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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari from Spartanburg County
Honorable J. Mark Hayes, II, Post-Conviction Relief Judge
Honorable R. Keith Kelly, Trial Judge

Appellate Case No. 2022-000434

DANIEL SPADE,

Respondent-Petitioner,

vs.

THE STATE,

Petitioner-Respondent.

APPENDIX
VOLUME I OF VII

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

THE STATE)
)
-vs-) TRANSCRIPT OF RECORD
) 2011-GS-42-04171
DANIEL WILLIAM SPADE,)
) FEBRUARY 24, 2014
DEFENDANT. SPARTANBURG, SOUTH CAROLINA

(VOLUME I)

B E F O R E:

THE HONORABLE R. KEITH KELLY, JUDGE. ; And a Jury.

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

BARRY J. BARNETTE, SOLICITOR
JENNIFER A.J. JORDAN, ASSISTANT SOLICITOR
KIMBERLY L. LESKANIC, ASSISTANT SOLICITOR
N. DOUGLAS BRANNON, ESQUIRE, SPECIAL PROSECUTOR
ATTORNEYS FOR THE STATE

KENNETH P. SHABEL, ESQUIRE
SHAWN M. CAMPBELL, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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Referred to _____
Answered _____

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(PROCEEDINGS, FEBRUARY 24, 2014)

MS. JORDAN: Judge, there is an issue. I have made a copy of it.

We amended the indictment with the Grand Jury last week to include one additional date on that. I made Ken aware that we were going to be amending the indictment. I believe he was going to make a motion. Maybe not.

MR. SHABEL: We are good.

MS. JORDAN: So I don't know if he needs to be arraigned on it, or just waive arraignment. It's just an amended indictment alleging one more date in addition to the one that we had initially had on the indictment.

MR. SHABEL: We waive arraignment.

THE COURT: You waive arraignment?

MR. SHABEL: Yes, sir.

THE COURT: Okay. All right.

This is the matter of the State of South Carolina versus Daniel Spade, 2011-GS-42-4171, criminal sexual conduct with a minor in the first degree.

Okay. We are here about motions. So any matters that we need to take up at this time? What's the first matter we need to take up?

MR. SHABEL: Your Honor, I believe the first matter is mine, insofar as the jury has not been selected and the trial has not yet begun.

This morning co-counsel, Mr. Campbell and I, were handed a letter addressed to the judges of this circuit from Mr. Barnette's office indicating as follows: "The Seventh Judicial Circuit Solicitor's Office has received a request from Doug Brannon to perform some pro bono work by advising the State in the above-referenced jury trial. Therefore, I am appointing N. Douglas Brannon, South Carolina Bar No.: 68798, who is working as a volunteer, as a special prosecutor for the Seventh Judicial Circuit beginning Monday, February 24th, 2014."

Understanding that the solicitor does have the right to appoint a special prosecutor, first of all, I don't have any evidence under Section 1-7-470 of the South Carolina Code that his appointment as special prosecutor has been in any way, shape or form commissioned by the Governor's office.

But more importantly, Your Honor, in addition to the lack of the formal notice, Mr. Brannon, as we think the testimony and our arguments will reveal, this case involves to a significant degree a lot of Family Court matters. Mr. Brannon served as counsel for the mother and now father of the victim in the Family Court trial that took place in October of 2012. We believe that creates an inherent conflict of interests and would ask that he not be allowed to serve as special prosecutor.

MR. BARNETTE: Your Honor, may I be heard on that?

THE COURT: Yes, sir.

MR. BARNETTE: Your Honor, I think that the solicitor has the right to appoint a special prosecutor.

Mr. Brannon has been involved in this case almost from the beginning in Family Court. He knows it inside out. He's been very helpful to our prosecutors. We have actually gotten Jennifer Jordan and Kim Leskanic going to be trying this case, Your Honor, from that standpoint.

Mr. Shabel has been on this case I believe from the beginning also and I think he would bring a whole wealth of knowledge about it. And we have already been back in chambers having pretrial conferences with you and I think you can see how complicated these issues are for Family Court, and actually I think we need to bring him on board to be part of that, Your Honor. This weekend I made that decision going through, and we actually talked Friday, and then Sunday he had actually met with Ms. Jordan, and I said "why don't we just appoint you as special prosecutor to help out in case some issue comes up and potentially help with a witness or help with the situation within the trial itself."

MR. SHABEL: Your Honor, the other big issue we have is, again, during that Family Court proceeding when Mr. Brannon served as the attorney for the victim's parents, it came across as evidence that we think is admissible in this

trial today that the victim's parents were advised by the Seventh Circuit Solicitor's Office, as well as law enforcement, not to cooperate with the court-appointed guardian ad litem. So I think he may have been given advice to his clients at the time that is indirect contradiction to what they would be presenting today.

THE COURT: Well, I don't see a conflict, though, Mr. Shabel. I really don't. Mr. Barnette, as the solicitor of this circuit, can appoint any licensed attorney to act as a special prosecutor. That's my understanding. In fact, I have had it happen to me before Mr. Barnette was the prosecutor in a case.

MR. SHABEL: We understand. Thank you.

THE COURT: And the other -- as far as the conflict, I don't see the conflict. Certainly there would be a conflict had he represented your client --

MR. SHABEL: Yes, sir.

THE COURT: -- but he didn't. So it's denied, but you are protected on the record.

MR. SHABEL: Thank you, Your Honor.

MR. BARNETTE: Do you want -- one other reason, too, is initially I was going to help with the prosecution more, but unfortunately the Blackwell death penalty case has been scheduled for January. It's been moved to March the 3rd. Obviously I have to be prepared for that.

THE COURT: Yes, sir.

MR. BARNETTE: So he can additionally help our folks with that, like I said, get the third person involved in it.

THE COURT: Yes, sir.

And for the record, that's why I'm here today. Judge Couch is going to try that case beginning next Monday, is my understanding, and my Common Pleas docket settled in Cherokee County, so I volunteered --

MR. SHABEL: Yes, sir.

THE COURT: -- to be here, so everybody is trying to help out a little bit.

All right.

MR. SHABEL: I understand.

THE COURT: The next motion.

MR. SHABEL: Your Honor, we talked very briefly in chambers. A lot of these motions I think we can deal with after the jury is selected, but one that I think is relevant to the proposed voir dire that's been submitted, primarily by myself and my co-counsel.

As I stated earlier, there is a -- there is a long history involving my client and the mother of the alleged victim in this case; ultimately the alleged termination of my client's parental rights by a court order filed in November of 2012. The order from that hearing terminated my

client's parental rights under 63-7-2570, Subsection (1), which states that the child or children in the case have been harmed. And based upon the nature of the harm, it's unreasonable that the home can be safe within a period of twelve months. The bottom line is the court found by clear and convincing evidence that they believed that -- the Family Court believed that he did what he's accused of in this criminal trial. We believe the results of that termination would be extremely prejudicial to my client and outweigh any probative value that that order may have.

We are asking, in essence, not necessarily that the jury be excluded from hearing the fact that his rights have been terminated, but we do not believe it's appropriate for the jury to know why, especially given the fact that at that trial there are much different evidentiary and statutory guidelines to be followed in that particular case. The parents filed a 19-1-180 motion so the child did not have to take the stand and my client did not have the opportunity to cross-examine his biological daughter at that hearing.

Furthermore, there was -- my client was required to take the Fifth Amendment and there are a lot of procedural issues that we just simply couldn't. No jury instruction could cure that and we believe it would be extremely prejudicial for this jury to hear why his rights

were terminated.

THE COURT: Well, let me ask you now, because we -- you are right, on the record here we want to make it clear we have had some extensive discussions when we heard about that, but now are -- I understand that there were two different actions. You are seeking to -- tell me what you are seeking to do, because I think we already fleshed this out.

MR. SHABEL: Your Honor, what we are seeking formally to do is to exclude any reference as to why his rights were terminated, to prevent the jury from having any information that any other court ruled on at any level of burden of proof the facts that are before the jury today.

THE COURT: Okay. Solicitor?

MR. BARNETTE: Thank you, Your Honor.

Do you have a copy of our return? I don't know if you have a copy of their motion.

THE COURT: I don't.

MR. BARNETTE: May I approach?

THE COURT: Yes, sir.

MR. BARNETTE: And do you have a copy of their motion?

THE COURT: I don't.

MR. BARNETTE: Let me hand it to you.

THE COURT: I have -- I tell you what I do have.

I have a witness list from the defense, along with proposed voir dire, and the State's request for voir dire and a proposed witness list.

MR. BARNETTE: Your Honor, that's their motion and then our return and our followup motions under that, Your Honor.

Do you need a second to read those, Your Honor?

THE COURT: Let's see. Just one second.

(Off the record)

(Back on the record)

THE COURT: Okay. Yes, sir, solicitor.

MR. BARNETTE: Thank you, Your Honor.

I know we had talked back in chambers with Your Honor about this.

Here is the problem that we have got, Your Honor, I think. You have two TPR actions. You have the first one, which was unsuccessful, and they are going to submit that the allegations occurred.

Or course, our position is that the allegations had nothing to do with that TPR.

And then the second TPR occurred and it was successful, and it was found on the ground based that this action is based off of in criminal court here today.

I think the problem that they have got is you got to introduce it all or none from that standpoint. I

understand they are arguing that as part of the motive, but the problem is if you introduce the Family Court actions, you are having a judge substitute the decision of the jury in this situation, on either decision from there.

So if you go to the first one, for example, if you allow in that it was not granted and the reasons why, then I think no question the second one should be entered in and the reasons why it was done, or you have to let basically that it was denied and granted, denied the first time and granted the second time, or you don't allow it. I mean, you have got to lay some kind of completeness in there so the judge can't wonder about what happened. From that standpoint I think it's highly prejudicial on both actions and the reasons for both are highly prejudicial, because obviously what this case would be about what happened to the seven-year old girl, or four-year old at the time it happened, not about what occurred in Family Court.

THE COURT: Yeah, I think -- I think that when you weigh the prejudicial effect and consider the completeness of the record, I just -- this is not -- going to throw this aside there, I think -- are you -- are you seeking to put a finding on the record, or are you just simply going to state some timeline, because if you are going to say -- I think I would allow if you are going to say a TPR action was brought and they were unsuccessful, and then allegations arose and a

second TPR action arose or was brought and they were successful. Then you don't get into what some other judge says.

MR. SHABEL: Ultimately we are just looking at a timeline, and for the record I can just basically summarize what that timeline is, as far as the Family Court proceedings are concerned.

August of 2007, my client, after already having begun a child support obligation in Virginia, files an action here in the State of South Carolina to seek visitation with his daughter.

In July of 2008, the Jolleys filed an action to terminate his parental rights.

They go to trial in July of 2009.

Judge Anderson issues an order in January of 2010 denying the termination of parental rights.

My client continues to exercise visitation at that point.

In November of 2010, before these allegations have arisen, they filed an action to suspend his visitation. It's granted. There are some discussions. The guardian is appointed. It appears that visitation may resume again and these allegations come up.

They file an action, a second action at that point to terminate his parental rights, and the action is

successful.

MR. BARNETTE: Your Honor, I'm going to let Mr. Brannon address this. That's one of the reasons why I brought him on board, because he knows the Family Court stuff as well as anybody. I'm going to let him respond to that part of it, Your Honor.

THE COURT: Yes, sir.

MR. BRANNON: Your Honor, Mr. Shabel is accurate in his timeline and description.

Mr. Spade was granted a visitation schedule by Judge Anderson in the failed TPR. He had some periods of visitation.

The motion to suspend his visitation was filed, not based on allegations of sexual abuse, but based on behaviors in this four-year old child that were unexplained. I mean, she was exhibiting extraordinary signs of anxiety, Your Honor. She was sleeping under a plastic table that she herself would drape with covers in the fetal position. Heather and David Jolley, they didn't know why she was exhibiting these behaviors, but they knew that something was going on. They took the child to a therapist, to whom the child made no disclosure.

So the problem that I have with defense motion is they -- they want the court to know that there was a failed TPR. I think if they do that, then they -- then they open

the door to the fact that there was this successful TPR.

The problem is that area in the middle. They are saying it shows motive. The problem is there is a therapist that's prepared to testify that the Jolleys took -- Heather took Minor Victim to see her for the purpose of facilitating visitation, not for suspending the visitation. They tried to get answers as to these symptoms of anxiety.

So if the court rules you can say -- "defense, you can say that there was a failed TPR, because that gets to their motive."

"State, you can say that there was a successful TPR," that still leaves that gray area in there that, in my opinion, defeats their motive argument, then has to become admissible.

THE COURT: Mr. Shabel?

MR. SHABEL: I interpret the middle a whole lot differently than Mr. Brannon. In fact, I think the middle is critical to establishing motive.

MR. BARNETTE: And, Your Honor, just to follow up with that, I think that's the prejudicial effect in this case. I mean, you might want to do a proffer beforehand just to determine if it comes in or not. I hate to mention that, but that may be the way to handle it, because it sounds like there is a legitimate disagreement on what occurred in the middle.

MR. SHABEL: Well, that's -- I mean, then we have got to proffer about two or three different witnesses. You know -- I mean, we would be profferring Kim Rosborough. We would be proffering Mr. And Mrs. Jolley. We could potentially be proffering Minor Victim if she has any -- to figure out if she has got any knowledge of the time frame, and certainly Alex Wolf, if she's called as a witness for our case as well.

MR. BARNETTE: Well, I mean, I guess what Mr. Shabel is saying -- what was the grounds for the second TPR? I was assuming the petition would have that on there.

MR. BRANNON: They do.

MR. BARNETTE: I think --

THE COURT: Yeah, what was the grounds for the first TPR?

MS. JORDAN: May I approach?

THE COURT: I don't know anything about the facts.

MS. JORDAN: Here is a copy of the first -- of the second TPR order. The first TPR order is in a file that I have upstairs, but --

MR. SHABEL: I have got a copy of it.

MR. BARNETTE: Let's put those as Court Exhibits, Your Honor, and let you look at them, obviously. I know you are very familiar with Family Court and you can decide.

MR. BRANNON: Are you asking for the orders or for

the petitions?

THE COURT: Well, let me just ask this. What was the -- on the first TPR that failed, what --

MR. BRANNON: Failure to support and failure to visit.

THE COURT: Okay, but it had nothing to do the allegations in this case?

MR. BRANNON: None.

MS. JORDAN: None.

MR. SHABEL: None.

MR. BRANNON: The second one was abuse.

MR. SHABEL: And failure to support.

MR. BRANNON: Correct.

THE COURT: All right.

MR. BARNETTE: May we approach the bench for just a second?

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: We will go back on the record and tell me exactly what it is that you were going to -- how you are going to say that.

MR. SHABEL: Here is what I understand will be allowed at this time.

August of 2007, Mr. Spade files an action in Family Court regarding VICTIM

July of 2008, Mr. And Mrs. Jolley filed an action in Family Court to terminate Mr. Spade's parental rights.

A hearing on the termination of parental rights was conducted July of 2009.

An order was issued in January of 2010 denying the request to terminate Mr. Spade's parental rights.

Mr. And Mrs. Jolley filed -- or Mrs. Jolley, excuse me, filed an action in November of 2010 to suspend Mr. Spade's visitation.

An order was issued in December of 2010 temporarily suspending his visitation.

Mr. And Mrs. Jolley filed an action in January of 2012 to terminate Mr. Spade's parental rights.

A hearing was conducted in October of 2012.

The court order from November of 2012 terminating Mr. Spade's parental rights as to Minor Victim

I believe that's where we are going to draw the line. We are not going to get into why anything was filed or for what purpose.

MR. BARNETTE: Your Honor, we would agree in that.

The only -- two things. One, they got to be very careful, because obviously the door is going to be opened in how they present it.

The second thing, obviously we have to explain why it was suspended. We are going -- obviously Kim Rosborough

is going to testify. Initially -- she didn't disclose initially. She had anxiety, things like that. That's the reason why she was taken. That's the reason why the suspension was brought out. I think we can bring that out --

MR. SHABEL: Yes.

MR. BARNETTE: -- from there, but we would like to have that option on that, on that part of it.

THE COURT: Yes, but at this point, it's like in opening, or so forth, where we are going with that is he's not getting into the facts behind each of those, right?

MR. SHABEL: Neither of us are.

THE COURT: Okay. Is that where we are?

MR. BARNETTE: Yes, sir.

THE COURT: Okay. All right.

MR. BRANNON: Your Honor, forgive me. We keep talking about TPR in here, because we all know what TRR means.

MR. SHABEL: Termination of parental rights. You have to say it, not TPR.

MR. BRANNON: Do you want the attorneys to explain what that means, or do you want to do that in your opening comments, or what?

THE COURT: I won't do it. I won't go into any facts, but you can explain it in --

MR. BRANNON: Okay.

THE COURT: -- your opening. I don't make any comments as to the facts.

MR. SHABEL: Yes, sir.

MS. JORDAN: While we are going on agreeing on stuff, could we also agree that the 2012 order also changed Minor Victim name from [redacted] to [redacted]?

MR. SHABEL: Is she referring -- that it was done in -- I would like them to know -- actually I would like them to know when it was changed.

THE COURT: Okay. There is no objection to that then?

MR. CAMPBELL: No.

THE COURT: There is no objection to that. All right.

MR. SHABEL: I think the rest of it we can do after the jury is sworn in, but those -- I mean, in order for you to determine whether or not the request for voir dire would be granted, I think we needed to have that motion heard.

MS. JORDAN: We have a few more that we could argue.

MR. BARNETTE: Yeah, we might as well go ahead and argue them, Your Honor, before.

MR. SHABEL: I defer to the court, but those are

the two that we had to get done with before the jury.

THE COURT: Okay. All right. But that's the two that you wanted to argue before a jury is sworn?

MR. SHABEL: Those are the two that I wanted -- I mean, I could argue more, if the court wants to, and I'll just --

THE COURT: It doesn't matter. It's just that the jury doesn't come back until 2:30, so --

MR. SHABEL: Okay. Well --

THE COURT: Do you have something else you wanted to argue?

MR. SHABEL: Yeah. Let me go ahead and argue a couple more, if I can.

THE COURT: Okay.

MR. SHABEL: One moment, Your Honor.

(Off the record)

(Back on the record)

MR. SHABEL: And if I can, very briefly, I need to kind of do a timeline on a couple of motions that have been filed previously in this case regarding discovery, with the court's indulgence very briefly.

On January 2nd, 2013, on behalf of Mr. Spade, I filed a motion to compel the State to turn over some discovery. It was very lengthy. We had an in-chambers meeting with Judge Hayes. As a result an order was issued

and filed on February 27th, 2013. Present in that in-chambers meeting were myself, Amy Goulding, who at the time was the assistant solicitor in charge of the case, as well as Mr. Barnette. But, in essence, a couple of things relevant to that particular order.

Number one, and I'm reading directly from the order, "the State shall not be required to turn over any mental health records of the alleged victim from Meredith Thompson-Loftis at this time. However, if the State intends to call her as a witness in their case, they must turn over all such records within a reasonable time prior to the trial of this case."

My first motion is to exclude any testimony of Meredith Thompson-Loftis.

After this order was issued, I did receive on October 31st of 2013 records from Minor Victim counseling with Meredith Thompson-Loftis that spanned May 17th, 2011, through February 16th of 2012. It was not until Thursday morning of last week, February 20th of 2014, that the State turned over records from February 23rd of 2012, through December 30th of 2013. No records have been turned over since December 30th -- from dates since December 30th of 2013. But, in essence, Your Honor four days before this trial was to begin they handed over the last twenty-two months of counseling records. I believe that is

contradictory to Judge Hayes' ruling. I don't believe they turned over her records within a reasonable time. Therefore, I would ask that any testimony of Meredith Thompson-Loftis be excluded under the terms of Judge Hayes' order, which were issued and filed with the court on February 27th of 2013.

THE COURT: Solicitor?

MS. JORDAN: Thank you, Your Honor.

Your Honor, as to those we do believe that it was in a reasonable amount of time that these records were turned over to the defense. He makes it sound like it was twenty-two months worth of records, which it is, but when you look at the documents we turned over last Thursday, it was twenty-five pages of counseling notes. And I -- if I could pass that up to the court so you could see what the page looks like with the amount of writing that's on there. It was five pages that included some writings and then twelve pages that included drawings.

Your Honor, he did have access to the majority of or Ms. Loftis' records prior to this.

He also had the ability to cross-examine Ms. Loftis in the Family Court trial back in -- correct me if I'm wrong, back in October of 2012. He's had the opportunity to cross-examine her as to that.

[redacted] has made no new allegations, as far as the

disclosures that came forth.

We do not believe it was un-burdensome what we turned over. We do believe it was a reasonable amount of time.

I have what we turned over last Thursday, if the court would like to look at it, because I think it is different when you say twenty-two months worth of records versus seeing the actual quality of what we did turn over to the defense at that point in time.

We had requested the things earlier. We had some issues getting them, as far as the snow and the counselor's schedule, but we did turn it over as soon as we received possession of it last -- we received it by fax last Wednesday night. Got into the office Thursday morning and turned it over.

MR. SHABEL: The fax was actually sent to y'all on 8:06 p.m. on February 19th.

MS. JORDAN: Excuse me.

MR. SHABEL: From Meredith to y'all. So I'm not saying that you withheld it. I don't think that you had it before then.

MS. JORDAN: I don't know if there is an issue with her fax, or what, but I remember getting it on Wednesday night, because I remember trying to get it to get it turned over.

MR. SHABEL: That is Wednesday.

MR. BARNETTE: Make it Court Exhibit 1 or 2.

THE COURT: Yeah. He's saying the same thing. You got it -- you got it the day before, that night.

MR. SHABEL: Yeah.

MS. JORDAN: Yes, sir.

If I could, I'll show this to him. I do need to make a copy of this.

THE COURT: Okay.

MS. JORDAN: Once I pass -- actually I have already made my copy. I apologize.

MR. SHABEL: Judge, we are looking at just not the volume and what's on there, but the legibility of what's on there, and they are asking you to translate her handwriting in four days.

(Counseling Records marked as Court's Exhibit No. 1 for identification)

MR. SHABEL: Furthermore, Your Honor, just for the record, it does -- you know, the fact that we got it prevents us from being able to have any experts, should we have wanted to have an expert look it.

MS. JORDAN: Judge, just also for the record, no shock in what Meredith Loftis is going to testify about. They have been there and done that in Family Court, as far as having the opportunity to cross-examine her. I don't

know if they had her records back then as to all of that, but it's not a surprise what's in these records.

THE COURT: Mr. Shabel, have you learned anything in here you didn't learn in the whole case?

MR. SHABEL: We have learned the number of appointments this child had with Meredith Thompson-Loftis in the year, plus, since the hearing, but nothing of major significance that I could see or that I could translate in the four days that I have had a chance to look at it.

THE COURT: Well, Mr. Shabel, I mean, as you well know, I practiced in Family Court twenty-five years, in addition to criminal law, and you have practiced for a number of years too. Meredith's records just looks pretty straightforward. I mean, I could read her handwriting.

Anything particularly that you can't read, or do you need --

MR. SHABEL: Not without delving into it in a little more, but I think --

THE COURT: Okay. I'm going to deny that motion.

MR. SHABEL: All right. Thank you, Your Honor.

In addition from that same order, Your Honor, in paragraph seven of the order, "at this time there is no forensic report from the search of the defendant's computer. If the State intends to use the computer or search of the computer as evidence at trial, it must provide copies of all

reports generated and documents obtained from that computer within a reasonable time prior to the trial of this case." That was issued in February of 2013.

It was not until February of 2014 that the State of South Carolina turned over any of the forensic documentation, despite the fact that everything given to me indicates it was available to the State of South Carolina as early as May 31st of 2011. They had it, or at least had access to it, for two years -- two and a half years before turning it over to me. We ask that any forensic -- any evidence obtained from my client's computer be excluded.

THE COURT: Solicitor?

MR. BARNETTE: Your Honor, based off that point, number one, I think Virginia kept on -- they had an ongoing investigation going on. We have received stuff periodically from them. As a matter of fact, we got e-mails off the computer. They have got new technology they keep using to keep checking the computer and keep finding more additional information off there. And we have the computer person here to testify to that, if you need that at a different time, Your Honor.

Our argument would be, first, Your Honor, obviously we have given this information to them. It's very self-explanatory from there.

The second thing, Your Honor, even if you would

grant their motion, I think we could still use it in reply. If they have witnesses that testify, we can use it to attack them in rebuttal, and obviously there is no time limit on there. And I think under any case law that would allowed in that situation.

THE COURT: Mr. Shabel?

MR. SHABEL: I think he's right on rebuttal, but I still think it is -- you know, given the volume -- we did receive -- the report I received was a thousand pages in length. And to get that less than thirty days prior to the trial I don't believe is reasonable.

THE COURT: When did South Carolina have it?

MR. BARNETTE: Ms. -- I'll let Ms. Jordan answer that, because she's more aware than I am.

MS. JORDAN: Your Honor, I'll distinguish between when I believe it was in on our file and when -- I know that Investigator Cantrell with the Spartanburg County Sheriff's Office had a copy of the disk with the text messaging on it. I got that from her when I went over there a couple -- two or three, four weeks ago I got a copy of the disk and at that point in time turned the disk over to Mr. Shabel.

We then received -- I believe it was last week we received another disk that was basically the same text messages, but in a different format easier to read, and I again turned that over to Mr. Shabel at that point in time.

MR. SHABEL: Where we are getting at, though, Your Honor, is Detective Cantrell also testified in a trial fifteen, sixteen months ago that she believed the computer had been wiped. And I asked then if there was a forensic report about that and she said it's my understanding there was. Here we are sixteen months later and I just now get that.

MS. JORDAN: Your Honor, it was my understanding is Mr. Marquez' report does not say it had been wiped.

MR. SHABEL: Well, that would be contradictory to her sworn testimony. So if you want to get into that argument --

MS. JORDAN: Well, I'm not going to pit my witnesses against each other, because that goes to -- that's not within her knowledge. She's not my computer person.

THE COURT: No, I understand, but we had those -- South Carolina had all that back in May, is that right?

MS. JORDAN: I don't know the exact date that we came into possession of it, as far as the sheriff's office that logged those text messages on that disk, but we did -- I agree with the dates that they were turned over to the defense. I agree with that.

And I would just ask if they are excluded in our case in chief, that we would be able to use them in reply or cross.

THE COURT: Well, I was going to say, even if I go with you on that, Mr. Shabel, they can use them on cross and --

MR. SHABEL: Yes, sir.

THE COURT: And they can use it on reply rebuttal. Do you understand that?

MR. SHABEL: Yes, sir, I understand that, Your Honor.

THE COURT: Okay. That one is granted.

MR. SHABEL: Thank you, Your Honor.

Anything else?

MR. SHABEL: I do have one more that I can deal with right now.

Again, the same order. Well, two different orders.

The February of 2013 order states the State at that time was not in possession of any medical records from Eastside Pediatrics and could not be compelled to release them. However, upon proper motion served upon the alleged victim's mother, the court may address the defendant's request to obtain such medical records.

I then subsequently filed a motion to have those records turned over. I served Ms. Jolley, through her attorney Doug Brannon, who appeared at a hearing on behalf of Heather Jolley in May of 2013.

So, in essence, I think I need for the record to renew my previous motion, just to protect myself for the record, because Mr. Brannon has appeared in this case on behalf of Heather Jolley.

But at this hearing the judge took it under advisement -- well, in essence, the judge ruled on this issue from the bench. There were other issues that he took under advisement with respect to my client's bond condition, but the order from that hearing -- and, again, that was filed I believe on July the 9th of 2013. The State -- and I'm quoting, "the State stipulates that there is no medical evidence to support the allegations contained in the warrant."

The reason I asked for these medical records was to determine what evaluations this child had had in October of 2010, shortly after the last time my client has seen his daughter.

"The State further stipulates there is no medical evidence to support the allegations they will raise through their witnesses at trial."

Sure enough, one of the witnesses at this trial is Dr. Nancy Henderson, who performed a medical evaluation of this child in April of 2011.

We believe the stipulation comes in. We believe the court has already ruled and accepted that stipulation.

We believe that any testimony that Dr. Henderson would be here to present would be to support the position that there is actually -- the fact that there is no medical evidence supports the allegations. We believe her testimony would then, based on the stipulation, be incredibly prejudicial. And given the fact that we have been denied access to the Eastside Pediatrics records specifically because of that stipulation, we would not have proper opportunity to cross-examine her on her testimony, and, therefore, we believe all of her testimony should be excluded.

THE COURT: Solicitor?

MS. JORDAN: Your Honor, we believe that Dr. Henderson's testimony should be included as to the fact that she will, as the court may have heard in her previous testimonies at trial, talk about the fact that no physical evidence in a child abuse case does not necessarily rule in or rule out that the abuse occurred, that it's not a definitive finding there. We believe that the jury should be able to hear that, that there was no medical finding. We agree to that. That is the stipulation, there was no medical finding, but that does not in any way negate Dr. Henderson from taking the stand and arguing -- or explaining to the jury that no medical evidence does not rule in nor rule out sexual abuse.

THE COURT: Mr. Shabel?

MR. SHABEL: One of the reasons again we wanted the documentation from Eastside Pediatrics is because the medical evaluation done at Eastside Pediatrics were a whole lot closer to the time of these allegations, or to the time of when this incident allegedly occurred, I should say, to Dr. Henderson's evaluation. Had I been able to access those Eastside Pediatrics records, I could have cross-examined Dr. Henderson more carefully and more stringently on her testimony and said "well, we have this evaluation," or, "we didn't have this evaluation from October of 2010, which is less than thirty days after he allegedly did what he is supposed to have done." So without those records I can't do good -- well, I believe I don't think I can give my client a fair cross-examination of their expert witness.

THE COURT: Well -- okay. So why does he not have those records?

MR. SHABEL: The records were -- basically the State submitted at that motion hearing that they were going -- they were going to stipulate that there was no medical evidence to support it, and, therefore, there was no reason for me to have the records.

THE COURT: Okay. And that's what the court ordered, is that right?

MR. SHABEL: There were some other stuff relevant to whether or not my client's bond conditions would be met

or not.

THE COURT: I understand that, but am I understanding that right?

MR. SHABEL: Yes.

THE COURT: I mean, I wasn't there.

MR. SHABEL: Yes.

THE COURT: Some judge ruled that you didn't get them, is that right?

MR. SHABEL: That's correct.

MS. JORDAN: That's correct, Your Honor. And I also wasn't there, but I do not believe the stipulation in any way says you can't call Dr. Henderson to explain the exam that she did.

MR. SHABEL: It doesn't say that one way or the other, but my argument to prevent Dr. Henderson from testifying is the fact that the order says "the defendant is no longer entitled to the medical records of the victim from Eastside Pediatrics and the motion is denied."

Without those records I can't give proper cross-examination of Dr. Henderson to contradict her testimony to the jury, which is that, you know, "when I evaluated her in April of 2011, there was no medical evidence," but that doesn't rule in or rule out, because if she would have had an evaluation from October of 2010, which I don't have access to, because I wasn't given those

records, because I was prohibited from getting them, I can't cross-examine her on that information.

THE COURT: Let me see the lawyers up here.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: Okay, Mr. Shabel, that motion is denied.

MR. SHABEL: Thank you, Your Honor.

THE COURT: It sounds to me like Judge Hayes preliminarily has already tried to narrow the issues here.

MR. SHABEL: I guess I need to formally make the same motion to exclude the Blackberry forensic, as well as the computer forensic. I made that earlier, but I didn't include the Blackberry. It's the same grounds, basically. The blackberry telephone.

MR. BARNETTE: It would be the same. We would use it for reply or cross, Your Honor.

THE COURT: Yes.

MR. SHABEL: Thank you.

That's all I have got personally for right now.

THE COURT: Okay.

Yes, ma'am.

MS. JORDAN: Judge, I don't have as many as they have, but I do have some.

THE COURT: Okay.

MS. JORDAN: My first one -- and these two are basically are the standard ones that we do in all child sexual assault cases, or all sexual assault cases. One is a notice of motion and motion in limine to exclude third-party guilt or any reference to it by the defense during the trial.

If I may approach?

THE COURT: Yes, ma'am.

MS. JORDAN: I'm also going to pass up the State's motion for compliance with rape shield.

THE COURT: As to third-party guilt?

MR. SHABEL: No objection, Your Honor.

THE COURT: No objection.

MS. JORDAN: Your Honor, I'm taking that to believe that they are not going to take the stand or have anyone to take the stand and accuse the now adopted father in this case of any type of allegations or misconduct at all?

MR. CAMPBELL: That's correct, Your Honor.

THE COURT: Okay. And as to the compliance with the rape shield?

MR. CAMPBELL: Well, hold on.

MR. SHABEL: Hold on one second, Your Honor.

(Off the record)

(Back on the record)

MR. CAMPBELL: Your Honor, we need to approach. I'm sorry.

THE COURT: Okay.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: So no third-party guilt, is that right?

MR. SHABEL: Yes, Your Honor.

THE COURT: As compliance with the rape shield?

MR. SHABEL: No objection.

Wait one second, Your Honor.

(Off the record)

(Back on the record)

MR. SHABEL: She argued the rape shield statute already?

MS. JORDAN: I just presented it to the court, as far as the basic standard Rape Shield Statute that we have.

MR. SHABEL: No objection.

MS. JORDAN: And like I said, we make this in every case just so stuff doesn't come out on the stand that's against it.

THE COURT: I understand. All the lawyers at the table here are seasoned lawyers now, so we all know what that law says, so -- all right. We are good on that?

MS. JORDAN: Yes, sir.

THE COURT: All right.

MR. CAMPBELL: The only other motions we have are evidentiary motions that we can take up after the court has picked the jury.

MS. JORDAN: Judge, my question becomes this, if we are not seeking to introduce the CAC videos. Do they still want to have the motion as far as having those?

MR. CAMPBELL: I think it's important, because like we discussed in chambers, we don't want to stop this trial for three to four hours in the middle of it to renew that motion and to review the videos and everything like that. It's best to take that up this afternoon.

MR. BARNETTE: Well, Your Honor, we are not going to introduce them. They can't introduce them, unless it comes out, you know, obviously on cross-examination from that standpoint. And my position would be I don't think we need to have a hearing on that if they are going to use them, you know, and then they were going to come in eventually, because -- I mean, if you are going to introduce them, then it becomes relevant at that point. I mean, we are not going to introduce them, unless they bring it up, and then possibly we would introduce them, based off reply what they introduce.

MR. CAMPBELL: Yes, sir.

THE COURT: So we don't need -- yeah, you don't

need it. They are not going to introduce the videos.

MR. BARNETTE: Unless it would be in reply would be the only thing.

MR. CAMPBELL: Yeah.

MS. JORDAN: It's a motion to admit the out-of-court statement of the child.

MR. CAMPBELL: That's correct.

So y'all aren't admitting -- if y'all aren't putting the disk in, then that notion doesn't need to be heard.

MR. SHABEL: Correct.

MR. BARNETTE: And we wouldn't, unless reply comes out, or something comes out in y'all's case.

MR. CAMPBELL: All right, I understand.

THE COURT: So anything -- I mean, so you don't need that?

MR. SHABEL: Nope.

THE COURT: Okay. Do you have anything -- do you have anything else, solicitor?

MS. JORDAN: No, sir.

MR. BARNETTE: The only other thing, Your Honor, I know they mentioned Nathan in our pretrial conference at the bench just a minute ago. My position is I don't think they are -- I don't think they are going to mention anything about that, from what I understand.

(Off the record)

(Back on the record)

MR. CAMPBELL: We don't believe so, Your Honor. If we decide to get into that, we can approach and have that heard outside of the jury.

MR. BARNETTE: Well, I would make a motion in limine at this point, because I don't think Nathan has got any relevance, because basically it just mentions somebody that she's at school and touching her over the top of her clothes. To me that's highly prejudicial, more prejudicial than probative value at this point.

MR. CAMPBELL: And it's on the video.

MS. JORDAN: And we have already had third-party guilt. We have already had rape shield. Are we getting back-doored around it?

MR. SHABEL: No, the third-party guilt discusses that my client didn't do it, that somebody else did.

MS. JORDAN: Uh-huh.

MR. SHABEL: We -- if Nathan were to come up, it's not to say that Nathan did it and not Danny D., because the allegation she makes in the video are different. It just goes into -- you know, quite frankly if it comes in, it would come in under cross-examination of Detective Cantrell to what exactly she did on her investigation and did not do.

MR. BARNETTE: Well, my --

THE COURT: Why is that relevant?

MR. BARNETTE: Yeah, that's what I mean. Why is it relevant? Even if it's relevant, how is it probative more than prejudicial?

MR. SHABEL: All right.

THE COURT: So -- because, yeah, yeah -- that's not relevant.

Okay, what else?

MR. CAMPBELL: Your Honor, we have a few motions in limine. I don't know if you want to deal with that now as well, or -- as regards to the evidence.

THE COURT: Okay.

MR. SHABEL: As to the evidence as the witnesses come up.

MR. CAMPBELL: Well, I mean, I would rather address some of those now.

THE COURT: All right.

MR. CAMPBELL: First off we would make a motion in limine to exclude any testimony regarding the wiping of my client's computer and/or Blackberry. You have already ruled that the reports don't come in. Your Honor, we would have the motion to exclude any testimony to the fact that they were done, because that line of testimony obviously leads into opening the door for the reports that were disseminated from them.

THE COURT: Solicitor?

MS. JORDAN: Your Honor, I think what he's referring to is there is a text message from the defendant's sister Christy to him about some instructions she received on how to wipe a computer, that she needs to wipe it seven times to clean it. I think that that does not go -- that it was pulled off of the text messages. That's how it became available to us or how we were aware of it. I think it could potentially come in as cross or reply rebuttal, in that if they take the -- if he takes the stand, as far as -- or anybody takes the stand and says that they have no knowledge or anything to do with the computer. I wouldn't seek to introduce it in my case in chief, but I would ask to reserve the opportunity to do it in reply or in cross of any of their witnesses.

MR. CAMPBELL: I think the main thing is obviously Detective Cantrell through her investigation, I don't believe she can say "Danny's computer was wiped," or, "we believe it was wiped," or anything like that.

THE COURT: Well, she's already -- the solicitor has already said she can't say that, because she's not the IT person, so --

MR. CAMPBELL: Well, she said it before and that's the only reason we bring it up.

THE COURT: Okay. All right.

MR. CAMPBELL: In addition, Your Honor, we make a motion in limine to exclude any testimony regarding any Internet purchases or viewing of any Internet sites after our client skyped or had any communication with the minor child. Obviously we believe that that is highly prejudicial and not probative in this matter to any matter.

I believe the testimony may or may not be that my client purchased adult material at some point after skyping with the minor child. We don't believe that is probative in this matter and should be excluded.

THE COURT: Solicitor?

MS. JORDAN: Your Honor, we would again ask that we be allowed to potentially go into that as far as on cross or reply. The fact that he did purchase I believe one of them was a penile enhancement device after speaking with his daughter on skype or via the computer, that that is potential evidence for reply or cross. We don't seek to introduce it in our case in chief.

MR. CAMPBELL: I don't even know how it's relevant on cross-examination, Your Honor.

THE COURT: I'm going to take that one under advisement. I would see what the testimony develops, but I don't understand what the relevance is on that at this point.

MR. CAMPBELL: Your Honor, in addition -- in

addition we make a motion to exclude any testimony regarding my client's sexual history, sexual proclivity, any conversations, or any investigation as to my client's perusing Internet chat sites, or, you know, sending pictures of himself to females, anything of that nature. It is purely of a purulent nature and is not for the probative value that we are here. It's highly prejudicial. The only thing it would be used for would be to prejudice my client, Your Honor.

THE COURT: Solicitor?

MS. JORDAN: Your Honor, I would just add that I don't intend to introduce any of that in my case in chief. However, depending upon what may come on cross and/or reply, I would like to have the opportunity to delve into it then.

THE COURT: It's not in the case in chief. We will see what happens on cross.

MR. CAMPBELL: Okay.

Your Honor, in addition I would make a motion in limine to exclude any testimony regarding my client being kicked out of Liberty University and/or his father being kicked out of his church. We don't believe that is relevant to the case in chief. Also it is prejudicial, not probative, and it's not true.

THE COURT: All right. I don't know what that's about. Solicitor?

MS. JORDAN: Your Honor, we agree as to it in the case in chief, but as I stated earlier, potential for reply, rebuttal, cross.

THE COURT: They're not going to talk about it in their case in chief. We will see what happens after that.

MR. CAMPBELL: Good.

Finally, Your Honor, I believe we made a motion in limine to exclude any testimony regarding any investigation in Virginia, including any criminal acts that may or may not have happened in Virginia, any Family Court proceedings that may or may not have happened or be happening in Virginia, Your Honor.

MR. BARNETTE: Your Honor, the problem is the Virginia investigations involved our investigation. I mean, basically there is information that's came from both sources in both cases and I think some of it has to come in to explain where a lot of this information came from, a lot of the stuff that we have gotten during the investigation, because there are two children, that he followed both of them. They are sort of inter-related from that standpoint. So I think there are certain things that has to come out from there, and we do have the investigators. Like the computer, things like that, that's involved in this case that potentially could come up. So I think that there has to be some explanation. There is an investigation in

Virginia. They don't have to say what they are investigating, but there has to be an investigation. They may think it's just related to our case, but I think we have to bring that in at some point.

THE COURT: And I don't know. That's why I'm asking. Apparently there is a separate investigation on another child? Is that what you are talking about?

MS. JORDAN: Yes, sir. There is investigations, as far as criminal domestic violence abuse between him and his fiance with whom he has three kids up in Virginia.

There is also allegations potentially as far as the child who is the same age as the child here, a seven-year old. I do believe there is any charges at this point, but there are -- there have been allegations made in the criminal investigation ongoing.

THE COURT: Okay.

MR. CAMPBELL: Your Honor, first off, criminal sexual conduct is in no way related to this.

Secondly, if the charges haven't been filed as to -- I mean not criminal sexual conduct. The CDV is no way related.

In regards to the seven-year old, charges have not been filed, Your Honor. Any mention of that then is highly prejudicial against my client.

THE COURT: Well, yeah, I understand that and we

are not going to talk about under bad acts, but it's kind of like this timeline that you were going to establish by saying certain things. You know, the solicitor may want to establish that we received some information or South Carolina received some information. Is that where you are going with that?

MR. BARNETTE: Well, and another thing, too, is [Minor Victim] is potential -- I mean, there is potential things with [Minor Victim] up in Virginia, but I think that we have to say -- obviously I understand we can't bring up the prior crimes and everything like that, but we have to show -- [Minor Victim] is part of that investigation, that there is an investigation that [Minor Victim] -- I think if it's related to [Minor Victim] I think it's okay. We can't bring in the other children, the CDV, I understand that, but there is things involving [Minor Victim] in this that goes to the visitation and everything, through there. I think they would agree with that. I think there is some --

MR. CAMPBELL: I mean, I think -- absolutely [Minor Victim] visited in Virginia, and the testimony as to that will come out, but any criminal acts into any other potential or any other children, obviously I don't think that --

THE COURT: Well, he agrees he's not going to bring other children in.

MR. BARNETTE: But I think things with Minor Victim that shows how Virginia got into this and how we got evidence from them and how they have been involved in the investigation involving Minor Victim

MR. CAMPBELL: Your Honor, other than the forensic computer reports and the Blackberry reports, I don't know what other information we have from Virginia.

THE COURT: I don't.

MR. BARNETTE: Well, there is -- I'm not saying we are going to introduce them, but there were statements given by the defendant. There was -- Nikki Cantrell actually spoke to him up there, and there is issues concerning when he asserted his right to an attorney. I'm not saying we are going to introduce those, but there is other parts of this investigation involved with that, and I think that we can talk about the investigation where they contacted authorities in Virginia to help with the investigation along -- what happened here is what potentially happened in Virginia.

THE COURT: Well, I will have to see how far we go with that now, gentlemen.

MR. CAMPBELL: Okay.

THE COURT: All right.

MR. CAMPBELL: The other motion I believe would be to exclude any statements my client has made to Detective

Cantrell in Virginia. At that point he asserted his right to counsel upon his arrest, and he has continued -- he continued to be questioned after that, after asserting his right to counsel. So, therefore, we would exclude any statements he may or may not have made after that.

THE COURT: Solicitor?

MR. BARNETTE: Your Honor, in the first one we would argue he did not assert his right to an attorney. He talked about contacting Ken Shabel, his attorney in South Carolina, which couldn't even practice in Virginia.

And the second one, he did assert his right to an attorney. He did reinitiate, we would argue, but honestly, Your Honor, I don't think we are going to look to introduce those. Obviously we would like to use them in rebuttal and reply testimony, as well as cross in there, and I think it's legitimate from there. And obviously we have the tapes, if you would like to see them from there, but I think I have pretty well summarized what was discussed on them. And I don't think we are going to look to introduce them. We will just use them in cross and rebuttal, if we needed to.

MR. CAMPBELL: I agree with that, Your Honor.

THE COURT: Okay. He's not to going to use them in the case in chief.

THE COURT: What else?

MR. CAMPBELL: Your Honor, I believe that's it at

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this time. We may have more after the break, but as of right now that's it.

MR. BARNETTE: Your Honor, the other question is did you want to start this afternoon?

THE COURT: That's where I'm going and that's what I'm asking. We are making progress here. We have got the jury coming in at 2:30.

MR. BARNETTE: May we approach for a second, Your Honor, to figure out the schedule?

THE COURT: Yes.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: We are good then until 2:30?

MR. CAMPBELL: Thank you, judge.

THE COURT: Is that right? 2:30.

We will pick -- what we are going to do is we are going to pick at 2:30. That will take probably until -- and any other motions that we might have, take us up to four, a little after four. We will start with openings first thing.

MR. BARNETTE: Your Honor, we would ask the letter be that I appointed Doug Brannon as Court Exhibit 2 just for the record.

THE COURT: All right. See you at 2:30.

(Letter, Dated 2/21/14, marked as Court's Exhibit No. 2 for identification)

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

(Photograph marked as State's Exhibit No. 1 for identification)

(Photograph marked as State's Exhibit No. 2 for identification)

(Photograph marked as State's Exhibit No. 3 for identification)

THE COURT: We ready to pick?

MS. JORDAN: Yes, we are.

THE COURT: Are we ready?

MS. LESKANIC: The State is ready, Your Honor.

MR. CAMPBELL: Defense is ready.

THE COURT: The defense is ready.

We are ready for them.

Do we have them all?

MS. JORDAN: Yes.

MR. CAMPBELL: Your Honor, we do have two more matters that we need to bring up before we bring the jury in.

MS. JORDAN: Judge, we just want to put one thing on the record as far as -- we talked about this in the back that at a certain point in time the State came in possession of some text messaging that was between Ken Shabel and his client.

We also came into possession of an e-mail that was between Ken and his client that were taken off of the computers as a result of the forensic in Virginia on them.

To make the court aware, as we did in the back, we came into possession of those, immediately turned them over to the defense to let them know that we had seen those and had possession of them. We gave them copies of those.

It's my understanding that they are not seeking a motion to recuse. I will turn to them for that.

MR. CAMPBELL: That is correct, Your Honor. We were notified I believe it was last week or the week before that the solicitor's office were, you know, in possession of the communication between Mr. Shabel and his client. After discussion with our client we have chosen not to make a motion for the solicitor's office to be recused, Your Honor.

THE COURT: Okay. All right. Very good.

MR. CAMPBELL: In addition, one final evidentiary matter. We do make a motion in limine to exclude any testimony as to essentially a grow house or a grow room being in the house of our client. I feel like that falls under the bad acts that we talked about earlier, but more specifically I think that we are making a motion to --

THE COURT: Okay. Any reason for that to come in?

MS. JORDAN: Not in our case in chief, Your Honor, no, sir.

THE COURT: Okay. We will talk about it later, if you need to --

MS. JORDAN: Okay.

THE COURT: -- but not in the case in chief.

MR. CAMPBELL: Thank you, Your Honor.

THE COURT: Thank you.

We are clear on the number of strikes, all that good stuff? We clear?

MS. JORDAN: Ten and ten. I'm just kidding. It's five and ten.

MR. SHABEL: It's what?

MS. JORDAN: Five and ten.

THE COURT: Five and ten.

We are ready.

(Whereupon, the jury venire panel entered the courtroom)

THE COURT: Is that everybody?

THE BAILIFF: Yes, Your Honor.

THE COURT: Okay. Thank you.

Good afternoon again, ladies and gentlemen. Again I'm Keith Kelly, one of your circuit court judges.

We are ready now to try the next case, which is the matter of the State of South Carolina versus Daniel William Spade.

Now, I want to tell you that from time to time

during this trial you will see me stand and not be seated in this chair at the bench. And I ask that you place no significance on this fact that I stand while one witness testifies and sits while another witness testifies. I simply do not like to sit for any length of time and I assure you that my standing or sitting during any witness' testimony has no bearing whatsoever on the believability or the credibility of that witness. Now, I say that because again, in all seriousness, I'm not giving weight one way or the other to what someone is saying if I'm standing or if I'm sitting. I just simply am not going to sit in this chair all day every day. I can't do it. It hurts my back. I'm not going to do it.

Now, again, I'm going to tell you we are about to begin the trial of the case of the State of South Carolina versus Mr. Daniel William Spade in this matter. He is the defendant and he's charged by indictment filed with the court with the crime of criminal sexual conduct with a minor, first degree, the elements of which will be explained to you later.

The indictment alleges that this did happen in the County of Spartanburg, State of South Carolina, on or between the dates of September 10, 2010 and October 3 of 2010, in violation of the State of South Carolina law.

The indictment I tell is simply the charge by

which the case is brought before the court. It is not in any sense evidence of any of the allegations contained therein and the defendant has pled not guilty to the indictment. The State, therefore, has the burden of proving each of the elements of the indictment beyond a reasonable doubt.

Before we select a jury there are several questions which I must ask you. I'll remind you that you were previously sworn and that you remain under oath at this time.

The first question. Has anyone ever been related by blood or marriage to Daniel William Spade? Anyone ever been related by blood or marriage to Mr. Spade? If so, please stand.

(No response)

THE COURT: Has anyone ever been related by blood or marriage to Minor Victim? If so, please stand.

(No response)

THE COURT: Has anyone ever had a close personal or social relationship with either Daniel William Spade or Minor Victim? If so, please stand.

(No response)

THE COURT: The following is a list of possible witnesses in this case and I ask you to bear with me because they are numerous.

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Daniel William Spade.

Alexandria Wolf.

Rod Spade.

Christy Trumpower.

Mike Mizak.

Damon Young.

Brian Howells.

Heather Jolley.

David Jolley.

Nic Carracino.

Investigator Nikki Cantrell.

Investigator Victoria Horton.

[redacted] Minor Victim .

Dr. Nancy Henderson.

Tabitha Webber.

Meredith Thompson-Loftis.

Kim Rosborough.

Dale Smith.

Heather Smith Jolly.

Robin Hyatt.

Juan Marquez.

Ken Knight.

Mike Jones.

Erica Gray.

And the other two I have already named.

Has anyone ever been related by blood or marriage to any of those potential witnesses? If so, please stand.

(No response)

THE COURT: Anyone have a close personal or social relationship with any of those potential witnesses? If so, please stand.

(No response)

THE COURT: I'm going to ask the lawyers to stand and face you and introduce themselves at this point in time. Then I'll ask you a couple of questions.

Solicitor.

MS. JORDAN: Thank you, Your Honor.

My name is Jennifer Jordan. I'm an assistant solicitor here in the Seventh Circuit. I prosecute cases on behalf of Barry Barnette.

MS. LESKANIC: May it please the court?

THE COURT: Yes, ma'am.

MS. LESKANIC: I'm Kim Leskanic and I'm also an assistant solicitor here for Cherokee and Spartanburg Counties.

THE COURT: Yes, sir.

MR. BRANNON: May it please the court?

THE COURT: Yes, sir.

MR. BRANNON: My name is Doug Brannon. I'm a private attorney, but in this matter I am working as a

special prosecutor.

MR. SHABEL: May it please the court?

THE COURT: Yes.

MR. SHABEL: My name is Kenneth Shabel. I'm a private attorney licensed to practice law in South Carolina with private offices here in Spartanburg.

MR. CAMPBELL: And I'm Shawn Campbell and I'm also a private attorney. We are in the same firm together, Campbell & Shabel.

THE COURT: Is any member of the jury panel related by blood or marriage, or ever have been related by blood or marriage, to any of the lawyers in this matter? If so, please stand.

(No response)

THE COURT: Any member of the jury panel have a close personal or social relationship with any of the lawyers? If so, please stand.

(No response)

THE COURT: Any member of the jury panel ever been represented by any of the lawyers in this matter in any capacity, please stand? Ever been represented by any of them?

(No response)

THE COURT: Has any member of the jury panel or any member of your family been represented in any -- well, I

asked that. Well, no, let me ask it further, because it has got a couple more lawyers in it. Been represented in any matter by either the lawyers in this case and also Ruth Cate, Andrea Moore, or Alexandria Wolf? If so, please stand.

(No response)

THE COURT: Has any member of the jury panel or any member of your immediate family been accused of a child abuse and/or neglect by either law enforcement, the Department of Social Services, or an equivalent agency, regardless of whether that said agency ultimately made a finding of abuse or neglect? If so, please stand.

(No response)

THE COURT: Has any member of the jury panel or any member of your immediate family been a victim of child sex abuse? If so, please stand.

Also let me ask -- let me say this. In the event that I ask one of these questions and, again, it's personal in nature and you would like to discuss it privately, just note that and at the end I will come off the bench and we will talk about it privately. So if anybody wants to talk about that privately, you are welcome to do so.

Has any member of the jury panel or a member of your family been a party in a Family Court proceeding for adoption of a minor child by a step-parent? If so, please

stand.

(No response)

THE COURT: Has any member of the jury or any member of your immediate family been involved in a custody dispute in Family Court? If so, please stand.

(No response)

THE COURT: Has any juror or a juror's family member or a close personal friend been accused of or charged with a violent offense? If so, please stand.

(No response)

THE COURT: Has any juror or a juror's family member or a close personal friend been accused of or charged with a criminal offense involving a minor child as a victim or witness? If so, please stand.

(No response)

THE COURT: Has any member of the jury or a juror's family member or a close personal friend currently or previously been prosecuted by the Seventh Circuit Solicitor's Office? If so, please stand.

(No response)

THE COURT: Has any member of the jury or a juror's family member or a close personal friend currently or previously involved in as a suspect in a case handled by the Spartanburg County Sheriff's Offers. If so, please stand.

(No response)

THE COURT: Has any member of the jury panel formed or expressed an opinion about any issue or matter involved in this case? If so, please stand.

(No response)

THE COURT: Is there any member of the jury panel aware of any bias or prejudice toward either the State or the defense in this case? If so, please stand.

(No response)

THE COURT: Is there any member of the jury panel who is a member of or contributor to any group which has as its primary concern the promotion of law enforcement or victims rights? These groups would include, but are certainly not limited to, Mothers Against Drunk Driving, Students Against Drunk Driving, Citizens Against Violent Action, or other such similar organizations. If so, please stand.

(No response)

THE COURT: Does any member of the jury panel know of any reason whatsoever why or she should not serve as a juror in this case, with particular emphasis being placed on your ability to be fair and impartial to both the State and the defense? If so, please stand.

(No response)

THE COURT: Additional questions from the State?

MS. JORDAN: None, Your Honor.

THE COURT: From defense?

MR. SHABEL: None, Your Honor.

THE COURT: Okay. At this time, ladies and gentlemen, I'm going to come down. I don't know that anyone would need to answer any of those questions, but if there is a private matter, I'll be down at the front.

(The following are on-the-record bench conferences out of the hearing of the jury venire panel)

THE BAILIFF: Number 121.

(Juror Number 121 approached the bench)

THE COURT: Yes, sir.

JURUR NUMBER 121: 121.

THE COURT: 121.

JUROR NUMBER 121: I just wanted to let you know that my sister's daughter was molested as a kid and my sister was tried through Spartanburg County.

THE COURT: Would that fact interfere with your ability to give the State and the defense a fair trial?

JUROR NUMBER 121: No, sir.

THE COURT: You may stay with us.

(Juror Number 121 returned to the jury venire panel)

THE BAILIFF: Number 34

(Juror Number 34 approached the bench)

THE COURT: Number 34.

JUROR NUMBER 34: I was sexually abused.

THE COURT: You were?

JUROR NUMBER 34: Uh-huh.

THE COURT: Would that fact interfere with your ability to give the State and the defense a fair trial?

JUROR NUMBER 34: No, sir.

THE COURT: You could be fair?

JUROR NUMBER 34: Yes, sir.

THE COURT: Thank you. You may step back.

MR. BRANNON: What's the juror number again?

THE COURT: 34.

(Juror Number 34 returned to the jury venire panel)

THE BAILIFF: 93.

(Juror Number 93 approached the bench)

JUROR NUMBER 93: That name sounds very familiar to me. I have heard that name as well.

THE COURT: Would that interfere with your ability to give both sides a fair and impartial trial?

JUROR NUMBER 93: No.

THE COURT: You can be fair?

JUROR NUMBER 93: Yes.

THE COURT: You can stay with us.

(Juror Number 93 returned to the jury venire

panel)

THE BAILIFF: 109.

THE COURT: 109.

(Juror Number 109 approached the bench)

JUROR NUMBER 109: I have a son who was convicted for criminal sexual conduct and he's serving thirty years in prison.

THE COURT: Would that interfere with your ability to give the State and the defense a fair trial?

JUROR NUMBER 109: I think it would.

THE COURT: You will be excused from the trial of this case.

JUROR NUMBER 109: Okay.

THE COURT: She's excused.

(Juror Number 109 returned to the jury venire panel)

THE BAILIFF: 171.

THE COURT: 171.

(Juror Number 171 approached the bench)

JUROR NUMBER 171: My parents, she has been adoptive parent. She has came to the Family Court trying to get custody of me, so -- it's been worked out, you know. They are still trying to figure out my name and stuff.

THE COURT: Does that interfere with your ability to give the State and defense a fair trial?

JUROR NUMBER 171: No.

THE COURT: You may stay with us.

JUROR NUMBER 171: Okay.

THE COURT: Thank you.

(Juror Number 171 returned to the jury venire panel)

THE BAILIFF: 46.

THE COURT: 46.

(Juror Number 46 approached the bench)

THE COURT: Yes, ma'am.

JUROR NUMBER 46: I was molested and I have several friends who were molested.

THE COURT: Would that interfere with your ability to give the State and the defense a fair trial?

JUROR NUMBER 46: Yes.

THE COURT: You may be excused from the trial of this case.

JUROR NUMBER 46: Okay.

THE COURT: Thank you.

46 is excused.

(Juror Number 46 returned to the jury venire panel)

THE BAILIFF: 2.

THE COURT: Number 2.

(Juror Number 2 approached the bench)

JUROR NUMBER 2: My mom was a Spartanburg County detective and she did sexual assaults and stuff.

THE COURT: Would that interfere with your ability to give the State and the defense a fair trial?

JUROR NUMBER 2: I do believe so.

THE COURT: You believe it would?

JUROR NUMBER 2: Uh-huh.

THE COURT: Number 2 is excused from the trial of this case.

(Juror Number 2 returned to the jury venire panel)

THE BAILIFF: 196.

THE COURT: 196.

(Juror Number 196 approached the bench)

JUROR NUMBER 196: My brother was molested when he was twelve and he was convicted and gone to prison.

THE COURT: Would that interfere with your ability?

JUROR NUMBER 196: That would not, but then he was also charged. He was a teacher and he was charged and they said he did something he didn't. Those were dropped, but then -- so that's the only other thing.

THE COURT: Okay. Would that interfere with your ability to be fair to both sides?

JUROR NUMBER 196: No.

THE COURT: You could be fair?

JUROR NUMBER 196: Uh-huh.

THE COURT: Thank you. You may stay with us.

JUROR NUMBER 196: Thank you.

(Juror Number 196 returned to the jury venire panel)

THE BAILIFF: 35.

THE COURT: 35.

(Juror Number 35 approached the bench)

JUROR NUMBER 35: We had a complaint from the last time he seen his father. He was potentially showing him pornographic material, but nothing was worked out through counseling and everything.

THE COURT: Would that interfere with your ability to give both the State and the defense a fair trial?

JUROR NUMBER 35: No, sir, it wouldn't interfere.

THE COURT: You could be impartial?

JUROR NUMBER 35: Yes.

THE COURT: You may stay with us.

(Juror Number 35 returned to the jury venire panel)

THE BAILIFF: 124.

THE COURT: 124.

(Juror Number 124 approached the bench)

THE COURT: 124.

