlawful for a
20 person who knows that he's infected with HIV to
21 knowingly engage in such sexual intercourse,
22 vaginal, anal, or oral, any of those, with another
23 person without first informing that person of his
24 HIV infection. And when that person forcibly
25 engages in sexual intercourse, vaginal, anal, or

STATE'S OPENING

1 oral without the consent of another person
2 including one's legal spouse. Either of these
3 three elements.

4 Today **Minor** is 11, almost 12. You
5 will get to hear from her on this very stand this
6 week. She probably won't tell you about swimming
7 and hanging out with her friends, she won't talk to
8 you about school and about still loving cats.

9 What she will tell you mostly about is
10 multiple times she was assaulted by this defendant.
11 She will tell you where it happened, how it
12 happened. She'll tell you about what led her to
13 eventually tell on the very person that was
14 supposed to protect her. She probably won't recall
15 specific dates and period of times.

16 You will also hear this defendant's own
17 words in an interview he gave to law enforcement.
18 And in that statement, time after time, you will
19 hear law enforcement asking him if he
20 inappropriately touched **Minor** And his response
21 to that question was, I don't know. He blamed that
22 on blackouts. And you will get to hear that
23 throughout his statement, as long as it is, time
24 after time after time.

25 You will also get to hear about medical

DEFENDANT'S OPENING

1 exams, medications. You will get to hear about law
2 enforcement investigations. You will hear from
3 multiple members of Berkeley County Sheriff's
4 Office. You will get to hear about the interviews
5 they conducted, and you will hear about people who
6 were in what we call chain of custody for all the
7 evidence that was collected by law enforcement.

8 That testimony might be a little
9 tedious, maybe a little boring, but the State has
10 the burden to prove the defendant guilty, and we
11 have to do so by introducing certain evidence. And
12 we accept that burden. You will get to hear from
13 people who tested that evidence from SLED. They
14 will tell you what they found and what they tested
15 and how they did it.

16 The State is competent that once you
17 hear all of the testimony on this stand, once you
18 hear all of -- see all of the physical evidence
19 introduced, you will find this defendant guilty and
20 you will be firmly convinced of his guilt at the
21 end of this trial.

22 THE COURT: Mr. Schwacke?

23 MR. SCHWACKE: Thank you, Your Honor.

24 Afternoon. Thank you for being here
25 this week. I'm going to address it because we were

DEFENDANT'S OPENING

1 all in here this morning, and when the first charge
2 was read out there was an audible gasp in the
3 courtroom. There is this horrible crime that we
4 are going to have to sit in judgment on and we
5 might get selected.

6 And when the charges got read again,
7 the next one, the next one, and the one after that,
8 and we got to the last charge, there was still even
9 more gasps.

10 The State, again now, in going through
11 their presentation has once again presented what
12 they believe is their evidence. As he sits there
13 right now and throughout this entire trial, he's
14 innocent. He's innocent right this second.

15 So let those people who gasped not
16 understand it, because I believe we've selected
17 people that can keep their promise and oath they
18 just made. That they are going to not hold things
19 against people; that they're going to sit and
20 listen to the evidence; that they're not going to
21 make any decision or form an opinion in their mind
22 until all of the evidence is presented, at the end
23 of the case and not until then.

24 Now these are adult charges. I am
25 representing my client. I have to ask some

DEFENDANT'S OPENING

1 questions I would prefer not to ask of a young
2 child, but I represent him and I have to do that;
3 because this is about seeking and finding justice,
4 and that information needs to come out.

5 So do not hold that against my client
6 when I have to do that, because that is something
7 that I am going to do in representing him to the
8 fullest of my ability.

9 Again, the judge has told you
10 reasonable doubt. And I invite you to listen to
11 the evidence throughout this trial. And if you
12 start to pick up on things that are reasonable,
13 that make you have a question about it, then when
14 you have your opportunity as a jury to go in the
15 back and discuss your opinion with someone else's
16 opinion and you-all try to reach a consensus, hold
17 on to that until you don't believe it's no longer a
18 reasonable doubt.

19 Reasonable doubt can mean a lot of
20 things. A question was asked today, do you believe
21 CSI and Law and Order are reality? Well, it's not
22 reality, but it's based on reality. And many times
23 in those cases, they are cut from the headlines in
24 other cases.

25 So it's not unheard of for a reasonable

DEFENDANT'S OPENING

1 doubt to spring from something as minimal as a
2 bullet that's one centimeter too small, or odds
3 that are greater than one in 10,000 or 1 in 1,000
4 or 1 in 100.

5 If something like that gets into your
6 head and you can't shake it loose when you're
7 deliberating, then it's something that you need to
8 consider. And that's what will help me in
9 representing my client, is making sure that we
10 present our side in terms of questions -- we don't
11 have to prove a thing.

12 The defendant never has to prove
13 anything. So how do you do it with some of the
14 allegations that you have?

15 The State has already told you, we
16 don't remember certain dates. It doesn't matter.
17 It could happen any time. They don't have to prove
18 a specific date, that's what the law is. But the
19 bottom line is, how do you defend yourself on that?
20 If you can't alibi yourself, you can't do any of
21 those things.

22 So that's why we're going to be trying
23 to present the holes in the State's case,
24 reasonable doubt, so that when you go and reach
25 your verdict it will be from the heart.

DEFENDANT'S OPENING

1 And, again, I thank you for being here
2 and, again, I apologize for the questions that have
3 to come, but I have to represent my client and I
4 have to do it the way that I know best to do that.
5 So don't hold it against me. Thank you.

6 THE COURT: Call your first witness.

7 MS. WILLIAMS: May we approach very
8 briefly?

9 (Bench conference.)

10 THE COURT: Ladies and gentlemen, there
11 is a brief matter that I must take up outside of
12 your presence. So this is a good time to go ahead
13 and take your midafternoon comfort break. Leave
14 your notepads right where they are or take them
15 with you.

16 Please rise for the jury.

17 (Jury out, 1:58 p.m.)

18 THE COURT: Thank you. Be seated.
19 Please call Ms. Myers.

20 MS. WILLIAMS: Minor [REDACTED].

21 PROFFERED TESTIMONY

22 Minor [REDACTED].

23 being first duly sworn, testified as follows:

24 THE CLERK: Please state your full name
25 and spell your last.

Minor [REDACTED] - PROFFERED DIRECT BY MS. WILLIAMS

1 THE WITNESS: Minor [REDACTED]-S.

2 DIRECT EXAMINATION

3 BY MS. WILLIAMS:

4 Q. Minor [REDACTED] I'm going to ask you a few
5 questions, and then we are going to bring the jury
6 in and ask some more questions. Try to talk into
7 the microphone.

8 Minor [REDACTED], do you know the difference
9 between the truth and a lie?

10 A. Yes.

11 Q. So if I were to say to you that I'm
12 wearing a bright pink suit, would that be the truth
13 or a lie?

14 A. A lie.

15 MS. WILLIAMS: Please let the record
16 reflect that I'm wearing a dark blue suit.

17 Q. What happens to you in your house when
18 you tell a lie?

19 A. I usually get grounded.

20 Q. Okay. And what would you think would
21 happen if someone told a lie?

22 A. Official trouble, I guess.

23 Q. Official trouble? Okay. So you think
24 that somebody would get in trouble if they got up
25 there and swore to tell the truth and they lied?

Minor [REDACTED] - PROFFERED EXAM BY THE COURT

1 A. Yes.

2 MS. WILLIAMS: Mr. Schwacke, do you
3 have any questions?

4 MR. SCHWACKE: I don't have any
5 questions.

6 EXAMINATION

7 BY THE COURT:

8 Q. Tell me how old you are, Minor [REDACTED].

9 A. Eleven.

10 Q. When is your birthday?

11 A. [REDACTED].

12 Q. And what does grounded mean to you?

13 What happens when you get grounded?

14 A. I sit in my room and think about what I
15 did.

16 Q. Do you like that?

17 A. No.

18 Q. And then you said, official trouble.

19 What do you think that means?

20 A. Bad record, I guess.

21 Q. And is it a good thing or a bad thing
22 to be in official trouble?

23 A. Bad thing.

24 Q. You took an oath. Do you remember what
25 you said to my clerk, Miss Kristi, when you put

Minor

- PROFFERED EXAM BY THE COURT

1 your hand on the Bible?

2 A. I said I do.

3 Q. What did you say; do you remember?

4 A. I said I would tell the truth and
5 nothing but the truth.

6 Q. And is that what you're going to do
7 here today?

8 A. Yes.

9 THE COURT: Okay. Thank you.

10 Based upon my questions, anything
11 further, Ms. Williams?

12 MS. WILLIAMS: Nothing further.

13 MR. SCHWACKE: No, Your Honor.

14 THE COURT: And is there any challenge
15 to the competency? She is presumed competent.

16 MR. SCHWACKE: For the record, I would
17 make a challenge to her competency. Again, we're
18 going to be dealing also with the video at some
19 point that was two years ago and not now. So there
20 is no way to corroborate this understanding of
21 truth and veracity as to what happened two years
22 ago. That's all.

23 THE COURT: Thank you. So we're going
24 to -- I'm going to let you step down and you're
25 going to have a seat next to your support person,

1 and then the jury is going to come in, and we're
2 going to swear you in all over again. So she knows
3 she's already done it, but we have to do it in
4 front of the jury. Do you understand?

5 THE WITNESS: Yes.

6 THE COURT: I need you to speak loudly.
7 Can you do that for me? Let's practice.

8 THE WITNESS: Like this?

9 THE COURT: Louder.

10 THE WITNESS: Like this?

11 THE COURT: Do you play outside?

12 THE WITNESS: No.

13 THE COURT: Do you play any sports?

14 THE WITNESS: No.

15 MS. WILLIAMS: Only that I would like
16 her to come across as she usually is. I want her
17 to speak into the microphone, but, please, let's
18 not have her shout like she does outside.

19 THE COURT: She doesn't play outside,
20 she said. I don't want to interrupt you, but
21 understand that if I can't hear you, I know that
22 all of the jurors cannot hear you, and I just want
23 you to know that I may tell you to speak up.

24 And it is important -- this is my court
25 reporter, Miss Denise. And on that screen is

1 coming up everything that I'm saying, as well as
2 everything that you're saying. And I already see
3 some mumble, mumble, mumble, that she's putting
4 down, and that's not good.

5 So it is vitally important that you
6 speak as loudly as you can, and everybody wants you
7 to be comfortable, but it is important that
8 everyone hears what you say. Do you understand?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: All right. That was great.
11 Now speak just like that so we can all hear you.
12 You may step down.

13 And, Mr. Schwacke, if you can't hear
14 her, let me know as well.

15 MR. SCHWACKE: Thank you.

16 THE COURT: Anything before we bring in
17 the jury?

18 MS. WILLIAMS: No.

19 MR. SCHWACKE: No.

20 THE COURT: Bring them in.

21 (Jury in, 2:05 p.m.)

22 THE COURT: Thank you. Please be
23 seated. Call your first witness.

24 MS. WILLIAMS: Thank you. The State
25 calls **Minor**.

Minor [REDACTED] - DIRECT EXAM BY MS. WILLIAMS

1 Minor [REDACTED]

2 being first duly sworn, testified as follows:

3 THE CLERK: Please state your full name
4 and spell your last.

5 THE WITNESS: Minor [REDACTED]

6 DIRECT EXAMINATION

7 BY MS. WILLIAMS:

8 Q. Minor [REDACTED], how old are you?

9 A. Eleven.

10 Q. And when are you going to be 12?

11 A. [REDACTED]

12 Q. Okay. And you are off from school
13 right now?

14 A. Yes, ma'am.

15 Q. Where do you go to school when school
16 is in?

17 A. Cane Bay Middle.

18 Q. What grade did you just finish?

19 A. Fifth.

20 Q. And did you have a favorite subject?

21 A. Social studies.

22 Q. How about a favorite teacher?

23 A. Mrs. Ross.

24 Q. Okay. Do you have any pets?

25 A. Two dogs, two cats.

Minor

- DIRECT EXAM BY MS. WILLIAMS

- 1 Q. Okay. What's your favorite?
- 2 A. The cats.
- 3 Q. Do you like to draw pictures of cats?
- 4 A. Yes.
- 5 Q. And do you have friends?
- 6 A. Yes, I do.
- 7 Q. And are those mostly school friends or
- 8 people on your block?
- 9 A. Yeah, mostly.
- 10 Q. And who lives in your house right now?
- 11 A. My mom, my brother, and me.
- 12 Q. And what is your brother's name?
- 13 A. Adam.
- 14 Q. How old is he?
- 15 A. Nine.
- 16 Q. Who used to live in your home?
- 17 A. My mom, my brother, and my uncle, my
- 18 aunt and my cousin.
- 19 Q. Okay. What are their names?
- 20 A. My cousin's name is Melyssa, my uncle's
- 21 name is Marco, and my aunt's name is Sylvia.
- 22 Q. And was there another person that lived
- 23 in the home at that time?
- 24 A. Yes.
- 25 Q. Who was that?

Minor

- DIRECT EXAM BY MS. WILLIAMS

1 A. Jeff.

2 Q. Okay. And when you say, Jeff, is that
3 Jeff Whitsett?

4 A. Yes.

5 Q. And who was he related to in your
6 family?

7 A. He was married to my mom.

8 Q. Okay. And do you remember how old you
9 were when Jeff came into your life?

10 A. I don't remember.

11 Q. Okay. Do you remember how old you were
12 when he moved out?

13 A. I was nine.

14 Q. Okay. And when Jeff lived at the house
15 with you-all, who would -- let me back up a minute.
16 Did your mom work at that time?

17 A. Yes.

18 Q. Do you remember where she worked?

19 A. Dick's Supporting Goods.

20 Q. And did she have regular hours or --

21 A. I don't remember.

22 Q. Okay. Well, when mom would go to work,
23 who would watch you-all?

24 A. Jeff.

25 Q. Was it always Jeff or was it sometimes

Minor - DIRECT EXAM BY MS. WILLIAMS

1 your aunt and uncle?

2 A. I don't recall.

3 Q. Okay. Were there times when Jeff was
4 watching you when your aunt and uncle were gone?

5 A. Yes.

6 Q. Where would they go?

7 A. Usually to the gym or a restaurant.

8 Q. Okay. How old was -- can you tell me
9 her name again?

10 A. Melyssa.

11 Q. Melyssa. Okay. And where is your
12 family from, your mother's side?

13 A. Brazil.

14 Q. So when you say Melyssa, is like
15 Melissa, but the pronunciation is Melyssa?

16 A. Yes.

17 Q. And when they would go to the gym, who
18 would be left in the home?

19 A. My brother, me, and Jeff.

20 Q. And what kind of things would Adam do
21 during that time when Jeff was watching you-all?

22 A. Play video games.

23 Q. Okay. And when Jeff first came in your
24 life, how did he treat you?

25 A. Treated me nicely.

Minor [REDACTED] - DIRECT EXAM BY MS. WILLIAMS

1 Q. And when you say, nicely, like what
2 kind of things would he do that were nice?

3 A. Gave me more privileges and usually
4 rewards for things that I wouldn't do.

5 Q. Okay. That sounds like a pretty good
6 deal. Did you spend time together?

7 A. Yes.

8 Q. What kind of things would you do?

9 A. Just sit around or go roller skating or
10 something like that.

11 Q. Did you get presents or anything like
12 that?

13 A. Yes.

14 Q. What kind of presents?

15 A. Usually things that I asked for or
16 candy or something related to that.

17 Q. What about Adam?

18 A. Adam usually not often, but sometimes.

19 Q. Okay. So did he spend time with Adam
20 too?

21 A. Not as much as me, but, yes.

22 Q. And why does Jeff not live there
23 anymore?

24 A. Because he hurt me and...

25 Q. Okay. Well, let's talk about that. Do

Minor [REDACTED] - DIRECT EXAM BY MS. WILLIAMS

1 you remember how many times he hurt you?

2 A. I don't remember.

3 Q. Okay. Do you remember how old you were
4 when it started?

5 A. I don't remember.

6 Q. Were you -- you said he left when you
7 were nine?

8 A. Yes.

9 Q. Was that because you told somebody?

10 A. Yes.

11 Q. Who did you tell?

12 A. I told my mom.

13 Q. And so when you told your mom, when was
14 the last time he had done it?

15 A. I don't remember.

16 Q. Was it when you were -- was it within
17 the month?

18 A. Yes.

19 Q. Okay. So you told your mom when you
20 were nine?

21 A. Yes.

22 Q. And the last time Jeff hurt you was
23 within the month that you told?

24 A. Yes.

25 Q. Okay. Let's talk about some of the

Minor - DIRECT EXAM BY MS. WILLIAMS

1 things that Jeff did to hurt you. Okay. Can you
2 tell me who would be there when that would happen?

3 A. Jeff, me, and Adam.

4 Q. Okay. And so tell me how, one of the
5 times, like how that would unfold, where you would
6 go and what would happen..

7 A. Usually he would send Adam to play his
8 game and he would take me into the room. And I
9 don't remember much stuff from that; although, I
10 remember I was forced to act normal after and not
11 act tired, but just don't tell anything to anybody.

12 Q. Okay. Well, let's look at some
13 pictures to help you.

14 Your Honor, I am going to show her
15 what's been previously marked as State's 3, 5, 6
16 and 9. I think these have been admitted without
17 objection.

18 MR. SCHWACKE: Yes, without objection.

19 THE COURT: Okay. That was in that
20 packet 3 through 17 admitted without objection.

21 MS. WILLIAMS: Yes, Your Honor.

22 May I approach?

23 THE COURT: You may.

24 BY MS. WILLIAMS:

25 Q. Minor, without talking about the

Minor - DIRECT EXAM BY MS. WILLIAMS

1 pictures, tell me if you recognize what these
2 pictures are.

3 A. Pictures of my home two years ago.

4 Q. I'm going to put these pictures up
5 here. I want you to turn around and look at them
6 and explain to the jury what these are pictures of.

7 Minor, this is a pointer. Just push
8 the red button.

9 MS. WILLIAMS: Can you please put
10 State's 3 up?

11 BY MS. WILLIAMS:

12 Q. What's that a picture of?

13 A. That was a previous picture of the
14 front of my home.

15 Q. Okay. And is that where you still
16 live?

17 A. Yes.

18 Q. Is that where you lived with Jeff?

19 A. Yes.

20 Q. What county is that in?

21 A. Berkeley County.

22 MS. WILLIAMS: Okay. And can you put
23 up State's 6, please?

24 Q. Tell us what that's a picture of.

25 A. That is a picture of my living room.

Minor - DIRECT EXAM BY MS. WILLIAMS

1 Q. Okay. Now, with the pointer, show us
2 where your mother's room would be in that picture.

3 A. Somewhere back here behind the kitchen.

4 Q. So point to the kitchen and show us
5 where Adam would be playing video games.

6 A. (Indicating.)

7 Q. So the kitchen is between your mother's
8 room and where Adam was?

9 A. Yes.

10 MS. WILLIAMS: And please put up
11 State's 9.

12 BY MS. WILLIAMS:

13 Q. Tell me what that's a picture of.

14 A. A picture of my mom's room.

15 Q. What happened in your mom's room?

16 A. I got hurt.

17 Q. Okay. And were you -- you can take
18 that down. You can turn around, Minor.

19 Minor you are going to have to
20 explain to us some of the details of the ways that
21 you were hurt. So if you could tell me --

22 MS. WILLIAMS: Please put up State's
23 18.

24 BY MS. WILLIAMS:

25 Q. There's going to be another diagram

Minor

- DIRECT EXAM BY MS. WILLIAMS

1 behind you. If you can turn around -- I have you
2 turning all over the place. What part of your body
3 was hurt by Jeff?

4 A. (Indicating)

5 Q. What are you pointing to there? What
6 do you call that?

7 A. Female private.

8 Q. What did you used it call it when you
9 were nine; do you remember?

10 A. I don't remember.

11 Q. What's the Brazilian word for that?

12 A. Pedeckka. (Phonetic.)

13 Q. Can you say that word again?

14 A. Pedeckka.

15 Q. That part of the body, the female part
16 that you were pointing to --

17 MS. WILLIAMS: Please let the record
18 reflect that she is pointing to a diagram pointing
19 to the vagina of the child in the picture.

20 Q. What part of Jeff touched your vagina?

21 A. His private.

22 Q. Okay. And when you say his private,
23 are you talking about his penis?

24 A. Yes.

25 Q. You can turn back around. Before you

Minor

- DIRECT EXAM BY MS. WILLIAMS

1 do, what other parts of your body were touched by
2 Jeff?

3 A. (Indicating.)

4 Q. Okay. What are you pointing to on the
5 second picture?

6 A. The other girl's privates.

7 Q. What do you call that?

8 A. I don't have names for them.

9 Q. Is it the rear end, the bottom, the --

10 A. Yeah, the bottom.

11 Q. Okay. And what part of Jeff's body
12 touched that part?

13 A. His private.

14 Q. Are you talking about his penis?

15 A. Yes.

16 Q. And when you were pointing to the top
17 part of the girl, what part of Jeff's body touched
18 those parts?

19 A. His hands.

20 Q. Okay. And what do you call those parts
21 on a girl?

22 A. The chest.

23 Q. Okay.

24 A. Thank you.

25 Q. Is there any other part of your body

Minor - DIRECT EXAM BY MS. WILLIAMS

1 that touched Jeff's body?

2 A. No.

3 Q. What about your mouth?

4 A. I think so. I can't remember.

5 Q. Okay. You can turn back around. And
6 you can take that down.

7 Minor, when you would go into the
8 bedroom with Jeff and he would hurt you, how would
9 you be laying and how would he be laying?

10 A. Sometimes I would be on my back on the
11 bed and he would be on his knees.

12 Q. Okay. And if you were on your back,
13 how were your legs?

14 A. They were open.

15 Q. Okay. And he would be on his knees?

16 A. Yes.

17 Q. And what part of his body was touching
18 yours?

19 A. His private.

20 Q. And where was it going?

21 A. In my private.

22 Q. And did it go inside your private?

23 A. Yes.

24 Q. Or something else? Okay. And when
25 would that stop?

Minor [REDACTED] - DIRECT EXAM BY MS. WILLIAMS

1 A. When the white stuff came out.

2 Q. Okay. And when the white stuff came
3 out, where did that go?

4 A. Usually in my mouth, but I could spit
5 it out.

6 Q. You were allowed to spit it out?

7 A. Yes.

8 Q. So if his private was in your private,
9 how did it get into your mouth?

10 A. He would put it in my mouth.

11 Q. Okay. Before it came out?

12 A. Yes.

13 Q. And did his mouth touch other parts of
14 your body besides your chest?

15 A. My private.

16 Q. Okay. And so tell me about what
17 position you would be in when his mouth would touch
18 your private.

19 A. I would still be on my back, he would
20 be on his stomach.

21 Q. Were there times you were in a
22 different position?

23 A. Not that I can remember.

24 Q. Do you remember talking about being on
25 your stomach?

Minor

- DIRECT EXAM BY MS. WILLIAMS

1 A. I don't remember.

2 Q. You pointed to the picture of your
3 bottom. And what part of Jeff's body went into
4 your bottom?

5 A. His private.

6 Q. Okay. And did it go inside your
7 bottom?

8 A. Yes.

9 Q. Okay. And did anything happen to his
10 body when that happened?

11 A. Not that I can remember.

12 Q. Okay. And how many times did this
13 happen, do you think?

14 A. I don't know.

15 Q. Was it more than one time?

16 A. Yes.

17 Q. More than five times?

18 A. Yes.

19 Q. And you said you were allowed to spit
20 out the white stuff. Were there other things he
21 told you to do or not to do when this was going on?

22 A. He told me not to tell anyone.

23 Q. Okay. What would happen if you told
24 somebody?

25 A. It was like there was death threats

Minor [REDACTED] - DIRECT EXAM BY MS. WILLIAMS

1 sometimes, but usually I feared what would happen,
2 so

3 Q. And you keep saying that he hurt you,
4 did it hurt your body when he was putting his
5 private inside of you?

6 A. Yes.

7 Q. And did you ever -- did he ever tell
8 you anything about that, about anything that you
9 should do about that?

10 A. No.

11 Q. Okay. Were you allowed to say
12 anything?

13 A. No.

14 Q. Did anything ever happen to your body
15 after these incidents would occur?

16 A. Sometimes I would get tired and I would
17 try to lay down, but he came and he said that I
18 needed to act normal. Like, I can't act tired or
19 else somebody would be suspicious.

20 Q. You said white stuff came out of his
21 body. Did anything come out of your body?

22 A. Sometimes blood.

23 Q. Where would it go?

24 A. In my underwear.

25 Q. Okay. And did he ever know about that?

Minor [REDACTED] - DIRECT EXAM BY MS. WILLIAMS

1 A. Yes.

2 Q. And what would happen?

3 A. He would take it and put it in
4 somewhere, and said he would burn it.

5 Q. He would tell you he would burn it?

6 A. (Nodding.)

7 Q. And what underwear were you able to
8 use?

9 A. My mom's.

10 Q. Did they fit you?

11 A. No.

12 Q. And did Jeff ever put anything on his
13 private before he would hurt you?

14 A. Sometimes Vaseline.

15 Q. Where would he get the Vaseline from?

16 A. My mom's top drawer.

17 MS. WILLIAMS: Okay. Can you put the
18 last picture you had up there.

19 Q. I'm going to have you turn around one
20 more time, I'm sorry. Show us where the Vaseline
21 was.

22 A. Right here. (Indicating.)

23 Q. And how were you laying on the bed?
24 Like where was your head and where was your leg?

25 A. I was laying this way. (Indicating.)

Minor [REDACTED] - DIRECT EXAM BY MS. WILLIAMS

1 Q. Okay. And outside that door is the
2 kitchen right there before you get to the living
3 room?

4 A. The kitchen is over here through this
5 door. That door is the bathroom.

6 Q. And there's some pictures on the wall.
7 Do you remember what those pictures are?

8 A. Yes..

9 Q. Tell us what those pictures are.

10 A. This picture is of my mom and her mom
11 holding my younger sister. This is of Adam. These
12 are two of my sisters. This is me and my sister.

13 Q. How old are you in the picture of you
14 and your sister?

15 A. I don't know, but I looked very young.
16 This is my mom as a child, and this is my brother,
17 very young. These three have some -- this is me as
18 a young child. These have Portuguese words on
19 there. This is of my mom's family. This is a
20 picture of all of us. And this is another one of
21 my mom's family, another one of all of us, and this
22 is me as a baby, and then another one of me as a
23 baby.

24 Q. So the ones on the other side are baby
25 pictures of you, and then the ones you pointed to

Minor [REDACTED] - DIRECT EXAM BY MS. WILLIAMS

1 first are maybe pictures of you as a toddler?

2 A. Yes.

3 Q. Okay. Did you tell right away?

4 A. No.

5 Q. And why was that?

6 A. I was scared about what was going to
7 happen.

8 Q. Okay. And did you finally tell?

9 A. Yes.

10 Q. I need to ask you one more question.

11 Did Jeffrey ever put his finger in any part of your
12 body?

13 A. Yes.

14 Q. Where was that?

15 A. In my private.

16 Q. Okay. So when you told finally, why
17 did you tell?

18 A. I couldn't take it anymore.

19 Q. And who did you tell?

20 A. I told my mom.

21 Q. And what did she do?

22 A. She immediately kicked him out and
23 called off of work.

24 Q. Okay. And did Jeff ever say anything
25 to you about his marriage to your mom?

Minor - CROSS EXAM BY MR. SCHWACKE

1 A. He really didn't like my mom, but he
2 married her just for me.

3 Q. Did he tell you that?

4 A. Yes.

5 MS. WILLIAMS: The Court's indulgence
6 for just a moment?

7 THE COURT: Take your time.

8 MS. WILLIAMS: Thank you, Minor .
9 Please answer any questions that Mr. Schwacke has
10 for you.

11 THE COURT: Mr. Schwacke.

12 MR. SCHWACKE: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. SCHWACKE:

15 Q. Good afternoon, Minor . You don't want
16 to be here, do you?

17 A. No.

18 Q. Sorry about that. I need to ask some
19 more questions about what you were talking about
20 with Ms. Williams. Is that all right?

21 A. Yeah, that's fine.

22 Q. I didn't quite understand something you
23 said right near the end there about your mom's
24 underwear.

25 A. Yeah. Like, I would get blood on mine

Minor

- CROSS EXAM BY MR. SCHWACKE

1 and he would give me Mom's. And I would usually
2 change out of that because it was uncomfortable.

3 Q. Into hers?

4 A. I would change out of hers.

5 Q. Out of hers?

6 A. Yeah.

7 Q. And would you have bled into hers?

8 A. Usually not.

9 Q. Okay. So you don't remember how many
10 different times this happened?

11 A. I do not.

12 Q. Did it ever happen in a different
13 place?

14 A. No.

15 Q. Were there times that Jeffrey went with
16 you to the gym?

17 A. Not that I can remember.

18 Q. Well, were you in Taekwondo?

19 A. I think so.

20 Q. With your brother?

21 A. Yes.

22 Q. And Jeffrey went with you to that?

23 A. Yeah.

24 Q. What belt did you get to?

25 A. I think the third, but --

Minor [REDACTED] - CROSS EXAM BY MR. SCHWACKE

1 Q. To the third. Was it a colored belt or
2 just says three on it?

3 A. I don't remember.

4 Q. So you called Jeffrey your step dad or
5 your dad? Or what did you call him?

6 A. I just called him Mr. Jeff after
7 marriage.

8 Q. But if somebody were to say, your dad,
9 would they be talking to you about Jeffrey or
10 someone else?

11 A. No, they would be taking about my dad.

12 Q. Adam, Senior?

13 A. Yes.

14 Q. How many times have you come here to
15 kind of talk about what happened?

16 A. I think three or four.

17 Q. Three or four. Were they recently or
18 were they --

19 A. I had one right when I told two years
20 ago, and then the other three were recent.

21 Q. Recent. So you had the one time over
22 in Summerville?

23 A. Yes.

24 Q. Where you talked to them?

25 A. I don't know who I was talking to.

Minor

- CROSS EXAM BY MR. SCHWACKE

1 Q. So the last three times have been in
2 this building?

3 A. Yes.

4 Q. And you were meeting with Ms. Williams?

5 A. Yes.

6 Q. And you were discussing what you would
7 talk about in here today?

8 A. Yes.

9 Q. So are there things that you have
10 forgotten since you talked to her?

11 A. Yeah. It's been -- there's small
12 things that I don't remember right now.

13 Q. Okay. How are you at reading? Do you
14 like to read?

15 A. It's fine for me. I will do it if I
16 have to, but...

17 Q. What was the last book you read just
18 for fun?

19 A. I don't know, some kind of cookbook.
20 It's been a while since I read for fun.

21 Q. Other than school?

22 A. Yeah, other than school.

23 Q. So do you remember talking about there
24 being lots of blood when this happened?

25 A. No.

Minor

- CROSS EXAM BY MR. SCHWACKE

1 Q. You didn't say lots of blood that you
2 recall?

3 A. No.

4 Q. On the picture that was shown to you
5 earlier, Number 9, is that the same bed that this
6 happened in?

7 A. Yes.

8 Q. And you don't know when that picture
9 was taken?

10 A. I don't know.

11 Q. So like the sheets and blanket, is that
12 pretty much how it always looked, or what do you
13 remember?

14 A. It looks better now because she makes
15 her bed more often, but, yes.

16 Q. And when this happened, did it happen
17 on top of the sheets or --

18 A. I don't remember.

19 Q. You don't remember. So you don't
20 remember whether there was blood everywhere and
21 some of it got on the bedsheets?

