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Oct 04 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM PICKENS COUNTY
Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2019-001477

THE STATE,

Respondent,

vs.

BRANDON JEROME CLARK,

Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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CLOSING ARGUMENTS

1 MS. MCCALL: I am, Your Honor.

2 Thank you.

3 The Defendant, Brandon Clark, victimized [REDACTED]

4 [REDACTED] He peed on her and stuck his fingers in her butt
5 when she was five years old. The pee was white. And it
6 came out of his big fat butt. Those were [REDACTED]
7 words.
8

9 At that time, when she was five, she called both
10 private areas on a girl and a boy a butt. And we saw that
11 with these anatomical drawings that were done in the
12 interview that you saw. The Defendant put his fingers in
13 her butt, digital penetration. That is a sexual battery.
14 That is one of the elements that is required in order for
15 you to find the Defendant guilty of criminal sexual
16 conduct with a minor in the first degree. And that is a
17 serious crime.

18 Throughout this trial, the Defense has done their
19 very best to try to confuse you. I know you haven't spent
20 as much time in the courtroom as I would have liked. And
21 I apologize for that. But it's been tough probably to
22 follow along with -- with what's going on here this week.
23 But I just ask you to, please, remember why we are here,
24 and that is because [REDACTED] [REDACTED] was the victim of a
25 crime. Sometimes, it's difficult to see the forest for

1 the trees. The waters can become murky.

2 The Defense asked you in their opening statement to
3 not be a sheep. Those were her words. But I believe
4 that's exactly what she wants you to do is to be a sheep
5 for the Defense. She wants you to just follow along
6 through her corn maze and take you astray, take you down
7 all these different paths pointing out things that could
8 have been done better, well, they may have produced
9 evidence in this -- in this instance. All the while
10 taking away from why we are here this week. And that is
11 to address the abuse that the Defendant did to [REDACTED]

12 I know Monday seems like a lifetime ago. It,
13 certainly, does for me. This has been quite a long week,
14 and I'm sure it has been for you. And I really do
15 appreciate all of your time and patience with us through
16 this week.

17 But I just ask you to remember, as best as you can,
18 [REDACTED] on Monday in the courtroom. [REDACTED] is a
19 seven-year-old little girl who started second grade this
20 week. And you heard testimony and you saw her in her
21 interview. And she's got a bubbly personality. She is
22 fun. And she is smart. But when she came in this
23 courtroom on Monday, she was sad. She was quiet. She
24 mumbled when she took that witness stand right there.
25 That was the first time she had seen the Defendant since

1 she --

2 MS. BARWICK: Judge, she's testifying to things not
3 in evidence.

4 THE COURT: Okay. What was it you just said?

5 MS. MCCALL: Your Honor, I stated that that was the
6 first time the Defendant had seen -- the victim had seen
7 the Defendant. And I believe that was testified to
8 through other parties.

9 THE COURT: Okay. Well, I don't recall either way,
10 to be candid. I just have to leave that up to the -- the
11 memory of the -- the jurors, whether or not that was
12 brought out.

13 You may proceed.

14 MS. MCCALL: Thank you.

15 The victim had to sit in front of the Defendant, a
16 man that she told on. She disclosed the sexual acts that
17 he did to her, a seven-year-old.

18 The Defense argued that she wanted attention, and
19 that was one of the reasons that she accused the Defendant
20 of what he did. But I ask you to think about the type of
21 attention that [REDACTED] has received since she disclosed
22 this abuse.

23 She had to go to the emergency room. She had to sit
24 in the interview that you saw and talk about what the
25 Defendant did to her. She's had to come and meet with me

1 multiple times. She had to go for a medical exam with
2 Dr. Crosswell. And then, finally, this week, she had to
3 get on that witness stand and testify in front of a
4 courtroom of mostly strangers in a setting she is not
5 comfortable in.

6 I've been an attorney for quite a while. And I,
7 sometimes, still get a little nervous when I talk in front
8 of people. It can be intimidating. And [REDACTED] had to
9 do that.

10 On March 20th of 2017, [REDACTED] disclosed sexual
11 abuse to her father at his home in Pickens. The first
12 thing that her father did was take her to the hospital.
13 Her father was concerned for her well-being.

14 There at the hospital, the ER nurse, she testified
15 that when [REDACTED] came to the hospital on that night, her
16 demeanor was happy. During that evaluation, [REDACTED]
17 disclosed to the nurse that she had been abused and that
18 it had happened two days prior.

19 Time is important to a medical professional when
20 they're evaluating this type of abuse. Because they have
21 to determine, along with the parents, whether or not a
22 rape examination should be done. You heard testimony from
23 multiple witnesses how intrusive this rape examination can
24 be. And it's traumatizing, especially for a five-year-old
25 child, a child who may not really comprehend what's going

1 on anyway.

2 So the medical professionals and the parents have to
3 make a decision based on the time that had passed, in this
4 case, two days, and the expectation of whether or not they
5 believe that they could find any valuable evidence. They
6 had to make a decision about whether or not they would do
7 that examination. And they chose not to at the hospital
8 that night.

9 While they were at the hospital, the nurse called law
10 enforcement. She notified the Pickens Police Department
11 that there had been a sexual assault that occurred in
12 their jurisdiction. And Sergeant -- excuse me, Sergeant
13 Renee Elrod responded to the hospital that evening.

14 Also called to the scene was the Department of Social
15 Services to investigate. And that is what they did. You
16 heard from Zack Wilson, who works for the Department of
17 Social Services. And he told you that he arrived on scene
18 to investigate that allegation in order to make a safety
19 plan.

20 Zack talked to [REDACTED] And [REDACTED] disclosed to
21 him that she was sexually abused at her mother's house,
22 the same place that she disclosed to her father and other
23 adults that she disclosed to.

24 After [REDACTED] was seen at the hospital that evening,
25 they made a referral for her to go to the Julie Valentine

1 Center, a child advocacy center. There at the center,
2 [REDACTED] underwent the child-friendly interview that you
3 saw on Monday, the recorded interview.

4 And after she sat through that interview, they
5 scheduled a medical examination for her with
6 Dr. Crosswell. Dr. Crosswell testified as an expert
7 before you that she had evaluated [REDACTED] and that her
8 examination was normal. This examination occurred, I
9 believe, two to three weeks after the disclosure was made.
10 And she testified that they, generally, wait to do these
11 examinations because, sometimes, it takes that long for
12 sexually transmitted diseases to show up.

13 Dr. Crosswell testified that, based on the
14 allegations and the abuse that was disclosed, she did a
15 physical examination and tested for sexually transmitted
16 diseases. Dr. Crosswell did testify that her examination
17 was normal. And, in fact, she said that based on that --
18 that less than three percent of victims show physical
19 trauma after abuse.

20 So she said that [REDACTED] examination was normal in
21 this case. That just because she had these specific
22 allegations of abuse did not indicate that she should or
23 would show any signs of trauma.

24 Dr. Crosswell, also, explained that any complaints of
25 a child's bottom hurting, especially at the age that

1 [REDACTED] was can be explained in a number of ways. It
2 could be a sign of sexual abuse. But it, also, could be
3 just a sign of poor hygiene, that children sometimes have
4 a hard time learning to properly wipe themselves when they
5 use the restroom.

6 So, in this case, we don't know what that information
7 means. We don't know if it means [REDACTED] complaints of
8 her bottom hurting if they were directly related to the
9 sexual abuse, or if they were related to her hygiene, or a
10 combination of both.

11 The Defense is going to have you -- and try to
12 convince you to believe that [REDACTED] was coached and
13 influenced in making these disclosures. But I ask you to
14 recall the interview that you saw on Monday and think
15 back -- I know it was a while ago -- but to -- to when she
16 first told the interviewer what happened.

17 The interviewer was asking her an unrelated question,
18 nothing related to sexual abuse. She wasn't prompted at
19 all. And [REDACTED] just sporadically started disclosing
20 what happened to her. She told what the Defendant did to
21 her. And then she said, I'm done talking about that. She
22 wanted to move on. [REDACTED] wanted to move on from having
23 to talk about what the Defendant did to her. And she
24 wanted to be a normal kid.

