

 ORIGINAL

VOLUME I OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHARLES M. DEVEAUX,

APPELLANT

APPELLATE CASE NO. 2011-202734

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

JULIE KATE KEENEY
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorneys for Respondent

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1 State of South Carolina) In the Court
2 County of Richland) Of General Sessions

3 Indictment No.: 2009-GS-40-7097
4

5
6 State of South Carolina,)
Plaintiff.)

 ORIGINAL

7
8 vs.)

Transcript of Record
Volume I

9
10 Charles M. Deveau,)
Defendant.)

11
12
13 October 10-13, 2011
Columbia, South Carolina
14

15 B E F O R E:

16 The Honorable G. Thomas Cooper, Judge, and a jury.

17
18 A P P E A R A N C E S:

19 Kathryn Ashton, Assistant Solicitor
Nicole Simpson, Assistant Solicitor
Attorneys for the State

20 Rhodes Bailey, Esquire
21 Brian Shealy, Esquire
Joanna Delaney, Esquire
22 Attorneys for the Defendant
23

24 Brenda J. Sigwald, Circuit Court
25 P.O. Box 206, Jackson, South Carolina 29831

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1 see if we can knock some of these out.

2 **PRETRIAL MOTIONS**

3 MR. BAILEY: Thank you, Judge. The first thing is
4 we'd like to renew discovery. I'm sure that's no surprise.
5 Also we have the Riddle Motion that Mr. Shealey is going
6 the refer to.

7 MR. SHEALY: Your Honor, this is our Riddle Motion
8 pursuant to Riddle vs. Osment 369 SC 39. Your Honor, this
9 goes beyond just general disclosure under Brady. As you
10 know, this case, the Court dealt with a witness in the
11 State's case that -- they gave a statement and then the
12 solicitor actually took this witness out and had other oral
13 statements and a presentation as far as the scene and
14 various discrepancies came about through this that there
15 would never be a known defense.

16 This case basically stands for the proposition that
17 anything that is not even tangible, writing, or anything in
18 conversations known by the solicitor's office or anybody:
19 law enforcement, associated with this case has to disclose
20 to the defense. This also provides an ability or
21 responsibility of the State to correct any misstatements in
22 the case. Right now, we're asking for any -- especially
23 since this case is -- we're here again and there's been
24 another time for investigation and an opportunity to gather
25 in evidence pertinent in the situation like that. Anything

1 known and unknown that could be --

2 THE COURT: I understand. That's fine.

3 MR. SHEALEY: Thank you, Your Honor.

4 MS. ASHTON: Your Honor, we've provided everything
5 to the defendant.

6 THE COURT: Under Rule 5.

7 MS. ASHTON: Under Rule 5, yes, Your Honor. We
8 also filed a reciprocal Rule 5 in this case a couple of
9 weeks ago, so we would also renew our motion as well
10 related to that, Your Honor.

11 THE COURT: Okay.

12 MS. ASHTON: And nothing has been turned over to us
13 from their --

14 THE COURT: I understand. How about the Riddle?
15 Any follow up?

16 MS. ASHTON: We have no follow up that we have not
17 already provided to them. There were some pictures taken
18 which we've provided to them, that's the extent of any
19 additional discovery since the last --

20 THE COURT: Since the last trial?

21 MS. ASHTON: Yes, sir.

22 MR. SHEALEY: And Your Honor, this goes -- this
23 goes to -- in some of the notes that we've been reviewing,
24 there was a question about who Dr. Watson is in this case
25 in regards to somebody -- who had possibly worked with Amy

1 Phipps. It could have been a psychiatrist or somebody they
2 may have interviewed.

3 THE COURT: What do you want to know?

4 MR. SHEALEY: I'm sorry?

5 THE COURT: What do you want to know?

6 MR. SHEALEY: I want to know who he is. I want to
7 know what he did.

8 THE COURT: Anybody know?

9 MS. ASHTON: Your Honor, anything about Dr. Watson,
10 that we have, they have. I'm not sure -- he has no
11 involvement in this case, he's not on our witness list.
12 They had access to whatever we have that's related to Dr.
13 Watson.

14 THE COURT: Who is Dr. Watson?

15 MS. ASHTON: I'm not even sure, Your Honor. I
16 believe he worked with Amy on some -- or he used to work
17 with Amy Phipps on some level. I believe that -- I think
18 they're referring to his name because they saw it in her
19 notes.

20 MR. SHEALEY: Yes, sir, Your Honor, that's true.
21 And out of an abundance of caution, I just ask that the
22 State -- if he did actually evaluate or have any kind of
23 clinical evaluation of the alleged victim in this case, we
24 would ask that be ascertained and it be turned over.

25 THE COURT: Did he? As far as you know?

1 MS. ASHTON: As far as we know, no, Your Honor.
2 And they have the same -- they knew where he works they
3 could research that themselves.

4 MR. SHEALEY: I don't know where he works now. I
5 just -- I can show you what the basic question -- it talks
6 about psychosocial evaluation, and I think it's incumbent
7 for them to go ahead and turn over that information.

8 THE COURT: Well, she said she don't have it.

9 MR. SHEALEY: Well, we have to find out if she
10 talks to Ms. Phipps.

11 THE COURT: Is Ms. Phipps a witness in this case?

12 MR. SHEALEY: Yes, sir.

13 MS. ASHTON: Yes, Your Honor.

14 THE COURT: Well --

15 MR. SHEALEY: I'm just trying to avoid --

16 THE COURT: That may be your answer to that.
17 Where's Ms. Phipps?

18 MR. BAILEY: If I could just speak briefly to that,
19 Your Honor, we do have Mr. Olszewski under subpoena, and if
20 there was anything done with the ARC it should be in that
21 file, so we just -- again, the sooner we can get that from
22 the State, that would be great -- just that might answer
23 the Dr. Watson question.

24 MS. ASHTON: Your Honor, Mr. Olszewski's file on
25 this particular case is -- they have everything that we

1 have from the Assessment Resource Center.

2 THE COURT: And they've subpoenaed his file?

3 MR. BAILEY: Yes, sir, Judge. And of course, the
4 case log showed that it says -- just because the State
5 doesn't have it in their position doesn't mean -- this was
6 the prosecution --

7 THE COURT: I'm not going to make her go looking
8 for stuff.

9 MR. BAILEY: All right. Thank you, Judge. We're
10 just --

11 THE COURT: This is not a fishing expedition.

12 MR. BAILEY: Sure. Well, all we need is -- if
13 Mr. Olszewski brings the stuff in, great.

14 THE COURT: All right. Let me know when you get
15 it.

16 MR. BAILEY: Thank you, Judge. Thank you, sir.

17 We would -- we would also like to move to sequester
18 the State's witnesses in accordance with Rule 615.

19 THE COURT: Any objection?

20 MS. ASHTON: Your Honor, I believe other than the
21 victim and her mother, as well as the lead investigator --

22 THE COURT: Investigating officer.

23 MS. ASHTON: -- and then anybody that's qualified
24 as an expert in this case is not subject to a sequestration
25 order, Your Honor.

1 THE COURT: All right.

2 MR. BAILEY: Your Honor, it's the State's story
3 over and over again, we would just ask that anybody that
4 can be sequestered be sequestered.

5 THE COURT: Tell me who you think they are.

6 MR. BAILEY: Well, I mean, Judge, it's an ongoing
7 area, that there's this one area of ARC throughout the
8 entire case and we just don't see why -- excuse me.

9 THE COURT: All right. Your motion is granted.

10 MR. BAILEY: All right. Thank you, Judge.

11 THE COURT: The mother of the victim, the
12 investigating officer will be allowed to stay in the
13 courtroom. The witnesses for the Assessment Resource
14 Center, they need not be in the courtroom at the same
15 time -- they need not be in the courtroom until they're
16 called as witnesses.

17 MR. BAILEY: Thank you, sir.

18 THE COURT: All right. Pick one.

19 MS. DELANY: Your Honor, we have a motion to limit
20 any corroboration testimony as to time and place. I've
21 actually got --

22 THE COURT: Which motion is that?

23 MR. BAILEY: This is No. 5.

24 THE COURT: It looks like No. 7 to me.

25 MR. BAILEY: I'm sorry, No. 7.

1 THE COURT: Did we not do that last time?

2 MS. DELANY: Your Honor, I don't think -- we were
3 having funding issues so we weren't able to get the
4 pretrial. All we were able to get was the testimony as far
5 as an actual transcript. So -- you know, we have seen
6 something, but --

7 THE COURT: Hold on, what's going on? Are they
8 involved in the case?

9 SECURITY OFFICER: Not at all. They're new
10 officers being trained.

11 THE COURT: Keep them in line.
12 I'm sorry.

13 MS. DELANY: Your Honor, there's a whole line of
14 case law --

15 THE COURT: Tell me what the issue is as to this
16 case.

17 MS. DELANY: The issue is when the victim testifies
18 in a CSC case, corroboration testimony is allowed as an
19 exception to the hearsay rule, but it's got to be limited
20 to time and place, and it can include any details,
21 particulars, or the identity of the perpetrator, and that
22 is very clear under South Carolina case law, Your Honor.
23 And I handed up those cases, as well as a motion and
24 memorandum to that fact. So we would ask --

25 THE COURT: Any objection?

1 MS. SIMPSON: No, Your Honor. We would just ask
2 that the defense be limited to time and place as well. I
3 know there's going to be issue with Corporal Monica Johnson
4 and Deputy Hatfield regarding an incident report in this
5 case and potential testimony that may come from them
6 regarding the actual details of the assault. So we would
7 ask that they also be limited to time and place, although
8 we have additional arguments as to why those statements
9 will be entered as well.

10 THE COURT: All right.

11 MS. SIMPSON: But for purposes of every witness.

12 THE COURT: Any objection?

13 MS. DELANY: Yes, Your Honor. The case law is
14 talking about the State's presentation of the case in as
15 far as them putting on evidence to corroborate the victim's
16 statement and specifically these cases are addressing, you
17 know, where the victim's mother gets up and testifies, Oh,
18 yes, she told me that he touched her here; or where the
19 victim's psychiatrist gets up and testifies, Oh he put his,
20 you know, thing in her whatever. That's what she told me.

21 So this is very limited. I mean, we still have
22 cross-examination -- I mean that -- this doesn't affect our
23 ability to cross-examine. These cases are talking about
24 the State's ability to admit corroborating evidence, and I
25 think those are two totally separate issues, Your Honor, so

1 we would object to that limitation. I think we need to be
2 able to effectively cross-examine witnesses, and I think we
3 need to be able to put on a defense.

4 THE COURT: Ms. Simpson, anything?

5 MS. SIMPSON: Your Honor, I maintain my prior
6 argument. I think we'll probably address this a little bit
7 later on with an upcoming motion specifically as to Deputy
8 Hatfield and Corporal Monica Johnson. However, Counsel
9 eluded to the fact that their cross-examination -- well
10 where their cross-examination potentially opens the door
11 and allows this evidence in, we should be able to refute
12 some things with prior consistent statements should they
13 open the door.

14 THE COURT: I agree with you.

15 MS. SIMPSON: Thank you, Your Honor.

16 THE COURT: Basically at this point, I'm going to
17 grant the defendant's motion. But again, you know, that's
18 subject to trial testimony.

19 MS. DELANY: Yes, Your Honor.

20 THE COURT: We'll see where we go with it.

21 MS. DELANY: Your Honor, while we're talking about
22 time and place, we've also got a motion to redact the 911
23 call. Specifically, we're asking that the statement by Ms.
24 Myers, Her daddy is putting his hand between her legs and
25 he's not supposed to do that, be redacted. You know,

1 that's -- again, that's corroboration testimony that is
2 hearsay, and that violates the time and place rules because
3 it's talking about details and particulars, Your Honor. So
4 I would ask that that part of the tape be redacted as the
5 State is seeking to introduce it.

6 THE COURT: State's position?

7 MS. ASHTON: Your Honor, we haven't -- we've gotten
8 the 911 call from the evidence room late Friday. If we
9 could just have the lunch break to go over that call again
10 before we respond to that motion.

11 THE COURT: All right. Defense? What did she say?

12 MS. DELANY: She said, Her daddy is putting his
13 hands between her legs and he's not supposed to do that.
14 That's the statement we want out, Your Honor. There are
15 other statements in that 911 tape generally saying that she
16 just told me he's been sexually abusing her, et cetera, and
17 we don't have a problem with that, but I think that that
18 statement, He's putting his hands between her legs, is a
19 violation of what we just talked about, the Jolly and
20 Dawkins cases, Your Honor.

21 THE COURT: All right. Let's take a look at it.
22 They may be able to agree.

23 MS. DELANY: Yes, Your Honor.

24 We've also got a motion --

25 THE COURT: How about No. 8?

1 MS. DELANY: Sir?

2 THE COURT: How about No. 8?

3 MS. DELANY: No. 8 is a motion to exclude the use
4 of the term victim. Your Honor, South Carolina State
5 Constitution defines the victim as a person to whom a crime
6 has occurred, and if I can -- I would like to make this a
7 Court's exhibit as well, Your Honor.

8 And, Your Honor, basically, the entire dispute here
9 is whether the crime actually occurred. This isn't a case
10 where there's some kind of defense or something like that.
11 The issue is did it happen. And we feel that by the
12 Court's specifically -- and the prosecution referring to
13 Ms. Child as a victim, that that's burden shifting. The
14 State, you know, is saying she's already a victim. You
15 know, we're telling you she's a victim. And like I said,
16 it's defined in our state constitution as someone to whom a
17 crime has occurred, and I think that calling her that is
18 invading the province of the jury, Your Honor, because
19 they're here to determine whether a crime has actually
20 occurred.

21 THE COURT: What's the State's position?

22 MS. SIMPSON: Your Honor, with respect to that, we
23 do not feel that we should be limited in referring to
24 Child as a victim. She is a victim. The State has the
25 burden of proof in this case; and in addition, Your Honor,

1 with respect to Counsel's position -- what the State must
2 prove is that the defendant is guilty of the offense. We
3 have the victim and then part of our proof is that this
4 defendant is guilty of this offense in addition to proving
5 the offense itself. As far as referring to her as the
6 alleged victim versus the victim, I don't think there's any
7 prejudice to the defendant, and if you'd like additional
8 case law, we can look it up.

9 THE COURT: Do what?

10 MS. SIMPSON: If you need additional case law, we
11 could potentially look for it over the break.

12 THE COURT: I don't need it. I'll read her brief.
13 I'm not inclined to grant that. Go ahead. But I'm going
14 to read your brief.

15 MS. DELANY: Thank you, Your Honor.

16 Your Honor, we've got another motion --

17 THE COURT: How about six?

18 MS. DELANY: Yes, sir. Your Honor this is a motion
19 to prevent reference by the State during opening and also
20 we're objecting to a jury charge on 16-3-657, which is the
21 statute that states that a victim's testimony doesn't need
22 to be corroborated. Your Honor, we think that's unfairly
23 prejudicial. We think that that singles out Child

24 Child

25 If I could mark that as a court's exhibit as well.

1 Your Honor, we feel that that highlights the
2 victim's credibility, probably makes the jury feel like
3 they don't need to evaluate the victim's credibility. We
4 think that issuing that particular charge places emphasis
5 on it. You know, you're going to instruct the jury that
6 they need to evaluate the credibility of all the witnesses,
7 and you're going to tell them, you know, they can believe
8 part, all, none -- and we think that by specifically
9 saying, you know, the victim in this kind of case, her
10 testimony doesn't need to be corroborated, we think that's
11 giving emphasis to it and we think that the Court saying
12 that is giving greater emphasis to her testimony.

13 It's almost as if, you're acknowledging that she
14 has more credibility by --

15 THE COURT: There's a statute. That's the statute
16 that I gave at the last trial.

17 MS. DELANY: And I understand that it's a statute,
18 Your Honor.

19 THE COURT: Don't you think the jury ought to know
20 about it?

21 MS. DELANY: I think that it's there. I think that
22 the purpose that it's there is that -- so that a case is
23 not supposed to be overturned on appeal because of a lack
24 of evidence. I think that that's why that statute is
25 there, and I think it's there so that one of these cases

1 can survive a DV motion. But I don't think it was put into
2 the law to be read to the jury. I think it's there for the
3 other purposes.

4 THE COURT: What's the State's position?

5 MS. SIMPSON: Your Honor, with respect to this,
6 this is the law, in addition to Ms. Delany's reasons as she
7 thinks the legislature may or may not have included it.
8 The legislature clearly found these cases to be unique and
9 issued this very specific statute regarding the victim's
10 testimony need not be corroborated. Your full charge
11 addresses more than enough of the defense's concerns;
12 however, this is the law and there are a number of reasons
13 including our element -- our burden of proof.

14 THE COURT: Why do we have to tell the jury that?

15 MS. SIMPSON: Your Honor, with respect to these
16 criminal sexual conduct cases, their unique nature, it's
17 much different than the armed robbery, the burglaries --
18 and I think maybe I'm presuming some as well, but that the
19 legislature considered this and that the victim's testimony
20 in a criminal sexual conduct case need not be corroborated
21 by other evidence. You will additionally state that no
22 witnesses testimony need to be corroborated throughout. It
23 is the law and should be your charge.

24 THE COURT: Okay. I'll read her brief, and I'll
25 let you know.

1 MS. SIMPSON: Thank you, Your Honor.

2 MS. DELANY: Do you want me to address No. 5, Your
3 Honor.

4 THE COURT: Yeah. I mean -- I was trying to hit
5 the easy ones first. But -- I think they're easy.

6 MR. BAILEY: Whichever ones -- whichever order
7 you'd like, Judge?

8 THE COURT: Go ahead if you've got No. 5, Ms.
9 Delany. Let's hear it.

10 MS. DELANY: Thank you, Your Honor.

11 THE COURT: Yes, ma'am.

12 MS. DELANY: Your Honor, basically this is a motion
13 to prevent the State's experts from giving an opinion as to
14 whether the child is telling the truth when she made the
15 allegations or during her allegations. And the case law
16 that I found, Your Honor, says that it is improper for an
17 expert witness to comment on whether a child is telling the
18 truth. State v. Jennings.

19 THE COURT: All right. I've read it. Now, what do
20 you do about compelling -- the word compelling?

21 MS. DELANY: Your Honor, we ask that they not be
22 allowed to say compelling and that's in this case law that
23 that is --

24 THE COURT: It is?

25 MS. DELANY: -- improper -- it is Your Honor.

1 There's --

2 THE COURT: In these kind of cases?

3 MS. DELANY: It is. There's a case that came out
4 actually on September 19th called State v Jennings, and I
5 put that in there. It's a split opinion, but it is highly
6 probative of these issues, and it specifically addresses
7 the word compelling. The other case I've got for you
8 Dawkins, Dempsey and Douglas just says improper bolstering
9 occurs when an expert is allowed to give an opinion whether
10 the witness is telling the truth because that's not beyond
11 the understanding of the average juror.

12 In Dempsey, the child sexual abuse counselor
13 testified about methods used to determine the child's
14 credibility, and they found that that improperly vouched
15 for her credibility. And in Dawkins a therapist saying he
16 believed the child's allegations were genuine was also
17 improper.

18 THE COURT: How about it?

19 MS. ASHTON: Your Honor, the case that she's cited
20 related -- well, State v Jennings, the recent Supreme Court
21 decision, that actually related -- it was overturned
22 because the forensic interviewer's notes were admitted, and
23 his reports were admitted, and because of the actual
24 reports being admitted, which included hearsay, which
25 included details of the assault on the mother as well, that

1 is the reason that that case was overturned.

2 As far as our -- there's two sections on the
3 forensic interviewer's report where it says this is
4 compelling or problematic, it's just a categorization of
5 the victim's interview, as far as whether further actions
6 need to be taken. So it's not necessarily him vouching for
7 her truthfulness or voracity, it's just a category of -- on
8 his report itself.

9 THE COURT: I understand.

10 MS. DELANY: And, Your Honor if I could respond?

11 THE COURT: Sure.

12 MS. DELANY: Jennings had a couple of things going
13 on. One was the testimony they got introduced at trial,
14 and one was reports that got introduced at trial. And
15 the -- I gave you Jennings twice because -- I gave you two
16 statutes of case law. But it's the same case. It's
17 dealing with time and place issue, but it's also dealing
18 with this vouching for credibility issue and they
19 specifically say the use of the word compelling -- it says
20 the forensic interviewer stated that each child had
21 provided a compelling disclosure of abuse by appellant.
22 There is no other way to interpret the language used in the
23 reports other than to mean the forensic interviewer
24 believed the children were being truthful. And then the
25 Court said for an expert to comment on the voracity of a

1 child's accusations of sexual abuse is improper. So there
2 are -- the statute's right -- there are two things going
3 on. The Court is addressing both of them and is saying
4 compelling in and of itself is improper, using the term
5 compelling.

6 THE COURT: All right. I'll read it. I haven't
7 read it yet.

8 MS. DELANY: Thank you, Your Honor.

9 THE COURT: You through with your remarks?

10 MS. DELANY: Yes, sir.

11 THE COURT: Yes, sir?

12 MR. BAILEY: I think, Judge, we can move on now to
13 the motion to exclude evidence of prior bad acts. I've
14 got -- I've got one for you and for the State, and I'd like
15 to make this a pretrial Court's exhibit also.

16 THE COURT: What are the bad acts you're talking
17 about?

18 MR. BAILEY: Specifically, the ones that the State
19 has made clear that they want to bring up, an alleged abuse
20 of Caitlyn Gray from an indictment -- that was actually
21 later indicted. There was an allegation that it supposedly
22 happened in 2007, and then also we want to make sure that
23 any references in DSS records to any prior abuse also --
24 that our client is currently on the central registry for
25 child abuse and negligent, we would like those -- just to

1 make sure those are not referenced. And I can certainly
2 speak to case law: Lyle, Johnson, Sutton, you know.

3 MS. ASHTON: Your Honor, if I may -- can -- these
4 are kind of loaded motions so if we could not go into all
5 those until after the lunch break because I think these
6 might take a little bit longer than the other motions we've
7 gone through.

8 THE COURT: Well, are you getting hungry?

9 MS. ASHTON: Well --

10 MR. SHEALEY: She's a runner, she might have worked
11 up an appetite.

12 MS. ASHTON: A little bit.

13 THE COURT: How about No. 12? Is that not already
14 done?

15 MS. ASHTON: Yes, Your Honor, we argued this
16 extensively during the last trial, and we actually provided
17 the video that we used in the last trial to the defense;
18 and we also provided them with specific notes on what was
19 redacted. And I believe the video that we provided them
20 is -- you hit -- that those are argued extensively in this
21 last trial and it includes -- we redacted any kind of prior
22 bad act statements of the victim related to what happened
23 when she was younger, related to what her mom might have
24 told her about another incident; and we also redacted a
25 portion -- the first -- I think what they want in --

1 THE COURT: What they want in?

2 MS. ASHTON: I'll let them say what they have a
3 problem with, but the redacted portion was extensively
4 argued last time, and we redacted anything that has to do
5 with hearsay.

6 THE COURT: All right. I need to find out what
7 they want.

8 MR. BAILEY: Sure, Judge, if I could just address
9 that -- I think we're more on the same page than not on the
10 same page, so if we could just have some more time to
11 address that when they're about to submit that into
12 evidence, we don't have to get into that right now.

13 THE COURT: All right. We'll stand at ease until
14 2:15.

15 MS. ASHTON: Thank you, Your Honor.

16 THE COURT: At that time, we'll continue the
17 qualifications.

18 MR. SHEALEY: Judge, did you say 2:15 or 2:50.

19 THE COURT: 2:15. The jury will be here at 2:15.
20 Defense Counsel, I need to speak with you just a
21 minute.

22 (WHEREUPON, there was a bench conference out of the
23 hearing of the Court Reporter.)

24 THE COURT: All right. We'll stand at ease.

25 (WHEREUPON a recess for lunch was observed.)

1 repercussions for doing so, because in doing so, you will
2 have upset the entire trial and it's a very, very serious
3 matter. So I hope you'll follow my instructions in this
4 regard.

5 Again, this whole case will be presented to you
6 right here. In trying to find out something about it on
7 the internet, which may or may not be true. They say that
8 everything in Wikipedia is not true -- or they don't know
9 that everything in Wikipedia is true. So the same is true
10 about any kind of independent research. I ask you not to
11 do so. I'll remind you every day of this trial not to do
12 so. And you might think I'm just being harsh, but I'm not.
13 These -- we need jurors who are impartial to hear the
14 evidence. It's not going to be fair to the defendant, it's
15 not going to be fair to the State if you've already made
16 up your mind. So please follow my instructions in that
17 regard.

18 And the last and final thing I'm going to ask you
19 to do is have a pleasant evening. We'll see you at nine
20 o'clock in the morning. You get ready, we'll be ready to
21 go. Thank you very much.

22 (WHEREUPON the jury left the courtroom at 3:55
23 p.m.)

24 PRETRIAL MOTIONS

25 THE COURT: All right. Ms. Ashton, I interrupted

1 when I started listening to arguments on Issue No. 3. But
2 she did -- so let's go back -- tell me about number three
3 again.

4 MR. BAILEY: I think, Judge, okay. Number three is
5 kind of one of your standard special to CSC case motion to
6 exclude prior bad acts. Before I get into the legal
7 reasoning here, I gave you all a memo, but the first thing
8 we want to make sure is excluded is allegations involving
9 Caitlyn Gray from up to two years before this alleged
10 incident, and then also we'd like to -- we'd like to -- you
11 know, we believe this rule also applies to any documents or
12 allegations of abuse in family court documents including
13 his status on that list of, the special watch list in
14 family court about negligent of children. I can talk a
15 little bit about that later.

16 Judge, I'd like to start with 404(b) and Lyle. I
17 know that the Court's probably familiar with a lot of this.
18 This is --

19 THE COURT: Are we talking about three and eleven
20 now?

21 MR. BAILEY: Sir? Oh, no, sir, I'm on number
22 three. Eleven is really just if his statement comes in or
23 if they seek to put his statement in, any statement --

24 THE COURT: Whose statement?

25 MR. BAILEY: Mr. Deveaux's statement. I don't

1 think that they seek to bring it in, but if they seek to
2 impeach him --

3 THE COURT: Okay. All right. I understand.

4 MR. BAILEY: Back to motion No. 3, Judge. What's
5 interesting about Lyle and everybody says exceptions,
6 exceptions, exceptions and they look for one of these
7 exceptions to fit the case. But it's not just -- not only
8 do we think that these exceptions don't apply, even if the
9 Court were to determine one of these exceptions does apply,
10 it must be used -- you know, it's not independently
11 relevant. The exception must be used to prove a material
12 element of the charge. I know frequently the State will
13 say, Oh, this is one of the exceptions and it gets in.
14 It's kind of a circular theme, it proves itself.
15 Essentially, it would have to be a material element of the
16 charge.

17 Now, the elements of this charge are -- you know,
18 they have charged Mr. Deveau, the defendant -- they have
19 to prove that he engaged in a sexual battery, and they have
20 to prove that it occurred against a victim that was less
21 than 11 years of age. The only element here that would
22 possibly fall under these exceptions -- I mean we're
23 looking at identity. Identity is not an issue. It's not
24 who did it, it's whether or not the incident occurred at
25 all. That's the issue.

1 So judge, we don't think that even if -- try as
2 they may, and I don't think a very strong case could be
3 made that one of these apply, we don't think that anything
4 exception-wise would apply to the material element of this
5 case.

6 THE COURT: Well, what prior acts are we talking
7 about?

8 MR. BAILEY: Sir?

9 THE COURT: What prior bad acts are we talking
10 about, specifically?

11 MR. BAILEY: I'm sorry, Judge. The first one
12 mentioned in our memo is the allegation that Mr. Deveau
13 assaulted Caitlyn Gray, 2007 -- they indicted this at a
14 later time after the last trial, that summer. But
15 eventually, there was an alleged warrant in 2007 on that,
16 and that's, you know, that's -- that's the one that I
17 believe that they're going to try and --

18 THE COURT: What's the State's position?

19 MR. BAILEY: I've got a lot more to say about that
20 too.

21 MS. ASHTON: Your Honor, the only -- we actually
22 don't have that memo that he keeps referring to, but the
23 only -- the only -- we would concede as far as in our case
24 in chief, the only Lyle evidence as far as prior bad acts
25 related to the other victims on the alleged abuse in this

1 case, the only one that is -- we would be offering is the
2 assault against Caitlyn Gray. Of course, we -- under
3 404(b) Lyle evidence to be properly admitted when the State
4 is able to demonstrate that a similarity or connection
5 between prior bad act and current charges is close. Here,
6 the -- there are several factors that can be considered in
7 the method of attack here. The defendant is accused of
8 touching -- or Child [REDACTED] actually penetrating with
9 his finger, with Caitlyn Gray, it was the same body part,
10 except it was on the outside of her clothes. But he did
11 touch her vagina. They were around the same age. I
12 believe Child [REDACTED] was ten, Caitlyn Gray was seven. They're
13 both family -- the relationship is similar. Mr. Deveau is
14 Caitlyn Gray's step grandfather and he is -- he is Child [REDACTED]
[REDACTED] biological father.

16 THE COURT: Time?

17 MS. ASHTON: Time and place, they are a year apart,
18 Your Honor. They both occurred at his house. So --

19 THE COURT: Whose house? His house.

20 MS. ASHTON: The defendant's home, [REDACTED]
21 [REDACTED]. So the other victims -- one occurred at a different
22 location. One was also his daughter, that was twenty years
23 ago.

24 THE COURT: You're not seeking to offer that one
25 are you?

1 MS. ASHTON: No, sir. And the case against Caitlyn
2 Gray actually is an indictment. So the second prong is
3 that there is clear and convincing evidence of a prior bad
4 act. Here we have the indictment. She came forward when
5 it happened. It was indicted. So it wasn't indicted until
6 a couple of years later when she was interviewed at the
7 ARC.

8 THE COURT: Okay.

9 MS. ASHTON: So that under all the other victims --
10 I think there's three or four other victims that have come
11 forward -- or at least that we've learned about throughout
12 our investigation of this case. The only one that we think
13 is strong enough to actually offer under Lyle is the --

14 THE COURT: Caitlyn Gray.

15 MS. ASHTON: -- Caitlyn Gray.

16 THE COURT: Okay.

17 MR. BAILEY: Thank you, Judge. Now, getting back
18 to case law. Obviously, we don't believe that this would
19 actually lend itself to any of the material elements and I
20 think it's a nonissue. They're going to talk about common
21 scheme and plan -- obviously, again -- please stop me if
22 I'm talking too much, but Lyle can't use -- Lyle says you
23 can't use any other crimes to raise an inference that the
24 defendant is guilty or corroborate their theory. It
25 also -- you've got -- Tutman, which says that -- any

1 connections -- they can't be remote.

2 It's got to be repeated, continuous, or it had a
3 continuous elicit conduct. You know, here we've got -- if
4 you look at three of the controlling cases on it,
5 Weaverland, McLellan, Widener -- Tutman rules that just
6 because it's a criminal sexual conduct case does not lower
7 the bar for admissibility under Lyle simply because sexual
8 crimes were involved. I mean it's clear -- there's no
9 common scheme. There -- the details are extremely remote,
10 and I think that they know it. You know, these are two
11 isolated incidents and not just a year apart, the
12 indictment is extremely vague. It says one time between
13 July of 2006 and February of 2009 that this allegedly
14 happened against the seven-year-old. The alleged victim
15 here is supposed to be ten years old.

16 We think that it's kind of a stretch, Judge, to
17 know there is no -- there is no continuous conduct. Yet
18 Tutman and the other cases say that the State can't just
19 put this in to show a propensity -- a criminal propensity
20 or demonstrate that the accused is a bad individual.
21 That's State v. Johnson.

22 You know, I can speak more to it, but it's got to
23 be -- it's got to be a real connection, more than just a
24 general similarity. I can read facts of cases where it
25 actually was found to be admissible where --

1 THE COURT: There are a lot of them.

2 MR. BAILEY: Right. But they are completely
3 different. The facts are -- those were extremely --
4 facts -- they show a pattern, they show a repetition and
5 they show ritual, or it's one continuous act spread over,
6 you know, hours and hours.

7 So, Judge, we would ask that anything involving
8 Caitlyn Gray, you know, not be admitted. I could certainly
9 elaborate if necessary.

10 THE COURT: All right. Are there other matters
11 that you are referring to?

12 MR. BAILEY: Yes, Judge -- well, we want to make
13 sure, and I think this was covered in the last trial, that
14 there is no mention of him being on the -- excuse me --
15 that there's no mention of him being on the central
16 registry for child abuse and negligent. You know, I've
17 got -- I've got clients that frequently have things going
18 on in DSS and all the time --

19 THE COURT: Is that a problem, Ms. --

20 MR. BAILEY: They haven't said anything about it.

21 MS. ASHTON: Your Honor, we would agree that we
22 would not mention the defendant being placed on the central
23 registry and that the physical documents that relate to
24 that don't come in either. However, we -- because they're
25 attacking -- or we anticipate that they're going to attack

1 Ms. Myers credibility as a mother, we should -- even though
2 we won't specifically mention the central registry, I do
3 think that it's proper to ask her about the steps that she
4 took after Child her daughter, disclosed the abuse to
5 her as far as going to get a protective order so that her
6 child did not have to comply with further visitation.

7 THE COURT: Okay.

8 MR. BAILEY: Judge, we think that's irrelevant and
9 more prejudicial than probative.

10 THE COURT: I think I'm -- that's a trial issue.

11 MR. BAILEY: Okay. Additionally allegations that
12 his wife once abused his daughter, I guess when she was
13 three year's old. I think that was probably discussed last
14 time. We would ask that that not be mentioned in
15 considering --

16 THE COURT: Is there a problem with that?

17 MS. ASHTON: Your Honor, they -- we agree that
18 whatever physical abuse occurred when Child was three at
19 the defendant's home, we will not bring that up. However,
20 if they ask her why she didn't want to go over to her
21 father's house -- if that comes up, she should be able to
22 honestly answer that question.

23 THE COURT: She should.

24 MS. ASHTON: But we won't -- we agree that that
25 shouldn't come up and defense opens that door.

1 MR. BAILEY: Well, if they're saying that's the way
2 the door -- to ask her -- so I get that straight. So we
3 don't need to worry about that door being open unless we
4 ask her why you didn't you want to go to your daddy's
5 house?

6 MS. ASHTON: I'm not agreeing that that's the only
7 question, but if they open the door in any manner --

8 THE COURT: Something like that, Mr. Bailey.

9 MR. BAILEY: Okay. Thank you, Judge.

10 THE COURT: We can deal with it during trial.

11 MR. BAILEY: That sounds great, sir. Just a
12 moment.

13 I think that covers it for us, Judge if we're not
14 going to get into the letters to people from Arizona twenty
15 years ago which Ms. Ashton said that they weren't, so...

16 THE COURT: All right. So Caitlyn Gray is the big
17 issue.

18 MR. BAILEY: Yes, Your Honor.

19 THE COURT: All right. Now, next motion?

20 MS. SIMPSON: Your Honor, we would like to address
21 the State's motion, essentially to exclude the officer's
22 lay opinion. There's not a written motion on this.

23 THE COURT: Well, wait a minute. He's not finished
24 with his.

25 MS. SIMPSON: Oh, I thought he was.

1 THE COURT: He's got ten and eleven to go.

2 MS. SIMPSON: My apologies.

3 MR. SHEALEY: Your Honor, ten is a motion in
4 response to their motion, and they have to -- I believe
5 they have a motion in limine that's been filed in this
6 case. So if it's okay --

7 THE COURT: In response to their's?

8 MR. SHEALEY: Yes, Your Honor. They had a motion,
9 and I'll let Ms. Ashton or Ms. Simpson speak to it. They
10 had a motion basically saying that they want to limit
11 defense's questioning I believe of Officer Hatfield on --
12 I'll let them address it.

13 THE COURT: All right. How about that?

14 MS. SIMPSON: And, Your Honor, if I may, just so
15 you know --

16 THE COURT: How about seven?

17 MR. BAILEY: We just talked about that, Judge, just
18 any statements that -- I mean the only statements I can
19 think of in discovery where Mr. Deveau answers to or
20 relates to any other allegations of abuse were when
21 Investigator Martin was interviewing and him saying -- I
22 just want to make sure if they're attempting to go into his
23 statement they don't try and -- try and -- try to impeach
24 him or whatever through references of past abuse.

25 That's all that is, Judge. I mentioned that

1 earlier in number three.

2 THE COURT: Any problem with that, Ms. Simpson?

3 MS. SIMPSON: Your Honor, with respect to that, at
4 this time we are not seeking to introduce that statement as
5 it is a self-serving statement and so it would not be
6 coming from the State. However, with respect to conceding
7 that we not be allowed to cross the defendant should he
8 take the stand in their case, we're just not willing to do
9 that at that time. But I can say that we have no intention
10 of it.

11 THE COURT: The rules change when he takes the
12 stand.

13 MS. SIMPSON: Thank you, Your Honor. And we would
14 ask that -- with respect to any other witnesses, and I'm
15 probably referring directly to our lead investigator being
16 crossed on the defendant's statement, and the substance of
17 that statement be excluded as well.

18 THE COURT: Be what?

19 MS. SIMPSON: Excluded. That they not be allowed
20 to go into that as it is a self-serving statement.

21 THE COURT: I think I ruled that way the last time
22 didn't I?

23 MS. SIMPSON: Yes, Your Honor.

24 MR. BAILEY: Yes, sir.

25 THE COURT: It's clearly self-serving.

1 All right. State's motion?

2 MS. SIMPSON: Your Honor, with respect to this one,
3 I do believe we did hand up a written motion to exclude --
4 and actually I'd like to hand up a copy of the incident
5 report just so you'll have it -- just so Your Honor can see
6 what we're referring to with respect to this. There are
7 essentially two parts to this motion, Your Honor, and I
8 will start with respect to the incident report itself.

9 I think we can all agree that the incident report
10 itself is not admissible. With respect to certain
11 statements in that, I'll first address the opinion
12 testimony by Deputy Hatfield. And this, I believe is on
13 page three, where it begins, My gut feeling tells me --

14 THE COURT: Just hold on a minute.

15 All right. Now, tell me what your motion is.

16 MS. SIMPSON: Essentially, we would seek to exclude
17 the opinion testimony by Deputy Hatfield, both with his
18 testimony regarding the actual incident report and should
19 he take the stand -- eventually, Your Honor, South Carolina
20 Rules of Evidence 701 governs the admissibility of opinion
21 testimony and if not an expert, a witness may testify in
22 the form of opinions or inferences, that's limited to those
23 which are rationally based on the perceptions of the
24 witness. Here Deputy Hatfield made some conclusions based
25 on his gut feelings because of the location which he meets

1 the mother at. He doesn't even realize that this is a
2 destination point and because of what he essentially views
3 as typical in these types of situations, which holds true
4 as a custody issue, even though that is -- that is
5 presumably not an issue. Presumption is based on
6 stereotypes and with limited information. That is all this
7 is.

8 Second, Your Honor, with respect to --

9 THE COURT: All right. The statements are, his, My
10 gut feeling line, and it struck me as odd --

11 MS. SIMPSON: Your Honor, we would argue, My gut
12 feeling, throughout the rest of that page.

13 THE COURT: Right.

14 MS. SIMPSON: So both of those paragraphs.

15 THE COURT: Okay. But not -- not the paragraph on
16 page 2 of 2.

17 MS. SIMPSON: Your Honor, actually I will -- I will
18 be addressing that in a moment.

19 THE COURT: All right. Well, let me hear from the
20 defendant on, My gut feeling, and Struck me as odd.

21 MR. SHEALEY: I'd be happy to. It may be easiest
22 for her to articulate the second part, and I'm going to be
23 addressing my memo which kind of covers everything. Once I
24 start -- it may be easier for everybody just to go through
25 the whole thing. But I'd be happy to do whatever you want.

1 This memo is pretty comprehensive and to go over that issue
2 as well as --

3 THE COURT: The whole incident report.

4 MR. SHEALEY: That's what she's trying to preclude
5 him from addressing.

6 THE COURT: Okay.

7 MR. SHEALEY: That, just for convenience, if she
8 would like to go ahead and outline her second argument, and
9 then I can go ahead and respond; and she can go back behind
10 me -- I mean, once I get going on this it may be time
11 wasting on may part to stop and start and find motions
12 again.

13 MS. SIMPSON: I'll be happy --

14 THE COURT: Okay.

15 MS. SIMPSON: -- finish my argument, Your Honor.

16 THE COURT: Finish your argument.

17 MS. SIMPSON: With respect to the second page,
18 beginning --

19 THE COURT: Two of two?

20 MS. SIMPSON: I'm sorry, page 2 of 2, which is
21 actually attached to this as the third page. Where it says
22 Corporal Monica Johnson interviewed Child and she said
23 this is -- Corporal Johnson's conversation with Child
24 Child Deputy Hatfield actually wrote this report, so
25 our first issue of hearsay is clearly going to be the one

1 level where Corporal Johnson related to Deputy Hatfield
2 what Child told her. So we've got several layers of
3 hearsay to deal with, and I would argue that there are no
4 exceptions that come under this.

5 Essentially that conversation with Corporal Johnson
6 and Child specifically the line, No digital penetration
7 occurred, according to Child that goes into the details
8 of the assault, and witnesses are clearly limited to time
9 and place. As I stated earlier, Your Honor, the defense
10 wants to limit us to time and place and they, I believe,
11 under our laws are also restricted to time and place as
12 well.

13 Hatfield did not speak to the child and he has no
14 personal knowledge about the statement, and it doesn't
15 qualify as any exception to the hearsay rule. Child is
16 here to testify and the purpose of the hearsay rule is to
17 avoid unreliable testimony, which I submit this is highly
18 unreliable and there -- as there are other errors in the
19 incident report as well. So we've got several problems
20 here, Your Honor, and we would argue that with respect to
21 their cross that they not be allowed to go into that
22 information.

23 THE COURT: All right.

24 MS. SIMPSON: And I'll be happy to follow up after
25 defense's argument.

1 THE COURT: Mr. Shealey?

2 MR. SHEALEY: Thank you, Your Honor, may it please
3 the Court. Your Honor, you know, it's rare we come to a
4 situation like this where the State is trying to preclude
5 their own officers, their first responders. There are a
6 number of issues in my memo that I would just touch upon
7 and you can read it, I guess, tonight or tomorrow morning.
8 What they're asking the Court to do is to limit the
9 defendant's ability through counsel to examine a State's
10 witness as key in this case. Your Honor, in the 14th
11 Amendment full and complete defense --

12 THE COURT: Hold on, I thought you -- why can't you
13 examine Mr. Hatfield?

14 MR. SHEALEY: I'm trying to tell you that I can. I
15 think I can.

16 THE COURT: All right.

17 MR. SHEALEY: On all these issues.

18 THE COURT: That's not the question. It's whether
19 this document should be admitted or not.

20 MS. SIMPSON: Your Honor, I believe we're all in
21 agreement that under the law it's clear that incident
22 reports themselves do not come in --

23 THE COURT: Correct.

24 MS. SIMPSON: -- as evidence.

25 THE COURT: Right.

1 MS. SIMPSON: So with respect to my latter
2 arguments, I was focused on the actual testimony that might
3 be elicited from the witnesses.

4 MR. SHEALEY: So what I'm going to speak to address
5 is they don't want the defense asking their officer certain
6 questions.

7 THE COURT: Right.

8 MR. SHEALEY: Your Honor, under the 14th Amendment,
9 full and defense -- full and complete defense, you know, we
10 have the ability to question and call witnesses and examine
11 them under the 14th Amendment and the confrontation clause,
12 6th Amendment, Your Honor, I'm citing U.S. Supreme Court
13 Chambers v Mississippi. It's in the brief. Everyone has
14 it. And I bring this case up because it's very similar to
15 this case, what they're trying to do.

16 In that case, the State had a key witness, like
17 here, the defense here would argue Hatfield and also
18 Corporal Johnson are key witnesses as first responders, and
19 in this case, Chambers, the trial judge under Mississippi's
20 state evidentiary hearsay rule, they determined the voucher
21 rule, trial judge precluded cross-examination of this key
22 witness on this guys confession to the murder. So this guy
23 confessed and the State made a pretrial motion, similar to
24 what's going on here because they didn't like what this guy
25 might say under a hearsay rule, which is part of what

1 they're saying here, hearsay -- we can't cross-examine
2 officer Johnson because he's going to say what this witness
3 said, what Ms. Myers might say or what he heard Ms. --
4 Corporal Johnson say. And what our Supreme Court says, you
5 know, we've got the ability to do this -- the right to
6 cross-examine -- this is under the 14th Amendment and the
7 6th Amendment confrontation clause. The right to
8 cross-examine is more than just a desirable rule of trial
9 procedure, it's implicit and a constitutional right of
10 confrontation.

11 It also can assure the accuracy of the truth
12 determining process and it's denial here cause and question
13 the ultimate integrity of the fact finding process and
14 because of the supremacy clause, which says, State
15 evidentiary rules don't trump constitutional rights that
16 come into play like the 14th Amendment and the 6th
17 Amendment. Constitutional rights directly affecting the
18 ascertainment of guilt are implicated, the hearsay rule may
19 not be applied mechanistically to defeat the ends of
20 justice.

21 The Court goes on to state that the State's
22 refusal, the trial judge's refusing to permit Chambers to
23 cross-examine McDonald, who is his witness, denied him a
24 trial in accord with traditional and fundamental standards
25 of due process.

1 Your Honor, the 6th Amendment confrontation clause
2 would certainly allow the defendant, through his counsel to
3 also question these officers -- Holden v. Kentucky hears a
4 case and I'm citing -- and again, I bring this to the
5 Court's attention, this is a rape case where the trial
6 judge limited, based on the State's motion, the defense to
7 cross-examine the alleged victim on the home environment,
8 the facts surrounding the rape. In this case it was a
9 white victim, a black defendant, and there was -- one of
10 the defense's theories was that, you know, part of this,
11 what was going on here, was she was lying because she had
12 another relationship going on and she didn't want to
13 jeopardize that.

14 The Court found that if the defendant had been
15 allowed to cross-examine on the exposure of the witness's
16 motivation testifying, there could have been a different
17 outcome. It's plain to us, the Court is saying no
18 reasonable jury might have received a seemingly different
19 impression of the witness's credibility had defense counsel
20 been permitted to pursue his proposed line of
21 cross-examination. All of this goes to the point that this
22 constitution of ours, the 6th Amendment allows us to
23 cross-examine to impeach and I find it a little bit more
24 credible here that this is the State's first responders
25 that they're seeking to limit.

1 On in my motion, Your Honor, Kyles v Whitley --
2 I'll kind of move on from the 6th Amendment and the 14th
3 Amendment and I'm going to go on to -- Kyles v Whitley says
4 that we get to attack and question officers regarding the
5 integrity of their investigation. Specifically in this
6 case, I get -- through counsel, we get to ask them
7 questions regarding anything that would attack the
8 integrity. And this line of questioning is not limited to
9 things that we perceive as -- it's just not hearsay either.
10 In this case, Kyles v Whitley, the State had an informant
11 that basically built a case around the defendant. This guy
12 gave about four different inconsistent statements. You
13 know, part of this case is about the State not turning over
14 those statements. But in the end, this snitch -- and I'll
15 call him a snitch for no other reason than that's kind of
16 what the Court talks about him as. His name is Beanie.
17 He's never called and defense counsel is not allowed to
18 cross-examine law enforcement in this case on this guy,
19 Beanie, because he's never produced -- you know information
20 about his statements never come to light until three or
21 four trials later. But the Supreme Court is very clear:
22 The defense could examine the police to good effect on
23 their knowledge of his possible guilt and with the defense
24 could have examined the police to good effect on their
25 knowledge of Beanie's possible guilt and in tolerating, if

1 not count enhancing serious possibilities that
2 incriminating evidence had been planted.

3 The tenant of this case, Your Honor, that I'm
4 trying to bring to light here is that the defense can
5 question officers in the case concerning statements made to
6 them in order to undermine the ostensible integrity of the
7 investigation. Here, you know, part of the statements that
8 they're trying to limit us from asking regarding his --
9 what they call opinion, as the first responder, you know,
10 they had police power, they have the ability to arrest in
11 cases and they're choosing not to arrest and the rational
12 behind that in talking -- in this case, they're going to be
13 going once to talk to the three parties in this case as
14 soon as possible and the fact that they're not -- they're
15 trying to ask you to preclude us from talking to them when
16 the Supreme Court says that we can ask any officer on the
17 stand about anything to attack the integrity of the
18 investigation, I certainly think asking both of these
19 responding officers in this case about statements from the
20 witnesses as well as regarding -- as the State deems their
21 opinion testimony -- all go to attacking the integrity of
22 this investigation, how they went about it.

23 I'll move on, Judge, the last point that I want to
24 reference here that's in my memo is State v. Thompson,
25 it's a South Carolina case, which actually says that, you

1 know, there's talk about this being -- it's hearsay within
2 hearsay, and our own courts have said that it's not hearsay
3 for a responding officer to testify as to statements
4 regarding how the -- how the -- how law enforcement
5 investigation was initiated. In this case, Thompson -- and
6 you may be aware of it, Judge, it's a violent crimes act
7 case and the responding officers are talking to witnesses
8 about certain things that are factual in this case. How
9 did this guy get this car? Where did this car go? And
10 some witnesses basically lead the officers to the
11 defendant's home, eventually, where they go in and arrest
12 him.

13 And, you know, over objection from defense counsel
14 in this case, you know, our Court's basically say, yes,
15 it's not hearsay. It's not for the truth of the matter
16 asserted. The judge makes it clear that evidence is not
17 hearsay unless it's an out-of-court statement offered to
18 prove the truth of the matter asserted. Additionally, our
19 courts are saying that an out-of-court statement is not
20 hearsay if it's offered for the limited purpose of
21 explaining why a government investigation was taken. Here,
22 it's not hearsay for us to ask these responding officers --
23 and that is on point with Thompson, you know, why -- how
24 did they get to Mr. Deveau's house? Who did they talk to?
25 And it's not hearsay.

1 Your Honor, I would invite you to take a look at
2 those cases. They're up there for you to read up there.

3 Your Honor, I think the 14th and 6th Amendment
4 certainly allows this line of questioning. The State's
5 witnesses are here. We're being limited -- or we're being
6 asked to limit our ability to cross-examine them. I think
7 that lies in the face of these two constitutional arguments
8 that I've presented and even if you don't agree with me on
9 that, even though the, you know, the Court's in Holden and
10 the Courts in Chambers say that's reversible error; I think
11 Kyles v Whitley certainly lets us attack the integrity of
12 this investigation through these officers and I think
13 Thompson makes it pretty clear that because they are
14 responding officers, they can testify as to what these
15 witnesses say that get them to the defendant's home and
16 it's not hearsay, it's not for the truth, but it's why the
17 investigation was taken.

18 And, Your Honor, I flatly disagree with the
19 argument with this being not allowable opinion testimony by
20 lay witnesses. It's generally not allowed, these
21 inferences and opinions by lay witness unless they're
22 rationally based on the perception of a witness. Well,
23 Hatfield went out there. His rationale is based on his own
24 perception. He's a first responder, unless they're helpful
25 to a clear understanding of the witnesses testimony or

1 their determination of a fact in issue, it's helpful to his
2 testimony because here he is, he's a witness that the State
3 is not happy with because he's written a report basically
4 saying that he doesn't believe these witnesses. They don't
5 like that. But I think that's helpful to a clear
6 understanding of his testimony and to the determination of
7 the fact in issue, Your Honor. Nothing's more of a fact at
8 issue other than the credibility of these witnesses.

9 And then finally under this, and does not require
10 special knowledge, skill or experience. Your Honor,
11 everybody knows whether or not they believe someone. And
12 the fact that Hatfield is going to be an officer with
13 twenty something years of experience and doing exactly
14 what, you know, he's paid to do, investigate -- go out to a
15 scene, figure out who he's going to arrest, take a
16 statement, or write out an incident report, and judge
17 people's credibility. You know, I think this is going to
18 be a huge issue, and I think just limited on the face of
19 their argument, it comes under 701, notwithstanding the
20 fact of my brief and everything else I believe allows us to
21 actually get into this issue.

22 THE COURT: Thank you. Anything further?

23 MS. SIMPSON: If I may be heard on a few points,
24 and I just got defense counsel's brief as well, so I will
25 read over them. But it's my understanding with respect to

1 his first argument under the constitution that we are
2 trying to limit the defense's ability to a full and
3 complete defense based on Chambers versus Mississippi --
4 anyway, that is, I believe a case -- from what he said
5 where the officer might have been testifying about
6 conversations or confession to have defendant and the
7 defense's action limited in its cross regarding the
8 defendant's own statement and confession. So I think those
9 are clearly distinguishable there. Your Honor, there are
10 no constitutional violations here and in spite of what
11 defense says, they are still governed by the rules of
12 evidence.

13 With respect to the other case, Holden versus
14 Kentucky, with respect to the home situation, I believe
15 they were precluded to testifying based on what the defense
16 has said, but here -- this responding officer has no actual
17 facts or basis for his opinion. He is not the
18 investigating officer -- and this is with respect to Deputy
19 Hatfield now. The investigating officer in this case is
20 Investigator Martin. These cases, specifically criminal
21 sexual conduct cases, are turned -- and assault cases, are
22 turned over to an investigator because they are specific
23 and unique in nature, and I submit do require special
24 knowledge, skill, and training and that is why they are
25 turned over to an investigator, why the child is sent to a

1 forensic interviewer or someone trained in forensic
2 interviewing. Here Deputy Hatfield did not even speak with
3 the victim in this case. He had limited facts as to the
4 circumstances surrounding this case as far as the issues.
5 Their goal, Your Honor, was merely to approach the
6 situation. It wasn't a freshly, current -- or offense that
7 had just been committed, so no arrest is made, but they
8 were there to determine the best place for the child. And
9 at that point they were determined -- based on their
10 conversations and what they had, just to remove the child
11 from the home. However, that was their initial
12 determination. He is not, I believe, qualified to offer
13 lay opinion testimony, which is clearly what, My gut --
14 actually, it probably isn't even opinion. My gut
15 feeling --

16 THE COURT: What about Corporal Johnson?

17 MS. SIMPSON: Your Honor, with respect to her's --
18 like I said, Corporal Johnson will take the stand, but more
19 importantly, Child [REDACTED] will take the stand and they are more
20 than welcome to question her about what happened to her.
21 As far as --

22 THE COURT: Well, I'm not -- confine your argument
23 to Johnson. She's the one that tells Hatfield all these
24 things.

25 MS. SIMPSON: Your Honor, I would argue that, first

1 of all this is clearly inadmissible hearsay. They would
2 clearly be offering the fact that no digital penetration
3 occurred for the truth of the matter asserted and the other
4 purpose --

5 THE COURT: She said Child told her that.

6 MS. SIMPSON: Well, that is another layer of
7 hearsay with respect to -- in addition -- as I said the
8 victim is available and will take the stand. It doesn't
9 qualify under any exceptions. It was an outpouring
10 statement. Like I said, they can ask Child about the
11 abuse. However, Corporal Johnson should also be limited to
12 time and place. And this is clearly the details of
13 assault, this is clearly --

14 THE COURT: What were the circumstances that -- of
15 the interview? Was it immediately?

16 MS. SIMPSON: Your Honor, it was not even
17 classified as an interview. What happened -- and if I
18 can --

19 THE COURT: It says interview.

20 MS. SIMPSON: I'm sorry, Your Honor?

21 THE COURT: The statement says interview. I didn't
22 make that up.

23 MS. SIMPSON: Well -- typically responding officers
24 will do brief -- they've got to gather brief facts.
25 However, it is not a forensic interview. She is not

1 trained.

2 THE COURT: I understand it's not a forensic
3 interview. It says Corporal Johnson interviewed Child
4 I mean it is what it is. She talked to her.

5 MS. SIMPSON: They can say -- and they can -- and
6 whether she talked to Child Your Honor -- however, they
7 should be limited with respect to the substance of that
8 conversation as it is clearly hearsay and they clearly
9 would be offering it for the truth of the matter asserted.

10 THE COURT: But what if Child said, Mr. Deveau
11 shot her?

12 MS. SIMPSON: Shot her, Your Honor?

13 THE COURT: Yeah.

14 MS. SIMPSON: Then they have the ability to cross
15 her on that point.

16 THE COURT: Huh?

17 MS. SIMPSON: I don't know that they can actually
18 impeach her through Corporal Johnson's conversations.

19 THE COURT: All right.

20 MS. SIMPSON: But they can clearly cross and
21 impeach Child on her own statements that were made.

22 THE COURT: Why can't the officer tell what the
23 victim said?

24 MS. SIMPSON: Because all the witnesses and -- they
25 just presented all the case law that's clear on limiting to

1 time and place of abuse. If the State's going to be
2 limited on time and place of abuse saying merely that the
3 sexual abuse occurred -- if they're going into the actual
4 details of the abuse, which -- and if you read, Your Honor,
5 on the second page -- prior to -- or -- whatever -- prior
6 to that statement, digital penetration was never made, it
7 actually says Corporal Johnson interviewed Child [REDACTED] and
8 she said that Deveaux entered her bedroom one evening, got
9 into bed with her and stuck his hand up under her panties
10 and rubbed her clitoris with his thumb and forefinger. If
11 they go into all that, Your Honor, that's clearly the
12 details of abuse and you can't go into that one and only
13 statement that they want to make without going into the
14 rest of them. And that one should be limited to time and
15 place. She learned that they were sexually abused. What
16 actions did she take after that. And --

17 MR. SHEALEY: Your Honor if I may?

18 THE COURT: When she finishes.

19 MS. SIMPSON: Do you want me to allow him to
20 address this point I just made or move on to the remaining
21 points?

22 Well, briefly, Your Honor. With respect to one of
23 the things he said, I believe that the defense is entitled
24 to inquire as to the integrity of the investigation. Your
25 Honor, this is not inquiring into the integrity of the

1 investigation, but rather the actual voracity of the
2 allegations, which is the sole province of the jury in this
3 case, and that this is the ultimate issue of the case,
4 which is why we can't get into improper bolstering or
5 certain opinions as to the voracity of her statements.

