STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County

Roger M. Young, Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JASON S. SIMMONS,

APPELLANT

APPELLATE CASE NO. 2020-000090

RECORD ON APPEAL

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State of South Carolina)
)Court of General Sessions
County of Cherokee) 2017-GS-11-00580

State of South Carolina)
)
vs.) Transcript of Record
)
Jason S. Simmons)

January 8-10, 2020
Chester, South Carolina

B E F O R E:

The Honorable Roger M. Young, Judge, and a jury.

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

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Attorney for the Defendant

Nadine M. Capps, CVR
Court Reporter

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I N D E X

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P R O C E E D I N G S

(The matter was heard in open court.)

THE COURT: You are Jason Scott Simmons?

THE DEFENDANT: Yes, sir.

THE COURT: Well, Mr. Simmons, you're here today, ready to go to trial on criminal sexual conduct with a minor in the first degree. Just want to put on the record that you are looking at 25 years, minimum, if you get convicted of this charge.

We had some discussions earlier about a plea that would be a plea to a substantially less term than that. I'm told you do not want to accept that plea. It was for ten years, an Alford plea. I'm not trying to convince you, one way or the other, to except it. I just want it to be on the record that if you get convict you understand that the minimum sentence of the Court will be 25 years and there's no parole and you would likely be put into the Sexually Violent Predator Program. Twenty-five is the minimum. You could get life on it. It's your choice, but that's a big old chunk of sentence right there if you lose on this.

THE DEFENDANT: Yeah, I know, sir.

THE COURT: All right. Do you need more time to discuss this with your lawyer?

THE DEFENDANT: No, sir.

THE COURT: You sure?

THE DEFENDANT: Yes, sir.

THE COURT: You got anything you want to say?

MR. MORIN: No, sir.

THE COURT: How are we doing with the jury?

Can I see the lawyers up here for a second?

MR. MORIN: Yes, sir.

(A conference was held at the sidebar between counsel and the Court.)

THE COURT: Back on the record. Before we begin, Mr. Simmons, I'd like to go over this for people in the court before we start the trial. As I told you, you're facing 25 to life.

You do have some rights that you need to -- I know your lawyer has spoken to you about it, but I want it to be on the record, that I want to make sure you understand.

You pled not guilty, and you have the right to testify if you want to when we go to trial. You also have the right to not testify, if you don't want to. If you want to get up and tell your side of the story to the jury, you can do that. You'd be placed under oath. You are obligated to tell the truth. And your lawyer will be able to ask you some questions, and then the State would be allowed to cross-examine you about your testimony.

Now, if you don't want to testify, you don't have to, and I will instruct the jury that they are not to hold that

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against you while they are deliberating the verdict. You don't have to tell me right now if you want to testify or not. I'll be telling the jury that basically I don't know whether or not you're going to testify, but that isn't -- under the law, they are obligated not to hold that against you. And I like to put that right up front. I don't even know whether or not you plan to, but if you don't, they are not to hold that against you while they are deliberating their verdict.

As I said, you don't have to tell me now, but it's something that at some point in the trial you will have to make a decision, so I want you to be thinking about it and I want you to discuss it with your lawyer. I'm sure you have, but you should continue those discussions with him. And if you have any family members or something like that you take their advice on, well, discuss it with them as well. But it's your trial and you're facing 25 years, so you may very well ---

THE DEFENDANT: It might take me some time.

THE COURT: --- want to testify or not, and give it a go. It deserves serious thought. Because the consequences are likely to be that if it goes against you, you're never going to see the outside of a prison again. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Okay.

THE DEFENDANT: It might take me time ---

THE COURT: Do we have any other pretrial matters we need to take up before the jury comes up?

MR. KENDALL: I don't know we -- before they come up -- or just before they're sworn, Your Honor, we have three motions that I think I gave the Court. Let me make sure. One is a third-party guilt motion, just to exclude the testimony of third-party guilt.

Mr. Morin has indicated that there's some stuff on the DNA about multiple individuals -- DNA on there. Certainly, he could say I inquired about that. But if we're looking for a specific individual, I don't think he would do -- he'd be able to do that without a pretrial motion.

We have a motion for admission of the out-of-court statement of the child under 17-23-175, basically, to play the CAC video. And a standard rape shield law. I don't think it's even -- I kind of filed it with this. I don't think there's anything that would -- as far as to my knowledge it would be. Yeah, she's a very small child, so I don't think that that is likely to come up, but...

THE COURT: All right. Mr. Morin, do you want to chime in on any of these?

MR. MORIN: Even if a 4-year-old did have sexual activity, I wouldn't bring it up in this trial.

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THE COURT: Okay.

MR. MORIN: So that's not a problem.

The third-party guilt, I understand, as Mr. Kendall has stated, there is sort of some DNA kind of thing, but there is no -- we have no intention of alleging someone else did it. And the third thing is, is the CAC video, which I've tried to figure out how to keep out, but I don't have an argument for that. So that would be my answer to those three.

THE COURT: All right. Well, then it sounds like you can have the out-of-court statement played. He gets to cross-examine the DNA person. You know, certainly, on statistics and how to read those and what they mean. But if he intends to offer a name of some third person, he would need to bring that to the Court's attention ahead of time. He represents that that's not going to be an issue. And the same with the rape shield law. It doesn't look like that's an actual issue, but if it does present itself, y'all let me know.

MR. MORIN: Yes, Your Honor.

THE COURT: All right. Let's see. We've got the witness list, voir dire. Anything else?

MR. KENDALL: No, sir, Your Honor.

THE COURT: Okay. Anybody else have any problem with ID evidence or voir dire?

MR. MORIN: No. I don't have any with it.

THE COURT: So before we bring the jury up, I just wanted to inquire this morning. Do you have a question about mental capacity or ability to assist you ---

MR. MORIN: I do not, Your Honor. I do not.

And just for the record, Your Honor, for the last -- probably for five of the last seven Saturdays, I've been to the defendant's home to discuss various aspects of the case and how the trial would go and met with both him and his wife, who's present in the courtroom, and there hasn't been any issues about not understanding or being able to assist me.

THE COURT: Thank you. Well, I think we're ready, then. Bring the jury up.

(The jury entered the courtroom at 10:35 a.m.)

THE CLERK: Is juror 111 here? Calandra Surratte? Juror 111? Thirty-eight, Your Honor.

THE COURT: All right. Well, welcome folks. My name's Roger Young. I am the judge that is presiding over this term of court this week here in Cherokee County. I'm from Charleston. This is the first time I've held court of up here in Cherokee County. It's been a wonderful week so far. I've been to Gaffney before. And I actually discovered a few years ago the best doughnut place in the world is actually located in Gaffney; that being Sunny's Donuts right

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down the road, so I was really excited when I got assigned here because I thought I get to go to Sunny's Donuts that week.

But one of the things that is a great thing about being a circuit court judge in this state is you travel all over the state. We've got 46 counties in this state, and as of this week, I've now held court in 44 of them. And it's the best part of the job, if you ask me. And being able to go all over and see this wonderful state, seeing the different ways of doing things. Every place is different, every place has its charm. There are things that are common, but there are things that are different as well.

And one of the things I just noticed is different about Gaffney is y'all have the speaker seats in your audience and everybody is sitting in a pattern like this, and I've never seen that before. But I hadn't really noticed until y'all came in that they weren't just benches, they were actually what I call "theater seats," and that's kind of interesting to see. Probably one of the things aside from Sunny's Donuts that I remember about Gaffney.

But here what we are going to do: We've got one case left on the docket this week and so we are doing jury trials. Everything that we do in the court system seems have big, fancy words. So I like to sit down and explain to you what we're doing and why we're doing it and take some of

the mystery away, at least, as far as the big, fancy words go.

Circuit Court, which is what this level of the court is -- we are divided into two different sections. We have civil and criminal. And we have big, fancy words for civil and criminal. The civil side we call "Common Pleas Court" and criminal court we call "General Sessions Court," so this week is a term of General Sessions Court. In other words, we're doing a criminal case today. And so we go through the process of qualifying the jury. And then we go through some exemptions that people might be entitled to exercise and ask to be moved to another time. That sort of thing. And then we actually will, in the third phase, ask you questions specific to the case that we will be starting in a little while, just determine if you can be fair and impartial -- because you don't know anything about the case -- that would prevent you from being a fair and impartial juror.

So there's really three basic phases to what we'll be doing. They ought to move by pretty quick. We don't have a real large jury panel, so it shouldn't take us that long, but it's important. And it is required that we have you under oath.

So have they been placed under oath yet?

MADAME CLERK: No, Your Honor.

THE COURT: Okay. So would stand and raise your right

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hand while the clerk administers the oath.

(The jurors were duly sworn for voir dire examination.)

THE COURT: All right. So the qualification phase -- the first thing I want to tell you is we are not trying to pry into anything and cause you to be embarrassed. So if there's any response that you feel like, oh, I should tell something but I don't want to because I don't want to stand up in front of a bunch of strangers and tell my business, please don't just sit there. Feel free to just stand up, ask to come here, and we'll move over here so the court reporter can hear what you have to say, as well as me. So that's first and foremost.

The second thing is all these questions that I'm asking you are required by state law to be asked, so they're all pretty straightforward. It's really easy to be qualified as a juror in this state. And you have met the two biggest qualifications in that you are breathing and you showed up, so just let that be said. If you are here -- and there's a good chance that all of you are going to fly through and become qualified. Then we'll get to exceptions, and again, then we'll get to the phase of where we ask questions about this. And then we'll go to straight into picking a jury.

So as far as qualifications go, is there anybody here who is not yet at least 18 years old? You've got to be at least 18 to service as a juror in South Carolina. If that

applies to anyone, would you please stand. I find none.

Is there anybody here who is not a citizen of the United States? If so, would you please stand. I find none.

Is there anybody here who is not a resident of Cherokee County? If so, would you please stand. I find none.

Is there anybody here who is not able to read, write, or understand the English language, would you please stand. And I know somebody out there is thinking, well, if you don't understand English, how could you respond to that question. It's a good question, and that's why I don't ask these without being told to ask them. That statute says that's a question. But if you've been sitting next to somebody and it doesn't look like they're understanding what's going on because of a language issue, it would be great if you brought that to my attention. But if that applies to anyone, would you please stand. I find none.

Is there anybody here who does not have at least a sixth grade education or its equivalent? If so, would you please stand. I find none.

Does anybody have any kind of physical or mental conditions which would keep you from serving as a juror this week? This is probably the first one where you go, well, I don't want to talk about my medical conditions in front of the judge or in front of a bunch of strangers. So again,

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feel free to ask to come forward on this. I'll tell you that normally what I do, my practice is we'll go about an hour and 15 minutes, hour and a half, and we break. If you need to stand or stretch or use the bathroom before that or anything, just feel free to stand or stretch. But if you need to go to the restroom, I always say just wake one of the bailiff's up and he'll get my attention and we'll call a break. That's usually when we go. So if you don't think you could sit for that period of time or maybe you're hard of hearing. I am. I wear hearing aids, and that's why I get a little bit closer if I can. What we usually do is -- the jury box or the witness box is right here and this is the jury box and so if you're a little hard of hearing, we'll put you closer to the witness stand. That sort of thing. But sometimes people have back issues and they say, well, I can sit for a long time. That's why I say stretch if you need to. But if anybody needs to talk to me about any kind of physical or mental condition that might keep you from serving as a juror, would you please stand. I find none.

Is there anybody here who was convicted of a crime in either federal or state court and is a crime that is punishable by more than a year in prison and you have not had your civil rights restored to you by either a pardon or an amnesty from a president or governor? Let me break that

down. Conviction means you either pled guilty or maybe you went to trial and the jury found you guilty or might have pled no contest. Those all count as convictions. Second, the crime for which you were convicted carries a penalty of more than a year in prison. It doesn't mean that you did more than a year; it just means you could have gotten more than a year and you may have just gotten fined or something along those lines. But that's what we're talking about. It doesn't necessarily have to be the State of South Carolina. It can be any state. It can also be federal court. And there's no time limit on that, so it goes back to the longest -- probably a juvenile record, if you got it back then. And then, finally, you didn't get your civil rights restored to you through either a pardon or amnesty from either a governor or a president. So if that applies to anyone, would you please stand.

Yes, sir. Your name and number?

THE JUROR: Calvin Gilliam; 49.

THE COURT: Okay. Was it simple possession of marijuana? That's what it says. Is that what you are talking about?

THE JUROR: That, and I did two years in prison.

THE COURT: Oh, you did? For what?

THE JUROR: Yes, sir. When I was a juvenile, they charge me as an adult, so I did two years in prison.

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THE COURT: Okay. Well, that would disqualify you. That was showing up. Appreciate you. Where was that at?

THE JUROR: Here, in Cherokee County.

THE COURT: Okay. Well, then you're free to go. Thank you. Take him off the list.

Yes, your name and number?

THE JUROR: 114. Yes, sir.

THE COURT: Let's see what we've got. You had a possession of marijuana.

THE JUROR: Uh-huh.

THE COURT: And that was just simple possession?

THE JUROR: Uh-huh.

THE COURT: CDV. How long ago was that?

THE JUROR: Back in the '90s.

THE COURT: Do you know what the penalty was?

THE JUROR: Oh, no. Me and my girlfriend had got into it when my daughter was a baby.

THE COURT: Was it handled in this court or down in magistrate court?

THE JUROR: I think in magistrate court.

THE COURT: And assault by a mob. What happened with that one?

THE JUROR: That was over back in -- with my -- no, that was just -- it got dismissed on me.

THE COURT: Okay. Well, then you're still good.

THE JUROR: Okay.
THE COURT: Thank you. Anyone else?
THE CLERK: You can come on down, sir.
THE BAILIFF: Your Honor, it's 28.
THE COURT: Thomas Dale?
THE JUROR: Yes, sir.
THE COURT: Okay. What do you have?
THE JUROR: I was arrested like three years ago for breach of peace and aggravated, but I never went to trial for it.
THE COURT: So it just got dismissed?
THE JUROR: I have no idea.
THE COURT: But you didn't get convicted?
THE JUROR: No, sir.
THE COURT: There's nothing showing up on here, so you're good. Thank you for bringing it to our attention. anyone else?
(A conference was held at the sidebar between counsel and the Court.)
THE COURT: Is there anybody here who is a clerk or deputy clerk of court, a constable, sheriff, a commissioned law enforcement officer -- in other words, you took an oath when you began the job -- a probate judge, county councilman, magistrate, or county officer or employee within the walls of courthouse? If so, would you please stand. I

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find none.

Is there anybody here who already did jury duty this calendar year in a court of record? Court of record would be a court where there was a court reporter present, like here. It wouldn't be magistrate court or municipal court, because even though a lot of them now have recording devices, for purposes of this question, they're not considered courts of record. So it would either be here or it would be in federal court. They draw theirs from sometimes a statewide panel, sometimes sections of the state. But if you've already served as a juror in a court of record this calendar year, would you please stand. I find none.

Anybody serve on the Cherokee County grand jury in the last ten years? Grand jury is a court that meets -- there's 18 that meet probably about once a month or view indictments. If you served on the grand jury, you'd know what I was talking about. Everybody else is probably going, I have no idea what he's talking about. But if you were on a grand jury, you would know. If that's so would, you please stand. I find none.

Well, congratulation. You are all qualified. I told you it's really easy to get qualified as a juror in this state.

Now we move to exemptions, and exemptions say even

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though you have been qualified as a juror, you may ask to be transferred or in a couple of instances, you could be excused from jury service entirely. Most of them are just transferring you to another time sort of exemptions. Now, this is kind of where I put in my pitch for jury service.

The jury service is a unique thing that we do. It's not done around the world like some people might just take it for granted. We take it for granted because we do it all the time. We do this week in, week out, all over the State, all of this country. But really, in the world, there's only about 12 countries in the entire world of over 200 countries that even have a jury trial for people that are accused of a crime, where their guilt or innocence is determined by a jury of their fellow citizens. And in most of the countries around the world, to the extent that they have anything resembling an actual trial, it's done by a judge or a panel of judges. But it was thought by our founding fathers of the country to be so important of a right, to have the right to have your guilt or innocence determined by fellow members of the community, they found it to be so important, they put it in the United States Constitution three times. They put it in the State constitution as well. So the right to a jury trial is a pretty big deal. There are people all over this world that were charged with crimes and wished they had the right to have it determined by their fellow citizens, as

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opposed to somebody who is paid by the government. So, again, it's a big deal to us. We take it for granted, so it doesn't seem like a big deal to us, but, trust me, it is a big deal. It's like everything else that you do all the time. You take it for granted and you kind of lose sight of the significance of it. But I understand the reluctance of people to show up for jury duty. They go, well, I got the notice, and I would really rather do it some other time. Maybe someday. But when the people get here and they actually serve on the jury, it's my experience they really do enjoy it. They feel like they participated in their community, and they learned something about it. It's not like TV, where we break for commercials every 12 minutes. You know, we have a flow to it, and I try to explain to you along the way why we do what we do so that it's understandable to you. But it's a pretty good system. And we've been doing it, by and large, the way we do it right now for several hundred years in this country. It's been around for a while now. But we are always trying to do better.

But my feeling is that juries get it right. I run and into people from time to time when I've presided over a trial, the served on the jury, and they come back and they'll recognize me in the grocery store or something. They say, hey, you were the judge where we served on the

jury. And the first thing they want to know is: Did we get it right? And I always tell them, look, 12 people all heard the same evidence, and they all came to the same conclusion. That's a pretty good indication that you got it right. When you stop and think how hard it is to get 12 people to agree to anything in this day and age. The sun rises in the east. People will argue about that. But to get 12 people that all agree on what the outcome of a trial will be is a pretty impressive accomplishment. And so I tell them you should feel confidence in that. To me the magic of a jury verdict being so good is the diversity of the jury panel. If you look around and say, well, we've got people from -- you know, you've got men, women, people of different races, people of different income levels, people of different educational levels, different experiences in life. No two people are really alike, and yet they all come here. They all listen to the same evidence. They all agree to apply the law that the judge tells them applies to that kind of case. And if 12 people come up with that same outcome, well, I'm feeling pretty good about that outcome. And I hope you would too.

But it's my experience that people do enjoy the experience, and they are glad they did it. And so I tell you, I understand why people find it's a burden. I understand they think, oh, it's a responsibility. I have to

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show up. But it's actually a privileged to serve on a jury, if you ask me. And I hope that you will think of it that way. Because this is your government at work this week. Right? You know we have three branches of government: Legislative, executive, and judicial. Well, this is the judicial branch and you are participating in your government. I'll tell you the 12 of you that get picked will be judges for the week. I presided over the trial, but you all will determine what the outcome of it is, so it's a big deal. And I hope that you will feel about it that way. That's my pitch for jury service. Okay. Because we need you to make it work -- the wide, diverse group of people. That's the way I feel the outcomes are valid. And I think you will feel the same way after you've participated. People really get invested in being in a jury once they get picked. And so if you have an exemption -- and I guess I get a little long winded sometimes -- but if you have an exemption and you want to exercise it, when I call it, stand up and just let me know what it is. I'm not going to browbeat you or try to talk you out of it. But if you don't want to exercise an exemption, well, you just stay seated. Okay? If you -- you are not required to exercise the exemption is where I'm going on that. Okay?

So first exemption is, is there anybody here that is not -- or that is 65 or older. If you're 65 or older, you

are entitled to be exempt from jury service, if you don't want to do it. If that applies to anyone, would you please stand. I find none.

Is there anybody here who served on a jury in the previous three calendar years. I told you earlier, if you served on a jury -- you really wouldn't be able to serve on a jury. We're in the first week of jury trial. So that really wouldn't apply, I guess, when you stop and think about it. But if you served on a jury in 2019, '18, or '17, you are entitled to be excused, because we don't want to overwork you. But if you enjoyed it and you want to stay, feel free. But if anybody served on a jury in a court of record in 2019, '18, or '17, would you please stand. I find none.

Is there anybody here who is the caregiver and custodian of children under the age of seven, and you don't have anybody that can help you take care of them this week, you are entitled to be excused from jury service. If that applies to anyone, would you please stand.

Yes. Your name and number?

THE JUROR: Alfred Charles Edmundson, 36.

THE COURT: Twenty-six?

THE JUROR: Thirty-six.

THE COURT: Thirty-six. Okay. And you are the caregiver and custodian of children under the age of seven?

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THE JUROR: Yes, Your Honor. I have a 3-year-old and a 9-year-old, but I do work. I have discussed it with -- I can't remember her name.

THE COURT: The clerk of court.

THE JUROR: Yes. I discussed it with her yesterday. I do have a job, so I'm -- she said I'm not considered an actual primary caregiver. But my wife's mother is deceased, and her father is incarcerated. My father is deceased, and my mother has been deemed by the State as mentally incompetent. She's a store manager, and I'm a warehouse supervisor. She sets her schedule up to where she can get them in the mornings, and I get them in the afternoons. And I really have no other family or support system to help with that.

THE COURT: All right. Well, then I will excuse you for this week. Thank you.

THE JUROR: Thank you, Your Honor.

THE COURT: You're free to go. Anyone else?

We also have an exemption for people on the other end of the age spectrum. So if you are the caregivers for somebody who is 65 or older and they can't take care of themselves, can't be left alone, and you can't find anybody else to help you this week, you are also entitled to be dismissed from jury service. So if that applies to anyone, would you please stand. Okay. I find none.

Is there anybody here who's a full-time student, school teacher, work at school, school bus driver, a school crossing guard, any kind of school-related function, and because of that, you cannot serve this week? This is one where we transfer you to another time. Can't excuse you entirely. We'll just transfer you to a time that doesn't interfere with school. If that applies to anyone who wishes to be transferred, would you please stand.

Yes, ma'am? Your name and number?

THE JUROR: Donna Childers; 16.

THE COURT: Okay. And what's your situation?

THE BAILIFF: I'm a behavioral interventionist at Limestone Central, I mean, I -- in the regular class --

THE COURT: Do you want to stay.

THE JUROR: I can stay.

THE COURT: Okay. Well, good. Thank you. Anyone else?

All right. Anybody have any work related issues that would keep you from serving this week, like, you know, you own the business, and there's nobody to take care of it or are you -- we have a lot of seasonal workers. I know a lot of aquaculture. Maybe summer is more of the problem than it is -- you know, we have late crops. And I don't know a lot about farming anyway, but if you have a work-related issue, I can't excuse you entirely. The most I can do is transfer

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you to another time. And what I can tell you about moving to another time is you don't know what you will get. This right now is a case that is going to go forward. I imagine it's going to go into tomorrow. I don't know that it will go into Friday. But the most you would be asked for would be into Friday, but that's the worst-case scenario. It will not go into next week. I can assure you of that. But if you come another week, you might be here for a whole week. But today -- this week, most you will be here is Wednesday, Thursday, Friday. I can only transfer you usually one time, unless there has been an issue about a last-minute emergency. But if you want to talk about transfer for work-related, business-related issues now is the time. If that applies to anyone, would you please stand. Okay. I find none.

Is there anybody who is employed as a guard with the department of corrections at a penitentiary? If so, would you please stand. Okay. I find none.

Well, is there anybody you know of any reason why you couldn't serve as a juror from extreme or compelling circumstance that I haven't covered but you want to discuss with me as to maybe transferring you to another time? You've rethought your position on an earlier question or just didn't get covered by an earlier question, but if you've got some kind of extreme hardship or compelling

circumstances, you are welcome to stand.

Yes? Your name and number?

THE JUROR: William Rosado; 103.

THE COURT: One hundred three?

THE JUROR: Yes, sir.

THE COURT: All right. Do you want to come up. What would you like to tell me?

THE JUROR: I don't feel right doing this.

THE COURT: Why is that?

THE JUROR: Judging people is against my beliefs.

THE COURT: And?

THE JUROR: I told her about it yesterday.

THE COURT: You don't think you could serve on the jury because of that? How do you think -- pardon?

THE JUROR: It's Biblical.

THE COURT: Oh, I understand that there are verses in the Bible that say don't judge people. But it says judge like you'd be judged, you want to be judged.

THE JUROR: I just don't...

THE COURT: All right. Well, I'll excuse you, then.

THE JUROR: Okay. Thank you.

THE COURT: Now what we will do is we will move to the last part, where we pick a jury for a case that we're going to preside over.

A couple things I want to tell you about this process.

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It's important to understand. This, just as I told you, is a criminal case. We're doing General Sessions Court, so a person has been charged by the State of South Carolina with committing a crime. He's pled not guilty to it. And it then puts a burden on the State to prove to the 12 of you that he is guilty of this crime that he's been charged with beyond a reasonable doubt. He doesn't have to prove he's innocent. The state has to prove that he is guilty, and that is a fundamental right that he has, that I have, and that you have, as a result of being United States citizens. No person charged with a crime in this country has to prove they're innocent.

If the State charges you with a crime, they have to prove you are guilty. All right. So that's something that I want you to keep in mind. Because I'm going to tell you about the case. I'm going to tell you about the parties that are involved, these names, asked if you know them. But the bottom line is when all is said and done, 12 of you, plus an alternate or two will sit up here, listen to this evidence. I will tell you what the law is, and then you will make a decision about guilt. All right. But you have to remember that the State has to prove that he is guilty. He doesn't have to prove he's not guilty. All right. So if you don't think you can do that, I need to know that. Because that's an important constitutional right. It's not

just one of those things where you talk about it or you learned about in civics or anything like that. It's a Constitutional Right. I have it, you have it, and the defendant in this case has it. All right.

Now, how do we get here? Well, we get here because of an indictment. Remember I asked you a little bit ago if anybody served on a grand jury? Nobody had. Grand juries are one of those things that -- they are around for a reason, and the reason goes back really almost 1000 years. If you ever heard of the Magna Carta. Back when they had The Northern Conquest in 1066. It used to be the king -- those kings that they had for a long, long time were not the nicest people that you see, like the lady that's the queen of England right now. We get all of our legal system from England. But you see Queen Elizabeth, she seems like a nice lady. You watch the TV shows, and she seems charming. But her job is a lot of different than it sued to be, and the world was a lot different place. King's, if they decided they didn't like you and they didn't like what you did, they basically could have you pulled up off the street, put you on trial, and you didn't even know why you were on trial. You just found out. And then he originally would sit as the jury. Later on, they had judges, and finally, we came up with this system of having individuals decide the outcome. But as a result of the conflicts that we have over hundreds

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of years, we came up with this system. It's a two-part system, where you have the grand jury, and then we have the petit jury, or the smaller jury. Well, y'all are in the petit jury.

But the grand jury was designed to keep them from having the king just grab you up off the street, put you in -- on the docket for the trial, and start a case without you even knowing why you were there. So we had this buffer. And the way it's devolved over hundreds of years is that we have 18 citizens that are brought in, approximately once a month -- depends on where you're from and how often they meet -- the 12 to 18 jurors listen to somebody from the State read to them usually some incident reports, stuff like that, and then 12 of those 18 jurors have to make a decision as to whether or not a crime was probably committed and that it's a possibility that a particular person should be charged with that crime. All that does is it results in an indictment, which is a twofold document. It puts the person who is charged with a crime on notice. This is what you were charged with and this is what you will state trial for. Also gives this court jurisdiction to try the case.

So in this case we have an indictment. I bring this up because it's important for you to understand that like all the other rights I've told you about throughout this, the fact that somebody's charged with a crime does not mean that

they are guilty of something. All right. The fact that they are charged with a crime is not to be considered by you as evidence. And so this indictment, it serves the purpose of putting them on notice with knowing what he's charged with, and again, gives this court jurisdiction, but it's not evidence. It's the only piece of paper that is going to go back in this trial other than the jury charges, if I send it back, that say -- that is the only piece of paper that will go back that is not to be considered by you as evidence. The only reason why it goes back, really, is because on the back of it is a place for the jury foreman to write what the verdict is. Okay.

So indictment is not evidence, but it's a charging document to let them know what he's charged with. So in this case, the State has alleged -- and I'm just going to read you what this indictment is, because we need to find out if anybody knows anything about this case. That's all the purpose of all these questions are. Do you know about the case, do you know any of the witnesses, and if you can be a fair and impartial juror.

The indictment in this case is against Jason Scott Simmons. So this is indictment 2017-GS-11-00580, and it's the State of South Carolina versus Jason Scott Simmons. And it alleges that Jason Scott Simmons did, in Cherokee County, between

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January the 8th, 2017, and January the 9th, 2017, commit the crime of criminal sexual conduct with a minor in that the defendant engaged in sexual battery with the victim, Minor [redacted] who is less than 11 years of age at the time of the said incident and is in violation of 16-3-655A1 of the South Carolina Code of Laws as amended. So he's charged with criminal sexual conduct with a minor in the first degree. He's pled not guilty to this. Pleading not guilty to this charge is why we are here. And, again, he now has the right to a jury trial and the State has to convince 12 of you that he is guilty of this charge.

The fact that he's discharge, again, is not to be considered by you as evidence. So once that indictment gets issued and he pleads not guilty, that starts things happening.

And in this state, our prosecutors are known as solicitors. And the State is divided up into 16 judicial circuits. This is the Seventh Judicial Circuit, and Cherokee County is part of this circuit. And each circuit elects a solicitor and your solicitor is Barry Barnett. All right.

Now, Mr. Barnett has people that work for him. He can't try every case. And in this case, he has elected to have these two folks right over here -- if you would stand -- handle the case for him. This is Mr. Matt Kendall

and Ms. -- and I'm going to butcher her name because I've done it so many times this week already -- she has a difficult last name, but it's Kimberly Leskanic.

MS. LESKANIC: Yes, sir.

THE COURT: I got it. All right.

Now, these are the two people that work for Mr. Barnett. He is assigned to them to prosecute this case this week on behalf of the State of South Carolina. So what I want to ask is, is there any member of the jury panel who is related by blood or marriage or acquainted in any way with either Mr. Barnett or Mr. Kendall or Ms. Leskanic? If so, would you please stand. Okay. I find none.

Now, Mr. Jason Scott Simmons. Would you stand real quick. That's the one in the white sweater with black stripes. This is Mr. Jason Scott Simmons. He is the defendant in this case. Is there any member of the jury panel who is related by blood or marriage or acquainted with him in any way? If so, would you please stand. Okay. I find none.

Now, he is represented by Mr. Michael Morin, who is this gentleman standing right in front of you right now. Is there any member of the jury panel who is related by blood or marriage or acquainted with him in any way, or perhaps you have been represented by him, either you or a member of your immediate family? If so, would you please stand.

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Okay. I find none. You may be seated.

Now, I'm going to call out the names of some people who might be called as witnesses in this case. And, again, what I'd like you to do is if you are related by blood or marriage or acquainted in any way with any of these people, when I call out your name, would you please stand. In addition to Mr. Simmons is Melisa Simmons. I find none. Minor [redacted] I find none. Danielle Ward, with the Cherokee County Sheriff's Office. I find none. Dana Fortner -- and I'm spelling -- F-o-r-t-n-e-r. Stephen Anderson with the Cherokee Detention Center. I find none. Jacob Mullinax with the sheriff's office. I find none. Billy Anthony with the sheriff's office. I find none. Jimmy Henson with the sheriff's office. I find none. Richard Burgess with the sheriff's office.

Yes, ma'am? Your name and number?

THE JUROR: Sixty-nine. It's Kimberly Lanier. And I attend church with Richard Burgess.

THE COURT: Okay. So you see him on a fairly regular basis? How well would you say you know him?

THE JUROR: Fairly well.

THE COURT: If he is called as a witness in this case, do you think that would affect your ability to be fair and impartial ---

THE JUROR: No.

THE COURT: --- in this case, either for or against the State or for or against the defense?

THE JUROR: No, sir.

MR. KENDALL: Your Honor, may I approach real fast?

(Whereupon, a bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

THE COURT: Oh, okay. So that's Mr. Burgess. I don't know anybody from around here. I know the lady down at Sonny's Donuts.

All right. Verona Herrera with SLED or state law enforcement; South Carolina Law Enforcement. All right. I find none. Kelly Clune; C-l-u-n-e. I find none. Tricia Austin, CAC. I'm not sure what CAC stands for.

MR. KENDALL: Children's Advocacy Center, Your Honor.

THE COURT: Okay. Child advocacy. Anybody?

Samuel Stewart with SLED. Brian Hudak; H-u-d-a-k, with SLED. I find none. Erin Bowles. I find none. Tempest Bryant, B-r-y-a-n-t. I find none. Ann Manning. I find none. Stephen Anderson. I find none.

Now, I read you out the indictment. Is there anybody that knows anything about this case? If so, would you please stand. I find none.

Is there anybody who has -- either you or one of your immediate family members ever been employed by the

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solicitor's office for the Seventh Circuit? If so, would you please stand. Okay. I find none.

Is there anybody -- either you or one of your immediate family members ever been prosecuted by the Seventh Circuit Solicitor's Office? If so, would you please stand? I find none.

Any member of the jury panel have an immediate family member or one of your close, personal friends employed by a law enforcement agency? Could be anywhere.

Okay. Let's start here on the front row, and we'll work our way back. Your name and number?

THE JUROR: Matthew Barnes; 117. My cousin, Manolo Gonzalez works in Spartanburg; he's a cop there.

THE COURT: All right. Would that affect your ability to be fair and impartial in this case, for or against the State or for or against the defense?

THE JUROR: No, sir.

THE COURT: Thank you. Your name and number?

THE JUROR: Teresa Fuller; 44.

THE COURT: Okay.

THE JUROR: I have a cousin that's with the sheriff's office and a nephew that's with the sheriff's office.

THE COURT: Local?

THE JUROR: Yes.

THE COURT: All right? And with Cherokee? And what's

their name?

THE JUROR: Stephen Wright and John Fuller.

THE COURT: Have you had any discussions with them about this case?

THE JUROR: No, sir.

THE COURT: Would that affect your ability to be fair and impartial in this case, either for or against the State or for or against the defense?

THE JUROR: No, sir.

THE COURT: All right. Thank you.

What is your name and number?

THE JUROR: Karoline Kenneth; 68. I have a brother-in-law who's retired from being a detective in Pinellas County, Florida. My sister worked at the jail, retired from there, and my nephew currently serves there.

THE COURT: Would that affect your ability to be fair and impartial in this case, for or against the State or for or against the defense?

THE JUROR: Honestly, sir, yes. By brother-in-laws were...

THE COURT: All right. You may be seated. Thank you.

Your name and number, please?

THE JUROR: Mackenzie Davis; 29. I have a --

THE COURT: Ninety-nine?

THE JUROR: Twenty-nine.

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THE COURT: Oh.

THE JUROR: I have a distant cousin that works for the sheriff's office. I don't really talk to him at all.

THE COURT: Would it affect your ability to be fair and impartial in this case, for or against the State or for or against the defense?

THE JUROR: No.

THE COURT: All right. Thank you, ma'am.

Your name and number?

THE JUROR: Terry McCluney; 79.

THE COURT: Seventy-nine. Okay.

THE JUROR: When you say "prosecuted" -- I have a son in 2017, I'm thinking, he had to come to court. He was innocent, whatever.

THE COURT: With what?

THE JUROR: He did do court.

THE COURT: Okay.

THE JUROR: But he was innocent. So I don't know if that would affect me.

THE COURT: So he was prosecuted by the local solicitor's office?

THE JUROR: He came here. I don't know -- he came here.

THE COURT: He came here?

THE JUROR: Uh-huh.

THE COURT: Would that affect your ability to be fair and impartial, for or against the State or for or against the defense?

THE JUROR: No.

THE COURT: All right. Thank you. Anyone else?

Any member of the jury panel ever serve as a juror or been a witness in a court case? I find none.

Any member of the jury panel, either you or immediate family member or close, personal friend been a victim of an assault of any type, including a sexual assault, but not just a sexual assault.

Again, if you want to come forward and talk to me about this more privately, you're welcome to.

THE BAILIFF: One hundred fourteen, Your Honor.

THE COURT: Okay. Yes, ma'am. What would you like to tell me?

THE JUROR: It was my granddaughter.

THE COURT: Okay.

THE JUROR: I don't know what they did, but DSS took over the case. But it never made it to Court with the guy.

THE COURT: So it was a sexual assault?

THE JUROR: Yeah. Is what it's supposed to have been.

THE COURT: And how old ---

THE JUROR: She's 4 years old.

THE COURT: And how long ago was that?

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THE JUROR: Just last year.
THE COURT: Is that local here?
THE JUROR: Uh-huh.
THE COURT: So that's ongoing? Were they -- nobody ---
THE JUROR: They looked at it. She was under investigation for it, and now they -- they done dropped it.
THE COURT: Do you think that would affect your ability to be fair and impartial in this case, for or against either party?
THE JUROR: No, sir.
THE COURT: Okay. Thank you.
MR. MORIN: What was it, Your Honor?
THE COURT: One hundred fourteen.
MR. MORIN: A relative was being prosecuted?
THE COURT: She said it was investigated, but no charges. Looks like they've dropped the investigation.
MR. MORIN: Okay. Was she the subject of it?
THE COURT: Her 4-year-old granddaughter was.
Yes?
THE BAILIFF: Twenty-seven, Your Honor.
THE COURT: Yes. 27.
THE JUROR: Yes, sir.
THE COURT: What would you like to tell me?
THE JUROR: I was sexually molested by my grandfather.
THE COURT: And this was when you were how old?

THE JUROR: Ten.
THE COURT: And was he prosecuted?
THE JUROR: No.
THE COURT: Do you think that would affect your ability to be fair and impartial in this case?
THE JUROR: Yes.
THE COURT: All right. Thank you.
THE BAILIFF: Twenty-two, Your Honor.
THE COURT: Yes, what would you like to tell me?
THE JUROR: My older brother was sexually molested as a kid.
THE COURT: Speak up for me.
THE JUROR: My older brother was sexually molested as a kid.
THE COURT: Okay. What happened as a result? Was he prosecuted or somebody prosecuted for --
THE JUROR: He didn't come out with it until later in life, so nothing ever came of it.
THE COURT: And so how old was he when that happened?
THE JUROR: Maybe 7 or 8 years old. Somewhere around in there.
THE COURT: And where was that at?
THE JUROR: I think it was in South Carolina. I'm not sure where we were living at the time.
THE COURT: Would it have been here?

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THE JUROR: It's possible. We did live in Gaffney back then, but I'm not sure. It might have been Chester. It was a small town in South Carolina. I don't know where it was.

THE COURT: Do you think that would affect your ability to be fair and impartial in this case, for or against the State or for or against defense?

THE JUROR: I do.

THE COURT: Okay. Thank you.

THE BAILIFF: Twenty-nine, Your Honor.

THE COURT: Yes, ma'am, what would you like to tell me?

THE JUROR: My sister was involved in a domestic violence case. Her husband held a knife to her.

THE COURT: Okay. And how long ago was that?

THE JUROR: Maybe a year.

THE COURT: And where was that?

THE JUROR: Gaffney.

THE COURT: Local here?

THE JUROR: Yes.

THE COURT: Was it prosecuted by the ---

THE JUROR: I'm not really sure. Maybe.

THE COURT: Is it an ongoing investigation, or did anybody get arrested?

THE JUROR: He was in jail and he got bailed out.

THE COURT: So did he ever go to trial?

THE JUROR: I really don't know.

THE COURT: Do you know, would that affect your ability to be fair and impartial in this case, for or against the State or for or against the defense?

