

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

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APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

Case Nos. 2010-GS-32-1860; 2010-GS-32-1861

State of South Carolina,

Respondent,

v.

Lance Austin Williams,

Appellant.

RECORD ON APPEAL

VOLUME 2 OF 2

Richard A. Harpootlian
Graham L. Newman
M. David Scott
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street
Post Office Box 1090
Columbia, South Carolina 29202
Telephone (803) 252-4848
Facsimile (803) 252-4810

ATTORNEYS FOR APPELLANT

Alan Wilson
Attorney General
John W. McIntosh
Chief Deputy Attorney General

Salley W. Elliott
Senior Assistant Deputy Attorney General
Harold M. Coombs, Jr.
Senior Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

Donald V. Myers
Solicitor, Eleventh Judicial Circuit
Lexington County Judicial Center
205 East Main Street
Lexington, South Carolina 29072
(803) 785-8352

ATTORNEYS FOR RESPONDENT

May 7, 2012

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Appellant additionally designated State's Trial Exhibits Number 9, 10, 11, 13, 14, 16, 19, and 20. These exhibits are photographs and diagrams in the possession of the Lexington County Clerk of Court. Appellant has contemporaneously filed a Motion pursuant to Rule 210 (f), SCACR, asking the Court direct the Lexington County Clerk of Court to deliver these exhibits to the Clerk of the South Carolina Court of Appeals.

1 THE COURT: All right. Thank you. Thank you
2 very much. All right. Ladies and gentlemen, I must take
3 up a matter outside of your presence. I'm going to give
4 y'all a 15-minute recess while I take this matter up.
5 Please do not discuss the case during this brief recess.
6 I'll also find out where we're at administratively. Thank
7 you very much. You may now go with your bailiff.

8 (The jury retires to the jury room.)

9 THE COURT: All right. Thank you, Mr. Corley.
10 Mr. Snell or Mr. Floyd, any motions?

11 MR. SNELL: Yes, Your Honor.

12 THE COURT: All right.

13 MR. SNELL: Your Honor, first---

14 THE COURT: Would you mind coming around to the
15 podium for me, Mr. Snell.

16 MR. SNELL: Not at all, Your Honor. I'll try to
17 speak up.

18 THE COURT: Thank you.

19 MR. SNELL: Your Honor, the Defendant would make
20 initially a motion for directed verdict on the indictment
21 for unlawful neglect of a child. Your Honor, in the
22 indictment, the State alleges that the Defendant, while
23 having been responsible for the welfare of the child, did
24 or caused to be done unlawfully or maliciously bodily harm
25 to the child so that the life or health of the child is

1 endangered---

2 COURT REPORTER: I'm sorry. Back up, please.

3 For the welfare of the child, did or caused to be done
4 unlawfully or maliciously---

5 MR. SNELL: Any bodily harm to the child so that
6 the life or health of the child is endangered or likely to
7 be endangered, to wit, did strike the victim causing
8 bruises to several areas of her body, and then references
9 the statute 63-7-20, as well as 63-5-70. Now, Your Honor,
10 assuming the facts presented, taken in the light most
11 favorable to the State, Brittany Brown, the mother of

12 , and the Defendant, Lance Williams, had been
13 dating for only approximately four months. During the time
14 that they'd been dating, Brittany primarily lived with her
15 father, Kevin. A few weeks before the incident of April
16 15th, Brittany moved in with her friend, LeeAnn Harvey.
17 Lance Williams was staying, according to testimony, with
18 Brittany Brown three or four overnights per week. Lance
19 Williams was not the biological father of
20 Lance Williams did not have legal custody of

21 . Another man, identified as Adam Cooper, was known
22 to be the father of , and he paid a hundred
23 dollars a week in child support. Lance Williams had not
24 been unsupervised with prior to April 15th.
25 This was his first direct supervision of the child. Now,

1 the language, responsible for a child's welfare, is taken
2 from 63-7-20, subpart 16, which states that a person
3 responsible for a child's welfare includes the child's
4 parent, guardian, foster parent and operator, employee or
5 caregiver, as defined by Section 63-13-20, of a public or
6 private residential home, institution, agency or childcare
7 facility, or an adult who has assumed the role and
8 responsibility of parent or guardian for the child but who
9 does not necessarily have legal custody of the child. A
10 person whose only role is as a caregiver and whose contact
11 is only incidental with the child, such as a babysitter or
12 a person who has only incidental contact, may not be a
13 caregiver, has not assumed the role or responsibility of a
14 parent or guardian. Illustratively, I think what this
15 language means, as far as another adult who assumes the
16 role or responsibility of a parent or guardian, the
17 reference, one of the few references made by the Court, the
18 State Supreme Court, in *Ex parte: Morris*, which is 367
19 S.C. 56, a 2006 case--and this is a case dealing with a
20 family court action based on the standing of a custodian--
21 the Court commented that the Legislature contemplated non-
22 relatives often may play a crucial and important role in
23 the life and well-being of a child, particularly when the
24 parents---

25 THE COURT: I'm sure my court reporter is not

1 getting this down, Mr. Snell.

2 COURT REPORTER: May play a crucial and---

3 THE COURT: All right. You may continue.

4 MR. SNELL: May play a crucial and important role
5 in the life and well-being of a child, particularly when
6 parents or relatives turn away from the child. So, in this
7 case, there is no evidence that either parent or relative
8 had turned away from or had abandoned her.
9 She lived with her mother, and she had contact and a
10 relationship with her father and the extended family.
11 There is no evidence that Lance Williams provided financial
12 support or assumed any other role as a caregiver or other
13 responsibility. So we make a motion for directed verdict
14 in that, as written by the statute, we're entitled to a
15 directed verdict as a matter of law in that Lance Williams
16 was not a person responsible for a child's welfare as it
17 triggers 63-5-70 and this indictment for unlawful neglect
18 of a child.

19 THE COURT: All right. Do you have other
20 motions, Mr. Snell?

21 MR. SNELL: Yes, Your Honor. Your Honor, with
22 regard to the other charge of criminal sexual conduct with
23 a minor in the first degree, the statute states, 63--excuse
24 me--16-3-655, that a person is guilty of criminal sexual
25 conduct with a minor if the actor engages in a sexual

1 battery with a victim who is less than 11 years of age.
2 Sexual battery is defined, under 16-3-651, as sexual
3 intercourse, cunnilingus, fellatio, anal intercourse or any
4 intrusion, however slight, of any part of a person's body
5 or of any object into the genital or anal openings of
6 another person's body except when such intrusion is
7 accomplished for medically recognized treatment or
8 diagnostic purposes. Your Honor, taking the evidence
9 presented in the light most favorable to the State,
10 had abrasions on her labia minora as well as
11 a bruised hymen. The medical testimony has been that the
12 hymen is outside of the genital opening or the vaginal
13 opening of the child. So there's been no evidence
14 presented of any penetration into the opening.

15 THE COURT: Into what opening?

16 MR. SNELL: Into genital
17 opening.

18 THE COURT: Genital opening?

19 MR. SNELL: Yes, Your Honor.

20 THE COURT: All right.

21 MR. SNELL: The testimony is that it was a
22 bruised hymen and the hymen sits on the outside of the
23 vaginal canal, which would be the genital opening.
24 Everything---

25 THE COURT: What are you defining as the genital

1 opening?

2 MR. SNELL: The vagina.

3 THE COURT: All right. So there's no vaginal
4 penetration.

5 MR. SNELL: Right, Your Honor.

6 THE COURT: All right.

7 MR. SNELL: Only a bruised hymen. And, based on
8 the statute defining what sexual battery is, there is no---
9 I mean, the warrant and the indictment doesn't allege
10 sexual intercourse, doesn't allege cunnilingus, does not
11 allege fellatio, does not allege anal intercourse. And,
12 simply, we have an allegation of a digital contact
13 resulting in a bruised hymen which sits on the outside of
14 the vaginal canal. So, taking this evidence in the light
15 most favorable to the State, there is no evidence of a
16 sexual battery as defined by the statute. So we make a
17 motion for directed verdict on those grounds for the charge
18 of criminal sexual conduct with a minor in the first
19 degree.

20 THE COURT: Thank you. Thank you very much. Any
21 other motions, Mr. Snell?

22 MR. SNELL: Nothing further, Your Honor.

23 THE COURT: All right. Thank you. Solicitor, if
24 you would take them in the same order in which Mr. Snell
25 argued them.

1 MS. MAYES: Yes, sir, Your Honor. May it please
2 the Court. In reference to the first motion for directed
3 verdict concerning the charge of unlawful conduct towards a
4 child, there is no requirement under the statute that the
5 Defendant or that any defendant have legal rights or legal
6 custody of a child. It's whether they assumed the role or
7 responsibility of a parent or guardian for the child in the
8 sense of becoming responsible for their welfare beyond that
9 of a babysitter or a person with only incidental contact.
10 And, in this particular case, it has been established,
11 through witnesses as well as, I submit, by the Defendant's
12 own statement, that his involvement with was
13 beyond that of a babysitter or a person with incidental
14 contact. It has been established that his relationship
15 with Brittany Brown was a romantic relationship, that they
16 were a couple and that, as a couple, they were getting to
17 the point, as Brittany Brown explained, of making plans for
18 the future, of moving in together. At this point in time,
19 they were acting as a family unit, which would be Brittany
20 Brown, Lance Williams and the child,
21 There's also testimony that occasionally the Defendant's
22 daughter would also come over and spend time with the three
23 of them. His contact at the home was more than incidental;
24 it was contact that began when she resided at her father's
25 home which occurred with him spending the night several

1 nights a week. And then, when she moved into the second
2 home, the home of LeeAnn Harvey, he, again, continued this
3 pattern of staying over in the home several nights a week
4 as the mother's paramour. And, throughout this time, as
5 the testimony has established, he took on various, various
6 roles with . . . He took some degree of discipline
7 with her. The testimony of Brittany Brown was that he
8 would provide verbal or constructive type discipline to her
9 as well as she provided as the parent. And then, by his
10 statement to the officer, he indicated that he disciplines
11 ; and those were his words. And his statement was
12 that he spans her. And he further stated that, on this
13 particular occasion, he elected to discipline her by
14 striking her. And, in addition to that, according to his
15 statement, he was providing some type of medical care for
16 her concerning the application of some type of cream or
17 lotion although the State certainly has a question as to
18 the validity of that particular statement. But, be that as
19 it may, Your Honor, his intent where is concerned
20 has been established by the circumstances and, I submit,
21 can ultimately be inferred by the circumstances of what his
22 intentions were. It's clear that he was acting in another
23 form, as more than just an incidental caregiver. He was
24 providing a bath to not just on this occasion but
25 also the night before and other occasions and that he also

1 helped dress her. I believe, on this particular day, the
2 testimony was that they woke up, he assisted in dressing
3 , none of that out of the ordinary because he had,
4 as I submit has been established through the testimony,
5 taken on the role or responsibility of a parent or guardian
6 or akin to a parent or guardian, more than mere incidental
7 contact and more than a mere babysitter, as a result of his
8 relationship with the mother and with the child.

9 THE COURT: All right. And then the second
10 indictment, Solicitor?

11 MS. MAYES: Your Honor, this particular charge,
12 the definition of sexual battery includes any intrusion,
13 however slight, into the vaginal opening. It's the State's
14 position that Dr. Luberoff was clear, unmistakably clear,
15 that this was a penetrating injury into the vaginal opening
16 of the child and that she had bruising all around the hymen
17 area and that that particular structure, the location of
18 that structure, and the force necessary to cause the
19 bruising was diagnostic of a penetrating injury. And, by
20 penetrating, she described that being penetration into the
21 vaginal opening, through the labia where she had noted
22 there to be abrasions.

23 THE COURT: Thank you, Solicitor. Do you care
24 to respond, Mr. Snell?

25 MR. SNELL: Just briefly, Your Honor. There is

1 no evidence. I think, again, the Solicitor is trying to
2 rely upon some testimony that Brittany Brown may have had
3 about she had future plans with Mr. Williams to begin a
4 family or have a long-term relationship. That is something
5 that was a future event. That hasn't happened, certainly
6 no ring or no date. He had not--- There was no evidence or
7 testimony that he ever did anything as far as her care or
8 supervision until the 15th unless it was simply incidental,
9 such as I think there might have been some testimony that
10 he would watch her while the other, Brittany or another
11 adult was in the house or while they cooked dinner a time
12 or two. He's not taking her to the doctor; he's not doing
13 anything else that a parent or someone responsible for a
14 child would tend to do. He's only in the house halftime,
15 and I don't believe that would be sufficient under the
16 statute. And, simply as a matter of law, he is not a
17 legally responsible person. With regard then to the issue
18 of the CSC, there is no testimony. The evidence and
19 testimony is that we did not go into, or Mr. Williams did
20 not go into the vaginal opening, only in the exterior
21 portion, in an area where the exterior would be ancillary
22 and incidental to a diaper change. There's no evidence of
23 anything beyond that that would give rise to a sexual
24 battery or trigger the CSC statute.

25 THE COURT: Thank you. Thank you, Mr. Snell. As

1 to the first issue, in the analysis under a review of
2 63-7-20, as the defense attorney points out, subsection 16,
3 they found their motion for directed verdict on the
4 interpretation of person responsible for the welfare of a
5 child. That particular subsection reads that it includes
6 the child's parent which Mr. Williams is not, the child's
7 guardian which he is not, the foster parent which he is
8 not, operator, employee, or caregiver as defined by section
9 63-13-20 of a public or private residential home,
10 institution, agency or childcare facility which he is not,
11 or an adult who has assumed the role or responsibility of a
12 parent or guardian for the child but who does not
13 necessarily have legal custody of the child. A person
14 whose only role is as a caregiver and whose contact is only
15 incidental with a child, such as a babysitter or a person
16 who has only incidental contact, may not be a caretaker,
17 has not assumed the role or responsibility of a parent or a
18 guardian. Listening to the testimony of Ms. Brown, Ms.
19 Harvey and Ms. Hutto, taking the motion in the light most
20 favorable to the State, I think there is direct evidence
21 and substantial circumstantial evidence for the case to go
22 to the jury for the determination of whether or not Mr.
23 Williams is a person responsible for the welfare of the
24 child, i.e., an adult who has assumed the role or
25 responsibility of a parent or guardian for the child but

1 who does not necessarily have legal custody of the child.
2 He is clearly more than a babysitter or a person who has
3 only incidental contact. He stays overnight at the house.
4 He shares that house more than, or that trailer, more than
5 four out of seven days. That's more than 50 percent. If
6 it's three out of seven, that's 40 percent or whatever the
7 numbers come out to be. Further, there is testimony that
8 he bathes the child, that he disciplines the child, that he
9 feeds the child, that he changes the child's diapers, that
10 he interacts with the child while the mother of the child
11 is cooking supper or doing other types of duties. So
12 that's clearly more than a babysitter that typically is one
13 that's paid X for so many hours when the parent or parents
14 go out for an evening or go to some other location just for
15 a brief period of time. He's clearly more than a person
16 who has only incidental contact. Again, that's giving the
17 standard I must apply at this time, looking at the motion
18 in the light most favorable to the State as I must do at
19 this time. Further, I looked at *In Re: Morgan*, and another
20 case; I believe it was *State v. Foster* or *South Carolina*
21 *DSS v. Foster* I believe. As to second indictment, as to
22 criminal sexual conduct and the issue of penetration, there
23 is testimony by Dr. Luberoff that the genital area of the
24 child was bruised, it was not normal, it was bruised
25 outside, the hymen was bruised, there was torn tissue. It

1 was diagnostic, in her testimony on direct, of vaginal
2 penetration. There is further testimony, based on the
3 vaginal bleeding, that it would have to be an extreme
4 injury, very deep and internal injury with penetration.
5 When I look at 16-3-655-H, which is the definitional
6 standard of sexual battery under our Code, it reads, quote,
7 sexual battery means sexual intercourse, cunnilingus,
8 fellatio, anal intercourse or any intrusion, however
9 slight, of any part of a person's body or of any object
10 into the genital or anal openings of another person's body
11 except when such intrusion is accomplished for medically
12 recognized treatment or diagnostic purposes. I look then
13 to *State v. Morgan*. *State v. Morgan* was a criminal sexual
14 conduct case with a minor that involved cunnilingus. It
15 defines the genital organs not to be only the vagina, and
16 it held that vaginal penetration is not required to be
17 convicted of criminal sexual conduct with a minor. Now,
18 again, that's the sexual battery of cunnilingus. In that
19 case, there was not allegations of digital penetration. So
20 I think, if you look at the plain meaning of the statute,
21 our Legislature did not intend intrusion to be only vaginal
22 penetration but genital because that is the term they use,
23 any object into the genital opening of another person's
24 body. Based on the doctor's testimony and the statement
25 given by the Defendant to the officer, I think it's a

1 question for the jury in looking at it in the light most
2 favorable to the State at this point as I must do. I think
3 there's substantial--- I think there's substantial direct
4 and substantial circumstantial evidence in the case in that
5 regard. Further, I reviewed two cases, one, *People v.*
6 *Quintana*, Q-U-I-N-T-A-N-A, Court of Appeals, First
7 District, Division IV, out of the State of California, a
8 2001 case; and I also reviewed another case. I'm going to
9 read from it before I cite it because I have it keyed up.
10 It used--- This statute used the term sexual penetration as
11 opposed to sexual battery; however their language is the
12 same. Sexual penetration is defined to include any
13 intrusion, however slight, of any part of the actor's body
14 into the genital or anal openings of the victim's body.
15 Furthermore, genital openings means the internal or
16 external genitalia, including, but not limited to, the
17 vagina, the labia majora, the labia minora, L-A-B-I-A M-I-
18 N-O-R-A, the vulva, V-U-L-V-A, the urethra, U-R-E-T-H-R-A,
19 or the perineum, P-E-R-I-N-E-U-M. This was a digital
20 penetration case in which the Defendant argued the
21 conviction should be reversed because the State failed to
22 demonstrate that some penetration occurred. That Court
23 disagreed with that defendant. That cite is the *State of*
24 *New Hampshire v. Flynn*, 855 Atlantic 2d 1254, a 2004 case.
25 So, given that, I would deny the motion for directed

1 verdict. All right. Does the Defendant intend to produce
2 any evidence or testimony, Mr. Floyd, Mr. Snell?

3 MR. SNELL: Your Honor, we would need to discuss
4 that with the Defendant if we may.

5 THE COURT: When?

6 MR. SNELL: If we may discuss--- We request an
7 opportunity to discuss that with the Defendant.

8 THE COURT: All right. Do you want to do that
9 now?

10 MR. SNELL: Yes, Your Honor.

11 THE COURT: Well, we'll take about a 15-minute
12 recess.

13 (Whereupon, a recess is taken.)

14 THE COURT: All right. Mr. Williams, would you
15 and Mr. Floyd and Mr. Snell come around to podium, please?
16 Madame Clerk would you place Mr. Williams under oath?

17 CLERK: Yes, sir.

18 WHEREUPON, LANCE AUSTIN WILLIAMS, is
19 first duly sworn.

20 THE COURT: Mr. Williams, I need to go over some
21 things with you. I have to do this with everyone who's on
22 trial, and I need your responses to be under oath. That's
23 why I placed you under oath. Do you understand?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: How old are you?

1 THE DEFENDANT: Twenty-five.

2 THE COURT: How much education do you have?

3 THE DEFENDANT: I have a high school diploma.

4 THE COURT: We've reached the stage of the trial
5 where the State has rested and your side, the defense, now
6 has the opportunity to present evidence for the jury to
7 consider. Do you understand where we're at in the trial?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: In that regard, you may call
10 witnesses to testify. If you choose to testify yourself,
11 you may do so. Do you understand?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: No one can force you to testify. You
14 have an absolute right to remain silent; and, if you choose
15 not to testify, I will tell the jury that they cannot hold
16 your silence against you in any way. I will tell them they
17 are not to even discuss the fact that you did not testify
18 in the jury room. Do you understand?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: If your side offers no evidence at
21 all, in other words, if neither you nor anyone on your
22 behalf testifies or offers any exhibits, then your attorney
23 will get to make the last argument to the jury. Otherwise,
24 the prosecutor gets to make the last argument. Do you
25 understand?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Solicitor, does Mr. Williams have any
3 prior criminal history that would subject him to
4 impeachment under Rule 609?

5 MS. MAYES: No, sir, Your Honor.

6 THE COURT: All right. The decision about
7 whether you testify or not is your decision to make and
8 yours alone. I expect that you have conferred with your
9 attorneys or with others whose opinions you value on
10 important decisions, but the decision about whether you
11 testify or not is your call, your decision. Do you
12 understand?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Has anyone exercised any undue
15 influence over you to get you to choose to testify or not
16 to testify?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Today, are you under the influence of
19 any drugs, alcohol, medication or anything that negatively
20 affects your thinking ability?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Do you suffer from any physical,
23 emotional, mental or nervous problem that negatively
24 affects your thinking ability today?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: Do you have any questions that you
2 would like to ask me about your right to testify or not to
3 testify?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Do you have any questions that you
6 would like to ask me about where we're at in the trial at
7 this time?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: All right. Have you made your
10 decision at this time or not?

11 THE DEFENDANT: Yes, I have, Your Honor.

12 THE COURT: Is that correct, Mr. Floyd?

13 MR. FLOYD: He's made his decision, yes, Your
14 Honor.

15 THE COURT: All right. And whatever decision
16 you've made, is that your decision?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Of your own free will and accord?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And what is your decision?

21 THE DEFENDANT: My decision is to testify, Your
22 Honor.

23 THE COURT: All right. Thank you. Thank you
24 very much, Mr. Williams. You may be seated?

25 THE DEFENDANT: Thank you, Your Honor.

1 THE COURT: All right. I find that the Defendant
2 has made a decision to testify and that decision is made
3 freely, knowingly and voluntarily. With that being said, I
4 believe I'll bring the jury out and release them for the
5 evening hours, and we will start back in the morning. Any
6 objections to that, Solicitor?

7 MS. MAYES: None from the State, Your Honor.

8 MR. SNELL: None from the Defendant, Your Honor.

9 THE COURT: All right. Bring us our jury,
10 please.

11 (The jury returns to the courtroom.)

12 THE COURT: All right. Mr. Archie?

13 JUROR: Yes, sir.

14 THE COURT: Raise your hand. All right. That's
15 correct. I thought that was Mr. Archie. Mr. Archie, I'm
16 going to appoint you as the foreperson of this jury. We
17 had an election while y'all were out a few minutes ago.
18 And, although there are many fine candidates--and I will
19 tell you it's a great field of candidates for foreperson--
20 but I'm going to appoint you as the foreperson of the jury.
21 Momentarily, I'm going to release y'all from your jury
22 service for the evening hours. Upon your return, I'm going
23 to ask you if you'll take this first seat where this young
24 lady is sitting, and you'll be the jury's spokesperson here
25 in courtroom and responsible for writing and signing the

1 verdicts. I will explain more to you about that in my
2 remarks to the jury. The State has rested its case and its
3 case in chief. Given that, I believe we'll take our
4 evening recess at this time. We'll start back fresh in the
5 morning. Please remember several things: First, the State
6 is the party that has the burden of proving its case beyond
7 a reasonable doubt. A defendant in a criminal case, no
8 matter the seriousness of the charges, is presumed to be
9 innocent and does not have to present any evidence or
10 testimony or prove himself or herself innocent. I remind
11 you, during this evening recess, you're not to discuss this
12 case with others including your fellow jurors, family,
13 friends or anyone else. Do not read, listen to or watch
14 any news reports of the case. Do not use your computer,
15 cellular phone or other electronic device with
16 communication capabilities or any other method to disclose
17 any information about case. Information, of course,
18 includes, but is not limited to, information about a party,
19 a witness, an attorney or a court officer, any news
20 accounts of the case, any information collected through
21 your research on any topics raised or testimony offered by
22 any witness or any information that you, on research on any
23 topic, that you might think would be helpful in deciding
24 the case. As I told you earlier in the week, that you
25 would probably be able to repeat that before the trial was

1 over. You have to decide the case based on the evidence
2 and the testimony you hear presented in this courtroom from
3 the witnesses testifying under oath from the witness stand
4 and any other documents or exhibits that are presented into
5 evidence. Remember to keep an open mind. Do not begin
6 your deliberations until you've heard all the evidence, all
7 the testimony, the closing arguments by the attorneys and
8 the instruction on the law by the Court. Since we're
9 quitting early today, I would like to start early in the
10 morning if that's possible. 8:30? Does anyone have a
11 problem with 8:30, child care problems, anything of that
12 nature? All right. If there're no problems then, if y'all
13 would please be back in your jury room promptly at 8:30
14 a.m. You're now excused for the evening hours. I hope
15 y'all have a pleasant evening. Thank you. Thank you very
16 much.

17 (The jury is excused for the day at 6:34 p.m.)

18 THE COURT: Mr. Floyd, Mr. Snell, do y'all need
19 to confer with your client tonight at the detention center?

20 MR. SNELL: Yes, Your Honor.

21 THE COURT: Sheriff, could you make sure they get
22 that message and make arrangements? And what time would
23 you like Mr. Williams over here in the morning?

24 MR. SNELL: 8:00 a.m.

25 THE COURT: All right. Can you also make

1 arrangements for that, Sheriff, so that Mr. Williams is
2 here promptly to confer with his attorneys at 0800 hours?
3 Anything further, Solicitor?

4 MS. MAYES: Nothing from the State, Your Honor.

5 THE COURT: Mr. Snell?

6 MR. SNELL: Nothing further, Your Honor.

7 THE COURT: Any requests to charge?

8 MS. MAYES: Not at this time, Your Honor, and I
9 will review that tonight.

10 MR. SNELL: Same thing, Your Honor.

11 THE COURT: Has anyone thought of a lesser-
12 included offense on CSC?

13 MR. FLOYD: We have thought of that, Your Honor.

14 THE COURT: All right. Thank you very much.
15 Court will be in recess until the 8:30 in the morning. I
16 hope y'all have a pleasant evening.

17 (Whereupon, the proceedings were concluded for
18 March 31, 2011.)

19 (The following proceedings were reported on April
20 1st, 2011.)

21 THE COURT: All right. Anything from the State
22 before we bring in our jury, Solicitor?

23 SOLICITOR: Yes, sir, Your Honor. In regard to a
24 potential defense witness, Mr. Selman Watson.

25 THE COURT: That's Watson?

1 MS. MAYES: Mr. Watson, yes, sir, Your Honor.

2 THE COURT: Mr. Watson?

3 MS. MAYES: Yes, sir. If he is going to testify
4 as an expert, the State would request to know exactly what
5 issues he may be proffered on concerning his expertise.

6 THE COURT: Mr. Snell?

7 MR. SNELL: Yes, Your Honor. And, Your Honor,
8 the State was provided with kind of a summary dated January
9 of 2011. However, we're not anticipating calling Dr.
10 Watson as a witness.

11 SOLICITOR: Okay. Well, it's not an issue.

12 THE COURT: All right. Anything further,
13 Solicitor?

14 SOLICITOR: No, sir, Your Honor.

15 THE COURT: Anything from the defense before we
16 bring in our jury?

17 MR. SNELL: No, Your Honor.

18 THE COURT: Thank you. Bring us our jury,
19 please.

20 (The jury returns to the courtroom at 8:40 a.m.)