6 Clearly, this is hearsay, Your Honor. And they
7 have offered no exceptions to that as to why Corporal
8 Johnson should be able to take the stand and testify as to
9 an out-of-court statement made to her by the victim or
10 allegedly made to her that was then relayed -- this isn't
11 even her report, Your Honor --

12 THE COURT: I know that.

13 MS. SIMPSON: As far as this is --

14 THE COURT: That's why I brought it up.

15 MS. SIMPSON: Okay. Your Honor, this isn't even
16 her report. It is Deputy Hatfield's report.

17 THE COURT: I said that five minutes ago, didn't I?

18 MS. SIMPSON: I believe you did.

19 THE COURT: I questioned whether Hatfield can say
20 these things, A, or B, can Johnson say these things since
21 she's the one that interviewed the victim.

22 All right. Mr. Shealey? You just can't stay in
23 your seat.

24 MR. SHEALEY: And Your Honor, I do apologize --
25 Your Honor, just to start with, while we're talking about

1 this time and place issue, I believe Ms. Simpson keeps
2 misstating it. The time and place rule is limited to
3 witnesses trying to corroborate the victim's statement.
4 She can go ahead and testify about what it seems to me is
5 allegedly happened to her. Corroborating witnesses cannot,
6 except for the limitations of time and place. For
7 impeachment, it certainly can be used. I want us to be
8 clear on that issue. That's what the cases say.

9 And Your Honor, again, I'll be happy to address --
10 I would invite you to read the cases I've given you. I'm
11 happy to address any questions you have. This -- first of
12 all she's saying that there's no exception to the hearsay
13 rule. I've just given you State v. Thompson. I've given
14 them State v Thompson. These are the responding officers.
15 State v Thompson, responding officers. They are --

16 THE COURT: You believe that Hatfield should be
17 able to say what Johnson said?

18 MR. SHEALEY: I think -- well, it's not for the
19 truth, Your Honor. According to the State v Thompson,
20 responding officers can testify about how -- why they
21 initiated the state action on this case. Why is there an
22 investigation? Who called them out here? How did they --
23 who did they talk to first that got them to the defendant's
24 doorstep? And that's exactly how it is in State v
25 Thompson. It mean it's not for the truth, but it's to

1 demonstrate why they initiated an investigation in this
2 case. That is permitted and it's not hearsay. Kyles v
3 Whitley, I can attack the integrity of the investigation
4 through the questioning of any law enforcement officer that
5 I wish according to our Supreme Court regarding statements
6 that are inconsistent with their theory of the case. I can
7 attack their investigation. That's what Kyles v Whitley
8 says. They are obviously not happy with both of their
9 responding officers -- more so, I'd say Hatfield. You
10 know, maybe to some extent Corporal Johnson, and I think
11 that's apparent here in this courtroom, and that's why I
12 started with a full and complete defense, Your Honor, the
13 14th Amendment and the 6th Amendment of confrontation.

14 THE COURT: Okay. Thank you, sir. Anything else?

15 MS. ASHTON: Your Honor. Ray Olszewski with the
16 Assessment Resource Center, he is the forensic interviewer
17 and interviewed Child [REDACTED] We offered the redacted video
18 probably Thursday of last week to them and to the Court,
19 Your Honor. That video is the one -- we were also offering
20 them the original video. That video was the one that was
21 used in court last time, and I'm not sure what issues they
22 had with that redacted version. So I'm not going to really
23 go into specifics until they tell me what the issue is with
24 that video that they have.

25 MS. DELANY: And Judge, if I could just briefly.

1 THE COURT: Number 9.

2 MS. DELANY: Sir?

3 THE COURT: It's your Motion Number 9. I'm sorry
4 that's not -- what's --

5 MS. DELANY: We just haven't had time to watch the
6 redacted version in all candor, Your Honor. We've been
7 working on other stuff. You know, we've read the -- I mean
8 the redactions that have been done seem reasonable. We
9 just have not physically had time to sit down and watch it.
10 And we've been here all weekend, Your Honor.

11 THE COURT: I understand.

12 MS. DELANY: If we could just have tonight to watch
13 it.

14 THE COURT: Well, you can watch it any time you
15 want. All right. Keep in mind, I've admitted the redacted
16 version one time and I'm likely to do the same thing again
17 unless you can show me some critical error that I made last
18 time in that ruling. Okay?

19 MS. DELANY: Thank you, Your Honor.

20 THE COURT: Anything further?

21 MS. ASHTON: Your Honor, Mr. Olszewski is here now.
22 As far as your prior rulings related to his testimony and
23 that video, video we filed a motion to admit child hearsay
24 testimony under the --

25 THE COURT: Right. What's the issue?

1 MS. ASHTON: Well, he's here and --

2 THE COURT: I know he's here.

3 MS. ASHTON: We thought we were going to get to
4 whether the video was going to be admitted and whether he
5 would be qualified as an expert in forensic interviewing.
6 We got to that in pretrial last time, and so I had him here
7 out of an abundance of caution in case that was going to be
8 an issue.

9 THE COURT: Well, let's just assume he's going to
10 testify as he did last time.

11 MS. ASHTON: Thank you, Your Honor.

12 THE COURT: You're not asking him to be called
13 today? We haven't even sworn the jury.

14 MS. ASHTON: Just for pretrial purposes, whether
15 he -- we had to go through -- last year he testified
16 outside the presence of the jury. I was hoping to save
17 time that we would do that today. But I didn't realize
18 that pretrial would take this long, Your Honor.

19 THE COURT: Defense have any objection to him
20 testifying?

21 MR. BAILEY: Judge, we'll probably have an
22 objection to him being qualified as an expert in forensic
23 interviewing.

24 THE COURT: Well, we'll take that up. Read the
25 transcript. I think you'll find most of the evidence in

1 there. And as I say, as far as I know there's no reason to
2 prevent him from testifying a second time.

3 MS. ASHTON: And Your Honor --

4 THE COURT: The ARC issue would be -- should the
5 video be further redacted.

6 MS. ASHTON: They have a -- one of the issues they
7 addressed earlier about the use of the word compelling, we
8 would concede that it would be improper for Mr. Olszewski
9 to say that he found the victim's interview compelling,
10 however, we would -- even though we argue that's going to
11 be a category of court, but we agree that the word
12 compelling could be construed as testifying to her
13 voracity. However, we would ask -- instead of saying the
14 word compelling or eliciting that word from the stand, we
15 would ask him once the interview was complete, what steps
16 did you take and then, of course, he'd say referred to
17 therapy or he referred her to the medical evaluation. That
18 type of --

19 THE COURT: Okay..

20 MS. ASHTON: But we agree to save time, we won't
21 use the word compelling or at least we won't elicit that
22 from his testimony on direct.

23 THE COURT: All right.

24 MR. BAILEY: That's all we ask on that issue,
25 Judge.

1 THE COURT: If there's no argument, then that's
2 what we'll do. Or make me make the decision.

3 MS. SIMPSON: Your Honor, the State also -- I know
4 the last trial we made the motion to exclude spectators
5 during the child's testimony. I don't know if the defense
6 has an issue with that this time. We just wanted to --

7 THE COURT: I'm sure they don't.

8 MS. SIMPSON: And additionally, Your Honor. We
9 would just make a motion to preclude any mention of the
10 innocence project or any specific cases based on that. And
11 I only made this motion in light of the motions that have
12 been made in some of the past trials and in the light of
13 recent events, on two specific cases and references to
14 them.

15 THE COURT: What are the recent events?

16 MS. SIMPSON: I'm sorry?

17 THE COURT: What are the recent events.

18 MS. SIMPSON: As far as events occurring in the
19 news and -- there are numerous ones, Your Honor.

20 THE COURT: I missed that.

21 MR. SHEALEY: Your Honor, we don't anticipate
22 talking about things that aren't relevant to this trial. I
23 don't think we need to have a motion moving to -- from us
24 talking about things that are not relevant to this case.

25 THE COURT: Well, I will make that ruling if they

1 ever -- if they do come up.

2 MS. SIMPSON: Thank you, Your Honor.

3 THE COURT: Anything further?

4 MR. SHEALEY: Your Honor, I just have one thing.

5 Mr. -- what's the last name -- again, the issue of Dr.
6 Watson if we could get -- try to figure that out for us
7 before morning.

8 THE COURT: Well, who is coming that knows that?

9 MR. SHEALEY: I believe this gentleman is.

10 MS. ASHTON: I don't think Mr. Olszewski would know
11 Dr. Watson. Amy Phipps was the one --

12 THE COURT: Amy Phipps. Ask her in the morning.

13 MS. ASHTON: Thank you.

14 MR. SHEALEY: Thank you, Your Honor.

15 THE COURT: Nine o'clock?

16 MS. ASHTON: Yes, sir.

17 MS. SIMPSON: And, Your Honor, briefly if we can
18 hand up one case on the responding officer and his
19 testimony, State versus Kelly on opinion testimony by an
20 officer. We would just add that in to supplement our
21 motion.

22 THE COURT: All right.

23 MR. SHEALEY: Your Honor, he is not with a
24 bondsman. That issue came up earlier. A cash bond was
25 paid with the clerk.

1 the burden of proof just as it should be. We bear that
2 burden of proof in the prosecution of every criminal case.
3 And I can tell you that we welcome that burden today. And
4 what that means is that we must prove to you each element
5 of the crime for which the defendant has been charged.

6 Now, in South Carolina, a person is guilty of
7 criminal sexual conduct with a minor first-degree if he
8 engages in sexual battery with another person who at the
9 time of the offense was under the age of eleven.

10 Now, sexual battery includes several things and I
11 submit to you that where a defendant sticks his finger or
12 thumb into the vagina of a ten-year-old little girl, he is
13 guilty of criminal sexual conduct in the first-degree.

14 Now, our legislature has noted that criminal sexual
15 conduct cases are somewhat unique in nature, a little bit
16 different than other cases and they prescribe that the
17 testimony of a victim in a criminal sexual conduct case
18 need not be corroborated by other evidence. But I submit
19 to you in this case it is.

20 As I said, we must prove to you beyond a reasonable
21 doubt. So what exactly is proof beyond a reasonable doubt?
22 Well, I can tell you that it is proof that leaves you
23 firmly convinced of the defendant's guilt. Now, there are
24 very few things that we know in this world with absolute
25 certainty, and the law does not require us to produce proof

1 her condition. It's kind of hard not to be aware of it.

2 Approach.

3 (WHEREUPON, there was a bench conference out of the
4 hearing of the jury and the Court Reporter.)

5 (WHEREUPON another juror left the courtroom to take
6 a break.)

7 THE COURT: All right. Well, it seems like
8 somebody else needs a restroom break. So lets take five
9 minutes. Go ahead back to your jury room and relax for a
10 few minutes and then we'll get started.

11 (WHEREUPON the jury left the courtroom at 10:12
12 a.m.)

13 **PRETRIAL MOTIONS**

14 THE COURT: All right.

15 MS. DELANY: Thank you, Your Honor. May it please
16 the Court. We made a number of pretrial motions yesterday
17 and we went into your chambers and you told us your
18 rulings. However, I think we need to get those put on the
19 record.

20 THE COURT: That's fine. I'll be glad to. With
21 regard to Motion No. 1, I basically am -- I grant that. In
22 other words, the State says they've produced everything.

23 Let me just go through them. Number 1 is granted.
24 No. 2 is granted. No. 3, I will reserve my decision on
25 that until the witness Caitlyn Gray testifies in-camera.

1 No. 4, I grant that. No. 5, State has agreed to not use
2 the word compelling when Mr. Olszewski testimony.

3 The -- Motion No. 6 is denied. Motion No. 7 is
4 granted. Motion No. 8 is denied. Motion No. 9 is granted.
5 Motion number -- I say granted. Once I hear the 911 tape,
6 I probably better reserve that one until I've had a chance
7 to review the 911 tape. Motion no. 10 is granted in part,
8 denied in part.

9 I'm not sure about No. 11 because I don't know
10 anything about it. And I'm denying No. 12. All right.

11 MS. ASHTON: Your Honor, Ray Olszewski is here with
12 the file. He is not going to testifying until tomorrow, so
13 the if you want him to just give -- turn the file over to
14 you -- I just don't want him to unnecessarily wait here all
15 day.

16 THE COURT: Why don't you have it?

17 MS. ASHTON: If he wants to turn it over to me, if
18 he's agreeable to that, that's fine.

19 THE COURT: That's fine.

20 MS. ASHTON: Okay.

21 THE COURT: All right.

22 MR. BAILEY: Judge, we just want to make sure that
23 our pretrial motion list, the numbers were made a Court's
24 exhibit so that it's clear -- we want to make sure that
25 it's clear when you reference the numbers that it's on the

1 that Mr. Ashton said that Mr. Olszewski is trying to bring
2 his whole file.

3 (WHEREUPON the attorneys were talking about the
4 file.)

5 (WHEREUPON the jury entered the courtroom at 10:26
6 p.m.)

7 THE BAILIFF: Jury is seated, Your Honor.

8 THE COURT: Good. All right. Solicitor, call your
9 first witness.

10 MS. ASHTON: May it please the Court, the State
11 calls Child Child

12 THEREUPON,

13 Child Child

14 after being duly sworn, testified as follows:

15 THE CLERK: Please have a seat and state your full
16 name for the record.

17 THE WITNESS: Child

18 MS. DELANY: I can't hear, Your Honor.

19 THE COURT: Be sure to speak up.

20 THE WITNESS: Child

21 **DIRECT EXAMINATION**

22 By Ms. Ashton:

23 Q Good morning Child

24 A Good morning.

25 Q How old are you?

Child [REDACTED] - Direct Examination by Ms. Ashton

- 1 A Fourteen.
- 2 Q And where do you go to school now?
- 3 A Lower Richland High School.
- 4 Q And what grade are you in?
- 5 A Ninth.
- 6 Q Where did you go middle school?
- 7 A Southeastern.
- 8 Q And what about elementary school?
- 9 A Weber Elementary and then Laurel Hill Elementary.
- 10 Q Weber?
- 11 A Yes, ma'am.
- 12 Q And then Laurel Hill?
- 13 A Yes, ma'am.
- 14 Q And what are your favorite subjects?
- 15 A Math.
- 16 Q And do you have a favorite teacher?
- 17 A Yes, ma'am.
- 18 Q Who is that?
- 19 A Ms. Nicely.
- 20 Q Ms. Who?
- 21 A Ms. Nicely.
- 22 Q And what does she teach?
- 23 A LA.
- 24 Q Is that English? What is the LA?
- 25 A English, language arts.

Child [REDACTED] - Direct Examination by Ms. Ashton

- 1 Q Okay. And do you participate in other activities
2 at school?
- 3 A Yes, ma'am.
- 4 Q What do you participate in?
- 5 A I'm on the JV volleyball team and in Jr. ROTC.
- 6 Q And what do you do on the volleyball team?
- 7 A I'm a manager slash player.
- 8 Q So you're a manager?
- 9 A And a player.
- 10 Q And a player?
- 11 A Yes, ma'am.
- 12 Q And where do you live now?
- 13 A [REDACTED] Hopkins, South Carolina.
- 14 Q And who do you live with?
- 15 A My mom and my step dad.
- 16 Q And does your brother live with you?
- 17 A He lives with my grandmom.
- 18 Q Your grandmom?
- 19 A Yes, ma'am.
- 20 Q And were you -- did you recently live with your
21 grandma?
- 22 A Yes, ma'am.
- 23 Q And who's mom is that?
- 24 A My mom.
- 25 Q And why were y'all living with her?

Child [REDACTED] - Direct Examination by Ms. Ashton

- 1 A We had to take care of her.
- 2 Q And what was going on with your grandmother?
- 3 A She got her right leg above the knee amputated.
- 4 Q And where was that? Where in Columbia did she
- 5 live?
- 6 A In Eastover, South Carolina.
- 7 Q Okay. So you didn't move too far?
- 8 A No, ma'am.
- 9 Q And how old is your brother?
- 10 A He's 18.
- 11 Q And do y'all get along?
- 12 A Yes, ma'am.
- 13 Q And you live with your mother. What's her name?
- 14 A Kathy Myers.
- 15 Q And is she here in the courtroom today?
- 16 A Yes, ma'am.
- 17 Q And who else -- your step father?
- 18 A Yes, ma'am.
- 19 Q What's his name?
- 20 A John Myers.
- 21 Q Okay. Now, who is your biological father,
- 22 Child [REDACTED]
- 23 A Charles Deveau.
- 24 Q And is he present in the courtroom today?
- 25 A Yes, ma'am.

Child [REDACTED] - Direct Examination by Ms. Ashton

- 1 Q Does he live with you?
- 2 A No, ma'am.
- 3 Q Have you ever lived with him in the same house?
- 4 A No, ma'am.
- 5 Q Child [REDACTED] I'm going to take your attention back to
6 the Summer of 2008, okay?
- 7 A Yes, ma'am.
- 8 Q Did you go see Mr. Deveaux during that summer?
- 9 A Yes, ma'am.
- 10 Q And do you remember summer after -- the summer
11 during 2008, do you remember which grade you had just
12 completed?
- 13 A Fifth grade.
- 14 Q And why did you -- why did you go to Mr. Deveaux's
15 house?
- 16 A I had a court order to visit.
- 17 Q Okay. And before this period of visitation, had it
18 been a while since you last went over to his house?
- 19 A Yes, ma'am.
- 20 Q Okay. When you went to his house during the
21 summer, do you remember anything that happened that made
22 you feel uncomfortable?
- 23 A Yes, ma'am.
- 24 Q And was this during the last visit?
- 25 A Yes, ma'am.

Child [REDACTED] - Direct Examination by Ms. Ashton

1 Q Can you describe what happened to the jury?

2 A I had to spend one week with him. That was a court
3 order. On that Tuesday during that week, he put his thumb
4 in my vagina.

5 Q Okay. And now, I'm going to back you up a little
6 bit, okay. What were you -- that particular Tuesday night
7 that you remember, what were you doing before this
8 happened?

9 A I was watching TV on the couch.

10 Q Okay. Where in the --

11 A In the living room.

12 THE COURT: Speak up a little bit, okay?

13 THE WITNESS: Yes, sir.

14 By Ms. Ashton:

15 Q Did you say anything -- who was with you in the
16 living room?

17 A Just me and him.

18 Q When you left the living room, did you say
19 anything?

20 A I told him I was going to bed.

21 Q And did he say anything back to you after that?

22 A He said, I'll be there in a minute.

23 Q Did that strike you as different?

24 A Yes, ma'am.

25 Q And why is that?

Child [REDACTED] - Direct Examination by Ms. Ashton

- 1 A He never said that before.
- 2 Q So when you went to bed, did you go to a
3 different -- did you go to your own room?
- 4 A Yes, ma'am.
- 5 Q And did you -- what did you do once you got into
6 the room?
- 7 A I got my night clothes and I went to the restroom
8 to wash up, and then I went back in my room and I went to
9 sleep.
- 10 Q Okay. The night clothes that you just spoke of, do
11 you remember what kind of night clothes they were?
- 12 A It was a nightgown.
- 13 Q And was that your nightgown or was that provided to
14 you, do you --
- 15 A It was provided.
- 16 Q Okay. And who gave that to you?
- 17 A His wife.
- 18 Q And who is -- what's his wife's name?
- 19 A Queen Deveaux.
- 20 Q So what happened after you finished washing up?
- 21 A I went to bed.
- 22 Q Okay. And I'm going to stop you for just a second.
23 I'm going to show you some photos, and I want you to tell
24 me if you recognize those, okay? Just glance at these and
25 let me know if you recognize them. Look at each one, one

Child [REDACTED] - Direct Examination by Ms. Ashton

1 by one. Take your time.

2 (WHEREUPON the witness was looking at the photos.)

3 THE WITNESS: Yes, ma'am.

4 By Ms. Ashton:

5 Q Okay. I'm going to first ask you if you recognize
6 State's Exhibit 1. Do you recognize that?

7 A Yes, ma'am.

8 Q And what does that show?

9 A That's his house.

10 Q I'm going to show you what's marked as State's
11 Exhibit 2. Do you recognize that?

12 A Yes, ma'am.

13 Q Now, is there anything -- what is that?

14 A That was my room.

15 Q At his house?

16 A Yes, ma'am.

17 Q Is there anything different about that photo --
18 anything different about the arrangement of the furniture?

19 A Yes, ma'am.

20 Q What's different about it?

21 A There was a TV stand and that wasn't there.

22 Q What was there instead?

23 A It was a bed right there.

24 Q Okay. And then I'll get to that in the a second.

25 So other than the rearrangement of the furniture, does that

Child [REDACTED] - Direct Examination by Ms. Ashton

1 fairly and accurately depict that room that you stayed in?

2 A Yes, ma'am.

3 Q In that house?

4 A Yes, ma'am.

5 MS. ASHTON: Your Honor, at this time I'd move to
6 introduce State's Exhibit 1 and 2 into the record.

7 THE COURT: Without objection.

8 (WHEREUPON State's Exhibits 1 and 2 were entered
9 into evidence.)

10 THE COURT: You may publish to the jury.

11 By Ms. Ashton:

12 Q Okay. So you laid down in the bed?

13 A Yes, ma'am.

14 Q And what happened once you laid down?

15 A He came into my room and he sat on the bed. Then
16 he got back up. He put a fan in the window and he sat back
17 down.

18 Q He put -- what did you say he put in the window?

19 A A fan.

20 Q Okay. I'm going to show you what's marked as
21 State's Exhibit 3. Do you recognize that window?

22 A Yes, ma'am.

23 Q Is that the window that's in your room -- or that
24 was in your room at that house?

25 A Yes, ma'am.

Child [REDACTED] - Direct Examination by Ms. Ashton

1 MS. ASHTON: Your Honor at this time I'd move to
2 offer State's Exhibit 3 into the record.

3 THE COURT: Without objection.

4 (WHEREUPON State's Exhibit 3 was entered into
5 evidence.)

6 By Ms. Ashton:

7 Q So there's a ledge on that window?

8 A Yes, ma'am.

9 Q Is it big enough for a fan to be placed there?

10 A Yes, ma'am.

11 Q Okay. Once he put the fan in the window, what
12 happened?

13 A He came back and sat on my bed and he laid down and
14 he started squeezing on my butt over my nightgown.

15 Q Okay. So he started over your nightgown?

16 A Yes, ma'am.

17 Q What did he do after that?

18 A He took his hand and he put it under my nightgown
19 and started squeezing my butt again.

20 Q He started what?

21 A Squeezing on my butt again.

22 Q Over your underwear?

23 A Yes, ma'am.

24 Q What happened after that?

25 A He moved my foot to the side, and then he took his

Child [REDACTED] - Direct Examination by Ms. Ashton

1 thumb -- well, he moved the side of my panties and he put
2 his thumb inside my vagina.

3 Q Okay. How did he move your foot?

4 A With his foot.

5 Q Okay. Do you remember which leg that was?

6 A My left.

7 Q And how are you able to remember which leg it was?

8 A Because I always sleep on my right side.

9 Q Okay. And so here you said the bed was against --
10 the headboard was against that wall?

11 A Yes, ma'am.

12 Q And you were facing the window on your right side?

13 A Yes, ma'am.

14 Q Okay. So he would have pushed that top leg over?

15 A Yes, ma'am.

16 Q When he put his finger -- was it a finger or thumb
17 or do you know?

18 A Thumb.

19 Q When he put his thumb in your vagina, did he say
20 anything to you?

21 A After a while he said, Did that feel good, and I
22 said, No.

23 Q Do you remember what he was doing -- was he doing
24 anything with the thumb while it was in your vagina?

25 A He was going up and down.

Child [REDACTED] - Direct Examination by Ms. Ashton

1 Q Were you -- what were you doing when this was
2 happening?

3 A I was crying.

4 Q Do you know if he knew whether you were crying?

5 A I don't know.

6 Q And you told him, no, that did not feel good?

7 A Yes, ma'am.

8 Q What happened after that?

9 A He told me to put my shoes on and we went outside.

10 Q Okay. And I'm going to show you what's marked as
11 State's Exhibit 4. Do you recognize that?

12 A Yes, ma'am.

13 Q And what does that show?

14 A That's the garage where we were.

15 Q Okay. The garage where he -- is that where he
16 walked you outside?

17 A Yes, ma'am.

18 MS. ASHTON: Your Honor, at this time, I'd offer
19 State's Exhibit 4 into evidence.

20 THE COURT: Without objection.

21 (WHEREUPON State's Exhibit 4 was entered into
22 evidence.)

23 By Ms. Ashton:

24 Q What happened after you went outside?

25 A He told me not to tell anybody.

Child [REDACTED] - Direct Examination by Ms. Ashton

- 1 Q Did he -- what did you say back to him?
- 2 A I told -- he told me to promise. I said okay. But
- 3 eventually, I was going to tell because I didn't say I
- 4 promise.
- 5 Q Because you just said okay.
- 6 A Yes, ma'am.
- 7 Q And how did you know you were going to tell?
- 8 A Because I knew it was wrong.
- 9 Q Now, you mentioned earlier that Queen lived with
- 10 him?
- 11 A Yes, ma'am.
- 12 Q What was she doing during all this?
- 13 A She was asleep.
- 14 Q And do you know where their room is in relation to
- 15 where you slept?
- 16 A It's all the way down on the other side of the
- 17 house.
- 18 Q Okay. Once you got back inside, what did you do?
- 19 A I went to sleep, crying.
- 20 Q Okay. Now, before we move on, is there a shed in
- 21 the back of the house?
- 22 A Yes, ma'am.
- 23 Q Did he -- did you walk toward that shed that night?
- 24 A Yes, ma'am.
- 25 Q I'm going to show you State's Exhibit 5. Do you

Child

- Direct Examination by Ms. Ashton

1 recognize that?

2 A Yes, ma'am.

3 Q And what is that?

4 A That's the shed where we just walked and came back
5 to the garage.

6 Q Okay.

7 MS. ASHTON: Your Honor, at this time, I'd offer
8 State's Exhibit 5 into evidence.

9 THE COURT: Without objection.

10 (WHEREUPON State's Exhibit 5 was entered into
11 evidence.)

12 By Ms. Ashton:

13 Q Now, you were there for a week?

14 A Yes, ma'am.

15 Q Had you ever spent that long over there in the
16 past?

17 A No, ma'am.

18 Q Did anything else occur that week?

19 A No, ma'am.

20 Q And had anyone ever done anything like this to you
21 before?

22 A No, ma'am.

23 Q Now, at some point, did you tell someone?

24 A Yes, ma'am.

25 Q And who did you tell?

Child [REDACTED] - Direct Examination by Ms. Ashton

- 1 A My mama.
- 2 Q And when did you tell her?
- 3 A On the next weekend that I had to go visit.
- 4 Q And why did you tell her at that point?
- 5 A Because I was scared.
- 6 Q And what were you scared of?
- 7 A That he was going the hurt me.
- 8 Q When you told your mom, what -- where were y'all?
- 9 A We were on our way to the destination point.
- 10 Q And what is that destination point?
- 11 A An Exxon -- it's an Exxon.
- 12 Q It's an Exxon?
- 13 A Yes, ma'am.
- 14 Q And so were y'all in the car?
- 15 A Yes, ma'am.
- 16 Q And once you told her, what did she do?
- 17 A She pulled over on the side of the road and she
- 18 called the police.
- 19 Q Was that before y'all had reached the Exxon?
- 20 A Yes, ma'am.
- 21 Q Okay. Was she upset when you told her?
- 22 A Yes, ma'am.
- 23 Q What happened once y'all went to the Exxon?
- 24 A She told me just go there and act like nothing
- 25 happened. So I went and she said she'll be there for me.

Child [REDACTED] - Direct Examination by Ms. Ashton

- 1 Q Okay. And was Mr. Deveau at the Exxon when y'all
2 got there?
- 3 A Yes, ma'am.
- 4 Q Were the police there yet?
- 5 A No, ma'am.
- 6 Q Did you go back to Mr. Deveau's house?
- 7 A Yes, ma'am.
- 8 Q Once you got there, do you remember who was there?
- 9 A Him and his granddaughter.
- 10 Q Okay. Did you have to stay there long that
11 afternoon?
- 12 A No, ma'am.
- 13 Q And why was that?
- 14 A My mom came with the police, and we went home.
- 15 Q Do you remember speaking with any of the police
16 officers?
- 17 A Yes, ma'am.
- 18 Q Do you remember how many came?
- 19 A Three.
- 20 Q Okay. And do you remember whether you spoke to
21 a -- was it a female or a male officer?
- 22 A Female.
- 23 Q Do you remember her name?
- 24 A No, ma'am.
- 25 Q Okay. Before you left, did Mr. Deveau say

Child [REDACTED] - Direct Examination by Ms. Ashton

- 1 anything to you?
- 2 A He asked me why did I tell.
- 3 Q Did you respond to that question?
- 4 A I said because it wasn't right.
- 5 Q Did you have to stay there that night?
- 6 A No, ma'am.
- 7 Q Have you had to go back since?
- 8 A No, ma'am.
- 9 Q Once that was over and once you went back home with
- 10 your mom, did you go to see anybody about this?
- 11 A Yes, ma'am.
- 12 Q And do you remember who you spoke to?
- 13 A Ms. Amy at the ARC.
- 14 Q At the ARC?
- 15 A Yes, ma'am.
- 16 Q And who -- what was she?
- 17 A She was a counselor.
- 18 Q Okay. Do you remember speaking with Ray Olszewski?
- 19 A Yes, ma'am.
- 20 Q And did you tell him what happened?
- 21 A Yes, ma'am.
- 22 Q Did he have you draw anything or document anything?
- 23 A Yes, ma'am.
- 24 Q I'm going to show you what's marked as State's
- 25 Exhibit 6. Do you recognize that?

Child [REDACTED] - Direct Examination by Ms. Ashton

1 A Yes, ma'am.

2 Q And is that your name down there?

3 A Yes, ma'am.

4 Q And is this the diagram that you completed with
5 him?

6 A Yes, ma'am.

7 MS. ASHTON: Your Honor, at this time, I'd move to
8 offer State's Exhibit 6 into the record.

9 THE COURT: Is that without objection?

10 MS. DELANY: May I see it, Your Honor?

11 (WHEREUPON the attorneys were looking at the
12 exhibit.)

13 MS. DELANY: Without objection, Your Honor.

14 THE COURT: Without objection.

15 (WHEREUPON State's Exhibit 6 was entered into
16 evidence.)

17 By Ms. Ashton:

18 Q And did you indicate to Ray where your father
19 touched you?

20 A Yes, ma'am.

21 Q Can you show where on this diagram you indicated
22 that?

23 A Right there.

24 Q Which way?

25 A (Pointing.)

Child [REDACTED] - Direct Examination by Ms. Ashton

- 1 Q Okay. Did you have to -- did you see any doctors
2 about this?
- 3 A Yes, ma'am.
- 4 Q Did you meet with the counselor for more than once?
- 5 A Yes, ma'am.
- 6 Q More than one afternoon?
- 7 A Yes, ma'am.
- 8 Q And did she help you deal with this situation?
- 9 A Yes, ma'am.
- 10 MS. ASHTON: Beg the Court's indulgence.
- 11 By Ms. Ashton:
- 12 Q And just so we're clear, this was your room?
- 13 A Yes, ma'am.
- 14 Q But the bed was where?
- 15 A In this area.
- 16 Q Okay. And if -- and you laid -- you said you lay
17 on your right side?
- 18 A Yes, ma'am.
- 19 Q Okay. So your left foot would have been on top?
- 20 A Yes, ma'am.
- 21 Q And were you facing the wall?
- 22 A Yes, ma'am.
- 23 Q Okay. And once again, since late June 2008, have
24 you had to go back to his house?
- 25 A No, ma'am.

Child [REDACTED] - Cross-Examination by Ms. Delany

1 Q And I know this is going to be hard, but can you
2 identify the man who put his finger or thumb in your vagina
3 in the courtroom today?

4 A He's over there.

5 Q And what is he wearing?

6 A He's wearing a Gray suit.

7 Q And with the flower tie?

8 A Yes, ma'am.

9 MS. ASHTON: Your Honor, let the record reflect
10 she's identified Mr. Deveaux as the --

11 THE COURT: The record so reflects the witness
12 identified the defendant.

13 MS. ASHTON: Thank you, Child [REDACTED] please answer any
14 questions the defense may have.

15 THE COURT: Cross-examination.

16 MS. DELANY: Thank you, Your Honor, may it please
17 the Court:

18 **CROSS-EXAMINATION**

19 By Ms. Delany:

20 Q Child [REDACTED] my name is Joanna Delany, and I'm an
21 attorney representing your dad, and I'm just going to ask
22 you some questions.

23 I first want to ask you about when you went to meet
24 with Mr. Ray Olszewski at the ARC. Do you remember that?

25 A Yes, ma'am.

Child [REDACTED] - Cross-Examination by Ms. Delany

- 1 Q Okay. And he started out, he asked you some
2 general questions, about your family, right?
- 3 A Yes, ma'am.
- 4 Q Okay. And you told him that you lived with your
5 mom, and you stayed with your grandmom sometimes, right?
- 6 A Yes, ma'am.
- 7 Q Okay. And he had you spell out the names of all
8 your family members, your brother, your mom, like that,
9 right?
- 10 A Yes, ma'am.
- 11 Q Okay. And you had some problems -- and I know you
12 were ten, but you had some problems spelling your dad's
13 last name, didn't you?
- 14 A I don't know.
- 15 Q You don't know?
- 16 Now, Mr. Ray, he asked you -- he asked you about
17 what we're here about today, what we're in court, for?
- 18 A Can you repeat that?
- 19 Q He asked you about why we're in court, right? That
20 incident?
- 21 A Yes, ma'am.
- 22 Q Okay. And you told him that it happened in your
23 room at your dad's house, right?
- 24 A Yes, ma'am.
- 25 Q Okay. And he asked you to describe the room to

Child [REDACTED]

- Cross-Examination by Ms. Delany

1 him, didn't he?

2 A Yes, ma'am.

3 Q Okay. And you couldn't remember what kind of bed
4 was in there, right?

5 A I don't remember.

6 Q Okay. Did you say it was a twin bed and then it
7 was a queen bed?

8 A I don't remember.

9 Q Okay. But you agree that this happened around the
10 end of June, right?

11 A Yes, ma'am.

12 Q Okay. And you said you were wearing a long
13 nightgown, right?

14 A Yes, ma'am.

15 Q Okay. You said it was like a dress, right?

16 A Yes, ma'am.

17 Q Okay. And he asked you what you were wearing
18 underneath it, right?

19 A Yes, ma'am.

20 Q And you said underwear and a bra, didn't you?

21 A Yes, ma'am.

22 Q Okay. And you said that you were under the covers
23 when your father came in, right?

24 A I don't remember.

25 Q Okay. You said that he put a fan in the window?

Child - Cross-Examination by Ms. Delany

- 1 A Yes, ma'am.
- 2 Q Okay. And you said that he got in the bed with you
- 3 and that he was on top of the covers; is that correct?
- 4 A Yes, ma'am.
- 5 Q Okay. And you told Mr. Ray that you were on your
- 6 side?
- 7 A Yes, ma'am.
- 8 Q And you said that he moved your top leg with his
- 9 foot?
- 10 A Yes, ma'am.
- 11 Q Said that he moved your underwear to the side?
- 12 A Yes, ma'am.
- 13 Q And said that he put his finger in your vagina?
- 14 A Yes, ma'am.
- 15 Q You said that he moved it back and forth?
- 16 A Yes, ma'am.
- 17 Q And asked you did it feel good?
- 18 A Yes, ma'am.
- 19 Q And you said that you said no?
- 20 A Yes, ma'am.
- 21 Q Okay. And you said at that point he stopped and
- 22 took his finger out?
- 23 A Yes, ma'am.
- 24 Q And you said that he told you to put on your shoes?
- 25 A Yes, ma'am.

Child [REDACTED] - Cross-Examination by Ms. Delany

- 1 Q And go outside?
- 2 A Yes, ma'am.
- 3 Q Okay. You said that he didn't do anything with his
- 4 other hand?
- 5 A Yes, ma'am.
- 6 Q Okay. And he didn't do anything with his mouth?
- 7 A Yes, ma'am.
- 8 Q Okay. And you said that y'all went outside?
- 9 A Yes, ma'am.
- 10 Q On the side of the -- over by the garage?
- 11 A Yes, ma'am.
- 12 Q And he told you not to tell anybody?
- 13 A Yes, ma'am.
- 14 Q Okay. And then y'all went back inside?
- 15 A Yes, ma'am.
- 16 Q Okay. And you said you didn't tell your mom right
- 17 away?
- 18 A Yes, ma'am.
- 19 Q You said you told her the next time that you were
- 20 going to visitation at your father's?
- 21 A Yes, ma'am.
- 22 Q Okay. And she told you to go ahead on there?
- 23 A Yes, ma'am.
- 24 Q And act like nothing happened?
- 25 A Yes, ma'am.

Child [REDACTED] - Cross-Examination by Ms. Delany

- 1 Q And then she called the police?
- 2 A Yes, ma'am.
- 3 Q And so you went to his house?
- 4 A Yes, ma'am.
- 5 Q And the police showed up?
- 6 A Yes, ma'am.
- 7 Q And they talked to your dad?
- 8 A Yes, ma'am.
- 9 Q And they talked to you?
- 10 A Yes, ma'am.
- 11 Q And you said that you didn't have any time with
- 12 your dad before the police showed up?
- 13 A No, ma'am.
- 14 Q That's what you said, right? In this ARC
- 15 interview?
- 16 A Can you repeat the question?
- 17 Q When you were talking to Mr. Olszewski, Mr. Ray,
- 18 did you tell him you didn't have any time alone with your
- 19 dad before the police showed up?
- 20 A Did I have any time alone?
- 21 Q Right.
- 22 A I did.
- 23 Q You did?
- 24 A Yes, ma'am.
- 25 Q Did you tell Mr. Ray that his granddaughter was

Child [REDACTED] - Cross-Examination by Ms. Delany

1 there the whole time?

2 A Yes, ma'am.

3 Q Okay. And did you tell Mr. Ray after that, after
4 the night he talked to you by the garage, he didn't talk to
5 you about it again?

6 A No, ma'am.

7 Q Okay. And then I want to talk to you, just to back
8 up and go over a couple of things that you said before. So
9 you said that you told your father that you were going to
10 bed?

11 A Yes, ma'am.

12 Q Okay. And he said I'll be there in a minute?

13 A Yes, ma'am.

14 Q And you thought that that was weird? Different?

15 A Yes, ma'am.

16 Q Okay. You said that he came in the room and got in
17 the bed with you.

18 A Yes, ma'am.

19 Q Okay. And you can't remember if you were under the
20 covers or over the covers; is that right?

21 A Yes, ma'am.

22 Q Okay. And that he put his thumb in your vagina?

23 A Yes, ma'am.

24 Q And he told you to put on your shoes and go
25 outside?

Child [REDACTED] - Cross-Examination by Ms. Delany

1 A Yes, ma'am.

2 Q Okay. Y'all went outside and he told you not to
3 tell.

4 A Yes, ma'am.

5 Q Okay. And you said that you told your father or
6 mother before your next visit because you were scared that
7 it was going to happen again?

8 A Yes, ma'am.

9 Q Okay. After you told her you still had to go over
10 to your father's that day, right?

11 A Yes, ma'am.

12 Q Okay. And then the police showed up.

13 A Yes, ma'am.

14 Q Right. Okay. And then you said that when the
15 police showed up, your father said, Why did you tell?

16 A Yes, ma'am.

17 Q Okay. And I think Ms. Kathryn -- Ms. Ashton asked
18 you about counseling with Ms. Phipps. You know Ms. Phipps,
19 right?

20 A Yes, ma'am.

21 Q Okay. And so you met with her -- how many times do
22 you think you've met with her?

23 A I don't know.

24 Q Okay. But a lot, right?

25 A Yes, ma'am.

Child [REDACTED] - Cross-Examination by Ms. Delany

- 1 Q Okay. And she saw you for counseling, right?
- 2 A Yes, ma'am.
- 3 Q But she also talked to you about what it's going to
- 4 be like in court, right?
- 5 A Yes, ma'am.
- 6 Q And she talked to you about how to act and behave
- 7 in court, right?
- 8 A Yes, ma'am.
- 9 Q Okay. And she told you how to dress, to dress
- 10 appropriately?
- 11 A Yes, ma'am.
- 12 Q Okay. And she told you that I was going to be
- 13 asking you some questions?
- 14 A Yes, ma'am.
- 15 Q Okay. And she told you how to respond to those
- 16 questions?
- 17 A Yes, ma'am.
- 18 Q Okay. And I think she gave you some reading
- 19 exercises if you got anxious, nervous, did she do that?
- 20 A Yes, ma'am.
- 21 Q Okay. And she brought you into the courtroom and
- 22 let you look around, right?
- 23 A Yes, ma'am.
- 24 Q Did she have you sit up on the witness stand like
- 25 you're doing now?

Child [REDACTED] - Cross-Examination by Ms. Delany

- 1 A Yes, ma'am.
- 2 Q Okay. Did she give you directions on how to talk
3 to the jury?
- 4 A I don't remember.
- 5 Q You don't remember. Now, you've met with -- I
6 think you call them Ms. Kathryn and Ms. Nicole about the
7 case, right?
- 8 A Yes, ma'am.
- 9 Q Okay. And you've met to talk to them about it --
10 about the case, right?
- 11 A Yes, ma'am.
- 12 Q Okay. And you guys talked about what was going to
13 happen in court, right?
- 14 A Yes, ma'am.
- 15 Q And what you were going to say in court, right?
- 16 A What do you mean what was I going to say?
- 17 Q Did you -- did you talk about you getting up here
18 and testifying?
- 19 A Yes, ma'am.
- 20 Q Okay. And you've met with them more than once
21 about that, right?
- 22 A Yes, ma'am.
- 23 Q Okay. How many times have you met with them about
24 that?
- 25 A I don't remember.

Child [REDACTED] - Redirect Examination by Ms. Ashton

1 Q Would you say it's more than twice?

2 A Yes, ma'am.

3 Q More than five times?

4 A I don't remember.

5 Q Okay. When was the last time that you met with
6 them about that?

7 A This past Monday.

8 Q Okay. And when was the last time that you met with
9 Ms. Phipps about court?

10 A I don't remember.

11 Q Was it a while -- has it been a long time?

12 A Yes, ma'am.

13 Q Okay. And I want to ask you just one more thing
14 about the nightgown that you were wearing. What did you do
15 with it when you left your father's house?

16 A I put it back in the drawer.

17 Q Okay. I don't have any more questions for you

18 Child [REDACTED]

19 THE COURT: Redirect?

20 MS. ASHTON: Beg the Court's indulgence.

21 **REDIRECT EXAMINATION**

22 By Ms. Ashton:

23 Q Just a couple of questions. Do you remember how
24 long that nightgown was, Child [REDACTED]

25 A It was below my knees.

Child [REDACTED] - Recross-Examination by Ms. Delany

1 Q Below your knees. All the way to your ankles or
2 just right below the knees?

3 A Just below the knees.

4 Q Okay. And it's been a long time since you've
5 talked to Ray, hasn't it?

6 A Yes, ma'am.

7 Q Almost three years?

8 A Yes, ma'am.

9 Q And has anyone -- she went through some people that
10 you've talked to about this case and met with. Has anyone
11 ever told you to say anything but the truth?

12 A Can you repeat the question?

13 Q Has anyone ever told you to say anything but the
14 truth about this case?

15 A No, ma'am.

16 Q Thank you.

17 THE COURT: Is that it? Ms. Ashton? Finished?

18 MS. ASHTON: Yes, Your Honor.

19 THE COURT: Anything further?

20 MS. DELANY: Beg the Court's indulgence, Your
21 Honor.

22 Very briefly, Your Honor.

23 **RECROSS-EXAMINATION**

24 By Ms. Delany:

25 Q **Child [REDACTED]** when you came to meet with Ms. Kathryn

Kathy Myers - Direct Examination by Ms. Simpson

1 and Ms. Nicole, was your mom with you?

2 A Yes, ma'am.

3 Q Was she with you every time you met with them?

4 A Yes, ma'am.

5 Q Okay. Nothing further.

6 THE COURT: All right. Thank you very much.

7 All right. Child you can come down. Thank you
8 very much.

9 Next witness.

10 MS. SIMPSON: State calls Kathy Myers.

11 THEREUPON,

12 KATHY MYERS,

13 after being duly sworn, testified as follows:

14 THE CLERK: Please have a seat and state your full
15 name for the record.

16 THE WITNESS: Kathy Myers.

17 DIRECT EXAMINATION

18 By Ms. Simpson:

19 Q Good morning, Ms. Myers?

20 A Good morning.

21 Q How old are you?

22 A Excuse me?

23 Q How old are you?

24 A Thirty-eight.

25 Q And are you married?

Kathy Myers - Direct Examination by Ms. Simpson

- 1 A Yes, ma'am.
- 2 Q Who's your husband?
- 3 A John Myers.
- 4 Q And do y'all have any children?
- 5 A No, not together.
- 6 Q Not together. Do you have any children, generally?
- 7 A Yes, ma'am.
- 8 Q What are their names and ages?
- 9 A Child Child she's 14 and Eric Dorman, he's
10 18.
- 11 Q And what's his name again? And speak up just a
12 little bit. I'm having a hard time hearing you?
- 13 A Eric Dorman. I'm a little horse.
- 14 Q And can you explain the reasons for their different
15 last names.
- 16 A They have different fathers.
- 17 Q Okay. And have you always lived in Columbia?
- 18 A No, ma'am, I lived in Eastover.
- 19 Q In Eastover, which is between the Columbia and
20 Sumter area?
- 21 A Yes, ma'am.
- 22 Q Where are you living now?
- 23 A .
- 24 Q . And who all lives with you?
- 25 A My husband and my daughter.

Kathy Myers - Direct Examination by Ms. Simpson

- 1 Q Your daughter, Child
- 2 A Yes, ma'am.
- 3 Q And are you currently working?
- 4 A No, ma'am, I'm unemployed.
- 5 Q Are you in school?
- 6 A Yes, ma'am.
- 7 Q What are you in school for?
- 8 A Cosmetology.
- 9 Q And prior to going to school for cosmetology, had
- 10 you worked before?
- 11 A Yes, ma'am.
- 12 Q What kind of things have you done?
- 13 A I'm a licensed CNA.
- 14 Q So why the switch to a student in cosmetology?
- 15 A Something different because I was doing CNA. For
- 16 about 11 years up in Orangeburg.
- 17 Q And you enjoy it?
- 18 A Yes, ma'am.
- 19 Q Now, the victim in this case, Child that's your
- 20 daughter?
- 21 A Yes, ma'am.
- 22 Q Okay. All right. And do you know the defendant?
- 23 A Yes, ma'am.
- 24 Q How do you know him?
- 25 A We dated.

Kathy Myers - Direct Examination by Ms. Simpson

- 1 Q You dated?
- 2 A Yes, ma'am.
- 3 Q And what is his relationship to Child
- 4 A He's her biological father.
- 5 Q He's the biological father?
- 6 A Yes, ma'am.
- 7 Q And can you point him out for the jury and just
- 8 tell us who her father is?
- 9 A He's sitting over there, Charles Deveau.
- 10 Q What's he wearing?
- 11 A Like a Gray suit and a flowerdy tie.
- 12 MS. SIMPSON: Okay. Let the record reflect that
- 13 she's identified the defendant.
- 14 THE COURT: She's identified the defendant.
- 15 By Ms. Simpson:
- 16 Q Now were y'all ever married?
- 17 A No, ma'am.
- 18 Q And did y'all ever live together?
- 19 A No, ma'am.
- 20 Q And how long have you been married to John Myers
- 21 now?
- 22 A About four years.
- 23 Q About four years. When is DaShawna's birthday?
- 24 A August 29.
- 25 Q Okay. So she --

Kathy Myers - Direct Examination by Ms. Simpson

1 A Yeah.

2 Q So she just had a birthday?

3 A Yes.

4 Q And now Kathy, I want to turn your attention back
5 to June and July of 2008, specifically to July 11th, 2008,
6 on the day that Child disclosed to you that she'd been
7 sexually abused?

8 MS. DELANY: Your Honor, Counsel is testifying. I
9 object to leading.

10 THE COURT: Don't lead the witness.

11 MS. SIMPSON: Thank you, Your Honor.

12 By Ms. Simpson:

13 Q Can you tell the jury about that day?

14 A We was just leaving our -- well my grandmother's
15 house. We stayed over there until the time to go meet at a
16 destination point for her visit with her father. We was on
17 our way and we stopped at a stop sign at the intersection
18 of Garners Ferry --

19 Q And let me back you up just a little bit and slow
20 you down. You said you were on the way to the destination
21 point. What was that destination point?

22 A The Exxon station.

23 Q The Exxon station, where is that located?

24 A It's McCords Ferry and Garners Ferry -- I think
25 it's Garners Ferry, something like that.

Kathy Myers - Direct Examination by Ms. Simpson

1 Q Okay. And so y'all were on the way, and you were
2 saying that you pulled up to a stop sign?

3 A Yeah, at a caution light on 601.

4 Q What happened then?

5 A She disclosed to me that her -- that she was
6 sexually abused.

7 Q And you were actually headed there to meet the
8 defendant for visitation?

9 MS. DELANY: She's still leading, Your Honor.

10 By Ms. Simpson:

11 Q Where were you on the way to?

12 A Go for her, Child to visit her father.

13 Q And once she told you what happened to her at her
14 father's home, what was your reaction?

15 A I cried. I was upset and I asked myself, why would
16 he do something like that to her; and then I just
17 immediately pulled over to the side of the road, and I
18 called 911.

19 Q Okay. And how old was Child at this time?

20 A I think she was about ten.

21 Q Okay. And did you call 911 right away?

22 A No, ma'am, I tried to call my husband first. I
23 couldn't reach him. I called a good friend and I couldn't
24 reach her, so I called 911.

25 Q And did you have a little bit of time to kind of

Kathy Myers - Direct Examination by Ms. Simpson

1 collect your thoughts?

2 A Yes, ma'am.

3 Q And figure out what you were going to do?

4 A Yes, ma'am.

5 Q And when you spoke with 911, did you -- what did
6 you tell them?

7 A I told them my daughter has visitation with her
8 father every other weekend. I was court ordered to take
9 her over there and she just disclosed to me -- without
10 giving me the details.

11 Q She disclosed to you that she'd been --

12 A Sexually abused.

13 Q And what did they say they would do?

14 A She said just -- I told her we were going to the
15 Exxon station and she said well the officer will meet you
16 there.

17 Q Okay. So you were under court order --

18 A Yes, ma'am.

19 Q -- to meet. When you arrived -- let me back up
20 just a little bit.

21 The officers were supposed to meet you there. Did
22 you want to have to drop Child [REDACTED] off to the defendant?

23 A No, I didn't.

24 Q What were you hoping?

25 A That the officer would meet me there before he got

Kathy Myers - Direct Examination by Ms. Simpson

1 there.

2 Q And once you got to Exxon station, what happened?

3 A The officer came -- he was there first, he got
4 there first and the officer came like --

5 Q And let me back you up. When he got there and by
6 he, who do you mean?

7 A Her father.

8 Q What happened when he got there? Or was he already
9 there? Tell us a little more about that?

10 A When I pulled up he was pulling up at the same
11 time.

12 Q Okay. So y'all got there about the same time?

13 A Yes, ma'am.

14 Q And what did you do?

15 A I told her to go, don't say nothing, just go -- I
16 mean, I was court ordered to take her there, so I didn't
17 really have a choice but to drop her off.

18 Q And did she know that you were going to be there to
19 get her?

20 A Yes.

21 Q And what happened after Child [REDACTED] got into the car
22 with him and left.

23 A The officer came afterwards and I told him what
24 happened and he told me -- asked me where did he live and I
25 directed him -- I directed the officer to his house.

Kathy Myers - Direct Examination by Ms. Simpson

1 Q And by directed, what do you mean?

2 A He followed me to his house.

3 Q He followed you, so you were in your own car?

4 A Yes, ma'am.

5 Q And when you arrived, what happened? When you got
6 to the -- let me back up. About how long was it, if you
7 recall, between the defendant picking Child up and the
8 officers arriving? Do you remember how long it was?

9 A Not exactly.

10 Q Not exactly. And how far was a Exxon gas station
11 from his home?

12 A I'd say about a mile.

13 Q Okay. So not very far?

14 A No.

15 Q And when y'all got there, the officer pulled up
16 too, what happened?

17 A Could you repeat the question?

18 Q When y'all -- when y'all got to the defendant's
19 home, what happened?

20 A The officer asked me do I know whether he was
21 inside. I said no. And he told me to go ahead and -- he
22 asked me to stay in the car, and he went to the door. He
23 didn't get an answer when he knocked on the door, so he,
24 you know, waited a few minutes. He kept knocking. He
25 couldn't get an answer.

Kathy Myers - Direct Examination by Ms. Simpson

1 Q Slow down just a little bit, you're getting fast.
2 And speak up because I'm having a hard time following too.

3 A When we got there, he told me to stay in the car
4 and he told me to -- he just said stay in the car. He was
5 going to the door. He knocked on the door a few times and
6 he didn't get an answer. And then he came back to the car
7 and asked me, He's not there.

8 I said, He should be because I just dropped her
9 off, and I know they was headed back to his house.

10 So when the officer didn't get an answer at the
11 front door, he went around back and that's where he found
12 them.

13 Q Who did he find? Who did he run into? Who did he
14 talk to?

15 A Child [REDACTED] and her father.

16 Q Okay. And you were still in your car?

17 A Yes, ma'am.

18 MS. DELANY: She's still leading, Your Honor.

19 MS. SIMPSON: I'll rephrase it.

20 MS. DELANY: She's leading throughout.

21 THE COURT: Rephrase it.

22 By Ms. Simpson:

23 Q What happened after the officer spoke with the
24 defendant and Child [REDACTED] What did you do?

25 A I just -- I stayed in my car. I didn't get out of

Kathy Myers - Direct Examination by Ms. Simpson

1 my car.

2 Q And did she stay at the home or did she go with
3 you?

4 A She went with me.

5 Q Once y'all left, where did you go? Or do you
6 recall where you went?

7 A Not -- I'm not really sure.

8 Q You don't remember?

9 A No.

10 Q Was Child ever taken to the hospital?

11 A Yes, she was.

12 Q And do you recall when that would have been?

13 A It was the same night.

14 Q And why did you take her to the hospital?

15 A Because I wasn't sure what he had had done.

16 Q Okay. Did anyone tell you to take her there? Or
17 did you just decide?

18 A That was my own decision.

19 Q Okay. Once Child disclosed to you that she'd
20 been abused, what was your primary concern?

21 A For her safety.

22 Q And what actions did you take, if any to protect
23 your daughter?

24 A I got a restraining order.

25 Q And to your knowledge, did Child ever receive

Kathy Myers - Direct Examination by Ms. Simpson

1 any counseling or anything? What did you do -- what was
2 the time period after the disclosure and the law
3 enforcement got involved? Was anybody else involved in
4 this case?

5 A Yes, ma'am, I took her to counseling.

6 Q To counseling?

7 A Yes, ma'am.

8 Q And why did you want to take her to counseling?

9 A Because an ordeal like that, you don't know how a
10 child's mind would be.

11 Q And who was responsible for taking her to
12 counseling?

13 A I was.

14 Q Do you remember who all you took her to see?

15 A She saw Ray at the ARC and Ms. Amy and the -- I
16 don't know the first name, a guy named -- the nurse at the
17 ARC.

18 Q Okay. During the -- but the nurse and Ray didn't
19 actually give her counseling?

20 A No.

21 Q Has Child [REDACTED] ever been removed from your home?

22 A No, ma'am.

23 Q And have you had any contact with the defendant
24 since this incident?

25 A No, ma'am.

Kathy Myers - Cross-Examination by Ms. Delany

1 MS. SIMPSON: Beg the Court's indulgence.

2 By Ms. Simpson:

3 Q And I think I talked over you just a little bit or
4 probably interrupted you earlier, when is DaShawna's
5 birthday?

6 A August 29th.

7 Q Of what year?

8 A August.

9 Q 29th of?

10 A '97.

11 Q '97.

12 MS. SIMPSON: No further questions at this time.

13 (WHEREUPON a juror raised her hand.)

14 THE BAILIFF: Your Honor.

15 THE COURT: Go ahead.

16 (WHEREUPON one juror took a break at 11:12 a.m.)

17 THE COURT: Cross-examination.

18 MS. DELANY: Please the Court, Your Honor.

19 **CROSS-EXAMINATION**

20 By Ms. Delany:

21 Q Ms. Myers, you've met Ms. Ashton and Ms. Simpson
22 previously, correct?

23 A Yes.

24 Q And you've met them up here at the courthouse?

25 A Yes.

Kathy Myers - Cross-Examination by Ms. Delany

- 1 Q And you've met with them several times?
- 2 A Yes, ma'am.
- 3 Q Because they've been wanting to talk to you and
- 4 Child [REDACTED] about the case?
- 5 A Yes, ma'am.
- 6 Q And every time they've talked to her, you've been
- 7 there?
- 8 A Yes, ma'am.
- 9 Q You've been the one to bring her here?
- 10 A Yes, ma'am.
- 11 Q And you brought her here today?
- 12 A Yes, ma'am.
- 13 Q Now, you said that you were on your way to the
- 14 Exxon station?
- 15 A Yes, ma'am.
- 16 Q Okay. To drop Child [REDACTED] off for visitation?
- 17 A Yes, ma'am.
- 18 Q And you said that on the way there, she told you
- 19 she'd been sexually abused?
- 20 A Yes, ma'am.
- 21 Q By her father?
- 22 A Yes, ma'am.
- 23 Q You said that you tried to call your husband?
- 24 A Yes, ma'am.
- 25 Q You said you tried to call your friend?

