

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RECEIVED

JUN 15 2018

SC Court of Appeals

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**

BRIAN FENTON - CROSS EXAM BY MR. SCHWACKE

1 A. Not that I can recall.

2 Q. Did you look at the bedroom?

3 A. I took photographs of the bedroom,
4 yeah.

5 Q. Did you look at any sheets?

6 A. The bed looked like it was kept, and I
7 didn't --

8 Q. You didn't look at any sheets?

9 A. I didn't inspect it with a microscope,
10 no.

11 Q. So there was a consent to search, but
12 basically she had done the searching for you and
13 left some items for you to take?

14 A. Yes, sir.

15 Q. So Mr. Whitsett in his discussion with
16 you, would you say that he was cooperative?

17 A. Well, I don't believe he told the
18 truth, but he was as cooperative as he could be.
19 He wasn't physically resistant or anything like
20 that.

21 Q. And he answered your questions?

22 A. For the most part.

23 Q. And he tried to describe whatever the
24 blackout system did to him?

25 A. He did. It didn't really make a whole

BRIAN FENTON - CROSS EXAM BY MR. SCHWACKE

1 lot of sense to me, but -- I don't understand how
2 you can describe a free falling sensation and know
3 when it's going to occur and then just blackout. I
4 don't know.

5 Q. The electronics that were taken, the
6 laptops and equipment, those were reviewed by
7 someone within the department?

8 A. They were.

9 Q. And that would have been Kevin Murphy?

10 A. Detective Lieutenant Murphy.

11 Q. And, again, you being the chief
12 investigating officer on this case, and you've
13 already testified that nothing of evidentiary value
14 was found?

15 A. Yes.

16 Q. That's not to say everything was wiped
17 clean. There was stuff there, there was just
18 nothing that would help you-all make a case against
19 him?

20 A. I don't know. I told Lieutenant Murphy
21 that we were looking for a video of him engaged in
22 a sex act with his stepdaughter. And I guess from
23 Lieutenant Murphy's search, we didn't find it.

24 Q. And you are not aware of any extraction
25 report done on any telephone devices?

BRIAN FENTON - CROSS EXAM BY MR. SCHWACKE

1 A. I don't.

2 Q. That would normally be something that
3 Kevin Murphy would do?

4 A. It depends; if the equipment is
5 compatible with his phone. Not all phones are
6 compatible with the equipment we have.

7 Q. And he would also check any other
8 computer devices?

9 A. Yes.

10 Q. And, again, there is no report for you
11 from him in this case?

12 A. I'm not sure if he wrote a
13 supplementary report.

14 Q. Well, he did do a supplemental report.
15 Would that help you?

16 A. I could review it.

17 MR. SCHWACKE: Your Honor, for
18 identification only, I would ask to make this as
19 Defendant's Exhibit 1.

20 (DFT. EXH. 1, Report from Detective
21 Murphy, was marked for identification.)

22 MR. SCHWACKE: May I approach?

23 THE COURT: You may.

24 BY MR. SCHWACKE:

25 Q. Detective Fenton, I will ask you to

BRIAN FENTON - CROSS EXAM BY MR. SCHWACKE

1 take a look at that. Does that appear to be a
2 supplemental report?

3 A. Supplementary report from Detective
4 Murphy.

5 Q. And it does mention the processes he
6 would go through with the electronic devices?

7 A. There was several electronic devices
8 that he searched.

9 Q. And they would have included the ones
10 that you obtained from Lamar Blakley?

11 A. Yes.

12 Q. And, again, they indicate there was no
13 -- nothing of evidentiary value on any of those
14 devices?

15 A. Correct.

16 MR. SCHWACKE: One moment, Your Honor.

17 BY MR. SCHWACKE:

18 Q. And again, concerning Mr. Whitsett's
19 cooperation, he did give you the passwords to all
20 of his devices?

21 A. Well, he didn't. He indicated he
22 didn't have passwords on his devices except for a
23 Microsoft Live account, and he gave some weird
24 Japanese word as the password.

25 Q. How many times would you have spoken

BRIAN FENTON - REDIRECT EXAM BY MS. SAS

1 with Ms. Nogueira?

2 A. I don't recall.

3 Q. You indicated at least you think one
4 time on the phone?

5 A. At least once.

6 Q. And then in person when you took the
7 items?

8 A. Yes.

9 Q. And she is from Brazil?

10 A. I assume so.

11 Q. Was there anyone else that you spoke
12 with personally in this case that spoke Portuguese
13 or had an accent?

14 A. Not that I can recall.

15 MR. SCHWACKE: Okay. Thank you.

16 That's all the questions I have.

17 THE COURT: Redirect?

18 MS. SZYMCZYNSKA-SAS: Just a couple of
19 follow-up questions.

20 REDIRECT EXAMINATION

21 BY MS. SZYMCZYNSKA-SAS:

22 Q. Lieutenant Fenton, you don't know that
23 the phone that was collected is the same phone with
24 which Minor [REDACTED] said she was being recorded
25 with, correct?

1 A. I don't know that.

2 Q. And you have no way of knowing whether
3 any data was erased from that phone?

4 A. I have no way to know.

5 Q. And do you recall how many times the
6 defendant said that he blacked out and he didn't
7 know if he did it or not?

8 A. I didn't count, but probably too many
9 to count.

10 MS. SZYMCZYNSKA-SAS: No further
11 questions.

12 THE COURT: Mr. Schwacke, re-cross.

13 MR. SCHWACKE: None, Your Honor.

14 THE COURT: You may step down.

15 THE WITNESS: Thank you.

16 THE COURT: Do you need a break?

17 THE FOREPERSON: Yes.

18 THE COURT: Remember all of my
19 admonitions. Please rise for the jury.

20 (Jury out, 3:40 p.m.)

21 THE COURT: Thank you. Be seated.

22 Mr. Schwacke, I'm going to allow you to
23 place your objection to the DVD interview on the
24 record. You were so gracious; you were trying to
25 redact the tapes to keep the trial moving, and I

1 just want to ensure that the record is accurate.

2 MR. SCHWACKE: I would point out
3 outside of the courtroom at the time that the
4 Dorchester Children's Center video was shown. I
5 approached the Court about that later, indicating
6 that we wished to make sure that we were able to
7 place on the record our continuing objection to
8 that and would ask the Court to have considered
9 that at the appropriate time.

10 THE COURT: Okay. What's left?

11 MS. WILLIAMS: Your Honor, we have two
12 chain witnesses left, Amy Stephens and Don
13 Register, to shore up our chain. After that, we
14 have two SLED analysts, Jessica Stowe and Donna
15 Money, and then we have Dr. Michelle Amaya.

16 THE COURT: That concludes the --

17 MS. WILLIAMS: That includes the day.
18 And then tomorrow we have our expert, who is Carol
19 Swiecicki, the first thing in the morning, and then
20 the State will rest.

21 THE COURT: And, Mr. Schwacke, any idea
22 whether you will be presenting witnesses?

23 MR. SCHWACKE: Not at this time.

24 I'm not saying -- at this time I'm
25 saying we are not sure if we will have witnesses.

1 THE COURT: Okay. Thank you. Take
2 about ten minutes.

3 (A recess transpired.)

4 THE COURT: Anything before we bring in
5 the jury?

6 MS. WILLIAMS: No.

7 MR. SCHWACKE: No, Your Honor.

8 MS. WILLIAMS: Every witness is right
9 there.

10 THE COURT: Right where?

11 MS. SZYMCZYNSKA-SAS: Right outside the
12 door, Your Honor.

13 (Jury in, 3:59 p.m.)

14 THE COURT: Please approach.

15 (Bench conference.)

16 THE COURT: Ms. Sas, call your next
17 witness to be sworn.

18 You may be seated.

19 MS. SZYMCZYNSKA-SAS: The State calls
20 Amy Stephens.

21 AMY STEPHENS,

22 being first duly sworn, testified as follows:

23 THE CLERK: Please state your full name
24 and spell your last.

25 THE WITNESS: Amy Stephens,

AMY STEPHENS - DIRECT EXAM BY MS. SAS

1 S-T-E-P-H-E-N-S.

2 DIRECT EXAMINATION

3 BY MS. SZYMCZYNSKA-SAS:

4 Q. Ms. Stephens, where are you currently
5 employed?

6 A. I'm employed with the South Carolina
7 Law Enforcement Division commonly known as SLED.

8 Q. And how long have you been employed
9 there?

10 A. A little over 11 years.

11 Q. And what is your official title?

12 A. I'm a forensic technician within the
13 evidence control department.

14 Q. What are your duties and
15 responsibilities as a forensic technician?

16 A. We log in and transport evidence for
17 forensic analysis in criminal cases.

18 Q. Were you involved in handling evidence
19 in this case?

20 A. Yes, I was.

21 MS. SZYMCZYNSKA-SAS: Permission to
22 approach, Your Honor?

23 THE COURT: You may.

24 BY MS. SZYMCZYNSKA-SAS:

25 Q. I'm going to show you what was

AMY STEPHENS - DIRECT EXAM BY MS. SAS

1 previously premarked as State's Number 28. I don't
2 know if there is a need for you to touch it, but if
3 you do we can certainly bring gloves.

4 Do you recognize this item?

5 A. Yes, I do.

6 Q. And what is it?

7 A. The label that is affixed to the
8 outside package corresponds with SLED lab number
9 L15-16081, which is SLED item number 2.

10 Q. Okay. And why would you have come in
11 possession of that item?

12 A. SLED item number two, is a pair of
13 underwear that is described as orange, white and
14 pink striped with a green waistband belonging to
15 the victim. That evidence was submitted to our
16 SLED laboratory and received by forensic technician
17 Jennifer Aycock of the Evidence Control Department
18 on July 8, 2016, at 11:11 a.m., from Kirsten
19 Chestnut of the Berkeley County Sheriff's Office.

20 Jennifer Aycock transferred that
21 evidence to a shelf within our evidence room, and
22 then I retrieved that evidence from that shelf on
23 July 12, 2016, and transferred it to forensic
24 technician Jessica Stowe in the Serology
25 Department, also on July 12, 2016.

AMY STEPHENS - DIRECT EXAM BY MS. SAS

1 Q. And did you do anything with that
2 particular item after Ms. Stowe came in touch with
3 that item?

4 A. Yes, I did. Jessica Stowe returned the
5 evidence to me July 19th, 2016. I placed it on a
6 return shelf in our evidence room, and that
7 evidence was returned to Berkeley County Sheriff's
8 Office on August 11, 2016, by forensic technician
9 Doris Yarborough.

10 Q. And is there anyone that would have
11 come in contact with it once you placed it in the
12 bin and when it was returned to Berkeley County
13 Sheriff's Office?

14 A. No one other than the evidence control
15 technician.

16 Q. And who would that have been on
17 August 11?

18 A. Doris Yarborough.

19 Q. Okay. And did you come in touch with
20 the same piece of evidence again?

21 A. Yes, I did.

22 Q. What day was that?

23 A. I received this evidence again on
24 September 9, 2016, from A.M. flood of the Berkeley
25 County Sheriff's Office, and transferred the

AMY STEPHENS - DIRECT EXAM BY MS. SAS

1 evidence to an intake shelf within our evidence
2 room.

3 Q. Okay. Who would have had contact with
4 that particular item of evidence after that?

5 A. Forensic technician Jackie Davis
6 retrieved the evidence from that shelf on
7 September 12, 2016, and transferred it to Jessica
8 Stowe of the Serology Department.

9 MS. SZYMCZYNSKA-SAS: Okay. Permission
10 to approach?

11 THE COURT: You may.

12 BY MS. SZYMCZYNSKA-SAS:

13 Q. Did that evidence appear to be tampered
14 with at any point when you were handling it? Did
15 it appear to be tampered, altered, or modified in
16 any way?

17 A. No, it did not.

18 Q. I'm going to show you what was
19 premarked for identification purposes only at this
20 time, State's Number 29.

21 MS. SZYMCZYNSKA-SAS: Permission to
22 approach?

23 THE COURT: You May.

24 BY MS. SZYMCZYNSKA-SAS:

25 Q. Do you recognize this piece of

AMY STEPHENS - DIRECT EXAM BY MS. SAS

1 evidence?

2 A. I didn't actually handle the physical
3 CSC kit box. This was handled by Jackie Davis, a
4 forensic technician with the Evidence Control
5 Department; however, the name that is listed on the
6 CSC kit box corresponds with the lab number for
7 this case.

8 Q. Okay. Do you have the SLED evidence
9 chain?

10 A. I do.

11 Q. Okay. And what item would that have
12 been?

13 A. SLED item number 1, which is described
14 as a CSC kit from **Minor**.

15 Q. Okay. Would you have handled anything
16 in that item number 1?

17 A. The inside contents of the CSC kit I
18 would have handled, yes.

19 Q. And what items were those and what
20 dates; and who did you receive them from and who
21 did they went to afterwards?

22 A. When the evidence is originally
23 submitted through our department, it's submitted as
24 item number 1, a CSC kit. This evidence was
25 originally submitted by Dean Kokinda of the

AMY STEPHENS - DIRECT EXAM BY MS. SAS

1 Berkeley County Sheriff's Office December 9, 2015,
2 and received by Jackie Davis.

3 She transferred that evidence to a DNA
4 intake shelf within our evidence room. On June 22,
5 2016, forensic technician Jennifer Aycok, who was
6 employed within the Evidence Control Department
7 retrieved it from that shelf and transferred it to
8 forensic technician Jessica Stowe.

9 On July 19, 2016, I received this
10 evidence from Jessica Stowe and transferred it to a
11 DNA intake shelf located within our evidence room.
12 On August 11, 2016, forensic technician Jennifer
13 Aycok retrieved the evidence from that shelf and
14 transferred it to Donna Money of the DNA
15 department.

16 Q. Okay. And would you have done anything
17 else with the samples that are within the item 1,
18 one item 11 and 12?

19 A. No. It was a sealed package when I
20 handled it.

21 MS. SZYMCZYNSKA-SAS: No further
22 questions for this witness, Your Honor.

23 MR. SCHWACKE: No questions.

24 THE COURT: You may step down. You are
25 free to go.

DON REGISTER - DIRECT EXAM BY MS. SAS

1 THE WITNESS: Thank you.

2 THE COURT: Thank you.

3 Call your next witness.

4 MS. SZYMCIYNSKA-SAS: The State calls
5 Don Register.

6 DON REGISTER,

7 being first duly sworn, testified as follows:

8 THE CLERK: Please state your full name
9 and spell your last.

10 THE WITNESS: My full name is William
11 Donald Register. Last name is spelled
12 R-E-G-I-S-T-E-R.

13 DIRECT EXAMINATION

14 BY MS. SZYMCIYNSKA-SAS:

15 Q. Good afternoon, Mr. Register. Where
16 were you employed back in 2015?

17 A. I was employed with MUSC Department of
18 Public Safety, Investigations Division.

19 Q. Okay. And how long were you with MUSC
20 at that point?

21 A. At that point, 18 years.

22 Q. Are you still with MUSC?

23 A. I'm retired.

24 Q. Okay. As a part of your job duties and
25 responsibilities, did you handle evidence that went

DON REGISTER - DIRECT EXAM BY MS. SAS

1 through MUSC, that was processed through MUSC?

2 A. Yes.

3 Q. Okay. And do you recall if you handled
4 evidence in this case which brings us here today?

5 A. I don't recall the particulars, but I
6 did refresh my memory on it so, yes.

7 Q. I'm going to show you what was
8 premarked as State's 29 for ID purposes only. Do
9 you recall if you have handled this particular
10 piece of evidence?

11 A. Yes.

12 Q. Okay. And do you know what it is?

13 A. It's a sexual assault evidence
14 collection kit.

15 Q. When would you have come in possession
16 of that particular kit?

17 A. Whenever I came in on the morning of
18 the 3rd, I would have checked the evidence sheets
19 and noticed that it was in the temporary
20 refrigerator and I would have pulled it out and
21 logged it into the permanent evidence room.

22 Q. And where would you have placed it in
23 the evidence room?

24 A. It's a refrigerator inside the evidence
25 room that we keep sexual assault collection kits

JESSICA STOWE - DIRECT EXAM BY MS. WILLIAMS

1 for whatever the investigating agency is.

2 Q. Okay. And would you have any other
3 dealings with that evidence after that?

4 A. No.

5 Q. Okay. And when you were handling the
6 kit, did it appear to be altered in any way? Did
7 the stickers appear to be tampered with?

8 A. No.

9 MS. SZYMCZYNSKA-SAS: No further
10 questions.

11 THE COURT: Mr. Schwacke.

12 MR. SCHWACKE: No questions.

13 THE COURT: Thank you. You may step
14 down. You're free to go or you may stay with us if
15 you like.

16 Call your next witness.

17 MS. WILLIAMS: The State calls Jessica
18 Stowe.

19 JESSICA STOWE,
20 being first duly sworn, testified as follows:

21 THE CLERK: Please state your full name
22 and spell your last.

23 THE WITNESS: My name is Jessica Stowe,
24 S-T-O-W-E.

25 DIRECT EXAMINATION

JESSICA STOWE - DIRECT EXAM BY MS. WILLIAMS

1 BY MS. WILLIAMS:

2 Q. Thank you, Ms. Stowe. Where do you
3 work?

4 A. I work for the South Carolina Law
5 Enforcement Division often referred to as SLED.

6 Q. What do you do there?

7 A. I'm a forensic serologist.

8 Q. What kind of background do you have in
9 terms of your education?

10 A. In terms of my education, I have a
11 Bachelor's of Science in biology with a major in
12 chemistry from the University of South Carolina.

13 Q. How long have you been at SLED?

14 A. Five years.

15 Q. How long have you worked in the field
16 of forensic serology?

17 A. Five years.

18 Q. What are your duties?

19 A. As a forensic serologist -- I'll just
20 explain what serology is. It's the identification
21 of body fluids; blood, semen, saliva. So as a
22 serologist, what I do is I screen items of evidence
23 that come in for blood, semen, saliva, and I can
24 also see who wore something or who touched
25 something.

JESSICA STOWE - DIRECT EXAM BY MS. WILLIAMS

1 We take samples off of those items of
2 evidence and prepare them for DNA analysis.

3 Q. How many cases do you think you've
4 worked as a forensic serologist?

5 A. Thousands.

6 Q. Have you testified as an expert in the
7 field of forensic serology?

8 A. Yes, I have.

9 Q. How many times do you think?

10 A. I have testified 12 times.

11 MS. WILLIAMS: Your Honor, at this time
12 we would ask that Mrs. Stowe be qualified as an
13 expert in the field of forensic serology.

14 MR. SCHWACKE: No objection.

15 THE COURT: She will be so qualified.

16 BY MS. WILLIAMS:

17 Q. So in the course of your work as a
18 forensic serologist, did you work on items of
19 evidence in this case?

20 A. Yes.

21 Q. And when you received these items, did
22 you receive them in packaging that wasn't tampered
23 with, that wasn't damaged?

24 A. Yes. We give a visual examination of
25 the items when we receive them to make sure that

JESSICA STOWE. - DIRECT EXAM BY MS. WILLIAMS

1 the seals are intact, everything is initialed, and
2 it looks like it hasn't been tampered with.

3 Q. And so what items of evidence did you
4 examine in this case?

5 A. I examined multiple items. I examined
6 the sexual assault evidence collection kit from
7 **Minor**.

8 Q. Okay.

9 A. Underwear and buccal swabs, and then
10 there were items within that sexual assault kit
11 that I analyzed as well.

12 Q. Okay. Let's first talk about the
13 sexual assault kit.

14 MS. WILLIAMS: May I approach, Your
15 Honor?

16 THE COURT: You may.

17 BY MS. WILLIAMS:

18 Q. I want to show you what was previously
19 marked as 29. Is this the kit that you examined or
20 that you dealt with?

21 A. We typically receive the internal
22 contents, not necessarily the box. So, yes, and I
23 can tell by the initials that are present and the
24 lab number.

25 Q. Okay. And so what did you do with this

JESSICA STOWE - DIRECT EXAM BY MS. WILLIAMS

1 when you received it?

2 A. Before we start a case, we review the
3 documentation that has been submitted. We
4 determine what is the agency documented, what are
5 they looking for? In this case it was semen. We
6 reviewed documentation to see, oh, well, should I
7 also screen for anything else in addition? And in
8 this case, I did, and performed my analysis,
9 generated a report based off of my findings.

10 Q. And tell us what your findings were
11 with regard to the sexual assault kit.

12 A. Okay. In regards to the sexual assault
13 evidence collection kit, item 1.1, there are
14 smears; vaginal, oral and rectal. No spermatozoa
15 was identified.

16 1.2, vaginal swabs. Examinations were
17 components of semen. P30 and spermatozoa were
18 negative, no semen identified.

19 Item 4, to the DNA section. Oral
20 swabs, examination for components of semen. P30
21 and spermatozoa were negative. No semen
22 identified.

23 1.4, rectal swabs. Examination for
24 components of semen. P30 and spermatozoa were
25 negative. No semen identified.

JESSICA STOWE - DIRECT EXAM BY MS. WILLIAMS

1 And the victim's buccal swab, item 4 is
2 the DNA section. Those are just known standards,
3 the known DNA profiles. We don't screen those for
4 any type of fluids.

5 Q. Okay. You didn't find any semen or
6 saliva on the vagina swabs, the rectal swabs, or
7 the underwear. And when we say underwear, are we
8 talking about the full piece of clothing or a
9 cutting from it? Can you explain that?

10 A. The underwear itself was negative for a
11 component of semen acid phosphatase. So semen was
12 not indicated on that item; however, after
13 reviewing the SANE documentation -- what that is,
14 is it's documentation that the nurse fills out
15 while collecting the sexual assault kit from the
16 hospital.

17 It was determined that I should perform
18 saliva screening on the crotch of the underwear.
19 Saliva screening was negative, but I still
20 forwarded that to the DNA section.

21 Q. And do you know anything about the
22 destruction of evidence in terms of semen and
23 saliva based on the behavior of the victim? Like
24 if the victim has urinated or defecated, would that
25 affect your ability to find sperm or semen on a

JESSICA STOWE - DIRECT EXAM BY MS. WILLIAMS

1 piece of evidence?

2 A. It would make the visualization a bit
3 more difficult, but as far as testing it, we would
4 still be able to look for it, yes.

5 Q. Okay. And do you know what the
6 protocol is? Is it 72 hours, or is that not the
7 same protocol that you use? If the hospital
8 determines that after 72 hours there's not going to
9 be anything there, if you get it sent to you,
10 you're going to test it?

11 A. Absolutely. Sperm cells can last much
12 longer than 72 hours. So we will take it past that
13 time frame.

14 Q. What did you do with the evidence in
15 the sexual assault kit after you were done with it?

16 A. After I am done with the kit, I return
17 it back to a centralized location where it can be
18 picked up later on.

19 Q. Okay. And so did you prepare a report
20 of your findings?

21 A. I did.

22 Q. And in your report, are there certain
23 notes where you say, item forwarded to DNA section?

24 A. Yes, on a few of the items on my
25 report.

JESSICA STOWE - DIRECT EXAM BY MS. WILLIAMS

1 Q. What items were forwarded to the DNA
2 section?

3 A. I forwarded vaginal swabs, victim
4 buccal swabs, and cutting from the crotch of the
5 underwear as well as buccal swabs from Jeffrey
6 Whitsett, which is just known DNA.

7 Q. So what would DNA -- what would the DNA
8 area do with that item afterwards?

9 A. Their job is to see if a DNA profile is
10 present and if they can link it to the evidence.

11 Q. Okay. So they do a little bit more --
12 a different kind of testing?

13 A. Right. We look for the body fluids
14 that can contain the DNA analysis or the DNA
15 profiles, and then the DNA analyst comes in and
16 tries to develop the profiles.

17 Q. Did you also receive a phone call from
18 anybody from the solicitor's office about examining
19 the underwear further?

20 A. Yes. I spoke with Anne Williams.

21 Q. And tell us what that was about.

22 A. I spoke with you about how you had
23 learned more information and she would like to have
24 the underwear resubmitted for blood screening.

25 Q. Is that unusual?

JESSICA STOWE - DIRECT EXAM BY MS. WILLIAMS

1 A. No, it is not.

2 Q. So is it often the case that people
3 find out more information about how a crime might
4 have unfolded and then ask you to test for
5 something that you didn't test for before?

6 A. That is very common.

7 Q. So before you were testing for semen
8 and saliva, nobody asked you to test for blood?

9 A. That would be correct.

10 Q. What, if anything, did you review to
11 see if that would even be worth it?

12 A. During the first visual examination, it
13 was noted that there were reddish brown spots
14 present on the underwear. It is routine for us to
15 document the color of the underwear, the size, the
16 brand, stuff that helps us identify it later on,
17 and any details that may be present such as the
18 reddish brown staining.

19 Q. And so you noticed the reddish brown
20 staining even before I called you? I mean, that
21 was noted in the file before I called you.

22 A. Right. I personally didn't notice it.
23 I had a trainee that was there and so we --
24 together she noticed it. She was like, hey, Jess,
25 what is this? And I suggested as part of the

JESSICA STOWE - DIRECT EXAM BY MS. WILLIAMS

1 training that we document that --

2 Q. Okay.

3 A. -- to my recollection.

4 Q. Thank you. I will show you what was
5 previously marked as State's 28. Did you handle
6 this piece of evidence?

7 A. Yes. This appears to be the underwear
8 from the victim **Minor**.

9 Q. And would the cutting be in here or was
10 that forwarded on to --

11 A. The cutting will be separated from the
12 item and then forwarded for DNA analysis.

13 Q. Okay. And so are there markings on
14 this packaging that would help you recognize this
15 is the item that you --

16 A. Uh-huh.

17 Q. -- examined?

18 A. Yes. Right here you see our SLED
19 specific lab number L15-16018, item 2, JHS, those
20 are my initials as well as my trainee who was
21 helping me with the case at the time. And the
22 second time the underwear was resubmitted, I solely
23 examined the underwear for blood on request, and
24 you see this right here, 2L15-16081, my initials by
25 itself, and the date. So that would be

JESSICA STOWE - DIRECT EXAM BY MS. WILLIAMS

1 September 12th, 2016.

2 Q. So you were the last person to handle
3 this piece of evidence?

4 A. That's correct.

5 MS. WILLIAMS: Your Honor, at this time
6 the State would move item 28 into evidence.

7 THE COURT: Any objection?

8 MR. SCHWACKE: Yes, Your Honor. I
9 would object on the basis of incomplete chain of
10 custody from the beginning and through and to the
11 collection by the sheriff's office.

