

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

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SEP 16 2019

S.C. SUPREME COURT

MICHAEL EDWARD WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002280

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
)
 -VS-)
)
 MICHAEL E. WILLIAMS,)
)
 DEFENDANT.)
 _____)

2012-GS-23-10445
2013-GS-23-0698A

TRANSCRIPT OF RECORD

OCTOBER 6 & 8, 2014
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE STEVEN H. JOHN

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

LISA BENTLEY, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

DOROTHY MANIGAULT, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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1 Monday, October 6, 2014:

2 (Whereupon State's exhibits 1 - 10 were marked for
3 identification)

4 **THE COURT:** Counsel, the jury has filled out that
5 questionnaire form. They're approximately ten or so out of
6 the thirty-five that have responded yes to at least one of
7 the questions. So I split those questionnaires off. The
8 other balance of them, where they responded no, I gave that
9 to the Clerk of Court for filing in this file in this
10 matter.

11 So it's my intention just to call the juror in or
12 jurors in one by one to go over their particular -- I'm not
13 going to delve too deeply in their response to the question,
14 but to question them about their duties and responsibilities
15 and see if they can be fair to the State and the Defendant
16 in this matter. So how are we going to get them in here?

17 **THE BAILIFF:** We'll bring them. They're in the next
18 room.

19 **THE COURT:** All right. Very good. If we can bring in
20 juror number 5, Jena Allison, please, juror number ...

21 (Whereupon juror number 5, Jena Allison, a white
22 female, entered the courtroom)

23 **THE COURT:** All right. Ms. Allison, could you come on
24 up and talk to me for just a second, please, ma'am.
25 Anywhere right there is good.

1 **MS. ALLISON:** Okay.

2 **THE COURT:** Right there is good. That's fine. You can
3 put your stuff down if you want to.

4 **MS. ALLISON:** Okay.

5 **THE COURT:** That's fine. Now, Ms. Allison, I had the
6 whole panel fill out that questionnaire.

7 **MS. ALLISON:** Um-hum (affirmative).

8 **THE COURT:** And since you responded in the affirmative
9 to at least one of the questions, I needed to further talk
10 to you just a little bit.

11 First, let me just explain in general the job of a
12 juror. If you're selected on this jury you hear the
13 evidence in this case and the instructions thereafter about
14 the law from the Court, from me.

15 **MS. ALLISON:** Yes, sir.

16 **THE COURT:** And the jury as a whole listens to the
17 evidence, finds that evidence they believe to be true.

18 **MS. ALLISON:** Um-hum (affirmative).

19 **THE COURT:** And then they compare that evidence to the
20 law that the Court will give to you to find whether or not
21 the State can prove the Defendant guilty beyond a reasonable
22 doubt.

23 **MS. ALLISON:** Okay.

24 **THE COURT:** So that's what the jury's going to have to
25 decide at the end.

1 Everybody brings with them their common experiences,
2 whatever they've encountered in their life.

3 **MS. ALLISON:** Right.

4 **THE COURT:** But if something happened in anybody's past
5 that would affect their decision, then that wouldn't be
6 proper.

7 **MS. ALLISON:** Right.

8 **THE COURT:** You have to decide the case solely and
9 completely on the facts and evidence you hear in the
10 courtroom, ---

11 **MS. ALLISON:** Yeah.

12 **THE COURT:** --- and from no other source. You
13 understand that?

14 **MS. ALLISON:** Absolutely.

15 **THE COURT:** And in that the juror must be absolutely
16 fair to the State and the Defendant in reaching that
17 decision.

18 **MS. ALLISON:** Yes, sir.

19 **THE COURT:** So you understand in general the job of a
20 juror?

21 **MS. ALLISON:** Yes, sir.

22 **THE COURT:** All right. Very good. Now, let me ask you
23 the qualification question. Can you give to the State of
24 South Carolina and to the Defendant a fair and impartial
25 trial? Can you be a fair and impartial juror in this case?

1 **MS. ALLISON:** Yes, sir.

2 **THE COURT:** Thank you very much, ma'am. All right.
3 What I'm going to have you do is go back, don't discuss
4 this. There'll be some general questions ---

5 **MS. ALLISON:** Okay.

6 **THE COURT:** --- besides these four questions that I'll
7 ask the panel as a whole when they all come in at that point
8 in time.

9 **MS. ALLISON:** Okay.

10 **THE COURT:** If you'll go back and have a seat, ---

11 **MS. ALLISON:** Absolutely.

12 **THE COURT:** --- okay?

13 **MS. ALLISON:** Yes, sir.

14 **THE COURT:** Thank you, ma'am. I appreciate it very
15 much.

16 (Whereupon juror number 5, Jena Allison, exited the
17 courtroom)

18 **THE COURT:** The next one will be juror number 30,
19 Timothy Brown, please, ma'am.

20 **THE BAILIFF:** Yes, sir.

21 **THE COURT:** Just a second, ma'am. I'll tell you in
22 just one second. Just hold on a second. I need to -- for
23 the attorney's benefit, juror number 5 answered yes to
24 question number 3. And that would mean there's a no
25 response to the rest of the questions. I'm only telling you

1 the one they responded affirmatively.

2 (Whereupon juror number 30, Timothy Brown, a black
3 male, entered the courtroom)

4 **THE COURT:** Mr. Brown, could you come on up. You can
5 just come and stand somewhere right around over here and let
6 me talk to you, if you can, for a minute, please, sir.
7 Right there is great. Okay.

8 Mr. Brown, because of the charges the State has brought
9 against the Defendant, I asked the panel, the thirty-five of
10 y'all to fill out this questionnaire. And you responded yes
11 to one or more of the questions. So based upon that I
12 wanted to talk to you about this case a little bit briefly,
13 okay?

14 **MR. BROWN:** (Affirmative nod).

15 **THE COURT:** Let me tell you briefly what the duties and
16 responsibilities of a juror are in general, okay? If you're
17 selected as a juror on this case, you listen to the facts
18 and evidence presented by the witnesses in this case. And
19 after that, you'll hear the law that the Court, that I will
20 tell the panel about.

21 The jury's job is to listen to all the facts in
22 evidence, find that evidence which convinces them it's true.
23 And then based upon the law that I will give to the jury,
24 the jury has to decide, based on the evidence they find to
25 be true, whether or not the State can prove the Defendant

1 guilty beyond a reasonable doubt. That's the State's job.
2 And then the jury has to decide whether or not the State has
3 done that. Do you understand that?

4 **MR. BROWN:** Yes, sir.

5 **THE COURT:** All right, sir. Now, understanding that
6 everybody brings to their service as a juror their own
7 experiences, but you must as a juror be able to decide the
8 case solely and completely on the facts in evidence you hear
9 in the courtroom and from no other source. You basically
10 have to let everything that -- outside and happened in the
11 past outside. It cannot affect your decision.

12 Your decision must be based upon what you hear in the
13 courtroom, the evidence you find to be true, did the State
14 prove the Defendant guilty beyond a reasonable doubt based
15 on that evidence the jury finds to be true? So that's what
16 you have to do. Do you understand that to be the job of a
17 juror?

18 **MR. BROWN:** Yes, sir.

19 **THE COURT:** All right, sir. So understanding the job
20 of a juror let me ask you the qualification question. Can
21 you give to the State and the Defendant a fair and impartial
22 trial? Can you be a fair and impartial juror? That is, let
23 everything on the outside stay outside and make your
24 decision only on what you hear in the courtroom.

25 **MR. BROWN:** To tell you the truth, I ---

1 **THE COURT:** Okay. If you have any hesitancy about
2 that, just tell me -- it would be a no answer then.

3 **MR. BROWN:** Yeah, on that question there it ---

4 **THE COURT:** Okay. And I appreciate that. So based
5 upon -- and I'm not asking you to tell me what happened,
6 okay? I don't need to know that. But based upon the past
7 experiences, you're saying you would not be able to set that
8 aside and make your decision only on the facts and evidence
9 in this case?

10 **MR. BROWN:** Yeah, I'd have to say no.

11 **THE COURT:** Okay. All right, sir. Thank you very
12 much. I'm going to set this juror aside from this
13 particular case only. Just go back and have a seat, okay?
14 Thank you, Mr. Brown.

15 Hold on one second. The next one's going to be --
16 well, since I've set him aside -- Mr. Brown, be back in the
17 assembly room at 2:00, okay? You can go back down to that
18 room downstairs. You know, where we all were downstairs?

19 **MR. BROWN:** Yes, sir.

20 **THE COURT:** Okay. Be back down there at 2:00 and Judge
21 Hill's going to pick a civil case at that point in time,
22 okay?

23 **MR. BROWN:** Okay.

24 **THE COURT:** So 2:00 downstairs, all right? Thank you.

25 (Whereupon juror 30, Timothy Brown, exited the

1 courtroom and was excused from this trial)

2 **THE COURT:** And the next one is juror number 34. And
3 that's Richard Bulger, Richard Bulger, please.

4 Mr. Brown answered yes to questions 3 and 4, 3 and 4.

5 Did I say Bulger? It was Brown. Mr. Brown, I'm sorry.

6 Juror number 30, Mr. Brown, answered yes to 3 and 4. I
7 hadn't got to Bulger yet. If I said his name, I'm sorry.

8 (Whereupon juror number 34, Richard Bulger, a white
9 male, entered the courtroom)

10 **THE COURT:** All right. Yes, sir. If you would, just
11 right here. Anywhere in there.

12 **MR. BULGER:** Yes, sir.

13 **THE COURT:** All right. Because of the charges the
14 State has brought against the Defendant, I asked the panel
15 as a whole to fill out that one questionnaire in addition to
16 the normal questions that we would ask.

17 **MR. BULGER:** Yes, sir.

18 **THE COURT:** And you've responded yes to one or more of
19 the questions. So I wanted to go over that a little bit
20 with you.

21 **MR. BULGER:** Yes, sir.

22 **THE COURT:** Let me start off with first talking about
23 the general job of a juror. If you're a juror on this case,
24 what's your general job. You listen to all the facts and
25 evidence presented during the trial from the witnesses under

1 oath or anything else that's presented.

2 The jury's job is then to find that, from all the
3 evidence they hear, find that evidence that convinces them
4 that it's true, that they believe is true. And then based
5 upon the law that the Court will give to you at the end, you
6 decide whether or not the State has proved the Defendant
7 guilty beyond a reasonable doubt. So you find the evidence
8 you find to be true, you hear the law that the Court gives
9 to you and then you decide did the State prove the Defendant
10 guilty beyond a reasonable doubt or not?

11 **MR. BULGER:** Yes, sir.

12 **THE COURT:** And that's the general job of a juror.

13 Now, everybody comes to being -- the job of a juror
14 with their own set of circumstances and experiences. Be
15 that as it may, you have to basically let the outside be the
16 outside. Whatever happened to you in the past, you don't
17 set aside your common sense, but you set aside those
18 experiences in the past and you decide the case solely and
19 completely on the facts and the evidence you hear in the
20 courtroom and from no other source. Do you understand that?

21 **MR. BULGER:** Yes, sir.

22 **THE COURT:** All right. So understanding that to be the
23 general job of a juror, let me ask you the basic
24 qualification question. Can you give to the State and the
25 Defendant a fair and impartial trial? Can you be a fair and

1 impartial juror in this case?

2 **MR. BULGER:** Yes, sir, I can.

3 **THE COURT:** All right. Thank you very much. What I'm
4 going to ask that you do is go back to the jury room. Don't
5 talk about this. There'll be some general qualification
6 questions that I'll ask the whole panel as a whole in just a
7 little bit, okay?

8 **MR. BULGER:** Yes, sir.

9 **THE COURT:** Thank you very much.

10 (Whereupon juror 34, Richard Bulger, exited the
11 courtroom)

12 **THE COURT:** All right. And the next one's going to be,
13 juror number 48. And then I believe that to be Glenn
14 Christianson.

15 **THE BAILIFF:** Yes, sir.

16 **THE COURT:** 48, Glenn Christianson. Thank you, ma'am.

17 The question that juror number 34, Mr. Bulger, answered
18 was number 3. He answered yes to number 3.

19 (Whereupon juror number 48, Glenn Christianson, a white
20 male, entered the courtroom)

21 **THE COURT:** Yes, sir.

22 **MR. CHRISTIANSON:** Yes, Your Honor. How you doing?

23 **THE COURT:** Doing good, sir.

24 **MR. CHRISTIANSON:** Great.

25 **THE COURT:** And your last name is Christianson?

1 **MR. CHRISTIANSON:** Christianson.

2 **THE COURT:** Yes, sir. All right, Mr. Christianson.

3 Based on the charges the State has brought against the
4 Defendant, I asked the panel as a whole to fill out a
5 questionnaire that we don't normally do. We have a set of
6 general questions that we normally ask, but this one, just a
7 little different.

8 Let's start off with the general job of a juror, okay?
9 A juror in any criminal case. You listen to all the facts
10 and the evidence presented in the courtroom from the
11 witnesses that testify under oath or any other kind,
12 documents that might come in.

13 The jury then hears all that. They find that evidence
14 that convinces them that it's true. From all that evidence,
15 they find the evidence that they believe to be true. They
16 hear at the end the law that the Judge will give to the
17 jury.

18 Now, based upon the evidence they find to be true, the
19 law that they have to follow, the jury has to decide did the
20 State prove the Defendant guilty beyond a reasonable doubt?
21 The State has the burden of proof. Did the State prove the
22 Defendant guilty beyond a reasonable doubt or not based upon
23 the evidence we find to be true and the law that the Judge
24 gives us? That's the general job of a juror.

25 **MR. CHRISTIANSON:** Um-hum (affirmative).

1 **THE COURT:** You understand?

2 **MR. CHRISTIANSON:** Sure. Yes, sir.

3 **THE COURT:** All right. Very good.

4 **MR. CHRISTIANSON:** Yes, Your Honor.

5 **THE COURT:** So with that, every juror comes into the
6 courtroom with their own set of experiences and things that
7 have brought them to this point in life.

8 **MR. CHRISTIANSON:** Um-hum (affirmative).

9 **THE COURT:** But you have to make your decision based on
10 the facts and evidence you hear in the courtroom. You can't
11 let matters that have occurred outside of the courtroom
12 affect your decision. You have to listen to the facts and
13 evidence, the law and then look at it in that manner based
14 on what you hear in the courtroom. Do you understand that?

15 **MR. CHRISTIANSON:** Yes, Your Honor.

16 **THE COURT:** All right. Very good. So with that, let
17 me ask you the qualification question. Can you give to the
18 State of South Carolina and the Defendant a fair and
19 impartial trial? Can you be a fair and impartial juror in
20 this case?

21 **MR. CHRISTIANSON:** Yeah, sure.

22 **THE COURT:** Thank you very much.

23 **MR. CHRISTIANSON:** Um-hum (affirmative).

24 **THE COURT:** All right. What I'm going to ask you to
25 do, Mr. Christianson, just go back, have a seat. There'll

1 be -- there'll be some general questions that I'll ask the
2 panel as a whole in just a little bit. But if you'll go
3 back and have a seat for now, all right? Thank you, sir.

4 (Whereupon juror number 48, Glenn Christianson, exited
5 the courtroom)

6 **THE COURT:** All right. The next one is juror number
7 83, Zulema Gonzalez. Gonzalez, 83.

8 Juror number, 48, Mr. Christianson, answered yes to
9 number 4.

10 (Whereupon juror number 83, Zulema Gonzalez, an
11 Hispanic female, entered the courtroom)

12 **THE COURT:** Right there is great. All right. Ms.
13 Gonzalez, based upon the charges the State brought against
14 the Defendant, I asked the panel as a whole to fill out this
15 extra questionnaire. And based upon that a number of, you
16 know, a bunch of jurors answered yes to one or more of the
17 questions. So that's why I'm talking to all of them in that
18 regard, okay?

19 **MS. GONZALEZ:** Okay.

20 **THE COURT:** Now, let's start off with just a general
21 job of a juror, a juror's job in any criminal case. You
22 listen to the facts and evidence presented in the courtroom,
23 the witnesses that come before and testify under oath and
24 any paper evidence or any other kind of evidence that might
25 be received in the case. The jury listens to that.

1 The jury also hears at the end the law that the Court,
2 the Judge, will give to the jury. The jury has to listen to
3 all the evidence, find that evidence which convinces them
4 it's true. They take the law that the Judge gives to them,
5 applies the law that the Judge gives to them to the facts or
6 the evidence they find to be true. And then they have to
7 decide did the State prove the Defendant guilty beyond a
8 reasonable doubt?

9 The State has the burden of proof. So find the
10 evidence we find to be true, we apply the law that the Judge
11 gave to us, did the State prove the Defendant guilty beyond
12 a reasonable doubt? That's the job, general job of a jury
13 in every criminal case. Do you understand that?

14 **MS. GONZALEZ:** Yes.

15 **THE COURT:** All right. Very good. Now, every juror
16 comes to the courtroom with their own set of experiences
17 that have brought them to this place in time. And that's
18 all well and good, but you have to, if you're a juror, make
19 your decision based on the facts and evidence you hear in
20 the courtroom.

21 Basically, let the outside be the outside. You set all
22 that aside, okay? And you make your decision solely and
23 completely on the facts and the evidence you hear in this
24 courtroom and from no other source. Do you understand that?

25 **MS. GONZALEZ:** Yes.

1 **THE COURT:** All right. So understanding that, let me
2 ask you the qualification question. Can you give to the
3 State of South Carolina and to the Defendant a fair and
4 impartial trial? Can you be a fair and impartial juror in
5 this case?

6 **MS. GONZALEZ:** Yes.

7 **THE COURT:** Thank you, ma'am. I appreciate it very
8 much. What I'm going to have you do is just go back and
9 have a seat, and then I'll call the whole panel in ---

10 **MS. GONZALEZ:** Okay.

11 **THE COURT:** --- in just a little bit, okay? Thank you,
12 ma'am.

13 **MS. GONZALEZ:** Um-hum (affirmative).

14 (Whereupon juror number 83, Zulema Gonzalez, exited the
15 courtroom)

16 **THE COURT:** All right. Oh, I'm sorry. The next one's
17 going to be juror number 103. And that's Clayton Kale.
18 Clayton Kale.

19 Juror number 83, Ms. Gonzalez answered yes to number 4.

20 (Whereupon juror number 103, Clayton Kale, a white
21 male, entered the courtroom)

22 **THE COURT:** How you doing, sir?

23 **MR. KALE:** I'm fine, sir. How are you?

24 **THE COURT:** Good. Mr. Kale, based upon the charges the
25 State brought against the Defendant, the Court had the panel

1 as a whole fill out that questionnaire. Normally we have
2 the standard set of questions that we ask, but with this one
3 I had these extra questions that I wanted the panel asked.

4 **MR. KALE:** Yes, sir.

5 **THE COURT:** And you, along with a number of other
6 jurors, answered yes to one or more of the questions. So
7 with that I wanted to go over that with you just real
8 briefly.

9 I want to first start off with the general job of a
10 juror. The job of a juror in any criminal case, okay? What
11 that is.

12 You listen to all the facts and the evidence presented
13 in the courtroom, the witnesses under oath, you know, any
14 documentary, or paper evidence or any kind of evidence
15 that's presented in the courtroom. That's the evidence in
16 the case. And then at the end you hear the law that the
17 Court -- the Judge will give based upon that particular
18 case.

19 The jury looks at all the evidence, they collectively
20 find that evidence which they believe to be true, the
21 evidence they believe to be true. They look at that
22 evidence they find to be true, apply the law that the Judge
23 gave to them and decide did the State prove the Defendant
24 guilt beyond a reasonable doubt. That's the State's job.
25 The State has the burden of proof, prove the Defendant

1 guilty beyond a reasonable doubt.

2 So the jurors look at the evidence they find to be
3 true, apply the law that the Judge gave to them and see did
4 the State prove the Defendant guilty beyond a reasonable
5 doubt or not. That's the general job of a juror. You
6 understand that?

7 **MR. KALE:** Yes, sir.

8 **THE COURT:** All right. Very good. Now, every juror
9 comes into the courtroom with their own set of experiences
10 that have brought them to this place in time, all right?
11 And that's, you know, that's how everybody finds themselves
12 when they come to the courtroom.

13 But you have to decide the case solely and completely
14 on the facts and the evidence you hear in the courtroom and
15 from no other source. You let the outside be the outside.
16 You let the -- you let that, what has happened in the past,
17 be outside. You decide the case on what you hear in the
18 courtroom. Do you understand that?

19 **MR. KALE:** Yes, sir.

20 **THE COURT:** All right. So with that let me ask you the
21 qualification question then. Can you give to the State of
22 South Carolina and the Defendant a fair and impartial trial?
23 Can you be a fair and impartial juror in this case?

24 **MR. KALE:** Yes, sir, I can.

25 **THE COURT:** Thank you very much. What I'm going to ask

1 that you do, Mr. Kale, is just go back and have a seat.
2 I'll call the whole panel back out in a little bit for the
3 general questions, okay?

4 **MR. KALE:** Yes, sir.

5 **THE COURT:** Thank you very much.

6 (Whereupon Juror number 103, Clayton Kale, exited the
7 courtroom)

8 **THE COURT:** The next one, Madame Clerk, is juror number
9 141, O'Neal. Randal O'Neal. Randal O'Neal, 141, all right?
10 Thank you.

11 Mr. Kale answered yes to number 4. He did handwrite in
12 there that I can be fair.

13 (Whereupon juror number 141, Randal O'Neal, a white
14 male, entered the courtroom)

15 **THE COURT:** Yes, sir. Thank you very much.

16 **MR. O'NEAL:** Yes, sir.

17 **THE COURT:** All right. Mr. O'Neal?

18 **MR. O'NEAL:** Yes.

19 **THE COURT:** All right. Very good. Mr. O'Neal,
20 regarding this particular case, because of the charge or
21 charges that the State has brought against the Defendant,
22 the Court had the panel as a whole to fill out this extra
23 questionnaire. We normally have a general set of questions
24 that I ask in every criminal case, but this one I wanted the
25 panel to answer these four.

1 Now, you along with a number of other jurors answered
2 yes to one or more of the questions. So based upon that I
3 wanted to go over a couple of things with you.

4 **MR. O'NEAL:** Sure.

5 **THE COURT:** Let's start off first with the general job
6 of a juror. What's the jurors -- juror supposed to do when
7 they come in a criminal case. They listen to the facts and
8 evidence presented in the courtroom, the witnesses that
9 testify under oath, any documents that might be introduced
10 into evidence, the evidence of that particular case.

11 They look at that evidence collectively as a whole, the
12 jury does, and finds that evidence that convinces them that
13 it's true. They find this evidence to be -- this portion of
14 the evidence to be true.

15 At the end of the case I'll give you the law that
16 you'll apply to those facts and the evidence you find to be
17 true. And then the jury takes the evidence they find to be
18 true, apply the law that the judge gives to them and then
19 decides did the State prove the defendant guilty beyond a
20 reasonable doubt.

21 The State -- that's the State's job. The State has the
22 burden of proof, prove the Defendant guilty beyond a
23 reasonable doubt. So that's what the jury has to do
24 generally in this criminal case, in any criminal case. Do
25 you understand that?

1 **MR. O'NEAL:** Yes, sir.

2 **THE COURT:** All right, sir. Every juror brings their
3 own set of experiences to the courtroom when they are called
4 for jury duty. And that's all well and good, but the juror
5 has to decide the case solely and completely on the facts
6 and the evidence you hear in the courtroom and from no other
7 source.

8 What happened on the outside happened on the outside,
9 okay? You can't let that affect the decision in any way.
10 You have to decide what is presented properly in the
11 courtroom, those facts you find to be true, the law the
12 court gives to you, did the State prove the Defendant guilty
13 beyond a reasonable doubt or not. That's what the juror has
14 to do, okay?

15 **MR. O'NEAL:** Okay.

16 **THE COURT:** With that, let me ask you then the
17 qualification question. Can you give to the State of South
18 Carolina and the Defendant a fair and impartial trial? Can
19 you be a fair and impartial juror in this case?

20 **MR. O'NEAL:** Yes.

21 **THE COURT:** Thank you very much, sir. Thank you, Mr.
22 O'Neal. What I'm going to ask, that you just go back and
23 have a seat. I'll call the whole panel out in just a
24 second.

25 **MR. O'NEAL:** Okay.

1 **THE COURT:** The next one, Madame Bailiff, is Ms.
2 Padgett, 144, Roxanne Padgett, please. Thank you, sir.

3 **MR. O'NEAL:** Thank you.

4 (Whereupon juror number 141, Randal O'Neal, exited the
5 courtroom)

6 **THE COURT:** All right. Mr. O'Neal answered yes to
7 numbers 3 and 4, 3 and 4.

8 (Whereupon juror number 144, Roxanne Padgett, a white
9 female, entered the courtroom)

10 **THE COURT:** How you doing, ma'am?

11 **MS. PADGETT:** Okay.

12 **THE COURT:** Right there is great.

13 **MS. PADGETT:** Okay.

14 **THE COURT:** Good deal. All right. Ms. Padgett?

15 **MS. PADGETT:** Yes.

16 **THE COURT:** All right. Very good. Based upon the
17 charges the State has brought against the Defendant, I asked
18 the panel as a whole to fill out that questionnaire. We
19 have a general set of questions that I'll be asking y'all,
20 the whole panel, in just a second, but based upon this case
21 I wanted to get those -- have those answered first, okay?

22 **MS. PADGETT:** (Affirmative nod)..

23 **THE COURT:** You along with a number of other jurors
24 answered yes to one or more of the questions. So with that,
25 I wanted to go over a couple of things with you, okay?

1 **MS. PADGETT:** Okay.

2 **THE COURT:** Let's first talk about the general job of a
3 juror. What's the job of a juror in any criminal case that
4 you call, okay. You listen to the facts and the evidence
5 presented in the courtroom, the witnesses that come before
6 the Court, testify under oath, the introduction of any kind
7 of documentary or paper evidence or any other kind of
8 evidence, the evidence of that particular case.

9 The jury looks at that and finds that evidence which
10 convinces them that it's true. We find this part of the
11 evidence or we find this evidence to be true. You listen to
12 the law that the Judge, that I'll give to you at the very
13 end, okay?

14 **MS. PADGETT:** Um-hum (affirmative).

15 **THE COURT:** And so you've got the evidence you find to
16 be true, the law that the Court gives to you and then the
17 jury decides did the State prove the Defendant guilty beyond
18 a reasonable doubt or not? That's the State's job, prove
19 the Defendant guilty beyond a reasonable doubt based upon
20 the evidence, if that is possible, all right?

21 **MS. PADGETT:** Okay.

22 **THE COURT:** And that's the jury's job to decide. You
23 understand?

24 **MS. PADGETT:** Um-hum (affirmative).

25 **THE COURT:** All right. Very good.

1 Every juror comes into the courtroom with their own set
2 of experiences that have brought them to this place in time.
3 And that's all well and good, but the jury as a whole has to
4 decide this case based upon the facts and evidence presented
5 in this courtroom and from no other source.

6 What happened in the past, happened in the past. What
7 happened on the outside, happened on the outside. So the
8 juror has to set that aside and make the decision based upon
9 the facts and evidence in this courtroom. Do you understand
10 that?

11 MS. PADGETT: Um-hum (affirmative).

12 **THE COURT:** Very good. So let me ask you the
13 qualification question. Can you give to the State of South
14 Carolina and the Defendant a fair and impartial trial? Can
15 you be a fair and impartial juror in this case?

16 MS. PADGETT: I can.

17 **THE COURT:** Very good, ma'am. Thank you very much, Ms.
18 Padgett. If you'll go back and have a seat with the whole
19 panel, please, ma'am.

20 The next one is juror number 202, Richard Lee. Thank
21 you.

22 (Whereupon juror number 144, Roxanne Padgett, exited
23 the courtroom)

24 **THE COURT:** And Ms. Padgett answered yes to number 4.

25 (Whereupon juror 202, Richard Lee, a white male,

1 entered the courtroom)

2 **THE COURT:** Mr. Lee, how you doing, sir?

3 **MR. LEE:** Fine.

4 **THE COURT:** Good, sir. Right there is fine.

5 **MR. LEE:** Okay.

6 **THE COURT:** That's fine. That's good. All right. Mr.
7 Lee, based upon the charges the State brought against the
8 Defendant, the Court had the panel as a whole fill out this
9 extra questionnaire. We will have a set of questions that
10 I'll be asking the whole panel in just a second, but with
11 this we had this extra questionnaire I wanted y'all to fill
12 out.

13 **MR. LEE:** Um-hum (affirmative).

14 **THE COURT:** And you, along with a number of other
15 jurors, answered yes to one or more of the questions. So I
16 wanted to go over ---

17 **MR. LEE:** Sure.

18 **THE COURT:** --- a couple of things with you, okay?

19 Let's first talk about the general job of a juror,
20 what's the job that any juror has to do in a criminal case.
21 You come in the courtroom and you listen to all the facts
22 and evidence presented in that case, the witnesses that
23 testify under oath, the introduction of any kind of paper
24 evidence or any other kind of documentary evidence that
25 might be part of this particular case.

1 So the jury looks at all that evidence as a whole, they
2 find that evidence which convinces them that it's true.

3 **MR. LEE:** Um-hum (affirmative).

4 **THE COURT:** We've heard all the evidence, we find this
5 part or this part of the evidence to be true.

6 At the end of the case I'll give you -- the Court, the
7 Judge will give you the law that the jury will apply to the
8 facts and evidence they find to be true. And then based
9 upon that, the jury has to decide did the State prove the
10 Defendant guilty beyond a reasonable doubt.

11 **MR. LEE:** Um-hum (affirmative).

12 **THE COURT:** The State has the burden of proof, proving
13 the Defendant guilty beyond a reasonable doubt based upon
14 the facts and the evidence presented and the law that the
15 Judge gives to the jury. Do you understand that to be ---

16 **MR. LEE:** Yes.

17 **THE COURT:** --- the job of a juror?

18 **MR. LEE:** I used to work for State Farm Insurance. So
19 I used to manage all ---

20 **THE COURT:** Well, good.

21 **MR. LEE:** --- the litigation ---

22 **THE COURT:** So you have some ---

23 **MR. LEE:** I understand.

24 **THE COURT:** You have some -- there's a different burden
25 of proof in civil ---

1 **MR. LEE:** Right.

2 **THE COURT:** --- and a criminal case, ---

3 **MR. LEE:** I understand.

4 **THE COURT:** --- but you have a general idea ---

5 **MR. LEE:** Sure.

6 **THE COURT:** --- of what's going on. Great. Okay. So
7 every juror comes to the courtroom with their own
8 experiences. And we appreciate that. But you understand
9 you have to decide the case on the facts and evidence
10 presented in the courtroom on this case and set everything
11 else aside. You understand that?

12 **MR. LEE:** Yes.

13 **THE COURT:** Let me ask you the qualification question.
14 Can you give to the State of South Carolina and the
15 Defendant a fair and impartial trial? Can you be a fair and
16 impartial juror in this case?

17 **MR. LEE:** I would have to say that depends because the
18 question I answered yes to ---

19 **THE COURT:** Right. And I appreciate that. So -- and I
20 don't want to delve ---

21 **MR. LEE:** Right.

22 **THE COURT:** --- too deeply in somebody's experiences.
23 The qualification question ---

24 **MR. LEE:** If you present the facts ---

25 **THE COURT:** Okay. Well, I mean, ---

1 **MR. LEE:** --- can decide.

2 **THE COURT:** Okay. And I appreciate that.

3 **MR. LEE:** Right.

4 **THE COURT:** The facts are going to be whatever the
5 facts are ---

6 **MR. LEE:** Right.

7 **THE COURT:** --- in this particular case, okay?

8 **MR. LEE:** Okay.

9 **THE COURT:** It's going -- they're going to be whatever
10 the Court finds to be proper and whatever the State and
11 Defense presents. Those are going to be the ---

12 **MR. LEE:** Right.

13 **THE COURT:** Those are going to be the facts, okay?
14 Whatever they are.

15 **MR. LEE:** Right.

16 **THE COURT:** And the law will be ---

17 **MR. LEE:** Sure.

18 **THE COURT:** --- what the Court gives to you at the end.

19 **MR. LEE:** Sure.

20 **THE COURT:** Those -- those at the end will speak for
21 themselves. Whatever the facts were and whatever the law
22 is, okay?

23 **MR. LEE:** Yes.

24 **THE COURT:** And then based upon those two things you
25 have to decide did the State prove the Defendant guilty

1 beyond a reasonable doubt or not. So the qualification
2 question requires that a juror be able to answer
3 unequivocally yes. And if they cannot answer unequivocally
4 yes, then the answer has to be no.

5 **MR. LEE:** Right.

6 **THE COURT:** All right? So with the qualification
7 question, can you give the State and the Defendant a fair
8 and impartial trial? Can you be a fair and impartial juror
9 in this case?

10 **MR. LEE:** Yes, sir.

11 **THE COURT:** Thank you very much. I appreciate it, Mr.
12 Lee. Go back and have a seat in the panel. And, Madame
13 Bailiff, next one is juror number 203. Thomas is the last
14 name. Leah Thomas, Leah Thomas. All right. Thank you.

15 (Whereupon juror number 202, Richard Lee, exited the
16 courtroom)

17 **THE COURT:** He answered -- Mr. Lee answered yes to
18 number 4.

19 (Whereupon juror number 203, Leah Thomas, a white
20 female, entered the courtroom)

21 **THE COURT:** Right over here is great, ---

22 **MS. THOMAS:** Okay.

23 **THE COURT:** --- Ms. Thomas.

24 **MS. THOMAS:** Yes, sir.

25 **THE COURT:** All right. Ms. Thomas, based upon the

1 charges the State brought against the Defendant, the Court
2 asked the panel as a whole to fill out this extra
3 questionnaire. And you along with a number of other jurors
4 answered yes to one or more of the questions, ---

5 **MS. THOMAS:** Yes, sir.

6 **THE COURT:** --- okay? So based upon that I wanted to
7 talk to those jurors.

8 **MS. THOMAS:** Okay.

9 **THE COURT:** Let's talk about first the general job of a
10 juror. What's the job of any juror in any criminal case?
11 You come in the courtroom and you listen to all the facts
12 and evidence presented in that particular case, the
13 witnesses that testify under oath, the introduction of any
14 kind of documentary evidence or any other kind of evidence
15 that might be presented, okay?

16 At the end of the case the Court, Judge, I will give
17 the jury, the panel as a whole, the law, the law that
18 they're going to apply to the facts and evidence the jury
19 finds to be true, okay?

20 And then the facts and evidence the jury finds to be
21 true, the law of the case, the jury decides did the State
22 prove the Defendant guilty beyond a reasonable doubt or not
23 because that's the State's job is to prove the Defendant
24 guilty beyond a reasonable doubt.

25 And the jury decides based upon the facts, and the

1 evidence, and the law, did the State do that or not? That's
2 the -- what the jury is going to do, okay? So you
3 understand that?

4 **MS. THOMAS:** Yes, sir.

5 **THE COURT:** Every juror brings into the courtroom their
6 own set of experiences and where they are in life at that
7 point in time, okay? With that the jury has to and each
8 jury must set that aside and base their decision solely and
9 completely on the facts and evidence you hear in this
10 courtroom and from no other source. I mean, we're not
11 asking you to leave your common sense behind. Obviously,
12 ---

13 **MS. THOMAS:** No.

14 **THE COURT:** --- you're going to need your common sense,
15 okay? But you can't let anything that occurred in the past
16 affect the decision. It has to be based upon the facts and
17 evidence in this courtroom and the law that the Judge --
18 that I will give to the jury. You understand that?

19 **MS. THOMAS:** Yes, sir.

20 **THE COURT:** All right. So based upon that, let me ask
21 you the qualification question.

22 **MS. THOMAS:** Okay.

23 **THE COURT:** Can you give to the State of South Carolina
24 and to the Defendant a fair and impartial trial? Can you be
25 a fair and impartial juror in this case?

1 **MS. THOMAS:** Yes, sir.

2 **THE COURT:** Thank you very much, ma'am. I appreciate
3 it very much. Go back and have a seat with the panel. And
4 then I'll call y'all in in just a second for ---

5 **MS. THOMAS:** Okay.

6 **THE COURT:** --- the general questions, okay?

7 **MS. THOMAS:** Thank you.

8 **THE COURT:** Thank you.

9 (Whereupon juror number 203, Leah Thomas, exited the
10 courtroom)

11 **THE COURT:** And then the last one is juror number 205,
12 Terry Whitley. Terry Whitley, juror 205 is the last one.

13 And this last juror answered yes to 3 and 4. 3 and 4.
14 Well, the answer to 4, honestly, was probably. The answer
15 to 3 was yes. And the answer to 4 was probably.

16 (Whereupon juror number 205, Terry Whitley, a white
17 male, entered the courtroom)

18 **THE COURT:** Just right over there, Mr. Whitley, is
19 great. Yeah, stand right there is great. All right. Mr.
20 Whitley, ---

21 **MR. WHITLEY:** Yes, sir.

22 **THE COURT:** --- based upon the State's charges against
23 the Defendant the Court asked the panel as a whole to fill
24 out this extra questionnaire. There's going to be -- I'll
25 call the whole panel out in just a minute and ask them the

1 general questions that we normally ask. But the case of
2 this case, I had this extra questionnaire.

3 You along with a number of other jurors answered yes to
4 one or more of the questions. So ---

5 **MR. WHITLEY:** Yes, sir.

6 **THE COURT:** --- I wanted to go over that generally with
7 you.

8 Let's start off first with the general job of a juror,
9 what's the job of a juror in any criminal case. You listen
10 to the facts and the evidence presented in the courtroom
11 based upon the witnesses that come before it, testify under
12 oath, any documentary or paper evidence that might come in
13 or any kind of evidence like that.

14 **MR. WHITLEY:** Yes, sir.

15 **THE COURT:** The jury looks at all that evidence as a
16 whole, finds that evidence which convinces them it's true.
17 We find this part of the evidence or all this evidence to be
18 true. At the end of the case I'll give you the law that you
19 will apply to the facts and evidence the jury as a whole
20 finds to be true.

21 **MR. WHITLEY:** Yes, sir.

22 **THE COURT:** So based upon that, the evidence the jury
23 finds to be true, the law that you've got to apply to it,
24 the jury has to decide did the State prove the Defendant
25 guilty beyond a reasonable doubt? Because that's what the

1 State's job is, prove the Defendant guilty beyond a
2 reasonable doubt, if it can. And that's what ultimately the
3 jury's going to -- to decide. So you understand that as the
4 general job of a juror?

5 **MR. WHITLEY:** Absolutely, sir.

6 **THE COURT:** All right, sir. So with that every juror
7 brings their own set of experiences into the courtroom as
8 they find themselves as a juror in a particular case. And
9 we appreciate that and understand that, but the juror and
10 the jury as a whole has to decide this case based solely and
11 completely on the facts and evidence you hear in the
12 courtroom and from no other source.

13 **MR. WHITLEY:** Yes, sir.

14 **THE COURT:** But what happened on the outside, happened
15 on the outside. We set that aside. We decide the case
16 solely and completely on what we hear in the courtroom. You
17 understand that?

18 **MR. WHITLEY:** Yes, sir.

19 **THE COURT:** Very good. So let me ask you the
20 qualification question. Can you give to the State of South
21 Carolina and to the Defendant a fair and impartial trial?
22 Can you be a fair and impartial juror in this case?

23 **MR. WHITLEY:** Yes, sir. I could not send somebody --
24 convict somebody who was not proven clearly that they had
25 done something wrong.

1 **THE COURT:** All right, sir. Very good, sir. Thank
2 you, Mr. Whitley. You want to go back ---

3 **MR. WHITLEY:** Yes, sir.

4 **THE COURT:** --- and have a seat with the panel as a
5 whole.

6 **MR. WHITLEY:** Yes, sir.

7 **THE COURT:** That's all of them, Madame Bailiff. Thank
8 you.

9 (Whereupon juror number 205, Terry Whitley, exited the
10 courtroom)

11 **THE COURT:** All right. And, again, Mr. Whitley
12 answered yes to number 3 and probably to number 4. All
13 right. So those are the ones that affirmatively responded
14 to one or more of the questions.

15 My intention now is to call the panel in as a whole and
16 ask them the general qualification questions at this time.
17 All right. Yes, ma'am.

18 **MS. MANIGAULT:** If it please the Court, Your Honor. I
19 have -- I would like to ask the Court at this time if I
20 could make a motion to have some of these jurors that you
21 had questioned excused by the Court.

22 **THE COURT:** I'll be glad for you to mention them by
23 juror number or name. Go ahead.

24 **MS. MANIGAULT:** Yes, sir. I'll make a general --
25 first, Your Honor. All of the eleven that you have

1 questioned either answered yes to 3 -- and that question is
2 have you or anyone in your immediate family ever been a
3 victim of criminal sexual conduct or sexual abuse whether
4 reported or unreported?

5 Then question number 4 is do you have strong beliefs
6 about CSC or sex abuse that would prevent you from being
7 fair and impartial in your consideration of the evidence in
8 this trial?

9 So I would start with number -- question number 4.
10 That would be juror number 30, which you've already excused.
11 That would be juror number 48, Glenn Christianson, who
12 answered yes to number 4. That would be juror number 83,
13 Zulema Gonzalez, who answered yes to question number 4.
14 That would be juror 103, Clayton Kale, who answered yes to
15 question 4.

16 **THE COURT:** He answered I can be fair.

17 **MS. MANIGAULT:** On the ---

18 **THE COURT:** On the response.

19 **MS. MANIGAULT:** On the form?

20 **THE COURT:** He didn't answer yes or no. He answered I
21 can be fair. He didn't say yes or no.

22 **MS. MANIGAULT:** On the form?

23 **THE COURT:** Yes, ma'am.

24 **MS. MANIGAULT:** Okay. Sorry.

25 **THE COURT:** He indicated, obviously, that he had strong

1 beliefs. He added I can be fair. But he didn't say yes or
2 no.

3 MS. MANIGAULT: All right. Well, I will take number
4 103 out.

5 THE COURT: Well, I mean, you can ---

6 MS. MANIGAULT: Yes, sir.

7 THE COURT: It doesn't matter. I mean, you can take
8 that as a yes. I don't -- I don't have a problem with that.
9 I'm just saying ---

10 MS. MANIGAULT: Yes, sir.

11 THE COURT: --- that's what happened.

12 MS. MANIGAULT: Yes, sir.

13 THE COURT: But go ahead.

14 MS. MANIGAULT: Juror number 141, Randal O'Neal, who
15 has answered yes to question number 4.

16 THE COURT: Yes, ma'am.

17 MS. MANIGAULT: Juror number 144, Roxanne Padgett, who
18 has answered yes to question number 4. Juror number 202,
19 Richard Lee, who has answered yes to question number 4.
20 Juror number 203, Leah M. Thomas, who answered probably to
21 question number 4. And juror number 205, who answered
22 probably to question number 4.

23 Your Honor, my hesitation and reason -- hesitation for
24 wanting them to remain a part of the panel is that on this
25 questionnaire it says strong beliefs that would prevent you

1 from being fair. They answered yes or probably on the
2 questionnaire.

3 I do understand that when the Court explained to them
4 and questioned them in camera, in court, that all of them
5 said they could be fair, which is a conflict of what they
6 put on the sheet that the Court presented them to fill out.
7 So that is my reason. I do not believe that those who
8 answered yes on the sheet and then came in court and said
9 they could be fair would be fair and impartial jurors on
10 behalf of the Defendant.

11 **THE COURT:** All right. I appreciate that, ma'am. That
12 is why I conducted an individual voir dire with the juror
13 first explaining their job as a juror and explaining that
14 they had to decide the case solely and completely on the
15 facts and evidence presented in the courtroom, from no other
16 source, to let their -- as I stated, the outside be the
17 outside.

18 And I believe that they have understood the Court's
19 explanation of their job and have stated to the Court
20 affirmatively that they can be fair to the State and the
21 Defendant. I respectfully decline your motion to exclude
22 those jurors from consideration in this particular case.
23 Any further motions?

24 **MS. BENTLEY:** Nothing from the State.

25 **MS. MANIGAULT:** Nothing else, Your Honor.

1 **THE COURT:** All right. Ask the panel as a whole to
2 come in, please.

3 (Whereupon the jury panel entered the courtroom at
4 12:35 pm)

5 **THE COURT:** Vacate that back row, please.

6 **MADAME BAILIFF:** We'll get two chairs, Judge.

7 **THE COURT:** No, we're going to vacate the back row.
8 All right. Ladies and gentlemen, we're going to pick a jury
9 in the case of the State of South Carolina versus Michael
10 Edward Williams. The State of South Carolina has charged
11 the Defendant with two crimes. Now in that the State has
12 charged and the State is proceeding on both of these
13 matters, correct, Solicitor?

14 **MS. BENTLEY:** Yes, sir, Your Honor.

15 **THE COURT:** All right. Very good.

16 The State has charged the Defendant -- and when I am
17 talking about this indictment and this charge, this is how
18 the matter comes before the court. The State brings charges
19 against the Defendant for the Defendant to respond. The
20 Defendant has pled not guilty to the charges and, therefore,
21 we are here to conduct that trial.

22 These documents are called indictments. These charges
23 are not evidence. They cannot be considered by anybody as
24 evidence in the case. They are how the matter comes to
25 court. The only reason I'm reading it to you is to see does

1 any member of the jury panel have any information about this
2 case, knows anything about this particular case.

3 So the State has charged that the Defendant, Michael
4 Edward Williams, did in Greenville County on or about the
5 31st day of March, 2012 commit a sexual battery on a minor
6 who was less than eleven years of age in violation of the
7 code of laws in the State of South Carolina, 1976 as
8 amended.

9 The second charge is that Michael Edward Williams did
10 in Greenville County on or about March 31st, 2012, the
11 Defendant being over the age of fourteen years wilfully and
12 lewdly commit or attempt a lewd and lascivious act on or
13 upon a minor, a child under the age of sixteen, with the
14 intent of arousing, appealing to or gratifying the lusts,
15 passions or sexual desires of the Defendant or the child.
16 And that's criminal sexual conduct with a minor in the third
17 degree.

18 Those are the two charges the State has brought against
19 the Defendant. So any member of the jury panel that knows
20 anything about this case, has any information about this
21 particular case, anything they need to bring to the Court's
22 attention that have not already done so, if so, please
23 stand.

24 (No response)

25 **THE COURT:** Very good.

1 The possible or potential witnesses, the possible
2 potential witnesses in this case are as follows; Tammy
3 Sutton, [Minor] that's [Minor] [REDACTED], Investigator
4 Michael Robertson, Greenville County Sheriff's Office,
5 Investigator Jim Perry, Greenville County Sheriff's Office,
6 Investigator Michael Rainy, Greenville County Sheriff's
7 Office, Dr. Nancy Henderson, Greenville Memorial Hospital,
8 Sarah Davis, the Julie Valentine Center, Shauna, S-h-a-u-a-
9 n-a [sic], Galloway Williams of the Julie Valentine Center
10 and Michael Edward Williams. Any member of the jury panel
11 that's related by blood or marriage, close personal friends,
12 acquaintances of any of these possible or potential
13 witnesses, if so, please stand.

14 All right. Yes, ma'am. Your name and juror number,
15 please, ma'am.

16 **MS. GONZALEZ:** Zulema Gonzalez, 83.

17 **THE COURT:** All right. And who is it that you might
18 know, please?

19 **MS. GONZALEZ:** Shauna Galloway, ---

20 **THE COURT:** All right.

21 **MS. GONZALEZ:** --- Julie Valentine.

22 **THE COURT:** All right. Do you know Ms. Galloway-
23 Williams personally or through visits?

24 **MS. GONZALEZ:** Both.

25 **THE COURT:** Okay. With that, and assuming her to be a

1 witness in this case, my question to you is can you give to
2 the State of South Carolina and to the Defendant a fair and
3 impartial trial? Can you be a fair and impartial juror in
4 this case?

5 **MS. GONZALEZ:** Yes, sir.

6 **THE COURT:** Thank you very much, ma'am. Anybody else?

7 (No response)

8 **THE COURT:** All right. Is there any member of the jury
9 panel, either you, yourself, or a member of your immediate
10 family has ever had any matters of any kind handled by the
11 Thirteenth Circuit Solicitor's Office? That's the
12 prosecuting office that covers Greenville and Pickens
13 County. If so, please stand.

14 Yes, sir. And it would -- I don't want you to explain
15 it to me. But by handled, I mean touched in any way by the
16 Thirteenth Circuit Solicitor's Office. And it'd be a yes or
17 no answer.

18 **JUROR:** Yes.

19 **THE COURT:** All right, sir.

20 **JUROR:** I believe so.

21 **THE COURT:** All right. Well, and just take that,
22 whatever it is, experience that you believe to be a yes
23 answer to this question, let me ask you the qualification
24 question then.

25 **JUROR:** Yes, sir.

1 **THE COURT:** Can you give to -- I'm sorry. I need your
2 name and juror number first. I'm sorry.

3 **MR. BURCH:** My name is Chris Burch. And I'm juror
4 number 36.

5 **THE COURT:** All right. And if you've already answered
6 questions to the Court, every question's a new question. So
7 you have to say your name and juror number even if you've
8 already said it two or three times, all right?

9 **MR. BURCH:** Yes, sir.

10 **THE COURT:** Just so everybody knows. All right. Can
11 you give to the State of South Carolina and to the Defendant
12 a fair and impartial trial? Can you be a fair and impartial
13 juror in this case?

14 **MR. BURCH:** Yes, sir.

15 **THE COURT:** Thank you very much, sir. Very good.

16 Any member of the jury panel related by blood or
17 marriage, close personal friends, acquaintances of anybody
18 employed at the Thirteenth Circuit Solicitor's Office? If
19 so, please stand. Yes, sir.

20 **JUROR:** Yes, sir. I have an acquaintance.

21 **THE COURT:** All right, sir. And can you then give to
22 the State of South Carolina and to the Defenant a fair and
23 impartial trial? Can you be a fair and impartial juror in
24 this case?

25 **JUROR:** Yes, sir.

1 **THE COURT:** And can you tell me your name and juror
2 number, please.

3 **MR. KALE:** Clayton Kale, 103.

4 **THE COURT:** Thank you, sir. All right.
5 Solicitor, if you'd stand up, identify yourself,
6 please, ma'am.

7 **MS. BENTLEY:** Hello. My name is Lisa Bentley. I'm a
8 prosecutor or the assistant solicitor for today's case. I'm
9 a resident of Greenville County. And I've been with the
10 Solicitor's Office for six years.

11 **THE COURT:** All right. Thank you very much. And for
12 the Defense, ma'am, please.

13 **MS. MANIGAULT:** Thank you, Your Honor. My name is
14 Dorothy Manigault. I'm the defense attorney in this case
15 for today.

16 **THE COURT:** All right. Very good. Is there any member
17 of the jury panel that's related by blood or marriage, close
18 personal friends, acquaintances of either one of these
19 attorneys that have stood and identified themselves before
20 you? If so, please stand.

21 (No response)

22 **THE COURT:** Very good.

23 Is there any member of the jury panel that you believe
24 you have any kind of personal, political, religious,
25 philosophical belief that would prevent you in any way from

1 being a fair and impartial juror? If so, please stand.

2 (No response)

3 **THE COURT:** The next question, is there any member of
4 the jury panel either you, yourself, have any kind of law
5 enforcement background of any kind or you have a current
6 family member who is now in law enforcement or was in the
7 past in law enforcement? If any of that applies, please
8 stand. All right. We'll start over here close to the wall.
9 Ma'am, your name and juror number, please.

10 **MS. PADGETT:** Roxanne Padgett, 144.

11 **THE COURT:** Yes, ma'am.

12 **MS. PADGETT:** I have a nephew that's a deputy sheriff
13 in Saluda, South Carolina.

14 **THE COURT:** All right. And so, obviously, not this
15 county, but with the sheriff's office down there?

16 **MS. PADGETT:** Right.

17 **THE COURT:** All right. Very good. Can you give to the
18 State of South Carolina and to the Defendant a fair and
19 impartial trial? Can you be a fair and impartial juror in
20 this case?

21 **MS. PADGETT:** I can.

22 **THE COURT:** Thank you very much, ma'am. Yes, ma'am,
23 your -- you can have a seat. Your name and juror number,
24 please, ma'am.

25 **MS. DAVIS:** Cynthia Davis, juror number 61. My son-in-

1 law is a sheriff's deputy with Spartanburg County.

2 **THE COURT:** All right, ma'am. Can you give to the
3 State of South Carolina and to the Defendant a fair and
4 impartial trial? Can you be a fair and impartial juror in
5 this case?

6 **MS. DAVIS:** Yes, sir.

7 **THE COURT:** Thank you very much, ma'am. All right.
8 Yes, sir.

9 **MR. WHITLEY:** Yes, sir. Terry Whitley, juror 205.

10 **THE COURT:** All right, sir.

11 **MR. WHITLEY:** I was a constable without recompense for
12 South -- at the South Carolina Tax Commission at that time
13 and ---

14 **THE COURT:** All right. Very good. Can you give to the
15 State of South Carolina and to the Defendant a fair and
16 impartial trial? Can you be a fair and impartial juror in
17 this case?

18 **MR. WHITLEY:** Yes, sir.

19 **THE COURT:** Thank you very much. Anybody else?

20 (No response)

21 **THE COURT:** All right. Is there any member of the jury
22 panel, either you, yourself, or a member of your immediate
23 family a member of any kind of victim's rights or law
24 enforcement supporter organization? Let me give you a
25 couple of examples.

1 This is not an exhaustive list of any kind. I'm just
2 trying to give you a couple of examples here. Citizens
3 Against Violent Crime, Mothers Against Drunk Driver, South
4 Carolina Law Enforcement Officer's Association, South
5 Carolina Sheriff's Association, just some kind of law
6 enforcement or victim's rights organization. Either you,
7 yourself, or a member of your immediate family. If so,
8 please stand. Yes, sir. Your name and juror number,
9 please.

10 **MR. PATE:** Charles Pate, juror 148.

11 **THE COURT:** All right. And was it yourself or a family
12 member?

13 **MR. PATE:** Family member.

14 **THE COURT:** Can you give to the State of South Carolina
15 and to the Defendant a fair and impartial trial? Can you be
16 a fair and impartial juror in this case?

17 **MR. PATE:** Yes, sir.

18 **THE COURT:** Thank you very much. Very good. All
19 right.

20 This next question, ladies and gentlemen, I'm going to
21 ask whether you, yourself, or a member of your immediate
22 family has ever been the victim of a crime. Now, I am not
23 going to ask you what occurred. I do not want you to
24 volunteer the information to me about what occurred. The
25 question's going to be straightforward, was it yourself or a

1 family member? And then I'll ask the qualification
2 question.

3 So is there any member of the jury panel, either you,
4 yourself, or a member of your immediate family has ever been
5 the victim of a crime, please stand. All right. We'll
6 start right here against the wall. Please, ma'am, your name
7 and juror number, please.

8 **JUROR:** Is this the same questions ---

9 **THE COURT:** No, ma'am. Well, this is a general
10 question. It's either you, yourself. And I'm just going to
11 be asking was it yourself or a family member. And then
12 you'll just say it was myself, or a family member or both.
13 And then I'll ask the qualification question, all right?
14 So, but first I need your name and your juror number.

15 **MS. ALLISON:** Jena Allison, number 5. Myself.

16 **THE COURT:** Can you give to the State of South Carolina
17 and to the Defendant a fair and impartial trial? Can you be
18 a fair and impartial juror in this case?

19 **MS. ALLISON:** Yes.

20 **THE COURT:** Thank you very much. Yes, ma'am. Your
21 name and juror number, please.

22 **MS. McKELVEY:** Pequita McKelvey, juror number 125.
23 Myself.

24 **THE COURT:** Can you give to the State of South Carolina
25 and to the Defendant a fair and impartial trial? Can you be

1 a fair and impartial juror in this case?

2 **MS. McKELVEY:** Yes.

3 **THE COURT:** Thank you very much, ma'am. All right. At
4 the end, please, sir.

5 **MR. BULGER:** Richard Bulger, juror number 34. And it
6 was a family member, sir.

7 **THE COURT:** Can you give to the State of South Carolina
8 and to the Defendant a fair and impartial trial? Can you be
9 a fair and impartial juror in this case?

10 **MR. BULGER:** Yes, sir, I can.

11 **THE COURT:** Thank you very much. And next to him,
12 ma'am.

13 **MS. STURGILL:** Evelyn Sturgill, 145.

14 **THE COURT:** Yourself?

15 **MS. STURGILL:** A family member.

16 **THE COURT:** Family member. All right. Very good. Can
17 you give to the State of South Carolina and to the Defendant
18 a fair and impartial trial? Can you be a fair and impartial
19 juror in this case?

20 **MS. STURGILL:** Yes, sir.

21 **THE COURT:** Thank you very much. Again, your name and
22 juror number, please, sir.

23 **MR. WHITLEY:** Terry Whitley, juror number 205. Family
24 member.

25 **THE COURT:** Can you give to the State of South Carolina

1 and to the Defendant a fair and impartial trial? Can you be
2 a fair and impartial juror in this case?

3 **MR. WHITLEY:** Yes, sir.

4 **THE COURT:** Thank you very much. Yes, ma'am. Name and
5 juror number, please.

6 **MS. THOMAS:** Leah Thomas, 203. Myself.

7 **THE COURT:** Can you give to the State of South Carolina
8 and to the Defendant a fair and impartial trial? Can you be
9 a fair and impartial juror in this case?

10 **MS. THOMAS:** Yes, sir.

11 **THE COURT:** Thank you very much. Yes, ma'am.

12 **MS. McADEN:** Nicole McAden, juror number 29. Myself.

13 **THE COURT:** Can you give to the State of South Carolina
14 and to the Defendant a fair and impartial trial? Can you be
15 a fair and impartial juror in this case?

16 **MS. McADEN:** Yes, sir.

17 **THE COURT:** Thank you very much. Very good.

18 All right, ladies and gentlemen, I'm going to ask you
19 my general or catch-all question. Do you know of any
20 reason, have any question in your mind, any doubt in your
21 mind that you believe you cannot give to the State of South
22 Carolina and the Defendant a fair and impartial trial? That
23 is for any reason whatsoever you believe you could not be a
24 fair and impartial juror in this case, if so, please stand.

25 (No response)

1 **THE COURT:** Further questions from the State?

2 **MS. BENTLEY:** Nothing from the State, Your Honor. But,
3 however, just in total candor, I believe that I am the
4 acquaintance that juror number 103 knows in the Solicitor's
5 Office.

6 **THE COURT:** All right. Very good. Very good. And any
7 further questions from the Defense?

8 **MS. MANIGAULT:** None from the Defense, Your Honor.

9 **THE COURT:** All right. Very good. All right, ladies
10 and gentlemen. How the selection process is going to go is
11 the clerk will call out a name in a random order. You will
12 come forward. You will stand up, come around and you'll
13 come basically -- basically to where that little lectern and
14 microphone is, right here in the middle, you come there, you
15 turn around and you face to the back of the courtroom.

16 At that point in time the clerk will inquire, ask the
17 State to present or excuse the juror. If you're excused,
18 you go back and have a seat from which you came. If you are
19 presented by the State, then the clerk will inquire of the
20 State [sic] to seat or excuse the juror. Obviously,
21 excused, you go back. If you are seated by the Defense, the
22 clerk will tell you to go over to the jury box and have a
23 seat in the jury box.

24 If you happen to have any personal items, a purse,
25 book, or anything like that and your name is called, please

1 bring that along with you in case you are seated you can go
2 directly to the jury box. All right, Madame Clerk.

3 **MADAME CLERK:** Juror number 48, Glenn Christianson.

4 (Whereupon juror number 48, Glenn Christianson, a white
5 male, came forward)

6 **MADAME CLERK:** What says the State?

7 **MS. BENTLEY:** Please present the juror.

8 **MADAME CLERK:** What says the Defendant?

9 **MS. MANIGAULT:** Please excuse Mr. Christianson from the
10 trial of this case.

11 **MADAME CLERK:** All right, Mr. Christianson, you may be
12 seated. Juror 202, Richard Lee.

13 (Whereupon juror 202, Richard Lee, a white male, came
14 forward)

15 **MADAME CLERK:** What says the State?

16 **MS. BENTLEY:** Please present the juror.

17 **MADAME CLERK:** What says the Defendant?

18 **MS. MANIGAULT:** Please excuse Mr. Lee from this case.

19 **MADAME CLERK:** All right, sir, please be seated! Juror
20 29, Nicole McAden.

21 (Whereupon juror 29, Nicole McAden, a white female,
22 came forward)

23 **MADAME CLERK:** What says the State?

24 **MS. BENTLEY:** Please present the juror.

25 **MADAME CLERK:** What says the Defendant?

1 **MS. MANIGAULT:** Please seat the juror.

2 **MADAME CLERK:** Ms. McAden, please have a seat in the
3 jury box. Juror 167, Evelyn Satterfield.

4 (Whereupon juror 167, Evelyn Satterfield, a white
5 female, came forward)

6 **MADAME CLERK:** What says the State?

7 **MS. BENTLEY:** Please present the juror.

8 **MADAME CLERK:** What says the Defendant?

9 **MS. MANIGAULT:** Please seat Ms. Satterfield.

10 **MADAME CLERK:** All right, ma'am, please have a seat in
11 the jury box. Juror 174, Dana Smith.