25 And throughout the interview, there's lots of

1 discussion. They come back to some talk about the sexual
2 abuse. But they, also, talk about other things unrelated.

3 [REDACTED] asked to -- to draw a rainbow. She wants to
4 write her ABC's. She wanted to be a normal kid.

5 You heard from Ms. Shauna Galloway-Williams, who is
6 an expert in child abuse dynamics. And, as we all know,
7 she said children lie. I don't think that's something
8 that we didn't know. But this expert explained that
9 children aren't sophisticated liars. Sometimes, they lie
10 to get out of trouble. That's pretty common.

11 But [REDACTED] used child-like terms in her disclosure.
12 And she gave contextual details of what the Defendant did
13 to her. She stated that his pee when he peed on her, it
14 was white. And it came out of his big fat butt that was
15 wiggly. We know that people urinate from their private
16 area, a child knows that as well. But [REDACTED] stated
17 that this was white.

18 And she, also, said that he stuck his fingers in her
19 butt, both butts. And as we see, [REDACTED] calls both her
20 front private and her back private butt. These are
21 child-like terms and not terms that an adult would use to
22 describe a sexual assault.

23 [REDACTED] even told us that the Defendant when he peed
24 on her, it came out of his shorts that had a hole in it,
25 boxer shorts. She described sensory details when she

1 disclosed that the Defendant put his fingers in her butt.
2 She said, And it felt like a rock. That is penetration.
3 That is the Defendant putting his fingers inside of her
4 vaginal area and her bottom. And she described what that
5 felt like to her in child-like terms.

6 During this disclosure when [REDACTED] was talking
7 about what the Defendant did to her on the couch, she,
8 also, said that he touched her hair and he put his fingers
9 in her mouth. Well, touching her hair isn't necessarily a
10 sexual act. [REDACTED] doesn't know. She's five. All she
11 knows is what the Defendant did to her, not necessarily
12 what it means or what adults think it means, just that he
13 did something to her that she knew wasn't right. It made
14 her feel uncomfortable and she wanted to tell.

15 The Defense wants you to think that the Defendant --
16 that the victim may have wanted her parents to reunite, or
17 that she didn't like the Defendant because he was mean to
18 her. Well, there's no testimony that she wanted her
19 parents to get back together. I think based on [REDACTED]
20 testimony, she didn't like the Defendant being mean to her
21 at times. And she, also, didn't like him sexually abusing
22 her. But she didn't make this up. She's a smart
23 seven-year-old.

24 But, as Ms. Galloway-Williams told you, she's not
25 able to make up sophisticated lies and give the contextual

1 details that she was able to give. She did not make those
2 up. Those are things that happened to her and that she
3 physically felt and saw with her own eyes.

4 Ms. Galloway-Williams, also, explained to you that
5 time's a difficult concept for kids. That makes sense.
6 Sometimes, it's hard for me to remember what I ate
7 yesterday. So asking a child what happened to them two
8 and a half years prior and when it happened, that's tough.
9 But she, also, told you that the closer in time the
10 disclosure is to when the abuse happened, the chances are
11 much better that their memory is going to be better and
12 they're going to be able to tell you when something
13 happened.

14 The expert, also, explained that trauma is processed
15 differently by different victims. So the way that one
16 victim may process trauma and appear to behave afterwards,
17 that's not the same as all victims.

18 And there are multiple factors that will affect a
19 child's disclosure. And two of those factors are the
20 child's age and the time that has passed. [REDACTED] was
21 five when this happened to her. And she was five when she
22 disclosed. It's now about two and a half years later, and
23 she's seven. A lot changes in between those times. The
24 circumstances change. Her environment may change.

25 But Ms. Galloway-Williams said that it's normal for

1 victims to remember certain pieces of trauma more than
2 others. And they may come in and out of their disclosure
3 phase and -- and what they're willing to disclose at one
4 time, or even what they do remember. It's a process that
5 happens over time. They could forget things or they could
6 begin to understand the significance of what happened to
7 them. And they could be embarrassed.

8 The Defense is unable to attack what, actually,
9 happened to [REDACTED] [REDACTED] because it happened. But
10 they're trying to just confuse you and distract you from
11 what's important. They want you to focus on things that
12 don't even effect what happened to her.

13 They say a rape examination could have been done.
14 And it may have produced evidence. That's accurate. It
15 could have been done and it may have produced evidence.
16 But they're not presenting anything to you that discounts
17 what [REDACTED] said. Keep your focus on [REDACTED] [REDACTED] and
18 what she experienced.

19 Was this a poor police investigation? Absolutely,
20 100 percent. Do I wish it were investigated better?
21 Absolutely. However, we have evidence in this case. We
22 have the testimony of the victim in an interview. And she
23 disclosed what happened to her very clearly in terms that
24 children understand and with details that she did not make
25 up.

1 They want to make a big deal about DNA evidence.
2 Could there have been DNA evidence in this case? It's
3 possible. It's very rare that in these types of cases we
4 have DNA evidence for a lot of different reasons. But in
5 this case, it's possible. We know where the abuse
6 occurred, it happened on the couch. Is it possible that
7 there could have been some bodily fluids, whether it's
8 urine or ejaculation -- some sort of semen -- I'm sorry --
9 that could have been on the couch. It's possible.

10 But there is uncontested testimony that the Defendant
11 lived in that house. He lived there for approximately two
12 years. So had we had DNA evidence, the Defense could have
13 argued the Defendant lived in that house, of course, his
14 DNA was going to be there.

15 Sergeant Elrod could have done much more to
16 investigate. But she did the best thing that she could,
17 and that was get [REDACTED] [REDACTED] to the Julie Valentine
18 Center for a child-friendly interview. And in that
19 interview, [REDACTED] felt comfortable enough to disclose in
20 her own words what really happened to her. These are
21 private crimes. They, generally, happen in a home with no
22 witnesses. And they're tough to prove. But what we have
23 here is the victim's testimony.

24 In that interview, there are many things that are
25 true. But there are, also, some things that aren't true.

1 As I told you earlier and we talked about, [REDACTED] wasn't
2 prompted when she gave that disclosure at the beginning of
3 that interview. She said what happened to her and then
4 she said, I don't want to talk about this anymore. I want
5 to move on. I want to be a kid again. Those things were
6 true.

7 There was one point when the interviewer left the
8 room and [REDACTED] kept drawing. Her demeanor did not
9 change when that interviewer left the room. She wasn't
10 one child in front of that interviewer and a different
11 child when she left. That was the same child in that
12 interview room the whole time.

13 [REDACTED] mentions in the interview something about
14 telling her mom about a dream she had, or maybe the term
15 would more appropriately be a nightmare. I myself have
16 had many nightmares before. One that I for some reason
17 over the years have always had, and it kind of comes and
18 goes. But I have this nightmare that I'm late for work,
19 court, or a meeting, something that I've done before. And
20 I -- I wake up in a panic with this nightmare. But that
21 is something that I've experienced before. I've never had
22 a nightmare about something that I knew nothing about and
23 had never experienced. You don't dream about things that
24 have never happened to you.

25 In that interview, [REDACTED] said she drove her mom to

1 the hospital. And she said the Defendant has cameras in
2 his eyes. Well, we know those things are not true. But
3 [REDACTED] knows about people driving cars. She knows about
4 cameras. She's familiar with those things. She's not
5 familiar with sexual abuse and sex acts at five.

6 As Ms. Galloway-Williams stated, just because one
7 part of what someone says isn't true, that doesn't mean
8 their whole story or their whole recount of what happened
9 is not true. [REDACTED] would not have known that a person
10 ejaculates out of the same hole that they pee out of.
11 Because a five-year-old just shouldn't know that. She
12 wouldn't know that a sexual act is digital penetration of
13 a private area and it feels like a rock in her private
14 parts. She would not know that unless she had experienced
15 it.

16 The Defense, when they questioned [REDACTED] they
17 tried to confuse her with her first few questions. If I
18 told you that I was wearing a red dress today, what would
19 you say? Well, the seven-year-old replied, I would say
20 that it's pretty. I think that's an appropriate response
21 for a seven-year-old.