21 THE COURT: All right. Our jury is present in
22 the courtroom. Good morning, ladies and gentlemen.
23 Welcome back. I hope y'all had a pleasant evening. As you
24 recall, the State has rested in its case in chief. The
25 defense may now call witnesses and put up testimony if the

1 defense chooses to do so. You will recall that the State
2 is the party that has the burden of proving its case beyond
3 a reasonable doubt. The Defendant is presumed to be
4 innocent, never has to prove himself innocent, does not
5 have to present any evidence or testimony whatsoever.
6 However, the Defendant may present evidence and testimony
7 if he chooses to do so. So, with that being said, we will
8 now direct our attention to Mr. Snell and Mr. Floyd and
9 ask. Do you intend to call any witnesses, Mr. Snell, Mr.
10 Floyd?

11 MR. SNELL: We do, Your Honor.

12 THE COURT: All right. If you would call your
13 first witness, please.

14 MR. SNELL: Your Honor, the defense calls Ms.
15 Mildred Moore.

16 THE COURT: All right. Ms. Moore, if you'd come
17 around and be sworn for us, please.

18 WHEREUPON, MILDRED MOORE, being first
19 duly sworn, testifies as follows:

20 CLERK: Have a seat, please, ma'am. Once you're
21 seated, please speak up loud and clear stating your full
22 name on the record.

23 THE WITNESS: My name is Mildred Logan Moore.

24 DIRECT EXAMINATION BY MR. SNELL:

25 Q Ms. Moore, I'm Jim Snell. I'm standing back here so I

1 can remind each of us to talk loud enough for the jury
2 to hear and for the court reporter to take us down.
3 Could you state--- First of all, tell the jury who you
4 work for?

5 A I work for Lexington County Department of Social
6 Services.

7 Q And what's your occupation there?

8 A I'm a Human Service Specialist II which is, in
9 essence, a child protective services investigator.

10 COURT REPORTER: I'm sorry. Which is a what?

11 A A child protective services investigator.

12 Q Is that similar to like a social worker or caseworker.

13 A Yes.

14 Q Now, did you have an opportunity to investigate the
15 abuse allegations involving [REDACTED]?

16 A I did.

17 Q From April 15th, 2010?

18 A Yes.

19 Q Okay. And were you able to determine whether or not
20 your Agency had jurisdiction over this case?

21 A Yes, we did. Yes, I was.

22 Q And what was that determination?

23 A We closed our case Category II. The case was
24 unfounded, Category II, because we determined that Mr.
25 Williams was not acting in loco parentis.

1 Q And is that because of the limited contact he had with
2 ?

3 A At the time, that's what we knew, yes.

4 Q And so the dismissal had nothing to do with the
5 physical allegations about what happened to
6 only about Mr. Williams' status with regard to her.
7 Is that correct?

8 A Yes.

9 Q Thank you. No other questions?

10 THE COURT: Thank you, Mr. Snell. Solicitor?

11 MS. MAYES: Yes, sir, Your Honor.

12 CROSS EXAMINATION BY MS. MAYES:

13 Q Good morning, Ms. Moore.

14 A Good morning.

15 Q Just to kind of fill us in a little bit, your role as
16 a DSS caseworker is to respond when there are
17 allegations of abuse. Correct?

18 A Correct.

19 Q And, in this particular case, y'all got a call when
20 was in the hospital. Correct?

21 A Yes.

22 Q And she was at Richland Memorial Hospital, and I think
23 you actually came out there yourself. Right?

24 A I did.

25 Q And you came out there, and you had a chance to look

1 at and see her injuries.

2 A Yes, I did.

3 Q And, at that time, y'all went ahead and opened the
4 case. Correct?

5 A Well, it was opened prior to me going out there.

6 Q Okay. Because somebody had called it in.

7 A Yes.

8 Q And do you have your file with you today?

9 A I do.

10 Q And I believe--- Would it have been called in by
11 someone there at the hospital or by law enforcement?

12 A I believe the hospital called law enforcement, and
13 then they called us and made the report.

14 Q Okay. And that's pretty much standard procedure when
15 a child is injured in her home environment. Correct?

16 A Correct.

17 Q Because, when a child is injured in their home
18 environment, it's pretty much a given that it's going
19 to be someone with close access to the child who's
20 committed those acts against her or him. Correct?

21 A Yes.

22 Q And so that's why DSS gets involved.

23 A Yes.

24 Q And, when y'all first received the information, y'all
25 used a term for Mr. Williams, and that's called a

1 paramour. Correct?

2 A Yes.

3 Q And with DSS, that's a common DSS term. Correct?

4 A Yes.

5 Q All right. And, when you talk about a paramour, that
6 basically means when mom has, or dad in some
7 situations, has a significant other and that
8 significant other, as a result of being a paramour, is
9 involved in the home life. Correct?

10 A Yes.

11 Q And so there are sometimes situations where there
12 might be a mom and there might be a dad but, if mom
13 gets a boyfriend or paramour and then he becomes
14 involved, that's something that DSS would look at as
15 well.

16 A Yes.

17 Q And, in the initial information--- I believe that
18 intake date was 4/16/2010, so that's the day after
19 was injured. At that point in time,
20 according to your records, there was a specific
21 allegation of abuse and neglect at that point.
22 Correct?

23 A Yes.

24 Q And the alleged perpetrator, which, at that point in
25 time, Mr. Lance Williams was identified as a caretaker

1 of the child. Correct?

2 A Yes.

3 Q Okay. And y'all proceeded to look further into it and
4 by that, you know, trying to determine whether Mr.
5 Williams might have future access to
6 Correct?

7 A Yes.

8 Q Why is that so important, to determine whether an
9 alleged perpetrator might have future access to that
10 child that's been injured?

11 A Well, at the time when I went out to the hospital and
12 spoke with Ms. Brown, we had no information about her.
13 Some of the parents we deal with aren't protective.
14 And so we did not know whether or not she would be
15 protective even though, you know, we're there. And so
16 we implemented a safety plan that said that
17 was to have no contact with Mr. Williams; and that was
18 simply because, like I said, we did not know if Ms.
19 Brown would continue to be protective. A lot of
20 times, we get moms who get back with their boyfriends.
21 You know, they're protective at the time. They get
22 sweet talked, and they get back with their paramour.
23 Q Okay. And, in fact, that's unfortunately quite
24 common in some child abuse cases that you've seen as a
25 DSS caseworker. Correct?

1 A Yes.

2 Q Especially in a situation where the boyfriend and the
3 mom might have other children in common and he's going
4 to be involved in the future. Correct?

5 A Correct.

6 Q And there's always that threat that his future
7 involvement with the mom might result in him
8 reoffending against that same child. Correct?

9 A Correct.

10 Q And, in this particular case, once Brittany Brown
11 signed that safety plan and agreed to have no future
12 contact with Mr. Williams, you were satisfied, as the
13 caseworker, that he was out of life for
14 good. Correct?

15 A Correct.

16 Q All right. Because they didn't have any other
17 children in common.

18 A Correct.

19 Q And he was not living in the home with [redacted] and
20 Brittany. Correct?

21 A Correct.

22 Q And they were not married.

23 A Correct.

24 Q And he didn't have any legal rights to [redacted]
25 Correct?

1 A Yes.

2 Q And do you have a copy of that safety plan with you
3 today or do you have the safety plan with you today
4 that Brittany Brown signed agreeing that she wouldn't
5 have any future contact with Mr. Williams?

6 A I do.

7 Q Okay. And what is the date that she signed that
8 safety plan?

9 A She signed it on the 16th of April, 2010.

10 Q All right. And can I see that, please?

11 A (Witness complies.)

12 Q And, when the safety plan is signed, one thing you
13 inform that mother of is, hey, look, we're going to
14 stay on you, we may make future visits, we might make
15 future phone calls, just to make sure he's not around.
16 Correct?

17 A Correct.

18 Q And that was put in your safety plan as well.

19 Correct?

20 A Exactly, yes.

21 Q All right. And there was never any indication, after
22 she signed that safety plan, that she would violate it
23 in any way and be back in contact with Mr. Williams.

24 Correct?

25 A Correct.

- 1 Q All right. And, in a situation like this where
2 there's no reason to believe there's going to be
3 future contact, this isn't a situation, is it, where
4 DSS would then pursue a family court action of any
5 kind?
- 6 A Correct.
- 7 Q There is no need for further action. Correct?
- 8 A Correct.
- 9 Q Because you were satisfied that she was in compliance
10 and that he was out of the picture.
- 11 A Correct.
- 12 Q And, as a result of that, in May, the case was closed.
13 Correct?
- 14 A Yes, it was.
- 15 Q And it wasn't closed because there was a lack of
16 evidence that was abused. Correct?
- 17 A Correct.
- 18 Q It was closed ultimately because, under your
19 determination, he was not living in the home and a
20 current threat to . Correct?
- 21 A Correct, and that he wasn't acting *in loco parentis*.
- 22 Q All right. And, when you use the term acting *in loco*
23 *parentis*, one of the things that you looked at there
24 was that he was not living in the home. Correct?
- 25 A Correct.

1 Q And, for certain things that--- In your initial
2 contact, y'all didn't--- It's not on your form to
3 follow up and ask exactly what level of involvement he
4 had with on a daily basis. Correct?

5 A Correct.

6 Q For example, when you met with Brittany in the
7 hospital, you were mainly concerned about assessing
8 the injuries and determining if he lived in the home.
9 Correct?

10 A Correct.

11 Q But there wasn't specific information about how
12 involved he was with in terms of being
13 present for family events.

14 A Correct.

15 Q Their plans as a family, meaning he and Brittany and
16 , their plans to live together as a family and
17 interact as a family is something you weren't aware of
18 at that time. Correct?

19 A I was not.

20 Q All right. And you weren't aware of small things,
21 such as how much he might bathe her.

22 A I was not.

23 Q Okay. Or do anything like that on a daily basis.
24 Correct?

25 A Correct.

1 Q And y'all weren't aware that his daily interaction
2 with was at a higher level than the
3 interaction he was having with his own biological
4 daughter. Correct?

5 A Correct.

6 Q All right. So you were looking at defining in loco
7 parentis in terms of him actually living in the home.
8 Correct?

9 A Correct.

10 MS. MAYES: Nothing further.

11 THE COURT: Redirect, Mr. Snell?

12 REDIRECT EXAMINATION BY MR. SNELL:

13 Q Ms. Moore, if DSS had found that Lance Williams was a
14 person responsible for the welfare of
15 pursuant to the statute, would you have closed the
16 case?

17 A Ask me that again, please. I'm sorry.

18 Q If DSS had determined that Lance Williams was a person
19 responsible for pursuant to the
20 statute, would y'all have closed the case?

21 A I don't know if I understand what you're asking.

22 Q DSS--- Were you able to determine if Lance Williams
23 was a person responsible for the welfare of
24 pursuant to the controlling statute?

25 A Well, as far as when I investigated, it looked as if

1 he was not responsible for her at the time. That day
2 he was because mom asked him to. But, from what I
3 determined in my investigation, he was not an ongoing
4 caregiver.

5 Q Would he have been like a babysitter?

6 A To me, that's what it appeared. That's what--- From
7 my investigation, that's what I perceived.

8 Q Thank you.

9 MR. SNELL: No other questions.

10 THE COURT: Recross, Solicitor?

11 SOLICITOR: Yes, sir, Your Honor.

12 RECROSS EXAMINATION BY MS. MAYES:

13 Q And, again, Ms. Moore, when you talk about your
14 investigation, it was limited in this particular case,
15 more limited than it is in a lot of your other cases.

16 Correct?

17 A Yes, it was.

18 Q I believe you had the initial visit out at the
19 hospital where you spoke with Ms. Brown. Correct?

20 A Correct.

21 Q And, at that point in time, there was a lot of other
22 stuff going on because Ms. Brown was being interviewed
23 by law enforcement.

24 A Uh huh (indicating affirmative response).

25 Q And the primary concern was her daughter who was

1 hospitalized at that time. Correct?

2 A Correct.

3 Q And, over the course of the next four days,
4 remained hospitalized there at Palmetto Health. And
5 did you get the opportunity to go back out to Palmetto
6 Health and talk to her at that point?

7 A I do not think I saw her again at the hospital. I
8 think I saw her at her father's house.

9 Q All right. And that follow-up contact was mainly to
10 make sure that she had, was not in contact with Mr.
11 Williams from that point on. And she assured you
12 that she was not and that he was out of her life.
13 Correct?

14 A Correct.

15 Q And that was pretty much the extent of it. In other
16 words, when you used the word investigation, it's not
17 as thorough as some of the other child protective
18 services investigations where it's known that a
19 perpetrator has direct involvement in a child's life
20 and they're going to continue to be involved in the
21 future because they're a biological parent or
22 something of that nature. Correct?

23 A Correct.

24 Q So you would admit, in this case, there was certain
25 information that DSS did not have about his level of

1 involvement. Correct?

2 A Correct.

3 MS. MAYES: Nothing further.

4 THE COURT: Thank you. Thank you very much for
5 being with us this morning, Mr. Moore.

6 THE WITNESS: Thank you.

7 THE COURT: And you may step down. Any
8 objections to Ms. Moore being excused?

9 MR. SNELL: None from the Defendant, Your Honor.

10 MS. MAYES: None from the State, Your Honor.

11 THE COURT: And you are excused.

12 THE WITNESS: Thank you.

13 (Witness leaves the witness stand.)

14 THE COURT: All right. Mr. Snell, you may call
15 your next witness.

16 MR. SNELL: Yes, Your Honor. The defense calls
17 Mr. Lance Williams.

18 THE COURT: All right. Mr. Williams, if you
19 would come around and be sworn, please.

20 WHEREUPON, LANCE AUSTIN WILLIAMS, being
21 first duly sworn, testifies as follows:

22 CLERK: Have a seat, please, sir. Once you're
23 seated, speak up loud and clear stating your name on the
24 record.

25 THE WITNESS: Lance Austin Williams.

1 DIRECT EXAMINATION BY MR. SNELL:

2 Q Mr. Williams, can you tell the jury what your date of
3 birth is?

4 A April 18th, 1985.

5 Q And how old are you today?

6 A I'm 25 years old.

7 Q And, just like with Ms. Moore, I'm going to stand back
8 here to remind us to talk loud enough for the jury to
9 hear and the court reporter to take down. Okay?

10 A Okay.

11 Q Now, Lance, how old are you today?

12 A Twenty-five.

13 Q And can you tell the jury--- First of all, where were
14 you born?

15 A I was born at Baptist Hospital in Montgomery, Alabama.

16 Q And who raised you when you were young?

17 A My grandmother and my mom both raised me whenever I
18 was younger. And then my mother actually raised me
19 from then on.

20 Q Is your grandmother in the courtroom?

21 A Yes, she is. She's sitting over there (indicating).

22 Q Is your mother in the courtroom?

23 A She's sitting next to my grandmother.

24 Q Now, how long did you live in Alabama?

25 A I lived in Alabama from birth to the age of 11.

1 Q And where did you go after you left Alabama?

2 A My mother and I, we moved to Tampa, Florida.

3 Q And how long did you live in Tampa?

4 A From age 11 to 19.

5 Q And, when you left Tampa, where did you go?

6 A I came here to Swansea, South Carolina.

7 Q How old were you when you moved to Swansea?

8 A I was 19 years of age.

9 Q And how far have you gone in school?

10 A I have a 12th grade education, high school diploma.

11 Q Now, do you have any specific job training or post-
12 high school training?

13 A Well, with my job, I held certain certifications like
14 OSHA training, heavy equipment training. I was able
15 to train people to be able to operate forklifts and
16 certify them.

17 Q And what kind of work have you done since high school?

18 A When I first graduated down in Tampa, I went into
19 plumbing. I did that for about a year and a half.
20 And, when I moved here to South Carolina, I got a job
21 with FedEx Ground, and I worked loading trucks. I
22 also did a route during the day. I went to Mesa; and,
23 in September of 2005, I went to work in the aviation
24 warehouse in maintenance, actually with the aircraft,
25 dealing directly with the mechanics that work on

1 airplanes. And then, from Mesa Airlines, on February
2 1st 2010, I went to ASA Airlines.

3 Q Okay. And where was your job at ASA Airlines? Where
4 did you report to work?

5 A I reported to work at the airport, Columbia
6 Metropolitan.

7 Q And what did you do there?

8 A The same thing I did at Mesa, warehousing, receiving
9 parts, entering them into the system, inventorying
10 them, distributing them to the maintenance mechanics.

11 Q Now, when you moved to Swansea, who did you live with?

12 A When I moved to Swansea, I lived with my mother.

13 Q What other family do you have?

14 A I have a three-year-old daughter; I have my
15 grandmother; I have a father that lives in Deatsville,
16 Alabama; I have a step-grandfather. I have many
17 relatives that live in McKenzie, Alabama.

18 Q And who's the mother of your daughter?

19 A Heather Rogers sitting over there.

20 Q Can you tell the jury, I guess, how long have you
21 known the Brown family?

22 A I have known the Browns since '04. That's whenever I
23 met Christopher Brown, which is the son of Kevin Brown
24 and is the brother of Brittany Brown.

25 Q And were you and Chris friends?

1 A Yes.

2 Q Approximately how old is he? How old is he?

3 A I believe Chris is 24 years old.

4 Q Now, when did you get to meet the rest of the family,
5 including Brittany Brown?

6 A I met Chris at an outing, and then me and Chris began
7 to hang out. And that's whenever he brought me to his
8 father's house and I was introduced to Kevin Brown. I
9 was introduced to Sharon Brown and Brittany Brown.

10 Q And who is Sharon Brown?

11 A Sharon Brown is sitting over there in front of Kevin
12 Brown, over there.

13 Q Now, how long had you known Brittany before y'all
14 started dating?

15 A I've known Brittany since 2004, so I'd probably known
16 her roughly six years.

17 Q All right. And when did y'all start dating?

18 A December 1st, 2010 or 2009.

19 Q And when was the first time you met ?

20 A I met shortly after she was born.

21 Q And did you know who father was?

22 A Yes, I do.

23 Q Who is that?

24 A It's Adam Cooper.

25 Q And do you know members of the Cooper family?

1 A I know of them. I've met them on certain occasions,
2 like dropping off or certain outings.

3 Q Now, up to this point, how have you gotten along with
4 the Brown and Cooper families?

5 A Like, with the Coopers, I didn't really have much
6 contact with them. Like I said, we'd just do the
7 transportation of . With the Browns, I was,
8 more or less, like a family member with them. I
9 considered them family too.

10 Q How much time did you spend with them?

11 A I spent a significant amount of time with Kevin Brown
12 and actually a lot more with him than I did with my
13 own mother.

14 Q Now, do you have any history of treatment of any type
15 of anger problems?

16 A I spent a lot of time when I was younger being--- Dr.
17 Renfro did evaluations on me. I was placed on
18 Ritalin when I was younger. My mother took me off of
19 it about two years ago. I did a test through my
20 doctor, and I was placed on Lexapro.

21 Q And how long did you take that medication?

22 A I took the medication probably for about three months.
23 I didn't like the way it affected me. It left me
24 feeling the same always. Whether I slept for ten
25 hours or slept for two hours, I always felt the same.

1 I didn't like it.

2 Q Now, on April 15th, 2010, which was a Thursday, were
3 you regularly scheduled to work that day?

4 A I was.

5 Q And did you go to work?

6 A No, I did not.

7 Q Can you tell the jury why not?

8 A On Monday, I had worked so I could replace schedules.
9 Somebody else said they'd work for me on Friday so I
10 could take a trip to Alabama. While at work, I backed
11 one of our company vehicles into another company
12 vehicle, so I was required to leave work and go take a
13 drug test, and I could return to work upon the drug
14 test results. So the drug test results didn't come
15 back until Thursday afternoon; and they, of course,
16 were negative, nothing.

17 Q Was that a standard requirement at your job if there
18 was an accident like that?

19 A Yes, it was.

20 Q And can you tell us where were you going in Alabama
21 and what was the purpose?

22 A I was going to McKenzie, Alabama; and it was my second
23 cousin's wedding. She was getting married, and I was
24 taking my daughter. My mother and I were going with
25 Mark who's sitting over there by my mom, which is, I

1 guess you could call him my stepdad.

2 Q Now, when were you--- When did you first find out that
3 you weren't going to be at work on Thursday?

4 A I found out that Monday. They had me go take the drug
5 test. And, like I said, they told me I could return
6 upon the results of the test.

7 Q Now, during this week, where was Brittany Brown
8 living?

9 A She was living with LeeAnn Harvey in Swansea.

10 Q And who was living with--- Who else was living with
11 Brittany?

12 A , Kaylee, Carlie and LeeAnn's son.

13 Q And Kaylee and Carlie, are those LeeAnn's children?

14 A Yes, those are both her daughters.

15 Q So how many children total were in the home?

16 A Four.

17 Q And can you tell us the ages of the other children?

18 A At the time, was 15 months old; Carlie, I
19 believe, was going on three; and I believe Kaylee was
20 going on, I think she was three going on four; and
21 the son, he was, I believe, six months old or five
22 months old. He was a newborn.

23 Q And what was the relationship between Brittany and
24 LeeAnn?

25 A LeeAnn's two girls, Kaylee and Carlie, is Brittany

1 Brown's nieces.

2 Q And who is their father?

3 A Christopher Brown.

4 Q Okay. Now, when was the decision made for you to
5 watch on that Thursday?

6 A That Wednesday, April 14th, that night.

7 Q And where was Brittany going?

8 A She was going to go help her father build a fence that
9 he had to put up.

10 Q What kind of fence?

11 A A privacy fence. He had to put it up because he owns
12 a tow truck service and he parks his tow truck at his
13 house so--- And it's not allowed to be visible from
14 the road in a residential area, so he had to keep them
15 behind a fence so you can't see them.

16 Q Now, why did Brittany want to put up that fence
17 instead of sending you?

18 A She said that she wanted to spend time with her father
19 and she didn't want to cancel on spending time with
20 him. So she went.

21 Q Now, how long were you supposed to have that
22 morning or that day?

23 A The prior agreement was that, when she got through,
24 she would come and get and then she would do
25 the dropping off.

- 1 Q About what time were you expecting her back?
- 2 A Sometime in the afternoon between 1:00 and 2:00.
- 3 Q Now, had you ever kept or watched before?
- 4 A One other time, but Kaylee and Carlie and my own
- 5 daughter were present, and it was for about an hour.
- 6 Q All right. And when was that?
- 7 A About two weeks prior to April 15th.
- 8 Q Okay. And where did Brittany and LeeAnn go?
- 9 A They went to the grocery store and the gas station.
- 10 Q Now, when they got back, were there any issues as far
- 11 as how the children were?
- 12 A None.
- 13 Q Now, even though this was the first time you had kept
- 14 by yourself, was there--- Was it unusual for
- 15 Brittany to use a babysitter?
- 16 A Not--- It wasn't unusual, I mean, no.
- 17 Q Why not?
- 18 A A lot of times--- She had solely; she raised
- 19 solely by herself. She had a lot of time
- 20 that she dedicated to , and sometimes she
- 21 needed a break.
- 22 Q Now, on Wednesday night, who all was at the trailer?
- 23 A LeeAnn Harvey, , myself, Kaylee, Carlie and
- 24 LeeAnn's son.
- 25 Q And what did you and Brittany do that night?

- 1 A We--- I believe we watched a movie.
- 2 Q Y'all stayed in?
- 3 A Correct.
- 4 Q And what time you did y'all go to bed?
- 5 A Between 11:00 and 12:00 o'clock.
- 6 Q And what time did Brittany get up in the morning?
- 7 A It was around 7:30.
- 8 Q And what time did you wake up?
- 9 A I actually woke up around 10:30, but I was awake
- 10 whenever Brittany left the house at 7:30.
- 11 Q Now, did Brittany do anything for that
- 12 morning before she left?
- 13 A Not to my recollection, no.
- 14 Q Okay. When Brittany left, where was she headed to?
- 15 A She was headed to her father's house to help him erect
- 16 the fence.
- 17 Q And who did she take with her?
- 18 A Just herself.
- 19 Q So, when Brittany left, who did she leave at the
- 20 trailer?
- 21 A
- 22 Q And who else was there?
- 23 A Myself, LeeAnn and Carlisle and her son.
- 24 Q Now, what happened after you got up that morning?
- 25 A Carlisle was actually the first one to wake up, and she

1 woke up. And that's when myself and LeeAnn
2 got up. LeeAnn fed and, while feeding
3 , Carlie was sitting at her princess table;
4 and she had asked that I feed her since LeeAnn was
5 feeding . So I fed Carlie.

6 Q Now, what time did LeeAnn leave?

7 A It was around 11:30.

8 Q And did she take her children with her?

9 A She did.

10 Q And, when LeeAnn left, who was left in the trailer?

11 A and myself.

12 Q And what did you and do at that time?

13 A After LeeAnn left, I went outside with in the
14 front yard.

15 Q Now, what did you take her outside for?

16 A To get out of the house, to play.

17 Q And where did you take her?

18 A To the front yard.

19 Q And what happened when you took her outside?

20 A We were outside for a little while; and, while
21 outside, she tripped and fell. And that's when she
22 bumped her head.

23 Q Now, the front yard, that's the side away from the
24 other house and the other buildings on the property?

25 A Correct.

- 1 Q Did get hurt when she was outside?
- 2 A Ask the question again.
- 3 Q Did get hurt when she was outside?
- 4 A Yes, she did.
- 5 Q Tell the jury exactly what happened.
- 6 A She was outside towards the front yard where the front
7 steps are. It's actually where the cars are parked,
8 and there's ruts where the tires had been. And that's
9 where she had fell and bumped her head.
- 10 Q How did she fall?
- 11 A She was running; and, when she was running, she
12 tripped and fell.
- 13 Q And where were you at that time?
- 14 A In the front yard with her.
- 15 Q How far away from her were you when she fell?
- 16 A I wouldn't say maybe--- Six feet maybe.
- 17 Q You were trying to keep up with her?
- 18 A Correct.
- 19 Q Now, how bad did it look? How hurt did she look at
20 that time?
- 21 A It was just a red mark on her head at the time.
- 22 Q And was she crying after that?
- 23 A She cried for a little while, but it's not--- She
24 didn't continue to cry. I mean, I wiped her off and
25 dusted the dirt off of her, and that's when she

- 1 stopped.
- 2 Q And when did you tell Brittany? Well, did you ever
- 3 tell Brittany about the bump on her head?
- 4 A I did. Around 12:00 or 12:30 when she contacted me is
- 5 whenever I told Brittany about her falling and hurting
- 6 her head.
- 7 Q And what did Brittany--- How did Brittany contact you?
- 8 A She called me on my cell phone.
- 9 Q And what did she call you for?
- 10 A She had called me to check on . And at that
- 11 time was whenever she explained to me that I'd be
- 12 dropping off to be with
- 13 grandparents on her father's side and also retrieving
- 14 her child support for her.
- 15 Q And how did Brittany respond when you told her about
- 16 the head bump?
- 17 A She just asked me if it was bad. She asked if she was
- 18 okay. And then that's when she had asked me to take a
- 19 picture of her and send it to her.
- 20 Q Did you do that?
- 21 A Not immediately, no.
- 22 Q Now, when did LeeAnn come back?
- 23 A LeeAnn came back around 1:00 o'clock.
- 24 Q And what were you doing when LeeAnn came back?
- 25 A When she came back, I was coming from the bathroom on

1 the right side of the trailer.