12 (Whereupon juror 174, Dana Smith, a white female, came
13 forward)

14 **MADAME CLERK:** What says the State?

15 **MS. BENTLEY:** Please present the juror.

16 **MADAME CLERK:** What says the Defendant?

17 **MS. MANIGAULT:** Please seat Ms. Smith.

18 **MADAME CLERK:** All right, ma'am, please have a seat in
19 the jury box.

20 **MS. MANIGAULT:** Excuse me, Your Honor.

21 **THE COURT:** Yes.

22 **MS. MANIGAULT:** May we approach?

23 **THE COURT:** Yes, absolutely.

24 (Whereupon a bench conference was held off the record
25 in the presense of the jury, but out of their hearing)

1 **THE COURT:** Go ahead, ma'am.

2 **MADAME CLERK:** All right. Thank you. Juror 83, Zulema
3 Gonzalez.

4 (Whereupon juror 83, Zulema Gonzalez, an Hispanic
5 female, came forward)

6 **MADAME CLERK:** What says the State?

7 **MS. BENTLEY:** Please present the juror.

8 **MADAME CLERK:** What says the Defendant?

9 **MS. MANIGAULT:** Please excuse Ms. Gonzalez from this
10 case.

11 **MADAME CLERK:** All right, ma'am. Ms. Gonzalez, you may
12 be seated back in the gallery. You've been excused from
13 this case. Juror 147, Franklin Parnell.

14 (Whereupon juror 147, Franklin Parnell, a white male,
15 came forward)

16 **MADAME CLERK:** What says the State?

17 **MS. BENTLEY:** Please present this juror.

18 **MADAME CLERK:** What says the Defendant?

19 **MS. MANIGAULT:** Please seat Mr. Parnell.

20 **MADAME CLERK:** All right. Mr. Parnell, please have a
21 seat in the jury box. Juror 203, Leah Thomas.

22 (Whereupon juror 203, Leah Thomas, a white female, came
23 forward)

24 **MADAME CLERK:** What says the State?

25 **MS. BENTLEY:** Please present the juror.

1 **MADAME CLERK:** What says the Defendant?

2 **MS. MANIGAULT:** Please excuse Ms. Thomas from the trial
3 of this case.

4 **MADAME CLERK:** All right. Ms. Thomas, please be
5 seated. You have been excused from this case. Juror 34,
6 Richard Bulger.

7 (Whereupon juror 34, Richard Bulger, a white male, came
8 forward)

9 **MADAME CLERK:** What says the State?

10 **MS. BENTLEY:** Please present the juror.

11 **MADAME CLERK:** What says the Defendant?

12 **MS. MANIGAULT:** Please seat the juror.

13 **MADAME CLERK:** All right, sir, please have a seat in
14 the jury box. Juror 67, Kelsey Durham.

15 (Whereupon juror 67, Kelsey Durham, a white female,
16 came forward)

17 **MADAME CLERK:** What says the State?

18 **MS. BENTLEY:** Please present the juror.

19 **MADAME CLERK:** What says the Defendant?

20 **MS. MANIGAULT:** Please seat Ms. Durham.

21 **MADAME CLERK:** Ms. Durham, please have a seat in the
22 jury box. Juror number 5, Jena Allison.

23 (Whereupon juror 5, Jena Allison, a white female, came
24 forward)

25 **MADAME CLERK:** What says the State?

1 **MS. BENTLEY:** Please present the juror.

2 **MADAME CLERK:** What says the Defendant?

3 **MS. MANIGAULT:** Please excuse Ms. Allison from the
4 trial of this case.

5 **MADAME CLERK:** Ms. Allison, please be seated back in
6 the gallery. Juror 114, Keith Lindsey.

7 (Whereupon juror 114, Keith Lindsey, a white male, came
8 forward)

9 **MADAME CLERK:** What says the State?

10 **MS. BENTLEY:** Please present the juror.

11 **MADAME CLERK:** What says the Defendant?

12 **MS. MANIGAULT:** Please seat Mr. Lindsey.

13 **MADAME CLERK:** Sir, please have a seat in the jury box.
14 Juror 37, Jacob Burdette.

15 **MS. MANIGAULT:** What was that number?

16 **MADAME CLERK:** 37.

17 (Whereupon juror 37, Jacob Burdette, a white male, came
18 forward)

19 **MADAME CLERK:** What says the State?

20 **MS. BENTLEY:** Please present the juror.

21 **MADAME CLERK:** What says the Defendant?

22 **MS. MANIGAULT:** Please seat Mr. Burdette.

23 **MADAME CLERK:** Mr. Burdette, please have a seat in the
24 jury box. Juror 194, David Winchester.

25 (Whereupon juror 194, David Winchester, a white male,

1 came forward)

2 **MADAME CLERK:** What says the State?

3 **MS. BENTLEY:** Please excuse the juror from the trial of
4 this case.

5 **MADAME CLERK:** All right, sir, please be seated back in
6 the gallery. You have been excused from this case. Juror
7 197, Mario Alameda.

8 (Whereupon juror 197, Mario Alameda, a white male, came
9 forward)

10 **MADAME CLERK:** What says the State?

11 **MS. BENTLEY:** Please excuse the juror from the trial of
12 this case.

13 **MADAME CLERK:** All right, sir, please be seated back in
14 the gallery. You have been excused from this case. Juror
15 148, Charles Pate.

16 (Whereupon juror 148, Charles Pate, a white male, came
17 forward)

18 **MADAME CLERK:** What says the State?

19 **MS. BENTLEY:** Please present the juror.

20 **MADAME CLERK:** What says the ---

21 **MS. MANIGAULT:** Please seat the juror.

22 **MADAME CLERK:** Thank you. Mr. Pate, please have a seat
23 in the jury box. Juror 205, Terry Whitley.

24 (Whereupon juror 205, Terry Whitley, a white male, came
25 forward)

1 **MADAME CLERK:** What says the State?

2 **MS. BENTLEY:** Please excuse the juror from the trial of
3 this case.

4 **MADAME CLERK:** All right. Please be seated, sir.
5 Juror 76, Jill Fuson.

6 (Whereupon juror 76, Jill Fuson, a white female, came
7 forward)

8 **MADAME CLERK:** What says the State?

9 **MS. BENTLEY:** Please present the juror.

10 **MADAME CLERK:** What says the Defendant?

11 **MS. MANIGAULT:** Please excuse the juror from this case.

12 **MADAME CLERK:** All right, ma'am, please be seated. You
13 have been excused from this case. Juror 60, Cassandra
14 Davis.

15 (Whereupon juror 60, Cassandra Davis, a black female,
16 came forward)

17 **MADAME CLERK:** What says the State?

18 **MS. BENTLEY:** Please present the juror.

19 **MADAME CLERK:** What says the Defendant?

20 **MS. MANIGAULT:** Please seat Ms. Davis.

21 **MADAME CLERK:** All right, Ms. Davis, please have a seat
22 in the jury box. Juror 145, Evelyn Sturgill.

23 (Whereupon juror 145, Evelyn Sturgill, a white female,
24 came forward)

25 **MADAME CLERK:** What says the State?

1 **MS. BENTLEY:** Please present the juror.

2 **MADAME CLERK:** What says the Defendant?

3 **MS. MANIGAULT:** Please excuse the juror for this case.

4 **MADAME CLERK:** All right, Ms. Sturgill, you've been
5 excused from this case. Juror 55, Mary Crain.

6 (Whereupon juror 55, Mary Crain, a white female, came
7 forward)

8 **MADAME CLERK:** What says the State?

9 **MS. BENTLEY:** Please excuse the juror from the trial of
10 this case.

11 **MADAME CLERK:** All right. Ms. Crain, you may be
12 seated. You have been excused from this case. Juror 65,
13 Kimberly Dunham.

14 (Whereupon juror 65, Kimberly Dunham, a white female,
15 came forward)

16 **MADAME CLERK:** What says the State?

17 **MS. BENTLEY:** Please present the juror.

18 **MADAME CLERK:** What says the Defendant?

19 **MS. MANIGAULT:** Please excuse Ms. Dunham from this
20 case.

21 **MADAME CLERK:** All right, ma'am, please be seated.
22 Juror 109, Sara Kosmer.

23 (Whereupon juror 109, Sara Kosmer, a white female, came
24 forward)

25 **MADAME CLERK:** What says the State?

1 **MS. BENTLEY:** Please present the juror.

2 **MADAME CLERK:** What says the Defendant?

3 **MS. MANIGAULT:** Please seat the juror.

4 **MADAME CLERK:** All right, ma'am, please have a seat in
5 the jury box. Juror number 6, Howard Anderson.

6 (Whereupon juror 6, Howard Anderson, a black male, came
7 forward)

8 **MADAME CLERK:** What says the State?

9 **MS. BENTLEY:** Please present the juror.

10 **MADAME CLERK:** What says the Defendant?

11 **MS. MANIGAULT:** Please seat Mr. Anderson.

12 **MADAME CLERK:** Sir, please have a seat in the jury box.

13 **THE COURT:** All right. We'll have one alternate.
14 It'll be one and two, please. One and two.

15 **MADAME CLERK:** Juror 144, Roxanne Padgett.

16 (Whereupon juror 144, Roxanne Padgett, a white female,
17 came forward)

18 **MADAME CLERK:** What says the State?

19 **MS. BENTLEY:** Please present the alternate.

20 **MADAME CLERK:** What says the Defendant?

21 **MS. MANIGAULT:** Please excuse her for this case.

22 **MADAME CLERK:** All right, ma'am, please be seated. You
23 have been excused for this case. Juror 96, Kristin Hrabe.

24 (Whereupon juror 96, Kristin Hrabe, a white female,
25 came forward)

1 **MADAME CLERK:** What says the State?

2 **MS. BENTLEY:** Please present the alternate.

3 **MADAME CLERK:** What says the Defendant?

4 **MS. MANIGAULT:** Please seat the juror.

5 **MADAME CLERK:** All right, ma'am, please have a seat in
6 the jury box.

7 **THE COURT:** All right, ma'am. You have been selected
8 as the alternate in this particular case, ma'am. Thank you.
9 Any objections to the jury as empaneled from the State?

10 **MS. BENTLEY:** Nothing from the State, Your Honor.

11 **THE COURT:** From the Defense?

12 **MS. MANIGAULT:** Nothing from the Defense, Your Honor.

13 **THE COURT:** Very good. I find the jury panel's been
14 properly empaneled pursuant to Batson versus Kentucky and
15 JEB versus Alabama. All right.

16 Since -- and I apologize to the jurors that are -- have
17 not been selected in this particular case because of the
18 length of this, you're not going to have a whole lot of
19 time, but you have to be downstairs at 2:00. And that's for
20 Judge Hill.

21 So I don't know if y'all are going to run over there to
22 Jack's or wherever y'all are going to go real quick for
23 lunch, but you have to be downstairs at 2:00. Judge Hill's
24 going to select his jury case, civil case, at that point in
25 time. So y'all are now excused. Thank you very much.

1 (Whereupon the remaining jurors exited the courtroom at
2 1:08 pm)

3 **THE COURT:** Counsel, y'all come up and talk to me for
4 just one second, please.

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

7 **THE COURT:** All right. Ladies and gentlemen of the
8 panel that has been selected in this case, I'm going to ask
9 that you do one thing for me first. And that's going to be
10 select your foreperson for this jury. So let me tell you
11 very briefly what the foreperson's duties and
12 responsibilities are.

13 If we're here in the courtroom and the jury as a whole
14 needs attention to some matter, the witnesses need to speak
15 up, or the lawyers, or just whatever it is, the foreperson
16 raises their hand, gets the Court's attention, and we'll
17 handle the matter, whatever it is.

18 If you're back in the jury room, there'll be a pad and
19 a pen provided for you, notepad and a pen. You write out a
20 note, you sign it and give it to the bailiff. It'll come to
21 me and we'll handle the matter, whatever that issue might
22 be.

23 When we have concluded the evidentiary portion of this
24 trial, all the witnesses have testified, we've heard the
25 closing arguments of the attorneys, I've given you the law

1 that you're going to apply to the facts and evidence you
2 find to be true in this case, I'll submit the case to you
3 for your deliberations and your unanimous decision.

4 The foreperson's duties and responsibilities change in
5 this regard. The foreperson is going to act like the
6 chairperson at a meeting. Important responsibilities the
7 foreperson has is make sure everybody that wants to has an
8 opportunity to be heard, everybody's voice has an
9 opportunity to be heard.

10 Now, the foreperson's voice and vote carries no more
11 weight than any other member of the jury panel. Everybody's
12 on an equal plain in that regard, but somebody does need to
13 be in charge, if necessary, guide the discussions, if
14 necessary.

15 Again, if there's some question, the foreperson takes
16 out that notepad and pen and writes out the note and gives
17 it to the bailiff. Again, I'll get it and we'll handle the
18 matter, whatever it is.

19 The final duty and responsibility of the foreperson is
20 when the jury has well and truly deliberated, you have
21 reached your unanimous decision in this particular matter,
22 you'll take the verdict form that the Court will provide to
23 you, and the foreperson will check the appropriate block or
24 write out the appropriate word and thereafter sign their
25 name as the foreperson indicating that that verdict that's

1 set forth on a verdict form is indeed the true and just
2 verdict of the entirety of the jury in this particular
3 matter.

4 So with that, what I'm going to do is ask that you go
5 back to your jury room, select your foreperson, knock on the
6 door, let the bailiff know who the foreperson is. Now,
7 Madame Alternate, that's -- pronounce your last name for me.

8 **MS. HRABE:** Hrabe.

9 **THE COURT:** Mr. Hrabe -- Ms. Hrabe. Well, I should
10 know that. I'm from Horry County and we don't pronounce the
11 H on the -- on Horry either. So I should have known that.

12 But anyway, Ms. Hrabe, you're the alternate. You can't
13 be the foreperson. You can vote on the foreperson, but,
14 obviously, being the alternate, you can't be the foreperson.
15 Everybody else is eligible to be the foreperson. Knock on
16 the door, let the bailiff know.

17 What I'm going to do is there are a number of motions
18 that the Court must decide in this matter before we would
19 start with the opening statements of the attorneys. That's
20 going to take probably a couple of hours. No sense in you
21 waiting around for that to be done and then coming back at
22 4:00 this afternoon for opening statements.

23 After you select a foreperson and tell the bailiff,
24 you're excused til tomorrow morning. Be in the jury room by
25 9:30. Be in that jury room by 9:30.

1 The bailiff will explain to you how to get back here
2 and get to the jury room or where they want you to assemble.
3 But please show up in time so that you're in the jury room
4 by 9:30, please. With that, retire to the jury room, select
5 your foreperson. Thank you.

6 (Whereupon the jury exited the courtroom at 1:14 pm)

7 **THE COURT:** All right. Counsel, what we'll do is --
8 it's 1:15 now. Y'all be back at 2:30. Be back at 2:30 and
9 we'll start the motions at that point in time. And then
10 we'll start with opening statements in the morning by 9:30.
11 But we'll talk about that then, okay? Y'all can go. Thank
12 you.

13 (Whereupon court was in recess at 1:15 pm)

14 (Whereupon the bailiff informed the Court the
15 foreperson would be juror 34, Richard Bulger)

16 (Whereupon court reconvened at 2:33 pm)

17 **THE COURT:** Thank you very much. You may be seated.
18 Thank you. All right. This is 2012-GS-23-2455 and 2013-GS-
19 23-698, the State of South Carolina versus Michael E.
20 Williams. There's a motion by the State for admission of an
21 out-of-court statement pursuant to section 17-23-175. The
22 State ready to proceed?

23 **MS. BENTLEY:** Yes, Your Honor.

24 **THE COURT:** All right.

25 **MS. BENTLEY:** The State calls Sarah Davis.

SARAH DAVIS - DIRECT EXAMINATION BY MS. BENTLEY

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1 **THE COURT:** All right. Please come around to be sworn,
2 ma'am. Just come right around up here, please.

3 **MADAME CLERK:** Ma'am, would you please place your left
4 hand on the Bible and raise your right hand.

5 **Sarah Davis,** being duly
6 sworn testified as follows;

7 **MADAME CLERK:** Thank you. Please be seated. Please
8 state your name for the record.

9 **MS. DAVIS:** Sarah Davis.

10 **MADAME CLERK:** Thank you.

11 **Direct Examination by Ms. Bentley:**

12 Q. Ms. Davis, where are you employed and in what capacity?

13 A. I work for the Julie Valentine Center. And I'm their
14 clinical coordinator.

15 Q. Okay. Have you always been the clinical coordinator
16 for the Julie Valentine Center?

17 A. I've not. That's a new position that I started in
18 March of this year.

19 Q. Okay. What did you do prior to becoming a clinical
20 coordinator?

21 A. I have been a forensic interviewer there since July of
22 2011.

23 Q. As clinical coordinator do you still perform forensic
24 interviews?

25 A. I do.

SARAH DAVIS - DIRECT EXAMINATION BY MS. BENTLEY

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1 Q. Okay. And when did you first begin performing --
2 pardon me. Let me take you back. Tell me about your
3 educational background.

4 A. I have a bachelor's degree in psychology from Clemson
5 and a master's in social work from the University of South
6 Carolina.

7 Q. Do you have additional training or certificates?

8 A. I do. I'm a licensed social worker in the State of
9 South Carolina.

10 Q. Okay. Do you attend classes regularly in the field of
11 either social work or forensic interviewing?

12 A. I do.

13 Q. Do you have particularized training in forensic
14 interviewing?

15 A. I do. I've attended the forty hour Child First
16 training course. I attended that back in July of 2011. And
17 I've also attended various advanced trainings in forensic
18 interviewing.

19 Q. Okay. When you were simply a forensic interviewer,
20 not a clinical coordinator at the Julie Valentine Center,
21 what were your primary duties?

22 A. I would conduct forensic interviews with children or
23 adolescents that were referred to us. I would prepare
24 reports based on those forensic interviews. I would testify
25 in court when necessary, attend multi-disciplinary team

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1 staffings.

2 Q. Could you tell the Court briefly what a forensic
3 interview is?

4 A. Sure. A forensic interview is a semi-structured,
5 developmentally appropriate, non-leading method of
6 questioning children about allegations of abuse.

7 Q. Okay. And how much experience do you have in
8 conducting forensic interviews with children?

9 A. A little over three years.

10 Q. And in those three years how many forensic interviews
11 have you conducted? Do you know?

12 A. I've done just over five hundred and thirty.

13 Q. What type of questions are you trained to use in a
14 forensic interview?

15 A. We use non-leading questions.

16 Q. What is the reason for that?

17 A. Well, in the forensic interview I want any information
18 that I get from the child to be information that's from them
19 and not something that I suggested to them.

20 Q. Okay. Do you know the alleged victim in this case,

21 Minor?

22 A. I do.

23 Q. How do you know her?

24 A. I did a forensic interview with her.

25 Q. What person or agency referred her for this forensic

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- 1 interview?
- 2 A. She was referred by Detective Robertson with the
- 3 Greenville County Sheriff's Office.
- 4 Q. What date was the forensic interview conducted?
- 5 A. I interviewed her on April 30th, 2012.
- 6 Q. And do you recall how old she was at that time?
- 7 A. She was five.
- 8 Q. Tell me if you did anything to preserve the interview
- 9 as it was conducted.
- 10 A. I made an audio and video recording.
- 11 Q. Okay. I'm going to show you what has been marked as
- 12 State's exhibit 7. Tell me if you can identify State's
- 13 exhibit 7.
- 14 A. That's the DVD of the interview that I did with **Minor**
- 15 Q. And how do you know that?
- 16 A. Because of the -- what's written on it. This is how we
- 17 mark all of our DVD's that are copied for court.
- 18 Q. Did you have a chance to watch this particular disk?
- 19 A. I did.
- 20 Q. And is it a fair and accurate representation of your
- 21 interview with **Minor** on April 30th, 2012?
- 22 A. It is.
- 23 Q. Have any additions been made or deletions been taken
- 24 from this disk?
- 25 A. No.

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1 Q. So it is exactly as the interview happened with Minor

2 A. Yes.

3 Q. All right. In regard to the forensic interview, please
4 describe the forensic interview room.

5 A. So we conduct a forensic interview in a room that does
6 not have very many furnishings in it. There are two chairs
7 in there. And then there's an easel with some easel paper
8 on it. We have tissues, tape dispenser and then
9 anatomically correct drawings that we use. So there's not a
10 whole lot of stuff in the interview room.

11 Q. Okay. And why is that?

12 A. Well, we really want to minimize the distractions for
13 the child while we're talking to them. And we also keep the
14 room free of, you know, toys or things like that for the
15 child to play with because the interview is for the purpose
16 of fact-finding. And so we want to keep play and fantasy
17 separate from the interview.

18 Q. What, if any, concerns did you have about Minor
19 ability to understand the questions you asked her?

20 A. There were some questions that I asked Minor that she,
21 you know, may have had some difficulty with. But the
22 questions that she had any difficulty with were -- it was
23 developmentally appropriate for her to maybe have some
24 trouble with those, like questions regarding -- with
25 prepositions, like if something was on or inside, that type

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1 of thing. Five year olds oftentimes have trouble with those
2 questions. So those were some that she had difficulty with.

3 Q. Did any of her responses give you pause as to her
4 ability to, I guess, understand what was being asked of her
5 aside from those prepositional issues?

6 A. No.

7 Q. Okay. And were there portions of the interview where
8 you experienced any difficulty understanding **Minor**

9 A. Her speech was difficult to understand especially at
10 the beginning of the interview. During the rappore building
11 phase I had to spend some time just getting to know how she
12 said certain words.

13 Q. Okay. Did she have any sort of speech impediment or
14 was it just ...

15 A. I believe she received speech therapy at school. So
16 I'm not sure what type of -- if she had a diagnosis
17 associated with that. But she just -- so I had some
18 difficulty understanding her speech. And it took me a
19 little bit of time to learn how she said certain things.

20 Q. Did you do anything to make sure that you heard her
21 correctly?

22 A. Yes. I would repeat back to her what she would say.
23 And that was just to give her a chance to clarify if she
24 said something and I repeated it back incorrectly, you know,
25 what she -- said back to her what she had not said, then it

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1 would give her an opportunity to correct me to let me know,
2 you know, what it was that she really had said.

3 Q. And did she correct you during the interview at all?

4 A. She did.

5 Q. All right.

6 **MS. BENTLEY:** Your Honor, at this time I would seek to
7 move exhibit 7 into evidence for purposes of this hearing
8 and play it for the Court to make a determination under 17-
9 23-175.

10 **THE COURT:** Is there any objection from the Defense?

11 **MS. MANIGAULT:** Your Honor, may I reserve my objection
12 until the tape is played and viewed by the Court?

13 **THE COURT:** I'm sorry, you haven't had a chance to ---

14 **MS. MANIGAULT:** I have.

15 **THE COURT:** Okay.

16 **MS. MANIGAULT:** I have.

17 **THE COURT:** All right. So, I mean, if you know you
18 have some objections, I guess I would like for you to bring
19 them to the Court's attention now before I even have a
20 chance to view it.

21 **MS. MANIGAULT:** Your Honor, my objection is that the
22 tape should not be allowed. My client did not have an
23 opportunity to be there for cross examination or any
24 representative on his behalf. It's generally dealing with
25 the confrontation clause. And this tape, as I have viewed

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1 it, goes far beyond the out-of-court statement being
2 relative to time and place.

3 **THE COURT:** All right. Solicitor.

4 **MS. BENTLEY:** Your Honor, pursuant to 17-23-175 in
5 order to address that confrontation clause issue the State
6 must make the child available for cross examination. The
7 State will be calling [REDACTED] Minor as a witness in the
8 trial.

9 **THE COURT:** All right. Very good. At the present time
10 the Court's going to allow the playing of the DVD. You may
11 proceed.

12 **MS. BENTLEY:** And, Your Honor, may Ms. Davis step down
13 so we don't have to play the video on top of her face?

14 **THE COURT:** Certainly. You're not going to be asking
15 her any questions during ---

16 **MS. BENTLEY:** No, sir, Your Honor.

17 **THE COURT:** --- while it's being played? Then, fine.
18 Yes, ma'am, you can step down. No problem.

19 (Whereupon State's exhibit 7 was played for the Court)

20 (Whereupon the video was ended)

21 **THE COURT:** You want the witness to resume the stand?

22 **MS. BENTLEY:** Your Honor, I don't have any further
23 questions for her. If Ms. Manigault has any cross exam,
24 I'll bring her back.

25 **THE COURT:** All right, ma'am, if you want to come back,

SARAH DAVIS - CROSS EXAMINATION BY MS. MANIGAULT

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1 please. Cross examination.

2 **MS. MANIGAULT:** Thank you, Your Honor.

3 **Cross Examination by Ms. Manigault:**

4 Q. Ms. Davis, there was a point in the tape she said
5 yesterday he touched my bottom.

6 A. Right.

7 Q. And you asked her was it this -- later on was it the
8 same time she was describing before?

9 A. Correct.

10 Q. And she said no.

11 A. Correct.

12 Q. Then you asked her had you seen him since what you
13 described? And she said, no.

14 A. Right.

15 Q. But then you went back to ask her again about what she
16 was wearing. The first time she told you she was wearing
17 shorts.

18 A. Right.

19 Q. The last time she told you she was wearing a dress?

20 A. When she had the doll in her hands she said she was
21 wearing the dress, yes.

22 Q. All right.

23 **MS. MANIGAULT:** No further questions, Your Honor.

24 **THE COURT:** Any redirect?

25 **MS. BENTLEY:** No, Your Honor. Not at this time.

1 **THE COURT:** You may step down, ma'am. All right.

2 Solicitor, further witnesses on your motion?

3 **MS. BENTLEY:** Not for our motion on your 17-23-175,

4 Your Honor.

5 **THE COURT:** All right. Ms. Manigault, any witnesses
6 you'd like to present?

7 **MS. MANIGAULT:** No witnesses, Your Honor.

8 **THE COURT:** All right. Very good. All right.

9 Solicitor, I'd be glad to hear from you.

10 **MS. BENTLEY:** Your Honor, we have heard from Sarah
11 Davis with the Julie Valentine Center. She's a qualified
12 forensic interviewer. She's performed over five hundred of
13 these in the past. She has an educational background in
14 addition to the forty hours of training.

15 So I believe that she is a -- qualified to perform a
16 forensic interview. The statement was given in response to
17 questioning conducted during an investigative interview.
18 Audio/visual recording was made. We were able to view that.
19 The child will be testifying at trial.

20 Your Honor, we believe that the child's statements were
21 elicited through non-leading questioning. She had just
22 turned five. So there were times that questions were re-
23 asked or re-phrased. As Ms. Davis testified, she had a
24 little bit of problem understanding prepositional phrases
25 and which is normal for someone of her cognitive ability.

1 We believe that this statement was detailed. It had
2 internal coherence. And we believe that it should be
3 admissible under 17-23-175.

4 **THE COURT:** All right. Thank you. All right, Ms.
5 Manigault. I'll be glad to hear from you, ma'am.

6 **MS. MANIGAULT:** Please the Court, Your Honor. Your
7 Honor, we believe that this video goes way beyond the time
8 and place that is alleged for the assault.

9 We believe that the interviewer -- I agree with
10 footnote 4 in State versus Cromer that the title forensic
11 interviewer is a misnomer. We believe that the interviewer
12 not using scientific methods or not explaining what
13 scientific methods they used did present a lot of leading
14 questions, repetitive questions, which, for me as an adult,
15 was tiring and it appeared to be tiring to the child also.

16 And it appeared that the interviewer was soliciting
17 answers that she believed should have come from the child
18 according to whatever information was given to her. Your
19 Honor, we believe that the forensic or the interviewer may
20 assist the investigation, but we don't believe that this
21 tape should be allowed into evidence at this -- at any
22 point.

23 **THE COURT:** All right. Thank you, ma'am. All right.
24 Pursuant to 17-23-175 the admissibility of out-of-court
25 statement of child under 12 regarding the determination of

1 trustworthiness, the -- for the purposes of that section the
2 alleged victim in this matter does fit the definition of a
3 child under subsection (c) and that -- also that for the
4 purposes of the section, the investigative interview was
5 questioning of the child by someone as set forth in
6 subsection (d), those parts were set forth.

7 The statute indicates that in court of general sessions
8 an out-of-court statement of a child is admissible. And
9 there are four parts to that. One is the statement was
10 given in response to questioning conducting -- conducted
11 during an investigative interview of the child. I think
12 that's clear for the purposes of the video that this was
13 done.

14 Two, an audio and visual recording of the statement is
15 preserved on film, videotape or other electronic means. And
16 I do find that that was also done as viewed by the Court in
17 this motion.

18 Three, the child testifies at the proceeding and is
19 subject to cross examination on the elements of the offense
20 and the making of the out-of-court statement. I've been
21 assured by the assistant solicitor prosecuting this case
22 that such will take place during the trial of this matter
23 against the Defendant. And, therefore, I am taking that as
24 an affirmative statement that will take place. And I find
25 that has been so properly covered.

1 Four, the Court finds in a hearing conducted outside
2 the presence of the jury, which is what we're doing right
3 now, that the totality of circumstances surrounding the
4 making of the statement provides particularized guarantees
5 of trustworthiness.

6 Based upon what I've heard from the testimony of the
7 interviewer, Ms. Davis, and the Court's observation of the
8 interview, I do find that this section has been properly
9 shown to the Court. I do not find that there's any reason
10 to find otherwise than the making of the statement shows
11 particularized guarantees of trustworthiness based upon what
12 I've been able to observe in the testimony of the witness.

13 So in that, though, the Court has to make certain
14 findings, that is in the (b) section. So in determining
15 whether or not a statement possesses the particularized
16 guarantees of trustworthiness the Court can consider, but
17 not limited to the following factors. So let's go over the
18 ones that they have set forth.

19 The statement, whether the statement was elicited by
20 leading questions, I've listened to the questions that were
21 asked by the interviewer, Ms. Davis, in this matter of the
22 alleged victim. While there may have been some repetitive
23 questions, I do not find that the interviewer was suggesting
24 answers in the questions. I do not find that by the
25 questions she asked she was giving answers to the alleged

1 victim as to what answers should be given in response to the
2 questions. And whether or not a question was asked more
3 than once or several times, I still do not find that the
4 answer was suggested and the -- that the child was being
5 forced or coached in any way to give any particular answer.

6 Two, whether the interviewer has been trained in
7 conducting investigative interviews -- interviews of
8 children, I find based upon her testimony that she has
9 received necessary training to conduct interviews. I find
10 that she has conducted a substantial number of interviews
11 and that -- I find that her training appears to the Court to
12 be sufficient to allow her to conduct this type of
13 interview.

14 Three, whether the statement represents a detailed
15 account of the alleged offense, regarding the two offenses
16 for which the Defendant is charged, that's criminal sexual
17 conduct with a minor, first degree, and criminal sexual
18 conduct with a minor, third degree, based upon the matters
19 presented and the answers given, if that evidence is so
20 believed by the jury, it would represent an account, a
21 detailed account of the offenses for which the Defendant is
22 charged. Looking at the indictments that were previously
23 read to the jury in this matter, I do find that number three
24 has been satisfied.

25 Four, whether the statement has internal coherence, I

1 find, again, whether or not there was repetitive questions,
2 that sort of helps the Court determine whether or not there
3 has been internal coherence regarding the statements or
4 answers given by the alleged victim in this matter. And I
5 do find that based upon the Court's observation of the
6 videotape and her answers that there has been an overall
7 internal coherence regarding her statements as to what may
8 have taken place.

9 And, five, the sworn testimony of any participant which
10 may be determined as necessary by the Court, I don't find
11 that necessary except for, obviously, the sworn testimony
12 that was given by Ms. Davis regarding the circumstances
13 surrounding the interview and her particularized training in
14 this matter. That is the only testimony I find that was
15 necessary in addition to the Court's viewing of the
16 videotape.

17 So, therefore, based upon all of that, I do find that
18 in accordance with the motion by the State pursuant to
19 section 23-175 that this out-of-court statement made by the
20 alleged victim in this matter is proper to be placed in
21 evidence in this case and played to the jury in this trial
22 again with the assertion by the solicitor that the alleged
23 victim in this matter will testify and be subject to cross
24 examination in this particular case.

25 Anything further from the State on this?

1 **MS. BENTLEY:** Nothing from the State, Your Honor.

2 **THE COURT:** Anything further from the Defense on that
3 particular matter?

4 **MS. MANIGAULT:** Nothing, Your Honor.

5 **THE COURT:** All right. Very good.

6 There was a -- there needs to be a Jackson v. Denno
7 hearing also, is that correct?

8 **MS. BENTLEY:** Yes, Your Honor. The Defendant made a
9 written statement.

10 **THE COURT:** All right. Very good. There was a written
11 statement?

12 **MS. BENTLEY:** Yes, sir, Your Honor.

13 **THE COURT:** Okay. And have you had that pre-marked by
14 ---

15 **MS. BENTLEY:** Yes, sir, ---

16 **THE COURT:** --- the court reporter?

17 **MS. BENTLEY:** --- Your Honor.

18 **THE COURT:** Great. Why don't we take a short break,
19 five minutes, and then we'll come back and do your Jackson
20 v. Denno hearing, okay?

21 **MS. BENTLEY:** Thank you.

22 **THE COURT:** Thank y'all.

23 **MS. BENTLEY:** And, Your Honor, may Ms. Davis be excused
24 for the remainder of the afternoon?

25 **THE COURT:** Any objection to that, Ms. Manigault?

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1 MS. MANIGAULT: None, Your Honor.

2 **THE COURT:** All right. Ma'am, you're excused til
3 tomorrow.

4 (Whereupon, court was in recess at 3:38 pm)

5 (Whereupon court reconvened at 3:45 pm)

6 **THE COURT:** I understand you have a Jackson v. Denno
7 hearing.

8 MS. BENTLEY: Yes, sir. One witness.

9 THE COURT: All right. You want to call the witness,
10 please.

11. **MS. BENTLEY:** Investigator Michael Robertson, please.

12 **THE COURT:** All right, sir. If you'd come around and
13 be sworn, sir. Put your left hand on the Bible and raise
14 your right hand, please, sir.

15 Michael Robertson, being
16 duly sworn testified as follows;

17 **THE COURT:** Very good, sir. Sit down and state your
18 full name for the record, please.

19 MR. ROBERTSON: Michael Robertson.

20 **THE COURT:** All right, solicitor.

21 Direct Examination by Ms. Bentley:

22 Q. Investigator Robertson, where are you employed and in
23 what capacity?

24 A. I'm employed with the Greenville County Sheriff's
25 Office. I'm in the Crimes Against Children's Unit.

MICHAEL ROBERTSON - DIRECT EXAMINATION BY MS. BENTLEY

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1 Q. How long have you been employed by the sheriff's
2 office?

3 A. The 23rd of this month will be twenty-five years.

4 Q. And have you always been in the Crimes Against
5 Children's Unit?

6 A. I have not.

7 Q. Tell me about -- a little bit about your background in
8 law enforcement.

9 A. When I was hired I went to the Criminal Justice
10 Academy. I spent ten years in uniform patrol, was
11 transferred to the Judicial Service Division where I spent
12 eleven years. In July, 2010 I transferred to the CID Unit,
13 which is Criminal Investigations Unit where I am now
14 assigned to the Crimes Against Children's Unit.

15 Q. All right. Were you in the Crimes Against Children's
16 Unit in late March, early April, 2012?

17 A. Yes.

18 Q. And in your capacity as the investigator did you begin
19 an investigation into this Defendant, Mr. Michael Williams?

20 A. I did.

21 Q. Please tell me what date that report came on your desk.

22 A. I didn't bring it with me. I ---

23 Q. Sorry. Do you recall the approximate time-frame that
24 you began your investigation into this Defendant?

25 A. I think it was March 31st.

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1 Q. Okay. And, investigator, as it relates to a statement,
2 did you actually speak to Mr. Williams during your
3 investigation?

4 A. I did.

5 Q. And can you please tell me how you initially came into
6 contact with him?

7 A. On May the 3rd I went to Mr. Williams' residence and
8 made contact with him, advised him that I was investigating
9 a case that involved him and I would like for him to come
10 down to the office.

11 Q. And did he agree to do that?

12 A. He did.

13 Q. Did he come down to the office?

14 A. He did. He came down the next -- next day, I think,
15 around 3:00 in the afternoon.

16 Q. And do you recall where you spoke with him?

17 A. In my office.

18 Q. And tell me a little bit about your office. What's it
19 look like?

20 A. It's a room that has an L-shaped desk, two chairs in
21 the front, some plaque stuff on the front, on the walls of
22 the office.

23 Q. Okay. And how were y'all seated when you spoke to Mr.
24 Williams?

25 A. I was behind the desk and he was sitting in the chair

MICHAEL ROBERTSON - DIRECT EXAMINATION BY MS. BENTLEY

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- 1 on the other side of the desk.
- 2 Q. Was he handcuffed?
- 3 A. He was not.
- 4 Q. Was he free to leave?
- 5 A. He was.
- 6 Q. Did you make any threats against him?
- 7 A. I did not.
- 8 Q. Did you advise him of the allegations against him?
- 9 A. I did.
- 10 Q. Did you ask him whether or not he wanted to speak to
- 11 you?
- 12 A. I did. I presented him with a waiver of rights form.
- 13 I asked him if he could read. He told me he could. I asked
- 14 him if he was willing to speak with me about the case, to
- 15 read the form, place his initials by -- in front of each
- 16 sentence ---
- 17 Q. Um-hum (affirmative).
- 18 A. --- and then sign the bottom of the form.
- 19 Q. Okay. So you did ask him if he wanted to speak to you?
- 20 A. I did.
- 21 Q. Did you -- did you deprive him of anything during your
- 22 conversation?
- 23 A. No.
- 24 Q. Bathroom breaks, food, water?
- 25 A. No. He never asked. And I never asked him if he

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1 wanted one.

2 Q. Okay. About how long were you and Mr. Williams in each
3 other's company?

4 A. I'm going to -- I'm going to estimate, not longer than
5 an hour.

6 Q. Okay. I'm going to show you what's been marked as
7 State's exhibits 5 and 6. And at this point will you just
8 tell me if you recognize these?

9 A. I do.

10 Q. Okay. Could you please tell me what exhibit 5 is?

11 A. This is the Miranda Warnings, his waiver of rights
12 form.

13 Q. Okay. And is that the form that you read Mr. Williams?

14 A. This is the one he read, yes.

15 Q. Okay. And how do you know that?

16 A. He placed his initials by each sentence and then signed
17 the bottom.

18 Q. Okay. And was anyone else in your office when he did
19 that?

20 A. No.

21 Q. So who was the witness to that?

22 A. Me.

23 Q. Okay. And what is the date on it? Is it dated?

24 A. The date is May 4th.

25 Q. Okay. And what time?

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1 A. 14:55 hours.

2 Q. Which is approximate 3:00?

3 A. 3:55.

4 Q. Okay. 2:55?

5 A. I'm sorry, 2:55.

6 Q. Okay. And did you read those rights aloud or did you
7 have him read those rights?

8 A. I had him read those rights.

9 Q. Did he read them aloud or to himself?

10 A. To himself.

11 Q. Okay. And could you please go ahead and tell us today
12 what those rights are that he read.

13 A. Before we ask any questions you must understand your
14 rights. You have the right to remain silent. Anything you
15 say can be used against you in court.

16 You have the right to talk to a lawyer for advice
17 before we ask you any questions and to have him with you
18 during questioning. If you have no money to pay for a
19 lawyer's fee, the court will appoint one to represent you
20 without cost, if you wish.

21 If you decide to answer questions now without a lawyer
22 present, you will still have the right to stop answering at
23 any time. You also have the right to stop answering at any
24 time until you talk to a lawyer.

25 And then the paragraph says I have read the statement

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1 of my rights and I understand what my rights are. I am
2 willing to make a statement and answer questions.

3 I do not want a lawyer at this time. I understand and
4 know what I am doing. No promises or threats have been made
5 to me. And no pressure or coercion of any kind has been
6 used against me.

7 Q. And you said that he put his initials by each line?

8 A. He did.

9 Q. And did he sign or otherwise indicate that he read the
10 entire thing?

11 A. That's correct.

12 Q. Where did he do that?

13 A. On the bottom under the waiver of rights paragraph.

14 Q. Okay. Did you discuss those with him to see if he had
15 any trouble understanding them?

16 A. I advise all my witnesses and the suspects I speak with
17 when I do the forms that when they read them if they have
18 any questions before they initial them to ask me, I'll
19 explain them to them. And if they understand them, that's
20 when they place their initials.

21 Q. Okay. Did Mr. Williams appear to be under the
22 influence of anything or suffering from anything that would
23 have impaired his ability to understand what was going on?

24 A. He did not, no.

25 Q. Okay. And could you please tell me what exhibit 6 is

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1 at this time?

2 A. This is a statement that Mr. Williams had written out.

3 Q. Okay. And is the writing on that statement, is that
4 Mr. Williams' writing or did you write it on his behalf?

5 A. No, this is his writing.

6 Q. Okay. And how did he come to write that statement?

7 A. I asked him if he would give me a written statement on
8 his relationship and the dealings he has with the victim.
9 And this is the statement he gave me.

10 Q. Okay. And is it initialed, signed, anything like that?

11 A. It is signed.

12 Q. Okay. And who is it signed by?

13 A. By Mr. Williams.

14 Q. All right. Is it also dated?

15 A. It is.

16 Q. Okay. What's the date?

17 A. May the 4th, 2012.

18 Q. Okay. Is there a time on that or no?

19 A. There is no time, no.

20 Q. Okay. Did Mr. Williams at any time ask you to stop
21 questioning, to stop the writing, to do anything like that?

22 A. No. No, ma'am, he did not.

23 Q. I have no further questions at this time. Please
24 answer any questions Ms. Manigault may have.

25 **THE COURT:** Cross examination.

MICHAEL ROBERTSON - CROSS EXAMINATION BY MS. MANIGAULT

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1 **Cross Examination by Ms. Manigault:**

2 Q. Investigator, did I understand you correctly, you said
3 the -- you asked him to write you a statement regarding his
4 relationship with **Minor**

5 A. I asked him if he would write me a statement of the
6 relationship with the mother and the allegations that I had
7 told him about.

8 Q. Okay. And you had informed him that he was being
9 investigated for what?

10 A. I advised him that he was being investigated -- the
11 allegations of that he performed oral sex on the victim and
12 had touched her inappropriately.

13 Q. Okay. All right. Thank you.

14 **THE COURT:** Any redirect?

15 **MS. BENTLEY:** No, Your Honor.

16 **THE COURT:** All right, sir. You may step down.

17 Further witnesses on behalf of the State?

18 **MS. BENTLEY:** Not for the -- no, Your Honor. No.

19 **THE COURT:** All right. Any witnesses on behalf of the
20 Defense?

21 **MS. MANIGAULT:** None, Your Honor.

22 **THE COURT:** All right. Thank you. If you'll just give
23 me a minute, please.

24 (Pause)

25 **THE COURT:** All right. Regarding the written statement

1 of the Defendant, I find that he was not in custody at the
2 time of the interview, that he voluntarily participated with
3 the investigator at the time of the interview. He was free
4 to leave at any point in time.

5 Even though the Court finds that he was not in custody
6 and made a voluntary statement, I will go on to say that he
7 was also advised of his Constitutional rights. He executed
8 a statement indicating that he understood that, that he
9 wanted to waive them, that he wanted to make a statement to
10 the representative of the sheriff's office and that he did
11 so give a written statement on May 4th, 2012 as indicated in
12 State's exhibit 6. I find that this is proper and should be
13 allowed in evidence in this particular case. Anything
14 further from the State?

15 **MS. BENTLEY:** No more motions from the State, Your
16 Honor.

17 **THE COURT:** All right. Motions from the Defense?

18 **MS. MANIGAULT:** There are none, Your Honor.

19 **THE COURT:** All right. Very good. All right. We will
20 start tomorrow, it's my intention to start at 9:30. So I'd
21 appreciate it -- Ms. Manigault, you want your client here at
22 9:15, 9:00? When do you want -- when do you want your
23 client here?

24 **MS. MANIGAULT:** Your Honor, they generally transport
25 them at nine. So 9:00 would be ---

1 **THE COURT:** 9:00 would be fine? All right. All right,
2 gentleman. I appreciate it.

3 So I would appreciate it, counsel, if y'all were in
4 place shortly after 9:00. Obviously, if there's any matter
5 that you need to bring up to the Court, then do that as
6 quickly as y'all get here so we can resolve that issue, if
7 there is one, before the jury -- so that we can get started
8 just as soon as they arrive and are situated and get started
9 hopefully right at 9:30, all right?

10 **MS. BENTLEY:** Yes, sir.

11 **MS. MANIGAULT:** Thank you.

12 **THE COURT:** Thank y'all very much.

13 (Whereupon court was in recess at 3:58 pm)

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF GREENVILLE) 2012-GS-23-10455; 0698
)
)
)
 STATE OF SOUTH CAROLINA)
) PLAINTIFF)
) vs.) TRANSCRIPT OF RECORD
)
 MICHAEL E. WILLIAMS)
) DEFENDANT)

October 7, 2014
 Greenville, South Carolina

B E F O R E:

THE HONORABLE STEVEN H. JOHN, Judge; and a jury.

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

LISA BENTLEY, ESQ.
 Attorney for the State

DOROTHY MANIGAULT, ESQ.
 Attorney for the Defendant

APRIL HERRON
 Official Court Reporter

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1 (WHEREUPON, State's Exhibits No.s 1-10
2 were marked for identification on October 6,
3 2014 by Court Reporter, Susan Hudgins.)

4 THE COURT: The jury has asked whether or not
5 they can take notes in this matter so I wanted to
6 cover that with y'all before we got started as to the
7 position of the State and Defense.

8 What's the Solicitor's position?

9 MS. BENTLEY: Your Honor, the State has no
10 objection to the jury taking notes.

11 THE COURT: And from the Defense, Ms. Manigault?

12 MS. MANIGAULT: Your Honor, my only objection
13 would be that they would not be by paying --

14 THE COURT: Attention?

15 MS. MANIGAULT: A 100 percent attention.

16 THE COURT: I do appreciate that.

17 Solicitor, remind me again how many potential
18 witnesses you have, please, ma'am.

19 MS. BENTLEY: I have eight potential witnesses.
20 But I believe at this point I will be calling six.

21 THE COURT: Okay, six.

22 And on the Defense the potential is one,
23 Ms. Manigault, is that correct?

24 MS. MANIGAULT: That's correct, Your Honor.

25 THE COURT: All right. I'm going to, in this

1 particular case, I'm going to have the jury -- I'm
2 going to explain to them that we're not going to be
3 allowing them to take notes during this particular
4 trial. It's not going to be of any great length. If
5 it was going to last a number of days, I probably
6 would be letting them do so. But with the number of
7 witnesses and my understanding of the case, I'm going
8 to say that -- that we're not going to be taking
9 notes in this particular trial. All right.

10 With that, is The State ready for the jury?

11 MS. BENTLEY: Yes, sir, Your Honor.

12 THE COURT: And the Defense?

13 MS. MANIGAULT: Yes, sir.

14 THE COURT: Very good.

15 Ask the jury to come in, please, Madam Clerk.

16 And yesterday I don't know if I told you, I
17 might have come in after y'all had left. Juror
18 number 34 is the foreperson. Juror number 34 is the
19 foreperson of the jury.

20 (WHEREUPON, the jury came into open court at
21 approximately 9:36 a.m.)

22 THE COURT: All right, Mr. Bulger, the jury has
23 selected you to be the foreperson for this particular
24 jury; is that correct?

25 MR. FOREPERSON: Yes, sir.

1 THE COURT: All right, very good. And will you
2 and Ms. Wood, would y'all just always occupy those
3 two seats that you're currently in for the foreperson
4 and the alternate. I just need to know where the
5 foreperson and the alternate are.

6 Rest of you, ladies and gentlemen, when you come
7 back from the jury room, just fill in wherever it is
8 you happen to be filing into the courtroom, there's
9 no other assigned seating other than the foreperson
10 and the alternate.

11 So, with that very first thing that's going to
12 happen is the administration of the oath. So, if all
13 of you would please stand at this time.

14 THE CLERK: Please raise your right hand.

15 (WHEREUPON, the jury was sworn.)

16 THE CLERK: Thank you, please be seated.

17 THE COURT: Is there any member of the jury that
18 did not affirmatively take the oath as given by the
19 Clerk of Court? If so, please stand. No juror
20 having stood, I find that the jury is properly sworn
21 in this matter.

22 All right, ladies and gentlemen, you have been
23 selected to be the jury in the cases that have been
24 brought by the State of South Carolina against the
25 Defendant, Michael E. Williams. In effect, you will

1 be deciding two charges or two cases. That's
2 criminal sexual conduct with a minor, first degree,
3 criminal sexual conduct with a minor, third degree.
4 I'll explain the differences to you later on when it
5 comes to the charge on the law. But suffice it to
6 say there are two different charges, they have
7 different elements and you'll have to decide both of
8 them. Because you decide one way on one does not
9 mean that you are obligated to find the same in the
10 other charge. They could be the same, they could be
11 different. Because the -- how you apply the facts
12 might be different. The elements are some different.
13 So, just understand going in there will be two
14 charges ultimately you will have to resolve.

15 In this particular matter the jury panel is
16 going to be operating as the judges of the facts of
17 this particular case. I will not indicate to you at
18 any point in time what I believe the facts of this
19 case are because that's not my job, that's not my
20 responsibility. It will be your job and your
21 responsibility to listen to the facts and evidence
22 presented in this case and find that evidence which
23 convinces you it's true. Now, based upon the
24 evidence you find to be true, you will apply the law
25 that I will give to you at the end and then make your

1 decision whether or not The State has proven the
2 Defendant guilty beyond a reasonable doubt of the
3 crime or crimes charged against him.

4 In looking at the facts and evidence, being the
5 judges of the facts, you will be called upon to judge
6 the credibility, that is the believability of
7 witnesses that come before you and testify under
8 oath. You might be thinking how do I judge
9 somebody's credibility and believability? You do it
10 every single day of your life. When somebody tells
11 you something you're automatically judging whether or
12 not you believe them. How do you do that? You do it
13 by using your good common sense. How you conduct
14 your own affairs. That's what we're asking you to do
15 here during this trial. Use your good common sense,
16 apply it to the facts and evidence presented and find
17 that evidence which convinces you its truth.

18 Now, I told you on more than one occasion that
19 The State has the burden to prove the Defendant
20 guilty beyond a reasonable doubt. According to our
21 rules, governed the conduct of criminal trials in
22 this state, across the United States, a Defendant is
23 presumed innocent of the charges brought against them
24 unless and until The State can prove those charges by
25 evidence which convinces you of the guilt of the

1 Defendant beyond a reasonable doubt. I tell juries
2 all the time the Defendant doesn't even need to show
3 up for trial. Because they don't have anything to
4 prove to you. They have nothing to show to you. The
5 State must prove the case to you beyond a reasonable
6 doubt by the evidence that is presented in this
7 particular matter.

8 Now, during the course of trial, how we'll
9 proceed. Be done with these comments in just a few
10 minutes. The attorneys will give you their opening
11 statements. After the opening statements we'll hear
12 the evidence. Witnesses will come before you and
13 testify under oath. We'll receive some other type of
14 evidence in this particular case. When we're done
15 with the evidentiary portion of the trial we'll have
16 the closing arguments of the attorneys. And then I
17 will give you the charge on the law. The law that
18 you will apply to the facts and evidence that you
19 find to be true and then I'll submit the case to you
20 for your deliberations and your unanimous decision in
21 this particular matter.

22 Now, I'll remind you that the opening statements
23 and the closing arguments of the attorneys, that is
24 not evidence. Cannot be considered by you as
25 evidence in this case. That comes during the course

1 of trial. The witnesses testifying, the introduction
2 of any other type of evidence. Now, those opening
3 statements, opening statements they are by the
4 attorneys to try and introduce their particular side
5 to you of this particular matter. The closing
6 arguments, they will be asking you their comments on
7 the facts and what they will be asking you to do as a
8 result of your unanimous verdict in this matter.
9 They are important but you just need to remember
10 they're not evidence, you're the judges of the facts
11 of the case when the evidence does come in.

12 During the course of the trial there also might
13 be certain motions or objections or matters raised to
14 the court by the attorneys. If I rule on those in
15 your presence then they'll send you back to your jury
16 room so I can discuss them more fully with the
17 lawyers. Please remember, again, I'm not making any
18 comments on the facts, I'm not making any comments on
19 who to believe or not to believe, that's your job,
20 your responsibility. But that will be about one of
21 my duties, that is governing the conduct of the
22 trial. How the trial will proceed is something
23 proper to be received by the jury or not. But by
24 that ruling, I am just allowing it into evidence if I
25 do for your consideration, your judgment, your view

1 of the credibility and believability.

2 All right. So, with that I'll turn it over to
3 the lawyers for their opening statements.

4 Solicitor.

5 MS. BENTLEY: May it please the Court?

6 THE COURT: Yes, ma'am.

7 MS. BENTLEY: Ms. Manigault.

8 MS. MANIGAULT: Yes.

9 OPENING STATEMENT

10 MS. BENTLEY: The fact that an adult could
11 physically abuse a child is not something that anyone
12 wants to talk about. The fact that an adult,
13 particularly a trusted adult could sexually abuse a
14 child is not something that anyone wants to believe.
15 Much less discuss in detail. Unfortunately, child
16 sexual abuse is a reality in Greenville County and it
17 is the reason we are in trial today. As you heard
18 yesterday, my name is Lisa Bentley, I'm the Assistant
19 Solicitor on this case. And I will be presenting
20 facts that prove the Defendant committed the crimes
21 for which he has been accused.

22 As you heard the Judge tell you, Mr. Williams
23 has been charged with the two counts relating to
24 child sexual abuse. Criminal sexual conduct with a
25 minor in the first degree and criminal sexual conduct

1 with a minor in the third degree. Due to the nature
2 of these allegations and The State's burden of proof,
3 you will probably hear things during this trial you
4 never wanted to hear. This is not done to upset or
5 anger you. It is done because The State has to prove
6 these crimes occurred and we have to prove it in
7 certain ways.

8 Proof beyond a reasonable doubt is not just a
9 term that we dandy about lightly. I's not just
10 something that you hear on TV. It is the foundation
11 on which our criminal justice is based and we do not
12 expect you to take that burden lightly. As the Judge
13 just told you, he will explain the law and the
14 differences in these allegations at the end of the
15 trial. But there are elements for parts of the crime
16 that you need to listen for as the evidence unfolds.

17 Criminal sexual conduct in the first degree with
18 a minor. Essentially, there are two key elements
19 that you need to listen for and that I need to prove
20 during the testimony. First, is the age of the
21 victim. I must prove that the victim was under the
22 age of 11 when the abuse occurred. The date of the
23 allegation is March 31st, 2012, that was a weekend.
24 And the evidence will show that the victim in this
25 case, [REDACTED] Minor [REDACTED] had recently turned five

1 years old at that time. The second element that I
2 must prove under criminal sexual conduct with a minor
3 in the first degree is a sexual battery. And the
4 Judge will define that for you. So essentially, I
5 must prove either some type of penetration by the
6 Defendant into the victim or I must prove oral
7 genital contact. The allegation in today's case is
8 oral genital contact between the Defendant and the
9 victim.

10 Criminal sexual conduct with a minor in the
11 third degree, formally known as lewd act. The Judge
12 read you parts of that indictment yesterday and
13 you're probably wondering what exactly is a lewd
14 act? Again, he'll define it for you at the end of
15 the trial but a lewd act is touching. Any touching,
16 rubbing, anything by the Defendant on the body of the
17 Victim that is meant to arouse either the Defendant
18 or the Victim.

19 Now, that you know what this case is about and
20 what The State intends to prove, I want to tell you a
21 little bit about what you can expect during this
22 trial. And I want you to keep in mind that child
23 sexual abuse is a secret crime. It is not performed
24 out in the open, it is not performed with the help
25 of an accomplice. Child sexual abuse crimes are

1 secret. There will not be fingerprints like someone
2 would leave behind in a burglary. There often not
3 signs of abuse like you would expect in a traditional
4 assault and battery case. There are no script
5 writers here to make things sound better or fancier
6 than they are. This is real life. One unique aspect
7 of child sexual abuse crimes is that you get to hear
8 from the Victim twice. You will meet **Minor** today as
9 she is, a seven year old girl. But you also get the
10 unique ability to go back in time. And you will see
11 **Minor** interview that was audio and video recorded
12 as they do for children, and you will see her closer
13 in time to when the assault actually occurred.

14 In addition to the Victim, **Minor** you will hear
15 from her mother and you will hear from some personnel
16 who investigate crimes against children. At this
17 point I'm going to let the evidence speak for itself.
18 And I thank you. I thank for your attention, I thank
19 for your time and I thank for letting us get justice
20 in this case.

21 THE COURT: All right, Ms. Manigault.

22 MS. MANIGAULT: Thank you, Your Honor.

23 OPENING STATEMENT

24 MS. MANIGAULT: Ladies and gentlemen, good
25 morning. Again, my name is Dorothy Manigault and I

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 represent Michael Williams in this case. Your Honor,
2 has told you the charge, he read the indictments to
3 you yesterday and explained to you that the
4 indictments are only the way of getting a matter
5 before the Court. They are the charging instrument.
6 And once that matter gets before the Court then the
7 factors are The State presents the evidence, the
8 Judge gives you the law to apply to what you have
9 heard and then your job is to, as jurors, is to apply
10 the law as the Judge gave it to you regarding the
11 information that you have received. The evidence
12 that has come before you. My client, Michael
13 Williams, has entered a plea of not guilty to both
14 charges. To the CSC first and to the CSC third.

15 Your Honor, has explained to you the presumption
16 of innocence. And he will explain that again to you
17 at the end of the case. Whatever Ms. Bentley says
18 the law is and whatever I say the law is does not
19 matter to you. We would not mislead you about the
20 law but you take exactly what Your Honor says the law
21 is and apply it. And so with that The State has the
22 burden of proof to bring to you evidence beyond a
23 reasonable doubt that Michael Williams did act as
24 charged. Again, Mr. Williams has entered a plea of
25 not guilty to CSC first, criminal sexual conduct

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 first, with a minor and CSC third.

2 So, he stands as we sometimes say with a robe of
3 innocence. It's a robe akin to what Your Honor wears
4 or a trench coat that you would wear in the rain.
5 The State has to present evidence that would not only
6 unbutton on or unzip the robe, but they have to take
7 that presumption of innocence completely off. Your
8 Honor will also tell you that your attention is
9 imperative in this case. So, that you will listen
10 carefully so that Mr. Williams will receive a fair
11 trial. Thank you.

12 THE COURT: Very good.

13 All right, Solicitor, your first witness please,
14 ma'am.

15 MS. BENTLEY: The state calls Tammy Sutton.

16 THE CLERK: Ms. Sutton, if you'd please come
17 forward.

18 THE COURT: Come all the way around please
19 ma'am. Meet the Bailiff right up here.

20 THE CLERK: Please place your left hand on the
21 Bible, raise your right hand.

22 TAMMY SUTTON, after being duly sworn,
23 testified as follows:

24 THE CLERK: Thank you, please be seated. State
25 your name for the record.

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 THE WITNESS: Tammy Sutton.

2 THE CLERK: Thank you.

3 THE COURT: Yes, ma'am, Ms. Bentley.

4 DIRECT EXAMINATION

5 BY MS. BENTLEY:

6 Q Ms. Sutton, how old are you?

7 A Thirty-seven.

8 Q Do you have any children?

9 A Yes, Minor

10 Q How old is Minor

11 A Seven.

12 Q Is she a girl or boy?

13 A Girl.

14 Q Ms. Sutton, do you work or go to school?

15 A I go to Greenville Tech full-time.

16 Q And how long have you been going to Greenville
17 Tech?

18 A Year and a half, two years.

19 Q What did you do prior to going to Greenville
20 Tech?

21 A Full-time mom.

22 Q Okay. What are you studying?

23 A Computer tech.

24 Q Okay. Where are you from originally?

25 A New York State.

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 Q Were you born in New York State?

2 A Yes, ma'am.

3 Q When did you move to South Carolina?

4 A Five and a half years ago.

5 Q Was **Minor** --

6 A Less than two years old, yeah.

7 Q Okay. Who did you move to South Carolina with?

8 A Me and **Minor** and her dad.

9 Q Who is her dad?

10 A Arthur Bell.

11 Q Is he still a part of her life?

12 A No, ma'am.

13 Q And where do you currently live? You don't have
14 to give me the exact address but tell me the approximately
15 where it is?

16 A Southern Greenville.

17 Q Okay. And do you live in the same home that you
18 lived in when you first moved here?

19 A Yes, ma'am.

20 Q Okay. Who lives in that home with you?

21 A **Minor** and I.

22 Q Has it always been just the two of you?

23 A Her dad for the first year but.

24 Q Has anyone else ever lived with you?

25 A No, ma'am.

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 Q Has anyone else ever stayed with you for an
2 extended period of time?

3 A A school friend for there weeks, but.

4 Q Okay. How did you meet people when you first
5 came to South Carolina?

6 A I didn't really meet too many people because
7 **Minor** wasn't even two years old and I bought a foreclosed
8 house and just so busy trying to get settled in and fix
9 the house. And, I mean, she was only not even two years
10 old, so.

