

1 A. Yes, sir.

2 Q. When you arrived I think you said you saw and
3 you observed Ms. Rivers standing out on the street?

4 A. She was in front of her apartment.

5 Q. On the street in front of her apartment?

6 A. Yes, sir.

7 Q. Did she have anything in her hands?

8 A. I don't remember if she did.

9 Q. Certainly, if she had a child in her hands, you
10 would have made that observation, would you not, in our
11 offense report?

12 A. Yes, I would imagine I would have. I don't
13 remember.

14 Q. We're talking broad daylight, are we not,
15 talking in the morning?

16 A. Yes, sir.

17 Q. You would have seen that as you approached her,
18 right?

19 A. Yes, sir.

20 Q. And there's no mention in your offense report
21 she was holding a child; is that correct?

22 A. That's correct.

23 Q. When you went to the bedroom, you did not
24 observe a child in either bed; is that right?

25 A. I don't remember.

1 Q. If you had, would that have been something you
2 would have noted?

3 A. I would have noted that.

4 Q. I assume you would have gotten the child and
5 removed the child?

6 A. Yes, sir.

7 Q. And that's not contained in your report?

8 A. That's correct.

9 MR. GREENLEE: I have no further questions
10 of this witness.

11 MR. McCLEES: No further questions, Judge.

12 THE COURT: All right. You may step down.

13 MR. McCLEES: Your Honor, may this witness
14 be excused?

15 MR. GREENLEE: Yes, sir.

16 THE COURT: Any objection?

17 MR. GREENLEE: No.

18 THE COURT: You are excused, Officer.

19 Thank you very much.

20 Are y'all hungry? I think so because I am.

21 We're going to order in for you -- and it's
22 here -- because of the heat. Please do not discuss the
23 case with anyone.

24 (Lunch recess)

25 (Open court, defendant and jury present)

1 THE COURT: I trust you enjoyed your lunch.

2 JUROR: Thank you (in unison).

3 THE COURT: Okay. Call your next witness.

4 MR. McCLEES: State calls Dana Oldham.

5 This witness has not yet been sworn.

6 (Witness sworn)

7 THE COURT: You may proceed.

8 MR. McCLEES: Thank you, Judge.

9 **DANA OLDHAM,**

10 having been first duly sworn, testified as follows:

11 **DIRECT EXAMINATION**

12 **BY MR. McCLEES:**

13 Q. I'd like you to start by introducing yourself
14 to the jury.

15 A. Dana Oldham. D-a-n-a. O-l-d-h-a-m.

16 Q. Where do you work?

17 A. I work at Memorial Hermann Health Care System.

18 Q. What do you do?

19 A. I'm a forensic nurse examiner.

20 Q. Have you ever heard the term SANE nurse?

21 A. I have.

22 Q. Are you one of those?

23 A. Yes, I am.

24 Q. Now, just for purposes of speed, does SANE
25 stand for sexual assault nurse examiner?

1 A. Yes.

2 Q. Why don't you give the jury a thumbnail sketch
3 of your educational background and training you've had
4 to receive to become a SANE nurse?

5 A. Okay. In 1999, I graduated with my associate
6 degree of nursing from Montgomery County College. I
7 also received my registered nurse license from the State
8 of Texas. In 2003, I graduated from the University of
9 Texas Medical Branch with my bachelors degree in science
10 of nursing. I'm a provider of basic life support
11 through the American Heart Association. I am a verified
12 provider of the Trauma Nurse Core Course through the
13 Emergency Nurses Association. I'm a certified adult,
14 certified pediatric sexual assault nurse examiner
15 through the office of the attorney general of Texas.

16 In order to be a forensic nurse or a sexual
17 assault nurse examiner, the first thing is you have to
18 be a registered nurse for two years. After that, you
19 take 80 hours of classroom time, followed by 96 hours of
20 clinical time. In that clinical time, you follow --

21 MR. GREENLEE: At this time, Your Honor,
22 it's not responsive, keeping it narrative. Question and
23 answer.

24 THE COURT: Sustained. Go back to question
25 and answer.

1 MR. McCLEES: That's fine.

2 Q. (By Mr. McClees) So, you were telling us how
3 you go about becoming a SANE nurse. Were you finished?

4 A. No.

5 Q. What other things do you have to do to become a
6 SANE nurse?

7 A. You have to have 80 hours of classroom time, 96
8 hours of clinical time, which includes following an
9 experienced forensic nurse examiner with both adult and
10 pediatric sexual assault exams. You have to have 24
11 hours of speculum exams, 20 hours of well-child exams,
12 and 16 hours of court time observation.