Yes, ma'am.

JUROR NUMBER 124: I have a son that was prosecuted here, and a nephew. It was about three years ago that was prosecuted here.

THE COURT: Okay. Would the fact that you have a son and a nephew prosecuted here, would that interfere with your ability to give both sides a fair trial?

JUROR NUMBER 124: No.

THE COURT: You could be fair?

JUROR NUMBER 124: Yes.

THE COURT: You may stay us.

MR. CAMPBELL: What were they prosecuted for?

THE COURT: What were they prosecuted for?

JUROR NUMBER 124: I beg your pardon?

THE COURT: What was the charges?

JUROR NUMBER 124: My nephew was charged with murder. My son was charged with -- he had too many tickets, speeding tickets.

THE COURT: Okay.

MR. CAMPBELL: Yes.

JUROR NUMBER 124: Stop for a blue light.

THE COURT: Okay. Thank you. You may stay with us.

(Juror Number 124 returned to the jury venire panel)

THE BAILIFF: 167.

THE COURT: 167.

(Juror Number 167 approached the bench)

JUROR NUMBER 167: I was touched several times unknowingly by my uncle when I was young and I never reported it and I just don't know if I could be fair.

THE COURT: You question whether or not you could be fair?

JUROR NUMBER 167: Yes, I do.

THE COURT: We will excuse you for trial of this case.

JUROR NUMBER 167: Okay.

THE COURT: You won't sit on this case.

JUROR NUMBER 167: Okay.

THE COURT: All right.

(Juror Number 167 returned to the jury venire panel)

THE BAILIFF: 51.

THE COURT: 51.

(Juror Number 51 approached the bench)

JUROR NUMBER 51: My son has a pending DUI in Spartanburg County.

THE COURT: Would that interfere with your ability to be fair to both sides?

JUROR NUMBER 51: No, sir.

THE COURT: You may stay with us. Thank you.

(Juror Number 51 returned to the jury venire panel)

THE BAILIFF: 155.

THE COURT: 155.

(Juror Number 155 approached the bench)

JUROR NUMBER 155: In the late eighties the guy I was living with hurt my son.

THE COURT: Molested your son?

JUROR NUMBER 155: Huh?

THE COURT: He touched your son?

JUROR NUMBER 155: No, he didn't touch him. He just made black and blue places on him.

THE COURT: Would that interfere with your ability to give the State and the defense a fair trial in this case?

JUROR NUMBER 155: No.

THE COURT: You may stay with us. Thank you.

(Juror Number 155 returned to the jury venire panel)

THE BAILIFF: 119.

THE COURT: 119.

(Juror Number 119 approached the bench)

JUROR NUMBER 119: I have been a victim and I went through the court through adoption -- not adoption, but my son from my previous marriage.

THE COURT: Would that interfere with your ability

to give both sides a fair trial?

JUROR NUMBER 119: (Shaking head yes).

THE COURT: You could still be fair?

JUROR NUMBER 119: Uh-huh.

THE COURT: Thank you. You may stay with us.

(Juror Number 119 returned to the jury venire panel)

THE BAILIFF: 29.

THE COURT: 29.

(Juror Number 29 approached the bench)

THE COURT: Yes, sir.

JUROR NUMBER 29: I would like to not participate in this trial because they tried to convict me -- I mean not convict me, but accuse me of the same situation about a year ago, but they couldn't find nothing, but I never would have done nothing.

THE COURT: Would that interfere with your ability to be -- are you saying that would interfere with your ability to be fair?

JUROR NUMBER 29: Yeah, it probably would.

THE COURT: Okay. You may be excused from the trial of this case.

JUROR NUMBER 29: All right.

(Juror Number 29 returned to the jury venire panel)

THE COURT: That's it.

(Whereupon, the on-the-record bench conferences were concluded)

THE COURT: Okay. Anything further from the State?

MS. JORDAN: Nothing from the State, Your Honor.

THE COURT: And from defense?

MR. CAMPBELL: Not from the defense, Your Honor.

THE COURT: Okay. Madam Clerk, I think we are ready for a jury.

THE CLERK: Yes, sir.

Ladies and gentlemen of the jury, as I call your juror name and number, please bring all of your belongings and stand in the middle and face the jury.

Juror Number 41, John Covati.

What says the State?

MS. JORDAN: Please present this juror.

THE COURT: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror Number 119, Maryjo Mcleod.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please excuse the juror from the trial of this case.

THE CLERK: Juror 121, David Merriotte.

What says the State?

MS. JORDAN: Please excuse the juror on the trial of this case.

THE CLERK: Juror 13, Kathleen Biggs.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please excuse the juror from the trial of this case.

THE CLERK: Juror 151, Gary Rudicill.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 94, Tommy Jackson.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror Number 30, Clara Campbell.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror Number 199, Mary Younger.
What says the State?
MS. JORDAN: Please present this juror.
THE CLERK: What says the defense?
MR. SHABEL: Please excuse the juror from the trial of this case.
THE CLERK: Juror 61, Leonard Frady.
What says the State?
MS. JORDAN: Please present this juror.
THE CLERK: What says the defense?
MR. SHABEL: Please seat this juror.
THE CLERK: Juror 21, Marian Bolton.
What says the State?
MS. JORDAN: Please present this juror.
THE CLERK: What says the defense?
MR. SHABEL: Please excuse the juror from the trial of this case.
THE CLERK: Juror 35, Ashish Chandarana.
What says the State?
MS. JORDAN: Please present this juror.
THE CLERK: What says the defense?
MR. SHABEL: Please excuse the juror from the trial of this case.
THE CLERK: Juror 142, Mindora Purgason.
What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 17, Susan Bishop.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please excuse the juror from the trial of this case.

THE CLERK: Juror 25, Anthony Branch.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 42, Tony Crady, Jr..

What says the State?

MS. JORDAN: Please excuse the juror in the trial of this case.

THE CLERK: Juror 145, William Renwick.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 51, Luke Dimaggio.

What says the State?

MS. JORDAN: Please excuse the juror in the trial of this case.

THE CLERK: Juror 101, David Kimbler.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 40, James Couch.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 122, Richard Meyer.

What says the State?

MS. JORDAN: Please excuse the juror from the trial of this case.

THE CLERK: Juror 154, June Sapao.

What says the State?

MS. JORDAN: Please present the juror in the trial of the case.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 58, Walter Forrister.

What says the State?

MS. JORDAN: Please present the juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: And for the alternate, Juror 171, Ceirra Stevens.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please excuse the juror from the trial of the case.

THE CLERK: Juror 108, Ofelia Lopez.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Jury selection has been completed.

THE COURT: Solicitor, would there be any matters?

MR. BRANNON: Yes, Your Honor.

THE COURT: Okay. Let me see the lawyers.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: All right. Ladies and gentlemen, you have been selected, but not yet sworn. At this point we are going to ask you to go with this bailiff to the jury room, which is right here, is that right?

THE CLERK: Yes.

THE COURT: She's going to segregate you from the other jurors at this point in time. So if you would go with her for just a few minutes.

(The following takes place outside the presence of the jury panel)

THE COURT: The ladies and gentlemen who were not selected, I'm sorry that you were not selected on this jury, but you will have more opportunities this week, beginning actually tomorrow, or maybe later this afternoon, so at this point in time we are going to ask you to go with the bailiffs back to your jury assembly room. We will have some further instructions for you there. So if you will go with your bailiffs.

(Whereupon, the jury venire panel left the courtroom)

THE COURT: Okay. I believe the State has some Batson issues?

MR. BRANNON: That's correct, Your Honor.

Your Honor, at the bench I said it was four. There are six. I was -- that was an error. Five of their six strikes were female jurors.

Your Honor, Batson requires that they are able to give a gender neutral explanation for their strike.

Your Honor, we agree that juror number 119 has an appropriate basis, as she was a victim of sexual abuse.

I would ask for gender neutral bases for the strikes of the other four female jurors.

MR. SHABEL: Is the State willing and prepared to do the exact same thing, because all four of their strikes were men?

MR. BRANNON: Certainly?

MR. SHABEL: All right.

THE COURT: Sure.

MR. SHABEL: Juror number 17 was a nurse. Given the nature of the testimony that's potentially going to be presented by Dr. Henderson, we felt that was unnecessary.

Number 21 is a retired teacher with two kids. We do not feel she would be an appropriate juror in this case.

Number 199 is a retired grandmother. We didn't feel like she would be appropriate.

And number 35 --

MR. CAMPBELL: Your Honor, number 35 was -- his stepfather was alleged to have shown him pornographic material.

MR. BRANNON: In questioning him.

MR. SHABEL: And one other one. I'm -- not for lack of looking, but I missed one and I apologize.

Number 13.

MS. JORDAN: 21.

MR. SHABEL: I covered 21.

MS. JORDAN: What was 21 again, I'm sorry?

MR. SHABEL: Number 21 is a retired high school teacher.

And the second one I struck was number 13, I believe.

THE COURT: Number 13, Kathleen Biggs.

MR. SHABEL: That was the grandmother and her age.

THE COURT: Tell me what you mean by that, Ken. She was a grandmother?

MR. SHABEL: It's prejudicial to our client. We felt that given the age and the retired nature and the number of kids she has, we didn't feel like she would be an appropriate juror for our case.

THE COURT: Okay. That's number 13.

Number 3, Mary Younger?

MR. SHABEL: 3?

THE COURT: I'm sorry -- I'm sorry, number 99 -- 199. 199.

MR. SHABEL: The same thing, Your Honor.

MR. BRANNON: The same thing what? She's a retired grandmother?

MR. SHABEL: If I'm remembering correctly.

Age and background. She's 65 years old and has three children and divorced. We felt she would be prejudicial.

THE COURT: Number 21.

MR. SHABEL: Retired teacher with two kids.

THE COURT: You are not challenging 35, but you are challenging number 17. She's the nurse?

MR. SHABEL: Yes.

THE COURT: All right, solicitor?

MR. BRANNON: May I respond to some of those first, Your Honor?

THE COURT: Yes. Yes. Yes.

MR. BRANNON: I mean, the jury -- and I understand that it's the general jury pool is supposed to represent the makeup of Spartanburg County, but in this case the specific jury itself does not in any way, shape or form represent Spartanburg County. This is not -- this is not a jury of his peers. This is a jury of his male peers, Your Honor. And many of these strikes were strikes because they were female and because they had children. I don't know that that is a legitimate basis for striking a juror. I mean --

Your Honor, these are dear friends of mine, but counsel had to go back and look at their jury list to come up with the reason that they gave you. They struck them because they were female, was what they did. After we made the Baton Motion they went back and looked at this jury list to find out some gender neutral motion.

MR. SHABEL: I think it's important to note that

even though we did not use four of our strikes, we put two female jurors on this. If this was really a case where we didn't want any women on the stand, those two women would have been sent back and we would have had to have ten strikes that were all women, or nine strikes that were women, one were the men. There were women selected on this jury with strikes left on the table by defense counsel.

THE COURT: Well, I'm going to tell you this, though, Mr. Shabel. I am concerned about when you strike a grandmother. I mean, that by its very nature implies she's female. Nobody else can be a grandmother.

MR. SHABEL: It's the age, as well as the fact that we felt she was retired grandmother, we felt that she just would not be -- we felt it would be more prejudicial to my client. It had nothing to do with the fact that she's a female. It's a combination of those.

MR. BRANNON: But I don't know that age is an appropriate measure of -- a basis for a strike either, Your Honor. I mean, you found them to be qualified to serve as jurors. You asked the age questions at the jury qualification.

And if you want to talk about age, let's look at some of the men that are in the jury box. They are at least as old as number 199.

THE COURT: All right. He has a motion too. That

one is under advisement for a minute. I'm going to get off the bench and go read this case law right quick, but we are going to hear from the other.

Let's hear from the State too.

MR. SHABEL: Every strike they made was men.

THE COURT: All right. Mr. Brannon, number 121.

MR. BRANNON: Yeah, Jen is going to take that, Your Honor.

THE COURT: Okay.

MS. JORDAN: I'm going to take them, Your Honor.

Your Honor, as to -- my notes are a little confused now.

As to 121, we struck him because he said he had a sister tried for child sexual assault, in addition to the fact that it sounded like his niece was molested as a kid and his sister was tried.

As to 42, I struck him because he was an engineer. I usually don't like to seat engineers, professors, lawyers on my juries.

Number 51 I struck because he was -- has a son with a pending DUI in Spartanburg County.

Number 122 I struck because his occupation was listed as a CFO. He fits into my category along with engineers, lawyers and professors.

MR. SHABEL: But yet they are complaining that I

did not sit a retired teacher, Your Honor.

MS. JORDAN: Your Honor, it has nothing to do with that. If you have look at professions that they struck, teachers and nurses are predominately handle -- are predominantly employed females.

He wants to say that they struck grandmothers. In their answer themselves I think they are giving you gender - grandmothers. They struck people because they had children. How does he even know that these people are grandmothers?

There are men on that jury with children. I think that they also would show that there are men the same age as some of the women who were struck on here because they were grandmothers.

THE COURT: Okay. Y'all just stand at ease.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

THE COURT: We are back on the record on the Batson Motion.

Mr. Shabel, I'm going to grant the State's motion on Batson as to juror number 13, Ms. Kathleen Biggs. It's not gender neutral, in that she's a grandmother. Only females can be grandmothers.

That also goes to number 199, Ms. Mary Younger.

As to number 119, that is gender neutral, in that she was a victim of sex offense herself.

As to number 21, that is gender neutral, in that she's a retired school teacher. Both male and female are teachers and coaches.

As to number 17, Susan Bishop, she's an RN. There are males who are RN's. In fact, my next door neighbor is a registered nurse and retired hospital administrator, so that is gender neutral as well, but not as to 199 and number 13.

So we need our -- Mr. Bailiff, we are going to need our jury panel back and we will pick again.

MS. JORDAN: Your Honor, just for clarification, to make sure I understand the whole process correctly, once -- if one -- if 13 and 199 come up at this point in time, they are required to take them without using a strike?

THE COURT: Well, that is correct. The case on that is State v. Franklin, if anybody wants that. It's 318 S.C. 47, 456 S.E. 2d at 357, 1995.

MR. SHABEL: And for the record you are granting the motion based on -- despite my argument of the age of the individual?

THE COURT: Yes, sir.

MR. SHABEL: Thank you.

MR. CAMPBELL: Your Honor, what about our motion regarding their strikes?

THE COURT: I don't think I have to reach that, but I will.

MR. CAMPBELL: Okay.

THE COURT: Number 121, the challenge -- he said his sister had been tried for a sex act, so that is race and gender neutral.

As to number 2, Mr. -- I'm sorry, number 42, the second strike by the State, he's a male. He's an engineer. I understand that that's race and gender neutral.

As to number 51, his son has a pending DUI with Spartanburg County. That's one of the questions I think both sides wanted me to ask, so that is race and gender neutral.

And finally as to Richard Meyer, number 122, the fourth strike, he's the past COO of Extended Stay America and is race and gender neutral as well. I just -- nobody said he was a grandfather or struck him for any other reason.

THE CLERK: Do you want me to pick another list?

THE COURT: Yes. We will need another list and then we will need these thirteen to come on out and join their brothers and sisters.

(Whereupon, the jury panel was brought back out into the courtroom and seated with the jury venire panel)

THE COURT: Let me see the lawyers just a minute.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: Madam Clerk.

THE CLERK: Yes, sir.

We are going to go through the same process as we did just a awhile ago.

Juror Number 22, Kimberly Bomar.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 27, Roy Brooks.

What says the State?

MS. JORDAN: Please excuse this juror.

THE CLERK: Juror 130, Glenda Morris.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please excuse the juror from the trial of this case.

THE CLERK: Juror 137, David Patton, Jr..

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 17, Susan Bishop.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please excuse the juror from the trial of this case.

THE CLERK: Juror 119, Maryjo Mcleod.

MS. JORDAN: What was that name again, Ms. Madam Clerk?

THE CLERK: Maryjo Mcleod.

MS. JORDAN: Number?

THE CLERK: 119.

MS. JORDAN: Thank you.

THE CLERK: What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please excuse the juror from the trial of this case.

THE CLERK: Juror 155, Karen Sawyer.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please excuse the juror from the trial of this case.

THE CLERK: Juror 151, Gary Rudicill.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 199, Mary Younger.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 145, William Renwick.

What says the State?

MS. JORDAN: Please present the juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 31, James Campbell.

What says the State?

MS. JORDAN: Please excuse the juror from the trial of this case.

THE CLERK: Juror 93, Melissa Jackson.

What says the State?

MS. JORDAN: Please excuse the juror from the trial of this case.

THE CLERK: Juror 57, Julie Farmer.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 104, Eliza Lewis.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 24, Keisha Bradley.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please excuse the juror from the trial of this case.

THE CLERK: Juror 133, Justin Osullivan.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 106, Clifton Lindler.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 60, David Fox.

What says the State?

MS. JORDAN: Please excuse this juror.

THE CLERK: Juror 33, Sylvia Casey.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please excuse the juror from the trial of the case.

THE CLERK: Juror 148, Derrek Richard.

What says the State?

MS. JORDAN: Please present the juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 61, Leonard Frady.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: Juror 96, Katie Jewell.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE CLERK: And for the alternate, Juror Number 112, Janie Massey.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please excuse the juror from the trial of the case.

THE CLERK: Juror 50, Shelley Dill.

What says the State?

MS. JORDAN: Please present this juror.

THE CLERK: What says the defense?

MR. SHABEL: Please seat the juror.

THE COURT: Will there be any matters from the State?

MS. JORDAN: None, Your Honor.

THE COURT: From the defense?

MR. SHABEL: None, Your Honor.

THE COURT: Okay.

All right. Ladies and gentlemen who were not selected, we are going to relieve you and release you for the day. It's right at four o'clock, about one or two minutes to. It's my understanding that this trial will proceed on into tomorrow and maybe even the next day, I'm unsure, but I do know that Judge Couch will be picking a jury tomorrow at nine o'clock. He starts at nine.

THE CLERK: Yes, sir.

THE COURT: So I'm going to ask you to be in your jury assembly room at 8:45. 8:45, 8:46, something like that. That will give you time to stow your coat, take that last drink of water, use the facilities, whatever it is you

might need to do, make the last phone call, because Judge Couch is going to pick the next jury.

Not that it matters to you, but let me see. Do you know what courtroom they are going to be in tomorrow at this point?

THE CLERK: This one.

THE COURT: They are going to be here?

THE CLERK: Yes.

THE COURT: Okay.

THE CLERK: You will be in West A.

THE COURT: I'm playing musical courtrooms, is that right?

THE CLERK: Yes, sir.

THE COURT: Okay. All right. You are going to end up being back in this courtroom with Judge Couch. This is ordinarily his courtroom, so you are going to be back in here tomorrow, and I understand I'm being shipped across the hall.

Am I in Judge Cole's?

THE CLERK: Cole's.

THE COURT: I'll be in Judge Cole's courtroom tomorrow, which is directly across the hall from here, but with that we are going to let you go with the bailiffs back to your jury assembly room and be released from there, because I think they collect the badges.

Don't y'all collect the badges?

THE BAILIFF: We collect the badges.

THE COURT: They will collect your badges and you will probably your coats and things back there as well. So go back there and the bailiffs will take good care of you, and Judge Couch will see you promptly at nine o'clock tomorrow morning. Thank you. Have a good evening.

(Whereupon, the jury venire panel left the courtroom)

THE COURT: Ready to swear the jury?

MR. SHABEL: Yes, Your Honor.

MS. LESKANIC: The State is ready, Your Honor.

THE COURT: Okay, Madam Clerk, please swear the jury to try this case.

THE CLERK: Yes, sir.

Please stand and raise your right hands.

Do you solemnly swear or affirm that the case about to be tried to truly try the issues joined in this case and render a true verdict according to the law and the evidence, so help you God?

JURY PANEL: (Collectively said I do.)

THE CLERK: Thank you. You may be seated.

THE COURT: Now, ladies and gentlemen of the jury, you have now been impaneled and sworn to try this case that's before you.

We are going to be releasing you in just a couple of minutes here. I'm going to give you a few instructions. Just like the rest of your brothers and sisters on the jury panel, we would ask you to be back in the morning about 8:45, 8:50, something like that, but 8:45. I will be taking the bench promptly at nine. Okay. I get here slightly before eight o'clock every morning. The lawyers will be here by eight o'clock in the morning. Any little administrative matter or thing that we have to do that does not require your attendance, we do not want to bother you and keep you waiting on us, so we will take care of that in the morning, if anything. If not, I'll have a second or third cup of coffee and wait until nine o'clock, but at nine o'clock I need you and the lawyers need you. And as I said earlier today, we cannot start if any one person is late or missing. We cannot start with ten, or eleven, or twelve. We have to have all thirteen of you to begin, so please keep that in mind. Do not inconvenience your neighbor, if you will, as it is on the jury with you. So be prompt in the morning, please.

Anybody has an emergency or anything whatsoever, you can get in touch with the bailiffs or you can get in touch with law enforcement and they will be able to assist you with that. We trust everyone will.

I'm going to let the bailiffs show you where you

are going to be, because you are not going to be in the jury assembly room with everyone else. You are going to be in your jury room, so they are going to -- I'm going to release you. They are going to take you to that room so that you will know where to report to in the morning, but you will not be with the other fifty or sixty folks that are out there. You will be just the thirteen of you in your jury room and then we will start promptly at nine tomorrow morning.

Tomorrow morning I want to appoint a foreperson of the jury before we begin. And I will tell you now that at the first break the foreperson and the alternate, ma'am, always sit in assigned seats, but everybody else can be a Rotarian. Okay, I have been a Rotarian for twenty-five years, and so you could just move around and sit wherever you would like, just like at the Rotary Club meeting, but those two individuals have to sit in the assigned seats, so that when I look up I would be addressing the spokesperson for the jury at that point in time. I know where my alternate is. Okay.

Anything from anybody before -- Madam Clerk?

THE CLERK: I'm good to go.

THE COURT: Anything from the State?

MS. LESKANIC: Nothing, Your Honor. Thank you.

THE COURT: Anything from the defense?

MR. SHABEL: No, Your Honor. Thank you.

THE COURT: I will advise everybody on the jury I don't have an idea whatsoever about what this case is about and neither do you. We have not heard the first piece of testimony. I have no reason to believe there will be anything on television, or newspaper, or what have you, the Internet, but I instruct you not to try to find out anything about the case. Don't -- if there is a news story of some sort, and I don't know what it would be, but if there is, please do not read it, do not listen to it if it's on the radio, do not watch it if it's on the television. All of your evidence must come clearly from the courtroom and only from the courtroom. So don't try to find out anything about the case. And, again, you don't know anything about it and I don't know anything about it, other than one piece of paper that's laying up here on the desk.

All right, with that we will release you to the bailiffs.

THE BAILIFF: If you would, just follow me, please.

(The following takes place outside the presence of the jury panel)

THE COURT: Any matters from the State?

MS. JORDAN: Yes, Your Honor.

We would ask that at this time, since the case has

been called and the jury has been sworn, that the defendant be taken into custody. His bond is over at this point in time.

MR. SHABEL: Your Honor, if I may be heard?

THE COURT: Yes, sir.

MR. SHABEL: My client has been diagnosed with Post-Traumatic Stress Disorder. I do have a letter from a doctor from Richland County indicating it would be in his best interests to remain in his family's care. He's driven all the way down from Virginia and he's got family here that's staying here. He's not a flight risk at this point. He's not going anywhere. We would ask that bond not be revoked and he be allowed to remain on recognizance bond pending tomorrow.

THE COURT: Well, Mr. Shabel, I can't do that. The crime is too serious.

MR. SHABEL: Yes, Your Honor.

THE COURT: And the solicitor is right. As much as I dislike that when I was practicing law, when the case is called he's in custody.

MR. SHABEL: Yes, Your Honor. Thank you.

THE COURT: Anything else from the State?

MS. JORDAN: Nothing, Your Honor.

THE COURT: Anything from the defense?

MR. SHABEL: No, Your Honor.

THE COURT: Okay. Ladies and gentlemen, I will be here no later than eight o'clock tomorrow morning. I'm usually here a few minutes to eight, so if I'm needed, whatever the lawyers might need, Trey and I will be here. I'll be here and Trey will be here close to that, is that right? So if you need us, we will be ready.

MR. CAMPBELL: Eight o'clock in the morning you want us here?

THE COURT: I will be hear by eight o'clock. I'm at the courthouse every morning by eight o'clock. So if you need me, if something develops overnight, some issue, or what have you, please get with opposing counsel and I will be available.

MS. LESKANIC: Thank you, Your Honor.

MS. JORDAN: Thank you.

(Whereupon, proceedings were adjourned to February 25, 2014)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

THE STATE)
)
-vs-) TRANSCRIPT OF RECORD
) 2011-GS-42-04171
DANIEL WILLIAM SPADE,)
) FEBRUARY 25, 2014
DEFENDANT. SPARTANBURG, SOUTH CAROLINA

(VOLUME II)

B E F O R E:

THE HONORABLE R. KEITH KELLY, JUDGE. ; And a Jury.

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

BARRY J. BARNETTE, SOLICITOR
JENNIFER A.J. JORDAN, ASSISTANT SOLICITOR
KIMBERLY L. LESKANIC, ASSISTANT SOLICITOR
N. DOUGLAS BRANNON, ESQUIRE, SPECIAL PROSECUTOR
ATTORNEYS FOR THE STATE

KENNETH P. SHABEL, ESQUIRE
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MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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(Hotel Receipt marked as State's Exhibit No. 4 for identification)

(Hotel Receipt marked as State's Exhibit No. 5 for identification)

THE COURT: All right, solicitor, any matter before we bring the jury?

MS. LESKANIC: No, Your Honor.

THE COURT: Defense?

MR. SHABEL: No, Your Honor.

THE COURT: We are ready for the jury.

(The following takes place in the presence of the jury panel)

THE COURT: Good morning, ladies and gentlemen.

Thank you for being prompt and timely this morning so we could get started. As I told you, we get here about eight o'clock every morning, or just slightly before that, to take care of anything that we need to, but we are ready to go at this time.

Now, we are about to try the case of the State of South Carolina versus Daniel William Spade, who is the defendant in this matter, but before we begin this trial I want to tell you that this trial will probably be different from what you might expect. Many people do not have the chance to attend an actual court session, as you are doing

now, and many people believe from watching television or movies or reading books that trials are always full of high drama, intense action and riveting circumstances. Now, while all these things may be true at times, this trial is not for entertainment purposes. This trial is a fundamental part of our democracy - a search for the truth in an effort to make sure that justice is done between the parties before the court. Searching for the truth and making sure that justice is done is often slow, deliberate and repetitive, the opposite of what you may have seen on television or in a movie or read in books. This courtroom is a place of honor dedicated to the protection and preservation of citizen's rights through what many have called the greatest justice system ever created.

The attorneys appearing before you are advocates for the parties they represent, but first and foremost they are officers of this court, sworn to uphold the integrity and fairness of our judicial system and to help you in the search for the truth. You should expect them to be professional, competent and ethical in their representation of their client's interests, and you also are expected to be professional, reasonable and ethical. Again, we thank you for your service as jurors this week.

What I say now is intended to serve as an introduction to the trial of this case. My remarks are not

a charge on the law of the case. I will instruct you on the law at the end of the trial before you retire to consider your verdict. My remarks are merely an explanation of the procedure that we will follow in the trial of this case so that you may better understand what may be happening.

You are not to take any notes during the trial of this case.

As I previously told you, the defendant is charged by an indictment filed with this court with the crime of criminal sexual conduct with a minor in the first degree, the elements of which will be explained to you later.

The indictment, this piece of paper, is simply the charging instrument that brings the case before the court and it is not in any sense evidence of any of the allegations contained therein.

The defendant has pled not guilty to the indictment. Therefore, the State has the burden of proving each of the elements of the indictment beyond a reasonable doubt. And it will be your duty, ladies and gentlemen, to decide whether the State has met that burden of proof.

Your purpose as jurors is to find and determine the facts. You are the sole judge of the facts. If at any time I make any comment regarding the facts, you must disregard it. You are to determine the facts from the testimony you hear and the other evidence introduced in

court. It is up to you to determine the inferences which you think may be properly drawn from the evidence presented in this case. It is especially important that you perform your duty of determining the facts diligently and conscientiously, because ordinarily there is no way to correct an erroneous determination of the facts by a jury.

On the other hand and with equal emphasis, the same law that makes you the judge of the facts makes me the judge of the law. The law as given by the court is the only law that you may consider. You must accept it and follow it, even you if you disagreed with it. I cannot tell you what the facts are and you cannot disagree with me about what the law is, or ought to be, or should be.

Your job is is to take the law as I give it to you and apply it to the facts as you find them to be from the testimony of the witnesses and any other evidence that is properly introduced during the trial. After doing that you will render your verdict, a verdict under the solemn oath that you just took as jurors, but until I tell you that you may begin deliberations you must not discuss this case with anyone, including your fellow jurors, friends, family members, and anyone involved in this case.

The attorneys and the parties in this case have been advised by me that they are not to speak to you at all. So if you see one of the attorneys or a party to this action

and they do not speak to you, they are not being rude or unfriendly. They are simply following my instructions.

You must decide this case based solely on the evidence presented in this courtroom. During the trial you must not conduct any independent research about the case or the facts of the case, the evidence presented in the case, or the people or organizations involved in any way in this case. Please do not try to learn information from any source outside of this courtroom. In other words, you must not look at dictionaries or other reference materials, search the Internet, websites or blogs, or use other electronic tools to discover or receive information about this case or to help you decide the case. You may not use computers, telephones, cellphones, Smart Phones, tablets, the Internet, or other tools of technology with communication capabilities at any time while you are in the courtroom or during your deliberations.

During breaks for meals or overnight you may use those devices; however, you must not use those devices to communicate with anyone about the case until the case is ended. This means you must not use phone calls, e-mails, text messages, instant messages, Twitter, or any blog, chat room, or website, including Facebook, Google Plus, My Space, Linked in, You Tube, or any social media website to send or receive information about this case. This includes

information about a party, a witness, an attorney, or a court officer, news accounts about the case research on any topics raised, any topics you may think would be helpful in deciding the case, or any testimony presented by any witness.

During the trial do not read, listen to, or watch any news reports about this case. This includes anything that may be in newspapers, on the Internet, radio, or television. You must not consider anything you may have read or heard about the case outside of this courtroom, whether before or during the trial. Information on television, radio, the Internet, or other sources, might be wrong or incomplete.

In our judicial system it is important that you are not influenced by anything or anyone outside of this courtroom. If you become aware of another juror's violation of my instructions, please inform me immediately. It is important that you keep an open mind and not decide any issue in this case until all of the evidence has been presented, the parties have made their closing arguments and I have instructed you on the law in this case.

It is your solemn responsibility to determine the guilt or innocence of the defendant and your verdict must be based solely on the evidence as it is presented to you in this trial and on the law as I instruct you during and at

the close of this trial.

In just a moment the solicitor will make what is called an opening statement in which the solicitor will explain to you the issues in this case, or at least what the solicitor thinks the issues are in this case. The attorney for the defendant may also make an opening statement, although he is not required to do so. What the attorneys tell you during their opening statement is not evidence in this case. It is only their contention as to what the issues are.

The evidence in this case will be presented to you by the testimony of sworn witnesses from the witness stand and/or by exhibits that may be introduced into evidence.

From time to time during the trial you may hear one of the lawyers say something like "Your Honor, I believe we have a question of law or a matter of law to discuss", or I myself may find it necessary to excuse you from the courtroom for a short while so the attorneys and I can discuss a matter of law. The reason for this is because you are the judge of the facts and sometimes when I am discussing a matter of law with the lawyers it may be necessary for me to make some comment as to the facts in connection with ruling on whether or not a particular law applies. I am not supposed to tell you what I think the facts are, so I will excuse you from the courtroom while

these discussions take place so that in no way will you be influenced by anything that I might say or do in connection with the facts.

In determining what the true facts are in this case you must decide whether or not the testimony of the witness is believable. It will be my responsibility to rule as a matter of law as to whether certain testimony is admissible, but once the testimony is admitted, whether or not you believe it is solely for you to determine.

In deciding whether to believe a witness you have the right to consider the interest of any witness, the bias of any witness, the prejudice of a witness, the opportunity for him or her to have seen the matters and things about which they may testify and the way the witness acts on the witness stand. You have a right to consider anything that is in the record that will help you evaluate the testimony of the witnesses. That means that it is your duty to pay close attention to the witness, to observe him or her, to listen to them, and to pay close attention to the lawyers and to the court. Please do not let your thoughts wander, but give strict attention to the testimony in this case, so that at the end of all the testimony, after the arguments of counsel and the charge on the law by the court you will then be in a position to determine what the true facts are and to apply the law to those facts and thus render a verdict.

Are we ready, solicitor?

MS. LESKANIC: The State is ready, Your Honor.

THE COURT: Okay. We will now begin the trial.

Solicitor.

MS. LESKANIC: Thank you.

May it please the court?

THE COURT: Yes, ma'am.

MS. LESKANIC: Thank you, Your Honor.

Good morning, ladies and gentlemen.

As Judge Kelly stated, the purpose of an opening is to tell you what the issue in the case is. The issue in this case is one; did that defendant molest his daughter when she was four years old. That's the issue that you have to decide.

He's charged with criminal sexual conduct with a minor in the first degree. It's first degree because of her age. She was four years old at the time.

The judge is going to go over with you at the end of the case what criminal sexual conduct is, but it's inappropriate sexual conduct by an adult with a child, and that's what this case is.

You are going to hear a lot of things in this case about some Family Court actions that took place.

The little girl in this case, her name is VICTIM She's now seven years old and you are going to hear from her

today. She's going to come in. She's going to take this stand and I will ask her questions about what her biological father did to her when she was four.

Now, the defendant, her biological father, lived in Virginia, and he lived in Virginia throughout Minor Victim s entire life. The mother and Minor Victim have always lived here in South Carolina and the defendant has lived in Virginia. He exercised some visitation with her, supervised visitation, usually with his girlfriend, or his sister, or his parents.

During the course of that there was a time where Ms. Jolley, Minor Victim mom, filed an action in Family Court to terminate his parental rights. They had a hearing and the judge denied that. They were not going to terminate his parental rights and he's going to continue with his visitation. It was visitation that was going to be supervised and then get to the point of being unsupervised.

What brings you all here today is the unsupervised visits that happened in South Carolina when he traveled from Virginia and came to South Carolina in September and October of 2010 and had unsupervised visits with Minor Victim in a motel here in Spartanburg County.

Following those visits Minor Victim came home September 12th, after a visit with the defendant, experiencing extreme anxiety. Her mother is going to tell you about it; wetting

herself when she was completely potty trained, screaming, crying, not sleeping in her own bed, even to the point where she had a table in her bedroom that she made into a little fort and would sleep inside that. She didn't want to be alone. She didn't want to be in her room. She didn't want to be in the dark. Clearly behavioral changes.

Her mom and stepdad were concerned. She needed to continue with the visitation and wanted to do what the court had told them to do, so they got her a counselor, Kim Rosborough, and you will hear from her. And they said "we need to help our daughter with the anxiety so she can continue with the visitation," so Minor Victim started seeing a counselor.

As the counselor was going on there was a day when Minor Victim was with her grandmother, who she spent a lot of time with, and you will hear from her grandmother. She calls her Mimi, and she disclosed to her grandmother that she had been sexually assaulted.

Now, with that information they go back to Kim Rosborough, the counselor, for advice, "what do we do?" She said take her to the Children's Advocacy Center and have a forensic interview done, forensic assessment, to try to find out exactly what has happened. They don't rush, they don't go to the police right away. They are trying to get more information about what may have happened to their daughter.

She meets with Tabitha Webber at the Children's Advocacy Center and there Minor Victim also discloses that she's been sexually assaulted.

With that information the Children's Advocacy Center made contact with the Spartanburg County Sheriff's Department, who conducts an investigation, and brings us here today with the defendant charged with molesting his daughter.

MR. CAMPBELL: Your Honor, at this time I would like to have a conference at the bench, please.

THE COURT: Yes, sir.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

MS. LESKANIC: Thank you, Your Honor.

As I was saying, after she met with the Children's Advocacy Center, the Children's Advocacy Center contacted Nikki Cantrell with the Spartanburg County Sheriff's Department. The investigation was underway. That brought us here today.

As Judge Kelly advised you, this is a search for the truth. And as representing the State of South Carolina, that's what we are here to do is ask you to listen to the testimony. You are going to hear from the officer.

You are going to hear from a seven year old little girl. And I don't know if any of you were nervous when you

had to stand up yesterday and give information in front of a group of people, but we are going to ask a seven year old to do that in the courtroom today.

You are going to hear from the counselors.

You are going to hear from her mother.

I believe that will lead you all to the truth of what happened in this case, and that is that the defendant is guilty of criminal sexual conduct with Minor Victim. Thank you.

MR. SHABEL: May it please the court?

THE COURT: Yes, sir.

MR. SHABEL: Good morning, ladies and gentlemen.

I want to thank you guys in advance, ladies and gentlemen, for your willingness to come, your participation, your attentiveness, your focus over the next several hours, potentially several days; the testimony, lots of lawyers speaking, and as Judge Kelly said, a search for the truth. The key word in that statement, ladies and gentlemen, is the word search. That means that you have to look for. It's not just handed to you. It's not just thrown at you. You have to find it. Take that into consideration as every witness takes that stand and as every document comes before you. It's a search. You have to look for it.

This case, ladies and gentlemen, is about a man, Daniel Spade, a man who became a father, a man who wanted to

become a dad under the most difficult of circumstances. A man, who lives in Virginia, got into a relationship with a woman who lives in South Carolina. She got pregnant. He became a father and he wanted to be a dad. So, as Ms. Leskanic said, Family Court got involved. He wanted to be a dad.

Minor Victim mom and stepdad wanted to terminate his parental rights. They didn't want him to be a dad, so he fought to be a dad and he got the chance to be a dad. He got to visit with his daughter as a dad. Unfortunately for Mr. Spade his journey to be a dad didn't get to end with a high school graduation, or a college graduation, or a medical school graduation. It didn't get to end with walking his daughter down the aisle at the wedding. It's culminated in a criminal trial. It's culminated in a criminal trial where he is being accused of an awful, awful crime, but as Judge Kelly has said, and will say again, Mr. Spade, just like any other defendant in this state, is innocent until the State can prove him guilty beyond a reasonable doubt.

So I'll ask you, ladies and gentlemen, over the course of the next several hours, potentially the next several days, to begin that search for the truth, with the understanding that it is the State's responsibility to prove that truth in here.

I submit to you that when this search is over and the State has given you and handed you everything that they want to hand you, the search will lead you to find Mr. Spade is not guilty of the crime that he's been accused of. It's a horrible crime. It's a horrible act, but this isn't about the horrible act. It's about whether Daniel Spade, a man who wanted to be a dad, committed the act. I look forward to the journey for the truth with you. Thank you.

THE COURT: Solicitor?

MS. JORDAN: May it please the court?

THE COURT: Yes, ma'am.

MS. JORDAN: Your Honor, the State calls Investigator Nikki Cantrell.

INVESTIGATOR NIKKI CANTRELL, having been first duly sworn, testified as follows:

THE COURT: Ma'am, I'm going to ask you to tell us your whole name and spell your last name for my court reporter, please.

THE WITNESS: Nikki Cantrell, C-A-N-T-R-E-L-L.

THE COURT: Thank you.

Solicitor.

DIRECT EXAMINATION BY MS. JORDAN:

Q. Investigator Cantrell, where are you employed?

A. Spartanburg County sheriff's office.

Q. What is your current position at the sheriff's office?

A. I'm a detective. I investigate all crimes that are sexually motivated and all crimes against children.

Q. Okay. How long have you been in that specific position?

A. Eleven years.

Q. Okay. Prior to going into investigations what was your possession at the sheriff's office?

A. I worked on patrol in the evenings. And then after that I worked undercover narcotics. And then after that I was assigned to car breaking task force. It was -- it's like a second step to detective.

Q. Okay. How many years have you been in law enforcement?

A. Thirteen.

Q. Did you become involved in a case involving Minor Victim Minor Victim ?

A. I did.

Q. Okay. How did you become involved in this case?

A. I was contacted by the Children's Advocacy Center on April the 8th, 2011.

Q. If you could just briefly, tell the judge -- or tell the jury what the Children's Advocacy Center is.

A. The Children's Advocacy Center is a nonprofit organization that typically law enforcement, doctors, DSS, we will refer children if there is suspicion of sexual abuse, physical abuse, if they were a witness to a violent

crime.

They are trained interviewers, as well as therapists. We use that organization so that many times cases we investigate DSS is involved, law enforcement is involved, and it would require multiple people to interview a child about the same thing repetitively, so it's an organization where we can send children so that they are interviewed by one person and all of the entities that are investigating the case have access to either observe or view those interviews on CD at a later time so that everybody gets the same information and the child is put through the least amount of trauma possible.

Q. You stated that normally you or law enforcement referred the child to the Children's Advocacy Center. Did that occur in this case?

A. No, ma'am.

Q. Do you know who she was referred to the Children's Advocacy Center by?

A. I do. She was referred by Kim Rosborough, who is a private therapist.

Q. Okay. Do you recall who specifically contacted you?

A. Tabitha Webber of the Children's Advocacy Center contacted me.

Q. During the course of your investigation were you able to establish the relationship between the defendant in this

case, Daniel Spade, and the victim in this case, Minor Victim Minor Victim?

A. I was. He was -- Danny is her biological father.

Q. Okay. What do you do as part of your investigation? Who else did you speak with? Don't tell me what they said, but just tell me who you spoke with.

A. I spoke -- I went to -- I spoke obviously to Heather Jolley, the mother. I had her come into the sheriff's office to file a police report so that we could begin our investigation.

Q. Okay.

A. I went to the -- she had named some hotels that they had -- that Daniel would stay at with Minor Victim when he would come to town, so I went to the Holiday Inn Express in Duncan, which was in Spartanburg County. I went there and spoke to their desk clerk there. I was able to determine who --

MR. CAMPBELL: Objection, Your Honor.

May we approach?

THE COURT: Yes, sir.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

BY MS. JORDAN:

Q. Investigator Cantrell, you were stating that you went to the Holiday Inn Express in Duncan?

A. I did.
Q. Okay. When you were there did you recover some records?
A. I did. I recovered receipts.
Q. I'm going to show you what's previously marked State's Exhibit No. 4 and 5.
MR. CAMPBELL: Your Honor, the same objection. I understand that they may call someone at a later time, but the objection stands.
THE COURT: Yes, sir, overruled at this time.
BY MS. JORDAN:
Q. Do you recognize what's been marked as State's Exhibit No. 4 and 5?
A. I do. These are the receipts that I obtained from the Holiday Inn Express.
Q. Okay. While you were at the Holiday Inn Express in Duncan did you also view the hotel?
A. I did. I went to the rooms that were reserved with these receipts. I photographed those rooms, and I also photographed the pool area. I also determined that there had been no remodeling or renovations.
MR. CAMPBELL: Objection, Your Honor.
THE COURT: Yes, overruled at this time. Yes, subject to --
BY MS. JORDAN:

Q. Please continue.
A. That there had been no remodeling or renovations from the time I was there taking pictures back to the time when these rooms were reserved.
Q. Okay. Did you also observe whether or not there was a pool at this hotel?
A. There was.
Q. Okay. Could you tell the jury about the pool?
A. The pool, it's an indoor pool, so it's inside the hotel. It's open year around. There is a bathroom in the pool area. A door to go into the bathroom.
Q. What does the bathroom at that pool look like?
A. It's a -- it's like a room. It's a single stall. It's not like a -- typically like one person would go in there. It's just a room with a toilet and a sink.
Q. It's a one toilet?
A. Correct.
Q. Okay. I'm going to show you what's been previously marked State's Exhibit 1 and ask if you recognize that?
A. I do. It's the picture of the pool.
Q. And did you take that picture?
A. I did.
Q. Okay. Does that picture fairly and accurately depict the pool as you saw it that day and --
I apologize, which day were you there?

A. I was there on April 21st, 2011, and, yes, it does.

MS. JORDAN: Your Honor, at this time the State would move State's Exhibit No. 1 into evidence.

THE COURT: Any objection?

MR. CAMPBELL: The same objection as previous, Your Honor.

THE COURT: Okay. It's admitted.

(Whereupon, States's Exhibit No. 1 was entered into the record as evidence)

MS. JORDAN: Your Honor, I don't believe that prior objection applies to the photograph.

THE COURT: It's admitted.

MS. JORDAN: Thank you.

BY MS. JORDAN:

Q. Investigator Cantrell, did you speak to Minor Victim in this case?

A. No, ma'am.

Q. Why not?

A. We typically do not speak to children, especially under the age of eleven, again, to prevent the child from being interviewed by multiple people.

Q. Okay. Please answer --

MS. JORDAN: May I have one moment?

(Off the record)

(Back on the record)

BY MS. JORDAN:

Q. Please answer any questions that Mr. Campbell may have.

A. Okay.

THE COURT: Mr. Campbell.

CROSS EXAMINATION BY MR. CAMPBELL:

Q. Ms. Cantrell, I believe you just testified that the Children's Advocacy Center actually reported to you or referred this case to you, is that correct?

A. They sent a letter on April the 8th.

Q. Okay. Do you remember testifying in a Family Court action?

A. I do.

Q. Okay. And I believe you were sworn under oath at that time?

A. I was.

Q. Okay. Do you recall being asked what you did as part of that investigation?

A. I do.

Q. And is it possible -- do you remember testifying in that Family Court action that you spoke to the victim's mother and you referred the victim to the Children's Advocacy Center?

A. I don't.

Q. And that you were the one that made the appointments?

A. I don't remember.

Q. Okay.
A. I believe I was saying typically.
I was being questioned about how many times I talked to the victim's parents and I said typically we will -- when a police report is filed, we will talk to them, because they were wanting exact dates and times --
Q. Okay.
A. -- and stuff to them and I could not remember.
Q. Okay. I'm going to show you --
First off, can you identify -- that's page 332 of the transcript of the Family Court hearing. Does that -- the first thing is direct examination, correct?
A. Correct.
Q. And is Mr. Brannon the one doing that direct examination of you?
A. Correct.
Q. Can you turn to page 334 for me, please?
At the bottom of that page does he ask you what you did as part of your investigation?
A. Yes, sir.
Q. And can you read your response to that, please?
A. "I spoke to the victim's mother, who filed the report, Heather Jolley, and I referred the victim to the Children's Advocacy Center, so I spoke to the Children's Advocacy Center to set up the appointment, and then they also

informed me of the outcome of her forensic interviews."

Q. Okay. Now, you testified here today that the Children's Advocacy Center actually contacted you first?

A. Correct.

Q. Now -- but at the Family Court trial you testified that you actually referred the Jolleys to the Children's Advocacy Center, correct?

A. Correct.

Q. So -- and you were under oath then and you were required to tell the truth, correct?

A. Correct.

Q. Now, I guess my question is were you telling the truth today, or were you telling the truth then?

A. Today I'm telling the truth.

Yes, in Family Court I --

Q. You were not telling the truth?

A. I was confused.

Q. So you were not telling the truth in Family Court?

A. I was confused.

Q. Okay.

MR. CAMPBELL: No further questions, Your Honor.

THE COURT: Anything?

REDIRECT EXAMINATION BY MS. JORDAN:

Q. When you were in Family Court did you have your notes from your investigation in front of you?

A. I did not.

MS. JORDAN: Nothing further, Your Honor.

THE COURT: Thank you.

Ma'am, you may step down. Please be careful.

MS. JORDAN: May we approach for scheduling purposes?

THE COURT: Yes.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: All right. The lawyers next witness is on the way and it's going to take a couple of minutes to get here. I think they're in the building. This is a good time for me to appoint a foreperson of the jury, as well as give you a short break. And I don't know any of these people, but I usually alternate between male and female and today it's a male, so juror number 137, a Mr. David Patton, where are you, sir?

Mr. Patton, I'm hereby appointing you as the foreman on this jury.

Now, sir, you will be the spokesperson for the jury here in the courtroom. It will be your duty to write the verdict, but I will give you further instructions about that at the conclusion of the case. And I ask that you and the alternate juror sit in the assigned seats. The bailiff, when you come back from your break, will tell you where you

are to sit. The rest of you are now Rotarians and you can move around and sit around anywhere you want throughout this trial, whether it be front row, back row, whatever you intend to do.

So with that I instruct you not to begin discussing this case. It has only begun. You know very little about it, so do not deliberate, not even within your own mind at this point in time.

With that, Madam Bailiff, if you will take our jury back to the jury room for about ten minutes, or so.

(The following takes place outside the presence of the jury panel)

THE COURT: Anything from the State?

MS. JORDAN: No, sir, Your Honor.

THE COURT: Defense?

MR. SHABEL: No, Your Honor.

MR. CAMPBELL: No, sir, Your Honor.

THE COURT: We will stand in recess. You need about ten minutes, or so?

MS. JORDAN: Yes, sir.

MR. SHABEL: That's right, Your Honor.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

THE COURT: Let me see the lawyers, please.

(Whereupon, the lawyers approached the bench for

, an off-the-record discussion)

THE COURT: We are ready for the jury.

(The following takes place in the presence of the jury panel).

THE COURT: Mr. Foreman, any matters for the jury?

JURY FOREPERSON: No, sir.

THE COURT: Good to go.

All right, solicitor?

MS. LESKANIC: Thank you, Your Honor.

May it please the court?

THE COURT: Yes, ma'am.

MS. LESKANIC: The State would call Minor Victim.

Minor Victim, having been first duly sworn, testified as follows:

THE CLERK: Have a seat here.

MS. LESKANIC: May it please the court?

THE COURT: Yes, ma'am.

DIRECT EXAMINATION BY MS. LESKANIC:

Q. Could you please start by telling the ladies and gentlemen your name?

A. Minor Victim

Q. What's your last name?

A. Minor Victim

Q. How old are you, Minor Victim?

A. Seven.

Q. Where do you go to school?
A. Simpsonville Elementary.
Q. What grade are you in?
A. First.
Q. All right. Who is your teacher?
A. Ms. Pringle.
Q. What's your favorite class?
A. Art.
Q. Okay. Do you do any type of dance?
A. Yes.
Q. What type of dance do you do?
A. Hip Hop.
Q. How long have you been taking dance?
A. I don't know.
Q. Let me ask you a couple of questions. You and I have met before, is that correct?
A. Yes.
Q. And I'm going to ask you a couple of questions about the difference between the truth and a lie, okay?

Do you know the difference between the truth and a lie?

A. Yes, ma'am.
Q. If I were to tell you that my shirt is blue, is that me telling the truth or me telling a lie?
A. A lie.
Q. All right. If I tell you that my shoes are black, is

that me telling the truth or me telling a lie?
A. The truth.
Q. Okay. And what happens if we tell lies?
A. We get in trouble.
Q. Okay. So you know the difference between telling the truth and telling a lie?
A. Yes, ma'am.
Q. Okay. All right. Let me ask you, do you know someone by the name of Danny D?
A. Yes.
Q. Who is Danny D?
A. A bad guy.
Q. Did you ever have to spend time with Danny D?
A. Yes.
Q. Where did you spend time with him?
A. At his house and a hotel.
Q. All right. Do you remember where his house is?
A. Virginia.
Q. Okay. And did you stay in a hotel with him here in South Carolina?
A. Yes.
Q. Do you remember whether anybody was with you when you were with him at the hotel?
A. No.
Q. All right. Was it just the two of you at the hotel?

A. Yes.
Q. All right. Did something happen while the two of you were at the hotel?
A. Yes.
Q. Can you tell the ladies and gentlemen what happened while you were at the hotel?
A. He stuck his private part in my mouth.
Q. Okay. Do you remember where you were when that happened, Minor Victim?
A. At the pool.
Q. Okay. Were you in the pool area or was it someplace else at the pool?
A. Someplace else at the pool.
Q. Okay. Where was that?
A. In the bathroom.
Q. Okay. Do you remember what the bathroom looked like, and what I mean whether it had one toilet or whether it had lots of different stalls? Do you remember what it looked like?
A. Yes.
Q. What did it look like?
A. It was just one bathroom.
Q. Okay. Just one place that you could go to the bathroom?
A. (Shaking head yes).

Q. Now, when you say he put his private in your mouth, where is his private located?
A. What do you mean?
Q. On his body.
Can you point on your body where his private would be on his body?
A. (Witness pointing).
Q. Okay. I'm sorry, can you stand up for me and just try to point?
A. (Witness pointing).
Q. Okay.
MS. LESKANIC: Your Honor, may the record reflect that she is pointing to her crotch area?
THE COURT: Yes, ma'am.
MS. LESKANIC: Where his private is located.
THE COURT: Yes, ma'am.
BY MS. LESKANIC:
Q. So while you were in the bathroom -- and this was near the pool?
A. Yes.
Q. At the motel in South Carolina?
A. (Shaking head yes).
Q. All right. Did he say anything to you when he had you do this?
A. Yes.

Q. What did he say?
A. He said if I didn't do it, he wouldn't take me home.
Q. Okay. Was his girlfriend there with him when this happened?
A. No.
Q. Your mom wasn't with you?
A. No.
Q. Do you remember anything else happening at the motel in South Carolina?
A. No.
Q. Okay. Just one second, okay?
(Off the record)
(Back on the record)
BY MS. LESKANIC:
Q. That's all the questions that I'm going to ask you, okay?
Now, Mr. Shabel is going to ask you some questions and then the court may have some questions for you, okay?
A. (Shaking head yes).
MS. LESKANIC: All right. Thank you.
MR. SHABEL: Your Honor, may the lawyers approach briefly?
THE COURT: Yes, sir.
(Whereupon, the lawyers approached the bench for an off-the-record discussion)

MR. SHABEL: May it please the court?

THE COURT: Mr. Shabel.

CROSS EXAMINATION BY MR. SHABEL:

Q. Hi, Minor Victim.

A. Hello.

Q. I have to ask what's your bear's name?

A. Charley.

Q. Charley.

Now, what color does Charley have all over him?

A. (No response).

Q. What colors do you see on Charley right now?

A. Pink.

Q. Okay.

A. Blue, orange, and green.

Q. I'm going to take a guess, and I want you to tell me if I'm wrong, okay? Did you make that at Build a Bear?

A. (Shaking head yes).

Q. Is that yes?

A. Yes.

Q. When did you go to Build a Bear?

A. I forgot.

Q. You forgot.

Was it yesterday?

A. Uh-uh.

Q. Was it last week?

A. No, sir.
Q. What about -- was it in the summer, do you remember?
A. No.
Q. No.
It's kind of hard to remember things, isn't it?
A. (Shaking head yes).
Q. Is that a yes?
A. Yes.
Q. Yeah.
There is a guy sitting over to your right in front of that computer. Do you see him?
A. Yes.
Q. He's got a job to do. He's got to write down everything that anybody in this room says, including me, including Ms. Leskanic that you just met, and including you. So if I ask you a question, or if anybody asks you a question, would you please say it with a word as opposed to just doing a head shake?
A. Yes, sir.
Q. Thank you.
So you are seven year old, is that right?
A. Yes, sir.
Q. Okay. You are in the first grade?
A. Yes, sir.
Q. Where did you go to kindergarten?

A. Simpsonville Elementary.
Q. And who was your teacher?
A. Ms. Norris.
Q. Ms. Norris. Okay.
And you live in Simpsonville?
A. Yes, sir.
Q. Okay. Who lives with you?
A. My mom, my dad, and my brother.
Q. Your brother.
What's your brother's name?
A. Minor 2
Q. And how old is Minor 2
A. Five.
Q. He's five years old.
So you are the big sister, is that right?
A. Yes, sir.
Q. Great.
Now, you already mentioned your mom. Does she have a first name?
A. Yes.
Q. What's your mom's name?
A. Heather.
Q. Okay. And does your dad have a first name?
A. Yes, sir.
Q. What's your dad's name?

A. David.
Q. Okay. Do you know how long you have lived with your dad and your mom?
A. No.
Q. Okay. Well, do you remember living with anybody other than your mom?
A. I don't know.
Q. Okay. Let's talk about the hotel, okay?
A. Okay.
Q. Can we talk about the hotel for a minute?
A. Yes, sir.
Q. You said that you were in the bathroom at the pool, is that right?
A. Yes, sir.
Q. Okay. Do you remember whether the room you stayed in was on that very same floor, or whether it was on a different floor?
A. Yes.
Q. Was it on the -- which one was it?
A. It was on the same floor.
Q. It was on the same floor?
A. Yes, sir.
Q. Okay. And I believe you said this all happened in the bathroom right outside the pool, is that right?
A. Yes, sir.

Q. Okay. Did your room have a bathroom?
A. Yes, sir.
Q. Okay. But none of what you have talked about today happened in that bathroom, right?
A. Correct.
Q. Okay. Now, this bathroom at the pool area, okay, how -- was there -- you said there was just one place to go to the bathroom?
A. Yes, sir.
Q. Okay. You have been in a lot of bathrooms in like restaurants and stuff?
A. Yes, sir.
Q. Okay. When you walk into the bathroom, is the potty right there, or do you have to open another door to get to the potty?
A. The potty is right there.
Q. The potty is right there.
A. (Shaking head yes).
Q. Okay. Was there any sign on the door before you walked in the door?
A. No, sir.
Q. No, there wasn't a sign. Didn't have any pictures or anything like that?
A. No, sir.
Q. Did Danny D, was he wearing anything when this

happened?
A. Yes, sir.
Q. What was Danny D wearing?
A. A bathing suit, I think.
Q. Okay. Did he have on anything else?
A. No.
Q. Didn't have on any hat?
A. No.
Q. Or shirt?
A. No.
Q. Did he have on a mask?
A. No.
Q. Do you remember telling anyone that Danny D was wearing a mask when he did this?
A. No.
Q. You never told anybody that Danny D was wearing a mask when he did this?
A. No.
Q. Okay. Are you sure?
A. Yes.
Q. Okay. What are the Hip Hop dances that you do? Do you know the names of them?
A. No.
Q. Okay. How often do you go to Hip Hop dancing?
A. Wednesdays.

Q. Every Wednesday?
A. Yes, sir.
Q. Okay. Minor Victim I'm going to grab of piece of paper because I need to remember something I wrote down. Can you bear with me just a moment?
A. Yes.
Q. Thank you.
(Off the record)
(Back on the record)
BY MR. SHABEL:
Q. Have you ever gone by a name other than Minor Victim?
A. Yes, sir.
Q. What have you gone by?
A. Minor Victim.
Q. Minor Victim. Okay.
Have you ever gone by a name -- let me start over. What's your last name?
A. Minor Victim
Q. Have you ever gone by a last name other than Minor Victim?
A. Yes, sir.
Q. What name have you gone by?
A. Minor Victim
Q. Okay. Were there a lot of people at the pool that day?
A. Yes.
Q. Okay. Was there a line trying to get into that

bathroom?
A. No, sir.
Q. Okay. Hang on just a second.
MR. SHABEL: Beg the court's indulgence.
(Off the record)
(Back on the record)
BY MR. SHABEL:
Q. Minor Victim, I don't have any more questions for you, okay?
A. Okay.
Q. Thank you.
MS. LESKANIC: Very briefly, Your Honor. I just want to clear up something.
REDIRECT EXAMINATION BY MS. LESKANIC:
Q. I'm just going to ask you a couple of questions.
Who is that bear again?
A. Charley.
Q. Okay. Is Charley your bear?
A. No.
Q. No.
Did somebody bring you Charley this morning to go to court with you?
A. Yes.
Q. Do you know where she got Charley?
A. Charley Bear.
Q. I just wanted to make sure we were clear on that, that

although he's with you, he's not your bear, okay?

A. (Shaking head yes).

MS. LESKANIC: That's all I have, Your Honor. Thank you.

THE COURT: Thank you.

Anything?

MR. SHABEL: No, Your Honor. Thank you.

THE COURT: All right.

You may step down. Ma'am, do you need some help getting down?

MR. BRANNON: I got it, Your Honor.

THE COURT: Solicitor.

MS. JORDAN: Your Honor, the State calls Heather Smith Jolley.

HEATHER SMITH JOLLEY, having been first duly sworn, testified as follows:

THE COURT: Ma'am, if you will state your full name and spell your last name, please?

THE WITNESS: Sure. It's Heather Jolley, J-O-L-L-E-Y.

THE COURT: Solicitor.

MS. JORDAN: Thank you.