11 Q Okay. Did you make a lot of friends when you
12 moved here?

13 A No, we stayed home a lot in the beginning.

14 Q What about now?

15 A Now that she's seven we get out a lot more and
16 go to the zoo and the parks and stuff like that. We go
17 bowling.

18 Q Okay. And do you know the Defendant in this
19 case?

20 A Yes, ma'am.

21 Q What is his name?

22 A Michael Williams.

23 Q Okay. Do you remember when you first met
24 Mr. Williams?

25 A I think around December 2011.

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 Q Okay. Do you remember how you met Mr. Williams?

2 A From the nextdoor neighbor.

3 Q Who was the nextdoor neighbor?

4 A Janet Cartee.

5 Q Do you know what the relationship between

6 Mr. Williams and--

7 A Cousin.

8 Q Cartee is? Okay. Are you nervous today?

9 A Yes, ma'am.

10 Q Would you like some water?

11 A Sure.

12 Q Okay. You said you met Mr. Williams through

13 your neighbor?

14 A Yes, ma'am.

15 Q Do you recall what he was doing that led to this

16 meeting?

17 A Michael and his father were nextdoor doing some

18 work because it was like a renovating.

19 Q Renovating?

20 A That house, yes, Janet's house.

21 Q What brought you to introduce yourself?

22 A Just seeing him outside and we just started

23 talking and exchanged numbers.

24 Q Okay. Was there a motivation behind exchanging

25 numbers?

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 A There's maybe a friendship in the future.

2 Q Okay. Did you become friends with Mr. Williams?

3 A Yes, ma'am.

4 Q How did that progress?

5 A We would get together once in a while whenever
6 he was free from work. Usually like a Friday or Saturday.

7 Q What would you do when you got together?

8 A Maybe lunch or dinner or go bowling.

9 Q Okay. Would **Minor** go along?

10 A Yes, ma'am, she was always with me.

11 Q Okay. And how was Michael's interaction with

12 **Minor**

13 A He was really good with her.

14 Q Could you describe that for us a little bit
15 more?

16 A Just playing with her, giving her attention.

17 Q How did **Minor** respond?

18 A She enjoyed it. She was only four years old,
19 so.

20 Q Did she always make friends easily?

21 A It was always her and I at that point.

22 Q Okay. Would she interact with strangers?

23 A Not really. I mean, she would say, Hi, maybe.
24 I mean, we were home a lot, so.

25 Q Okay. I want to take you back to late March

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 2012. How old was **Minor** at that point?

2 A She just turned five.

3 Q When is her birthday?

4 A February 27.

5 Q What year?

6 A 2007.

7 Q Okay. And how often were you spending time with
8 Mr. Williams late spring 2012 or late, early spring 2012?

9 A We hung out for off and on for three months.
10 So, from when we met in January until February, March when
11 this happened.

12 Q Okay. You said you hung out off and on?

13 A Like maybe once a week or every other week.

14 Q Did he live nextdoor with your neighbor Janet?

15 A No, ma'am, he lived 15 minutes down the road or
16 something.

17 Q Okay. Did you -- how often did you see him
18 weekly?

19 A Like on a Friday or Saturday.

20 Q Okay. Did he ever spend the night in your home?

21 A Yes, ma'am.

22 Q Do you know how often that happened?

23 A Within that three month period about five times.

24 Q Okay. Were you and Mr. Williams engaged in any
25 type of romantic relationship?

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 A No, ma'am, it was just strictly friendship.

2 Q Okay. Did you ever engage in any flirtatious.
3 behavior, perhaps?

4 A Texting but not in person.

5 Q Okay. And did you communicate with Mr. Williams
6 a lot via text message?

7 A Yeah, we never talked on the phone but we always
8 texted.

9 Q Okay. When he would spend the night, tell me
10 how that would work as far as sleeping arrangements.

11 A I recall one night that he did sleep in her bed.
12 And one night he slept on the couch. But whenever he did
13 sleep there, Minor always slept in my bed with me in my
14 bedroom.

15 Q Okay. I want to take you back to the weekend of
16 March 31st, 2012. Do you remember that weekend somewhat?

17 A I remember him spending the night that Saturday.

18 Q That Saturday night. Do you recall what you did
19 Saturday night?

20 A Not really just that he was around for the whole
21 night.

22 Q Okay. What did you typically do on weekends
23 that he ended up spending the night?

24 A Just, you know, stuff around the house.

25 Q Okay. Did he help you with projects around the

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 house?

2 A He helped me with a couple of things, nothing
3 major.

4 Q What did he help you with.

5 A Just like a little painting or fixing an outlet
6 or putting up a shelf or something, simple stuff.

7 Q Okay.

8 A Nothing major.

9 Q Okay. And you said that he spent the night that
10 Saturday, correct?

11 A Yes, ma'am.

12 Q And do you recall where he slept that Saturday?

13 A In **Minor** bed.

14 Q And where did you and **Minor** sleep?

15 A In my bed.

16 Q Okay. At any point did you leave your bedroom
17 with **Minor** there?

18 A No, ma'am. She was always with me.

19 Q Okay. Tell me about the next day, did
20 Mr. Williams -- what time did he leave?

21 A That Sunday he left at 6:00 p.m. because **Minor**
22 and I were heading out to get my mom.

23 Q What were you headed to get your mom for?

24 A Because my mom was spending the night at my
25 house Sunday night until Friday night because I had a job

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 at a warehouse at that time.

2 Q What warehouse were you working at?

3 A WSI.

4 Q How long did you work there?

5 A Six weeks.

6 Q Okay. So, your mom would stay with you from
7 when to when?

8 A Sunday night into Friday night when I got off at
9 3:30 or whatever.

10 Q Okay. Do you remember when that job began?

11 A Like March 13th. It was like the day before my
12 birthday.

13 Q Okay. And when did that job end?

14 A Like April 14th. It was six weeks.

15 Q Okay. And your mom lived with you from Sunday
16 to Friday?

17 A Yeah.

18 Q Okay. That Sunday, did you leave the house and
19 leave **Minor** with Michael at any point in time?

20 A He was never 100 percent alone with her but I
21 would be in like a different room. He would be in the
22 playroom or something with her. I was always nearby, he
23 wasn't 100 percent alone with her, but. Or like they
24 would be outside or I would be inside or vice versa.

25 Q Okay.

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 A I was always close.

2 Q Okay. Had you previously left **Minor** and Michael
3 alone together without you nearby?

4 A Never.

5 Q Had -- did you have a set babysitter for **Minor**

6 A No, she never had no babysitter. Janet babysat
7 her at that point in time once before on New Year's Eve
8 when I went bowling. And then my mom would babysit.
9 Other than that **Minor** has no babysitters. Other than at
10 that time we were members at the YMCA and they had parents
11 night out, the first Friday of every month. So, she would
12 go there, once a month.

13 Q Okay. Was there ever a time that you asked
14 Mr. Williams to babysit **Minor**

15 A I never asked him. But at that time when I was
16 work, I had worked a Saturday March 31st, and he insisted
17 on babysitting **Minor**

18 Q Tell me about that.

19 A We were texting and I mean he was pretty
20 persistent about me letting him babysit **Minor**

21 Q I want to show you what's first been marked as
22 State's Exhibit 2. Do you recognize, and don't tell us
23 anything else, but do you recognize what's been marked as
24 State's Exhibit 2? And you can flip through that if you'd
25 like.

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 A Yes, ma'am.

2 Q Okay. And what do you recognize this to be?

3 A These are some of our texts but there are a lot
4 that are deleted.

5 Q Okay. What is -- does this appear to be your
6 phone messages or someone else's?

7 A My phone.

8 Q Okay. And are you -- are messages that you sent
9 on those pages?

10 A Yes.

11 Q How do you know that?

12 A Well, it's got my name and my number. I mean, I
13 know -- I couldn't tell you what day I said that but.

14 Q Okay. If I directed you to Message 127 through
15 136, could you give me the dates then?

16 A One twenty-seven?

17 Q Message 127, I'm sorry.

18 A To where?

19 Q One thirty-six.

20 A March 23rd and March 24th.

21 Q So, this was a conversation that lasted more
22 than one day?

23 A Yes. But like I said there's a lot of other
24 texts that are deleted in between there.

25 Q Correct. But these are just your messages that

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 you sent?

2 A Yeah.

3 Q Okay. And these are your replies?

4 A Yeah, I'm not sure if those are all my replies
5 but his are deleted.

6 Q Okay. But just going off your replies, do they
7 indicate what you said?

8 A Yes, ma'am. About babysitting and wasn't sure
9 if that was a good idea, him babysitting. And people --
10 at that time nobody really babysat **Minor**

11 Q Was that just a personal belief that you had?

12 A She was always with me. I mean, I don't work so
13 when I did work I only worked for six weeks. My mom,
14 she's grandma so she babysat **Minor** so.

15 Q But you did not allow the Defendant to babysit
16 **Minor**

17 A No, ma'am. But he was pretty persistent via
18 text about me letting him babysit.

19 Q Okay. I want to go back to the weekend of
20 March 31st. Tell me a little bit about the lay out of
21 your home?

22 A When you walk in the front door I have a pool
23 table. It's a bonus room.

24 Q Okay.

25 A Then the next room is supposed to be a dinning

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 room but it's just basically a walk through to get from
2 one room to another.

3 Q As it always functioned as a walk through?

4 A I've had an exercise bike in there, I had a
5 table and chairs in there, I had a couch in there.

6 Q Okay. So, you walk in and there's the bonus
7 room with the pool table and then the dinning room?

8 A On the left.

9 Q On the left, okay.

10 A And then the next room is the living room and
11 the kitchen. Then on the other side of the pool table is
12 my bedroom, the playroom, **Minor** bathroom and **Minor**
13 bedroom.

14 Q Okay. Tell me a little bit about **Minor**
15 playroom.

16 A It's just technically supposed to be the third
17 bedroom but we turned it into her playroom.

18 Q Okay. Are all of her toys and things in there?

19 A Yes, ma'am.

20 Q Is there a bathroom in the playroom?

21 A There's a bathroom right next to the playroom.
22 Between -- her bathroom is between the playroom and her
23 bedroom.

24 Q Okay.

25 A Then I have my own bathroom.

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 Q Okay. When -- that Sunday after Mr. Williams
2 stayed over, you said that y'all were kind of all around
3 the house all day, is that correct?

4 A Yes, ma'am.

5 Q Was there every any time when Mr. Williams was
6 alone with **Minor** in the playroom?

7 A Yes, ma'am.

8 Q Do you know approximately how long that was?

9 A I mean, I'm guessing six hours throughout the
10 day.

11 Q Okay. And what would you have been doing while
12 they were playing?

13 A I was sitting in the couch, what's supposed to
14 be the dinning room.

15 Q Okay.

16 A So, I can see. I could see what they were
17 doing, I could hear them.

18 Q Okay. What else were you doing in there?

19 A On the internet, on the computer.

20 Q Okay. And did you hear, see anything throughout
21 the day?

22 A I mean, I just heard them in there playing and
23 reading books and laughing and joking.

24 Q Would you check on them?

25 A Yes, ma'am. Numerous times.

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 Q And where were Michael and Minor in the room?

2 A Sitting on the floor.

3 Q Okay. Did you ever notice anything out of the
4 ordinary when you would walk by?

5 A Well, I would walk by to past that room to get
6 to my bedroom, to my master bath and like whenever I like
7 made contact with Michael, he just seemed like he was
8 doing something he shouldn't have been doing. I never
9 seen him do nothing but he was just acting different
10 towards me that day.

11 Q Okay. You said they were there off and on for
12 about six hours?

13 A Yeah, throughout the weekend.

14 Q Okay. What time did Mr. Williams live that day?

15 A Six p.m.

16 Q How do you know it was 6:00 p.m.?

17 A Because I had to go pick up my mom in
18 Powdersville at 6:00 p.m. and bring her to my house for
19 the weekend. I mean, for the week, I'm sorry.

20 Q Okay. And tell me about you getting ready to
21 leave that evening?

22 A It was right before 6:00 o'clock and I said, All
23 right, it's 6:00 o'clock, it's time to go get grandma.
24 And again, it's like I caught Michael off his guard or
25 something. And I didn't think nothing of it. But Minor

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 was laying there on her left side and she was tugging at
2 her shorts and her panties. Which seemed kind of odd
3 because, I mean, she had those clothes on all day. And,
4 you know, she don't mess with her clothes, they're just
5 there.

6 Q Okay. Were her clothes on or off?

7 A I asked her as soon as he walked--

8 Q Well, I don't want to talk about what you talked
9 about her yet. When you saw here was her clothing on?

10 A It was on from when I could see. But like I
11 said she was tugging at the back where I couldn't see her
12 bottom.

13 Q Okay. And where was Mr. Williams at that time?

14 A He was on the floor next to her getting up and
15 just looking like I caught him doing something or.

16 MS. MANIGAULT: Your Honor, I'm going to object
17 to her. . .

18 THE COURT: I appreciate the --

19 Why don't you rephrase your question, Solicitor,
20 so that it elicits if it can be what she actually
21 observed, saw.

22 MS. BENTLEY: Okay.

23 THE COURT: Not her impressions.

24 BY MS. BENTLEY:

25 Q Could you just describe where **Minor** was in

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 relation to where Mr. Williams was on the floor?

2 A Within three feet away.

3 Q Okay. And were -- you said **Minor** was lying
4 down?

5 A Yeah, on her left side.

6 Q Okay. And how was Mr. Williams positioned?

7 A He was just sitting on his bottom.

8 Q Do you recall which direction he was facing?

9 A He was facing the door.

10 Q Okay.

11 A So was **Minor**

12 Q So, they were facing the same direction?

13 A Yeah.

14 Q What did you do at that point in time?

15 A At that point in time Michael left and then I
16 questioned **Minor** about what was going on with her. You
17 know, what's wrong?

18 Q Okay. Was Mr. Williams there when you
19 questioned her?

20 A No, ma'am, he was gone.

21 Q Okay. And do you recall the exact question that
22 you asked **Minor**

23 A I said, Why were you -- why were you tugging at
24 your shorts? What was wrong with your shorts?

25 Q Okay. Without telling us what she said, did you

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 ask a follow up question?

2 A Yes, ma'am.

3 Q What was your follow up question?

4 A I asked her if Michael touched her private.

5 Q Okay. Had you explained to **Minor** what private
6 parts were?

7 A No, ma'am. Other than pee-pee.

8 Q Had you ever discussed good touching versus bad
9 touch withing her?

10 A No, ma'am.

11 Q Have you ever had or sort of conversation with
12 her about that?

13 A No.

14 Q Did she appear distressed?

15 A She knew that I was upset and she started crying
16 thinking that she did something wrong.

17 Q Were you upset?

18 A Yes, ma'am.

19 Q And you can't tell us what she said but based on
20 what she said, what did you do?

21 A I just asked her a couple more questions.

22 Q Okay. And after asking those questions what did
23 you do?

24 A I said, Okay let's go get grandma, we'll take
25 care of this in a little bit.

TAMMY SUTTON-DIRECT' BY MS. BENTLEY

1 Q Okay. Did you go pick up your mother?

2 A Yes, ma'am.

3 Q Where did you go after that?

4 A Back home.

5 Q What did you do when you got home?

6 A I contacted my nextdoor neighbor, Janet Cartee,
7 because I just wanted to let her know what **Minor** told me.

8 Q Okay. After speaking with Janet what did you
9 do? You can't tell us anything that Janet said.

10 A Called 911.

11 Q Okay. Did the police respond?

12 A Yes, ma'am.

13 Q And did you also meet with an investigator
14 later?

15 A Yes, ma'am.

16 Q Okay. I'm going to show you what's been marked
17 as State's Exhibit 3. And don't tell us what it is but do
18 you recognize this document?

19 A Yes, ma'am.

20 Q What is this document?

21 A It was to retrieve the text messages off my cell
22 phone.

23 Q Okay. And is your signature on this document?

24 A Yes, ma'am.

25 Q Has anything been added, deleted, change this

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 document since you last saw it?

2 A No, ma'am.

3 Q And what is the date on this document?

4 A November 1st, 2013.

5 Q Okay. Is that the date that you first met with
6 investigators or was that a separate date?

7 A I don't recall what date.

8 Q Okay.

9 A I recall that time him coming to get my cell
10 phone and retrieving the messages but I couldn't honestly
11 tell you the date.

12 Q Okay. Do you think you spoke to investigators
13 prior to November? Did you speak to police before then?

14 A Yes, ma'am.

15 Q And did you cooperate with them fully?

16 A Yes, ma'am.

17 Q Did you give them a statement?

18 A Yes, ma'am.

19 Q Okay. And I want to ask you, did you ever
20 confront Mr. Williams about the events of that weekend?

21 A Right after I talked to **Minor** I texted Michael
22 asking him -- or excuse me, I told him I didn't want him
23 around my daughter no more. And he had no concerns
24 about--

25 MS. MANIGAULT: Your Honor, I'm going to object

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 to anything -- her impressions about his concerns.

2 THE COURT: All right, sustained.

3 BY MS. BENTLEY:

4 Q Okay. Just yes or no, did you confront the
5 Defendant?

6 A Yes, ma'am, via text right after I talked to

7 **Minor**

8 Q Okay. And I'm going to show you what's been
9 marked as Exhibit 1. I'm going to show you what has been
10 marked as State Exhibit 1. Do you recognize, looking
11 through it, what that document is?

12 A Yes, ma'am. Those are the text messages that
13 were on my phone.

14 Q How do you know that?

15 A Because I recall sending them and it's got my
16 phone number.

17 Q Okay. And are these all messages that you have
18 received throughout time, different parts of time?

19 A These were only the messages at the end.

20 Q In November?

21 A These are the messages -- the first messages are
22 from somebody I heard off of Craig's List and I have a
23 lawsuit against him.

24 Q Okay.

25 A And then the second messages are the ones I sent

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 to Michael right after this happened on April 1st. And
2 the time that said 6:24 and he left my house at 6:00.

3 Q Okay. If you can, I know you're upset, just
4 answer the questions. So, you said you confronted him?

5 A Yes, ma'am.

6 MS. BENTLEY: And, Your Honor, this is basically
7 to get what in what I would classify as admission of
8 a party defendant. If may have a little bit of
9 leeway regarding the question or response.

10 THE COURT: I'm going to allow you to ask the
11 question, we'll see if there's an objection to it.

12 MS. BENTLEY: All right.

13 THE COURT: Go ahead and ask the question.

14 BY MS. BENTLEY:

15 Q What do you recall first texting Mr. Williams?

16 A I told him--

17 MS. MANIGAULT: Your Honor, objecting.

18 THE COURT: All right, ladies and gentlemen of
19 the jury, go to the jury room for a little bit,
20 please. Thank you, very much.

21 (WHEREUPON, the jury left open court at
22 approximately 10:20 a.m.)

23 THE COURT: Solicitor, are you attempting to get
24 into evidence the response text from the Defendant?
25 Is that what you're?

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 MS. BENTLEY: Yes. What she does independently
2 recall.

3 THE COURT: I'm sorry, you don't have a copy of
4 it?

5 MS. BENTLEY: I do have a copy of it, Your
6 Honor, yes.

7 THE COURT: So, you can show that to her and ask
8 her if that is the response text.

9 MS. BENTLEY: Yes, sir, Your Honor.

10 THE COURT: Okay. All right. First, you would
11 probably need to get some background based upon their
12 prior work or prior texting.

13 MS. BENTLEY: Correct.

14 THE COURT: You know, some background
15 information about that. And then go into that and
16 then I'll hear the objection at that point in time.
17 Go ahead.

18 BY MS. BENTLEY:

19 Q All right. You stated that you confronted
20 Mr. Williams via text?

21 A Yes, ma'am, right after I talked to **Minor**

22 Q What was the substance of your confrontation
23 text?

24 A I said I don't want him around my daughter no
25 more.

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 Q Did you say anything else to him?

2 A No, ma'am.

3 Q If I show you what's been marked as Exhibit 1 do
4 you think it might refresh your recollection as to exactly
5 what you said?

6 A Yes, ma'am.

7 Q Okay. Message No. 28 and 29, please.

8 A (The witness nods.)

9 Q Does that refresh your recollection?

10 A Yes, ma'am.

11 Q Okay. In addition to telling him that you don't
12 want him around your daughter anymore, was there anything
13 else that you said?

14 A He had something of mine and I said you can just
15 give it back, delete my number.

16 Q Okay. What was his response, do you recall?

17 A He had no response about **Minor**

18 Q Okay. Do you recall exactly what his response
19 was?

20 A No, ma'am.

21 Q Okay. If I show you, again, what's been marked
22 as State's Exhibit 1, do you recall if that was the
23 response that you recall receiving?

24 A Yes, ma'am.

25 Q Okay. Look at text number 30.

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 A Yes, ma'am.

2 Q Okay. Do you recall his response now?

3 A He had no concern about **Minor** but he said that
4 he would give my stuff back, no problem. Like no big
5 deal.

6 Q Okay. I'm going to ask you, again, I'm going to
7 show you what's been marked as State's Exhibit 1, text
8 number 30. And I want you to look at it and tell me if
9 you can tell me what that says.

10 A He asked, What do I have?

11 Q Okay. And did you then respond in kind?

12 A Yes, ma'am.

13 Q Do you recall exactly what you said or should I
14 show you your message again?

15 A I said, Yeah, that's what he had.

16 Q Okay. Was there anything else that you asked
17 him?

18 A That, you know, I was -- I wasn't really
19 concerned about that.

20 Q Okay. Do you recall what his response was?

21 A No, ma'am.

22 Q Okay. I'm going to show you, again, what's been
23 marked as State's Exhibit 1, Message 32, can you just read
24 that for us?

25 A He said, Oh yeah -- okay, yeah, I can understand

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 that.

2 MS. BENTLEY: All right. And that would be the
3 exchange.

4 THE COURT: All right. I need for you to go
5 into not only the background of this exchange but to
6 establish their pattern of communication. You talked
7 about it in general, you need to talk about phone
8 numbers, being able to recognize the Defendant's
9 phone number. You need to ask her questions about
10 that.

11 MS. BENTLEY: Certainly.

12 BY MS. BENTLEY:

13 Q Ms. Sutton, you established that this is the
14 recordings from your cell phone, correct?

15 A Yes, ma'am.

16 Q And you recognized the first messages were from
17 somebody that you hired?

18 A Yes, ma'am.

19 Q And you said the second messages were from
20 Mr. Williams, is that correct?

21 A Yes, ma'am.

22 Q Please tell me how you identified these as
23 Mr. Williams responses to your text?

24 A Because it has his name and his phone number.

25 Q Okay. Do you independently recall his phone

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 number?

2 A No, ma'am but I look at my contacts and they
3 came off my cell phone.

4 Q Had you saved him in your phone?

5 A Under contacts, yes.

6 Q What was the name that you saved him under?

7 A Michael Williams.

8 Q And what is the number next to the text messages
9 that came to you?

10 A [REDACTED].

11 Q Is that your phone number?

12 A No, ma'am.

13 Q Okay. What about going up where the name, Bill
14 Leary, what's the phone number next to that name?

15 A [REDACTED].

16 Q Is that your phone number?

17 A No, ma'am, it's the handyman's.

18 Q How do you know that that was Bill Leary's phone
19 number?

20 A Because it says Bill Leary and it was in my
21 contacts on my cell phone.

22 Q Okay. Going further into -- you mentioned that
23 these were the only messages saved on your phone at the
24 time, is that correct?

25 A Yes, ma'am.

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 Q Were there -- did you exchange more than these
2 text messages with Mr. Williams?

3 A Yeah, we text a lot because we never talked on
4 the phone. And we only seen each other maybe once a week
5 so we did text a lot.

6 Q All right. I'm going to go back and show you
7 what we previously identified as State's Exhibit 2, just
8 for identification purposes. And is -- you recognize
9 these as text messages that you sent, is that correct?

10 A Yes, ma'am.

11 Q And how do you recognize that those are messages
12 that you sent?

13 A My name and my phone number and I do recall
14 saying those kinds of things.

15 Q Okay. And what is the phone number next to your
16 name?

17 A My phone number is (864)293-4865 and that's
18 still correct.

19 Q That's still correct. Okay. And looking -- and
20 looking at -- obviously if these are -- that's still your
21 phone number. Where there other messages subsequent to
22 the ones that we discussed between you and Mr. Williams?

23 A Yeah, we texted a lot.

24 Q Okay. Did you text a lot after the
25 confrontation?

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 A No, ma'am.

2 Q April 1st.

3 A No, ma'am.

4 Q Are there a few messages after that?

5 A I think there are a couple on April 2nd but that
6 was that last.

7 Q And these -- these messages reportedly from
8 Mr. Williams, do they -- do they reference anything that
9 you two had discussed either in person or previously that
10 would make you believe that it was Mr. Williams that you
11 were speaking to? And you can look through those if you
12 need to.

13 A Well, the last time that we text was April 2nd
14 and on here he texted me 10 days later--

15 Q But I'm just talking about the substance of
16 these messages. Are there things in here that y'all had
17 previously discussed, going to the beach, his girlfriend?

18 A Yes, ma'am. Yes.

19 Q Those are thing that you had talk about in
20 person?

21 A Via text.

22 Q Okay. Had you invited anyone else to the beach?

23 A No, ma'am.

24 Q Okay. Would anyone else know --

25 A No, ma'am-

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 Q -- that you were talking to go to the beach with
2 Mr. Williams?

3 A No.

4 Q And these messages, Message 28, does that say
5 whether you sent it or received it?

6 A I sent it on April 1st.

7 Q Okay. And the Messages 30 and 32, were those
8 messages that is you sent or received?

9 A I received from Michael on April 1st.

10 Q Okay.

11 MS. BENTLEY: As far as just the admission of
12 the party opponent, does that satisfy?

13 THE COURT: All right, any objection, ma'am,
14 Ms. Manigault?

15 MS. MANIGAULT: Your Honor, my objection is that
16 the witness has continually said that a lot of
17 messages have been deleted but even before I get to
18 that, all The State is showing is that there is a
19 phone number popping up that she has listed in her
20 phone as Michael Williams. There is no testimony
21 that Michael Williams actually sent these texts.
22 These are responses that they're trying to verify it
23 from Michael Williams. Your Honor, there is no proof
24 through these text messages, somebody else could have
25 had the phone. We're objecting for the text messages

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 exhibit. We were just trying to wait to see what--

2 THE COURT: She hasn't offered them as exhibits
3 yet.

4 MS. MANIGAULT: Yes, sir. But we were just
5 trying to wait and see where it was going. As far as
6 her continuing to say that she had received text
7 messages back from Michael Williams, then I am
8 lodging an objection to that overall right now. That
9 she -- I'm objecting to her testifying to that.

10 THE COURT: All right. I'm going to allow her
11 to testify about the content of the text based upon
12 their past conduct, what she has testified, they had
13 set up a communication scheme between themselves
14 prior to this date of the alleged occurrence with the
15 minor victim that established a pattern of contact
16 between them, that she recognized it and such as the
17 Defendant's number and that's how he would
18 communicate with her. And I'm going to allow her to
19 comment about these texts. To the extend that she
20 sent him the text that either made the definitive
21 statement or asked a question and got a response from
22 that text number that she had used in the past to
23 communicate with the Defendant. And this was the
24 response.

25 Now, Solicitor, you need to caution your witness

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 that she cannot give personal comments.

2 MS. BENTLEY: Yes, sir, Your Honor.

3 THE COURT: She must confine her testimony to
4 what she sent or what she asked and what the response
5 was. Not her opinion about the response.

6 MS. BENTLEY: Yes, sir, Your Honor.

7 THE COURT: All right. But I'm going to allow
8 it based upon the development. Now, none of this has
9 happened in front of the jury. If you are going
10 to -- if you intend to do this, develop that pattern
11 of communication between herself and the Defendant,
12 the recognition of that phone number, the recognition
13 that that's how they established a pattern of
14 contact. She already said they didn't talk on the
15 phone, this is how they communicated. You establish
16 that then you can communicate or talk about that
17 particular communication, what she asked or sent and
18 what she got in response.

19 MS. BENTLEY: Yes, sir, Your Honor.

20 THE COURT: We're not dealing with the issues of
21 whether or not these documents can be introduced into
22 evidence. They haven't been offered yet. And so,
23 we're not, of course, not making a ruling on that at
24 this point in time, all right.

25 MS. BENTLEY: Yes, sir.

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 THE COURT: So, with that we'll take a very
2 short break for five minutes, we'll come back and
3 continue on. Thank you, very much.

4 You may step down, ma'am, you may not talk to
5 the Solicitor.

6 (WHEREUPON, a short break was taken.)

7 THE COURT: All right, Solicitor, you ready for
8 the jury to come back in?

9 MS. BENTLEY: Yes, sir, Your Honor.

10 THE COURT: And the Defense?

11 MS. MANIGAULT: Your Honor, the Defense is
12 ready. I just want to make sure my objection -- I am
13 objecting to the Solicitor using these documents at
14 all to elicit information because they're not in
15 evidence.

16 THE COURT: Well, I appreciate that and they are
17 not in evidence but they are a document from which
18 she may refresh her memory if she needs to. If she
19 needs to refresh her memory she may use the
20 documentation. Those being the text messages that
21 she sent. Assuming again, that she establishes, of
22 course, conduct, the messages that were received.
23 But obviously, she cannot testify directly from them.
24 She may use them to refresh her memory and then the
25 Solicitor will secure them from her when she gives

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 her testimony. All right, thank you, very much.

2 Ask the jury to come in, please.

3 (WHEREUPON, the jury came into open court at
4 approximately 10:44 a.m.)

5 THE COURT: All right, Solicitor, you may
6 continue, ma'am.

7 MS. BENTLEY: Thank you, Your Honor.

8 BY MS. BENTLEY:

9 Q Ms. Sutton, you previously testified that you
10 and Mr. Williams never spoke on the phone, is that
11 correct?

12 A Yes, ma'am.

13 Q What was your method of communication?

14 A Via text.

15 Q And when did you first exchange numbers did you
16 say?

17 A Pretty sure was the end of December 2011.

18 Q Okay. Do you recall when your texting really
19 began?

20 A Definitely we texted in January, February and
21 March.

22 Q Okay. I'm going to show you, again, what's been
23 marked for identification as State's Exhibit 2, could you
24 look through here and tell me -- you previously identified
25 some messages that you said were from you to the

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 Defendant, okay. I want you to look through here and tell
2 me how you recognize that you sent these messages?

3 A It's just stuff that we were talking about.

4 Q At different points and times?

5 A Yes, ma'am.

6 Q And how do you know which messages that you
7 either sent or was sent to you?

8 A It has my phone number.

9 Q And what's your phone number?

10 A [REDACTED]

11 Q Is that still your phone number?

12 A Yes, ma'am.

13 Q So that has not changed?

14 A No, ma'am, it hasn't.

15 Q And is your name anywhere on there?

16 A Yes, ma'am.

17 Q Where is it?

18 A Next to the phone numbers.

19 Q Which phone number?

20 A (864) 293-4865.

21 Q Your phone number?

22 A Yes, ma'am.

23 Q Okay. And are there dates listed on these
24 messages?

25 A Yes, dates and times.

TAMMY SUTTON-DIRECT BY MS. BENTLEY .

1 Q Can you tell me, and you can look through there,
2 what date you began seeing your name and phone number?

3 A The very first --

4 THE COURT: Again, Solicitor, if she needs to
5 refresh her memory from the document she may do so.
6 And then -- she can't testify from the documents,
7 they're not in evidence.

8 MS. BENTLEY: Okay.

9 BY MS. BENTLEY:

10 Q Do you recall when you first started texting
11 with the Defendant?

12 A I would have to say the first of January 2012.

13 Q Okay. Did you text with him continuously
14 through then?

15 A Yes, ma'am.

16 Q Do you recall when your messages ended more or
17 less?

18 A April 2nd.

19 Q Okay. And I'm going to show you what's
20 previously been marked as State's Exhibit 1 that you
21 identified as your phone contents, okay? Let's show it to
22 you.

23 A Yes, ma'am.

24 Q Did you have the Defendant, Mr. Williams, listed
25 in your phone?

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 A Yes, ma'am.

2 Q And who entered that data?

3 A I did.

4 Q And who entered the -- or pardon me, what
5 information did you list in addition to his name?

6 A Just his name Michael Williams and his phone
7 number.

8 Q Okay. How did you obtain that phone number?

9 A Face-to-face.

10 Q Okay. And is that the only number that you had
11 for him?

12 A Yes, ma'am.

13 Q Did it ever change?

14 A No, ma'am.

15 Q Did you ever receive any type of response that
16 indicated it was no longer Mr. Williams?

17 A No, ma'am.

18 Q Did you ever receive any responses that led you
19 to believe that you would not have been speaking with
20 Mr. Williams?

21 A No, ma'am.

22 Q Okay. You previous said that you confronted him
23 via text message?

24 A Yes, ma'am.

25 Q When was that?

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 A On April 1st about 20 minutes after he left my
2 house and I confronted **Minor**

3 Q Okay. So, you recall sending that message?

4 A Yes, ma'am.

5 Q Do you recall exactly what you said to him?

6 A Not word for word.

7 Q Okay. If I show you the downloads from your
8 phone, would that refresh your recollection?

9 A Yes, ma'am.

10 Q Okay. I'm just going to show you this so you
11 can tell me the message that you said to confront him.
12 Please let me know what that says.

13 THE COURT: Again, she can refresh her memory
14 then she can testify on her own.

15 MS. BENTLEY: Okay.

16 BY MS. BENTLEY:

17 Q I'd like for you to look over that until you can
18 remember what it was that you said to him. But don't read
19 from it.

20 A Okay.

21 Q Do you recall what you said to confront
22 Mr. Williams?

23 A Yes, I said I don't want him around my daughter
24 no more.

25 Q Did you say anything else?

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 A No, ma'am.

2 Q I'm going to show you, again, what's been marked
3 as State's Exhibit 1. If I showed this to you would that
4 help you remember whether or not you said anything else?

5 A Yes, ma'am.

6 Q Okay. Turn your attention to Message No. 29, is
7 that a message you sent?

8 A Yes, ma'am.

9 Q Do you recall now?

10 A Yes, ma'am.

11 Q Was there anything else that you said to him?

12 A No, ma'am.

13 Q Okay. Do you recall his response?

14 A He had no concern about--

15 Q I'm sorry. You can just testify if you recall
16 what his response was.

17 A Yes, ma'am.

18 Q What was his response?

19 A He had no concern about Minor

20 Q I'm sorry--

21 THE COURT: All right, ma'am. Please listen to
22 me. If you can answer the question directly as to
23 what exactly the response was, not your impression of
24 it, not your opinion of it, what was the response?
25 If you cannot, the Solicitor can show you the

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 document to refresh your memory to answer that
2 question -- answer that question. You listen to the
3 question of the Solicitor, do not interject your
4 opinion or your belief, okay?

5 THE WITNESS: Okay.

6 BY MS. BENTLEY:

7 Q Do you remember his response?

8 A Yes, ma'am.

9 Q What was his response?

10 A About returning my stuff.

11 Q Okay. Did he have any of your property?

12 A Yes.

13 Q What did he have?

14 A A tiller.

15 Q Why did he have your tiller?

16 A Trying to fix it.

17 Q Did you reply after he asked about the tiller?

18 A Yes.

19 Q Do you recall exactly what you said to him?

20 A Yes.

21 Q What did you say to him?

22 A He had multiple parts of it and one part was
23 good and one part wasn't. I just really wanted the one
24 part.

25 Q Okay. And did he reply in kind?

TAMMY SUTTON-DIRECT BY MS. BENTLEY

1 A Yes.

2 Q Okay.

3 MS. BENTLEY: I have no further questions at
4 this time, please answer any questions Ms. Manigault
5 may have.

6 THE COURT: All right, cross-examination.

7 CROSS-EXAMINATION

8 BY MS. MANIGAULT:

9 Q Ms. Sutton, I believe you testified that on
10 March the 31st of 2012 you were sitting or seated in the
11 area where the couch is located?

12 A Yes, ma'am.

13 Q And that area is considered your living room or
14 front area?

15 A It's a dinning room.

16 Q It's dinning room?

17 A I have two couches. The couch in the living
18 room and the couch in the dinning room. At that time.

19 Q And you were sitting on the couch in the dinning
20 room?

21 A Yes, ma'am.

22 Q And your testimony is that you'd known Michael
23 Williams for approximately three months?

24 A Yes, ma'am.

25 Q Were you also having your house remolded?

TAMMY SUTTON-CROSS BY MS. MANIGAULT

1 A No, just little repairs.

2 Q Just little repairs. And you testified that
3 Michael Williams helped you with minor repairs?

4 A Yes, ma'am.

5 Q Your testimony is that Mr. Williams may have
6 spent approximately five nights in your home?

7 A Yes, ma'am.

8 Q And otherwise, during that three months, you may
9 have seen him every other weekend?

10 A We would get together maybe once a week. And it
11 would be like on a Friday or Saturday. And then he did,
12 within that three month period, he spent the night about
13 five times.

14 Q So, your testimony would be that he may have
15 been to your house. . .

16 A A dozen.

17 Q A dozen times?

18 A Yes, ma'am.

19 Q I believe you testified that you were always at
20 home and **Minor** was always there also?

21 A Yes, ma'am.

22 Q And it is your testimony that while you were
23 sitting on the couch, Michael Williams and **Minor** was in
24 the playroom, is that correct?

25 A Yes, ma'am.

TAMMY SUTTON-CROSS BY MS. MANIGAULT

1 Q And you could see into the playroom?

2 A Yes, ma'am.

3 Q All right. And you saw they were reading a
4 book?

5 A Playing games?

6 Q Playing games.

7 A Puzzles.

8 Q Sitting on the floor. So, is your testimony
9 that they stayed in the playroom for total of six hours?

10 A Throughout that weekend.

11 Q Oh, throughout the weekend?

12 A Saturday and Sunday.

13 Q Okay. So, on the 31st how long would you say
14 that they stayed in the playroom area?

15 A I don't recall. I don't even remember what time
16 he exactly came, I just remember what time he left.

17 Q Okay. Would you -- would you guess that it was
18 more than an hour or you just don't have any idea?

19 A More than an hour about what?

20 Q That they were in the playroom playing on March
21 31st?

22 A Oh, yes, ma'am.

23 Q So, you think it was more than an hour?

24 A Yes. Then Sunday was longer than that.

25 Q All right. And Sunday you believe it was a

TAMMY SUTTON-CROSS BY MS. MANIGAULT

1 couple of hours?

2 A It was more than one hour. It was probably
3 several hours.

4 Q Several not seven?

5 A Several.

6 Q Several. Okay. You testified that you walked
7 passed the room -- the playroom a couple of times?

8 A Numerous.

9 Q Numerous times?

10 A Uh-huh.

11 Q Okay. During the -- that was during Saturday
12 and Sunday?

13 A Yes.

14 Q And in the playroom both of those times was only
15 Mr. Williams and **Minor**

16 A Yes, ma'am.

17 Q But you kept walking by the playroom?

18 A Yes, ma'am.

19 Q And you could observe what was going on?

20 A Yes, ma'am.

21 Q And during that time you observed them sitting
22 on the floor?

23 A Yes, ma'am.

24 Q Reading books and playing games?

25 A Yes, ma'am.

TAMMY SUTTON-CROSS BY MS. MANIGAULT

1 Q So, your testimony you were always near, always
2 close by?

3 A Yes, ma'am. He was never 100 percent alone with
4 her.

5 Q Okay. Did they go outside any that day? That
6 Saturday or Sunday?

7 A I'm guessing Sunday.

8 Q You're guessing, you're not sure?

9 A No, ma'am.

10 Q Were you trying to develop more than a cordial
11 friendship with Mr. Williams?

12 A No, ma'am, he had a girlfriend and I -- I just
13 didn't have no romantic feelings towards him. I mean, we
14 flirted via text but it was never nothing in person
15 though.

16 Q If it's nothing in person why would you let him
17 stay in your house five nights?

18 A He was a friend. I mean, I had friends sleep
19 over at my house before in the past.

20 Q You said he lived about 15 miles down the road?

21 A Something like that. I'd never been to his
22 house but I know it wasn't close by.

23 Q But it wasn't that far either?

24 A I mean. . .

25 Q You testified earlier maybe 15 miles?

TAMMY SUTTON-CROSS BY MS. MANIGAULT

1 A Yes, ma'am.

2 Q How long had you known Janet Cartee, the
3 neighbor?

4 A Probably about six or eight months prior to
5 meeting Michael.

6 Q Okay.

7 A Because they bought the house nextdoor to me.

8 Q So, you were in the area before Ms. Cartee?

9 A Yes.

10 Q And your testimony is Ms. Cartee is Michael
11 Williams' cousin?

12 A Yes, ma'am.

13 MS. MANIGAULT: Thank you.

14 THE COURT: Any redirect, ma'am?

15 MS. BENTLEY: No, Your Honor.

16 THE COURT: All right, you may step down, ma'am.
17 You can step down, thank you.

18 All right, your next witness, Solicitor.

19 MS. BENTLEY: The State calls [REDACTED] Minor

20 THE COURT: All right, very good. Solicitor, if
21 you would, when the witness gets on the stand, if you
22 can get her to say her name and her age and then I'll
23 tell the jury about testimony of children, okay?

24 MS. BENTLEY: Sure enough.

25 THE COURT: Thank you, ma'am.

TAMMY SUTTON-CROSS BY MS. MANIGAULT

1 THE CLERK: Minor

2 Katrinia, would you hold the Bible for her?

3 Minor place your left hand on the Bible,
4 your left hand, the other hand, there you go. Raise
5 your right hand.

6 Minor, after being duly
7 sworn, testified as follows:

8 THE CLERK: Can you say yes or no?

9 THE WITNESS: Yes.

10 THE CLERK: Thank you. All right, would you
11 please have a seat in that green chair.

12 DIRECT EXAMINATION

13 BY MS. BENTLEY:

14 Q Hi Minor

15 A Hello.

16 Q Can you please tell me your whole name?

17 A Minor

18 Q Can you tell me how you spell Minor

19 A Minor

20 Q Okay.

21 THE COURT: How old is she?

22 BY MS. BENTLEY:

23 Q Minor, how old are you?

24 A Seven.

25 Q When is your birthday?

Minor

DIRECT BY MS. BENTLEY

1 A February 27th.

2 Q Do you know what year you were born?

3 A No, ma'am.

4 Q Okay.

5 THE COURT: All right, ladies and gentlemen, in
6 this particular trial you will obviously hear the
7 testimony of a child. I tell you, as I explained to
8 you, obviously do judge credibility and believability
9 of every witness that testifies. Now, when you have
10 a child that is a witness, you can consider not only
11 the things that we would normally consider regarding
12 whether or not the credibility and believability of a
13 witness, but with a child you may also examine the or
14 consider the age of the child, the's child's ability
15 to observe and remember. The child's ability to
16 understand and answer any questions that are asked of
17 her. Because the potential exists for young children
18 to not fully understand what is happening in a court
19 proceeding. It is up to you to decide whether or not
20 a child understands the seriousness of appearing as a
21 witness in a criminal case, whether the child
22 understands the questions, whether the child has a
23 good memory, whether the child understands the
24 difference between lying and telling the truth. So,
25 it's up to you to determine this and to determine

Minor

DIRECT BY MS. BENTLEY

1 whether or not if, in fact, it happens or doesn't
2 happen. A child may be influenced by how the
3 question is asked. So, that -- it will be up to you
4 obviously decide if the child understands all of
5 these things. And, of course, whether or not the
6 witness answered the questions truthfully. Thank
7 you, very much.

8 All right, Solicitor.

9 BY MS. BENTLEY:

10 Q Minor, do you go to school?

11 A Yes, ma'am.

12 Q Where do you go to school?

13 A Robert E. Cashion Elementary.

14 Q What grade are you in?

15 A Second.

16 Q What's your teacher's name?

17 A Ms. Riznyk.

18 Q Do you like Ms. Riznyk?

19 A Yes.

20 Q What is your favorite thing to do in school?

21 A Read.

22 Q Road. What do you like to read?

23 A Like stories.

24 Q Okay. Have you ever been in this room before,

25 Minor

Minor

DIRECT BY MS. BENTLEY

1 A No, ma'am.

2 Q Have you ever sat in that chair before?

3 A No, ma'am.

4 Q Do you know who any of these people are?

5 A (The witness nods.)

6 Q Who do you know?

7 A My mommy and Mike.

8 Q Okay. Who is your mommy? Can you point her
9 out?

10 A (The witness complies.)

11 Q You're pointing to your mommy in red?

12 A (The witness nods.)

13 Q What's your mommy's name?

14 A Tammy.

15 Q And you said you recognize Mike, who is that?

16 A I don't know.

17 Q Where is he?

18 A Sitting down right there.

19 Q Okay. Are you pointing to the man in the gray
20 suit?

21 A (The witness nods.)

22 Q Do you remember when you talked to him?

23 A Yes.

24 Q When did you talk to him?

25 A I don't know.

Minor

DIRECT BY MS. BENTLEY

1 Q Okay. Do you recognize anyone else in the
2 courtroom?

3 A No, ma'am.

4 Q Okay. Do you have any pets Minor

5 A Yes, ma'am.

6 Q What are your pets?

7 A Dogs.

8 Q Okay. What kind of dogs do you have?

9 A I only know the Chihuahua.

10 Q Chihuahua, okay. Do you -- who do you live
11 with?

12 A My mommy and my dogs and me.

13 Q Okay. Has anyone else ever lived with you?

14 A (The witness shook her head.)

15 Q Did your grandma ever live with you?

16 A Yes.

17 Q When was that?

18 A When we like pick her up for the weekend.

19 Q Okay. Do you know why you're here today?

20 A (The witness nods.)

21 Q Why?

22 A To ask you questions.

23 Q So, I can ask you questions?

24 A (The witness nods.)

25 Q Okay. You said you recognized your mommy and

Minor

DIRECT BY MS. BENTLEY

1 Mike over there, do you recognize that man in the blue
2 shirt?

3 A No, ma'am.

4 Q Okay.

5 MS. BENTLEY: I don't have any more questions
6 for you, Minor Please answer any questions this
7 lady right here has. Her name is Ms. Manigault,
8 okay.

9 THE COURT: All right, cross-examination.

10 MS. MANIGAULT: Thank, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. MANIGAULT:

13 Q Minor I'm Dorothy. And you said you're five
14 years old now?

15 A No, ma'am.

16 Q How old are you?

17 A Seven.

18 Q All right, you're seven years old. You say your
19 birthday's in February?

20 A (The witness nods.)

21 Q Is that right?

22 A (The witness nods.)

23 Q And when did you start going to Robert Cashion
24 Elementary School, first grade?

25 A I don't know when.

Minor

CROSS BY MS. MANIGAULT

1 Q You don't no when?

2 A (The witness shook her head.)

3 Q Do you remember where you went to school in the
4 first grade?

5 A Robert Cashion Elementary.

6 Q Did you go to kindergarten?

7 A Yes, ma'am.

8 Q Where did you go to kindergarten?

9 A Robert Cashion Elementary.

10 Q And was the 4K or 5K, do you know?

11 A 5K.

12 Q 5K. All right. And do you know your address,
13 your home address? Where you live?

14 A [REDACTED] Fork Shoals Road.

15 Q Okay. Do you know how long you have lived
16 there?

17 A No, ma'am.

18 Q How long have you had your dog?

19 A I don't know when.

20 Q Have you ever -- do you have a brother or
21 sister?

22 A No, ma'am.

23 Q And has anybody else ever slept over at your
24 house?

25 A My grandma.

Minor

CROSS BY MS. MANIGAULT

1 Q Just your grandma?

2 A (The witness nods.)

3 Q Okay. Do you have -- have you ever had a sleep
4 over party with some friends at your house?

5 A No, ma'am.

6 Q Have you ever slept over at any of your friends
7 house?

8 A Yes.

9 Q Was that for birthdays or?

10 A No, ma'am.

11 Q Do you remember why you slept over at a friends
12 house?

13 A Because we went to church.

14 Q Went to church. Do you go to church often?

15 A No, ma'am.

16 Q Okay. When -- when -- has your mommy ever
17 gotten upset with you about anything?

18 A Yes, ma'am.

19 Q Yes. And how -- what do you do when your mommy
20 gets upset?

21 A I try to make her feel better.

22 Q Try to make her feel better. Do you cry?

23 A Yes, ma'am.

24 Q Does your mommy cry sometimes?

25 A No, ma'am.

Minor

CROSS BY MS. MANIGAULT

1 Q No. Okay. So, when -- when your mommy's upset
2 you try to make her feel better, is that right?

3 A (The witness nods.)

4 Q And sometimes you cry?

5 A (The witness nods.)

6 Q Do you remember anything that you did at school
7 in first grade?

8 A No, ma'am.

9 Q Do you remember anything that you did at school
10 when you were in 5K?

11 A Play in centers.

12 Q Play in what?

13 A Centers.

14 Q Centers. Okay. And do you remember who your
15 teacher was at 5K?

16 A Mr. and Ms. Tucker.

17 Q Okay. And do you know how many students were --
18 kids were in your class?

19 A No, ma'am.

20 Q Did you ever do anything bad at school?

21 A No, ma'am.

22 Q So, you never had to be punished at school, is
23 that right?

24 A No, ma'am.

25 Q Did you ever have to be punished at home?

Minor

CROSS BY MS. MANIGAULT

1 A Yes, ma'am.

2 Q Okay. And why would you have to be punished at
3 home?

4 A Because if I do something wrong.

5 Q What would you do wrong?

6 A Like eat something like I'm not supposed to.

7 Q So, you eat something that you're not supposed
8 to, that's the only thing?

9 A (The witness nods.)

10 MS. MANIGAULT: Beg the Court's indulgence for a
11 moment?

12 THE COURT: Yes, ma'am.

13 BY MS. MANIGAULT:

14 Q Minor you recognize this man?

15 A Yes, ma'am.

16 Q And that's Mike you said?

17 A Yes, ma'am.

18 Q And you recognize this lady because?

19 A She's my mommy.

20 Q Okay. All right.

21 MS. MANIGAULT: Thank you.

22 THE COURT: Any redirect, Solicitor?

23 MS. BENTLEY: No, Your Honor.

24 THE COURT: All right. She may step down then.

25 MS. BENTLEY: Can Minor a please be excused,

Minor

CROSS BY MS. MANIGAULT

1 Your Honor?

2 THE COURT: Any objection to that?

3 MS. MANIGAULT: Yes, sir.

4 THE COURT: All right, well, I'm going to allow
5 her to leave the courtroom.

6 MS. MANIGAULT: Yes, sir.

7 THE COURT: She can be at ease until -- unless
8 the Court needs her.

9 MS. BENTLEY: Certainly.

10 You can come down.

11 THE COURT: All right, Solicitor, your next
12 witness, please.

13 MS. BENTLEY: State calls Sarah Davis to the
14 stand.

15 THE COURT: Ms. Davis, come around, please.

16 THE CLERK: Ms. Davis, please place your left
17 hand on the Bible, raise your right hand.

18 SARAH DAVIS, after being duly sworn,
19 testified as follows:

20 THE CLERK: Thank you, please be seated. State
21 your name for the record.

22 THE WITNESS: Sarah Davis.

23 DIRECT EXAMINATION

24 BY MS. BENTLEY:

25 Q Ms. Davis, where are you employed?

SARAH DAVIS-DIRECT BY MS. BENTLEY

1 A The Julie Valentine Center?

2 Q How long have you worked there?

3 A Since July 2011.

4 Q What is the Julie Valentine Center?

5 A The Julie Valentine Center is a rape crisis and
6 child abuse center here in Greenville.

7 Q Okay. And tell me a little bit about your
8 education and background a little bit.

9 A Sure, I have a Bachelor's in Psychology from
10 Clemson and a Master's in Social Work from the University
11 of South Carolina. And I'm also a licensed social worker
12 in the State of South Carolina.

13 Q Okay. Have you ever worked as a social worker?

14 A The job that I had prior to working at the Julie
15 Valentine Center was as a behavior modification specialist
16 at the Department of Mental Health.

17 Q Okay. And what are some of your duties at the
18 Julie Valentine Center, what's your current role?

19 A My current role is as a clinical coordinator.
20 And as the clinical coordinator I supervise the forensic
21 interview department. I also conduct forensic interviews
22 and I also conduct child and adolescent therapy.

23 Q How long have you been a clinical coordinator?

24 A Since March of 2014.

25 Q Okay. And prior to being a clinical coordinator

SARAH DAVIS-DIRECT BY MS. BENTLEY

1 what was your role at the Julie Valentine Center?

2 A I began performing forensic interviews in
3 July 2011. And then I added the therapy duties in August
4 of 2013.

5 Q Can you explain what a forensic interview is?

6 A Sure. A forensic interview is semi-structured
7 developmentally appropriate, not leading method of
8 questioning children about allegations of abuse.

9 Q And tell me a little bit about what that means.
10 What's a semi-structured interview?

11 A So, we have a protocol that we're trained to
12 follow during the interview. But that protocol, you don't
13 have to follow it very rigid like you have to do all the
14 sets in order, you can sort of let it flow with the child.
15 To kind of just work with the kid and where they are in
16 the interview.

17 Q Okay. Is there a different protocol for
18 victim's of different ages or?

19 A No. That's the reason that it's semi-structured
20 because you may have to do more things with a young child
21 to sort of establish their development than you have to do
22 with an older child.

23 Q Is there a minimum age for a child to be able to
24 participate in such an interview?

25 A You have to be able to speak. I've interviewed

SARAH DAVIS-DIRECT BY MS. BENTLEY

1 kids as young as two years old.

2 Q Okay. And is there an age where you stop
3 performing interviews?

4 A We do forensic interviews with developmentally
5 delayed adults. So, I believe I've interviewed a 44 year
6 old woman before.

7 Q Okay. And how, in your three years conducting
8 forensic interviews, how many interviews have you
9 conducted would you say?

10 A Just over 530.

11 Q Okay. And do you know [REDACTED] Minor

12 A I do.

13 Q How do you know [REDACTED] Minor

14 A I did a forensic interview with her.

15 Q Do you recall the date of that interview?

16 A It was April 30th, 2012.

17 Q Okay. And what person or agency referred her to
18 the Julie Valentine Center?

19 A She was referred to us by Detective Robertson
20 with the Greenville County Sheriff's Office.

21 Q Okay. Is Detective Robertson in this courtroom
22 right now?

23 A He is.

24 Q Who is it?

25 A The man in the gray suit.

SARAH DAVIS-DIRECT BY MS. BENTLEY

1 Q Okay. Do you know his first name?

2 A Mike.

3 Q Okay. How old was **Minor** at the time of the
4 interview?

5 A She was five.

6 Q Okay. And did you do anything to preserve the
7 interview?

8 A Yes, I made a audio and a video recording.

9 Q Okay. I'm going to show you what's been marked
10 as State's Exhibit 7. Can you tell me if you recognize
11 this.

12 A I do.

13 Q How do you recognize it?

14 A I recognize the handwriting as one of your staff
15 members at the Julie Valentine Center who makes the copies
16 of the DVD's for court.

17 Q Okay. And have you previously had a chance to
18 view this video?

19 A Yes.

20 Q And it is a fair and accurate representation of
21 your interview with **Minor**

22 A It is.

23 Q Has anything been changed to be added or removed
24 from it?

25 A No.

SARAH DAVIS-DIRECT BY MS. BENTLEY

1 Q It is an exact, I guess, duplication of your
2 interview with Minor

3 A It is.

4 MS. BENTLEY: Okay, Your Honor, at this time The
5 State moves Exhibit 7 into evidence.

6 THE COURT: Any objection?

7 MS. MANIGAULT: Yes, Your Honor.

8 THE COURT: All right. There are additional
9 grounds you wish to object?

10 MS. MANIGAULT: Um --

11 THE COURT: Just tell me yes or no.

12 MS. MANIGAULT: Yes, sir.

13 THE COURT: All right, ladies and gentlemen, you
14 got to go to the jury room, I'm sorry, go ahead.

15 (WHEREUPON, the jury left open court at
16 approximately 11:15 a.m.)

17 THE COURT: All right, ma'am, be glad to hear
18 from you.

19 MS. MANIGAULT: Thank you, Your Honor. Our
20 objection is we're challenging the constitutionality
21 of Section 17-23-175 which deals with the
22 admissibility of out of court statements. And as
23 objected previously, we are renewing our objection on
24 the fact that this video would circumvent the
25 confrontation clause of the rights of the Defendant.

SARAH DAVIS-DIRECT BY MS. BENTLEY

1 And additionally, that the video itself is suggestive
2 in nature, leading questions to elicit answers. The
3 questions were given in multiple choice answers. The
4 repetitive nature of the questions and the fact that
5 forensic interview and the protocol is not using a
6 scientific method. And that is the gist of our
7 objection.

8 THE COURT: All right. We'll deal with them one
9 at a time. Tell me your first one.

10 MS. MANIGAULT: We're challenging the
11 constitutionality of Section 17-23-175.

12 THE COURT: Response, Solicitor?

13 MS. BENTLEY: Your Honor, Section 17-23-125
14 [verbatim] has been reviewed by the Supreme Court.
15 There are certain safeguards that the legislature has
16 put in there to ensure that there's confrontation
17 clause violation. And it is otherwise been found --
18 I mean, it complies with South Carolina law.

19 THE COURT: All right, thank you, ma'am.

20 I do not find Section 17-23-175 to be
21 unconstitutional regarding the confrontation clause.
22 I do believe that it is structured to allow a
23 meaningful examination of any witness regarding the
24 matters clearly already in this particular child.
25 The minor has testified, has been subject to

SARAH DAVIS-DIRECT BY MS. BENTLEY

1 cross-examination. The Defense is aware of the
2 contents of the video tape. Obviously it was played
3 again yesterday regarding the motion hearing. And
4 the child was available for cross-examination as the
5 Defense had chosen to do so. So, I do not believe
6 that is unconstitutional in any respect.

7 What's your next objection?

8 MS. MANIGAULT: Your Honor, the other objection
9 the Court has ruled on previously, the suggestive
10 nature of the questioning. The leading nature of the
11 questioning, the repetitiveness of the questioning.

12 THE COURT: All right, ma'am. All right,
13 regarding the leading and/or suggestive nature of the
14 questioning or the repetitive, it would -- there may
15 have been some questions that may have been repeated.
16 I do not find it to be in any way violative of
17 the -- either of the statute or the Defendant's
18 rights. First, there were two charges that had to
19 have been -- or had to be explored by the interviewer
20 as an arm of the State in its investigation. Also
21 regarding, I do not believe the questions were
22 leading. I do not believe they suggested the
23 answers. I think the questions were such that the
24 response elicited could be of any nature not one
25 directed by the question.

SARAH DAVIS-DIRECT BY MS. BENTLEY

1 As to the issue of the forensic examine, I find
2 that this particular matter, I don't know that it's
3 necessary to classify it, I have not classified it as
4 such as a forensic examine under the particular areas
5 of the Statute 17-23-175. This type of investigative
6 interview is allowed under the protections set forth
7 regarding the confrontation clause. And I find that
8 it's a proper interview and a proper investigative
9 technique and arm of the State and it is proper.

10 Thank you, very much.

11 MS. MANIGAULT: Thank you, Your Honor.

12 THE COURT: All right, let's ask the jury to
13 come back in, please, ma'am.

14 (WHEREUPON, the jury came into open court at
15 approximately 11:20 a.m.)

16 THE COURT: All right, Solicitor, you may
17 continue, ma'am.

18 MS. BENTLEY: Your Honor, The State renews its
19 request to move Exhibit 7 into evidence.

20 THE COURT: Over the objection of the Defense
21 I'm going to allow State's Exhibit 7 in evidence in
22 this matter.

23 MS. BENTLEY: Thank you, Your Honor.

24 THE COURT: Yes, ma'am.

25

SARAH DAVIS-DIRECT BY MS. BENTLEY

1 (WHEREUPON, State's Exhibit No. 7, having been
2 marked in previous testimony, was received into
3 evidence.)

4 BY MS. BENTLEY:

5 Q Ms. Davis, you testified that State's Exhibit 7
6 is a recording of your interview with [REDACTED] Minor ,
7 is that correct?

8 A Yes.

9 Q Please describe the room where you interviewed
10 [REDACTED] Minor

11 A Sure. So, in the interview rooms we keep the
12 furnishings pretty minimal so that there's not very much
13 distraction for the child. We have two chairs, we have an
14 easel with some easel paper on there. We have markers, a
15 tape dispenser and anatomical drawings that we use.

16 Q Okay. Is anyone else in the room?

17 A No, just myself and the child.

18 Q Does anyone observe the interview?

19 A Any investigators can observe the interview.

20 So, like the law enforcement investigator, DSS
21 investigator.

22 Q Okay. But they're not in the room?

23 A No.

24 Q Does the child -- can the child see that person
25 when they're in the room?

SARAH DAVIS-DIRECT BY MS. BENTLEY

1 A No. We have a video camera so it's not like a
2 two-way mirror or anything like that because there's a
3 video camera up on the wall.

4 Q Okay. I'm also going to show you what's been
5 marked as State's Exhibit 8 through 10, please tell me if
6 you can recognize those.