2 Q And what were you doing?

3 A I had just got through blow drying hair.

4 Q Why?

5 A I had given her bath because I had laid her down for a
6 nap. And I had taken a nap too. The air conditioning
7 was off. There is no central heating and air in the
8 trailer. There's two window units, one in the master
9 bedroom and one in the living room. Neither one of
10 them was on. And, in the room was in, there
11 is no window unit and it was hot. And I woke up
12 sweating myself. She was fully dressed and under a
13 blanket. And I took it upon myself to bathe her.

14 Q Now, why were the air conditioners off?

15 A Because, at the time in the morning, it wasn't hot in
16 the house.

17 Q Did it heat up?

18 A Yes, it did.

19 Q Now, when LeeAnn got there, how did she react to your
20 blow drying her hair or giving a bath?

21 A She didn't say anything. She just asked what I was
22 doing, and I explained what I was doing.

23 Q Now, did LeeAnn ask you to do her any favors at that
24 time?

25 A At the time is whenever she--- Carlie was not feeling

1 good, and she laid Carlie down for a nap. And that's
2 when she went back over to her mother's shop to get
3 her--- She came to the house originally to get her
4 son's bottle so she could feed him.

5 Q Now, how old is Carlie?

6 A At that time, I believe she was two and a half.

7 Q When she laid her down, where did she lay her?

8 A In her bed in her room.

9 Q So you agreed to keep Carlie?

10 A I agreed to keep an eye on her, yes, but she was
11 asleep the whole time she was there.

12 Q And where--- What did LeeAnn leave to go do?

13 A She went back to her mother's shop to feed her son and
14 to associate with Tommi's, her mother's, clients.

15 Q Now, how did you feel when Brittany had told you that
16 she wasn't coming back that early afternoon and was
17 planning on you staying all day?

18 A I originally didn't--- I mean, I didn't mind. I had
19 agreed to watch until early afternoon. When
20 I found out that I was watching her until 6:00 o'clock
21 at night, I mean, I guess I felt like I was being
22 used.

23 Q And when--- What happened when LeeAnn came back to the
24 trailer after she left Carlie with you?

25 A She came back and got Carlie and she got the rest of

1 her stuff, and then they left to go meet Brittany for
2 the makeup appointment.

3 Q Where was the makeup appointment at?

4 A If I'm not mistaken, they were at Columbiana Mall over
5 in Harbison.

6 Q And what time--- Who all had makeup appointments?

7 A Brittany Brown, Heather Thompson and LeeAnn Harvey.

8 Q What time was Brittany's appointment?

9 A I believe hers was--- I don't recall which one hers
10 was. I know that there was three separate
11 appointments and each one of them had three separate
12 appointments and they all wanted to go together. So
13 that's why they all left at the same time.

14 Q What time did LeeAnn leave?

15 A She left around 3:00 o'clock, 2:45, 3:00 o'clock.

16 Q Now, when you were left with this day, was
17 there anyone else there with you, any other adults to
18 help you take care of her?

19 A No.

20 Q So you were responsible for everything.

21 A Correct.

22 Q And did that include giving her drinks?

23 A It includes everything.

24 Q Did you have an occasion or a need to change her
25 diaper?

1 A Yes, I did.

2 Q And tell us what kinds of diapers you had to change.

3 A In the morning, I changed diapers that were just wet.

4 Towards the afternoon is whenever I did change the
5 dirty diaper, the messy one that had poop in it.

6 Q All right. And can you describe it?

7 A It was a messy diaper, diarrhea, runny.

8 Q And how did you know she needed to be changed?

9 A Because I'd been---

10 COURT REPORTER: I'm sorry. What did you say?

11 Q How did you know she needed to be changed?

12 A Because I could smell it. I mean, I could smell
13 the---

14 Q Now, had you ever changed before?

15 A I had prior to that, yes.

16 Q Can you tell the jury about when you changed her, what
17 time you changed her before?

18 A At Kevin Brown's house, at her father's house, when I
19 would help Brittany with , I would change her
20 diaper.

21 Q Now, when you took this particular diaper off, could
22 you tell the jury where she was dirty?

23 A There was poop like on the back side of her, almost
24 towards the top of the diaper, and all the way up the
25 front towards the top of the diaper.

1 Q And did that include going up inside her private
2 areas?

3 A Yes. It was a very messy diaper.

4 Q Okay. And, when you found out you had to change her,
5 what was the first thing you did?

6 A I laid her on her back--this is in the, actually in
7 LeeAnn's son's room--on the floor, and I resumed to
8 change her diaper.

9 Q And can you describe to the jury what steps you used?
10 I mean---

11 A When I was changing the diaper, I laid her on her
12 back, pulled her shorts down, took her diaper off.
13 There was poop that was on the back side of her, so I
14 lifted her up and cleaned the back side of her off
15 before I sat her back down. And then that's whenever
16 I moved to the front and cleaned the front side of her
17 off.

18 Q Now, what did you use to clean her off?

19 A Baby wipes.

20 Q Where did you get them? Where did you get them?

21 A Out of diaper bag.

22 Q And can you show the jury how do you--- When you took
23 the wipe, how did you hold it and clean her?

24 A Like that (indicating).

25 Q Okay. And did you have to hold her legs during this

1 time?

2 A Yes, I did.

3 Q Can you tell us or tell the jury what technique you
4 had to use when you cleaned her?

5 A Well, whenever I was cleaning her front side or
6 midsection, I lifted her, both of her legs up like
7 that (indicating) so I could clean her good and then
8 actually held her legs apart so I could actually get
9 everything clean.

10 Q When you clean, is there a certain way you have to
11 wipe?

12 A Yes, from front to back.

13 Q And why is that?

14 A To keep from infection.

15 Q Now, did you--- How important is it, that you know it
16 is, to be very careful or thorough when you clean her?

17 A Very important. My mother has actually taught me how
18 to change my own daughter's diaper and how to be
19 careful with her and how it is a very sensitive area.

20 Q Now, when you were changing her, did you ever touch
21 her without using a baby wipe?

22 A No, I did not.

23 Q Now, was any part of this diaper change, any part of
24 that, sexually stimulating for you?

25 A No.

1 Q Anything you were looking forward to?

2 A No.

3 Q Now, did you ever touch her private areas without
4 using a baby wipe?

5 A No, I did not.

6 Q Now, how were you feeling when you found out you had
7 to change this diaper?

8 A Aggravated.

9 Q Why?

10 A Because I was left with her in my care, and I was just
11 aggravated that I was having to deal with these things
12 in taking care of her.

13 Q How did that--- How did your feelings or your anger
14 affect the way you changed the diaper?

15 A It made me not be as--- I guess I was rougher than I
16 should have been.

17 COURT REPORTER: I'm sorry?

18 A Rougher.

19 COURT REPORTER: Rougher.

20 A Yes.

21 Q Now, did you intend to be so rough that you left
22 bruises on her?

23 A No, I did not.

24 Q And did you knowingly press down or press into her
25 other than to clean her?

1 A No, I did not.

2 Q Now, was cooperative during the diaper
3 change? Did she lie still?

4 A No. She--- I mean, she struggled like any other child
5 when we were changing the diaper.

6 Q And, after you finished cleaning her, what did you do
7 next?

8 A I put a fresh diaper on her, and then I put her shorts
9 back on.

10 Q And did you apply any type of lotion or cream?

11 A Yes, there is Aveeno lotion that I did apply. It was
12 actually on her thighs, on her legs.

13 Q And where did you get it?

14 A Out of the diaper bag.

15 Q And whose diaper bag was that?

16 A diaper bag.

17 Q Now, on this Thursday, did you take diaper
18 off any other time other than to change her?

19 A No, I did not.

20 Q Now, after you changed this diaper, what did you and
21 go do?

22 A We went into the living room, and that's where we
23 were. I had the TV on and had a VCR tape in. I
24 believe it was Elmo or something. And then she was
25 playing in the toy box which is located in the living

1 room.

2 Q And how were you feeling at that time?

3 A I mean, I was aggravated that I was having to sit
4 there with nowhere else to go besides in this trailer
5 and watch

6 Q Now, how did--- Did do anything at that time
7 that you didn't like?

8 A She was playing in her toy box, and she was throwing
9 toys. And I had told her to stop, and she didn't.
10 And that's whenever I reached up and popped her in the
11 right side of her head.

12 Q How hard did you hit her?

13 A At the time, I didn't think it was hard enough to do
14 any damage. I mean, I just popped her open-handed.

15 Q Which hand did you use?

16 A My right hand.

17 Q Do you have any problems or difficulties with that
18 hand?

19 A I do. I have limited feeling in it.

20 Q How long have you had the limited feeling?

21 A Since my eighth-grade year, and I believe it was '98
22 when I was in military school.

23 Q And how did react when you hit her in the
24 ear?

25 A Shocked. She stopped what she was doing. I mean, she

- 1 was obviously shocked.
- 2 Q And do you believe you hit her too hard?
- 3 A Yes.
- 4 Q Now, what was the next thing that happened?
- 5 A She had thrown her sippy cup, and I told her not to do
- 6 that. And that's whenever I reached around and I
- 7 popped the left side of her head.
- 8 Q And what made you change ears?
- 9 A It's just the position that I was in.
- 10 Q And what hand did you use?
- 11 A My left hand.
- 12 Q And how hard did you pop her?
- 13 A Again, at the time, I didn't think it was hard enough
- 14 to do any damage, but, I mean, hard.
- 15 Q Do you acknowledge that was wrong? Do you acknowledge
- 16 that was wrong to hit her like that?
- 17 A It was very wrong.
- 18 Q Now, what time did you hear from Brittany again?
- 19 A I heard back from her, I believe it was like 5:30 is
- 20 when she called me back.
- 21 Q And what did she call you for?
- 22 A She had called to make sure that I was getting ready
- 23 to leave to go meet grandparents on her
- 24 father's side.
- 25 Q And where were you going to have to take ?

1 A To the gas station in Pelion.

2 Q How far away from where you were was that?

3 A From my house or the trailer in Swansea to Pelion is
4 probably a 15-minute ride.

5 Q Now, when --- When you got ready to take
6 , was she dressed?

7 A Yes, she was.

8 Q And what kind of marks or bruises did she have on her
9 at that time?

10 A The only marks that were noticeable at the time that I
11 dropped her off was the bruise on her forehead.

12 Q Did you notice--- You couldn't see any marks or
13 bruising on the ears?

14 A No, I noticed nothing.

15 Q What about any marks on her arms?

16 A No.

17 Q Now, when you took , who did you meet?

18 A I met Adam Cooper's parents, which would be
19 grandparents.

20 Q And are they in the courtroom?

21 A Yes, they are.

22 Q Point them out please.

23 A They're sitting right over there (indicating).

24 Q And, when you dropped off, where did y'all do
25 this?

1 A At a gas station in Pelion. I don't recall the name
2 of the gas station. It was in the parking lot.

3 Q Can you describe the outside of the gas station for
4 us?

5 A There's lights. It's--- I mean, it is 6:15, 6:00
6 o'clock, when I dropped her off, so it wasn't dark.
7 The sun was still up. It was clear.

8 Q Now, what did you tell the Coopers about
9 condition when you dropped her off?

10 A That's whenever we talked about the bruises on her
11 forehead, and that's when I told them that's where she
12 had fallen.

13 Q Now, was there any kind of concern or discussion
14 raised about her condition at that time?

15 A Not at all.

16 Q And how did you think her condition was at that
17 time?

18 A Fine.

19 Q Now, did they give you anything to take back to
20 Brittany?

21 A They did. They gave me child support to give back to
22 Brittany.

23 Q Now, after you dropped off, where did you go?

24 A I went back to my house, my mother's house.

25 Q And what did you go back there for?

1 A Because I needed to start packing so I could go on my
2 trip to Alabama, and I needed to start packing some of
3 my daughter's stuff too and my own.

4 Q Who was there at the house? Who did you meet at your
5 mother's house?

6 A My mom, and Mark was also there too.

7 Q Okay. Now, who was going to go on the trip to Alabama
8 with you?

9 A Myself, my mother, Mark and my daughter.

10 Q Now, what kind of relationship did you have with your
11 own daughter at the time?

12 A I have joint custody, the primary placement being with
13 her mother. But, as an actual relationship with my
14 daughter, she and me get along fine. She's my--- I
15 mean, she's my world.

16 Q Do you pay child support?

17 A I did, \$600 a month.

18 Q Now, how were you planning on picking up your
19 daughter?

20 A I was meeting Heather Rogers, which is over there too,
21 in Enoree, South Carolina, because she lived in
22 Cowpens which is close to Spartanburg.

23 Q This is Enoree which is in Spartanburg County. Is
24 that correct?

25 A Correct. It's exit 41 off of 26.

1 Q And where do y'all--- Is that a regular meeting place?

2 A Yes, that's where I normally--- I don't normally meet
3 Heather there. I normally pick Aubrey up from
4 Heather's mom in Irmo. But, because I was taking
5 Aubrey on a trip with me and to keep Heather from
6 having to drive all the way to Columbia, I met her in
7 Enoree.

8 Q And what happened when you got to the gas station?

9 A While I was sitting at the gas station waiting for
10 Heather and Aubrey to arrive, the detective right
11 there--I can't pronounce his name; Detective Presti is
12 what he told me to call him--he had actually contacted
13 me on my cell phone.

14 Q And tell us about that call?

15 A He had called and told me that he needed to talk to me
16 about some things that had happened to . I
17 told him that I would be more than happy to give my
18 statement but I was waiting for my daughter to come,
19 but that I would be more than happy to come down and
20 give a statement.

21 Q Okay. And what did he ask you? What did he ask you
22 to do then?

23 A He asked me what time or how long it would take, and I
24 told him that I was still waiting, that I could be
25 there at 7:00 o'clock but I did have my daughter, or I

1 was waiting on my daughter and that, after I got her,
2 I would be on my way, that I'd have her with me.

3 Q And what did he tell you about bringing your daughter?

4 A He had told me that they would provide somebody to
5 look after my daughter at the office if she was with
6 me.

7 Q Now, at that time, did you have any concerns or
8 problems going down and talking to the detective about
9 this?

10 A Not at all.

11 Q Why not?

12 A Because I wasn't aware that anything was wrong with
13

14 Q Now, when did Heather arrive?

15 A I believe she arrived around like 5:30, 5:45, is when
16 she actually arrived at the gas station.

17 Q And who came with her?

18 A It was just her and my daughter, Aubrey.

19 Q Now, did you tell Heather about what was going on?

20 A I did. I explained what was going on, what I was
21 going to do, what I was doing, that I was going to
22 talk to the detective and give him my statement.

23 Q Now, why had Heather moved from Lexington to
24 Spartanburg County.

25 A She was actually married, and she moved with her

- 1 husband to Cowpens.
- 2 Q Y'all weren't dating at the time?
- 3 A No.
- 4 Q Now, did you have any problems picking up Aubrey from
- 5 Heather then?
- 6 A Did I have any problems?
- 7 Q Yes.
- 8 A No, not at all.
- 9 Q So, when you left exit 41, where did you go?
- 10 A I headed towards Lexington County Sheriff's Department
- 11 to talk to Detective Presti.
- 12 Q And where did you--- Which office did you go to?
- 13 A If I'm not mistaken, it's the office that's right over
- 14 by the jail. It's in front of the jail I think. It's
- 15 on Gibson Road.
- 16 Q And can you tell the jury what happened once you
- 17 arrived at the Sheriff's Department?
- 18 A I had actually contacted my mom on my way to the
- 19 Sheriff's Department and asked her to meet me there so
- 20 she could actually watch Aubrey. And, when I arrived
- 21 there, I probably sat in the room for maybe five
- 22 minutes until the secretary got Detective Presti to
- 23 come see me. And, when he did come see me, he came
- 24 out the door, and he introduced himself and then he
- 25 took me back to the interrogation room.

1 Q And can you describe what the first part of that
2 conversation was, how it went?

3 A When I first got in there, we just pretty much talked
4 about my background. He had told me that he had
5 actually looked at my records in different ways and
6 couldn't find anything on me, that I was clean, never
7 been in trouble.

8 Q Now, when you got to the room--- First of all, can you
9 describe the interview room for us?

10 A It's basically just a small room with a desk like
11 they're sitting at, I believe with four chairs. And
12 it's just a small, closed, like, interrogation room.

13 Q Did--- When you got into the room, did you see any
14 pictures or documents or anything about this case?

15 A There was nothing in there about the case that I could
16 see, no.

17 Q And, when you first got there, who was in the room
18 with you?

19 A Say that again.

20 Q Who was in the room with you first?

21 A Detective Presti.

22 Q And did he have anything with him, like a file or
23 papers or anything?

24 A Not that I could see, no.

25 Q Now, what was the first thing he asked you?

1 A He had asked me what happened to while she
2 was in my care.

3 MR. SNELL: Beg the Court's indulgence.

4 THE COURT: Yes, sir, certainly.

5 (Pause.)

6 Q Now, when the detective first asked you if you knew
7 anything about being hurt, what did you tell
8 him?

9 A I told him the only thing I was aware of was the
10 bruise on her forehead from her fall.

11 Q Why did you tell him that?

12 A Because that was the only bruise that I was aware of.

13 Q And what happened then?

14 A That's when he pulled out the pictures of and
15 started asking me about specific parts or specific
16 bruises that was on her.

17 Q And what was your reaction when you saw the
18 photographs?

19 A Shock.

20 Q Why?

21 A Because of what my actions did to her.

22 Q Did you expect it?

23 A No.

24 Q Now, what did you tell the detective about her head
25 bump?

1 A On her forehead?

2 Q Yes, sir.

3 A That's where she had fallen outside.

4 Q Is that the truth?

5 A Yes.

6 Q What did you tell him about the bruising on her arms?

7 A That that's where I had lifted her up from, like her
8 back facing me, from over, lifted her up.

9 Q Did anybody ever talk to you about picking children up
10 like that before?

11 A I had picked my own daughter up like that, and my
12 mother had told me that it's not the right way to pick
13 her up. And I did it for the fact to keep from
14 hurting my back.

15 Q Is that the truth?

16 A Yes.

17 Q What did you tell him about the marks above her ears?

18 A That that is where I slapped her open-handed to
19 discipline her.

20 Q And was that the truth?

21 A Yes.

22 Q And did the detective ask you if you had touched
23 in a sexual manner?

24 A He did.

25 Q And what did you tell him?

- 1 A No.
- 2 Q Is that the truth?
- 3 A Yes.
- 4 Q Now, Lance, where do you live now?
- 5 A Where do I live now?
- 6 Q Now.
- 7 A Lexington County Detention Center.
- 8 Q How long have you been there?
- 9 A About a year.
- 10 Q Since this happened?
- 11 A (Witness nods indicating affirmative response.)
- 12 Q Now, let me ask you, after you changed
- 13 diaper at the house, the trailer, where did you put
- 14 her dirty diaper?
- 15 A In the trashcan in the kitchen.
- 16 Q Were there other trashcans in the house?
- 17 A There is.
- 18 Q Where is the other trashcan?
- 19 A There's a trashcan in the bathroom that's on one side
- 20 of the house, and there's a trashcan I believe in
- 21 LeeAnn's bathroom, in her bedroom.
- 22 Q Are you sure which trashcan you used?
- 23 A Yes.
- 24 Q Now, did the detective ask you about any injuries to
- 25 her lip?

1 A He did.

2 Q And what did you tell him?

3 A I told him that it was where a piece of skin was
4 hanging, it's where I'd pulled it off. It was like a
5 piece of skin was hanging there, and it's where I
6 actually peeled it off.

7 Q Have you ever seen that happen before?

8 A I have.

9 Q Who did you see do that?

10 A I've seen Brittany--I believe it was on the bottom
11 lip--where she had pulled it off before. It was like
12 a piece of dry skin or, like you get on your lip.

13 Q Were you trying to help at that time?

14 A Yes.

15 Q And did you mean for that to hurt her?

16 A No.

17 Q Now, whatever had made the skin fall, was that
18 something that she already had on her?

19 A Yes.

20 Q Now, Lance, are you guilty of criminal sexual conduct?

21 A No.

22 MS. MAYES: Objection, Your Honor. Objection to
23 the phrase of that question.

24 THE COURT: Overruled.

25 Q Lance, are you guilty of criminal sexual conduct?

1 A No, I'm not.

2 Q What are you responsible for?

3 A I'm responsible for the bruises on

4 MR. SNELL: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 (Pause.)

7 MR. SNELL: No other questions.

8 Q Lance, please answer anything the prosecutor has for
9 you. Okay?

10 THE COURT: Thank you, Mr. Snell. Solicitor?

11 MS. MAYES: Yes, sir, Your Honor.

12 CROSS EXAMINATION BY MS. MAYES:

13 Q Now, Mr. Williams, when you gave this statement to law
14 enforcement, you had been advised of your rights.
15 Correct?

16 A Yes, ma'am.

17 Q I'm going to have you take a look at this, State's
18 Exhibit 22. That statement is in your handwriting,
19 isn't it?

20 A Yes, ma'am.

21 Q And it contains your signature, doesn't it?

22 A Yes, ma'am.

23 Q All right. So those are your words.

24 A Yes, ma'am.

25 Q And, in your words, on April 15th, was in

1 your care. Correct?

2 A Yes, ma'am, she was.

3 Q And, throughout this interview with the detective, you
4 were offering explanations for how these injuries
5 occurred. Correct?

6 A I was explaining how they occurred during my care,
7 yes.

8 Q All right. So, when you were first confronted with
9 the pictures of her ears, you immediately knew that
10 was because you had struck her in both ears, didn't
11 you?

12 A Yes, ma'am, I did.

13 Q There was no doubt in your mind.

14 A No doubt.

15 Q And the explanation that you gave to law enforcement
16 in this statement is that you struck her in her ears
17 because that was your form of discipline. Correct?

18 A Yes, ma'am.

19 Q Now, you have a daughter of your own who's three now,
20 and she was two at the time. Correct?

21 A Yes, ma'am, I do.

22 Q Her name is Aubrey. And Aubrey had been at the
23 residence on multiple occasions herself, hadn't she?

24 A Not multiple occasions.

25 Q Had she been to Kevin Brown's house?

1 A A couple of times, yes.

2 Q All right. And, in addition to Kevin Brown's house,
3 she had been to LeeAnn's house once Brittany moved
4 there. Correct?

5 A Twice.

6 Q And you don't strike your own daughter in the ears, do
7 you?

8 A No, ma'am, I don't.

9 Q You were 24 years of age, and you had a two-year-old
10 daughter, and you were well aware that you don't
11 strike a 15-month-old child across the head as a form
12 of punishment. Correct?

13 A Yes, ma'am.

14 Q But, on this particular day, you chose to strike
15 not once but twice across each ear. Correct?

16 A Yes, ma'am.

17 Q And, having a daughter of your own, you're familiar
18 with toddler behavior. Correct?

19 A I believe it all varies between different toddlers.

20 Q And toddlers are known to throw things. Right?

21 A Some more than others, yes.

22 Q Well, a toddler throwing down a cup or a bottle isn't
23 unusual, is it?

24 A Not particularly, no.

25 Q Okay. But, on this particular day, a toddler doing a

1 toddler thing set you off, didn't it?

2 A Yes, ma'am.

3 Q And it set you off to the extent that you struck her
4 across the side of the head.

5 A Yes, ma'am.

6 Q Now, your testimony was that, earlier in the day, you
7 took out to the front yard.

8 A Yes, ma'am.

9 Q And you're familiar with the layout of the area. You
10 know there's a swing set and play area on the other
11 side of the house, aren't you?

12 A I never even took my own daughter in the play set area
13 that you talked, that they talked about. I have had
14 her over in the garage; but she's never been in the
15 back yard, no.

16 Q All right. How many times has your daughter, Aubrey,
17 been to the home?

18 A She's been there twice.

19 Q All right. And what do y'all do when she comes over
20 there?

21 A Normally, the girls play together. She has spent the
22 night at the home before.

23 Q Okay.

24 A And, like I said, they've played in the carport area
25 behind Ms. Hutto's shop.

1 Q And, when your daughter comes over to stay, she spends
2 the--- She's spent the night there, and she's also
3 spent the night at Kevin Brown's house. Correct?

4 A Yes, ma'am.

5 Q And that's because it was important for you to
6 establish that, or in Brittany's eyes and in your eyes
7 and the eyes of the other members of the Brown family,
8 that you cared about both children equally. Correct?

9 A Yes, ma'am.

10 Q And I think your previous testimony was that you
11 considered the Browns to be like your own family.
12 Correct?

13 A Yes, ma'am.

14 Q And there's no doubt that, on this particular day, the
15 reason that Brittany had entrusted you with
16 care is because you had always indicated to her that
17 you genuinely cared about. Correct?

18 A Yes, ma'am.

19 Q As if she were your own daughter.

20 A I wouldn't go so far as to say that she was my own
21 daughter; but, yes, I did have a place for in
22 my heart.

23 Q All right. And that extended to--- I believe your
24 earlier testimony was, when you were at Kevin Brown's
25 house, you would change her diapers to help Brittany

1 out. Correct?

2 A Yes, ma'am.

3 Q This wasn't the first time you had changed
4 diaper.

5 A No, ma'am, it wasn't.

6 Q And it certainly wasn't the first time you had changed
7 a diaper because you have a daughter of your own.
8 Correct?

9 A Correct.

10 Q And your own daughter has never had to be hospitalized
11 because of being in your care, has she?

12 A Never.

13 Q She's never had to be hospitalized because of your
14 form of discipline, has she?

15 A No, ma'am.

16 Q She's never had to be hospitalized or medically
17 treated because you caused injuries to her vagina
18 while changing her diaper.

19 A No, ma'am.

20 Q Now, when you talk about going outside in the front
21 yard, I believe your earlier testimony was that,
22 according to your testimony, she fell and you had
23 to dust her off. Correct?

24 A Yes, ma'am.

25 Q And you stated that she had a red mark on the head at

1 the time.

2 A Yes, ma'am, she did.

3 Q And you're talking about the forehead. Correct?

4 A Correct.

5 Q So that's the only bruise, according to your
6 testimony, that you had knowledge of?

7 A It was the only bruise that I had knowledge of until
8 Detective Presti showed me the pictures.

9 Q All right. And you're aware that had
10 multiple blows to the head. Correct?

11 A Yes, ma'am.

12 Q As well as a hematoma to the back of the head.
13 Correct?

14 A I was not advised of that whenever I was interrogated,
15 but I am aware of it now.

16 Q All right. And your testimony is that, as a result of
17 a fall, she had one red mark on her head. So your
18 testimony is you have no idea where the other head
19 injuries came from.

20 A That's correct.

21 Q Then you went on to state that, at some point, you had
22 grabbed her by the neck. Correct?

23 A No, I did not grab her by the neck. I grabbed her by
24 her short collar, and it was to keep her from falling.

25 Q So all of this occurred while you were outside?

1 A Yes, ma'am, it did.

2 Q And your testimony is that you grabbed her by the
3 shirt collar to keep her from falling. Correct?

4 A Correct.

5 Q And, when you grabbed her by the shirt collar, what
6 happened?

7 A She didn't fall.

8 Q Mr. Williams, you're not testifying that, by grabbing
9 her by the shirt collar, it resulted in these bruises
10 to her neck, are you?

11 A Yes, I am.

12 Q Your testimony is that this pattern of bruises---

13 A Well, I'm not a doctor to be able to tell what it's
14 from, but I'm telling you that's where it's from in my
15 eyes, whenever I grabbed her shirt, yes.

16 Q Okay. So all of this along her neck, according to
17 your testimony, happened when you grabbed her shirt.
18 Correct?