22 A. I don't remember.

23 Q. You don't remember. So you said in
24 here, he would take the underwear and hide it?

25 A. Yes.

Minor

- CROSS EXAM BY MR. SCHWACKE

1 Q. Do you know where he hid it?

2 A. No.

3 Q. Did you see him hide it?

4 A. He would usually take it, but I didn't
5 see him hide it.

6 Q. Okay. So once he left wherever you
7 were, it was gone and you never saw it again?

8 A. Yes.

9 Q. And you said he made death threats?

10 A. Yes.

11 Q. Like what?

12 A. Like I know he had guns and knives and
13 things like that, and he threatened to kill me if I
14 told anyone.

15 Q. How do you know he has guns and knives?

16 A. I saw his.

17 Q. Where were they?

18 A. Somewhere outside. The others, I don't
19 know where they were.

20 Q. You don't know where outside?

21 A. In his, like, workshop thing.

22 Q. In his?

23 A. Workshop.

24 Q. He works on motorcycles?

25 A. Yes.

Minor [REDACTED] - CROSS EXAM BY MR. SCHWACKE

1 Q. Like a canopy or something out there in
2 the back?

3 A. Yes.

4 Q. Do you-all have a trampoline?

5 A. Yes.

6 Q. And there was a pool?

7 A. There was.

8 Q. Okay. And it's not there anymore?

9 A. No.

10 Q. Do you remember saying anything about
11 Jeff giving you strange looks?

12 A. No.

13 Q. That word -- you don't remember saying
14 strange looks?

15 A. (Shaking head.)

16 Q. And so you don't -- if I said, what did
17 the strange look look like, you don't remember?

18 A. No.

19 Q. So how are you doing in school now?

20 A. I'm pretty much getting A's all the
21 time, and I'm in the gifted and talented class.

22 Q. You're in the gifted and talented
23 class?

24 A. Yes.

25 Q. Did you say something about a

Minor

- CROSS EXAM BY MR. SCHWACKE

1 recording, a video?

2 A. He took a video one time.

3 Q. And when was that?

4 A. I don't know.

5 Q. You don't know what time?

6 A. No.

7 Q. Do you know what he took the video
8 with?

9 A. His phone.

10 Q. And do you remember anything about the
11 phone?

12 A. No.

13 Q. What kind it was?

14 A. No.

15 Q. Was it -- did it have color?

16 A. I think it was white.

17 Q. And how did he take the pictures?

18 A. I don't know what you're asking.

19 Q. You said he made a video?

20 A. Yes.

21 Q. And was it a flip phone or a regular
22 phone?

23 A. It was a normal phone.

24 Q. How did he -- did he prop it up on
25 something?

Minor

- CROSS EXAM BY MR. SCHWACKE

1 A. No, he held it.

2 Q. He held it. Do you remember in the
3 interview over in Summerville you talked about
4 spring break?

5 A. No.

6 Q. Going in the big pool?

7 A. (Shaking head)

8 Q. You don't remember?

9 A. I don't remember that.

10 Q. Have they -- when you were coming here
11 to -- the three times that you came here and met
12 with Ms. Williams, did they show you a video of
13 yourself talking to --

14 A. No, they didn't show me a video.

15 Q. And they didn't have you read anything
16 about --

17 A. No.

18 Q. So there were some times that Jeffrey
19 went to the gym?

20 A. Yes.

21 Q. And that was for the Taekwondo?

22 A. Yes.

23 Q. Did you ever see him light anything on
24 fire?

25 A. I think he made a fire one time in the

Minor

- CROSS EXAM BY MR. SCHWACKE

1 fire pit.

2 Q. You don't know what that was made with?

3 A. No.

4 Q. It could have been wood, you don't
5 know?

6 A. Could have been.

7 MR. SCHWACKE: One moment, Your Honor.

8 THE COURT: Take your time.

9 BY MR. SCHWACKE:

10 Q. Do you do any kind of -- did you do any
11 kind of chores around the house when you were
12 living with Jeffrey?

13 A. Not at that time.

14 Q. Not laundry?

15 A. No.

16 Q. You didn't have to gather up dirty
17 clothes?

18 A. No.

19 Q. And put them in a hamper?

20 A. No.

21 Q. Didn't have to clean your room?

22 A. I wouldn't take that as a chore.

23 That's kind of as punishment.

24 Q. Well, there is a picture of your room,
25 and it looked like it would have been a lot of

Minor - CROSS EXAM BY MR. SCHWACKE

1 work.

2 A. It was. We cleaned it, and it's much
3 better now.

4 Q. And at the time, you were sharing a
5 room with your brother, Adam?

6 A. Yes.

7 Q. You and Adam in a room, and then your
8 uncle --

9 A. My uncle and aunt and my cousin.

10 Q. And is he an uncle, uncle, or is he
11 just a friend uncle?

12 A. No, he's a real uncle.

13 Q. Who is he related to?

14 A. He's married to my mom's sister.

15 Q. So you only remember one time?

16 A. There was like multiple times, but I
17 remember -- I don't remember much.

18 Q. What do you have in your hand? What do
19 you have in your hand?

20 A. I have a stress ball.

21 Q. Keeping you calm?

22 A. Yes.

23 Q. So, again, you don't recall anything
24 about Jeff giving you weird looks or --

25 A. No.

Minor - CROSS EXAM BY MR. SCHWACKE

1 Q. -- acting strange?

2 A. He did act strange, but I don't
3 remember anything about the looks.

4 Q. What do you mean by act strange?

5 A. He wouldn't act himself.

6 Q. Was he like zoned out?

7 A. He wasn't like I normally knew him,
8 but...

9 Q. But -- so not normal, but -- was he
10 just sitting there blank or --

11 A. Yeah.

12 Q. Would he do that for long periods of
13 time?

14 A. I don't remember.

15 Q. But there were times he would just kind
16 of be zoned out?

17 A. Yes.

18 MR. SCHWACKE: Minor I don't have
19 anymore questions. I want to come back and thank
20 you for answering my questions.

21 THE WITNESS: Okay.

22 THE COURT: Ms. Williams.

23 MS. WILLIAMS: Briefly.

24 REDIRECT EXAMINATION

25 BY MS. WILLIAMS:

Minor - REDIRECT EXAM BY MS. WILLIAMS

1 Q. Minor a, are you nervous here today?

2 A. Yes.

3 Q. Is that affecting your ability to
4 remember lots of details?

5 A. Yes.

6 Q. How long ago did this happen?

7 A. Two years.

8 Q. And Mr. Schwacke was asking you about
9 what Mr. Whitsett would do with your underwear.
10 What did he tell you he was going to do with them?

11 A. He told me he was going to burn it.

12 Q. And is there a burn pit out in the
13 backyard?

14 A. Yes.

15 Q. Was it near his motorcycle shed or
16 wherever he worked on motorcycles?

17 A. Yeah.

18 Q. And Mr. Schwacke was asking you about
19 when Mr. Whitsett would take videos of you. When
20 he would do that, and I know this is difficult to
21 talk about, what would he make you do in the
22 videos?

23 A. He would make me put my finger inside
24 of my private.

25 Q. And what would he -- did he tell you

Minor

- REDIRECT EXAM BY MS. WILLIAMS

1 how your expression should be?

2 A. Told me I had to smile.

3 Q. And so when he was taking the video, it
4 wasn't during the time he was assaulting you and
5 hurting you. He was telling you, he was directing
6 you to do things?

7 A. Yes.

8 Q. Okay. And do you remember telling your
9 mother what day -- like, when you told your mother,
10 do you remember telling her what day the last one
11 happened?

12 A. I didn't tell her that.

13 Q. Did you tell anyone it was Saturday?

14 A. No.

15 Q. You don't remember that?

16 A. I don't remember.

17 Q. Okay. You don't remember the dates and
18 times?

19 A. No.

20 MS. WILLIAMS: Thank you, Minor.

21 THE COURT: Mr. Schwacke.

22 MR. SCHWACKE: No further questions.

23 THE COURT: You may step down. Thank
24 you.

25 Call your next witness.

M.B. [REDACTED] - DIRECT EXAM BY MS. WILLIAMS

1 MS. WILLIAMS: The State calls M.B. [REDACTED]

2 [REDACTED]

3 M.B. [REDACTED]

4 being first duly sworn, testified as follows:

5 THE CLERK: Please state your full name
6 and spell your last.

7 THE WITNESS: M.B. [REDACTED]

8 M.B. [REDACTED].

9 THE COURT: Ms. Williams.

10 DIRECT EXAMINATION

11 BY MS. WILLIAMS:

12 Q. Can I just say Melissa rather than
13 Melyssa?

14 A. Uh-huh.

15 Q. How are you related to Minor [REDACTED]?

16 A. She is my cousin.

17 Q. Okay. So explain the relationships.
18 Who is related to who?

19 A. My aunt, she is my mom's sister.

20 Q. So your mother's sister is Minor [REDACTED]
21 mother?

22 A. Uh-huh.

23 THE COURT: Is that a yes?

24 THE WITNESS: Yes, I'm sorry.

25 BY MS. WILLIAMS:

M.B. [REDACTED] - DIRECT EXAM BY MS. WILLIAMS

1 Q. How old are you now?

2 A. I'm 17.

3 Q. And are you in school?

4 A. Yes. I just graduated.

5 Q. Okay. And when you first moved -- when
6 did you first move here?

7 A. It was December 2014.

8 Q. Okay. And where did you move from?

9 A. From Brazil.

10 Q. When you moved here in December of
11 2014, where did you move to?

12 A. To my aunt's house in [REDACTED]

13 [REDACTED].

14 Q. And who lived in that house?

15 A. It was me, my mom, my dad, my aunt,
16 Jeff and Minor [REDACTED] and Junior.

17 Q. And do you know how long you lived
18 there?

19 A. We moved -- we lived there since
20 December to March of this year, I think.

21 Q. And during the time that you lived
22 there, did Jeff Whitsett live there too?

23 A. Yes.

24 Q. And do you remember how old Minor [REDACTED] and
25 Adam were at that time when you first moved in?

M.B. [REDACTED] - DIRECT EXAM BY MS. WILLIAMS

1 A. I think Minor was nine and Junior was
2 seven.

3 Q. Okay. And is that what you call Adam,
4 Junior?

5 A. Yeah, I'm sorry.

6 Q. That's okay. And so when the kids were
7 with -- did Vitoria, the mother of those children,
8 work?

9 A. Yes, she worked at Dick's.

10 Q. At Dick's. And who would watch the
11 kids when she was at work?

12 A. We would stay with them for like in the
13 afternoon, and then Jeff would come home, and we
14 would leave to go to the gym. And then we would
15 come back, and she would come back later from work.

16 Q. So when you would leave, would Jeff be
17 home alone with the kids?

18 A. Yes.

19 Q. How often would that happen?

20 A. Pretty much every day of the week.

21 Q. Okay. And why were you going to the
22 gym so much?

23 A. We -- I like -- we just moved in so we
24 didn't know anybody. That was the only place we
25 kind of knew where to go and we really enjoy the

M.B.

- DIRECT EXAM BY MS. WILLIAMS

1 gym.

2 Q. Did you go every day?

3 A. Yeah.

4 Q. I'm going to show you a diagram that
5 was previously marked as State's 23.

6 MS. WILLIAMS: May I approach, Your
7 Honor?

8 THE COURT: You may.

9 BY MS. WILLIAMS:

10 Q. This diagram is going to be displayed
11 behind you. This little red thing is a laser
12 pointer. If you can kind of show us, is that a
13 diagram of the trailer that you lived in?

14 A. Yes; it is.

15 Q. So show me where everyone's bedroom
16 was?

17 A. This was me and my parents' bedroom,
18 that was Minor and Adam's bedroom, and that one
19 was my aunt's and Jeff's bedroom.

20 Q. Where was the kitchen?

21 A. Right here.

22 Q. And where was the living room?

23 A. Right here.

24 Q. All the bedrooms were on one side and
25 then your aunt's bedroom is on the other. Is that

M.B. [REDACTED]

- DIRECT EXAM BY MS. WILLIAMS

1 the bedroom that she shared with Mr. Whitsett?

2 A. Yes, it is.

3 Q. You can take that down. Did you
4 observe Jeff spending time with the kids?

5 A. He would play video games with the kids
6 sometimes, yeah. And that was pretty much all we
7 saw.

8 Q. Okay. Did you see him spend time with

9 Minor [REDACTED]

10 A. Yes. He would spend more time with
11 Minor [REDACTED] than Junior. He played more with her than
12 Junior.

13 Q. Did you notice anything about Minor [REDACTED]
14 behavior when you-all would leave and she would be
15 stuck there with Jeff?

16 A. She would always ask us, like, where we
17 were going, if she could go with us, when we would
18 come back, but we didn't know something was
19 happening. We just thought she wanted to go
20 because we were going out. She would always ask
21 that.

22 Q. So she always wanted to leave and go
23 with you?

24 A. Yes.

25 MS. WILLIAMS: No further questions.

M.B. [REDACTED] - CROSS EXAM BY MR. SCHWACKE

1 Please answer any questions that
2 Mr. Schwacke has.

3 CROSS-EXAMINATION

4 BY MR. SCHWACKE:

5 Q. Now it's my turn to mispronounce your
6 name. Melyssa?

7 A. Yes.

8 Q. So you're Minor [REDACTED] cousin?

9 A. Yes.

10 Q. And you moved into the house when?

11 A. December of 2014.

12 Q. And you have only recently moved out
13 this March?

14 A. Yes.

15 Q. So do you work?

16 A. No, I don't.

17 Q. You don't work?

18 A. No.

19 Q. Who all was employed living in that
20 house?

21 A. My dad; he works.

22 Q. Your dad?

23 A. Yes.

24 Q. What's his name?

25 A. Marco.

M.B. [REDACTED] - CROSS EXAM BY MR. SCHWACKE

1 Q. And where does he work?

2 A. He works with construction. I don't
3 know the name of the company he works with.

4 Q. All right. And then you said you,
5 Marco and then --

6 A. My mom, Sylvia.

7 Q. Sylvia. And Jeffrey worked?

8 A. Yes, he did.

9 Q. Do you know when he would go to work
10 and when he would come back?

11 A. He would leave in the morning and he
12 would come back at like 2 or 2:30. I don't
13 remember exactly the time.

14 Q. And he was working at the steel
15 company?

16 A. Yeah, I think.

17 Q. So when is the first time anybody from
18 the police talked with you about this case?

19 A. Can you repeat the question?

20 Q. When is the first time anyone from the
21 police talked with you about this case? Did you
22 ever talk to an officer?

23 A. I talked when they come and asked me to
24 testify here.

25 Q. And that was just a couple of weeks

M.B. [REDACTED] - CROSS EXAM BY MR. SCHWACKE

1 ago?

2 A. Yes.

3 Q. And that's the first -- no one has
4 asked you to give a statement?

5 A. No.

6 Q. Nobody's ever asked you to write
7 anything down?

8 A. No.

9 Q. And you were saying it was a
10 seven-night-a-week-deal going to the gym?

11 A. Yes.

12 Q. Every day?

13 A. Uh-huh.

14 Q. What was the gym that you would go to?

15 A. It was in Goose Creek.

16 Q. Do you know the name?

17 A. I don't remember the name because they
18 changed the name now. But I don't remember.

19 Q. What was the name when you went?

20 A. Huh?

21 Q. What was the name of it when you went?

22 A. I can't remember. It was something --
23 I think it was EO Fitness.

24 Q. Do you go there now?

25 A. No. My dad does.

KEVIN KEARSE - DIRECT EXAM BY MS. WILLIAMS

1 Q. Sorry?

2 A. My dad still goes there, but I don't.

3 Q. Why did you stop?

4 A. Because he started working and I don't
5 drive.

6 MR. SCHWACKE: One moment, Your Honor.

7 No further questions.

8 THE COURT: Redirect?

9 MS. WILLIAMS: No, Your Honor.

10 THE COURT: You may step down. Call
11 your next witness.

12 MS. WILLIAMS: The State calls Kevin
13 Kearse.

14 KEVIN KEARSE,

15 being first duly sworn, testified as follows:

16 THE CLERK: Please state your full name
17 and spell your last.

18 THE WITNESS: Kevin Kearse,
19 K-E-A-R-S-E.

20 DIRECT EXAMINATION

21 BY MS. WILLIAMS:

22 Q. Thank you, Mr. Kearse. What do you do
23 for a living?

24 A. I'm a lawyer.

25 Q. Where do you work?

KEVIN KEARSE - DIRECT EXAM BY MS. WILLIAMS

1 A. Right down the street, 107 Pine Street.

2 Q. And was that your office in June of
3 2015?

4 A. It was.

5 Q. Do you know Vitoria Whitsett?

6 A. I do.

7 Q. How do you know her?

8 A. She is a friend and a client.

9 Q. Okay. And how did you meet her?

10 A. She was working at the clerk's office,
11 I believe. This clerk, sorry, Berkeley County
12 Clerk of Court.

13 Q. Okay. And did you hear from her back
14 June 1, 2015?

15 A. I did.

16 Q. Tell me about that.

17 A. She called me; she was very frantic,
18 hysterical really. And said that she had been told
19 that her husband at the time, Mr. Whitsett --

20 MR. SCHWACKE: Your Honor, objection.

21 THE COURT: What's the basis? You need
22 to approach?

23 MR. SCHWACKE: Yes, ma'am.

24 (Bench conference.)

25 BY MS. WILLIAMS:

KEVIN KEARSE - DIRECT EXAM BY MS. WILLIAMS

1 Q. Let's take a step back.

2 A. Yes, ma'am.

3 Q. When Mrs. Whitsett called you, can you
4 describe her demeanor?

5 A. She was hysterical, frantic, confused,
6 scared, angry. All of those things.

7 Q. And the thing that had made her angry
8 and upset, don't tell us what she said yet, but did
9 that thing just happen?

10 A. She just found out that that thing had
11 happened.

12 Q. Okay. And what did she tell you that
13 thing was that had happened? What were her words
14 that she said when she was hysterical and upset?

15 A. That Jeff Whitsett, who was married to
16 her at the time, had molested her daughter.

17 Q. Okay. And what did you two determine
18 to do about that?

19 A. Well, she needed direction, so I gave
20 her assistance, and that was to call law
21 enforcement and try to contact experts who could
22 help to determine or collect evidence.

23 Q. And did you call law enforcement?

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

25 Q. Do you remember what time you called

KEVIN KEARSE - DIRECT EXAM BY MS. WILLIAMS

1 them?

2 A. It was in the evening she called me,
3 had to be after 5 because it was after work hours.

4 Q. Would it refresh your memory to look at
5 the Berkeley County CAD report from that?

6 A. Sure, it would.

7 (STATE EXH. 32, CAD report, was marked
8 for identification.)

9 MS. WILLIAMS: May I approach?

10 THE COURT: You may.

11 BY MS. WILLIAMS:

12 Q. See if this refreshes your memory as to
13 about what time you called the police after you got
14 the call from Mrs. Whitsett.

15 A. Okay... It does.

16 Q. Okay. What time did you call?

17 A. 1802 military time.

18 Q. And so is that 6:02 p.m.?

19 A. Yes.

20 Q. Okay. And did they respond after you
21 called?

22 A. They did.

23 Q. Okay. And did they make a report that
24 night?

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

KEVIN KEARSE - DIRECT EXAM BY MS. WILLIAMS

1 Q. Okay. And when did you make the next
2 report?

3 A. They had -- it was something about the
4 officer. The officer came out and that particular
5 officer could not take the report. That was a
6 female officer. So the next morning we set up a
7 time for an officer to come and actually do a
8 report.

9 Q. Okay. And the next morning did Vitoria
10 and the child come to your office and you went
11 through all the steps to make sure that that report
12 got done?

13 A. Yes, ma'am, we did.

14 Q. Okay. And was she given direction as
15 to where to go to get medical assistance and all
16 that good stuff?

17 A. Yes, ma'am. I set all of that up for
18 her with the officer.

19 MS. WILLIAMS: Thank you, Mr. Kearse.
20 Please answer any questions Mr. Schwacke has.

21 MR. SCHWACKE: No questions.

22 THE COURT: You may step down. You are
23 free to leave, but feel free to stay with us.

24 THE WITNESS: Thank you, Your Honor.

25 MS. WILLIAMS: The State calls Cody

CODY MILLHOUSE - DIRECT EXAM BY MS. WILLIAMS

1 Milhouse.

2 THE COURT: Sir, please come forward
3 and be sworn.

4 CODY MILHOUSE,

5 being first duly sworn, testified as follows:

6 THE CLERK: Please state your full name
7 and spell your last.

8 THE WITNESS: Cody Milhouse,
9 M-I-L-H-O-U-S-E.

10 DIRECT EXAMINATION

11 BY MS. WILLIAMS:

12 Q. Thank you, Mr. Milhouse. Where do you
13 live now?

14 A. I live -- it's [REDACTED],
15 St. Matthews, South Carolina, 29135.

16 Q. Where do you work?

17 A. I work at Seahunt Boats, Incorporated.

18 Q. And where were you living in June of
19 2015?

20 A. At [REDACTED],
21 Moncks Corner, South Carolina, 29461.

22 Q. And who lived at lot five?

23 A. Miss Vitoria Whitsett at the time.

24 Q. Okay. And who lived with her there?

25 A. It was her son and daughter, her.

CODY MILLHOUSE - DIRECT EXAM BY MS. WILLIAMS

1 brother -- brother-in-law, her sister, and their
2 daughter, and Jeff Whitsett.

3 Q. And where is that in relation to where
4 you were living?

5 A. Right across the little road that's
6 right there.

7 Q. Okay. And did you know Jeff Whitsett?

8 A. Yes.

9 Q. Would you spend time together?

10 A. We hung out a little bit. We were -- I
11 worked on vehicles, cars and trucks, and he worked
12 on motorcycles. We would trade off work.

13 Q. Okay. And how often would you say you
14 went over there?

15 A. I would say about once or twice a week.

16 Q. Okay. And at some point, were you made
17 aware of the fact that he moved out of the
18 residence?

19 A. Yes, ma'am, I was. My mother told me
20 weeks after -- you know, after everything happened.

21 Q. Okay. And did you go over to that home
22 after he left?

23 A. Yes, ma'am. Ms. Vitoria asked me if I
24 would come out in the backyard and get rid of some
25 of the scrap that was out there. And I went back

CODY MILLHOUSE - DIRECT EXAM BY MS. WILLIAMS

1 there and was cleaning up for her.

2 Q. Was she trying to get some metal to
3 sell to get some money for --

4 MR. SCHWACKE: Your Honor, leading.

5 BY MS. WILLIAMS:

6 Q. Do you know why -- why did she tell you
7 that?

8 A. Just to clean up the property. There
9 was junk everywhere.

10 Q. Okay. I'm going to show you some
11 photographs, Mr. Milhouse.

12 MS. WILLIAMS: Showing Mr. Schwacke
13 State's 14, 15, and 16. Can you put State's 14 up
14 there and 17?

15 BY MS. WILLIAMS:

16 Q. Can you just -- there's a little
17 pointer in front of you, Mr. Milhouse. If you
18 could just turn around in your chair and sort of
19 explain to the jury what that is. If you push this
20 red button, you can point to things.

21 A. Okay. There was a little shed right
22 there. And right here where the tarp was, there
23 was like a little motorcycle shop, you know, tools
24 back there and a couple of motorcycle parts.

25 (Indicating)

CODY MILLHOUSE - DIRECT EXAM BY MS. WILLIAMS

1 Q. Is that where you would hang out with
2 Mr. Whitsett?

3 A. Yes, ma'am.

4 MS. WILLIAMS: Would you put up State's
5 17, please?

6 BY MS. WILLIAMS:

7 Q. And what is that?

8 A. That's a burn pit there and a
9 trampoline back there with a little kids swing set.

10 Q. Because we can't see it, show us where
11 the motorcycle shop would be in relationship to the
12 burn pit?

13 A. It would be over to the left side of
14 the picture.

15 Q. Okay. And when you were over there
16 helping Vitoria Whitsett clean out the backyard to
17 try to find some scrap metal, did you find scrap
18 metal?

19 A. Yes, ma'am.

20 Q. What else did you find?

21 A. While I was cleaning up, on a little
22 shelf that was in the little motorcycle shop, I
23 found behind there a coffee can with a few screws
24 and bolts and stuff and old light bulbs out of a
25 car, and I found a pair of women's pants.

CODY MILLHOUSE - DIRECT EXAM BY MS. WILLIAMS

1 Q. Okay. Women's panties. Were they
2 women's panties or were they girl's panties?

3 A. I wouldn't -- I didn't really look all
4 that closely. I just know there was women's
5 underwear.

6 Q. Okay.

7 A. Or female.

8 MS. WILLIAMS: Okay. If you can put
9 State's 16 up there.

10 BY MS. WILLIAMS:

11 Q. One more time, if you could turn around
12 and look at the -- now, what is that a picture of?

13 A. That was the table there.

14 Q. What are we looking at? What is that
15 the inside of?

16 A. That's the inside of the motorcycle
17 shop.

18 Q. And is that where you and Mr. Whitsett
19 would work on things?

20 A. Yes.

21 Q. Tell the jury where you found the
22 girl's underwear inside the coffee can.

23 A. There was a box right over here and
24 there was -- when I was cleaning up, there was a
25 couple of motorcycle heads in that box there. And

CODY MILLHOUSE - CROSS EXAM BY MR. SCHWACKE

1 right behind that, right there behind the box up in
2 there was the coffee can sitting right there.

3 Q. And the panties were underneath the
4 screws and light bulbs or just mixed in?

5 A. It was just mixed in this.

6 Q. Now, about when did you move away?

7 A. I moved away, I don't know, about the
8 end of that month. June 30th, I believe.

9 Q. Okay. So it's been about two years
10 since you lived on Farrell Street?

11 A. Yes, ma'am.

12 Q. Have you seen or talked to Vitoria
13 Whitsett during that time?

14 A. Not really. I think I ran into her one
15 time when I was visiting my mom.

16 Q. Because Jeffrey Whitsett was pretty
17 much the person that you were communicating with
18 over at that house?

19 A. Yes.

20 MS. WILLIAMS: Thank you, Mr. Milhouse.

21 Please answer any questions from Mr. Schwacke.

22 CROSS-EXAMINATION

23 BY MR. SCHWACKE:

24 Q. So what kind of work would you and Jeff
25 do?

CODY MILLHOUSE - CROSS EXAM BY MR. SCHWACKE

1 A. Work on motorcycles or on a car.

2 Q. What kind of work would you do?

3 A. Anything he needed help with.

4 Adjusting valves, you know, putting in exhaust or
5 changing out a magneto or, you know, anything like
6 that.

7 Q. And were you employed?

8 A. At that time I was employed at John's
9 Truck Service.

10 Q. I'm sorry?

11 A. John's Truck Service.

12 Q. What did you do for them?

13 A. I was a diesel mechanic..

14 Q. So you have worked on machinery a lot?

15 A. Yes, sir.

16 Q. Have you ever cut your hand while
17 working on machinery?

18 A. Yes.

19 Q. A lot?

20 A. Yes, sir.

21 Q. Because you're always bumping into
22 little things that nick and catch you?

23 A. Yes, sir.

24 MR. SCHWACKE: One moment, Your Honor?

25 THE COURT: Take your time.

CODY MILLHOUSE - CROSS EXAM BY MR. SCHWACKE

1 BY MR. SCHWACKE:

2 Q. So you and Jeffrey worked on equipment
3 together?

4 A. Yes, sir.

5 Q. And you indicated that there's been
6 times you were working on machinery and you cut
7 your hand?

8 A. Yes.

9 Q. Did you see Jeff cut his hands?

10 A. Not that I recall.

11 Q. Did you cut your hands over there?

12 A. I'm not sure if I cut my hands over
13 there or not.

14 Q. But you have before as well?

15 A. Yes, sir.

16 Q. You don't know that's a rag or what
17 that was. You just knew it was women's underwear?

18 A. I know it was women's underwear.

19 MR. SCHWACKE: Thank you. That's all
20 the questions I have.

21 THE COURT: Redirect?

22 MS. WILLIAMS: No, Your Honor.

23 THE COURT: You may step down.

24 THE WITNESS: Thank you.

25 THE COURT: You are free to leave, but

1 feel free to stay with us. Call your next witness.

2 MS. WILLIAMS: State would call Karen
3 Drozd.

4 KAREN DROZD,
5 being first duly sworn, testified as follows:

6 THE CLERK: Please state your full name
7 and spell your last.

8 THE WITNESS: Karen Lynn Drozd,
9 D-R-O-Z-D.

10 THE COURT: Ladies and gentlemen, we
11 are going to take a short comfort break. We did
12 not take a break when you took your comfort break,
13 so it's time for us to take a break.

14 Again, same admonitions; please do not
15 begin discussing this case. Take your notepads or
16 leave them in the chair. Please rise for the jury.

17 (Jury out, 3:11 p.m.)

18 THE COURT: Thank you. Be seated.
19 Ma'am, you may stay seated. We're going to take a
20 break. If you step down, do not discuss your
21 testimony with anyone. Do you understand?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: You've got ten minutes.

24 MS. WILLIAMS: Your Honor, apparently,
25 Deputy Lawrence has an emergency at his home. If

1 it's okay with Karen, we're going to switch his
2 testimony -- it's very short -- before her. If
3 that's okay.

4 THE COURT: All right. So step down.
5 I'll need you to wait outside and just have
6 Lawrence ready to go. When you all ready from your
7 comfort break, we'll get started.

8 Thank you.

9 (A recess transpired.)

10 THE COURT: Anything before we bring in
11 the jury?

12 MR. SCHWACKE: None from this side.

13 MS. WILLIAMS: Nothing from the State.

14 THE COURT: And your next witness is in
15 the courtroom and ready.

16 MS. WILLIAMS: Yes, Your Honor.

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

18 (Jury in, 3:20 p.m.)

