

23231

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Beaufort County  
John C. Hayes, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

BENJAMIN CERVANTES HERNANDEZ,

APPELLANT

APPELLATE CASE NO 2016-000612

---

RECORD ON APPEAL

---

SUSAN B. HACKETT  
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON  
Attorney General

MARK FARTHING  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ISAAC McDUFFIE STONE, III  
Solicitor, Fourteenth Judicial Circuit  
Post Office Box 1880  
Bluffton, SC 29910  
(843) 255-5880

ATTORNEYS FOR RESPONDENT

INDEX

|                                                   |     |
|---------------------------------------------------|-----|
| INDEX .....                                       | i   |
| TRIAL TRANSCRIPT DATED FEBRUARY 22-25, 2016 ..... | 1   |
| OPENING STATEMENT BY MS. KEENEY .....             | 8   |
| OPENING STATEMENT BY MS. DOVELL .....             | 12  |
| TESTIMONY                                         |     |
| MARIA PIZANA                                      |     |
| Direct examination by Ms. Keeney .....            | 13  |
| Cross examination by Ms. Dovell .....             | 18  |
| Redirect examination by Ms. Keeney .....          | 24  |
| KAREN DROZD                                       |     |
| Direct examination by Ms. Keeney .....            | 25  |
| Cross examination by Ms. Dovell .....             | 31  |
| LINDSEY GIBSON                                    |     |
| Direct examination by Ms. Keeney .....            | 39  |
| Cross examination by Ms. Dovell .....             | 42  |
| WILLIAM FERRELLI                                  |     |
| Direct examination by Ms. Keeney .....            | 44  |
| Cross examination by Ms. Dovell .....             | 49  |
| MINOR 1                                           |     |
| Direct examination by Ms. Keeney .....            | 51  |
| Cross examination by Ms. Dovell .....             | 62  |
| MINOR 3                                           |     |
| Direct examination by Ms. Keeney .....            | 80  |
| Cross examination by Ms. Dovell .....             | 87  |
| MINOR 2                                           |     |
| Direct examination by Ms. Keeney .....            | 90  |
| Cross examination by Ms. Dovell .....             | 94  |
| KENDRA TWITTY                                     |     |
| Direct examination by Ms. Keeney .....            | 98  |
| Cross examination by Ms. Dovell .....             | 103 |

|                                              |     |
|----------------------------------------------|-----|
| BAKER ODOM                                   |     |
| Direct examination by Ms. Keeney .....       | 106 |
| Cross examination by Ms. Dovell.....         | 113 |
| BONIFACIO PEREZ                              |     |
| Direct examination by Ms. Keeney .....       | 114 |
| Cross examination by Ms. Dovell.....         | 120 |
| MOTION FOR A DIRECTED VERDICT.....           | 123 |
| RULING BY THE COURT.....                     | 124 |
| TESTIMONY                                    |     |
| BENJAMIN CERVANTES-HERNANDEZ                 |     |
| Direct examination by Ms. Dovell.....        | 131 |
| Cross examination by Ms. Keeney .....        | 145 |
| RENEWAL OF ALL MOTIONS.....                  | 149 |
| RULING BY THE COURT.....                     | 151 |
| CHARGE CONFERENCE.....                       | 151 |
| CLOSING ARGUMENT BY MS. DOVELL .....         | 158 |
| CLOSING ARGUMENT BY MS. KEENEY .....         | 163 |
| CHARGE ON THE LAW .....                      | 174 |
| JURY NOTE.....                               | 191 |
| RECHARGING THE LAW .....                     | 192 |
| VERDICT .....                                | 195 |
| SENTENCING .....                             | 209 |
| COURT'S EXHIBIT #13 (JURY INSTRUCTIONS)..... | 210 |
| COURT'S EXHIBIT #14 (JURY NOTE).....         | 229 |
| MOTION FOR NEW TRIAL.....                    | 230 |
| MOTION TO RECONSIDER SENTENCE.....           | 231 |

|                                                             |     |
|-------------------------------------------------------------|-----|
| ORDER DENYING MOTION FOR NEW TRIAL AND RECONSIDERATION..... | 233 |
| INDICTMENTS .....                                           | 234 |
| SENTENCE SHEET.....                                         | 240 |
| CERTIFICATE OF COUNSEL .....                                | 241 |

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:  
 STATE'S EXHIBIT #1 (RECORDING FROM OFFICER'S BODY CAMERA); STATE'S  
 EXHIBIT #2 (FORENSIC INTERVIEW-MINOR 1); STATE'S EXHIBIT #3 (FORENSIC  
 INTERVIEW-MINOR 3); STATE'S EXHIBIT #4 (FORENSIC INTERVIEW-MINOR 2);  
 STATE'S EXHIBIT #6 (RECORDING OF APPELLANT'S INTERROGATION)**

State of South Carolina., )  
 )  
 )  
County of Beaufort., )

In the Court of General  
Sessions for Beaufort

Case No.: 2010-GS-23-06118

State of South Carolina., )  
 )  
Plaintiff., )  
 )  
-vs- )  
 )  
Benjamin Cervantes-Hernandez )  
 )  
Defendant. )  
 )

Transcript of Record  
Of Record

February 22-25, 2016  
Beaufort, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., Judge, and a jury.

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

Ms. Julie Kate Keeney  
Assistant Solicitor  
Fourteenth Judicial Circuit  
Beaufort, South Carolina  
For the Plaintiff

Ms. Helen Dovell, Esquire  
Associate Attorney  
The Law Office of Mrak J. Devine, LLC  
507 Savannah Highway  
Charleston, South Carolina 29407  
For the Defendant

**ORIGINAL**

1 Hernandez.

2 Would you have Mr. Hernandez - Cervantes-Hernandez  
3 stand?

4 (DEFENDANT STANDS.)

5 THE COURT: And he is represented by Ms. Helen Dovell.

6 You may be seated.

7 The defendant Mr. Cervantes-Hernandez is not fluent in  
8 English so he will be - the reason I'm telling you that is  
9 he has seated beside him a lady who I have not met yet but  
10 who will be translating for him.

11 Another translator translating for the Court.

12 You will see her discussing with him. She is telling  
13 him what I'm saying, what the witnesses are saying, and  
14 whatever else happens.

15 The State is represented by Julie Kate Keeney.

16 (SOLICITOR KEENEY STANDS.)

17 THE COURT: You may be seated.

18 I'm gonna let her tell us now the charges against Mr.  
19 Cervantes-Hernandez.

20 SOLICITOR KEENEY: Thank you, your Honor.

21 The State calls Benjamin Cervantes-Hernandez  
22 Indictment Number 2015-GS-07-0-1-2-0-5 criminal sexual  
23 conduct with a minor, second degree. Indictment Number  
24 2015-GS-07-0-1-2-9-6 criminal sexual conduct with a minor  
25 third degree. And Indictment Number 2015-GS-07-0-1-2-9-7

1 criminal sexual conduct with a minor third degree.

2 THE COURT: Members of the jury panel, you've heard  
3 the charges and what Ms. Keeney has read out are just  
4 charges. They are not evidence of anything. These  
5 indictments contain the charges against Mr. Cervantes-  
6 Hernandez but they're not evidence. And he is charged with  
7 three counts of criminal sexual conduct with a minor that  
8 allegedly occurred here in Beaufort County on July 17th,  
9 2015.

10 To these charges he has entered pleas of not guilty  
11 which places on the State the burden of proving his guilt  
12 beyond a reasonable doubt before a jury could convict him.

13 I have to go over now similar questions as I did  
14 earlier but this time I'm not going to ask you to come  
15 forward and form a line. What I am going to do is if you  
16 have to respond to any of these questions and if you think  
17 there is a marginal - is marginal whether you need to  
18 respond or not then respond, just stand where you are and  
19 we'll have a dialogue between me and you where you are as  
20 opposed to forming a line.

21 First, are any of you related by blood or marriage to  
22 Mr. Cervantes-Hernandez or Ms. Keeney - Keener - I'm sorry.

23 SOLICITOR KEENEY: Keeney.

24 THE COURT: Keeney and or Ms. Dower; if so, please  
25 stand?

1 comfortably seated, if you would stand the Clerk would  
2 administer the oath.

3 (JURY SWORN BY CLERK OF COURT AT 3:34 P.M.)

4 THE COURT: First, I appreciate your patience. I kind  
5 of underestimated how much we needed to do to make the case  
6 go much more smoothly. But I assure you that the work  
7 we've been doing yesterday and today will help the case go  
8 smoother and more promptly now that you are in here and you  
9 will not have to be shuffling in and out that may have had  
10 to occur otherwise. As I understand, you are now -- which  
11 one of you -- Wendy, and I'm probably mispronouncing it, I  
12 am definitely, you're now on the panel. The -- Ms.  
13 Kittridge remembered something that she told us about that  
14 required me to let her go, even though she promised me, and  
15 I believe that she still could have been fair and  
16 impartial, but she didn't do anything wrong. In fact, she  
17 did exactly right, letting me know that something had  
18 blasted her memory, so that's -- that's why we're -- where  
19 we are.

20 And even though, Mr. Turner, you were drawn before Ms.  
21 Andstat -- we draw by lots -- So, even though you,  
22 chronologically would have be next, we don't do it that  
23 way. We write your names on a little pieces of paper, and  
24 you were the lucky one that got drawn.

25 Now, I'm going to chat with you just a little bit

-199-

1 before I turn the case over to the attorneys. Mr.  
2 Cervantes-Hernandez is charged with these three sexual --  
3 criminal sexual conduct of a minor charges. To these, each  
4 and every one, he has entered pleas of not guilty. His  
5 pleas of not guilty place on the State the burden of  
6 proving his guilt beyond a reasonable doubt. He, as to  
7 these charges, is presumed innocent, and I will talk to you  
8 more about that at the end of the trial. But again, he  
9 does not have to prove his innocence, the State must prove  
10 his guilt beyond a reasonable doubt.

11 Now, I have three primary jobs in this case. One is,  
12 I am the logistics person, and I make sure we take breaks,  
13 that we -- make sure that one person is talking at a time,  
14 make sure that you can hear and see those things that are  
15 important for you to see and hear.

16 I also rule on evidentiary matters, and that's some of  
17 what I've been doing for the last day and a half. But it's  
18 up to me to determine what evidence that one side or the  
19 other believes is relevant, and if, for some reason, the  
20 other side believes that the evidence should not be  
21 submitted for your consideration, it's up to me to make the  
22 final determination on that.

23 My third job is that I am the sole judge of the law in  
24 this case. You are required to take, accept, and apply the  
25 law as I charge it, even if you think I charge the law in

1 error, or even if you think the law should be different. I  
2 am giving you a few legal principles now. During the  
3 trial, I may give you some. At the end of the trial, I  
4 will give you a concise and comprehensive charge on the  
5 law, which you are to apply to the facts as you determine  
6 them to be.

7 Now, you are the judge of the facts. You are not to  
8 infer from anything I say or do at any time as indicating  
9 an opinion of mine on the facts. Our law does not allow a  
10 trial judge to formulate or to express to a jury any  
11 opinion on the facts. It is solely your providence to  
12 examine the evidence, to give the evidence the effect, the  
13 value, the truth, you believe it should have. In doing  
14 this, you may believe one witness, as opposed to several;  
15 several witnesses, as opposed to one. You may believe all,  
16 part, or none of a witness's testimony. Use your common  
17 sense, your sense of logic, your sense of reason, and your  
18 experiences in life as you analyze the evidence.

19 As judges of the facts, you necessarily must judge the  
20 credibility, that is, the believability of the witnesses  
21 who testify. In assessing believability, use the things  
22 I've just talked about. Use the things that you find in  
23 your day-to-day life as being indicators of truthfulness in  
24 individuals, and you can use certain evaluators. The  
25 witness's demeanor, how they act on the stand. Are they

-201-

1 hesitant, straightforward? Is their testimony consistent  
2 or inconsistent? Consider the opportunity a witness had to  
3 know those things about which that witness testifies. And  
4 you can consider whether a witness has any bias or  
5 prejudice, any reason, that is, to help or hurt one side or  
6 the other. All of these things you consider, determine the  
7 true facts, apply the law, and you'll return a verdict that  
8 speaks the truth.

9 I've already talked to you about not discussing the  
10 case and not trying to make up your own mind, not being  
11 exposed to news coverage; not using any research methods,  
12 electronic or otherwise. I'm not going to repeat that.

13 In just a moment, the attorneys have the right, but no  
14 obligation, to come before you and make what we call  
15 opening statements. They're not giving you arguments.  
16 That is, they're not trying to convince you of anything.  
17 That'll come at a later time, after the presentation of the  
18 evidence. At this point, they will simply give you an  
19 outline or a blueprint of the trial. They'll be telling  
20 you what they expect, what this case is more about than I,  
21 and they will also be telling you how they think the case  
22 may proceed. Again, these are just opening statements,  
23 they're not arguments.

24 We take breaks about every hour and a half, but if  
25 anybody needs a break at any time, just raise your right

1 hand, and with no questions asked, we'll take a break.  
2 We'd like to move the case along, but we're not in such a  
3 hurry that, if someone needs a break, we won't take a  
4 break. And I extend that to Counsel and Mr. Cervantes-  
5 Hernandez, also. If we need a break, we'll take it.

6 If you can't see or hear, cup your ear, voice raising  
7 gesture, or a nudging gesture, so I can make whatever's in  
8 your way be moved or move, and make whoever's not being  
9 loud enough be louder. And there's no need to take notes.  
10 I ask that you not take notes, that you just simply pay  
11 close attention to the testimony and the evidence.

12 Counsel.

13 SOLICITOR KEENEY: May it please the Court?

14 THE COURT: Yes, ma'am.

15 OPENING STATEMENT BY SOLICITOR KEENEY:

16 SOLICITOR KEENEY: Good afternoon. The Jimenez  
17 family, they trusted the defendant, Benjamin Cervantes-  
18 Hernandez. They considered him family. In fact, the girls  
19 that you're going to hear from today actually call him,  
20 Uncle. On July 17, 2015, the defendant, he violated that  
21 trust. You see, that day, he touched eleven-year-old  
22 Minor 1, eleven-year-old Minor 3 and nine-year-old  
23 Minor 2 on their private parts, in the Jimenez home.

24 The little girls told the mother, Maria, the mother of  
25 Minor 1 and Minor 2 Minor 3 is their cousin. And that

-203-

1 night, Maria called the Bluffton Public Police. The  
2 Bluffton Police Department responded to [REDACTED],  
3 Bluffton, South Carolina. When they arrived on the scene,  
4 they found the defendant there, along with the girls, and  
5 several other family members. You're going to hear from  
6 the officers from the Bluffton Police Department about what  
7 they learned that night, what they saw, and just about  
8 their investigation.

9 You're also going to hear from Minor 1, Minor 2, and  
10 Minor 3, and they're going to tell you about what happened  
11 to them that night. They're going to tell you about what  
12 the defendant did to them, and it's going to be  
13 uncomfortable for everyone involved, because little girls,  
14 for that matter, nobody wants to talk about this. Nobody  
15 wants to talk about someone violating their body parts.  
16 And I assure you, eleven-year-old and nine-year-old little  
17 girls don't want to talk about that. But we have to.  
18 That's what we're here for today.

19 You're also going to hear from the defendant, through  
20 his statement that he gave to law enforcement. I'm going  
21 to ask that you listen very carefully to it, and at times,  
22 it's going to be painful, because there's a translator  
23 there, and we're -- the officers there who speak -- the  
24 main officer speaks English, and then the translator who is  
25 translating to the defendant, and then telling the officer

1 what he said. And it's going to be long, and it's going to  
2 be painful, but it's important. It's important to the  
3 State. It's important to Minor 1. It's important to  
4 Minor 2. It's important to Minor 3. And it's important to  
5 their families.

6 Now, in this case, I have to prove to you beyond a  
7 reasonable doubt that the defendant committed criminal  
8 sexual conduct with a minor, second degree. So, you're  
9 going to ask yourself, what is that? What does that mean?  
10 The judge is going to charge you on the law towards the end  
11 of the trial, and what he says goes. He is the judge of  
12 the law, but I'm going to give you a brief overview of what  
13 it means. Criminal sexual conduct with a minor, second  
14 degree, and this is what we're talking about what he did  
15 with Minor 1 the eleven-year-old, I have to prove to you  
16 that the defendant engaged in a sexual battery with someone  
17 who is at least eleven years of age. Minor 1 is eleven.

18 You're going to ask yourself, what does sexual battery  
19 mean? Sexual battery has numerous definitions, but the one  
20 that applies to this case is that, if someone intrudes a  
21 person's genital areas, however slight then that is a  
22 sexual battery. In this case, we are talking about genital  
23 penetration, talking about using his hand, his fingers,  
24 going into her lower private area.

25 Now, I also have to prove to you that he conducted

-205-

1 criminal sexual conduct with a minor, third degree, and  
2 that's two counts of that. That's for **Minor 2** and for  
3 **Minor 3** Now, that definition is a little bit more  
4 complicated but to sum it -- summarize it, I have to prove  
5 that the defendant was over the age of fourteen years old.  
6 He was thirty-six at the time. I have to prove that he  
7 lewdly -- excuse me -- willfully and lewdly committed, or  
8 attempted to commit, a lewd or lascivious act upon a  
9 child's body who was under the age of sixteen. Well, no  
10 doubt that the children, **Minor 3** was eleven; **Minor 2** was  
11 nine. And lewd just means indecent, lustful, obscene. And  
12 lascivious means continuing to excite, or lust.

13 The next thing I have to prove to you is that he had  
14 the intent of arousing, appealing to, or gratifying the  
15 lust, passions, or sexual desires of himself or the child.  
16 He touched their vagina. It wasn't an accident. He  
17 touched all three girls' vaginas. You can't accidentally  
18 just touch all three girls' vaginas all in the same night.  
19 That doesn't happen.

20 I told you this case is going to be difficult. And  
21 one reason it's going to be difficult, because it's an  
22 uncomfortable subject matter. And the second reason is  
23 because part of it's in Spanish. I don't speak Spanish,  
24 and I don't know if you all speak Spanish, but it's going  
25 to be a difficulty. But despite these difficulties, I ask

1 that you listen carefully. You use your common sense that  
2 everyone brought with them in the courtroom today. And  
3 when you deliberate, you find the defendant guilty of all  
4 three counts of criminal sexual conduct with a minor.

5 Thank you.

6 THE COURT: Ms. Dovell.

7 MS. DOVELL: May it please the Court?

8 OPENING STATEMENT BY MS. DOVELL:

9 MS. DOVELL: Benjamin Cervantes-Hernandez told the  
10 Bluffton Police what happened on July 17, 2015. While his  
11 version of events differs from what [Minor 1] told  
12 her mother, and subsequently told law enforcement, he stuck  
13 around when he was faced with the allegations to say what  
14 happened. The allegations are pure imagination from  
15 [Minor 1] from [Minor 3] and from [Minor 2]

16 Ms. Keeney talked about the relationship between the  
17 families, how Benjamin was a trusted friend, called Uncle.  
18 Imagine his surprise at being accused of these allegations.  
19 He adamantly denies any inappropriate touching of [Minor 2]  
20 and of [Minor 3] and his version of what happened with  
21 [Minor 1] may seem unlikely, but that's what happened.

22 Benjamin told the Bluffton Police Department what  
23 happened that night. He didn't run away from the  
24 allegations. And today is his day in court. This is his  
25 time to clear his name. The Bluffton Police didn't believe

MARIA PIZANA: DIRECT BY SOLICITOR KEENEY

-207-

1 him. The State doesn't believe him. He is asking each of  
2 you to believe him, and at the end of this trial, find him  
3 not guilty of all charges.

4 THE COURT: You may call your first witness.

5 SOLICITOR KEENEY: The State calls Maria Pizana.

6 MADAM CLERK: Place your left hand on the Bible and  
7 raise your right hand.

8 (WHEREUPON, MARIA PIZANA,  
9 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

10 MADAM CLERK: Again, state your full name and spell  
11 your last.

12 ((ALL QUESTIONS ASK AND ALL RESPONSES GIVEN TRANSLATED  
13 BY COURT INTERPRETER REBECCA MACANN.))

14 A. Maria Elizabeth Pizana-Covos. C-o-v-o-s.

15 SOLICITOR KEENEY: May it please the Court.

16 DIRECT EXAMINATION

17 MARIA PIZANA BY SOLICITOR KEENEY:

18 Q. Ms. Pizana, who are you married to?

19 A. With Efrian Jimenez.

20 Q. How many children do you have?

21 A. Five.

22 Q. Can you tell me the names of those children?

23 A. Jessica J. [REDACTED]; Maria J. [REDACTED], Minor 1  
24 [REDACTED]; Minor 2 [REDACTED]; Julio J. [REDACTED]; and  
25 Jacob J. [REDACTED].

- 1 Q. How old is Minor 1 [REDACTED]
- 2 A. Twelve.
- 3 Q. Do you know her birthday?
- 4 A. The [REDACTED] [REDACTED].
- 5 Q. How old is Minor 2 [REDACTED]
- 6 A. Nine.
- 7 Q. When's her birthday?
- 8 A. The [REDACTED] [REDACTED].
- 9 Q. Thank you. On July 17th of 2015, where did you live?
- 10 A. [REDACTED] [REDACTED].
- 11 Q. What town is that in?
- 12 A. Bluffton, South Carolina.
- 13 Q. Can you explain the setup of your house, like, how
- 14 many rooms?
- 15 A. We live in a trailer. It has three bedrooms, two
- 16 bathrooms, and we live there alone.
- 17 Q. Thank you. Do you know who Benjamin Cervantes-
- 18 Hernandez is?
- 19 A. Yes.
- 20 Q. How do you know him?
- 21 A. I'm -- I know him through my husband. But in fact, he
- 22 is not of us. We have sort of related to one other - one
- 23 another five or six years, for five or six years.
- 24 Q. Did you consider him family at one point?
- 25 A. Yes. Up until one moment that's what I thought.

MARIA PIZANA: DIRECT BY SOLICITOR KEENEY

-209-

1 Q. Do you see him in the courtroom today?

2 A. Yes.

3 Q. Can you point him out for the jury, and describe what  
4 he's wearing? And describe what he's wearing.

5 A. He is dressed in black.

6 Q. Where is he sitting?

7 A. There.

8 SOLICITOR KEENEY: Let the record reflect that she has  
9 identified the defendant.

10 (WITNESS INDICATED TOWARD DEFENDANT AT DEFENSE TABLE.)

11 BY SOLICITOR KEENEY:

12 Q. Do you have any idea how old he is?

13 A. I think that he is something like - that he's thirty-  
14 six, something like that.

15 Q. Who's he married to?

16 A. He is not married. He -- he is -- lives with Veronica  
17 Barrios.

18 Q. I'm going to go back to July 17th of 2015.

19 Can you tell me what you did that day?

20 A. On that day I got up, and we were excited because that  
21 day, my daughter, Jessica, was of fifteen years. In other  
22 words this was a Friday, but the -- the day that she was  
23 going to turn fifteen was a Saturday. I went out for a  
24 moment with **Minor 3** and **Minor 2**, and we went out to buy  
25 dresses. And **Minor 1** stayed at home with Jacob, Julio,

MARIA PIZANA: DIRECT BY SOLICITOR KEENEY

-210-

1 and Michael, who is the son of a friend of mine. And when  
2 I was in the store Veronica Barrios called me and saying to  
3 me, did I want to go eat with them, and I told her, I don't  
4 -- I told her no, because I was in the store. And then she  
5 called me and she said she was going to the house and that  
6 she was bringing a gift. A half an hour passed before I  
7 arrived and they were there in the living room. They were  
8 seated there in the living room. And when I arrived, well,  
9 we -- we -- there were so many children there, and we went  
10 to sit in the dining room.

11 Q. Okay. And I'm going to stop you there. When you got  
12 home, you said they were seated. Who are you referring to?

13 A. Veronica and Benjamin and the children.

14 Q. Where was your husband?

15 A. He was working.

16 Q. What happened next?

17 A. After a while, we were -- we were chatting, talking.  
18 We wanted to listen to some music. He went to look for the  
19 cable to his --

20 Q. And, he, is referring to who?

21 A. Benjamin. And after that, he came back to the dining  
22 room, and my husband arrived. And my husband said that he  
23 was going to play billiards, play pool. He -- And my  
24 husband invited us, but I said to him, I said no to him,  
25 and he went. He left. And after that, all of the children

MARIA PIZANA: DIRECT BY SOLICITOR KEENEY

-211-

1       went out. They went outside with Benjamin. And that was  
2       when - and my daughter came to me and I was seated in the  
3       dining room with --

4       Q.    Okay. Stop. Which daughter came to her? Which  
5       daughter came to her?

6       A.    [Minor 1]

7       Q.    What was [Minor 1] demeanor? How was she acting?

8       A.    She was very nervous, fearful. And she said --  
9       Veronica and I were there.

10      Q.    Without going into specifics, did she make a  
11      disclosure to you? Did she make a disclosure to you?

12      A.    Yes.

13      (WITNESS CRYING.)

14      A.    That her uncle had touched her.

15      MS. DOVELL: Objection, your Honor. That's hearsay.

16      THE COURT: I sustain the objection. Just disregard  
17      that particular testimony from the witness.

18      BY SOLICITOR KEENEY:

19      Q.    After [Minor 1] came to you crying and nervous and  
20      fearful, what did you do?

21      A.    I went out, and I went out to confront him, and to ask  
22      him. And Veronica also confronted him and asked him.

23      Q.    What did you do next?

24      A.    I called the police.

25      SOLICITOR KEENEY: No further questions.

MARIA PIRANA: DIRECT BY SOLICITOR KEENEY  
CROSS BY MS. DOVELL

-212-

1 Oh, I'm sorry, one question.

2 Q. Did you take Minor 1 to the doctor?

3 A. Yes.

4 Q. When did you take her to the doctor?

5 A. That -- that very same day.

6 Q. Thank you.

7 SOLICITOR KEENEY: No further questions.

8 THE COURT: Ms. Dovell?

9 MS. DOVELL: Thank you, your Honor.

10 CROSS-EXAMINATION

11 MARIA PIZANA BY MS. DOVELL:

12 Q. Ms. Jimenez, you confronted Benjamin, and he denied  
13 any wrongdoing?

14 A. Yes.

15 Q. You said you called 911?

16 A. Yes, I called them.

17 Q. Did you speak with Minor 3 and Minor 2 before calling  
18 911?

19 A. No, because they didn't -- they weren't aware of when  
20 I called 911.

21 Q. So, you called 911 immediately after confronting  
22 Benjamin?

23 A. Yes.

24 Q. And you were outside of your house?

25 A. Who?

MARIA PIZANA: CROSS BY MS. DOVELL

-213-

1 Q. You went outside to confront Benjamin?

2 A. Yes, because he was outside.

3 Q. And at that point, Minor 2, Minor 3, and Jacob were  
4 outside with him?

5 A. Yes.

6 Q. Were there any other children outside?

7 A. My son Julio.

8 Q. Were there any other adults outside?

9 A. No. Just us.

10 Q. Okay. Do you remember your conversation with the 911  
11 operator?

12 A. Yes.

13 Q. All right. And the operator asked you a lot of  
14 questions. Right?

15 A. Yes.

16 Q. And the operator asked you what you were calling  
17 about.

18 A. Yes.

19 Q. And you identified Benjamin.

20 A. Yes.

21 Q. And the 911 operator asked if your daughter was okay.

22 A. Yes.

23 Q. And the operator asked if he touched her outside, or  
24 if he penetrated her?

25 A. Yes.

MARIA PIZANA: CROSS BY MS. DOVELL

1 Q. And you responded that he did not penetrate her.

2 A. I didn't know.

3 Q. But your response was, no penetration.

4 A. Uh-huh.

5 Q. To back up a little bit, you also told the 911  
6 operator that Benjamin touched two girls.

7 A. Uh-huh.

8 Q. And you explained that the other girl was a friend's  
9 daughter?

10 A. Uh-huh.

11 Q. Is --

12 THE COURT: Can you instruct her to say, yes, as  
13 opposed to, uh-huh?

14 MADAM INTERPRETER: Yes, your Honor.

15 A. Yes.

16 BY MS. DOVELL:

17 Q. And this other girl, were you referring to **Minor 3**?

18 A. Yes.

19 Q. Would you mind explaining for us the relationship  
20 between your family and **Minor 3** family?

21 A. The relationship between **Minor 3** and I is that  
22 **Minor 3** mother and I are friends.

23 And she lives in North Carolina.

24 Q. So, your girls just call her their cousin, but she's  
25 really a friend?

MARIA PIZANA: CROSS BY MS. DOVELL

-215-

1 A. Yes.

2 Q. Okay. And the -- the alleged touching of [Minor 1] --  
3 excuse me, I'll back up a little bit. You told the 911  
4 operator that Benjamin touched the other girls legs.  
5 Correct?

6 A. Yes.

7 Q. Were you home when Benjamin touched [Minor 1] ?

8 A. Yes.

9 Q. And you said that when you came home from the store,  
10 you found Benjamin and Veronica sitting in the living room?

11 A. Yes.

12 Q. And you said there were a lot of children everywhere?

13 A. Yes.

14 Q. How many children were there by the time you -- at the  
15 time you came home?

16 A. Four.

17 Q. Okay. So, [Minor 1], Julio, Jacob, and Michael. And  
18 you had, with you, [Minor 2] and [Minor 3]

19 A. Yes.

20 Q. And did you have any other people with you?

21 A. No.

22 Q. And when you all came home, you, Veronica, and  
23 Benjamin went to the dining room.

24 A. Yes.

25 Q. Do you recall [Minor 3] sitting on Benjamin's lap, or

MARIA PIZANA: CROSS BY MS. DOVELL

-216-

1 near him, while you were in the dining room?

2 A. Yes.

3 Q. Was **Minor 3** actually sitting on his lap?

4 A. On his legs.

5 Q. Did you see him inappropriately touch **Minor 3** at that  
6 time?

7 A. No. No I didn't see.

8 Q. And they were -- were they -- they were sitting at the  
9 same table with you. Correct?

10 A. Yes.

11 Q. And you said that at some point you all wanted to  
12 listen to music?

13 A. Yes.

14 Q. All right. So, you and Veronica and Benjamin and  
15 **Minor 3** are seated in the kitchen.

16 A. At the table.

17 Q. At the table, I'm sorry. Were there other children  
18 around at that time?

19 A. Yes.

20 Q. Were they seated at the table too?

21 A. Yes, they were around the table.

22 Q. About how many chairs do you have at your table?

23 A. It's ten -- ten chairs.

24 Q. Okay. All right. So, you were in the dining room  
25 when **Minor 3** was seated on Benjamin's lap?

MARIA PIZANA: CROSS BY MS. DOVELL

-217-

1 A. Yes.

2 Q. And was **Minor 2** hanging around Benjamin and **Minor 3** at  
3 that time?

4 A. Yes.

5 Q. And in order to listen to the music, you all needed  
6 that charger; is that right?

7 A. Yes.

8 Q. Okay. And Benjamin went to go get the charger?

9 A. Yes.

10 Q. And he came right back to the dining room.

11 A. He -- he -- yes. He -- he took some time.

12 Q. Did you notice **Minor 3** move from the dining room to the  
13 living room area?

14 A. Yes.

15 Q. Okay. All right. I've got a kind of uncomfortable  
16 question to ask you. All right. **Minor 1** is twelve years  
17 old now? And she was -- Is that a yes?

18 A. Yes.

19 Q. And she was eleven on July 17th?

20 A. Yes.

21 Q. Had she started her period at that time?

22 SOLICITOR KEENEY: Your Honor, I'm going to object??

23 THE COURT: I overrule the objection.

24 A. Yes.

25 Q. And so, she has a familiarity of how body parts work.

MARIA PIZANA: CROSS BY MS. NOVELL  
REDIRECT BY SOLICITOR KEENEY

1 A. Yes.

2 Q. Did you explain to her about feminine products, like  
3 Tampax, pads, tampons?

4 A. No, only what -- the towels.

5 Q. Okay.

6 MS. DOVELL: Beg the Court's indulgence, your Honor.

7 (PAUSE AT 04:15 PM.)

8 MS. DOVELL: No further questions for the witness at  
9 this time.

10 THE COURT: All right. Any redirect?

11 SOLICITOR KEENEY: Briefly.

12 REDIRECT EXAMINATION

13 MARIA PIZANA BY SOLICITOR KEENEY:

14 Q. How many people do you think were at your house that  
15 night?

16 A. There were seven.

17 Q. Was there a lot of things going on, were children  
18 playing?

19 A. Yes. Yes, as always.

20 Q. Did you constantly look underneath the table, to see  
21 if anybody was touching each other?

22 A. No.

23 SOLICITOR KEENEY: No further questions.

24 THE COURT: Re-cross?

25 MS. DOVELL: No, your Honor.

KAREN DROZD: DIRECT BY SOLICITOR KEENEY

-219-

1 THE COURT: All right. You can step down.

2 (WITNESS LEAVING WITNESS STAND.)

3 THE COURT: You want to call your next witness?

4 SOLICITOR KEENEY: Yes. The State calls Karen Drozd.

5 THE COURT: All right. While that witness is coming

6 up, can I see Counsel over here just a minute?

7 MS. DOVELL: Yes, sir.

8 (SIDE BAR OFF THE RECORD OUT OF THE HEARING OF THE

9 JURY AT 04:18 PM.)

10 (WHEREUPON, KAREN DROZD,  
11 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 MADAM CLERK: State your full name and spell your last  
13 name for the record please.

14 A. Karen Lynn Drozd. D-r-o-z-d.

15 SOLICITOR KEENEY: Thank you. May it please the  
16 Court?

17 THE COURT: Yes, ma'am.

18 DIRECT EXAMINATION

19 KAREN DROZD BY SOLICITOR KEENEY:

20 Q. All right. Where do you work?

21 A. I'm sorry?

22 Q. Where do you work?

23 A. Medical University South Carolina. I'm in the child  
24 abuse pediatrics division.

25 Q. How long have you been doing that?

1 A. Just about two years.

2 Q. Can you tell me what a SANE nurse is?

3 A. SANE stands for Sexual Assault Nurse Examiner.

4 Q. Is that what you do?

5 A. Yes.

6 Q. What's your education? Where did you go to school?

7 A. I graduated high school in New Jersey. I attended  
8 college -- graduated from College of Charleston. I have a  
9 bachelor's in science in psychology. And then, I went on,  
10 later went back for a nursing degree.

11 Q. And can you tell the jury the process of an exam for a  
12 SANE nurse, that you conducted?

13 A. So, they're called either acute sexual assault exams,  
14 or forensic exams, and it's quite a big process, a  
15 meticulous process, with evidence collection. But first  
16 and foremost, we like to make sure that the child is  
17 healthy. I see only pediatrics, birth to eighteen. We  
18 need to make sure that they're healthy, that they don't  
19 have any infections, that they don't have any trauma that  
20 needs further -- either further assessment, or that we  
21 might need to bring in a specialist.

22 We collect evidence. There's a specific process for  
23 evidence collection, a kit that's used for the State. We  
24 take images, forensic images, which are very different than  
25 typical photographs. We document, based on our

KAREN DROZD: DIRECT BY SOLICITOR KEENEY

-221-

1 observations, and then prescribe medications, either for  
2 treatment of infections or for what we consider  
3 prophylactic treatment. That's for the prevention of  
4 infections they might have been exposed to.