13 Q. Okay. Did you do all that?

14 A. Yes, I did.

15 Q. And how long have you been a SANE nurse?

16 A. I've been a SANE nurse for three years.

17 Q. Okay. Now, what is the basic process -- let me
18 go back a minute.

19 Among your duties, have you -- you're a
20 registered nurse, right?

21 A. Yes, I am.

22 Q. You've been in the emergency room?

23 A. Yes, I have.

24 Q. Okay. And then you also have the duties of
25 being a SANE nurse?

1 A. That's correct.

2 Q. Now, is it -- would you agree with me that
3 being a SANE nurse, there's basically two major duties
4 that you have; is that right? Like -- well, let me
5 rephrase that. You have a medical obligation and then
6 you have, as a secondary obligation, to collect
7 evidence; is that right?

8 A. That's correct.

9 Q. Okay. Of those, which is the most important?

10 A. The assessment of my patient, the medical, for
11 diagnosis and treatment of my patient.

12 Q. For medical purposes?

13 A. Medical purposes.

14 Q. Okay. Without regards to this case, in just
15 any sexual assault case that you're involved in, is it
16 necessary, after doing your examination, to have a
17 doctor get involved with further medical care for the
18 patient?

19 A. Yes.

20 Q. Okay. Does it happen often?

21 A. Every time.

22 Q. All right. Now, take us through. What are the
23 basics of how you do a sexual assault nurse exam?

24 A. A sexual assault nurse exam, a medical forensic
25 exam, has four components. The first part is to get a

1 history from my patient.

2 Q. What is the purpose of getting history from
3 your patient?

4 A. The purpose of getting a history is for
5 diagnosis and treatment of my patient.

6 Q. Okay. And what do you do after that?

7 A. The second part of the medical forensic exam is
8 to do a head-to-toe exam looking for injury.

9 Q. What's the purpose of that?

10 A. Looking for injury and collecting evidence, if
11 needed.

12 Q. That's not getting to the genital part, but
13 just the basic rest of the body?

14 A. That's correct.

15 Q. Okay. And then what do you do?

16 A. Then I do a detailed genital exam looking for
17 trauma and also collecting evidence.

18 Q. So, the third thing you do, the detailed
19 general familiar exam, is a combination of both looking
20 for evidence and the medical treatment?

21 A. That's correct.

22 Q. All right. And then finally what do you do?

23 A. Well, the last part is collecting evidence.

24 It's done at the same time while I'm doing the
25 head-to-toe exam or the detailed genital exam.

1 Q. When you say collect evidence, give the jury an
2 idea of what type of evidence you look for.

3 A. Based on what the patient tells me, that helps
4 me with my assessment and to know what areas there may
5 be a deposit of evidence. And so, as I go through the
6 exam, the head-to-toe exam and the genital exam, I use a
7 kit that's called the Texas evidence collection kit.

8 Q. Let me stop you there. Does that have another
9 more colloquial name?

10 A. I've heard it called by different patients the
11 rape kit.

12 Q. Okay. Continue. What is the purpose of that
13 kit?

14 A. That kit is used as a tool in my assessment to
15 collect evidence. It is a sealed box that I open
16 myself. And inside of this box are envelopes. And in
17 these envelopes, there's various swabs, which are just
18 Q-tips, long Q-tips. And there are smears. There can
19 be a comb with a piece of paper that I would use to aid
20 me in combing a person's hair. And so, whenever we
21 collect evidence -- whenever I collect evidence, I can
22 use those things to collect evidence from the patient.

23 Q. Okay. In order to be qualified to do that, you
24 receive the training that you just told us you have
25 received, correct?

1 A. That's correct.

2 Q. Okay. Well, when you do an exam, do you keep a
3 record of the -- of your exam?

4 A. Yes, I do.

5 Q. What is that called?

6 A. The medical forensic exam record.

7 Q. Does that have sort of a dual purpose?

8 A. Well, it's the record of my assessment and my
9 findings.

10 Q. Are those sometimes used by doctors?

11 A. There are times that if I'm going in to
12 document injuries with physical findings for the
13 purposes of the physician calling me in to document
14 injuries, I will use that and the physician will get a
15 copy of that.

16 MR. McCLEES: May I approach the witness,
17 Your Honor?

18 THE COURT: You may.

19 Q. (By Mr. McClees) I'm going to show you what
20 I've marked State's Exhibit No. 10. Do you see this,
21 ma'am (indicating)?

22 A. I do.

23 Q. Okay. Take a minute just to thumb through it.

24 A. (Witness complies).

25 Q. Have you had a chance to review State's

1 Exhibit No. 10?

2 A. Yes.

3 Q. Is State's Exhibit 10 a copy of your
4 forensic -- I want to get this right -- forensic
5 examination -- sexual assault examination forensic
6 report?