19 THE COURT: Thank you. Be seated.

20 Ladies and gentlemen, we had to take a witness out
21 of order. Call your next witness.

22 MS. SZYMCZYNSKA-SAS: The State calls
23 Officer James Lawrence.

24 JAMES LAWRENCE,

25 being first duly sworn, testified as follows:

JAMES LAWRENCE - DIRECT EXAM BY MS. SAS

1 THE CLERK: Please state your full name
2 and spell your last.

3 THE WITNESS: James Lawrence
4 L-A-W-R-E-N-C-E.

5 DIRECT EXAMINATION

6 BY MS. SZYMCZYNSKA-SAS:

7 Q. Officer, where are you currently
8 employed?

9 A. Berkeley County Sheriff's Office.

10 Q. And how long have you been employed
11 there?

12 A. Five years.

13 Q. Okay. What is your current position
14 and rank?

15 A. (Inaudible)

16 THE COURT REPORTER: Say again.

17 THE WITNESS: Corporal, uniform patrol.

18 BY MS. SZYMCZYNSKA-SAS:

19 Q. And what is your current job
20 responsibility and your job duties?

21 A. Basically, answer calls for service,
22 provide extra patrol, traffic enforcement,
23 enforcement of state laws.

24 Q. And were you employed with Berkeley
25 County in the same capacity in June of 2015?

JAMES LAWRENCE - DIRECT EXAM BY MS. SAS

1 A. I was.

2 Q. Okay. And did you happen to get
3 involved in the case that brings us here today?

4 A. Yes.

5 Q. Okay. And how did you get involved?

6 A. I was dispatched to 107 Pine Street in
7 reference to a possible sexual assault.

8 Q. Okay. And how did you know how to
9 respond to that particular location?

10 A. I was dispatched.

11 Q. And do you recall when you responded
12 there?

13 A. It was around 9:50, somewhere around in
14 there.

15 Q. Do you remember what day that was?

16 A. June 2, 2015.

17 Q. Okay. And who did you meet there?

18 A. I met Mrs. Whitsett and an attorney.
19 I'm not sure what the attorney's name is.

20 Q. And what kind of crime was reported to
21 you?

22 A. Criminal sexual conduct with a minor.

23 Q. Was it reported to you when that took
24 place?

25 A. I believe she told me it was disclosed

JAMES LAWRENCE - DIRECT EXAM BY MS. SAS

1 to her the previous day, but it had been taking
2 place over a couple of months.

3 Q. Was it reported to you where it took
4 place?

5 A. Where it took place? 117 Farrell
6 Street, I believe.

7 Q. Okay. And did you have a chance to
8 talk to the minor victim?

9 A. No.

10 Q. Okay. Do you usually talk to minor
11 victims?

12 A. No.

13 Q. What did you do after taking the
14 information from the victim's mother?

15 A. I got the information and I notified my
16 sergeant, my immediate supervisor, who advised me
17 to get in touch with the investigators. I spoke
18 with investigators and they advised me to get the
19 information for a forensic interview and supply
20 that to the victim's mother, and I did.

21 Q. Forensic interview for -- what is that?

22 A. Basically a -- like, the Lowcountry
23 Children's Center where they take children who have
24 gone through traumatic experiences and they --
25 they're more experienced in doing it than I would

JAMES LAWRENCE - DIRECT EXAM BY MS. SAS

1 be.

2 Q. So it's an interview for the minor
3 child?

4 A. Yes.

5 Q. Do you do interviews with minor
6 children?

7 A. No, ma'am.

8 Q. Is that a standard procedure that you
9 don't do it?

10 A. Yes, ma'am.

11 Q. Did you prepare a report in this case?

12 A. I did.

13 Q. Did you have any other involvement in
14 this case that you can recall?

15 A. No, ma'am.

16 MS. SZYMCZYNSKA-SAS: Court's
17 indulgence? No further questions at this time.

18 MR. SCHWACKE: No questions.

19 THE COURT: You may step down. You're
20 free to go. Thank you.

21 Call your next witness.

22 MS. WILLIAMS: The State calls Sergeant
23 Lamar Blakely.

24 LAMAR BLAKELY,

25 being first duly sworn, testified as follows:

LAMAR BLAKELY - DIRECT EXAM BY MS. WILLIAMS

1 THE CLERK: State your full name for
2 the record and spell your last.

3 THE WITNESS: James Lamar Blakely,
4 B-L-A-K-E-L-Y.

5 DIRECT EXAMINATION

6 BY MS. WILLIAMS:

7 Q. Thank you, Sergeant Blakely. Where do
8 you work?

9 A. Currently employed at the Berkeley
10 County Sheriff's Office.

11 Q. How long have you worked there?

12 A. Been employed there since 2001.

13 Q. Where did you work before that?

14 A. I worked over at communications.

15 Q. Okay. With the Berkeley County
16 government?

17 A. Yes, ma'am.

18 Q. What are your present duties?

19 A. I'm currently assigned to the United
20 States Marshal Services Fugitive Task Force.

21 Q. And were you working in that capacity
22 in June of 2015?

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

24 Q. And what does the United States Marshal
25 Fugitive Task Force do?

LAMAR BLAKELY - DIRECT EXAM BY MS. WILLIAMS

1 A. We conduct fugitive investigations
2 mostly on violent crimes; as well, we're an
3 extension of the detective units for the various
4 entities that make up the task force.

5 Q. Did you get involved in the case of
6 Jeffrey Whitsett?

7 A. Yes, we did.

8 Q. Was your assistance requested by the
9 Berkeley County Sheriff's Office detective unit?

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

11 Q. Was that to find Mr. Whitsett?

12 A. Yes, ma'am.

13 Q. What date was that?

14 A. I don't recall the date, ma'am. I
15 believe it was maybe June 8th or the 9th of 2015.

16 Q. Okay. And what was your specific
17 involvement in locating this subject?

18 A. My involvement was to conduct the
19 investigation and locate Mr. Whitsett.

20 Q. And is it your understanding that they
21 had already been trying to find him?

22 A. I don't know that that was the case. I
23 mean, usually they do make an attempt before they
24 contact us.

25 Q. Because that's why they would call you,

LAMAR BLAKELY - DIRECT EXAM BY MS. WILLIAMS

1 because you're the fugitive task force?

2 A. That's correct, ma'am.

3 Q. How did you find him?

4 A. We conducted through our investigation
5 various leads, various associates that we
6 interviewed, and located where -- where this
7 gentleman was staying.

8 Q. Where was he?

9 A. I don't have the address in front of
10 me.

11 Q. Okay. Is there something that you
12 could look at to refresh your memory?

13 A. Maybe on the evidence sheet; I'm not
14 sure.

15 Q. Okay. How about your e-mail? Well,
16 let me ask you this: Does 1261 Trailmore Drive in
17 Charleston sound familiar?

18 A. Yes.

19 Q. And was he staying like at a house, at
20 a hotel? Do you remember how you got to him?

21 A. It was a mobile home park.

22 Q. Okay. Was it his mobile home or
23 somebody else's?

24 A. No, ma'am, it was someone else's.

25 Q. Okay. And when you located him, did he

LAMAR BLAKELY - CROSS EXAM BY MR. SCHWACKE

1 have anything in his possession?

2 A. Yes, ma'am. We obtained his
3 possessions from the residence which was, from what
4 I remember, laptop computer and a hard drive from a
5 computer.

6 Q. Anything unusual about any of those
7 items?

8 A. Just the hard drive was not attached to
9 -- it was a hard drive removed from a desktop
10 computer.

11 Q. So it was pulled out?

12 A. Yes, ma'am.

13 Q. And what did you do next?

14 A. At that point, once he was taken into
15 custody, we transported him to Berkeley County and
16 handed him over to, I believe, Detective Fenton.

17 Q. Did you ask him any questions?

18 A. No, we did not.

19 MS. WILLIAMS: Nothing further. Please
20 answer any questions from Mr. Schwacke.

21 THE COURT: Mr. Schwacke.

22 CROSS-EXAMINATION

23 BY MR. SCHWACKE:

24 Q. Hey. Just a few questions.

25 So I guess the bottom line of it is,

LAMAR BLAKELY - CROSS BY MR. SCHWACKE/REDIRECT BY. MS. WILLIAMS

1 you don't know whether at the point you got
2 involved in the case that Mr. Whitsett already knew
3 that you were looking for him?

4 A. No, sir.

5 Q. So you don't know if that was the case
6 at all?

7 A. No, sir.

8 Q. And then the items we were talking
9 about, would it be described as an internal hard
10 drive that's being viewed externally because it is
11 no longer inside the machine?

12 A. An internal hard drive, yes, sir.

13 Q. And that's just somebody could add a
14 second hard drive into a desktop, that would be one
15 reason you might have that?

16 A. I have no clue about computers.

17 MR. SCHWACKE: That's all the questions
18 I have.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MS. WILLIAMS:

22 Q. Just one. And, Sergeant Blakely, you
23 don't know what he had done with that equipment
24 before you got there?

25 A. No, ma'am.

LAMAR BLAKELY - RECROSS BY MR. SCHWACKE

1 Q. You don't know what was erased, what
2 was cleaned, you don't know what he was doing with
3 that equipment?

4 A. No, ma'am.

5 Q. You just know at least on the hard
6 drive he had pulled it out?

7 A. That's what it appeared, yes, ma'am.

8 MS. WILLIAMS: Okay. Thank you.

9 THE COURT: Mr. Schwacke.

10 RECROSS-EXAMINATION

11 BY MR. SCHWACKE:

12 Q. And the manner you found him,
13 ultimately you pinged his phone?

14 A. I wouldn't use that terminology, no,
15 sir. It was an investigation where we interviewed
16 associates. There was information received from
17 our technical operations, but that wasn't the
18 ultimate end result of how we located him.

19 Q. But it was a tool that you used?

20 A. It was.

21 Q. And his phone was there? For you to
22 find him where he was, with the pinging?

23 A. No, sir. That is not -- we didn't ping
24 a phone and automatically go where he was. That's
25 incorrect. It's not how it works.

LAMAR BLAKELY - RECROSS BY MR. SCHWACKE

1 Q. How does it work?

2 A. We received information from our
3 technical operations group, and we use that, along
4 with maybe call records of people in the area, and
5 we narrow it down such as that.

6 Q. And that required him to have a working
7 phone?

8 A. Not necessarily.

9 Q. To find it?

10 A. If we were relying just on the phone,
11 yes.

12 Q. I'm not saying that was the only tool
13 being used to find him. I'm saying there was a
14 process that involved law enforcement pushing
15 whatever magic button needs to be pushed to try to
16 find the phone, and that was one of the tools?

17 A. That is one of the tools that we used,
18 but this was not the be-all end-all of how we
19 located him.

20 Q. I'm not saying it is. I'm just saying
21 there was a working phone at the time he was
22 arrested?

23 A. I don't know that it was working or not
24 at the time he was arrested.

25 Q. But there was a number of items that

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 were all taken into custody by you?

2 A. Yes, sir.

3 Q. And everything that was there or that
4 kind of interest you-all took?

5 A. That's correct.

6 Q. And you turned that over, I guess --

7 A. To Detective Fenton.

8 Q. Detective Fenton?

9 A. Yes, sir.

10 MR. SCHWACKE: Thank you. That's all
11 the questions I have.

12 THE COURT: You may step down. Feel
13 free to stay with us.

14 Call your next witness.

15 MS. WILLIAMS: The State calls Karen
16 Drozd.

17 KAREN DROZD,

18 being first duly sworn, testified as follows:

19 THE CLERK: Please state your full name
20 and spell your last.

21 THE WITNESS: Karen Lynn Drozd,
22 D-R-O-Z-D.

23 DIRECT EXAMINATION

24 BY MS. WILLIAMS:

25 Q. What is your occupation?

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

- 1 A. I'm a nurse.
- 2 Q. And where do you work?
- 3 A. MUSC.
- 4 Q. And are you licensed?
- 5 A. Yes.
- 6 Q. And in what states?
- 7 A. South Carolina.
- 8 Q. And how long have you been licensed in
- 9 your profession?
- 10 A. Since January 2011. Six years.
- 11 Q. Do you specialize in a particular area
- 12 of nursing?
- 13 A. Yes.
- 14 Q. And what is that?
- 15 A. I'm a certified pediatric nurse,
- 16 pediatric sexual assault nurse examiner.
- 17 Q. And what kind of training is involved
- 18 in getting that certification?
- 19 A. Well, you can be a PSANE and you can
- 20 practice as a PSANE, you need -- in our setting we
- 21 have a -- we take a 40-hour didactic course, in
- 22 addition to being a practicing RN. We take call
- 23 for three months, shadow somebody who is
- 24 experienced.
- 25 We need to see a certain amount of

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 cases. We need to maintain that level, at least
2 ten cases a year. We need to -- we participate in
3 our division in a monthly peer review where we go
4 through cases, look at photos, discuss histories,
5 and maintain our experience that way.

6 Q. Okay. And before you can become a
7 certified pediatric sexual assault nurse examiner,
8 you have to be a registered nurse, correct?

9 A. Yes. The certification is actually an
10 extra step after. Like I practiced for two and a
11 half years and then sat for the certification exam.
12 So it's a level above.

13 Q. In addition. And what is required to
14 become a registered nurse?

15 A. Well, I had a bachelor's degree first,
16 and I went back for my associate's degree in
17 nursing. You have to then sit for a certification
18 exam as well.

19 Q. Okay. And where did you have -- where
20 did you get your bachelor's degree?

21 A. My bachelor's was from the College of
22 Charleston, my associate's in nursing was from
23 Trident, and I'm actually in a master's program now
24 at Loyola.

25 Q. And what does -- when you say PSANE, is

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 that the pediatric sexual assault nurse examiner?

2 A. Yes.

3 Q. So much shorter, PSANE. What does that
4 type of nursing involve?

5 A. So it's very specific training that --
6 to collect evidence, to triage, to take care of
7 patients that have experienced sexual assault.
8 We're especially trained in analyzing genitalia,
9 what looks normal, what doesn't look normal, what
10 are normal variations, what trauma and injuries
11 look like, and what healed injuries look like.

12 We're trained in documentation,
13 evidence collection, photo documentation.

14 Q. And before you were practicing as a
15 PSANE, what type of nursing were you involved in?

16 A. I was in labor and delivery.

17 Q. Was that also at MUSC?

18 A. Uh-huh.

19 Q. Okay. And, I'm sorry, you might have
20 said this, how long have you been with the PSANE
21 department at MUSC?

22 A. I started as a PSANE in April 2014 --
23 2014, a little over three years, and then I became
24 a full-time -- full time with the division last
25 January. And that's as an RN nurse case

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 coordinator for child abuse. And this January I
2 became the pediatric sexual assault nurse examiner
3 coordinator for the program.

4 I trained, hire, train; we run a
5 monthly meeting where we -- I put together an
6 educational piece to help those that are working
7 towards their certification as well.

8 Q. How many assault examinations have you
9 performed or supervised?

10 A. So I've personally been involved in
11 about 150 exams that are acute, which means that we
12 see them in the ER within three days of when it's
13 happened, so within 72 hours. I've been involved
14 in well over 200 more nonacute exams, which are
15 exams that take place beyond that three-day period.

16 In addition to that, in order to prep
17 for the certification exam, you do lots and lots of
18 case studies. And I reviewed and -- and then I
19 oversee all of the other pediatric sexual assault
20 cases, the acute cases, that come through our
21 division. So I've probably looked at well over 500
22 in the last three years since I've been there.

23 MS. WILLIAMS: Your Honor, at this
24 time, we would move to have Karen Drozd qualified
25 as an expert in pediatric sexual assault nurse

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 examination.

2 MR. SCHWACKE: No objection.

3 THE COURT: Pediatric sexual assault
4 examination?

5 MS. WILLIAMS: Yes, Your Honor.

6 THE COURT: Nursing.

7 MS. WILLIAMS: Pediatric sexual assault
8 nurse examination.

9 THE COURT: Ladies and gentlemen,
10 normally a person can't give opinion testimony when
11 they testify. They typically must testify as to
12 either what they heard or saw or sensed by smell or
13 something of that nature. There is an exception in
14 our law for someone who is qualified because of
15 their education and experience.

16 This witness will be qualified in the
17 area of pediatric sexual assault nurse examinations
18 and will be allowed to give opinion testimony in
19 that area. That does not mean that you must accept
20 her opinion. It is simply evidence for you to use
21 in any way that you see fit.

22 Ms. Williams.

23 MS. WILLIAMS: Thank you, Your Honor.

24 BY MS. WILLIAMS:

25 Q. Were you working at MUSC on June 2,

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 2015?

2 A. Yes. I was on call for the PSANE.

3 Q. And did you examine **Minor** on
4 that date?

5 A. Yes.

6 Q. What was the purpose of that
7 examination?

8 A. I received a report that she had been a
9 victim of sexual assault and that the police had a
10 case number, and they were ready for an evidence
11 collection kit to be performed.

12 Q. And did she come to MUSC for that
13 examination?

14 A. Yes.

15 Q. Downtown?

16 A. Yes.

17 Q. And how old was she at that time?

18 A. Nine.

19 Q. And as part of your duties, do you
20 review records before you examine the patient?

21 A. No.

22 Q. Okay. Do you collect what sometimes is
23 called a medical history?

24 A. Absolutely.

25 Q. Before you examine the patient?

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 A. Yes. It's very important to get a
2 medical history.

3 Q. What is a medical history?

4 A. So a medical history can include any
5 previous illnesses, any conditions that would
6 affect your interpretation, your ability to --
7 anything that would make the body appear different.
8 So I specifically look for blood disorder, skin
9 disorder, anything that causes a variation in
10 normal body structure.

11 And then from there, we collect history
12 of recent events that could cause injuries. And in
13 addition to that, we look at what brought them in
14 that day so that we can do a focus assessment. It
15 helps guide the examination if you collect enough
16 information.

17 Q. Okay. And so is it important to find
18 out from the child, or the patient, what they say
19 happened?

20 A. Absolutely. It does help. It helps --
21 it helps you to know what you're looking for and
22 where. Just like you would ask somebody, are you
23 having pain in your ribs? Where are you having
24 pain? And they say the ribs, you would x-ray
25 there. It's the same kind of thing. If I'm

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 looking to know where to collect evidence from, I
2 need to know where things have happened.

3 For example, if somebody says to me,
4 you know, there was no condom used or there was
5 some wet stuff on their arm, I'm specifically going
6 to look in that area to help guide the examination
7 better.

8 Q. Beyond evidence collection, with regard
9 to diagnosis and treatment of that patient, is it
10 important to know where somebody was penetrated,
11 whether there were fluids involved, whether a
12 condom was used?

13 A. Yes.

14 Q. Why would that be important for
15 diagnosis and treatment?

16 A. Well, we need to know what kind of
17 sexually transmitted infections, where we're going
18 to test for them. We need to know if there are any
19 injuries, if we need to bring in another service
20 like OB-GYN; or if there are fractures, we need to
21 call in orthopedics or order x-rays.

22 Q. Okay. What about questions like
23 whether the child has ever been constipated,
24 whether the child has defecated or urinated before
25 they got to the hospital, or brushed their teeth?

1 Are those important questions?

2 A. Absolutely.

3 Q. Explain why.

4 A. So the further away you get from an
5 event in time, the harder -- or the -- time equals
6 evidence, so you lose evidence over time. So it's
7 best to see them as quickly as possible and to know
8 exactly what has happened since then.

9 So if they come in and they haven't
10 used the bathroom yet, you know they haven't wiped
11 anything way. If they've come in and brushed their
12 teeth and they've used mouthwash, then you lose the
13 opportunity to collect DNA from that area.
14 Something could be washed away if they've eaten or
15 they've drank, they've bathed. So it reduces the
16 amount of DNA that you could possibly find.

17 Q. What about if a child has urinated or
18 defecated, does that make it harder to collect
19 evidence?

20 A. Sometimes. It depends how well they
21 clean themselves afterwards.

22 Q. What about with **Minor**, had she
23 urinated, defecated, brushed her teeth?

24 A. Yes, she had.

25 Q. After the sexual assault, but before --

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 A. Yes.

2 Q. Did she tell you when the last sexual
3 assault was?

4 A. Yes. I believe it was two days prior.
5 Can I look at a report?

6 Q. Would it refresh your memory to look at
7 your report?

8 A. Yes.

9 MS. WILLIAMS: Court's indulgence?

10 THE COURT: Take your time.

11 MS. WILLIAMS: I'm going to show Mr.

12 Schwacke what I will have marked as State's 33.

13 This is a five-page report.

14 (STATE EXH. 33, Report, was marked for
15 identification.)

16 MS. WILLIAMS: May I approach, Your
17 Honor?

18 THE COURT: You may approach, yes.

19 MS. WILLIAMS: Thank you, Your Honor.

20 BY MS. WILLIAMS:

21 Q. You are welcome to refresh your memory
22 with anything in your own report. I believe the
23 question I asked you was, did she tell you when the
24 last sexual assault was?

25 A. Yes.

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 Q. And what day of the week was it that
2 you were examining her? Do you know what -- what
3 date was it?

4 A. The date was June 2nd.

5 Q. Okay. Is that a Tuesday; do you know?

6 A. I believe it was a Tuesday.

7 Q. Okay. And when does she say the last
8 sexual assault occurred?

9 A. On May 30th.

10 Q. Okay. And --

11 A. So it looks like approximately 50 hours
12 earlier.

13 THE COURT REPORTER: I'm sorry, 15 or
14 50?

15 THE WITNESS: Fifty.

16 BY MS. WILLIAMS:

17 Q. When you say acute exam, how much time
18 is allowed to pass before you will do an acute
19 exam?

20 A. It needs to be within the last
21 72 hours.

22 Q. And 50 hours had passed --

23 A. Uh-huh.

24 Q. -- you're saying?

25 A. Yes.

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 Q. And the child had urinated?

2 A. Yes.

3 Q. Defecated?

4 A. Yes.

5 Q. Brushed her teeth?

6 A. Yes. Eaten.

7 Q. Eaten?

8 A. Drank.

9 Q. And did you ask questions about whether
10 there was a history of constipation?

11 A. Yes.

12 Q. Did she have constipation?

13 A. She did not have a history of
14 constipation.

15 Q. Why would that be important?

16 A. Yes, they did not report a history of
17 constipation. It's important because constipation
18 can stress the tissue around the anus and cause
19 damage over time.

20 Q. Okay. So you would want to know if any
21 damage around the anus would be caused not just by
22 sexual assault, by something like constipation?

23 A. Exactly. We try to rule out other
24 causes.

25 Q. What did she tell you happened that was

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 important for you to know with regard to diagnosis
2 and treatment?

3 A. She did not use these words, but she
4 described being penetrated both vaginally and
5 rectally, anally by -- with a penis.

6 Q. Okay.

7 A. And fingers.

8 Q. Okay. Anything else?

9 A. Oral, there was oral copulation.

10 Q. Oral copulation --

11 A. Oral contact.

12 Q. From him to her or her to him, or both?

13 A. Both.

14 Q. And what about any fondling, anything
15 else noted that's noted on your report?

16 A. Yes, there is fondling.

17 Q. Kissing?

18 A. Yes.

19 Q. Anything else?

20 A. Photographs.

21 Q. Licking? Was there anything?

22 A. Licking, yes. Kissing, yes. Fondling,
23 yes.

24 Q. Does she indicate if there was a condom
25 used?

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 A. No condom.

2 Q. Okay. Does she indicate whether
3 ejaculation occurred?

4 A. What she described as ejaculation. She
5 described white stuff coming out.

6 Q. Okay. And what about any lubricant?

7 A. Yes. She told me that he used
8 something called Vaseline, in her words.

9 Q. Anything else that she told you
10 regarding anything medically that would occur after
11 the sexual assaults that would be important for
12 diagnosis and treatment?

13 A. She reports bleeding.

14 Q. Okay. And bleeding from where?

15 A. Both her vagina and anus.

16 Q. Okay. Does she say anything else about
17 the blood that would aid you in evidence
18 collection?

19 A. Well, a couple of things. First of
20 all, it was continued. She described the assault
21 as not as one occurrence, but she spoke in the
22 present tense and talked about it as it continued.
23 So she said it would always bleed, it would always
24 bleed. She would have blood in her underwear. He
25 would take the underwear to burn it.

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 Q. Did she report to you where the sexual
2 assault happened?

3 A. Yes; in her mother's bedroom.

4 Q. And did she report -- well, you said
5 she reported when, right? The last event?

6 A. Yes. She spoke specifically of the
7 last event, but then her tenses switched from it
8 happened here to, like, ongoing present tense. He
9 tells me to do this. He tells me to go to Mom's
10 bedroom.

11 Q. Was her mom around during the period of
12 time that she was being examined?

13 A. Yes. She was with us the whole time.

14 Q. And what did you observe about **Minor**
15 in the presence of her mother?

16 A. She was protective of Mom. She was
17 concerned that she was upsetting her. She would
18 turn to her and say, I'm so sorry, Mommy, as her
19 mother cried.

20 Q. And what was -- what did you observe --
21 without saying anything that Vitoria Whitsett said,
22 what was she doing? Just observing her demeanor.

23 A. What was **Minor** doing?

24 Q. No. What was the mother doing?

25 A. She was sad; she was crying.

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 Q. Okay. And what evidence collection
2 procedures are employed during this examination?

3 A. So it's a very meticulous step-by-step
4 process in order to not just collect, but preserve
5 evidence and maintain chain of custody. There is,
6 and I'm extremely meticulous in my practice, so I
7 take things step-by-step. I do first a head-to-toe
8 examination, look at skin, photograph any -- any
9 discoloration that could be looked at as bruises
10 and marks.

11 And then as far as the genital exam, we
12 take pictures. I collect evidence in a very
13 meticulous fashion, along with collecting swabs for
14 sexually transmitted infections.

15 Q. And about how long was **Minor** at
16 MUSC for this exam from beginning to end?

17 A. It was a really long process. She
18 arrived sometime in the afternoon, and I think I
19 started somewhere like 9:00 at night with her.
20 Yeah, about or 9:15. And it didn't finish until --
21 let's see where they signed off -- somewhere around
22 midnight or 1:00 a.m. It's a long, long arduous
23 process.

24 Q. Is the child like -- can you just
25 describe like what position she's in and where she

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 is when she's being examined?

2 A. So she remained in a bed. We used a
3 spine position, which means laying flat on her
4 back, legs in like a frog-like position. They pull
5 them up together. We use stirrups for older kids,
6 but she was younger and her body is not fully
7 developed yet, so it's much easier for them to be
8 in this frog-leg position because it's kind of
9 invasive.

10 Q. And are photographs taken of each phase
11 of the exam when you're examining her?

12 A. Yes. Yeah. Every positioning and in
13 between taking swabs, we photograph.

14 Q. And what is a sexual assault kit?

15 A. It's an evidence collection kit that is
16 put together by the State, by SLED, South Carolina
17 Law Enforcement Division. And it's prepackaged so
18 that everything remains sterile. Not sterile, but
19 uncontaminated. And you open the kit and have it
20 with you the entire time to maintain chain of
21 custody. It's prepackaged with envelopes that are
22 labeled for specific body parts, and swabs that are
23 labeled for specific body parts.

24 And part of what we do to keep
25 everything -- maintain that integrity is apply

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1 labels to the swabs that identify which body part
2 has been swabbed. And then those go into a dryer
3 that's locked, and I have the key. I maintain the
4 key, I maintain the box while we finish up all
5 paperwork and finish the examination.

6 And then everything gets packaged up
7 and sealed and signed off to the police. So once
8 the kit is opened, it remains in my custody until I
9 sign off on it to -- to a police officer.

10 Q. Okay. I'm going to show you what has
11 been marked as State's 29 and State's 30.

12 MS. WILLIAMS: May I approach?

13 MR. SCHWACKE: Your Honor, we have not
14 agreed for the admission until the complete chain
15 has been --

16 MS. WILLIAMS: We're not offering to
17 admit it at this time.

18 May I approach the witness?

19 THE COURT: You may. 29 is the box and
20 30 is the contents?

21 MS. WILLIAMS: 30 is the victim's
22 buccal swab.

23 BY MS. WILLIAMS:

24 Q. Can you describe for the jury what that
25 is?

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 A. This is an evidence collection kit that
2 I used for this -- for this case. And I
3 specifically marked the case number, this is my
4 handwriting.

5 Q. And so you know that this is the kit
6 for **Minor** because her name is on it?

7 A. Uh-huh, exactly.

8 Q. And inside the kit I'm going to show
9 you what's been marked as State's Exhibit 30. Can
10 you tell me what that is?

11 A. This is her buccal swab which is a swab
12 taken inside the cheek for what we call known DNA.
13 And that means it's to determine -- it's to give us
14 a baseline. We expect to get at least one
15 persons's DNA if we're swabbing, and that would be
16 the victim. And this identifies what the DNA is of
17 the victim.

18 Q. What are some of the other items in the
19 kit?

20 A. So it's separated. There is
21 toxicology, potentially toxicology, which we did
22 not do with **Minor**. There are body swabs,
23 potential saliva swabs, vaginal, oral, rectal; and
24 oral swabs are to identify another person's DNA.
25 There are specific areas within the mouth that you

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1 swab to collect for oral and specific -- a
2 different area that we swab for buccal.

3 Q. Okay. And after you're done collecting
4 all of these items, I'm assuming they get put back
5 into the box?

6 A. Yes. Each individual envelope gets
7 labeled, and then I sign them and they get sealed,
8 and they get sealed within the larger labels and
9 then the box. And then they all have evidence
10 stickers with my initials on them.

11 Q. And explain to the jury where this kit
12 went after you sealed it up and it left your
13 possession?

14 A. I believe MUSC Public Safety took it
15 from me.

16 Q. Can you read the names on the back of
17 the box? I don't know if they're legible.

18 A. Lee Holbrook took the kit from me at
19 midnight, around midnight, and then it was picked
20 up --

21 MR. SCHWACKE: Your Honor, I would --

22 THE COURT: Hold on one second.

23 MR. SCHWACKE: I would object beyond
24 what she did with it.

25 THE COURT: She can testify as to

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 what's on the -- I'm going to allow the testimony
2 as to what is on the box. She's testifying as to
3 what is on the box.

4 MR. SCHWACKE: May we approach?

5 THE COURT: You may.

6 (Bench conference.)

7 THE COURT: It doesn't make it
8 admissible in the chain, Mr. Schwacke. Note your
9 exception to this line of questioning.

10 BY MS. WILLIAMS:

11 Q. Where did it go after Mr. Holbrook?

12 A. Pamela Poinés. I believe it's
13 P-O-I-N-E-S.

14 Q. Okay.

15 A. And then Sergeant Register in the
16 evidence room, and then Dean Kokinda.

17 Q. Thank you. Thank you very much.

18 Now, when you do the acute exam, are
19 there forms that you follow in order to document
20 what you're doing, what injuries were on the child,
21 what evidence has been collected, and such things
22 as those?