22 We knew what the Defense attorney meant. We knew she
23 was trying to trip her up and get her to look as if she
24 did not want to correct an adult. But that was an
25 appropriate response. She was trying to be respectful.

1 If you were wearing a red dress, it would probably be
2 pretty.

3 The questions in the interview were appropriate.

4 [REDACTED] when she disclosed, she didn't even respond to a
5 question related to sexual abuse. She just wanted to tell
6 her story, a real life story that had really happened to
7 her. [REDACTED] wasn't prompted. She told that in her
8 real -- in her own words and no one else's.

9 As you've heard a few times, our burden today as the
10 State is to prove to you beyond a reasonable doubt that
11 the Defendant sexually abused [REDACTED] [REDACTED] a
12 five-year-old at the time. I don't want you to confuse
13 deliberation with hesitation. I ask you to deliberate.
14 That is what you're here for. That is why we picked you
15 12 jurors is to deliberate over the evidence and the
16 testimony that you have heard.

17 This case has enormous impact both on [REDACTED] [REDACTED]
18 her family, and the Defendant, Brandon Clark. Use your
19 time to deliberate, to think about all of the evidence
20 that you have seen. And I -- I ask that you would
21 remember that every single criminal who has ever been
22 convicted has been convicted under this same burden. A
23 prosecutor just as myself and Mr. Todd has presented
24 evidence that proved to a jury just like yourself, a jury
25 of our peers, that the crime happened.

1 Proof beyond a reasonable doubt is not proof that
2 overcomes every doubt. But it's proof that leaves you
3 firmly convinced that the Defendant sexual abused [REDACTED]
4 [REDACTED] a five-year-old. And that she was able to disclose
5 in her own words what he did to her.

6 In the Defense's opening, they stated to you that,
7 essentially, you need more than the victim's statement to
8 convict, that it has to be corroborated by some other
9 evidence. That is not the law. If you believe the
10 victim's statement, her statements here in court, and her
11 interview, that is evidence sufficient to convict the
12 Defendant based on those statements.

13 I ask that you use your common sense, your education,
14 your life experiences. Everything that you have done or
15 seen up until this point, use that in your deliberations.
16 Each of you brings so many valuable diverse things to the
17 table. Talk, go through all of the different options.
18 Think about children that you know. Children lie. But
19 we, also, know that children tell the truth. And children
20 tell what happened to them.

21 So use your experiences that you have had with
22 children over the course of your life and evaluate this
23 case based on that, based on your common sense of what a
24 five-year-old should know, based on your experiences of
25 the terms the children you know use and whether an adult

1 would use those same terms.

2 You are so valuable in this process. And I thank you
3 so much for your time and attention in this matter. We're
4 coming near the end. I know it's been a long week. But I
5 just ask that you would deliberate based on everything
6 that each of you brings to the table.

7 [REDACTED] [REDACTED] told what the Defendant did to her.
8 He ejaculated on her, or peed on her, and digitally
9 penetrated her vagina and bottom on her mom's couch in
10 Pickens when she was five, just a couple of days before
11 she told. He peed on her, and it was white. He stuck his
12 fingers in her butt and it felt like a rock. Those are
13 the words of a five-year-old that had been violated in the
14 worst kind of way possible by her mom's boyfriend, the
15 Defendant, Brandon Clark.

16 We ask that you find the Defendant guilty of criminal
17 sexual conduct with a minor in the first degree.

18 Thank you.

19 THE COURT: Thank you, Solicitor.

20 Ms. Barwick, are you ready?

21 MS. BARWICK: Yes, I am, Your Honor.

22 Thank you.

23 Normally, I like to just go into my own closing. But
24 there are tremendous amounts of falsities that the State
25 just told you. And I need to correct those. One, what I

1 told you is that you need more than the inconsistent,
2 fantastical statements of one person to convict somebody
3 and to find them guilty beyond a reasonable doubt. That
4 is past all reasonable doubt. What you heard from each of
5 these witnesses yesterday over and over and over again was
6 nothing but reasonable doubt.

7 Next point. We're not asking [REDACTED] what she ate
8 yesterday. This is a lot more important than that. I
9 can't remember what I ate yesterday.

10 But you remember traumatic events. Even Shauna
11 Galloway-Williams, what'd she say? I might not remember
12 everything when I go to the grocery store. But if I got
13 in a car accident at the grocery store, I'm going to
14 remember it a lot more.

15 Ms. McCall brought up another good point. They chose
16 not to. They chose not to do the rape kit. That is not
17 the choice of a parent. The investigator should have
18 gotten that rape kit. If she felt seriously enough about
19 these allegations, she would have done her job in this
20 case and done what was necessary to find the evidence to
21 either corroborate the child's statement or to disprove
22 it.

23 An investigation doesn't mean we're going to do
24 everything we can to convict somebody who's accused. An
25 investigation means, did he do it? Let's find the

1 evidence. Let's see what we can do to find out if it
2 happened or if it didn't happen. We're not in the
3 business of accumulating evidence against somebody who may
4 not be guilty. We need to research all of those avenues.

5 The last statement Ms. McCall said, she said the
6 five-year-old -- the assault happened on the couch. Guess
7 what? That child, also, said in that interview at minute
8 six -- you can go back and listen to it back in the jury
9 room. At minute six, she said it happened one time.

10 So if it happened one time -- she told other people
11 it happened upstairs in her bed when her sister was
12 sleeping. But nobody even thought to talk to the sister
13 to kind of corroborate something that -- that [REDACTED]
14 said. So did it happen on the couch downstairs or in the
15 bed upstairs? That is a huge inconsistency.

16 Ms. McCall wants you to think that this child has
17 forgotten what's happened in the past two years, magically
18 forgot all the things she said in this forensic interview.
19 Did she? Because the child testified yesterday -- or was
20 it the day before? My days are getting confused.

21 But the child testified that Ms. McCall had her watch
22 that forensic interview. She watched the video preparing
23 for her testimony. She -- both the parents said, we met
24 with -- mom said, we met with Ms. McCall three times.
25 Each time, [REDACTED] was with me. Dad said we met with

1 Ms. McCall. Each time, [REDACTED] was with me, three or four
2 times. And they both said it happened separately. That's
3 seven -- six to seven times this child met with Ms. McCall
4 to prepare for her testimony. And she has a forgetful
5 memory.

6 Ms. McCall says about Dr. Crosswell's testimony,
7 well, we don't really know what that information means.
8 We don't know if it's abuse. And we don't know if it's
9 improper hygiene and improper wiping. Dr. Crosswell said
10 it could be either or. You cannot convict beyond a
11 reasonable doubt on an either or piece of evidence. This
12 is not an either or case.

13 Ms. McCall said there's lots of possibilities.
14 Again, we're not interested in possibilities. We're
15 interested if the State has done their job and met their
16 burden beyond a reasonable doubt.

17 Now, DNA. Y'all have common sense. Y'all have
18 common knowledge. Y'all are intelligent people. We know
19 that blood is different than urine. We know that urine is
20 different from semen.

21 If the investigator had went out to the scene and
22 done her job -- she even played word games with y'all,
23 word games. The semen's at the hospital. The semen was
24 at the place the assault occurred. If she had went out to
25 the scene and did the least little bit of work, she could

1 have determined if there was blood from this gushing
2 bleeding wound on the child's face that nobody saw, on the
3 couch, or in the bed. She could have seen if there was
4 urine or semen from my client in the bed or on the couch.
5 All she would have to do is go to the scene and collect
6 that.

7 People don't normally pee in beds, or pee on couches,
8 or have semen on couches. At least, this would be -- and
9 even -- even if they did, at least, this would be one
10 little corroborating piece of evidence. Because if this
11 case was that important to the State and they really
12 believed this child, would they not have gone out and done
13 this extra work to ensure that they had enough evidence to
14 convict?

15 I will say this, I went home and I thought about this
16 case a lot last night. I've been thinking about it for a
17 long time. And y'all might have seen me get fired up with
18 these witnesses. And I probably got more fired up with
19 Officer Elrod than I've ever gotten fired up on an
20 examination of a witness before in my career.