7 A. It is.

8 Q. Was it made by you?

9 A. It was filled out by me.

10 Q. Filled out by you.

11 Was it made at or near the time of the
12 examination?

13 A. Yes.

14 MR. McCLEES: Your Honor, I'm going to
15 tender State's Exhibit No. 10 to opposing counsel and
16 offer it.

17 **(State's Exhibit No. 10 Offered)**

18 MR. GREENLEE: Your Honor, we do have a
19 copy. At this time, we object to its admission.

20 THE COURT: I didn't hear that. You're
21 going to object to its admission?

22 MR. GREENLEE: I'm going to object to its
23 admission.

24 (Phone rings)

25 THE COURT: And I'm going to object to

1 keeping my phone on in the trial. I turned it off.
2 I'll make sure it don't happen again. Otherwise, the
3 sheriff will confiscate it.

4 Approach the bench.

5 (At the Bench, on the record)

6 THE COURT: You're going to object to this
7 under the same grounds we talked about earlier and
8 you're going to counter that by saying?

9 MR. McCLEES: Judge, there's two reasons
10 why this is admissible on its face.

11 MR. GREENLEE: The jury can hear.

12 MR. McCLEES: I'll keep my voice down.

13 MR. GREENLEE: I'd ask the jury go out.

14 THE COURT: What are y'all saying? I'm
15 sorry.

16 MR. GREENLEE: I'm asking if you'd take the
17 jury out.

18 (Open court, defendant and jury present)

19 THE COURT: Would y'all step back into the
20 jury room? The indoor plumbing awaits you.

21 (Open court, defendant and jury present)

22 THE COURT: You may proceed.

23 MR. GREENLEE: At this point in time, Your
24 Honor, the defense would object to the State's proffer
25 of State's Exhibit No. 10, which is a copy -- or I

1 assume the original of the SANE nurse report conducted
2 by -- completed by Ms. Dana Oldham. The particular
3 portions of this exam that are objectionable to the
4 defense are on Page 3 under step two, specifically the
5 paragraph noted: History of assault. On that section,
6 it specifically states that patient states, quote,
7 Carlton Penright, Jr. came through the window, he said
8 he would kill me if I was with anyone else. He choked
9 me, but I got out of the hold. He then started cutting
10 my clothes with scissors. He told me to take my clothes
11 off. He said that if you don't take off your clothes,
12 I'm going to choke you until you pass out and cut your
13 hair. He took me by the back of the neck, put my face
14 in the mattress, he bent me over, spread my legs, put
15 his penis in my vagina.

16 It's my understanding that the Court -- as
17 developed by Ms. Oldham, this is clearly a hearsay
18 document, but, obviously, there's an exception for a
19 business record to come into evidence. So, on its face
20 at least, this would be admissible under that exception.
21 However, it is also clear that any hearsay statements
22 within a business record themselves have to be qualified
23 under some recognized exception.

24 When I look at this, the only possible
25 exception that this hearsay can come in would be that

1 which is necessary for the SANE nurse to conduct both
2 the diagnosis as well as the treatment or recommend a
3 course of treatment or conduct a course of treatment.
4 Looking at that, I can in no way see where the
5 statement, Carlton Penright came through the window, has
6 anything to do with treatment, diagnosis, or anything
7 like that.

8 Further looking at this, I think clearly
9 the statement that he said he would kill me if I was
10 with anyone else, again I see where that in no way has
11 anything to do with diagnosis and/or treatment. With
12 regard to the rest of what's being said, I think we
13 probably would not have as much objection because it
14 does go to -- he choked me, I can see where that clearly
15 would have diagnostic and treatment value. I do not
16 think he started cutting my clothes with scissors has
17 any diagnostic or treatment value for purposes of
18 allowing this in. He told me to take my clothes off.
19 Again, same objection to that. That if I did not, he
20 would cut off my clothes, choke me until I passed out.
21 And then with the rest of it with regard to he took me
22 by the back of the neck and put my face into the
23 mattress and bent me over, I would have no objection to
24 that last sentence. That could go to diagnosis and
25 treatment.

1 So, what I'm asking the Court to do is for
2 the State to redact certain portions of the statement.
3 And that would satisfy our objection. I do not think
4 those portions to which we have objected deal with
5 diagnosis or treatment.

6 MR. McCLEES: May I respond, Your Honor?

7 THE COURT: You may.

8 MR. McCLEES: The basics of hearsay, as
9 this Court knows, the business records exception found
10 under Rule 803 applies to this document, as does the
11 hearsay within hearsay, which is 803, I believe
12 subsection 4 -- I could be off -- on the statement for
13 purposes of medical diagnosis or treatment.