12 THE COURT: State's 28 into evidence,
13 noting your objection.

14 Are you requesting to publish it in any
15 way?

16 MS. WILLIAMS: Yes. Permission to
17 publish?

18 THE COURT: You may.

19 (STATE EXH. 28 in evidence.)

20 BY MS. WILLIAMS:

21 Q. So this underwear is the little girl's
22 underwear that you examined?

23 A. Yes. It appears to be, yes.

24 Q. And you can tell that because of the
25 markings on there?

JESSICA STOWE - DIRECT EXAM BY MS. WILLIAMS

1 A. I can tell that from the markings, yes.
2 And I also took a photo of my own that is
3 consistent with those.

4 Q. Okay. And what were the results of
5 your testing for blood on the underwear?

6 A. Presumptive testing for blood was
7 positive.

8 Q. So all of the reddish brown spots on
9 the child's underwear was blood?

10 A. Yes. The ones that I tested, yes.
11 Well, it's a presumptive test. It doesn't mean it
12 absolutely is blood, but it's a good indicator.

13 Q. Okay. I'm going to show you what's
14 been marked as State's 36 -- 37, I'm sorry, through
15 40.

16 MR. SCHWACKE: No objection.

17 THE COURT: Are you asking --

18 MS. WILLIAMS: I was going to
19 authenticate. Are you not objecting to their
20 submission?

21 MR. SCHWACKE: Well, it would be
22 subject to my prior exception, but beyond that.

23 THE COURT: All right.

24 MS. WILLIAMS: May I approach?

25 THE COURT: You may.

JESSICA STOWE - DIRECT EXAM BY MS. WILLIAMS

1 BY MS. WILLIAMS:

2 Q. Tell us if these accurately depict the
3 markings that you made on the underwear and which
4 one might illustrate them the best.

5 A. Which picture illustrates --

6 Q. Where you can tell us the testing and
7 where the stains were.

8 A. They all look great, honestly, but --

9 Q. We can put it up if you tell me which
10 one.

11 A. Okay. Well, we can -- this one is a
12 good representation of the positive possible blood
13 areas.

14 Q. Okay.

15 A. This one has the negative APS area.

16 MS. WILLIAMS: Okay. Can you please
17 put up State's 40?

18 BY MS. WILLIAMS:

19 Q. Can you show the jury the areas of the
20 underwear where you found blood?

21 A. Do you need me to stand?

22 Q. I'm sorry, there is a pointer and this
23 little red dot. That will swivel around if you
24 like. Whatever you are most comfortable with.

25 A. That's fine. Which button?

JESSICA STOWE - DIRECT EXAM BY MS. WILLIAMS

1 Q. The little red one.

2 A. Right here, that is a positive p-h-e-n.

3 And what that means is that's a positive
4 phenolphthalein test. That's a test that we use to
5 screen for the possible presence of blood. You see
6 that here, you see that here as well. (Indicating)
7 Yes. Those are the only two areas I can clearly
8 see in this picture.

9 MS. WILLIAMS: Okay. You can take that
10 down.

11 Thank you, Mrs. Stowe. Answer any
12 questions that Mr. Schwacke may have.

13 THE COURT: Just I think there was some
14 confusion, are you moving 37 through 40 into
15 evidence?

16 MS. WILLIAMS: Yes. I think
17 Mr. Schwacke didn't object. We would like to move
18 those into evidence.

19 THE COURT: State's 37 through 40
20 inclusive into evidence without objection -- or
21 noting your prior objection.

22 (STATE EXH. 37 in evidence.)

23 (STATE EXH. 38 in evidence.)

24 (STATE EXH. 39 in evidence.)

25 (STATE EXH. 40 in evidence.)

JESSICA STOWE - CROSS EXAM BY MR. SCHWACKE

1 CROSS-EXAMINATION

2 BY MR. SCHWACKE:

3 Q. Hey, Ms. Stowe. I'm David Schwacke; we
4 talked on the phone.

5 A. Yes.

6 Q. I have a question about the -- is there
7 a way to put that last exhibit up?

8 All right. So the items that you were
9 pointing out, there was a cutting made from this
10 pair of underwear, correct?

11 A. That's correct.

12 Q. And that was what was sent from you to
13 the DNA lab, which is next?

14 A. That's correct.

15 Q. Next step in the process?

16 A. Right.

17 Q. And what we're looking at where the
18 marks are, are they outside of the cutting area or
19 -- the area that -- if the -- because I don't know
20 if you're familiar with the DNA report that
21 follows --

22 A. Uh-huh.

23 Q. -- but the -- it appears that that's
24 going to come from the cutting itself?

25 A. Correct.

JESSICA STOWE - CROSS EXAM BY MR. SCHWACKE

1 Q. And at this point the cutting is not
2 part of the photograph that we're showing?

3 A. That's correct.

4 Q. So the areas that you were discussing
5 are just blood areas that were not sent on for the
6 DNA part?

7 A. Right. There were -- these are
8 possible blood areas that were adjacent to the
9 crotch, directly above and below it the way that
10 this photo is oriented, but the actual cutting
11 itself is missing from the photo.

12 Q. And that part of the -- because we
13 don't see it in this picture. Where was the cut
14 section removed from the pair of underwear?

15 A. The cut section was removed directly
16 from the crotch portion. I have a photo of my own
17 if that helps or if you would like to see it.

18 Q. I guess I'm trying to figure out how
19 many different locations did you make that
20 observation about the positive PHEN?

21 A. There were a few spots that I made
22 that.

23 Q. And where are they in the diagram?

24 A. I can only see in this photo a spot
25 right here, and then a spot right there.

JESSICA STOWE - CROSS EXAM BY MR. SCHWACKE

1 (Indicating) And this very well could be one, but
2 I can't see my results clearly in this photo.

3 Q. And in your photographs you can tell
4 that the brand name of the panties, although it's
5 not showing in this picture, would be connected
6 with what is oriented in the photograph -- if this
7 photograph is the bottom section, correct?

8 A. It appears to be, yes. These aren't my
9 photos, so I'm not that --

10 Q. You're familiar that there was a
11 branding information on the underwear?

12 A. Yes. And I have that documented if you
13 would like to --

14 Q. No. I'm just saying it would not be
15 visible at the top where you can see the band.

16 A. Right. From this photo, what it looks
17 like to me, the orientation of the underwear with
18 the brand would be here. (Indicating) And I can
19 see -- I always consistently write the case
20 information, the item, the lab number, and my
21 initials. I write that near the brand information.

22 And I can kind of see right here where
23 my initials and the lab and the case information is
24 right here. So that tells me that the brand
25 information is more than likely right here.

JESSICA STOWE - CROSS EXAM BY MR. SCHWACKE

1 (Indicting) This would be the interior rear area
2 above the crotch, and this would be the interior
3 right above the crotch.

4 Q. Okay.

5 A. Does that make sense?

6 Q. It does. And so the fact that in
7 serology when you first examine these items, there
8 was no saliva and so semen found.

9 A. It wasn't detected.

10 Q. Detected. What's the difference?

11 A. Because it very well could have been
12 there, but our test -- it could have been a low
13 enough level to where our test did not detect it,
14 or it could just not be there at all.

15 Q. Okay. And so as far as that then goes,
16 the item that was retested was retested for blood?

17 A. That was the request.

18 Q. Was that, again, the entire pair of
19 underwear or just the cutting?

20 A. The underwear itself was resubmitted
21 for the blood screening only. Whenever I spoke
22 with Anne, she asked if there were blood spots
23 directly in that crotch area. So that part was
24 still at the lab.

25 So I just put my eyes on it and I

JESSICA STOWE - CROSS EXAM BY MR. SCHWACKE

1 didn't see anything, but whenever we got the
2 underwear back, I could see that there were the
3 positive areas she was interested in directly
4 adjacent to it. So it's still in the general
5 crotch area.

6 Q. And we're not talking semen and we're
7 not talking saliva. That's going to be DNA from a
8 blood source only?

9 A. This was not requested for DNA. It was
10 basically for blood identification, body fluid
11 identification only. It didn't have any DNA
12 request associated with it.

13 Q. But you had already determined from
14 your serology testing that no saliva and no -- no
15 saliva and semen found in various testing?

16 A. Right. This was a supplemental
17 submission so the blood screening would be on
18 another report. My other report, you're correct,
19 it was negative for the presence of semen and
20 saliva.

21 Q. Okay. And then it goes on to the DNA
22 --

23 A. Yes, sir.

24 MR. SCHWACKE: Okay. No further
25 questions.

JESSICA STOWE - REDIRECT EXAM BY MS. WILLIAMS

1 MS. WILLIAMS: Just a couple.

2 REDIRECT EXAMINATION

3 BY MS. WILLIAMS:

4 Q. So just to be clear, since Mr. Schwacke
5 did clarify this for us, just because you testing
6 didn't pick up saliva and semen doesn't mean it
7 wasn't there?

8 A. Right.

9 Q. And the blood that's on there, because
10 the crotch portion was already sent to DNA, but the
11 blood that was on there was just -- you cut the
12 middle crotch part out, but it's really pretty much
13 right by the crotch part of the underwear?

14 A. Yes. The picture that I took
15 personally shows where I cut, and I have positive
16 phenolphthalein, that positive possible blood area
17 directly above and below that cutting. So it's
18 still in that general vicinity of that crotch area.

19 MS. WILLIAMS: Thank you.

20 THE COURT: Re-cross?

21 MR. SCHWACKE: No, Your Honor.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you.

24 THE COURT: Call your next witness.

25 MS. WILLIAMS: The State calls Donna

DONNA MONEY - DIRECT EXAM BY MS. WILLIAMS

1 Money.

2 DONNA MONEY,

3 being first duly sworn, testified as follows:

4 THE CLERK: Please state your full name
5 and spell your last.

6 THE WITNESS: Donna Money, M-O-N-E-Y.

7 DIRECT EXAMINATION

8 BY MS. WILLIAMS:

9 Q. Where do you work?

10 A. I'm currently employed at the South
11 Carolina Law Enforcement Division, also known as
12 SLED.

13 Q. What do you do there?

14 A. I'm a DNA analyst in the DNA casework
15 department.

16 Q. And how long have you been employed
17 with SLED?

18 A. Since 2012.

19 Q. And what does the DNA analyst do?

20 A. We conduct DNA analysis on submitted
21 evidence items and known standards. We will
22 conduct comparisons between those items and issue a
23 report and testify in court.

24 Q. What is your educational background?

25 A. I received a bachelor's degree in

DONNA MONEY - DIRECT EXAM BY MS. WILLIAMS

1 forensic science from the Pennsylvania State
2 University in 2011.

3 Q. And what is your training and
4 experience in the field of forensic science?

5 A. Upon my employment at SLED, I underwent
6 a year and a couple of months training under a
7 qualified analyst. This training included training
8 samples, practice samples, report writing exams,
9 oral exams, mock courtroom testimony on positive
10 competency samples.

11 Q. And have you testified in court before?

12 A. Yes.

13 Q. About how many times?

14 A. Approximately 18.

15 Q. Have you been qualified as an expert
16 before?

17 A. Yes.

18 MS. WILLIAMS: Your Honor, at this time
19 the State would move for Donna Money to be
20 qualified as an expert in the field of forensic
21 sign DNA analysis.

22 MR. SCHWACKE: No objection.

23 THE COURT: She will be so qualified:

24 BY MS. WILLIAMS:

25 Q. In the course of your work, did you

DONNA MONEY - DIRECT EXAM BY MS. WILLIAMS

1 examine a piece of evidence in this case?

2 A. Yes.

3 Q. Tell us what a standard is.

4 A. A standard is something collected
5 directly from an individual. Typically, it is --
6 it could be a buccal swab, which is the swab inside
7 a person's cheek, or it could be a blood draw.

8 Q. What does it tell you?

9 A. It just gives us the person's profile.

10 Q. So when you say profile, you're talking
11 about their unique DNA?

12 A. Yes.

13 MS. WILLIAMS: Your Honor, I'm going to
14 show her what was previously marked as State's 31.
15 May I approach the witness?

16 THE COURT: You may.

17 BY MS. WILLIAMS:

18 Q. Tell us if this piece of evidence was
19 handled by you.

20 A. Yes. I see my initials and the date
21 when I opened the package over here on the seal.

22 Q. What is that?

23 A. This is SLED item number 3, which were
24 buccal swabs from Jeffrey Whitsett.

25 MS. WILLIAMS: We would offer 31 into

DONNA MONEY - DIRECT EXAM BY MS. WILLIAMS

1 evidence?

2 THE COURT: Mr. Schwacke.

3 MR. SCHWACKE: No objection.

4 THE COURT: State's 31 in evidence
5 without objection.

6 (STATE EXH. 31 in evidence.)

7 MS. WILLIAMS: Your Honor, I'm going to
8 show her what's been marked as 29 and 30. May I
9 approach?

10 THE COURT: You may.

11 BY MS. WILLIAMS:

12 Q. And tell us what this is.

13 A. This appears to be a sexual assault
14 evidence collection kit.

15 Q. And did you handle this piece of
16 evidence?

17 A. I handled the pouch that is located in
18 this box, but I did not receive the actual box.

19 Q. Tell us what's been marked as State's
20 30 what that is.

21 A. This is SLED item 1.5, which is a known
22 standard from Minor [REDACTED].

23 MS. WILLIAMS: Okay. And at this time
24 we would offer State's 29 and 30 into evidence.

25 MR. SCHWACKE: No objection, Your

DONNA MONEY - DIRECT EXAM BY MS. WILLIAMS

1 Honor.

2 THE COURT: State's 29 and 30 --
3 without objection, Mr. Schwacke?

4 MR. SCHWACKE: Yes, ma'am.

5 THE COURT: State's 29 and 30 into
6 evidence without objection.

7 (STATE EXH. 29 in evidence.)

8 (STATE EXH. 30 in evidence.)

9 BY MS. WILLIAMS:

10 Q. You did DNA analysis on a cutting from
11 a piece of underwear; is that correct?

12 A. Yes.

13 Q. Did you first do DNA analysis?

14 A. I did what we call a serial analysis
15 which looks at human DNA.

16 Q. And then after that analysis, did you
17 do further testing?

18 A. Yes. Based on the results from the
19 initial testing, it was determined that there was
20 potential for male DNA to be present. Because of
21 that, I went forward and did YSTR testing, which
22 shows focuses on male DNA testing.

23 Q. What were the results from the YSTR
24 testing on the cutting from the crotch of **Minor**
25 **██████████** underwear?

DONNA MONEY - DIRECT EXAM BY MS. WILLIAMS

1 A. May I consult my report?

2 Q. Yes, please. Would it refresh your
3 memory to do so?

4 A. Yes. The YSTR DNA profile developed
5 from item 2.1, the cutting from the underwear, is a
6 mixture of at least two male individuals. The
7 partial YSTR DNA profile of the major contributor
8 to this mixture matched the YSTR DNA profile of
9 Jeffrey Whitsett.

10 Q. So Jeffrey's DNA is in the crotch of
11 **Minor** ' underwear?

12 A. According to these results, yes. The
13 key thing to remember with male DNA, though, is
14 every male member in a paternal lineage will have
15 the same profile.

16 Q. So Jeffrey Whitsett and his male
17 relatives?

18 A. Yes.

19 Q. And then there is a minor contributor
20 also in there. And what did you learn about that
21 minor contributor?

22 A. The partial DNA -- the YSTR DNA profile
23 of the minor contributor was insufficient for
24 interpretation.

25 Q. Does that mean there just wasn't very

DONNA MONEY. - DIRECT EXAM BY MS. WILLIAMS

1 much there?

2 A. Correct.

3 Q. So could it be somebody who found
4 underwear and touched it?

5 A. It's possible.

6 Q. Could it be someone else in the home,
7 like a little brother, if he touched it?

8 A. It's possible.

9 Q. Could it be the guy in the underwear
10 factory?

11 A. It's possible, but not as probable.

12 Q. Not as likely?

13 A. Uh-huh.

14 Q. Fair enough. But the major contributor
15 is Jeffrey Whitsett or his male relatives?

16 A. Correct.

17 Q. And is there female DNA in there as
18 well, in 2.1, which is the cutting from the
19 underwear? Did you develop any profile from that
20 either through the YSTR or the DNA testing
21 previously?

22 A. The initial DNA testing had a profile
23 developed and it was consistent with the DNA
24 profile of Minor [REDACTED].

25 Q. So from the cutting of the underwear

DONNA MONEY - CROSS EXAM BY MR. SCHWACKE

1 Minor [REDACTED] DNA is present?

2 A. Yes.

3 Q. And Jeffrey Whitsett or one of his male
4 relatives is present?

5 A. Yes.

6 Q. And then there is a smaller amount of
7 DNA that is -- you can't identify because there is
8 not enough there?

9 A. Yes.

10 Q. And that could be consistent with
11 someone finding it, touching it, or it could be
12 consistent with some other male in the home?

13 A. It's possible, yes.

14 MS. WILLIAMS: Court's indulgence?

15 Thank you so much, Mrs. Money. Answer
16 any questions for Mr. Schwacke.

17 CROSS-EXAMINATION

18 BY MR. SCHWACKE:

19 Q. Good afternoon.

20 A. Afternoon.

21 Q. All right. So there's steps in the
22 process at the SLED lab; it starts with serology,
23 and things can then move to the DNA lab; is that --

24 A. Correct.

25 Q. -- pretty much what happened here?

DONNA MONEY - CROSS EXAM BY MR. SCHWACKE

1 A. Yes.

2 Q. Condensed version?

3 A. Yes.

4 Q. So what you received in your lab was a
5 cutting from a pair of underwear?

6 A. I directly received, yes, a cutting
7 from the crotch of the underwear.

8 Q. And that's the only item that you
9 received?

10 A. That was one of four items I received.

11 Q. And so those items included the buccal
12 swabs of Minor [REDACTED], the buccal swab of Mr.
13 Whitsett, vaginal swabs, and a cutting?

14 A. Correct.

15 Q. And vaginal swabs in this incident
16 revealed what?

17 A. They are consistent with the DNA
18 profile of Minor [REDACTED].

19 Q. Which you would expect?

20 A. Yes.

21 Q. Okay. Buccal swab of Minor [REDACTED], you
22 would expect her DNA?

23 A. Yes.

24 Q. Because that's the DNA you're going to
25 match it to?

DONNA MONEY - CROSS EXAM BY MR. SCHWACKE

1 A. Yes.. It was also taken directly from
2 the person.

3 Q. Correct. It's a known sample that's
4 going to stand as the standard for what
5 investigation you do regarding her as a contributor
6 of the DNA that you're looking at?

7 A. Yes..

8 Q. So the only -- I guess, only item that
9 you're really looking at for any type of value now
10 is the underwear?

11 A. Correct.

12 Q. And the underwear has -- you are using
13 a specific test on it because you're looking at the
14 Y kind of the male -- human male Y chromosome in
15 terms of what you were testing?

16 A. Yes.

17 Q. And, obviously, males have that Y and
18 females don't have that Y?

19 A. That's correct.

20 Q. So anything that you're going to find
21 developing through a YSTR test is going to be male?

22 A. Correct.

23 Q. There's an indication -- and I'm
24 curious about the DNA matching the contributor, the
25 major contributor which was a mixture, is

DONNA MONEY - CROSS EXAM BY MR. SCHWACKE

1 approximately one in 1,000, is a statistic in your
2 report?

3 A. Yes.

4 Q. Can you explain to me what that is and
5 how it gets set up?

6 A. Whenever we state that there is a match
7 between an unknown profile and the known profile of
8 an individual, we have to apply a statistical
9 weight to that profile. In this instance, the
10 statistic was the probability of randomly selecting
11 an unrelated male from the population is
12 approximately one in 1,000.

13 The key thing with Y testing is, since
14 other individuals in a paternal male lineage would
15 have the same profile, the weight is not as great
16 as, say, when you do overall human testing.

17 Q. And then -- and, again, that number was
18 -- I guess the -- where do you get the statistical
19 information from to apply it?

20 A. We use a database that has all of the
21 different DNA types or YSTR types that may occur,
22 and it calculates how often those types occur in
23 the population. And then from there it generates a
24 number.

25 Q. So those are given to you outside of

DONNA MONEY - CROSS EXAM BY MR. SCHWACKE

1 your lab?

2 A. Yes. It's a database maintained by the
3 National Institute of Justice.

4 Q. And there is a determination that the
5 DNA profile developed from both 1.2, which they
6 have shown you was the vaginal swabs, and 2.1,
7 which is the cutting from the underwear, that
8 that's consistent with **Minor** ?

9 A. That's correct.

10 Q. And those were -- those were identified
11 as underwear in the report?

12 A. Yes.

13 Q. And if it happened to be her underwear,
14 then the findings that you have is really -- would
15 be -- you would be expected to find potentially DNA
16 remnants or residue or however you want to call it,
17 if they're her known underwear?

18 A. That's correct.

19 Q. The question then becomes, the
20 underwear identified -- or the testing indicating a
21 profile of Mr. Whitsett, correct?

22 A. Could you repeat the question?

23 Q. Okay. So now we're dealing with the
24 Jeffrey Whitsett contribution within the area that
25 you tested for DNA?

DONNA MONEY - CROSS EXAM BY MR. SCHWACKE

1 A. That's correct.

2 Q. And the statistics there indicate one
3 in 1,000 possibility that an unrelated party could
4 match him as a contributor? The probability of
5 randomly selecting an unrelated male having the DNA
6 profile matching Mr. Whitsett is approximately one
7 in a thousand?

8 A. Not matching Mr. Whitsett. Matching
9 the major contributor profile from the evidence
10 item.

11 Q. Because it could include male
12 relatives?

13 A. Correct.

14 Q. And one of the things, I guess, about
15 DNA, and perhaps you could tell me, would this be
16 considered a sort of degraded sample? Was this
17 something that had been in any way -- the actual
18 sample may have been diluted by washing or any
19 other contact?

20 A. I can't make that determination.

21 Q. Because it's possible that -- well,
22 first off, DNA testing can't tell the age of a
23 substance?

24 A. That's correct.

25 Q. It could be there as long as it would

DONNA MONEY - CROSS EXAM BY MR. SCHWACKE

1 survive in its location where it's placed?

2 A. That's correct.

3 Q. So there is no way to tell how long
4 this particular sample was on the underwear?

5 A. That's correct.

6 Q. And you have no opinion as to how it
7 may have become placed there?

8 A. That's correct.

9 MR. SCHWACKE: One moment, Your Honor.

10 BY MR. SCHWACKE:

11 Q. Could you tell us what touch DNA is?

12 A. So when an individual handles an object
13 or touches a surface, they may leave behind skin
14 cells from their person. And if that surface or
15 that item would be swabbed, those things have the
16 potential to be picked up, and that is known as
17 touch DNA.

18 Q. Is there any way to exclude this as a
19 touch DNA situation?

20 A. It's a possibility, but we can't
21 determine how the DNA got there.

22 Q. But that would be one of the
23 possibilities?

24 A. Yes, it's a possibility.

25 MR. SCHWACKE: That's all the questions

DR. AMAYA - DIRECT EXAM BY MS. WILLIAMS

1 I have.

2 THE COURT: Redirect.

3 MS. WILLIAMS: Nothing further, Your
4 Honor.

5 THE COURT: You may step down.

6 THE WITNESS: Thank you.

7 THE COURT: You're free to go.

8 Call the next witness.

9 MS. WILLIAMS: The State calls
10 Dr. Michelle Amaya.

11 MICHELLE AMAYA, M.D.,

12 being first duly sworn, testified as follows:

13 THE CLERK: Please state your full name
14 and spell your last.

15 THE WITNESS: Michelle with two Ls,
16 Amaya, A-M-A-Y-A, M.D.

17 DIRECT EXAMINATION

18 BY MS. WILLIAMS:

19 Q. Good afternoon, Dr. Amaya.

20 A. Hello.

21 Q. Where do you work?

22 A. I work at the Medical University of
23 South Carolina, or MUSC.

24 Q. And are you a licensed physician?

25 A. Yes, I am.

DR. AMAYA - DIRECT EXAM BY MS. WILLIAMS

1 Q. And in what state?

2 A. South Carolina.

3 Q. And how long have you been licensed in
4 your profession?

5 A. In medicine?

6 Q. Yes, ma'am.

7 A. Twenty-seven years, more or less.

8 Q. What is your educational background?

9 A. I completed college at University --
10 the University -- the College of William and Mary
11 in Virginia; and then I went to medical school at
12 the University of North Carolina in Chapel Hill; I
13 then completed my pediatric residency and
14 internship, all three of those were also through
15 University of North Carolina at Chapel Hill; and
16 then I went to the University of Alabama in
17 Birmingham where I did a two-year fellowship, and
18 at the same time I completed a master's in public
19 health and children's health.

20 Q. And what part of MUSC are you working
21 in right now?

22 A. I'm working in two divisions -- I'm in
23 the department of pediatrics. I work in two
24 divisions; I have some time both in general
25 pediatrics where I'm the director of the newborn

DR. AMAYA - DIRECT EXAM BY MS. WILLIAMS

1 nursery, and I also work in the child abuse
2 pediatrics division.

3 Q. And how long have you been associated
4 with the child abuse pediatrics division?

5 A. Since I was recruited to come here and
6 be part of it in 2008.

7 Q. And how does that department interact
8 with other areas of the hospital?

9 A. Well, because people have concerns or
10 there is suspicions related to child abuse and
11 neglect, and it can involve every single organ of
12 the body -- physical abuse, sexual abuse,
13 neglect -- we have overlap and interplay with every
14 other pediatric division in the hospital.

15 Sometimes we also have interactions
16 with some of the adult divisions because of
17 domestic violence, and that's observed pretty
18 commonly, for example, in OB-GYN, sometimes in the
19 elder units. And they all have questions for us
20 about child abuse and neglect because there are
21 children in the home.