21 To me, this is a very scary situation. It is
22 terrifying that an officer can take one little snidbit of
23 what a child says, not compare it to what -- a whole
24 42 minutes of what the child says to see if there's
25 inconsistencies, not worry even about it, not go look at a

1 medical examination, make a decision not to do a rape kit
2 when the evidence might be right there, don't do anything
3 else, don't talk to any of the witnesses the child might
4 have talked to. There was a lot of them. There was,
5 like, eight of them. And then go and make a charge.

6 And do you know what's even scarier to me than that?
7 That the State would pick up that charge and put this
8 before you. That officer probably did less than four
9 hours worth of work. And the State asks you to come in
10 here and do four days worth of work to see did they do it?
11 Did they not do it? If they cared that much about this
12 case, the evidence would be here, not they chose not to.
13 They chose not to is the theme of this case. And you can
14 chose not to, too.

15 Ms. McCall said that the child said that the pee came
16 out as white. That's not true. Let's go to minute nine.
17 And you'll have the video back in the jury room with you.
18 And you can watch it, rewind it, fast forward it, play it,
19 pause it. At minute nine, the child said it was white and
20 it was blue. And she said her big fat -- and it came out
21 of his big fat butt. Watch the video again. She wasn't
22 referring to the front butt. She smacked her own butt,
23 the back butt. Does that make sense?

24 She, also, said the pee felt like ice cream. Ice
25 cream is cold. The internal body temperature is 98.6. So

1 let's think about this a little bit.

2 What Shauna Galloway-Williams told you is there's a
3 difference between core details and contextual details.
4 Core details are your who, what, when, where, why, how.
5 Children have a hard time with those sometimes. She said
6 contextual details if they get those and start telling you
7 about that, that's a lot more likely that they, actually,
8 experienced it, instead of being told about it, or having
9 seen it, or being coached about it.

10 And sensory details are how things feel. She even
11 got that wrong. Urine or semen coming out of the body
12 does not feel cold like ice cream. What did the child
13 tell you in that interview? I watched videos of naked
14 people with my mother. Is that something the child
15 experienced, the urine or semen coming out, or is that
16 something she watched? It sounds like to me it's
17 something she watched.

18 But the State, and Officer Elrod, and no one seemed
19 concerned that mom might have been letting this child
20 watch pornography. And what'd the mom say? The mom
21 testified and said my daughter falsely accused me of
22 watching pornography. If a child is willing to falsely
23 accuse her own mother, whether it's by accident or not and
24 due to developmental level or not, where does that leave
25 my client?

1 Let's talk about instincts. The one thing that makes
2 us different than animals is our ability to use our good
3 logical sense. The State is preying on your instincts.
4 And I get it. I get when you hear something like this,
5 you -- every instinct in you says, I need to protect this
6 child. There's no way a child could lie about this. I
7 need to do what's right. I need to protect this child. I
8 need to be the hero.

9 Well, guess who else had that instinct, instead of
10 using logic? Law enforcement. They didn't need anything
11 else. The child says something. I don't even need to
12 compare it to their 42-minute inconsistent statement. I
13 have enough. That's it. I'm moving forward. It was a
14 knee jerk reaction. It wasn't logic. Does it match up
15 with everything else? They are so desperate to believe
16 this child that they've put their blinders on.

17 When I asked you in the beginning what am I not being
18 told and why am I not being told it? It's because it
19 wasn't done. They had their blinders on. And they
20 decided they weren't going to do it.

21 Let's talk about burden of proof a little bit here.
22 Burden of proof means the State has the burden of proof.
23 It means the State -- before you can do a guilty verdict,
24 you have to believe beyond a reasonable doubt that the
25 Defendant is guilty beyond a reasonable doubt. Just

1 because you think he might have done it, that's not enough
2 to convict. It has to be beyond a reasonable doubt. And
3 that's -- that's a -- that's a high, high doubt.

4 And let me explain that to you a little bit.
5 Reasonable suspicion is the kind that an officer needs to
6 stop you to question you. I -- I suspect you of doing
7 something. Then probable cause would leave an ordinary
8 person to believe. Again, that's not beyond a reasonable
9 doubt.

10 Preponderance of the evidence is the greater weight
11 of the evidence, more likely than not. This is the
12 standard in civil cases. You get in a car wreck, you get
13 some money if it's more likely than not that you were the
14 one at fault.

15 Clear and convincing evidence, this is the burden
16 that's required to take your children away from you in
17 Family Court DSS cases. It requires a firm belief, a
18 conviction of truth, something enough to take your kids.

19 Guess what? Your burden here is even more powerful
20 than the burden that's required to take your kids away
21 from you. This is beyond a reasonable doubt. It requires
22 the elimination of every single reasonable doubt.

23 Reasonable doubt is the kind of doubt that would
24 cause you to hesitate to act in the very most important of
25 your own affairs. Burden of proof. All of this is not

1 guilty. If you feel any of these ways, you have to return
2 a verdict of not guilty. Even if you think his guilt is
3 highly likely, you have to return a verdict of not guilty.

4 So the State knows they have this burden. And guess
5 what? They chose not to. They chose not to give you what
6 you needed. They chose not to give you your tools so that
7 you could find this. Because they knew it wasn't going to
8 be there.

9 Let's talk about some important dates. So [REDACTED]
10 born. That's her birthday. The indictment says it
11 happened between February 20th and March 20th of 2017.
12 What did [REDACTED] tell you on the stand? I was three. I
13 was four. I was five.

14 In the forensic interview, she said, I'm four, I'm
15 five. I don't really know. Well, did it happen before or
16 after your birthday? I don't know. But her birthday's in
17 January before the dates of the indictment.

18 Then on March 20th, she makes this disclosure. The
19 nurse that testified said that [REDACTED] said it happened
20 two days prior. They're at the hospital at 6:00 p.m. Two
21 days prior. Let's think about what two days prior means.
22 Because it happened in the middle of the night when
23 everyone was sleeping. Two days prior could have been
24 March 18th at 10:00 at night within that 48-hour window.
25 But they chose not to.

1 And they're making this big to-do about how traumatic
2 this is. I have no doubt about this. Having to go
3 through an examination like that is probably terrible,
4 especially for somebody [REDACTED] age. And I would not
5 wish that on anyone. But guess what they do? They don't
6 do it when the evidence is most freshest when
7 Dr. Crosswell says there's -- would be a lot more
8 probability of it being there than not being there the
9 sooner you are to the date that it happened, two days.

10 They turn around 24 days later, 24 days later and do
11 it another -- they do an intrusive exam just as intrusive
12 as the rape kit. There's a scope that goes into the
13 vagina to see if there's any injuries. They do it
14 anyways. And they do it 24 days later. Why didn't they
15 do it two days later?

16 Officer Elrod seeks a warrant. Officer Elrod seeks a
17 warrant and says, you know what, I'm just going to worry
18 about this, I don't care about that, I don't care about
19 that. I don't care about any kind of DNA. I'm not going
20 to the house. I'm just going to get a warrant.

21 And then my client gets arrested. Brandon gets
22 arrested and they take his DNA. And they take his DNA
23 because it might be useful. Unfortunately, SLED doesn't
24 have anything to compare it to because the State chose not
25 to.

1 Let's talk about that power of suggestion. Shauna
2 way -- Ms. Shauna way -- Shauna Galloway-Williams talked
3 about the power of suggestion. Children are susceptible
4 to the power of suggestion. A lot of people are
5 disagreeable people.

6 I, actually, instruct my witnesses when I'm preparing
7 them for trial, listen, don't just say yes to what's being
8 asked. If the other side asks you how far away it was and
9 you don't know, say, I don't know. Now, they're going to
10 try to get you to say it was about 20 feet, wasn't it? It
11 was about 20 feet. And you'll turn around and say, well,
12 yeah, it's right. Because that's our natural human
13 instinct to want to be agreeable.

14 Now, imagine a five-year-old with all these people of
15 authority around her wanting her to be agreeable. These
16 are all the people that spoke with her before that
17 interview even occurred. These are all people that are
18 not trained in interviewing. They don't know how to ask
19 questions and to avoid suggesting answers.