5 We also make recommendations for followup, for  
6 therapies. There's an extensive process on them as well.  
7 We deal with -- it's a multi-disciplinary team. We deal  
8 with the physicians, social work, DSS, law enforcement.  
9 So, we're sort of a hub between everybody and patient care.

10 Q. What's the difference between acute versus non-acute  
11 exam?

12 A. An acute exam for our age group, the pediatric age  
13 group, is any time, seventy-two hours from the event. It's  
14 within that time period. Non-acute is beyond that.

15 Q. How many total exams have you done, acute and non-  
16 acute?

17 A. I personally have done seventy-nine.

18 Q. How many of those were acute?

19 A. Fifty-nine.

20 Q. So, fifty-nine of those were within seventy-two hours  
21 of the alleged assault?

22 A. Uh-huh. Yes.

23 Q. Okay. Out of those acute -- well, statistically, do  
24 you know how many acute exams demonstrate trauma?

25 A. Approximately twenty percent of acute exams will have

1 trauma.

2 Q. And does that include just a certain type of cases,  
3 like digital penetration, or is that just --

4 A. It's -- We don't collect evidence in that -- we don't  
5 collect data in that form, but we look at all trauma that  
6 we, you know, that we encounter within that seventy-two  
7 hour period, and approximately twenty percent of the cases  
8 demonstrate some form of trauma.

9 Q. So, it doesn't matter if it's allegations of digital  
10 penetration or rape, it's all the same category?

11 A. Right.

12 Q. Do you know whether or not you're likely to find  
13 trauma -- well, full penetration?

14 A. There's all different forms of penetration, so it's  
15 difficult to say. We -- we do find trauma in all different  
16 kinds of cases, whether it's penetration or not.

17 Q. Did you examine **Minor 1**?

18 A. Yes.

19 Q. When did that examination occur?

20 A. Sometime early in the morning, on July 18th I believe.  
21 I would have to look directly at the records.

22 Q. Okay.

23 A. But I think it was July 18th last summer.

24 Q. So, that would be 2015?

25 A. Yes.

KAREN DROZD: DIRECT BY SOLICITOR KEENEY

-223-

1 Q. Who brought Minor I to see you?

2 A. She came with her mother. I believe there was some  
3 other family there as well.

4 Q. Do you remember how old she was at the time?

5 A. Eleven.

6 Q. Who was present during the exam?

7 A. Minor I, her mother, and I was actually training  
8 somebody at the time, so Dr. Erica Piaz was with me as  
9 well.

10 Q. Was there an interpreter there?

11 A. The interpreter was there for all documentation. He  
12 was not present for the actual physical exam.

13 Q. Did you get a medical history of the victim?

14 A. Yes. The interpreter was there for that.

15 Q. Did you question Minor I about what happened -- what  
16 happened, before you examined her?

17 A. So, her mother was the one who reported what happened.  
18 It was through the interpreter, and we documented  
19 everything that had been said.

20 Q. Okay. Can you tell me the results of the exam that  
21 you performed on Minor I

22 A. The physical results?

23 Q. Yes.

24 A. So, there was no -- no bleeding, no obvious trauma.  
25 However, there was an area of what we call erythema which

1 is redness between -- we look at -- we consider the vagina  
2 in a clock face, with a clock face, and we assign numbers  
3 twelve, three, six, and nine. And somewhere between four  
4 and eight o'clock, there was an area before the entrance of  
5 the vagina, what we call the -- the fossil vicularius and  
6 that's sort of the entrance beforehand. And there was an -  
7 - and that area was -- had erythema redness, and it also  
8 had some skin that was sloughed off, which is where you  
9 take the top layer of skin, and it's sort of gone, that top  
10 layer of skin in that direct area. And that's what I  
11 documented.

12 Q. Do you know if Minor 1 was on her period at that  
13 time?

14 A. There was no bleeding that was evident, and in the  
15 documentation, it should tell you -- it should say exactly  
16 when -- I don't remember exactly what was in my  
17 documentation, but it should say exactly when her last  
18 menstrual period was.

19 Q. Okay. Let me show it to you just ---

20 A. Sure.

21 Q. --- to refresh your memory.

22 SOLICITOR KEENEY: May I approach the witness?

23 THE COURT: You may.

24 A. So, the last -- the date of the first day of her last  
25 cycle was on 7/03/15.

KAREN DROZD: DIRECT BY SOLICITOR KEENEY  
CROSS BY MS. DOVELL

-225-

1 Q. Thank you. And for the redness that you found, you're  
2 not able to identify the cause of that, are you?

3 A. No.

4 Q. I'll take that from you.

5 SOLICITOR KEENEY: No further questions for this  
6 witness.

7 THE COURT: Cross.

8 MS. DOVELL: Thank you, your Honor.

9 CROSS-EXAMINATION

10 KAREN DROZD BY MS. DOVELL:

11 Q. Good afternoon, Nurse. Drozd. My name is Helen  
12 Dovell, I represent Benjamin Cervantes. I have a few  
13 questions for you. As part of your intake, you evaluate  
14 for any health concerns. Correct?

15 A. Yes.

16 Q. Did you have any health concerns about **Minor 1** ?

17 A. Again, I would have to look, but what -- from what I  
18 recall, she had some edema or swelling in her feet that I  
19 noted back to the resident that was on duty in the ER.  
20 Those were my -- that, I think, and again, I would have to  
21 look, I believe that was the only health concern that I  
22 had.

23 Q. Okay. And you've noted in here, obesity, as well?

24 It's --

25 A. She -- she was over weight.

KAREN DROZD: CROSS BY MS. DOVELL

-226-

1 Q. And your protocol is pretty thorough. Correct?

2 A. That's a standard SLED form that is interpreted into  
3 -- the Epic system, is the charting system that we use at  
4 MUSC. So, yes, it's very thorough.

5 Q. And you had an interpreter present when Ms. Pizana  
6 related the history of the event?

7 A. Yes.

8 Q. Okay.

9 A. And I believe that it states that, per mother with  
10 interpreter present.

11 Q. Yes, ma'am.

12 A. That's usually how I document that.

13 Q. And to your recollection, Ms. Pizana told you that,  
14 when she had returned from the store, Benjamin had already  
15 touched **Minor 1** is that right? Would I need to --

16 A. I would need to look to say exactly --

17 MS. DOVELL: Your Honor, may I approach the witness?

18 THE COURT: Yes you may.

19 A. That's -- that, yeah, that's what she said, that  
20 Veronica arrived at the house I was there the mother  
21 because --

22 THE COURT: Ms. Dovell, you're between the witness and  
23 the jury.

24 MS. DOVELL: Excuse me, your Honor. I apologize.

25 THE COURT: Start over.

KAREN DROZD: CROSS BY MS. DOVELL

-227-

1 BY MS. DOVELL:

2 A. When I got back from the store, they were there, and  
3 he had already touched her.

4 Q. Okay.

5 A. That's what the mother said.

6 Q. Thank you.

7 MS. DOVELL: Your Honor, do you object to me having  
8 Nurse Drozd hold onto a copy of her report?

9 THE COURT: No.

10 MS. DOVELL: Court's indulgence, your Honor.

11 If I could just find the right place in my file  
12 folder. My apologies for the delay.

13 Q. And this is sort of one of those uncomfortable  
14 questions, but did you also find that she presented with  
15 poor hygiene when she came in?

16 A. Yes, I believe so.

17 Q. And you also said that she appeared to be mature? Or  
18 noted that she appeared to be mature?

19 A. Mature physically? You have the first page? I'm  
20 sorry. It's underneath your ---

21 Q. No problem. This --

22 A. --- notation that's got the hygiene part.

23 Q. I think it's on the third page.

24 A. Yes. Yes.

25 Q. And you conducted a number of tests, or swabbing, for

KAREN DROZD: CROSS BY MS. DOVELL

-228-

1 certain indications. Correct?

2 A. We swabbed for sexually transmitted infections. We  
3 also swabbed for evidence that -- everything that goes  
4 into --

5 Q. All right. And how did -- will you describe what the  
6 swabbing entails?

7 A. It's like an extended Q-tip, and there's very  
8 meticulous way that you have to swab for evidence  
9 collection for a DNA kit. But in addition to that, when  
10 you swab for a sexually transmitted infection, there's sort  
11 of a different approach that you take.

12 Q. I guess --

13 A. They swab, and then they go -- So when you're  
14 collecting for a kit, you swab, and then it goes on a  
15 special stand that goes into a dryer, so that nothing else  
16 touches those. When you swab for sexually transmitted  
17 infections, you swab, let's say, the throat ---

18 Q. Uh-huh.

19 A. --- and you have to, you know, do complete swipes, a  
20 couple of complete swipes, and it goes into a container  
21 that gets sent off to a lab.

22 Q. Okay. And as far as swabbing in the vaginal area, is  
23 there actual intrusion into the vaginal canal?

24 A. Depends on their age.

25 Q. Uh-huh.

KAREN DROZD: CROSS BY MS. DOVELL

-229-

1 A. For this age group, once they're adolescent, once  
2 they're menstruating, yes, you do enter -- you can enter  
3 the vagina. Some of that is guided by the history. That's  
4 why its so important to write a good history. For example,  
5 if there was, you know, a recorded history of ejaculation  
6 or no condom used, then we definitely want to get back near  
7 the cervix, as well.

8 Q. Okay. And your other findings when you -- and I'm  
9 looking at page -- I think that this is going to be page  
10 six, the one with the diagram. You found there was a rash-  
11 like appearance, sort of in the folds where the vaginal  
12 area and the legs meet?

13 A. Yes. It's outside the folds.

14 Q. And that's on both sides of -- on both legs. Correct?

15 A. Yes. Sort of outside the labia, so it's beyond the  
16 vagina, sort of on the outside of the area toward -- the  
17 groin area toward those folds yes.

18 Q. Okay. And you noticed there was no trauma to the  
19 posterior fourchette?

20 A. Yes.

21 Q. And what -- if you could describe for the jury what  
22 the posterior fourchette is.

23 A. So, where the labia meet, the labia meet at the top,  
24 toward the clitoris, and at the bottom there's an area that  
25 when the labia is open creates like a very thin form piece

1 of skin. And that's what's considered the posterior  
2 fourchette and that's before the fossa and before the  
3 entrance to the vagina.

4 Q. And it's that fossa navicularis that you said had some  
5 top-layer epidermis slough?

6 A. Uh-huh.

7 Q. And the slough was from four to eight o'clock on the  
8 --

9 A. So, if you can imagine the -- the labia, if you go  
10 beyond the labia, beyond the posterior fourchette which is  
11 a thin piece of skin along the bottom, there's sort of an  
12 area of depth before you get to the opening of the vagina.  
13 That area is considered the fossa navicularis. It's what  
14 would become the floor of the vagina, and it's before the  
15 entrance to the vagina, so, just inside the labia.

16 Q. So, when you say there is epidermis slough with slight  
17 arrhythmia, or erythema, excuse me, noted, how did it --  
18 how does that work in combination?

19 A. So, erythema is redness. Fancy term. And the slough  
20 is basically the removal of the top layer of skin.

21 Q. Okay.

22 A. That's the best way.

23 Q. And you don't know what caused that. Correct?

24 A. So, it's -- that's sort of beyond my scope of  
25 practice, to identify a cause. That would be a physician

KAREN DROZD: CROSS BY MS. DOVELL

-231-

1 that would make that call.

2 Q. Okay. And you had mentioned earlier that, out of the  
3 acute exams you do, approximately twenty percent  
4 demonstrate trauma?

5 A. Not me personally, but statistically.

6 Q. Statistically.

7 A. That's the national average. When they look at  
8 statistics of concurring trauma in acute and non-acute  
9 cases, that twenty -- approximately twenty percent of acute  
10 cases that have happened within the last -- you know, where  
11 we see them and examine them within the last three days,  
12 those demonstrate trauma.

13 Q. Okay.

14 A. So, eighty percent do not ---

15 Q. Okay.

16 A. --- demonstrate trauma. And then, the other -- as far  
17 as our numbers at MUSC, it's not mine personally, but all  
18 of our group, so we did like a hundred and forty cases last  
19 year, approximately twenty percent of those had  
20 demonstrated trauma, and those are numbers that are  
21 collected that we have to submit to SCAMMERS the state  
22 organization that oversees our protocols.

23 Q. Okay.

24 A. So, we're -- basically we're right in line with the  
25 national averages.

KAREN DROZD: CROSS BY MS. DOVELL

-232-

1 Q. Okay. And that deals with all sorts of trauma, like  
2 you said. So, that would be digital penetration, penile  
3 penetration, anal penetration, any kind of trauma  
4 whatsoever?

5 A. Trauma is -- it's hard -- it's hard to find trauma.

6 Q Okay.

7 A. There's -- on sexual assaults. This area of the body  
8 is intended to stretch.

9 Q. Uh-huh.

10 A. It naturally stretches. It's very resilient. It's  
11 highly vascular, heals very quickly. So, it's very hard to  
12 -- to pinpoint a lot of the trauma in sexual assaults.  
13 When we go beyond those three days to non-acute cases, the  
14 number drops to five percent.

15 Q. Okay. And it's fair to say that there are other --  
16 there are non-trauma-related causes for things like  
17 erythema. Correct?

18 A. Yes.

19 Q. Things like infections, reaction to medications?

20 A. I -- yes, yes. I guess that could be.

21 Q. Okay.

22 MS. DOVELL: Beg the Court's indulgence, your Honor.

23 No further questions for Ms. Drozd.

24 THE COURT: Redirect?

25 SOLICITOR KEENEY: No, your Honor.

OFFICER LINDSEY GIBSON: DIRECT BY SOLICITOR KEENEY

-233-

1 THE COURT: You may step dpown and be excused.  
2 We certainly appreciate your time.

3 (WITNESS LEAVING WITNESS STAND.)

4 THE COURT: Thank you. Just hand that back to  
5 Counsel.

6 Call your next witness.

7 SOLICITOR KEENEY: Thank you. The State calls Lindsey  
8 Gibson.

9 (WHEREUPON, LINDSEY GIBSON,  
10 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

11 MADAM CLERK: State your full name for the record and  
12 spell your last.

13 A. Lindsey A. Gibson, G-i-b-s-o-n.

14 THE COURT: Do you have some gum in your mouth?

15 MS. GIBSON: I'm sorry?

16 THE COURT: Do you have gum?

17 MS. GIBSON: Oh, yes.

18 (WITNESS DISPOSED OF GUM.)

19 DIRECT EXAMINATION

20 OFFICER LINDSEY GIBSON BY SOLICITOR KEENEY:

21 Q. Officer Gibson, where do you work?

22 A. For the Bluffton Police Department.

23 Q. How long have you been at the Bluffton Police  
24 Department?

25 A. Approximately four years.

1 Q. What is your position?

2 A. Currently, I'm a school resources officer.

3 Q. What was your position in July of 2015?

4 A. On patrol.

5 Q. What were some of your duties?

6 A. To answer calls, routine patrol and duties.

7 Q. On July 17th of 2015, did you respond to [REDACTED]

8 [REDACTED]?

9 A. Yes, ma'am.

10 Q. And what town is that in?

11 A. Bluffton.

12 Q. What county?

13 A. Beaufort.

14 Q. Who was on the scene when you arrived?

15 A. Myself, Officer Ferrelli.

16 Q. Did you meet with any witnesses in the case?

17 A. Yes, ma'am.

18 Q. Who were they?

19 A. I can't remember all -- the -- Ms. Jimenez. I can't  
20 remember her first name. The mom.

21 Q. The mom?

22 A. Yeah.

23 Q. Were there any little girls on the scene?

24 A. Yes.

25 Q. Did you meet with the little girls?

OFFICER LINDSEY GIBSON: DIRECT BY SOLICITOR KEENEY

-235-

1 A. Yes.

2 Q. Did you conduct interviews with the little girls?

3 A. Not thorough, but yes.

4 Q. You got --

5 A. To basically find out what -- why we were called  
6 there.

7 Q. Okay. And did those little girls disclose anything to  
8 you?

9 A. Yeah, that they were touched inappropriately.

10 MS. DOVELL: Objection, your Honor.

11 THE COURT: I sustain the objection.

12 SOLICITOR KEENEY: Your Honor, may we approach?

13 (SIDE-BAR CONFERENCE OFF THE RECORD OUT OF THE HEARING  
14 OF THE JURY AT 4:45 P.M.)

15 THE COURT: I sustain the objection. We'll follow up  
16 with some other questions.

17 BY SOLICITOR KEENEY:

18 Q. Can you remember the girls who you spoke with, their  
19 names?

20 A. Yes. I don't know how to say **Minor 1** -- My  
21 goodness. I'm sorry, I'm drawing a blank. **Jessica J.**  
22 and -- first name starts with an A, last name starts with a  
23 T. I'm very sorry.

24 Q. **Minor 3**

25 A. Yes, ma'am.

OFFICER LINDSEY GIBSON: DIRECT BY SOLICITOR KEENEY  
CROSS BY MS. DOVELL

-236-

1 Q. And then, was there another little girl there?

2 **Minor 2** Does that name ring a bell?

3 A. Yes, it does.

4 Q. Okay. When you talked to them, not going into any  
5 details, did they make a disclosure to you?

6 A. Well, yes.

7 Q. Did they say where the incident happened?

8 A. Yes.

9 Q. And where was that?

10 A. Inside the house.

11 Q. Okay. And did they say when the incident happened?

12 A. Yes, it was that night.

13 Q. That night.

14 SOLICITOR KEENEY: No further questions.

15 THE COURT: Cross.

16 CROSS-EXAMINATION

17 OFFICER LINDSEY GIBSON BY MS. DOVELL:

18 Q. Hello, Officer Gibson.

19 A. Hello. How are you?

20 Q. Fine, thanks. My name is Helen Dovell. I represent  
21 Benjamin. Benjamin was on-scene when you arrived.

22 Correct?

23 A. Yes.

24 Q. And about how many officers would you say arrived,  
25 were on-scene when you got there?

OFFICER LINDSEY GIBSON: CROSS BY MS. DOVELL

-237-

1 A. It was just me and Officer Ferrelli.

2 Q. And during the time you were there, other officers  
3 arrived, didn't they?

4 A. Yes.

5 Q. Approximately how many other officers?

6 A. When -- Well, my supervisor, and then detectives came.

7 Q. And was there an interpreter?

8 A. Yes.

9 Q. And during the time you were there, did Benjamin try  
10 to leave the scene?

11 A. No.

12 Q. Did he -- he didn't try to run away?

13 A. No.

14 Q. Okay. And you had a chance to interact with Benjamin.  
15 Correct?

16 A. Yes.

17 Q. And there was a language barrier?

18 A. Correct.

19 Q. But he indicated he wanted to speak with law  
20 enforcement?

21 A. Uh-huh.

22 THE COURT: You need to say, yes, for the record.

23 A. Yes.

24 MS. DOVELL: I don't have any other questions right  
25 now, your Honor.

SERGEANT WILLIAM FERRELLI: DIRECT BY SOLICITOR KEENEY

-248-

1       blew away. I talked to my wife earlier in Rock Hill and  
2       some -- not personally, but she's a principle -- but some  
3       of the schools are actually closing because of concern I  
4       think about some tornadic matters. There was a huge  
5       temperature drop over night and I'm not a meteorologist but  
6       apparently there's some concern. I don't hear any for down  
7       here but it certainly was windy this morning. It's just an  
8       editorial comment.

9             All right, call your next witness.

10            SOLICITOR KEENEY: Thank you, your Honor.

11            The State calls Sergeant William Ferrelli.

12                               (WHEREUPON, WILLIAM FERRELLI,  
13       BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

14            MADAM CLERK: State your full name for the record and  
15       spell your last.

16       A.     William Peter Ferrelli. F-e-r-r-e-l-l-i.

17            SOLICITOR KEENEY: May it please the Court?

18                               DIRECT EXAMINATION

19       SERGEANT WILLIAM FERRELLI BY SOLICITOR KEENEY:

20       Q.     Officer Ferrelli, where do you work?

21       A.     Bluffton Police Department.

22       Q.     What's your position at the police department?

23       A.     I'm a patrol supervisor.

24       Q.     How long have you been at the police department?

25       A.     Since 2007.

SERGEANT WILLIAM FERRELLI: DIRECT BY SOLICITOR KEENEY

-249-

1 Q. On July 17th of 2015, did you respond to [REDACTED]  
2 [REDACTED]?

3 A. Yes, ma'am.

4 Q. What town is that in?

5 A. It's in the town of Bluffton, the county of Beaufort,  
6 state of South Carolina.

7 Q. When you arrived on-scene, were there any officers  
8 that were there, or arrived shortly thereafter?

9 A. Yes.

10 Q. Who were they?

11 A. Officer Gibson, Sergeant DeStasio, and later on it was  
12 Officer Perez and Officer -- or, Detective Odom.

13 Q. When you arrived on-scene, did you see anybody else?

14 A. No. I was the first to arrive on-scene, as far as  
15 from the police department.

16 Q. What about any witnesses? Did you come in contact  
17 with any witnesses?

18 A. There were several family members there, yes. And one  
19 of them was the victim, identified as the victim.

20 Q. Did you come in contact with the defendant in this  
21 case?

22 A. Yes.

23 Q. Can you tell me about that contact?

24 A. When I initially responded and made contact with the  
25 family that were present, a Hispanic male approached me,

SERGEANT WILLIAM FERRELLI: DIRECT BY SOLICITOR KEENEY

-250-

1 saying that he needed to talk to me, and that was later --  
2 he was later identified as the defendant. He pulled me  
3 aside, like, motioning to -- as if he wanted to speak to  
4 me.

5 Q. Did you have problems speaking with him?

6 A. We began to have difficulty, as far as his English was  
7 concerned, so that's -- later on, when we contacted Officer  
8 Perez to come down to help assist with the translation.

9 Q. And when Officer Perez came, were you able to talk to  
10 the defendant?

11 A. Yes.

12 Q. And did he make statements to you?

13 A. He made statements, yes. Basic information is what we  
14 were trying to gather from that point.

15 Q. Okay.

16 SOLICITOR KEENEY: May I approach the witness?

17 THE COURT: Yes, ma'am.

18 BY SOLICITOR KEENEY:

19 Q. I'm showing ou what's been marked as State's Exhibit  
20 One. Do you recognize this?

21 A. Yes.

22 Q. How do you recognize it?

23 A. My initials and the date.

24 Q. What is this?

25 A. That's a copy of my body camera.

SERGEANT WILLIAM FERRELLI: DIRECT BY SOLICITOR KEENEY

-251-

1 Q. Okay. Is it a fair and accurate copy of your body  
2 camera?

3 A. Yes, ma'am.

4 SOLICITOR KEENEY: At this time, State moves to move  
5 State's Exhibit One into evidence.

6 MS. DOVELL: No objection.

7 THE COURT: That's not his body camera. That's the  
8 DVD from his body camera?

9 SOLICITOR KEENEY: Correct.

10 BY SOLICITOR KEENEY:

11 Q. Is this the DVD?

12 THE COURT: I mean we got - somebody's gonna be reading  
13 this record later.

14 A. Yes, ma'am. That's a copy of my body camera.

15 Q. Okay.

16 A. Yes.

17 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE, IDENTIFIED AND  
18 MARKED, RECEIVED INTO EVIDENCE.)

19 SOLICITOR KEENEY: Permission to publish?

20 THE COURT: Yes, ma'am.

21 (STATE'S EXHIBIT NUMBER ONE, PUBLISHED TO THE JURY AT  
22 9:51 AM./STOPPED AT 10:10 AM.)

23 BY SOLICITOR KEENEY:

24 Q. Officer Ferrelli.

25 A. Ma'am.

SERGEANT WILLIAM FERRELLI: DIRECT BY SOLICITOR KEENEY

-252-

1 Q. The very first video that I played.

2 A. Yes.

3 Q. Can you tell the jury what was on the rest of the  
4 video?

5 A. On the rest of the video, there was just -- we were  
6 just trying to coordinate whether we could get someone  
7 Spanish-speaking on-scene to -- to actually get his  
8 statement from Mr. Cervantes, and we later were able to get  
9 in contact with Officer Perez, who assisted us in that.

10 Q. So, the defendant wasn't making any statements that  
11 you could understand.

12 A. No. At that point, we just -- we were at, kind of  
13 just at a halt.

14 Q. Okay. Do you see Benjamin Cervantez-Hernandez in the  
15 courtroom today?

16 A. I do.

17 Q. Can you identify him for the jury?

18 A. Yes.

19 Q. And what's he wearing?

20 A. He's wearing a black shirt with a purple tie.

21 SOLICITOR KEENEY: Let the record reflect that he has  
22 identified the defendant.

23 (WITNESS INDICATED TOWARD DEFENDANT BENJAMIN  
24 CERVANTEZ-HERNANDEZ.)

25 SOLICITOR KEENEY: No further questions for this

OFFICER WILLIAM FERRELLI: CROSS BY MS. DOVELL

-253-

1 witness.

2 THE COURT: Cross.

3 MS. DOVELL: Thank you, your Honor.

4 CROSS-EXAMINATION

5 SERGEANT WILLIAM FERRELLI BY MS. DOVELL:

6 Q. Officer Ferrelli.

7 A. Hello.

8 Q. As we saw, Benjamin was on-scene when you arrived.

9 Correct?

10 A. Yes, ma'am.

11 Q. And the family was also on-scene when you arrived?

12 A. Yes.

13 Q. Did you have an opportunity to speak with Minor 1

14 [REDACTED]?

15 A. I did.

16 Q. Okay. When law enforcement arrived, did Benjamin stay  
17 on the scene?

18 A. He did.

19 Q. Did he try to run away?

20 A. No.

21 Q. At any point while you were there, did he try to  
22 leave?

23 A. No.

24 Q. And there were cars in the driveway. Correct?

25 A. Yes.

1 Q. Did he try to drive away?

2 A. No.

3 Q. Thank you, Officer Ferrelli.

4 MS. DOVELL: No further questions.

5 THE COURT: All right. Redirect?

6 SOLICITOR KEENEY: No, your Honor.

7 THE COURT: Officer Ferrelli, appreciate your time.

8 SERGEANT WILLIAM FERRELLI: Thank you, sir.

9 THE COURT: Thank you. You may be excused.

10 (WITNESS LEAVES WITNESS STAND.)

11 THE COURT: Call your next witness.

12 SOLICITOR KEENEY: The State calls **Minor 1**.

13 SOLICITOR KEENEY: May we approach?

14 THE COURT: Yes, over there at the side.

15 (SIDE BAR CONFERENCE OFF THE RECORD OUT OF HEARING OF  
16 THE JURY AT 10:12.)

17 THE COURT: We're gonna make a little - just  
18 logistics. I noticed and the bailiff's noticed that the  
19 two people closest to the screen are gonna have creeks in  
20 their neck, so I'm gonna ask that the people on the last  
21 row, two rows, move back one row. That will put the two in  
22 the pinkish garments one row back, the two of you, one row  
23 back, and then let the Foreman and the lady in the front  
24 move down to those seats so they won't have to crane their  
25 neck. Not move to those seats but let these three move

Minor 1: DIRECT BY SOLICITOR KEENEY

-255-

1 down.

2 I'll tell you what, anybody - Why don't y'all  
3 rearrange yourselves. I got eleven grandchildren and  
4 trying to organize them it's not - not equating y'all to  
5 grandchildren. When you get a group it's hard. That's  
6 good. Thank you.

7 SOLICITOR KEENEY: Your Honor, may we approach again,  
8 briefly?

9 THE COURT: All right.

10 (SIDE BAR OFF THE RECORD OUT OF THE HEARING OF THE  
11 JURY AT 10:14 AM.)

12 (WHEREUPON, Minor 1,  
13 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

14 MADAM CLERK: Say your full name for us and speak  
15 loudly and spell your last name.

16 A. Minor 1

17 DIRECT EXAMINATION

18 Minor 1 BY SOLICITOR KEENEY:

19 Q. Good morning, Minor 1

20 A. Good morning.

21 Q. And if you can, will you talk a little bit louder, so  
22 the jury can hear you?

23 A. Yes.

24 Q. Minor 1 how old are you?

25 A. I'm twelve.

Minor 1 [REDACTED]: DIRECT BY SOLICITOR KEENEY

-256-

1 Q. When's your birthday?

2 A. [REDACTED]

3 Q. What year?

4 A. [REDACTED]

5 Q. Who are your parents?

6 A. Maria Pizanna --

7 THE COURT: I know you're young and you've got a soft  
8 voice, but you're going to have to speak up a little bit,  
9 because the whole purpose is for the jury to hear what you  
10 have to say. So, I don't mean to be harsh, but try to  
11 speak a little louder.

12 A. Maria Pizana and --

13 MADAM COURT REPORTER: Just a minute, Judge.

14 That mic's not on.

15 MADAM CLERK: It is on but it's not doing anything.

16 MADAM COURT REPORTER: This one's not either.

17 SOLICITOR KEENEY: Okay. Minor 1 [REDACTED] since the mic's  
18 not working, can you really try to project, and make your  
19 voice louder?

20 A. Yes.

21 Q. Do you have any brothers or sisters?

22 A. Yes, I do.

23 Q. What are their names?

24 A. My big brother's name is Jacob J. [REDACTED]. My brother  
25 name is Julio J. [REDACTED] My little sister's name is Minor 2 [REDACTED]

Minor I [REDACTED]: DIRECT BY SOLICITOR KEENEY

-257-

1 [REDACTED]. Then, comes me, Minor I [REDACTED]. Then, my older  
2 sister, Jessica J. [REDACTED].

3 Q. Okay. What grade are you in school?

4 A. I'm in sixth grade.

5 Q. Where do you go to school?

6 A. Bluffton Middle School.

7 Q. What town do you live in?

8 A. Bluffton.

9 Q. Do you know the difference between the truth and a  
10 lie?

11 A. Yes.

12 Q. Is it right or wrong to tell a lie?

13 A. It's wrong.

14 Q. It's what?

15 A. It's wrong.

16 Q. Okay. Do you promise to tell the truth today?

17 A. Yes.

18 Q. And if you don't know the answer to a question, what  
19 should you do? Should you guess?

20 A. No.

21 Q. Minor I [REDACTED], I'm going to take you back to July 17th of  
22 2015. Okay? Do you know how old you were at that time?

23 A. Yes.

24 Q. How old were you?

25 A. Eleven?

Minor 1: DIRECT BY SOLICITOR KEENEY

-258-

1 Q. Okay. What were you doing that day?

2 A. So, when -- so, I was in the house, and my mom, my  
3 cousin Minor 3 and my little sister Minor 2, were  
4 somewhere, I think, like, I don't know, I think at Ross.  
5 I'm not sure. And they were at Ross and then I was with my  
6 mom's friend's son and my brother Julio, and my baby  
7 brother Jacob, and my baby brother Jacob was sleeping at  
8 his bed. Like, not in the bed, but, like, in the crib.  
9 And my brother and this boy named Michael were at the other  
10 room watching TV, and I was in the living room playing my  
11 brother's Tablet and watching TV. And then, after, I'm not  
12 sure, like, at twelve or three my --

13 Q. Did somebody come to your house?

14 A. Yes.

15 Q. Can you tell us who came to your house? Do you know  
16 their names? And you've got to say, yes or no. Do you  
17 know their names?

18 A. Yes.

19 Q. What were their names?

20 A. Benjamin and --

21 Q. Benjamin and who else? You need some water?

22 (WITNESS CRYING.)

23 SOLICITOR KEENEY: Your Honor, can we pass those  
24 tissues there next to you?

25 THE COURT: There's some up there.

Minor 1: DIRECT BY SOLICITOR KEENEY

-259-

1 SOLICITOR KEENEY: Thank you.

2 A. And Veronica.

3 Q. Veronica. Okay. How do you know Benjamin?

4 A. In 2011, our whole family, like, my dad and my mom,  
5 all of us were, like, at a party, and --

6 Q. I'm going to interrupt you. Did -- is he -- do you --  
7 did you consider him a family member?

8 A. Well, my dad told me he was like, our, like, I think  
9 our uncle. So I was just like okay he's our uncle and I  
10 considered him as an uncle.

11 Q. Okay. Do you see him in the courtroom today? You've  
12 got to say yes or no.

13 A. Yes, I do.

14 Q. Can you point him out to the jury?

15 A. There.

16 SOLICITOR KEENEY: Let the record reflect that she's  
17 identified the defendant.

18 (WITNESS INDICATED TOWARD DEFENDANT.)

19 BY SOLICITOR KEENEY:

20 Q. Okay. So, Benjamin and Veronica come to your house.

21 Correct?

22 A. Yes.

23 Q. Okay. What happens next?

24 A. Well, I'm sitting on the couch and Benjamin sits right  
25 next to me, and Veronica's, like, right next to him. And I

Minor 1: DIRECT BY SOLICITOR KEENEY

-260-

1 don't know why Veronica didn't see him touching me.

2 Q. And where did he touch you? I know it's tough, but  
3 can you tell the jury where he touched you?

4 (WITNESS CRYING.)

5 Q. Mari --

6 THE COURT: All right. Why don't we take a break, and  
7 let her get composed, so while the jury go to the jury  
8 room, just for a minute.

9 (JURY EXITS COURTROOM AT 10:24 AM.)

10 THE COURT: We'll take a little break, about ten  
11 minutes. And Minor 1, you can step down, and have some  
12 water. You can't talk to anybody about the testimony. If  
13 you want to just kind of walk around or use the restroom  
14 that's fine.

15 (COURT IN RECESS AT 10:25 AM.)

16 (COURT BACK IN SESSION AT 10:38 AM.)

17 SOLICITOR KEENEY: Your Honor, we apologize, we were  
18 making sure we had the Hope Haven video correct after your  
19 most recent ruling.

20 THE COURT: Good. Good. All right, bring in the  
21 jury. The sound system is now working.

22 (JURY REENTERS COURTROOM AT 10:41 AM.)

23 THE COURT: During the break we were also able to get  
24 the sound system going.

25 You may proceed.

Minor 1 : DIRECT BY SOLICITOR KEENEY

-261-

1 SOLICITOR KEENEY: Thank you, your Honor.

2 DIRECT EXAMINATION-CONTINUES

3 Minor 1 BY SOLICITOR KEENEY:

4 Q. Minor 1, so you said you were in the living room.

5 Correct?

6 A. Yes.

7 Q. And who was in the living room with you?

8 A. Benjamin and Veronica.

9 Q. Okay. And can you tell us what happened next?

10 A. Well, I was in the living room, I was playing my  
11 brother's Tablet. And then, Benjamin sits right next to  
12 me, and Veronica sits next to Benjamin. And then, Benjamin  
13 starts touching me.

14 Q. And where did he touch you?

15 A. In my private -- my private part.

16 Q. Is there another name that you can call it?

17 A. I don't want to say it.

18 Q. You don't want to say it. Is it on the upper half or  
19 lower half of your body?

20 A. Lower.

21 Q. Okay. What happened next?

22 A. I heard the baby crying, so I went in and gave him the  
23 baby bottle. So --

24 Q. Where was the baby?

25 A. In the room, in the crib.

Minor 1: DIRECT BY SOLICITOR KEENEY

-262-

1 Q. Okay.

2 A. Crying, so I gave him the bottle. And then, I heard  
3 Benjamin say he needed to use the restroom, but he didn't  
4 need to use the restroom. So while I was giving the baby  
5 the bottle Benjamin came in the room. And I just grabbed  
6 the baby -- I just grabbed the baby and --

7 Q. And what happened next?

8 A. And then, he just pushed me a little bit back, and  
9 then just touched my breasts, and I just -- I just grabbed  
10 Jacob, and then I was just, like, trying to get out. But  
11 then, he, with all his force trying to like, like, leave me  
12 room, like, just like that. And then, I just grabbed Jacob  
13 so hard and I went, like, in the living room, and then  
14 Benjamin took awhile, and then he went to the living room.