Kathy Myers - Cross-Examination by Ms. Delany

1 A Yes, ma'am.

2 Q And then you called 911?

3 A Yes, ma'am.

4 Q You went ahead and took her to the Exxon?

5 A Yes, ma'am.

6 Q Okay. To meet her father?

7 A Yes, ma'am.

8 Q You told her to go ahead on home with him?

9 A Yes, ma'am.

10 Q And don't say anything?

11 A Yes, ma'am.

12 Q Okay. I want to talk to you about that 911 call.

13 You were the one who called law enforcement about this?

14 A Yes, ma'am.

15 Q Okay. And you called 911 and you talked to the 911

16 operator?

17 A Yes, ma'am.

18 Q Okay. And the first thing that you said when you

19 talked to the 911 operator was, Child [REDACTED] has visitation

20 with her father?

21 A Yes, ma'am.

22 Q Okay. Every other weekend?

23 A Yes, ma'am.

24 Q And you said -- and then you said, She just told me

25 he's been sexually abusing her?

Kathy Myers - Cross-Examination by Ms. Delany

- 1 A Yes, ma'am.
- 2 Q And then you said, I need a police report taken
3 out.
- 4 A Yes, ma'am.
- 5 Q You didn't say, I need help, did you?
- 6 A No, ma'am.
- 7 Q You didn't say, I need help to come get my child?
- 8 A No, ma'am.
- 9 Q You didn't say, My child is in danger?
- 10 A No, ma'am.
- 11 Q What you said was that you needed a police report
12 taken out.
- 13 A Yes, ma'am.
- 14 Q You asked for an officer to come out?
- 15 A Yes, ma'am.
- 16 Q To meet you at the Exxon.
- 17 A Yes, ma'am.
- 18 Q You didn't ask for an officer to go to his house?
- 19 A That was the officer's decision to go to his house.
- 20 Q When you called 911, you asked for an officer to
21 meet you at the Exxon?
- 22 A Yes, ma'am.
- 23 Q Not at his house?
- 24 A No, ma'am.
- 25 Q And during that 911 call, you brought up the Court

Kathy Myers - Cross-Examination by Ms. Delany

1 order for visitation again.

2 A Yes, I did.

3 Q And again, you said every other weekend.

4 A Yes, it was.

5 Q They asked you, Is this your child he's abusing.

6 And you said, yes?

7 A Yes.

8 Q You said, Yes; and then you said, And I have full

9 custody of her?

10 A I do.

11 Q That's what you said to the 911 operator; isn't it?

12 A I don't remember.

13 Q You asked her how long did they think it was going

14 to take?

15 A Yes, I did.

16 Q And they said they didn't know.

17 A I don't remember what they said.

18 Q They said it depends on how busy they are. Is that

19 what she told you?

20 A I don't remember.

21 Q And you stayed at the Exxon and waited for them?

22 A Yes, I did.

23 Q And you didn't know how long it would take for them

24 to get there?

25 A No, ma'am.

Kathy Myers - Cross-Examination by Ms. Delany

- 1 Q After you had just dropped daughter off?
- 2 A Yes, ma'am.
- 3 Q To go home with him?
- 4 A Yes, ma'am.
- 5 Q You brought up that visitation order twice during
- 6 that 911 call; is that fair to say?
- 7 A I don't remember.
- 8 Q There's two parties to that visitation order, you
- 9 and Charles Deveau; is that right?
- 10 A Yes.
- 11 Q You were upset about that visitation order?
- 12 A I was upset about the situation, that it happened.
- 13 Q You were upset about that visitation order because
- 14 you got put in jail for violating it?
- 15 MS. SIMPSON: Objection, Your Honor.
- 16 THE COURT: Overruled. Ask your question.
- 17 By Ms. Delany:
- 18 Q You were upset about that visitation order because
- 19 you were put in jail for violating it?
- 20 A Yes, I was. Twice.
- 21 Q You didn't like being in jail?
- 22 A Who do?
- 23 Q You had to get booked into the jail?
- 24 A Yes.
- 25 Q They searched you?

Kathy Myers - Cross-Examination by Ms. Delany

1 A Yes.

2 Q You didn't have any privacy?

3 A No, ma'am.

4 Q They made you sleep on a cot?

5 MS. SIMPSON: Your Honor, I'm clearly going to
6 object at this point with respect to this line of
7 questioning.

8 THE COURT: Sustained.

9 By Ms. Delany:

10 Q Now, you met Officer Hatfield at the Exxon; is that
11 right?

12 A I can't remember his name. It was the officer that
13 came out.

14 Q You told him that you got a phone call from your
15 daughter saying she was sexually abused?

16 A No, I didn't.

17 Q You took Child [REDACTED] to the ARC; is that right?

18 A Yes, ma'am.

19 Q And did they have you fill out some forms while you
20 were there?

21 A Yes, ma'am.

22 Q Okay. And did you fill out a form called a
23 Caregiver Questionnaire?

24 A I don't remember.

25 Q Okay. This was a form that was asking about who

Kathy Myers - Cross-Examination by Ms. Delany

1 she lives with? Where does she go to school? Does she
2 have any allergies? Does that sound familiar?
3 A I don't remember.
4 MS. DELANY: Beg the Court's indulgence, Your
5 Honor.
6 Permission to approach the witness?
7 By Ms. Delany:
8 Q Does that look familiar to you?
9 A Yes, yes, ma'am.
10 Q Okay. Can you read me what it says at the top?
11 Very top?
12 A Assessment and Resource Center --
13 MS. SIMPSON: Your Honor, I'm going to object. If
14 she's going to be testifying from an actual document
15 without it being introduced into evidence.
16 THE COURT: You can't do that.
17 MS. DELANY: Your Honor, I was just asking if she
18 remembered it.
19 THE COURT: What is it? Did you show it to
20 Ms. Simpson?
21 MS. SIMPSON: I saw it, Your Honor.
22 THE COURT: You know what she's asking her.
23 MS. SIMPSON: Yes, Your Honor.
24 THE COURT: All right.
25 MS. SIMPSON: And I'm just saying that the witness

Kathy Myers - Cross-Examination by Ms. Delany

1 had already said that she --

2 THE COURT: I understand. I understand. You can't
3 just read it.

4 MS. DELANY: And Your Honor, I was just trying to
5 refresh her recollection.

6 THE COURT: That's fine.

7 By Ms. Delany:

8 Q When you took her to the ARC, did they ask you how
9 often did the child see the person suspected of harming
10 her? Does that sound like a question they asked you?

11 A Repeat the question.

12 Q Did they ask you how often does the child see the
13 person suspected of harming her?

14 A Yes -- I don't remember.

15 Q Is that a yes or a you don't remember?

16 A They may have asked me, I don't remember.

17 Q Ms. Myers, what you're telling us is that Child
18 told you her father had sexually abused her, correct?

19 A Yes.

20 Q And then you dropped her off to go see him?

21 A Yes.

22 MS. DELANY: Beg the Court's indulgence, Your
23 Honor.

24 Nothing further, Your Honor.

25 THE COURT: Redirect?

Kathy Myers - Redirect Examination by Ms. Simpson

1 MS. SIMPSON: Briefly, Your Honor. May we approach
2 or take up a matter of law prior to this witness's
3 redirect?

4 THE COURT: Approach the bench.

5 (WHEREUPON, there was a bench conference out of the
6 hearing of the jury and the Court Reporter.)

7 MS. SIMPSON: May it please the Court?

8 THE COURT: Yes, ma'am.

9 **REDIRECT EXAMINATION**

10 By Ms. Simpson:

11 Q Kathy, how long ago did this incident happen?

12 A About three years ago.

13 Q About three years ago? And there was a visitation
14 order in place, correct?

15 A Yes, there was.

16 Q Do you remember the date when that first -- when
17 that visitation order was originally issued?

18 A I can't recall.

19 Q Was it a long time ago?

20 A It's been an order for a long time.

21 Q A long time. And Counsel brought up the fact that
22 you were unhappy with the visitation order?

23 A Yes, I was.

24 Q What reason did you have to be unhappy with that
25 order?

Kathy Myers - Redirect Examination by Ms. Simpson

1 MS. DELANY: Objection, Your Honor.

2 THE COURT: What's the objection?

3 MS. DELANY: Your Honor --

4 THE COURT: Yes, ma'am?

5 MS. DELANY: Your Honor, it's not relevant. It
6 goes into things that we talked about in pretrial. I have
7 numerous objections, and I think we have a matter of law.

8 THE COURT: You haven't told me what your objection
9 is. You asked her about it.

10 MS. DELANY: Your Honor, Ms. Simpson asked her
11 about it originally.

12 THE COURT: You asked this witness on
13 cross-examination.

14 MS. SIMPSON: Your Honor, on redirect -- on direct.
15 I merely asked her was there a visitation order in place.
16 Very limited because of these matters that we discussed.
17 However --

18 THE COURT: Overruled. Go ahead.

19 By Ms. Simpson:

20 Q Now, let me back up just a little bit. That
21 visitation order was in place a long time ago?

22 A Yes, ma'am.

23 Q All right. Did you -- what reasons did you have
24 for being upset with the visitation order? Why did you not
25 want Child █████ to have visitation with her father?

Kathy Myers - Redirect Examination by Ms. Simpson

1 A Are you asking me about this time? This recent
2 time or --

3 MS. DELANY: Objection, Your Honor, and this would
4 be 403 and 404(b).

5 THE COURT: All right. Ladies and gentlemen, let
6 me ask you to go to the jury room. I'll get this
7 straightened out with the attorneys. Just relax for a few
8 minutes. Don't discuss the case among yourselves while
9 you're in the jury room.

10 (WHEREUPON the jury left the courtroom at 11:32
11 a.m.)

12 THE COURT: What's the objection?

13 MS. DELANY: They're trying to get into prior bad
14 acts. Impeachment does not open the door to that. I'm
15 citing you Holden v. Kentucky. The exposure of a witness's
16 motivation to testifying is a proper and important function
17 of the institution. The constitutionally protected right
18 of cross-examination. I'm citing you 608(c) that we have a
19 right to cross-examine on any motive to misrepresent bias
20 or prejudice.

21 I'm citing, 607, credibility of any party may be
22 attacked by any party or the credibility of any witness.
23 Your Honor, there's a reason that when we start a trial, we
24 get a rap sheet for every witness. I mean that's very
25 relevant. In a snitch trial, we get to ask -- you know,

Kathy Myers - Redirect Examination by Ms. Simpson

1 we're going to get a reduction in their sentence. We need
2 to ask them what they were doing in jail, what they were
3 doing in prison. You know, they brought it up. They
4 brought up that visitation order to explain why she went
5 ahead and dropped her off. That's how they brought it up
6 and that was what they asked. They asked her, you went
7 ahead and dropped her off because of that visitation order.
8 We have a right to cross-examine her on the fact that she
9 went to jail in 2008. She went to jail in 2008. That does
10 not open up the door to ten years worth of DSS history.

11 THE COURT: Well, she can testify why she went to
12 jail.

13 MS. DELANY: Yes, sir, absolutely.

14 THE COURT: She can explain that.

15 MS. DELANY: She can -- I mean we have no problem
16 with her explaining. We're talking about a visitation
17 order. We're not talking about she -- the State wants to
18 get into the defendant's wife being accused of child abuse
19 against Child [REDACTED] in 2000. That's what they're trying to
20 get into. That is not relevant and that is so prejudicial.

21 THE COURT: I agree with you.

22 MS. DELANY: We have no objection to them
23 explaining why she went to jail at all, but we would object
24 to her saying anything about 2000, the child abuse.

25 MS. SIMPSON: If I may be heard briefly, Your

Kathy Myers - Redirect Examination by Ms. Simpson

1 Honor. With respect to the question of this witness and --
2 which is why I approached prior to redirect because I knew
3 that the defense -- and we all knew that they were walking
4 a very fine line with respect to opening the door. I
5 limited my direct, was there a visitation order in place
6 and they could have said were you held in contempt. That's
7 fine. But she went into, were you upset about visitation.
8 Were you unhappy about the visitation, all these things
9 that she was, which she'd said, yes I was upset. Yes, I
10 was unhappy, but I think she should be allowed to state the
11 reason that she was upset about that.

12 THE COURT: Prior bad acts -- if it's prior bad
13 acts, I'm not going to allow it.

14 MS. SIMPSON: Your Honor, with respect to -- and we
15 ran into this last trial as well, if I limit it to, did you
16 have a good reason for not wanting Child [REDACTED] to go over
17 there, because I think we're entitled to go there. They
18 opened the door. That contempt order for violation --

19 THE COURT: I thought you were going to ask her
20 about the contempt, why she was held in contempt.

21 MS. SIMPSON: Well, Your Honor, if I could give you
22 just a little bit of the timeline because --

23 THE COURT: Why don't you ask her.

24 ///

25 ///

Kathy Myers - Examination - In Camera - by Ms. Simpson

EXAMINATION - IN CAMERA

By Ms. Simpson:

Q Ms. Myers, did the defendant file a complaint against you in family court to for failing to comply with visitation?

A Yes, ma'am.

Q And how long had it been since he'd actually been visiting with Child under that order before -- before he filed that complaint?

A None. He didn't visit with her.

Q He didn't visit with her -- I mean when you say none, is that a matter of minutes, hours, days, weeks, years?

A Years.

Q And do you have an approximation on how many years or you just know it?

A I don't remember.

Q You don't remember. And did this complaint -- what had you done before this complaint with respect -- did you ask the defendant for anything?

A No, ma'am, not that I remember.

Q Did you file for anything?

A More child support.

Q So you filed for child support before he filed a complaint against you?

Monica Johnson - Direct Examination by Ms. Simpson

1 Next witness.

2 MS. SIMPSON: State calls Corporal Monica Johnson.

3 THEREUPON,

4 MONICA JOHNSON,

5 after being duly sworn, testified as follows:

6 THE CLERK: Please have a seat and state your full
7 name for the record.

8 THE WITNESS: Monica Johnson.

9 **DIRECT EXAMINATION**

10 By Ms. Simpson:

11 Q Good afternoon, Ms. Johnson. What is your
12 occupation?

13 A I'm a deputy with Richland County Sheriff's
14 Department.

15 Q Okay. And what's your title there?

16 A I'm a senior corporal, line supervisor.

17 Q And, I'm sorry, what law enforcement agency did you
18 say you worked for?

19 A The Richland County Sheriff's Department.

20 Q And how long have you been with Richland County?

21 A Almost nine years.

22 Q Nine years. And did you work in law enforcement
23 before that?

24 A No.

25 Q Okay. What are your present duties with the

Monica Johnson - Direct Examination by Ms. Simpson

1 sheriff's department?

2 A I'm a road supervisor.

3 Q And as a road supervisor, what do you do?

4 A I respond to calls and any administrative issues
5 that need to be taken care of.

6 Q Do you respond to all types of calls as a road
7 deputy?

8 A Yes.

9 Q And were you employed in your present capacity back
10 on July 11th of 2008?

11 A Yes.

12 Q And did you have occasion to become involved in
13 this case?

14 A Yes.

15 Q All right. When did you become involved?

16 A Possibly ten minutes after the first officer was on
17 the scene.

18 Q Okay. And what was the date of that?

19 A It was the 11th of July, 2008.

20 Q And do you recall exactly how you were brought into
21 the case?

22 A I was dispatched as a backup unit.

23 Q Okay. So there was another officer already
24 responding --

25 A Yes.

Monica Johnson - Direct Examination by Ms. Simpson

1 Q -- essentially, and you were backup?

2 A Yes.

3 Q When you -- where did you go when you received the

4 call?

5 A Where was I dispatched to?

6 Q Yes.

7 A I was dispatched to the address [REDACTED] [REDACTED] [REDACTED]

8 [REDACTED].

9 Q And is that here in Richland County?

10 A Yes.

11 Q And when you arrived, who all was there?

12 A When --

13 Q At the location?

14 A When I arrived, the original officer was there. I

15 believe the victim's mother was there. The victim's father

16 was there, the victim and there was one other unidentified

17 person. I never identified them.

18 Q Okay. And as a responding officer to the scene,

19 what was your job? What were you supposed to do?

20 A In my capacity, all I was supposed to do was be the

21 support officer and assist with anything that the

22 responding officer needed, whether it be questioning

23 someone else involved or helping with paperwork.

24 Q And did you, in fact, insist -- I'm sorry, assist

25 the other officer in this case?

Monica Johnson - Direct Examination by Ms. Simpson

- 1 A I did.
- 2 Q And what did you do?
- 3 A I spoke with the victim.
- 4 Q Did you speak to anyone else while you were out
- 5 there?
- 6 A I spoke to the mom and the dad briefly, but most of
- 7 my time was spent with the victim.
- 8 Q And with these type of cases, once you respond,
- 9 where does that information ultimately go? Do you keep the
- 10 case or what happens to it?
- 11 A In this type of case when there's no -- when it's
- 12 not freshly committed, it's sent to our investigators to be
- 13 investigated fully.
- 14 Q Explain freshly committed for the jury?
- 15 A If there's no -- in a sense in this case, because
- 16 it didn't just happen, an arrest could not be made, so we
- 17 would just record as much facts as we could get and send it
- 18 up to an investigator.
- 19 Q And are you familiar with the victim's name in this
- 20 case?
- 21 A Not without looking at my notes.
- 22 (WHEREUPON the witness looked at her notes.)
- 23 THE WITNESS: It's Child Child
- 24 By Ms. Simpson:
- 25 Q And what happened to Child What determinations

Monica Johnson - Cross-Examination by Mr. Shealey

1 did you make with respect to her -- where she should go
2 that day? Did she --

3 A She stated to me that --

4 MR. SHEALEY: Objection.

5 By Ms. Simpson:

6 Q Well, no --

7 MS. SIMPSON: I would ask my question again.

8 By Ms. Simpson:

9 Q Did Child [REDACTED] stay in the home? Or what did y'all
10 determine?

11 A We sent Child [REDACTED] back home with her mother.

12 Q And so responding -- as a responding officer, was
13 that the extent of your involvement in this case?

14 A Yes.

15 MS. SIMPSON: Nothing further from the State.

16 Thank you.

17 THE COURT: Cross-examination.

18 MR. SHEALEY: May it please the Court.

19 **CROSS-EXAMINATION**

20 By Mr. Shealey:

21 Q Now, Corporal Johnson, I believe you testified
22 you're a supervisor?

23 A Yes.

24 Q Okay. How long have you been a supervisor?

25 A Just over four years..

Monica Johnson - Cross-Examination by Mr. Shealey

1 Q Over four years?

2 A Yes.

3 Q How long have you been at the Richland County
4 Sheriff's Department?

5 A Almost nine.

6 Q Nine years. Now, I bet you didn't start off in
7 your elevated position at Richland County; did you have to
8 work your way up?

9 A Yes, I did.

10 Q And where did you first start out at Richland
11 County?

12 A I was a line officer.

13 Q What does that mean?

14 A It means I took all the calls, specifically the
15 ones that no one else wanted to take.

16 Q Now, when you say take calls, does that mean that
17 you went out to locations?

18 A Yes.

19 Q Okay. So in your nine years now, I think you said
20 as both a line officer and a supervising officer, is it
21 fair to say that you've been out to a number of calls, a
22 number of scenes?

23 A Yes.

24 Q Okay. And part of your duty, I guess, when you're
25 a line officer, was to talk to folks, right?

Monica Johnson - Cross-Examination by Mr. Shealey

1 A Yes.

2 Q And when you talked to people, generally line
3 officers and you, yourself take notes, right?

4 A Yes.

5 Q And I think you said that you were referring from
6 your notes just now, right?

7 A Yes.

8 Q And that's because you want to know what you were
9 thinking and doing all that time ago in case you ever get
10 called into a situation like this and you have to come
11 testify, right?

12 A Right.

13 Q And the point of taking notes and -- let me ask you
14 this: The notes that you took are they in a -- is it in a
15 report form? Are they handwritten form? What --

16 A My notes are handwritten.

17 Q And you took handwritten notes regarding this
18 incident?

19 A No.

20 Q Okay. Explain to me the handwritten notes that
21 you're referring to?

22 A To remember the victim's name, I had just
23 specifics, the date, and her name and the incident location
24 because I did not write the report.

25 Q Okay. Do you have a narrative of what happened in

Monica Johnson - Cross-Examination by Mr. Shealey

1 your handwritten notes?

2 A I do have a narrative, but it's not -- that is not
3 in my writing.

4 Q Okay. Are you looking at -- and just -- I'll have
5 this marked for identification purposes only to make sure
6 we're looking at the same thing.

7 MR. SHEALEY: If we could mark this for ID
8 purposes.

9 (WHEREUPON Defendant's Exhibit No. 1 was marked for
10 ID purposes.)

11 By Mr. Shealey:

12 Q Corporal Johnson, I'm going to show you what's
13 marked as Defendant's Exhibit 1 for ID purposes. Is that
14 what you're referring to as your notes?

15 A This is -- this is not my notes. This is the
16 incident report.

17 Q Okay. Just for clarification, you were talking
18 about your notes that you're referring to just now. Is
19 that the same thing, though? Is that -- when you said your
20 notes, is that what you're talking about?

21 A Yes.

22 Q Okay. Okay. So you have a copy of this. Will you
23 look through all three pages, and make sure we're talking
24 about the exact same thing.

25 A Yes.

Monica Johnson - Cross-Examination by Mr. Shealey

1 Q Okay. I'll just take that back for you. Thank
2 you.

3 Now, Corporal Johnson, in your experience, nine
4 years experience at Richland County, you're aware of what
5 this is. This is a standard incident report, right?

6 A Yes.

7 Q And the notes that you're using come from something
8 that's -- a generated form that all Richland County
9 Sheriff's Department officers use, right?

10 A Right.

11 Q And -- when they go out to a scene to document what
12 happened, right?

13 A Yes.

14 Q Okay. And Richland County Sheriff's Department
15 officers are often referred to -- the ones that go out to a
16 scene -- are referred to as responding officers, right?

17 A Right.

18 Q And if you look down in this category here, because
19 there's a category for everything on this report, where it
20 says responding officers, you see your signature there?

21 A Yes, I see -- that's my signature.

22 Q Okay. Okay. On that document that you have in
23 front of you, right?

24 A Right.

25 Q All right. And you also notice that there is a

Monica Johnson - Cross-Examination by Mr. Shealey

1 little box for everything. You can look on your copy and
2 I've got the same thing here. The incident location, you
3 can see that box, right?

4 A Right.

5 Q You can see --

6 MS. SIMPSON: Your Honor, may I ask Counsel if he
7 has a specific question for the witness without
8 introducing -- she's essentially testifying from --

9 THE COURT: No, you can't ask any questions. If
10 you've got an objection, state your objection.

11 MS. SIMPSON: Your Honor, I'm objecting to the fact
12 that he is specifically asking her -- referencing this
13 document that's not introduced into evidence without having
14 a prior question. He's not refreshing her recollection or
15 otherwise.

16 THE COURT: All right.

17 MR. SHEALEY: Your Honor, she's got a copy --

18 THE COURT: Let me rule on it, please.

19 Overruled.

20 MS. SIMPSON: Thank you, Your Honor.

21 By Ms. Simpson:

22 Q Now, back to where we were, Corporal Johnson. You
23 realize there are a lot of different boxes on this thing,
24 right?

25 A Yes.

Monica Johnson - Cross-Examination by Mr. Shealey

1 Q And you know that because your experience, nine
2 years, every box means something, right?

3 A Right.

4 Q That way you know where -- like the box where it
5 says incident location, you come here today, you can look
6 at it and say, I know that's where the incident allegedly
7 occurred. There's a box there for time, right?

8 A Right.

9 Q Dispatch time, right?

10 A Right.

11 Q There's generally a box for a complainant's name on
12 these reports, right?

13 A Right.

14 Q There's even information as to the complainant's
15 height and weight, right?

16 A Yes.

17 Q Telephone numbers, right?

18 A Yes.

19 Q Time of day, right?

20 A Yes.

21 Q The alleged suspect's name, right?

22 A Right.

23 Q And generally in these reports, it's good when
24 someone's writing a report like this, like you have in your
25 nine years experience, to write detailed and accurate

Monica Johnson - Cross-Examination by Mr. Shealey

1 reports, right?

2 A Yes.

3 Q Because when you write -- and is it fair to say
4 when you write detailed, accurate reports, you have a
5 better idea of what happened because time can go by and
6 memories fade, right?

7 A Right.

8 Q Okay. Now, you've already testified that your
9 signature as a responding officer is down here on the
10 incident report, right?

11 A That's not correct. My signature is the approving
12 officer. My name was written by Deputy Hatfield in the
13 responding officer.

14 Q Okay. I'm glad you bring up approving officer. So
15 your signature as the approving officer, you're signing off
16 on what has gone on in this report as far as the accurate
17 details of this report, correct?

18 A Incorrect.

19 Q Really?

20 A Yes, sir.

21 MR. SHEALEY: Beg the Court's indulgence.

22 By Mr. Shealey:

23 Q Now, you said that because you're the approving
24 officer, that you don't necessarily agree with what's on
25 this report. You just testified to that, right?

Monica Johnson - Cross-Examination by Mr. Shealey

1 A Not that I don't agree with what's on the report,
2 but I have no way with the number of reports that I have to
3 approve to determine what is accurate and what is not
4 accurate.

5 Q Now, Corporal Johnson, you testified here
6 previously that the approving officer --

7 MS. SIMPSON: Objection, Your Honor.

8 THE COURT: What's the objection.

9 MS. SIMPSON: I'm sorry, just -- nevermind, Your
10 Honor.

11 THE COURT: You withdraw?

12 MS. SIMPSON: I withdraw my objection.

13 By Mr. Shealey:

14 Q Now, you testified here in a previous hearing that
15 the approving officer --

16 MS. SIMPSON: Objection, Your Honor.

17 THE COURT: Well, are you objecting or not?

18 MS. SIMPSON: I am, Your Honor, with respect to
19 what he is using with impeachment. May we approach?

20 THE COURT: Yes, ma'am.

21 (WHEREUPON, there was a bench conference out of the
22 hearing of the jury and the Court Reporter.)

23 THE COURT: All right show it to the deputy.

24 By Mr. Shealey:

25 Q Corporal Johnson, I'm going to show you part of a

Monica Johnson - Cross-Examination by Mr. Shealey

1 transcript of a prior hearing in this matter.

2 MR. SHEALEY: May I approach?

3 THE COURT: Yes.

4 By Mr. Shealey:

5 Q And I'm going to let you go ahead and look over
6 this bottom portion here and I'll ask a couple of
7 questions. If you would just look down to the bottom of
8 that page and you can turn the page as well. Just let me
9 know when you're finished?

10 MS. SIMPSON: And Your Honor, I apologize, just
11 what pages is he referencing?

12 THE WITNESS: One 0 seven.

13 MS. DELANY: Yours are probably 272.

14 THE COURT: Go ahead.

15 By Mr. Shealey:

16 Q Now, you just testified as the approving officer
17 you don't ever agree necessarily with everything that's in
18 the report, right?

19 A I don't -- I don't make a determination of whether
20 I agree or disagree with what's in the report. I don't
21 respond to every call, as approving authority. It so
22 happens, I was on this call. But on every -- when I
23 approve reports, I have to depend on the officer for
24 annotating the correct information they received from the
25 complainant, so I can't say that -- whether I agree or

Monica Johnson - Cross-Examination by Mr. Shealey

1 disagree with someone's report.

2 Q So is that an I don't know, or a yes or no?

3 A What's your question?

4 Q My question was, as approving officer -- I asked
5 you as approving officer, you would agree with what's in
6 the report, and I believe you said no before?

7 A You asked me did I agree that everything was
8 accurate in the report, and I just responded to you no.

9 Q And in a previous hearing, the question posed to
10 you was as approving officer, you're approving what the
11 incident report indicates, correct. And would you agree
12 with me that you say, right on that issue?

13 A When it comes to that question, that is correct,
14 but it doesn't have anything to do with accuracy.

15 Q And I believe in the question previously in a
16 hearing in this matter that approving incident report is
17 part of your determination for acting on this case and
18 would you agree that you did say approving a report is
19 giving faith --

20 THE COURT: Page -- give the page and line number.

21 MR. SHEALEY: We're on page 110 of my copy, Your
22 Honor.

23 By Mr. Shealey:

24 Q And would you agree that you said that approving a
25 report is actually giving faith that the officer has

Monica Johnson - Cross-Examination by Mr. Shealey

1 properly written down things as fact. Would you agree with
2 that?

3 A Yes.

4 Q Okay. Now, you didn't write a separate report from
5 the report that you called your notes in this case, did
6 you?

7 A I did not.

8 Q And I believe there's another officer on the scene,
9 Officer Hatfield, as well, right?

10 A That's correct.

11 Q And I guess, you know, because you're a supervising
12 officer at that time, that's why you had to approve what he
13 wrote, right?

14 A Right.

15 Q That's why you fill in the blank of the approving
16 officer versus him filling in the blank of approving
17 officer, because you were a higher rank, right?

18 A Right.

19 Q Now, if you look at your notes, and I refer you
20 down to the date that you signed as approving officer on
21 this report. Should be right to the right. Do you see it?

22 A Yes, I do.

23 Q And you agree that says July 13th of 2008?

24 A That's correct.

25 Q And you'll agree that the incident report date of

Monica Johnson - Cross-Examination by Mr. Shealey

- 1 actually going out there is July 11th of 2008?
- 2 A Correct.
- 3 Q So you would agree with me that as approving
- 4 officer and supervising officer on this case, there's a
- 5 two-day gap between when you responded and signed
- 6 approving, right?
- 7 A Correct.
- 8 Q And you didn't go into this house?
- 9 A I did not.
- 10 Q But you talked to Child.
- 11 A I did.
- 12 Q And you talked to Kathy? Ms. Myers?
- 13 A Yes.
- 14 Q Right. And I believe you testified that you
- 15 briefly talked to Charles?
- 16 A Yes.
- 17 Q Okay. And you didn't arrest anybody that day, did
- 18 you?
- 19 A No.
- 20 Q Now, we've been talking about the other officer
- 21 that responded to the scene, and you know his name, right?
- 22 A Yes.
- 23 Q Tell the Court his name?
- 24 A John Hatfield.
- 25 Q Okay. Now, he got -- you know, you went to the

Monica Johnson - Cross-Examination by Mr. Shealey

1 house, right? You didn't go to the Exxon gas station,
2 right?

3 A Right.

4 Q In this case.

5 A Right.

6 Q Mr. Hatfield, Officer Hatfield, went to the Exxon
7 gas station, right?

8 A That's what he stated, yes.

9 Q And help me with this: And then he went to the
10 house and you were already at the house?

11 A No.

12 Q Okay.

13 A He got to the house before I did.

14 Q Okay. I apologize. So when you got there, he
15 was -- both of you were first responders, he was the first
16 responder, right?

17 A That wouldn't be correct departmental terms. We
18 both were at the scene, yes. He is first responder, I was
19 the support unit.

20 Q And it's important to keep everything relative with
21 departmental terms, correct?

22 A Generally.

23 Q That's why -- I mean that's how people elevate in
24 rank at the Richland County Sheriff's Department, by doing
25 their job, right?

Monica Johnson - Cross-Examination by Mr. Shealey

- 1 A I can't make a statement on that.
- 2 Q Okay. But departmental terms, you were the
- 3 approving officer in this case?
- 4 A That is correct.
- 5 Q And you had two days to review this and to sign as
- 6 the approving officer from the time the report was made?
- 7 A That's how it happened, yes.
- 8 Q Okay. Now, after you talked to people that you
- 9 spoke to, and after Officer Hatfield spoke to people that
- 10 he spoke to, you guys have a discussion about this?
- 11 A We did.
- 12 Q Okay. Is that standard?
- 13 A Yes.
- 14 Q Okay. And you guys decided at that point in time
- 15 not to arrest anybody, right?
- 16 A That's right.
- 17 Q Now, you talked about your experience, nine years,
- 18 you started off as a line officer, right?
- 19 A Right.
- 20 Q And now you made your way to supervisor, right?
- 21 A Right.
- 22 Q And part of -- and I -- tell me if I'm wrong, but
- 23 part of that was you got elevated because you've been doing
- 24 a good job, right?
- 25 A Right.

Monica Johnson - Cross-Examination by Mr. Shealey

1 Q You were following protocol?

2 A Right.

3 Q Doing what you're supposed to do?

4 A Right.

5 Q And you got a badge on your shoulder there, right?

6 A Right.

7 Q And generally, you carry a gun, right?

8 A Yes.

9 Q And you have arrest power?

10 A I do.

11 Q And you've arrested people on the scene before as a

12 line officer, haven't you?

13 A I have.

14 Q And as a responding officer, you arrest people.

15 That's within your discretion?

16 A Yes.

17 Q Now, you testified that you talked to Officer

18 Hatfield in regards to this case afterwards, right?

19 A Right.

20 Q And so you know that he doesn't lend my credibility

21 to Kathy Myers in the case?

22 MS. SIMPSON: Objection, Your Honor. Improper

23 hearsay.

24 THE COURT: Sustained.

25 MR. SHEALEY: Your Honor, I'm just going to reserve

Monica Johnson - Redirect Examination by Ms. Simpson

1 to right to make the record and -- at the end of this
2 thing.

3 THE COURT: Certainly.

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

5 I'm going to end questioning at this time and I
6 appreciate it. Thank you.

7 THE COURT: Redirect?

8 MS. SIMPSON: Briefly, Your Honor.

9 **REDIRECT EXAMINATION**

10 By Ms. Simpson:

11 Q He talked -- Defense Counsel talked a lot about
12 your arrest power and your ability to arrest someone. Why
13 didn't you arrest the defendant on that date?

14 A The incident was not freshly committed. It was at
15 least two weeks old.

16 Q And is that standard?

17 A That is standard.

18 Q And as approving officer in this case, why were you
19 the approving officer? Was it your status or support --
20 for what reason were you the approving?

21 A Because I'm the supervisor.

22 Q You're the supervisor?

23 A Yes.

24 Q Sure.

25 MS. SIMPSON: Nothing further from this witness.

Monica Johnson - Redirect Examination by Ms. Simpson

1 MR. SHEALEY: Briefly recross, Your Honor.

2 THE COURT: Sure.

3 **RECROSS-EXAMINATION**

4 By Mr. Shealey:

5 Q Corporal Johnson, you judge people's credibility on
6 a daily basis.

7 MS. SIMPSON: Objection, Your Honor.

8 THE COURT: Overruled.

9 By Mr. Shealey:

10 Q You judge people's credibility on a daily basis
11 when you respond to a scene, right?

12 A I make an assessment on my -- yes.

13 Q Okay. And after discussing the case, you and
14 Officer Hatfield --

15 MS. SIMPSON: Objection, Your Honor, based on --

16 MR. SHEALEY: I need to ask the question before
17 it's objected to.

18 THE COURT: Overruled. Let him ask the question.

19 By Mr. Shealey:

20 Q And both of you chose not to arrest, right?

21 A Yes.

22 Q Okay.

23 THE COURT: You may come down, ma'am, thank you
24 very much.

25 This witness be excused?

1 State of South Carolina) In the Court
2 County of Richland) Of General Sessions

3 Indictment No.: 2009-GS-40-7097
4

5
6 State of South Carolina,)
7 Plaintiff.)

 ORIGINAL

8 vs.)

Transcript of Record
Volume II

9
10 Charles M. Deveau,)
Defendant.)

11
12
13 October 10-13, 2011
14 Columbia, South Carolina

15 B E F O R E:

16 The Honorable G. Thomas Cooper, Judge, and a jury.

17
18 A P P E A R A N C E S:

19 Kathryn Ashton, Assistant Solicitor
20 Nicole Simpson, Assistant Solicitor
Attorneys for the State

21 Rhodes Bailey, Esquire
22 Brian Shealy, Esquire
Joanna Delaney, Esquire
Attorneys for the Defendant

23
24 Brenda J. Sigwald, Circuit Court
25 P.O. Box 206, Jackson, South Carolina 29831

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Robert Martin - Direct Examination by Ms. Ashton

1 (WHEREUPON there was no response.)

2 THE COURT: Without objection.

3 Next witness.

4 MS. ASHTON: State calls Investigator Robert
5 Martin.

6 THEREUPON,

7 ROBERT MARTIN,

8 after being duly sworn, testified as follows:

9 THE CLERK: Please have a seat and state your full
10 name for the record.

11 THE WITNESS: Robert Martin.

12 **DIRECT EXAMINATION**

13 By Ms. Ashton:

14 Q Is that investigator?

15 A It is.

16 Q Where are you employed?

17 A I'm currently employed at the Richland County
18 Sheriff's Department.

19 Q And how long have you been employed with the
20 sheriff's department?

21 A About eleven years.

22 Q And what was your experience before the sheriff's
23 department?

24 A I started as a corrections officer with the
25 Department of Juvenile Justice, became a public safety

Robert Martin - Direct Examination by Ms. Ashton

1 officer, a sworn police officer at the Department of
2 Juvenile Justice for the State. I then went to work for
3 the city of Camden Police Department as a corporal; and
4 then in early 2000, I started at the Richland County
5 Sheriff's Department.

6 Q Okay. And take me through your positions at the
7 sheriff's department?

8 A I started as a uniform patrol officer in the Region
9 II Dentsville area of Richland County. Within a year I
10 promoted to regional investigator or was assigned that
11 position. There wasn't an actual promotion, just a change
12 of duty, where I worked property crimes and simple
13 assaults. I applied and took a test and became an
14 investigator; went to the narcotics unit for a little
15 while. I left the sheriff's department for a brief time
16 and trained police officers in Lamond Jordan with a private
17 contractor.

18 I then came back to Richland County and again went
19 back into investigations, went through the special victim's
20 unit, robbery homicide unit, and then currently assigned as
21 a senior officer of the cold case homicide unit.

22 Q You said that you were an investigator of the
23 special victim's unit?

24 A I was.

25 Q And when was that?

Robert Martin - Direct Examination by Ms. Ashton

1 A I believe it was from 2006, 2007 to probably 2009.

2 Q And what is meant by the term special victim's
3 unit?

4 A It's a spectrum of crimes that range from child
5 abuse, child neglect, infant fatality, child fatality,
6 criminal sexual conduct of minors in different degrees,
7 lewd acts against minors, soliciting minors, working into
8 more of the adult age of cases from -- with terms of date
9 rape, which is, again a criminal sexual assault on an
10 adult, assault -- sexual assault of someone who's been
11 incapacitated either by ingesting drugs or alcohol, elder
12 abuse cases, elder rape, elder neglect, financial swindling
13 of the elderly. I believe that encompasses that unit.

14 Q We're going to take you back June of 2008. Were
15 you in the special victim's unit at that point?

16 A I was.

17 Q And as a sexual assault investigator, how are cases
18 actually assigned to you? How do you get the case,
19 usually?

20 A Cases are usually reported to patrol officers.
21 They go out and respond to the scene and take information.
22 It could be at the hospital, it could be a facility, it
23 could be at DSS, it could be at someone's residence. It
24 could be a school -- from almost any location you can
25 imagine. The officers will go out there, they will take

Robert Martin - Direct Examination by Ms. Ashton

1 the report, they will title the report. If they determine
2 it to be in one of those categories that I mentioned
3 earlier, it will be assigned to the special victim's unit.
4 The supervisor of the special victim's unit will collect
5 those reports on a daily basis. I get them usually in the
6 morning and then they go through the case load and
7 determine who is going to receive which case.

8 Q And at some point were you assigned the case
9 against Charles Deveaux?

10 A I was.

11 Q But you didn't respond to where the incident was
12 reported?

13 A That's correct.

14 Q And do you know who responded to that?

15 A Deputy Johnson and Deputy Hatfield. I believe
16 Hatfield.

17 Q And is Deputy Hatfield still with the sheriff's
18 department?

19 A I believe he's still with the sheriff's department.
20 He's in a different capacity. He's working as civil
21 process, paper server.

22 Q Okay. Now, why were you assigned the case against
23 Deveaux? Was there an allegation against Mr. Deveaux?

24 A There had been an allegation of criminal sexual
25 assault from Mr. Deveaux to his daughter.

Robert Martin - Direct Examination by Ms. Ashton

1 Q And who is that daughter?

2 A Child Child

3 Q And how old was she when this -- when this report

4 was made?

5 A She was ten years old at the time.

6 Q And did you learn through your investigation what

7 address the assault took place?

8 A I did. It took place at [REDACTED],

9 which is Richland County.

10 Q And what is the significance of this home?

11 A That's the residence of Mr. Deveau.

12 Q And do you know who else was living in that house

13 with him at the time?

14 A His wife, Queen.

15 Q Okay. When were you assigned this case?

16 A It was assigned to me on the 14th of July, 2008.

17 Q Okay. And so a day after Corporal Johnson approved

18 the report? The incident report?

19 A It wasn't the day after. I believe she took her

20 report on a Friday. Special victim's unit, we have on-call

21 investigators. There's a freshly committed need for an

22 investigator to show up. We weren't called out. It wasn't

23 a freshly committed crime. It was delayed reporting, very

24 common in these kind of cases. Victims of sexual assault

25 are not always --

Robert Martin - Direct Examination by Ms. Ashton

1 MR. BAILEY: Objection, Your Honor.

2 THE COURT: I'm sorry, what's the objection?

3 MR. BAILEY: The officer is making a broad
4 speculation about sexual assault victims. He's not a
5 special list in this area.

6 THE COURT: Overruled.

7 THE WITNESS: In more of these cases, they don't
8 come forward -- just, it's a long delay sometimes in
9 reporting these cases. So it was reported, again, on
10 Friday. I reported to work on Monday and would have gotten
11 that report Monday morning between 8 and 8:30.

12 By Ms. Ashton:

13 Q Okay. And what were the first steps you took once
14 you were assigned this case?

15 A To review the information contained in the report.
16 I contacted the victim's mother, spoke to her, cautioned
17 her about talk -- discussing the case with her daughter.
18 We didn't want to give her any ideas, we wanted the
19 daughter to not be thinking about this and decide to come
20 to it when she was ready. It was important that I speak to
21 the mother about this case.

22 I explained the assessment resource process --
23 we -- children under the age of fifteen, over the age of
24 three, we refer to a facility called the Assessment
25 Resource Center. At the Assessment Resource Center, it is

Robert Martin - Direct Examination by Ms. Ashton

1 a child friendly environment where they can be interviewed
2 by professionals that can listen to them and recognized by
3 the Courts as being experts in interviewing children in
4 these kind of cases and assaults. There's no pressure put
5 on the child. The child recalls what happened to them, if
6 anything.

7 MR. BAILEY: Objection, Your Honor.

8 THE COURT: What's the objection.

9 MR. BAILEY: The investigator is describing a
10 process that he's really not involved in. He's described
11 the ARC process.

12 THE COURT: Overruled. Overruled.

13 By Ms. Ashton:

14 Q You were describing the environment of the ARC?

15 A Oh, child friendly environment and this interview
16 is audio and video recorded, so it's captured for later use
17 in cases of a trial or to redetermine and assess what
18 crimes were committed, if any.

19 Q And as part of that -- so that the child doesn't
20 have to retell her story over and over again?

21 A That's right. It's usually traumatizing to a child
22 to have to relive this in front of people.

23 MR. BAILEY: Objection, Your Honor. The witness is
24 not a child psychologist.

25 THE COURT: It's within common knowledge of this

Robert Martin - Direct Examination by Ms. Ashton

1 witness. I'll overrule the objection.

2 MR. BAILEY: Thank you, Your Honor.

3 By Ms. Ashton:

4 Q Did you also have -- did you also -- did you notify
5 DSS?

6 A I did. I sent a DSS intake form, I believe it was
7 via fax with a copy of the incident report.

8 Q Okay. And is that common in these kind of cases?

9 A Our primary concern isn't necessarily a criminal
10 case, our primary concern is care and safety of the child.
11 That is the focus of the whole process in itself is to make
12 sure that the child is taken care of. So yes, that is
13 standard practice.

14 Q And in this case, once Child [REDACTED] was removed from
15 the defendant's home, she was in a safe spot, is that your
16 understanding?

17 A That's correct. At that time she was in a safe
18 spot. There was a -- at that time she was in a safe spot.

19 Q Okay. But further investigation was needed by
20 multiple agencies?

21 A That's correct.

22 Q Now, once you faxed the Assessment Resource Center
23 their information, what happened next?

24 A The Assessment Resource Center will take in that
25 form, and it has the actual intake form itself, and there's

Robert Martin - Direct Examination by Ms. Ashton

1 a copy of the report that goes along with it. I'll make
2 contact with the ARC or they'll contact me once they
3 receive that report. Then it will try to establish an
4 appointment. It's an unfortunate thing, but it is a small
5 facility and there are a lot of abused and assaulted
6 children in Richland County and other surrounding agencies.
7 So they're scheduling appointments and we can't get them
8 in -- unfortunately can't get them in the day it happens.
9 It's usually a process. So they schedule an appointment.
10 They make contact with the family and then they make
11 arrangements to come in for that interview.

12 Q Okay. And was there an appointment made for

13 Child [REDACTED]

14 A There was.

15 Q And do you know what day that was?

16 A Let me -- may I check my notes?

17 (WHEREUPON the witness was looking at his notes.)

18 THE WITNESS: I have in my notes that that
19 interview actually took place on the 23rd of July.

20 By Ms. Ashton:

21 Q Okay. And after that interview, what did you
22 receive from the Assessment Resource Center?

23 A Get a call from Ray Olszewski, he is -- works at
24 the ARC. He does these forensic interviews, and I've
25 worked with Ray on many cases. Ray contacted me, and he

Robert Martin - Direct Examination by Ms. Ashton

1 gave me a synopsis of what took place during the interview.

2 Q Okay. Once you received that synopsis, you spoke
3 with Ray, what did you do next. Tell the jurors the next
4 step in this investigation?

5 A My next step was to contact the suspect in this
6 case, which was Mr. Deveaux, and arrange for an interview.

7 Q And did he agree to speak with you?

8 A He did.

9 Q And did you in fact meet with him?

10 A I did.

11 Q Now, was he -- what day was this, Investigator
12 Martin?

13 A Let me look at my notes.

14 (WHEREUPON the witness was looking at his notes.)

15 THE WITNESS: On the 25th of July, 2008.

16 By Ms. Ashton:

17 Q Okay. Was he arrested that day?

18 A No, he was not.

19 Q At what point did you obtain an arrest -- a warrant
20 for his arrest?

21 A It was later. It was after -- I'll have to check
22 my notes, and I'll see the exact date.

23 (WHEREUPON the witness was looking at his notes.)

24 THE WITNESS: I believe I sent the warrant in on
25 the 29th, and I made the arrest of Mr. Deveaux through the

Robert Martin - Direct Examination by Ms. Ashton

1 assistance of Investigator Rowe, I believe after the 31st
2 of July.

3 By Ms. Ashton:

4 Q So approximately six days after you met with him?

5 A That's correct.

6 Q The warrant was taken out about four days before;
7 is that right?

8 A That's correct.

9 Q Four days after --

10 A That's correct.

11 Q Now, going back to your involvement in this case,
12 was there an attempt to collect any fingerprints from the
13 crime scene?

14 A No, there was not.

15 Q And why was that?

16 A The defendant lives at the crime scene. His
17 fingerprints are going to be in his house. My fingerprints
18 are in my house. Your fingerprints are in your house.
19 That would not be uncommon and that would not show any kind
20 of determining factor. It's his house, I would expect to
21 find his fingerprints or there possibly could not be any
22 fingerprints. But it's not a deciding factor in this case.

23 Q And what about -- what about DNA in this case?

24 A This isn't a semen case. If we had some kind of
25 sexual assault, sexual battery which resulted in

Robert Martin - Direct Examination by Ms. Ashton

1 ejaculation of some -- which is one of the questions I
2 believe is asked, then we'd be looking for that evidence,
3 that semen evidence. There's no reason for his semen to be
4 on the body of the victim. There's no justification.

5 Now fingerprints, a father touching a child on her
6 shoulder or her back, if you could get DNA or fingerprints,
7 that's a common transference but to have semen would
8 suggest a very suggestive sexual assault.

9 Q But we're talking about a two-week delay, that
10 transference wouldn't be present in this case, would it?

11 A That's correct. You're talking -- this was a
12 digital penetration case, so finger, a digit went into --
13 or thumb went into the vagina --

14 MR. BAILEY: Objection, Your Honor.

15 THE COURT: What's the objection.

16 MR. BAILEY: Time and place.

17 THE COURT: Sir?

18 MR. BAILEY: Time and place, Judge.

19 THE COURT: All right.

20 MS. ASHTON: Your Honor, he's just -- he's just
21 explaining the reasons why he didn't do certain things in
22 his investigation.

23 MR. BAILEY: We've got a matter of law, Judge.

24 THE COURT: Approach the bench.

25 (WHEREUPON, there was a bench conference out of the

Robert Martin - Direct Examination by Ms. Ashton

1 hearing of the jury and the Court Reporter.)

2 THE COURT: I'd ask the court reporter to read back
3 that last answer.

4 (WHEREUPON the court reporter read the last answer
5 for the Court.)

6 THE COURT: All right. Ladies and gentlemen,
7 strike that from the record. This witness doesn't --
8 doesn't have personal knowledge of anything like that. So
9 I'm going to ask you to disregard that in your
10 consideration of this case, and I'm going to ask that it
11 be stricken from the record.

12 You may continue.

13 By Ms. Ashton:

14 Q Investigator Martin, the defendant's DNA would be
15 all over this house; is that correct?

16 A That is correct.

17 Q Is that why crime scene did not respond to this
18 location?

19 A Is that why crime scene --

20 Q Wasn't called to come to this location?

21 A It was not called to come to this location. It was
22 a delayed reporting. The -- the crime scene division
23 wouldn't just show up to a scene. They wouldn't be called
24 out and summoned out on a delayed report. It would have to
25 be a search warrant obtained to go through that house. In

Robert Martin - Direct Examination by Ms. Ashton

1 other words, in order to obtain the search warrant, I would
2 have to have a belief, one that the crime occurred, and
3 two, that evidence sought in the crime would be in that
4 location -- would still be there.

5 I did not believe there was anything left behind
6 that would be beneficial to this case one way or the other,
7 due to the fact of the nature of the crime that was
8 reported and the defendant living in the home.

9 Q So it's different from an armed robbery or murder
10 in that sense?

11 A Again, yes, you're -- in this case you're dealing
12 with an unknown, and there is not a witness who can tell
13 you who was standing there. So you're looking for evidence
14 to identify an unknown or corroborate or disprove a portion
15 of whatever happened in that case. There are so many
16 different variables that I -- you could go on and on and
17 on. But the crime lab is a tool -- is a tool that I would
18 use to investigate a crime if I felt that the division was
19 necessary in this crime.

20 We have all kinds of tools at the sheriff's
21 department. We have TANK in-house. It was not appropriate
22 to put that into this investigation and the crime scene lab
23 was not an appropriate tool to use in this investigation.

24 Q Okay. For instance in shooting cases, there might
25 be shell cases to collect, right?

Robert Martin - Direct Examination by Ms. Ashton

1 A Shell casings and blood and hair samples and stuff
2 that would show the nature of that crime. This particular
3 crime, the body would be the best source of any kind of
4 evidence. The body cleanses itself over time, which we're
5 talking a delay of about a week, ten days.

6 MR. BAILEY: Objection, Your Honor.

7 THE WITNESS: The body cleanses itself, there's not
8 going to be any need for evidence collection.

9 THE COURT: Overruled.

10 By Ms. Ashton:

11 Q And even in your role in these type of cases
12 because of the sensitive nature, is limited; is that right?

13 A That's correct. I -- at the time I was not
14 certified to conduct these interviews. I don't have the
15 facility to conduct these interviews as has been
16 regulated --

17 Q And what --

18 A -- a protocol called RATAC, R-A-T-A-C --

19 Q Is that --

20 A --child forensic interviews, yes. And the physical
21 examination, I'm not a doctor. It would be very
22 inappropriate for me to sit in on a doctor's examination of
23 a child of their vaginal area or anything else, so I use
24 experts to -- in those parts of the investigation and use
25 their results.

Robert Martin - Direct Examination by Ms. Ashton

1 Q And, in fact, what is the best practice considered
2 with these child victims?

3 A To send -- we schedule appointments at the
4 Assessment Resource Center, and they interview in that safe
5 child environment..

6 Q And is this done in all of these kind of cases?

7 A Yes.

8 MS. ASHTON: Beg the Court's indulgence.

9 By Ms. Ashton:

10 Q And just a few more questions.

11 During your investigation, when was this -- when
12 did this allegedly occur?

13 A The allegation was between the 22nd and the 29th of
14 2008, it was June.

15 Q Okay. And are responding officers trained in
16 sexual assault investigations?

17 A No.

18 Q What is their main purpose?

19 A To document and take information given by
20 witnesses, victims, suspects. Pretty much a who, what,
21 when, where, and why. They fill out the blanks as they
22 can, with as much information as they can obtain at that
23 time, triage, if you will. If there is a freshly committed
24 crime, they will act and investigate and determine if an
25 arrest needs to be made or not need to be made; and if they

Robert Martin - Cross-Examination by Mr. Bailey

1 have any questions, they'll ask for advice from the
2 investigative division.

3 Q And to make sure that the victim is safe?

4 A And in these kind of cases, the victim is a first
5 priority.

6 Q And was that done in this case?

7 A It was.

8 Q Thank you Investigator Martin.

9 A You're welcome.

10 THE COURT: Cross-examination.

11 MR. BAILEY: Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 By Mr. Bailey:

14 Q Good afternoon, Investigator Martin?

15 A Good afternoon.

16 Q Investigator, you mentioned, I think eleven years,
17 was that in your whole career or with this department? I'm
18 sorry.

19 A That's with this department. I have -- I started
20 law enforcement in '96.

21 Q Okay. So eleven years Richland County Sheriff's
22 Department; is that right?

23 A That's correct.

24 Q Okay. And, I mean obviously, you've held a lot of
25 positions there, you've had a lot of training; is that

Robert Martin - Cross-Examination by Mr. Bailey

1 correct?

2 A I've had some training, yes, sir.

3 Q Okay. And in this training, I guess they teach you
4 how to do an investigation?

5 A I haven't had a lot of investigation training.
6 Most of my training involves the other hats that I wear and
7 that would be, bomb technician, so a lot of my technical
8 experience is in explosives, SWAT team training, dive team
9 training, leadership. I've had an extensive amount of
10 leadership schools. But as far as investigative schools,
11 I've been to one.

12 Q Okay. So you've been to a lot of training; is that
13 right?

14 A I've been to a lot of training in tactics, yes.

15 Q Okay. And you -- I assume you've written a lot of
16 reports; is that right?

17 A Over the years, I have to say I've written quite a
18 few reports.

19 Q Okay. And you've done a lot of investigations,
20 right?

21 A Yes, I have.

22 Q Okay. And in your investigations, you're taught to
23 be detailed; is that correct?

24 A Taught to be detailed? It's best if you can be
25 more detailed.

Robert Martin - Cross-Examination by Mr. Bailey

1 Q Okay. And in your reports you write down your
2 investigation, you're taught your best to be accurate; is
3 that right?

4 A We try to be accurate; that's correct.

5 Q And thorough?

6 A Depends on what reports you're referring to.. If
7 you're talking about the initial incident report, they're
8 to be documented and give a brief synopsis of what
9 happened. In a follow up, it's just supposed to be fresher
10 information or kind of a map of what you've done in that
11 investigation in case you're no longer with the department
12 or unable to go over that case. Someone else is looking at
13 it.

14 Q So nobody ever tells you not -- nobody ever --
15 people tell you not to be thorough in your -- you're taught
16 to be thorough when you can; is that right?

17 A Yeah. I don't have somebody standing over me
18 saying be thorough. My role as an investigator, I don't
19 have a supervisor standing over me going over my reports if
20 that's what you're asking. My details, my cases, are
21 brought to court by me. They're not -- I don't really have
22 a supervisor who comes in like in trials. This is my case.
23 This is what I need for court.

24 Q But, would you -- being thorough is a good thing,
25 right?

Robert Martin - Cross-Examination by Mr. Bailey

1 A Well, you should be as thorough as you can, I
2 guess.

3 Q Okay. And on this case, Investigator Martin, you
4 were the lead investigator, right?

5 A That's correct.

6 Q Okay. Everything, this whole investigation,
7 everything involved in this investigation goes through you
8 at some point; is that correct?

9 A Yes.

10 Q Okay. You read every piece of every report in this
11 investigation; is that right?

12 A Do I read every piece of every --

13 Q Well, it goes --

14 A Well, I'd like to, but you're asking if I read
15 every piece -- I believe I have.

16 Q Okay. All right. And basically the buck stops
17 with you right here; is that right?

18 A As far as?

19 Q I mean you're the lead investigator. Everyone else
20 is operating under you; is that right? All the other law
21 officers involved in this investigation?

22 A Did they report to me? I don't know that I
23 understand the question?

24 Q Okay. Well, there are reporting officers, right?

25 A There was the two officers that responded.

Robert Martin - Cross-Examination by Mr. Bailey

1 Q Okay. And then there's the lead investigator; and
2 that's you, right?

3 A I'm the lead investigator.

4 Q Okay. So you are in charge of the investigation,
5 is that right?

6 A In charge of the investigation. I'm not the
7 reporting officer.

8 Q Okay. All right. But you read what the reporting
9 officers write, right?

10 A Yes.

11 Q You read their reports.

12 A I do.

13 Q Okay. And in this case, I think you said,
14 yourself, you weren't the reporting officer in this case,
15 were you?

16 A I was not.

17 Q Okay. In fact, I believe, Deputy Hatfield, John
18 Hatfield, he was the responding officer; is that right?

19 A Yes.

20 Q Okay. And also Corporal Johnson, she was a
21 responding officer, right?

22 A Yes.

23 Q Okay. And they've received training as deputies,
24 haven't they?

25 A They've been through the field training officer

Robert Martin - Cross-Examination by Mr. Bailey

1 program. I don't know their extensive background.