7 A I recognize them.

8 Q How do you recognize them?

9 A They are from my interview with **Minor**

10 Q And how do you know that they're from your
11 interview with **Minor**

12 A Because her name and the date of the interview
13 is written at the top and my initials are also on the
14 bottom.

15 Q And what are State's Exhibits 8, 9 and 10?

16 A State's Exhibit 8 is a female anatomical drawing
17 that I used to identify anatomy during the interview.

18 Q Okay.

19 A Exhibit 9 is a male anatomical drawing used for
20 the same. And Exhibit 10 is a copy of the easel paper
21 that we use to like draw **Minor** face and identify her
22 family members.

23 Q Okay. And aside from the markings that are on
24 there, were any other markings made on those pieces of
25 paper except what we would see in the interview?

SARAH DAVIS-DIRECT BY MS. BENTLEY

1 A I added her name and the date and my initials
2 following the interview. But other than that everything
3 was done during the interview.

4 Q Okay.

5 Your Honor, at this time The State moves
6 Exhibits 8, 9 and 10 into evidence.

7 THE COURT: Any objection?

8 MS. MANIGAULT: Your Honor, may we approach?

9 THE COURT: Absolutely.

10 MS. MANIGAULT: Thank you.

11 (WHEREUPON, an off-the-record bench conference
12 was held in the presence of the jury but out of
13 the hearing of the jury.)

14 THE COURT: So, with that I'm going to allow 8,
15 9 and 10 with the redaction as set forth on State's
16 8, I'm going to allow them into evidence.

17 (WHEREUPON, State's Exhibits Nos. 8-10, having
18 been marked in previous testimony, were received
19 into evidence.)

20 BY MS. BENTLEY:

21 Q All right, Ms. Davis, aside from the drawings
22 that we talked about, are there any other tools that you
23 used in your interview with **Minor**

24 A We can and I did in this interview anatomically
25 correct dolls.

SARAH DAVIS-DIRECT BY MS. BENTLEY

1 Q Okay.

2 Your Honor, at this time The State wishes to
3 publish Exhibit 7 to the jury.

4 THE COURT: You may do so.

5 MS. BENTLEY: May Ms. Davis step down --

6 THE COURT: Yes, ma'am.

7 Can y'all dim the lights a little bit, Madam
8 Clerk?

9 THE BAILIFF: Yeah, I'll get them over here.

10 THE COURT: Okay.

11 (WHEREUPON, State's Exhibit 7 was published to
12 the jury.)

13 THE COURT: Go ahead, Solicitor.

14 MS. BENTLEY: Yes, sir, Your Honor.

15 BY MS. BENTLEY:

16 Q Ms. Davis, did you have any concerns about
17 **Minor** ability to understand your questions when you were
18 speaking with her?

19 A I didn't have any concerns in general. There
20 were some questions that seemed like were somewhat
21 difficult for her. Like questions dealing with
22 prepositions like if somebody was holding her in or on top
23 of her or under her but that would be developmentally
24 appropriate for a five year old to have difficulty with
25 those questions.

SARAH DAVIS-DIRECT BY MS. BENTLEY

1 Q Did you have any difficulty understanding any of
2 her responses?

3 A Yes, her speech was kind of difficult to
4 understand. Especially, at the beginning I sort of had to
5 learn how she said certain words as we were building
6 rapport and talking about her field trip, for example.

7 Q Was there anything that you would do in order to
8 help you overcome that difficulty?

9 A Yes. I would repeat back to her what she would
10 say to me. And that would be so that she could hear what
11 I was hearing and then she would have the opportunity to
12 correct me if I wasn't hearing her right.

13 MS. BENTLEY: Okay. I have no more questions
14 for you, please answer any questions that
15 Ms. Manigault may have.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MS. MANIGAULT:

19 Q Ms. Davis, can we talk for a moment about
20 protocol and questioning?

21 A Yes.

22 Q Is that a list of questions you have or how do
23 you develop a protocol?

24 A The protocol that I followed in this interview
25 was the RATAAC protocol. And it's not a specific list of

SARAH DAVIS-CROSS BY MS. MANIGAULT

1 questions because the questions are, you know, determined
2 during the interview based on what the child is saying
3 based on what the allegations are. But it's five steps
4 that we go through in the interview.

5 Q And it's RATAAC, R-A-T-A-C?

6 A Yes, it's an acronym.

7 Q Okay. And is that a scientific methodology,
8 what is that?

9 A It is researched based, yes.

10 Q Okay. It has been approved by the court or?

11 A It's widely used in the State of South Carolina.
12 It's used by most of the children advocacy centers in the
13 State of South Carolina and throughout the nation and
14 worldwide.

15 Q You say it's widely used. So, has it been
16 verified, certified, founded?

17 A There has been research conducted on the
18 protocol that it is appropriate to use with children.

19 Q So, it's researched?

20 A Yes.

21 Q All right. I think you explained to the jury or
22 to the Court that your interview techniques, you referred
23 to it as forensic, is that correct?

24 A It's a forensic interview, yes.

25 Q Okay. I think you informed the Court that with

SARAH DAVIS-CROSS BY MS. MANIGAULT

1 your type of interview, that you do not use leading
2 questions?

3 A Correct. We utilize a continuum of non-leading
4 questions.

5 Q And what would you consider a leading question?

6 A A leading question would be a question that
7 suggests information to the child that they have not
8 already given me.

9 Q Okay. And would a leading question be a
10 question if the child has said no to a previous question,
11 would a leading question be to ignore or reject the no and
12 give another affirmative question for that answer that
13 you're eliciting or seeking?

14 A Could you ask that again?

15 Q If the child has given you an answer of no. He
16 didn't touch me, he didn't do anything. Then the next
17 question you ask is, how did it feel when he touched you?
18 What would you call that?

19 A Well, I would ask the follow up question, how
20 did you feel when he touched you, only if the child had
21 already disclosed that there had been some kind of
22 touching. So, even if the child throughout the interview
23 says, no, there was no touching, if they had already
24 previously made a disclosure of touching and provided me
25 with core and contextural details, then I would just

SARAH DAVIS-CROSS BY MS. MANIGAULT

1 continue to follow up and ask additional questions about
2 what they had already disclosed.

3 Q Okay. And your procedure of interview with this
4 child was to suggest the multiple choice of answers?

5 A That is a type of non-leading questions,
6 multiple choice questions. Like I said before, use a
7 continuum of non-leading questions and so some of those
8 are very open-ended like tell me about that. And multiple
9 choice questions are more direct questions like yes or no
10 questions are also considered non-leading because the
11 child can say, you know, answer one of multiple choices
12 that I give. But we also always give the something else
13 option and so they can say something else or give me a
14 whole 'nother answer that I didn't give in my list.

15 MS. MANIGAULT: All right, thank you.

16 THE COURT: Any redirect?

17 MS. BENTLEY: No redirect, Your Honor.

18 THE COURT: All right, thank you, you may step
19 down.

20 MS. BENTLEY: May Ms. Davis be excused?

21 THE COURT: Any objection to the witness being
22 excused?

23 MS. MANIGAULT: No, Your Honor.

24 THE COURT: All right, ma'am, you're released
25 from the subpoena, you may go back to your regular

SARAH DAVIS-CROSS BY MS. MANIGAULT

1 duties. Thank you.

2 All right. Counsel, can y'all come up and talk
3 to me for a second, please.

4 (WHEREUPON, an off-the-record bench conference
5 was held in the presence of the jury but out of
6 the hearing of the jury.)

7 THE COURT: All right, ladies and gentlemen,
8 with the witness The State intends to call next I
9 think it's appropriate that we break for lunch at
10 this point in time. So, what I'm going to do is
11 excuse y'all for lunch. I'm going to ask that you be
12 back at 1:30. Be back in your jury room at 1:30 and
13 we'll resume the trial at that time.

14 All right, everyone else remain seated. Okay.

15 (WHEREUPON, the jury left open court at
16 approximately 12:12 p.m.)

17 THE COURT: All right, Solicitor, anything
18 before we break for lunch?

19 MS. BENTLEY: Nothing from The State, Your
20 Honor.

21 THE COURT: From the Defense?

22 MS. MANIGAULT: Nothing, Your Honor.

23 THE COURT: All right, we'll resume at 1:30
24 then. Thank you, very much.

25 (WHEREUPON, a lunch break was taken.)

SARAH DAVIS-CROSS BY MS. MANIGAULT

1 (WHEREUPON, State's Exhibit No. 11 was marked
2 for identification only.)

3 THE COURT: All right, Solicitor, The State
4 ready to proceed?

5 MS. BENTLEY: Yes, sir Your Honor.

6 THE COURT: And the Defense?

7 MS. MANIGAULT: Yes, sir.

8 THE COURT: Great, ask the jury to come in.
9 please, ma'am.

10 (WHEREUPON, the jury came into open court at
11 approximately 1:43 p.m.)

12 THE COURT: All right, Solicitor, your next
13 witness, please, ma'am.

14 MS. BENTLEY: State calls Investigator Robertson
15 to the stand.

16 THE COURT: All right, please come around to be
17 sworn.

18 THE CLERK: Sir, please place your left hand on
19 the Bible, raise your right hand.

20 MICHAEL ROBERTSON, after being duly
21 sworn, testified as follows:

22 THE CLERK: Thank you, please be seated. State
23 your name for the record.

24 THE WITNESS: Michael Robertson.

25 THE CLERK: Thank you.

SARAH DAVIS-CROSS BY MS. MANIGAULT

1 THE COURT: You may proceed, Solicitor.

2 DIRECT EXAMINATION

3

4 BY MS. BENTLEY:

5 Q Investigator Robertson, where are you employed?

6 A Greenville County Sheriff's Office.

7 Q How long have you worked at the sheriff's
8 office?

9 A The 23rd of this month will be 25 years.

10 Q Have you always been in law enforcement?

11 A Yes.

12 Q Tell me a little bit about your background.

13 A When I was hired I went to the Criminal Justice
14 Academy, spent 10 years in uniform patrol, transferred to
15 the Judicial Service Division for 11 years. And then in
16 July of 2010 I transferred to the Criminal Investigation
17 Division.

18 Q Okay. And are there different parts in the
19 Criminal Investigation Division?

20 A There are.

21 Q Tell me about where you currently work.

22 A I'm in the Crimes Against Children's Unit.

23 Q And how long have you been in the Crimes Against
24 Children's Unit?

25 A Since 2010.

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 Q Okay. And Investigator Robertson, were you
2 working as a investigator in the Crimes Against Children's
3 Unit in March of 2012?

4 A Yes.

5 Q As an investigator, did you come to work on a
6 case involving the Defendant, Michael Williams?

7 A I did.

8 Q Please tell me when that case was assigned to
9 you.

10 A The report was taken on April the 1st and I
11 received it on April the 2nd.

12 Q Okay. Was there an incident location that was
13 given to you?

14 A It was.

15 Q What was that?

16 A Fork Shoals Road in Greenville County.

17 Q That is in Greenville County?

18 A Yes, ma'am.

19 Q Is all of Fork Shoals Road in Greenville County?

20 A I believe so.

21 Q Okay. And tell me who was the alleged victim in
22 this case?

23 A It was the child [REDACTED] Minor .

24 Q Okay. Did you meet with [REDACTED] Minor on April 2nd?

25 A I did not.

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 Q Did you meet with anybody on April 2nd?

2 A No, I did not.

3 Q When was the first time that you met with
4 somebody to talk about this case?

5 A I made contacted with the mother, Tammy, to see
6 if she would come into the office to speak with me. She
7 couldn't because of her work schedule. So, I arranged to
8 meet her at her work.

9 Q Okay. When was that, do you recall?

10 A On April 3rd.

11 Q Okay. And where did you meet Tammy? You said
12 it was at her place of work?

13 A At her place of employment.

14 Q Do you remember where that was?

15 A I do not.

16 Q Okay. And did Tammy provide you with a
17 statement in this case?

18 A She did.

19 Q Was it written or oral?

20 A It was written.

21 Q Okay. Based on what Tammy told you what were
22 your next steps as an investigator?

23 A I advised her that I was going to se the child
24 up for a forensic interview at the Julie Valentine Center.
25 And I completed the referral and sent it over to them.

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 Q Okay. Now, did you also interview **Minor**

2 A I did not.

3 Q Why is that?

4 A Normally with children that age we don't. We
5 refer them over to the Julie Valentine Center for a
6 forensic interview so they don't have to recount the
7 incident more than they have to.

8 Q Okay. Did you meet **Minor** at some point.

9 A I did. I met her at the Julie Valentine Center.

10 Q Have you seen her since then?

11 A I think I seen her besides court yesterday one
12 other time.

13 Q Okay. And how old was **Minor** when she had the
14 interview at the Julie Valentine center?

15 A She was five.

16 Q Do you recall in relation to the alleged
17 incident date how far after the interview took place?

18 A On April 3rd was the interview date.

19 Q Okay. Do you recall when this event took place?

20 A It was March 31st.

21 Q Okay. Did you execute a search warrant for the
22 Sutton's residence?

23 A I did not.

24 Q Why not?

25 A I didn't feel that there was any evidence there

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 to obtain that would be good to this case.

2 Q Okay. Were you present -- you said you met
3 **Minor** at the Julie Valentine Center, were you present for
4 her forensic interview?

5 A I was.

6 Q After the interview what was your next step?

7 A After that interview I made contact with
8 Mr. Williams to see if he would come into the office for
9 an interview.

10 Q Okay. Can you please tell me where you first
11 made contact with Mr. Williams?

12 A At his residence.

13 Q Was he home?

14 A He was.

15 Q Was there a vehicle there?

16 A There was.

17 Q Do you remember what type of vehicle it was?

18 A A blue pickup truck.

19 Q Okay. And did you speak with Mr. Williams that
20 day about the allegations?

21 A I did not. I advised him that I was working --
22 I was investigating a case that involved him and asked him
23 if he could come down to the office and speak with me
24 about it.

25 Q Did he agree to do so?

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 A He did.

2 Q When did he end up coming to your office?

3 A The next day.

4 Q Okay. I'm going to show you what has previously
5 been marked as State's Exhibits 5 and 6. And at this
6 point can you just tell me if you recognize both of those
7 exhibits?

8 A I do.

9 Q Can you tell me how you recognize State's
10 Exhibit 5?

11 A I have my signature on the bottom as a witness.

12 Q Is that a form that you often use?

13 A It is.

14 Q And can you please tell us basically what
15 State's Exhibit 5 is?

16 A That is a Waiver of Rights form that we read to
17 or have the suspects read when they come into the office.

18 Q Is that the form that you read or had
19 Mr. Williams read?

20 A It is.

21 Q How do you know that?

22 A It has my signature, it also has his initials
23 beside each sentence and his signature.

24 Q Is that item dated?

25 A It is.

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 Q What's the date?

2 A May 4th, 2012.

3 Q Is that the same date that you spoke with
4 Mr. Williams?

5 A That is correct.

6 Q Is that also -- is there a time written on
7 there?

8 A It is.

9 Q What is it?

10 A 2:55.

11 Q Okay. And aside from the writings that you
12 recognize, have any other additions or deletions been made
13 to that item?

14 A No, ma'am.

15 MS. BENTLEY: Your Honor, at this time The State
16 moves Exhibit 5 into evidence.

17 THE COURT: Any objection?

18 MS. MANIGAULT: No objection, Your Honor.

19 THE COURT: All right, it's in evidence without
20 objection.

21 (WHEREUPON, State's Exhibit No. 5, having been
22 marked in previous testimony, was received into
23 evidence.)

24 BY MS. BENTLEY:

25 Q Moving on to State's Exhibit 6, how do you

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 recognize that form?

2 A This is also a statement form that we have. We
3 ask them to fill out if they will. It has my signature
4 down as a witness. It also has Mr. Williams signature at
5 the bottom.

6 Q So, that is the same form that you used when
7 speaking with Mr. Williams?

8 A That's correct.

9 Q It is dated?

10 A It is.

11 Q What is the date?

12 A May 4th, 2012.

13 Q The handwriting on that form, whose handwriting
14 is that?

15 A It's Mr. Williams.

16 Q Okay. And aside from the handwriting that you
17 recognize as either yours or Mr. Williams, have any other
18 changes been made to that?

19 A No, ma'am.

20 MS. BENTLEY: Your Honor, at this time The State
21 moves Exhibit 6 into evidence.

22 THE COURT: Any objection?

23 MS. MANIGAULT: No objection, Your Honor.

24 THE COURT: All right, it's in evidence without
25 objection.

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 (WHEREUPON, State's Exhibit No. 6, having been
2 marked in previous testimony, was received into
3 evidence.)

4 BY MS. BENTLEY:

5 Q All right, Investigator Robertson, where did you
6 speak to Mr. Williams?

7 A The first time at his residence, the second time
8 in my office.

9 Q Okay. Please describe your office to us, where
10 is it located?

11 A It's at University Ridge at County Square.

12 Q So, it's not the main Law Enforcement Center?

13 A It is not.

14 Q And tell me a little bit about what your office
15 looks like.

16 A It has a L-shaped desk, I have two chairs
17 sitting in the front. It's just a squared off office.

18 Q Okay. Tell me, was anyone else present when you
19 spoke with Mr. Williams in your office?

20 A No.

21 Q Was he under arrest at that time?

22 A No, ma'am.

23 Q Was he in handcuffs?

24 A No, ma'am.

25 Q Was he deprived of any food, water, bathroom

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 breaks?

2 A No, ma'am, he never asked.

3 Q Was he free to leave?

4 A Yes, ma'am.

5 Q Was he free to stop talking to you at any time?

6 A Yes, ma'am.

7 Q Did he agree to speak with you, though?

8 A He did.

9 Q Did you advise him of his rights?

10 A I did with this waiver.

11 Q Why did you do that?

12 A It's sheriff's office procedure. We do that to
13 make sure they understand that even though in this
14 interview whatever they say can and will be used against
15 them and they have an option of not speaking with me at
16 all.

17 Q Okay. Can you, please, read us the rights that
18 are initialed on that form?

19 A Yes, ma'am.

20 Before we ask you any questions you must
21 understand your rights. You have the right to remain
22 silent, anything you say can be used against you in court.
23 You have the right to talk to a lawyer for advice before
24 we ask you any questions and to have him with you during
25 questioning. You have -- if you have no money to pay a

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1 lawyer's fee, the Court will appoint one to represent you
2 without cost if you wish. If you decide to answer
3 questions now without a lawyer present you will still have
4 the right to stop answering questions at any time. You
5 also have the right to stop answering at any time until
6 you talk to a lawyer.

7 Paragraph says, I have read the statement of my
8 rights and I understand what my rights are. I am willing
9 to make a statement and answer questions. I do not want a
10 lawyer at this time. I understand and know what I am
11 doing. No promises or threats have been made to me and no
12 pressure or coercion of any kind has been used against me.

13 Q Did you have any concerns about Mr. Williams
14 ability to understand those rights?

15 A I did not.

16 Q Did he appear to be under the influence or
17 suffering from any mental distress that day?

18 A No, ma'am.

19 Q And did you advise him of the allegations
20 against him?

21 A I did.

22 Q Do you recall what you told him?

23 A I believe I told him exactly what was disclosed
24 in the forensic interview.

25 Q Okay. Had you seen the forensic interview prior

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 to speaking with him?

2 A I did.

3 Q Okay. And did you advise him that he had been
4 accused of sexual abuse.

5 A That's correct.

6 Q And did you tell him who the alleged victim was?

7 A I did.

8 Q Okay. And what did he do in response to that
9 allegation by you?

10 A Of course, he denied it.

11 Q Okay. Did he provide you with a statement?

12 A He did.

13 Q Okay. And would you, please, read that
14 statement to us?

15 A I'll try.

16 Q Well actually, pardon me, before you do that.
17 Can you tell me what you asked him to provide you with the
18 statement?

19 A I asked him to provide me what his relationship
20 was with Tammy and if he would tell me about the time that
21 the allegations were being made about them being in the
22 room and what went on in the room between him and **Minor**

23 Q All right. To the best of your ability, please
24 read his statement.

25 A Okay, it says -- you want me to start up here or

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 just read what he wrote.

2 Q Just read.

3 A We came back in from somewhere and Minor wanted
4 to read books and do puzzles. So, we sat near the door
5 and played with puzzles -- can't make out that word. Then
6 started -- starting reading books. While doing this Tammy
7 my would come by every two or five minutes. Around six
8 o'clock she told Minor to feed fish so they could get
9 ready to go to her mom. After she was through feeding
10 they got ready to leave. I gave Minor a hug, then gave
11 Tammy a hug and said, Bye. They left and I left.

12 Tammy and me had a just friends relationship
13 with no sex involved. But she always wanted more. Kept
14 on saying she wanted us to have sex and be a daddy to
15 Minor since she doesn't have one.

16 Q All right. And was that the extent of the
17 statement he provided?

18 A It is.

19 Q Was he free to leave after that?

20 A Yes, ma'am.

21 Q I want to show you -- I want to show you what's
22 previously been marked as State's Exhibits 3 and 4. Can
23 you tell me -- first, do you recognize each of those
24 documents?

25 A I do.

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 Q Can you tell me how you recognize Exhibit 3?

2 A This is a consent form that we use if we're
3 trying to get consent from someone to search a phone.

4 Q Okay. And for Exhibit 3, whose consent form is
5 that?

6 A This is Tammy Sutton.

7 Q Okay. And do you recognize the signatures on
8 that?

9 A I do.

10 Q Who signatures do you recognize?

11 A It's Tammy Sutton and myself.

12 Q Okay. And what is the date of that?

13 A November 1st, 2013.

14 Q Okay. And did you do -- or did you request a
15 forensic analysis be done on Tammy's phone?

16 A I did.

17 Q Okay. How do you -- tell me about that process?

18 A I take possession of the phone, have them fill
19 out a form saying that I took the phone from them. Take
20 that to our computer lab. We have three guys that work in
21 the computer lab. I give them the form and the phone and
22 they do a forensic download of the phone. Then they give
23 me the phone back. And they give me a disk of what they
24 download.

25 Q Okay.

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 Your Honor, at this time The State moves Exhibit
2 3 into evidence.

3 THE COURT: Any objection?

4 MS. BENTLEY: This is Ms. Sutton's.

5 MS. MANIGAULT: No objection, Your Honor.

6 THE COURT: All right, State's 3 is in evidence
7 without objection.

8 (WHEREUPON, State's Exhibit No. 3, having been
9 marked in previous testimony, was received into
10 evidence.)

11 BY MS. BENTLEY:

12 Q Can you tell me what is -- or how you recognize
13 State's Exhibit 4?

14 A This is the same type of form.

15 Q Okay. And when you were speaking with
16 Mr. Williams, did you ask him for consent to search his
17 phone?

18 A I did.

19 Q And did he provide you with consent?

20 A He did.

21 Q Did you -- is that the form that you used with
22 him?

23 A Yes, ma'am.

24 Q How do recognize it? Or how do you know?

25 A It has his signature and my signature and also

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 the case number up at the top.

2 Q Okay. And aside from his signature, has any
3 deletions been made from those?

4 A No, ma'am.

5 Q Okay.

6 MS. BENTLEY: Your Honor, at this time The State
7 moves Exhibit 4 into evidence.

8 THE COURT: Any objection?

9 MS. MANIGAULT: No objection, Your Honor.

10 THE COURT: All right, it's in evidence without
11 objection.

12 (WHEREUPON, State's Exhibit No. 4, having been
13 marked in previous testimony, was received into
14 evidence.)

15 BY MS. BENTLEY:

16 Q Can you tell me when you took possession of
17 Mr. Williams phone?

18 A The same day that we had the interview in my
19 office.

20 Q Okay. And where is that computer lab that you
21 were speaking about?

22 A It's the same location as our office is except
23 you go out of my office and you walk three offices down,
24 it's on the right.

25 Q Okay. So, then when he gave you permission to

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 search his phone, did you take the phone immediately?

2 A I did.

3 Q Okay. Do you recall how long it took for them
4 to perform that download?

5 A Time, I don't recall. I know because they would
6 give the phone back to him before he left.

7 Q Okay. Do you know approximately how long
8 Mr. Williams was in your office?

9 A I'm going to guess no more than an hour.

10 Q Okay. And finally, I'm going to show you what's
11 been marked as State's Exhibits 1 and 2. First, I'm going
12 to ask you a question. You indicated that you did not --
13 or you were not super clear on the process of downloading
14 the phone, is that correct?

15 A That's correct.

16 Q And you do not do that, is that correct?

17 A That's correct.

18 Q There's specially trained people to do that,
19 correct?

20 A That's correct.

21 Q That, being said, do you recognize State's
22 Exhibits 1 and 2?

23 A These are the forms once they give me the DVD
24 after the download and I pull it up on the computer, this
25 is what I print out.

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 Q So, that appears to be a phone download that you
2 get?

3 A Correct.

4 Q And do you get those frequently in your cases?

5 A Correct?

6 Q Okay. Looking at State's Exhibit 1, what can
7 you tell me about -- or what do you recognize about that
8 particular exhibit?

9 A The same. This is the same phone that belonged
10 to Tammy.

11 Q How do you know that?

12 A Because the paperwork I have shows her phone as
13 an LG.

14 Q Okay. And what about State's Exhibit 2?

15 A It's the same type of phone that belonged to
16 Mr. Williams, a Nokia.

17 Q Okay. Thank you, very much. Investigator
18 Robertson, do you see Mr. Williams was in this courtroom
19 today?

20 A Yes, ma'am.

21 Q Does he look substantially the same as he did
22 when you spoke with him over two years ago?

23 A No, ma'am.

24 Q All right. I'm going to show you what's been
25 previously marked as State's Exhibit 11, would you look at

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 this for me and not tell me what it is?

2 A Yes, ma'am.

3 Q Do you recognize that image?

4 A I do.

5 Q How do you recognize that image?

6 A This looks like the person I spoke with when I
7 spoke with Mr. Williams on that May the 4th date.

8 Q Okay.

9 Your Honor, at this time The State would move
10 exhibit 11 into evidence.

11 THE COURT: Is there any objection to that?

12 MS. MANIGAULT: Your Honor, I do have an
13 objection.

14 THE COURT: All right, ladies and gentlemen of
15 the jury, if you'd go to your jury room, please.
16 Thank you.

17 (WHEREUPON, the jury left open court at
18 approximately 2:00 p.m.)

19 THE COURT: All right, Ms. Manigault, be glad to
20 hear from you, ma'am.

21 MS. MANIGAULT: Yes, sir. Your Honor, we object
22 to the photo of the Defendant being placed into
23 evidence from two years ago. I believe the officer
24 testified and describe how he appeared two years ago
25 and how he appears today and he explained the

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 difference. I do not believe that the photo is
2 necessary in this case.

3 THE COURT: All right, very good. I'm going to
4 allow State's 11 into evidence over the objection of
5 the Defense. I think it's a proper aid for the jury
6 in understanding the testimony of the investigator in
7 this matter. And I'm sure The State will question
8 the investigator about the differences between the
9 photograph and today. But I believe it's a proper
10 aid to help explain that to the jury so I'm going to
11 allow it.

12 All right, Solicitor, you'll still need to move
13 that into evidence when the jury comes back.

14 MS. BENTLEY: Yes, sir.

15 THE COURT: If the jury is ready to come back,
16 ask them to come back in, please.

17 (WHEREUPON, the jury came into open court at
18 approximately 2:01 p.m.)

19 (WHEREUPON, State's Exhibit No. 12 was marked
20 for identification only.)

21 THE COURT: All right, Solicitor, you may
22 continue, ma'am.

23 MS. BENTLEY: Your Honor, The State renews its
24 request to move Exhibit 11 into evidence.

25 THE COURT: All right, I'm going to allow

MICHAEL ROBERTSON-DIRECT BY MS. BENTLEY

1 State's Exhibit 11 in evidence over the objection of
2 the Defense.

3 You may proceed.

4 (WHEREUPON, State's Exhibit No. 11 was admitted
5 into evidence.)

6 BY MS. BENTLEY:

7 Q Investigator Robertson, can you, and again, the
8 jury will have a photograph, can you briefly describe the
9 main differences between Mr. Williams today versus
10 Mr. Williams when you spoke with him over two years ago?

11 A I don't recall him having a full beard. And he
12 appears to have lost a good bit of weight since that date.

13 MS. BENTLEY: All right, I have no further
14 questions for you, please answer any questions
15 Ms. Manigault may have.

16 THE COURT: All right, cross-examination.

17 CROSS-EXAMINATION

18 BY MS. MANIGAULT:

19 Q Investigator, you said that you first went to
20 Mike Williams house and advised him that you were
21 investigating and asked him to come down to your office?

22 A Yes, ma'am.

23 Q And he came down to your office the next day?

24 A Yes, ma'am.

25 Q Did he come alone or did he bring his father or

MICHAEL ROBERTSON-CROSS BY MS. MANIGAULT

1 anybody else with him?

2 A If I remember correctly he came alone.

3 Q And when you asked him or to do a statement
4 describing what his relationship was with Tammy and **Minor**
5 he gave you that statement voluntarily?

6 A Yes, ma'am.

7 Q That was after you had advised him of all of his
8 rights?

9 A Yes, ma'am.

10 Q And you advised him that this was a criminal
11 investigation?

12 A Yes, ma'am.

13 Q And he gave you that statement?

14 A Yes, ma'am.

15 Q And you also asked him if you could have his
16 telephone -- cell phone?

17 A Yes, ma'am.

18 Q To download any information off that phone?

19 A Yes, ma'am.

20 Q And he I believe State's Exhibit No. 4, you
21 testified that this is the consent he gave you to download
22 from his cell phone, is that right?

23 A Yes, ma'am.

24 Q Okay. And he gave you that voluntarily? You
25 didn't have to force him to give it to you?

MICHAEL ROBERTSON-CROSS BY MS. MANIGAULT

1 A That's correct.

2 Q And you testified that the -- he came to your
3 office on the 4th, May 4th?

4 A Yes, ma'am.

5 Q Okay. And the interview that was at the
6 Valentine Center with Sarah Davis, was on April 30th?

7 A Yes, ma'am, that's what I have in my report.

8 Q And you testified that you were present for that
9 interview?

10 A That's correct.

11 Q And you did not go into the interview room but
12 you were in a position where you could view the room and
13 the interview?

14 A Correct. We view it in another room via closed
15 circuit television.

16 Q Okay. And did Sarah Davis at any time, she left
17 the room, the interview room with **Minor** did she come to
18 speak with you?

19 A She did.

20 Q Did she come to speak with you a couple of times
21 about anything?

22 A If I recall it was just once.

23 Q Just once, all right. Thank you.

24 THE COURT: Any redirect?

25 MS. BENTLEY: None, Your Honor.

MICHAEL ROBERTSON-CROSS BY MS. MANIGAULT

1 THE COURT: All right, you may step down, sir.

2 Next witness from The State.

3 MS. BENTLEY: The state calls Dr. Nancy

4 Henderson.

5 THE CLERK: Please come forward. Place your

6 left hand on the Bible, raise your right hand.

7 NANCY HENDERSON, after being duly

8 sworn, testified as follows:

9 THE CLERK: Thank you, have a seat, please.

10 Would you, please, state your name for the record.

11 THE WITNESS: Nancy Henderson.

12 THE COURT: Okay, could you scoot the chair up

13 as close to the microphone as you could please,

14 ma'am. Thank you.

15 DIRECT EXAMINATION

16 BY MS. BENTLEY:

17 Q Dr. Henderson, please tell us where you are
18 employed and in what capacity?

19 A I'm employed with the Greenville Health System,
20 I'm the director of the forensic pediatrics there at the
21 hospital.

22 Q Okay. Is your main office at Greenville
23 Memorial Hospital?

24 A That's my employer but I do work in a number of
25 different locations as a part of that job.

NANCY HENDERSON-DIRECT BY MS. BENTLEY

1 Q Please tell us where you work?

2 A Right. So, I am at the hospital, I'm involved
3 in inpatient consult when there's a concern about abuse
4 and neglect in evaluating that. I'm also involved with
5 evaluations at the Julie Valentine Center for referrals
6 for usually concerns of sexual abuse and some physical
7 abuse. I also work at the Children's Advocacy Center in
8 Spartanburg at a center similar as the Julie Valentine
9 Center. I work there two days a week and see children
10 there as well as participate in staffings. I also work at
11 the Pendleton Place evaluating the children that come into
12 foster care. Some of the children stay there and some of
13 the children we just evaluate as an outpatient doing their
14 initial medical assessments, developmental assessments.
15 And then do follow up over at the center for pediatric
16 medicine where I also see children.

17 Q All right. Dr. Henderson, can you, please, tell
18 us a little bit about your educational background?

19 A Yes. My undergraduate experience, I graduated
20 with a BS in Pharmacy. It was a five year undergraduate
21 degree from Rutgers University in New Jersey. I then went
22 to medical school in Bowman Gray Medical School which is
23 in Winston Salem, North Carolina and graduated in 1984.
24 And then did my pediatric residency at T.C. Thompson
25 Children's Hospital which is in Chattanooga, Tennessee and

NANCY HENDERSON-DIRECT BY MS. BENTLEY

1 became board certified in pediatrics. And then
2 subsequently moved to South Carolina and began working at
3 the hospital in 1991. And in 19 -- in 2009 there became a
4 sub-board in the area of child abuse and neglect so that
5 50 percent of your practice had to be involved with child
6 abuse. And was able to sit for that board and pass that.
7 So, I am sub-boarded in the area of child abuse
8 pediatrics.

9 Q Do you also have any special training in the
10 filed of child abuse pediatrics and special seminars or
11 certifications aside from the. . .

12 A Well, as part of being able to take that board
13 certification like i mentioned, you had to have 50 percent
14 of your practice be a part of it. You have to take this
15 written examine which you have to recertify every 10
16 years. And then we have a statewide child abuse network
17 of nurse practitioners and positions. And with that we
18 have to get a certain number of continuing education
19 credits as well as well as for the general medical degree
20 in South Carolina you have to take ongoing medical
21 education credits.

22 Q All right. Approximately how many hours of
23 special training do you have to have every year to
24 maintain your medical license and sub-board certification?

25 A It is 40 like hours every two years.

NANCY HENDERSON-DIRECT BY MS. BENTLEY

1 Q Okay. And are there -- do you keep up with the
2 literature in child abuse pediatrics?

3 A Well, you know, since this is a part of my --
4 the majority of my job, with each case, you know, you're
5 constantly reviewing. We do peer reviews as part of our
6 statewide network as well. So constant review is just a
7 daily part of my job.

8 Q Okay. Are there special methods that you use as
9 a pediatrician and as a child abuse pediatrician?

10 A For review?

11 Q Yes.

12 A Well, there's a lot of different ways to do
13 that. Like I mentioned we have to take an written examine
14 which is a four hour examine. So I have to be able to
15 pass that. There's a list serve that is continually
16 sending information about new articles being published.
17 Each year with all the courses since the majority of my
18 area is with child abuse and neglect, my continuing
19 medical education credits is really focused in on that
20 every year. And then we really also given ongoing
21 trainings, not only to the residence but also to community
22 partners, DSS, law enforcement, guardian ad litem. So,
23 with each of those trainings it's enough to kind of
24 redefine what you're talking about and make sure that
25 you're sharing the latest information to the residence, to

NANCY HENDERSON-DIRECT BY MS. BENTLEY

1 other people that are going to be using that information.

2 Q Okay. Dr. Henderson, have you previously been
3 qualified as an expert in General Sessions Court?

4 A Yes, I have.

5 Q And what was your expert qualification?

6 A Well, it's been both in the area of general
7 pediatrics and also and in the area of child abuse
8 pediatrics.

9 MS. BENTLEY: Your Honor, at this time The State
10 wishes to qualify Dr. Nancy Henderson as an expert in
11 child abuse pediatrics.

12 THE COURT: Do you wish to voir dire the witness
13 as a to qualifications or to challenge The State's
14 offer?

15 MS. MANIGAULT: No, sir.

16 THE COURT: All right. I'm going to qualify her
17 to give her opinion in the field of child abuse
18 pediatrics.

19 You may continuing, ma'am.

20 BY MS. BENTLEY:

21 Q Dr. Henderson, did you see a patient by the name
22 of [REDACTED] Minor [REDACTED]?

23 A Yes, I did.

24 Q When did you see her?

25 A I saw her on May 3rd, 2012.

NANCY HENDERSON-DIRECT BY MS. BENTLEY

1 Q By whom was she referred to you?

2 A She was referred by law enforcement.

3 Q And what is the process that someone, I guess,
4 is referred to someone in your speciality?

5 A Yes. So, she was referred to the Julie
6 Valentine for a forensic interview and for a medical
7 evaluation. Which majority of the times happens on
8 different days. So, they will make a call either DSS or
9 law enforcement make a call to make that referral that
10 there's some type of concern for abuse and neglect
11 requesting the medical examine.

12 Q Okay. And how old was **Minor** when you performed
13 your examine?

14 A She was five.

15 Q Can you, please, explain the process of a
16 forensic medical examine and how it differs from a typical
17 pediatrician visit?

18 A Sure. So, what we have typically do is I work
19 with a child life specialist who just helps to make sure
20 that the child is aware of what's going to happen and the
21 parent or whoever is accompanying them with the examine to
22 just make sure there's no surprises and to understand
23 what's happening. So, that child life specialist will go
24 out to the waiting room and bring the child back and the
25 accompanying adult. She then goes through and just allows

NANCY HENDERSON-DIRECT BY MS. BENTLEY

1 the child to have an opportunity to understand about this
2 being a head to toe physical examine just to manipulate
3 the equipment, the stethoscope, orthoscope. Then the
4 other thing that is a very important part of the examine
5 is what's called the colposcope. And it is a big piece of
6 equipment but it just has a lot of intense light and
7 magnification and we use it to look at the genital area
8 and to document our findings. So, we allow the child to
9 look at that so they're not frightened from it.

10 We have -- and then after that the child
11 specialist will also determine what kind of body part
12 names that the child is using to make sure that we are
13 talking about the same things. And then typically I will
14 talk with the parent just to understand, you know, what
15 concerns, problem is going on with the child, any medical
16 problems, headaches, anything like that child. And then
17 try to talk with the child by themselves if they're able
18 to separate. Again, to understand what worries and
19 concerns they may be having with their body. And then we
20 will do the medical examine at that point. We allow the
21 child to with them whoever they would feel comfortable
22 with. We use distractions like lately iPad has become
23 probably the number one distraction with a lot of
24 different games for them so that they don't get so worried
25 and they can relax. Because that cooperation is really

NANCY HENDERSON-DIRECT BY MS. BENTLEY

1 very, very important as part of my examine. Especially
2 when we get to the genital area.

3 So, we do a complete head to toe, looking at the
4 genital area. The child will usually put their feet in
5 the feet holders. But it's not like an adult examine so
6 we do use the speculum. Really all the information is
7 very close to the outside and the child is distracted
8 they really can participate very, very easily with it.
9 And then based on the disclosures or symptoms, then I
10 decide what type of testing if anything needs to be looked
11 at for other medical problems or concern about sexually
12 transmitted infections we do that. Then allow the child
13 to get dressed and then complete the examine by making
14 sure they have the appropriate referrals to move forward.

15 Q Did **Minor** elect to have her mother with her
16 during her medical examine?

17 A Yes, he did.

18 Q Did **Minor** express any concerns about her body to
19 you?

20 A No, she did not.

21 Q Did you specifically asked **Minor** whether she had
22 been touched in any type of way?

23 A I do usually ask if there has been any -- has
24 anything ever happened where you've been hurt or anyone
25 touch you on your body and she did not share any

NANCY HENDERSON-DIRECT BY MS. BENTLEY

1 information with me.

2 Q Okay. And what were the findings of your
3 forensic medical examine?

4 A Everything on her examine was normal.

5 Q Okay. And tell me what a normal examine means.

6 A So, a normal examine really means when, you
7 know, I looked at just like the ears, chest and the
8 genital examine, there were nothing -- nothing that I saw
9 that was that concerning. So, that's everywhere from
10 redness, discharge, tears, scars, everything. There was
11 just nothing remarkable when I saw her examine that day.

12 Q Okay. It is possible for sexual touching or
13 abuse to occur and there still be a normal examine?

14 A Yes. In fact, that's very, very common in my
15 field. About 90 percent of the children is see have
16 normal examines.

17 Q Why is that?

18 A Well, similar to what you had said, a lot of
19 times when children are referred the allegations are about
20 being touched. Sometimes it can be oral sex, sometimes it
21 can be digital penetration. Even sometimes penile
22 penetration and there are a number of reasons why the
23 examine may be normal. Often children don't disclose
24 right away. So, the abuse can happen, sometimes there's
25 days, weeks and occasionally years before they will feel

NANCY HENDERSON-DIRECT BY MS. BENTLEY

1 comfortable coming forward. And that area of the body has
2 a very good blood supply so even small tears can heal
3 very, very quickly. So, it's not uncommon, even when
4 there has been trauma to sometime have normal examine.

5 I Think the other reason that's fairly common is
6 a lot of times when children have those type of things
7 happen, whether that's being touched or oral sex, it's not
8 specifically to the vaginal area or to what was call the
9 outer vulva area. They describe it kind of the same way
10 because they use just one body name to describe their
11 whole genital area they were touched there, whatever that
12 name might be. And so, a lot of times it's not causing
13 trauma what we think to the hymen as that might be to
14 someone having actual intercourse. So, that they say that
15 went inside them but it often is inside their vulva area,
16 not necessarily into their vaginal area. And it may hurt
17 and it may be uncomfortable but it may not be, again, any
18 signs of any visible trauma, scars, tears, things like
19 that. And certainly with those kinds of allegations the
20 risk if STI's is pretty minimal. Not really anything with
21 digital penetration, orals sex, is pretty uncommon but it
22 could happen.

23 Q Okay. And what about -- you spoke about the
24 minimal trauma that could occur from digital penetration,
25 what about oral genital contact? Would there be any signs

NANCY HENDERSON-DIRECT BY MS. BENTLEY

1 of trauma from that?

2 A Well, I think sometimes, you know, anything
3 could cause irritation. If you saw it right away. But
4 sometimes we may not see that on the examine. So, the
5 majority of times they're examines are normal.

6 Q Does it concern you that **Minor** did not say
7 that -- that she did not express any concerns about her
8 body to you?

9 A No. You know, it's something I think is really
10 important as part of my examine to ask those questions.
11 But, you know, children are very, very different at
12 different times. Sometimes they feel like if they've
13 already shared, they've already told, then that's it,
14 they're done. And they don't want to keep talking about
15 it. And they know if they say yes, you know, we're going
16 to ask another question. If they say, No, nothing's
17 happened, that kind of cuts it short, that's the end of
18 the conversation. So, kids are pretty smart about that.
19 And really they have full control about what happens in
20 the examine. And so, sometimes kids are really worried
21 and concerned and can really share a lot of detail in the
22 medical examine. And sometimes they cannot. And it's
23 very, very variable. And I document that but I don't
24 think it means, you know, which one's true, which one's
25 not. I think it's just the child deciding whether she

NANCY HENDERSON-DIRECT BY MS. BENTLEY

1 wants to share information or not.

2 Q Okay. And Dr. Henderson, one last question.

3 Did you at any point in time observed [Minor]

4 forensic interview?

5 A I did not.

6 Q Okay. So, you have not seen that?

7 A I have not?

8 Q Okay.

9 I have no further questions, please answer any
10 questions that Ms. Manigault may have.

11 THE COURT: Cross-examination.

12 MS. MANIGAULT: Just a couple of questions, Your
13 Honor.

14 CROSS-EXAMINATION

15 BY MS. MANIGAULT:

16 Q Dr. Henderson, you said that her medical
17 physical examination, everything was normal?

18 A Yes, ma'am.

19 Q And you said her mom was present at the time, is
20 that correct?

21 A Yes.

22 Q And there were no concerns or information given
23 to you by any kind of touching from [Minor]

24 A From [Minor] herself, no.

25 MS. MANIGAULT: Thank you.

NANCY HENDERSON-CROSS BY MS. MANIGAULT

1 THE COURT: Any redirect?

2 MS. BENTLEY: No, Your Honor.

3 THE COURT: Do you wish the witness to be
4 excused?

5 MS. BENTLEY: Yes, please, Your Honor.

6 THE COURT: Any objection?

7 MS. MANIGAULT: None, Your Honor.

8 THE COURT: All right, ma'am, you're released
9 from your subpoena, you may go back to your regular
10 duties. Thank you.

11 Next witness by The State.

12 MS. BENTLEY: Your Honor, The State calls Shauna
13 Galloway-Williams.

14 THE COURT: You can come all the way up front
15 ma'am, please. All the way up toward the Bailiff
16 please, ma'am.

17 THE CLERK: If you'd, please, place your left
18 hand on the Bible, raise your right hand.

19 SHAUNA GALLOWAY-WILLIAMS, after being
20 duly sworn, testified as follows:

21 THE CLERK: Thank you, please be seated. State
22 your name for the record.

23 THE WITNESS: Shauna Galloway-Williams.

24 DIRECT EXAMINATION

25

SHAUNA GALLOWAY-WILLIAMS-DIRECT BY MS. BENTLEY

1 BY MS. BENTLEY:

2 Q Can you please tell us where you are employed
3 and in what capacity?

4 A I'm the executive director of the Julie
5 Valentine Center.

6 Q And what do you do as the executive director of
7 the Julie Valentine Center?

8 A The Julie Valentine Center is the child abuse
9 and sexual assault recovery center that serves Greenville
10 and Pickens County. As executive director I am -- I
11 manage all the administrative functions of the center,
12 financial oversight, all of those duties as well as
13 continuing to provide clinical support and supervision. I
14 still conduct forensic interviews, work directly with our
15 forensic interviewers and the other clinical staff.

16 Q When did you become the executive director of
17 the Julie Valentine Center?

18 A I served as executive director for five years.
19 Prior to that I was the clinical director at the center
20 and prior to that worked as a forensic interviewer.

21 Q Okay. Could you please tell us a little bit
22 about your educational background?

23 A Sure. I have a Bachelor's degree in psychology
24 and a Master's in counseling. I'm licensed as a
25 professional counselor in the State of South Carolina.

SHAUNA GALLOWAY-WILLIAMS-DIRECT BY MS. BENTLEY

1 Q And when did you receive those qualifications?

2 A I received my Bachelor's degree in 1996. My
3 Master's degree in 2000. And my licensure in 2004.

4 Q Do you also attend training seminars in the
5 field of forensic interviewing and child development?

6 A I do. I received over 150 -- or participated in
7 over 150 skills based hours of training directly related
8 to forensic interviewing which also relates to working
9 with children and dynamics of child abuse in general. As
10 well as other continuing education courses related to
11 counseling, children and assessing and working with the
12 families.

13 Q Okay. And where does the Julie Valentine Center
14 get its funding?

15 A We are a nonprofit organization. About a third
16 of our funding comes from the Greenville County United
17 Way, another third of our funding is federal funding.
18 That funding comes from the Violence Against Women's Act,
19 Victim's Crime Act, DHEC, National Children's Alliance.
20 And then the other third of our funding is through
21 fundraising, personal donations and grants.

22 Q In total, how many years have you worked with
23 victims of sexual assault?

24 A I worked with children and their families who
25 have been impacted by child abuse and sexual assaults for

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1 the past 14 years.

2 Q Do you subscribe to any trade publications?

3 A Well, I do receive child maltreatment which is a
4 journal published by ADSAP. Which is the American
5 Professional Society on the abuse of children.

6 Q Okay. And do you read other journals or
7 articles on a regular basis?

8 A Yes.

9 Q Do you maintain or do you have to maintain a
10 certain number of educational hours annually?

11 A Yes.

12 Q How many is that?

13 A Well, it's 22 hours every two years.

14 Q Okay. And are you -- have you taught classes or
15 taught seminars in the fields of forensic interviewing or
16 child development, child abuse?

17 A I do. I'm currently an adjunct professor at the
18 University of South Carolina Upstate. And their child
19 advocacy studies program. I teach a course on child
20 maltreatments. I also provide training at local,
21 statewide and national conferences.

22 Q Okay. Is child development part of either the
23 classes that you teach or seminars and classes that you
24 have taken?

25 A Yes.

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1 Q In what aspect or?

2 A Well, in the area of forensic interviewing,
3 child development as part of our training because we look
4 at how children communicate, how children take in
5 information. The way that the protocols are structured
6 for forensic interviewing are really based on child
7 development and an understanding of that.

8 Q Okay. The matters of child sexual abuse that
9 you testified about in the past, have they been published
10 in professional journals, through publications and
11 whatnot?

12 A Yes.

13 Q And how long have people been researching child
14 abuse?

15 A Well, it's -- it is a fairly new field of study.
16 It's really been over the past 20 or 30 years where
17 there's been significant impact in the research and really
18 a growth in the scientific field of research around
19 forensic interviewing and how we work with children and
20 families who have been impacted by these crimes.

21 Q Okay. Have the principles that you used been
22 subject to review?

23 A Yes.

24 Q Are they uniformly accepted and recognized, I
25 guess, within the broader field of sexual abuse and

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1 trauma?

2 A Yes.

3 Q How big, if you can describe, is the field of
4 sex abuse researchers?

5 A How big?

6 Q How large? Are there a lot of people that
7 research this or is a boutique science?

8 A You know, it's a nationally and internationally
9 recognized field. In fact, we belong to the National
10 Children's Alliance, which is also directly involved with
11 the National Children's Advocacy Center and the Gunter's
12 National Child Protection Training Center. Our center is
13 one of more than 800 children's advocacy centers that are
14 across the country.

15 Q Okay.

16 A So, it's pretty widely accepted field of study
17 and profession.

18 Q And how many years experience do you personally
19 have counseling children or doing forensic interviews?

20 A Well, I have been working in the field of mental
21 health for about 18 years. Specifically working with
22 children and families for 14 of those years. I've
23 conducted more than 800 forensic interviews, I'd say over
24 the period of 14 years I've worked with more than a
25 thousand children and their families and consulted on

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1 numerous cases and continue to provide and work with the
2 team around peer review both for counseling and forensic
3 interviewing.

4 Q So, have you previously been qualified as an
5 expert in General Sessions Court?

6 A I have.

7 Q Have you previously testified as a blind expert
8 in General Sessions Court?

9 A I have.

10 MS. BENTLEY: Your Honor, at this time The State
11 would seek to qualify Ms. Galloway-Williams as an
12 expert in child sexual abuse and development and
13 treatment. And would request a finding of her
14 training and knowledge that they are reliable
15 pursuant to State vs. Tapp and State vs. White.

16 THE COURT: Tell me the field again, please
17 ma'am.

18 MS. BENTLEY: In child development and, I guess,
19 child sexual abuse.

20 THE COURT: All right, Ms. Manigault, do you
21 wish to voir dire the witness or challenge The
22 State's offer?

23 MS. MANIGAULT: I just want to get one thing
24 straight. She's offering her as a blind expert in
25 the field of child development and sexual abuse?

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1 THE COURT: Child development and sexual abuse,
2 yes, ma'am.

3 MS. MANIGAULT: No, sir.

4 THE COURT: All right. Very good.

5 MS. BENTLEY: And if I can put on the record
6 that her training and knowledge are reliable pursuant
7 to State v. Tapp?

8 THE COURT: Y'all come up and talk to me for a
9 second.

10 (WHEREUPON, an off-the-record bench conference
11 was held in the presence of the jury but out of
12 the hearing of the jury.)

13 THE COURT: What I'm going to do, Solicitor, is
14 qualify her to give her opinion in the field of child
15 sexual abuse and child development, that's all I'm
16 going to do.

17 MS. BENTLEY: Yes, sir.

18 THE COURT: Thank you.

19 BY MS. BENTLEY:

20 Q Ms. Galloway-Williams, do you know the victim in
21 this case [Minor]

22 A No, I do not.

23 Q Have you counseled [Minor] or her family?

24 A No.

25 Q To your knowledge have you met [Minor] or her

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1 family?

2 A No.

3 Q You have no personal knowledge regarding the
4 allegations in this case?

5 A No.

6 Q All right. And can you tell the jury what you
7 understand your purpose of testifying today is?

8 A To provide information and education about the
9 dynamics of child sexual abuse.

10 Q Okay. Do children have to be of a certain age
11 to become a victim of child sexual abuse?

12 A No. Children of any age from infancy up to and
13 through adulthood can be victims of sexual abuse. It's
14 been my experience working at our center that we've seen
15 victims within that age range.

16 Q All right. And is there a general range where
17 children begin to understand what sexual abuse and what
18 inappropriate sexual contact is?

19 A You know, when children -- one of the first
20 things we look at is whether, you know, whether a child
21 can actually verbally communicate with us. We typically
22 do forensic interviews with children who can speak.
23 Whether they're two years old, usually three is the age
24 that we look at. So, a lot of times children that are
25 younger than that just may not have words to describe

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1 abuse that's happened. A lot of times in those kinds of
2 cases the abuse is discovered by a behavior, an action,
3 someone asking them a question about something a child
4 said or done that's concerning or looks out of the
5 ordinary. As children get a little bit older and they
6 have more knowledge about their body parts, they may begin
7 to understand that something they experienced or something
8 that's happened to them was not okay or was abusive.
9 There are a lot of other things that play into that too,
10 though. How long the abuse has occurred, the
11 circumstances around it, who has committed it, who has
12 been the person who abused them. Generally, once children
13 do have an understanding of sexuality and sexual
14 knowledge, particularly when children reach the age of a
15 teenager, they have a much better understanding of what
16 has happened to them and really what the impact of that
17 has been on them.

18 Q Okay. What demeanor do children have when
19 discussing sexual abuse in your experience?

20 MS. MANIGAULT: Your Honor -- that's okay.

21 THE COURT: Okay, go ahead, ma'am.

22 THE WITNESS: Well, you know, most children --
23 most children, teenagers, adults are uncomfortable
24 talking about sex in general. Whether it's
25 pleasurable or unpleasurable. For young children who

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1 really don't have a frame of reference around them,
2 it can be really embarrassing to them. For those
3 that really don't understand what it really means to
4 talk about sex, they may not be embarrassed about it
5 at all. It may just be that they're talking about
6 something that happened to them. So again, that
7 could really be across the full range of experiences.
8 But most of the time children are embarrassed about
9 it. We teach children to keep their private parts
10 and body parts covered and that's something we don't
11 talk about. People aren't to touch. And so, talking
12 about it to anyone is usually pretty uncomfortable.
13 Unless they're making jokes about it. Which at
14 certain developmental ages we know that's totally
15 developmentally appropriate and kids do that.

16 MS. BENTLEY: All right. I have no further
17 questions for this witness.

18 Please answer any questions Ms. Manigault may
19 have.

20 THE COURT: Cross-examination.

21 MS. MANIGAULT: None, Your Honor.

22 THE COURT: Do you wish the witness to be
23 excused, ma'am?

24 MS. BENTLEY: Yes, sir, I do.

25 THE COURT: All right, any objection?

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1 MS. MANIGAULT: No objection.

2 THE COURT: Very good. You are excused, ma'am,
3 you may go back to your regular duties, thank you.

4 All right, next witness by The State, ma'am.

5 MS. BENTLEY: Your Honor, The State rests.

6 THE COURT: All right, very good.

7 There's some matters of law for the Court at
8 this time from the Defense?

9 MS. MANIGAULT: Yes, sir.

10 THE COURT: All right, very good.

11 All right, Mr. Foreman, ladies and gentlemen of
12 the jury, at this stage of the proceedings when The
13 State rests, there are always -- it's proper for the
14 Court to hear certain matters. At this time,
15 obviously, I need to do that outside your presence.
16 Please go to your jury room, I'll call you back out
17 as soon as I can. Thank you, very much.

18 (WHEREUPON, the jury left open court at
19 approximately 2:37 p.m.)

20 THE COURT: All right, Ms. Manigault, motions by
21 the Defense.

22 MS. MANIGAULT: Your Honor, the Defense would
23 move for the charge -- the case to be dismissed.
24 One, there was no testimony in trial from the alleged
25 victim as to any elements of the crime as charged.

1 Stop there.

2 THE COURT: Okay. All right.

3 State want to respond to that?

4 MS. BENTLEY: Yes, sir, Your Honor. Under
5 17-23-125, the Victim's statement in the interview
6 which is -- has been admitted and is admissible, is
7 the format for allowing some children to make the
8 disclosure to the jury. The jury's seen the
9 interview. The Victim was also subject to
10 cross-examination. And it's a matter for the jury at
11 this point to determine whether or not the interview
12 alone is sufficient to find the Defendant guilty.

13 THE COURT: Thank you, ma'am.

14 All right. On that particular motion by the
15 Defense I'm going to respectfully decline to grant
16 your motion to a directed verdict motion on the two
17 charges. Based on a failure by The State to produce
18 evidence. Regarding this particular matter, that
19 directed verdict motion, The Court, Trial Court, is
20 only concerned with the existence of evidence.
21 Whether or not the evidence exist, I'm not hear to
22 judge credibility or believability regarding that
23 particular evidence. And again, general standard is
24 if there is any direct evidence or substantial
25 circumstantial evidence reasonably tending to prove

1 the guilt of the accused, the case is properly
2 submitted to the jury. I don't have the same
3 standard that the jury does, that's beyond a
4 reasonable doubt. The court's standard is is there
5 any evidence or substantial circumstantial evidence
6 reasonably tending to prove the guilt of the accused.

7 So, only when there would be -- situation would
8 be that the evidence would be raising a mere
9 suspicion that the accused was guilty would I -- or
10 would The Court grant the directed verdict motion.
11 In this particular case The Court did find it to be
12 proper pursuant to our state statutes for the
13 interview that was conducted with the victim to be
14 played to the jury in accordance with the structures
15 of statutes which I have already indicated, I
16 believe, properly followed the directions of the
17 statute and properly protected the constitutional
18 rights of the Defendant and the confrontation clause
19 by the ability to cross-examine The State to --
20 cross-examine the victim to the extent the Defense
21 wished to do so.

22 Based upon the interview and the evidence that
23 was presented, I do find there is direct evidence and
24 substantial circumstantial evidence that reasonably
25 tends to prove the Defendant guilty of the crimes

1 charged. Now, it will be up to the jury to judge the
2 credibility and believability of the witness, child
3 witness, as I have explained that to the jury. And
4 will so explain to them again. But the testimony and
5 the evidence exist, therefore, the motion to -- for a
6 directed verdict as to the two charges is denied.

7 Further motions by the Defendant, Ms. Manigault?

8 MS. MANIGAULT: None, Your Honor.

9 THE COURT: All right, thank you, very much.

10 All right, you indicated there was the potential
11 for the Defendant to testify, do you want to talk to
12 your client about that? You want us to take a short
13 break and you talk to him about that before I ask him
14 about his intentions?

15 MS. MANIGAULT: Yes, sir.

16 THE COURT: All right, very good.

17 We'll take a short break, about five, ten
18 minutes, come back and resume the case at that time.
19 Thank you, very much.

20 (WHEREUPON, a short break was taken.)

21 THE COURT: Ms. Manigault, your client ready for
22 me to question him regarding his right to testify?

23 MS. MANIGAULT: Yes, sir.

24 THE COURT: All right, very good.

25 All right, sir, if you'd please stand up.

1 Madam Clerk, administer the oath to him, please.

2 THE CLERK: Would you raise your right hand.

3 MICHAEL WILLIAMS, after being duly
4 sworn, testified as follows:

5 EXAMINATION

6 BY THE COURT:

7 Q All right. Now, Mr. Williams, I am going to
8 explain to you certain of your constitutional rights. If
9 at any point in time you don't understand what we're
10 talking about or you have a question or need some
11 explanation, you need to indicate that to me. You need to
12 raise your hand, you can tell your attorney but in some
13 way you got to indicate that to me, do you understand
14 that?

15 A Yes, sir.

16 Q We're in agreement there?

17 A Yes, sir.

18 Q All right. We've reached a stage of the trial
19 where you can present your defense. Now, you have the
20 right to claim the protection given to you by the Fifth
21 Amendment to the Constitution of the United States of
22 America. Now, that amendment states in part that no
23 person shall be compelled in any criminal case to be a
24 witness against themselves. That means nobody can make
25 you testify. You can testify if you want to but nobody

MICHAEL WILLIAMS-EXAMINATION BY THE COURT

1 can make you testify, do you understand that?

2 A Yes, sir.

3 Q All right, sir. Now, if you decide to testify
4 you're going to be subject to the same rules you've seen
5 all the other witness testify in this case? You'll come
6 up, you'll be placed under oath, you will be questioned or
7 examined by your attorney. And then you will be
8 cross-examined or asked questions by The State as to all
9 matters the Court deems relevant in this particular case,
10 do you understand that?

11 A Yes, sir.

12 Q All right, sir.

13 Now, Solicitor, are there any prior convictions
14 that The State would be asking the Defendant to admit or
15 deny?

16 MS. BENTLEY: Your Honor, the Defendant does
17 have a prior criminal sexual conduct with a minor
18 conviction. It was released within the past few
19 years. We would note that should be --

20 THE COURT: So, he has a conviction for criminal
21 sexual conduct with a minor, what degree?

22 MS. BENTLEY: Second degree.

23 THE COURT: Second degree. And it occurred
24 within the past 10 years?

25 MS. BENTLEY: He was released from active --

MICHAEL WILLIAMS-EXAMINATION BY THE COURT

1 THE COURT: He was released from active
2 confinement within the past 10 years?

3 MS. BENTLEY: Yes, sir.

4 THE COURT: Very good. And The State would ask
5 to question him whether or not he has a conviction,
6 correct?

7 MS. BENTLEY: Yes, sir, Your Honor.

8 THE COURT: Very good.

9 BY THE COURT:

10 Q What the Court would do in that regard, since
11 there is a degree of similarity between that crime and the
12 crime and the crime for which the Defendant is on trial
13 now, The State would be limited to asking you whether or
14 not you have been convicted of a felony, criminal offense,
15 that's a felony, in the past. And if you admitted that
16 you had been convicted of that felony, within the past 10
17 years, that -- or that you have that conviction for a
18 felony, then The State would not be allowed to question
19 you further about that. Obviously, if you denied that,
20 then The State would be allowed to go into more detail to
21 determine whether or not that conviction actually exist.
22 Do you understand that?