19 A Correct.

20 Q What about the bruises underneath her jaw line?

21 A I was never aware of any bruises under her jaw line,
22 neither was I told about them in my interrogation.

23 Q All right. But you are aware now. Correct?

24 A I am now.

25 Q And your testimony is you grabbed her shirt collar and

1 that caused the bruising to her neck?

2 A Correct.

3 Q And underneath her jaw line as well?

4 A I can't say that.

5 Q And, Mr. Williams, your testimony today is that the

6 injury to lip--- Have you seen these

7 photographs before?

8 A Yes, I have.

9 Q Where did you see them?

10 A From Detective Presti.

11 Q Your testimony is that these injuries to

12 lip were the result of you trying to help her?

13 A It was the results of her having a piece of skin
14 hanging off her lip, like a scab, and I pulled it off.

15 Q How did you pull it off?

16 A I pulled it off (indicating).

17 Q And you pulling off a piece of skin resulted in this
18 pattern of bleeding underneath her lip. Correct?

19 A Correct.

20 Q That's your testimony.

21 A Yes.

22 Q And the open-handed blows across the head resulted in
23 these ear injuries. You don't dispute that at all.

24 Correct?

25 A No, ma'am.

1 Q And explain again about picking her up and causing arm
2 injuries.

3 A She was--- The back of her was facing me, and I
4 reached over and picked her up by her elbows.

5 Q All right. And your testimony is that you knew that
6 you were not supposed to pick the child up that way
7 because your own mother had told you not pick your
8 daughter up that way. Correct?

9 A Yes, ma'am.

10 Q So your mom says, look, you're not supposed to pick
11 a child up that way. And, on this particular day,
12 according to your testimony, you were angry and you
13 were agitated and you didn't want to be watching
14

15 A Correct.

16 Q And you picked her up by her elbows, according to your
17 testimony, because you didn't want to hurt your back.

18 A Yes. I have sulcatation of the spine. I've
19 dislocated my tailbone twice.

20 Q And, because of that reason, you picked her up by her
21 elbows and that resulted in the multiple bruises.

22 A Correct.

23 Q And you acknowledge that the bruises to her legs
24 occurred in your care as well. Correct?

25 A Correct.

1 Q I believe your testimony on direct was that, because
2 you were aggravated about having to watch
3 you were rougher than you should have been.

4 A Rougher than I should be doing what?

5 Q That was your testimony. I'm asking you.

6 A Well, I'm asking what you're referring to being
7 rougher. Rougher---

8 Q Your testimony was that you were rougher than you
9 should have been when you were changing her diaper.

10 A Okay. Yes, I was.

11 Q What about the rest of the day?

12 A No. When I changed the diapers during the other day,
13 during other times of the day, I was not rough with
14 her at all.

15 Q Well, were you rough with her during any other event
16 during the day?

17 A Whenever I disciplined her, yes.

18 Q Now, in addition to being agitated, upset, angry, as
19 you put it, because you didn't want to be watching
20 , you were also upset because you had had an
21 argument with Brittany about the fence situation.

22 A I didn't have an argument with her. We had a
23 discussion about it, and I finally just told her that
24 she could go because it wasn't worth arguing about or
25 it wasn't really worth getting into a discussion about

1 that.

2 Q You were the one who was originally supposed to help
3 with the fence. Correct?

4 A Kevin had asked me to help him do the fence, yes.

5 Q All right. And what happened?

6 A Brittany wanted to do it so she could spend time with
7 her dad.

8 Q And, when you became involved with Brittany, I think
9 your testimony was that you have known her for many
10 years. Correct?

11 A I've known her since '04, yes.

12 Q And you've known since shortly after she was
13 born.

14 A Yes, ma'am.

15 Q And you knew, when you got involved with Brittany,
16 that she was a mother and that is a part of
17 her life and will always be a part of her life.

18 A Yes, ma'am.

19 Q And that, by being involved with her, is a
20 part of your life as well. Correct?

21 A Yes, ma'am.

22 Q And, on this particular day, you were upset about the
23 fact that she was in your care.

24 A Yes, ma'am.

25 Q And, when LeeAnn Harvey arrived at the home, there

1 weren't any bruises on her at that time, were there?

2 A No, ma'am.

3 Q So all of these bruises became apparent at some point
4 in the day after LeeAnn Harvey left. Correct?

5 A Yes, ma'am.

6 Q Okay. And, according to your testimony, that dirty
7 diaper that you testified about you put in a kitchen
8 trashcan. Correct?

9 A Yes, ma'am.

10 Q The same kitchen trashcan with the other diapers.
11 Correct?

12 A Yes, ma'am.

13 Q And, according to your statement to Detective Presti,
14 you changed five diapers that day. Correct?

15 A I did.

16 Q And, by changing her diapers throughout the day, you
17 were aware that she was bleeding from the vagina,
18 weren't you?

19 A No, I was not.

20 Q You were not?

21 A No.

22 Q I'm going to ask you to take a look at these photos,
23 Mr. Williams, State's Exhibit 25 and State's Exhibit
24 31. All right. Your testimony is you changed five
25 diapers that day. Correct?

1 A Correct.

2 Q And now your testimony is you have no idea where the
3 blood stains, what appear to be blood stains, came
4 from?

5 A That's where I thought they came from, her butt
6 whenever she had the diarrhea because it has occurred
7 before.

8 Q So now your testimony is that she was bleeding but you
9 thought she was bleeding from the butt.

10 A It wasn't that she was bleeding. It's that it came
11 from whenever she had diarrhea, and it has happened
12 before because of constipation problems.

13 Q So that wipe with the blood on it---

14 MR. SNELL: Objection, Your Honor.

15 THE COURT: Rephrase your question, Solicitor.

16 MS. MAYES: Yes, sir, Your Honor.

17 THE COURT: Thank you.

18 Q That wipe with the stain on it you acknowledge is
19 part of you changing her diaper. In other words,
20 you're aware of that diaper and that wipe and that
21 stain.

22 A I am aware of the diaper and the stain, yes.

23 Q All right. And at no point that day when you spoke
24 with Brittany did you bring any of this to her
25 attention, did you?

1 A No, ma'am.

2 Q You didn't tell her that was bleeding, did
3 you?

4 A No, ma'am. And it wasn't a continuous bleeding.

5 Q Mr. Williams, how many of the five diapers that you
6 changed contained what you believed to be blood?

7 A I don't recall any diapers actually containing blood.

8 Q How many times did you observe blood?

9 A I observed blood one time whenever I changed her
10 diaper, whenever it was a poopy diaper.

11 Q Your testimony is now that you only saw blood one time
12 and that was with the diaper that you call the poopy
13 diaper.

14 A Yes, ma'am.

15 Q All right. So on that particular wipe that you just
16 testified about.

17 A Correct.

18 Q Well, that's not the poopy diaper, is it?

19 A No, it's not. There's not a poopy diaper that's in
20 evidence either.

21 Q That's what I'm asking you.

22 A Well, I didn't collect the diapers.

23 Q So, if you only saw blood one time---

24 MR. SNELL: Objection, Your Honor. There's been
25 no testimony about blood.

1 MS. MAYES: Yes, sir, Your Honor.

2 Q If you only saw blood, what you believed---

3 THE COURT: Wait just a minute, please, and let
4 me rule. Overruled. Thank you.

5 Q If you only saw what you believed to be blood one
6 time, didn't you just testify that you were aware of
7 what you believed to be blood on that wipe and on that
8 diaper in that photograph?

9 A I don't notice any blood on the diaper. I notice
10 blood on this wipe, yes.

11 Q All right. Didn't you just acknowledge a few moments
12 ago---

13 A On the wipe, yes.

14 THE COURT: I can't track it when y'all interrupt
15 each other.

16 A Sorry. Sorry, Your Honor.

17 THE COURT: I'm not fussing at you, Mr. Williams,
18 at all. But, Solicitor, please finish your question. And
19 then you answer the question.

20 A Yes, Your Honor. I'm sorry.

21 THE COURT: Thank you. I'm not--- Again, I'm not
22 fussing at you at all or at the Solicitor.

23 SOLICITOR: Yes, sir, Your Honor.

24 THE COURT: Thank you, Solicitor. You may ask
25 your next question.

- 1 Q All right. So there's no doubt in your mind that
2 those wipes in the photographs are the result of your
3 diaper changing that day.
- 4 A Yes, ma'am.
- 5 Q Now, another question that Detective Presti posed to
6 you was, do you have anger problems.
- 7 A Yes, ma'am, I do.
- 8 Q What do you mean by that?
- 9 A I was placed on Lexapro due to my anger problems.
- 10 Q What is that drug?
- 11 A Lexapro is a controller for bipolar disorder and for
12 anger problems.
- 13 Q All right. So these anger problems had sort of reared
14 its head before this situation with .
- 15 Correct? It was enough where you knew, and people
16 around you knew, that you needed professional help
17 with it.
- 18 A Yes, ma'am.
- 19 Q Because you would be very short-tempered and would
20 sometimes blow up at people or certain situations.
- 21 Correct?
- 22 A Yes, ma'am.
- 23 Q And I believe your testimony was that you had been in
24 military school. Why was that?
- 25 A My mother placed me in military school to better me,

- 1 to give me a sense of discipline.
- 2 Q And your anger problem was part of what led to that
- 3 decision as well. Correct?
- 4 A No, ma'am.
- 5 Q When did you first get put on the Lexapro?
- 6 A I was put on the Lexapro I believe two years ago, a
- 7 year prior to being incarcerated.
- 8 Q And so this anger problem was certainly present during
- 9 adulthood. Correct?
- 10 A Yes, ma'am.
- 11 Q Now, your testimony on direct examination was that you
- 12 took some Aveeno lotion out of the baby bag and you
- 13 put it on her legs and thighs. Correct?
- 14 A Yes, ma'am.
- 15 Q When you were questioned by Detective Presti about
- 16 that, his specific question to you was, what kind of
- 17 cream did you put on her vagina.
- 18 A I was referring to the area not directly on--- When he
- 19 showed me the picture of the bruise above, that's
- 20 where I had applied it, on like her stomach or her
- 21 belly. When he showed me the picture or told me about
- 22 pictures of internal, that's whenever I told him it
- 23 was from a rough diaper change.
- 24 Q And, in this particular situation, we're talking about
- 25 the bruising right here (indicating)---

1 A Yes, ma'am.

2 Q ---to the top of the vagina. Correct?

3 A Yes, ma'am.

4 Q Your testimony is that that bruising to the top of her
5 vagina was because you were putting lotion on her?

6 A That's what I had told him in the beginning.

7 THE COURT: Let me see that picture, Solicitor.

8 MS. MAYES: Yes, sir, Your Honor.

9 THE COURT: Rephrase your question, Solicitor,
10 please. I can see it. Just rephrase your question.

11 Q Your testimony is that that bruising to the top of her
12 vagina is because you were putting lotion on her.

13 A Originally it was, yes. And then, when he disclosed
14 to me that she had internal bruising, that's whenever
15 I told him that it was due to a rough diaper change.

16 Q All right. So you acknowledge causing these bruises
17 as well.

18 A I do.

19 Q And what you term a rough diaper change resulted in
20 abrasions not only to this child's vagina but to the
21 inner structure of the vagina and to the hymen.

22 Correct?

23 MR. SNELL: Objection, Your Honor. There's been
24 no testimony as to that.

25 THE COURT: Step up here for me, please,

1 Mr. Snell.

2 (Whereupon, there is a bench conference off the
3 record in the presence of the jury but out of the hearing
4 of the jury.)

5 THE COURT: All right. Solicitor, you may
6 rephrase your question.

7 MS. MAYES: Yes, sir, Your Honor.

8 Q Now, your testimony is that you knew how to change a
9 diaper because your mom had discussed that with you
10 before. Correct?

11 A Yes, ma'am.

12 Q And because you have a daughter of your own and you've
13 changed her diaper on many occasions.

14 A Yes, ma'am, I have.

15 Q And because you had even changed diaper on
16 other occasions. Correct?

17 A Yes, ma'am, I have.

18 Q And at no time in the past have you caused injuries to
19 a child by changing her diaper, have you?

20 A No, ma'am, I haven't.

21 Q And, on this particular day when you were angry and
22 you had this anger problem, it results in injuries to
23 vaginal area. And you acknowledge that
24 whatever abrasions, redness and swelling that she
25 received that day were the result of how you handled

1 her. Correct?

2 A Yes, ma'am. How I changed the diaper, yes.

3 MS. MAYES: Nothing further, Your Honor.

4 THE COURT: Thank you. Thank you very much,
5 Solicitor. Redirect, Mr. Snell?

6 MR. SNELL: No other questions, Your Honor.

7 THE COURT: Thank you. Thank you very much, Mr.
8 Snell. Mr. Williams, you may step down.

9 A Thank you, Your Honor.

10 (Witness leaves the witness stand.)

11 THE COURT: All right. Mr. Foreman and ladies
12 and gentlemen, I believe now we'll take our morning recess.
13 I would remind you, during this recess, do not discuss the
14 case with your fellow jurors. Remember to keep an open
15 mind. Do not begin your deliberations until I instruct you
16 to do so. We'll take a 15-minute recess. If anyone wants
17 to go outside, you may certainly do so. Again, do not
18 discuss the case with anyone. I would like a bailiff to
19 escort those outside at this stage of the proceeding. If
20 y'all stay together, you can go outside with a bailiff.
21 Thank you very much. You may now go to your jury room.

22 (The jury retires to the jury room.)

23 THE COURT: Mr. Snell, can you share with me if
24 you have other witnesses? If you can't, that's fine. You
25 can tell me when we come back. I won't hold you to it.

1 MR. SNELL: We're not planning to call any
2 additional witnesses.

3 THE COURT: All right. Upon our return then,
4 I'll be glad hear any motions if that's appropriate.
5 Although you haven't formerly rested in front of the jury
6 panel, I would still be glad to hear the motions if you
7 don't have any objections to that. All right. We'll take
8 us a 15-minute recess. Well, Solicitor, and then I'll need
9 to know whether or not you have any reply. Thank you.

10 (Whereupon, there is a recess.)

11 THE COURT: All right. Mr. Snell, Mr. Floyd, do
12 you have any motions? And, again, I'm assuming you're
13 going to rest.

14 MR. SNELL: Your Honor, we are; and, at this
15 time, we would renew our previous motions made for directed
16 verdict on both the charge, on both charges of the unlawful
17 conduct towards a child allegation as well as the criminal
18 sexual conduct with a minor in the first degree.

19 THE COURT: All right. Thank you. Thank you,
20 Mr. Snell. I will--- Considering the evidence at this
21 stage, both Ms. Moore's testimony and, additionally, Mr.
22 Williams' testimony, I would renew my previous ruling as to
23 the directed verdict. I find there is direct evidence and
24 circumstantial evidence as to violations of section,
25 unlawful conduct towards a child, under Title 63, and also

1 criminal sexual conduct looking at the case at this point
2 in the light most favorable to the non-moving party, that
3 being the State. Solicitor, is the State going to have any
4 evidence or witnesses in reply.

5 MS. MAYES: No, sir, Your Honor.

6 THE COURT: All right. Are there any requests to
7 charge?

8 MS. MAYES: Not beyond the statutes that are
9 currently before the Court or have currently been discussed
10 by the Court. That would include the definition of sexual
11 battery--of course, I believe that's already a part of
12 Your Honor's charge in the criminal sexual conduct with a
13 minor--and as to unlawful contact towards a child, Your
14 Honor, the subsection which deals with the definition of a
15 person responsible for the child's welfare.

16 THE COURT: All right. Thank you. Mr. Floyd?

17 MR. FLOYD: Your Honor, we have several we would
18 like to hand up to you.

19 THE COURT: All right.

20 MR. FLOYD: And, of course, we'd also request the
21 lesser-included offense of assault and battery of a high
22 and aggravated nature. Your Honor, we also feel that it's
23 kind of a---

24 THE COURT: And, Solicitor, do you have copies of
25 these requests?

1 MS. MAYES: I do not, Your Honor.

2 MR. FLOYD: I don't think--- I just did them last
3 night. I'll let her look at them, Your Honor.

4 THE COURT: All right. Well, why don't you ask
5 the clerk if she'll make a set for the Solicitor and we can
6 look at them. Do you mind doing that, Madame Clerk?

7 CLERK: No, sir.

8 MR. FLOYD: Your Honor, he's kind of, in some
9 ways, being cheated because, as you know, they changed the
10 assault law in June of I believe 2010 after this incident.
11 But I think he would be entitled to take advantage of the
12 ABHAN, common law ABHAN, which was in effect at the time of
13 this incident. If the new law--- If the new law applies in
14 any way--- I mean, we've looked at it and thought assault
15 in the second degree may well be a lesser-included offense.
16 I don't know if we could take advantage of the old and the
17 new at the same time. So I think that would be the posture
18 we're in.

19 THE COURT: Well, let me ask the Solicitor. What
20 about the assault and battery of a high and aggravated
21 nature, Solicitor?

22 MS. MAYES: Yes, sir, Your Honor. The common law
23 of ABHAN was the law in effect at the time of this offense.
24 They had not yet passed any of the new legislation, and
25 certainly that would not apply. There is case law to

1 support a charge of ABHAN as a lesser-included offense to
2 criminal sexual conduct with a minor under certain
3 circumstances when there are facts on the record to support
4 it. Traditionally, that has been in the context of
5 indecent liberties with a female as the lesser-included
6 offense. And, in this particular case, it's unusual
7 because he does not acknowledge any indecent liberties with
8 a female.

9 THE COURT: Well, it could be a difference in the
10 gender or the sizes, a difference in the ages. Of course,
11 as you all know, assault and battery of a high and
12 aggravated nature is no more than assault and battery with
13 circumstances of aggravation, and those laundry list of
14 circumstances of aggravation that appear in the common law
15 are not all inclusive. I think the charge says these are
16 just examples of circumstances of aggravation in that
17 regard. His testimony, if you take it from the Solicitor's
18 point of view, is that he was engaged in a lawful act and
19 committed it in an unlawful manner, so to speak, that it
20 was lawful for him to change [redacted]'s diaper if it needed
21 changing, but it was obviously, whether I couch it in terms
22 of being unlawful, if you take his testimony, it was rough,
23 it was too rough. I'll look at that. That would obviously
24 be unlawful. Did I get a set? My reasoning for making
25 copies was---

1 CLERK: I made an extra set. I just didn't know
2 who to give it to, Your Honor.

3 MR. FLOYD: She gave me yours.

4 THE COURT: So you decided whoever you gave it to
5 I wouldn't be one of them, Madame Clerk? Is that how it
6 works now?

7 (Hands to Court.)

8 (Pause.)

9 THE COURT: All right. Solicitor, as to the
10 requests to charge, are there any that you do not have
11 objections to or any that you object to?

12 MS. MAYES: Your Honor, as to--- No objections.
13 I think it's what they have labeled number four,
14 traditionally the King charge. That's probably part of
15 Your Honor's standard charge in a case where a lesser-
16 included offense is submitted.

17 THE COURT: All right.

18 MS. MAYES: I'm not sure about the difference in
19 this terminology versus what the Court might already have
20 as a part of your standard charge.

21 THE COURT: Okay.

22 MS. MAYES: But, as to the others, Your Honor, in
23 looking at number three and number five, I believe these
24 are misstatements of the law or with the charging of the
25 jury with something that does not adequately describe or

1 define the law, and I believe the statute itself clearly
2 sets forth what the elements are. And, in terms of intent,
3 I believe Your Honor already has a standard charge
4 concerning intent.

5 THE COURT: I do give a standard charge on
6 intent, Mr. Floyd, that's--- Actually, it talks about the
7 State always having to prove intent beyond a reasonable
8 doubt.

9 MR. FLOYD: As long as we get the intent in
10 there, Judge. And, as far as the King charge, yes, Your
11 Honor. We're not married to the language here if you give
12 the standard King charge on the lesser-included also. We
13 just want the concepts in the charge.

14 (Pause.)

15 THE COURT: I thought--- And I asked my law clerk
16 to check. I thought King was reversed, and it was.

17 MR. FLOYD: I think it's not automatic anymore,
18 Your Honor. But I thought, if we requested, it was
19 appropriate.

20 THE COURT: Well, if y'all don't have any
21 objections, I'll give it. I'll certainly explain it to the
22 jury. All right. I think what it did is the new case said
23 you're not required to give it if you give the modern
24 reasonable doubt charge. All right. How long do you need
25 to argue? I won't hold you to it. I'd just like to have

1 it in my mind. Solicitor, Mr. Floyd?

2 MR. FLOYD: Your Honor, I imagine around 30
3 minutes.

4 THE COURT: Solicitor?

5 MS. MAYES: The State would waive opening, Your
6 Honor, and less than 30 minutes.

7 THE COURT: All right. Madame Clerk, is the jury
8 ready?

9 CLERK: Yes, sir, Your Honor.

10 THE COURT: All right. Thank you. Thank you
11 very much. When the jury comes out, of course, I will turn
12 my attention back to the defense to call your next witness.
13 You can formally rest and renew your objections for the
14 record. I don't know if you have to do that or not in
15 front of the jury, but I always suggest that. Of course, I
16 don't have to tell y'all how to try cases, but I would
17 still suggest it. And then I'll tell them where we're at
18 procedurally, and then we'll go right into closing
19 arguments. Depending on the length of the arguments, we
20 may or may not take a break between the arguments. If
21 they're only 30 minutes or less, we will not take a break
22 between your arguments. Of course, if the Solicitor needs
23 a few minutes to get the evidence straight after Mr. Snell
24 or Mr. Floyd's closing, I'll certainly allow that. I don't
25 allow anyone in or out of the courtroom or any moving about

1 during the course of the attorneys' closing arguments to
2 the jury. If you want to leave after the defense's closing
3 argument and before the Solicitor starts, you may certainly
4 do so in that narrow window of time. If you want to leave
5 after the Solicitor's closing and prior to the Judge's
6 instruction to the jury, you may certainly do so. But no
7 moving about during the course of the closing arguments. I
8 find it's distracting. I'm sure it may be distracting to
9 the jury. It's the attorneys' last opportunity that they
10 have to speak to the jury on behalf of their clients. All
11 right. Anything further, Solicitor, Mr. Floyd?

12 MS. MAYES: Your Honor, I just need a moment to
13 get the evidence straight.

14 THE COURT: All right. Well, Mr. Floyd and Mr.
15 Snell are going to move it all around anyway, Solicitor,
16 so--- Bring us our jury, please, Mr. Corley.

17 (The jury returns to the courtroom.)

18 THE COURT: All right. Our jury is back present
19 in the courtroom. As you recall, we are continuing the
20 trial of the case by the presentation of evidence and
21 testimony by the defense. Mr. Snell, you may call your
22 next witness.

23 MR. SNELL: Your Honor, the defense would now
24 rest.

25 THE COURT: All right.

1 MR. SNELL: And we would also, Your Honor, like
2 to reinstate our previous motions made and objections.

3 THE COURT: All right. Thank you. Thank you
4 very much, Mr. Snell. I would reaffirm all my previous
5 trial rulings, both evidentiary and as to the motions.
6 Solicitor, does the State intend to offer any evidence in
7 reply.

8 MS. MAYES: No, sir, Your Honor.

9 THE COURT: All right. Thank you. Thank you
10 very much, Solicitor. Mr. Foreman, ladies and gentlemen,
11 you have now heard that the defense has rested, that the
12 State does not intend to call any evidence or witnesses in
13 reply. The stage we're at now is the stage of the closing
14 arguments by the attorneys. Closing arguments are
15 different from opening statements. They're true arguments.
16 The attorneys may argue the facts, the inferences to be
17 drawn from the facts and how they apply to the law which I
18 will instruct you on after the closing arguments. The
19 procedure we follow in a case such as this is the attorney,
20 I believe Mr. Floyd, will first present the closing
21 argument on behalf of his client, Mr. Williams, thereafter,
22 followed by the Solicitor who will present the closing
23 argument on behalf of the State, the State being the party
24 that bears the burden of proving the case beyond a
25 reasonable doubt. As I have stated on prior occasions, the

1 Defendant is presumed to be innocent and that presumption
2 of innocence remains with him throughout the trial of this
3 case unless and until the jury finds that the State has met
4 its burden of proving the case beyond a reasonable doubt.
5 After the Solicitor's closing argument to you, I will then
6 charge you or instruct you on the law that applies to the
7 facts of this case. Thereafter, the case will be submitted
8 to you for your deliberations and for your verdicts. I
9 have advised, and will again advise the spectators in your
10 presence, that I do not allow any movement about the
11 courtroom while the attorneys are addressing the jury.
12 It's the final time they have the opportunity to speak with
13 the jury on behalf of their clients. I further have
14 advised the spectators that they may leave between the
15 arguments; in other words, after Mr. Floyd's, they may
16 leave prior to the Solicitor starting or, after the
17 Solicitor's prior to my instructions to you, so that it
18 will not be distracting to you or to me. So please, those
19 in the courtroom, keep that in mind. With that being said,
20 if you will please give the parties your complete and
21 undivided attention as you have done throughout the course
22 of this proceeding. Mr. Floyd?

23 MR. FLOYD: Thank you, Your Honor. Mr. Foreman
24 and ladies and gentlemen of the jury, this young man is
25 Lance Williams. He's the young man you just met; yet, you

1 are going to decide today whether, based on what you've
2 heard in this courtroom, whether or not he should be
3 branded a criminal, and not just any criminal, but one of
4 the worse criminals in our society, a child sex molester.
5 Now, if you've never served on a criminal jury before, you
6 almost have to set aside human nature because some of you
7 may have the thought in your minds that, because Lance
8 Williams was arrested which he was, because he was carried
9 to jail which he was, because he has been charged with
10 these crimes which he has been, because he now sits before
11 you to be judged which he does, you may have the thought,
12 well, he must be guilty. Well, if you've got that kind of
13 thought in your mind, you have got to erase it because, you
14 see, Lance Williams has the same rights each and every one
15 of us has; and one of those most important rights is what
16 we call the presumption of innocence. So, when you look at
17 Lance Williams, you must say in your heart and in your mind
18 Lance Williams is innocent and Lance Williams remains
19 innocent unless the State proves to each one of your
20 satisfactions beyond a reasonable doubt of his guilt. Now,
21 what do we mean by that? A lot of people define reasonable
22 doubt as that doubt which would cause a reasonable person
23 to hesitate to act. That doubt which would cause a
24 reasonable person to hesitate to act. So, if you could
25 somehow take all the evidence you have heard and seen in

1 this courtroom and put it in the shape of this piece of
2 paper and, because of one piece of that evidence or the
3 lack of one piece of evidence you would hesitate before you
4 would vote that he should be branded a sex molester of
5 children, well, then your obligation as a juror is to
6 return a verdict of not guilty. Even if there is evidence
7 that makes you suspicious of the guilt, because, when you
8 vote guilty or not guilty back in that jury room, you're
9 not voting on whether or not you think he did it. What
10 you're voting on is, has the State proven the guilt of
11 Lance Williams to my satisfaction beyond a reasonable
12 doubt. Now, I am not going to stand up here and argue to
13 you that Lance Williams is not at some fault in this
14 matter. I do not argue that to you. I do not argue that
15 to you. And I think you heard him on the stand. He does
16 not say that. This is a very difficult kind of case
17 because there is a child, an innocent being, who has
18 suffered some injuries. Now, fortunately for everybody
19 concerned, the injuries are not permanent and basically the
20 child ended up with bruising that healed. How do we know
21 that? Because we haven't heard anything different. That
22 doesn't make it right, and we don't say it's right. Now,
23 here's what you've got to decide. You see, Lance has been
24 charged with two different crimes. Now, one of those
25 crimes is the unlawful conduct toward a child. And I'm not

1 going to say that everything he did was lawful, but there's
2 a technicality with that particular crime because they have
3 to prove that he was in some kind of a special relationship
4 with the child for that statute to apply. The Judge will
5 tell you all about that. And you'll notice DSS certainly
6 didn't feel that way. That's for y'all to decide on that.
7 The second thing that he's charged with is the one that he
8 disputes whole heartily, not just on a technicality, and
9 that's that he has been charged with criminal sexual
10 conduct with a minor in the first degree, a serious offense
11 that would affect him for the rest of his---

12 SOLICITOR: Objection, Your Honor. Sentencing is
13 within the discretion of the Court.

14 THE COURT: I'm sorry. I couldn't hear you.

15 SOLICITOR: Sentencing is within the discretion
16 of the Court.

17 THE COURT: All right.

18 MR. FLOYD: I didn't say anything about the
19 sentence, Judge.

20 THE COURT: And, of course, ladies and gentlemen,
21 A, the Solicitor is correct and, B, Mr. Floyd is correct in
22 that regard. And that is not a consideration--- Sentencing
23 is not a consideration for the jury whatsoever. That would
24 not be part of your deliberations in any manner. Mr.
25 Floyd, you may continue.