22 Q. Are you a member of the American Board
23 of Pediatrics?

24 A. Yes, I am.

25 Q. What is required to be certified by

DR. AMAYA - DIRECT EXAM BY MS. WILLIAMS

1 that board?

2 A. Well, they -- once you have completed
3 all of your medical training, then you're allowed
4 to sit for -- you have to maintain a certain
5 eligibility to sit for their licensing exam or
6 their -- it's a quality assurance exam.

7 So you sit for that exam, and you have
8 to pass it to show that you are -- you are meeting
9 the basic standards of care.

10 So it is possible as a pediatrician, I
11 could practice without being board certified by the
12 American Board of Pediatrics, but probably not at
13 any academic institution like MUSC or -- for
14 example, because every physician there has to be
15 board certified.

16 Q. Thank you. How many child abuse cases
17 do you think you have been involved with, either,
18 you know, just evaluating when they came in,
19 whether they wound up being child abuse or not?

20 A. I probably -- I stopped counting after
21 about 2,000. So more than 2,000.

22 Q. And were a portion of those cases
23 involving sexual assault?

24 A. Sure, uh-huh.

25 Q. Have you regularly performed sexual

DR. AMAYA - DIRECT EXAM BY MS. WILLIAMS

1 assault examinations?

2 A. Yes.

3 Q. Have you supervised sexual assault
4 examinations?

5 A. Yes.

6 Q. Have you reviewed data and history from
7 sexual assault examinations to determine diagnosis?

8 A. Yes.

9 MS. WILLIAMS: Your Honor, at this time
10 the State would move to have Dr. Amaya qualified as
11 an expert in the field of child abuse pediatrics
12 and sexual assault examinations.

13 MR. SCHWACKE: No objections.

14 THE COURT: She will be so qualified.

15 MS. WILLIAMS: Thank you.

16 BY MS. WILLIAMS:

17 Q. So what -- when cases come into the
18 child abuse pediatric division, are they all -- do
19 they always wind up being child abuse after you
20 evaluate them?

21 A. No.

22 Q. What percentage have you found that
23 after evaluation you determined that there is
24 actually child abuse?

25 A. The mean data we have for that is

DR. AMAYA - DIRECT EXAM BY MS. WILLIAMS

1 Charleston, MUSC, like a number of other locations
2 in South Carolina, are members of a network of
3 child abuse medical physicians that's based out of
4 USC.

5 And so that center collects data for
6 all of us about what, as physicians and providers,
7 we are doing. So based upon that data, it varies a
8 little bit, but it's surprisingly similar actually
9 to our location.

10 So, as a state, we're somewhere between
11 -- it can vary like from 49 to 53-ish percent that
12 are found to be not abuse, or indeterminant for
13 abuse. And that's actually the same -- very
14 similar for us in Charleston; somewhere around 51
15 percent, I think, are found to be abused.

16 So that means 49 percent we can't make
17 a decision by the medical examination.

18 Q. Okay. So plenty of kids come in there
19 with a claim of child abuse or sexual abuse, but a
20 large percent are determined not to be so?

21 A. Correct.

22 Q. And when you collect a medical history,
23 are you collecting in addition to the patient's
24 medical history, a social history?

25 A. Absolutely.

DR. AMAYA - DIRECT EXAM BY MS. WILLIAMS

1 Q. And why is that important for
2 diagnosis?

3 A. Well, we're looking at risk factors and
4 also for parameters of function for the child. So
5 just like -- it's like we consider it part of their
6 developmental history, and because children don't
7 -- they don't live alone and sustain themselves,
8 they depend on their family.

9 And family is widely varying, so we
10 want to know who are the influential people in
11 their family? Who keeps them safe? How do they
12 get food, learning, et cetera?

13 Q. Okay.

14 A. Are there other people in the family
15 that have illnesses, all of that family history, as
16 well as their social history.

17 Q. Okay. And so when a child comes in on
18 a claim of sexual assault, is it important to know
19 did they urinate? Did they defecate? Did they
20 brush their teeth? Because that information is in
21 the form collected by the nurse. Why is that
22 important?

23 A. That's for our acute assaults if we're
24 considering collecting an evidence kit. So an
25 evidence kit goes kind of play by play. Just kind

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1 of looks -- not only do we look at the child, but
2 we then do critical swabbing to see if there's any
3 potential DNA on the child from the assailant,
4 saliva, urine, semen, vaginal fluid, any kind of --
5 so if -- what you want to know is, is there
6 anything that could affect the finding.

7 So if the child had been swimming in
8 the lake afterwards, or sometimes children are put
9 in tubs and scalded after they've been assaulted,
10 these things are going to definitely interfere.

11 And then just routine things like,
12 eating, going to the bathroom, some of the children
13 vomit after something like this has happened, all
14 of those things definitely affect the recovery of
15 any kind of DNA evidence that might be there.

16 Q. So for a nine-year-old child who
17 urinated, defecated, washed, wiped, brushed their
18 teeth, is that going to decrease the chance of them
19 finding semen or saliva on those swabs and the rest
20 of the sexual assault kit?

21 A. Sure. Yes.

22 Q. Okay. Is there any statistics
23 regarding that, those kinds of findings?

24 A. Well, that we separate a little bit,
25 our protocol is based on adults, men or women, who

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1 are assaulted and come in and have evidence
2 collected versus children.

3 So children, especially if they're
4 prepubertal, and this little girl was very early,
5 puberty was just starting. She was only nine so
6 she was probably in that lower group.

7 We really have the highest rate of
8 finding DNA in children if they present less than
9 24 hours. And most of the time, it's not just on
10 the child, but it's on like whatever, like sheets,
11 or on a couch, or the cushions, the place where the
12 child was at the time the assault occurred.

13 Q. And you had involvement in this case of
14 Minor [REDACTED]?

15 A. I did.

16 Q. And Minor [REDACTED] came in 50 hours after
17 the assault. So for a child that comes in 50 hours
18 later who has -- I keep repeating it -- urinated,
19 defecated, washed, wiped, is that going to decrease
20 the chances of finding any evidence?

21 A. It does. Because there are rare
22 instances where it can be recovered, we do try, but
23 we're much more likely to get -- for example, in
24 that case, we always try to make sure -- when she
25 came, if she had the underwear at the time that she

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1 was assaulted, that would be useful.

2 Q. And who did the initial exam on Minor

3 [REDACTED]?

4 A. Ms. Karen Drozd, one of our -- she is
5 one of our lead pediatric nurses -- nurse assistant
6 assessment -- PSANE nurses.

7 Q. Okay.

8 A. Pediatric sexual abuse nurse
9 evaluators, sorry. Had a TIA there.

10 Q. Okay. And how many follow-up exams did
11 Minor have?

12 A. She completed all of them; she received
13 four follow-ups. She had the initial ER assessment
14 and four medical follow-ups, plus she had
15 additional counselling ones.

16 Q. And so her mother brought her in for
17 all of the examinations that were recommended by
18 the medical staff?

19 A. Yes.

20 Q. And why is it important to know whether
21 this child had been exposed to any kind of other
22 diseases, STDs, including HIV?

23 A. Two reasons. I think the biggest
24 reason is her own personal health, because some of
25 these diseases are curable and some of them can

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1 certainly be -- their effects lessened by early
2 diagnosis. HIV is not a curable disease; however,
3 if you diagnose it early, people can live full
4 lifetimes with careful medical -- access to medical
5 care. They can do pretty well.

6 Herpes is not curable, and it causes a
7 lot of problems from -- I think mental health
8 related as well as physical problems, because
9 people feel a lot of stigma related to it. And
10 then there's things like syphilis and gonorrhea and
11 chlamydia.

12 All of those things are completely
13 curable once they're diagnosed. So we want to
14 prevent that suffering and enhance the quality of
15 life for those.

16 And the second reason is evidence. So
17 a child who is eight or nine years old isn't
18 expected to be consensually sexually active at that
19 age. Well, we ask pretty regularly, and there
20 might be an occasional person, but it's very, very
21 uncommon.

22 So if a child of that age develops any
23 of those diseases, then it's very useful in
24 determining being sexually abused or not. It's too
25 late for them to -- if they're being diagnosed,

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1 there's a couple of caveats for some of them, but
2 they're not going to have contracted it from birth.

3 Q. And this child, you did not find out
4 that she had HIV during the examination; is that
5 correct?

6 A. I don't think she did have HIV, but she
7 had been exposed.

8 Q. She had been exposed to it.

9 A. It wasn't known at the time she was
10 assessed in the emergency room.

11 Q. Did you learn it later -- at a later
12 time in her medical treatment?

13 A. Yes, because I got a phone call.

14 Q. Okay. And do you know where that phone
15 call originated from?

16 A. Detective Fenton.

17 Q. And what was done with that
18 information, and how did that affect **Minor**
19 treatment?

20 A. They routed the phone call to me, and I
21 spoke with infectious disease, one of the
22 infectious disease consultants, Dr. Terry Dixon,
23 who is wonderful and does a lot of treatment for
24 these cases. Just asked him what kind of
25 additional tests we need to do.

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1 We're lucky at MUSC, we have access to
2 kind of a -- our basic HIV screen test is a little
3 bit hoity-toity in that it's a fourth generation
4 test. It has some ability to detect new infection
5 as well as the antibodies from -- you know, if you
6 had the infection for at least three months, but
7 it's not as well as like a DNA-type test. So he had
8 -- he just guides us about what would be the best
9 way to test.

10 We were too far out, unfortunately, for
11 any kind of medication prophylaxis to be of help,
12 but we kind of ran it by him -- I ran it by him to
13 see what his thoughts were. And he made a
14 recommendation for her to come on back for her
15 regular scheduled appointment that was going to be
16 at two weeks.

17 Luckily, they were very compliant with
18 that, and we did more detailed testing. So,
19 normally, she would not have gotten an additional
20 HIV test in that first visit, but she got two. She
21 got the HIV ELISA, and she also got the HIV RNA
22 quantitative test.

23 Q. Is that a blood test?

24 A. Both of them are blood tests.

25 Q. And when you say that it was too late

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1 for her to get prophylactic treatment -- first of
2 all, what is prophylactic treatment and why was it
3 too late?

4 A. When someone comes in, if they are
5 exposed -- this is the same for some other diseases
6 too, but if you are -- if someone is exposed to
7 HIV, if you seek treatment within 72 hours, earlier
8 being better, you have a good chance of being able
9 to completely prevent contraction of HIV, because
10 you start on antiviral medications, antiretroviral
11 medications that specifically target the HIV.

12 The later you are, the -- for example,
13 when I'm in the nursery, if I have a baby that's
14 born to a mother who has HIV, if I can identify
15 that and get the baby started on medications right
16 when the baby is born probably within ten hours,
17 but we really try to do it within two hours, the
18 baby has a much better likelihood of not
19 contracting the disease.

20 There is a much higher viral load in
21 this situation when it's from a mother to a newborn
22 than in this case, but it's similar. So that if
23 someone has exposure through sexual contact, then
24 if you can identify that and offer medication in
25 the first 72 hours, it may mitigate and decrease

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1 their risk of getting infection.

2 It's based on occupational exposure for
3 medical personnel. So like when we get a needle
4 stick or something from taking care of someone,
5 that's where all the studies are. There's not a
6 lot of detailed studies in patients because you
7 can't randomize and say, okay, you are going to be
8 able to have medicine and you're not.

9 If someone had a significant exposure
10 in that time frame based on what we're
11 extrapolating from our experience of occupational
12 exposure, then we give them medication. We try to
13 prevent the infection.

14 Q. So she had basically been molested for
15 too long by the time that everybody figured it out
16 for her to get prophylactic treatment?

17 A. The window between when her last abuse
18 occurred and when we identified it, it was much
19 more than 72 hours. It was like a week or so.. So
20 it was too late for it to do any good. She would
21 have just had all the bad side effects without the
22 gain.

23 Q. Okay. Now, let's talk a little bit
24 about physical injuries or physical findings after
25 sexual abuse. How common is it to find physical

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1 findings on children that you later have definitive
2 evidence that they were sexually abused?

3 A. So in children of this patient's age,
4 it's uncommon. I guess really for any children,
5 including adult women, it's fairly uncommon, but we
6 see it in like maybe 8 percent or less. So even
7 when they've had an acute relatively violent, I
8 guess, sexual assault, most of the children don't
9 have lasting findings.

10 They may have a little bit of blood,
11 they may have a little bit of redness, a little bit
12 of bruising, but if you don't see them like within
13 very few hours, that area of the body has such a
14 great blood supply that it heals really fast.

15 So within four days, three days --
16 we've done -- looked at studies where people have
17 had an acute assault, let's say a bad one where
18 there was tearing of tissues, and then sort of
19 follow it up weekly, monthly with some of the
20 centers in the country, and it's shocking how well
21 -- it's just a testament to the wonders of the
22 human body of how well people can heal in this
23 situation.

24 So even some of the children who had
25 big tears in the vaginal areas, they can look

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1 remarkably good, especially once they hit puberty.
2 And estrogen is kind of a magical hormone; it
3 fluffs up things for young ladies and it can make
4 it very hard to see much change.

5 So the good news is that it generally
6 tends to be something that the body heals really
7 well. It's a matter of healing the mental health
8 part in situations like this.

9 Q. So when you have physical findings that
10 confirm or mirror what a child is saying happened
11 to them, that's pretty significant?

12 A. Sure, yeah.

13 Q. And why is it important -- if a nurse
14 sees findings on an acute exam, why is it important
15 to confirm those in a later appointment?

16 A. The way we run our program is, we have
17 nurses who are specifically trained as pediatric
18 nurses and have to go through all kinds of long
19 training with us, but we review every single case
20 that our nurses have.

21 Within their scope of practice they
22 have a nursing diagnosis that they are allowed to
23 do, but they're not really allowed to do kind of
24 the -- they just haven't had the same training that
25 we have. You heard my story about how forever I

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1 had to go to school, and some of the nurses
2 certainly do.

3 Some of them go on to be masters and
4 doctors of nursing; that's different. The nurses
5 that we're having are there mostly to -- they're so
6 good with children, they're able to interact with
7 them, they give them dignity and respect, calm them
8 down, collect the information they need to do in as
9 pain-free and as scarey-free way as we have taught
10 them.

11 They also know how to respond to the
12 children's abuse and they can collect information
13 and collect these swabs, which can be very scarey
14 for these little people, but, therefore, they --
15 they can definitely say they see acute injury or
16 they don't, but their forte is not so much
17 differentiating, oh, this child has this X, Y, Z
18 chronic disease that could be changing the way that
19 these findings are, or any kind of conditions.

20 So we, as the faculty members, review
21 them and interpret them and then compare them to
22 follow-up. So for this little girl, she had some
23 abnormal findings right at the beginning. So then
24 you look to see, well, how compliant was she? This
25 was when she was just coming in, it's in the ER,

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1 it's kind of scarey.

2 I think the police had been talking to
3 her, and, you know, kids want to please and do the
4 right thing. It's kind of intimidating. I'm kind
5 of intimidated when the police are talking to me,
6 and they've got their gun on their hip, and I'm a
7 big person and old.

8 So we bring them back to the clinic,
9 which is a family-centered friendly place, looks
10 like a little house. It's not super scarey and it
11 has like happy paintings on the wall that are good
12 for the people who work there, but really good for
13 the children. And they come in, and it's a much
14 more relaxed situation, and we try to empower them
15 and we re-examine them and see.

16 So, yes, some of the injuries are going
17 to be completely gone for even when they really
18 were there, but some of them, as in this case,
19 persisted. So it helps you to kind of figure out,
20 okay, is this finding a trauma finding, first of
21 all? Is this a penetrating trauma or is this a
22 disease? Does this child have asthma, or do they
23 have eczema, or do they have something that would
24 color the interpretation of their findings?

25 So it helps us sort things out and be a

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1 little bit more detailed. We have a little more
2 time. We usually schedule -- those appointments
3 are like hour-and-a-half appointments; whereas,
4 most of the time when you go to the doctor, it's 15
5 or 20 minutes.

6 In the ER, everything is centered on
7 evidence collection, the medical, determination of
8 stability, safety, and then getting any kind of --
9 doing that procedural kit. And so there's not as
10 much time spent on hashing out all of the disease
11 problems or processes in that person's life.

12 Q. Okay. And I'm going to give you an
13 opportunity to explain the injuries on this child,
14 but, in short, did you find the injuries consistent
15 with blunt force penetrating trauma as the patient
16 describes?

17 A. They weren't only consistent, they were
18 diagnostic of it.

19 Q. I'm going to show you two diagrams
20 previously marked as 21 and 24.

21 MS. WILLIAMS: May I approach?

22 THE COURT: You may.

23 BY MS. WILLIAMS:

24 Q. I don't know which of these would be
25 the most helpful, but tell me which of these could

DR. AMAYA - DIRECT EXAM BY MS. WILLIAMS

1 help you explain to the jury the injuries this
2 child suffered as a result of the blunt force
3 penetrating trauma.

4 A. Maybe this because it's bigger.

5 Q. Okay.

6 A. Can I shade it? Just because it's flat
7 and, like, if you were looking at it like one of
8 those --

9 Q. You weren't here before, but our
10 technological abilities are very limited. I don't
11 even know what that means, but if you want to shade
12 it, it's actually already been scanned in --

13 A. Okay.

14 Q. -- on the -- do we have the big easel?
15 Would that be more helpful?

16 A. Whatever is going to be good for people
17 to understand, but I think it can be difficult just
18 looking at this diagram because it's flat and not
19 three dimensional of what is outside skin and what
20 is inside mucosa skin. Let's go ahead and try it.
21 If it's confusing, you can ask me to clarify.

22 Q. Okay. We can do that.

23 MS. WILLIAMS: Can you please put up
24 State's 21?

25 BY MS. WILLIAMS:

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1 Q. And then, Dr. Amaya, this is a laser
2 pointer. If you just push this red button, and you
3 can swing that way, and you can maybe just explain
4 to the jury the injuries that this child suffered.

5 A. Okay. We're looking at -- (inaudible)

6 THE COURT REPORTER: You're going to
7 have to speak up, Doctor, because I need to be able
8 to hear you.

9 THE WITNESS: Oh, because I don't have
10 this thing?

11 THE COURT REPORTER: Sure.

12 THE WITNESS: I just said, what we're
13 looking at now is the bathing suit area of a girl.

14 And which button do I push?

15 BY MS. WILLIAMS:

16 Q. The red one.

17 A. So let's start from the outside going
18 in. So to orient you, this girl is sitting looking
19 at you, facing you. And when -- let's just say her
20 legs are like a little frog, so that her legs are
21 open. So starting from the outside, this is her
22 tummy up here at the top. So where that plus sign
23 is, let's just call that her belly button area up
24 there. (Indicating)

25 And back here is her bottom, and so

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1 these are thighs. Then as you come in, as you may
2 know, girls have protective barriers for their body
3 to keep them safe. So there's outside doors, as I
4 call them, and there's inside doors. The fancy
5 doctor words are labia. The labia majora and the
6 labia minora, but if it's okay, we're just going to
7 use outside doors and inside doors.

8 These are the outside doors right here.
9 (Indicating.) Color, color, color, right there,
10 which is the labia majora. And this right here is
11 the little thinner inside door, typically, in
12 prepubertal or early pubertal children, right here.
13 (Indicating.)

14 And also as you go from outside towards
15 the middle, you're going in. So thighs are out
16 here, then you open, then down in here is the
17 outside labia, or the outside doors. You open them
18 in, you go in a little further, so you're going
19 deeper into the person.

20 And so then you get to this area, which
21 this is the opening here, the vaginal opening.
22 This is the opening called the urethra where the
23 urine comes out, and this is the clitoral hood
24 where the clitoris is.

25 So this opening doesn't just hang out

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1 like that open for girls. Everything kind of
2 sticks together. If they're very relaxed then it
3 can be loose, but it doesn't open like that until
4 like -- you can tell here (indicating) someone is
5 holding the labia apart, and that's what allows
6 that opening to show like that.

7 So the tissue around, that's supporting
8 this urethral mound and supporting the vaginal
9 opening, and the vagina really is a canal. So it's
10 not just an opening, it's a whole canal that's
11 leading up to the uterus. We're just looking at
12 the opening here.

13 So this tissue is called the hymen.
14 And the hymen has more residual function from
15 development, so in order for the vagina to develop
16 the hymen is there. It starts out as like a sheath
17 of tissue that's closed, and then it opens. It
18 makes an opening once the baby is getting close to
19 being born.

20 But this -- so that is left there, so
21 it doesn't -- like you can definitely live without
22 a hymen. We haven't found any children ever who
23 were born without one. All of us all over the
24 world, in the United States as well as other
25 countries, there's been zero case reports of people

DR. AMAYA - DIRECT EXAM BY MS. WILLIAMS

1 being born without one. They do come in various
2 shapes and sizes.

3 So this is what we're looking at. And,
4 interestingly, after a lot of studies, because
5 initially when people in my position started doing
6 these tests to check and see if they had injuries,
7 there was things that we just didn't know. What's
8 normally there? What's the newborn -- what happens
9 in children who you collect a lot of data when
10 there is non abuse? What's normal? So we've
11 learned a lot of stuff over 20 years, and
12 especially the last ten years.

13 So what -- we can use this information.
14 There's a lot of variations up here that can be
15 there without trauma, but especially if you draw a
16 little line across here, (indicating) what's below,
17 there can be things that happen here. (Indicating)
18 This is where -- during sexual activity, consensual
19 or nonconsensual, where injuries can occur and may
20 show.

21 So that's kind of the area of the hymen
22 that we're especially trying to look and see -- as
23 well as all these kind of tissues around here, to
24 see if there was any injuries or redness or
25 bruising in a situation where someone is saying

DR. AMAYA - DIRECT EXAM BY MS. WILLIAMS

1 that there's been a sexual assault. So we look at
2 the integrity of those tissues.

3 Q. Okay. So where did this child have
4 injuries, and what was the extent of those
5 injuries?

6 A. Some of her injuries are off this page,
7 but starting from here, she had some redness here.
8 (Indicating.) Oh, look, there's the bottom. So
9 that's an opening, or the anus. So she had redness
10 in here, and she especially had some redness here.
11 (Indicating.)

12 She -- in the position she was in, you
13 could easily see into the entire floor of her
14 vagina because there was a separation of the tissue
15 here. So it was a little bit obscured because she
16 happened to have some discharge. So she had some
17 vaginal discharge. So we're like, okay, is that
18 really a separation of the tissue, or is that
19 vaginal discharge? It looked like a clear
20 separation of the tissue right here (indicating)
21 and leading on down.

22 There was a little bit of redness.
23 There was no visible blood at the time she was
24 seen; there wasn't any visible bruising at the time
25 she was seen, but then moving on down, she also had

DR. AMAYA - DIRECT EXAM BY MS. WILLIAMS

1 injury there. (Indicating.)

2 She had a little skin fold there which
3 is really common, most people have that at -- we'll
4 call that the 12:00 position -- but there was some
5 tearing in that skin fold where the tissues were
6 stretched and pulled apart and had some -- a little
7 bit of friability there, or rawness.

8 And then she also had another tear here
9 (indicating), 1:00-ish, where the tissue was pulled
10 apart. And it was kind of on the outer side; not
11 in the inner surface of the anus.

12 Q. And so what, after the follow-up visit,
13 about the examination at that time, in your review
14 of that earlier visit, led you to believe that, I
15 think you said, the hymen was transected?

16 A. Yes.

17 Q. There was a transection. And that that
18 was not only corroborative of what this child said
19 happened, but diagnostic of sexual assault and
20 trauma to the vaginal and anal area?

21 A. Sure. Luckily, I have amazing team
22 members. Our nurse practitioners are pretty
23 amazing in how they can get -- a little
24 nine-year-old girl is very self conscious to comply
25 and be relaxed enough for their exams.

DR. AMAYA - DIRECT EXAM BY MS. WILLIAMS

1 There were at least 60 photographs over
2 those five visits that I was able to review that
3 were of good quality, and they were extremely close
4 up of the skin tissues, and they were of such high
5 quality photos, I could zoom in on them further.

6 So looking at all of those images,
7 concerns were immediately raised of course in the
8 initial assessment, but all of them, so the
9 two-week visit, the six-week visit, the three-month
10 visit, and the six-month visit in January of 2016,
11 all showed as -- you know, it wasn't something that
12 healed and went away. She had a persistent area
13 where that tissue remained separated and there was
14 -- it may have torn and healed.

15 So at the time she presented it looked
16 like it had already been torn and had already
17 healed back, and then -- but the subsequent visits
18 she did not have the discharge there and she was
19 able to tolerate having -- letting me do a little
20 gauze or something that had soaked up any natural
21 secretions that were there and was able to be seen.
22 She was able to be examined in a couple of
23 positions to confirm the findings.

24 Q. Okay.

25 A. So we had two different positions, but

DR. AMAYA - DIRECT EXAM BY MS. WILLIAMS

1 we also had just multiple examinations by different
2 examiners even, and a couple of different nurse
3 practitioners examined her to verify the findings,
4 which is extremely important.

5 Say like if someone -- this makes such
6 a giant difference in someone's life. It's just
7 like if she was coming in for a cancer biopsy;
8 you'd want to make sure that that was viewed
9 carefully and all the findings would come together,
10 so you wouldn't do it just on one visit. You would
11 have a couple of visits. Very helpful, very well
12 done.

13 Q. And this child had an absence of
14 constipation too.

15 A. Correct. In fact, it was noted at
16 every -- every single visit they talked about any
17 changes, any problems. And she -- in fact, she had
18 kind of an opposite problem because she has a milk
19 sensitivity and she has to take like lactate. And
20 so she has a tendency the other way.

21 Q. The opposite of constipation?

22 A. Yeah, not to be constipated.

23 Q. So when you wrote in your report, an
24 absence of hymenal tissue or a transection
25 extending nearly to the base of the hymen is

DR. AMAYA - DIRECT EXAM BY MS. WILLIAMS

1 consistent with blunt force penetrating trauma as
2 the patient described, that's what you're talking
3 about as being diagnostic of the sexual abuse that
4 **Minor** described?