THE JUROR: No, sir.

THE COURT: Okay. Thank you.

THE BAILIFF: Sixty-three, Your Honor.

THE COURT: Yes, ma'am.

THE JUROR: I was actually interviewed here with my kids. My ex-husband molested my daughter.

THE COURT: Who did?

THE JUROR: My ex-husband.

THE COURT: Okay.

THE JUROR: And I was too when I was little.

THE COURT: And how old was your daughter?

THE JUROR: When it started? Nine.

THE COURT: Pardon?

THE JUROR: Nine.

THE COURT: And where was that at?

THE JUROR: New Hampshire.

THE COURT: Okay. Do you think that would affect your ability to be fair and impartial in this case?

THE JUROR: Oh, yeah. Yeah.

THE COURT: Okay. Thank you. You can be seated.

THE JUROR: Okay.

THE BAILIFF: Six, Your Honor.

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THE COURT: Six. All right. What would you like to tell me?

THE JUROR: My grandfather molested my younger cousin -- not the first case -- in Ohio.

THE COURT: And how long ago was that?

THE JUROR: He was convicted, I think, it was about 2014 or 2015. And it happened previously, back in the early 2000s.

THE COURT: So your cousin was roughly how old?

THE JUROR: She was about eight.

THE COURT: Okay. And that was your grandfather?

THE JUROR: Yes, sir. He's currently in prison in Ohio.

THE COURT: Do think that would affect your ability to be fair and impartial in this case, for or against the State or for or against the defense?

THE JUROR: No, sir.

THE COURT: You'd be okay?

THE JUROR: Yes, sir.

THE COURT: Okay. Thank you.

THE BAILIFF: Eighty-two, Your Honor.

THE COURT: Yes, ma'am. What would you like to tell me?

THE JUROR: I was just being honest about being molested as a child.

THE COURT: You were?

THE JUROR: I was.

THE COURT: Okay. By who?

THE JUROR: A family member. But there was never anything come of it. I was just being honest because I was never ---

THE COURT: I'm sorry?

THE JUROR: I never told anyone. I was never in therapy.

THE COURT: So nobody was charged with --

THE JUROR: I was being honest.

THE COURT: So nobody got charged?

THE JUROR: I didn't tell anyone.

THE COURT: Do you think that would affect your ability to be fair and impartial in this case.

THE JUROR: No. Absolutely not.

THE COURT: Okay. Thank you.

THE BAILIFF: Ninety-seven, Your Honor.

THE COURT: Okay, sir.

THE JUROR: My daughter was sexually assaulted.

THE COURT: Pardon?

THE JUROR: My daughter was sexually assault when she was younger.

THE COURT: By who?

THE JUROR: I'd rather not say his name.

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THE COURT: A family member or ---

THE JUROR: Oh, no. It was my daughter -- my sister's boyfriend at the time.

THE COURT: So who was molested?

THE JUROR: My daughter.

THE COURT: Your daughter?

THE JUROR: Yes.

THE COURT: And how old was she?

THE JUROR: She's 31 now.

THE COURT: Okay. How old was she at that time?

THE JUROR: Thirteen. And I still got a sore taste in my mouth about this.

THE COURT: So do you think it would affect your ability to be fair and impartial?

THE JUROR: I do. Yes, sir.

THE COURT: Okay. Thank you.

THE BAILIFF: One seventeen, Your Honor.

THE COURT: One seventeen. Yes, sir?

THE JUROR: Between the ages of 10 to 12 I was molested by a family friend of ours who had died before anything happened.

THE COURT: How old were you?

THE JUROR: I was 10 to 12 years old.

THE COURT: Do you think it would affect your ability to be fair and impartial this case, for against the State or

against the State ---

THE JUROR: I think so.

THE COURT: Okay. Thank you.

THE BAILIFF: Fifteen, Your Honor.

THE COURT: Yes, sir.

THE JUROR: Yeah. I'm going to be biased. I have three kids. I'm a foster parent, and I have three kids that I've adopted. And each one of those cases there was a sexually assault, where one of the parents was found guilty and one of them got -- pretty much get away with it. And I've adopted these kids, and they been in my life for nine years. And we've been having to still go to therapy.

THE COURT: Do you think this would affect your ability to be fair and impartial in this case?

THE JUROR: Yeah.

THE COURT: All right. Thank you.

THE BAILIFF: Two, Your Honor.

THE COURT: Yes.

THE JUROR: My grandfather used to touch me when I was younger.

THE COURT: He molested you?

THE JUROR: Yes.

THE COURT: And how old were you?

THE JUROR: Eight.

THE COURT: All right. Do you think this would affect

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your ability to be fair and impartial in this case?

THE JUROR: Yes.

THE COURT: Okay. Thank you. Anyone else? All right.

Is there any member of the jury panel who either you or one of your family members ever been charged with or convicted of any crime involving sexual -- criminal sexual conduct with a minor or any other such crime and you did not already bring it to my attention just now? Okay. I find none.

Anybody have any kind of experience with a police officer, a state trooper, a federal or state law enforcement agent or agency that might affect your ability to be fair and impartial in this case? I find none.

Any a member of an organization that seeks to prevent sexual assaults against children or has any kind of purpose of supporting law enforcement, like Mothers Against Drunk Driving; Students Against Drunk Driving; CAV, Citizens Against Violent Crime, those sorts of things? I find none.

Anybody have any reason that they know of that they haven't already brought to my attention that may keep you from being a juror in this case for any reason? It could be, well, anything really. Sometimes you get people that say it's against their religious beliefs. Sometimes you get people that say that they belong to organizations that say, well, if somebody gets convicted -- or somebody gets

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arrested, well, they must be guilty of something, so I'm going to convict them, no matter what. You have people in groups that are on the opposite end of that spectrum, where, they believe like, "You know what, I don't believe you can trust the government and if somebody gets arrested, I'm not convicting somebody, no matter what." You find people that have all kinds of beliefs in this world. I'm just giving you some examples of things that I've had people say in the past, but it's not limited to that.

Here's my position on that: It's America. I really don't really care what you believe as long as you're not advocating the violent overthrow of the government, you can believe what you want. All right.

But this is a serious charge. This is a serious case. It's seriousness on both sides. Both sides deserve their day in court. They deserve a fair trial. They deserve to have 12 jurors who can come in with an open mind and listen to the evidence. First of all, take an oath that says they can listen to the evidence that is presented in this courtroom. And they will make their decision based on the evidence that was presented in this courtroom. And whatever prejudices and beliefs that you might have, you put them aside. And you will base your decision, your verdict, on what you hear in this courtroom and you can apply the law that I tell you applies to this kind of case. Even if you

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don't think that's what the law is or what the law ought to be. But you can take an oath that says, you know what, I may disagree with what the law is, but this is what the judge says I have to make my decision on and I will except it. That's what I'm looking for. So I'm not going to try to talk you out of your beliefs or embarrass you. I just need to know it, and the lawyers need to know it so that we can then make a decision as to whether or not you can be a fair and impartial juror in this case. That's my sole purpose in asking the question. It's not to argue with you or embarrass you, but if you have some reason why you think you can't be a juror, any reason, please stand up and just come forward and talk about it privately. All right.

THE BAILIFF: Thirteen, Your Honor.

THE COURT: What was your number again?

THE JUROR: Thirteen.

THE COURT: Thirteen. Okay. What would you like to tell me?

THE JUROR: Well, I've got three daughters at home, and I don't think I could be nonbiased, to be quite honest. Because if it was one of my children, I'd be -- I don't know what I would think would be my --

THE COURT: Is it just the nature of the charges would lead you to believe he's guilty?

THE JUROR: Well, I don't think I can be honest with

it.

THE COURT: Okay. Well, that's what I'm asking you to do, is be honest with me. Okay. Thank you. All right.

Bear with us just a second. I'm going to take the lawyers to the back and have a discussion with them.

If y'all need to take a restroom break, don't talk to each other about the case in any way and just be back in ten minutes. Okay. Thank you.

(The jury exited the courtroom at 11:35 a.m.)

(A conference was held in chambers off the record.)

(The jury entered the courtroom at 11:50 a.m.)

THE COURT: All right. Have we got everybody back in, then.

Do you have a list for me?

THE CLERK: Yes, sir. I'm pulling it now.

THE COURT: Anything from the State?

MR. KENDALL: No, sir, Your Honor.

THE COURT: From the defense?

MR. MORIN: No, sir.

THE COURT: All right. Madame clerk?

THE CLERK: When I call your name, please come forward. Please bring all of your personal belongings with you. You will stand in front of me, face back out to where you can see the clock on the back wall. If I tell you to take a seat in the jury box, you'll take a seat over here. If I

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tell you you've been excused, you'll take a seat back where you're at.

(The jury was selected.)

THE COURT: All right. Anything from the State?

MR. KENDALL: No, sir, Your Honor.

THE COURT: From the defense?

MR. MORIN: No, sir.

THE COURT: Okay. Well, folks, you will be our jury now, and we will start this case after lunch. It's 12:00 p.m. right now. So I'm going to let you go back with the bailiffs right now. They will show you where the jury room is and you will see where the jury room is, and they will show you how to go in and out. I don't think you come back through here to go in and out, but you don't come straight back to the jury box after lunch. You'll go down, and they will show you how to get in and how to get out.

When you go to lunch, you can go to lunch with anybody you want to, including other members of the jury, but you can't talk about the case. I know you don't really know that much about it, but at this point it's a standard instruction that I give people. Don't talk about the case. When you go back, the first thing we'll do is give you an oath and you'll promise that you'll make your decision based on what you hear in this courtroom and not anywhere else. That's why I don't want you to talk to anybody else about

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the case, because their influence. As soon as you tell them what kind of case that you're involved in, they're going to want to talk to you about it, and that poisons your mind, one way or the other, and that's not good.

These days, we have to have people -- I have to instruct you not to post things on social media during the trial. Now, once the trial is over with, you can put it on Facebook, Twitter, or whatever you want to, whatever you want to about the case. But during the case, it's not fair because, I'll tell you, you make up your mind at the end of the trial, not at the beginning of the trial. And you're going to probably change your mind more than once throughout the trial. The bottom line is you don't make your decision until you've heard all of the evidence. But it's only the evidence that you will make your decision on, and that's what we tell people, not to talk to everybody else. The same thing holds true with social media. If you post something on Twitter or Facebook about your jury service about that case, I guarantee you somebody's going to comment on it. And that's the same as if you went up and talked to a stranger or anybody else off the street. There's no difference. Don't do that while you're on this trial. When the case is over with, you can put whatever you want to to your heart's content about the trial, but not during the trial, so stay off of social media posting about this case.

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I'm not prohibiting you from looking at your Facebook or anything like that. I will tell you, don't go and try to find out anything about the case because now, once people get on the jury, they kind of get invested and they want to go find out about -- see if there's anything in the media about the case or online about the case or they want to start doing research on the law. Again, whatever you need to know to make a decision in this case, we will tell you in this courtroom: Evidence and laws. Just go enjoy your lunch. You can tell the family member or work you got picked on the jury. You're not allowed to talk about the case, and that will just have to suffice for a couple of days. Okay.

So go with these folks, and they will show you how to get in and out. If you would be back at a quarter to 2:00, and we will get started shortly thereafter.

Okay. See you in a few minutes.

(The jury exited the courtroom at 12:06 p.m.)

THE COURT: Okay. Now, the rest of you, you're finished for today. There's a pretty fair possibility you're done for the rest of the week, but we won't know until the end of the day probably, I'm sure.

So what I want you to do is call the telephone number after 6:00, and it will tell you whether or not you're finished for the week or whether or not you need to report

back tomorrow or whether or not you just need to call back tomorrow night after 6:00. I don't know that just yet. So just bear with us on that.

You're free to go. You can talk to anybody you want to about the case, except for those folks that just got picked as a juror, of course. And you're welcome to go come back and watch the trial, if you want to. But you're free to go. I thank you so much for showing up and helping us to draw a jury this week. We cannot do it without you.

And, again, I hope you will one day get to be on the jury. Because in my experience, people really do enjoy it once they get picked on a jury and they learn about the process. And I'm telling you, I've never had anybody tell me they've regretted serving on a jury. It's always just the opposite -- of how much they enjoyed it and what they learned about our system. Because we need people to have a positive jury experience. That's why people show up.

Ultimately, they believe in their government. They believe in our system, and we need them to go back out and say, "Yeah, I served on the jury, and you know what, I enjoyed it and I'm glad I did it." That's the kind of message we hope you'll walk away with. If you don't feel that way about anything after your jury experience, even this week, please just let us know. Because I can tell you, you know, you've got a good clerk of court staff here. Your

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clerk does a good job. I know she's like everybody else; she wants to do a better job. If somebody has a problem, please bring it to her attention and to my attention, and we'll see what we can do to fix it. All right. You're free to go. Thank you very much.

(The jury exited the courtroom at 12:08 p.m.)

THE COURT: Okay. Well, why don't we meet back here at 1:30 p.m. If there's anything we need to take up at that time, we'll do it. Otherwise, be ready to start up at 1:45 p.m. Okay?

MR. MORIN: Thank you.

MR. KENDALL: Your Honor, one thing: His bond situation.

THE COURT: He is in no custody of the sheriff's department.

MR. MORIN: Your Honor, if I may be heard on that, just briefly.

THE COURT: Sure.

MR. MORIN: My client's been on electronic monitoring, home detention for three years. He has no violations, and I have a statement from the bondsman saying that they're willing to remain on the bond.

THE COURT: Well, there is 25 years to life he's facing and we're at trial, and so, sorry, I can't accommodate you. All right.

(Minor DIRECT BY MR. KENDALL)

MR. MORIN: Okay. Thank you, Your Honor. Thank you for hearing me.

(A recess was taken.)

(At 1:30 p.m., the court was reconvened.)

(Counsel conferred briefly.)

(The following took place without the presence and hearing of the jury.)

THE COURT: Let's bring her on up.

Minor after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Minor, how old are you right now?

A Seven.

Q And where do you go to school?

A Pine Tree school.

Q And Minor, do you know if it's good or bad to tell the truth or a lie? Is it good or bad to tell the truth?

A Good.

Q Is a good bad to tell a lie?

A Bad.

Q Now, Minor, if I told you that I had a pink tie on, would that be the truth or would that be a lie?

A Lie.

Q What if I told you that you had a star on your shirt --

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a sparkly star on your shirt, would that be the truth or would that be a lie?

A The truth.

Q Now, Minor , what happens in court if somebody asks you a question that you don't know the answer to? What do you say?

A I don't remember.

Q Okay. So what if I asked you how many dogs I had at home, what would you say?

A I don't know.

Q All right. And what happens if something happened a long time ago and you might have noted it at some point, but you don't know it then?

A I don't remember.

Q All righty. And is it bad to tell a lie?

A Bad.

Q What happens if you tell a lie in court?

A You will get in trouble.

Q Okay. So when you're in court, you're only going to tell the truth; is that right?

A Yes.

Q All right.

MR. KENDALL: Your Honor, if there's any other questions Your Honor has as well.

THE COURT: All right. I'm the judge. He probably

told you that, right? So when we start the trial, I won't really be asking you any questions. But the lawyers will be asking you questions, and that was one of the lawyers there. He's with the State, and then the other fellow over there with the black suit on and the glasses who's just waiving, he's another lawyer, and he gets to ask questions, too, so you'll get to hear questions from both sets of lawyers.

Are you okay with that?

THE WITNESS: Yes.

THE COURT: All right. So you understand you're supposed to tell the truth to both of those lawyers asking you questions.

Do you understand?

THE WITNESS: Yes.

THE COURT: Don't just tell them what they think they want to hear. You tell them what the truth is. Okay?

THE WITNESS: Okay.

THE COURT: All right. Do you have any questions that you want to ask me?

THE WITNESS: No.

THE COURT: All right. And you think you'd be okay with talking to the jurors -- the people that are sitting in those chairs over there, we call those the jurors, and they make up what we call the jury. And they are ultimately making the decision on this case. But all your job is, is

just to provide them with information. And you do that by answering the questions that the lawyers ask you, and you just tell the truth.

THE WITNESS: Okay.

THE COURT: You can do that?

THE WITNESS: Yes.

THE COURT: So you tell them what you know; and if you don't know, you tell them you don't know.

THE WITNESS: Okay.

THE COURT: Okay. You can handle that?

THE WITNESS: Yes.

THE COURT: You won't be too scared to do that?

THE WITNESS: No.

THE COURT: There will be a lot of people in here and they're all looking at you, but you think you'll be able to answer the questions?

THE WITNESS: Yes.

THE COURT: Okay. Did you want to ask anything right now?

MR. MORIN: No, sir.

THE COURT: No. Okay. Well, I want you to go over there and sit back down, and they're going to get started. And then we'll call you as a witness in a little bit.

(The witness was excused temporarily.)

MR. MORIN: Thank you, Your Honor. Before we bring the

jury in, do you mind if we set up the CAC -- just the computers in here? Because it usually takes a second to boot up and get everything on there. I was going to go ahead and load it up. I mean, she's -- as you can watch the video. Okay. That would just save the time.

THE COURT: Tell the jury that I would like them, when they all get in there, to pick a jury foreman, and it can be anybody except for the alternate.

THE BAILIFF: Yes.

THE COURT: Okay.

(A recess transpired.)

(At 1:40 p.m., the court was reconvened.)

THE COURT: All right. Well, we did examine Minor and she, in my opinion, does know the difference between telling the truth and telling a lie. And despite her tender years, seems to be ready to testify truthfully in court. You'd be allowed to cross-examine her. All right. We've get everybody here and we've got a jury foreperson, Ms. Sierra Hamilton, 52. So if we are ready -- do you have anything?

MR. MORIN: No, sir. I'm ready.

THE COURT: All right. Bring the jury back in, then.

(The jury entered the courtroom at 1:46 p.m.)

THE COURT: Okay. Folks welcome back. You're Ms. Hamilton?

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THE JURY FOREMAN: Yes.

THE COURT: Okay. It sounds like you got selected to be the jury foreperson, so congratulations. You don't get any extra pay. Just when we go to do deliberations, you conduct the deliberations, make sure everybody gets a chance to have their say, asking questions they want to ask. You'd take the vote, and you let us know what the verdict is.

During the course of the trial, we don't let jurors ask questions, but during deliberations, if you have a question, I ask that you have a foreperson write it down, and then pass it to the bailiff, who's going to let me know. And then if there's anything that comes up during the course of a trial, it's just easier to pass the note through the jury to the foreperson.

Okay. So we're ready to begin. The first thing I need to do is place you under oath, so if you would, stand and raise your right hand.

Will the clerk of court administer the oath.

(The jurors and alternates were duly sworn to try this case.)

THE COURT: All right. Folks, just wanted to give you limited remarks, just to let you know what we do in a trial, explain some of the things that you might be unfamiliar with if you've never been a juror, and reiterate some of the things that we did talk about earlier when were qualifying

you. We told you this is a criminal case.

And so the State has charged Mr. Jason Scott Simmons with criminal sexual conduct with a minor, first degree. He pled not guilty to that charge and therefore that casts a burden upon the State to provide him with a jury trial and to provide enough evidence to convince 12 people -- you -- that he is guilty of this charge beyond a reasonable doubt. He is not required to prove his innocence; the State is required to prove his guilt. You must remember that in this state and in every state in the United States, no defendant is required to prove they're innocent. The state always -- or the government always has the burden of proof. That fact that somebody has been arrested or indicted does not cast any presumption of guilt. He is presumed to be innocent of these charges as he sits here throughout the trial, from the time he was arrested, throughout the trial, and unless and until; the State provides enough evidence to convince all 12 jurors that he is guilty beyond a reasonable doubt, he remains innocent of these charges.

Now, that's not one of those legal theories that we just talk about in law school. As I told you, that's a constitutional right that he has, I have, and you have. So we don't take it lightly. It's part of your oath. You must believe in your mind that he is innocent of these charges right now and that the State, again, has the burden of

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proving beyond a reasonable doubt his guilt of these charges.

Now, we talk about the burden of proof. What does burden of proof mean? It simply means the amount of evidence that the State has to provide. It's a concept or a term that we use. It's easier to understand it sometimes in relation to the burden of proof in a civil case, which I'll go over in a minute.

But basically, proof beyond a reasonable doubt means that after you've heard all of the evidence, you are firmly convinced of his guilt. At the end of the trial, if you are not firmly convinced of his guilt, you have to give the benefit of the doubt to the defendant and find him not guilty. The state has to prove every element of the crime to your satisfaction beyond a reasonable doubt. In other words, you have to be firmly convinced he's guilty in order to convict. You're going to have to prove, again, that he is innocent.

I'm speaking in English and a lot of times, people are still thinking "I understand what you've heard, I understand the words, but I'm still not quite sure what it means, proof beyond a reasonable doubt." Well, a lot of times -- you've seen the scales of justice before, you know, where you have the old fashioned scales and weights. You know there's two pans and sometimes you see Lady Justice holding it,

sometimes you see it out on a chain with an old fashioned scale. That helps people understand things a little bit better to see it. But for most of us -- I am -- I'm a visual learner, and I have to see something in order to really grasp it. So imagine that set of scales. And at the beginning of a trial like this, you have the State on one hand and the defendant on other hand. Those scales at the beginning of the trial are even. In order to prove guilt beyond a reasonable doubt, the State has to tip those scales quite a bit in their favor in order to prove guilt beyond a reasonable doubt. I give you that example to contrast it with the burden of proof in a civil case. In other words, somebody gets in a car wreck or there's a breach of contract or something along those lines, burden of proof in a civil case is what we call a preponderance of the evidence, which is often defined as the greater weight of the evidence or whatever everybody is trying to prove more often true than not true. See how those things kind of sound impressive, but you really are still kind of going "Well, I don't want to say anything because I really don't know what it means still."

Well, take that same set of scales. At the beginning of the trial, you have the person that brought the lawsuit, being the plaintiff. The defendant is the person who got sued. You start off with even scales. In a civil case,

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where, say the alleged victim, the defendant who caused the car wreck, they only have to tip the scales just a little bit during a civil case. And that's met a preponderance of the evidence or a greater weight of the evidence. The example I just gave you about a criminal case, where proof beyond a reasonable doubt, those scales, have to tip quite a bit -- which it's a much heavier burden of proof because they're charging somebody with a crime. And so the law says if you're going to charge somebody with a crime, you're going to have a heavier burden of proof. Hopefully, that will help you understand that just a little bit.

Now, we have duties in this course of the trial. We all have duties. Everybody that's in the courtroom has some role that they're playing. You are the jury. You're going to be the judges of the fact. You are in fact judges during the trial. We don't give you a black robe, but you're still the judges. In fact, you're the ultimate judges of the outcome of the case.

You're going to hear evidence. Evidence is presented to you in the form of people getting up on the witness stand. They're under oath and they tell you what they heard, they saw, they touched, they showed, they smelled. That's a form of evidence. Sometimes you have documents. Sometimes you have photographs. Sometimes you might have a recording. Those are all forms of evidence.

All right. There's often a conflict in evidence. Sometimes you hear something from one witness and then another witness will contradict what that person says. As the jury, you have to weigh all of the evidence that you hear, and you determine what to believe and what is true and what is not true. It's not me that determines that; it is you.

All right. You are not going to get any little eye signals or winks or nods from me. If you think I'm trying to signal to you what you ought to rule in this case or don't believe this person or do believe that person, you are reading it wrong. Okay. That means I probably had something in my eye, and I'm wiping something. I am not trying to tip you off as to how I think you ought to rule on something.

Believability or credibility of a witness is completely your job. My job as the judge of the trial -- I'm called the judge of the law; you're the judge of the facts. My job is really two-fold. First of all, it's to preside over the trial. Make sure that the rules of procedure are followed, all the rules of evidence are followed. And then second, at the end of the trial, I tell you what the law is that applies to this kind of case. And then you take that law, and then you go back and figure out what the facts are that you believe. And you take the law and apply it to those

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facts. That's how you come up with the verdict. Okay. It's really not a whole lot more complicated than that. That's, in essence, what we're trying to do.

Now, because the State has the burden of proof, the State calls their witnesses first, and you will hear from -- wherever a party calls a witness, they get to ask the witness questions first. That's called direct examination. But then our rules say, well, the other side will get to ask questions of that witness as well, so after the witness answers questions under direct examination, the other side gets to ask questions. That's called cross-examination. All right. So they'll get to ask questions. And then I usually allow a follow-up round or re-direct, and then re-cross. So re-direct and re-cross are usually a lot shorter than the direct and the cross. But once you've heard it from a witness, then we go on to the next witness.

Now, every time we take a break, I'm going to tell you don't begin your deliberations or discussions for one very important reason: You haven't heard all the evidence until the end of the trial, so it's improper for you to make up your mind. If you start deliberating and start discussing things like credibility of the witnesses and things like that -- very often a trial is just like in life. There's usually two sides to every story and until you hear both sides, it's improper for you to begin to make up your mind,

certainly, in a court of law in a case. But what you can learn the hard way in life is, you know, somebody will come in and tell you something, and then you'll find out something a little bit later. And that might change the way you view something. It might be that you end up believing exactly what your first impression was. But, then again, you might change your mind. So if we had you -- allowed you to deliberate along the way, well, it's only natural that once people start voicing what they're opinions are, then they start digging their heels in. Because nobody likes to admit they're wrong. So that's why I say don't begin deliberations. Keep an open mind until you've heard all of the evidence in the trial. All right.

So to get back to how we do this trial. And I told you the lawyers are going to be presenting evidence to you. And evidence is, again, people telling you what they heard, saw, touched, told, smelled, pictures, documents photographs. What evidence is not is lawyers talking. And you're going to hear from the lawyers a lot. You probably hear more from the lawyers in whole than you do from me and from any of the witnesses. All right.

So why is that important? Well, the lawyers aren't the witnesses. They weren't there. They didn't see anything, and they can't tell you anything. If they were there and could see something and tell you something, then they would

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not be allowed to act as lawyers in the case. They would put on the witnesses, put under oath, and tell you what they heard, saw, touched, felt, smelled. That sort of thing. So in the course of the trial, when a lawyer asks a question to a witness, that's not evidence; but the answer to the question is evidence. Okay. So keep that in mind.

But when you hear these lawyers talking, they are not testifying and what they say should not be regarded by you as evidence. Because in a minute, when we start the trial, the very first thing you're going to do is hear from the lawyers before you hear from anything of the witnesses. We start out with opening statements in which the lawyers get up and they kind of give you what I call the "Reader's Digest condensed version of the case." I realize I'm going to have to come up with a better example than that because as we get older, I don't even know if they make Reader's Digest condensed version of books anymore. More and more people have no idea what I'm talking about, and the younger crowd, when they -- most people, if they've ever seen a Reader's Digest condensed version any more is when they go to the mountains or some lake cabin or something and there's one above the fireplace. Very few people have ever looked at one.

So the bottom line is that they get to tell you a little brief overview of what this case is about from their

perspective so that it will help you follow the evidence a little bit better. Okay. But it's important for you to remember that what they say is not evidence. And if it gets contradicted by something that somebody says on the witness stand -- you will see -- you don't even consider what the lawyers said. Because what's evidence is what I told you: What people told you, pictures, documents that are allowed into evidence.

Now, during the course of the trial, sometimes there's a question asked and another lawyer might stand up and say "Objection." Objection is kind of like -- I call it our little code word for, "Judge, you need to pay attention here and you've got to make a ruling." Because at that point, I have to make a decision as to whether or not it's proper for you to hear the evidence that's about to be presented sometimes, when it's a document. But sometimes it might be what the witness is getting ready to say.

And I don't really know that much more about this case than you do at this point. I've had a little bit of dealings with them this morning, but really not a whole lot. So when somebody says something from the witness stand, you're hearing it for the first time. I'm probably hearing it for the first time as well. And so the point I'm trying to make is, I have to sometimes make a decision as to whether or not it's proper for you to hear something or see

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something. Because my job as the trial judge is to rule on admissibility of evidence. I've got to know if it's proper for you to hear something or not hear something. Sometimes I can make that decision based on -- the lawyer might stand up and say "Objection. Hearsay." And because of the context of whatever is being said, I can say "sustained" or "overruled." Sometimes I might even need to get them to come up here, out of your earshot, just to give me a little argument on what it is so that I can rule. Sometimes it might be necessary for me to send you back to the jury room and hear what the witness is going to say so that I can hear it and make a decision as to whether or not you can hear it. The point is that we have to have evidence presented to you in a form that we call "legally competent evidence." The point being, like in any case, if there is a decision that one of the parties didn't like and it gets appealed, if there's any factual evidence in the record to support your decision, the appellate courts are bound to accept that. What they aren't bound by are my rulings. And they say, well, that judge should not have let that jury hear that question or the judge should have let them hear that question or hear the answer to the question. That's on me. Or if I charge the law incorrectly in the trial, well that's on me. And then we have to come back and do it all over again, not with you, but with a different jury. Well,

nobody wants to come back and do that twice. So we're really just trying to do it correctly and on time. Nobody's trying to hide anything from you. When a lawyer stands up and says "objection," they're just doing their job. Okay. So don't hold it against them for doing their job. We are all just trying to do it right, the best we can, and let you make the decision based on the best evidence that's supposed to come in at a trial like this.

So the hardest part about this, again, is as I said: Keep an open mind throughout the trial. I know it's going to be human nature to start getting impressions, but again, don't rush to judgment on this. There will be plenty of time for you to talk about the case with each other, stuff like that.

After we have the opening statements, we'll get into evidence. After the evidence is over, we'll have closing arguments, where the lawyers get up and review the evidence that you've heard, review what they know I'll be charging on the law, and in attempting to persuade you to come up with a verdict. After that, I'll go over the law with you and give the entire consideration of what the verdict is.

Procedurally, as I've told you, I think, earlier, we usually take a break about every hour and 15 minutes, hour and 30 minutes so that you can use the restroom. It might be a little bit before that or a little bit after, just

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depending on where we're at with the witnesses. But we'll probably go to about 5:00, if anybody needs to make transportation arrangements or child care or something like that, let me know when we go to our next break. But that's generally what we'll do. We'll probably go to about 5:00 p.m. today, come back tomorrow morning, and start back up at 9:30 a.m. And, again, go throughout -- hopefully, you know, we'll finish tomorrow or come very close to it tomorrow. We might have to finish up Friday morning, just depends on how things go.

Trials are -- you try, you plan, and then they just -- they just happen. Sometimes they go faster; sometimes they go slower. So I know this: They won't make any progress if I keep talking all afternoon, so I'm going stop and we'll start with the State making their opening statement.

MR. MORIN: Thank you, Your Honor. May it please the Court?

THE COURT: What do you want? A notepad? Okay. That's fine. Do we have note pads available?

THE CLERK: I can get some. Just need one?

THE COURT: It's fine to take notes during trial. It's important to be sure to listen and not get distracted. And ultimately, when you go back and deliberate, I don't let you take your notes back because then somebody will get into an argument about, "Well, this is what my notes say" verses

that. If you have any questions about evidence, you can come back, we'll play you back the transcript or read back the transcript, but we don't let you say, "Well, this is what my notes said." Okay. But you're certainly free to take them. That helps people a lot of times, to be notetakers, but you're not required to.

All right. Mr. Solicitor?

MR. KENDALL: Thank you, Your Honor. May it please the Court, Counsel.

Ladies and gentlemen of the jury, my name is Matt Kendall, and I represent the State of South Carolina. Thank you all very much for coming here today. We are all here because on the night of January 8th and January 9th, 2017, the defendant, Jason Simmons, sexually assaulted 4-year-old Minor This happened at the home of Mr. Simmons, here, in Cherokee County. Minor , the 4-year-old, was related to Mr. Simmons' wife, Missy, was over there to spend the night. These were family friends, ladies and gentlemen. That night Missy went to bed early and left Minor alone with Jason. They sat on the couch and watched TV. And there, in his living room, he inappropriately touched her. All this going on while Missy was asleep in the other room. The next day, ladies and gentlemen, Jason brought Minor home and acted very odd while dropping her off. He insisted on taking her clothes straight to the laundry room. He also

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started crying, pondering what would happen to Missy, his significant other, if something happened to him. This was very odd behavior and very out of the ordinary and not something that, Dana, Minor 's mother was used to.

Later that day, Minor went to Walmart with her mother and while using the restroom, Minor broke down and told her mother that she had been touched Jason's the night before. Her mother then called the police and took her to the emergency room. There a nurse performed a sexual assault kit and swabbed part of her private area to preserve the DNA from these parts.

Subsequently, Minor was interviewed with the Children's Advocacy Center and identified and described the assault perpetrated by the defendant, Jason Simmons. Law enforcement also executed a search warrant at the home of Mr. Simmons, and they found that is hard drive to his extensive camera system was gone. They also found multiple pairs of underwear of Minor 's hidden in his attic. The DNA they had collected from Minor was sent to SLED and compared the DNA with Jason Simmons'. And on these swabs, ladies and gentlemen, they found in the swabs taken from Minor 's private areas Mr. Simmons' DNA.

Now, at the end of the trial, I'm going to ask you to return the verdict of guilty. But for right now, I'm only going to ask you three things: First, listen to the

instructions of the judge. That will ensure a fair trial in this case; second, you listen carefully to all of the evidence that's presented over the course of this trial, ladies and gentlemen; and finally, in this case, you use common sense. Thank you.

THE COURT: Mr. Morin?

MR. MORIN: My name is Michael Morin, and I represent Jason Simmons. I understand that no doubt when you heard these statements and the charges you felt a certain way. I've felt that way for 25 years on both sides in dealing with these cases.

This case is going to come down to what did the 4-year-old tell and is it true. Those of you that have 4-year-olds will know that 4-year-olds believe the things they're saying, whether they're true or not. But you're going to have to decide if the 7-year-old is telling you what happened when she was 4 years old, three years ago, if that's what happened.

As to laundry that was dropped off by the client in the laundry room, watch what happens with that line that they're -- that Mr. Kendall's very excited about. And as far as the DNA goes, well, I've got questions about the DNA. I've been doing this a long time. And this DNA I definitely have questions about. And you'll see when I'm asking him the questions about the DNA. And you will have to decide

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whether or not what they're saying, basically, if they have proof of it or not. Because at the end of the day, this is about what 4-year-old said.

So that's where I'm going to leave that for right now. I'm not going to address any of the other things he said, but I will tell you this: I've got questions about the DNA and I have questions about this laundry thing. Can't wait to talk about it. But most of all -- and the hardest thing about these -- in any case is deciding whether or not someone is telling the truth or not. And it's going to be particularly difficult for you because 4-year-olds believe what they say. They believe it. And 7-year-olds believe it. There are things that they will tell you and they will believe for 100 percent. And those of you that have children -- and I have four myself. Mr. Kendall has two. When they're that age, they believe something, no matter how outrageous, they believe it.

So I'm going to ask you to look at all the evidence and not just hear the charge and have that reaction. You can't help it. I'm not telling you you can't, but I'm telling you this is about a 4-year-old and what they said three years ago. Thank you.

THE COURT: You may call your first witness.

MR. KENDALL: Your Honor, the State will call

Minor [redacted]

(The witness returned to the stand.)

Minor after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Hi, Minor . Can you please tell us your full name?

A Minor

Q All right. And, Minor , how old are you?

A Seven.

Q And where do you go to school?

A Pine Tree School.

Q All right. And what grade are you in?

A Third grade.

Q Okay. And, Minor , who is in your family?

A My dad, my mom, two brothers, and my one sister.

Q Okay. And do you have any pets?

A I got three cats and one dog.

Q All right. And, Minor , do you know Jason and Missy?

A Yes.

Q And how do you know Jason and Missy?

A Because I went to their house.

Q Okay. You used to spend the night with them?

A Yes.

Q Okay. Do you see Jason in the courtroom?

A Yes.

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(Minor [redacted] DIRECT BY MR. KENDALL)

Q All right. Where is Jason sitting?
A Over there.
Q Is he in the white striped shirt?
A Yes.
MR. KENDALL: Okay. If we can let the record reflect that she identified the defendant.
THE COURT: So ordered.
Q Now, Minor , do you remember if you spent the night with Missy on January 8, 2017?
A Yes.
Q And where did you spend the night that night?
A In the living room.
Q Of Jason and Missy's house?
A Yes.
Q And other than Jason, who else was there?
A Missy.
Q Okay. And earlier in the afternoon, did you hang out with both of them?
A Yes.
Q And when it came to nighttime, who went to sleep first?
A Missy.
Q And where did she go to sleep?
A In her room.
Q And what did you do after Missy went to sleep?
A Watched TV in the living room.

Q Was anybody else in the living room with you at that time?
A Jason.
Q Was there anybody other than Jason or just you and Jason?
A It's me and Jason.
Q And what happened to you when you all were sitting and watching TV in the living room?
A The thing happened.
Q All right. Could you tell the jury what took place? What happened when you were watching TV?
A The thing.
Q It's okay. It's all right. And what was "the thing"?
A The thing with my privates -- area.
Q Okay. When you say "the thing" with the private areas, did somebody touch you in the private areas?
A Yes.
Q Okay. And who touched you in the private areas?
A Jason.
Q Now, when he touched you, when you're talking private areas, are you talking about the areas you go to the bathroom out of?
A Yes.
Q And you used to call that your "nu-nu;" is that right?
A Yes.

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Q Okay. And where did Jason touch you? Where did this happen?
A In the living room.
Q And where were y'all sitting?
A On the couch.
Q And how did he touch you? What happened when he touched you? It's okay.
A We what -- what was it --
Q So what -- how did he touch you or what happened when he touched you?
A He -- he -- he...
Q It's okay. Just take a deep breath.
A I don't remember.
Q Okay. Did he touch you on the outside of your nu-nu or on the inside of your nu-nu?
MR. MORIN: Your Honor, may I approach?
THE COURT: Yeah.
(A bench conference was held off the record, in the presence of the jury, but out of the hearing of the jury.)
Q All right. Minor , you testified a couple of minutes ago he touched you in the private area; is that right?
A Yes.
Q Did he touch you on the inside of the private area, outside, or both?
A Both.

Q And what did he use to touch you?
A A toothbrush.
Q A toothbrush?
A Yes.
Q All right. Could you describe this? What kind of toothbrush was it?
A Electric one.
Q Okay. One that goes "errr," makes a noise?
A Yes.
Q And how did that make you feel?
A It kind of -- it kind of feels like it was shocking, but it was just a thing moving.
Q And what else happened? So this happened when Missy was asleep? Is that what you testified to?
A Yes.
Q All right. And what happened after that?
A I went to bed.
Q And where did you go to bed?
A On the sofa.
Q And where was Jason?
A I don't know.
Q All right. If you don't know, it's okay to say you don't know. All right.

And what were y'all -- before this touching happening, what was going on in there? What were you guys doing in the

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living room?
A I don't know.
Q All right. Did Jason give you anything while this was going on?
A A chocolate bunny.
Q A chocolate bunny?
A Yes.
Q And after this happened, did you tell anybody that it happened?
A My mom.
Q Do you remember where you were when you told your mom?
A In Walmart bathroom.
Q And how old are you now?
A Seven.
Q And do you remember how old you were when this happened?
A Four.
Q And after you told your mom, did you talk to other people?
A No.
Q Do you remember talking to the interviewer at CAC?
A Yes.
Q And do you remember going to the hospital?
A No.
Q Okay. "No," you just don't remember?