2 Q Okay. But they've received training just like --
3 maybe not, you know -- you know, bomb training, but they've
4 received training also; is that right?

5 A Honestly, I can't say what training they have or
6 haven't gotten. They've gone through the field training
7 officer program. What they've done after that, I don't
8 have -- I have no way of knowing. They work in a different
9 division than I do. I don't have a daily contact with
10 these people. I don't know --

11 Q But they've received some training. They're
12 trained as officers, right? I would assume so.

13 A They're all trained through the academy as police
14 officers.

15 Q Okay. So they're trained to do their job; is that
16 right?

17 A I would say yes.

18 Q Okay. And Deputy Hatfield spoke with the family in
19 the case, didn't he?

20 A I believe he did, yes.

21 Q Okay. And Deputy Johnson also spoke with the
22 family in this case?

23 A I believe she testified that she spoke to them.

24 Q And you did not see the family at the time of this
25 incident, did you?

Robert Martin - Cross-Examination by Mr. Bailey

1 A I did not.

2 Q Okay.

3 A At the time of the incident or at the time of the
4 reporting? The incident happened before.

5 Q Well, you did speak -- you did not speak to the
6 family at the time it was reported; is that right?

7 A I did not.

8 Q Okay. Now, the reporting officers drafted an
9 incident report also, didn't they?

10 A They did.

11 Q Okay. And they interviewed the family, right?

12 A I believe they did, yes.

13 Q Okay... And Deputy Hatfield was suspicious about
14 the --

15 MS. ASHTON: Objection.

16 THE COURT: Sustained.

17 MR. BAILEY: Judge, I'd like to discuss a matter of
18 law.

19 THE COURT: Come up.

20 (WHEREUPON, there was a bench conference out of the
21 hearing of the jury and the Court Reporter.)

22 THE COURT: All right. Ladies and gentlemen, I
23 need to discuss this matter with the attorneys on the
24 record. So I'm going to ask you to go to the jury room for
25 just a minute. We'll get it straightened out, and I'll

1 call you. Don't discuss the case among yourselves, just
2 relax a few minutes.

3 (WHEREUPON the jury left the courtroom at 2:21
4 p.m.)

5 THE COURT: All right. Counsel?

6 MR. BAILEY: Thank you, Judge. We feel at this
7 time that the law allows us to speak to the lead
8 investigator of a case about the integrity of his
9 investigation, the many people and parts of it.

10 THE COURT: All right.

11 MR. BAILEY: I mean, I believe it goes to the
12 integrity of the investigation. We're not trying -- you
13 know, we're not trying to get into Hatfield's opinion. But
14 the fact that Hatfield had an immediate impression. I
15 think to use the term he said earlier, you know, he
16 observed -- he made observations about demeanor. A lot of
17 that leads to where this investigation goes next. You
18 know, there's a reason -- one reason why certain further
19 action wasn't made that day was maybe because -- you know
20 -- we're not trying to get into what Hatfield said,
21 although we do think it is extremely probative and
22 potentially exculpatory, but we feel like it's important
23 that Hatfield had impressions.

24 He believed that the mother had suspicious
25 behavior. He believed the allegation was false. He

1 believed that -- he questioned the motives --

2 THE COURT: Why are you asking this witness those
3 questions.

4 MR. BAILEY: Because he didn't -- because he
5 clearly did the exact opposite and believed the opposite of
6 what Hatfield did. We believe that is an integrity of the
7 investigation issue.

8 THE COURT: But that --

9 MR. BAILEY: We believe that he had knowledge.

10 THE COURT: You can ask him what he did in response
11 to being -- reading the incident reports.

12 MR. BAILEY: Well, I mean --

13 THE COURT: Isn't that the issue?

14 MR. BAILEY: It's extremely probative that -- you
15 know..

16 THE COURT: Whether he -- whether Hat -- whether
17 Hatfield believed either of the two witnesses, this officer
18 wasn't there.

19 MR. BAILEY: Well, he says your job is to
20 document --

21 THE COURT: Well, you're asking him to verify and
22 corroborate what's in that incident report. You're asking
23 him to testify about the voracity of the report?

24 MR. BAILEY: Yes. It's offered for the matter
25 asserted.

1 THE COURT: That's what you're asking him?

2 MR. BAILEY: Every investigation is -- well -- I
3 feel like -- I don't want to further argue with the judge.
4 We do believe though that it's probative. We do believe --

5 THE COURT: I understand that.

6 MR. BAILEY: -- we do believe that this is highly
7 exculpatory information, Judge.

8 MS. ASHTON: And it is rife with hearsay opinions,
9 and things that are not verified within this Court.

10 THE COURT: Now, one at the time, please.

11 MR. BAILEY: Yes, sir, I'm sorry.

12 THE COURT: I just told you at the bar, I'm not
13 going to allow that incident report into evidence, and
14 you're not going to back door it in through this witness or
15 any other witness. Now, that's going to be my ruling.

16 MR. BAILEY: Yes, sir.

17 THE COURT: Constant, throughout. Argue all you
18 want about whether I'm right or wrong, but you can take
19 that up somewhere else.

20 MR. BAILEY: Yes, sir.

21 THE COURT: That's not -- it's not coming in in
22 this case.

23 MR. BAILEY: Yes, sir, Your Honor.

24 MR. SHEALEY: And Your Honor, I'm hearing your
25 ruling, but I think this is in regard to witness --

1 Corporal Johnson. I was overruled -- excuse me, I was not
2 allowed to go into this -- I would like to preserve this
3 objection, that I was not allowed to question Corporal
4 Johnson about her conversation with Officer Hatfield and
5 her understanding of Officer Hatfield's disbelief in Kathy
6 Myers' statement and I just want for the furtherance of the
7 record say, Judge, I believe that the defendant through his
8 Counsel can do that under Kyles v Whitley. It's very akin
9 to Bean in that case and in the Supreme Court of our United
10 States says that Bean, who was giving inconsistent
11 statements that would have blown the State's case apart,
12 was just given a different verb -- different idea of what's
13 going on in the case. It points them in a different
14 direction and they say, you know, the defense counsel could
15 have asked to get effect, any single officer in that case
16 that had knowledge of it -- and both of these officers
17 would have knowledge regarding discrepancies, opinion and
18 that -- and it's -- that falls under the 4th Amendment --
19 14th Amendment, Your Honor, 16th Amendment, competition;
20 and I think that's right on point in Kyles v Whitley and I
21 just wanted to say that --

22 THE COURT: Okay.

23 MR. SHEALEY: -- to preserve the objection that was
24 sustained in regards to Corporal Johnson and me not being
25 allowed to ask her questions about Hatfield's impression

1 and their conversation in regards to Ms. Myers.

2 THE COURT: All right. And Mr. Bailey you also had
3 a mistrial motion?

4 MR. BAILEY: Yes, Your Honor, we would move for a
5 mistrial on the basis that Investigator Martin's testimony
6 was against the time and place ruling. That's something we
7 discussed earlier before the trial started when he
8 specifically spoke to what -- something to the allegations
9 if it happened, digital penetration which is exactly --

10 THE COURT: I struck that from the record.

11 MR. BAILEY: Yes, sir. We would just like to
12 preserve that, and we moved for a mistrial at that time.

13 THE COURT: Anything further?

14 MR. BAILEY: No, sir.

15 THE COURT: You prepared to go forward with this
16 officer?

17 MR. BAILEY: Yes, Judge.

18 THE COURT: All right. Good. Bring the jury. If
19 they're ready.

20 (WHEREUPON the jury entered the courtroom at 2:28
21 p.m.)

22 THE BAILIFF: Jury is seated, Your Honor.

23 THE COURT: Very good.

24 You may continue.

25 MR. BAILEY: Thank you, Your Honor.

Robert Martin - Cross-Examination by Mr. Bailey

CROSS-EXAMINATION - CONTINUED

By Mr. Bailey:

Q Investigator Martin, Deputy Hatfield met Ms. Myers at the Exxon station; is that right?

A That's correct.

Q Okay. And he interviewed her; is that right?

A He spoke to her, yes.

Q Okay. And he documented information from that interview?

A I believe he did.

Q Okay. And he talked to the victim?

A I believe that's correct.

Q Okay. And no arrests were made that day?

A The delay in reporting -- it was not a freshly committed felony so he was unable to make an arrest that day.

Q Okay. Well, no arrests were made that day; is that right?

A That's correct. Operating from the guidelines, the law.

Q Okay. No arrest was made that day?

A That's correct.

Q Okay. To get to where the investigating started, you received this case July 14, 2008; is that right?

A That's correct.

Robert Martin - Cross-Examination by Mr. Bailey

1 Q Okay. And that was when you sent Child to the
2 ARC, Assessment Resource Center?

3 A No, that's not correct. That's when I sent the
4 intake information for Child to the ARC?

5 Q I'm sorry, I'm sorry. So that was when you took
6 the steps you needed to take to send her to the ARC?

7 A That's correct.

8 Q Okay. And then you, on July 24th, I believe, you
9 called my client, Charles Deveaux; is that right?

10 A One second. Please let me just verify that date.

11 (WHEREUPON the witness was looking at his notes.)

12 THE WITNESS: That is correct.

13 By Mr. Bailey:

14 Q You called him to set up an appointment for him to
15 come in to speak with you?

16 A That is correct.

17 Q Okay. Now originally at that point it was set
18 for -- originally it was set for July 28th; is that right?

19 A One moment please.

20 (WHEREUPON the witness was looking at his notes.)

21 THE COURT: Yes, that's correct.

22 By Mr. Bailey:

23 Q All right.

24 A It was a Monday.

25 Q But Mr. Deveaux wanted to move it up to the next

Robert Martin - Cross-Examination by Mr. Bailey

1 day, Friday the 25th; is that right?

2 A That is correct.

3 Q Okay. And so Mr. Deveau came in?

4 A Yes, sir.

5 Q And he gave you a statement?

6 A He did.

7 Q And he denied these allegations?

8 MS. ASHTON: Objection.

9 THE COURT: What's the objection?

10 MS. ASHTON: Self-serving.

11 THE COURT: All right. That's as far as you can
12 go.

13 Answer that question.

14 THE WITNESS: Yes, he denied the allegations.

15 By Mr. Bailey:

16 Q All right. And I believe that you called
17 Mr. Deveau again somewhere between July 30th and 31st
18 about -- that you had a warrant for him?

19 A One second.

20 (WHEREUPON the witness was looking at his notes.)

21 THE WITNESS: Yes, I believe I called him on the --
22 we were leaving messages, and I believe I spoke to him on
23 the 31st.

24 By Mr. Bailey:

25 Q All right. And Mr. Deveau turned himself in,

Robert Martin - Cross-Examination by Mr. Bailey

1 right?

2 A Yes, he did.

3 Q Okay. Now, you started the investigation in July

4 of 2008, right?

5 A That's correct.

6 Q Okay. And I guess you had a fair amount of time to

7 investigate this case after that point?

8 A Fair amount.

9 Q I mean -- well, you -- I mean, this was about three

10 years ago, right?

11 A From today? Yeah, I believe that's correct.

12 Q All right. Now, initially during the

13 investigation, you didn't go to the house, did you?

14 A I did not.

15 Q Okay. And you didn't send anybody to the house,

16 did you?

17 A I did not.

18 Q Okay. Nobody searched the house?

19 A That's correct.

20 Q Okay. Nobody checked the room that was supposed to

21 be DaShawna's?

22 A Did not, no.

23 Q Okay. Nobody even really knew what that room

24 looked like, I guess?

25 A I did not know what that room looked like.

Robert Martin - Cross-Examination by Mr. Bailey

1 Q Okay. There was no physical evidence collected by
2 Richland County Sheriff's Department, right?

3 A There was a doctor's examination that was done
4 that -- I believe that would be a physical collection of
5 evidence. There was an interview that was done; and that
6 was recorded, so that was evidence.

7 Q Okay. Excuse me, I'm talking about, there was
8 nothing picked up from that house, there was no physical
9 evidence picked up from this location, right?

10 A I understand your question.

11 Q But that's my question, I would like just -- there
12 was nothing picked up at this location; is that right?

13 A That's correct.

14 Q Okay. There were -- no one searched for
15 fingerprints at this location, right?

16 A I did not search for fingerprints at that location.

17 Q Okay. No one searched for fingerprints at that
18 location then?

19 A I didn't search for fingerprints at this location.

20 Q Okay. But you don't -- nobody else did either?

21 A I don't have a report saying they ever reported any
22 findings --

23 Q Okay.

24 A -- of fingerprints or anything.

25 Q All right. Nobody observed or examined bedding or

Robert Martin - Cross-Examination by Mr. Bailey

1 covers?

2 A As far as I know, no.

3 Q Okay.

4 A I did not.

5 Q Okay. Nobody observed or looked for a robe or a

6 nightgown?

7 A No.

8 Q Okay. Nobody looked for a fan in a window?

9 A No.

10 Q Okay. And no crime scene investigator was sent

11 out?

12 A That is correct.

13 Q Okay. And Investigator Martin, you wrote an

14 investigative follow up; is that correct?

15 A I did.

16 Q Okay. And it was less than a page long; is that

17 correct?

18 A That's correct.

19 Q All right. And I guess you said earlier yourself,

20 you're not a doctor?

21 A Right.

22 Q And you're not a psychologist?

23 A I am not.

24 Q But you are an investigator?

25 A That's correct.

Robert Martin - Redirect Examination by Ms. Ashton

1 Q Okay. And your investigation is less than a page
2 long; is that right?

3 A My report of this investigation is; that's correct.

4 Q All right. Thank you.

5 MR. BAILEY: I have no further questions.

6 THE COURT: Redirect?

7 **REDIRECT EXAMINATION**

8 By Ms. Ashton:

9 Q Investigator Martin?

10 A Yes, ma'am?

11 Q Most of this investigation occurred at the ARC; is
12 that correct?

13 A That is true.

14 Q The Assessment Resource Center?

15 A That is correct.

16 Q And in child sexual abuse cases, is that where most
17 of the investigations occur?

18 A That is correct.

19 Q Because they're trained professionals?

20 A Correct.

21 Q With sensitive victims?

22 A That's correct.

23 Q Involving sexual abuse?

24 A Yes.

25 Q I'm going to show you what's marked as State's.

Robert Martin - Redirect Examination by Ms. Ashton

1 Exhibit 3. Do you recognize that picture?

2 A I do.

3 Q What is that?

4 A It would be where DaShawna's bedroom would be, and

5 that would be where the window would be.

6 Q And is there a ledge there?

7 A Yeah; it's about four to six inches wide.

8 Q Large enough for a fan to be placed?

9 A That is correct.

10 Q And again, the crime scene was the defendant's

11 home?

12 A That's correct.

13 Q Where his DNA would be all over?

14 A That's correct.

15 Q Where his fingerprints would be all over?

16 A That's correct.

17 Q And would that assist you in this investigation

18 whatsoever?

19 A It would not.

20 Q And is the person where all the evidence in this

21 case led to, is he in this courtroom?

22 A He is. It's Mr. Deveaux there, the black gentleman

23 sitting at the table with a grey suite, looks like a

24 brownish tie, striped shirt.

25 MS. ASHTON: Your Honor, let the record reflect

Robert Martin - Recross-Examination by Mr. Bailey

1 he's identified Charles Deveau as the defendant in this
2 case.

3 THE COURT: The record so reflects.

4 Recross?

5 MR. BAILEY: Yes, sir, just briefly.

6 **RECROSS-EXAMINATION**

7 By Mr. Bailey:

8 Q Investigator Martin, these pictures that you were
9 just referred to --

10 A Yes.

11 Q These were taken last week; right?

12 A That's correct?

13 Q Okay. These were not taken three years ago; is
14 that right?

15 A That is correct.

16 Q Okay.

17 MR. BAILEY: No further questions, Your Honor.

18 THE COURT: All right. You may come down. You may
19 be excused if you wish to be excused.

20 Next witness.

21 MS. SIMPSON: State calls Dr. Susan Luberoff.

22 THEREUPON,

23 SUSAN LUBEROFF,

24 after being duly sworn, testified as follows:

25 THE CLERK: Please have a seat and state your full

Dr. Susan Luberoff - Direct Examination by Ms. Simpson

1 name for the record.

2 THE WITNESS: I'm Susan Breland Luberoff,
3 L-u-b-e-r-o-f-f.

4 **DIRECT EXAMINATION**

5 By Ms. Simpson:

6 Q Good afternoon, Dr. Luberoff. What is your
7 profession?

8 A I'm a pediatrician.

9 Q And where do you work?

10 A My employer is the USC School of Medicine,
11 Department of Pediatrics and I'm stationed at the
12 Assessment and Resource Center.

13 Q And in your capacity, what do you do?

14 A The Assessment and Resource Center is a facility
15 that evaluates children who are suspected as having been
16 either physically or sexually abused or neglected or been
17 witnesses to violence and that sort of thing. I do the
18 medical part of their evaluations, the children who come
19 through the Assessment and Resource Center that need to
20 have a medical exam. That's the part that I do.

21 Q And how long have you been working with the ARC?

22 A Actually --

23 Q Or the Assessment and Resource Center?

24 A I actually helped establish the ARC back in the
25 early '90s when it was established; and I've been doing

Dr. Susan Luberoff - Direct Examination by Ms. Simpson

1 this kind of work for a good twenty years. I took a bit of
2 a break to work with handicapped children for a while, but
3 during that period of time, I was kind of help -- behind
4 the scenes, helping people understand medical issues in
5 cases like this. I've been back at this job now for a
6 little over five and a half years.

7 Q And can you tell the jury a little bit about your
8 educational background and training?

9 A Sure. I finished medical school here at the USC
10 School of Medicine. I was in the third class to graduate,
11 so I'm older than I look. And I finished a residency in
12 pediatrics at the -- it was called Children's Hospital at
13 Richland Memorial back then. In 1986 is when I finished
14 that. Since then I've been a pediatrician, and I've
15 largely practiced in Columbia, but a little bit in some
16 other areas. I'm an associate professor of clinical
17 pediatrics at the USC School of Medicine so I'm involved in
18 teaching and my -- mostly what I do these days is the
19 medical assessment in cases where there's a concern for
20 abuse, but I also have spent stints of time in private
21 practice, co-directing the pediatrics clinic at Richland
22 Memorial Hospital a good while back. I've had a lot of
23 exposure just in general pediatrics as well as this
24 particular field.

25 Q And did you pursue any specialty training with

Dr. Susan Luberoff - Direct Examination by Ms. Simpson

1 respect to child assault examinations?

2 A I've -- way back when I started doing these, I went
3 and spent six weeks in Denver at The National Center of
4 Child Abuse as a scholar and resident. It's like a
5 mini-fellowship program. There weren't a lot of
6 full-length fellowships in child abuse pediatrics back at
7 that time unless I was a practicing pediatrician. I also
8 completed a three-week course through the National
9 Children's Advocacy Center in Huntsville, Alabama about
10 1990. And since that time, I've continued to remain
11 current by attending seminars and trainings on the topic of
12 medical aspects of child abuse and other aspects of child
13 abuse. I also provide training in the field.

14 Q And if you can guesstimate, I guess how -- how much
15 experience would you have with respect to this field
16 specifically?

17 A I guess one way to look at that is how many
18 children have I examined specifically coming in from
19 worries about abuse; and I estimate that I'm between five
20 and ten thousand children at this point. Probably over
21 seven thousand that I've examined specifically for this.

22 MS. SIMPSON: Your Honor, at this time, the State
23 would move that Dr. Susan Luberoff be qualified as an
24 expert in the field of child sexual abuse examination.

25 THE COURT: Any voir dire or objection?

Dr. Susan Luberoff - Direct Examination by Ms. Simpson

1 MR. BAILEY: Judge, as long as it's physical abuse
2 that's fine with us, Judge.

3 MS. SIMPSON: Your Honor, if I may. It's clearly
4 child sexual abuse evaluations, and this is a sexual -- the
5 allegations in this case are sexual in nature. That's what
6 we're here to talk about as far as her expertise.

7 THE COURT: I'll admit her. Go ahead.

8 MS. SIMPSON: Thank you, Your Honor.

9 By Ms. Simpson:

10 Q On or about July 23rd of 2008, did you have
11 occasion to see Child [REDACTED] --

12 A Yes, I did.

13 Q -- the victim in this case?

14 A Yes, I did.

15 Q Where did you see her?

16 A I saw her at the ARC, at the Assessment and
17 Resource Center.

18 Q And under what circumstances was she admitted for
19 the medical exam?

20 A She had been referred to me actually through two
21 different routes. One was that the Department of Social
22 Services had called and made an appointment for her to be
23 seen for a medical exam and for an interview. But I had
24 also gotten a referral from Richland Memorial Hospital's
25 emergency room. She had been through our emergency room

Dr. Susan Luberoff - Direct Examination by Ms. Simpson

1 and they had done an assessment there and then sent over
2 some paperwork to refer her to be seen by me. So I
3 actually had two referral sources that had requested that I
4 see her.

5 Q And with respect to Palmetto Health Richland, did
6 you receive those medical records from them, as far as
7 her -- from the evaluation at that time?

8 A From that encounter, yes I did.

9 Q Okay. And according to those records, do you
10 recall when Child went to Palmetto Health?

11 A I believe it was about the 11th of July. I can
12 refresh my memory on that.

13 (WHEREUPON the witness was looking at her records.)

14 THE WITNESS: Yes, she was seen on the 11th of July
15 in 2008 and I saw her on -- about the 23rd, a couple of
16 weeks later.

17 By Ms. Simpson:

18 Q Was she actually examined at the ER?

19 A She was examined at the emergency room, but
20 according to records it doesn't look like they did an
21 examination of her genitalia at the emergency room. They
22 took a history and did an overall examination to ensure
23 that she was stable, and then referred her to me for her
24 exam.

25 Q And are you aware of the circumstances under why

Dr. Susan Luberoff - Direct Examination by Ms. Simpson

1 she may not have been examined at that time?

2 A Yes, I am.

3 Q Can you tell us about that?

4 A According to medical record, the complaint that the
5 child was making had occurred about two weeks earlier and
6 the resident that assessed her in the emergency room noted
7 in his notes that he felt it would be appropriate to have
8 that part of the exam at another facility.

9 Q And are you familiar with some of the ER practices
10 as far as, I guess standards with respect to collection or
11 finding or what they thought they might get from these
12 exams? Are you familiar with the ER practice?

13 A Yes.

14 Q And can you tell us a little bit more about that?

15 A Yes, in the emergency room, basically an emergency
16 room is for emergencies so it's the place where you would
17 go if you had chest pain or an injury or something like
18 that. If a child presents to the emergency room with a
19 concern about sexual abuse, then the main job for the
20 emergency personnel is to make sure there's not an
21 emergency with that child's body or with that child's
22 health.

23 If something has -- if it's thought that something
24 has happened to that child within the last -- and some
25 people use 72 hours, some places use 48 hours, but within

Dr. Susan Luberoff - Direct Examination by Ms. Simpson

1 the last couple of days where there might be actual DNA
2 evidence on that child, then there's a procedure whereby
3 some specially trained nurses will attempt to collect any
4 DNA evidence that might be on that child. If the child
5 presents to the emergency room though and the history or
6 what the child is saying is that something happened more
7 than three days previously or a couple weeks previously as
8 would be this case, then that doesn't apply because --
9 because DNA evidence collection is really not useful when
10 that much time has passed. So it would -- it would be
11 ordinary practice for a physician in this emergency room
12 with the history that was given in this case to do just a
13 general exam. Some physicians would actually examine the
14 genitalia. Some wouldn't.

15 Some of that depends on the child's level of
16 comfort. I don't know all the factors that an individual
17 doctor takes into that decision, but basically they're
18 looking to make sure there's not an emergency with regard
19 to that child's health. And then at our hospital, it's
20 standard to then refer the child on for an exam with us or
21 another facility.

22 Q And just to make sure that I'm clear, the 72 or the
23 48 hours, that's essentially a time frame for which DNA
24 would be collected?

25 A That's correct.

Dr. Susan Luberoff - Direct Examination by Ms. Simpson

1 Q And are you familiar with -- or are you aware about
2 the circumstances surrounding why it would be difficult to
3 collect DNA outside of that time frame? Like what
4 circumstances, under what conditions would affect that?

5 A Several things affect the ability to collect DNA
6 evidence. If a child or victim has bathed, changed clothes
7 used the bathroom, those things wash away DNA evidence if
8 there's evidence in the genital area. It's been pretty
9 well established in children who are victims of sexual
10 abuse that the best source for DNA evidence is actually the
11 bedding or the clothing, not the child's body, especially
12 after about 24 hours. We rarely find saliva or semen or
13 DNA sources on the child beyond the first day or two in
14 younger children.

15 Q And you said sources of DNA, saliva or semen, or
16 some -- are some sources better than others as far as the
17 ability to collect or are you aware of that?

18 A Well, semen, if there's actually sperm present in
19 it is a good source for DNA. Saliva can be a good source
20 for DNA because it contains cells from the mouth of the
21 person who's saliva is on the child.

22 Can I ask for some water. I've had a cold this
23 weekend and I'm feeling really dry. I'm so sorry.

24 (WHEREUPON the bailiff got the witness some water.)

25 THE WITNESS: Thank you.

Dr. Susan Luberoff - Direct Examination by Ms. Simpson

1 THE BAILIFF: You're welcome.

2 By Ms. Simpson:

3 Q Now, are you ever tasked with interviewing a child
4 victim about a sexual assault? Is that ever your job?

5 A It's not -- it's not usually my job. Every once in
6 a while it is, but most of the time in the setting where I
7 currently work at the ARC, the interview is done by one of
8 the forensic interviewers, then I do the medical portion of
9 the investigation, and then we all kind of put all of that
10 together and provide it to whoever is investigating it.

11 Q And what does your exam typically entail with --
12 your medical exam?

13 A Children can come to us for lots of different
14 reasons, lots of different kinds of concerns for abuse and
15 when a child comes to the ARC or to a children's advocacy
16 center where we're -- if we're doing a good job, we should
17 be looking for any kind of abuse. So my particular exam
18 generally entails a head-to-toe look at all of the child's
19 skin so that I'm not missing any injuries from physical
20 abuse or anything like that or signs of neglect. It's --
21 my exam is going to entail a good detailed look at the
22 genital area, looking into the mouth, sometimes we'll see
23 evidence of neglect in the mouth, like dental neglect or
24 cavities, that sort of thing. And the order that I usually
25 go in is that I'll start with the child's hands and feet

Dr. Susan Luberoff - Direct Examination by Ms. Simpson

1 because that's not very threatening to a child. Children
2 are comfortable with me looking at hands and feet.

3 And then I'll sort of move inward and look at the
4 arms and legs, and the abdomen. Then I'll do the genital
5 exam and then there's still a lot more exam to come that's
6 less embarrassing. It's after the genital exam that I
7 listen to the heart, look at the ears, do things that
8 they're accustomed with, so that the older kids,
9 particularly the teenagers who are embarrassed with the
10 genital part, have a lot of time with me in the room
11 afterwards to kind of get away from being embarrassed.

12 The -- before the exam is even done, the child in
13 our facility, spends time with a child-life specialist who
14 explains the exam to the child and that's particularly
15 important for younger kids who might be nervous about the
16 equipment or the Q-tips or things that we might have to
17 use. And the child-life specialist makes sure the child
18 understands that everything is going to happen, understands
19 the positions that I might need the child to be in.

20 When the child-life specialist feels like the child
21 is comfortable and competent to participate in the exam,
22 then I come in and do my part. And my exam may, depending
23 on the case, may involve collecting specimens for testing
24 for infections, like sexually transmitted infections or
25 doing a pregnancy test, that sort of thing.

Dr. Susan Luberoff - Direct Examination by Ms. Simpson

1 Q And do you give the same exam for all children no
2 matter their age, or does it vary?

3 A It's basically the same no matter the age. If the
4 child is young enough to still be in diapers, then we might
5 not spend time explaining the exam to that child. That
6 part is going to be different, but it includes a detailed
7 exam of the skin, then examine the genitalia, height,
8 weight, looking for evidence of neglect, that sort of
9 thing.

10 Q And were you able to get some general impressions
11 from DaShawna's exam?

12 A Yes.

13 Q And would it assist you and the jury -- would it
14 help the jurors if you could come down in front of them to
15 explain those?

16 A I -- no, not right now.

17 Q Okay.

18 A Not that I can think of, but thank you for the
19 offer.

20 Q You're welcome. And what were your general
21 impressions?

22 A Well DaShawna's height and weight were appropriate
23 for each other. She wasn't overweight or underweight. She
24 was alert, pleasant, and able to cooperate with the exam.
25 Overall she appeared healthy. I didn't see any injuries on

Dr. Susan Luberoff - Direct Examination by Ms. Simpson

1 her skin that worried me about anyone harming her on
2 purpose. Her genital exam was completely normal. And
3 based on the history and the physical exam, I did not do
4 any sort of testing for sexually transmitted diseases on
5 her...

6 Q And did you actually find any evidence of trauma in
7 this case?

8 A No, I didn't.

9 Q And would you always expect to find evidence of
10 trauma in these types of cases?

11 A No, actually I expect to almost never find evidence
12 of trauma, which is very different than what a lot of us
13 believe we're going to find or should find if the child's
14 experienced any kind of sexual contact or even penetration.
15 I know I grew up believing that when -- the first time any
16 sort of object got placed in the vagina of a child or a
17 young woman that the hymen would rupture or change in some
18 permanent way and people would be able to tell. But
19 actually now with years and years and years of examining
20 children and really specifically paying attention to that
21 part, we know that it's actually relatively rare that
22 there's any injury to the hymen or the vagina of a child.

23 And when the history or what the child is
24 explaining happened has to do with a finger penetrating,
25 then there's even less of a -- of an expectation to find

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1 anything abnormal. When a child gets to the point of
2 puberty, of having periods, there's ample room in that part
3 of the body to admit a finger or larger objects in most
4 circumstances.

5 Q And so the healing properties of the genitalia,
6 does that affect or does that -- explain a little bit more
7 about that?

8 A Well, many, many, many, many children do not
9 sustain an injury in the first place. If -- there are lots
10 of acts that, really if you use common sense, you wouldn't
11 expect injury from, like, touching of the genital area.
12 You wouldn't expect to see an injury from that. Even lay
13 people wouldn't expect that. But more intimate activities
14 like inserting a finger or penis into the vagina, actually,
15 most of the time doesn't cause an injury in the first
16 place. And if an injury results, then that part of the
17 body has a really, really good ability to heal and heals
18 really fast. So that if the child does get an injury from
19 being sexually abused, and I don't see that child until two
20 weeks later, within two weeks healing should be completed.
21 So there's -- when we do find injuries in children, it's
22 usually in children that we're examining really just --
23 just immediately after something happens or within just a
24 couple of days afterwards.

25 At two weeks out or a month out, I think it was a

Dr. Susan Luberoff - Direct Examination by Ms. Simpson

1 good month, according to the history by the time I saw this
2 child, and with the history of it being a finger I would
3 have been very surprised to find anything abnormal on her
4 exam.

5 Q So in fact a normal exam could be consistent with
6 sexual abuse?

7 A A normal exam is what we expect to find. In fact,
8 even in pregnant teenagers where by definition we
9 absolutely know there's been pretty intimate sexual
10 contact, the majority of teenagers who are pregnant have
11 completely normal exams. They don't have ruptured hymens,
12 they don't have tears or scars. If they -- if they do
13 manage to get injured during the sexual act, that part of
14 the body, the hymen doesn't need scar tissue to complete
15 its healing. It heals by what we call -- by primary
16 intention, which means that it just covers back over with
17 exactly the same kind of tissue that was there in the first
18 place. It's similar to -- to the inside of your mouth.
19 The inside of your mouth is a mucus-membrane-type of
20 tissue, which means it stays moist all the time; and if you
21 get an injury inside the mouth, most injuries inside the
22 mouth don't need scar to heal. So even people who have had
23 oral surgery, a lot of times you can't find scars in their
24 mouth. Some people may, but usually it just heals right
25 over with the same moist tissue that was there in the first

Dr. Susan Luberoff - Cross-Examination by Mr. Bailey

1 place.

2 And it's the same thing with the hymen. At puberty
3 the hymen grows a good deal also so that it ends up with a
4 lot more room. It's preparing itself for the act of
5 procreation.

6 Q And so Child her exam was normal and this is
7 what you would expect?

8 A It was what I expected with the history, yes.

9 MR. BAILEY: Nothing further at this time.

10 THE COURT: Cross-examination?

11 MR. BAILEY: Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 By Mr. Bailey:

14 Q Dr. Luberoff?

15 A Luberoff.

16 Q I'm sorry Luberoff?

17 A L-u-b-e-r-o-f-f.

18 Q Dr. Luberoff, you do look younger than your age?

19 A Thank you.

20 Q If I may say so.

21 Dr. Luberoff when you examined Child it was
22 after she had received a forensic interview?

23 A She received it on the same day, and to my
24 recollection, the interview happened before the exam.

25 Q Okay. And you did read the interview at some

Dr. Susan Luberoff - Cross-Examination by Mr. Bailey

1 point?

2 A I talked with the interviewer, and I believe I was
3 actually able to watch a part of the interview.

4 Q Okay. And during your physical examination there
5 was no indication of any behavioral changes in Child [REDACTED] is
6 that right?

7 A Correct.

8 Q Okay. And there was no indication at the time of
9 differences?

10 A Not that I recall.

11 Q Okay. And I think you just testified her medical
12 examination was normal?

13 A Completely normal.

14 Q Okay.

15 A Well, except she had a rash, but it had nothing to
16 do with why we're here today.

17 Q Okay. Like the rash was --

18 A On her neck.

19 Q On her neck. And there was no indication of
20 penetration or injury of her hymen; is that correct?

21 A That's correct.

22 Q I'm asking questions that seem kind of silly and
23 I'm not trying to be, you know -- okay?

24 A I'm here to help you understand.

25 Q Looking at the -- I'm not quite five, ten. But

Dr. Susan Luberoff - Cross-Examination by Mr. Bailey

1 take a look at me. Can you say for sure that I did not
2 parachute into work today on the roof of this building?

3 Can you look at me and say for sure that that didn't
4 happen?

5 A No, I can't say that. I hope you didn't. It was
6 raining.

7 Q That's true. But you can't say for sure that it
8 did not happen, right?

9 A No.

10 Q Because you can't say for sure that it didn't
11 happen, does that mean that I probably did parachute into
12 work today?

13 A No.

14 Q Okay. Thank you.

15 MR. BAILEY: No further questions.

16 THE COURT: Anything else?

17 MS. SIMPSON: No, Your Honor.

18 THE COURT: All right. You may come down. Thank
19 you very much.

20 May this witness be excused?

21 (WHEREUPON there was no response from the
22 attorneys.)

23 THE COURT: Without objection. You're free to go.

24 Next witness.

25 MS. ASHTON: State calls Amy Phipps.

Amy Phipps - Direct Examination by Ms. Ashton

1 THEREUPON,

2 AMY PHIPPS,

3 after being duly sworn, testified as follows:

4 THE CLERK: Please have a seat and state your full
5 name for the record.

6 MR. BAILEY: I'm sorry, Judge, can we approach,
7 briefly, sir?

8 THE COURT: Sure.

9 (WHEREUPON, there was a bench conference out of the
10 hearing of the jury and the Court Reporter.)

11 THE COURT: You may proceed.

12 **DIRECT EXAMINATION**

13 By Ms. Ashton:

14 Q Ms. Phipps, can you please state your name for the
15 record, again?

16 A Amy Phipps, P-h-i-p-p-s.

17 Q And where are you currently employed?

18 A I currently work with Palmetto Health Richland
19 Hospital in the Neonatal Intensive Care Unit.

20 Q And what is your -- what are you licensed in?

21 A I'm a licensed independent social worker in
22 clinical practice, LISWCP.

23 Q In what practice?

24 A Clinical.

25 Q And how long have you -- have you ever worked at

Amy Phipps - Direct Examination by Ms. Ashton

1 the ARC? The Assessment Resource Center?

2 A Yes.

3 Q And when did you work there?

4 A I worked there from 2007 until about three months
5 ago.

6 Q Okay. And why did you have to leave?

7 A It was a grant-funded position and the grant money
8 ended.

9 Q Okay. And what was your position at the Assessment
10 Resource Center?

11 A I was a therapist.

12 Q And who did you provide therapy to in general?

13 A In general it was for children ages three to
14 eighteen.

15 Q And just any particular children or what was the
16 reason that you were providing therapy to these
17 individuals?

18 A I provided therapy to victims of trauma, primarily
19 sexual abuse.

20 Q And where did you work before the Assessment
21 Resource Center?

22 A Prior to working at the Assessment Resource Center,
23 I spent about a year working at the Department of Social
24 Services in Lexington County.

25 Q And can you describe -- we kind of briefly went

Amy Phipps - Direct Examination by Ms. Ashton

1 over your education, will you please describe your
2 education?

3 A Uh-huh. I have a bachelor's degree in psychology
4 from Brigham Young University and a master's degree in
5 social work from the University of South Carolina. I also
6 have a minor in family sciences that accompanied my
7 bachelor's degree and certificate in drug addiction studies
8 that accompanied my master's degree.

9 Q And how many licenses do you have?

10 A One. I'm licensed as an LISWCP.

11 Q And what does that license enable you to do?

12 A It allows me to provide clinical practice in the
13 field of social work, including things like private
14 practice.

15 Q And are you also able to give diagnoses in your
16 capabilities?

17 A Yes.

18 Q All right. And as a licensed social worker, are
19 you trained in specialized knowledge and practice skills in
20 the area of child abuse victims?

21 A I have been trained. I've completed multiple
22 different trainings on child maltreatment and how to treat
23 children who have been traumatized from child abuse.

24 Q And you're also able to diagnose children?

25 A Yes.

Amy Phipps - Voir Dire Examination by Mr. Shealey

1 Q And what commodity do you use to make those
2 diagnoses?

3 A I primarily use a cognitive therapy model, and when
4 I worked at the ARC it was a trauma focused cognitive
5 therapy.

6 Q And are you capable of diagnosing someone with
7 post-traumatic stress disorder?

8 A Yes.

9 Q And does that also include related to sexual abuse?

10 A Sometimes it can.

11 MS. ASHTON: Your Honor, at this time, I'd offer
12 Ms. Phipps as an expert in the area of behavioral sciences.

13 MR. SHEALEY: Your Honor --

14 THE COURT: Voir dire?

15 MR. SHEALEY: Yes, Your Honor, I'd like to voir
16 dire.

17 THE COURT: Okay. Go ahead.

18 **VOIR DIRE EXAMINATION**

19 By Mr. Shealey:

20 Q Hello, Ms. Phipps. What is your undergraduate in
21 again?

22 A I'm sorry?

23 Q Your undergraduate?

24 A Psychology.

25 Q Psychology?

Amy Phipps - Voir Dire Examination by Mr. Shealey

- 1 A A bachelors in psychology.
- 2 Q So is that a BA or BS?
- 3 A BS.
- 4 Q Okay. Now, have you before been qualified as an
- 5 expert before in your life?
- 6 A Yes.
- 7 Q You have? How many times?
- 8 A Twice.
- 9 Q Twice. Okay. And was that last time in general
- 10 mental health?
- 11 A It was in behavioral sciences.
- 12 Q And I heard a fancy word, cognitive behavioral
- 13 therapy. What's your training in that?
- 14 A I have completed two graduate school theoretical
- 15 applications for cognitive behavioral therapy. I've also
- 16 completed a training course for child focused behavioral
- 17 therapy. In addition, I've completed an web-based advanced
- 18 training course in trauma behavioral therapy.
- 19 Q Now, you said you studied this cognitive behavioral
- 20 therapy in graduate school?
- 21 A Yes.
- 22 Q And what -- who was your professor that taught you
- 23 that?
- 24 A I couldn't tell you that, I don't remember.
- 25 Q What was that class called?

Amy Phipps - Voir Dire Examination by Mr. Shealey

- 1 A It was -- honestly, that was a long time ago, I
2 don't remember the classes, the names of the classes.
- 3 Q Was that at USC?
- 4 A Yes, sir.
- 5 Q And that was part your master's program. What's
6 the title of that masters?
- 7 A Social work.
- 8 Q So that's a general master's in social work?
- 9 A Yes.
- 10 Q Okay. Now talk to me about this online course you
11 took.
- 12 A There is a web-based writing course through USC for
13 trauma focused cognitive behavioral therapy and I've
14 completed that web training -- when I initially started
15 working at the ARC.
- 16 Q Can anyone access that web based --
- 17 A Yes.
- 18 Q I could do it?
- 19 A Yes.
- 20 Q And how do you know if you successfully complete
21 it? Did you have to read it?
- 22 A There are several modules that you complete with --
23 including a pretest and a post test -- and then it did
24 provide you with a printout when you completed it.
- 25 Q So I could look online and do this -- if I did it

Amy Phipps - Voir Dire Examination by Mr. Shealey

1 correctly, I would get what? A certificate?

2 A It's just a printout letting you know that you've
3 completed the course.

4 Q And that printout from the online literature would
5 get me a printout -- is it talking about accuracy at least
6 as far as how many I got right or how many I got wrong?

7 A No. It just says that you've completed the
8 training module.

9 Q So it's not even a pass/fail, it's just that you
10 attempted it?

11 A That you completed it.

12 Q Okay. Thank you.

13 MR. SHEALEY: Your Honor, I don't have any
14 objection to her being qualified as an expert in mental
15 health, but I do object to cognitive behavioral therapy
16 expertise based on an online-web-based survey.

17 THE COURT: Somebody?

18 MS. ASHTON: Your Honor, I asked her to be
19 qualified in the area of child behavioral sciences. That
20 is not whatever he just referred to. Not related to her
21 online training.

22 THE COURT: Go ahead.

23 MR. SHEALEY: And I'm fine with behavioral sciences
24 as an expert. That's fine.

25 THE COURT: Okay. Just don't go outside of her

Amy Phipps - Direct Examination by Ms. Ashton

1 field.

2

DIRECT EXAMINATION

3 By Ms. Ashton:

4 Q Okay. Ms. Phipps, is it okay if I call you Amy?

5 A Yes.

6 Q You stated that you worked at the Assessment
7 Resource Center?

8 A Yes.

9 Q And describe in more detail of what your job was at
10 the Assessment Resource Center?

11 A I was with therapist and so I completed therapy,
12 primarily trauma focused behavioral therapy, with children
13 who were referred to me for that purpose.

14 Q And what -- those are big words. Is there an
15 abbreviation for it?

16 A It's TFCBT.

17 Q And can you just describe why that type of therapy
18 is used? Is that considered best practice or is that just
19 the type -- can you expand upon that, please?

20 A TFCBT is considered evidence based best practice,
21 meaning it's been studied and determined that it is, in
22 fact, best course and treatment for individuals --
23 particularly children -- who have been traumatized; and we
24 use it for the purpose of, primarily of dealing with sexual
25 trauma.

Amy Phipps - Direct Examination by Ms. Ashton

1 Q Okay. And did you -- were you -- did you provide
2 therapy to Child Child

3 A Yes.

4 Q And at what point did you first meet with Child

5 A Is it okay if I refer to my notes?

6 Q Sure.

7 (WHEREUPON the witness was looking at her notes.)

8 THE WITNESS: That would have been in January of
9 2009.

10 By Ms. Ashton:

11 Q Okay. And can you talk about your initial therapy
12 with Child How did that begin?

13 A Child was referred to me following an interview
14 at the ARC, and so we began -- in therapy when we start, we
15 do an assessment. So my initial phase of treatment was to
16 do an overall mental health assessment.

17 Q Okay. And can you describe the overall -- what
18 does the overall mental health assessment involve?

19 A A mental health assessment overall involves
20 information about how -- what symptoms she may or may not
21 have. It involves information about her schooling,
22 performance in school, it also includes information about
23 any medical diagnoses she may have had or prior mental
24 health treatment that she may have undergone. It also
25 includes a mental status exam, which is when we identify if

Amy Phipps - Direct Examination by Ms. Ashton

1 she's also experiencing any symptoms having suicidal
2 thoughts, things like hallucinations, or delusions, where
3 she is experiencing any symptoms like depression or
4 anxiety.

5 Q And why did she actually start therapy?

6 A She was referred to me following an interview where
7 she disclosed sexual abuse for a treatment program.

8 Q Okay. Now, part of your initial medical
9 assessment, does that involve making a diagnosis?

10 A Yes.

11 Q And was Child diagnosed the anything in this
12 case? By your assessment?

13 A Yes. The diagnosis that was provided for her was
14 sexual abuse of a child, and that's where our focus or
15 clinical attention is on a child victim of sexual abuse.

16 Q So is that helpful to how you proceed with your
17 therapy?

18 A Very much so.

19 Q And why is that? Why is that helpful?

20 A Because we want to provide therapy that's accurate
21 and appropriate. I don't want to be giving therapy for a
22 diagnosis that doesn't exist.

23 Q Okay. And did you meet -- after you made the
24 initial assessment, what was the next steps in your
25 involvement with Child

Amy Phipps - Direct Examination by Ms. Ashton

1 A After completing the initial assessment, we started
2 therapy by establishing rapport, spending time together,
3 getting to know one another and helping Child feel
4 comfortable with being involved in therapy and being
5 involved in the therapeutic process.

6 Q How many times did you meet with Child

7 A I'd have to count it up.

8 Q Was it -- you can just estimate. Was it over a
9 course of months?

10 A Yes.

11 Q More than five occasions -- you can look at your
12 notes?

13 A I don't remember the exact amount. It was over the
14 course of several months starting in January and ending in
15 June.

16 Q Okay. And what were her treatment goals with you?

17 A Her treatment goals included learning about abuse,
18 so providing psychoeducation on abuse; included developing
19 a safety plan, identifying thoughts, feelings and behaviors
20 and completing a trauma narrative and also having her
21 caregiver included in that process.

22 Q And who is her caregiver in this case?

23 A Her mother.

24 Q Okay. And was she involved in the treatment as
25 well?

Amy Phipps - Direct Examination by Ms. Ashton

1 A She was.

2 Q Okay. When you met, with Child [REDACTED] were most of
3 those visits just you and Child [REDACTED] by yourselves?

4 A Primarily, with some of me visiting with mom
5 following an appointment or prior to an appointment.

6 Q Okay. And in general, what kind of symptoms may a
7 child exhibit when they have been sexually abused?

8 A Some children can exhibit symptoms of depression or
9 anxiety, feeling withdrawn, not making friends, acting
10 clingy with their parents, having stomachaches or
11 headaches, those kinds of things. Other children may act
12 out, be very aggressive with their peers, their caregivers.
13 Some children may over compensate and excel in school, do
14 really, really well and get really involved in a bunch of
15 activities. Other children may have feelings or thoughts
16 of guilt, thoughts about what happened that aren't
17 necessarily accurate or true, thinking that they're dirty
18 or shameful. Some children don't display any kind of
19 symptoms.

20 Q And does that mean that they haven't been sexually
21 abused?

22 A No.

23 Q And what kind of symptoms did Child [REDACTED] display?

24 MR. SHEALEY: Objection, Your Honor, this is under
25 403 improper bolstering.

Amy Phipps - Direct Examination by Ms. Ashton

1 THE COURT: Overruled. I think she can testify as
2 to her observations. Overruled.

3 By Ms. Ashton:

4 Q You can answer the question.

5 A She -- during our initial assessment, informed me
6 that she was experiencing nightmares, was afraid of the
7 dark, and had a loss of appetite.

8 Q Okay. And over the course of your treatment, did
9 she progress?

10 A She did. By the end of treatment, she actively
11 didn't have any symptoms at all.

12 Q Okay. And in your expert opinion are DaShawna's
13 symptoms consistent with sexual abuse?

14 MR. SHEALEY: Objection, Your Honor.

15 THE COURT: Sustained.

16 MS. ASHTON: I'll keep going.

17 By Ms. Ashton:

18 Q Is part of your therapy with CCChild courtroom
19 preparation?

20 A Yes.

21 Q And what does that -- what does that mean exactly?

22 A Courtroom preparation is the opportunity that a
23 therapist has to help a child feel comfortable with having
24 to come to court and testify.

25 Q And what kinds of things would be uncomfortable for

Amy Phipps - Direct Examination by Ms. Ashton

1 a child?

2 A Testifying -- sitting on the stand, in this place
3 right here, and talking to a bunch of strangers about
4 sexual touches can be very uncomfortable. Having to use
5 words that might make a child feel uncomfortable talking
6 about private parts, those kinds of things.

7 Q And procedures as well?

8 A Yes.

9 Q For instance what oath means?

10 A A child might not know what that word means.
11 Sometimes a child might feel uncomfortable with actions
12 that attorneys make, so when someone says objection, that
13 might make a child feel uncomfortable. Attorneys fighting,
14 or they're mad at each other. Sometimes that can be a
15 discomfort for a child.

16 Q And in the course of your courtroom preparation
17 part of the therapy, do you ever try to tell a child what
18 to say in a courtroom?

19 A No.

20 Q So it only involved their being comfortable with a
21 surroundings, in other words, for the most part?

22 A For the most part, yes.

23 Q Okay. And when you make your treatment plan and
24 when you make your diagnosis, does anyone sign off on that?

25 A At the ARC, which is part of the South Carolina

Amy Phipps - Cross-Examination by Mr. Shealey

1 Department of Mental Health, one of this requirements is
2 that a child who is seen for ninety days or more, that
3 chart has to be reviewed by a psychiatrist, and the
4 psychiatrist has to sign the plan of care or what's also
5 known as a treatment plan. So my treatment plan was signed
6 by a psychiatrist.

7 Q And approved?

8 A Yes.

9 MS. ASHTON: Beg the Court's indulgence.

10 Thank you, ma'am.

11 THE COURT: Cross-examination.

12 MR. SHEALEY: May it please the Court.

13 **CROSS-EXAMINATION**

14 By Mr. Shealey:

15 Q Okay. Ms. Phipps, so Child [REDACTED] came in and she was
16 referred to you -- and I believe in a chain of events you
17 were one of the last people to talk to her? Right? I'm
18 sorry go ahead. Is that correct?

19 A Yes.

20 Q All right. Because initially, in your experience
21 it's safe to say a claim is made, right? I'm talking about
22 how do you get involved with these -- a claim was made?

23 A Yes.

24 Q All right. And you're at the ARC. You're not
25 currently at the ARC, but at the time of all of this you

Amy Phipps - Cross-Examination by Mr. Shealey

1 were at the ARC?

2 A Yes.

3 Q All right. And there were referrals for you
4 getting involved, right?

5 A Yes.

6 Q And who were those made by?

7 A I'm sorry?

8 Q Who were those made by again?

9 A Let me double check real quick.

10 (WHEREUPON the witness was looking through her
11 notes.)

12 THE WITNESS: I don't think I have that
13 information.

14 By Mr. Shealey:

15 Q Okay. Generally they're made through people at the
16 ARC?

17 A Generally it's a forensic interviewer.

18 Q Okay. And he's at the ARC, right?

19 A Yes.

20 Q And I think referrals can be made from DSS; is that
21 correct?

22 A Yes, sometimes.

23 Q Okay. Sometimes. We're talking generalities here.

24 And you had some information about this case before you
25 actually ever met Child █████ right?

Amy Phipps - Cross-Examination by Mr. Shealey

1 A When I received a referral, someone who's -- on a
2 page of -- piece of paper with the child's -- just the
3 basic information about what occurred in the forensic
4 interview. And when I say basic, it's just literally one
5 or two sentences, and the child's name and date of birth
6 and the caregiver's name and the contact number.

7 Q And you knew in this case there was an allegation
8 of sexual abuse, right?

9 A Yes.

10 Q And I mean, you're a therapist for -- at the ARC,
11 partially to talk to people about sexual abuse, right?

12 A Yes.

13 Q So your diagnosis of sexual abuse wasn't
14 inconsistent with what you deal with at the ARC, being
15 employed by the ARC, correct?

16 A I'm sorry, it was consistent or inconsistent?

17 Q It's not inconsistent with what you do for a living
18 or what you did for a living, right?

19 A Right.

20 Q Okay. Now, I believe you said that her caregiver,
21 Ms. Myers brought her to come see you for these visits?

22 A Yes.

23 Q I believe you testified just now that you actually
24 spoke with Ms. Myers individually, right?

25 A Yes.

Amy Phipps - Cross-Examination by Mr. Shealey

1 Q And you also said that your work is reviewed by a
2 psychiatrist?

3 A That's correct.

4 Q Do you have all your notes and materials -- do you
5 have your file that you generated in front of you?

6 A I have some of my notes in front of me.

7 Q Okay. I'm going to try to refer you to a couple of
8 things, and if you don't have them, please let me know and
9 I'll do my best to get in front of you. I'm referring you
10 to one of your handwritten notes dated May 12, 2009. It's
11 a handwritten note. You see it?

12 A Uh-huh.

13 Q All right. And you'll agree that that note
14 basically says that, you know, this psychiatrist you've
15 just testified about, Dr. Watson -- is that the person
16 we're talking about? Dr. Watson?

17 A Is the psychiatrist, yes.

18 Q Okay. And is that a he or she?

19 A She.

20 Q It's a she. Okay. And she did a check off on what
21 you were doing?

22 A She met with Child [REDACTED] and her mother individually
23 and completed her own version of a mental health assessment
24 or psychosocial assessment as it's sometimes called. And
25 then she reviewed the plan of care that we had created and

Amy Phipps - Cross-Examination by Mr. Shealey

- 1 then signed off on it.
- 2 Q So to your knowledge Dr. Watson did her own
3 psychosocial assessment and evaluation?
- 4 A That's correct.
- 5 Q Are you made privy to that, do you have a copy of
6 that?
- 7 A I do not have a copy of that.
- 8 Q And what happened to that evaluation?
- 9 A That evaluation goes into the ARC's chart, so it
10 would have been in DaShawna's chart.
- 11 Q So that's in the Assessment and Resource Center
12 file?
- 13 A Yes.
- 14 Q That would be in DaShawna's file?
- 15 A It should be.
- 16 Q And you said you testified that that's part of the
17 ARC's protocol to bring in a psychiatrist to kind of
18 oversee and do a check over what you you're doing?
- 19 A That's part of the Department of Mental Health's
20 protocol, and we follow that protocol.
- 21 Q So the ARC followed those protocol on that issue?
- 22 A Yes.
- 23 Q And that's in every case?
- 24 A That's in any child who is seen for ninety days or
25 more.

Amy Phipps - Cross-Examination by Mr. Shealey

1 Q Okay. So any case by ARC where a therapist is
2 seeing a child for ninety days, they do have that -- a
3 psychiatrist to come in and do a checkoff from what you are
4 going?

5 A Yes, sir.

6 Q That's across the board over ninety days?

7 A That's the standard.

8 Q There's nothing unique about this case? That's how
9 it's done?

10 A For having a psychiatrist, that's done.

11 Q Okay. Now, we talked a lot about what you do -- do
12 you distinguish any difference between counselor and the
13 term therapist? If I call you counselor, I apologize, is
14 there any difference to you?

15 A For me? No.

16 Q Okay. So you're fine with counselor?

17 A Yes.

18 Q Okay. And I believe you testified that, you know,
19 she's demonstrated no symptoms towards the end of this
20 counseling?

21 A Yes, sir.

22 Q Let me refer you to your progress center report
23 from July 7, 2009, if you would go ahead and find that for
24 me.

25 A Okay.

Amy Phipps - Cross-Examination by Mr. Shealey

1 Q And that's where you said that she doesn't
2 experience any symptoms, right?

3 A Yes.

4 Q All right. Let me refer you to your handwritten
5 notes dated June 29th of 2009.

6 A Okay.

7 Q Okay. And you referenced in your notes no
8 symptoms, but she needs court preparation, right?

9 A Yes.

10 Q Let me refer you to September 25th, 2009,
11 handwritten notes.

12 A I'm sorry, what date was that?

13 Q September 25th, 2009.

14 A Okay.

15 Q So -- and I believe you testified that your
16 counseling sessions ended with her in June?

17 A Yes.

18 Q Okay. Now, you agree that this note talks about
19 the court preparation that was done, right?

20 A Yes.

21 Q So you're doing counseling. And you say that that
22 session, six months or so, had ended, but now you're
23 involved in the courtroom process, right?

24 A Uh-huh, yes, sir.

25 Q Okay. Now, that was in September of 2009. Let me

Amy Phipps - Cross-Examination by Mr. Shealey

1 refer you to your discharge summary and transition plan,
2 dated October 30th of 2009. I'm sorry, do you have it?

3 A Yeah.

4 Q You're quick.

5 Here you're saying generally that you're unable to
6 finish this courtroom preparation at this time because
7 there's not a court date, right? At the top?

8 A Yes.

9 Q It's all indicated for you.

10 A Uh-huh.

11 Q And lastly, let me show you to your September 25th
12 2009, limited contact sheet short form.

13 A That's the September 25th?

14 Q Yes, ma'am.

15 A Okay.

16 Q And generally does that comprise all the Court
17 preparation that you did there, right? You're doing the
18 vocabulary?

19 A Yes.

20 Q Appropriate etiquette -- and I've gone through all
21 these dates, you know, generally in 2009, have you seen --
22 did you see her since 2009 to practice those courtroom
23 procedures and etiquette?

24 A You're asking me if I have another one?

25 Q I'm asking you if the other ones that I referenced,

Amy Phipps - Cross-Examination by Mr. Shealey

1 those other ones out there, those other notes that you have
2 about preparing her for court?