20 What did Shauna Galloway-Williams say about children
21 and lying? She said, Children lie because they want to
22 get out of trouble. And she said, Children are not
23 sophisticated liars. They can't keep it up for a period
24 of time.

25 Well, she disclosed when her parents were asking her

1 about her butt hurting. And both parents, even though
2 they try to say they didn't think it was because of
3 hygiene, Officer Elrod and the DSS worker, Mr. Wilson,
4 both said the parents told them they thought it was
5 because of hygiene.

6 Now, two years later, the parents are saying that's
7 not the case. And, unfortunately, they lied to you. Even
8 Dr. Crosswell said the parents told her they thought it
9 was because of poor hygiene.

10 I have a five-year-old as well at home. She started
11 kindergarten on second grade -- or on Tuesday. She
12 started kindergarten. Guess what she does sometimes?
13 She's learning how to wipe. She's trying hard. And
14 she's -- probably when she becomes a little older is going
15 to kill me for telling y'all about this. But I'll go into
16 her room. And I might find her underwear in the corner
17 under a stuffed animal or she'll, sometimes, sneak it in
18 and try to throw it in the washing machine. She doesn't
19 quite wipe well enough. And it's embarrassing for her.
20 Five-year-olds get embarrassed.

21 And if you ask her about it, she's going to lie to
22 you, no, no. Well, she's trying to get out of trouble.
23 And this little innocent trying to get out of trouble --
24 this little white lie gets heard. And all the parents
25 instincts kick in, rightfully so. And it becomes bigger,

1 and bigger, and bigger than what it is.

2 And you have all these people paying attention to
3 her, all 11 of them before she even gets into that
4 interview. And they're asking her questions, suggestive
5 questions. Because they don't know how to ask questions.
6 And they're implying answers to her. And she's just
7 saying, yes, yes, yes.

8 In the interview, did I get that right?

9 Yes.

10 Did I get that right?

11 Yes.

12 Did he force you to do this?

13 This interviewer is putting words into her mouth.
14 You'll notice the interviewer will say, Well, didn't --
15 didn't you say that A, B, and C happened.

16 There was a three-minute break in that interview
17 where they're circling all those anatomical drawings that
18 Ms. McCall had up there. And as soon as all the drawings
19 are done, the interviewer goes, well, you were telling me
20 about A, B, and C happening and him forcing you to do
21 that. Did I get that right? Well, there's a lag of three
22 minutes.

23 That interviewer -- we all hear things and then
24 paraphrase it. But it might not be exactly what was said.
25 And that happened over, and over, and over. Go back and

1 watch the interview. Did I get that right? Isn't that
2 right? Isn't that right? That's a child's desire to want
3 to please. It's hard to correct an adult. I didn't try
4 to trick her. I asked her, What would you say if I was
5 wearing a red dress?

6 Well, I would say it's pretty.

7 What would you say if I said my hair was black?

8 Well, I prefer blond hair.

9 Then I asked the question, Do you feel comfortable
10 correcting adults?

11 And she said, No.

12 Adult after adult after adult wanted to gather more
13 information, rightfully so. Did this happen? Well, did
14 this happen, too? Did this happen, too? Did this happen,
15 too? Yes, yes, yes, yes, yes. Because it's hard to
16 correct an adult.

17 It's hard for me, if I think the Judge got something
18 wrong, to correct the Judge. He's in a position of
19 authority. I feel like I'm a pretty confident person, but
20 I'm not doing that. Imagine what a child feels like with
21 all these people she's never met before asking her these
22 specific questions. Did he do this? Did he do this? Did
23 he do this? Yeah, you're going to get a yes answer every
24 single time.

25 Back to beyond a reasonable doubt. When I was a

1 prosecutor sitting at Ms. McCall's table doing exactly
2 what Ms. McCall did years ago, I used to tell my people,
3 what's beyond a reasonable doubt? And I'd like to give an
4 example. It always worked better when I was in the bigger
5 courtroom downstairs where we, actually, had windows. But
6 I would said, It's not beyond all doubt. It's beyond a
7 reasonable doubt.

8 So let's say we're in the courtroom and we hear
9 thunder and we hear -- you know, we see the lights flash a
10 little bit in here. And we see what might be lightening
11 outside. And we hear what we think might be rain. We
12 don't know all of those things, but we're -- we're pretty
13 sure. And then we step out. And then somebody comes
14 inside and says, it's raining outside. Well, that makes
15 sense.

16 And then court finishes up. You leave your juror
17 box. You have a verdict. You leave. And you go outside
18 and the ground's wet. Well, it rained. It rained beyond
19 a reasonable doubt. Now, there could be other
20 explanations for all of those different noises. But you
21 know it rained beyond a reasonable doubt.

22 In this case, what the solicitor's office is doing is
23 saying we want you to stay in this courtroom with no
24 windows. You can't hear very well. You don't hear any
25 thunder. You don't hear any rain. And you have somebody

1 you don't know come in here that you don't know where they
2 come from, what their motivations are, what their
3 background is, what people have told them. Somebody young
4 like a five-year-old comes in here who has already lied to
5 you before -- or not -- told inconsistencies to you before
6 about it raining outside. And then they come in here and
7 tell you it's raining.

8 And the State is asking you, as a jury, to not even
9 look outside the window to see if the ground's wet, not
10 even go outside. We're not letting you outside. But we
11 want you to return a verdict that it's raining. And
12 it's -- you can't do that. You have to be convinced
13 beyond a reasonable doubt. The State just hasn't met that
14 burden.

15 Let's go through all the reasonable doubt in this
16 case. And -- and I'm sorry. And I'm going to try to make
17 this quick. Y'all are tired. I'm tired. I'll try my
18 best with this. But there's a lot to go through. And
19 it -- and it's important.

20 And let me just say this. I am so thankful, my
21 client is so thankful. Brandon over there and his family,
22 we are thankful that y'all are taking your jobs more
23 seriously and performing it with more care than law
24 enforcement, than DSS, and the State in this case.

25 The attention to detail is necessary. You have to

1 hold their feet to that fire and make sure that they're
2 not violating people's rights, Constitutional rights by
3 not conducting any investigation whatsoever and telling
4 you to return a guilty verdict.

5 Let's go through this reasonable doubt. Let's go
6 through [REDACTED] testimony yesterday [sic] after having
7 watched that interview before coming in and testifying,
8 after meeting with the solicitor's office six to seven
9 times. What does she tell you? He peed on me. He peed
10 on my privates. That was said in the interview. Maybe
11 that's why she's in here telling you that yesterday -- or
12 Monday.

13 The other problem, too, is that peeing doesn't meet
14 the elements of criminal sexual conduct with a minor.
15 There has to be penetration into the anal or vaginal
16 openings by a part -- body part of the Defendant, the
17 person charged, or with an object. Urination does not
18 meet that element. That is not criminal sexual conduct
19 with a minor.

20 Now, this interview, which I didn't have the
21 opportunity to cross-examine the witness on whatsoever,
22 she goes into a bunch of other things. But the only thing
23 she was able to tell you, even after having her memory
24 jogged by the solicitor's office six or seven times, was
25 that there was pee. She didn't tell you about

1 penetration.

2 And was she really urinated on, or is this something
3 she saw? Cold like ice cream doesn't make sense. She
4 said it was cold like ice cream.

5 It is easy to just agree to things people are saying.
6 And it's easy to agree to terrible things about people
7 outside of that person's presence.

8 All of the witnesses said [REDACTED] did not have a
9 hard time saying what happened to her. She would just
10 spout it off. And even Zack Wilson with DSS said she was
11 happy-go-lucky and wasn't -- didn't seemed bothered in the
12 least.

13 But she's up on the stand and she's bothered. She's
14 bothered because she knows she's having to say these
15 things about someone, and he's right there in front of her
16 when they might not have happened. And might not have
17 happened is reasonable doubt for which blocks you from
18 returning a verdict of guilty.

19 It's easy to spread falsities or to agree to
20 falsities about someone when they're not there. It's hard
21 when they're here. The only time she had difficulty
22 talking about what happened to her is here.