23 A. Absolutely. It's built into our
24 electronic medical record at MUSC.

25 Q. Okay. And is that kind of called a

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 protocol or -- for lack of a better word?

2 A. Yes. It mirrors the SLED documentation
3 forms that are found in the kit and we just built
4 it electronically. And it's a very specific set of
5 questioning -- a line of questioning that we go
6 through and document on.

7 Q. And is that what you've been using to
8 refresh your memory?

9 A. Yes.

10 Q. On the form do you document any
11 injuries or other things of note on the physical
12 body of the child?

13 A. Yes. You document all of your
14 interpretations, everything that you see,
15 everything I see.

16 Q. Okay. I'm going to show Counsel what
17 was previously marked as State's 24.

18 On page 5 of the report that you're
19 using to refresh your memory --

20 MS. WILLIAMS: May I approach the
21 witness, Your Honor?

22 THE COURT: You may.

23 BY MS. WILLIAMS:

24 Q. I made a copy of it. They're going to
25 show that diagram. If you could put up State's 24?

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 MR. SCHWACKE: Could we approach a
2 second?

3 (Bench conference.)

4 BY MS. WILLIAMS:

5 Q. That page 5 is something that you
6 utilized to note what you observed; is that
7 correct?

8 A. Yes.. This is my documentation.

9 Q. Okay. If you could put State's 24 up.
10 If you could just kind of swing around, there's a
11 laser pointer, and explain to the jury what
12 injuries or notes that you made.

13 A. So --

14 Q. Move it up a little more. Okay. Thank
15 you.

16 A. Perfect. So what I document is
17 anything that's outside the norm. Or if I don't
18 see any trauma at all, that's what I document. So
19 in **Minor** case, there were -- there were several
20 areas that I identified with variations from the
21 norm with differences.

22 Q. Okay.

23 A. So my numbers actually block the image.
24 If you could imagine the structures -- the labia
25 are there. (Indicating) That's the labia majora,

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 that's the outer portion. And then here is labia
2 minora. This is the clitoral hood, this is the
3 urethra for urination, and then this is the vaginal
4 opening. (Indicating)

5 Now, around the vaginal opening is the
6 hymen. And there is a big misunderstanding that
7 the hymen is actually closed until the woman has
8 intercourse, but there actually is always an
9 opening.

10 The hymen changes as a girl matures.
11 So when you're looking at the hymen of a young
12 person, it's small, tight, the color is different,
13 it's very vascular, extremely sensitive.

14 When you're looking at the hymen of a
15 pubertal person, a female, one thing through
16 puberty, it's estrogenized and it gets real -- it's
17 all fluffy, there are a lot of folds in it, it's
18 stretchy, it's white and less vascular, and it's
19 not as painful.

20 So what we have here is the -- is the
21 hymen and then the hymenal opening. My
22 documentation covers a piece of that. So if you
23 imagine a clock face where 12:00 is at the top,
24 6:00 is at the bottom, what I noted was that there
25 was a separation in hymen at 6:00. And that would

1 be right here. (Indicating)

2 So, basically, the hymenal tissue which
3 ordinarily looks like a ring, it could be round,
4 which we call annular, or concentric, which is sort
5 of a half -- like a crescent moon; **Minor** was
6 separated at the bottom. So there were two pieces
7 here with a separation at 6:00. That's the first
8 notation.

9 The second notation is that she had
10 what we call erythema, which is just redness,
11 irritation. And that was -- if those numbers
12 weren't in the way, where the hymen comes down and
13 then it was separated, there was some little folds
14 and there was erythema on the outside at 5:00 and
15 7:00 on the clock face.

16 And those were the notable differences
17 from a normal -- what I would consider a normal
18 examination. So variation in the norm. That's for
19 this portion.

20 When you move to the anus, there was at
21 12:00 a skin tag. And, of course, my numbers block
22 it again. If you were, again, to imagine the clock
23 face, at the top there was a skin tag that was
24 folded over, and that's an extra growth of skin
25 that sometimes happens during irritation.

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 A lot of people that have constipation
2 will have skin tags, but the notable piece was that
3 as the anus dilated there were tears within that
4 skin tag. And they were at here, here, and here.
5 (Indicating) There were three most notable tears
6 in the anal folds. That's the tissue that folds up
7 into -- that folds into the anus. And it's
8 intended to dilate. That's a part of the body
9 that's intended to stretch.

10 So she had vertical tears within -- I'm
11 sorry, she had tears within the skin folds and they
12 were at from like 1:00 to 11:00.

13 Q. Did the mother --

14 A. Sorry, I put 1:30. I reviewed the
15 photos again before coming in, and it was somewhere
16 in that range. And then she also had what is
17 called venus pooling, which is just a darkness
18 noted in the tissue where the blood tends to
19 collect, and that's a normal -- that's a normal
20 finding.

21 Q. Okay. So the abnormal findings, just
22 so I understand, was the separation in the hymen at
23 6:00, the erythema possibly, and the tears in the
24 anus?

25 A. Yes.

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 Q. And you, as a nurse, are not prepared
2 to give medical opinions about that. You're just
3 telling us things that you noted that were not
4 within the normal range?

5 A. So part of what we do is our -- this is
6 the initial exam, and we get to see -- we get to
7 document at the initial point where there is
8 potentially trauma. This part of the body heals
9 really, really quickly. It's so vascular, there's
10 so much blood flow, and the tissue healing is
11 really, really quick. Like, within a day or two
12 you can start healing up.

13 So what we do, we're photo documenting
14 and documenting on paper what we see, but the
15 follow-up is what is so important. Because after
16 we leave, there is an attending physician, a doctor
17 who is trained in child abuse pediatrics, who
18 reviews my documentation, reviews my photos, and
19 makes sure that they agree with what they found --
20 what I found or reported.

21 And Dr. Michael Taylor had done that
22 with my documentation and agreed with everything.
23 Then we schedule them -- they come back for a
24 two-week and six-week and three months, sometimes a
25 six-month appointment. And there are several

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 things we do at those follow-up appointments.

2 They get a complete head-to-toe, but
3 the important piece is that they then look at this
4 documentation, they photo document, and they
5 physically document what they find at those
6 appointments, and they compare them to see what
7 changes were noted.

8 So where somebody might have a
9 discoloration of the skin that I might think is a
10 bruise, when they come for follow-up, if it's still
11 there it might be a normal variation. If it's not
12 there, like in this case, on follow-up her -- there
13 was healing, there was -- that erythema wasn't
14 there. It tells us that then that was an incident
15 of trauma and it was healed.

16 So then on those, it's either a child
17 abuse pediatrician or a nurse practitioner, and
18 they're both specifically trained in child abuse
19 that sees these kids for follow-up. Luckily,
20 **Minor** came for all of her follow-ups.

21 So that documentation was then not just
22 eyes were put on her from the nurse practitioner,
23 but then there was another set of -- actually, two
24 more child abuse pediatricians that then review the
25 documentation to make sure they agreed not only

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 with my findings, but with the subsequent visits
2 and their findings. And we were all in agreement.

3 Q. So in this particular case, you're
4 noting findings, physical things you're seeing that
5 are outside of the norm, is that typical for --
6 even for children that you find out later that
7 there was proof they were sexually assaulted? Is
8 it typical to have findings?

9 A. No. It's actually -- so the statistics
10 for children that come in with acute sexual
11 assaults, those that come in in the 72-hour window,
12 the findings are less than 20 percent. So we
13 expect that 80 percent of the kids that walk in the
14 door will have absolutely no findings whatsoever.
15 No variation from the norm.

16 And that's for several reasons, and
17 this was a huge, huge study that revealed that.
18 And those numbers are international. We have
19 looked at our specific numbers and, statistically,
20 we are very much -- our practice at MUSC is very
21 much in line with that less than 20 percent of
22 cases have trauma.

23 So we know that we're diagnosing the
24 same way that everybody else is, I guess is what
25 I'm saying. But there are lots of reasons why you

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 would find a normal exam for a child that has been
2 sexually assaulted. That part of the area is
3 intended to stretch. If they're an adolescent,
4 that's even more so the hymen is stretchy.

5 It's -- you know, the anus also dilates
6 and stretches. So it's -- it's easy to not have
7 trauma, but then when you talk about younger kids
8 that have that tighter hymen, like **Minor** would,
9 that have that -- that those structures that don't
10 stretch as easily in the vaginal area, they tend to
11 pull back.

12 The hymen is very sensitive and very
13 painful, so they tend to pull back when something
14 comes in contact with the hymen. So we don't
15 usually see tears because it's -- you know, nothing
16 really penetrates.

17 And their interpretation -- a child who
18 doesn't understand what intercourse is, you know,
19 doesn't understand what penetration is, their
20 interpretation is that anything that's gone past
21 the labia, past that portion here (indicating) that
22 doesn't usually open, they're saying, oh, something
23 went inside when, in fact, it may not have. So we
24 usually don't see trauma at all.

25 Q. So in some ways this is remarkable?

KAREN DROZD - DIRECT EXAM BY MS. WILLIAMS

1 A. This is -- I have only seen two cases
2 -- in all of these exams that I have done, I have
3 seen two cases that have this kind of hymenal
4 separation.

5 Q.. And did you ask Vitoria Whitsett, the
6 mother of this child, if this child had been
7 exposed to HIV?

8 A. I asked her if there were any sexually
9 transmitted infections that I needed to know about
10 to treat her.

11 Q. And did she tell you?

12 A. She said there were not that she knew
13 of.

14 Q. And later did you find out that that,
15 in fact, was not the case?

16 A. Three days later. And the concern is
17 that if somebody has been -- if a child has been
18 exposed to HIV, I mean, we did test her anyway, we
19 always do, but Peds Infectious Disease needs to get
20 involved in those cases immediately and start them
21 on either a plan of monitoring -- there's a whole
22 different course of treatment and a whole different
23 way to look at kids that have, number one, either
24 had their first exposure in the last 72 hours, but
25 if they've had continual exposure over the months,

KAREN DROZD - CROSS EXAM BY MR. SCHWACKE

1 it increases their chances of gaining HIV. So they
2 put them on a very specific protocol.

3 MS. WILLIAMS: Okay. Court's
4 indulgence for just a second.

5 Please answer any questions that
6 Mr. Schwacke has.

7 THE COURT: Mr. Schwacke.

8 MR. SCHWACKE: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. SCHWACKE:

11 Q. You're not a doctor, so you're a nurse.
12 I'm just trying to figure out what is the correct
13 title to use.

14 A. Karen Drozd is fine.

15 Q. And I'm not being funny about that, but
16 clearly one of the things here is you can't give a
17 medical opinion?

18 A. I cannot give a medical diagnosis.

19 Q. And so that's something we're not going
20 to hear from you today in regards to this case, is
21 any kind of medical diagnosis?

22 A. I am not giving a medical diagnosis.
23 All I'm doing is giving you the interpretation
24 of --

25 Q. Something you've seen --

KAREN DROZD - CROSS EXAM BY MR. SCHWACKE

1 A. -- documentation.

2 Q. I have seen this, it doesn't look
3 normal, I'm documenting it for Dr. Maya or somebody
4 else down the line to deal with?

5 A. Well, there is another piece of it,
6 though, that's important, and that's that depending
7 on what we see, it guides us down a certain road.
8 So if we see trauma, then we need to get them the
9 kind of help they need before they can see the
10 doctor.

11 And, in fact, doctors bring us in to
12 get our opinions because we see a lot more
13 genitalia than they do and we're able to tell them,
14 hey, this is normal, this isn't normal, let's look
15 at A, B or C for treatment.

16 Q. So the documents that you -- the
17 documentation that you made on -- it's up there.
18 Okay. On the document that you have in front of
19 you, 24 for identification, those are irregular
20 findings for you and you documented them, correct?

21 A. Variations from the norm, yes.

22 Q. You can't provide a medical opinion
23 based on medical certainty of the causation of
24 those things that you have documented?

25 A. No. I am not giving you a medical

KAREN DROZD - CROSS EXAM BY MR. SCHWACKE

1 opinion.

2 Q. You are not giving it nor are you
3 qualified to give it?

4 A. Right.

5 Q. Okay. So any indication as to when
6 these occurred or how they occurred, that's not
7 something that you're qualified to answer?

8 A. So when they occurred, I can tell the
9 difference from a fresh wound and one that is
10 healed if that's -- and I can definitely document
11 under those scores, if that's what you're asking.

12 Q. But that's something we're going to
13 hear later with Dr. Maya apparently.

14 A. Oh, Dr. Maya will definitely give her
15 opinion, yes.

16 Q. And some of the things that you found
17 on the pictures, and I realize you're not a doctor
18 again, but the -- some of these things are -- may
19 be unusual, but may not necessarily be related to a
20 sexual assault. Some of those things like skin
21 tags in the anus, that's actually something that's
22 nonspecific or normal or unrelated to --

23 A. We do often see that with constipation.

24 Q. Okay. And that could include tears in
25 the anus?

KAREN DROZD - CROSS EXAM BY MR. SCHWACKE

1 A. Right.

2 Q. And those can be caused by constipation
3 or any type of thing that unduly stretches that
4 area?

5 A. Exactly. That's why we get a really
6 good history and we take a good medical history
7 before beginning.

8 Q. Did you see any signs of blood?

9 A. There was no active bleeding.

10 Q. And that is two days after this --
11 within -- did we say it was 50 hours, is that when
12 we determined it was?

13 A. Yes. The reported time, I believe, was
14 somewhere around -- now, this is a nine-year-old
15 telling us something -- somewhere around 5:00 p.m.
16 on the 30th, and I examined her on the 2nd
17 somewhere around 9:00 p.m.

18 Q. So to kind of run through your report,
19 and you did it with Ms. Williams, and I will just
20 do it again. The contact that was described by
21 **Minor** included vaginal penetration, penis and
22 finger; penal or anal penetration by the penis;
23 oral of and by kissing and licking; ejaculation,
24 mouth, vagina and body. Is that correct, that's
25 what she described?

KAREN DROZD - CROSS EXAM BY MR. SCHWACKE

1 A. Yes. She said after -- she described
2 it after ejaculation that she had to lick it.

3 Q. And so the other activity, the
4 post-assault activity that's noted there includes
5 urination, genital or body wipe, bath, shower, wash
6 -- you can't find it?

7 A. It's here.

8 Q. I will let you get to it.

9 A. The way we document it -- the way it
10 prints out is in a different order than how we
11 document it.

12 Q. So are you back with me? I don't want
13 to get too far ahead.

14 A. Yep, I got it.

15 Q. And all of that -- some of that is on
16 the top of page two of five of that document.

17 I want to step back a second. The
18 history of assault by patient, which was on that
19 same page, was that told to you, to someone else,
20 you-all together?

21 A. No, that was told directly to me by
22 **Minor** word for word. So this is completely in her
23 words.

24 Q. Okay.

25 A. Verbatim.

KAREN DROZD - CROSS EXAM BY MR. SCHWACKE

1 Q. Including there was always a lot of
2 blood that comes out?

3 A. Yes.

4 Q. So, again, we were talking about what
5 contact was described by the patient, and then what
6 activity post assault did she give you, urination,
7 genital or body wipe, bath, shower, wash, brush
8 teeth, ate and drank.

9 A. Yes.

10 Q. And you were talking about acute
11 examinations versus one further in time. You
12 mentioned that 72 hours is sort of the cutoff for
13 what is acute and what is nonacute. Is there
14 another word for nonacute?

15 A. No.

16 Q. Okay.

17 A. Sorry.

18 Q. I was wondering if there was another
19 word.

20 A. And that determination, that 72-hour
21 mark is sort of an accepted standard in the
22 practice, but MUSC follows the State protocols
23 under SCCAMRS, South Carolina Child Advocacy
24 Medical Response System.

25 And they set up protocols that identify

KAREN DROZD - CROSS EXAM BY MR. SCHWACKE

1 how -- up to how long is considered, you know,
2 should we collect for children and up to how long
3 should we -- you know, what kind of medicines we
4 should give and that kind of stuff. So we guide
5 our practice by those standards.

6 Q. And the format that you use is the SLED
7 protocol that's incorporated into your computer
8 system, so everything that SLED requires or is
9 asking you to do is included in the information
10 you're sort of given from your computer system?

11 A. Yes. It was built -- it's guided by
12 the form that comes in the SLED kit.

13 Q. So in this case, in spite of the hour
14 or the length of time that it happened, and in
15 spite of the sort of cleaning ritual, including
16 urination, every one of those body functions,
17 despite that you still did the kit and did the
18 collections?

19 A. She definitely fell within that time
20 frame. She was definitely deemed appropriate for
21 our test.

22 Q. So you collected the oral swab and
23 smear, the buccal swabs, vaginal swabs, and rectal
24 swabs?

25 A. Yes.

KAREN DROZD. - CROSS EXAM BY MR. SCHWACKE

1 Q. And you didn't collect any clothing?

2 A. I did not collect clothing. Changed
3 clothes, she had changed already.

4 Q. She had changed clothes, but the SLED
5 protocol basically says, if the victim had changed
6 clothes after the alleged assault, collect only the
7 items in direct contact with the victim's genital
8 area?

9 A. Yeah. And for some reason, I think she
10 came in with no underwear, but I did not -- I do
11 not remember.

12 Q. It says, changed. Says underwear
13 changed in your report, but it doesn't say anything
14 about being collected?

15 A. She had changed several times since
16 then.

17 Q. And it says, if the victim changed
18 clothes after the alleged assault, collect only the
19 items in direct contact with the victim.

20 A. Yeah. I don't know why we didn't
21 collect underwear.

22 Q. But you didn't?

23 A. It would be documented here.
24 Everything is documented on here.

25 MR. SCHWACKE: All right. Just one

KAREN DROZD - REDIRECT EXAM BY MS. WILLIAMS

1 moment.

2 That's all the questions I have.

3 THE COURT: Redirect?

4 MS. WILLIAMS: Yes, ma'am.

5 REDIRECT EXAMINATION

6 BY MS. WILLIAMS:

7 Q. Mr. Schwacke asked you about whether or
8 not something looked like -- he asked you about
9 whether or not what you were seeing was from trauma
10 or not trauma; and you answered, you can tell when
11 something is a fresh wound. You talked a little
12 bit about how that is impacted by later
13 examinations. Can you explain why you know that
14 might be trauma based on the fact that when she
15 comes back it's healed up?

16 A. So there's different stages of healing
17 that we look for. A fresh wound, for example, may
18 have, not always, but may -- you may see jagged
19 edges of torn skin. You may see like raw
20 looking -- the top layer or layers of skin have
21 come off, there might be a separation in skin.

22 A healed wound is not going to look as
23 red as that, you know, angry look that fresh wounds
24 get. A healed wound is -- there are different
25 stages of healing and you look for that. Sometimes

KAREN DROZD - REDIRECT EXAM BY MS. WILLIAMS

1 the skin will turn white. If you had like a
2 separation in skin, there was a tear and jagged
3 edges, by the time they're healing they're curled
4 in, white around the edge, they're not red and
5 fresh like a fresh wound would be.

6 Erythema is usually seen in a fresh
7 wound, or fresh irritation, and then over time it's
8 going to go away. It will get -- just turn into
9 the normal pink skin color if you're Caucasian and
10 then if there's -- if it's a deeper wound, there's
11 granular tissue that we look for.

12 So for a newer wound or one that is
13 oozing, might have this what we call granular
14 tissue, a little grainier looking and isn't as
15 sensitive and it's starting to heal.

16 Q. And this child's hymen was separated?

17 A. Yes.

18 Q. Is it sometimes called transected like
19 a transection?

20 A. So a transection is a medical diagnosis
21 and it is -- there are different degrees of
22 transection. There is complete that goes all the
23 way through the hymen down to the base of the
24 vagina, or it could be a partial transection. So
25 what I documented was a separation to later be

KAREN DROZD - REDIRECT EXAM BY MS. WILLIAMS

1 determined as a transection.

2 Q. Okay. And Mr. Schwacke asked you about
3 skin tags and how they can be normal, but tearing
4 inside the skin tag is not normal in the absence of
5 constipation, correct?

6 A. It is not a typical -- it's not a
7 typical finding unless there is some other skin
8 disorder. There is several of them I could name,
9 like sclerosis where the skin becomes very friable
10 which means it can tear and fall apart easily and
11 create wound.

12 None of the causes that -- none of the
13 medical issues that caused that kind of -- that
14 kind of tearing is what they reported to me.

15 MS. WILLIAMS: Okay. Thank you. No
16 further questions.

17 THE COURT: Recross?

18 MR. SCHWACKE: No, Your Honor.

19 THE COURT: You may step down. Leave
20 everything right there.

21 Call your next witness.

22 MS. WILLIAMS: Vitoria Whitsett.

23 THE COURT: Vitoria Whitsett. If you
24 would come up this way.

25 VITORIA WHITSETT,

VITORIA WHITSETT - DIRECT EXAM BY MS. WILLIAMS

1 being first duly sworn, testified as follows:

2 THE CLERK: Please state your full name
3 and spell your last.

4 THE COURT: Vitoria Nogueira Caldas,
5 N-O-G-U-E-I-R-A, C-A-L-D-A-S.

6 DIRECT EXAMINATION

7 BY MS. WILLIAMS:

8 Q. Vitoria, how many children do you have?

9 A. Three.

10 Q. And is one of those children **Minor**?

11 A. Yes.

12 Q. And how old is she now?

13 A. She is 11.

14 Q. She will be 12 in September?

15 A. September.

16 Q. And which children live with you at
17 this time?

18 A. **Minor**, myself, and Adam.

19 Q. Okay. And how old is Adam?

20 A. Adam is nine.

21 Q. Okay. And where do you work?

22 A. Chick-Fil-A.

23 Q. And how long have you worked there?

24 A. A year and a half.

25 Q. Where did you work before that?

VITORIA WHITSETT - DIRECT EXAM BY MS. WILLIAMS

1 A. Dick's Sporting Goods.

2 Q. And how about before that?

3 A. Wal-Mart.

4 Q. Before that?

5 A. Courthouse, family court.

6 Q. Okay. So you worked at the clerk of
7 court here in Berkeley County?

8 A. Yes.

9 Q. Who is Jeffrey Whitsett to you?

10 A. My ex-husband.

11 Q. Do you see him here in the courtroom?

12 A. Yes.

13 Q. Can you please point him out and tell
14 us what he's wearing?

15 A. Blue shirt.

16 Q. Okay. And what kind of blue shirt?

17 A. Golf shirt.

18 MS. WILLIAMS: Okay. Let the record
19 reflect, Your Honor, that she has identified
20 Jeffrey Whitsett, the defendant.

21 THE COURT: It will.

22 BY MS. WILLIAMS:

23 Q. Okay. When were you married to
24 Mr. Whitsett?

25 A. 2014, January.

VITORIA WHITSETT - DIRECT EXAM BY MS. WILLIAMS

1 Q. And when did you stop living with him?

2 A. June 2015.

3 Q. Were you together before you actually
4 got married?

5 A. Yes.

6 Q. And how old was he when you got
7 married?

8 A. How old was him?

9 Q. Yeah.

10 A. 25, I think.

11 Q. And how old were you?

12 A. I was 46, or 45.

13 Q. And where do you live now?

14 A. Berkeley County, 117 Farrell Street,
15 lot five, Moncks Corner.

16 Q. Okay. And were you living there in
17 2015?

18 A. Yes.

19 Q. Did Mr. Whitsett live with you at that
20 time?

21 A. Yes.

22 Q. And where were you working back in June
23 of 2015? We just went through all of your jobs.

24 A. Dick's Sporting Goods.

25 Q. Okay. And was Mr. Whitsett working?

VITORIA WHITSETT - DIRECT EXAM BY MS. WILLIAMS

1 A. Yes, ma'am.

2 Q. Do you remember where he worked?

3 A. Scrap.-- Berkeley County Scrap.

4 Q. Okay. And who else was living in the
5 home back in June of 2015?

6 A. My sister, my brother-in-law, and my
7 niece.

8 Q. What were their names?

9 A. Marco Barcellos is my brother-in-law,
10 my sister is Sylvia Barcellos, my niece is Melyssa,
11 and my two kids.

12 Q. Okay. And when you were at work, who
13 would be home with the children?

14 A. Most of the time Jeffrey Whitsett.

15 Q. Was he regularly home with the
16 children?

17 A. Yes, ma'am.

18 Q. Did you observe him spending time with
19 your children?

20 A. Yes, ma'am.

21 Q. And who did he spend time with?

22 A. He spend with both of them. He had a
23 preference for my daughter.

24 Q. Okay. And what happened in June of
25 2015 that changed things?

VITORIA WHITSETT - DIRECT EXAM BY MS. WILLIAMS

1 A. I was getting ready to go to work and
2 my daughter was taking a shower, **Minor**. And she
3 called me in the bathroom, and I went over there
4 and got inside, and she started to cry. And she
5 told me she was scared. And I asked her why.

6 And she told me that evil Jeff is
7 coming. And I said what do you mean, evil Jeff is
8 coming? She said, Mom, I'm afraid. And I'm like,
9 what you mean you're afraid? And she started
10 crying and she wouldn't talk about it.

11 And I was like, did he ever touch you?
12 Did he touch you? And she said, yes. She just
13 shake her head. I'm like, did she (sic) put her
14 hand on you, on your physical body? She said,
15 yeah. That was enough. When she said that I knew
16 what happened --

17 Q. Okay.

18 A. -- so...

19 Q. And did she -- what were you doing when
20 she told you this?

21 A. I was getting ready to go to work.

22 Q. Okay.

23 A. And she didn't want to go.

24 Q. She didn't want to go?

25 A. She didn't want I go.

VITORIA WHITSETT - DIRECT EXAM BY MS. WILLIAMS

1 Q. Okay. If I ask you something and you
2 don't understand it, it's okay to slow down and
3 I'll slow down. I'm kind of peppering you with
4 questions.

5 What was her demeanor like? What was
6 she acting like when she was telling you this?

7 A. She was crying.

8 Q. Okay. And what did you do next?

9 A. I yelled at him in the bathroom still.
10 I told him to get out. I was -- I knew what
11 happened. I told him what he done and he need to
12 get out before I changed my mind. He need to get
13 out.

14 Q. And what did you do next?

15 A. He grabbed his stuff, he grabbed his
16 computer, his laptop, his phone; and I told him not
17 to get the truck, because the truck was in my name.
18 He had to get his motorcycle and leave. So he
19 didn't grab a whole lot of stuff.

20 And he saying, no, he never did that,
21 he would never do that. And I told him I didn't
22 want to talk. I was already -- by that time I was
23 hysterical crying, I couldn't really think myself.

24 Q. When you said he didn't take much
25 stuff, but he did take all of his electronics?

VITORIA WHITSETT - DIRECT EXAM BY MS. WILLIAMS

1 A. Yes, ma'am.

2 Q. And who was Kevin Kearse? Is he a
3 friend of yourself?

4 A. He is my attorney. He handled my
5 second divorce case.

6 Q. Okay.

7 A. And I knew him back when I worked for
8 the clerk of court. He come in here pretty often,
9 and I trusted him to be my adviser any time I had a
10 legal question.

11 Q. And so did you call him?

12 A. Yes, ma'am. He was the first person I
13 tried to call. I was pretty confused; I didn't
14 know what to do.

15 Q. Okay. And did you eventually take --
16 did Kevin help you? Did he call the police?

17 A. Yes, ma'am. After he finally realized
18 what I was trying to say, because I was crying
19 pretty much, and he told me to just wait and he
20 would help me. He would call me back, just wait.
21 And he did, he called me back about 15, 20 minutes,
22 I think.

23 And he said, I talked to the police, I
24 want you in my office -- you and **Minor** try to get
25 some rest tonight and see if you can calm down her

VITORIA WHITSETT - DIRECT EXAM BY MS. WILLIAMS

1 and come to my office 9:00 tomorrow.

2 Q. Did you go back at 9:00 a.m.?

3 A. Yes, ma'am.

4 Q. And after -- at that time did you talk
5 to the police?

6 A. Yes, ma'am.

7 Q. Okay. And did you take **Minor** in for a
8 medical examination?

9 A. Yes, as soon as he told me to do so.

10 Q. And did you take **Minor** in for an
11 interview at the Dorchester Children's Center?

12 A. Yes, ma'am. After MUSC's exam, they
13 told me I could go from that point to Dorchester
14 Children and take her there and continue with the
15 case.

16 Q. Okay. And during the medical
17 examinations, were you asked whether **Minor** had
18 been exposed to any sexually transmitted diseases?

19 A. Yes.

20 Q. And at the time did you know if she
21 had?

22 A. I wasn't sure if she was contagious,
23 but the doctor asked me while she was there, and my
24 answer was, just test her for everything possible.
25 I couldn't say yes or no --

VITORIA WHITSETT - DIRECT EXAM BY MS. WILLIAMS

1 Q. You didn't tell?

2 A. I didn't told her because **Minor** was
3 there. She was nine at that point; I didn't want
4 to explain for her what HIV means.

5 Q. And you knew she had been exposed why?
6 How do you know that?

7 A. Because Jeffrey Whitsett is HIV
8 positive.

9 Q. And how do you know he's HIV positive?

10 A. Because when we was together, after a
11 couple of months, a friend of ours introduced me to
12 him --

13 Q. Don't say what anyone else said. Tell
14 us how you know he's HIV positive?

15 A. They told me he had. And I pressed him
16 to go get an exam. And, finally, he did the exam
17 and it confirmed that he was.

18 Q. And did you ever go with him to any of
19 the treatments for HIV?

20 A. Yes, I went with him.

21 Q. And where would that be?

22 A. It's the Wellness Center in West
23 Ashley, I believe.

24 Q. Okay. And you especially know he's HIV
25 because you're infected?

VITORIA WHITSETT - DIRECT EXAM BY MS. WILLIAMS

1 A. Yes, he also infected me in 2015.

2 Q. And where do you get your treatment?

3 A. In the same place.

4 Q. Okay. And at some point before you
5 were infected, did you receive counselling on what
6 to do to prevent that?

7 A. Yes, ma'am. Before when he went to
8 test and he was positive, I was tested the same
9 time and I was negative. So we was explained at
10 that point what we had to do to avoid to infect
11 myself.

12 Q. What's the main thing?

13 A. Safe sex.

14 Q. Okay. And did you practice safe sex?

15 A. I wanted to; he refused.

16 Q. Okay. So you had unprotected sex with
17 your then husband Mr. Whitsett?

18 A. Yes.

19 Q. About how many times would you say that
20 happened?

21 A. It's hard to say. It was over a year
22 before I got contagious, way over a year. About a
23 year and a half.

24 Q. So a year and a half of unprotected sex
25 and you were infected?

VITORIA WHITSETT - DIRECT EXAM BY MS. WILLIAMS

1 A. Yes, ma'am.

2 Q. At some point -- have you ever
3 discussed HIV with your daughter?

4 A. No, ma'am, not to this day. I have
5 not.

6 Q. To your knowledge, did Mr. Whitsett
7 ever let her know anything about HIV?

8 A. No.

9 Q. Did she ask you any questions about it?

10 A. No.

11 Q. After you kicked Mr. Whitsett out of
12 the home, did you ever go back to where he would
13 spend his time in the back yard?