DIRECT EXAMINATION BY MS. JORDAN:

Q. What is your maiden name?

A. Smith.

Q. When [redacted] was born what was your name?
A. [redacted]
Q. Okay. And what name was [redacted] given when she was born?
A. [redacted]
Q. Okay. What does [redacted] -- how is [redacted] related to you?
A. She's my biological daughter.
Q. Okay. What's [redacted] s date of birth?
A. [redacted] 2006.
Q. Okay. How do you know the defendant Daniel Spade?
A. We worked together. That's how we met.
THE COURT: Excuse me, solicitor.
I'm going to ask you to speak up.
THE WITNESS: I'm sorry.
THE COURT: He has to record it.
Okay.
BY MS. JORDAN:
Q. When did you become pregnant with [redacted]
A. I think it was [redacted] She was born in [redacted] [redacted] of 2006.
Q. Did you inform the defendant of her, of the fact that you were pregnant?
A. Yes.
Q. Was he also informed when you gave birth to [redacted]

A. Yes.

Q. Okay. Minor Victim was born in [redacted] Where were you living?

A. Spartanburg, South Carolina. Here.

Q. Okay. When was the first time that the defendant saw Minor Victim?

A. It was January, February of the following year.

Q. About how old was she?

A. Months oldish.

Q. Do you recall who was with him when he saw her for the first time?

A. His sister.

Q. Okay. Where did that visit take place?

A. At my house.

Q. Okay. Are you aware that the defendant had filed an action in regards to Minor Victim in I believe it was 2007?

A. Yes.

Q. Who is David Jolley?

A. My husband.

Q. Okay. When did you and David get married?

A. It was in December of 2007.

Q. Okay. Did you as a collective decision --

I'll ask you this. What did Minor Victim call David Jolley?

A. Daddy.

MR. SHABEL: Objection, hearsay.

THE COURT: Hearsay?

MR. SHABEL: Yeah, what did Minor Victim call is hearsay.

THE COURT: Okay. It's overruled. Go ahead.

BY MS. JORDAN:

Q. Did you come to a collective decision with other people as to what Minor Victim would refer to Daniel Spade as?

A. Yes.

Q. And what was that name?

MR. SHABEL: Objection, hearsay.

THE COURT: Ask the question again, solicitor.

MS. JORDAN: The name that she and the group of others decided that they would call -- or Minor Victim would call Daniel Spade.

THE COURT: Okay. It's overruled. Go ahead.

BY MS. JORDAN:

Q. What was that name?

A. Danny D.

Q. Okay. Why did y'all decide upon that name for him, for Daniel Spade?

A. During a mediation it was just decided. We were throwing around names and our lawyer at that time had just threw out the name Danny D and it just stuck.

Q. Okay. In 2008, did you and your husband file an action in Family Court in regard to Minor Victim?

A. Yes.
Q. Okay. Was that action a TPR?
A. Yes.
Q. And does TPR stand for termination of parental rights?
A. Yes.
Q. Okay. How did you find out about such an action?
A. We didn't know if that was even an option at that time. It was actually our lawyer that brought that to our attention, that based on the reason we were there, that might have been an option.
Q. Okay. And you did file for a TPR?
A. Correct.
Q. Were you successful in that TPR?
A. No.
Q. Based on that action was a visitation schedule established?
A. Yes.
Q. Okay. During the spring -- I'm going to talk about the spring of 2010 -- I guess the winter, spring of 2010, into the summer. During that time frame did the defendant have visitation with Minor Victim?
A. Yes.
Q. Okay. Where did those visitations occur?
A. Typically it would be here in South Carolina, of course.

Q. Okay. During those visits do you recall whether or not he was by himself or if anyone came with him?
A. In the beginning I believe that the girlfriend or fiance was with him, but that fall, no.
Q. Who was his girlfriend?
A. Kara Brunner.
Q. Did they have any children together?
A. Yes.
MS. JORDAN: Objection, relevancy.
THE COURT: I'm going to let her go there. Just don't go too far with that.
Overruled.
MS. JORDAN: That's as far as I was going, Your Honor.
THE COURT: Okay. All right.
BY MS. JORDAN:
Q. I'm sorry, how many children?
A. Three.
Q. In the summer of 2010, I believe in July, did Minor Victim go to Virginia?
A. Yes.
Q. And how long did she go to Virginia for?
A. Ten days.
Q. Okay. Was that the first time that she had left the State of South Carolina with him?

A. Yes.
Q. After that visit for ten days, and I believe it was July, kind of bordered into August, were there any visitations here in South Carolina?
A. Yes.
Q. Was there one in September?
A. Yes.
Q. Do you recall the dates?
A. I think it was the first weekend of that September, maybe the 11th.
Q. Okay. During that visit, tell the jury how you would exchange Minor Victim with the defendant.
A. Danny and I agreed that we would meet somewhere public and pass Minor Victim off, and so Heywood Mall is typically where I would pass her off, at the little inside play area inside the mall, and that's where I would pass her off at.
Q. And in 2010, did you -- where did you live?
A. We were in Anderson.
Q. Okay. When you would drop -- tell the jury how it was when you would drop her off.
A. She wouldn't want to go, but it was court ordered, and so we would pack her bag and I would take her and she would stand right behind me, not excited to be going, but we would meet. And I don't know that he ever really -- I don't recall him "hey," give her a hug, you know, "how are you,

good to see you." I don't recall that. And then it was just pass the bag and he would take off and Minor Victim would follow behind.

Q. Would he grab Minor Victim's hand?

A. No.

Q. Would he pick Minor Victim up and walk with her?

A. No.

Q. Would he actually walk ahead of her?

A. Yes.

Q. Okay. So he would leave her behind a distance?

A. Yes. This particular time she didn't want to go and I had turned around to walk off, because it was hard. The longer I stayed, the harder it got for her to leave, so I thought she was walking. This one particular time I thought she was following him, so I turned around to go back up the steps to leave and -- I just turned around to make sure she was gone and he was not even around the corner at the mall and Minor Victim was just kind of standing there. And then all of the sudden he turned around and comes back to get her and then -- she didn't see me. I was out of eyeshot to her at that point, so she walked ahead.

Q. Okay. How did you normally pick Minor Victim up from the weekend visits in the fall, or any of the visits?

A. Danny and I agreed again that we would meet, and typically that would either be at the mall again or -- one

time I think it was at Starbucks that we met in the parking lot.

Q. Okay. Is that the Starbucks on Pelham Road?

A. Yes.

Q. Did you and your husband at some point in time move to the Greenville Simpsonville area?

A. We did.

Q. Okay. Do you recall after the September visit, around September the 11th, do you recall any changes of behavior with Minor Victim

A. Yes.

Q. Could you talk to the jury about when you received her back in September of 2010 -- I'm sorry, I said 2011 earlier, but 2010.

A. They had stayed at a hotel. And when I -- when I picked her up, I went to the back of the car to get her out of the car seat. I'm thinking -- I'm trying not to get confused. She had wet herself in the car seat.

When we get home and I asked her, I said "did you take a bath," because she had spent the night with him, and she said "I didn't take a bath. I was in the pool." So just being a mom I went to her bag and I pulled out that there was just a wet bathing suit laying on top of all of her stuff, so I knew that she had been swimming that day. So I got her in the bathtub. And when I was getting her out she

started crying uncontrollably. I was trying to dry her off and she kept pulling away from me. And she hid herself in the corner and just completely wet herself and she couldn't control herself. She was -- she was to the point of making herself sick she was so upset. And when I asked her what was wrong, she said "I don't know." And I did everything that I could to console her, but you don't know what to do when you don't know what the problem is.

Q. Did you have any -- when you talked about Minor Victim wetting herself in the car and wetting herself at the house, in the bathroom, prior to this Minor Victim was four at this time?

A. (Shaking head yes).

Q. And when was Minor Victim potty trained?

A. She was two.

Q. Okay. Explain the potty training with her. Was she a difficult potty trainer, or was she a guided and y'all moved on?

A. Quick, yeah.

Q. Was she the type of child who at two, three, and four had accidents?

A. Not typically.

Q. Okay. Did she sleep with a pull-up on at night at the age of four?

A. No, uh-uh.

Q. Okay. In September of 2010 did you communicate with

the defendant about your concerns with her anxiety during the visits?

A. I did. I think it was right before maybe the last visit. I don't recall when, but I remember telling him or e-mailing him and making him aware that "look, her anxiety levels are really high. We are trying to figure this out. If you have issues when you are visiting with her, please call me or tell me or just be on the lookout for this," and the only response I got was "okay."

Q. Did she -- did Minor Victim also have a visit with him in October?

A. Yes.

Q. Do you recall when that visit was?

A. It would be that first weekend of October. I don't recall the date.

Q. Okay. And like we have done with this weekend in September, can you go through the drop off and pickup? Was it your standard drop off and pickup?

A. It was. I believe it was both -- maybe both times at the mall.

Q. Okay.

A. I think.

Q. Okay. Again, when you received Minor Victim back, did you notice any changes in her behavior?

A. The same thing. Her -- and both times, I will say --

Let me back up. Minor Victim is usually a pretty good sleeper prior to all of this. All of the sudden she's terrified of the dark. And when I say panic attack for her, it was constantly "my stomach hurts, my head hurts," and unexplainably, and then she would revert back to the way a two year old would talk. And then all of the sudden she would just break down completely and there was no consoling her. I'm talking hide herself in the corner behind the door and wouldn't come out. And that could go on for five minutes. It could go on for thirty minutes. And when she finally did come out, all she wanted me to do was hold her. "Just hold me, momma. Just hold me."

Q. And you said there was some issues with her sleeping?

A. Yes. Again, she was terrified of the dark, definitely did not want to be in her room. She would scream.

We had a routine every night that we would take her to bed, say her prayers, read a book, and have to be able to go to sleep. She would scream and she would cry and as a mom, I would say something really wrong with my kid, but I don't --

Q. Were there any changes in like how Minor Victim would sleep?

A. Yes.

Q. And where?

A. There were nights where she -- her crying would stop for a small period of time.

And one particular time I went to go check on her and she had a small red, just a plastic play table in her room, and she had taken that table and turned blankets over it and she put pillows up to barricade it, and she was in the fetal position in her underwear on the hard floor and that's how she fell asleep.

Q. Okay. Did this occur after one of the visits in September, October?

A. Yes.

Q. I'm going to show you what's been marked as State's Exhibit 2 and 3 and ask if you recognize those photographs?

A. Yes.

Q. Are those a fair and accurate depiction of how you and your husband found Minor Victim one night?

A. Yes.

Q. In her room in the fall of 2010?

A. Yes.

MS. JORDAN: Your Honor, at this time the State moves 2 and 3 into evidence.

THE COURT: Any objection?

MR. SHABEL: Your Honor, unless she can specify a specific date that that photograph was taken, I would have to object.

THE COURT: Ask her a couple of questions about the time period.

BY MS. JORDAN:

Q. Was this taken after the visit in September?

A. It was.

Q. Okay. So that was when she returned back from being with the defendant alone?

A. Correct.

Q. In September of 2010?

A. Yes.

Q. Okay.

THE COURT: Anything further?

MR. SHABEL: Again, without more specificity as to the date, I would object.

THE COURT: Okay. They are admitted. Overruled.

(Whereupon, State's Exhibit No. 2 was entered into the record as evidence)

(Whereupon, State's Exhibit No. 3 was entered into the record as evidence)

MS. JORDAN: Thank you.

Your Honor, may I publish them to the jury?

THE COURT: You may.

BY MS. JORDAN:

Q. Okay. Just for the jury, State's Exhibit 3, what is this a picture of?

A. That's just what I was describing, the table with the blankets and the pillows.

Q. And then in State's Exhibit No. 3, what is this photograph of?
A. That's the same thing. I had just moved the pillow so I could see where she was.
Q. And who is in the photograph?
A. Minor Victim
Q. Okay. After the visit in October did you decide to do something to help your daughter?
A. Yes.
Q. What did you do?
A. We sought counsel for her -- counseling for her --
Q. Okay.
A. -- based on her -- I'm sorry, go ahead.
Q. Who -- did you speak to someone?
A. We did.
Q. Okay. And based on that conversation with them, who did you take her to?
A. Kim Rosborough.
Q. Had you been -- did you know Kim Rosborough before this?
A. No.
Q. Why did you take her to Kim Rosborough?
A. It was all about anxiety. I didn't know what was causing it, that Kim came highly recommended to us.
Q. Did you take Minor Victim to her first visit with Kim?

A. Yes.
Q. Do you recall when that was?
A. October.
Q. Okay. October of 2010?
A. 2010.
Q. Was this after the October visit with Daniel Spade?
A. (No response).
Q. And if you don't recall, that's fine.
A. I don't recall exactly. I'm sorry.
Q. No, that's no problem.
When did you tell Kim Roseborough that Minor Victim had been sexually assaulted by the defendant?
A. Never.
Q. Okay. You didn't mention the word sexual assault to Kim?
A. Never crossed my mind.
Q. Did you pay for the counseling sessions with Kim, you or your husband?
A. Yes.
Q. Okay. Do you recall approximately how much it was for her to see Kim Rosborough?
A. It was 125 every visit.
Q. Do you recall approximately how many visits your child had with Ms. Rosborough?
A. Maybe ten or eleven, maybe. Maybe.

Q. Okay. During the time that she started to see Kim Rosborough, did you and your husband file another action in Family Court?
A. Yes.
Q. What was that action in regard to?
A. (No response).
Q. Let me ask you, did you file an action to suspend the defendant's visitation?
A. Yes.
Q. Why did you want that action filed?
A. Because of the allegations that you have heard today.
Q. About the anxiety?
A. Yes.
Q. And that's in November?
A. I'm sorry, yes. Yes.
Q. Okay. Because before that had there -- when you -- when that action was filed to suspend visitation, had there been any comments, or notes, or anything about sexual abuse?
A. No, not at all. It was all anxiety and we were trying to figure out what was causing it.
Q. And was one of the goals that you had with taking Minor Victim to Kim Rosborough to ease the anxiety for when she visits her father?
A. That was the whole idea behind it. You know, if we could work together and those would go smoother.

Q. Okay. During her visits with Kim Rosborough, did you notice an improvement in Minor Victim's anxiety?

A. Yes.

Q. Okay. And during those times that she saw Kim Rosborough, do you recall when the last time that she saw Kim Rosborough was?

A. Oh gosh --

Q. Do you recall approximately how long?

A. It's been a while. It was 2010.

Q. When she started?

A. Yeah. It was a only couple of months, so the beginning of that fall. I'm sorry, I --

Q. No, no, no, that's not a problem. I understand.

While she was seeing Kim Rosborough, did she have any in-person contact with the defendant?

A. In-person?

Q. Yes, ma'am.

A. No.

Q. Did she have phone contact with him?

A. Yes.

Q. Okay. But the in-person visits were stopped?

A. Correct.

Q. Okay. And her anxiety improved?

A. Correct.

Q. When was the first time that you were told about any

type of sexual allegations with your daughter and the defendant?

A. I believe it was around April of 2011.

Q. And how did you find out there had been any type of disclosure by your daughter?

A. I got a phone call from my parents.

Q. What's your mom's name?

A. Dale Smith.

Q. And what does Minor Victim call Dale?

A. Mimi.

Q. Okay. When you received that phone call, what did you do?

A. I didn't do -- it was late on a Thursday night when I got the phone call and I sat on the information. I didn't tell anybody.

The next day my parents came over and told me that this is what has been shared.

Q. Okay. When did you report this to law enforcement?

A. Never.

Q. Okay. What did you do?

A. I called the lawyers.

Q. And based upon your phone conversations with the lawyers, what was your next step?

A. They advised us to set up an appointment with Tabitha.

Q. Tabitha?

A. Yeah.
Q. Okay.
A. CAC.
Q. Did you also speak with Kim Rosborough, or did someone speak with her?
A. Yes. I'm sorry, yes.
Q. Based upon all those conversations, was a referral made to the Children's Advocacy Center?
A. Yes.
Q. Did you speak to Investigator Cantrell before or after your daughter started going to the Children's Advocacy Center?
A. After.
Q. So you didn't call law enforcement?
A. No.
Q. Your husband didn't call law enforcement either, did he?
A. No.
Q. Did you and your husband have to pay for her to be seen to the Children's Advocacy Center?
A. We did.

MS. JORDAN: Your Honor, may I have a moment?

THE COURT: Yes, ma'am.

(Off the record)

(Back on the record)

BY MS. JORDAN:

Q. Heather, what is Minor Victim s name now?

A. Minor Victim Her last name is Minor Victim Minor Victim Minor Victim

Q. How did that come about?

A. Through the termination of parental rights.

Q. Okay. We have heard about the first one that was unsuccessful.

A. Yes.

Q. Did you and your husband file a second termination of parental rights?

A. Yes.

Q. Do you recall when that was filed?

A. I don't recall the date. I'm sorry.

Q. Was it in 2011, or 2012?

A. Yes.

Q. And the judge granted it?

A. Yes.

Q. Please answer any questions that Mr. Shabel may have.

THE COURT: Yes, sir.

MR. SHABEL: If it please the court?

CROSS EXAMINATION BY MR. SHABEL:

Q. Good morning.

A. Good morning.

Q. Ms. Jolley, you became pregnant with Minor Victim in

of 2006, approximately?

A. Correct.

Q. Okay. How long had you been dating Mr. Spade before you became pregnant with Minor Victim

MS. JORDAN: Objection, Your Honor, relevance.

THE COURT: Yeah, let me see the lawyers, please.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: Hold on a second.

Mr. Foreman, at this point in time we are going to let you go to your jury room just for a moment or two. Do not discuss this case, not even amongst yourselves or even by yourself.

Please take the jury out.

(The following takes place outside the presence of the jury panel).

THE COURT: Okay. Where are we going with this? I mean, we are not going to turn this into a Family Court case.

MR. SHABEL: I'm not turning it into a Family Court case, Your Honor. It goes into motive as why this child was being asked to testify to these things. It's the history of -- it's basically trying to establish the pattern trying to prevent my client from exercising his rights and being the father that ultimately led to these allegations

come up.

THE COURT: Why?

MR. SHABEL: I think it's important for the jury to know the history of this relationship to show the contentious nature from the very beginning.

THE COURT: Well, I understand where you are going with that, you know. As you well know, I practiced family law, as well as criminal law for twenty-five years, so I know --

MR. SHABEL: Yes, sir.

THE COURT: -- what the motive and I know where you are going with that, but how long they had been dating and whether or not they were, you know -- I guess maybe you can ask if they were married or not at a point in time, but how long they had dated, or not dated, or known each other, I don't understand where we are going with that. Explain that to me.

MR. SHABEL: May I proffer with one question?

THE COURT: Yes, sir.

MR. SHABEL: If I may just proffer the testimony.

THE COURT: All right, go ahead.

BY MR. SHABEL:

Q. Ms. Jolley, how long had you been dating prior to the time that you became pregnant?

A. I don't know that you would necessarily call it dating

as such. I had known Danny for several months prior.

Q. Would it be fair to say that this was a one-night stand?

A. No.

Q. Okay.

MS. JORDAN: Your Honor, that is my objection right there.

MR. SHABEL: We withdraw the question.

THE COURT: Yeah, I'm not going there.

Okay, anything else?

MR. SHABEL: No, Your Honor. Thank you.

MR. BRANNON: Your Honor, may I -- did you just tell the jury not to talk to themselves?

THE COURT: I did.

MR. BRANNON: I just wanted to make sure.

THE COURT: I tell them all the time, I say don't even meditate within your own mind.

THE COURT: Okay. All right. Now, we know where the boundaries are, right? We are not -- I mean, we know --

MR. SHABEL: I know where that boundary is. I'm sure I will be reminded if I try to cross another one.

THE COURT: Okay. Well, we are not going to be in a Family Court matter. We are not here to embarrass anybody.

MR. SHABEL: No.

THE COURT: Let's have the jury.

(The following takes place in the presence of the jury panel)

THE COURT: All right. Thank you.

You are ready to continue.

MR. SHABEL: Yes, sir, Your Honor. May it please the court?

BY MR. SHABEL:

Q. Ms. Jolley, I had asked you previously you found out that you became pregnant I believe in [redacted] of 2006, is that correct?

A. Yes.

Q. And Minor Victim was born on [redacted] of 2006, is that correct?

A. That's correct.

Q. All right. I'm going to do a little bit of a timeline, if I could. You tell me if I'm wrong, or if I'm right, or if you don't remember, okay?

A. Uh-huh.

Q. We have got the date of her birth [redacted] 2006, is that correct?

A. Correct.

Q. All right. And then in August of 2007 Danny filed an action in Family Court, correct?

A. Correct, uh-huh.

Q. You then filed an action, along with your husband, for termination of his parental rights, correct?
A. Correct.
Q. And that was in July of 2008, is that correct?
A. I believe so.
Q. Okay. There was a hearing on that, correct?
A. Yes.
Q. And there was an order denying your request for termination of parental rights in January of 2010, correct?
A. Correct.
Q. From January of 2010 until the summer of 2010, Danny had some visits here in South Carolina, correct?
A. Yes.
Q. And he stayed in hotels, correct?
A. Yes.
Q. Okay. Then in the summer of 2010 he has a visit with Minor Victim in Virginia, correct?
A. Yes.
Q. And that lasted about ten days?
A. Yes.
Q. Can you tell the jury what month it was?
A. It was in July.
Q. Of 2010?
A. I'm sorry, yes.
Q. Okay. He then visits in September of 2010 and October

of 2010?
A. Correct.
Q. Correct.
After that when was the next time he was scheduled to come visit?
A. After October --
Q. Yes.
A. -- of 2010. The next month, I believe. November.
Q. Okay. And did that happen for any reason?
A. No.
Q. Okay. Were there plans in place for Danny to come visit in December of 2010?
A. I think, according to our schedule.
Q. Yes.
A. He had to come November for that visit, and then, yes, December as well.
Q. So, from your understanding, there was going to be a visit in December of 2010?
A. That is correct.
Q. Before that visit was scheduled to take place --
A. Uh-huh.
Q. -- you filed an action in Family Court to suspend Mr. Spade's visitation?
A. Yes.
Q. And, in fact, the hearing on that took place the Monday

after what would have been his weekend, correct?

A. Yes.

Q. There was a mutual agreement at that time that because there was this hearing he wasn't going to exercise his December visit until the judge made a ruling, correct?

A. That is correct.

Q. Okay. The judge made a ruling and his visitation was suspended, correct?

A. Yes.

Q. In December of 2010?

A. Yes.

Q. We'll come back to my timeline in just a second. I need to ask you this question.

Has Minor Victim seen Mr. Spade face to face since October of 2010?

A. No.

Q. Not once?

A. (Shaking head no).

Q. Is that a no?

A. That's a no, I'm sorry.

Q. That's fine.

Talked on the phone, but not seen face to face?

A. That is correct.

Q. Okay. So you find out in April of 2011 that Minor Victim has said something has happened to her?

A. Yes.
Q. You then -- and then finally the Family Court has a second termination of parental rights hearing and the court grants it, is that correct?
A. Yes.
Q. And I believe that was granted in November of 2012, is that correct?
A. Yes.
Q. Okay. You mentioned that Minor Victim was having some behavioral concerns after the September and October visits?
A. Uh-huh, yes.
Q. Isn't it true she was having the exact same behavioral problems after the visit in Virginia?
A. To an extent.
Q. Okay.
A. I'm sorry, go ahead.
Q. No, I interrupted you. Go ahead.
A. Stomach aches, anxiety, yes.
Q. Clinging to you?
A. Sure.
Q. Didn't want to leave you?
A. Uh-huh.
Q. Is that a yes?
A. Yes, sorry.
Q. So it wasn't just after the September and October

visits? This happened after the July visit, right?
A. I would say that the anxiety was there, absolutely.
Q. Okay. And, again, this was the first time that -- is this the first time this child had been away from you for any length of time?
A. Yes.
Q. In any of the other visits had this child spent the night away from you?
A. She has.
Q. Okay.
A. Yes.
Q. But in the same town?
A. Correct.
Q. Okay. And never for more than forty-eight hours, correct?
A. I don't believe so.
Q. Okay. There was a decision made to call Danny Danny D?
A. Yes.
Q. You said it took place at a mediation?
A. I believe that's where it came about.
Q. Can you explain to the jury what your understanding of a mediation is?
A. Sure. I was served for visitation rights, upon other things, and so what we agreed to was to meet with the lawyers and -- which was the mediation. And the mediation

was to come up with an agreement, which we came up with a set child support schedule to be paid, as well as a visitation schedule, and that's when we also decided the name.

Q. Okay. Now, was this mediation before or after you filed an action for termination -- the first action for termination of parental rights?

A. I don't recall. I'm sorry.

Q. That's okay. It's hard to remember things, isn't it?

A. Yeah.

Q. Especially things that happened three or four years ago, right?

A. Yeah.

Q. Okay. How old are you?

A. I will be -- well, I'm thirty-nine.

Q. Thank you.

You started taking Minor Victim to Kim Rosborough when?

A. I believe it was October of 2010.

Q. And do you recall -- well, do you recall continuing to see -- or to take Minor Victim to see Kim Rosborough throughout the early stages of 2011?

A. Yes.

Q. Up until literally the end of March, right?

A. That's correct.

Q. Okay. After Minor Victim -- after you found out about what

Minor Victim had said --
A. Uh-huh.
Q. -- did she ever go back to Kim Rosborough?
A. No.
Q. Do you recall your last meeting with Kim Rosborough?
A. Yes.
Q. Do you -- can you tell the jury, based just us on that meeting --
A. Uh-huh.
Q. -- what the short term plan was for Minor Victim's therapy?
A. Sure.
Q. What your understanding is.
A. Uh-huh. At the last meeting that we had Kim had suggested that we reach out to Danny, and since we are still trying to figure out why we are having these anxiety issues. We agreed that it would be -- if we are going to continue the visitations, that we all needed to sit down and come up with a game plan; one, how to handle it; but then, two, how to help her, how to best help her grasp her anxiety.
Q. And, again, this was toward the end of March in 2011, correct?
A. I believe so.
Q. Okay. Do you remember the date that this took place?
A. I really don't.
Q. Okay. Again, it's difficult to remember that far back,

right?
A. Uh-huh.
Q. All right. Do you and your husband share an e-mail address?
A. We do.
Q. And have you always shared an e-mail address or have you used separate ones?
A. We both have a separate, and then we have a family -- a family account.
MS. JORDAN: Your Honor, can we approach?
THE COURT: Yes.
(Whereupon, the lawyers approached the bench for an off-the-record discussion).
MR. SHABEL: One moment, Your Honor, if I could have a couple of exhibits marked.
THE COURT: Yes, sir.
(E-Mail marked as Defendant's Exhibit No. 1 for identification)
(E-Mail marked as Defendant's Exhibit No. 2 for identification)
MR. SHABEL: May it please the court?
THE COURT: Yes, sir.
BY MR. SHABEL:
Q. Ms. Jolley, I'm going to read you an e-mail address and I want you to tell me if this is one that either is yours,

or it's his, or if it's shared, okay?
A. Uh-huh.
Q. The letter D, the letter J with a dot, David Jolley, D-A-V-I-D J-O-L-L-E-Y, at G-Mail.Com?
A. That's our family account, yeah.
Q. So -- and, again, that's your husband's name, David Jolley, correct?
A. That is correct.
Q. Okay. If you wrote an e-mail --
A. Uh-huh.
Q. -- would you write Heather at the bottom of the e-mail?
A. Yes.
Q. All right. If you don't know this, that's fine, but if David wrote the e-mail, would you put -- would David put David?
A. I would assume.
Q. So even though the e-mail says DJ.David Jolley, if it ends with Heather --
A. Uh-huh.
Q. -- it's from you, correct?
A. Typically, yes.
MR. SHABEL: May I approach the witness?
THE COURT: Yes.
BY MR. SHABEL:
Q. Ms. Jolley, I am handing you what's been marked for

identification purposes at this time as Defendant's Exhibit No. 1.

A. Okay.

Q. Does that appear to be an e-mail sent from you from that family account?

A. Yes.

Q. Okay. And who is it sent to?

A. It was sent to Alex Wolf.

Q. Okay.

A. Andrea Moore.

Q. Okay.

A. And Kim Rosborough.

Q. Okay. We know who Kim Rosborough is.

Let me back up a little bit.

A. Okay.

Q. Who is Andrea Moore?

A. She was our attorney at the time.

Q. All right. And who is Alex Wolf?

A. She was the guardian ad litem.

Q. And when you say guardian ad litem, what does that mean? Explain to the jury what a guardian ad litem is.

A. They are not -- go ahead, I'm sorry.

Q. Go ahead.

A. Okay. So Alex was appointed to Minor Victim to always find the best interests for her client, and her client was

Minor Victim

Q. And I believe she was appointed as Minor Victim s guardian back in that December 2010 hearing, correct?

A. That is correct.

Q. Okay. From your knowledge, was she also the guardian in the first termination of parental rights case as well?

A. She was.

Q. Okay. So she knows Minor Victim pretty well at this point?

A. Yes.

Q. All right. In this e-mail that's been marked as Defendant's Exhibit No. 1, what's the date of it?

A. March 24th, 2011.

Q. And did you explain to those two individuals who you just talked to that she had a phone call with her dad -- or with Mr. Spade that day?

A. That is correct.

Q. Okay. And I think you were telling everyone that --

MS. JORDAN: Your Honor, is he admitting this into evidence, or is he just going to read it? I mean --

THE COURT: Well, let me ask you, are you offering -- are you going to admit it or --

MR. SHABEL: Not at this time, because I needed to get how I got this document in.

THE COURT: Well, he can ask questions about it.

MS. JORDAN: Your Honor, I don't object to how he

got the document.

THE COURT: I'm sorry?

MS. JORDAN: I don't object to how he got it.

MR. SHABEL: I think I need to present it through another witness as well, so --

THE COURT: Okay. All right. Well, you can ask her questions about it.

BY MR. SHABEL:

Q. Mr. Spade tells Minor Victim "I love you" in this, correct?

A. Yes.

Q. And do you recall him saying "Minor Victim you can say I love you too, daddy"?

A. Yes.

Q. And from your reaction were you upset with that comment, or were you happy with that comment?

A. Not happy.

Q. All right. What did you say:

A. "Grrrr."

Q. "Grrrr." Okay.

Now I'm showing you what has been marked as Defendant's Exhibit No. 2. Is that another e-mail from you to those same three individuals?

A. Yes.

Q. Okay.

MS. JORDAN: Your Honor, may I see -- may I have a

copy of this?

MR. SHABEL: Didn't I give you a copy? I apologize, Ms. Jordan.

MS. JORDAN: That's no problem. I have the first one.

MR. SHABEL: Okay. There you go. My apologies.

May it please the court?

THE COURT: Yes.

BY MR. SHABEL:

Q. After having handed a copy of that to Ms. Jordan, because I accidentally forgot to give that to her, is that another e-mail that you sent to everyone?

A. It is.

Q. And it is based on another conversation that you had with -- that Minor Victim had with Mr. Spade, right?

A. Yes.

Q. What's the date of that?

A. March 31st, 2011.

Q. And would each of these e-mails be sent on the same day as the phone calls?

A. Yes.

Q. Was there talk in that phone conversation about Minor Victim s last name?

A. I'm sorry, could you --

Q. Sure, absolutely.

A. (Witness reviewing document).
Yes.
Q. What did Minor Victim want to be called?
A. Minor Victim .
Q. Okay. Thank you.
And, again, March 24th, 2011?
A. Uh-huh.
Q. And March 31st, 2011?
A. Correct.
Q. All right. March 31st, 2011, this phone call --
A. Uh-huh.
Q. -- is this the last time Minor Victim spoke to Mr. Spade?
A. I believe so.
Q. Okay.
MR. SHABEL: Beg the court's indulgence.
(Off the record)
(Back on the record)
BY MR. SHABEL:
Q. The last e-mail that I talked to you about was March 31st of 2011?
A. Yes.
Q. Okay. We talked a little bit about Alex Wolf, who was the court-appointed guardian for Minor Victim, right?
A. That's correct.
Q. And I asked you earlier about the final order of

termination of parental rights happening in November of 2012, is that right?

A. Yes.

Q. And Ms. Wolf was the court-appointed person to look out for the best interests of Minor Victim

A. That's correct.

Q. Between March 31st of 2011 --

A. Uh-huh.

Q. -- and November of 2012, do you know how many times Alex Wolf saw Minor Victim

A. I do not recall.

Q. Was it more than once?

A. I really don't recall. I'm sorry.

Q. I understand. It's hard to remember things that happened a couple years ago, right?

A. (Shaking head yes).

Q. Okay. You testified earlier about I think there was a visit where you left, turned around and Minor Victim was there all by herself?

A. Uh-huh.

Q. Okay. And then Danny came back around. Why did that bother you?

MS. JORDAN: Your Honor, could I ask him to repeat the question?

BY MR. SHABEL:

Q. Why did that bother you?

MS. JORDAN: Could you repeat the first part?

MR. SHABEL: Sure.

MS. JORDAN: I just missed it.

BY MR. SHABEL:

Q. There was talk about a visit, or a visitation exchange, where you saw Minor Victim -- you left Minor Victim you turned around and Minor Victim was there by herself?

A. Yes.

Q. And then Danny obviously came back in sight and took her away?

A. (Shaking head yes).

Q. Why did that bother you?

A. To me it's pretty obvious there is no relationship there. The whole point of these visitations was to have him involved as a father, and what father would turn around and walk off and leave a four year old girl standing by herself in the middle of the mall? That's why it bothers me.

Q. You have been married how long?

A. Almost -- well, six years.

Q. Okay. You don't --

A. I think. Sorry.

Q. And this is going to sound like a stupid question, but you don't believe that in any way, shape or form that your husband would ever do that?

MS. JORDAN: Objection, Your Honor.

MS. JORDAN: I'm not -- I'm not insinuating that he would.

MS. JORDAN: May we approach?

THE COURT: Yes, yes, yes, yes. Approach.

MR. SHABEL: I'll withdraw the question.

THE COURT: Okay.

MR. SHABEL: I will withdraw the question.

MR. BRANNON: Move to strike. Move to strike.

THE COURT: It's ordered stricken.

MR. SHABEL: Okay.

THE COURT: The jury will disregard it.

MR. SHABEL: Judge, that's all I have of this witness. Thank you.

THE COURT: Anything?

MS. JORDAN: Yes, sir.

REDIRECT EXAMINATION BY MS. JORDAN:

Q. Heather, I want to start with the first e-mail that he pointed to -- that he gave to you up there and I'm going to make sure that I wrote the right numbers.

State's Exhibit -- I'm sorry, Defense Exhibit No. 1, I know it has not been admitted yet, but Mr. Shabel has talked to you about some of the things that are in that e-mail, hasn't he?

A. Yes.

Q. Okay. Is there also something in there that -- did the defendant call on time?
A. No.
Q. What was the first thing out of Minor Victim's mouth when he did call?
A. "I don't want to talk to you."
Q. Okay. Did she say that once, or more than once?
A. Several times.
Q. Okay. It also states in here about -- Mr. Shabel has talked to you about how he said "I love you," and you could hear him saying Minor Victim you can say I love you too, daddy"?
A. Yes.
Q. Okay. What's the next line there that you have?
A. My comment?
Q. Yes, ma'am, other than "grrrr." We heard that. Right after that.
A. It says "anyway, she finally told him for the 15th time she didn't want to talk to him and she hung up."
Q. Okay. So in March of -- on March 24th, 2011 Minor Victim didn't want to talk to him, did she?
A. Correct.
Q. Thank you.
And you informed her guardian ad litem, her counselor and your attorney of that?
A. That's correct.

Q. To keep them informed as to what was going on with Minor Victim

A. Yes.

Q. Okay. The next e-mail, which I believe is Defendant's -- I'm holding it. I apologize.

In that e-mail Mr. Shabel talked to you about what Minor Victim's name was and what she wanted to be called, is that correct?

A. Yes.

Q. Okay. The very first paragraph there in this letter to your attorney, Minor Victim's guardian, and Kim Rosborough, what did you say that Minor Victim did when she picked up the phone?

A. "She told him she didn't want to talk to him."

Q. Okay. What else did she say?

A. Oh, I'm sorry, "she went on to say that the problem was that it made her stomach hurt when he called himself daddy."

Q. Okay. Did she also talk about her feelings?

A. Yeah, I'm sorry, and then she added that "it hurt her feelings that he kept calling himself daddy."

Q. Okay. Mr. Shabel has talked to you about the mediation, and I believe it's 2007, 2008, and the fact that you then after the mediation filed the first TPR?

A. Correct.

Q. Why did you file that first TPR?

MR. SHABEL: Objection, Your Honor.

May we approach?

THE COURT: Yes.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

BY MS. JORDAN:

Q. I'm going to step back and talk a little bit more about Kim Rosborough real quick.

Why did you stop seeing Kim Rosborough?

A. It was after the disclosure.

Q. Okay. And at that point were you referred to the Children's Advocacy Center?

A. Yes.

Q. Okay. Once you were at the Children's Advocacy Center, did they refer you -- at the end of her assessment, did they refer you to a different counselor?

A. Yes.

MR. SHABEL: Objection. It calls for hearsay.

MS. JORDAN: Your Honor, I can rephrase the question.

THE COURT: Okay, rephrase the question.

BY MS. JORDAN:

Q. Based upon your -- based upon the information that you received at the Children's Advocacy Center, did you contact Meredith Loftis?

A. Yes.

Q. Is she a licensed counselor in our state?
A. She is.
Q. Okay. He also talked about the fact that y'all were going to have a sit-down, that you and Kim Rosborough were going to have a sit-down. Who, to your knowledge, was going to be involved in that sit-down?
A. It would have been myself, Danny, Kim, Minor Victim and possibly my husband.
Q. Okay.

MS. JORDAN: Nothing further, Your Honor.

THE COURT: Thank you.

Anything, however brief would be, Mr. Shabel? Anything from what came out?

MR. SHABEL: Nothing, Your Honor.

THE COURT: Okay. Ma'am, you may step down. Please be careful.

MS. JORDAN: Judge, may I approach just for scheduling?

THE COURT: Yes, ma'am.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: All right, we need to take about fifteen minutes, or so. We have been running now for a little while. I don't want anybody sitting for any longer than you have to at a time.

So, again, Mr. Foreman, ladies and gentlemen of the jury, please do not begin deliberations. The case is not over. Again, don't even consider it within your own mind at this time.

So with that, Mr. Foreman, if you will take your jury out.

(The following takes place outside the presence of the jury panel)

THE COURT: All right. Any matters from the State at this point, or are we ready to break?

MS. JORDAN: No, sir, Your Honor.

THE COURT: Defense.

MR. SHABEL: Nothing, Your Honor.

THE COURT: Okay. We will be in recess for fifteen minutes then.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

THE COURT: Anything before we bring the jury in, defense?

MR. SHABEL: No.

THE COURT: State?

MS. JORDAN: No.

THE COURT: We are ready for the jury.

(The following takes place in the presence of the jury panel)

THE COURT: Mr. Foreman, any matters from the jury?

JURY FOREPERSON: No, sir.

THE COURT: We are in good shape.

Okay, solicitor.

MS. JORDAN: Your Honor, the State calls Kim Rosborough.

KIMBERLY ROSBOROUGH, having been first duly sworn, testified as follows:

THE COURT: Ma'am, if you would tell us your name and spell your last name, please.

THE WITNESS: Kimberly Rae Rosborough. It's R-O-S-B-O-R-O-U-G-H.

THE COURT: Thank you.

Solicitor.

DIRECT EXAMINATION BY MS. JORDAN:

Q. Ms. Rosborough, I'm going to start out with some background information on you.

Would you tell the jury your educational background?

A. Yes. I have a Bachelor of Arts in Psychology, and I have a Masters Degree in Social Work.

Q. Okay. Do you have any type of certification?

A. Yes, I am a licensed independent social worker in the State of South Carolina and a supervisor.

Q. Is that what all those letters mean after the end of

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your name?
A. That's what some of them mean, yes.
Q. Okay. As part of your -- where do you work?
A. I work at Turning Leaves For Children, which is a private psychotherapy practice that I co-founded fifteen years ago with two partners.
Q. Okay. Going back to your education and certification, what type of training did you have to do to become a licensed certified counselor in our state?
A. You have to have a Masters Degree, and then you have two years of supervision with a licensed supervisor.

You have to pass the test, obviously.

And then I have -- also I'm a registered play therapist, which means that I have specialized training in working with young children. Generally it's considered twelve and under.

And I'm also -- I also have a certification in forensic counseling.
Q. Okay. As part of your education and qualification, I know as attorneys we have to do certain hours every year. Do you also have that requirement?
A. I do. We have to have twenty years of -- not twenty years, I'm sorry, twenty hours of continuing education every year to maintain our license.

I also have to have continuing education to have the

registration in play therapy, and I'm also a supervisor in play therapy, so I have to maintain a certain number of hours.

I have more hours than that just because of the particular interests that I have had over the years. I have a specialization in child sexual abuse and in trauma and providing treatment to children who have been traumatized.

Q. Okay. Have you ever been qualified as an expert in the field of child abuse therapy and treatment in the State of South Carolina?

A. I have.

Q. Which courts?

A. I have been qualified as an expert in several different areas in several different counties in South Carolina in both Family Court and General Sessions Court.

Q. Okay. Is General Sessions Court what we call criminal court?

A. Yes.

MS. JORDAN: Your Honor, at this time we move Ms. Rosborough in as an expert, or to have her qualified as an expert in the field of child abuse therapy and treatment.

THE COURT: Child abuse therapy and treatment?

MS. JORDAN: Yes, sir.

THE COURT: Any objection?

MR. SHABEL: None.

THE COURT: All right, she's so qualified.

Ladies and gentlemen, normally a person cannot give opinion testimony. When a person testifies, they must testify as to what they either saw, or heard, or sensed by smell, or something of that nature. However, there is an exception when someone is qualified because of education, experience, knowledge, skill or training. They are permitted to give an opinion in certain areas, if the court so qualifies them.

This witness is qualified in the area of child abuse therapy and treatment.

That does not mean that you must accept her opinion, but it is evidence for you to consider and use any way that you see fit and give such weight and credibility to it as you believe appropriate.

All right, solicitor.

MS. JORDAN: Thank you.

BY MS. JORDAN:

Q. Did you have an occasion in 2010 to meet Minor Victim Minor Victim ?

A. I did.

Q. Okay. How did you come to meet her?

A. She was referred to my practice. I was going to look for the exact date.

In September of 2010. And her initial appointment was

scheduled in October of 2010.

Q. Okay. Do you recall who referred her?

A. I do. She was -- the family actually called. The mother made the first phone call, that she stated that she was referred or how she came to know about my practice was from Ruth Cate, who is an attorney in Spartanburg.

Q. Okay. Who brought Minor Victim to the first meeting?

A. The first meeting I had was -- the first meeting that I had with Minor Victim was with her mother. Her mother actually brought her in. I had previously met with the stepfather and just gotten some background information and the paperwork. I did not meet Minor Victim on that first appointment.

Q. Okay. Why was Minor Victim brought to you?

A. The original referral sheets stated that she was -- they were wanting her to come in because she was exhibiting signs of -- I think the actual word on this sheet was anxiety, but basically she was having a lot of stress. She was complaining of stomach aches and headaches. They stated that she was having panic attacks and temper tantrums on the initial referral sheet.

Q. Okay. So what was the purpose or goal of your therapy sessions with Minor Victim

A. Are you talking about from the very first phone call, or after I met with Minor Victim and had gotten more information?

Q. After you had met with Minor Victim and gotten more

information.

A. Okay. When I met with Minor Victim on the first session I did get more family history and background, and I also had the mother and the stepfather to do what's called a children's problem checklist. And I was really surprised at the number of problems that they were reporting that this child was having emotionally. She was having nightmares --

MR. SHABEL: Objection, Your Honor. It calls for hearsay.

THE COURT: Okay. That's sustained at this point, yes.

BY MS. JORDAN:

Q. Ms. Rosborough, based upon your assessment of Minor Victim what did you diagnose her as having?

A. I diagnosed her with having an adjustment disorder with anxiety.

Q. Okay. What was your goal of treatment with Minor Victim

A. Well, at this point after I had found out more information about what was going on in her world, my goal was to help her with her anxiety and some of the separation anxiety and the symptoms that she had developed after beginning visitation with her biological father.

Q. How many times did you see Minor Victim

A. I saw her maybe ten to twelve times. I can count, if you need an exact number, but it was around that, that many

times.

Q. When was your last visit with Minor Victim

A. It was the end of March --

Q. Okay.

A. -- was the last time that I saw her.

Q. And that was in March of 2011?

A. Yes.

Q. Okay. During your treatment with or your time with Minor Victim did you also communicate with the defendant in this case?

A. I did.

Q. Okay. How and when was your first communication with him?

A. I believe that I met with Minor Victim the end of October or mid to end of October. And it's my policy that when I meet with a child and I haven't met one of the biological parents, I pretty quickly send a letter and ask that parent if they would like to be involved. I want to make sure that they are notified that I'm providing treatment and ask them if they would like to talk with me. I knew that he was out of state, but I offered him to either come in, if he wanted to visit with me when he was down here for a visit, or a telephone call.

Q. Okay. So you reached out to him in October of 2010?

A. Yes, I believe the date of the letter was October the

27th.

Q. Okay.

A. It was right after I met with Minor Victim

Q. Did you -- did he -- did you have any contact with him?

A. He initially placed a phone call, is my understanding, to my secretary who handled that. And I was given the information that he wanted a specific date and time to talk with me and I was not available. I already had appointments scheduled for the time that he said was convenient for him, so I requested my secretary either call him or e-mail him back and let him know that I could not do that one specific hour that he had requested. I already had something in that slot, but that I would be happy to give him another time, for him to please let us have some other options, and he did not call us back or return that correspondence, so I did not hear back from him at that point.

Q. Okay. Sometime in March of 2011 were you made aware that Minor Victim had made a disclosure?

A. Yes.

Q. Okay. Based upon that disclosure what did you do?

A. I received a telephone call. And based on that information I talked with the attorney who was working with the family and I stated that my recommendation at that point was not to have Minor Victim come back to see me. I had been her therapist for approximately five months, and that when there

is an allegation of some type of abuse, it is preferable for the therapist to not be the person to interview the child, based on the relationship you already have with the child. And there is some guidelines that specifically state the protocol that you need to do if that happens, and that protocol is for the child to be referred for a forensic interview. And even though I do forensic interviews, I certainly wasn't going to do that with the child that I had already been seeing, so I made a referral. I filled out the referral forms and sent it to the Children's Advocacy Center and requested that they see Minor Victim to try to determine what she was stating had happened. I didn't want that for there to be any contamination and even have her come back to me one time in between that. I wanted them to get her clean and fresh and without another professional having interviewed her.

Q. Okay. Who made the phone call to your office about the disclosure?

A. The message that I received was from Mike Smith. I did not know who that was. He stated in the message he was the grandfather. I had not met him, but he is the one who left the message at my office, and I did return his call and he -- yes, he told me what the child had said.

Q. Okay. Did you see Minor Victim any more, once you had your last therapy session with her and she went to the Children's

Advocacy Center, or CAC, as we all call it?
A. No, when children are being interviewed and they are going through that interview process, it's also a recommendation that they not see their ongoing therapist at that time. And, again, that's for the same reason. You don't want to confuse children. You don't want more than one person in a therapeutic professional relationship interviewing them or talking to them, so what I told the family was that I was not going to reschedule Minor Victim and that I was not going to see her during the time that the Children's Advocacy Center was doing their interview with her.
Q. I'm just going to go with you in general. As an expert in the field of child abuse trauma and therapy treatment, can you talk to the jury about what's known as coaching?
A. Coaching. Coaching would be, in this particular example, would be if someone encourages the child to say something that's not true. If you tell the child something that didn't happen, you give them information and you ask or pressure them to say that it happened when it did not.
Q. Did you see any signs of coaching in Minor Victim
MR. SHABEL: Objection. Calls for bolstering.
MS. JORDAN: Your Honor --
THE COURT: Let me see the lawyers.
(Whereupon, the lawyers approached the bench for

an off-the-record discussion)

MS. JORDAN: Your Honor, I withdraw that last question of this witness.

MR. SHABEL: Motion to strike.

THE COURT: Motion to strike is granted. It's stricken.

MR. SHABEL: Thank you, Your Honor.

THE COURT: The jury disregard the question.

BY MS. JORDAN:

Q. Ms. Rosborough, could you talk to the jury now about what's calls disclosure? They have heard that term many times. Could you talk to them about what that is?

A. Disclosure is, in this situation, again, is when a child initially states or tells someone that he or she has been a victim of abuse.

Q. Okay. What's known as partial disclosure?

A. Partial disclosure is one -- is part of the Child Sexual Abuse Accommodation Syndrome, which basically it's that children rarely tell everything that happened the first time they start talking about it. And there are many reasons for that. Obviously with a child, especially a young child, basically children only tell part of it.

One of the things that we know was happening is that they are looking to see what people's reaction is. They want to see what people are going to do, or say, or think

before they go on and give more information.

And the other reason is that it certainly can be overwhelming to children to start talking about something so traumatic, and so they may tell a little and stop and then you have to go back later and children -- you know, ask them more questions to fill in more of the blanks about what happened.

Q. Okay. Now let me talk about parts of disclosure. Could you talk about delayed disclosure?

A. Uh-huh. Again, delayed disclosure is part of the Child Sexual Abuse Accommodation Syndrome. Basically when -- there is a lot of research done to look at how kids tell about this kind of trauma and one of the things that they noticed is that kids very often do not tell when it first happens, and there is many, many reasons for that, but they usually don't tell when it initially happens. And, again, it can be because of fear. It can be because they don't think that they will be believed. It can, and usually, I have found, is specifically related to what the perpetrator said to them would happen if they talked.

MS. JORDAN: Your Honor, may I have a moment?

THE COURT: Yes, ma'am.

(Off the record)

(Back on the record)

BY MS. JORDAN:

Q. Ms. Rosborough, did Minor Victim ever make a disclosure to you about sexual assault?
A. No, she did not.
Q. Okay. Did anyone else speak to you about sexual assault, other than her grandfather?
A. No, they did not.
Q. Okay.
(Off the record)
(Back on the record)
BY MS. JORDAN:
Q. I noticed that -- you have already stated that one of the -- or that the diagnosis that you made was for adjustment disorder with anxiety?
A. Yes.
Q. Did you see any of the science of anxiety in Minor Victim that had been described by her parents, or just in interacting with her?
A. Did I see them?
Q. Yes, ma'am.
A. Yes, I did.
Q. What did you see?
A. I saw a lot of anxiety in terms of nervousness. When I would try to talk with her about her biological father, she would become upset. She would be very avoidant and not want to talk about the subject.

I asked her numerous times to draw me pictures of things that happened on the visit, just anything to try to get more information from her so that I could start to help redevelop that relationship and figure out, you know, what they did on visits and what she liked to do. She would not do any of that initially. She would not talk about the biological father. She would not give me any information about what she did on the visits, other than to verbalize that she did not want to go.

Q. Last question. Did Heather or David Jolley ever indicate there was an issue or allegation of sexual abuse to you?

A. No, they did not.

Q. Thank you. Please answer any questions that Mr. Shabel or Mr. Campbell may have.

MR. SHABEL: May it please the court?

THE COURT: Yes, sir, Mr. Shabel.

CROSS EXAMINATION BY MR. SHABEL:

Q. Ms. Rosborough, how long have you been in practice here in the Upstate?

A. I have been in private practice for fifteen years. Prior to that I helped to develop the therapy practice for children at rape -- at Safe Homes Rape Crisis for about two years.

Q. And your first meeting, is that typically with the

child, or is it with the caregiver?
A. Typically it's with the caregiver only.
Q. Okay. Do you know whether Minor Victim physically attended that first visit, or whether it was just the caregiver, meaning if Minor Victim was in the lobby or if she was somewhere else on the premises?
A. Minor Victim was not in the lobby the day that I met with Mr. Jolley, usually.
Q. Do you know if Heather Jolley was anywhere in the picture?
A. She was not.
Q. Okay. So it was the stepfather alone that brought her?
A. Yes, to the -- well, he didn't bring her. I met with him alone for the first time.
Q. He met you. I apologize.
A. Yes.
Q. Okay. And that was in October of 2010?
A. Correct.
Q. The first meeting?
A. Yes.
Q. Why did it take so long from the initial referral until you actually met someone involved in the case? Would it be fair to say that you have a lot of appointments?
A. I do, but I don't think it took very long. The first referral came in at the end of September and I believe I met

with Mr. Jolley on October the 5th. So generally it takes two to three weeks that I'm booked out, unless I just happened to have a cancellation or an opening.

Q. I understand.

Let's skip ahead then to the very end.

A. Uh-huh.

Q. Okay. Do you recall having a session with Minor Victim on March the 28th of 2011?

A. I don't remember that date specifically.

Q. Do you have your notes in front of you?

A. I do.

Q. And do those notes contain the notes that you personally took from all of the sessions that you had with either Minor Victim or a member of Minor Victim s family?

A. It should.

Q. All right. Please turn in your notes to determine whether or not you received or you had a session with Minor Victim or a member of Minor Victim s family on March the 28th of 2011.

A. I'm sorry. I do not see notes in here from 3-28, of what we are looking t.

Q. All right.

A. I have a date of 3-14.

The last one I see is 3-14.

Q. All right.

MR. SHABEL: May I approach, Your Honor?

THE COURT: Yes.

(Clinical Notes marked Defendant's Exhibit No. 3 for identification)

BY MR. SHABEL:

Q. Ms. Rosborough, I'm handing you what I have had marked for identification purposes only as Defendant's Exhibit No. 3.

A. Uh-huh.

Q. What's the first word on that page?

A. Up at the top?

Q. Yes.

A. Minor Victim

Q. No, I mean --

A. "Clinical notes," yes.

Q. Is this a typical page that you have in your book?

A. Yes, this is mine.

Q. And this --

A. I'm sorry, I just didn't --

Q. No, that's fine.

Does it appear to be your notes from 3-28-2011?

A. Yes.

Q. I would ask you to review that in its entirety. Don't -- read it to yourself and look up when you are done.

A. Okay.

(Witness reviewing document).

A. Okay.
Q. Ms. Rosborough, from your review of that document, did you have a meeting with Heather Jolley that day?
A. I did.
Q. And based on your review of that document, did that document refresh your memory of what happened in that meeting?
A. Yes.
Q. From your recollection, having reviewed that, what was the next step in therapy after March 28th, 2011?
A. On March the 28th, what I was recommending on that date was that we had a session to meet with the parents, to meet with Mr. And Mrs. Jolley and Mr. Spade, to talk about where we go from here, to look at having a meeting to determine what steps we needed to take and then to start some therapeutic visitation with the biological father. At that point he was not visiting with her. And what I had said to Ms. Jolley was that I wanted to be planning for that. That was the goal and that I wanted to start planning for that, and that that meant that we needed to have that initial meeting. And then I wanted to see him with the child to look at her reactions and to look for attachment and to see, you know, how they interacted with each other, and that was going to be down the road.
Q. Okay. Thank you.

A. Uh-huh.
Q. Now, you testified earlier that the first words that you got about some disclosure was from the grandfather, correct?
A. Correct.
Q. And that came to your attention after the grandfather called your offices and left you a message, is that correct?
A. Yes, that is correct.
Q. If someone in your office leaves a message, how is that relayed to you?
A. She wrote it -- we have a message book and it was written on a message. And when I came in or down from my appointments, I don't remember what time it was or if I got it after lunch or before, but when I go into my office, my secretary's office is there and she hands me my messages. And if there is anything urgent in there, she immediately says or has that one on top and says "you got this call."
Q. And do you save those slips of paper and keep them in the file?
A. I do sometimes physically keep them in the file. Sometimes I xerox them so that it's easier to file. And most of the time they are destroyed, because they have usually called to schedule an appointment or just that person called.
If they have any content on them, then my secretary did

write some content on that one, so I did make a copy of it and put it in the file.

Q. So you did that in this case with the message that you got from the grandfather?

A. Yes, I did.

Q. Okay. Please tell the jury -- do you have that in front of you?

A. I do.

Q. Please tell the jury the date that you received the message from the grandfather.

A. Okay. The message came in on 3-31, at 10:57 a.m.. That's what my secretary reported. It said Minor Victim-- it said "Mike Smith, Minor Victim s grandfather," then it had his phone number, "would like to talk to you about a situation they're involved" -- I'm sorry, "they've uncovered." I apologize for the writing. "That they've uncovered about Minor Victim."

Q. And, again, the date?

A. 3-31, at 10:57.

Q. Three days after you met with Heather Jolley?

A. Yes.

MR. SHABEL: Beg the court's indulgence?

THE COURT: Yes.

(Off the record)

(Back on the record)

BY MR. SHABEL:

Q. Thank you, Ms. Rosborough.

MR. SHABEL: Nothing further for the witness.

THE COURT: Anything briefly?

MS. JORDAN: Very brief, Your Honor.

REDIRECT EXAMINATION BY MS. JORDAN:

Q. As to this conversation that you had with Heather Jolley on 3-28, is there any indication that Minor Victim was present for that conversation, as far as meeting with David, Heather, and the defendant?

A. She would not have been in that meeting. She may have been in my office. I believe I did see her later, but I don't have those kinds of conversations with children present.

Q. Okay. And prior to the March 28th conversation about involving Danny Spade, how much contact had you had with him?

A. I had had -- at that point I had had one phone call.

Q. Okay. And the message that Mr. Shabel has referred to, that was from who?

A. That was from Mike Smith and he identified himself as Minor Victim's grandfather.

Q. The one phone call that you had with Daniel Spade, did you ever -- did you actually speak with him, or was this a phone contact with your office?

A. No, we did schedule and I did have a conversation with him. I believe that it was around March the 24th. It was around the end of March when I did have a conversation with him on the phone.

Q. Okay. Please answer --

MS. JORDAN: I'm done, Your Honor.

THE COURT: Anything to that?

MR. SHABEL: Nothing.

THE COURT: Thank you. You may step down. Please be careful.

Next witness.

MS. JORDAN: Your Honor, the State calls Dale Smith.

MR. SHABEL: Your Honor, I believe we have a scheduling issue real quick.

MS. JORDAN: Sure.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: Mr. Foreman and ladies and gentlemen of the jury, it appears that it's a good for a lunch break. Some of them are getting hungry, I think, so we will do that. We try to be accommodating. It's twelve noon, so what we are going to do is we are going to break now for lunch and we are going to come back at 1:30. Okay, that will give you a few minutes to get out of the building and a

few minutes to get back into the building without interrupting a full lunch hour for you, and the lawyers say they will be ready to go then.

So with that, Mr. Foreman and ladies and gentlemen, if you will again be instructed not to deliberate in any way about this matter, because it's not ended, and so it would be improper for you to do that, but with that we will release you to the bailiffs and they will take you to your jury room and then you are going to leave from there, I guess, and be back say about twenty after, maybe, or something like that and we will start promptly at 1:30. Thank you.

(The following takes place outside the presence of the jury panel)

THE COURT: Let me ask -- just some housekeeping. Now, we have got -- you got another expert to testify, right?

MS. JORDAN: Your Honor, I actually have Dale Smith, who is the grandmother of Minor Victim Tabitha Webber from the Children's Advocacy Center; and Meredith Loftis, who is the counselor, who is in Greenville. They are the ones that would be called to testify. We then have, I would assume, the very short witness from the hotel, Ms. Gray, as far as putting in the --

THE COURT: Okay.

MS. JORDAN: -- hotel records.

THE COURT: Okay.

MS. JORDAN: Then we also have potentially Dr. Henderson in the morning. That may be something that we don't touch, that we don't bring in, but I would like to -- I don't want to state that right now.

THE COURT: No, no, I'm just trying to -- I'm just looking at the clock. That's all, so --

MS. JORDAN: There is the potential that we could rest today, but I don't want to be held to that.

THE COURT: No, no, you won't be. You won't be. I'm just -- again, I'm just trying to figure out where we are, so --

MS. JORDAN: Yes, sir. I would assume that -- I would assume that Ms. Smith would not be a lengthy -- too lengthy of a witness. Ms. Webber would not be. Ms. Loftis could potentially have that possibility to be a long witness.

THE COURT: Okay. And is there any question as to them being qualified, or anything like that?

MR. SHABEL: No, probably not.

THE COURT: No, probably not. Okay.

Well, again, I'm just --

MR. SHABEL: Obviously we all know that based on the --

THE COURT: Okay. But we do think that we may get the State's case in chief in today, maybe, is that right?

MS. JORDAN: Potentially.

MR. BRANNON: Yes, sir.

THE COURT: Okay.

MS. JORDAN: Yes, sir, with Dr. Henderson and making sure our hotel witness is here --

THE COURT: Right.

MS. JORDAN: -- this afternoon.

THE COURT: Okay. I was just trying to get an idea of where we are. All right.