5 A. In absence of any other history, to say
6 this child had come in and said, last month I fell
7 on -- with all these findings, I would say, did you
8 get a scrape or hurt on your body? Last month I
9 fell on my bike and I -- I -- I had no banana seat
10 on there, just the pole, and fell on it and I hurt
11 myself, and there was bleeding and it hurt like
12 crazy.

13 And I would say, oh, well, that could
14 have been the cause, but there was no trauma
15 history at all in this particular case. So even
16 without -- except for what she said about what had
17 happened to her, about the person assaulting her.

18 So even without that history that she
19 was able to give so clearly of her disclosure, it
20 was very -- it stands alone really.

21 Q. So if you hadn't heard anything and you
22 just looked at this child --

23 A. I would be concerned.

24 Q. -- something happened?

25 A. Yes.

DR. AMAYA - CROSS EXAM BY MR. SCHWACKE

1 Q. And also to the anal area too?

2 A. Yes. Well, the anal area is a little
3 bit less specific because there are other things
4 that can happen; but because of the location of
5 them and because of splitting in that skin fold,
6 it's too high for, like, if she had like the worst
7 ever possible constipation. It shouldn't tear that
8 skin fold.

9 So it also was corroborative of what
10 she had disclosed to the examiner and then
11 subsequently disclosed during her forensic
12 interview.

13 MS. WILLIAMS: Court's indulgence for a
14 second?

15 Thank you so much, Dr. Amaya. Please
16 answer any questions that Mr. Schwacke has.

17 THE WITNESS: Sure.

18 CROSS-EXAMINATION

19 BY MR. SCHWACKE:

20 Q. Dr. Amaya, in terms of what you were
21 describing on the chart just awhile ago, you said
22 some things don't heal; is that right?

23 A. I'm sorry?

24 Q. Some injuries won't heal or didn't
25 heal?

DR. AMAYA - CROSS EXAM BY MR. SCHWACKE

1 A. Oh --

2 Q. A hymen injury, will it heal?

3 A. Many do, yes. This one did not.

4 Q. Some don't?

5 A. Uh-huh.

6 Q. So the only thing that you could rely
7 on to determine when it happened, because there is
8 no way medically for you to tell when it happened
9 in history?

10 A. Well, there's -- we certainly can't do
11 it like on TV like NCIS where you can say, oh, this
12 happened exactly at 4:00 on whatever date, so we
13 can tell -- because of the healing that was there,
14 we can tell that it was pre-existing. So the child
15 came in with a complaint of having a recent event.

16 Q. I understand that's the complaint.

17 A. She had findings that day that were
18 consistent with it being recent, like within three
19 to four days, especially the anal tearing. Her
20 vaginal -- and she had a little peri-vaginal
21 redness which was not specific, but supporting what
22 she said.

23 But her vaginal findings, she didn't
24 have acute tearing or new bruising, which could
25 have been resolved by three days. She had well

DR. AMAYA - CROSS EXAM BY MR. SCHWACKE

1 healed disruption of her hymen at that 6:00 place,
2 so something had happened before as well. And that
3 can't be specifically timed. Could it have been a
4 month ago? Could it have been two months ago?
5 Can't say.

6 Q. So we don't know?

7 A. We don't know what?

8 Q. Exactly when this happened.

9 A. When you say exact, you mean like hour
10 and minute? That would be correct.

11 Q. Weeks, days, months?

12 A. Well, we know that anal tearing
13 happened likely within three to five days. Because
14 the rate of healing is so fast in the area, it was
15 definitely not more than a week old. It was less
16 than that.

17 Q. Okay. And you're indicating there was
18 no history of constipation?

19 A. Right. And that was repeatedly asked
20 and repeatedly confirmed that she didn't have any
21 problems with constipation.

22 Q. Who was that asked to be confirmed?

23 A. Her mother who accompanied her to the
24 ER, and then the mother came to each of the visits,
25 and we asked the child.

DR. AMAYA - CROSS EXAM BY MR. SCHWACKE

1 Q. Her mother who didn't tell you about
2 the HIV?

3 A. She was not asked directly do you -- I
4 mean, we ask about sexually transmitted infections,
5 but she was not, to my knowledge, asked directly,
6 do you or does the offender have HIV? We ask the
7 question, like, are there any history of sexually
8 transmitted diseases?

9 Q. So on the reports of this visit, this
10 first visit --

11 A. Uh-huh.

12 Q. -- I see all sorts of other doctors'
13 names on here, but I don't see yours --

14 A. I'm the supervising one that signed
15 everything on most of them.

16 Q. Well, cosigner, Michael Taylor, right?

17 A. Right. He's gone.

18 Q. Right, but he's a cosigner on --

19 A. On the initial one, correct.

20 Q. And there are a number of visits after
21 the initial --

22 A. I specifically wrote and signed the
23 document that was dated June 10th; I cosigned the
24 one dated June 25th; I cosigned the one dated July
25 15th; and I cosigned the one dated January 2016.

DR. AMAYA - CROSS EXAM BY MR. SCHWACKE

1 Q. Correct. And then you also had the
2 benefit of photographs and other things that were
3 documented --

4 A. Absolutely.

5 Q. -- by the other nurses? So the rectal
6 --

7 A. Tearing.

8 Q. -- tearing without bleeding, because no
9 bleeding is noted anywhere on that visit during the
10 first examination, correct?

11 A. None on the child.

12 Q. None on the child?

13 A. I don't know if it was on her clothing.
14 I think her underwear was collected and there may
15 have been blood on that, but there wasn't any
16 visible blood on the child.

17 Q. If I told you her clothing was not
18 collected, was that a mistake?

19 A. We like to have the clothing collected,
20 but if it was not the clothing she was wearing at
21 the time of the assault, then it's not necessarily
22 collected.

23 Q. So if the SLED protocol is if they
24 change clothes they are still supposed to collect
25 the underwear they wore, that has contact with the

DR. AMAYA - CROSS EXAM BY MR. SCHWACKE

1 vagina, that's supposed to be done?

2 A. I think it's optional, yes. We would

3 -- we like to get that underwear.

4 MR. SCHWACKE: One moment, Your Honor?

5 THE COURT: Take your time.

6 MR. SCHWACKE: May I approach?

7 THE COURT: You may.

8 (DFT. EXH. 2, SLED protocols, was
9 marked for identification.)

10 BY MR. SCHWACKE:

11 Q. I show you what was marked as
12 Defendant's Exhibit 2 for identification and ask if
13 you are familiar with the SLED protocols.

14 A. I am.

15 Q. And if I were to show you, please note
16 number two, what would that say?

17 A. If the victim -- well, it doesn't say
18 if this is addressed towards adults or children or
19 differentiated, and the protocols are a little bit
20 different for children, but it does say here, the
21 victim changed clothes after the alleged assault,
22 collect only the items in direct contact with the
23 victim's genital area.

24 Q. So you understand that to be their
25 policy or their collection --

DR. AMAYA - CROSS EXAM BY MR. SCHWACKE

1 A. Their recommendations.

2 Q. -- instructions?

3 A. Uh-huh.

4 Q. Are you familiar with the Adam's
5 Classification Table?

6 A. Yes, I am.

7 Q. What is that?

8 A. Joyce Adams is one of my colleagues who
9 was working in San Diego, California, and we all
10 convened together and worked over years on groups
11 to try to figure out best evidence for diagnosing
12 trauma and then weighing how correlated it can be
13 in helping to make diagnosis of abuse.

14 She -- she authored it and made several
15 iterations of it over the years and updates it
16 periodically based on best existing evidence.

17 Q. And, apparently, it's a project that
18 gets undertaken by students at Harvard Medical
19 School to kind of update?

20 A. Well, since Joyce recently has retired,
21 I'm not really, to be honest, sure who was trying
22 to update it or who she engaged to do it. But she
23 was doing it over years, and a lot of different
24 people, like in this national group we're in, would
25 participate.

DR. AMAYA - CROSS EXAM BY MR. SCHWACKE

1 Q. And it kind of breaks things into
2 classifications. There are things that are normal
3 or unrelated to abuse in one category; there are
4 things that are nonspecific, which is in the
5 halfway point between might be, might not be sexual
6 abuse; and then you've got things that are
7 concerning. In class III you have things that are
8 concerning for sexual abuse.

9 A. Right. And it's based only on the
10 physical findings. It's not looking at the whole
11 rest of the story, so it's not coming up with sort
12 of the final diagnosis of abuse. It's just helping
13 people who are less familiar with cases to have
14 some kind of reference of what to be concerned with
15 and language to use when they're describing the
16 findings.

17 Q. So when you were describing the hymen
18 to Ms. Williams in this child, and she asked you if
19 it was something that would be known as a septate
20 hymen?

21 A. She didn't say anything about a septate
22 hymen.

23 Q. What is a septate hymen?

24 A. It's a normal variation of hymen. So
25 the best way I know to describe it, it kind of

DR. AMAYA - CROSS EXAM BY MR. SCHWACKE

1 looks like a no-smoking sign. So if you're looking
2 at the vaginal opening, there is a bit of tissue
3 that is still connected.

4 Remember, I was telling you how in
5 utero when the baby girl is developing, there's a
6 mucosal-like sheath that completely covers the
7 vaginal opening, well, it starts to get a little
8 opening. So if it stops there, it looks kind of
9 like a sieve, so it's called a cribriform hymen.

10 And if it keeps going until it
11 coalesces and there's sort of like a tag that goes
12 across like a no-smoking sign, that's called a
13 septum, a superficial hymen septum as opposed to
14 other septums, but -- so that's a septated hymen.
15 It's a normal variant.

16 Q. Okay. And you mentioned a tag in the
17 anus?

18 A. She had a skin -- a skin fold.

19 Q. And that's a normal --

20 A. Uh-huh, yes.

21 Q. -- situation?

22 A. Typically, it's normal. Hers was where
23 it was located right in the midline.

24 Q. Erythema was noted on the findings?

25 A. What did you say?

DR. AMAYA - CROSS EXAM BY MR. SCHWACKE

1 Q. Erythema.

2 A. Oh, erythema? Redness, uh-huh.

3 Q. And that's -- that's nonspecific?

4 A. Correct.

5 Q. That might be an indication of abuse
6 and might not be?

7 A. Yes.

8 Q. And then the actual -- I'm sorry, anal
9 fissures?

10 A. Uh-huh, anal tears.

11 Q. Anal tears, that would be nonspecific;
12 it could be, it might not be.

13 A. Right. You have to take into other
14 accounts because you have to look at -- you can't
15 just look at them isolated by themselves, like if
16 we're talking about you have killer constipation.

17 As physical examiners, we look at the
18 location of where the fissures are; because if they
19 are more internal, then it's much harder to say and
20 so much -- I mean, it's easy to say, well, it could
21 easily be from just normal bowel movement passage,
22 but when it's a little more external, it's not --
23 it's not something where I would say, oh, this
24 person has fissures, I definitely know they have
25 been abused, without some kind of corroborative

DR. AMAYA - REDIRECT EXAM BY MS. WILLIAMS

1 history to go with it.

2 MR. SCHWACKE: One moment?

3 THE WITNESS: Sure.

4 MR. SCHWACKE: Thank you, Dr. Amaya.

5 That's all the questions I have.

6 THE WITNESS: Okay.

7 MS. WILLIAMS: Quick follow-up, Your
8 Honor.

9 REDIRECT EXAMINATION

10 BY MS. WILLIAMS:

11 Q. So, Dr. Amaya, this child said that she
12 had been repeatedly abused from March through May.
13 So she then says the last episode is May 30th, and
14 she gets to the hospital June 2nd. So from
15 May 30th to June 2nd, the anal injury, that would
16 be right on target, wouldn't it? I mean, you said
17 three days.

18 And then as far as three months ago,
19 when you said there were healing injuries, would
20 that not be consistent with her being repeatedly
21 raped for three months?

22 A. Yes.

23 Q. And in the history it said she washed,
24 showered, and wiped. I mean, would that not be
25 some of the reason why there wouldn't be active

DR. AMAYA - REDIRECT EXAM BY MS. WILLIAMS

1 blood or blood that was residual on her body?

2 A. Yes.

3 Q. And Mr. Schwacke asked you about the
4 acute exam. That's the only exam you didn't
5 actually supervise and sign off on, but did you
6 review that before you came today?

7 A. Many -- actually, the team brought that
8 up. We've had opportunity to review them together
9 multiple times, including with all of the division
10 members. We have a regular review where we all
11 review -- like pretty much right after it happens.
12 We have it every month where every case that
13 presents to the children's hospital is reviewed.

14 So we want to be very careful to not
15 over call things and make sure that even our images
16 are adequate enough to make a diagnosis or a
17 comment about and also to guide future follow-up
18 plans to be done.

19 So that was the first time and that was
20 like just a few days later, and then the -- the
21 examiners brought the case to me to review simply
22 because I saw the one -- I mentored the one at the
23 two-week visit. So whenever you look at the
24 two-week visit, of course you go back to the
25 original images because you have to compare them.

DR. AMAYA - RECROSS EXAM BY MR. SCHWACKE

1 So each time the child came in, we
2 reviewed all of her previous images. So we've
3 looked at them numerous times.

4 Q. Mr. Schwacke asked you about a septated
5 hymen, which I have no idea what that is, but this
6 child had a transected hymen.

7 A. Correct.

8 Q. A split all the way to the base of the
9 hymen?

10 A. Correct. Transected means like
11 separated. Like you said, torn.

12 Q. Okay. And so we talked about a skin
13 tag being normal. What's not normal is the tearing
14 inside of the skin tag, correct?

15 A. Correct.

16 Q. And the other tearing and the location
17 of the tears in the anus, correct?

18 A. Correct.

19 MS. WILLIAMS: Nothing further.

20 MR. SCHWACKE: Some follow-up, I'm
21 sorry.

22 RECROSS-EXAMINATION

23 BY MR. SCHWACKE:

24 Q. So what was just described to
25 Ms. Williams, would that be painful to **Minor**?

DR. AMAYA - RECROSS EXAM BY MR. SCHWACKE

1 A. Well, the child -- she stated that it
2 was painful and she had a lot of bleeding every
3 time it happened. And I would expect it to be
4 painful.

5 Q. Why would you expect it to be painful?

6 A. Well, in the data that we have
7 collected over all these children, it's just like
8 such a conundrum. Why don't they have findings?
9 They're just little girls. Why don't all of these
10 children that have some partial penetration have
11 some tearing?

12 The ones that do have findings, all of
13 them have strong -- it's strong correlation of
14 reported bleeding and pain. And so even all the
15 ones that have bleeding and pain don't necessarily
16 have findings, but they have a higher likelihood of
17 having findings.

18 So I'm not surprised since her findings
19 are so significant that she had reported bleeding
20 and pain.

21 Q. Would she be able to bathe without
22 having substantive pain from that?

23 A. I mean, she may not like it, and it may
24 hurt and sting, but, yes.

25 Q. How much stinging are we talking about?

DR. AMAYA - RECROSS EXAM BY MR. SCHWACKE

1 A. I think people's pain is qualitative
2 from person to person, but for like a -- it's a
3 superficial tear. It's not like it's a deep
4 internal tear or laceration. So I think it would
5 sting for probably like a day or so, and then the
6 healing in the area is pretty rapid.

7 I'm also comparing it to like the
8 experiences of some of the women postpartum and
9 they have -- like, they've just had a baby and they
10 have a lot of tearing there, and it's amazing how
11 well they heal with such a significant thing.

12 Q. But would it cause enough pain that
13 someone in the house, her mother, would notice?

14 A. Not necessarily. Not unless the child
15 chose to say something. If she was littler, like
16 two or three, she should probably have been more
17 complaining, but eight-year-old child in the fourth
18 grade who has been told -- according to her report,
19 was threatened not to tell and told not to tell,
20 it's very powerful from the victims that we see.

21 MR. SCHWACKE: Thank you.

22 THE WITNESS: Uh-huh.

23 THE COURT: You may step down.

24 THE WITNESS: Thank you.

25 THE COURT: Thank you so much.

1 That completes the witnesses for today?

2 MS. WILLIAMS: It does.

3 THE COURT: Ladies and gentlemen, we
4 are going to break for the evening. Please
5 remember all of my admonitions. Do not begin
6 discussing this case; do not do any independent
7 research. All of the admonitions that I have given
8 you.

9 Please report back in the jury room at
10 the same time you did this morning 9:45, and the
11 bailiff will explain what time to be there for us
12 to begin at 9:45. Take your belongings. We will
13 lock your notepads up. Please rise for the jury.

14 (Jury out, 5:41 p.m.)

15 THE COURT: Thank you. Be seated.

16 Plan for tomorrow, Ms. Williams?

17 MS. WILLIAMS: Tomorrow we have our
18 last witness which is Carol Swiecicki, who is an
19 expert, and then the State will rest.

20 THE COURT: Okay. And, Mr. Schwacke,
21 any idea if you're going to have witnesses?

22 MR. SCHWACKE: I do not. We intend to
23 speak with our client before we leave for the
24 evening.

25 THE COURT: Okay. And at this time, of

1 course, I'm going to be finishing up my charges and
2 the verdict form. Are you requesting any lesser
3 included?

4 MS. WILLIAMS: I don't think there are
5 any lesser includes, Your Honor.

6 THE COURT: Mr. Schwacke.

7 MR. SCHWACKE: Based upon the
8 allegations by age, there is no lesser includes.

9 THE COURT: And, Mr. Schwacke, any
10 charges that you think that I may have -- that
11 would not be obvious that you are requesting?

12 MR. SCHWACKE: At this time, yes,
13 ma'am. No additional ones.

14 THE COURT: No additional.

15 MS. WILLIAMS: I have one.

16 THE COURT: Yes.

17 MS. WILLIAMS: We would ask that
18 voluntary intoxication be charged because there is
19 so much evidence that he's blacking out from
20 medicine that he's taking.

21 THE COURT: It's already in my charge.

22 MS. WILLIAMS: Thank you, Your Honor.

23 THE COURT: I'm happy to hear from you.
24 I understand that you may not request that, that
25 you do not want me to charge involuntary

1 intoxication.

2 MR. SCHWACKE: I do not think it
3 applies. I think there's been talk about whether
4 that's a matter of his condition as opposed to his
5 medication, so I would not request that charge.

6 THE COURT: Okay. At this time, based
7 on my recollection of viewing the interview and
8 what I've heard here today and the testimony
9 throughout the progress of the trial, I would be
10 charging voluntary intoxication. Subject to change
11 based upon anything that may transpire tomorrow.

12 Okay. Mr. Schwacke, I will be here.
13 Where are you planning on talking to your client?

14 MR. SCHWACKE: I guess the sheriff is
15 going to want to clear out the courtroom. So we'll
16 probably, if they will let us, use this back room.

17 THE COURT: So I will be here. I have
18 other matters to work on, so if you would be kind
19 enough to let me know if you've reached a decision
20 for planning purposes. We're trying to determine
21 lunch and those types of things.

22 (These proceedings were recessed at
23 5:49 p.m. to be continued June 29, 2017 @9:45 a.m.)

24

25

1 (The following proceedings were held
2 6/29/2017, at 9:52 a.m., State v. Whitsett,
3 Berkeley County General Sessions Court.)

4 THE COURT: Anything before we bring in
5 the jury?

6 MS. WILLIAMS: Your Honor, I have one
7 thing I would like to put on the record regarding
8 the redacted tape. Just for the record, I
9 understand that Mr. Schwacke was objecting to the
10 admission of the statements, both the forensic
11 interview of that child and of his client, but the
12 agreement, once the Court made that ruling, was
13 that the redactions that we made, we agreed
14 together.

15 For the record, not only did the
16 redactions reflect the Court's ruling with regard
17 to third-party guilt and keeping out the prior
18 sexual assault and Rape Shield, but Mr. Schwacke
19 also made some strategic decisions, I'm guessing,
20 because there was a lot of things that were
21 redacted that benefitted his client.

22 For example, any information about the
23 child saying that she was told she was good at
24 telling the truth, any information about that she
25 should tell the truth in the forensic interview,

1 also all information about any drug use by the
2 client in his statement, all information about the
3 polygraph, all information about the exchange about
4 the lawyers which all would have been
5 inappropriate, but Mr. Schwacke did -- not only
6 redact information that reflected the Court's
7 ruling, but also we agreed to redact things that
8 was helpful to his client as well. I just wanted
9 to put that on the record.

10 We also have some more on the jury
11 instructions, but I will wait until the Court tells
12 me that is an appropriate time to discuss it.

13 THE COURT: Anything further,
14 Mr. Schwacke?

15 MR. SCHWACKE: Not at this time.

16 THE COURT: Okay. Bring in the jury.

17 (Jury in, 9:51 a.m.)

18 THE COURT: Thank you. Please be
19 seated.

20 Morning, ladies and gentlemen. If you
21 complied with the Court's instruction over the
22 evening hours, raise your right hand. Thank you.

23 Did you comply, Mr. Hill? Did you
24 comply with my instructions?

25 A JUROR: Yes, ma'am.

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1 THE COURT: All right. Let the record
2 reflect Mr. Hill said affirmatively he did comply
3 with my instructions, and the remaining 13 did
4 raise their right hand.

5 Please give your strict attention.
6 Call the next witness.

7 MS. SZYMCZYNSKA-SAS: Thank you, Your
8 Honor. The State calls Carole Swiecicki.

9 CAROLE SWIECICKI,
10 being first duly sworn, testified as follows:

11 THE CLERK: Please state your full name
12 and spell your last.

13 THE WITNESS: My name is Carole, first
14 name is C-A-R-O-L-E, last name Swiecicki,
15 S-W-I-E-C-I-C-K-I.

16 DIRECT EXAMINATION

17 BY MS. SZYMCZYNSKA-SAS:

18 Q. Ms. Swiecicki, can you please tell the
19 jury where you are currently employed?

20 A. I'm the executive director at Dee
21 Norton Child Advocacy Center. Our legal name is
22 Dee Norton Lowcountry Children's Center,
23 Incorporated.

24 Q. And what services does that child
25 advocacy center provide?

CAROLE SWIECICKI - DIRECT EXAM BY MS. SAS

1 A. We have a -- it's a nationally
2 recognized model, the child advocacy center model
3 that provides several core services. One of them
4 is forensic interviews, which is a non-leading
5 interview by a neutral provider, typically a
6 therapist of our agency around allegations that a
7 child might be a victim or a witness to a crime.

8 We also provide medical examinations in
9 partnership typically with the Medical University
10 of South Carolina. We have providers on-site for
11 children. We also provide mental health
12 assessments to get an idea of whether children are
13 having symptoms related to some abuse or trauma
14 that they may have experienced, and then we also
15 provide therapy when children are in need of
16 treatment.

17 Q. And how long have you been with the
18 children's center?

19 A. I've been the executive director for
20 three and a half years.

21 Q. Okay. Can you tell the jury, what is
22 your educational background and prior professional
23 experience?

24 A. I received my bachelor's degree from
25 the University of Florida in psychology and my

CAROLE SWIECICKI - DIRECT EXAM BY MS. SAS

1 master's and PhD in clinical psychology from
2 St. Louis University.

3 I did a post-doctoral fellowship at
4 St. Johns University in Queens, New York, which was
5 around child psychopathology, which is disorders
6 and other mental health diagnoses, specifically
7 working with children who are victims of abuse and
8 other types of trauma; and then worked for six and
9 a half years as a psychologist; and then the mental
10 health director at a hospital-based child advocacy
11 center in Norfolk, Virginia; and then came to my
12 position where I am now.

13 Q. And what exactly are your
14 responsibilities, job duties right now as the
15 executive director?

16 A. So I provide overall oversight for our
17 program. We have about 35 staff members. I direct
18 our day-to-day operations of the center and oversee
19 our five departments which include clinical and
20 forensic services, which are those direct services
21 with children, community programs which involve
22 education in the community; and other outreach.

23 We have a finance and operations team
24 to help keep the center open and manage finances.
25 A grant and programs team -- our program is largely

CAROLE SWIECICKI - DIRECT EXAM BY MS. SAS

1 funded by grants -- and then a development and
2 marketing team.

3 Q. Are you licensed in the state of South
4 Carolina or any other states?

5 A. Yes. I'm a licensed psychologist here
6 in South Carolina and have formerly been licensed
7 as a psychologist in Virginia. Since I no longer
8 practice there, that's now expired.

9 Q. And did you undergo any training in
10 child abuse and sexual assault dynamics?

11 A. Yes. My -- the final clinical year to
12 receive your PhD in psychology is a full-time
13 clinical internship. I did mine at the Medical
14 University of South Carolina in their psychiatry
15 department at the National Crime Victims Center,
16 specifically a trauma intern working with children
17 and also adults who had been victims of sexual
18 abuse and assault.

19 And, as I said, my post-doctoral
20 fellowship was specifically working with children
21 who are victims of child abuse and other types of
22 crimes.

23 Q. Okay. And do you teach anywhere,
24 provide any instructions to others?

25 A. I do. I'm on the clinical faculty,

CAROLE SWIECICKI - DIRECT EXAM BY MS. SAS

1 which is community settings where they're all
2 clinical for MUSC psychiatry department. My
3 program is a rotation for the current pre-doctoral
4 interns who are doing their clinical work, and I
5 supervise that clinical intern in their treatment
6 cases.

7 Q. And is that in the area that includes
8 child abuse and sexual assault dynamics?

9 A. Yes.

10 Q. Do you attend any additional training
11 courses in child abuse and sexual assault dynamics
12 since your clinical year at MUSC?

13 A. I do. So I'm also on the board of
14 directors of the National Children's Alliance,
15 which is the national organization that accredits
16 centers like mine across the country. There is an
17 annual conference that they put on in Washington,
18 DC, the National Children's Alliance Conference. I
19 have attended that for several years.

20 The American Professional Society on
21 the Abuse of Children have an annual conference; I
22 attend that. And then there are periodic
23 conferences that I attend around the issue of child
24 abuse including sexual assault.

25 Q. Have you ever been a presenter at one

CAROLE SWIECICKI - DIRECT EXAM BY MS. SAS

1 of the trainings?