23 Let's talk about the interviewer. The first thing
24 she said out of her mouth was, I work for a child advocacy
25 center. And I'm unbiased and I'm neutral. Then she told

1 you that she spoke with DSS before performing the
2 interview. And she, also, told you that she reviewed all
3 of law enforcement's records. She said there wasn't
4 really a reason for her to do that.

5 Well, we don't do things without reason. She had to
6 get the background of it because she had to know, as a
7 child advocate, what she was going into that interview to
8 get the child to say. And she got her to say it, except
9 things were off.

10 At the hospital, the story was it was up in the
11 bedroom upstairs. In the interview, it was downstairs on
12 the couch. It only happened one time. That interviewer
13 came in with preformed opinions and she had to get them
14 out because she is a child advocate. She works for a
15 child advocacy center that gets paid by funds to advocate
16 for children. You don't get paid those funds if you are
17 not getting the results you need.

18 Shauna Galloway-Williams said children are very
19 susceptible to suggestion. Throughout that interview,
20 there are closed-ended questions. They're not open ended.
21 And they're leading. Leading questions mean questions
22 that suggest the answer over and over.

23 You'll hear the advocate say -- the child say, Well,
24 he did this with my fingers.

25 You'll hear the advocate say, He did what with your

1 hand -- or his hand? Or the advocate will say, He forced
2 you to do what? And the child never used the word
3 "forced" before. The advocate will say, Now, you were
4 saying A, B, C, D happened; isn't that right? That's
5 suggesting an answer. That's getting the advocate to get
6 the child to say what the advocate needs the child to say.

7 Let's talk about some of the problems. There was
8 incorrect paraphrasing of what the child said, which is
9 suggestion. The interviewer never made sure that this
10 child understood what the instruction of you can correct
11 me means.

12 The advocate said, Here's a picture of a dog. This
13 dog is eating ice cream.

14 The child said, Okay.

15 And the advocate says, Well, no, the child isn't
16 eating -- or the dog isn't eating ice cream. The dog is
17 eating pizza. What is the dog doing?

18 And then the advocate says, Well, thank you for
19 correcting me. But the correction is never made. There
20 is never a correction. This child is incapable of
21 correcting that interviewer in something as basic as her
22 own name.

23 The interviewer throughout the interview is going,
24 [REDACTED] At minute 25 when the
25 interviewer goes to walk out of the room for a break,

1 [REDACTED] says, Well, my name's [REDACTED] She couldn't
2 correct the interviewer until minute 25 on something as
3 basic as her name. How is she supposed to correct her on
4 all these other leading statements? She's not comfortable
5 correcting adults, she told you that even at the age of
6 seven, let alone the age of five.

7 Positive and negative reenforcement. Go back and
8 watch the video. I'm trying to write all the times down
9 that I didn't get to. But after the interviewer comes
10 back, think about positive and negative reenforcement.
11 This child is trying to do things that would normally get
12 you positive reenforcement. Look, I know how to spell. I
13 know my numbers. I know how to write them.

14 And the interviewer is kind of like, Yeah, let's move
15 it along and get back to what I need you to tell me. And
16 the child's not getting the attention and the positive
17 reenforcement she would -- gets -- like she would normally
18 get by doing the things she normally does that gets it to
19 her.

20 So then the interviewer -- when the child starts
21 answering the questions like the interviewer wants, the
22 interviewer is all the sudden engrossed, Yeah, tell --
23 tell me more. And didn't this happen? And isn't that
24 right?

25 In fact, when she comes back from her break, the

1 interviewer says, You can keep coloring if you answer my
2 questions. And then after that point it's, isn't that
3 right? Isn't that right? Isn't that right? Yes, yes,
4 yes, yes, yes. Because that child wants to keep on
5 coloring.

6 Then the child keeps saying, Can I take that picture
7 home with me? Can I take that picture home with me? The
8 interviewer doesn't really give her an answer because she
9 wants to have that ability to say you can take that home
10 with you, or not answer it so the child thinks I can have
11 that picture if I keep answering all of her questions.

12 Then at the very end of the interview, the child
13 says, Now, can I take it home with me?

14 No.

15 That interviewer went in there with a mission and she
16 got what she wanted. And that's sad.

17 The interviewer said -- the interviewer got some
18 answers she didn't want. And -- and you'll see it. At
19 the end of the interview, the interviewer says, Did anyone
20 tell you what to tell me?

21 And the child says, My mommy, my daddy, and my nanny.

22 And then the interviewer says, What did they ask --
23 want you to tell me?

24 That it's all about me.

25 She was told -- the child was told before she even

1 went in the interview by these 11 people what to tell the
2 interviewer.

3 Let's talk about that interview. Again, she didn't
4 just say the pee was white. She said it was blue. The
5 State misinformed you on purpose in her closing saying the
6 child described it as white. By leaving out information
7 is the same thing as misinforming. She purposely left out
8 the blue. She purposely left out the fact that the child
9 described it as being cold. And she told you that the
10 child gets her front and back butts mixed up and she was
11 probably referring to the front. The child spanks her own
12 butt. She is saying he peed on her with his butt.

13 What isn't the State telling you? And why aren't
14 they telling you it? Because they're so desperate to
15 believe that something so terrible happened to this child
16 when it might have just been the promulgation of an
17 innocent white lie to get out of trouble and all these
18 adults took it and ran with it.

19 Let's talk about that interview. It was fantastical.
20 This child is talking about her friend dying, and her mom
21 dying, and them coming back to life. That's towards the
22 end of the interview. She's talking about cameras in
23 eyes, talking about driving people to the hospital.

24 She even says at one point at minute 15 -- you can go
25 back. If you forget my times, you can go back and listen

1 to my closing on recording and then go look at the times.
2 At minute 15, when asked if she told her mom about all of
3 this, she said, I told her that B -- I was dreaming about
4 it, though.

5 So was she dreaming all of this up? I think that was
6 that child's attempt to say, whoa, whoa, whoa, not all of
7 this happened. It was just a dream. It's -- it's make
8 believe. And that interviewer is like, whoa, no, we're
9 moving on. Didn't this happen, too? And didn't this
10 happen, too? And didn't this happen, too? She didn't
11 recognize to stop and think that there might be an
12 alternative explanation for it.

13 Let's talk about Brandon [REDACTED] the father. Let's
14 talk about his reasonable doubt. He's been convicted of
15 lying to law enforcement, convicted of lying to law
16 enforcement. Yet, the State wants you to believe him and
17 puts him up on the stand. A known convicted liar and the
18 State's relying on his testimony.

19 He said that he never said that he thought the butt
20 pain was from not wiping well enough. Again, we have a
21 medical doctor saying that that's what father said. We
22 have a DSS caseworker saying that's what father said. And
23 we have Officer Elrod saying that's what he said.

24 He, also, said the child can't remember if yesterday
25 was, actually, three weeks ago. She can't remember

1 timing. And you're probably wondering why I keep going
2 back to timing. Mom said, We were dating -- me and
3 Brandon -- Brandon and I were dating for two years off and
4 on. That means there's the possibility that when this
5 alleged incident occurred, my client wasn't in the home
6 because the child can't remember when it happened, three,
7 four, five.

8 They -- at three years old, they -- mom and Brandon
9 might not have even been dating. How do we know? Dad,
10 also, said he didn't believe the child had told the mother
11 prior to going to the hospital. But the child told you
12 she told her mother.

13 So when he says I don't believe that child told her
14 mother, he is saying I don't believe that child, his own
15 child. He is saying that the child made something up.

16 He said he wasn't still getting back together with
17 mom at the same time mom was with Brandon. However,
18 Officer Elrod testified in the body cam video that dad
19 said he was getting back with mother during that time.
20 That's motivation for dad to put a little something in
21 that child's ear to get this man out of the home so he can
22 resume his relationship with mother.

23 The Judge is going to tell you, to judge the
24 credibility of a witness, you have to consider their
25 motivations, their biases. That's pretty good motivation

1 to get your child to say something.