23 A Yes, sir.

24 THE COURT: All right, very good. And I do find
25 for the purposes of this hearing that the probative

MICHAEL WILLIAMS-EXAMINATION BY THE COURT

1 value of admitting that evidence outweighs any
2 prejudicial value to the Defendant with the
3 limitation that The Court has explained. And you
4 understand that Solicitor, correct?

5 MS. BENTLEY: Yes, sir, Your Honor.

6 THE COURT: All right, very good.

7 Q If you decide to testify, it's got to be your
8 decision. It's got to be made freely and voluntarily,
9 intelligently made knowing these rights that we've talked
10 about. Now, you may have ask your attorneys questions or
11 if you have a family member you want to ask a question to
12 you can do that but this is your decision, do you
13 understand that?

14 A Yes, sir.

15 Q All right, very good. Now, if you decided not
16 to testify, I would charge to the jury that they cannot
17 give that fact any consideration whatsoever. I will tell
18 them they can't talk about it in the jury room, it's not
19 part of their decision making process. They can't use it
20 mentally to make a decision, do you understand that?

21 A Yes, sir.

22 Q All right, sir. Have you understood what we've
23 talked about?

24 A Yes, sir.

25 Q Do you want to ask your attorney or someone else

MICHAEL WILLIAMS-EXAMINATION BY THE COURT

1 any questions at this point in time?

2 A Yes, sir.

3 Q Okay. Go ahead if you'd like to talk to your
4 attorney, go right ahead.

5 (WHEREUPON, an off-the-record discussion was
6 held with the Defendant and Ms. Manigault.)

7 BY THE COURT:

8 Q All right, Mr. Williams, have you had an
9 opportunity now to discuss with your attorney and any
10 other family member or whoever whatever questions you
11 have?

12 A Yes, sir.

13 Q All right, sir. Do you wish to testify in this
14 case?

15 A No, sir.

16 THE COURT: Very good, sir. Thank you, very
17 much, you can have a seat.

18 All right. So, that we don't have to call the
19 jury out and send them right back out, Ms. Manigault,
20 obviously, we'll do this in the presence of the jury
21 again. But does the Defense rest at this point in
22 time?

23 MS. MANIGAULT: The Defense rests, Your Honor.

24 THE COURT: All right, very good. Would like to
25 renew your motions at this point in time?

1 MS. MANIGAULT: Yes, Your Honor. We renew our
2 motion for a directed verdict on both charges.

3 THE COURT: Very good. All right, I'm not going
4 to go back through the explanation of the law that
5 The Court just went through regarding directed
6 verdict standard as to both charges. Suffice it to
7 say that I do believe that there is direct verdict,
8 substantial circumstantial evidence reasonably
9 tending to prove the guilt of the accused. Again,
10 I'm not judging credibility or believability or
11 things that the jury must evaluate regarding the
12 testimony of children. But I find the evidence exist
13 and if so believed by the jury more than sufficient
14 to convict the Defendant of the crimes charged. And
15 therefore, your motions for directed verdict as to
16 both charges are respectfully denied.

17 With that -- hold on one second. All right.
18 So, when we bring the jury back out and we'll talk
19 about the charge in just a second. But when we bring
20 the jury back out, what I'll ask Ms. Manigault is the
21 position of the Defense and you can tell me the
22 Defense rests at that point in time. Then, I'll
23 explain to the jury what stage we're at that we're
24 going to go into the closing arguments of the
25 attorneys and the charge on the law. There has been

1 no evidence introduced by the Defense so obviously
2 The State will be obligated to open and or give their
3 complete argument first and then the Defense will
4 have the second or the final argument before the jury
5 in this matter.

6 It's my intention then to charge to the jury and
7 let me go over that with y'all so if you have any
8 things you want to talk to The Court about, we can do
9 that before the jury comes in. Obviously, I'm going
10 to talk to the jury about some things we always talk
11 to them about, credibility and believability, direct
12 and circumstantial evidence. In that I will go over
13 with them regarding the testimony of children.
14 Basically, the same charge or explanation that I gave
15 to the jury earlier when the minor victim testified.
16 I'll go over that again with them. At that point in
17 time as to their obligations in this matter. I will
18 talk to them about the statement of the Defendant and
19 again, The Court allowed into evidence but they make
20 the final decision as to whether the Defendant made
21 the statement, whether it was voluntarily made,
22 whether he was given Miranda warnings. And again,
23 that's the jury's job regarding the statement of the
24 Defendant. And I'll explain that to them.

25 I will go over with the jury about an expert

1 witness, I qualified witness to give their opinion.
2 I'll explain to them just because The Court qualified
3 them to give their opinion doesn't give them any
4 special status. They judge all the testimony same.
5 Judge all the credibility and believability of all
6 the witnesses and the designation does not give that
7 witness any greater weight than any other witness. I
8 will explain to the jury what I told Mr. Williams
9 that the Defendant did not testify, that that's not
10 part of their consideration, can't be considered by
11 them in any manner in this -- or in their
12 deliberations. And that they can't use it in their
13 determination. Talk to them about the presumption of
14 innocence in this case, reasonable doubt, kind of
15 doubt that would cause a ordinary, reasonable person
16 to hesitate to act. And then talk to the jury about
17 the two charges. First degree criminal sexual
18 conduct with a minor. And criminal sexual conduct
19 with a minor, third degree. Define both of those to
20 the jury.

21 The verdict form will be straightforward as the
22 caption of the case. One of them has criminal sexual
23 conduct with a minor, first degree, I'll charge
24 criminal sexual conduct with a minor in the first
25 degree. We, the jury, by unanimous consent find the

1 Defendant and there's two choices, not guilty or
2 guilty. They decided that, then they'll go on to the
3 charge of criminal sexual conduct with a minor, third
4 degree. Same form and two choices, not guilty or
5 guilty. Then the instructions to knock on the door
6 and notify the Bailiff when they have finished their
7 deliberations.

8 So, that's the Court's intention regarding the
9 charge to the jury. Is there anything else that The
10 State would like the Court to include in my
11 discussion of the law with the jury?

12 MS. BENTLEY: Nothing, Your Honor.

13 THE COURT: From the Defense?

14 MS. MANIGAULT: Your Honor, just a question. Is
15 there -- can there be a charge of a lesser included
16 offense? I've done some research--

17 THE COURT: A lesser included offense to what?

18 MS. MANIGAULT: As to assault and battery of
19 any. . .

20 THE COURT: You mean, simple assault and battery
21 or assault and battery?

22 MS. MANIGAULT: Well, use to be ABHAN, assault
23 and battery high and aggravated nature.

24 THE COURT: Yes, ma'am.

25 MS. MANIGAULT: My question is would the Court

1 be willing to charge assault and battery, second and
2 or third degree as a lesser included?

3 THE COURT: Well, all right. Under -- before I
4 ask The State to respond, what facts would the
5 Defense rely upon? Because obviously The Court's
6 obligated to charge any aspects of law that is
7 reflected by the evidence. What testimony or
8 evidence would there be of the crime of assault and
9 battery first or assault and battery second? What
10 testimony would that be?

11 MS. MANIGAULT: Your Honor, the testimony that
12 would be a touching. I think the video tape
13 showed -- stated on top of the clothing. So, that
14 would be the testimony that I would be relying on for
15 a lesser included offense.

16 THE COURT: Hold on a second. Every since The
17 State got hacked, our computers shut off every 10
18 minutes if you don't look at it or do something every
19 10 minutes the thing goes blank and you can't get
20 back into it again. So, not exactly helpful.

21 All right, assault and battery, first degree. A
22 person commits the offense of assault and battery in
23 the first degree if the person unlawfully, and first
24 part of it, injured another person. Okay. And so
25 first injured another person. And the act either

1 involves a non-consensual touching of the private
2 parts of an adult either under or above clothing with
3 lewd and lascivious intent.

4 Let's see. So, how would that apply,
5 Ms. Manigault?

6 MS. MANIGAULT: Your Honor, obviously I was
7 referring to the touching above the clothing.

8 THE COURT: Well, I appreciate that but it says
9 that -- and this is for first, I haven't gone in
10 second or third degree. But first degree says,
11 Injured -- a person commits the offense of assault
12 and battery, first degree, if the person
13 unlawfully -- the first thing is, injures another
14 person. And the act either -- then it talks about,
15 you know, robbery and burglary, kidnapping and all of
16 those. Or involves the non-consensual touching of
17 the private parts of an adult. Either under or above
18 the clothing with lewd and lascivious act. Well we
19 don't have an injury here. I mean, the medical
20 testimony is clear, there's just no injury at all,
21 right?

22 MS. MANIGAULT: That's correct.

23 THE COURT: So, it can't be assault and battery
24 in the first degree.

25 MS. MANIGAULT: Right.

1 THE COURT: So, let's skip over that one. Go
2 into assault and battery, second degree. And there
3 the person commits the offense of assault and battery
4 in the second degree if the person unlawfully injures
5 another or offers or attempts to injury another
6 person with the present ability to do so and either,
7 again, then it goes on to skip -- we'll skip the
8 things about bodily injury because there isn't
9 anything here.

10 MS. MANIGAULT: Yes, sir.

11 THE COURT: Or the act involves the
12 non-consensual touching of the private parts of an
13 adult either under or above the clothing. We've got
14 that part in there that says of an adult. I'm not
15 sure whether that's restrictive definitional --
16 definitionally [verbatim] or not but it does say the
17 private parts of an adult. And it does not say a
18 minor.

19 MS. MANIGAULT: Yes, sir.

20 THE COURT: So, we've got that problem. And
21 then third degree, can't be third degree because
22 that's just if the person unlawfully injures another
23 person or offers to attempt to injure another person
24 with a present ability to do so. So, the facts of
25 this case doesn't support that. So, I just don't see

1 how the facts --

2 Well, Solicitor, let me hear from you.

3 MS. BENTLEY: Your Honor, The State would oppose
4 any lesser included. It's not typically our position
5 to do that. But in this case there are specific laws
6 that address touching of minor children. They're
7 enumerated in the indictments that The State has put
8 before you but before the jury and those are the only
9 appropriate charges for the jury to consider.

10 THE COURT: All right, thank you, ma'am. And--

11 All right, well it was the Defendant's request
12 to have the lesser included charges of assault and
13 battery or first and second to be charged regarding
14 these offenses of criminal sexual conduct with a
15 minor, first degree and third degree, is that
16 correct, Ms. Manigault?

17 MS. MANIGAULT: Yes, sir.

18 THE COURT: Okay. Based upon the definitions
19 then of the -- and the law of the assault and
20 battery, I just do not see how the facts of this case
21 would support The Court's lesser included offense.
22 They definitionally do not meet the facts of this
23 particular case and therefore, I would simply decline
24 to granted your lesser included charges of the
25 assault and battery first or second degree.

1 MS. MANIGAULT: Thank you, Your Honor.

2 THE COURT: Thank you, ma'am. Further motions
3 about The Court's proposed charge to the jury?

4 MS. MANIGAULT: None, Your Honor.

5 THE COURT: All right, very good.

6 All right, is The State ready for the jury to
7 come in regarding closing arguments?

8 MS. BENTLEY: Yes, sir, Your Honor. I would
9 like to make sure all exhibits are in.

10 THE COURT: That would be a good idea.

11 So, the only two that are not in evidence are
12 State's 1 and 2?

13 MS. BENTLEY: Yes, sir, Your Honor.

14 THE COURT REPORTER: And 12, Your Honor.

15 THE COURT: Twelve, very good.

16 Yeah, the Court Reporter needs all of them.
17 Yes, she needs to keep all of them.

18 Madam Court Reporter, you have 1 and 2 in your
19 possession?

20 THE COURT REPORTER: No, sir.

21 THE COURT: Okay.

22 THE COURT REPORTER: And also 12 was marked.

23 THE COURT: There was a 12?

24 THE COURT REPORTER: It was marked but it wasn't
25 introduced.

1 THE COURT: Okay, so let's give that to the
2 Court Reporter. And then. . .

3 Okay, will you hand to her State's 1 and 2?

4 MS. BENTLEY: I just did, Your Honor.

5 THE COURT: You've got them all now?

6 THE COURT REPORTER: Yes, sir.

7 THE COURT: Okay, great. Good deal.

8 All right, so, The State's now ready?

9 MS. BENTLEY: Yes, sir, Your Honor.

10 THE COURT: And the Defense?

11 MS. MANIGAULT: Yes, sir.

12 THE COURT: All right, very good.

13 Ask the jury to come in, please.

14 (WHEREUPON, the jury came into open court at
15 approximately 3:16 p.m.)

16 THE COURT: All right, Ms. Manigault, what's the
17 position of Defense at this point in time?

18 MS. MANIGAULT: Your Honor, the Defense rests.

19 THE COURT: All right, very good.

20 All right, ladies and gentlemen, we have
21 concluded the evidentiary portion of this trial.
22 There will be no more evidence received in this
23 particular case. That obviously does not end the
24 case. Where we are going to proceed now is into the
25 closing arguments of the attorneys. After which time

1 I will give you the law that you will apply to the
2 facts and evidence that you find to be true in this
3 case. Then I'll submit the case to you for your
4 deliberations and your unanimous decision in this
5 particular matter. Please remember what I told you
6 about the opening statements and the closing
7 arguments by the attorneys. They are not evidence,
8 cannot be considered by you as evidence because
9 that's already been received. We've heard all of
10 that evidence that is going to be considered by you
11 in this case. But the closing arguments are
12 important. They are each side's summation to you of
13 what they believe the evidence has shown to you
14 during the course of the trial and what that will be
15 asking you to do as a result of your unanimous
16 verdict in this matter. Remembering, of course, that
17 you are judges of the facts of this particular case.
18 So, with that I'll turn it over to The State for The
19 State's closing argument.

20 MS. BENTLEY: May it please the Court?

21 THE COURT: Thank you, ma'am.

22 MS. BENTLEY: Ms. Manigault.

23 CLOSING STATEMENT

24 Good afternoon, ladies and gentlemen, I came
25 before you a few hours before and I explained to you

1 who I was. I explained what you could expect from
2 this case and here we are at the end. You have seen
3 all the evidence that there is to see, you heard from
4 all the witnesses available to The State. I told you
5 at the beginning that sex abuse, criminal sexual
6 conduct, crimes involving children, these are secret
7 crimes. There are crimes that are not performed out
8 in the open. They're not performed with an
9 accomplice. The actions aren't going to leave
10 fingerprints. They're not going to leave lots of
11 signs of assault. And that's where we are now.

12 I told you, you also heard from Ms. Manigault
13 and you heard from the Judge and you will hear again
14 that The State had the entire burden of proof during
15 today's trial. That's true in every criminal case.
16 The State always has the burden of proof. The
17 foundation of our criminal system so I want to start
18 off with that now. Proof beyond a reasonable doubt.
19 Proof beyond a reasonable doubt does not mean proof
20 beyond all doubt. It is an extremely high burden.
21 But there are few things in life that we can know
22 with absolute certainty. None of us were present in
23 Minor playroom the weekend of March 31st, 2012.
24 And since we were not there, we cannot know for
25 absolute certainty what happened. We have to rely on

1 the testimony and evidence, people that either were
2 there or were around or deal with these types of
3 cases to make our judgment.

4 You are the finders of fact in this case. You
5 determine what evidence to believe, what witness
6 testimony to believe, what not to believe. And I
7 presented to you present -- submit to you that
8 everything that The State has given you today is more
9 than enough to find the Defendant guilty. Proof
10 beyond a reasonable doubt is proof that leaves you
11 firmly convinced of the Defendant's guilt. Proof
12 that when you go back to that jury room, when you
13 deliberate, when you discuss the Exhibits, you are
14 firmly convinced. You do not hesitate to sign your
15 name to a verdict of guilty. If you go back there,
16 if you discuss pros and cons, if you discuss bias and
17 motive, that's not doubt. That's deliberations and
18 that is your job.

19 And I submit to you that The State has overcome
20 that burden. We have proven the weekend of
21 March 31st, 2012, the Defendant, Michael Williams,
22 performed oral sex and touched [REDACTED] Minor on
23 her vagina. I want to go through the evidence that
24 The State presented. I know you heard it all today.
25 This has not been an exceptionally long trial. But

1 let's talk about what you heard and what it means now
2 that you've seen and heard everything.

3 You heard from Tammy Sutton. She is a single
4 mother. She moved to South Carolina five and a half
5 years ago with her daughter and her daughter's
6 father. She now raises **Minor** on her own. It was
7 hard for her to make friends when **Minor** was little.
8 She mainly stayed in her house. What kind of house
9 did she have? A forecloser. And she has a neighbor,
10 Janet Cartee. And Janet also bought a house that
11 needed a lot of work. Who worked on her house? Her
12 cousin, Mr. Williams. Well, Ms. Sutton told you that
13 she went out, she introduced herself, she also needed
14 work too. They exchanged numbers, they began
15 texting. Their friendship involved over the next few
16 months. So, that they would hang out weekly. He
17 didn't live close, he didn't live too far, they would
18 go bowling together. And **Minor** always went. **Minor**
19 did not stay with babysitters very often. She went
20 to a Mom's Day Out at the Y occasionally but **Minor**
21 went with Tammy and Michael whatever they would do.
22 And sometimes Michael would stay over. Whether it
23 was because it was late, because she liked the
24 company, it doesn't matter, he was there.

25 The day of this alleged event, Michael had

1 stayed over the prior night. He stayed over
2 Saturday. And Sunday he had remained there all day.
3 Tammy was here, there, doing stuff around her house,
4 in the dinning room where she had a couch, looking at
5 the computer. And she said she never left. She
6 never left Mr. Williams alone with her daughter but
7 they were playing, she heard them playing. She would
8 look in, she would walk by, she would check in, she
9 thought everything was fine that way. She said she
10 walked by a few times and he look startled but
11 nothing out of the ordinary. Until it's 6:00 p.m.
12 and it's time for them to leave. She and Minor have
13 to go pick up her mother who stays with them from
14 Sunday through Friday while Tammy works. She told
15 you she had a job for six weeks.

16 And what happens when Tammy goes to the playroom
17 to tell Minor it's time to go? She immediately
18 notices that Minor is pulling at her pants, she's
19 pulling up her pants, she's fixing her pants. And
20 Tammy explained to you why that was unusual. She
21 hadn't seen her do it earlier in the day. Tammy told
22 you that her clothes fit fine. There was no reason
23 for her to do that. On its face that's not immediate
24 evidence of wrongdoing. So, she sends Michael on her
25 way -- his way and she pulls Minor to the side.

1 Now, you were only able to hear the questions
2 that Tammy asked her daughter. And what questions
3 were those? First, she asked her why she was pulling
4 at her pants. Her follow up questions was did he
5 touch you on and Tammy said she said private part.
6 Based on that Tammy went to pick up her mother and
7 called the police. What else did we hear from Tammy?
8 Well, we heard a little bit about her texting
9 relationship with Mr. Williams. She testified that
10 that was the only way they communicated when it
11 wasn't in person, they never spoke on the phone. She
12 said there was some flirting sometimes on the text
13 messages. And she recalled two specific
14 conversations. One was the week prior to this
15 weekend. She had to work the Saturday that
16 Mr. Williams ends upcoming over. And what did she
17 tell you they talked about? She said she didn't ask
18 but Mr. Williams pressured her in to try to get him
19 to babysit **Minor** that day. She said it was a
20 conversation, text conversation, that lasted for two
21 days. For two days this 45 year old man is trying to
22 get her to leave her five year old daughter alone
23 with him. While she goes to work.

24 Ladies and gentlemen, as the Judge has told you,
25 you do not leave your common sense at the door when

1 you become a juror. In addition, to the evidence
2 before you, you also have your common sense. It is
3 reasonable that a 45 year old man would just want to
4 babysit the five year old child of a woman that he
5 sees occasionally? Or is he trying to create an
6 opportunity to get this child alone? She also told
7 you that right after she spoke to [Minor] and she
8 remembered the timeframe, she confronted Mr. Williams
9 about what [Minor] told her. It was kind of confusing
10 for y'all, I'm sure, going back and forth on the text
11 messages and what could be read and what couldn't.
12 But the gist was she said, Don't ever come over here,
13 give me my stuff back, you know what you did. And
14 she responded about the tiller. And she told you
15 that he had one of her tiller, the lawn tool, and
16 that he was going to fix it, he had to find parts for
17 it. And that was his only response was about the
18 tiller. Okay. That's fine. If you've just been
19 accused of something, is that your only response?
20 You can consider that when you go back in
21 deliberations.

22 You heard from Investigator Robertson who's been
23 in law enforcement 25 years, he's in the Crimes
24 Against Children's Unit. He testified about a number
25 of procedural things, about how he referred the

1 victim to the Julie Valentine Center. He explained
2 that there was no search warrant in this case. There
3 really wouldn't be forensic evidence to obtain. He
4 also testified about speaking with Mr. Williams in
5 earlier May. And he told you that at that time, this
6 is what Mr. Williams looked like. He's definitely
7 similar looking to someone who has been, you know,
8 more than a quarter of their life where he looked
9 like the same person? I don't know, that's something
10 for you to consider. But Mr. Williams looked like
11 this and he was cooperative, he spoke to the police.
12 He agreed to give a written statement that we'll talk
13 about at the end. He also told you that when he went
14 to Mr. Williams house that he had a blue truck.

15 Why are all those pieces significant? Because
16 you heard from [REDACTED] Minor. You heard from her
17 twice, as I said you would. You heard from her today
18 as she was at seven years old. She came in and she
19 got on that stand and I thought did a really good job
20 for someone who has never been in a courtroom and had
21 no idea why she was here. She was here to answer
22 questions. And she did. She answered basic
23 questions about her name and how old she was and her
24 pets. And she did not recognize the Defendant. She
25 recognized her mom and she recognized the police

1 officer that she met with a couple of times. But
2 again, two and a half years is a pretty long time.
3 For her, it's more than a quarter of her life. And
4 this is what he looked like then.

5 You also got to hear from **Minor** as she was less
6 than 30 days after this event occurred. And you saw
7 her exactly as she was at the Julie Valentine Center.
8 You have an audio and video recording. And this
9 audio/video recording is in evidence. I would
10 encourage you to go back during your deliberations
11 and watch it again if you don't remember it clearly.
12 This is your evidence for you to do with as you wish.
13 You can listen to it again, you can watch it again.
14 So, if you doubt anything that I say or if
15 Ms. Manigault and I disagree about something that
16 happened during it, it's yours. You take it back
17 there and you watch it.

18 What I want to say about that interview and what
19 I think you need to take away as jurors is how
20 natural **Minor** was. Again, she did not know why she
21 was there. She talked as I would expect a five year
22 old child to talk. She had a little bit of
23 difficulty with her speech. But her answers were
24 what I would expect a five year old to give. They
25 weren't her first, they weren't coached. She didn't

1 know the names for a lot of the body parts. You have
2 the diagrams here used by Sarah Davis. You can see
3 where he just she just kind of calls the vaginal and
4 the rear area, bottom for both a boy and a girl. And
5 her mother told you she hadn't taught her body parts,
6 she hadn't taught her touches. She didn't know. So
7 she called it bottom. And she did not know that
8 those were places that a little girl shouldn't be
9 touched. She said that a little girl shouldn't be
10 touched on her head. Because she didn't like that.

11 The questions that the Julie Valentine Center
12 uses are non-leading questions. And that's
13 important. **Minor** was never asked who touched her.
14 **Minor** was told there are places on a girl's body that
15 shouldn't be touched. And Sarah Davis pointed out,
16 you know, you shouldn't touch on the boobies or this
17 bottom or that bottom. And do you remember **Minor**
18 said, None of it? Like a question.

19 And then Sarah said, that's right, none of it.

20 And what did **Minor** say? Only Michael touched me
21 there.

22 And then Sarah asked a follow up questions.

23 **Minor** was not prompted to say that. She didn't quite
24 understand what it was that she had even said. But
25 then the disclosure starts coming out. He touched

1 her on her bottom and she pointed to front bottom
2 with his finger and his tongue. And she told you a
3 lot of core details about that whole scenario.
4 Details you would expect a five year old to know,
5 where it happened. In the playroom.

6 Whose playroom?

7 I don't know, it's just my playroom.

8 Where were you?

9 We were by the bathroom.

10 Tammy Sutton told you that the bathroom was not
11 in the playroom, it was right outside the door of the
12 playroom.

13 What were you doing?

14 We were reading books.

15 **Minor** told you it was Winnie the Pooh. She
16 remembers what book they were reading. She tells you
17 that Michael was sitting down on the rug. And she
18 gives you a progression of how she was as this
19 occurred. She was first standing up reading. And
20 then she said Michael told her that she had to sit
21 down before they read the book. And he encouraged
22 her to sit down. And that's how this touching
23 happened. And again, watch that interview again.
24 Listen to the disclosure. To the words she uses.
25 Those are her five year old memories of what

1 occurred. About a month after it occurred.

2 You heard from Sarah Davis, she basically lays a
3 foundation for this to come in. She explains the
4 pictures they used, she explained the protocol they
5 used. She explained that they were in a plain room
6 and why there were in a plain room. Then you heard
7 from Dr. Nancy Henderson and Shauna
8 Galloway-Williams. And they were both qualified as
9 experts and the Judge will explain what that means at
10 the end. But basically, they just kind of give you
11 an opinion that another person couldn't give you.

12 And the only reason that we called them was
13 because **Minor** was such a young child when this
14 occurred. She's still a young child but she had just
15 turned five years old. There was also no signs of
16 abuse and Dr. Henderson explained that to you.
17 Shauna Galloway-Williams explained that children can
18 react a lot of different ways when they disclose.
19 Once children understand what private parts are their
20 often embarrassed. But you heard that **Minor** she
21 wasn't -- **Minor** was not embarrassed, she didn't
22 understand what she said. She didn't even know what
23 her private parts were. So again, watch that video,
24 again, after hearing from Dr. Henderson and
25 Ms. Galloway-Williams.

1 The final person we heard from was Mr. Williams
2 himself. On May 4th, 2012 he provided this
3 statement, his own writing, his own words. And I
4 want you to go back and look at what he says.
5 Because he gives you an identical account of Minor
6 except in one key way. She tells you that were in
7 the playroom. He said that Minor wanted to read
8 books. So there were reading books. They were near
9 the door, which is exactly what Minor said. Minor
10 said they were by the bathroom, just near the door.
11 Near the door reading books in the playroom. We were
12 sitting down. Well, Minor told you that eventually
13 they were sitting down. And then where Minor told
14 you, He touched my bottom, he tells you and Tammy
15 walked by every two to five minutes. And that is
16 significant, ladies and gentlemen, because he was
17 paying attention. He was waiting and he was paying
18 close attention to the times that Tammy Sutton walked
19 by. He knew she was in the house. He knew she was
20 in the house either in the dinning room, walking to
21 her bathroom, he kept tabs on where she was and how
22 long he had with Minor alone.

23 I want you to read the statement, I want you to
24 go back through Minor disclosure video and I want
25 you to return a verdict of guilty for criminal sexual

1 conduct with a minor in the first degree and criminal
2 sexual conduct with a minor in the third degree. I
3 want you to return verdicts that speak the truth
4 about what happened to [REDACTED] Minor in her
5 playroom.

6 THE COURT: Ms. Manigault.

7 MS. MANIGAULT: May it please the Court?

8 THE COURT: Yes, ma'am.

9 MS. MANIGAULT: Ms. Bentley.

10 CLOSING STATEMENT

11 MS. MANIGAULT: Ladies and gentlemen of the
12 jury, again, this is very important for my client and
13 for The State. And as I indicated to you in our
14 opening statement, that you are the trier of the
15 facts. You decide from the testimony that you heard
16 what facts occurred. What occurred on this date.
17 The Judge gives you the law and you're to take the
18 law as he gives it to you. The Judge told you about
19 opening argument is not facts and our closing
20 arguments is not facts. But with that our arguments
21 are just to -- our statements are just to highlight
22 some points that we believe should be of interest to
23 you or very important to the Defense.

24 As I indicated to you in the beginning, open
25 statement, my client has entered a plea of not guilty

1 to the charges. CSC first with a minor, CSC third
2 with a minor. So, he's entered a plea of not guilty.
3 The presumption of innocence continues to say with
4 him even after you've heard all the evidence and seen
5 whatever -- the video. Your Honor, will tell you
6 that that is not removed until the 12 of you come to
7 a unanimous decision one way or the other. Guilty or
8 not guilty. The decision has to be unanimous.

9 The burden of proof, as The State has freely
10 admitted and The Court has told you, is on the State
11 of South Carolina. Represented here these two days
12 by Ms. Lisa Bentley. The Defendant, because he has
13 entered a plea of not guilty, because in our system
14 of jurisprudence in America of the United States, one
15 of the best systems in the world, that presumption is
16 very important for anybody that's charged with
17 anything. It is very important. So, Your Honor,
18 will tell you that because a person or Defendant
19 decides -- and he's already told you, he doesn't have
20 to come and prove anything to you. He didn't have to
21 come and prove that he's innocent. The presumption
22 is already there that he's innocent. So, the fact
23 that he has not decided -- His Honor will instruct
24 you that you cannot use that, you cannot weigh that
25 against him. Because that is a part of his

1 constitutional right. Just like it's a part of every
2 American citizens constitutional right.

3 The expert witnesses and any other witness that
4 has been before you, the believability and the
5 credibility of those witnesses are weighed by you.
6 Your Honor, will tell you that just because he has
7 qualified somebody as an expert witness, their
8 opinion is whatever weight you decide to give it, if
9 any. You may completely ignore the testimony. It
10 has been said that you do not leave your common sense
11 out. When I say completely ignore, you may believe a
12 part of one person's testimony but not all of it.
13 You may believe a part of another person's testimony
14 but not all of it. And so, that's why we have 12
15 jurors to decide and weigh and discuss what you
16 believe has occurred. The testimony is as you recall
17 it. And, Your Honor, has told you that, I told you
18 that and Ms. Bentley has told you that.

19 The reasonable doubt. If there is any doubt in
20 your mind as to whether The State has proved its
21 case, the elements of the crimes as charged, then
22 that doubt goes to the benefit of my client, Michael
23 Williams. If you have a reasonable doubt that doubt
24 goes to the benefit of my client. The Judge may
25 charge you, he will give you the elements of the

1 charge, the crime of criminal sexual conduct, first
2 degree with a minor. He will tell you what you have
3 to look for in the testimony. He will give you any
4 charges, CSC third, he will tell you what the
5 elements are that need to be proved and you will
6 decide whether what The State has presented lines up
7 to your benefit. Or to the benefit of proving the
8 charge as the Defendant has been charged.

9 All right. State's Exhibit 6 and State's
10 Exhibit 5. This is my client's waiver of rights that
11 he signed freely. The officer said he came, he went
12 to his house, he told him he wanted to talk to him.
13 He came in voluntarily the next day. Did not arrest
14 him when he went to his house. He came in
15 voluntarily the next day to the officer's office.

16 All right. The officer gave him an explanation of
17 what was going on and why he wanted him there. He
18 read my client his Miranda rights or had my client
19 read it to himself, I can't remember which way it
20 went. But either way he signed the paper of the
21 waiver saying that he freely talked to the officer.
22 He wrote a statement out. And if you heard the
23 testimony of the officer, the officer testified
24 himself that the only thing he asked him to do in the
25 statement was to talk about, generally, what kind of

1 relationship do you have with [Minor] and with Tammy.
2 What is your relationship to them? And that's from
3 the officer's testimony.

4 State's Exhibit 8 and 9 are the drawings that
5 Ms. Sarah Davis used to show to [Minor] And if you
6 would note on the video, she would pause, she would
7 ask what something was, you can't see on the video
8 clear but she would ask what a body part was and
9 [Minor] would tell her. And she would stop and write
10 something down. So, these are what Ms. Davis used.
11 All right. And you will also notice that there were
12 times in the video or if you'll recall, that [Minor]
13 did not know what body parts were. But she was
14 asked, What does your mommy call it? Or something of
15 that nature.

16 It is important to note that Ms. Davis and
17 Ms. Galloway testified that their interview process
18 is a non-leading process. That's for you to decide.
19 The video, as you've seen it, you have seen whether
20 the questions were leading, whether the information
21 was applied, whether there were choices given,
22 whether words were planted in a five year old's mind.
23 So you can recall that for yourself.

24 Your Honor has explained to you the testimony of
25 a child. And he will explain in how you can view

1 that, he will explain that to you again. But there
2 are several points that I wanted to point out. That
3 there were several times in the video Minor kept
4 saying to Ms. Davis, He did not touch me. And
5 Ms. Davis question would be, right after she said, He
6 didn't touch me, her question would be, Well, how did
7 it feel when he touched you? Is that suggestive? Is
8 that planting an idea? So, there were several times
9 and you can recall -- all right, she said, He touched
10 my bottom.

11 She said where? Did you have your clothes on?

12 Yes, all my clothes were on.

13 What did you have on?

14 Shorts.

15 Another time in the interview, What did you have
16 on?

17 Blue jeans.

18 Another time in the interview, What did you have
19 on?

20 A dress.

21 This is coming from Minor

22 Did he touch you under your clothes or on your
23 clothes?

24 And Minor would say, On the clothes.

25 And as the interview goes along, Did he touch

1 your skin?

2 The testimony from Ms. Davis and or
3 Ms. Galloway, one or the other, saying that well, she
4 may not have understood the words on, in or under.
5 Okay. That's very important. That's very important.
6 The words touching on your clothing, touching on your
7 skin or touching within your vaginal area. Those
8 very important words because they are elements of the
9 crime that is charged. CSC is having to prove an
10 intrusion into the body part. **Minor** said that he
11 didn't hug me, he didn't kiss me.

12 Who hugged you?

13 Mommy, grandmommy.

14 Who kissed you?

15 Mommy, grandmommy, my doggie.

16 Anybody ever pinched you?

17 No.

18 So, she understood very well very important
19 words. So, it is difficult for me to see how she
20 would not understand on top of my clothes, under my
21 clothes or on my skin. So, as you notice on the
22 video, as the questions went on, you notice how **Minor**
23 was lying up and apparent to become a little bit
24 frustrated or anxious or wanting to get through with
25 this and wanting to play or go play. Of course,

1 that's to be expected from a child. She was five
2 years old.

3 The fact that this statement that my client gave
4 on May the 4th has some of the same background
5 information as what **Minor** has said is good. And
6 here's why. Because he was not trying to lie about
7 his presence there. He didn't say I wasn't there.
8 He didn't say I never went in the playroom. Because
9 Ms. Davis [verbatim] herself testified they had a
10 three month relationship. She testified to that.
11 Maybe she'd see him once a week, maybe. Or on the
12 weekends or whatever the regularity of their
13 visitation was. But she testified about texting him.
14 And there was a lot made about she text him that I
15 don't want you coming back to my house. And he made
16 no response. Well, we don't know whether he made no
17 response or not because the text messages are not
18 here for you to review.

19 Ms. Davis [verbatim] testified herself that a
20 lot of the text messages were missing, deleted.
21 Michael's and/or hers, I don't know which one. She
22 said some text messages were deleted. The fact
23 that -- the fact that **Minor** kept saying, He didn't
24 touch me, he didn't do anything. Now, she flip
25 flopped, I grant you that, I grant you that. But the

1 fact that she kept going back to -- all right the
2 allegation is that this happened on the 31st of
3 March. The interview was on the 30th of April. So,
4 during that time I think she probably was talking to
5 some people. Who, we don't know. Okay. She lived
6 with her mother so she was probably talking to her
7 mother about things. If she was talking to any other
8 investigator -- Investigator Mike, who she recognized
9 very quickly, she recognized her mommy. Solicitor
10 asked her, do you recognize anybody else?

11 No.

12 Okay, the reason for this picture is they want
13 to try to tell you that she couldn't -- Minor
14 couldn't recognize Mike because he looked so much
15 different. I'm offering you this for your
16 consideration. That as you deliberate and weigh the
17 testimony and the evidence that has been presented to
18 you, that you come back with a verdict of not guilty
19 on CSC first and not guilty on CSC third. We submit
20 to you that The State has not proved the elements of
21 the crime as charged and we ask for a not guilty
22 verdict from all of you. Thank you.

23 JURY CHARGE

24 THE COURT: All right, ladies and gentlemen,
25 it's now time for The Court to discuss with you the

1 law that you will apply to the facts and evidence
2 that you find to be true in this case. I told you at
3 the very beginning I would not indicate to you at any
4 point in time what I thought the facts of this case
5 were because that was your job, not my job in this
6 particular case. If you came into the courtroom
7 having any preconceived idea as to what the law is,
8 what it ought to be, hope it would be, you disregard
9 that. You'll take the law as I now give it to you
10 and apply it to the facts and evidence that you
11 collectively find to be true.

12 I told you at the very beginning that one of
13 your jobs, duties and responsibilities was to judge
14 the credibility and believability of the witnesses
15 that came before you in this particular criminal
16 trial. In doing so you can believe one witness
17 against several, several against one. You can
18 believe a portion of what a witness says and
19 disregard the remaining portion of it. If you got a
20 good and sound reason for doing so, you can disregard
21 in it's entirety the testimony of a particular
22 witness. You look at whether or not that witness has
23 exhibited to you any kind of interest, motive, bias
24 or prejudice they may have in giving you the
25 testimony they gave you from the witness stand. You

1 obviously consider the demeanor, how did they appear
2 when they testified before you. And, of course, the
3 opportunity for knowledge. How did they come about
4 that information they gave you from the witness
5 stand?

6 Your job, your objective is to find the truth.
7 It doesn't matter from what part of the evidence that
8 comes. By your verdict you don't have any friends to
9 reward, you don't have any enemies to punish and your
10 verdict cannot be the result of any kind of passion,
11 prejudice or sympathy. It has to be an examination
12 of the facts and evidence and find that evidence
13 which convinces you it is true.

14 Two types of evidence was presented in the first
15 and every single case in this trial called direct
16 evidence and circumstantial evidence. Direct
17 evidence. Testimony of a person who claims to have
18 actual knowledge of a fact. That's what they saw.
19 What they heard. What took place in their presence.
20 Circumstantial evidence, that's the -- a chain of
21 facts indicating the existence of a fact. And the
22 law doesn't make any distinction between the two.
23 Now, if The State relies upon circumstantial
24 evidence, all those circumstances do have to be
25 consistent with each other and when taken together

1 point conclusively to the guilt of the accused beyond
2 a reasonable doubt.

3 I qualified a witness or two to give their
4 opinion in this case. We normally don't allow
5 witnesses to give their opinion, they have to tell
6 you about what they saw, what they heard, what took
7 place in their presence. But sometimes witnesses by
8 reason of their training, their education, their
9 experience in a particular field, we'll allow them to
10 give their opinion. Now, just because we did that
11 doesn't give them any special status. You judge all
12 the witnesses the same. You look at all the
13 witnesses, you judge their credibility and
14 believability. And to find that evidence which
15 convinces you of the truth.

16 I remind you what I told you about when you
17 heard the testimony of the minor child in this case.
18 When you hear testimony from a child you must
19 determine, as you must with all witnesses,
20 credibility and believability and talk about those
21 things we just talked about, their demeanor,
22 opportunity for knowledge, those types of things that
23 we talk about with every witness. Regarding a child,
24 you also consider the age of the child, the child's
25 ability to observe and remember facts, the child's

1 ability to understand and answer questions. Because
2 young children may not fully understand what's
3 happening in a criminal trial, you must decide
4 whether the child understood the seriousness of
5 appearing as a witness in a criminal trial, whether
6 the child understood the questions, whether the child
7 had a good memory, whether the child understands the
8 difference between lying and telling the truth. And
9 whether or not the child was or was not influenced by
10 the way questions were asked. So, it's up to you to
11 decide and make all those determinations.

12 A statement of the Defendant was admitted into
13 evidence by The Court. Now, while I determined that
14 that was an admissible part of the evidence in this
15 case, it is you, collectively the jury, to make the
16 ultimate decision of a couple of things. One,
17 whether or not the Defendant made the statement. If
18 you find the Defendant made the statement, then you
19 decide whether or not the Defendant made the
20 statement voluntarily, on his own freewill. And
21 wasn't caused by any kind of pressure, fear, force of
22 any kind. And whether or not the Defendant was
23 appraised of his constitutional rights. And again,
24 those being that you have the right remain silent.
25 Anything that you can and say will be used against

1 you in a court of law. You have the right to have a
2 lawyer present. If you cannot afford one one will be
3 appointed for you. You can stop making a statement
4 at any point in time that you so choose. All of your
5 constitutional rights. The State has the burden of
6 proving the validity of the statement. The Defendant
7 made a statement of his own freewill, advised of his
8 constitutional rights. And then, if you believe The
9 State has done that beyond a reasonable doubt, that's
10 The State's burden on everything, beyond a reasonable
11 doubt, then you give it whatever consideration you
12 want. Again, whatever consideration you believe it
13 should have if any at all.

14 The Defendant did not testify in this case. I
15 instruct you and I tell you and I emphasize to you
16 that is not part of this case. I told you at the
17 very beginning, the Defendant is presumed innocent of
18 the crimes for which The State has brought against
19 him unless and until The State can prove the
20 Defendant guilty beyond a reasonable doubt. Told you
21 the Defendant has no burden. The Defendant doesn't
22 have anything to prove to you. The State must
23 produce the evidence for you to consider. Whether or
24 not The State can prove the Defendant guilty beyond a
25 reasonable doubt. So, the assertion of a Defendant

1 of the constitutional right to remain silent cannot
2 be used against them in any shape, manner or form.
3 You can't talk about it in the jury room, you can't
4 use it mentally to make a discussion in this case.
5 It is not part of this case.

6 The presumption of innocence, we talked about
7 that at the very beginning. It's an important rule
8 of law that the Defendant in this case, the Defendant
9 in any criminal case is presumed innocent of the
10 crime or crimes charged that The State has brought
11 against him unless guilt has been proven to you by
12 evidence that satisfies you of the guilt of the
13 Defendant beyond a reasonable doubt. This
14 presumption of innocence, it's liken to a robe of
15 righteousness. It's placed on the shoulders of the
16 Defendant and it stays on the shoulders of the
17 Defendant until it is stripped from the shoulders of
18 the Defendant by evidence produced by The State which
19 convincing you of the guilt of the Defendant beyond a
20 reasonable doubt. This is not just some legal phrase
21 or theory. It's an important right to which this
22 Defendant, to which every American is entitled.
23 They're presumed innocent unless and until The State
24 can prove the Defendant guilty of crime or crimes
25 charged beyond a reasonable doubt.

1 So, what's reasonable doubt? A kind of doubt
2 that would cause an ordinary, reasonable person to
3 hesitate to act. Proof beyond a reasonable doubt is
4 proof that leaves you firmly convinced of the
5 Defendant's guilt. There very few things that we can
6 know with absolute certainty. You can doubt that the
7 earth is going to keep spinning. But we're not
8 talking about fanciful doubts, we're talking about
9 doubts that here what The State is required to do is
10 not overcome every possible doubt. If based upon
11 your consideration of the evidence you are firmly
12 convinced that the Defendant is guilty of the crime
13 charged, you must find the Defendant guilty. On the
14 other hand, if you are not firmly convinced that the
15 Defendant is guilty of the crime charged, you must
16 give the Defendant the benefit of the doubt and find
17 him not guilty.

18 The Defendant is charged with two crimes. I
19 will go over the elements of each crime. These are
20 the elements that The State has to prove to you
21 beyond a reasonable doubt by the facts and evidence
22 that it has presented. The Defendant is charged with
23 first degree criminal sexual conduct with a minor.
24 The State has to prove beyond a reasonable doubt that
25 the Defendant engaged in a sexual battery with the

1 victim. Now, sexual battery, what is that? That's
2 sexual intercourse, cunnilingus, fellatio, anal
3 intercourse or any intrusion, however slight, of any
4 part of a person's body or of any object into the
5 genital or anal openings of a person's body. The
6 State has to prove also beyond a reasonable doubt
7 that the victim was less than 11 years of old -- or
8 11 years old at the time of that sexual batter.
9 Consent, willingness, indifference, ignorance on the
10 part of the minor, if any, as to what was taking
11 place does not the effect the charge of criminal
12 sexual conduct with a minor because the minor under
13 the age of 14 cannot legally consent to any type of
14 sexual activity.

15 Second charge, criminal sexual conduct with a
16 minor, third degree. The Defendant, being charged
17 with this crime, The State has to prove to you beyond
18 a reasonable doubt that the Defendant -- the
19 Defendant was over 14. Next, The State has to prove
20 that the Defendant willfully and lewdly committed or
21 attempted a lewd or lascivious act on or with the
22 body of a child under 16 with the intent to arouse,
23 appeal to or gratify the lust, passions or sexual
24 desires of the Defendant or the child. Now, willful,
25 that means voluntarily, intentionally. Lewd means

1 obscene, indecent. Lascivious, that means to incite
2 lust, lewd or indecent behavior tending to deprave
3 the morals with respect to sexual relations.

4 That, ladies and gentlemen, is the law. The law
5 that you have to apply to the facts and evidence that
6 you find to be true in this case. They're two
7 verdict forms in this case, two charges. Very
8 straightforward. As the caption of the case. State
9 of South Carolina vs. Michael Edward Williams.

10 Criminal sexual conduct with a minor, first degree.

11 On the charge of criminal sexual conduct with a
12 minor, first degree, we, the jury, by unanimous
13 consent find the Defendant and it's two choices. I
14 put one before the other, don't assign anything to
15 that. You've got two choices, you've got to put one
16 before the other. Not guilty or guilty. When you
17 decided that -- when the jury decided that,

18 Mr. Foreman, you go on to the next charge. Criminal
19 sexual conduct with a minor, third degree. On the
20 charge of criminal sexual conduct with a minor in the
21 third degree, we, the jury, by unanimous consent find
22 the Defendant again, two choices, not guilty, guilty.

23 So, Mr. Foreman, these are the verdict forms
24 that you will arrive in marking the unanimous verdict
25 of the jury in this case. You'll check the

1 appropriate block, you will sign your name, you will
2 put today's date. When you're done with those, you
3 will knock on the door and let the Bailiff know that
4 the jury has reached a unanimous verdict in this
5 matter.

6 Now, unanimous, it means exactly what you think
7 it means. It means 12-0. It does not mean 11-1,
8 10-2, any combination thereof. So, whatever verdict
9 the jury arrives at, it is 12-0. So, Mr. Foreman,
10 check that block, you sign your name, you're telling
11 the court, each and every member of the jury agrees
12 that's their verdict. So, what I'm going to ask you
13 to do, Mr. Foreman, is take the 12 members, yourself
14 and the other 11 members of the jury to the jury
15 room.

16 Madam Alternate, if you'll please stay with us.

17 Mr. Foreman, take the jury in the jury room do
18 not, do not begin your deliberations until the
19 Bailiff hands to you the verdict forms and the
20 Exhibits. So, when the Bailiff hands those to you,
21 then you may begin your deliberations. Mr. Foreman,
22 take the jury to the jury room, please.

23 (WHEREUPON, the jury left open court at
24 approximately 4:09 p.m.)

25 THE COURT: All right, is there any reason from

1 The State or the Defense that the Court should not
2 release the alternate from her duties and
3 responsibilities in this particular case, Solicitor?

4 MS. BENTLEY: No, sir, Your Honor.

5 THE COURT: Ms. Manigault?

6 MS. MANIGAULT: No, Your Honor.

7 THE COURT: All right, very good.

8 Now, regarding this particular case Ms. Robbie,
9 I can release you from your duties and obligations in
10 this case. I can't release you from the jury
11 service, we'll talk about that in just a second. But
12 your job was to step in the shoes of one of the other
13 members of the jury if for some reason they couldn't
14 go forward, somebody got sick or whatever. You won't
15 believe how many times that happens, it happens all
16 the time. Just didn't happen today. So, I
17 appreciate your service in this particular case. We
18 are going to be pick another jury in a criminal case
19 tomorrow morning. I'm going to start tomorrow. So,
20 I do need you to be back in the Jury Assembly Room
21 tomorrow morning at 9:30 please, ma'am. With that
22 you're now excused. Thank you, ma'am, I appreciate
23 it.

24 (WHEREUPON, the alternate was excused.)

25 THE COURT: All right, with that, exceptions or

1 deletions to the charge from The State?

2 MS. BENTLEY: None, Your Honor.

3 THE COURT: Exceptions, deletions to the charge
4 from the Defense?

5 MS. MANIGAULT: None, Your Honor.

6 THE COURT: Thank y'all, very much. First, I
7 want to tell you, Solicitor and Ms. Manigault, that I
8 appreciate the way that both of you approached the
9 case, tried the case. You did everything The Court
10 expected of you in representing your respective
11 interest in this particular matter. Also, if you
12 could, if y'all could look at the Exhibits, make sure
13 we got them all. And then we'll have the court
14 reporter collect them and go on to the jury. Thank
15 y'all, very much.

16 (WHEREUPON, deliberations began at approximately
17 4:13 p.m.)

18 THE COURT: All right, we'll be ease until the
19 jury needs us.

20 (WHEREUPON, court was in recess awaiting a
21 verdict.

22 THE COURT: I understand that the jury would
23 like to come back in the morning to resume their
24 deliberations. So, Madam Clerk, Madam Bailiff, I
25 want them to be assembled in their jury room by 9:15.

1 So whatever time y'all need to get them here to make
2 sure all of them are in the jury room by 9:15.
3 That's when -- you can tell them that when they
4 leave. When the -- obviously, we're going to have
5 another court reporter tomorrow so what are we going
6 to do, Madam Clerk, you're going to lock the exhibits
7 up?

8 THE CLERK: Yes, sir.

9 THE COURT: Okay. So, y'all will collect them
10 and lock them up and just give them back and the
11 laptop, just keep the laptop with the exhibits.

12 THE CLERK: Yes, sir.

13 THE COURT: And just give it all back to them in
14 the morning. Or have it in there in the morning when
15 they get back.

16 THE CLERK: Yes, sir.

17 THE COURT: Okay.

18 So, with that, ask the jury to come in.

19 (WHEREUPON, the jury came into open court at
20 approximately 5:37 p.m.)

21 THE COURT: All right, Mr. Foreman, ladies and
22 gentlemen of the jury, I believe you have made the
23 decision to go home for the evening. Now, when you
24 go home for the evening you see your husband, wife,
25 boyfriend, girlfriend, person down the street,

1 obviously they know you're on the jury, other than
2 that that's all they can know. You cannot talk to
3 them about this case in any shape, manner or form.
4 To have them interpose their opinions in this case
5 you would be violating your oath and obviously The
6 Court would have to declare a mistrial. So you
7 cannot in any way talk to anybody about this case
8 expect when all 12 of you are assembled in your jury
9 room. Remember, you are not investigators. You not
10 researchers. You cannot look up anything on the
11 internet. You can't look at anything that you think
12 in some way might help you or aid you in your
13 decision. You must decide this case solely and
14 completely on the facts and evidence that you hear in
15 the courtroom and from no other source.

16 So with that, I'm going to release you. I want
17 you to be able to start your deliberations again
18 tomorrow morning at 9:15. I don't know, the Bailiffs
19 might have you here a little bit earlier so they can
20 get you assembled and into the jury room. But the
21 Clerk will secure the exhibits, we'll have them all
22 back in front of you along with the laptop tomorrow
23 morning in your jury room when you come back at 9:15.
24 So, we'll make sure those are all secured and locked
25 up. So with that, I'll see you back tomorrow

1 morning, 9:15. Thank you, very much.

2 (WHEREUPON, the jury left open court at
3 approximately 5:40 p.m.)

4 (WHEREUPON, Court's Exhibit No. 1 was marked for
5 identification and received into evidence.)

6 THE COURT: All right, anything further from The
7 State at this point in time?

8 MS. BENTLEY: No, sir, Your Honor.

9 THE COURT: From the Defense, Ms. Manigault?

10 MS. MANIGAULT: Nothing, Your Honor.

11 THE COURT: All right, good. Counsel, if y'all
12 will make sure that you are available should the jury
13 need anything by 9:15 in the morning. Obviously,
14 we'll, as far as this case is concerned, we'll be at
15 ease until the jury needs us. It's my intention,
16 hopefully, depending upon what Judge Hill has done
17 with the civil jury in picking a jury, see if we have
18 a jury available of people available to start another
19 case. That would be my intention to start another
20 case if we can. But y'all make sure that you're
21 available, okay?

22 MS. MANIGAULT: Yes, sir.

23 MS. BENTLEY: Yes, Your Honor.

24 THE COURT: Thank y'all, very much.

25

1 (WHEREUPON, the proceedings were concluded for
2 the day to be reconvened on October 8, 2014.)
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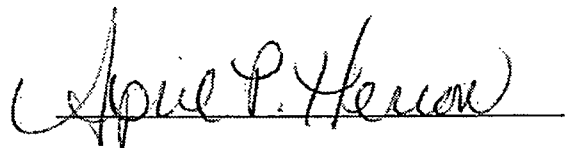
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and partial Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
General Sessions for Greenville County, South Carolina, on
the Seventh day of October, 2014.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

March 26, 2015


APRIL P. HERRON, Court Reporter

1 Wednesday, October 8, 2014:

2 (Whereupon the jury began deliberations at 9:10 am)

3 (Whereupon court reconvened at 9:22 am)

4 **THE COURT:** Thank you very much. All right. Y'all can
5 sit down. As I understand it from the State and the Defense
6 there was an issue last night where potentially the jurors
7 in this case had contact with the mother and the minor
8 victim. Is that correct, solicitor?

9 **MS. BENTLEY:** Yes, sir, Your Honor. Ms. Manigault and
10 I observed that they crossed the street together to the
11 parking garage after the jury panel was released.

12 **THE COURT:** Very good. It's the Court's intention to
13 question all the jurors one at a time to see if there was
14 any contact and what occurred, if anything. Madame Clerk,
15 take the roll of the jurors, call out the first name,
16 please, ma'am.

17 **MADAME CLERK:** All right. The first one would be
18 Nicole McAden.

19 **THE COURT:** Bring them in.

20 (Whereupon juror, Nicole McAden, entered the courtroom)

21 (Pause)

22 **THE COURT:** I'm sorry, ma'am. Your name is?

23 **MS. McADEN:** Nicole McAden.

24 **THE COURT:** Ms. McAden, it's my understanding that when
25 I excused the jurors and the jurors were going to the

1 parking lot that they might have had, obviously
2 unintentionally, but might have had some contact with either
3 the victim or the victim's mother. Did you observe that?
4 Did you know that at all?

5 MS. McADEN: When we were at the corner all going into
6 the parking garage, the victim and her mother were at the
7 same corner ---

8 THE COURT: All right.

9 MS. McADEN: --- at the same time.

10 THE COURT: Did you observe anybody speaking to each
11 other?

12 MS. McADEN: No.

13 THE COURT: All right. There was no communication
14 passed among any of those parties?

15 MS. McADEN: Nope.

16 THE COURT: All right. And you, yourself, did not
17 speak to them?

18 MS. McADEN: No, sir.

19 THE COURT: And they did not speak to you?

20 MS. McADEN: No, sir.

21 THE COURT: All right. In this particular matter can
22 you continue with your duties and obligations to give to the
23 State and the Defendant a fair and impartial trial and
24 render a true and just verdict in this matter?

25 MS. McADEN: Yes, sir.

1 **THE COURT:** Thank you very much. You can go back and
2 have a seat in the jury room. Do not discuss this with the
3 other jurors.

4 **MS. McADEN:** Yes, sir.

5 (Whereupon juror, Ms. McAden, exited the courtroom)

6 **THE COURT:** Thank you. Next juror, please, ma'am.

7 **MADAME CLERK:** The second is Evelyn Satterfield.

8 (Whereupon juror, Evelyn Satterfield, entered the
9 courtroom)

10 **THE COURT:** Ms. Satterfield, ---

11 **MS. SATTERFIELD:** Yes, sir.

12 **THE COURT:** --- last night when the Court excused the
13 jurors to go home, it appears there might have been some
14 unintentional situation whereby at least some of the jurors
15 and the victim or the victim's mother might have been in the
16 same place at the same time, going to the parking lot or
17 going to their cars. Did you observe that at all?

18 **MS. SATTERFIELD:** No.

19 **THE COURT:** All right. And so you did not have any
20 contact with the victim or the victim's mother, is that
21 correct?

22 **MS. SATTERFIELD:** No, sir.

23 **THE COURT:** And, obviously, you didn't speak to them or
24 they did not speak to you?

25 **MS. SATTERFIELD:** No, sir.

1 **THE COURT:** All right. And -- all right. Thank you,
2 ma'am. You can go back and have a seat in the jury room.
3 Thank you. Appreciate it. Next one, please, ma'am.

4 **MADAME CLERK:** Yes, sir.

5 (Whereupon juror, Evelyn Satterfield, exited the
6 courtroom)

7 **MADAME CLERK:** The next is Dana Smith.

8 (Whereupon juror, Dana Smith, entered the courtroom)

9 **THE COURT:** Ms. Smith, it has been reported to me that
10 there might have been some unintentional contact or at least
11 the jurors and the victim and the victim's mother might have
12 been in the same place going to the parking lot last night.
13 Did you observe that?

14 **MS. SMITH:** Yes. They -- they were on the same side of
15 the street once we crossed. I think we crossed the street
16 together and then they were right there.

17 **THE COURT:** Okay. All right. So with that, did you
18 observe anybody communicating or talking to each other?

19 **MS. SMITH:** No, sir.

20 **THE COURT:** All right. Did you communicate with them
21 in any way?

22 **MS. SMITH:** No, sir.

23 **THE COURT:** And did they communicate with you in any
24 way?

25 **MS. SMITH:** No, sir.

1 **THE COURT:** All right. With that, are you or can you
2 at this point in time continue with your duties and
3 obligations and to give to the State and Defendant a fair
4 and impartial verdict and render a true and just verdict in
5 this matter?

6 **MS. SMITH:** Yes, sir.

7 **THE COURT:** Thank you very much, ma'am. Have her go
8 back and have a seat. Thank you. Next juror.

9 (Whereupon juror, Dana Smith, exited the courtroom)

10 **MADAME CLERK:** Next is Franklin Parnell.

11 (Whereupon juror, Franklin Parnell, entered the
12 courtroom)

13 **THE COURT:** Mr. Parnell?

14 **MR. PARNELL:** Yes, sir.

15 **THE COURT:** All right, sir. Last night it appears
16 there may have been some unintentional, I don't know if
17 contact's the right word, but apparently some of the jurors
18 and the victim, the victim's mother were in the same
19 location going to their cars out to the parking lot last
20 night.

21 **MR. PARNELL:** Yes, sir.

22 **THE COURT:** Did you observe that?

23 **MR. PARNELL:** I did.

24 **THE COURT:** All right, sir. So first, did you observe
25 anybody having any communication or contact between them?

1 As far as anybody speaking to anybody or ---

2 **MR. PARNELL:** Didn't hear a word.

3 **THE COURT:** --- anything like that? All right, sir.

4 And you did not have any conversation with them?

5 **MR. PARNELL:** No, I did not.

6 **THE COURT:** And they did not have any conversation with
7 you?

8 **MR. PARNELL:** They did not.

9 **THE COURT:** All right. Very good, sir. With that, are
10 you still ready, willing, able to continue on with your duty
11 and obligation to render a true and just verdict in this
12 matter?

13 **MR. PARNELL:** Yes, I am.

14 **THE COURT:** Thank you very much, sir. You can go back
15 and have a seat. Thank you.

16 (Whereupon juror, Franklin Parnell, exited the
17 courtroom)

18 **THE COURT:** Who's the next one?

19 **MADAME CLERK:** Next, Richard Bulger.

20 (Whereupon juror, Richard Bulger, entered the
21 courtroom)

22 **THE COURT:** Mr. Bulger, it appears last night that
23 there may have been some unintentional, I don't know if
24 contact's the right word, but apparently the victim,
25 victim's mother and some of the jurors were in the same

1 location at the same time, apparently going to the parking
2 lot or going to their cars last night. Did you observe
3 that?

4 **MR. BULGER:** Yes, sir, I did.

5 **THE COURT:** Okay. Did you observe any kind of
6 communication? Anybody speaking to anybody at that point in
7 time?

8 **MR. BULGER:** No, sir, I did not.

9 **THE COURT:** All right. And you did not speak to them
10 yourself?

11 **MR. BULGER:** No, sir, I did not.

12 **THE COURT:** And they did not speak to you?

13 **MR. BULGER:** No, sir, they did not.

14 **THE COURT:** Very good. Are you ready, willing and able
15 to continue with your duties to render a true and just
16 verdict in this matter?

17 **MR. BULGER:** Yes, I am, sir.

18 **THE COURT:** Thank you very much. You can go back and
19 have a seat.