3 A I don't have any that I recognize.

4 Q Well, even if you don't have it in front of you,
5 I'm talking about 2009.

6 A Uh-huh.

7 Q Did you prepare for court at any time in 2010?

8 A I don't remember. I'd have to look at her chart.

9 Q Have you ever met with the solicitor's office in
10 combination with Child [REDACTED] and getting her ready for court?

11 A Typically we do. Again, I don't remember if we met
12 together in the courtroom prior to getting ready for
13 court -- I know I met with them.

14 Q Y'all have met in a courtroom like this?

15 A We met in this courtroom right here.

16 Q And part of what you advised Child [REDACTED] on is how to
17 address the different situations in court, right?

18 A Yes. So when -- to mentally prep a child to be
19 most comfortable as possible so that includes prepping them
20 to understand what the courtroom looks like, where people
21 sit, vocabulary, what a judge is, what the jury is, what a
22 witness is. Helping them understand and feel comfortable
23 with that terminology and helping them to feel comfortable
24 talking into a microphone, not shouting. Sometimes kids go
25 crazy with a microphone and we want them to feel as

Amy Phipps - Redirect Examination by Ms. Ashton

1 comfortable and as appropriate as possible.

2 Q Do you give her any indication how she should
3 dress?

4 A We indicate that courtroom etiquette -- standard
5 etiquette that would provide initially.

6 MR. SHEALEY: Beg the Court's indulgence.

7 Thank you, Ms. Phipps.

8 THE WITNESS: Uh-huh.

9 THE COURT: Any redirect?

10 MS. ASHTON: Your Honor, may we approach briefly?

11 (WHEREUPON, there was a bench conference out of the
12 hearing of the jury and the Court Reporter.)

13 **REDIRECT EXAMINATION**

14 By Ms. Ashton:

15 Q Amy, two quick questions. The psychiatrist
16 involved, is that for medicaid purposes?

17 A Yes.

18 Q Okay. So that's to do with anything related to
19 medicaid and that sort of thing?

20 A Yes, DMH follows medicaid's standards. Medicaid
21 protocol and one of medicaid's requirements is that anyone
22 receiving therapy for ninety days or more has to be seen
23 and assessed by a psychiatrist and so it's a
24 department-wide standard and we all follow it.

25 Q Okay. And if that particular psychiatrist

Amy Phipps - Redirect Examination by Ms. Ashton

1 disagreed with your treatment plans, do you become aware of
2 that?

3 A Yes. If they did, then they would indicate that my
4 diagnosis was incorrect or that my plan of care wasn't
5 appropriate.

6 Q In this case they didn't?

7 A Right.

8 Q They signed off?

9 A Correct.

10 Q And again, courtroom preparation, you never told
11 Child [REDACTED] what to say?

12 A No, I don't. One thing we do with children is if
13 they don't know an answer or don't understand the question,
14 we do let them know that it's okay to say I don't know or I
15 don't understand because we don't want them to feel like
16 they have to answer something untruthfully out of fear or
17 misunderstanding. But as far as providing her with
18 testimony or reviewing what she should and shouldn't say,
19 no, we don't do that.

20 Q Thank you.

21 THE COURT: Anything further?

22 MR. SHEALEY: No, Your Honor.

23 THE COURT: You may come down. Thank you very
24 much.

25 Can this witness be excused? Without objection?

1 MR. SHEALEY: Without objection.

2 THE COURT: You're free to go, ma'am, thank you
3 very much.

4 All right. Ladies and gentlemen of the jury, let's
5 take a short afternoon break. We've been going for several
6 hours now. I wish you would -- I'm going to ask you to do
7 one thing. If you have any childcare issues, please let
8 the bailiff know. We -- in other words we may run past
9 five o'clock. We're not going to run late, but you know,
10 some day cares and things of that nature are pretty
11 restrictive about picking the children up and that sort of
12 thing, and we don't want to interfere with that. So if
13 you'll let the bailiff know, we'll try to work it out.

14 All right. We'll stand at ease for about ten
15 minutes. Don't discuss the case among yourselves while
16 you're in the jury room.

17 (WHEREUPON the jury left the courtroom at 3:41
18 p.m.)

19 THE COURT: We'll stand at ease for about ten
20 minutes.

21 (WHEREUPON a recess was observed.)

22 THE COURT: Counsel, let me see you.

23 (WHEREUPON, there was a bench conference out of the
24 hearing of the Court Reporter.)

25 THE COURT: All right. Bring the jury, please.

1 (WHEREUPON the jury entered the courtroom at 3:56
2 p.m.)

3 THE BAILIFF: Jury is seated, Your Honor.

4 THE COURT: Thank you. All right. Ladies and
5 gentlemen, as I told one of the attorneys, as I look at
6 this list, I probably shouldn't have asked the question.
7 (Laughter) No, I'm serious. We do want to accommodate you
8 as best we can.

9 The next witness as proposed by the State, they
10 have advised me is going to be somewhat lengthy. If it was
11 a short witness, I think we could move on, but I think we
12 better stop for the day. I don't want to have to interrupt
13 that witness's testimony at five o'clock. I think most of
14 you have indicated you need to leave at five o'clock. So
15 I'm going to dismiss you now, and ask you to be back in
16 your jury room tomorrow morning at nine o'clock.

17 Again, I'll ask you not to discuss this case among
18 yourselves or with anyone else over the evening hours or do
19 any, as I said earlier, any internet research or anything
20 like that. If you will leave --

21 Are your numbers on your note pads?

22 THE JURY: Yes.

23 THE COURT: They are. Just leave them in your
24 chairs with pencils, and we'll collect them, and give them
25 back to you in the morning. We'll take care of them for

1 the evening. Have a pleasant evening, we'll see you at
2 nine o'clock in the morning.

3 One more thing. Let me ask you -- those of you
4 that have indicated that you have childcare issues, let's
5 check to see -- tomorrow we may need to run to six or
6 something like that. See if you can make some alternate
7 arrangements. I just never know how long these things are
8 going to take. Just see if there's some way that you can
9 handle these pick ups with maybe a friend or a relative or
10 something like that if that will work. If it doesn't work,
11 I'll understand too. All right. Thank you very much.

12 (WHEREUPON the jury left the courtroom at 3:59
13 p.m.)

14 **MOTIONS**

15 THE COURT: Mr. Shealey, you had something you
16 wanted to put on the record?

17 MR. SHEALEY: Yes, Your Honor, this is a mistrial
18 motion for a discovery violation.

19 Your Honor, I questioned Ms. Phipps on the stand
20 about Dr. Watson. We've previously, in pretrial and other
21 parts of this case, we've been continuously asking who's
22 Dr. Watson and who's Dr. Watson --

23 THE COURT: You questioned her in pretrial?

24 MR. SHEALEY: We discussed it generally -- off the
25 record before this case began.

1 THE COURT: You did what?

2 MR. SHEALEY: We generally discussed this issue,
3 maybe off the record before this case started.

4 THE COURT: Yes, I understand that.

5 I thought you said you asked Ms. Phipps in a
6 pretrial hearing.

7 MR. SHEALEY: No, Your Honor.

8 THE COURT: All right. I'm with you now.

9 MR. SHEALEY: We covered this in pretrial.

10 THE COURT: Yes.

11 MR. SHEALEY: You signed some court orders for us
12 to go ahead and get what we could get of these records from
13 both the ARC and I believe the center that Dr. Watson is
14 supposed to be working.

15 THE COURT: Uh-huh.

16 MR. SHEALEY: I questioned Amy Phipps on the stand
17 about Dr. Watson. She says, Yes, for any ninety day
18 counseling --

19 THE COURT: I remember.

20 MR. SHEALEY: Right. She says that. A
21 psychiatrist comes in and does an evaluation, kind of looks
22 over my shoulder, and that goes directly into the ARC's
23 file.

24 I said so that would be in DaShawna's file.

25 Yes, that would be in DaShawna's file.

1 Right after her questioning, I'm getting some
2 information back from one of our law clerks who actually
3 served and sent the Court order. And, you know, I see here
4 some -- one report from -- that we just got. It's child
5 and adolescent new patient template that generally
6 describes some things that I would have considered -- I
7 would love to ask Dr. Watson. I would have loved to have
8 known about this earlier. Apparently, it's been in the ARC
9 file the entire time.

10 Your Honor, under -- I would say this was a
11 discovery violation under Rule 5. I think it -- it just
12 flies in the face of Brady. I think this is -- per Riddle,
13 this is in and of itself -- doesn't allow me on behalf of
14 Charles Deveau to potentially figure out if there's
15 anymore paperwork to this, to interview Dr. Watson, to
16 cross-examine her on the stand.

17 THE COURT: Why didn't you subpoena her?

18 MR. SHEALEY: Well, we just all learned this
19 information today, and apparently according to the clinic
20 where she is, she's in North Carolina some place. Your
21 Honor, my point is, according to Amy Phipps who testified
22 under oath, this has always be in the ARC's file.

23 THE COURT: I understand. I understand. I heard
24 it. And you're moving for a mistrial?

25 MR. SHEALEY: I am moving for a mistrial.

1 THE COURT: All right. What's the State's
2 position?

3 MS. ASHTON: Your Honor, Dr. Watson's name -- first
4 of all, Dr. Watson is not affiliated with the ARC. She is
5 an independent contractor.

6 THE COURT: She?

7 MS. ASHTON: Her name is Lakeshia Watson. The
8 first time I learned about Lakeshia Watson was when Defense
9 Counsel brought her name to my attention at some point last
10 week or over the weekend. Doctor -- we subpoenaed the
11 mental health records and all the medical records in ARC's
12 custody.

13 THE COURT: Where is Dr. Watson's report?

14 MS. ASHTON: I don't have that -- Dr. Watson's
15 report. Apparently it's in the ARC's file.

16 THE COURT: You better get it.

17 MS. ASHTON: Can I please -- it's in the file,
18 which we haven't touched. It's in our office.

19 THE COURT: Well, go get it.

20 MS. ASHTON: Thank you. They never turned Dr.
21 Watson's reports over to us because they, under HIPAA
22 didn't feel that they had the ability to turn it over
23 because it wasn't an ARC document. It was an independent
24 person, and as far as, you know, them --

25 THE COURT: You know you have something in your

1 file?

2 MS. ASHTON: I didn't know --

3 THE COURT: Do you?

4 MS. ASHTON: Apparently from what we heard today,
5 this particular document that they have that we don't have
6 has been in the ARC file.

7 THE COURT: And you just said you have the ARC
8 file.

9 MS. ASHTON: In the office. I haven't looked at
10 it. We haven't -- I mean you ordered us to get it this
11 morning.

12 THE COURT: Well, go get it and look at it.

13 MS. ASHTON: She's going to get it. But, I mean as
14 far as any violations under the discovery rules, Your
15 Honor, we -- it has to be in the possession, custody or
16 control of the prosecution, the existence of what is known
17 in materials given for preparation for defense or intended
18 for use by the prosecution.

19 THE COURT: I know what the rule says.

20 MS. ASHTON: It wasn't in our possession.

21 THE COURT: I understand. Are you going to get it
22 or not?

23 MS. ASHTON: The file is right there.

24 THE COURT: Get the report.

25 MS. ASHTON: I'm not sure what report he's

1 referring to.

2 THE COURT: It ought to be pretty clear. It's got
3 the name Thomas on it.

4 MS. ASHTON: Thomas?

5 THE COURT: Watson. Have a seat. We're going to
6 sit here until you find it.

7 MR. SHEALEY: You know, I don't know what's in
8 their file with regard to Dr. Watson.

9 THE COURT: I don't either, but we're going to try
10 to find out.

11 (WHEREUPON the solicitor was looking through the
12 ARC file.)

13 MS. ASHTON: Okay. Your Honor, we found one
14 report, so far.

15 THE COURT: Keep going.

16 (WHEREUPON the solicitor continued looking through
17 the file.)

18 MS. ASHTON: I mean there's others that relate to
19 medicaid and insurance and billing. I'm not sure what
20 exactly -- are you just concerned with Dr. Watson's?

21 THE COURT: Everything that has Dr. Watson's name
22 on it.

23 MS. ASHTON: Okay.

24 (WHEREUPON the solicitor presented a document to
25 the Court.)

1 MS. ASHTON: Your Honor, that's the only thing that
2 I found with Dr. Watson's name on it. Other than what they
3 already have as far as her signing off on the medical
4 treatment plan and diagnosis.

5 THE COURT: Okay.

6 (WHEREUPON the Court is looking at the document
7 that was found.)

8 MR. SHEALEY: Your Honor, when you would like to
9 hear from me, I'm happy to --

10 THE COURT: All right.

11 MR. SHEALEY: Your Honor, I do think this is a
12 serious violation of Brady under Rule 5. My line of
13 questioning was directed at Ms. Phipps to get to the bottom
14 of Dr. Watson. It's always been in the ARC file. It's
15 always been in the purview of the solicitor's office. This
16 ARC file should be open to them. This is a doctor in the
17 case. And this report, I would love to question Dr. Watson
18 on this. And I would love to go hire a doctor to even
19 interpret it.

20 There are medical terms and psychiatric terminology
21 here that I think could potentially be exculpatory that I
22 don't even have the vocabulary to really be able to
23 articulate. And she can't be in the courthouse. She's not
24 under subpoena, we just found out about her, and it's
25 always been in the custody of the ARC. This is a 14th

1 Amendment due process violation for the ability for us to
2 give a full and complete defense.

3 This is a confrontation issue under the 6th
4 Amendment, and it's at odds with Brady, Riddle, and it's
5 always been in the -- it's always been in Child
6 Anderson's ARC file, which has been retained at the
7 Assessment Resource Center and the State's had access to
8 it, and we're just now learning about it today. And there
9 are things here that I can't have cured and that -- that's
10 why I'm asking for a mistrial to be granted.

11 THE COURT: What's the State's position?

12 MS. ASHTON: Your Honor, again, again, the South
13 Carolina Rule of Evidence provides -- states that, Upon
14 request of the defendant, the prosecution shall permit
15 defense to inspect -- it has to be -- first of all, it has
16 to be -- as it relates to mental examinations or whatever
17 he's referring -- whatever he's classifying in this -- I
18 don't even know -- I mean it says child -- I mean it does
19 say, Patient Eval Template. Whether this is an evaluation
20 or a physical or mental exam, I mean -- I don't necessarily
21 think this is even classified under that information that,
22 which is in our possession or control. We subpoenaed the
23 records from ARC. They provided us mental health documents
24 from Amy.

25 THE COURT: How did you get what you've got in your

1 hand?

2 MS. ASHTON: From your court order.

3 MR. SHEALEY: After we subpoenaed that last week.

4 MS. ASHTON: Excuse me. This is not a document --
5 this is not ARC's document. This is an independent
6 contractor.

7 THE COURT: Where was it?

8 MS. ASHTON: Apparently it was in the ARC file.
9 I've never seen this document before, Your Honor.

10 THE COURT: Did you ever review the ARC file?

11 MS. ASHTON: When we subpoenaed the records --

12 THE COURT: Did you ever review the ARC file?

13 MS. ASHTON: No, we did not.

14 THE COURT: All right.

15 MS. ASHTON: We subpoena the records. They give us
16 the mental health records. They give us the medical evals,
17 and they give us the summaries of the forensic interviews
18 and the CDs.

19 THE COURT: Well, then why didn't you get this?

20 MS. ASHTON: When I asked Ms. Phipps that, she said
21 because it's not an ARC -- she's an independent contractor,
22 this is not -- she cited HIPAA, she said that when we
23 release the documents, we release -- the ones that come
24 from our production, meaning her employees at the ARC, not
25 from an independent contractor. This doctor is not

1 affiliated with the ARC.

2 THE COURT: How do you know that? How do you know
3 what this doctor is?

4 MS. ASHTON: Amy testified to that. She's with the
5 University Specialist's Office. And it's for medicaid
6 purposes. The only reason this person is even involved is
7 for medicaid purposes. That person -- she testified --

8 THE COURT: Well, I understand what it's -- whether
9 it's medicaid or Obama Aid, this is a medical examination
10 of this patient with conclusions by -- you say it's a
11 psychiatrist, I don't know. There's no evidence -- there's
12 no indication here as to who this person is. All I see is
13 a signature by -- I can't read -- Lakeshia Watson on May
14 8th, 2009. And it's in the State's file.

15 I mean -- I'm like Mr. Shealey. I'm not sure I can
16 read it because I don't know what some of these terms are.
17 But I can read, Mom does not report a history of mood
18 anxiety, mania symptoms. Patient currently denies all
19 symptoms indicative of mania. That's the way I see it or
20 anxiety disorder. She describes good sleep, appetite --
21 sleep, appetite, and energy.

22 Concurrently she denies -- I don't know what that
23 word is. She denies any mood swings or grandiosity. No
24 history of -- patient -- well, FOI, patient denies any
25 fears except developmentally and appropriate fear of

1 snakes. No ritualistic behavior. At times she thinks
2 about trauma a little, but denies repetitive fierce
3 thoughts. Denies hypervigilance or avoidant behaviors.
4 She also denies fears of seeing dad at this time. Is not
5 concerned he can hurt her. She denies any ongoing trauma
6 at this time. She enjoys dancing, singing, playing games
7 with her friends as well.

8 I mean, I can read that much.

9 MS. ASHTON: Well --

10 THE COURT: Which indicates this doctor found that
11 on May 8, 2009, she was in pretty good shape according to
12 this document.

13 MS. ASHTON: Well, Your Honor, we don't dispute
14 that. Amy testified to that. This is at the end -- the
15 date of service, the one time this doctor apparently saw
16 Child [REDACTED] is at the end of her therapy, toward the end of
17 her therapy. And the second page also says history of
18 sexual abuse by dad. Denies sexual activity.

19 MS. ASHTON: You know -- so, again, they -- we
20 produced mental health records to them, which we subpoenaed
21 from the ARC and we received. We weren't even required to
22 do that without a court order, but we did because we, in
23 our subpoena said -- we said all mental health court
24 records.

25 Now, I had no idea -- and we didn't have to do that

1 without a court order because those aren't technically
2 examinations or evaluations. That's how this doctor's name
3 came up. They had access to this doctor's name for a year
4 just like -- I mean --

5 THE COURT: Why do you say this is not an
6 examination? This is technically not an examination?

7 MS. ASHTON: Well, it's not --

8 THE COURT: Well, what is it?

9 MS. ASHTON: It's not an examination, and it's
10 not --

11 THE COURT: What is it? What is it?

12 MS. ASHTON: It's a new patient evaluation
13 template. It's a template. That is the title of this
14 document by --

15 THE COURT: Well, I guess we don't look at the
16 context of that document. Is that your position?

17 MS. ASHTON: Yes, Your Honor, because it doesn't
18 fall under the Rules of Evidence 5, 6, I believe we're
19 arguing over D.

20 THE COURT: Well --

21 MR. SHEALEY: Your Honor, Ms. Phipps testified that
22 this was a psychosocial evaluation done by a psychiatrist
23 that was placed in DaShawna's file, and always been in the
24 custody of the ARC. We are --

25 THE COURT: I know that. I understand what you're

1 saying.

2 How do you know this witness is in North Carolina?

3 MR. SHEALEY: The only information I have to that
4 is when our clerk went to retrieve some of these documents
5 in emergency fashion, and he was inquiring about her, they
6 said something to the effect, She's out of state.

7 THE COURT: Well, somebody better try and find her.
8 And I would suggest that the State try to find her. She
9 may be in Charlotte shopping for a wedding dress. I don't
10 know. She may have moved to North Carolina.

11 MS. ASHTON: Your Honor, she's not -- we don't have
12 to call her as a witness to prove our case, Your Honor.
13 We're not using anything related to her --

14 THE COURT: Well -- but the defense is entitled to
15 it.

16 MS. ASHTON: And they have subpoena power as well.
17 They knew about this -- if they wanted this information so
18 bad they could have gotten the Court order before today,
19 Your Honor.

20 MR. SHEALEY: Your Honor, here's our problem. They
21 have failed to disclose under Brady, under Riddle, Kyles v
22 Whitley, and that document has been in the State's
23 possession the entire time. For a full and complete
24 defense, in order to translate some of these medical terms,
25 I would need to hire a doctor myself.

1 THE COURT: You don't think I did a pretty good
2 job?

3 MR. SHEALEY: Yes, Your Honor, about as good as I
4 could have done. His ability to have a defense, full and
5 complete in this case, just having this right now when it's
6 been in the possession of ARC the entire time, this
7 prevents us from doing what we need to do to possibly
8 prepare a better defense, to -- in anticipation of
9 cross-examining, Dr. Watson, who by the way, isn't even
10 here. All of these things are why a mistrial motion should
11 be granted for discovery violations just like this.

12 THE COURT: I understand. I'm not going to grant
13 it now, but there better be some movement on this issue by
14 morning. Either we're going to bring Dr. Watson in here or
15 I'll consider your motion for mistrial. I mean -- I'm not
16 a psychiatrist, but somebody, a jury reeding this or
17 hearing this might have some -- it might be important in
18 their determination of the guilt or innocence of the
19 defendant. It might be. It might have some tendency to be
20 exculpatory, it may not. But I think the defense is
21 entitled to have this evidence in front of the jurors.

22 Now, that's all I've got to say. I don't know how
23 that can be done, but it's -- I mean, how do you -- how do
24 you -- I mean -- nevermind. I can't explain why it wasn't
25 produced, why somebody didn't know about it, why we're

1 three days into a trial, and now it finally comes out. But
2 this witness knew all about it and this witness has
3 testified before. This witness knew all about this. I
4 don't know why the State didn't know about it.

5 MS. ASHTON: Your Honor, this witness -- this never
6 came up until three days ago. They brought this up three
7 days ago. If I knew Dr. Watson was going to be such an
8 issue, we would have started trying to get her on yesterday
9 morning. It didn't come up in the previous trial because
10 Dr. Watson played a minor role in this case. Amy Phipps
11 testified the only reason she was involved is because of
12 some medicaid requirements whenever counseling exceeds
13 ninety days some psychiatrist has to come into the picture.

14 And she also testified that if the treatment plan
15 weren't --

16 THE COURT: So you mean this doesn't mean anything
17 if this is just for the government to confirm that somebody
18 can get medicare benefits?

19 MS. ASHTON: That is the testimony that came from
20 the stand.

21 THE COURT: That's your position?

22 MS. ASHTON: Yes.

23 THE COURT: It means absolutely nothing?

24 MS. ASHTON: In addition that she had -- she has no
25 interaction with this case whatsoever except for this.

1 evaluation template.

2 THE COURT: Did she interview your victim.

3 MS. ASHTON: She did meet with the victim to
4 formulate this report.

5 THE COURT: She interviewed her.

6 MS. ASHTON: I don't know what the interaction was.

7 MR. SHEALEY: Your Honor, that was the testimony.

8 THE COURT: Just wait a minute.

9 She talked to her?

10 MS. ASHTON: Yes, in order to do this report.

11 THE COURT: And made conclusions from what your
12 victim told her.

13 MS. ASHTON: Which were all --

14 THE COURT: I mean these are rhetorical questions.
15 I know the answers.

16 MS. ASHTON: Yes, Your Honor. And she also signed
17 off on the treatment plan that was discussed, and she
18 signed off on the diagnosis that was discussed in
19 testimony. There's nothing new to their case. It's all
20 already been testified to.

21 THE COURT: Well, that's where there's a difference
22 of opinion. They feel it's significant to their case. You
23 don't. I understand that.

24 MS. ASHTON: Well --

25 THE COURT: You better either brief it or produce

1 her.

2 MS. ASHTON: We've already -- we will try our best
3 to find this doctor. We don't plan on calling her in our
4 case. So I mean --

5 THE COURT: I understand that. I need to know
6 whether she's available or not so the defense can call her
7 or we can start over next month.

8 We'll stand at ease until nine o'clock.

9 MR. BAILEY: Thank you, Judge.

10 MS. SIMPSON: Thank you, Your Honor.

11 MS. ASHTON: Can I give Ray his file back Your
12 Honor, or does this need to stay with the Court.

13 MR. BAILEY: Not to make this more complicated,
14 Judge, but -- this is -- we would ask that a copy be made
15 for the Court to have since this is a serious violation and
16 we'd like access to it. If it's going somewhere, and we
17 won't have access to it later if we have more questions.

18 MS. DELANY: I'd like to see what else is in it.
19 She said there was billing stuff in it. And I don't -- we
20 apparently haven't seen the whole file.

21 THE COURT: Why should they not have a copy.

22 MS. SIMPSON: Your Honor, if I may, can we just
23 provide it to the Court, and you can look at it and decide
24 whether some of this stuff is material -- some of this
25 information, as I said and Ms. Ashton stated it -- well

1 with respect law enforcement and what we have access to
2 through our subpoenas, separate agencies, court orders,
3 HIPAA reasons, attorneys, with respect to this, I believe
4 you can review the file.

5 MS. ASHTON: Would you review the file and
6 determine whether anything they need copies of is present?

7 THE COURT: Sure.

8 MR. SHEALEY: Your Honor, can I approach ex parte?

9 (WHEREUPON, there was a bench conference out of the
10 hearing of the Court Reporter.)

11 THE COURT: Nine o'clock.

12 WEDNESDAY, OCTOBER 12, 2011

13 THE COURT: Ms. Ashton, what are we waiting on.

14 MS. ASHTON: Your Honor, we are bringing the victim
15 down.

16 THE COURT: You're what?

17 MS. ASHTON: The victim.

18 THE COURT: Okay.

19 MS. ASHTON: I told them to be down here at 9:40.

20 They're coming down.

21 THE COURT: How about your Dr. Watson?

22 MS. ASHTON: I asked her -- I told her that she was
23 ordered to be here. She's on her way.

24 THE COURT: Okay. Have her sit in this courtroom.

25 MS. ASHTON: She's going to come in the courtroom.

1 THE COURT: And stay.

2 MS. ASHTON: Yes, sir.

3 THE COURT: All right.

4 MS. ASHTON: Your Honor, our next witness is going
5 to be doctor -- I mean Ray Olszewski. We're going to have
6 to use the computer that we always use to play that video
7 with the projector screen and I just want to make sure that
8 there's no issues that they have with the actual computer.
9 It is the one that's always used. No access to any kind of
10 software on our system. I don't think the internet can be
11 accessed. You have to have a password to get into
12 anything. I just want to make sure that's not going to be
13 an issue.

14 THE COURT: Where is it?

15 MS. ASHTON: It's on it's way, right?

16 MS. SIMPSON: Yes. They're bringing the equipment.

17 THE COURT: Are we waiting on Ms. Delany?

18 MR. SHEALEY: I'm not sure where she went, Judge.
19 We can start without her for purposes of this motion.

20 THE COURT: All right. Is the State ready to
21 proceed?

22 MS. ASHTON: Yes, Your Honor.

23 THE COURT: Defense ready to proceed?

24 MR. SHEALEY: Yes, sir.

25 THE COURT: Any matters we need to take up before

1 the jury is seated?

2 MR. SHEALEY: Yes, Your Honor. We have our motion
3 for mistrial that we touched upon yesterday. If I may?

4 THE COURT: Proceed.

5 MR. SHEALEY: Thank you, Your Honor. May it please
6 the Court. Your Honor, yesterday's events as they
7 unfolded, for the sake of the record, we know that there
8 is, a note in Amy Phipps terms, a handwritten note related
9 to Dr. Watson. We looked at this note. We didn't see
10 anything else in discovery about Dr. Watson. I believe we
11 looked at this on Sunday, realized there's nothing else
12 about Dr. Watson. You know, Ms. Ashton -- pretrial we
13 brought up in Riddle -- I specifically said who is Dr.
14 Watson. You signed some court orders. We had the
15 impression from the State that she may have worked at a
16 clinic in town. You signed a court order for us to get
17 records from that clinic, the University Specialty Clinic,
18 I believe, as well as the Assessment Resource Center.

19 It came to the point where the State called Amy
20 Phipps as the therapist, and part of my examination of her
21 was somewhat intentionally directed at who is Dr. Watson.
22 She was very candid in saying that in all of our cases
23 where the therapeutic counseling is recommended over a
24 ninety day period they had a psychiatrist come in, a child
25 psychiatrist come in, and review the counselor's work. And

1 I said is this unique to this case. No, it's not unique.

2 Then where's that counselor's work product, and she called
3 it a psychosocial evaluation on the stand.

4 Where does that go, where does that work product go
5 once it's completed. She said she spoke to -- initially to
6 Child Child and Kathy Myers, who is Child
7 mother; and the response of Amy Phipps was it goes into our
8 file, and it's always been in the ARC file with Child
9 Anderson's name on this. In this case, prior to ever
10 coming to trial, we subpoenaed the entire ARC file. We've
11 never been given a copy of that. After I sat down from
12 cross-examining Ms. Phipps, pursuant to your orders, our
13 law clerk was able to go to the University Specialty Clinic
14 and actually get an evaluation report from this clinic,
15 detailing a lot of the psychiatric language.

16 There's also language in there that certainly on
17 its face could be considered impeachment. Half of the
18 language, I am not educated as a lawyer to understand the
19 psychiatric terms. At that point in time, questions were
20 given to the State about where this thing is; and they got
21 a copy from their ARC file, which apparently Mr. Olszewski
22 had brought to the courthouse yesterday. So it's always
23 been in his possession.

24 Your Honor, that's just procedural background as I
25 know it. Your Honor, this is a violation of the 6th

1 Amendment confrontation clause or meaningful confrontation.
2 This is a violation of the 14th Amendment for a full and
3 complete defense. In discussing the disclosure of the
4 State, Reid touches upon it. Then Bagley talks about being
5 disclosed and saying there's no distinguishing anymore
6 between impeachment or ex culpability in terms of what is
7 considered fair and favorable to the defense.

8 Your Honor, Kyles v. Whitley specifically touches
9 upon this as does Riddle. Your Honor, as far as Kyles v
10 Whitley, the Supreme Court's language for a solicitor in
11 this case or a prosecutor is duty of disclosure. An
12 individual -- and I quote, an individual prosecutor has a
13 duty to learn of any foreseeable evidence known to the
14 others acting on the government's behalf in the case. The
15 government cannot avoid responsibility for knowing when the
16 suppression of evidence comes to court and has such an
17 effect on a trial's outcome as to destroy confidence in the
18 trial's result.

19 Now, while this means that prosecutors anxious
20 about tacking too close to the wind will disclose a
21 favorable piece of evidence. This is as it should be for
22 such disclosure will one, serve to justify trust in a
23 prosecutor as a representative of a sovereignty whose
24 interest in criminal prosecution is not that someone shall
25 win a case, but that justice will be done; and two, you

1 attempt to preserve the criminal trial as distinct from the
2 prosecutor's private deliberations as the chosen form for
3 ascertaining the truth about criminal accusations..

4 Your Honor, this should have been disclosed.
5 Whether it's good faith or bad faith, that's not the point.
6 Per Whitley this should have come to light. This is not a
7 lay witness, and it's my understanding that Dr. Watson has
8 been subpoenaed down from North Carolina where she worked
9 all night, and she's coming to this courthouse. This is
10 not a -- this is a psychiatrist. I don't know if she has a
11 specialty in child psychiatry. It's not a mere lay witness
12 or another officer on the scene that we can quickly assess
13 and be prepared to cross-examine. This potentially changes
14 defense's trial strategy.

15 They've already indicated they're not going to put
16 her up on the stand. Then where he have to decide whether
17 or not we're going the lose last closing, are we going to,
18 you know, give away his right to remain silent and put up a
19 case potentially. It changes the entire strategy as far as
20 potentially Charles Deveau. If we put up a case is he
21 going to testify?

22 And further as we discussed yesterday, there is
23 impeachment value, obvious in this evaluation, and for
24 anybody to say that this is not a psychological evaluation,
25 I would say would be disingenuous. This document is full

1 of psychiatric terminology that I don't know what it means,
2 and I'm not prepared to Google it or Wikipedia what it
3 means because that's not how we present a defense or the
4 best defense for our client.

5 But what I potentially would have done if I'd known
6 about this information before -- and granted this case is
7 three years old and it's already been tried once and
8 mis-tried -- but I certainly would want the opportunity on
9 behalf of my client under the 14th Amendment to present a
10 full and complete defense, potentially hire a forensic
11 child psychiatrist to look at this report and potentially
12 glean things from it that I can't know as a layperson what
13 some of these terms mean. Is it consistent with sexual
14 trauma? Is it not consistent with sexual trauma?

15 And Your Honor, per Kyles v Whitley, the government
16 cannot bury their head in the sand on this and say, Well,
17 we didn't get it because the ARC didn't give it to us. It
18 is clear in Kyles v. Whitley that it does not matter
19 whether it was given to them or not. The duty of
20 disclosure is there, and we have a right to have this to
21 preserve his constitutional amendments, the 14th and 6th
22 Amendment; and Your Honor, what was clear from yesterday is
23 that this is protocol for ARC to have a child psychiatrist
24 and that there are two ARC files in this case.

25 There's one that ARC gives for court purposes and

1 there's another one. I've got up here two files to make
2 Court exhibits. One is what we were given in this case,
3 which is roughly half an inch in depth. The other is the
4 ARC file, which, not only does that special ARC file have
5 another two inches of depth stacked up against what we were
6 given, but it also has specifically the psychiatric report
7 by Dr. Watson; and it's got other -- in reviewing it today
8 for the first time, the rest of that special ARC file has
9 charts and graphs and diagnostics which we were never
10 given, and I mean -- at this point in time under this time
11 constraint, I don't know the relevance. We certainly can't
12 exclude them for this impeachment value or exclude them
13 from potential exculpability, and that's why the only true
14 remedy in this case at this point in time is a mistrial
15 motion, Your Honor, to be granted.

16 THE COURT: What's the State's position?

17 MS. ASHTON: Your Honor, first of all, the only
18 document -- well, Dr. Watson's name only came up -- it's on
19 a note in Ms. Phipps file. The signature where she
20 approved a plan of care. So there is no note in Amy Phipps
21 file from Dr. Watson. It's a signature approving a plan of
22 care. As far as this examination or this thorough
23 examination that the defense counsel is referring to, you
24 have a copy of it. It's a four page, handwritten document
25 titled Child Adolescent New Patient Evaluation Template.

1 And you know, all the medical terminology -- it's a very
2 cursory surface language, Your Honor. As far as whether
3 this is under -- we've already been through whether it was
4 in our possession or not. We did everything we could. We
5 did our due diligence under Rule 5. We subpoenaed all
6 mental health records from the Assessment Resource Center
7 and everything that was provided to us, we provided to the
8 defense counsel.

9 You know, the ARC is a -- has protected information
10 in their files under HIPAA and under other federal
11 regulations. They don't just allow us to go into their
12 office and get everything in their file. It's not like a
13 law enforcement police file, Your Honor. It's simply
14 the -- different from that because there's protected
15 information. So it was not in the State's possession under
16 Rule 5.

17 Also, as far as it being material, part of the Rule
18 5 under Brady, it has to be evidence of material guilt or
19 punishment and there are several cases from the U.S.
20 Supreme Court, our courts, that you know, give the
21 definition of what is material. Here we are dealing with a
22 psychiatrist who is resident at the University Specialty
23 Clinic. Her involvement in this case was a one-time
24 meeting with the victim, who she'd already approved the
25 plan of care, and we had that witness testify. The witness

1 also testified if there's anything different that she
2 disagreed with on the plan of care that that would be noted
3 and brought to Ms. Phipps attention and it never was.

4 Ms. -- Dr. Watson met with Child one time. She
5 completed this four page handwritten evaluation template,
6 which doesn't, based on what I'm reading, doesn't include
7 any kind of exculpatory information. It does say at the
8 end of her treatment she's not exhibiting any kind of signs
9 of trauma. But Ms. Phipps testified to that. That was at
10 the end of her treatment. It didn't say anything from here
11 where someone else did it or this never happened. It says
12 history of sexual abuse by dad. It says -- I mean -- based
13 on this document, there's nothing in here that's
14 exculpatory to the defense.

15 Also, it's printed material. There has to be a
16 reasonable probability that had the evidence been disclosed
17 the result would have been different or you know, the mere
18 possibility that this might help the defense. This is a
19 U.S. Supreme Court case, United States v. Hurs, H-u-r-s,
20 the mere possibility that undisclosed information might
21 have helped the defense or might have effected the outcome
22 of the trial does not establish materiality.

23 It's not a fishing expedition, Your Honor. And
24 they had evidence under State v Finley, a South Carolina
25 Supreme Court case that they discovered the file in time to

1 act adequately to use it at trial. They've had the
2 discovery in this case with Dr. Watson's name included
3 since we turned over discovery early this year. So they
4 had Dr. Watson's name available to them as well, where she
5 signed off on Amy Phipps plan of care.

6 If we -- it took us last night to find Dr. Watson.
7 She's still in Columbia. In fact, I Goodled her and her
8 address -- her home address came up on whitepages. So they
9 had her name way before this trial -- this weekend, just as
10 we did. And again, we weren't planning on calling Dr.
11 Watson in our case in chief. What she would have been able
12 to testify to, what we now know is consistent with what Ms.
13 Phipps already testified to. We had no intention on using
14 any of her information in our case in chief. So under
15 State v Trotter, you know, that case says that a medical
16 report is an official statement of facts concerning --
17 well, there's just -- I mean this is not any kind of
18 diagnostic or you know, in-depth evaluation. This is a
19 four page handwritten document that does not contain
20 exculpatory information. It's titled as an evaluation
21 template. This is a one time meeting.

22 THE COURT: All right. I understand.

23 MS. ASHTON: And this is not a fishing expedition
24 either, Your Honor.

25 THE COURT: All right. I'll take it under

1 advisement.

2 MR. SHEALEY: Your Honor, if I may, it could be
3 helpful for your advisement to look at what she says is
4 clearly Dr. Watson's signature on Amy Phipps -- we've been
5 referring to it a lot. She's got it. She knows exactly
6 what it is.

7 MS. ASHTON: No, actually, we don't know.

8 MR. SHEALEY: Well, she's been referencing it.

9 MS. ASHTON: There's another page that is much
10 clearer.

11 (WHEREUPON there was off the record discussion
12 between the attorneys.)

13 (WHEREUPON the a page was marked as a court's
14 exhibit.)

15 THE COURT: Tell me what this is.

16 MR. SHEALEY: What I just gave you is what first
17 alerted our attention to it. It's part of Amy Phipps
18 materials that we were given, and that's what in Amy
19 Phipps' handwriting referenced Dr. Watson. That's what
20 first brought all of this about, and I think what's
21 referenced was that her signature was on the bottom of that
22 and once she said that for the first time ever I looked
23 down there and was able to see some signatures; and I bring
24 it to the Court's attention to see if that's clear enough
25 for anybody to discover anything as far as Dr. Watson.

1 MS. ASHTON: Actually, Your Honor, what I was
2 referring to as far as her signature is under the plan of
3 care which is attached to her memo. She signs off on the
4 plan of care.

5 THE COURT: Okay.

6 MS. ASHTON: So I was referring to something
7 different from that.

8 THE COURT: All right.

9 MR. SHEALEY: None of that negates any of my
10 previous argument about their responsibility to provide the
11 evaluation which is at issue.

12 THE COURT: I understand. All right.

13 Ready for the jury?

14 MS. ASHTON: Yes, Your Honor.

15 THE COURT: Defense ready?

16 MS. DELANY: Yes, sir.

17 THE COURT: Bring the jury.

18 (WHEREUPON the jury entered the courtroom at ten
19 o'clock a.m.)

20 THE BAILIFF: Your Honor, the jury is present.

21 THE COURT: Good morning, ladies and gentlemen.

22 THE JURY: Good morning.

23 THE COURT: Maybe we should start at 9:30 from now
24 on.

25 Well it -- I have always experienced traffic

Raymond Olszewski - Direct Examination by Ms. Ashton

1 problems coming in too. So -- might be we'll do that
2 tomorrow. All right. We're now ready to continue with the
3 trial.

4 Solicitor, call your next witness.

5 MS. ASHTON: State calls Raymond Olszewski.

6 THEREUPON,

7 RAYMOND OLSZEWSKI,

8 after being duly sworn, testified as follows:

9 THE CLERK: Please have a seat and state your full
10 name for the record.

11 THE WITNESS: First name is Raymond. Last name is
12 Olszewski. That's O-l-s-z-e-w-s-k-i.

13 **DIRECT EXAMINATION**

14 By Ms. Ashton:

15 Q Good morning.

16 A Good morning.

17 Q Mr. Olszewski, would you please state what your
18 educational background is?

19 A Yes, I have a bachelor's degree in psychology from
20 the State University of New York at Oneonta. I have a
21 master's degree in social work from the University of South
22 Carolina here in Columbia.

23 Q And where are you currently employed?

24 A I'm employed at the Assessment and Resource Center,
25 commonly known as the ARC. It's also here in Columbia on

Raymond Olszewski - Direct Examination by Ms. Ashton

1 the State Hospital campus on Bull Street.

2 Q And what are your duties at the ARC? What's your
3 position at the ARC?

4 A The ARC is a nationally accredited children's
5 advocacy center where we conduct forensic interviews of
6 suspected child abuse victims and also medical examinations
7 on the same -- many of the same alleged victims. I am
8 primarily a forensic interviewer, so I conduct forensic
9 interviews as the majority of my job duties at the ARC.

10 Q And what is meant by the term of forensic
11 interviewer?

12 A Forensic interview is simply an investigative or
13 fact finding interview where we're trying to determine
14 whether or not something has happened, and if it has to get
15 as many details or facts about what happened as possible.

16 Q Okay. And you mentioned that the Assessment
17 Resource Center is nationally accredited. Who -- who is
18 responsible for that accreditation?

19 A The National Children's Alliance is the accrediting
20 body for children's advocacy centers across the country.

21 Q And before you began working at the ARC -- when did
22 you say that was?

23 A In December of 1999.

24 Q Where did you work before that?

25 A Prior to that, I worked for the Department of

Raymond Olszewski - Direct Examination by Ms. Ashton

1 Social Services both in Florence County and in Richland
2 County. Initially as a CPS investigator conducting
3 investigations and then as a supervisor in child protective
4 services.

5 Q And can you describe the type of -- any courses or
6 seminars or other training that you've received in the
7 field of forensic interviewing and child abuse assessment?

8 A Sure. Shortly after beginning my work at the ARC,
9 I attended a national training called Finding Words. It's
10 a 40-hour course that teaches a specific forensic
11 interviewing protocol. It's the protocol that we use at
12 the ARC. I've also attended an advanced forensic interview
13 training, a week-long course in Minneapolis, Minnesota
14 taught by Corner House. Corner House is also a children's
15 advocacy center and that is where this protocol was
16 developed, the one that we use and many other states use as
17 well.

18 And I've attended numerous other individual
19 workshops, trainings in all different aspects of child
20 sexual abuse and forensic interviewing. So...

21 Q And do you have any teaching experience related to
22 these fields?

23 A Yes, I've taught workshops and seminars, different
24 aspects of child abuse and forensic interviewing. I'm also
25 on the faculty -- in 2001, South Carolina began teaching

Raymond Olszewski - Direct Examination by Ms. Ashton

1 what I referred to before as the Finding Words Course, the
2 week-long forensic interviewing course. We began teaching
3 it three or four times a year. We teach front-line
4 professionals from all over South Carolina -- that would be
5 law enforcement investigators, child protective services
6 workers, other forensic interviewers. We teach the
7 protocol that we use. And I'm on the faculty for that
8 course and I have been, like I said, since 2001.

9 Q And does that include physicians as well as -- and
10 nurses and -- who have attended the seminars?

11 A I think on occasion we've had some doctors and
12 physicians attend the course.

13 Q Okay. And about how long have you been doing this?
14 The forensic interviews?

15 A At the ARC, it will be almost twelve years. It
16 will be twelve years in December.

17 Q And can you estimate how many you've conducted?

18 A It would be over a thousand interviews. I don't
19 have an exact number.

20 Q And as part of your education and training and
21 experience in forensic interviews and child abuse
22 assessment, do any of those issues relate to delayed
23 disclosures?

24 A Yes. That's one of the things that we learn about
25 and talk about.

Raymond Olszewski - Direct Examination by Ms. Ashton

1 Q And what is meant by that term?

2 A Delayed disclosure simply means when a child or --
3 in general terms, it can be when anybody delays in telling
4 something that's happened to them. If we're talking about
5 a child sexual abuse event, it would be a child who delays
6 in reporting what happened to them.

7 MR. BAILEY: Objection, Your Honor.

8 THE COURT: What's your objection.

9 MR. BAILEY: I don't believe they've submitted him
10 as an expert, Judge.

11 THE COURT: Well --

12 MS. ASHTON: I just asked him what the terminology
13 was.

14 THE COURT: Go ahead.

15 THE WITNESS: When a child delays in reporting what
16 happened to them, that delay could be hours, days, weeks,
17 months, years.

18 By Ms. Ashton:

19 Q And also do some of the issues that you learn about
20 and teach about relate to any kind of level of detail that
21 a child can provide?

22 A Yes, we're always looking at the level of detail,
23 and usually that depends on a child's age. As the child
24 gets older, their ability to provide detail increases. So
25 we would expect to get more detail from a teenager, for

Raymond Olszewski - Voir Dire Examination by Mr. Bailey

1 example, than a preschool age child, a three or four year
2 old.

3 Q And have you previously been qualified as an expert
4 in a court of law in the field of forensic interviewing and
5 child abuse assessment?

6 A Yes.

7 Q And can you approximate how many occasions?

8 A It would be, you know, over twenty times. I don't
9 have an exact number.

10 MS. ASHTON: Your Honor, at this time I would offer
11 Mr. Olszewski as an expert in the field of forensic
12 interviewing and child abuse assessment.

13 THE COURT: Voir dire or objection?

14 MR. BAILEY: Brief voir dire, Judge.

15 **VOIR DIRE EXAMINATION**

16 By Mr. Bailey:

17 Q Mr. Olszewski, do you have a degree in forensic
18 interviewing?

19 A No. No, I do not.

20 Q Okay. Do you take tests to get to -- do you take
21 tests to show how good a forensic interviewer you are?

22 A No.

23 Q Okay. And they don't score you on this?

24 A Score me on what?

25 Q Well, you don't take tests?

Raymond Olszewski - Voir Dire Examination by Mr. Bailey

- 1 A Right.
- 2 Q Okay. So there's no scientific way to measure the
3 accuracy of a forensic interview; is that right?
- 4 A No. Again, we're gathering information. The
5 ultimate determination of whether or not something is
6 truthful, I guess that's a matter for the jury or a judge.
- 7 Q Well, you can't scientifically measure the accuracy
8 of what you do; is that right?
- 9 A No. I'm not sure I understand the question.
10 completely, but, no, I guess --
- 11 Q Okay.
- 12 A You can explain -- ask the question a little bit
13 differently.
- 14 Q Okay. There's no way to ascertain -- there's no
15 way to measure the level of accurate interviews or the
16 amount of accurate interviews or accurate information that
17 comes out of the interviews, is there?
- 18 A I guess it depends on how you define accuracy. I
19 mean, is it defined by whether or not the victim has told
20 the truth or whether or not the interviewer has properly
21 conducted an interview.
- 22 Q Can your field be peer tested to determine whether
23 or not a certain percentage of interviews come out with
24 accurate success rates?
- 25 A No, I don't know of any study like that.

Raymond Olszewski - Direct Examination by Ms. Ashton

1 MR. BAILEY: No further questions now, Judge.

2 THE COURT: Any objection?

3 MR. BAILEY: Just that we don't -- we don't think
4 this is a science that he can be an expert in, Judge.

5 THE COURT: All right. Overruled. Go ahead.

6 **DIRECT EXAMINATION**

7 By Mr. Ashton:

8 Q Did you conduct a forensic interview with Child
Child

10 A Yes, I did.

11 Q And when did you conduct that interview?

12 A On July 23rd, 2008.

13 Q And how was she referred to you?

14 A She was referred by Investigator Rob Martin with
15 the Richland County Sheriff's Department and by Jules Alec,
16 Richland County Department of Social Services.

17 Q And what documents did you have before you
18 interviewed Child

19 A I had the ARC intake form and the police incident
20 report.

21 Q Okay. And when Child -- when you had an
22 interview with Child was anyone else present in that
23 interview?

24 A No. When we conduct an interview, it's an
25 interviewer and the child in the room.

Raymond Olszewski - Direct Examination by Ms. Ashton

- 1 Q So no one else is in the room?
- 2 A Nobody else is in the room, that's correct.
- 3 Q And where -- where is the interview conducted?
- 4 A The interview is conducted at the ARC, the
- 5 Assessment and Resource Center. Physically we're located
- 6 on the grounds of the State Hospital campus on Bull Street,
- 7 here in Columbia. We have three forensic interview rooms.
- 8 These are small rooms, they're sparsely furnished. There's
- 9 like a love seat and a chair maybe in each room, a flip
- 10 chart on a tripod, and we have a chest with some anatomical
- 11 diagrams and anatomical dolls in it. So that's what the
- 12 room looks like. It's a -- there's no toys or anything in
- 13 the room. It's not like a play-therapy room. Each room
- 14 is -- has a camera and microphone in it so each forensic
- 15 interview is recorded, video recorded.
- 16 Q And what is the purpose of the recording?
- 17 A To make an accurate record of the interview, and to
- 18 document the interview.
- 19 Q Okay. And during -- before you actually start the
- 20 interview, is there any rules or guidelines that are told
- 21 to the child?
- 22 A There's no hard and fast rules. We introduce
- 23 ourselves. We advise the child about the camera and the
- 24 microphone.
- 25 Q Okay. And are there any measures taken to assess a

Raymond Olszewski - Direct Examination by Ms. Ashton

1 child's competency, either before the interview process
2 starts or during?

3 A Yeah, before the interview starts, it would be
4 whether or not we've got information that a child has some
5 kind of issue, developmental issue, learning disability,
6 some type of cognitive delay or something like that. And
7 during the interview it would be -- when we begin the
8 interview, we begin asking questions. We're constantly
9 assessing, you know, whether or not this child is answering
10 questions and -- in a manner consistent with a child that
11 age, chronologically so.

12 You know, if you're talking to a ten-year-old, does
13 she seem like she's ten in the way she provides her
14 narrative responses and the answers to her questions and
15 that kind of thing.

16 Q And did anything related to -- did you have any
17 concern about DaShawna's competency in this case?

18 A No.

19 Q Okay. And before you actually interviewed
20 Child [REDACTED] did you obtain any kind of history about her
21 other than what was provided to you?

22 A The only history we obtained -- whenever a child
23 comes to the ARC, the person bringing the child to the ARC
24 would be asked to fill out what's called the Caregiver
25 Questionnaire. And it's a three-page document that the

Raymond Olszewski - Direct Examination by Ms. Ashton

1 caregiver fills out, and it asks for some basic information
2 about the makeup of the household, the school the child
3 attends, do they have any medical or mental health issues
4 that the person wishes to identify, various things on that
5 form. That's what we would obtain prior to the interview.

6 Q Okay. And the type -- what should be done to
7 question Child -- once you begin your interview, is
8 there a type of interviewing process that you use?

9 A Yes, we use a -- again, I mentioned before a
10 particular protocol. It's known commonly by its acronym,
11 RATAAC, R-A-T-A-C, and each letter stands for a different
12 stage of the protocol. That's the protocol that we use.

13 Q Okay. I'm going to use this board. So the
14 interview -- you said the protocol?

15 A Yeah. RATAAC, R-A-T-A-C.

16 Q And what is meant by the -- what is the first --
17 what is rapport (sic) refer to?

18 A Well the R in RATAAC stands for rapport so there's a
19 rapport-building phase where we're trying to make the
20 child, you know, feel comfortable in the setting. We're
21 trying to -- we have some ice-breaking activities, if you
22 would, that we do with some children. With young children,
23 for example, we draw a picture of their face and we ask the
24 child to spell their name, put their name and age on the
25 flip chart, and our name, just kind of -- again, it's an

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1 ice-breaking activity, a rapport-building activity.

2 At the same time we're doing some of these things,
3 we're asking the child questions and beginning to get an
4 idea of how competent they are, what are their narrative
5 skills. In other words, how are they at handling
6 open-ended questions. And by open-ended question, I mean a
7 very broad question like, you know, Tell me about that. So
8 for example, you know, Tell me about your school, or Tell
9 me what you did this morning. Sort of a focus question.
10 So again, we're assessing their abilities, getting a hint
11 of their competency at the same time that we were making
12 them feel comfortable, trying to build some rapport with
13 this child that we've just met.

14 Q And is this -- this method that we're discussing,
15 is this considered a best practice in your field?

16 A This is one protocol that is used in many states.
17 There are other accepted protocols that are used.

18 Q Okay.

19 A They have more similarities than they do
20 differences. I mean, there's going to be a
21 rapport-building phase, I think, in any type of interview
22 when you're trying to establish a rapport.

23 Q We can move on. What is the A? What does the A
24 stand for?

25 A The first A stands for anatomy identification.

Raymond Olszewski - Direct Examination by Ms. Ashton

1 Q And can you explain that step?

2 A Yeah, that's where we have anatomically detailed
3 body diagrams that we use, and we will actually put them up
4 on the flip chart paper and go through and circle parts of
5 the body on the male and female body diagrams and ask the
6 child to name the various parts of the body. We're trying
7 to arrive at a common language for body parts. And, you
8 know, again, we'll start with the eyes, ears, nose, mouth
9 and work our way down and eventually get to the genital
10 area, the private areas. Again, we want to get the child's
11 words for these parts, so we'll ask the child to tell us
12 what their names are for these parts.

13 The reason being that if we need to discuss things
14 later on related to those parts, then we use the child's
15 words and the child's language for those body parts.

16 I want to say something about the protocol right
17 now too, that there is some flexibility built into this
18 protocol. So for example anatomy identification, that is
19 something that we simply always do with young children,
20 like three through eight or nine. Once a child gets a
21 little bit older, we don't automatically do anatomy
22 identification because they're older and sometimes they're
23 able to just verbally tell us what happened. We may still
24 use these anatomy identification diagrams later for
25 clarification purposes.

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1 So the protocol as it's laid out doesn't always
2 look the same. It depends on the age of the child and some
3 other factors. I just wanted to make that point.

4 Q And was a diagram used in DaShawna's case.

5 A It was, but not in order. I believe it was used
6 for clarification later in the interview.

7 Q Okay. But just for time-saving purposes, do you
8 recognize State's Exhibit 6?

9 A Yeah, that's one of our --

10 Q And is this the one that Child used in your
11 interview?

12 A Yes.

13 Q And how did -- how did she refer to her private
14 areas?

15 A If I could look at that again --

16 Q Yeah.

17 A -- I could get a reminder. She used vagina and
18 butt. So there's a picture of the front of the child and
19 the back of the child.

20 Q And you still had her point those out in the
21 diagram because --

22 A Again for clarification because what we know is
23 sometimes -- we never assume things so just because a child
24 says vagina, sometimes we'll go back and clarify. Again,
25 depending on the age of the child. If I have a 17-year-old

Raymond Olszewski - Direct Examination by Ms. Ashton

1 telling me he touched my vagina, I may not bring out a
2 diagram because I assume unless she's delayed she knows
3 what she's talking about. It's a judgment call for the
4 interviewer, but in this case, I decided to get
5 clarification and make sure I knew exactly what part the
6 child was referring to.

7 Q And the next step -- what does the T stand for in
8 this?

9 A T stands for touch inquiry.

10 Q Okay. And can you describe that -- that step?

11 A Yes. With a younger child, we have to somehow
12 introduce the topic of touch. And what we're trying to do
13 here is -- this is the part here where we would begin to
14 discover whether or not something has happened to the
15 child. And we do that through introducing this concept of
16 touch. So we may talk to the child about hugs, kisses,
17 tickles, various types of touches they get. Who in their
18 life gives them those kinds of touches and then using those
19 body diagrams, we may check for a child's understanding of
20 personal safety and ask them to identify parts of their
21 body that nobody's supposed to touch. Most kids get that
22 lesson either at home or at school.

23 Once they do that, we then ask if somebody's has
24 ever touched or done something to them on one of these
25 parts and, you know, depending on how the answer is, the

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1 interview goes from there. With an older child, we don't
2 necessarily do anything that specific in terms of touch
3 discussion, and hugs, kissing and tickles. An older child
4 who comes in, we may try to get to the issue of whether or
5 not something happened by simply asking the child, do you
6 know why you're here today or do you know why you came in
7 today, a very open-ended-non-leading way to try to just
8 discover whether or not something has happened. Of course,
9 if the child doesn't know or shrugs or doesn't understand,
10 then we can always go back and discuss touches even with an
11 older child and use the traditional touching query.

12 Q And what does the next A stand for?

13 A The second A -- excuse me, stands for abuse
14 scenario.

15 Q And can you explain that to us?

16 A Yeah, this would be the part of the interview where
17 the child would be given the opportunity to discuss what's
18 happened to them. So, you know, you may not have an abuse
19 scenario. In fact, in my interviews, you don't because the
20 child either denied that anything happened or didn't
21 disclose anything, so you wouldn't necessarily have an
22 abuse scenario. But if the child makes some type of
23 disclosure and you have the second A that would be where
24 the child is given the opportunity, again, to talk about
25 what's happened to them and provide details about what's

Raymond Olszewski - Direct Examination by Ms. Ashton

1 happened to them.

2 Q And the last -- the C stands for clarification?

3 A C stands for closure.

4 Q Closure. Okay. And what is -- what is meant by
5 this last letter?

6 A This is where we wrap up the interview. We try to
7 do a couple of things here. One of them is to provide a
8 respectful end to the interview, so we thank the child for
9 coming in. Depending on the age of the child and what's
10 already transpired in the interview, we may do more checks
11 for their understanding of personal safety. So, again, is
12 the child -- this may be, again, for a really young child,
13 like the three or four-year-old. Do they really understand
14 that they have parts on their body that are private and
15 that nobody's supposed to touch. We check for
16 understanding of their safety options. So does the child
17 understand who they can go to if something happens to them
18 or if something happens to them again. So make sure the
19 child really understands those two concepts.