Well, we will see everybody at 1:30.

MR. SHABEL: Thank you, Your Honor.

MR. BRANNON: Your Honor, is it okay if we talk to ourselves?

THE COURT: Yes.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were recessed)

THE COURT: We ready for the jury?

MS. JORDAN: Your Honor, I believe we have the issue with the proffer?

THE COURT: Oh, yes, I'm sorry, you are right.

MS. JORDAN: Mr. Barnette is on his way down --

THE COURT: Okay.

MS. JORDAN: -- if we could just have a moment.

THE COURT: Yes, the issue of the proffer.

(Off the record)

(Back on the record)

THE COURT: Yes, sir.

MR. BARNETTE: Thank you.

THE COURT: Are we ready?

MR. BARNETTE: We are, Your Honor.

THE COURT: Mr. Shabel, I believe you have a proffer that you would like to make outside the presence of the jury?

MR. SHABEL: Yes, Your Honor.

If it please the court, it's my understanding that the next witness to testify is going to be Dale Smith. In light of the court's ruling regarding third-party guilt, I do have some potential cross-examination I would like to proffer to the court to have the court rule on that before the jury gets back in and before Ms. Smith actually begins her formal testimony.

THE COURT: All right.

MR. SHABEL: So if Ms. Smith is present, I would like her to come to the stand, please.

MS. JORDAN: She is, Your Honor.

THE COURT: All right, Ms. Smith, come forward and be sworn please.

DALE SMITH, having been first duly sworn, testified as follows:

THE COURT: Ms. Smith, give us your full name and spell your last name, please.

THE WITNESS: Dale M. Smith, S-M-I-T-H.

THE COURT: Thank you.

MR. SHABEL: May it please the court?

THE COURT: Yes, sir.

DIRECT EXAMINATION BY MR. SHABEL:

Q. Ms. Smith, you are Minor Victim's -- I believe you are Minor Victim's maternal grandfather?

A. Grandfather?

Q. Grandmother.

A. Oh, yes.

Q. Okay. And do you see her on a regular basis?

A. I do.

Q. Okay. Do you recall testifying in a Family Court proceeding in October of 2012?

A. I do.

Q. And do you recall talking about panic attacks that you have observed that Minor Victim has had?

A. Correct, yes.

Q. Okay. Have you ever witnessed a panic attack of Minor Victim when it was just the two of you?

A. No.

Q. Have you ever witnessed a panic attack when it was just you?

A. I take that back. Yes, I have.

Q. When was that?

A. I don't recall the date, but it was in our backyard.

Q. Was it before or after October 2012?

A. After.

Q. Okay. Have you ever observed a panic attack prior to October of 2012, where it was just you and Minor Victim

A. No.

Q. Have you ever observed a panic attack before October of 2012, where it was just you and Minor Victim's grandfather?

A. Before 2012?

Q. Before October 2012, when you testified in the Family Court proceeding.

A. Yes. Well, just us two, no.

Q. Have you ever observed a panic attack when Heather Jolley -- when it was just you and Heather Jolley with Minor Victim

A. No.

Q. Have you ever observed panic attacks when it was you and David Jolley were present?

A. Just me and David?

Q. Just you and David.

A. No.

Q. What about when it was David Jolley and Heather Jolley together?
A. I mean, I -- just us three with her?
Q. Yes.
A. No.
Q. Okay. Can you tell the court if David Jolley was present for all of the panic attacks that you saw?
A. He wasn't.
Q. He was not present for every panic attack that you saw?
A. If you consider the one that was in our backyard, no.
Q. Let me rephrase the question.

Was he present for every panic attack that you saw prior to October of 2012?

A. Yes.
Q. Was Heather Jolley present for every panic attack that you saw prior to October of 2012?
A. Yes.

MR. SHABEL: That's the end of my proffer, Your Honor.

THE COURT: Your Honor, we would just ask who else was present during -- I'm sorry.

MR. BARNETTE: Go ahead.

CROSS EXAMINATION BY MS. JORDAN:

Q. Who else was present during any of those panic attacks?
A. During these panic attacks?

Q. Yes, ma'am.

A. After 2012, or before?

Q. That's before. Before your Family Court in 2012.

A. It was Heather, David, myself, my husband, and Minor Victim's little brother Minor 2

MS. JORDAN: Nothing further.

THE COURT: Anything?

MR. SHABEL: No, Your Honor.

THE COURT: Ma'am, you may step down. Thank you.

MR. BARNETTE: If I could be heard on this matter?

THE COURT: Yes, sir.

MR. BARNETTE: We have had third-party guilt motions in the beginning, Your Honor. They indicated they weren't going to add any third-party guilt or enter into any third-party guilt.

Mr. Shabel was nice enough to go back in chambers with us before this witness testified to explain that he was going to go through this line of questioning and give us a chance to be heard in front of the court and we appreciate him doing that, from that standpoint, to avoid any problems, but to me this is clearly outside. I mean, this is third-party guilt. They are trying to shift to show that the panic attacks occurred with a certain individual. And even in the best light I don't think you could say that it's just David Jolley. It could be any male person, or

whatever, that could cause these panic attacks from there, but there were other people available.

But if you look at the third-party guilt memo I handed up, and I did give a copy to the defense, Your Honor, if you look through the case law, I'll go through different cases here, but the first one I would like to talk about is on page three. State v. Al-Amin, which is 353 S.E. 2d 405, Your Honor. It's a 2003 South Carolina appeals case, Your Honor. Basically in that case, if you look at the facts of it, they were trying to point -- it was a murder involving Al-Amin was charged with it, he wanted to try to point the finger at the person that lived there was evicted from the residence ahead of time. And he also had DNA that was not consistent with his DNA that was found at the scene, or found on the person from there, Your Honor. But they basically said they ruled the evidence offered by Al-Amin was not inconsistent of his own guilt. This is definitely not inconsistent with the guilt of the defendant, evidence is what I understand appeared here in court today, and then raise a reasonable inference for presumption as to his innocence. So, therefore, under the case law, if you go through that, and there are several other cases that are mentioned in the memo, Your Honor, I would like to incorporate into my argument.

In Holmes v. South Carolina, which has been heard

and affirmed at 126 S. Ct. Case, 1727, reaffirmed the rule that was established in State v. Gregory concerning the admissibility of third-party guilt. Well established rules of evidence permit a trial judge to exclude evidence if its probative value is outweighed by certain factors, such as unfair prejudice, confusion of the issue, potential to misleading the jury.

To me, even if it was admissible, the prejudicial effect would be just -- the probativeness is outweighed by the prejudicial effect, because it doesn't prove that it has anything to do with this sexual assault that occurred on this young lady from there. It would just be talking about panic attacks.

And I understand the defense's point that it's going to be -- they are going to try to argue that the only time the panic attacks occurred is when David Jolley was there, but I think you heard the evidence of the witness testify it could be any male person involved with that. It could be any kind of factors. Therefore, I think it's not reliable. It's not relevant. And even if it is relevant in this case, it's highly prejudicial. It outweighs the probative effect in this case.

And I would just like to incorporate the other arguments in my memo with this too, Your Honor.

THE COURT: All right.

Yes, sir.

MR. SHABEL: Your Honor, the difference in this case and the cases that are cited in this brief that I have been handed this afternoon is that the evidence that the defense tried to present in those cases was actual solid evidence that they didn't commit the act in question.

This is a situation where there are allegations that the child is having panic attacks. That panic attacks in and of itself could or could not have anything to do with the fact that my client may have committed this act.

What we are trying to do is to give potentially other reasons, non-criminal reasons, why the panic attacks are occurring, not necessarily issues that she's having a panic attack to go as to what her biological father did.

We are not establishing third-party guilt. We are establishing explanation for symptoms, which the State of South Carolina is going to argue is a symptom of child sexual abuse and she's having panic attacks because of what her biological father did.

I think this case is very distinct from the cases that are cited here.

THE COURT: Well, Mr. Shabel, if you want to -- if you want to call an expert to testify otherwise as to the panic attacks could be caused by a number of things in a child's life, or what have you, you certainly can do that.

MR. SHABEL: Or I can ask Ms. Loftis, who will be here later?

THE COURT: But at this point in time -- you could, but this court looks at this as sort of a back door to third-party guilt, and I have already ruled on that yesterday in pretrial motions. And the defendant has failed to show that the proper evidence is inconsistent with his guilt, so I'm not -- I'm not going to allow that in.

MR. SHABEL: Will I be allowed to ask her on cross-examination what was going on when the panic attacks occurred?

THE COURT: Such as?

MR. SHABEL: Such as where was the child; what was the child doing; what was going on at that moment in time.

THE COURT: I can go with you a little bit on that as to what the child was doing, whether she was playing in the yard, or whether she was at the mall, or something, but --

MR. SHABEL: Or was she being disciplined, or anything like that.

THE COURT: But you got to be careful now about bringing in who all was there. Well, David Jolley was there.

MR. SHABEL: Without going into who was there, would I be allowed to go into what was going on?

THE COURT: Solicitor?

MR. BARNETTE: Your Honor, I think he has to be very careful. I think the court has cautioned him on that. Obviously he can ask questions concerning that, her evaluation and talking to the witness, but to bring up the reasons for these panic attacks, he has to be very careful to point out a certain individual.

THE COURT: I agree with that. Don't point to any particular individuals.

MR. SHABEL: But I would be allowed to ask what was going on without mentioning a specific individual?

THE COURT: Yeah. Yes. Yes, sir.

MR. SHABEL: Thank you.

MR. BARNETTE: Your Honor, if we could mark this as a Court Exhibit? I know it wasn't filed and I apologize.

THE COURT: That would be great. Yes, sir.

MR. BARNETTE: You may have the original, Your Honor.

(Memorandum of Law marked as Court's Exhibit No. 3 for identification)

THE COURT: Anything further before we --

MS. JORDAN: Yes, Your Honor. Could we have just have a moment?

THE COURT: Yes.

MR. BARNETTE: Do you need an extra copy?

THE COURT: I would love it, yes sir.

MR. BARNETT: Yes, sir.

(Off the record)

(Back on the record)

MS. JORDAN: I know I let the court aware at the bench that I had incorrectly listed Erica Gray's name as Erica Gray, but it's really Erica Gary.

THE COURT: Gary.

MS. JORDAN: That was inverted on my -- my mistake there. And we have also provided a criminal record to the defense that they have been made aware of.

THE COURT: All right.

MR. SHABEL: Thank you.

MS. JORDAN: I do intend to call her next, and then we will move back to Ms. Smith, if that's okay with the court.

THE COURT: Yes, ma'am.

Let's have our jury.

(The following takes place in the presence of the jury panel)

THE COURT: Mr. Foreman, thank you, and ladies and gentlemen, thank you for your patience. We have been working in your absence, but I think we are ready to resume.

Any issues for the jury?

JURY FOREPERSON: No, sir.

THE COURT: Okay, solicitor.

MS. JORDAN: Your Honor, the State calls Erica Gary.

THE COURT: Ms. Gary.

ERICA GARY, having been first duly sworn, testified as follows:

THE COURT: Ma'am, if you will slide up there to that microphone and tell us your full name and spell your last name, please.

THE WITNESS: Erica Diane Gary, G-A-R-Y.

THE COURT: Thank you.

Solicitor.

MS. JORDAN: Thank you.

DIRECT EXAMINATION BY MS. JORDAN:

Q. Ms. Gary, how old are you?

A. Twenty-five.

Q. Where are you currently employed?

A. Holiday Inn Express that sits in Duncan.

Q. What is your position there?

A. The front desk clerk.

Q. Okay. How long have you been employed there?

A. About five months.

Q. Did you -- do y'all keep business records at your establishment of guests who have been at the hotel?

A. Yes, ma'am.

Q. Okay. I'm going to show you what's been previously marked as State's Exhibits 4 and 5 and ask if those appear to be receipts from Holiday -- from where you work?

A. Yes, ma'am.

Q. Okay. Do those appear to have been altered in any way, other than the hole punched in the side?

A. No, ma'am.

Q. Does it indicate on there who the guest was?

A. Yes, ma'am.

Q. What was the guest's name?

A. Daniel Spade.

Q. And --

MS. JORDAN: Your Honor, at this point in time I would move 4 and 5 into evidence.

THE COURT: Any objection?

MR. CAMPBELL: None, Your Honor.

THE COURT: Okay. They are so admitted.

(Whereupon, State's Exhibit No. 4 was entered into the record as evidence)

(Whereupon, State's Exhibit No. 5 was entered into the record as evidence)

BY MS. JORDAN:

Q. If you could just state what the dates of the receipts for those hotel rooms were?

A. September the 10th of 2010.

Q. Okay. What about the other one?
A. October the 1st of 2010.
Q. And when was the checkout date on both of those?
A. October the 2nd of 2010, and September the 11th of 2010.
Q. Okay. May I draw your attention to this? What did you say the departure date was on State's 4?
A. October the 2nd of 2010.
Q. Could I draw your attention to departure line right here?
A. Sorry, October the 3rd of 2010.
Q. Thank you. Please answer any questions that Mr. Campbell may have.

MR. CAMPBELL: Thank you.

CROSS EXAMINATION BY MR. CAMPBELL:

Q. Do you have a copy of --
A. No.
Q. I'm going to show you what's marked State's Exhibit 4 and 5. I think you were just looking at them.

On the September dates, can you tell me which room number Mr. Spade stayed in?

A. Room 313.
Q. And how many floors do you have in your hotel?
A. Three.
Q. I'm assuming obviously that's the top floor.

Which floor is the pool located on?

A. The first floor.

Q. Okay. Obviously it's not located on the third floor, is it?

A. No, sir.

Q. Okay. How about the October dates? When was -- or on the October date what room did he stay in?

A. 213.

Q. And I'm assuming that's on the second floor, correct?

A. Yes, sir.

Q. And what I assume correctly by your testimony that the pool is not on the second either?

A. Yes, sir.

MR. CAMPBELL: No further questions, Your Honor.

MS. JORDAN: Your Honor, may this witness be excused?

THE COURT: Any objection?

MR. CAMPBELL: None, Your Honor.

THE COURT: All right, ma'am, you may step down. Please be careful. You can stay or leave.

THE WITNESS: Thank you.

THE COURT: Yes, sir.

MS. JORDAN: The State calls Dale Smith.

THE COURT: Ms. Smith, come up and be sworn, please.

DALE SMITH, having been first duly sworn, testified as follows:

THE COURT: Ms. Smith, would you tell us your full name and spell your last name, please?

THE WITNESS: Dale M. Smith, S-M-I-T-H.

THE COURT: Thank you.

Solicitor.

DIRECT EXAMINATION BY MS. JORDAN:

Q. Ms. Smith, I was about to ask you your age, but I will not do that.

How are you related to Heather Jolley?

A. I'm her mother.

Q. How are you related to Ms. Minor Victim ?

A. I'm her grandmother Mimi.

Q. I'll take you back and just let you tell the jury about your relationship with Minor Victim beginning when she was born. Did you spend much time with Minor Victim when she was an infant?

A. Yes.

Q. Could you explain that to the jury?

A. When Minor Victim was born, she -- my daughter was a single mom and I quit my job and stayed at home to take care of Minor Victim for -- to help her out, and I was there the majority the time 24/7 with her.

Q. Okay. Was that -- where did Heather and Minor Victim live then?

A. They lived near the Boiling Springs area. Heather had bought a house for them.
Q. And where did you live at that time, or where do you live this during this time?
A. I lived in Spartanburg, eastside, in the Hillcrest area.
Q. Okay. As Minor Victim got older did you continue to spend time with her?
A. I'm sorry, I didn't hear you.
Q. As Minor Victim got -- throughout Minor Victim's life have you continued to spend time with her?
A. Yes.
Q. Okay. At a certain point in time did Heather and David and Minor Victim move to Anderson?
A. They did whenever they got married.
Q. Okay. Did you still continue to spend time with Minor Victim then?
A. I did.
Q. Would she stay over at your house?
A. She would.
Q. About how often would she stay with you?
A. At least two times a month over the weekends.
Q. Okay. When she would stay with you, did you have a certain -- my family we call it night night routine. Do you have a certain night night routine with her?

A. We did.
Q. What would you do with Minor Victim ?
A. We would play during the day and at the end of the day we would take our baths, or she would -- I would give her a bath and she would get her PJ's on and we would get ready for bed, and then we read a book. We would go to bed, say our prayers and read our book and talk.
Q. Okay. In March of 2011, did Minor Victim spend the night with you towards the end of that month?
A. Yes.
Q. Okay. Could you tell the jury about the routine that you went through with her that night that she was with you?
A. Well, we gave our baths. We got our baths. We went and put our PJ's on and read our book and said our prayers and she wasn't real sleepy that night, so we just started talking.
Q. Did you have the lights on, or was there overhead light, or any type of light in the room?
A. We had a lamp on to read the book.
Q. Okay. At a certain point did Minor Victim speak, or -- that night did Minor Victim make a disclosure to you about sexual abuse?

MR. SHABEL: Objection, calls for hearsay.

MS. JORDAN: Your Honor, under 802 I believe that I can get into this as one of the exceptions to the hearsay

or a statement that was not hearsay.

THE COURT: Mr. Shabel?

MR. SHABEL: Under 802?

MS. JORDAN: I believe it's 802 (d), the last line, but I'll double check.

MR. SHABEL: Please do.

MS. JORDAN: Your Honor, I apologize, it's 801 (d)(1)(d).

MR. SHABEL: And your basis for that is?

MS. JORDAN: May we approach?

THE COURT: Yes, please.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: Solicitor.

BY MS. JORDAN:

Q. The end of March, 2011, did Minor Victim state to you -- did Minor Victim make a sexual assault disclosure to you? Just answer yes or no.

A. Yes.

Q. And I failed to mention this earlier. What does Minor Victim call you?

A. Mimi.

Q. Okay. I believe I might have called you Mimi earlier. What did you do with that information?

A. I -- I was in disbelief in a way to what she said, so I

just passed it around in my mind for a day or two and then I went to my husband and told him.

Q. Okay. Did -- did Heather Jolley tell you that -- did Heather Jolley tell you that Minor Victim has been sexually assaulted?

MR. SHABEL: Objection, calls for hearsay.

MS. JORDAN: I'll withdraw it, Your Honor.

THE COURT: Okay.

MS. JORDAN: May I have a moment?

THE COURT: Yes, ma'am.

(Off the record)

(Back on the record)

MS. JORDAN: Your Honor, could we go back to my last question?

THE COURT: Okay.

MS. JORDAN: And could I ask it again, because I don't believe it's hearsay. I believe it's just a yes or no statement that's not eliciting any type of hearsay.

THE COURT: All right, ask the question and let's see.

BY MS. JORDAN:

Q. Did Heather Jolley at any point in time tell you that or make the statement that Minor Victim had been sexually assaulted?

A. No.

Q. Did anyone, other than Minor Victim tell you that she had been sexually assaulted?
A. No.
MS. JORDAN: Your Honor, I have no more questions for this witness.
BY MS. JORDAN:
Q. If you will please answer anything that Mr. Shabel may have.
THE COURT: Mr. Shabel.
CROSS EXAMINATION BY MR. SHABEL:
Q. So Minor Victim makes a disclosure of a sexual assault to you?
A. Correct.
Q. And you sat on that for a day or two without telling anyone?
A. I was in shock of what she said. I wasn't expecting it.
Q. Who did you tell?
A. My husband.
Q. When did you tell Heather?
A. My husband made a phone call to her on that following Thursday.
Q. How many days after you talked to your husband did your husband make a phone call to your daughter?
MS. JORDAN: Your Honor, I would object. I don't

know if it's speculation if she was present when the phone call was made or anything like that.

THE COURT: Well, if she can answer it, we'll see, if she knows.

BY MR. SHABEL:

Q. Were you present when the phone call was made?

A. Was I present during the phone call?

Q. No. When the phone call was made, were you aware that the phone call was being made?

A. Not until afterwards.

Q. Okay. Isn't it true that you and your husband waited a couple of days to tell Heather?

A. Yes, because we weren't sure which way to go with it, whether -- I mean, he went to the guardian ad litem.

Q. You waited a couple of days?

A. We did.

Q. Thank you.

MR. SHABEL: Nothing further.

THE COURT: Anything?

REDIRECT EXAMINATION BY MS. JORDAN:

Q. Ms. Smith, you all waited a couple of days to tell Heather. How soon did you tell the guardian ad litem, or how soon was the guardian ad litem notified?

A. My husband -- I told him and he told the guardian ad litem immediately after telling him.

Q. Okay. And this is guardian ad litem Alex Wolf that we have previously heard testimony about?

A. Correct.

Q. Okay. And at that point in time were you aware of any visitation between Minor Victim and Daniel Spade?

MR. SHABEL: Objection. Outside the scope of redirect.

THE COURT: Yes. Let's move it along.

MS. JORDAN: Nothing further, Your Honor.

THE COURT: All right. Thank you.

Ma'am, you may step down, please. Please be careful.

Yes, ma'am.

MS. LESKANIC: Thank you, Your Honor.

The State calls Tabitha Webber.

THE COURT: Ms. Webber, come forward and be sworn, please.

MR. SHABEL: Your Honor, may counsel approach?

THE COURT: Certainly.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: Mr. Foreman --

Let's have her sit down.

Mr. Foreman, ladies and gentlemen, this is one of those times again where I need to take up a matter with the

lawyers, so if you would return to your jury room, please.

(The following takes place outside the presence of the jury panel)

THE COURT: Where are we? I thought we had this ironed out.

MS. LESKANIC: Your Honor, there -- during the first interview that Minor Victim went to with Ms. Webber, when she first started talking she spoke about a child at school by the name of Nathan.

THE COURT: Nathan.

MS. LESKANIC: We discussed that on Monday as part of the State's third-party guilt motion and we all agreed that nobody was going to go into that.

THE COURT: Right.

MS. LESKANIC: In speaking with Ms. Webber, she is certainly concerned she doesn't want to tell a lie on the stand and if we were to ask did she report a sexual assault, I am referring to a sexual assault involving the defendant. However, I can't ask her who Minor Victim named.

MR. SHABEL: We have also got the issue of that she disclosed something about Nathan. And then she asked if Danny D did this and she used "no, Nathan." So we have got major issues throughout the interviews.

MS. LESKANIC: And I'm just trying to figure out the correct way to couch the answers. I'm not trying to

pull Nathan out of her. I don't think I can ask her who. I can just say "did she report a sexual assault? Did she say where it happened," which I think is going to elicit an answer of a motel with a pool would be her answer. But if she were to give a thorough answer and could go into third-party guilt, which, of course, we don't want, it may also be at school with Nathan. She wants to answer the question completely, but also be in compliance with the court's ruling on third-party guilt, and I wanted to make sure we were all on the same page.

THE COURT: Well, I understand. I mean, we took this up in motions yesterday and I -- we limited it to, you know, that there is no third-party guilt in this, right? I mean, that's where we are, and Nathan, that came up yesterday.

MS. LESKANIC: Yes, sir.

THE COURT: I think we were under the impression we were limiting that. That's the ruling. That was the agreement.

MR. SHABEL: Judge, given the nature of what I'm about to argue, I would like to do this in chambers.

THE COURT: Okay. We can do that. We can do that. Let's get off the bench. We will go back.

(Whereupon, the proceedings were recessed)

(Whereupon, the proceedings were reconvened)

MR. SHABEL: Yes, Your Honor. Thank you for the indulgence.

THE COURT: Okay.

Ms. Webber, come on up.

Has she been sworn?

THE CLERK: No, sir.

THE COURT: Okay.

Let's have the jury.

MR. SHABEL: Your Honor, may we approach briefly while the jury is coming in?

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

(The following takes place in the presence of the jury panel)

THE COURT: All right. Ms. Webber, come up and be sworn, please.

TABITHA WEBBER, having been first duly sworn, testified as follows:

THE COURT: Ma'am, if you would tell us who you are and spell your last name, please?

THE WITNESS: My name is Tabitha Webber, W-E-B-B-E-R.

THE COURT: Okay. Solicitor?

MS. LESKANIC: May it please the court?

DIRECT EXAMINATION BY MS. LESKANIC:

Q. Thank you. Where are you employed, Ms. Webber?

A. At the Children's Advocacy Center in Spartanburg, Cherokee, and Union Counties.

Q. And this jury has heard a lot today about the Children's Advocacy Center. Could you please inform them a little bit about what the Advocacy Center is and what you do at the Advocacy Center?

A. Yes, we are a center that provides treatment for children. We do assessments when there has been allegations of sexual abuse, physical abuse, or a child has witnessed a violent crime. And we are there -- we are very child friendly. We are there so that a child does not have to go from place to place to place to be interviewed. They can come to one place and other professionals can come watch that interview, so that the child does not have to talk over and over again.

And we also provide medical exams. We have a forensic pediatrician. We also provide therapy, and we have multi-disciplinary team meetings and make recommendations based on the best -- the best recommendations for the child.

Q. How long have you been working with the Children's Advocacy Center?

A. For about fourteen years now.

Q. And what type of education, training, and experience do

you have to hold that position at the Advocacy Center?
A. I have a Bachelors Degree in Psychology, a Masters Degree in Social Work, and I'm a licensed independent social worker through the State of South Carolina. And I have extensive training in child development, child abuse, linguistics, developmental delays, pediatric psychotherapy, play therapy. Lots of issues surrounding children, primarily.
Q. Do you know Minor Victim ?
A. I do.
Q. Did you meet with Minor Victim in regard to this case?
A. Yes, I did.
Q. Did you conduct a forensic interview with Minor Victim
A. Yes, I did.
Q. Do you know what days that you conducted those interviews?
A. I saw her -- it was all in 2011, and it was April the 7th, April the 4th, April 12th, April 14th, and May 6th.
Q. All right. During your forensic interviews with Minor Victim did she disclose to you a sexual assault occurring to her in South Carolina?
A. She did.
Q. Did she say where that happened?
A. She did.
Q. Where did she say that happened?

A. She said it happened at the hotel with a pool.
Q. All right. After receiving that information from Minor Victim and concluding your forensic interviews, what did you do?
A. I made recommendations for her to begin therapy.
Q. And was law enforcement contacted?
A. Yes. Yes.
Q. Did you make that contact yourself?
A. I did.
Q. Okay.
A. I did. I made a report to law enforcement and got in touch with the detective and I gave the detective my information.
Q. Okay.

(Off the record)

(Back on the record)

BY MS. LESKANIC:

Q. Do you know who the investigator was that you contacted regarding this case, or did you just make a general referral to the sheriff's department?
A. Usually I just make a general referral to the sheriff's department and they let me know, or the detective themselves will contact me when they have been assigned the case.
Q. And did you find out who was assigned in this case?
A. Yes, it was Detective Nikki Cantrell.

Q. Thank you very much. Please answer any questions that the defense has.

MR. SHABEL: No questions, Your Honor.

THE COURT: Thank you.

Ms. Webber, you may step down. Thank you. Please be careful.

MR. BRANNON: The State calls Meredith Thompson-Loftis.

MR. SHABEL: I would renew my motion previously made, Your Honor, regarding her testimony.

THE COURT: Yes, sir. It's overruled.

MR. SHABEL: Thank you, Your Honor. I preserve the record.

THE COURT: Yes, sir.

MEREDITH THOMPSON-LOFTIS, having been first duly sworn, testified as follows:

MR. BRANNON: May it please the court?

THE COURT: Yes.

DIRECT EXAMINATION BY MR. BRANNON:

Q. Ma'am, would you please state your full name for the record and spell your last, please?

A. It's Meredith Leanne Thompson-Loftis, L-O-F-T-I-S.

Q. Okay. Now is Thompson-Loftis, is that what it is?

A. Yes, sir.

Q. Okay. All right.

Ms. Loftis, what do you do for a living?

A. I'm a licensed professional counselor in private practice in Greenville.

Q. Okay. Would you tell the court what your educational background is?

A. I have a Bachelor of Science in Human Development and Family Studies from Pennsylvania State University.

I have a Master of Arts in Counseling.

I also have been licensed by the State of South Carolina as a licensed professional counselor.

I received the annual training every year.

I have worked at the Children's Advocacy Center for about five years here in Spartanburg, and I have been in private practice since 2001.

Q. Okay. And who are your typical clients or patients?

A. Typically I see children, families. I have some young adults that I see, college-aged students, but the majority of my clients are children under the age of eighteen.

Q. Okay. And do you have any specific -- you mentioned that you are licensed by the State of South Carolina. What license do you hold?

A. I have a license as an LPC, which is a licensed professional counselor.

Q. Okay. And to maintain that license, are you required to get certain numbers of hours of continuing education?

A. Yes, we have to get twenty hours a year.
Q. And are you current with those continuing education hours?
A. Yes, I am.
Q. Do you also keep up with treatises and articles and writings within your profession?
A. I try to as much as I can, yes.
Q. Okay. Now, you said that your typical client or patient is a child, some young adults, correct?
A. Yes, sir.
Q. And what do you typically treat your clients or patients for? Why are they there?
A. A wide variety, but typically I do a lot of trauma. I also see a lot of children with anxiety, divorce reaction. I had a specialty in forensic sensitive therapy, in addition to sexual abuse of children.
Q. Okay.
A. PTSD.
Q. Do you deal with play therapy, for instance?
A. I do.
Q. Okay. And are you trained in play therapy?
A. I have received training in play therapy, yes.
Q. In your practice do you make diagnoses?
A. Yes, I do.
Q. Do you treat after the diagnosis?

A. Yes.
Q. And is treatment considered therapy?
A. Yes, sir.
Q. Okay.

MR. BRANNON: Your Honor, I would ask at this point that she be admitted as an expert in child abuse diagnosis, treatment, and therapy.

THE COURT: Say that again, Mr. Brannon.

MR. BRANNON: Child abuse, diagnosis, treatment and therapy.

THE COURT: Mr. Shabel?

MR. SHABEL: If I may ask some questions?

THE COURT: Yes, sir.

VOIR DIRE EXAMINATION BY MR. SHABEL:

Q. How much of your licensure requirement goes into child abuse, diagnoses, and treatment?
A. It just depends. You know, depending upon which trainings I attend each year.

Being that a majority of my clients are trauma victims, or have been in the past, I have quite an extensive amount of forensic and sexual abuse training, Post-Traumatic Stress training.

MR. SHABEL: Your Honor, I do have an objection, but I believe it needs to be heard outside the presence of the jury.

THE COURT: Okay. Mr. Foreman, once again we need to take up a matter outside of your presence, so if you would kindly take your jury.

(The following takes place outside the presence of the jury panel)

THE COURT: Yes, sir.

MR. SHABEL: Thank you, Your Honor, for your indulgence.

My objection is to not necessarily that this witness may be an expert in some field, but my objection is to the very field that Mr. Brannon is asking this court to find her an expert in. He's asking her to find Ms. Loftis as an expert in child abuse diagnosis. I believe that gets to the very issue for which this jury is about to make a determination of guilt or innocence, so I would ask that she not be found as an expert in the field of child abuse diagnosis, because I think that would be unfairly prejudicial to my client and would have far less probative value. That's my first objection.

My second objection, Your Honor, would be qualifying this expert in the field of child abuse treatment, because, again, it would be her expertise that she's treating a victim of child abuse, which once again implies that this victim is, in fact, a child abuse victim, which again would be highly prejudicial to my client.

I have no objection to this witness being offered as an expert in the field of individual counseling and child therapy, because that doesn't imply any guilt upon my client.

THE COURT: Mr. Brannon?

MR. BRANNON: First of all, Your Honor, while I'm not -- while I'm not agreeing to remove the word diagnosis, Your Honor, how can you properly treat someone if you haven't been able to diagnose that person? If you are agreeing that she's an expert in the treatment, you -- I mean, you can't get to one without the other. That's why I included diagnosis, treatment, and therapy.

Your Honor, first off I have to say this woman was admitted as an expert in another court related to the same child in the same set of facts and circumstances. I understand there is a different burden of proof in the other court, but there is no different burden in the admission of an expert in the Family Court than there is in the General Sessions Court.

So, Your Honor, I would ask that the court overrule the objection.

THE COURT: Let me ask this, Mr. Brannon, has she been qualified as an expert in any court in child abuse, diagnosis, treatment, and therapy?

MR. BRANNON: I can't answer that question

specifically. She's been admitted as an expert multiple times in state court, Family Court.

And I -- I would have to say that she's been admitted as an expert in treatment and therapy. It's my extrapolation that you can't provide therapy if you can't diagnose.

MR. SHABEL: Briefly in response, Your Honor?

THE COURT: Yes, sir.

MR. SHABEL: First of all, Mr. Brannon is correct. She was qualified as an expert in a hearing in October of 2012. She was qualified in the field of family counseling and child therapy, which is what I indicated to the court earlier I had no objection to.

The problem again, Your Honor, is by -- by qualifying her as an expert as the treatment of child sexual -- of child abuse or the diagnoser of child abuse, it's implying to the jury that the person you are seeing is a victim of child abuse. It's extremely prejudicial to put that before the jury and say "okay, we are treating this child who has been a victim of child sexual abuse. Guess what, Mr. Spade is here being accused of child sexual abuse, boom, make the connection." It's not a very short trip.

We ask that she be qualified only in the field as an expert of family counseling and child therapy.

THE COURT: Mr. Brannon?

MR. BRANNON: Your Honor, again, how can you provide therapy if you don't know what's wrong?

THE COURT: Okay. The court will qualify her -- you want her as a family -- as family counseling and child therapy.

MR. SHABEL: Thank you, Your Honor.

THE COURT: We will go with that.

MR. BRANNON: Thank you.

THE COURT: Anything else?

MR. BRANNON: Nothing.

MR. SHABEL: We would ask the court instruct the jury that they are not to treat her in the form of the expert that was requested.

MR. BRANNON: Well, I would just ask the court to say she's being admitted as an expert in the area of child therapy.

THE COURT: I'm going to advise the jury that she's being qualified as an expert of family counseling and child therapy.

MR. SHABEL: Thank you, Your Honor.

MR. BRANNON: Thank you.

THE COURT: Yes, sir.

(The following takes place in the presence of the jury panel)

THE COURT: All right. Ladies and gentlemen of

the jury, the witness is being proffered and the court is qualifying her in the area of family counseling and child therapy.

And as I have told you before, a person cannot give opinion testimony. When a person testifies, they must testify as to what they either saw, heard, or sensed, or smelled, or something of that nature, but there is an exception when someone is qualified because of education, experience, knowledge, skill, or training. In that case they are permitted to give an opinion.

The court has now qualified this witness as an expert in the area of family counseling and child therapy. That does not mean that you must accept her opinion, but it is evidence for you to use in any way that you see fit and you should give any weight and credibility that you believe is appropriate. Thank you.

MR. BRANNON: May it please the court?

THE COURT: Yes, sir.

BY MR. BRANNON:

Q. Ms. Loftis, do you know Minor Victim?

A. Yes, I do.

Q. Is she one of your --

Let me clarify. Do you call them patients or clients?

A. Clients.

Q. Okay. Is Minor Victim one of your clients?

A. She is.
Q. When did you first meet Minor Victim
A. Minor Victim first came to my office back in May of 2011.
Q. Okay. Do you have any idea how or why she appeared in your office? Was she referred there?
A. She was.

I used to work for the Children's Advocacy Center in Spartanburg, so I also do a tremendous amount of victim assistance, which means I treat people who qualify for victim services. And since I took that, Ms. Webber referred Minor Victim to see if I could provide therapy for her under victim assistance and I agreed, and Minor Victim was brought for her session, first session, in May of 2011.

Q. Okay. And so the lady who just testified before you, Tab Webber, is the one who referred Minor Victim to you, is that correct?
A. Yes.

MR. SHABEL: Objection to leading.

THE COURT: Overruled. Go ahead.

MR. BRANNON: Okay. Thank you.

BY MR. BRANNON:
Q. All right. Now, in cases where there is abuse of any kind, is it typical for a child after the Children's Advocacy Center interviews to change therapists?
A. I think once a determination has been made or a

recommendation has been made, I typically see most forensic interviews results in therapy or further therapy, and I don't think it's unusual for someone to be referred to a different therapist, based upon the type of treatment they provide, or based upon the types of insurance panels there are on. There could be a number of reasons.

Q. Okay. So what this jury already knows is that Minor Victim was seeing Kim Rosborough. Minor Victim then went to the Children's Advocacy Center, and then Minor Victim came to see you. Is that unusual in the typical case of abuse?

A. No, not at all.

Q. Okay. Thank you.

Ma'am, can you please describe what a partial disclosure is?

A. A partial disclosure --

MR. SHABEL: Objection, Your Honor, outside the witness' expertise.

THE COURT: Mr. Brannon?

MR. BRANNON: I can rephrase the question.

THE COURT: Okay.

BY MR. BRANNON:

Q. Ma'am, are you familiar with the term partial disclosure?

A. Yes.

Q. Can you define it or describe it to the jury?

A. Yes, I can.
Q. Thank you.
Would you please do so?
MS. JORDAN: Renew the objection.
THE COURT: Overruled. Go ahead.
A. A partial disclosure is one where children who take time to disclose all different parts of abuse that they -- what I refer to as piecemeal disclosure. They take different pieces and they report what they can when they feel safe and what they are able to report at that given time. So it's not unusual to see kids report part of the disclosure and then the rest of that disclosure at a later point in time.
BY MR. BRANNON:
Q. All right. And does age sometime impact partial or the totality of the disclosure?
A. Absolutely. I think age, the child's personality. A lot of factors can affect the totality of a disclosure.
Q. All right. Are you familiar with the term delayed disclosure?
A. Yes.
Q. Can you describe or define it to the jury?
MR. SHABEL: Objection. Outside the witness' expertise as a family counselor or a child therapist.
THE COURT: Mr. Brannon?

MR. BRANNON: Again, Your Honor, I asked her if she was aware of the term and asked her if she could define or describe it.

THE COURT: If she knows what the term means, she can describe it. Overruled.

Go ahead.

A. Delayed disclosure is very similar to partial disclosure or piecemeal disclosure. It's one where children take time to disclose over time. They may tell one portion of it, disclosure at one point, and then maybe a significant period of time before they can tell the rest of it.

BY MR. BRANNON:

Q. All right. Is it -- is delayed disclosure, can it also be described in an act of any type of abuse occurring today and even a partial disclosure a month later, or a year later, or twenty years later?

MR. SHABEL: Objection. Speculative and outside the scope of this witness' expertise.

MR. BRANNON: Your Honor, I --

THE COURT: Let me see the lawyers.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

MR. BRANNON: Your Honor, may I restate the question?

THE COURT: Yes, please.

BY MR. BRANNON:

Q. Ma'am, I believe my question was a delayed disclosure, might it also be described in a scenario where an event of any type of abuse occurred and a disclosure, even a partial disclosure, isn't made until some time significantly later, a month, a year, or twenty years?

A. Yes.

Q. Okay. Thank you.

Are you familiar with a term called coaching?

A. Yes, sir.

Q. Are you able to define or describe that to the jury?

A. Yes, sir.

Q. Okay. Would you please do so?

A. My understanding of coaching would be one where a child has been influenced or manipulated to say or do something that may not be accurate.

Q. Okay. Now, I'm going to get back to Minor Victim okay?

You testified May of 2011 was your first visit, is that correct?

A. Yes, sir.

Q. How many times have you seen Minor Victim

A. I was counting it and to date I have seen her seventy-one times.

Q. Is she continuing to be a client of yours today?

A. She is.

Q. Okay.

MR. SHABEL: Your Honor, I have a motion I need to make outside the presence of the jury.

THE COURT: All right, Mr. Foreman, please take your jury back to the jury room.

(The following takes place outside the presence of the jury panel)

MR. SHABEL: Thank you for the indulgence.

THE COURT: Yes, sir.

MR. SHABEL: Your Honor, I think I have to go into a little bit more detail now as I renew my motion to exclude this woman's testimony.

THE COURT: Okay.

MS. JORDAN: Judge Hayes' ruling was very clear. They had to provide me with her records within a reasonable time of trial.

As I stated yesterday in my motion, the last record I received from the solicitor's office that Meredith Loftis had seen this child is December 30th, 2013. If her testimony is that this child continues to be a patient of hers today, then I believe there are records that have not been turned over to me. And, therefore, I don't believe they are in compliance with Judge Hayes' ruling and I would ask that this witness be excluded and that all of her testimony be stricken from the record.

THE COURT: Solicitor?

MR. BRANNON: Your Honor, it's my understanding of the rule that discovery requires everything within the State's control and possession be turned over.

If I may approach, Your Honor, here is the last page of the discovery materials in the trial notebook dated December 30th, 2013. We are in the second month of 2014, Your Honor. Full disclosure has been made.

(Off the record)

(Back on the record)

MR. BRANNON: That's right. And the fax, the cover sheet says 2012 to present.

THE COURT: Mr. Shabel, do you have that? I think this was what was handed to me yesterday, was it not?

MR. SHABEL: If I may, Your Honor? Let me see this.

THE COURT: Wasn't that what was handed up yesterday?

MR. SHABEL: That is the last record I have, 12-30-2013, but if this witness has just testified that she continues to be a patient, I think it's important to know whether there are any additional sessions since that date.

MR. BRANNON: Your Honor, 2000 -- whatever it says to present indicates that they continue. I mean, it doesn't --

THE COURT: Ask her. Just ask her.

BY MR. BRANNON.

Q. Ms. Loftis, do you have any additional records dealing with Minor Victim post December 30th, 2013?

A. I have records for January 2014.

MR. BRANNON: Your Honor --

THE COURT: They will be excluded. The January records are not coming in.

MR. BRANNON: Then -- I understand the ruling.

Have I -- have I breached any -- I mean, all I said was how many times have you --

THE COURT: I understand.

MR. SHABEL: If I may -- I'm sorry, I didn't mean to interrupt.

THE COURT: Let me hear from Mr. Brannon.

Go ahead.

MR. BRANNON: All I have asked is how many times have you seen her.

THE COURT: Okay.

MR. BRANNON: The followup question to that is does she continue to be a client of yours. The answer was yes.

MR. SHABEL: I am reading directly from Judge Hayes' ruling. "If the State intends to call her as a witness in their case, they must turn over all such records

within a reasonable time prior to the trial of the case."

There are records I do not have. They have not complied with the court's order.

THE COURT: Mr. Shabel, I understand what you are saying, and the court's order ruling right now is they cannot use anything past December 31 of -- December the 30th, 2013. She's seen her in January. She's not going to testify to anything that happened since December 30th, 2013, Mr. Brannon.

MR. BRANNON: I understand that, Your Honor.

May I propose an alternative solution? We have already taken a break. There is one document the State -- I haven't even seen it. I mean, it's no unfair --

THE COURT: She's not going to testify to that.

MR. BRANNON: That's fine. Thank you, Your Honor.

MS. JORDAN: I'm just going by Judge Hayes' order and Judge Hayes ruling. I believe this witness should be excluded and I respectfully ask that.

THE COURT: I understand that. That's overruled, but your objection is on the record.

MS. JORDAN: Thank you, Your Honor.

THE COURT: But she will testify to nothing that happened past December 30th, 2013.

MR. BRANNON: I'm fine with that.

THE COURT: Anything else?

MR. SHABEL: No, Your Honor. Thank you.

THE COURT: All right. We are walking the jury now.

MR. BRANNON: She technically is still a client. I'm not -- I won't go -- I won't go past December 30th. Did that question -- is the court satisfied with the question?

THE COURT: I'm satisfied with that question --

MR. BRANNON: Thank you.

THE COURT: -- but we are not going to listen to any testimony from anything past December the 30th, okay?

We are ready?

MR. BRANNON: Yes, Your Honor.

THE COURT: Okay.

(The following takes place in the presence of the jury panel)

THE COURT: All right. Thank you, Mr. Foreman, ladies and gentlemen.

All right, Mr. Brannon.

MR. BRANNON: May it please the court?

THE COURT: Yes, sir, solicitor.

BY MR. BRANNON:

Q. Ms. Loftis, when Minor Victim first came to see you in May, was she displaying any particular symptoms to you?

A. She was.

Q. Can you explain what those symptoms were?

A. Minor Victim had nightmares. She had --

MR. SHABEL: Objection, Your Honor, outside this witness' firsthand knowledge. We ask for a better foundation.

THE COURT: Mr. Brannon -- isn't she the therapist?

MR. SHABEL: She's the therapist, but I'm trying to elicit what she -- I think the question is what she actually saw.

THE COURT: Ask the question again, Mr. Brannon.

BY MR. BRANNON:

Q. When Minor Victim came to see you in May of 2011, was she displaying any particular symptoms? That was the question.

MS. JORDAN: It calls for hearsay.

THE COURT: Overruled.

MR. BRANNON: Thank you.

THE COURT: Answer the question.

A. She was displaying fear. She was displaying anxiety. She was very shy. She was nervous. She had reported symptoms of nightmares, anger, bed wetting, fear of being alone. She was a very worried little girl.

BY MR. BRANNON:

Q. Thank you.

And in your treatment up to and through December 30th of 2013, have you seen progression, improvement? I don't

know what the clinical word is, in Minor Victim behaviors and the symptomatology?

A. I have. I have seen a lot of improvement in Minor Victim She's a client that I have had for a very long time and I have seen a lot of transformation in her. I have seen her go from someone who could barely talk about with anyone or look anyone in the eye to be able to talk and become confident and her self-esteem has gone up. Her social skills are so much better. She has friends. I mean, she engages in activities. She's -- she's a remarkable child.

Q. At any point during your treatment of Minor Victim up through December 30, 2013, did she make a disclosure of sexual abuse to you?

A. Yes, she did.

Q. Was she specific as to location?

A. She was.

Q. Was the location in South Carolina?

A. Yes, it was.

Q. Was she specific as to time, the time period?

A. The time period, yes.

MR. BRANNON: I have no further questions.

THE COURT: Thank you.

Mr. Campbell or Mr. Shabel?

MR. SHABEL: May it please the court?

THE COURT: Yes.

CROSS EXAMINATION BY MR. SHABEL:

Q. Your testimony is that this witness -- that this young girl was specific as to time?

A. Time period.

Q. She couldn't tell you a day?

A. Well, at the time she started seeing me she was four and a half years old --

Q. Right.

A. -- so it would not be unusual for a four and a half year old to be unable to give a specific exact date and year. She was able to identify a time period.

Q. Okay.

MS. JORDAN: Beg the court's indulgence.

THE COURT: Yes, sir.

(Off the record)

(Back on the record)

MR. SHABEL: Nothing further for the witness.

THE COURT: All right.

MR. BRANNON: Nothing, Your Honor, and ask this witness be excused.

THE COURT: Yes, ma'am, you may step down and please be careful and you may stay or go, whichever you choose.

THE WITNESS: Thank you.

MR. BRANNON: Your Honor, I would ask the court --

and I apologize for this. I know that we have been doing this a lot, but the State needs a break, Your Honor. We may have no more witnesses.

THE COURT: Okay.

Mr. Foreman, ladies and gentlemen, we may be toward the end of this case. I don't know. I'm learning about it as you learn about it, but let's do take about fifteen minutes while the lawyers sort things out and see where we go from here, but we will take about a fifteen, sixteen minute -- I tell you what let's do. Let's be back -- let's be back about twenty-five after. Will that give you plenty of time to sort out everything that you are going to do?

MR. BRANNON: Thank you, Your Honor. Yes.

THE COURT: And defense, does that give you plenty of time?

MR. CAMPBELL: Yes, sir.

MR. SHABEL: Plenty of time.

THE COURT: We will be back at twenty-five after and see where we are. All right.

(The following takes place outside the presence of the jury panel)

THE COURT: All right. You just want to --

MR. BRANNON: Your Honor, we are going to go get in a little conference room and chat and we will let the

court know.

THE COURT: Okay. Let's don't keep our jury waiting now. Let's decide something before twenty-five after.

MR. BRANNON: We will be ready before that, Your Honor.

THE COURT: Okay.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

THE COURT: Okay. It's 3:30 p.m.. We were going to be back at 3:25, but we were in chambers discussing a couple of matters.

I think I understand that the State intends to rest?

MS. JORDAN: Yes, sir, we do.

THE COURT: So the State rests at this point?

MS. JORDAN: Yes, sir.

THE COURT: All right.

MR. SHABEL: Your Honor, at this time the defendant would move for a directed verdict. Given the evidence in the light most favorable to the State, we do not believe the State has met its burden of proof in this matter. And specifically I want to draw the court's attention to the testimony of Minor Victim - or excuse me, Minor Victim. She was unable to testify to a specific

time. She was unable to testify as to a location, other than in a hotel bathroom. More importantly, Your Honor, she did not make an in-court identification of my client. She identified someone as Danny D, who is a bad man and that Danny D did a certain thing. There was no testimony elicited as to whether or not Danny D was in the courtroom. There was no testimony as to whether Danny D had even been anywhere involved in these proceedings. Therefore, we believe that a directed verdict is appropriate. Thank you, Your Honor.

THE COURT: Solicitor?

MS. JORDAN: Thank you, Your Honor.

We believe that a standard for a directed verdict motion is taking the testimony or evidence in the light most favorable to the nonmoving party, which is us, but there is plenty of evidence out there, not just to pass a directed verdict, but to get to a guilty verdict in this case to show that he committed a sexual battery upon a child who is under the age of eleven.

Your Honor, there is testimony out there that this child referred to him as Danny D; that Ms. Heather Jolley referred to him as -- that's how they came to a collective agreement to refer to him as Danny D.

She suffered the sexual battery and I'm sure the court will instruct the jury that fellatio is one definition

of sexual battery, which oral sex performed on a male. That was what Minor Victim described from the witness stand.

We believe that there is sufficient evidence out there, definitely enough in the light most favorable to the nonmoving party, that the motion for a directed verdict should be denied.

THE COURT: Thank you.

Your motion for a directed verdict is denied, Mr. Shabel. The court is concerned with a scintilla of the evidence, any evidence whatsoever, not the weight of the evidence itself.

MR. SHABEL: Yes, Your Honor.

THE COURT: But there is evidence from not only the child, but other witnesses as to the time and the place, the hotel that's in question, which is in Spartanburg County, South Carolina; that he was visiting with the child at that hotel; that he was the person who rented those rooms. She described the hotel. She is a small child. I don't know that she can be held to a standard of did it take place at 2:32 p.m., but certainly she didn't drive herself there. He drove her there and he had her on that time period on those weekends that mom has testified to. So there is more than a scintilla of evidence in this case.

The next motion?

MR. SHABEL: Your Honor, I just -- in addition,

Your Honor, I would just simply add for the record that I don't believe this child testified that the hotel was in Spartanburg, South Carolina.

THE COURT: Okay. Well, I don't know that the child necessarily testified to that, but there is a scintilla -- more than a scintilla of evidence that that hotel is in the County of Spartanburg, South Carolina.

MR. SHABEL: Thank you.

THE COURT: Other witnesses testified to that.

Other motions?

MR. SHABEL: Not from the defense, Your Honor.

THE COURT: Okay. At this point, Mr. Shabel, does the State -- I'm sorry, does the defense intend to put up a case, because the State has now rested.

MR. SHABEL: We do not, Your Honor, subject to your examination of my client regarding his Fifth Amendment privileges.

THE COURT: Okay. Is he choosing to testify or not testify?

MR. SHABEL: He's choosing not to testify, Your Honor.

THE COURT: Okay.

Sir, I'm going to ask you to stand, and you can stand with your lawyers, if you would like, and be sworn.

DANIEL WILLIAM SPADE, having been first duly sworn, testified as follows:

THE COURT: Sir, you have not the strongest voice. Maybe it's because you don't have a microphone over there, but I'm going to ask you to speak loudly when I ask you these questions here in a moment, because my court reporter has to record your answers, okay?

THE DEFENDANT: (Shaking head yes).

THE COURT: Now, sir, you are Daniel William Spade, is that right?

THE DEFENDANT: Yes.

THE COURT: Mr. Spade, at this time I'm going to explain to you certain of rights that you have. And if you do not understand anything that I say, please advise me of that.

If you need to speak to either or both of your lawyers in the next few minutes as I'm conducting this colloquy, you are certainly welcome to do so. If you will raise your hand or something to interrupt me, I will be happy to allow you time to talk to your lawyers. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Okay. We have reached the stage in this trial where you may present your defense. Your lawyers have indicated that they do not intend or you do not intend

to present a defense.

You have the right to claim protections given to you by the Fifth Amendment to the United States Constitution. And this Amendment states, in part, no person shall be compelled in any criminal case to be a witness against himself.

Also, Mr. Spade, you have the right to claim protections given to you by Article I, Section XII of the South Carolina Constitution, which states, in part, no person shall be compelled in any criminal case to be a witness against himself.

This means that you cannot be required to testify in this case. You have the right to testify on your own behalf, but no one can make you testify. That is a personal right and no one waive that right except you.

Your lawyers can give you advice as to whether you should or should not testify, but the decision not to testify in this case must be your decision and only your decision. Do you understand what I have told you?

THE DEFENDANT: Yes.

THE COURT: If you decide to testify, you will be subject to the same rules that govern other witnesses and you may be examined and cross-examined on any relevant issue in this case.

In addition, if you have any convictions involving

dishonesty, or false statement, or for crimes punishable by imprisonment for more than one year and this court determines that the probative value of admitting this evidence outweighs its prejudicial effect to you, the solicitor will be able to introduce your record to attack your credibility. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: If you decide to testify, the decision on your part must be freely, intelligently and voluntarily made with knowledge of the protections given to you by the Constitutions of the United States and of the State of South Carolina and the consequences of your decision to testify.

If you decide not to testify, I will instruct the jurors that they cannot give the fact that you did not testify any consideration whatsoever and that there is to be absolutely no prejudice to you because you did not testify.

It is left entirely up to you whether or not you testify. You may speak with your lawyers, your family and friends, or anyone else, but the final decision must be left entirely up to you.

Mr. Spade, I now ask you, do you understand what I have explained to you?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about what I have explained to you?

THE DEFENDANT: No.

THE COURT: Have you discussed with your lawyers whether you should or should not testify?

THE DEFENDANT: Yes, sir.

THE COURT: Do you wish to talk to either or both of your lawyers at this time?

THE DEFENDANT: No, Your Honor.

THE COURT: Do you wish to testify?

THE DEFENDANT: No, sir.

THE COURT: Is it your decision and only your decision not to testify?

THE DEFENDANT: Yes.

THE COURT: Did anyone force you, threaten you, coerce you in any manner not to testify?

THE DEFENDANT: No, Your Honor.

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

MR. SHABEL: With that the defense rests and renew my motion.

THE COURT: Okay. Defense has rested. Your motion is renewed and overruled as before.

Anything from the State?

MS. JORDAN: Yes, Your Honor, we do have two requests to charge.

Number one, and I have placed a copy on their

table. If I may approach?

THE COURT: Yes, please.

MS. JORDAN: Your Honor, the first one is that the testimony of the victim need not be corroborated in criminal sexual conduct prosecutions. That's in reference to Section 16-3-657 of the South Carolina Code Annotated.

The other one, Your Honor, is that time is not a material element of the crime of criminal sexual conduct under the State v. Wingo case, Court of Appeals, 1991.

We request that both of those be presented to the jury.

THE COURT: Objection from the defense?

MR. CAMPBELL: Your Honor, it was my -- I was under the impression we were going to discuss this in the morning.

THE COURT: We can.

MR. CAMPBELL: I would prefer to take this up at that time.

THE COURT: Sounds good. All right.

Anything else?

MR. BRANNON: One other motion, Your Honor. It deals with the sequence of the closing arguments, Your Honor.

I am fully aware of the rule that if the defense does not introduce evidence or call a witness, that they

then get the final closing argument. Your Honor, I would ask the court to consider something, though. Your Honor, in their -- in one of their cross-examinations they marked two documents as exhibits. They, in fact, informed the court that they would intend to introduce those documents through a subsequent witness. There was an objection made by, I believe, Ms. Jordan as to their questioning of the witness based on those documents. Based on their responses they intended to call a witness with whom they could introduce those documents. You allowed them to question those witnesses. Your Honor, they have subsequently decided that they are not going to call that witness; therefore, not introduce those documents. But, Your Honor, they led everyone in this courtroom to believe that they intended to call that document. I believe then they, therefore, forfeited final close.

THE COURT: Defense?

MR. SHABEL: Your Honor, if you want to talk about things we were led to believe, everybody's witness list is twelve to thirteen witnesses long. Until the trial goes you don't know what's going to happen. You can't predict what evidence is going to come in or what evidence is going to come in or not, so I think it's unfair for the State to say well, you led us to believe. Well, we were led to believe there were fifteen witnesses. We were led to believe there

were different allegations. We were led to believe there were going to be medical evidence presented. So -- I mean --

One second, Your Honor.

(Off the record)

(Back on the record)

MR. BRANNON: I have a response, Your Honor.

MR. SHABEL: Those documents were never admitted into evidence. They questioned the witnesses in redirect just as much. They could have offered the documents in evidence as well, Your Honor.

THE COURT: Yes, sir.

MR. BRANNON: Your Honor, none of our insinuations were made in the presence of the jury.

THE COURT: I knew where you were going with that.

Okay. That's under advisement. I'll rule on that in the morning.

MR. BRANNON: Thank you.

THE COURT: Yes, ma'am.

MS. JORDAN: Judge, could I add a third request to charge --

THE COURT: Yes.

MS. JORDAN: -- which would be the definition of fellatio? I know the court will read that as part of the sexual battery. If the court wants to give the definition

of cunnilingus also, but I think it's important that the jury know the definition of that word.

THE COURT: All right, here is what we are going to do. Everybody has Trey's e-mail, right? I mean, it's on the --

MS. JORDAN: Yes, sir.

THE COURT: And I want to make sure that everybody here, you know, we have your e-mail. I certainly have -- I should have everybody. Everybody is a member of the Bar and you are required to have it on the Bar's website, so what's going to happen is Trey is going to work. He's already working on it and he will work on a proposed charge. As I told you in chambers, and I'll say it for those in the audience, he will continue to work on that into the evening, if necessary. He will then e-mail that to each of you lawyers so you will have it sometime tonight. I don't know if that would be seven p.m. or eight, but Mr. Odom will get it to you. It is a draft. Okay. It is a draft document.

Tomorrow morning Mr. Shabel has another matter that he has to be at very early, so we are going to start at 10:30 tomorrow morning. However, at 9:30 the lawyers are going to convene for the purpose of a charge conference. So we will be in this courtroom tomorrow at that time. By that time you will have had a chance to review the draft document. Mr. Shabel can certainly send Mr. Campbell to you

any comments that he has on it before that time period, so we will have an hour to flesh that out in the morning and I will rule on this other motion that Mr. Brannon has made as well, but my intent is to bring the jury back at 10:30 and begin promptly at 10:30.

Anything from anybody?

MR. BRANNON: No, Your Honor?

MR. SHABEL: No, Your Honor.

THE COURT: Okay. All right.

At this time then, everybody, State and defense, I'm going to bring the jury in, advise them on the record that both sides have now rested, admonish them and instruct them not to begin deliberations in this matter until tomorrow, and I'm going to release them until 10:30.

Any objection?

MR. SHABEL: None.

THE COURT: Okay. Let's have our jury.

(The following takes place in the presence of the jury panel)

THE COURT: Any matters, Mr. Foreman?

THE FOREPERSON: No, sir.

THE COURT: Okay. Ladies and gentlemen of the jury, the State has now rested its case in this matter, which means that they don't intend to call any other witnesses or put up any other evidence. And, likewise, the

defense has now rested in this matter. So this case, as far as the testimony goes and the evidence to come in before you is at an end.

So just giving you an idea of what we are going to do at this point is I'm going to release you back to your jury room to be released for the day. The lawyers and I will confer on a couple of matters, but tomorrow morning we need to start just a little bit later, because there's another matter that I must attend to that was previously scheduled, so we are going to ask you to be here tomorrow morning ready to go at 10:30. Be ready to go at 10:30. Again, I will be here, the lawyers will be here, but I have got another matter that has nothing to do with this case that I must attend to in the morning, so I don't want you sitting back there. So we would ask you to be here about 10:15, 10:20, and we will be ready to go at 10:30.

I also remind you that you are not to begin deliberating this case. Don't discuss it with your family, friends, neighbors. Not even within your own mind don't do that, because you must deliberate as a collective group of twelve.

So with that, Mr. Foreman, we will let you take your jury out and be released from your jury room, but please be back timely in the morning.

(The following takes place outside the presence of

the jury panel)

THE COURT: Anything from the State?

MS. LESKANIC: No, Your Honor.

THE COURT: Anything from the defense?

MR. SHABEL: No, Your Honor.

THE COURT: Okay. Well, once again I invite you in the next couple or three hours if you have a proposal to add to the charge, if you will send it to Mr. Odom, he will ferret that out, okay?