20 (Whereupon juror, Richard Bulger, exited the courtroom)

21 **THE COURT:** Who's the next juror?

22 **MADAME CLERK:** The next is Kelsey Durham.

23 (Whereupon juror, Kelsey Durham, entered the courtroom)

24 **THE COURT:** Ms. Durham, last night apparently there
25 might have been some unintentional, and again, I don't know

1 if the right word is contact, but apparently the victim,
2 victim's mother and some of the jurors were in the same
3 location going to the parking lot or going to their cars .
4 after court was excused last night. Did you observe that?

5 **MS. DURHAM:** I saw it, yes, sir.

6 **THE COURT:** All right, ma'am. Did you observe anybody
7 communicating or talking with each other?

8 **MS. DURHAM:** Not at all.

9 **THE COURT:** And you did not speak to them?

10 **MS. DURHAM:** No.

11 **THE COURT:** And they did not speak to you?

12 **MS. DURHAM:** No.

13 **THE COURT:** Very good. Are you ready, willing and able
14 to continue on with your duties to render a true and just
15 verdict in this matter?

16 **MS. DURHAM:** Yes, sir.

17 **THE COURT:** Thank you very much, ma'am. Have a seat
18 back in the jury room. Thank you, ma'am.

19 (Whereupon juror, Kelsey Durham, exited the courtroom)

20 **MADAME CLERK:** Next is Keith Lindsey.

21 (Whereupon juror, Keith Lindsey, entered the courtroom)

22 **THE COURT:** Mr. Lindsey, last night there was
23 apparently some unintentional, again, I've said I don't know
24 if contact's the right word, but apparently the victim,
25 victim's mother and some of the jurors were in the same

1 location going to the parking lot, going to their cars last
2 night. Did you observe that?

3 **MR. LINDSEY:** Yes, sir.

4 **THE COURT:** All right, sir. Did you observe anybody
5 communicating with each other? Talking to each other at
6 that point in time?

7 **MR. LINDSEY:** No, sir.

8 **THE COURT:** And you did not speak to them?

9 **MR. LINDSEY:** No, sir.

10 **THE COURT:** And they did not speak to you?

11 **MR. LINDSEY:** No, sir.

12 **THE COURT:** And are you ready, willing and able to
13 continue on with your duties and obligations to render a
14 true and just verdict in this matter?

15 **MR. LINDSEY:** Yes, sir.

16 **THE COURT:** Very good, sir. You can go on back and
17 have a seat in the jury room. Thank you.

18 (Whereupon juror, Keith Lindsey, exited the courtroom)

19 **THE COURT:** Next one.

20 **MADAME CLERK:** Jacob Burdette.

21 (Whereupon juror, Jacob Burdette, entered the
22 courtroom)

23 **THE COURT:** Mr. Burdette, last night there apparently
24 was some kind of unintentional contact or some of the jurors
25 and the victim, victim's mother were apparently in the same

1 location going to the parking lot, going to their cars last
2 night when I excused the jury. Did you observe that?

3 **MR. BURDETTE:** I saw that, yes, sir.

4 **THE COURT:** All right, sir. Did you see anybody
5 communicating or talking to each other at that point in
6 time?

7 **MR. BURDETTE:** No, sir.

8 **THE COURT:** All right. And you did not speak to them?

9 **MR. BURDETTE:** No, sir.

10 **THE COURT:** And they did not speak to you?

11 **MR. BURDETTE:** No, sir.

12 **THE COURT:** Very good. Are you ready, willing and able
13 to continue on with your duties and obligations to render a
14 true and just verdict in this matter?

15 **MR. BURDETTE:** Yes, sir.

16 **THE COURT:** Thank you very much. You can go back and
17 have a seat. Thank you.

18 **MR. BURDETTE:** Yes, sir.

19 (Whereupon juror, Jacob Burdette, exited the courtroom)

20 **MADAME CLERK:** Charles Pate.

21 (Whereupon juror, Charles Pate, entered the courtroom)

22 **MR. PATE:** First seat?

23 **THE COURT:** Yes, sir. That'd be great. Mr. Pate, last
24 night, apparently there was some unintentional contact or
25 the victim, victim's mother and some of the jurors were in

1 the same location, apparently going to the parking lot,
2 going to their cars last night. Did you happen to see that?

3 **MR. PATE:** No. I didn't -- I saw the mother, the child
4 from a distance ---

5 **THE COURT:** From a distance? Okay. Did you happen to
6 observe anybody, any of the jurors or the victim's mother
7 talking in any way? Anybody speaking?

8 **MR. PATE:** No. I was forward ahead of them. This was
9 behind me.

10 **THE COURT:** All right, sir.

11 **MR. PATE:** I didn't see anything.

12 **THE COURT:** All right. And they, obviously, then did
13 not speak to you?

14 **MR. PATE:** No, sir.

15 **THE COURT:** And you did not speak to them?

16 **MR. PATE:** Correct, I did not.

17 **THE COURT:** All right, sir. And are you ready, willing
18 and able to continue on with your duties to render a true
19 and just verdict in this matter?

20 **MR. PATE:** Yes, Your Honor, I am.

21 **THE COURT:** Very good, sir. Thank you very much. You
22 can go back and have a seat in the jury room. Thank you.

23 (Whereupon juror, Charles Pate, exited the courtroom)

24 **MADAME CLERK:** Cassandra Davis.

25 (Whereupon juror, Cassandra Davis, entered the

1 courtroom)

2 **THE COURT:** I'm sorry, ma'am. Your last name is?

3 **MS. DAVIS:** Davis.

4 **THE COURT:** All right. Ms. Davis, last night
5 apparently there was some unintentional contact or that --
6 apparently the victim, victim's mother and some of the
7 jurors were in the same location last night when I excused
8 y'all when they were going to the parking lot or going to
9 the cars. Did you happen to see that?

10 **MS. DAVIS:** I seen them, yes.

11 **THE COURT:** All right, ma'am. Okay. You saw them.
12 Did you see anybody talking to each other? Did anybody
13 speak to each other? Did you see any of that?

14 **MS. DAVIS:** No, sir, I didn't ---

15 **THE COURT:** All right.

16 **MS. DAVIS:** --- see none of that.

17 **THE COURT:** All right. And did you speak to them?

18 **MS. DAVIS:** No, sir.

19 **THE COURT:** And they did not speak to you?

20 **MS. DAVIS:** No, sir.

21 **THE COURT:** Very good. And are you ready, willing and
22 able to continue on with your duties and obligations to
23 render a true and just verdict in this matter?

24 **MS. DAVIS:** I am.

25 **THE COURT:** Thank you very much, ma'am. You can go

1 back and have a seat in ---

2 MS. DAVIS: Thank you.

3 THE COURT: --- the jury -- thank you.

4 (Whereupon juror, Cassandra Davis, exited the
5 courtroom)

6 MADAME CLERK: Sara Kosmer.

7 (Whereupon juror, Sara Kosmer, entered the courtroom)

8 THE COURT: Ms. Kosmer, apparently last night there was
9 some unintentional, I don't know if contact's the right
10 word, but the victim, victim's mother and some of the jurors
11 were in the same location going to the parking lot, going to
12 their cars last night.

13 MS. KOSMER: Yes, sir.

14 THE COURT: Did you happen to see that?

15 MS. KOSMER: Yes, sir.

16 THE COURT: All right. Did you happen to observe
17 anybody talking to each other, anybody speaking to each
18 other?

19 MS. KOSMER: No, sir.

20 THE COURT: All right. And did you speak to them?

21 MS. KOSMER: No, sir.

22 THE COURT: And they did not speak to you?

23 MS. KOSMER: No, sir.

24 THE COURT: Very good. Are you ready, willing and able
25 to continue on with your duties to render a true and just

1 verdict in this matter?

2 MS. KOSMER: Yes, sir.

3 THE COURT: Thank you very much, ma'am.

4 MS. KOSMER: Thank you.

5 THE COURT: You can go back and have a seat. Thank
6 you.

7 (Whereupon juror, Sara Kosmer, exited the courtroom)

8 MADAME CLERK: Howard Anderson.

9 THE COURT: And that would be the last one, is that
10 right?

11 MADAME CLERK: Yes.

12 THE COURT: Thank you, ma'am.

13 (Whereupon juror, Howard Anderson, entered the
14 courtroom)

15 THE COURT: Mr. Anderson, ---

16 MR. ANDERSON: Yes, sir.

17 THE COURT: --- last night apparently there was some
18 unintentional contact or the victim, victim's mother was in
19 the same location as some of the jurors were going to the
20 parking lot, going to their cars last night when y'all got
21 excused. Did you happen to see that?

22 MR. ANDERSON: No, sir. I saw her when we were coming
23 out.

24 THE COURT: All right, sir. Did you see anybody -- any
25 of the jurors or any of them or the victim's mother talking

1 to each other? Did you see anything like that at all?

2 MR. ANDERSON: No, sir.

3 THE COURT: All right, sir. And you didn't speak to
4 her?

5 MR. ANDERSON: No, sir.

6 THE COURT: And she did not speak to you?

7 MR. ANDERSON: No, sir.

8 THE COURT: Very good. You ready, willing and able to
9 continue on with your duties to render a true and just
10 verdict in this matter?

11 MR. ANDERSON: Yes, sir.

12 THE COURT: Thank you very much, sir. You can go back
13 now to the jury room.

14 MR. ANDERSON: Thank you.

15 (Whereupon juror, Howard Anderson, exited the
16 courtroom)

17 THE COURT: And, Madame Bailiff, if you'll tell the
18 jury panel to continue with their deliberations then.

19 MADAME BAILIFF: Yes, sir.

20 THE COURT: Here's the exhibits.

21 (Whereupon the jury continued with deliberations at
22 9:41 am)

23 THE COURT: Anything further from the State at this
24 point in time?

25 MS. BENTLEY: Nothing from the State, Your Honor.

1 **THE COURT:** From the Defense?

2 **MS. MANIGAULT:** Your Honor, from the Defense, the
3 Defense would make a motion for a mistrial. And the ---

4 **THE COURT:** And ---

5 **MS. MANIGAULT:** --- basis ...

6 **THE COURT:** Okay. I'm sorry. I was going to ask what
7 basis might that be.

8 **MS. MANIGAULT:** Yes, sir. The basis is for the close
9 proximity with the child and the -- the alleged victim and
10 the mother outside the controlled environment of the
11 courtroom could tend to lead them to sympathy or empathy and
12 not focus on the facts.

13 My observation of the matter began when the jury came
14 from the back door of the courthouse, the mother and child
15 walking down to the parking lot, the mother and child
16 intermingled with the members of the jury, walked out of the
17 parking lot onto the sidewalk and waited for the light,
18 crossed the street together, waited on the other side
19 together, crossed the street and went up into the garage.
20 And we think that that close proximity would tend to evoke
21 sympathy or sympathy on behalf of the minor child.

22 **THE COURT:** All right. So you believe that the jurors
23 when they came in and talked to me were lying, basically?

24 **MS. MANIGAULT:** Your Honor, I'm making the motion for a
25 mistrial for the record.

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

2 **MS. MANIGAULT:** Thank you.

3 **THE COURT:** Any response from the State?

4 **MS. BENTLEY:** Your Honor, I believe that the jury has
5 been thoroughly questioned, that this contact was completely
6 unintentional on everyone's part and that the jury has not
7 been influenced in any way whatsoever. There was zero
8 contact -- zero communication, that there wasn't any further
9 contact.

10 **THE COURT:** All right. Very good. The Court finds
11 that what contact, if any, it doesn't even appear there
12 actually was any contact. They apparently were in the same
13 location with some of the jurors at the same time, and from
14 what the jurors have indicated, they were in the same
15 location. But there was no contact, there was no
16 communication, there was nothing improper that occurred.
17 Therefore, the motion for a mistrial is denied. Thank you
18 very much.

19 Solicitor, Ms. Manigault, we'll await the jury's
20 verdict in this matter. So y'all just be around so that we
21 can call you when we need you, okay?

22 **MS. BENTLEY:** Yes, Your Honor.

23 **THE COURT:** Thank you very much.

24 **MS. MANIGAULT:** Thank you, Your Honor.

25 (Whereupon court was in recess at 9:43 am)

1 (Whereupon Court's exhibits 2, 3, 4 and 5 were marked)

2 (Whereupon court reconvened at 11:08 am)

3 **THE COURT:** You may be seated. Thank you. All right,
4 counsel, it appears that the jury has requested to listen to
5 a portion of the testimony of Investigator Michael
6 Robertson. And the court reporter indicates she's prepared
7 to play back that portion of the testimony as requested by
8 the jury. And so that's what we're going to do. If you'd
9 ask the jury to come in, please.

10 (Whereupon the jury entered the courtroom at 11:10 am)

11 **THE COURT:** All right. Mr. Foreman, based upon your
12 written request, I believe the court reporter has found the
13 portion of the testimony of Investigator Robertson that the
14 jury was interested in hearing. I'm going to have the court
15 reporter play that.

16 I'll leave it to you to indicate when you want us to
17 stop. You can just raise your hand if you want to. And at
18 the end of that, if for some reason that is -- there's more
19 that you want or there's something else that you want,
20 obviously, we're here at your convenience. We're just
21 trying to accommodate the specific request as best we could.
22 All right?

23 **MR. FOREMAN:** Thank you, sir.

24 **THE COURT:** All right. Go ahead, ma'am.

25 (Whereupon the following testimony of Investigator

1 Michael Robertson was played for the jury)

2 Q. Could you please tell me where you first made contact
3 with Mr. Williams.

4 A. At his residence.

5 Q. Was he home?

6 A. He was.

7 Q. Was there a vehicle there?

8 A. There was.

9 Q. Do you remember what type of vehicle it was?

10 A. A blue pick-up truck.

11 Q. Okay. And did you speak with Mr. Williams that day
12 about the allegations?

13 A. I did not. I advised him that there -- I was working
14 -- I was investigating a case that involved him and asked
15 him if he would come down to the office and speak with me
16 about it.

17 Q. Did he agree to do so?

18 A. He did.

19 Q. When did he end up coming to your office?

20 A. The next day.

21 Q. Okay. I'm going to show you what's previously been
22 marked as State's exhibits 5 and 6. And at this point can
23 you just tell me if you recognize both of those exhibits?

24 A. I do.

25 Q. Can you tell me how you recognize State's exhibit 5?

1 A. I have my signature on the bottom as a witness.

2 Q. Is that a form that you often use?

3 A. It is.

4 Q. And can you please tell us basically what State's
5 exhibit 5 is?

6 A. This is a waiver of rights form that we read to or have
7 the suspects read when they come into the office.

8 Q. Okay. Is that the form that you read or had Mr.
9 Williams read?

10 A. It is.

11 Q. How do you know that?

12 A. It has my signature. It also has his initials beside
13 each sentence and his signature.

14 Q. Okay. Is that item dated?

15 A. It is.

16 Q. What is the date?

17 A. May 4th, 2012.

18 Q. And is that the same date that you spoke to Mr.
19 Williams?

20 A. That's correct.

21 Q. And is that also -- is there a time written on there?

22 A. There is.

23 Q. What is it?

24 A. 2:55.

25 Q. Okay. And aside from the writings that you recognize,

1 have any other additions or deletions been made to that
2 item?

3 A. No, ma'am.

4 **MS. BENTLEY:** Your Honor, at this time the State moves
5 exhibit 5 into evidence.

6 **THE COURT:** Any objection?

7 **MS. MANIGAULT:** No objection, Your Honor.

8 **THE COURT:** All right. It's in evidence without
9 objection.

10 (Whereupon State's exhibit 5 was admitted into
11 evidence)

12 Q. Moving on to State's exhibit 6, how do you recognize
13 that form?

14 A. This is also a statement form that we have that we ask
15 them to fill out, if they will. It has my signature down as
16 a witness. It also has Mr. Williams' signature at the
17 bottom.

18 Q. So that is the same form that you used when speaking
19 with Mr. Williams?

20 A. That's correct.

21 Q. Is it dated?

22 A. It is.

23 Q. What is the date?

24 A. May 4th, 2012.

25 Q. The handwriting on that form, whose handwriting is

1 that?

2 A. It's Mr. Williams.

3 Q. Okay. And aside from the handwriting that you
4 recognize as either yours or Mr. Williams, have any other
5 changes been made to that?

6 A. No, ma'am.

7 **MS. BENTLEY:** Your Honor, at this time the State moves
8 exhibit 6 into evidence.

9 **THE COURT:** Any objection?

10 **MS. MANIGAULT:** No objection, Your Honor.

11 **THE COURT:** All right. It's in evidence without
12 objection.

13 (Whereupon State's exhibit 6 was admitted into
14 evidence)

15 Q. All right. Investigator Robertson, where did you speak
16 to Mr. Williams?

17 A. The first time at his residence. The second time in my
18 office.

19 Q. Okay. Please describe your office to us. Where is it
20 located?

21 A. It's at University Ridge at County Square.

22 Q. So it's not at the main Law Enforcement Center?

23 A. It is not. No, ma'am.

24 Q. Okay. Tell me a little bit about what your office
25 looks like.

1 A. It has an L-shaped desk. I have two chairs sitting in
2 the front. It's just a squared off office.

3 Q. Okay. Tell me, was anyone else present when you spoke
4 with Mr. Williams in your office?

5 A. No, ma'am.

6 Q. Was he under arrest at that time?

7 A. No, ma'am.

8 Q. Was he in handcuffs?

9 A. No, ma'am.

10 Q. Was he deprived of any food, water or bathroom breaks?

11 A. No, ma'am. He never asked.

12 Q. Okay. Was he free to leave?

13 A. Yes, ma'am.

14 Q. Was he free to stop talking to you at any time?

15 A. Yes, ma'am.

16 Q. Did he agree to speak with you then?

17 A. He did.

18 Q. And did you advise him of his rights?

19 A. I did with this waiver.

20 Q. Why did you do that?

21 A. It's sheriff's office procedure. We do that to make
22 sure they understand that even though in this interview
23 whatever they say, you know, can and will be used against
24 them. And they have an option of not speaking with me at
25 all.

1 Q. Okay. Could you please read us the rights that are
2 initialed on that form?

3 A. Yes, ma'am. Before we ask you any questions you must
4 understand your rights. You have the right to remain
5 silent. Anything you say can be used against you in court.

6 You have the right to talk to a lawyer for advice
7 before we ask you any questions and to have him with you
8 during questioning. If you have no -- if you have no money
9 to pay a lawyer's fee, the court will appoint one to
10 represent you without cost if you wish.

11 If you decide to answer questions now without a lawyer
12 present, you will still have the right to stop answering
13 questions at any time. You also have the right to stop
14 answering at any time until you talk to a lawyer.

15 The paragraph says I have read the statement of my
16 rights, and I understand what my rights are. I am willing
17 to make a statement and answer questions.

18 I do not want a lawyer at this time. And I understand
19 and know what I am doing. No promises or threats have been
20 made to me. And no pressure or coercion of any kind has
21 been used against me.

22 Q. Did you have any concerns about Mr. Williams' ability
23 to understand those rights?

24 A. I did not.

25 Q. Did he appear to be under the influence or suffering

1 from any mental distress that day?

2 A. No, ma'am.

3 Q. And did you advise him of the allegations against him?

4 A. I did.

5 Q. Do you recall what you told him?

6 A. I believe I told him exactly what was disclosed in the
7 -- in the forensic interview.

8 Q. Okay. Had you seen the forensic interview prior to
9 speaking with him?

10 A. I did.

11 Q. Okay. And did you advise him that he had been accused
12 of sexual abuse?

13 A. That's correct.

14 Q. And did you tell him who the alleged victim was?

15 A. I did.

16 Q. Okay. And what did he do in response to that
17 allegation by you?

18 A. Of course he denied it.

19 Q. Okay. And did he provide you with a statement?

20 A. He did.

21 Q. Okay. And would you please read that statement to us.

22 A. I'll try.

23 (Whereupon the Foreman indicated to the Court)

24 **THE COURT:** All right, Madame Court Reporter.

25 (Whereupon the testimony was stopped)

1 **MR. FOREMAN:** Oh, I'm sorry.

2 **THE COURT:** All right. Finish out the statement, where
3 he's reading the statement, please.

4 (Whereupon the testimony was continued for the jury)

5 Q. Well, actually, before you do that, can you tell me
6 what you asked him to provide you in the statement?

7 A. I asked him to provide me with what his relationship
8 was with Tammy and if he could -- if he would tell me about
9 the time that the allegations were being made about him
10 being in the room and what went on in the room between him
11 and **Minor**

12 Q. All right. Investigator, please read his statement.

13 A. Okay. It says ---

14 (Whereupon the Foreman indicated to the Court)

15 **THE COURT:** Okay. Stop it, please. So I take it, Mr.
16 Foreman, that answers the questions that you had posed to
17 us, is that right?

18 **MR. FOREMAN:** Yes, it does, Your Honor.

19 **THE COURT:** All right. Very good. If you could take
20 the jury back and resume your deliberations. Thank you,
21 sir.

22 (Whereupon the jury exited the courtroom at 11:18 am)

23 **THE COURT:** As I indicated, we replayed that testimony
24 at the request of the jury. It was a written request. I've
25 marked it as a Court's exhibit. Counsel, if y'all wanted to

1 come up and read that, I'll be glad for you to do so. And
2 they'd actually asked the Court a question. I told them I
3 couldn't answer the question, we could replay testimony.
4 And that's what they said. All right?

5 So I'll be glad for you to look at it. And if you have
6 any questions or any other matters you want to bring to the
7 Court's attention, please do so. With that, is there
8 anything further at this point in time from the State?

9 **MS. BENTLEY:** Nothing from the State ---

10 **THE COURT:** From the Defense?

11 **MS. MANIGAULT:** Nothing, Your Honor.

12 **THE COURT:** All right. Thank you very much. Again,
13 we'll be at ease until the jury needs us.

14 (Whereupon court was in recess at 11:19 am)

15 (Whereupon a bench conference was held off the record
16 and Court's exhibit 6 was marked)

17 (Whereupon court reconvened at 3:21 pm)

18 **THE COURT:** Thank you very much. All right. Counsel,
19 I understand that in the trial that the jury has rendered a
20 verdict. Is the State ready to receive it?

21 **MS. BENTLEY:** Yes, sir, Your Honor.

22 **THE COURT:** And the Defense?

23 **MS. MANIGAULT:** Yes, sir.

24 **THE COURT:** All right. Very good. I don't know if all
25 the participants here are involved in the State versus

VERDICT OF THE JURY

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1 Michael Edward Williams' matter, but I just want to make a
2 comment to the -- everyone in the courtroom. We ask the
3 jury to do a very difficult thing. And they've worked very
4 hard to do that.

5 I do not know what the verdict is. We will all receive
6 that verdict at the same time. Whatever the verdict is of
7 the jury regarding the two charges, it will be received with
8 respect and it will be received with silence.

9 I will not tolerate any kind of showing of emotion or
10 any kind of reaction to the jury's verdict. If there is,
11 you will be detained by a representative of the Greenville
12 County Sheriff's Office and held for further proceedings.
13 So if you cannot honor the Court's order, please leave the
14 courtroom now. Thank you very much.

15 (No response)

16 **THE COURT:** All right. Ask the jury to come in,
17 please.

18 (Whereupon the jury entered the courtroom at 3:25 pm)

19 **THE COURT:** All right, Mr. Foreman. Has your jury
20 reached a verdict in this matter?

21 **MR. FOREMAN:** Yes, Your Honor, we have.

22 **THE COURT:** Good. Could you hand the verdict forms to
23 the bailiff, please. Thank you, sir.

24 (Pause)

25 **THE COURT:** Madame Clerk, you may publish the verdicts.

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1 **MADAME CLERK:** Thank you. Your Honor, in the case of
2 2012-GS-23-10445, the State of South Carolina versus Michael
3 Edward Williams, number one, criminal sexual conduct with a
4 minor in the first degree, on the charge of criminal sexual
5 conduct with a minor in the first degree, we, the jury, by
6 unanimous consent find the Defendant not guilty.

7 In the case of 2013-GS-23-0698, the question two for
8 criminal sexual conduct with a minor, third degree, on the
9 charge of criminal sexual conduct with a minor in the third
10 degree, we, the jury, by unanimous consent find the
11 Defendant guilty. These are signed by our foreperson, Mr.
12 Bulger.

13 Ladies and gentlemen, if you agree these are the
14 verdicts that you reached in your deliberation room would
15 you please raise your right hand.

16 (Whereupon all jurors raised their right hand)

17 **MADAME CLERK:** Thank you.

18 **THE COURT:** Thank you very much. Does the State wish
19 the jury polled?

20 **MS. BENTLEY:** No, Your Honor.

21 **THE COURT:** Does the Defense wish the jury polled?

22 **MS. MANIGAULT:** No, sir.

23 **THE COURT:** All right. Thank you very much.

24 Mr. Foreman, ladies and gentlemen of the jury, I want
25 to thank you for your service in this case. You did exactly

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1 what the Court asked you to do, that is to well and truly
2 deliberate. We understand, we ask you to do a very
3 difficult thing.

4 As a more minor matter, if you're involved in any kind
5 of relationship, you understand it's difficult to get two
6 people to agree to do anything. So to get twelve people to
7 agree, we appreciate that and we understand that. So thank
8 you for your service.

9 Madame Clerk, what does the jury coordinator want?

10 **MADAME CLERK:** To please call in after six tonight.

11 **THE COURT:** Please call in after six. I've already
12 started a trial. So y'all won't be involved in a trial with
13 me. And I know Judge Hill's jury is still going on. So --
14 and Judge Miller had to go to Columbia today for some court
15 business. So I guess he'll be back tomorrow. So I don't
16 know if there'll be another trial or not, honestly, to tell
17 you the truth. But -- so with that you're excused.

18 Just call that juror information line tonight after
19 6:00. If I don't have the opportunity to see you again,
20 again, I appreciate it very much. You've worked hard on
21 this. Thank y'all very much. Appreciate it. You're
22 excused. Thank you.

23 (Whereupon the jury exited the courtroom at 3:28 pm)

24 **THE COURT:** All right, Ms. Manigault. Motions by the
25 Defense, please, ma'am.

SENTENCE OF THE COURT

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1 **MS. MANIGAULT:** Your Honor, we would renew our motions
2 and ask the Court to set aside the verdict. We do not
3 believe that the State proved its case or the elements of
4 the crimes as charged. I want to make a motion for a new
5 trial.

6 **THE COURT:** All right. Thank you, ma'am. Regarding
7 this particular matter and the Defendant's motion for a new
8 trial, the standard is when there is -- if the Court
9 believes there's any competent evidence to sustain the
10 jury's verdict, the trial court, if I had a different
11 judgment than the jury, not saying that I do, but even if I
12 did, a trial court may not substitute the judgment for that
13 of the jury and overturn the verdict if there's any
14 competent evidence to sustain the jury's verdict.

15 I'll say for the record, I don't have a -- believe that
16 the Court has a different judgment than the jury's verdict
17 in this matter. I find there was more than sufficient and
18 competent evidence to sustain the jury's verdict in this
19 matter. And, therefore, the motion for a new trial is
20 denied.

21 Any other motions?

22 **MS. MANIGAULT:** No, Your Honor.

23 **THE COURT:** All right. Is the State ready to proceed
24 with sentencing?

25 **MS. BENTLEY:** Yes, sir.

SENTENCE OF THE COURT

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1 **THE COURT:** All right. And Defense?

2 **MS. MANIGAULT:** Yes, sir.

3 **THE COURT:** All right. Very good. All right,
4 solicitor. I'll be glad to hear from you, ma'am.

5 **MS. BENTLEY:** May it please the Court, Your Honor. You
6 were present for the duration of the trial, through the
7 presentation of the testimony and evidence. The maximum
8 penalty for a lewd act on a minor, criminal sexual conduct
9 in the third degree is fifteen years. The State believes
10 that is an appropriate sentence in this case for a variety
11 of reasons.

12 First and foremost, the age of the victim in this case,
13 she had just turned five years old. Number two, Your Honor,
14 this Defendant has a prior criminal sexual conduct with a
15 minor and a contributing to the delinquency of a minor in
16 2002.

17 He was sentenced to twenty years suspended to ten years
18 and five years probation. He had very recently been
19 released from prison for sexual abuse on a minor when this
20 event occurred. And furthermore, Your Honor, this Defendant
21 is awaiting trial for another criminal sexual conduct with a
22 minor in Anderson County.

23 **MS. MANIGAULT:** I would object to any ---

24 **THE COURT:** I'm not going to take that into
25 consideration. I'm taking into consideration the prior

SENTENCE OF THE COURT

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1 record, the facts and evidence of this case. Thank you. Go
2 ahead. Anything else from the State?

3 **MS. BENTLEY:** Your Honor, that concludes the State's
4 ---

5 **THE COURT:** All right. Thank you very much. All
6 right, Ms. Manigault. Be glad to hear from you.

7 **MS. MANIGAULT:** May it please the Court, Your Honor.
8 My client is a life-long resident of Greenville County. He
9 is a graduate of Carolina High School. He is age forty-six.
10 He suffers a medical condition of a heart murmur. He was
11 working at South Forks Metal Fabrication for approximately a
12 year and a half at the time of this arrest. And he is
13 engaged. He has one child, age eighteen. He was living
14 with his father, who has been in the courtroom with him
15 throughout the three days that we were involved in this
16 trial.

17 He is asking me if the Court would consider a minimum
18 sentence in this case. He does acknowledge that he did
19 receive that sentence in 2002 of twenty years suspended to
20 ten years and five years probation. He does acknowledge
21 that.

22 He had not completed his probation. If the Court is
23 going to inquire about that, he had not, because his release
24 was in 2010. So we'd ask -- he's asking the Court for mercy
25 in this case. And he's asking for a minimum sentence.

SENTENCE OF THE COURT

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1 **THE COURT:** Thank you, ma'am.

2 (Pause)

3 **MS. MANIGAULT:** Your Honor?

4 **THE COURT:** Yes, ma'am.

5 **MS. MANIGAULT:** He's reminded me, he was on ankle
6 monitoring for about a year and a half. And he's asking the
7 Court to consider giving him credit for that on electronic
8 monitoring while he was on probation.

9 **MS. BENTLEY:** And the State would respectfully request
10 that he not be given credit for that house arrest time, but
11 any credit for time that he did serve in the detention
12 center.

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

14 (Pause)

15 **THE COURT:** 2013-GS-23-698, the State of South
16 Carolina, County of Greenville versus Michael Edward
17 Williams regarding criminal sexual conduct with a minor,
18 third degree. Mr. Williams, I've heard what your attorney
19 has said, obviously, heard all the evidence that was
20 presented in this matter.

21 I do take into consideration the prior record. I do
22 find that to be important in the sentencing in this matter.
23 Based upon the prior offenses that do involve minors and the
24 relative short period of time that the Defendant was out
25 before being arrested for this charge and now being

SENTENCE OF THE COURT

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1 subsequently convicted by a jury of his peers, therefore,
2 the sentence of the Court is the Defendant is committed to
3 the State Department of Corrections for a determinate term,
4 fifteen years. He's given credit for the time that he has
5 spent in jail. Thank you very much.

6 **MS. BENTLEY:** Thank you, Your Honor.

7 (Hearing Ended at 3:34 pm)

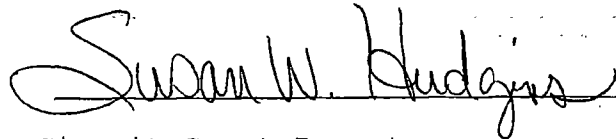
8 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 6th & 8th day of October 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 3, 2015

A handwritten signature in cursive script that reads "Susan W. Hudgins". The signature is written in dark ink and is positioned above the printed name.

Circuit Court Reporter

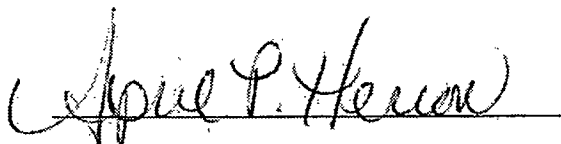
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and partial Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the Seventh day of October, 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 26, 2015


APRIL P. HERRON, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Greenville)Michael Edward Williams 283356)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2018-CP-23-00131

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
PAUL B. WICKES
GREENVILLE, S.C.

2018 JAN - 8 PM 3:38

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Greenville County Law Enforcement Center, and now Tyger River C.I. - U8-210, 200 Prison Rd. Enoree, S.C. 29335
2. Name and location of Court which imposed sentence Greenville County Court house, 305 E. North St., Greenville, S.C. 29601
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-23-10445
 - (b) 2013-GS-23-0698A

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2012-GS-23-10445 Found Not Guilty Oct. 08-2014
- (b) 2013-GS-23-0698A Found Guilty Oct. 08-2014, 15 years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty After a plea of "not" "Guilty"
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State of South Carolina in the Court of Appeals, case # 2014-002241
- ii. Petition for Rehearing Filed Feb. 24, 2017
- iii. Petition for Writ of Certiorari
- (b) the result in each such Court to which you appealed:
- i. Affirmed conviction
- ii. Denied
- iii. Denied
- (c) the date of each such result:
- i. January 11, 2017
- ii. Feb. 27, 2017
- iii. November 15, 2017
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) Trial Judge was prejudice and Bias
- (c) Look on separate paper *
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Please look on Separate paper provided.
- (b) separate paper, to much to write in this section.
- (c) separate paper
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Appellate counsel chose two grounds for my direct
 (b) Appeal. I had no input in what was presented. Until
 (c) now in this P.C.R.

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Dorothy Manigault, 305 E. North St., Greenville,
S.C. 29601

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Direct Appeal - LaNelle Cantey Durant, 1330 Lady St.
Suite 401, Columbia, S.C. 29201

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

To have my charge vacated.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Michael Edward Williams, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael Williams

SWORN to and subscribed before me this 4
day of July, 2018.

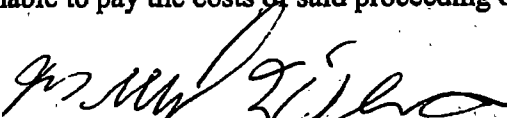
Notary Public (L.S.)
Notary Public

My Commission Expires: Dec. 10, 2024

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Michael Edward Williams, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
4th day of JAN., 2018.


Notary Public

My Commission Expires: Dec 10, 2024

Ineffective Assistance of Counsel

Page 3 , Section 10(a)

Trial counsel ineffective for failing to request preliminary hearing. When defendant ask for one, By this trial counsel Fail to know what evidence war against defendant, Failing to interview, investigate, plan, and present a defense. Nance v. Ozmint, 626 S.E. 2d 878 (S.C. 2006). U.S. Supreme Court; Florida v. Nixon, 543 U.S. 175 (2004). Frett v. State, 378 S.E. 2d 249 (S.C. 1988)

Trial counsel ineffective for failing to object to solicitor's second charge of c.s.c. w/minor third degree almost a year later from the original charge of c.s.c. w/minor First degree. The state charged me with two crimes, one of which is a lesser including offense of the other. Double jeopardy is potentially implicated. Hopkins v. State, 451 S.E. 2d 389 (S.C. 1994), State v. Gentry, 610 S.E. 2d 494, 501 (S.C. 2005), Page v. People, 2017, CO 88 (2017)

Page 3 , Section 10(a) , continue

Trial counsel ineffective for failing to cross-examine the state's witness when defendant ask counsel too. The state witness lied on the stand about not wanting a sexual relationship with the defendant. Riddle v. Ozmint, 631 S.E. 2d 70(S.C. 2006)(per curiam), Miller v. State, 665 S.E. 2d 596(S.C. 2008), Martinez v. State, 403, S.E. 2d, 113 (S.C. 1991), Cobbs v. State, 408, S.E. 2d 223(S.C. 1991)

Trial counsel ineffective for advising defendant that, if he testified, he could be cross-examined about prior conviction, and failed to get a rule from judge concerning remoteness. Defendant did not testify because of this advice, and for failing to object to prosecutor's argument that he only had one closing because the defense presented no evidence. which was essentially a comment on defendant's right to silence. Horton v. State, 411 S.E. 2d 223(S.C. 1991), McFadden v. State, 539 S.E. 2d 391(S.C. 2000)

Page 3, Section 10(a) continue

Trial counsel ineffective for failing to object to the judge's order that the jurors had to stay until they reached a verdict. The jurors were at a standstill, and wanted to go for the day. Judge said no, and less than a few minutes they came back with a guilty verdict. I deeply feel if the judge would have granted the request. They would have found me not guilty. *Pauling v. State*, 565 S.E. 2d 769 (S.C. 2002), *Dawson v. State*, 572 S.E. 2d 445 (S.C. 2002)

Trial counsel ineffective for failing to object to the defendant was improperly sentenced as a second offender when conflict in the statutes must be resolved in favor of the later, more specific statute, which excluded defendant's earlier convictions from counting to classify him as a "second offender," and for failing to object to trial court's consideration of the defendant's exercise of the right to trial in sentencing the defendant to fifteen years the maximum sentence of the charge. For not pleading guilty. The trial court to consider the defendant's exercise of his right to trial as an aggravating factor. *Scott v. State*, 513 S.E. 2d 100 (S.C. 1999)

Page 3 , Section 10(d) continue

Rainey v. State, 414 S.E. 2d 131 (S.C. 1992), Davis v. State, 520 S.E. 2d 801 (S.C. 1999)

" Judge prejudice and bias against the defendant "

Page 3 section 10(b)

Trial judge was prejudice and bias against the defendant by allowing the jury pool to remain. The judge gave them a four question paper. The fourth question ask if they could give me a fair verdict. Around ten of them said no they could not. Then the judge called them out one by one that said no, and asked them again. This time they said yes. My trial counsel did object, and ask for them to be removed from the selection. The judge said no.

Trial judge was prejudice and bias against the defendant by the comments he made in the presence of the jury which clearly reflected that the judge believed the victim's testimony. Sosebee v. Lecke, 362, S.E. 2d 22 (S.C. 1987)

Page 3 , Section 10(c)

I believe that I have additional claims for post-conviction relief. But I do not have collateral counsel, access to the discovery process, or funds for expert services to investigate these claims.

All this and more shows that my fourth and sixth Amendments were violated.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Michael Edward Williams, 283356

2018-CP-23-0131

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on January 8, 2018, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In February of 2013, the Greenville County Grand Jury indicted Applicant on the charges of criminal sexual conduct (CSC) with a minor first degree (2013-GS-23-) and criminal sexual conduct with a minor third degree (CSC). (2013-GS-23-0698)(A). Dorothy Manigault, Esquire, represented Applicant. Lisa Bentley, Esquire, prosecuted the case. On October 6, 2014, Applicant proceeded to trial before the Honorable Steven H. John and a jury. The jury found Applicant not guilty of the CSC with a minor first degree but found him guilty of the CSC with a minor third degree. Judge John sentenced Applicant to fifteen years imprisonment for criminal sexual conduct with a minor third degree.

Applicant filed a timely notice of appeal. LaNelle Durant, Esquire, of the Office of Appellate Defense perfected the appeal. Applicant's conviction and sentence were affirmed in an

unpublished opinion from the Court of Appeals. State v. Williams, Op. No. 2017-UP-026 (S.C. Ct. App. filed January 11, 2017). Applicant submitted a timely Petition for Rehearing and by Order filed February 1, 2017, the Petition was denied. On March 22, 2017, Applicant submitted a Petition for a Writ of Certiorari to the South Carolina Supreme Court. The Court denied Applicant's Petition on November 15, 2017. The Remittitur was returned to the circuit court on April 3, 2018.

Attached to this Return are the records of the Greenville County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the Applicant's appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

On Saturday, March 31, 2012, Appellant Michael Williams spent the night at the home of Mother and her five-year-old daughter, the minor victim (Victim) in this case. (Oct. 7 Tr. p. 23). Mother and Appellant were not romantically involved but were friends. Only Mother and Victim lived in Mother's home. (Oct. 7 Tr. pp. 18; 20-23) While still in Mother's home the next day, Appellant spent about several hours in the playroom alone with Victim. Mother periodically checked on Victim during this time and Appellant acted strangely each time Mother walked by. (Oct. 7 Tr. pp. 30-31). Around 6:00 p.m., when Mother was preparing to leave the home with Victim to pick up Victim's grandmother, Mother observed Appellant on the floor next to Victim. Appellant appeared "off guard." (Oct. 7 Tr. pp. 24; 31; 33). When Mother entered the room, Appellant immediately got up while Victim remained lying on her left side. Mother observed Victim pulling and tugging at her shorts and panties. (Oct. 7 Tr. p. 32).

Appellant left Mother's home. (Oct. 7 Tr. p. 33). Because she observed uncharacteristic behavior from Victim, Mother asked Victim why she was tugging at her shorts. (Oct. 7 Tr. p. 33). Mother then asked Victim whether Appellant touched her private. (Oct. 7 Tr. p. 34) Victim began to cry. (Oct. 7 Tr. p. 34). Mother noted that on March 31, Appellant oddly persisted in offers to babysit Victim which Mother declined. (Oct. 7 Tr. p. 28).

Mother called law enforcement and met with Investigator Michael Robertson on April 3, 2012. (Oct. 7 Tr. pp. 35; 94). After taking a written statement from Mother about the incident, Investigator Robertson advised Mother that he would schedule a forensic interview for Victim at the Julie Valentine Center. (Oct. 7 Tr. pp. 34, 94).

The clinical coordinator at the Julie Valentine Center, Sarah Davis, conducted a forensic interview of Victim on April 30, 2012. (Oct. 7 Tr. p. 76). The interview was preserved in an audio and video recording. (Oct. 7 Tr. p. 77). Victim was five years old at the time of the interview. (Oct. 7 Tr. p. 77).

The court held a pre-trial motion hearing to determine the admissibility of the out-of-court statement made by Victim pursuant to S.C. Code Ann. § 17-23-175 (2010). (Oct. 6 Tr. p. 69). The State called Sarah Davis to testify out of the presence of the jury. (Oct. 6, Tr. p. 69). Ms. Davis testified that she had conducted over five hundred and thirty forensic interviews with children. (Oct. 6 Tr. p. 72). Ms. Davis has a bachelor's degree in psychology from Clemson University and a master's in social work from the University of South Carolina; she is a licensed social worker in South Carolina and attends classes regularly in social work and forensic interviewing. (Oct. 6 Tr. p. 71). Ms. Davis defined a forensic interview as a semi-structured, developmentally appropriate non-leading method of questioning children about allegations of abuse. (Oct. 6 Tr. p. 72). Ms. Davis testified that she is trained to use non-leading questions so

that the information elicited does not stem from something she suggests. (Oct. 6 Tr. p. 72). Davis testified that she knew Victim from the forensic interview she performed on April 30, 2012. (Oct. 6 Tr. pp. 72-73). The interview was preserved in an audio and video recording marked as State's Exhibit 7. (Oct. 6 Tr. p. 73).

Davis testified that the interview room is set up to minimize distractions for the child being interviewed. (Oct. 6 p. Tr. 74). Although there were some questions that Victim had difficulty understanding, the responses were developmentally appropriate given that Victim was five years old. (Oct. 6 Tr. pp. 74-75). To ensure she heard correctly, Ms. Davis would repeat Victim's answers and allow Victim the opportunity to correct anything that was repeated back incorrectly. Victim corrected Ms. Davis during the interview. (Oct. 6 Tr. p. 75). The State sought to move the recorded interview, State's Exhibit 7, into evidence for the purposes of the hearing. (Oct. 6 Tr. p. 76). Appellant objected to the admissibility of State's Exhibit 7 on the grounds it violated the confrontation clause because Appellant was not present during the interview to cross-examine Victim and because the statement exceeded time and place restrictions. (Oct. 6 Tr. pp. 76-77; 80). In response, the State clarified that, pursuant to section 17-23-175, it must make Victim available for cross examination at trial in order to address Confrontation Clause concerns and that Victim would be called to testify as a witness at trial. (Oct. 6 Tr. p. 77).

At the conclusion of the pre-trial motion hearing, Judge John found that the out-of-court statement, State's Exhibit 7, was admissible given that Victim would testify and be subject to cross examination. (Oct. 6 Tr. p. 84). Specifically, Judge John found that the statement was given in response to an investigative interview of Victim; that an audio and visual recording of the statement was preserved on film, videotape, or other electronic means; that the child would

testify and be subject to cross examination; and, finally, that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness. (Oct. 6 Tr. p. 84). Judge John reiterated that based upon what he heard from the interviewer, Ms. Davis, and his observation of the interview, the requirements concerning the admissibility of the statement were met. (Oct. 6 Tr. pp. 80-82; 84).

Judge John also made specific findings in determining that the statement possessed the particularized guarantees of trustworthiness. First, he found that the interviewer's questions did not suggest answers. Second, Judge John concluded that the interviewer's training was substantial, and thus sufficient to allow her to conduct the interview. Third, he found that the statement represented a sufficiently detailed account of the offense such that if the evidence was believed by the jury, it would represent a detailed account of the offense. Fourth, he found that the nature of the questions did not obstruct the overall internal coherence of Victim's statements. Lastly, he concluded that the sworn testimony of Ms. Davis regarding the circumstances surrounding the interview was the only testimony necessary, in addition to the court's viewing of the videotape. (Oct. 6 Tr. p. 84).

The trial commenced and the State called Victim to testify. Victim identified Appellant and Mother in the courtroom. She stated that she lives with Mother and has dogs. (Oct. 7 Tr. pp. 63-66). Appellant cross-examined Victim on her age, birthday, school, address, sleep-overs, and what she does not make Mother feel better. (Oct. 7 Tr. pp. 68-72).

The State also again called Ms. Davis to testify before the jury regarding the circumstances of the recorded interview of Victim. (Oct. 7 Tr. p. 78). The State then sought to move State's Exhibit 7 into evidence. (Oct. 7 Tr. p. 78). Appellant renewed his earlier challenge to the constitutionality of Section 17-23-175 on Confrontation Clause grounds. Appellant argued

that the content of the recorded interview was suggestive in nature because leading and repetitive questions were employed. (Oct. 7 Tr. pp. 78-79). Appellant also stated that a scientific method was not used to produce the recorded interview. (Oct. 7 Tr. pp. 78-79).

Judge John allowed State's Exhibit 7 into evidence, rejecting Appellant's arguments that the statute was unconstitutional and that leading questions were employed. (Oct. 7 Tr. pp. 79-80). Instead, he found that all of the statutory requirements concerning the admissibility of an out-of-court statement by a child under twelve were met in that the statement was given in response to an investigative interview of the child; that an audio and visual recording of the statement was preserved on film, videotape, or other electronic means; that the child testified at the proceeding and was subject to cross examination; and, finally, that the totality of the circumstances surrounding the making of the statement provide particularized guarantees of trustworthiness. (Oct. 7 Tr. pp. 79-84). Appellant's objections were overruled and the recorded interview was admitted as State's Exhibit 7. (Oct. 7 Tr. p. 81).

During the direct examination of Ms. Davis, the State published State's Exhibit 7 to the jury. During the recorded interview, Victim referred to Appellant by name and stated that he touched her "bottom" with his finger and his tongue. [State's Exhibit 7, 14:40-15-10]. Victim described that the incident took place when she was five in the playroom at her house. [State's Exhibit 7, 15:40-16-50]. Victim, not the interviewer, is the first to mention the name of Appellant. In order to conduct an interview in an appropriate manner for a child, the interviewer followed a technique, known as RATAC, which is widely used in South Carolina and around the country. (Oct. 7 Tr. 87). In this method, the interviewer uses a continuum of questions without suggesting information that the child has not already provided. (Oct. 7 Tr. p. 88). The interviewer

asks questions about the specific incident only after Victim identified Appellant and stated that he inappropriately touched her "bottom." [State's Exhibit 7, 14:40-25:00].

Forensic pediatrician Nancy Henderson examined Victim on May 3, 2012. Victim was five years old at the time of the examination. Dr. Henderson found the physical examination was normal but explained that a normal examination does not preclude sexual touching and provided an explanation to the jury to support her testimony in this regard. (Oct 7 Tr. pp. 115-125).

Shauna Galloway-Williams testified that she does not know and has never met Victim. She explained disclosure behavior to the jury. (Oct. 7 Tr. pp. 135-137).

III.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. Attachment (pg.8-11)
2. Trial Judge was prejudice and bias
 - a. Attachment (pg.11-12)

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the proceeding "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation

within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent interprets Applicant's second claim as an allegation of judicial bias. Respondent submits Applicant's allegation regarding judicial bias is wholly without merit and should be dismissed. An allegation of judicial bias must be supported by evidence of bias. State v. Howard, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009) (quoting State v. Cheatham, 349 S.C. 101, 561 S.E.2d 618 (Ct. App. 2002)). However, the alleged bias "must be personal, as

distinguished from judicial, in nature.” Id. Allegations of judicial bias based on a trial judge’s adverse ruling are wholly frivolous and are not grounds for relief. See Reading v. Ball, 291 S.C. 492, 495, 354 S.E.2d 397, 399 (Ct. App. 1987) (“The fact a judge rules against a litigant is not proof of prejudice by the judge[.] We find Reading’s argument clearly frivolous[.]”).

Furthermore, PCR “is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction.” S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“It is uniformly held that an application for post-conviction relief is not a substitute for an appeal.”). Applicant’s allegations regarding judicial bias could have been raised at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, Respondent requests these allegations be dismissed pursuant to Rule 12(b)(6), SCRCPP.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

VI.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII.

WHEREFORE, having made its Return, Respondent an evidentiary hearing be held on any claims so requiring one.

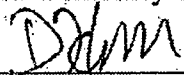
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 9, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2018-CP-23-0131

MICHAEL EDWARD WILLIAMS, 283356)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross, Esquire
 Ross & Enderlin, PA
 330 East Coffee Street
 Greenville SC 29601

DATED this 9th day of May, 2018.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

MICHAEL EDWARD WILLIAMS,
APPLICANT.

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

SUPPLEMENTAL APPLICATION

CASE # 2018-CP-23-0131

13 OCT 22 PM 4:22
2022 WILKINSON DOC 2018 CP 23 0131

This matter comes before the Court by way of application of post conviction relief filed January 8, 2018, alleging ineffective assistance of trial counsel. A Return was made on May 9, 2018. This application is intended to incorporate the allegations of Mr. Williams' original application and add the following allegations of violations of the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution.

1. Ineffective assistance of trial counsel for

(a) failure to strike juror #34 and deplete all strikes to preserve the argument that the trial judge should not have qualified jurors who had stated they could not be impartial on a questionnaire; (p.13)

(b) failure to fully cross examine witness Tammy _____ ;

(c) failure to effectively cross or recall the child witness;

(d) failure to argue the fact that the child witness was unable remember the incident or to identify the Applicant even when he was pointed out to her in the courtroom (p. 66-72) meant her testimony does not meet SC Code Section 17-23-175 (A)(4)'s requirement that the child testifies and is subject to cross examination; (p. 78-81)

(e) failure to argue that the child witness's inability to remember the incident or to identify the Applicant even when he was pointed out to her in the courtroom (p. 66-72) showed she was not competent as a witness under SCRE 601 & 602 or that the video did not contain particularized guarantees of trustworthiness required for its admission as evidence after the child was unable to remember the incident or to identify the Applicant during her testimony;

(f) failure to stress in closing argument that the child witness was unable to remember the incident or to identify the Applicant while under oath and point out that when the doctor who conducted a forensic examination asked the child whether she'd been hurt or touched on her body she "did not share any information" which meant she said no. (p.122, pp.170-8)

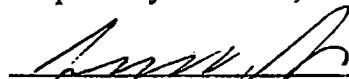
(g) advising the Applicant that his prior conviction could come in if he testified; and

(h) failure to object to the jury instruction, "Your job, your objective is to find the truth..." (p. 180, l. 6 & p. 190, l. 5)

2. The Applicant was denied his Fifth Amendment due process rights and his right to remain silent when the State called the child witness to the stand and she was unable to remember the incident the charge was based upon or to identify the Applicant. After the child was released as a witness without presenting any evidence that the Applicant had committed a crime, the State played a video of the child's forensic interview which was entered into evidence through the interviewer. This presentation of the evidence effectively compelled the Applicant to present a defense by forcing him to recall the child to the stand in his case in chief in order to confront her regarding the video evidence. A Defendant cannot be forced to give up his Sixth Amendment right to confrontation or his Fifth Amendment right to remain silent. This procedure was unconstitutional and denied the Applicant a fair trial.

Similarly, the Applicant was denied a fair trial when the trial judge attempted to rehabilitate jurors who stated they could not be impartial on questionnaire rather than did not striking them for cause. This violated the Applicant's Sixth Amendment right to an impartial jury.

Respectfully submitted,



Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina

This 18 day of October, 2018

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
MICHAEL EDWARD WILLIAMS,

Applicant,

vs.

THE STATE OF SOUTH CAROLINA,
Respondent.

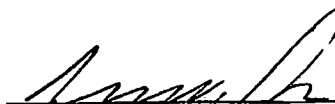
IN THE COURT OF COMMON PLEAS

2018-CP-23-0131

AFFIDAVIT OF SERVICE
BY MAIL

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Supplemental Application** on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Attorney General
Alan Wilson
P.O. Box 11549
Columbia, SC 29211
Attn: DeShawn Mitchell


Attorney for Defendant

This 18 day of October, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS

2018-CP-23-00131

MICHAEL EDWARD WILLIAMS,
APPLICANT,)

vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
RESPONDENT.)

ORIGINAL

October 24, 2018
Greenville, South Carolina

B E F O R E:

THE HONORABLE ALEX KINLAW, JR., JUDGE.

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

SUSANNAH C. ROSS, ESQ.
Attorney for the Applicant

SHERRIE BUTTERBAUGH, ESQ.
Assistant Attorney General

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.

(AW) MICHAEL EDWARD WILLIAMS:

Direct Examination by Ms. Ross.....12
Cross-Examination by Ms. Butterbaugh.....35

(RW) DOROTHY A. MANIGAULT:

Direct Examination by Ms. Butterbaugh.....43
Cross-Examination by Ms. Ross.....62

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

MS. BUTTERBAUGH: May it please the Court, Your Honor.

THE COURT: Yes, ma'am.

MS. BUTTERBAUGH: My name is Sherry Butterbaugh.

THE COURT: Spell your last name.

MS. BUTTERBAUGH: Butterbaugh, B-U-T-T-E-R-B-A-U-G-H.

THE COURT: Butterbaugh?

MS. BUTTERBAUGH: Butterbaugh, yes, Your Honor.

THE COURT: Okay. Thank you.

MS. BUTTERBAUGH: Thank you, Your Honor.

And I represent the State of South Carolina.

THE COURT: All right.

MS. BUTTERBAUGH: This is Michael E. Williams v. the State, 2018-CP-23-0131. Mr. Williams is presently confined at SCDC.

He was indicted in February of 2013 for first degree criminal sexual conduct with a minor and third degree CSC with a minor. His trial began October 6th, 2014, before the Honorable Steven John. Dorothy Manigault represented the Applicant. The jury acquitted the Applicant of first degree CSC with a minor, but found him guilty of third degree CSC with a minor. Judge John sentenced Mr. Williams to 15 years.

The Applicant filed a timely appeal. The Court of Appeals affirmed his convictions in 2017. And the Supreme

1 Court denied certiorari review. The remittitur was issued
2 in April of 2018.

3 Mr. Williams filed his PCR application on
4 January 8th, 2018. The State made its initial return on
5 May 9th, 2018. The Applicant, through appointed counsel,
6 amended his application, which Respondent received last
7 week.

8 Mr. Williams is present and represented by Ms. Ross.

9 As an initial matter before we begin the hearing, I
10 would like to move to dismiss a couple of these
11 allegations. There are three of them. One that was
12 contained in the initial application. And two of them
13 that are in the amended application that are direct appeal
14 issues that are record based.

15 One of them in the initial return is that the Judge
16 was biassed. And claim two in the amended application,
17 which is a due process violation, is that he was forced to
18 choose between the right to remain silent and the right of
19 confrontation.

20 And the last claim, which is not numbered, it's on
21 Page 3 of the application, the right to an impartial
22 jury -- that his right to an impartial jury was violated.
23 All three of these are direct appeal claims that could
24 have been raised prior to this application. They are not
25 ones that are proper in this action.

1 So we would move -- before we begin taking evidence,
2 we would move to go ahead and dismiss those so we can get
3 going on the actual claims that the State believes that
4 can be raised through the testimony of the witnesses that
5 we have present today.

6 THE COURT: All right. Ms. Ross, what's your --
7 what's your position on those?

8 MS. ROSS: Well, Judge, in reply, I would argue that
9 these are fundamental due process violations that I could
10 argue exist through post-conviction relief. I don't
11 have -- I looked at a case yesterday that went to that. I
12 know that's a high standard. And that's the -- sort of
13 the second part of my amended application. But I believe
14 it's -- it's suitable in this case.

15 If, in fact, that is something that appellate defense
16 should have brought up, I would request to amend the
17 application to allege ineffective assistance of appellate
18 counsel for failing to bring up those issues, if that's
19 how you --

20 THE COURT: Well, I tend -- I tend to agree with
21 Counsel, particularly, on the issue of bias. Although, I
22 didn't see -- you want to -- you want verbally to make a
23 motion to amend?

24 MS. ROSS: As far as judicial bias, I --

25 THE COURT: I don't see -- go ahead.

1 MS. ROSS: That was not in my amended application.
2 That was in his initial application. He's made that
3 allegation. And I request we have an opportunity to go
4 forward with it. However, I'll stand by your ruling,
5 based on the State's motion on that.

6 THE COURT: Well, I'm going to -- I'm going to grant
7 her motion in that regard.

8 He's been -- he's been in jail since 2014?

9 MS. ROSS: Yes.

10 THE COURT: All right. He was given a 15-year
11 sentence.

12 How much -- how much jail time credit did he get?
13 Because on the sentencing sheet, it just had credit for
14 jail time. It doesn't list an amount for that.

15 MS. ROSS: I don't think it was much of any. Because
16 he'd been out on house arrest for two years, or something.

17 (Pause.)

18 MS. ROSS: Yeah. The Judge refused to grant him
19 house arrest time.

20 THE COURT: Right.

21 MS. ROSS: He'd been out on house arrest for --

22 THE COURT: Well, it says on here, Not house arrest.
23 Credit for jail time, not house arrest.

24 What's his max out date?

25 MR. MICHAEL WILLIAMS: I think it's April of 2022, I

1 believe.

2 MS. BUTTERBAUGH: We're looking it up on SCDC's
3 website.

4 MS. ROSS: I've got it right here if I can see --
5 4/18/22 -- I mean 4/08/2022.

6 THE COURT: So with some -- with some in-house good
7 time credit, you're looking at probably a little over
8 three years.

9 Have you discussed that with him?

10 MS. ROSS: Yes. His situation -- he's been acquitted
11 on the CSC second [sic]. And he received a maximum
12 sentence on the charge that he had.

13 So I believe it's your wish to still proceed?

14 MR. MICHAEL WILLIAMS: Yeah.

15 MS. ROSS: Now, if -- if there's something I'm not
16 warning him about that I've missed, but I don't think so.

17 MR. MICHAEL WILLIAMS: I didn't understand the other
18 part about the three -- what was that, three and a half?

19 Ms. ROSS: Well --

20 THE COURT: No. I think -- I think Counsel's
21 understanding what I'm asking. What I'm asking is --

22 Ms. ROSS: Right.

23 THE COURT: -- the sentencing date on this was
24 October 8th, 2014. It was a 15-year sentence. And I just
25 wanted to know, first of all, whether or not you've got

1 any jail time credit. Because it doesn't denote the
2 amount of days that he got, but no -- no house arrest
3 credit.

4 And if his max out date is 2022 from what you just
5 told me, if he -- if he behaves himself inside the walls
6 and he gets some good time credit, there's a good chance
7 that he's going to get out in about three -- a little over
8 three years, during my experience in that process. I
9 think I'm right.

10 So my question is -- you know, I'm -- I just threw
11 that out for whatever it's worth.

12 MS. ROSS: I've reviewed that with him --

13 THE COURT: I think -- I think y'all can read through
14 the lines.

15 MS. ROSS: Do you understand that?

16 MR. MICHAEL WILLIAMS: Right, right.

17 MS. ROSS: Stand up.

18 I've reviewed that with him.

19 Do you understand that?

20 Mr. MICHAEL WILLIAMS: Yeah.

21 MS. ROSS: And -- and the Judge, specifically,
22 neglected to give him credit for the house arrest time,
23 which he is able to -- he doesn't have to under the
24 statute.

25 So I believe he'd still like to proceed with the --

1 THE COURT: And -- and he fully understands the only
2 thing I could give him if -- if I -- if I agree with the
3 Applicant's application, the only thing I can give him is
4 a new trial. And he goes back in.

5 MR. MICHAEL WILLIAMS: Right. I understand that,
6 yes, sir.

7 MS. ROSS: And you could spend as much time waiting
8 as the two years to get out.

9 Do you understand that, that possibly you could be in
10 limbo for another year waiting while this plays out
11 whereas you could be --

12 THE COURT: You're not going to go to trial next
13 week. If -- I mean, if -- I'm not saying -- I haven't
14 seen -- heard the testimony. I'm not trying to say
15 anything at all. But I just want you to be fully aware of
16 this process and how it works.

17 (Pause.)

18 MS. ROSS: Yes. He understands that. We've reviewed
19 that, and his right to an appeal bond as well. So we --
20 he still wants to go forward, Your Honor.