14 A. Yes, ma'am.

15 Q. Where was that? Explain what that was
16 to us.

17 A. It's in right behind my windows in the
18 living room in the back. My -- call it a shed
19 or --

20 Q. Right.

21 MS. WILLIAMS: Can you put State's 14
22 up on the screen? I'm showing counsel what was
23 previously marked as State's 14.

24 BY MS. WILLIAMS:

25 Q. If you would just kind of swing around

VITORIA WHITSETT - DIRECT EXAM BY MS. WILLIAMS

1 in your chair? I've been torturing people all
2 day --

3 A. Yes, ma'am.

4 Q. And explain to the jury, there's a red
5 button there, where the area was that he would
6 spend time.

7 A. Right here inside that place in here.
8 This is where. (Indicating)

9 Q. Okay. And is there a burn pit in your
10 yard?

11 A. Yes, ma'am.

12 Q. Where is that?

13 A. It's not in this picture. It's in this
14 side over here. Might be in another picture.

15 Q. Who would use that burn pit?

16 A. He would be the only one to use it.

17 MS. WILLIAMS: Can you put up State's
18 17? I'm showing counsel what was previously marked
19 as State's 17.

20 BY MS. WILLIAMS:

21 Q. Is that the burn pit?

22 A. Yes, ma'am. This is my dog right here.
23 (Indicating)

24 Q. And what is that box that's being
25 burned there; do you know?

VITORIA WHITSETT - DIRECT EXAM BY MS. WILLIAMS

1 A. It looks like trash, I guess. I don't
2 know. Where you do the -- what's the name -- the
3 meat outside, for hot dogs and stuff.

4 Q. And so at some point after he left, did
5 you ever go back in the area or ask anyone else to
6 go back in the area?

7 A. Yes, ma'am. He would -- he used to
8 leave the tools and stuff all over the place, and
9 my dog was free to walk over there, and I was
10 afraid my dog would get hurt. So I asked my
11 neighbor's son could he -- to help me clean it up
12 because he also worked with cars and motorcycles,
13 and they used to be friends.

14 So I asked him to help me clean it up,
15 that place. So he went there and cleaned it up
16 with me. I also wanted to get some metals out and
17 help with the money, and we sold some scrap.

18 Q. Okay. And did anything happen that was
19 unusual when Cody was going through that area and
20 trying to help you find scrap metal and clean up?

21 A. Yes, ma'am. I was in the back. He did
22 find a container, a metal container, with one of my
23 daughter's underwear in it. **Minor** underwear was
24 there.

25 Q. And what did you do with that underwear

VITORIA WHITSETT - DIRECT EXAM BY MS. WILLIAMS

1 after Cody gave it to you?

2 A. I put it in a plastic bag and called
3 the police immediately.

4 Q. Okay. And did they come and collect
5 it?

6 A. Yes, ma'am.

7 MS. WILLIAMS: Court's indulgence.

8 THE COURT: Take your time.

9 MS. WILLIAMS: I'm going to show
10 Counsel what was previously marked as State's 28.

11 May I approach the witness?

12 THE COURT: You may.

13 BY MS. WILLIAMS:

14 Q. Mrs. Whitsett, I want to show you
15 what's been previously marked as State's 28 for
16 identification. I'm not asking that it be
17 introduced at this time. What is that?

18 A. That's my daughter's, **Minor**,
19 underwear.

20 Q. Is that the underwear that Cody brought
21 you from the can?

22 A. Yes.

23 Q. And that's the underwear you put in the
24 plastic bag and called the police?

25 A. It looks like it. It's been over two

VITORIA WHITSETT - DIRECT EXAM BY MS. WILLIAMS

1 years so, yes, ma'am. That's what I did.

2 Q. Now, eventually the medical
3 professionals at MUSC found out that your daughter
4 had been exposed to the HIV virus; is that correct?

5 A. Yes. I told them when I went to the
6 children's center. The doctor that saw her for the
7 review, I talked to her. And that was private
8 between me and her, and I did told her.

9 Q. So that was at a later appointment?

10 A. Yes, the very next one.

11 Q. And are you aware of the fact that the
12 police might have told them before that, or do you
13 have any knowledge of that?

14 A. To my daughter?

15 Q. That they might have told the doctors
16 that she had been exposed to HIV?

17 A. I don't know.

18 Q. Has **Minor** been tested for HIV?

19 A. Yes, ma'am.

20 Q. How many times?

21 A. Six times, I believe.

22 Q. Okay. And so far has she been negative
23 or positive?

24 A. Negative, thank God.

25 Q. Were you aware of law enforcement's

VITORIA WHITSETT - CROSS EXAM BY MR. SCHWACKE

1 efforts to find Mr. Whitsett?

2 A. Yes, ma'am.

3 Q. Did they try to get information from
4 you about where he might be?

5 A. Yes, ma'am.

6 Q. And did you give them information?

7 A. Yes, ma'am.

8 Q. And did they -- were they able to find
9 him right away?

10 A. Not very easy, but then they located
11 him.

12 MS. WILLIAMS: Okay. Thank you.

13 Please answer any questions that Mr. Schwacke may
14 have.

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Mr. Schwacke.

17 CROSS-EXAMINATION

18 BY MR. SCHWACKE:

19 Q. Ms. Whitsett, do you recall --

20 A. Nogueira.

21 Q. Sorry?

22 A. Nogueira.

23 Q. Nogueira.

24 A. Yes, sir. I'm sorry.

25 Q. That's fine.

VITORIA WHITSETT - CROSS EXAM BY MR. SCHWACKE

1 Do you recall when this first happened
2 having a discussion with the caseworker involved in
3 this?

4 A. When the case started, yes, sir.

5 Q. Okay. And do you remember telling the
6 caseworker that you had actually observed some
7 blood in **Minor** underwear?

8 A. Yes, sir.

9 Q. And that was on the day of the
10 examination at the hospital when you told the
11 caseworker that you recalled seeing blood in her
12 underwear?

13 A. The blood, I saw it. It was the
14 underwear I found out in the backyard.

15 Q. But you had the conversation with the
16 caseworker on June 3rd?

17 A. Okay. I don't recall that.

18 Q. And the item wasn't found in the yard
19 until June 17th?

20 A. I don't recall seeing blood on her
21 underwear. I recall -- I told them before I even
22 knew she was being abused; I noticed the underwear
23 was disappearing in her drawer; I remember that.
24 And I didn't know why, but I would go over there
25 and put them away, and it was less every time. I

VITORIA WHITSETT - CROSS EXAM BY MR. SCHWACKE

1 remember that. I remember that.

2 Q. Do you have Vaseline at your house?

3 A. We do, yes, sir.

4 Q. Was that located when they searched the
5 house?

6 A. Yes, sir, it was located.

7 Q. Vaseline?

8 A. Vaseline.

9 Q. Not -- not another lubricant, Vaseline.

10 A. We did too have lubricant, but that was
11 located empty, and I gave to the police a small
12 one, but the Vaseline I still have in my house.

13 Q. The police searched your house,
14 correct?

15 A. Yes.

16 Q. You gave -- you signed a piece of paper
17 that said, come search my house?

18 A. Yes.

19 Q. And that is the same day that the pants
20 were turned over from you to Officer Fenton?

21 A. Yes, sir. I don't understand the
22 question. I still have Vaseline at my house. That
23 doesn't mean it's the same --

24 Q. I understand.

25 A. Yeah. Okay.

VITORIA WHITSETT - CROSS EXAM BY MR. SCHWACKE

1 Q. I understand. I'm just asking from a
2 search standpoint.

3 A. Yes, sir. I understand.

4 Q. So are you on Facebook still?

5 A. Yes.

6 Q. Is it odd that you have pictures of
7 Jeffrey still on your Facebook page?

8 A. I'm not expert on computers at all, and
9 I tried to delete those and somehow they didn't
10 delete. I had to ask somebody who was expert on it
11 and they tried to delete. I didn't want the
12 pictures on there, I promise you. I did not want
13 it.

14 Q. Aren't there pictures of you and him
15 hugging and kissing?

16 A. Okay.

17 Q. There are pictures of you and him and
18 the children.

19 A. Okay.

20 Q. Correct?

21 A. There was, yes, sir. Not anymore. You
22 can go now and see.

23 Q. When did you take them off?

24 A. I took off when I was aware -- someone
25 told me they was there.

VITORIA WHITSETT - CROSS EXAM BY MR. SCHWACKE

1 Q. Somebody in the solicitor's office?

2 A. Yes, sir. And I was not aware it was
3 there anymore. Trust me, I did not want those
4 pictures there.

5 Q. You wanted to hide that --

6 A. I wanted to disappear. I wanted them
7 burned, gone, that's what I want.

8 Q. **Minor** told you about a lot of blood
9 came out when that was happening?

10 A. Yes, sir, she did.

11 Q. And so this was happening in your bed
12 and your bedroom?

13 A. Yes, sir.

14 Q. For all of this blood, did you ever see
15 any blood in your bed?

16 A. No, I have not.

17 Q. Did you ever see it on any sheets?

18 A. No, not on the sheets.

19 Q. Never saw it on any blankets?

20 A. No blanket, no.

21 Q. How did you meet Mr. Whitsett?

22 A. A friend introduced me to him.

23 Q. Was that a mutual friend?

24 A. Yeah, I believe so.

25 Q. And when was that? How long ago was

VITORIA WHITSETT - CROSS EXAM BY MR. SCHWACKE

1 that?

2 A. It was in 2013, February 2013.

3 Q. And at that point you were still
4 married to your husband -- now ex-husband?

5 A. I don't remember, to be honest. I
6 really don't.

7 Q. That's not something in the family
8 history that you told to the doctors at the Medical
9 University when they were taking down the details?

10 A. I'm sorry?

11 Q. When the Medical University nurses, the
12 SANE practitioner that was just here, you don't
13 recall including that information about you having
14 an affair with my client?

15 MS. WILLIAMS: Objection; relevance.

16 THE COURT: Counsel approach.

17 (Bench conference.)

18 THE COURT: Let's move on,
19 Mr. Schwacke. Thank you.

20 MR. SCHWACKE: I'll not only move on,
21 Your Honor, but I'm going to stop. Thank you.

22 THE COURT: Do you have any redirect?

23 MS. WILLIAMS: Court's indulgence for
24 just a moment. Nothing further, Your Honor.

25 THE COURT: You may step down. You are

1 free to leave, but you're also free to stay with
2 us.

3 THE WITNESS: Thank you.

4 THE COURT: Please remember all my
5 admonitions. Take your notepads with you or leave
6 them in your chair. Please let the bailiff know
7 when you're ready to come back in.

8 (Jury out, 5:04 p.m.)

9 THE COURT: Please be seated. Anything
10 before we take our comfort break? And, again,
11 Ms. Williams, who do you have left for this
12 evening?

13 Thank you. Be seated.

14 Who is your next witness?

15 MS. SZYMCZYNSKA-SAS: Lee Holbrook.

16 THE COURT: Go ahead and have him on
17 the front row.

18 (A recess transpired.)

19 (Jury in, 5:16 p.m.)

20 MS. SZYMCZYNSKA-SAS: State calls Lee
21 Holbrook.

22 LEE HOLBROOK,

23 being first duly sworn, testified as follows:

24 THE CLERK: Please state your full name
25 and spell your last.

LEE HOLBROOK - DIRECT EXAM BY MS. SAS

1 THE WITNESS: Lee Holbrook, last name
2 H-O-L-B-R-O-O-K.

3 DIRECT EXAMINATION

4 BY MS. SZYMCZYNSKA-SAS:

5 Q. Mr. Holbrook, where are you currently
6 employed?

7 A. MUSC.

8 Q. And how long have you been employed
9 there?

10 A. Two and a half years.

11 Q. And what's your current position there?

12 A. Public safety officer.

13 Q. And what are your job duties and
14 responsibilities as a public safety officer?

15 A. Day-to-day patrols, answer dispatch
16 calls that I go to.

17 Q. Do you handle evidence as well?

18 A. We do.

19 Q. Okay. And do you handle sexual assault
20 kits?

21 A. We do.

22 Q. Okay. And was that a part of your job
23 duties and responsibilities back in June of 2015?

24 A. Yes, it was.

25 Q. And are you aware of any point -- did

LEE HOLBROOK - DIRECT EXAM BY MS. SAS

1 you handle evidence in this case which brings us
2 here today?

3 A. I did.

4 MS. SZYMCZYNSKA-SAS: May I approach?

5 THE COURT: You may.

6 BY MS. SZYMCZYNSKA-SAS:

7 Q. I show you what has been marked for
8 identification only, State's Exhibit Number 29.
9 Can you tell the jury and the judge what -- if
10 you've handled this?

11 A. I have.

12 Q. And how do you know that?

13 A. My name is on the back of it where I
14 received it for the chain of custody.

15 Q. Okay. And what is this piece of
16 evidence?

17 A. A sexual assault evidence collection
18 kit.

19 Q. How do you know that? Have you handled
20 ones like that before?

21 A. We handle them almost on a daily basis.

22 Q. Okay. And they're standard issued?

23 A. They are.

24 Q. And did you have an occasion to handle
25 this particular kit?

LEE HOLBROOK - DIRECT EXAM BY MS. SAS

- 1 A. I did.
- 2 Q. Okay. And when was that?
- 3 A. On June 2, 2015.
- 4 Q. Okay. Do you recall what time?
- 5 A. It was approximately 12:00 a.m.
- 6 Q. Okay. And who would you have received
- 7 it from?
- 8 A. The SANE nurse for MUSC.
- 9 Q. Okay. Do you recall what her name is?
- 10 Would the chain of custody be helpful for that?
- 11 A. Sure. It's Karen Drozd.
- 12 Q. And what would you have done with that
- 13 kit?
- 14 A. When I receive it from her, I sign the
- 15 chain of custody, and then when I return from the
- 16 clinical science building where she works, simply
- 17 walk it across the street to our office, which is
- 18 the Department of Public Safety with MUSC, and then
- 19 begin any paperwork in there.
- 20 Q. Who would you have given this
- 21 particular kit to?
- 22 A. That particular night I turned it over
- 23 to Pam Poirier, and she took possession of it and
- 24 handled the report and all that after -- after I
- 25 gave it to her.

LEE HOLBROOK - DIRECT EXAM BY MS. SAS

1 Q. Okay. When you received this kit, from
2 Karen Drozd, was this tape in the same condition?

3 A. It was sealed.

4 Q. Okay. Did it appear to have been
5 altered in any way? Was the seal intact?

6 A. The seal was certainly intact at that
7 time.

8 MS. SZYMCZYNSKA-SAS: Okay. Court's
9 indulgence? No further questions.

10 MR. SCHWACKE: No questions, Your
11 Honor.

12 THE COURT: Okay. You may step down.
13 You are free to go; feel free to stay with us.

14 Call your next witness.

15 MS. SZYMCZYNSKA-SAS: State calls
16 Pamela Poirier.

17 THE COURT: Please come forward and be
18 sworn.

19 PAMELA COLLINS

20 being first duly sworn, testified as follows:

21 THE CLERK: Please state your full name
22 and spell your last.

23 THE WITNESS: Okay. Pamela Collins,
24 C-O-L-L-I-N-S.

25 DIRECT EXAMINATION

PAMELA COLLINS - DIRECT EXAM BY MS. SAS

1 BY MS. SZYMCZYNSKA-SAS:

2 Q. Ms. Collins, is this your married name?

3 A. I got married in between when I took
4 the first report and now.

5 Q. Okay. And what was your previous name?

6 A. Poirier.

7 Q. And can you tell the jury where you are
8 currently employed?

9 A. MUSC Public Safety.

10 Q. Okay. And how long have you been at
11 MUSC?

12 A. Just over four years.

13 Q. Okay. And what is your current
14 position and your job responsibilities?

15 A. I'm a police officer there. We do
16 safety checks on campus and deal with law
17 enforcement issues, traffic accidents, that type of
18 thing.

19 Q. Do you also handle evidence?

20 A. Yes, we do.

21 Q. Do you handle sexual assault kits?

22 A. Yes, we do.

23 Q. Okay. And was that a part of your job
24 duties or responsibilities back in June of 2015?

25 A. Yes, ma'am.

PAMELA COLLINS - DIRECT EXAM BY MS. SAS

1 Q. Do you recall if you handled evidence
2 in the case that brings us here?

3 A. Yes, ma'am.

4 MS. SZYMCZYNSKA-SAS: Permission to
5 approach?

6 THE COURT: You may.

7 BY MS. SZYMCZYNSKA-SAS:

8 Q. I'm going to show you what was
9 previously marked as State's Exhibit 29 for
10 identification purposes only. If you can -- if you
11 would like to touch, I can give you gloves or I can
12 hold it. What is this?

13 A. That is an evidence kit, sexual assault
14 evidence kit.

15 Q. And are those pretty standard?

16 A. Absolutely, yes.

17 Q. And how do you know that you handled
18 this kit?

19 A. Because my name is on the chain of
20 custody.

21 Q. Okay. And is it just your written name
22 or your signature?

23 A. It is my written name and my signature.

24 Q. Okay. And when did you handle this
25 kit?

PAMELA COLLINS - DIRECT EXAM BY MS. SAS

1 A. 12:15 a.m., the 3rd of June.

2 Q. Which year?

3 A. 2015.

4 Q. Okay. And who would you have received
5 it from?

6 A. Lee Holbrook.

7 Q. And what would you have done with the
8 kit?

9 A. I would have had the kit with me the
10 whole time while doing the report. And then once
11 the report was done, I would fill out the evidence
12 sheet and the kit would go into the evidence
13 refrigerator.

14 Q. Okay. And can you tell us about the
15 evidence refrigerator?

16 A. Yes. It's located in Public Safety
17 headquarters. It's a standard refrigerator. When
18 you open it up, there's like a metal case so you
19 can't actually get access to the evidence. There's
20 a small post box where you drop the evidence in,
21 and once in there, the only people that have access
22 are the investigators.

23 Q. So you could put it in, but you
24 couldn't take it out?

25 A. That's correct.

PAMELA COLLINS - DIRECT EXAM BY MS. SAS

1 Q. Okay. And is that what you did with
2 this evidence you placed in that refrigerator?

3 A. Yes.

4 Q. Do you know who was the next person to
5 handle that evidence?

6 A. It would have been one of the
7 investigators at Public Safety.

8 Q. Would you be able to tell that from the
9 chain of custody?

10 A. If I saw the chain of custody, yes. It
11 would be Sergeant Register.

12 Q. Okay. And what day would he have
13 handled that on?

14 A. 3rd of June 2015.

15 Q. At what time?

16 A. 8:27 in the morning.

17 Q. Okay. And are you familiar with what
18 the investigators do once they pick it up from that
19 refrigerator?

20 A. I'm not. All I know is, once it goes
21 into the refrigerator, we don't have access, but
22 the investigators do have a key, and they will give
23 it to the department that's actually dealing with
24 the case when they come down to retrieve the
25 evidence.

DAVID WAGNER - DIRECT EXAM BY MS. SAS

1 MS. SZYMCZYNSKA-SAS: Okay. Thank you.

2 No further questions from this witness.

3 THE COURT: Mr. Schwacke.

4 MR. SCHWACKE: No questions, Your
5 Honor.

6 THE COURT: You may step down. Feel
7 free to stay with us.

8 THE WITNESS: Thank you.

9 THE COURT: Call your next witness.

10 MS. SZYMCZYNSKA-SAS: The State calls
11 David Wagner.

12 THE COURT: David Wagner.

13 DAVID WAGNER,

14 being first duly sworn, testified as follows:

15 THE CLERK: Please state your full name
16 and spell your last.

17 THE WITNESS: Sergeant David Wagner,
18 W-A-G-N-E-R.

19 DIRECT EXAMINATION

20 BY MS. SZYMCZYNSKA-SAS:

21 Q. Sergeant Wagner, please tell the jury
22 where you're currently employed.

23 A. Medical University of South Carolina
24 Department of Public Safety.

25 Q. Okay. And what is your current job

DAVID WAGNER - DIRECT EXAM BY MS. SAS

1 position there?

2 A. I'm an investigator and also evidence
3 custodian.

4 Q. And does that mean that you handle some
5 of the evidence --

6 A. Correct.

7 Q. -- at MUSC? Okay. Was that -- how
8 long have you been there?

9 A. Since 2006.

10 Q. Okay. And back in 2015, would you have
11 been in the same position and have the same
12 responsibilities, meaning handling evidence?

13 A. Yes.

14 Q. Do you also have access to any of the
15 refrigerators at MUSC?

16 A. Yes.

17 Q. How many refrigerators do you have for
18 storing the evidence?

19 A. Two.

20 Q. Okay. And where are they located, each
21 of them?

22 A. The first refrigerator is located in a
23 conference room, which is kind of adjacent to the
24 investigations section. That is our temporary
25 storage refrigerator. That's where the patrol

1 officers would store the evidence once it's brought
2 in from the trauma center or wherever it may be.

3 Then it's secured in that refrigerator
4 under lock and key, and the room has video
5 surveillance. Then the following morning we come
6 in with our key; there's only two people with keys,
7 myself and my coinvestigator.

8 We come in and remove the evidence out
9 of the evidence refrigerator in the conference room
10 and then we process it, enter it into our computer
11 system, and then we place it into the permanent
12 storage refrigerator located in the evidence room.

13 Q. Okay. And who has access to that
14 refrigerator?

15 A. Myself and coinvestigator, and that is
16 it.

17 Q. Who would that have been back in 2015?

18 A. Sergeant Register.

19 MS. SZYMCZYNSKA-SAS: Permission to
20 approach, Your Honor?

21 THE COURT: You may.

22 BY MS. SZYMCZYNSKA-SAS:

23 Q. I will show you what has been premarked
24 as State's Exhibit 29 for identification only. If
25 you would like to touch it, we can certainly give

DAVID WAGNER - DIRECT EXAM BY MS. SAS

1 you gloves. Do you know what that is?

2 A. A sexual assault evidence collection
3 kit.

4 Q. Do you know if that's a kit that you
5 would have had any contact or knowledge about?

6 A. Yes.

7 Q. How do you know that?

8 A. From the T number.

9 Q. Okay.

10 A. Which is the evidence tag number which
11 tells me it's our evidence.

12 Q. Okay. How would you have known that
13 you had anything to do with this evidence? Does
14 your name appear on it?

15 A. No. Whenever I turn the kit over to
16 Deputy Kokinda with the Berkeley County Sheriff's
17 Office, I did a supplemental incident report
18 stating that I gave it back to him, that I turned
19 the kit over to him with their chain of custody.

20 Q. What day would you have given it to
21 him?

22 A. June 22nd.

23 Q. Okay. And is that also reflected on
24 the chain of custody when he received it?

25 A. Yes. Yes.

DAVID WAGNER - DIRECT EXAM BY MS. SAS

1 Q. And who would have had it -- according
2 to this chain of custody, who would have had it
3 before?

4 A. The evidence locker, the evidence
5 refrigerator.

6 Q. Specifically, is there anyone else's
7 name?

8 A. Sergeant Register would have placed it
9 into the evidence refrigerator. He's the one that
10 took it out of the temporary refrigerator.

11 Q. Would you have physically touched this
12 kit?

13 A. Yes.

14 Q. Okay. So why would your name not
15 appear on the kit?

16 A. Well, I'm the evidence custodian. I
17 mean, we're one in the same, myself and the room is
18 the same people. So it's not our agency protocol
19 to put our name on anything, other than if we gave
20 it back. And then we do a disposed on the computer
21 system showing that it was disposed.

22 Q. So this particular kit had never left
23 the evidence room until Dean Kokinda picked it up?

24 A. Absolutely not.

25 Q. And according to the kit, when was is

DEAN KOKINDA - DIRECT EXAM BY MS. SAS

1 that Sergeant Register placed this in the evidence
2 room?

3 A. He would have placed it in the evidence
4 room at 8:27 a.m. on June 3rd, 2015.

5 MS. SZYMCZYNSKA-SAS: Okay. No further
6 questions for this witness.

7 MR. SCHWACKE: No questions.

8 THE COURT: You may step down. You are
9 free to leave; feel free to stay with us.

10 THE WITNESS: Thank you.

11 THE COURT: Call your next witness.

12 MS. SZYMCZYNSKA-SAS: State calls Dean
13 Kokinda.

14 DEAN KOKINDA,

15 being first duly sworn, testified as follows:

16 THE CLERK: Please state your full name
17 and spell your last.

18 THE WITNESS: Dean Robert Kokinda,
19 K-O-K-I-N-D-A.

20 DIRECT EXAMINATION

21 BY MS. SZYMCZYNSKA-SAS:

22 Q. Where are you currently employed?

23 A. Berkeley County Sheriff's Office.

24 Q. Okay. And what is your current rank?

25 A. I'm a lieutenant.

DEAN KOKINDA - DIRECT EXAM BY MS. SAS

1 Q. Okay. And what are your current job
2 duties and responsibilities?

3 A. Currently, I'm the lieutenant over the
4 criminal investigations division. Before that I
5 was lieutenant over the forensic services unit.

6 Q. Okay. And so how long have you been
7 with the Berkeley County Sheriff's Office?

8 A. Twenty-eight years.

9 Q. And back in 2015, were you with
10 forensics or were you with CID?

11 A. I was with the forensic unit.

12 Q. Okay. As part of your job
13 responsibilities, do you handle transportation of
14 evidence?

15 A. On occasion, yes.

16 Q. Do you know if you have been involved
17 in transporting evidence in this case that brings
18 us here today?

19 A. Yes, I did.

20 Q. I'm going to show you what has been
21 premarked as State's Exhibit 29. If you would like
22 to touch it, we have gloves. Do you know what that
23 is?

24 A. Yes; a sexual assault kit.

25 Q. Okay. Have you handled them before?

DEAN KOKINDA - DIRECT EXAM BY MS. SAS

1 A. Yes.

2 Q. Many times?

3 A. Yes.

4 Q. And they're standard?

5 A. Yes. It's a standard kit that SLED
6 uses.

7 Q. Okay. When would you have come in
8 possession of this kit?

9 A. This particular kit was June 22nd of
10 2015, and I received it from MUSC police.

11 Q. Okay. And what time would that have
12 been?

13 A. Shows 11:00 a.m.

14 Q. When you received it, was it in the
15 condition that it is here today?

16 A. No, it was sealed.

17 Q. Okay. And none of the seals were
18 broken?

19 A. No, not when I did it.

20 Q. Didn't appear to be altered or
21 modified?

22 A. No.

23 Q. And you received it from the evidence
24 room. And where would you have taken it?

25 A. To the evidence room at the Berkeley

DEAN KOKINDA - DIRECT EXAM BY MS. SAS

1 County Sheriff's Office.

2 Q. Okay. And what would you have done
3 with it at the sheriff's office?

4 A. It would have been logged in and then
5 stored in a refrigerated unit.

6 Q. Do you know who would have logged that
7 in?

8 A. It should have been Crystal Spence.

9 Q. And did you have an occasion to come in
10 touch with this evidence again?

11 A. December 9th, 2015, and I removed it
12 from evidence and transported it to the State Law
13 Enforcement Division Crime Lab.

14 Q. Okay. Where are they located?

15 A. In Columbia.

16 Q. Okay. And what would you have done
17 with the evidence at that point?

18 A. I would have logged it in with them so
19 they can have testing done on it.

20 Q. Okay. Do you recall what exactly --
21 who exactly you would have given it to at SLED?

22 Would it refresh you to look at the
23 chain of custody --

24 A. Sure.

25 Q. -- from SLED?

DEAN KOKINDA - DIRECT EXAM BY MS. SAS

1 MS. SZYMCZYNSKA-SAS: Your Honor, I'm
2 going to premark this as State's 34 for ID only.

3 (STATE EXH. 34, Copy of SLED report,
4 was marked for identification.)

5 MS. SZYMCZYNSKA-SAS: Permission to
6 approach?

7 THE COURT: You may.

8 BY MS. SZYMCZYNSKA-SAS:

9 Q. I'm going to show you what was
10 premarked as State's 34. Can you review that and
11 see if it refreshes your recollection who you would
12 have taken it to?

13 A. It would have been Jackie Davis.

14 Q. Okay. And who is she employed with?

15 A. The South Carolina Law Enforcement
16 Division. She's one of the log-in technicians.

17 Q. So she would have taken it and logged
18 it in?

19 A. Correct.

20 MS. SZYMCZYNSKA-SAS: No further
21 questions from this witness.

22 MR. SCHWACKE: No questions.

23 THE COURT: Lieutenant, you may step
24 down. Feel free to stay with us.

25 Call your next witness.

KIRSTEN CHESTNUT - DIRECT EXAM BY MS. SAS

1 MS. SZYMCZYNSKA-SAS: State calls
2 Kirsten Chestnut.

3 KIRSTEN CHESTNUT,
4 being first duly sworn, testified as follows:

5 THE CLERK: Please state your full name
6 and spell your last.

7 THE WITNESS: Kirsten Lee Chestnut,
8 C-H-E-S-T-N-U-T.

9 DIRECT EXAMINATION

10 BY MS. SZYMCZYNSKA-SAS:

11 Q. Where are you currently employed?

12 A. Berkeley County Sheriff's Office.

13 Q. And what's your current rank and
14 position at the Berkeley County Sheriff's Office?

15 A. I'm a private first class forensic
16 technician.

17 Q. How long have you been with Berkeley
18 County Sheriff's Office?

19 A. Eighteen months.

20 Q. Okay. And what are your job duties and
21 responsibilities?

22 A. I process crime scenes, process
23 evidence, log in evidence, test drugs, transport
24 evidence back and forth to and from SLED.

25 Q. And were you in that position back in

KIRSTEN CHESTNUT - DIRECT EXAM BY MS. SAS

1 2016?

2 A. Yes.

3 Q. Okay. Did you have a chance to handle
4 evidence in this case?

5 A. Yes.

6 Q. Okay. I'm going to show you what was
7 premarked as State's Exhibit Number 28 for
8 identification purposes only.

9 MS. SZYMCZYNSKA-SAS: Permission to
10 approach, Your Honor?

11 THE COURT: You may.

12 BY MS. SZYMCZYNSKA-SAS:

13 Q. Do you recognize what that item is?

14 A. Yes.

15 Q. How do you recognize it?

16 A. I recognize it by the label.

17 Q. How do you know that you handled this
18 piece of evidence?

19 A. It has my handwriting on it to --
20 stating what it is, also, as well as my name on the
21 chain.

22 Q. Okay. And how would this particular
23 item come into your possession?

24 A. It was in the evidence room at Berkeley
25 County Forensic.

KIRSTEN CHESTNUT - DIRECT EXAM BY MS. SAS

1 Q. Okay. And what is this particular
2 item?

3 A. Underwear.

4 Q. Okay. And do you know when it came
5 into your possession?

6 A. May I look at the chain?

7 Q. Sure. What would you have done with
8 this particular item?

9 A. It would have already been logged in,
10 so I would have logged the evidence into SLED --
11 pre-logged it, and then at that time I would have
12 put the security tape on it to seal the evidence,
13 and then it would have went to SLED after that.