2 A. Yes; just over 30 times.

3 Q. Okay. And is that a national level or
4 regional, local, or both?

5 A. Both.

6 Q. And did you present in the area of
7 child sex abuse and sexual assault dynamics?

8 A. I have. Typically, when I present on
9 that, it's included other forms of traumatic
10 events. When we research in that area, a lot of
11 times children report sexual abuse, but also might
12 report physical abuse or a traumatic death of a
13 loved one, and most of my presentations have
14 included samples that have all of those things.

15 Some of them have been exclusive to
16 sexual abuse, but a lot of them have included other
17 types of abuse as well.

18 Q. And have you published anything?

19 A. In peer review manuscripts, yes.

20 Q. What area?

21 A. Generally, in the area of child abuse
22 and sexual abuse in terms of sexual abuse
23 prevention, symptoms that children have, and
24 different treatment responses, and ways that
25 children engage in therapy services.

CAROLE SWIECICKI - DIRECT EXAM BY MS. SAS

1 Q. And how many times would you say that
2 you have been published, if you have to
3 approximate?

4 A. I just counted. So eight peer-reviewed
5 scientific publications and manuscripts and then
6 four additional invited book chapters.

7 Q. Is there any kind of peer review
8 process for your work?

9 A. For those manuscripts and the
10 conference presentations, there is typically a
11 blind review process. We submit the manuscript or
12 our presentation, and they take off the author
13 information and send it to other people to review
14 the contents for scientific merit.

15 Q. And have you testified in court before
16 as an expert?

17 A. Yes.

18 Q. How many times?

19 A. Approximately, 15 times.

20 Q. Is it here in South Carolina or outside
21 of the state?

22 A. Both. So I've been certified as an
23 expert witness in Charleston criminal court; also
24 in criminal court in Norfolk, Virginia; and
25 Virginia Beach, Virginia; and then in family court

CAROLE SWIECICKI - DIRECT EXAM BY MS. SAS

1 in Portsmouth, Virginia; and also military court
2 martial in Norfolk, Virginia.

3 Q. What area have you been qualified as an
4 expert?

5 A. Typically, in child abuse dynamics, but
6 I've also been qualified as an expert in the child
7 psychology and general psychology.

8 MS. SZYMCZYNSKA-SAS: Your Honor, at
9 this time, the State would like to offer
10 Ms. Swiecicki as an expert in the area of child
11 abuse and sexual assault dynamics.

12 MR. SCHWACKE: May we approach?

13 THE COURT: You may.

14 (Bench conference.)

15 THE COURT: Any objection,
16 Mr. Schwacke?

17 MR. SCHWACKE: No, Your Honor.

18 THE COURT: She will be qualified as
19 such. You may continue.

20 MS. SZYMCZYNSKA-SAS: Thank you, Your
21 Honor.

22 BY MS. SZYMCZYNSKA-SAS:

23 Q. Ms. Swiecicki, can you tell the jury
24 what does the term delayed reporting, delayed
25 disclosure mean?

CAROLE SWIECICKI - DIRECT EXAM BY MS. SAS

1 A. So disclosure is defined as telling
2 about something that's happened. Related to a
3 sexual abuse, a delay is more than one month from
4 the time the incident happened. So an immediate
5 disclosure is considered any time within that first
6 month, and then a delay is anything more than one
7 month after that.

8 Q. Okay. And do kids that don't tell
9 immediately, how are they able to not disclose it
10 if there is prolonged abuse versus maybe an acute
11 abuse incident?

12 A. So the literature shows essentially
13 that out of every four victims of child abuse in
14 childhood, one to two out of them tells within that
15 first month, and then another one tells at some
16 point after the first month, and then pretty
17 consistently another one out of the four doesn't
18 tell anyone until adulthood, so about 25 percent.

19 There's actually a fair amount of
20 literature in terms of reasons why children don't
21 disclose. A lot of times they talk about it like a
22 teakettle, that they -- they actually feel like
23 there's a lot of things going on inside, like
24 thoughts about it or upset feelings about it, that
25 other people can't really see. And sometimes they

CAROLE SWIECICKI - DIRECT EXAM BY MS. SAS

1 actually have reported in lots of -- several
2 studies that they feel like they've told, but
3 they've maybe said things that aren't clear to the
4 person they told.

5 Like, I don't want to go to that
6 person's house, or I don't want to spend a lot of
7 time with them. So there are tons of reasons why a
8 child might not want to spend time with someone,
9 but they feel like that's actually starting the
10 disclosure process. So sometimes even when they
11 haven't actually told, children feel like they
12 might have started that.

13 Q. So are there any specific reasons or
14 factors why kids don't report immediately?

15 A. Yes. The literature has -- and there's
16 really kind of two different categories. One
17 category is case-related factors. So that would
18 include things like the child's age when the abuse
19 started.

20 When children are younger when the
21 abuse started, and the cutoff is kind of just under
22 age ten, if they're younger than that when the
23 abuse starts, they are more likely to delay abuse.
24 When the abuse is committed by somebody who is
25 within their family, a parent or stepparent, but

CAROLE SWIECICKI - DIRECT EXAM BY MS. SAS

1 also aunts, uncles, grandparents, somebody that's a
2 family member, they are more likely to delay
3 reporting.

4 And if it's chronic, if it happens more
5 than once, they're more likely to delay reporting.
6 So those case factors are one sort of category, and
7 then the other category are really things that are
8 internal to the child. So they report actually a
9 lot of feared consequences of what will happen if
10 they tell, and the literature shows that they are
11 really weighing things.

12 And some of those things -- a big one.
13 that a lot of children mention is they're afraid it
14 will be upsetting to them or it might be upsetting
15 to somebody else, maybe a parent or somebody --
16 even the alleged offender. They talk about --
17 especially because over 90 percent of the time,
18 it's someone the child knows, whether it's a family
19 member or coach or somebody else that is known to
20 them. They report that it could be upsetting to
21 that person or that that person might go to jail.

22 And then they also report fears that
23 they're going to be hurt or killed, even when
24 that's not been explicitly threatened.

25 Q. Are there any reasons that -- reasons

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1 that a child does eventually tell?

2 A. So they describe kind of this
3 teakettle, that they weigh these factors and at
4 some point they wind up telling. Typically, that
5 involves an opportunity to tell. So someone maybe
6 asks them, even if they don't ask explicitly. They
7 say, something seems off with you, what's going on.
8 So it's kind of a prompt to get the -- and then the
9 child tells.

10 Other times -- another thing is a
11 contact of a supportive caregiver. So one study
12 actually showed that children who had a sexually
13 transmitted infection, which was indicative of an
14 outside confirmation that sexual abuse had
15 happened. When they had a supportive caregiver,
16 63 percent of those children disclosed. So the
17 ones who had a non-supportive caregiver, only
18 17 percent of them disclosed.

19 So that contact of having someone
20 supportive in their life is something that the
21 children talk about that they had somebody they
22 felt they could tell.

23 Q. And do kids say anything specific other
24 than -- from the studies, is there anything very
25 specific that they also say of a reason why they

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1 disclose?

2 A. Some children talk about wanting to
3 protect siblings. Some say they couldn't take it
4 anymore and they wanted the abuse to stop.
5 Interestingly, I mean, in the field we oftentimes
6 think that would be the first thing that they would
7 say, they wanted the abuse to stop, but it's
8 actually not one of the most common things that
9 children say.

10 It's usually more things that they
11 couldn't handle the emotional impact of it any
12 longer, or they wanted to protect someone, or
13 someone finally asked and they felt comfortable
14 saying.

15 Q. And I think you touched a little bit on
16 that a second ago with the relationship with the
17 supporting parents or guardians, but how does the
18 child's relationship with that parent or guardian
19 or maybe concern for them impact a child telling
20 about the sexual abuse? Can you talk a little bit
21 in more detail about that?

22 A. I think where that relationship has
23 shown to be most important is when they're either
24 trying to protect that person, the children
25 actually have said that they have, what they call

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1 in the literature, a non-preference for the person
2 that they kind of want to protect.

3 So they will say something, well, I
4 don't tell my mom because she would be really
5 upset, but I could tell my aunt because she could
6 handle it. So having that person that's in their
7 life who is supportive.

8 I had a client who similarly -- her
9 parent was supportive, the mother, but she couldn't
10 -- she said it would be too upsetting to tell my
11 mom, so I told my grandmother. And so that
12 relationship can come out in that way. But mostly
13 what it shows is if they have support, children are
14 more likely to tell.

15 Q. I think you mentioned that children
16 have fear disclosing sexual abuse. Why would a
17 child victim think they would get in trouble if
18 they were sexually assaulted and they would
19 disclose?

20 A. It's a really common thing that they
21 think. A lot of times the theory around that is
22 that the dynamics around sexual abuse is that it
23 could be somebody much older than the child that's
24 engaging in the sexual abuse that's abusing them,
25 and most of the time children are supposed to

CAROLE SWIECICKI - DIRECT EXAM BY MS. SAS

1 listen to grownups.

2 So if the child tells on a grownup, a
3 lot of times they get in trouble, and children
4 don't understand oftentimes, realize that this is a
5 different situation, that they wouldn't get in
6 trouble for telling on the grownup.

7 Other times, the offenders explicitly
8 tell the child and threaten them that they would
9 get in trouble or no one is going to believe them.

10 Q. Can you tell a jury what is a flat
11 affect response?

12 A. Uh-huh. So affect is the emotion that
13 we wear on our face and our body. So flat affect
14 is when that emotion we're wearing on our body is
15 very flat, neutral, not showing a lot of emotion.

16 Q. And in your practice, do you see a kid
17 showing that affect, the flat affect?

18 A. Very frequently in initial kind of
19 early appointments. When children are first coming
20 and meeting the first person who is going to do the
21 interview, typically, they're a bit more reserved
22 and a bit more flat in terms of how they show their
23 emotion until they get to know the people at the
24 center a little bit better.

25 Q. Does that change, in your experience,

CAROLE SWIECICKI - DIRECT EXAM BY MS. SAS

1 at any point, or could change?

2 A. Yes. So I mentioned that we do
3 forensic interviews. That's typically one of the
4 first things that happens with children, and that's
5 talking about what might have happened. When
6 children disclose something happening and go on to
7 therapy, in therapy that's much longer. The
8 forensic interview is typically maybe one or two
9 sessions that they're meeting with the interviewer.

10 Therapy, the goal of that is completely
11 different. The goal of that is to reduce symptoms
12 that the child has. You're talking to them about
13 their thoughts, about their feelings. And during
14 therapy, they learn ways to manage those feelings,
15 but they also talk about whatever the abuse
16 incident was and their thoughts and feelings about
17 that.

18 At the point where they start talking
19 about their feelings about the abuse and their
20 thoughts about it, that's when we tend to see them
21 have more upset feelings that they show.

22 Q. Okay. So would their behavior in the
23 courtroom and retelling the story in the courtroom
24 be different than in therapy?

25 A. It would be more like a forensic

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1 interview because it's typically more about the
2 facts of what happened and not the thoughts and
3 feelings around what happened. You tend to see the
4 feelings more when you're asking about the
5 feelings.

6 Q. Are there any common behavioral
7 reactions to sexual abuse, or are they different
8 based on every individual child?

9 A. So children who have experienced sexual
10 abuse and other types of traumatic events are at
11 higher risks for certain emotional and behavioral
12 problems. Post-traumatic stress disorder is one a
13 lot of us know because combat veterans are at
14 higher risk for that. It's a similar sort of
15 situation where our bodies have the sort of danger
16 response; it's flight or fight.

17 So they're at higher risk for that, but
18 certainly not all children experience that. It's
19 only 13 percent to 75 percent. It's a really wide
20 range depending on lots of factors.

21 Q. And you mentioned that response, that
22 fight, flight or freeze. Can you tell us a little
23 bit about that response?

24 A. So that's our body's response to
25 danger. If something dangerous happens, everyone

CAROLE SWIECICKI - DIRECT EXAM BY MS. SAS

1 has either a fight, flight, or freeze response
2 based on our biology; that you're either ready to
3 fight the danger that's going on, to run away from
4 it so that you don't get injured, and some folks
5 actually freeze which can be adaptive.

6 Like if you're hiding from the danger,
7 that actually can be something that helps you in
8 the dangerous situation.

9 Q. Does anxiety usually look differently
10 in a younger child versus an older child?

11 A. So I mentioned that anxiety -- anxiety
12 has a lot of different disorders that you can
13 diagnosis. The most common one in relation to
14 something like sexual abuse is post-traumatic
15 stress disorder. And our newest diagnostic manual
16 actually, because there are some differences for
17 younger kids, has different criteria for diagnosing
18 that for children who are under age six.

19 So it recognizes really that children
20 under age six are particularly unique in how they
21 express those emotions. And then the emotions --
22 or the symptoms were originally developed for
23 adults. And so children who are kind of 6 to 18,
24 they're diagnosed similarly to adults, but kind of
25 show -- you know, if they're seven, they may look a

CAROLE SWIECICKI - DIRECT EXAM BY MS. SAS

1 little bit closer to children who are younger.

2 Q. And what are some of the actions that
3 you would anticipate or reactions in the child in
4 an anxious child?

5 A. So the things that you look for in
6 terms of whether a child might be developing an
7 anxious response or post-traumatic response are
8 things like nightmares. For younger kids in
9 particular, it's harder for them to talk about
10 things going on in their head. So their parents
11 might see that they're getting up in the middle of
12 the night and come to sleep with Mom and not
13 explaining, I had a nightmare, I'm scared.

14 They may be afraid to go to school,
15 even though that hadn't been a problem before. And
16 sometimes we see things like bedwetting even after
17 they've been dry with toileting and doing that
18 fine.

19 With younger kids, you see some
20 behavioral problems like a lot of anxiety like
21 tapping their legs a lot and seeing jumping. You
22 actually see jumping, that's at all ages, that's
23 not unusual. And with teenagers you might see
24 those same sort of jumpy or kind of hyper responses
25 in terms of them using substances to kind of calm

CAROLE SWIECICKI - DIRECT EXAM BY MS. SAS

1 that down or running away or breaking rules. So it
2 comes out in different ways as they get older.

3 Q. And every child is different and so
4 every child's response would be different?

5 A. Correct. It's really at our center
6 about 30 percent of the children that disclose this
7 type of abuse wind up showing symptoms like that.
8 So it's slightly less than half.

9 Q. And the way they show anxiety could be
10 shown in different ways that are specific to them?

11 A. Yes. Those are the ones that have
12 severe reactions. There are some that have mild
13 reactions, but about a third have pretty
14 significant reactions.

15 Q. And I think going back a little bit
16 what we talked about the fight, flight, and freeze
17 response. Does that tie into how a child would
18 cope with maybe an ongoing abuse versus one
19 singular incident?

20 A. I think it actually plays into how they
21 respond to both of those. So particularly, when
22 abuse is chronic, it oftentimes starts out less
23 severe in terms of penetration or things like that.
24 So they might not have a danger response to that.
25 It might be something more like confusion.

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1 And then when it becomes a more
2 significant interaction, that's where you see --
3 you know, something that has penetration, that's
4 where you would see something like a fight, flight
5 or freeze response. It's really not that different
6 from combat.

7 So, you know, the way that folks who
8 are in the military respond to things like this,
9 they may be really good in the field. They may be
10 one that's better behind the lines where they have
11 that sort of, I'm in this in the moment, and then
12 when they're removed from that dangerous situation
13 is where you see things like symptoms.

14 Q. So could the child be functioning in
15 their daily activities as if nothing was happening?

16 A. Each child reacts a little bit
17 different, but the way that typically happens with
18 children until the point where they disclose is
19 that they, a lot of times, think that there are
20 symptoms going on, but they're inside their body
21 and other people can't see it.

22 Similarly to how folks who want to be
23 in combat, in the moment, you know, they might have
24 a lot of adrenaline, things going on. They're in
25 the midst of getting through it and then once

CAROLE SWIECICKI - CROSS EXAM BY MR. SCHWACKE

1 they're out of that situation, they realize that
2 that might have been fear. You know, that they
3 might have had thoughts that they might die, things
4 like that, but they don't focus on it in the
5 moment.

6 MS. SZYMCZYNSKA-SAS: Court's
7 indulgence.

8 No further questions for this witness.

9 Actually, one other question, I'm
10 sorry.

11 BY MS. SZYMCZYNSKA-SAS:

12 Q. Did you ever meet with this child
13 before?

14 A. No.

15 Q. Okay. Did you review the case file?

16 A. No.

17 MS. SZYMCZYNSKA-SAS: Okay. No further
18 questions.

19 CROSS-EXAMINATION

20 BY MR. SCHWACKE:

21 Q. And each child is different?

22 A. Correct.

23 MR. SCHWACKE: That's all the questions
24 I have.

25 THE COURT: Redirect?

1 MS. SZYMCZYNSKA-SAS: No questions.

2 THE COURT: You may step down. Thank
3 you. Feel free to go, but you're also free to stay
4 with us.

5 Call your next witness.

6 MS. WILLIAMS: Your Honor, at this
7 time, the State would rest.

8 THE COURT: Ladies and gentlemen, that
9 indicates to the Court there's a matter of law that
10 I must take up outside of your presence. Do not
11 begin your deliberations, do not discuss the case
12 amongst yourselves. We will receive you back into
13 the courtroom in a few moments.

14 (Jury out, 10:19 a.m.)

15 THE COURT: Thank you. Please be
16 seated.

17 Mr. Schwacke, any motion or matters now
18 that the State has rested?

19 MR. SCHWACKE: Thank you, Your Honor.

20 We would move for directed verdict of
21 not guilty based upon the lack of the evidence to
22 establish guilt beyond a reasonable doubt for each
23 and every one of the indictments. We would also
24 ask for a new trial based upon the failure of the
25 Court to allow evidence of third-party guilt.

1 We would also move for a new trial
2 based upon the Court's ruling in admitting the
3 video-audio interrogation of Mr. Whitsett as well
4 as the child's interview -- forensic interview.

5 THE COURT: Anything else?

6 MR. SCHWACKE: I'm double checking.

7 THE COURT: Take your time.

8 MR. SCHWACKE: I've covered my bases.

9 THE COURT: As to the motion for a new
10 trial based upon the failure of the court to allow
11 third-party guilt, that motion is denied.

12 As to your motion for a new trial and
13 objection to the Court's allowing the interview of
14 the defendant, that motion is denied. As to the
15 motion for a new trial and objection to the Court
16 allowing the interview of the child, that motion is
17 denied.

18 As to the motion for directed verdict,
19 Ms. Williams, let me hear from you. As you are
20 aware, please go through each indictment and tell
21 me what information has been presented that would
22 allow this to go to the jury.

23 MS. WILLIAMS: Certainly, Your Honor.

24 With reference to 2016-GS-08-01369,
25 that is one of the indictments for criminal sexual

1 contact in the first degree. That indictment
2 alleges anal penile penetration. The victim,
3 **Minor**, got on the stand and told the jury
4 that she -- that the defendant's penis went in her
5 rectum. Then we also had testimony from two
6 medical professionals that there was tearing around
7 her rectum that was consistent with that
8 disclosure.

9 With reference to 01370, criminal
10 sexual contact with a minor in the first degree,
11 that indictment alleges penile-genital intercourse
12 between the defendant and **Minor**. She
13 disclosed that his penis went in her vagina. There
14 was medical evidence to corroborate that disclosure
15 in the form of injuries that were consistent with
16 penetrating blunt force trauma to her vaginal area.

17 With regard to indictment 01371, that
18 indictment alleges digital penetration. The
19 victim, **Minor**, said that the defendant put
20 his finger inside of her vagina.

21 With regard to indictment 01372, that
22 is another indictment for criminal sexual contact
23 with a minor in the first degree, and that alleges
24 fellatio. The victim repeated in her forensic
25 interview, as well as on the stand, disclosed that

1 the defendant put his penis in her mouth.

2 With regard to indictment 01337,
3 another indictment for criminal sexual contact with
4 a minor in the first degree that alleges
5 cunnilingus between the defendant and the minor
6 victim, **Minor**; she told the jury that he put
7 his mouth on her vagina.

8 With regard to 01374, criminal sexual
9 conduct with a minor in the third degree, to prove
10 that charge, the State has to prove that the
11 defendant was over the age of 14, that the victim
12 was under the age of 16, and that he touched her
13 body parts, or had her touch his body parts with
14 the intent of arousing, appealing or gratifying
15 lusts, passions or sexual desires of the defendant
16 or the child.

17 She testified that he had her play with
18 his penis, and after that, he put it in her vagina
19 until the white stuff came out. I think it's clear
20 that the intent of him asking her to do that was
21 for sexual desire, lust and lascivious intent.

22 With regard to 01375, exposing another
23 to HIV virus, the defendant himself told the
24 investigators that he had had the HIV virus for
25 five years. His treating nurse, Theresa Dryden,

1 testified that he was diagnosed in 2012, that he
2 had been counselled about his diagnosis repeatedly,
3 that he had been told about the dangers of
4 transmission.

5 That statute requires us to prove that
6 he knowingly committed an act, forcibly engaging
7 sexual intercourse -- vaginal, anal, or oral --
8 without the consent of the other person; and that's
9 what he did to **Minor**

10 With regard to all of the testimony
11 from her and that the testimony from himself and
12 Theresa Dryden showed that he knew he had the
13 disease. Also, that he engaged in sexual activity
14 with another person without telling them that he
15 had HIV, and he did not tell this child that he had
16 HIV.

17 As Your Honor knows, the standard for
18 directed verdict is that the Court should not be
19 concerned about the weight of the evidence, but the
20 existence or nonexistence of evidence. And the
21 State looks at State v Williams, 303 SC 274, which
22 is a 1991 case; and State v Brannon, 379 SC 487,
23 which is a 2008 case.

24 The State has presented multiple
25 witnesses about -- the direct witnesses like Angela

1 Myers that talked specifically about the abuse. We
2 have presented forensic evidence that corroborates
3 her version of the facts, and particularly with the
4 underwear that was found in the defendant's shed
5 with her blood on it and his DNA, and then also the
6 medical evidence that was very powerful about the
7 injuries that were stained by Minor [REDACTED] that
8 were consistent with her disclosure. We would ask
9 the Court to deny defendant's motions.

10 THE COURT: Mr. Schwacke.

11 MR. SCHWACKE: No argument, Your Honor.

12 THE COURT: Okay. In ruling on a
13 motion for directed verdict under the Rules of
14 Criminal Procedure, Rule 19, the Court must grant a
15 motion for directed verdict if there's a failure of
16 competent evidence with which to present the case
17 to the jury.

18 The Court is concerned only with the
19 existence or nonexistence of the evidence and not
20 as to the weight. Based upon the testimony that's
21 been presented throughout this trial, specifically
22 the testimony of the victim, I do find that there
23 is competent evidence.

24 Your motion for directed verdict is
25 denied as to the five counts of criminal sexual

JEFFREY WHITSETT - EXAM BY THE COURT

1 contact with a minor, first degree, one count of
2 criminal sexual contact with a minor, third degree,
3 and exposing another to the HIV virus. Note your
4 exception to my ruling.

5 Any other post motions at the close of
6 the State's case?

7 MR. SCHWACKE: None, Your Honor.

8 THE COURT: Mr. Whitsett, please stand.
9 I will place you under oath.

10 JEFFREY WHITSETT,

11 being first duly sworn, testified as follows:

12 EXAMINATION

13 BY THE COURT:

14 Q. We now really have reached the stage of
15 the trial where you may present your defense. Do
16 you recall me advising you of your rights to
17 testify, the benefits and the consequences?

18 A. Yes, Your Honor.

19 Q. Do you have any questions for the
20 Court?

21 A. No, Your Honor.

22 Q. Have you had sufficient time to meet
23 with Mr. Schwacke and Ms. Tolley, either together
24 or separately?

25 A. Yes, Your Honor.

JEFFREY WHITSETT - EXAM BY THE COURT

1 THE COURT: Again, evidence authored by
2 the accused to the commission of a crime by another
3 person, third party, must be limited to such facts
4 that are inconsistent with the defendant's own
5 guilt. Based upon the testimony that has been
6 presented, I'm -- I have already talked about
7 third-party guilt, but I'm not allowing -- I do not
8 believe that the State's admission of the DNA
9 evidence opened the door for me to change my
10 ruling.

11 Note your exception to that,
12 Mr. Schwacke.

13 MR. SCHWACKE: Thank you. And now we
14 can move forward.

15 THE COURT: Now, Mr. Whitsett -- do you
16 need to explain to him the ruling before he makes
17 his decision?

18 MR. SCHWACKE: No.

19 BY THE COURT:

20 Q. Mr. Whitsett, I have ruled. I
21 understand that was the last remaining issue for
22 you to make your determination. Have you decided
23 whether or not you would testify?

24 A. Yes.

25 Q. And what is that decision?

JEFFREY WHITSETT - EXAM BY THE COURT

1 A. I am not going to testify.

2 THE COURT: And, Mr. Schwacke, you have
3 again advised him of the consequences and the
4 benefits of testifying --

5 MR. SCHWACKE: We have.

6 THE COURT: -- of choosing not to
7 testify.

8 MR. SCHWACKE: Yes, ma'am.

9 THE COURT: Thank you. You may have a
10 seat.

11 And we had the discussion last evening,
12 there are no lesser included; is that correct?

13 MR. SCHWACKE: No, Your Honor.

14 THE COURT: And any additional --
15 anything that you would -- you are requesting for
16 me to place into the charges?

17 MR. SCHWACKE: I'm assuming, and I
18 don't know if I could get you to just touch on sort
19 of the headings --

20 THE COURT: Let's -- why don't we do
21 this. We'll take a brief charge conference and
22 allow you to look over the verdict forms. We'll
23 take a recess to allow you to gather your thoughts
24 for your closing, and then we will proceed back at
25 that time.

1 THE COURT: Thank you. Please be
2 seated.

3 Mr. Schwacke.

4 MR. SCHWACKE: Your Honor, at this
5 time, the defense would rest.

6 THE COURT: Thank you.

7 Ladies and gentlemen, you have now
8 heard all the evidence that you will hear in this
9 case and have received into evidence all the
10 exhibits that will be made part of the record in
11 this case. We have now reached the stage of the
12 trial where you will hear closing arguments on
13 behalf of counsel.