14 It is up to the medical personnel to
15 determine what is important to them or what is not
16 important to them. There are a variety of reasons they
17 need to know the whole story. If they don't have the
18 whole story, there can be portions -- or their
19 examination could be thwarted. Okay? Now, in this
20 situation, she needed to have the whole story. When we
21 look to the purpose of this hearsay exception, the
22 purpose of the exception is we can go way back in
23 history. There are certain types of hearsay, certain
24 types of statement have an indicia of reliability and
25 trustworthiness.

1 And that it has been decided by courts in
2 the past that a -- and codified in the Texas Rules of
3 Evidence that one of those purposes is when someone is
4 talking to a doctor for purposes of medical diagnosis or
5 treatment. It's not as much that each statement in
6 there can only pertain to medical diagnosis or
7 treatment. That's not the view of it. It is that this
8 has by itself an indicia of reliability. That's the
9 purpose of this exception as well as the other
10 exceptions.

11 The purpose of those or the spirit of the
12 exceptions all goes back to reliability, as we have seen
13 in a variety of cases going down -- from the United
14 States Supreme Court on down. So, because this is one
15 of the longest, most well-held, long-held exceptions to
16 the hearsay rule, the whole thing comes in. We don't
17 parcel it based on one thing or another. The statement
18 was given for this purpose. Now, whether or not a
19 doctor at all -- used it doesn't matter. She could have
20 said: I had an ingrown toenail. She didn't know what
21 all the doctor needed to know.

22 She doesn't know -- the purpose is she
23 doesn't know what the doctor needs to know. This has an
24 indicia of reliability because she's talking to the
25 doctor. That's what the rule says. Mr. Greenlee is

1 certainly capable of cross-examining upon that, but
2 because that's the purpose of the rule and this is one
3 of the most long-held hearsay exceptions, the whole
4 statement should come in.

5 MR. GREENLEE: May I respond, Your Honor?

6 THE COURT: You may.

7 MR. GREENLEE: If, in fact, this exception
8 was so sacrosanct, there would be no modification with
9 regard to the requirement that the hearsay within
10 hearsay has to be qualified, part A. And further,
11 what's being done here, saying: Even if you are able to
12 qualify the hearsay within the hearsay, that has to
13 relate to something very specific. In this case, it has
14 to relate to the ability of, initially, the SANE nurse,
15 I assume at some point in time a doctor, to aid them, if
16 it does, in their treatment. First they diagnose to
17 determine what's wrong and then the treatment in terms
18 of how to deal with what's wrong.

19 I cannot fathom a reason why telling
20 someone or relating to someone that crawling through a
21 window has anything to do with diagnosis or treatment.
22 We redact portions of documents all the time. It's a
23 very normal process. That's why the Court has given us
24 the ability to do that. Some things may be admissible
25 if you can directly relate them to diagnosis and

1 treatment. Those things are not. Ms. Oldham is not a
2 juror. Ms. Oldham is not a judge. Her job is not here
3 for purposes of reaching a conclusion that are legal
4 conclusions about criminal conduct. Her job is a very
5 specific job, which is diagnosis and treatment. As she
6 said, that's her job.

7 So, again, yes, the report itself is an
8 exception. I have no issue with that, but I do not
9 think that the rule would allow just a wholesale
10 admission of something more simply because a portion of
11 it does relate to diagnosis and treatment. And we
12 redact portions that are not, in fact, covered by the
13 rule all the time.

14 THE COURT: How difficult is it to redact
15 that particular portion or those particular portions?

16 MR. McCLEES: Judge, it's a matter of
17 taking a magic marker and cutting them out, but, again,
18 I stress we go back --

19 THE COURT: Go back to the history of the
20 hearsay exception.

21 MR. McCLEES: Go back to that and to the
22 fact that everything that he just said, it's already
23 come out here in court. We don't have a 403 prong.
24 This is already here. He's had the right to confront
25 the witness who made that. There's nothing that is

1 different from the report that's in State's Exhibit
2 No. 10.