MR. SHABEL: Yes, Your Honor.

THE COURT: We will see everybody at 9:30. 9:30 in the morning.

MR. CAMPBELL: Yes, sir.

THE COURT: All right. We are in recess until then.

(Whereupon, proceedings were recessed to February 26, 2014)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

THE STATE)
)
-vs-) TRANSCRIPT OF RECORD
) 2011-GS-42-04171
DANIEL WILLIAM SPADE,)
) FEBRUARY 26, 2014
DEFENDANT. SPARTANBURG, SOUTH CAROLINA

(VOLUME III)

B E F O R E:

THE HONORABLE R. KEITH KELLY, JUDGE. ; And a Jury.

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

BARRY J. BARNETTE, SOLICITOR
JENNIFER A.J. JORDAN, ASSISTANT SOLICITOR
KIMBERLY L. LESKANIC, ASSISTANT SOLICITOR
N. DOUGLAS BRANNON, ESQUIRE, SPECIAL PROSECUTOR
ATTORNEYS FOR THE STATE

KENNETH P. SHABEL, ESQUIRE
SHAWN M. CAMPBELL, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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THE COURT: Okay, we will be back on the record.

We've had a charge conference this morning off of the record and I do think we had two matters that need to be put on the record, is that right?

MR. BRANNON: Actually, Your Honor, there is a third issue that won't take any court's time.

As the court is aware, I made a motion yesterday asking the court to consider flipping the closing arguments.

Your Honor, first off forgive me. After I made the motion, I did some more research and I found that my request was not the correct remedy for the situation, and so with that now -- with that knowledge I would withdraw that motion.

THE COURT: Okay. That motion is withdrawn.

So we have two matters then, one from the State and one from the defense.

MR. BRANNON: Yes, Your Honor. Thank you.

THE COURT: All right.

Yes, ma'am, solicitor.

MR. BARNETTE: Your Honor, I'll put this on the record. In the charge conference we were talking about I believe on the verdict form, Your Honor, that you submitted, there was two parts to it. The first part was "we find for the defendant Daniel William Spade concerning the offense of

criminal sexual conduct with a minor in the first degree." You had the verdict form not guilty and guilty. Of course, I know that's how you always put it there, Your Honor. We have no objection that.

The second part was -- it's not an objection. The second part of it was "we, the jury, unanimously find the conduct constitutes a sexual battery by the defendant Daniel William Spade involving," there was three different ones by statute; sexual intercourse, anal intercourse, intrusion by an object. Your Honor, we realize that's for aggravation possibly used for a death penalty on a second conviction for CSC with a minor, first degree, Your Honor. We are going to waive that part of it in this case, because I think even if we did go forward with that, I think Kennedy v. Louisiana, which is a U.S. Supreme Court case, 554 U.S. 407 cite, Your Honor, we wouldn't be able to go forward on the death penalty anyway. We feel like it would be very confusing to the jury in this case of the allegations of oral sex in this case. So as the solicitor I'm asking that we go ahead and basically dismiss that part of it and waive that part of it, Your Honor.

THE COURT: Okay.

MR. BARNETTE: We will not proceed on that.

MR. CAMPBELL: We are in agreement with that. No problem with that.

THE COURT: Okay. It's without objection.

Of course, I put that, as everybody here knows, the lawyers at least know, that's what the statute has written by General Assembly, so that's why that was included on that verdict form, and I understand why, and I understand that the State is waiving this without objection.

MR. BARNETTE: And we are waiving it, Your Honor, because obviously we are not looking to use it at a later time, so I think it would hurt us in that situation. It would not hurt the defendant. As a matter of fact, it would be beneficial to the defendant.

THE COURT: It the would be beneficial to the defendant, that's correct.

MR. BARNETTE: Yes, sir.

THE COURT: And it's without objection.

And I think that the State -- I mean the defense has a motion.

MR. CAMPBELL: Yes, Your Honor, briefly.

As to one charge that's included, the phrase additionally, "time is not a material element of the crime of criminal sexual conduct." I believe time is an important element in this case. Specifically in the indictment it alleges that these acts occurred on or before September and October. That is the specific time frame, Your Honor. So as such we believe that time is an important factor.

Also because there has been testimony that this child stayed at a hotel with the defendant other than those two incidences. So, I mean, that is an important part of this case.

THE COURT: Okay. Solicitor?

MS. JORDAN: Your Honor, we believe that is an appropriate request to charge and for the judge to charge that, because under State v. Wingo it says time frame not being an essential element, in that especially in cases like this you have small children who can't pinpoint the exact day, which is why we have a gap out time frame of the two visits that the child had, unsupervised, here in Spartanburg County between September and October of 2010.

THE COURT: Yes.

I'm going to overrule your motion there, Mr. Campbell, considering that the time frame has been introduced as between certain dates in the child's testimony. I'm taking into account also the age of the child at that time.

Okay. Anything else from the defense?

MR. CAMPBELL: That's all, Your Honor. Thank you.

THE COURT: All right. We can be off the record.

(Off the record)

(Back on the record)

THE COURT: Are we ready now?

MR. BRANNON: Yes, Your Honor.

THE COURT: It looks like we have got the charge ready, so we are ready to argue. Okay.

Mr. Bailiff, if we could have our jury.

(The following takes place in the presence of the jury panel)

THE COURT: Good morning, ladies and gentlemen.

Mr. Foreman, any matters from the jury?

JURY FOREPERSON: No, sir.

THE COURT: We are ready to begin.

Call your attention to the lawyers when they give summations.

MR. BRANNON: May it please the court?

THE COURT: Yes, sir.

MR. BRANNON: Good morning, ladies and gentlemen.

First off, on behalf of Ms. Leskanic and Ms. Jordan I would like to thank you for your time and attention that you have put into this trial. While it has not been an extraordinarily long trial, it's been a very, very important trial.

As you are aware, this man, Daniel Spade, is charged with the crime of criminal sexual conduct with a minor in the first degree.

After Mr. Shabel gets up and makes his closing statement the judge is going to charge you on the law. He's

going to tell you what that law is, but just for the purposes of my closing argument I want to tell you that criminal sexual conduct occurs when a sexual battery is put upon an individual.

In this case it's criminal sexual conduct in the first degree because of the age of the victim. The law requires that the victim be under eleven years of age.

Sexual battery is defined as -- I'm going to read it. Sexual battery means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or any other object. That's the definition of sexual battery, and I'm going to put dot, dot, dot, because there are some other words, but they don't matter in this situation.

So what we, the State of South Carolina, have to do in this case is prove beyond a reasonable doubt, and I want to talk about that for just a minute.

A reasonable doubt is defined as that doubt that would cause a reasonable person to hesitate to act.

Now, what I want you to understand is that it doesn't mean beyond all doubt. It doesn't mean proof positive. It simply means beyond a reasonable doubt.

What we have to prove is that Minor Victim -- you may have heard Minor Victim but Minor Victim is under eleven years of age.

Well, ladies and gentlemen, what you can do is you you can look at the evidence that has come in from this witness stand or that has been introduced into evidence and you look at the evidence in this case. Minor Victim told you how old she was. You saw her. Her date of birth is [redacted] 2006. In fact, in Mr. Shabel's questioning of Heather Jolly, the very first thing he said to her on cross-examination was her date of birth is [redacted] 2006.

So, ladies and gentlemen, one of the elements of the crime is that the victim is under eleven years of age. I submit to you that the evidence has shown beyond a reasonable doubt that she's under eleven years of age.

The other element that we have to prove beyond a reasonable doubt is that a sexual battery occurred.

Now, ladies and gentlemen, what Minor Victim told you, what this girl who is now seven years of age told you, was that he put his penis in her mouth. "And if you don't do it, I won't take you home."

Please keep in mind the statute says penetration, ever so slight. Penis in the mouth. Ever so slight.

But I want to give you another definition, and that's the definition of fellatio, and I had to look it up, but it's real simple. Fellatio is oral sex on a man.

Those are the elements. That's it.

Now, one good argument that we have to prove that

it occurred in Spartanburg County and that it occurred in South Carolina. I'm going to tell you that this Holiday Inn Express is in Duncan, South Carolina. And I can tell you that Duncan, South Carolina is in Spartanburg County, South Carolina.

Now, what we as lawyers do in opening and closing statements is we tell you what we want you to understand that you are likely to hear from this chair. And in Mr. Shabel's open he said "my client, Danny Spade, was a man who became a father and then embarked on a journey to become a dad." That's what he said. Keep that in mind.

Heather Smith, now Heather Jolly, got pregnant by him, by that man right there. And what we know, because a witness told you, what the evidence has shown is that Danny Spade then got a phone call. And in that phone call Heather Jolly said "I'm pregnant."

What we know is that he then got another phone call, and this phone call said "Minor Victim has been born."

What we also know, that the evidence has shown, is that Danny Spade made his first trip to meet his daughter when she was five months old. I don't know. I'm a dad. I have been blessed with children, and I became a dad when I found out their momma was pregnant. I wanted to go to the doctor. I can't -- I remember the date that I saw the ultrasound and I knew that my first baby was going to be a

boy. Let me tell you something. I was a dad before he was born. I was a dad when I heard "she's pregnant," but in this case he was a father. He was on a journey to become a dad. He was a father.

Now, you have heard that he was so engaged that he had to file an action to get visitation. You heard that. The evidence showed it.

What you also heard was that then there was a mediation. Okay. And, again, Mr. Shabel wants you -- and he's going to tell you this when he gets up, he wants you to believe that Heather wanted Danny Spade out of Minor Victim life. Well, he filed an action to get visitation and there is this mediation, and they reached an agreement in mediation. If I want you out of my life or if I want you out of my daughter's life, why would I agree to anything? But she did. She reached an agreement.

What you then heard, what the evidence presented, was that after mediation there was an attempt, which was recommended by a lawyer, recommended by a lawyer named Ruth Cate, to Heather and to her husband David to terminate his rights.

You also heard, the evidence presented showed that that first TPR wasn't successful, that a Family Court judge granted Mr. Spade some visitation. That visitation started off supervised. It was supervised by his sister, or

somebody else, so there was a period of time when he got to see Minor Victim about once a month, but somebody was with him.

Then what we found out was that he got to take Minor Victim to Virginia for an extended period of time.

And then you hear that Minor Victim becomes anxious. You hear that a potty trained little girl wets herself. You hear that a baby, a four year old little girl, is afraid of the dark. You hear that a four year old little girl has to sleep under a table like this. You hear that this baby does this just so she can close her eyes and not be afraid.

And then you heard that Heather and her husband filed an action that suspended Danny Spade's visitation.

Now, what they want you to know, what the defense wants you to believe is that they went from failed TPR to second TPR. That's not what happened. And what the evidence shows you from this chair was there was a motion filed to suspend his visitation. That motion was filed in late 2011, okay? That motion was filed, because, according to Meredith Thompson-Loftis, she was a worried little girl. She was having nightmares. She wet herself after being completely potty trained. She was fearful, clinging, all of those things. She was sleeping under a table.

What the evidence showed, through Ms. Kim Rosborough, was they took, Heather and David, took Minor Victim to see a counselor to figure out why. Why is my baby sleeping

under a table? Why is she peeing herself in the bathroom behind the door? Why won't she let go of mommy's leg? Why? Kim Rosborough told you. She came in, she displayed symptoms, but never, not one time did Heather say "I think she's been inappropriately touched." Never, not one time, did she say sex abuse. Never.

Kim Rosborough reached out to Danny Spade to bring him into this therapy to find out why a baby is sleeping under a table. What she got was a one phone call response from Mr. Spade.

It wasn't until Minor Victim had spent the night with Mimi and said "Mimi, Danny is a bad guy. Danny did something bad. Danny hurt me." That's when the next TPR came, a period of time later. It wasn't -- it didn't have anything to do with Heather wanting him out of her life. It had to do with what he did to her.

Now, you heard from that pretty red headed lady, Tab Webber. Tabitha Webber is a forensic interviewer. Forensic interviewers are trained to ask questions, not to lead the person to any point. It's simply to find information. And after Minor Victim developed the nerve to tell Mimi, she was able to talk to Tabitha. After she talked to Tabitha Webber she was referred to Meredith Thompson-Loftis. She told Meredith a similar story. But, you know, she told somebody else too. She told you. She told you what that

bad guy did, so she's made yet another disclosure to you.

Now, you are going to hear a couple of things from the defense attorney. One, you are going to hear that there was a meeting, and you have already heard it. You heard it from Kim Rosborough. There was a meeting. I believe it was on March 28th, 2011, I think. And in that meeting that Kim believed that it was time to bring Daniel Spade into this counseling stuff, and that only three, or four, or some days later [redacted] tells Mimi. Well, here is the deal. Mimi wasn't in that meeting. [redacted] wasn't in that meeting. But what we know is before that meeting [redacted] was curled up under a table. [redacted] was fearful. [redacted] was having nightmares. [redacted] was clinging. [redacted] potty trained, stands behind a door in the bathroom in her mommy's house and pees herself.

They want you to think that this is Heather Jolly trying to get Danny Spade, the bad guy, out of her daughter's life. That's not it at all. That's not it at all. He's a bad guy who put his penis in her mouth in a motel in Duncan, South Carolina, and she just, in a delayed disclosure, developed the ability to tell her Mimi, and then developed the ability to tell Tab Webber, and then developed the ability to tell Meredith Thompson-Loftis, and then yesterday developed the ability to tell you.

You know, several years ago -- my daughter is now

twenty years old. Several years ago she came home from school and she said "daddy, I know what you do." She said "I know you're a lawyer, daddy, and you tell people stories. That's what you do." And she said "daddy, I know what the police do. They arrest the bad people." She said "but daddy, I'm really scared and I'm concerned." And I said "well, baby, what is it?" She said "daddy, who takes care of the good people?" And, you know, I'm a pretty well educated person. I have been a dad for a long time, but there are certain things that you cannot prepare for. That question was one of those things that I wasn't prepared for, because at that point my daughter was maybe five or six years old. And that question was so deep and so out of my perception of her ability to think. And so me, this well educated lawyer, kind of took a step back and I said "baby, that's a really great question, but you are going to have to give daddy a minute or two to think about that, because I want to give you the right answer." And I did, I thought for a few minutes. Then we sat down at the dinner table and it just came on me. And I said "baby, do you remember the question you asked me?" She said "yeah, daddy." I said "I think I have an answer." I said "you are right, baby. My job is to tell somebody a story," and I'm telling Minor Victim's story today. And I said "you are right, the police, they arrest the bad people." And I said "but, baby, there is a

group of people that take care of the good people." Ladies and gentlemen, that group of good people is you. You take care of the good people. I told her "baby, the jury takes care of the good people."

You know, in Mr. Shabel's opening statement he said Danny Spade became a father. He was then on a journey to become a dad. And he told you that his journey ended unfortunately not in a way where he could walk her down the aisle, or take pictures at the prom. It ended in a courtroom with this horrible allegation.

Ladies and gentlemen, I submit to you that it didn't end in this courtroom. It didn't end with this horrible allegation. His journey to become a dad ended in this motel. It ended in a bathroom next to this swimming pool. It ended when that bad guy said "put this in your mouth," when he stuck his penis in her mouth, and said "if you don't, I won't take you home." His journey ended in that motel. It didn't end here today.

Ladies and gentlemen, we have to prove that Minor Victim was under eleven years of age. We have to prove that there was a sexual battery; that Danny Spade committed that sexual battery; that there was an intrusion, ever so slight; that fellatio was involved. She told you "he put his private part in my mouth." She told you about fellatio and intrusion, ever so slight. It happened in Spartanburg

County, South Carolina.

Ladies and gentlemen, I submit to you that we have proved each and every element of this crime beyond a reasonable doubt. Minor Victim put it best when she was asked "who is Danny D?" She said "he's a bad guy."

Ladies and gentlemen, you are the good people. You take care of the good people. Minor Victim is in your hands. He's guilty. Thank you.

THE COURT: Mr. Shabel?

MR. SHABEL: May it please the court?

THE COURT: Yes, sir.

MR. SHABEL: Good morning.

On behalf of Mr. Campbell, on behalf of Mr. Spade, I want to thank you for your attentiveness, for your focus, for your sacrifice in being here committing to the process of this wonderful government system that we have, and your patience with us. And let's be real, this was not just an education in government, in the judicial process, but it was a little bit of an aerobics workout. You come in, you sat down, you hear some stuff, you stand up, you go out, you come in, you sit down, you get up and you go out. Thank you for all of that.

Ms. Leskanic, Ms. Jordan, Mr. Brannon, Mr. Campbell, and I, we're all very passionate people. We love what we do, and our passion is the same. We want justice

and we seek the truth.

Now, clearly we have different opinions on how that should end, or what justice is and what the truth is, but we are both -- we are all very passionate people. You have had the opportunity to observe that passion over the last day, plus. You have seen a lot of evidence. You have heard a lot of testimony. In a little bit our passion is done and you will go to your juror deliberation room and you will talk about your search for the truth.

Mr. Brannon is correct, it is the duty and responsibility of the State of South Carolina to prove that Mr. Spade is guilty beyond a reasonable doubt. The judge will instruct you specifically on what that is, but I can tell you, ladies and gentlemen, it's the kind of doubt that would cause a reasonable person to hesitate. A reasonable person to hesitate.

If when you consider all of the evidence, you are firmly convinced that Mr. Spade is guilty, then that would be your verdict.

On the other hand, if there is a real possibility that he is not guilty, then you must give Mr. Spade the benefit of the doubt and find him not guilty. If there is a real possibility that he is not guilty, you must give him the benefit of the doubt.

We began this case, as I have said in my opening,

and I have said it several times already, on a search for the truth, a search for what has happened to lead us to this moment in time.

Ladies and gentlemen of the jury, at the very beginning of that search, the very first witness that's presented to you, admitted giving two completely different versions. Detective Nikki Cantrell testified in one proceeding she made a referral to the Children's Advocacy Center and she testified in this proceeding to something different. That is how the State began this search for the truth, by presenting a witness who gave two different versions of something very critical in this case. Does that cause you to hesitate?

A good friend of mine once said the old Hip Hop song in about, oh, twenty years ago, some of you may remember it, "things that make you go huh." Huh.

Mr. Brannon showed you a photograph. He showed you a photograph of a pool, a pool in a Holiday Inn. It's a nice pool. What don't you see in this photograph? You do not see a bathroom in this photograph.

Now, I have got a Smart Phone, Samsung Galaxy phones. My daughter has got an I-phone. All those got cameras on them. It's real easy to take a photograph. Where is the bathroom? You hear[redacted] She described the bathroom to you. There was a camera at the hotel to take

photographs of the bathroom. Where is the photograph? Where is the evidence to show that Minor Victim's remembering of the bathroom is accurate? The bathroom is not even in this photograph. Huh.

Mr. Brannon showed you another photograph of Minor Victim He used the word sleeping. I see a little girl. I see a little girl tucked in a ball. I don't see her face. I don't see her eyes. I don't see that they are closed. I can't tell that she's sleeping.

You heard testimony from Heather Jolly; panic attacks, of wetting the bed. And the only other thing they have, other than Heather Jolly, is a photograph of a girl tucked in a ball. The only person that came to you and said "this is what this child is experiencing" is Heather Jolly, Minor Victim's mother. Remember that as we go forward, things that make you go huh.

Let's go back to that hotel. The pool. Do you remember what Minor Victim said? Minor Victim said her room was on the same floor as the pool. And then to the witness stand later that day comes an employee of that very same hotel, the very same hotel Mr. Spade stayed at. One receipt, room 213, second floor. One receipt, 313, third floor. Where is the pool? First floor. Minor Victim testified "no, the pool was on the same floor as my room."

Mr. Spade came to South Carolina to visit with his

daughter. He paid for a hotel; had a room, a room with a lock, a room with a door, a room nobody could get into, a room that probably wouldn't be a whole lot of people walking past, except other people going to their room, but the testimony was he didn't take her to his room, no. He took her to the pool bathroom with more people around. If he's really a bad guy, doesn't he do it where he could have privacy, where no one could catch him? No, the State says he goes down to the first floor to a public bathroom where the pool is, where anybody could walk in and see what's happening. I asked Minor Victim did anything happen in the room?" She said "no." I submit to you that's a hesitation to me. That makes me go huh.

Mr. Brannon brought up his daughter. I have a daughter of my own, and I, too, I feel personally that I became dad when I found out that my daughter was on the way.

I mentioned being a dad for Mr. Spade was a journey. Maybe he didn't come down and see the birth. Remember, he lived in Virginia. Heather lived in South Carolina. I submit to you it's not that simple to just be there. I submit to you that it wasn't as easy for him to be there as it might be for somebody else, but he got involved and he wanted to be a dad, so he filed an action for visitation here in South Carolina. He made the effort and he began the journey to be a dad. And as Ms. Jolley herself

told you, there was a mediation and there was an agreement and Danny was on his journey to become a dad and the next thing that happens is mom tries to take that away; mom, the person who presented you her testimony that she saw [redacted] have these panic attacks. The one and only person who testified to that tried to take Danny's parental rights away and it did not work. The court denied her request to terminate Danny's parental rights and so the journey continues.

He visits in South Carolina and then he gets to bring his daughter home to Virginia for ten days. And then mom says the child begins to have anxiety, so she takes the child to Kim Rosborough, even while Danny has two more visits. Heather says the anxiety continues. Heather reports the anxiety to Kim Rosborough. Heather files an action to suspend Mr. Spade's visitation, and in late 2010 that happens. Another stumbling block on Mr. Spade's road and journey to becoming a dad.

Danny doesn't quit. He still wants to be a dad, and he contacts Kim Rosborough and they have a phone call. That phone call takes place March 24th, 2011. Mr. Brannon made a point to mention that he only made one phone call. Remember the date. March 24th, 2011. Four days later, Kim Rosborough testified to this, she brings in Heather and says "we need to start preparing to bring Danny back into the

fold and to do some therapeutic visitation. We need to start getting ready to bring Danny back." That was March 28th, 2011. Four days after the one phone call, Kim Rosborough is ready to bring Danny back into the fold, and then three days later, three days later, Kim Rosborough gets a message from grandpa and now there has been a disclosure.

Let's talk about that disclosure, shall we? You heard from Mimi. The State presented testimony Mimi was the first person that Minor Victim told. Mr. Brannon -- excuse me, I apologize, not Mr. Brannon, another solicitor, asked "did Minor Victim make a disclosure of a sexual assault?" Mimi's answer, "yes."

I mentioned my daughter. I could not imagine what I would do if my daughter came to me and said something like that had happened to her. I can't imagine. I do know there is one thing I absolutely wouldn't do. I wouldn't hesitate. I wouldn't wait. I would want answers. And yet the State wants you to believe that the first person that this child disclosed to hesitated, waited for more than a day, several days. After her granddaughter comes to her and makes a disclosure she hesitates. Why does she hesitate? Does she believ Minor Victim or did Minor Victim really tell her; or did she need time? Did the family need time?

Remember what happened on March 28th. Heather is told we "are going to bring Danny back into the fold."

March 31st, grandpa calls Kim Rosborough. We know grandpa is the first person that Mimi told. We know grandpa made calls immediately. We can do some pretty good math and say a couple of days before that Mimi knew. That would put us, ladies and gentlemen, on or around March 28th, 2011, when Heather knew that Kim Rosborough was going to bring Danny back into the fold. Did she really need time to think? Did she really need to hesitate, or did they need time, time to get the story straight?

Yes, this child has seen Tabitha Webber five times. Yes, this child has seen Meredith Loftis seventy times. They have had time. Minor Victim's testimony yesterday was an attempt to bring that time to a conclusion. But even that testimony, I submit to you, ladies and gentlemen, causes hesitation. She can't remember how long she has been doing Hip Hop, but she can remember something that happened to her in a public bathroom in September or October of 2010. September and October of 2010, ladies and gentlemen. That was over three years ago, nearly half of this little girl's life. She can't remember how long she has been doing Hip Hop dancing, but she can remember what happened in a public bathroom more than three years ago. Huh.

Mr. Spade began a journey to become a dad and he's had roadblock after roadblock in his way. Distance. His own children. You heard testimony he had three other kids,

three other kids in Virginia. Quite frankly the biggest roadblock of all, Heather. They worked it out. She wanted to terminate his parental rights. It's denied. Danny visits. Now the anxiety starts and maybe his visitation gets taken away. They get ready to bring him back into the fold and here we are. Here we are.

Ladies and gentlemen, as I said in the beginning of this argument and this summation, if there is a real possibility that he is not guilty of this crime, you must give him the benefit of the doubt. If there is a real possibility. We just talked about stuff, possibilities.

A search for the truth, I submit to you, culminates in a verdict of not guilty. Thank you, ladies and gentlemen.

THE COURT: Thank you, Mr. Shabel.

(Whereupon, at 11:24 a.m., the Court charged the jury panel)

THE COURT: Mr. Foreman and ladies and gentlemen of the jury, you have seen and heard the evidence presented, as well as the arguments of counsel. It is now my duty and obligation to instruct you on the law that is applicable to this case. It will then be your solemn duty and obligation to begin your deliberations, through which process you will decide the facts, apply the law as I have instructed, and render a fair and impartial decision.

It is your exclusive duty to determine what the facts are in this case. You do that based on your own common-sense examination and your evaluation of the testimony and other evidence received during the trial of this case.

You twelve jurors alone will decide what effect, value and weight is to be given to any particular testimony or other evidence received. Quite simply, your ultimate goal is to find the truth in this case and by doing so you will have fulfilled your obligations as jurors in giving both the State and the defendant a fair and impartial trial, based on the evidence presented and the law applicable to this case.

The indictment charges the defendant with criminal sexual conduct with a minor in the first degree, specifically that Daniel William Spade did, in the County of Spartanburg, State of South Carolina, on or between the dates of September 10, 2010 and October 3, 2010, commit the crime of criminal sexual conduct with a minor, in that the defendant did commit a sexual battery upon the minor victim Minor Victim, who was under eleven years of age at the time of the said incident, in violation of the laws of South Carolina.

I remind you that the fact the defendant was arrested, charged and indicted in this case is not evidence

in this case and cannot be considered by you as evidence of guilt, nor does it create any presumption or inference of guilt. This document simply is the formal written instrument which contains the charge made against him. It is the formal document by which the case is brought before the court.

The defendant has pled not guilty to the indictment and that plea puts the burden on the State to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent.

I charge you that it is a cardinal, important and vital rule of law that in a criminal trial, no matter what the seriousness of the charge may be for which he stands charged, the defendant will always be presumed to be innocent of the crime for which the indictment was issued, unless guilt had been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

This presumption of innocence does not end when you begin your deliberations, but it accompanies the defendant throughout the trial, until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of innocence placed about shoulders of the defendant which

remains with him from the moment of his arrest and continues until it has been stripped from him, from his shoulders, by evidence satisfying you of his guilt beyond a reasonable doubt.

The presumption of innocence is not mere legal theory, nor is it a legal phrase. It is a substantial right to which every defendant is entitled, unless you twelve jurors are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

I'll remind you that during this trial you and I have had certain duties to perform. By the same Constitution that makes you the finders of the facts, I am the sole instructor in the law. As the trial judge it is my responsibility to preside over the trial of this case, and I also have the duty to rule on the admissibility of the evidence offered during this trial. You are to consider only the competent evidence before you. If there were any testimony ordered stricken from the record in this case during this trial, you must disregard that testimony and it must play no part in your deliberations. You are to consider only the testimony which has been presented from this witness stand and any exhibits which have been made a part of the record in this case.

I have the additional duty to charge you the law applicable to the case. As the presiding judge, I am the

sole judge of the law and it is your duty as jurors to accept and apply the law as I now state it to you. If you already have any idea as to what the law is or what the law ought to be based on religious beliefs or organizational values you hold and it does not agree with what I now tell you the law is, you must abandon your idea because you are sworn to accept the law and apply the law exactly as I state it to you.

In every case tried in this court before a jury the jury becomes the sole and exclusive judge of the facts in a case. A trial judge cannot intimate, state, comment on, or make any statement to a trial jury about the facts in a case. You, the jury, are the sole judge of the facts in this case. You are not to infer from what I have said during the progress of this trial in ruling upon the admissibility of evidence, or otherwise, or anything that I say now during the course of my instructions to you that I have an opinion about the facts in this case. The law does not allow me to have an opinion about the facts. This is z matter solely for you, the jury, to determine. As jurors, it is your duty to determine the effect, value, weight and truth of the evidence presented during this trial.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. Ladies and gentlemen, proof beyond a reasonable doubt is proof that leaves you

firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

A reasonable doubt may also be described as the kind of doubt that would cause a reasonable person to hesitate to act. If you have such a doubt as to the guilt of the defendant, then he would be entitled to a verdict of not guilty. Reasonable doubt may arise from evidence which is in the case, or from the absence or lack of evidence in the case.

If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty.

If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

You alone must make the determination of whether or not reasonable doubt exists as to the guilt of the defendant.

I instruct you and emphasize that the fact that the defendant did not testify is not a factor to be considered by you in any way in your deliberation and in your consideration of the question of the guilt or the innocence of the defendant. It must not be considered by

you in any manner whatsoever. A defendant has the Constitutional Right to remain silent, and the assertion of this right must not be considered by you in your deliberations. I'll repeat, under your oath you are to draw no conclusion whatsoever from the fact that the defendant in this case did not testify. The fact that this defendant did not testify should not be discussed in the jury room. The burden of proof, as I have stated to you, is on the State. The defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

There are two types of evidence which are generally presented during a trial - direct evidence and circumstantial evidence.

Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation.

The law makes absolutely no distinction between

the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You should weigh all of the evidence in this case. And after weighing all of the evidence, if you are not convinced of the guilt of a defendant beyond a reasonable doubt, you must find the defendant not guilty.

Under the Constitution of South Carolina you are the finders of the facts in this case. Necessarily you must determine the credibility of witnesses who have testified. Credibility simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth.

In determining the believability of witnesses who have testified, you may believe one witness over several witnesses, or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether any witness has exhibited to you any interest, bias, prejudice, or other motive in this case. You may also consider the appearance and manner of a witness while on the witness stand. Was the witness straightforward

in answering question or hesitant in responding to questions. Simply put, do you believe the witness was telling the truth. You may consider how the witness came to know the facts to which he or she testified and whether or not the witness had an opportunity to hear, observe, or perceive a fact by means of their senses.

Whatever your good judgment and common sense tells you is the most believable testimony is the testimony that you should accept and reject that testimony which you find not to be credible or believable.

The Rules of Evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who, by education and experience, have become an expert in some art, science, profession, or calling may state an opinion as to relevant and material matter in which the witness claims to be an expert and may also state the reasons for the opinion.

You should consider any expert opinion received in evidence in this case, and like any other evidence, give it the weight you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience, or if you conclude that reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard

the opinion testimony.

An expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. Further, you are not required to accept an expert's opinion, even though it is not contradicted.

Now, I'll remind you, by the same Constitution that makes you the finders of the facts makes me the sole and only instructor in the law. You must accept as correct the law that I charge and apply the law to the evidence as you find it and reach your verdict. Put aside any conceptions you may have had as to the law before coming here today and accept the law as I instruct it to be. For purposes of your duty as jurors you should not be concerned about what the law ought to be but what I charge you the law is now in South Carolina.

Criminal intent is a necessary element of each crime that must be proved by the State beyond a reasonable doubt.

Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty. There is no way medical science can dissect a person's brain and determine what he had in mind, so the law says that criminal intent may be inferred from

the circumstances shown to have existed. This is how a jury makes a determination of whether or not the element requiring intent was present.

Criminal intent is a state of mind, which operated jointly with an act is the commission of a crime. Criminal intent is a mental state, a conscious wrongdoing, so it is up to you, the jury, to determine what the defendant intended to do, based on the circumstances shown to have existed. I tell you that the State must prove criminal intent beyond a reasonable doubt, just as the State must prove every element beyond a reasonable doubt, as I have previously explained.

It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference, in the same way as any other fact, by taking into consideration the acts of the parties and all the facts and circumstances of the case. While the State may prove motive, it is unnecessary that the State do so. However, the State must prove intent.

I have instructed you that the defendant is charged with the offense known as criminal sexual conduct with a minor in the first degree and I will now read to you, in part, Section 16-3-655 of the South Carolina Code of Laws, which reads:

A person is guilty of criminal sexual conduct with

a minor in the first degree if the actor engages in sexual battery with a victim who is less than eleven years of age.

For purposes of this section:

Actor means a person accused of criminal sexual conduct.

Victim means the person alleging to have been subjected to criminal sexual conduct.

And sexual battery means 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 such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

To prove the defendant guilty, the State must first proof beyond a reasonable doubt that the defendant engaged in a sexual battery with the victim. The State must then prove beyond a reasonable doubt that the victim was less than eleven years of age at the time of the sexual battery.

The South Carolina Code of Laws provides that the testimony of the victim in criminal sexual conduct prosecutions need not be corroborated by other testimony or evidence.

Additionally, time is not a material element to the crime of criminal sexual conduct.

Now, Mr. Foreman, ladies and gentlemen of the jury, I will give you a copy of these instructions in written form. During your deliberations you may refer to my instructions to guide your decision making. You must consider the instructions as a whole and not follow some and ignore others. Please return these instructions to the court at the time your verdict is rendered.

You have been selected as fair and impartial jurors, sworn to impartially try and determine the facts of this case and when you comply with your oath to do so, then no one will have a right to criticize your verdict and you will have fully discharged your duty as jurors. You are to decide this case according to the testimony that you have heard from the lips of the sworn witnesses, along with other evidence introduced during the trial.

During your deliberations you may only discuss the case in the jury room with your fellow jurors, because they have seen and heard the same evidence that you have seen and heard. However, you must not discuss the case with anyone else until you have returned a verdict and the case is ended. Whenever a member of the jury requires a break, whether for smoking, restroom, or otherwise, please discontinue your deliberations until that juror returns.

Now, ladies and gentlemen, Mr. Foreman, your verdict must be a unanimous one. Mr. Foreman, when the jury

agrees on the verdict, you will indicate your verdict in the space provided on the verdict form and sign your name as the foreperson. Then knock on the jury room door and inform the bailiff that you have reached a verdict. At that time we will return you to the courtroom and receive your verdict.

Now, Mr. Foreman, the verdict form of which I speak is this single piece of paper, which will come back to the jury room, along with these instructions that I just read to you, along with the exhibits, because those exhibits belong to you, the jury. This form has the caption of the case and the number and it says "we, the jury, unanimously find the defendant Daniel William Spade concerning the offense of criminal sexual conduct with a minor in the first degree not guilty, or guilty. I certify this decision was a unanimous decision of the jury," and it has a place for you to sign, Mr. Foreman, and put today's date where indicated.

There is no significance to the fact that not guilty is before guilty. It just necessarily means that one has to be placed on the piece of paper before the other and I always do it the same way each and every time. So this is the form that I was speaking. This will come back to you, Mr. Foreman.

At this I point I'm going to ask you to return to your jury room, but not to begin your deliberations until you are told to do so by the bailiff, because there is some

matters that I need to discuss with the lawyers.

Also, and I don't mind telling you this, one of the things is we have to make sure that all of the exhibits are here present for you. They all have to come back at one time, so we are going to ask for about five minutes to make sure that everything is together and we will send it back. When the bailiff brings the exhibits and this jury form, Mr. Foreman, you are then free to begin your deliberations.

(Whereupon, at 11:43 a.m., the jury panel retired to the jury room, awaiting instructions to begin deliberating)

THE COURT: Anything from the State?

MR. BRANNON: Only one thing, Your Honor, and forgive me if I'm jumping the gun here, but the alternate was sent back as well.

THE COURT: Yeah, I'm going to get her. Thank you.

MR. BRANNON: Okay.

THE COURT: You have my permission, everybody, to always remind me of that.

MR. BRANNON: But we have no questions or concerns with the charge, Your Honor.

THE COURT: Anything?

MR. CAMPBELL: That was the only thing we were going to bring up, Your Honor, and we would renew our motion

as to the charge that we objected to previously.

THE COURT: Yes, sir, it's overruled again for the same reasons, and you are protected on the record.

Okay. Thank you both for reminding me about the alternate. I have it marked and I told my law clerk and I told my deputy.

All right. If you gentlemen will make sure that everything is there and we will send it back.

(Off the record)

(Back on the record).

COURT REPORTER: Do you want me to mark the jury charge now as a Court's Exhibit, Your Honor?

THE COURT: I will mark it now, if you want. I usually mark it after, but do you want to have it marked now? I just don't want it to say Court's Exhibit.

MR. BRANNON: Okay. Do you want to put that with it?

THE COURT: Uh-huh.

MR. BRANNON: Everything is there.

MR. SHABEL: It's good to go.

THE COURT: Okay. I understand -- we are on the record now and I understand that all the lawyers are in agreement as to the exhibits are there and the verdict form and my instructions, and there are no objections to any of that, is that correct, gentlemen?

MR. BRANNON: Correct.

MR. SHABEL: Correct, Your Honor.

THE COURT: Okay.

I need my alternate to go to a sequestered room.

THE BAILIFF: Okay.

(Whereupon, at 11:45 a.m., the jury panel were instructed to begin deliberations)

THE COURT: We are going to be at ease while the jury is deliberating.

(Whereupon, at 11:46 a.m., proceedings were recessed, pending the verdict of the jury)

(Whereupon, at 12:37 p.m., proceedings were reconvened)

MR. BRANNON: I'm sorry, Your Honor, are you ready?

THE COURT: Yes.

MR. BARNETTE: May I have one more second?

THE COURT: Sure.

(Off the record)

(Back on the record)

THE COURT: Yes.

MR. BRANNON: Your Honor, yesterday I made the motion concerning switching the closing arguments based on those two exhibits that were marked by the defense. The court was assured that they would be admitted through

another witness, which then in turn made you -- put you in a position to agree that they could question Heather Jolley about those documents.

My research shows that changing the order of the closing arguments is not the appropriate remedy. What the appropriate remedy is to striking the testimony about the exhibits that would not have been otherwise admissible.

I have read the question. The question says they want to see the e-mails talking about -- they want to see the e-mails was the question.

Your Honor, I agree with Mr. Campbell it's probably too late at this minute to strike the testimony concerning the e-mails, but Mr. Shabel asked Heather Jolley to read the e-mails. Now, he didn't ask her to read the e-mails in total, but he did ask her to read parcels of it or pieces of the e-mails.

I would ask the court to consider simply reading the e-mails to the jury.

In the alternative, Your Honor, I would move -- I would stipulate to the admissibility of the e-mails, which then would make them exhibits and they could take them into the jury room.

MR. BARNETTE: And, Your Honor, in discussing this among all four of us here, basically the situation with the jury, there was evidence placed in front of them, which I

know was nobody's fault whatsoever, but never was introduced, like the defense said it was. So obviously we are stipulating to try to solve that situation from their, so long as the jury has a question, they are not admissible. Both parties have to agree to it, obviously, but then we if they don't agree to it, I think we have a right to an instruction to explain them that it was not entered into evidence and it was -- it may hinder the part where, you know, the defense said they were going to enter it through another witness and they didn't.

THE COURT: Well, defense counsel, I mean, they are offering to stipulate to their admissibility, and the jury -- and this is going to be a Court's Exhibit, of course, but the question is "can we see the e-mails discussing phone conversations between the child and the defendant, or the transcript where these were read?"

They are offering to put the -- which would otherwise be not admissible evidence.

MR. SHABEL: Well, Your Honor, I think there were lots of contemporaneous objections they could have made to my testimony and I --

THE COURT: Well, they did.

MR. SHABEL: Well, they did, but they did not object to its admissibility and they -- I indicated to the court at the end that I could use -- that I would like to

talk with us about another witness before I introduced it. I never made the guarantee that I was going to introduce it --

MR. BRANNON: Oh, absolutely --

THE COURT: Wait, wait, wait, I got this.

Mr. Shabel, now --

MR. SHABEL: That I recall. If I'm wrong, the transcript will speak for itself. I just got here. I was --

THE COURT: I understand. I understand, but --

MR. SHABLE: I didn't --

THE COURT: I understand that, but this court was assured that you would be introducing a witness later as to those e-mails and that did not happen.

MR. SHABEL: Your Honor, I said I could get this in through another witness. I never said the words "I was going to introduce -- "I was going to bring another witness." That I am sure about, but --

THE COURT: Okay. Well, we will remember that in the future.

MR. SHABEL: Well, I mean that's -- that's my recollection. I mean, that's --

THE COURT: There is -- they are offering to stipulate to the e-mails and they are marked as Defendant's. Do you want them in or not?

MR. SHABEL: One moment. Could I have a moment --

THE COURT: Yes.

MR. SHABEL: -- to speak to co-counsel?

THE COURT: Yes.

(Off the record)

(Back on the record)

MR. SHABEL: Judge?

THE COURT: Yes, sir.

MR. SHABEL: We will let them in.

THE COURT: All right, I want to be clear on the record, okay, that it is now stipulated by both the State and the defense that Defendant's Exhibits -- what are the numbers there?

MR. BRANNON: 1 and 2.

THE COURT: 1 and 2 are in evidence by agreement and without objection by any party, is that correct?

MR. SHABEL: Yes, Your Honor.

THE COURT: Okay. That will comply with their question. They want to see them. They are now admitted.

MR. BARNETTE: Your Honor, could we mark them as Court Exhibits at this point?

THE COURT: Yes, we will mark them as Court Exhibits.

MR. BRANNON: I have another request, Your Honor.

THE COURT: Okay.

MR. BRANNON: They are now in evidence. I think the jury needs some explanation as to why five exhibits were sent back but two were left out. They have now asked the question about the exhibits. I think that they need a very short evidentiary statement "these were not actually introduced into evidence. Based on your question, there has been a stipulation to their admissibility and we now can present them to you."

THE COURT: Any objection?

MR. CAMPBELL: I mean, I don't know why that's necessary, Your Honor.

MR. BRANNON: Because they are --

MR. CAMPBELL: They are getting them. They just get them.

MR. BARNETTE: Well, I think -- you took out stipulations out of your charge specifically, but there is now --

THE COURT: There is now a stipulation.

MR. BRANNON: But I don't know that we need to -- I don't think we need an additional charge as to what stipulated evidence is, because that charge speaks to "I stipulate that it rained on March 3rd, 2013." This is just a stipulation that those are now admissible, so it's just evidence for them to consider, but I think they need to understand why they didn't get sent back with the other

five.

MS. JORDAN: Because at the end of the judge's charge is once we review all the evidence and make sure it's all here, we are going to send it back to you. Well, now we are just -- you know, now we are giving them more and I do think they need the explanation of why. I think it's the last paragraph in the judge's charge.

MR. BRANNON: Yeah, I mean, look, you -- the only evidence that is admitted into evidence -- exhibits that are admitted into evidence can be seen by the jury. We had seven things that were marked. Only five of them were admitted.

MR. CAMPBELL: Your Honor, the other situation is to just strike the testimony and tell them they can't consider it.

THE COURT: Well, I think that horse is out of the gate. I mean, it's obvious they have already considered that, Mr. Campbell. They are deliberating on that very -- that's an issue before them right now.

Do you oppose any kind of an instruction as to the exhibits being admitted?

MR. CAMPBELL: I don't -- I would like to know what the instruction is going to be, obviously, before I oppose anything.

THE COURT: Okay. Give me a minute here.

COURT REPORTER: Your Honor, you don't need this then?

THE COURT: We are not going to need to play it back, that's correct.

(Off the record)

(Back on the record)

(Defendant's Exhibit No. 1 was remarked Court's Exhibit No. 5 for identification)

(Defendant's Exhibit No. 2 was remarked Court's Exhibit No. 6 for identification)

THE COURT: Okay. I'm open to suggestions here, but "I now instruct you that Court Exhibits 5 and 6 were not previously admitted into evidence, but by agreement of both parties have now been admitted and are, therefore, properly before you for your consideration."

MR. CAMPBELL: That's perfect.

MS. JORDAN: Yes, sir.

MR. BRANNON: That's fine.

MR. BARNETTE: We agree. That's basically what I wrote down.

THE COURT: All right. Let's have our jury and I will need my 13th juror.

THE BAILIFF: Okay. We will go get them.

(Jury Note marked as Court's Exhibit No. 7 for identification)

(Whereupon, at 12:50 p.m., the jury returned to the courtroom)

THE COURT: Thank you, Mr. Foreman.

I have a question that was sent out that has now been made a part of the record. It's Court's Exhibit 7. I'm going to read this. "Can we see the e-mails discussing phone conversations between the child and the defendant or the transcript where these were read?" That's Court's Exhibit No. 7.

Mr. Foreman, ladies and gentlemen, I now instruct you that Court Exhibits 5 and 6, which are the e-mails, were not previously admitted into evidence, but by agreement of both parties they have been admitted and are, therefore, properly before you for your consideration.

Anything else, Mr. Foreman?

JURY FOREPERSON: No, sir.

THE COURT: Okay, Mr. Foreman, if you will take your jury back to the jury room and resume your deliberations.

(Whereupon, at 12:51 p.m., the jury panel returned to the jury room to continue deliberations)

THE COURT: Any objection from the State?

MS. LESKANIC: No, Your Honor.

THE COURT: Any from defense?

MR. SHABEL: No, Your Honor.

THE COURT: Okay. All right, we will stand at ease.

(Whereupon, at 12:52 p.m. proceedings were recessed, pending the verdict of the jury panel)

(Whereupon, at 2:20 p.m., proceedings were reconvened)

THE COURT: Okay. We are back on the record.

I understand, ladies and gentlemen, we have a verdict in this matter.

Now, for those in the gallery, you are welcome to stay, but this court would not tolerate any outbursts, one way or the other. This is nothing to celebrate one way or the other.

Do the lawyers need a minute to talk with anyone back there?

MR. BRANNON: I have already done so, Your Honor.

THE COURT: Okay.

MR. CAMPBELL: I have already done so, Your Honor.

THE COURT: Okay. All right.

We will have our jury.

(Whereupon, at 2:21 p.m., the jury panel returned to open court to report its verdict)

THE COURT: Mr. Foreman, I have been informed that the jury has reached a verdict, is that right?

JURY FOREPERSON: Yes, sir.

THE COURT: Okay. Would you please hand that to the bailiff?

Madam Clerk.

THE CLERK: Yes, sir.

"In the General Sessions Court, Case Number 2011-GS-42-4171, State of South Carolina versus Daniel William Spade, we, the jury, unanimously find the defendant Daniel William Spade concerning the offense of criminal sexual conduct with a minor in the first degree guilty.

I certify this decision was the unanimous decision of the jury."

This is signed by the foreperson and dated today's date.

Ladies and gentlemen of the jury, if this your verdict and still your verdict, please raise your right hand.

So say you all.

THE COURT: Thank you.

Mr. Foreman, the last act that you need to do as a -- or the second to the last act is to sign the back of the indictment, which I have here. Madam Clerk will have that, so in just a moment I'm going to ask you to come over and sign that and then I'm going to ask you to take your jury back to the jury room and you will be released from there.

JURY FOREPERSON: Okay.

THE COURT: Ladies and gentlemen, this concludes your service in this particular case. I don't know what the instructions are.

Madam Clerk, do you know for those jurors?

THE CLERK: No, sir, I don't.

THE COURT: Okay. I would say call that number that you have been given after six o'clock tonight for further instructions. I don't know what the other judges are doing the rest of the week.

Also I want to tell you that you also have the right to refuse or discuss a verdict in this case as much as you choose. You are also free to stop talking to anyone or not talk to anyone at all. And if anybody violates your personal space regarding that, please report that person to the clerk of court and we will take care of it from there.

All right, Mr. Foreman, if you will come and sign the back of the indictment, please?

MR. BRANNON: Your Honor?

THE COURT: Yes, sir.

MR. BRANNON: Forgive me. May the lawyers approach after the signature is affixed?

THE COURT: Yes, sir.

(Off the record)

(Back on the record)

THE COURT: Okay, let me see the lawyers.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: Anything further, ladies and gentlemen?

MS. JORDAN: No, sir.

THE COURT: Okay. Mr. Foreman, that concludes your jury service in this matter. Thank you so very much.

(Whereupon, at 2:24 p.m., the jury panel was discharged)

THE COURT: Matters from the State?

MS. JORDAN: Nothing from the State, Your Honor.

THE COURT: Matters from defense?

MR. CAMPBELL: Nothing, Your Honor.

THE COURT: All right. Do we have a sentencing sheet.

MS. JORDAN: I do, Your Honor. I didn't know if they were going to renew any motions or anything at this point?

THE COURT: They said no matters.

MS. JORDAN: Yes, sir.

THE COURT: Will the defendant rise, please, with his lawyers?

Mr. Spade, you were supposed to be [Minor Victim]'s protector and you became her predator. You were supposed to

love her, take care of her, but you took advantage of her and you did unspeakable things to one of South Carolina's most vulnerable people, most treasured assets, that being a child. This court will never understand how a grown man can harm a child.

THE DEFENDANT: I did not, not at the time.

THE COURT: It's not time for you to talk.

And I will tell you this, this court will not take lightly those individuals who hurt a child.

On Indictment 2011-4171, you are committed to the State Department of Corrections for a period of 35 years.

I'll give you credit for any time that you did serve, whatever that might be.

MR. CAMPBELL: Your Honor, may we approach?

THE COURT: Yes.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: Okay. Good luck to you, sir.

(Court's Jury Instructions marked as Court's Exhibit No. 4 for identification)

THE COURT: Okay. Court is now in recess.

MR. SHABEL: Thank you, Your Honor.

THE COURT: Thank you.

(END OF REQUESTED TRANSCRIPT OF RECORD)

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh 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 the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for SPARTANBURG County, South Carolina, on the 24th, 25th and 26th days of February, 2014.

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

SEPTEMBER 7, 2014

Michael R. Watts
Circuit Court Reporter

DOCKET NO. 11-GS-42-4171

WITNESSES

Spartanburg County Sheriff's Office

1. [illegible] ☑
2. [illegible] ☐
3. [illegible] ☒
4. [illegible] ☒
5. [illegible] ☒
6. [illegible] ☒
7. [illegible] ☐

ARREST WARRANT NUMBER

M126199

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: FEB 21 2014

VERDICT

Guilty

Donald Vath Jr. 2-26-14

Foreperson of Petit Jury
Date:

Amended
The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

FEB 24 2014

TERM

THE STATE

vs.

Daniel William Spade

Indictment for

CRIMINAL SEXUAL CONDUCT W/MINOR, FIRST DEGREE

SC Code: 16-03-0655(1)
CDR Code: 0385
Class FEL-C(V)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on FEB 21 2014, the Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That Daniel William Spade, did in Spartanburg County, on or between the dates of September 10, 2010 and October 3, 2010, commit the crime of Criminal Sexual Conduct with a minor, in that the defendant did commit a sexual battery upon the minor victim Minor Victim who was under eleven (11) years of age at the time of the said incident. Said incident occurred in Spartanburg County, South Carolina, in violation of §16-03-655 (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

Computer ARREST WARRANT

5/20/11 M-126199 fugitive

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of 7616S

Spartanburg

THE STATE 11040592

against

Daniel William Spade

Address: [redacted]

Manassas, VA 20111-

Phone: SSN:

Sex: M Race: W Height: Weight:

DL State: DL #.

DOB: [redacted]75 Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff

Prosecuting Officer: Nicole Cantrell - 0686

Offense: Sex / Criminal sexual conduct with minor or Attempt -victim under 11 yrs of age - First degree

Offense Code: 0385

Code/Ordinance Sec: 16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date.

RETURN

A copy of this arrest warrant was delivered to defendant Daniel Spade on 5-18-11

Signature of Deputy/Law Enforcement Officer

ENTERED NCIC DATE 4/29/11 TERMINAL L Ams

RETURN WARRANT TO:
General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Spartanburg

AFFIDAVIT

ORIGINAL

349

Personally appeared before me the affiant Nicole Cantrell who being duly sworn deposes and says that defendant Daniel William Spade did within this county and state on or about 09/10/2010 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Spartanburg) in the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor or Attempt -victim under 11 yrs of age - First degree

2011 MAY 20 AM 10:11

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That between September 10, 2010 and October 2, 2010, in the county of Spartanburg, one Daniel William Spade did engage in sexual battery by penile penetration, digital penetration and oral sex, with a minor, the victim being less than eleven years old and the defendant being more than three years older.

Warrant based on police investigation. NC

Signature of Affiant

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Spartanburg

Affiant's Address 8045 Howard Street
Spartanburg, SC 29303-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 9/10/2010 defendant Daniel William Spade did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor or Attempt -victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 04/29/2011

(L.S.)

Signature of Issuing Judge

Jason Thomas Wall

Judge Code: 7019

Judge's Address Spartanburg County Judicial Center
Spartanburg, SC 29306-2335

Judge's Telephone (864)596-2564

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE VS.)
Daniel William Spade)
AKA:)
Race: WHITE Sex: M Age: 28)
DOB: [redacted]-75 SS#: [redacted])
Address: 45892 Kristi Lynn Ct.)
City,State,Zip: Lexington Park, MD 20653)
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS **350**

INDICTMENT/CASE#: 2011GS4204171
A/W#: M126199
Date of Offense: 9/10/2010
S.C. Code § : 16-03-0655
CDR Code #: 0385

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

in violation of § 16-03-0655 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: JORDAN, JENNIFER A 69423 SC Bar# Defendant Attorney for Defendant 69496 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 35 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 the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
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	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP ___
___ 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, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Tinsley
Court Reporter: Nelle Watts
Presiding Judge: R. Keith Kelly
Judge Code: 2165
Sentence Date: 26 February 2014

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERALSESSIONS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	
	)	
	)	
	)	**VERDICT FORM**
vs.	)	
	)	Case Number: 2011-GS-42-4171
	)	
Daniel William Spade,	)	
	)	
Defendant.	)	

We the jury, unanimously find the Defendant, Daniel William Spade, concerning the offense of **Criminal Sexual Conduct with a Minor in the First Degree**:

_____ Not Guilty

✓ Guilty

I certify this decision was the unanimous decision of the jury.

Daniel C Patterson Jr.

Foreperson
February 26, 2013

352

ORIGINAL

STATE OF SOUTH CAROLINA **COUNTY OF SPARTANBURG**	)	**IN THE GENERAL SESSIONS COURT** **SEVENTH JUDICIAL CIRCUIT**
STATE OF SOUTH CAROLINA,	)	**REQUEST AND NOTICE OF MOTION PURSUANT TO BRADY V. MARYLAND 373 U.S. 83 (1963) AND RULE 5 OF THE SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE**
vs.	)	
DANIEL WILLIAM SPADE,	)	**WARRANT: M 126199**
DEFENDANT.	)	**CHARGES: CSC 1ST DEGREE (w/MINOR < 11)**

TO: Barry Barnett, Solicitor, Seventh Judicial Circuit:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys, Kenneth P. Shabel and Shawn M. Campbell, represent the above-named defendant in matters relating to the above stated charges.

Please direct all further communications relating to the defendant and his charges to us or to our office.

KENNETH P. SHABEL
S.C. Bar No. 16136

SHAWN M. CAMPBELL
S.C. Bar No. 69696

CAMPBELL & SHABEL, LLC
104 N. Daniel Morgan Ave., Suite 201
Spartanburg, SC 29306
Tel. (864) 583-0001
Fax (864) 583-1199

May 18, 2011

Service Accepted by:

Solicitor's Office,
Seventh Judicial Circuit

RECEIVED
MAY 18 REC'T
BY: M. HOPE BLACKLEY

2011 MAY 18 AM 11:02
CLERK OF COURT
SPARTANBURG COUNTY
FILED

ORIGINAL

STATE OF SOUTH CAROLINA **COUNTY OF SPARTANBURG**	)	**IN THE GENERAL SESSIONS COURT** **SEVENTH JUDICIAL CIRCUIT**
STATE OF SOUTH CAROLINA,	)	REQUEST AND NOTICE OF MOTION
	)	PURSUANT TO BRADY V. MARYLAND
vs.	)	373 U.S. 83 (1963) AND RULE 5 OF THE
	)	SOUTH CAROLINA RULES OF CRIMINAL
DANIEL WILLIAM SPADE,	)	PROCEDURE
	)	WARRANT: M-126199
DEFENDANT.	)	CHARGE:CSC 1ST DEGREE (W MINOR< 11)

TO: Barry Barnett, Solicitor of the Seventh Judicial Circuit:

YOU WILL PLEASE TAKE NOTICE that the above named defendant, by his undersigned attorney, hereby requests information pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and information pursuant to Rule 5 & 6 of the South Carolina Rules of Criminal Procedure, on the belief of the attorney for the defense that such information is necessary and important to the defendant's defense. Specifically requested are the following:

1. Disclosure to the defense of any and all exculpatory information that is now, or has been, or may come to the attention of the prosecution or police or any person or agency associated with the prosecution, in the subject matter, until the conclusion of this matter by trial and appeal; as required under the mandate of Brady v. Maryland, 373 U.S. 83 (1963).

2. Any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person known to the defendant to be a prosecution agent.

3. A copy of the defendant's prior criminal record, if any, as is within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

M. HOPE BLACKLEY

RECEIVED
2011 MAY 18 AM 11:02
MAY 18 REC'D
SPARTANBURG COUNTY
CLERK OF COURT
FILED
BY:

4. All books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are in the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in the chief at the trial, or were obtained from or belong to the defendant.

5. Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in the chief at the trial.

6. Any and all papers evidencing chain of physical custody or control of evidence pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure

YOU WILL PLEASE TAKE FURTHER NOTICE that, unless the requests contained herein are complied with within thirty (30) days after the service of this request, the above named defendant, by his undersigned attorney, will move before the presiding judge of the General Sessions Court of Spartanburg County on or after the thirty-first (31st) day following the service of this request, for an Order of the Court granting such relief as is consistent with justice and the dictates of Brady v. Maryland 373 U.S. 83 (1963) and Rule 5 of the South Carolina Rules of Criminal Procedure.

KENNETH P. SHABEL
S.C. Bar No. 16136
CAMPBELL & SHABEL, LLC
104 N. Daniel Morgan Ave., Suite 201
Spartanburg, SC 29306
Tel. (864) 583-0001
Fax (864) 583-1199

May 18, 2011

Service Accepted by:

Solicitor's Office,
Seventh Judicial Circuit

M. HOPE BLACKLEY
2011 MAY 18 AM 11:02
CLERK OF COURT
SPARTANBURG COUNTY
FILED

04/11/11	Name	JOLLEY, HEATHER SMITH	Complainant
04/11/11	Name	[redacted] Minor Victim	VICTIM
04/11/11	Name	SPADE, DANIEL WILLIAM	SUSPECT

Spartanburg County Sheriff's Office

Deputy Report for Incident 11040592

Nature: Sex Offense
Location: 35
Address: 275 FRONTAGE RD DUNCAN SC 29334

Offense Codes: CSCM
Received By: Cantrell Ni **How Received:** T **Agency:** SCSO
Responding Officers: Cantrell Ni
Responsible Officer: Cantrell Ni **Disposition:** ACT 04/11/11
When Reported: 12:57:36 04/11/11 **Occurred Between:** 00:00:00 02/01/10 and 12:57:36 10/02/10

Assigned To: Cantrell Ni **Detail:** SVU **Date Assigned:** 04/11/11
Status: ASN **Status Date:** 04/11/11 **Due Date:** **/**/**

Complainant: 162149
Last: JOLLEY **First:** HEATHER **Mid:** SMITH
DOB: [redacted]74 **Dr Lic:** **Address:** [redacted]
Race: W **Sex:** F **Phone:** [redacted] **City:** GREENVILLE, SC 29615

Offense Codes

Reported:
Observed: CSCM Criminal Sex Conduct w/ Minor

Additional Offense: CSCM Criminal Sex Conduct w/ Minor

Circumstances

Responding Officers: Cantrell Ni
Unit : 4460

Responsible Officer: Cantrell Ni
Received By: Cantrell Ni
How Received: T Took over phone
When Reported: 12:57:36 04/11/11
Judicial Status:
Misc Entry:

Agency: SCSO
Last Radio Log: **:**:** **/**/**
Clearance:
Disposition: ACT **Date:** 04/11/11
Occurred between: 00:00:00 02/01/10
and: 12:57:36 10/02/10

Modus Operandi: **Description :** **Method :**

Involvements

Date	Type	Description

ORIGINAL

STATE OF SOUTH CAROLINA **COUNTY OF SPARTANBURG**	)	**IN THE GENERAL SESSIONS COURT** **SEVENTH JUDICIAL CIRCUIT**
STATE OF SOUTH CAROLINA,	)	**MOTION FOR BOND HEARING**
vs.	)	**WARRANT: M 126199**
DANIEL WILLIAM SPADE,	)	**CHARGE: CSC 1ST DEGREE (W/MINOR < 11)**
DEFENDANT.	)	

TO: Barry Barnette, Solicitor, Seventh Judicial Circuit:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney, on behalf of the above-named Defendant, will move immediately before the presiding judge of the Seventh Judicial Circuit during the term of General Sessions Court beginning June 20, 2011 at 9:00 a.m., or as soon thereafter as counsel may be heard, for an Order allowing the Defendant to be released upon the filing of a Personal Recognizance Bond; or in the alternative, for an Order setting a reasonable bond for Defendant's release.