14 Q. So the condition that it's in now, was
15 that the condition in which it was delivered to
16 SLED and the condition it was in evidence?

17 A. No.

18 Q. Okay. What's different about it now?

19 A. The heat-sealed bag has been opened.

20 Q. So it would have been completely
21 sealed?

22 A. Yes. Prior to SLED, it would have been
23 just this envelope with the security tape, and I
24 would have signed and indicated -- I would have
25 initialed and then dated it, and then SLED would

KIRSTEN CHESTNUT - DIRECT EXAM BY MS. SAS

1 have put it into the heat-sealed bag.

2 Q. So everything that you would have
3 packaged was packaged and sealed and delivered to
4 SLED?

5 A. Yes.

6 Q. And what date did you deliver it?
7 Would it have been the same day that you would have
8 taken it from evidence and delivered it to SLED?

9 A. Not always. Sometimes we prelog it
10 before. It was delivered to SLED on 7/8 of '16.

11 Q. Okay. But that's the day you would
12 have come in possession of it, the date you took it
13 to SLED?

14 A. Correct.

15 Q. Do you recall who you gave it to at
16 SLED? Would it help to look at chain of custody?

17 A. Yes.

18 Q. What do you do when you take evidence
19 to SLED?

20 A. We check in with the evidence tech, and
21 then we get called back and tell them how many
22 cases we have. And then we hand the evidence over
23 to them where they heat-seal each piece of
24 evidence, and then I initial and date it on the
25 heat-sealed side and on the front of the bag. And

KIRSTEN CHESTNUT - DIRECT EXAM BY MS. SAS

1 they take it to the intake shelf after that.

2 Q. Do you sign anywhere or any other
3 paperwork?

4 A. Yes. We get paperwork back from SLED
5 stating what the evidence is with the lab number,
6 and we sign and date that.

7 Q. Okay. And do you know if that would
8 have appeared on the chain of custody forms, your
9 signature?

10 A. Yes.

11 Q. And would it refresh you to look at the
12 chain of custody?

13 A. Yes.

14 Q. I'm going to show you what has been
15 premarked for identification only as State's
16 Exhibit Number 34 just to refresh your
17 recollection. Does that refresh your recollection
18 with regards to who you gave this particular
19 Exhibit Number 28, the underwear, to?

20 A. Yes.

21 Q. At SLED?

22 A. Yes.

23 Q. Who would it have been?

24 A. Forensic technician Jennifer Aycock.

25 Q. Okay. And who is she at SLED?

KIRSTEN CHESTNUT - DIRECT EXAM BY MS. SAS

1 A. She is the person who logs in the
2 evidence for SLED.

3 Q. Okay. And do you know what her role
4 would have been based on the chain?

5 A. She would have logged in the evidence
6 per SLED procedures, heat-sealed it, had me initial
7 and date it, and then she would have taken it to
8 the intake shelf.

9 MS. SZYMCZYNSKA-SAS: Okay. Permission
10 to approach?

11 THE COURT: You may.

12 BY MS. SZYMCZYNSKA-SAS:

13 Q. Do you recall if you were involved in
14 handling any other evidence on this case?

15 A. Yes.

16 Q. And I'm going to show you what was
17 previously marked as State's 31 for identification
18 only.

19 MS. SZYMCZYNSKA-SAS: Permission to
20 approach?

21 THE COURT: You may.

22 BY MS. SZYMCZYNSKA-SAS:

23 Q. Do you recognize what this item is?

24 A. Yes.

25 Q. What is it?

KIRSTEN CHESTNUT - DIRECT EXAM BY MS. SAS

1 A. It's a buccal swab kit.

2 Q. From who?

3 A. From the defendant, Jeffrey Whitsett.

4 Q. How do you know that?

5 A. I have my handwriting on the buccal
6 swab envelope itself where I labeled it as a buccal
7 swab from the defendant.

8 Q. And how did you come in possession of
9 this particular exhibit?

10 A. It was in the evidence room at Berkeley
11 County Sheriff's Forensics.

12 Q. And who would have -- would someone
13 have logged it in at the sheriff's office at the
14 evidence room?

15 A. Yes.

16 Q. Do you know who it was?

17 A. Who logged it in?

18 Q. Correct.

19 A. I do not know who would have logged it
20 in.

21 Q. Would you keep track on any forms of
22 how evidence is logged in?

23 A. Yes. It would be on the chain of
24 custody for that item.

25 Q. Would it help you to see that chain of

KIRSTEN CHESTNUT - DIRECT EXAM BY MS. SAS

1 custody to refresh your recollection?

2 A. Yes.

3 MS. SZYMCZYNSKA-SAS: I'm going to
4 premark this as State's 35 for identification only.

5 (STATE EXH. 34, Chain of custody, was
6 marked for identification.)

7 BY MS. SZYMCZYNSKA-SAS:

8 Q. Do you recognize this document?

9 A. Yes.

10 Q. Can you just review it for your own
11 recollection? Do you recall, based on that, who
12 would have logged that piece of evidence into the
13 sheriff's office?

14 A. Yes.

15 Q. Who would that have been?

16 A. Tiffany Swinton.

17 Q. And was she employed with the sheriff's
18 office?

19 A. She was a forensic technician in the
20 forensics service.

21 Q. Who would she have received it from?

22 A. She received it from Corporal Ashley
23 Betts.

24 Q. What day did she receive it on?

25 A. 6/28/16.

KIRSTEN CHESTNUT - DIRECT EXAM BY MS. SAS

1 Q. Okay. And that's the same day it was
2 logged in?

3 A. Yes.

4 Q. Okay. And when did it come into your
5 possession?

6 A. May I see the SLED chain --

7 Q. I believe it's right there.

8 A. -- for the date? Okay.

9 Q. Do you recall what day you took that
10 evidence to SLED?

11 A. It went to SLED on 7/8/16.

12 Q. Okay. And who would you have given it
13 to at SLED?

14 A. Jennifer Aycock.

15 MS. SZYMCZYNSKA-SAS: Okay. No further
16 questions.

17 MR. SCHWACKE: No questions.

18 THE COURT: You may step down. Feel
19 free to stay with us, but you are free to go.

20 THE WITNESS: Thank you.

21 THE COURT: Who is your next witness?

22 MS. SZYMCZYNSKA-SAS: State calls
23 Ashley Betts.

24 ASHLEY BETTS,

25 being first duly sworn, testified as follows:

ASHLEY BETTS - DIRECT EXAM BY MS. SAS

1 THE CLERK: Please state your full name
2 and spell your last.

3 THE WITNESS: Ashley Betts, B-E-T-T-S.

4 DIRECT EXAMINATION

5 BY MS. SZYMCZYNSKA-SAS:

6 Q. Where are you currently employed?

7 A. Berkeley County Sheriff's Office.

8 Q. What is your rank?

9 A. Corporal.

10 Q. Okay. And how long have you been with
11 the Berkeley County Sheriff's Office?

12 A. Four and a half years.

13 Q. And as part of your duties, do you
14 sometimes assist with executing search warrants?

15 A. Yes, ma'am.

16 Q. Were you a part of an execution of a
17 search warrant in this case back in 2016?

18 A. Yes.

19 Q. What was the search warrant for?

20 A. For DNA.

21 Q. Whose DNA?

22 A. The defendant, Mr. --

23 Q. Was it Mr. Whitsett?

24 A. Yes, I'm sorry.

25 Q. And do you recall when you executed

ASHLEY BETTS - DIRECT EXAM BY MS. SAS

1 that search warrant?

2 A. It was, I believe, June 28th. If you
3 have -- if you have my report?

4 Q. Sure. I can give you --

5 A. June 28, I believe, 2016.

6 Q. I can refresh you with your report.

7 MS. SZYMCZYNSKA-SAS: Your Honor,
8 that's going to be State's 36 for ID only.

9 (STATE EXH. 36, Report, was marked for
10 identification.)

11 MS. SZYMCZYNSKA-SAS: Permission to
12 approach?

13 THE COURT: You may.

14 BY MS. SZYMCZYNSKA-SAS:

15 Q. Does that refresh your recollection in
16 regards to when you handled the search warrant
17 execution?

18 A. Yes.

19 Q. What day was that?

20 A. June 28, 2016, at approximately 5:11 in
21 the evening.

22 Q. Okay. And where did you execute it?

23 A. At the sheriff's office headquarters.

24 Q. What was involved in the execution of
25 the search warrant for his DNA?

ASHLEY BETTS - DIRECT EXAM BY MS. SAS

1 A. Mr. Whitsett came to our office, and I
2 presented him with a DNA collection kit. And
3 inside the kit we have -- there's the swabs which
4 are in a sterile, sealed package along with some
5 gloves for -- just for us to wear while we do it.
6 And then the envelope to which I filled out his
7 information. And then after the swabs are done on
8 the inside of his mouth, they were placed in there
9 and sealed.

10 Q. Okay. And are there directions in the
11 kit as well for you to follow step by step?

12 A. Yes.

13 Q. I believe you have before you what has
14 been remarked as State's 31 for identification
15 only.

16 A. Yes.

17 Q. And if you need to use the gloves, you
18 can do that. Do you recognize that?

19 A. Yes, ma'am.

20 Q. What is it?

21 A. This is the chain of custody that goes
22 along with the DNA kit.

23 Q. Okay. And so is that the DNA kit that
24 you used on Mr. Whitsett?

25 A. Yes.

ASHLEY BETTS - DIRECT EXAM BY MS. SAS

1 Q. Okay. And you know that because your
2 name is on the chain of custody?

3 A. Yes.

4 Q. And what did you do with the kit?

5 A. Turned it in to the evidence locker at
6 the sheriff's office.

7 Q. And who has access to the locker?

8 A. All sworn personnel can place things
9 inside of it, but once we place items inside of it,
10 only the forensic technicians can open them to
11 remove it.

12 Q. What do they do, to your understanding,
13 with the items from the locker?

14 A. My understanding is they take them to
15 the forensic building to log them into evidence.

16 Q. Okay. Do you know who would have
17 logged that into evidence from the sheriff's office
18 on the kit?

19 A. Whichever technician was working that
20 day. It should be on the chain.

21 Q. Okay. If you want to refresh yourself
22 with the chain in there.

23 A. Sure. Says here Tiffany Swinton is who
24 is on here for forensics.

25 MS. SZYMCZYNSKA-SAS: No further

AUGUSTUS MACK FLOOD - DIRECT EXAM BY MS. SAS

1 questions for this witness.

2 MR. SCHWACKE: No questions.

3 THE COURT: You may step down. Feel
4 free to stay, but you're free to go. Thank you.

5 THE WITNESS: Thank you.

6 MS. SZYMCZYNSKA-SAS: State calls Mack
7 Flood.

8 AUGUSTUS MACK FLOOD,
9 being first duly sworn, testified as follows:

10 THE CLERK: Please state your full name
11 and spell your last.

12 THE WITNESS: Augustus Mack Flood, the
13 Third, F-L-O-O-D.

14 DIRECT EXAMINATION

15 BY MS. SZYMCZYNSKA-SAS:

16 Q. How long have you been employed --
17 where are you currently employed?

18 A. Berkeley County Sheriff's Office.

19 Q. How long have you been with the
20 sheriff's office?

21 A. Approximately, six years.

22 Q. And what are your job -- as part of
23 your job duties and responsibilities, do you handle
24 evidence, logging in and transport?

25 A. Yes, I do.

1 Q. And were you part of handling on any of
2 the evidence on the case which brings us here
3 today?

4 A. Yes, I was.

5 Q. Okay. Where do you usually pick up
6 evidence from? Or, specifically, on this case,
7 where would you have picked it up?

8 A. Evidence is put in our secured lockers
9 at the sheriff's office. It's picked up from there
10 and brought to the forensic's office which is right
11 next door to the courthouse.

12 Q. Okay. I'm going to show you what was
13 previously premarked as State's Exhibit 28 for
14 identification only. Did you handle this specific
15 -- if would like gloves, it's open.

16 A. I just want to look at chain of
17 custody.

18 Q. Sure. Can you tell us if you have
19 handled this specific item before?

20 A. Yes, I have.

21 Q. Okay. And how do you know that?

22 A. I signed the sealed bag and I noticed
23 that I -- looks like I took it to SLED.

24 Q. What is that particular item we're
25 looking at?

AUGUSTUS MACK FLOOD - DIRECT EXAM BY MS. SAS

1 A. Chain of custody.

2 Q. What is the item that was in the
3 evidence bag?

4 A. The underwear?

5 Q. Yes, sir. The underwear?

6 A. Yes, it is.

7 Q. When did you come into possession of
8 that item?

9 A. Looks like I got it out of the locker
10 June 17, 2015, and put it into evidence.

11 Q. And where is that locker located?

12 A. Over at the sheriff's office; and it
13 was brought to our location, logged in and put into
14 a safe, secure location.

15 Q. Who would have logged it in on this
16 particular case?

17 A. This particular case it was done by
18 Officer Spence.

19 Q. Okay. And you said you also were
20 involved in taking this evidence to SLED?

21 A. No. It looks like I brought it back
22 from SLED.

23 Q. What date did you bring it back?

24 A. Looks like August 11, 2016.

25 Q. Do you show who took it to SLED first?

AUGUSTUS MACK FLOOD - DIRECT EXAM BY MS. SAS

1 A. It looks like Officer Chestnut.

2 Q. Okay. So she took it to SLED. And
3 when would she have taken it?

4 A. July 8th, 2016.

5 Q. Okay. And you would have brought it
6 back to the evidence room back when?

7 A. August 11, 2016.

8 Q. Did you handle that evidence again?

9 A. Other than turning it in to the
10 solicitor's office.

11 Q. Would you have handled it again
12 specifically on September 9th, 2016?

13 A. Oh, yes, I did.

14 Q. What did you do with that evidence?

15 A. It was released to me by SLED.

16 Q. Would you have taken it to SLED that
17 day, because you brought it --

18 A. Yes, I did, I'm sorry. I took it to
19 SLED on that date, September 9, 2016.

20 Q. So you brought it from SLED initially
21 in August and then you took it back to SLED in
22 September?

23 A. That's correct.

24 MS. SZYMCZYNSKA-SAS: Okay. No further
25 questions, Your Honor.

ELIZABETH PILCHER - DIRECT EXAM BY MS. SAS

1 MR. SCHWACKE: No questions.

2 THE COURT: You may step down. You are
3 free to go, but feel free to stay with us.

4 MS. WILLIAMS: Can we approach, Your
5 Honor?

6 THE COURT: You may.

7 (Bench conference.)

8 THE COURT: Ladies and gentlemen, we
9 have one more witness. Feel free to take a stretch
10 break while we call the next witness to the stand.

11 MS. SZYMCZYNSKA-SAS: State calls
12 Elizabeth Pilcher.

13 ELIZABETH PILCHER,
14 being first duly sworn, testified as follows:

15 THE CLERK: Please state your full name
16 and spell your last.

17 THE WITNESS: My name is Elizabeth
18 Pilcher, P-I-L-C-H-E-R.

19 DIRECT EXAMINATION

20 BY MS. SZYMCZYNSKA-SAS:

21 Q. Ms. Pilcher, where are you currently
22 employed?

23 A. Dorchester Children's Center.

24 Q. And how long have you been with the
25 children's center?

ELIZABETH PILCHER - DIRECT EXAM BY MS. SAS

1 A. A little over three years.

2 Q. Okay. And what do you do at the
3 children's center?

4 A. I am a forensic interviewer and a child
5 and family therapist.

6 Q. Okay. And have you had an occasion to
7 interview a minor child, **Minor**?

8 A. Yes.

9 Q. When did you interview her?

10 A. June 3, 2015.

11 Q. Okay. And was that interview audio or
12 video recorded?

13 A. It was.

14 Q. Okay. And was there a recording
15 prepared and turned over to our office from that?

16 A. Yes, I believe so.

17 MS. SZYMZYNSKA-SAS: Okay. Your
18 Honor, at this time the State would like to move
19 into evidence State's Exhibit 27, and with your
20 permission we would like to publish that tomorrow
21 morning.

22 MR. SCHWACKE: Your Honor, we would
23 renew our previous motions and object to its
24 admission.

25 THE COURT: Okay. Do you have any

1 additional questions for this witness?

2 MS. SZYMCZYNSKA-SAS: No, Your Honor.

3 THE COURT: All right. Do you have --

4 MR. SCHWACKE: No questions.

5 THE COURT: No questions for this
6 witness. I'll take up the matter of 27 outside the
7 presence of the jury.

8 You may step down.

9 Is this witness free to leave?

10 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

11 THE COURT: You may step down. You are
12 free to leave.

13 This is our last witness -- last live
14 witness for today.

15 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

16 THE COURT: Ladies and gentlemen, we
17 have heard all of the testimony that we will hear
18 today. So we're going to take our break. There's
19 matters that I must take up outside of your
20 presence in the morning, so we're going to start a
21 little bit later than normal. You need to report
22 back at 9:45 in the morning, 9:45. As you are
23 leaving, the bailiff will show you how to report in
24 the morning.

25 Please remember all of my admonitions,

1 you may not discuss the case with anyone. That
2 does include your fellow jurors, but it does
3 include -- you're going to go home and people are
4 going to ask you where have you been all day, and
5 you're going to have to tell them, I can't discuss
6 this case with anyone in any fashion.

7 Please remember, it's so easy to want
8 to post what we've been doing on social media,
9 something of that nature; you are not allowed to do
10 that. Your actions could violate and jeopardize
11 the outcome of this case, if you violate my
12 instructions.

13 Ladies and gentlemen, remember, it's
14 pretty simple, no discussion of this case in any
15 format whatsoever until I tell you otherwise.
16 Please do not do any independent research; do not
17 read, watch, or listen to any news accounts
18 regarding this case should there be any; and you
19 may not go by the scene of any of these places that
20 were discussed in testimony here today.

21 Do not look up any of the words if you
22 were unfamiliar with any of the terminology. I
23 will give you the definitions that you will need
24 when I instruct you on the law applicable to this
25 case.

1 Ladies and gentlemen, it's been a long
2 day. Go home and enjoy the evening.

3 And you report at what time,
4 Mr. Williams?

5 THE FOREPERSON: 9:45.

6 THE COURT: Please bring your notepads
7 with you. Have a wonderful evening. Please rise
8 for the jury.

9 (Jury out, 6:05 p.m.)

10 THE COURT: Thank you. Be seated.
11 Anything before we recess for the evening from the
12 State?

13 MS. SZYMCZYNSKA-SAS: Your Honor, for
14 purposes of the record, we would like to enter
15 State's Number 26. It is the forensic interview
16 which is the un-redacted version of the interview,
17 and 27, which was -- previously we asked for, Your
18 Honor, to enter that which is the redacted one.

19 MS. WILLIAMS: But we would publish 27.

20 THE COURT: You would publish 27, but
21 you're asking to admit 26; is that correct?

22 MS. WILLIAMS: The record has to be
23 reflective just so that on appeal they understand
24 that the full interview was coming in and that we
25 agreed to some redactions that were prejudicial to

1 both the State and the defendant, and they reflect
2 the Court's ruling so that both of those things are
3 available on appeal.

4 But we would publish 27; that's the
5 agreed upon redacted version that reflected the
6 Court's ruling.

7 THE COURT: You're asking to admit 26,
8 which is the full, but that will not go back to the
9 jury.

10 MS. WILLIAMS: Right, Your Honor. If
11 you want to make that a Court's exhibit, that's
12 fine. However is the easiest way to do it.

13 THE COURT: You object to both.

14 MR. SCHWACKE: Well, for content of it
15 I do, but for the marking of it, I believe it would
16 make sense to mark it as a Court's Exhibit. That
17 way, it's clear it never went in.

18 THE COURT: It's too late. It's
19 already been marked as State's 26. So the record
20 is clear, it is admitted into evidence over your
21 objection. It will not go back to the jury, and
22 it's very simple, we don't have a way for them to
23 play it anyway. So we can either keep it out, or
24 keep it outside of the presence of the jury, but 27
25 will be the one that is played. And if we play

1 that back, we will play it then.

2 Because we have been talking about 26,
3 it does not make sense to now label it as something
4 else. I think that will be more confusing for the
5 appellate purposes than helpful.

6 State's 26 and 27, noting your prior
7 objections at pretrial Friday and this morning, it
8 is in evidence and your objections are noted.

9 MR. SCHWACKE: And just in regards to
10 that interview, I would like to amend my objection
11 to it just for the publication aspect of it, that
12 it will be improper bolstering, hearsay. So that
13 will be part of my objection.

14 THE COURT: Okay.

15 MR. SCHWACKE: The other matter that we
16 have would be the continued custody or not of
17 Mr. Whitsett. He's been in custody since this
18 morning. He -- I don't know if you caught in the
19 testimony, but part of what he's done, he's always
20 appeared every time I've asked him to appear.

21 He appeared for the buccal swab, that
22 was when he was out on bond, he reported to do
23 that. And he has also appeared when the bond -- or
24 the bond was being set on the direct indictments.
25 Each time, Your Honor, he's been present.

1 THE COURT: State's position?

2 MS. WILLIAMS: Due to the nature of the
3 charges, we would ask that he remain in custody.
4 Bond is over, we are here for trial; however, I do
5 understand that Nick Bennett has agreed to stay on
6 the bond throughout trial. I'm not really sure how
7 that works procedurally.

8 And I would agree with Mr. Schwacke
9 that we have no evidence that he hasn't always
10 shown up when he was supposed to show up, but based
11 on the serious nature of the charges, it is -- we
12 would ask that he remain in custody.

13 THE COURT: Okay. So, Mr. Bennett, I
14 have a signed order. Thank you for following that
15 protocol. At this time, I am going to require that
16 he remain in custody.

17 Mr. Whitsett, I will advise you of your
18 right to testify. We will have a little later
19 start in the morning, so I will give you some time
20 to discuss your right to testify. I think we're
21 moving quicker than the State anticipated.

22 Please place Mr. Whitsett under oath.

23 JEFFREY LANCE WHITSETT,
24 being first duly sworn, testified as follows:

25 EXAMINATION

JEFFREY LANCE WHITSETT- EXAM BY THE COURT

1 BY THE COURT:

2 Q. Mr. Whitsett, I'm going to advise you
3 at this time -- I'm not going to require an answer
4 whether or not you want to testify, because you
5 have not heard all of the State's witnesses and I
6 have not ruled on any motions that may be presented
7 after the State's case. Do you understand?

8 A. Yes, ma'am.

9 Q. I simply wanted to give you the time to
10 think about the rights that you have to testify and
11 not to testify, and then the State's going to let
12 me know if you have any prior convictions.

13 THE COURT: Are there any prior
14 convictions, Ms. Williams?

15 MS. WILLIAMS: Yeah. He just has one
16 prior conviction, and that is possession of a
17 stolen vehicle. I believe it's 2006, but let me
18 just pull it up. Oh, 2013; I stand corrected.

19 THE COURT: For impeachment purposes?

20 MS. WILLIAMS: Yes, Your Honor.

21 THE COURT: Even though it's not a
22 felony.

23 MS. WILLIAMS: Yes. It's not a felony;
24 a crime of dishonesty.

25 THE COURT: Crime of dishonesty.

JEFFREY LANCE WHITSETT- EXAM BY THE COURT

1 And you've advised your client.

2 MR. SCHWACKE: We have talked about
3 that, yes.

4 BY THE COURT:

5 Q. Mr. Whitsett, when the State has
6 presented their case and I have ruled on any
7 motions at that time, you will have reached the
8 stage of the trial where you will then be able to
9 present your defense.

10 You have the right to claim the
11 protections given to you by the Fifth Amendment of
12 the Constitution of the United States. This
13 amendment states in part that no person shall be
14 compelled in any criminal case to be a witness
15 against themselves. This means that you cannot be
16 required to testify in this case. You have the
17 right to testify on your own behalf. This is a
18 right personal to you. No one can make you
19 testify. Do you understand that?

20 A. Yes.

21 Q. If you decide to testify, you will be
22 subject to the same rules that have governed the
23 other witnesses who have testified here today. You
24 may be examined and cross-examined on any relevant
25 issue in this case. In addition, if you have any

JEFFREY LANCE WHITSETT- EXAM BY THE COURT

1 convictions involving dishonesty or false
2 statements, or for crimes punishable by
3 imprisonment for more than one year, and I
4 determine that the probative value of admitting
5 this evidence outweighs the prejudicial effect to
6 you, the Solicitor will be able to introduce your
7 record to attack your credibility.

8 THE COURT: At this time, without any
9 further argument, Mr. Schwacke, do you believe that
10 that crime would qualify for impeachment purposes?

11 MR. SCHWACKE: Your Honor, he has a
12 prior receiving stolen goods and possession of a
13 stolen vehicle. Those are less than \$2,000 value.
14 The making, but not carrying a year or more, so
15 that issue would be resolved, but because of the
16 nature of the charge, receiving stolen goods, that
17 appears to invoke some dishonesty that would allow
18 the State to use probably both of those.

19 BY THE COURT:

20 Q. Mr. Whitsett, you need to understand
21 that the State would be allowed to use those two
22 prior convictions to impeach your credibility for
23 dishonesty. Do you understand?

24 A. Yes, Your Honor.

25 Q. If you decide to testify, this decision

JEFFREY LANCE WHITSETT- EXAM BY THE COURT

1 on your part must be freely, voluntarily and
2 intelligently made with the knowledge of the
3 protections given to you by the Fifth Amendment and
4 the consequences of your decision to testify.

5 If you decide not to testify, I will
6 instruct the jurors that there is to be no
7 prejudice to you, and they cannot give the fact
8 that you did not testify any consideration
9 whatsoever. Do you understand?

10 A. Yes, Your Honor.

11 Q. It is left entirely up to you whether
12 or not you testify. You may talk with your
13 attorney, together, separately; you may talk to
14 your friends, family members, or anyone else. The
15 final decision is left up to you. Do you
16 understand what I have explained to you?

17 A. Yes, Your Honor.

18 Q. Do you have any questions about what I
19 have explained to you?

20 A. No, Your Honor.

21 Q. Have you previously discussed with
22 Mr. Schwacke and Ms. Tolley whether or not you
23 would testify?

24 A. Discussed it, and I have not come to a
25 solid decision.

1 Q. Okay. Thank you. You may have a seat.

2 THE COURT: Anything further,

3 Mr. Schwacke?

4 MR. SCHWACKE: No, Your Honor.

5 THE COURT: I will mark your bond order
6 as Court's 3.

7 (COURT EXH. 3, Bond order, was marked
8 for identification.)

9 THE COURT: Anything further?

10 See you at 9:45.

11 (These proceedings were recessed at
12 6:19 p.m., to be continued 6/28/17 at 9:45 a.m.)

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1 (The following was had 6/28/2017, at
2 9:55 a.m., State v. Whitsett, Berkeley County
3 General Sessions.)

4 THE COURT: Mr. Schwacke, Ms. Williams.

5 MS. WILLIAMS: Your Honor, Mr. Schwacke
6 and I and Ms. Sas have isolated a small portion of
7 the transcript where the defendant talks about her
8 father molesting the other child. So we have an
9 agreement of what we're going to take out.
10 Unfortunately, it's not out yet. Mr. Schwacke has
11 been --

12 THE COURT: In which?

13 MS. WILLIAMS: In the defendant's
14 interview. So Mr. Schwacke is getting a laptop to
15 come over here, someone to bring the laptop, and
16 they're going to redact it.

17 For scheduling, what we had planned to
18 do was put on a quick SLED chain witness, the HIV
19 nurse practitioner, and then play the forensic
20 interview, and after that have Detective Fenton
21 come up and we were going to play the tape.

22 If we get to a point after the forensic
23 interview plays that you're not ready to break for
24 lunch, we don't have anything else, because we have
25 to have Mr. Schwacke or someone in our office

1 redact that portion of the tape.

2 THE COURT: Is there any reason we
3 would have 50 minutes while the forensic interview
4 is playing. Is there any reason you can't step out
5 and take care of that? Ms. Tolley would be here.

6 MR. SCHWACKE: I believe so. The
7 problem isn't really the editing; I should be able
8 to do that pretty easily. We isolated three exact
9 points that need to have, in some instances, like
10 five words redacted. The problem is the burning
11 process after the editing, and I can't control
12 that. So, I mean, that should be completed within
13 the time frame that you're suggesting.

14 MS. WILLIAMS: Just in case, though, we
15 wanted you to be aware of that. I understand the
16 Court's admonition about time and scheduling, but
17 that's just a piece of evidence that we cannot show
18 the jury until that information has been redacted.

19 THE COURT: I think while we're sitting
20 here and -- you're not going to be able to make any
21 objections anyway until I allow you to slip out.

22 MR. SCHWACKE: Right. We sent Mr. Hare
23 over to the office to get the program and the
24 laptop, so I should be able to do that.

25 THE COURT: Anything before we bring in

1 the jury, Mr. Williams?

2 MS. WILLIAMS: Not from the State, Your
3 Honor.

4 THE COURT: Mr. Schwacke?

5 MR. SCHWACKE: No, Your Honor.

6 THE COURT: Bring them in.

7 (Jury in, 10:18 p.m.)

8 THE COURT: Thank you. Please be
9 seated. Good morning.

10 THE JURY: Good morning.

11 THE COURT: Did every member of the
12 jury comply with my instructions over the evening
13 hours? If you did not follow my directions, please
14 stand.

15 Thank you. All 14 jurors have complied
16 with the Court's instructions over the evening
17 hours.

18 Ladies and gentlemen, we are now going
19 to resume the trial of this case.

20 Ms. Williams, please call the next
21 witness.

22 MS. SZYMCZYNSKA-SAS: Thank you, Your
23 Honor. State calls Jackie Davis.

24 JACKIE DAVIS,
25 being first duly sworn, testified as follows:

JACKIE DAVIS - DIRECT EXAM BY MS. SAS

1 THE CLERK: Please state your full name
2 and spell your last.

3 THE WITNESS: My name is Jackie Davis,
4 and it's D-A-V-I-S.

5 DIRECT EXAMINATION

6 BY MS. SZYMCZYNSKA-SAS:

7 Q. Good morning, Ms. Davis. Could you
8 please tell the jury where you are employed?

9 A. South Carolina Law Enforcement
10 Division.

11 Q. How long have you been employed there?

12 A. Since December of 2015.

13 Q. Okay. And what is your current
14 position?

15 A. I'm a forensic technician.

16 Q. Okay. And what are those job duties
17 and responsibilities for you as a forensic
18 technician?

19 A. When the cops bring in evidence, we
20 package, log in, and transfer it to the evidence
21 room.

22 Q. Okay. And as a part of the duties and
23 responsibilities, did you handle evidence in this
24 case?

25 A. I did.

JACKIE DAVIS - DIRECT EXAM BY MS. SAS

1 Q. Okay. I'm going to show you what has
2 been previously premarked as State's Exhibit 28 for
3 ID only. Do you recognize this?