20 Q And was this process used with Child [REDACTED] I know
21 you said it was a flexible process, but was this protocol
22 used with Child [REDACTED]

23 A Yeah. This is the general protocol that we
24 followed. Again, it's a flexible protocol and it may not
25 always look exactly like it's laid out here on the flip

Raymond Olszewski - Direct Examination by Ms. Ashton

1 chart though.

2 Q And was the interview recorded?

3 A Yes.

4 Q What kind of equipment is used for that
5 recordation?

6 A Well, we have cameras, microphone in the interview
7 room that's fed by wires to another room we call an
8 observation room that has a TV in it and it has a digital
9 recording device. If anybody here has a DVR, a Time Warner
10 DVR, it's something like that. It's a digital video
11 recorder. The difference is this one here also has a DVD
12 player and recorder in it as well.

13 So whatever you record on the hard drive, can
14 simply be transferred from the hard drive to a DVD. And we
15 use that process to reduce the amount of error that we may
16 have. If you record straight onto a disk, you may have a
17 defective disk and you could lose an entire interview.
18 This way everything is on the hard drive and then we
19 transfer it over just to try to reduce the amount of error
20 that may occur.

21 Q At what point is that DVD retrieved?

22 A Retrieved?

23 Q At what point is the DVD taken from the equipment?

24 A I generally dub my interviews pretty quickly, the
25 same day or the next day. Is that what you're asking?

Raymond Olszewski - Direct Examination by Ms. Ashton

1 Q Yes. And I'm going show you what's marked as --
2 actually, I need this marked.

3 (WHEREUPON State's Exhibit 7 was marked for
4 evidence.)

5 THE WITNESS: Could I get some water?

6 (WHEREUPON the bailiff got the witness some water.)

7 By Ms. Ashton:

8 Q I'm going to show you what's marked as State's
9 Exhibit 7. Do you recognize this?

10 A Yes. This looks like one of our DVD's and it has
11 Child [REDACTED] Child [REDACTED] name on it..

12 Q And --

13 A And the date.

14 Q And have you had an opportunity to view this before
15 today?

16 A Yes.

17 MS. ASHTON: Your Honor, at this time, I'd like to
18 offer State's Exhibit 7 into the evidence.

19 THE COURT: Objections?

20 MR. BAILEY: Yes, Your Honor, we believe this is
21 improper bolstering and also a prior inconsistent
22 statement. We believe that Ms. Child [REDACTED] has already
23 testified and this would just be her giving another
24 testimony.

25 THE COURT: Overruled. It's admitted into

Raymond Olszewski - Direct Examination by Ms. Ashton

1 evidence.

2 (WHEREUPON State's Exhibit 7 was entered into
3 evidence.)

4 By Ms. Ashton:

5 Q And we'll have an opportunity to review that later.
6 I want to ask you a few more questions. During this
7 interview, with Child [REDACTED] did she disclose to you that
8 she'd been sexually assaulted?

9 A Yes.

10 Q And what, if anything, did she relay to you about
11 the time that this occurred?

12 A She said it was --

13 Q The time that it happened.

14 A Yeah, she said it was near the end of June of that
15 same year that I interviewed her, 2008.

16 Q Okay. And did she tell you where the assault took
17 place?

18 A Yes. At the home of her father, Charles Deveau.

19 Q And in this particular case, was -- you mentioned
20 the term delayed disclosure earlier. Was that an issue in
21 this case?

22 A Yes, I believe it was. Delay of a period of some
23 weeks, a couple of weeks perhaps.

24 Q Yeah. And was that unusual in child sexual abuse
25 cases?

Raymond Olszewski - Direct Examination by Ms. Ashton

1 A No. In fact, it's quite usual. In my experience,
2 many children, the majority of children, delay in reporting
3 sexual abuse. So it's a rare occurrence where a child
4 sexual abuse victim makes an immediate outcry right after
5 being abused.

6 Q It's not unusual?

7 A No.

8 Q What type of factors play into this delayed
9 disclosure?

10 A That's -- that could be a number of things. You
11 know, it depends on each case and the unique circumstances
12 of each case. Generally things that the child experiences
13 within themselves could lead to a delay, fear of what will
14 happen when they disclose, embarrassment, some children
15 feel guilt over what occurred and they feel partly
16 responsible for it.

17 MR. BAILEY: Objection, Your Honor.

18 THE COURT: What's your objection.

19 MR. BAILEY: He's not a child psychologist,
20 psychiatrist.

21 THE COURT: Overruled. Go ahead.

22 THE WITNESS: There are other factors outside of
23 the child -- I mean they may feel like they -- they may
24 have been told not to tell and fear of reprisals if they
25 tell from the alleged perpetrator or someone else that they

Raymond Olszewski - Direct Examination by Ms. Ashton

1 feel like they won't be believed. They don't want to be
2 stigmatized, perhaps as a victim. So there are numerous
3 issues and factors, I think, that play into that.

4 Q Okay. And was **Child** able to give you any type
5 of details surrounding the assault?

6 A Yes, she was.

7 Q And why is that significant in these cases?

8 A Well, again, like I said earlier, as a child's age
9 increases, their ability should also increase. So their
10 ability to provide additional details other than the actual
11 events, so peripheral details, like, for example what were
12 other people doing at the time, where were other people in
13 the home or at the location. Can they provide some
14 subsequential narrative around what happened. Can they
15 talk about what happened leading up to the event and what
16 happened after the actual event.

17 Many times with preschool children, for example,
18 where the best we can hope for or expect is maybe who did
19 what; so somebody did something to me, but they lacked the
20 ability to put any context there or provide peripheral
21 detail. But as the child gets older, we expect them to be
22 able to do more of that.

23 Q And in this particular case, what type of
24 peripheral detail was provided? Sort of what happened
25 before and after?

Raymond Olszewski - Direct Examination by Ms. Ashton

1 A Again, well, she was -- even better than young
2 children at being able to provide sort of the time --

3 MR. BAILEY: Objection, Your Honor.

4 THE COURT: What's your objection?

5 MR. BAILEY: Vouching. We're asking for a ruling.

6 THE COURT: I don't think so. Overruled.

7 THE WITNESS: Older children, and in this case
8 Child [REDACTED] are sometimes better to provide information about
9 the timing of the event, when it took place, more
10 information about the location, details about the location,
11 for example, where the event took place. What was
12 happening before the event.

13 She was able to describe what she was doing before
14 the event and what led up to the event. Information about
15 what the alleged perpetrator was doing or did just prior to
16 the alleged assault. And then very detailed information
17 about the act or events that's being alleged.

18 How the clothing were -- how the clothing was
19 manipulated and that kind of thing. And then, again, after
20 the event, provide information about what happened, again,
21 subsequently after the event ended. So what happened
22 following the event and that was all provided in this case.

23 Q I have just a few more questions.

24 MS. ASHTON: Beg the Court's indulgence.

25 Q When a child is the age of ten, do you look for

Raymond Olszewski - Direct Examination by Ms. Ashton

1 signs of potential suggestibility or improper influence?

2 A Yes. Not as much so a suggestibility issue.

3 That's more of an issue with really young children, like

4 preschool age children in terms of being suggestible. Now,

5 we avoid trying -- we avoid -- we try to avoid asking

6 leading questions or suggestive questions in our interview.

7 In other words, questions that try to lead a child in a

8 certain direction or suggest an answer. We do that with

9 kids of all ages. And the other part of that was?

10 Q Just the level of detail that you discussed

11 previously. How does that relate to potential improper

12 influence or things of that nature?

13 A Okay. By improper influence, you mean the child

14 being influenced by somebody else.

15 Q Outside sources.

16 MR. BAILEY: Objection, Your Honor. Clear

17 vouching.

18 THE COURT: He can describe the process.

19 Go ahead. Overruled.

20 THE WITNESS: Okay. Well, again, my experience,

21 children who have been perhaps influenced by others, maybe

22 to say something in particular, those interviews will often

23 be lacking in detail. The detail I just talked about. And

24 that may be because it's easy to remember. The fewer facts

25 you try to remember, the easier it is. So oftentimes when

Raymond Olszewski - Direct Examination by Ms. Ashton

1 you press for details, they won't be there or they'll be
2 lacking. Or it appears that the child is searching, you
3 know, for an answer. So that's one thing that we look for
4 in relation to that question.

5 By Ms. Ashton:

6 Q And when you interviewed Child did you try to
7 use open ended questions always?

8 A Yes.

9 Q Unless you might be following something up?

10 A That's correct. I mean there's a -- what we call a
11 funnel of questioning. I mean, we have very open-ended
12 questions at the top of the funnel, so broad questions,
13 like, Tell me about that; and then we have questions that
14 are also open ended and more focused. The question like
15 maybe, Tell me what happened in the bedroom, or Tell me
16 what happened in the kitchen. That's a focused recall
17 question.

18 We use other types of questions that are not
19 leading or suggestive, but they're definitely more focused,
20 like multiple choice questions, even yes, no, or either; or
21 questions can be okay, but not necessarily leading or
22 suggestive. Questions we try to avoid are questions, like,
23 you know, He touched you, didn't he. That would be a
24 leading or suggestive question.

25 Q And after your interview, what steps did you take?

Raymond Olszewski - Direct Examination by Ms. Ashton

1 A Well, after the interview, we prepare a written
2 report. In addition to the DVD being a record, we prepare
3 a written report that basically just is a narrative summary
4 of the interview. It's not a verbatim Q and A of the
5 interview process. We make recommendations also at the end
6 of the interview, and I did so in this case.

7 Q And what were those recommendations?

8 A I recommended or I referred Child [REDACTED] for therapy
9 and referred her to our treatment coordinator at the ARC to
10 contact the family about getting that therapy started. And
11 then there's some standard language whenever a child makes
12 a disclosure, we recommend the family continue to
13 cooperated with the DSS or law enforcement investigation
14 that's going on, and I recommended no contact with the
15 father at this time.

16 That's pretty standard if the child has disclosed
17 that. We recommend no contact at this time and during the
18 investigation. For the child's safety as well.

19 MS. ASHTON: Beg the Court's indulgence one moment.

20 Your Honor, at this time, I'd ask for permission to
21 publish the video to the jury.

22 THE COURT: All right.

23 MS. ASHTON: It is about 30 minutes, and we just
24 need to set up that equipment.

25 THE COURT: Go ahead.

Raymond Olszewski - Cross-Examination by Mr. Bailey

1 (WHEREUPON the attorneys were setting up the
2 equipment to show the DVD to the jury.)

3 (WHEREUPON a juror stepped out to take a break. At
4 10:34 a.m.)

5 THE COURT: Anybody else need a break before this
6 starts? It's going to take about thirty minutes.

7 (WHEREUPON two jurors left the courtroom to take a
8 break at 10:35 a.m.)

9 THE COURT: Don't start it until all the jurors are
10 present.

11 (WHEREUPON all the jurors returned at 10:38 a.m.)

12 THE COURT: All right, sir. You may now begin.

13 (WHEREUPON the video is playing for the jury.)

14 MS. ASHTON: Thank you, no further questions from
15 the State.

16 THE COURT: Cross-examination.

17 MR. BAILEY: Thank you, Judge.

18 **CROSS-EXAMINATION**

19 By Mr. Bailey:

20 Q Hi, Mr. Olszewski, how are you?

21 A I'm all right.

22 Q I believe we talked earlier about your training and
23 forensic interviewing briefly, right?

24 A Right.

25 Q And I believe you said that it was, you know,

Raymond Olszewski - Cross-Examination by Mr. Bailey

1 correct me if I'm wrong, that you can't measure -- you
2 can't actually scientifically measure the accuracy of the
3 techniques of forensic interviewing; is that right?

4 A Well, again, the interviewing process itself is
5 based on scientific study and various principles, but what
6 we're doing is gathering information from a child that then
7 becomes part of an investigation.

8 Q I'm sorry, I should probably rephrase that. When
9 it comes to success, the truthfulness of an interview, you
10 can't measure -- this interview is truthful on a scale of
11 one to ten, or you can't say yes, definitively this
12 interview is truthful or not, it is definitively not; is
13 that correct?

14 A That's an issue for a jury or a judge. That's --

15 Q But I'm talking about measuring it. I mean --

16 A I don't know of any way to measure truthfulness.

17 Q Okay. So there's no way to measure truthfulness
18 when interviewing somebody else?

19 A Not that I'm aware of.

20 Q Okay. Mr. Olszewski, you've been involved with a
21 course called Child First South Carolina; is that correct?

22 A Correct. The Finding Words course I spoke about
23 earlier. A couple of years ago the name changed to Child
24 First and it's called Child First, South Carolina.

25 Q And I think you taught it too, right?

Raymond Olszewski - Cross-Examination by Mr. Bailey

1 A I still do.

2 Q Okay. So -- and do you remember a part of these
3 course materials that describe forensic interviewing of
4 children as an art?

5 A Yes. It's not a section I teach, but I believe
6 there's a section that refers to it as both an art and a
7 science.

8 Q Right. But this is part of a course that you're
9 affiliated with?

10 A Correct.

11 Q Do you remember the course materials saying that it
12 should be -- that it is guided by intuition and creativity
13 and influenced by the interviewers emotions, beliefs, and
14 background, performed better by those with a flair for
15 empathy. Do you remember that line in the course
16 materials?

17 A No, I don't.

18 Q Okay. But you don't deny that it's probably
19 somewhere in there?

20 A You'd have to show it to me.

21 Q Okay.

22 A I'd like to see it. I'd like to see it in context.

23 Q Okay.

24 (WHEREUPON Mr. Bailey is showing the witness.)

25 ///

Raymond Olszewski - Cross-Examination by Mr. Bailey

1 By Mr. Bailey:

2 Q From here to just right here. Is this what I just
3 read to you?

4 A Can I have this, please?

5 THE COURT: What are you referring to?

6 MR. BAILEY: I'm sorry. I'm sorry, Judge. We're
7 referring to the Children First South Carolina Forensic
8 Interviewing of Children using RATAAC Protocol, for
9 identification purposes, defense --

10 MS. ASHTON: And I -- objection.

11 MR. BAILEY: I'd be happy to show it to --

12 (WHEREUPON the attorneys were looking at the book.)

13 MS. ASHTON: What is the purpose in using this?

14 THE COURT: It's cross-examination.

15 MR. BAILEY: He asked if I could show it to him.

16 THE COURT: Sure. Go ahead. Overruled.

17 By Mr. Bailey:

18 Q Does this look like what I just read to you,
19 Mr. Olszewski?

20 A Yes, sir, if I could read the paragraph that
21 follows.

22 Q How -- you know, which part would you like to read?
23 This right here?

24 A Underneath that, it says, Interviewing child
25 victims of sexual abuse is a difficult and emotionally

Raymond Olszewski - Cross-Examination by Mr. Bailey

1 charged task. Interviewers must be up to the task, with
2 carefully developed skills, current and complete knowledge,
3 and a feel and talent for communicating with children.

4 I think that helps expand on this idea of it being
5 an art as well as a science. There is a lot of clinical
6 judgment that goes into these interviews in addition to the
7 scientific background on which the protocol was built. So
8 what we're teaching the students in the class is that, yes,
9 it's based on science, but there's also an art and a skill
10 to it like there is in lots of other interviewing. Like
11 interrogations, for example and those sorts of things.

12 Q Okay. Like interrogations?

13 A Like -- there's judgment used and there's -- my
14 understanding is that --

15 Q So you're saying there's similarities between what
16 you're doing and interrogations?

17 A I was making a point that in different types of
18 interviewing, clinical judgment and the judgment of the
19 person doing the interview plays a part in addition to
20 science -- the science in which that interview is based.

21 Q Well -- but one of your instructions does say that
22 this is an art, combined with intuition, creativity
23 influenced by the interviewer's emotions, beliefs, and
24 background, and performed better by those with a flair for
25 empathy, right?

Raymond Olszewski - Cross-Examination by Mr. Bailey

1 A That's what it says.

2 Q Also in one of these manuals, it describes
3 investigation of child abuse as a team process; is that
4 right?

5 MS. ASHTON: Objection. If he's going to keep
6 referring to the manual, it needs to be introduced into
7 evidence.

8 THE COURT: Not necessarily. What are you
9 referring to?

10 MR. BAILEY: The book mentions that --

11 THE COURT: What book do you --

12 MR. BAILEY: I'm sorry, I apologize, Judge. Again,
13 the same, Children First, South Carolina Training or course
14 material -- okay. Child First South Carolina Training
15 Forensic Interviewing of Children using RATAC Protocol.
16 This one is course materials, March 2011.

17 Do I need to give it to the court reporter?

18 THE COURT: I'm sorry?

19 MR. BAILEY: I'm just referring to -- generally to
20 the content in the book, Judge.

21 THE COURT: What do you want to ask him?

22 By Mr. Bailey:

23 Q It talks about you being a part of the team; is
24 that right?

25 A Yes.

Raymond Olszewski - Cross-Examination by Mr. Bailey

1 Q Okay. The other members of the team, those would
2 be police officers, right?

3 A Right. It's -- we refer to it as a
4 multidisciplinary team approach to child abuse
5 investigations.

6 Q And I guess also the solicitor's also part of this
7 team; is that right?

8 A That's correct.

9 Q Okay. And it talks about team members must work
10 together, right? Does it tell you that forensic interviews
11 should discuss areas of the case with the solicitors?

12 A I mean, yeah, if the situation arises.

13 Q Okay. Do you remember where it says do not argue
14 with solicitor's? Resolve conflict before trial?

15 MS. ASHTON: Objection. Rule 104. He keeps
16 referring to segments of this book without providing
17 context.

18 THE COURT: I'll sustain the objection.

19 MR. BAILEY: All right.

20 THE COURT: Show it to her.

21 MR. BAILEY: I will definitely --

22 THE COURT: Show it to her.

23 MR. BAILEY: Yes, sir, yes, sir, I'm sorry.

24 (WHEREUPON the attorneys were looking at the
25 manual.)

Raymond Olszewski - Cross-Examination by Mr. Bailey

1 MR. BAILEY: I'm sorry, Judge. Court's indulgence.
2 Right there. I'm sorry.

3 MS. ASHTON: Your Honor, Mr. Bailey is referring to
4 Slide eleven of forty-five slides, so if he's going to be
5 able to refer to one, there's forty-five slides in that
6 presentation that he's referring to.

7 MR. BAILEY: I mean --

8 THE COURT: What's the question? Ask the witness
9 and then I'll hear the objection.

10 By Mr. Bailey:

11 Q Do you recognize this from one of the presentations
12 where it says, Do not argue with the prosecutor,
13 parentheses, resolve any conflicts before trial?

14 A Let me take a look at this. Slide eleven, Don't
15 argue with judge, defense lawyer, or lawyer for parents or
16 prosecutor. Resolve any conflicts before trial. That's
17 the slide you're referring to?

18 Q Right. But and it says resolve conflicts with
19 prosecutor before trial?

20 A That's what the slide says. I think -- I don't
21 teach that section, but I could comment on it in you wish.

22 Q I just -- this is in the manual -- this is in a
23 guide for people that are supposed to give forensic
24 interviews, part of the team, right?

25 A Correct.

Raymond Olszewski - Cross-Examination by Mr. Bailey

1 Q Okay. Now, your job, obviously, Mr. Olszewski, is
2 forensic interviewing. And the solicitor's job is to try
3 cases, right?

4 A (Witness nodded head.)

5 Q To convict people, right?

6 A I -- with the proper evidence, I guess that's their
7 task.

8 Q Okay. And you're on their team?

9 A It's a multidisciplinary team approach to the
10 investigation of child abuse cases, so it involves law
11 enforcement investigators, sometimes child protective
12 services caseworkers, medical professionals, forensic
13 interviewers, solicitor's office. The goal is to -- one of
14 the goals we have is to minimize the number of times the
15 child has to be interviewed forensically to avoid
16 duplication of effort by different agents; for example, law
17 enforcement and DSS and that type of thing.

18 So, yes, we do emphasize a multidisciplinary team
19 approach to the investigation in what are often very
20 complicated cases.

21 Q Okay. The solicitor's are here to try and convict
22 my client, and you're on their team; is that right?

23 MS. ASHTON: Objection.

24 THE COURT: Sustained.

25 MR. BAILEY: Thank you. No further questions.

Raymond Olszewski - Redirect Examination by Ms. Ashton

REDIRECT EXAMINATION

By Ms. Ashton:

Q At team meetings do y'all also discuss unfounded cases?

A Yes.

Q And I actually would like you to explain that particular slide. And this slide, this particular slide eleven, it also says do not argue with judge --

A Right.

Q -- and do not argue with defense lawyer?

A Correct.

Q And can you explain the context of this particular slide? Take your time.

A This is in a particular workshop as far as the course, testifying in court. It's -- again, it's designed -- we're teaching front-line professionals who are going to be, perhaps doing these types of interviews and involved in these investigations, and are going to perhaps be testifying in court like this. So it's just tips for, you know, testifying in court.

And this particular slide, I think the message that the slide is trying to get across -- again, it's just a slide, it's a PowerPoint slide with three bullet points -- is that you shouldn't be arguing with various parties involved, whether it be the judge or a defense lawyer or a

Raymond Olszewski - Redirect Examination by Ms. Ashton

1 prosecutor; and that any issues that are obvious should be
2 on the table prior to going to trial.

3 Q So you shouldn't argue with the judge while you're
4 testifying?

5 A Right.

6 Q Or you shouldn't argue with defense counsel while
7 you're testifying on that stand, unless you disagree with a
8 point?

9 A Right.

10 Q And neither should you do that with me as well?

11 A That's what we're trying to get across, that it
12 should not be a confrontational type of process, especially
13 if you're an expert. You're there, more or less, to
14 educate the Court and the jury about various issues and
15 about their role in the case.

16 Q And I'll take that booklet. And there is a lot of
17 material in here?

18 A There's a lot of material in there, yes.

19 Q And he's picking out one or two pages for you to
20 look at and comment on, right?

21 A Yes.

22 Q Thank you.

23 THE COURT: Any recross-examination?

24 MR. BAILEY: Briefly.

25 ///

Raymond Olszewski - Recross-Examination by Mr. Bailey

RECROSS-EXAMINATION

By Mr. Bailey:

Q Mr. Olszewski, Ms. Ashton is right. There is a lot of material in here. Do you remember the part that says forensic interviewers should not talk to defense lawyers before trial?

MS. ASHTON: Objection Rule 106.

MR. BAILEY: I'm done, Your Honor. Thank you.

THE COURT: Anything further from this witness?

MS. ASHTON: No, sir.

THE COURT: All right, sir. You may come down.

May this witness be excused?

(WHEREUPON there was no response from the attorneys.)

THE COURT: Without objection.

Approach the bench, Counsel.

(WHEREUPON, there was a bench conference out of the hearing of the jury and the Court Reporter.)

THE COURT: All right. Ladies and gentlemen of the jury, there are a number of matters that I need to take up with the attorneys at this time, at this stage of the trial. It's 11:30. I think rather than have you sit in the jury room, I know that's torture sometimes, I think the most efficient use of our time would be for you to take an early lunch hour. I'll ask you to be back in the jury room

Raymond Olszewski - Recross-Examination by Mr. Bailey

1 at two o'clock, at which time we will continue with the
2 trial.

3 Now, again, I'll caution you, do not discuss the
4 case with anyone over the lunch hour or with anyone --
5 among yourselves when you return to the jury room. We'll
6 see you at two o'clock. We'll be ready to go at that time.
7 Thank you very much.

8 (WHEREUPON the jury left the courtroom at 11:27
9 a.m.)

10 THE COURT: All right. Ms. Ashton, if you'll bring
11 Dr. Watson --

12 MS. ASHTON: Sure.

13 MR. BAILEY: Judge, we have a quick motion. You
14 want to do it later? We don't want to interrupt --

15 THE COURT: Okay.

16 MR. BAILEY: Judge, we would move for a mistrial
17 based on a violation of voracity ruling and also James.
18 Although, Ms. -- although, you know the testimony solicited
19 by Ms. Ashton did not specifically name details. It talked
20 about how grave details, the details were and how this was
21 more truthful, more likely to be used -- I mean clearly
22 they were trying to boost the credibility within -- by
23 trying to work around the time and place -- the time and
24 place exception. They mentioned clothing -- her
25 description of clothing was very detailed. They mentioned

1 the perpetrator. Her description of the perpetrator, was
2 so detailed and so accurate that -- you know, that that --
3 that was special about her case.

4 We think they're vouching for the details without
5 actually mentioning the details. So we would ask for a
6 mistrial on that basis, Judge.

7 THE COURT: Denied.

8 MR. BAILEY: Thank you, Your Honor.

9 THE COURT: Is Dr. -- is this Dr. Watson?

10 MS. ASHTON: Yes, sir.

11 THE COURT: All right. Dr. Watson, good morning.

12 DR. WATSON: Good morning.

13 THE COURT: It's my understanding that you did an
14 evaluation of Child [REDACTED] Child [REDACTED]

15 DR. WATSON: I'm listening, Judge, yes, sir.

16 THE COURT: Is that correct?

17 DR. WATSON: Yes, sir.

18 THE COURT: And you did at some -- well, let's find
19 my copy -- sometime back in '08? Or '09?

20 DR. WATSON: '09.

21 THE COURT: Okay. You've been subpoenaed because
22 your testimony may be essential in this case. I don't know
23 whether it will be or not, but the defense counsel --

24 Would y'all just stand.

25 (WHEREUPON the defense counsel stood.)

1 THE COURT: These lawyers need to talk to you about
2 that record.

3 DR. WATSON: That's fine. I do have limited time.
4 I need to be --

5 THE COURT: Well, I understand, but you're under
6 subpoena.

7 DR. WATSON: Yes. I'll be right here --

8 THE COURT: You cannot leave until that subpoena --
9 until you've satisfied the terms of that subpoena. You
10 understand?

11 DR. WATSON: I do, but I'm a physician who works in
12 the ER. I'm obligated to my patients as well.

13 THE COURT: I'm going to do the best I can to honor
14 those obligations.

15 DR. WATSON: Right.. That's all I ask.

16 THE COURT: But at this time -- you need to stay --
17 you need to talk with these attorneys --

18 DR. WATSON: Yes, I am willing to do that.

19 THE COURT: Okay -- about the contents of your
20 report. And it may be necessary for you to testify. I
21 don't know. It's up to them. They will make that
22 decision.

23 DR. WATSON: I'm willing to find that out.

24 THE COURT: All right. Now, if you'll just have a
25 seat, and we'll try to figure out who's going to go where.

1 DR. WATSON: Yes, sir.

2 THE COURT: How would you like to do this, Counsel?

3 MR. SHEALEY: I would like to have an opportunity
4 to -- the three of us with a witness of your choice
5 independent, a non-attorney witness to speak to her a
6 little bit.

7 THE COURT: I don't see any non-attorneys in here.

8 MR. SHEALEY: I know.

9 THE COURT: With the exception of the bailiffs.

10 MR. SHEALEY: We have a clerk.

11 THE COURT: He's not an attorney.

12 MR. SHEALEY: We also have a clerk downstairs I
13 think it may be more appropriate as well because I think
14 Taylor has an obligation this afternoon in case she doesn't
15 testify. So we'll get that sorted out and that's what I
16 would request.

17 THE COURT: Any objection?

18 MS. ASHTON: Your Honor, we would also like to have
19 an opportunity to speak with Dr. Watson.

20 THE COURT: Oh, sure. After they do.

21 MR. SHEALEY: She's under --

22 MS. ASHTON: She's under our subpoena, too. I
23 would actually request that we get her first.

24 THE COURT: Well, at this point, she's probably
25 under my subpoena. She's not -- you're not going to

1 release her from your subpoena. You understand?

2 MS. ASHTON: I understand that, Your Honor.

3 THE COURT: Okay.

4 MS. ASHTON: We'll talk to her after. We just want
5 an opportunity to speak with her as well.

6 THE COURT: All right. Is this jury room
7 satisfactory?

8 MR. SHEALEY: Satisfactory. It's private.

9 THE COURT: All right. I think you better get
10 somebody that can stay with her that's not an lawyer.
11 Here's another one that's not a lawyer if you want him.

12 MR. SHEALEY: He may be of some service to you,
13 after all.

14 THE COURT: I'm -- I'm constantly reminded of that.
15 Let's get to it. Show --

16 Dr. Watson -- sorry about this. This is a last
17 minute thing, but your report turned up in this file and it
18 becomes important that you talk to these attorneys. If
19 there's no jurors in there --

20 Are there?

21 THE BAILIFF: No, sir.

22 THE COURT: The jurors can't come back until two
23 o'clock.

24 THE BAILIFF: No, sir, no jurors in there, Your
25 Honor.

1 THE COURT: All right. We'll stand at ease until
2 two o'clock.

3 (WHEREUPON a recess was observed for lunch.)

4 THE COURT: All right. Come back to order. It's
5 my understanding that the State chooses to rest at this
6 time; is that correct.

7 MS. ASHTON: Yes, Your Honor, that is correct.

8 THE COURT: And I'll let you announce it to the
9 jury if you wish to do so.

10 MS. ASHTON: Thank you.

11 THE COURT: So at this time, Mr. Deveau, I'm going
12 to explain to you certain of your rights. Do you
13 understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: If you'll stand, please. Mr. Deveau,
16 as I said, at this time, I'm going to explain to you
17 certain of your rights. If you do not understand anything
18 that I say, please let me know. If you want me to explain
19 anything in more detail, please let me know. Do you
20 understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: We've now reached the stage of this
23 trial where you may present your defense. You have the
24 right to claim the protections given to you by the 5th
25 Amendment to the Constitution of the United States. This

1 amendment states in part no person shall be compelled in
2 any criminal case to be a witness against himself or
3 herself. This means that you could not be required to
4 testify in this case. You have a right to testify on your
5 own behalf. However, no one can make you testify. This is
6 a personal right. No one can waive this right except you.

7 If you decide to testify, you'll be subject to the
8 same rules that govern other witnesses, and you may be
9 examined and cross-examined on any relevant issue in this
10 case. In addition, if you have any convictions involving
11 dishonesty or false statement or for crimes punishable by
12 imprisonment for more than one year and this Court
13 determines that the probative value of admitting this
14 evidence outweighs its prejudicial effect to you, the
15 solicitor will be able to introduce your record to attack
16 your credibility.

17 If you decide to testify, this decision on your
18 part must be freely, voluntarily, and intelligently made
19 with knowledge of the protections given to you by the 5th
20 Amendment to the constitution and the consequences of your
21 decision to testify. If you decide not to testify, I will
22 instruct the jury that they cannot give the fact that you
23 did not testify any consideration whatsoever and that there
24 is to be absolutely no prejudice to you because you did not
25 testify. It's left entirely up to you whether or not you

1 testify. You may talk with your attorneys, your family and
2 friends or anyone else. But the final decision will be
3 left entirely up to you.

4 Do you understand what I've explained?

5 THE DEFENDANT: Yes I do.

6 THE COURT: Do you have any questions about what
7 I've explained to you?

8 THE DEFENDANT: No, sir not at this time.

9 THE COURT: All right, sir. I'm going -- I'm not
10 going to ask you at this point in time if you choose to
11 testify or not to testify. There's some other matters that
12 the Court needs to take up before that decision needs to be
13 made by you. You understand?

14 THE DEFENDANT: Yes, I do, sir.

15 THE COURT: Thank you very much.

16 THE DEFENDANT: You're welcome, Judge, thank you.

17 MR. SHEALEY: Your Honor, are we at ease now?

18 THE COURT: Yes, I'm sorry, yes, you are.

19 (WHEREUPON a recess was observed.)

20 MR. BAILEY: Judge Cooper, Dr. Watson is here now.

21 THE COURT: All right. Come on, Doctor, we'll see
22 if we can move this along so we can get you out of here.

23 DR. WATSON: Judge, I would appreciate it.

24 MS. DELANY: I'm going to go get Mr. Shealey.

25 THE COURT: Yeah, get all the lawyers.

Dr. Lakeshia Watson - Examination In-Camera by Mr. Shealey

1 DR. WATSON: Just have a seat?

2 THE COURT: Yes, ma'am.

3 (WHEREUPON there was a short break while awaiting
4 the arrival of all of the attorneys.)

5 THE COURT: Dr. Watson, come around please.

6 DR. WATSON: Sure.

7 THE COURT: Come place your left hand on the Bible
8 and raise your right, please.

9 THEREUPON,

10 LAKESHIA S. WATSON,
11 after being duly sworn, testified as follows:

12 THE COURT: Have a seat in the witness box and
13 state your full name for the record.

14 THE WITNESS: My name is Lakeshia S. Watson.

15 MR. SHEALEY: May it please the Court?

16 THE COURT: Yes, sir.

17 **EXAMINATION - IN CAMERA**

18 By Mr. Shealey:

19 Q Dr. Watson, I appreciate you being here. We'll try
20 to get you on your way as soon as possible.

21 Now, do you have your notes on Child Child
22 that we've all been referencing?

23 A Yes, I have the New Eval Template that I was given
24 time to review.

25 Q Right. And that's a psychological evaluation?

Dr. Lakeshia Watson - Examination In-Camera by Mr. Shealey

1 A It's a New Patient Eval in a psychiatric clinic.

2 Q Okay. So --

3 THE COURT: Speak up just a little bit. I couldn't
4 quite hear you.

5 THE WITNESS: Yes.

6 THE COURT: What did you say it was?

7 THE WITNESS: It's a New Patient Evaluation of the
8 psychiatric clinic.

9 By Mr. Shealey:

10 Q Okay. And what was the evaluation on?

11 A Excuse me?

12 Q What is the evaluation on?

13 A It's a new patient evaluation that's standard. It
14 was to determine if medication management was necessary for
15 her.

16 Q Right. And by doing that -- you're a psychiatrist,
17 right? Not a psychologist?

18 A Yes, I'm a psychiatrist.

19 Q And you used your skill set in psychiatry to
20 evaluate this young lady?

21 A Yes.

22 Q For purposes of seeing if she needed to have
23 medication?

24 A Yes, that was the reason for the referral.

25 Q Okay. And to see if she needed medication, you

Dr. Lakeshia Watson - Examination In-Camera by Mr. Shealey

- 1 have to do a psychosocial history of her?
- 2 A Yes. That's in here.
- 3 Q Okay. And that would be regarding any kind of
- 4 family mental health history as well as present?
- 5 A Yes.
- 6 Q Okay. Thank you. Now, to be clear, you are a
- 7 child psychiatrist, right?
- 8 A Yes, I'm a board certified adult psychiatrist, a
- 9 board eligible child psychiatrist.
- 10 Q Okay. And you're not a forensic child
- 11 psychiatrist, right?
- 12 A No.
- 13 Q Okay. A behavioral psychiatrist?
- 14 A I don't know if there's a distinction between a
- 15 behavioral psychiatrist versus something else.
- 16 Q Okay. But you're -- you stated that you're
- 17 definitely not -- you're certainly not a forensic child
- 18 psychiatrist, right?
- 19 A Right. That's a separate field.
- 20 Q Now, when you were referred to do an evaluation of
- 21 Ms. Child [REDACTED] here, you had knowledge that she -- there was
- 22 a claim of sexual abuse, right?
- 23 A By virtue of where she came from, it's known that
- 24 there's an allegation of some type of trauma.
- 25 Q Okay.

Dr. Lakeshia Watson - Examination In-Camera by Mr. Shealey

1 A Yes.

2 Q Okay. Now -- and I do -- you've got your
3 evaluation in front of you. And you stated here that
4 you're a child psychiatrist as well as a -- I think you're
5 certified in adult psychiatry?

6 A Uh-huh. At the time of this evaluation, I was
7 completing my child fellowship, so I had not completed it
8 at the time.

9 Q Okay.

10 A So I was still in training.

11 Q Okay. And part of your evaluation was asking her
12 questions about potential symptoms and also talking to her
13 mother about history of any kind of mental health
14 situation, right?

15 A Yes.

16 Q And then once you once start -- once you got
17 through with that from her, you would put it in your
18 report, right?

19 A Yes.

20 Q Okay.

21 A Yes.

22 Q Like, here in part of your report, Patient is
23 currently denying any symptoms of -- and I'm kind of
24 frightened of that first sentence -- it's that next
25 sentence?

Dr. Lakeshia Watson - Examination In-Camera by Mr. Shealey

1 A I see it.

2 Q Denies any symptoms indicative of depression, mania
3 or anxiety, right? She would have told you that?

4 A Yes, I had to review things with her in order to
5 document that.

6 Q You know being -- she would have also told you
7 things like -- towards the bottom that she has a fear of
8 seeing her dad at this time and she's not concerned that he
9 can hurt her at this time, right?

10 A Yes, I documented that.

11 Q You also indicated things in this report -- I think
12 I asked you before what anhedonia means because I was
13 uncertain what that meant?

14 A Yes.

15 Q And correct me, Anhedonia, because you're the
16 doctor, but I think generally you're saying, no problems
17 with enjoying what she previously enjoyed. That's what
18 that term generally means?

19 A Pretty much, yes.

20 Q So she enjoyed dancing before, but you indicate
21 she's got no problems with anhedonia and she -- that hasn't
22 been -- diminished her enjoyment of dancing or something
23 like that?

24 A At the time of my exam, correct.

25 Q That's a lay -- that's my lay way of saying it?

Dr. Lakeshia Watson - Examination In-Camera by Mr. Shealey

1 A That's fine, but --

2 Q Okay --

3 A -- at that time, yes.

4 Q Now, I'd asked you, and I'm going to ask you again,
5 your specialty is child psychiatry, and you've never
6 testified as an expert, right?

7 A No.

8 Q Okay. And you said that, you know, you can't, just
9 as a child psychiatrist say that your interview with her
10 and the symptoms that she's expressing or not expressing --
11 you can't say if that's either consistent with or not
12 consistent with an allegation of sexual abuse, right?

13 A No, I wouldn't be able to say that because --

14 Q And you're not a forensic child psychiatrist who
15 could possibly render an opinion on if anything like this
16 would be consistent with or not consistent with sexual
17 abuse?

18 A No, I wouldn't.

19 Q All right.

20 MR. SHEALEY: Beg the Court's indulgence.

21 Thank you Dr. Watson. I don't have any further
22 questions.

23 DR. WATSON: Thank you, too.

24 THE COURT: Anything from the State?

25 MS. ASHTON: Two questions, Your Honor.

Dr. Lakeshia Watson - Examination In-Camera by Ms. Ashton

1 THE WITNESS: Yes, ma'am.

2 EXAMINATION - IN CAMERA

3 By Ms. Ashton:

4 Q Dr. Watson, I want to ask you two quick questions.

5 A Yes, ma'am.

6 Q Both referencing the first page of your new patient
7 evaluation template about trauma.

8 A Yes.

9 Q I believe the first sentence is found on one,
10 two -- nine lines down. At times she thinks about trauma a
11 little, in quotes, but denied repetitive invasive thoughts.
12 Can you explain what you meant in that -- when you stated
13 trauma in that particular sense?

14 A In terms of trauma, if it's anything having to do
15 with any kind of abuse, physical, sexual emotional --
16 because I did not specifically put something back in
17 parentheses, it's kind of a more global term, but she just
18 described a little thoughts about the trauma.

19 Q But when you read that sentence in context, are you
20 able to determine that mental trauma or physical trauma?

21 A Given the history that this is related to a sexual
22 trauma it would be specifically that.

23 Q Given --

24 A Given the history that I have that this was related
25 to sexual trauma, it would relate to that.

Dr. Lakeshia Watson - Examination In-Camera by Ms. Ashton

1 Q Okay. You mentioned trauma twice. One time you
2 said, At times she thinks about trauma a little but denies
3 repetitive intrusive thoughts. When you said trauma there,
4 is it mental or physical trauma?

5 A It would be more physical.

6 Q Okay.

7 A No, ma'am. I'm specifically telling you because of
8 the history that I was given, this is related to sexual
9 trauma.

10 Q Okay.

11 A On that particular sentence. And repetitive and
12 invasive thoughts, I'm making sure whether or not these
13 thoughts are having any problems on her functioning.

14 Q So there you're referring to the sexual, physical
15 trauma that occurred to her in that thing -- in that
16 sentence?

17 A Uh-huh.

18 Q Okay. That --

19 A Yes.

20 Q The last sentence where you say -- or second to
21 last -- she denies any ongoing trauma at this time. What
22 did you mean by that as far as any ongoing trauma?

23 A That she didn't describe any physical, sexual, or
24 emotional trauma going on with her at the time that I saw
25 her for my exam.

Dr. Lakeshia Watson - Examination In-Camera by Ms. Ashton

1 Q And what was the date of that?

2 A 5/8/09.

3 Q Thank you, Dr. Watson.

4 A Yes, ma'am.

5 THE COURT: Anything further?

6 MR. SHEALEY: No, Your Honor.

7 THE COURT: This witness free to leave?

8 MR. SHEALEY: No objection.

9 MS. ASHTON: Yes, Your Honor.

10 THE COURT: All right. Thank you very much. I'm
11 sorry we intruded on your schedule.

12 THE WITNESS: That's fine.

13 THE COURT: But it was necessary.

14 THE WITNESS: Yes, sir. Thank you.

15 MR. SHEALEY: And, Your Honor, if I may, I'd like
16 to add to the record with regards to Dr. Watson's
17 testimony.

18 THE COURT: Yes, sir.

19 MR. SHEALEY: Your Honor, this is in relation to
20 our motion for mistrial, the request that's being
21 considered at this time. We proffered Dr. Watson who just
22 testified that she is a child psychiatrist. You know, she
23 has indicated she's done an evaluation here, that we've
24 gotten our hands on, I believe, yesterday. Your Honor,
25 part of my previous argument as to why this needs to be

1 granted as far as this pretrial motion is that -- and as
2 she testified, she is not a child forensic psychologist or
3 psychiatrist, therefore, she can't offer an opinion as to
4 whether or not anything is -- the evaluation here can be
5 consistent with or not consistent with an allegation of
6 child sexual abuse. If we had had that document -- now,
7 this is a document not by -- like I said at first, not by
8 an officer, not even by a counselor. This is a document by
9 someone skilled in child psychiatry. However, she -- you
10 know, she rendered her medical opinion referenced here in
11 an evaluation of Child [REDACTED] as well as an evaluation in part
12 from the psychosocial history point from Kathy Myers.

13 What she did say, she can't render an opinion as to
14 whether or not any of this makes it more likely or less
15 likely, given the circumstances that the abuse occurred.
16 However, if I had this document in my possession ten months
17 ago to say one of our first steps would have been to hire a
18 child forensic psychiatrist. We can't do that without
19 advanced notice. I'd have to get funding. You're well
20 aware of that with the public defender's office.

21 Part of our defense well could have been, in the
22 14th Amendment consideration for a full and complete
23 defense, to have the ability to retain a child forensic
24 psychiatrist to take a look at this report along with the
25 rest of discovery coming from the Assessment Resource

1 Center. And now we have -- I would have hoped to have had
2 the ability to have that full file as opposed to the skinny
3 version that we've -- we were given. And that child
4 forensic psychiatrist could have -- and we don't know
5 because it hasn't happened yet, offered an opinion about
6 whether or not things in here are -- could be consistent
7 with or could not be consistent with an allegation of child
8 sexual abuse. Certainly there are things in here that any
9 layperson can deem to be impeachment material, but what I'm
10 primarily concerned with right now is the ability that
11 we've been prevented by just getting this yesterday, to
12 potentially hire a child forensic psychiatrist to take a
13 look at this evaluation by that psychiatrist and putting
14 context to the case of child sexual abuse.

15 If anything, a child psychiatric -- a forensic
16 psychiatrist, as she stated here, she can't render that,
17 but maybe a child forensic psychiatrist could. And we will
18 never know if you allow this trial to go on as it is, and
19 we will be forever prejudiced under the 14th Amendment by
20 not being able to present a full and complete defense
21 because we didn't have access to this document that's in
22 the possession -- DaShawna's complete ARC file, which we
23 didn't have access to. It wasn't given to us until
24 yesterday.

25 This report, in combination with other test results

1 from Amy Phipps, in combination, could have been considered
2 by someone that we could have hired, a child forensic
3 psychiatrist, as an expert in our case to consider and
4 render an opinion as experts can on whether or not this is
5 consistent with or not consistent with sexual abuse. We
6 will never know if you don't grant this mistrial motion.
7 Right now, we don't have the ability to run out and get an
8 expert of this nature. It takes scheduling, it takes
9 money, neither of which on this day that we have. This is
10 integral to our case. I don't perceive this to be just an
11 oversight or something that could be easily overlooked. I
12 think this very integral.

13 I think, you know, any mental health by a -- this
14 evaluation that was hidden from us up until this point and
15 I've already gone over the State's obligations on how
16 they're to look for and have this disclosed -- documents
17 that are in the possession of people that they work with on
18 a routine basis. We heard Amy Phipps testify, this is
19 routine. This is a routine type psychiatric evaluation for
20 them to be in compliance with the Department of Mental
21 Health, it happens every single case of a child that they
22 agree needs counseling over a ninety day period. This is
23 not unique at all. This is routine and I think to proceed
24 on this case in particular where there has already been a
25 mistrial once and then these documents -- these documents

1 never surfaced in the last trial. There's no reference to
2 them. So he's already gone through one trial experience
3 that obviously defense counsel of choice having access to
4 these and I think if he -- if this trial does not -- if
5 this mistrial motion is not granted, I think it is ultimate
6 injury on his 14th Amendment and constitutional right for a
7 full and complete defense.

8 THE COURT: What's the State's position?

9 MS. ASHTON: Your Honor, as we stated before, Mr.
10 Shealey, himself referred to this as an evaluation. Rule 5
11 discusses reports and examinations and tests. Again, are
12 there basically three prongs under this where on the
13 request of the defendants the State -- the prosecution
14 shall present the defendant any perspective copy of any
15 results or reports of physical or mental evaluations, any
16 scientific tests or copies thereof.

17 First of all, he, himself is referring to this as
18 an evaluation. This is a standard form that this doctor
19 completed with meeting Child [REDACTED] one year after the
20 allegation and asked -- and one time. So whether this is
21 an examination or not is definitely up for debate. They
22 were not within our possession. State v. Gullledge does say
23 that any kind of law enforcement agency is considered State
24 possession, however, in this case, we subpoenaed all mental
25 health court records. We are not as I stated earlier,

1 allowed to go to the ARC, just like we can't go to the VA
2 to start looking through their psychiatric files because
3 there's other laws that cover these protected documents
4 under HIPAA and other regulations, Your Honor.

5 So it's not -- it's our position that they were not
6 in our possession. The defense had two pieces of paper
7 with Dr. Watson's name on this -- on their -- what they
8 were provided in discovery, so they had her name. We
9 didn't fail to disclose her name. She's listed in that as
10 a doctor, as a psychiatrist, and they've had possession of
11 her name. They also went through this as they stated to
12 you earlier, two weeks ago. They had the same issue come
13 up where Mr. Bailey had a trial that he realized that
14 there's a full ARC file that they don't also receive the
15 complete copy of. He had the power to -- he did. He
16 subpoenaed that ARC file. He also had the power to come to
17 you for an order when he realized they weren't getting
18 those copies because they have to follow HIPAA, because
19 they have to follow federal regulations.

20 He could have come to you for that order before
21 yesterday, or whenever that was signed by Your Honor. And
22 again, you know, as soon as you ordered -- as far as our
23 duty to exercise due diligence, as soon as this became an
24 issue to us, we sent -- we had investigators go to this
25 doctor's house three times last night, one time this

1 morning. As soon as we found out her location, I called
2 Mr. Bailey on his cell phone, told him exactly where she
3 was, exactly what her number was. And so we did our best
4 once we were ordered to produce this information that
5 previously we did not know existed, to provide that to the
6 defense.

7 She's not a forensic child psychologist. So by Mr.
8 Shealey asserting that he could hire a child forensic
9 psychiatrist to review this evaluation -- again if that
10 would -- I don't think anything material would have
11 resulted from that hiring. And they thought that -- if
12 they thought that would be necessary in this case, you
13 know, they've had this discovery for, you know, over six
14 months now. So that name has existed for six months.

15 And as far as him saying, we will never know if
16 this if this is, you know, prejudices their defendant under
17 the 14th Amendment, again, rules of discovery is not a
18 fishing expedition. They have to show that this would have
19 been material to their case, and based on what the doctor
20 testified to today and even before she testified, our
21 position is that this doctor in her evaluation did not
22 raise any material issues. Nothing was inconsistent with
23 what Child [REDACTED] has already told other folks, other
24 individuals. Ms. Phipps testified to basically what's in
25 this report, about symptoms and also it would have been

1 cumulative -- putting this witness on the stand would have
2 been cumulative to what Ms. Phipps already testified to.
3 It's -- again, discovery rules are not a fishing expedition
4 and by Mr. Shealey saying we will never know whether this
5 is true material or not to their case. It's not the proper
6 standard that Rule 5 and Brady considers, Your Honor.

7 MR. SHEALEY: Your Honor, in response, I just have
8 two words.

9 THE COURT: Okay.

10 MR. SHEALEY: Kyles v Whitley. And we've got the
11 cite on the record.

12 THE COURT: Okay. I have reviewed Kyles v Whitley.

13 MR. BAILEY: Just, I would like -- I'm sorry.

14 THE COURT: Go ahead.

15 MR. BAILEY: I'd like to submit this to the Court
16 of record.

17 THE COURT: What is it.

18 MR. BAILEY: This is an e-mail that I gave to
19 Ms. Ashton this weekend. We've been asking her for a while
20 who Dr. Watson is. And, you know, they said, well -- I
21 don't know. And I just want to make sure that this is part
22 of the exhibit that we asked and until we saw the report
23 for ourselves, after getting an order, we had to go find
24 the doctor ourselves.

25 I don't want to cite anymore --

1 THE COURT: What is this?

2 MS. ASHTON: That is an e-mail that he sent to me
3 Sunday afternoon. Sunday afternoon, this weekend, asking
4 me who Dr. Watson was. That's the first time I'd ever
5 heard of Dr. Watson.

6 THE COURT: Okay.

7 MS. ASHTON: So I would just object to this being
8 introduced into the record.

9 THE COURT: Well, it's a court record. I'm
10 allowing him to put it in.

11 MR. BAILEY: As soon as we saw that there may be
12 more than we suspected -- which there was, that we needed
13 to see Dr. Watson, I immediately e-mailed Ms. Ashton. She
14 may not have been here working this weekend, but I e-mailed
15 it to her as soon as I realized there was another doctor
16 involved, or actually a doctor.

17 THE COURT: I know, we dealt with it on Monday,
18 so...

19 MR. BAILEY: Yes, sir.

20 THE COURT: That's about as fast as she could
21 respond.

22 MR. BAILEY: Yes, sir. Sure. I just wanted to
23 make it clear that we were wanting to know who it was.

24 THE COURT: As an officer of the Court, you can
25 just say that.

1 MR. BAILEY: Sure. When in doubt, more
2 documentation.

3 THE COURT: Okay. All right. Well, I've reviewed
4 all your memos, the State's memo and defense memo, I've
5 read Kyles v. Whitley. I -- the report was produced
6 yesterday. I viewed this report as -- just what she said
7 it is, it's just an evaluation of this doctor, and it's
8 very straightforward in terms of generalities, about
9 answers that the -- Ms. Child gave to her at this
10 interview. There's no treatment recommendation, no meds.
11 There's nothing in here which is either inculpative or
12 exculpative of the defendant. She talks very little -- I
13 mean the interview talks very little about the defendant
14 and -- other than the fact that he's her father and that's
15 the source of the -- and the reason for her examination.

16 I don't see where it materially affects the outcome
17 of the case. I don't see that it creates a reasonable
18 probability of a different result in this case. It is what
19 it is, and based on that, I respectfully deny your motion
20 for a mistrial.

21 MR. SHEALEY: Thank you, Judge.

22 THE COURT: Now, how do you wish to proceed?

23 MR. BAILEY: Well, Judge, we've just got our --
24 after the State rests, we've got our standard mid-trial
25 motions if you want to do that, Your Honor, or if you want

1 to wait until they have stated they rest in front of the
2 jury.

3 THE COURT: All right.

4 MR. BAILEY: We're going to do a directed verdict.

5 THE COURT: I understand. Assuming it's not
6 granted -- assuming it's not granted, do you propose to
7 present a defense?

8 MR. BAILEY: Yes, Your Honor.

9 THE COURT: Okay. Good. You wish to announce --
10 bring the jury in, tell them you rest and send them back
11 out? Or you want me -- you want me to do it when they come
12 in?

13 MS. ASHTON: We'll say the State rests at this
14 point in front of the jury.

15 THE COURT: Huh?

16 MS. ASHTON: We would like to say that the State
17 rests at this point in front of the jury -- with the jury
18 present.

19 THE COURT: All right. I'm going to bring them in
20 and send them back out, right?

21 MS. ASHTON: Yes, sir.

22 THE COURT: Bring in the jury.

23 (WHEREUPON the jury entered the courtroom at 2:14
24 p.m.)

25 THE BAILIFF: Your Honor, the jurors are present.

1 THE COURT: All right. Thank you very much. Good
2 afternoon, ladies and gentlemen.

3 THE JURY: Good afternoon.

4 THE COURT: All right. Solicitor, call your next
5 witness.

6 MS. ASHTON: Your Honor, at this time, the State
7 would rest.

8 THE COURT: All right. All right. Ladies and
9 gentlemen, the State has completed their case. Now, as I
10 told you at the beginning of this trial, the defense now
11 has the opportunity to present a defense if they wish to do
12 so. But before they do that, before that -- before they
13 make that election, I have to take up another legal matter
14 on the record with the attorneys. I know you think I'm
15 making you get up and down -- you're getting some good
16 exercise, but I need to take that up with the attorneys on
17 the record. So I'm going to ask you to return to the jury
18 room for just a minute and then we'll continue.

19 (WHEREUPON the jury left the courtroom at 2:16
20 p.m.)

21 THE COURT: Mr. Bailey?

22 **MID-TRIAL MOTIONS**

23 MR. BAILEY: Thank you, Judge. At this time, we
24 would move -- we'd like to -- well, several things. We'd
25 like to move for a directed verdict, we'd like to renew all

1 our previous objections and motions. And we'd definitely
2 like to renew our primary mistrial motions and the other
3 mistrial motions. Would you like for me to start with any
4 particular, Judge, or just start?

5 THE COURT: It's your argument.

6 MR. BAILEY: All right. Thank you, Judge.

7 First, we'd move for a directed verdict because we
8 feel that the State has not met their burden, and we feel
9 that -- and we also would like to reserve our previous
10 mistrial motions. The first one being that Mr. Shealey so
11 artfully argued, which I don't need to elaborate too much,
12 but just that there was a serious Riddle and Brady
13 violation, and we had to, you know, basically -- not only
14 were we denied discovery and due process, and we weren't
15 allowed to do a complete defense, but we basically, you
16 know, the discovery burden was shifted onto us and we'll
17 never be able to get an expert witness that could evaluate
18 something that we believe to be potentially exculpatory.

19 Additionally, we'd like to move for a mistrial
20 motion based on Ray Olszewski's violation of the time and
21 place restriction and his vouching for the voracity of
22 Ms. Child [REDACTED] We also would like to move for a mistrial
23 based on the fact that we weren't allowed to get involved
24 with Investigator Martin or Investigator Johnson about the
25 integrity of the investigation, and things that Deputy

1 Hatfield said and saw during his report that the State
2 wanted to keep out just because they thought it wasn't
3 favorable. Anyway, we'd like to renew all these mistrial
4 motions.

5 We'd like to renew all previous objections and
6 motions, including, but not limited to these. And that's
7 it, Judge.

8 THE COURT: State's position?

9 MS. ASHTON: Your Honor, I believe we've presented
10 evidence to pass his directed verdict motion. Your Honor,
11 we have presented DaShawna's testimony and as Your Honor is
12 aware, the legislature in these types of cases in 19-16-267
13 where the testimony of a victim need not be corroborated
14 for prosecutions under the -- at certain times, and this
15 qualifies under a criminal sexual conduct with a minor in
16 the first-degree. It's one of those.

17 We also have presented the forensic interview where
18 she also discloses the sexual assault by her father against
19 her. So at this point, we believe we've presented
20 sufficient evidence to overcome a directed verdict motion,
21 Your Honor.

22 MR. BAILEY: One more thing, Judge. I forgot also,
23 we wanted to move for the mistrial based on Martin --
24 Investigator Martin's time and place violations, speaking
25 specifically to the details of the alleged assault which

1 the State knows he's not allowed to get into. I just
2 wanted to point that out with the others. Thank you,
3 Judge.

4 THE COURT: All right. Well, I feel that there's
5 sufficient evidence -- and really it's not my place to
6 judge the weight of the evidence -- only the existence of
7 evidence to support the State's theory of the crime, and I
8 find there is, based on the testimony of the victim in and
9 of itself. And there's no contrary evidence at this point,
10 and not that I would be in a position to judge it anyway;
11 but the existence of the evidence makes me find that I
12 cannot grant a directed verdict motion.

13 Now, approach the bench, please.

14 (WHEREUPON, there was a bench conference out of the
15 hearing of the Court Reporter.)

16 THE COURT: We'll stand at ease for ten minutes.

17 (WHEREUPON a recess was observed.)

18 THE COURT: Is the State ready to proceed?

19 MS. ASHTON: Yes, Your Honor.

20 THE COURT: Defense ready to proceed?

21 MR. BAILEY: Yes, sir.

22 THE COURT: Bring the jury.

23 THE BAILIFF: Yes, sir.

24 MS. ASHTON: I thought we talked about
25 proffering -- that's what they asked.

John Hatfield - Direct Examination by Mr. Shealey

1 THE COURT: It's their case.

2 (WHEREUPON the jury entered the courtroom at 3:34
3 p.m.)