1 MR. FLOYD: Thank you, Your Honor. As I say,
2 this is a most serious type of offense. It's the type of
3 offense that would affect him for the rest of his life.
4 Sexual child molester. Now, the Judge will tell you
5 something as an important matter of law. When a person is
6 charged with a crime, also the jury must consider any what
7 are called lesser-included offenses. And, if you listen
8 closely, he will explain it to you and that this crime,
9 criminal sexual conduct with a minor in the first degree,
10 it carries with it the lesser-included offense of assault
11 and battery of a high and aggravated nature. Assault and
12 battery of a high and aggravated nature. And he'll explain
13 to you what that law means and what are elements of that
14 law. But, basically, that means, when there is an assault
15 that occurs, that there is a distinct difference between
16 the assailant and the victim by means of age, size and so
17 forth or the victim is of a particularly tender age; and
18 then the assault becomes assault of a high and aggravated
19 nature. And what the Judge will tell you is that, when
20 you're considering whether the conduct is either of the
21 higher level offense or the lower level offense, either
22 criminal sexual conduct with a minor or assault and battery
23 of a high and aggravated nature which is a lesser-included
24 offense, that, if you have any doubt as to which one of
25 those applies, you must give the doubt to the Defendant and

1 go with the lesser-included offense. Now, let's talk about
2 some of the evidence in the case. I'm sure the Solicitor
3 is going to parade a bunch of photographs in front of you.
4 And you've seen them all, and they're not pretty at all.
5 No question about that. Now, let's talk about some things
6 that are kind of not in dispute before we start disputing
7 some things. We do know this: That, at the end of the day
8 when Lance turned over to the grandparents, there
9 was only one injury that was clearly visible, one new
10 injury--I'm going to talk about something else in a
11 minute--and that was the bruise on her forehead. We know
12 that, once was taken to the ball field and some
13 additional time had passed, it was noted that there were
14 other bruises obvious to her, on her face, on her arms, I
15 think on her legs but I don't want to--- If I say something
16 different than your memory of it, you go by your memory of
17 it because you're the judges of the facts. One thing that
18 was interesting to me about that is LeeAnn called the
19 mother and told her about the bruises. And that's what she
20 told her about were the bruises; there was no mention of
21 the lip. Now, I suggest to you what that shows us is that
22 the lip was a pre-existing kind of a situation that they
23 all knew about so they weren't concerned about that because
24 that would obviously be very obvious. And that makes
25 sense. It was scabbed over and the scab was pulled off.

1 That still does not excuse the other bruises, and I'm not
2 trying to excuse those. We know those bruises happened.
3 Now, Lance Williams was not aware of that bruising yet
4 because they had not appeared. He didn't even know about
5 the bruising until he talked with the investigator, Deputy
6 Prestigiacomo, and he showed him the photographs. And what
7 was his reaction? Surprise. Now--- And we know all this
8 is true because even the doctors tell us there can be a
9 substantial period of time between a blow being struck and
10 the bruise appearing. And we know the bruises weren't
11 apparent when the grandparents picked up the child and when
12 Lance delivered the child, so we know Lance could not be
13 aware of the way the child had been injured. Once he saw
14 the photographs, sure, he could put it together. He had
15 been rough with her. There could be no other explanation
16 in his mind as to why those bruises are there other than
17 his conduct, which he freely accepted. Now, we know that
18 there was a blow to the side of the head, two of them.
19 He's admitted that. We know that he picked the child up.
20 I don't think there's anything malicious there. Daddies
21 pick their children up like that without meaning to do them
22 any harm. It leaves some bruises. Maybe he was too rough
23 when he did it. We don't dispute that. You know,
24 sometimes we adults forget the differences---maybe men do
25 more than women do---we forget our strength and the weakness

1 of a child. We never should do that, and that is no
2 excuse. And maybe he was too rough when he picked her up.
3 He freely admits that. Now, we go to--- And then the
4 revelation that there is some bruising in her genital area.
5 What he says is there is no way he did anything sexual with
6 this child. He vehemently denies that. He was first asked
7 and shown the photograph where there is a bruise on the--
8 and forgive my pronunciation--the mons pubis, the front
9 part of the upper area. And his only explanation is, that
10 must've happened when I was putting the lotion on her.
11 He's then asked about some bruising in the lower part of
12 the area, the labia and the hymen and the clitoris. The
13 only way he could explain that is from the poop diaper that
14 he changed. Now, you heard Dr. Luberoff on that point.
15 What did she say? Yes, it is appropriate for an adult to
16 touch a child's private areas, a female child's private
17 areas, the genitalia, when cleaning a diaper. That's not a
18 sexual act; that's an act of hygiene. And that's what he
19 was doing. Now, maybe he was too rough, and he freely
20 admits that because it caused some bruising. It caused
21 some bruising. That doesn't make him a sexual molester.
22 You know why we know it's not a sexual act? You know where
23 there was no bruising on the interior of the vagina? There
24 was no bruising on the interior of the vagina. You heard
25 Dr. Luberoff talking about, you know--taking us back into

1 the various areas of the vagina itself--no bruising on the
2 vagina, on the interior of the vagina. And, if it was a
3 sexual act, then there would have been penetration of the
4 vagina. There was none. There was none. So what you've
5 got is bruising caused by being too rough wiping the
6 child's diaper, wiping the child off, getting between the
7 folds, too rough with it and it caused bruising. How else
8 do we know it's not a sexual act? There was no forensics
9 whatsoever to reveal any type of sexual act. And what do
10 we know? We know they did a rape kit. That's what they
11 do. They swabbed that entire genital area of that child,
12 the entire anal area of that child. They saw a spot on the
13 foot that could be body fluids. They took it, and they
14 tested it all. And what did they find out? No semen, no
15 sperm, no saliva, no DNA whatsoever of that young man,
16 Lance Williams. Now, let's talk about these diapers for a
17 minute. They've got pictures of them. They're going to
18 try to make some kind of big to do about that, maybe even
19 try to argue about that. Well, where is the poop? These
20 diapers were gathered at 2:00 o'clock on the afternoon of
21 the 16th. Remember them getting those timeframes down for
22 you? The hospital said, go get some diapers. Now, the
23 questioning about the poop in the diaper, well, that didn't
24 come about until 7:00 o'clock that night. So, when these
25 people were told by the hospital to go get diapers, they

1 were told to go get diapers. They weren't asked to get a
2 poopy diaper because nobody knew that was even an issue.
3 They were told to go get diapers so they could look at them
4 to determine if there was any evidence in those diapers of
5 a sexual assault. And there wasn't. Have you heard
6 anybody say to you there was any evidence of a sexual
7 assault in those diapers they have pictures of? Not a
8 single person. Has anybody come in and said, well, there
9 was blood in those diapers? Not a single person. Now,
10 they've got the State, they've got the hospital, they've
11 got SLED, they've got the Sheriff's Department.
12 Everybody's been involved in this case. Everybody's been
13 investigating Lance Williams. And not a single person has
14 ever said he did anything sexual. There is no evidence of
15 any sexual activity from him. There is no evidence of any
16 sexual activity on the body of the child nor on any of the
17 evidence that they tested and seized. Now, with that in
18 mind, how can you not help but hesitate when you're
19 deciding whether or not Lance Williams should be convicted
20 of criminal sexual conduct with a minor in the first
21 degree? How can you not help but hesitate? You saw him.
22 We put him up there for you to get a feel for him. The
23 man's got a daughter of his own two years old, the main
24 love of his life. He has joint custody with his wife.
25 She's here. The mother of the child, she's here too in

1 support of him. And what did you hear about that? He
2 spends as much time with that child as he can. He paid his
3 support for that child. He loves that child. He had a
4 good relationship with the family. There's nothing
5 wrong--- Nobody said anything bad about the Brown family at
6 all. He had a good relationship with them. He cared for
7 them. He spent a lot of time with them. He had a
8 relationship going with Brittany and was developing a
9 relationship with . Now, we can't excuse his
10 losing his temper that day, and we're not asking you to
11 excuse him for losing his temper that day. We're not
12 asking you do that at all. All we're asking is that you
13 look at the evidence real close and you consider everything
14 that you've heard here today and just make sure that he
15 gets convicted for what he actually did. You know,
16 everybody wants to jump to the defense of a small child.
17 And I've had children. You love your little children. You
18 want to protect them. But, on the other hand, you've got
19 to apply the law correctly; and all we ask is that you do
20 that in this case. Think about the facts. There's just no
21 evidence whatsoever to suggest this is a sexual act.
22 There's no evidence whatsoever, if you listen to the Lance
23 Williams that I suggest you would have in your mind after
24 listening to him, that he was motivated by some type of
25 sexual motivation. That's just not there. He's got an

1 anger problem, and that anger problem caused him this
2 problem. We're all fortunate that the child was not hurt
3 bad. We're fortunate that all it was was bruising and some
4 minor lacerations and so forth. We're all fortunate
5 because he did lose his temper. But we know it wasn't
6 devastating because even the bruising and all didn't even
7 come up until several hours later. That doesn't make it
8 right. It doesn't make it right. It was wrong, and we
9 freely admit that. We suggest to you, yes, he's guilty of
10 assault, but not sexual assault, assault and battery of a
11 high and aggravated nature. If you find him guilty of
12 that, we can't complain about that. He's admitted to that.
13 And I'm going to shut up and sit down. I know I've been
14 talking a long time. And I apologize. But, you see, the
15 way this system works is, when I sit down, I don't get to
16 say anything else to you, not a thing. And Ms. Mayes will
17 get up behind me and she'll get to talk to you like I'm
18 talking to you now. And she's a very skilled prosecutor,
19 and so she's going to try her best to convince you to, oh,
20 forget what he said, this man's a sex molester. And she's
21 going to show you these pictures, and she's going to try to
22 give up your sympathy for this child, you should always
23 have a sympathy for a child, and try to talk about, see all
24 these injuries, all these injuries, see how bad these
25 pictures look, see how close these injuries are to her

1 vagina, it must be a sexual act. All we can ask is, if she
2 brings up something we've overlooked or talks about it
3 differently than the way we've approached it, is, when you
4 get back in the jury room, if you will just talk and stop
5 and consider how we could've responded to her new argument
6 if we had a chance. You see, she gets to go last just like
7 they get to sit closer to you because the rules allow that
8 because, you see, the State has what's called the burden of
9 proof, so they get to go last and speak with you last which
10 is an advantage because they must prove the guilt of Lance
11 Williams beyond a reasonable doubt. All we ask is that you
12 think hard about it. That's all we can ask. And we
13 appreciate your patience and paying close attention
14 because, you see, this man, this is the most important day
15 in the life of Lance Williams. And the decision you make
16 about him will affect him for a long time. So it's a
17 serious decision, and it merits your serious consideration.
18 We appreciate your consideration because, you know, the
19 police can charge you and arrest you. They've got to get
20 an arrest warrant to arrest you; and, just on that alone,
21 you can go to jail. But you can't be actually convicted of
22 the crime unless 12 members of the community unanimously
23 all agree that the evidence proves that guilt beyond a
24 reasonable doubt. So we thank you for your presence here
25 today. Lance has been sitting in jail, and this is finally

1 his day for this matter to be addressed in some fashion.
2 We ask for your consideration in these matters, and we ask
3 you to think hard about the lesser-included offense. We
4 think that's the appropriate charge. And we feel
5 comfortable placing Lance in your hands. Thank you very
6 much.

7 THE COURT: Thank you. Thank you, Mr. Floyd.
8 Solicitor?

9 MS. MAYES: Yes, sir, Your Honor. May it please
10 the Court.

11 THE COURT: Yes, ma'am.

12 MS. MAYES: When I first spoke with you the other
13 day, one of the things that I mentioned was that child
14 abuse is a secret crime. It's a crime of silence, and
15 usually that's because kids are living in a home where
16 they're not able to talk about what's happened or what is
17 happening to them because it's the people around them who
18 are the ones that are hurting them. It might be even
19 someone that they love, most often someone that they trust.
20 And, in this case, it's a secret crime not only because
21 it's child abuse but because the victim is too little to
22 talk; she's too little to tell us what happened to her that
23 day. So, instead, we can only look at the evidence that's
24 left behind. And that's the thing about child abuse. It's
25 not like other crimes where you might have an armed robbery

1 that's committed in a convenience store and there is a
2 camera up above and it's recording what's happening all
3 along, that we can come into court and we can show you that
4 videotape so you know exactly who committed the crime and
5 what they did. It's not like a burglary case where
6 fingerprints are left behind and we can come in and show
7 you those fingerprints and you know exactly who was in the
8 house and what they did. These crimes, instead, leave
9 behind victims who are too afraid to talk or too little to
10 talk. But what we know for sure is that was
11 beaten badly that day, badly enough to put her in the
12 hospital four days, bad enough to cause multiple blows to
13 her head. And what we heard today was the Defendant taking
14 the stand and, once again, trying to explain away what
15 happened to . . . Not credible, not believable.

16 had multiple blows to the head, not just some red
17 mark on her head that he tried to explain away as her
18 falling outside. And keep in mind how he manufactures
19 these explanations not only to Detective Presti but even
20 here in this courtroom to all of you, trying to manufacture
21 an explanation that, oh, conveniently, I was in the front
22 of trailer where no one else could see me, because he knows
23 full well that Ms. Hutto was right there with the windows
24 open, working at her station in that beauty shop; and, if
25 he had been outside with , she would've seen him.

1 There was no fall, ladies and gentlemen. But, even so, he
2 says that fall resulted in a red mark to the head. That's
3 not what happened to .. had multiple blows
4 across her head, both sides of her head, involving the
5 inside of the ears, the top of the ears, the back of the
6 ears and, most significantly, a hematoma to the back of the
7 head. And that hematoma to the back of the head resulted
8 in bleeding underneath the scalp that was seen on the CT
9 scan. And, when we look at this constellation of injuries,
10 the back of the head, the neck, all over her body, he tries
11 to explain this away by the most ordinary of actions,
12 actions that most parents think about as routine every
13 single day, things like picking up a child, things like
14 leaning over to lift a child, things like the child has
15 something on their lip and you check it. Ladies and
16 gentlemen, this is not someone trying to help .
17 She was popped in the mouth. Those are fresh injuries.
18 This is not someone trying to keep her from tripping over.
19 This is someone who has grabbed her by the neck in anger
20 and in rage which, by his own admission, he was that day.
21 Why? Why? She was just being a little girl. He says
22 these blows to her ears are the result of discipline. We
23 know, I submit, that discipline to a 15-month-old, to a
24 baby, does not include boxer blows, as the nurse examiner
25 put it, to the sides of the head because she throws down a

1 cup or a bottle. And, as he continues to try and explain
2 away these injuries, though she had these multiple pattern
3 bruises to her arms, also to her legs, and he says, oh, I
4 was just picking her up, now, I knew full well I wasn't
5 suppose to pick up a child like that, but I didn't want to
6 hurt my back. That's ridiculous and unacceptable. And
7 then, as he continues trying to explain away these
8 injuries, had been bleeding from the vagina. When
9 she got to the hospital, they knew she had been physically
10 abused. There was no question about it because she was
11 covered with all these bruises that could be easily seen.
12 And you heard the testimony. There at the hospital her
13 diaper was removed and, as they removed her diaper, they
14 right away saw what appeared to be blood in the diaper, she
15 had swelling all about the outside of the vaginal area as
16 well bruising here (indicating) along the top, which Dr.
17 Luberoff suggested may be a bite mark. It was certainly a
18 pattern of bruising. And they knew that this assault had
19 also included criminal sexual conduct or suspected criminal
20 sexual conduct which would be an assault on her genitals.
21 And, as the examination progressed, there was no doubt.
22 You heard the testimony from Dr. Luberoff specifically,
23 this injury is a penetrating injury into the vagina. If
24 there's any question at all---

25 MR. FLOYD: Objection, Your Honor. That's

1 misstating the testimony.

2 THE COURT: All right. Ladies and gentlemen of
3 the jury panel, you are the determiners of the facts in the
4 case and the inferences to be drawn from the facts in the
5 case. As I've told you previously, what the attorneys tell
6 you is not evidence. You would apply the facts as you find
7 them to be from your memory and your recollection. Thank
8 you. Solicitor, you may continue.

9 MS. MAYES: Yes, sir, Your Honor. The testimony
10 of Dr. Luberoff was that her examination was diagnostic of
11 vaginal penetration, diagnostic of vaginal penetration.
12 That was her diagnosis, meaning there was blunt force
13 trauma as she described. I said, how much force. She said
14 enough, enough to cause bruising all along the hymen.
15 Ladies and gentlemen, this is criminal sexual conduct, the
16 intrusion into the genital opening of a child under 11.
17 Now, the State does not have to prove what his intentions
18 are. As I stated before, we have a little girl who can't
19 talk. In a situation like this, what is known is that he
20 chose to act out against her in that manner. He chose to
21 insert his finger or fingers into her vagina. Why? Why
22 harm a child---

23 MR. FLOYD: Your Honor, I object. There's been
24 no testimony that his finger went into her vagina.

25 THE COURT: All right. Again, ladies and

1 gentlemen, the facts of the case are solely within the
2 province of the jury. You determine the facts and the
3 reasonable inferences to be drawn from the facts. You and
4 you alone will make those decisions. Thank you. Thank
5 you, Mr. Floyd. You may continue, Solicitor.

6 MS. MAYES: Yes, sir, Your Honor. Again, the
7 testimony of Dr. Luberoff, diagnostic of vaginal
8 penetration. If there's any question at all about her
9 testimony and about her testimony in regards to this being
10 a penetrating injury to , you may come back and
11 hear that portion of her testimony or anyone else's.
12 testimony at any point in this case. I submit there's
13 absolutely no question. She made it clear that there was a
14 diagnosis that that occurred. I submit you can easily
15 confirm among yourselves, after looking at the picture,
16 that that is what has occurred. The State is not required
17 to prove that there is intercourse or the degree of
18 penetration--and I will speak on that momentarily--but the
19 law is any intrusion, however slight, into the genital
20 opening. Now, I submit that, when we look at crimes like
21 this against children, it is impossible to presume the
22 motive behind someone who would commit this type of crime.
23 He says he has an anger problem. I submit it goes a lot
24 more beyond that. In cases where there is some type of
25 criminal sexual conduct, I submit it is not always about

1 sexual gratification. There are certainly offenders out
2 there who commit rape, criminal sexual conduct, as a means
3 of power, control, out of rage, brutality, for example, a
4 prison rape. You hear about rapes of that nature that
5 occur in the prison system not because there is any sexual
6 gratification to be gained but because it's a form of
7 domination and control to take a victim and assault them
8 sexually, sometimes even with an object, as a form of
9 harming them physically, physical torture. For whatever
10 reason that day, he acted out. He chose to act out against
11 in the worse way possible. He chose to put his
12 fingers there, to put his fingers in her. And I submit
13 that he did that knowing full well that he was harming that
14 little girl. His story about the dirty diaper doesn't
15 float. It doesn't float. LeeAnn Harvey's testimony was
16 that she went home and retrieved the diaper. Was there a
17 dirty diaper? Her testimony was there was not. She
18 brought in the diapers.

19 MR. FLOYD: Your Honor, I object. She did not
20 testify as to whether or not there were not any dirty
21 diapers.

22 MS. MAYES: Your Honor---

23 THE COURT: Again, ladies and gentlemen, the
24 facts aren't decided by the Court, by the Solicitor, by Mr.
25 Floyd. They're decided by you. It's your recollection of

1 the testimony individually and collectively as a jury. You
2 are the determiners of the credibility and the
3 believability of the witnesses in this case. Thank you,
4 Mr. Floyd. Solicitor, you may continue.

5 SOLICITOR: Yes, sir, Your Honor. Again, if
6 there is any question as to the testimony of any witness,
7 you may hear that testimony again. The testimony was she
8 brought in the diapers, there were six diapers. He says he
9 changed five that day. I ask you to consider his own
10 inconsistencies even as he tries to explain that away. He
11 takes the stand and said, well, I did notice some blood but
12 I thought it was coming from her butt, and I noticed the
13 blood when I was changing her dirty diaper. That's the
14 only time he claimed he saw blood. Then he's confronted
15 with the photographs. Then he admits, well, yeah, I saw
16 that, yeah, I know what that wipe's about, yeah, okay, I'm
17 familiar with that. Once again, there's no dirty diaper
18 here, just, I submit, blood. For whatever reason, he chose
19 to act out against in what is, under the law,
20 criminal sexual conduct with a minor. When we look at what
21 the State is required to prove under this particular
22 statute--and the Judge will charge you momentarily on
23 exactly what the law is--it is when there is a sexual
24 battery committed against a child who is under the age of
25 11. That element has been proven beyond a reasonable

1 doubt. Secondly, sexual battery is defined as any
2 intrusion, however slight, into the genital opening. That
3 element also has been proven beyond a reasonable doubt.
4 This includes digital penetration or insertion of a finger
5 into the genital opening. Secondly, the offense of
6 unlawful conduct towards a child. In this case, beyond a
7 reasonable doubt, Lance Williams was responsible for
8 welfare. Under the law, he does not have to be
9 a parent, he does not have to be the guardian, he does not
10 have to be a licensed daycare provider. In this particular
11 case, the testimony is, and by his own admissions, he
12 considered them a family member. He wasn't just some
13 random babysitter. The reason Brittany entrusted
14 in his care that day is because, all along, he had led her,
15 through his actions and through his words, to believe that
16 he genuinely cared for , that he would treat Aubrey
17 and the same. And, in fact, his daily interaction
18 with was far more than that with his own daughter.
19 His testimony was that his normal contact with his daughter
20 would be every other weekend and then sometimes she would
21 stay over at Brittany's house along with . His
22 interaction with included giving her baths,
23 changing her diaper, and then making plans with Brittany
24 for them to move in together and be a family. And that is
25 how he held himself out to be, as a family member to

1 , as a stepfather, somebody that he could, somebody
2 who could be trusted to care for .. And, on this
3 day, he committed bodily harm, again, proven beyond a
4 reasonable doubt. We know she was hospitalized and
5 remained hospitalized. And, the final element, he
6 endangered the health of a child; and certainly, in this
7 case, health was endangered to point where she
8 was admitted to the hospital and continued to receive
9 medical treatment until her injuries began to heal. As I
10 stated before, we could never prove, in a case like this,
11 what motivates him to act the way he did, but we can prove
12 what he did. What he did on that particular day was hurt
13 this little girl in a way that a child should never be hurt
14 anywhere, anytime, under any circumstances. You have
15 before you the most noble of opportunities, the chance to
16 strike back against injustice and deliver a verdict that
17 speaks the truth. And, in this case, the truth is that
18 Lance Williams committed these offenses of unlawful conduct
19 towards a child and criminal sexual conduct with a minor.
20 The Judge will charge you on the lesser-included offense of
21 aggravated assault and battery. And I submit to you that
22 assault and battery of a high and aggravated nature does
23 not apply in this case because that's not what he did to
24 . He chose to commit an intrusion of her genital
25 opening. Thank you.

1 THE COURT: Thank you. Thank you, Solicitor.

2 (Whereupon, the Court charged the jury as
3 follows.)

4 THE COURT: Ladies and gentlemen of the jury, my
5 charge to you, or my instruction to you, will take about 30
6 minutes. If anyone needs a break now, we'll take it now.
7 If not, I'm going to press on. I will not take a break
8 during the course of my instructions to you. So raise your
9 hand now or forever hold your peace, so to speak.

10 (There is no response.)