4 A. I do.

5 Q. Do you know what that is?

6 A. Only by the unit lab number we assigned
7 to it.

8 Q. Okay. And do you keep track of what
9 that item is at SLED?

10 A. We keep track of where it is, but what
11 it is, we take it on a said-to-contain basis. So
12 when they bring it in, all we do is seal it and put
13 it in the evidence room until the analyst needs it.

14 Q. And would you have come in contact with
15 this particular item?

16 A. To retrieve it from the shelf to give
17 it to the analyst, yes.

18 Q. And what item number is that?

19 A. Number two.

20 Q. Okay. And when did it come into your
21 possession?

22 A. Let me look at my notes. On 12/9 of
23 '15 at 1:53 in the afternoon. Sergeant Dean
24 Kokinda of Berkeley County Sheriff's Office brought
25 it in to us.

JACKIE DAVIS - DIRECT EXAM BY MS. SAS

1 Q. Okay. He brought it directly to you?

2 A. Yes.

3 Q. And what would you have done with that
4 item?

5 A. I put on gloves and I put it in the
6 SLED heat-sealed pouch, sealed it, had him sign it,
7 and I logged it in. And then I put it on the DNA
8 shelf in our sealed evidence room.

9 Q. Who would have taken it from there?

10 A. According to the chain of custody, on
11 6/22, Jennifer Aycock pulled the evidence requested
12 by the forensic analyst, Jessica Stowe.

13 Q. Okay. And what do you mean by pulled
14 it?

15 A. We keep them all on shelves, and the
16 analyst will tell us which file they need, and we
17 pull it for them, keep it in the evidence room
18 until they tell us they need it, and then we hand
19 it to them through a window. Very secure.

20 Q. So there's no opening of the package?

21 A. Not by us.

22 Q. It remains intact, sealed?

23 A. Correct.

24 Q. I'm going to show you what was
25 previously premarked as State's Exhibit Number 28.

JACKIE DAVIS - DIRECT EXAM BY MS. SAS

1 MS. SZYMCZYNSKA-SAS: Court's
2 indulgence?

3 THE COURT: Take your time.

4 MS. SZYMCZYNSKA-SAS: May I approach,
5 Your Honor.

6 THE COURT: You may, and you have
7 continuing permission.

8 MS. SZYMCZYNSKA-SAS: Thank you, Your
9 Honor.

10 BY MS. SZYMCZYNSKA-SAS:

11 Q. I show you what was previously
12 premarked State's Exhibit Number 29. Do you
13 recognize this piece of evidence?

14 A. Yes.

15 Q. And what is it?

16 A. That is a sexual assault kit.

17 Q. Okay. And would you have come into
18 possession of the sexual assault kit?

19 A. Yes. The officers actually bring that
20 to us, just like that with the paperwork, and
21 that's what we get from them.

22 Q. Okay. Would you have come in
23 possession of that particular sexual assault kit?

24 A. Yes.

25 Q. Okay. How do you know that?

JACKIE DAVIS - DIRECT EXAM BY MS. SAS

1 A. By the name on that.

2 Q. Okay.

3 A. And also there's a lab number on that
4 sexual assault kit that identifies it.

5 Q. Okay. And what would -- when did you
6 come into possession of this particular item?

7 A. Again, it was on 12/9/15 at 1:53 in the
8 afternoon.

9 Q. And what was the appearance of the
10 evidence when it came into your possession?

11 A. It was sealed, meaning the red -- I'll
12 show you. We only take evidence if it's sealed.
13 When the officer brings it, we look to make sure
14 all these seals are intact. If they are not, we
15 don't accept it, but I have never not had one
16 intact.

17 Q. And what would you have done with this
18 specific piece of evidence?

19 A. At that time what we do is we undo the
20 seals, and everything in this is sealed already,
21 which this package right here was already sealed so
22 we have to separate.

23 There is toxicology, which is either
24 blood or urine, and it has to be separated before
25 it goes to the correct analyst; but, again,

JACKIE DAVIS - DIRECT EXAM BY MS. SAS

1 everything is sealed. We don't even see what it
2 is. We go by the labels that are inside this
3 package.

4 So we take all of the DNA and put it in
5 a bag and we seal it just like this, and then we
6 label it DNA. And we take the tox, which is blood
7 or urine, and put it in a sealed -- and seal it as
8 well. We never physically touch it or see what is
9 in the sealed envelope.

10 Q. Okay. And once you do that with each
11 individual envelope, what do you do with each of
12 those?

13 A. We then log them in and give them their
14 unit lab number, so number two is the DNA. And if
15 there was anything else in there, such as tox, it
16 would have been given another lab number, like
17 number one or number three. That way we can
18 identify what is in here.

19 Q. So in this specific box, how many
20 envelopes were there?

21 A. Let me look at my notes. I'm showing
22 two.

23 Q. Okay. What would those envelopes have
24 contained?

25 A. They would have contained the DNA and

JACKIE DAVIS - DIRECT EXAM BY MS. SAS

1 then the victim's buccal swab, which goes into a
2 separate container.

3 Q. And who would have handled this
4 evidence after you according to your chain?

5 A. According to my chain, Jennifer pulled
6 it, Jennifer Aycock. I took this and put it in the
7 sealed evidence room, the analyst requested it,
8 Jennifer then took this sealed as it was and gave
9 it to the analyst through a window.

10 Q. Okay. You were referring to item
11 number two?

12 A. Just the DNA.

13 Q. So that would have been handled by
14 Jennifer Aycock?

15 A. Yes.

16 Q. Do you know what she would have done
17 with it afterwards?

18 A. She gives it to --

19 Q. According to your chain?

20 A. Yeah. Jessica Stowe and then Jennifer
21 is done with it. We just transfer the evidence to
22 the analyst.

23 Q. Okay. And I want to bring your
24 reference to -- I want to clarify a couple of
25 things.

JACKIE DAVIS - DIRECT EXAM BY MS. SAS

1 A. Okay.

2 Q. Item two that you have in front of you,
3 that came to you from the sheriff's office? And I
4 can refresh you with the chain if you would like
5 to, unless you have a copy.

6 A. I have it. I have to find where it
7 was. That's correct, it did come to me.

8 Q. I'm referring to item number two.

9 A. Uh-huh.

10 Q. Did that come to you or Amy Stephens?

11 A. I logged it in, it went into the
12 evidence room, Jennifer gave it to the analyst, and
13 then it went to Amy.

14 Q. Okay. What about the other item?

15 A. The what?

16 Q. What about the other item of evidence?

17 A. The other item, the buccal swab?

18 Q. Yes. Item number one that -- you have
19 the CSC kit is item number one. That first came to
20 you?

21 A. That is correct.

22 Q. Okay. What about item number two that
23 you have sitting over there, who did that come to
24 first?

25 A. Amy Stephens.

THERESA DRYDEN - DIRECT EXAM BY MS. WILLIAMS

1 Q. And you had it after Amy Stephens?

2 A. Yes.

3 Q. And then it went to Jessica Stowe?

4 A. Correct.

5 MS. SZYMCZYNSKA-SAS: No further
6 questions.

7 THE COURT: Mr. Schwacke.

8 MR. SCHWACKE: No questions.

9 THE COURT: Thank you. You're free to
10 go.

11 Call your next witness?

12 MS. WILLIAMS: The State would call
13 Theresa Dryden.

14 THERESA DRYDEN,

15 being first duly sworn, testified as follows:

16 THE CLERK: Please state your full name
17 and spell your last.

18 THE WITNESS: My name is Theresa
19 Dryden, D-R-Y-D-E-N.

20 DIRECT EXAMINATION

21 BY MS. WILLIAMS:

22 Q. Good morning, Ms. Dryden.

23 A. Good morning.

24 Q. Can you tell us your occupation?

25 A. I'm a nurse practitioner.

THERESA DRYDEN - DIRECT EXAM BY MS. WILLIAMS

1 Q. And you're an RN, and are you also
2 certified in some other way?

3 A. I'm a registered nurse in the State of
4 South Carolina and I'm nationally certified as a
5 nurse practitioner.

6 Q. Are you also an advanced registered
7 nurse practitioner?

8 A. The very definition of being a nurse
9 practitioner in this state.

10 Q. What does that mean to the rest of us
11 who don't understand all that terminology?

12 A. So a nurse practitioner is by very
13 nature a nurse first with a baccalaureate degree,
14 and then gets advanced training and a graduate
15 degree and receives national certification.

16 Q. What is your educational background?

17 A. I got my baccalaureate degree in
18 nursing at Queen's College, now Queen's University
19 in Charlotte, North Carolina; my graduate studies
20 were at University of North Carolina Chapel Hill,
21 and I've been practicing for 18 years.

22 Q. And when you are certified as a
23 registered nurse, is there some kind of examination
24 required for that?

25 A. Required to practice as a nurse

THERESA DRYDEN - DIRECT EXAM BY MS. WILLIAMS

1 practitioner you have to be nationally certified.
2 Once you have completed graduate studies, you can
3 sit for a national certification exam. If you pass
4 the exam, you can begin your practice. You do have
5 to recertify with your national certification body.
6 I'm certified through the American Academy of Nurse
7 Practitioners and I have to recertify every five
8 years.

9 Q. Are there a certain amount of hours,
10 like practice hours, that are required for those
11 certifications?

12 A. You have to have a certain number of
13 continuing education credits per five years and a
14 certain number of clinical practice hours.

15 Q. And you've been an advanced registered
16 nurse practitioner for 18 years. How long have you
17 been a registered nurse?

18 A. A registered nurse for 21 years.

19 Q. Do you specialize in a particular field
20 of medicine?

21 A. I treat -- all of my 18 years tenure as
22 a nurse practitioner has been treating patients
23 with HIV disease.

24 Q. Are you presently practicing in your
25 profession?

THERESA DRYDEN - DIRECT EXAM BY MS. WILLIAMS

1 A. I am.

2 Q. Where is that?

3 A. At the Roper St. Francis Ryan White
4 Wellness Center. We're a federally funded program
5 to take care of those who have HIV.

6 Q. And except for the Ryan White Wellness
7 Center, have there been other facilities where you
8 have worked in the field of HIV treatment?

9 A. The first half of my career was
10 primarily in private practice, and the first part
11 of my Charleston tenure was also in private
12 practice, but always in a program that involved
13 federally funded HIV care.

14 Q. Okay. If you had to guess, how many
15 HIV cases have you been involved in, in your
16 career?

17 A. More than 1,000, less than 2,000.

18 MS. WILLIAMS: Okay. Your Honor, at
19 this point we would move to have Theresa Dryden an
20 expert in the field of HIV treatment.

21 THE COURT: Any objection or additional
22 voir dire? Is this your witness, Ms. Tolley?

23 MS. TOLLEY: Yes, Your Honor.

24 THE COURT: Any objection or any
25 additional voir dire?

·THERESA DRYDEN - DIRECT EXAM BY MS. WILLIAMS

1 MS. TOLLEY: No, Your Honor.

2 THE COURT: She will be qualified as an
3 expert in that area. You may continue.

4 MS. WILLIAMS: Thank you.

5 BY MS. WILLIAMS:

6 Q. What does the practice of HIV treatment
7 involve?

8 A. Once a patient has been diagnosed, the
9 patient comes to a medical provider and decisions
10 are made. Most patients today go on treatment
11 right away. Once the provider and patient agree on
12 a given course of treatment, the patient begins
13 treatment, and the provider's responsibility after
14 that point is to make sure the patient follows up
15 with them and that the chosen treatment plan has
16 resulted in undetectable levels of virus, which is
17 the treatment goal.

18 Q. And does your facility diagnose in
19 addition to treating patients? Do they let people
20 know that they have HIV sometimes?

21 A. We test, diagnose, and treat.

22 Q. Okay. And HIV treatment has changed
23 over the years; is that an accurate statement?

24 A. Over my 18 years of practice, HIV
25 treatment has changed vastly in terms of how many

THERESA DRYDEN - DIRECT EXAM BY MS. WILLIAMS

1 medications patients require to control their
2 virus, how many times a day they have to take their
3 medicine for their virus. It's moved from a place
4 of an acute terminal illness to a chronic disease
5 state.

6 Q. Okay. So people survive HIV now?

7 A. We tell our patients not to expect to
8 die from HIV. Most of my patients who do not
9 survive do not die of HIV-related causes if they
10 remain engaged in treatment.

11 Q. Did you treat a patient named Jeffrey
12 Whitsett?

13 A. I did.

14 Q. How about Vitoria Whitsett?

15 A. Yes.

16 Q. And when you're treating patients,
17 specific patients, is it important to get a medical
18 history in order to treat them and make decisions
19 about treatment and diagnosis?

20 A. Medical and social history are probably
21 the two most important historical points to collect
22 before you can decide upon appropriate treatment.

23 Q. And if you were to find out somebody
24 was not practicing safe sex and they were more
25 dangerous for transmission to others, would that be

THERESA DRYDEN - DIRECT EXAM BY MS. WILLIAMS

1 important information for you to know in order to
2 know how to counsel them about how to proceed with
3 their disease?

4 A. Absolutely, and that falls under the
5 social history piece of history taking.

6 Q. Do you know when Mr. Whitsett first
7 became aware that he was infected with HIV?

8 A. He was diagnosed in April of 2012.

9 Q. And was he treated with medicines for
10 his HIV infection?

11 A. He was. He did not present to our
12 wellness center until September 11 of 2012. There
13 was a delay in his treatment because of
14 absenteeism. So the treatment was delayed until, I
15 believe, 2013, perhaps in January.

16 Q. And when you say absenteeism, meaning
17 he's not showing up for appointments?

18 A. It's not uncommon for a patient to be
19 referred and then there's a delay between the time
20 of their referral and the time of their appointment
21 sometimes driven by patients. It's also not
22 uncommon for our patient population to engage in
23 care and disengage and then re-engage. So
24 typically we refer to this as absenteeism.

25 Q. And ideally if the patient is going to

THERESA DRYDEN - DIRECT EXAM BY MS. WILLIAMS

1. do well with the disease, what would they do in
2 terms of taking medication and what types of
3 medication are involved?

4 A. Successfully treated HIV patients take
5 -- for the most part, today take a single tablet
6 that contains three or more ingredients, and if
7 they take that single tablet on a consistent basis
8 from day to day, meaning not once a day, but once a
9 day around the same time every day, they will be
10 highly successful.

11 Q. Okay. And did you have an opportunity
12 to counsel both Mr. Whitsett and his wife, whose
13 name at the time was Vitoria Whitsett, about the
14 dangers of transmission to her and the way to avoid
15 that?

16 A. Mr. Whitsett was engaged to our
17 wellness center under a different medical provider,
18 my previous supervising physician named Cody
19 Fugate. All of our patients when received to the
20 wellness center get layers of counselling, first
21 from case management, medical case management, and
22 then from their medical providers, as well as we
23 now have a peer navigation team who is consistent
24 with that messaging also.

25 Q. Okay. And did you review some of that

THERESA DRYDEN - DIRECT EXAM BY MS. WILLIAMS

1 history about the success or lack of success with
2 counselling this couple about how not to transmit
3 this disease to the wife?

4 A. Both -- both parties were counselled
5 regarding the natural history of HIV, modes of
6 transmission, necessity for protected intercourse,
7 confidentiality disclosure issues, treatment
8 modalities, and treatment guidelines.

9 Q. So I'm assuming, like in plain English,
10 using a condom would vastly reduce the chance of
11 transmitting it to your wife?

12 A. It is still our primary way o --
13 prevention of HIV transmission, latex condoms, yes.

14 Q. And this couple was counselled about
15 that, and what success -- was there any success in
16 them following the instructions?

17 A. In our case management records, Vitoria
18 was tested in November of 2013 and, fortunately, at
19 that time tested negative. Our HIV tester
20 documented that at the time Jeffrey refused condom
21 use and other prevention strategies such as
22 withdrawal and other things that we counsel our
23 clients about and, also, seemed indifferent.

24 Vitoria at the time indicated that she
25 loved Jeffrey, she was somewhat resigned to the

1 fact that she would be vulnerable to acquisition of
2 HIV if they did not change their sexual behaviors.

3 Q. Did she, in fact, later test positive
4 for HIV?

5 A. She tested positive in 2015.

6 Q. And knowing that information, I'm
7 assuming that there would be decisions made in
8 treatment to give them more information and
9 encourage them to practice safe sex?

10 A. Absolutely.

11 Q. Now, explain to us why -- I'm assuming
12 that some of the dangerous behavior would be sexual
13 intercourse?

14 A. Yes, it's -- our primary mode of HIV
15 transmission in this county is still unprotected
16 sexual intercourse with those who do not -- with
17 HIV negative individuals with those who have HIV.

18 Q. And explain how this could happen. Why
19 would Mr. Whitsett transmit HIV to his wife while
20 having intercourse with her over a period of time
21 and possibly not transmit HIV to somebody else that
22 he was doing that to over a period of months?

23 A. So repeated -- there are many variables
24 included in risk of transmission under the umbrella
25 of unprotected intercourse. And so the variables

THERESA DRYDEN - DIRECT EXAM BY MS. WILLIAMS

1 that are considered are level of viremia, so how
2 much virus does the positive patient have? How
3 many exposures? Whether there was a latex barrier
4 between positive and negative patients. Nature of
5 sexual intercourse; anal receptive intercourse on
6 Vitoria's part would have been the highest risk,
7 followed by vagina penetrative sex, followed by
8 oral.

9 Q. So if he was having sexual contact with
10 Vitoria over a period of a year and a half and he
11 was molesting the child -- a different person over
12 a period of two or three months, I mean, common
13 sense would say she has a higher risk of
14 transmission?

15 A. That would be correct based on absolute
16 number of exposures.

17 Q. And let's talk about Mr. Whitsett's
18 viral load. Are you aware of what that was in 2015
19 and 2014 and 2013?

20 A. Really, despite some absenteeism on
21 Jeffrey's part, he's historically done very well
22 controlling virus and has had lower levels to
23 undetectable levels of virus under my care.

24 Q. Okay. So him having a very low level
25 of HIV virus, would that decrease the chance of

THERESA DRYDEN -- DIRECT EXAM BY MS. WILLIAMS

1 transmission?

2 A. . It would. We, historically, don't
3 emote that to our patients because we endorse latex
4 condoms between positive and negative, but in
5 truth, the lower the load of the viral population
6 in positive patients, the lower risk of
7 transmission.

8 Q. So Vitoria just got unlucky because of
9 so many repeated contacts?

10 A. Yes.

11 Q. Now, let's talk about a little bit
12 about the medications that were given to
13 Mr. Whitsett. Do any of those medications have a
14 side effect of causing blackouts?

15 A. No.

16 Q. And has Mr. Whitsett ever told you in
17 any of the times when you visited with him about
18 his disease that he was experiencing blackouts?

19 A. No.

20 Q. Did he ever say that he felt dazed or
21 confused by his medication?

22 A. No.

23 Q. And you're not aware of that being a
24 side effect of any of these medications?

25 A. No.

THERESA DRYDEN - DIRECT EXAM BY MS. WILLIAMS

1 MS. WILLIAMS: Court's indulgence?

2 THE COURT: Take your time.

3 BY MS. WILLIAMS:

4 Q. How about, has he said to you that his
5 medication was causing him to have a feeling of
6 free falling?

7 A. Free falling, perhaps, but not
8 blackouts or other neurological symptoms that you
9 previously described.

10 Q. What is free falling?

11 A. So for certain patients, a description
12 can be vague and difficult to pin down. Free
13 falling, in this case, could feel -- I don't want
14 to describe lightheaded, but perhaps fishbowlish.
15 Perhaps like one has a relative fog, but it's
16 certainly left up to subjective interpretation, but
17 I would not have interpreted it as a blackout or
18 near syncope or vertigo. Syncope is near passing
19 out and vertigo is room spinning.

20 Q. Okay. And you've never heard in all of
21 your years of practice of anybody blacking out due
22 to this medication and forgetting what they do?

23 A. On the particular single tablet that
24 Jeffrey was on, no.

25 MS. WILLIAMS: Okay. Thank you.

THERESA DRYDEN - CROSS EXAM BY MS. TOLLEY

1 Please answer any questions that Mr. Schwacke has.

2 THE COURT: Ms. Tolley.

3 MS. WILLIAMS: I'm sorry, Ms. Tolley.

4 MS. TOLLEY: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. TOLLEY:

7 Q. How are you, Ms. Dryden?

8 A. I'm fine.

9 Q. So you've been a nurse for about
10 21 years?

11 A. Yes, ma'am.

12 Q. And you indicated that an important
13 part of what you do when you meet with a patient is
14 you take a patient's history; is that correct?

15 A. That's correct.

16 Q. Okay. And you talk to them about their
17 symptoms; is that correct?

18 A. That's correct.

19 Q. And you talk to them about how the
20 symptoms can be treated or treatment for?

21 A. Symptoms of HIV or side effects of
22 medication?

23 Q. Both.

24 A. Yes, and, yes.

25 Q. Okay.

THERESA DRYDEN - CROSS EXAM BY MS. TOLLEY

1 MS. TOLLEY: Pardon me for just a
2 second.

3 THE COURT: Take your time.

4 BY MS. TOLLEY:

5 Q. Okay. And as a part of that history,
6 you talk to them about their social history you
7 said; is that correct?

8 A. That's correct.

9 Q. And some of the symptoms that you might
10 ask them about is whether or not they have like a
11 change in appetite or something like that?

12 A. Correct.

13 Q. Whether or not they have blurred
14 vision?

15 A. Correct.

16 Q. Whether or not there is a decrease in
17 hearing?

18 A. Correct.

19 Q. You might --

20 A. Well, actually, I'll back up. I don't
21 ask about changes in hearing. Many of the -- much
22 of the review of systems done with our patients is
23 self-report. Traditionally, our patients who are
24 stable follow up every four, sometimes up to every
25 six months, and although a specific review of

THERESA DRYDEN - CROSS EXAM BY MS. TOLLEY

1 systems might be detailed, a lot of it is patient
2 self-report over the interval since their last
3 visit.

4 Q. Okay. But those are things that you
5 would be interested in knowing about; is that
6 correct?

7 A. That's correct. But I would
8 traditionally not -- so about hearing, I would
9 traditionally not ask about hearing acuity unless
10 the patient indicated there was a problem.

11 Q. Okay. You would ask about things about
12 shortness of breath perhaps?

13 A. Yes.

14 Q. Okay. About dizziness and fainting,
15 you might ask about those things?

16 A. In a stable HIV patient, I'm not
17 expecting dizziness unless they're on our very
18 first single tablet regimen for HIV. And Jeffrey
19 has not been on that single tablet regimen.

20 Q. One of the things you might be
21 concerned about is whether or not there is
22 dizziness or fainting; is that correct?

23 A. Correct.

24 Q. And, as a matter of fact, in the report
25 that you provided for us here, one of the questions

THERESA DRYDEN - CROSS EXAM BY MS. TOLLEY

1 included in that report or one of the things that
2 is documented is whether or not there are symptoms
3 of dizziness, fainting, headaches; is that correct?

4 A. That's correct.

5 Q. Okay. And so if he described a
6 sensation of free falling -- he's not a medical
7 doctor, is he?

8 A. No.

9 Q. And so he might use language that is
10 not consistent with language that a doctor or nurse
11 might use?

12 A. That's correct.

13 Q. So you also indicated that there are
14 different ways that the virus can be transmitted?

15 A. Yes.

16 Q. And if a person were not having sex
17 with -- if an HIV person were not having sex with a
18 noninfected person, that person would not get
19 infected; is that correct?

20 A. You're asking if someone with HIV was
21 not sexually active with someone without HIV,
22 transmission would not occur?

23 Q. That's correct.

24 A. That's correct.

25 Q. Okay. So if, for example, Mr. Whitsett

THERESA DRYDEN - REDIRECT EXAM BY MS. WILLIAMS

1 were not having sex with **Minor**, there would be no
2 transmission of the virus?

3 A. Abstinence is the only sure way to
4 prevent transmission of HIV.

5 Q. If he were not touching her vaginally,
6 there would be no transmission; is that correct?

7 A. Repeat your question.

8 Q. If he were not touching her vaginally,
9 there would be no transmission?

10 A. That's correct.

11 Q. If he were not touching her anally,
12 there would be no transmission?

13 A. That's also correct.

14 Q. If he were not touching her orally,
15 there would be no transmission?

16 A. That is also correct.

17 MS. TOLLEY: I don't have any other
18 questions, Your Honor.

19 THE COURT: Redirect.

20 REDIRECT EXAMINATION

21 BY MS. WILLIAMS:

22 Q. Ms. Dryden, Ms. Tolley asked you about
23 shortness of breath, dizziness, fainting.

24 Mr. Whitsett never told you that he was fainting or
25 dizzy, did he?

THERESA DRYDEN - REDIRECT EXAM BY MS. WILLIAMS

1 A. No.

2 Q. And she asked you all these questions
3 about if he didn't have vaginal sex with Minor if
4 he didn't touch Minor however, if he was
5 molesting Minor and forcing vaginal sex, anal sex,
6 oral sex, touching her, and she doesn't, by the
7 grace of God, get HIV, that doesn't mean that he
8 wasn't doing that, does it?

9 A. Correct.

10 Q. So he can have unprotected sex with
11 people with his low viral load over a short period
12 of time, they might get infected, they might not?

13 A. That's correct.

14 Q. Because his viral load lowers the risk;
15 is that true?

16 A. Correct.

17 Q. And is it understandable because he was
18 having sex with Vitoria over a longer period of
19 time that increased her chances of getting the
20 disease?

21 A. Correct.

22 MS. WILLIAMS: Thank you.

23 THE COURT: Ms. Tolley, re-cross?

24 MS. TOLLEY: No re-cross, Your Honor.

25 THE COURT: Thank you. You may step

1 down. Feel free to stay with us, but you are free
2 to leave.

3 THE WITNESS: Thank you.

4 MS. SZYMCZYNSKA-SAS: At this time, the
5 State would like to publish the previously
6 introduced State's Exhibit 27, and we would like to
7 publish that to the jury. That is the statement of
8 Minor [REDACTED].

9 THE COURT: Okay. Ladies and
10 gentlemen, sometimes we take -- because this is a
11 videotape we can take this out of order. So this
12 may have made more sense for us to play it last
13 night when the interviewer was on the stand, but we
14 broke at an appropriate time and -- so that we had
15 some live testimony.

16 So don't put any stock in the -- or
17 think there is any reason why we take something out
18 of order. It's just for scheduling purposes.

19 Mrs. Brown.

20 MS. BROWN: Yes, ma'am.

21 (Videotape playing in open court.)

22 MS. WILLIAMS: Technical trouble.

23 Sorry, Your Honor.

24 (Videotape playing in open court.)

25 Your Honor, I'm sorry to interrupt. I

1 am being told if we had a cable there would not be
2 a delay after every word she says. I'm just
3 concerned that the jury is not able to hear or
4 understand what the child is saying.

5 If we could just have like five or
6 ten minutes, we could put a cable -- we wouldn't be
7 relying on the Internet in the courtroom. That
8 seems to be the problem.

9 THE COURT: Do you have the cable?

10 MS. WILLIAMS: The cable is available
11 and it would take us just a moment. I feel like
12 that would be an easier way for them to understand.

13 THE COURT: Where is the cable?

14 MS. WILLIAMS: Ms. Sas is getting it.

15 MS. SZYMCZYNSKA-SAS: Your Honor, we
16 are getting an IT person in here.

17 MS. WILLIAMS: I apologize to the
18 court, Your Honor. I just want to make sure that
19 the tape is understandable.

20 THE COURT: So, Mr. Williams, your
21 decision is -- do you want to sit there for a
22 moment or go back to the jury room --

23 A JUROR: It's like right there.

24 THE COURT: Are you an IT person?

25 A JUROR: No, ma'am.

1 THE COURT: I was going to let you come
2 down and hook us up.

3 Mr. Williams, let's go ahead and --
4 you-all just go ahead. We'll make sure that you
5 get some coffee and things like that. Please rise
6 for the jury.

7 (Jury out, 11:08 a.m.)

8 THE COURT: Thank you. Be seated.

9 MS. WILLIAMS: We were ready, Your
10 Honor, and I apologize to the court for the delay.

11 (A recess transpired.)

12 (Jury in, 11:28 a.m.)

13 THE COURT: Thank you. Please be
14 seated. We apologize for the technical
15 difficulties, but I've been assured by IT that we
16 should be good to go.

17 So we're going to start from the
18 beginning, and we're going to turn off all the
19 lights. So I smelled coffee, so if anybody needs a
20 coffee or water, please let the bailiff know.

21 THE COURT: Ms. Brown.

22 MS. BROWN: Yes.

23 (State's Exhibit 27 published in open
24 court.)

25 THE COURT: We need to take a short

1 break. Please remember all my admonitions. Please
2 take your pads or leave them in the chair. Please
3 rise for the jury.

4 (Jury out, 12:14 p.m.)

5 THE COURT: Thank you. Be seated.

6 We are going to break now until 1:00.

7 (A luncheon recess transpired.)

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1 THE COURT: Anything before we bring in
2 the jury? From the State?

3 (STATE EXH. 37, Picture, was marked for
4 identification.)

5 (STATE EXH. 38, Picture, was marked for
6 identification.)

7 (STATE EXH. 39, Picture, was marked for
8 identification.)

9 (STATE EXH. 40, Picture, was marked for
10 identification.)

11 MS. WILLIAMS: We have three more
12 pictures marked, 37, 38, 39 and 40. Mr. Schwacke
13 has no objection.

14 MR. SCHWACKE: I will have --
15 (Jury in, 1:09 p.m.)

16 THE COURT: Thank you. Be seated.
17 Call your next witness.

18 MS. SZYMCZYNSKA-SAS: Your Honor, the
19 State calls Lieutenant Brian Fenton.

20 BRIAN FENTON,
21 being first duly sworn, testified as follows:

22 THE CLERK: Please state your full name
23 and spell your last.

24 THE WITNESS: My name is Lieutenant
25 Brian Fenton, F as in Frank, E-N-T-O-N.

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 DIRECT EXAMINATION

2 BY MS. SZYMZYNSKA-SAS:

3 Q. Lieutenant, can you tell us where
4 you're currently employed?

5 A. I'm employed with the Berkeley County
6 Sheriff's Office.

7 Q. How long have you been employed there?

8 A. A little more than 11 years.

9 Q. And what is your prior law enforcement
10 experience or any other experience?

11 A. Before working at the sheriff's office,
12 I managed a hardware store in Moncks Corner for
13 several years, and I also did about six years in
14 the Army National Guard as a military police
15 officer.