Kenneth P. Shabel
S.C. Bar No. 16136
Shawn M. Campbell
S.C. Bar No. 69696
CAMPBELL & SHABEL, LLC
104 N. Daniel Morgan Ave., Suite 201
Spartanburg, SC 29306
Tel. (864) 583-0001 Fax (864) 583-1199

June 15, 2011

Service Accepted by:

Solicitor's Office,
Seventh Judicial Circuit

RECEIVED
JUN 15 REC'D
BY:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
v.)
)
Daniel Spade)
)
Defendant.)

AFFIDAVIT OF DISCOVERY
Indictment No(s):
Warrant No(s): M1201199

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:
☑ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☐ MEDIA (CD, DVD)

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☑ Incident Report(s)	1-14	☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☐ Photograph(s)	
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☐ Video/DVD	
☐ Voluntary Statement(s):		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)			
☑ Defendant's NCIC (Rap)	19-22		
☐ Consent to Search Form(s)			
☐ Search Warrant and Return			
☐ Drug Report(s)			
☐ SLED Lab Report(s)			
☐ Hospital Lab Report(s)			
☑ Solicitor's Reciprocal Rule 5			
☑ Other			

CAC report pg 15, Receipt pg 16-18, Emails pg 23-33

TOTAL COPIED/NUMBERED: 33pgs DATED: 6/2/2011

I, Ken Shabel, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 2 day of June, 20__.

Attorney or Designee

Susan S. Reese / C. Beall
SOLICITOR'S OFFICE

SWORN to before me this 2 day of June, 2011

Notary Public for South Carolina
My commission expires: 11.23.19

2011 JUN -7 P 12:54
M. MICHELE BLACKWELL

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
STATE OF SOUTH CAROLINA)
)
)
)
)
VS.)
)
)
Daniel Spade)

IN THE COURT OF GENERAL SESSIONS

Indictment No(s):
Warrant No(s): M126199

REQUESTS FOR DISCLOSURE
(Recip. Rule 5)

TO: DEFENDANT AND HIS ATTORNEY Ken Shabel:

Pursuant to Rule 5, Rules of Criminal Procedure, the State in the above captioned matter requests the disclosure of the following evidence to the State by the Defendant:

1) That the Defendant permit the prosecution to inspect and copy books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the possession, custody or control of the Defendant and which the Defendant intends to introduce as evidence in chief at the trial;

2) That the Defendant permit the prosecution to inspect and copy any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the Defendant, which the Defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the Defendant intends to call at trial when the results or reports related to his testimony.

3) The prosecution requests that the Defendant serve upon the prosecution a written notice if he intends to offer an alibi defense, stating the specific place or places at which the Defendant claims to have been on or between the dates of September 10, 2010 and October 2, 2010, the names, address, and birthdays of the witnesses upon whom he intends to rely to establish such alibi.

4) That any and all evidence is available for viewing at the arresting agency or the South Carolina Law Enforcement Division.

The State further requests that the Defendant notify the State of the Defendant's intention to rely upon the defense of insanity or plea of guilty but mentally ill at the time of the crime.

These requests are continuing requests for disclosure and any relevant matters arising subsequent to the date hereof should be regarded as included in this request.

Susan S. Reese
Assistant Solicitor
Seventh Judicial Circuit

Spartanburg, South Carolina
Dated: June 2, 2011

360

ORIGINAL

STATE OF SOUTH CAROLINA **COUNTY OF SPARTANBURG**	)	**IN THE GENERAL SESSIONS COURT** **SEVENTH JUDICIAL CIRCUIT**
STATE OF SOUTH CAROLINA,	)	**MOTION FOR BOND HEARING**
vs.	)	**WARRANT: M 126199**
DANIEL WILLIAM SPADE,	)	**CHARGE: CSC 1ST DEGREE (W/MINOR < 11)**
DEFENDANT.	)	

TO: Barry Barnett Solicitor, Seventh Judicial Circuit:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney, on behalf of the above-named Defendant, will move immediately before the presiding judge of the Seventh Judicial Circuit during the term of General Sessions Court beginning May 27, 2011 at 9:00 a.m., or as soon thereafter as counsel may be heard, for an Order allowing the Defendant to be released upon the filing of a Personal Recognizance Bond; or in the alternative, for an Order setting a reasonable bond for Defendant's release.

Kenneth P. Shabel
S.C. Bar No. 16136
Shawn M. Campbell
S.C. Bar No. 69696
CAMPBELL & SHABEL, LLC
104 N. Daniel Morgan Ave., Suite 201
Spartanburg, SC 29306
Tel. (864) 583-0001 Fax (864) 583-1199

May 18th, 2011

Service Accepted by:

Solicitor's Office,
Seventh Judicial Circuit

M. HOPE BLACKLEY
RECEIVED
2011 MAY 18 AM 11:02
MAY 18 REC'D
CLERK OF COURT
SPARTANBURG COUNTY
BY:
FILED

Narrative

The complainant and her husband, David Jolley, came to the Sheriff's Office to file a report. Heather is the mother of the listed victim. The biological father is the suspect. Daniel Spade was allowed court order visitation the beginning of every month in South Carolina. The weekend of September 10 - 12, 2010, Daniel came to South Carolina and had the victim stay with him at the Holiday Inn Express in Duncan, SC. When the victim was returned to her mother, she was extremely upset. She was crying uncontrollably, talking like a baby, fearful, timid, and even urinated on the floor. This behavior continued every time she would see or speak to her biological father. The victim stated that Danny D, which is what she calls the suspect, slept in the bed with her without a shirt on and it makes her stomach hurt. That was all the victim would say at that time. On October 1 - 2, 2010, Daniel came to South Carolina for another visit. He stayed at the Crown Plaza on Roper Mountain Road in Greenville with the victim that time. In November 2010, there was a Family Court hearing where the suspect's visitations were stopped. Heather and David received disturbing information from the suspect's girlfriend. The victim's panic attacks stopped after the visitation was suspended. About 2 weeks ago, the victim disclosed to her maternal grandmother, Dale Smith, that she was sexually abused by Daniel Spade. The victim was referred to the Children's Advocacy Center. Further investigation required.

Responsible LEO:

Approved by:

Date

Supplement

Supplemental Report:

The victim was seen at the Children's Advocacy Center. She disclosed vaginal penetration by the suspect's finger and his penis. She also disclosed that he made her perform oral sex on him. She stated that the incidents occurred on two separate occasions when she stayed at a hotel with him during her visitations. I obtained receipts from the Holiday Inn Express in Duncan, SC that show the suspect rented a room there on a weekend in September 2010 and October 2010, when the victim had her visitation with him. I presented this case to Judge Wall. He issued warrant M-126199 on Daniel Spade for CSC w/ a minor 1st degree.

Name Involvements:

Complainant : 162149

Last: JOLLEY **First:** HEATHER **Mid:** SMITH

DOB: [redacted]74 **Dr Lic:** **Address:** [redacted]

Race: W **Sex:** F **Phone:** [redacted] **City:** GREENVILLE, SC 29615

SUSPECT : 162153

Last: SPADE **First:** DANIEL **Mid:** WILLIAM

DOB: [redacted]75 **Dr Lic:** **Address:** [redacted]

Race: W **Sex:** M **Phone:** [redacted] **City:** MANASSAS, VA 20111

VICTIM : 162151

Last: [redacted] **First:** [redacted] Minor Victim **Mid:** [redacted]

DOB: [redacted]06 **Dr Lic:** **Address:** [redacted]

Race: W **Sex:** F **Phone:** [redacted] **City:** [redacted]

SPARTANBURG COUNTY DETENTION FACILITY

950 CALIFORNIA AVENUE
SPARTANBURG, SOUTH CAROLINA-29303-2184

LARRY W. POWERS
DIRECTOR

TELEPHONE (864) 596-2607
FAX (864) 596-3421

VICTIM/WITNESS JAIL NOTIFICATION FORM

State v. Daniel William Spade Ticket/Warrant # M-126199 Agency SD

Offense Criminal Sexual conduct with minor

1. Victim's Name [redacted] (minor)
2. Victim's Address [redacted] Greenville SC 29615
3. Victim's Telephone [redacted]
4. Attempts to Contact of Arrest:

(A) Date 5-18-11 Time 0918

(B) Date 5-18-11 Time 0934

(C) Date 5-18-11 Time 1025

Comments: 1st 1515 Message Left on Voicemail
1025 unable to speak to Vic family left message on voice
2nd Unable to contact Vict's parent -
Notified Greenville Comm (864) 271-5210 oper 338 - Kim
stated A Officer would be sent to the Resident w/ Notification of ARR + Arrai
5. Attempts to Contact of Release: Greenville unable to contact (1025) 5-18-11

(A) Date _____ Time _____

(B) Date _____ Time _____

(C) Date _____ Time _____

Comments

_____

_____

_____

C. P. Dunn
Signature of Jail Official

Date 5-18-11

_____
Printed Name of Official

VICTIM NOTIFICATION FORM

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE OF SOUTH CAROLINA

VS

Daniel William Spade

CHECK AND COMPLETE ONE OF THE FOLLOWING

☒ A representative of the Spartanburg County Detention Facility, (the facility of the Defendant), acknowledge that a resonable attempt was made to notify the victim (s) sufficiently, in advance of the bond hearing

Name of Victim (s) [redacted] (MINOR)

OR

☐ A representative of the Spartanburg County Detention Facility, (the facility having custody of the Defendant, indicates the victim (s) did not wish to be notified of the bond hearing.

Name of Victim (s) _____

(Representative's Signature)

(Judge's Signature)

Or the arresting officer if Defendant is brought directly before the judge

Daniel William Spade — Name of Defendant

M-126199 — Warrant/Ticket No.

Charges: Sex / Criminal sexual conduct with minor or Attempt -victim under 11 yrs of age - First degree

County of Spartanburg

Trial Court: ~~Magistrate~~ 615

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

DIRECTIONS: Magistrates and municipal court judges must use this checklist for **ALL GENERAL SESSIONS** and for **ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE**. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. **Defendant must be provided a completed copy of this form.**

☐ BAIL PROCEEDING / ☑ FIRST APPEARANCE (NON-BAILABLE OFFENSES)

1. Form used at bail proceeding
   - ☐ a. Bond Form I (personal recognizance)
   - ☐ b. Bond Form II (surety, cash, percentage)
   - ☑ c. None (Non-Bailable Offense)
2. For cases in which bond was set, defendant was informed:
   - ☑ a. Warrant for arrest will be issued for violation of any condition of bail bond order.
   - ☐ b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
   - ☐ c. Failure to appear in court as required will result in institution of additional criminal charges. Failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of not more than $5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, additional charge has penalty of not more than $1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.
3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
   - ☐ a. Orally
   - ☐ b. In writing

   {NOTE: Defendant must be informed of right both orally and in writing.}
4. ☐ Defendant was informed of the right to trial by jury.
5. In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
   - ☐ a. Charges against defendant and nature of the charges.
   - ☐ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
   - ☐ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal proverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before _____ located at _____ _____ for indigency screening. Defendant is responsible for a statutory fee of $_____ for indigency screening.
6. ☐ In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
7. ☐ If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.

5-18-11
First Appearance or Bond Hearing Date:

JUDGE'S SIGNATURE

STATE OF SOUTH CAROLINA **COUNTY OF SPARTANBURG**	)	**IN THE GENERAL SESSIONS COURT** **SEVENTH JUDICIAL CIRCUIT**
STATE OF SOUTH CAROLINA,	)	**ORDER FOR BOND**
vs.	)	WARRANT: M-126199
Daniel William Spade,	)	CHARGES: CSC 1st degree (minor < 11)
DEFENDANT.	)	

This matter was before this Court on the Defendant's motion, by and through **Shawn M. Campbell, Esq.,** *pursuant to S.C. Code Ann. Section 17-15-10, et. seq.,* seeking bond on the above-referenced charge. At the hearing held in this matter the State was represented by Susan Reese of the Seventh Circuit Solicitor's Office.

It appears that the Defendant has been held in the Spartanburg County Detention Center awaiting trial since May 18, 2011 in connection with the charges listed above. Having considered all relevant factors, this Court finds that the Defendant's motion for bond should be and is hereby **granted** and that bond should be set in the amount of **$75,000.00** with the following special conditions: The Defendant may have no contact with the victim, the victim's family, or Cara Lintner.

IT IS ORDERED THAT the Defendant's Bond be set at $75,000.00 with the following special conditions:

(a) The Defendant may have no contact with the victim or the family of the victim; and

(b) Defendant may have no contact with Cara Lintner.

IT IS SO ORDERED!

Roger L. Couch
SEVENTH JUDICIAL CIRCUIT
GENERAL SESSIONS COURT

July 15, 2011

2011 JUL 15 AM 11:35

MESSAGE CONFIRMATION

07/15/2011 10:48
ID=SPTBG CO CLK OF CRT

DATE	S.R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT	
07/15	00'17"	1 864 596 3423	TX	01	OK	0000

07/15/2011 10:48 SPTBG CO CLK OF CRT → 3423 NO.733 P01

STATE OF SOUTH CAROLINA **COUNTY OF SPARTANBURG**	)	**IN THE GENERAL SESSIONS COURT** **SEVENTH JUDICIAL CIRCUIT**
STATE OF SOUTH CAROLINA,	)	**ORDER FOR BOND**
vs.	)	WARRANT: M-126199
Daniel William Spade,	)	CHARGES: CSC 1st degree (minor < 11)
DEFENDANT.	)	

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IT IS ORDERED THAT the Defendant's Bond be set at $75,000.00 with the following special conditions:

STATE OF SOUTH CAROLINA **COUNTY OF SPARTANBURG**	)	**IN THE GENERAL SESSIONS COURT** **SEVENTH JUDICIAL CIRCUIT**
STATE OF SOUTH CAROLINA,	)	
vs.	)	**MOTION FOR BOND HEARING**
DANIEL WILLIAM SPADE,	)	**WARRANT: M 126199**
DEFENDANT.	)	**CHARGE: CSC 1ST DEGREE (W/MINOR < 11)**

TO: Barry Barnette, Solicitor, Seventh Judicial Circuit:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney, on behalf of the above-named Defendant, will move immediately before the presiding judge of the Seventh Judicial Circuit during the term of General Sessions Court beginning July 11, 2011 at 9:00 a.m., or as soon thereafter as counsel may be heard, for an Order allowing the Defendant to be released upon the filing of a Personal Recognizance Bond; or in the alternative, for an Order setting a reasonable bond for Defendant's release.

Kenneth P. Shabel
S.C. Bar No. 16136
Shawn M. Campbell
S.C. Bar No. 69696
CAMPBELL & SHABEL, LLC
104 N. Daniel Morgan Ave., Suite 201
Spartanburg, SC 29306
Tel. (864) 583-0001 Fax (864) 583-1199

July 7, 2011

Service Accepted by:

Solicitor's Office,
Seventh Judicial Circuit

2011 JUL -8 AM 11:19
RECEIVED
BY

Print Form

CUSTODIAN OF EVIDENCE (S.C. Code §17-28-330(A))

REGISTRATION FORM

Daniel William Spade	00358974
INMATE NAME	SCDC # *
Spartanburg County Clerk of Court	
REGISTERING ENTITY (SHERIFF'S DEPT., POLICE DEPT., SOLICITOR, SLED, ETC.) *	
180 Magnolia Street, Spartanburg, SC 29306	864-596-3883
COMPLETE MAILING ADDRESS *	PHONE NUMBER *
C. TINSLEY	02262014
INFORMATION SUBMITTED BY/TITLE *	DATE *
ctinsley@spartanburgcounty.org	
EMAIL ADDRESS	

*denotes required field

Mail completed from to:

Jimmy Sligh, Operations Coordinator
Division of Operations
4444 Broad River Road
Columbia, SC 29210
(803) 896-8540
Email: Sligh.Jimmy@doc.state.sc.us

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg

Case No. 2011-[illegible]-7111

371

00358974

Plaintiff(s) South Carolina

vs.

Defendant(s) Daniel Spade

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1 Photograph,	1 E-mail (ID)	1 Counseling Records
2 Photograph,	2 E-mail (ID)	2 Letter - 2/21/14
3 Photograph	3 Clinical Notes (ID)	3 Memorandum of Law
4 Hotel Receipt	4	4 Jury Instructions
5 Hotel Receipt,	5	5 Email
6	6	6 E-mail
7	7	7 Jury Note
8	8	8
9	9	9
10	10	10
11	11	11
12	12	12
13	13	13
14	14	14
15	15	15
16	16	16
17	17	17
18	18	18
19	19	19
20	20	20

Court Reporter Michael R. Watts

Clerk of Court Charlene Smalls 2/26/14
A Sears

DK 28
Documents

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
v.)
Daniel Spade,)
)
Defendant.)

AFFIDAVIT OF DISCOVERY
Indictment No(s): 11 4171
Warrant No(s): M126199

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:
☑ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☐ MEDIA (CD, DVD)

Supplemental

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☐ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☐ Photograph(s)	
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☐ Video/DVD	
☐ Voluntary Statement(s):		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)		☐ Children's Advocacy Center Report	
☐ Defendant's NCIC (Rap)		☐ CAC Video	
☐ Consent to Search Form(s)		☐ DSS records	
☐ Search Warrant and Return			
☐ Drug Report(s)			
☐ SLED Lab Report(s)			
☐ Hospital Lab Report(s)			
☑ Solicitor's Reciprocal Rule 5			

☑ Other Therapy records pg 1-89

TOTAL COPIED/NUMBERED: 89 pg DATED: 10/31/13

I, Ken Shabel, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 4 day of Nov., 2013.

Attorney or Designee

Christie B. Lindsey for C. Gordan
SOLICITOR'S OFFICE

SWORN to before me this 4 day of Nov., 2013

Notary Public for South Carolina
My commission expires: 4-23-19

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 NOV 14 PM 2:44
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	
	)	
	)	2011-GS-42-4171
The State of South Carolina	)	
	)	
	)	
vs.	)	ORDER FOR CONTINUANCE
	)	
Daniel William Spade,	)	
Defendant.	)	
	)	

M. HUFF BLACKLEY 2013 OCT 28 PM 3:28

The State, by and through counsel, hereby moves for a continuance of the above-mentioned case for the following reasons:

This case involves allegations of Criminal Sexual Conduct with a Minor in the 1st Degree. The alleged victim in this case is the 7 year-old biological daughter of the Defendant.

The case was filed May 20, 2011, and has been the subject of numerous bond and motion hearings. Amy Goulding was the Assistant Solicitor originally assigned the case and the person who has handled the vast majority of the previous and bond and motion hearings. The Defendant by and through his attorney has requested a jury trial. Due to past scheduling and discovery issues, I met with Assistant Solicitor Goudling, and Ken Shabel, attorney for the Defendant. At that meeting I set the trial for a date certain to be held beginning November 4, 2013.

In late August of 2013, the case was reassigned to Assistant Solicitors Jennifer Jordan and Susan Reese. Mrs. Reese was asked to step in because of her experience in working with children in cases such as these. At that time, the child had been in therapy for many months and was continuing therapy. Therefore, the child had not actually spoken with a representative of the Solicitor's office. Mrs. Reese was able to meet with the child on two occasions. Assistant Solicitor, Kim Leskanic has also been asked to help in the prosecution of this matter due to her experience

SCANNED

working with children as well. Mrs. Leskanic has met once with the child with Mrs. Reese in an effort to prepare for next week's trial.

On Friday, October 25, 2013, Mrs. Reese received word that she had been approved to travel to China to complete an adoption in process there. She and her husband were given travel dates for the week of November 4, 2013. Mrs. Reese has asked and been granted protection for that term and each terms throughout her required maternity leave.

The State has requested a continuance in this matter due to the nature of the charges and the need for the child to be comfortable with the persons questioning her. The parties met in my chambers October 28, 2013 to discuss their various positions on a potential continuance.

Present for the State were Solicitor Barry Barnette, Assistant Solicitors Kim Leskanic and Susan Reese. Present and representing the family of the victim was Doug Brannon. Present for the Defense was Ken Shabel.

The Defendant by and through Mr. Shabel adamantly opposes any continuance in this case. The Defense opines that the case has been set for a date certain and should continue without the presence of Mrs. Reese due to her recent introduction into the matter. Mr. Shabel contends that other attorneys in the office are qualified to try the case and should do so per the prior scheduling order.

FILED
CLERK OF COURT
2013 OCT 28 PM 3:28
M. RENE BLACKLEY

The State contends that only Mrs. Reese and Mrs. Leskanic have met with the child and that the last minute change in representation would put the child at an unfair position given her age and her anxiety. Additionally, although Mrs. Leskanic has met with the child, she in not in a position to try this case without Mrs. Reese given her limited knowledge of the other facts and evidence.

Mr. Shabel contends that he is aware of the length of time required for Mrs. Reese to be home with her adopted child given the circumstances and needs of that child. He contends that a

continuance to a term when Mrs. Reese could prosecute the matter is unreasonable.

The State contends that they would in fact be able to try the case without Mrs. Reese if Mrs. Leskanic were given some smaller amount of additional time to prepare. Mr. Barnette states that they would be willing to remove Mrs. Reese from the case and to place Mrs. Leskanic on the case with Assistant Solicitor Jennifer Jordan if that would provide a more reasonable option.

Mr. Shabel contends that although his client is not in jail, the pending charges in South Carolina are adversely affecting his client's ability to visit with three other children in Virginia. Therefore, although Mr. Shabel states he is sympathetic with the reason for the request, he still maintains the trial should go forward on the 4th as planned.

Given the nature of the case, the age of the child, the compelling reason for the absence of Mrs. Reese, and the willingness of Mrs. Leskanic to step in to the prosecution thereby reducing the time needed to continue the matter before the trial could take place, I find the following:

1. The case shall be continued from the November 4, 2013, trial docket
2. The prosecutors of record in the matter will be Assistant Solicitors Jennifer Jordan and Kim Leskanic.
3. The case will be placed on the General Sessions trial docket for the week of February 24, 2014.
4. The case shall be placed on the docket in the first position and no cases will be set before it.

IT IS SO ORDERED.

J. Mark Hayes
Administrative Judge
Seventh Judicial Circuit
Spartanburg County, South Carolina

October____, 2013

M. NUFFE BLACKLEY
2013 OCT 28 PM 3:28
FILED
CLERK OF COURT

SCANNED

STATE OF SOUTH CAROLINA) COUNTY OF SPARTANBURG)	IN THE COURT OF GENERAL SESSIONS FOR THE SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA)	**ORDER FOR DATE CERTAIN**
vs.)	
Daniel Spade,)	Indictment 2011-GS-42-4171 Criminal Sexual Conduct with a Minor, 1st Degree
Defendant.)	

The above-referenced case was on the General Sessions docket for the week of June 3, 2013, but was not reached. It appears that multiple witnesses as well as the Defendant reside outside the State of South Carolina. The Court finds it appropriate to set the above-referenced case as the first case on the docket for the week of November 4, 2013.

THEREFORE, IT IS ORDERED that the above-referenced case shall be the first case on the docket for the week of November 4, 2013.

The Honorable J. Mark Hayes, II
The Seventh Judicial Circuit Court

July 8, 2013
Spartanburg, South Carolina

2013 JUL -8 PM 4:54

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG STATE OF SOUTH CAROLINA vs. Daniel Spade, Defendant.	IN THE COURT OF GENERAL SESSIONS FOR THE SEVENTH JUDICIAL CIRCUIT **ORDER ON DEFENDANT'S MOTION TO COMPEL AND BOND MODIFICATION** M126199 Indictment 2011-GS-42-4171 Criminal Sexual Conduct with a Minor, 1st Degree

2013 JUL 12 PM 2

This matter came before the Court on May 7, 2013, for hearing on Defendant's Motion to Compel and Motion to Amend Bond. The Defendant was represented by Attorney Ken Shabel. The State was represented by Assistant Solicitor Amy Goulding. The family of the Victim was properly served with the Motion to Compel and represented by Attorney Doug Brannon.

The Defendant sought an Order compelling the alleged Victim's mother to sign a HIPAA release to obtain specific medical records of the Victim. The Defendant also sought an Order modifying the terms of his bond insofar as it relates to contact with Cara Litner, the mother of the Defendant's other children residing in Virginia. The State and the Victim's mother, through Attorney Brannon, opposed both of the Defendant's Motions.

Regarding the Motion to Compel, the State stipulated there is no medical information to support the allegations made by the Victim against the Defendant. Subsequently, Defense withdrew its Motion to Compel regarding the Victim's medical information from Eastside Pediatrics.

Regarding the Motion to Amend Bond, the Defendant sought a bond modification to allow him to have contact with Cara Litner "solely as to issues related to the minor children they share together." The Court was informed by Defendant's attorney that based on the present South Carolina bond order dated July 15, 2011, a court in Virginia has barred the Defendant from having contact with Cara Litner. Defense further informed the Court the children shared with Cara Litner in Virginia are not the subjects of a present South Carolina criminal case. The State and the

SCANNED

attorney for the Victim's family argued that if allowed bond modification would result in the Defendant using his ability to contact Cara Litner as a means of intimidating a potential witness for the State in the presently pending South Carolina criminal case against the Defendant.

Therefore, as to both parts of the Defendant's Motions, **IT IS THEREFORE ORDERED:**

1. In light of the State's stipulation, the Defendant is not entitled to the medical records of the Victim from Eastside Pediatrics.
2. The Court grants the Defendant's Motion to Amend Bond for the limited purpose for which it was sought – "solely as to issues related to the minor children they share together" – but restricts his ability to have contact with Cara Litner consistent with any orders issued by a Virginia Family / Domestic Court.
3. The present modification of bond is limited to the Defendant having the ability to seek modification of Virginia court orders or restraining orders from the appropriate Virginia court as it relates to issues concerning the minor children (Virginia residents; not the subject of the presently pending South Carolina criminal case) shared with Cara Litner without such actions of going to court being a violation of his present South Carolina bond. A Virginia Court should decide the issue of contact between parents, Defendant and Cara Litner, regarding matters concerning their children. If the appropriate Virginia Court determines he is to have no contact with Cara Litner, the Defendant must abide by that directive. If the appropriate Virginia Court lifts Defendant's restrictions of contact with Cara Litner, the requirement of no contact with Cara Litner from the July 2011 bond remains as part of the present bond save for contact "solely as to issues related to the minor children they share together" until further order of a Circuit Court Judge in South Carolina.

2013 JUL -9 P 3:21

4. Other than the assertion of Virginia-resident Cara Litner being a potential witness in the South Carolina matter, the Court was not provided sufficient information to determine Cara Litner's involvement in the presently pending South Carolina criminal case. If further modification to the South Carolina bond is sought, consideration should be given to making the request to the judge who issued the original bond.
5. In all other respects, all bond requirements remain.

IT IS SO ORDERED.

The Honorable J. Mark Hayes, II
The Seventh Judicial Circuit Court

July 9, 2013
Spartanburg, South Carolina

2013 JUL -9 P 3:21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	)	
Vs.	)	MOTION FOR BOND MODIFICATION AND TO COMPEL RELEASE OF MEDICAL RECORDS
DANIEL WILLIAM SPADE, Defendant.	)	2011-GS-42-04171

TO: BARRY BARNETTE, Seventh Circuit Solicitor
AMY GOULDING, Assistant Solicitor
HEATHER JOLLEY, Mother of Alleged Victim

The Defendant Daniel William Spade, by and through the undersigned attorney, hereby moves for an order for the following relief:

(a) Modifying the terms of the Defendant's bond to allow him to have contact with Cara Litner (a non-South Carolina resident) solely as to issues related to the minor children they share together; and

(b) Compelling Heather Jolley, the mother of the alleged victim in this case, to sign a HIPAA release to authorize the undersigned attorney to receive (under such protective Orders as the court finds appropriate) the medical records of the alleged victim from Eastside Pediatrics, Taylors, South Carolina.

WHEREFORE, your Defendant prays for an Order granting the relief requested in this Motion and that the Court schedule a hearing on these issues.

Respectfully Submitted this twelfth day of March, 2013.

Kenneth P. Shabel
SC Bar #16136
CAMPBELL & SHABEL, Attorneys at Law
104 North Daniel Morgan Avenue, Suite 201
Spartanburg, South Carolina 29306
864.583.0001
864.583.1199 (Fax)

FILED
MAR 20 2013
2013 MAR 20 AM 10:32
MARIE BRADLEY

STATE OF SOUTH CAROLINA **IN THE COURT OF GENERAL SESSIONS**

COUNTY OF SPARTANBURG **SEVENTH JUDICIAL CIRCUIT**

State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
	)	Case No.: 2011-GS-42-4171
DANIEL WILLIAM SPADE	)	
	)	
Respondent.	)	

I hereby certify that a copy of the foregoing **MOTION FOR BOND MODIFICATION AND TO COMPEL RELEASE OF MEDICAL RECORDS** was served upon counsel of record and/or unrepresented parties by U.S. Postal Service first class mail, postage prepaid, on the 15th day of March, 2013 to the address(es) as follows:

Barry Barnette, Esq.
7th Circuit Solicitor's Office
Spartanburg County Courthouse
180 Magnolia Street, 3rd Floor
Spartanburg, SC 29306

Amy Goudling, Esq.
7th Circuit Solicitor's Office
Spartanburg County Courthouse
180 Magnolia Street, 3rd Floor
Spartanburg, SC 29306

Jennifer Moss, Paralegal
Campbell & Shabel Attorneys at Law
P.O. Box 1793
Spartanburg, SC 29304
Tel.: (864) 583-0001
Fax: (864) 583-1199

2013 MAR 20 AM 10:32
M. HOPE BRADLEY

March 16, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	)	
	)	ORDER ON
Vs.	)	DEFENDANT'S MOTION TO COMPEL
	)	
DANIEL WILLIAM SPADE,	)	Indictment Number:
Defendant.	)	2011-GS-42-04171

M 126199

This matter was before the Court on February 15, 2013 pursuant to a Motion to Compel filed by the Defendant on January 2, 2013. The Defendant's attorney, Kenneth P. Shabel, filed a Brady request for discovery on November 20, 2012 seeking various items in discovery. The State was represented by this hearing by Solicitor Barry Barnette and Assistant Solicitor Amy Goulding.

On the Defendant's motion as to the specific items requested, and on other ancillary issues, the Court rules as follows:

1. The State shall turn over all audio recordings of the Defendant in its possession (including jail conversations in both Virginia and South Carolina) within ten days of this Order.
2. The State shall turn over its one video recording of the Defendant – a video from an interrogation in Virginia – within ten days of this Order.
3. The State is not in possession of any medical records from Eastside Pediatrics and cannot be compelled to release them; however, upon proper Motion served upon the alleged victim's Mother, the Court may address the Defendant's requests to obtain such medical records.
4. The State shall not be required to turn over any mental health records of the alleged victim from Meredith Thompson Loftis at this time; however, if the State intends to call her as a witness in their case, they must turn over all such records within a reasonable time prior to the trial of the case.

2013 FEB 26 PM 4:48

SCANNED

5. The State shall turn over the full investigative file of the Spartanburg County Sheriff's Office and Detective Nikki Cantrell within ten days of this Order. The Defendant has ordered a transcript of a Family Court hearing from October 2012, and after receiving that transcript the Defendant may renew this portion of his Motion if he believes based upon the transcript that there has not been full release of this file.
6. The State shall turn over copies of all text messages obtained from the Defendant's cell phone within ten days of this Order. The State has asserted that no photographs were taken from the cell phone.
7. At this time, there is no forensic report from the search of the Defendant's computer. If the State intends to use the computer (or its search of the computer) as evidence at trial, it must provide copies of all reports generated and documents obtained from that computer within a reasonable time prior to the trial of the case.
8. The case shall be removed from the docket for the week of February 25, 2013. It shall be placed back on the docket no sooner than June 1, 2013 but may be placed on the docket sooner upon the Defendant's receipt of the transcript from the October 2012 Family Court proceedings with consent of both he State and the Defendant.

AND SO IT IS ORDERED this 22nd day of February, 2013.

J. MARK HAYES, II
PRESIDING CIRCUIT COURT JUDGE
SEVENTH JUDICIAL ~~DISTRICT~~ Circuit

Spartanburg, South Carolina

2013 FEB 26 PM 4:48

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	)	
	)	ORDER ON
Vs.	)	DEFENDANT'S MOTION TO COMPEL
	)	
DANIEL WILLIAM SPADE,	)	Indictment Number:
Defendant.	)	2011-GS-42-04171

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FILED
2013 FEB 26 PM 4:48
SPARTANBURG COUNTY

5. The State shall turn over the full investigative file of the Spartanburg County Sheriff's Office and Detective Nikki Cantrell within ten days of this Order. The Defendant has ordered a transcript of a Family Court hearing from October 2012, and after receiving that transcript the Defendant may renew this portion of his Motion if he believes based upon the transcript that there has not been full release of this file.

6. The State shall turn over copies of all text messages obtained from the Defendant's cell phone within ten days of this Order. The State has asserted that no photographs were taken from the cell phone.

7. At this time, there is no forensic report from the search of the Defendant's computer. If the State intends to use the computer (or its search of the computer) as evidence at trial, it must provide copies of all reports generated and documents obtained from that computer within a reasonable time prior to the trial of the case.

8. The case shall be removed from the docket for the week of February 25, 2013. It shall be placed back on the docket no sooner than June 1, 2013 but may be placed on the docket sooner upon the Defendant's receipt of the transcript from the October 2012 Family Court proceedings with consent of both he State and the Defendant.

AND SO IT IS ORDERED this 22nd day of February, 2013.

J. MARK HAYES, II
PRESIDING CIRCUIT COURT JUDGE
SEVENTH JUDICIAL ~~DISTRICT~~

Spartanburg, South Carolina

2013 FEB 26 PM 4:48

386

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
v.)
Daniel Spade,)
)
Defendant.)

AFFIDAVIT OF DISCOVERY
Indictment No(s): 11 4191
Warrant No(s): M1261199

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:
☑ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☑ MEDIA (CD, DVD)

Supplemental

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☐ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☐ Photograph(s)	
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☑ Video/DVD 2 DVDs 2 CDs	
☐ Voluntary Statement(s):		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)		☐ Children's Advocacy Center Report	
☐ Defendant's NCIC (Rap)			
☐ Consent to Search Form(s)			
☐ Search Warrant and Return			
☐ Drug Report(s)			
☐ SLED Lab Report(s)			
☐ Hospital Lab Report(s)			
☑ Solicitor's Reciprocal Rule 5			
☑ Other: Call Log pg 1 & 2			

TOTAL COPIED/NUMBERED: 4 pgs DATED: 2/15/13
2 DVD's & 2 CD's

I, Ken Shabel, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 21 day of Feb, 2013

Attorney or Designee

Christie B. Kinsey / S. Reed
SOLICITOR'S OFFICE

SWORN to before me this 21 day of Feb, 2013

Notary Public for South Carolina
My commission expires: 03/2022

CLERK OF COURT SPARTANBURG
2013 FEB 26 PM 1:53

SCANNED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
	)	GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
State of South Carolina	)	DEFENDANT'S MOTION TO
	)	COMPEL DISCOVERY
Vs.	)	
	)	
DANIEL WILLIAM SPADE,	)	
Defendant.	)	Indictment Number
	)	2011-GS-42-04171

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through the undersigned attorney, hereby moves for an Order compelling the State of South Carolina to produce those documents and items requested by the Defendant in his request for discovery filed with the Solicitor's Office on November 20, 2012. The Defendant so moves based upon the grounds that more than thirty days have passed since the issuance of the discovery requests and, based on information and belief, there exists no justifiable basis for the failure of the State to disclose this information.

WHEREFORE the Defendant respectfully requests a hearing be docketed on this Motion as soon as possible.

WHEREFORE the Defendant further respectfully requests that the Court issue an Order pursuant to Rule 5(d)(2) of the South Carolina Rules of Criminal Procedure requiring immediate release of this information or, in the alternative, prohibiting the State from introducing any evidence not disclosed pursuant to this request.

This Motion is hereby made this twenty-seventh of December, 2012.

Shawn M. Campbell (SC Bar #69696)
Kenneth P. Shabel (SC Bar #16136)
CAMPBELL & SHABEL, Attorneys at Law
104 North Daniel Morgan Avenue, Suite 201
Spartanburg, South Carolina 29306
864.583.0001
864.583.1199 (Fax)

2013 JAN -2 PM 2:02

SCANNED

388

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
v.)
Daniel Spade,)
Defendant.)

AFFIDAVIT OF DISCOVERY
Indictment No(s): 11 4191
Warrant No(s): M120199

FILED
CLERK OF COURT
2012 OCT 18 AM 10:22
M. RUPE BLACKLEY

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:
☐ HARD COPY; ☑ ELECTRONICALLY (e-mail); ☐ MEDIA (CD, DVD)

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☐ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☐ Photograph(s)	
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☐ Video/DVD	
☐ Voluntary Statement(s):		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)		☐ Children's Advocacy Center Report	
☐ Defendant's NCIC (Rap)			
☐ Consent to Search Form(s)			
☐ Search Warrant and Return			
☐ Drug Report(s)			
☐ SLED Lab Report(s)			
☐ Hospital Lab Report(s)			
☑ Solicitor's Reciprocal Rule 5			

☑ Other Medical report pg 1-13

TOTAL COPIED/NUMBERED: 13 pgs DATED: 10/15/12

I, Kes Shabel, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this _____ day of _____, 20____.

e-mailed
Attorney or Designee

Christie B. Lindsey / A Gowdy
SOLICITOR'S OFFICE

SWORN to before me this 15th day of October, 20 12.

Cinthia Cassaday
Notary Public for South Carolina
My commission expires: 1/26/2015

389

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
v.)
Daniel Spade)
Defendant.)

AFFIDAVIT OF DISCOVERY
Indictment No(s):
Warrant No(s): M126199

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:
☐ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☐ MEDIA (CD, DVD)

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☐ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☐ Photograph(s)	
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☑ Video/DVD 3 CDs of calls + 1 CD of interview	
☐ Voluntary Statement(s):		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)		☐ Children's Advocacy Center Report	
☐ Defendant's NCIC (Rap)			
☐ Consent to Search Form(s)			
☐ Search Warrant and Return			
☐ Drug Report(s)			
☐ SLED Lab Report(s)			
☐ Hospital Lab Report(s)			
☐ Solicitor's Reciprocal Rule 5			

☐ Other

TOTAL COPIED/NUMBERED: 3 CDs DATED: 10/12/12
1 CD of int.

I, Doug Brannon, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 12th day of October, 2012.

Andrea Moore
Attorney or Designee

Christie B Lindsey / A Goulding
SOLICITOR'S OFFICE

SWORN to before me this 12th day of October, 2012.

Chris J Cassady
Notary Public for South Carolina
My commission expires: 1/22/2015

2012 OCT 15 AM 9:22
SPARTANBURG
CLERK

SCANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
v.)
Daniel Spade,)
Defendant.)

AFFIDAVIT OF DISCOVERY
Indictment No(s):
Warrant No(s): M126199

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:
☐ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☐ MEDIA (CD, DVD)

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☐ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☐ Photograph(s)	
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☐ Video/DVD	
☐ Voluntary Statement(s):		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)		☐ Children's Advocacy Center Report	
☐ Defendant's NCIC (Rap)			
☐ Consent to Search Form(s)			
☐ Search Warrant and Return			
☐ Drug Report(s)			
☐ SLED Lab Report(s)			
☐ Hospital Lab Report(s)			
☐ Solicitor's Reciprocal Rule 5			
☑ Other			

1-33 dated 6/2/11 pg 1-44 dated 6/14/12

TOTAL COPIED/NUMBERED: MM pgs DATED: 10/4/12

I, Doug Brannon, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 11 day of Oct, 2012.

Attorney or Designee

Christie B. Lindsey / A. Gaulding
SOLICITOR'S OFFICE

2012 OCT 15 AM 9:23
CLERK
SPARTANBURG

SWORN to before me this 11 day of Oct, 2012.

S. Jones
Notary Public for South Carolina
My commission expires: 4.23.19

SCANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
v.)
Daniel Spade,)
)
Defendant.)

AFFIDAVIT OF DISCOVERY
Indictment No(s):
Warrant No(s): M126199

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:
☑ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☐ MEDIA (CD, DVD)

FILED
CLERK OF COURT
2012 JUN 21 PM 2:24
M. HOPE BLACKLEY

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☐ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☐ Photograph(s)	
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☐ Video/DVD	
☐ Voluntary Statement(s):		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)			
☐ Defendant's NCIC (Rap)			
☐ Consent to Search Form(s)			
☐ Search Warrant and Return			
☐ Drug Report(s)			
☐ SLED Lab Report(s)			
☐ Hospital Lab Report(s)			
☐ Solicitor's Reciprocal Rule 5			

☑ Other: CAC report pg 1-HH Supplemental

TOTAL COPIED/NUMBERED: HH pg DATED: 6/14/12

I, Ken Shabel, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 15 day of June, 20 12

Attorney or Designee

Christie B. Lindsey / A. Gerding
SOLICITOR'S OFFICE

SWORN to before me this 15 day of June, 20 12

S. Jones
Notary Public for South Carolina
My commission expires: 4.23.19

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
v.)
Daniel Spade,)
Defendant.)

AFFIDAVIT OF DISCOVERY
Indictment No(s):
Warrant No(s): M12610K9

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:
☐ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☑ MEDIA (CD, DVD)

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☐ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☐ Photograph(s)	
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☑ Video/DVD 1 CHC Video	
☐ Voluntary Statement(s):		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)			
☐ Defendant's NCIC (Rap)			
☐ Consent to Search Form(s)			
☐ Search Warrant and Return			
☐ Drug Report(s)			
☐ SLED Lab Report(s)			
☐ Hospital Lab Report(s)			
☐ Solicitor's Reciprocal Rule 5			

☐ Other *Supplemental*

TOTAL COPIED/NUMBERED: 1 DVD DATED: 11/10/11

I, Ken Shabel, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 28 day of November, 20 11.

Attorney or Designee

Amy S. Goulding / C Beall
SOLICITOR'S OFFICE

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 DEC 12 AM 9:28
M. HOPE BLACKLEY

SWORN to before me this 28 day of November, 20 11.

S. Jones
Notary Public for South Carolina
My commission expires: 4-23-19

Computer

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF SPARTANBURG	)	
State of South Carolina	)	
	)	**MOTION IN LIMINE FOR COMPLIANCE WITH RAPE SHIELD LAW**
vs.	)	
	)	
Daniel Spade,	)	2011-GS-42-4171
	)	
Defendant.	)	

To the Defendant and his attorney, Ken Shabel:

Now comes the State with notice to the defendant, by and through counsel for defendant, Beverly Jones, Esquire, that the State of South Carolina moves to ensure compliance with S.C. Code Section 16-3-659.1, the "Rape Shield Statute", which mandates limited admissibility of opinion evidence, reputation evidence, or specific instances of sexual activity by the victim with person other than the defendant. Furthermore, this law is established pursuant to the S.C. Rules of Evidence, Rule 412.

Please take notice that the State moves to prohibit any reference or line of inquiry by counsel regarding prior sexual knowledge and/or sexual activity concerning the victim, [redacted] with any person other than the defendant. The exclusion of such reference shall include, but is not limited to: any inquiry by counsel, and/or any reference by counsel during summation, argument, or witness examination which alleges any specific instance of prior sexual activity or sexual knowledge.

Furthermore, S.C. Code Section 16-3-659.2 requires notice to the State before any such evidence may be proffered before the Court. In addition, the law mandates an *in-camera* review by the court before any such evidence may be deemed relevant or admissible.

Respectfully Submitted,

Jennifer A.J. Jordan
Assistant Solicitor
7th Circuit Solicitor's Office
180 Magnolia St.
Spartanburg, SC 29306
864-596-2575

FILED
2014 FEB -7 PM 4:10
CLERK OF COURT
SPARTANBURG, SC

February 7, 2014
Spartanburg, South Carolina

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA vs. Daniel Spade, DEFENDANT.	Motion for Admission of an Out-of-Court Statement of a Child under South Carolina Code §17-23-175 2011-GS-42-4171

To the Defendant and his attorney Ken Shabel:

PLEASE TAKE NOTICE that the State will move before the Court before trial to be determined pursuant to S.C. Code Section 17-23-175 for admission of two out-of-court statements made by the victims in the above-captioned case, to wit: Minor Victim [redacted], who was born on [redacted] 2006. S.C. Code Section 17-23-175 was enacted as part of the Sex Offender Accountability and Protection of Minors Act of 2006.

An out-of-court statement by a child under the age of twelve is admissible in a General Sessions Court proceeding upon satisfaction of the provisions set forth in South Carolina Code § 17-23-175 and a finding by the Court that the statements provide "particularized guarantees of trustworthiness." In the present case, the victim was under the age of twelve years or functioned cognitively, adaptively, or developmentally under the age of twelve at the time both statements were made. Furthermore, the defendant is currently charged with one count of Criminal Sexual Conduct with a Minor – First Degree which would require sex offender registry pursuant to the provisions of Article 7, Chapter 3, Title 23.

Evidence offered by the State pursuant to this section includes recorded statements made by the child victim Minor Victim [redacted] to Tabitha Webber, MSW, LISP-CP/Forensic Interviewer with the Children's Advocacy Center of Spartanburg. The statements were recorded on April 7, 2011, April 8, 2011, April 12, 2011, April 14, 2011, and May 6, 2011.

The State offers the following facts in support of the admission of the aforementioned out-of-court statements(s):

(1) the statement was given in response to questioning conducted during an investigative interview of the child, pursuant to South Carolina Code § 17-23-175(A)(1);

(2) an audio and visual recording of both statements has been preserved by electronic means, pursuant to South Carolina Code § 17-23-175(A)(2);

(3) The child is expected to testify at trial and is subject to cross-examination on the elements of the offense and the making of the out-of-court statement(s), pursuant to South Carolina Code § 17-23-175(A)(3).

The State contends that the totality of the circumstances surrounding the making of both statements provides particularized guarantees of trustworthiness. The State requests an in-camera review by the Court for consideration of the following factors in support of the admission of said evidence pursuant to South Carolina Code § 17-23-175(B):

(1) whether the statement was elicited by leading questions;

(2) whether the interviewer has been trained in conducting investigative interviews of children;

(3) whether the statement contains a detailed account of the offense;

(4) whether the statement has internal coherence; and

(5) sworn testimony of any participant which may be determined as necessary by the Court.

For the foregoing reasons, the State moves to introduce evidence and/or testimony of the out-of-court statements made by the child concerning details of the alleged Criminal Sexual Conduct with a Minor – First Degree in this case. Furthermore, the State contends that upon consideration of the totality of the circumstances, both statements possess particularized guarantees of trustworthiness sufficient for admissibility within the provisions of South Carolina Code § 17-23-175.

Respectfully submitted,

Jennifer A.J. Jordan
Assistant Solicitor
Seventh Circuit Solicitor's Office
180 Magnolia Street
Spartanburg, South Carolina 29302

February 7, 2014
Spartanburg, South Carolina

2014 FEB -7 PM 4:10

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	
COUNTY OF SPARTANBURG)	FOR THE SEVENTH JUDICIAL CIRCUIT
)	
)	INDICTMENT NOS.: 11-GS-42-4171
)	
THE STATE,)	
)	
VS.)	**NOTICE OF MOTION AND MOTION IN LIMINE TO EXCLUDE THIRD PARTY GUILT OR ANY REFERENCE TO IT BY THE DEFENSE DURING THE TRIAL**
)	
Daniel Spade,)	
)	
DEFENDANT.)	
)	

TO: THE DEFENDANT AND HIS ATTORNEY KEN SHABEL.

YOU WILL PLEASE TAKE NOTICE, that the State of South Carolina will move in front of this Court on February 24, 2014 or when scheduled by this Court for an order to prevent the Defendant and his attorney from making reference to third party guilt evidence during the trial of this case.

The State will ask for the exclusion of any reference to any items involving any third party guilt including, but not limited to: any inquiry by counsel and/or any reference by counsel during summation, argument, opening statement, closing argument, any objections, witness examination, and any actions in front of the jury which alleges any specific instance of third party guilt.

The State would request an *in-camera* review by the Court before any such evidence may be deemed relevant or admissible in this case under the grounds stated in this Motion

Jennifer A.J. Jordan
Assistant Solicitor
Seventh Judicial Circuit

February 7, 2014
Spartanburg, South Carolina

Computer

397

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
		INDICTMENT NO.: 2011-GS-42-4174
The State,	)	
	)	
v.	)	**RETURN TO DEFENDANT'S MOTION**
	)	**IN LIMINE TO EXCLUDE EVIDENCE OF THE**
Daniel William Spade,	)	**TERMINATION OF DEFENDANT'S PARENTAL**
	)	**RIGHTS AND IN THE ALTERNATIVE STATE'S**
Defendant.	)	**MOTION IN LIMINE TO EXCLUDE EVIDENCE**
	)	**OF CUSTODY HEARINGS FROM FAMILY COURT**

TO: The Defendant and his attorneys, Kenneth P. Shabel, Esq. and Shawn M. Campbell, Esq.:

The State, by way of Return to Defendant's motion, would submit in opposition to Defendant's motion in the following:

1. If the defense would present any evidence during the cross-examination of the State's witnesses or during their presentation of the defendant's case of the TPR and custody matters from the Family Court, the jury will wonder about the results of these hearings and will create unnecessary issues in front of the jury.

2. The State will need to respond with the evidence from those hearing to answer any questions that the jury may have about them once the defense submitted any evidence of these matter.

3. If the Court excludes any evidence of Termination of the Defendant's Parental Right in this matter, the State would in return ask for the Court to exclude any evidence of any of the Family Court matters in this case because such evidence would substantially prejudicial to the Victim and the State in this matter and the prejudicial effect would out weight any probative value that this issues would have for the jury under Rule 403 of the South Carolina Rules of Evidence.

By: Barry J. Barnette

Barry Barnette
Solicitor
Seventh Judicial Circuit

February 17, 2014
Spartanburg, SC

M. HOPE BLACKLEY
2014 FEB 17 AM 11:
SPARTANBURG
CLERK OF
FILED

M1261099

398

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
v.)
Daniel Spade,)
)
Defendant.)

AFFIDAVIT OF DISCOVERY
Indictment No(s): 14 41771
Warrant No(s): M1 26199

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:
☐ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☑ MEDIA (CD, DVD)

Supplemental

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☐ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☐ Photograph(s)	
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☐ Video/DVD	
☐ Voluntary Statement(s):		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)		☐ Children's Advocacy Center Report	
☐ Defendant's NCIC (Rap)		☐ CAC Video	
☐ Consent to Search Form(s)		☐ DSS records	
☐ Search Warrant and Return			
☐ Drug Report(s)			
☐ SLED Lab Report(s)			
☐ Hospital Lab Report(s)			
☐ Solicitor's Reciprocal Rule 5			

☑ Other: DVD (Text messages) 1 DVD (pgs 1-104) + Supplemental pgs 105-107
Text Messages pgs 1-118

TOTAL COPIED/NUMBERED: 2 DVDs DATED: 2/5/14

I, Kim Shabel, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this _____ day of _____, 20____.

Attorney or Designee

SOLICITOR'S OFFICE

SWORN to before me this 6 day of Feb, 20 14

Notary Public for South Carolina
My commission expires: 10.23.19

2014 FEB 10 PM 3:26

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
v.)
Daniel Spade,)
)
Defendant.)

AFFIDAVIT OF DISCOVERY
Indictment No(s): 14 417
Warrant No(s): M1266194

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:
☐ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☑ MEDIA (CD, DVD) : Supplemental

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
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☐ Witnesses Written Statement(s)		☐ Children's Advocacy Center Report	
☐ Defendant's NCIC (Rap)		☐ CAC Video	
☐ Consent to Search Form(s)		☐ DSS records	
☐ Search Warrant and Return			
☐ Drug Report(s)			
☐ SLED Lab Report(s)			
☐ Hospital Lab Report(s)			
☐ Solicitor's Reciprocal Rule 5			

☑ Other

TOTAL COPIED/NUMBERED: 120 DATED: 2/19/14

I, Kim Shabel, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 19 day of February, 2014.

Nancy E Meers
Attorney or Designee

C. B. Brodey / D. Gordan
SOLICITOR'S OFFICE

SWORN to before me this 19 day of Feb, 2014

Notary Public for South Carolina
My commission expires: 4-23-19

Computer

400

17126199
Criminal Charging Document No.

BAIL PROCEEDING
FORM II

STATE OF SOUTH CAROLINA
COUNTY OF Lexington

IN THE ☑ COURT OF GENERAL SESSIONS
☐ MAGISTRATE COURT
☐ MUNICIPAL COURT OF _____

STATE OF SOUTH CAROLINA
v.
Daniel Dpade
NAME OF DEFENDANT

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Offense Charged: CSC 1st

FILED
CLERK OF COURT
2017 JUL 28 PM 12:
RICHLAND COUNTY

At a bail proceeding conducted by the undersigned judge, for the defendant named above, it was determined by the court (check one or both):

☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact: _____

[Considerations: Nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.

2. That the above named defendant be released from custody provided as follows:

CASH IN LIEU OF BOND

☐ The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

☐ The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the State.

FILED
CLERK OF COURT
2017 JUL 19 PM 2:45
M. HOPE BLACKWELL
RICHLAND COUNTY

APPEARANCE RECOGNIZANCE WITH SURETY

☑ The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging his indebtedness to the State in the amount of 75,000 Professional Bondsman

3. That the defendant shall appear at (check one):

☑ the term of COURT OF GENERAL SESSIONS beginning on On Demand
at _____ o'clock, M, at _____
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.

☐ the session of ☐ MAGISTRATE COURT ☐ MUNICIPAL COURT beginning on _____
at _____ o'clock, M, at _____
If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

INITIALS OF DEFENDANT X DWS

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

Set Bond Order

Judge Coody PK Smith
SIGNATURE OF JUDGE

7/15/17
DATE

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

X [redacted] (Latino court) X Daniel W Good
ADDRESS SIGNATURE OF DEFENDANT

X Manassas, VA. 20111 [redacted] 7-15-11
CITY/STATE/ZIP TELEPHONE DATE

X [redacted]
SOCIAL SECURITY NUMBER DRIVER'S LICENSE OR ID NUMBER ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of: _____
NAME OF PERSON OR ORGANIZATION

_____ _____ _____ _____
ADDRESS CITY/STATE ZIP TELEPHONE

who agrees (1) to supervise the defendant as set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

_____ _____
SIGNATURE OF CUSTODIAN (IF APPROVED) DATE

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions: _____

c. ☐ Part-time Release. The defendant will be released from custody from _____ o'clock, _____ to _____ o'clock, _____
TIME AM/PM TIME AM/PM

on _____ on condition that he return to the custody of _____
DATE(S) NAME OF PERSON OR ORGANIZATION

at _____ as designated.
LOCATION

d. ☒ Other Conditions. The defendant will comply with the following other conditions of release: No Contact with the Victim or the family of the Victim, Defendant may have NO Contact with Cara Linton

APPEARANCE RECOGNIZANCE WITH SURETY

On the 15 day of 7, 2011, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of 25,000, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

[redacted] 523-[redacted] [redacted]
NAME OF SURETY BONDSMAN TELEPHONE SIGNATURE OF SURETY BONDSMAN

[redacted]
ADDRESS OF SURETY BONDSMAN

Spartanburg SC 29[redacted]
CITY/STATE/ZIP SIGNATURE OF JUDGE

_____ 7/15/11
NAME OF INSURANCE COMPANY DATE

_____
ADDRESS OF INSURANCE COMPANY

_____
CITY/STATE/ZIP

Form Approved by SC Attorney General
Section 17-15-40
September 5, 2006

STATE OF SOUTH CAROLINA **COUNTY OF SPARTANBURG**	)	**IN THE GENERAL SESSIONS COURT** **SEVENTH JUDICIAL CIRCUIT**
STATE OF SOUTH CAROLINA,	)	**ORDER FOR BOND**
vs.	)	WARRANT: M-126199
Daniel William Spade,	)	CHARGES: CSC 1st degree (minor < 11)
DEFENDANT.	)	

This matter was before this Court on the Defendant's motion, by and through **Shawn M. Campbell, Esq.,** *pursuant to S.C. Code Ann. Section 17-15-10, et. seq.*, seeking bond on the above-referenced charge. At the hearing held in this matter the State was represented by Susan Reese of the Seventh Circuit Solicitor's Office.

It appears that the Defendant has been held in the Spartanburg County Detention Center awaiting trial since May 18, 2011 in connection with the charges listed above. Having considered all relevant factors, this Court finds that the Defendant's motion for bond should be and is hereby **granted** and that bond should be set in the amount of **$75,000.00** with the following special conditions: The Defendant may have no contact with the victim, the victim's family, or Cara Lintner.

Prof - Bondsman

IT IS ORDERED THAT the Defendant's Bond be set at $75,000.00 with the following special conditions:

(a) The Defendant may have no contact with the victim or the family of the victim; and

(b) Defendant may have no contact with Cara Lintner.

IT IS SO ORDERED!

Roger L. Couch
SEVENTH JUDICIAL CIRCUIT
GENERAL SESSIONS COURT

July 15, 2011

CLERK OF COURT
SPARTANBURG COUNTY
2011 JUL 15 AM 11:35
M. HOPE BLACKLEY

CERTIFIED COPIES OF THE FOLLOWING SENTENCES WERE ACCEPTED BY:

SPATANBURG COUNTY JAIL: _____ M12019

DATE: 2/26/14

DEFENDANT: Daniel William Spade

WARRANT AND OR INDICTMENT NUMBER #: 11-4121

BY CHARLENA TINSLEY OF THE SPARTANBURG COUNTY CLERK OF COURT'S OFFICE

11-GS-42-04171

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Honorable R. Keith Kelly, Circuit Court Judge

Case No. 2011-GS-42-04171

The State of South Carolina, Respondent,

v.

Daniel William Spade, Appellant.

NOTICE OF APPEAL M126199

Daniel William Spade appeals his conviction and sentence in this case. The sentence was imposed by the Honorable R. Keith Kelly on February 26, 2014.

March 4, 2014

Kenneth P. Shabel (SC Bar #16136)
Shawn M. Campbell (SC Bar #69696)
104 N. Daniel Morgan Ave., Suite 201
Spartanburg, SC 29306
Tel. (864) 583-0001
Fax: (864) 583-1199
Attorneys for Appellant

Other Counsel of Record:
Barry Barnette, Esq., Solicitor, 7th Judicial Circuit
Jennifer A.J. Gordon, Esq., 7th Circuit Solicitor's Office
Kimberly Lewis Leskanic, Esq., 7th Circuit Solicitors' Office
180 Magnolia Street
Spartanburg, SC 29306

N. Douglas Brannon, Esq.
Turnipseed Brannon & Kennedy
P.O. Box 1904
Spartanburg, SC 29304

MAR 06 2014

11-GS-42-04171

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Honorable R. Keith Kelly, Circuit Court Judge

Case No. 2011-GS-42-04171 M126199

The State of South Carolina, Respondent,

v.

Daniel William Spade, Appellant.

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was served upon all counsel of record and/or unrepresented parties by U.S. Postal Service first class mail, postage prepaid, on the 4th day of March, 2014 to the address as follows:

Barry Barnette, Esq. – Solicitor, 7th Judicial Circiut
Jennifer A.J. Gordon, Esq. – 7th Circuit Solicitor's Office
Kimberly Lewis Leskanic, Esq. – 7th Circuit Solicitor's Office
180 Magnolia Street
Spartanburg, SC 29306

N. Douglas Brannon, Esq.
Turnipseed Brannon & Kennedy
P.O. Box 1904
Spartanburg, SC 29304

Kenneth P. Shabel (SC Bar #16136)
Shawn M. Campbell (SC Bar #69696)
104 N. Daniel Morgan Ave., Suite 201
Spartanburg, SC 29306
Tel. (864) 583-0001
Fax: (864) 583-1199
Attorneys for Appellant

2011-GS-42-04171

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	)	
Vs.	)	ACKNOWLEDGEMENT AND ACCEPTANCE OF SERVICE
DANIEL WILLIAM SPADE, Defendant.	)	Indictment Number: 2011-GS-42-04171 M126199

The Undersigned employee of the Spartanburg County Solicitor's Office hereby acknowledges receiving copies of (and accepting service of) the following Motions filed by the Defendant in this case on February 11, 2014:

1. Defendant's Motion in Limine to Exclude Forensic Analysis of Defendant's Laptop
2. Defendant's Motion in Limine to Exclude Evidence of the Termination of Defendant's Parental Rights
3. Defendant's Motion in Limine to Exclude Testimony of Meredith Thompson Loftis
4. Defendant's Motion in Limine to Exclude Testimony of Dr. Nancy Henderson
5. Defendant's Motion in Limine to Exclude Evidence of Internet Searches
6. Defendant's Motion in Limine to Exclude Forensic Analysis of Defendant's Blackberry
7. Defendant's Motion in Limine to Exclude Family Court Order for Termination of Parental Rights

So acknowledged this eleventh day of February, 2014.