3 THE COURT: We've been through that.

4 MR. McCLEES: Yes, sir.

5 THE COURT: Okay. I'm going to order that
6 it come in.

7 MR. GREENLEE: Will the Court note my
8 exception?

9 THE COURT: Duly noted.

10 MR. McCLEES: With that, is it admitted,
11 Your Honor?

12 THE COURT: It's admitted.

13 **(State's Exhibit No. 10 Admitted)**

14 THE BAILIFF: Ready for them?

15 THE COURT: Yes, sir.

16 (Open court, defendant and jury present)

17 THE COURT: Be seated, please.

18 MR. McCLEES: May I proceed, Your Honor?

19 THE COURT: You may.

20 MR. McCLEES: For purposes of the record,
21 State's Exhibit No. 10 is now admitted. Is that
22 correct?

23 THE COURT: Yes, sir.

24 MR. McCLEES: May I publish State's Exhibit
25 No. 10, Your Honor?

1 THE COURT: You may.

2 Q. (By Mr. McClees) Now, in this case did your --
3 well, let me back up.

4 January 13th, 2010, did you do an
5 examination?

6 A. Yes.

7 Q. Did you do an examination of Brittane Rivers?

8 A. Yes.

9 Q. Okay. And we see -- that's State's Exhibit
10 No. 10 up on the screen. And this is the report that we
11 just discussed, correct?

12 A. Yes.

13 Q. All right. Now, on here you've got some
14 essentially basic introductory information where she
15 lived, what her name was. We see a history of assault.
16 Okay. Patient's description. This is basically -- is
17 this the portion that is the -- getting the history of
18 what happened for the purposes of a medical diagnosis
19 and treatment?

20 A. Yes.

21 Q. And this one, she -- is this handwriting hers
22 or yours (indicating)?

23 A. This is my handwriting.

24 Q. When you write this down, are you writing down
25 what she told you?

1 A. These are her words exactly.

2 Q. What we see is: Patient states Carlton
3 Penright came through the window. He said he would kill
4 me if I was with anyone else. He choked me, but I got
5 out of the hold. He started cutting my clothes with
6 scissors. He told me to take my clothes off and said:
7 If you don't take your clothes off, I'm going to choke
8 you until you pass out and cut your hair. He took me by
9 the back of the neck and put my face in the mattress,
10 bent me over, spread my legs, and put his penis in my
11 vagina.

12 Is that, indeed, what she told you?

13 A. Yes.

14 Q. We see a time here listed roughly at 9:00 a.m.,
15 correct?

16 A. Correct.

17 Q. All right. So, you get the initial history.
18 And from that, you use information that she told you.
19 Do you use that to kind of focus where you take your
20 exam from there?

21 A. It aids me in my assessment of the patient and
22 that of evidence collection.

23 Q. Okay. So, from there do you go next to the
24 head-to-toe exam?

25 A. Yes.

1 Q. Now, in State's Exhibit No. 10 we see a body
2 diagram. Is this ever useful to you (indicating)? When
3 it focuses.

4 A. Yes, that's my documentation of my assessment.

5 Q. Okay. In this situation, did you, in your
6 head-to-toe exam, document any external injuries?

7 A. I did.

8 Q. Okay. What do we see?

9 A. I see three abrasions to the right side of her
10 neck.

11 Q. Okay.

12 A. And there's -- and point tenderness on the left
13 side of her neck.

14 Q. For purposes of the record, on the body diagram
15 that's in State's Exhibit 10, we see the front drawing
16 of a figure and the back drawing of a figure. Right?

17 A. That's correct.

18 Q. And the abrasions you discussed were on the
19 left fore-facing figure and the point of tenderness was
20 on the -- I'm sorry. The abrasions were on the right,
21 would have been on the person's right of the forward
22 facing figure, the tenderness on the backward facing
23 figure, correct?

24 A. That's correct.

25 Q. Now, do you ever document injuries further

1 through photographs?

2 A. Yes.

3 MR. McCLEES: May I approach the witness,
4 Your Honor?

5 THE COURT: You may.

6 Q. (By Mr. McClees) I'm going to show you what
7 I've marked as State's Exhibit No. 11. Do you see this,
8 ma'am (indicating)?

9 A. Yes.

10 Q. What is State's Exhibit No. 11?

11 A. These are photos of her neck.

12 Q. Who took those?

13 A. I did.

14 Q. Do those photographs fairly and accurately
15 depict the way she looked at the time of the exam?

16 A. Yes.

17 MR. McCLEES: Your Honor, I tender State's
18 Exhibit No. 11 to opposing counsel and offer into
19 evidence.

20 **(State's Exhibit No. 11 Offered)**

21 MR. GREENLEE: No objections.

22 THE COURT: Admitted without objection.

23 **(State's Exhibit No. 11 Admitted)**

24 MR. McCLEES: May I publish, Your Honor?

25 THE COURT: You may.

1 Q. (By Mr. McClees) All right. On State's Exhibit
2 No. 11, we basically see a little bit in photograph form
3 of what we see on those diagrams; is that right
4 (indicating)?