21 THE COURT: All right. Very well.

22 MS. BUTTERBAUGH: I was just going to let you know
23 that it was -- he got credit for 30 days.

24 THE COURT: 30 days?

25 MS. BUTTERBAUGH: Yes, sir.

1 THE COURT: Is everybody ready to proceed?

2 MS. BUTTERBAUGH: Yes, sir.

3 MS. ROSS: Yes, Your Honor.

4 THE COURT: All right. Ms. Ross.

5 MS. ROSS: Just to -- to give a quick -- quick
6 overview. This is another criminal sexual conduct case
7 that went to trial. Mr. Williams denied involvement. You
8 can see from the amended application -- the application
9 sort of where we're going.

10 But what happened in this case that's worth noting is
11 I guess -- there was a pre-trial determination that the
12 video could come in. That was contingent on the child
13 testifying and presenting evidence and, I believe, as to
14 giving the video and the elements of the offense. And
15 that was on Page 81, Line 18.

16 THE COURT: All right.

17 MS. ROSS: The State proceeded to then call the child
18 witness, who could not remember the incident or recognize
19 the Defendant in the courtroom at all. Ms. Manigault went
20 into that on cross in a limited way, but did question
21 that.

22 And then the video was brought in through the child
23 witness. The Judge denied directed verdict. And -- and
24 the case went to the jury. And they came back with a
25 lesser included.

1 So a lot of these allegations involve the Court of
2 Appeals finding that -- that the video was brought in
3 correctly. And they cite State v. Anderson and State v.
4 Hill.

5 However, we'd argue that the Applicant's trial
6 attorney didn't effectively argue that issue and bring
7 into question the child's credibility as a witness once
8 she cannot recall the elements of the offense, or even an
9 incident, or identify the Defendant in court. So that's,
10 basically -- boils down a lot of where we're going with
11 this.

12 THE COURT: All right.

13 MS. ROSS: At this point, we'll call Mr. Williams to
14 the stand.

15 THE COURT: All right. Mr. Williams, come forward,
16 please, sir.

17 THE CLERK: Mr. Williams, please place your left hand
18 on the Bible and raise your right hand..

19 WHEREUPON,

20 MICHAEL EDWARD WILLIAMS,
21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 You may be seated.

24 Please state your full name for the record.

25 THE WITNESS: Michael Edward Williams.

DIRECT EXAMINATION

BY MS. ROSS:

Q Hey there, Mr. Williams.

You've already stated you -- you understand what a PCR is and you want to go forward.

A Correct.

Q You've alleged ineffective assistance of counsel. Can you outline what your lawyer should have done at trial and didn't do?

A Well, can I go back on some of this --

Q Yeah. Sure.

A Well, on the one, I -- I felt like she should have addressed the -- how the -- the Solicitor should have -- she should have -- how could I put it?

They -- they charged me with first degree. And then almost a year later, they come back with that third degree. And, you know, I -- I questioned that because I felt like that could have been potentially double jeopardy, that she didn't talk to the Solicitor about that. We didn't have a preliminary hearing to hear anything about the charges, what was being brought up, any kind of evidence, you know, so we could discuss it and how we could go about it.

Then she never talked to me about a defense, you know, of this case. She kept trying to get me to take

1 a -- a plea deal. And I told her, I ain't pleading to
2 nothing I didn't do.

3 Q Do you recall if there was a plea deal?

4 A Well, I think she -- the only thing she told me is
5 they would -- they would go with whatever the Judge
6 recommended.

7 Q All right.

8 A And, you know, they didn't say it'd be any kind of
9 cut time, or anything like that. Just whatever the Judge
10 went with, they would agree with. They -- they wouldn't
11 ask for nothing.

12 Q So did y'all sit down and discuss a plan for trial?

13 A Not until the very last minute, you know. Because,
14 like I say, she kept wanting me to do a plea deal. And
15 then she, at one time, even had me leave work because I
16 thought I was going to court. And it was a plea deal.
17 And I -- you know, I had to sit there all that time and
18 miss work.

19 And then when I told them I didn't want a plea deal,
20 then they kind of laughed at me about it. Then -- then
21 that's when they threw that third -- the third degree on
22 me when I left. It was, like, almost a year later.

23 Q And this is out -- when you're out on HIP and you'd
24 come to court?

25 A Right. That was -- you know, I had a good -- I got a

1 good job working and all. And I had to miss work just
2 because, I guess, they thought they were going to scare me
3 into a guilty plea, or something, but.

4 Q Okay. Did she investigate the case as much as you'd
5 like, or was there anything --

6 A Nah. I don't think so. I mean, I don't feel like
7 she did. But, you know, because -- I mean, she never
8 did -- we never really talked about a defense. And she
9 never told me exactly how she was going to do it, what --
10 what's going on.

11 I didn't find out what kind of evidence they supposed
12 to have had against me until the day of the trial, you
13 know. Before they started the trial, they -- I don't know
14 what it's called, you know. They -- that's when they
15 started bringing all the evidence up. And she would make
16 a motion for this, or something. But that's the first
17 time I heard about the stuff they was doing -- you know,
18 about the video, and all that.

19 Q All right. So you hadn't seen the discovery
20 before -- before then or hadn't reviewed the video?

21 A No. Just -- just that day when -- when we was
22 getting ready for trial.

23 Q Okay. And -- and going back to that -- to right
24 before that day. So, for you, from the beginning, it was
25 going to be a trial?

1 A Oh, yeah, no doubt.

2 Q And that's what you'd said.

3 Now, once the trial started, you allege that she
4 failed to cross-examine witnesses. As to the witness
5 Tammy, who was the mother of the child victim, just --
6 let's go back. Did you have a prior CSC in your history?

7 A Yes, back in 2002.

8 Q Now, Tammy, the mother of the child who -- who made
9 this allegation, was she aware of that charge?

10 A Yes, from the first day I met her. Because I was
11 working on my cousin's house. And then my cousin had
12 introduced me saying that her neighbor -- some guy had
13 gypped her, ripped her off because he was supposed to have
14 done \$15,000 worth of work.

15 And she saw that me and my dad was working on my
16 cousin's house. And she wanted to know if I would help
17 out on it. And I told her right off when I seen she had a
18 little girl. I said, Look, I said, I've been in prison.
19 I said, I was charged with a CSC second degree. And she
20 seemed like she had no problem with it.

21 And, you know, so I told her I'd help her out, do the
22 work because I felt bad because Tammy -- well, between
23 Tammy and Jan, which is my cousin -- first cousin, you
24 know, they -- you know, they gave me that sad story. So I
25 started helping her out doing the stuff the other guy was

1 supposed to have done.

2 Why he left, I don't know, you know. But she said
3 that she -- she got a lawsuit.

4 But I told her right off from the beginning that --
5 I told her --

6 Q What do you mean she said she had a lawsuit?

7 A She had a lawsuit against that guy that had --
8 supposed to have done the work, the handy man.

9 Q Okay.

10 A And owed her that -- you know, owed her that \$15,000
11 worth of work.

12 Q All right. So, now, you're working for her?

13 A Correct.

14 Q You've told her about your history?

15 A Correct.

16 Q Knowing that she had a child. What -- was she always
17 around when you were ever around the child?

18 A Oh, yeah, all the time. I mean, she -- she never
19 left the site, you know, no matter if I was doing
20 electrical work, or when I remodeled the kitchen, wherever
21 it may be.

22 Q Now, you heard at the trial the allegations against
23 you. Were those true?

24 A No, no, none of them.

25 Q And when -- when she was there with you and the

1 child, when did -- y'all had a friendly relationship for
2 some time?

3 A Correct, correct.

4 Q How did that end?

5 A Well, you know, I got tired of her -- see, I -- I was
6 engaged to this Hispanic woman. And -- and she kept
7 wanting me to have a sexual relationship with her. And I
8 told her, I said, No, you know -- you know, I'm not into
9 that because I'm -- I'm engaged to this woman.

10 And she kept saying, you know, Well, y'all ain't
11 having sex. We could have sex. We could do that.

12 And I said, No.

13 And then I told her if she didn't quit bugging me
14 about it that I'm going to quit coming around and finish
15 helping her out. Because there was still a few odds and
16 ends that needed to be finished.

17 And, of course, she quit for a while. Then she
18 started back. So I told her, I said, Today's the last
19 day. I ain't coming back. The next thing I know this --
20 all this blows up on me, so.

21 Q Now, was that the day that you -- had you, in fact,
22 spent the night, as she testified to at your trial, the
23 night --

24 A I stayed the night and finished her kitchen. I
25 worked all night, yeah.

1 Q All right. And -- and so what was the time -- when
2 did the -- things kind of blow up with her becoming angry
3 at you for not wanting to reciprocate a relationship?

4 A Oh, it was that -- it was on a Sunday. I don't
5 remember the exact date. I think it was in March.

6 Q Okay.

7 A I told her -- I said, you know -- I told her -- I
8 said, you know, I -- I can't do it. And I even -- you can
9 ask my fiancée -- or ex-fiancée now, but you could ask
10 her. I told her every time I turned around how she kept
11 coming on to me. Because I don't hide nothing from her.
12 And...

13 Q Now, did Ms. Manigault cross Tammy about those
14 things?

15 A None whatsoever. Because Tammy mentioned on the
16 thing that she never did have -- she wanted no kind of
17 romantic relationship with me.

18 Q Okay.

19 A And, you know, it was like when Tammy said I didn't
20 respond back to her when she asked me why -- why did I do
21 that to Sierra. And I showed Manigault. I said, I did
22 respond. I showed it to her. But she never did
23 cross-examine her on that.

24 Q But had you told Ms. Manigault all this history --
25 this back history with Tammy?

1 A Yes.

2 Q All right. Now, talking about -- there -- there was
3 some testimony with Tammy a bunch -- about a bunch of text
4 messages going back and forth?

5 A Yeah. We would text back -- you know, she'd say,
6 Hey, how are you doing? How was your day at work, or
7 something like that, you know. And I'd respond back, How
8 y'all? How -- how you doing? How -- you know, because,
9 she was trying to get a job at -- I think packing golf
10 balls, or something, but.

11 Q Now, did Ms. Manigault object to those text messages
12 being discussed? Do you recall?

13 A I can't recall that.

14 Q Do you recall on the testimony Tammy saying that she
15 had deleted some -- a lot of the text messages --

16 A Right. Yeah. She said she had deleted a lot of them
17 on her phone.

18 Q Yet, she just read in some that she hadn't deleted?

19 A Right.

20 Q Were they authenticated in any way by -- did someone
21 come in and say that's real or --

22 A No one professional. He just -- by -- by word of
23 mouth that -- by --

24 Q By Tammy's word of mouth?

25 A By Tammy's word of mouth, yes.

1 Q And -- and you think Ms. Manigault should have
2 cross-examined her about that?

3 A Yeah. I would have liked for her to have
4 cross-examined her on a few things that she made on
5 statements that wasn't true, so.

6 Q And she made some statements about -- she sent you a
7 text message, basically, saying -- alleging that you had
8 improperly touched her daughter. And then she stated that
9 you just replied about work and nothing -- nothing about
10 the daughter?

11 A Well, she said I replied -- I didn't reply at all
12 that one time and then said -- and I did. Because I was
13 showing her, I said -- I said, Look right there. And I
14 showed Manigault. Because she had a photo. And I showed
15 her, I said, Look, right there's where I responded back.

16 Q And how'd you respond?

17 A And she said -- I think she said something about
18 she'd put it in the closing argument, or something like
19 that.

20 Q Okay. But how did -- how did you -- did you respond
21 and talk about the allegation in your response in the text
22 message?

23 A Are you talking about --

24 Q When you were talking to Tammy. When Tammy sent you
25 a text --

1 A Right.

2 Q -- and you responded?

3 A Correct.

4 Q Was Tammy's statement that you had no response to the
5 allegation, true or not true?

6 A Right. I -- I didn't respond back to that text
7 message.

8 Q You did respond back?

9 A She said -- she said I didn't respond back to it.

10 Q And you --

11 A And I did.

12 Q Correct.

13 Okay. And -- and that didn't come out through
14 cross-examination of Tammy?

15 A Correct.

16 Q Do you think that prejudiced you that Tammy was
17 telling the jury that you had no response to --

18 A Yeah. But I think it kind of made me look like I
19 might have been a little guilty, you know. The jury is
20 sitting back listening to this. And they're going, why
21 didn't he respond back, you know, when I, actually, did.

22 Q Now, let's move on to cross-examining the child
23 witness against you. She testified -- and it's in the
24 transcript around Page 66, 68, right in there. But in her
25 testimony, she points out a Mike in the courtroom; correct?

1 A Correct.

2 Q Was that you?

3 A No. That was the investigating officer that was
4 sitting beside Tammy.

5 Q So that was Mike Fortner, the investigating officer
6 in the case?

7 A The investigating officer.

8 Q And that was made clear by Ms. Manigault; correct?

9 A Right.

10 Q And when she was -- pointed -- her attention was
11 directed to you sitting at the table by the Solicitor?

12 A Correct.

13 Q She couldn't identify you, could she?

14 A No. She looked right at me. Because the Solicitor
15 pointed and said, Do you know him? And, you know, I
16 looked directly at her, you know. And she did like this
17 and looked at me and said, no, she didn't recognize me.

18 Q All right. Now, on cross, Ms. Manigault did ask her
19 some questions, didn't she?

20 A Yes, ma'am.

21 Q And was she ever able to then identify you, or
22 remember giving the tape, or any of that?

23 A No.

24 Q Now, at that point, there were some other witnesses
25 that came up. And do you recall that there was the -- let

1 me grab my -- the State put up two experts. Do you recall
2 that?

3 A Yes, ma'am.

4 Q So one of them was, I believe, Ms. Davis, who did the
5 forensic interview of the little girl?

6 A Yes, ma'am.

7 Q And then -- well, sorry, three experts. Then there
8 was Nancy Henderson, who was the doctor?

9 A Okay. Yes, ma'am.

10 Q And then there was Shauna Galloway-Williams, who
11 worked at -- who was sort of the child behavioral expert
12 from the Julie Valentine Center?

13 A Yeah. That's correct.

14 Q Now, do you recall whether your lawyer objected to
15 them putting up -- especially the -- Shauna
16 Galloway-Williams, all those experts and sort of restating
17 what the child never said in court?

18 A Could you repeat that for me?

19 Q Well, did -- were there any objections to those
20 witnesses bolstering the statement made in the video?

21 A She made one -- one objection on something about --
22 well, she wanted -- but I think that was before the trial.
23 I think I'm getting ahead of you. She wanted one of them
24 not to be -- she wanted it dismissed, or something, moved
25 because she never talked to the child or me. But she was

1 supposed to have been the expert witness. And she asked
2 to have that one removed. But the Judge, of course,
3 denied it, but.

4 Q Denied it. And that's where you're getting the Judge
5 being against you --

6 A Correct.

7 Q -- and the fact that you got the maximum sentence and
8 no credit for home incarceration?

9 A Correct. Because, I mean, every time we would try to
10 do something, he would -- he would deny everything, you
11 know. We really had our hands tied, you know, especially
12 with me and what I thought about was he gave a
13 questionnaire out about -- and I think it was the third or
14 fourth question that said, Can you give an impartial
15 trial, you know, and give him a fair trial? And I think
16 10 or 11 said, No. And Manigault asked him for them to be
17 removed and he denied it.

18 So we ended up having to strike -- use a lot of our
19 strikes to get them out. Because they said that
20 they wouldn't give me a fair trial. We ended up having
21 one on the jury which the Court made the foreman of the
22 jury.

23 So, you know, that's why I felt like the Judge was --
24 was being prejudiced against me, you know. Because, I
25 mean, they -- because he -- even though he called them in

1 one by one and asked them could they give it to him [sic].
2 Then they said yes in front of him. Then he kind of was
3 like, you think they'd lied to me, a Judge.

4 Q Well, let's talk about that. That's on -- around
5 Page 13 at the beginning of the trial on the first day.
6 So, basically, they handed a questionnaire out to the
7 jurors; right?

8 A The jury pool for right now, yes, ma'am.

9 Q And did -- one of the questions or two of the
10 questions involved could you be impartial. Have you had a
11 family member or yourself been victimized sexually? And
12 then the next question was, Could you be impartial in this
13 case or in a case of criminal sexual conduct?

14 A Correct.

15 Q And a number of jurors asked -- answered that, yes,
16 they had been violated or a family member. And, no, they
17 couldn't be impartial.

18 A Correct.

19 Q And so what happened is you're saying the Judge went
20 and questioned each of those jurors who answered that way
21 one by one and rehabilitated those jurors?

22 A Correct. They -- then they turned around and said,
23 yes, except for one. I think one said no. They -- he
24 stayed honest.

25 Q Okay.

1 A But the rest of them turned around and said, yes, in
2 front of him.

3 Q So after talking -- answering the questions from the
4 Judge, they ended up saying, well, yes, they could be
5 impartial?

6 A Right.

7 Q Now, do you think that was giving you fair -- a fair
8 jury pool of your peers after all those -- the
9 questioning?

10 A I -- I don't believe it was. I don't think I could
11 have a fair one.

12 Q And, in fact, Ms. Manigault failed to strike Juror
13 #40 -- I mean #34. One of the jurors was allowed on the
14 jury?

15 A Correct.

16 Q And she had to use up almost all her other strikes on
17 other people who'd said they couldn't be impartial?

18 A Correct.

19 Q Do you think not having strikes to just use who you
20 wanted hurt your trial?

21 A Yeah, I -- I think so. I think we should have been
22 able to not have to use them strikes against the ones who
23 answered honestly, I believe, on the questionnaire and
24 then turned around and said, yes, in front of the Judge.

25 Q All right. And on Page -- also, there was an

1 incident where the Judge talked to jurors who'd had
2 contact with the child and her mother out on the street
3 walking to the parking lot; correct?

4 A Correct.

5 Q And that's on Page 97. What did he do with those
6 jurors who'd seen the child?

7 A Well, you know, when I came back in, I seen the
8 Solicitor didn't look too well, you know. And I asked
9 Dorothy, I said, What happened?
10 She said, Well, we witnessed them walking out
11 together to the stop -- to the light. And then they had
12 to wait to cross the street and -- all the way to the
13 parking lot.

14 I said, Well, that should be a mistrial all day long;
15 right?

16 She said, Well, no. We've got to talk to the Judge
17 about it.

18 So then the Judge, again, called each one in
19 personally, and asked, Did you see them talking? Did you
20 talk to them? Did you see anybody talking to them?

21 They said, No. Each one said, No.

22 But I feel still that is being biassed. Because even
23 though they might not have spoke verbally, you know, first
24 appearance -- you know, actions between a mother and a
25 child, she could have been real loving, and all that. And

1 that could have made a big impression on them, you know,
2 with them walking together. They was in amidst of each
3 other all the way -- from the courthouse, across the
4 street, all the way down to the parking lot.

5 Q And you said something else about the jury wanted to
6 take a break for a day, or sent a note to that effect?

7 A Correct.

8 Q And that's on Page 123. What do you think -- how do
9 you think that prejudiced you, or what was wrong with
10 that?

11 A I think it pressured the jury to make a quick
12 decision. Because there -- there was another trial that
13 went on and -- and that Judge made them stay. And they
14 stayed until, like, 11:00 or 12:00 that night until they
15 got a verdict.

16 But they wanted to go because they couldn't make a
17 decision at that time. And somebody had to leave. And
18 they wanted to come back the next day. And so the Judge
19 turned around and wrote a note back and said they had to
20 stay. I didn't get to see the note. I wanted to see the
21 note. But I was -- it's what Manigault was telling me.

22 And they said that -- that they had to stay until
23 they come up with a verdict. I didn't hardly get in that
24 holding cell and sat down good before they come up with a
25 verdict. And, of course, they found me not guilty on the

1 first degree, and guilty on the third.

2 And I think he pressured them into a quick verdict.
3 Because he wanted to start a new trial. He even stated in
4 there that he was already starting a new trial. So he was
5 trying to hurry up and get into another one.

6 MS. ROSS: And I believe there's some reference to
7 that possibly on 126, Line 11. And that's the -- I might
8 call it volume one, the October 6th and 8th. There are
9 two transcripts, October 6th and 8th. I'll call it one.

10 THE COURT: Okay.

11 MS. ROSS: And two is October 7th. So it's kind of
12 confusing.

13 BY MS. ROSS:

14 Q Now, you didn't testify. Why not?

15 A Well, I was told that if I testified that the old
16 charge, which I had from 2002, could be brought back up
17 and, you know -- and told. And I know that would make me
18 look bad in front of the jury, you know, if they found out
19 that I was already -- had been convicted before on a CSC
20 second degree.

21 Q Now, during the trial transcript, I can see where the
22 Judge said -- when he was talking to you about whether to
23 testify or not, he said, I'm only going to tell the jury
24 that you have a prior felony. After hearing that, why
25 didn't you want to testify?

1 A Because I -- I still had in my head from what I was
2 being told that when they said felony, I thought that's
3 what they was going to do. They was going to bring the
4 actual charge up.

5 So, I mean, because I'd have been glad to have got on
6 that stand and tell my side of it, just like I'm doing
7 now, so. But I was told that they -- you know, that they
8 were going to bring the charge up. And if they did that,
9 then I know that would already put doubt in -- in their
10 mind.

11 Q All right. Now, do you recall the closing argument
12 that Ms. Manigault did in your case?

13 A Vaguely. I'd have to look at it, you know, to
14 remember it all, but.

15 Q Now, one thing. Did -- do you recall whether she
16 stressed the fact that the child, when she was under oath
17 testifying in front of that jury, didn't remember
18 anything?

19 A I think she might have mentioned it once. I don't
20 think she really -- I'm not sure if she did or didn't on
21 that. I'd have to look at it again. I really couldn't
22 recall on that.

23 Q Okay. Well, I'd refer you to Page 120 -- 170, Line
24 8. That's -- that's just where the closing argument
25 starts. I'll -- I'll get into it. The record sort of

1 speaks for itself.

2 But in that closing argument, did -- did
3 Ms. Manigault mention the fact that the doctor in the
4 case, Dr. Henderson, she had stated that when the child
5 was asked whether she'd been hurt or touched on her body,
6 the child did not share any information? In
7 Ms. Manigault's closing, she doesn't say that that meant
8 the child said, no, that she hadn't been touched.

9 A Do you know what line that was on?

10 Q Well, do you mind if we just let the record speak for
11 itself on that one --

12 A Yeah, yeah. I'm sorry about that.

13 Q Okay. And, also, just as far as -- did you -- did
14 you know anything or listen to the -- the Judge's
15 instructions to the jury?

16 A Well, I know he was telling them that it was their
17 job to find the truth. And -- and I can't remember
18 everything he said. But -- but I know he said that they
19 supposed to watch something -- a -- you know, what they
20 all heard. And then they supposed to come up with the
21 truth of what -- what really happened, something like
22 that. I'm not word for word with that, so.

23 Q And that's on Page 180, Line 6. And I've marked 190,
24 Line 5. And the 190 is where there's no objections to the
25 jury instructions. And the 180 is the actual instruction.

1 Did you understand that that was the juries duty, to
2 find the truth?

3 A I thought -- me, I thought the juries -- I mean, I've
4 never been on a jury like that. But I would have just
5 thought they supposed to see, you know, if they had a
6 burden of proof, you know, if the Solicitor had a burden
7 of proof to find me guilty or not, not -- you know, I
8 don't know how to put that in words, but.

9 Q Well, and -- and then this is -- how do you think the
10 jury could possibly find you guilty when the child didn't
11 testify to anything from the stand?

12 A I -- I was flabbergasted. I didn't -- I didn't think
13 they would, you know. Because like -- like I said before,
14 and I think I have it in here about the video. After the
15 child kept making up -- couldn't remember the lies she --
16 she was told, you know, it was a dress, shorts, pants,
17 inside, outside.

18 Then right there towards the end of the video, she
19 told the truth. You could see she got frustrated. And
20 she said, No, no, no, no. And then the -- the woman who
21 was --

22 Q Ms. Davis?

23 A Yeah, said -- said, no, what, Sierra? She said he
24 didn't do nothing, you know. So I -- I figured, you know,
25 that that right there alone should have been the sealed

1 deal that, you know, I didn't do nothing. Because you
2 could tell she told the truth. She was so frustrated
3 because of them asking all these questions.

4 Q So the -- the way the trial went is after the child
5 didn't remember anything, they put up the video where it
6 was back and forth. And then they put up the doctor. And
7 then they put up the other supposed expert?

8 A Correct.

9 Q And then that was the end of the trial. Do you think
10 that -- that video with those witnesses gave you a fair
11 trial, or an unfair --

12 A No. I -- I really don't believe they did. Because,
13 you know, they -- because the Solicitor was pushing, you
14 know, trying to say that she did -- you know, because she
15 said all that. But, I mean, if -- there's two things in
16 that video that should have showed that I didn't do it,
17 like, when they gave the two dolls. This is you. This is
18 Michael. Show us what he did. She couldn't -- she didn't
19 know what to do. She just stared down, you know, and
20 looked at them.

21 And they took them away from her and gave them to her
22 again and said, This is you. This is Michael. What did
23 he do to you? Again, she couldn't do nothing, you know,
24 because she didn't know what to do, you know. But none of
25 that was presented, you know, to let them know, look, this

1 is what she did, and this is what she said. That really
2 wasn't expressed to the jury.

3 They -- what was expressed to the jury is what she
4 said I did do, you know. And -- and it was sporadic, you
5 know, how she was saying it. Because she couldn't -- to
6 me, I felt like she couldn't remember what kind -- what
7 she was supposed to have been told what she was supposed
8 to say.

9 Q What do you think she would have said if
10 Ms. Manigault had been able to cross-examine her after the
11 video, after they'd seen all that stuff?

12 A Well, I think she'd said, no --

13 MS. BUTTERBAUGH: Your Honor, objection. That calls
14 for speculation.

15 THE COURT: I will sustain the objection.

16 BY MS. ROSS:

17 Q And -- but in court, she looked right at you and
18 didn't say anything?

19 A Yeah. I looked right at her so she could see my
20 face. And she -- like, she was sitting here and I was
21 sitting over there. I looked at her and she looked at me
22 and -- while the Solicitor was pointing dead at me. And
23 she didn't recognize me.

24 MS. ROSS: Okay. I've got no further questions.

25 THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. BUTTERBAUGH:

Q Hello, Mr. Williams.

A Hey. How are you?

Q My name is Sherry Butterbaugh.

So you're talking about some of the discovery. You don't recall going over any discovery with Ms. Manigault --

A None whatsoever.

Q -- that you received from the State?

A No.

Q Okay.

A I'd say every time I saw her, most of the time, she was wanting me to do a guilty plea.

Q Okay. And what were the guilty pleas that you're talking about?

A She just told me -- because when she talked to me -- the last time I talked to her, she said that -- about the guilty plea, she said that the Solicitor would go with whatever the Judge recommended, you know, whatever time he said -- they wouldn't offer, you know, their recommendation, or whatever time. Just whatever the Judge went with, they would go with it if I'd plead guilty. And I said, No, put 12 in a box. I'm not guilty. And I'm not going to plead guilty.

1 Q So you don't recall asking Ms. Manigault to talk to
2 the Solicitor about an Alford plea?

3 A No. We talked -- what I'm saying, we talked and
4 these -- that's when she told me that the only thing they
5 would do is what the Judge recommended. And I said, No, I
6 ain't going to do that.

7 Q Or lewd act with a minor. You don't recall --

8 A Oh, yeah. She did say that, lewd act. I'm glad you
9 refreshed my memory. Yeah.

10 Q Okay.

11 A She -- she tried to -- well, she tried to -- I think
12 it was in the courtroom she did that. She tried to get
13 the Judge -- asked the Judge if he'd go with a lesser
14 offense of lewd act, or something like that.

15 Q Okay. So when you were talking to her prior to the
16 trial when you met with her, did you give her any possible
17 leads or witnesses to investigate?

18 A Well, I just asked her if she'd investigate the --
19 the guy -- I don't know his name, but the handyman, you
20 know, to ask why did he do that. Because, you know, she
21 could have got information either from Tammy or get
22 somebody to get information from Tammy and then ask him.

23 Because I feel like maybe she was harassing him, or
24 something. And he got tired of it, too, and left, so.

25 But I did ask her if she -- she would talk to him.

1 Because I -- I felt strongly that might have been the
2 reason why he left and quit doing the job, so.

3 Q Okay. And let's talk about this indictment issue and
4 the preliminary hearing that you're talking about with the
5 first degree and third degree CSC with a minor. But you
6 were still on trial for both of these charges; correct?

7 A Yeah. Because they did a first degree first. They
8 served it on me. Then they waited almost a whole year.
9 And that's when they served the second -- the other one
10 for third degree is when I had to get off of work to go to
11 a guilty -- a plea -- what's it called? -- guilty plea
12 court, whatever.

13 I had to sit there and wait until Dorothy came. And
14 then that's when I found out that was what it's for. And
15 I said -- that kind of made me mad. And I did say, Y'all
16 are wasting my time. I told you I ain't going to plead
17 guilty, you know. But then when I started walking out,
18 that's when the officer walked out there and said, Here
19 you go. And that's when he gave me the -- the other
20 indictment on the third degree.

21 Q But when you were at trial, you were still on trial
22 for both of these charges. So you were on notice that you
23 were on trial for both of these charges. So there wasn't
24 any kind of notice issue that you thought that you weren't
25 necessarily on trial for these; correct?

1 A Yeah. I know I was on for both, first and third.

2 Q Okay.

3 A Correct.

4 Q So let's talk about your statement to police in this
5 case. And you voluntary -- voluntarily gave that
6 statement; correct?

7 A Correct.

8 Q Okay. And you denied the allegations?

9 A Correct.

10 Q Okay. And you told Michael Robertson, an
11 investigator, that you were playing with the child in the
12 room?

13 A I was right there at the doorway. Like I say, Tammy
14 was right there all the time.

15 Q And that's exactly what I was going to say, that you
16 had this relationship where you were just friends with the
17 mom?

18 A Correct.

19 Q And that she was -- the mom was kind of in and out of
20 the room, passed the door?

21 A Yeah. Well, she was right there in the living room.
22 She could see the door right there.

23 Q Okay. And what type of relationship did you have
24 with the girl's mom?

25 A You know, just friends, and working on her house.

1 Q And you said you'd been alone with that girl --
2 little girl before. The victim in this case, had you been
3 alone with her before?

4 A No, huh-uh, never.

5 Q Okay. So --

6 A Tammy was always around.

7 Q Okay. And you talked about this similar charge, this
8 second degree CSC that you had?

9 A Correct.

10 Q So were you on probation for that charge?

11 A No. I was, actually, off. But they're saying I -- I
12 wasn't off probation. But I'd already did my two years.
13 They -- they had me on an ankle monitor. And they was
14 trying to -- what's that woman judge's name? I can't
15 think of her name. But they even asked her, -- that they
16 wanted to go ahead and sign me off. And she said, No,
17 they've got to wait till trial.

18 So that's why I had to stay on an ankle monitor even
19 longer, for over a year and a half.

20 Q So what about sex offender registry? Were you
21 supposed to be on the sex offender registry?

22 A Yeah. I'm still on -- I was on the registry, yeah.

23 Q So were you even supposed to be around little kids at
24 this time?

25 A What? Being on the registry?

1 Q Uh-huh.

2 A I don't know. I guess -- I mean, you know, as long
3 as supervision, I -- I reckon. I mean, I don't know all
4 the rules about that. They never said I couldn't on the
5 registry.

6 Q So you don't know if you were following the rules of
7 being on the sex offender registry?

8 A Because I was -- I do everything -- you know, I,
9 basically, worked. You can ask anybody. I worked. I
10 usually go home.

11 The only reason I was over there at Tammy's is
12 because they gave me that sad story about that guy leaving
13 her with all that. That's why I went ahead and was
14 up-front with her about it, you know. Because I -- I
15 didn't want her to find out later on and say, oh, I didn't
16 know, you know. So I -- I was up-front with everybody. I
17 always try to do the right things.

18 Q Okay. But you didn't if you weren't -- as a -- as a
19 registered sex offender, you probably weren't supposed to
20 be around young children.

21 A Well, I didn't know. I know I wasn't supposed to go
22 to places where children gather, like parks, or something
23 like that. But, you know --

24 Q Okay.

25 A Or what's that? Toys R Us? You know, something like

1 that. Because, you know, there's a bunch of children
2 there. I know that. But they didn't say I couldn't --
3 because they always said I can go, like, around my family
4 members, or somebody, you know, supervising, and all that.
5 Like I say, Tammy was there at all times. She never left
6 the site.

7 Q Okay. And did you talk to trial counsel about your
8 prior criminal history?

9 A To Manigault?

10 Q Yes, yes, sir.

11 A Yeah.

12 Q Okay. And so when you talked to her about it, did
13 you talk to her about what it might mean if you did
14 testify at trial?

15 A Yeah. Well, she told me that they could bring it up.
16 And she said, Do you -- do you really want to do that?

17 And I said, No. I said, you know, Because that would
18 definitely put some thoughts in their minds, you know,
19 knowing that I -- I had that second degree.

20 Q Let's talk about this verdict. The jury did find you
21 not guilty of first degree CSC with a minor. So that was
22 the more serious charge; correct?

23 A Correct.

24 Q So that did work out in your favor; correct?

25 A Well, that one did, yeah.

1 Q So do you think that maybe trial counsel and some of
2 the strategy and what you guys discussed ahead of time in
3 cross-examination, do you think that that worked out for
4 you?

5 A Well, I think what it was was that the doctor --
6 because, you know, they brought up that -- that she
7 didn't -- had no marks, no signs that she'd been
8 penetrated, or scars, tissues, or anything. I think that
9 had to do a lot with it, too. That showed I didn't
10 penetrate her for that first degree.

11 Q Okay.

12 A But, I -- I mean, there's some things I think
13 Manigault did do. But I do think there's some that she
14 didn't do right that would've helped my case, you know.
15 And I, also, think the Judge helped out, too, you know,
16 that I think -- I still say he was biassed against me.

17 MS. BUTTERBAUGH: All right. Thank you very much.

18 THE COURT: All right. Any other witnesses?

19 MS. ROSS: No.

20 And I've got no redirect.

21 THE COURT: No redirect.

22 Okay. Sir, you can step down.

23 Does the Applicant have any other witnesses?

24 MS. ROSS: No, Your Honor.

25 THE COURT: Is the State ready to proceed?

1 MS. BUTTERBAUGH: Yes, Your Honor.

2 THE COURT: All right. You can call your first
3 witness.

4 MS. BUTTERBAUGH: The State calls Dorothy Manigault.

5 THE COURT: All right. Ms. Manigault, come forward.

6 THE CLERK: Ms. Manigault, please place your left
7 hand on the Bible and raise your right hand.

8 WHEREUPON,

9 DOROTHY A. MANIGAULT,
10 after first having been duly affirmed, testified as follows:

11 THE CLERK: Thank you.

12 You may be seated.

13 THE WITNESS: Okay.

14 THE CLERK: Please state your name for the record.

15 THE WITNESS: Dorothy A. Manigault.

16 THE COURT: Yes, ma'am.

17 DIRECT EXAMINATION

18 BY MS. BUTTERBAUGH:

19 Q Hello, Ms. Manigault.

20 A Hello.

21 Q How long have you been practicing law?

22 A Good Lord, more than 30 years.

23 Q Okay. And how much of that has been criminal law?

24 A More than 30 years.

25 Q Okay. And do you recall if you were appointed or

1 retained in this case?

2 A I was appointed through the public defender's office,
3 Greenville County.

4 Q Okay. And how many times did you meet with
5 Mr. Williams in the course of this representation?

6 A I met with Mr. Williams on June 21st, 2012, for a
7 field interview. We met when he was released on bond. He
8 came into the public defender's office on November 13th,
9 2012, for an appointment.

10 He was given a copy of the discovery. The Defendant
11 reviewed the DVD interview of the child with me and my
12 legal assistant at the time, Tracy Burkett. On the 13th,
13 I, also, asked if he could get a copy of the DVD from the
14 Solicitor. And that was denied. She would not allow me
15 to hand that DVD out to him.

16 I met with him -- he kind of dropped off the scene.
17 I think he may have called in on July 9th, 2013. I was
18 looking for him and told the Solicitor I couldn't find
19 him. So she informed me that he was in jail in Anderson
20 County on the charge of a CSC third with a minor.

21 So I met with him again on June 4th, 2014. I gave
22 him another copy of the discovery. He said he would
23 review it and he would call me back for another
24 appointment. And I met with him, like he said, before
25 trial. But I can't -- I don't have the date written down

1 for that.

2 Q That CSC third with a minor in Anderson County is
3 unrelated?

4 A Unrelated.

5 Q Okay.

6 A Unrelated.

7 Q Okay. So back to this forensic interview that you
8 watched with Mr. Williams. What was your discussion with
9 him about that forensic interview?

10 A He, generally, just -- we talked about the --

11 MS. ROSS: And, Judge, I don't think it matters
12 because there's no jury here. But I'd ask that that be
13 stricken from the record, the reference to the other
14 pending CSC. It's my understanding it was dismissed and
15 has been expunged.

16 MS. BUTTERBAUGH: Okay. And I wasn't going to make
17 any reference to it. I just -- that was the first I've
18 heard of it. And so I just wanted to clarify that it --
19 clarify that it wasn't this one, I guess.

20 MS. ROSS: That's fine.

21 THE COURT: So noted.

22 MS. BUTTERBAUGH: Okay.

23 THE WITNESS: We just talked about the interview, in
24 general. And he pointed out the -- the behavior of
25 the child during the interview and the lack of any -- what

1 he thought was concrete statements by the child.

2 BY MS. BUTTERBAUGH:

3 Q Okay.

4 A And to -- I need to clarify that on September the
5 12th, 2013, that the Applicant did appear to be served --
6 to be arraigned and to be served with a direct indictment
7 for lewd act on a minor.

8 Q Okay.

9 A With the CSC second.

10 Q Okay. So with this forensic interview and as you
11 approached trial, what was your strategy with the forensic
12 interview at trial?

13 A The strategy was as far as the Defendant's defense to
14 me is that he was not guilty. And the mother was being
15 vindictive because she wanted to date him and have sex
16 with him and he refused.

17 So we were just going to point out that the child
18 never did make a consistent statement in the DVD about
19 what he did.

20 Q Okay.

21 A Or what he was alleged to have done at that point.

22 Q Okay. So as you approached trial and then resolving
23 these charges with your client, did you try to secure a
24 plea deal for him?

25 A Yes. The first plea offer was on the CSC charge.

1 And that offer was 25 years. And, of course, I told the
2 Solicitor that -- I presented it to my client. And, of
3 course, he refused it, denied it. And I asked him did he
4 want me to continue to work on a plea deal. He said, Yes,
5 but he didn't think he would take any -- anything.

6 So the second plea offer was a plea to lewd act. It
7 was an open plea. And whatever the Judge gave him, that's
8 what he would get. And that was conveyed to him. He
9 refused that. And then I explored the possibility of an
10 Alford plea to the lewd act. And he did not want that
11 either.

12 Q Okay. So as you get closer and you're talking about
13 a jury trial, did you explain to him the Constitutional
14 rights that he -- that go into that with the jury trial?

15 A Yes.

16 Q Okay.

17 A I did.

18 Q So his right to testify, right to remain silent,
19 right to confront witnesses against him?

20 A Correct. He had always said that he did not believe
21 he wanted to testify because he was on probation for a CSC
22 second. And that was out of Greenville County.

23 And the Judge he was referring to was Judge Verdin.
24 On February the 1st, 2013, she continued the violation
25 hearing and said that he would have to stay on monitoring

1 until the active charges were disposed of. So he was, in
2 fact, still on probation for a CSC second.

3 Q Okay. So if you could, give us kind of a brief
4 overview of what the State's evidence was against the
5 Applicant beyond the forensic interview?

6 A The statement from the mother, Tammy, that my client
7 had spent several nights -- between five and six nights at
8 her home. My client had -- was doing some work there.
9 And the mother stated that my -- my client had spent time
10 alone -- although she was in the house that he had spent
11 time with her daughter in a different room.

12 Okay. And then, of course, we had the forensic. The
13 child was interviewed by the sheriff's department. And
14 she did indicate at that time that she was touched and her
15 butt was licked by my client.

16 Q Okay. And you went over all of that with your
17 client?

18 A Yes.

19 Q And did you explain the strengths and weaknesses of
20 that case with him?

21 A Yes.

22 Q And what were the relative strengths and weaknesses?

23 A Well, the big point against us, of course, was he was
24 on probation for a CSC second.

25 The weaknesses were that he kept trying to convince

1 me that he was doing work for Tammy, but he was spending
2 the night at the house. He was not interested in Tammy.
3 Because, as he testified, he had a girlfriend, a fiancée,
4 or whatever. What I tried to tell him is that's weak.
5 Because you're spending time with a child in this lady's
6 house that you say has offered you sex and you don't want
7 anything from her, but you're spending time with her
8 child.

9 And we did discuss that he was on the sexual registry
10 and he should not be around children unsupervised. Of
11 course, this is after the fact, you know. He's always
12 been -- already been arrested.

13 So the weakness -- another weakness is that he could
14 not really testify, although we got the Judge to rule
15 that -- that he would not allow reference to the
16 conviction of a CSC second if my client testified. That
17 the only reference would be that he has been convicted of
18 a felony before, and -- and not bring the actual charge
19 in.

20 But he still felt uncomfortable with that because he
21 had a tendency of volunteering information that you didn't
22 ask him. I mean, he felt uncomfortable about testifying
23 about the relationship and what they did.

24 He tried to -- the strong point, if any, he tried to
25 paint the situation as a work-related situation. But how

1 many workers spend the night or stay overnight at a place
2 that they're working, doing repairs? He claimed that he
3 spent the night because he worked late into the night and
4 he just didn't go home. He didn't leave until 6:00 the
5 next morning. And that was on more than one occasion.

6 So I really -- I actually -- the strong point was the
7 DVD itself. Because the child was not that hard -- her
8 statements weren't that hard against my client. So that
9 was our strong point, the DVD, which sounds strange. But
10 that was our strong point.

11 Q Because there wasn't a lot of physical evidence so it
12 did kind of come down to credibility in this case?

13 A It came down to credibility, no physical evidence.
14 Because you don't have evidence of somebody putting their
15 tongue on somebody's butt, or crotch, or breasts, or
16 touching. So there -- that is no physical evidence there.
17 And there was -- correct, there was no -- nothing else.

18 Q So was that your general strategy as it applied to
19 witnesses and how you cross-examined witnesses was kind of
20 impeaching their credibility?

21 A Yes. And as I discussed with my client is that we
22 have to be careful when we cross-examine a child. Because
23 we don't want to be seen as beating up on the child.
24 Because there's a possibility that the jury may hold that
25 against us.

1 But in the testimony, he was absolutely correct that
2 when the child was on the stand, she did not identify him
3 in the courtroom. She just picked out other -- other
4 people that she knew. But she never identified him.

5 Q So the -- I guess looking at it cold -- because
6 looking at the cold record when she identifies Mike,
7 that's a different Mike?

8 A That's right. That was the police officer, the
9 investigator.

10 Q Okay. So what about when you're talking about
11 Dr. Henderson when she says that it was a normal exam. No
12 indication that the child victim had been touched. What
13 about that being -- would you consider that good for
14 your case?

15 A Yes. The testimony was there was no bruising,
16 scratching. That's what she was referring to. A
17 normal -- a normal examination would be everything
18 presented -- the child presented itself in a normal
19 manner, no cuts, no bruises, no scratches, no indication
20 of intrusion in the vaginal area or the rectal area.

21 Q Okay. So when you -- back to the forensic interview.
22 Now, you did not want it admitted at trial; correct?

23 A Correct.

24 Q And you did make a pre-trial hearing pretty
25 substantial related to that forensic interview. Can you

1 talk about what that objection was just a little bit?

2 A Well, in -- in the discussion with my client, we were
3 trying to weigh whether we wanted it in, or wanted it out,
4 or how it was going to play out with the jury. So we --
5 my strategy was to try to keep it out so that the jury
6 wouldn't even see that portion of it so -- which would
7 mean that the other experts would not be able to testify
8 to the DVD and what they saw.

9 So that was the strategy there, to try to keep the
10 two experts out, which did not work.

11 Q All right. And you kind of argued a little bit, too,
12 about the confrontation rights; correct, like the
13 Constitutionality --

14 A Oh, on the DVD?

15 Q Uh-huh.

16 A Yeah. Because they put the child up first. I'm
17 sorry. And then I did the cross-examination. And then
18 they decided to put the -- the DVD in, which gave them an
19 opportunity to call their two experts.

20 Q Yes.

21 A And I argued that the Defendant did not have a chance
22 to cross-examine after reviewing the DVD in the court.

23 Q So it was two -- I guess twice in the transcript you
24 objected to the DVD coming in, at the pre-trial fairly
25 lengthy, and then again before Ms. Davis testified?

1 A Yes. The Solicitor had provided a copy of the
2 experts names before trial and a -- some information on
3 the experts. So that's why I was trying to keep the DVD
4 out so that they wouldn't testify either.

5 Q So do you feel like you adequately handled this
6 forensic interview and -- and kind of your strategy with
7 it?

8 A I think I did. The jury decided not guilty on the
9 CSC first, which was a win for my client. But in his
10 situation, the guilty verdict on the CSC second I knew was
11 going to kill him sentence wise. And so I believe that I
12 handled it effectively considering the totality of the
13 picture.

14 Q Okay. I just want to kind of talk briefly about some
15 of these allegations that they've raised. One of them
16 goes to the voir dire. And in the voir dire, you guys had
17 a couple of specific questions that you had asked the
18 jurors -- the jury pool. One of them was a question about
19 whether they or an immediate family member had been a
20 victim of sexual abuse, and whether or not the jurors had
21 strong beliefs about the topic of sexual abuse that would
22 prevent them from being fair and impartial. And about 11
23 of them kind of indicated that, yes, to those two
24 questions.

25 Do you recall who came up with those questions to put

1 them in the voir dire? Was it you or the Solicitor?

2 A The Solicitor submitted them. We reviewed them
3 before submission. And I -- I agreed to the questions.

4 Q Okay.

5 A The Judge did not use the format that the Solicitor
6 submitted. He used a blank sheet of paper. I've written
7 all over it now. But he just listed all four of the
8 questions. And the jurors were supposed to answer the
9 questions.

10 Q Okay. And so is it typical in a CSC with a minor
11 case to ask more specific questions than just kind of a
12 general voir dire?

13 A Well, yeah, it's typical in a CSC and in a lot of
14 other cases, depending on what the State or the Defense
15 want to find out about the jurors. So it's not strange,
16 no.

17 Q Okay. So do you recall, specifically, kind of what
18 happened after these 11 jurors indicated yes to some of
19 these questions and when the jury -- excuse me, when the
20 Judge called everybody back in individually as jurors what
21 the purpose was for the Judge doing that?

22 A Okay. The jury voir dire questions -- there were
23 four questions. It only asks the jurors, have you been
24 convicted or do you know anybody who's been abused or --
25 that's the gist of it. Then when he -- the Judge handed

1 out these questionnaires in the jury assembly room
2 downstairs and he gave the questionnaire to 35 jurors, the
3 list of four questions, and -- and asked them to answer
4 it.

5 When they filled out the form, he brought them
6 upstairs individually one by one. He put the jury panel
7 in another courtroom. And we were in a separate
8 courtroom. He questioned each juror separately on the
9 record. And no other juror was present, only the
10 attorneys were present with the court reporter, and the
11 Judge, and his law clerk, if possible.

12 The -- there were 11 individuals. And when he
13 questioned them about their answers, they told the
14 Judge -- for instance, Juror #5 says a family member had
15 been assaulted. So the Judge went on to question that
16 juror to see whether that juror could be fair and
17 impartial in the trial. And he went that way for 11. 10
18 said that they could be fair and impartial. One juror
19 said that he could not be fair and impartial. That was
20 Juror #30. And the Judge excused him. But the other 10
21 said they could be fair and impartial.

22 However, I did make a motion for those 10 to be
23 excused. And the Judge refused to excuse them because he
24 said that they could be fair and impartial.

25 Q And that's kind of the purpose of calling these

1 jurors in individually and the Judge asking those
2 question; correct?

3 A Yes.

4 Q And so #34, which is the one that, specifically, the
5 Applicant is complaining about and making the allegation
6 about. During your strikes, you didn't strike him;
7 correct?

8 A That's correct. #34 said that he could be fair and
9 impartial. I did not strike him because there were
10 several other jurors in the pool that were either friends
11 of solicitors, their family members were a deputy in
12 another county or state, they were a constable, they were
13 a member of an organization and they had been victims of
14 crimes, not necessarily CSC, their family members had been
15 victims of crimes, not necessarily CSC.

16 So I was trying to save a few strikes in case any of
17 those came up. So this -- the #34, I accepted because he
18 said that he could be fair and impartial. And, generally,
19 when I'm striking a jury, I will talk with my client at
20 the table to see -- get his or her opinion about how I
21 should handle it.

22 So I can't say, specifically, that I did that in this
23 case. But, generally, that's what I do.

24 Q Okay. Moving on to another allegation about the
25 failure to fully cross-examine the victim's mother. What

1 was your strategy kind of going into crossing the victim's
2 mother?

3 A She had volunteered some information to the police
4 officers that this may not have been the first time that
5 he had touched her -- her daughter. And that she had
6 noticed earlier that the child was fiddling, fidgeting
7 with -- on a different occasion involving her pants and
8 panties. And I did not want to get any of that
9 information on the record or before a jury.

10 So I wanted her to be as limited as possible in what
11 she offered the Court. Because she offered the
12 investigating officer several different times that there
13 could have been something, but maybe she just didn't pay
14 attention.

15 Q Okay. And so I think -- you know, you've kind of
16 got -- addressed the -- how you cross-examined the victim.
17 Because, as you said, you kind of wanted to keep that
18 contained and don't want to look like you're beating up on
19 a child victim, I think, you talked about.

20 Moving on to failure to argue the child was unable to
21 recognize the Applicant or remember the incident. So
22 meaning that her testimony didn't meet the statutory
23 requirements of the admissibility of an out-of-court
24 statement. But she was subject to cross-examination,
25 which is what you did; correct --

1 A Yes.

2 Q -- in this case?

3 So -- and so I think it kind of -- do you think that
4 you fully addressed maybe that allegation in how you dealt
5 with the forensic interview and coupled with your
6 cross-examination of her at trial?

7 A Yes. Because I -- okay. If -- if you -- if she's
8 not pointed out my client and is not remembering the
9 information that she had testified to -- or told the
10 investigator, I did not want to take the chance that if I
11 kept asking her the question about, are you sure he didn't
12 do anything to you? And she blurted out, yes, he did
13 something to me.

14 So I wanted to limit that as much as possible so that
15 we wouldn't have that exposure of her surprisingly saying
16 something that we didn't know the answer to.

17 Q Okay. And, again, I think that, also, kind of goes
18 to the allegation arguing that that makes her an
19 incompetent witness. I think that kind of, again, goes to
20 that allegation as well. So I'm going to kind of skip
21 over that.

22 Allegation 1F, failure to stress in your closing that
23 the child witness was unable to remember the incident or
24 identify Applicant in your closing. What was your
25 strategy, do you remember, during closing -- your closing

1 argument before the jury?

2 A The closing was just -- like you said, the record can
3 speak for itself. But the closing was just to present
4 that my client didn't do anything. He was not guilty of
5 anything. And that was our total strategy, that he was
6 not guilty. She -- she was not pointing him out as -- as
7 the person as she did for the investigator. So we were
8 just presenting a not guilty argument.

9 Q And let's talk about not wanting to recall the child
10 witness either. Because you had -- you had -- or having
11 him testify at trial. Because you wanted to preserve
12 closing argument or -- I mean last argument. I mean,
13 what -- was that, also, going into part of your strategy
14 about not wanting to...

15 A I talked to my client about -- about that and -- when
16 the Judge refused to have the Solicitor recall the child
17 for further cross-examination. Yes, the opportunity was
18 there for me to call the child as my witness in the
19 Defense case. We talked about that. We decided against
20 that, again, because we didn't know what she was going to
21 say.

22 The video, as my client said -- testified, was good.
23 The courtroom testimony was good. So we thought that
24 should have been good enough for not guilty on both
25 charges, on both.

1 Q Okay.

2 A So we didn't -- we decided -- I decided not to call
3 her as a Defense witness.

4 Q And you talked with Mr. Williams about, you know,
5 possibly if he did testify, that previous charge, at
6 least, to the extent of a general you've got a criminal --
7 past criminal history would come out; right, if -- if he
8 was subject to cross-examination?

9 A Yes. I did -- we did discuss that. We discussed his
10 testifying, not testifying. We -- I discussed that the
11 previous CSC second where he had served -- just served 20
12 suspended to 10 and was on five years probation that that
13 may come out. But we would argue with the Court -- to the
14 Court that it should not come out because it would be
15 highly prejudicial.

16 And so the Judge agreed with us and would just say --
17 if he testifies, it will be named a felony conviction.

18 Q And then, finally, the last allegation is looking at
19 the closing jury instruction where the trial court told
20 the jurors, Your job, your objective is to find the truth.
21 Are you familiar with the Aleksey case where that jury
22 instruction is disfavored? I don't know if you're
23 familiar with that or not.

24 So I just wanted to kind of ask you a couple of
25 questions about that. Was that jury instruction -- if you

1 look at Page -- I don't know if you have the trial
2 transcript. If not, I do have -- it's on Page 180. And
3 it's the October 7th one.

4 A I have it.

5 Q It's Line 6.

6 A Uh-huh.

7 Q Okay. So that was the context of the juries role in
8 the case; correct?

9 A Correct.

10 Q Okay. And in their role of examining the evidence;
11 correct?

12 A Yes.

13 Q Okay. And was that anywhere near the burden of proof
14 instruction that the State had the burden of proving their
15 case beyond a reasonable doubt?

16 A I don't believe so.

17 Q Okay.

18 A I don't -- I don't think that that was prejudicial
19 to -- to my client.

20 Q Okay.

21 A If it was an error, I believe it was a harmless
22 error. It did not shift -- to me, it did not shift the
23 burden of proof from the State.

24 Q Okay. So you think the jury instruction as a whole
25 was a correct statement of the law?

1 A Yes.

2 Q Okay. Is there anything else you would like to say
3 about this case that you don't think we've covered?

4 A No.

5 MS. BUTTERBAUGH: Okay. Thank you very much.

6 No further questions.

7 THE COURT: Ms. Ross.

8 MS. ROSS: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. ROSS:

11 Q I'm going to switch around. I might just start from
12 there.

13 A Okay.

14 Q On the -- you understand the State's burden of proof
15 is proof beyond a reasonable doubt, of course?

16 A Yes, yes.

17 Q And, now, you're familiar with case law and sort of a
18 tradition or -- that's coming along of building case law
19 over the past 20 years that's telling Judge's that it's
20 not a good idea to talk about -- anything about their
21 objection is to seek the truth or find the truth in -- in
22 a criminal case because it can be confusing to the jury?

23 A Right. Yes.

24 Q And, now, despite the fact that -- well, I'll just
25 leave it -- the transcript. Wouldn't you agree that

1 having that in this case that's -- that's so close to have
2 the Judge ask the jury, try to find the truth here versus
3 you need proof beyond a reasonable doubt throughout.

4 Would you agree that that could be prejudicial to a client
5 in a close case like this?

6 A If that was the only instruction, yes. But the Judge
7 gave a totality of instruction on credibility,
8 believability, direct and circumstantial evidence,
9 testimony of children, statement of the Defendant or not,
10 expert witnesses, defense silence, not testifying,
11 presumption of innocence, reasonable doubt, the definition
12 for both charges.

13 So I believe that in the totality of the charge that
14 that did not effect or shift the burden of proof from the
15 State.

16 Q All right. And so you had no -- you had no objection
17 to that?

18 A No. I did not have an objection.

19 Q And -- and would it be for you -- are you an
20 appellate court? I mean, do you recognize if you'd had an
21 objection, the appellate court could have looked at that
22 and reviewed it?

23 A Sure.

24 Q And they didn't get that opportunity --

25 A Correct.

1 Q -- because you didn't; right?

2 A Correct.

3 Q Okay. Now, I'd like to talk a little bit about
4 confrontation and -- and viable witnesses. The Crawford
5 v. Washington case, which I'm sure you're familiar with,
6 is one where it sort of changed the way we deal with lots
7 of cases in -- in South Carolina, at least, day-to-day for
8 me. What -- and that's -- would you agree that the
9 classic case is when -- when a woman comes in in a
10 criminal domestic violence and says, I have no
11 recollection of anything happening. And then the State
12 would try to come in and say, well, didn't your 911 call
13 say A, B, C, D. Wouldn't that be a classic situation
14 where Crawford would come up?

15 A I agree.

16 Q They can't use that prior 911 call?

17 A Correct.

18 Q And if -- if the witness comes in and says they have
19 no recollection and that's it, they've been denied
20 confrontation. That's the whole Crawford v. Washington
21 if --

22 A Uh-huh.

23 Q Now, in this situation, this is sort of skipped --
24 skipped over. We -- we jump process because it's a child
25 involved?

1 A Uh-huh.

2 Q And they use that Section, 17-23-175, that -- that
3 you talked about in the case. That's the one where it
4 says a child can testify. They can bring in the video.

5 A Uh-huh.

6 Q And in that case, you made a number of objections to
7 the video coming in at pre-trial motion about that. And
8 you at no time renewed that based on the fact that in this
9 case, the child witness made no -- had no recollection of
10 the event or, at least, testified to none and couldn't
11 point out Mr. Williams from the stand.

12 A And the question is I didn't make an objection --

13 Q I'm sorry. That you didn't make that argument. That
14 she was not -- she did not -- she was not a witness that
15 could be cross-examined because she said she didn't recall
16 the event.

17 A Okay. Are you talking about my closing argument, or
18 are you talking about my argument with the Judge -- I
19 mean, the motion?

20 Q The argument about the video coming in.

21 A Okay.

22 Q So after she testified -- and I'm sorry I'm being
23 confusing.

24 A Okay.

25 Q After she testified, they then put up Ms. Davis, who

1 then brought in and played the video. And you objected to
2 it. But at no time did you say this -- this child is not
3 enough of a witness on the stand. She did not provide
4 enough information to meet the guidelines, you know,
5 demanded by this statute. And I'll show it to you.
6 Here's the...

7 A Okay. So you're saying I should have objected while
8 the State was trying to put Ms. Davis up or --

9 Q Right, right. Prior -- made the objection that the
10 child was not competent enough, or she did not have
11 knowledge of the elements of the offense, or present that,
12 or the identity of the Defendant. And, therefore, the
13 foundation wasn't laid for the video. And that statute
14 was no longer met because she didn't provide the
15 information -- enough information to -- to lay that
16 foundation to be a witness who could be cross-examined?

17 A Okay. To answer your question, I did not renew my
18 objection. I think that's what you wanted.

19 Q And -- and I'm being overly complicated. And -- and
20 you might have renewed your objection prior to it coming
21 in.

22 A Right.

23 Q But you just didn't make the argument that she did
24 not lay enough foundation because she had no recollection
25 of the event. And let me -- I'll --

1 MS. ROSS: I beg the Court's indulgence. I'm
2 trying to...

3 (Pause.)

4 BY MS. ROSS:

5 Q At the beginning of the trial, the Judge asked the
6 Solicitor, Is the child witness going to testify about the
7 elements of the offense, and the Defendant, and be subject
8 to cross-examination as required by the statute?

9 A Okay.

10 Q And the Solicitor said, Yes.

11 Now, when she testified, you asked her did she
12 remember anything happening when she was five years old.

13 And she said, No.

14 You, essentially, asked her did she remember the
15 Defendant.

16 And she said, No.

17 At that point, did you -- and nothing had been
18 brought up in direct about anything. At that point, did
19 you feel that you were open to cross-examine her about do
20 you remember this video we haven't seen? Do you remember
21 who this is? Because you've already asked her that and
22 she is not remembering -- she's not a witness who can
23 recollect anything about what Mr. Williams was charged
24 with.

25 A Yes. I -- I was open to cross-examination.

1 Q Okay.

2 A The point I made earlier is that because she did not
3 remember any of that stuff, I did not want to ask her
4 continually about specifics in case she said, oh, yeah,
5 yes, I remember. Yes, it was him and started crying,
6 whatever.. That was a part of the Defense strategy that I
7 would not ask her -- if she did not say it, I was not
8 going to illicit it from her, that she remembered this --
9 this man, or she remembered he did something.

10 But, yeah, the opportunity to cross-examine her was
11 there. I just shortened my cross-examination of the -- of
12 the child. But I -- however, I will agree to this point
13 is that I believe an opportunity after the video was
14 played should have been afforded to the Defendant without
15 me having to call the child as -- as a Defense witness.
16 But that was not afforded to us.

17 Q And this -- and this will get into sort of just the
18 argument that I'd made in the application. Under the
19 Sixth Amendment, you have a right to confrontation?

20 A Correct.

21 Q Under the Fifth Amendment, you have a right to remain
22 silent --

23 A Correct.

24 Q -- and don't have to put up any evidence against
25 yourself?

1 A Correct.

2 Q Do you think it's fair, the case law and the
3 opinions, that said that you have an opportunity to put
4 the child up in your case in chief in order to get your
5 right to confront?