11 THE COURT: All right. The manner in which I
12 cover these charges is I first give the general law that
13 applies to all criminal cases in South Carolina. After I
14 cover the general law that applies to all criminal cases, I
15 will then cover the specific charges in the indictments,
16 criminal sexual conduct with a minor in the first degree,
17 the lesser-included offense of assault and battery of a
18 high and aggravated nature and the second indictment of
19 unlawful conduct towards a child. I will usually give you
20 the caption of the paragraph I am fixing to cover; and,
21 when I change paragraphs, I will also give you the caption.
22 Charge, arrest, indictment not evidence: The indictments
23 charge the Defendant with criminal sexual conduct with a
24 minor in the first degree and unlawful conduct towards a
25 child. I remind you that the fact that the Defendant was

1 arrested, charged and indicted in this case is not evidence
2 and cannot be considered by you as evidence of guilt in
3 this case nor does it create any presumption or inference
4 of guilt. These documents, these indictments, are simply
5 the formal written instruments which contain the charges
6 made against the Defendant. It is the formal documents by
7 which the case is brought before the Court. Multiple
8 charges: The indictments in this case allege different
9 offenses. The charges in indictment one, unlawful conduct
10 towards a child, and, in indictment two, criminal sexual
11 conduct with a minor in the first degree. Each indictment
12 is a separate and distinct offense. You must decide each
13 indictment separately on the evidence and the law that
14 applies to it uninfluenced by your decision as to the other
15 indictment. The Defendant may be convicted or acquitted on
16 either or both of the offenses charged. You will be asked
17 to write a separate verdict of guilty or not guilty as to
18 each indictment. Presumption of innocence: The Defendant
19 has pled not guilty to these indictments, and that plea
20 puts the burden on the State to prove the Defendant guilty.
21 A person charged with committing a criminal offense in
22 South Carolina is never required to prove himself innocent.
23 I charge you that it is an important rule of the law that a
24 defendant in a criminal trial, no matter what the
25 seriousness of the charge may be, will always be presumed

1 to be innocent of the crime for which the indictment was
2 issued unless guilt has been proven by evidence satisfying
3 you of that guilt beyond a reasonable doubt. This
4 presumption of innocence does not end when you begin your
5 deliberations, but it accompanies the Defendant throughout
6 the trial until you reach a verdict of guilty based on
7 evidence satisfying you of that guilt beyond a reasonable
8 doubt. The presumption of innocence has been said to be
9 like a robe of righteousness placed about the shoulders of
10 the Defendant which remains with the Defendant until it has
11 been stripped from the Defendant by evidence satisfying you
12 of the Defendant's guilt beyond a reasonable doubt. The
13 presumption of innocence is not a mere legal theory; it is
14 not just a legal phrase. It is a substantial right to
15 which every defendant is entitled unless you, the jury, are
16 satisfied from the evidence of the Defendant's guilt beyond
17 a reasonable doubt. Reasonable doubt: What is a
18 reasonable doubt? A reasonable doubt is the kind of doubt
19 that would cause a reasonable person to hesitate to act.
20 The State has the burden of proving the Defendant guilty
21 beyond a reasonable doubt. Some of you in the past may
22 have served as jurors in civil cases where you were told
23 that it is only necessary to prove that a fact is more
24 likely true than not true, such as by the greater weight or
25 the preponderance of the evidence. In criminal cases, the

1 State's proof must be more powerful than that; it must be
2 proof beyond a reasonable doubt. Proof beyond a reasonable
3 doubt is proof that leaves you firmly convinced of the
4 Defendant's guilt. There are very few things in this world
5 that we know with absolute certainty. And, in criminal
6 cases, the law does not require proof that overcomes every
7 possible doubt. If, based on your consideration of the
8 evidence, you are firmly convinced that the Defendant is
9 guilty of the crime charged, you must find the Defendant
10 guilty. If, on the other hand, you think there is a real
11 possibility that the Defendant is not guilty, you must give
12 the Defendant the benefit of the doubt and find him not
13 guilty. Duties of jury and trial judge: I remind you
14 that, during this trial, you and I have certain duties to
15 perform. As the trial judge, it's my responsibility to
16 preside over the trial of this case, and I also have the
17 duty to rule on the admissibility of the evidence offered
18 during the trial. You are to consider only the competent
19 evidence before you. If there was any testimony ordered
20 stricken from the record during this trial, you must
21 disregard that testimony. You are to consider only the
22 testimony which has been presented from the witness stand
23 and any exhibits which have been made a part of this
24 record. I have the added duty to charge you or instruct
25 you on the law that applies to this case. As the presiding

1 judge, I am the sole judge of the law of this case; and it
2 is your duty, as jurors, to accept and apply the law as I
3 now state it to you. If you already have any idea as to
4 what the law is or what the law ought to be and it does not
5 agree with what I now tell you the law is, you must abandon
6 your idea because you are sworn to accept the law and apply
7 the law exactly as I state it to you. In every case tried
8 in this Court before a trial jury, the jury becomes the
9 sole and exclusive judge of the facts in the case. A trial
10 judge cannot intimate, state, comment on, or make any
11 statement to a trial jury about the facts in a case. Since
12 you, the jury, are the sole judge of the facts in this
13 case, you are not to infer, from what I have said during
14 the progress of this trial in ruling upon the admissibility
15 of evidence or otherwise or anything that I now say to you
16 during the course of this instruction, that I have any
17 opinion about the facts in this case. The law does not
18 allow me to have an opinion about the facts in this case.
19 That is a matter solely for you, the jury, to determine.
20 As jurors, it is your duty to determine the effect, the
21 value, the weight, and the truth of the evidence presented
22 during the trial. Direct and circumstantial evidence:
23 There are two types of evidence which are generally
24 presented during a trial, direct evidence and
25 circumstantial evidence. Direct evidence is the testimony

1 of a person who claims to have actual knowledge of a fact,
2 such as an eyewitness. It is evidence which immediately
3 establishes the main fact to be proved. Circumstantial
4 evidence is proof of a chain of facts and circumstances
5 indicating the existence of a fact. It is evidence which
6 immediately establishes a collateral fact from which the
7 main fact may be inferred. Circumstantial evidence is
8 based on inference and not on personal knowledge or
9 personal observation. The law, our law, makes absolutely
10 no distinction between the weight or the value to be given
11 to either direct or circumstantial evidence nor is there a
12 greater degree of certainty required of circumstantial
13 evidence than of direct evidence. You should weigh all of
14 the evidence in the case. After weighing all of the
15 evidence, if you are not convinced of the guilt of the
16 Defendant beyond a reasonable doubt, you must find the
17 Defendant not guilty. Credibility of witnesses: Members
18 of the jury, in determining what the facts are in this
19 case, you, of necessity, must pass upon the credibility of
20 the witnesses who have testified. Credibility in the law
21 simply means believability. Can I believe this witness?
22 Is this witness credible? The value and the weight to be
23 given to their testimony is in your sound discretion and
24 good judgment. You alone must decide the force and effect
25 and the truth of the testimony. In making a determination

1 as to the credibility of a witness, there are many factors
2 that you may and should take into consideration, such as
3 the appearance or manner of the witness as he or she gave
4 testimony from the witness stand known in the law as the
5 demeanor of the witness. Did the witness have an interest
6 in the outcome of the trial? Was the witness forthright or
7 hesitant? Was the witness' testimony consistent or did it
8 contain discrepancies? What was the ability of the witness
9 to know about the facts concerning which he or she gave
10 testimony? Did the witness have cause or reason to be
11 biased or prejudiced in favor of the testimony that he or
12 she gave? Was the testimony of the witness corroborated or
13 made stronger by other testimony or evidence or was it made
14 weaker and impeached by other testimony or evidence? As
15 jurors, you have the right to believe a small portion of a
16 witness' testimony and disregard a larger portion, or you
17 may believe a larger portion of a witness' testimony and
18 disregard the smaller portion. You may disregard a
19 witness' testimony in its entirety if you have sound reason
20 in the record for doing so. You may believe the testimony
21 of a single witness against that of many witnesses or of
22 the many witnesses against one. Most certainly you do not
23 determine the matter of credibility or believability merely
24 by counting the number of witnesses for either side.
25 Throughout this entire process, you have but one single

1 objective, and that is to seek the truth regardless from
2 what source that truth may come. Expert witnesses: The
3 rules of evidence ordinarily do not permit witnesses to
4 testify as to opinions or conclusions. An exception to
5 this rule exists for witnesses we call expert witnesses. A
6 witness who, by education or experience, has become expert
7 in some art, science, profession or calling may state an
8 opinion as to relevant and material matter in which the
9 witness claims to be an expert and may also state the
10 reasons for holding that opinion or those opinions. You
11 should consider any expert opinion received in evidence in
12 this case and, like any other evidence, you give it the
13 weight you think it deserves. If you decide that the
14 opinion of an expert witness is not based on sufficient
15 education or experience or if you conclude that the reasons
16 given in support of the opinion are not sound or that the
17 opinion is outweighed by other evidence, you may disregard
18 the opinion in its entirety. An expert witness' testimony
19 is to be given no greater weight than that of any other
20 witness simply because the witness is an expert. Further,
21 you are not required to accept an expert's opinion even
22 though it is not contradicted. Statement of the Defendant:
23 A statement alleged to have been made by the Defendant has
24 been admitted into evidence in this case. While the Court
25 has determined that the statement is admissible, I instruct

1 you that you make the ultimate decision of whether or not
2 the Defendant made the statement. If the Defendant did
3 make the statement, you must determine whether the
4 statement was made by the Defendant voluntarily and of his
5 own free will. This means that the statement was not
6 caused by pressure, force, fear, threats, coercion,
7 intimidation or hope or promise of leniency or reward of
8 any kind. In determining whether or not a statement was
9 voluntary, you should consider both the characteristics of
10 the Defendant and the details of the questioning. Some of
11 the factors that you must consider are the age of the
12 Defendant, the Defendant's education or lack of education,
13 the Defendant's mental ability or capacity, the Defendant's
14 IQ or intelligence, the Defendant's background and
15 environment, the place and length of detention, the nature
16 of the questioning and the advice or lack thereof to the
17 Defendant of his constitutional rights including, but not
18 limited to, the right to remain silent, that any statement
19 could be used against him in a court of law, the right to
20 have a lawyer present, that, if he could not afford a
21 lawyer, a lawyer would be appointed to represent him
22 without any cost and that he could stop making a statement
23 at any time. You must carefully consider all of the
24 surrounding circumstances before you give any weight to any
25 alleged statement. The State has the burden of proving

1 beyond a reasonable doubt that the alleged statement was
2 voluntary. If you determine it was not, you may give the
3 statement--- Let me start that one over. The State has the
4 burden of proving beyond a reasonable doubt that the
5 alleged statement was voluntary. If you determine that it
6 was voluntary, you may give the statement any further
7 consideration that you deem proper. You must decide what
8 weight, if any, should be given to the alleged statement.
9 If you determine that the alleged statement was not the
10 voluntary and the free statement of the Defendant, you
11 should not consider the statement at all. If you would
12 please continue to give me your complete and undivided
13 attention, ladies and gentlemen. Intent: In order to
14 establish criminal liability, criminal intent is required.
15 For example, the mental state required to be proven by the
16 State for a particular crime might be purpose, intent,
17 knowledge, recklessness or criminal negligence. Criminal
18 intent must be proven by the State beyond a reasonable
19 doubt. Criminal intent is always a matter that must be
20 determined by the jury from the circumstances surrounding
21 the situation. There is no way to prove intent to a
22 mathematical certainty. There is no way medical science
23 can dissect a person's brain and determine what the person
24 had in mind. So the law says that criminal intent may be
25 inferred from the circumstances shown to have existed.

1 This is how you make a determination of whether or not the
2 element requiring intent is present. It is not necessary
3 to establish intent by direct and positive evidence, but
4 intent may be established by inference in the same way as
5 any other fact, by taking into consideration the acts of
6 the parties and all the facts and circumstances of the
7 case. Criminal intent is a mental state, a conscious
8 wrongdoing. It is up to you to determine what the
9 Defendant intended to do based on the circumstances shown
10 to have existed. An act that's done willfully is done
11 voluntarily, intentionally and with a specific intent to do
12 something the law forbids. An act is done intentionally if
13 it is done with a conscious awareness or knowledge of the
14 nature of the act involved and with the purpose of
15 committing the act. It is not done intentionally if by
16 mistake or accident or negligence or recklessness.
17 Criminal intent can arise from an action or a failure to
18 act. It may arise from negligence, recklessness or
19 indifference to duty or to consequences. That is
20 considered by the law to be the equivalent of criminal
21 intent. Ladies and gentlemen, I am now going to cover the
22 charges in the indictments. First, I'm going to cover
23 criminal sexual conduct with a minor in the first degree
24 and the lesser-included offense of aggravated assault and
25 battery. It is unlawful in South Carolina to commit

1 criminal sexual conduct with a minor in the first degree.
2 The Defendant is charged with first degree criminal sexual
3 conduct with a minor. The State must prove beyond a
4 reasonable doubt that the Defendant engaged in a sexual
5 battery with the victim. The term sexual battery is
6 defined in our Code of Laws. A sexual battery is sexual
7 intercourse, cunnilingus, fellatio, anal intercourse or any
8 intrusion, however slight, of any part of a person's body
9 or of any object into the genital or anal openings of a
10 another person's body except when the intrusion is
11 accomplished for medically recognized treatment or
12 diagnostic purposes. The State must then prove beyond a
13 reasonable doubt that the victim of the sexual battery was
14 less than 11 years of age at the time. That's the charge
15 on criminal sexual conduct with a minor in the first
16 degree. Mr. Foreman, ladies and gentlemen, if you find
17 that the State has not proven that the Defendant is guilty
18 of criminal sexual conduct with a minor in the first
19 degree, you must then determine whether the State has
20 proved that the Defendant is guilty of assault and battery
21 of a high and aggravated nature. Under our law, the
22 theory, the greater offense, the criminal sexual conduct
23 with a minor in the first degree, includes also the lesser
24 offense of assault and battery of a high and aggravated
25 nature. The elements of assault and battery of a high and

1 aggravated nature: Assault and battery of a high and
2 aggravated nature is an unlawful act of violent injury to
3 the person of another accompanied by circumstances of
4 aggravation. We'll break down those terms. An assault
5 occurs when a person unlawfully attempts or offers to
6 commit a violent injury upon another person and had the
7 present ability to complete the attempted injury. An
8 assault is the intentional creation of a reasonable fear of
9 immediate bodily harm. It is not necessary that the
10 attempted injury or harm actually take place. For example,
11 if I walk up to you and we're within arm's length, I draw
12 back to hit you, that is an assault. A battery: A battery
13 is the unlawful touching of another person by a person who
14 has committed the assault. An unlawful touching can be
15 caused by a part of the accused's body or by any object
16 that the accused puts in motion. A battery is the
17 completion of the assault by using or applying force to
18 another person, however slight, in a rude, angry or
19 resentful manner without legal justification for doing so.
20 In using my earlier example, if I carry through with the
21 assault and I'm within my arm's length of you, by hitting
22 you, that is the battery. You have the assault and the
23 battery. The State must also prove a circumstance of
24 aggravation, thus the charge assault and battery of a high
25 and aggravated nature. Circumstances of aggravation

1 include, but are not limited to, the following: The use of
2 a deadly weapon, the intent to commit a felony, the
3 infliction of serious bodily injury, a great disparity
4 between the ages and physical conditions or sizes of the
5 parties, a difference in the genders of the parties, the
6 taking of indecent liberties or familiarities with a female
7 through the use of force, the purposeful infliction of
8 shame and disgrace. And, again, these are only examples of
9 circumstances of aggravation. Now, as to the charge of
10 criminal sexual conduct with a minor in the first degree
11 and the lesser-included offense of assault and battery of a
12 high and aggravated nature, if you have any reasonable
13 doubt as to whether the Defendant should be convicted of
14 the greater or the lesser-included charge, you must give
15 the Defendant the benefit of that doubt and only convict
16 him of the lesser-included charge of assault and battery of
17 a high and aggravated nature. That is the charge, ladies
18 and gentlemen, of criminal sexual conduct with a minor in
19 the first degree and assault and battery of a high and
20 aggravated nature. I am now going to cover the other
21 indictment, unlawful conduct towards a child. Thank you
22 again for giving me and continuing to give me your complete
23 and undivided attention. Unlawful conduct towards a child
24 is a Code section in South Carolina. The Defendant is
25 charged with unlawful conduct towards a child. The State

1 must first prove beyond a reasonable doubt that the
2 Defendant had charge or custody of the child, was the
3 parent or guardian of the child or was a person responsible
4 for the care and support of the child. Under our Code,
5 section 63-7-20, subsection 16, it is defined, quote, a
6 person responsible for a child's welfare includes the
7 child's parent, guardian, foster parent, an operator,
8 employee or caregiver as defined by section 63-13-20 of a
9 public or private residential home, institution, agency or
10 childcare facility or an adult who has assumed the role or
11 responsibility of a parent or a guardian for the child but
12 who does not necessarily have legal custody of the child.
13 A person whose only role is as a caregiver and whose
14 contact is only incidental with a child, such as a
15 babysitter or a person who has only incidental contact,
16 such as a babysitter, has not assumed the role or
17 responsibility of a parent or a guardian. A person whose
18 only role is as a caregiver and whose only contact is only
19 incidental with a child, such as a babysitter or a person
20 who has only incidental contact but may not be a caregiver,
21 has not assumed the role or responsibility of a parent and
22 guardian and would not be a person responsible for a
23 child's welfare. The State must also prove beyond a
24 reasonable doubt that the Defendant placed the child at
25 unreasonable risk of harm affecting the child's life,

1 physical or mental health or safety or unlawfully and
2 maliciously did or caused to be done any bodily harm to the
3 child so that the life or health of the child is endangered
4 or likely to be endangered. A child is defined as a person
5 under the age of 18. That is the charge of unlawful
6 conduct towards a child. Finally, ladies and gentlemen,
7 the form of verdict. And I assure you the end of my charge
8 is in sight. Mr. Foreman, ladies and gentlemen of the
9 jury, you cannot allow yourself to be governed by sympathy,
10 by prejudice, by passion, by public opinion or any other
11 arbitrary factor not in evidence in this case. Both the
12 State and the Defendant have the right to expect that each
13 of you will carefully and impartially consider all of the
14 evidence in this case and that you will precisely follow
15 the law as I have explained it to you. You will have, Mr.
16 Foreman, in the jury room a form of verdict which will have
17 the caption of the case and the charges listed thereon. As
18 to the charge of unlawful conduct towards a child, there
19 are two possible verdicts that may be reached, guilty or
20 not guilty. As to the charge of criminal sexual conduct
21 with a minor in the first degree, there're really three
22 possible verdicts, guilty of criminal sexual conduct with a
23 minor in the first degree or guilty of aggravated assault
24 and battery, the lesser-included offense, or not guilty.
25 The order in which I explained those has no significance.

1 I have to list one first. Your verdicts, ladies and
2 gentlemen, must be unanimous. All twelve of you must
3 agree. The form that you will have, Mr. Foreman, will have
4 the indictment number as to the specific indictment. And
5 this one is the unlawful conduct towards a child; and it
6 has, we, the jury, by unanimous consent, find the
7 Defendant, and there you have the word guilty and the words
8 not guilty. If, after your determination and deliberations
9 of the facts, you find that the State has met its burden of
10 proof beyond a reasonable doubt as to that charge and your
11 unanimous verdict is guilty, I would ask you to check to
12 the left of the word guilty, circle both your checkmark and
13 the word guilty. If you find that the State has failed to
14 meet its burden of proving the case beyond a reasonable
15 doubt as to that charge, I would ask you to check to the
16 left of the words not guilty and circle both your checkmark
17 and the words not guilty. As to criminal sexual conduct
18 with a minor in the first degree, I have it listed out, we,
19 the jury, by unanimous consent, find the Defendant, and it
20 has guilty of criminal sexual conduct with a minor in the
21 first degree, under that, guilty of assault and battery of
22 a high and aggravated nature or not guilty. Again,
23 whatever your verdict may be, your unanimous verdict,
24 check to the left, circle both your checkmark and all the
25 word or wording associated with whatever your verdict may

1 be. Please keep in mind, as to the criminal sexual conduct
2 with a minor in first degree and the aggravated assault and
3 battery, if you have a reasonable doubt as to whether or
4 not the Defendant is guilty of the greater or the lesser
5 offense, you would give the Defendant the benefit of that
6 doubt and find the Defendant guilty of the lesser offense
7 of assault and battery of a high and aggravated nature.
8 Once you have reached those unanimous verdicts, if you'd
9 sign and date the form, Mr. Foreman, if you'd then knock on
10 the jury room door and inform the bailiff that you have
11 reached those unanimous verdicts, we will receive you back
12 into the courtroom for your verdict. I'm going to ask you
13 to return to your jury room. Do not begin your
14 deliberations until you are directed to do so by the clerk.
15 I may have to bring you back out here for further
16 instructions. If not, if I don't have to bring you back,
17 the form of verdict will be sent in, all of the evidence
18 that has been presented will be sent in; and you will then
19 be directed by the clerk to begin your deliberations. If
20 you have any questions during the course of your
21 deliberations, Mr. Foreman, please write me out a note,
22 knock on the jury room and give it to one of our fine
23 bailiffs. Lunch is supposed to be here at---

24 CLERK: It's here.

25 THE COURT: All right. Well, it's here. So

1 perhaps you may want to eat before you begin your
2 deliberations. But I'll see if I have to bring you back
3 out. If you have any questions, please write me a note.
4 And I assure you we're not going to leave y'all. I realize
5 you're being held captive. Thank you for your complete and
6 undivided attention during my instruction to you. You may
7 now go with your bailiff.

8 (The jury retires to the jury room.)

9 THE COURT: Any exceptions from the State,
10 Solicitor?

11 MS. MAYES: None from the State, Your Honor.

12 THE COURT: Thank you, Solicitor. Defense?

13 MR. SNELL: None from the Defendant, Your Honor.

14 THE COURT: All right. We need to check the
15 evidence. My experience with that is perhaps stay away
16 from my court reporter until such time as she checks it.
17 Is that correct, Madame Court Reporter?

18 COURT REPORTER: Yes, sir, that's great advice.

19 THE COURT: And then--- I've learned that
20 experientially over the years. And then, once she's
21 checked it, she'll review it with the attorneys.

22 COURT REPORTER: Thank you, Judge.

23 (Pause.)

24 THE COURT: Solicitor, have y'all checked the
25 evidence?

1 MS. MAYES: Yes, sir, Your Honor.

2 THE COURT: All right. And you're satisfied it's
3 proper?

4 MS. MAYES: Yes, sir, Your Honor.

5 THE COURT: Mr. Snell?

6 MR. SNELL: Yes, Your Honor.

7 THE COURT: All right. And you're satisfied it's
8 proper?

9 MR. SNELL: Yes, Your Honor.

10 THE COURT: All right. Then I'm going to send
11 the proposed form of verdict in and the evidence and bring
12 the alternate out. All right?

13 MS. MAYES: Yes, sir.

14 THE COURT: Thank you very much. We will be
15 awaiting the jury's verdict.

16 (The jury commences its deliberation at 12:30
17 p.m.)

18 (The following occurred at 2:18 p.m.)

19 THE COURT: All right. I have a note from the
20 jury. The first question is, can we review the transcript
21 of Dr. Luberoff's testimony. Of course, there is no
22 transcript. So I intend to advise the jury that a
23 transcript is not available. Any objection to that,
24 Solicitor?

25 MS. MAYES: Your Honor, no objection to that

1 particular charge, but we would ask that the jury be
2 informed that there are portions that they may request from
3 the court reporter.

4 THE COURT: Mr. Snell?

5 MR. FLOYD: Your Honor, we have no problem if the
6 answer is that there is no transcript. If they want to
7 listen to the tape itself, it would be our position that we
8 have to listen to all of it.

9 THE COURT: The second question is, can we get a
10 copy of the State law words related to criminal sexual
11 misconduct to a minor. We specifically are interested in
12 words related to penetration. There are no--- The word
13 penetration does not appear in my charge. I'll be glad to
14 give them a copy of my charge and a copy of the assault and
15 battery of a high and aggravated nature charge if y'all
16 don't, in writing, if y'all don't object. I'll be glad to
17 reread it. Solicitor?

18 MS. MAYES: I have no objection to their request,
19 Your Honor.

20 THE COURT: Any objection---

21 MR. SNELL: No, sir.

22 THE COURT: ---as far as giving them a copy of
23 the charge?

24 MR. SNELL: No objection, Your Honor.

25 THE COURT: All right. Bring us our jury.

1 (The jury returns to the courtroom at 2:22 p.m.)
2 THE COURT: All right. Mr. Foreman, ladies and
3 gentlemen of the jury, I received a note from the jury.
4 The first request is, can we review the transcript of Dr.
5 Luberoff's testimony. Of course, there is no transcript.
6 If you're talking about the written words, it is not
7 transcribed at this time. Obviously, the testimony is
8 preserved. It can be played back. The testimony is about
9 an hour and a half, give or take, probably more give than
10 take, but about an hour and a half. If you want to listen
11 to it, that's fine. I would require that you listen to the
12 entire testimony of Dr. Luberoff in that regard. I have no
13 objections to you listening to it, but I don't want to
14 parse it out so to speak. And I'll allow you to step back
15 to your jury room, and you can decide that amongst
16 yourselves outside the presence of the Court. Your second
17 request is, can we get a copy of the State law words, not
18 my words, related to criminal sexual misconduct to a minor.
19 We specifically are interested in the words related to
20 penetration. I have a copy of my charge as it relates to
21 first degree criminal sexual conduct with a minor and
22 assault and battery of a high and aggravated nature. It's
23 three pages. The attorneys have no objections to me
24 providing that to you. I will give that to you for you to
25 review. Again, keep in mind that is encapsulated within

1 the entire charge. I'm not sending my entire charge in
2 there to you, the 24 pages, because you haven't requested
3 it. But, again, I don't want you just to parse something
4 out and consider it not in the light of the total and
5 complete charge in that regard if I make myself somewhat
6 clear.

7 MR. FOREMAN: I understand.

8 THE COURT: All right. Mr. Corley, would you
9 hand this to our Foreperson for me, please. And I'm going
10 to ask you to step back to your jury room. If you'd just
11 let me know if you want to hear that transcript or that
12 testimony, we'll get it keyed up. All right. Thank you.
13 Thank you very much. It may take us a few minutes, but
14 thank you very much.

15 (The jury returns to the jury room at 2:27 p.m.)

16 THE COURT: Any objections from the State,
17 Solicitor?

18 MS. MAYES: No, sir, Your Honor.

19 THE COURT: Defense?

20 MR. SNELL: No objection, Your Honor. And we
21 have a question. Did the charge of CSC with a minor and
22 the lesser, the ABHAN, did that also include, in the body
23 of your charge, the language regarding, if you can't make
24 up your mind, how to resolve that?

25 THE COURT: It did not.

1 MR. SNELL: If possible, we would ask to have
2 that included and submitted to the jury in addition.

3 THE COURT: Let me see what they say about the
4 transcript. Let me think on that. Of course, I covered
5 that as the theory; and then I, of course, covered that as
6 part of the form of the verdict. It's a concept that
7 applies in any case in which there is a lesser-included
8 offense. And, of course, that's--- That raises the issue
9 of, when they do request just part of a charge, to make
10 sure they encapsulate the entire charge. That's why I
11 tried to explain that to them. But I'll see if the
12 Solicitor would like to respond.

13 MS. MAYES: Yes, sir, Your Honor. The State
14 would oppose that. I believe that would be a charge on a
15 legal issue that goes beyond the request. The request was
16 actually for a specific definition of criminal sexual
17 misconduct, as they termed it, specific to sexual battery
18 or the definition of intrusion or penetration.

19 THE COURT: I'm going to deny that now at this
20 time, Mr. Snell. You're certainly protected on the record
21 in that regard.

22 MR. SNELL: Thank you, Your Honor.

23 THE COURT: All right. Let's not get too far
24 away in case they you want to hear testimony. Let's see
25 what their requests are in that regard.

1 (Court's Exhibit 2 is marked for purposes of the
2 record.)

3 (The following occurred at 2:43 p.m.)

4 THE COURT: I received a note from the jury. It
5 indicates, no additional information needed, signed by the
6 foreperson. We will be awaiting our jury's verdict or
7 verdicts. Thank you.

8 (Court's Exhibit Number 3 is marked for purposes
9 of the record.)

10 (The following occurred at 3:00 p.m.)

11 THE COURT: In many cases, the taking of the
12 verdict can be very emotional for either or both sides.
13 The Court will not tolerate any show of emotion. If you
14 feel like you cannot contain your emotions, I would ask you
15 to please step out of the courtroom at this time. All
16 right. And, sheriffs, if y'all would remain posted.
17 Thank you very much. Bring us our jury, please.

18 (The jury returns to open court to report its
19 verdict.)

20 THE COURT: All right. Our jury has returned to
21 the courtroom. Madame Clerk?

22 CLERK: Mr. Foreman, have you reached your
23 verdicts?

24 MR. FOREMAN: Yes, ma'am, we have.

25 CLERK: Please pass them up by the bailiff.

1 (Hands to Clerk.)

2 THE COURT: All right. Madame Clerk, if you
3 would please publish the verdicts.

4 CLERK: Indictment 2010-GS-32-1860 and 2010-GS-
5 32-1861, the State of South Carolina v. Lance Austin
6 Williams. As to indictment 2010-GS-32-1860 as to unlawful
7 conduct toward a child, we, the jury, by unanimous consent,
8 find the Defendant guilty. Indictment number 2010-GS-32-
9 1861, as to criminal sexual conduct with a minor in the
10 first degree, to wit, digital penetration, we, the jury, by
11 unanimous consent, find the Defendant guilty of criminal
12 sexual conduct with a minor in the first degree. And it is
13 so signed by the foreperson. Mr. Foreman, and ladies and
14 gentlemen of the jury, if these are your verdicts, please
15 indicate, each of you, by raising your right hand. All
16 hands raised, Your Honor.