14 Please remember, just as I instructed
15 you what was contained in opening statements is not
16 evidence, neither is what the attorneys tell you in
17 their closing arguments. I will instruct on the
18 law applicable to this case.

19 Remember the exhibits that have been
20 made part of the record will go back with you when
21 you retire to consider your verdict.

22 Ladies and gentlemen, after you have
23 heard in this case -- Ms. Williams will go first on
24 behalf of the State, and Mr. Schwacke will have the
25 last close in this case. After that, I will

STATE'S CLOSING ARGUMENT

1 instruct you on the law applicable to this case,
2 and you will then retire to consider your verdict.

3 Please give your strict attention.

4 Ms. Williams.

5 MS. WILLIAMS: Thank you, Your Honor.

6 May it please the Court. Counsel.

7 She was nine years old. Nine years

8 old. What was she thinking about that summer?

9 Swimming, drawing cats, seeing her friends?

10 Huh-uh. She was thinking about surviving repeated
11 brutal rapes at the hands of her stepfather.

12 Vaginally, anally, putting his penis in her mouth,
13 putting his mouth on her private area, putting his
14 fingers inside her, that's what this nine-year-old
15 child had to cope with during that period of time.

16 And then to make it worse, if it could
17 get any worse, he doesn't even have the decency to
18 protect her against a potentially fatal disease.
19 She isn't even important enough to protect her
20 against HIV. He didn't even treat her like a human
21 being.

22 The lack of respect and decency toward
23 that little girl has been shown to you again and
24 again from the State's case.

25 Let's talk about Mr. Whitsett though.

STATE'S CLOSING ARGUMENT

1 Because in some ways he was the best witness we
2 could have. You watched his statement. What did
3 he tell you? Let's go through just a few
4 highlights.

5 Detective Fenton: Is it possible that
6 maybe while you were having one of those blackout
7 spells that you might have done something
8 inappropriate?

9 I don't know. I can't remember
10 anything from it.

11 Detective Fenton: You don't know. So
12 it's quite possible that you might have done
13 something inappropriate while you blacked out.

14 I don't know. Like I said, I can't
15 recall anything.

16 Detective Fenton mirrors the voice of
17 common sense in this next statement. He said, so
18 let me get this straight. I'm just trying to keep
19 this straight in my head because I'm a little
20 confused. So **Minor** lies, she threatens you, she
21 says she's going to say that you touched her, she
22 looks at porn, she touches herself, but you're not
23 sure if you accidentally touched her or
24 inappropriately touched her because you blackout?

25 The defendant: I can't recall.

STATE'S CLOSING ARGUMENT

1 One of the most important things that
2 you need to determine guilt or innocence in this
3 case is something you brought with you when you
4 walked in the door, and that's common sense. Does
5 that make any sense to you? Use your life
6 experience.

7 This man is being asked if he touched a
8 nine-year-old inappropriately, repeatedly. I think
9 that Detective Fenton even says, she says you put
10 your penis inside of her. I don't know. Sometimes
11 I black out; I can't remember. Use your common
12 sense.

13 Now, ladies and gentlemen, you have
14 heard a lot of very uncomfortable evidence in this
15 case, and I'm sorry. I am sorry that you had to
16 listen to it. It's uncomfortable for most people
17 to hear that; it's horrifying. And I hate that we
18 had to use certain language and that we had to
19 bring up certain topics, but, unfortunately, this
20 is an ugly case.

21 It's an ugly set of episodes that
22 occurred, so the only way for us to go through and
23 prove our case was to, unfortunately, make you
24 listen to some things that were very uncomfortable.

25 And right now I would like to go

STATE'S CLOSING ARGUMENT

1 through very briefly, because I know that you've
2 been very patient and it's been some long days, but
3 go through very briefly some of the evidence that
4 you heard and just hit some of the highlights,
5 because you heard a lot of different people
6 testify. The State had over 20 witnesses. Let's
7 go through some of that now.

8 First of all, very briefly, let's talk
9 about the burden of proof and what we have to
10 prove, because we have the burden of proof. We
11 have to prove every single charge beyond a
12 reasonable doubt, and we welcome that burden and we
13 feel that we have met it.

14 So this defendant is charged with
15 criminal sexual contact with a minor in the first
16 degree, and he's charged with five different
17 counts. And so what do we have to prove for that?
18 A person is guilty of criminal sexual contact with
19 a minor in the first degree if he engages in a
20 sexual battery and the victim is less than 11 years
21 of age.

22 You heard repeatedly that **Minor**
23 was nine years old. You heard it from her, you
24 heard it in the forensic interview, you heard it
25 from the doctors. So we have met that burden.

STATE'S CLOSING ARGUMENT

1 Let's talk about a sexual assault.
2 What does that mean? A sexual battery is sexual
3 intercourse, and that is obviously his penis in her
4 vagina; cunnilingus, which is kind of an unusual
5 term, but all that means is his mouth on her
6 private, oral sex from a man to a woman; fellatio
7 which is his penis in her mouth, oral sex the other
8 way, a female on a male; and anal intercourse.

9 Now, you heard **Minor** talk from
10 this witness stand, and we showed the pictures and
11 then we asked her the questions. Do you mean his
12 penis? Yes. Did his penis go in your private?
13 Yes. Did his penis go in your bottom? Yes.

14 And she talked about -- and this is
15 horrible to even remind you of this. She talked
16 about how it would only stop when the white stuff
17 would come out and he would put his penis in her
18 mouth at that point.

19 And she talked about his fingers going
20 into her vagina; and that's the second part of that
21 where it says, any intrusion, however slight, of
22 any part of a person's body or any object into the
23 genital or anal openings of another person's body,
24 except when such intrusion is accomplished by
25 medically recognized treatment or diagnostic

STATE'S CLOSING ARGUMENT

1 purposes. We know Mr. Whitsett is not a
2 gynecologist.

3 So we have proven that his penis went
4 in her vagina, it went into her bottom. He put his
5 finger in her vagina, he forced his penis in her
6 mouth, and put his mouth on her private parts.
7 That's five counts of criminal sexual contact in
8 the first degree.

9 You heard extensive medical testimony
10 that corroborates what **Minor** told you because of
11 the injury to her private area.

12 Criminal sexual contact with a minor in
13 the third degree. We have one count of this. And
14 to prove that, we have to prove that the defendant
15 was over the age of 14 years. I think it's obvious
16 he is, but you heard testimony from Vitoria
17 Whitsett that he was 25 when he married her, you
18 heard his birth date from Detective Fenton.

19 So he's clearly over the age of 14, and
20 that he willfully and lewdly committed or attempted
21 any lewd or lascivious act upon, or with the body
22 of any part or members thereof, of a child under
23 the age of 16.

24 We lawyers like to put a whole bunch of
25 words in to confuse people, but all that means is

STATE'S CLOSING ARGUMENT

1 that Mr. Whitsett touched **Minor** for sexual
2 reasons, or he had her touch him. And she talked
3 about him making her play with his penis. So there
4 is plenty of evidence of that.

5 The last charge is exposing another
6 person to the HIV virus, and you heard testimony
7 that he knew he was infected. And that was Theresa
8 Dryden who testified right from the stand that he
9 knew he had it from 2012. He himself told the
10 detectives that he had it for five years.

11 So before he started raping this child,
12 he knew he was HIV positive. He never used a
13 condom. He knowingly engaged in sexual
14 intercourse -- vaginal, anal, or oral -- with
15 another person without first informing them of his
16 HIV infection. He clearly did not tell her he was
17 HIV positive, or he forcibly engaged in sexual
18 intercourse -- vaginal, anal, or oral -- without
19 the consent of the other person, including one's
20 legal spouse.

21 So both of those apply to **Minor**.
22 He repeatedly raped her while he was HIV positive;
23 he didn't tell her about it, and it was forcibly.

24 Now, the defendant has been proven
25 guilty of these charges by all of the evidence that

STATE'S CLOSING ARGUMENT

1 we presented, but I wanted to talk a little bit
2 about, for you to believe he's innocent you have to
3 believe certain things. So let's talk about that.

4 If he didn't do it, you would have to
5 believe that **Minor** made it up. Okay. Because if
6 she didn't make it up, he's guilty. So let's talk
7 about **Minor** for a minute. **Minor** testified from
8 the stand, and we talked a little bit about common
9 sense.

10 You are the sole judges of the
11 credibility of the witnesses. This child looked
12 like she wanted to crawl under this witness stand.
13 She was not comfortable to be here. She was not
14 comfortable to talk about these things. So why
15 would this child make this story up?

16 Let's think about what she went through
17 after she finally disclosed. She had to go to MUSC
18 and endure a lengthy, uncomfortable, intrusive
19 physical examination. Why would anybody want to go
20 through that? She then had to go through interview
21 after interview after interview, and then she had
22 to come up here and tell a whole room full of
23 strangers some really embarrassing things.

24 If the goal was to get Jeff Whitsett
25 out of the house, he was kicked out of the house

STATE'S CLOSING ARGUMENT

1 immediately. So why then would she go the very
2 next day, tell the police what happened -- he's out
3 of the house, gone -- and then keep this story up?
4 She goes on to the medical examination the next
5 day, tells the same story. She goes to the
6 forensic interview, tells the same story. Two
7 years later, she comes in and tells the story.

8 What benefit does she have for making
9 this up? You know, there just isn't one. So is
10 that reasonable? Do you think she made it up?
11 It's not reasonable.

12 Let's think of another thing that you
13 would have to believe to think that he's not
14 guilty, that he actually blacked out. First of
15 all, this is kind of a misleading one because even
16 if he did black out, he's still guilty. The judge
17 is going to give you an instruction that says
18 voluntary intoxication is not a defense to a crime.

19 So let's just say we believe this big
20 bag of boloney that he blacked out, which really
21 doesn't make any sense, and that while he's blacked
22 out he commits constant rapes of this
23 nine-year-old; even then he's still guilty of the
24 crime. You don't get to say, I blacked out, and
25 get to rape children. So is that reasonable? It's

STATE'S CLOSING ARGUMENT

1 not.

2 Let's think of another way that he
3 could be not guilty. Let's say his wife made the
4 whole thing up. So for him to be not guilty
5 because of Vitoria Whitsett, now Nogueira, made it
6 up, you would have to believe that she had some
7 other motivation. Because she kicked him out of
8 the house, he's already out of the house.

9 Then she goes and tells the police the
10 whole story, drags her child to have this
11 examination. Not just one examination, but I think
12 the doctor named four examinations. Has to get her
13 tested repeatedly for HIV, then she somehow plants
14 the child's blood on some underwear, puts it in his
15 motorcycle shed underneath some screws and light
16 bulbs in a coffee can, then figures out how to get
17 his friend next door to find the underwear, and
18 then gets his DNA on the crotch of the underwear.

19 You saw Vitoria Whitsett testify. Does
20 she seem like the kind of person that is capable of
21 pulling off this kind of caper? In addition to
22 that, we would somehow have to explain how this
23 child has injuries that are consistent with
24 penetrating trauma to her vaginal area and tears of
25 her rectum. So Vitoria Whitsett making it up

STATE'S CLOSING ARGUMENT

1 negating his guilt is not reasonable.

2 In order for you to find him not
3 guilty, you would have to think that all of the
4 forensic evidence is wrong. So this child's blood
5 is not on the underwear; his DNA is not in the
6 crotch of the underwear.

7 Mr. Schwacke asked a question of the
8 forensic analyst I found very interesting. In
9 addition to her blood being on the underwear that
10 was found in his motorcycle shop, and the
11 defendant's DNA being in the crotch of the
12 underwear, he said to the forensic analyst, but
13 there is no semen or saliva that is found on the
14 underwear. So it wasn't there.

15 She said, that's not necessarily true.
16 It could be there, but it could just not be a
17 strong enough sample for our test to pick it up.
18 So the forensic evidence layered with all the other
19 evidence is overwhelming, but you would have to
20 believe that these forensic scientists are somehow
21 involved in framing Mr. Whitsett, and that's simply
22 not reasonable.

23 Lastly, and I touched upon this, the
24 medical evidence. So the medical evidence was very
25 powerful. In fact, it was just so hard to listen

STATE'S CLOSING ARGUMENT

1 to. Dr. Amaya said it wasn't only corroborative of
2 what this child said, it was diagnostic of what she
3 said.

4 In other words, had they not even had
5 the back story, absent this kid having some kind of
6 straddle injury on the bicycle, the injuries were
7 so traumatic that it was diagnostic of penetrating
8 trauma to her vaginal area. Think about that. So
9 that's not reasonable either.

10 I want to talk a tiny bit about the
11 witnesses that you saw. Cody Milhouse; he's
12 friends with the defendant. Why would he lie?
13 What motivation does he have to lie? He doesn't
14 know Vitoria that well.

15 Vitoria; what we know is she kicks him
16 out of the house immediately. She calls her friend
17 Kevin Kearse, takes her child to all of her
18 appointments. There was another little thing that
19 happened while she was on the stand. And
20 Mr. Schwacke asked her, do you remember talking to
21 the DSS agent at the hospital? And she said yes.

22 And he goes, and you told her that
23 there was blood in the underwear that night. And
24 she said, I don't recall that. I told her that the
25 panties kept disappearing, and that's all we heard

STATE'S CLOSING ARGUMENT

1 about that. So don't fall for cheap tricks.

2 She did not tell DSS at the hospital
3 that there was blood on the underwear. What she
4 said was she noticed that night that the underwear
5 had been disappearing from the child's drawer. She
6 does not find out there's blood on this child's
7 underwear until the underwear is found on the 17th.

8 He also asked her a bunch of questions
9 about cheating on her husband. What does that have
10 to do with anything? Even if we want to paint
11 Vitoria somehow as a bad person, what does that
12 have to do with **Minor** Why is that **Minor**
13 fault? I fail to see what that has to do with this
14 case at all.

15 The other thing I want you to remember
16 is that Vitoria testified that when she kicked him
17 out, he doesn't grab his clothes, he grabs the
18 electronics. And this is on the 1st of June. He's
19 not apprehended until the 10th of June. So what
20 he's doing with those electronics, we don't know
21 during those nine days; but during his interview
22 it's interesting when he said, well, I didn't
23 delete anything. He's very well versed. He knows
24 exactly what he's doing.

25 So this -- and that's important because

STATE'S CLOSING ARGUMENT

1 this child said he made a video of her with his
2 phone. We don't know whether the phone they
3 apprehended him with is the same phone, and even if
4 it is, if anything has been deleted. We also don't
5 know if there's anything on the other devices
6 because he's had nine days to deal with it.

7 Remember that Lamar Blakely from the
8 Fugitive Task Force says that when he apprehends
9 him, he has already got the hard drive out of the
10 computer. That's interesting information for you
11 to ponder.

12 **Minor** was very nervous when
13 she was on the stand. I think you can judge her
14 demeanor and her credibility yourself. I don't
15 think she wanted to be here, and I don't think she
16 wanted to talk about what we had to have her talk
17 about. She said, I don't remember a lot. I don't
18 remember. So it's good that you got to see her as
19 a nine-year-old child.

20 And when you see her as a nine-year-old
21 child, she's sort of relating facts in a way that's
22 not -- she's not traumatized. And the expert
23 talked to you a little bit about how different kids
24 deal with that. You know, she's being asked
25 questions about the facts; she's not really asked

STATE'S CLOSING ARGUMENT

1 about how it made her feel.

2 I think at one point in the forensic
3 interview, she was asked something about how it
4 made her feel. And she said, painful, or it hurt.
5 So it's very difficult to watch a nine year old
6 child talk about things that a nine year old child
7 should have no knowledge of.

8 I want you to remember the things she
9 says in that interview, and there are some
10 differences, there are some facts she doesn't
11 remember, but there is a lot of similarities. Ask
12 yourself, in your common experience in observing
13 the world, is it reasonable for people to forget
14 certain details two years later? Is it reasonable
15 for a nine-year-old to remember things differently
16 than an adult?

17 She also -- I talked a little bit about
18 why would she lie. One of the more chilling things
19 that this defendant tells her is, I never loved
20 your mother. I married her for you. And you've
21 heard about the difference in age; take that, you
22 know, with the rest of the facts. She was 45 when
23 he married her; he was 25. He may not have been
24 after her at all. He may have been after her
25 daughter as he told her.

STATE'S CLOSING ARGUMENT

1 Detective Fenton testified extensively,
2 and you had to watch a two-hour video. I know that
3 it was really long and there was a lot of
4 information in there. If there's any portion of
5 that you want to hear again, you are welcome to
6 re-listen to any portion of the evidence that you
7 want.

8 Please remember that there are at least
9 six or seven times where this defendant says, I
10 don't know, it could have, I'm not sure because I
11 blacked out. And, again, think about the world and
12 the way that you would expect people to interact
13 and people to answer questions like that. Did you
14 molest your nine year old daughter? Did you have
15 sex with your nine year old stepdaughter? I don't
16 know. I don't know. I could have done it while I
17 blacked out. Is that a reasonable response? Is
18 that a credible response?

19 The other interesting thing that
20 Detective Fenton picks up on is that one of the
21 many stories that Mr. Whitsett gives for excusing
22 his behavior and why somebody would accuse him of
23 this is that Vitoria told him -- first he said that
24 **Minor** said she was going to get him out of the
25 house. Then he said Vitoria told him, if you don't

STATE'S CLOSING ARGUMENT

1 get out of the house, I'm going to say you touched
2 my child.

3 Well, first of all, that makes no sense
4 because he gets out of the house, and then she goes
5 on to continue with that. So, again, if that's the
6 goal, why does she keep calling the police and
7 taking the kid to the hospital? But the other part
8 of that that makes no sense that's kind of subtle
9 is he admits that he then texts a couple of days
10 later and said, I would never hurt **Minor**. I'm
11 sorry, I didn't do it.

12 Well, if she's already told him that
13 she is making it up, why does he have to convince
14 her he didn't do it? Those are subtle things that
15 you need to take into account when you evaluate the
16 credibility of this man. Think about things like
17 that. And those are the things that you do every
18 day when you evaluate the credibility of the people
19 in your life and the people you come into contact
20 with.

21 Also, remember, and I've already
22 touched on this, his knowledge of video equipment.
23 That could be a huge reason as to why we don't find
24 the video that **Minor** describes. It's also very
25 interesting before we get on to Theresa Dryden,

STATE'S CLOSING ARGUMENT

1 what **Minor** said is that he makes her put her
2 fingers inside herself.

3 And then he tells Detective Fenton, oh,
4 well, I've caught her playing with herself, a
5 nine-year-old. He's caught her playing with
6 herself, because he's trying to sort of build this
7 ridiculous excuse that somehow this over-sexualized
8 child is making this up and trying to get him for
9 some reason.

10 Theresa Dryden was the HIV nurse, and
11 she talked a little bit about his disease. She
12 said he knew he had the disease since 2012. He was
13 counselled about transmission but refused to wear
14 condoms, and he had a low viral load. I think
15 that's important to note because a fair question
16 is, well, wait a minute, if he was raping this
17 child, how come she hasn't gotten HIV yet and how
18 come Vitoria has?

19 I think what she explained to you is,
20 first of all, there's a common sense reason why,
21 and that is that Vitoria had unprotected sex with
22 her husband for over 18 months repeatedly. So she
23 probably had so many different episodes so she's
24 increasing her chances of getting the disease. He
25 already had a low viral load so he was less of a

STATE'S CLOSING ARGUMENT

1 risk of transmission. Minor on the other hand,
2 was only subjected to the rapes for about three
3 months, and but for the grace of God, she so far
4 has not contracted the disease.

5 Dr. Amaya; very difficult evidence to
6 listen to. I've already talked about the blunt
7 force penetrating trauma. She talked about how
8 rare it is to have any physical findings, even on
9 children that we know have been sexually abused,
10 that later -- that that area heals so quickly that
11 they often don't see physical findings even when
12 the child has been abused.

13 These findings, these injuries to this
14 child's vagina and rectal area are so rare, that's
15 why they should be given so much weight by you
16 because they are corroborative and diagnostic of
17 the sexual abuse.

18 This, I think, is more disturbing than
19 anything else. So Minor turned in the chair and
20 she told you that is where this man repeatedly
21 raped her. Who is surrounding this child while
22 she's getting raped? Oh, that's a picture of me
23 when I was two. That's a picture of me and my
24 sister. That's a baby picture of me. He's raping
25 this child in her mother's room surrounded by baby

STATE'S CLOSING ARGUMENT

1 pictures of her. Let that sink in for just a
2 minute.

3 This is a physical piece of evidence
4 that cannot be denied even if her blood wasn't on
5 it, which it was. Why in the world is it in his
6 motorcycle shop? Why do you have your
7 stepdaughter's underpants hidden behind a box in a
8 coffee can with some other things in your
9 motorcycle shop not five feet away from a burn pit?

10 And that's another thing: What does he
11 tell her when he sees blood on the underpants?
12 Give me the underpants; I'm going to burn them.
13 And, true to form, he just didn't get to that pair.
14 So, you know, that's another thing that it just
15 can't be explained.

16 Again, the most powerful piece of
17 evidence that we have in this case is the
18 statements of the defendant made to law
19 enforcement. I want to remind you of some of
20 those.

21 (Audio tape played in open court.)

22 I don't know. I just don't know. I
23 don't know if I put my penis inside a nine-year-
24 old. I just don't know.

25 Now, you are going to hear a little bit

STATE'S CLOSING ARGUMENT

1 about reasonable doubt. Don't listen to us about
2 reasonable doubt; listen to the judge. In fact, I
3 think if there is anything that is different from
4 what the judge tells you, she is the authority on
5 the law. But I suspect that she will tell you that
6 reasonable doubt is not all doubt. We just have to
7 leave you firmly convinced.

8 So, again, listen to her instruction
9 about reasonable doubt. Attorneys love to get up
10 and tell you what it is; but it's really up to the
11 judge.

12 Ladies and gentlemen, this is a
13 community in this courtroom. We all have roles to
14 play. The judge is the authority of the law,
15 Mr. Schwacke is an attorney, I'm an attorney, but
16 you are the conscience of this community. You are
17 the truth tellers. I'm asking you to think about
18 the evidence you've heard about a nine-year-old
19 girl and think about what happened when she went
20 behind closed doors and what that man did to her.

21 I'm asking you to have the courage of
22 your convictions when you go back there and
23 deliberate about this case, because he's guilty and
24 it's time for justice.

25 THE COURT: Mr. Schwacke.

DEFENDANT'S CLOSING ARGUMENT

1 MR. SCHWACKE: Your Honor.

2 Ladies and gentlemen, Jeffrey Whitsett
3 is not guilty. As he sits here now, as he sat here
4 at the beginning of the trial, he's not guilty.
5 That's because the State has to convince you that
6 it has met its burden, and part of that burden is
7 beyond a reasonable doubt.

8 And, yes, you're going to hear that
9 from me a lot because that's one of the very
10 foundations of our legal system. It is required in
11 every criminal case for the State to meet that
12 burden, and if they don't it's your obligation to
13 find my client not guilty.

14 I'm not here to do any cheap tricks as
15 Ms. Williams sort of suggested. I'm here just like
16 she is here -- and she indicated we're both
17 attorneys. We took the same oath, and that oath
18 mandates that each of us represent our clients and
19 that we allow no one to be convicted in this
20 courtroom unless it's upon proof beyond a
21 reasonable doubt.

22 Mr. Whitsett, in his statement that you
23 got to watch, is a hard-working person. He kept a
24 job, brought his paycheck home. What didn't go to
25 bills went to doting on his stepchildren. That's

DEFENDANT'S CLOSING ARGUMENT

1 verified even by Minor who said that he had -- he
2 had bought them things, he had taken them skating,
3 he played games with them.

4 And then he said a change started
5 around March when he was able to go and see his own
6 natural child, his own daughter, for a party. And
7 that was the first time -- that event was the first
8 time that his natural child met Minor, and after
9 that time that's when it started. It's in the
10 video that you can watch, where suddenly the
11 relationship changed between Minor and
12 Mr. Whitsett.

13 And as far as other things occurring
14 inside the house, you did have some testimony from
15 Ms. Barcellos, an aunt, but you did not hear from
16 Uncle Marco that was living there, an adult. Nor
17 did you hear from Adam, the only other person
18 allegedly home when all of this was occurring. You
19 did not hear from them. The State did not call
20 them. The burden is on them to call witnesses.
21 Not me.

22 So when Mr. Whitsett is confronted by
23 Vitoria, he leaves the house. He's not aware --
24 he's aware that his wife had thrown him out of the
25 house, but not aware what is going on afterwards.

DEFENDANT'S CLOSING ARGUMENT

1 So there is some suggestion, because it takes the
2 U. S. Marshals to track down Mr. Whitsett, that he
3 was running from them; he didn't know they were
4 looking for him. And when he is picked up, he's in
5 possession of electronic equipment.

6 The State chose not to present you with
7 the electronic equipment. The State chose not to
8 present you with the witness who goes through --
9 Lieutenant Murphy, Kevin Murphy, he was on the
10 witness stand, who goes through these things to
11 find purposely deleted files. They looked for
12 those. They can recover those with their
13 equipment.

14 Anything that was suggested to you was
15 possible on the equipment he had, the State by not
16 calling their witness and putting in that witness
17 has pretty much told you, we didn't have what we
18 thought we were going to get. We didn't get it.
19 We don't have it.

20 So Jeffrey does get arrested, and he's
21 in the process of being interviewed by Detective
22 Fenton, and for the first half of that tape he
23 denies doing anything. He denies being able to
24 have done it. It's not until he gets to the
25 wear-down stage in the interview -- and the State

DEFENDANT'S CLOSING ARGUMENT

1 told you it's a two-hour tape, so you know it's a
2 long process -- where he himself begins to think,
3 well, I want to believe my stepchild. I don't
4 understand what she's alleging me of, maybe I can
5 help them come up with some explanation.

6 And at that point, he's reaching out
7 for that explanation so he can continue the
8 interview with the cops and be done with it.

9 So Detective Fenton some 18 days after
10 this is first reported finally goes over to
11 Vitoria's house where Jeffrey had lived. And he's
12 handed over some items. And he gets Vitoria to
13 write out a consent-to-search form, but he didn't
14 do any search. He just takes what she hands over.