2 Let's talk about Brittany Hudson. She, too, thought
3 the child's butt pain issues were from not wiping well.
4 So you have two people that know this child the very best,
5 and they both thought this is because she wasn't wiping
6 well. But, now, all the sudden, it's this -- this big
7 thing through the power of suggestion of 15 people.

8 Brittany -- let's talk about mom a little bit more.
9 She said the child thinks yesterday sometimes could be a
10 year ago or a few years later. She doesn't know timing.
11 She -- this child doesn't know timing.

12 Mom got up here and testified that what the child
13 said was not true over and over again. I said, Did your
14 daughter tell you before you went to the hospital?

15 No, absolutely not.

16 And if law enforcement thought the child had done
17 that, had told mom, had believed the child, law
18 enforcement would have charged. Officer Elrod admitted to
19 you that's a zero to 10-year felony offense. It's called
20 unlawful conduct towards a child. But mom wasn't charged.

21 I asked mom if Brandon ever busted her head open with
22 a baseball bat, or whatever it was the child said.

23 Mom said, No. That never happened.

24 Did your daughter drive you to the hospital after
25 that baseball bat to the head injury?

1 No. My five-year-old never drove me to the hospital.
2 Mind you, this child was told at the very beginning
3 of this interview it's very important for you to tell me
4 only what's really happened to you. And at the end of the
5 interview when the child says it's possibly a dream, the
6 interviewer says, But you only told me what really
7 happened to you; right?

8 Well, this child's been told twice to make sure you
9 only say what really happened. And when the child says
10 that she drove her mom to the hospital, the interviewer
11 says real quick, But we only need to talk about things
12 that really happened. So how do we know everything else
13 really happened?

14 The child said she had got a scratch and she was
15 bleeding all over the place. But nobody saw a scratch.
16 The child said that Brandon busted her TV. Mom says there
17 was no busted TV. Brandon -- the child, [REDACTED] said
18 that Brandon had cameras in the back of his eyes and was
19 taking pictures of her. Mom says that -- we -- we don't
20 need mom to tell us that didn't happen.

21 And then the pornography. The child says mom exposed
22 her to pornography. Guess what? Law enforcement didn't
23 make a charge on that. DSS didn't do anything about that.
24 It's because they didn't believe the child. They thought
25 those statements were fantastical. But they're picking

1 and choosing what they choose to believe from this child
2 and not.

3 Let's talk about Allison Meena. She's the nurse. I
4 already talked to you a little bit about this. She's
5 saying that the child's family gets to determine who does
6 this rape kit to see if there's DNA evidence left behind,
7 if there's semen, if there's blood, if there's hair. She
8 said the child's family said not to do it. But that
9 48 hours -- we could have met that 48 hours. And that's
10 not a hard and firm line. That's a suggested line. Why
11 not try to do it if you can get something, especially if
12 you're going to do it 24 days later anyways?

13 Dr. Crosswell said either or. It could be from
14 improper hygiene. It could be from sexual assault. I
15 don't know. You can't convict on I don't knows.
16 Dr. Crosswell, all she was able to tell you on the stand
17 is, I saw no evidence that a sexual assault occurred.
18 That was her testimony.

19 Zack Wilson confirmed that the child, [REDACTED] said
20 the incident happened upstairs in the bed with the other
21 child, the sister, present. Again, no one talked to the
22 sister. No one went and got DNA. No one thought to say,
23 wait, you said it happened downstairs. Now, you're saying
24 it's upstairs or vice versa.

25 Let's talk about Officer Elrod. She lost evidence.

1 She lost evidence in this case. She got on the stand and
2 she was so cavalier with the importance of this case and
3 so cavalier about the job you're doing that she laughed.
4 She thought this was funny. She thought her lack of
5 investigation was funny. I have never ever seen that in
6 all of my years of trying these cases. She laughed about
7 it. This is not a laughing matter.

8 This is an important matter. And the State's only
9 law enforcement investigating officer laughed about it,
10 laughed about her doing zero work. This is not a laughing
11 matter. And I know none of y'all are laughing. And I
12 know none of y'all think it is.

13 So we, basically, at this point in time, have
14 witnesses that have either lied to you, laughed about it,
15 done zero work, or are up here to try to explain the
16 weaknesses in the State's case.

17 Officer Elrod said, yes, it happened in the bed
18 upstairs with her sister, [REDACTED] present. But, no, I did
19 not go to the place where the assault occurred. She even
20 tried to play word games with you about where the scene
21 is. I mean, she never talked to the sister. She never
22 compared the interview to what the child said in the
23 hospital. She never went to the scene. She never looked
24 at the medical examination report. She purposely didn't
25 interview a bunch of people that might have shed some

1 light on this and made your jobs a little easier.

2 She shushed the DSS caseworker in the interview. And
3 she tries to tell you that the shushing motion is just her
4 wanting to finish a statement or her starting to start a
5 statement. And she was able to describe this whole body
6 camera and how it works to you in great detail. But,
7 essentially, what she tried to make very complicated is
8 that you put it on to start the recording and hit off to
9 stop the recording.

10 She just forgot to interview everybody that would
11 have had something really important to say that would have
12 been great for y'all to have been able to view. That is a
13 piece of her equipment. It's like her handcuffs. It's
14 like her gun. If she has to draw her gun on someone
15 because her life's in danger, do you think she's going to
16 forget to turn off the safety? That is her job. She is
17 supposed to know how her equipment works and make sure it
18 works.

19 Here's the other thing, she told you the interview
20 process -- the sequence of interviews. First, she did
21 this long family history that we didn't have a
22 interview -- we didn't have a recording of. She said it
23 was just to gather dates of birth, and stuff. But she did
24 that later for these people. So I don't know what she was
25 gathering.

1 Then she interviews the victim, [REDACTED] Guess what
2 she does? She doesn't record that either. Then she
3 interviews mom. She turns it on. She turns it on for
4 mom. And then she interviews dad. And remember the large
5 portion of dad's interview that was on -- it -- it wasn't
6 on camera. The whole important meeting part about the
7 disclosure, not on camera, only the contact information
8 and next steps in the investigation, which there weren't
9 any next steps.

10 So, basically, what I'm telling you is she put the
11 camera off for the family history. She kept the camera
12 off for her interview with the alleged victim. She turns
13 it on for mom. She turns it back off during the meaty
14 portion, only to turn it back on for the portion she wants
15 you to hear. What isn't the State telling you? And why
16 aren't they telling you it? Because they have a knee jerk
17 emotional reaction and they just want you to convict.
18 Because they didn't do anything else.

19 Let's talk about Shauna Galloway-Williams. The only
20 reason the State put that witness in front of you -- the
21 only reason was to explain away or attempt to all of the
22 weaknesses in their case. This woman said all children
23 are different. But I'm going to tell you how most
24 children are. They both can't be accurate.

25 She's going to say it's consistent with the majority

1 of child abuse victims to have inconsistencies in their
2 statement. That doesn't make any logical sense. By their
3 very definition, inconsistencies are inconsistent. They
4 are not consistent.

5 The Judge will tell you that an expert can give
6 opinion testimony, but you shouldn't treat their testimony
7 with any greater weight than any other witness. You can
8 treat their testimony with no weight. You can give it
9 some weight. You can decide to believe some of it and not
10 some of it. They're like any other witness. We just put
11 a fancy term on it like expert so that they can give you
12 an opinion to fix all the problems with their case.

13 What did she say? What did Shauna Galloway-Williams
14 say? She never met the child. She never met the family.
15 She never met all the people that -- 15 people that talked
16 to the child about the disclosure. She doesn't know their
17 history. She doesn't know their motivation. She doesn't
18 know their bias. She never viewed any of the evidence in
19 the case. The only information she got from the case is
20 from the people who are wanting to convict my client on no
21 evidence.

22 She's clearly on the side of the State. She's never
23 testified for the Defense. She even tried to trick you
24 and say, well, I testified for the Defense in a federal
25 case, a federal civil case, not a criminal case. She gets

1 paid to advocate for children. She's not going to get
2 funding if she comes in here and testifies on behalf of
3 someone who's been falsely accused. That's why she's
4 never done it.