A I don't remember going to the hospital.

Q Did Jason tell you -- say anything about talking to anybody or telling anybody or anything like that?

A He told me he will get in trouble.

Q If you told anybody?

A My mom.

BY MR. KENDALL: Please answer any questions Mr. Morin may have.

CROSS-EXAMINATION

BY MR. MORIN:

Q Minor, you said you have two brothers and a sister?

A Yes.

Q And who's the oldest?

A My sister.

Q And are both of your brothers younger than you?

A One of them's -- one of them's younger, but the other one's my big brother.

Q Okay. So you're the third, right?

A Yes.

Q Okay. Now, your brothers and your sister, do they always tell the truth?

A Sometimes my brother tells a lie and sometimes he tells the truth.

Q Okay. Now, Mr. Kendall asked you if you stayed over at Jason and Missy's house on January 7th. Do you remember

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that?
A Yes.
Q And you said "yes." Do you know if that's the date it happened?
A Yes.
Q And who told that that was the date it happened? Did Mr. Kendall tell you that? You don't remember who told you?
A No.
Q But somebody told you, didn't they?
A Yeah.
Q Now, when you first told your mama -- well, let me actually back up.
Do you remember if it was daytime or nighttime when you got to Missy and Jason's house?
A It was still daytime.
Q Still daytime. Okay. And where did you -- Missy and Jason took you to their house?
A Yes.
Q And where did they pick you up at?
A They picked me up from my house.
Q And did you go in -- did Missy and Jason have separate cars or -- what kind of car did they go in?
A I think Missy -- Missy was the only one that came.
Q Okay. Just Missy came.
A Yeah.

Q All right. And did Missy have a car seat in her car, or did your mama give her a car seat?
A I don't know.
Q You rode in a car seat, though, right?
A Yes.
Q Okay. Now, when you went, did your mama give you a backpack or something to take with you?
A She gave me a backpack.
Q And what kind of backpack was it?
A It was a polka-dotted little backpack.
Q And when you got to Missy and Jason's house, was Jason there?
A Yes.
Q Now, did you have dinner over there?
A No.
Q You didn't. Did you eat before you went?
A I don't remember.
Q Now, when you got over there, did you go outside or did you just stay where they lived?
A I don't remember what I did at the time.
Q Well, tell me, when you went there, tell me about their house. Where was it? Do you remember?
A It was at the end of the street.
Q And did they live upstairs or downstairs?
A They had a house but was -- they had a downstairs and

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an upstairs.
Q Did they live in both places or were there other people there?
A They lived in both places.
Q I see. Now, when you say he was in the living room, is that downstairs or upstairs?
A Upstairs.
Q And the bedroom that Missy went to sleep in, is that downstairs or upstairs?
A Upstairs.
Q And this thing that you've told us about, did that happen upstairs or downstairs?
A Upstairs in...
Q Now, who was with you when you went to Walmart that day?
A My mom and I think my little brother, too.
Q Okay. Now, did -- just a minute.
If I -- and you tell me if I'm wrong, okay? Are you saying that Jason touched you with a toothbrush or his hands or both?
A A toothbrush.
Q Just the toothbrush. Okay.
Do you remember telling anyone that Jason has shaved your legs?
A No.

Q You don't remember that. Okay.

Now you had stayed over Jason's and Missy's before?

A Yes.

Q And when you stayed over there before, where did you sleep?

A With Missy.

Q With Missy. Okay. Do you remember what -- do you remember if your mom asked you if he had -- you tell me -- did she ask you if he put the toothbrush in the hole where you pee? Do you remember her asking you that?

A No.

Q You don't remember? Okay.

Now, you say that you don't remember going to the hospital, right?

A Yes.

Q But you do remember -- and maybe you remember her name. Her name was Tracy. Do you remember talking to Tracy?

A Yes.

Q Well, let me ask you this: You told your mom at Walmart, right?

A Yes.

Q And who else did you tell -- and if you -- if anybody?

A We what?

Q Who else did you tell?

Well, let me ask you this: Mr. Kendall -- you told

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(Minor CROSS BY MR. MORIN)

Mr. Kendall what happened, right?

A (Nodded head up and down.)

Q And when you did, your mom was present, wasn't she?

A What?

Q Your mom was there when you told Mr. Kendall?

A Yes.

Q And you told your dad about it, right?

A Uh-huh.

Q Yes. And did you tell Ms. Leskanic? This nice lady right here; did you tell her?

A Yes.

Q All right. Now, you kind of had to talk about this a lot, haven't you?

A Yeah.

Q A lot of people have been asking you questions about it, haven't they?

A Yes.

Q Minor , have you ever seen your mom shave her legs?

A Yes.

Q And the thing that she uses to shave her legs, does it make a noise?

A No.

Q And how about Missy? Have you ever seen Missy shave her legs?

A No.

Q And have you ever seen Missy put lotion on?
A No.
Q Has Missy ever put lotion on you?
A No.
Q And how about your brothers and sisters? You ever see your mom put lotion on any of your brothers or sisters?
A No.
Q No. Okay.

MR. MORIN: May I have just a moment, Your Honor. If you'll hold on just a minute for me. Okay. That's all the questions I have. Thank you.

MR. KENDALL: I'll be real brief, Your Honor.

THE COURT: Okay.

RE-DIRECT EXAMINATION

BY MR. KENDALL:

Q Just sitting there at the table is Ms. Leskanic.

When we met in the past, was there another woman that was there with me sometimes?

A Yes.
Q All right. Take a look.

MR. KENDALL: Ms. Leskanic, if you would stand up a minute.

Q Is this the same one?
A Yes.
Q Are you sure?

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(Minor RE-DIRECT BY MR. KENDALL)

A Yes.
Q If you don't -- well, think about it hard.
A Yes.
Q I don't think you ever met Ms. Leskanic before, Minor .
Do you remember there being another woman that would come with me that had dark hair?
A Yes.
MR. KENDALL: Don't want to mislead the jury. Okay.
Q All right. Now, Mr. Morin asked you when this took place.
Did you tell your mom about it? How long after this happened did you tell your mom about it? Was it weeks later? Was it the next day? Was it...
A I think it was -- I think it was the next day.
Q And so that's how you know the dates, the next day from what it happened? Is that ---
A Yeah.
Q Minor did anybody tell you what to say or try to tell you what you had to say or what was the right answer or wrong answer?
A No.
MR. KENDALL: Nothing further, Your Honor.
MR. MORIN: I have no further questions.
THE COURT: All right. You can step down. Thank you.
(The witness left the stand.)

Just a little bit less than an hour. Why don't we take a restroom break so you can get ready for your next witness. All right. So go back to use the restroom. Be back in about ten minutes.

(The jury exited the courtroom at 2:37 p.m.)

THE COURT: Who is your next witness going to be?

MR. KENDALL: It's going to be the Children's Advocacy Center forensic interview, Your Honor.

THE COURT: Okay.

MR. KENDALL: Tricia Austin.

THE COURT: All right. Do you have the witness ready?

MR. KENDALL: Yes, sir, Your Honor.

THE COURT: Let the record reflect the defendant's in the courtroom, plus the clerk of court.

(The jury entered the courtroom at 2:49 p.m.)

THE COURT: Okay. Folks, we will resume.

The State, call your next witness.

MR. KENDALL: Your Honor, at this time, the State will call Tricia Austin.

TRICIA AUSTIN, upon first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Would you please state your name for the record.

A Yes. My name is Tricia Austin.

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Q And Ms. Austin -- were you -- not Tracy?
A No, not Tracy.
Q And, Ms. Austin, where are you currently employed?
A I conduct forensic evaluations for the Children's Advocacy Center in Spartanburg, South Carolina.
Q Okay. And, without going into the details of this case, what, generally speaking, is a forensic interview?
A A forensic interview is an objective and a child-friendly way of understanding about a child's experiences, particularly experiences that are under investigation at the time. This is done in a way that's done at a good pace for the child and that adapts to the child's developmental levels and abilities to communicate.
Q And did you conduct a forensic interview of Minor
A Yes, I did.
Q And do you recall what day that was?
A That was January the 18th of 2017.
Q And how was she referred to you?
A She was referred from the Cherokee County Sheriff's Office.
Q And do you recall how old she was at the time?
A She was four at the time.
Q And was this video audio -- or video-recorded?
A Yes. All of our interviews are both audio and

video-recorded.

(State's Exhibit 1 was marked for identification.)

Q I'm going to show you what is marked as State's Exhibit 1.

I believe we have it preloaded. This is just the case. Myself and Mr. Morin have loaded it in there. But have you had the opportunity to view it before I put it in there?

A Yes, I did.

Q Was that a fair and accurate representation of those interviews?

A Yes, it was.

MR. KENDALL: Your Honor, we would offer State's Exhibit 1 into evidence and request permission to publish at this time.

MR. MORIN: No objection.

THE COURT: All right. It's admitted in. You may publish.

(State's Exhibit 1 was played for the Court and jury.)

MR. KENDALL: Your Honor, something is going on with the computer. If we could just have a couple minutes.

THE COURT: Okay. Let me send you back to the jury room while we try to work out those audio/visual problems. And don't enter deliberations or discussions about the case.

(The jury exited the courtroom at 3:08 p.m.)

(The jury entered the courtroom at 3:18 p.m.)

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THE COURT: All right. Do you have it ready yet?

MR. KENDALL: Yes, sir, Your Honor.

THE COURT: Okay.

MR. KENDALL: I think we've got it.

(State's Exhibit 1 was played for the Court and jury.)

MR. KENDALL: I believe we placed State's Exhibit 1 into evidence. If it's not, we request it be placed in there.

No further questions, Your Honor.

THE COURT: Any cross?

MR. MORIN: I have no questions of this witness.

THE COURT: All right. You may stop down.

(The witness left the stand.)

May I have the lawyers up here for a second.

(A bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

MR. KENDALL: At this time the State will call Dana Fortner.

DANA LINDSEY FORTNER, upon first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Hi. Could you please state your full name for the record.

A It's Dana Lindsey Fortner.

(DANA FORTNER-DIRECT BY MR. KENDALL)

Q Ms. Fortner, where are you currently employed?
A I work a Valley Falls Terrace.
Q And, Ms. Fortner, what is your relationship to Minor ?
A Minor is my daughter.
Q Okay. When was she born?
A Where was she born?
Q When.
A When? Oh, [redacted]
Q And do you know Jason and Missy?
A Yes.
Q How do you know them?
A Missy is my husband's cousin and Jason is her husband.
Q And you do see him in the courtroom today?
A Yes.
Q And is he the gentleman wearing the white and gray stripped shirt?
A Yes.
Q Does your family have any biological relationship to Jason and ---
A No.
Q Okay. Prior to this all taking place, what was y'all's relationship with them?
A They would come to the house and see us and hang out with the kids and hang out with us. We'd go out to dinner, to like the Mexican place down the street -- I mean, kind of

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the same with a lot of his family.
Q How would you characterize it, just overall?
A Friendly. I mean...
Q Okay. So friendly family relationship?
A Yeah.
Q Was there anything that happened over the course around this time that changed that, outside of this?
A No.
Q Any, you know, falling out amongst family? Any divorces that are ---
A No.
Q --- causing problems? So anything just between the group that caused to everybody to have some sort of falling out at all?
A No, not at all. No.
Q No, like, great aunt that died and left a million dollars so somebody in the family was squabbling over it? Something like that?
A No, nothing.
Q And on this night of January 8th -- it was the 8th; is that ---
A Yes.
Q -- that correct? What was going on? Where were they staying?
A Well, it had snowed, and we had been in the house for a

few days and Missy volunteered to take Minor with her because Minor was getting kind of stir crazy being in the house, so she stayed at their house for the night.

Q And had you been to their house before?

A Had she been?

Q Had you been?

A Yes.

Q Do you know where it's located?

A It's on -- well, that was Quarter Round Road in Cherokee County.

Q And so it's located in what county and state?

A Cherokee County, South Carolina.

Q And could you sort of describe the residence? Are they the only ones that live there, or what's the ---

A No. I think his parents lived downstairs, and they lived in an upstairs apartment, like above the garage. We never went to his parents' house; only to theirs.

Q So it's all one house? There's ---

A Yes. They both ---

Q His family lives upstairs and downstairs, but ---

A Yes.

Q --- Jason kind of had a separate apartment upstairs?

A Yes.

Q Is that fair to characterize it? Okay. And who lived up there with him?

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(DANA FORTNER-DIRECT BY MR. KENDALL)

A Missy.
Q Do they at that time have any other children?
A No. Not anybody lived in there, just them.
Q And had they stayed over there before?
A Minor had not spent the night. She'd been over there before, but she had not spent the night. My other kids had. At one point both of them had -- my older ones.
Q Okay. All right. And so they went over there on the 8th. I'm assuming they came back, then, how many days later?
A It was the next day.
Q And who brought them home?
A Well, it was just her, and Jason brought her home.
Q And so you say "it was just her." And you're referring to Minor ?
A Yes. It was just -- it was only her that spent the night with them.
Q All right. And what happened when he brought Minor home?
A Well, it was strange for him to be bringing her home, because usually it was Missy. That was kind of our understanding, you know, but I just always wanted to know when she was not with them, that, you know, Missy was with her just because she's family, and I just, you know...
So he was just -- it was strange that he brought her

home. And then he came and wanted to take her back to the laundry room. And she was only gone one night. My daughter packed -- my oldest daughter packed her bag, packed up all her clothes. She just always over-packs. He said everything was dirty and he give me two pair of pants and insisted on taking it to the laundry room, which was fine, and he took that. And then he came in the living room -- out from the laundry, went into the living room, kind of stood against the TV stand, and was just -- started talking about what if something happened to him and his health isn't good and he needed to go to Charleston and see his doctor, if something happened to him, then what would happen to Missy and she couldn't pay the bills. And he got really emotional and started crying, which was strange, but ---

Q Did you do anything to elicit this?

A No. It was just strange. You know, I was feeding the baby during -- at the time. My 3-year-old was, what? One -- or not even one. And so I was feeding him. I just thought it was weird. I mean, I listened to him. You know, any time -- I just listen. I just thought it was weird.

Q Okay. So this wasn't something you elicited? You weren't, you know ---

A No, no, no.

Q --- asking about this? He just sort of came back, wanting to drop the clothes off, and then started kind of

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breaking down, crying?
A Yeah. Just started talking about what if something happened to him and how would -- you know. And I was just like, well, I guess you need to try to get in touch with your doctor, and just trying to reassure him, you know. But he was just emotional.
Q Did he indicate at all what they'd done the night before?
A He said she stayed up late and he stayed up with her.
Q Did he allude to any behavioral problems or anything like that?
A No. Just that she wouldn't go to sleep.
Q Okay. And he said they stayed up and he stayed up with her?
A Yeah. He said that.
Q While this was going on, was Missy employed?
A Yes.
Q And do you have any idea if she worked the next day?
A She was at work. That's why he brought her home is what he said.
Q Okay.
A Yes. Because that's what I asked. Because normally Missy drove and not him, so I just wondered why.
Q And so what happened after Minor came home? Where did you all go?

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A We had been in the house for a few days. I'm not comfortable driving in the snow or ice. So the roads were finally clearing up, and I took the kids to Wade's to eat. Because we just needed to get out of the house. So the four kids and I went to Wade's, and then we went to Walmart. And I don't remember what we went there for, but we went to get some stuff. And then we went to the bathroom. I had to go, and she went in a separate stall.

Q Okay. And without going into ---

A Yes.

Q --- what happened, did she tell you that something had occurred of a sexual nature?

A Yes.

Q Did she tell you when and where that took place?

A Yes.

Q And where and when did that take place?

A At Missy and Jason's house the night before.

Q And this was on January 9th, when she told you this?

A Yes.

Q Okay. Following that, what did you all do?

A What did we -- what did I do?

Q Yeah.

A Well, she had knocked on the stall and asked to come in, and then that's when she told me ---

Q And after that, did you all call the police or anything

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like that?
A Well, we were -- I called my husband and I called Missy and had her meet me and my husband at the house. And then I called the police once we got there. And I didn't -- I mean, there's not -- nobody tells you what to do. So I didn't really know. So I went outside in the snow. I remember the snow and my feet. And I called the police.
Q So Missy was aware that this happened ---
A Yeah.
Q --- the next day?
A Because I was just trying to clarify what was going on, you know.
Q Okay. And once you called the police, what did they tell you to do?
A They told me to have her go home. The police officer told me to have her go home, you know, not to -- no more contact with her, since she was his wife. And then to take Minor to the hospital.
Q And did you take her to the hospital?
A I did. I took her to Spartanburg Regional.
Q And what happened at Spartanburg Regional?
A They did a rape kit.
Q And subsequent to this, did you take her anywhere? The Children's Advocacy Center?
A Before?

Q No, no. After.
A After. I took her to the Children's Advocacy Center, I think, the next week.
Q And you've been with your daughter through our meetings and things like that? Is that fair to say?
A Yes, yes.
Q And just to clarify something, Ms. Leskanic wasn't there; is that ---
A No, no.
Q She works in our office. We have a small office. She's been around, but she didn't actually sit through any of the meetings?
A No, no.
Q I'm going to show you some other things that will kind of come up later.
A Okay.
MR. KENDALL: Could you mark these as State's Exhibits 2, 3, and 4.
(State's Exhibit 2, 3, and 4 were marked for identification.)
Q I'm going to show you what is marked as State's Exhibit 2. Do you recognize these?
A Yes.
Q And what are these?
A Those are Minor 's panties.

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(DANA FORTNER-DIRECT BY MR. KENDALL)

Q Okay.
A They have the shiny liner. We had two pair like that.
Q A shiny liner?
A Yeah, yeah. But different from any I've ever seen.
Q And State's Exhibit 3. You recognize that?
A Yes. Those also are hers.
Q And State's Exhibit 4.
A Yes. Those are hers -- her panties.
MR. KENDALL: Your Honor, we would offer State's Exhibits 2 through 4 into evidence at this time.
MR. MORIN: No objection.
THE COURT: They're admitted.
MR. KENDALL: And we will publish those at the appropriate time.
Q When you went over to Jason's -- you'd been to Jason's in the past, correct?
A Yes.
Q Would he have anything, I'll say, out of the ordinary there, as far as security-type stuff?
A He had a security system because he said that you could login and see. You know, he would show us things on his phone all the time and said you could login and see what's going on at his house.
Q So is there cameras or is there a surveyla- ---
A Yeah, cameras. And login and see who's pulling in the

driveway and all that stuff.

Q All right. Were they outside or inside as well?

A Both; outside and inside.

MR. KENDALL: Please answer any questions that Mr. Morin has.

CROSS-EXAMINATION

BY MR. MORIN:

Q Ma'am, did I understand that this is the first time that Minor spent the night there?

A Yes, it's the first time.

Q And you said some of your other children have spent the night there?

A Yes. From what I remember Maggie once and Logan once.

Q How old was Maggie then?

A Well, she's 14 now, so she would have been 11.

Q Okay. And she's the one that packed the bag; is that correct?

A Yes. She's my organizer.

Q Now, the bag that he came and, you say, he took into the laundry room, did you ever wash those clothes?

A No. They were still in the bag, in the laundry room. I didn't -- our laundry room is small. Stuff gets thrown in there. And I just -- he set it in there, and I left it. I didn't mess with it.

Q And did you do anything else with it?

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A No.
Q Did you ever take it to law enforcement?
A When I -- I did. I did, eventually.
Q Okay.
A I talked to them and they took it, because -- when I realized it was still there. But the clothes that she had on ---
Q Right.
A --- those went to the hospital.
Q Yeah. That was -- I understand.
A But that -- I just called them and said I have this bag. I didn't realize it was still there, and I did. They met me, and they took it.
Q Now, when you were at Walmart and she told you this, what was her demeanor?
A Oh, she -- at first, she was just -- I was asking, you know, I've missed you and tell me what you've done and what's this -- she had stuff on her -- red stuff on her fingers, and I was asking what that was. And then when she said about what happened, you know, I kind of had looked down on my shoes. And that's one of those moments where your feet hit the floor. And I looked up, and I said, "What did you say?" And, you know, she has a really strong personality, and she backed into the corner and did this -- and it was like "Nothing. It's okay mama. It's nothing."

You know, and then I tried to stimulate her to tell me and when she told me again -- but she was afraid that I guess I was mad at her and ---

Q Right.

A --- she was going to be in trouble.

Q Well, do you remember telling the police that she was just hopping and skipping along and you were trying to keep her from becoming upset?

A When?

Q When you wrote the statement that you gave to law enforcement.

A I read the statement. I know what I gave.

Q Right.

A Spent four hours writing it.

Q Yeah. It's long. But do you remember writing that her attitude was ---

A She was fine when we came out of the stall.

Q Sure.

A She was hopping and her normal self.

Q Okay.

A But when I asked her a second time and she saw my face change, it scared her.

Q I see. And ---

A Because she said that -- she was told she'd be in trouble if she told, so...

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Q Right. And then -- correct me if I'm wrong -- but then there was another conversation at your house with your husband present and Missy present ---

A Yes.

Q --- and it was brought up again.

A Yes.

Q And, again, we just basically see the same child -- I think we saw in the video, where she's kind of -- she's 4 and ---

A And she was a little more focused. I mean, even in the bathroom, she was a little more focused. But she was just trying to explain to us what happened.

Q All right.

A You know, and then we just told her to go back to her room. We won't talk about it anymore.

Q Now, two things: I asked her if she had told anybody about shaving her legs. Did she tell you that he had shaved her legs?

A Yes.

Q Okay. And I asked her if she had told you or if you had asked her if anybody put her -- put anything in -- or if he put anything in -- and you used the word "pee pee hole."

A Just in her private area.

Q Right. Private area. And she denied that, didn't she? You did ask?

A I did ask her.
Q And she denied it?
A And she didn't know, yeah. She didn't. I mean, she didn't really understand what I'm asking. You know, I just tried to -- because at first, when she first started telling me, she was trying to show me, you know.
Q Okay.
A Yeah.
Q Now, this was -- it was snowing around this time?
A It had been snowing. It was icy. It wasn't as much snow as it was ice. Because I wouldn't let them go outside and play. That's why they were frustrated.
Q Okay. And Minor came home on the 9th, and then it was a few days after that that this happened. I don't know. I didn't hear that correct.
A No. It happened the same day.
Q Same day. Okay.
A She told me within three hours.
Q All right. So I was trying to follow the snow ---
A No.
Q --- and that. Okay.
A And she told me -- because it -- I don't drive on ice, and the weather had finally cleared up. And I -- but I felt safe enough to take them, get them out of the house, took them to Wade's. We ate, then we went to Walmart because we

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needed stuff. We'd been in the house a few days.
Q All right. Now Jason's health is not good, is it?
A It's not great, no. But he -- he's also worked in my yard all day long on cars.
Q I understand. But he did have some health issues?
A Uh-huh.
Q And he did have to go to see doctors about that?
A Yeah.
MR. MORIN: That's all the questions I have of this witness, Your Honor.
THE COURT: Re-direct?
MR. KENDALL: I actually need to go approach on something real fast, Your Honor.
MR. MORIN: May we approach, Your Honor.
THE COURT: Yes.
(A bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

RE-DIRECT EXAMINATION

BY MR. KENDALL:
Q Ms. Fortner, I'll be very brief. I just wanted to clear something up, because it was a bit confusing.
In your conversation with Minor about what had happened, did she indicate if anybody had had -- what was the nature of the inappropriate touching that she told you?
A It was the front of our nu-nu and the back of her

nu-nu.

Q Okay.

A He showed her the front and the back.

Q So you did indicate that somebody did touch the front and the back ---

A Yeah.

Q --- of her nu-nu; is that correct?

A And he told her this is your front; this is your back.

Q All right. So she didn't -- did she deny that there was any touching?

A No. She said he touched her in her nu-nu.

MR. MORIN: Okay. Nothing further.

THE COURT: Re-cross?

MR. MORIN: No, sir.

(The witness left the stand.)

THE COURT: All right. Okay. Folks, I think this is where we will break for the afternoon. So I'm sending you home. Don't forget no deliberations or discussions with anybody, including other members of the jury panel.

If you go home, when you talk to people, first thing they will ask is did you get picked, if you haven't already talked to them. If they asked if you got picked, you can say "Yes, I did. It's a criminal sexual conduct case, and that's all the judge said that I was allowed to talk to you about." Again, as soon as you start saying anything, people

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are going to want to know more. And then they are going to give you their comments on it. And, again, it's completely inappropriate. It's not fair to the parties. They're entitled to a fair trial. And it's based on what you hear in here. So don't talk to anybody about the case. Don't post anything on social media. And if anybody does approach you about the case, please report that first thing in the morning.

Which we will start back up at 9:30 a.m. So if you could be back in here a little bit before 9:30, we should be able to get started and hopefully get all the rest of the evidence in tomorrow. Okay? See you tomorrow.

(The jury exited the courtroom at 4:00 p.m.)

THE COURT: Okay. The clerk's got a copy of some proposed jury instructions. I'll have my law clerk draw up an email in the afternoon for you to take. Some of them may or may not apply, depending on what comes in. Take them home, look at them, and if there's something that you want to add, bring that with you tomorrow morning. And if y'all want to meet back at 9:15 a.m. in the morning, we'll handle anything that comes up.

Otherwise, madame clerk, we'll be sure to be here at 9:30 a.m.

MR. KENDALL: Thank you, Judge. Can I just say every time we do these trials that they always say that we don't

know what you guys said at the bench. I could just very briefly kind of explain it for the record.

THE COURT: Oh, absolutely. I'm sorry.

MR. KENDALL: We had a brief conversation at the bench regarding the testimony of what she said Minor told her about what Jason said. I approached because I was concerned because of, quite frankly, case law and bolstering and stuff like that. We had a conversation. There was kind of some question about how -- what she said, and we kind of all agreed it would be okay on a very limited scope to address that. And that's what we did. I just wanted to complete the record, because they -- as I said, they always get on us about that.

THE COURT: Anything you wanted to add to that?

MR. KENDALL: No, sir.

(On Wednesday, January 8, 2020, at 4:02 p.m., court was recessed until Thursday, January 9, 2020, at 9:30 a.m., and after such recess, the following proceedings were had before the Court and jury:)

THE COURT: We will bring the jury in.

(The jury enters the courtroom at 9:35 a.m.)

THE COURT: All right. Folks, welcome back. Juror Zachary Whisonant -- I'm not sure how to pronounce that -- anyway, called in with food poisoning, so he will not be returning. And so that makes Mr. Tate -- which of you is

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Mr. Tate? Okay. You are now a regular juror. You are no longer the alternate. Okay?

All right. We are going to proceed now with the State calling the next witness.

MR. KENDALL: Your Honor, at this time the State would call Jacob Mullinax.

JACOB MULLINAX, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Mr. Mullinax, could you please state your name for the record.

A Yes, sir. It's Jacob Mullinax.

Q Mr. Mullinax, and where are you currently employed?

A I'm currently employed with the Cherokee County Sheriff's Office.

Q And how long have you worked there?

A I've been at the sheriff's office about four and half years.

Q And what are your responsibilities at the sheriff's office?

A I am a crime scene investigator.

Q And what do you do as a crime scene investigator?

A We respond out to scenes and collect evidence and process scenes for any evidence that may need to be

collected.
Q And did you do a search warrant on the residence of Jason Simmons on, I believe, January 20th, 2017?
A Yes, sir, I did.
Q And who was with you when you executed this search warrant?
A At the time of this search warrant, Detective Billy Anthony was with me, as well as Detective Richard Burgess, and Captain Daniel Ward.
Q Okay. I'm going to show you ---
MR. KENDALL: I need these marked. I'm sorry.
(State's Exhibits 5 through 10 were marked for identification.)
Q --- State's Exhibits 5, 6, 7, 8, 9, and 10. If you could take a look through these and let me know if you recognize these.
A Yes, sir. These are pictures obtained during the execution of a search warrant.
Q And how do you recognize those?
A As far as?
Q How do you recognize them?
A Oh, I obtained those photographs.
Q Okay. Are those a fair and accurate representation of Mr. Simmons' home on or about January 20th, 2017?
A Yes, sir.

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(JACOB MULLINAX-DIRECT BY MR. KENDALL)

MR. KENDALL: Your Honor, we would offer State's Exhibits.

MR. MORIN: Thank you. Have a moment to see them, Your Honor. No objection.

THE COURT: Admitted.

MR. KENDALL: At this time we would request permission to publish, Your Honor.

THE COURT: You may.

Q All right. Detective Mullinax, what is this?

A This is the exterior of the residence, leading up to the living area that was identified as belonging to Mr. Simmons.

Q And what is this, if you can sort of explain it to the jury? If you can just step down.

(The witness left the stand and went to the screen.)

A Yes, sir, if you don't mind.

That is one of the interior rooms of the residence.

Q Okay. And this is State's Exhibit 6.

And if you could identify State's Exhibit 7.

A Yes, sir. That is another interior room of the residence; the living room area.

Q All right. And off of that -- can you identify where the bedroom would be off of that?

A Yes, sir. If you're looking at the picture where the television is, the bedroom, it's that doorway that's

directly behind it.
Q And are there any other doorways in this room?
A In this particular photograph, where the couch is, you see the -- there's a coatrack, back -- at the back -- the right corner of the room. There is a small doorway that leads into an attic-type area there.
Q Okay. And then State's Exhibit 8.
A That is just a different view of the living room area.
Q All right. And State's Exhibit 9.
A That appears to be a picture of the -- in kitchen area, leading into the bathroom, which leads into a bedroom.
Q Okay. If you would have a seat.
(The witness returned to the stand.)
A Yes, sir.
(State's Exhibits 11 through 14 were marked for identification.)
Q Now I'm going to show you State's Exhibits 10 through 14. If you would take a look at these.
Do you recognize those?
A Yes. These are photographs that I obtained inside the residence.
Q All right. Is that a fair and accurate representation of what you obtained inside the residence?
A Yes, sir.
MR. KENDALL: All right. We would offer

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Exhibits 10, 11, 12, 13, and 14 into evidence at this time.

THE COURT: Without objection and admitted.

MR. KENDALL: And request permission to publish these to the jury.

THE COURT: You may.

Q Could you please explain to the jury what this is.

A Yes, sir. That is the doorway that was previously viewed in the picture of the interior of the living room of the residence, the small doorway that leads into the attic area.

Q All right. And on State's Exhibit 11, what is this?

A Do you mind if I step down, sir?

Q No, not at all, if it's all right with the Court.

(The witness left the stand and went to the screen.)

A Sir, that is inside of the attic area. You see the insulation there.

Q And what is this back here? Are you able to tell?

A Yes, sir. That was observed to be a pair of -- a small pair of underwear.

Q And State's Exhibit 12.

A Again, inside of that same area, a pair of what's identified as children's underwear.

Q All right. Was it just one pair or are there multiple pairs?

A There were multiple pairs found in there, sir.

Q Okay. And State's Exhibit 13.
A And more pictures of the underwear that was found inside the attic area.
Q And then, subsequently, State's Exhibit 14.
A These were the underwear after they were recovered from inside of the attic area; that were brought out to be photographed; that showed what was located in there.
Q Could you go ahead and have a seat.
(The witness returned to the stand.)
I am now going to show you what have previously been marked States Exhibit's 2, 3, and 4, that had been previously submitted into evidence.
A Yes, sir.
Q You need a glove. Could you please take a look at those. And what were those?
A Those were the underwear that were collected from inside the attic area of the residence.
Q And those were previously identified as Minor 's; is that correct in Court yesterday?
A Yes, sir. That's correct.
Q At this time would you go ahead and show those to the jury?
A Sure.
(The witness left the stand and went to the jury box.)
THE WITNESS: Your Honor?

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(JACOB MULLINAX-DIRECT BY MR. KENDALL)

THE COURT: You may.

(The exhibits were handed to the jury)

A This is one pair here. This is size 4T. This was the second pair. Those were Faded Glory, size 6. And these were Berry size 4T.

Q So to be clear: The underwear that was found in the attic, are those the ones that were photographed today?

A Yes, sir.

Q Those are the same underwear as from the photograph that were found in the attic?

A Yes, sir. Yes, sir. That's correct.

Q And previously identified as Minor 's?

A Yes, sir.

(State's Exhibits 15, 16 were marked for identification.)

Q I'm going to show you what is marked State's Exhibits -- at this time, I'm going to show what is marked State's Exhibits 15 and 16.

Could you identify what those are?

A Yes, sir.

Q And what are those?

A The first photograph here is of a desk area where a -- the surveillance system was set up. And the second photo is the interior of the box for the recorder.

MR. KENDALL: Your Honor, at this time we would offer

State's Exhibits of 15 and 16 into evidence?

MR. MORIN: No objection.

THE COURT: Admitted.

MR. KENDALL: And request permission to published.

THE COURT: You may.

Q So what is this?

A That is the area where the surveillance system was set up in the living room area of the residence.

Q All right. And over the course of your search warrant, were you able to find the hardware for that?

A Yes, sir. The box that was -- that everything was running from? Yeah.

Q I'm going to show you what is marked State's Exhibit 16.

A Yes, sir.

Q What is that?

A That is the interior of the box of the surveillance system. The -- I guess it would be the control box.

Q All right. And was anything missing from the interior of that control box?

A It appeared from the -- from being able to look at it that there was something missing from the right side of it. There was a cord that was not -- that did not appear to be a hooked up, and that is usually where the hard drive is for the system.

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(State's Exhibits 17, 18 was marked for identification.)
Q All right. And I'm going to show you State's Exhibit 17. If you would take a look at that.
A Yes, sir.
Q And what is that?
A This is the control box for the surveillance video system.
Q And if you could step down and sort of show the jury the interior of that. And where would the hard drive typically go?
A It would typically go in this area.
Q And what does a hard drive do, just generally speaking?
A Just records the data. That's where they're recorded.
Q That's where things are stored. Is that fair to say?
A Yes, sir, that would be fair to say.
Q And on this model -- or on this date, that hard drive was not there; is that accurate?
A That's correct, sir.
Q So you were not able to recover any of the recordings off the hard drive of what took place; is that fair?
A Yes, sir, that would be fair to say.
Q Okay. All right. I am now going to show you State's Exhibit 18.
Do you recognize this?
A Yes, sir. This was taken inside the residence.

Q And what is that?
A It's a photograph of a shelf. Inside the residence, it has different things on a shelf, including a -- what appears to be some type of a chocolate bunny.
MR. KENDALL: All right. We would offer State's Exhibit 18 into evidence.
MR. MORIN: No objection.
THE COURT: Admitted.
Q Now, over the course of this search, was there anything you were looking for specifically?
A As far as?
Q Any items had been mentioned that you all were curious about?
A Yes. We were looking for any type of recording device or any type of evidence of a sexual assault.
Q Okay. Had you heard word yet of the toothbrush -- the allegation of the toothbrush?
A I had. In preparing for the search warrant, I had been told that there was a possibility of a toothbrush, yes, sir.
Q Okay. And did you all look for that?
A Yes, sir, we did.
Q Were you able to locate an electric toothbrush anywhere inside the residence?
A No, sir, we were not.
Q Was that an item you were specifically looking for?

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A Yes, sir.

(State's Exhibits 19, 20, and 21 were marked for identification.

Q Okay. I'm going to show you what is marked items 19 through 21. And what are those?

A Those are photographs of the bathroom counter and the drawers there in the residence.

Q And those are a fair and accurate representation of what you found?

A Yes, sir.

MR. KENDALL: Your Honor, at this time we would offer 19, 20 and 21 into evidence.

MR. MORIN: No objection.

THE COURT: Admitted.

Q And what is this?

A That is the right side of the bathroom counter and the sink.

Q And what is this?

A And that is just a drawer that was there as part of the vanity in the bathroom.

Q And what is this?

A That would be the other side of the countertop there for the sink.

Q And what is that thing up in the -- where the toothbrushes are stacked? Is that an electric toothbrush?

A It appears to be some type of flosser or something in that -- I'm not real familiar ---

Q A WaterPik?

A Yeah. Yes, sir. Some -- I'm not really familiar with it, but that is what it appears to be, yes, sir.

Q So nowhere in the home did you all collect an electric toothbrush. Is that fair to say?

A That's fair to say, yes, sir. That's correct.

(State's Exhibit 22, 23, 24 were marked for identification.)

Q I'm going to show you what's been marked as State's 22 through 24. And what are those?

A Those are photographs of different lotions and scented items, hygiene items that were located in the bathroom of the residence.

Q And are some of these strawberry in nature?

A Yes, sir.

MR. KENDALL: We would offer State's 22 through 24 into evidence.

MR. MORIN: No objection.

THE COURT: Admitted.

Q And would you recall where this was taken?

A Yes, sir. That was taken in the bathroom, again, right there at the sink area. There was a cabinet that was elevated above the sink.

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Q And what is that?
A That is some type of -- I can't tell from the photograph -- body wash or lotion that was strawberry scented.
Q And State's Exhibit 24?
A Is a spray that is strawberry scented.
Q So there were strawberry things in the house. Is that fair to say?
A Yes, sir.
(State's Exhibit 25 was marked for identification.)
Q I'm also going to show you what is marked State's Exhibit 25. Do you recognize this?
A Yes, sir. This is one of the flash drives that was recovered from the residence?
Q Do you recall where it was recovered?
A If I could refer to my notes for just a second, sir.
That particular flash drive was located on the entertainment center in the living room of the residence.
Q And I would offer State's Exhibit -- does this appear to be the same flash drive?
A Yes, sir.
MR. KENDALL: We would offer State's Exhibit 25 into evidence.
MR. MORIN: No objection.
THE COURT: Admitted.

Q And with the exception of this flash drive, did you all discover any recordings, anything else from that video system?
A No, sir, not that I'm aware of.
Q Okay. So the only thing he had was -- and this was not in the video system; is that correct?
A That's correct, sir.
Q So this was burned separately, conceivably?
MR. MORIN: Objection calls for speculation.
MR. KENDALL: I'll reword, Your Honor.
Q This wasn't in any way attached to that system; is that correct?
A No, sir, it was not attached.
Q This was something that was stored separately?
A Yes, sir.
Q And did this appear to be hooked up to the Internet in any way or is it just a drive sort of sitting by itself or sitting with other stuff?
A To the best of my recollection, it was just there on the entertainment center, yes, sir.
Q And is this like an internet-capable thing, or is this just a storage device?
A A storage device.
Q When you all found the camera system, like on the camera system itself, that hard drive, were you able to

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extract any data whatsoever from that?
A From the box that was collected there?
Q Yeah. Did you know any way to do that?
A I did not, sir.
Q But no information could be or was extracted straight from that, correct?
A To the best of my knowledge, no, sir, there was not.
Q What do you typically get the information off of when you're doing these things?
A As far as the...
Q Well, where is the information typically stored?
A It would be stored on a hard drive.
Q And that was missing in this case?
A Yes, sir.
MR. KENDALL: And just -- I believe I've already admitted them, but if not, we admit all State's 1 through 25 at this point. I believe they're all admitted.
THE COURT: I think everything was admitted.
MR. MORIN: I think so.
THE COURT: If not, it is.
Q When you -- since this happened, once you took all this evidence into custody, what do you do with it?
A Once all the evidence is taken into custody, it's taken to the Cherokee County Sheriff's Office and stored in the evidence vault there at the sheriff's office.