15 If you recall the testimony when **Minor**
16 is discussing the alleged incidents, she mentioned
17 a lot of blood. Well, during the assault she
18 alleged that she removed her clothes. He removed
19 his clothes. So all of this blood is not getting
20 on the clothes at that point; it's getting on the
21 sheets and blankets of the bed that he never ever
22 went in and inspected or took away for that to be
23 looked at by SLED.

24 He didn't take pictures of where the
25 items were found. He didn't go to the burn pit to

DEFENDANT'S CLOSING ARGUMENT

1 poke around and even dig up and take out the
2 materials in there to see if it had any remnants,
3 scraps, fabrics to match the description of some
4 panties. And then you have panties themselves.

5 When the neighbor testified, of course,
6 it was mentioned by the State, he described those
7 panties as ladies or women's, not child's panties.
8 The ones he saw, the ones he found, the ones he
9 turned over to eventually Ms. Vitoria who had those
10 in her possession until the cops come 18 days after
11 the alleged assault.

12 When -- Minor was taken to the SANE
13 nurses. The SANE nurse came in and testified and
14 she was quite meticulous in what she had done and
15 quite meticulous in her testimony, except for the
16 fact that one of the directions for the assault --
17 the assault kit requires if the child's clothing
18 has been changed, you are to take their underwear
19 or anything that is in contact with the genitalia
20 area for evidentiary purposes.

21 They did not do that, and they were not
22 as meticulous as they thought because that would
23 have been earlier in time, and it would have been a
24 truer test of what was present, and it wasn't done.

25 Dr. Amaya testified that some injuries

DEFENDANT'S CLOSING ARGUMENT

1 just don't heal. They don't. And because of that,
2 sometimes age is difficult to determine. When did
3 that happen? How did that happen? She said that
4 at some subsequent visits some of the same findings
5 were still present when he was already out of the
6 picture, he had been removed from the residence.

7 And then Dr. Amaya also testified at
8 one point regarding the oral -- I'm sorry, the anal
9 tears, that it looked to her like it happened
10 sometime in the past. So not even connected with
11 this.

12 Detective Fenton had asked -- going
13 back briefly to the electronic equipment, had asked
14 what's going to happen when we get the search
15 warrant and what files are we going to find that
16 were deleted? And he said that because, again,
17 they can find those deleted files. And if they had
18 them, they would be on that table right there, and
19 it would be going back in the jury room with you in
20 just a moment.

21 The HIV nurse, Ms. Dryden, she
22 indicated a couple of things in terms of what was
23 being described by Jeffrey as the free fall -- or
24 free falling. And she understood what he was
25 explaining and that that had actually been

DEFENDANT'S CLOSING ARGUMENT

1 something that they had discussed.

2 And even **Minor** in her testimony, her
3 cross-exam here, when I asked her she described a
4 condition of Jeffrey being zoned out. So that's
5 just not something that Jeffrey made up on the fly.
6 It's something that he had reported to his nurse
7 and something that was observed by his own
8 children.

9 Ladies and gentlemen, I've told you
10 that no conviction can be had unless there is proof
11 beyond a reasonable doubt. The fact that there was
12 no testimony from the stand from Adam might be
13 something someone would find creates a reasonable
14 doubt. The fact that there were no sheets removed
15 from the bed, someone might find that to be a
16 reasonable doubt.

17 The fact that there was no sign of
18 blood alerting Vitoria to what was happening, which
19 the State alleges over a three-month period,
20 someone might find that to be a reasonable doubt.
21 Because Vitoria was not noticing any pain from any
22 injury, that might be something someone would find
23 to be a reasonable doubt.

24 The fact that the electronics and
25 phones weren't presented to you, that might be

DEFENDANT'S CLOSING ARGUMENT

1 something that someone might say is a reasonable
2 doubt. The fact that no gun was located, or even
3 searched for by the police, at Vitoria's house
4 might be something someone would say is a
5 reasonable doubt.

6 The fact that no evidence was removed
7 from the burn pit that might show the presence of
8 fibers and clothing, that might be something that
9 someone would find a reasonable doubt. The fact
10 that no semen or saliva were found or reported as
11 found, that might be something that someone would
12 find to be a reasonable doubt.

13 The fact that there is no indication,
14 and SLED indicated there was no way to age when
15 something happened in terms of DNA, might be
16 something someone would find to be a reasonable
17 doubt. The fact that there was no evidence of
18 scratches or cuts on Mr. Whitsett to result in his
19 having bled, because that is something that would
20 have been observed earlier, that is something that
21 someone might find to be a reasonable doubt.

22 Ladies and gentlemen, the fact that the
23 DNA from this is a mixture of at least two male
24 individuals, that's not just reasonable doubt.
25 That's a substantial doubt. Thank you.

JURY CHARGE

1 THE COURT: Ladies and gentlemen, I
2 remind you that during the trial, you and I have
3 had certain duties -- ladies and gentlemen, I
4 remind you that during this trial you and I have
5 had certain duties to perform.

6 As the trial judge, it is my
7 responsibility to preside over the trial of this
8 case, and I also have the duty to rule on the
9 admissibility of the evidence offered during this
10 trial. You are to consider only the competent
11 evidence before you.

12 You are to consider only the testimony
13 that has been presented from the witness stand and
14 any exhibits that have been made a part of the
15 record in this case.

16 I have the additional duty to charge
17 you the law applicable to this case. As the
18 presiding judge, it is my responsibility to give
19 you the law in this case. I am the sole judge of
20 the law in this case. It is your duty as jurors to
21 accept the law and apply the law exactly as I state
22 it to you now.

23 If you already have any idea as to what
24 the law is or what the law ought to be and it does
25 not agree with what I'm about to tell you, you must

JURY CHARGE

1 abandon your own idea, because you are sworn to
2 accept the law and apply the law exactly as I state
3 it to you now.

4 In every case tried in this court
5 before the jury, the jury becomes the sole and
6 exclusive judges of the facts. A trial judge may
7 not make any comment to the jury about the facts in
8 this case. You, the jury, are the sole judges of
9 the facts in this case.

10 You are not to infer from anything that
11 I have said or done throughout the progress of this
12 trial, that I have any opinion about the facts in
13 this case. That is solely for you to determine.

14 It is your duty as jurors to determine
15 the effect, value, and weight of the evidence
16 presented during this trial.

17 The seven indictments charged the
18 defendant with five counts of criminal sexual
19 conduct with a minor, first degree; one count of
20 criminal sexual conduct with a minor, third degree;
21 and one count of exposing another to human
22 immunodeficiency virus.

23 I remind you the fact that the
24 defendant was arrested, charged and indicted in
25 this case is not evidence in this case and cannot

JURY CHARGE

1 be considered by you as evidence of guilt in this
2 case, nor does it create any presumption or
3 inference of guilt. The indictment is simply a
4 document that brings this charge into court.

5 Just as the indictments in this case
6 are not evidence, any terminology or labels used to
7 refer to the individuals involved in the case
8 cannot be considered as evidence. For example, the
9 use of the words defendant and victim are merely
10 formal labels and may not be considered by you as
11 evidence.

12 Each indictment in this case alleges a
13 different offense against the defendant. The
14 indictments are indictment 20160-GS-08-1369,
15 criminal sexual conduct with a minor, first degree;
16 indictment number 2016-GS-08-1370, criminal sexual
17 conduct with a minor, first degree; indictment
18 number 2016-GS-08-1371, criminal sexual conduct
19 with a minor, first degree; indictment number
20 2016-GS-08-1372, criminal sexual conduct with a
21 minor, first degree; indictment number
22 2016-GS-08-1373, criminal sexual conduct with a
23 minor, first degree; indictment number
24 2016-GS-08-1374, criminal sexual conduct with a
25 minor, third degree; indictment number

JURY CHARGE

1 2016-GS-08-1375, exposing another to HIV virus.

2 Each indictment charges a separate and
3 distinct offense. You must decide each indictment
4 separately on the evidence and the law applicable
5 to it uninfluenced by your decision as to any other
6 indictment.

7 The defendant may be convicted or
8 acquitted on any or all of the offenses charged.
9 Mr. Foreman, you will be asked to write a separate
10 verdict of guilty or not guilty for each
11 indictment.

12 The defendant has pled not guilty to
13 each indictment. A person charged with committing
14 a criminal offense in South Carolina is never
15 required to prove himself innocent. I charge you,
16 it is an important rule of law that the defendant
17 in a criminal trial, no matter what the seriousness
18 of the charge may be, will always be presumed to be
19 innocent of the crime for which the indictment was
20 issued unless guilt has been proven by evidence
21 satisfying you of that guilt beyond a reasonable
22 doubt.

23 This presumption of innocence does not
24 end when you begin your deliberations, but it
25 accompanies the defendant throughout the trial

JURY CHARGE

1 until you reach a verdict of guilt based upon
2 evidence satisfying you of that guilt beyond a
3 reasonable doubt.

4 The State has the burden of proving
5 guilty beyond a reasonable doubt. Some of you may
6 have served as jurors before in civil cases where
7 you were told it was only necessary to prove that a
8 fact is more likely true than not true, such as by
9 the greater weight or preponderance of the
10 evidence.

11 In criminal cases, the State's proof
12 must be more powerful than that. It must be beyond
13 a reasonable doubt. Proof beyond a reasonable
14 doubt is proof that leaves you firmly convinced of
15 the defendant's guilt. There are very few things
16 in this world that we do know with absolute
17 certainty, and in criminal cases the law does not
18 require proof that overcomes every possible doubt.

19 If, based upon your consideration of
20 the evidence, you are firmly convinced that the
21 defendant is guilty of the crime charged, you must
22 find the defendant guilty. If, on the other hand,
23 you think there is a real possibility that the
24 defendant is not guilty, you must give the
25 defendant the benefit of the doubt and find him not

JURY CHARGE

1 guilty.

2 There are two types of evidence
3 generally presented throughout a trial: Direct
4 evidence and circumstantial evidence. Direct
5 evidence directly proves the existence of a fact
6 and does not require deduction. Circumstantial
7 evidence is proof of a chain of facts and
8 circumstances indicating the existence of a fact.

9 Crimes may be proven by circumstantial
10 evidence. The law makes no distinction between the
11 weight or value to be given to either direct or
12 circumstantial evidence; however, to the extent
13 that the State relies on circumstantial evidence,
14 all of the circumstances must be consistent with
15 each other, and when taken together, point
16 conclusively to the guilt of the accused beyond a
17 reasonable doubt.

18 If the circumstances merely portray the
19 defendant's behavior as suspicious, the proof has
20 failed. The State has the burden of proving the
21 defendant guilty beyond a reasonable doubt. This
22 burden rests with the State regardless of whether
23 the State relies on direct evidence, circumstantial
24 evidence, or some combination of the two.

25 Necessarily, you must determine the

JURY CHARGE

1 credibility of the witnesses who have testified in
2 this case. Credibility simply means believability.
3 It becomes your duty as jurors to analyze and to
4 evaluate the evidence and determine which evidence
5 convinces you.

6 In determining the believability of the
7 witnesses who have testified in this case, you may
8 believe one witness over several witnesses or
9 several witnesses over one witness. You may
10 believe a part of the testimony of a witness and
11 reject the remaining part of the testimony of that
12 same witness. You may believe the testimony of a
13 witness in its entirety or reject the testimony of
14 a witness in its entirety.

15 You may consider whether any witness
16 has exhibited to you any interest, bias, prejudice,
17 or other motive in this case, and you may also
18 consider the appearance and manner of a witness
19 while that witness was testifying.

20 The rules of evidence ordinarily do not
21 permit witnesses to testify to opinions or
22 conclusions. An exception to this rule exists for
23 witnesses we call expert witnesses. A witness who
24 by education and experience has become expert in an
25 art, science, profession, or calling may state an

JURY CHARGE

1 opinion as to a relevant and material matter in
2 which that witness claims to be an expert and may
3 also state the reasons for that opinion.

4 You should consider any expert opinion
5 received in evidence in this case like any other
6 evidence; give it the weight you think it deserves.
7 If you decide that the opinion of an expert witness
8 is not based on sufficient education and
9 experience, or if you conclude that the reasons
10 given in support of the opinion are not sound, or
11 that the opinion is outweighed by other evidence,
12 you may disregard the opinion entirely.

13 An expert witness's testimony is to be
14 given no greater weight than that of any other
15 witness simply because the witness is an expert.
16 Further, you are not required to accept an expert's
17 opinion even though it is not contradicted.

18 A statement alleged to have been made
19 by the defendant has been admitted into evidence in
20 this case. While the Court has determined that the
21 statement is admissible, I instruct you that the
22 fact that you are the jurors, you make the ultimate
23 decision of whether or not the defendant made the
24 statement.

25 If the defendant did make the

JURY CHARGE

1 statement, you must determine whether the statement
2 was made by the defendant voluntarily and of his
3 own free will. This means that the statement was
4 not caused by pressure, force, fear, threats,
5 coercion, or intimidation, or by hope or a promise
6 of leniency or a reward of any kind.

7 In determining whether the statement
8 was voluntary, you should consider both the
9 characteristics of the defendant and the details of
10 the questioning. Some of the factors that you must
11 consider are the age of the defendant; the
12 defendant's education or lack of education; the
13 defendant's mental ability or capacity; the
14 defendant's IQ or intelligence; his background and
15 environment; the place and length of detention; the
16 nature of the questioning, and the advice or lack
17 thereof to the defendant of his constitutional
18 rights, including but not limited to the right to
19 remain silent; that any statement could be used
20 against him in a court of law; the right to have a
21 lawyer present; that if he could not afford a
22 lawyer, one would be appointed to represent him
23 without any cost; and that he could stop making the
24 statement at any time.

25 You must carefully consider all of the

JURY CHARGE

1 surrounding circumstances before you give any
2 weight to an alleged statement. The State has the
3 burden of proving beyond a reasonable doubt that
4 the alleged statement was voluntary. If you
5 determine it was, you may give the statement any
6 further consideration that you deem proper.

7 You must decide what weight, if any,
8 should be given to the alleged statement. If you
9 determine the alleged statement was not the free
10 and voluntary statement of the defendant, you
11 should not consider the statement at all.

12 In order to establish criminal
13 liability, criminal intent is required. The mental
14 state required to be proven by the State for a
15 particular crime might be purpose, intent,
16 knowledge, recklessness, or criminal negligence.

17 Criminal intent must be proven by the
18 State beyond a reasonable doubt. Criminal intent
19 is always a matter that must be determined by the
20 jury from the circumstances surrounding the
21 situation. There's no way to prove intent to a
22 mathematical certainty. There is no way medical
23 science can dissect a person's brain and determine
24 what the person had in mind.

25 The law says that criminal intent may

JURY CHARGE

1 be inferred from the circumstances shown to have
2 existed. This is how you make a determination of
3 whether or not the element requiring intent was
4 present. It is not necessary to establish intent
5 by direct and positive evidence, but intent may be
6 established by inference in the same way as any
7 other fact by taking into consideration the act of
8 the parties and all the facts and circumstances of
9 the case.

10 Criminal intent is a mental state. It
11 is a conscious wrongdoing. It is up to you to
12 determine what the defendant intended to do based
13 upon the circumstances shown to have existed.
14 Criminal intent can arise from action or a failure
15 to act. It may arise from negligence,
16 recklessness, or an indifference to duty or to
17 consequences that is considered by the law to be
18 the equivalent of criminal intent.

19 The defendant is charged with five
20 counts of criminal sexual conduct with a minor in
21 the first degree. In order to prove that offense,
22 the State must prove beyond a reasonable doubt that
23 the defendant engaged in a sexual battery with a
24 victim who was less than 11 years of age.

25 Sexual battery means sexual

JURY CHARGE

1 intercourse, cunnilingus, fellatio, anal
2 intercourse or any intrusion, however slight, of
3 any part of a person's body, or of any object into
4 the genital or anal opening of another person's
5 body, except when such intrusion is accomplished
6 for medically recognized treatment or diagnostic
7 purposes.

8 The defendant is charged with criminal
9 sexual conduct with a minor in the third degree.
10 The State must prove beyond a reasonable doubt that
11 the defendant was over 14 years of age, and the
12 defendant willfully and lewdly committed, or
13 attempted to commit, a lewd or lascivious act upon
14 or with the body or its parts of a child under the
15 age of 16 with the intent of arousing, appealing
16 to, or gratifying the lust, passions, or sexual
17 desires of the defendant or the child.

18 The defendant is charged with exposing
19 another to HIV virus. The State must prove beyond
20 a reasonable doubt that the defendant knew he was
21 infected with the virus and knowingly engaged in
22 sexual intercourse -- vaginal, anal, or oral --
23 with another person without first informing that
24 person of his HIV infection, or forcibly engaged in
25 sex intercourse -- vaginal, anal, or oral --

JURY CHARGE

1 without the consent of another person.

2 Insanity caused by the use of drugs or
3 alcohol may be a defense if the insanity is
4 permanent and destroys the defendant's ability to
5 know right from wrong; however, when voluntary
6 intoxication has not produced permanent insanity,
7 it is not a defense to a crime. A person who
8 voluntarily becomes intoxicated is just as
9 responsible for the acts committed while
10 intoxicated as when the person is not intoxicated.

11 I instruct you and emphasize the fact
12 that the defendant did not testify in this case is
13 not a factor to be considered by you in any way in
14 your deliberation and in your consideration on the
15 question of the guilt or innocence of the
16 defendant. It must not be considered by you in any
17 manner whatsoever.

18 A defendant has the constitutional
19 right to remain silent, and the assertion of this
20 right must not be considered by you in your
21 deliberations. I repeat, under your oath you are
22 to draw no conclusion whatsoever from the fact that
23 the defendant in this case did not testify. The
24 fact that the defendant did not testify should not
25 even be discussed in the jury room.

JURY CHARGE

1 Mr. Foreman, it is incumbent upon you
2 under your oath that you do not allow discussion
3 about this matter by other juror members.

4 The burden of proof, as I have stated
5 to you, is on the State. The defendant is not
6 required to prove his innocence. The burden of
7 proof remains on the State to prove guilt beyond a
8 reasonable doubt.

9 Ladies and gentlemen, I'm now going to
10 go over the verdict forms with you. Please
11 remember there is absolutely no significance in the
12 way that I read the verdict forms. It is simply
13 something has to go on the paper, and I have to
14 read one of the verdict forms first.

15 Mr. Foreman, you are responsible for
16 completing the seven separate forms, and we will go
17 over the forms now.

18 In the Court of General Sessions, Ninth
19 Judicial Circuit, indictment number
20 2016-GS-08-1369, State of South Carolina versus
21 Jeffrey Lance Whitsett, Defendant; we, the jury,
22 find the Defendant, Jeffrey Lance Whitsett, not
23 guilty; or we, the jury, find the Defendant,
24 Jeffrey Lance Whitsett, guilty of criminal sexual
25 conduct with a minor, first degree, to wit: Anal,

JURY CHARGE

1. penile penetration upon **Minor** .

2. Once you have reached a unanimous
3. decision on that verdict form you will sign it and
4. date it. Unanimous decision means all 12 of you
5. must agree on the decision.

6. In the Court of General Sessions, Ninth
7. Judicial Circuit, 2016-GS-08-1370, State of South
8. Carolina versus Jeffrey Lance Whitsett; we, the
9. jury, find the Defendant, Jeffrey Lance Whitsett,
10. not guilty; or we, the jury, find the Defendant,
11. Jeffrey Lance Whitsett, guilty of criminal sexual
12. conduct with a minor, first degree, penile genital
13. intercourse upon **Minor**

14. Once you have reached a unanimous
15. decision on that verdict, meaning all 12 of you
16. must agree on this verdict form, you would sign
17. that verdict form and date it.

18. In the Court of General Sessions, Ninth
19. Judicial Circuit, 2016-GS-08-1371, State of South
20. Carolina versus Jeffrey Lance Whitsett; we, the
21. jury, find the Defendant, Jeffrey Lance Whitsett,
22. not guilty; or we, the jury, find the Defendant,
23. Jeffrey Lance Whitsett, guilty of criminal sexual
24. conduct with a minor, first degree, digital
25. penetration upon **Minor** .

JURY CHARGE

1 Once you have reached a unanimous
2 decision on that verdict, once again, all 12 of you
3 must agree on the verdict, you will sign that
4 verdict form and date it.

5 In the Court of General Sessions, Ninth
6 Judicial Circuit, 2016-GS-08-1372, State of South
7 Carolina versus Jeffrey Lance Whitsett; we, the
8 jury, find the Defendant, Jeffrey Lance Whitsett,
9 not guilty; or we, the jury, find the Defendant,
10 Jeffrey Lance Whitsett, guilty of criminal sexual
11 conduct with a minor, first degree, fellatio, upon
12 Minor [REDACTED]

13 Once you have reached a unanimous
14 decision on that verdict form, that verdict -- you
15 will sign the verdict form indicating that you have
16 reached a unanimous decision, sign it and date it.

17 In the Court of General Sessions, Ninth
18 Judicial Circuit, 2016-GS-08-1373, State of South
19 Carolina versus Jeffrey Lance Whitsett; we, the
20 jury, find the Defendant, Jeffrey Lance Whitsett,
21 not guilty; or we, the jury, find the Defendant,
22 Jeffrey Lance Whitsett, guilty of criminal sexual
23 conduct with a minor, first degree, cunnilingus
24 upon Minor [REDACTED].

25 Once you have reached a unanimous

JURY CHARGE

1 decision upon that verdict, you will sign the
2 verdict form indicating your decision, sign and
3 date the verdict form.

4 In the Court of General Sessions, Ninth
5 Judicial Circuit, 2016-GS-08-1374; we, the jury,
6 find the Defendant, Jeffrey Lance Whitsett, not
7 guilty; or we, the jury, find the Defendant,
8 Jeffrey Lance Whitsett, guilty of criminal sexual
9 conduct with a minor, third degree.

10 Once you have reached a unanimous
11 decision on this verdict, you will sign the verdict
12 form indicating that all 12 of you have agreed and
13 date the verdict form.

14 In the Court of General Sessions, Ninth
15 Judicial Circuit, indictment 2016-GS-08-1375, State
16 of South Carolina versus Jeffrey Lance Whitsett;
17 we, the jury, find the Defendant, Jeffrey Lance
18 Whitsett, not guilty; or we, the jury, find the
19 Defendant, Jeffrey Lance Whitsett, guilty of
20 exposing another to HIV.

21 Once you have reached a unanimous
22 decision on that verdict form, you will sign the
23 verdict form and date it indicating your unanimous
24 verdict.

25 Once again, each indictment must be

JURY CHARGE

1 considered separately uninfluenced by your decision
2 on the other indictments.

3 Ladies and gentlemen, is there any
4 member of my first 12 that feel they would be
5 unable at this time to complete their deliberations
6 in this matter? If you feel that you would be
7 unable to complete your deliberations, please stand
8 at this time.

9 Thank you. All 12 have indicated that
10 they are able to complete their deliberations. To
11 my two alternates, this completes your service, but
12 I will have you remain with us until we have
13 secured the 12 and they have indicated that they
14 have begun their deliberations.

15 To my jurors, this is the last time
16 that I'm going to say this to you. Do not begin
17 your deliberations. Do not begin discussing this
18 case. We are getting the verdict forms and the
19 evidence to you, and once we do that, the bailiffs
20 will indicate that you may begin your
21 deliberations.

22 Ladies and gentlemen, please rise for
23 the jury.

24 (Jury out, 12:43 p.m.)

25 THE COURT: Any objections, corrections

1 to the charges as read?

2 MS. WILLIAMS: No, Your Honor.

3 MR. SCHWACKE: Other than our prior
4 objection.

5 THE COURT: Okay. Thank you.

6 Everything is boxed and ready to go
7 back so it's all organized.

8 (12:43 p.m. evidence sent back.)

9 THE COURT: Ms. Williams, any objection
10 to what has gone back?

11 MS. WILLIAMS: No, Your Honor.

12 MR. SCHWACKE: No, Your Honor.

13 THE COURT: We'll be at ease. Let your
14 office know I will begin back at 1:30.

15 (Jury deliberating.)

16 (Court EXH. 4, Jury note, was marked
17 for identification.)

18 (COURT EXH. 5, Jury note, was marked
19 for identification.)

20 (COURT EXH. 6, Jury note, was marked
21 for identification.)

22 (COURT EXH. 7, Jury note, was marked
23 for identification.)

24 THE COURT: We have a verdict.

25 Anything before we bring in the jury?

VERDICT

1 MS. WILLIAMS: Not from the State.

2 THE COURT: From the defendant?

3 MR. SCHWACKE: No, Your Honor.

4 (Jury in, 7:17 p.m.)

5 THE COURT: Thank you. Please be
6 seated.

7 I understand you have reached a
8 verdict. If you would please fold the verdict
9 forms and hand them to my bailiff.

10 Mr. Whitsett, please rise.

11 THE CLERK: In the Court of General
12 Sessions, County of Berkeley, Indictment Number
13 2016-GS-08-1369, State of South Carolina versus
14 Jeffrey Lance Whitsett; we, the, jury find the
15 Defendant Jeffrey Lance Whitsett guilty of criminal
16 sexual conduct with a minor, first degree, anal,
17 penile penetration upon Minor. Signed by
18 the foreperson.

19 Indictment number 2016-GS-08-1370,
20 State of South Carolina versus Jeffrey Lance
21 Whitsett; we, the jury, find the Defendant Jeffrey
22 Lance Whitsett guilty of criminal sexual conduct
23 with a minor, first degree, penal genital
24 intercourse upon Minor. Signed by the
25 foreperson.

VERDICT

1 Indictment number 2016-GS-08-1371 State
2 of South Carolina versus Jeffrey Lance Whitsett;
3 we, the jury, find the Defendant Jeffrey Lance
4 Whitsett guilty of criminal sexual conduct with a
5 minor, first degree, digital penetration upon
6 Minor . Signed by the foreperson.

7 Indictment number 2016-GS-08-1372,
8 State of South Carolina versus Jeffrey Lance
9 Whitsett; we, the jury find the Defendant Jeffrey
10 Lance Whitsett guilty of criminal sexual conduct
11 with a minor, first degree, fellatio upon Minor
12 . Signed by the foreperson.