4 THE BAILIFF: Your Honor, the jury is present.

5 THE COURT: That's funny, they're not present --

6 (WHEREUPON one more juror entered the room.)

7 THE COURT: They are now.

8 THE BAILIFF: Yes, sir.

9 THE COURT: All right. Mr. Shealey, call your next
10 witness.

11 MR. SHEALEY: Yes, Your Honor, the defense calls
12 Officer Hatfield to the stand, please.

13 THEREUPON,

14 JOHN D. HATFIELD,
15 after being duly sworn, testified as follows:

16 THE CLERK: Please have a seat. State your full
17 name for the record.

18 THE WITNESS: My name is John Desmond Hatfield.

19 **DIRECT EXAMINATION**

20 By Mr. Shealey:

21 Q Good afternoon, Officer Hatfield.

22 A Good afternoon.

23 Q Do you recall responding to an incident, July 11th
24 of 2008 in the case regarding Child Child

25 A I do.

John Hatfield - Direct Examination by Mr. Shealey

- 1 Q And do you have your Richland County Sheriff's
2 Department incident report in front of you?
- 3 A Yes, sir.
- 4 Q And is that a report that you wrote?
- 5 A Yes, it is.
- 6 Q Okay. Your signature is on the bottom of that?
- 7 A That's correct.
- 8 Q And that's as a responding officer?
- 9 A I was primary officer, yes, sir.
- 10 Q Was there another responding officer?
- 11 A Corporal Monica Johnson, my supervisor.
- 12 Q Was she your superior or your lesser officer?
- 13 A She was my superior.
- 14 Q Did she write a report?
- 15 A I am not guilty sure if she did or not, sir.
- 16 Q But she -- if you look on your report, she was your
17 approving officer, right?
- 18 A She -- her initials are down there as approving the
19 report, yes, sir.
- 20 Q Okay. Now, where are you from originally?
- 21 A Cincinnati, Ohio.
- 22 Q Okay. How many years of experience do you have in
23 law enforcement?
- 24 A It's twelve years in May.
- 25 Q Twelve years in May? Okay.

John Hatfield - Direct Examination by Mr. Shealey

1 And where did you start out your law enforcement
2 career?

3 A In Orlando, Florida.

4 Q Okay. And how long -- what position did you have
5 down there?

6 A Deputy sheriff on road patrol.

7 Q And what do some of your duties as a road patrol
8 officer entail?

9 A I worked a twelve-hour shift, answered several
10 different calls: CDV, disorderly conduct -- you name it,
11 I've seen it.

12 Q Okay. What's CDV?

13 A Well, Domestic Violence.

14 Q Okay.

15 A Criminal Domestic Violence.

16 Q Just, thank you. I appreciate that because I
17 wouldn't understand as --

18 A Right, I'm sorry.

19 Q All right. Now, as a responding officer, you go
20 out and you talk to people?

21 A That's correct.

22 Q And you said you have a little over twelve years of
23 doing this?

24 A Yes, sir.

25 Q Or excuse me, how long were you a responding

John Hatfield - Direct Examination by Mr. Shealey

1 officer?

2 A I was on road patrol for nine and a half years.

3 Q Nine and a half years. Do you have any training?

4 Do they gave you a training or do they just give you a
5 badge?

6 A Well, I went to the academy and they -- one of the
7 courses that -- blocks of instruction at the academy is
8 interview -- interviewing techniques.

9 Q Okay. So at the academy, you're telling me that
10 they trained you on how to interview people?

11 A That's correct.

12 Q And do you also gain experience just by doing it?

13 A That's correct.

14 Q Okay. Now, were you a responding officer in South
15 Carolina for a given amount of time?

16 A Yes. I was for two and a half years in Lower
17 Richland and three months in Blythewood.

18 Q Okay. And are you familiar with this type of
19 document that you have before you, which is a Richland
20 County incident report?

21 A Very familiar.

22 Q And how many years have you been using reports like
23 this?

24 A Well, like this, since 2006 -- July of 2006 when I
25 joined the sheriff's department.

John Hatfield - Direct Examination by Mr. Shealey

1 Q And there are a lot of boxes. Is it safe to say
2 there are a lot of boxes on this report?

3 A Yes, it's safe to say.

4 Q And do each of them have a meaning?

5 A Yes, sir.

6 Q All right. What does it mean to have this box for
7 like let's say incident location? What does that mean?

8 A This incident location is where the complainant or
9 victim told -- tells me that the incident, whatever
10 incident it is, took place.

11 Q And --

12 A It's jurisdiction.

13 Q And is it important to have a fair and accurate and
14 detailed report?

15 A Most certainly.

16 Q Okay. And why is that?

17 A Well, you want to -- you want to be accurate, you
18 want to state the facts because the -- the case may go to
19 trial, may go the Court and you want to look through it
20 when you go the Court.

21 Q All right. And to the best of your knowledge, is
22 in this a fair and accurate detailed report?

23 A Yes, it is.

24 Q Now, on this box here, if you refer to your report,
25 under complainant's name, what does it say?

John Hatfield - Direct Examination by Mr. Shealey

1 A Kathy L. Myers.

2 Q Okay. You responded to this incident location,
3 right?

4 A Yes, sir.

5 Q And looking at your report and going on your
6 recollection of events, where is -- where do you respond to
7 first?

8 A I responded to the Exxon gas station at the corner
9 of McCords Ferry and 378.

10 Q Okay. And who was there at the Exxon?

11 A It was Kathy Myers.

12 Q Okay. And what did she tell you?

13 MS. ASHTON: Objection.

14 MR. SHEALEY: Your Honor, this is under State v
15 Thompson and you've already ruled on it.

16 THE COURT: Sorry?

17 MR. SHEALEY: It's under State v Thompson, you've
18 already ruled on this issue. It's not for the truth, but
19 for the investigative purpose of the officer being there.
20 State v. Thompson.

21 THE COURT: I understand what you're saying. I
22 just didn't understand what your point was.

23 He can -- I have ruled that he can testify about
24 the facts that he saw and observed. He can tell what the
25 witnesses told him if it's in furtherance of his

John Hatfield - Direct Examination by Mr. Shealey

1 investigation as you say it's a reason for the police to be
2 there.

3 MR. SHEALEY: All right, sir.

4 THE COURT: Only up to a certain point now. At
5 some point, it becomes hearsay.

6 By Mr. Shealey:

7 Q Officer, what did Mr. Myers tell you about when you
8 came up there?

9 A She told me that she received a phone call from her
10 daughter, Child [REDACTED] Child [REDACTED] and Child [REDACTED] told her that she
11 was sexually abused by the defendant.

12 Q Okay. Did Ms. Myers tell you anything else? Did
13 she ask you anything else?

14 A She did ask me if DSS was going to be involved.
15 Asked me at least twice.

16 Q Okay. Did you observe her to be crying?

17 A No, I did not.

18 Q Did you observe her to be crying?

19 A I did not.

20 Q Okay. Did you take her out there to the incident
21 location at that point?

22 A I did not.

23 Q Okay. Do you know if she got out to Mr. Deveaux's
24 house?

25 A She did.

John Hatfield - Direct Examination by Mr. Shealey

- 1 Q And how did you observe her getting there?
- 2 A Her vehicle.
- 3 Q Okay. And did you talk to Child Child
- 4 A I did not.
- 5 Q Okay. Did you observe Corporal Johnson talking to
- 6 her?
- 7 A I may -- let me go back. I may have talked to her,
- 8 but not about the incident, the alleged incident.
- 9 Q Now, you talked to Charles Deveau, right?
- 10 A That's correct.
- 11 Q And you've --
- 12 MS. ASHTON: Objection.
- 13 MR. SHEALEY: To what?
- 14 THE COURT: I haven't heard the question yet. I
- 15 haven't heard the question. What's the question?
- 16 By Mr. Shealey:
- 17 Q And you also talked to Kathy Myers?
- 18 A Yes, I did.
- 19 Q Okay. Now, would you agree that page one of your
- 20 incident report is in regards to factual observations?
- 21 A Yes, sir.
- 22 Q Page three of your incident report, is that in
- 23 regard to factual observations?
- 24 A Yes, sir.
- 25 Q And what would you -- without saying, what would

John Hatfield - Direct Examination by Mr. Shealey

- 1 you consider page two to be?
- 2 A My opinion.
- 3 Q Okay. And is that your opinion on this case?
- 4 A Yes, sir.
- 5 Q Were you told to write your opinion regarding this
- 6 case?
- 7 A That's correct.
- 8 Q Was that part of your training?
- 9 A I was told to write what was called at the time --
- 10 and again three years ago, an investigative follow up.
- 11 Q Okay. Now to your recollection, did you and
- 12 Corporal Johnson have an opportunity immediately after all
- 13 this stuff to have a conversation about the case?
- 14 A We may have, passing words, but I do not know what
- 15 was said.
- 16 Q And on July 11th of 2008 when you got the call to
- 17 respond out there to this Exxon gas station, when all this
- 18 happened, did you make an arrest of Charles Deveaux?
- 19 A I did not.
- 20 Q Do you know in your observations if Corporal
- 21 Johnson made an arrest of Charles Deveaux?
- 22 A She did not.
- 23 MR. SHEALEY: Beg the Court's indulgence.
- 24 By Mr. Shealey:
- 25 Q Do you recall, Officer Hatfield, if Ms. Myers

John Hatfield - Cross-Examination by Ms. Ashton

1 talked to you about the visitation order?

2 MS. ASHTON: Objection.

3 MR. SHEALEY: State v Thompson, Your Honor.

4 MS. ASHTON: This has nothing to do with --

5 THE COURT: Go ahead. Overruled. Just answer the
6 question.

7 By Mr. Shealey:

8 Q You can answer it. Do you recall?

9 A No, I do not recall.

10 Q Okay. Thank you. Please answer any questions the
11 assistant solicitors have for you?

12 **CROSS-EXAMINATION**

13 By Ms. Ashton:

14 Q Is it deputy?

15 A Yes, ma'am.

16 Q Deputy Hatfield, this crime wasn't freshly
17 committed, was it?

18 A I'm sorry?

19 Q This crime was not freshly committed, was it?

20 A No, it wasn't.

21 Q So, therefore, you couldn't make an arrest at this
22 point?

23 A That's correct.

24 Q And you've been with the sheriff's department for
25 how long?

John Hatfield - Cross-Examination by Ms. Ashton

- 1 A A little over five years.
- 2 Q And in law enforcement how long?
- 3 A A little over twelve years.
- 4 Q And are you an investigator?
- 5 A No, I'm not.
- 6 Q Are you, in fact, in civil process?
- 7 A Yes, I am in civil process.
- 8 Q Are you trained in sexual assault investigations?
- 9 A No, I'm not.
- 10 Q And when you said you had training in interviews,
- 11 you said that was nine years ago at the academy?
- 12 A No, I was on patrol for nine and a half years,
- 13 ma'am.
- 14 Q And when did you have training in these interviews
- 15 that you discussed?
- 16 A At the academy, nine and a half years ago.
- 17 Q Exactly. And all these boxes that he went through,
- 18 that's for purposes of providing to an investigator so that
- 19 he can continue the investigation?
- 20 A No, ma'am. Some of these boxes are standard.
- 21 Q To get statistical information to turn over to the
- 22 investigator, for his investigation; is that correct?
- 23 A Well, yes, ma'am.
- 24 Q You mentioned the complainant's name. Who is the
- 25 victim's name?

John Hatfield - Redirect Examination by Mr. Shealey

1 A Child K. Anderson.

2 MS. ASHTON: Beg the Court's indulgence.

3 Thank you, sir.

4 MR. SHEALEY: Brief redirect?

5 THE COURT: Yes, sir.

6 REDIRECT EXAMINATION

7 By Mr. Shealey:

8 Q Now, the assistant solicitor referenced your power
9 to make an arrest, and you do have the ability in your
10 experience, your professional experience as a law
11 enforcement officer, you have made arrests before on the
12 scene, have you not?

13 A Oh, yes, sir.

14 Q And you've investigated domestic situations before,
15 have you not?

16 A Yes, sir.

17 Q And, in fact, part of your job is in judging
18 credibility?

19 A That's correct.

20 Q And in doing your job with domestic situations
21 before, isn't it true that you've had to establish who they
22 primary aggressor is in certain domestic situations when
23 people are telling different versions of the truth, right?

24 A Yes, sir.

25 Q And in your experience of over twelve years, you've

John Hatfield - Recross-Examination by Ms. Ashton

1 had to make decisions on whether to arrest and whether or
2 not to arrest, right?

3 A That's correct.

4 Q All right. Thank you.

5 THE COURT: Anything further?

6 MS. ASHTON: One question.

7 **RECROSS-EXAMINATION**

8 By Ms. Ashton:

9 Q Is this case that we're talking about a domestic
10 violence case?

11 A No, ma'am.

12 Q Thank you.

13 THE COURT: All right. You may come down, sir.
14 Thank you very much.

15 MR. SHEALEY: And, Your Honor, we do have a
16 matter -- a matter of law before the witness leaves.

17 THE COURT: I'll ask him to stay.

18 Stick around, Officer.

19 THE WITNESS: Okay.

20 THE COURT: Next witness.

21 MR. BAILEY: So, Your Honor, are we going to take
22 up a matter of law later, is that right?

23 THE COURT: Yes, sir.

24 Officer Hatfield, you're not leaving are you?

25 THE WITNESS: No, sir.

Charles Deveau - Direct Examination by Mr. Bailey

1 THE COURT: Okay. Thank you.

2 MR. BAILEY: The defense calls Mr. Charles Deveau.

3 THEREUPON,

4 CHARLES DEVEAUX,

5 after being duly sworn, testified as follows:

6 THE CLERK: Please have a seat. State your full
7 name for the record.

8 THE WITNESS: Charles M. Deveau.

9 **DIRECT EXAMINATION**

10 By Mr. Bailey:

11 Q How you doing this afternoon, Mr. Deveau?

12 A Doing pretty good.

13 Q Mr. Deveau, could you tell us a little bit about
14 yourself? Your age and where you're from?

15 A Okay. I'm currently 57 years old. I was born in
16 Eastover, South Carolina. That's where I presently live.
17 I've lived there pretty much all of my life except for some
18 military time I spent away from home.

19 Q Did you go to school in Eastover?

20 A Yes, I did. I went to what was then known as Weber
21 High School for eleven years and then I graduated from
22 Hopkins High during the merge. They had a merge back then,
23 and I graduated from Hopkins High in 1971.

24 Q Mr. Deveau, you mentioned that you entered the
25 military. When did you enter the military and what branch?

Charles Deveau - Direct Examination by Mr. Bailey

1 A Well, when I first entered the military, first of
2 all, I -- I got a job when I got out of high school and I
3 worked over at Equipment Depot over on Bluff Road washing
4 state police cars, highway patrol cars. I went into the
5 military, I think, in November of '74, and I stayed until
6 December of '88.

7 Q Were you honorably discharged, Mr. Deveau?

8 A Yes, I was honorably discharged from the United
9 States Air Force.

10 Q Were you stationed in a variety of places when you
11 were in the military?

12 A Yes, sir. My first duty station took me to Langley
13 Air Force Base, Texas, where I received basic training and
14 how to prepare myself for a serviceman; and from there I
15 went to tech school at Lackland again and after that I
16 received my first duty assignment, which was at Columbus
17 Air Force Base, Mississippi, did some time there. And
18 skipping places, I remember receiving my overseas tour.

19 My family and I received an overseas tour at
20 Misawa, Japan. I stayed there four and a half years and
21 came back from over there, back to the United States and
22 was later discharged.

23 Q Did you -- did you come back to South Carolina
24 after your time in the military?

25 A Yes, after I was discharged from the military, I

Charles Deveau - Direct Examination by Mr. Bailey

1 did come back to South Carolina and stayed in Eastover and
2 started to transform my life there. The jobs that were
3 available.

4 Q What kind of work did you do when you got back?

5 A Well, first of all, my brother owned a body shop in
6 Eastover, and so he hired me and I did small body work
7 there where we straightened out wreck vehicles, you know,
8 took off the old parts and put on the new parts; and then
9 I -- the work got slack there and I got a job as -- I
10 became an insurance salesman. I sold insurance for a while
11 and then from there -- that didn't last too long. I went
12 to work at the Alvin S. Glenn Detention Center as a
13 detention officer where I stayed there for eight years. I
14 was promoted to supervisor there. I was supervisor over
15 the juvenile department when I left there. And from --
16 after that, I got one other job as a security guard for the
17 Defense Services in Columbia.

18 Q Mr. Deveau, are you involved in any community
19 organizations? Do you go to any church in town?

20 A Yes, I do. I go to church over in West Columbia at
21 500 Chris Drive. My pastor there is Pastor Gene O.
22 Jennings with a lay minister, the local minister is Dowell
23 Jones. We have services every Sunday.

24 Q Charles, I want to talk to you a little bit about
25 the family situation and why we're here today. Can you

Charles Deveau - Direct Examination by Mr. Bailey

1 tell us about when you met Ms. Kathy Myers or I guess at
2 the time Kathy Anderson.

3 A Yes, at the time she was Kathy Anderson. I met her
4 at -- in the late '90s, the late '90s we met and we began
5 seeing one another. We established a relationship with
6 each other. It was in the late '90s.

7 Q Did -- I guess the relationship eventually ended?

8 A Yeah, we stayed together -- we dated one another
9 for about six or eight months. And we broke up and grew
10 apart.

11 Q Did you and Ms. Myers have a child together?

12 A Yes, unfortunately, we did have a child together.
13 I say unfortunately because the child was, you know, born
14 out of wedlock and I believe in doing things right.

15 Q And is that child Child [REDACTED]

16 A Yes, that child was Child [REDACTED] Child [REDACTED]

17 Q Now, you say she was born out of wedlock. You
18 don't hold it against Child [REDACTED] though, right?

19 A No, I don't. I don't hold it against her. She's a
20 sweet girl.

21 Q Charles, because you did not stay with Ms. Myers,
22 was there a visitation situation that was arranged?

23 A Yeah, there was a visitation arranged between us
24 that State arranged visitation between us because I didn't
25 deal with her. We had visitation. I had -- we had

Charles Deveau - Direct Examination by Mr. Bailey

1 visitation twice a week, every holiday, Father's Day and
2 Christmas, in particular. And two weeks out of the year --
3 I mean -- yeah, two weeks out of the year during the
4 summertime, two weeks during the summer. And that was it.

5 Q Did y'all have a place where you met to -- for you
6 to pick up Child

7 A The local meeting place was at the Exxon station
8 just above my house, about a mile above my house.

9 Q And Charles, did you have a visitation week with
10 her the week of June 22nd through June 29th of 2008?

11 A 2008, I did have a visitation week -- a visitation
12 with her during that time, yes.

13 Q Okay. So did you pick her up at the Exxon station
14 that day?

15 A Yeah, I picked her up at the Exxon station as I
16 usually do, and we greeted one another and I took her off
17 to the house. And you know, she went to her room and put
18 her things in her room and started out -- we started our
19 visitation at that point.

20 Q Would you say that it was a fairly normal
21 visitation week?

22 A Yeah, I would say it was a fairly normal visitation
23 week. There was one thing that I noticed about her. She
24 seemed to have been very withdrawn from me, and I didn't
25 know why she didn't want to talk to me, didn't want to have

Charles Deveau - Direct Examination by Mr. Bailey

1 anything much to say to me.

2 Q Was there anything else unusual about that week?

3 A Well, nothing really. She showed up one morning in
4 our bedroom and said that she was having nightmares and
5 that she had been afraid, scared to some extent. So I
6 invited her in the bed and she got in.

7 Q Anything else other than that that was out of the
8 ordinary?

9 A No, that -- that's all I can -- that was all.

10 Q Mr. Deveau at the end of the week, did you take
11 her back to the Exxon station to her mom?

12 A Yes, sir, I did. I took her back to the Exxon
13 station, local meeting place.

14 Q And I know this is a long time ago, would you say
15 that the next visitation that you had scheduled with her
16 was July 11th?

17 A That sounds about right because it was July 11 --
18 that sounds like -- that was the next visitation, July
19 11th.

20 Q Okay. Charles, when did you first hear the
21 allegations that the State and Ms. Myers made against you?

22 A Shortly after I picked up my daughter from the
23 Exxon station. I took her home where I normally take her.
24 Where I always take her and -- and I took her home -- took
25 her to her room, she put her things away, and I don't know

Charles Deveau - Direct Examination by Mr. Bailey

1 how long after that, but it wasn't too long after that, we
2 were in -- we were in the backyard and I noticed a deputy
3 sheriff was coming around the corner of the house.

4 When I looked, I saw him, I went to meet him, and
5 so when I went to meet him, he had -- I noticed he had some
6 paper in his hand and he asked me was a Charles Deveau;
7 and I replied, yes, I was. I am, I'm Charles Deveau.

8 And he asked me about my daughter, Child
9 Child Child was she here. And I told him, I said,
10 Yeah, she's here. I said, I'm curious, what's going on,
11 sir? And that's when he said that I had been accused of
12 touching my daughter inappropriately and...

13 Q And what did you --

14 A I didn't know what to say. I was shocked,
15 surprised. I said, What? You know, and so --

16 Q Did you tell him anything?

17 A Well, he wanted -- he wanted to get Child He
18 wanted to take her away from the house. And I can't
19 remember what conversation we had, you know, during that
20 time. But he got Child and he took her away.

21 Q Did you hear from Richland County Sheriff's
22 Department again after that?

23 A Yes, sir, I did. I heard from Richland County
24 Sheriff's Department after that, I did.

25 Q Okay. Who did you hear from?

Charles Deveau - Direct Examination by Mr. Bailey

- 1 A I heard from investigator -- I think it was Martin.
- 2 Q The gentleman right over here?
- 3 A Yes, sir, the gentleman seated right there in the
- 4 red tie and black suit.
- 5 Q Did you -- did he call you up on the phone?
- 6 A He did. He gave me a call. He gave me a call on
- 7 the phone and said he wanted to -- he wanted to make a date
- 8 for an interview. He wanted to have an interview with me.
- 9 Q Did you -- was that interview date soon enough for
- 10 you?
- 11 A Well, no, it wasn't because I wanted him to know
- 12 that I wasn't -- I didn't do what they said I did. I
- 13 didn't do it. So I told -- I wanted to get it over, so I
- 14 told him I would come on in right away, which I did.
- 15 Q Was it the next day when you went?
- 16 A It was the next day.
- 17 Q And what did you say to Investigator Martin when
- 18 you spoke with him?
- 19 A Well, first of all, I told Investigator Martin that
- 20 I didn't do it. You know, he asked me some questions about
- 21 who Child was and did I know her and I answered his
- 22 questions and everything.
- 23 Q Were you -- did you leave after that -- after that
- 24 interview?
- 25 A Yes, I did. I did leave after that interview.

Charles Deveaux - Direct Examination by Mr. Bailey

1 Q And did he eventually call you back on the
2 telephone?

3 A Yes, he did call me back. He did call me back and
4 he wanted to arrest me. He said he had a warrant for my
5 arrest, and I should come on -- his -- so I went and turned
6 myself in. I went and turned myself in.

7 Q Charles, how have these allegations changed your
8 life?

9 A I -- dramatically. They have dramatically changed
10 my life. Sometimes I don't know how I managed to hold on
11 to my sanity. But they have dramatically changed my life
12 because I've lost everything. I've lost my good job. I
13 lost my credibility. I've lost friends, people -- it was
14 put on the news. My face went up on the television, and at
15 that time I was a detention officer working out at the
16 jail, and I don't know if anybody in here have ever been in
17 that position.

18 Q Mr. Deveaux, do you think that -- the damage done
19 by these allegations can be repaired?

20 A I don't know.

21 Q Mr. Deveaux, Charles --

22 A Yes, sir.

23 Q -- the State is accusing you of molesting your own
24 daughter. Did you do this?

25 A No, I did not.

Charles Deveau - Cross-Examination by Ms. Simpson

1 Q Mr. Deveau, do you love your daughter?

2 A Yes, I do. Very much.

3 Q All right. Thank you Mr. Deveau. Please answer
4 any questions that the prosecution has for you.

5 MS. SIMPSON: May it please the Court?

6 THE COURT: Yes, ma'am.

7 **CROSS-EXAMINATION**

8 By Ms. Simpson:

9 Q Mr. Deveau, now, you said that **Child** stayed
10 with you during the week of June 22nd to 29th of 2008,
11 correct?

12 A 22nd to 29th --

13 Q 2008, that's right.

14 A Yes, I did.

15 Q Or she did, she stayed with you?

16 A You asked me did I say that. I said, yes, I did
17 say that.

18 Q And that was pursuant to court-ordered visitation,
19 correct?

20 A Yes.

21 Q And -- I want to -- you stated earlier that you
22 loved your daughter, right?

23 A Yes. I did.

24 Q Very much?

25 A Yes.

Charles Deveau - Cross-Examination by Ms. Simpson

- 1 Q And you wanted to visit with her didn't you?
- 2 A Of course.
- 3 Q This visitation order in place -- I want to talk a
- 4 little bit about it. You said Child [REDACTED] was born -- when's
- 5 her date of birth day?
- 6 A [REDACTED].
- 7 Q Of what year?
- 8 A [REDACTED].
- 9 Q [REDACTED] [REDACTED]
- 10 A [REDACTED].
- 11 Q Her birthday is [REDACTED] [REDACTED] [REDACTED]? And
- 12 that visitation order that was actually issued late [REDACTED]
- 13 right? [REDACTED]?
- 14 A I guess.
- 15 Q [REDACTED] And we're in 2011 now. This occurred back
- 16 in 2008, what we're here today about. You actually filed a
- 17 complaint against Kathy Myers for failing to comply with
- 18 that [REDACTED], didn't you? Did you file a complaint with
- 19 her?
- 20 A I don't remember, I probably did.
- 21 Q Well, you've been sitting here this whole trial.
- 22 You don't remember filing a complaint?
- 23 A Yes, I remember filing a complaint.
- 24 Q For her --
- 25 A Being able to see my daughter.

Charles Deveau - Cross-Examination by Ms. Simpson

1 Q Exactly. And that was pursuant to a 1998
2 visitation order, right?

3 A Okay.

4 Q And that complaint you filed, that was filed on
5 October 9th of 2007, wasn't it?

6 A Okay.

7 Q October 9th. Up there it says October 1st, but I
8 believe October 9th, 2007.

9 A Okay.

10 Q Correct?

11 A Go ahead.

12 Q I asked my question. That's when you filed it,
13 right?

14 A Yeah.

15 Q And isn't it true that four days earlier, you were
16 actually served with a notice of financial responsibility,
17 right?

18 A Four days earlier?

19 Q Four days. October -- let me make sure I've got it
20 right. October 5th of 2007?

21 MR. BAILEY: Objection, Your Honor, relevancy.

22 THE COURT: Overruled. It's cross-examination.

23 By Ms. Simpson:

24 Q I'll say it again. Four days earlier, prior to you
25 filing that complaint in family court for Kathy failing to

Charles Deveau - Cross-Examination by Ms. Simpson

1 comply with that 1998 visitation order, you were served
2 with a notice for financial responsibility, correct?

3 A I probably was. I don't know, I don't remember
4 ma'am. I don't remember if I was served with that -- with
5 a notice of financial responsibility or not. I don't
6 remember.

7 Q And so you don't remember ever being served with
8 notice of financial responsibility. Would it help you if I
9 found that for you --

10 A It was --

11 Q -- and showed it to you?

12 A Yes, ma'am, it may.

13 MS. SIMPSON: Permission to approach?

14 THE COURT: Yes, ma'am.

15 By Ms. Simpson:

16 Q Now, if you would specifically this top page, this
17 would actually be where you were served. What's the date
18 on the top?

19 A This says October 5th. October 5th, 2007.

20 Q All right. So four days earlier, you were served
21 with a notice of financial responsibility?

22 A Okay.

23 Q October 5th?

24 A Yes, ma'am.

25 Q Prior to you filing for that -- your complaint for

Charles Deveaux - Cross-Examination by Ms. Simpson

1 visitation rights?

2 A Right.

3 Q And financial responsibility, you know that to be
4 child support, correct?

5 A Financial responsibility, yes, child support.

6 Q So essentially you -- that visitation order, 1998,
7 that's the one we're talking about here today. Your
8 complaint wasn't filed until nearly ten years later for
9 failing to comply with that, right? You filed it in
10 October of '07. The visitation order was in 1998 and you
11 didn't file your compliant until Kathy Myers sought --

12 MR. BAILEY: Objection, Your Honor.

13 MS. SIMPSON: -- sought child support from you.

14 MR. BAILEY: Objection, Your Honor.

15 THE COURT: What's the objection?

16 MR. BAILEY: I think we spoke a little bit about
17 this yesterday. We can certainly take it up as a matter of
18 law.

19 MS. SIMPSON: Your Honor, I'm going go no further
20 than this.

21 THE COURT: Well, he's got an objection. Yesterday
22 was a long time ago. Tell me -- approach the bench.

23 (WHEREUPON, there was a bench conference out of the
24 hearing of the jury and the Court Reporter.)

25 ///

Charles Deveau - Cross-Examination by Ms. Simpson

1 By Ms. Simpson:
2 Q Okay. So I'll ask my last question again, make it
3 a little more simple. You didn't file a complaint for
4 failing to comply for visitation until after -- five days,
5 four days -- after Kathy Myers filed for child support,
6 isn't that right?
7 A Four days or five days after she --
8 Q Just a few days. Less than a week?
9 A Okay. All right.
10 Q That's right?
11 A Okay.
12 Q So the answer to the -- the answer to my question
13 is yes?
14 A Yes.
15 Q Now, Child [REDACTED] had her own bedroom at your house;
16 isn't that right?
17 A Can you repeat the question?
18 Q Child [REDACTED] had her own bedroom at your house?
19 A Yes.
20 Q She had her own bed, correct?
21 A Yes.
22 Q Had a window in the room, correct?
23 A There was a window, correct.
24 Q And you might have sat on the bed at some point,
25 correct?

Charles Deveau - Cross-Examination by Ms. Simpson

- 1 A Yes.
- 2 Q You just don't recall.
- 3 A That's right.
- 4 Q And you even -- I believe you said you talked to
- 5 Investigator Martin at the sheriff's department, right?
- 6 A Yes, I did.
- 7 Q And when talking to him, you went even to go so far
- 8 as to say there were no chairs in that bedroom, so you
- 9 might have sat on the bed?
- 10 A That's right.
- 11 Q And if you had climbed into bed with your
- 12 ten-year-old daughter, that would have been all right as a
- 13 parent, true?
- 14 A Yeah.
- 15 Q Even though you stated earlier on direct that at
- 16 that time Child [REDACTED] wouldn't hardly talk to you. I believe
- 17 you said withdrawn, right?
- 18 A Yes, I said that.
- 19 Q Okay. So even though she was withdrawn, wouldn't
- 20 hardly talk to you, it would have been okay for you to get
- 21 into the bed with her because you're her parent?
- 22 A She would not have gotten into the bed with me or I
- 23 wouldn't have gotten into her bed with her under those
- 24 circumstances, her being withdrawn.
- 25 Q Okay. But -- back on -- I believe late July after

Charles Deveau - Cross-Examination by Ms. Simpson

1 these charges, when Investigator Martin sat down with you,
2 you indicated at that time it would have been all right if
3 you had sat in that bed?

4 A I said that --

5 Q Referring to this time period?

6 A I said that.

7 Q The time period of June 22nd to June 29 of 2008,
8 even though you couldn't hardly get a word out of her,
9 correct?

10 A Correct.

11 Q As a matter of fact, she actually played well with
12 other children. You noted that. You said that, right?

13 A Yes, uh-huh.

14 Q Pretty much you were the only person she didn't
15 want to talk to, right?

16 A I can't say that. I can't say yes on that.

17 Q And you indicated that -- that Kathy Myers had been
18 trying to stop visitation with you, right?

19 A Yes.

20 Q But, in fact, she's been complying with visitation
21 ever since you file a complaint against her in 2007 seeking
22 visitation; isn't that right?

23 A No.

24 Q That's incorrect?

25 A Yes.

Charles Deveau - Cross-Examination by Ms. Simpson

1 Q She hasn't brought Child ██████ to you?
2 A Since when, 2007?
3 Q 2007. And you filed a complaint in 2007 --
4 MR. BAILEY: Objection, Your Honor.
5 THE COURT: What's the objection?
6 MR. BAILEY: She's leading the witness.
7 THE COURT: She can lead.
8 MR. BAILEY: The factual information is clearly
9 inaccurate. We established that on the record.
10 THE COURT: Well, all he has to do is say he
11 doesn't know or doesn't understand. She can lead.
12 MR. BAILEY: She's made statements that are
13 blatantly wrong.
14 THE COURT: I don't know that.
15 MR. BAILEY: We can talk about that.
16 THE WITNESS: He's the witness.
17 MR. BAILEY: Okay. What she's saying about what
18 year, what happened, things she's been saying things that
19 were incorrect.
20 THE COURT: All right. You can redirect.
21 MR. BAILEY: All right. Thank you, Judge. Thank
22 you, sir.
23 By Ms. Simpson:
24 Q And you actually -- and I'll back up. You filed
25 the complaint in 2007, but she didn't actually start

Charles Deveau - Cross-Examination by Ms. Simpson

1 complying until after she was held in contempt, correct?

2 A Pretty much.

3 Q So that would have been probably late January of
4 2008? That's when she started complying with that?

5 A Yes.

6 Q But that was only after you filed your complaint?

7 A Yes.

8 Q But once you filed that complaint, ten years after
9 that visitation order, she was complying with visitation.

10 She was bringing Child ██████ to you.

11 A Yes.

12 Q Every other weekend. I believe you initially --
13 well, every other weekend, right?

14 A Yes.

15 Q On direct you stated that it was supposed to be two
16 times a week, but it was actually every other weekend,
17 right?

18 A Every other weekend.

19 Q And now DaShawna's is -- I believe we said August
20 29th, 1997, right?

21 A Okay. Yes.

22 Q But you haven't really been sending her birthday
23 cards have you?

24 A I don't know where to send them.

25 Q Christmas cards? You didn't know --

Charles Deveau - Cross-Examination by Ms. Simpson

1 MR. BAILEY: Objection, Your Honor.

2 THE COURT: What's the objection now?

3 MR. BAILEY: She knows he's not allowed to send
4 birthday cards to her. Again, this gets back to the same
5 thing she said she wasn't going to do --

6 THE COURT: He can tell that. I don't need you to
7 testify. He can testify that he wasn't allowed -- if he
8 wasn't allowed to do it. I don't know. If that's what he
9 says, that's what he said. You can't put words in your
10 client's mouth.

11 MR. BAILEY: All right. We've got a matter of law,
12 Judge.

13 THE COURT: All right. I'll take it up later..

14 By Ms. Simpson:

15 Q Now, I want to move on. When talking with
16 Investigator Martin, you indicated that you just -- you
17 didn't think that Kathy Myers was capable of going to such
18 extreme measures, right?

19 MR. BAILEY: Objection. I don't -- she's
20 testifying for the witness things he never said.

21 MS. SIMPSON: Your Honor, I'll --

22 THE COURT: You've objected to that several times.
23 My ruling is the same.

24 MR. BAILEY: All right. Thank you, Judge.

25 THE COURT: He can answer the questions, not you.

Charles Deveau - Cross-Examination by Ms. Simpson

1 By Ms. Simpson:

2 Q Did you say that to Investigator Martin?

3 A Extreme measures?

4 Q I will repeat my question --

5 A I said I didn't think that she would try to destroy
6 my credibility.

7 Q So let me stop you there. To destroy your
8 credibility?

9 A That's right.

10 Q Okay. Your job, right?

11 A Yes.

12 Q Destroy you, correct?

13 A Yes.

14 Q You even said your home, destroy your home? She's
15 out to get you, right?

16 A Yes, I said that.

17 Q And you admit that's an extreme measure, right?
18 Because this is a pretty big deal, isn't it?

19 A It was a big deal. It was a big deal.

20 Q You couldn't believe or didn't think she was
21 capable of going to such extreme measures, right?

22 A I don't know if I said extreme measure or said go
23 this far.

24 Q So you're just not sure whether you said extreme
25 measures in that statement?

Charles Deveau - Cross-Examination by Ms. Simpson

- 1 A I think I said this far.
- 2 Q Would it help you if you looked at it?
- 3 (WHEREUPON the witness was looking at his
- 4 statement.)
- 5 By Ms. Simpson:
- 6 A Extreme measures, this far, both of them.
- 7 Q So extreme measures and going this far. You said
- 8 both of them? Probably. And maybe we're splitting hairs
- 9 here. But I want to talk a little bit -- because extreme
- 10 measures -- let's talk about those. That extreme measure
- 11 is essentially having Child ██████ make up such horrible
- 12 accusations against you, right?
- 13 A That's right.
- 14 Q I believe we talked a little bit on direct about
- 15 that week that she was there, and you stated that it was
- 16 pretty normal that week. Matter of fact, you couldn't
- 17 hardly recall anything from June 22 of 2008 to June 29th,
- 18 right?
- 19 MR. BAILEY: Is there a question there, Judge.
- 20 THE COURT: I thought I heard one.
- 21 By Ms. Simpson:
- 22 Q I'd be happy to ask it again.
- 23 A Couldn't recall anything?
- 24 Q You said it was a pretty normal week that week?
- 25 A Yeah, pretty much.

Charles Deveau - Cross-Examination by Ms. Simpson

1 Q You couldn't recall much of anything about that
2 week that was out of the ordinary.

3 A Okay.

4 Q Except for Child having a nightmare, right? At
5 some point?

6 A Yeah.

7 Q You stated in your statement to Mr. Martin,
8 directly after volunteering or you volunteered that
9 information about the nightmare directly after indicating
10 that you didn't think that Kathy Myers would go to such
11 extreme measures to destroy your credibility?

12 MR. BAILEY: Objection, Your Honor. Compound
13 question.

14 THE COURT: Sustained.

15 MR. BAILEY: I'm sorry?

16 THE COURT: I'm going to agree with you this time.
17 Sustained.

18 MR. BAILEY: Thank you, Judge.

19 By Ms. Simpson:

20 Q I'll break my question up. Okay. You stated to
21 Investigator Martin that you couldn't -- you didn't think
22 that Kathy Myers would go to such extreme measures to
23 destroy your credibility?

24 A That's right.

25 Q And then directly after that, you volunteered

Charles Deveau - Cross-Examination by Ms. Simpson

- 1 information about Child having a nightmare, right?
- 2 A Uh-huh.
- 3 Q Matter of fact, you woke up and she was standing
- 4 there.
- 5 A That's right.
- 6 Q Right.
- 7 A Yes, ma'am.
- 8 Q She never woke you up and said, Dad, I'm having a
- 9 nightmare; I'm afraid, can I get into bed with you. She
- 10 never said that, right?
- 11 A No. I mean -- she never said those -- like that,
- 12 like what you just said.
- 13 Q But she woke you up?
- 14 A Yeah.
- 15 Q You didn't wake her up? Or you didn't wake up on
- 16 your own? Child came over and woke you up?
- 17 A No, she -- no, she did not touch me.
- 18 Q Okay. You woke up and she was standing there?
- 19 A I woke up and there she was.
- 20 Q And you could tell that she was afraid. She said
- 21 she was having a nightmare?
- 22 A Yeah.
- 23 Q And you told her to get into the bed with you?
- 24 A Okay.
- 25 Q Right? She didn't say, Dad can I get into bed with

Charles Deveau - Cross-Examination by Ms. Simpson

1 you, you told her to come on, right?

2 A Right.

3 Q And this is that little girl who was withdrawn from

4 you, right?

5 A Right.

6 Q Couldn't hardly get a word out of her, correct?

7 A That's right.

8 Q But she came to you because she was having a

9 nightmare, right?

10 A That's right.

11 Q Now, let me move on. I believe you said on direct

12 that Child was a sweet child, right?

13 A Yeah.

14 Q Pretty soft spoken, she's a good child, right?

15 A Pretty much.

16 Q Played well with others, correct?

17 A Yeah.

18 Q And it's your contention that you never sexually

19 abused Child

20 A That's correct.

21 Q Never touched her inappropriately?

22 A That's right.

23 Q And if you got into bed with her, it would have

24 been okay --

25 A As a --

Charles Deveaux - Cross-Examination by Ms. Simpson

- 1 Q -- because you were her parent?
- 2 A As a parent, yes.
- 3 Q As a parent, it would have been okay?
- 4 A Yes, ma'am.
- 5 Q Essentially that Kathy Myers put her up to it,
- 6 right? That's what you're telling us here today?
- 7 A Yes.
- 8 Q Her mom put her up to this, this extreme measure?
- 9 A Yes.
- 10 Q To destroy your credibility; right?
- 11 A Right.
- 12 Q Your job?
- 13 A That's right.
- 14 Q Your home? Destroy you. She put up Child soft
- 15 spoken, sweet --
- 16 MR. BAILEY: Objection, Your Honor, asked and
- 17 answered numerous times.
- 18 THE COURT: Not in that form. I'll allow it. Go
- 19 ahead.
- 20 By Ms. Simpson:
- 21 Q Kathy Myers, her mom, you're saying here today, her
- 22 mom put Child -- what you just said was sweet, right?
- 23 Soft spoken, good, up to this?
- 24 A People change.
- 25 Q People change.

Charles Deveau - Cross-Examination by Ms. Simpson

- 1 A Everybody change. You change.
- 2 Q Everybody changes?
- 3 A You're not the same person all the time. So --
- 4 you're not the same person all the time. We have different
- 5 times during the day.
- 6 Q Different times during the day? So we're different
- 7 people during --
- 8 A No, no, I didn't say we were people. And I'm --
- 9 Q You said at different times during the day --
- 10 THE COURT: Hold on a minute. Counsel, this court
- 11 reporter cannot get down --
- 12 MS. SIMPSON: I apologize, Your Honor.
- 13 THE COURT: -- get down what he says and you say
- 14 when you talk at the same time. She can only take down one
- 15 at a time. Allow him to answer his questions.
- 16 By Ms. Simpson:
- 17 Q Go ahead, I apologize.
- 18 A I'm finished.
- 19 Q I don't believe we got to the answer.
- 20 THE COURT: Ask it again.
- 21 By Ms. Simpson:
- 22 Q Okay. You just said that we're different at
- 23 different times during the day, correct?
- 24 A Yes.
- 25 Q So early in the day we might be one person, but at

Charles Deveau - Cross-Examination by Ms. Simpson

1 night we might be another?

2 A One frame of mind, one state of mind, things may be
3 happening and you're different. Things do happen to make
4 you different throughout the day, which cause us to change.

5 Q Change our frame of mind --

6 A Nobody remains the same all the time. Nobody
7 remains a flat -- we do different things, we say different
8 things, we respond to things that we come up against during
9 the day which cause us to make this change, the adjustment
10 to whatever it is that we -- that we have projected -- we
11 have a project to do.

12 Q Even you change, right?

13 A Yes.

14 Q Because we all change, correct?

15 A I think I've already answered that.

16 Q We all change, correct?

17 A Yes.

18 Q So you might be one person in the morning --

19 MR. BAILEY: Asked and answered.

20 THE COURT: I agree. He's answered this question
21 twice already. Move along.

22 MS. SIMPSON: I'll move on.

23 THE COURT: Please.

24 By Ms. Simpson:

25 Q So Kathy Myers put Child [REDACTED] up to this, right?

Charles Deveau - Cross-Examination by Ms. Simpson

1 THE COURT: Asked and answered. You don't have to
2 answer that, sir. You've already answered it.

3 By Ms. Simpson:

4 Q So essentially, Child [REDACTED] is not telling the truth
5 about what happened to her, correct?

6 A Correct.

7 Q She's not telling the truth -- or let me back up.
8 You're saying that you never went into her bedroom that
9 week, right? Correct?

10 A I already answered that.

11 Q I don't believe you have.

12 A Yes, I did.

13 Q I'll ask you again.

14 A Yes.

15 Q You never went into her bedroom?

16 A Yes, I did.

17 Q You did go into her bedroom?

18 A Yes.

19 Q But you didn't go in and sit on the bed, right?

20 A I don't remember what happened.

21 Q And put a fan in this window?

22 A No.

23 Q You didn't do that? Child [REDACTED] made that up, right?

24 A Yes.

25 Q She made up the fact that you got into her bed,

Charles Deveau - Cross-Examination by Ms. Simpson

- 1 right?
- 2 A I never touched her like that, like you're
- 3 implying.
- 4 Q I didn't ask you that, sir.
- 5 A You are. I see it. I did never touched her like
- 6 that. I didn't touch her like that.
- 7 Q I believe -- and I'm going to back up a bit. I
- 8 believe my question to you was you never got into bed with
- 9 her.
- 10 A I never touched her like that.
- 11 Q That wasn't my question. My question to you --
- 12 A No, I did not get into bed with her.
- 13 Q She made that up too, right? You never squeezed on
- 14 her butt, correct? You never squeezed on her butt,
- 15 correct?
- 16 A No, I never squeezed on her butt.
- 17 Q And you never stuck your finger or your thumb into
- 18 her vagina?
- 19 A No.
- 20 Q Right. She made that up too, right?
- 21 A Someone did.
- 22 Q Well, Child said it. So she's not telling the
- 23 truth, right?
- 24 A I've already answered that question.
- 25 Q Not my specific question.

Charles Deveau - Cross-Examination by Ms. Simpson

1 MR. BAILEY: Objection, Judge, this one was
2 definitely asked and answered.

3 THE COURT: Sustained. Move on.

4 By Ms. Simpson:

5 Q And you never asked her did it feel good or --

6 A No.

7 Q -- does that feel good? You never said that to
8 her?

9 A No, no.

10 Q She made that up too?

11 A No.

12 Q You never told her to put on her shoes and follow
13 you outside?

14 A No.

15 Q She made that up too, right? She's not telling the
16 truth about that, right?

17 A I've already answered that question.

18 Q I don't believe you have.

19 A She's not.

20 Q My question to you is --

21 A She's not.

22 Q She's not telling the truth about that?

23 A She's not. She's not.

24 Q And you never said to her outside, You trust me,
25 don't you; or, Do you trust me?

Charles Deveau - Cross-Examination by Ms. Simpson

1 A No.

2 Q And you never said --

3 A No.

4 Q -- don't tell anyone about what I did?

5 A No.

6 Q You never said that? Child made all that up and

7 her mama put her up to it?

8 A Maybe she was having a nightmare. I don't know.

9 Q That's a pretty big nightmare.

10 A I don't know.

11 Q Okay. So everything we just went through, you're

12 saying that's a nightmare?

13 A I --

14 Q It could have been?

15 A I answered your question already, miss.

16 Q Well, I'm talking about something that you just

17 said. You just said she might have been having a

18 nightmare, right?

19 A Yes, I said that.

20 Q A nightmare about what?

21 A I can't answer that. I don't know.

22 Q Well, you just said -- when I asked you --

23 A I don't know, ma'am.

24 Q You don't know about the nightmare?

25 A No.

Charles Deveau - Cross-Examination by Ms. Simpson

1 Q But essentially everything we just went through,
2 Child [REDACTED] wasn't telling the truth about, right?

3 A I've already answered that question now, several
4 times. Several times.

5 Q Several times. And her mom made her do all this,
6 right?

7 MR. BAILEY: Judge, asked and answered.

8 MS. SIMPSON: I'll move on.

9 THE COURT: Ma'am, you say you're moving on, but
10 you keep asking the same questions. Now, move on to a
11 different subject, not just moving on to keep asking the
12 same questions or...

13 By Ms. Simpson:

14 Q You essentially said that Kathy Myers put her up to
15 it and that DaShawna's lying about all of this. Let's go
16 through everybody that she's lied to okay. Because this is
17 what -- this happened back in 2008?

18 MR. BAILEY: Judge, is there a question -- I would
19 ask you to correct --

20 THE COURT: Overruled. Sit down.

21 By Ms. Simpson:

22 Q She lied to Corporal Johnson, right? About being
23 sexually abused? She lied, right? Well, either she's
24 made all this up? She lied, right? To Corporal Johnson?

25 A Yes.

Charles Deveaux - Cross-Examination by Ms. Simpson

1 Q And she lied to Ray Olszewski, right?

2 A Whatever you have on that paper that she said that
3 I did that, I touched her like that, is a lie.

4 MR. BAILEY: Objection, Your Honor. She's pitting
5 one witness against the other trying to get him to explain.

6 THE COURT: Well, he's answered the question. Move
7 on.

8 By Ms. Simpson:

9 Q And all these people that we've heard from today,
10 there's a lot of teams and agencies involved in this case,
11 right? Correct? This involves you, right? A lot of
12 agencies, did you understand my question?

13 A I don't -- I understood what you said, but I,
14 don't -- I'm not in court --

15 Q You're not in court?

16 A -- like this all of the time. I don't know how to
17 measure a lot.

18 Q Okay. Well, let's go through the agencies involved
19 in this case. Richland County Sheriff's Department is
20 involved in this case, right?

21 A Yes.

22 Q And the Assessment Resource Center, referred to as
23 the ARC throughout this trial, has been involved in this
24 process, right?

25 A Yes.

Charles Deveau - Cross-Examination by Ms. Simpson

1 Q And the Department of Social Services is involved
2 in this case, right?

3 MR. BAILEY: Objection, Your Honor, relevance.

4 THE COURT: Sustained.

5 By Ms. Simpson:

6 Q Essentially, it's your contention here today that
7 for three years Child [REDACTED] has been telling this made up
8 story to destroy you, right?

9 MR. BAILEY: Objection, Your Honor, asked and
10 answered about seven times.

11 THE COURT: Sustained.

12 MS. SIMPSON: Beg the Court's indulgence.

13 I have nothing further for you.

14 THE COURT: Redirect?

15 MR. BAILEY: No, Your Honor.

16 THE COURT: All right. Thank you. You may come
17 down, sir. Thank you very much.

18 THE WITNESS: Yes, sir.

19 THE COURT: Approach the bench, Counsel, please.

20 (WHEREUPON, there was a bench conference out of the
21 hearing of the jury and the Court Reporter.)

22 THE COURT: The jury can take a short break if
23 you'd like. I need to talk with the attorneys anyway.

24 (WHEREUPON the jury left the courtroom at 3:42
25 p.m.)

1 THE COURT: Court reporter needs a break.

2 (WHEREUPON a recess was observed.)

3 THE COURT: All right. Counsel, any objection to
4 releasing the jury at this time?

5 MS. ASHTON: No, Your Honor.

6 MR. BAILEY: That's fine with us, Judge.

7 THE COURT: All right. Bring the jury, please,
8 Mr. Broom.

9 THE BAILIFF: Yes, sir.

10 THE COURT: Are you announcing that you're going to
11 rest.

12 MR. BAILEY: We want to proffer that testimony,
13 first.

14 THE COURT: Okay. That's fine.

15 (WHEREUPON the jury entered the courtroom at 3:56
16 p.m.)

17 THE BAILIFF: Your Honor, the jury is present.

18 THE COURT: You sure? (Laughter) All right. Thank
19 you very much, ladies and gentlemen.

20 Ladies and gentlemen, that completes the testimony
21 in this case. Now the remaining portion of the trial will
22 consist of the attorneys' final arguments to you and my
23 charge on the law of South Carolina as it applies to this
24 case.

25 Now, that procedure will take several hours, so

1 obviously, I've already informed you that we would not run
2 past five o'clock today. I'm going to dismiss you now for
3 the day and ask you to be back in the jury room at 9:30 in
4 the morning, at which time we will conclude this case.

5 All right. I want you to have a pleasant evening.
6 I'm going to ask you again not to discuss the case with
7 anyone over the evening hours or among yourselves when you
8 return to the jury room. You're going to have that
9 opportunity tomorrow and you can discuss it fully as you
10 see fit. I'll ask you again not to try to do any research
11 about this case. You've heard all of the evidence right
12 here in the courtroom and you're going to hear the rest of
13 it tomorrow. So I trust you'll respect my instructions in
14 that regard and otherwise. Just have a pleasant evening.

15 We'll see you at 9:30 in the morning. Thank you
16 very much. Leave your pads again.

17 (WHEREUPON the jury left the courtroom at 3:58
18 p.m.)

19 THE COURT: All right. Mr. Shealey?

20 MR. SHEALEY: Your Honor, at this point in time,
21 I'd like to proffer the testimony that you previously ruled
22 on our pretrial motion that wasn't admitted at this time
23 regarding Officer Hatfield over our objections on the 14th,
24 6th, Kyles v Whitley and State v Thompson. At this time
25 I'd like to make a proffer on the portion that we were

John Hatfield - Examination - In-Camera by Mr. Shealey

1 prohibited from questioning him on.

2 THE COURT: Certainly. Go ahead.

3 Officer, you can take the stand again. You're
4 still under oath. You understand?

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: All right. Thank you very much.

7 MR. SHEALEY: May it please the Court?

8 THE COURT: Yes, sir.

9 **EXAMINATION - IN-CAMERA**

10 By Mr. Shealey:

11 Q Officer Hatfield, we're going to go to the second
12 page of your Richland County Sheriff's Department report,
13 page two where it says supplementary report. You see that?

14 A Yes, sir.

15 Q Okay.

16 THE COURT: You're referring to two of two?

17 MR. SHEALEY: I'm referring to page two of three.
18 It's a three page report.

19 THE COURT: Okay.

20 By Mr. Shealey:

21 Q We have the first, page, second, third?

22 THE COURT: I've got three pages.

23 THE WITNESS: It's actually labeled one of one.
24 That's how we did the investigative followups.

25 THE COURT: I see it. Okay. I see it up top pages

John Hatfield - Examination - In-Camera by Mr. Shealey

1 one of one, two to have two, are the supplementary?

2 MR. SHEALEY: Thank you, Judge, yes, sir.

3 By Mr. Shealey:

4 Q Officer Hatfield, so we're referring to page one of
5 one. And the beginning portion of this -- and you
6 testified earlier in front of the jury, but this page you
7 deemed more of your opinion, right?

8 A That's correct.

9 Q And you testified about your experience, over
10 twelve years experience, right?

11 A That's correct.

12 Q As a deputy?

13 A That's correct.

14 Q And the majority of that experience is going to be
15 as a field officer responding to calls, right?

16 A Nine and a half years of the twelve.

17 Q And is it safe to say you've had a lot of
18 experience interviewing people, right?

19 A Yes.

20 Q And you've already testified that you've got
21 training through the academy on interviewing people, right?

22 A Yes.

23 Q Now, you testified as well that you often get
24 called out to cases such as in a domestic situation, where
25 you have to, particularly because of the law, determine who

John Hatfield - Examination - In-Camera by Mr. Shealey

1 is more culpable or who is the primary aggressor, right?

2 A That's correct.

3 Q And those cases, you're gauging people's character,
4 right?

5 A That's correct.

6 Q Okay. Do you feel that you can effectively gauge
7 people's character?

8 A I think -- I'm not an expert, but I believe, you
9 know, you go with your gut feeling at times. But I believe
10 I'm pretty good at that.

11 Q Well, anything that you wrote on this second page,
12 which is identified as page one of one, is there anything
13 in there that you wrote -- did you write anything that was
14 untrue in your opinion?

15 A No. No.

16 Q All right. And I'm referring to the first
17 paragraph when you're talking about your gut feeling. On
18 this first paragraph, tell me about why your gut told you
19 that you didn't believe Kathy Myers?

20 A I just know from my experience that in the past
21 there have been -- you know, when you're dealing with
22 domestic situations where children are involved, even
23 divorces, you -- emotions are high and one party has -- you
24 know, has been known to file false -- make false
25 allegations against the other party. So in my mind it

John Hatfield - Examination - In-Camera by Mr. Shealey

1 wasn't -- being this wasn't an investigative followup, in
2 my opinion, that's, you know, why I came up with the
3 opinion that I formed.

4 Q Okay. So with your twelve years experience -- I
5 mean, you know in reality, often people make up
6 allegations. You've come to that in your experience,
7 right?

8 A Yes.

9 Q You've come into a situation with an open mind?

10 A Yes.

11 Q Okay. Now, I'm going back into this next report,
12 and you've already testified that Kathy Myers asked
13 repeatedly about if DSS was going to get involved, right?

14 A Yes.

15 Q And we're talking about more about your experience
16 and more about your opinion and your gut feeling here, and
17 you found it odd that she was talking at the Exxon gas
18 station, right?

19 A Yes.

20 Q When she was telling you that her daughter, who she
21 had just -- according to report she had recently disclosed
22 by her daughter of an allegation of sexual abuse by Charles
23 Deveaux. According to the report, it seems that your gut
24 feeling found that odd because she called you to the Exxon
25 station, right?

John Hatfield - Examination - In-Camera by Mr. Shealey

1 A That's correct.

2 Q And she didn't demand or she didn't send someone
3 out to this guy's house that was a couple of miles down the
4 road, right?

5 A That's correct.

6 Q In your experience you found that as a question
7 mark on her credibility?

8 A Yes.

9 Q Okay. I think you testified that her demeanor, she
10 wasn't crying?

11 A She wasn't crying.

12 Q How would you describe her demeanor? If you
13 recall?

14 A She seemed -- I mean she seemed -- to me she seemed
15 concerned.

16 Q Okay.

17 A But I just don't recall her crying.

18 Q Okay.

19 MR. SHEALEY: Beg the Court's indulgence.

20 I'm just going the check with the court reporter
21 here and make sure that she already has a copy into the
22 record. I believe she does.