5 A. That is correct.

6 Q. Okay. Essentially, this exhibit has got three
7 photographs on it.

8 A. That is correct.

9 Q. Look at the lower one, we see a ruler to give
10 us a little bit of a guide. It's got some glare on it,
11 but we see inch marks on a ruler and we see some marks
12 on the neck, right (indicating)?

13 A. That is correct.

14 Q. Are those marks consistent with fingernails?

15 A. It is consistent with fingernails.

16 Q. Okay. And the jury can look at this more as
17 they see fit, but we see more marks. And all three of
18 these photographs are of the same place on the neck,
19 right?

20 A. They're on the right side of the neck.

21 Q. That's what I meant.

22 Okay. So, you noted that in your
23 head-to-toe exam. Let me ask you this. Would it
24 require there be pressure put upon the neck to give
25 those injuries?

1 MR. GREENLEE: Objection, Your Honor. That
2 would call for a conclusion.

3 THE COURT: Sustained.

4 Q. (By Mr. McClees) Okay. Would it -- for a mark
5 to occur on the neck, pressure would have to be applied
6 to it?

7 MR. GREENLEE: Objection. Same objection.

8 MR. McCLEES: Judge --

9 THE COURT: Overruled.

10 Q. (By Mr. McClees) Is it correct that pressure
11 would have to be applied to the neck?

12 A. The injuries that are there are abrasions. And
13 abrasions are the removal of skin by force.

14 Q. Okay. Now, when you look at her history and
15 look at the injuries, do they match each other?

16 A. Yes.

17 Q. In the history it was stated that her neck was
18 squeezed, right?

19 MR. GREENLEE: I object. First of all, it
20 did not say that. It's in evidence and the jury can
21 read it, but that's a mischaracterization of the
22 exhibit, Exhibit No. 11 -- I believe No. 10.

23 MR. McCLEES: Judge, I will withdraw the
24 question and be more specific to refer to what's in it.

25 THE COURT: All right.

1 Q. (By Mr. McClees) All right. You see a portion
2 where it says: He choked me, but I got out of the hold.
3 And then we see further on down: He says he was going
4 to choke me until I passed out. And then we see: He
5 took me by the back of the neck and put my face in the
6 mattress.

7 Is that something that's consistent with
8 the injuries that we see in State's Exhibits 10 and 11?

9 A. It is.

10 Q. Okay. From there, what do you do next?

11 A. After my physical exam, I do a detailed genital
12 exam.

13 Q. Let's talk about that for a moment.

14 MR. McCLEES: Judge, may I ask the witness
15 to stand down for a moment?

16 THE COURT: You may.

17 Q. (By Mr. McClees) Would you step down, ma'am?

18 A. (Witness complies).

19 Q. I want you to step over to the well of the
20 courtroom.

21 A. (Witness complies).

22 Q. All right.

23 MR. GREENLEE: Judge, may I walk over?

24 THE COURT: You may.

25 Q. (By Mr. McClees) What I'd like you to do is

1 give us -- just for demonstrative purposes, give us
2 anatomy 101. Here's what I'm looking for. I'd like you
3 to sketch for us basically the genitals of the female
4 that you look for in the exam.

5 A. This is a female that's laying on her back with
6 her knees up (indicating).

7 Q. As part of the same exam, are they in a chair
8 that has their legs put up?

9 A. They're on a stretcher or on a chair that lays
10 back that they're able to put their knees up.

11 Q. Okay. Go from there, please.

12 A. Okay. This is the labia majora, which are the
13 fatter outer lips that serve as the beginning of the
14 female sexual organ. The labia minora are the thinner
15 inner lips that are inside the female sexual organ
16 (indicating).

17 The urethra is where urine passes or where
18 we pee from. This is the opening to the vagina. And
19 the vagina is the canal that the baby is birthed from.
20 And then you have the anus, which is a muscle that
21 relaxes and allows the passage of stool or where you
22 poop from (indicating).

23 Q. When you do your exam, obviously, this is the
24 area that you're looking at, right?

25 A. Right.

1 Q. Grab a seat, please.

2 A. (Witness complies).

3 Q. So, you've got the person, their legs are
4 spread, you're looking at them. Let me ask you this:
5 The basis of how the anatomy works, in a sexual assault
6 exam do you always see trauma when someone has been
7 sexually assaulted?

8 A. No.

9 Q. Let me ask the inverse of that. In sexual
10 assault exams, are there times that you -- let me back
11 up and phrase it this way: Is it possible to see trauma
12 for a completely consensual act?

13 A. It is possible.

14 Q. Okay. So, seeing trauma or not seeing trauma,
15 would it be fair to say that you can't make any
16 necessary conclusions based upon that alone?