5 She said a disclosure normally is piecemeal. And you
6 get a little bit more, and a little bit more, and a little
7 bit more. On Monday, you got a lot less, a lot less. And
8 I can pretty much guarantee you what you got was the
9 result of the Solicitor letting that child watch the
10 interview before she came in here and testified.

11 She said never once in all of her imminent experience
12 conducting interviews of these children -- this is what
13 Shauna Galloway-Williams said -- has a child come back in
14 and said, Ms. Williams, I'm so sorry. I lied about this.
15 Because a child is locked into that statement. You can't
16 come back and say you lied about something like this. You
17 can't.

18 Again, her whole sole purpose in testifying was to
19 clean up this mess. And that's what you have in front of
20 you is a big giant mess. And I'm sorry that you're going
21 to have to sort through that mess and deal with that. I'm
22 sorry you've been listening to that mess for four days.

23 By returning a verdict of not guilty, you're saying,
24 huh-uh, no, the people of Pickens County are not going to
25 deal with this mess. We're not going to allow somebody's

1 life and liberty to be placed on the line with zero
2 effort, zero investigation, zero corroboration.

3 I am scared to death by this case, petrified.
4 Because guess what? I have a dad. I have an uncle. I
5 have cousins. I have nephews. I have all of these men in
6 my life that all it would take is an officer hearing a few
7 minutes at the hospital to charge him and for him to have
8 to come up here and be on trial to answer for something
9 that there is zero evidence of.

10 And the only evidence are inconsistent statements
11 from a child who has been coached over and over, whether
12 it was purposeful or accidental coaching, over and over
13 and over what to say and to blow up what was just an
14 innocent explanation into something very much more. That
15 is scary. That could happen to any of my family members.
16 And that petrifies me.

17 By returning a verdict of not guilty, you're saying
18 to the State, you've got to do more. We are not going to
19 put our citizens on trial for this kind of mess. Let this
20 be a teachable moment for the State. Let them know that
21 they need to go out to the scene. That they need to
22 review every single statement a -- an alleged victim, an
23 accuser makes before they make a charge.

24 Let them know that they can't just not collect
25 evidence or not look at medical exams. Let them know that

1 this is unacceptable behavior and we're not going to put
2 our people through this. All they have in this case --
3 the only thing they have in this case are the inconsistent
4 statements of this child, who wasn't even able to testify
5 to hardly anything, except for one little thing from that
6 interview, despite having watched it before coming in
7 here.

8 What I'm asking you to do today is not just take some
9 unknown person's word that it's raining out. Get up.
10 Look out the window. Don't let the State tell you that
11 you can't look out that window. Don't let them tell you
12 that you can't listen. Don't let them tell you that you
13 can't use your own reasonable good sense to know that it's
14 not raining outside because you haven't seen any rain, you
15 haven't heard the rain, you haven't heard the thunder.
16 There's no rain on the ground outside. The ground's
17 perfectly dry. Don't let them turn you into a sheep of
18 just listening to someone without questioning the story
19 like everybody else, like every single one of their
20 witnesses has done.

21 The Judge is going to tell you that your verdict has
22 to be unanimous. That means in order to find my client
23 guilty, all 12 of you have to believe beyond a reasonable
24 doubt of his guilt. You have to believe more that -- more
25 than that his guilt is just simply highly likely. You

1 have to believe beyond a reasonable doubt. You have to be
2 so convinced that it would not make you hesitate to act in
3 the very most important of your own affairs. It's more
4 than highly likely. If they haven't proven that, they
5 haven't met their burden and you have to return a verdict
6 of not guilty.

7 Your not guilty verdict, also, has to be unanimous.
8 Because if it's not, then we have to come back in here
9 again and try this case again. A lot of people think,
10 well, I can't decide one way or the other, we'll just --
11 you know, since we're split, we'll just be a hung jury if
12 we're split that he did it or didn't do it. It's -- it's
13 not that.

14 It's you have to -- even if you think it's highly
15 likely that he's guilty, you still have to return a
16 verdict of not guilty. Because it's better to let an
17 innocent -- well, it's better to let somebody who may be
18 guilty go free than to convict an innocent man and put him
19 in jail for a very long time.

20 My family members could be in this same situation.
21 And I -- I really hope they have a jury like you.

22 When you go back in that jury room, 12 minds are
23 better than one. I've said that before. Get together.
24 Figure out what you've heard and what you didn't hear.
25 And ask yourselves, would I hesitate to act in the most

1 important of my very own affairs?

2 Thank you for your time.

3 THE COURT: Thank you, Ms. Barwick.

4 Solicitor, any reply?

5 MS. MCCALL: Thank you, Your Honor.

6 Yes. And I will be brief.

7 THE COURT: Okay.

8 MS. MCCALL: This is a very serious case and that is
9 why we are here. We acknowledge that Sergeant Elrod did
10 not do what we would have preferred. But that does not
11 mean that there are -- is not evidence in this case and
12 testimony to support the case that we have presented to
13 you. It is very important and very serious. And that is
14 why we felt that it was worthy of your time this week.

15 The Defense harped a lot on [REDACTED] [REDACTED] a
16 seven-year-old, not being able to take that witness stand
17 and fully testify to everything that we would hope she
18 would. But if you recall, when the Defense attorney got
19 up to question her, she said, Miss [REDACTED] [REDACTED] do you
20 mind if I just stay seated right here? Is that okay with
21 you?

22 And [REDACTED] said, No. I would prefer for you to
23 stand, unless you're tired.

24 Did you see the Defense attorney do that to any other
25 witness? No, she didn't. She wanted [REDACTED] to have to

1 stare at her abuser. She wanted her to have to look at
2 him when she answered that attorney's questions.

3 There have been many misstatements of the evidence
4 that you saw this week. I won't go through each of those.
5 I will say, though, that I -- it is within your ability to
6 recall what you saw. And if you don't remember,
7 specifically, what you saw, you can ask for something to
8 be replayed or for that to -- to -- for us to go over that
9 again.

10 And I just would ask that you would use your own
11 memory and knowledge of what you saw and not rely on
12 anything that I have said or anything that Ms. Barwick has
13 said. It's very important that the facts, and the
14 evidence, and the testimony, they stand as they are.

15 There's no testimony that pornography was viewed.
16 That term wasn't used. [REDACTED] was watched -- was asked
17 about seeing naked people, I believe is what it was, in
18 the interview. And she said she saw a scary movie with
19 her mom. We're not sure what that means. Her mom says,
20 no, she doesn't recall her seeing that type of -- of
21 movie. But we don't know. [REDACTED] didn't clarify.
22 However, Ms. Barwick told you she saw pornography. There
23 has been no testimony that [REDACTED] saw pornography.

24 They, also, want you to believe that [REDACTED] is
25 incapable of correcting an adult. She's not. As they've

1 even discussed, in that interview, she corrected the
2 interviewer and told her, My name is [REDACTED] not [REDACTED]
3 And she was not prompted when she disclosed. So that was
4 not in response to a question.

5 I'm going to leave you with this last thought. The
6 Defense wants you to believe that [REDACTED] [REDACTED] came up
7 with a lie because she did not wipe well and it caused her
8 bottom to hurt and that was embarrassing to her. So
9 because she was embarrassed that she did not wipe well
10 when she used the bathroom, she came up with an elaborate
11 lie with details that the Defendant had sexually abused
12 her, peeing on her, and penetrating her vagina and bottom.
13 They want you to believe that that is the reason that she
14 came up with a white lie. All because she was embarrassed
15 about the way she wiped when she went to the bathroom.

16 What is more embarrassing, not wiping well, or being
17 sexually abused when you were five years old?

18 Thank you.

19 THE COURT: Thank you, Solicitor.

20 Ladies and gentlemen, it is now time to take your
21 lunch break. I'm sure that the pizza's here. It's
22 probably been here for a while.

23 And I remind you, don't begin any deliberations. And
24 when you are finished -- take your time eating. Okay. I
25 don't want you to rush through it. And when you are

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2020-001421

THE STATE,

Respondent,

vs.

ROBERT WATKINS,

Appellant.


CERTIFICATE OF COUNSEL

The undersigned certifies that this Supplemental Record on Appeal complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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September 28, 2022