Q And who has access to that?
A Our evidence custodian is Billy Anthony.
Q Did you all collect any communications devices from him?
A I believe -- if I can reference my notes for just a second -- yes, sir. There was a Samsung smartphone that was collected as part of the search warrant.
Q Were you ever able to get into that in any way?
A Not to my knowledge, sir. I would not be the one that would do that.

MR. KENDALL: Please answer the questions Mr. Morin may have.

CROSS-EXAMINATION

BY MR. MORIN:

Q Mr. Mullinax, I think you mentioned that once you took all these things, you put them in the evidence and that was the end of your involvement in this; is that correct?
A As far as the evidence?
Q Yes.
A Yes. Yes, sir.
Q This was the first time that you had been in this house; is that correct?
A Yes, sir. That's correct.
Q And it was the first time that you saw this computer equipment; is that correct?

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(JACOB MULLINAX-CROSS BY MR. MORIN)

A Yes, sir. That would be correct.
Q So you don't know how long the computer equipment was in that condition, do you?
A No, sir.
Q You didn't move anything when you took these pictures, did you?
A I'm not sure which pictures you would be referring to, sir.
Q Well, when you took the pictures inside the house that we have seen -- 8. I mean, you tell me, how long have you been doing evidence --
A I've been in crime scene for four years.
Q Four years. Okay.
A Yes.
Q Well, I'm just going to give you 6 -- 5, 6, 7, and 8. Just if you will look at those.
A Yes, sir. Yes, sir.
Q Now, in your training and experience in doing crime scene investigation, do you take pictures as you find them? Or do you move things around and then take the picture?
A We take pictures as we find them. When I first went into the residence, I took overalls of the entire residence to get an accurate representation of the residence as I saw it.
Q And then after you did that, did you manipulate or move

anything and then take pictures?
A Yes, sir.
Q And what did you do?
A As far as?
Q What did you move?
A I would have to go back to my pictures to be able to...
Q I'm also giving you -- all right -- so let me -- so we can have the record clear, 5, 6, 7, 8, 9. Excuse me for a moment. The pictures, I want to get in the order that they came. I've got 5, 6, 7, 8 and then 9, 18, 19, 20, 21, 22, 23, 24. I'll hand you the house. And if you'll just hold on just a second because I'm not sure about these two. And then 15 and 16 -- couldn't read the handwriting on there.

So if you will look and you tell me on each one of them -- if you will look at each one. And the ones where you've taken something after you've moved stuff, if you could tell me what those are and which photographs you've moved and then took another picture.
A Okay. Sir, from the photographs themselves, it appears that these are. However, because they're not time stamped on the photograph, I cannot say for sure whether these were taken before or after.
Q But they may have been moved -- things may have been moved and then the picture taken?
A Yes, sir. That's correct.

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Q Okay. And when you went out there, there was a search warrant that said we're looking for some lotion bottles; is that correct?
A I'm not sure exactly. I would have to look at the search warrant again to be able to tell you exactly what were on the search warrants.
Q Well, I don't want to step out of bounds.
Did you do the inventory of it or the search warrant, or were you just there collecting as you went? Because it's different --
A Well, I executed the search warrant, and then the return was completed by me.
Q Okay. And do you have a copy of that in your file?
A I do not have one with me, sir.
MR. MORIN: For identification purposes. May I approach?
THE COURT: Yes.
(Defendant's Exhibit 1 and 2 were marked for identification only.)
Q I'm going to show you what's been marked for identification as Defendant's 1 and 2 and ask if this refreshes your memory about -- or if this document -- these documents refresh your memory about serving the search warrant, what were you looking for, and what you collected.
A Yes, sir.

Q All right. And in the search that you executed, you were looking for those bottles; is that correct?
A Yes, sir.
Q Did you collect those bottles?
A No, sir, we did not.
Q So the ones that you moved and took pictures of, can we just talk about those for a moment.
A Sure.
MR. MORIN: I guess what I -- if the Court would permit me -- I'd just have him come down and he can post it and tell us what he's moved. Is that all right?
THE COURT: Tell us what?
MR. MORIN: Rather than me come over here, if he -- I want him to publish and explain to the jury the things that were moved and what he took pictures of.
THE COURT: Okay.
MR. MORIN: And I think that might be the most efficient way.
THE COURT: All right.
(The witness left the stand and stepped over to the screen.)
Q Okay. So just the ones that have moved items.
A Okay.
Q So we don't need the ones unmoved.
A This -- this photograph here, as previously stated, I

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don't know whether this was taken before or after -- there was another photograph where the bunny was laying down. I'm not sure because of the timestamps that are being -- missing from these still photographs that were printed, whether that was moved. But things were moved on that -- on that shelf.

Q That's 18.

A Yes, sir.

Q This photograph here -- what appears to have been moved here, again, it's either before or after. There were some items on the -- if you will look right here. This is the countertop for the bathroom sink, and there was things that had been moved from other photographs. In this photograph here: This is State's Exhibit 23. This is a -- I was holding one of the bottles to take a photograph of it.

Q Okay. That's your hand.

A Yes, sir. This is State's Exhibit 24. This was me holding the bottle of spray. And then this photograph is of the DVR system, and I'm not sure who is holding it.

Q Right. It's after you took the cover off.

A If -- I cannot recall completely, but the cover may have already been off. I would have to look at more photographs.

Q Okay. So the only thing we know is somebody is holding -- it might be you -- but that's what -- that's been moved, obviously ---

A Yes.
Q --- because you're holding it?
A Yes, sir.
Q Okay. Thank you. When you collected the evidence and put it into the evidence the vault, all that we've seen you've testified to as having -- that you collected, was anything -- was it packaged this way and simply put into a -- into the vault? There wasn't anything else done to it? You collected it. You're wearing blue gloves, right?
A Yes.
Q Just like you are today, and you put it into those things and you put it into the vault?
A Yes, sir. It's ---
Q And the vault -- excuse me. I didn't mean to cut you off.

The vault is not temperature controlled or -- I mean, is it connected to the sheriff's office in a way that the air condition would affect what's in it or not or what?
A It is in a climate-controlled environment, yes, sir, downstairs.
Q Okay. And you put that stuff into evidence. Other than getting ready to come to court today, was there anything else you did or -- with this evidence?
A Not that I can recall, with this evidence.

MR. MORIN: That's all the questions I have,

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Your Honor.

RE-DIRECT EXAMINATION

BY MR. KENDALL:

Q When you were photographing the crime scene, could you very briefly describe for the jury how you do that? Like, what your procedure is in actually photographing the scene?

A Yes, sir. Anytime we go into a scene, we always try to take overall photographs of the scene to get an accurate representation of the scene as we found it, without moving anything, to be able to show what the scene was when we arrived on scene. Once we get those overalls, we begin our investigation, as we go on through, collecting evidence, marking evidence, things of that nature. We get photographs of the evidence as we're collecting it.

Q Okay. And do you just photograph the stuff you think is important?

A No, sir. We try to get a full picture of everything that's inside of the scene to, again, give an accurate representation of the scene itself.

Q Okay. So in this case, these were all the pictures that got taken at the scene?

A No, sir. At any given scene, I mean, there could be hundreds of photographs.

Q And at any time of this, did you add stuff into the mix? In other words, did you bring the chocolate bunny

yourselves or anything like that?
A No, sir.
Q So when you said you moved stuff, why are you doing that?
A To examine it, to see -- to see if there's anything that I need to see on it, whether I need to read it, you know, to see what it is or to get a closer picture of it to get the camera in focus.
Q And do you do that before or after you take the overall picture of things?
A That is after, sir.
Q So, for example, we come in court, you can be asked about what got moved. Is that fair to say?
A Yes, sir.
Q So you initially preserve it, and then you all look at it and see what's important; is that...
A Yes, sir.
Q And this case, it was actually a search warrant as well, so you actually are actively searching the house; is that ---
A Correct. Yes, sir.
MR. KENDALL: Nothing further, Your Honor.
MR. MORIN: Nothing. Thank you, sir.
THE COURT: You may step down. Next witness.
(Witness left the stand.)

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MR. KENDALL: At this time the State will call Daniel Ward.

DANIEL WARD, upon first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Could you please state your name and rank for the record.

A Sure. Captain Daniel Ward.

Q And, Captain Ward, how long have you been with the Cherokee County Sheriff's Office?

A Twenty-two years.

Q And what is your current position with the sheriff's office.

A Captain, criminal investigation division.

Q And so what sort of things do you do as a captain of criminal investigations?

A Assign cases, oversee the workload, assist when necessary in cases. I take a call week like everybody else.

Q And did you assist in the case against Jason Simmons?

A I did.

Q And a search warrant was conducted at his house on January 20th. Were you present for that search warrant?

A I was.

Q And could you please describe to the jury what happened

as you went in the home. Who was present inside the home when you got there?

A Jason, myself, and the other guys, and Jason.

Q And what happened immediately as you came into the home?

A We announced what we were there for and Detective Mullinax explained the warrant and mirandized Jason.

Q Okay. And did Jason provide you anything or give you anything?

A He did. He came forward with a flash drive, a thumb drive ---

Q Okay.

A --- that he said was proof of him sleeping all night during the night of the incidence, best of my memory.

Q And did you watch it right then?

A No, sir.

Q And why not?

A Well, because in cases like this, there are devices that are used to -- I mean, he could have downloaded a malicious program to our equipment, or it could have immediately erased itself.

Q Is this something you all saved?

A Yes, sir.

Q And I'm going to show you what is marked

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State's Exhibit 25. Do you recognize that?
A That is a flash drive.
Q Does that appear to be the one that he -- was there?
A I honestly can't remember exactly what it looked like.
Q Have you had a chance to watch the flash drive?
A Uh-huh.
Q And what was on that?
A There's video -- there are actually three videos on it.
Q Okay.
A Videos of Jason sleeping throughout the night. There is -- one of the copies -- they all have the same date and times -- similar, at least. One of those videos is of Jason laying on the chair in the living room, I believe, with a camera pointing at him, sleeping all night. There is another one that is very similar, except for the fact in the beginning it shows Jason walk to the camera, make sure that the camera's pointing at where he's sleeping, lay down, and then play all through the night. And then I think on that video was the one where the next morning he gets up, he walks to it, and then you see the time change -- or the date actually change on that video.
Q I see. And we'll publish this in a second.
Did you all -- were you able to, while you were out there, examine the hard drive as well?
A I saw it. Yes, sir.

Q Not that hard drive; the recording device.
A The recording device. Yes, sir.
Q That's State's Exhibit 17.
A That's correct.
Q And what condition did that appear in?
A You could tell that it had been -- I'll be honest, I don't remember. Just like Jacob, I'd have to see the photos. But you could tell that it had appeared to have been opened. But matter of fact, I think it was currently open and the hard drive missing from it. Upon further inspection, we saw that the screws that used to hold the hard drive had been removed.
Q So the screws had been removed as well, that kept the hard drive in there?
A That's correct.
Q And did he indicate where he got this hard drive -- or excuse me -- where he got this information from if the hard drive was gone?
A From the Revo America cloud, stored on the cloud.
Q Were you able to determine if Revo America offered a cloud service at the time?
A I did my best. I tried to -- I called Revo America. They put me in contact with a technician.
MR. MORIN: Objection. Hearsay.
THE COURT: Well, he hadn't said what anybody's going

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to say yet.
Q At any point in time, were you able, through your research, to determine if Revo offered a cloud service at that time?
A Revo -- I was told that Revo America ---
MR. MORIN: Objection. Hearsay.
THE COURT: Sustained.
Q Okay. Without going into what anybody else told, were you able to find a cloud service offered by Revo?
A No, sir.
Q Did you attempt to do that?
A Yes, sir.
Q And why did you attempt to do that?
A I attempted to do that because it was my intent to serve a search warrant to the cloud and get any data that we weren't able to collect from the hard drive that was missing.
Q But you weren't able to do that because you never find where a cloud service ever was?
A That's correct.
Q I'm going to show you what's been previously entered as State's Exhibit 25. You had the opportunity to look at this, correct?
A I have, yes, sir.
Q And this is what was -- consisted, which was provided

to you all that day?

A Yes, sir.

Q Now, I'm going to show you first clip dated 1/11/2007 [sic] 093409. Before I go all the way into that, can you tell on what date that was modified?

A It says date modified January the 11th, 2017.

Q Okay. And to be clear, when was the search warrant executed?

A January. I'd have to see the copy to be sure. Because of my recollection it was January the 20th.

Q All right. Would looking at your notes help refresh your recollection?

A I think. January the 20th, 2017.

Q And so approximately nine days after this file was modified; is that correct?

A Yes, sir.

Q Now, before we begin, what date is present right here, in the clip name, on the application file?

THE WITNESS: Can I step down there? I can't see what he's pointing at.

THE COURT: Yes, sir.

(The witness left the stand and went to the screen.)

A What did you ask me, sir?

Q Right there. How is this named?

A Where the -- okay. The green? Revo Online Backup,

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two-thousand se----

Q Uh, whoa.

A Clip 01-11. So it's modified by -- by the modification date.

Q What about the name of the clip?

A The name of the clip?

Q Where it says "clip 01," how is that -- right where the arrow's pointed.

A Okay. So 93409. 9-3409.

Q But it states clip 01-11-2017, and then 093409?

A Yes, sir.

Q Now, at the top of this clip, can you read the date up here?

A I can. It's January the 11th, 2017.

Q But down here it's different; is that correct?

A That is correct.

Q Now, you've watch this entire video. It's pretty long. It's 8 hours long or something like that; is that correct?

A I have, sir.

Q I don't know if it's exactly eight, but it's a very, very long thing. We don't need to watch that whole thing in court.

A I have, sir.

(State's Exhibit 25 was played for the Court and jury.)

Q And who is that?

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A That is Jason Simmons.
Q And what does he appear to be doing?
A He is looking at the camera system. That's where it was located. That's what he appears to be doing.
Q Now, what does the clock down here at the bottom say?
A 2017, January the 8th.
Q So that is different than from the actual -- how the clip is up here; is that correct?
A That's correct.
Q And after he sets it up, what does he basically do all night?
A He lays down in that recliner right there and tosses and turns and appears to sleep.
Q At any point in time, do you see Minor at all on this?
A No, sir.
Q And so according to this clock down here -- which we're looking at 9:45.
A Uh-huh.
Q So hardly up all night, correct?
A Right.
Q And, again, it's very long, but over the course of this sleeping, do you see anything wild and crazy or out of the ordinary?
A No, sir.
Q Any small children running around or anything like

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(DANIEL WARD-DIRECT BY MR. KENDALL)

that?
A No, sir.
Q Is there anything else in this camera view, other than him sleeping? Like any important stuff throughout the house that you can see? In another words, in this area here or over here, is there any high-value items or ---
A No, not that I can see.
Q So the camera is basically focused on the area he's sleeping; is that correct?
A Right.
Q And then what appears to be a wood floor with a vacuum cleaner?
A Yes, sir. It appears to me that he has recorded himself sleeping.
Q And as he's sleeping at this point, it appears he still has the light on; is that correct?
A In that room, yes, sir. He's cut the light off in the living room, but the light ---
Q The light's in the other room, so you can see him sleeping.
A Yes, sir.
Q We're just going to fast-forward. What time is on this now?
A 22:05.
Q The light still on? He's still laying there, sleeping?

A Yes, sir. He's still laying there.
Q All right. 23:09?
A Yes, sir. Still laying there.
Q All right.
A He's still there.
Q All right.
A 02:13 and he's still there.
Q All right. Light still on?
A Yes, sir. 03:30. He's still there. 04:59. He's still there.
Q All right.
A 05:50. He's still there.
Q And the light stays on all night over there; is that right?
A Yes, sir. Appears to be.
MR. KENDALL: All right. And I'm playing this, just for the record, in fast-forward.
Q All right. It looks he's stirring. Is that what he appear's to be doing?
A Yeah. Starting to -- starting to wake up, grab his things.
Q All right. And what does he do immediately upon waking up?
A Go straight to the camera system.
Q And what does he appear to do there?

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A I'm not sure exactly what happened, but the time just changed from 06:38 to ---

Q Keep -- keep looking right there. I'm sorry.

What were you saying?

A The time just changed from 06:38 to 06:44, skipped ahead. And the view of the camera has changed.

Q Okay. We'll go faster here. And if you could watch down here at the time clock.

A Yes, sir.

Q And tell me if you notice anything changing.

And, again, just for the record, the camera is not really pointing at anything at this point, right?

A No.

Q Or where is the camera pointed at this point?

A Appears to be upside down, at the ceiling.

Q Okay.

A And the date just changed from January 1st to January the 11th.

Q So at the end of this movie ---

A Excuse me. January the 9th to January the 11th.

Q And where is that when you say that happens? Can you show us with the pen where you're talking about.

(The witness complied.)

A Sure. It's not very bright. That date right there just changed from report -- the incident or the report date,

which is January 9th, to two days later, January the 11th, 2017.

MR. KENDALL: And back up a little bit and show that in real time.

Q Okay. And, again, what did you see?

A The change from January the 9th to January the 11th.

Q And just to be clear: What is the date that's on the top of the clip?

A It's still January the 11th, 2017.

Q Now, was this the only clip that was on the disk he gave you?

A No, sir.

Q All right. How many more are on there?

A There are two more.

Q And what differs between those two clips and this one with regard to their life?

A They get shorter.

Q They get shorter. All right. I'm going to show you the file merely marked "1."

And how does the beginning of this clip compare to the beginning of the last clip?

A It's, the best I can tell, the same.

Q All right. And, again, we have the lighted area and the dark area; is that correct?

A Yes, sir.

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(DANIEL WARD-DIRECT BY MR. KENDALL)

Q And I guess to be fair, we -- there's some sort of light in that area. Is that fair to say?
A Yes, sir.
Q Now, we're going to pull over here to the end. So we're just going to do the same thing we did before, sort of fast-forward.
And what does he appear to be doing throughout the night?
A Lying in that recliner.
Q Now, looking at this video to the end -- okay. So with regards to the first clip I showed and the second clip, what was -- with regard to him setting up the camera, was it the same or different?
A The same.
Q Were there any differences in the end of the video?
A In the end of the video, it had been shortened by approximately 30 minutes, to the best of my recollection.
Q And does the end of the video show him getting up and moving the camera?
A No.
Q Does the end of the video of the second video show that time change?
A No.
Q Okay. And just so we're clear: How was this one labeled?

A "1."
Q Just "1." Okay. Now, going to the third video, when was this one modified?
A January the 11th, 2017.
Q So I guess looking at that date modification, which ones of these was the first one that was created?
A Let's see January 11th, 7:46 p.m.
Q Check again. The clock.
A Sir?
Q Look at the second one. When was that created?
A January 11th, 2017.
Q All right. And approximately what time or at what time?
A 12:40 p.m.
Q Okay. So a little bit after ---
A Okay. I'm sorry. So...
Q What about the second video, the one labeled "clip 1," when was that created?
A 7:46 p.m., the same day.
Q And what about the one that's been labeled "Revo Online Backup"?
A At 11:18 p.m., the same day.
Q So this is the last one that was created?
A Yes, sir.
Q The first one that was created was the one that was the

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longer, full one, correct?
A Right.
Q All right. Playing the third one -- all right -- what differs this one from the beginning of the other two that we saw?
A The setting up of the camera has been removed. It's been shortened in the beginning.
Q So it's been shortened to basically not show him ---
A Correct.
Q -- set up the camera? Okay.
And jumping here to the end. How's this one...
A You want me to tell you now or are we waiting?
Q All right. And how does that one end?
A It's been shortened even more, look a little further. I think about an hour more to eliminate Mr. Simmons beginning the video or ending the video. He's been taken out.
Q Okay. So, in total, how may clips do we have here?
A Three.
Q And on the -- is it fair to say that two of those have been edited?
A Yes.
Q All right. And the first clip that we saw, labeled as "application clip 1/11/2017," how did that differ from the other two?

A That one differed than the other two by -- it shows Mr. Simmons coming and setting up the camera and it also showed him getting out of bed, and the time, moving the camera again. And then the time changed, and then it looks like the date changed.

Q And so it indicated that time and date change as well. Is it fair to say that clip 1 showed setting up the camera, but not the time and date change?

A Yes, sir. That's correct.

Q And clip -- the third clip we watched, the one that's labeled "Revo Online Backup," that actually cuts out both him setting up the camera and him getting up, moving the camera, and the time changing; is that correct?

A That is correct.

MR. KENDALL: No further questions, Your Honor.

THE COURT: Okay. Before we begin across, why don't we take a morning break. I'll give you all about 15 minutes to stretch your legs and use the restroom. Don't enter any deliberations or discussions.

(The jury exited the courtroom at 10:58 a.m.)

THE BAILIFF: Everybody be seated until the jury leaves.

THE COURT: All right. We can go to the restroom if you need to but you can't talk to anybody while we're at rest. Okay. Why don't you all take about 5 minutes to use

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the restroom.

(A recess was taken.)

(The jury entered the courtroom at 11:16 a.m.)

THE COURT: All right. Welcome back, folks. We'll resume now with the defendant's cross-examination.

CROSS-EXAMINATION

BY MR. MORIN:

Q You're Captain Ward?

A Uh-huh.

Q You are the lead investigator in this case; is that correct?

A Yes, sir. That's correct.

Q And you're in charge of the investigation and what needs to be done?

A Yes, sir.

Q Are you familiar with -- I'm going to show you State's Exhibits 2, 3, and 4. If you can just open them. I don't think you have to take them out, but if you do, I can get you gloves.

A I'm familiar.

Q Okay. Can you tell us if these items were in any way tested by any experts in this case?

A To my memory, no, sir.

Q And you being the lead investigator, that would be yours to request, typically; is that correct?

A I have that authority.
Q Correct. Well, let's walk through that, then. Because you've been in law enforcement for 22 years.
A Uh-huh.
Q And you're a captain and you're the lead on this investigation, and if we want to send something to, say, state law enforcement to have it examined -- whether it be fingerprints, a drug report, DNA, or what have you -- you would fill out a request for them to do that, would you not?
A I wouldn't, no, sir.
Q Who would?
A We lean heavily on our crime scene unit.
Q In this case, that crime unit includes Mullinax, Henson, and Anthony?
A That's correct.
Q Those were the three officers that were with you?
A Yeah.
Q Now, the video of the thumb drive that we've seen -- when you arrived with the other three officers to conduct the search warrant, who entered first; do you recall?
A I do not.
Q And you say that Mr. Simmons handed you a thumb drive; is that correct?
A He didn't hand it to me, no, sir.
Q Okay. Did you say he gave it to you?

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(DANIEL WARD-CROSS BY MR. MORIN)

A That's --
Q Is that your testimony?
A That's fair, yeah.
Q Don't -- I don't want to ---
A Well, what actually happened was he said, "I have this."
Q All right. So it was in his hand?
A And he laid it down on the table to be collected with everything else.
Q So that's why Officer Mullinax testified he picked it up off the table?
A Exactly.
Q Okay. Now, in the course of your career or personally, have you ever had the occasion to get one of these thumb drives -- buy one for whatever reason?
A Have I ever bought a thumb drive? Is that the question?
Q Bought one and used one?
A Yes, sir.
Q All right. And isn't it consistent that when you do that and you make a recording of something, it's as it's been -- it was referred back and forth -- and I want to be clear. On the video it says "modified," but that's the date it's created, correct? The thumb drive doesn't look at the video and then put on there what it is. That's -- when you

put it in and you make a copy of something, that's when it's going to show that "modified"; isn't that correct? Or is that not your experience?

A I presume that's what that means.

Q Now, there's three videos on this; is that correct?

A Yes.

Q And it's your testimony that Mr. Simmons gave it to you and said here it is?

A Uh-huh.

Q He didn't then make any modifications to it?

A After the fact? Is that what you're asking?

Q Correct.

A No, sir.

Q So we can talk about whether it's -- video 1 is longer than video 2 or shorter than video 3, but you watched them all, correct?

A I did.

Q And they all came from him.

A Yes, sir.

Q It wasn't -- okay. Now, during your investigation, what did you learn about how this Rovio [sic] system works?

A It has a hard drive, like most of them do, that records video. And I'm not sure what else you want.

Q Is it Wi-Fi-based?

A I -- I don't know the answer to that. I presume that

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(DANIEL WARD-RE-DIRECT BY MR. KENDALL)

it is Wi-Fi-based.
Q Okay. Well, I don't know if it's wired or if it's a Wi-Fi, if it goes anywhere, if the cameras are connected to the hard drive by Wi-Fi or what have you. Do you know?
A No, I don't know that.
Q Do you know how many cameras he had?
A No, sir. I'm not sure.
Q When you went out to do the search warrant, you had already -- were aware of what Minor had said, correct?
A Yes, sir.
Q And what part -- when did she say anything about --
MR. MORIN: Well, I withdraw that question.
That's all the questions I have.
THE COURT: Re-direct?
MR. KENDALL: Briefly, Your Honor.

RE-DIRECT EXAMINATION

BY MR. KENDALL:
Q Mr. Morin asked you -- in your experience of using pin drives and whatnot, if you made a video on January 11th, burned it to a hard drive, what would the date show?
A January the 11th.
MR. KENDALL: Nothing further, Your Honor.
THE COURT: Re-cross?
MR. MORIN: No, sir.
THE COURT: You may step down.

THE WITNESS: Thank you.

(The witness left the stand.)

MR. KENDALL: The State will call Kelly Clune at this time.

KELLY CLUNE, upon first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Good afternoon.

A Good afternoon.

Q Would you please state your name for the record.

A Kelly Clune.

Q And, Ms. Clune, what is your occupation?

A I'm a child-abuse medical provider.

Q And how long have you been in this occupation?

A I've been taking care of abused children for 13 years now. I recently have got my nurse practitioner, and I started taking it to the next level about three years ago.

Q Okay. And what sort of education did you go through?

A I was -- been a registered nurse for 28 years, working in the emergency department. I got my SANE Certification, which is Sexual Assault Nurse Examiner, in 2007, for adult and adolescents. And then I went back and I educated for Sexual Assault Nurse Examiner for prepubertal children in 2009. I got my Nurse Practitioners in 2017.

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(KELLY CLUNE-DIRECT BY MR. KENDALL)

Q So back in January of 2017, where were you working at that time?
A Spartanburg Regional Medical Center.
Q And did you conduct a rape kit examination or a sexual assault evidence collection kit examination of Minor back in January of 2017?
A I did.
Q And do you recall what date that was?
A January the 9th.
Q And could you please describe to the jury the process of what you do with that sexual examination collection kit.
A The process -- the first thing we do is we talk to the parents to get a history. We try not to question the children too much. I spend the first 20 or 30 minutes bonding with the child, so that the ---
Q Okay. And please don't tell us anything she told you. Just ---
A Oh. Bonding with the child so that they'll be comfortable with the exam. At that point I would open up the sexual assault kit and do whatever evidence collection that was needed, based on the history I'd obtained from either law enforcement or the parents.
(State's Exhibit 26 was marked for identification.)
Q And I'm going to show you what is marked State's Exhibit 26. Do you recognize this?

A Yes, I do.
Q And what is that?
A That is the sexual assault evidence collection kit I obtained from Minor [redacted]
Q And do you recall what date it was on?
A January the 9th. It says 2016 but it was 2017.
Q Okay. And before we actually get into it, once you're done with the collection kit, what do you do with it?
A I would seal it up and hand it over to law enforcement.
Q Okay. And do you make a notation of that?
A Yes. On the back of the kit.
Q And did you do that in this instance?
A I did.
Q And who did you hand the sealed kit to?
A It's says Aaron D. Bowles.
Q Now, we can go ahead and open this up.
If you could, I want you to take a look at these.
A Okay.
Q In this instance, what evidence did you collect from Minor [redacted]?
A From Minor [redacted], I collected -- is it okay if I refer to my notes?
Q Yes.
A I collected her shirt; her underwear; a debris sheet, which is a sheet that they stand on as they undress; oral

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swab; vaginal swab; an external vaginal area; rectal swab; and a buccal swab, which is inside the cheek.

Q And if you could just sort of walk us through that process of what you do and how you collect that.

A Sure. We begin by having the child placed on -- place -- first I'd place a regular sheet on the floor, place the debris sheet, which comes in the kit, which is just a large paper -- piece of paper on the floor and have the child undress while standing on that sheet. What we're hoping in this instance is if any fibers or hair falls off her body as she's undressing, we would catch it on that sheet. I would then have her step off the sheet, place her in a gown, then fold that up from outer to inner and place it in the evidence bag.

Q And what is the purpose of doing that?

A We're looking for any foreign hairs, bodies, or dry secretions that may fall off the body as they're undressing.

Q And what do you do after that?

A After that, we do a head-to-toe examination, looking for any marks, any signs of trauma. And we also do this with a UV-positive light, which is a black light that we use with orange goggles, which will show up body fluids, and it'll glow in like an orange color.

Q And did you find any body fluids in this case?

A No, I did not.

Q And what do you do after that?
A After that, I start collecting my swabs, which is our Q-tips. We collect the buccal swab inside the cheek. That's usually the first thing I collect.
Q What is a buccal swab?
A It's a swab that you swab inside the cheek. And what you're collecting is the patient's DNA.
Q So it kind of creates a known standard. Is that fair to say?
A Yes, it creates a known standard.
Q And what happens after you do the buccal swab?
A We put it in a -- we have a swab dryer, which is a self-contained unit that the swab goes into. Because everything has to be totally dry before we package it up.
Q Okay. And then what about after that? What do you do with your buccal swab?
A After the buccal swab, I usually do the oral swab, which with that, we are looking for the perpetrator's DNA. We will swab around the teeth, under the tongue, in the lower recess of the jawline.
Q And what about after that?
A After that, I usually -- after we've done the physical exam of the body, I will gather the vaginal swabs.
Vaginal swabs of prepubertal children -- we do not go internal because it's very painful for them, and we are

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medical. The whole reason that we're taking care of them is because of medical, and we don't want to do anything that's going to traumatize further.

So what we do is -- the labia come together like this (indicating). We just gently open the labia, and we take the swab. And we'll swab inside the labia, but not all the way internal.

Q Okay. So you're swabbing inside the labia. Is that fair to say?

A Correct.

Q Are you wiping around the outside of the labia, as well or just inside the labia?

A It will go some on the outside of the labia too. But mostly, it's just inside the labia.

Q And did you do that in this instance?

A Yes, I did.

Q And what did you do after that?

A After that, I obtained a rectal swab. The rental swab, because the rectum is not sensitive, it's actually an internal swab. You take the swab -- usually I will wet it with a little sterile water, and that's to loosen any secretions that may be in there. You insert it into the rectal cavity. You just kind of twirl it around to collect any secretions that may be there.

Q So you would collect it from the actual inside of the

rectal area?

A Correct.

Q And did you do that in this case with Minor ?

A Yes, I did.

Q What do you do after that?

A After that, I place all the swabs -- we have a swab holder that is labeled with each area. We put all of them on the swab holders, place them within the drying unit for them to dry. After they dry, we package it in individual packages.

Q Is that what you did in this case?

A Yes, it is.

Q And just, again, once you have all of this together, is this -- after looking through this kit, is this a fair and accurate representation of what was taken from Minor ?

A Yes, it is.

Q And what do you do with it before you turn it over to law enforcement?

A After it's dry, we individually package it. The -- they are in separate envelopes -- all the swabs obtained. And then we put it into a larger outer envelope, which we seal with evidence tape, and I mark my initials on the evidence tape.

Q Okay. So when it leaves your possession, it's sealed with evidence tape and marked; is that correct?

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A Correct.
Q And did you make notations on this box as well, indicating that's the case?
A Correct. Because after the envelopes, we will put them inside the box and then seal the box with the evidence tape and, again, with my initials.
Q Showing this exhibit again. Are those -- point out your initials to the jury.
A Yes. The "K" is on this side and the "KC" on that side -- other side of the box. The "K" here and "C" here.
(State's Exhibit 27, 28, and 29 were marked for identification.)
Q Okay. State's Exhibit 27 -- do you recognize that?
A Yes, I do.
Q All right. Now, to be clear to the jury, was it in that original package -- the other packaging?
A No, it was not.
Q Who added that? Can you tell?
A Looks like Billy Anthony.
Q And so what packaging did you package it in?
A The inner paper packaging.
Q And what is that?
A That is -- looks like -- I can't see the front that well, where it's labeled. This is the paper bag that comes with the kit that the underwear goes into.

Q And we got multiple things here. State's Exhibit 28. I'm sorry -- on State's Exhibit 27, did you seal that as well?
A Yes, I did.
Q Okay. And what is in that?
A It looks like the outer package that all the individual swabs and their individual packages goes into; the debris sheet package, maybe; and the slides.
Q And did you package those as well, in the sealed box, and envelope?
A Yes, I did.
Q I think, finally, we just have a -- that was added by you.
A Yes. This is a -- if we are concerned that they were given any drugs or alcohol, this is where we would actually draw blood from them and seal it in the kit.
Q And were each of these placed, again, in State's Exhibit 26, and sent off to SLED?
A Yes, they were.
MR. KENDALL: Nothing further, Your Honor .

CROSS-EXAMINATION

BY MR. MORIN:
Q Ms. Clune, is it my understanding -- and correct me if that typically -- this exam took about 30 minutes. Is that fair to say?

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A No, sir.
Q Do you have a copy of your report?
A Yes, sir.
Q Could you look at page 6 of your report.
A Yes, sir.
Q Does that list just start on kind of on the end time of the exam?
A Yes, sir.
Q And how long did it take?
A Technically, it states 30 minutes.
Q You did a head-to-toe exam. Did you at any time note or record any kind of trauma or any kind of abrasions that you referred to you were looking for?
A She had a rash on her abdomen.
Q Okay. Anything else?
A And then she had a small circular bruise to her lower leg.
Q Lower leg. Okay. Did you record her general demeanor?
A Yes.
Q And how would you describe it?
A It was playful.
MR. MORIN: That's all the questions I have.
THE COURT: Can I see you both.
(Whereupon, a bench conference was held off the record in the presence of the jury but out of the hearing of the

jury.)

THE COURT: Any re-direct?

RE-DIRECT EXAMINATION

BY MR. KENDALL:

Q If you could just sort of elaborate on the 30 minutes, how you did that log.

A The time that I placed on my documentation for the SLED kit is the actual collection of the swabs themself. The actual exam takes about three hours because you spend time bonding with the child to begin with, and there's other -- getting history, other physical things that you are doing in the meantime.

MR. KENDALL: Nothing further, Your Honor.

THE COURT: Anything else?

MR. MORIN: No, sir.

THE COURT: You may step down. Thank you.

(The witness left the stand.)

THE COURT: All right. Next witness.

MR. KENDALL: Your Honor, the State would call Jimmy Henson at this time.

JIMMY HENSON, upon first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Could you please state your name for the record.

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A Jimmy Henson.
Q And, Mr. Henson, where are you currently employed?
A Cherokee County Sheriff's Office.
Q And what do you do at the sheriff's office?
A Crime scene investigator.
Q And how long have you been with the sheriff's office?
A Forty years.
Q Forty?
A Forty.
Q Did you have involvement in the Jason Simmons case?
A Yes, sir.
Q And did you take a buccal swab from Mr. Simmons on June 12th, 2017?
A Yes, sir, I did.
Q And do you recall where that took place?
A In your office.
Q And can you please briefly describe to the Court what a buccal swab is -- the jury what a buccal swab is.
A To take a buccal swab, we've got Q-tips. There's two comes inside a sealed container. And when we do the buccal swab, we open it and swab the inside of the cheeks and get DNA on it, and we put it back. We -- ours comes with a little box. We drop them -- the swabs back in the box, and the box has the holes in it so it can air dry.

(State's Exhibit 30 was marked for identification.)

Q Okay. And I'm going to show you what is marked State's Exhibit 30. Do you recognize this?
A Yes, sir, I do.
Q And what is that?
A This is the envelope that I put the buccal swab in after I did it. I sealed it inside that.
Q And you talked about a box. Can you sort of, without opening it up, just sort of show the jury where the outline of the box would be.
A Yes. It's flat now. It's been mashed flat, but that's it.
Q So that comes inside? You put that -- the swabs inside that?
A Put the swabs inside the box.
Q All right. And you testified a moment ago you sealed that?
A Yes, sir.
Q Did you make any markings on that, indicating that it was sealed or anything?
A Yes, sir. My initials would be on this tape. This has got the envelope sealed, and my initials is on it and the date that I sealed it.
Q And what did you do with that once you sealed it?
A Once I sealed it, I enter it in on our property sheet, or the evidence log, at the sheriff's office, and it goes

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into the evidence vault.
Q Okay.
A Until a trip's made to SLED, and it's taken down there.
Q And when you say "the evidence vault," do you have access to the evidence vault?
A Yes, sir, I do.
Q In fact, one of your responsibilities is actually collecting the evidence; is that correct?
A Yes, sir.
Q And is that what you did in this case, on State's Exhibit 30, is took it into the evidence vault?
A Yes, sir, I did.
Q And the time you took it in the evidence vault, was it sealed with evidence tape and initialed?
A Yes, sir, it was.
Q And this was taken of Jason Simmons on June 12th, 2017?
A Yes, sir.
MR. KENDALL: Please answer any questions Mr. Morin may have.

CROSS-EXAMINATION

BY MR. MORIN:
Q Did you have any other involvement in this case?
A I think I did do something else. No, sir, not on that one I -- date, I didn't. The first search warrant that they did at the house, I went with Detective Mullinax, and I did

obtain some photographs in it.
Q You took some photographs out there?
A Sir?
Q Did you say you took some photographs out there?
A Yes, sir, I did.
Q Do you have a special camera for that or did you use a phone?
A We have our own cameras -- crime scene cameras.
Q Same kind of crime scene camera you've been using for quite a while?
A Yes, sir.
Q That camera doesn't put dates on things?
A Yes, sir.
Q Didn't put any dates on these pictures.
A It doesn't show the date on the picture itself. But when you put it on the computer, it'll pull the date up on the computer.
Q I see. So it doesn't stamp the pictures.
A The pictures not stamped -- date stamped. No, sir.
Q And is the evidence -- I'm sorry -- your evidence -- how do you describe it? I was going to say technician, but that's not right. Evidence custodian?
A Custodian.
Q Okay. Correct me if I'm wrong, but did you request any items be tested by state law enforcement division in this

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case? I mean other than, obviously, you took the buccal swab, and that went. But did you fill out any requests?

A I didn't fill out any requests. But, usually, when we do a case, the crime scene technicians will get together and decide what we think needs to go to SLED.

Q Okay. Did you participate in that, that you're aware of?

A I don't recall.

Q Okay. But that being the case, you didn't request anything specifically be tested or not tested?

A No. There's nothing except this buccal swab.

MR. MORIN: Okay. That's all the questions I have, Your Honor.

RE-DIRECT EXAMINATION

BY MR. KENDALL:

Q Just to clear something up: Would you remember which search warrant you went on, that you were at, one of the search warrants? Do you recall what date that was on?

A February the 10th.

Q So you went out there on February the 10th?

A Yes, sir.

Q Do you recall if you were there on January 20th as well, or just the February date?

A All I have is the February date.

Q Okay.

MR. KENDALL: Just give us one moment, Your Honor. I have no questions. Thank you, Your Honor.

THE COURT: Anything?