15 Q. He went where?

16 A. In the living room.

17 Q. Did anything else happen in the bedroom?

18 A. No. My baby brother was crying because I knew he  
19 wanted to sleep. But I went to the crib. I don't mean in  
20 the crib, like I put my baby brother in the crib, and like  
21 I locked the door. And then, I don't know how, Benjamin  
22 got in the room.

23 Q. And what happened next?

24 (WITNESS CRYING.)

25 Q. Minor 1 can you tell us what happened next?

Minor 1 : DIRECT BY SOLICITOR KEENEY

-263-

1 A. He -- he would put his hand, like, on a private part.

2 Q. Did he put his hand -- was it on top of your clothes,  
3 or underneath of your clothes?

4 A. Underneath my clothes.

5 Q. Underneath your clothes? Was it on top of your  
6 underwear, or underneath your underwear?

7 A. Underneath.

8 Q. Okay. How did it make you feel?

9 A. Uncomfortable.

10 Q. Did it hurt?

11 MS. DOVELL: Objection, your Honor. Those are leading  
12 questions.

13 THE COURT: That's a leading question. I sustain the  
14 objection. Move on to your next question.

15 BY SOLICITOR KEENEY:

16 Q. What happened next? I'm sorry. Did he say anything  
17 to you?

18 A. Yes.

19 Q. What did he say?

20 A. He said if I say something --

21 MADAM COURT REPORTER: I'm sorry, could you repeat  
22 that, please?

23 A. He said if I say something, he said it's going to get  
24 worse, and I just got scared. So, I just grabbed the baby  
25 from the crib, and went to the living room.

Minor 1: DIRECT BY SOLICITOR KEENEY

-264-

1 Q. And what did you do next?

2 A. And then, every time -- everywhere I sat, he sat right  
3 next to me. And then -- and then, I was just - over me  
4 like a lot of movement and he just kept following me, and I  
5 just got scared. And then, my mom, like, she came. And  
6 then, my mom told me to check Jacob because he was, like,  
7 crying. And then, I just left him, he was already asleep,  
8 because I just gave him the bottle, and he just got back to  
9 sleep. And then, I went back to the living room.  
10 Veronica, my mom, and Benjamin were in the kitchen, and  
11 were just talking while hearing music. It wasn't my  
12 sisters, like, I don't know -- you plug it in, and then, it  
13 makes a loud sound. I'm not sure how, but that's how you -  
14 - that's how you hear music. And then, I just started  
15 playing with my brother's Tablet. And then, my mom's  
16 friend came and took -- and took Michael.

17 And then, my brother wanted his Tablet so he could  
18 play with Benjamin. And so, they were playing in the  
19 kitchen. And then, while I was watching TV, I heard the  
20 baby crying. And then the baby -- and then I went to the  
21 living room and got the baby out but then in the living  
22 room he was still crying and crying and my mom told me to  
23 take my baby brother outside. And then, she told -- she  
24 also told me to take out the walker so I did. And then, my  
25 cousin and my sister, Minor 2, they took -- they were

Minor 1: DIRECT BY SOLICITOR KEENEY

-265-

1 outside. And then, they went back in, because there was  
2 mosquitos, and they asked for the bug spray.

3 And I was on the porch while they were asking for the  
4 bug spray, and Benjamin was in his car, getting the bug  
5 spray out. And I saw him, like, spray bug spray on Minor 3  
6 and my sister Minor 2. She just put bug spray on her own  
7 self. And then, I was, like, in this little -- I got down  
8 the stairs and I got my baby brother and set in the walker.  
9 And then -- and then, Benjamin saw me come down and then he  
10 went and then he came and with the bug spray. And then he  
11 was telling me -- I just grabbed the bug spray and put some  
12 on my brother so he could start walking in the grass. And  
13 then, while I was picking up my brother from the grass,  
14 Benjamin said he wanted to kiss me. And then, I was just -  
15 - and then, I just put Benjamin -- not Benjamin, my baby  
16 brother, Jacob -- I just put him down in something where he  
17 could get up and just walk. I don't know what it's called,  
18 but I just left him there, and then I took -- went back  
19 running up. And then, Benjamin told me, where you going?  
20 I was like, I'm just going to get something, and that's  
21 when I told my mom that.

22 Q. What happened?

23 A. Yes.

24 Q. Okay. When he touched you, your private parts  
25 underneath your clothes, do you know if his fingers went

Minor 1: DIRECT BY SOLICITOR KEENEY  
CROSS BY MS. NOVELL

1 inside your private part?

2 A. Yes.

3 Q. Do you -- do you know? Did his fingers go inside your  
4 private part?

5 A. Yes, it did.

6 Q. Did your mom call the police?

7 A. Well, I heard Veronica say --

8 SOLICITOR KEENEY: I'll withdraw the question. I'm  
9 sorry.

10 No further questions for this witness.

11 THE COURT: Ms. Dovell?

12 MS. DOVELL: Your Honor, may I approach?

13 (SIDE BAR CONFERENCE OFF THE RECORD OUT OF HEARING OF  
14 JURORS AT 10:54 AM.)

15 CROSS-EXAMINATION

16 Minor 1 BY MS. DOVELL:

17 Q. Good morning, Minor 1

18 A. Good morning.

19 Q. I know Ms. Keeney asked you how many brothers and  
20 sisters you have, but would you mind going back through  
21 their names for me?

22 A. My little brother's name is Jacob. My -- my brother  
23 is Julio. My little sister is Minor 2 And then, it's  
24 me, Minor 1. And then, it's my older sister, Jessica.

25 Q. Okay. How old is Julio?

Minor 1 : CROSS BY MS. NOVELL

-267-

1 A. He's eight years old.

2 Q. On July 17th, you were at your house?

3 A. Yes.

4 Q. And Minor 2 and Minor 3 were out with your mom?

5 A. Yes.

6 Q. So, you were at home with Jacob, Julio, and Michael?

7 A. Yes.

8 Q. And you were watching them?

9 A.. No. Julio and Michael were in my mom's room watching  
10 TV, and I was with my brother's Tablet, in the living room,  
11 watching TV, while my baby brother was in my -- my older  
12 sister and my little sister's room, sleeping in the crib.

13 Q. Okay. And your older sister, she was at a sweet  
14 fifteen practice; is that right?

15 A. Yes.

16 Q. I was just listening to your testimony, and you said  
17 that you and Benjamin and Veronica were all seated on the  
18 couch; is that right? After they first got there?

19 A. Yes.

20 Q. Okay. And you said that Benjamin touched you?

21 A. Yes.

22 Q. And you said that Veronica didn't see him?

23 A. No.

24 Q. And she was seated next to Benjamin?

25 A. Yes.

Minor 1: CROSS BY MS. NOVELL

-268-

1 Q. Okay. Do you remember speaking with Officer Ferrelli  
2 on July 17th?

3 A. Yes.

4 Q. Okay. Do you remember telling him that Benjamin sat  
5 right next to you on the couch?

6 A. No cause I was scared.

7 Q. So, you're telling me you don't remember what you told  
8 Officer Ferrelli?

9 A. I told him everything, like, what Benjamin did to me  
10 and everything, but I didn't -- I think I missed some  
11 parts, because I was so scared.

12 Q. Well, you told Officer Ferrelli he didn't touch you  
13 when you were on the couch, didn't you?

14 A. I told him he did touch me.

15 Q. You told Officer Ferrelli that he didn't touch you  
16 when you were on the couch; isn't that right?

17 A. I told him he did touch me when I was on the couch.

18 Q. All right. Do you remember talking with a lady named  
19 Ms. Kendra?

20 A. No.

21 Q. Do you remember going to -- well, do you remember  
22 talking with Ms. Kendra a few weeks after the incident,  
23 like, in the beginning of August?

24 A. At Hope Haven?

25 Q. Yes.

Minor 1: CROSS BY MS. NOVELL

-269-

1 A. Yes.

2 Q. Okay. And do you remember when you spoke with Ms.  
3 Kendra, you told her nothing happened on the couch; isn't  
4 that right?

5 A. I'm not sure. I don't remember.

6 Q. Okay. Okay. You've had a lot to say, so I'm going  
7 very carefully over everything that you said on the stand.  
8 You -- you've told the Court that you went -- you heard the  
9 baby cry, and you went to the room; is that right?

10 A. Yes.

11 Q. And the gave the baby a bottle; is that right?

12 A. Yes.

13 Q. Okay. And you heard Benjamin say he needed to use the  
14 restroom? And he was in the living room when he said that?

15 A. Yes.

16 Q. Okay. And you said that he didn't need to use the  
17 restroom; is that right?

18 A. Yes.

19 Q. And you said --

20 A. While he was talking to Veronica, he said he needed to  
21 use the restroom, but he didn't need to use the restroom  
22 because he just went to my room.

23 Q. Okay. So, he went to the room you were with the baby;  
24 is that that right?

25 A. Yes.

1 Q. And you said that he came in, and that he -- did he --

2 I couldn't quite hear. You said that he pushed you?

3 A. He pushed me while I was doing -- well, while I was  
4 getting my little brother. He wouldn't, like, stop crying.

5 Q. Uh-huh.

6 A. I don't know why he wouldn't stop crying. So, I  
7 grabbed him. I was walking -- I was about to leave the  
8 door but then, Benjamin, he was like, right in front. And  
9 then he pushed me back with his -- I just went back.

10 Q. Okay. And you said that he used -- that he -- at that  
11 time, you said that he touched your breasts; is that right?

12 A. Yes.

13 Q. And you said he -- that he used all of his force to  
14 try to leave you in the room? Okay. And then, you said  
15 after that, you grabbed Jacob, and you went back to the  
16 living room?

17 A. Uh-huh.

18 Q. And Veronica was still in the living room?

19 A. Yes, she was.

20 Q. Okay. And were Julio and Michael still in the other  
21 room watching TV?

22 A. Yes. They were still watching TV.

23 Q. Okay. Again, you said you remember speaking with  
24 Officer Ferrelli.

25 A. Yes.

Minor 1 : CROSS BY MS. NOVELL

-271-

1 Q. And do you remember telling him that, when Benjamin  
2 went to -- said he went to the bathroom the first time, you  
3 told him that he came in the room. Correct?

4 A. Yes.

5 Q. But you told him that nothing happened that time;  
6 isn't that right?

7 A. Yes.

8 Q. Okay. So, you told Officer Ferrelli that nothing  
9 happened the first time Benjamin went to the bathroom.

10 And then, again, you remember talking with Ms. Kendra  
11 at Hope Haven, and you told Ms. Kendra the same thing, that  
12 he had to go -- that he said he had to go to the bathroom.  
13 Right? And then, you said he went into the room. And you  
14 told Ms. Kendra that he didn't touch you then, didn't you?

15 A. He did touch me??

16 Q. But you told Ms. Kendra that he didn't touch you that  
17 first time, didn't you?

18 A. He did touch me.

19 Q. My question is, you told Ms. Kendra that he did not  
20 touch you. You don't remember?

21 A. No, I don't remember.

22 Q. Okay. Okay. And so, after -- after that, you went  
23 out into the living room. Veronica's there, and you said  
24 Benjamin just kind of took him time coming back to the  
25 living room; is that right?

Minor 1 : CROSS BY MS. NOVELL

-272-

1 A. Yes.

2 Q. And then, you said you heard the baby crying again,  
3 and you went to the crib; is that right?

4 A. Yes.

5 Q. And you said that you locked the door?

6 A. Yes.

7 Q. And then, you said somehow, Benjamin came in the room?

8 (WITNESS NODDED HER HEAD.)

9 Q. Okay.

10 MADAM COURT REPORTER: Can I get a response instead of  
11 a head nod?

12 MS. DOVELL: Okay.

13 Q. Minor 1 would you mind saying yes or no when you  
14 answer the questions, instead of just nodding your head?

15 It's for the court reporter.

16 A. Yes.

17 Q. Thank you. Okay. He came in the room again, and you  
18 said he put his hand underneath your underwear?

19 A. Yes, he did.

20 Q. Okay. And you said, at that time, he told you that  
21 things would get worse if you tell?

22 A. Yes, he did.

23 Q. Okay. All right. And again, you remember talking  
24 with Ms. Kendra at Hope Haven. Correct?

25 A. Yes.

Minor 1 [REDACTED]: CROSS BY MS. NOVELL

-273-

1 Q. And you told Ms. Kendra that, when he touched you  
2 under your clothes, he didn't say anything to you; isn't  
3 that right?

4 A. No, he didn't say nothing.

5 Q. Okay. And after that happened, you said you went back  
6 to the living room; is that right?

7 A. Yes.

8 Q. Okay. And you said, from that --- where did -- and you  
9 said that you went to go sit on the couch after that; is  
10 that right?

11 A. Yes.

12 Q. Was Veronica still on the couch?

13 A. Yes, she was.

14 Q. And you said Benjamin went to sit next to you?

15 A. Yes, he did.

16 Q. Well, where did you go from there?

17 A. What do you mean?

18 Q. Well, you said that he kept following you; is that  
19 right?

20 A. Yes.

21 Q. Well, where did you go next?

22 A. I was -- I kept moving from -- from the couch.

23 Q. Okay. And you said that your mom came home then.

24 A. Yes.

25 Q. So, your mom was not home about -- with the incidents

Minor 1: CROSS BY MS. NOVELL

-274-

1 we talked about earlier.

2 A. Yeah.

3 Q. Okay. And then, your mom said to take Jacob, he's  
4 crying; is that right?

5 A. Yeah.

6 Q. All right. So, your mom and Veronica and Benjamin,  
7 they're all -- are they in the kitchen?

8 A. Yes. My brother Julio and my -- my brother Julio and  
9 Michael were in the living room. And then, Michael's mom  
10 came and picked Michael up. And then I -- and then, my  
11 brother -- I was -- while my --

12 Q. Okay. I just asked if they -- if Veronica and your  
13 mom and Benjamin were in the kitchen. So, it's okay.

14 A. Yeah, somewhere.

15 Q. All right. And Minor 3 and Minor 2 were outside.  
16 Right?

17 A. Yes.

18 Q. And this was while you were playing with the Tablet?

19 A. Yes.

20 Q. Okay. So, the baby is still crying. Right?

21 A. Yes.

22 Q. And you've got him, and your mom asks you to take him  
23 outside; is that right?

24 A. Yes.

25 Q. Okay. So, Minor 3 and Minor 2 are already outside?

Minor 1: CROSS BY MS. NOVELL

-275-

1 A. Yes. But then, they came back in to ask for bug  
2 spray.

3 Q. Okay. And then, Benjamin went outside to get bug  
4 spray?

5 A. Yes.

6 Q. Okay. And you said that Benjamin was spraying Minor 3?

7 A. Yes.

8 Q. And that he -- that Minor 2 took it and sprayed  
9 herself.

10 A. Yes.

11 Q. Okay. And you were outside at this point, too, then.  
12 Right?

13 A. Yes. I was on the porch.

14 Q. Okay. You were on the porch. And you put the baby  
15 down on the grass; is that right?

16 A. Not in the grass.

17 Q. In the walker?

18 A. Yes.

19 Q. Is that where he was? Okay. So, he was in the  
20 walker. And Benjamin saw you put the baby in the walker?

21 A. No. Benjamin was like, I heard voices like when he  
22 was talking to Minor 3 and Minor 2. So, while I was  
23 putting the walker in this, like, sidewalk that we have ---

24 Q. Uh-huh.

25 A. --- I put the walker on the sidewalk, and I was

Minor I : CROSS BY MS. NOVELL

-276-

1 carrying my brother, because he couldn't walk or crawl.

2 Q. Okay.

3 A. Yet. Well, he could crawl a little bit, but like, he  
4 can't walk or like, crawl that much.

5 Q. Oh, that's fine. So, how about this? So, you were  
6 taking care of your brother. Right?

7 A. Yes.

8 Q. Okay. And Benjamin comes -- Okay. Did you go -- you  
9 went over to Benjamin to get the bug spray?

10 A. No.

11 Q. He came over to you to give the bug spray.

12 A. Yes.

13 Q. Okay. And you said that you grabbed the bug spray to  
14 put some on your brother?

15 A. Yes.

16 Q. Okay. And you said, at that point, Benjamin said that  
17 he wanted to kiss you?

18 A. Yes.

19 Q. Okay. And then, you ran inside?

20 A. Yes.

21 Q. Okay. All right. Again, you remember talking with  
22 Ms. Kendra at Hope Haven. Right?

23 A. Yes.

24 Q. All right. And you, you told her that -- that that  
25 night, he told you that he wanted to go to bed with you?

Minor 1 : CROSS BY MS. NOVELL

-277-

1 A. Yes.

2 Q. You told her that? Okay. Okay. And you remember  
3 talking with Ms. Kendra. Right?

4 A. Yes.

5 Q. Okay. And she asked you if anything went inside your  
6 vagina; is that right?

7 A. Yes, she did.

8 Q. And you said -- you asked her, well, what do you mean;  
9 is that right?

10 A. Yes.

11 Q. And then, she asked, well, how did it feel; is that  
12 right?

13 A. Yes.

14 Q. And then, you just said, I don't know; is that right?

15 A. Yeah.

16 Q. Okay. And she asked you again, she said, you're not  
17 sure if something goes in; is that right? And -- and you  
18 said you weren't sure; is that right?

19 A. Yes.

20 Q. Okay.

21 MS. DOVELL: All right. Your Honor, beg the Court's  
22 indulgence.

23 THE COURT: Yes, ma'am.

24 MS. DOVELL: I'd like to -- may I set up my video?

25 THE COURT: Yes, ma'am.

Minor 1: CROSS BY MS. NOVELL

-278-

1 MS. DOVELL: Okay. Thanks. Your Honor, we might need  
2 to take a break, because my computer is not set up for  
3 audio/visual at this point.

4 SOLICITOR KEENEY: You just plug it in.

5 MS. DOVELL: Your Honor, I'm going to do my best to  
6 try to get these to the exact spots. There are some points  
7 where I don't have the exact times pinpointed, and I may  
8 need to take a break to pinpoint those times.

9 THE COURT: All right.

10 MS. DOVELL: Thank you.

11 THE COURT: Let's see how it goes.

12 BY MS. DOVELL:

13 Q. Minor 1 I had asked you --

14 THE COURT: Members of the jury panel, this is a  
15 audio/video of an interview by Kendra Twitty and Minor 1  
16 taken August 5, 2015.

17 MS. DOVELL: I think this is the spot.

18 BY MS. DOVELL:

19 Q. Minor 1 I had asked you earlier if you remember  
20 telling Ms. Kendra that nothing happened on the couch. Do  
21 you remember telling her that?

22 A. No.

23 MS. DOVELL: Well, your Honor, maybe I have the  
24 headphone jack in the wrong place. Court's indulgence,  
25 please.

Minor 1: CROSS BY MS. NOVELL

-279-

1 All right, try this again.

2 Your Honor, for whatever reason, my volume is not  
3 working on the -- the audio/visual display here. Let me  
4 try this again. Mute is off. All right. I think that  
5 worked.

6 (VIDEO/AUDIO PUBLISHED TO THE JURY AT 11:20 AM.)

7 THE COURT: See if you can - Can you get it any  
8 louder?

9 MS. DOVELL: Your Honor, the video is pretty quiet,  
10 but I'll do my best. This is as loud as my computer goes,  
11 your Honor.

12 THE COURT: It's not audible.

13 MS. DOVELL: Yes, sir.

14 THE COURT: Let's take a short break, while they see  
15 if we can get this kink worked out.

16 (JURY EXITS COURTROOM AT 11:22 AM.)

17 THE COURT: I'm not a techy so I don't have any ideas  
18 of what to do. And incidently this is Court's Exhibit  
19 Number?

20 MADAM COURT REPORTER: This is Minor 1 Forensic  
21 Interview on August the 5th. This is Court's Eleven.

22 MS. DOVELL: Court's Eleven?

23 MADAM COURT REPORTER: Yes, ma'am.

24 THE COURT: Of course I want to make sure that was in  
25 the record.

Minor 1: CROSS BY MS. NOVELL

-280-

1 MADAM COURT REPORTER: Okay.

2 MS. DOVELL: Okay. Thank you. Court's Eleven.

3 (COURT IN RECESS AT 11:25 AM.)

4 (COURT BACK IN SESSION AT 11:37 AM.)

5 MS. DOVELL: Your Honor, can we have Minor 1  
6 sequestered while we're playing this. I don't know if it's  
7 just a matter of course now because if you're gonna put the  
8 video in she's gonna hear it. Well I guess she won't be in  
9 here for that but while I'm stopping and starting do we  
10 want her still here on the stand?

11 SOLICITOR KEENEY: You're about to present it to her  
12 anyway.

13 MS. DOVELL: Yeah. But I'm just saying, I'm trying to  
14 find the right spots for stuff and for the - I'm trying to  
15 find the right spots on the video for the points where I'm  
16 using it.

17 SOLICITOR KEENEY: You want to play it to see if I can  
18 hear it?

19 (AUDIO/VIDEO PLAYED.)

20 SOLICITOR KEENEY: I can hear it but barely.

21 MS. DOVELL: All right, your Honor, I think I've got  
22 some of the spots identified. Now the problem is just  
23 making sure the jury can hear. All right.

24 THE COURT: I don't know of anything better to do. I  
25 will not take judicial notice but I will note that when we

Minor 1 : CROSS BY MS. NOVELL

-281-

1 as to all three of the children's forensic interviews I  
2 don't know whether it was where the mic was positioned  
3 which apparently it was at their back and their soft voices  
4 most of it was not intelligible to me on the video played,  
5 the video and audio played by the State when we were  
6 accessing it under the statute. So I don't know, I don't  
7 know of any way to get it any louder.

8 MS. DOVELL: Okay. Well, we'll see what we can do.

9 THE COURT: Okay. Bring in the jury.

10 MS. DOVELL: I think we might be ready for the first  
11 part.

12 THE COURT: I'm sorry, I didn't hear what you said.

13 MS. DOVELL: I think we might be ready for the first  
14 part.

15 THE COURT: Okay. Bring in the jury.

16 You're not gonna have the video, just the other?

17 MS. DOVELL: Yes, your Honor.

18 THE COURT: Because I want to tell the jury because  
19 they've already seen the setting.

20 MS. DOVELL: Okay. That's fine.

21 (JURY REENTERS COURTROOM AT 11:40 AM.)

22 THE COURT: As we all know technology can be great but  
23 it can be a pain too. We've done what we think we can with  
24 the -- in the actual interview you've seen the interview  
25 room between Ms. Twitty and I mentioned earlier. We're not

Minor 1: CROSS BY MS. DOVELL

-282-

1 gonna do the video; we're just going to as to questions  
2 that Ms. DOVELL has that rather relate to the interview.  
3 She's just gonna play the audio. Now I can tell you I have  
4 listened to the entire interview and this is the best we  
5 can do because this witness has a soft voice and the way  
6 that room is configured at full volume this is it.

7 Okay, you may go ahead.

8 MS. DOVELL: Thank you, your Honor. May it please the  
9 Court?

10 THE COURT: Yes, ma'am.

11 MS. DOVELL: For the record, I am playing the audio  
12 portion of Court's Exhibit Eleven. With the Court's  
13 permission, I'd like to publish.

14 THE COURT: You may.

15 BY MS. DOVELL:

16 Q. Minor 1, I had asked you if you remember telling Ms.  
17 Kendra that nothing happened while you were on the couch,  
18 and you responded, no. Is that still your answer?

19 A. Yeah.

20 Q. Okay. Thank you.

21 (WHEREUPON, COURT'S EXHIBIT NUMBER ELEVEN, PUBLISHED  
22 TO THE JURY AT 11:42 AM..)

23 BY MS. DOVELL:

24 Q. Minor 1, I had asked you if you remember talking with  
25 Ms. Kendra.

Minor 1: CROSS BY MS. NOVELL

-283-

1 A. Yes.

2 Q. And do -- and I asked that -- and I said, you told Ms.  
3 Kendra that nothing happened the first time went to the --  
4 the first time Benjamin went to the restroom; isn't that  
5 right? And you said you didn't remember telling Ms.  
6 Kendra; is that right?

7 A. Yeah.

8 (COURT'S EXHIBIT NUMBER ELEVEN CONTINUES TO BE  
9 PUBLISHED TO THE JURY.)

10 BY MS. DOVELL:

11 Q. All right. And Minor 1 I had asked you if you told  
12 Ms. Kendra you didn't know if something went into your  
13 vagina; isn't that right?

14 A. Yeah.

15 Q. And you said you didn't know.

16 A. Yeah, because I didn't understand ---

17 Q. Okay. That's --

18 A. --- the question.

19 Q. Okay.

20 SOLICITOR KEENEY: Your Honor, may we approach?

21 (SIDE BAR CONFERENCE OFF THE RECORD OUT OF THE HEARING  
22 OF THE JURY AT 11:44 AM.)

23 MS. DOVELL: Beg the Court's indulgence, your Honor.

24 THE COURT: Yes, ma'am.

25 MS. DOVELL: Your Honor, I have no further questions

Minor 3: DIRECT BY SOLICITOR KEENEY

-284-

1 for the witness.

2 THE COURT: Thank you. Redirect?

3 SOLICITOR KEENEY: No, your Honor.

4 THE COURT: All right. Minor 1 you can step down  
5 and have a seat. Thank you. We appreciate your time.

6 (WITNESS LEAVES WITNESS STAND.)

7 THE COURT: Call you next witness.

8 SOLICITOR KEENEY: The State calls Minor 3.

9 (WHEREUPON, Minor 3

10 [REDACTED], BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS  
11 FOLLOWS:)

12 MADAM CLERK: State your full name, your first and  
13 your last, and spell your last name for us.

14 A. Minor 3 [REDACTED]

15 DIRECT EXAMINATION

16 Minor 3 BY SOLICITOR KEENEY:

17 Q. Good afternoon, Minor 3 Minor 3, how old are you?

18 A. Eleven.

19 Q. When is your birthday?

20 A. [REDACTED]

21 Q. Do you have any brothers or sisters?

22 A. Yeah.

23 Q. What are their names?

24 A. Antonio and Rosa.

25 Q. What school do you go to?

Minor 3: DIRECT BY SOLICITOR KEENEY

-285-

- 1 A. Porter Ridge Middle School.
- 2 Q. What -- where is that?
- 3 A. Monroe, North Carolina.
- 4 Q. What grade are you in?
- 5 A. Sixth.
- 6 Q. Do you know what a lie is?
- 7 A. Yes.
- 8 Q. Do you know the difference between the truth and a
- 9 lie?
- 10 A. Yes.
- 11 Q. Are you -- Is it wrong to tell a lie?
- 12 A. Yes.
- 13 Q. Do you promise to tell the truth?
- 14 A. Yes.
- 15 Q. If you don't know the answer to a question, should you
- 16 guess?
- 17 A. No.
- 18 Q. I'm going to take you back to July 17th of 2015.
- 19 Okay?
- 20 A. Okay.
- 21 Q. How old were you at that time?
- 22 A. Eleven.
- 23 Q. Where were you on that day?
- 24 A. At my cousin's house.
- 25 Q. And who's your cousin?

Minor 3: DIRECT BY SOLICITOR KEENEY

-286-

1 A. Minor 1 and Minor 2.

2 Q. And were you living with them, or visiting?

3 A. Visiting.

4 Q. What did you do that day?

5 A. I don't recall.

6 Q. At some point, did you leave the house?

7 A. Yes.

8 Q. Where did you go?

9 A. Outside.

10 Q. Did you go anywhere with Minor 1 mother?

11 A. Yes.

12 Q. Where did you go?

13 A. We went to the store.

14 Q. Did you eventually come back from the store?

15 A. Yes.

16 Q. And can you tell me, who went to the store, just you  
17 and Maria, or was there anybody else?

18 A. Me, Maria, and Minor 2

19 Q. What happened when you got back from the store?

20 A. Well, we came back, and there was people there. There  
21 was my cousin Minor 1, my other cousin, the baby Jacob,  
22 and two other people.

23 Q. Do you know who those other people were?

24 A. I don't -- I don't remember their names but I do  
25 remember one of 'em.

Minor 3: DIRECT BY SOLICITOR KEENEY

-287-

1 Q. Okay. Do you know how those other people knew  
2 Minor 1 family?

3 A. Yeah.

4 Q. How do they know them?

5 A. They're, I think, cousins from the dad's side.

6 Q. What happened when you were at Minor 1 house?

7 A. Like, what do you mean, what happened?

8 Q. What were you all doing at the house that night?

9 A. We were like, basically eating and playing and stuff  
10 like that.

11 Q. Did anything out of the usual happen to you that  
12 night?

13 A. Yes.

14 Q. Can you tell the jury what happened?

15 A. I got inappropriately touched.

16 Q. Okay. Do you know who touched you inappropriately?

17 A. Yes.

18 Q. Who?

19 A. Benjamin.

20 Q. Do you see him here today?

21 A. Yes.

22 Q. Can you point him out for the jury? What's he  
23 wearing? Can you see?

24 A. Uh-huh.

25 Q. Can you see what he's wearing?

1 A. Right now?

2 Q. Yeah.

3 A. I think, a black tux and a purple tie.

4 Q. Okay.

5 SOLICITOR KEENEY: Let the record reflect that she has  
6 identified the defendant.

7 (WITNESS IDENTIFIED DEFENDANT BENJAMIN CERVANTES-  
8 HERNANDEZ AT DEFENSE TABLE.)

9 BY SOLICITOR KEENEY:

10 Q. Okay. Where did Benjamin inappropriately touch you?  
11 Or what room in the house?

12 A. The kitchen.

13 Q. And can you tell us more about that touching, what  
14 happened?

15 A. Yeah.

16 Q. What happened?

17 A. Like, how?

18 Q. Yeah. How did it happen?

19 A. Well, we were sitting on the other side of the table,  
20 across from my aunt, and he just, like, reached down and  
21 started touching.

22 Q. And where, on your body, did he touch you?

23 A. My private part.

24 Q. And is there another name you call it?

25 A. No.

Minor 3: DIRECT BY SOLICITOR KEENEY

-289-

1 Q. Is it your upper half lower half?

2 A. Lower half.

3 Q. When he touched you on your private part, was it on  
4 top of your clothes, or underneath your clothes?

5 A. On top.

6 Q. Did he say anything to you?

7 A. No.

8 Q. What happened next? What did you do, or where did you  
9 go?

10 A. Like, after the thing?

11 Q. Yeah, after he touched you in the kitchen.

12 A. Well, we went to go, like, play tag and hide and go  
13 seek and stuff.

14 Q. Okay. Did you ever go anywhere -- did you ever have  
15 any other encounters with Benjamin?

16 A. Yes.

17 Q. And where was that encounter?

18 A. Yes.

19 Q. And where was that encounter?

20 A. In the -- I think it was in, like, one of my cousin's  
21 room.

22 Q. Okay. Can you tell us some more about what happened  
23 in the cousin's room?

24 A. Yes. We were looking for a cable, and we couldn't  
25 find it, so we were about to leave.

Minor 3 : DIRECT BY SOLICITOR KEENEY

-290-

1 Q. I'm sorry to interrupt you. And when you say, we, who  
2 are you talking about?

3 A. Me, Minor 2, and Benjamin.

4 Q. Okay. So, you're looking for a cable, and then what  
5 happened next?

6 A. So we couldn't find out, so Minor 2 left first. And  
7 then, he tried to go down my pants, but I didn't really,  
8 like, I didn't know it was wrong, so like, pretended I was  
9 pulling up my pants.

10 Q. So, you pulled your pants up, and what did you do?

11 A. I just walked away.

12 Q. Did you eventually tell somebody what happened?

13 A. Yes.

14 Q. Who did you tell?

15 A. My -- my aunt.

16 Q. Is that Minor 1 mom?

17 A. Yes.

18 SOLICITOR KEENEY: No further questions for this  
19 witness. Oh, I'm sorry, can I just ask one more?

20 Q. Did you want him to touch you inappro -- touch you in  
21 that way?

22 A. No.

23 Q. Thank you.

24 THE COURT: Ms. Dovell?

25 MS. DOVELL: Thank you, your Honor.

Minor 3 : CROSS BY MS. NOVELL

-291-

CROSS-EXAMINATION

Minor 3 BY MS. DOVELL:

Q. Hello, Minor 3.

A. Hey.

Q. You told us that Benjamin touched you outside your clothes?

A. Yes.

Q. And this was in the kitchen?

A. Yes.

Q. And you were sitting at the table?

A. Yes.

Q. And your aunt was in the kitchen?

A. Yes.

Q. She was sitting at the table?

A. Yes. She was sitting on the opposite side of the table.

Q. Okay. And was the other -- was there another lady there?

A. Yes.

Q. And she was sitting at the table, too?

A. Yes, on the opposite side of the table.

Q. And there were other people in the kitchen. Right?

A. Yeah. Walking in and out, yeah.

Q. Okay. And you said when you were in the room looking for the cable, Minor 2 was in there as well?

Minor 3 CROSS BY MS. NOVELL

-292-

1 A. Yes.

2 Q. And were you outside when Benjamin went to get the bug  
3 spray?

4 A. Yes.

5 Q. And you said that you told Minor 1 mom what  
6 happened?

7 A. Yes.

8 Q. And you told her what happened before the police  
9 arrived?

10 A. Yeah.

11 Q. And you told her before she called the police. Right?

12 A. Yeah.

13 Q. And you spoke with Minor 1 and Minor 2 before the  
14 police arrived. Right?

15 A. Uh --

16 Q. You had a chance to hang out with them, right, before  
17 the police arrived?

18 A. A little while, yeah.

19 Q. And you're close with Minor 1 Right?

20 A. Yes.

21 Q. Even though you live in Monroe, your families are  
22 close?

23 A. Yes.

24 Q. And was Minor 1 family planning a trip to Carowinds  
25 sometime soon to see you?

Minor 3: CROSS BY MS. NOVELL

-293-

1 A. Yes.

2 Q. And you're the same age as Minor 1 Right?

3 A. Yes.

4 Q. And do you remember speaking with a woman named Kendra  
5 Twitty?

6 A. Yes.

7 Q. Okay. And that was at Hope Haven. Right?

8 A. Uh-huh.

9 Q. When you met with her, did you recall telling her --  
10 well, she asked you what happened. Right?

11 A. Yes.

12 Q. And you said, I don't know when, but a man touched us;  
13 isn't that right?

14 A. Yes.

15 Q. Okay.

16 MS. DOVELL: Beg the Court's indulgence, your Honor.

17 THE COURT: Yes.

18 MS. DOVELL: The Court's indulgence, your Honor.

19 (PAUSE AT 11:58 AM..)

20 MS. DOVELL: No further questions for the witness at  
21 this time, your Honor.

22 THE COURT: All right. Any redirect?

23 SOLICITOR KEENEY: No, your Honor. May this witness  
24 be excused?

25 THE COURT: You may step down and be excused. We

Minor 2 : DIRECT BY SOLICITOR KEENEY

-294-

1 appreciate your time. Thank you.

2 (WITNESS LEAVING WITNESS STAND.)