Spartanburg County Solicitor's Office

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 FEB 11 AM 10:06

172

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	)	
	)	DEFENDANT'S MOTION
Vs.	)	IN LIMINE TO EXCLUDE
	)	EVIDENCE OF INTERNENT
	)	SEARCHES
	)	
DANIEL WILLIAM SPADE,	)	Indictment Number:
Defendant.	)	2011-GS-42-04171

TO: BARRY BARNETTE, Solicitor
JENNIFER A.J. JORDAN, Assistant Solicitor

NOW COMES THE DEFENDANT, by and through the undersigned attorneys and with Notice hereby upon the State of South Carolina, who moves before the Presiding Judge over the trial of this case (or the Judge designated by the Court of General Sessions to preside over this Motion) for an Order excluding any evidence of Internet Searches conducted by the Defendant following Skype communications with the alleged victim.

The Defendant would state that such evidence would substantially prejudicial to the Defendant and that such prejudice would far outweigh any probative value to the jury.

The Defendant respectfully requests an in-camera review (or, in the alternative, a proffer of testimony outside the presence of the jury) prior to the admissibility of any testimony of such evidence.

The Defendant so moves this eleventh day of February, 2014.

Kenneth P. Shabel (SC Bar #16136)
Shawn M. Campbell (SC Bar #69696)
CAMPBELL & SHABEL, Attorneys at Law
104 North Daniel Morgan Avenue, Suite 201
Spartanburg, South Carolina 29306
864.583.0001
864.583.1199 (Fax)

FILED
CLERK OF
SPARTANBURG COUNTY
2014 FEB 11 AM 10:00
[illegible] BLACKLEY

SCANNED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	)	
	)	DEFENDANT'S MOTION
Vs.	)	IN LIMINE TO EXCLUDE
	)	EVIDENCE OF THE
	)	TERMINATION OF DEFENANT'S
	)	PARENTAL RIGHTS
DANIEL WILLIAM SPADE,	)	Indictment Number:
Defendant.	)	2011-GS-42-04171

TO: BARRY BARNETTE, Solicitor
JENNIFER A.J. JORDAN, Assistant Solicitor

NOW COMES THE DEFENDANT, by and through the undersigned attorneys and with Notice hereby upon the State of South Carolina, who moves before the Presiding Judge over the trial of this case (or the Judge designated by the Court of General Sessions to preside over this Motion) for an Order excluding any evidence of the Termination of the Defendant's Parental Rights in and to the alleged victim.

Based upon the fact that the ruling of the Family Court stemmed in part from the very allegations before the Court and the jury under this indictment, and based upon the fact that the standard of proof and rules of admissibility of evidence were significantly different in the Family Court hearing than at this trial, the Defendant would state that such evidence would substantially prejudicial to the Defendant and that such prejudice would far outweigh any probative value to the jury.

The Defendant respectfully requests an in-camera review (or, in the alternative, a proffer of testimony outside the presence of the jury) prior to the admissibility of any testimony of such evidence.

The Defendant so moves this eleventh day of February, 2014.

Kenneth P. Shabel (SC Bar #16136)
Shawn M. Campbell (SC Bar #69696)
CAMPBELL & SHABEL, Attorneys at Law
104 North Daniel Morgan Avenue, Suite 201
Spartanburg, South Carolina 29306
864.583.0001
864.583.1199 (Fax)

CLERK'S OFFICE
SPARTANBURG
2014 FEB 11 AM 10:00

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	)	
	)	DEFENDANT'S MOTION
Vs.	)	IN LIMINE TO EXCLUDE
	)	FAMILY COURT ORDER FOR
	)	TERMINATION OF PARENTAL RIGHTS
DANIEL WILLIAM SPADE,	)	Indictment Number:
Defendant.	)	2011-GS-42-04171

TO: BARRY BARNETTE, Solicitor
JENNIFER A.J. JORDAN, Assistant Solicitor

NOW COMES THE DEFENDANT, by and through the undersigned attorneys and with Notice hereby upon the State of South Carolina, who moves before the Presiding Judge over the trial of this case (or the Judge designated by the Court of General Sessions to preside over this Motion) for an Order excluding the Order of the Spartanburg County Family Court terminating the parental rights of the Defendant in and to the alleged victim.

Based upon the fact that the ruling of the Family Court stemmed in part from the very allegations before the Court and the jury under this indictment, and based upon the fact that the standard of proof and rules of admissibility of evidence were significantly different in the Family Court hearing than at this trial, the Defendant would state that such evidence would substantially prejudicial to the Defendant and that such prejudice would far outweigh any probative value to the jury.

The Defendant respectfully requests an in-camera review (or, in the alternative, a proffer of testimony outside the presence of the jury) prior to the admissibility of any testimony of such evidence.

The Defendant so moves this eleventh day of February, 2014.

Kenneth P. Shabel (SC Bar #16136)
Shawn M. Campbell (SC Bar #69696)
CAMPBELL & SHABEL, Attorneys at Law
104 North Daniel Morgan Avenue, Suite 201
Spartanburg, South Carolina 29306
864.583.0001
864.583.1199 (Fax)

CLERK OF COURT
SPARTANBURG
2014 FEB 11 AM 10:00
SCANNED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	)	
	)	DEFENDANT'S MOTION
Vs.	)	IN LIMINE TO EXCLUDE
	)	FORENSIC ANALYSIS OF
	)	DEFENDANT'S LAPTOP
DANIEL WILLIAM SPADE,	)	Indictment Number:
Defendant.	)	2011-GS-42-04171

TO: BARRY BARNETTE, Solicitor
JENNIFER A.J. JORDAN, Assistant Solicitor

NOW COMES THE DEFENDANT, by and through the undersigned attorneys and with Notice hereby upon the State of South Carolina, who moves before the Presiding Judge over the trial of this case (or the Judge designated by the Court of General Sessions to preside over this Motion) for an Order excluding the forensic analysis performed on the Defendant's Laptop in Virginia as well as any evidence obtained from that computer.

The Defendant bases this Motion, in part, upon the ruling of the Honorable J. Mark Hayes, II from a February 15, 2013 Motion to Compel hearing. The Motion requested, in part, the release such forensic analysis. In its ruling, the Court stated that "if the State intends to use the computer (or its search of the computer) as evidence at trial, it must provide copies of all reports generated and documents obtained from that computer within a reasonable time prior to the trial of the case."

The Defendant would state that there was a forensic analysis report completed in October of 2013 in Virginia. However, that report was made available to the Defendant until Monday, February 10, 2014 – four months after it was made and only two weeks prior trial. The report is in excess of three thousand pages. Furthermore, this report contains no information from the computer. There has not been a forensic analysis report submitted as to the computer. The Defendant would further state that The Defendant would state that such evidence is substantially prejudicial to the Defendant and that such prejudice would far outweigh any probative value to the jury.

The Defendant respectfully requests an in-camera review (or, in the alternative, a proffer of testimony outside the presence of the jury) prior to the admissibility of any testimony of such evidence.

The Defendant so moves this eleventh day of February, 2014.

Kenneth P. Shabel (SC Bar #16136)
Shawn M. Campbell (SC Bar #69696)
CAMPBELL & SHABEL, Attorneys at Law
104 North Daniel Morgan Avenue, Suite 201
Spartanburg, South Carolina 29306
864.583.0001
864.583.1199 (Fax)

2014 FEB 11 AM 10:00
CLERK OF
SPARTANBURG
SCANNED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	)	
	)	DEFENDANT'S MOTION
Vs.	)	IN LIMINE TO EXCLUDE
	)	FORENSIC ANALYSIS OF
	)	DEFENDANT'S BLACKBERRY
DANIEL WILLIAM SPADE,	)	Indictment Number:
Defendant.	)	2011-GS-42-04171

TO: BARRY BARNETTE, Solicitor
JENNIFER A.J. JORDAN, Assistant Solicitor

NOW COMES THE DEFENDANT, by and through the undersigned attorneys and with Notice hereby upon the State of South Carolina, who moves before the Presiding Judge over the trial of this case (or the Judge designated by the Court of General Sessions to preside over this Motion) for an Order excluding the forensic analysis performed on the Defendant's Blackberry Cell Phone in Virginia as well as any evidence obtained from that computer.

The Defendant bases this Motion, in part, upon the ruling of the Honorable J. Mark Hayes, II from a February 15, 2013 Motion to Compel hearing. The Motion requested, in part, the release such forensic analysis. In its ruling, the Court stated that "if the State intends to use the computer (or its search of the computer) as evidence at trial, it must provide copies of all reports generated and documents obtained from that computer within a reasonable time prior to the trial of the case."

The Defendant would state that there was a forensic analysis report completed in October of 2013 in Virginia on the Blackberry Cell phone. However, that report was made available to the Defendant until Monday, February 10, 2014 – four months after it was made and only two weeks prior trial. The report is in excess of three thousand pages. Although the Court's ruling from February 2013 did not specifically mention the forensic report of a cellphone, the Defendant would state that the contents are similar to that of a computer forensic report (emails, messages, photos, etc). The Defendant would further state that The Defendant would state that such evidence is substantially prejudicial to the Defendant and that such prejudice would far outweigh any probative value to the jury.

The Defendant respectfully requests an in-camera review (or, in the alternative, a proffer of testimony outside the presence of the jury) prior to the admissibility of any testimony of such evidence.

The Defendant so moves this eleventh day of February, 2014.

Kenneth P. Shabel (SC Bar #16136)
Shawn M. Campbell (SC Bar #69696)
CAMPBELL & SHABEL, Attorneys at Law
104 North Daniel Morgan Avenue, Suite 201
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864.583.0001
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FILED
CLERK OF
SPARTANBURG
2014 FEB 11 AM 10:01

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	)	
Vs.	)	DEFENDANT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF DR. NANCY HENDERSON
DANIEL WILLIAM SPADE, Defendant.	)	Indictment Number: 2011-GS-42-04171

TO: BARRY BARNETTE, Solicitor
JENNIFER A.J. JORDAN, Assistant Solicitor

NOW COMES THE DEFENDANT, by and through the undersigned attorneys and with Notice hereby upon the State of South Carolina, who moves before the Presiding Judge over the trial of this case (or the Judge designated by the Court of General Sessions to preside over this Motion) for an Order excluding the testimony of Dr. Nancy Henderson.

The Defendant bases this Motion, in part, upon the ruling of the Honorable J. Mark Hayes, II from a May 7, 2013 Motion to Compel hearing. The Motion requested, in part, the release of the minor child's medical records from Eastside Pediatrics. In that ruling, the Court noted the State stipulated "that there is no medical evidence to support the allegations contained in the warrant." The State also stipulated "there is no medical evidence to support the allegations they will raise (through their witnesses) at trial." As the result of these stipulations, the Court ruled that the Defendant was not entitled to the medical records of the minor child from Eastside Pediatrics.

The Defendant would state that because of these stipulations and the denial of access to the child's medical records, any testimony from any medical professional to justify the lack of medical evidence in support of the allegations would be substantially prejudicial to the Defendant and such prejudice would far outweigh any probative value to the jury.

The Defendant respectfully requests an in-camera review (or, in the alternative, a proffer of testimony outside the presence of the jury) prior to the admissibility of any testimony of Dr. Nancy Henderson.

The Defendant so moves this eleventh day of February, 2014.

Kenneth P. Shabel (SC Bar #16136)
Shawn M. Campbell (SC Bar #69696)
CAMPBELL & SHABEL, Attorneys at Law
104 North Daniel Morgan Avenue, Suite 201
Spartanburg, South Carolina 29306
864.583.0001
864.583.1199 (Fax)

FILED
CLERK OF COURT
SPARTANBURG
2014 FEB 11 AM 10:01
SCANNED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	)	
	)	DEFENDANT'S MOTION
Vs.	)	IN LIMINE TO EXCLUDE
	)	TESTIMONY OF
	)	MEREDITH THOMPSON LOFTIS
DANIEL WILLIAM SPADE,	)	Indictment Number:
Defendant.	)	2011-GS-42-04171

TO: BARRY BARNETTE, Solicitor
JENNIFER A.J. JORDAN, Assistant Solicitor

NOW COMES THE DEFENDANT, by and through the undersigned attorneys and with Notice hereby upon the State of South Carolina, who moves before the Presiding Judge over the trial of this case (or the Judge designated by the Court of General Sessions to preside over this Motion) for an Order excluding the testimony of Meredith Thompson Loftis.

The Defendant bases this Motion, in part, upon the ruling of the Honorable J. Mark Hayes, II from a February 15, 2013 Motion to Compel hearing. The Motion requested, in part, the release of Ms. Loftis' counseling records. In its ruling, the Court stated that "if the State intends to call [Ms. Loftis] as a witness in their case, they must turn over all such records within a reasonable time prior to the trial of the case."

The Defendant would state that as of the date of this Motion the State has not turned over all of Ms. Loftis' records in the nearly one year since the Court's ruling and that it is no longer a reasonable time prior to the February 24, 2014 call of the case.

The Defendant respectfully requests an in-camera review (or, in the alternative, a proffer of testimony outside the presence of the jury) prior to the admissibility of any testimony of Meredith Thompson Loftis.

The Defendant so moves this eleventh day of February, 2014.

Kenneth P. Shabel (SC Bar #16136)
Shawn M. Campbell (SC Bar #69696)
CAMPBELL & SHABEL, Attorneys at Law
104 North Daniel Morgan Avenue, Suite 201
Spartanburg, South Carolina 29306
864.583.0001
864.583.1199 (Fax)

FILED
CLERK OF
SPARTANBURG COUNTY
2014 FEB 11 AM 10:01

2011-GS 41 414

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
v.)
Daniel Spade,)
)
Defendant.)

AFFIDAVIT OF DISCOVERY
Indictment No(s): 2011GS4204171
Warrant No(s): M1261199

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:
☑ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☑ MEDIA (CD, DVD)

Supplemental

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☐ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☐ Photograph(s)	
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☑ Video/DVD 1 Polygraph	
☐ Voluntary Statement(s):		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)		☐ Children's Advocacy Center Report	
☐ Defendant's NCIC (Rap)		☐ CAC Video	
☐ Consent to Search Form(s)		☐ DSS records	
☐ Search Warrant and Return			
☐ Drug Report(s)			
☐ SLED Lab Report(s)			
☐ Hospital Lab Report(s)			
☐ Solicitor's Reciprocal Rule 5			

☑ Other: CD of forensic examination, Law Notes from West Virginia pg 1-2, polygraph report pg 3-6

TOTAL COPIED/NUMBERED: 1CD + DVD (6 pgs) DATED: 2/10/14

I, Ken Shabel, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 10th day of February, 20 14.

Attorney or Designee

CB Lindsey / C Gordan
SOLICITOR'S OFFICE

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SPARTANBURG COUNTY
2014 FEB 14 PM 3:03
HOPE BLACKLEY

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Sally E Jones
Notary Public for South Carolina
My commission expires: 4-23-19

SCANNED

2014A4171 415

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
v.)
Daniel Spade,)
)
Defendant.)

AFFIDAVIT OF DISCOVERY
Indictment No(s):
Warrant No(s): M1261199

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:
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Supplemental

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☐ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☑ Photograph(s)	24 pgs
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☐ Voluntary Statement(s):		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)		☐ Children's Advocacy Center Report	
☐ Defendant's NCIC (Rap)		☐ CAC Video	
☐ Consent to Search Form(s)		☐ DSS records	
☐ Search Warrant and Return			
☐ Drug Report(s)			
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☐ Hospital Lab Report(s)			
☐ Solicitor's Reciprocal Rule 5			
☐ Other			

TOTAL COPIED/NUMBERED: 24 pgs DATED: 1/23/14

I, Kim Shabel, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 24 day of January, 20 14

Attorney or Designee

C. Ridgeway JAG
SOLICITOR'S OFFICE

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Notary Public for South Carolina
My commission expires: 1/23/19

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CLERK OF COURT
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416

11-4171

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
v.)
Daniel Spade,)
Defendant.)

AFFIDAVIT OF DISCOVERY
Indictment No(s): 11 4171
Warrant No(s): M1260199

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:
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☐ Solicitor's Reciprocal Rule 5			

☑ Other VA reports pg 1-18

TOTAL COPIED/NUMBERED: 18 pgs DATED: 2/17/14

I, Ken Shabel, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 17 day of February, 2014.

Nancy Mieres
Attorney or Designee

C.R. Lindsey / C. Jordan
SOLICITOR'S OFFICE

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SPARTANBURG, SC
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SWORN to before me this 17 day of Feb, 2014.

Notary Public for South Carolina
My commission expires: 7-23-19

SCANNED

VW

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
v.)
Daniel Spade,)
)
Defendant.)

AFFIDAVIT OF DISCOVERY
Indictment No(s): 11 4171
Warrant No(s): M1261199

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:
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DOCUMENT	Page No.	DOCUMENT	Page No.
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☐ Incident Report(s)		☐ Evidence Sheet(s)	
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I, Ken Shabel, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 20th day of February, 2014.

Attorney or Designee

C.B. Lindsey Jr. Jordan
SOLICITOR'S OFFICE

SWORN to before me this 20th day of February, 2014.

Notary Public for South Carolina
My commission expires: 1/18/2020

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 08/01/17
OMCOMITA RELEASE DATE SCREEN C056427

SCDC# > 358974 LOC: **LEE**
SPADE, DANIEL WILLIAM SCDC CLASSIFICATION..: **VIOLENT**
OFFENDER TYPE...: **ADULT-STRAIGHT SENTENCE** SEXUAL REGISTRY..: **Y**
SEXUAL PREDATOR..: **PENDING**
DNA STATUS.....: **COMPLETED**
GPS REQUIREMENT..: **Y**
PREA DECISION....:
PREA VICTIM.....: PREA PERP..:
CURRENT SENTENCE: **035-00-000** CONSECUTIVE SENTENCE ..: **N**
035-00-000 CURRENT SENT START DATE: **12/28/2013**
PROJECTED COMPLETION DATES
MAXOUT DATE .....: **12/19/2048** CURRENT EWC .: **3 F 5**
YOA SIX YEAR DATE: **/ /** CURRENT EEC .: **NOT CURRENTLY EARNING EEC**
INITIAL PAROLE DATE: **00/00/0000** NEXT PAROLE HEARING DATE: **00/00/0000**

TOTAL GT DAYS EARNED .....: **000000** LABOR CREW/WORK PROG DATE: **99/99/9999**
TOTAL EARNED WORK CREDITS ..: **000308** LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS ....: **000000** **CURRENT OR PRIOR SEX CONDUCT CONVICT**
TOTAL EXTRA EARNED CREDITS .: **000** SUPERVISED REENTRY DATE..: **00/00/00**
TOTAL SERVICE TIME EARNED ..: **001293** ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

South Carolina Department of Corrections

Classification Summary Reports

Date: Tuesday, August 1, 2017

Classification Summary Reports

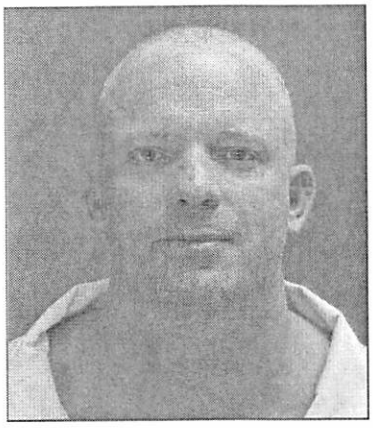
Inmate Number 358974 Submit

Classification Summary Report for SPADE, DANIEL WILLIAM :

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CLASSIFICATION SUMMARY REPORT DATED 08/01/2017

SCDC# 00358974 SPADE, DANIEL WILLIAM FBI# 588964LD8



OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

INSTITUTION: LEE

SECURITY/CUST: 3 MININMUM IN

CURR INCARC SENT: 35 YRS 0 MOS 0 DAYS

VICTIM WITNESS: [redacted] SEPREQ:N

MED CLASS [redacted]

INST RESTRICT: NO RESTRICTION

MENTAL CLASS: MH-5 (STABLE)

CURRENT PROGRAM: NO CURRENT PROGRAM

SEX REGISTRY: Y

DNA: C

AGE: 41

RESIDENT STABILITY: NA

DORMROOMBUNK_CODE: F6 1228 T

PROJ MAXOUT DATE: 12/19/2048

PROJ PAROLE DATE: -

EWC JOB: TEACHER ASSISTANT

ASSIGNMENT: EDUCATION DEPT

EWC LEVEL: 3F5 EEC LEVEL:-

EDUC PGM: NO CURR EDUC PROGRAM

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	SENTENCE YRS	MOS	DYS	COUNTY	START	SENTENCE V/NV	CAT	INDICT
CRIM SEX COND W/MINOR(1ST	35	0	0	SPARTANBURG	12/28/2013	V	5	11GS4204171

COMPLETED OFFENSES

NO COMPLETED OFFENSES

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

HOLD IRO CATEG:

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARIES HISTORY

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

06/29/2017	LEE	INCARCERATED	ADMINISTRATIVE
06/29/2017	KIRKLAND	INCARCERATED	MEDICAL
12/02/2014	LEE	INCARCERATED	ADMINISTRATIVE
12/01/2014	KIRKLAND	INCARCERATED	MEDICAL
04/07/2014	LEE	INCARCERATED	ADMINISTRATIVE
02/27/2014	KIRKLAND	INCARCERATED	R&E PROCESSING
02/27/2014	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
TEACHER ASSISTANT	06/10/2014	-		3F5
GENERAL WORKER	04/11/2014	06/09/2014	LATERAL TRANSFER	3F5

HISTORY OF EARNED EDUCATION CREDITS:

NO SCHOOL ASSIGNMENTS

********** END OF REPORT **********

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Honorable R. Keith Kelly, Circuit Court Judge

SC Court of Appeals No. 2014-000448

The State, ... Respondent,

vs.

Daniel William Spade ..... Appellant

BRIEF OF APPELLANT

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Attorneys for Appellant

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Questions Presented

Question I: Did the trial court err in excluding the testimony of Dale Smith as to the occurrence of panic attacks by the minor child when adult males other than Daniel Spade was present when the occurrence of panic attacks was used by the state to prove Mr. Spade had abused his daughter?

Question II: Did the trial court err in declaring that the attorney for Daniel Spade improperly struck Juror 199 based upon her gender strike when the attorney specifically stated the juror was struck for her age and being retired?

Question III: Did the trial court err in permitting Douglas Brannon, a private attorney, to actively participate in the trial of this case when he had represented the mother and adoptive father of the minor child in the family court case?

Question IV: Did the trial court err in ruling that Doug Brannon had been properly appointed as required by S. C. Code § 1-7-470 when the solicitor failed to produce the commission from the governor as required by the statute?

Question V: Did the trial court err in failing to exclude the testimony of Meredith Thompson-Loftis when the state had been ordered to turn over to the defendant the file of Ms. Loftis if they intended to use her as a witness a reasonable time before trial and the state did not turn over substantial portions of the file until four days before trial and portions were not turned over until the day of trial?

STATEMENT OF THE CASE

Procedural Facts

Daniel Spade was arrested on May 3 , 2011 and charged with criminal sexual conduct with a minor. The Spartanburg grand jury indicted him on June 17, 2011. An amendment was returned on February 21, 2014. He was tried before the Honorable R. Keith Kelley and a jury on February 24-26, 2014. Prior to the start of the trial, Solicitor Barry Barnett presented a letter written by him appointing Mr. Doug Brannon, the attorney who had represented the mother and adoptive father in the second termination of parental rights matter, as a special prosecutor in the trial. The jury convicted Mr. Spade of criminal sexual conduct with a minor. Judge Kelly sentenced him to 35 years in prison. Mr. Spade filed his notice of appeal on March 4, 2014.

Facts of the Case

While Daniel Spade was employed with the same company as Heather Smith, they met and had a brief affair.[1] As a result of this affair, a daughter was born. Mr. Spade, who then resided in Virginia, came to Spartanburg a few months after the birth of his child to visit. Rec. on App. at 155, ll 5-9. He visited numerous other times as she grew older. Rec. on App. at 155, ll 15-17.

Mr. Spade expressed a desire to establish regular visitation with his daughter. When the mother rebuked this attempt, he filed an action seeking visitation in August of 2007. Rec. on App. at 155, ll 15-17; Rec. on App. at 177, ll 23-25. The parties agreed to mediate the

[1] In December of 2007 Mrs. Smith married David Jolley who later adopted the minor child. Rec. On App. at 155, ll 20-21.

matter prior to a hearing. During the mediation conference, the mother of the minor child decided that "Danny D" would be the appropriate name for their daughter to call Mr. Spade. Rec. on App. at 156, ll 6-23. No explanation was given for the name chosen for the daughter to use.

As a result of the mediation, Mr. Spade was given visitation with his daughter. Before visitation could begin, Mrs. Jolley filed the first action to terminate Mr. Spade's parental rights. This action was filed in 2008. Rec. on App. at 24-25 to 153, ll 1-14; Rec. on App. at 196, ll 20-23. After Mrs. Jolley lost the first termination of parental rights action, Mr. Spade started his visitation. He visited with the minor child several times in Spartanburg and for ten days in the summer of 2010 she went to Virginia to stay with him. Rec. on App. at 154, ll 19-23. After the visitation in Virginia, Mr. Spade visited in Spartanburg, SC in September and October of 2010.

After the September of 2010 visit, Mrs. Jolley complained of their daughter having anxiety attacks, not sleeping well, crying for no reason and, after being potty trained, started to wet herself. Rec. on App. at 161, ll 8-25 to 163, ll 1-9. She sought out Kimberly Roseborough, a counselor who was qualified at trial as an expert in child abuse and treatment. Rec. on App. at 202, ll 19-22. At that time she also filed an action to stop all visitation. Rec. On App. at 179, ll 20-23. The purpose of the minor child seeing the counselor was to resolve the anxiety issues. After about 6 months of counseling, during which no allegation of sexual abuse arose, the counselor, on March 28, 2011, told Mrs. Jolley she was recommending that visitation resume. Rec. on App. at 184, ll 5-22; 217, ll 11-16. This counselor had also recommended to Mrs. Jolley that a "sit down" be held with Mr. Spade, the counselor, and Mr. and Mrs. Jolley.

Rec. on App. at 198, 3-8. This was the last contact Ms. Rosborough had with the minor child and Mrs. Jolley.

During the time visitation stopped, Mr. Spade did have telephone contact with his daughter. Rec. on App. at 188, ll 13-13-16; 190, ll 14-18. Mrs. Jolley testified she was "not happy" that Mr. Spade had told their daughter "[Minor child], you can say I love you too, daddy." Rec. on App. at 189, ll 11-18.

Three days after the recommendation that visitation resume, Dale Smith, the grandmother of the minor child, first reported that the child told her of an incident of alleged sex abuse. Rec. on App. at 219, ll 9-21. A "day or two" after Mrs. Smith was first told of the alleged incident, she told her husband. Rec. on App. at 243, ll 16-25 to 244, ll 1-2 After a few more days, Mr. Smith reported what had been said to Mrs. Jolley. Rec. on App. at 245, ll 20-22.

The child's mother then took the child to Tabitha Webber for a forensic interview. She was qualified at trial as an expert in family counseling and child therapy. Rec. on App. at 261, ll 17-20. Ms. Webber testified that as a result of her interview she contacted the local police and made arrangements for the minor child to enter therapy. Rec. on App. at 253, ll 2-13. As a result of the statement by the minor child, Mr. Spade was arrested.

The minor child testified that during a visit Mr. Spade put his private parts in her mouth. Rec. on App. at 142, ll 7. The minor child further testified that no other act of sexual abuse occurred. Rec. on App. at 144, ll 8-9. She did not identify on which visit this occurred, but that it occurred in the restroom near the pool. Rec. on App. at 142, ll 8-25. She further testified that the pool was on the same floor as their room. Rec. on App. at 148, ll 15-22. The testimony by the witness from the hotel was that Mr. Spade stayed on the second floor on one

visit and the third floor on the other stay. Rec. on App. at 238, ll 18-25 to 239, ll 1-13. The pool was located on the first floor. Rec. on App. at 239, ll 1-2. The minor child also testified that a lot of people were present at the pool. Rec. on App. at 151, ll 23-24. These people would have had ready access to the restroom at the pool. She further stated that the bathroom did not contain a stall. Rec. on App. at 149, ll 13-18. The record did not establish on which day Mr. Spade stayed at the hotel that this incident allegedly occurred.

Argument

Question I

Did the trial court err in excluding the testimony of Dale Smith as to the occurrence of panic attacks by the minor child when adult males other than Daniel Spade was present when the occurrence of panic attacks was used by the state to prove Mr. Spade had abused his daughter?

At trial defense counsel proffered the testimony of Dale Smith to establish that the minor child had had panic attacks when David Jolley, the adoptive father, was present. Rec. on App. at 228, ll 11-17. The state argued that this was proof of third party guilt which had been excluded in a pre-trial hearing. Rec. on App. at 229, ll 21-25. The state further argued the testimony should be excluded because it tended to show "[a]nd even in the best light I don't think you could say that it's just David Jolley. It could be any male person, or whatever, that could cause these panic attacks from there but there were other people available." Rec. on App. at 229, ll 23-25 to 230, ll 1-2. The state then concluded "To me, even if it is relevant in this case, it's highly prejudicial. It outweighs the probative effect in this case." Rec. on App. at 231, ll 20-22. In response, defense counsel appropriately pointed out "We are not establishing third

party guilt. We are establishing explanation for symptoms, which the State of South Carolina is going to argue is a symptom of child sexual abuse and she's having panic attacks because of what her biological father did." Rec. on App. at 232, ll 15-19. The testimony was excluded.[2]

True to the prediction by defense counsel, the state argued in closing the anxiety attacks were caused by the sexual abuse. Mr. Brannon said in closing "Then what we found out was that he got to take [minor child] to Virginia for an extended period of time. And then you hear that [minor child] becomes anxious. You hear that a potty trained little girl wets herself. You hear that a four year old girl, is afraid of the dark. You hear that a four year old little girl has to sleep under a table like this. You hear that this baby does this just so she can close her eyes and not be afraid." Rec. on App. at 301, ll 3-10. He further argued "But what we know is before that meeting [the minor child] was curled up under a table. [The minor child] was fearful. [the minor child] was clinging. [The minor child], potty trained, stands behind a door in the bathroom in her mommy's house and pees herself." Rec. on App. at 303, ll 10-15. But what the jury did not hear was an alternative explanation for these anxiety attacks. The jury was left with only one impression - the attacks were caused by the alleged sexual abuse. With no other explanation for the anxiety attacks, the conclusion of the jury was both logical and compelled by the evidence.

The alternative explanation for the anxiety was relevant evidence as it tended to prove the anxiety was not caused by any alleged sexual abuse by Mr. Spade. As the South

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[2] The trial judge cautioned defense counsel concerning this testimony "Don't point to any particular individual." Rec. on App. at 234, ll 8-9. This admonishment apparently did not apply to the prosecution as Mr. Brannon, in his closing argument, pointed to only one individual - Mr. Spade.

Carolina Supreme Court has said " Evidence is relevant and admissible if it tends to establish or make more or less probable the matter in controversy." *State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009); Rule 401, South Carolina Rules of Evidence. The trial court mistakenly viewed the testimony as being evidence of third party guilt which he had excluded in a pre-trial motion. He failed to recognize that the testimony was relevant on the issue of the cause of the anxiety. Defense counsel never argued the testimony related to third party guilt. Nor did the trial judge explain how the testimony related to third party guilt.

As the state argued below, an alternative explanation for the anxiety would, of course, been prejudicial to the theory of the state's case. But when one argues that evidence is prejudicial, this is not what is meant. As the South Carolina Supreme Court has said "Moreover, the standard is not simply whether the evidence is prejudicial; rather, the standard under Rule 403, SCRE is whether there is a danger of unfair prejudice that substantially outweighs the probative value of the evidence." *State v. Collins*, 409 S.C. 524, 536, 763 S.E.2d 22, 28 (2014), reh'g denied (Sept. 24, 2014). Evidence that supplies an alternative explanation for the anxiety is probative of a very relevant issue. Any alleged prejudice to the state in admitting the testimony is not outweighed by the defendant being able to explain a series of facts in a manner inconsistent with the state's theory of guilt. As has been said by another court "Unfair prejudice does not mean the damage to [the state's] case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." *United States v. Bonds*, 12 F.3d 540, 567 (6th Cir.1993)

The trial judge used an improper basis to rule that the testimony was not admissible. This ruling prevented the jury from hearing relevant evidence that would establish

an alternative explanation for the anxiety attacks. This testimony would not have caused the jury to decide the case on an improper basis. In fact, the testimony would have aided the jury in deciding the case on a proper basis.

Question II

Did the trial court err in declaring that the attorney for Daniel Spade improperly struck Juror 199 based upon her gender strike when the attorney specifically stated the jury was struck for her age and being retired?

During the jury selection, the state objected to the decision of the attorney for Mr. Spade to strike Jurors 13 and 199. When the jury was re-selected, Juror 199, whom the trial judge prevented defense counsel from striking, was selected for the second jury. That juror, therefore, is the only juror in question in this appeal. *See, State v. Adams*, 322 S.C. 114, 126, 470 S.E.2d 366, 373 (1996) ("When the trial judge quashed the first jury panel, the parties selected a new jury. Adams has voiced no complaints about the new jury. We find that no prejudice resulted from the judge's error.")

When asked about Juror 199 defense counsel explained his decision by saying "Number 199 is a retired grandmother. We did not feel she would be appropriate." Rec. on App. at 92, ll 14-15.[3]

After that statement by defense counsel the following occurred between trial counsel and the judge:

THE COURT: Tell me what you mean by that, Ken. She was a

---

[3] While defense counsel did not specifically articulate what was meant by not being appropriate, the testimony at trial was that the report of sexual abuse was first made by the grandmother of the minor chid. Rec. on App. at 243, ll 16-25 to 244, ll 1-2

grandmother?

MR. SHABEL: It's prejudicial to our client. We felt that given the age and the retired nature and the number of kids she has, we didn't feel like she would be an appropriate juror in our case." Rec. on App. at 93, ll 8-13

* * *

THE COURT: I'm sorry - - I'm sorry, number 99 - - 199. 199.

Mr. SHABEL: The same thing, Your Honor.

MR. BRANNON: The same thing what? She's a retired grandmother?

MR. SHABEL: If I am remembering correctly. Age and background. She's 65 years old and has three children and divorced. We felt she would be prejudicial. Rec. on App. 93, ll 17-25

The state then said "They struck them because they were female, was what they did." Rec. on App. at 94, ll 21-22. Defense counsel then pointed out that two women were on the jury and he still had four strikes left when the final juror was selected.[4] In fact, the fourth juror selected was a female at which time the defendant had only used two of his ten strikes. Also, the eleventh juror selected was a female when the defendant had four strikes left. These facts, when considering the totality of circumstances, are evidence that the defendant did not purposefully strike the juror based upon gender.

In giving the reason for striking Juror 199, the attorney for Mr. Spade stated the strike was based upon her being over 65 and retired. That is a gender neutral basis for striking a potential juror. In an attempt to meet its obligation under *Batson* to refute this gender neutral basis for striking the juror, Mr. Brannon simply said "I think that they also would show that there

[4] Of the twenty-two jurors drawn in the initial jury selection, fourteen were male.

are men the same age as some of the women who were struck on here because they were grandmothers." Rec. on App. at 97, ll 10-13. But the state never named any specific juror who would fit the claimed profile. The trial judge also never named any specific juror who would fit the profile. Our Supreme Court has said "During step three, the party asserting the *Batson* challenge should point to direct evidence of racial discrimination, such as showing that the opponent struck a juror for a facially neutral reason but did not strike a similarly-situated juror of another race." *State v. Inman,* 409 S.C. 19, 27, 760 S.E.2d 105, 108-109 (2014). The state has not met its burden in step three as they failed to identify any specific juror who was male and who was over the age of 65. If any juror were even close to the age of Juror 199, and had the state pointed out a specific juror, defense counsel would have had the opportunity to explain a specific reason for accepting that juror. Mr. Brannon, however, did not name a specific juror so no explanation was required.

This court will not, and should not, review an objection that is not ruled upon by the trial court. *State v. Johnson*, 363 S.C. 53, 59, 609 S.E.2d 520, 523 (2005) ("Because the objection was clearly based on remoteness and not the use of the moral turpitude standard, we hold that the issue regarding the use of the moral turpitude standard is not preserved for appellate review.") Likewise, this court should hold that the failure of the state to identify a seated male juror who was over 65 precludes the trial court and this court from upholding the state's *Batson* motion. The person making the *Batson* objection is required to do more than say some seated juror may have been of the same age or some juror may have been seated that is identical to the reason given in opposition to the *Batson* challenge. Suppose the state, in response to a *Batson* objection by a defendant, gave a racially neutral reason of "unemployed." The defendant would

not have met its burden to prove the ground was pre-textual by saying "I think that they would also show that there were white jurors on that jury who were unemployed." This court would and should require more. This court would, and should, simply say "the defendant failed to prove its allegation." This case is no different.[5]

The reason for such a rule is simple. Had the state made its *Batson* motion and in response said a certain male juror was over 65, then defense counsel would have been given the opportunity to explain why that juror was an appropriate juror notwithstanding his age. For example, defense counsel may have known that the juror had a close friend who had been falsely accused of criminal sexual conduct with a minor or a myriad of other reasons. The trial court would have been required to consider those reasons in making its final determination.

Question III

Did the trial court err in permitting Douglas Brannon, a private attorney, to actively participate in the trial of this case when he had represented the mother and adoptive father of the minor child in the family court case?

On the morning of trial, the solicitor for the Seventh Judicial Circuit gave counsel for Daniel Spade a letter stating that Doug Brannon, the attorney who represented the mother and the adoptive father in the second action involving the termination of the parental rights of Mr. Spade, would be a special prosecutor in the case. Counsel for Mr. Spade asked that Mr. Brannon be disqualified on two grounds. First, he had not been appointed in keeping with the provisions

---

[5] In making the *Batson* motion, Mr. Brannon also said "But I don't think age is an appropriate measure of - - a basis for a strike either, Your Honor." Rec. on App. at 95, ll 17-19. The trial court did not rule on the age issue and research has not located a case that says age is a proper basis for a *Batson* motion.

of S.C. Code § 1-7-470. Second, counsel pointed out that Mr. Brannon had represented both the natural mother and the adoptive father in the action in Family Court to terminate the parental rights of Mr. Spade and "that creates an inherent conflict of interest . . . ." Rec. on App. at 18, ll 1-25. The TPR action was based upon the same allegations as this present action.

In arguing against the motion the solicitor argued:

> MR. BARNETTE: Your honor, I think the solicitor has the right to appoint a special prosecutor.
>
> Mr. Brannon has been involved in this case almost from the beginning. He knows it inside and out. He's been very helpful to our prosecutors. We have actually gotten Jennifer Jordan and Kim Leskanic going to be trying this case, Your Honor, from that standpoint.
>
> * * *
>
> This weekend I made that decision going through, and we actually met with Ms. Jordan, and I said "why don't we just appoint you as special prosecutor to help out in case some issue comes up and potentially help with a witness or help with the situation within the trial itself."
> Rec. on App. at 19, ll 3-21.

Mr Brannon did more than just "help out" on some issue. He argued the *Batson* motion. Rec. on App. at 91, ll 18-25 to 99, ll 1-16. He assisted the minor child from the stand. Rec. on App. at 153, ll 9-11. He conducted the direct examination of Meredith Thompson-Loftis and the motions related to her testimony. Rec. on App. at 254, ll 3-25 to 276, ll 1-14. He argued the issue of the order of closing arguments. Rec. on App. at 285, ll 21-25 to 287, ll 1-18; 292, ll 6-18. Finally, he made the only closing argument for the state. Rec. on App. at 296, ll 15 to 25, to 306, ll 1-8.

In denying the motion on both grounds, the trial judge simply said "Well, I don't see a conflict, though Mr. Shabel. I really don't. Mr. Barnette, as the solicitor of this circuit, can

appoint any licensed attorney to act as a special prosecutor. That's my understanding." Rec. on App. at 20, ll 7-10. He further said "[A]s far as the conflict, I don't see the conflict. Certainly there would be a conflict had he represented your client - - . . . but he didn't." Rec. on App. at 20, ll 14-19.

The inherent conflict of the special prosecutor mentioned by defense counsel below violates the due process clause of Article I, § 3 of the Constitution of the State of South Carolina and the Fifth and Fourteenth Amendments to the Constitution of the United States of America. A defendant in a criminal case has the right to be prosecuted by a prosecutor who is free from any conflict of interest, potential or actual.

The United States Supreme Court has held that an attorney for a company cannot be appointed as special prosecutor in a trademark criminal contempt action for violation of a restraining order where the attorney also represents the company who owned the trademark. The Court said "[A]s will generally be the case, the appointment of counsel for an interested party to bring the contempt prosecution in this case at a minimum created *opportunities* for conflicts to arise, and created at least the *appearance* of impropriety." *Young v. United States*, 481 U.S. 787, 807 (1987)(emphasis in original).

The reason for such a rule is clear. As the Supreme Court said in *Berger v. United States*, 295 U.S. 78, 88 (1935) "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall

not escape nor innocence suffer." A prosecutor does not have the obligation of confidentiality to the natural mother and adoptive father that Mr. Brannon has. The obligation of confidentiality to a client is exactly what creates the conflict. A prosecutor has an ethical duty to share with defense counsel all conversations with prosecution witnesses which may be inconsistent with prior statements. The private lawyer has the exact opposite obligation. His conversations with his client must remain sacrosanct. In holding that a prosecutor who had represented the wife in a divorce action could not also prosecute the husband on a criminal assault charge, the Fourth Circuit Court of Appeals said " We think the conduct of this prosecuting attorney in attempting at once to serve two masters, the people of the Commonwealth and the wife of Ganger, violates the requirement of fundamental fairness assured by the Due Process Clause of the Fourteenth Amendment." *Ganger v. Peyton*, 379 F.2d 709, 714 (4th Cir. 1967); *See also, State v. Eldridge,* 951 S.W.2d 775 (Tenn. Ct. Cr. App.)

An argument has been made that the rule of confidentiality is so strong that even with a waiver, a trial court should disqualify a prosecutor from handling a case that involves his former client. "Moreover, given the public interest in reserving confidentiality, the court may exercise its inherent power and disqualify the district attorney even if the former client waives his confidentiality." Eli Wald, *Disqualifying a District Attorney When a Government Witness Was Once the District Attorney's Client: The Law Between the Courts and the State,* 85 DENV. U. L. REV. 369, 383.

To the extent *State v. Addis*, 257 S.C. 482, 186 S.E.2d 415 (1972) is contrary to the argument of Mr. Spade in this matter, the case should be overruled. *Addis* recognizes that privately retained counsel "assumes the same obligations to the court as the solicitor himself."

Id. at 417, 257 S.E.2d at 487. The case does not address the inherit conflict involved in this dual representation as discussed in this brief. The Court further stated "If he participates in the trial of a case and does only what a solicitor should do, the defendant has no right to complain." *Id.* As noted above, as a matter of ethics, a private attorney cannot do only what a solicitor does. He is required to honor the confidentiality of his conversations with his client. The solicitor does not have such a requirement.

The practice of appointing "special prosecutors" has been criticized by the South Carolina Supreme Court. The court has said "Although we find no error in this practice, we express our disapproval of the practice of appointing private counsel to prosecute criminal cases. Because of the increased possibility of a conflict when private counsel is involved, we believe the practice should be discouraged." *State v. Mattoon,* 287 S.C. 493, 495, 339 S.E.2d 867, 869 (1986). No case in South Carolina involving special prosecutors has discussed or mentioned the inherent conflict of the duty to disclose evidence by a prosecutor and the duty to honor confidentiality by the private lawyer.

Mr. Spade is not required to prove actual prejudice in this case. As noted by the United States Supreme Court "Given the fundamental and pervasive effects of such an appointment, we therefore hold that harmless-error analysis is inappropriate in reviewing the appointment of an interested prosecutor in a case such as this." *Young* at 814. In fact, to develop prejudice Mr. Spade would have to be permitted to examine Mr. Brannon under oath and ask that he obtain a waiver from his clients of the attorney-client privilege. The simplest solution is for this court to reverse the conviction of Mr. Spade with a decision barring in this case and in the future, the use of a special prosecutor who has represented parties involved in the same incident

as the prosecution.

Question IV

Did the trial court err in ruling that Doug Brannon had been properly appointed as required by S. C. Code § 1-7-470 when the solicitor failed to produce the commission from the governor as required by the statute?

In *State v. Matton,* 287 S.C. 493, 339 S.E.2d 867 (1986) the South Carolina Supreme Court held that S. C. Code § 1-7-405 applies to special prosecutors. Thus, S. C. Code § 1-7-470 should also apply to the special prosecutor in this case. Defense counsel called to the attention of the trial court that Doug Brannon had not been commissioned by the governor's office as required by the statute. Rec. on App. at 18, ll 12-16. The trial court simply ignored this argument and permitted Mr. Brannon to act as a counsel in the case.

Our Supreme Court has held that a violation of a statute does not cause a reversal of a trial unless the defendant can establish prejudice. *State v. Huntley*, 349 S.C. 1, 6, 562 S.E.2d 472, 474 (2002)("Evidence the simulator test was not run in conformity with Act 434 goes to the weight, not the admissibility, of Huntley's breathalyzer results."). In this case Mr. Spade can establish prejudice. As the Fourth Circuit has said "We think the conduct of this prosecuting attorney in attempting at once to serve two masters, the people of the Commonwealth and the wife of Ganger, violates the requirement of fundamental fairness assured by the Due Process Clause of the Fourteenth Amendment." *Ganger v. Peyton*, 379 F.2d 709, 714 (4th Cir. 1967). By permitting Mr. Brannon to assist in prosecuting this matter, the due process right of Mr. Spade to have a truly independent prosecutor prosecute his case has been violated.

Question V

Did the trial court err in failing to exclude the testimony of Meredith Thompson-Loftis when the state had been ordered to turn over to the defendant the file of Ms. Loftis if they intended to use her as a witness a reasonable time before trial and the state did not turn over substantial portions of the file until four days before trial and portions were not turned over until the day of trial?

Under the order of the Honorable J. Mark Hayes filed on February 27, 2013 the order specifically required the state, within a reasonable time before trial, to turn over the file of Meredith Thompson-Loftis in the event they elected to use her as a witness in the case. Order of J. Mark Hayes filed February 27, 2013. On October 31, 2013 the state sent to defense counsel the records of Ms. Loftis from May 17, 2011 through February 16, 2012. Rec. on App. at 35, ll 15-21. The defendant concedes this was a reasonable time before trial. On Thursday before the trial, the state sent to the defendant records of Ms. Loftis from February 23, 2012 until December 31, 2013. Rec. on App. at 35, ll 18-25 to 26, ll 1-6.

During the testimony of Ms. Loftis, defense counsel learned that the minor child had continued to see Ms. Loftis for January and February of 2014. Rec. on App. at 268, ll 10-25. These notes were not given to defense counsel. The trial judge, in rejecting defense counsel's motion to strike her testimony and exclude her testimony from the record, ruled that the state could not use any testimony from the counseling sessions in January and February of 2014. Rec. on App. at 271, ll 4-23.

The violation of the discovery rules in this case is more than a violation of Rule 5 of the South Carolina Rules of Criminal Procedure. Arguably the notes from Ms. Loftis may not

have been obtainable under Rule 5. *See, State v. Trotter,* 322 S.C. 537, 473 S.E.2d 452 (1996) Defense counsel, in preparation for the trial, and not relying entirely upon Rule 5, had over a year before trial obtained a specific order from Judge Hayes requiring that the notes be turned over a reasonable time before trial. As defense counsel appropriately pointed out to the trial judge "Furthermore, Your Honor, just for the record, it does - - you know, the fact that we got it prevents us from being able to have any experts, should we have wanted to have an expert look at it." Rec. on App. at 38, ll 18-21.

The courts of South Carolina have held on numerous occasions that a violation of Rule 5 discovery is not reversible unless the defendant can show actual prejudice. *See, State* v. *Kerr*, 330 S.C. 132, 498 S.E.2d 212 (Ct. App. 1999) The defendant contends that this analysis should not apply here because the state has violated a specific order of a circuit judge to produce the information in time for the defendant to be able to use the information at trial. When a specific order is involved, this court should not use a prejudice standard for the state had known of the specific court order. When a specific order is involved this court should not engage in a speculative analysis as to how defense counsel could have used the information.

In addition, a defendant would not know how the information may be helpful until defense counsel has had the opportunity to further evaluate the information with an expert. The state had ample notice to provide the defendant with the proper information. In fact had the state simply provided all the notes from Ms. Loftis that it had available on October 31, 2013 this issue would not have arisen. At the trial below the state never explained why they did not produce all of Ms. Loftis' notes that were in fact available when they made a partial disclosure. The state simply cannot assert a good faith effort to comply with the order.

Trial counsel requested that the testimony of Ms. Loftis be excluded. The trial judge refused. But this was not the only alternative available to the trial court. "[O]nce a trial court determines that a discovery violation has occurred, the court may order further discovery, grant a continuance, exclude the evidence, or impose any sanction which, in its discretion, it deems just under the circumstances." *People v. Aguilar*, 218 Ill. App. 3d 1, 9, 578 N.E.2d 109, 115 (1991). At the very least the trial judge should have continued the case to permit defense counsel to evaluate the evidence. Only after an evaluation by an expert can the defendant clearly establish harm.

CONCLUSION

For the foregoing reasons the conviction of Daniel Spade should be reversed and the matter remanded for a new trial.

December 10, 2014

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ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

RECEIVED
JUN 22 2015
SC Court of Appeals

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2014-000448

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

DANIEL WILLIAM SPADE,

APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

I. **Appellant's issue regarding panic attacks is not preserved for review where Appellant received the relief he requested below and had no problem with the judge's limitation on the evidence. Regardless, Appellant's issue is patently without merit because his contentions are without factual support in the record.**

II. **The trial judge properly concluded that defense counsel's stated reason for striking Juror 199 was not gender-neutral where he struck the juror because she was a "grandmother" and only females can be grandmothers. Counsel's additional proffered reasons for the strike, including age and retired status, were tainted by the discriminatory reason.**

III. **Appellant's issue regarding the special prosecutor's duty of confidentiality to his former clients is not preserved for review where that specific issue was not raised or ruled upon below as a part of defense counsel's motion. In any event, the trial judge properly permitted a private attorney to assist the solicitor's office during Appellant's trial as a special prosecutor where the private attorney did not have a personal or financial conflict of interest; did not have control over Appellant's case to the exclusion of the solicitor; and where there is no assertion that the private attorney possessed or withheld any pertinent information or disregarded any of his obligations as a special prosecutor.**

IV. **Appellant's challenge to the appointment of a special prosecutor on the ground that the solicitor did not produce a commission from the governor is not preserved for review because Appellant failed to secure a ruling on this issue below. Regardless, there was no reversible error on this ground where Appellant has failed to show any prejudice.**

V. **The trial judge did not abuse his discretion in denying Appellant's motion to exclude the testimony of the victim's counselor, and Appellant has failed to show any prejudice resulting from the delay in his receipt of some of the counseling records especially where Appellant was not entitled to the counselor's records in the first place under Rule 5, SCRCrimP.**

STATEMENT OF THE CASE

Appellant was indicted in Spartanburg County for criminal sexual conduct with a minor in the first degree. On February 24-26, 2014, Appellant was tried before the Honorable R. Keith Kelly and a jury. The jury found Appellant guilty, and Judge Kelly sentenced Appellant to thirty-five years. A timely notice of appeal was served and filed.

ARGUMENT

Overview of Facts Presented at Trial

The victim's mother and Appellant met at work and ultimately had a child together, the victim, who was born in [redacted] of 2006. (R. p. 153-55). Appellant, who lived in Virginia at the time, first saw the victim in January or February of 2007. (R. p. 155). Sometime in the year 2007, Appellant filed an action in family court seeking visitation with the victim. (R. p. 155-56). The victim's mother married her husband David in December 2007. (R. p. 155, lines 20-21). The victim referred to David as "daddy." (R. p. 155, lines 23-24). In 2008, the victim's mother and her husband filed an action in family court seeking to terminate Appellant's parental rights. (R. p. 156-57). The action was not successful and a visitation schedule was thereafter established. (R. p. 157). In the summer of 2010, the victim, then almost four years old, went to Virginia to visit with Appellant. (R. p. 158). The next two visitations took place in South Carolina in September 2010 and October 2010. (R. p. 159-63).

The September 2010 visit took place at a Holiday Inn Express in Spartanburg County. (R. p. 130-31; p. 161). During this visit, Appellant took the victim to the hotel's pool. (R. p. 142-44). At one point he took the victim into the private bathroom near the pool area and "stuck his private part in [her] mouth." (R. p. 142, lines 5-15). Appellant told the victim that if she "didn't do it," he wouldn't take her home to her mother. (R. p. 144, lines 1-2).

Following the September visit, the victim's mother noticed some behavioral changes in the victim. (R. p. 161). The victim wet herself in her car seat, which was unusual for her. (R. p. 161-62). After having a bath, the victim started crying

uncontrollably. (R. p. 162). She pulled away from her mother, hid herself in the corner, and wet herself again. (R. p. 162, lines 2-4). The victim was unable to control herself and was almost making herself sick. (R. p. 162, lines 3-5). When the victim's mother asked what was wrong, the victim said "I don't know." (R. p. 162, lines 5-6). Thereafter, the victim developed problems sleeping and was suddenly terrified of the dark. (R. p. 164). One night the victim's mother found her barricaded under a small play table in her room, asleep. (R. p. 165, lines 1-9). The victim also began to complain of stomach aches and headaches, and would sometimes revert back to speaking like a two-year-old. (R. p. 164, lines 4-6). Sometimes she would "break down completely" and there was no consoling her. (R. p. 164, lines 6-8). Sometimes she would hide behind a door and not come out for anywhere from five to thirty minutes. (R. p. 164, lines 8-10). When she finally did come out, she wanted her mother to hold her. (R. p. 164, lines 10-12). After the October 2010 visit with Appellant, the victim's mother decided to seek counseling for the victim. (R. p. 167).

That same month, the victim began counseling with Kim Rosborough. (R. p. 167-68). At the time counseling began, the victim's mother had no idea that sexual assault was an issue. (R. p. 168, lines 11-16). Instead, the goal of the counseling was to figure out the cause of the victim's anxiety and to try to ease any anxiety she may have had regarding her visits with Appellant. (R. p. 169). Following the commencement of counseling, the victim had no further in-person visits with Appellant. (R. p. 170, lines 14-18). Also following commencement of counseling, the victim's mother noticed an improvement in the victim's anxiety symptoms. (R. p. 170, lines 1-3 & 23-24).

The victim disclosed the sexual abuse to her grandmother in late March of 2011. (R. p. 242-43). The grandmother was in shock regarding the disclosure, but after a day or two she told her husband about it. (R. p. 243-44). Her husband, the victim's grandfather, reported the disclosure immediately to the victim's family court guardian ad litem. (R. p. 246, lines 24-25). He also called Kim Rosborough, the victim's counselor at that time, and reported the disclosure. (R. p. 207-208). In response, Ms. Rosborough referred the victim for a forensic interview at the Child Advocacy Center. (R. p. 208, lines 1-12). The victim's mother found out about the allegation from her parents around this time. (R. p. 170-71).

Tabitha Webber, a forensic interviewer at the Child Advocacy Center, conducted forensic interviews with the victim on several different dates in April and May of 2011. (R. p. 251-52). During the course of these interviews, the victim made a disclosure of sexual abuse that occurred "at a hotel with a pool" in South Carolina. (R. p. 252-53). Following the interviews Ms. Webber made a report to law enforcement. (R. p. 253). The victim thereafter began counseling with Meredith Thompson-Loftis in May of 2011. (R. p. 263). The victim disclosed sexual abuse during the counseling sessions and provided a specific time period and location. (R. p. 274). Although the victim started out having a variety of symptoms of anxiety, she exhibited a great deal of improvement over the course of the counseling sessions. (R. p. 272-74). Appellant's parental rights were terminated in family court in November of 2012, and the victim's last name was subsequently changed to that of her adoptive father. (R. p. 181, lines 2-8).

I. Appellant's issue regarding panic attacks is not preserved for review where Appellant received the relief he requested below and had no problem with the judge's limitation on the evidence. Regardless, Appellant's issue is patently without merit because his contentions are without factual support in the record.

Relevant Facts

Following the testimony of four State's witnesses, Appellant's counsel informed the judge that he wished to proffer some testimony from Dale Smith, the victim's grandmother. (R. p. 225, lines 8-18). Ms. Smith was called to the stand and briefly examined by Appellant's counsel. (R. p. 226-28). Ms. Smith testified that she was the victim's maternal grandmother and that she saw the victim on a regular basis. (R. p. 226, lines 10-16). She recalled testifying in a family court proceeding in October 2012, and in that proceeding, she testified that she observed the victim having panic attacks. (R. p. 226, lines 17-22). The term "panic attack" was not defined by defense counsel or the witness. Ms. Smith then stated the following: (1) she had, on one occasion after October 2012, observed the victim have a panic attack in her backyard when she was alone with the victim; (2) prior to October 2012, she had never observed the victim having a panic attack when she was alone with the victim; (3) she had never, before October 2012, observed the victim having a panic attack when only herself and her husband were present; (4) she had never observed the victim having a panic attack when only herself and the victim's mother were present; (5) she had never observed the victim having a panic attack when only herself and the victim's adoptive father, David Jolley, were present; (6) she had never observed the victim having a panic attack when only herself, the victim's mother, and the vicitm's adoptive father were present; (7) the victim's adoptive father was not present for the panic attack the victim had in the witness's

backyard after October 2012; (8) both the victim's mother and the victim's adoptive father were present during all of the panic attacks she had observed prior to October 2012. (R. p. 226-28). On cross-examination, Ms. Smith testified that the following persons were present during the panic attacks she witnessed prior to October 2012: herself, her husband, the victim's mother, the victim's adoptive father, and the victim's little brother. (R. p. 229, lines 3-5).

Appellant's counsel subsequently argued that "[t]his is a situation where there are allegations that the child is having panic attacks. That panic attacks in and of itself could or could not have anything to do with the fact that my client may have committed this act." (R. p. 232, lines 7-10). He continued, "[w]hat we are trying to do is give potentially other reasons, non-criminal reasons, why the panic attacks are occurring, not necessarily issues that she's having a panic attack to go as to what her biological father did." (R. p. 232, lines 11-14). Finally, Appellant's counsel stated he was not attempting to establish third-party guilt but was trying to establish an "explanation for symptoms, which the State of South Carolina is going to argue is a symptom of child sexual abuse and she's having panic attacks because of what her biological father did." (R. p. 232, lines 15-19).

The trial judge told Appellant's counsel he was free to call an expert witness to testify that panic attacks could be caused by a number of other things in a child's life. (R. p. 232, lines 22-25). The judge also indicated Appellant's counsel could ask the State's own expert similar questions. (R. p. 233, lines 1-4). However, he ruled that "this court looks at this as sort of a back door to third-party guilt, and I have already ruled on that yesterday in pre-trial motions. And the defendant has failed to show that the proper

evidence is inconsistent with his guilt, so I'm not - I'm not going to allow that in." (R. p. 233, lines 3-8). Nevertheless, the judge stated he would allow questions about what was going on when the panic attacks occurred, where the child was, what the child was doing, or whether or not she was being disciplined at the time. (R. p. 233, lines 9-20). The judge cautioned that the questions about this should be framed in a way that avoided simply pointing the finger at the victim's adoptive father and insinuating that because he was present at the time of a panic attack, perhaps he was the one who abused the victim. (See R. p. 233, lines 21-23). After clarifying that he would indeed be permitted "to ask what was going on without mentioning a specific individual," Appellant's counsel stated, "Thank you." (R. p. 234, lines 10-13).