MR. MORIN: That's all.

THE COURT: You may step down. Thank you.

(The witness left the stand.)

Next witness.

MR. KENDALL: Your Honor, at this time the State will call Billy Anthony.

BILLY ANTHONY, upon first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Could you please state your name for the record.

A Billy Anthony.

Q And what is your rank and what do you do?

A I am a lieutenant, and I do crime scene investigations and the evidence custodian at the sheriff's office.

Q And what is an evidence custodian -- excuse me -- what is an evidence custodian at the sheriff's office?

A We maintain all evidence that is turned in for criminal cases to be held or to be taken to another lab and hold onto it until the court proceeding's concluded.

Q And where is this all housed?

A The evidence vault is inside the sheriff's office.

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You -- as in, there's only a drop box to access it by other officers -- our officers that drop evidence into. It's kind of like a little mail slot in the wall. They can drop evidence in. But once they drop it in, they can't retrieve it, unless one of the custodians is there to get it out.

Q And who are the custodians?

A The current custodians now is myself, Detective Jimmy Henson, and Jacob Mullinax.

Q And when people drop evidence of like a genetic nature into the drop box, what does it need to be for you all to process it? In other words, what condition does it meet? Can I just take a swab, throw it in there, and walk away?

A All the evidence that's dropped into the evidence vault, it has to be packaged in some type of a container, whether it be an envelope or a plastic bag. But before they drop it, it must be in a sealed container. If it comes in and it's not sealed, we make notations of that, and it's -- then it would be sealed by us, notating that it was not sealed when it arrived.

Q And I'm going to show you what is marked State's Exhibit 30. Do you recognize this?

A Yes, I do.

Q And what is that?

A That's the buccal swab from Jason Simmons.

Q And was that collected by you all?

A Detective Jimmy Henson.
Q And how did it come into your possession?
A Detective Henson would have placed it into the evidence vault. I primarily transport all evidence to SLED for further testing and bring it back. I would have taken it to SLED for testing.
Q And did you take it to SLED in this instance?
A Yes, sir, I did.
Q And what do you do with it once it's at SLED?
A When we take it to SLED, we take -- depending on what the item is, we'll go and when we're placing it in their evidence lockers, to drop our evidence off, we'll put -- place it inside a heat-sealed envelope. I print my name and date when I'm placing it into the locker. And when I heat-seal it, I put my initials and date to show that I sealed it before I dropped it in.
Q And did you do that in this instance?
A Yes, sir, I did.
Q So that was taken in a sealed envelope to SLED and dropped off up there in a sealed envelope. Is that fair to say?
A Yes, sir. That's correct.
Q All right. Now, I'm going to show you kind of a group of exhibits. State's Exhibit 26, 27, 28, and 29.
First off, as this came to you, how was it packaged?

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A When this was brought to the sheriff's office, it was in the sealed box. The officer that takes it in, in the intake, or gets it from the nurse, he would sign -- he'll initial -- or sign it and date it when he received it. And then there is a date. And where it is placed, we have a refrigerator that has a lock on it for officers. So if they bring something in that must be refrigerated, they put it in there, and they lock the lock. And it can't be accessed again until an evidence custodian comes in and unlocks it to retrieve the evidence out.

Q Okay. And what did you do with that box?

A I transported -- take -- took it out of the initial refrigerator it was placed in. We barcode it. It has our case number and the item number so we are able to track our pieces of evidence and place it into our refrigeration unit we have inside our evidence vault and then transport it to SLED for testing.

Q And do you open the rape kit while it's at the Cherokee County Sheriff's Office?

A No, sir.

Q So that -- when you took that to -- did you make any markings on it, indicating what you did with it?

A The actual box, we do not. When it comes in, if there would -- if it'd had a seal broken, anything, we would have made a notation on the property sheet, where it was brought

in. And I did not do so on this one.
Q Okay. So that indicates it was, in fact, sealed?
A That's correct.
Q And so you took the sealed box to SLED; is that correct?
A Yes, sir. That's correct.
Q And I just want to -- and, internally, we have these in sealed evidence bags; do you recall?
A Yes, sir. When we went to evidence intake, the sexual assault kits, a lot of times they'll take it -- rather than it going into a locker, they have to put it into the items that must maintain in a refrigeration. They'll actually open the seal in our presence, place them in the bags, and I initial and dated them when I actually sealed them into those bags at SLED.
Q Okay. So when it came to you, it was sealed, here, in this -- in State's Exhibit -- in the box of State's Exhibit 26, right?
A Yes, sir. That's correct.
Q And that includes 27, 28, and 29?
A Yes, sir.
Q And they're all inside the box. Then you take the entire box to SLED; is that correct?
A That's correct.
Q And throughout this whole time, it's sealed, correct?

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A That's correct.
Q And either on this or on State's Exhibit 30 we looked at a second ago, if the evidence tape is ripped, are you able to tell?
A Absolutely. Yes, sir.
Q And what's unique about evidence tape?
A It's not easily to be able to pull off -- it tears really easily. If you try to pull it off, it kind of tears off in strips and the adhesion -- the glue on the back will maintain -- stay on the packaging. And you'll see it, where if anyone tries to open it, that it'll tear.
Q So were all these exhibits, State's Exhibit 30, State's Exhibit 28, 29 -- or 26, 27, 28, and 29 -- were these all sealed?
A Yes, sir.
Q And they were sealed when they left the sheriff's office; is that correct?
A Yes, sir. That's correct.
Q And then with respect to these, you actually resealed these in heat-treated envelopes; is that accurate?
A Yes, sir. That's correct.
Q And, obviously, if someone got in those, then the seal would be broken. Is that a fair statement?
A That's correct.
Q And how did they come back to you?

A When I take -- we go to SLED usually, at least, monthly or biweek -- biweekly. When items are ready to be returned, their evidence intake will let us know and we'll pick up any items that are to be returned to our agency and we will sign a chain of custody from them back to us and we'll return it back to the sheriff's office and I place it on the shelf in the evidence vault.

Q Okay. And, likewise, State's Exhibit 2, 3, and 4, do you kind of recognize y'all's on this?

A Yes, sir.

Q Were those also maintained at the sheriff's office?

A They are. And all of these envelopes also have a barcode that has our case number, the item description, and item number. And the officers, when they seal them, initial and date it to show the seal was intact.

Q Okay. And then State's Exhibit 17 -- was this kept down there as well?

A Yes, sir, it was.

Q So since this has taken place, this has all been maintained in a secure part of the sheriff's office, other than the stuff that was sent to the South Carolina Law Enforcement Division?

A Yes, sir. That's correct.

MR. KENDALL: Please answer any questions Mr. Morin may have.

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(BILLY ANTHONY-CROSS BY MR. MORIN)

CROSS-EXAMINATION

BY MR. MORIN:

Q These items that you have here, 25, -6 and, -7 in this box, that went to SLED?

A Yes, sir.

Q And these items here, Items 2, 3, and 4, they did not go to SLED; is that correct?

A No. No.

Q Let me ask you about the back of this box.

A Yes, sir.

Q On the back of the box it lists -- it has a list of who had the item, correct?

A Yes, sir.

Q So we have Kelly Clue first, and that is on January 9th.

A Yes, sir.

Q And that's at 21:15, which -- almost 10:00; is that correct?

A Yes, sir.

Q And then Mr -- Officer Bowles, he got it on January 9th, at this date. And he also got it from her at that time, I assume; is that correct?

A Yes, sir.

Q And then it went into evidence the next day, but it was late. So 2:00 in the morning it ended up in evidence?

A Yes, sir.
Q Now, when it goes into the evidence vault, that seems to indicate it went in at 2:00 in the morning.
A Yes, sir.
Q There's nobody there at 2:00 in the morning, though, is there?
A It was placed in the evidence refrigerator. The one that has the vault -- the padlock on it. And they placed it inside that until I get it the following day.
Q Okay. So this -- we put it in the mail slot, what have you, and nobody can get to it. But now -- not now, but if I understand correctly, there's a separate place that this goes.
A Anything that is cold, that has to be refrigerated, it goes into that refrigerator I was telling you about earlier, that has the lock on it, that once the officers place something in it, they lock it back. Then we have to come in to retrieve it out. We leave it unlocked until the next officer needs it to place evidence into.
Q So it stays unlocked, and then once something is in there and you come in and see it's locked, then you know you need to get something out?
A The officers usually will send us a email, a text message. They -- when they place it in there to let us know. That way, as soon as we get there the following

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morning, we can retrieve the items out.
Q Okay. One more thing. So the transfer from the refrigerator to -- from that refrigerator to your refrigerator -- is that recorded somewhere?
A Yes, sir. It should be on our property sheet. It is not on the copy that I have in my hands here. I don't have that on this form. I'm sorry, sir.
MR. MORIN: That's all the questions I have, Your Honor.
THE COURT: Re-direct.

RE-DIRECT EXAMINATION

BY MR. KENDALL:
Q So just to be clear: This was in one refrigerator that was locked, and then you all got it out, and put it in a different refrigerator that was locked?
A Yes, sir. That's correct.
Q And then took it to SLED after that?
A Yes, sir. That's correct.
Q And the whole time that happened, it was in a sealed envelope until it got with SLED?
A It was in the sealed box, yes, sir.
Q And the envelope wasn't busted or -- or the seal wasn't busted or nothing like that?
A No, sir.
MR. KENDALL: Nothing further, Your Honor.

THE COURT: Re-cross?

MR. MORIN: No, sir.

THE COURT: You may step down.

(The witness left the stand.)

Next witness.

MR. KENDALL: This time the State will call Verona Herrera, Your Honor.

VERONA HERRERA, upon first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Would you please state your name for the record.

A Verona Herrera.

Q And, Ms. Herrera, where are you currently employed?

A DHEC and the on-site wastewater enforcement.

Q And back in January of 2017, where were you employed at that time?

A The South Carolina Law Enforcement Division, which we refer to as SLED.

Q Actually, January into 2018, would it have been the same?

A It would. I left there November of last year.

Q And in your capacity as -- what did you do at SLED?

A Was a forensics serologist in the DNA casework department.

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Q And what did that entail?
A Larger pieces of evidence in crime scene, such as clothing, car parts, handguns -- similar to that -- is brought in. We've looked for bodily fluids, semen, saliva, or blood, and we also test rape kits in order to facilitate further testing within the DNA department.
Q And did you do that in the case of State versus Jason Simmons?
A I did. Yes, sir.
Q I'm going to show you what is marked State's Exhibit 26, 27, 28, and 29, I believe.
Can you take a look at those.
A Yes, sir.
Q All right. And what are those?
A 26 and 29 do not remain at SLED. They are returned with the submitting agency. Your Item 27 is the underwear that was contained within the kit when it was submitted to SLED. And my initials are -- and the date that I resealed it are on the bottom here.
Item 28, State's Exhibit 28, is the debris collection paper and the envelopes that are contained within the kit that were collected at the time of the exam.
Q And do those kits included the swabs that were sent?
A Yes, sir. They're inside the larger envelope inside the smaller envelopes.

Q And what did you do in that -- this case upon receiving those?

A The first thing we do is open the kit and inventory what swabs were submitted to us. In this case, there were several different swabs that were submitted: Vaginal swabs, oral swabs, rectal swabs, the victim buccal swabs, and then there was the debris collection and then the underwear that was packaged separately.

Those were assigned distinct item numbers in the case so if the -- in this case, the sexual assault kit is Item 1, the vaginal swabs are going to be labeled Item 1.1, because they were part of that original Item 1, and so forth for the other items.

Q And so what sort of testing do you do on these once these come in, or how do you process this when it comes in?

A Depending on the information that we're given, we usually test for semen, for the components of semen, and we also could test for saliva, if that's applicable.

Q And what sort of training did you have to undergo to start doing those tests?

A I have two associate's degree: One from Greenville Tech, one from Tri-County Tech. I have a Bachelor's Degree in Criminal Justice Forensics from Liberty University. And when I first started at SLED, I was trained by a court-qualified, in-house analyst on the

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evidence processing or the larger pieces of evidence side of it. Later, in 2015, I believe it was, I also added on the body fluid identification, which is the testing we do on the rape kits, or the SANE kits.

Q And so you are a serologist; is that correct?

A Serologist -- a forensic serologist, yes.

MR. KENDALL: Your Honor, we would offer Ms. Herrera as an expert in serology.

MR. MORIN: No objections.

THE COURT: All right. Folks, remember when we were talking -- I guess it was when we started -- I told you that normally evidence comes in from people getting on the witness stand and telling you what they heard, they saw, they touched, they felt, they smelled. That sort of thing. But we don't normally let people come in and give their opinion about evidence. They're giving you the straight facts.

However, the law says that when somebody because of education or experience or specialized training in some field rises to the level of expertise in that filed, they are allowed to come in and testify. And they can testify in the form of an opinion, and they can give you the basis for that opinion.

This witness has now been qualified as an expert in the field of serology. She'll be allowed to give you an

opinion. Just because she's been qualified as an expert, however, does not require that you blindly accept her testimony. You decide how much weight you get her testimony, based on all the evidence that you'll hear throughout the trial. And you can weigh things like her experience and her training, et cetera, in the field. And it's solely within your discretion as to how much weight to give this witness's testimony, along with all the other testimony that you hear throughout the trial.

All right. You may continue.

MR. KENDALL: Thank you very much, Your Honor.

Q So as this came to you -- what did you do first, when this evidence came to you; this rape kit?

A This first piece of evidence that I worked on was the underwear. We test with a presumptive test to see if there might possibly be semen or a component of semen in the underwear. Then I go on and process any cuttings that would come from the underwear and the swabs that were in the CSC kit.

Q When it came to you in this instant, was this container sealed?

A The heat-sealed pouches were sealed, yes, sir.

Q And so you were the one that actually had to unseal them?

A That is correct. Yes, sir.

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(VERONA HERRERA-DIRECT BY MR. KENDALL)

Q And you testified a moment ago that you read the underwear underneath a light source?
A I do, yes. I'm not sure I said that, yes.
Q All right. But if you can sort of explained that to me. I'm sorry.
A No, that's fine. We have what's called an alternate light source. It emits a specific wavelength of light. It allows us to visualize by -- possible body fluid stains. We use that on fabrics when we're looking for saliva, as well as semen. We would mark those areas, and then go back and test with what we call presumptive tests, which is a quick color change test. We take what looks like a larger Q-tip, moisten that was sterile water, wipe the swab -- the area of interest and then drop some chemicals on it. If it changes color within a minute, that means that there's a possibility that that location could be semen, and we would test that -- cut that area and take it for further testing.
Q Okay. So what are you actually testing for? Like, what are you specifically trying to find? Is it just semen?
A In this case it was just semen. And we also -- I also evaluate it for hair in the underwear.
Q Okay. Now, when you're talking about semen, are you specifically talking about just sperm, or are you talking about a greater component to semen?
A Actually, both. Semen is comprised of two parts.

There's a liquid part, which carries the enzyme and the proteins that we can look for. And then there's the cellular portion, which is the actual sperm cell itself. We do look for both of those in our testing.

Q So is it possible to have male ejaculate that does not have semen in it -- excuse me -- that does not have sperm in it?

A That is -- that is possible, yes. It's also possible that because semen itself is not a homogenous fluid. Like, every sample you take out of an ejaculate is not going to have the same amount of spermatozoa or sperm cells. So you may miss it in our testing, but it may still be there in very low concentrations.

Q And what other reasons would there be for just -- for not having sperm in semen? If someone was -- had a vasectomy, for example?

A That is correct. If they had a vasectomy. If it's pre-ejaculate or if they had ejaculated in rapid fire, like over several days, many times, there could be very, very low count that would allow us not to find it as well.

Q And when you say "pre-ejaculate," what kind of are you referring to there?

A Like the fluid that is released before ejaculation.

Q And so I'm just going to be blunt. The white stuff is typically -- ejaculate may or may not have sperm in it. Is

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that fair to say?
A That is correct, yes.
Q And in this case, which of the -- what did you check for -- which items did you check for semen?
A Item 1 -- the vaginal -- Item 1.1 -- excuse me -- the vaginal swabs were tested for the possibility of semen, the oral swabs, the rectal swabs, and then the underwear.
Q Okay. And how did you test those?
A For the underwear, it was a quick color change test, which in this case, was negative. The examination for component of semen acid phosphatase was negative. There was also no hair found on the underwear. So nothing went forward from that for further testing.

For the swabs, we cut a small portion of it. We soke it in water to release the sperm cells or the components of the semen, and then we do a quick -- it's called a card test. It's read similar to a pregnancy test. So the number of lines indicates whether the chemical is present in the sample or not.

We also take a small portion of the extract, the liquid we soak the cells and the chemicals out into, and we place that on a slide and look at it under a microscope to determine if we see the sperm cells themselves.
Q And with regard to the vaginal swabs, did you find ---

MR. MORIN: Your Honor, can I -- can we approach for a

moment?

THE COURT: Sure.

(A bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

THE COURT: Folks, I need to take up a matter of law right now before we go any further, so let me just get you to go into the jury room. You can use the restroom, and we'll have you back in about ten minutes. Again, don't begin deliberations.

(The jury exited the courtroom at 12:17 p.m.)

(The witness was excused temporarily.)

THE COURT: Okay. Mr. Morin?

MR. MORIN: Your Honor, again, I apologize. But sometimes as trials go on, I think about how things are connected, and I come up with an idea. I have an objection. So here's what I'm going to do here. I'm going to object to her testifying as to what her findings are because there is no evidence or testimony in the record that my client at any time even exposed himself to this little girl. None. She was asked on the stand and she said in the video "Did he expose...?" "Was he wearing...?" "Did you see his nu-nu," and other things, and she said no. There is no testimony that would support them now claiming that there is any kind of protein, antigen, or any other sperm-type thing in this case. And for that reason, I believe that she shouldn't be

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allowed to say whether or not she found anything. Because there's none -- up to this point, there has been no testimony or any evidence that would support that being found or that that occurred.

And I understand that when we were doing a search warrant or what have you, that we're looking for anything that might be of evidentiary value. But in this particular instance, we are now to a point where little girl never said anything like that happening. Never. So for them to now try to introduce evidence that that did happen outside of that, I argue it should be in admissible.

THE COURT: All right. What's the State's position?

MR. KENDALL: Your Honor, there's certainly additional ways to transfer semen, other than ejaculate or exposing yourself. For example, if he had it on his hands, had it on something else, some sort of other instrument, it could result in the transfer of that.

I also don't believe -- there's certainly some difficulties in her testimony as a young child as to conceptually understanding as to what happens. But she does talk about him rubbing things on her in the CAC video. I think that it's certainly sufficient to submit to the jury as to what took place. I mean, the act itself of finding his sperm on her vaginal and rectal area, by itself, is evidence of a sexual assault, regardless of what she says.

We see that all the time with murder cases. Certainly, if she'd passed away and we found this, it'd certainly be relevant evidence in that instance.

But basically, Your Honor, just because she didn't see how he got the ejaculate on to her doesn't mean that it's not there and doesn't mean it's not evidence of a sexual assault, specifically based on the areas where it's located. I mean, it's located in, I think, what we subsequently testified to is in her -- vaginal swabs came back and the rectal swabs came back.

You heard the testimony regarding the rectal swabs and how they did that, as well as the vaginal swabs and how they did that. And, quite frankly, I don't think there's a way that that spermatozoa can get there without some sort of assault taking place. Coupled with her testimony, where she indicates that an assault took place, I think there's certainly sufficient evidence from which the jury can gather that at some point his spermatozoa ended up on her vagina and rectum. She says it's from touching.

I think that those two things are very obviously connected. I don't think that she's required to see him masturbate or see him attempt to penetrate her. I think that the fact that they're there, the fact that she said he's the one that touched her is sufficient evidence to suggest that's the case.

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THE COURT: Response?

MR. MORIN: First response is: According to the point I have, I used 1.1 and 1.3, no spermatozoa identified. So we're down to a protein, and they've already put in evidence that it was lotion. They even put the pictures in. So to now say, well, we changed our mind; he was rubbing something on her -- that was the testimony that they went with and evidence they presented.

So, again, I would say that they have to establish that something happened before they could put this evidence in. And he may be correct in a murder case, but we have a witness in this case and nothing like that was added and specifically asked.

THE COURT: All right. Well, my answer to that would be, well, there's two types of evidence: There's direct and circumstantial. And direct evidence was done in a case like this, the victim we would say, yes, he penetrated me or this is what he did to end up with it. But we're talking about a 4-year-old girl and her ability to convey whatever happened, even at the time, was very, very, very limited because of her years, so I don't believe it's required that there be direct evidence that she saw him perform a sex act or state that he performed a sex act. The fact that there is semen or some DNA that appeared on her is circumstantial evidence that something took place. And that's just a piece in the

chain that a sexual assault took place, so your motion is overruled.

MR. MORIN: Thank you, Your Honor. And, Your Honor, I just want to state for the record that from this point forward, with these pieces of evidence, I'm going to renew my objection based on what I've argued here.

THE COURT: And your objection is noted and it's overruled.

MR. MORIN: So I just want to ---

THE COURT: It's a continuing objection.

MR. MORIN: I understand, but I may make it again because sometimes the court of appeal says ---

THE COURT: All right. If you feel like it's necessary, if you have new grounds, then ought to let me know. Otherwise, I will just say it's overruled.

MR. MORIN: Yes, Your Honor.

THE COURT: Okay. Let me ask you this just for planning purposes: Will this be your last witness before lunch?

MR. KENDALL: It can be, Your Honor.

THE COURT: Okay. Well, let's plan on that. Let's just take five quick minutes if you need to before we resume. Thank you.

(A recess was taken.)

THE COURT: All right. We have everybody back.

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It won't be necessary for you to renew your objection.

MR. MORIN: Okay. If you say so, Your Honor, then that ---

THE COURT: I say so.

MR. MORIN: --- then that's what I'm going with.

THE COURT: All right. You all ready?

MR. KENDALL: Yes, sir, Your Honor.

THE COURT: Okay. Bring the jury back in.

(The jury entered the courtroom at 12:31 p.m.)

THE COURT: All right. We will resume now with direct examination by the State.

MR. KENDALL: Thank you, Your Honor.

(The witness returned to the stand.)

Q Just to sort of go back to what we talked about.

So you initially -- or you've checked the underwear and determined there was no semen components and no hair were found, correct?

A The one component that I tested for was not there, yes.

Q So after you tested the underwear, what did you test after that?

A I started on the swabs; the vaginal swabs, the oral swab, and the rectal swabs.

Q And what sort of test did you do for those?

A It's a test for the presence of p30, which is a protein in the liquid portion of semen, first of all. And then a

small portion of that sample is taken and placed on a microscope slide, viewed microscopically to look for the spermatozoa, or the sperm cells.

Q And did you do that for each of these: The vaginal, oral, and rectal swabs?

A That is correct, yes.

Q With regard to the oral swabs, did you find any components semen; this p30 protein?

A No, sir. Both his p30 and his spermatozoa were negative.

Q So that basically stops the testing of your swabs; is that correct?

A That is correct.

Q What about with the vaginal swabs? What did you find there?

A The examination for component of semen p30 was positive. No spermatozoa were identified, so the item was forwarded to the DNA section.

Q And is that your expert opinion; that there was a p30 protein, a component to semen present?

A Yes, sir.

Q With regard to the rectal swabs, what would be your expert opinion with regard to those?

A The examination for component of semen p30 was positive as well, no spermatozoa were identified, and the item was

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forwarded to the DNA section.

Q So in both the vaginal and rectal swabs, a component of this p30 protein -- this component to semen, was found, but no spermatozoa; is that correct?

A That is correct.

Q And that's your expert opinion as an expert?

A Yes, sir.

Q And you testified a few moments ago there's multiple ways that could be the case. Is that fair to say?

A That is correct, yes.

Q When you got these things, were they sealed?

A Yes. All the individual envelopes were sealed inside the larger envelope.

Q And what did you forward then to the DNA section?

A Item 1.1, the vaginal swabs; Item 1.3, the rectal swab; and Item 1.4, the victim swab.

Q Okay. And who did you give that to?

A I gave that directly to the DNA Analyst Samuel Stewart.

Q And what did you all do with ---

MR. KENDALL: I think we can go ahead and get some of this stuff into evidence right now.

Q Did you all keep -- once you got this rape kit, what did you all do? Did you send this stuff to Mr. Stewart as well, this box and this ---

A No. The box and the toxicology envelope are returned

to the agency at the time that the kit is submitted to the SLED laboratory. The only things the SLED's allowed to keep are the individually heat-sealed pouches.

MR. KENDALL: We would offer State's Exhibit 26 and 29 into evidence. It's the blood...

MR. MORIN: The stuff that hasn't been tested.

MR. KENDALL: And the box.

MR. MORIN: Yeah, that's fine. The box. Yes, sir, I don't have any objection to that.

THE COURT: Admitted.

Q So just to sort of summarize. When it came to you, it was sealed; is that correct?

A That is correct.

Q When it left you, it went to the DNA analyst; is that correct?

A That is correct.

Q And you found a potential -- or you found this p30 protein, a component of semen, on the vaginal swabs and rectal swabs. That's what you forwarded to him; is that correct?

A That is correct.

Q Along with her buccal swab?

A Yes, sir.

MR. KENDALL: If I can just have one moment, Your Honor, just to make sure.

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Q And you didn't handle the defendant's buccal swab, correct?
A No, sir. I believe that came in at a later date.
MR. KENDALL: Please answer any questions the defendant may have.

CROSS-EXAMINATION

BY MR. MORIN:
Q I'm interested in P90 ---
A P30.
Q P90 is something else. P30, that is the protein that all males have; is that correct?
A That is correct.
Q And isn't there a blood test for that?
A Yes. It's considered the PSA test. It's to test male blood for the amount of prostate-specific antigen to determine likelihood of prostate cancers.
Q So this protein is common in all men?
A In specific body fluids, yes, sir.
Q And the body fluids being?
A It's present in blood in high concentrations of men with prostate cancer. It's present in seminal fluid or semen and can also be present in urine due to the anatomy of the male reproductive and urinary tracks.
MR. MORIN: That's all the questions I have.
THE COURT: Re-direct?

MR. KENDALL: Nothing further, Your Honor.

THE COURT: You can step down. Thank you.

(The witness left the stand.)

All right. Folks, we'll break for lunch right now. Again, don't forget don't enter deliberations or discussion when you go to lunch with people on the jury. If you talk to anybody, do not discuss the case, don't discuss witness demeanor, or anything at all about the case.

If you would, let's be back at 2:15 p.m. And we will resume this afternoon. Hopefully, see you in a little bit.

(The jury exited the courtroom for a lunch recess at 12:30 p.m.)

MADAME CLERK: This trial is in recess until 2:15 p.m., but the judge will be taking the bench back at 2:00 p.m.

(A recess transpired.)

THE COURT: All right let's bring the jury in.

(The jury entered the courtroom at 2:18 p.m.)

THE COURT: All right. Folks, we're going to resume and let the State call their next witness.

Before they do that, though, it looks like we are going to probably be finished tomorrow morning, instead of this afternoon. Kind of hoping maybe we could, but with trials is you just do your best. Is that going to present a problem for anybody? Because I'd indicated at one time I thought we might finish today, but it really looks like

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tomorrow morning. We have no more alternates, and I want to make sure that we're not going to lose any more because of some issue that can't be helped. Okay. I don't see anybody objecting, so call your next witness.

MR. KENDALL: Your Honor, the State will call Brian Hudak.

BRIAN HUDAK, upon first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Could you please state your name for the record.

A Brian Hudak.

Q Mr. Hudak, where are currently employed?

A I'm with the South Carolina Law Enforcement Division, known as SLED.

Q And what are your responsibilities with SLED?

A I work in computer crimes and I perform forensic -- digital forensics on cell phones, computers, vehicles, network intrusion cases, pretty much everything digital.

Q And what kind of education did you have to learn how to do this?

A I've been through a wide array of training through the National White Collar Crime Center. I've been through their basic data recovery analysis, intermediate data recovery and analysis, Macintosh triage and imaging, applied device

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forensics, Windows artifacts. I've also attended classes at the National Computer Forensics Institute, which is run by the U.S. Secret Service. I've taken basic investigation of computer and electronic crimes, basic network investigation training, and also network intrusion response training, as well as various other trainings through NW3C and CFI.

Q And what do these areas focus in? What have you learned to do?

A We're known to extract and interpret data from cell phones, computers, also network -- computer networks. And I have had recently some education in malware analysis.

MR. KENDALL: Your Honor, we would offer Mr. Hudak as an expert in the field of digital analysis.

MR. MORIN: No objection.

THE COURT: Digital analysis. Is that what you said?

MR. KENDALL: Yes, sir, Your Honor.

THE COURT: All right. Folks, this witness has now been qualified as an expert in the field of digital analysis. Like I told you with the last witness, experts are allowed to give their testimony in the form of opinions, and so he has been qualified as an expert in this field to be allowed to testify as to his opinion and give you the basis of his opinion.

As I also told you with the previous witness, you alone determine how much weight to give his testimony based on all

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of the evidence that you hear throughout the trial. And if you feel like it doesn't match up with anything else you've heard or you don't feel like his experience and education is sufficient, then you decide alone how much weight to give his testimony.

All right. You may proceed.

Q Mr. Hudak, in your time at SLED, did you analyze a 64 gigabytes pin drive submitted by the Cherokee County Sheriff's Office?

A Yes, I did.

Q I don't know if you can see on the screen. Does this appear to be the three files that were sent up?

A Yes.

Q And these three files. Let me open one up. Just a second. Does that appear to be the files you analyzed?

A Yes.

Q And on this pin drive, what sort of analysis did you conduct?

A I conducted -- first of all, I forensically imaged the thumb drive before I analyzed it. Which we put the thumb drive up to a write blocker to prevent any of our systems from changing or editing any of the data on it. We create what's called a forensic image of the device, in this case, the thumb drive, which is an exact copy of the thumb drive to a file that goes sector by sector, copies all data.

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And then the program that we'd use to image also then creates what's called a forensic hash value, which is essentially digital DNA. It runs that file, created through an algorithm, that creates a hash file that is unique to that file to show that there was nothing done to manipulate the file. There's nothing changed in that file. You can take that same file I created back in 2017 today and run -- the hash value would be the same as that hash value.

Q So it's basically an evidence preservation process; is that correct?

A Exactly, yes.

Q And what do you do after that to make sure you're not messing with anything?

A After that -- after the forensic image is created, we put the evidence item back in our vault, and that's the only time we use it, we touch it. Everything -- all the work I do is off of that. Basically, that forensic image, that's a copy that I made.

Q And that's exactly the same as what's on the disk?

A Correct.

Q And in this case, did you do that with the 64-bit thumb drive?

A Yes, I did.

Q And did you create a report from that? What did you do with that to analyze it?

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A With that, I loaded it into a program called a forensic tool kit. It's otherwise known as FTK. It processes -- it looks for any files on the thumb drive. I also had it attempt to carve out any sort of deleted files or anything. If it could detect if there was anything deleted on it, and then analyze what files it did find.

Q All right. And did you do that in this instance?

A Yes, I did.

(State's Exhibit 31 was marked for identification.)

Q And I'm going to show you what is marked State's Exhibit 31. Do you recognize this?

A Yes, I do.

Q And what is that?

A It's part of the report created by the FTK software of the three files that I located that were relevant to this case.

MR. KENDALL: And I'm going to -- we would offer State's Exhibit 31 into evidence, and we request permission to publish that.

Q And if you can just step down, that would be fine.

I'm going to show you this report you generated in regards to these three files.

A Yes.

(The witness left the stand and went to the screen.)

Q Now, what are kind of the common themes -- that's hard

to see with this pointer but -- common themes in each one that you guys have listed?

A For each of the three files I found, it shows the modified date being January 11th, 2017, with created dates of January the 16th of 2017.

Q Now, what is the modified date? What is that?

A The modified date is normally if any modifications have been made to a file after it's been created, Windows or other operating systems will mark when it was modified.

Q And so for these files, they're all different times. But what date were they last modified?

A They were last modified January 11th, 2017.

Q So the modification occurred on the 11th. When were they actually put on that pin drive?

A They were put on the thumb drive on January the 16th of 2017. And that's under the created date.

Q So these weren't initially saved or anything directly to this pin drive. Is that fair to say?

A Not as far as I can tell. That's correct. Yes.

Q And they were actually the modified date -- the date that it -- how is the modified related to the original machine?

A Whenever you create a file on a computer, obviously, that would be the created date and time. When you're copying a file, say, from your hard drive on your computer

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to a pin drive, such as this one, your -- it's the same file, but the file system sees it as a new file. Which is -- what it will do is it will take the original created date, it'll move that down to the modified date, and then it will put the created date and time as the date and time it was created on that pin drive; copied onto that pin drive.

Q So is it fair to say it's specific to the pin drive?

A Correct.

Q So for that pin drive, as far as it's concerned, it didn't have -- it didn't have anything on it until January the 16th; is that correct?

A That's correct. I didn't find any deleted items or anything on it.

Q But as far as it knows, that's when these videos got there, that's why it says "created date"?

A Correct.

Q All right. And then what is the modified date?

A The modified date is the original creation date according to the system those files were created on. So assuming those were created on, you know, a DVR or a desktop or whatever, that would have been the original created date. Like, if you saw those files on that system, they would have the created date of January 11th, 2017.

Q So as far as the DVR goes, the created date on that is January 11th. Is that fair to say?

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A If that's what created these files, yes.
Q Okay. That makes sense. All right.
Now, switching back -- hopefully -- to the computer, we have down here at the bottom this sort of running time. What is that? Where does that typically come from?
A That would typically come from the date and time of the DVR system.
Q And what were the obstacles you ran into on this? Let me actually show you this DVR. It's State's Exhibit 17. What, looking at this, is missing? What needs to be there? Is anything missing?
A It looks like there should be a hard drive, like you would find in your computer. It's got two connectors for the power and the data transmission from the motherboard of the DVR that would transmit to the hard drive. And I do not see a hard drive.
Q So the hard drive is gone. Typically, on these systems, keeping in mind that its -- the lack of a hard drive is an obstacle for you in doing analysis of these things?
A Yes. Without a hard drive, it's worthless to me. There's nothing I can get off of it.
Q Typically, in video systems, the clock at the bottom, how is this -- how do they come up with that?
A That's set by a user on the DVR system, just like you

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would set the time on your -- you know, on your TV or microwave or stove top.

Q So it can be set to anything?

A Correct.

Q Sometimes, for a reasonable degree -- if you lived in California, you would shift it for that correct time; is that correct?

A Yes.

Q So it's possible to manipulate that. Is that fair?

A Yes.

Q So I guess what I'm asking is, how is that similar to any sort of household appliances or anything like that?

A It's the same thing. You just go into a menu, go into the settings, and you can change your date and time on your DVR system. Just like, again, you would on your microwave or coffeepot.

Q And it can be changed to any date and time that the ---

A That's correct.

Q The top that's labeled clip 11 -- 11127093409, can you say anything about that at all?

A I believe a lot of DVR systems when you export a view from them, it creates a file, and a lot of times the default file name will a lot of times be the date and the time of a video file. So if you're creating a video file from 1/11/17, it'll create the file name. And it appears that

the file name is what's on top of that the video.
Q Can you manipulate that as well? In other words, was the number of the first clip you listed is 1, would that have come across initially as something entirely different, then he's changed the name?
A It could have been renamed before copied to the thumb drive, yes.
Q So on what day were these three videos transferred to that thumb drive?
A I believe -- I apologize. I believe it was January -- if I refresh myself -- I apologize. It would have been January 16th, 2017.
Q And what day were those last modified off of the original system?
A January 11th, 2017.
Q And is that when they would have been created, on that date?
A Yes.
MR. KENDALL: Nothing further, Your Honor.
MR. MORIN: If I may have just a moment, Your Honor.
THE COURT: Uh-huh.
MR. MORIN: I don't have any questions for this witness, Your Honor.
THE COURT: You may step down.
(The witness left the stand.)

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THE WITNESS: Thank you, sir.

THE COURT: Next witness.

MR. KENDALL: At this time the State would Steve Anderson, Your Honor.

STEPHEN ANDERSON, upon first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Could you please state your name for the record.

A Stephen Anderson.

Q And where are you currently employed, sir?

A I am the general administrator at the Cherokee County Detention Center.

Q And you're Major Anderson; is that correct?

A Yes, sir.

Q In your role as an administrator of the jail, do you all record phone calls?

A Yes, sir.

Q And how is that done?

A All phone calls are recorded in there, even given a pre-statement that they could be used in a court of law. It is done through a system that is based out of Texas, but it is stored for our use for evidence.

Q And you have to go to access those files?

A Yes.

Q If you don't take action, do those files stay around forever?
A They will stay around for one year if we don't take any action.
Q And do you have the ability to take action and keep those files?
A Yes.
(State's Exhibit 32 was marked for identification.)
Q I'm going to show you what is marked State's Exhibit 32. Do you recognize this?
A Yes. It looks to be a CD of a phone call from our system.
Q And have you had an opportunity to listened to this?
A Yes.
Q And was that a fair and accurate representation of the phone call that was copied?
A Yes.
MR. KENDALL: And we would offer State's Exhibit 32 into evidence at this time.
MR. MORIN: No objection.
THE COURT: You may publish. It's admitted.
What was the date on it again?
MR. KENDALL: Of the call?
THE COURT: Of the phone call.
MR. KENDALL: I believe it was January 23, 2017.

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(State's Exhibit 32 was played for the Court and jury.)

Q All right. Just a couple things real fast. This was a call that was made to Mr. Simmons; is that correct?

A Mrs. Simmons made that phone call home.

Q And what did he just indicated they took?

MR. MORIN: Objection. Hearsay.

THE COURT: It speaks for itself.

(State's Exhibit 32 was played for the Court and jury.)

MR. KENDALL: Please answer any questions the defense may have.

MR. MORIN: I have no questions of this witness.

THE COURT: You may step down.

THE WITNESS: Thank you.

(The witness left the stand.)

MR. KENDALL: The State will call Samuel Stewart at this time, Your Honor.

SAMUEL ADAM STEWART, upon first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Could please state your name for the record.

A Samuel Adam Stewart.

Q Mr. Stewart, where are you currently employed?

A I work for the South Carolina officer division, commonly known as SLED.

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Q And how long have you been employed there?
A Eight years.
Q And what are your responsibilities with SLED?
A I'm a DNA analyst in the scientific DNA casework department.
Q And what sort of education did you undergo and training to get this assignment?
A I received my bachelor's in science and biology from Frances Marion University. I also received in-house SLED training under other court-qualified analysts for a little over a year and a half. I had to successfully complete a written exam, an oral exam, a competency, and mock trial before I was deemed competent as a DNA analyst.

THE COURT: Your Honor, at this time we would offer Samuel Stewart as an expert in DNA analysis.

MR. MORIN: If I can ask a question.

THE COURT: Sure. You can voir dire if you want.

BY MR. MORIN:
Q How many times have you testified as an expert in DNA analysis?
A Approximately 33 times.

MR. MORIN: That's all. No objection.

THE COURT: All right. Well, folks, this witness has now been qualified as an expert in the field of DNA analysis. As I told you earlier with expert witnesses,

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they'll be allowed to testify in the form of an opinion. You decide how much weight to give his testimony based on all of the evidence that you hear throughout the trial, as well as to weigh things like his background, training, level of expertise. You decide alone how much weight to give his evidence -- his testimony based on all the evidence that you'll hear throughout the trial.