3 THE COURT: Call your next witness.

4 SOLICITOR KEENEY: The State calls Minor 2 .

5 (WHEREUPON, Minor 2 ,

6 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

7 MADAM CLERK: State your full name and spell your last  
8 name.

9 A. Minor 2 . Minor 2 .

10 DIRECT EXAMINATION

11 Minor 2 BY SOLICITOR KEENEY:

12 Q. Good afternoon, Minor 2 . How old are you?

13 A. Nine.

14 Q. When's your birthday?

15 A. [REDACTED] [REDACTED]

16 Q. Who is your mom and dad?

17 A. Maria Pizanna and Efrian Jimenez.

18 Q. Do you have any brothers and sisters?

19 A. Yes.

20 Q. Can you tell me just their first names?

21 A. Minor 1 Jessica, Julio, and Jacob.

22 Q. What school do you go to?

23 A. Red Cedar Elementary.

24 Q. What grade are you in?

25 A. Fourth.

Minor 2 [REDACTED]: DIRECT BY SOLICITOR KEENEY

-295-

1 Q. Do you know what a lie is?

2 A. Yes.

3 Q. Is it right or wrong to tell a lie?

4 A. Wrong.

5 Q. Do you promise to tell the truth today?

6 A. Yes.

7 Q. And if you don't know the answer to a question, should  
8 you guess?

9 A. No.

10 Q. I'm going to take you back to July 17th of 2015.

11 Okay?

12 A. Yes.

13 Q. How old were you at that time?

14 A. I was nine.

15 Q. Where -- What did you do that day?

16 A. I was at home.

17 Q. Did you ever leave the home to go anywhere that day?

18 A. Uh-huh.

19 Q. Where did -- And say yes or no.

20 A. Yes.

21 Q. And where did you go?

22 A. I went to the gasoline station to buy some drinks.

23 Q. Who was at your house that night?

24 A. Benjamin and Veronica.

25 Q. Was there anyone else there?

Minor 2 [REDACTED]: DIRECT BY SOLICITOR KEENEY

-296-

1 A. Minor 3 my mom, my brothers, and my sisters.

2 Q. Was Jessica there? Do you remember?

3 A. No.

4 Q. And you said Benjamin was there. How do you know  
5 Benjamin?

6 A. Because he was -- I don't know.

7 Q. Do you see Benjamin in the courtroom today?

8 A. Yes.

9 Q. Can you point him out for the jury? Can you tell me  
10 what he's wearing?

11 A. A tie and black sweater -- I mea a black shirt.

12 SOLICITOR KEENEY: Let the record reflect that she's  
13 identified the defendant.

14 (WITNESS IDENTIFIED THE DEFENDANT BENJAMIN CERVANTES-  
15 HERNANDEZ SEATED AT DEFENSE TABLE.)

16 BY SOLICITOR KEENEY:

17 Q. Tell us what happened that night. What were you  
18 doing?

19 A. I was with Minor 3

20 Q. What were you all doing?

21 A. We were talking to him, and she was talking about  
22 Carowinds and she said -- she told him she wants to go to  
23 the room to talk about it and she told me --

24 Q. I'm sorry for interrupting you, when you say, him, who  
25 are you talking about?

Minor 2: DIRECT BY SOLICITOR KEENEY

-297-

1 A. Benjamin.

2 Q. And when you talk about Carowind's you're talking  
3 about the amusement park, with roller coasters?

4 A. Yes.

5 Q. And you can keep going. And what happened next?

6 A. And we went there. And then, we were talking about  
7 Carowinds then we left. And then, I, like, I -- like, I  
8 got up on him, and he's like -- he's started to kiss me on  
9 the mouth, but I tried to like, move my -- my face away, so  
10 that he couldn't do it. And then, I got off quick. And  
11 then, I went with Minor 3.

12 Q. Did -- When you say you got on him, what do you mean?

13 A. Like, I -- got, like -- I, like, jumped on him.

14 Q. Playing? Were you playing around?

15 A. No, like, I like -- like, he carried me.

16 Q. How did he carry you?

17 A. Like, I can't explain it. Like, my legs were -- like,  
18 we, like, where his, like, body is, like --

19 Q. What else happened?

20 A. And then, we went to the kitchen. And then, then he  
21 sat down on the -- on the ta -- on the chair. And then,  
22 he, like, put me on his lap, and then he started touching  
23 me.

24 Q. Where did he touch you?

25 A. On my part, my private part.

Minor 2 : DIRECT BY SOLICITOR KEENEY  
CROSS BY MS. NOVELL

-298-

1 Q. And is that on your lower -- lower part of your body,  
2 or upper part of your body?

3 A. Lower part.

4 Q. And what did he touch you with?

5 A. His hand.

6 Q. Did you want him to touch you on your private part?

7 A. No.

8 Q. How did it make you feel?

9 A. Like, scared.

10 Q. Was -- when he touched you on your private part, was  
11 it above your clothes, or underneath your clothes?

12 A. Above.

13 Q. Did you eventually tell somebody what happened that  
14 night?

15 A. I did, after that happened.

16 Q. Who did you tell?

17 A. I told my mom.

18 Q. And did the police come that night?

19 A. Yes.

20 SOLICITOR KEENEY: No further questions.

21 THE COURT: Ms. Dovell?

22 MS. DOVELL: Thank you, your Honor.

23 CROSS-EXAMINATION

24 Minor 2 BY MS. DOVELL:

25 Q. Hello, Minor 2 .

Minor 2 : CROSS BY MS. NOVELL

-299-

1 A. Hi.

2 Q. All right. You testified that Benjamin touched you on  
3 your private part?

4 A. Yes, ma'am.

5 Q. And you said that this was when he was on -- that you  
6 were on his lap?

7 A. Yes.

8 Q. And you were in the kitchen?.

9 A. Yes.

10 Q. And was Minor 3 in the kitchen?

11 A. Yeah.

12 Q. And your mom was in the kitchen. Right?

13 A. Yes.

14 Q. And Veronica was in the kitchen. Right?

15 A. Yes.

16 Q. And people are kind of coming and going. Right?

17 A. Yeah.

18 Q. All right. Back up a little bit. You are the middle  
19 child; is that right?

20 A. Yes.

21 Q. Okay. And you knew Benjamin pretty well. Right? You  
22 called him uncle?

23 A. Yes.

24 Q. And you said that you went to the gas station that  
25 night. Right?

Minor 2: CROSS BY MS. NOVELL

-300-

1 A. Yes.

2 Q. To get drinks?

3 A. Yes.

4 Q. And Benjamin took you all to get drinks. Right?

5 A. Yes.

6 Q. And that night, he and Veronica brought you all some  
7 chips. Right?

8 A. Yes.

9 Q. And at some point, you went outside. Right?

10 A. Yes.

11 Q. With Minor 3. Right?

12 A. Yes.

13 Q. And you were outside when Benjamin got the bug spray?

14 A. Yes.

15 Q. Okay. And Minor 1 was outside, too. Right?

16 A. I don't know.

17 Q. You talked with Minor 1 and Minor 3 before the police  
18 arrived. Right?

19 A. I don't remember.

20 Q. And --

21 MS. DOVELL: Beg the Court's indulgence, your Honor.

22 Excuse me one moment, Minor 2.

23 (PAUSE AT 12:11 PM..)

24 Q. Minor 2, do you remember talking with Ms. Kendra  
25 Twitty?

Minor 2 : CROSS BY MS. NOVELL

-301-

1 A. Yes.

2 Q. At Hope Haven?

3 A. Yes.

4 Q. And do you remember at that interview Ms. Kendra asked  
5 you some questions. Right?

6 A. Yes.

7 Q. And she asked you why you were here. Right? And you  
8 said, I can't explain it. Right?

9 A. Yes.

10 Q. And then, you said, he's been touching me everywhere.  
11 Right?

12 A. Yes.

13 Q. Okay. And then, you told her that he touched your  
14 private part. Right?

15 A. Yes.

16 Q. And you said that he touched your upper leg?

17 A. Um . . .

18 Q. That's all right. You don't remember?

19 A. Huh-huh.

20 Q. Okay.

21 MS. DOVELL: Beg the Court's indulgence, your Honor.

22 No further questions, your Honor.

23 THE COURT: Redirect?

24 SOLICITOR KEENEY: No, your Honor.

25 THE COURT: You can step down and be excused. We

KENDRA TWITTY: DIRECT BY SOLICITOR KEENEY.

-302-

1 appreciate your time. Thank you. You can step down.

2 (WITNESS LEAVES WITNESS STAND.)

3 THE COURT: Call your next witness.

4 SOLICITOR KEENEY: The State calls Kendra Twitty.

5 (WHEREUPON, KENDRA TWITTY,

6 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

7 MADAM CLERK: State your full name for the record and  
8 spell your last name.

9 A. Okay. My name is Kendra Twitty. It's T-w-i-t-t-y.

10 SOLICITOR KEENEY: Mark these, there's three of 'em.

11 (WHEREUPON, STATE'S EXHIBIT NUMBERS TWO, THREE AND  
12 FOUR, PREMARKED FOR IDENTIFICATION.)

13 DIRECT EXAMINATION

14 KENDRA TWITTY BY SOLICITOR KEENEY:

15 Q. Good afternoon, Ms. Twitty.

16 A. Good afternoon.

17 Q. Where do you work?

18 A. I work at Hope Haven of the Lowcountry.

19 Q. What's your job there?

20 A. I am a forensic interviewer and therapist.

21 Q. Basically, what are your duties?

22 A. Okay. So, I -- Hope Haven receives some calls from  
23 law enforcement and DSS to assist in investigations of  
24 child abuse allegations. So, as a forensic interviewer, a  
25 child is recommended to Hope Haven. We do a neutral,

KENDRA TWITTY: DIRECT BY SOLICITOR KEENEY

-303-

1 objective, fact-finding interview, to gather information,  
2 and let law enforcement and DSS do their followup  
3 investigations. And then, Hope Haven, there's  
4 recommendations of further counseling, treatment, or  
5 medical treatment if the child needs any of those services.

6 Q. Do you remember interviewing Minor 1 [REDACTED] on  
7 August 5th of 2015?

8 A. Yes, ma'am.

9 Q. And did you interview Minor 3 [REDACTED] on that same day?

10 A. I interviewed Minor 1 [REDACTED], I'm sorry, and give  
11 me a second. I also interviewed Minor 3 [REDACTED] as well, and --  
12 yes, both of them on that day.

13 Q. And did you interview Minor 2 [REDACTED]? Minor 2 [REDACTED]  
14 [REDACTED]

15 A. Minor 2 [REDACTED], I did, as well, on that day on  
16 August 5th, 2015.

17 Q. And did you interview them together or separately?

18 A. Each child is interviewed separately.

19 Q. And can they hear each other's interviews?

20 A. No.

21 SOLICITOR KEENEY: May I approach the witness?

22 THE COURT: Yes, ma'am.

23 BY MS. KEENEY:

24 Q. I'm showing you what's been marked as State's Exhibits  
25 Two, Three, and Four. Can you take a look at these, and

1 tell me if you recognize those?

2 A. Yes. These are the DVD's I made of the interviews.

3 Q. And how do you recognize those?

4 A. Well, it's my handwriting and my signature.

5 Q. And so, you've reviewed these?

6 A. Yes, ma'am.

7 Q. Are these a fair and accurate copy of the interviews  
8 that you conducted of the three girls on August 5th of  
9 2015?

10 A. They are.

11 SOLICITOR KEENEY: At this time, the State would move  
12 to admit State's Exhibit Two, Three, and Four.

13 THE COURT: Based on earlier rulings, any objections?

14 MS. DOVELL: No objection, your Honor, as long as they  
15 are -- it complies with the earlier ruling.

16 THE COURT: All right. Based on earlier rulings,  
17 they're in evidence, submitted into evidence.

18 SOLICITOR KEENEY: Thank you.

19 (WHEREUPON, STATE'S EXHIBIT NUMBERS TWO, THREE, AND  
20 FOUR, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

21 SOLICITOR KEENEY: Permission to publish?

22 THE COURT: Yes, ma'am.

23 SOLICITOR KEENEY: Starting with State's Exhibit  
24 Three, interview of **Minor 3**.

25 (STATE'S EXHIBIT NUMBER THREE PUBLISHED TO THE JURY AT

KENDRA TWITTY: DIRECT BY SOLICITOR KEENEY

-305-

1 12:17 PM./STOP AT 12:36 PM.)

2 SOLICITOR KEENEY: Your Honor, could we briefly  
3 approach?

4 (SIDE BAR CONFERENCE OFF THE RECORD OUT OF HEARING OF  
5 THE JURY AT 12:37 PM.)

6 THE COURT: We'll take a five-minute refresher break.  
7 Just five -- quick, refresher break.

8 (JURY EXITS COURTROOM AT 12:37 PM.)

9 (COURT IN RECESS AT 12:38 PM.)

10 (COURT BACK IN SESSION AT 12:43 PM.)

11 (JURY REENTERS COURTROOM AT 12:48 PM.)

12 THE COURT: You may proceed.

13 SOLICITOR KEENEY: Thank you, your Honor. I'm now  
14 playing State's Exhibit Four. That's Minor 2  
15 interview.

16 (STATE'S EXHIBIT NUMBER FOUR PUBLISHED TO THE JURY AT  
17 12:49 PM./STOP AT 01:02 PM.)

18 THE COURT: Counsel, like I said, we might go through  
19 the next one, but I think it's probably we ought to go  
20 ahead and break for lunch. It's one o'clock, so, we'll  
21 break for lunch until 2:15. Then, we'll -- we've got one  
22 more of these after lunch, but I've seen it, and I know how  
23 long it takes, so, I think we'll ought to go ahead and  
24 break now.

25 We'll see you back at 2:15.

1 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 1:02 PM.)

2 (COURT IN LUNCH RECESS AT 1:02 PM.)

3 (COURT BACK IN SESSION AT 2:17 PM.)

4 THE COURT: Ms. Twitty is back on the stand.

5 Is the State ready?

6 SOLICITOR KEENEY: Your Honor, the only thing I would  
7 ask, at the appropriate time could you give a charge to the  
8 jury that, you know, we're not gonna hide anything but  
9 subject to your order that's why we're skipping around.

10 THE COURT: I thought about making that comment  
11 earlier, so I will tell the jury that at - What I usually  
12 say is that you've noticed some blank spaces, that is not  
13 bring presented because its not relevant.

14 SOLICITOR KEENEY: Thank you.

15 THE COURT: All right. Ms. DOVELL?

16 MS. DOVELL: Yes, your Honor.

17 THE COURT: Your ready?

18 Bring in the jury.

19 (JURY REENTERS COURTROOM AT 02:20 PM.)

20 THE COURT: Members of the jury panel, in that last  
21 video you probably noted but there was a place where there  
22 was an absence of audio. You don't need to guess or  
23 speculate why that portion was omitted, at least the audio  
24 was. The reason it was because it had nothing to do with  
25 this case. That is, it contained no relevant evidence and

KENDRA TWITTY: CROSS BY MS. NOVELL

-307-

1 so rather than have something presented to the jury that  
2 maybe cause it confusing or mislead you. Where we hae  
3 something that's not relevant we just simply exclude it.  
4 So I don't know if there's any blank space in any other of  
5 the others but if it is don't infer anything from it, it's  
6 just we had to do it because it didn't have anything to do  
7 with this case.

8 Go ahead.

9 SOLICITOR KEENEY: Thank you, your Honor. At this  
10 time, I'm gonna play State's Exhibit Two, Minor 1  
11 interview.

12 (STATE'S EXHIBIT NUMBER TWO PUBLISHED TO THE JURY AT  
13 2:23 PM.)

14 SOLICITOR KEENEY: Your Honor, may we briefly  
15 approach?

16 (SIDE BAR CONFERENCE OFF THE RECORD OUT OF HEARING OF  
17 THE JURY AT 2:37 PM.)

18 (STATE'S EXHIBIT NUMBER TWO CONTINUES TO BE PUBLISHED  
19 TO THE JURY/STOPS AT 02:45 PM..)

20 SOLICITOR KEENEY: Your Honor, I have no further  
21 questions for this witness.

22 THE COURT: Cross-examination?

23 MS. DOVELL: Thanks, your Honor.

24 CROSS-EXAMINATION

25 KENDRA TWITTY BY MS. DOVELL:

KENDRA TWITTY: CROSS BY MS. NOVELL

-308-

1 Q. Good afternoon, Ms. Twitty.

2 A. Good afternoon.

3 Q. One of your roles at Hope Haven is as a forensic  
4 interviewer?

5 A. Yes, ma'am.

6 Q. All right. And you conduct forensic interviews at the  
7 request of law enforcement agencies?

8 A. Law enforcement and DSS.

9 Q. Law enforcement and DSS. So, private citizens can't  
10 walk in and request you to do a forensic interview; is that  
11 right?

12 A. That's correct.

13 Q. And your interviews are part of a government  
14 investigation.

15 A. They are part of the investigation for law enforcement  
16 and for DSS.

17 Q. Okay. Is this for some -- Why is that? Why is it  
18 that you can only do interviews at the request of law  
19 enforcement and DSS?

20 A. Well, the purpose of the forensic interview is for a  
21 child to be brought to one place where ---

22 Q. Uh-huh.

23 A. --- they have to be questioned one time while law  
24 enforcement and DSS sit in another room. As I said --

25 Q. Uh-huh.

KENDRA TWITTY: CROSS BY MS. NOVELL

-309-

1 A. --- you know a camera where my friends are watching.  
2 That means law enforcement and DSS is watching. So, in the  
3 '90's, we realized that the more children were questioned  
4 by different people, the more traumatized they were. So,  
5 professionals got together and created the Children's  
6 Advocacy Center, which is the model that the child's  
7 questioned one time.

8 Q. Okay. And back to -- sort of back to my previous  
9 question.

10 A. Uh-huh.

11 Q. So, in order for -- if somebody feels like they're --  
12 a private citizen feels like something has gone on in a  
13 child's life, they have to file an incident report or  
14 contact DSS before you could do an interview?

15 A. That's correct.

16 Q. Okay.

17 MS. DOVELL: No further questions for Ms. Twitty.

18 THE COURT: All right. Redirect?

19 SOLICITOR KEENEY: No, your Honor. May this witness  
20 be excused?

21 THE COURT: You can step down and be excused, and we  
22 appreciate your time.

23 (WITNESS LEAVES WITNESS STAND.)

24 THE COURT: Call your next witness.

25 SOLICITOR KEENEY: State calls Officer Baker Odom.

OFFICER BAKER ODOM: DIRECT BY SOLICITOR KEENEY

-310-

1 (WHEREUPON, BAKER ODOM, BEING  
2 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

3 MADAM CLERK: State your full name for the record and  
4 spell your last.

5 A. Baker Odom, O-d-o-m.

6 DIRECT EXAMINATION

7 OFFICER BAKER ODOM BY SOLICITOR KEENEY:

8 Q. Officer Odom, where do you work?

9 A. Bluffton Police Department.

10 Q. What's your position at the police department?

11 A. I'm a detective in the criminal investigation's  
12 division.

13 Q. How long have you been a detective.

14 A. Since July of last year

15 Q. Okay. Beginning of July?

16 A. Yes, beginning of July.

17 Q. Okay. I want to take you back to July 17th of 2015.

18 How did you first become involved in this case?

19 A. I was -- it was one of the first calls I got called  
20 out on. Detective Murphy, I believe, was the one that  
21 called me, and I ask what was going on. I then responded  
22 out there, and he would have been contacted at the request  
23 of, I assume, the Sergeant.

24 Q. Okay. And where did you respond to?

25 A. [REDACTED], which is in the town of Bluffton,

OFFICER BAKER ODOM: DIRECT BY SOLICITOR KEENEY

-311-

1 county of Beaufort, state of South Carolina.

2 Q. Okay. When you arrived on-scene, who was present,  
3 officer of Bluffton Police Department-wise?

4 A. Detective Murphy, Officer Perez, Sergeant DeStasio.  
5 Sergeant Ferrelli at the time was Master patrol officer,  
6 and Officer Gibson.

7 Q. Okay. What was occurring, what was happening when you  
8 got there?

9 A. At that point, Officer Perez had translated everything  
10 back and forth between Officer Ferrelli and the defendant.  
11 And at that point the defendant had already said that as I  
12 understood it several times saying he had --

13 Q. Just the statement.

14 A. Had made a statement, yes.

15 Q. Okay. What did you do after that?

16 A. After learning what his statement was, Detective  
17 Murphy and I went over to where the defendant was, which he  
18 was with Officer Ferrelli, still, and I placed him under  
19 arrest.

20 Q. Okay. What did you do next?

21 A. We had a marked patrol unit transport him back to the  
22 police department, and Officer Perez and myself then  
23 interviewed the defendant.

24 Q. Okay. When you interviewed the defendant, did you  
25 read to him what's called the *Miranda* Rights?

OFFICER BAKER ODOM: DIRECT BY SOLICITOR KEENEY

-312-

1 A. Yes, I did.

2 (WHEREUPON, STATE'S EXHIBIT NUMBER FIVE, PREMARKED FOR  
3 IDENTIFICATION.)

4 SOLICITOR KEENEY: May I approach the witness?

5 THE COURT: Yes, ma'am.

6 BY SOLICITOR KEENEY:

7 Q. I'm showing you what's been marked as State's Exhibit  
8 Five. Do you recognize this document?

9 A. Yes. This is the written advisement of the *Miranda*  
10 Rights that I read him that night, with the assistance of  
11 Officer Perez, who interpreted for me. It's dated July  
12 17th, and it's signed by Officer Perez.

13 Q. Okay. Is this a fair and accurate copy of the *Miranda*  
14 form you presented the defendant in this case?

15 A. Yes, it is.

16 Q. Okay.

17 SOLICITOR KEENEY: At this time, the State would move  
18 to admit State's Exhibit Five into evidence.

19 MS. DOVELL: No objections.

20 THE COURT: In, without objection.

21 (WHEREUPON, STATE'S EXHIBIT NUMBER FIVE, IDENTIFIED  
22 AND MARKED, ADMITTED AS EVIDENCE.)

23 BY SOLICITOR KEENEY:

24 Q. Okay. Can you go over -- can you read what this form  
25 says?

OFFICER BAKER ODOM: DIRECT BY SOLICITOR KEENEY

-313-

1 A. Sure. At the top, it says, "Bluffton Police  
2 Department Advisement of Miranda Rights." It then says,  
3 "Miranda Warning given to", at which point I wrote in,  
4 "Benjamin Cervantes". It has the case number, followed by  
5 the *Miranda* Warning: "You have the right to remain silent.  
6 Anything you say can and will be used against you in a  
7 court of law."

8 MADAM COURT REPORTER: Just a minute. I can't keep up  
9 with you that fast.

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

11 "You have the right to remain silent. Anything you  
12 say can and will be used against you in a court of law.

13 You have the right to talk to an attorney for advice  
14 before we ask you any questions. If you can't afford an  
15 attorney, one will be appointed for you before any  
16 questioning, if you wish.

17 If you decide to answer questions now, without an  
18 attorney, you will still have the right to stop answering  
19 at any time. You also have the right to stop answering at  
20 any time until you talk to an attorney."

21 And there are six different spots there where -- spots  
22 for him to initial that he understands that particular part  
23 of the *Miranda* warning, in which he initialed all of those.

24 It has the waiver of rights. The first question is,  
25 "Do you understand each of these rights as I have explained

1 to you?" He initialed next to, "yes".

2 "Having these rights in mind, do you wish to talk to  
3 us now?" He again initialed next to, "yes".

4 Then, there's his signature, the date -- well, the  
5 spot for date and time, it just has the date written in  
6 here, and his address. And then, again, the signature of  
7 Officer Perez and the witness signature spot.

8 Q. Thank you. So you conducted an interview. Do you  
9 remember how long the interview lasted?

10 A. I believe it lasted until about two hours, somewhere  
11 in there.

12 Q. Okay. After the inter -- can you briefly, briefly  
13 summarize what he said in the interview?

14 A. In the interview, he admitted to touching **Minor 1**.

15 He stated that she --

16 MS. DOVELL: Objection, your Honor.

17 THE COURT: Yeah. It speaks for -- the statement  
18 speaks for itself.

19 SOLICITOR KEENEY: Okay.

20 Q. After the interview, did you make any arrangements for  
21 **Minor 1** Did you send them anywhere?

22 A. They went to initially tried to have her go to Coastal  
23 Carolina. I believe that's where we tried first, but she  
24 ended up going to MUSC to have a sexual assault kit done.

25 Q. Okay. Do you know where the sexual assault kit is

OFFICER BAKER ODOM: DIRECT BY SOLICITOR KEENEY

-315-

1 right now?

2 A. It is at SLED.

3 Q. And what's SLED stand for?

4 A. South Carolina Law Enforcement Division.

5 Q. Okay. So, has the Bluffton Police Department received  
6 the kit back yet?

7 A. We have not.

8 Q. So, has the kit been tested at SLED?

9 A. As far as I know, it's still pending.

10 Q. Okay. In your experience as an investigator, does it  
11 take SLED a long time or a short amount of time to test the  
12 kit?

13 A. It seems to take SLED quite a while. Certain cases,  
14 they'll give priority at the top, and it's usually  
15 something along the lines of a murder or something like  
16 that.

17 Q. Okay. So, you arranged for **Minor 1** to go to MUSC, to  
18 get checked out. Correct?

19 A. I didn't personally arrange for it, but we did,  
20 someone in the police department.

21 Q. Okay. What about **Minor 3** **Minor 2** and **Minor 1** Did  
22 they get interviewed again by anyone?

23 A. At the time, because we're trained only to get initial  
24 statement and not go into detail with children, at the  
25 time, all we were told was that they had stated something

OFFICER BAKER ODOM: DIRECT BY SOLICITOR KEENEY

-316-

1 that would not require a sexual assault kit. And because  
2 of that, we did not send them to get kits done.

3 Q. Okay. Did you arrange for them to go to Hope Haven?

4 A. They did go to Hope Haven, yes.

5 Q. Okay. And did you collect any clothes for **Minor 2** or  
6 **Minor 3**?

7 A. No, we did not.

8 Q. Is there a reason you didn't?

9 A. Again, due to the nature of what we had been told had  
10 happened, that was not something that would normally occur.

11 Q. Okay. Do you see the person that you interviewed on  
12 July 17th of 2015 in the courtroom today?

13 A. Yes, I do.

14 Q. Who is that?

15 A. Benjamin Hernandez, sitting right over there.

16 Q. Okay. What is he wearing?

17 A. A black collared shirt with a purple bow tie

18 SOLICITOR KEENEY: Let the record reflect he has  
19 identified the defendant.

20 (WITNESS INDICATED TOWARD DEFENDANT SEATED AT DEFENSE  
21 TABLE.)

22 SOLICITOR KEENEY: No further questions for this  
23 witness.

24 THE COURT: Cross?

25 MS. DOVELL: Thank you, your Honor.

OFFICER BAKER ODOM: CROSS BY MS. DOVELL

-317-

CROSS-EXAMINATION

OFFICER BAKER ODOM BY MS. DOVELL:

Q. Investigator Odom.

A. Yes, ma'am.

Q. On July 17th, you were aware that **Minor 3** and **Minor 2** had made allegations against Benjamin; Is that right?

A. Yes.

Q. Was he arrested that night for those allegations?

A. No, he was not.

Q. And you had an opportunity to interview him?

A. Yes.

Q. And during that interview, he denied the allegations with **Minor 3** and **Minor 2**?

A. Correct.

Q. And you actually arrested him again -- or arrested him on the **Minor 3** and **Minor 2** charges on a different date.

Correct?

A. Yes.

Q. And after he was arrested on those charged, you had an opportunity to speak with him as part of your investigation?

A. Yes.

Q. And during the course of your interview, he denied the allegations of -- with **Minor 3** and **Minor 2**. Correct?

A. Yes, he did.

OFFICER BONAFACIO PEREZ: DIRECT BY SOLICITOR KEENEY

-318-

1 MS. DOVELL: No further questions for this witness,  
2 your Honor.

3 THE COURT: Any redirect?

4 SOLICITOR KEENEY: No, your Honor.

5 THE COURT: You can step down and take your place back  
6 at the table. Thank you.

7 OFFICER BAKER ODOM: Thank you, your Honor.

8 (WITNESS LEAVES WITNESS STAND.)

9 THE COURT: Call your next witness.

10 SOLICITOR KEENEY: Your Honor, the State calls Officer  
11 Bonafacio Perez.

12 (WHEREUPON, BONIFACIO PEREZ,  
13 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

14 MADAM CLERK: State your full name for the record and  
15 spell your last name.

16 A. Bonifacio Perez, P-e-r-e-z.

17 SOLICITOR KEENEY: I beg the Court's indulgence.

18 DIRECT EXAMINATION

19 OFFICER BONIFACIO PEREZ BY SOLICITOR KEENEY:

20 Q. Officer Perez, where do you work?

21 A. I work for Bluffton Police Department.

22 Q. What's your position at the police department?

23 A. I'm a master police officer.

24 Q. How long have you been there?

25 A. Approximately six years now.

OFFICER BONAFACIO PEREZ: DIRECT BY SOLICITOR KEENEY

-319-

1 Q. Okay. On July 17th of 2015, how did you first become  
2 involved in this case?

3 A. I was called out. I was advised that there was a case  
4 that needed translation, so I responded to [REDACTED]  
5 [REDACTED].

6 Q. What town is that in?

7 A. Town of Bluffton, county of Beaufort, state of South  
8 Carolina.

9 Q. Thank you. When you arrived, who was on-scene?

10 A. Officer Ferrelli, Sergeant DeStasio, and Officer  
11 Gibson were on-scene.

12 Q. Okay. And so, what was your role there?

13 A. I was the translator.

14 Q. Okay. Did you come in contact with the defendant in  
15 this case?

16 A. I did.

17 Q. Okay. After you interviewed him on-scene, did you  
18 come in contact with the defendant again?

19 A. Yes, ma'am.

20 Q. And where was that?

21 A. We met back up at the Bluffton Police Department,  
22 where we conducted an interview.

23 Q. Okay. Who was present during that interview?

24 A. Detective Odom was there.

25 Q. And your role was to translate, again?

1 A. Yes, ma'am.

2 Q. Okay. And was the defendant read his *Miranda* Rights?

3 A. He was read his *Miranda* Rights at that instance, yes,  
4 ma'am.

5 Q. And you translated those rights to him?

6 A. Correct.

7 Q. Okay.

8 A. Both English and Spanish was read to him.

9 Q. And did the defendant agree to waive those rights to  
10 you?

11 A. He did.

12 (WHEREUPON, STATE'S EXHIBIT NUMBER SIX, PREMARKED FOR  
13 IDENTIFICATION.)

14 SOLICITOR KEENEY: May I approach the witness?

15 THE COURT: Yes, ma'am.

16 BY SOLICITOR KEENEY:

17 Q. I'm showing you what's been marked as State's Exhibit  
18 Six. Do you recognize this? You can pull it out??

19 A. Yes, ma'am.

20 Q. What is this?

21 A. It is a copy of the interview conducted on that date.

22 Q. And how do you recognize it?

23 A. It has my signature in the top corner.

24 Q. And you've reviewed this list?

25 A. I have, ma'am.

OFFICER BONAFACIO PEREZ: DIRECT BY SOLICITOR KEENEY

-321-

1 Q. Is this a fair and accurate copy of the interview?

2 A. It is.

3 SOLICITOR KEENEY: At this time, the State would move  
4 to admit State's Exhibit Six.

5 MS. DOVELL: Without objection, subject to the prior  
6 rulings of the Court.

7 THE COURT: In, without objection, subject to prior  
8 ruling of the Court.

9 (WHEREUPON, STATE'S EXHIBIT NUMBER SIX, IDENTIFIED AND  
10 MARKED, ADMITTED AS EVIDENCE.)

11 SOLICITOR KEENEY: Permission to publish?

12 THE COURT: Yes, ma'am.

13 MS. DOVELL: Your Honor, I would like to state that  
14 this looks like the audio. Is there a video of the?

15 SOLICITOR KEENEY: May we approach?

16 (SIDE BAR CONFERENCE OFF THE RECORD OUT OF HEARING OF  
17 THE JURY AT 3:01 PM.)

18 BY MS. KEENEY:

19 Q. Officer Perez, you've reviewed this disc. Correct?

20 A. I have, ma'am.

21 Q. In fact, you've viewed many copies of this interview.  
22 Correct?

23 A. Yes, ma'am.

24 Q. Is there a problem with the actual video and audio?

25 A. Yes, ma'am. On the discs themselves, they do not sync

OFFICER BONAFACIO PEREZ: DIRECT BY SOLICITOR KEENEY

-322-

1 up correctly the video to the audio. So, you can hear the  
2 audio, and then, it takes a little while for the video to  
3 catch up.

4 Q. So, there are times where Detective Odom might be  
5 talking out loud, but it looks like you were talking?

6 A. Correct, ma'am.

7 Q. And it's not just a couple seconds off, is it?

8 A. No, ma'am. It's actually several minutes off at  
9 times.

10 Q. It's kind of confusing when you look at it?

11 A. Yes, ma'am.

12 Q. And listen to it. But you've listened to the actual  
13 audio, too. Correct?

14 A. I have.

15 Q. Okay.

16 (STATE'S EXHIBIT NUMBER SIX PUBLISHED TO THE JURY AT  
17 03:03 PM.)

18 (STATE'S EXHIBIT SIX, AUDIO PAUSED AT 3:56 PM./STOPS  
19 AT 04:10 PM.)

20 THE COURT: This will probably be a good time to -  
21 we've been at it a couple of hours. Let's take about a ten  
22 minute refresher.

23 (JURY EXITS COURTROOM AT 4:10 PM.)

24 (COURT IN RECESS AT 4:10 PM.)

25 (COURT BACK IN SESSION AT 4:30 PM.)

1 THE COURT: Thank you, you may take your seats.

2 You can come on up Officer Perez.

3 I understand that based on - I didn't realize we were  
4 close to the part where we were gonna stop.

5 What else does the State have this afternoon?

6 Do you have any other witnesses?

7 SOLICITOR KEENEY: No, your Honor.

8 THE COURT: All right. Well we still have cross-  
9 examination of this - you still have some time.

10 All right. Is the State ready?

11 SOLICITOR KEENEY: Yes, your Honor.

12 THE COURT: Is the Defense ready?

13 MS. DOVELL: Yes, your Honor.

14 THE COURT: Oh, we might as well go ahead and put on  
15 the record - and we'll clarify it more later - but during  
16 the break we discussed the portion of the officer's cam -  
17 what do you call it?

18 SOLICITOR KEENEY: Ferrelli's body cam.

19 THE COURT: Officer Ferrelli's shirt cam, voice cam?

20 SOLICITOR KEENEY: Body cam.

21 THE COURT: Body cam. As to what a certain phrase -  
22 what a certain phrase was that was stated by the defendant  
23 and after discussing it - and I'll let both sides discuss  
24 it more on the record - my decision was that we would not  
25 try to make any corrections or direct the jury's attention

OFFICER BONIFACIO PEREZ: CROSS BY MS. NOVELL

-324-

1 to it or anything and go forward with it. It's already in  
2 evidence. With that said we will bring in the jury.

3 While the jury's coming in, Ms. DOVELL, you probably  
4 wont' have time this afternoon, but are you ready to go  
5 forward in the morning?