6 A As you said, I am not appellate. But I don't think
7 it's fair. But the Court has ruled, you know, I --

8 Q Would you agree this is sort of pitting your Fifth
9 Amendment rights and your Sixth Amendment rights against
10 each other, saying you can assert this right by waiving
11 this right, and that that would be unfair in a trial?

12 A To answer your question, yes. However, to -- for me
13 to recall the child in the Defense case, I think, would
14 have been absolute murder. I just didn't want to take
15 that chance. I did not want to take that chance for my
16 client.

17 Q And -- and you shouldn't have had to because you have
18 a right to -- your client has a right to put up no
19 evidence --

20 A Correct.

21 Q -- in his case.

22 Now, and you said you had an opportunity -- the
23 appellate court said you didn't avail yourself of the
24 opportunity to cross-examine. Now, when the State asked
25 whether the child could identify the Defendant and she

1 pointed to Mike, the wrong guy, wouldn't you agree that
2 they seemed surprised by that?

3 A I don't know. They may have been. I didn't make any
4 notes to that response in my file. So they may have been.
5 I don't know.

6 Q Well, and then when -- after they attempted to say,
7 well, do you recognize this man right here, and pointed to
8 the Defendant, and she looked at him and said, no, at that
9 point, they asked no further questions.

10 Now, you didn't feel that that would open that, quite
11 likely, the child didn't recall the man or the incident at
12 all?

13 A Yeah. It could have opened that up, yeah.

14 Q And you agree if you had crossed or recalled, that
15 would have been preserved for appellate review, that whole
16 issue?

17 A If I had crossed -- I did the cross that I thought
18 was sufficient for the situation. I could not -- I could
19 not say whether the -- the Prosecutor was going to put the
20 DVD in. So I crossed on what was there already, the
21 actual event.

22 Q And did you feel like if you had brought in the DVD
23 yourself and everything, you'd waive any appellate review
24 of the fact that the DVD came in?

25 A Yes.

1 Q Okay. Wouldn't you agree that's sort of putting you
2 in a catch-22 situation as a defense attorney?

3 A Well, it happens.

4 Q Can I see the statute? I handed it up or --

5 A Right here.

6 Q Now, would you agree that when the State gave their
7 direct testimony of the child witness, they did not
8 question her whatsoever on the elements of the offense, or
9 anything about making the tape, or Ms. Davis, or anything
10 like that in the trial?

11 A Would I agree to that, that --

12 Q I mean, the record -- they didn't -- the State --

13 A Right.

14 Q -- Lisa didn't ask her anything about the video.

15 A Right.

16 Q Do you -- do you feel like that could possibly have
17 been their strategy in the case?

18 A It may have been. Like I said, I -- I couldn't
19 depend on them putting the DVD in. So I didn't want to
20 ask a question about the DVD if it didn't come in. So --
21 so that may have been a part of their strategy.

22 Q Okay. And then that strategy shut down your defense
23 a little bit because you had no opportunity to
24 cross-examine the child on the video after she'd seen it
25 and it had come in?

1 A Correct.

2 Q And just going back to the -- striking the jury.
3 Wouldn't you agree that the Judge's -- I think on Page 40,
4 Line 5, you -- you asserted to the fact that you objected
5 to -- to the Judge rehabilitating the number of jurors who
6 said that they couldn't be impartial, that answer to
7 question four about being impartial? If you'll look at
8 it.

9 A I don't think that's how it went. It wasn't -- the
10 questionnaire just asked them about whether they were
11 victims, if their family were victims of the crime -- a
12 crime. And then when the Judge brought them in, those who
13 answered yes to those questions, then the Judge asked them
14 individually could they be impartial. And 10 says, yes,
15 they could be fair and impartial. And one says, no, he
16 could not.

17 So the -- he didn't -- you know, I may have said it.
18 But he -- he asked them individually. And none of them
19 said that they could not be fair, except one. And the
20 Judge excused that one immediately.

21 Q Okay. On -- in Volume I on Page 40 right at the
22 beginning, I think you were speaking. So you made a
23 general objection. And then on Line 5, then question
24 number four is, do you have strong beliefs about CSC that
25 would prevent you from being fair and impartial in

1 questioning the evidence at trial? Now, is that -- so
2 that wasn't the question on -- you're saying that wasn't
3 on the sheet of paper that --

4 A No, no, no. I have a copy of the -- the paper that
5 the Judge used. I've written on it.

6 Q Okay.

7 A But, no, it wasn't on there.

8 Q Okay. But that -- that suggested a -- that there
9 was, at some point, a question number four was asked where
10 they said --

11 A Yes.

12 Q And wouldn't you agree that -- that he went on and
13 qualified those jurors who said -- had already said, at
14 some point, no, they could not be impartial?

15 A No, no. My argument may state that, but my notes say
16 that he questioned them individually. They all said they
17 could be fair and impartial, although a family member may
18 have been charged with a crime, although they had been
19 a -- been a victim of a crime themselves, although a
20 family member may have been a victim.

21 So I -- I don't -- he did not necessarily totally
22 rehabilitate anybody. Because he didn't even -- he tried
23 with #30, Timothy Brown. He just said he could not be
24 impartial. So the Judge just excused him.

25 So if at any point that I noted that the Judge had

1 any reservation -- serious reservation about any of the
2 jurors, I -- I believe that he would have dismissed
3 them -- or excused them. Excuse me. And I made that
4 motion just for protection.

5 Q Okay. But I'll just -- for the record, the motion on
6 Page 40 says question number --

7 THE COURT: Let me ask you a question. Didn't I --
8 didn't I rule on --

9 THE WITNESS: Yes, you did.

10 THE COURT: -- the issue of bias? I mean, wasn't
11 that a -- a motion that you made, Counsel, at the
12 beginning and I ruled that you weren't going to get --
13 where -- where are we going with this? Because --

14 MS. ROSS: Okay. I'm sorry.

15 THE COURT: It's either -- it's either down the
16 street of ineffective assistance of counsel, which it's
17 not. And I -- and if it's going down the street alleging
18 the Judge was biased, I already ruled on that.

19 MS. ROSS: Okay, Judge.

20 THE COURT: So move this along.

21 MS. ROSS: I will move it along. I apologize.

22 THE COURT: Get on the right street.

23 MS. ROSS: My point there was simply going to whether
24 that -- how that had worked out. And I'll withdraw that
25 question.

1 BY MS. ROSS:

2 Q Now, as far as the witness who came in, Nancy
3 Henderson testified on Page 116 of Volume II. And on Page
4 122, she testified that when she asked the child whether
5 she'd been hurt or touched on her body, she testified --
6 Ms. Henderson testified that the child didn't share any
7 information at that time. And -- and you never
8 cross-examined her saying that meant she said, no, that
9 she hadn't been touched back at the time. Would you agree
10 if that's not in the transcript that you
11 didn't cross-examine --

12 A No. I didn't cross-examine her. Because I probably
13 thought the testimony was clear enough.

14 Q All right. And did you argue that in closing to
15 follow-up?

16 A If it's not in there, I didn't argue it. I didn't
17 review it totally.

18 Q All right. And as far as -- would you agree that the
19 two witnesses testified as to the child's demeanor? One
20 was Dr. Henderson saying it's natural not to answer
21 questions. And then they called another doctor, Shauna
22 Galloway-Williams. And I don't believe it's doctor. But
23 she works at the Julie Valentine Center. She said the
24 same thing, didn't she?

25 A Yes.

1 Q And you -- you didn't object to both of those --

2 A No.

3 Q -- witnesses being called?

4 And they both, essentially, testified that finding no
5 evidence of penetration or -- is normal, and common, and
6 doesn't mean anything happened. And that it was normal
7 not to tell when something happened, and the same thing.
8 Do you find that common that that's the testimony that you
9 hear from the witnesses in CSC cases?

10 A Well, I find it common for doctors who are examining
11 victims to say what their usual examination is and what
12 their opinion is about nonresponse. Because the Judge in
13 his charge charged on the expert witness and what -- you
14 can believe what they say or not say.

15 MS. ROSS: Okay. I beg the Court's indulgence.

16 (Pause.)

17 MS. ROSS: I've got nothing further, Your Honor.

18 THE COURT: All right. Anything else?

19 MS. BUTTERBAUGH: No, Your Honor.

20 THE COURT: All right. I don't have any questions.

21 Thank you, Ms. Manigault.

22 You can step down.

23 THE WITNESS: Thank you.

24 THE COURT: Short argument from both sides.

25 MS. ROSS: Judge, I'd ask you to allow me to make a

1 written argument, a brief one, or a proposed order in the
2 case. It's been a long day. And I have set up a lot of
3 my arguments. I would just pass up a copy of State v.
4 Legg and State v. Anderson.

5 THE COURT: I'll do better than that. Send me a
6 proposed order within 10 days.

7 MS. ROSS: All right. Thank you, Judge.

8 MS. BUTTERBAUGH: Thank you, Your Honor.

9 THE COURT: All right. And you can attach any -- any
10 cases you might want me to read, or any -- attach a
11 memorandum. Submit it to my law clerk, Shedricka
12 Anderson. Send it to her.

13 MS. ROSS: All right.

14 THE COURT: Okay.

15 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

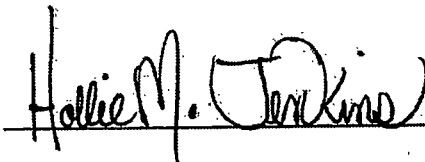
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth 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 captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 24th day of October, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 12, 2019

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
)
)
)

MICHAEL EDWARD WILLIAMS,
APPLICANT.

) POST HEARING ARGUMENT
)
)
)

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) CASE # 2018-CP-23-0131
)
)
)

This matter comes before the Court by way of application of post conviction relief filed January 8, 2018, alleging ineffective assistance of trial counsel. A Return was made on May 9, 2018. A hearing was held October 24, 2018 before the Honorable Alex Kinlaw. Applicant testified on his own behalf. He stated that he was prejudiced by ineffective assistance of his trial counsel and testified regarding the allegations made in his Application and the Supplemental Application. He stated that he was not guilty of the charge. He also said that the child witness did not recall any allegations against him in court and was unable to identify him even after he looked directly at her when the solicitor pointed him out. The State called Dorothy Manigault, Esquire. She also testified regarding the allegations made in the Application and the Supplemental Application. She said that the trial strategy was that the charge was based on the child's mother being vindictive. The testified that the trial judge's jury instructions were thorough and proper so she did not object to his instruction that the jury's objective is to find the truth. She said that the child testified and was unable to identify the Applicant or recall the incident. She stated that she did not cross examine the child on the elements of the offenses charged or the making of the forensic video. Counsel maintaining that to do so would be introducing potentially damaging testimony against her client. At the conclusion of testimony the court allowed the Applicant submit this argument in writing.

The crux of this case whether the Applicant was denied a fair trial when the State introduced a forensic video that was completely uncorroborated by the child witness. In her reply to Ms. Manigault's directed verdict motion in Mr. William's trial, the solicitor stated that the forensic video was admitted under S.C. Code Ann. 17-25-175 and it was a matter for the jury to decide whether or not the interview alone was sufficient to find the defendant guilty. (R. Vol. II pp. 136-139). She conceded that a jury conviction must be based solely on the child's forensic interview. A review of the full transcript shows that the State presented no testimony as to any elements of the crime charged. The only evidence of any elements of the charged offenses was presented through the forensic video. This was not testimony given under oath. Applicant's counsel failed to argue this point in her objections to the forensic video or her directed verdict motion. (R. Vol. II pp. 78-81 & pp. 136-139). Counsel also failed to argue that without the sworn testimony of the child regarding the allegations made in the video, there was no foundation for the admission of the video.

A review of the child's testimony shows that she was unable to identify the Applicant even after he was pointed out to her in the courtroom by the solicitor; she did not recall making the forensic video; she did not recall any elements of the charges against Mr. Williams; and she was not asked whether she understood the truth and the importance of telling the truth. (R. pp. 62-73). A witness is incompetent if they lack the mental capacity to perceive, *recall*, or relate the facts or to understand the duty to tell the truth when testifying. South Carolina Dept. of Social Services v. Doe, 355 S.E.2d 543, 548, 292 S.C. 211 (S.C. App., 1986) *emphasis added*. Counsel failed to argue the child's inability to recall the facts pertinent to the charges or to identify the Applicant made her an incompetent witness under the rules of evidence. *See* SCRE 601 & 602.

The pre-trial ruling on the video's admissibility was contingent on the child testifying and being subject to cross examination on the elements of the offense and the making of the out of court statement. (R. Vol. I, p. 81, l. 18) The child's inability to recall and testify to the facts pertinent to the charges or the making of the video negated the foundation for the admissibility of the forensic video under S.C. Code Ann. 17-25-175 (A)(3). The child could not be subject to cross examination on the elements of the offense and the making of the forensic video as required by S.C. Code Ann. 17-25-175 (A)(3) when she could not recall them. Counsel failed to argue this or point out to the Court that the child's failure to recall also effected whether the video contained particularized guarantees of trustworthiness as required by S.C. Code Ann. 17-25-175 (A)(4) and (B)(5). (R. p. 81, l. 18)

In State v. Legg, the Appellant argued that S.C. Code Ann. 17-25-175 allowed an alleged victim to testify twice in violation of the defendant's Due Process right to a fair trial. The Court ruled that because it would be possible to apply S.C. Code Ann. 17-25-175 without offending procedural Due Process, it was not facially unconstitutional. The Court reasoned that there would be no grounds for a Due Process duplication of testimony argument if the State called the minor in its case in chief and "only questioned the minor as to the creation of the videotape prior to its publication to the jury and cross-examination" and found the statute could thus be applied constitutionally. State v. Legg, 416 S.C. 9, 785 S.E.2d 369, 372 (S.C., 2016)

The Court does envision a scenario where State can call the minor to the stand, elicit nothing relevant to the charge or the making of the video, and then tender the minor to the defense for cross examination because that scenario is not valid under S.C. Code Ann. 17-25-175 and our constitutions. It is burden shifting and sandbags the defense. The State's the burden of proof cannot be fulfilled by presenting a witness with no recollection of the allegations.

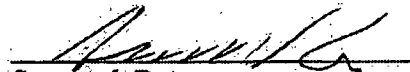
underlying the charge or the making of the video, reserving the video until the minor is off the stand, and then argue the witness was available for cross examination or recall. Such action forces the defendant to either compromise his Sixth Amendment right to effective confrontation and a fair trial or his Fifth Amendment due process rights and his right to remain silent. The procedure which was allowed in this case was unconstitutional and denied the Applicant a fair trial. "A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice." State v. Hornsby, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997). Counsel did not argue to the trial judge that the State's total reliance on the forensic video and failure to elicit any testimony from the child witness regarding the elements of the offence, any recollection of the incident or recognition of the defendant was fundamentally unfair and burden shifting.

Without these arguments preserved on the record, the Court of Appeals said in its unpublished opinion, "[A]s to cross-examination specifically, the Confrontation Clause guarantees only an **opportunity** for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." (quoting United States v. Owens, 484 U.S. 554, 559 (1988)). Citing State v. Hill and State v. Anderson they also pointed out that trial counsel could recall the child witness after the state has presented the forensic video if they want to cross examine on the statements made in the video. However, in State v. Hill and State v. Anderson where the constitutionality of S.C. Code Ann. 17-25-175 was similarly challenged, the child victims *testified to abuse* and were made subject to cross examination regarding that abuse before the video was presented pursuant to S.C. Code Ann. 17-25-175. State v. Hill, 394 S.C. 280, 291, 715 S.E.2d 368, (Ct. App. 2011), State v. Anderson, 413 S.C. 212, 217-18, 776 S.E.2d 76, 78-79 (2015). Testimony is defined as evidence given by a

competent witness under oath or affirmation. *Black's Law Dictionary* 1476 (6th ed. 1990). There was no testimony of abuse in this case. The outcome on appeal would likely have been different if trial counsel had effectively preserved the record to address this issue.

Alternatively, if the Court is saying that the trial procedure here where the admission of an unsworn forensic video requiring no recollection of events relating to the charges or the making the video, is constitutionally sound; trial counsel was ineffective for not probing the child witnesses total lack of recollection on cross examination. Counsel also failed to stress in closing argument that the child witness was unable remember the incident or to identify the Applicant while under oath and that when the doctor who conducted a forensic examination asked the child whether she'd been hurt or touched on her body she "did not share any information" meaning she said no. (p.122, pp.170-8) As to argument regarding the jury instruction asking the jury to seek the truth State v. Beaty provides some insight. There the court instructs trial judges to omit any language, whether in remarks to the jury or in an instruction, which might have the effect of lessening the State's burden of proof in a criminal case. State v. Beaty, 813 S.E.2d 502 (S.C., 2018). The State's burden of proof in the Applicant's case was substantially lessened to the degree that Mr. William's was denied a fair trial and counsel's errors amounted to ineffective assistance that effected the outcome of his trial.

Respectfully submitted,



Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina
This 2 day of November, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

MICHAEL EDWARD WILLIAMS,)

Applicant,)

vs.)

THE STATE OF SOUTH CAROLINA,)

Respondent.)

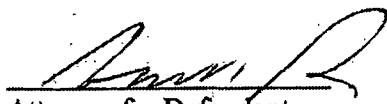
IN THE COURT OF COMMON PLEAS

2018-CP-23-0131

AFFIDAVIT OF SERVICE
BY MAIL

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Supplemental Application** on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Attorney General
 Alan Wilson
 P.O. Box 11549
 Columbia, SC 29211
 Attn: Megan Jameson


 Attorney for Defendant

This 2 day of November, 2018

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Michael Edward Williams, #282256,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

C/A No. 2018-CP-23-0131

ORDER OF DISMISSAL

ENTERED COMPUTER

18 DEC 14 PM 10:40
Paul Wickensimer COC SUL SC

This matter comes before this Court pursuant to an application for post-conviction relief (PCR) filed January 8, 2018, by applicant. The State made its return May 9, 2018. Applicant amended the application on October 18, 2018 through PCR counsel. An evidentiary hearing was convened on October 24, 2018, before this Court at the Greenville County Courthouse. Applicant was present and represented by Susannah Ross. Assistant Attorney General Sherrie Butterbaugh represented respondent. Testimony was taken from trial counsel, Dorothy Manigault, and applicant.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the hearing, this Court finds applicant has failed to establish any constitutional violations and denies the PCR application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. A Greenville County grand jury indicted applicant on the charge of first-degree criminal sexual conduct (CSC) with a minor and then in February 2013 on the charge of third-degree CSC with a minor. (2012-GS-23-10455; 2013-GS-23-698A). Dorothy Manigault represented applicant and Lisa Bentley prosecuted the case. Applicant proceeded to trial before the Honorable Steven H.

[Handwritten signature]

Ross / A.G.

12 14 18

John and a jury on October 6, 2014. The jury found applicant not guilty of first-degree CSC with a minor, but found him guilty of third-degree CSC with a minor. Judge John sentenced applicant to a term of fifteen years for third-degree CSC with a minor.

Applicant timely filed a notice of appeal and was represented by LaNelle Cantey Durant. Appellate counsel argued: (1) the trial court erred in denying applicant's motion that S.C. Code Ann. § 17-23-175 was unconstitutional based on a violation of the Confrontation Clause when applicant did not have an opportunity to cross examine the child during the forensic interview and the State did not elicit details about the incident during direct examination so applicant could not cross examine her about it during trial; and, (2) the trial court erred in admitting the videotape where the forensic interviewer asked leading questions which were barred by S.C. Code Ann. § 17-23-175 and used a nonscientific method of interviewing, which impacted the trustworthiness of the interview. Applicant's conviction and sentence were affirmed in an unpublished opinion from the Court of Appeals. *State v. Williams*, Op. No. 2017-UP-026 (S.C. Ct. App. filed Jan. 11, 2017). Applicant submitted a petition for rehearing which the court denied by order filed February 1, 2017.

On March 22, 2017, applicant submitted a Petition for a Writ of Certiorari to the South Carolina Supreme Court. The Court denied the petition on November 15, 2017. The remittitur was issued on April 3, 2018.

SUMMARY OF FACTS GIVING RISE TO THE CONVICTIONS

On Saturday, March 31, 2012, applicant spent the night at the home of mother and her five-year-old daughter, the victim. (Oct. 7 Tr.p.23). Mother and applicant were friends, and not romantically involved. While still in mother's home the next day, applicant spent several hours in the playroom alone with victim. Mother periodically checked on victim. (Oct. 7 Tr.pp.30-

31). Around 6:00 p.m., when mother was preparing to leave with victim to pick up victim's grandmother, mother saw applicant on the floor next to victim. Applicant appeared caught "off guard." (Oct. 7 Tr.p.24; p.31; p.33). When mother entered the room, applicant immediately got up while victim remained lying on her left side. Mother observed victim pulling and tugging at her shorts and underwear. (Oct. 7 Tr.p.32).

Applicant left. (Oct. 7 Tr.p.33). Because she observed uncharacteristic behavior from victim, mother asked victim why she was tugging at her shorts. (Oct. 7 Tr.p.33). Mother asked victim whether applicant touched her privates. (Oct. 7 Tr.p.34). Victim began to cry. (Oct. 7 Tr.p.34). Mother testified, previously, applicant oddly persisted in offers to babysit victim which mother declined. (Oct. 7 Tr.p.28).

Mother called law enforcement and met with Investigator Michael Robertson (Robertson) on April 3, 2012. (Oct. 7 Tr.p.35; p.94). After taking a written statement, Robertson advised mother he would schedule a forensic interview for victim at the Julie Valentine Center. (Oct. 7 Tr.p.34, p.94).

The clinical coordinator at the Julie Valentine Center, Sarah Davis (Davis), conducted a forensic interview of victim on April 30, 2012. (Oct. 7 Tr.p.76). The interview was preserved in an audio and video recording. (Oct. 7 Tr.p.77).

The court held a pre-trial motion hearing to determine the admissibility of the out-of-court statement made by victim pursuant to S.C. Code Ann. § 17-23-175. (Oct. 6 Tr.p.69). The State called Davis to testify out of the presence of the jury. (Oct. 6, Tr.p.69). Davis testified she had conducted over 530 forensic interviews with children. (Oct. 6 Tr.p.72). Davis had a bachelor's degree in psychology from Clemson University and a master's in social work from the University of South Carolina; she was a licensed social worker in South Carolina and attended

classes regularly in social work and forensic interviewing. (Oct. 6 Tr.p.71). Davis defined a forensic interview as a semi-structured, developmentally appropriate non-leading method of questioning children about allegations of abuse. (Oct. 6 Tr.p.72). Davis testified she was trained to use non-leading questions so the information elicited did not stem from something she suggested. (Oct. 6 Tr.p.72). Davis testified she knew victim from the forensic interview she performed on April 30, 2012. (Oct. 6 Tr.pp.72-73).

Although there were some questions victim had difficulty understanding, Davis testified the responses were developmentally appropriate given victim was five years old. (Oct. 6 Tr.pp.74-75). To ensure she heard correctly, Davis would repeat victim's answers and allow victim the opportunity to correct wrong responses. Victim corrected Davis during the interview. (Oct. 6 Tr.p.75). The State sought to move the recorded interview into evidence for the purposes of the hearing. (Oct. 6 Tr.p.76). Applicant objected on the grounds it violated the Confrontation Clause because he was not present during the interview to cross-examine victim and because the statement exceeded time and place restrictions. (Oct. 6 Tr.pp.76-77; p.80). In response, the State clarified, pursuant to § 17-23-175, it must make victim available for cross examination at trial to address Confrontation Clause concerns and that victim would be called to testify as a witness at trial. (Oct. 6 Tr.p.77).

At the conclusion of the pre-trial motion hearing, the trial judge found the out-of-court statement was admissible given victim would testify and be subject to cross examination. (Oct. 6 Tr.p.84). Specifically, the judge found the statement was given in response to an investigative interview of victim; an audio and visual recording of the statement was preserved on videotape; the child would testify and be subject to cross examination; and, finally, the totality of the circumstances surrounding the making of the statement provided particularized guarantees of

trustworthiness. (Oct. 6 Tr.p.84). The judge reiterated that based upon what he heard from Davis and his observation of the interview, the requirements concerning the admissibility of the statement were met. (Oct. 6 Tr.pp.80-82; p.84).

The trial judge also made specific findings in determining that the statement possessed the particularized guarantees of trustworthiness. First, he found that the interviewer's questions did not suggest answers. Second, the judge concluded the interviewer's training was substantial, and sufficient to allow her to conduct the interview. Third, he found the statement represented a sufficiently detailed account of the offense such that if the evidence was believed by the jury, it would represent a detailed account of the offense. Fourth, the judge found the nature of the questions did not obstruct the overall internal coherence of victim's statements. Lastly, he concluded that the sworn testimony of Davis regarding the circumstances surrounding the interview was the only testimony necessary, in addition to the court's viewing of the videotape. (Oct. 6 Tr.p.84).

The trial commenced and the State called victim to testify. Victim identified her mother in the courtroom and an investigator, also named Michael. She stated she lived with mother and has dogs. (Oct. 7 Tr.pp.63-66). Applicant cross-examined victim on her age, birthday, school, address, sleep-overs, and what she does to make mother feel better. (Oct. 7 Tr.pp.68-72).

The State also again called Davis to testify before the jury regarding the circumstances of the recorded interview of victim. (Oct. 7 Tr.p.78). The State then sought to move the interview into evidence. (Oct. 7 Tr.p.78). Applicant renewed his earlier challenge to the constitutionality of § 17-23-175 on Confrontation Clause grounds. Applicant argued the content of the recorded interview was suggestive in nature due to the use of leading and repetitive questions. (Oct. 7 Tr.pp.78-79).

The trial judge admitted the interview into evidence, rejecting the arguments that the statute was unconstitutional and leading questions were used. (Oct. 7 Tr.pp.79-80). Instead, the judge found all of the statutory requirements concerning the admissibility of an out-of-court statement by a child under twelve were met. (Oct. 7 Tr.pp.79-84). Applicant's objections were overruled. (Oct. 7 Tr.p.81).

During the direct examination of Davis, the State published the forensic interview to the jury. (Oct. 7 Tr.p.85). During the recorded interview, victim referred to applicant by name and stated that he touched her "bottom" with his finger and his tongue. Victim described that the incident took place when she was five in the playroom at her house. Victim, not the interviewer, is the first to mention applicant's name. The interviewer asks questions about the specific incident only after victim identified applicant and stated that he inappropriately touched her "bottom."

Forensic pediatrician Nancy Henderson examined victim on May 3, 2012. The doctor found the physical examination was normal, but explained a normal examination does not preclude sexual touching and provided an explanation to the jury to support her testimony. (Oct 7 Tr. pp.115-125). Shauna Galloway-Williams testified that she does not know and has never met victim. She explained disclosure behavior to the jury. (Oct. 7 Tr. pp.135-137).

At the close of the State's case, applicant moved for a directed verdict, asserting the State failed to prove its case because the victim did not testify at trial to the elements of the indicted offenses. The trial judge denied the motion. (Oct. 7 Tr.p.138).

Applicant elected not to present any witnesses. The jury convicted applicant of third-degree CSC with a minor, but acquitted him of the more serious charge of first-degree CSC with a minor. (Oct. 8 Tr.p.124).

ALLEGATIONS

In his initial application, applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failure to request a preliminary hearing
 - b. Failure to object to indictment of third-degree of CSC with a minor
 - c. Failure to fully cross examine child victim's mother
 - d. Advising applicant a prior conviction could be used against him if he testified at trial
 - e. Failure to object to trial judge's order telling jurors to stay until they reached a verdict
 - f. Failure to object when applicant improperly sentenced as a second offender
2. Judicial bias and prejudice

In the amended application, PCR counsel alleges the following claims of error:

1. Ineffective assistance of counsel:
 - a. Failure to strike juror #34 and deplete all strikes
 - b. Failure to fully cross examine witness Tammy _____
 - c. Failure to effectively cross or recall the child witness
 - d. Failure to argue the child witness's testimony did not meet S.C. Code Ann. § 17-23-175(A)'s requirements
 - e. Failure to argue the child witness was not a competent witness under SCRE 601 & 602 or that the video did not contain particularized guarantees of trustworthiness
 - f. Failure to stress in closing argument the child witness was unable to remember the incident or to identify the applicant while under oath and other evidentiary issues
 - g. Advising applicant that his prior conviction could come in if he testified
 - h. Failure to object to the jury instruction, "Your job, your objective is to find the truth . . ."
2. Applicant was denied his Fifth Amendment due process rights when the State called the child witness to the stand and she was unable remember the incident or to identify applicant. After the child was released as a witness, the State played a video of the child's forensic interview which was entered it into evidence through the interviewer. This order of presentation of the evidence effectively compelled applicant to present a defense. A defendant cannot be forced to give either up his Sixth Amendment right to confrontation or his Fifth Amendment right to remain silent. This procedure was unconstitutional and denied the applicant a fair trial
3. Applicant was denied a fair trial when the trial judge attempted to rehabilitate

jurors who stated they could not be impartial on a questionnaire rather than did not striking them for cause. This violated the applicant's Sixth Amendment right to an impartial jury

At the start of the hearing, respondent moved to dismiss claims Two and Three in the amended application, and the claim of judicial bias in the initial application, arguing they were not proper for post-conviction relief (PCR) and asserted they were direct appeal issues specifically barred by statute. This Court agrees and summarily dismisses all three claims. Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b); *see also Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal."). All three of the allegations could have been raised in applicant's direct appeal. The claims were raised in the initial PCR application and amended application with cites to the record. Nothing prevented applicant from raising them prior to this action. *See Drayton v. Evatt*, 312 S.C. 4, 430 S.E.2d 517 (1993) (explaining issues that could have been raised at trial or on direct appeal cannot be asserted in an application for PCR absent a claim for ineffective assistance of counsel). Applicant's failure to raise the allegations when he had the opportunity to do so waived these issues as grounds for PCR. Therefore, claims Two and Three in the amended application, and the claim of judicial bias in the initial application are dismissed with prejudice.

Also prior to the start of the hearing, PCR counsel indicated applicant would proceed only on the ineffective assistance of counsel claims raised in the amended application. Therefore, to the extent any allegations in the initial application are not explicitly denied in this order, they are dismissed with prejudice as no testimony was presented to prove the claims. *See* Rule 71.1(e), SCRCP (providing the burden of proof is on the applicant to prove his allegations

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by a preponderance of the evidence).

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant testified on his own behalf. Applicant testified trial counsel did not review discovery with him, develop a defense, and urged him to plead guilty. Applicant stated he was not aware of the State's evidence against him until the day of trial. He testified counsel failed to fully cross examine the victim's mother about text messages they sent each other or about the nature of their relationship. Applicant stated the mother wanted to have sex with him, but he was engaged so he told her he did not want to have a romantic relationship with her. Applicant testified he told the victim's mother he had a prior second-degree CSC with a minor charge, told her the allegations were not true, and the mother did not mind if he spent time with her daughter. Applicant stated the victim could not identify him in the courtroom, but rather pointed to "Michael" the investigator, and counsel failed to cross examine her about the failure to identify him. Applicant also testified counsel did not cross examine the victim about the alleged incident in the playroom.

Applicant testified he felt the trial judge was biased during jury qualifications, particularly because some jurors indicated on the questionnaire they could not be impartial during trial. Finally, applicant stated he believed trial counsel did not effectively argue his case before the jury during her closing argument.

During cross examination, applicant acknowledged he was on the sex offender registry at the time of the incident and that he talked to trial counsel about his prior criminal record when they discussed whether or not he should take the stand to testify at trial. Applicant testified he gave a statement to investigators in which he denied the allegations and explained the victim's mother checked on them every few minutes while they were in the playroom. Applicant also

acknowledged the jury found him not guilty of the more serious charge of first-degree CSC with a minor.

Trial counsel testified she was appointed to represent applicant and met with him numerous times, including after she received discovery. Counsel stated she met with applicant to watch the victim's forensic interview and review other discovery materials with him. Counsel noted the mother gave a statement to investigators in which she told them applicant spent the night at her house several times, applicant had been alone with the victim in a separate room, and the victim told the forensic interviewer applicant "licked her butt." Counsel testified her strategy at trial was to argue applicant was not guilty and the victim's mother was being vindictive by bringing charges against applicant because he would not have a romantic relationship with her. Further, counsel stated her strategy was to argue to the jury the victim never made a clear statement about the allegations in the interview. Counsel testified she explained applicant's constitutional rights to him and he told her he did not want to testify at trial because of his criminal history and because he was still on probation.

Trial counsel testified there was a plea offer from the State for twenty-five years, which applicant rejected. Counsel stated applicant told her he did not think he would take any offer. The State made a second offer for the lesser-included offense of lewd act upon a minor which applicant also turned down. Applicant also did not agree to plead guilty pursuant to *Alford*.¹ Counsel testified the trial judge limited the reference of applicant's prior charge to simply a prior felony.

Regarding cross examination of witnesses, trial counsel testified her strategy was to limit the testimony of the victim's mother. Counsel stated she wanted to keep her cross examination

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

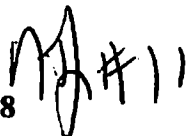
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short because the mother gave information to investigators she believed was more harmful to applicant and she wanted to avoid the jury hearing that information. Counsel testified she also explained to applicant she would have to be careful about how she questioned a child witness. Counsel stated she wanted to limit the victim's testimony and to avoid the possibility of the child blurting out something that would hurt her client's case. Specifically, counsel testified she did not believe the forensic interview was particularly harmful because the child was not specific in her allegations and her strategy was to limit the child's testimony at trial. Further, counsel stated she objected pre-trial and during trial to the admission of the videotaped interview, but was ultimately unsuccessful in keeping the interview out. During her closing argument, counsel testified she wanted the jury to hear the defense strategy that applicant was not guilty and he did not harm the child.

Regarding jury selection, trial counsel testified there were eleven potential jurors who were individually examined by the trial judge during *voir dire* after indicating "yes" to at least one question on the juror questionnaires.² When asked by the judge, ten of the potential jurors indicated they could be fair and impartial, while one said he could not and the judge excused him. Counsel stated she made a motion to excuse the other ten, but the judge denied it. Counsel testified she did not strike juror #34 who was one of the ten because he told the judge he could be fair and impartial, and because she wanted to save some of her remaining strikes to use if other members of the pool came up during jury selection. Counsel stated she was more concerned about members other than #34 possibly being seated.

Finally, trial counsel testified she did not object to the trial judge's closing instruction to

² One question asked if the potential juror or anyone in their immediate family had ever been a victim of CSC or sexual abuse, and the other asked if the person had strong beliefs about CSC or sex abuse that would prevent them from being fair and impartial in their consideration of the evidence. (Oct. 6 Tr.p.40).



the jury that their objective was to "find the truth." Counsel stated she did not think the charge was objectionable because that language was used in the context of the jury's role in the case and was not near the burden of proof instruction. Counsel testified the charge was not prejudicial to her client because it did not shift the burden away from the State, and the jury instruction, as a whole, was correct.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony. As a matter of general impression, this Court finds trial counsel's testimony was credible and persuasive on all matters, while also finding applicant's testimony and assertions lack credibility. These credibility findings have been applied to the Court's findings set forth below. Pursuant to S.C. Code Ann. §17-27-80, the Court makes the following findings of facts and conclusions of law based on the probative evidence presented.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland*, 466 U.S. at 686. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

MA #12

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, an applicant must prove counsel's performance was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds applicant has failed to carry his burden of proof and has not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by applicant:

Failure to strike juror #34 and deplete all strikes

Applicant alleges trial counsel was ineffective in failing to strike juror #34 and deplete all strikes to preserve the argument the trial judge should not have qualified jurors who indicated on a questionnaire they could not be impartial. (Amended App.p.1). This Court finds this claim is without merit.

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Applicant has failed to present any credible evidence to support this allegation. While the Sixth and Fourteenth Amendments provide a defendant with the constitutional right to a fair and impartial jury of his peers, this right does not entitle him to handpick a jury. *State v. Stanko*, 376 S.C. 571, 576, 658 S.E.2d 94, 97 (2008). The trial judge has a duty to ensure a jury of fair, impartial, and unbiased jurors is impaneled. S.C. Code Ann. §§ 14-7-1010 & 1020. To identify potential sources of bias, the judge must ask potential jurors whether they are aware of any bias or prejudice against a party—a process commonly known as *voir dire*. *State v. Woode*, 345 S.C. 583, 588, 550 S.E.2d 282, 284 (2001).

At trial, eleven people in the jury pool answered "yes" on at least one question on the questionnaire. (Oct. 6 Tr.p.6). The trial judge examined them each individually to determine if they could be fair and impartial. The judge explained to them the duties and responsibilities of a juror and asked if they could be fair to applicant and State. One indicated he could not be and the judge immediately excused him. (Oct 6 Tr.p.12). The other ten indicated they could be fair and impartial and the judge determined they were qualified to serve.

This Court finds trial counsel's testimony on this issue credible and supported by the record. Counsel testified, based on the information revealed during the oral examination, she did not believe it prudent to exercise a peremptory strike for juror #34, one of the ten who indicated he could be impartial. Counsel believed she needed to save her strikes for future and more compelling *voir dire* issues. Further, counsel testified she made an earlier motion to excuse all the individually questioned potential jurors, but the trial judge denied the motion. Both strategic decisions are entitled to deference by this Court. *See Strickland*, 466 U.S. at 689 (holding a petitioner must overcome the presumption that the challenged action taken by counsel is considered sound trial strategy). This Court finds counsel was not deficient.

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In addition, applicant failed to show he was prejudiced by the jury selected because he cannot demonstrate the jurors were not impartial and there is no evidence of bias. *See Stanko*, 376 S.C. at 576, 658 S.E.2d at 97 (explaining a defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury). Accordingly, this Court finds applicant has failed to meet his requisite burden of proof. This allegation is denied and dismissed with prejudice.

Failure to fully cross examine mother

Applicant next alleges trial counsel was ineffective in failing to fully cross examine the victim's mother. (Amended App.p.1). This Court finds this allegation is without merit as applicant has failed to establish what further cross examination of the mother would have brought out to the jury. The purpose of cross-examination at trial is "to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness." *State v. Gillian*, 360 S.C. 433, 451, 602 S.E.2d 62, 71 (Ct. App. 2004) *aff'd as modified*, 373 S.C. 601, 646 S.E.2d 872 (2007) (citing *Delaware v. Van Arsdall*, 475 U.S. 673 (1986)).

At trial, trial counsel elicited information from the mother that she never left the victim and applicant fully alone, she could see into the playroom, and applicant and her daughter sitting on the floor. (Oct. 7 Tr.pp.57-59). The record also demonstrates counsel tried to establish through questioning that the mother wanted to develop more than a friendship with applicant, but mother denied it. (Oct 7 Tr.p.61).

Both trial counsel and applicant testified about this issue at the evidentiary hearing. This Court finds counsel's testimony more credible than applicant's. Counsel testified she had a strategic reason for limiting the mother's cross examination and for asking the types of questions

she did—counsel did not want potentially harmful from her statement to investigators being heard by the jury. It also supported the defense theory applicant was not guilty of the crime because he did not have the opportunity to be alone with the victim or because the mother was being vindictive by bringing charges because applicant would not have sex with her. Therefore, because counsel had a valid, strategic reason for asking the types of questions she did during cross examination, her performance was reasonable. "When counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). The Court finds applicant cannot demonstrate counsel was deficient.

Applicant also fails to prove he was prejudiced by counsel's cross examination of the victim's mother. Counsel's cross examination and argument that she advanced at trial fully set forth enough information so the jury could properly assess the witness's credibility and counsel attempted to demonstrate the supposed lack of it regarding the nature of the relationship the mother wanted with applicant. *See, e.g., Fugate v. Head*, 261 F.3d 1206, 1219 (11th Cir. 2001) ("The decision as to whether to cross-examine a witness is a tactical one well within the discretion of a defense attorney" and absent a showing of a single specific instance where cross-examination arguably could have affected the outcome of "either the guilt or sentencing phase of the trial, an applicant is unable to show prejudice necessary to satisfy the second prong of *Strickland*") (citations omitted). Accordingly, this Court finds this allegation must be denied and dismissed with prejudice.

Failure to effectively cross examine or recall the child witness

Applicant next claims trial counsel was ineffective in failing to effectively cross examine or recall the child victim. (Amended App.p.1). This Court does not find this argument compelling.

Trial counsel's credible testimony at the evidentiary hearing before this Court was she wanted to be careful in cross examining the child victim and limit her testimony to avoid the possibility she blurted out something more harmful to applicant's case.

This Court notes the charges in this case involve applicant sexually abusing the victim, a five year old girl. The victim testified at trial, at which time she was seven years old. (Oct. 7 Tr.p.63). The cross-examination of a female child in sexual misconduct cases is a delicate task to be performed with care and caution. A review of the record in this case reveals trial counsel did just that. Counsel's questions were calculated to elicit only testimony counsel believed was necessary while treading carefully not to engage in meaningless debate over specifics or appear aggressive or condescending. This Court simply cannot find counsel's cross-examination, on the whole, unreasonable or deficient. Counsel attempted through her questioning to establish the child did not have a good memory about various events and to question her ability to recognize applicant. (Oct. 7 Tr. pp.68-72). Additionally, this Court believes it is pure conjecture to claim such further questioning would have potentially affected the outcome of the trial. Accordingly, this allegation is denied and dismissed with prejudice.

*Failure to argue the child witness's testimony at trial did not meet
S.C. Code Ann. § 17-23-175(A)'s requirements*

Applicant asserts trial counsel was ineffective in failing to argue the child witness's testimony at trial did not meet S.C. Code Ann. § 17-23-175(A)'s requirement that the child testify and be subject to cross examination because she was unable to remember the incident or to identify applicant in the courtroom. (Amended App.p.1). This Court finds this allegation is without merit.

This Court finds trial counsel was not deficient where the record shows counsel objected to the admission of the videotaped interview pursuant to S.C. Code Ann. § 17-23-175 during trial

on confrontation grounds—the very issue now raised to this Court. When the State sought to move the forensic interview into evidence, counsel objected and argued it violated applicant's constitutional rights to confront the child, a more general objection than the one applicant now asserts should have been used. (Oct. 7 Tr.pp.78-79). This was a renewed objection to the video's admission from the pre-trial hearing where counsel argued the interview violated the Confrontation Clause because applicant was not present to cross examine the child. (Oct. 6 Tr.pp.76-77). The trial court found the statutory requirements were met, in particular, because the child testified at the proceeding and was subject to cross examination. (Oct. 7 Tr.pp.79-80). As this Court found above, counsel effectively cross examined the child witness because she strategically chose to limit her questions to ensure the victim's answers would not be harmful to her client. This Court finds counsel credibly testified she felt she adequately addressed the forensic interview and did what she could to prevent its admission at trial. This Court will not second guess counsel's trial tactics and finds her strategy reasonable. See *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing *Goodson v. United States*, 564 F.2d 1071 (4th Cir. 1977)) (holding courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel). Moreover, this Court must make "every effort" to "eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. *Strickland*, 466 U.S. at 689. This Court finds counsel's efforts regarding the forensic interview were not deficient.

Because applicant cannot demonstrate the first prong of *Strickland*, he also fails to prove he was prejudiced by trial counsel's objection to the forensic interview and child victim's testimony. Particularly where there is nothing in the record to indicate the trial court would

have made a different ruling regarding the admissibility of the interview had counsel used different language, as argued by applicant, as counsel had already tried to prevent its admission twice and been unsuccessful. Accordingly, this Court finds this allegation must be denied and dismissed with prejudice.

Failure to argue the child witness was not a competent witness under Rules 601 and 602, SCRE, or that the video did not contain particularized guarantees of trustworthiness

Applicant next asserts trial counsel was ineffective for failing to argue the child victim's inability to remember the incident or to identify applicant showed she was not a competent witness under Rules 601 and 602, SCRE, or that the video did not contain particularized guarantees of trustworthiness required for its admission after the child was unable to remember the incident or identify applicant during her testimony. (Amended App.p.2). This Court finds this allegation is without merit and dismisses it with prejudice.

A child is competent to testify at trial if she, among other factors, is mature enough to understand the questions and answer them, know the difference between right and wrong, understand it is right to tell the truth and wrong to tell a lie, and be willing to tell the truth, and fear punishment if she lies. *S.C. Dep't of Soc. Servs. v. Doe*, 292 S.C. 211, 219, 355 S.E.2d 543, 547 (S.C. Ct. App. 1987). The competency of a child witness is not dependent on the content of her testimony, but rather on whether "the child is substantially rational and responsive to the questions asked." *Id.* at 219, 355 S.E.2d at 547.

Prior to the child's testimony, the trial court gave the jury a special instruction regarding child witnesses. (Oct 7 Tr.p.64). The court explained the jury would judge her credibility as they would any witness who testified, but cautioned children are different than other witnesses because of their age and it was up to the jury to "decide whether a child understands the seriousness of appearing as a witness in a criminal case, whether the child understands the

questions, whether the child has a good memory, whether the child understands the difference between lying and telling the truth." (Oct. 7 Tr.pp.64-65).

This Court finds trial counsel was not ineffective where counsel heard the testimony of the child and there was nothing to indicate the child was not a competent witness or that counsel could have realistically made that argument. The record demonstrates the child was responsive to the questions asked, answered all questions appropriately, and was a rational witness. *See Doe, supra*. During direct and cross examination, the child victim answered questions about who lived with her, where she went to school, her age, sleep-overs, who she recognized in the courtroom, among others. The child also acknowledged there were things she did not remember and when she did not know an answer. Accordingly, this Court finds applicant fails to prove either prong of *Strickland*—counsel cannot be ineffective for failing to make what would be a frivolous argument. *See Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (explaining an applicant bears the burden of proving the allegations in his or her application).

Next, this Court finds trial counsel was not ineffective in failing to argue the forensic interview did not possess particularized guarantees of trustworthiness based on the child victim's testimony. Similar to the allegation above, the Court finds counsel was not deficient particularly where there record demonstrates counsel objected to the admission of the videotaped interview pursuant to S.C. Code Ann. § 17-23-175(B) during trial—the very issue now raised to this Court. When the State sought to move the forensic interview into evidence, counsel objected and argued the interviewer used leading questions, the questions were suggestive in nature, the questions were repetitive and in multiple-choice form, and the protocol used was not scientific, a more general objection than the one applicant now asserts should have been used. (Oct. 7 Tr.pp.78-79). This was a renewed objection to the video's admission from the pre-trial hearing where

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counsel argued a similar motion. (Oct. 6 Tr.p.80). The trial court made specific findings in determining the statement possessed the particularized guarantees of trustworthiness. First, the court found the interviewer's questions did not suggest answers. Second, the interviewer's training was substantial and sufficient to allow her to conduct the interview. Third, the court found the statement represented a sufficiently detailed account of the offense such that if the evidence was believed by the jury, it would represent a detailed account of the offense. Fourth, the court found the nature of the questions did not obstruct the overall internal coherence of the victim's statements. Lastly, the court concluded the sworn testimony of the interviewer regarding the circumstances surrounding the interview was the only testimony necessary, in addition to the court's viewing of the videotape. (Oct. 6 Tr.p.84). During trial, the court again rejected counsel's argument leading questions were used, in particular, the court found the totality of the circumstances surrounding the making of the statement provided guarantees of trustworthiness. (Oct. 7 Tr.p.79-80).

This Court finds counsel's strategy reasonable where the record shows counsel objected to the admission prior to trial and again when the State moved to admit the video into evidence. *See Whitehead*, 308 S.C. at 122, 417 S.E.2d at 531 (holding courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel). Again, this Court finds counsel's testimony credible she felt she did what she could to prevent the forensic interview's admission at trial.

Because applicant cannot demonstrate the first prong of *Strickland*, he also fails to prove he was prejudiced by trial counsel's argument. Particularly where there is nothing in the record to indicate the trial court would have made a different ruling had counsel used different language

during the second motion to prevent the video's admission, as argued by applicant. The trial court ruled in the pre-trial hearing the only sworn testimony necessary for his decision was that of the forensic interviewer, so any other argument by counsel would not have been successful and this Court finds applicant cannot demonstrate prejudice. *See Strickland*, 466 U.S. at 687 (holding an applicant must show not only that counsel's performance was deficient, but that the deficiency prejudiced his defense). Accordingly, this Court finds this allegation must be denied and dismissed with prejudice.

Failure to argue in closing the child witness could not remember incident or identify applicant and other evidentiary issues

Applicant argues trial counsel was ineffective in failing to stress during closing argument the child witness was unable to remember the incident or identify applicant while under oath and point out that when the doctor who performed the forensic examination asked the child whether she had been hurt or touched she did not share any information which meant she said "no." (Amended App.p.2). This Court finds this allegation is without merit and applicant has failed to establish any deficiency of trial counsel regarding the claim.

"[C]losing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case." *State v. Mouzon*, 321 S.C. 27, 31, 467 S.E.2d 122, 125 (Ct. App. 1995) (quoting *Herring v. New York*, 422 U.S. 853 (1975)). Further, "it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole" because "[o]nly then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries' positions." *Mouzon*, 321 S.C. at 31, 467 S.E.2d at 125.

This Court finds trial counsel credibly testified her strategy was to preserve the last argument, argue applicant was not guilty, and the victim's mother was being vindictive by

bringing charges against applicant because he would not have a romantic relationship with her. Further, counsel stated during the evidentiary hearing her strategy was to argue to the jury the victim never made a clear statement about the allegations in the interview. This Court finds counsel did make such arguments during her closing, including the following portions:

It is important to note that Ms. Davis and Ms. Galloway testified that their interview process is a non-leading process. That's for you to decide. The video, as you've seen it, you have seen whether the questions were leading, whether the information was applied, whether there were choices given, whether words were planted in a five year old's mind. So you can recall that for yourself. (Oct 7 Tr.p.174).

[T]here were several times in the video [victim] kept saying to Ms. Davis, He did not touch me. And Ms. Davis's question would be, right after she said, He didn't touch me, her question would be, Well, how did it feel when he touched you? Is that suggestive? Is that planting an idea? (Oct 7 Tr.p.175).

Did you have your clothes on?

Yes, all my clothes were on.

What did you have on?

Shorts.

Another time in the interview, What did you have on?

Blue jeans.

Another time in the interview, What did you have on?

A dress.

This is coming from [victim]. (Oct 7 Tr.p.175).

Did he touch you under your clothes or on your clothes?

And [victim] would say, On the clothes.

And as the interview goes on, Did he touch your skin?

The testimony from Ms. Davis and or Ms. Galloway, one or the other, saying that well, she may not have understood the words on, in or under. Okay. That's very important. That's very important. The words touching on your clothing, touching on your skin or touching within your vaginal area. Those very important words because they are elements of the crime that is charged. CSC is having to prove an intrusion into the body part. [Victim] said that he didn't hug me, he didn't kiss me. (Oct 7 Tr.pp.175-76).

[Mother] herself testified they had a three month relationship. She testified to that. Maybe she'd see him once a week, maybe. Or on

the weekends or whatever the regularity of their visitation was. But she testified about texting him. (Oct 7 Tr.p.177).

[Victim] lived with her mother so she was probably talking to her mother about things. If she was talking to any other investigator – Investigator Mike, who she recognized very quickly, she recognized her mommy. Solicitor asked her, do you recognize anybody else? No. Okay, the reason for this picture is they want to try to tell you that she couldn't – [victim] couldn't recognize [applicant] because he looked so much different. I'm offering you this for your consideration. That as you deliberate and weigh the testimony and the evidence that has been presented to you, that you come back with a verdict of not guilty on CSC first and not guilty on CSC third. We submit to you that The State has not proved the elements of the crime as charged and we ask for a not guilty verdict from all of you. (Oct 7 Tr.p.178).

The record conclusively establishes counsel thoroughly noted throughout her closing argument the child did not make clear allegations against applicant and did not have a good memory, generally, and tied it directly to the defense strategy. Therefore, this Court finds counsel was not deficient in her performance.

Additionally, this Court finds applicant has failed to establish any prejudice from this purported deficiency as there is no likelihood the result of applicant's trial would have been different had counsel argued her closing any differently. Counsel pointed out the weaknesses in the State's case and the jury ultimately returned a verdict partially in applicant's favor when it found him not guilty of the more serious charge of first-degree CSC with a minor. Therefore, this allegation must be denied and dismissed with prejudice.

Ineffectiveness in advising applicant his prior conviction could be used against him

Next, applicant asserts trial counsel was ineffective in advising him his prior conviction could be used against him if he chose to testify at trial. (Amended App.p.2). This Court finds this allegation is meritless.

At trial, the trial court informed applicant the State could impeach him on his prior

conviction if he testified. (Oct 7 Tr.pp.143-44). However, because it was a second-degree CSC with a minor and similar to the offense for which applicant was currently on trial, the State would be limited to asking if he had been convicted of a prior felony, but could not ask him about the specific charge. (Oct 7 Tr.p.144). The court proceeded to engage in a colloquy with applicant wherein his rights were explained to him, he had a short conference with trial counsel, and he chose not to testify. (Oct 7 Tr.pp.144-46).

Before this Court, applicant testified he talked to trial counsel about his prior criminal record when they discussed whether or not he should take the stand to testify at trial. Counsel testified she explained applicant's constitutional rights to him and he told her he did not want to testify at trial because of his criminal history and because he was still on probation.

This Court finds trial counsel's testimony more credible than applicant's on this issue. The record demonstrates applicant voluntarily chose not to testify following pre-trial discussions with counsel, a lengthy colloquy with the trial court, and a discussion at trial with counsel following the court's decision regarding his prior CSC charge. Further, counsel testified applicant always told her he did not want to testify so any advice she gave him regarding his prior charge was made in the context of that strategy. *See Strickland*, 466 U.S. at 691 (stating counsel's actions are often based on information supplied by the defendant). This Court finds counsel was not deficient.

This Court also finds applicant has failed to demonstrate trial counsel's advice prejudiced him in any way. *See Jackson v. State*, 329 S.C. 345, 352-53, 495 S.E.2d 768, 772 (1998) (holding advising applicant not to testify is a valid strategic decision not prejudicing him where applicant had prior convictions for crimes of moral turpitude). The trial court had already ruled the nature of applicant's prior conviction could not be raised and the State would be limited to

asking him if he had been convicted of a prior felony. Further, if applicant testified, the State could have tested his version of events. This Court finds applicant has not met his burden of demonstrating the result of trial would have been any different. Therefore, the Court finds applicant has failed to meet his burden regarding his allegation and it must be denied and dismissed with prejudice.

Failure to object to "find the truth" language

Finally, applicant alleges trial counsel was ineffective in failing to object to the trial court's closing instructions to the jury in which he told jurors, "Your job, your objective is to find the truth." (Amended App.p.2); *see also* (Oct 7 Tr.p.180). This Court finds applicant has failed to meet his burden as to this allegation.

At the evidentiary hearing, this claim was primarily addressed through testimony by trial counsel. Counsel testified she did not object to the language because she did not think the charge was objectionable. Counsel stated language was used in the context of the jury's role in the case and was not near the burden of proof instruction. Counsel testified the charge was not prejudicial to her client because it did not shift the burden away from the State, and the jury instruction, as a whole, was correct.

On this issue, our State Supreme Court has cautioned "[j]ury instructions on **reasonable doubt** which charge the jury to 'seek the truth' are disfavored because they '[run] the risk of unconstitutionally shifting the burden of proof to the defendant.'" *State v. Aleksey*, 343 S.C. 20, 26-27, 538 S.E.2d 248, 251 (2000) (emphasis added). However, the *Aleksey* court went on to hold because the "truth-seeking" instruction in that case was "given in the context of the jury's role in determining the credibility of witnesses" there was "not a reasonable likelihood the jury applied the challenged instruction in a manner inconsistent with the burden of proof beyond a

reasonable doubt." *Id.* at 28-29, 538 S.E.2d at 252. The court cautioned the circuit courts to abandon the truth-seeking language in future charges, but held that the instruction as a whole in that case was a correct statement of law and found no basis for reversal on that ground. *Id.*

The recent opinion in *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018), revisited the *Aleksey* decision and held a preliminary instruction using the phrases "search for the truth," "true facts," and "just verdict" were delivered in error but caused no prejudice warranting reversal where the instruction appeared in the preliminary remarks to the jury and, again, did not speak to the State's burden of proof. *Beaty*, 423 S.C. at 33, 813 S.E.2d at 506. The *Beaty* court held "the disputed comments can be distinguished from *Aleksey* because they were a mere statement to the jury and not a charge on the law." *Id.* at 34, 813 S.E.2d at 506. Further, the remarks were not linked to either the reasonable doubt or the circumstantial evidence charges as was condemned in *Aleksey*. *Id.*

This Court finds that the jury instruction applicant cited do not form the basis for a grant of post-conviction relief. The instruction delivered in this case is limited to a single line at the very beginning of a lengthy jury instruction. The limited nature of this phrase imparted no duty upon counsel to object in light of the *Aleksey* decision, which existed at the time of trial, and the failure to object to this limited phrase did not rendered counsel's performance deficient. Further, the lack of objection to the charges excerpted above did not prejudice applicant because the trial court's issuance of any language pertaining to the jury's role at trial did not address the burden of proof the jury was to apply to its deliberations. The cited instruction referenced only the jury's role in the greater scheme of the trial and role to deliver a unanimous verdict. The relevant case law makes it clear the instruction did not prejudice applicant because it spoke only generally to the jury's role as the factfinder. The instruction was not anywhere near the burden of proof

instruction and did nothing to shift the burden from the State. There is no reasonable possibility of a different outcome had counsel lodged an objection to the instruction. Accordingly, pursuant to *Aleksey and Beaty*, this Court finds applicant has failed to demonstrate *Strickland* error-and-prejudice warranting a grant of relief.

CONCLUSION

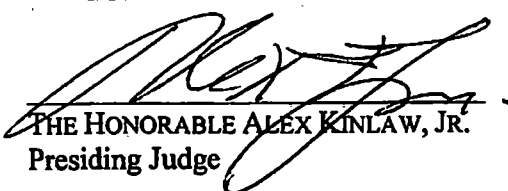
Based on the foregoing, this Court finds applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief.

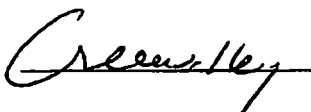
The Court notes the applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek review, PCR counsel must file a notice of appeal on the applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for further procedures for appeal.

IT IS THEREFORE ORDERED:

1. The PCR application is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12 day of December, 2018.


THE HONORABLE ALEX KINLAW, JR.
Presiding Judge

, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR THIRD DEGREE

At a Court of General Sessions, convened on

FEB 19 2013

the Grand Jurors of Greenville

County present upon their oath:

That MICHAEL EDWARD WILLIAMS did in Greenville County, on or about the 31st day of March, 2012, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of C. S-B, a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-03-0655 (C) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

Michael Robertson

Greenville County Sheriffs Office

6/12/2012

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DOB: 1/1965 WM SSN: [REDACTED]

2013 45230048A

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013 2012-GS-23-LAB

000698A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS
February

2013
TERM 2012

THE STATE

vs.

MICHAEL EDWARD WILLIAMS

Indictment for

3661

CRIMINAL SEXUAL CONDUCT WITH A MINOR
THIRD DEGREE

VIOLATION § 16-03-0655 (C)

ENTERED
ACCT.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE

At a Court of General Sessions, convened on FEBRUARY 19, 2002 the
Grand Jurors of Greenville County present upon their oath:

That MICHAEL EDWARD WILLIAMS did in Greenville County, on or about the 24th day of August, 2001 or the 25th day of August, 2001, commit a sexual battery on A.B.E., who was fourteen years of age or less but who was at least eleven years of age. This is in violation of §16-3-655(2) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Thomas J. Davis
SOLICITOR

WITNESSES

INV. L. HENDERSON *Hildebrandt/s*

GCSO

10/01/01

ARREST WARRANT NUMBER

G 453992

ACTION OF GRAND JURY

TRUE BILL

Don Holman
EMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2002-GS-23-

TJQ

C1384

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

4/15/02
FEBRUARY TERM 2002

THE STATE

vs.

PLEAD GUILTY
MICHAEL EDWARD WILLIAMS

Karher
Indictment for

0396

CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE

VIOLATION § 16-3-655(2)

5-42

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF GREENVILLE) ATTEMPTED CRIMINAL SEXUAL CONDUCT WITH A
) MINOR
) SECOND DEGREE

At a Court of General Sessions, convened on FEBRUARY 19, 2002 the

Grand Jurors of Greenville County present upon their oath:

That MICHAEL EDWARD WILLIAMS did in Greenville County, on or about the 1st day of September, 2001, attempt to commit a sexual battery on A.B.E., who was fourteen years of age or less but who was at least eleven years of age. This is in violation of §16-3-655(2) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

THOMAS J. QUINN
SOLICITOR

WITNESSES

L. HENDERSON *Hildebrandt*

GCSO

10/01/01

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

ACTION OF GRAND JURY
TRUE BILL

Joan Zilmer

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2002-GS-23-^{TJQ} C1385

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2002

THE STATE

vs.

MICHAEL EDWARD WILLIAMS

ENDED

APR 16 2002

Indictment for

0396

ATTEMPTED CRIMINAL SEXUAL CONDUCT
WITH A MINOR
SECOND DEGREE
VIOLATION § 16-3-655(2)

544

02-23-1385