17 A. That is correct.

18 Q. Now, in this case you did an exam?

19 A. Yes, that's correct.

20 Q. What did you see?

21 A. I did not see any genital injury.

22 Q. And, again, did that surprise you?

23 A. No, it did not.

24 Q. When you're doing the exam, did you --you say
25 you've got swabs and you start -- I'm speaking

1 colloquially here, but do you start putting swabs inside
2 the canals, inside the labia minora, majora, and all
3 that, to try to extract any potential evidence?

4 A. I insert swabs inside the opening of the vagina
5 into the vaginal vault.

6 Q. Okay. And did you collect evidence?

7 A. I collected swabs.

8 Q. Okay. And tell us, what do you do with -- do
9 you swirl it around?

10 A. Once you insert the swabs and you swab on the
11 inside just like a motion to swab. And then after I
12 collect those swabs, I put them inside a swab dryer,
13 which has a tray that individually each swab stands in
14 and then the swab dryer is closed and will air-dry the
15 swabs.

16 Q. All right. Is that what you did in this case?

17 A. Yes.

18 Q. At that point, the evidence collection is over,
19 or not?

20 A. Once I'm through collecting all of my evidence,
21 I'm through.

22 Q. The types of swabs you do, you do a vaginal
23 swab?

24 A. I do different swabs based on the history that
25 the patient gives me and my assessment. In this

1 particular case, I did do vaginal swabs.

2 Q. Any other swabs that you did in this particular
3 case?

4 A. I would have to refer to my records for all of
5 them.

6 Q. Are those in State's Exhibit No. 10?

7 A. Yes.

8 Q. May I bring that to you?

9 A. Sure.

10 MR. McCLEES: May I approach the witness,
11 Your Honor?

12 THE COURT: You may.

13 A. I collected four vaginal swabs, four anal
14 swabs, two saliva swabs, I collected fingernail swabs,
15 and head hair combings.

16 Q. (By Mr. McClees) And from that, you put them in
17 the envelopes?

18 A. After they dry, I put them into a swab box that
19 I seal and then those swab boxes are put into an
20 envelope that I seal with a piece of evidence tape and
21 initial.

22 Q. And from that the police will come and take it
23 for examination?

24 A. After I -- after the envelopes are sealed, I
25 put them back into the kit and I seal those -- seal the

1 sides of the kit, label the kit, and then release it to
2 the police.

3 MR. McCLEES: Pass the witness, Your Honor.

4 MR. GREENLEE: May I approach? I can't see
5 the witness.

6 THE COURT: You may.

7 MR. McCLEES: I'll get that out of your
8 way, Steven.

9 **CROSS-EXAMINATION**

10 **BY MR. GREENLEE:**

11 Q. Ms. Oldham, going back to what is in evidence
12 as State's Exhibit No. 10, which would be your report,
13 and going to Page 3 where it says: History of assault.

14 A. Yes, sir.

15 Q. It's already admitted into evidence. Do you
16 recall that section?

17 A. Yes, sir.

18 Q. There's nothing in that statement from
19 Ms. Rivers to you with regard her being threatened with
20 a pair of scissors, is there?

21 A. She just said: He started cutting my clothes
22 with scissors.

23 Q. There's nothing where she says that, is there,
24 ma'am?

25 A. No.

1 Q. There's nothing there that says that he held
2 scissors to me or my neck and forced me to have sex with
3 him; is there anything that says that?

4 A. That is correct.

5 Q. In fact, the only time scissors are mentioned,
6 it's in reference to cutting clothes and hair; is that
7 correct?

8 A. That is correct.

9 Q. You'd agree with me that none of that has
10 anything to do with sex; would you agree with me?

11 A. I would agree.

12 Q. Now, what is the difference between an abrasion
13 and a scratch?

14 A. An abrasion and scratch are the same thing.
15 They're both removal of skin by force.

16 MR. GREENLEE: May I approach the exhibit?

17 THE COURT: You may.

18 MR. GREENLEE: May I approach the witness?

19 Well, I can do it from here.

20 Q. (By Mr. Greenlee) Looking at State's Exhibit
21 11 -- looking at State's Exhibit No. 11, for purposes of
22 clarification, we're talking about three marks; we're
23 not talking about nine marks, are we?