6 MS. DOVELL: Yes, sir, I'll be ready to go forward.

7 THE COURT: Okay. Before we leave I'll discuss with  
8 Mr. Cervantez-Hernandez his rights.

9 MS. DOVELL: Thank you, your Honor.

10 THE COURT: And I'll give him over night to further  
11 discuss it. I know you've discussed it already with him.

12 MS. DOVELL: We need some more time, your Honor.

13 THE COURT: That's okay.

14 (JURY REENTERS COURTROOM AT 4:33 PM.)

15 THE COURT: Counsel, you may proceed. The jury is  
16 seated.

17 SOLICITOR KEENEY: Thank you, your Honor.

18 (STATE'S EXHIBIT NUMBER SIX CONTINUES TO BE PUBLISHED  
19 TO THE JURY AT 04:34 PM.)

20 (STATE'S EXHIBIT SIX STOPS AT 04:39 PM..)

21 SOLICITOR KEENEY: No further questions for this  
22 witness.

23 THE COURT: All right. Cross-examination?

24 MS. DOVELL: Thanks, your Honor.

25 CROSS-EXAMINATION

OFFICER BONIFACIO PEREZ: CROSS BY MS. NOVELL

-325-

1 OFFICER BONIFACIO PEREZ BY MS. DOVELL:

2 Q. Officer Perez.

3 A. Yes, ma'am.

4 Q. You were on-scene at [REDACTED]. Correct?

5 A. I was, yes.

6 Q. At any time, did Benjamin Cervantes indicate that he  
7 was ready to leave the scene?

8 A. No.

9 Q. Did he try to flee?

10 A. He did not.

11 Q. At any time, did he attempt to get into a vehicle to  
12 leave?

13 A. No, ma'am.

14 Q. And he spoke with you, giving his version of the  
15 events. correct?

16 A. Yes, ma'am.

17 Q. Okay.

18 MS. DOVELL: No further questions, your Honor.

19 THE COURT: Redirect?

20 SOLICITOR KEENEY: No, your Honor. May this witness  
21 be excused?

22 THE COURT: You can step down, Officer Perez.

23 OFFICER BONIFACIO PEREZ: Thank you, your Honor.

24 (WITNESS LEAVES WITNESS STAND.)

25 SOLICITOR KEENEY: Your Honor, at this time, the State

1 rests.

2 THE COURT: Members of the jury panel, the State is  
3 resting, that is they're telling us they've presented their  
4 evidence so we've reached the point in the trial where you  
5 have received the evidence from the State. You're not yet  
6 in the position for you to make up your own mind or discuss  
7 the case or do anything regarding research, social media,  
8 or anything like that. All the admonitions that I gave you  
9 as to the trial still apply because we haven't reached that  
10 point that I talked about earlier in the week where you'll  
11 have sufficient tools; that is, the evidence and the charge  
12 on the law so you can make a intelligent decision.

13 We have some legal matters to take up and I know  
14 you've been in and out; we try to get through by 5:30 each  
15 day, so rather than have you go out plus the lawyers and I  
16 believe it or not have some more things we have to do.

17 A trial is sort of like a sporting event. We've got a  
18 first part and then you reach the part and certain things  
19 that you - I'm sure the jury thinks well why didn't they  
20 take care of those things before this started. There are  
21 certain things we can't do until we get to this point and  
22 we've got a few things that we've got to do outside your  
23 presence. So we're gonna do those and start back at 9:30  
24 in the morning.

25 Anything else from the State or the Defense before the

-327-

1 jury --

2 SOLICITOR KEENEY: No, your Honor.

3 MS. DOVELL: Nothing for the jury, your Honor.

4 THE COURT: Okay. Have a pleasant evening and we'll  
5 see you back at 9:30.

6 (JURY EXITS COURTROOM AT 4:41 PM.)

7 THE COURT: Anything from the State at this time?

8 SOLICITOR KEENEY: No, your Honor.

9 THE COURT: Ms. Dovell?

10 MS. DOVELL: Thanks, your Honor. At this time, I  
11 would like to move for a directed verdict on all charges.  
12 I'll start first with the CSC second with the minor, the  
13 Minor 1 charge. I have to say, I was surprised  
14 that Minor 1 testimony today gave the assertion that  
15 there was penetration, that his finger did go inside. That  
16 was news to us. However, there is evidence that there is  
17 no penetration from the 911 call. She had te -- that she  
18 had spoken before that she just didn't know --

19 THE COURT: Well, now, you're asking me to weight the  
20 evidence, and I -- in regard to that, I'll let you argue  
21 it, but I can tell you in advance and you're telling me she  
22 testified to one thing -- two different versions in the  
23 record, that's the jury's issue but go ahead.

24 MS. DOVELL: Thank you, your Honor. I was just going  
25 to say that there's no testimony about injury that was, for

1 sure, caused by this incident, and there's a question about  
2 whether or not there was vaginal penetration or genital  
3 penetration. And I think that that's an issue in this  
4 case, your Honor.

5 THE COURT: All right. What does the State have to  
6 say about that?

7 SOLICITOR KEENEY: Your Honor, criminal sexual conduct  
8 with a minor second degree requires that the defendant  
9 engage in a sexual battery with a victim who is at least  
10 eleven years of age, and it can be any type of injury,  
11 however slight. There's no injury requirement under the  
12 statute, and viewing the evidence in the light most  
13 favorable to the State, [Minor 1] did testify that his  
14 fingers entered her genital region, which would -- and that  
15 in itself would get past --

16 THE COURT: As to that motion for a directed verdict  
17 regarding [Minor 1] I'll call her, the charge of second  
18 degree criminal sexual conduct with a minor as to [Minor 1]  
19 I'll deny the motion for a directed verdict.

20 MS. DOVELL: Thank you, your Honor. May I just -- and  
21 one more thing, in rebuttal. I understand what the  
22 language of -- I understand your ruling. But just to put  
23 on the record that I brought this up, it says in the  
24 indictment that there is penetration of her vagina. If I  
25 recall her testimony correctly, she was asked if his

-329-

1 fingers went inside of her. There was never any testimony  
2 at any time about his fingers going into her vagina, and  
3 it's just an ambiguous fingers penetration.

4 THE COURT: Okay. Well, it does say that, but here is  
5 -- I don't have the case at hand, and I will certainly ask  
6 the State to take a look at the law on that particular  
7 issue, because we may want to visit it in the morning  
8 because the wording is there. However, it also has the  
9 code section. So, the whole language of the code section  
10 is incorporated as to the -- it says in violation of  
11 Section 16-3-655. I think there are some cases that say if  
12 there's discrepancy or inconsistency -- and I'm not -- I'm  
13 not -- don't -- I wouldn't stake my life on it, but I think  
14 there are some cases that say, where there is a discrepancy  
15 such as this, that the statute clearly puts the defendant  
16 on notice of what he's facing, and what the charge is, that  
17 that's sufficient, but I'll ask for - I'll reserve  
18 addressing that with finality until in the morning.

19 SOLICITOR KEENEY: And just so that we're clear, is  
20 she challenging the indictment? Because that --

21 THE COURT: No, she's saying you haven't proved what  
22 you charged him with.

23 SOLICITOR KEENEY: And your Honor --

24 THE COURT: She's not challenging the indictment. It  
25 said digital penetration of the victim's vagina. And she's

1       arguing that there's no real evidence that the vagina - is  
2       following upon the argument that you just made, that  
3       there's no evidence that the vagina was penetrated because  
4       the statute says any slight penetration of the genital  
5       area, I think.

6               SOLICITOR KEENEY: Correct. And you're correct, your  
7       Honor. I want to say it's *State versus Thompson*, but I  
8       would have to look, but by putting the code section in  
9       there, you incorporate the entire statute through.

10              THE COURT: I think that's the case, and I think there  
11       is a case that says that's the case. But I'd like to see  
12       it, so I'll take that into consideration. Anything else?

13              MS. DOVELL: Yes, your Honor. In regards to the  
14       criminal sexual conduct with a minor, third degree, in  
15       regards to -- first, I'll -- it's basically the same  
16       argument for both girls, but I'll address them one by one.

17              We'll start with **Minor 3** The statute requires the  
18       actor is over fourteen years of age, and the actor  
19       willfully and lewdly commits, or attempts to commit, a lewd  
20       or lascivious act upon the body or its parts on a child who  
21       is sixteen years of age, with the intent of arousing,  
22       appealing to, or gratifying the lust, passions, or sexual  
23       desires of the adult or the child, the actor or child.

24              Your Honor, there's been no testimony about any sort  
25       of lewd -- act of lewdness, or lewd or lascivious act on

-331-

1 the body that would -- with the intent of arousing or  
2 appealing to, or gratifying the lust or sexual desires of  
3 Mr. Cervantes or of Minor 3. I believe that there are  
4 crimes that better fit what has been testified to, and I  
5 think that this statute -- that I do not think that there's  
6 evidence of lewd or lascivious -- or activity, or  
7 satisfying the lusts of Mr. Cervantes or the child.

8 THE COURT: All right.

9 SOLICITOR KEENEY: Your Honor, I think touching  
10 someone's private genital region would count. The standard  
11 charge for lewd and lascivious is obscene, lustful, or  
12 indecent. And I think, certainly, that, if you touch a  
13 little girl's private part, that would count. Now, I don't  
14 know if she's getting at that I didn't prove intent. I  
15 think *State versus Tuckness* says that there's hardly ever  
16 direct evidence of intent in cases; you have to prove it by  
17 circumstantial evidence, and here, I think, just -- Minor 3  
18 testified that he touched her private part multiple times,  
19 and that he tried to get into her pants, one time that she  
20 pulled them up. And I think the combination of all three,  
21 I mean, that's the point of -- when you look at the 404(b)  
22 exception, when you're doing *Lyle*, and entering that type  
23 of evidence -- and I know we don't have that here, but we  
24 tried them all together, the reason behind that is to help  
25 prove motive and intent. And I think, viewing the evidence

1 in the light most favorable to the State, that we've met  
2 the burden here.

3 THE COURT: I agree. I find that, in the light most  
4 favorable to the State, based on the direct evidence and  
5 substantial circumstantial evidence, that the -- I deny the  
6 motion.

7 MS. DOVELL: Thank you, your Honor. And I have a  
8 similar argument to make, as far as **Minor 2** is concerned.  
9 Again, there is no testimony about the lascivious intent,  
10 or the activity that has been testified to is not, in  
11 itself, lewd or lascivious, or with the intent, or, in  
12 fact, gratifying the lust, passions, or sexual desires of  
13 Mr. Cervantes or of **Minor 2**

14 THE COURT: All right. Let me hear the State on that  
15 one.

16 SOLICITOR KEENEY: Your Honor, it's just some more  
17 argument but, you know, if you're touching a little girl's  
18 private parts that it counts, in the light most favorable  
19 to the State.

20 THE COURT: I also find, as to -- and I have trouble  
21 pronouncing her name -- **Minor 2**, that the State, looking  
22 at the evidence in the light most favorable to the State,  
23 that there is sufficient direct and sufficient substantial  
24 circumstantial evidence that is strong enough for this case  
25 to go to the jury. That is, from which the jury could make

1 a determination as to all three of these charges and  
2 particularly as to **Minor 2** whom I'm addressing at this  
3 time, I find that the State has carried the burden of  
4 proof, and proven Mr. Cervantez-Hernandez is guilty of one  
5 or more of these charges beyond a reasonable doubt.

6 MS. DOVELL: Your Honor, did you just make a finding  
7 on the record that they proved their burden?

8 THE COURT: I said, there's enough from which the jury

9 --

10 MS. DOVELL: Okay. I'm sorry, your Honor.

11 THE COURT: No. No, I would never do that. I don't  
12 have that prerogative. And we can have it read back, but I  
13 think I said that there's enough from which the jury could  
14 conclude that the State -- let's go back so I can correct  
15 it if I'm wrong.

16 MADAM COURT REPORTER: Sorry, Judge.

17 THE COURT: Well, let's go back on the record then.

18 I don't think I need to listen to it. If I said that,  
19 then, I correct myself, because I do not have the authority  
20 to make that decision. I tell the jury very up front that  
21 they are the judges of fact, and I can't make any kind of  
22 decision, even applying the law to facts that I can't  
23 determine. So, I don't think I said that, but if I did, I  
24 reverse myself, and certainly want it clear that I made no  
25 finding, can make no finding, and do make no finding as to

1 whether the state has or has not proven its case beyond a  
2 reasonable doubt.

3 MS. DOVELL: Thank you, your Honor. At this time, I  
4 just renew all my prior objections, and renew my motions.

5 THE COURT: All right. That's one of those motions, I  
6 don't know how -- how to address, because I'm not sure  
7 that's a required motion. But to the extent that you are  
8 moving that anything I -- that you asked me that I revisit  
9 any rulings I have already made, I deny that motion.

10 MS. DOVELL: Thank you, your Honor.

11 THE COURT: All right. Anything else?

12 MS. DOVELL: Nothing further at this time, your Honor.  
13 I would ask that you have a conversation with Mr. Cervantes  
14 about his right to testify or not.

15 THE COURT: All right. Mr. Cervantes-Hernandez, can  
16 you hear me?

17 (ALL QUESTIONS ASK OF THE DEFENDANT AND ALL ANSWERS  
18 GIVEN BY THE DEFENDANT WERE TRANSLATED BY INTERPRETER  
19 BEVERLY NEIDERHISER.)

20 MR. CERVANTES-HERNANDEZ: Yes.

21 THE COURT: At this point of the trial the State has  
22 rested. That means the State has presented the evidence it  
23 intends to use and which it relies on to convince this jury  
24 that you committed one or more of these offenses with which  
25 you are charged.

BENJAMIN CERVANTES-HERNANDEZ: DIRECT BY MS. NOVELL

-342-

1 CERVANTEZ-HERNANDEZ, BEING FIRST CALLED AND DULY SWORN,  
2 TESTIFIED AS FOLLOWS:)

3 MADAM CLERK: State your full name and spell your  
4 last.

5 A. Yes I swear to tell the truth.

6 THE INTERPRETER: He can sit down. Correct?

7 MS. DOVELL: Please take a seat.

8 A. I am Benjamin Cervantes-Hernandez. H-e-r-n-a-n-d-e-z.

9 (ALL QUESTIONS ASK AND ALL ANSWERS GIVEN WERE  
10 INTERPRETED FOR THE COURT AND THE JURY BY INTERPRETER  
11 BEVERLY NEIDERHISER.)

12 DIRECT EXAMINATION

13 BENJAMIN CERVANTES-HERNANDEZ BY MS. DOVELL:

14 Q. Thank you, Benjamin. Now that you've stated your name  
15 for the record, will you please come down from the stand,  
16 and I'd like you to please draw the layout of [REDACTED]  
17 [REDACTED]e.

18 (WITNESS LEAVES WITNESS STAND.)

19 THE COURT: You need to position yourself so that you  
20 can see it.

21 MS. DOVELL: We have some logistics to work out here.  
22 Benjamin, please make sure you try to speak as clearly as  
23 possible for the court reporter.

24 BY MS. DOVELL:

25 Q. All right. Would you please draw the layout of [REDACTED]

1 [REDACTED]?

2 A. Yes.

3 Q. Benjamin, will you please --

4 MADAM COURT REPORTER: Ma'am, I did not get his  
5 response from her.

6 A. Something like this.

7 Q. Thank you, Benjamin. Will you please draw where the  
8 dining room or kitchen table is?

9 (WITNESS COMPLIES.)

10 Q. And will you please point where the front door is?

11 A. It's here.

12 Q. Okay. And where is -- where is the couch, in the  
13 living room area?

14 A. This is the television.

15 Q. Okay. And which bedroom were Minor 1 and the baby  
16 in?

17 A. In this one.

18 Q. Okay. Would you mind putting up the letter -- would  
19 you mind drawing where the bed is in that room?

20 (WITNESS COMPLIES.)

21 Q. And what was that you just drew?

22 A. This is the bed, and this is the crib beside it.

23 Q. And where did you go to look for the charger?

24 A. To the last bedroom.

25 Q. Thank you, Benjamin. Do you understand it may be

BENJAMIN CERVANTES-HERNANDEZ: DIRECT BY MS. NOVELL

-344-

1 difficult for people to believe an eleven-year-old girl  
2 would take your hand and put it down her pants, to her  
3 private parts?

4 SOLICITOR KEENEY: Your Honor, objection.

5 THE COURT: I sustain the objection.

6 MS. DOVELL: Okay.

7 Q. Benjamin, will you please demonstrate what happened  
8 when **Minor 1** put your hand down her pants?

9 A. Of course.

10 (WITNESS DEMONSTRATED.)

11 Q. For a lack of better demonstrative evidence, the book  
12 will represent the baby. Benjamin, what happened when you  
13 went into the room?

14 A. The baby was at the edge of the bed. That's when I  
15 went in, because I told the girl that he was probably going  
16 to fall. When I went in, I hold the baby from here, to  
17 move him. I leaned over, and it was lower than this.

18 Q. And Benjamin, just -- I'm sorry to interrupt you --  
19 approximately how old was the baby?

20 A. Eight months.

21 Q. Thank you. Please continue.

22 A. As I leaned over, the girl was on the side.

23 Q. And Benjamin, to clarify, which girl?

24 A. **Minor 1**.

25 Q. Thank you. Please continue.

1       A.    I take the baby, and the girl gets at my shoulder,  
2       grabs my shoulder with her right hand. As I was in this  
3       position, I do this, and she gives me a kiss between my  
4       cheek and my lips. I have the baby, holding onto one side  
5       of him. I let go, and put my hand this way, to separate  
6       her. And then, I lean back, and I pushed her. She takes  
7       my hand, and she puts it inside her pajama. She takes my  
8       left hand with her right hand, and with her left hand, she  
9       makes pressure between her legs. At that moment, I still  
10      couldn't let go of the baby, because I hadn't been able to  
11      move him into the middle of the bed. I get to push him a  
12      little further up, and that's when I like, moved back, and  
13      pushed her to take my hand out. That's how it happened.

14      Q.    What did it -- when you walked into the room, was the  
15      door locked?

16      A.    No.

17      Q.    How did you find the door?

18      A.    It was beside the -- in the hallway, beside the  
19      bathroom.

20      Q.    All right. Benjamin, you can take the stand again, if  
21      you'd like. Thank you.

22               (WITNESS RETURNS TO WITNESS STAND.)

23      Q.    Benjamin, was Ms. Pizana home when this happened?

24      A.    Yes. She was home at that time.

25      Q.    Why didn't you tell Ms. Pizana immediately after this

BENJAMIN CERVANTES-HERNANDEZ: DIRECT BY MS. NOVELL

-346-

1       happened?

2       A.    It was a surprise. I was trying to find a way to tell  
3       her what had happened.

4       Q.    Well, what happened next?

5       A.    After that happened, I went out and went into the  
6       bathroom next to it. I went in to wash my hands, and I  
7       went towards the kitchen, with the mother of the girl and  
8       my wife.

9       Q.    Okay. And it might be difficult to see, Benjamin, but  
10       I'm going to -- is this the bathroom you went to?

11       A.    Yes.

12       Q.    What did -- what happened after you went to the  
13       kitchen?

14       A.    I went, sat down. After awhile the girl came out with  
15       the baby in her arms. She puts him in a walker, and she  
16       sits on the couch. The baby is a little -- moves around  
17       so the mother tells her to take him out of the walker. And  
18       then, she says, maybe it would be better to take him  
19       outside to play. The little girls go out. **Minor 3** and  
20       **Minor 2** come in immediately because there are mosquitos.  
21       My wife says that there is repellant in the truck, and she  
22       sent me to go get it for them. I go out, I go to the  
23       truck. I take out the repellent.

24               By then, the girls had come out again, **Minor 3** and  
25       **Minor 2**. They asked for the repellent, and they use it.

1 I told them not to use a lot, because I had to -- we had to  
2 put some on the baby. While they're using it, the girl,  
3 **Minor 1**, comes out with the walker and the baby in her  
4 arms. They come out, and they're not very far from the  
5 trailer. There's a small space that's got pavement on it.  
6 That's where they were when I turned towards them, with the  
7 repellent in my hand.

8 Halfway there, **Minor 2**, the girl, she shouts at me,  
9 Uncle, I love you. I turn around, and I said, me, too. By  
10 then, I was closer to **Minor 1** and the baby, and she says,  
11 you only love them. I said, no, you, too. And I said,  
12 well, you more; you're the one that takes care of your  
13 little brother, and you seem like his mother.

14 I gave her the repellent, but she didn't want to take  
15 it. I said, you don't want it? And then, she takes it  
16 from me. I take the repellent -- I apologize -- she takes  
17 the repellent, but tries to spray the baby by herself  
18 directly. I said, no, don't do that. I said, here, I'll  
19 show you how you need to do this. She gives me back the  
20 repellent. I begin to put the repellent on my hands, and I  
21 start to put it on the baby's face. That's when **Minor 1**  
22 turns around, and she goes inside the house.

23 Q. Did you tell her that you wanted to go to bed with  
24 her?

25 A. No. At no moment.

BENJAMIN CERVANTES-HERNANDEZ: DIRECT BY MS. NOVELL

-348-

1 Q. Did you tell her you wanted to kiss her?

2 A. No.

3 Q. Okay. I'm going to jump back in time a little bit, go  
4 out of order. Prior to the incident where Minor 1 put  
5 your hand down her pants, did you go to the baby's room  
6 while Minor 1 was in the room with the baby?

7 A. There was a time that we all went, and I'm referring  
8 to Minor 1, Minor 3, and Minor 2

9 Q. Okay. Did you ever push Minor 1

10 A. No.

11 Q. Did you ever touch her breasts?

12 A. No.

13 Q. Did you ever use force to keep her from leaving that  
14 room?

15 A. No, at no time.

16 Q. Okay. To go even further back in time, what did you  
17 do when you first arrived at [REDACTED]?

18 A. Before I went into the trailer, I had gone to eat with  
19 my wife. My wife called the cousin because they had  
20 already arranged -- they talked and said that when she was  
21 off work they would go eat. And we were in the restaurant  
22 she called her three or four times. At first, she said she  
23 was coming, and the last one, she said she wasn't, because  
24 the baby was sick.

25 Q. And Benjamin, I'm sorry to interrupt. I didn't ask

1 the question well. What happened when you first arrived at  
2 [REDACTED]?

3 A. We arrive, but we didn't see their truck, and I told  
4 my wife, they're not here. My wife called them on the  
5 phone, and she said she was at the store, but she wouldn't  
6 be long. And she said, go on in, the children are there.  
7 So, we went in. We knocked on the door, Minor 1 opened  
8 the door. She said, my mom's not here, and I said, yes,  
9 your aunt has already said that, but she won't be long.  
10 The reason that we went in, she -- the girl went on the  
11 couch in the corner. And then, we sat on the --

12 THE INTERPRETER: Can I ask him to repeat, your Honor?

13 THE COURT: Yes, ma'am.

14 A. She sat on the couch, at the corner, and we sat on the  
15 same couch, but on the other side.

16 Q. Okay. And when you say, we, are you talking about you  
17 and your wife?

18 A. Yes, my wife Veronica.

19 Q. All right. Are you legally married?

20 A. No.

21 Q. But you consider her your wife?

22 A. I think nine years are enough.

23 Q. Okay. Thank you, Benjamin. So, while you were  
24 sitting on the couch with Minor 1, did you touch her  
25 vagina?

BENJAMIN CERVANTES-HERNANDEZ: DIRECT BY MS. NOVELL

-350-

1 A. No.

2 Q. Was Veronica sitting on the couch next to you?

3 A. Yes, she was sitting beside me.

4 Q. Did -- When **Minor 1** would get up, would you follow  
5 her?

6 A. She never got up.

7 Q. Well, she had to get up, to go to the back, to take  
8 care of the baby. Right?

9 A. The baby was sleeping.

10 Q. Okay. But eventually, she would -- she got up. At  
11 some point, she got up. Correct?

12 A. Not at all, until after the other kids that were there  
13 came out.

14 Q. Okay.

15 A. When they came out, they made noise, and that woke the  
16 baby up.

17 Q. All right. I'm going to refer again to the drawing.  
18 And Benjamin, would you mind coming down here, and I'm  
19 going to get you to point some things out.

20 (WITNESS LEAVES WITNESS STAND.)

21 Q. At some point, when you were in the kitchen, did  
22 **Minor 3** sit on your lap?

23 A. At no time. She only got near it.

24 Q. Okay. Where were you seated at the table?

25 A. I was sitting here. The little boy, Julio, was

1 sitting here at this corner. And at this corner, he had a  
2 Tablet that we were playing with.

3 Q. Who else was at the table?

4 A. At that time, the mother of the children and my wife  
5 were over here.

6 Q. Okay. What were **Minor 3** and **Minor 2** doing?

7 A. They were running all around, from the kitchen to the  
8 living room, and they were coming over to where I was.

9 Q. Okay. I am going to ask you to demonstrate what you  
10 mean by, she wasn't on your -- your lap. Will you please  
11 demonstrate how **Minor 3** was seated next to you, or near you?

12 A. I was in this position, and the girls came in and went  
13 out. They never sat down. They were near my leg, yes.  
14 There was a split second that she tried to sit down, but I  
15 let her down, because I was worried she was going to fall.  
16 The chair doesn't have arms. So, what I did was, I put my  
17 hand on her shoulder.

18 Q. Did you ever touch her private parts?

19 A. No.

20 Q. Did Veronica and Ms. Pizana have full view of you?

21 A. They were on the other side of the table.

22 Q. Okay.

23 A. Probably, yes, they could see what was going on.

24 Q. Okay. Did you ever follow **Minor 3** from the kitchen to  
25 the couch?

BENJAMIN CERVANTES-HERNANDEZ: DIRECT BY MS. NOVELL

-352-

1 A. No.

2 Q. Okay. Well, did **Minor 2** ever sit on your lap?

3 A. She only came to get near me, and she was trying to  
4 get through so that she could see what we were playing.

5 Q. But was she near your lap?

6 A. In the same position.

7 Q. Okay. Did you ever touch her private parts?

8 A. No.

9 Q. And did Veronica and Ms. Pizana, are they still seated  
10 at the end of the table?

11 A. They were always sitting there, opposite me.

12 Q. Okay. You may take the stand again. Thank you.

13 (WITNESS RETURNS TO WITNESS STAND.)

14 Q. At some point, did you help look for a charger?

15 A. Yes.

16 Q. Okay. And what happened?

17 A. Couldn't find it. We went to the bedroom, the last  
18 bedroom, with the girls **Minor 2**, **Minor 3**, and the boy,  
19 Julio. But it was disorganized and it was impossible to  
20 find the charger. I tried to find -- to look for it for a  
21 few seconds. The kids were lifting clothes, trying to find  
22 it, but we couldn't find it.

23 Q. Okay. At any point while you were looking for the  
24 charger, did you attempt to put your hand down **Minor 3**  
25 pants? **Minor 3**.

1 A. No.

2 Q. When you were leaving that room, did you attempt to  
3 put your hand down **Minor 3** pants?

4 A. No. The only contact I had with her was getting her  
5 out of the closet. She had climbed up.

6 Q. And why did you have contact with her?

7 A. Just to get her down. She was stuck.

8 Q. Did you touch her private parts then?

9 A. No?

10 Q. Where did you touch her?

11 A. I took her like this.

12 (WITNESS DEMONSTRATED.)

13 Q. Okay. Now, at some point, did you carry **Minor 2**

14 A. I don't understand.

15 Q. Okay. At any point, did you pick **Minor 2** up to carry  
16 her?

17 A. You mean, if I picked her up, carried her?

18 Q. Yes.

19 A. No.

20 Q. Okay. At some point, did she jump on you?

21 A. When we were coming out of the bedroom, she climbed  
22 out a few seconds before **Minor 1**, with Julio.

23 Immediately, she was coming back, and I was behind them.

24 Behind me was the girl **Minor 3** **Minor 2** runs and she jumps  
25 at me to hug me. It's a very small space in the hallway.

BENJAMIN CERVANTES-HERNANDEZ: DIRECT BY MS. NOVELL

-354-

1 She holds me around my neck, and puts her legs around my  
2 body, and when she does that, I end up like this, in this  
3 position.

4 (WITNESS DEMONSTRATED.)

5 A. The impulse that she was bringing she gave me a kiss  
6 near my -- on my cheek, near my lips. And then, I grabbed  
7 her waist, and with my arm, I held onto the bathroom door.  
8 Behind me was **Minor 3**

9 Q. Did you force **Minor 2** to kiss you on the mouth?

10 A. No.

11 Q. Okay. What did you do after Ms. Pizana called the  
12 police?

13 A. I don't know when she called them, but I never tried  
14 to leave.

15 Q. Were you arrested at **[REDACTED]**?

16 A. Yes.

17 Q. And where did you go after that?

18 A. They took me to the police station in Bluffton.

19 Q. And what were you under arrest for?

20 A. At that time, I wasn't arrested. I was going so that,  
21 how do the detectives say, to help with the investigation.

22 Q. Okay. At some point, were you placed under arrest?

23 A. After I told them what had happened, trying to explain  
24 to the detective, he said they were going to bring me here  
25 to Beaufort.

1 Q. And when you mean, here to Beaufort, where did you go?

2 A. To the jail.

3 Q. And what were you charged with?

4 A. Sexual conduct. I think aggressive and second degree.  
5 Something like that is what hey wrote.

6 Q. Related to -- to whom?

7 A. With the girl **Minor 1** only.

8 Q. Were you aware that night that **Minor 3** and **Minor 2**  
9 claimed you touched them?

10 A. I heard **Minor 3** cry when the police came, and I briefly  
11 heard her say something about I had touched her.

12 Q. And did you deny this?

13 A. Yes.

14 Q. How long were you in jail?

15 A. They brought me here Saturday early in the morning and  
16 Sunday afternoon I got out.

17 Q. And what did you do after you bonded out?

18 A. I went home to the apartment.

19 Q. That you stayed in the community?

20 A. Yes, in Bluffton.

21 Q. When were you arrested on the charges involving **Minor 3**  
22 and **Minor 2**

23 A. It was on August 10th.

24 Q. Okay.

25 MS. DOVELL: All right, Benjamin. I don't have any

BENJAMIN CERVANTES-HERNANDEZ: CROSS BY SOLICITOR KEENEY

-356-

1 more questions for you right now. Please answer any  
2 questions Ms. Keeney has for you.

3 SOLICITOR KEENEY: May it please the Court.

4 CROSS-EXAMINATION

5 BENJAMIN CERVANTES-HERNANDEZ BY SOLICITOR KEENEY:

6 Q. Benjamin, on July 17th of 2015, you were thirty-six  
7 years old. Correct?

8 A. I am thirty-six.

9 Q. Still thirty-six. On that night, do you remember  
10 Officer Ferrelli responding from the Bluffton Police  
11 Department?

12 A. Several patrols came.

13 Q. Do you remember the first officer that you talked to,  
14 the first male officer that you talked to?

15 A. Yes, he was the first one that came to the scene.

16 Q. And you remember how he was trying to talk to you, but  
17 there was a language barrier. Correct?

18 A. Yes.

19 Q. When you say, yo, in Spanish, you're referring to  
20 yourself, Benjamin Cervantes-Hernandez. Correct?

21 A. Yes.

22 Q. And when you say culab -- sorry -- culable -- C--

23 MS. DOVELL: Objection, your Honor. I think there's a  
24 mis-characterization of ---

25 SOLICITOR KEENEY: I'll spell it.

1 MS. DOVELL: --- what he said.

2 THE COURT: She's withdrawing it.

3 SOLICITOR KEENEY: I will spell it.

4 Q. C-u-l-a-b-l-e. When you say that word in Spanish,  
5 that means guilty. Correct?

6 MS. DOVELL: Objection, your Honor. She's asking,  
7 when he says this and I --

8 THE COURT: I sustain the objection.

9 SOLICITOR KEENEY: Okay.

10 Q. You testified that, when you were in the room with  
11 Minor 1 and the baby, the baby was on the edge of the bed.

12 Correct?

13 A. Yes.

14 Q. And Minor 1 grabbed your shoulder. Correct?

15 A. By the neck.

16 Q. By the neck. And then, she tried to kiss you.

17 Correct?

18 A. That's it.

19 Q. And then, she grabbed your hand. Correct?

20 A. Yes.

21 Q. And you were still trying to address the baby.

22 Correct?

23 A. Yes.

24 Q. Do you remember talking to Officer Odom on July 17th,  
25 the night of the event, at the Bluffton Police Department?

BENJAMIN CERVANTES-HERNANDEZ: CROSS BY SOLICITOR KEENEY

-358-

1 A. Yes.

2 Q. And do you remember telling him that your right hand  
3 was on the baby. You tried to stop **Minor 1** with your left  
4 hand. She pulled and kissed you. The baby crawled toward  
5 the center of the bed. You straightened up, and **Minor 1**  
6 grabbed your hand. Correct?

7 A. I tried to explain to him how it happened.

8 Q. Okay. So, your hand touched eleven-year-old  
9 **Minor 1** genital area. Correct?

10 A. My left hand.

11 Q. Okay. And when you touched her genital area, you felt  
12 moisture. Correct?

13 A. I -- Yes.

14 Q. And you touched **Minor 1** inside her underwear.  
15 Correct?

16 A. That's where she put my hand.

17 Q. The Jimenez family has been to your house before.  
18 Correct?

19 A. Yes.

20 Q. And you live in Bluffton House. Correct?

21 A. Presently, currently yes.

22 Q. Is that where you lived in July, July 15th, 2015?

23 A. On the 15th?

24 Q. July 15th, 2015.

25 A. Yes.

1 Q. That's a couple minutes away from the Jimenez family,  
2 Douglas Lane. Correct?

3 A. It's ten minutes, probably, max.

4 Q. Ten minutes max.

5 SOLICITOR KEENEY: Beg the Court's indulgence.

6 No further questions for this witness.

7 THE COURT: Redirect?

8 MS. DOVELL: No further questions, your Honor.

9 THE COURT: All right. The witness can step back  
10 down, and have a seat with his attorney.

11 (WITNESS AND INTERPRETER LEAVE WITNESS STAND.)

12 THE COURT: Call your next witness.

13 MS. DOVELL: No further witnesses, your Honor.

14 Defense rests.

15 THE COURT: Defense rests. Anything in reply?

16 SOLICITOR KEENEY: No, your Honor.

17 THE COURT: All right. Members of the jury panel we  
18 have now reached the stage in the trial where you've heard  
19 all the testimony, and received the exhibits; the CD's, the  
20 DVD's, so, now you have all the evidence. But you hadn't  
21 heard my charge on the law, so we're gonna take a break at  
22 this point, because I have to take up matters of law  
23 outside your presence. But you're not in a position yet to  
24 try to make up your own mind on this case, because I  
25 haven't told you what the law to apply to the facts. So,

-360-

1 don't start discussing the case yet, and don't be trying to  
2 make up your own mind. When you come back in, we'll be in  
3 a position where the attorneys will make their closing  
4 arguments. Unlike the opening statements two days ago,  
5 where they were just outlining the trial, now, they will be  
6 taking the evidence, talking to you about the law, which I  
7 have talked to them about earlier today and later yesterday  
8 afternoon, and will talk to them briefly again, before you  
9 come in. They will know what law I'm charging, so they'll  
10 refer you to the law, tell you why, based on what I'm going  
11 to tell you the law is, your verdict to be a certain  
12 verdict, based on the facts. So, that's where we are. We  
13 have to take a break at this time to take up some matters.

14 We'll send for you as promptly as we can.

15 (JURY EXITS COURTROOM AT 11:03 AM.)