When Ms. Smith was later called to testify, Appellant's counsel did not cross-examine her regarding panic attacks at all.[1] (See R. p. 245-47). In fact, Appellant's counsel did not question any subsequent witness regarding panic attacks. (See R. p. 238, line 15 – p. 239, line 14; p. 254, line 3; p. 274, line 24 – p. 275, line 17; p. 277, lines 16-17). Appellant did not call any defense witnesses. (R. p. 280, lines 12-21). In closing argument, Appellant's counsel mentioned panic attacks only one time when he noted that the victim's mother, who was trying to have Appellant's parental rights taken away, was the one who presented testimony about the victim having panic attacks after visting with Appellant. (See R. p. 306-14; p. 311, lines 2-7). Note that Appellant's counsel previously had a full opportunity to cross-examine the victim's mother regarding her testimony about the victim's panic attacks and other symptoms of anxiety. (See R. p. 153-98).

[1] The prosecutor also did not ask Ms. Smith about panic attacks during direct examination. (R. p. 240-45).

Discussion

Appellant now contends on appeal that the trial court erred in "excluding the testimony of Dale Smith as to the occurrence of panic attacks by the minor child when adult males other than [Appellant] were present when the occurrence of panic attacks was used by the state to prove Mr. Spade had abused his daughter." (Brief of Appellant, p. 5). This issue is not preserved for appellate review and is patently without merit where it is wholly without support in the record.

Following his proffer, Appellant received the relief he requested - i.e., to be permitted to ask questions regarding the circumstances surrounding the victim's panic attacks - and had no complaints about the trial judge's ruling. (See R. p. 234, lines 10-13). The trial judge even told Appellant's counsel that he could call an expert witness, or question the State's witness, regarding potential alternative causes for panic attacks. (R. p. 232, line 22 – p. 233, line 4). Although defense counsel apparently made a subsequent decision to abandon the issue, this decision could not have been a result of the trial judge's ruling since the trial judge's ruling permitted counsel to fully explore the issue of alternative causes of the panic attacks short of actually attempting to place factually unsupported blame for the victim's panic attacks upon the victim's adoptive father. (R. p. 232-34). Where Appellant received the relief he requested below and made no complaint about the limitations of the judge's ruling, he should not be permitted to complain on appeal. See State v. Patterson, 324 S.C. 5, 16, 482 S.E.2d 760, 765 (1997) (an issue is not preserved for review if the objecting party accepts judge's ruling on a particular matter and does not contemporaneously make an additional objection indicating his dissatisfaction with any limitations); State v. Sinclair, 275 S.C. 608, 610,

274 S.E.2d 411, 412 (1981) (holding that where the defendant received the relief requested from the trial court, there is no issue for the appellate court to decide); State v. McEachern, 399 S.C. 125, 146, 731 S.E.2d 604, 614-15 (Ct. App. 2012) (where defendant received the relief she sought she could not be heard to complain on appeal); State v. Parris, 387 S.C. 460, 465-66, 692 S.E.2d 207, 210 (Ct.App.2010) (holding where a defendant receives the relief requested from the trial court, there is no issue for the appellate court to decide).

Regardless, this issue is patently without merit where it is wholly without support in the record. Initially, it is unclear what exactly Appellant is contending he should have been allowed to introduce but was prevented from doing so by the trial judge. (See Brief of Appellant, p. 5-8). To the extent Appellant is alleging he should have been allowed to introduce testimony and/or argument that the victim's panic attacks happened only in the presence of the victim's adoptive father, this testimony has no factual support in the proffer presented by Appellant's counsel and, in fact, no factual support in the record **whatsoever**. (See R. p. 225-29). Appellant presented no factual or expert testimony supporting an identifiable alternate cause or trigger for the victim's panic attacks despite the fact that the judge's ruling allowed him the opportunity to present testimony in this regard.[2] There was absolutely no evidence that any person's physical presence triggered the victim's panic attacks. Moreover, although he did not do so, Appellant's counsel was

[2] In the State's view, Appellant has, on appeal, improperly conflated "panic attacks" - which have a very specific definition - with the victim's other various anxiety-related symptoms. (See Brief of Appellant, p. 5-8). See American Psychological Association. *Diagnostic and Statistical Manual of Mental Disorders.* 5th ed. Washington, D.C.: American Psychological Association, 2013 (see § 300.01, defining "panic attack" as "[a]n abrupt surge of intense fear or intense discomfort that reaches a peak within minutes, and during which time four or more [specified symptoms] occur."). Defense counsel's proffer below asked the victim's grandmother only about "panic attacks," and his argument to the judge was similarly limited. (See R. p. 226-34). Any extension of the issue to the victim's other symptoms of anxiety is therefore not preserved for review. See, e.g., State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial.").

free to argue to the jury that the State failed to prove that the victim actually had panic attacks or that the victim's panic attacks were the result of any abuse by Appellant. (See R. p. 306-14). In sum, Appellant's issue is unpreserved for appellate review and is clearly without merit. Appellant is not entitled to reversal on this ground.

II. The trial judge properly concluded that defense counsel's stated reason for striking Juror 199 was not gender-neutral where he struck the juror because she was a "grandmother" and only females can be grandmothers. Counsel's additional proffered reasons for the strike, including age and retired status, were tainted by the discriminatory reason.

Relevant Facts

After the first jury was selected, the State contended that Appellant made strikes based upon gender and requested that the court require Appellant to set forth gender-neutral reasons for his strikes. (See R. p. 91-92). The State noted that five of Appellant's six strikes were strikes of female jurors, but agreed that the strike of Juror 119 was appropriate because that juror had been a victim of sexual abuse. (R. p. 91, lines 19-21). In response, defense counsel told the judge he struck Juror 199 because she "is a retired grandmother. We didn't feel like she would be appropriate." (R. p. 92, lines 14-15). Defense counsel also told the judge he struck Juror 13 because "[t]hat was the grandmother and her age." (R. p. 93, lines 4-7). The judge asked counsel to explain what he meant in striking her because she was "a grandmother." (R. p. 93, lines 8-9). Defense counsel responded, "It's prejudicial to our client. We felt that given the age and the retired nature and the number of kids she has, we didn't feel like she would be an appropriate juror for our case. (R. p. 93, lines 10-13). When asked again about his reason for striking Juror 199, counsel stated it was "the same thing." (R. p. 93, lines 17-19). Counsel elaborated that his reason was "age and background" since the juror was

"65 years old and has three children and divorced." (R. p. 93, lines 23-24). He stated "[w]e felt she would be prejudicial." (R. p. 93, lines 24-25).

Counsel for the State pointed out that the jury was "not a jury of [Appellant's] peers," instead, it was "a jury of his male peers." (R. p. 94, lines 14-15). The jury panel consisted of ten men and two women. (R. p. 95, lines 1-2). Defense counsel pointed out that he had four strikes remaining but seated two female jurors. (R. p. 95, lines 1-7). The judge then stated that he had concerns about defense counsel's strike of "a grandmother" because "that by its very nature implies she's female. Nobody else can be a grandmother." (R. p. 95, lines 8-11). Defense counsel responded that "[i]t's the age, as well as the fact that we felt she was [a] retired grandmother, we felt that she just would not be – we felt it would be more prejudicial to my client. It had nothing to do with the fact that she's a female. It's a combination of those." (R. p. 95, lines 12-16). The solicitor argued that "in their answer [itself] I think they are giving you gender – grandmothers." (R. p. 97, lines 6-8). The solicitor also stated that there were men on the jury panel the same age as the women who were struck for being grandmothers. (R. p. 97, lines 11-13; see also p. 95, lines 22-24).

The trial judge ruled that he was going to grant the State's motion as to Jurors 13 and 199. (R. p. 97, lines 17-23). He found that one of the reasons given for the strike - that the jurors were grandmothers - was not gender-neutral because "[o]nly females can be grandmothers." (R. p. 97, lines 20-22). The judge stated he was granting the motion despite defense counsel's additional argument regarding "the age of the individual." (R. p. 98, lines 17-20).

Applicable Law

In Batson v. Kentucky, 476 U.S. 79 (1986), the United States Supreme Court concluded that the Equal Protection clause forbade the use of peremptory challenges to strike jurors because of their race. In J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127 (1994), the Court extended Batson and held that the Equal Protection clause also prohibited gender-based discriminatory strikes. See, e.g., State v. Chapman, 317 S.C. 302, 306, 454 S.E.2d 317, 320 (1995).

Our Supreme Court reiterated the procedure the trial court is to follow for a Batson hearing in State v. Evins:

> After a party objects to a jury strike, the proponent of the strike must offer a facially race neutral explanation. Once the proponent states a reason that is race neutral, the burden is on the party challenging the strike to show the explanation is mere pretext, either by showing similarly situated members of another race were seated on the jury or that the reason given for the strike is so fundamentally implausible as to constitute mere pretext despite a lack of disparate treatment. The burden of persuading the court that a Batson violation has occurred remains at all times on the opponent of the strike.

State v. Evins, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007) (citing State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996) & State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999)).

A trial court's finding of purposeful discrimination rests on its evaluation of demeanor and credibility. State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 823 (2009). "Often the demeanor of the challenged attorney will be the best and only evidence of discrimination, and an 'evaluation of the [attorney's] mind lies peculiarly

within a trial [court's] province.'" Id. (quoting Hernandez v. New York, 500 U.S. 352, 365 (1991)).

In Payton v. Kearse, our Supreme Court rejected the "dual-motivation" doctrine in Batson cases. 329 S.C. 51, 59, 495 S.E.2d 205, 210 (1998). Instead, "South Carolina follows the 'tainted' approach whereby a discriminatory explanation for the exercise of a peremptory challenge will vitiate other nondiscriminatory explanations for the strike." State v. Rayfield, 357 S.C. 497, 503, 593 S.E.2d 486, 489 (Ct. App. 2004) (citing Payton 329 S.C. at 59, 495 S.E.2d at 210). Therefore, "[t]he challenged party should not have an opportunity to convince the judge that he would have struck the juror regardless of the discriminatory reason." Payton, 329 S.C. at 60, 495 S.E.2d at 210.

Discussion

Appellant argues that the trial judge erred in determining that Juror 199 was improperly struck where defense counsel specifically stated the juror was struck for her age and for being retired. However, as mentioned above, South Carolina has rejected the dual-motivation doctrine; thus, a gender-based reason for a strike taints any other proffered reasons for a strike. See Payton at 59, 495 S.E.2d at 210. Here, defense counsel's initial reason for striking Juror 199 was because she was a "retired grandmother." (R. p. 92, lines 14-15). Saying a person is a retired grandmother is another way of saying that the person is a retired older ***female***. As the trial judge properly pointed out, only ***females*** can be grandmothers. Cf. Payton at 55-60, 495 S.E.2d at 208-10 (since only whites can be "rednecks," a strike motivated in part because the juror was a "redneck" was not race-neutral on its face; the attorney's other proffered reasons for the strike were tainted by the discriminatory reason). Since Appellant's strike

of Juror 199 was at least in part motivated by gender, the strike was improper under Payton and the trial judge properly concluded that the strike was not gender-neutral. See Payton at 56, 495 S.E.2d at 208 ("Here, because the reason offered was not race-neutral on its face, we need not reach the third step of the analysis."). Accordingly, it was not error for the trial judge to grant the State's Batson motion.[3]

As an additional sustaining ground, the State submits that - even assuming defense counsel's proffered reason for the strike was gender-neutral - it was pretext for purposeful gender discrimination. The solicitor pointed out on two separate occasions that similarly-aged men had been seated on the jury, and defense counsel failed to dispute the State's assertions and failed to respond to them at all. (See R. p. 95, lines 22-25; p. 97, lines 6-18; see p. 95-98). Obviously, defense counsel had the juror information sheets before him at trial and had the opportunity to view each individual juror as he or she was seated on the jury. The fact that defense counsel failed to dispute that similarly-situated male jurors were seated on the jury renders this an uncontested and undisputed issue below. Cf. State v. Smith, 328 S.C. 622, 626, 493 S.E.2d 506, 509 (Ct. App. 1997) (statement made in a person's presence was admissible under Rule 801(d)(2)(B), which excludes from the definition of hearsay a statement offered against a party in which the party has "manifested an adoption or belief in its truth," where under the circumstances one would expect the person to refute the statement if it was untrue (citations omitted)). Accordingly, where defense counsel's asserted reasons for the strike of Juror 199 were mere pretext for gender discrimination, the granting of the State's Batson motion should be upheld.

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[3] Since the judge found the reason not gender-neutral at step two of the Batson process, there was no need for him to proceed to step three of the process to determine whether or not the explanation was mere pretext.

III. Appellant's issue regarding the special prosecutor's duty of confidentiality to his former clients is not preserved for review where that specific issue was not raised or ruled upon below as a part of defense counsel's motion. In any event, the trial judge properly permitted a private attorney to assist the solicitor's office during Appellant's trial as a special prosecutor where the private attorney did not have a personal or financial conflict of interest; did not have control over Appellant's case to the exclusion of the solicitor; and where there is no assertion that the private attorney possessed or withheld any pertinent information or disregarded any of his obligations as a special prosecutor.

Relevant Facts

Prior to trial, defense counsel requested that the court not allow Douglas Brannon to serve as a special prosecutor in the case. (See R. p. 18-21). Counsel indicated he had received a copy of a letter appointing Mr. Brannon as a special prosecutor that morning. (R. p. 18, lines 1-10). Counsel did not dispute that the solicitor had the right to appoint a special prosecutor, but noted that he had no evidence "under Section 1-7-470 of the South Carolina Code that his appointment as special prosecutor has been in any way, shape or form commissioned by the Governor's office." (R. p. 18, lines 11-16). He also argued that the fact that Mr. Brannon, in October of 2012, represented the mother and adoptive father of the victim in family court created an "inherent conflict of interests." (R. p. 18, lines 19-25). The trial judge denied Appellant's motion, stating that the solicitor had the right to appoint any licensed attorney to act as a special prosecutor and that he did not see a conflict of interest since Mr. Brannon had never represented Appellant. (R. p. 20, lines 7-16).

Issue Preservation

On appeal, Appellant now argues that Mr. Brannon's obligation of confidentiality to the victim's mother and adoptive father created a conflict of interest that violated

Appellant's due process rights. However, this argument is clearly unpreserved because it was not made to the trial judge below. Although defense counsel made a general argument about an "inherent conflict of interests," he failed to make any arguments regarding Mr. Brannon's duty of confidentiality. Because Appellant is now attempting to raise an argument that was not brought to the trial judge's attention and was not ruled on by the trial judge, the issue argued on appeal is not properly preserved. See, e.g., I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (imposing preservation requirements on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments; the "purpose of an appeal is to determine whether the trial judge erroneously acted or failed to act and when appellant's contentions are not presented or passed on by the trial judge, such contentions will not be considered on appeal"); Morris v. Anderson County, 349 S.C. 607, 611 n. 4, 564 S.E.2d 649, 651 n. 4 (2002) (noting "[i]t is well-settled that appellants cannot raise new arguments or change their grounds between trial and appeal"); State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (finding argument advanced on appeal was not raised and ruled on below and therefore was not preserved for review); State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (noting "[a] party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground ") (emphasis added); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (holding a party may not argue one ground at trial and another on appeal); State v. Whitten, 375 S.C. 43, 47, 649 S.E.2d 505, 507 (Ct.App.2007) (finding an appellate court is limited by appellate rules that allow the court to consider only the precise question that

was before the trial judge and ruled upon by him or her); Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006) (noting "[i]ssue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review," and until the trial court considers the matter and makes a ruling, an appellate court is unable to find error). Accordingly, this issue should be dismissed on error preservation grounds.

Discussion

Error preservation concerns aside, the trial judge properly allowed Mr. Brannon to serve as a special prosecutor in Appellant's case, and Appellant's contention that Mr. Brannon's service as a special prosecutor violated his constitutional rights is contrary to well-reasoned and settled precedent. In State v. Addis, a private attorney who had previously represented the victim's family in a civil claim against the defendant participated in the defendant's criminal trial alongside the solicitor. 257 S.C. 482, 486, 186 S.E.2d 415, 416 (1972). The civil claim was settled prior to trial. Id. In finding no error with respect to the private attorney's participation in the case, our Supreme Court found that "traditionally in this State private counsel has been permitted to assist the State in prosecutions." Id. at 487, 186 S.E.2d at 417. The Supreme Court also stated that "the defendant has no right to complain" where private counsel "participates in the trial of a case and does only what a solicitor should do." Id. Finally, the Supreme Court held: "We cannot say that the participation of private counsel violates the constitution or any statutory or common law principle. Such ruling would appear to be in keeping with the weight of authority." Id. at 487-88, 186 S.E.2d at 417.

In State v. Nichols, a 1997 murder case, the defendant asserted it was unconstitutional to allow the solicitor to use three private attorneys hired by the victim's family to prosecute his case. 325 S.C. 111, 119, 481 S.E.2d 118, 122 (1997). Our Supreme Court rejected his argument, ruling as follows:

> Private counsel's participation in a trial to assist the solicitor has been sanctioned in State v. Mattoon, 287 S.C. 493, 339 S.E.2d 867 (1986); State v. Addis, 257 S.C. 482, 186 S.E.2d 415 (1972); State v. Lee, 255 S.C. 309, 178 S.E.2d 652 (1971); and State v. Gregory, 172 S.C. 329, 174 S.E. 10 (1924).
>
> In State v. Addis, 257 S.C. at 487–88, 186 S.E.2d at 417, we declined to find error in the allowance of a private attorney's participation in a criminal trial. The trial court has discretion to allow the solicitor to have the assistance of counsel employed by the prosecuting witness or other person interested in securing a conviction with the consent of the solicitor. Id. A special assistant solicitor is not automatically disqualified because of his simultaneous representation of an interested party. Disqualification occurs when a special assistant solicitor attempts to use his authority in the criminal action to the advantage of his civil client or otherwise compromises his neutrality in the criminal proceeding. State v. Mattoon, 287 S.C. at 494–95, 339 S.E.2d at 869. There is no evidence the private attorneys who acted as special assistant solicitors here stood to gain an unfair advantage in the civil matter as frowned upon in In re Jolly, 269 S.C. 668, 239 S.E.2d 490 (1977). Further, the solicitor maintained control of the case. We do not find error in the use of private attorneys here.

Id. at 119, 481 S.E.2d at 122-23.

The reasoning of Nichols and Addis applies squarely in Appellant's case.[4] The Seventh Circuit Solicitor's Office maintained control of Appellant's case and Mr. Brannon merely served as a "third chair" and assisted with some aspects of the trial, including arguing two motions, examining one witness (the victim's therapist), and

[4] As Appellant points out in his brief, our Supreme Court in State v. Mattoon, 287 S.C. 493, 339 S.E.2d 867 (1986), discouraged the practice of appointing private counsel to prosecute criminal cases. Note, however, that in Mattoon, the private attorney appointed to prosecute the case was the sole prosecutor and no one from the solicitor's office was present during trial. Mattoon at 494-95, 339 S.E.2d at 868-69. In any event, despite the statement of discouragement in Mattoon, the decisions of our Supreme Court have consistently upheld the use of special private prosecutors when attacked by the defendant. The Nichols case reiterates this view.

presenting the State's closing argument. (See R. p. 19, lines 7-9; see Brief of Appellant, p. 12). Further, in Appellant's case, unlike in Nichols, Mr. Brannon did not "simultaneously" represent an interested party; instead, his representation of the victim's mother and adoptive father concluded in October of 2012, more than a year and three months before Appellant's trial. (See R. p. 18, lines 20-23). Mr. Brannon stood to gain nothing (other than a sense of personal satisfaction, perhaps) from providing *pro bono* assistance to the State, nor has there been any contention that he attempted to use his authority as a special prosecutor in some improper way. (See R. p. 18, line 5). Therefore, contrary to Appellant's suggestion, Mr. Brannon was not "serving two masters at once." (See Brief of Appellant, p. 14).

Appellant's argument, in addition to not being preserved for review, is based on rank speculation that Mr. Brannon *might* have learned something during his representation of the victim's mother and adoptive father in the past that *might* have been helpful to the defense in this case, and assumes that Mr. Brannon failed to turn such information over to the defense. However, had the issue of privilege or confidentiality actually been raised below or brought to the trial judge's attention in some way, it most likely would have been revealed that Mr. Brannon's former clients - the victim's mother and adoptive father - had indeed waived lawyer-client confidentiality and agreed that Mr. Brannon could, consistent with his obligations as a special prosecutor for the State, turn over any pertinent information. There has been no contention, either at trial or on appeal, that Mr. Brannon actually possessed pertinent information that was required to be turned over to the defense. Further, there has been no contention at trial or on appeal that Mr.

Brannon, as special prosecutor, failed to actually comply with Brady or Rule 5 obligations.

The cases cited by Appellant in support of his position are distinguishable in that those cases involved situations where the private attorney simultaneously represented a financially interested party and was in total control of the prosecution. In Young v. U.S. ex rel. Vuitton et Fils S.A., 481 U.S. 787 (1987), private attorneys served as special prosecutors in a criminal contempt action regarding a violation of a trademark infringement injunction. The injunction and consent decree contained a liquidated damages provision in the amount of $750,000 for a violation of the injunction. Id. at 805. The private attorneys were appointed by the district court and, significantly, the United States Attorney's Office had no involvement in the case at all. Id. at 791-92. Because the private attorneys simultaneously represented Vuitton in the trademark matter, and in light of the $750,000 liquidated damages provision for a violation of the injunction, there was the potential for "private interest to influence the discharge of public duty." Id. at 805-806. Therefore, the private prosecutors were "interested" and their appointment was improper. Id. at 814. The Court refused to employ a harmless error analysis under these circumstances because the error was "fundamental" where the appointment of interested private prosecutors - with no involvement of the United States Attorney's Office - raised doubts about "the integrity of the criminal proceeding." Id. at 809-810.

In Ganger v. Minor Victim 379 F.2d 709 (4th Cir. 1967), the Fourth Circuit Court of Appeals held that the defendant's conviction for assaulting his wife was constitutionally invalid because the attorney prosecuting the criminal case simultaneously represented the defendant's wife in a divorce action then pending against the defendant, and the divorce

action was based upon the same assault involved in the criminal matter. Id. at 711-12. Significantly, the private prosecuting attorney improperly used his influence as a prosecutor because he offered to drop the criminal assault charge if the defendant would make a favorable property settlement in the divorce action. Id. A favorable settlement, of course, would have likely impacted the amount of his fee in the divorce matter. Id. at 713. Because of the prosecuting attorney's "self-interest" in the outcome of the criminal case, he was not in a position to exercise fairminded judgment with respect to prosecution of the criminal case. Id. at 712-13. This conflict of interest - wherein the prosecuting attorney was actively attempting to serve two masters at the same time - violated the defendant's due process rights. Id. at 714. A harmless error analysis was not appropriate because the *sole* prosecuting attorney was not "free to exercise the fair discretion which he owed to all persons charged with crime in his court." Id.

Appellant's case is totally different from both Young and Ganger. Again, Mr. Brannon merely assisted the State with the trial as a third-chair prosecutor and he did not have control over Appellant's prosecution from the inception of the case as did the attorneys in Young and Ganger. Furthermore, Mr. Brannon was not "interested" as were the private prosecutors in Young and Ganger because he was not simultaneously representing the victim's mother and adoptive father since that matter concluded in October 2012. Mr. Brannon performed his work as a special prosecutor *pro bono* and there was no possibility of pecuniary gain or unfair advantage in any pending, related civil matter. Accordingly, Young and Ganger do not apply to Appellant's case and there was no "fundamental" trial error here.

Notably, in a case subsequent to Ganger, the Fourth Circuit Court of Appeals

distinguished Young and held that although Young "flatly proscribes turning the prosecution completely over to private counsel for interested parties," it "certainly did not proscribe all participation by such counsel." Person v. Miller, 854 F.2d 656, 663 (4th Cir. 1988). The court then stated:

> We therefore read *Young* at least implicitly to approve (or certainly not to forbid) the practice of allowing private counsel for interested parties to participate formally with government counsel in the prosecution of contempt citations so long as that participation (1) has been approved by government counsel; (2) consists solely of rendering assistance in a subordinate role to government counsel; and (3) does not rise in practice to the level of effective control of the prosecution. As indicated, we find authority for this rule of limited participation at least implicit in *Young* and we think it wholly conformable to *Young*'s underlying principles. Accordingly, we adopt it as the appropriate rule governing the participation of private counsel for interested parties in contempt prosecutions.

Id. The court also noted that the evil at which the Young rule was aimed - "the possibility that the criminal contempt sanction would be invoked and prosecuted by private counsel, operating in the adversarial mode, solely to secure advantage to his client and hence without regard for any interests of the defendant and the public in fairness of the criminal process" - is sufficiently guarded against, both in appearance and reality, by "the presence of disinterested government counsel effectively in a position and manifestly prepared to exercise control over the critical prosecutorial decisions - most critically, whether to prosecute, what targets of prosecution to select, what investigative powers to utilize, what sanctions to seek, plea bargains to strike, or immunities to grant." Id. at 664. Significantly, the reasoning of this Fourth Circuit case is fully in keeping with Nichols and Addis.

Contrary to Appellant's argument on page 15 of his Brief, prejudice must be shown in order for Appellant to receive relief. In State v. Smart, 278 S.C. 515, 299

S.E.2d 686 (1982), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991), a disqualification case, there existed a potential conflict of interest arising from the fact that one of the prosecutors in the solicitor's office had previously worked for the public defender's office during the pendency of the charges against him. Smart at 517-18, 299 S.E.2d at 687-88. The Supreme Court stated that although Appellant's claim had "merit in the abstract," there was no "constitutional grounding" for it and held that the defendant was required to show "actual prejudice" from the trial court's failure to disqualify the solicitor's office. Id. at 518, 299 S.E.2d at 688. The court rejected Appellant's assertion that prejudice must be "presumed," stating that "[c]reating artificial dilemmas does not relieve appellant of his burden to show actual prejudice in this case." Id. at 519, 299 S.E.2d at 688; see also State v. Chisolm, 312 S.C. 235, 238, 439 S.E.2d 850, 852 (1994) ("Appellant must show actual prejudice from the failure to disqualify the solicitor's office."); State v. Patterson, 324 S.C. 5, 19-20, 482 S.E.2d 760, 767 (1997) (no reversible error in denying the defendant's motion to disqualify an assistant solicitor where the defendant failed to allege any true conflict and failed to allege any actual prejudice from the assistant solicitor's participation in the trial); State v. Bell, 374 S.C. 136, 143-44, 646 S.E.2d 888, 892 (Ct. App. 2007) (absent deliberate prosecutorial misconduct (such as intentionally eavesdropping on a confidential conversation between the defendant and his attorney) or actual prejudice to the defendant, the trial judge did not abuse his discretion in refusing to disqualify the solicitor's office).

In sum, this case is controlled by Nichols and Addis, and under these cases, the

trial judge did not err in allowing Mr. Brannon to assist the State in Appellant's trial.[5] No actual prejudice has been alleged or shown, and Appellant is not entitled to reversal on this ground.

IV. Appellant's challenge to the appointment of a special prosecutor on the ground that the solicitor did not produce a commission from the governor is not preserved for review because Appellant failed to secure a ruling on this issue below. Regardless, there was no reversible error on this ground where Appellant has failed to show any prejudice.

Issue Preservation

"Our law is clear that a party must make a contemporaneous objection that is *ruled upon by the trial judge* to preserve an issue for appellate review." State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011) (emphasis added). "To be preserved for appellate review, an issue must be both presented to *and passed upon* by the trial court." State v. Watts, 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct. App. 1996) (emphasis added). "If the issue is raised but not ruled on, it is not preserved for appeal." Id.; see State v. Hudgins, 319 S.C. 233, 236, 460 S.E.2d 388, 390 (1995) (although appellant objected, the trial judge did not rule on the objection and appellant did not object further or request curative instructions; therefore, this issue was not preserved for review), *overruled on other grounds by* State v. Collins, 329 S.C. 23, 495 S.E.2d

[5] North Carolina and West Virginia, among other states, have adopted standards similar to those set forth in Nichols and Addis. In State v. Moose, 310 N.C. 482, 489, 313 S.E.2d 507, 512-13 (1984), the North Carolina Supreme Court stated that "where it is shown that the solicitor consented to the participation of a privately employed prosecutor and retained control and management of the prosecution, no reason exists why such an accepted and well-settled practice, in and of itself, should cause reversal of the case." North Carolina also requires actual prejudice: "The law in this State with respect to private prosecutors is clear: absent some evidence that the private prosecutor has in fact ignored the interests of justice in seeking a conviction, his assistance of the public prosecutor is not a per se constitutional violation." Moose at 488, 313 S.E.2d at 512. Similarly, the West Virginia Supreme Court of Appeals has stated: "At the appellate level, a complaint against a private prosecutor must be bottomed on an instance of the private prosecutor's misconduct that in some way prejudiced the defendant." Acord v. Hedrick, 176 W.Va. 154, 160, 342 S.E.2d 120, 126 (1986).

202 (1998); State v. Clute, 324 S.C. 584, 591, 480 S.E.2d 85, 88 (Ct. App. 1996) ("Moreover, after the trial court ruled that Clute was not in custody for purposes of Miranda, Clute failed to request a specific ruling as to the voluntariness issue pursuant to Jackson v. Denno. The [voluntariness] issue is therefore not preserved for appeal."), *overruled on other grounds by* State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000); see also Atlantic Coast Builders and Contractors, LLC v. Lewis, 398 S.C. 323, 730 S.E.2d 282 (2012) (pointing out that "error preservation has been a critical part of appellate practice in this State for a long time, serving to ensure . . . that we do not reach issues which were not ruled upon by the trial court"); State v. Gee, 262 S.C. 373, 379, 204 S.E.2d 727, 729 (1974) ("Only matter that has been ruled on below can be reviewed, otherwise, the appellate court would be exercising original jurisdiction rather than being a reviewing court. Since the trial judge was not requested to rule upon the foregoing question, and made no ruling thereabout, it is not properly before this Court for consideration.") (citations omitted); Harkins v. Greenville County, 340 S.C. 606, 620, 533 S.E.2d 886, 893 (2000) ("In order to be preserved for review, the lower court must rule upon the issue."); Townsend v. City of Dillon, 326 S.C. 244, 247, 486 S.E.2d 95, 97 (1997) (an issue not ruled on by the trial judge is not preserved for appeal); Town of Mount Pleasant v. Jones, 335 S.C. 295, 305, 516 S.E.2d 468, 474 (Ct. App. 1999) ("Because the municipal court judge and the circuit court judge specifically declined to rule on this issue, it is not properly before us for appellate review.").

Appellant argues that the trial judge erred in allowing Mr. Brannon to participate in the trial as a special prosecutor on the ground that the solicitor failed to produce a commission from the governor as required by S.C. Code § 1-7-470. However, although

counsel mentioned below that "I don't have any evidence under Section 1-7-470 of the South Carolina Code that his appointment as special prosecutor has been in any way, shape or form commissioned by the Governor's office," (R. p. 18, lines 12-16), the judge did not issue a ruling on this particular point nor did counsel request that the judge include this issue in his ruling. (See R. p. 20, lines 7-20). In fact, the judge did not even rule that S.C. Code § 1-7-470 was applicable, since defense counsel conceded that the solicitor "does have the right to appoint a special prosecutor." (R. p. 18, lines 11-12). Accordingly, the issue was not properly preserved for appellate review. See, e.g., Watts, 321 S.C. at 167, 467 S.E.2d at 278.

Discussion Regarding the Merits

Even assuming the issue was somehow preserved for review, Appellant's argument is without merit. S.C. Code § 1-7-470 states as follows:

> The circuit solicitor of the seventh judicial circuit may appoint a competent attorney, who is a resident of Spartanburg County, as assistant solicitor. He shall perform any and all of the duties and functions now or hereafter imposed by law upon the circuit solicitor in Spartanburg County, as the solicitor of the circuit shall authorize, designate and direct. The assistant solicitor shall be appointed by the solicitor of the seventh judicial circuit and shall after appointment be commissioned by the Governor; *provided, however,* the solicitor of the seventh judicial circuit shall have the right to remove the assistant solicitor from office at his pleasure, and in no event can the assistant solicitor be appointed for a period beyond the term of office of the circuit solicitor. The assistant solicitor shall receive from Spartanburg County as compensation for his services such sum per year as may be provided by the General Assembly, payable the first and fifteenth of each month, and eight hundred dollars per year for travel (emphasis in original).
>
> The assistant solicitor shall appear and represent the State in magistrates' courts when requested by the sheriff's department or the highway patrol located in Spartanburg County. He shall further prosecute appeals from magistrates' courts in that county.

Initially, it is not clear that S.C. Code § 1-7-470 is necessarily applicable to Appellant's case, since the Seventh Circuit Solicitor appointed Mr. Brannon as a volunteer special prosecutor for the duration of one trial, rather than as a paid "assistant solicitor" as discussed in the statute.[6] The case of State v. Mattoon, 287 S.C. 493, 339 S.E.2d 867 (1986), cited by Appellant, may be distinguishable because, in addition to dealing with a different statutory provision (S.C. Code § 1-7-405), in that case the private attorney was appointed as a "special assistant solicitor" and he had an agreement (presumably for pay) to prosecute "a series of obscenity cases" in the county. Regardless, even if the statute was applicable, it does not require that the governor's commission occur prior to the commencement of the service; it merely requires that the commission occur "after appointment." Had Appellant pressed the issue below and requested that the judge specifically address it, he may have come to learn that Mr. Brannon was in the process of being commissioned or that the process was going to be initiated within a reasonable time.

However, even assuming the statute did apply and that the "commissioned by the Governor" language was not complied with, Appellant has utterly failed to show prejudice, which he acknowledges would be required for reversal. (See Brief of Appellant, p. 16). See, e.g., State v. Huntley, 349 S.C. 1, 6, 562 S.E.2d 472, 474 (2002) (finding the trial court erred in automatically suppressing a breath test's results when no prejudice to the defendant was shown as a result of the implied consent statute's violation); see also State v. Chandler, 267 S.C. 138, 143, 226 S.E.2d 553, 555 (1976) ("[E]xclusion of evidence should be limited to violations of constitutional rights

[6] As mentioned previously, defense counsel conceded that the solicitor "does have the right to appoint a special prosecutor." (R. p. 18, lines 11-12). Counsel did not reference a particular statute for this point.

and not to statutory violations...."). Contrary to Appellant's argument, the case of Ganger v. Peyton, 379 F.2d 709 (4th Cir. 1967), does not illustrate prejudice by way of a due process violation because the case is distinguishable for the many reasons discussed above in the previous section. Appellant has failed to assert or prove actual prejudice and he is not entitled to reversal on this ground.

V. The trial judge did not abuse his discretion in denying Appellant's motion to exclude the testimony of the victim's counselor, and Appellant has failed to show any prejudice resulting from the delay in his receipt of some of the counseling records especially where Appellant was not entitled to the counselor's records in the first place under Rule 5, SCRCrimP.

Relevant Facts

On February 27, 2013, the Honorable J. Mark Hayes, II, filed an order that stated, in pertinent part: "The State shall not be required to turn over any mental health records of the alleged victim from Meredith Thompson Loftis at this time; however, if the State intends to call her as a witness in their case, they must turn over all such records within a reasonable time prior to the trial of this case." (R. p. 3). Judge Hayes' order did not provide for any particular remedy in the event a violation occurred. On February 11, 2014, approximately two weeks prior to Appellant's trial, defense counsel filed a motion to exclude the testimony of Meredith Thompson Loftis on the ground that the State had not yet turned over all of Ms. Loftis' records and that "it is no longer a reasonable time prior to the February 24, 2014 call of the case." (R. p. 8). The motion also requested an in camera review of the issue prior to the admissibility of Ms. Loftis' testimony. (R. p. 8).

On February 24, 2014, the day the case was called for trial, defense counsel raised the issue of Judge Hayes' order and argued the State violated it by failing to turn over

records within a reasonable period of time prior to trial. (R. p. 34-35). Specifically, defense counsel asserted that although the State, on October 31, 2013, turned over records covering the dates of May 17, 2011 through February 16, 2012, it was not until "last week," February 20, 2014, that the State turned over records spanning the dates of February 23, 2012 through December 30, 2013. (R. p. 35, lines 15-21). Defense counsel also stated that no records for any dates after December 30, 2013, had been turned over. (R. p. 35, lines 21-23). Counsel argued, "in essence, Your Honor, four days before this trial was to begin they handed over the last twenty-two months of counseling records. I believe that is contradictory to Judge Hayes' ruling. I don't believe they turned over her records within a reasonable time. Therefore, I would ask that any testimony of Meredith Thompson-Loftis be excluded under the terms of Judge Hayes' order, which were issued and filed with the court on February 27 of 2013." (R. p. 35, line 23 – p. 36, line 6).

In response, the State noted that the "twenty-two months" of records in fact included only twenty-five pages of counseling notes. (R. p. 36, lines 11-14). The solicitor noted that "[i]t was five pages that included some writings and then twelve pages that included drawings." (R. p. 36, lines 17-18). The solicitor also pointed out that the defense had access to the majority of Ms. Loftis' records prior to this; that defense counsel personally cross-examined Ms. Loftis in the family court trial that took place in October of 2012; and that the victim had made no new disclosures to the counselor. (R. p. 36, line 19 – p. 37, line 1). The solicitor argued that considering the "un-burdensome" nature of the records turned over four days prior to trial, the records were turned over within a reasonable amount of time. (R. p. 37, lines 2-4). The solicitor further noted that she had requested the records earlier from Ms. Loftis, but there were apparently some

issues with obtaining the records; however, the State turned over the records the morning after receiving them via fax at 8:06 pm on Wednesday, February 19, 2014. (R. p. 37, lines 10-17).

Defense counsel agreed that these records were turned over upon receipt and stated, "I'm not saying you withheld it." (R. p. 37, lines 16-21). However, he argued that the "legibility" of the records was an issue and having to "translate her handwriting in four days." (R. p. 38, lines 12-15). He also noted that his late receipt of the records prevented the defense "from being able to have any experts, should we have wanted to have an expert look [at] it." (R. p. 38, lines 18-21).

The judge then asked defense counsel if there was anything new or surprising in the records that had recently been turned over. (R. p. 39, lines 3-4). Defense counsel responded that he had learned the "number of appointments this child had with Meredith Thompson-Loftis in the year, plus, since the hearing, but nothing of major significance that I could see or that I could translate in the four days that I have had to take a look at it." (R. p. 39, lines 5-9). The judge responded that the records looked "pretty straightforward" and said that he was able to read Ms. Loftis' handwriting. (R. p. 39, lines 10-14). He also offered assistance with "translating" the records but defense counsel declined. (R. p. 39, lines 15-18). The judge then denied counsel's motion to exclude the testimony of Meredith Thompson-Loftis. (R. p. 39, line 19). Defense counsel stated, "All right. Thank you, Your Honor." (R. p. 39, line 20).

Later in trial, after Ms. Loftis testified that the victim was still a client of hers to date, defense counsel renewed his motion to exclude. (R. p. 267-68). He stated that if the victim is a continuing patient of Ms. Loftis, there must be records dated after

December 30, 2013 which had not been turned over. (R. p. 268, lines 17-22). He argued that the State was therefore not in compliance with Judge Hayes' order and asked that Ms. Loftis be excluded as a witness and that all of her testimony be stricken from the record. (R. p. 268, lines 22-25). The State noted that it was not in possession of any records dated after December 30, 2013. (R. p. 269, lines 2-8). Ms. Loftis then told the court she did have records for January 2014. (R. p. 270, lines 1-5). Over defense counsel's objection, the judge ruled that Ms. Loftis would not be excluded as a witness but would not be permitted to testify as to anything that occurred with respect to sessions after December 30, 2013, since defense counsel had not been privy to those records prior to trial. (R. p. 270-72).

Discussion

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing an evidentiary ruling, the appellate court gives great deference to the trial judge because the reception or exclusion of evidence is a matter left largely to the sound discretion of a trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). An appellate court will not reverse a trial judge's decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v.

Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.").

Appellant argues that the trial court erred in refusing to exclude the testimony of Meredith Thompson Loftis due to the State's failure to turn over portions of her counseling records within a reasonable time prior to trial. However, despite Judge Hayes' order requiring the State to turn over the counseling records, Appellant was not in fact entitled to receive the counselor's notes under Rule 5. See State v. Trotter, 322 S.C. 537, 542, 473 S.E.2d 452, 455 (1996) (holding that counseling sessions do not constitute "physical or mental examinations" for purposes of Rule 5, SCRCrimP, and that even if they did, a counselor's notes from such sessions would not be subject to disclosure under Rule 5(a)(1)(D)); see also Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."). Appellant essentially concedes as much in his Brief. (See Brief of Appellant, p. 17-18: "Arguably the notes from Ms. Loftis may not have been obtainable under Rule 5.") Nevertheless, Appellant asserts in his Brief that the State's violation of Judge Hayes' order in this case was "more" than a violation of Rule 5. (Brief of Appellant, p 17). To the contrary, in the State's view, since Appellant was not entitled to the counseling notes in the first place, any alleged violation of Judge Hayes' order is better classified as "less" than a Rule 5 violation. In that vein, Appellant's receipt of *any* of the counseling notes in advance of trial allowed Appellant to reap a benefit to which he was not entitled and that most defendants do not receive. Appellant cannot predicate

reversible error upon his failure to timely receive something he was never actually entitled to receive in the first place under our discovery rules.

In any event, Judge Hayes' order requiring the records to be turned over "within a reasonable time prior to the trial of the case" did not provide for a remedy in the event of noncompliance. (See R. p. 3-4). Therefore, it was up to the trial judge to determine whether or not a remedy was warranted, and if so, what remedy was appropriate under the circumstances. Cf. State v. Salisbury, 330 S.C. 250, 267, 498 S.E.2d 655, 664 (Ct. App. 1998) ("Even if the State failed to comply with Salisbury's Rule 5 request, the trial court had discretion to provide a proper remedy."), *affirmed as modified on other grounds by* 343 S.C. 520, 541 S.E.2d 247 (2001). Here, after learning (1) that the State did not intentionally withhold the records turned over the week before trial (as defense counsel conceded); (2) that the records contained only twenty-five pages, some with drawings, and that the records were "pretty straightforward;" and (3) that the records had little overall significance to the defense, the trial judge denied Appellant's motion to exclude Ms. Loftis' testimony. (See R. p. 34-39). It cannot be said that this decision was an abuse of discretion under these circumstances. Further, after discovering there were records that had not ever been in the possession of the State and that had not been turned over to the defense, the trial judge precluded the State from eliciting any testimony pertaining to those particular records. (See R. p. 267-72). Likewise, this was not an abuse of discretion and was a fair remedy.

Moreover, Appellant, at trial and on appeal, has failed to show any prejudice from the delay in his receipt of the records. See State v. South, 285 S.C. 529, 535-36, 331 S.E.2d 775, 779 (1985) (applying a harmless error analysis to a violation of a discovery

order in a death penalty case); cf. State v. Landon, 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006) ("A violation of Rule 5 is not reversible unless prejudice is shown."). He has not asserted, at trial or on appeal, that any of the records, including the post-December records, contained anything relevant or material to either the State or the defense. In fact, Appellant did not even request that the post-December records be made a court's exhibit. (See R. p. 267-72). Significantly, although on appeal Appellant contends that "[a]t the very least the trial judge should have continued the case to permit defense counsel to evaluate the evidence," (Brief of Appellant, p 19), defense counsel below did **not** request a continuance of trial or request further time to consult with an expert.[7] Cf. Curtis v. Blake, 392 S.C. 494, 503, 709 S.E.2d 79, 83 (Ct. App. 2011) (pointing out that exclusion of a witness is a harsh sanction not to be lightly invoked and noting that the defendant could have but did not move for a continuance prior to the witness' testimony). Finally, as suggested above, it is impossible for Appellant to show prejudice from his failure to receive counseling notes which he was never entitled to receive in the first place. In sum, Appellant has failed to show that the trial judge committed a prejudicial abuse of discretion. Appellant is not entitled to reversal on this ground.

[7] Appellant has also failed to explain why the defense would need an expert to evaluate Loftis' counseling records. In fact, defense counsel's comment on lines 18-21 of page 38 of the record certainly suggests that the defense had no desire to consult with an expert and that counsel's contention dealt more with a hypothetical issue than an actual one: "Furthermore, Your Honor, just for the record, it does – you know, the fact that we got it [late] prevents us from being able to have any experts, *should we have wanted an expert to look [at] it*." Note also that Loftis' testimony about delayed and partial disclosure was entirely routine, and that this testimony, as well as her testimony regarding the victim's symptoms, was largely cumulative to that of other witnesses. (See R. p. 161-73; p. 194-97; p. 200-13; p. 251-53; p. 263-75).

CONCLUSION

For the reasons discussed above, the State requests that this Court affirm Appellant's conviction and sentence for criminal sexual conduct with a minor in the first degree.

Respectfully submitted,

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June 22, 2015

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

The Honorable R. Keith Kelly, Circuit Court Judge

RECEIVED
JUN 22 2015
SC Court of Appeals

Appellate Case No. 2014-000448

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

DANIEL WILLIAM SPADE,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Honorable R. Keith Kelly, Circuit Court Judge

SC Court of Appeals No. 2014-000448

The State, ... Respondent,

vs.

Daniel William Spade ..... Appellant

REPLY BRIEF OF APPELLANT

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Argument

Question I

Did the trial court err in excluding the testimony of Dale Smith as to the occurrence of panic attacks by the minor child when adult males other than Daniel Spade was present when the occurrence of panic attacks was used by the state to prove Mr. Spade had abused his daughter?

The Respondent argues that Mr. Spade received the relief he requested. Br. of Resp. at 9. This is simply not a correct reading of the relief Mr. Spade requested below or of the ruling of the trial court. In an effort to determine what the position of the trial judge would be on the admissibility of the evidence, trial court sought a ruling from the trial judge on a cross examination of Dale Smith as to the presence of David Jolley when the minor child suffered panic attacks. The precise question was:

> Q. Was he [David Jolley] present for every panic attack that you saw prior to October of 2012?
> A. Yes.
> Rec. on App. at 228, ll 15-17.

The solicitor then argued that mentioning the presence of David Jolley would be bringing up third party guilt which the trial court had excluded in a pre-trial conference. He said "I mean, this is third party guilt. They are trying to shift to show that the panic attacks occurred with a certain individual. And even in the best light I don't think you could say that it's just Daivd Jolley. It could be any male person, or whatever, that could cause these panic attacks from there, but there were other people available." Rec. on App. at 229, ll 21-25 to 230, ll 1-2.

The trial judge then very specifically ruled such testimony would not be admissible. He said "But at this point in time - - you could, but this court looks at this as sort of

a back door to third party guilt, and I have already ruled on that yesterday in pretiral motions. And the defendant has failed to show that the proper evidence is inconsistent with his guilt, so I'm - - I'm not going to allow that in." Rec. on App. at 233, ll 3-8. The solicitor then stated:

> Your honor, I think he has to be very careful. I think the court has cautioned him on that. Obviously he can ask questions concerning that, her evaluation and talking to the witness, but to bring up the reasons for these panic attacks, he has to be very careful to point our a certain individual.
> Rec. on App. at 234, ll 2-8.

The trial court then responded "I agree with that. Don't point to any particular individual." Rec. on App. at 234, ll 8-9. How from this limitation can one argue that defense counsel got the relief he requested? He asked to bring out that David Jolley was around the minor child when the panic attacks occurred. Defense counsel was informed that he could bring out the panic attacks but he could not point out that David Jolley or any other individual was around when they occurred. At best defense counsel obtained half of what he requested and without the two halves, the one half was not only not helpful but would actually hurt the case of Mr. Spade. Why would defense counsel have any desire to bring out more testimony about panic attacks if he could not ague that Mr. Jolley was present when they occurred. This was not about third party guilt, but about an explanation for the panic attacks that tended to exonerate Mr. Spade. The panic attacks could easily have been caused by the minor child's fear of Mr. Jolley for a variety of reasons that had nothing to do with any sexual abuse. But the jury was forbidden to hear this testimony. Defense counsel simply cannot fully explore the alternative explanation for the panic attacks if he is not able to show they occurred when Mr. Jolley was present.

Under Rule 401 of the South Carolina Rules of Evidence, evidence that the child

had panic attacks while Mr. Jolley was present is relevant evidence as defined. As this Court has said "Under Rule 401, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy." *State v. Preslar*, 364 S.C. 466, 475, 613 S.E.2d 381, 386 (Ct. App. 2005). The evidence made less probable the fact that Mr. Spade caused the panic attacks.

Defense counsel did not argue below, and did not suggest, that the panic attacks only occurred in the presence of the adoptive father. He did seek to introduce evidence that they occurred in the presence of the adoptive father and therefore the probative value of the panic attacks being caused by any alleged sexual abuse by Mr. Spade was greatly lessened.

The Respondent is correct that Mr. Spade's attorney was free to argue that the minor child did not have panic attacks or that the panic attacks were not caused by any alleged sexual abuse by Mr. Spade. Such an argument would have fallen on deaf ears as he was not permitted to offer evidence that panic attacks occurred when Mr. Jolley was present. The only testimony the jury heard was that panic attacks occurred when the child visited with Mr. Spade.

Question II

Did the trial court err in declaring that the attorney for Daniel Spade improperly struck Juror 199 based upon her gender strike when the attorney specifically stated the juror was struck for her age and being retired?

The Respondent attempts to characterize a term used to describe a juror as being a strike because of the person's gender. When asked about Juror 199 the attorney for Mr. Spade simply said "The same thing your honor." Rec. on App. at 93, l 19. The State then assumed that the reason was Juror 199 was a grandmother. They said "She's a retired grandmother?" Rec. on

App. at 93, ll 20-21. The explanation then given by defense counsel was gender neutral. Defense counsel stated he used his strike because of her age, having three children, and being divorced. Rec. on App. at 93, ll 23-25. When defense counsel later refered to Juror 199 as being a retired grandmother that term was used as a description and not as a reason for striking her. In an attempt to prove the strike was used based upon her gender, the State argued "[L]et's look at some of the men that are in the jury box. They are at least as old as number 199." Rec. on App. at 95, ll 22-24.

Pointing out that jurors who are seated bear the same characteristics as a juror who was struck, can be persuasive in proving an improper motive in striking a juror. But the burden remains with the party seeking to prove an improper basis for striking the juror. As the South Carolina Supreme Court has said:

> Finally, in regard to the second part of Johnson's argument, the Solicitor does not have a duty to indicate whether these standards were applied to white jurors who were seated. The burden is on the defense counsel to prove that the Solicitor's allegedly neutral reasons were pretextual because they were not applied in a neutral manner. No evidence was presented that a white juror was seated who had the same disqualification as the black jurors who were struck.
> *State v. Johnson,* 302 S.C. 243, 246, 395 S.E.2d 167, 169 (1990)

As noted in the opening brief, the failure of the State to identify those jurors who were of the same approximate age and retired prevented defense counsel from stating why they were permitted to sit on the juror assuming they were the same. Defense counsel is not required to identify similar jurors and explain why they were seated. The State has the burden of establishing the fact that similar jurors were not struck by defense counsel. The failure of defense counsel to object to a vague and general statement that does not comply with the

requirements of the law can not be interpreted as an admission the state has met its burden of proof.

In *Payton v. Kearse*, 329 S.C. 51, 495 S.E.2d 205 (1998) the term "redneck" was not used as a general description to help identify the juror who is being discussed. Counsel in that case from the comments made in stating why he struck the juror, used the term to apply to a certain group of people. He actually meant, as the term was defined by the court, "a member of the white rural laboring class ... offensive slang." *Id.* at 56, 495 S.E.2d at 208, n. 1. As defense counsel here used the term to generally describe the person who was not present in the courtroom, the state still have the burden of showing that similar jurors who were male were in fact seated. The state failed in this burden.

As this Court has said "The State's reasons for striking jurors do not have to be reasonably specific or legitimate." *State v. Garris,* 394 S.C. 336, 354, 714 S.C. 888, 898 (Ct. App. 2011).[1] Defense counsel gave a gender neutral basis for the strike and the state never refuted this reason by establishing that similarly situated male jurors were in fact seated. The trial court erred in finding the strike of Juror 199 was based upon gender.

Question III

Did the trial court err in permitting Douglas Brannon, a private attorney, to actively participate in the trial of this case when he had represented the mother and adoptive father of the minor child in the family court case?

Issue Preservation

[1] Arguably if counsel gave an illegitimate reason for a strike, that could be evidence of a strike based upon race or gender. The state has never argued the reasons given in this case were not legitimate.

The Respondent has argued that this issue is not preserved because defense counsel was not specific enough in his objection. Defense counsel objected saying "Mr. Brannon served as counsel for the mother and now father of the victim in the Family Court trial that took place in October of 2012. We believe that creates an inherent conflict of interest and would ask the he not be allowed to serve as a special prosecutor." Rec. on App. at 18, ll 20-25. Counsel could not have been clearer that the dual representation created a conflict in this case. The trial court had the opportunity to rule upon the conflict and the trial judge improperly ruled there was no conflict.

Merits

The Respondent contends that Mr. Spade's conflict of interest claim "is based upon rank speculation that Mr. Brannon *might* have learned something during his representation of the victim's mother and adoptive father in the past that *might* have been helpful in this case and assumes that Mr. Brannon failed to turn such information over to the defense.." Br. of Resp. at 20(emphasis in the original). The Respondent then engages in the speculative assumption that had the mother and adoptive father been asked, they would have waived the lawyer-client confidentiality. *Id.* The issue of conflict of interest was raised to the trial court below. No waiver of attorney client privilege was ever placed on the record. During the entire discussion concerning the conflict of interest Mr. Brannon remained mute and never represented to the court that he had no actual conflict. Rec. on App. at 18-20.

The Respondent attempts to distinguish this case from the ones cited by Mr. Spade in his opening brief by saying here Mr. Brannon was working with the solicitor and not prosecuting the case on his own. This is a distinction without a difference. Once private counsel

undertakes to represent his client in a criminal prosecution, the same conflict exists whether he is the sole prosecutor or part of a team. The fact that the adoption proceeding was completed some 16 months before this trial does not eliminate the conflict inherent in Mr. Brannon prosecuting this case. His obligation to respect the confidentially of his clients remained sacrosanct. *See*, Rule 1.6, *Confidentially of Information*, and Rule 1.9(c)(2), *Duties to Former Clients,* Rule 407, S.C. Rules of Professional Conduct.

The Respondent also cites *Person v. Miller*, 854 F.2d 656 (4th Cir. 1988) for the proposition that a private attorney may assist in prosecuting a case. *Person* does not even discuss the issue raised by Mr. Spade - is there a conflict when private counsel can be forced to reveal privileged matter in his prosecution of the criminal case.

Nor is this case controlled by *State v. Smart*, 278 S.C. 515, 299 S.E.2d 686 (1982). *Smart* did not discuss or rule upon the issue of the obligation of confidentiality to one client being in conflict with the obligation of a prosecutor to give to the defense counsel any exculpatory material or information in the possession of the private attorney acting as a prosecutor.

As noted in the opening brief our Supreme Court has been critical of the use of private prosecutors. *State v. Mattoon,* 287 S.C. 493, 339 S.E.2d 867 (1986). While they have been critical no decision discusses the inherent conflict between a private lawyer who had represented a litigant prosecuting the same issue in criminal court. Respondent acknowledges this inherent conflict when it argues that had the trial court asked, Mr. Brannon's client would have waived any conflict and Mr. Brannon never stated there was no conflict. The facts are they did not waive any such conflict. In the event Mr. Spade is required to file a post conviction relief

action, could Mr. Brannon refuse to testify on the ground that he has an attorney-client confidential relationship with the mother and adoptive father? This Court should take the lead from our Supreme Court and hold private counsel being involved in the prosecution of a criminal case is in fact an inherent conflict and that such an action can be undertaken only after an intelligent and knowing waiver of that confidentiality by the client.

Question IV

Did the trial court err in ruling that Doug Brannon had been properly appointed as required by S. C. Code § 1-7-470 when the solicitor failed to produce the commission from the governor as required by the statute?

Issue preservation

Respondent's argument that the issue concerning S. C. Code § 1-7-470 is not preserved ignores the plain meaning of the dialogue between defense counsel and the trial judge. In making his objection defense counsel said:

> Understanding that the solicitor does have the right to appoint a special prosecutor, first of all, I don't have any evidence under Section 1-7-470 of the South Carolina Code that his appointment as special prosecutor has been in any way, shape or form commissioned by the governor's office.
> Rec. on App. at 18, ll 11-16.

This statement cannot be construed to mean that defense counsel conceded that the solicitor has the right to appoint a special prosecutor without complying with the terms of the statute. The statement is a simple statement that while the solicitor has the right to appoint a special prosecutor, such appointment must comply with the statute.

The Respondent's position that the trial judge did not rule on the issue is also

misplaced. Defense counsel made two objections to the use of Mr. Brannon as a special prosecutor. The first was based on the statute and the second was based upon the conflict of interest. When the trial court ruled on the issue, here is the full content of the ruling:

> THE COURT: Well I don't see a conflict, though Mr. Shabel. I really don't. Mr. Barnette, as the solicitor of this circuit, can appoint any licensed attorney to act as a special prosecutor. That's my understanfing. In fact, I have had it happen to me before Mr. Barnette was the prosecutor in a case.
>
> MR. SHABEL: We understand, thank you.
>
> THE COURT: *And the other* - - as far as the conflict, I don't see the conflict. Certainly there would be a conflict had he represented your client - -
>
> MR. SHABEL: Yes, sir.
>
> THE COURT: - - but he didn't. So its denied, but you are protected on the record.
> Rec. on App. at 20, ll 20, ll 7-19 (emphasis added).

When the trial court made the statement "and on the other" he obviously knew he was ruling on two issues and intended to rule on the two issues. He first ruled on the appointment issue and then ruled on the conflict issue. Defense counsel asked for two rulings and he received two rulings. The issue is obviously preserved.

Merits

A now retired circuit court judge of our state once advised a lawyer "Read the code. You will be surprised what you find." Defense counsel read the code and found there is a process by which special prosecutors are appointed in the Seventh Judicial Circuit. The solicitor failed to comply with the statute.

The Respondent argues that Mr. Brannon was a "volunteer special prosecutor for the duration of one trial rather than as a paid 'assistant solicitor' as discussed by the statute. Br. of Resp. at 28. The Respondent fails to point out in the record where this fact was proven below. The Respondent also fails to explain how this court is to determine the difference between a "special prosecutor" and an "assistant solicitor." The statute in question applies to the Seventh Judicial Circuit and the solicitor of that circuit must comply with its mandates.

If the solicitor did not comply with the statute, then Mr. Brannon is not authorized to is participate in the trial. If he is not authorized then his participation is a nullity. Using the logic of the Respondent, if a person who is not a lawyer prosecuted a case, then the conviction could not be reversed unless the defendant could show prejudice. When the error is so fundamental as to go to the right of a person to participate in the trial, then reversal should be required. If not, then there is no incentive for the solicitor to comply with the statue. A law has to have purpose and meaning.

Question V

Did the trial court err in failing to exclude the testimony of Meredith Thompson-Loftis when the state had been ordered to turn over to the defendant the file of Ms. Loftis if they intended to use her as a witness a reasonable time before trial and the state did not turn over substantial portions of the file until four days before trial and portions were not turned over until the day of trial?

The Respondent has argued that "Appellant cannot predicate reversible error upon his failure to timely receive something he was never actually entitled to receive." Br. of Resp. at 34. This statement is not a correct statement under the facts of this case. In preparing for trial defense counsel specifically requested an order requiring the state to turn over the counseling records of Meredith Thompson Loftis. Whether without the order Mr. Spade was entitled to those records under any theory is a moot question. The solicitor had every opportunity to argue that position before Judge Mark Hayes at the time of the hearing. If the solicitor asserted the position that Mr. Spade was not entitled to those records, the solicitor lost that issue. Mr. Spade's entitlement to the records at the time of trial was the law of the case. This Court cannot look behind the order of Judge Hayes. As Mr. Spade was in fact entitled to the records pursuant to a court order, Mr. Spade can predicate reversible error on the failure to provide the records.

Mr. Spade acknowledges that the order from Judge Hayes does not provide for a remedy. In fact most pre-trial orders do not provide for a specific remedy. The lack of a remedy does not mean the order is not enforceable. The fact that the records had not been in the possession of the state is not relevant. The wording of the order states that the records were to be given to defense counsel only if the state elected to use Ms. Lofis as a witness. Obviously everyone assumed the state did not have the records and they were in the possession of Ms. Loftis. Once the State decided to use her as a witness they were