16 Q. What is your current position at the
17 Berkeley County Sheriff's Office?

18 A. I'm a lieutenant in our community
19 services division. I supervise our school resource
20 officers and community action team.

21 Q. And how long have you been in that
22 position?

23 A. About two years.

24 Q. Were you in that position in June of
25 2015?

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 A. I was not.

2 Q. What position were you back then?

3 A. Back then I was a detective in the
4 criminal investigations division.

5 Q. And when did you transition to the new
6 position?

7 A. About October or November of 2015.

8 Q. Okay. And when did you first become
9 involved in the case which brings us here today?

10 A. I first became involved on June 5,
11 2015, when I received an e-mail from the children's
12 center indicating a child had disclosed abuse.

13 Q. Okay. And who e-mailed you?

14 A. Miss Beth Pilcher.

15 Q. Okay. And is that Dorchester
16 Children's Center?

17 A. Yes.

18 Q. And did this e-mail include any
19 attachments or --

20 A. It was just a brief description of the
21 child's disclosure.

22 Q. And is that standard for you to receive
23 those e-mails?

24 A. It happens quite often. At that time
25 my primary role was to investigate crimes against

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 children and sex crimes. I was the contact person
2 between the various children's centers in the area.

3 Q. Was there not an initial officer
4 responding in this case?

5 A. I think the initial officer was Deputy
6 Lawrence who responded on the 2nd.

7 Q. And why would you not have received his
8 report first?

9 A. So depending on what day of the week
10 the report is taken depends on when he would have
11 completed the report, and then the report would go
12 to one of his supervisors who would have to approve
13 the report. It would go through our records
14 division and then would go through one of our
15 supervisors in criminal investigations who would
16 assign the report.

17 So it might be a couple of days between
18 the time the report was made and an investigator
19 was assigned the case.

20 Q. And it just so happened in this case
21 you received the e-mail first?

22 A. Yes.

23 Q. And back to the e-mail, what was the
24 crime that was being reported?

25 A. Sexual assault of a minor.

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1 Q. And who was the minor?

2 A. Minor

3 Q. Okay. And did you actually obtain a
4 copy of the forensic report?

5 A. I did later on June 24th.

6 Q. Okay. And what did you do after
7 receiving that initial e-mail on June 5th with the
8 summary?

9 A. So what I did was I drew a warrant for
10 criminal sexual conduct with a minor and attempted
11 to make contact with the suspect at his employment.

12 Q. Okay. Once you drew the warrant, did
13 you do anything with the warrant?

14 A. We put warrants into a computer program
15 called NCIC. The FBI runs a database that holds
16 information, criminal justice information. The
17 purpose of putting it into NCIC would be so that if
18 any law enforcement would have contact with
19 Mr. Whitsett, they would understand that he had a
20 warrant and he would be arrested.

21 Q. Did you talk to the minor child before
22 drawing the warrant?

23 A. I did not.

24 Q. Why not?

25 A. I'm not trained to speak with children.

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 We use our local child advocacy centers to conduct
2 forensic interviews for us.

3 Q. What day did you draw the warrant on?

4 A. The 5th.

5 Q. June 5th?

6 A. Yes, ma'am.

7 Q. And what attempts, if any, did you make
8 to locate the defendant?

9 A. I went by his place of employment,
10 which was Charleston Steel on Highway 52 between
11 Moncks Corner and Goose Creek. I was informed that
12 I just missed him, he had already left for the day.
13 I was informed that he was scheduled to be back on
14 the 8th of June.

15 Q. Okay. Did you follow up on June 8th?

16 A. I did. I went back by his place of
17 employment on June 8th and was informed that he
18 called in, said his father had passed away and he
19 was going to Florida to see his father -- or attend
20 the funeral, I assume.

21 Q. And how many days have passed now since
22 the initial disclosure to law enforcement?

23 A. So the initial disclosure would have
24 been on the 2nd, and this would have been on the
25 8th, so about six days.

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1 Q. Okay. And so what is the next step
2 that you took?

3 A. So the next thing I did was I contacted
4 Sergeant Lamar Blakley. He's a part of the United
5 States Marshals Fugitive Task Force, a group of
6 young men and ladies that are skilled in finding
7 people. That's what they do.

8 Q. Okay. And would you have done that
9 because you anticipated that he would be at work
10 and he didn't show up?

11 A. Yeah. I originally planned on finding
12 him at work, and we didn't know where he would be.
13 I didn't have any information about on his
14 whereabouts at that time.

15 Q. Did the U. S. Marshal eventually locate
16 him, to your knowledge?

17 A. He did.

18 Q. And was he arrested on the warrant that
19 you initially prepared?

20 A. He was.

21 Q. Okay. Did you have a chance to come in
22 contact with the defendant Jeffrey Whitsett after
23 the arrest?

24 A. I did.

25 Q. Okay. What date was that on?

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 A. That was on June 10, 2015.

2 Q. To your understanding, is that the date
3 that they located him?

4 A. I believe so.

5 Q. Okay. And so how many days would that
6 have been since the initial disclosure to law
7 enforcement?

8 A. Between the 2nd and the 8th. I mean,
9 the 2nd and the 10th, so it would have been about
10 eight days.

11 Q. Okay. And did you have a chance to
12 talk to the defendant?

13 A. I did.

14 Q. And who was present during that
15 conversation?

16 A. During our interview was myself,
17 Detective Shane Cook, and Mr. Whitsett.

18 Q. Okay. And where did it take place?

19 A. We conducted the interview at the
20 sheriff's office in an interview room.

21 Q. Do you have interview rooms?

22 A. In our office, we have several
23 interview rooms that are padded rooms so you don't
24 hear a lot of outside noise or bother other
25 interviews. And they are audio- and video-recorded

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 rooms.

2 Q. During the interview, did the defendant
3 appear to be under the influence of alcohol or
4 drugs that would impair his ability to understand
5 your questions?

6 A. No, ma'am.

7 Q. Okay. And did he appear to have any
8 physical or mental disability that would impair his
9 ability to understand your questions?

10 A. No.

11 Q. And do you recall what was the
12 approximate time when the interview began?

13 A. About 11:00 a.m.

14 Q. And what is the approximate length of
15 the interview?

16 A. Almost two hours.

17 Q. Would it be maybe less than that?

18 A. Yeah, hour, 50 minutes. Somewhere
19 around in there.

20 Q. But you have -- you don't know the
21 exact time?

22 A. No. And that included about a
23 15-minute break.

24 Q. Okay.

25 A. In between.

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 Q. Did the defendant ever ask you for
2 food, water, or bathroom break?

3 A. He didn't, but we offered him water and
4 chips and a bathroom break, and he accepted.

5 Q. Did you promise him anything in return
6 for making a statement to you?

7 A. I did not.

8 Q. Did you coerce him in making a
9 statement to you? Did you threaten him with any
10 actions?

11 A. I did not.

12 Q. To the best of your knowledge, was his
13 statement freely given to you?

14 A. I believe so.

15 Q. And he was already under arrest?

16 A. He was.

17 Q. For the charge that you served him the
18 warrant with?

19 A. Yes, ma'am, he was.

20 Q. Was he informed why you wanted to
21 question him?

22 A. Yeah. He was informed about the arrest
23 when we arrested him and we would be speaking about
24 the accusation.

25 Q. Did you advise him of his

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 constitutional rights pursuant to Miranda?

2 A. I did.

3 Q. At which point of the questioning was
4 that in?

5 A. I advised him of his rights prior to
6 any questioning about the actual incident.

7 Q. Okay. And did you advise him verbally
8 or in writing?

9 A. Both, verbally and writing.

10 Q. Okay. I'm going to show you what was
11 previously premarked as State's Exhibit 1.

12 MS. SZYMCZYNSKA-SAS: Your Honor,
13 permission to approach?

14 THE COURT: You may.

15 BY MS. SZYMCZYNSKA-SAS:

16 Q. Do you recognize this document?

17 A. I do.

18 Q. What is it?

19 A. It's a Berkeley County Sheriff's Office
20 Miranda advisement form.

21 Q. And when do you use this kind of form?

22 A. We use this form any time we're just
23 going to do a custodial interview and ask somebody
24 about the accusation.

25 Q. Okay. And what's the purpose of this

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 form and the Miranda?

2 A. To make sure that the defendant
3 understands what their rights are.

4 Q. And did you -- is this the form that
5 you used during the interview with the defendant?

6 A. It is.

7 Q. How do you know that?

8 A. It has my signature on it.

9 Q. Okay. Does it have his signature on
10 it?

11 A. It does.

12 Q. Would you have witnessed that
13 signature?

14 A. I did.

15 Q. Is that form dated?

16 A. It is not.

17 Q. So how would you know that's the
18 particular form that you used during that interview
19 on June 10, 2015?

20 A. Because I only conducted one interview
21 with him.

22 Q. Okay. Can you please let the jury know
23 what kind of rights did you advise him of and how
24 he acknowledged understanding those rights?

25 A. Yes, ma'am. So before we ask a person

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 questions about an accusation, we advise them of
2 their Miranda rights. And what we do is take the
3 form, I would read it to him while he read along
4 with me. I would ask him to put -- I would put
5 hash marks next to each advisement of his rights
6 and ask him to initial next to it if he understood
7 what it meant. And then I would read along with
8 him.

9 What I read was, you have the absolute
10 right to remain silent and do not have to answer
11 any questions, or give a statement, and this fact
12 cannot be used against you. If you do answer
13 questions or give a statement, anything that you
14 say can and will be used against you in a court of
15 law.

16 You have the right to consult with a
17 lawyer of your choice before you answer questions
18 or give a statement and also to have him present
19 while you are being questioned. If you wish to
20 talk to a lawyer or have him present, but are
21 unable to afford to hire a lawyer, one will be
22 appointed to represent you free of charge.

23 If you decide to answer questions or
24 give a statement without having a lawyer present
25 representing you, you have the absolute right

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1 during the interview to stop answering questions
2 and remain silent.

3 And then I would read the line that
4 says, I have read this Miranda form and my
5 signature below references the understanding of the
6 contents within.

7 And I would ask the person to -- ask
8 Mr. Whitsett to sign it if he understood what all
9 of that meant. And then I would ask him, I hereby
10 understand the above listed rights, and I would
11 like to speak to an investigator. And if he would
12 like to speak to me I would ask him to sign that
13 portion, and which he did.

14 Q. Okay. Did the defendant have the clear
15 ability to understand written and spoken English?

16 A. He did.

17 Q. Did he answer -- the answers to your
18 questions were rational? Was he emotional, which
19 gave you reason to believe that he didn't
20 understand the warnings and he didn't waive his
21 rights?

22 A. He didn't appear emotional or confused
23 or anything during that portion.

24 Q. And did he indicate to you that he
25 wanted an attorney initially?

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 A. He did initially indicate he wanted an
2 attorney.

3 MS. SZYMCZYNSKA-SAS: Your Honor, at
4 this time the State would like to move State's
5 Exhibit 1 into evidence.

6 THE COURT: Any objection?

7 MR. SCHWACKE: Subject to our prior
8 objection.

9 THE COURT: State's 1 into evidence.
10 Noting your prior objection.

11 (STATE EXH. 1 in evidence.)

12 BY MS. SZYMCZYNSKA-SAS:

13 Q. Did the defendant make a written
14 statement to you?

15 A. No; just a verbal.

16 Q. Okay. And did you learn anything
17 during the interview about the defendant's medical
18 condition?

19 A. During the interview he informed me
20 that he was HIV positive.

21 Q. Okay. Did you do anything with that
22 information after the interview?

23 A. After the interview I called MUSC to
24 speak with the SANE nurse to make sure that that
25 information was provided to them for the child's

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 care.

2 Q. And how did the defendant tell you he
3 became HIV positive?

4 A. He said that he was involved in a
5 bloody fight in West Ashley, and the other person
6 he was fighting with was infected.

7 Q. Okay. And did he make any other claims
8 about his health?

9 A. He said that his HIV level was
10 undetectable, but he didn't make any other claims
11 about his health. He -- he -- during the interview
12 he claims that he had some blackout spells where he
13 had memory loss.

14 Q. What did he say about the blackouts in
15 regard to him inappropriately touching **Minor**

16 **[REDACTED]**

17 A. When we asked him if he would have or
18 he could have touched his stepdaughter
19 inappropriately during one of the blackout spells,
20 he said he didn't know.

21 Q. Was that once that he said it?

22 A. Oh, multiple times.

23 Q. Okay. Did he ever tell you he
24 discussed these blackouts with the medical
25 professional?

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 A. He said that he didn't specifically
2 address the blackout spells with his doctor.

3 Q. And what did he tell you that he did
4 for a living; do you recall?

5 A. He said he worked at Charleston Steel
6 and Metal processing steel and operating a crane.

7 Q. And so he handled heavy machinery?

8 A. Heavy equipment and dangerous metals.

9 Q. Did he tell you if he ever disclosed
10 these blackouts to the boss?

11 A. Said he never told his boss or his
12 coworkers.

13 Q. Okay. Did he ever tell you that any of
14 the blackouts happened on the job?

15 A. He did. He described using the crane
16 and moving metal and that he would not remember how
17 he moved a piece of metal. He had had a blackout
18 while operating the crane.

19 Q. And these statements that he made to
20 you, were they audio and video recorded?

21 A. They were both audio and video
22 recorded.

23 Q. What would you have done with the
24 recording?

25 A. After we do the interview, we use our

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 DVR player to put it on a CD and we would enter
2 that into evidence.

3 Q. And that was provided to our office?

4 A. It was.

5 MS. SZYMCZYNSKA-SAS: Your Honor, at
6 this time the State would like to move State's
7 Number 25 into evidence. It's the defendant's
8 audio- and video-recorded interview.

9 THE COURT: Any objection?

10 MR. SCHWACKE: The same, Your Honor, we
11 would renew our previous objection. We may need to
12 approach.

13 THE COURT: Okay.

14 (Bench conference.)

15 THE COURT: Ms. Sas.

16 MS. SZYMCZYNSKA-SAS: Your Honor, at
17 this time the State would like to move State's
18 Number 25 and State's Number 2 into evidence, and
19 we would like permission to publish State's 25.

20 THE COURT: Mr. Schwacke, any
21 objection?

22 MR. SCHWACKE: Yes, subject to our
23 prior objection.

24 THE COURT: Okay. State's 2 and 25
25 into evidence, noting your previous objection.

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 Ms. Sas, you may publish State's 25 at
2 this time.

3 (STATE EXH. 2 in evidence.)

4 (STATE EXH. 25 in evidence.)

5 (State's Exhibit 25 published in open
6 court.)

7 (Video stopped.)

8 THE COURT: It's dark and we just ate,
9 so if you want to move around in your chair a
10 little bit that might help.

11 (Video continued.)

12 THE COURT: I need you to stop it.

13 Mr. Hill, I'm concerned you're
14 sleeping. I don't mean to call you out. Are you
15 okay?

16 A JUROR: Yes, ma'am.

17 THE COURT: Okay. So just for my
18 satisfaction, everybody stand up and take a stretch
19 break.

20 You too, Lieutenant Fenton.

21 THE COURT: Sure. You all need a
22 break?

23 FOREPERSON: Yes, ma'am.

24 THE COURT: Okay. But you all have to
25 go, so remember my admonitions.

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 (Jury out, 2:08 p.m.)

2 THE COURT: Thank you. Be seated. So
3 I have observed Mr. Hill, who is our alternate
4 seated closer to the State's table sleeping.

5 Anything from the State?

6 MS. WILLIAMS: Not from the State, Your
7 Honor. We appreciate you bringing it to our
8 attention and giving them a break. It is after
9 lunch and it's a long video, but we're getting
10 there.

11 THE COURT: Mr. Schwacke, Ms. Tolley.

12 MR. SCHWACKE: Thank you for bringing
13 that to our attention as well. I can't see around
14 the corner, but at this time we don't have a
15 motion.

16 THE COURT: Okay. Everybody take about
17 seven minutes.

18 We have taken care of it. Thank you.

19 (A recess transpired.)

20 (Jury in; 2:19 p.m.)

21 THE COURT: Thank you. Be seated.

22 (Video continued.)

23 BY MS. SZYMCZYNSKA-SAS:

24 Q. I have just a couple of follow-up
25 questions from the interview that you just had a

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 chance to watch. I'm sure you've watched before.
2 How many different excuses did the defendant
3 provide during the course of the interview for not
4 showing up for work since being out of the house on
5 June 1st until U. S. Marshal located him on
6 June 10th?

7 A. A couple if different excuses. He said
8 that -- one was he didn't have transportation,
9 another one was that his father died and he needed
10 to go to Florida, another one he was too emotional
11 to go to work.

12 Q. And were you the first person that he
13 told about these blackout spells?

14 A. I believe so. According to him, he
15 indicated there was nobody he could tell it to.

16 Q. Okay. And did you have any other
17 involvement in this case?

18 A. After speaking with him, I think we
19 drew -- I drew a couple of warrants for some of the
20 electronic devices that he had on him when he was
21 arrested.

22 Q. And do you recall what those devices
23 were?

24 A. I think they were a couple of laptops,
25 some cameras, hard drive that had been removed from

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 a computer, a flash drive, cell phone.

2 Q. And those were the items that were with
3 him during the time of arrest by the U. S.
4 Marshals?

5 A. Yes, ma'am.

6 Q. You said you prepared search warrants
7 for those?

8 A. Yes, ma'am.

9 Q. And what did you do after the search
10 warrant? What happened to the items?

11 A. The materials were delivered to
12 Detective Murphy who is our, I guess, resident
13 computer guy at the sheriff's office.

14 Q. Okay.

15 A. He has training in various data
16 extraction-type thing with electronics.

17 Q. Was anything recovered of significance
18 from these items?

19 A. Nothing of evidentiary value.

20 Q. And the defendant, based on the
21 interview, did it appear that he had knowledge
22 about electronics?

23 A. He did. He, in my opinion, he was very
24 knowledgeable. He said he knew how to limit the
25 cell phones so the children wouldn't be able to

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 access whatever sites he was watching. He said
2 when he was dealing with the tablet he was able to
3 clear the memory, cache, and the history settings
4 and things like that so the children would not see
5 the pornography that he was watching.

6 Q. So you don't know if during that time
7 period when he left the house on 6/1/15, and when
8 he actually was arrested on June 10th of 2015, that
9 he didn't erase any of the data?

10 MR. SCHWACKE: Objection; leading.

11 THE COURT: I'm going to allow it.

12 THE WITNESS: I'm sorry, can you repeat
13 it?

14 BY MS. SZYMCHYNSKA-SAS:

15 Q. Sure. So do you know if during that
16 time period between June 1st of 2015 and June 10th,
17 2015, if he erased any of the data?

18 A. I would have no idea of knowing.

19 Q. Okay. Did you ever go to the victim's
20 residence?

21 A. I did.

22 Q. When was that?

23 A. I think it was June 17th, 2015.

24 Q. And do you recall what the address for
25 that residence is?

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 A. I want to say 117 Farrell Street, lot
2 five, Moncks Corner area of Berkeley County, South
3 Carolina.

4 Q. And how many days after the initial
5 report would that have been that you went to the
6 house?

7 A. About 15 days.

8 Q. And what did you do at the house?

9 A. We conducted, I guess you would call
10 it, a search. We took several photographs,
11 collected some items from the residence.

12 Q. Did you obtain a search warrant for the
13 residence?

14 A. I did not. I got written consent to
15 search from Mrs. Whitsett.

16 Q. Is that standard procedure?

17 A. It is pretty standard. It allowed me
18 to search any areas that she would have access to.

19 Q. You said you took photographs. Did you
20 make any observations about the backyard?

21 A. There was a utility shed with, I guess
22 you would call it, a homemade lean-to attached to
23 it; there was a burn pit, I think some kids play
24 equipment like a trampoline and those kind of
25 things, and a big black dog running around.

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 Q. Did you make any observation about the
2 fire pit?

3 A. I noticed that there were several items
4 in the fire pit that were not burned and didn't
5 look like they had been set on fire yet.

6 Q. Did you collect any items that were at
7 the residence that you would have placed into
8 evidence in this case?

9 A. I did.

10 Q. And do you recall what those items
11 were?

12 A. A pair of underwear, some lubrication,
13 a pair of cameras, and his wife gave me what looked
14 like a cigar that had been taken apart, I guess you
15 would say.

16 Q. The underwear that you mentioned, where
17 did it come from? Did you locate it?

18 A. No. Mrs. Whitsett gave it to me. She
19 indicated that her -- a friend had found it in the
20 shed.

21 MS. SZYMCZYNSKA-SAS: Okay. Permission
22 to approach, Your Honor?

23 THE COURT: You may.

24 BY MS. SZYMCZYNSKA-SAS:

25 Q. I'm going to show you what was

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 previously marked as State's Exhibit 28 for ID
2 only. Do you recognize what that item is?

3 A. A bag with something in it.

4 Q. Okay.

5 A. Do you want me to put a pair of gloves
6 on?

7 Q. Which item is that?

8 A. It's a pair of underwear according to
9 the evidence label you would call it.

10 Q. Okay. Does it state who the delivery
11 officer is?

12 A. Myself, Brian Fenton.

13 Q. Okay. So would that be the pair of
14 underwear that you located?

15 A. It would.

16 Q. Okay. Would there be a chain of
17 custody form that would have been completed?

18 A. There should be.

19 Q. What would you have done with this --

20 A. I would take it to the sheriff's
21 office. In the sheriff's office squad room,
22 there's a set of evidence lockers. I would place
23 it in the locker and shut the locker that would
24 lock.

25 Q. And who has access to that locker?

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 A. Just the evidence personnel. Deputies
2 can place items in the locker, but we can't remove
3 them.

4 Q. Would you have any access to that
5 underwear afterwards? Did you do anything with is?

6 A. No, I didn't do anything with it.

7 Q. Where would it have gone after that?
8 Who would have picked it up?

9 A. Evidence personnel would pick it up and
10 take it to the forensic services building, and it
11 would be stored there for a period of time until it
12 was transferred to the appropriate agency. I
13 believe SLED in this case, would have tested it,
14 did some tests on it.

15 Q. And according to the chain of custody,
16 who would have been the person that would have
17 picked it up from the locker?

18 A. Mr. Flood.

19 Q. Okay. And did you do any anything else
20 in this case?

21 A. Later on, after reviewing the case, I
22 obtained a warrant for exposing a person to HIV.

23 Q. Okay. And when did you prepare that
24 warrant?

25 A. I think September of 2016. Not

BRIAN FENTON - DIRECT EXAM BY MS. SAS

1 September. February of 2016.

2 Q. Okay. Why would you wait this long?

3 A. In that position of time, I re-reviewed
4 the case as I was putting the case file together
5 and I was transitioning into -- or had transitioned
6 into another role. And I was trying to clear up
7 some cases that I had assigned to me as a
8 detective, so this is kind of when I got it.

9 Q. The HIV statute, is that something that
10 you were really familiar with?

11 A. It is not. And this is actually the
12 first case that I've drawn a warrant for that, for
13 that offense.

14 Q. And did you prepare a report in this
15 case?

16 A. I did.

17 MS. SZYMCZYNSKA-SAS: Okay. Court's
18 indulgence?

19 BY MS. SZYMCZYNSKA-SAS:

20 Q. One more question. Do you recall what
21 the defendant's specific date of birth is?

22 A. February 22, 1990, I believe.
23 2/22/1990.

24 MS. SZYMCZYNSKA-SAS: Okay. No further
25 questions, Your Honor, at this time.

BRIAN FENTON - CROSS EXAM BY MR. SCHWACKE

1 THE COURT: Mr. Schwacke.

2 MR. SCHWACKE: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. SCHWACKE:

5 Q. Detective Fenton, you were the chief
6 officer in charge of this investigation?

7 A. I was the case agent on the
8 investigation.

9 Q. So everything in the case kind of runs
10 through you?

11 A. It should, yeah.

12 Q. And so any reports that were part of
13 this report of this case, you would be aware of
14 them?

15 A. I should be.

16 Q. In discussing the case earlier, you
17 indicated your involvement in this case doesn't
18 begin until the 5th of June?

19 A. Yes.

20 Q. And that would have been after the
21 alleged event was -- well, event was reported on
22 June 1st?

23 A. I think the report said June 2nd.

24 Q. Okay. But you've been sitting here and
25 you understood there was an attempt to report to

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1 Attorney Kearsse?

2 A. That's what I learned today. Or
3 yesterday, whenever he testified.

4 Q. And so your involvement begins on the
5 --

6 A. The 5th.

7 Q. Did you also have contact with the
8 Department of Social Services, any caseworker, any
9 investigator?

10 A. I don't remember ever speaking to a DSS
11 person about this case. I talk to DSS all the time
12 about all sorts of things, but I don't remember
13 this case.

14 Q. So you wouldn't recall that one of the
15 DSS case workers indicated to the nurse at MUSC
16 that?

17 MS. SZYMCHYNSKA-SAS: Objection, Your
18 Honor.

19 THE COURT: Let him finish the
20 question.

21 BY MR. SCHWACKE:

22 Q. You wouldn't be aware then -- and,
23 again, you're the chief agent in this case --

24 A. Uh-huh.

25 Q. -- of a report made by Ms. Nogueira

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1 that she had seen a pair of bloody underwear back
2 on the 2nd?

3 MS. SZYMCZYNSKA-SAS: Objection.

4 THE COURT: What's the basis?

5 MS. SZYMCZYNSKA-SAS: Hearsay, Your
6 Honor.

7 THE COURT: Is there an exception?

8 MR. SCHWACKE: It would be that he's
9 talking --

10 THE COURT: Approach, please.

11 (Bench conference.)

12 THE COURT: Sustained as to hearsay.

13 BY MR. SCHWACKE:

14 Q. And your involvement, first contact
15 with Mr. Whitsett was not until the 10th of June?

16 A. Correct.

17 Q. And your next contact with Ms. Nogueira
18 was on the 17th of June?

19 A. That's when I met her.

20 Q. And that's the first time that you met
21 her?

22 A. I think I spoke to her on the phone
23 before that.

24 Q. Do you recall when you spoke to her on
25 the phone?

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1 A. I know I would have called her prior to
2 going to her residence as opposed to showing up
3 there unexpected.

4 Q. How did that go down exactly on the
5 17th?

6 A. How did it go down?

7 Q. Yes.

8 A. I mean, I arrived at her residence,
9 filled out the form to have the consent to search.

10 Q. Why did you go to her house?

11 A. Well, I would like to meet the lady,
12 take photographs of the incident location, collect
13 anything that would be of evidentiary value.

14 Q. She didn't indicate to you, hey, I
15 found this, come to my house?

16 A. She might have; I don't remember.

17 Q. Or any mention of the neighbor across
18 the street and that pair of underwear?

19 A. When I got there, I know that she --
20 she had informed me a pair of underwear was found.

21 Q. So who was present when you got to the
22 house on the 17th?

23 A. I believe it was just myself and her.

24 Q. So the neighbor was not there?

25 A. I don't remember seeing him.

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1 Q. And just so we understand, we're
2 talking about Cody Milhouse?

3 A. If that's the neighbor that testified
4 earlier.

5 Q. You didn't take a statement from him?

6 A. I did not.

7 Q. You didn't take a statement from
8 Ms. Nogueira?

9 A. I did not.

10 Q. So when you arrive at the house, what
11 is the first thing that you do?

12 A. I had her sign the consent to search,
13 and then I took some photographs of the residence
14 and around the residence.

15 Q. And where -- do you photograph where
16 any items were?

17 A. She had already had collected them and
18 handed them over to me.

19 Q. So anything that would have been
20 evidence may have already been moved by
21 Ms. Nogueira?

22 A. I would assume so.

23 Q. And things may not have been in the
24 original place?

25 A. Yes, sir.

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1 Q. Did you find a gun?

2 A. I did not.

3 Q. Did you find any Vaseline?

4 A. I didn't find any Vaseline. I don't
5 remember specifically looking for Vaseline, but I
6 didn't collect any.

7 Q. Well, you were made aware of **Minor**
8 statement by the Dorchester Children's Center?

9 A. I didn't receive her actual forensic
10 interview report until the 24th.

11 Q. Well, it was in the facts that you got?

12 A. Just that -- I don't remember there
13 being anything about -- I don't remember anything
14 about Vaseline in the original e-mail.

15 Q. So the tube of ID Glide that was taken,
16 was that handed to you?

17 A. It was.

18 Q. How much of -- it's just you doing the
19 search?

20 A. It was.

21 Q. And how long did it take you to search
22 that house?

23 A. It didn't take long. The majority of
24 what I did was take photographs. I didn't rifle
25 through people's stuff.

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1 Q. Did you basically just go where she
2 told you to go and hand you things?

3 A. I think she already had them in the
4 kitchen of the residence from what I remember.

5 Q. And they were gathered up in a bag?

6 A. I'm not sure of what you're saying.

7 Q. Well, how did she have them arranged
8 when you got there?

9 A. She had the underwear, I think those
10 were in a Ziploc bag, and the other items were just
11 -- I think the lubricant and the plant material.

12 Q. And so did you not know of Cody
13 Milhouse until we were in trial preparation? Is
14 that when you find out about him?

15 A. I knew that the neighbor found the
16 underwear.

17 Q. And --

18 A. When she told me that --

19 Q. There was no statement taken from him?

20 A. No, sir.

21 Q. No statement taken from Ms. Nogueira?

22 A. No, sir.

23 Q. So what were the items that were in the
24 burn pit that you saw?

25 A. Just looked like some boxes and -- off

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1 the top of my head.

2 Q. Did you just take the photograph of the
3 burn pit?

4 A. Uh-huh.

5 Q. Did you go through the burn pit to see
6 if there were any unburnt sections of clothing?

7 A. I did not.

8 Q. Is there any way to tell by the items
9 that were left in the burn pit how long they had
10 been in that condition?

11 A. I wouldn't know. I don't remember what
12 the weather was like. I would assume if the
13 weather was inclement it would be in worse
14 condition then.

15 Q. Do you remember what those items were?

16 A. They were in the burn pit?

17 Q. Yes.

18 A. All I remember is a big box, and I
19 can't remember what else was in there.

20 Q. So were there any other items that you
21 examined while at the residence?

22 A. I don't know what you mean by examined.

23 Q. Well, before you take them and you are
24 going to observe them. Are there items that you
25 observed that you didn't take into possession?