16 THE COURT: All right, anything from the State?

17 SOLICITOR KEENEY: No, your Honor.

18 THE COURT: Anything from the Defense?

19 MS. DOVELL: At this time, your Honor, I would like to  
20 renew all my previous motions including my directed verdict  
21 motions. Any other objections and motions that I have made  
22 though there is no verbal. Specifically as far as a  
23 directed verdict goes for the criminal sexual conduct  
24 second degree with a minor in relation to **Minor 1**.  
25 We've discussed this already, your Honor. I would just

1 like to put on the record that the State drafted the  
2 indictment. The indictment says that my client digitally  
3 penetrated [Minor 1] vagina. I do not believe the State  
4 has met that burden of proof to where the penetration was  
5 of the actual vagina. And, your Honor, I would ask for a  
6 directed verdict based on those facts.

7 THE COURT: All right. Well there are sort of two  
8 things on that. One is, that the indictment has charged  
9 him -- and we're not talking about the quality of the  
10 indictment at this time - but the indictment has charged  
11 him with a statute which would include any intrusion  
12 however slight.

13 The second point that I did not think of when I was  
14 discussing this yesterday but was called to my attention by  
15 Ms. Keeney is that the indictment was drawn based on what  
16 information the State had from the victim who herself  
17 referred to her genital area as her vagina in the forensic  
18 interview. So from the victim's perspective there was  
19 penetration of her vagina. Maybe that's - I know that's a  
20 technical medical term but from her standpoint that is what  
21 happened.

22 But regardless of that I think the incorporation of  
23 the statute is enough to place the defendant on notice of  
24 the charges. And I believe that the evidence, as I said  
25 earlier, as to the charges as to all three is sufficient

1 from which the jury could conclude that the State has - I'm  
2 not finding that it has -- proven Mr. Cervantes-Hernandez  
3 guilty of one or more of the offenses beyond a reasonable  
4 doubt.

5 All right. Now, anything else? And as far as prior  
6 rulings they stand as ruled.

7 MS. DOVELL: Thank you, your Honor. And just for the  
8 record I am renewing my directed verdict motion for CSC  
9 third with a minor based on my previous arguments.

10 THE COURT: As to two, as to both?

11 MS. DOVELL: As to both.

12 THE COURT: And those are denied also yes, ma'am.

13 Now, we will take a break and I am not going to - We  
14 have analyzed and reanalyzed and maybe over analyzed  
15 whether or not the position of the defense which is - and  
16 there are lesser included offenses under the cascade of  
17 assault - well not all of em - but assault and battery  
18 statutory offenses, I find that those are not lesser  
19 included offenses and I'm not going to charge any lesser  
20 included offenses or give the jury - don't give the jury  
21 that option on the verdict. I affirmly find based on the  
22 test - the elements test - the analysis of the elements  
23 test that the assault and battery charges do not - they  
24 require proof of injury whereas the charges which are set  
25 forth in the indictment do not, so I do not find that they

1 are lesser included's because they contain elements not  
2 expand in the three charges as lodged.

3 Now, is the State going to waive opening?

4 SOLICITOR KEENEY: We will waive opening on the law.

5 THE COURT: Okay. All right. Now we're gonna take a  
6 short break. I'm gonna check with the Clerk about how we  
7 go about ordering lunch. We're at that stage where it  
8 looks like we could get it to the jury in time for them to  
9 have lunch. Any other house keeping matters before we take  
10 a short break, or legal matters? The State?

11 SOLICITOR KEENEY: No, your Honor.

12 THE COURT: The Defense?

13 MS. DOVELL: Yes, your Honor. I know that the Court's  
14 time is precious and I don't want to take up time but we  
15 had our discussion about the charges, the jury charges, off  
16 the record.

17 THE COURT: Okay. Well let's put - Put whatever you  
18 want on the record now at this time.

19 MS. DOVELL: Thank you very much, your Honor.

20 I beg the Court's indulgence while I get my notes  
21 together.

22 THE COURT: Yes, ma'am.

23 MS. DOVELL: Okay. Your Honor, I had ask the Court to  
24 consider charging assault battery first degree under South  
25 Carolina Code Section 16-3-600(C)(1)(A)(1) for assault and

-364-

1 battery in the first degree. And 16-3-600(D)(1)(B) for  
2 assault and battery in the second degree as it pertains to  
3 Indictment 2015-GS-07-0-1-2-0-5 for CSC 2nd degree with a  
4 minor.

5 I also ask the Court to consider CSC 3rd degree with a  
6 minor to have lesser included offenses of 16-3-600(D)(1)  
7 assault and battery in the second degree; 16-3-600(E)(1)  
8 assault and battery in the 3rd degree as to Indictments  
9 2015-GS-07-0-1-2-9-6 and 1-2-9-7.

10 My argument is based on cases that or rulings that  
11 were held when ABHAN was not codified. But the common law  
12 offense. I believe it carried -- unclassified misdemeanor  
13 carried ten years. I base my argument on *State v. Mathis*,  
14 287, S.C. 589 where the court held that AGHAN may be a  
15 lesser included offense of criminal sexual conduct with a  
16 minor 1st degree, where there is evidence from which it can  
17 be inferred that the defendant committed the lesser and not  
18 the greater. At that time - I'm referring to *State v.*  
19 *Jones* 133 S.C. 167 for a definition of common law ABHAN  
20 which was the unlawful act of violent injury to the person  
21 of another accompanied by circumstances of aggravation, and  
22 the circumstances, change in the stature, indecent  
23 liberties with a woman, any number of aggravating factors.

24 The case of *State v. Patterson* 337 S.C. 215 notes that  
25 serious injury is not required for a finding of ABHAN. And

1 so, your Honor, it's clear that assault and battery high  
2 and aggravated nature under common law did require some  
3 sort of injury. And in cases - in the case of *Mathis* for  
4 example the defendant was alleged to have put his penis on  
5 the six year old victim and she said that it hurt her and  
6 the court found in that case that there - that ABHAN was an  
7 appropriate charge.

8 Fast forward all these years later, your Honor, and we  
9 have - And I'd also note for the court that I refer to  
10 *State v. Murphy* which is 322 S.C. 321 and in that case it  
11 was an attempted criminal sexual conduct first degree with  
12 a minor, and the court found that the lesser included  
13 charge of assault high and aggravated was the lesser  
14 included offense.

15 So there is case law that supports AGHAN, AHAN, lesser  
16 included of criminal sexual conduct with a minor in the  
17 first degree.

18 As it applies to Criminal sexual conduct with a minor  
19 second degree, the second degree charges the same thing  
20 except the date, there is a difference in age. And so now  
21 we have a codified statute for criminal sexual conduct  
22 cimres where lewd act is now CSC third with a minor. And  
23 we have a new but as you put it cascade of assault and  
24 battery charges stemming from AGHAN to assault and battery  
25 first, second, and third degree.

1 Common law ABHAN I would argue is the equivalent of  
2 assault and battery first degree which is a ten year  
3 felony. It requires unlawful injury and it involves non-  
4 consensual touching.

5 I beg the Court's indulgence just to consult my  
6 statute.

7 Criminal sexual conduct with a - or excuse me - get to  
8 the right statute. Assault and battery first degree.  
9 Okay, involves non-consensual touching of the private parts  
10 of a person either under or above clothing with lewdness,  
11 lascivious intent would be the applicable section. Assault  
12 and battery second requires unlawful injury or offer an  
13 attempt with the apparent present ability to do so. And  
14 also requires touching, non-consensual touching of the  
15 private parts of a person either under or above the  
16 clothing.

17 In these cases, your Honor, is it pertains to CSC 2nd  
18 with a minor. I think assault and battery first degree  
19 applies. Whether or not there is any injury that would be  
20 up to the jury to determine based on the evidence but  
21 there's certainly a form of non-consensual touching. And  
22 assault and battery second which fall under that is a  
23 lesser included.

24 I make the argument for CSC 3rd with a minor on the  
25 basis that there is touching involved and the language of

1 CSC 3rd while it requires lewd and lascivious intent, you  
2 know, that is not required by assault and battery in the  
3 second degree. I'm not arguing first degree assault and  
4 battery because there's no injury as far as **Minor 3** and  
5 **Minor 2** are concerned.

6 As far as the assault and battery in the second  
7 degree, it's a lesser included offense of the higher  
8 AGHAN's and it is - involves a non-consensual touching of  
9 the private parts of a person either under or above  
10 clothing. And I certainly think that applies here where  
11 the touching was above - allegedly above the clothing for  
12 **Minor 3** and **Minor 2** related offenses, your Honor.

13 And I understand the court's ruling. I just want to  
14 put on the record that I did have an argument and that's  
15 it.

16 THE COURT: All right. I appreciate that. I will  
17 take note that I think this supports my ruling, is that the  
18 legislature has now created as I called it earlier the  
19 cascade of assault and battery or assaulted behavior. And  
20 in that litney or in those there is hierarchy first,  
21 second, third, and the legislature has taken great pains to  
22 explain what one offense - which offenses are lesser of  
23 which higher offenses. And that leads me to at least to  
24 believe that had the legislature desired to include these  
25 crimes these charges under the CSC has lesser included of

-368-

1 the new assault and batteries. They could have included  
2 these offenses as lesser included offenses by statute but  
3 I'm not gonna charge the lesser included. But I  
4 understand, your argument's very well stated as was Ms.  
5 Keeney's opposition. All right. Anything else before we  
6 take a break?

7 SOLICITOR KEENEY: No, your Honor.

8 MS. DOVELL: Nothing further, your Honor.

9 THE COURT: Okay. All right, let's take a break. I  
10 know y'all need a few minutes to get your thoughts  
11 together, let's break until eleven thirty.

12 (COURT IN RECESS AT 11:17 AM.)

13 (COURT BACK IN SESSION AT 11:39 AM.)

14 THE COURT: Is the State ready to proceed?

15 SOLICITOR KEENEY: The State's ready.

16 THE COURT: Defense?

17 MS. DOVELL: Yes, your Honor.

18 THE COURT: Okay. Bring in the jury.

19 (JURY REENTERS COURTROOM AT 11:40 AM.)

20 THE COURT: Members of the jury panel, we've reached  
21 the point in the trial where you will now hear the closing  
22 arguments of the attorneys. I've already told you that.  
23 Once you hear those I will then charge you the law that you  
24 are to apply. I'll tell you more in a moment when I charge  
25 you but just so you'll know, you'll be going out about

CLOSING ARGUMENT: BY MS. DOVELL

-369-

1 lunch time so we've ordered lunch so that we can get to  
2 work at that time. So at this time, keeping in mind that  
3 these attorneys are not witnesses, they're simply telling  
4 you what they recall of the evidence. And you remember  
5 what the evidence was. If an attorney happens to misstate  
6 or you question their recollection of the evidence, you  
7 recall what you heard and saw because it's your decision.

8 They also will perhaps talk to you a little bit about  
9 some of the legal principles I will charge you. And they  
10 know what I'm gonna charge you. But were they to tell you  
11 a legal principle and you did not hear it from me then it  
12 doesn't apply. And again, if they did do that it would be  
13 simply a slip not anything intentional.

14 So, Counsel.

15 MS. DOVELL: Thank you, your Honor.

16 CLOSING ARGUMENT BY MS. DOVELL:

17 MS. DOVELL: The allegations in this case are  
18 imaginary. It's tempting to believe the imaginary  
19 scenario, especially when the reality is so difficult to  
20 believe. No one wants to believe an eleven-year-old girl  
21 took my client's hand, and put it down to her pants, to her  
22 private parts, but that's what happened. Nobody wants to  
23 believe a nine-year old and an eleven-year-old girl would  
24 accuse a family friend of inappropriate touching, but  
25 that's what happened. And this is Benjamin's very

CLOSING ARGUMENT: BY MS. DOVELL

-370-

1       terrifying reality.

2               Benjamin has stood firm from the beginning. When  
3       faced with these allegations on the night of July 17th, he  
4       didn't run. He could have left. He could have gone into  
5       hiding. This is serious stuff. He didn't run from police.  
6       He didn't try to escape. He stayed, because he wanted to  
7       tell police what happened. After he was arrested for the  
8       charge related to **Minor 1**, he bonded out, and he stayed in  
9       the community. Facing these allegations, he stayed. He is  
10      here to clear his name, and he's told you what happened.

11             There are logistical issues with **Minor 3** and **Minor 2**  
12      version of sitting in Benjamin's lap, and you saw Benjamin  
13      describe what happened. And , it's not a  
14      huge space. There are a lot of people within that home.  
15      Benjamin was in the same room as Ms. Pizana and Veronica.  
16      He was seated at the kitchen table, the same kitchen table  
17      they were seated at. And surely, they would have noticed  
18      some sort of untoward hand or arm gesture, especially when  
19      it came to a child. There were at least three or four  
20      adults and four or five children at any point in time at  
21      . It just doesn't make sense why he  
22      would try to touch them with so many people around, seated  
23      in the same room.

24             **Minor 1** story is vastly different. Her story that  
25      she told yesterday on the stand, vastly different than what

CLOSING ARGUMENT: BY MS. DOVELL

-371-

1 she told Kendra Twitty at the forensic interview. There's  
2 the touching on the couch. She said that she and Benjamin  
3 and Veronica were seat -- seated on the couch, and that  
4 Benjamin touched her on the couch. But that's not what she  
5 told Kendra Twitty. She said nothing happened at that  
6 point.

7 And again, logistics. Surely, Veronica would have  
8 noticed her husband, seated next to her, inappropriately  
9 touching someone seated next to him. **Minor 1** says there  
10 were two times, that Benjamin came back to the room where  
11 she was taking care of the baby, to touch her. And there's  
12 a change in that story, as related to the first time he  
13 goes back. She admitted on the stand yesterday that, when  
14 she spoke to Officer Ferrelli the night of the incident,  
15 she told Ferrelli, nothing happened the first time that he  
16 went back to the -- the bedroom. And she told Kendra  
17 Twitty the same thing. She certainly didn't tell Ms.  
18 Twitty that Benjamin pushed her, or forced her to stay in a  
19 room, or that she locked the door on her second trip back  
20 to take care of the baby.

21 Now, she also says Benjamin's fingers went inside of  
22 her. Well, when she spoke with Ms. Twitty, this was  
23 something she wasn't sure about, and she didn't know. So,  
24 what's changed? And to that point, she never actually says  
25 his fingers penetrated her vagina. When her mom called

CLOSING ARGUMENT: BY MS. DOVELL

-372-

1 911, she said there was no penetration. Now, there is.  
2 The nurse's exam noted epidermis slough in an area on the  
3 outer region of the vagina, not inside. She also noted  
4 that there -- again, uncomfortable things, that there was  
5 poor hygiene. In Benjamin's interview with Investigator  
6 Odom, he's asked whether or not it's possible that his  
7 fingers went inside her. He says, it's possible. He  
8 explained that the girl applied pressure when she put his  
9 hand on her private parts. He says that he felt moisture,  
10 but that certainly doesn't mean that there was penetration.

11 [Minor 1] is the second oldest child. She's a middle  
12 child, and on July 17th, her older sister was getting ready  
13 -- she was practicing for a Sweet Fifteen party. And her  
14 mom has testified they were all so excited about that. And  
15 then, you have [Minor 3] and [Minor 2] who come across as  
16 quite a twosome. They're doing things together, they're  
17 hanging out together. They're running errands with Ms.  
18 Pizana. And then, there's [Minor 1], who's hanging out with  
19 -- well, I guess she wasn't hanging out. She's at home  
20 with the two younger boys, taking care of the baby.

21 Perhaps, [Minor 1] didn't get the attention she needed  
22 from her family. Nurse Drodz testified she noted obesity  
23 and swollen feet as health concerns when she came to MUSC.  
24 Nurse Drodz also noted her poor hygiene. Desperate for  
25 attention, [Minor 1] reached out in a very wrong way for her

CLOSING ARGUMENT: BY MS. DOVELL

-373-

1       uncle's attention. Perhaps, she felt nervous and guilty  
2       about what she had done, and she went inside, to turn the  
3       tables on Benjamin before he could tell her mother what had  
4       happened. It didn't take long for **Minor 3** and **Minor 2** to  
5       close ranks with **Minor 1** or maybe they just wanted  
6       attention for themselves. They had time to talk before the  
7       call -- the 911 call was placed, and before police arrived.  
8       Ms. Pizana says she didn't speak with **Minor 3** before calling  
9       911, but how would she have known to tell the operator that  
10      a friend's daughter had also been touched? And she  
11      testified that the girl said she was touched on her legs.

12       **Minor 3** said she told Ms. Pizana what happened before  
13      calling police. **Minor 3** also told Ms. Twitty in the  
14      interview she hadn't told anyone before she told the  
15      police. There's something that's just -- just not right  
16      about these discrepancies.

17       About the logistics, the State will present its  
18      argument, and this is the last time you will hear from me,  
19      despite what the State argues, please remember how Benjamin  
20      told you what happened. The bottom line is that he has  
21      stood fast from the very first moment. What sense does it  
22      make to stay on-scene when you're accused of  
23      inappropriately touching a child, to just say that the  
24      child put your hand down their pants, if it's not true? He  
25      stayed the entire time.

CLOSING ARGUMENT: BY MS. DOVELL  
BY SOLICITOR KEENEY

-374-

1           What a terrifying situation it must be for him now, to  
2           be accused of something he had no intention of ever doing,  
3           and of inappropriately touching people, children. It just  
4           didn't happen. This is Benjamin's day in court, and this  
5           is his opportunity to clear his name. And he is asking  
6           each of you to believe him, and he is asking each of you to  
7           find him not guilty of all charges.

8           SOLICITOR KEENEY: May it please the Court?

9           THE COURT: Yes, ma'am.

10                   CLOSING ARGUMENT BY SOLICITOR KEENEY:

11           SOLICITOR KEENEY: I told you at the beginning that  
12           the Jimenez family trusted the defendant Benjamin  
13           Cervantes-Hernandez. They trusted him in their home. They  
14           trusted them with their children. And then, one night, he  
15           destroyed that trust. Now, I want you to ask yourselves,  
16           why would three little girls lie about this?

17           MS. DOVELL: Your Honor, objection, that's burden  
18           shifting.

19           THE COURT: Yeah. I sustain the objection. We'll  
20           move on.

21           SOLICITOR KEENEY: Defense Counsel wants you to  
22           believe that this is imaginary. It's not imaginary, and we  
23           know it's not, because the defendant told you himself that  
24           his hand touched **Minor 1** genitals. He told you that.  
25           **Minor 1** didn't make that up. She didn't want that kind of

CLOSING ARGUMENT: BY SOLICITOR KEENEY

-375-

1 attention. You saw her on the stand. Did it look like she  
2 wanted attention from the people in this room? No. She  
3 couldn't barely get through a sentence, she was bawling and  
4 crying. She didn't want to testify. She didn't want to be  
5 here, and tell a roomful of strangers about someone  
6 touching her private parts. It was clear, she couldn't  
7 even tell you, without crying, her parents' name, because  
8 she didn't want that attention.

9 So, this is what we know. We know, from **Minor 1**  
10 mother, Maria, that there are numerous people at the house  
11 that night. There were kids running around. Veronica was  
12 there. Veronica and Maria were talking. Now, she also  
13 told you that she wasn't looking underneath the table to  
14 see if the defendant was touching little girls' private  
15 parts. You know why she wasn't looking under the table?  
16 Because she trusted him. It doesn't make sense. She  
17 wouldn't have looked underneath the table because she --  
18 she wouldn't expect that.

19 We know that **Minor 1** went to her mother that night,  
20 and told her what happened. **Minor 1** was upset,  
21 understandably, and that's when Maria called the police.  
22 Maria called the police. She said there was no  
23 penetration, but Maria didn't see the defendant touch her.  
24 She wasn't in the room when the defendant's hand touched  
25 **Minor 1** genitals. She wasn't there, so how would the

CLOSING ARGUMENT: BY SOLICITOR KEENEY

-376-

1 mom know if there was penetration or not?

2 Now, we know, from Karen Drodz, who was the nurse from  
3 MUSC, that she examined Minor I the day after the  
4 incident. She told you what acute exam versus non-acute  
5 exams. Simply put, acute means that she exams someone  
6 within seventy-two hours of the assault. Non-acute means  
7 it's been more than seventy-two hours. This was an acute  
8 exam, because it happened the next day. She told you that  
9 there was a red rash on Minor I genital area. She told  
10 you that Minor I was not on her period, and she told you  
11 that trauma is really hard to find, and that's important,  
12 because she also told you some statistics, and she's not  
13 just talking about her cases. But statistically, only  
14 twenty percent of cases, acute cases, seventy-two hours,  
15 you find trauma, and that's all sorts of molestation.  
16 That's everything. That doesn't just include digital  
17 penetration like we have here. So, there's no surprise  
18 that she didn't find trauma in this case, because in only  
19 twenty percent of all cases is there ever trauma found.  
20 It's hard to find.

21 Now, you heard from Officer Ferrelli, who was the  
22 first on-scene. He's the one whose body cam you saw. He  
23 met with the defendant, realized there was a language  
24 barrier, and that's when Officer Perez came. And what does  
25 the defendant say? He says that an eleven-year-old girl

CLOSING ARGUMENT: BY SOLICITOR KEENEY

-377-

1 basically overpowered him, not basically, she overpowered  
2 him, and put his hand down her pants. That's the story he  
3 said. Now, Defense Counsel wants to say, well, he didn't  
4 run. No, he didn't run. But guess what? The Jimenez  
5 family knows him. He's not a stranger. They've been to  
6 his house. They know where he lives. He lives ten minutes  
7 away in Bluffton. Where's he going to run to? It's not  
8 going to be hard for the Bluffton Police Department to find  
9 him, when they know exactly who they're looking for. So,  
10 he stayed, and he made up a story, a story he wants you all  
11 to believe, that an eleven-year-old, who you saw on the  
12 stand; who was timid, quiet, soft-spoken, overpowered him,  
13 and forced herself on him.

14 You heard from **Minor 3** She is the girl that was from  
15 North Carolina, who was visiting who she considers her  
16 cousins, for summer vacation. She told you that the  
17 defendant touched her multiple times on her private part on  
18 top of her clothes. One of those times was in the kitchen,  
19 yes, where other adults were. But we already know that the  
20 adults aren't looking underneath a table to look for  
21 inappropriate touching. She told you that they went to the  
22 bedroom, meaning her, **Minor 2** and the defendant to look  
23 for a cable. They didn't find the cable. The defendant  
24 told you himself, yes, they did go to that bedroom to look  
25 for the cable so, we know she's not imagining that. And

CLOSING ARGUMENT: BY SOLICITOR KEENEY

-378-

1 that's when he tried -- he came behind her, and tried to  
2 put his hand down her pants.

3 And I think this is important, because we're not  
4 talking about an accidental brush on someone's private  
5 part. We're not talking about walking past someone, and  
6 bumping your arm accidentally into someone. He did it  
7 multiple times, multiple. You don't accidentally touch  
8 someone's private part multiple times. We saw her forensic  
9 interview, and what she said to Kendra Twitty is what she  
10 told you on the stand yesterday.

11 You heard from Minor 2 She is the nine-year-old who  
12 is sisters with Minor 1. She told you that they, her and  
13 the defendant, and Minor 3, went to the bedroom to talk  
14 about Carowind's, which is the amusement park, because  
15 they're kids. They like kid things like amusement parks.  
16 And when they left the room, the defendant kissed her on  
17 the mouth, and touched her private part. And she told you,  
18 in the forensic interview, that he touched it underneath  
19 her shorts, but on top of her underwear. And that's  
20 important, because we're not talking about an accident any  
21 more. It's not an accidental touch on the private part.  
22 We're talking about someone putting their hand underneath  
23 her shorts, and touching her private part. You saw her  
24 forensic interview, and she said what she said to Kendra  
25 Twitty to you all yesterday in court.

CLOSING ARGUMENT: BY SOLICITOR KEENEY

-379-

1 Now, let's get to Minor 1. We all know who Minor 1  
2 is. She's the eleven-year-old. And she was upset on the  
3 stand, and that's understandable, because she's eleven or  
4 she's twelve now. She's a little girl. And she's a little  
5 girl talking about her private parts in front of you all.  
6 You know, I asked her, is there another name for the  
7 private part, and she was too embarrassed to say. That's  
8 what we're dealing with here, a little girl.

9 Now, Minor 1 told you that the defendant put his hand  
10 down her pants, and made contact with her skin. She  
11 testified that his fingers went inside of her. Now, you  
12 might remember her interview with Kendra Twitty, and she  
13 said, when Kendra asked her about penetration, she said,  
14 what do you mean? And she said, I don't know. And she  
15 told you on the stand, when Ms. Dovell was crossing her, I  
16 didn't understand what she was asking me. And guess what?  
17 That makes sense, because she's eleven. She's not used to  
18 someone touching her private parts in that way.

19 In her forensic interview, she said that, when the  
20 defendant touched, she called it her vagina, that it hurt,  
21 and he did it hard. If it's not penetration, then why  
22 would it hurt? She said she hated it, understandably. She  
23 didn't grab his hand and put it down her pants. She didn't  
24 want that kind of attention. She liked taking care of her  
25 little brother. She didn't need that attention or want it.

CLOSING ARGUMENT: BY SOLICITOR KEENEY

-380-

1           And you heard from Officer Perez, who translated for  
2           the defendant, while both at the scene, and during the  
3           interview that same night, with Officer Odom. Now, Officer  
4           Perez testified, and you saw the video, or you heard the  
5           audio, and you heard what the defendant had to say. So,  
6           let's go over what he had to say. He said, the girl,  
7           referring to **Minor 1**, jumped up, and kissed him between  
8           the lips and cheek. He said, no, put his hand up, and she  
9           grabbed his hand, and put it -- his left hand on her parts.  
10          And he admits he touched her private parts. He says, she  
11          kissed me between the lips. I did not react, as I was bent  
12          down. Who doesn't react if it was unwanted? I lifted my  
13          hand, and **Minor 1** grabbed and pulled my hand. I tried to  
14          push her. He testified today that he didn't -- he didn't  
15          push her. She pulled my hand, and put it on her privates.  
16          She put my hand down in her parts. She had a free hand,  
17          and pressed against his hand. The other hand was cupping  
18          to press on the outside. He tells us, or he tells Officer  
19          Odom and Officer Perez, she put my hand under her underwear  
20          to touch her. She had put pressure with the other hand.

21                Okay. If we entertain the idea that this eleven-year-  
22                old girl is coming onto a thirty-six-year-old man, let's  
23                entertain for a minute. Okay. Maybe, if she was coming  
24                onto him, she could grab his hand, and put it on her parts,  
25                on the outside of her clothes. But he's let her put his

1 hand underneath her underwear, and apply pressure. How do  
2 you let it go that far? You don't, because what he says is  
3 not believable. She didn't do that. He did that on his  
4 own free will.

5 He also says, when asked if there was penetration, he  
6 said, yeah, possibly. And he says that he felt moisture.  
7 And I told you that this case was going to be kind of icky,  
8 because nobody wants to talk about this. But you heard  
9 from the nurse, she wasn't on her period. So, what is he  
10 feeling moisture from, if it's not penetration?

11 Now, he testified today that the reason this eleven-  
12 year-old girl can overpower him is because the baby, which  
13 was on a bed that was not even that high off the ground,  
14 was at the edge of the bed. And then, she jumps on him at  
15 the neck and kisses him. And then, he puts his hand out to  
16 stop her, and then, that's how she was able to grab his  
17 hand and put it underneath her underwear, and then apply  
18 pressure. But he tells Officer Odom and Officer Perez  
19 that, my right hand was on the baby. I tried to stop her  
20 with my left hand. She pulls and kisses. The baby crawled  
21 toward the center of the bed. I straightened up, and she  
22 grabbed my hand, and said, why don't you want to kiss me?

23 So, he tells Officer Odom that she's strong. Officer  
24 Odom says, she's eleven. He says, yes, but she looks  
25 older. And the defendant concludes by saying, it seems

CLOSING ARGUMENT: BY SOLICITOR KEENEY

-382-

1 impossible, but, yeah, she has a lot of strength. She has  
2 a big body for an eleven-year-old. And he's right. It  
3 does seem impossible, because that's not what happened. An  
4 eleven-year-old girl did not overpower him. An eleven-  
5 year-old girl did not come onto him.

6 Now, the judge is going to charge you on the law of  
7 this case. I'm going to go over it again briefly, because  
8 that's what you all are going to be deliberating about.  
9 You're going to be deliberating about the facts of this  
10 case, and whether I have met my burden of proof in this  
11 case.

12 Now, with Minor 1 [REDACTED], she is the person  
13 involved with the CSC for criminal sexual conduct with a  
14 minor, second degree, charge. And I have to prove to you  
15 that the defendant engaged in a sexual battery with the  
16 victim, who is at least eleven, between eleven and  
17 fourteen. We know Minor 1 [REDACTED] was eleven, no doubt about  
18 that. So, sexual battery. That could be proven by any  
19 intrusion, however slight, of any part of a person's body,  
20 or of any object into the genital openings of a person's  
21 body. Remember the intrusion, however slight, when you're  
22 deliberating, because when we're talking about the  
23 penetration here, we've got Minor 1 [REDACTED] that told you that his  
24 fingers went inside of her. And then, we've got the  
25 defendant that said, yeah, possibly, my fingers did go

CLOSING ARGUMENT: BY SOLICITOR KEENEY

-383-

1 inside of her. And we've got the defendant saying he felt  
2 moisture. And we also have Minor 1 saying that it hurt.  
3 It doesn't have to be full-blown penetration. It's however  
4 slight.

5 Now, with CSC, this criminal sexual conduct with a  
6 minor, third degree, charges with Minor 2 and Minor 3, I  
7 have to prove to you that the defendant was over fourteen  
8 years old -- years of -- was over fourteen years old. You  
9 all know he was thirty-six. He told you he was thirty-six.  
10 He told Officer Odom and Perez that he was thirty-six  
11 during this event. And I have to prove to you that the  
12 children were under the age of sixteen. They testified  
13 that Minor 3 was eleven, Minor 2 was nine, and the  
14 defendant willfully and lewdly committed or attempted to  
15 commit a lewd or lascivious act upon the child's body.  
16 Touching someone's private parts counts. Lewd means  
17 indecent, and I think everyone can agree that, if someone  
18 touches someone's private part, unless you are a doctor, or  
19 you had a little baby that you're changing, that it's  
20 indecent to touch someone's private parts. I have to prove  
21 to you that he had the intent of arousing or appealing to  
22 his lust, or passions, or sexual desires. I'm not sure why  
23 you would be touching someone else's private parts, unless  
24 you had that intent.

25 Now, the judge is going to charge you about what

CLOSING ARGUMENT: BY SOLICITOR KEENEY  
CHARGE TO THE JURY

-384-

1 reasonable doubt is. That is my burden of proof. I have  
2 to prove to you that he committed these crimes beyond a  
3 reasonable doubt. Now, a reasonable doubt does not mean  
4 beyond every single doubt you could possibly have. There's  
5 very few things in life that we know without doubt. But if  
6 you're firmly convinced that he committed these crimes,  
7 then you must find him guilty.

8 These little girls didn't imagine this. This is a  
9 nightmare for them. They didn't go through all this, they  
10 didn't tell their parents, the police, Kendra Twitty from  
11 Hope Haven, and then get up on the stand, and they didn't  
12 sit here all week because of their imagination. We know  
13 it's not imagination. We know the defendant touched  
14 **Minor 1** for a fact. He admits that.

15 Now, the judge will also charge you that, in cases  
16 such as these, criminal sexual conduct cases, the victims'  
17 testimony does not have to be corroborated. So, that means  
18 that, if you believe these girls, then you can find him  
19 guilty of these crimes. You can't get the Jimenez'  
20 family's trust back from the defendant. You can't restore  
21 that. I can't restore that. Nobody in this room can  
22 restore that trust. But you can make the defendant  
23 accountable for what he did. You can make him stop blaming  
24 little girls. Find him guilty of all three charges. Thank  
25 you.

CHARGE TO THE JURY:

1 THE COURT: Members of the jury panel, I appreciate  
2 your attention you've given me and to the attorneys and to  
3 the witnesses. Now, it's time for me to charge you the law  
4 which you are to apply to the facts as you determine them  
5 to be in this case, set of cases. And then of course there  
6 are three and there are three separate cases, and I'll  
7 mention that more in a moment, but there are three separate  
8 indictments. Now these indictments, which you will have in  
9 the jury room, are not evidence. They're simply the  
10 paperwork by way of which this case is processed through  
11 our court system. They contain the allegations, the charge  
12 against Mr. Cervantes-Hernandez, and are -- and put him on  
13 notice of what the charge he is to face. It also is a  
14 place where the unanimous verdict of the jury will be  
15 enrolled, and I will talk to you more about that at the end  
16 of my charge, Mr. Foreman, but they're not evidence. Keep  
17 that in mind. What these papers said on these indictments  
18 is not evidence.

19  
20 Mr. Cervantes-Hernandez is charged with criminal  
21 sexual conduct in the second degree, two counts, and  
22 criminal sexual conduct in the third degree. The fact that  
23 he was arrested, charged, and indicted in this case is not  
24 evidence that he committed these offenses, and cannot be  
25 considered by you. You cannot consider the fact that he

CHARGE TO THE JURY:

-386-

1 has been arrested, charged, and indicted as evidence of his  
2 guilt in this case, nor does it create any presumption or  
3 inference of guilt. As I said, these indictments are  
4 simply the formal written instruments which contain the  
5 charges made against him, and are the formal documents  
6 which brought this case into court.

7 These indictments allege, as I said, two separate  
8 offenses, with three alleged victims. Each indictment  
9 charges a separate and distinct offense, and you must  
10 decide each indictment separately on the evidence and the  
11 law applicable to it, uninfluenced by your decision on any  
12 other indictment. Mr. Cervantes-Hernandez can be convicted  
13 or acquitted on any or all of the offenses charged, and you  
14 will be asked to write a separate verdict of guilty or not  
15 guilty on the indictment. So, your verdict does not have  
16 to be the same, and each indictment stands or falls on the  
17 evidence, applying the law as I charge it.

18 Mr. Cervantes-Hernandez has pled not guilty to each of  
19 these three charges, and this plea places on the State the  
20 burden of proving his guilt beyond a reasonable doubt. Any  
21 person charged with any offense in our system is never  
22 required to prove himself innocent. I charge you that it  
23 is an important rule of law that a defendant in a criminal  
24 trial, no matter what the seriousness of the charge may be,  
25 will always be presumed to be innocent of that crime for

CHARGE TO THE JURY:

-387-

1 which the indictment was issued, unless guilt has been  
2 proven by evidence satisfying you of that guilt beyond a  
3 reasonable doubt.

4 This presumption of innocence is a substantial right.  
5 It is not a mere theory, or a mere legal phrase. The  
6 presumption of innocence attaches to an individual at the  
7 time of their arrest, and remains with them until you as  
8 the trial jury in this case, if you are so convinced, are  
9 convinced of his guilt beyond a reasonable doubt, as to  
10 that particular charge. The presumption of innocence  
11 remains with Mr. Cervantes-Hernandez as I speak, and  
12 remains with him as you deliberate. This presumption of  
13 innocence in his favor is removed if and when the jury  
14 unanimously determines the State has proven his guilt  
15 beyond a reasonable doubt.