You may resume.

MR. KENDALL: Thank you, Your Honor.

Q And did you conduct the DNA analysis in the Jason Simmons case?

A Yes, I did.

Q I'm going to show you what is marked State's Exhibit 30. Do you recognize this?

A Yes, I do.

Q And what is that?

A It is a buccal swab from Jason Simmons. It has the unique SLED lab number and item number, as well as my initials and date on it.

Q And how did that come to you?

A I got it from my evidence control department.

Q And when you got it, was it sealed at that the time?

A Yes, it was.

Q And after testing it, did you seal it back up and send it back.

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A That's correct.
Q And are there any markings on there that indicate that?
A Yes. It has my initials and date, when I entered it into the heat-seal pouch, as well as when I exited it out of the heat-sealed pouch.
MR. KENDALL: Your Honor, we would offer State's Exhibit 30 into evidence.
THE COURT: Over his previous objection, I submit it.
Q And I'm going to show you what is marked State's Exhibit 28. Do you recognize this?
A Yes, I do. This is the CSC kit from Minor has the unique SLED number and item number as well.
Q And did you receive that as well?
A Yes, I did.
Q Where did you get that from?
A I got it straight from Forensics Serologist Verona Herrera.
MR. KENDALL: Your Honor, we would offer State's Exhibit 28 into evidence.
THE COURT: It's not already in?
MR. MORIN: No, sir. It was part of it.
THE COURT: Pardon?
MR. MORIN: It was part of the one I objected to earlier.
THE COURT: All right. Admitted over his objection.

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Q And were you sent the State's Exhibit 27? Did that actually come to you?

A I did not get this item.

MR. KENDALL: We would offer State's Exhibit 27 into evidence. It was actually -- the chain was complete through Ms. Verona.

THE COURT: I thought all those were already in, but admitted over his objection.

Q Sir, once you received these items, what do you do with them?

A Once items come into my custody, I start processing -- processing these items for DNA to develop a DNA profile.

Q And how do you do that? Could you please explain the procedure for how you develop a DNA profile.

A Not a problem. The first thing we do is we extract the DNA from the item. Usually, it's a cutting or from a piece of swab. Once I extract it, I put it inside a solution to try to pull away that DNA that may be there. And then I quantify that DNA to try to find out exactly how much we have. We have to have the DNA within a certain range. Too much won't give us a good profile, and too little won't give us a good profile either.

Once I find that range that's necessary for each and every item of evidence, I amplify it; make many, many copies of that DNA. And then we put it on another instrument to

develop the DNA profile. And once those profiles are developed, I compare the evidence to the known standards, which are the individuals that are involved in that criminal case, to see whether or not those individuals are included or excluded as possible contributors to the DNA profile from the evidence.

Q And this case, whose profiles did you come up with?

A I had a buccal swab from Minor [redacted] and buccal swabs from Jason Simmons.

Q And so from that, were you able to develop a DNA profile of those individuals?

A Yes, I was.

Q And what items came to you as a result of this?

A She sent me items 1.1, the vaginal swabs from CSC kit and Item 1.3, the rental swabs from the CSC kit.

Q And what, generally speaking, test did you -- what did you test on this?

Let me ask it like this: Did you run tests on this for sperm fraction and nonsperm fraction?

A That is correct. Whenever we have an item from a sexual assault kit that has indication of any male DNA, I did a different type of extraction known as differential. And what that does is split each item into to two portions. A nonsperm fraction -- this is the portion, what I hope to separate, all the female DNA that I know that is there, and

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a sperm fraction. This portion is the portion that I hope to capture any potential male DNA that is present on that item.

And this is because of where these items come from, the individual's body, there's a potential that that female's DNA can mask any DNA that's present, any kind of potential male DNA I should say. So we try to separate it out to try to Isolyte -- excuse me -- isolate any of that DNA that may be there from a male.

Q Now, when you talk about sperm fraction, does that necessarily require there be an actual sperm?

A No. It's just a normal picture that we have for those different portions.

Q So you could, for example, pull out this male portion to it and there'd be no sperm in there at all. Is that fair to say?

A That is correct.

Q That's just what you guys call it; just the nomenclature from how this testing is done?

A That is correct.

Q And did you run a nonsperm fraction test on the vaginal swabs in this case?

A Yes, sir. Nonsperm and sperm.

Q And what were, in your expert opinion, your findings with regards to the nonsperm fraction?

A The DNA profile -- the nonsperm fraction from the vaginal swab is consistent with the DNA profile of Minor [redacted] And I also -- excuse me, if I may -- I also did Y-testing on these items as well.

If I may explain, Y-testing tests DNA only from the Y-chromosome. So it isolates the male's profile. They're only from male DNA that's present there as well. And this kind of profile is -- pass along the male paternal lineage. So this profile is shared by individuals -- father, grandfather, brother, uncle -- anyone in that line too. So I did that testing as well. I just want to explain before I continue with my results.

A partial Y-STR DNA profile developed is a mixture of the two male individuals. A partial Y-STR DNA profile of the major contributor matches the Y-STR profile of Jason Simmons.

Q And what is meant by "the major contributor"?

A Oh, yeah. When we have -- sometimes we have a mixture on an item. That meets two or more individuals may have contributed the time -- excuse me -- their DNA through an item. Sometimes I'll break down that mixture into a major and a minor. One person contributed significantly more DNA to that item and a minor contributed -- some contributed significantly to that item.

Q And Mr. Simmons was the major contributor in this

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instance?
A That is correct.
Q And what's the probability were you able to ascertain that he was the contributor?
A Excuse me. The probability of selecting an unrelated male individual having a Y-STR DNA profile matching a major contributor to the non-sperm fractioning of this item is 1 in 5600. And the closest statement, paternal male relatives of Jason Simmons may not be excluded as the major contributor to this Y-STR profile.
Q Were you able to run the Y-STR profile for the minor contributor?
A I did. But it was insufficient for interpretation.
Q Was it fair to say that there was a very small quantity then?
A That is correct.
Q And did you run the sperm fraction DNA on these vaginal swabs as well?
A That is correct.
Q And if you could, in a situation where you're identifying a male, is there any advantage to using a sperm fraction DNA?
A Typically, that's the portion that we hope to have captured, that male DNA that is present on that item.
Q And what did the sperm fraction indicate?

A The DNA profile is a mixture of at least two individuals. The DNA profile foreign to [redacted] matches the DNA profile of Jason Simmons.

Q So in that instance, it wasn't a separate male? In this instance, it was [redacted]s DNA and Jason's DNA?

A That is correct. And the probability of randomly selecting an unrelated individual having a DNA profile matching a foreign contributor to this mixture is 1 in 6 billion.

What that statement means is if I took a random person's DNA profile and I compared it to that foreign DNA profile, there would be a 1 in 6 billion chance that that random person's profile would match that foreign DNA profile person.

Q And when you talk about the foreign DNA profile as it relates to this case, the foreign DNA profile is Jason Simmons'; is that correct?

A That is correct.

Q So with regard to the sperm fraction DNA. There is a 1-in-6-billion probability of it not being him. Is that accurately stated?

A That is correct.

Q And is that your expert opinion?

A Yes, it is.

Q Did you run any additional tests with regards to the

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vaginal swabs?

A Yes. I also did the Y for the sperm fraction as well. That statement -- the partial Y-STR DNA profile developed matches the Y-STR profile of Jason Simmons. And the probability of randomly selecting an unrelated male individual having a Y-STR DNA profile matching the sperm fraction of this item is 1 in 2700.

And I guess the statement once again, paternal male relatives of Jason Simmons may not be excluded intrinsic of his profile.

Q And I want to kind of ask you a question about that.

Does that hold true for the -- other male contributors could be involved -- does that hold true for the sperm fraction you did?

A No. Because I believe that he is that individual that is there. So he is the only other contributor to that item.

Q So there would not -- in that instance, where you're using sperm fractioning, it doesn't also include all male relatives; is that correct?

A No, not for the regular STR that I did.

Q So with regard -- so the sperm fraction is found to be a 1-in-6-billion match to Jason Simmons; that does not include all male relatives?

A No, that does not.

Q All right. With regard to the rectal swabs, what did

you find there?

A For the non -- excuse me -- the nonsperm portion, the DNA profile is a mixture for these two individuals. The DNA profile of the major contributor is consistent with the DNA profile of [redacted] And the partial DNA profile of the minor contributor is insufficient for interpretation.

Q So you were not able to get enough DNA to compare that one to Jason; is that correct?

A Yeah. It was just too partial a profile. And we can't put the statistics to that profile, we don't do any comparisons with it.

Q And were you able to use the sperm fraction to try to make some findings?

A Yes, I did. The sperm fraction partial DNA profile is a mixture of two individuals, but due to the inability to calculate statistic, no further interpretation will be offered.

But I also was able to do Y with that sperm fractioning. And the partial Y-STR DNA profile matches the Y-STR DNA profile of Jason Simmons.

Q And what probability of that?

A The probability of randomly selecting an unrelated male individual having a Y-STR DNA profile matching the sperm fraction of this item is 1 in -- excuse me -- 220.

Q Now, why would there be differences between these?

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What are y'all's limiting factors when you're doing analysis of DNA?

A Well, it's just that I -- I just didn't have enough when I did it to -- our normal STR way. But when I just honed in on the Y -- the Y DNA that may have been present there, I did have enough to do the comparison to his profile.

Q So the DNA is not changing. It's just the quantity of the DNA and whether it matches; is that correct?

A It's the quantity and the methodology that I'm using.

Q And the methodology you use -- what does it look for? When you create a profile, what does that mean?

A Well, when we do a normal STR profile, it's along 21 different chromosomes that are found within your body. So we're taking DNA from all the different chromosomes. But for a Y, I'm only using that chromosome that every male has, so that's why it's -- there's a difference between the two.

Q All right. So using the sperm fraction from the vaginal swab, in your expert opinion, what is the probability of it not being Jason Simmons or selecting an unrelated individual?

A It's 1 in 6 billion.

MR. KENDALL: Please answer any questions Mr. Morin may have.

CROSS-EXAMINATION

BY MR. MORIN:

Q Mister? Detective?

A Mister is fine.

Q Mr. Stewart, I'm not quite up to speed on some of this, so if you'll have -- permit me.

In order for you to get these statistics, there had to be a study -- or where are you getting that number from?

A These numbers are housed by a database that is maintained and verified and certified by the FBI.

Q I see. And isn't it true that that database is created by the FBI based on some random samples?

A It is done by sampling many, many people, that is correct.

Q And how many people?

A I would have to say for each different ethnicity -- Caucasian, African-American, I believe, there's Asian and Hispanic -- I would say anywhere between hundreds to thousands of people.

Q Hundreds to thousands?

A Yes.

Q And where do these people come from?

A I believe it's just a random sampling. I'm not sure -- I'm not sure about how, you know, they chose the individuals.

Q And if I understand correctly -- and I see on TV

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(SAMUEL ADAM STEWART-CROSS BY MR. MORIN)

sometimes these other databases -- there's 23, and you said 21; is that correct?

A We use 21 different locations. That's correct.

Q Now, in case you don't know, I'm a little older. When I first started this, it was nine. Did you know -- we started out at nine. Did you know that?

A I was not -- I was not doing it when it was just nine.

Q And then we went to 13.

A I do remember the 13.

Q And now we're at 21 or 22.

A Twenty-one. That's correct.

Q Now, the way it was explained to me, way back when, was we looked at these nine, and if they all matched, then that's a match, correct?

A I guess, I would --

Q Well, I'm misusing the word "match," ain't I?

A I don't know how they did it back then.

Q All right. Well, let's do 13, then.

A Okay.

Q You had 13 and you compared all those 13, and then you matched them up to this database that the FBI has created, correct?

A Yes.

Q And that's how you match them up to see -- and I'm using the word "match," but we're really not supposed be

using the word "match," are we?
A Well, for this, we can use match.
Q Okay. All right. So back when we had the 13 -- they said, well, you know, we'll go up to 13. So if we looked at 12 and they were all good, but the thirteenth one didn't match, completely thrown out.
A I would assume so. If -- we would like the match at every location as possible, but sometimes we do have locations that don't show up. But it would need to be a match at every location.
Q All right. So that was when we were at 13. Because now we're at 21.
A That's correct.
Q So people who matched at 13, lo those many years ago, if they retested today -- now that we've added another ten, they might actually be kicked out, wouldn't they?
A I'm not following.
Q You got 13, back when they were doing 13. And you said we looked at 13, and if 12 of them were matches and the 13th was not, then that wasn't a match. We eliminated that person.
A Oh, yeah. I said that.
Q All right. So today -- if back when I had the 13, if I was a match, but if we used the new 21, if we went all the way up to 19, and then last two weren't a match, we'd throw

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it out.
A I mean, if the profiles doesn't match, then yeah, it wouldn't match as 13 or 21.
Q That's my point, though. My point is you had a system of 13.
A Yes.
Q You increased it to 21.
A That is correct.
Q And when you did that, people that were previously decided we match, we now may or may not match because we're looking at these extra -- I said 10. I should have eight -- eight extra spots, correct?
A I'm not familiar with any of that that has happened. Through my -- you know, to my knowledge.
Q Well, let me ask you this: These things that you looked at, these chromosomes ---
A That's correct.
Q --- what do they do?
A Are non-coding chromosomes within your body. So usually chromosomes, you know, determine your eye color, your hair color, your skin color. But the chromosomes that we use to develop a DNA profile, they don't code for anything.
Q Some people would call them "junk DNA." That's been a term used, it's it?

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A That has been a term used for them.
Q That's right. So, now, you've got a couple of different things based on these -- so we're looking at some junk DNA, and we're going off of this data that the FBI created. And some of the numbers -- and I wrote them down -- you said one of them was 1 in 5600; is that correct?
A That was for the non-sperm fractioning, the vaginal swab, and that was the Y stat -- the Y-STR stat.
Q So for that and the approximate population of Cherokee County's 56,000 -- so based on that, you're saying that this fraction would match approximately 1,000 people in this county.
A Well, no. Because this one is the one where it's shared. So this is a different database that we're pulling from as well, too, for the Y. And Y isn't as discriminatory as regular STRs, just for the simple fact that it's shared among so many different male individuals.
Q Well, that's kind of my point. So the number -- well, the solicitor -- you do have one that says 6 billion.
A Oh, and that's for the STR. That is correct.
Q And the solicitor talked about that. But I'm interested in -- because I've done these a few times and you've got one number that says 1 in 220.
A That's the -- yeah, for the Y stat for the sperm fraction of Item Number 22.

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(SAMUEL ADAM STEWART-CROSS BY MR. MORIN)

Q So the Y stat is giving us a lower number.
A And that's because the shared-ness of those profiles.
Q Well, now I'm a little confused, and I apologize.
It was my understanding that the Y stat was from the male, the Y chromosomes that appears just on the male.
A That's correct. But those profiles are also shared between his brother -- uncle, brother, any of those, so because of that, it's less discriminatory. And because it's less discriminatory, that number, that stat, is going to be lower because it's shared by more individuals.
Q Exactly. More individuals. I mean, you're saying -- explain that part about his brothers and whatever again.
A With that Y profile that I developed, it will be shared by his brothers, uncles, grandfather, anyone who followed that same paternal lineage.
Q But you don't know how many brothers and sisters and all that he has?
A I do not.
Q Right. So when you say 1 in 220 or 1 in 2700 or 5600, you're saying in a random population that match is going to show up once every 220 times?
A That is correct for male individuals, of course.
Q So if we assume Cherokee County -- that half of the people are males, and that's 25,000. And then we divide that by 220. We're going to come up with a lot of matches,

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aren't we?
A It is possible.
Q Now, you said -- and I don't -- I didn't catch this exactly, but you said if you have too much or too little, you're going to have not a good profile?
A That is correct.
Q Were you talking about the standards then; the buccal swabs?
A Oh, no. I was talking about just DNA in general. We have -- I was talking about how we have to get DNA within a certain range, as much of the amount that we have, I should say.
Q So if you have too much DNA, that's going to give you a bad read?
A Yeah. The profile won't be useful.
Q All right. And you also used the words that when you were working with it, you hoped to separate it out and you were going to try and separate -- or hoped to capture and try to separate.
A When we do these different extractions, it's not 100 percent that we get a clear-cut separation between the male and the female DNA. Sometimes there's some overlap, and that's common. I mean, that happens all the time, that we have some of her DNA maybe still inside that sperm fraction. That's very common.

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Q I see.

MR. MORIN: That's all the questions I have.

THE COURT: Re-direct?

RE-DIRECT EXAMINATION

BY MR. KENDALL:

Q So you ran multiple tests on this, right, between the vaginal and rectal swab, and things like that?

A That is correct.

Q At any point in time, did you find evidence that it wasn't Jason Simmons?

A No, did not.

Q So when you developed these profiles, the profile you get from the swabs, is that a full -- you all the -- every single portion of the DNA? How does that work?

A For most of them, I did; for some of them, I did not get a full DNA profile. For the sperm fraction of Item 1.3, that was not the full profile; it was a partial profile. And all the profiles that I ran for Y testing, I would go through it with partial profiles as well.

Q And then you matched those -- that profile you create against Jason Simmons's, correct?

A That is correct.

Q And if there's some stuff that's not filled in there, that's reflected in the odds. Is that fair to say?

A Yes. It is reflected in the stats. That is correct.

Q And the limiting factor to that -- or what is the limiting factor to that? Is that the quantity of DNA? Is that who the person is? What is the ---

A It's just the quality and the quantity of DNA.

Q So, for example, if there's less DNA found on the rectal swab, than on the vaginal swab, you would -- it might be common for there to be less DNA present, a lower match. Is that fair to say?

A A lower statistic. That is correct.

Q Now, Mr. Morin asked you about the people of Cherokee County -- people matching it around here.

On that sperm fraction DNA that came back as a 1 in 6 billion, was that -- did that include his male's -- other males in his family?

A It did not.

Q So that is unique to him. Is that fair to say?

A That is correct.

Q So it's a 1-in-6 billion chance, not of being his uncle or his mother or anything else, of it being him; is that correct?

A That is correct.

MR. KENDALL: Please answer any questions...

MR. MORIN: If I may, Your Honor?

THE COURT: You may.

RE-CROSS-EXAMINATION

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(SAMUEL ADAM STEWART-RE-CROSS BY MR. MORIN)

BY MR. MORIN:

Q I'm not picking up on something here. Maybe you can explain it. Your name is Stewart.

A That is correct.

Q We're 100 percent sure that it's you.

A Yes, I'm sure.

Q We don't need a percentage. We don't need a 1 in 2600, correct?

A That is correct.

Q Now, Mr. Kendall, just asked you if this DNA is him; Mr. Simmons, correct?

A That is correct.

Q Your reports got statistics on there: 1 in 2600, 1 in 5700, 1 in a billion. Correct?

A That is correct.

Q And those are because you -- while it is consistent in certain respects -- it's not 100 percent. Or -- and you tell me, in your experience in 33 times testifying, how many times have you seen the number nonillion?

A I've seen it quite a few.

Q Quite a few. And how many times have you seen quintillion?

A I've seen it quite a few as well.

Q And how many times have you seen 220?

A For Y stat? That could be common for Y stat.

Q Could be?
A Yes.
MR. KENDALL: That's all the questions I have.
THE COURT: All right. You may step down.
(The witness left the stand.)
Do you have any other witnesses?
MR. KENDALL: We were just checking to make sure I've got everything in. I believe I have all my exhibits in.
THE COURT: So does the State rest then?
MR. KENDALL: If not, I believe there's 35.
THE COURT: I've got some jurors that want to go to the bathroom, so if you're going to rest, that's where we're going to break for it right now. If you need to clear up any evidence, make sure it's then. Somebody needs to go to the bathroom, we'll take a break. Don't begin deliberations or discussions. We'll have you back in a few minutes.
(The jury exited the courtroom at 3:23 p.m.)
(A recess was taken.)
(The jury entered the courtroom at 3:36 p.m.)
THE COURT: All right. Mr. Solicitor, anything else from the State?
MR. KENDALL: Yes, sir, Your Honor. At this time, the State would move Exhibits 1 through 32 into evidence to the extent that any of them are not.
THE COURT: I think everything was without objection,

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except 28, 29, and 30.

MR. MORIN: I think that's right.

THE COURT: So they're admitted over objection.

MR. KENDALL: And the State would rest at this time, Your Honor.

THE COURT: All right. Well, folks, you've now heard the State's case. And due to the lateness of the hour, we'll break for the day. We'll finish up the case in the morning.

Now, you've heard all the evidence you're going to hear from the State, but you still might have the opportunity to hear something from the defense. The defendant does not have to testify, doesn't have to put up a defense. I'm giving them overnight to decide if they want to. I what to stress to you, as I told you at the beginning of the trial, the State has to prove guilt beyond a reasonable doubt. The defendant does not have to prove he is innocent. He does not have to testify. He does not have to put up a defense. And if he does not testify and if he chooses not to call any witnesses, you are not to hold that against him while you are deliberating. So don't let that enter into your mind. That's not to come up during your deliberations tomorrow. But I just wanted to put that up front to make sure that you understand that he does not have to put up a defense and he does not have to testify and he does not have to even tell

me right now whether or not he's decided to. I told his lawyer because it's late, I'll let him decide whether or not he'll do it and let me know in the morning.

So we will finish the trial up tomorrow morning, and so don't begin deliberations or discussions or talk about the case with anyone. Don't post anything on social media or try to find anything out on the Internet and if anybody does approach you about the case, please report that to me in the morning. So go home. If you would be back just a little bit before 9:30 a.m. Hopefully, we'll get started right at 9:30. Thank you.

(The jury was excused for the day at 3:38 p.m., after which the following proceedings were had before the Court in this matter:)

THE COURT: All right. Any motions?

MR. MORIN: Your Honor, at this time the defense would make a motion for directed verdict on the grounds that the evidence in light most favorable to the State would cause the jury to have to speculate, and also based on my objections to evidence that's been put in regarding that issue.

THE COURT: Any response?

MR. KENDALL: Yes, sir, Your Honor. I would move the State has met his burden in the light most favorable. We've established jurisdiction through Minor and her mother. She

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made a disclosure of sexual conduct with the defendant Jason Simmons, who she pointed out in court.

Additionally, Your Honor, there's a forensic interview in which, again, detailed evidence of sexual abuse, inappropriate touching to the inside of her vaginal area. Moreover, Your Honor, it is significant evidence to point to DNA is basically found on vaginal and rectal swabs. This in and of itself, I think, is certainly prima facie evidence known there's inappropriate touching, particularly, when coupled with the fact that she does allege inappropriate touching.

We've also heard evidence of his attempts to alter evidence or present evidence to law enforcement that misleads, suggesting a guilty conscience in mind, both with the video, which he produced for them, that clearly was produced on a different day and was heavily edited to make it appear that he was just sleeping all night, which was inconsistent with his statement, as well as a jail phone call, in which he requests that Missy or requests that someone basically block police from -- take efforts to block police from accessing his phone. We think in the light most favorable to the State, we've met our burden for directed verdict, Your Honor.

THE COURT: Well, I find that there is some direct and substantial circumstantial evidence of sexual assault by the

defendant upon Minor [redacted] who is a minor under the age of 11, and so motion is denied.

All right. So tomorrow morning you will let me know. You had listed ---

MR. KENDALL: --- Melisa Simmons. Yes, Your Honor. That may be a witness too.

THE COURT: All right. Let's meet maybe, say, 9:15 a.m., and we'll plan accordingly ---

MR. MORIN: Yes, sir.

THE COURT: --- as to whether or not we're just going to go straight into deliberations and charging and arguing. So if you got anything that you want as far as the charges, you've got what I got. At this point we will leave the defendant not testifying. And everything else, other than statement of the defendant, will be left in -- the statement of the defendant, how defense was offered against him.

All right. See y'all at 9:15 a.m.

(On Thursday, January 9, 2020, at 3:41 p.m., court was recessed until Friday, January 10, 2020, at 9:28 a.m., and after such recess, the following proceedings were had before the Court and jury:)

THE COURT: Okay. We're back. The defendant is in the courtroom. All right.

Mr. Simmons, we talked on -- today's Friday -- so Wednesday, I guess, when we started, about your right to

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testify, not testify. I told you you didn't have to tell me then, but at some point in the trial, you would have to make a decision as to whether or not you want to testify, tell your side of the story to the jury. If you don't want to testify, I will instruct the jury to not hold that against you in any way while they are deliberating.

It's that point in time when you'd have to make a decision as to whether or not you're going to present a defense, which would include or not include, you testifying.

Have you made a decision?

THE DEFENDANT: Yes, sir.

THE COURT: And what is it? You're going to testify?

THE DEFENDANT: Testify.

THE COURT: Okay. You will be placed under oath. Your lawyer will ask questions first, and the State will have the right to cross-examine. Is there any issues about prior convictions?

MR. MORIN: I don't think he has anything in the last 20 years, Your Honor. That was the discussion I had with the State earlier.

MR. KENDALL: That is correct, Your Honor.

THE COURT: Okay. Well, are we ready, then? Is there anything we need to do before we call the jury in?

MR. MORIN: We are ready.

THE COURT: State ready?

MS. LESCANIK: Yes, State's ready.

THE COURT: Okay. Bring the jury in.

(The jury entered the courtroom at 9:30 a.m.)

THE COURT: All right. Folks, welcome back. We are going to now to take it to the next phase of the trial in which the defense will have the opportunity to call the first witness. Mr. Morin?

MR. MORIN: Thank you, Your Honor. The Defense would call Jason Simmons.

JASON SCOTT SIMMONS, upon first being duly sworn, testified as follows:

THE WITNESS: I just have depth perception problems.

THE COURT: Okay.

THE CLERK: Just don't try to get down until the bailiffs are there to help you. Okay?

THE COURT: All right. Mr. Morin?

MR. MORIN: Thank you.

DIRECT EXAMINATION

BY MR. MORIN:

Q Mr. Simmons, will you state your name for the jury, please.

A Jason Scott Simmons.

Q And, Mr. Simmons, just as a matter of housekeeping, let's go over the reason that you're using a cane.

How old are you?

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A Forty-five.
Q And have you had or have you sustained a brain injury at some point in your life?
A Yes.
Q Can you tell me about that.
A I was shot when I was a baby, and in 2012 -- I don't know my age -- I had a stroke.
Q Well, let's start with that. You got shot when you were a baby; is that correct?
A Yes. When it was a kid.
Q All right. And as a result, what happened from that injury?
A They had to leave the BB in my brain.
Q Okay. Now, do you work now?
A No.
Q Are you disabled?
A Yes, sir.
Q Have you been disabled your whole life since you got shot?
A No. I used to drive a tractor-trailer.
Q And when did you stop driving the tractor-trailer?
A March 2nd, 2012, I had a TIA and a TBI, brain injury, a stroke.
Q And after that point, you couldn't drive?
A No.

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Q Now, as a result of that stroke, did you have surgeries on your brain, then?
A Yes.
Q And so that's where you've been going since 2012?
A Yes, sir.
Q Now, there's been testimony about your discussion with Ms. Fortner about having to go to Charleston.
A Yes.
Q Now, in 2017, did you have to go to Charleston?
A Yes.
Q And why did you have to go to Charleston?
A I have to go to have MRIs and CT scans every six -- six months.
Q And why do you have to do that?
A The tumors I have, grow. And they have to be removed surgically.
Q Now, since 2017 -- it looks like in 2017 you weren't using a cane.
A Yeah. It's gradually getting worse.
Q And so what Ms. Fortner testifies about your being upset about having to go there in January 2017, did you actually go there?
A Yes.
Q And how did you go to Charleston?
A My wife had to drive me.

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(JASON SCOTT SIMMONS-DIRECT BY MR. MORIN)

Q And back in 2012, when you had your CDL ---
A Yes.
Q --- and then you had a stroke, tell me about what happened with your TBI?
A I had to make a report to the government -- federal government letting them know that I had a stroke -- excuse me -- surrender them. First they had to, after I made the report, they submitted it to my medical department with Schneider, and Schneider revoked the -- my medical card. And then the Department of Transportation sent a notice to release to have my CDLs revoked.
Q Now, back in 2017, were you experiencing any problems regarding these injuries?
A Yes.
Q And what were they?
A Epileptic ---
THE COURT: Pardon?
THE THE BAILIFF: They can't hear.
THE COURT: Can't hear?
THE CLERK: Bring the mic closer.
THE COURT: Lean in more towards the microphone.
A I had -- had the surgery. Repeat the question.
Q It's okay. I was asking you about the revocation of your CDL license?
A Yes. They revoked my medical part of my CDLs, then

they revoked my CDLs.
Q And then ---
A I had to voluntarily return everything.
Q Now, in 2017, in January, were you experiencing issues with your brain?
A Yes.
Q And were you taking any medication?
A Yes. Depakote, Keppra.
Q And what were you taking those for?
A Epileptic seizures.
Q Now, there's a video that we've seen of you sleeping in the chair.
A Yes.
Q Can you tell the jury why it is you were videotaping yourself in the chair.
A Trying to catch the seizures on film, where Dr. Vandergriff, Dr. Ringel could see what kind I was having. If they mono or -- I forgot the name of the other one. Mono seizure's a jerk, and it's -- and it's what they call an "absence seizure."
Q Now, there's been a 64-gig video.
A Yes.
Q There's been a discussion about how the State came in possession of that.
A Yes.

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Q Tell the jury what you remember about that exchange.
A Yes. I was sitting on the couch. I can barely move. I hurt constantly in my back due to my stroke. He -- the police come in -- they rushed in through the house. I didn't know what to do. I'm -- I get scared very, very easily; a firecracker could scare me. He came in and grabbed everything out of my hands, even the flash drive and my cell phone and TV remote.
Q What, if anything, did you say about the flash drive?
A I told him there is a video of the night that I was in the chair, asleep.
Q Did he tell you what night he was interested in?
A No. Huh-uh. No, sir.
Q Now, there's a video recorder with a missing hard drive.
A Yes.
Q Tell the jury about the missing -- what happened there.
A If anybody's had a computer before, a hard drive, when they fail, they can actually catch fire, burn up. I had one in one of my computers burn up, and I took the hard drive out of the Revo unit. I don't know if it went in one of the computers or a laptop, to give me -- where I could get access to my data on my computer.
Q Now, who do you live with now?
A My wife, Melisa, and my son, Landon.

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Q And how old is Landon?
A Three months, I think. If not two months, he's almost three.
Q Now, back on January 8th of 2017, did you at any point come in contact with Jason or Dana Fortner or their family?
A Yes.
Q Well, tell me about that.
A I can remember bits and pieces.
Q Tell us what you remember.
A I can remember going out to eat.
Q Well, let's start there. Because you at this time were living at Quarter Round Road, correct?
A Yes.
Q And so you went out to eat. Where did you go? Do you remember where you went?
A Mexican. I don't -- I forgot the name of the restaurant. It's Mexican. I know that.
Q And who was at the Mexican restaurant?
A Jason, Dana, me, Melisa, Minor, Maggie.
Q And when you say "Minor," you're talking Minor ?
A Yeah.
Q So after you ate there -- was that supper or lunch you had?
A It's a little -- I think it was just getting dark. I can't -- I get supper and dinner confused.

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Q All right. Well, it's in that area. So after you ate at the Mexican restaurant, where did you go?
A I think we went back to their house. I'm not sure.
Q All right. So you think you went back to their house?
A Yeah. My mind -- my memory is --
Q Fair enough. During the dinner, when did it come up that Minor would go with you? And Missy was with you, right?
A Yes.
Q Your wife?
A I don't know if it was in the middle or after dinner. I cannot -- I can't remember that. I think I was outside, smoking. I'm not sure.
Q But when you went to meet the Faulkners [sic] for dinner or supper later in the evening, you didn't know then that Minor was going to be staying with you?
A No.
Q So at some point, it's decided that Minor's going to stay.
A Yeah.
Q And you go from their home in Spartanburg to your place, where you were living at Quarter Round Road?
A Yes. To my mama and Ed's.
Q Now, who was driving?
A Melisa.

Q And when you get to your house, who's in charge of taking care of Minor -- you, her, or both of y'all?
A Missy; Melisa.
Q Melisa. All right. So you got back. Was it light or dark out?
A Dark.
Q And did you go up the stairs into your apartment or live-in area, where you were staying?
A Yes.
Q What did you do that you remember?
A I remember playing, I think, Fallout 4 on the computer and watching some TV and a few other things. And that's all I can remember right now.
Q And did any of that -- and where did it occur in the room?
A I had my computer hooked to the -- to the big TV, our big TV, I think it was a 50-inch TV, to play Fallout 4.
Q There, in the living room?
A Yes.
Q Did Minor ever come into the living room where you were?
A Yes.
Q And when she did, where was Missy?
A I think Missy was sitting in the recliner by then. If you...
Q All right. So when it was time for Minor to go to bed,

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tell us about that.
A I know I was playing Fallout 4 or watching TV, one of the two. It's on the computer. I knew it was on the computer. I can't remember which -- which computer.
Q That's fine.
A If it was Kodi or Amazon Fire. It was on one. They were in the recliner and they went into the bedroom. The doorway to the bedroom and the living room is right close to each other.
Q Okay.
A And I remember her running across the floor. 'Cause I can remember creeks in the floor.
Q Did Minor sleep -- where did Minor sleep?
A Next to Missy.
Q In what room?
A The bedroom.
Q And how many beds are in that -- in that area that you've got?
A One.
Q And did you and Missy sometimes sleep in that bed together?
A Yes.
Q Sometimes you slept in the recliner.
A Yes.
Q Minor had been with you and Melisa over night before,

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haven't they?
A Yes.
Q "She," not "they". And during that time -- those times that you were -- you and Missy had her overnight, did you ever -- what was the normal sleeping arrangements?
A I'd sleep on either the couch or the chair due to my muscles hurting or ---
Q Sure.
A --- or spine hurting.
Q Is there any time that you and Melisa and Minor were all in the bed at the same time?
A No.
Q Is there any time that Melisa -- I mean, Minor came to the house and she slept in the same room with you?
A No.
Q Now, the next day, January 9th ---
A Yes.
Q --- it had been snowing; is that correct?
A I think so.
Q And who do you remember getting up first that day?
A I did.
Q And why do you think you got up first?
A I usually get up anywhere from 3:00 to 5:00 in the morning.
Q So later on, Missy and Minor got up?

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A Yes.
Q Was there ever a time that you were in a room alone with Minor?
A No. I was more concerned -- I don't know if it snowed that day or iced. I was more concerned of the weather.
Q Okay. Now, you're going to take Minor back to the Fortner's home, correct?
A Yes.
Q Tell me about that. Where did you go?
Well, actually when you left the house, how many cars went?
A Two.
Q And what two cars did you have?
A A Jeep Cherokee and a Nissan Altima.
Q And which one did you drive?
A The Jeep.
Q And so Minor drove in the Altima?
A Yes.
Q And who did Minor ride with?
A Missy at first, then swapped to me.
Q Well, let's talk about that. Where did you go? Did you go straight to the Fortner's home?
A McDonald's.
Q Do you remember where at McDonald's?
A Cedar Springs.

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Q Is that close to where the Fortner's live?
A Yes.
Q So you went to McDonald's. Y'all ate there?
A Yes.
Q Now, when you left McDonald's, you were still driving the Jeep Cherokee?
A Yes.
Q Obviously, your wife's driving the Altima. Where was Minor?
A I had just put her car seat into the back of the Jeep.
Q And what --
A I can't name the side of it. Passenger side.
Q Right. And what was the reason that you did that?
A Where I could see or if we got in a wreck or something?
Q No. I want to know why you took the car seat out of the Altima and put it in the Jeep?
A Oh, my wife had got called into work.
Q And so from there, you went from McDonald's to the Fortner's house?
A Yes.
Q Did you make any stops along the way?
A Huh-uh.
Q And when you got there -- when you got to the Fortner's, you had the car seat; is that correct?
A Yes.

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Q At what happened to it?
A I think I took everything inside the house and set it in the door -- I call it like a washroom.
Q Now, there's been talk about a backpack you brought in.
A Yes. I think that was the last thing I brought in. Because the car seat was heavy.
Q And what did you do with that backpack?
A I think I set it in the laundry room or in the -- in between the kitchen and the living room, and don't know after that.
Q Okay. Now, the Fortners -- it's been several years you've known the Fortners; is that correct?
A Yes.
Q And did you know the Fortners before or after your 2012 stroke?
A Before.
Q And your wife, Missy, she's related to the Fortners?
A Yes, sir.
Q How long have you been -- you and Missy been together?
A I want to say 2011, 2010.
Q And are you married now?
A Yes, sir.
Q When did you get married? Was it before or after 2012?
A After.
Q Was it before or after 2017?

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A Before.
Q Mr. Simmons, have you ever put lotion on Minor?
A No, sir.
Q Have you ever been present when Minor was having a bath or a shower?
A No. I would actually -- actually walk outside.
Q When that was occurring?
A Yes.
Q Have you ever -- well, I don't want to do that too far.
So you're saying -- there's also some conversation about this toothbrush.
A Yes.
Q You've heard that?
A Yes.
Q Is there -- can you tell the jury if you touched Minor with any kind of vibrating something?
A No.
Q Toothbrush?
A No.
Q Shaver?
A No.
Q Now, when Minor comes over, sometimes she has to change from whatever she was wearing to a nightgown -- night -- we'll get to that -- nightgown or some other sleeping clothes?

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A Yes.
Q And the times that Minor has been with you and Missy, have you ever changed her clothes?
A No. I actually go outside. I do smoke a lot, and I go outside. My parents wouldn't let me smoke upstairs if there were kids upstairs, or anybody stayed over.
Q So you were using that time to be a signal for a smoke break.
A Yeah.
MR. MORIN: Answer any questions. Thank you.
THE COURT: Cross?
MR. KENDALL: If it pleases Your Honor.