17 THE COURT: Thank you. Thank you very much,
18 Madame Clerk. Anything further for the jury from the
19 State?

20 MS. MAYES: Nothing from the State, Your Honor.

21 THE COURT: From the defense?

22 MR. SNELL: Your Honor, we make a motion to poll
23 the jury.

24 THE COURT: All right. Madame Clerk, would you
25 poll the jury and would you poll them separately as to each

1 charge?

2 CLERK: Yes, sir.

3 THE COURT: Thank you. And explain the procedure
4 to them.

5 CLERK: As I call your name, please hold your
6 hand up so I can recognize you. I will ask you the
7 question really basically in four parts. The first one
8 will be: As to the verdict of unlawful neglect of a child,
9 was this your verdict? I need a response. And is it still
10 your verdict? I'll need a response.

11 THE COURT: And use the term unlawful conduct.

12 CLERK: Unlawful conduct, yes, sir. I'm sorry.

13 THE COURT: That's all right.

14 CLERK: And, as to the charge of criminal sexual
15 conduct in the first degree, it would be a same thing.
16 Kelly Wilson, as to the charge of unlawful conduct toward a
17 child, was this your verdict?

18 JUROR: Yes.

19 CLERK: Is it still your verdict?

20 JUROR: Yes.

21 CLERK: As to the charge of criminal sexual
22 conduct with a minor in the first degree, to wit, digital
23 penetration, was this your verdict?

24 JUROR: Yes.

25 CLERK: Is it still your verdict?

1 JUROR: Yes.

2 CLERK: Jonathon Mitchell, as to the verdict as
3 to unlawful conduct toward a child, was this your verdict?

4 JUROR: Yes, ma'am.

5 CLERK: Is it still your verdict?

6 JUROR: Yes, ma'am.

7 CLERK: As to charge of criminal sexual conduct
8 with a minor in the first degree, to wit, digital
9 penetration, was this your verdict?

10 JUROR: Yes, ma'am.

11 CLERK: Is it still your verdict?

12 JUROR: Yes, ma'am.

13 CLERK: Jo Ann Veronee, as to the verdict as to
14 unlawful conduct toward a child, was this your verdict?

15 JUROR: Yes, ma'am.

16 CLERK: Is it still your verdict?

17 JUROR: Yes, ma'am.

18 CLERK: As to charge of criminal sexual conduct
19 with a minor in the first degree, to wit, digital
20 penetration, was this your verdict?

21 JUROR: Yes, ma'am.

22 CLERK: Is it still your verdict?

23 JUROR: Yes, ma'am.

24 CLERK: Chatmond Byas, as to the verdict of
25 unlawful conduct toward a child, was this your verdict?

1 JUROR: Yes.

2 CLERK: Is it still your verdict?

3 JUROR: Yes.

4 CLERK: As to verdict of criminal sexual conduct
5 with a minor in the first degree, to wit, digital
6 penetration, was this your verdict?

7 JUROR: Yes.

8 CLERK: Is it still your verdict?

9 JUROR: Yes.

10 CLERK: Angela Swann, as to the verdict of
11 unlawful conduct toward a child, was this your verdict?

12 JUROR: Yes, ma'am.

13 CLERK: Is it still your verdict?

14 JUROR: Yes, ma'am.

15 CLERK: As to the verdict of criminal sexual
16 conduct with a minor in the first degree, to wit, digital
17 penetration, was this your verdict?

18 JUROR: Yes, ma'am.

19 CLERK: Is it still your verdict?

20 JUROR: Yes, ma'am.

21 CLERK: Jeffrey Archie, as to the verdict of
22 unlawful conduct towards a child, was this your verdict?

23 JUROR: Yes, ma'am.

24 CLERK: Is it still your verdict?

25 JUROR: Yes, it is.

1 CLERK: As to the verdict of criminal sexual
2 conduct with a minor in the first degree, to wit, digital
3 penetration, was this your verdict?

4 JUROR: Yes.

5 CLERK: Is it still your verdict?

6 JUROR: Yes, it is.

7 CLERK: Michelle Godfrey, as to the verdict of
8 unlawful conduct towards a child, was this your verdict?

9 JUROR: Yes, ma'am.

10 CLERK: Is it still your verdict?

11 JUROR: Yes, ma'am.

12 CLERK: As to the verdict of criminal sexual
13 conduct with a minor in the first degree, to wit, digital
14 penetration, was this your verdict?

15 JUROR: Yes, ma'am.

16 CLERK: Is it still your verdict?

17 JUROR: Yes, ma'am.

18 CLERK: Tiffany Baldwin, as to the verdict of
19 unlawful conduct towards a child, was this your verdict?

20 JUROR: Yes, ma'am.

21 CLERK: Is it still your verdict?

22 JUROR: Yes, ma'am.

23 CLERK: As to the verdict of criminal sexual
24 conduct with a minor in the first degree, to wit, digital
25 penetration, was this your verdict?

1 JUROR: Yes.

2 CLERK: Is it still your verdict?

3 JUROR: Yes, ma'am.

4 CLERK: Terri Highsmith, as to the verdict of
5 unlawful conduct towards a child, was this your verdict?

6 JUROR: Yes, ma'am.

7 CLERK: Is it still your verdict?

8 JUROR: Yes, ma'am.

9 CLERK: As to the verdict of criminal sexual
10 conduct with a minor in the first degree, to wit, digital
11 penetration, was this your verdict?

12 JUROR: Yes, ma'am.

13 CLERK: Is it still your verdict?

14 JUROR: Yes, ma'am.

15 CLERK: Charles Greer, as to the verdict of
16 unlawful conduct toward a child, was this your verdict?

17 JUROR: Yes, ma'am.

18 CLERK: Is it still your verdict?

19 JUROR: Yes, ma'am.

20 CLERK: As to the verdict of criminal sexual
21 conduct with a minor in the first degree, to wit, digital
22 penetration, was this your verdict?

23 JUROR: Yes, ma'am.

24 CLERK: Is it still your verdict?

25 JUROR: Yes, ma'am.

1 CLERK: Jennifer Moore, as to the verdict of
2 unlawful conduct towards a child, was this your verdict?

3 JUROR: Yes.

4 CLERK: Is it still your verdict?

5 JUROR: Yes.

6 CLERK: As to the charge of criminal sexual
7 conduct with a minor in the first degree, to wit, digital
8 penetration, was this your verdict?

9 JUROR: Yes.

10 CLERK: Is it still your verdict?

11 JUROR: Yes.

12 CLERK: Walter Kennerly, as to the verdict of
13 unlawful conduct towards a child, was this your verdict?

14 JUROR: Yes, ma'am.

15 CLERK: Is it still your verdict?

16 JUROR: Yes, ma'am.

17 CLERK: As to the verdict of criminal sexual
18 conduct with a minor in the first degree, to wit, digital
19 penetration, was this your verdict?

20 JUROR: Yes, ma'am.

21 CLERK: Is it still your verdict?

22 JUROR: Yes, ma'am.

23 CLERK: All jurors polled, Your Honor.

24 THE COURT: Thank you. Thank you very much,
25 Madame Clerk. Anything further for the jury from the

1 defense, Mr. Snell, Mr. Floyd?

2 MR. SNELL: Not at this time, Your Honor.

3 THE COURT: Thank you. Thank you very much. All
4 right. Mr. Foreman, ladies and gentlemen of the jury
5 panel, this will conclude your jury service for the
6 remainder of the term, which is about an hour and 50
7 minutes away if we went the full time on Friday. Thank you
8 very much for your participation in this process this week.
9 We would not be able to be about the very important
10 function of administering your civil and criminal justice
11 system without the participation of citizens just like
12 yourselves week in and week out, not only in Lexington
13 County, but in all 46 counties in South Carolina. And, as
14 I had said Monday when I qualified the jury and I repeat
15 it--and it's not just idle words--it's been my pleasure and
16 privilege to be with y'all, to serve with y'all this week.
17 I hope to see you in the future. I'm not sure you hope the
18 same, but I hope to see you in the future again. I don't
19 know that I've seen a jury that is more hard working, more
20 focused, more attentive and more patient as you have been
21 to the Court and to all of the parties throughout the trial
22 in this case. And, with that being said, you're now
23 released from your jury service. If you would leave your
24 buttons on the stand as you leave. You do not have any
25 further requirements for jury service for the remainder of

1 2011 as far as State circuit court of record is concerned.
2 Thank you. Thank you again very much for your
3 participation. And, Mr. Archie, the Clerk will need to see
4 you momentarily in the hallway out back. Thank you very
5 much. You're now excused.

6 (The jury is excused.)

7 THE COURT: Any motions from the State?

8 MS. MAYES: None from the State, Your Honor.

9 THE COURT: I take it, Mr. Snell, Mr. Floyd,
10 y'all would have some post-trial motions?

11 MR. FLOYD: That's correct, Your Honor.

12 THE COURT: Would you object if I heard them next
13 week?

14 MR. FLOYD: No, Your Honor. It might be good to
15 give us a chance to put them in writing to you or whatever.

16 THE COURT: All right. Solicitor and Mr. Floyd,
17 since I'm requesting that I can hear them next week and
18 sentence Mr. Williams next week, would you have a
19 preference of what day, Solicitor?

20 MS. MAYES: No, sir, Your Honor.

21 THE COURT: As far as you know, members of the
22 victim's family would be available at whatever time the
23 Court set?

24 MS. MAYES: That's correct, Your Honor.

25 THE COURT: All right. And, Mr. Floyd, I believe

1 you told me previously you may have a sentencing in Federal
2 Court Monday?

3 MR. FLOYD: That got continued today, so I don't
4 have anything that would take priority.

5 THE COURT: All right. Mr. Snell?

6 MR. SNELL: Your Honor, if at all possible, if we
7 could have--- If I could have protection for Monday.

8 THE COURT: All right. Well, then why don't we
9 say Tuesday morning then. That would be the 5th, Tuesday
10 morning at 9:30. I don't know what courtroom I'll be
11 assigned to next week. Thank you. Thank you very much.
12 Post-trial motions are continued until Tuesday morning at
13 9:30. Thank you, Solicitor. Thank you, Mr. Floyd, Mr.
14 Snell.

15 (Whereupon, the proceedings were concluded for
16 April 1st, 2011.)

17 (Whereupon, the following proceedings were
18 reported on April 5th, 2011.)

19 CLERK: State v. Lance Williams.

20 THE COURT: All right. Why don't you have the
21 victims remain seated until I hear the motions, Solicitor,
22 Sheriff. All right. Mr. Snell, Mr. Floyd, I'll be glad to
23 hear your motions.

24 MR. SNELL: Thank you so much, Your Honor. I
25 would like to begin the motions, if I may, by handing up a

1 case which is *State v. Middleton*, 295 S.C. 218, Your Honor.
2 May I?

3 THE COURT: Yes, sir.

4 (Hands to Court.)

5 MR. SNELL: And, Your Honor, in this case, the
6 South Carolina Supreme Court has noted that the terms rape
7 and criminal sexual conduct are interchangeable. And rape
8 is defined by Black's Law Dictionary as unlawful sexual
9 activity without consent and usually by force or threat of
10 injury. Your Honor, we believe that, taking all the
11 evidence presented certainly in the light most favorable---

12 THE COURT: What page were you reading from?

13 MR. SNELL: Oh, I'm sorry, Your Honor.

14 THE COURT: That's all right. I see it. The
15 third page?

16 MR. SNELL: Yes, Your Honor.

17 THE COURT: Three of 6. All right. Thank you.

18 MR. SNELL: Your Honor, we believe, taking the
19 appropriate standard, taking everything the State has
20 submitted in the light most favorable to the State and even
21 assuming it to be true, there has been no evidence put
22 forth of a sexual touching or sexual contact with Mr.
23 Williams, by Mr. Williams with the minor child. And it's
24 been our position that he's been charged with conducting a
25 lawful activity in an unlawful manner. Your Honor, we

1 would make the following motions post-trial. The first
2 motion would be for a motion in arrest of judgment. And,
3 in this motion, we are asking the Court to withhold
4 judgment on the verdict because of those errors appearing
5 on the face of the record; and the principle is based on
6 the fact that, even if everything alleged is true and has
7 been proved, the Defendant cannot be convicted of the
8 offense. We'd also make a motion for a judgment
9 notwithstanding the verdict, or JNOV, which still exists in
10 General Sessions cases.

11 THE COURT: You think that still exists in
12 criminal court?

13 MR. SNELL: Your Honor, the last cases came up in
14 the '70's, but there was no case saying you can't.

15 THE COURT: Well, as I read Judge Anderson's
16 *State v. Taylor*, 558 S.E.2d 917, 2002, he states, as an
17 initial matter, we note that a motion for JNOV in a
18 criminal case is not recognized in this case. Who I am to
19 question Judge Ralph King Anderson, of course?

20 MR. SNELL: Your Honor, the last cases I read--
21 and I can cite one--which were in the '60's, began treating
22 them as almost like ancillary motions for directed verdict
23 and a lot of the same standards were applied.

24 THE COURT: All right.

25 MR. SNELL: And, in addition, we'd also make a

1 motion on the same grounds pursuant to the 13th Juror
2 Doctrine as would apply in General Sessions. Your Honor,
3 our belief is, if the Court granted one of those motions,
4 that would be as to the offense of criminal sexual conduct
5 only and it would revert back, the conviction would revert
6 back to the lesser-included offense of assault and battery
7 of a high and aggravated nature as well as the, as well as
8 his previous or simultaneous conviction for unlawful
9 neglect of a child. So, Your Honor, we make those motions.
10 And then, with regard to all charges, we'd make a motion
11 for a new trial on the basis of all the issues previously
12 presented to the Court as well as the evidence submitted
13 and previous objections made by the Defendant that were
14 overruled and previous motions denied.

15 THE COURT: Thank you. Thank you very much, Mr.
16 Snell. Mr. Floyd, anything you would like to add, sir?

17 MR. FLOYD: No, Your Honor. I think Mr. Snell
18 has said it succinctly. It's our position that, from the
19 evidence--and much of it was perhaps revolting because of
20 the injuries to the child--there was actually no
21 penetration of the vagina and no evidence whatsoever of a
22 forensic nature to suggest that there was any sexual
23 activity involved. And, of course, that's where the bulk
24 of our motion is coming from. There is no evidence of any
25 sexual activity involved in this attack.

1 THE COURT: All right. Thank you, Mr. Floyd.
2 Solicitor?

3 MS. MAYES: Yes, sir, Your Honor. The State's
4 position is that this particular statute, criminal sexual
5 conduct--in this case, criminal sexual conduct with a minor
6 in the first degree pursuant to 16-3-655--is intended to
7 include victims who are helpless, incompetent or otherwise
8 unable to speak, such as a deceased murder victim; and,
9 often, we are left only with circumstantial evidence to
10 prove a case. And, in this particular situation, his
11 intent, whatever that may be, can be inferred by the
12 circumstances. The statute does not require proof of
13 sexual gratification, only intrusion, however slight, of
14 the genital openings.

15 THE COURT: All right. Thank you. Thank you,
16 Solicitor. I reviewed my notes of the entire trial. I
17 think one of the motions made was a motion for arrest of
18 judgment. A motion for arrest of judgment is a post-
19 verdict motion made to prevent the entry of a judgment
20 where the charging document is insufficient or the Court
21 lacked jurisdiction to try the matter. It has been held
22 that a motion in arrest of judgment is distinguishable from
23 a motion to quash an indictment in that reasons sufficient
24 to sustain the quashing of an indictment may be
25 insufficient to sustain a motion in arrest of judgment.

1 However, it has also been held that a motion in arrest of
2 judgment is a post-trial motion to quash an indictment.
3 When ruling on a motion in arrest of judgment, the trial
4 court is limited to rectifying trial errors and cannot make
5 a redetermination of the credibility and weight of the
6 evidence. Based on my review of both indictments and the
7 case, I would deny the motion for arrest of verdict both as
8 to the unlawful conduct towards a child and the criminal
9 sexual conduct with a minor in the first degree. As to the
10 other motion, as to the motion for judgment notwithstanding
11 the verdict, I do not believe that motion exists in South
12 Carolina in criminal court based on *State v. Taylor* and
13 *State v. Follin*, F-O-L-L-I-N, 35--no, excuse me--352 S.C.
14 235. JNOV is a civil motion and not proper in a criminal
15 trial. As to the motion for a new trial, that being,
16 according to the case law, the only post-verdict fact-based
17 remedy available for a defendant is a motion for a new
18 trial, citing *State v. Miller*, 337 S.E.2d 883. Where there
19 is no evidence to support a conviction, an order granting a
20 new trial should be upheld. However, where there is
21 competent evidence to sustain the jury's verdict, the judge
22 may not substitute his judgment for that of the jury, *State*
23 *v. Prince*, 447 S.E.2d 177. As I stated earlier, I reviewed
24 my notes, scoured my notes as a matter of fact, and
25 reviewed all the documentary evidence that was introduced.

1 I reviewed the timeline, as best I could determine it from
2 the evidence, that the mother of left the
3 residence at 8:00 that morning leaving, of course, the
4 Defendant, Ms. Harvey and Ms. Harvey's three children. Ms.
5 Harvey left at 11:30 or so, returned 1:00ish, sees Mr.
6 Williams coming down the hall with in a diaper
7 only, doesn't note anything askew, doesn't take any steps,
8 doesn't put up a human cry. Upon her return, of course,
9 she finds that the door was locked and had to walk over to
10 her mother's beauty shop to retrieve the key. She comes
11 back at 2:30, as I understand it, Ms. Harvey does, and
12 kisses goodbye because she's going to her father's
13 for the weekend, does not notice anything, any injuries and
14 such. Then around 6:20 to 6:30, is delivered to
15 Pelion to her aunt. The aunt notes unusual demeanor,
16 unusual appearance, behavior very different than usual,
17 sees bruises and such. Although the child stays at the
18 ballpark for a period of time, the aunt and the paternal
19 grandmother and grandfather call mother. They meet at the
20 BP station in Swansea. The mother's demeanor deteriorates.
21 She's very upset, crying. They go to Palmetto Richland
22 Hospital. is examined by doctors at the hospital
23 and then by the SANE nurse, Ms. Clary, a forensic nurse
24 examiner. Her testimony is that the injuries that she
25 observed are no, time wise, are no greater than 24 hours

1 previous. She notes the heightened vigilance of the child,
2 not wanting to be touched. Of course, it's a very
3 traumatic experience for a 15-month-old child to be in that
4 setting. Her general assessment is that it is suggestive
5 of sexual activity, that her labia is swollen, there are
6 blood streaks in her diaper, and the appearance of genital
7 abnormalities. Dr. Luberoff testifies to the following:
8 Hematoma at the back of the child's head, bruises on the
9 forehead, which previously Mr. Williams had called the
10 mother or there was a conversation between Mr. Williams and
11 the mother. I believe the mother called him checking on
12 . And he indicated, by his testimony, that he had
13 told the mother of the injuries to the child's forehead,
14 that she fell out in front of the trailer, in the front
15 yard, in rough terrain. There are bruises bilaterally to
16 both ears. There's a neck abrasion, what appears to be a
17 fingernail mark perhaps. There is--- Her upper lip inside
18 is bleeding or has the appearance of some blood; it hasn't
19 scabbed over. Her elbows have what appear to be finger
20 marks. The doctor described those as grip marks. There is
21 an injury to her right nipple suggestive of fingernails and
22 bruises to her knee, her knees. The doctor testified that
23 the bruises are diagnostic of child physical abuse. They
24 are outside the normal range of bruises for children that
25 age that may be falling and tumbling and playing and such.

1 As to the child's vagina, she indicates there are, there is
2 a bruised hymen, there is bruising outside, that, from her
3 observations, that is diagnostic of vaginal penetration. I
4 looked at the photographs, specifically State's Exhibit
5 Number 14 I believe it is, which is a picture of the
6 child's vagina with traction, in other words, with the
7 nurse opening it up. It appears to be very reddened; it's
8 beyond the outer area of the genital opening of the child,
9 beyond the labia majora and labia minora, and then the
10 hymen is bruised internally. Again, the doctor further
11 testified that it's an extraordinary injury, very deep, and
12 it is an internal injury with some type of penetration to
13 the genital opening. Relying on *State v. Middleton*, the
14 defense says criminal sexual conduct, as the case says,
15 that intended the term rape and criminal sexual conduct to
16 be interchangeable. *Middleton*, which is actually reversed,
17 I think, because of some live testimony where Mr. Middleton
18 committed two homicides several days apart in Charleston
19 County--- Well, that was the first Middleton trial. This
20 is the second. He was retried and convicted and again
21 sentenced to death. The issue, in that case, was in the
22 sentencing phase of the death penalty trial since the
23 Legislature had not amended the statute to include criminal
24 sexual conduct as a statutorily aggravating circumstance
25 for which the imposition of the death penalty would have

1 been appropriate as opposed to rape. I think that's very
2 different than here. Of course, I base my ruling on *State*
3 *v. Morgan*, which is a South Carolina case, 574 S.E.2d 203,
4 *State v., State of New Hampshire v. Flynn*, 855 Atlantic 2d
5 1254, and *State v., The People v. Quintana*,
6 Q-U-I-N-T-A-N-A, 89 California Appellate 4th 1362. Of
7 course, the statute does not define vaginal, but only
8 genital opening. I do not think I can impose my will over
9 the will of the jury when there is competent evidence from
10 which the jury could have returned a verdict of guilty.
11 And I cannot substitute my verdict based on *State v.*
12 *Taylor*, 558 S.E.2d 917, and *State v. Garrett*,
13 G-A-R-R-E-T-T, Opinion Number 3515, Court of Appeals, 2002.
14 With that, the Defendant's motions for a new trial are
15 denied. I did not address specifically the issues as to
16 unlawful conduct with a child. In this case, I think there
17 was sufficient evidence for which, competent evidence for
18 which a jury could return the verdict that it did; and I
19 would not substitute my opinion for that of the jury. So
20 the post-trial motions are denied. Anything further before
21 imposition of the sentence, Mr. Snell, Mr. Floyd?

22 MR. SNELL: Your Honor, we'd just like to have
23 you hear from the family, and then we have---

24 THE COURT: Certainly.

25 MR. SNELL: ---a psychologist.

1 THE COURT: All right. Sure. I mean, I haven't
2 heard yet the Solicitor as far as any post-trial as far as
3 sentencing. I'll be glad to hear from them. Just give me
4 a moment. Solicitor, anything you would like to add?

5 MS. MAYES: Yes, sir, Your Honor. I would like
6 to begin by making part of the record the report of Dr.
7 Susan Luberoff who was the consulting physician at Palmetto
8 Health Richland. As the Court has noted, during her
9 testimony, she did describe evidence of vaginal
10 penetration; and, on page 3 of her report, she noted not
11 only the multiple bruises on many areas of the body which
12 were consistent with non-accidental physical trauma, but
13 she also noted clear evidence of the sexual abuse including
14 injury to the genital area which may include bites and also
15 includes deep penetrating injury to the vaginal area as
16 evidenced by contusion to the hymen and bruising and
17 abrasions of the labia minora. I will submit that to the
18 Court at this time.

19 THE COURT: All right. Do you have a copy of
20 this, Mr. Snell?

21 MR. SNELL: We do, Your Honor.

22 THE COURT: All right.

23 (Hands to Court.)

24 MS. MAYES: Your Honor, as for victim impact
25 testimony, the grandfather of , Kevin Brown, is

1 present; and I believe he does wish to address the Court.
2 The father, Adam Cooper, and his family have been present
3 throughout the proceedings. They were present for the
4 trial last week and are present today as well. And, at
5 this time, I would ask Mr. Brown to come forward.

6 THE COURT: And this is the maternal grandfather.
7 Is that correct?

8 SOLICITOR: Yes, sir, Your Honor.

9 THE COURT: All right. Would you tell me your
10 full name, please?

11 KEVIN BROWN: Kevin Lynn Brown.

12 THE COURT: All right. Madame Clerk, would you
13 place Mr. Brown under oath?

14 WHEREUPON, KEVIN BROWN, being first
15 duly sworn, testifies as follows:

16 THE COURT: Mr. Brown, I'll be glad to hear from
17 you.

18 KEVIN BROWN: Yes, sir. I'm a resident of
19 Lexington County for 45 years, a business owner in the
20 community. I speak for the whole entire family. We have
21 been going through a whole bunch of issues for the past
22 year after this thing took place. I have four
23 grandchildren. They're all girls, being in the
24 middle. Lance was in the family and helped me in my
25 business and done things around us for a long time; and we

1 trusted him, and everybody knew him as a good person and
2 knew him as a friend of the family's. And, you know, we
3 just are totally still in shock that all this stuff took
4 place the way it did. The whole family is still
5 struggling. Hopefully, today, we can possibly get past
6 this a little easier and a little better. a
7 beautiful child, great demeanor, great personality. I can
8 only imagine, you know, what she went through at that time.
9 The family appreciates everything the County and the State
10 has done for us and appreciates the jury and everything
11 that you have done for us here. And, hopefully, everything
12 from here on out can be carried out in the way you see fit.

13 THE COURT: Thank you. Thank you, Mr. Brown.

14 KEVIN BROWN: Thank you.

15 MS. MAYES: Beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 (Pause.)

18 MS. MAYES: Nothing further, Your Honor. Mr.
19 Williams does not have a prior record.

20 THE COURT: Thank you. Thank you, Solicitor.
21 Mr. Snell?

22 MR. SNELL: Your Honor, may it please the Court.
23 I would ask Your Honor to hear from the Defendant's mother
24 and a friend, Mr. Rosenberg.

25 THE COURT: Certainly. I'll be happy to hear

1 from anybody you want, Mr. Snell, Mr. Floyd.