13 Indictment number 2016-GS-08-1373,
14 State of South Carolina versus Jeffrey Lance
15 Whitsett; we, the jury, find the Defendant Jeffrey
16 Lance Whitsett guilty of criminal sexual conduct
17 with a minor, first degree, cunnilingus upon Minor
18 . Signed by the foreperson.

19 Indictment number 2016-GS-08-1374,
20 State of South versus Jeffrey Lance Whitsett, we,
21 the jury, find the Defendant Jeffrey Lance Whitsett
22 guilty of criminal sexual conduct with a minor,
23 third degree. Signed by the foreperson.

24 Indictment number 2016-GS-08-1375,
25 State of South Carolina versus Jeffrey Lance

VERDICT

1 Whitsett; we, the jury, find the Defendant Jeffrey
2 Lance Whitsett guilty of exposing another to HIV
3 virus. Signed by the foreperson.

4 Ladies and gentlemen, if this is your
5 verdict, please signify by raising your right hand.

6 THE JURY: (Raised hands.)

7 THE CLERK: Thank you.

8 THE COURT: Anything further required
9 of the jury from the defendant?

10 MR. SCHWACKE: The defense would
11 request the jury to be polled.

12 THE COURT: Ladies and gentlemen, you
13 are going to be polled. This is a very common
14 occurrence in general sessions.

15 Madame Clerk, will you poll the jury
16 using their numbers?

17 THE CLERK: Juror 195, is this your
18 verdict?

19 A JUROR: Yes.

20 THE CLERK: Is this still your verdict?

21 A JUROR: Yes.

22 THE CLERK: Juror number 105, is this
23 your verdict?

24 A JUROR: Yes.

25 THE CLERK: Is this still your verdict?

VERDICT

1 A JUROR: Yes.

2 THE CLERK: Juror number 36, is this
3 your verdict?

4 A JUROR: Yes.

5 THE CLERK: Is this still your verdict?

6 A JUROR: Yes.

7 THE CLERK: Juror number 26, is this
8 your verdict?

9 A JUROR: Yes.

10 THE CLERK: Is this still your verdict?

11 A JUROR: Yes.

12 THE CLERK: Juror number 75, is this
13 your verdict?

14 A JUROR: Yes.

15 THE CLERK: Is this still your verdict?

16 A JUROR: Yes.

17 THE CLERK: Juror number 43, is this
18 your verdict?

19 A JUROR: Yes.

20 THE CLERK: Is this still your verdict?

21 A JUROR: Yes.

22 THE CLERK: Juror number 151, is this
23 your verdict?

24 A JUROR: Yes.

25 THE CLERK: Is this still your verdict?

VERDICT

1 A JUROR: Yes.

2 THE CLERK: Juror number 108, is this
3 your verdict?

4 A JUROR: Yes.

5 THE CLERK: Is this still your verdict?

6 A JUROR: Yes.

7 THE CLERK: Juror number 182, is this
8 your verdict?

9 A JUROR: Yes.

10 THE CLERK: Is this still your verdict?

11 A JUROR: Yes.

12 THE CLERK: Juror number 178, is this
13 your verdict?

14 A JUROR: Yes.

15 THE CLERK: Is this still your verdict?

16 A JUROR: Yes.

17 THE CLERK: Juror number 27, is this
18 your verdict?

19 A JUROR: Yes.

20 THE CLERK: Is this still your verdict?

21 A JUROR: Yes.

22 THE CLERK: And juror number 107, is
23 this your verdict?

24 A JUROR: Yes.

25 THE CLERK: Is this still your verdict?

1 A JUROR: Yes. .

2 THE CLERK: Your Honor, the jury has
3 been polled and the verdict stands.

4 THE COURT: Anything further, Mr.
5 Schwacke?

6 MR. SCHWACKE: No, Your Honor.

7 THE COURT: Anything further required
8 of the jury from the State?

9 MS. WILLIAMS: No, Your Honor.

10 THE COURT: Please be stated. Thank
11 you.

12 Ladies and gentlemen, this completes
13 your service to this case. It also completes your
14 service for the week. Please be escorted back to
15 your jury room and I will be there in just a few
16 moments..

17 Mr. Foreman, I need you to sign the
18 indictments before you leave.

19 Please rise for the jury.

20 (Jury out, 7:28 p.m.)

21 THE COURT: Thank you. Please be
22 seated.

23 Outside the presence of the jury, any
24 motions or matters, Mr. Schwacke?

25 MR. SCHWACKE: Your Honor, I would at

1 this time renew all motions previously made on
2 behalf of Mr. Whitsett, and those would include the
3 introduction -- the objection the defense had to
4 the introduction of the audio-video recording of
5 the victim, the audio recording of the defendant
6 that was taken; and we would also renew other
7 motions that were made regarding third-party guilt
8 as well as -- our opposition to the voluntary
9 intoxication charge, and the -- and others that
10 were made previously during the course of the
11 trial.

12 THE COURT: Okay. Any response or any
13 further motion or matters?

14 MS. WILLIAMS: We stand on the previous
15 arguments, Your Honor.

16 THE COURT: At this time, I have heard
17 nothing to change my rulings that were initially
18 made, and note your exception to all of my previous
19 rulings, Mr. Schwacke.

20 Are you prepared for sentencing at this
21 time?

22 MS. WILLIAMS: Yes, Your Honor. We
23 would ask that you would sentence tonight. Ms. Sas
24 will be back in a couple of minutes with the
25 sentencing sheets.

1 THE COURT: Are you prepared for
2 sentencing?

3 MR. SCHWACKE: We are, Your Honor.

4 THE COURT: All right. Any objection
5 to excusing the jury?

6 MS. WILLIAMS: No.

7 THE COURT: Mr. Schwacke?

8 MR. SCHWACKE: No, Your Honor.

9 THE COURT: Let me know when you're
10 ready.

11 (COURT EXH. 8, Jury note, was marked
12 for identification.)

13 (A recess transpired.)

14 MR. SCHWACKE: Your Honor, for the
15 record, I'm not sure I made a request for a new
16 trial, again, based upon the lack of evidence and
17 insufficient evidence to sustain the conviction.

18 THE COURT: Okay. And I think that you
19 did, but just out of an abundance of caution, I
20 heard you and I deny your motion for a new trial on
21 that basis as well.

22 MR. SCHWACKE: Thank you.

23 THE COURT: All right. All of the
24 jurors wish to come in for sentencing.

25 MS. WILLIAMS: That's fine with the

1 State. We have all sentencing sheets done. I
2 didn't realize we needed the Judge Harrington
3 guilty sheets done.

4 THE COURT: If you will hand me the
5 sentencing sheets, that would be fine.

6 If you will remain seated when the jury
7 walks in.

8 (Jury in, 7:43 p.m.)

9 THE COURT: State ready to proceed?

10 MS. WILLIAMS: The State is ready, Your
11 Honor.

12 THE COURT: Defense ready?

13 MR. SCHWACKE: Yes, Your Honor.

14 THE COURT: Ms. Williams, I heard the
15 facts and I'm familiar with the prior record. Is
16 there anything else? Does anyone wish to address
17 the Court?

18 MS. WILLIAMS: Your Honor, Vitoria
19 Whitsett, the mother of the victim, would like to
20 address the Court, and the State would like to
21 address the Court very briefly.

22 I know you've heard all the facts, and
23 I think that you've recognized that this is an
24 important case to us and it's a serious case. He's
25 facing 25 years to life on the CSC first, with a

1 minor charge, 0 to 15 on the CSC, third charge, and
2 0 to 10 on the exposing others to HIV.

3 I realize Mr. Whitsett has been on his
4 best behavior. He only has two prior convictions,
5 which is a possession of a stolen vehicle,
6 receiving stolen goods from 2013, and a possession
7 of marijuana from 2008, but these are crimes that
8 are done in secret, behind closed doors.

9 Given the brutality of the attacks, the
10 indifference to this child with the exposure to
11 HIV, the State would ask for the maximum sentence
12 of life.

13 At the appropriate time, Vitoria
14 Whitsett, the mother, would like to address Your
15 Honor.

16 THE COURT: I'm happy to hear from her.

17 Yes, ma'am, I'm happy to hear from you.

18 THE WITNESS: I am sorry to take your
19 time. I just want you consider the fact how much
20 that event changed for my daughter. She is not her
21 normal child. I mean, she's very angry and she's
22 always up nervous around people since that happened
23 and she will need a lot of counselling. And what I
24 can (inaudible) been going to church and doing a
25 lot more counselling, but she would need more.

1 So please, please I'm just begging you
2 as a mother, I hope, and consider this, and what he
3 had done with her changed her life forever and my
4 life, big one. And I'm just glad he will never
5 hopefully do that again to another child.

6 THE COURT: Thank you.

7 THE WITNESS: Thank you.

8 THE COURT: Anything else from the
9 State?

10 MS. WILLIAMS: Not from the State, Your
11 Honor.

12 THE COURT: Mr. Schwacke, I'm happy to
13 hear from you.

14 MR. SCHWACKE: Thank you, Your Honor.

15 Mr. Whitsett is 27 years of age. He
16 was born here in the lowcountry. He attended West
17 Ashley High School through tenth grade. His last
18 employment he was working with Charleston Sheet and
19 Metal. He also recently had been working with
20 North American Tractor, heavy equipment repair
21 facility.

22 The State has told you of Mr.
23 Whitsett's prior record. It is all magistrate
24 level offenses, including a possession of marijuana
25 conviction from 2008, receiving stolen goods less

1 than 2000, from 2013, and a possession of a stolen
2 vehicle also under the \$2,000 mark, making those
3 magistrate level offenses that carry no more than
4 30 days each. He has no other prior record.

5 Your Honor, we respect the verdict of
6 the jury. We understand the sentencing request of
7 the State. We would, however, ask that you temper
8 as much mercy with justice in fashioning the
9 sentence.

10 He understands that no matter what it
11 is, it's going to have mandatory sentencing
12 requirements, and we would just ask for the Court
13 to show as much mercy as possible.

14 THE COURT: Mr. Schwacke, did you
15 advise your client that the criminal sexual conduct
16 with a minor in the first degree is a violent and a
17 most serious offense?

18 MR. SCHWACKE: Yes, ma'am, I have
19 instructed him that those are mandatory 85 percent,
20 no parole offenses in any event. The only one that
21 doesn't have that component to it would be the
22 exposure of HIV virus.

23 THE COURT: Okay.

24 MR. SCHWACKE: And the CSC third.

25 THE COURT: The CSC third is a violent

1 and most serious offense as well.

2 MR. SCHWACKE: I was talking about in
3 terms of the 85 percent. So he understands the
4 strike situation with those being classified as
5 most serious and violent offenses.

6 THE COURT: Did you advise your client
7 of his right to appeal the decision within ten
8 days?

9 MR. SCHWACKE: I have.

10 THE COURT: And did he understand?

11 MR. SCHWACKE: He does understand.

12 THE COURT: Did you also advise your
13 client of all the collateral consequences of this
14 conviction for a sex offense?

15 MR. SCHWACKE: Correct. He understands
16 that they are sex offender registry offenses. He
17 understands with regard to the CSC, third, with a
18 minor that that is a mandatory GPS monitoring for
19 life. He also understands that based upon these,
20 he is subject to the Sexually Violent Predator Act
21 that comes into play should he ever become eligible
22 for release of prison.

23 THE COURT: Is there anything else you
24 wish to tell the Court?

25 MR. SCHWACKE: No, Your Honor.

SENTENCING

1 THE COURT: Mr. Whitsett, please stand.

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Mr. Whitsett, your attorney
4 has indicated to me that he's explained to you your
5 appellate rights. Do you understand that you have
6 the right to appeal the jury's verdict, but you
7 must do so within ten days of today's date? I'm
8 going to sentence you now.

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Do you have any questions
11 about that?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Do you understand that the
14 criminal sexual conduct with a minor in the first
15 degree, and criminal sexual with a minor, third
16 degree are all violent and most serious offenses
17 and what that means to you?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you understand that you
20 are now subject to lifetime GPS monitoring,
21 lifetime sexual offender registry, and a potential
22 for a sexually violent predator classification?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you have anything you
25 wish to tell the Court? I understand that your

SENTENCING

1 attorney may have advised you not to address the
2 Court due to appellate reasons. Is there anything
3 you wish to tell me before I impose sentence?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Mr. Schwacke, anything
6 further?

7 MR. SCHWACKE: No, Your Honor.

8 THE COURT: Ms. Williams, anything
9 further?

10 MS. WILLIAMS: Not from the State, Your
11 Honor.

12 THE COURT: Criminal sexual conduct
13 with a minor, first degree, is 25 to life; is that
14 correct?

15 MS. WILLIAMS: That's correct.

16 THE COURT: And criminal sexual conduct
17 with a minor in the third degree is 0 to 15 and/or
18 a fine in the Court's discretion?

19 MS. WILLIAMS: That is correct.

20 THE COURT: And the exposure to HIV is
21 up to ten and up to a \$5,000 fine; is that correct?

22 MS. WILLIAMS: That's correct.

23 THE COURT: Is that your understanding,
24 Mr. Schwacke?

25 MR. SCHWACKE: It is, and that has been

SENTENCING

1 explained to Mr. Whitsett.

2 THE COURT: Okay. It's the order of
3 the Court on 2016-GS-08-1369, 2016-GS-08-1370,
4 2016-GS-08-1372, 2016-GS-08-1373, that you be
5 committed to the State Department of corrections
6 for a term of 45 years.

7 It is the order of the Court on
8 2016-GS-08-1374 that you be committed to the State
9 Department of Corrections for a term of 15 years.
10 Those indictments will run concurrent.

11 It's the order of the Court on
12 2016-GS-08-1375 that you be committed to the State
13 Department of Corrections for a term of ten years.
14 That will run consecutive to the previous
15 indictments.

16 I'll give you credit for any time that
17 you have served pursuant to 24-13-40.

18 Good luck to you, sir.

19 THE DEFENDANT: Thank you, Your Honor.

20 MR. SCHWACKE: Thank you, Your Honor.

21 THE COURT: Thank you, again, to your
22 service to Berkeley County and to our justice
23 system. And we will -- you all have your
24 belongings, correct?

25 Okay. Is there any reason -- we can

1 take them out the front, right?

2 THE DEPUTY: We can.

3 THE COURT: We will escort you out. My
4 deputies will escort you out. Thank you for your
5 service.

6 (Jury out, 7:48 p.m.)

7 THE COURT: Anything further, Ms..
8 Williams?

9 MS. WILLIAMS: No, nothing.

10 THE COURT: Anything further Mr..
11 Schwacke?

12 MR. SCHWACKE: No.

13 THE COURT: As always to the four of
14 you -- Ms. Tolley, this is our first trial, but as
15 always, Mr. Schwacke, and, Ms. Williams, and, Ms.
16 Sas, you are the ultimate professionals.

17 Thank you for being so prepared and
18 handling a very delicate matter with the upmost
19 profession.

20 MS. WILLIAMS: Thank you.

21 MR. SCHWACKE: Thank you.

22 THE COURT: And thank you to our staff.
23 Thank you.

24 Thank you, Detective Fenton.

25 (These proceedings were concluded at

1 7:53 p.m.)

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669

AMW/0305831
WITNESSES

Berkeley County Sheriff's Office

R. Cottle 6/28/16

AGENCY CASE NUMBER

2015-06028560

ARREST WARRANT NUMBER

2016-GS-08-01369

DATE OF ARREST

06/10/2015

ACTION OF GRAND JURY

True Bill

Jina Marshall 6/28/16
Foreperson of Grand Jury Date:

VERDICT

Guilt

A. Williams 6-29-2017
Foreperson of Petit Jury Date:

DOCKET NO. 2016-GS-08-01369

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2016

THE STATE

VS.

JEFFEREY LANCE WHITSETT
W/M DOB: 02-22-1990

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR, FIRST DEGREE**

SC Code: § 16-03-0655(A)(1)
CDR Code: 0385

16 JUN 29 AM 10:06
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

AMW
FILED

KWM

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

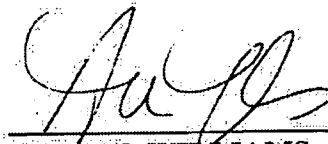
INDICTMENT

At a Court of General Sessions, convened June 2016, the Grand Jurors of Berkeley County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That in Berkeley County, South Carolina, on or between January 1, 2015 - May 30, 2015, the Defendant, Jefferey Lance Whitsett, did commit, a sexual battery, To wit anal/penile penetration upon the victim, Minor [REDACTED], a minor who was less than eleven years of age in violation of Sections 16-3-655(A)(1) of the South Carolina Code of Laws, (1976), as amended.

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



ANNE M. WILLIAMS
SENIOR ASSISTANT SOLICITOR

701

AMW/0305831
WITNESSES

Berkeley County Sheriff's Office

R. Cottle 6/28/16

AGENCY CASE NUMBER

2015-06028560

ARREST WARRANT NUMBER

2016-GS-08-01370

DATE OF ARREST

06/10/2015

ACTION OF GRAND JURY

True Bill

Vina Marshall 6/28/16
Foreperson of Grand Jury Date:

VERDICT

Guilty

C. Williams 6-24-17
Foreperson of Petit Jury Date:

DOCKET NO. 2016-GS-08-01370

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2016

THE STATE

VS.

JEFFEREY LANCE WHITSETT
W/M DOB: 02-22-1990

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR, FIRST DEGREE

SC Code: § 16-03-0655(A)(1)
CDR Code: 0385

16 JUN 29 AM 10:06

FILED

AMH

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

KWM

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened June 2016, the Grand Jurors of Berkeley County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That in Berkeley County, South Carolina, on or between January 1, 2015 - May 30, 2015, the Defendant, Jefferey Lance Whitsett, did commit, a sexual battery, To wit: penile/genital intercourse upon the victim, Minor [REDACTED], a minor who was less than eleven years of age in violation of Sections 16-3-655(A)(1) of the South Carolina Code of Laws, (1976), as amended.

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



ANNE M. WILLIAMS
SENIOR ASSISTANT SOLICITOR

AMW/0305831
WITNESSES

Berkeley County Sheriff's Office

R. Cottle 6/28/16

AGENCY CASE NUMBER

2015-06028560

ARREST WARRANT NUMBER

2016-GS-08-01371

DATE OF ARREST

06/10/2015

ACTION OF GRAND JURY

True Bill

Uma Marshall 6/28/16
Foreperson of Grand Jury Date:

VERDICT

Guilty

H. Williams 6-24-17
Foreperson of Petit Jury Date:

DOCKET NO. 2016-GS-08-01371

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2016

THE STATE

VS.

JEFFEREY LANCE WHITSETT
W/M DOB: 02-22-1990

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR, FIRST DEGREE**

SC Code: § 16-03-0655(A)(1)
CDR Code: 0385

16 JUN 29 AM 10:06
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

J. M. H.

KWM

STATE OF SOUTH CAROLINA

INDICTMENT

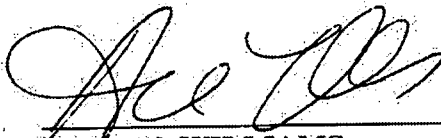
COUNTY OF BERKELEY

At a Court of General Sessions, convened June 2016, the Grand Jurors of Berkeley County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That in Berkeley County, South Carolina, on or between January 1, 2015 - May 30, 2015, the Defendant, Jefferey Lance Whitsett, did commit, a sexual battery, To wit: digital penetration upon the victim, Minor [REDACTED], a minor who was less than eleven years of age in violation of Sections 16-3-655(A)(1) of the South Carolina Code of Laws, (1976), as amended.

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



ANNE M. WILLIAMS
SENIOR ASSISTANT SOLICITOR

AMW/0305831
WITNESSES

Berkeley County Sheriff's Office

R Cortte 6/28/16

AGENCY CASE NUMBER

2015-06028560

ARREST WARRANT NUMBER

2016-GS-08-01372

DATE OF ARREST

06/10/2015

ACTION OF GRAND JURY

True Bill

Jina Marshall 6/28/16
Foreperson of Grand Jury Date:

VERDICT

Guilty

William 6-24-17
Foreperson of Petit Jury Date:

DOCKET NO. 2016-GS-08-01372

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2016

THE STATE

VS.

JEFFEREY LANCE WHITSETT
W/M DOB: 02-22-1990

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR, FIRST DEGREE

SC Code: § 16-03-0655(A)(1)
CDR Code: 0385

16 JUN 29 AM 10:06
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

AMH

KWM

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

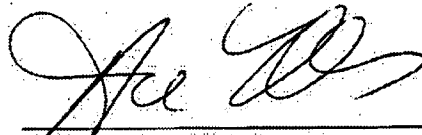
INDICTMENT

At a Court of General Sessions, convened June 2016, the Grand Jurors of Berkeley County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That in Berkeley County, South Carolina, on or between January 1, 2015 - May 30, 2015, the Defendant, Jefferey Lance Whitsett, did commit, a sexual battery, To wit: Fellatio, upon the victim, **Minor**, a minor who was less than eleven years of age in violation of Sections 16-3-655(A)(1) of the South Carolina Code of Laws, (1976), as amended.

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



ANNE M. WILLIAMS
SENIOR ASSISTANT SOLICITOR

AMW/0305831
WITNESSES

Berkeley County Sheriff's Office

R. Cottle 6/28/16

AGENCY CASE NUMBER

2015-06028560

ARREST WARRANT NUMBER

2016-GS-08-01373

DATE OF ARREST

06/10/2015

ACTION OF GRAND JURY

True Bill

Uma Marshall 6/28/16
Foreperson of Grand Jury Date:

VERDICT

Guilty

William 6-29-17
Foreperson of Petit Jury Date:

DOCKET NO. 2016-GS-08-01373

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2016

THE STATE

VS.

JEFFEREY LANCE WHITSETT
W/M DOB: 02-22-1990

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR, FIRST DEGREE**

SC Code: § 16-03-0655(A)(1)
CDR Code: 0385

16 JUN 29 AM 10:06
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

AMW

nwm

STATE OF SOUTH CAROLINA

INDICTMENT

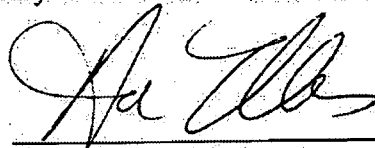
COUNTY OF BERKELEY

At a Court of General Sessions, convened June 2016, the Grand Jurors of Berkeley County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That in Berkeley County, South Carolina, on or between January 1, 2015 - May 30, 2015, the Defendant, Jefferey Lance Whitsett, did commit, a sexual battery, To wit: Cunnilingus upon the victim Minor, a minor who was less than eleven years of age in violation of Sections 16-3-655(A)(1) of the South Carolina Code of Laws, (1976), as amended.

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



ANNE M. WILLIAMS
SENIOR ASSISTANT SOLICITOR

AMW/0305831
WITNESSES

Berkeley County Sheriff's Office

RCatt 6/28/16

AGENCY CASE NUMBER

2015-06028560

ARREST WARRANT NUMBER

2016-GS-08-01374

DATE OF ARREST

06/10/2015

ACTION OF GRAND JURY

True Bill

Uma Marshall *6/28/16*
Foreperson of Grand Jury Date:

VERDICT

Guilty

William *6-24-17*
Foreperson of Petit Jury Date:

DOCKET NO. 2016-GS-08-01374

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2016

THE STATE

VS.

JEFFEREY LANCE WHITSETT

W/M DOB: 02-22-1990

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR, THIRD DEGREE**

SC Code: § 16-03-0655(C)

CDR Code: 3661

16 JUN 29 AM 10:06
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

*AMW
FILED*

KWM

AMW/0316100
WITNESSES

Berkeley County Sheriff's Office

R. Gottle 6/28/16

AGENCY CASE NUMBER

2015-06028560

ARREST WARRANT NUMBER

2016A0810400266

DATE OF ARREST

04/01/2016

ACTION OF GRAND JURY

True Bill

Jina Marshall
Foreperson of Grand Jury

6/28/16
Date:

VERDICT

Guilty

G. Williams
Foreperson of Petit Jury

6-29-17
Date:

DOCKET NO. 2016-GS-08-01375

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2016

THE STATE

VS.

JEFFEREY LANCE WHITSETT

W/M DOB: 02-22-1990

Indictment for

EXPOSING ANOTHER TO HIV VIRUS

SC Code: § 44-29-0145

CDR Code: 1561

16 JUN 29 AM 10:06
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

AMH
FILED

AMH

STATE OF SOUTH CAROLINA

INDICTMENT

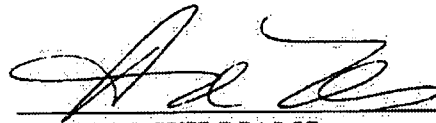
COUNTY OF BERKELEY

At a Court of General Sessions, convened June 2016, the Grand Jurors of Berkeley County present upon their oath:

EXPOSING ANOTHER TO HIV VIRUS

That in Berkeley County, on or between January 1, 2015 and May 30, 2015, the Defendant, Jefferey Lance Whitsett, knowing he was infected with Human Immunodeficiency Virus (HIV), did (1) knowingly engage in sexual intercourse, vaginal, anal, or oral, with another person without first informing that person of his HIV infection; or (2) knowingly commit an act of prostitution with another person; or (3) knowingly sell or donate blood, blood products, semen, tissue, organs, or other body fluids; or (4) forcibly engage in sexual intercourse, vaginal, anal or oral, without the consent of the other person, including a legal spouse; or (5) knowingly share with another person a hypodermic needle, syringe or both, for the introduction of drugs or any other substance into, or for the withdrawal of blood or body fluids from the other person's body without first informing that person that the needle, syringe or both, had been used by someone infected with HIV. This in violation of South Carolina Code Ann. Section 44-29-0145 (1976) as amended.

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

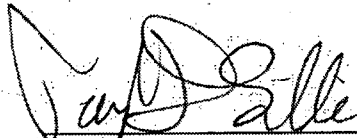


ANNE M. WILLIAMS
SENIOR ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 15th day of June, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 15th day of June, 2018.

RECEIVED

JUN 15 2018

SC Court of Appeals