CROSS-EXAMINATION

BY MR. KENDALL:
Q Mr. Simmons, just to make sure I've got a couple of things straight: You were in fact there that night, on the night of January 8th and January 9th?
A Yes.
Q Is that correct? You were in the home?
A Yes, I was in the home.
Q And the only other individuals inside that home, in the upstairs apartment were yourself and Minor ; is that correct?
A No. Missy; Melisa.
Q You yourself and Melisa. Okay. And so there were no

other adults, no other children there; is that correct?
A No, sir.
Q And she spent the night that night, correct?
A Yes, sir.
Q Now, the other day -- I believe you were in the courtroom. We played a jail phone call -- is that correct -- from you, from the jail?
A Yes.
Q Who was on the other end of that call?
A That was my wife.
Q And while in this house, you all at some point in time owned an electric toothbrush; is that correct? You owned an electric toothbrush?
A I did not, no.
Q Did Melisa own one?
A She used one for her -- to clean her ---
Q --- rings?
A --- rings.
Q And so there was an electric toothbrush in the house, correct?
A Far as I know.
Q Now, we talked about -- a moment ago about the hard drive off this computer, correct?
A Yes.
Q Off this -- excuse me -- video recording device,

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correct?
A Yes.
Q And you testified that it was removed from the video recording device. So let me back up.
Prior to them executing the search warrant on January 20th, you were aware that an investigation was taking place, correct?
A Not until they showed up.
Q Were you contacted by Melisa on January 9th by phone and her asking questions about what happened there the night before?
A No. She did not tell me anything on that.
Q Did she contact you on the 9th?
A She contacted me on the 9th.
Q And on the 9th, did she ask you about the rabbit that had been eaten -- the chocolate rabbit thing?
A I don't recall.
Q But you do you recall having a phone conversation with her about what happened regarding Minor the night before, correct?
A No.
Q She didn't ask any questions about Minor ?
A No.
Q So she just happened to call on the 9th, after talking ---

A She was talking -- are you talking about the jail call?
Q No, sir. I'm talking about January 9th, the day after this happened, the same day that you were brought back. Melisa called you and asked you some questions about the night before, correct? She called you from Dana Fortner's house, correct?
A No.
Q You don't recall any phone calls from ---
A I remember talking to her that day, but not at -- I can't remember at night.
Q All right. So that afternoon or evening?
A I think so.
Q And throughout this entire time, Melisa was staying with you, right? You all were in contact, correct?
A Yes.
Q And once you got arrested, you talked to her on the phone, correct?
A Yes.
Q And you asked her to basically disable the cellular phone so the police couldn't get on it; is that correct?
A No. Basically, we pay by the gig, data. Cut the data off to the phone, where we won't be charged; and cut the voice off to the phone, where we won't be charged; and cut the voice off to the phone, where we wouldn't be charged.
Q But you heard that jail call, correct ---

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A Yes.
Q --- here in the courtroom?
A Yes.
Q I believe what you said was to cut it off so they couldn't use it; is that correct?
A Yes. Where we wouldn't be charged the money -- the gigs and the minutes. We only get by -- pay-by-the-minute and pay-by-gig plan.
Q But how would they be using it? I mean, you didn't think the police were going to go down to the evidence locker and start making phone calls with your phone, did you?
A I did not know. I was ---
Q You did not know?
A No. I had one phone before. A person used it and used over 30 gig on it before, and I got a $500 bill and didn't know.
Q Okay. But why would you say "so they couldn't use it"?
A Where they couldn't use the data off of it.
Q Right. The data that would potentially include incidences happening off of this, right, of Melisa ---
A The Internet, yes. What I'm talking -- like the data, I'm talking, like cutting the Internet off to it.
Q But, again, this would contain what was in the phone, correct?

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A Everything that's in the phone is in the phone. I can't wipe the phone wirelessly.
Q That's not entirely true, is it? You can clear out the phone. In fact, it's what you asked her to do, I believe.
A No, sir. You can't wirelessly wipe a phone. I don't know which -- I think it was the S5 that can't be wiped wirelessly. It's got to be in hand.
Q Now, you acknowledged you told the police you slept all night that night, correct?
A Yes. I was up and down. I think I had a seizure that night.
Q And you indicated that you recorded this on a recording device, correct?
A Yes.
Q And it was set up for this, correct?
A Yes, sir. It was set up to record if I was going to have a seizure, trying to find out -- they were trying to find out if I was having mono seizures or absentee [sic] seizures.
Q And you produced a disk for the police, correct?
A No, not a disk.
Q Or a thumb drive. I'm sorry.
A Thumb drive.
Q And thumb drives have ---
A I can't produce a disk off of a thumb drive.

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(JASON SCOTT SIMMONS-CROSS BY MR. KENDALL)

Q Okay. But you produced a thumb drive, correct?
A Yes.
Q And the thumb drive contained on it three separate versions of what took place -- or three separate versions, edited versions of that, correct?
A Yes. I don't know the exact time I had a seizure, but it's in the video. I was trying to shorten it down to -- to narrow the seizures down.
Q But you didn't just simply abstract the seizures, did you?
A No.
Q I mean, the disks are on the -- or the videos are almost the same length, minus the part where the date changes, minus the part where you set the camera up, and minus the part where you re-direct the camera to the floor, correct?
A The camera never went to the floor.
Q Or excuse me -- was taken away from the couch, correct?
A Usually, when I get up and moved around, I moved the camera.
Q But this wasn't pointed at anything?
A It was pointed at the door.
Q And you were pointing it -- it was pointed to the top of the doorframe.
A Yes.

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Q And you pulled all of those out -- that portion out, as well as you setting up the camera.
A I don't like people looking at me in my drawers -- I'm sorry -- especially my doctor.
Q But it is your doctor. What you're saying is you're giving this to the doctor, correct?
A Yes.
Q All right. A medical professional, correct?
A Yes.
Q Who has the ability -- who examines you and everything else, correct?
A Yes.
Q And so what your testimony is, to make sure I'm understanding -- we'll go back -- is that this hard drive went missing because you took this hard drive and replaced it in a different computer?
A Yes. One of my computers, the hard drive had failed, and I was trying to get the data off of it.
Q But how would putting this drive in that computer recover that hard drive?
A It will -- I could spool the hard drives together as one, and the data could be transferred.
Q I'm sorry. You could spool them together, but you said that one crashed. You worried about it catching on fire, correct?

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A Yes. You could spool two hard drives, if it's crashed in one area of the hard drive, like a fragmented file, you could skip that file and move it to a second hard drive.
Q And that happened somewhere between when you made that video? It just happened to happen some time when you made that video and when this took place?
A No. The hard drive failed maybe six -- six months prior to that.
Q But you were still recording off the video system?
A Yes.
Q And you were making a recording off the video system?
A Yes.
Q Despite the fact there was no hard drive in the computer.
A Yes. You can actually log in through Revo and -- from a remote site to save all data off the camera system to that computer through their app.
Q But you didn't have that computer -- you didn't have the hard drive in that computer. The necessary components of the computer were missing, correct?
A There was one computer there that had Revo on it and it was a gaming computer and it had Revo on it and you could actually see the live feed from the camera system and save it at the same time.
Q So where is the rest of the camera system?

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A There's three cameras on the side of the house. Two -- there were a total of six cameras on the front side of the house and the other six on the other.
Q But you had cameras internally, correct?
A Only one.
Q That would've shown the living room; is that correct?
A Yes. Showed the living room -- that -- well, the dining room.
Q And the only video we got from this was the one you set up, correct?
A Yes.
Q The one that you said was taken on January 8th to 9th that was actually labeled January 11th, correct?
A Yes. I think that's what the cameras stated on the video.
Q And you're fairly fluent in computers, correct?
A Decent. Not -- I can't program them. I can -- I can work on them, replace parts of them.
Q So you certainly know how to change the time on your camera system, correct?
A No. That can't be changed.
Q You can't change the time on the camera system?
A No.
Q Impossible?
A Not on that unit.

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(JASON SCOTT SIMMONS-CROSS BY MR. KENDALL)

Q So what happens to people who don't live in the Eastern time zone?
A If you plug it into the Internet, it's got a auto correction when it's plugged.
Q Oh, it has an auto correction; is that correct?
A When you plug it in, it won't let you change date and time?
Q But if you left it unplugged, then it wouldn't auto correct, correct. It has to be connected to the Internet, right?
A No. It would still stay the same if it was unplugged or plugged in.
Q How would it be that it'd stay the same? The Internet doesn't just jump on the stuff; you actually have to connect to the Internet, right?
A You've got to have Internet going to it.
Q Oh. So if it was labeled the 8th or 9th, and then you plugged it back in, you could manipulate it?
A No.
Q And then when you plugged it back in, it would fix itself, correct?
A It would actually fix itself by -- it takes about 30 minutes to do.
Q Well, what I'm wondering here is if you have a data file that was created on the 11th, which you're claiming

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took place the 8th and the 9th, where you're videotaping yourself sleeping.

A Yes.

Q But forensically the entire thing shows the 11th, correct?

A Yes. I think that's the date I come home from the hospital.

Q Okay. But, again, that wouldn't change the time on the camera. It wouldn't know you came home from the hospital; it's a computer, correct?

A Yes.

Q Were you aware that Minor 's panties were in your attic?

A No, sir.

Q No?

A No, sir.

Q No idea how they got there?

A I know she runs around the -- throwing her clothes when Missy was taking her home. One time she threw all her clothes into the closets and attics, throwing them everywhere.

Q And so you have no reason to understand why they would be -- she just run around throwing her underwear in the attic. Is that your testimony?

A Yes. I can't go into the attic due to the fact that

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there is a -- no ceiling, no floor there.
Q But there were pairs of underwear there, correct?
A Not that I know of.
Q But when you were here in court ---
A Yes.
Q --- watching testimony, correct?
A Yes.
Q And they were thrown a ways back there; correct? They were thrown a ways back there; they weren't sitting right on the thing. She's a 4-year-old girl.
A Yes. They were thrown ---
Q Or placed.
A --- the way it looks by the pictures, maybe 3-foot from the door. I can't tell.
MR. KENDALL: I'm showing him State's Exhibit 11, maybe.
A Yeah, it's 11. Looks like 3-foot from the door.
Q What's that? I'm sorry?
A Looks about 3-foot from the door -- from that door. Because if you count here one, two, and that's the third beam. And I know those beams are set at 12 on center.
Q Oh. So 12 on center?
A Yes.
Q So it's within arm's reach, about 3 feet from the door?
A It ain't in arm's reach; it's throwing's reach.

Q So just to sort of summarize here: She did stay there that night, correct?
A Yes.
Q She was 4 years old at the time, correct?
A I think so.
Q And that was the night you chose to video yourself in your underwear, correct?
A I video self [sic] every night, even now, even before that. I want to catch if my seizures are -- epileptic is getting worse, that way I could show Vandergriff and ---
Q But you didn't have a disk with the next night or the night after that or the night after that.
A Yes.
Q You had this burned on there on this drive, correct?
A I burn it on all drives. I had a ---
Q But you put it on a pin drive to go someplace else, correct?
A Yes. To carry to Dr. Vandergriff.
Q And specifically asked Missy when she was on the jail call with you if they had gotten that drive, correct?
A Yes.
Q That was the only one you asked about, correct?
A No.
Q You didn't ask her about any other nights you were sleeping like that. You asked specifically about that

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drive, correct?
A No. I have two 64-gig drives.
Q Oh. So there's a second 64-gig drive?
A Yes.
Q And did that have other -- so what you were saying is -- what you referenced with Missy is not the drive you gave the police and told them to look at for -- when they executed the search warrant? Is that what you ---
A No. I didn't know they were doing a search warrant until after they done went in the house and started picking up stuff.
Q At that point they offered them a disk and laid it down there, correct?
A A disk?
Q A pin drive.
A Yes. A USB drive.
Q Yes. And that's what you were referencing on the call with Missy, correct?
A No. I was actually looking for the other one.
Q The other one?
A Yes.
Q Are there different videos of you sleeping that night?
A Not that night.
Q So you wanted the police to see evidence that wasn't involving in that night?

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A There was other nights of me sleeping prior to that when I was having seizures.
Q So what you're saying here is that what you wanted to do is have the police see other nights of you sleeping?
A No.
Q No?
A No.
Q So why would you be asking about whether the police had taken that drive?
A I have around ---
Q It was 64-gig drive. It's got the night that you say was created on the 8th and the 9th. You're saying there's another drive that has an additional ---
A I don't know when it was created because I -- when you put it in, it created the -- Revo, you know, it creates its own date and time.
Q But it's the computer, correct? And you just testified a moment ago, that it's ---
A Yes.
Q --- automatically set up to update the date and time on the computer, correct?
A Yes.
Q All right. And the computer says January 11, 2017, correct?
A Yes.

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Q And that's the one you offered the police, correct?
A I think so.
Q Okay.
MR. KENDALL: Nothing further, Your Honor.
THE COURT: Re-direct?

RE-DIRECT EXAMINATION

BY MR. MORIN:
Q Did you change any dates on any of these videos?
A No. No. No.
Q What was the reason that you were putting these videos on USB drives?
A I wanted to send it to Dr. Vandergriff and Dr. Ringel.
MR. KENDALL: That's all the questions I have.
THE COURT: Re-cross?

RE-CROSS EXAMINATION

BY MR. KENDALL:
Q But you acknowledge the dates are different on those, correct?
A That, I don't know.
Q Well, I mean, you sat here. You saw the one that said 8th and you saw one that said 11th, correct?
A No. I can't see from over there to here.
Q Oh, okay. But...
MR. KENDALL: Nothing further.
THE COURT: You can step down. Next witness.

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(The witness left the stand.)

MR. MORIN: Melisa Simmons.

MELISA RENÉE SIMMONS, upon first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MORIN:

Q Ma'am, would you state your name for the jury.

A Melisa Renée Simmons?

Q And how do spell Melisa?

A M-e-l-i-s-a.

Q Melisa, how are you related to Jason?

A He is my husband.

Q And when did you get married?

A June 22nd, 2015.

Q All right. And how long have you known him?

A How long have I known Jason?

Q Yes.

A I've known him since 2010.

Q Okay. When you met him, was he working?

A Yes.

Q And what was he doing?

A At the time, he was working at a warehouse and had started working -- going back to work at driving a truck.

Q And when he was driving the truck, did you travel with him?

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A Yes.
Q And he stopped driving the truck?
A Yes.
Q When he stopped driving a truck, were you present with him when the reason for him to stop driving the truck occurred?
A Yes.
Q Where were you?
A We were at Best Buy in Greenville. He ended up having a stroke.
Q And did he go to the hospital?
A He did.
Q And who took him to the hospital?
A I drove him.
Q Now, how are you related to the Fortners?
A Jason Fortner is my cousin.
Q Fortner. I'm sorry. I've been saying Faulkner. Fortner. He's your cousin?
A Yes.
Q And after 2012 -- well, let me ask you this: Did you and Jason have contact with Jason and Dana?
A Yes.
Q In 2011? 2010?
A Yes.
Q And after Jason had the stroke, you didn't travel as

much?

A We didn't.

Q Did you spend more time with them?

A We did.

Q All right. Now, there's been testimony about how many times or -- actually, there's been testimony that on January 8th of 2017, that was the first time Minor had spent the night with you and Jason; is that correct?

A That is incorrect.

(Defendant's Exhibit 3 was marked for identification.)

Q That is incorrect. I'm going to show you what's been marked for identification as Defendant's Exhibit 3 and ask if you, if you can tell me, what's that a picture of?

A That is Minor spending the night at our house.

Q Who took the picture?

A I did.

Q Is this taken on January 8th?

A No.

MR. MORIN: Move State's Exhibit 3 into evidence, Your Honor -- the Defendant's Exhibit.

THE COURT: Without objection, it's admitted.

Q Now, in fact, isn't it true that you and Jason had taken Minor out of state?

A Yes.

Q And when was that?

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A December of 2016.

(Defendant's Exhibit 7, 8, and 9 were marked for identification.)

Q I'm going to show you what's been marked as Defendant's Exhibit 7, 8, and 9. Have you take a look at those. Do you recognize these pictures?

A Yes.

Q Who took these pictures?

A I did.

Q Where did you take these pictures?

A These were taken actually in Knoxville, Tennessee.

Q Knoxville, Tennessee.

A Yes.

Q Defendant's Exhibit 7 -- with regard to --

MR. MORIN: Oh, I move Defendant 7, 8 and 9 into evidence, Your Honor.

MR. KENDALL: Objection.

THE COURT: Admitted.

Q With regard to Defendant's Exhibit 9 ---

A Yes.

Q --- can you tell me where this picture was taken?

A It was taken in a hotel where we had spent the night.

Q And who was in that picture?

A It is me and Minor .

Q And Minor is doing what?

A Taking a nebulizer treatment.
Q A nebulizer treatment?
A Yes.
Q Where did you get that nebulizer treatment?
A The mask came from their home. She had been getting over from being sick, and she still needed the medication. One of the other children -- I can't remember which one -- was also sick and was needing a nebulizer treatment as well. And they only had one machine, but they had several of the masks. The masks came from their house. It was hers with her medicine, and I had used my mama's box for that nebulizer.
Q January 8th, of 2017?
A Yes.
Q When did you first come in contact with Jason and Dana and Minor?
A On that day?
Q Yes.
A They had called wanting us to come over to go eat. We also carried their Christmas presents to them because they were sick through Christmas. And then we went and eat at -- I think it was -- Bronco's up the street. We left, went back to their house, and then when we got back to their house is when Minor decided that. And they'd asked about us taking Minor .

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Q And, again, that wasn't something unusual, was it?
A No.
Q So about what time was it when you left their house to go back to Quarter Round?
A Probably about 6:00 or 7:00 that night.
Q So it was dark out?
A It was.
Q Now, when you got back to Quarter Round, what happened then?
A We were sitting there watching TV. Minor decided she was still hungry. She had eat some macaroni and cheese, the little cups, ate a popsicle -- freezing and she got on the pad and we went to bed.

(Defendant's Exhibits 4, 5, and 6 were marked for identification.)

Q All right. I'm going to show you what's been marked for identification as Defendant's 4, 5, 6. Can you tell me what these are?
A 4 is a picture of me and Minor, with Minor eating the popsicle. 5 is a picture of me and Minor in the bed with her playing on the tablet. And 6 is a picture of Minor eating macaroni and cheese after I had got her ready for bed.
Q Who took these pictures?
A I did.

MR. MORIN: Your Honor, I move Defendant's 4, 5, and 6 into evidence.

THE COURT: Without objection, admitted.

MR. MORIN: If I may have a moment. I'm unfamiliar with their electronics here.

Q This is Defendant's 5.

MR. MORIN: Can we turn on the lights. It's making it go completely dark. It's doing better with the lights on. Thank you.

Your Honor, I ask that she step down just briefly about this photo. I think it would be easier.

(The witness left the stand and stepped over to the screen.)

Q This photograph --

A Yes.

Q --- a selfie ---

A Uh-huh.

Q Where are you two when this photograph is taken?

A In the bed.

Q What is Minor doing in this photograph?

A She is watching the pad -- tablet, going to sleep.

Q That's what I needed to ask you. If you'll have a seat back.

(The witness returned to the stand.)

Q Now, these photographs, the ones that you say come from

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the 8th, the ones that came from Knoxville, and the one that came from a different date, you took them all?

A Yes.

Q They are all from your phone?

A Yes.

Q How many of them did you send to Dana?

A A bunch of them.

Q A bunch of them. So she had these pictures too?

A Yes.

Q Now, that night that she came here, the 8th, where did she sleep?

A In the bed with me.

Q Had she slipped in the bed with you before?

A Yes.

Q Had she gotten up ---

A Yes.

Q -- before? Okay. She has?

A Uh-huh.

Q And what happens -- tell me about that.

A When she would wake up, when she would spend the night with us at the house, she would always wake me. And instead of her getting out the other side of the bed, she would always want to crawl over me before I would get up. And she would just stand there and wait on me to get up as soon as she would crawl over me.

All right. So this is State's Exhibit 9. And if you can step down for a second.

(The witness left the stand and stepped over to the screen.)

Q Are you familiar with what this is a picture of?

A Yes.

Q And what are we looking at?

A It is someone standing in the kitchen. The middle room, where the tile changes, is the bathroom. And then where the other doorway is is this the bedroom.

Q Now, this is how it was on the 8th?

A Yes.

Q And is Minor , when she's sleeping, do you always sleep on the same side or does it matter? Sometimes she lands on the right? Sometimes she was on the left?

A It was always the same.

Q And what was it?

A I would always be on the left, next to the doorway, and then she would be on the right, near the wall.

Q Okay. You can have a seat.

(The witness returned to the stand.)

MR. MORIN: If I can just have a moment, Your Honor.

Q This is State's Exhibit 10. Can you see that?

A I can.

Q Tell me about this door.

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A That is the door that goes into the attic, that's in the living room.
Q And is it a full-sized door, or is it a shorter door?
A It's a shorter door.
Q How did Minor react to this small door?
A She was always excited, always trying to open that door, and trying to go in. We would try to keep it locked and keep something in front of it where she couldn't get into it.
Q But did she ever get into it?
A She has.
Q Tell me about when she got into it.
A One day I was trying to take and get her to -- ready to go home and she actually opened the door and grabbed her book bag that she had and just poured all of her clothes out, like slinging it and whatnot. I was having to be very careful to try to get her clothes out of the attic because it's nothing but insulation and all you have to stand on is like little rafter things. You don't have no plywood, anything like that.
Q Now, Jason had medical things to take care of in Charleston; is that correct?
A It is.
Q And after this and after the police came, did he go at any point to Charleston?

A Yes.
Q And how did he get to Charleston?
A I drove him.
Q And was that one of those ones where he was just down there a day, or do you remember?
A He was down there for a day.
Q So you drove him down there for his checkup and came back?
A Yes.
Q Now, since he had his stroke in 2012, has his ability to get around stayed the same?
A It's changed.
Q And it's changed in which way?
A It's went downhill.
Q I'm going to show you what's been marked as the State's Exhibit 18. Can you see that okay? Can you tell me about that Sunny Bunny.
A It was a Easter bunny that my husband had went and got me for Easter the year before, and no one ever eat it.
Q So this is January, and that's an Easter bunny -- candy bunny from the year before.
A Yes.
Q And this is Defendant's Exhibit 4. Can you see this okay? And I think you've testified, but, again, what is this a picture of?

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A That's a picture of Minor sitting on my lap, eating an orange popsicle.
Q And is this taken on the 8th?
A It is.
Q And I've asked because I noticed that the picture doesn't have a date on it, so how do you know what the date is?
A It was showing on my phone.
Q And that's where these came from?
A Uh-huh.
Q On the next day, when y'all got up, tell me about that.
A Jason had woke up before me. I woke up. Minor was in the bed, asleep. I shut the door back, went into the living room, waited on her to wake up. Once she woke up, I got her dressed. Well, she didn't want to take her gown off. And we ended up going to McDonald's. I had got called into work. We went to McDonald's at Cedar Springs, went in, sat down, and eat. We ate chicken nuggets. After that, I was trying to hurry up to get back to work. So Jason took the car seat out of my car, put it into the Jeep, and drove her home from there, and I went into work.
Q Sometime on the 9th you called -- or Ms. Dana called you?
A Yes.
Q And she talked about some stuff that allegedly happened

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on the 8th?

A Yes.

Q And you went to their house?

A Yes. She called me and asked me to come to her house.

Q Did you call Jason and tell him what was being alleged?

A I don't recall calling him and telling him. I remember telling him when I got home, even though they told me not to.

Q So now, is it possible that during that night Minor got into the bathroom?

A No.

Q Well, is it possible that perhaps she got out of bed and went in there and took a shower?

A No.

Q Well, let's talk about the shower for a minute. What -- how far -- we've seen the picture, but it's not far from the bed.

A Maybe -- maybe 10 feet from the bed.

Q There's no bathtub in that?

A No.

Q It's just a shower?

A Yes.

Q And what kind of noise does the shower make when it comes on?

A Makes a loud noise.

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Q In fact, there's been some plumbing problems out there, hasn't there?
A There has.
Q At any time this night or any other night, with the exception, I assume -- when you were in Knoxville, I assume -- did Jason have a separate room, or what did we do that night?
A We had a room with two beds in it.
Q And Minor ---
A Minor slept with me. We was on the bed closer to the bathroom, at the right; Jason slept over in the bed to the left.
Q Is there any other time when Jason slept in a room with Minor other than that?
A No. Not unless it was the night that we had took and stayed at their house to watch the kids for them.
Q I see. So sometimes y'all stayed over and watched after all their kids?
A Yes.
Q Did Jason ever give -- or present during the time she was being undressed or re-dressed?
A No.
Q Now, the toothbrush that we've heard about ---
A Yes.
Q --- did you have one?

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A Yes.
Q Where'd you keep it?
A In the kitchen, on the top shelf.
Q And what was it used for?
A It was used to clean my jewelry.
Q And how often did you clean your jewelry?
A About once every week or two because of all the stuff that I deal with at work getting into my rings, and I didn't want it to mess up.
Q And where do you work?
A At Spartanburg Regional Medical Center.
Q And what do you do there?
A I'm a phlebotomist.
Q Do you recall if you ever cleaned your jewelry when Minor was present?
A Yes.
Q Just a moment. Now, there's a picture here. This is Defendant's 6. Can you see that okay?
A Uh-huh.
Q This was taken on the 8th; is that correct?
A It is.
Q Did you testify that y'all had gone to a Mexican place that night?
A We did.
Q And when you got to your house -- and apparently she's

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changed into her nightgown -- gown. She's eating again.
A Yes.
Q Was that unusual?
A No.
Q You've been with Jason for almost ten years now?
A Yes.
Q And he's been disabled for about eight of those?
A Yes.
Q Do you regularly speak to your husband during the day?
A Yes.
Q Is there many days that you go and you don't talk to him on the phone if you're not home?
A No.
Q He can get kind of irritating with the phone calls, can't he?
A He can.
MR. MORIN: Please answer any questions they have.
THE WITNESS: Okay.

CROSS-EXAMINATION

BY MR. KENDALL:
Q I'm going to show you Defendant's Exhibit 3. What date was this taken on? Do you know?
A If I'm not mistaken, I'm wanting to say it was like November the 16th or 17th of 2016.
Q Of 2016?

A Yes.
Q Are these three pictures -- Defendant's Exhibits 9, 8, and 7 -- are those all from the Nashville trip?
A It's from Knoxville. Yes, sir.
Q And did you go on the Knoxville trip, where you met there with other families? How were you in Knoxville? Did y'all just go to see sights with other families around?
A We -- we have a friend that lives up there, and we had planned to go visit her.
Q So you were meeting other families there, another family there. Is that fair to say?
A We went to meet a friend that was up there.
Q And in this case, you all stayed in the same hotel room; is that correct? Slept on separate beds?
A We did.
Q Was this a suite, or was this contained to one room?
A It was -- well, it had -- I'm not sure exactly what you would consider it. It had the two beds. It had the microwave, the sink. It had the bathroom.
Q There weren't no separate rooms to the room?
A No.
Q It was just one room, correct?
A Yes.
Q So you were in the same room the entire time as Jason, correct?

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A Yes.
Q This is the Nashville trip?
A Knoxville.
Q Knoxville. Excuse me. That's correct.
Now, I want to touch on the toothbrush. You indicated a moment ago there was an electric toothbrush in the house, correct?
A Yes.
Q And you had the opportunity -- I believe you were in the courtroom -- to hear the jail phone call the other day, correct ---
A Yes.
Q --- about the electric toothbrush? It went missing, correct?
A Yes. I could not find it after they went in. We've recently moved since then, and I haven't located it.
Q So the electric toothbrush is gone, as far as your concerned, right?
A Yes.
Q And when you were in Knoxville -- you stayed in Knoxville, correct? You didn't ---
A Yes. We drove up --
Q That was not at your home, here in Cherokee County, correct?
A No.

Q Now, you testified a moment ago that Jason woke up first, correct?
A On that morning of January the 8th, yes -- or January 9th.
Q What time did he wake up?
A Probably about 6:00.
Q And what time did you wake up?
A By 6:30, 7:00.
Q And is Jason in any way biologically related to Minor ?
A Jason Simmons?
Q Yes.
A No, he is not.
Q So he has no biological relation to them at all, correct?
A No.
Q And prior to this happening, did you all have any beefs at all with the Fortners?
A No.
Q Was there anything going on at this time that was -- you know, some sort of like custody battle or like ---
A No.
Q --- some money y'all were fighting over or some sort of something going on?
A No.
Q Until this happened, did you have anything, any sort of

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animosity towards them one bit?
A No.
Q What about the next morning when Minor woke up? Was there anything that happened? That you'd spanked Minor or you screamed at Minor or something like that?
A No.
Q Now, once you were -- after this came out, Dana called you, correct?
A Yes.
Q And do you recall where you were when she called you?
A I was at work.
Q Did you guys just talk on the phone, or did you actually go over to her home?
A She had text me and asked me if I could call her as soon as I was able to. I had called her. She asked me -- didn't want to talk on the phone, asked me to meet her at her house.
Q And did you go to her house that day?
A I did.
Q And at that time, she kind of explained to you what was going on, correct?
A Yes. She had called -- well, when I got there, she had told me, yes.
Q And at one point, when talking to her, the issue of this chocolate bunny came up, correct?

A Yes. Minor had talked about it.
Q And you called Jason about that and asked about that, correct?
A Yes.
Q So you call him and asked him about the chocolate bunny and stuff like that.
A Yeah.
Q And am I fair to characterize this, that you didn't think that happened, correct?
A I didn't think it, no. I still don't.
Q Like I said, that didn't happen in front of you -- the chocolate bunny?
A No.
Q And I believe it was an issue whether she climbed up and got it or he gave it to her or something of that effect?
A I do know that that the picture that was showed of the chocolate bunny was the only chocolate bunny in the house.
Q But you and Jason talked about that, and he said, yeah, she was trying to get to the chocolate bunny at one point? Something --
A Yes.
Q And you weren't present for that, correct?
A What? When she was trying to get it?
Q Yes.
A I was in the house, but I wasn't aware that she was

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trying to get it.
Q So that happened outside of your presence, correct?
A Yes.
Q And you were unaware of it at that time. Is that fair to say?
A I was.
Q Now, you testified a few moment ago, I believe, that you actually told Jason what was happening after this took place, correct?
A I did.
Q So he was aware that there was at least some sort of allegation? You know, certainly didn't know where it was going to go, but there was some sort of allegation going on, correct?
A Yes.
Q And you were aware of that too, correct?
A Yes.
(State's Exhibits 33, 34, and 35 were marked for identification.)
Q I'm going to show you what is marked State's Exhibits 33, 34, and 35. Do you recognize these?
A Yes.
Q And what are those?
A This is where I had a lease on a iPad that I had to turn in or they was going to charge me $500 and something

for it.

MR. KENDALL: And I would offer State's 33 through 35 into evidence, Your Honor.

THE COURT: Okay. Admitted.

Q And this is the same iPad that you had on January 8th and January 9th, correct?

A Yes.

Q And it appears that you returned that iPad. I'm assuming you got a different one?

A No. I turned it in.

Q When did you turn that in? It's showing a return date of January 20th, 2017?

A January the 20th, then, because that was the last day I had to turn it in or they was going to charge me.

Q I'm seeing this. What is this iPad in the picture? It appears to be a receipt for a return.

A Yes. That was from Sprint. That's where I had to return the iPad. That's just the case that it was in, here, with the receipt. That's where I had to return it so I wouldn't be charged the $500 for the iPad.

Q So the iPad that was at the house that night wasn't kept. It was turned into Sprint, correct?

A It was a lease. That is correct.

Q It was returned; is that correct? Okay.

Now, from this time she spent the night with you all in

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November, do you have any -- did she stay the night with you that night?

A Yes.

Q Do you have any other photographs of her spending the night, as you have here with her sleeping in bed here and her -- with her sitting at the iPad here? Anything other than this? Because if I'm correct, this is her just eating dinner at your house, correct?

A That was at night. That was right before we went to bed, and I don't recall on that specific night having a picture of her in the bed with us.

Q With us?

A With me. I'm sorry. We had a dog at the time that would always sleep in the bed with us.

Q Now, do you recall having a kind of -- a phone conversation with Jason?

A Can you repeat that?

Q At the jail, correct?

A Yes.

Q And at the jail, he asked you to disconnect, with regard to his phone -- he asked specifically about his phone, correct?

A He did.

Q A couple of times. Is that fair to say?

A Yes.

Q And he told you you needed to disconnect it where they can't use it, correct?
A Yes.
Q And to go in there and block the data, call, and text so they can't use it, correct?
A He was worried about the bill being run out.
Q Okay.
A Because we didn't have unlimited text and talk and data at that time.
Q Well, did he say that? He didn't say that on the jail call, correct?
A No. But I knew what he was referring to. That's how I took the call.
Q That -- go in there and block it so they can't call --
A Yes. Because Sprint has ---
Q --- block the data and call so they can't use it?
A Yes. Because Sprint has a thing that you can go on and block the texts and the calls and all that so that it doesn't run the bill up.
Q But it was in evidence at the sheriff's office, correct? I mean, you were aware of that, correct?
A I was not aware of what was taken from the house until the second search warrant.
Q But I believe on the first phone call, you actually told him what was on -- what was taken from the house,

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correct?
A I was telling him what -- that I had noticed that was gone. I did not have a copy of the actual papers and the evidence that was taken from the search warrant.
Q But you knew it was there; then you knew it wasn't there, correct?
A Yes.
Q He specifically asked about the phone a couple of times. You said the police had it, correct?
A I believe so.
Q Now, you testified a few moments ago about what she did while you were asleep, right?
A What do you mean?
Q What Minor did while you were sleeping, like her behavior while you were sleeping, correct?
A Yes.
Q But during all of that, you would actually be asleep, correct?
A She would always wake me up if I were asleep and she were to wake up before me, or if she had to use the bathroom, she would wake me up. And I was a light sleeper.
Q But you would already know that at the time she woke you up, correct?
A I was a light sleeper.
Q But it's certainly possible she got up, you didn't

realize it, and the only times you realized she'd woke you up is when she woke you up, correct?

A That's not possible.

Q It's impossible?

A With that bed, it's squeaks, so I could have heard her get out of that bed. It would have woke me up.

Q But there's no way for you to know that, correct? I mean, you're kind of guessing that's what would have taken place. Is that fair to say? I mean, you don't know what happens when you sleep, correct?

A I'm a very light sleeper with him having the seizures and the strokes and everything. He's fell in the shower. And I'm very alert on everything.

Q But the worst things you didn't know about, correct? I mean, didn't know about this chocolate bunny, correct?

A I wasn't aware of the -- that is correct.

Q And this isn't like a big -- this is a couple of rooms that are all kind of connected, correct?

A They are. It's just a big circle.

Q So, certainly, some things happened that you weren't aware of, correct?

A Yes. I was unaware of the bunny, that she was trying to get it.

Q And she was talking about getting the bunny that night, and you didn't know that took place, correct?

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A Yes, I did not.

MR. KENDALL: No further questions, Your Honor.

THE COURT: Re-direct?

RE-DIRECT EXAMINATION

BY MR. MORIN:

Q When you went to sleep that night -- there are two doors that go to the bathroom, correct?

A Yes.

Q Were they open or closed?

A The one from the living room to the bedroom was shut; the one from the bathroom to the bedroom was open.

Q What about the one from the kitchen to the bathroom?

A It was open.

Q Now, when you went to sleep, she was sleeping on your right; is that correct?

A Yes.

Q And when you woke up, where was she?

A To my right.

MR. MORIN: That's all the questions I have.

THE COURT: Any re-cross?

MR. KENDALL: Nothing further, Your Honor.

THE COURT: You may step down.

(The witness left the stand.)

Any other witnesses from the defense?

MR. MORIN: No, sir. At this time, the defense is

going to rest.

THE COURT: All right. Well, folks, we are going to take a break now and get ready for the next portion of the trial. I'm going to send you back to the jury room, so we can all taken a break. Don't get into deliberations or discussions about the case. See you back in about 15 minutes.

(The jury exited the courtroom at 3:38 p.m., after which the following proceedings were had before the Court in this matter:)

THE COURT: All right. Are you going to have anything else?

MR. MORIN: Your Honor, at this time I renew my motion for a directed verdict on the same basis I made when the State rested.

THE COURT: All right. Well, for the same reasons, I will deny them.

Okay. Let's come back in about 15 minutes.

(A recess was taken.)

THE COURT: All right. We've got everybody back.

Are you ready, Mr. Solicitor?

MR. KENDALL: Yes, sir, Your Honor.

THE COURT: Mr. Morin?

MR. MORIN: Yes, sir.

THE COURT: The defendant is in the courtroom.

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Bring the jury back.

(The jury entered the courtroom at 11:13 a.m.)

THE COURT: Okay. Folks, well, we're into the final phase of the trial now, where we will have the closing arguments from the lawyers, and then I will charge you on the law before you then go to retire and consider what your verdict will be.

In this final phase of closing arguments, I want to remind you this is the lawyers now getting up and reviewing the evidence that you've heard, and they will give you a preview of the law that I'll be charging you and attempting to persuade you by way of argument to render a verdict on their client's behalf.

It's important to remember, the lawyers talking is not to be considered by you as evidence. Evidence, again, is what you've heard from witnesses testifying, photographs, or documents that were admitted into evidence during the record. The lawyers were not, again, witnesses. It's not to be considered by you as evidence what they'd have to say. Our rules of procedure provide that because the State has the burden of proof, that the State gets to argue first and gets to close. So you will hear from State through the solicitor, who will argue their case in full. The defense will then have the opportunity to make a closing argument. Then the State will get to make a brief reply or rebuttal to

whatever the defense's argument was, if they choose.

So we begin by the solicitor with his opening.

MR. KENDALL: Thank you, Your Honor. May it please the Court, Counsel.

Good morning, ladies and gentlemen. Thank you for your attention throughout this trial. My opening statement I ask of you all three things: First, you listen to the instructions of the judge. In a few moments, the judge is going to give you the final instructions, the final summation. And if I say anything different that the judge, please, by all means, listen to the judge.

In the same way that you all decide the facts in this case, the judge decides the law. So with that in mind, I'd like to talk to you all about what the law is in this case. The defendant is charged with criminal sexual conduct with a minor in the first degree. As is relevant in this case, a person is guilty of criminal sexual conduct with a minor in the first degree if that person engages in a sexual battery with a victim who is less than 11 years old. In this case, ladies and gentlemen, it took place when Minor was 4 years old.

Now, sexual battery is not just limited to sex, ladies and gentlemen, but can mean sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, no matter how slight of a person's -- of any part of a person's body or

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any object into the genital or anal openings of another person, except when such intrusion is accomplished or medically recognized treatment, diagnostic purposes with a doctor, the same as we saw here today.

In short, ladies and gentlemen, it's not required that the State show that he had actual intercourse with her, sexual intercourse, or had oral sex with her. But a sexual battery occurred if there is any intrusion, no matter how slight, by any part of the defendant's body or an object into the body -- of Minor 's body for a not medically-recognized treatment or diagnostic purpose.

The second thing I asked you, ladies and gentlemen, in this case was too listen to all of the evidence that was presented. And I appreciate the efforts you all have made throughout the course of this trial to pay attention. And I'd like to talk a little bit about what the evidence showed in this case.

This case involves the sexual touching of a 4-year-old girl, Minor by Jason Simmons at his home in Cherokee County. Minor who is now seven, testified that she'd gone over to Missy and Jason's the night before to spend the night on this night of January 8th, 2017. She testified that the two people at the house were Missy and Jason and that she said that that night she'd been with both of them earlier and that Missy had gone to sleep earlier

that night and she was with Jason in the living room. There, ladies and gentlemen, on the couch, you heard, 4-year-old at the time, now 7-year-old Minor talk about how he touched both inside and outside of her vagina with an electric toothbrush. She also told you that Jason told her not to tell anyone or he would get in trouble. Jason took her home the next day, ladies and gentlemen, to her mother, and they all went to Walmart, where there, in the bathroom, she testified she told her mother what took place.

You next heard Tricia Austin, the forensic evaluator, ladies and gentlemen, who testified she interviewed Minor on January 18th, 2017, not long after this took place. You were able to watch the interview and observe Minor as she was 4 years old. And what did the tape reveal? She said she had gone to Missy and Jason's that night. She said this happened while Missy was asleep. She took her clothes off and laid them on the shiny table, and then he put lotion on her nu-nu, what she called her vagina, both inside and outside, ladies and gentlemen, and used the electric toothbrush to shave her legs. She said this all happened on the couch while she was watching a movie. She described the toothbrush to you in the CAC video as being black and brown, and that she then went to sleep in Jason and Missy's bed.