2 MR. SNELL: Mr. Rosenberg, if you will, start off
3 by telling the Court your full name.

4 MARK ROSENBERG: Sure. Mark Wayne Rosenberg.

5 THE COURT: Say it again?

6 MARK ROSENBERG: Mark Wayne Rosenberg.

7 THE COURT: Madame Clerk, would you place Mr.
8 Rosenberg under oath for me, please?

9 WHEREUPON, MARK ROSENBERG, being first
10 duly sworn, testifies as follows:

11 THE COURT: Yes, sir. I'll be glad to hear from
12 you, Mr. Rosenberg.

13 MARK ROSENBERG: Good morning. I consider myself
14 a pretty normal guy, and I'm not real intelligent and not
15 real dumb. Actually, I like to think of myself as having a
16 nice dose of common sense and the ability to think
17 logically. I've sat here for two and a half days of facts
18 and evidence and some testimony in this case. And, to be
19 perfectly honest, I'm having a hard time with it. In fact,
20 this case has been so serious and emotional that it's
21 tested my personal principles and my compassion and those
22 of everybody involved. After all the testimony of the
23 family members, the testimony of the experts and the law
24 enforcement professionals, this case left me, and I'm sure
25 a few others, very unsure and worried about the future of

1 the two principal people involved in this case,
2 and Lance. We can surmise all day long about exactly what
3 endured during that week of last year; but,
4 ultimately, there's only two people who really know for
5 sure, Lance and . . . can't tell us what
6 happened, but Lance can and has. In fact, it seems to me
7 that he's been trying to from the start. He drove 75 miles
8 voluntarily in his own car, on his own time, straight to
9 the Lexington County Sheriff's Department with the
10 intention to give a statement voluntarily. He submitted
11 his explanation to the investigator when he could have
12 easily made them come to him. But they had their minds
13 made up before ever meeting him. He tried volunteering his
14 accounts of that day to Brittany Brown, the mother; but she
15 refused to listen. He then wanted to explain things to the
16 man who he looked up to and admired the most, Kevin Brown;
17 but he rejected Lance before ever listening to his side of
18 the story. I'm not trying to paint Lance as a victim here,
19 just to point out he did everything he was asked,
20 everything, and without being forced. It seems to me that,
21 over the past days, every expert testifying here has
22 stressed how important history is to their job. Each
23 doctor and nurse has to detail the history of what has
24 allegedly taken place so they can effectively assess the
25 patients. The detectives have to dig through mountains of

1 leads and suspects to uncover the history of the events
2 leading up to a successful conclusion. In fact, history is
3 paramount to finding the truth. And sometimes a lack of
4 history shows even more. Lance has no history, no previous
5 history, of criminal behavior. He has no previous history
6 of altercations with the law or its enforcers. He has no
7 previous history of mistreating children, his own or anyone
8 else's, none. And he had relationships before Brittany
9 with women who've had young toddlers whom he's watched and
10 cared for with no issues whatsoever. Actually, up to this
11 point, Lance has very little negative history, but he does
12 have history known to those close to him, some issues of
13 repressed anger and a very short temper. And he needs our
14 help in dealing with them. Anyone who has children knows
15 just how amazingly resilient they are, and
16 is no different. In many ways, she's an ordinary 2 and a
17 half-year-old child playing tag with friends and family,
18 participating in beauty pageants and just trying to grow up
19 in a world that is dangerous. I believe she's going to be
20 fine. She has another 15 and a half years before she
21 legally becomes an adult. And I don't doubt for one minute
22 that, without Lance being in her life, she's moved on and
23 already forgotten about what all the fuss is about. Lance,
24 on the other hand, is different. He will never forget.
25 He's 25 years old and facing an imposing term of

1 imprisonment, whether it's 25 or 50 years. I believe we
2 have an opportunity, an opportunity to possibly save Lance
3 from imploding. I really don't believe that it would be in
4 anyone's best interest to put him away forever. I believe
5 he can prove to be a productive member of society if we
6 just give him a chance by offering help instead of
7 imprisonment. If he learned to control his anger and his
8 temper and his negative emotions, I am positive he would
9 show the world just how compassionate and helping and
10 impressive he could be if he's given the chance. I ask
11 your help, Your Honor, by showing mercy and leniency.
12 Everyone could benefit from a judicious example of
13 clemency, the victims and family, the Defendant and family.
14 A lifetime of incarceration won't put Lance on the right
15 track or the right train; it will only show him that no one
16 seems to care. Thank you.

17 THE COURT: Thank you, Mr. Rosenberg.

18 THE COURT: Tell in your full name, please.

19 DEFENSE ATTORNEY: Deborah Lynn Williams.

20 THE COURT: All right. Madame Clerk, would you
21 place Ms. Williams under oath?

22 WHEREUPON, DEBORAH WILLIAMS, being
23 first duly sworn, testifies as follows:

24 THE COURT: All right, Ms. Williams.

25 DEBORAH WILLIAMS: I'll do my best to read this,

1 Your Honor. When I started writing this--- When I started
2 writing this letter of mercy to the Court, I truly didn't
3 know where to begin. What words can I say that would
4 impact you enough so you would show mercy to my son, Lance?
5 How can a mother's love be explained? I feel my son's
6 every pain; I feel his sorrow, his disappointment, his
7 frustration, his excitement, his joy, his compassion, his
8 tears and his laughter. I hurt when he hurts. I laugh
9 when he laughs. I cry when he cries, and I smile when he
10 smiles. Not a thing about my son's life has been easy.
11 His father became a quadriplegic before he was born. Then
12 he was separated from me from the age of two to five years
13 of age. By the time he was six years old--I'm
14 sorry--he was diagnosed with the ADHD. The medications
15 didn't seem to help. He struggled through school. I was
16 in a relationship for 15 years with someone that was
17 abusive to both, to someone that was both abusive verbally
18 and physically to both of us. I have always made excuses
19 during that time, in our relationship, that maybe he and I
20 deserved it. I didn't know how to help myself or my son at
21 that time. But, thanks to God, I am no longer in that
22 relationship. However, it has scarred my son greatly. He
23 has had anger and temper issues for most of his adolescent
24 and adult life. He has severe mood swings. He sometimes
25 would just not want to get out of bed. He has severe

1 depression, anxiety, and sometimes talks of not wanting to
2 live. I'm not saying these things to make you feel sorry
3 for him. Since my son has been in jail, I have been doing
4 a lot of searching trying to figure out why. I feel that
5 my son has some sort of a disorder that has gone untreated
6 for far too long. He has had all the warning signs for
7 many years, but I've always just took it as being immature
8 and he would grow up one day. I feel his outburst with
9 was done due to this condition and, with proper
10 medical care and counseling, he would benefit from that
11 more than being sent to prison for a number of years. He
12 has a 3-year-old daughter that he has joint custody of,
13 whom he takes care of. His mother--- Her mother, Heather,
14 has primary placement. He has been paying child support
15 and taking care of her since she was 9 months old. He
16 would get her for 3 and a half days every other week. And,
17 at that time, he had never had any outbursts or any ill
18 will toward her. He's lived with me in Swansea from 2004
19 until 2010. He has lived on and off with the Browns during
20 that time. During the time of the visits with Aubrey, they
21 would come and stay with me and live with me during those
22 visits. My son has never been in trouble before. He is a
23 good man; he is a good son; he has been a good father; and
24 he was a good boyfriend. I pray, Your Honor, that you have
25 mercy on my son and help him get the proper treatment he

1 needs to better himself so he can continue to be a good
2 father to his daughter and protect her in society. She
3 truly misses him. She asks every day where is her daddy.
4 She doesn't understand why we get to come home from work
5 and her daddy doesn't. The only way she gets to talk to
6 him is on the phone, and he gets to raise her by phone. He
7 shouldn't have to be punished for something for the rest of
8 his life for one instant of mistake. Lance has been in
9 jail now for over 350 days. That's a long time. I hired
10 Dr. Watson for a medical evaluation, and I hope that today
11 maybe he'll be able to confirm some of the things that I
12 have said and will let you know that imprisonment is not
13 the best thing that needs to happen in this case. I thank
14 you for your time.

15 THE COURT: Thank you, Ms. Williams.

16 MR. SNELL: Your Honor, this is Lance's maternal
17 grandmother, and then this is the mother of his own
18 daughter.

19 THE COURT: Yes, ma'am, your name, please?

20 MINNIE LUMPKIN: Minnie Evelyn Lumpkin.

21 COURT REPORTER: I'm sorry. I did not---

22 MINNIE LUMPKIN: Minnie, M-I-N-N-I-E, Evelyn,
23 E-V-E-L-Y-N, Lumpkin, L-U-M-P-K-I-N.

24 THE COURT: All right. Madame Clerk, would you
25 place Ms. Lumpkin under oath?

1 WHEREUPON, MINNIE EVELYN LUMPKIN, being
2 first duly sworn, testifies as follows:

3 THE COURT: I'll be glad you to hear from you,
4 Ms. Lumpkin.

5 EVELYN LUMPKIN: I wrote a short note Friday and
6 gave it to Mr. Floyd. I would like for him to read it,
7 please.

8 THE COURT: All right. Certainly.

9 MR. FLOYD: Your Honor, in her note, what she
10 says is that she, of course, has known Lance all his life.
11 She helped raise him. He's very special and close to her.
12 She's never known him to be physically abusive or violent
13 to any person, adult, child or anything. That he's a good
14 father to his own daughter who is, as you've heard, about
15 3 years of age. He's a loving father, and he tries to do
16 what's right. She, likewise, doesn't condone what he did
17 in any way. She understands that he was under a lot of
18 pressure at the time. It started out at work, you know,
19 with what had gone on at work. I think you heard a little
20 bit about that. And his frustration of the day doesn't
21 excuse what happened. Please don't think I am saying it
22 for that. And that he just lost his temper. She
23 doesn't--- And she hopes you'll understand that he's not a
24 bad person, he's a good person. He's never been in trouble
25 before. He does have an anger issue, and he lost it on

1 this particular day. She asks you for whatever mercy you
2 can give him because he is a good man who loves his family,
3 loves his child, has good family support. And whatever
4 mercy you can give him she would appreciate.

5 THE COURT: Thank you. Thank you, Mr. Floyd.
6 Anything you would like to say personally, Ms. Lumpkin?

7 MINNIE LUMPKIN: Well, that particular day--I
8 know I may not be allowed to say this--but I think Brittany
9 Brown took advantage of Lance and Lance should have been
10 going to help her father work on the fence and her take
11 responsibility of her own daughter or take her to one set
12 of her grandparents instead of leaving her there with
13 Lance. He's not a monster. He made a mistake, but he's
14 not a monster.

15 THE COURT: Thank you. Thank you very much, Ms.
16 Lumpkin. Yes, ma'am, your name, please?

17 HEATHER ROGERS: Heather Rogers.

18 THE COURT: Last name?

19 HEATHER ROGERS: Rogers.

20 THE COURT: All right. Madame Clerk, would you
21 place Ms. Rogers under oath?

22 WHEREUPON, HEATHER ROGERS, being first
23 duly sworn, testifies as follows:

24 HEATHER ROGERS: My name is Heather Rogers. I am
25 the mother of Lance's 3-year-old daughter. I have known

1 Lance for many years, and I really know him heart and soul.
2 Although this last year of Mr. Williams' incarceration has
3 been heart wrenching for all family and friends involved on
4 both sides, this past week has been just as tough. Since
5 April 16, 2010, the day that I was notified of the
6 situation, I have been behind Lance 100 percent. On that
7 day, Lance called me as I was leaving work to go pick up
8 our daughter and meet him for his weekend visitation. I
9 was shocked. I was shocked because I would never imagine
10 that Lance would ever do anything to hurt another human
11 being, let alone a child. I proceeded to my home to pick
12 up my child and to exit 41 where Lance was waiting on me.
13 We talked when I arrived, and he informed me that he was
14 going to meet Detective Ed to give his statement. I gave
15 him my daughter and gave him and my daughter a hug, and I
16 told him that I believed in him and to call me when he was
17 finished with his statement. I never received a phone
18 call. I tell you this because this shows how confident I
19 am, that I feel that Lance is a good person and that this
20 entire incident is just that, a one-time incident. Last
21 week we all heard over and over again beyond a reasonable
22 doubt. There was no doubt in my mind when I handed my
23 daughter, my only child, over to him. Had any part of me
24 for one second thought that he was capable of intentionally
25 or maliciously hurting a child, especially in any sexual

1 manner, my child would have never left with him, especially
2 with the plans to go out of State the next day because, if
3 I thought that for one second I would never see my child
4 again, I would've never taken her to meet him. There has
5 not been any doubt in anyone's mind that there has been
6 wrongdoing. The jury decided that. However, it's a
7 learned lesson. And Lance knows that he needs help for his
8 anger and it will be hard for him to get the proper help
9 that he needs behind bars. My main concern through all
10 this is like any mother of her child. Every day, I see my
11 child hurt. She asks about her daddy, when he's coming
12 home, if he can pick her up from school, why she can't call
13 or see him. How do you tell a 3-year-old that? I know
14 that it's no one else's fault but Lance's for putting
15 himself in that situation. is not the only
16 child affected in this; she has healed, and she will not
17 remember this unless it's brought to her attention growing
18 up. I will be answering these questions to my daughter for
19 many days and possibly even years and trying to find an
20 explanation to fill that void. Aubrey loves her father,
21 and Lance has been devoted to her since day one. They had
22 an amazing relationship and bond that has unfortunately
23 been interrupted. Your Honor, the only thing that I ask of
24 you is to please consider the other child that has fallen
25 victim in this case. The thought of Aubrey not seeing her

1 father for another year or years to come kills me. No
2 child should grow up without their father. I hope and pray
3 that she will have the chance to have her father in her
4 life and to grow up with him and not be as old as I am
5 whenever she sees him again. I thank you for listening to
6 my concerns and taking into consideration these thoughts in
7 making your decision when sentencing Lance Williams.

8 THE COURT: Thank you. Thank you, Ms. Rogers.

9 MR. SNELL: Your Honor---

10 THE COURT: Yes, sir.

11 MR. SNELL: I have letters the family has
12 provided from Wayne Black, Michael Myers and Diane Black
13 and if I may approach. And Ms. Mayes has reviewed those.

14 (Hands to Court.)

15 (Pause.)

16 THE COURT: All right. Mr. Snell?

17 MR. SNELL: Thank you so much, Your Honor. We
18 have Dr. Selman Watson who has evaluated Lance, and we
19 would like to have the Court listen to some of his
20 findings.

21 THE COURT: All right. Madame Clerk would you
22 place Dr. Watson under oath, please?

23 WHEREUPON, DR. SELMAN WATSON, being
24 first duly sworn, testifies as follows:

25 THE COURT: Yes, sir. I'll be glad to hear from

1 you, Dr. Watson.

2 COURT REPORTER: I didn't get your first name.

3 DR. SELMAN WATSON: It's Selman, S-E-L-M-A-N,
4 Watson, W-A-T-S-O-N.

5 COURT REPORTER: Thank you.

6 DR. SELMAN WATSON: I spent about eight hours
7 examining Mr. Williams last year. He took a battery of
8 tests, and I probably interviewed him for the better part
9 of three or four hours. He does not have an Axis I
10 impairment; in other words, he is not mentally ill. I
11 don't see any elements of schizophrenia or bipolar disorder
12 in his functioning. And he seems to have a lot of
13 borderline features. These are basically people that feel
14 very empty inside. They have trouble controlling their
15 anger. A lot of their anger tends to be very chronic in
16 its origin. And I think, given what's happened between
17 and Mr. Williams, this is pretty much borne out.
18 One of the deficits Mr. Williams has is that he was so
19 attached to Ms. Brown that he didn't have the strength to
20 tell her no when she asked him to stay at the house as
21 opposed to him going to erect the fence. So he's got some
22 psychological deficits, but he knew what he was doing and
23 he does not have a mental illness in my opinion. One thing
24 Mr. Williams did tell me was, when I was examining him, he
25 said he saw some spots in his visual field when he got real

1 angry. Whether he's got some neuro-psychological deficits
2 that make it difficult for him to control his anger is
3 probably another issue. I did not examine him in terms of
4 any kind of neuro-psychological instruments, but he talked
5 about spots in his visual field when he got real angry.
6 That might relate to some of his control problems.

7 THE COURT: What--- Doctor, I've never had you in
8 court before that I know of. You've never appeared in my
9 court before. What is your background?

10 DR. SELMAN WATSON: I'm a clinical psychologist,
11 but I practice forensic psychology. So I do a lot of
12 referrals from the courts and the attorneys.

13 THE COURT: All right. Thank you. Thank you,
14 Doctor. Anything further?

15 DR. SELMAN WATSON: No.

16 THE COURT: Thank you. Thank you very much.

17 MR. SNELL: Dr. Watson--- If I may, Your Honor?

18 THE COURT: Certainly.

19 MR. SNELL: Can you comment at all on his sexual
20 offender tendencies, Doctor?

21 DR. SELMAN WATSON: Just hearing about this case
22 and talking to Mr. Williams, the overriding impression in
23 my mind was this was a physical assault as opposed to a
24 sexual assault. I know some of anatomy was
25 targeted, but that's not the way pedophiles generally

1 operate. You know, pedophiles try to get close to children
2 so they can sexually molest them, and they get a lot of
3 gratification from that. From just my conceptualization of
4 the case, it just seems like he lost control of his anger
5 and the physical assault took place on this child.

6 THE COURT: Thank you. Thank you, Dr. Watson.
7 Anything you would like to say, Mr. Williams?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: All right. Madame Clerk, would you
10 place Mr. Williams under oath, please?

11 WHEREUPON, LANCE AUSTIN WILLIAMS, being
12 first duly sworn, testifies as follows:

13 THE DEFENDANT: Your Honor, I stand before you
14 today and ask you to have mercy on me. I know this has
15 been an extremely serious case, and I am very sorry for
16 what pain I have caused and her family. I never
17 intentionally brought any harm to and
18 her family and I have shared many good times too. The
19 Browns are like a family to me. We, too, shared in many
20 ups and downs. Again, I am both remorseful and regretful
21 for what pain I did cause and her family. I now
22 face the possibility of never being able to continue
23 raising my own daughter. I also may never know what it
24 means to have a family with my daughter. I was raised by
25 my mother and my grandmother with no father. I do not want

1 Aubrey to grow up with no father. Aubrey is my world and
2 everything. If I am sent to prison for a long time, it
3 will affect many lives besides my own. I am a good person
4 with a big heart. I have never been in any kind of trouble
5 before. I have held a job since I was 14 years old. I am
6 a big part of my daughter's life, both mentally, physically
7 and financially. I ask that you please take everything
8 into consideration and show mercy on me. Again, I am sorry
9 for all the pain that has stemmed from this situation.
10 Thank you for your time, your fairness and your
11 consideration.

12 THE COURT: Thank you, Mr. Williams. Mr. Snell?

13 MR. SNELL: Your Honor, just in closing, I just
14 would say we recognize, and Mr. Williams certainly
15 recognizes, the seriousness of this and we recognize the
16 serious nature of the statute. But we'd just ask for all
17 the consideration the Court can provide and as much mercy
18 and leniency as you can offer.

19 THE COURT: Thank you. Thank you, Mr. Snell.
20 Mr. Floyd?

21 MR. FLOYD: Just briefly, Your Honor. I think
22 you've heard everything, and I think Lance expressed
23 himself well on the point. This is a sad case. These
24 people were close, and he loved this family, and I think
25 they loved him too. And it's just a very unfortunate

1 situation that he lost his temper on this particular day.
2 We're all thankful and hopeful that will suffer
3 nothing permanent, and it doesn't appear so at this point.
4 And we hope that's true and she's over it because he does
5 feel very bad about it. We just ask for whatever mercy you
6 can give him. We know there are some constraints with the
7 statute, but we'd ask you to do whatever you could to be
8 fair and merciful to Mr. Williams.

9 THE COURT: Thank you. Thank you, Mr. Floyd.
10 Anything further Mr. Floyd, Mr. Snell?

11 MR. SNELL: No, Your Honor.

12 THE COURT: Solicitor, anything further?

13 MS. MAYES: Yes, Your Honor, briefly just in
14 response to I think Mr. Watson's statement that, in his
15 opinion, Mr. Williams is not a pedophile. I just wanted to
16 clear up for the record that the State is not alleging that
17 he would fit within the criteria of that unique category of
18 sex offenders known as a pedophile. There are certainly
19 many other types of sex offenders; and, as Mr. Watson
20 stated, the child's genitals were targeted.

21 THE COURT: Thank you, Solicitor.

22 (Pause.)

23 THE COURT: As to the charges for which the
24 Defendant was convicted, unlawful conduct toward a child
25 and criminal sexual conduct with a minor in the first

1 degree, I have considered all of the evidence and testimony
2 presented during the trial. Further, I have considered all
3 of the statements that have been presented by the State
4 during the sentencing proceeding, both the address to the
5 Court by Mr. Kevin Brown and Dr. Luberoff's report that was
6 handed up. Further, I have considered the statements given
7 before the Court by Mr. Rosenberg, by Ms. Williams, Ms.
8 Lumpkin, Ms. Rogers and Dr. Watson, and I've considered the
9 statement of Mr. Williams, the Defendant. Further, I have
10 listened very carefully to the arguments of Mr. Snell and
11 Mr. Floyd. Numerous things strike me from what I pluck out
12 of the various statements that were presented to the Court
13 today. It is apparent that has a very loving and
14 caring and supportive family. Many families may not have
15 responded as timely as family did and may not
16 have been as supportive as they have been throughout this
17 ordeal and throughout the course of the trial. It's
18 further apparent that Mr. Williams has a very loving and
19 supportive family, some of whom look back and wonder what
20 they may have done wrong or perhaps could have done
21 different. Of course, that Monday morning quarterbacking
22 never resolves any issues. As I've always said,
23 hindsight's 50/50. Some people say it's 20/20; I say it's
24 still 50/50. You can't change the past. I have detected a
25 genuine remorse in Mr. Williams, and I don't think it's

1 only remorse because he's going to prison. I think it's
2 remorse--- Obviously, he doesn't relish that thought, and I
3 don't blame him. If he did, I would be more concerned
4 about him and his mental stability. I think he does have
5 remorse for his actions and the harm that it caused to
6 . And, further in his statement, he says he
7 realizes there are many, many other victims; and there are.
8 First and foremost is who is innocent of all
9 misconduct. You know, it's amazing to me--- Of course, the
10 courtroom's full with family members for both sides. I'm
11 certainly not comparing or any human to a dog;
12 but, if a dog had been mistreated like this, there would
13 probably be people out there picketing the courthouse.
14 There would probably be groups up here wanting him to get
15 the maximum. As I say, I'm a dog lover too. It just
16 amazes me, with our children, our most precious assets, our
17 future, there is not more of that. But all of the victims
18 that have been victimized in both the Brown and Cooper
19 families and the Williams family, that has been caused by
20 the misconduct of the Defendant. And the jury has spoken
21 on the matter. The jury, as the lawyers did, both the
22 State and the defense, did an excellent job. The jurors
23 had an opportunity to return a verdict of guilty of
24 aggravated assault and battery of a high and aggravated
25 nature; they chose not to do so based on their

1 understanding of the facts as they determined them to be
2 and the law as charged by the Court. Under 16-3-655-A, a
3 person is guilty of criminal sexual conduct in the first
4 degree if the actor engages in sexual battery with a victim
5 who is less than 11 years of age. Under C-1 of that same
6 section, a person convicted of a violation of Subsection A-
7 1 is guilty of a felony and, upon conviction, must be
8 imprisoned for a mandatory minimum of 25 years, no part of
9 which may be suspended or probation granted, or must be
10 imprisoned for life. 2010-GS-32-1861, Lance Austin
11 Williams, criminal sexual conduct with a minor under the
12 age of 11, first degree, under 655-A-1, the Defendant is
13 committed to the State Department of Corrections for a
14 determinate term of 25 years. 2010-GS-32-1860, Lance
15 Austin Williams, unlawful conduct towards a child, the
16 Defendant is committed to the State Department of
17 Corrections for a determinate term of 10 years. Those are
18 concurrent. He's given credit for all time served. And
19 he's placed on the Central Registry of Child Abuse and
20 Neglect. He shall be subject mandatorily to the Sex
21 Offender Registry. Good luck to you, Mr. Williams.

22 MR. WILLIAMS: Thank you, Your Honor.

23 MS. MAYES: Thank you, Your Honor.

24 THE COURT: Thank you, Solicitor.

25 (WHEREUPON, TRIAL CONCLUDED.)

C E R T I F I C A T E

I, the undersigned CAROLE R. SHEALY, Official Court Reporter for the Eleventh 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 of the captioned cause, relative to appeal, in the Court of General Sessions for Lexington County, South Carolina, as recorded by L. Coconut Pantsari, Court Reporter, on the 30th and 31st days March, 2011, and on the 1st and 5th days of April, 2011.

I do further certify that I am neither of kin, counsel or interest to any party.

July 8, 2011.

Carole R. Shealy

CAROLE R. SHEALY

VOLUNTARY STATEMENT

10034448

Page 2 of 2 pages. LANCE AUSTIN WILLIAMS

Q: How many diapers did you change yesterday?

A: Five

Q: What kind of cream did you put on her vagina?

A: Aveno lotion

Q: Where did the blood come from?

A: Butt

Q: Did you spank [redacted]?

A: Yes

Q: Do you have an anger problem?

A: Yes

Q: What happened to [redacted] vagina (bruises)?

A: Was angry that the poop got in between her and used excessive force to clean (wipe) her. Poop got in between her lips, used excessive force to clean her.

4/16/2010

I have read this page, initialed corrections or changes, if any, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.

WITNESS:

DET [signature] 4/16/2010 e 2025 AU

[signature]
Signature of person giving voluntary statement

COPY GIVEN TO WILLIAMS [signature]

10034448



Lexington County Sheriff's Department Statement Form



DATE April 16th, 2010 PLACE INTERVIEW Room #1 TIME STARTED 7:00 P M

I, the undersigned, LANCE ANTON WILLIAMS, am _____ years of age, my date and place of birth being the 18th day of APRIL, 19 85, at ALABAMA

My present address is _____

I completed 12 grade(s) in school. I can read and write. JW (Initials)

CONTACT NUMBERS: H) _____ W) _____ C) _____

ALTERNATE CONTACT: Name _____ Phone Numbers: _____

Before answering any questions or making any statements, ED ALBERTA/ALBANO / JEFF PALKOWSKI

a person who identified him/herself as a DETECTIVE / SGT - LCSD.

duly warned and advised me that:

- 1) I HAVE THE RIGHT TO REMAIN SILENT. JW
- 2) ANYTHING I SAY, CAN AND WILL BE USED AGAINST ME IN A COURT OF LAW. JW
- 3) I HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE ASKED ANY QUESTIONS AND TO HAVE HIM OR HER PRESENT WITH ME DURING QUESTIONING. JW
- 4) IF I HAVE NO MONEY FOR LAWYER'S FEES, THE COURT WILL APPOINT ONE TO REPRESENT ME WITHOUT COST TO ME IF I WISH. JW
- 5) IF I DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, I WILL STILL HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME. I ALSO HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANYTIME UNTIL I TALK WITH A LAWYER. JW

I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. JW I MAKE THE FOLLOWING STATEMENT:

On 8/15/10 was in my car. She has two based cars which is the result of 2 stops to each car. Once for discipline cause she was throwing toys everywhere, the other car do to her throwing her cup around. The bruises on her head are from falling outside on rough terrain while playing. The bruises on her arms are do to lifting her by her elbows. The bruise on her neck occurred sometime while playing outside, I might have grabbed her shirt collar to catch her and bring her back. The bruising around her privates is from the cream I applied for her dry skin, as I applied to much force do to lack of feeling in hand. I gave her a bath around afternoon due to her sweating in her sleep.

DET. Scott 4/16/2010 @ 2025 HRS

Notary Public

X JW

Person giving Statement

Date

Mv Commission expires

(DM GIVEN TO WILLIAMS) Pg 1 of ___ pgs

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

Case No.: 2010-GS-32-1860; 2010-GS-32-1861

The State,

Respondent,

v.

Lance Austin Williams,

Appellant.

CERTIFICATE OF SERVICE

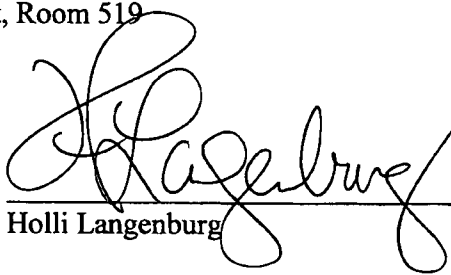
I, Holli Langenburg, employee to the attorney for the Appellant, Richard A. Harpootlian, P.A., with offices at 1410 Laurel Street, Post Office Box 1090, Columbia, South Carolina 29202, certify that on May 8, 2012, served by U.S. Mail, the following document to the below mentioned person(s):

Document:

Record on Appeal

Served:

Harold M. Coombs, Jr., Senior Assistant Attorney General
Office of the Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201


Holli Langenburg

RECEIVED

MAY 08 2012

SC Court of Appeals