16 Our law has defined a reasonable doubt as the kind of  
17 doubt that would cause a reasonable person to hesitate to  
18 act. Proof beyond a reasonable doubt is proof that leaves  
19 you firmly convinced of a defendant's guilt. There are  
20 very few things in our world that we can know with absolute  
21 certainty, and in criminal cases, our law does not require  
22 proof that overcomes every possible doubt. If, based on  
23 your consideration of the evidence, you are firmly  
24 convinced that Mr. Cervantes-Hernandez is guilty of one or  
25 all of the charges, you would find him guilty. If, on the

CHARGE TO THE JURY:

-388-

1 other hand, you think there is a real possibility that the  
2 defendant is not guilty to one or more of the charges, you  
3 would give him the benefit of that doubt, and find him not  
4 guilty.

5 I remind you that, during this trial, you and I have  
6 certain duties. As a trial judge, it is my responsibility  
7 to preside over the trial, and I also have a duty to rule  
8 on the question of admissibility of evidence during the  
9 trial. You are to consider only the competent evidence  
10 before you. If there was any testimony ordered stricken  
11 from the record by me during the trial, you must disregard  
12 that testimony. You are to consider only the testimony  
13 which has been presented from the witness stand, any  
14 exhibits that have been made part of the record in this  
15 case.

16 During the course of the trial, an attorney may have  
17 made an objection to the introduction of evidence. You are  
18 not to hold this against him -- her -- as this is part of  
19 their job. You are to make no inference from the fact that  
20 an attorney objected at any point in the trial. I have the  
21 additional duty to charge you the law applicable to this  
22 case. As the presiding judge, I am the sole judge of the  
23 law in this case. It is your duty, as jurors, to accept  
24 and apply the law as I charge it. This is true, even if  
25 you think the law should be different, or even if you think

## CHARGE TO THE JURY:

-389-

1 I have made an error in charging you the law. In every  
2 case tried in this court before a jury, you, the jury,  
3 become the sole and exclusive judges of the facts. A trial  
4 judge cannot intimate, state, comment, or make any  
5 statement to a trial jury about the facts, since it is you,  
6 the trial jury, who are the sole judges of the facts.

7 You are not to infer from anything I have said or done  
8 during this trial, or anything I now say or do, as any  
9 indication of my having an opinion on the facts of this  
10 case; or that I have any opinion about this case. Our law  
11 does not allow me to have an opinion about the facts of  
12 this case. This is a matter solely for you, the jury, to  
13 determine. As jurors, it is your duty to determine the  
14 effect, the value, the weight, and the truth of the  
15 evidence presented during the trial.

16 There are two types of evidence which are generally  
17 presented during a trial, direct evidence and  
18 circumstantial evidence. Direct evidence directly proves  
19 the existence of a fact, and does not require deduction.

20 Circumstantial evidence is proof of a chain of facts  
21 and circumstances indicating the existence of a fact. The  
22 crimes may be proven by circumstantial evidence. The law  
23 makes no distinction between the weight or value to be  
24 given to either direct or circumstantial evidence.

25 However, to the extent the State relies on circumstantial

CHARGE TO THE JURY:

-390-

1 evidence, all of the circumstances must be consistent with  
2 each other, and when taken together, point conclusively to  
3 the guilt of the accused beyond a reasonable doubt. If  
4 these circumstances merely portray the defendant's behavior  
5 as suspicious, that proof has failed. Excuse me one  
6 second.

7 The State has the burden of proving Mr. Cervantes-  
8 Hernandez' guilt beyond a reasonable doubt, and this burden  
9 rests on the State, regardless of whether the State relies  
10 on direct evidence, circumstantial evidence, or some  
11 combination of the two.

12 As judges of the facts, necessarily, you must judge  
13 the credibility of the witnesses who have testified.  
14 Credibility, of course, means believability. It is your  
15 duty to analyze and to evaluate the evidence, and determine  
16 what evidence convinces you of its truth. In determining  
17 the believability of a witness, or witnesses, who have  
18 testified, you may believe one witness over several,  
19 several witnesses over one. You may believe a part of the  
20 testimony of a witness, and reject the remaining part of  
21 the testimony of that same witness. You may believe the  
22 testimony of a witness in its entirety, or reject the  
23 testimony of a witness in its entirety.

24 Use your common sense, your sense of reason, and your  
25 experience in life as you analyze the evidence. In judging

CHARGE TO THE JURY:

-391-

1 credibility of witnesses, use those things that you find in  
2 your day-today life being indicative of truthfulness in a  
3 person. You may also use evaluators of the truthfulness  
4 such as a witness's demeanor, how they act on the stand.  
5 Look at a witness's testimony. Are they hesitant or  
6 straightforward? Look at consistencies or inconsistencies  
7 in a witness's testimony at trial, or as compared to prior  
8 testimony or statements. You may also consider any bias or  
9 prejudice with which a witness might have. That is, any  
10 reason to help or hurt one side or the other. Consider the  
11 opportunity a witness might have had to know those things  
12 to which the witness testified. All these things you  
13 consider to determine the true facts in this case. Excuse  
14 me.

15 In order to establish criminal liability, criminal  
16 intent is required. For example, the mental state required  
17 to be proven by the State for a particular crime might be  
18 purpose, intent, knowledge, recklessness, or criminal  
19 negligence. Criminal intent must be proven by the State  
20 beyond a reasonable doubt. Criminal intent is always a  
21 matter that must be determined by the jury from the  
22 circumstances surrounding the situation. There is, of  
23 course, no way to prove intent to a mathematical certainty.  
24 There's no way medical science can dissect one's brain, and  
25 determine what that person had in mind. So, our law says

CHARGE TO THE JURY:

-392-

1 that criminal intent may be inferred from the circumstances  
2 shown to have existed. This is how you make a  
3 determination of whether or not the element requiring  
4 intent was present.

5 It is not necessary to establish intent by direct and  
6 positive evidence, but intent may be established by  
7 inference, in the same way as other facts are taken into  
8 consideration, the acts of the parties, and all the facts  
9 and circumstances of the case. Criminal intent is a mental  
10 state, a conscious wrongdoing. It is up to you to  
11 determine what the defendant intended to do, based on the  
12 circumstances shown to have existed. Criminal intent can  
13 arise from action or failure to act. It may arise from  
14 negligence, recklessness, or indifference to duty, or to  
15 consequences that are considered by law to be the  
16 equivalent of criminal intent.

17 You heard the testimony of witnesses in this case who  
18 testified in Spanish. The witness testified through an  
19 interpreter. Some of you may have knowledge of Spanish.  
20 However, you cannot rely on your own knowledge of Spanish.  
21 Even if you disagree with the interpreter's translation,  
22 you must accept the translation of the witness's testimony  
23 by the interpreter.

24 A statement alleged to have been made by Mr.  
25 Cervantes-Hernandez has been admitted as evidence in this

CHARGE TO THE JURY:

-393-

1 case. While I have earlier -- and that's one of the things  
2 I did while you all were in the jury room -- made a  
3 determination as to the admission of that statement, or  
4 here statement. I instruct you that the ultimate decision  
5 of whether or not the defendant made the statement is up to  
6 you, the jury. If the defendant did make the statement, if  
7 you determine that he made the statement, you must  
8 determine whether the statement was made by him  
9 voluntarily, and of his own free will. This means that the  
10 statement was not caused by pressure, force, fear, threats,  
11 coercion, or intimidation, or by hope or promise of  
12 leniency or reward of any kind. In determining whether the  
13 statement was voluntary, you should consider both the  
14 characteristics of Mr. Cervantes-Hernandez and the details  
15 of the question.

16 Some of the factors you must consider are the age of  
17 the defendant, the defendant's mental ability or capacity,  
18 his background and environment, the place and length of  
19 detention, the nature of any questioning, the advise or  
20 lack thereof to the defendant of his constitutional rights,  
21 including but not limited to the right to remain silent;  
22 that any statement can be used against him in a court of  
23 law, the right to have a lawyer present; that, if he cannot  
24 afford a lawyer, a lawyer would be appointed to represent  
25 him without any cost; and that he can stop making a

CHARGE TO THE JURY:

-394-

1 statement at any time.

2 You must carefully consider all the surrounding  
3 circumstances before you give any weight to any alleged  
4 statement. The State has the burden of proving beyond a  
5 reasonable doubt that the alleged statement was voluntary.  
6 If you determine it was, you may give the statement any  
7 further consideration you deem proper. You must decide  
8 what weight, if any, should be given to the alleged  
9 statement. If you determine the alleged statement was not  
10 the free and voluntary statement of Mr. Cervantes-  
11 Hernandez, you should not consider the statement at all.

12 During the trial, you've heard testimony from  
13 children. Where a witness is a child you must determine,  
14 as with any witness, whether the testimony is believable.  
15 In deciding believability, you may consider not only  
16 matters that I have already discussed with you about all  
17 witnesses, but you may also consider the age of the child,  
18 the child's ability to observe and remember facts, and the  
19 child's ability to understand and answer questions.  
20 Because young children may not fully understand what is  
21 happening, here, it is up to you to decide whether the  
22 child understood the seriousness of appearing as a witness  
23 at this trial; whether the child understood the questions;  
24 whether the child has a good memory; and whether the child  
25 understands the difference between lying and telling the

CHARGE TO THE JURY:

-395-

1 truth. In addition, young children may be influenced by  
2 the way the questions are asked. It is up to you to decide  
3 whether the child understood the questions asked.

4 The first charge I'm going to go over is the  
5 indictment that charges Mr. Cervantes-Hernandez with  
6 criminal sexual conduct with a minor. In that one the  
7 victim alleged is **Minor 1**. Here, the State must prove  
8 beyond a reasonable doubt that the defendant engaged in  
9 sexual battery with the alleged victim. A sexual battery  
10 is sexual intercourse, cunnilingus, fellatio, anal  
11 intercourse, intercourse, or any intrusion, however slight,  
12 of any part of a person's body, or any object into the  
13 genital or anal openings of another person's body, except  
14 for when the intrusion is accomplished for medically-  
15 recognized treatment or diagnostic purposes.

16 The State must prove beyond a reasonable doubt that  
17 the alleged victim was at least eleven years old, but not  
18 more than fourteen years of age at the time of the sexual  
19 battery. Consent, willingness, indifference, or ignorance  
20 of the fact of the minor, if any, as to what was taking  
21 place, does not, in any way, affect the charge of criminal  
22 sexual conduct with a minor.

23 The defendant is also charged in two counts with the  
24 other two children, with committing criminal sexual conduct  
25 in the third degree with those two, **Minor 3** and **Minor 2**

CHARGE TO THE JURY:

-396-

1 Here, the State must prove beyond a reasonable doubt that  
2 the defendant, Mr. Cervantes-Hernandez, was over the age of  
3 fourteen. Next, the State must prove that the defendant  
4 willfully and lewdly committed, or attempted a lewd or  
5 lascivious act on the body or its parts of a child under  
6 the age of sixteen years, with intent to arouse, appeal to,  
7 or gratify the lust, passions, or sexual desires of the  
8 defendant or of the child.

9 Willfully means voluntarily and intentionally, with a  
10 specific intent to do something the law forbids. Lewd  
11 means obscene, lustful, indecent, or lecherous. Lascivious  
12 means intending to incite lust, lewd, indecent, obscene, or  
13 intending to deprave the morals and respect to sexual  
14 relations. In criminal conduct cases, the testimony of  
15 victims need not be corroborated.

16 Now, in just a moment, I will send you to the jury  
17 room to deliberate, but do not start deliberating until you  
18 are told by the Clerk or Bailiff to do so. There are  
19 certain matters I have to go over with the attorneys before  
20 I can let you start. I told you, you have to follow the  
21 law exactly as I charge it, so I've got to make sure I did  
22 not make any error, and make a mistake. If I have made an  
23 error or mistake, I will bring you back in and correct it.

24 The verdict must be unanimous. All twelve jurors must  
25 agree. Once all twelve jurors have agreed on a verdict,

CHARGE TO THE JURY:

-397-

1 the foreman will write that verdict, and I will talk to you  
2 in just a moment, more about that, on the back of the  
3 indictments. Your verdicts will not be -- cannot be and  
4 are not to be based on passion, prejudice, public opinion,  
5 or matters outside the record. If, while you're  
6 deliberating, you have questions, please write them down.  
7 Send them out by way of the bailiff. I will confer with  
8 the attorneys, and I may be able to write an answer on the  
9 note, or I may have to bring you back here and answer your  
10 question in open court. If I do respond by writing a note  
11 on your note, keep that, and turn it in at the end of the  
12 trial with the exhibits, Mr. Foreman, because it has to be  
13 part of the record. I am going to send in with you a  
14 written copy of my charge, but if you want me to, in open  
15 court, come back out and re-charge you on any part or all  
16 of the law, let me know, and I will be glad to re-charge  
17 you here in open court.

18 You may refer to these instructions that I send in to  
19 guide your decision making. You must consider the  
20 instructions in a whole, and not follow some and ignore the  
21 others. And please return the written instructions along  
22 with the exhibits at the end also, Mr. Foreman.

23 Now, we do have lunch coming in around one. We're --  
24 it's up to you whether you want to take a break and eat at  
25 that time, or whether you want to eat and work at the same

CHARGE TO THE JURY:

-398-

1 time. That's up to you.

2 Ms. Anstaett, you will remain with us as you're on the  
3 jury. Mr. Turner, if you'll just wait in the jury -- wait  
4 here in the courtroom when the jury goes out this time --  
5 Which one is Mr. Turner? That's what I thought -- because  
6 you're not participating any further, although we do have  
7 lunch coming for you.

8 Now, on the indictments, Mr. Foreman, you will see, on  
9 the back of the indictment, printed in blue, I think it  
10 says, True Bill. Right to the left of that is the word,  
11 verdict. On one of the lines below the words, True Bill,  
12 write either -- where you'll writing the unanimous verdict  
13 of the jury. If the State has failed to convince the jury  
14 beyond a reasonable doubt that Mr. Cervantes-Hernandez'  
15 guilt as to a particular charge, you would simply write two  
16 words, not guilty; sign and date it. Today, I think, is  
17 the 25th. You are -- If the State has failed to convince -  
18 - I'm sorry. I told you, if the State has failed to  
19 convince you of Mr. Cervantes-Hernandez' guilt beyond a  
20 reasonable doubt, you would write the two words, not  
21 guilty. If, on the other hand, the State has convinced you  
22 as to one or more of the charges of Mr. Cervantes-  
23 Hernandez' guilt beyond a reasonable doubt, you would write  
24 the one word, guilty, again, sign and date it.

25 Now, when you go into the jury room, don't start

CHARGE TO THE JURY:

-399-

1 deliberating. As I said earlier, Mr. Turner, you'll stay  
2 in here with us, and we will either send for you  
3 momentarily, or we will send in to you the exhibits.

4 Now, I want to make sure with -- probably should have  
5 done this before -- that you have the capability in the  
6 jury room to, either through a clean laptop, that is a  
7 laptop supplied with no other stuff on it, or some other  
8 way, so that you can watch the videos, because they're in  
9 evidence. So, I'm going to let you go to the jury room at  
10 this time.

11 (JURY EXITS COURTROOM AT 12:33 PM.)

12 THE COURT: Mr. Turner, I'll be with you in just a  
13 minute. Anything from the State involving the charge?

14 SOLICITOR KEENEY: No, your Honor.

15 THE COURT: Defense?

16 MS. DOVELL: No, your Honor.

17 THE COURT: All right. Well, we'll send it in, and  
18 I'll mark the charge, I'll send in, and the indictments,  
19 and we'll tell them to start deliberating. And we do have  
20 some way for them to watch?

21 SOLICITOR KEENEY: Your Honor, due to the redactions  
22 and the court's order pretrial, I don't think we can send  
23 it back to the jury. We'd have to watch it in here.

24 THE COURT: All right. Do you object to me -- Let me  
25 bring the jury back in, and tell them that.

CHARGE TO THE JURY:

-400-

1 SOLICITOR KEENEY: Okay.

2 THE COURT: Just bring the jury back in.

3 Mr. Turner, just keep your seat. I'll be with you in  
4 just a minute.

5 (WHEREUPON, COURT'S EXHIBIT NUMBER THIRTEEN,  
6 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

7 (JURY REENTERS COURTROOM AT 12:34 PM.)

8 THE COURT: Members of the jury panel, after  
9 conferring with the attorneys while you were out, it's my  
10 understanding that there are -- if you remember, on some of  
11 the videos, there were blank spaces, where we had to shut  
12 off the audio. Well, we cannot send these exhibits back  
13 with you, because you won't know where to pause, or where  
14 to skip. If you wish to listen to any part, or all of any  
15 of the forensic interviews, or the statement of Mr.  
16 Cervantes-Hernandez at the police station, if you want to  
17 have any of that replayed, let us know, and we'll bring you  
18 out here and do it in open court. I'm gonna let you go  
19 back, but don't start deliberating yet.

20 (JURY EXITS COURTROOM AT 12:37 PM.)

21 THE COURT: Anything?

22 SOLICITOR KEENEY: No, your Honor.

23 MS. DOVELL: I just wanted to make sure the body cam  
24 video is going back.

25 Ms. Keeney. It's just the -- it's simply the

1 statement that was given. Correct? There's no other  
2 statement that was given by my client?

3 SOLICITOR KEENEY: It's not going back.

4 MS. DOVELL: Okay. So, none of the discs are going  
5 back.

6 THE COURT: All right.

7 MS. DOVELL: Okay. I just wanted to make sure. I  
8 thought that, for whatever reason, you had left the body  
9 cam out, and that it was going back there. That's fine.

10 Nothing further.

11 THE COURT: All right. Tell the jury to start  
12 deliberating. And here are the indictments. And we'll be  
13 at ease. Mr. Turner --

14 Are there any other documents that go in?

15 Mr. Turner, we do have some lunch coming. You can  
16 wait and eat, or you can leave; or you can wait around and  
17 see what the jury's verdict is. That's your call but  
18 you're through and you're through for the week. We're  
19 obviously not gonna start another trial, it's Thursday  
20 afternoon after lunch. So, we appreciate your help. The  
21 attorneys may want to talk to you about this case, there's  
22 no prohibition. The law, we haven't gotten a rule that  
23 says the lawyer can't talk to a juror, but you don't have  
24 to. They may want ask how you feel about the case, and if  
25 you want to say, I'd rather not talk about it, then they'll

-402-

1 hush. But if they do approach you and want to talk to you  
2 they're not violating any laws or violating any rules.

3 (ALTERNATE JUROR DISMISSED AT 12:37 PM.)

4 So, we'll be at ease, pending hearing from the jury.  
5 Again, I want to thank you -- not again, but I want to make  
6 sure I thank, on the record, all of the attorneys for the  
7 courtesies they've shown me during the trial of this case.

8 Thank you. We'll be at ease.

9 (COURT AT EASE AT 12:37)

10 (WHEREUPON, COURT'S EXHIBIT NUMBER FOURTEEN,  
11 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

12 (COURT BACK IN SESSION AT 02:17 PM.)

13 THE COURT: Thank you. You may take your seats.

14 We've -- we've received a note that's been shared with  
15 counsel. It says, "Do we need to agree on penetration to  
16 convict on second degree?"

17 The only thing I can do is call them back in, and tell  
18 them, of course, their verdict has to be unanimous, and  
19 tell them what the definition is, and re-charge them on  
20 second degree. They actually have it in their hands, in  
21 there, but they -- maybe if I go over it again, and re-read  
22 it, that might spark something that will answer whatever it  
23 is that's troubling them. So, any comment on that from the  
24 State?

25 SOLICITOR KEENEY: No, your Honor.

RECHARGE CRIMINAL SEXUAL CONDUCT WITH A MINOR:

-403-

1 THE COURT: Defense?

2 MS. DOVELL: No, sir.

3 THE COURT: All right. Let's bring 'em back in.

4 (JURY REENTERS COURTROOM AT 02:20 PM.)

5 THE COURT: Mr. Foreman, I have received your note,  
6 and the only way I can answer that is to re-charge you the  
7 law on criminal sexual conduct with a minor in the second  
8 degree, and remind you that your verdict must be unanimous.

9 Mr. Cervantes-Hernandez is charged with second degree  
10 criminal sexual conduct with a minor. Here, the State must  
11 prove beyond a reasonable doubt that he engaged in a sexual  
12 battery with the victim. A sexual battery is sexual  
13 intercourse, cunnilingus, fellatio, anal intercourse, or  
14 any intrusion, however slight, of any part of a person's  
15 body, or with any object into the genital or anal openings  
16 of another person's body, except when the intrusion is  
17 accomplished for medically recognized treatment or  
18 diagnostic purposes.

19 The State must prove beyond a reasonable doubt that  
20 the victim, alleged victim, was fourteen years old at the  
21 time of the sexual battery. Consent, willingness,  
22 indifference, or ignorance on the part of the minor, if  
23 any, as to what was taking place does not, in any way,  
24 affect the charge of criminal sexual conduct with a minor,  
25 because with a minor.

RECHARGE CRIMINAL SEXUAL CONDUCT WITH A MINOR:

-404-

1           So, that is my re-charge. It has to be the sexual  
2 battery, the charge of criminal sexual conduct with a minor  
3 in the second degree, which requires a sexual battery as I  
4 have defined it.

5           Again, your verdict must be unanimous. I'm going to  
6 let you go back and deliberate. When you've reached a  
7 verdict, knock on the door. You have notes -- I'm not  
8 saying you can't send out more notes, I'm just think I  
9 forgot to tell you earlier, what you do when you do reach a  
10 unanimous verdict is knock on the door and tell the  
11 bailiff, and he will come and tell us. Thank you.

12           (JURY EXITS COURTROOM AT 02:22 PM.)

13           THE COURT: Anything from the State?

14           SOLICITOR KEENEY: Your Honor, the only thing is, I  
15 thought I heard you say that I had to prove that she was  
16 fourteen. I didn't hear the eleven to fourteen range. I  
17 know that wasn't the exact issue they asked about, but.

18           MS. DOVELL: I also heard you say she had to be  
19 fourteen years old.

20           THE COURT: All right. Bring 'em back in.

21           So, what you're saying is, I neglected to charge that  
22 the victim was at least eleven, but not more than fourteen?

23           SOLICITOR KEENEY: Correct, you left out the eleven.

24           THE BAILIFF: Ready, your Honor?

25           THE COURT: Yes, sir.

RECHARGE CRIMINAL SEXUAL CONDUCT WITH A MINOR:

-405-

1 (JURY REENTERS COURTROOM AT 02:24 PM.)

2 THE COURT: I did, apparently, make one misstatement  
3 while I was charging you on -- re-charging you, as to the  
4 age issue. In order for there to be a conviction of -- for  
5 criminal sexual conduct with a minor, second degree, the  
6 victim must be at least eleven years of age, but not more  
7 than fourteen years of age at the time of the sexual  
8 battery. So, I needed to correct that. Thank you.

9 (JURY EXITS COURTROOM AT 02:25 PM.)

10 THE COURT: Anything else?

11 SOLICITOR KEENEY: No, your Honor.

12 MS. DOVELL: No, your Honor.

13 THE COURT: Thank you. I appreciate your catching  
14 that. We'll remain at ease.

15 (COURT AT EASE AT 02:25 PM.)

16 (COURT BACK IN SESSION AT 03:54 PM.)

17 THE COURT: Thank you. Take your seats, please. I  
18 understand the jury has reached a verdict, so, anything  
19 from the State before the jury comes in?

20 SOLICITOR KEENEY: No, your Honor.

21 THE COURT: Anything from the Defense?

22 MS. DOVELL: No, your Honor.

23 THE COURT: All right. Let's bring in the jury.

24 BAILIFF: Ready, your Honor?

25 THE COURT: Bring them in.

VERDICT:

-406-

1 (JURY REENTERS COURTROOM AT 03:55 PM.)

2 THE COURT: Mr. Foreman, I understand the jury has  
3 reached verdicts.

4 MR. FOREMAN: Yes, your Honor, we have.

5 THE COURT: Hand 'em to the bailiff, and he'll hand  
6 'em up to me.

7 (VERDICT RECEIVED UP BY THE COURT.)

8 THE COURT: Madam Clerk.

9 MADAM CLERK: In the *State of South Carolina versus*  
10 *Benjamin Cervantes-Hernandez*, Indictment Number 2015-GS-07-  
11 01296, not guilty. Indictment Number 2015-GS-07-01297, not  
12 guilty. Indictment Number 2015-GS-07-01205, guilty.

13 Mr. Foreman, is that your verdict?

14 MR. FOREMAN: Yes, ma'am.

15 MADAM CLERK: If you all will please stand. Raise  
16 your right hand. Is that still your verdict?

17 (ALL JURORS RESPONDED IN THE AFFIRMATIVE.)

18 THE COURT: Thank you. You may be seated. All  
19 twelve affirmed. Anything from the State before the jury  
20 is dismissed?

21 SOLICITOR KEENEY: No, your Honor.

22 THE COURT: Anything from Defense before the jury is  
23 dismissed?

24 MS. DOVELL: No, your Honor.

25 THE COURT: All right. Members of the jury panel,

1       thank you for your help. This was a difficult case for  
2       everybody, including the jury, and with interpreters and  
3       translating, and young children. So, I appreciate your  
4       patience. I appreciate your diligence, and thank you very  
5       much for helping us get this matter resolved. You will be  
6       mailed a check.

7               Is that right?

8               MADAM CLERK: Yes, sir.

9               THE COURT: Okay. You will be mailed a check for your  
10       service, and you are through for the week. We're not going  
11       to start another trial on Thursday afternoon, so feel free  
12       to leave. If you are interested in whatever sentence I may  
13       impose, the bailiffs will take you around, and you can come  
14       in and sit in the back. I'm not going to require you to  
15       stay while I do what we need to do next, but if you'd like  
16       to see that part of the -- of this proceedings, the  
17       bailiffs will show you, and bring you around to the back.  
18       Thank you. Appreciate all you've done for us.

19               (JURY DISMISSED/EXITS COURTROOM AT 03:58 PM.)

20               THE COURT: All right. Is there anything from the  
21       State? I'd be glad to hear from the victim and those sort  
22       of things in a moment, but right now, anything dealing with  
23       the trial matters?

24               SOLICITOR KEENEY: No, your Honor.

25               THE COURT: Anything from the Defense?

1 MS. DOVELL: Your Honor, not at the moment. I'd like  
2 to take a couple of minutes. I don't think I will have any  
3 post-trial motions, but just --

4 THE COURT: All right. Take your time. We'll be at  
5 ease a few minutes.

6 MS. DOVELL: Okay. Thank you very much.

7 (PAUSE.)

8 SOLICITOR KEENEY: Your Honor, may I be excused from  
9 the table just briefly, for a moment? May I be excused  
10 from the table?

11 THE COURT: Oh, yes, ma'am.

12 SOLICITOR KEENEY: Briefly.

13 THE COURT: I'm sorry, I didn't hear you.

14 MS. DOVELL: Your Honor, may I be excused momentarily  
15 as well?

16 THE COURT: I'm sorry?

17 MS. DOVELL: May I momentarily be excused, as well?

18 THE COURT: Yes, yes. You both may.

19 (COURT AT EASE.)

20 THE COURT: All right. Ms. Dovell.

21 MS. DOVELL: Yes, your Honor. I thank you for the  
22 moment. I'm not going to make any post-trial motions at  
23 this time, but I understand I have ten days to make any  
24 motions.

25 THE COURT: Well, you have to ask for it and I'll

SENTENCING:

-409-

1 grant it.

2 MS. DOVELL: Sir?

3 THE COURT: I think you have to ask for the ten days,  
4 but I'll give you ten days.

5 MS. DOVELL: Thank you, your Honor, for granting the  
6 ten days.

7 THE COURT: Now, -- But I'm going to go ahead and  
8 sentence today.

9 MS. DOVELL: Yes, sir.

10 THE COURT: All right. If you'll bring Mr. Cervantes-  
11 Hernandez around, please, ma'am.

12 MS. DOVELL: Yes, sir.

13 SOLICITOR KEENEY: Your Honor, briefly, for the record  
14 purposes, I know I didn't make it clear when we were  
15 playing the audio of the defendant's interview of where I  
16 stopped it. I didn't know it would be something that,  
17 probably, the appellate courts would want to know. The  
18 audio was stopped between fifty-three minutes and fifty  
19 seconds.

20 THE COURT: The audio. Which one?

21 SOLICITOR KEENEY: The defendant's first interview,  
22 the only one that was entered into evidence. And then, it  
23 was started back up at fifty-seven minutes and forty-seven  
24 seconds. And then, it was stopped at one hour and fourteen  
25 minutes and forty seconds. And the rest was suppressed by

SENTENCING:

-410-

1 your Honor.

2 THE COURT: All right. That was a presentation by the  
3 State, does anyone want to speak on the victim's behalf?

4 SOLICITOR KEENEY: Yes, your Honor. And if it's okay  
5 with the Court, may Jessica translate, since we're short  
6 one translator?

7 THE COURT: Yes, ma'am.

8 MS. DOVELL: Your Honor, would you like us to  
9 approach, or --

10 THE COURT: Yeah, it would be nice if he'd come up a  
11 little bit. How many days has he already been in jail?

12 MS. DOVELL: Your Honor, he has been incarcerated  
13 since his arrest on August 10th.

14 THE COURT: All right. Somebody -- will you figure  
15 out the number of days? My clerk will figure out the  
16 number of days.

17 MS. DOVELL: Thank you.

18 THE COURT: All right. Yes, ma'am.

19 SOLICITOR KEENEY: May it please the Court?

20 THE COURT: Yes, ma'am.

21 SOLICITOR KEENEY: The State, in this case, is asking  
22 for the maximum twenty years. As your Honor knows,  
23 although the jury did not hear, this conduct started with  
24 **Minor 1** when it was -- when she was in third grade. And  
25 it escalated on July 17th of 2015, with the digital

SENTENCING:

-411-

1 penetration. You've also heard, although the jury did not,  
2 that the fourth victim, which was Jessica, which he's not  
3 charged with, I think that's important for your Honor's  
4 consideration.

5 His prior record is limited. Its just a driving  
6 without a license, but I think, due to the allegations  
7 involved and the number of victims we've had, I think  
8 twenty years is appropriate.

9 THE COURT: But he's found not guilty on two of the  
10 victims.

11 SOLICITOR KEENEY: Yes, sir.

12 THE COURT: I can't consider them the victim.

13 SOLICITOR KEENEY: I understand, your Honor. Would  
14 you like to hear from the family at this time?

15 THE COURT: Please. I would like to hear from the  
16 family.

17 SOLICITOR KEENEY: Is it okay if they come here?

18 THE COURT: Yes, ma'am.

19 SOLICITOR KEENEY: Would Jessica, and everyone and  
20 Maria?

21 THE COURT: And of course, as to Jessica, I'd be glad  
22 to hear from her. But there's been no - Was he indicted  
23 for matters involving her and it was just not tried?

24 SOLICITOR KEENEY: He has not bee indicted.

25 MS. DOVELL: He was not been arrested for any matters

SENTENCING:

-412-

1 involving Jessica, so I'd ask your Honor to please take  
2 that into consideration. Although the solicitor classifies  
3 her as a victim, she is not -- he has not been charged with  
4 any ---

5 THE COURT: All right.

6 MS. DOVELL: --- anything related to that.

7 SOLICITOR KEENEY: I just told them to make sure they  
8 just direct the comments to your Honor, and not the  
9 defendant.

10 THE COURT: Okay.

11 SOLICITOR KEENEY: Who wants to start?

12 THE COURT: Yes, sir. Give us your name first.

13 A. Efrian Jiminez. I want to know why they accused him  
14 of one case but not two.

15 SOLICITOR KEENEY: And your Honor, that's a question  
16 for me to explain. Let me, briefly, real quick.

17 EFRIAN JIMINEZ: I feel really bad, because I know he  
18 touched her.

19 THE COURT: I'm going to ask you to speak up just a  
20 little bit. I know you're young and kind of nervous, but.

21 EFRIAN JIMINEZ: I feel really bad, because -- I feel  
22 really bad, because he touched another girl, and nobody  
23 believes her, because they accused him of one.

24 THE COURT: All right. We need her name.

25 A. I'm sorry. My name is Paula Tapia.

SENTENCING:

-413-

1 MS. TAPIA: I don't feel well because I left my child  
2 with someone I trust, and someone -- a stranger came, and  
3 he touched my girl, and I feel really bad about it, and I  
4 feel like any other parents would feel that bad. And that  
5 you can do more justice because of that.

6 SOLICITOR KEENEY: Your Honor, just --

7 MS. TAPIA: Because that's not good that he touches a  
8 girl he doesn't know, and.

9 A. Maria Elizabeth Pizana Covoz.

10 (MS. PIRANA SPEAKING AND NO ONE INTERPRETING.)

11 THE COURT: Let me stop you.

12 Jessica, tell me what she's said so far.

13 MS. PIZANA: I don't think anything's going to change,  
14 because he only -- it's not fair that he only touched --  
15 that they only believe that he only touched one girl but  
16 not both, not the other two. And it won't change anything  
17 about them. And I feel really, really bad.

18 THE COURT: Thank you. Anything else from the State?

19 SOLICITOR KEENEY: Your Honor, I think I just -- what  
20 shocks me about the case is the comments about the eleven-  
21 year-old girl overpowering him. I think it's unbelievable.  
22 I think the jury didn't believe it, and I think it's just  
23 the time for him to be accountable for what he did. And  
24 again, the State's asking for twenty years.

25 THE COURT: All right. Ms. Dovell, is your client,

SENTENCING:

-414-

1 subject to any ICE issues?

2 MS. DOVELL: Yes, your Honor, he is. He does have an  
3 ICE detainer, and with this conviction for criminal sexual  
4 conduct, second degree, he will be deported from the United  
5 States, and subject to a lifetime bar from returning to the  
6 United States.

7 THE COURT: All right. I'll be glad to hear from you.  
8 Anything you want to say.

9 MS. DOVELL: Yes, your Honor. I do have some things  
10 I'd like to say. First of all, I appreciate the State  
11 wants to have people speak on behalf of their victim, but  
12 Ms. Tapia is the mother of Minor 3 and he was  
13 acquitted of that charge. So, I ask your Honor, please,  
14 not to take that into consideration when you're forming  
15 your sentence. I don't think that you would. I understand  
16 the State's position on twenty years.

17 However, I disagree with the fact that the jury  
18 obviously didn't believe him. The jury deliberated for  
19 over three hours before returning a verdict. Benjamin has  
20 declared his innocence from the very beginning. Your Honor  
21 has listened to the whole trial. You've heard Benjamin's  
22 testimony. There's not much more to say about the facts,  
23 so I'd like to fill you in a little bit about Benjamin as a  
24 person.

25 Benjamin is thirty-six years old. He is from Mexico,

SENTENCING:

-415-

1 originally, and he has been in the United States for about  
2 twelve to thirteen years. He did work in drywall. In my  
3 representation of Benjamin, I have gotten to speak with  
4 numerous individuals who are in full support of him, who  
5 have known him their whole life, who have trusted their  
6 children to him, and who think the world of Benjamin. His  
7 wife, Veronica Barrios is here, and his brother, Bernardino  
8 Cervantes-Hernandez, are here, your Honor.

9 I know that they could do a much better job of telling  
10 you about their loved one, their Benjamin, than I can tell  
11 you. I would like to say that Benjamin has been very  
12 active in participating in his defense. I've enjoyed  
13 speaking with him. He tells me he is finished secundario I  
14 guess, in middle school or high school equivalent in  
15 Mexico. He's always been well-spoken, and it's been my  
16 pleasure to represent him.