Now, ladies and gentlemen, Minor remembers many points

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of this story, what took place that night that she was touched in her vagina by Jason on the couch at Jason's and Missy's. Jason told her not to tell anyone. But there are some differences in this case. Minor was four at the time -- and you're free to watch the video, ladies and gentlemen -- but didn't clearly understand the gravity of the situation.

And so, ladies and gentlemen, I'd like to take a few moments to look at all of the evidence in this case, the remaining evidence of this case, and talk about how this all fits together. When you have all the trees, you have a forest. When you have all the puzzle pieces, you can put them together and see the picture.

The next witness you heard from in this case, ladies and gentlemen, was Minor 's mother, Dana. She testified what happened that day. This had been a snowy day, and the kids had been sort of pent up inside. She said that Missy offered to take Minor for the night. She told us that Jason, not Minor -- not Missy -- excuse me -- brought Minor home the next day, as Missy had to work. She said that when Jason came in, he got very emotional -- out of the ordinary emotional -- and dropped off -- and told her that Minor had been up late that night, not went to bed at 9:00 on the video. She had been up very late the previous evening. She testified that after going to Wade's, she

indicated she had been sexually assaulted at Jason's and Missy's the night before in the corner -- she told this to her mother in the corner of the bathroom stall at Walmart. Dana then called Missy, who then knew of the allegation, called the police, and tried to take her daughter to the hospital, where she had to undergo a rape kit exam by a stranger, Kelly Clune, the SANE nurse at Spartanburg Regional. She was also able to identify Minor 's underwear found in the attic.

Almost as important, ladies and gentlemen, she testified there was no animosity between the families. There were not fights between the families. Everyone was on good terms, ladies and gentlemen. In short, there's none of this bad blood motivation that would exist in a case like this.

Next, ladies and gentlemen, you heard from Jacob Mullinax, who executed the search warrant in the home. Jacob photographed the underwear that was found and collected it. More importantly, though, ladies and gentlemen, he found the defendant's video system. But when they tried to gather the video system, to get it all together, look at what happened. It's a video system. Conceivably, it would show -- they realized the hard drive to the system was gone. He also testified that though they collected his cell phone, they were unable to access it.

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(CLOSING ARGUMENTS BY MR. KENDALL)

Next you hard from Danielle Ward, who was also out on the search warrant. He, too, examined the video recording system and noted that the hard drives and the screws were removed. More importantly, ladies and gentlemen, he testified that when they came in the home, it was Jason Simmons who attempted to give him this pin drive. The pin drive itself contained three video files that showed he had been sleeping that night. But, ladies and gentlemen, though these files contained the same overall thing, about an eight-hour long thing, there are important distinctions between them. The longest file -- that system file that was on there, labeled 1/11/2017 -- showed him walking up to the camera, making sure it was set up right, showed him sleeping through the night, then it showed him get back up again, walk back to the camera, reposition it, to sort of -- it appears to be up into the doorway. It also shows, ladies and gentlemen, the date on that camera jumped. It doesn't say the 8th as it was reported to be, but jumps. The date modified is also consistent with January 11th, the day this video was made. Next, ladies and gentlemen, you saw a shorter video -- it was also on this disk -- of him setting of the system. But in this one, the part where it jumped back to the 11th had mysteriously been taken off. And finally, you saw the video that was his last edit, the one that was renamed or could have been renamed January 8th.

On this one, not only has he removed himself setting it up, but he's also removed the date reduction and him taking it down at the end. This was further discussed by SLED expert Brian Hudak, who testified that the pin drive, the little disk he gave, was created on January 16th. But the file, what actually happened, the content of that, that was created on January 11th. He also testified it's fairly easy to change the time that was shown on the disk as it was with the regular appliances. You just put in a different time and that's how it sets the time up and was able to show you, ladies and gentlemen, a computer expert, where that hard drive had been and noted that it wasn't there. He showed you the wires, showing how it was previously connected. What does this show, ladies and gentlemen? That this was a manufactured video, not taken on the night of the 8th and 9th, but at a later date, most likely the 11th, designed to mislead the police to what happened that night.

You heard from Missy that by this point he was aware an investigation was taking place, ladies and gentlemen, and he had made a video to try to get himself out of it, but he messed up. What's more, where is Minor ? She's over there that night. He's told Dana that she was up late. We don't see her in that video card. Why? She wasn't there that night. This was created on the 11th, and why did he leave the light on?

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(CLOSING ARGUMENTS BY MR. KENDALL)

You heard further evidence of his attempts to mislead, obstruct police. You heard a jail call between he and Missy in which he asked her to basically shut down the phones so the police can't get on it. You have that in evidence, ladies and gentlemen. You are welcome to hear that again. But as it's presented, it certainly doesn't sound like this is a data-saving measure. Moreover, this phone is sitting at the sheriff's office. It's not as if the sheriff's office is down there downloading movies onto his phone. It was an attempt to block access to that phone. They also mentioned the toothbrush on the phone. The toothbrush that they -- she said was taken. This was odd because the police testified they didn't take the toothbrush. The toothbrush wasn't taken, ladies and gentlemen; the toothbrush went missing. The toothbrush isn't there any more. It's not down at the sheriff's office. The toothbrush is gone. Most likely the same place that hard drive went. A piece of evidence that just vanished.

Next you heard, ladies and gentlemen, Kelly Clune, the SANE nurse, who gave an exam that overall usually lasted a couple of hours. You heard how she preserved the evidence and took swabs of Minor 's vagina and rectum to be sent to SLED to be compared. You heard her testify how she took these swabs, swabbing Minor 's genitals -- or vagina and rectum area.

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Then, after some chain witnesses, ladies and gentlemen, you heard from Verona Herrera, an expert in serology, where they're identifying bodily fluids. She testified to when examining these swabs from the vagina and rectum, she identified the p30 protein, which is a component of semen. She located this, ladies and gentlemen, on both the vaginal and rectal swabs.

Finally, ladies and gentlemen, you heard from Daniel Stewart, the DNA expert. He testified in this case, ladies and gentlemen, that he was able to match the DNA to Mr. Simmons of both the vaginal and rectal swab.

Now, before we talk about the specifics of this, ladies and gentlemen, I just want to point something out. This was not a cold case. This was not a case where there was no suspect. This was not like one of those things on TV where, after 25 years, they find out who it is, using DNA. This was confirmatory evidence, ladies and gentlemen. Minor said Jason touched me appropriately. The DNA says Jason touched me inappropriately -- or Jason's DNA is on an area that's wildly inappropriate. This is confirmatory. This shows -- this backs up her story. This is a piece of evidence that shows what she said is accurate. And what did it show? A 1-in-6-billion match from the swab on the vagina. The DNA doesn't know the facts in this case, ladies and gentlemen. It's just DNA. So it's not just a

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1-in-6-billion match, but it's a 1-in-6-billion match to the man she happened to spend the night with the night before. The man that she says touched her. This DNA -- a 1-in-6-billion match confirms that Jason Simmons is the one that touched her. She said it happened, and this DNA shows it. And, of course, in this case, there were smaller ratios on some of the other swabs; some of the other testing techniques. I think the rectum was the smallest, at 1 in 220. I think some were in the 5600s, somewhere around there -- 2600s.

But you heard testimony from expert Samuel Stewart that there is not one piece of DNA evidence that excludes Jason as a contributor, not a single one. Some of this DNA may have been more complete than the others. They all match to Jason. Not a single piece eliminated him as the contributor.

Now, ladies and gentlemen, after the State closed, you also heard from the defense. The defendant and his wife, Missy, Melisa, who have a child together, a young child -- a certain strong motivation to want this to go away -- but you have some inconsistencies to the defense story, important consistencies. Jason testified he never slept in the same room. Missy testified they slept in the same room in Nashville. Never alone with Missy? Well, that night, apparently, he was alone with her at some point. She didn't

know about the chocolate bunny. And, apparently, that happened. Jason told her about the chocolate bunny, at some point. And that's, I believe, from the CAC video. She's talking about that later in the night. It happened outside the presence of Melisa. That night, they were alone together at some point.

There's also this testimony about how he acted when she was there, which was somewhat odd, to simply leave the house every single time she goes to take her shower or changes clothes or anything like that. That's somewhat bizarre behavior, ladies and gentlemen, not in the ordinary. You don't typically leave the home every time a kid takes a bath. It's a guilty mind.

He also testified that he didn't know this was going on until the search warrant took place. It wasn't until the search warrant happened, and that's when he knew what was going on. But Melisa said they talked about it like that next day. That like on the 9th, that they were talking about it. More importantly, ladies and gentlemen, when he made this disk, transferred the pin drive on the 16th, made on the 11th, he knew the investigation was ongoing. When asked about it, he didn't really give a clear answer of when this was created because he screwed up, ladies and gentlemen, couldn't answer that. He's got too many versions on there. He's got some that say the 11th. All say they

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were created on the 11th. And then some where he's changed the clocks to the 8th and the 9th. Three different files edited twice to make it appear that that night he was just sleeping on the couch, claims it was online. The police were never able to find any online backup to this.

And, ladies and gentlemen, she also testified about that electric toothbrush, which suddenly went missing. Police don't have it, ladies and gentlemen, and it was definitely there. Where is the electric toothbrush? Probably the same place as that hard drive.

Now, ladies and gentlemen, at the beginning of this trial I asked you a third thing: To use common sense. And I hope you will keep this in mind when you evaluate this case; this case, where you heard Minor testify how Jason inappropriately touched her in her vagina. This case, where you watched a video as she explained the touching to a forensic interview as a 4-year-old child. You heard of his bizarre reaction when he took her home, saw the video he attempted to manipulate, ladies and gentlemen, in order to show that he was out there sleeping all night; saw that he removed the hard drive from that recorder; heard him ask for his phone to be put in a position so police couldn't access it; and, most importantly, ladies and gentlemen, you heard there was DNA found in her vagina and rectum that matched Jason Simmons.

(CLOSING ARGUMENTS BY MR. MORIN)

Ladies and gentlemen, based on these facts, I would ask you to return a verdict of guilty. Thank you.

THE COURT: Mr. Morin?

MR. MORIN: A giraffe does not want your peanut butter and jelly sandwich. Why do I say that? Well, when I stood up here before you at the beginning of this trial, I told you that a 4-year-old -- and y'all knew -- some of y'all even shook your head -- y'all knew what I said -- a 4-year-old believes what they believe. It doesn't matter if it's true or not. It doesn't matter.

In 2000, I took my young child to the Riverbanks Zoo. She was fascinated with giraffes. About a month after we got home, she came crying to us, and she said there's a giraffe in the backyard trying to eat my peanut butter and jelly sandwich. Now, obviously, that's not true. She's 23 now; she lives in Spain. If I call her up right now and ask her if that happened, she's going to go, "Well, I know it didn't happen, but that's the way I remember it."

And every one of us do that. Every one of us has a dream that we had as a child that if you got on there and you said, you know what, did this happen? You'd say, yes. Now, we're grown-ups, and we know when we're asleep and we're having a dream and we say, well, you know what, that's a dream. But a 4-year-old doesn't have that. So we have to look at what they say. And as the person that I respect

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(CLOSING ARGUMENTS BY MR. MORIN)

said, you know, children of this age, their ability to communicate sometimes is limited. And that's true. But that doesn't change the burden of the State and that doesn't change the evidence.

Minor -- so let me ask you a couple of questions, and these are good ones. Has Minor ever met Ms. Leskanic? She sat up here; she said, yes, she's been to meetings. Remember that? Yes. In fact, Mr. Kendall had her stand up and say it. And this tells everything you need to know about this case. Because Mr. Kendall stood right here, and what did he do? "Are you sure?"

"I met with this child several times" is what they said. The mama said she was never with her. Now, with Jimmy Henson, who's not here today -- the heavier-set gentlemen who did the swab -- sat up here -- right? Now, Officer Mullinax and Officer Ward -- who was on the search warrant? Anthony, Mullinax, Ward and Hanson. What happens when Henson gets up here? "I wasn't with them." And it was odd. And here's the thing that was odd about that: Mr. Kendall didn't go, "Are you sure?" Why did he do that to Minor but not to Officer Henson? Because he's suggesting the answer, he's suggesting the answer. And she was convinced the answer was supposed to be yes, when she answered, and she stuck with it. She stayed with it.

He's right. Jason and Missy do have a young child

together; they do. That is a reason that she might want to tell them something that's not true. But when she's sitting up there, what did she say? He told me not to tell them, but I did it anyway. Now, how hard would it have been for her not to say that? But she's telling the truth. Mama, on the other hand, when he asked her how many times has she spent the night: That's the first time. When I said, "Are you sure," that's the first time.

Well, then I had to come up and I got pictures from Knoxville, where you're taking weekend trips, and the child is sick. Why is that the thing that we're not telling the truth about? Why is that the thing? That doesn't even make any sense, but there it is, there it is.

Now, those of you that have children have slept with children. When children move -- and you're asleep and they move, you move. That's a fact. Mr. Kendall wants to talk about: Are you 100 percent sure she didn't leave? This is the same guy who wants to talk about chances of 1 in 220. But it really doesn't. He only wants to talk about 1 in a billion. He likes that number. But the other ones he's kind of fuzzy on: 5700, 220.

Well, how about this? When Minor was sitting up here and he asked her and he told you just now, what do you say Jason touched you with, and she said toothbrush. That's what she said. She said a toothbrush. Well, at 1:14 -- and

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(CLOSING ARGUMENTS BY MR. MORIN)

I wrote 40 seconds -- it might have been give or take a little bit -- on the video that they presented, Ms. Austin asked Minor did he touch your nu-nu with a toothbrush. And she says no. So if she's telling the truth as she remembers it now, and she was telling the truth as she remembered it then, then that means that toothbrush did not touch her in a private area. You will have the video, as Mr. Kendall said, back with you. Fourteen -- right around 4:14 thereabouts. You can watch the whole thing, if you'd like. I thought about playing it in here, but we don't need to do that. We can do that if you feel it's necessary.

But to suggest -- so am I saying that Minor is not telling the truth? No. Am I saying that she believes what she said -- saw? Yeah. She's four. She believes it. Did it happen? No. What did she say she had? A chocolate bunny that was a popsicle. What did she have? Well, we have a photograph saying and showing she did have a popsicle with her and it was a chocolate bunny there. Did she see a pad? Yes. Do we have a picture of it? Yes. Why do we have a picture? To send to the Fortners; look, this is what we're doing.

When I was growing up it was an attic door smaller than that one, about this big (indicating), in a tri-level. And my parents raised Cain with us about opening that door and looking in there. If you've had a child that has to deal

with that, you know. In fact, I'll go even further. There's a door like that in my house. It's a laundry chute. My daughter jumped down it. She asked if she could jump down. I said don't mess with that. She said, "But I want to see it." And one day I was sitting there, and she came walking around the door that she couldn't have gotten to because I didn't see her. I say, "Did you jump down that laundry chute?" And she was three or four, and she says yes. I said, "How'd you like it?" She said, "I didn't. It's a lot longer than I thought." So when they say "that little door" -- you see that picture -- that's like a magnet to a child. They told you that she had opened that before -- Missy did. The same Missy who says, yep, I told her. There's a lot of people you have to decide who you believe or not believe in this case. But I'm going to submit to you that Missy is the most truthful person that came here. There's plenty of places in there where she could have -- "Well, I don't remember" or "I'm not sure." "I didn't say that." It's all there, it's all there.

And as far as DNA goes, I asked the officer -- I asked Mr. Stewart, I said, "Have you done a lot of these?" He said, "I've done 33 in court." And I said, "You've done more than that." I don't want to mislead you. "You've done more than that." And I said, "Have you had many that's had a nonillion?" He said, "Quite a few."

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(CLOSING ARGUMENTS BY MR. MORIN)

Recently, in a case, in doing something else, I found out what nonillion is. A nonillion is a number with 30 zeros after it. Okay. So a billion, seven numbers, I think. A nonillion is 30. He's saying the randomness of possibly picking somebody out at random is 220 or 5700 or 2700. Where does it come from? Well, it's this protein. A protein. Yeah. Okay. And are you saying -- what can you tell me about this protein? I can't tell you anything. It's junk DNA.

My wife sent away to 23andMe. And guess what? Her ancestors aren't from Germany. Most of them are from England. But the DNA he's using to try to accuse that man of committing a terrible crime -- well, no, it's junk DNA. And he even said it. Well, you know, sometimes it tells you what your hair color is and -- not this. This is just stuff. I'm not really sure. And where is the thing that you came up with this number? Well, the FBI did hundreds of thousands. I'm not sure about this. We talk a lot about that DNA these days.

When the government starts coming at me with numbers like 2700 or 5600 or a billion or nonillion, and they're kind of sketchy on that math -- because it's been a long time since I took biology -- and I got done through high school and that was it. But I can tell -- I have a little bit, and I think y'all know a little bit about what we're

talking about here.

And really -- Mr. Kendall really, really -- with this video -- did Mr. Simmons make a video, clip it, and put it on a different thing and type something else? It's all right there. He told you why he was doing it. It's not like he somehow tried to hide that. They're concerned about him turning off the phone. Every phone's got a pass code. We all know that. It's 2020. And stuff stored on the phone. And they're going to do what they're going to do, a search. But they don't. That's speculation. That's not even circumstantial evidence. That's complete speculation. They're not even claiming that they -- that there was anything on the phone. They're not even claiming it. They're just talking about it.

At the end of the day, the question is: Did this 4-year-old have her legs shaved by this toothbrush? Did she eat the chocolate bunny? Was this the first time she'd ever been there? No. Does she believe it? Probably. At the end of the day, Melisa Simmons said I went to sleep in our marital bed with the child and she was moving. Now, maybe Mr. Kendall is not familiar with young children moving around in the bed, climbing up, doing whatever they do because they do a bunch. But if you've slept with a child, a 4-year-old, you're going to be aware of them, and you're going to know it they leave. And that's the bottom line.

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(REBUTTAL BY MR. KENDALL)

I want to talk about sexual battery for a moment. I don't want to, but I'm going to. It's not enough for them to say he touched her inappropriately. You have to prove, as he's already said, sexual battery, which the judge will tell you. There's a lot of evidence. There's a lot of pictures about different things that went on in there. I put in some because I felt like it was important to establish what real relationship was between them, to establish the fact that they had been staying together. But at the end of the day, this didn't actually happen and he's not guilty. And the fact that she's young and she might not be able to tell the best way, that doesn't change the burden.

You know, in 1692, the children of this age came forward and said there's some witches. And they said, well, a lot of the crops were going, so we're going to go with the kids. That's what they're doing. They're going to go with the kids. I have to stay over here. I have to make sure that they're proven beyond a reasonable doubt that this happened. And I submit to you, they have not and he is not guilty. Thank you.

MR. MORIN: All right. A brief reply?

MR. KENDALL: Yes, sir, Your Honor.

Witch hunt, huh? Giraffes, peanut butter sandwiches, kids don't know. That's where we are now? They found

components to semen in her vagina and rectum, ladies and gentlemen.

Now, I understand you heard testimony. You've watch this video. She was four and seven. You can ask enough questions to get her confused. You can get some inconsistencies about this, but the big points of this, always the same: Jason and Missy's house, on the couch, Jason touched her. You want to talk peanut butter sandwiches and giraffes, ladies and gentlemen? Sure. On its face, who knows. When you start looking at other evidence -- if you're in the backyard and you see a bunch half eaten peanut butter and jelly sandwiches and giraffe dung, then maybe that's a little something different. And that's what we've got in this case. This just isn't Minor and that's it. It's not just Dana, and that's it. And for what it's worth, Mr. Morin asked her, I believe, if she spent the night with her at his house. Not in Nashville. At the house. And that's when she said no. I find it hard to believe that Missy is more believable than her mother. And that's for you to decide.

Ladies and gentlemen, there is no reason for his semen or components of semen to be in her vagina and rectum, except one: That he inappropriately touched her. This stuff just doesn't materialize. It just didn't happen to be in her vagina. It just didn't happen to be in her rectum.

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(REBUTTAL BY MR. KENDALL)

It had to get there, for some reason. That just doesn't come about. Somehow, his DNA ended up there. You heard that from the serologist. You heard that from the DNA expert. And Mr. Morin's tried to paint this picture that sometimes the match is even better. It's 1 in 6 billion, ladies and gentlemen. 6 billion. But what's more than that, it's not just 1 in 6 billion on a cold case. This isn't just a random thing. We're looking at 1 in 6 billion that DNA shows it's him, plus says it's him. This confirms it. So it's like 1 in 6 billion, and it just so happens, of all the 6 billion, it just happens to be the guy she spent the night with the night before. Just so happens to be the guy that she says sexually assaulted her. That's a pretty epic coincidence, ladies and gentlemen. This is his DNA. Moreover, this establishes that there was semen in her vagina and rectum. This isn't just some ---

MR. MORIN: Objection. Objection. May we approach?

THE COURT: Yes.

(A bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

MR. KENDALL: Okay. There is a component of semen in her vagina and rectum. That just didn't get there by accident. That's not hers. That was foreign DNA, ladies and gentlemen. Somebody's proteins, or whatever, from the semen or, you know, potential semen got there. Somebody's

did, and it was not Minor 's. This is foreign DNA. They separated the male component to it, not Minor 's. So the idea that somebody touched her has been proven. We know there is DNA foreign to her, somebody who touched her. Somehow this foreign DNA got there. Is not Minor 's.

So the question becomes who's is it. Is it some random human being out there in the ether? Somebody that we don't know who it is? Some stranger? Or is it the guy that she says inappropriately touched her. Is it the guy whose DNA matches this to 1 in 6 billion? Is it the guy who tried to distort the hard drive -- or create a video -- excuse me -- got rid of the hard drive and create a video that shows he was asleep, even though we know that wasn't that night; that it was created days later? Was it the guy who claimed that he didn't know an investigation was going on, when his own wife testified she told him about it?

Ladies and gentlemen, at the beginning of this trial, I asked you to use common sense, and I hope you do that when you approach your deliberations. Thank you.

THE COURT: All right. Well, folks, you've now heard all the evidence. You've heard the arguments from the lawyers. And it is my duty now to charge you on what the law is as it applies to those facts for you to renew your verdict upon.

I told you at the beginning of the trial, you have

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duties and I have duties. And my job is to preside over the trial, make sure we followed our rules of procedure, rules of admissibility of evidence. You, on the other hand, I told you are to consider only the evidence that was presented in this courtroom, which, again, consisted of testimony from the witness stand, photographs, documents, things like that, that I allowed to be admitted into evidence. But I also have this final job, which is to charge you on the law that is applicable to this type of case. It's your duties, under the oath that you took at the beginning of the trial, to accept the law as I now charge it to you. And if you think you have some idea of what the law is or what the law ought to be, and it doesn't agree with what I now tell you, under the oath that you took, you are obligated to accept the law as I charge it to you.

Now, you are the judges of the facts, and you are the sole judges of the facts. I cannot comment upon the facts. I cannot state any kind of opinion about how I feel from the facts. And if you feel like I made some kind of inference about how you ought to feel about the facts, you are to disregard that. You've misunderstood something that I was saying or some way I looked, the fact that I ruled on admissibility of evidence, things like that -- you are to take no feeling that I have about how you should feel about the evidence in this case. The law does not allow me to

have an opinion about the facts of this case. That is solely a matter for you, the jury, to decide. And it is your duty to determine the effect, the value, the weight, and the truth of the evidence that got presented during this trial.

I told you at the beginning of the trial, the fact that the defendant was arrested, charged, and indicted in this case is not evidence in this case, and it cannot be considered by you as evidence of guilt in this case, nor does it create any presumption or evidence of guilt.

This indictment that I went over with you when we started is simply the formal written notice, which contains the charge that was made against the defendant, and it gives this Court jurisdiction to hear this case. And that indictment was 2017-GS-11-00580, which was for criminal sexual conduct with a minor in the first degree. The defendant pled not guilty to that indictment, and that plea then put the burden on the State to prove his guilt beyond a reasonable doubt.

I charge you that a person who is charged with a crime in South Carolina is never required to prove himself innocent. This is an important rule of law in this country, that the defendant in a criminal trial will always be presumed to be innocent of the crime for which he is indicted, unless and until his guilt has been proven by

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evidence satisfying you of that guilt beyond a reasonable doubt. This presumption of innocence is not some kind of mere legal theory. This isn't just a legal phrase that we toss about. This is a substantial constitutional right to which every defendant is entitled. This presumption of innocence accompanies a defendant from the time he is charged, throughout the trial, unless and until you reach a verdict of guilty based upon evidence satisfying you of that guilt beyond a reasonable doubt.

We talked a little bit about reasonable doubt at the beginning of the trial, and again, it is the State's burden to prove guilt beyond a reasonable doubt. I told you some of you may have served in a civil case before, where you were told it was only necessary to prove that a fact is more likely true than not true, such as by the greater weight of the evidence, or a preponderance of the evidence. But in a criminal case like this, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Reasonable doubt has also been defined as the kind of doubt that would cause a reasonable person to hesitate to act. 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. And based on

your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, then you must find the defendant guilty.

On the other hand, if you think there's a real possibility that the defendant is not guilty, then you must give the defendant the benefit of the doubt and find him not guilty. Now, in the course of a trial, there's generally speaking two types of evidence that gets presented: Direct evidence and there's circumstantial evidence. Direct evidence directly proves the existence of a fact that doesn't require any kind of deduction. Circumstantial evidence is proof of a chain of facts and circumstances that indicate the existence of a fact. Crimes can be proven by circumstantial evidence, and the law makes no distinction between the weight or value to be given either direct or circumstantial evidence.

However, to the extent that 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 portrayed the defendant's behavior as a suspicious, then the proof has failed. Again, the State has the burden of proving the defendant's guilt beyond a reasonable doubt. This burden rests with the State, regardless of whether the State relies

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on direct evidence, circumstantial evidence, or some combination of the two.

Now, as jurors, you must determine the credibility of witnesses who testified in this case. Credibility simply means believability. It's your duty as jurors to analyze and to evaluate evidence and determine which evidence convinces you of the truth. In determining the believability of witnesses who testified in this case, you can believe the one witness over several witnesses or several witnesses over one witness. You may believe the testimony of a witness in its entirety, or you can reject the testimony of a witness in its entirety. You can believe part of the testimony of a witness and reject the remaining part of that testimony of that same witness. If you reject part, you may still accept the remainder of a witness's testimony. You may consider whether any witness has exhibited to you any kind of interest, bias, prejudice, or other motive in this case. You can consider things like appearance and demeanor of a witness while on the witness stand. You're not bound to decide this case based upon the number of witnesses that a side produces.

Now, during the trial, you heard testimony from a child. Where a witness is a child, you must determine, as with any other 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 in this trial and 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 the questions are asked. It's up to you to decide whether the witness understood the questions asked. I also told you during the course of the trial that we don't usually let people come in and give their opinion about things in court, but we make an exception for expert witnesses. And these are people who are experts because of experience or education or specialized training in some area, and we allow them to give their opinion and state the reasons for their opinion. You can give the expert's testimony as much or as little weight as you think it deserves. And if you don't think it's based on sufficient education or experience, or you conclude that an expert's opinion is not sound or that it's outweighed by other evidence, you may disregard that opinion entirely. In other

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words, you're not required to blindly accept an expert's opinion. You have the right to consider the testimony in light of all the circumstances and give it such weight, if any, that you think it's entitled to.

Now, as to the offense of criminal sexual conduct with a minor in the first degree, the State must prove beyond a reasonable doubt, that the defendant engaged in a sexual battery with the victim and that she was less than 11 years old at the time of the sexual battery. Sexual battery is defined as 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 that intrusion is accomplished for medically-recognized treatment for diagnostic purposes.

I charged you that consent, willingness, indifference, or ignorance on the part of a minor under the age of 14, if any, as to what was taking place, does not, in any way, affect the charge of criminal sexual conduct with a minor in the first degree, because a person under the age of 14 cannot legally consent to sexual intercourse.

Now, in determining your verdict of guilty or not guilty, you cannot consider any possible penalty for any particular crime. The punishment for a crime is a matter for me to determine and should never be considered by you in

any way whatsoever in arriving at a verdict of guilty or not guilty. Your verdict must be unanimous. In other words, all 12 jurors must agree.

Now, madame foreman, when your jury agrees on a verdict, I want you to write it on the back of this indictment. Again, the indictment is the only piece of paper that is going to go back that is not in evidence. And down here on the bottom, you'll see it says two possible verdicts: Guilty or not guilty. And you write whichever verdict your jury agrees on, sign it, date it, and let the bailiff know that you have reached that verdict.

Now, I'm going to return you to the jury room, but do not begin your deliberations just yet. I have to give the lawyers the opportunity to show me if I misspoke on something, then we'll get the evidence together, send it back to the jury, with a copy of the jury instructions, and the indictment. And the bailiff will tell you that I said it's okay to begin your deliberations, but do not begin your deliberations until I send word back.

Also, your lunch will be here, I think. It was supposed to get here at about 11:00. And you can eat while you are deliberating. You can wait until you've finished eating to begin your deliberations. That is totally up to you. If at any point you need to take a break, for instance, somebody wants to go out and get a breath of fresh

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air or smoke a cigarette, something like that, you must cease deliberations. You can only deliberate when all 12 jurors are in the jury room. All right. Again, do not begin your deliberations until I send word back with the bailiff along with the evidence. All right.

(At 12:10 p.m., the jury retired to deliberate on a verdict.)

THE COURT: Anything from the State?

MR. KENDALL: No, sir, your Honor.

THE COURT: From the defense?

MR. MORIN: No.

THE COURT: Do you want to review the exhibits?

MR. KENDALL: Yes.

(Counsel examined the exhibits.)

THE COURT: All right. Everyone is back. The defendant is in the courtroom.

(A note from the jury was marked as Court Exhibit 1.)

The jury wants to hear the jail call record. Is that queued up?

MR. KENDALL: I believe it is, Your Honor.

THE BAILIFF: They're going to bring it out with them.

THE COURT: Okay. Bring them in. Tell them to bring the disk.

(The jury entered the courtroom at 1:07 p.m.)

Okay. Folks, we will queue up the jail call for you. I

understand that's what you want hear, so we'll play it through. And if you want to hear it again, let us know. Otherwise, we will stop and go back to deliberations. While it's being played, don't deliberating in front of us. Okay.

(Upon the request of the jury, State's Exhibit 32 was played.)

Are you finished? You don't want to hear the rest of it? That's enough.

THE JURY FOREMAN: We've heard what we needed.

THE COURT: Raise of hands. All in favor of stopping it now. All 12 are up. Okay. All right. Go ahead and go on back to continue deliberations.

(At 1:13 p.m., the jury returned to the jury room to deliberate.)

THE COURT: All right.

MS. LESKANIC: We are getting the victims family, Your Honor. If we can have just one moment.

THE COURT: All right.

MS. LESKANIC: State's ready, Your Honor. Thank you.

THE COURT: Okay. Bring the jury in.

(The jury entered the courtroom at 1:54 p.m.)

(A note from the jury was marked as Court Exhibit 2.)

THE COURT: All right. Madame foreman, I understand your jury has reached a verdit; is that correct?

THE JURY FOREMAN: Yes, sir.

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(JURY VERDICT)

THE COURT: Is it unanimous?

THE JURY FOREMAN: Yes, sir.

THE COURT: All right. Would you give it to the bailiff, please? All right. Did you already publish?

THE CLERK: 2017-GS-11-0580, the State versus Jason Scott Simmons, indictment for criminal sexual conduct with a minor, first degree. The jury's verdict is guilty, signed by forelady Sierra Hamilton.

Ladies and gentleman of the jury, if this is the verdict of you all, please indicate by raising your right hand.

THE COURT: Let the record reflect that all the jurors have raised their right hand.

Do you want to poll them?

MR. MORIN: No, sir.

(The jury was dismissed from duty.)

THE COURT: All right. We move to sentencing. Mr. Solicitor, is there anything that you would like ---

MR. KENDALL: Just give me a moment to just talk with the victim's family and see if they would like to address the Court.

THE COURT: All right.

MR. KENDALL: Your Honor, I think Ms. Fortner would like to address the record -- Ms. Dana Fortner. If I could while she comes -- she's getting her thoughts together -- if

I can just put in his criminal record.

THE COURT: Yes, ma'am. What would you like to tell me?

MS. FORTNER: I just want to thank y'all for your time and for hearing this case. And it's just been very traumatic on our daughter, and I just really appreciate everything everybody's done to help us. You know, you don't think something like this would happen to your child. And that was my first thought. I'm very protective, and I don't know if I'm -- I don't even -- my aunt's never really kept them at her house. I don't let them go anywhere. I keep them right under me. And you just don't think somebody would hurt your child like this. And I just -- it's just been really hard, you know, to get through the three years and to put her through therapy, and then pull all this back up. She's had a hard week the last week, a lot of trouble with anxiety and stuff, because of this. And now we can finally move on, you know, take a deep breath and move on and start the healing process for all of us. I think that's all.

THE COURT: Thank you.

THE WITNESS: Thank you.

MR. KENDALL: He does have a criminal record, Your Honor. It's from 1996, domestic violence. It looks like two counts; from '97, fraudulent check, five counts; in

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1998, criminal domestic violence. And I believe that was his last conviction, Your Honor.

THE COURT: All right. And what's the State asking for?

MR. KENDALL: This of course carries 25 to life, based on the nature of the crime, the age of the girl -- the child, and his efforts to sort of destroy evidence, we would ask for something certainly higher than the 25 years, but certainly, whatever the Court deems to be appropriate.

THE COURT: All right. Mr. Morin?

MR. MORIN: Your Honor, I don't have too much to say. You heard my client's family situation and that kind of thing as we've gone through. I'd just say that he -- during the time he was out on bond these three years, on electronic monitoring, he didn't have any violations. He's always responsive to the Court and to me when I needed to see him. He is 45 years old.

The charge at the mandatory minimum is going to put him pretty much -- as long a sentence as it is, he obviously, in addition to that, has a young child who he is no longer going to be with. And we would ask something close to the 25 years be considered, given his relative little history. And that's what I would have to say, Your Honor. I don't know if his wife has anything further she'd like to say, but I would like to turn around and just check for her.

THE COURT: All right.

MR. MORIN: And that would be "no." She's -- can't.

THE COURT: Well, Mr. Simmons, do you want to say anything?

MR. MORIN: All right. If I may, just a moment, Your Honor.

THE DEFENDANT: Before you -- after you sentence me, can I hug my wife.

THE COURT: Can you what?

THE DEFENDANT: Hug my wife and my kid.

THE COURT: I'm sure they will arrange that for you.

THE DEFENDANT: Before they lock me up or anything. I think -- I just want to give my son a kiss.

THE COURT: Anything else you want to say?

THE DEFENDANT: No, sir. I thank you for your time.

THE COURT: All right. Well, these are terrible cases. They are the worst, in my opinion. I think I'd rather handle a murder case than something like this. The possibilities of a child being traumatized from this point on -- on the one hand, you'd go, well, she was so young, that maybe she won't remember anything. And hopefully, after the excitement and all the anxiety of going to trial passes, and -- she can move on and maybe get some therapy and put this behind her and not have this affect the rest of her life. But 4 years old -- that's just a monstrous act to

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(SENTENCE OF THE COURT)

commit this on a 4-year-old. It very truly is and hard for me to understand this kind of crime. It truly is.

The case boils down to DNA. It really does, and there's no explanation for it. It's there, and that's the strongest part against you. But that film and plotting to -- they certainly made a good argument that it was an attempt for you to create evidence to show that you didn't do it, which that isn't something that really -- does not work for your favor, I'll be honest with you.

Twenty-five years is the minimum. That's probably a life sentence, the way you're deteriorating from the time that I saw you on that film to now. You're not doing very well.

Nevertheless, I think a sentence of 40 years in the department of corrections is an appropriate sentence. You'll get credit for whatever time you served. It's no parole, so you've got to do 85 percent. And probably, if you were still alive, be subject to a sexually violent predator. You may or may not ever get out, but good luck to you.

MR. KENDALL: Thank you, Your Honor.

MS. LESKANIC: Thank you.

THE COURT: If there is nothing else we are adjourned.

(End of Transcript of Record)

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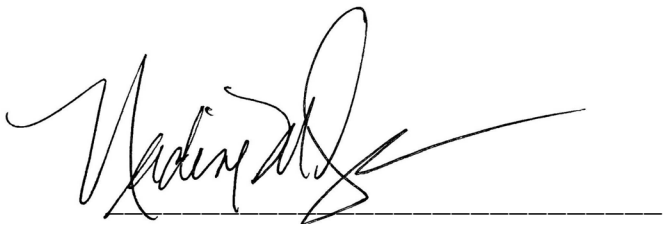
CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Cherokee)

I, Nadine M. Capps, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the General Sessions Court for Cherokee County, South Carolina, on the 8th-10th day of January, 2020.

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

April 13, 2020.



Nadine M. Capps, CVR
Court Reporter

WITNESSES

Cherokee County Sheriff's Office

ARREST WARRANT NUMBER

2017A1110100062

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 4-13-17

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 17-GS-11-00580

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

April 13 2017 TERM

THE STATE

vs.

JASON SCOTT SIMMONS

Indictment for

CRIMINAL SEXUAL CONDUCT W/MINOR, FIRST DEGREE

SC Code: 16-03-655 (A) (1)
CDR Code: 385
Class: FEL/A

FILED IN THE OFFICE
CLERK OF COURT

2017 APR 13 A 10:46

SANDY W. McBEE
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on April 13 2017, the Grand Jurors of Cherokee County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That Jason Scott Simmons did in Cherokee County between January 8, 2017, and January 9, 2017, commit the crime of Criminal Sexual Conduct with a minor, in that the defendant did engage in a sexual battery with a victim, Minor [redacted] who was less than eleven (11) years of age at the time of the said incident(s), in violation of §16-03-655 (A)(1), *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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

ASSISTANT SOLICITOR

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STATE OF SOUTH CAROLINA)
COUNTY OF Cherokee)
STATE VS.)
Jason Scott Simmons)
AKA:)
Race: WHITE Sex: M Age: 45)
DOB: [redacted] SS#[redacted])
Address: [redacted] John Dodd Rd.)
City,State,Zip: Spartanburg, SC 29303)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS1100580
A/W#: 2017A1110100062
Date of Offense: 1/8/2017
S.C. Code § : 16-03-0655(A)(1); 16-03-0
CDR Code #: 0385

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree (25-life)
in violation of § 16-03-0655(A)(1); 16-03-0 of the S.C. Code of Laws, bearing CDR Code # 0385
☐ 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.

ATTEST: KENDALL, MATT
SCB77213 SC Bar# 16037
Defendant
Morin, Michael David Attorney for Defendant
SCB65094 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 40 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
☐ 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered** **PTUP** _____

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

Clerk of Court/ Deputy Clerk Brandy W McBee
Court Reporter: Nadine Capps

_____ days/hours Public Service Employment

Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
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, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge
Judge Code: 2134
Sentence Date: January 14, 2020

SCCA/217 (04/2018)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED
Oct 06 2020
SC Court of Appeals

s/*Susan B. Hackett*
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 6th day of October, 2020.