24 A. That's correct.

25 Q. Three shots of the same area; is that correct?

1 A. That is correct.

2 Q. If a lay person were to look at this, they can
3 conclude this is a scratch; would that be correct?

4 MR. McCLEES: Objection. Calls for
5 speculation on what a lay person can do.

6 THE COURT: Sustained.

7 MR. GREENLEE: I'll rephrase the question.

8 Q. (By Mr. Greenlee) In looking at that, these can
9 be interpreted as a scratch; is that correct?

10 A. It's possible.

11 Q. Because, as you've already testified, a scratch
12 and abrasion are basically the same thing?

13 A. That is correct.

14 Q. Did you uncover any other scratches and/or
15 abrasions on Ms. Rivers when you conducted your SANE
16 examination?

17 A. No, sir.

18 Q. Now, you testified that -- going to the next
19 page, which, I guess, would be Page 4, with regard to
20 the genital portion of your exam. And there are several
21 categories under genital examination; is that correct?
22 I believe it's Page 4. Correct. Page 4 under genital
23 examination.

24 A. Yes, sir.

25 Q. And you've got what appears to be, I guess,

1 seven categories; is that correct?

2 A. Yes, sir.

3 Q. And the first one is labia majora. Is that how
4 you pronounce that?

5 A. Yes, sir.

6 Q. Labia majora. No trauma; is that correct?

7 A. That is correct.

8 Q. The labia minora, no trauma; is that correct?

9 A. That's correct.

10 Q. The hymen, no acute trauma; is that correct?

11 A. That's correct.

12 Q. Vagina. Is that not visualized?

13 A. That's correct.

14 Q. What does that mean?

15 A. It means that I did not look into the vaginal
16 vault.

17 Q. Okay. Cervix, same, not visualized; is that
18 correct?

19 A. That's correct.

20 Q. As part of your SANE exam, would you ordinarily
21 look into a vaginal vault or the cervix?

22 A. Based on my assessment, I decide the need to
23 look inside the vaginal vault or the cervix.

24 Q. Is that because you felt there was nothing
25 there that would be conclusive one way or the other?

1 A. That is correct.

2 Q. Okay. Perineum, I guess is how you pronounce
3 that. Is that correct?

4 A. Yes, sir.

5 Q. No trauma there as well?

6 A. That's correct.

7 Q. And lastly, the anus, no trauma?

8 A. That's correct.

9 Q. You testified that you can have sexual assault
10 situations where you would not necessarily have trauma
11 to these areas; is that correct?

12 A. That is correct.

13 Q. Just like you can have consensual sex and you
14 could have trauma to these areas?

15 A. Yes, sir.

16 Q. So, in looking at that, one -- would it be true
17 then that it would be difficult to determine what's the
18 difference between, if you will, rough sex and sexual
19 assault?

20 A. That is correct.

21 Q. So, you could have a situation clearly where
22 people just engage in rough sex and we don't have sexual
23 assault; is that correct?

24 A. Rephrase the question, please.

25 Q. Depending on the type of sex two people may

1 engage in, that could be defined, if you will, rough sex
2 and you might actually show trauma to some of these
3 areas as a result of that; is that correct?

4 A. It is possible to have trauma in sexual assault
5 and it is also consistent to not have trauma in sexual
6 assault.

7 Q. And you could have trauma in consensual sex,
8 can you not?

9 A. That is correct.

10 Q. Other than -- with regard to Ms. Rivers, other
11 than what you were told, that is, you were conducting an
12 exam of sexual assault, how would we know she was
13 sexually assaulted, other than what you were told?

14 A. Based on her history.

15 Q. That's it. Because there's nothing medically
16 that you discovered which would necessarily reach an
17 absolute conclusion that she was sexually assaulted?

18 A. I did not see any injury in her genitalia.

19 Q. With regard -- you indicated that you collected
20 some various swabs from different portions of her body;
21 is that correct?

22 A. That's correct.

23 Q. One of which was fingernail swabs?

24 A. Yes, sir.

25 Q. Do you know what happened to those fingernail

1 swabs by any chance?

2 A. When I collect fingernail swabs, I put them in
3 the dryer. And then after they dry, I put them into a
4 box. I seal those boxes, I put them into an envelope
5 that I seal and initial. And then that goes into the
6 kit. And once I seal the kit and that kit is released
7 to the crime lab -- to the police. After that, that's
8 all I do.

9 Q. So, you conduct no analysis of any kind on the
10 swab from the fingernails; is that correct?

11 A. That's correct.

12 Q. You do not know if anybody else would have done
13 that; is that correct?

14 A. No one that I know of.

15 Q. Okay. And, certainly, no one at your direction
16 would have done? You didn't say: Do an analysis of
17 these swabs?

18 A. That's correct.

19 MR. GREENLEE: No further questions at this
20 time.

21 MR. McCLEES: Very briefly, Judge.

22 **REDIRECT EXAMINATION**

23 **BY MR. McCLEES:**

24 Q. Mr. Greenlee was talking to you about evidence
25 of sexual assault outside of what she had told you. We