17 As a matter of housekeeping, I have explained to  
18 Benjamin that this offense carries up to twenty years, and  
19 it's an eighty-five percent offense. It is violent and  
20 most serious, and that -- I don't think this will come into  
21 play, because he's not going to be released from custody in  
22 the United States, but he would be subject to the sex  
23 offender registry, and potentially GPS monitoring.

24 I just wanted to put on the record that I have  
25 informed Benjamin of all these, and it was his knowing

SENTENCING:

-416-

1 decision to go to trial. Like I said from the first, he  
2 has said that he will -- he wanted this trial, and it  
3 didn't make sense to him to plead guilty to something that  
4 he did not do.

5 THE COURT: I believe he also will be required to be  
6 on the Center Registry for Child Abuse.

7 MS. DOVELL: Yes, your Honor. That is correct.

8 THE COURT: All right.

9 MS. DOVELL: And your Honor, if -- would you mind  
10 hearing from Veronica and Bernardino?

11 THE COURT: Of course not. Of course not.

12 MS. DOVELL: Thank you. Bernardino, would you like to  
13 speak on Benjamin's behalf? You can come up here.

14 THE COURT: You need to come up. Your name?

15 (ALL INTERPRETATION MADE BY BEVERLY NEIDERHISER.)

16 BERNARDINO CERVANTES-HERNANDEZ: Bernardino Cervantes-  
17 Hernandez.

18 THE COURT: All right.

19 BERNARDINO CERVANTES-HERNANDEZ: I'm sorry for the  
20 situation we're going through. But I'm also sure that my  
21 brother had no intention of touching the girls. I am sure  
22 that he never has done it. In our country we don't know  
23 permission of our rights. We don't know our rights but the  
24 law is here very well. We have other customs, so I think  
25 sometimes, we fall into the cracks. My brother is a good

SENTENCING:

-417-

1 person. He's a good son. He's a very good brother, and  
2 I'm saying, that he -- holding onto him because he is my  
3 brother. We, as Mexicans, are humble, but we have good  
4 principles. And for my brother and the people here, we're  
5 walking tall because we are convinced it didn't happen like  
6 they've made it seem, and I've very sure of that.

7 MS. DOVELL: Thank you, Bernardino.

8 THE COURT: Thank you.

9 MS. DOVELL: Veronica, would you like to speak on  
10 Benjamin's behalf?

11 (ALL INTERPRETATIONS MADE BY BEVERLY NEIDERHISER.)

12 VERONICA BARRIOS: Hi.

13 THE COURT: Good afternoon.

14 VERONICA BARRIOS: My name is Veronica Barrios.  
15 Benjamin is my husband. I completely trust him. We've  
16 been together for ten years. We've had differences, like  
17 every couple, but I trust him, and I know that he didn't do  
18 anything. I love him a lot, and he's a very good person.  
19 He's got his whole life respectful. He respects people.  
20 He's not capable of doing something like this.

21 THE COURT: Thank you.

22 VERONICA BARRIOS: Thank you.

23 THE COURT: Yes, ma'am. Thank you. All right. I'll  
24 be glad now to hear from Mr. Cervantes-Hernandez, if he  
25 wishes to tell me anything.

SENTENCING:

-418-

1 (ALL INTERPRETATIONS MADE BY BEVERLY NEIDERHISER.)

2 MR. CERVANTES-HERNANDEZ: Of course. I'm very sorry  
3 about this situation. I was involved in this dilemma.  
4 It's the first problem like this that I've been involved  
5 in. The Jimenez-Pizana family is not the first family that  
6 I've known with children. I've known lots of people with  
7 children. I've seen them grow up. Maybe she misunderstood  
8 the affection and the love, for lack of better words, sir.  
9 But I treated her well.

10 Several times, they were left alone at home, and they  
11 would come to visit at the apartment, where we had moved  
12 into. There were lots of times that they were alone. If  
13 the mother feels -- I'm sorry. I believe that they put a  
14 person -- I'm sorry. If you can send a person who works  
15 for the State to investigate them --

16 MS. DOVELL: Okay. Benjamin, you cannot comment about  
17 the family. I understand you're upset.

18 MR. CERVANTES-HERNANDEZ: Unfortunately, I'm involved  
19 in this matter. I can't express myself the way I would  
20 like to. That would be -- Your Honor, give me your  
21 verdict.

22 THE COURT: All right.

23 MR. CERVANTES-HERNANDEZ: I think twenty years is a  
24 lot of time, without having done something. I've got one  
25 hundred and ninety-eight days that I've been here. I've

SENTENCING:

-419-

1 seen similar cases, with evidence, people have said they  
2 were guilty of doing things. Twenty years. I would be the  
3 third Hispanic in seven months -- I would be the third  
4 Hispanic in seven months to go to prison with something  
5 like this. Already a nineteen-year-old --

6 MS. DOVELL: Benjamin, you cannot comment on any of  
7 those cases.

8 MR. CERVANTES-HERNANDEZ: They're similar cases.

9 THE COURT: He can tell me whatever he wants to. This  
10 is his opportunity to express whatever.

11 MR. CERVANTES-HERNANDEZ: The young boy was given  
12 thirty years, without having arrived -- without having had  
13 a trial. Another person, they gave him fifteen years, and  
14 they're Hispanic. I've heard Americans and Americans the  
15 sentence is much less. They get a bond of a hundred  
16 thousand, of a hundred thousand to fifty. And from fifty  
17 to twenty. I understand you have to give your verdict.  
18 It's your right. As I told my family, if I have to pay for  
19 something that I didn't do, I'm going with my head up tall.  
20 Maybe not accepting the offer, the plea, was my mistake.

21 MS. DOVELL: Your Honor, I -- Benjamin has had a very  
22 difficult time in jail. It's not been easy for him. He's  
23 been a mostly law-abiding person in the community, and he  
24 has expressed to me concerns about treatment of various  
25 peoples in various cases. I -- I don't believe he means

SENTENCING:

-420-

1 this, in any way, disrespectful, or anything like that.

2 THE COURT: It's not taken as such. I understand.

3 MS. DOVELL: Thank you, your Honor. But I agree with  
4 Benjamin. Twenty years is way too much. He exercised his  
5 right to a trial, and he was found not guilty of two of  
6 these accusations. He has family who loves him, a minor  
7 prior record, and the biggest punishment, perhaps, is that  
8 he will have no chance of returning to the United States,  
9 once your Honor's sentence has been served.

10 I understand the family is upset about the charges,  
11 and that sexual battery encompasses a myriad of situations,  
12 and Benjamin has said that he is not guilty of touching  
13 **Minor 1** The jury did not agree. But I ask your Honor  
14 to please consider a lenient sentence, in light of his good  
15 moral character, and the fact that he is no longer going to  
16 be in the United States, once a sentence is served.

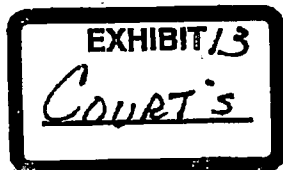
17 THE COURT: Thank you. All right. Mr. Cervantes-  
18 Hernandez, the sentence of the court is a term of  
19 imprisonment for fifteen years. I'm giving you credit for  
20 a hundred and ninety-nine days. You will be enrolled on  
21 the state's Child Abuse and Neglect Registry, the sex  
22 offender registry, and that's it. Thank you.

23 MS. DOVELL: Thank you, your Honor.

24 SOLICITOR KEENEY: Thank you, your Honor.

25 THE COURT: I believe that's everything for the day

THE INDICTMENTS CHARGE THE DEFENDANT WITH CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE AND 2 COUNTS OF CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE. I REMIND YOU THAT THE FACT THE DEFENDANT WAS ARRESTED, CHARGED AND INDICTED IN THIS CASE, IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THE INDICTMENT IS SIMPLY THE FORMAL WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGES MADE AGAINST THE DEFENDANT. IT IS THE FORMAL DOCUMENT BY WHICH THIS CASE IS BROUGHT INTO THIS COURT.



THE INDICTMENTS IN THIS CASE ALLEGE SEVERAL DIFFERENT OFFENSES AGAINST THE DEFENDANT.

EACH INDICTMENT CHARGES A SEPARATE AND DISTINCT OFFENSE AND SO DOES EACH SEPARATE COUNT. YOU MUST DECIDE EACH INDICTMENT SEPARATELY ON THE EVIDENCE AND THE LAW APPLICABLE TO IT UNINFLUENCED BY YOUR DECISION AS TO ANY OTHER INDICTMENT. THE DEFENDANT MAY BE CONVICTED OR ACQUITTED ON ANY OR ALL OF THE OFFENSES CHARGED. YOU WILL BE ASKED TO WRITE A SEPARATE VERDICT OF GUILTY OR NOT GUILTY FOR EACH INDICTMENT.

THE DEFENDANT HAS PLED NOT GUILTY TO THIS INDICTMENT, AND THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF LAW THAT A DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE ATTACHES TO AN INDIVIDUAL AT THE TIME OF THEIR ARREST AND REMAINS WITH HIM UNTIL THE JURY IS CONVINCED OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. THE PRESUMPTION OF INNOCENCE REMAINS WITH THE DEFENDANT WHILE I SPEAK, AND REMAINS WITH HIM AS YOU DELIBERATE. THE PRESUMPTION OF INNOCENCE IS IN HIS FAVOR IS REMOVED ONLY IF AND WHEN THE JURY UNANIMOUSLY DETERMINES THE STATE HAS PROVEN HIS GUILTY BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY.  
IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO  
WHICH EVERY DEFENDANT IS ENTITLED.

WHAT IS A REASONABLE DOUBT IN THE LAW? A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND THE DEFENDANT GUILTY. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

I REMIND YOU THAT, DURING THIS TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD IN THIS CASE DURING THIS TRIAL, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE.

DURING THE COURSE OF A TRIAL, AN ATTORNEY MAY HAVE MADE AN OBJECTION TO THE INTRODUCTION OF CERTAIN EVIDENCE. YOU ARE NOT TO HOLD THIS AGAINST HIM OR HER, AS THAT IS PART OF THEIR JOB. YOU ARE TO MAKE NO INFERENCE FROM THE FACT AN ATTORNEY OBJECTED AT ANY POINT IN THE TRIAL.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THIS CASE, AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. THIS IS

TRUE EVEN IF YOU THINK THE LAW SHOULD BE DIFFERENT OR YOU THINK I HAVE CHARGED THE LAW IN ERROR.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS IN A CASE. A TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A CASE. SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE FACTS IN THIS CASE, YOU ARE NOT TO INFER FROM ANYTHING I HAVE SAID OR DONE DURING THE PROGRESS OF THIS TRIAL AS ANY INDICATION OF MY HAVING AN OPINION ON THE CASE, OR THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS IN THIS CASE. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, IT IS YOUR DUTY TO DETERMINE THE EFFECT, VALUE, WEIGHT, AND TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL—DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE DIRECTLY PROVES THE EXISTENCE OF A FACT AND DOES NOT REQUIRE DEDUCTION. CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT.

CRIMES MAY BE PROVEN BY CIRCUMSTANTIAL EVIDENCE. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, HOWEVER, TO THE EXTENT THE STATE RELIES ON CIRCUMSTANTIAL EVIDENCE, ALL OF THE CIRCUMSTANCES MUST BE CONSISTENT WITH EACH OTHER, AND WHEN TAKEN TOGETHER, POINT CONCLUSIVELY TO THE GUILT OF THE ACCUSED BEYOND A REASONABLE DOUBT. IF THESE CIRCUMSTANCES MERELY PORTRAY THE DEFENDANT'S BEHAVIOR AS SUSPICIOUS, THE PROOF HAS FAILED.

THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. THIS BURDEN RESTS WITH THE STATE REGARDLESS OF WHETHER THE STATE RELIES ON DIRECT EVIDENCE, CIRCUMSTANTIAL EVIDENCE, OR SOME COMBINATION.

NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH.

IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. USE YOUR COMMON SENSE, YOUR SENSE OF REASON, AND YOUR EXPERIENCE IN LIFE IN ANALYZING THE EVIDENCE.

IN JUDGING THE CREDIBILITY OF THE WITNESSES, USE THOSE THINGS THAT YOU FIND IN YOUR DAY TO DAY LIFE TO BE INDICATIVE OF TRUTHFULNESS IN A PERSON.

YOU MAY ALSO USE EVALUATION OF TRUTHFULNESS SUCH AS A WITNESSES' DEemeanor, HOW THEY ACTED ON THE STAND, LOOK AT THE WITNESSES' TESTIMONY, ARE THEY HESITANT OR STRAIGHT FORWARD, LOOK AT CONSISTENCIES OR ANY INCONSISTENCIES IN A

WITNESSES' TESTIMONY AT TRIAL, OR AS COMPARED TO PRIOR TESTIMONY OR STATEMENTS. YOU MAY ALSO CONSIDER ANY BIAS OR PREJUDICE WHICH A WITNESS MIGHT HAVE, ANY REASON TO HELP OR HURT ONE SIDE OR THE OTHER, CONSIDER THE OPPORTUNITY A WITNESS MIGHT HAVE HAD TO KNOW THE THINGS TO WHICH A WITNESS TESTIFIED.

IN ORDER TO ESTABLISH CRIMINAL LIABILITY, CRIMINAL INTENT IS REQUIRED. FOR EXAMPLE, THE MENTAL STATE REQUIRED TO BE PROVEN BY THE STATE FOR A PARTICULAR CRIME MIGHT BE PURPOSE, INTENT, KNOWLEDGE, RECKLESSNESS, OR CRIMINAL NEGLIGENCE. CRIMINAL INTENT MUST BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING THE SITUATION. THERE IS NO WAY TO PROVE INTENT TO A MATHEMATICAL CERTAINTY. THERE IS NO WAY MEDICAL SCIENCE CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT THE PERSON HAD IN MIND, SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW YOU MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT REQUIRING INTENT WAS PRESENT. IT IS NOT NECESSARY TO ESTABLISH INTENT BY DIRECT AND POSITIVE EVIDENCE, BUT INTENT MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY AS ANY OTHER FACT BY TAKING INTO CONSIDERATION THE ACTS OF THE PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF THE CASE.

CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS

WRONGDOING. IT IS UP TO YOU TO DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN TO HAVE EXISTED.

CRIMINAL INTENT CAN ARISE FROM ACTION OR A FAILURE TO ACT. IT MAY ARISE FROM NEGLIGENCE, RECKLESSNESS, OR AN INDIFFERENCE TO DUTY OR TO CONSEQUENCES THAT IS CONSIDERED BY THE LAW TO BE THE EQUIVALENT OF CRIMINAL INTENT.

YOU HEARD THE TESTIMONY OF WITNESSES WHO TESTIFIED IN SPANISH. THE WITNESSES TESTIFIED THROUGH AN INTERPRETER. SOME OF YOU MAY HAVE SOME KNOWLEDGE OF SPANISH. HOWEVER, YOU CANNOT RELY ON YOUR OWN KNOWLEDGE OF SPANISH. EVEN IF YOU DISAGREE WITH THE INTERPRETER'S TRANSLATION, YOU MUST ACCEPT THE TRANSLATION OF THE WITNESSES' TESTIMONY BY THE INTERPRETER.

A STATEMENT ALLEGED TO HAVE BEEN MADE BY THE DEFENDANT HAS BEEN ADMITTED INTO EVIDENCE IN THIS CASE. WHILE THE COURT HAS DETERMINED THAT THE STATEMENT IS ADMISSIBLE, I INSTRUCT YOU THAT YOU MAKE THE ULTIMATE DECISION OF WHETHER OR NOT THE DEFENDANT MADE THE STATEMENT. IF THE DEFENDANT DID MAKE THE STATEMENT, YOU MUST DETERMINE WHETHER THE STATEMENT WAS MADE BY THE DEFENDANT VOLUNTARILY AND OF HIS OWN FREE WILL. THIS MEANS THAT THE STATEMENT WAS NOT CAUSED BY PRESSURE, FORCE, FEAR, THREATS, COERCION, OR INTIMIDATION, OR BY HOPE OR A PROMISE OF LENIENCY OR A REWARD OF ANY KIND. IN DETERMINING WHETHER THE STATEMENT WAS VOLUNTARY, YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS OF THE DEFENDANT AND THE DETAILS OF THE QUESTIONING. SOME OF THE FACTORS THAT YOU MUST CONSIDER ARE: (1) THE AGE OF THE DEFENDANT; (2) THE DEFENDANT'S MENTAL ABILITY OR CAPACITY; (4) THE DEFENDANT'S BACKGROUND AND ENVIRONMENT; (6) THE PLACE AND LENGTH OF DETENTION; (7) THE NATURE OF THE QUESTIONING; AND (8) THE ADVICE, OR LACK THEREOF, TO THE DEFENDANT OF HIS CONSTITUTIONAL RIGHTS INCLUDING, BUT NOT

LIMITED TO, THE RIGHT TO REMAIN SILENT; THAT ANY STATEMENT COULD BE USED AGAINST HIM IN A COURT OF LAW; THE RIGHT TO HAVE A LAWYER PRESENT; THAT IF HE COULD NOT AFFORD A LAWYER, A LAWYER WOULD BE APPOINTED TO REPRESENT HIM WITHOUT ANY COST; AND THAT HE COULD STOP MAKING A STATEMENT AT ANY TIME. YOU MUST CAREFULLY CONSIDER ALL OF THE SURROUNDING CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO AN ALLEGED STATEMENT.

THE STATE HAS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT THE ALLEGED STATEMENT WAS VOLUNTARY. IF YOU DETERMINE IT WAS, YOU MAY GIVE THE STATEMENT ANY FURTHER CONSIDERATION THAT YOU DEEM PROPER. YOU MUST DECIDE WHAT WEIGHT, IF ANY, SHOULD BE GIVEN TO THE ALLEGED STATEMENT. IF YOU DETERMINE THE ALLEGED STATEMENT WAS NOT THE FREE AND VOLUNTARY STATEMENT OF THE DEFENDANT, YOU SHOULD NOT CONSIDER THE STATEMENT AT ALL.

DURING THIS TRIAL, YOU HAVE HEARD TESTIMONY FROM A CHILD. WHERE A WITNESS IS A CHILD YOU MUST DETERMINE, AS WITH ANY WITNESS, WHETHER THAT TESTIMONY IS BELIEVABLE. IN DECIDING BELIEVABILITY, YOU MAY CONSIDER NOT ONLY MATTERS THAT I HAVE ALREADY DISCUSSED WITH YOU, BUT YOU MAY ALSO CONSIDER THE AGE OF THE CHILD, THE CHILD'S ABILITY TO OBSERVE AND REMEMBER FACTS, AND THE CHILD'S ABILITY TO UNDERSTAND AND ANSWER QUESTIONS. BECAUSE YOUNG CHILDREN MAY NOT FULLY UNDERSTAND WHAT IS HAPPENING HERE, IT IS UP TO YOU TO DECIDE WHETHER THE CHILD UNDERSTOOD THE SERIOUSNESS OF APPEARING AS A WITNESS AT THIS CRIMINAL TRIAL, WHETHER THE CHILD UNDERSTOOD THE QUESTIONS, WHETHER THE CHILD HAS A GOOD MEMORY, AND WHETHER THE CHILD UNDERSTANDS THE DIFFERENCE BETWEEN LYING AND TELLING THE TRUTH. IN ADDITION, YOUNG CHILDREN MAY BE INFLUENCED BY THE WAY THAT QUESTIONS ARE ASKED. IT IS UP TO YOU TO DECIDE WHETHER THE CHILD UNDERSTOOD THE QUESTIONS ASKED.

THE DEFENDANT IS CHARGED WITH SECOND DEGREE CRIMINAL SEXUAL CONDUCT WITH A MINOR. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT ENGAGED IN A SEXUAL BATTERY WITH THE VICTIM.

A SEXUAL BATTERY IS SEXUAL INTERCOURSE, CUNNILINGUS, FELLATIO, ANAL INTERCOURSE, OR ANY INTRUSION, HOWEVER SLIGHT, OF ANY PART OF A PERSON'S BODY OR OF ANY OBJECT INTO THE GENITAL OR ANAL OPENINGS OF ANOTHER PERSON'S BODY, EXCEPT WHEN THE INTRUSION IS ACCOMPLISHED FOR MEDICALLY RECOGNIZED TREATMENT OR DIAGNOSTIC PURPOSES.

THE STATE MUST THEN PROVE BEYOND A REASONABLE DOUBT THAT: THE VICTIM WAS AT LEAST ELEVEN YEARS OLD, BUT NOT MORE THAN FOURTEEN YEARS OLD AT THE TIME OF THE SEXUAL BATTERY.

CONSENT, WILLINGNESS, INDIFFERENCE, OR IGNORANCE ON THE PART OF THE MINOR, IF ANY, AS TO WHAT WAS TAKING PLACE, DOES NOT IN ANY WAY AFFECT THE CHARGE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR.

THE DEFENDANT IS CHARGED WITH COMMITTING CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE THIRD DEGREE (2 COUNTS).

THE STATE MUST FIRST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS OVER THE AGE OF FOURTEEN.

NEXT, THE STATE MUST PROVE THAT THE DEFENDANT WILLFULLY AND LEWDLY COMMITTED OR ATTEMPTED A LEWD OR LASCIVIOUS ACT ON, OR WITH THE BODY OR ITS PARTS OF, A CHILD UNDER THE AGE OF SIXTEEN YEARS, WITH THE INTENT TO AROUSE, APPEAL TO, OR GRATIFY THE LUST, PASSIONS, OR SEXUAL DESIRES OF THE DEFENDANT OR THE CHILD.

WILLFULLY MEANS VOLUNTARILY AND INTENTIONALLY WITH THE SPECIFIC INTENT TO DO SOMETHING THE LAW FORBIDS.

LEWD MEANS OBSCENE, LUSTFUL, INDECENT, OR LECHEROUS.

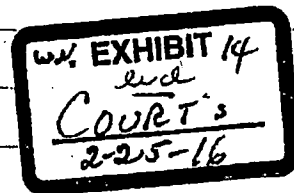
LASCIVIOUS MEANS TENDING TO INCITE LUST, LEWD, INDECENT, OBSCENE, OR TENDING TO DEPRAVE THE MORALS IN RESPECT TO SEXUAL RELATIONS.

IN CRIMINAL SEXUAL CONDUCT CASES, THE TESTIMONY OF THE  
VICTIMS NEED NOT BE CORROBORATED.

Do we need to Agree on Penetration  
to convict on 2<sup>nd</sup> Degree?

~~XXXX~~ ~~XX~~ ~~XX~~

*[Signature]* 2-25-16



○ 02:40 PM.

STATE OF SOUTH CAROLINA ) IN THE GENERAL SESSIONS COURT  
 ) FOURTEENTH JUDICIAL CIRCUIT  
 COUNTY OF BEAUFORT ) AM 10:58  
 JURY MAR - 3 ) VERDICT 2015GS0701205

STATE OF SOUTH CAROLINA  
 BEAUFORT COUNTY, S.C.  
 CLERK OF COURT

) NOTICE OF MOTION AND MOTION  
 versus ) FOR NEW TRIAL PURSUANT TO  
 ) RULE 29, SCRCrimP  
 BENJAMIN CERVANTES )  
 HERNANDEZ. )  
 Defendant. )

TO: JULIE KATE KEENEY, ASST. SOLICITOR, FOURTEENTH JUDICIAL  
 CIRCUIT

YOU WILL PLEASE TAKE NOTICE that Defendant through his undersigned counsel  
 will move before this Honorable Court, as soon as counsel can be heard, for a new trial pursuant  
 to South Carolina Rule of Criminal Procedure 29, on the following grounds:

1. The Court erred in denying Defendant's Motion for Directed Verdict.
2. The Court erred in failing to charge the jury on Assault and Battery, 1<sup>st</sup>  
 degree and Assault and Battery, 2<sup>nd</sup> degree as lesser included offenses of  
 Criminal Sexual Conduct with a Minor, 2<sup>nd</sup> degree.
3. The evidence presented by the State of South Carolina did not support the  
 verdict.

Respectfully submitted,



Helen Dovell, Esq.  
 Associate Attorney  
 Law Office of Mark J. Devine, LLC  
 507 Savannah Highway  
 Charleston, SC 29407  
 (843)789-4586 phone  
 (843)974-5082 fax  
 helen@mjddevine.com

Charleston, SC  
 March 3, 2016

STATE OF SOUTH CAROLINA ) IN THE GENERAL SESSIONS COURT  
 ) FOURTEENTH JUDICIAL CIRCUIT  
 COUNTY OF BEAUFORT )  
 State of South Carolina ) Indictment #: 2015GS0701205  
 vs. )  
 Benjamin Cervantes Hernandez, )  
 Defendant. )

2016 MAR -3 AM 10:55  
 JERRI ALIN ROSENBLAU  
 BEAUFORT COUNTY, S.C.  
 CLERK OF COURT

Notice of Motion and Motion to Reconsider  
 Sentence

The Defendant through his attorney, Helen Dovell, hereby moves this court for a reconsideration of sentence imposed on the above captioned indictment by the Honorable John C. Hayes, III on February 25, 2016. Reconsideration of the Defendant's sentence is requested on the following grounds:

1. The above captioned Defendant was convicted by a jury of Criminal Sexual Conduct with a Minor 2<sup>nd</sup> degree after trial on February 25, 2016. He was acquitted of two counts of Criminal Sexual Conduct with a Minor 2<sup>nd</sup> degree.
2. The Defendant was sentenced to 15 years in prison.
3. The Defendant will be subject to removal and a permanent bar from the United States upon completion of his sentence. Immigration and Customs Enforcement (ICE) has a detainer on the Defendant. He will not be released from detention while in the United States, and he is subject to mandatory detention under §236 of the Immigration and Nationality Act. He will be placed in ICE custody upon service of his sentence.
4. Criminal Sexual Conduct with a Minor 2<sup>nd</sup> degree is a no parole offense. Defendant will serve at least 85% of his sentence before release to ICE custody.
5. Additionally, the mother of one of the alleged victims spoke at the sentencing hearing. Defendant believes it was improper for her to address the court about his being found not guilty of the offense involving her daughter. The parents of the victim in this case also addressed the court about the Defendant being found not guilty of the offense involving their other daughter.

6. Accordingly, the Defendant moves that the court consider a reduction in sentence under the facts of the case and the law of South Carolina, and in light of his mandatory continued detention upon release from service of the sentence imposed on Indictment 2015GS0701205.

Respectfully Submitted,



---

Helen Dovell  
Associate Attorney  
Law Office of Mark J. Devine, LLC  
507 Savannah Highway  
Charleston, SC 29407  
(843)789-4586 (office)  
(843)870-5803 (cell)  
(843)974-5082 (fax)  
helen@mjdevine.com

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )  
STATE OF SOUTH CAROLINA )  
Plaintiff, )  
v. )  
BENJAMIN CERVANTES )  
HERNANDEZ )  
Defendant. )

IN THE COURT OF GENERAL SESSIONS  
FOURTEENTH JUDICIAL CIRCUIT

Case No: 2015-GS-07-01205

ORDER

2016 MAR 10 PM 2:43  
JENNIFER ROSE  
CLERK OF COURT  
BEAUFORT COUNTY, S.C.

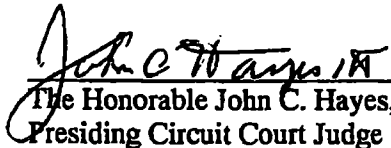
Defendant timely moves for the Court to reconsider the sentence imposed February 25, 2016 and for a new trial pursuant to Rule 29, SCRPC.

As to the Motion to Reconsider Sentence, same is DENIED.

As to the Motion for New Trial, which sets forth three grounds, the Court affirmatively finds it did not err in denying Defendant's Motion for Directed Verdict, or in failing to charge the jury on Assault and Battery, First Degree and Assault and Battery, Second Degree as lesser included offenses of Criminal Sexual Conduct with a Minor, Second Degree. The Court also finds the evidence presented by the State of South Carolina does support the jury verdict. Therefore, the Motion for New Trial is also DENIED.

IT IS SO ORDERED.

March 8<sup>th</sup>, 2016.

  
The Honorable John C. Hayes, III  
Presiding Circuit Court Judge

WITNESSES

D. Murphy, Bluffton PD

ARREST WARRANT NUMBER

2015A0720200185

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: OCT 29 2015

VERDICT

True Bill

Guilty

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2015GS0701205

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2015

THE STATE

vs.

Benjamin Cervantes Hernandez

Indictment for

Criminal sexual conduct with minor - victim 11  
to 14 years old - 2<sup>nd</sup> Degree

SC Code: 16-03-0655(B)(1)

CDR Code:0396

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

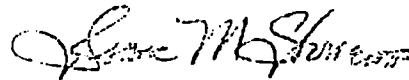
INDICTMENT  
2015GS0701205

At a Court of General Sessions, convened on October 29, 2015, the Grand Jurors of Beaufort County present upon their oath:

**Criminal sexual conduct with minor - victim 11 to 14 years old – 2<sup>nd</sup> Degree**

That in Beaufort County, South Carolina, on or about July 17, 2015, the Defendant, Benjamin Cervantes Hernandez, did commit a sexual battery upon a minor who was fourteen (14) years of age or less but who was at least eleven (11) years of age, to wit: digital penetration of victim, Minor 1 [REDACTED], vagina, date of birth [REDACTED] 3, in violation of Section 16-3-655, S.C. 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.



---

Solicitor

**WITNESSES**

B. Odom, Bluffton PD

**ARREST WARRANT NUMBER**

2015A0720200217

**ACTION OF GRAND JURY**

*[Signature]*  
Foreperson of Grand Jury

Date: OCT 24 2015

**VERDICT**

**True Bill**

*Not Guilty*

*[Signature]*  
Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2015GS0701296

**The State of South Carolina**

**County of Beaufort**

**COURT OF GENERAL SESSIONS**

**October Term 2015**

**THE STATE**

**vs.**

**Benjamin Cervantes Hernandez**

**Indictment for**

**Criminal sexual conduct with minor, 3rd degree**

SC Code: 16-03-0655(C)

CDR Code:3661

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

**Defendant**

Hereby appear in my own proper person and plead guilty to the within indictment or to

**Defendant**

**Witness:**

**C.C.C. PLS. and G.S.**

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

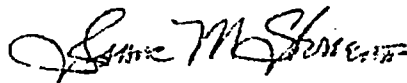
INDICTMENT  
2015GS0701296

At a Court of General Sessions, convened on October 29, 2015, the Grand Jurors of Beaufort County present upon their oath:

**Criminal sexual conduct with minor, 3rd degree**

That in Beaufort County, South Carolina, on or about July 17, 2015, the Defendant, Benjamin Cervantes Hernandez, 1979-07-03, a person over fourteen years of age, willfully and lewdly did commit or attempt to commit a lewd or lascivious act upon the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: **Minor 3**, date of birth [REDACTED], with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, in violation of Section 16-3-655 of the S.C. 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.



---

Solicitor

**WITNESSES**

B. Odom, Bluffton PD

**ARREST WARRANT NUMBER**

2015A0720200219

**ACTION OF GRAND JURY**

*[Signature]*  
Foreperson of Grand Jury

Date: OCT 29 2015

**VERDICT**

**True Bill**

*Not Guilty*

*[Signature]*  
Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2015GS0701297

**The State of South Carolina**

**County of Beaufort**

**COURT OF GENERAL SESSIONS**

**October Term 2015**

**THE STATE**

**vs.**

**Benjamin Cervantes Hernandez**

**Indictment for**

**Criminal sexual conduct with minor, 3rd degree**

SC Code: 16-03-0655(C)

CDR Code:3661

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury. ✓

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

INDICTMENT  
2015GS0701297

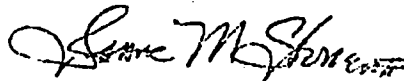
At a Court of General Sessions, convened on October 29, 2015, the Grand Jurors of Beaufort County present upon their oath:

**Criminal sexual conduct with minor, 3rd degree**

That in Beaufort County, South Carolina, on or about July 17, 2015, the Defendant, Benjamin Cervantes Hernandez, 1979-07-03, a person over fourteen years of age, willfully and lewdly did commit or attempt to commit a lewd or lascivious act upon the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit:

Minor 2, date of birth [REDACTED], with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, in violation of Section 16-3-655, S.C. 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.



---

Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Beaufort

STATE

Benjamin Cervantes-Herrandez

AKA:

Race:

Hispanic

Sex:

M

Age:

DOB:

SS#:

Address:

City, State, Zip:

Bluffton SC 29910

DL#:

SID#:

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Criminal sexual conduct

in violation of

16-3-655(B)(1)

of the S.C. Code of Laws, bearing CDR Code =

0396

NON-VIOLENT

VIOLENT

SERIOUS

MOST SERIOUS

Mandatory GPS(CSC

w minor 1st or Lewd Act)

17-25-45

The charge is

As Indicted

Lesser Included Offense

Defendant Waives Presentment to Grand Jury

(defendant's initials)

The plea is

Without Negotiations or Recommendation

Negotiated Sentence

Recommendation by the State

ATTORNEY

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

State Department of Corrections

County Detention Center

for a determinate term of

15

days months years

or

Youthful Offender Act

not to exceed

years

and or to pay a fine of \$

provided that upon the service of

days months years and or payment

of \$ plus costs and assessments as applicable\*, the balance is suspended with

probation

for

months years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference

CONCURRENT or

CONSECUTIVE to sentence on

The Defendant is to be given credit for time served pursuant to S.C. Code

24-13-40 to be calculated and applied

by the State Department of Corrections

999 day

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code

17-25-135

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

See Offense Registry

RESTITUTION:

Deferred

Def. Waives Hearing

Ordered

PTUP

Total: \$

plus 20% fee

\$

Payment Terms:

Set by SCDPPPS

Recipient:

\*Fine

14-1-206 (Assessments 107.5%)

\$

14-1-211(A)(1) (Conv. Surcharge)

\$100

14-1-211(A)(2) (DUI Surcharge)

\$100

36-5-2995 (DUI Assessment)

\$12

36-1-286 (DUI Breath Test)

\$25

Provide 47-9 (Public Def Prob)

\$500

14-1-212 (Law Enforce Funding)

\$25

14-1-213 (Drug Court Surcharge)

\$150

30-21-114(B)(1) Breath Test Fee

\$50

36-5-2942(J) (Vehicle Assessment)

\$40 ea

Provide 90-5 (SCCJA Surcharge)

\$5

3% to County (if paid in installments)

\$

TOTAL

\$

Clerk of Court Deputy Clerk

Court Reporter

SCCA 217 (03 2011)

Presiding Judge

Judge Code:

Sentence Date:

✓

CONVICTED OF or

PLEADS

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

PTUP days hours Public Service Employment

Obtain GED

Attend Voc Rehab or Job Corp

May serve W F beginning

Substance Abuse Counseling

Random Drug Alcohol testing

Fine may be pd. in equal, consecutive weekly monthly

pmts of \$ beginning

\$ paid to Public Defender Fund

Other

Appointed PD or appointed other counsel.

47-12 requires \$500 be paid to Clerk during probation

Presiding Judge

Judge Code:

Sentence Date:

John C. H. [Signature]

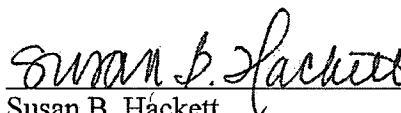
30-79

2/25/16

## 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,

A handwritten signature in cursive script, reading "Susan B. Hackett", is written over a horizontal line.

Susan B. Hackett  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 17th day of May, 2017.