23 THE COURT REPORTER: Yes, sir.

24 MR. SHEALEY: She's telling me she does. All
25 right.

John Hatfield - Examination - In-Camera by Ms. Ashton

1 Thank you, Officer.

2 THE COURT: Any questions?

3 MS. ASHTON: I mean? I don't know if it's
4 necessary but since it's a proffer, I'll just ask him a few
5 questions.

6 **EXAMINATION - IN-CAMERA**

7 By Ms. Ashton:

8 Q Did you know that the Exxon gas station was a
9 designation point?

10 A Yes, ma'am.

11 Q You did. Because she told you that?

12 A I believe dispatch told me that.

13 Q When she called 911?

14 A Correct.

15 Q Okay. Does the -- is probable cause and your gut
16 feeling, are they related at all?

17 A No, ma'am, because to have probable cause, that's
18 got to be factual.

19 Q But you didn't have any of the background facts of
20 this case to make your gut feeling; isn't that true?

21 A That's what an investigative followup was about.

22 Q But this is not an investigative followup. This is
23 called a supplementary report.

24 A No, ma'am, it's investigative follow up.

25 Q Well, why does it say supplementary report?

John Hatfield - Examination - In-Camera by Mr. Shealey

1 A I don't know.

2 Q Are you an investigator?

3 A No, ma'am.

4 Q So your investigative followup talks about your gut
5 feeling, and what struck you as odd, and you-uh just stated
6 you do not know the background of this situation, right?

7 A I didn't know it until I went to the scene.

8 Q How long did you meet with Kathy, approximately, at
9 the gas station?

10 A Maybe five minutes, ten minutes.

11 Q Five to ten minutes.

12 A Uh-huh.

13 Q So that was enough for you to judge Ms. Myers
14 credibility and character? Because that's what you did.

15 A Well, if that's what you're saying, ma'am, okay.

16 Q Thank you, sir.

17 MR. SHEALEY: Brief redirect, Your Honor?

18 THE COURT: Okay.

19 MR. SHEALEY: Then we'll let him go.

20 THE COURT: All right.

21 **EXAMINATION - IN-CAMERA**

22 By Mr. Shealey:

23 Q Officer Hatfield, this -- the second page of this
24 report in question has your opinions on that, you were told
25 in Richland County to do that, right?

John Hatfield - Examination - In-Camera by Ms. Ashton

1 A An investigative followup?
2 Q Right.
3 A Correct.
4 Q And the purpose of that, you were trained on was to
5 go ahead and, I'll just say, give a heads up to an
6 investigator about your beliefs about the facts on the
7 scene, right?
8 A My -- my opinion.
9 Q Right. And you knew that that was going to go to
10 the investigator in this case, right?
11 A That's correct.
12 Q And you were told to do this kind of report?
13 A By my superiors to do a followup, correct.
14 Q Okay.
15 THE COURT: Anything further?
16 MS. ASHTON: One thing.
17 **EXAMINATION - IN-CAMERA**
18 By Ms. Ashton:
19 Q Who are your superiors that told you to do this?
20 A There are several.
21 Q Can you tell me who their names are?
22 A At the time it was Major James.
23 Q Major -- what's his first name?
24 A Wash James.
25 Q Who?

John Hatfield - Examination - In-Camera by Ms. Ashton

1 A Wash -- Washington James.

2 Q Washington James. Okay. Who else?

3 A Robert Ragland.

4 Q Okay. Anybody else that you can remember who told

5 you to put your opinion in your supplemental report?

6 A No, ma'am.

7 Q Okay. Thank you.

8 THE COURT: Thank you very much. You may come

9 down. May this witness be excused now.

10 MR. SHEALEY: Yes, sir.

11 THE COURT: Without objection.

12 MS. ASHTON: Yes, Your Honor.

13 THE COURT: Anything further from the defense?

14 MR. SHEALEY: No, Your Honor. And, again, this

15 proffer is just in regards to our pretrial motion that

16 we -- you know, in response to the State's motion in

17 limine, the memo is on the record; and that was in regards

18 to my argument along the lines that we should be permitted

19 to question under the 14th Amendment, the right of a

20 defendant for a full and complete defense in the Chambers

21 cases, as well as the 6th Amendment under the Crane v

22 Kentucky cases as well as Kyles v Whitley and also our

23 state case, State v Thompson.

24 THE COURT: All right. Thank you very much. Well,

25 all right. I haven't changed my opinion and my decision is

John Hatfield - Examination - In-Camera by Ms. Ashton

1 still the same.

2 Now, is there anything further on behalf of the
3 defense?

4 MR. BAILEY: Not really, Judge. I mean, we can do
5 these motions after I -- I don't -- excuse me, Judge.

6 (WHEREUPON the lawyers were conferring.)

7 MR. BAILEY: Yeah, I guess we'll just go ahead and
8 do the resting tomorrow and then do our post-trial evidence
9 motions tomorrow if that's fine with you, Judge.

10 THE COURT: Well, I'd rather get started early with
11 the jury.

12 MR. BAILEY: Okay.

13 THE COURT: So I mean, why -- we've got an hour.
14 Why can't you -- if I understand, you're going to rest, you
15 can make your motions now.

16 MR. BAILEY: Right. But technically, I mean, I
17 don't know if it's procedurally proper if we haven't rested
18 and -- we'll do it, but I just want to make sure for PCR
19 purposes if this is wrote up as Rhodes Bailey's fault --

20 THE COURT: Well, my name's on it, generally, not
21 yours.

22 MR. BAILEY: So we have a ruling that we can make
23 these motions before resting, is that --

24 THE COURT: All right. Let me ask you this: Do
25 you rest at this time?

1 MR. BAILEY: Yes, Your Honor.

2 THE COURT: Thank you. Any motions?

3 MR. BAILEY: Yes, we have some motions, Judge.

4 THE COURT: All right.

5 **POST-TRIAL MOTIONS**

6 MR. BAILEY: First, Judge, we'd like to renew our
7 directed verdict motion on the same basis as before. We'd
8 also like to renew all previous objections and motions. We
9 don't want to waive any of those previous objections and
10 motions. And specifically, we'd like to renew our mistrial
11 motions, and I don't think I need to point them out. I
12 think we did that about thirty minutes ago. But every
13 mistrial motion that we made previously, we'd like to
14 renew, especially the discovery burden shifting and other
15 than that, Judge, that's it from us.

16 THE COURT: All right. I feel that -- that things
17 have not changed since my prior ruling, and I most
18 respectfully deny your motions at this time.

19 MR. BAILEY: All right.

20 THE COURT: Now, I have a set of jury charges that
21 I frankly used in the previous trial. I'll give each of
22 you a set. If you've got any other requests to charge,
23 I'll be glad to consider them. If you have any at this
24 time?

25 MS. DELANY: We have --

1 MR. BAILEY: Are we going to be able to offer some
2 tomorrow, Judge?

3 THE COURT: Well, I'm asking if you got them now, I
4 can consider them overnight.

5 MR. BAILEY: We'd like to ask, Judge, I think the
6 only thing we can think of at this second -- we probably
7 need to consult our client if you want some ideas
8 overnight, Judge.

9 THE COURT: Okay. Well, let's be here at nine
10 o'clock in the morning, and the jury will be here at 9:30.

11 MR. BAILEY: We'll definitely be here, yes, sir.

12 THE COURT: Thank you, very much.

13 MR. BAILEY: Thank you, Judge.

14 THE COURT: We'll stand at ease.

15 MR. BAILEY: Thank you, Your Honor.

16 THE COURT: Does the State have any proposed
17 charges?

18 MS. ASHTON: Not at this time. We'll provide them
19 at nine in the morning.

20 THE COURT: If you do, have them at nine o'clock in
21 the morning.

22 MS. ASHTON: I sure will, Your Honor.

23 THE COURT: We'll stand at ease until nine o'clock.
24 Thank you. Oh, and also consider if you will, the form of
25 the verdict. All right?

1 MS. DELANY: Yes, sir.

2 THE COURT: Prior trial it was guilty or not
3 guilty. If you have any concerns about that...

4 THURSDAY, OCTOBER 13, 2011

5 THE COURT: Who's going to do the final argument?

6 MS. DELANY: The what, sir?

7 THE COURT: Argument.

8 MR. BAILEY: I'm going to do the closing statement,
9 Judge.

10 THE COURT: Thank you.

11 **JURY CHARGE CONFERENCE**

12 THE COURT: We're in a charge conference. Any
13 additions or suggested changes to the set of charges I
14 handed out yesterday from the State?

15 MS. SIMPSON: Your Honor, the State has two
16 additional requests to charge. I noticed that the
17 defendant's failure to testify was in that stack.

18 THE COURT: Yeah --

19 MS. SIMPSON: We have -- so that would be taken
20 out. We have no additional.

21 THE COURT: What was taken out?

22 MS. SIMPSON: The defendant's failure to testify.

23 THE COURT: I'll take that out.

24 MS. SIMPSON: But we have no additional charges,
25 Your Honor.

1 THE COURT: All right. Fine.

2 MS. DELANY: And Your Honor, we would renew our
3 objection to the victim's -- the 16-3-657 being charged.
4 And we would also request -- I handed up to the Court, I
5 think it's Court Exhibit No. 16 for the defendant. We
6 would ask that you charge -- If you find that the State has
7 not proven beyond a reasonable doubt that a sexual battery
8 occurred, you must stop deliberating and find this
9 defendant not guilty of this charge.

10 THE COURT: Okay. The State have any objection?

11 MS. SIMPSON: Yes, Your Honor, we believe that
12 this -- this charge is included in your standard charge and
13 if there's no -- it's unnecessary to provide this extra
14 charge. It's included throughout your charge, actually.

15 THE COURT: Well, that's funny. Would you care to
16 know that you did not object to it when I charged it in
17 this last trial?

18 MS. SIMPSON: Your Honor, that -- we would just
19 object to it as it being an additional charge. It is
20 included at this trial.

21 THE COURT: It was requested -- where do you think
22 it's included.

23 MS. SIMPSON: Your Honor, with respect to your
24 charges --

25 MS. DELANY: And, Your Honor --

1 MS. SIMPSON: You essentially say that if the State
2 has not proven any element of the crime or you find that
3 they have not proven the element, then you must stop
4 deliberating as a course at the end.

5 MS. DELANY: We looked through your jury charges.
6 I don't believe it is in there in that wording. If you
7 think it's an appropriate charge, it's one of Judge
8 Anderson's charges, and we would ask that you charge the
9 jury that.

10 MS. SIMPSON: Your Honor, you don't go -- as with
11 any case, you don't necessarily go through each element
12 individually in a separate charge, and say that if you do
13 not find the defendant -- that the State has proven beyond
14 a reasonable doubt that this element occurred, you must
15 stop deliberating. That's unnecessary.

16 THE COURT: What other element is there other than
17 the age of the child.

18 MS. SIMPSON: There is no other element with
19 respect to this charge.

20 THE COURT: Okay. That's the issue.

21 MS. SIMPSON: Well, then, we would just ask that
22 you charge it in full. Just as the statute as a whole.

23 THE COURT: What?

24 MS. SIMPSON: If you don't find that the State has
25 proven elements of criminal sexual conduct with a minor

1 first-degree, then you must stop deliberating and find the
2 defendant not guilty of this charge.

3 THE COURT: It's almost written as though there's
4 more than one charge. Anyway, I'm just looking for the
5 previous -- I swear I charged that the first trial.

6 MS. DELANY: And, Your Honor, that was Mr. John
7 Johnson's request to charge last time. I don't know if you
8 did, in fact, charge.

9 THE COURT: I think I did. I'll have to look at
10 the transcript. One for the State and one for the defense.
11 Right?

12 MS. DELANY: Yes, sir.

13 THE COURT: All right. I'll give it.

14 MS. DELANY: Thank you, Your Honor.

15 MS. SIMPSON: Thank you, Your Honor.

16 THE COURT: Anything else?

17 **POST-TRIAL MOTIONS**

18 MR. SHEALEY: Yes, Your Honor, there is a couple of
19 issues I wanted to take up or actually one issue with a
20 couple of parts to it. This is in regards to the number of
21 our mistrial motions. Your Honor, under *Pruitt v State*,
22 *State v. Johnson* and *State v. Whipple*, you know, some of
23 these issues, these mistrial motions, you denied, you made
24 a very clear record why you denied our discovery violation
25 mistrial motion; however, three other mistrial motions, you

1 just said denied and the cases I just cited for the
2 appellate record, the Courts have held that unless the
3 judge actually articulates their reasoning why he denied
4 it, it's not preserved for appeal.

5 You know, I would just ask that if you could for
6 purposes of appeal on the -- our first mistrial motion was
7 denied -- this was in regards to Officer Martin. We
8 objected on time and place. He did say more than time and
9 place. I believe he said that the allegation was
10 penetration of the finger into the vagina. If you could
11 articulate your denial of that mistrial motion,
12 respectfully?

13 THE COURT: Well, I'm not going to do it now.

14 MR. SHEALEY: Okay.

15 THE COURT: If you want to submit something in
16 writing, I'll try to answer your question in writing. But
17 there are so many mistrial motions frankly, I just don't
18 remember the logic or reasoning for each one of them. I
19 mean, you know, it seems as though the defense in this
20 case, maybe in every case, any time you have an adverse
21 ruling, you move for a mistrial. I just don't think it's
22 necessary, but you can take it up with whomever. But I
23 don't think it's necessary to go back and reargue all those
24 motions or all those mistrial motions.

25 Frankly a number of them were evidentiary and I

1 think the Court has discretion to make evidentiary rulings,
2 and not give a mistrial motion every time I do. I mean,
3 there's -- I'm not going to go back through the record and
4 review all that testimony and review the arguments of
5 Counsel and tell you in specific terms why I denied this
6 mistrial motion or that mistrial motion.

7 So go ahead and make your record. I'm not going to
8 do it now. We've got a jury coming in and we're going to
9 conclude this trial.

10 MR. SHEALEY: Thank you, Your Honor. And for the
11 record, time and place mistrial motion that Mr. Bailey
12 made, Investigator Martin was specific more so than he
13 should have been and was our first mistrial motion that you
14 denied.

15 There was a mistrial motion where Ms. Simpson --
16 and I made that mistrial motion under Riddle, that I
17 believe she should have corrected an inaccuracy coming from
18 the witness, Kathy Myers, in regards to Child Child
19 never being or maybe having no contact with her father in
20 her younger years. That was denied.

21 You were very specific in your reasoning on the
22 discovery violation where we had to proffer testimony
23 through Dr. Watson.

24 The next mistrial motion was Ray Olszewski. Mr.
25 Bailey made that objection. Then a matter of law was taken

1 up on him vouching for Child Anderson's detailed
2 statement. Ms. Ashton was questioning him along the lines
3 about why that was material to the case and why it was
4 important that -- what was the significance of Child
5 Anderson's statement being so detailed. And he said, well,
6 basically he was getting to the point where we objected to,
7 him vouching for the credibility of that statement. That
8 was the implication.

9 Finally, in pretrial we made a motion in opposition
10 to the State's motion in limine in regard to Officer
11 Hatfield. Your ruling was, you denied that -- our motion
12 in part and granted it in part. Your denial was you
13 granted the State's motion precluding us from questioning
14 Officer Hatfield on page two of his incident report as the
15 first responder. That incident report is in the record.
16 It is marked one of one and it was his opinion. We made
17 several arguments that I won't go back into because they
18 are on the record. You denied our ability to question him
19 on that, though you did grant our ability to question him
20 concerning statements that were made to him in the course
21 of his investigation. Under State v. Thompson you allowed
22 that. The case law says that, you know, if a denial or
23 granting of motion in part is not enough to preserve the
24 record that it must be explained on the record, Your Honor.
25 Again, that's State v. Johnson, 332 SC 62. It's Pruitt v.

1 State as well as State v. Whipple at 324 SC 43. Thank you,
2 Your Honor.

3 THE COURT: All right. Who's going to be opening
4 for the State?

5 MS. SIMPSON: Your Honor, I'll be opening on the
6 law, and Ms. Ashton will be -- I mean I'll be closing on
7 the law and Ms. Ashton will be closing on the facts.

8 THE COURT: You'll start?

9 MS. SIMPSON: Yes, Your Honor.

10 THE COURT: All right. Anything further?

11 MS. SIMPSON: Yes, Your Honor.

12 MS. ASHTON: With respect to the jury charge, we
13 found it.

14 THE COURT: Which jury charge?

15 MS. SIMPSON: The one that the defendants
16 requested. In the prior trial transcript, you did in fact
17 charge it.

18 THE COURT: Yes.

19 MS. SIMPSON: However, on page 494, you also
20 charged, prior to that charge that the State must also
21 prove to you beyond a reasonable doubt that the victim was
22 less than eleven years of age at the time of the sexual
23 battery. Consent, willingness, indifference, or ignorance
24 on the part of a minor, if any, as to what was taking place
25 does not in any way affect the charge of criminal sexual

1 conduct with a minor because an unmarried woman under the
2 age of fourteen cannot legally consent to sexual
3 intercourse. So if you find the State has not proven
4 beyond a reasonable doubt that a sexual battery occurred,
5 then you must find the defendant not guilty of this charge.
6 And then you say, Now, an additional statute or part of our
7 law says that the testimony of a victim in a criminal
8 sexual conduct case need not be corroborated.

9 So, Your Honor, we would just ask that that charge
10 be placed in the appropriate context.

11 THE COURT: I don't follow you. I mean, I'm
12 looking at the charge from last time, the last trial.

13 MS. SIMPSON: Beginning on page 493?

14 THE COURT: Yes. All right. You say I charged
15 something different than what I gave you yesterday?

16 MS. SIMPSON: The jury charges that you gave us
17 were not as expansive as what you actually charged. So we
18 would just ask that you place the defenses charge in
19 context as you did last time.

20 THE COURT: I'll compare what I handed you to the
21 previous trial.

22 MS. DELANY: Your Honor, it's in --

23 THE COURT: Just wait a minute. I'm trying to
24 figure out what she's asking me to do.

25 I think what I handed you is exactly what I charged

1 last time. Tell me what's different.

2 MS. DELANY: Your Honor, what she read to you is in
3 your charge on first-degree CSC about the age of the
4 victim, consent, willingness. However, there's not
5 anything -- let's see -- we like the -- I mean, I want that
6 language in. I mean, it's up to you where you put it.

7 THE COURT: What language?

8 MS. DELANY: The language in the charge we
9 submitted, Your Honor.

10 THE COURT: I granted that.

11 MS. DELANY: Thank you.

12 THE COURT: Granted.

13 MS. DELANY: Thank you.

14 THE COURT: Now, what's the problem, Ms. Simpson?

15 MS. SIMPSON: Your Honor, we're just going to ask
16 that it be placed in the context of your charge with
17 respect to the elements of criminal sexual conduct.

18 THE COURT: The way I did it last time?

19 MS. SIMPSON: Yes, Your Honor.

20 MS. ASHTON: And the way you did it last time, Your
21 Honor, in the transcript is more expansive than what you
22 provided us --

23 THE COURT: It's what?

24 MS. ASHTON: The way you charged last trial is just
25 more expansive than what's actually in --

1 THE COURT: I know, you know why?

2 MS. ASHTON: No more questions.

3 THE COURT: Because Mr. Leevy Johnson submitted it.
4 I just -- I didn't type it in.

5 MS. ASHTON: But that's only three sentences, what
6 he submitted. This is -- we're referring to the portion
7 about the element related to the child being under the age
8 of fourteen. We'll be happy to hand it up, this copy of
9 the transcript.

10 THE COURT: I've got it in front of me. I don't
11 know what you're talking about.

12 MS. ASHTON: Well, we're talking about page -- 493
13 and 494.

14 MS. DELANY: And I don't have a copy of that.

15 THE COURT: I don't think you need it. I don't
16 know what you're talking about. What I handed you is
17 exactly what is in the transcript of the last trial with
18 the exception of Mr. Johnson's suggested charge about stop
19 deliberating from Anderson, which I had just -- I had
20 slipped it in my charges. I didn't print it as a
21 separate -- I slipped it in my charges. I read it to the
22 jury. I took it out when I -- I slipped it out when I
23 handed you this set of charges. Now, the defense has asked
24 that it be put back in, which I've agreed to do.

25 MS. ASHTON: And, Your Honor, just -- okay. Thank

1 you.

2 THE COURT: It's the exact same charge I gave last
3 time, with the addition of the suggested charge.

4 All right. We'll stand at ease until the jury
5 arrives. Oh, come back the order, please. Any -- let me
6 get you to look at the form of the verdict. Any -- it's
7 the general verdict form.

8 MR. SHEALEY: Looks fine to me, Your Honor. I
9 think we normally say or you say it doesn't matter what
10 order it's in it's just -- we're fine with that, you state
11 the order isn't significant.

12 THE COURT: Both Counsel approved the verdict form?

13 MS. ASHTON: Yes, Your Honor.

14 MS. SIMPSON: Yes, Your Honor.

15 MR. SHEALEY: Yes, Your Honor.

16 MR. BAILEY: Yes, Your Honor.

17 MS. DELANY: Yes, Your Honor.

18 THE COURT: All right. We're at ease until the
19 jury arrives.

20 (WHEREUPON a recess was observed.)

21 THE COURT: Is the State ready for the jury?

22 MS. SIMPSON: We are, Your Honor.

23 THE COURT: Is the defense ready for the jury?

24 MR. BAILEY: Yes, sir.

25 (WHEREUPON the jury entered the courtroom at 9:47

1 a.m.)

2 THE BAILIFF: Your Honor, the jury is present.

3 THE COURT: All right. Good morning, ladies and
4 gentlemen.

5 THE JURY: Good morning.

6 THE COURT: We're ready to conclude the trial with
7 the final arguments of Counsel and my instructions on the
8 law as it applies to this case. You have your notes with
9 you. You may -- well, I'll leave it at that.

10 Counsel, you may begin with your closing arguments.

11 MS. SIMPSON: Thank you, may it please the Court.

12 THE COURT: Yes.

13 **CLOSING ARGUMENTS**

14 MS. SIMPSON: Members of the jury, here we are at
15 the end of this case. You've heard all of the evidence and
16 in just a bit, this case will be turned over to you and
17 individually and collectively you must decide, and only you
18 can decide, what happened. Now, this case is not about
19 defense counsel's parents getting him to do his chores or
20 them wanting him to be healthy. We're not having a
21 birthday cake or a Poptart the first time he ate it. It's
22 not about him getting the Sunday paper, which is what I
23 heard about in the first ten minutes of his opening
24 statement. This case is about what happened to the victim,
25 Child [REDACTED] Child [REDACTED] during that week long visit of June 22nd

1 to June 29th of 2008. And it's about the defendant's
2 actions during that time. And the only thing you must
3 decide is whether the defendant committed a sexual battery
4 against his daughter, Child [REDACTED] That's what we're here to
5 decide. That's what you're here to decide.

6 Now, the defense has chosen to put up a case, and
7 because of that I now have the opportunity to talk to you
8 about the law. And once I'm done speaking to you about the
9 law as it applies to this case, then defense counsel will
10 get up and present his arguments as to what he thinks that
11 the facts show; and then Ms. Ashton will get up for the
12 State and present her closing arguments.

13 Now, I get to talk to you about the law because as
14 the State, we bear the burden of proof in this case and
15 you've heard that many times throughout this case. And I
16 want to talk to you about the law. But at the end of
17 closing arguments, the Honorable Judge Cooper is going to
18 instruct you on the law as you are to apply it to the facts
19 in this case. And so as I talk to you about the law, if I
20 misquote it in any way, it is not intentional. You are to
21 follow his instructions and his rulings to you.

22 Now, with that said, if either side
23 mischaracterizes the facts in this case or misstates the
24 facts in this case, you remember them because facts are
25 stubborn things. And you heard the witnesses testimony.

1 You remember it.

2 Now, members of the jury, as I said, you've heard
3 all the evidence that there is in this case. The evidence
4 that you can consider in coming to your verdict; and that
5 is the testimony that you heard from this witness stand
6 from all the witnesses that took the oath, got up here and
7 testified, and the physical evidence, the video, the
8 photographs. That is the evidence that you must base your
9 verdict on. Your verdict cannot be based on conjecture,
10 speculation, innuendo, or just plain wishful thinking.
11 That is not evidence. As I said to you earlier, criminal
12 cases are somewhat unique, and they are unique because the
13 defendant actually has the right to confront these
14 witnesses that took the stand before you. It is his right
15 and he should have that right. And what that means is that
16 the State must bring these witnesses forward to talk to you
17 in person, live testimony. You've heard a lot of
18 references to reports, examinations, statements, those are
19 not admissible because the defendant has the right to make
20 every person come and take this stand and talk to you
21 during this trial.

22 Now, we have the burden of proof. The State has
23 the burden of proof. And like I said, I'm going to say it
24 numerous times, you're going to hear it a lot more often
25 throughout this trial. And what that means is that in

1 every criminal case, the defendant is presumed innocent
2 until proven guilty. Proven guilty beyond a reasonable
3 doubt. And that presumption of innocence, he's entitled
4 to. He should be entitled to and as the State, we should
5 have that burden of proof. We agreed with the defense in
6 this respect. Because when the State -- when someone
7 accuses the defendant of a crime and the State brings
8 charges against him and brings him into this courtroom
9 before you, we should have to prove to you his guilt. That
10 is as it should be. And we have to prove that beyond a
11 reasonable doubt. And that is a great burden, members of
12 the jury. But we gladly accept that burden. And if you
13 will remember, I asked you to remember that every criminal
14 defendant who walks through that door and starts his trial,
15 at the start of his trial, he was presumed innocent. Every
16 criminal defendant is presumed innocent until proven
17 guilty. And if the State could not overcome this
18 presumption, could not prove to you beyond a reasonable
19 doubt that the crime had been committed, no one would ever
20 be found guilty. No one would ever be held criminally
21 responsible for wrong doing. We've overcome that
22 presumption here today. We've met our burden.
23 Now, that burden of proof is beyond a reasonable
24 doubt. You've heard a lot about reasonable doubt and the
25 judge is going to instruct you that reasonable doubt is --

1 or proof beyond a reasonable doubt is proof that leaves you
2 firmly convinced of the defendant's guilt. There are few
3 things in this world that we know with salute certainty and
4 the law in criminal cases does not require proof that
5 overcomes all doubt or every possible doubt. If based on
6 your consideration of the evidence you are firmly convinced
7 that the defendant is guilty of the crime charged, you must
8 find him guilty. If, on the other hand, you think there is
9 a real possibility that he is not guilty, then you must
10 give him the benefit of the doubt and find him not guilty.

11 Now, our courts have gone a little further and
12 defined it or talked about it in terms of reasonable doubt
13 is that doubt which would cause a reasonable person to
14 hesitate to act. Members of the jury, this case is not a
15 carton of milk. And you're not here for a mere sniff test.
16 I submit to you that hesitation for reasonable doubt is
17 turning on that light and checking the expiration. That's
18 that hesitation of a reasonable person. That is that proof
19 that leaves you firmly convinced of the defendant's guilt.

20 Now there are two types of evidence: Direct and
21 circumstantial, presented during a trial. Sometimes you
22 may have one, sometimes you may have the other, sometimes
23 you may have both. Now, our law has said that there is
24 direct evidence and circumstantial evidence. Those are the
25 two types. Now, direct evidence is the testimony of a

1 person who asserts or claims to have actual knowledge of a
2 fact, such as an eyewitness, Child Direct evidence.

3 Now, direct evidence -- or circumstantial evidence
4 is proof of a chain of facts and circumstances indicating
5 the existence of a fact. The law makes absolutely no
6 distinction between the weight or the value to be given to
7 either direct or circumstantial evidence nor is a greater
8 degree of certainty required of circumstantial evidence
9 than of direct evidence. You should weigh all the evidence
10 in this case. And after weighing all the evidence, if you
11 are not convinced of the guilt of the defendant beyond a
12 reasonable doubt, you must find the defendant not guilty.
13 If on the other hand, you are convinced of the defendant's
14 guilt beyond a reasonable doubt, then you must find him
15 guilty.

16 Now, you've heard a lot of testimony this week.
17 You've heard from Child You heard from her mother.
18 You heard from a DSS worker, Ronnette Sumler. You've heard
19 from experts. That's evidence that you can consider.
20 You've heard from the defense as well.

21 Now, the State must also prove criminal intent. We
22 must prove that the defendant intended to commit this
23 crime. Now, criminal intent is said to be a state of mind
24 which operates jointly with an act or an omission in the
25 commission of a crime. It is a mental State of conscious

1 wrongdoing. It includes those consequences which represent
2 the very purpose for which the act is done or are known to
3 be substantially certain to result regardless of one's
4 desires. It may be shown by acts and conduct of the
5 defendant and circumstances from come you may naturally and
6 reasonably infer intent. We've done that here today.

7 Now, what we must prove to you is that the
8 defendant is guilty of criminal sexual conduct with a minor
9 in the first-degree. And there are two elements. It's a
10 pretty short statute for a very serious crime. We must
11 prove to you that he engaged in a sexual battery with a
12 person, Child [REDACTED] Child [REDACTED] who at the time of the offense
13 was under the age of eleven. She was ten. A sexual
14 battery is a pretty broad term that includes several
15 things. Sexual battery means sexual intercourse,
16 cunnilingus, fellatio, anal intercourse, or any
17 intrusion, however slight of any person's body or of an
18 object into the anal or genital openings of another.
19 Fingers or thumb. Intrusion, however slight into the
20 genital or anal openings of that person's body. We've
21 proven to you that the defendant stuck his fingers or his
22 thumb into DaShawna's vagina. That's that intrusion. Any
23 intrusion, a sexual battery. We've proven that to you here
24 today.

25 Now, as I said in opening statements, criminal

1 sexual conduct cases are unique from some of our other
2 cases. It's not an armed robbery or a murder. Now, our
3 legislature has noted, has recognized that these cases are
4 special, the circumstances surrounding them are often very
5 unique compared to other cases. And in doing so, they've
6 said that the testimony of a victim in a criminal sexual
7 conduct case need not be corroborated by other testimony or
8 evidence. That is because this crime, members of the jury,
9 occurs in the shadows, in the darkness, behind closed
10 doors; often with child victims, or adults, but here we
11 have a child, especially with children. Behind closed
12 doors. With little to no forensic evidence of the
13 offender. As I said, this is not a murder case, where
14 there's a murder weapon or shell casings to be found or
15 blood at the scene, footprints at the scene, fingerprints
16 at the scene. In this case, we have digital penetration,
17 the fingers, where little to no evidence of trauma would be
18 noted, where there would be no DNA. The disclosure was a
19 couple of weeks later. And you heard Dr. Luberoff testify.
20 So this is not about DNA and this is not about fingerprints
21 because it didn't occur -- it occurred at the defendant's
22 home. His fingerprints are going to be there. And there
23 wasn't a good source of DNA. And our legislature has
24 recognized, the testimony of a victim in criminal sexual
25 conduct prosecutions need not be corroborated by other

1 testimony or evidence. But we had other testimony and
2 evidence in this case. We didn't just bring Child to
3 the stand to tell her -- to tell you about what happened to
4 her. We brought you other evidence in this case. But if
5 Child took this stand and you believed her beyond a
6 reasonable doubt, that would be enough. But we brought you
7 more.

8 The judge is also going to instruct you on
9 credibility of witnesses. And I saved this one for last
10 because it's one of the most important things in this case.
11 Because that is what much of the evidence that you've heard
12 has been, witness testimony. And credibility is
13 essentially believability. And only you can make that
14 determination. Each of you individually can determine how
15 credible, how believable each witness was when they took
16 the stand. That's up to you. And we ask that you consider
17 several things. Was that witness hesitant or forthright
18 when testifying? Is the testimony of that witness
19 consistent within itself or is it corroborated by other
20 evidence? The demeanor on the witness stand.

21 Now, you saw every witness take this stand. You
22 got to look at them as they testified. Judge their
23 demeanor on the stand. And perhaps the most important one,
24 does that witness have any reason to be biased or
25 prejudiced in this case? You've heard from a lot of

1 experts and independent parties in this case. You've heard
2 from the victim, her mother, and you've also heard
3 testimony from the defense. And while the defense is not
4 required to put up a case because he's never required to
5 prove himself innocent, that remains with us. That is our
6 burden. But when we chooses to take the stand, when he
7 chooses to put up a case, you are to judge the credibility
8 of their witnesses just as you would the State's. Hesitant
9 or forthright when testifying. Were those witnesses -- was
10 their testimony consistent? Was it corroborated by other
11 evidence? What was that witnesses demeanor on the stand?
12 Did that witness have any reason to be biassed or
13 prejudiced in this case? You judge their witnesses just as
14 you do ours.

15 Now, you've also heard from expert witnesses. You
16 heard from Amy Phipps who was an expert in behavioral
17 science. You heard from Ray Olszewski, an expert in
18 forensic interviewing in this case. He's had twelve years
19 of interviewing children, thousands of cases. This is a
20 science or a field of expertise. And he came up here and
21 he took the stand. He spoke to you. And these expert
22 witnesses, you're allowed to consider their expertise. But
23 you will weigh their testimony just as you do any other
24 witness who takes the stand. And in weighing all of the
25 witnesses' testimony, you can believe part of what a

1 witness says. You can believe none of what a witness says
2 or you can believe everything that that witness said. That
3 is up to you.

4 Now, in criminal cases, the State -- we essentially
5 try to anticipate what the defense may be. Is it identity?
6 Do we know -- is it a who-done-it case? We don't really
7 have that here. Or is it a case where the victim just made
8 it up, fabrication? Or is it a case where we kind of blame
9 someone else. We have kind of a mixture, a mixture of
10 these last two. The defense is that mama put her up to it.
11 Mama made up this story and put Child up to telling you
12 falsely about what happened to her. And not just you in
13 here today, but she put her up to it and it's been three
14 years. There have been a lot of people involved in this
15 case and a lot of agencies. And I ask you to consider that
16 when making your determination.

17 Now, that is the law in this state and that is the
18 law that I submit you will need to apply to the facts of
19 this case. And as I said, if I misstated anything or
20 misquoted anything with respect to what His Honor gives
21 you, it was not intentional. You're to follow his rules.
22 I submit that we have overcome the presumption of
23 innocence. We have proven to you beyond a reasonable doubt
24 that the defendant committed a sexual battery against
25 Child this ten-year-old little girl. Thank you.

1 THE COURT: Mr. Bailey?

2 MR. BAILEY: Thank you, Your Honor.

3 Every other weekend. Every other weekend. Ladies
4 and gentlemen, you've heard this phrase over and over and
5 over again over the course of the week. Every other
6 weekend, Kathy Myers had to bring her child to visit,
7 rightfully and legally, a man she detested. Every other
8 weekend, she knew if she didn't bring her child to visit
9 Charles like she was supposed to, she would go back to jail
10 as she did twice. Every other weekend was a reminder.
11 Every other weekend was a reminder that if she didn't do
12 what she was supposed to do and drop her child off with her
13 husband -- excuse me, with her father, she could go back to
14 jail. It's easy to see why jail would be motive for some
15 kind of revenge. It's easy to see why somebody would want
16 to take care of the threat of jail that may be hanging
17 over them every other weekend. It's also a lot easier for
18 a team, a team that is here to prosecute people to find
19 child abuse when mama draws a map.

20 Ladies and gentlemen, I want you to ask why. I
21 want you to ask why about a lot of things. One, I want you
22 to ask why Kathy Myers dropped her child off with Charles
23 and then made the police call. She dropped her off in this
24 allegedly very dangerous place with this person. The
25 State says, Oh, you know, she had a visitation order she

1 had to abide by. If she was really afraid of Charles
2 Deveaux, she could have met at the Exxon station and called
3 the police to come there.

4 But the Exxon station is also interesting. I want
5 you to ask why the State did not want you to hear from
6 Deputy Hatfield. We had to call Deputy Hatfield. They
7 talk about their experts. They talk about their witnesses.
8 But they only called the ones that followed the map, that
9 say what they wanted them to say. And I'm going to get to
10 that in a second.

11 Ms. Myers comes to the Exxon on this day in July of
12 2008. The first officer to speak with her is
13 Investigator -- excuse me, Deputy Hatfield. He's the very
14 first person, first law enforcement. They talk about their
15 experts' years of experience. He has been an officer for
16 twelve years. He arrives at the scene. He speaks with Ms.
17 Myers. He notices that Child [REDACTED] isn't there with her, that
18 she's apparently somewhere else. In a dangerous place as
19 said Ms. Myers. He notices that she talks a lot of DSS.
20 He notices she talks a lot of visitation. She admitted
21 herself that when she called 911, she said I need the
22 police report. Ms. Myers, needed a paper trail. Ms. Myers
23 needed a paper trail for her map.

24 Another inconsistency here that Deputy Hatfield
25 noticed and testified to was that she was not crying. Ms.

1 Myers and the State made a big deal about her crying. She
2 also said that she made three phone calls before she called
3 the police or two, I think. Kimberly -- excuse me, Kathy
4 Myers says first she called a friend. We don't know who
5 this friend is. It's never said. Then she says, well I
6 called my husband, and then I called the police. The State
7 kind of breezed over that. They didn't call these people.
8 Child [REDACTED] says that she also called her grandmom, which is a
9 little different from what her mother said, but either way,
10 we really don't know who she called or why she called them
11 after she dropped Child [REDACTED] off, came back to the Exxon and
12 planned to call Richland County Sheriff's Department to
13 continue with making, drawing this map. I would think --
14 I'm not a mother, but I would think that no mother with the
15 immediate threat of a child abusing father would put the
16 child in the hands of the father and then drive miles away
17 to another location to begin laying down this paper trail.
18 If the child were in danger, I would think it would be -- I
19 think it's extremely odd that she would just drop them off
20 and then proceed to call the authorities and go through the
21 important paperwork.

22 But I want to talk about Charles for a second. You
23 heard from Charles. Charles took the stand. He doesn't
24 have to do that. He does not have to get on that stand and
25 say he didn't do it. But he did because he wants to tell

1 you himself. He did tell you himself. When the deputy
2 came to his house, the first thing he said, I did not do
3 this. When he met with Investigator Martin, he said, I did
4 not do this. Today -- excuse me, yesterday, he got up on
5 the stand and he said I did not do this.

6 Now, the State, you know, they got up -- they asked
7 him some questions. It was find of like a filibuster.
8 They just kept trying -- they thought if they asked him
9 something over and over again they could just trip him up.
10 You know, when you're being asked questions by a lawyer
11 who's talking over you and doesn't even let you answer
12 questions, it's pretty easy to see how he can be upset.
13 The man is on trial for sexually abusing his daughter. But
14 he still got up here. He had the courage to get up here
15 and tell you himself he did not do this.

16 Now, the State wants to make this a choice between
17 Charles Deveau and between Child Child They were
18 trying -- you know, they're like, you're saying your
19 daughter's a liar. He doesn't want to have to call his
20 daughter a liar. That's not what this is about. That's
21 not the choice. That is a disingenuous choice. Child
22 Child is a victim. Child Child is most definitely
23 a victim. She's a victim of a bitter custody dispute, of a
24 dispute over visitation rights. She is a victim of the
25 manipulation of her mother and three years of preparation,

1 not just by her mother, but by this team that's supposed to
2 put people in jail for crimes. I'm not going to get up
3 here and say bad things about this little girl. We've got
4 nothing bad to say about that. But the State knows they
5 don't have a case, so they've got to try and say it's this
6 man, and they use words like shadows as much as possible to
7 make him appear as creepy as possible versus this sweet
8 little girl. It's not that simple. It's the truth versus
9 a map that Ms. Myers has been drawing ever since he
10 realized she would have to see him every other weekend.

11 I'd like to talk a little bit more about the
12 investigation. The part the State didn't want -- the guy
13 they didn't want to bring up was Investigator Martin.
14 He -- he was not the first to talk to the family. And he
15 did not send anybody to the scene of the crime. We're not
16 even talking about DNA. He didn't even show up at the
17 house to go inside and look at it. You know, where this
18 allegedly happened. Where is the bedroom? What kind of
19 bed was it? You'll notice when we watched the ARC video,
20 Child [REDACTED] can't say what type of bed she's in. But little
21 simple facts -- was there a nightgown? What kind of
22 underwear were you wearing? Things Mr. Olszewski asked
23 about, they were not concerned with. A lot of times you
24 don't know if there's something important until you go to
25 look for it. And my question is how hard is it with all

1 these vast resources to go by the house and look for it.
2 Look and see if there's something that matches the story or
3 contradicts it. It doesn't matter because they weren't
4 investigating. They were building a case.

5 So for -- I know I'm going to say it a lot, Deputy
6 Hatfield. They didn't want Deputy Hatfield up here.
7 Deputy Hatfield who recognized an obsession with DSS.
8 Deputy Hatfield who wrote his own opinions on it that they
9 don't want -- they don't want you to hear that. Oh,
10 another -- one more thing about Deputy Hatfield. You'll
11 notice that he testified that Ms. Myers said that she
12 learned about this through a phone call that her daughter
13 called her and said there was sexual abuse -- on the stand,
14 she says they were just driving the car and she said there
15 was sexual abuse. That's a significant detail. We're
16 talking about consistency here.

17 Since we are talking about consistencies and
18 inconsistencies, we're talking about -- we have to examine
19 Child █████ Anderson's story or stories. And I want -- I
20 would say it's less Child █████ Anderson's story and probably
21 her mama's story. Any narrative that's been reenforced and
22 possibly tweaked over the last three years during this
23 investigation. In the ARC video, she says -- she says that
24 her father penetrated her with his fingers. Then she
25 testifies that it was a thumb the other day.

1 Now, Ms. Simpson just got up here and spoke with
2 you. She really couldn't tell you whether it was a thumb
3 or fingers. She kind of, fingers, thumbs, you know, she
4 just kind of muddled them together. That's a slight --
5 that's a change. Because when you got a story, you got a
6 narrative, the longer it goes on, the story you tell your
7 friends, it becomes a little bit more detailed. You know
8 it becomes a little bit more colorful. It starts to take
9 shape in your head. Details, colors are added, things
10 change. One of those details is Ms. Child Child got
11 on the stand, and she said that right when the police
12 showed up at the house, that Mr. Deveau said, Why did you
13 tell on me. Why did you tell. And the State's story
14 varied a bit, why did you do this to me. And then the
15 comes come and they take her away.

16 When you watch the video, Ray Olszewski asked her,
17 he said, did you ever speak to your father about this
18 incident after? Did you ever talk to him about it after it
19 happened. Let me see if I can get a more specific --
20 you'll get a chance to watch the video again if you want
21 to. But essentially, did you ever talk to him about this
22 again? Did you ever talk about it? Did he ever ask you
23 about it? No, we never talked about it again. But as time
24 went on, as this story developed, they talked about three
25 years. Three years is a long time for a story to so lid

1 fie. Three years of being with counselors who say, we
2 talked to her to prepare her for court. Meeting with the
3 solicitors who were there to prepare her for court. And
4 when Ms. Delany asked Child [REDACTED] about her meeting with the
5 solicitors, she said that her mama was there with her every
6 time she met with them. Every time that she met with these
7 solicitors to talk about what was going to be said in
8 court, her mother was right there. Her mother was right
9 there beside her.

10 They brought up Ray Olszewski and Mr. Olszewski
11 told you himself there's no way to measure truth. You
12 can't measure scientifically whether somebody's being
13 truthful or not. Again, Mr. Olszewski, very friendly man,
14 obviously, has been working for the county a long time,
15 twelve years experience. Same amount of time that Deputy
16 Hatfield has spent in his field. But they don't want you
17 to hear from Deputy Hatfield.

18 Ladies and gentlemen, this is a tough case to hear
19 because this is a criminal sexual conduct with a minor
20 case. Now, the State says that they welcome this burden.
21 They say that they want to prove this beyond a reasonable
22 doubt. But what they really want to use is in that box
23 right there. There's no physical evidence. They're hoping
24 that you're going to say, eww, criminal sexual conduct with
25 a minor. This is scary. This is dirty. They're hoping to

1 arouse your emotions. They like to point at my client. I
2 couldn't even count how many times they went and pointed
3 toward Charles to make him this bad guy, like this is Law
4 and Order. This is America. This is a courtroom and we
5 don't try and use your emotions to get convictions. That's
6 not how that's supposed to be done.

7 This box that Mr. Shealey referred to earlier, the
8 box where all your prejudices and emotions and preconceived
9 ideas about what television tells you is right here. They
10 want to tip this box over. They know they don't have any
11 physical evidence. They know that they've got an angry
12 vengeful mother who did not want to go back to jail. They
13 know that they've got no real case.

14 Ladies and gentlemen, this is Charles Deveau. He
15 is a man. He is a man like any other. He's a veteran.
16 He's a member of this community. He's a member of his
17 church. He's not this cartoon that they're trying to paint
18 of a man that lingers in shadows. They're trying to paint
19 him with a paint brush rather than prove to you what didn't
20 happen.

21 Ladies and gentlemen, we're not here to get
22 convictions. We're not here to ask you to rubber stamp
23 what the jury (sic) wants you to rubber stamp by scaring
24 you with nasty phrases, like child sexual abuse. We are
25 here because we believe in Charles Deveau. And we believe

1 in his innocence and we don't believe that an angry mother
2 should use the criminal court system to drag a man's name
3 through the mud for her own personal vendetta. He has a
4 family here too that also believes in him. You'll notice
5 that Child could not spell his name on the ARC tape.
6 And that's because in Ms. Myers' house, his name is mud.
7 She didn't want her daughter to have a relationship with
8 Mr. Deveau. And every other weekend, she felt like
9 somebody was rubbing it in her face. Every other weekend
10 she had to think about going to that jail cell twice and
11 she was out for revenge. This is not a choice of Child
12 versus Charles Deveau. This is about a team that has
13 worked to convict this man following the map that an angry
14 woman drew. It's a lot easier to find something when
15 you're looking for it. And it's a lot easy when mom drew
16 the map.

17 Ladies and gentlemen, beyond a reasonable doubt,
18 I'm not going to put up a bunch of posters here. Basically
19 if you think, maybe it could have happened, but I'm not
20 sure. That's reasonable doubt. You have to find him not
21 guilty. If you think, well, he probably did it, but I'm
22 not entirely sure, that's reasonable doubt. You have to
23 find him not guilty. But I don't think -- I don't think
24 it's even that tough of a choice.

25 Ladies and gentlemen, Mr. Deveau is innocent. The

1 State has tried to package this the way they want it to
2 look. Basically, they've got someone in their sights.
3 They shot it. They fired it. They shot first then they
4 drew a little bulls eye around it. Ha, we got him. They
5 say the target on point. It's a little easier when you can
6 draw the target around what you're looking for after you've
7 already shot. And that's what happened in this case and
8 that's what's happening with Mr. Charles Deveau.

9 Again, ask yourself why Deputy Hatfield wasn't part
10 of this. Why did we have to bring an officer of Richland
11 County up here? Why did we have to bring him up here? Why
12 can't they do it? Because they don't want to see the map,
13 the paper trail that was laid and they don't want Officer
14 Hatfield's suspicious to be seen. Anyway, ladies and
15 gentlemen, I want you to think about every other weekend
16 and I want you to think about the threat of jail time
17 hanging over a woman's head every other weekend. And I
18 want you to think about people and divorces and
19 relationships and child custody disputes and how mean and
20 angry they can get and what they will do because false
21 accusations happen.

22 Ladies and gentlemen, Charles Deveau is an
23 innocent man and I ask that you find him not guilty.

24 THE COURT: Counsel, you may proceed.

25 MS. ASHTON: Thank you, may it please the Court.

1 This case is about Child Child This case is
2 about how a ten-year-old little girl was sexually assaulted
3 by her father at his home. This case is about how this
4 man, who had a position of trust and a position of
5 authority, used the cover of darkness, the cover of noise
6 and the cover of secrecy to violate his daughter. He put
7 his finger up her vagina and had the audacity to ask her if
8 it felt good. That is what this case is about.

9 Child Child a ten-year-old little girl was
10 brave enough to do what a lot of individuals, even adults
11 never have the courage to do. She told her mother, the
12 only person that she knew would protect her, about what
13 happened to her. That is why we're here today. She knew
14 at the young age of ten that what he did to her was wrong.
15 She knew she was going to tell and that is exactly what she
16 did. She was scared it was going to happen again.

17 She didn't want to have to cry herself to sleep
18 again and so she told after it happened one time, before he
19 was able to do it again. Ladies and gentlemen, this is a
20 very important case. This is an important case to the
21 State, and it's also an important case to Child What
22 this case is not about is all the dirt and all the mud that
23 they've thrown on this case, on the truth, on Child I
24 want you, with this box, to shake it out. Shake that mud
25 out and shake that dirt out. Shake it out. And I want you

1 to take out your common sense. Please take your common
2 sense out of this box. What this case is not about is all
3 that dirt and all that mud that they've thrown on Kathy
4 Myers and Child

5 Defense counsel came to you at the beginning of
6 this case and he talked to you about his life in
7 Blythewood, growing up with his parents and how his parents
8 were in the mental health profession and how they were able
9 to use their persuasion skills to get him -- to manipulate
10 him to do his chores. His chores. And now that he's grown
11 up, now that he's matured, they can laugh about it. But
12 this is not about chores. This is about criminal sexual
13 conduct and Kathy and her daughter, Child when this is
14 all over, they can't laugh about it. I want you to take
15 your common sense out of that box and ask yourself if
16 Child and her mother would be able to talk to -- would
17 be able to keep this elaborate story through multiple
18 agencies, multiple people, through first law enforcement,
19 and then a doctor at Richland Memorial Hospital, and then
20 law enforcement again, and then through the forensic
21 interview and then through DSS; multiple visits over a
22 course of a year, back in 2009, and then throughout her
23 therapy with Amy Phipps back in 2009. And then come to you
24 today, fourteen strangers, and tell you about how her
25 father put his finger in her vagina. How is she able to do

1 this for three years. Take out your common sense, ladies
2 and gentlemen. Why would anyone go through that? Why
3 would any mother put her child through all of this, through
4 all of this torture for three years? You've heard from
5 Child [REDACTED] She's fourteen today. She's grown up. She's
6 still that soft-spoken little girl that she was when she
7 was ten, but she's a freshman in high school. She's on the
8 volleyball team. She's in ROTC. She's grown up. For the
9 past three years she's been in a supportive environment
10 with her family, with her grandmother, with her mother,
11 with her brother, and with her step father. So she's
12 better now. Thank goodness she's better now. She's been
13 able to move on because of that support at home.

14 I also -- you have a video of when she was ten and
15 I want you to take a close look at that video. Don't just
16 look at it on it's surface and take it as a whole. I want
17 you to break down that video. When she walks in that
18 room -- or excuse me. When Ray walks in that room, she's
19 in there and they start talking about her family. They
20 start talking about her mom, her brother, her grandma, how
21 she was in the wedding of her mother and John Myers
22 recently. And her face is lit up. Look at her eyes. Look
23 at her smile. She is happy. She is talking about people
24 that she loves. And then as soon as the defendant's name
25 is mentioned, that goes away. Immediately. The light goes

1 out of her eyes. The smile comes out of her face. She
2 looks down. And then when Ray asked her, Hey, Child
3 why are you here today, she puts her head down, and she
4 blurts out to a stranger -- I shouldn't say the word blurt,
5 but for the first time she's having to tell a complete
6 stranger -- she had to use the word vagina. She's having
7 to tell him that her dad did this to her. She's ten years
8 old. She puts her head down and she just gets it out
9 because it's a scary, traumatic thing to talk about.

10 But Ray is trained in these type of interviews. So
11 he backs her up. He backs her up and he asks her to start
12 at the beginning of this night. And you see her lift her
13 head, and you see her make eye contact, and you see her
14 start to talk about that day that terrible day from the
15 beginning. So by the time he takes her through, by the
16 time she gets through to the point where he -- she has to
17 say her vagina again, she has to describe that again, she's
18 comfortable enough to where she can look him in the eye and
19 look at him to talk about it. Because he's trained.

20 That's -- this is not about scientific reliability, about
21 truthfulness. That's your job. Okay. That's your job.
22 His job is to make sure that he asks open-ended questions
23 to make sure that he makes Child comfortable enough to
24 where she can talk about what happened. It's not about
25 scientific. No. That's not what it's about.

1 And then, you know, she -- on the stand she did
2 say -- let's see what did she talk about. On the stand,
3 she said finger and she also said thumb. The bottom line
4 is, something from his hand went up her vagina. Thumb,
5 finger, sexual battery. She also talked about what he said
6 to her that night. When she went to bed that night, she
7 thought it was strange that for the first time he said,
8 I'll be there in a minute. She remembers that because that
9 was something different about that night. Something that
10 he had never said before. And I also want you to think
11 about the fan -- one thing she said in this interview, one
12 thing that she maintained from the beginning is this fan.
13 He got in the bed and he put that fan in the window where
14 no one would hear any kind of response that she would give.
15 And I want you to think about that fan very carefully and
16 that window carefully because this is not just any window.
17 This is a window with a large, wide ledge that has a
18 definite spot for a fan.

19 Kathy Myers has never been in side this home. So
20 in order for you to believe that Child is lying and that
21 Kathy put her up to this, you have to think that Child
22 as a ten-year-old girl said, Mom, I know what I need the
23 add. There's this window that has a ledge, and it's a big
24 ledge. So I can add that he put a fan there in the window.
25 I mean the mom has never been in that home. She would have

1 no way of knowing that that is a wide ledge of a window.

2 Enough for a fan to be placed there.

3 And in the video she talks about, you know, when
4 she's asked what day -- he's like what -- when did this
5 happen? She says, I think it was a Tuesday. I'm not sure.
6 I think it was a Tuesday. Well, if this is so
7 memorialized, if this is such a coached story, why not say
8 Tuesday, no doubt about it. Because it's not a
9 memorialized story.

10 The one thing that she's never waived on is how
11 when he came in that bed, he put his hand over her clothes,
12 grabbed her butt and went under the nightgown, rubbed her
13 butt over her underwear, and then slid it to the side and
14 put his finger in. When she's in that video, when she's in
15 that room with Ray, she points to her left leg when she's
16 asked about which leg he moved because she knows she always
17 sleeps on her right side, and she knows that she was facing
18 the wall away from him. And here she said he moved her
19 left leg because that's how she sleeps every night. But
20 what doesn't happen every night is that sexual assault.

21 Now, they want to talk about how this is all Kathy
22 Myers. Everything about this is Kathy Myers. Kathy Myers
23 is DaShawna's mother. She is the person who Child
24 trusts the most. When she was in that car with her mom,
25 she was scared it was going to happen again, so she told

1 her mom. Her mom pulled over. She knew she had to compose
2 herself before she called 911, so she made two calls.
3 Whether it was to her husband, to her friend, to her
4 grandmother, it doesn't matter. She called two people and
5 then she called 911. She went to the Exxon station because
6 she knew if she didn't she'd have to go the jail. She
7 can't help her daughter from jail. Okay. She knew the
8 officers were on their way. Unfortunately, they didn't
9 come quick enough. Deputy Hatfield didn't come quick
10 enough, so she told her daughter to go with Mr. Deveau.
11 I'll be there. They're coming.

12 And defense counsel asked, Oh, well, did you ask
13 for help? Ladies and gentlemen, it's common sense.
14 Calling 911 is asking for help. You don't have to tell the
15 dispatcher, I want, I want, I need help. That is
16 understood. She knew that she needed police involvement.
17 She knew she needed documentation because she had to go the
18 jail before for not complying with the order. So, yes, she
19 needed proof in order to not go to jail so that she would
20 not -- so she would be able to protect her daughter. It's
21 as simple as that.

22 Defense counsel's questions are not the evidence.
23 So when they say every other weekend, every other weekend,
24 who did you hear that from? Defense counsel. Not from our
25 witnesses -- defense counsel, not from the evidence. And

1 that visitation order that they keep talking about, the one
2 from the early -- late '90s that he did not pursue until
3 child support was asked for in 2007, nine years later, when
4 he decides to enforce that visitation order. And this is
5 not about child support. Do not think anything about that
6 because if this man is in jail, how in the world is he
7 going to pay child support. So when you ask yourself about
8 motive and bias, think about all these things. She cannot
9 protect her daughter from jail. So yes, she did not want
10 to violate that order again. She let her go. She told her
11 to act normal so nothing else would happen and she knew
12 that the police were on their way.

13 No one from the stand testified except for the
14 defendant that Kathy Myers was anything but supportive to
15 her daughter throughout this whole process. Kathy Myers
16 took out a protective order immediately. She took her to
17 the hospital that night. Now, if this is just a story,
18 why -- make it easier on yourself. Make up that story
19 before you have to go meet him again. Make it up the
20 second she came back from that previous visitation. Why go
21 to the hospital that night your daughter disclosed to you
22 on a Friday night, Palmetto Health Department Emergency
23 Room when you know nothing happened? Why go to all that
24 trouble? Save yourself those steps. You saw Kathy on the
25 stand. You are the judge of her credibility and her

1 demeanor. You ask yourself, Kathy Myers for three years
2 can be so manipulative and fool multiple agencies, law
3 enforcement, DSS, Assessment Resource Center, the doctor at
4 Palmetto Health. You ask yourself if Ms. Myers, who you
5 saw on this stand who got confused easily, distraught
6 easily. You ask yourself if this lady can make this up for
7 three years and keep this story going. You are the judge
8 of her credibility. I want you to ask yourself that too.

9 Ladies and gentlemen, the bottom line is that there
10 using her as a scapegoat because they have nothing else.
11 They have nothing else. They have to blame it on her.
12 They can't blame it on Child [REDACTED] They have to blame it on
13 her. And yes, she was supportive and she was there
14 throughout this whole ordeal because she is her mother.
15 That is why she was there. She is her mother. Who else is
16 supposed to take Child [REDACTED] to the therapy sessions and the
17 interview? That's Kathy. I mean, let's be honest. Of
18 course, she was there.

19 And this case is also not about Deputy Hatfield. I
20 will tell you why we didn't call Deputy Hatfield. Because
21 Corporal Monica Johnson and Deputy Hatfield both responded
22 to the scene. Corporal Monica Johnson who's now a senior
23 corporal, she's still in the criminal investigative
24 division. Deputy Hatfield is in civil process. He serves
25 papers. The last time he had any training in interviews

1 was nine and a half years ago at the academy when he first
2 started with the county. He told you that. That is why we
3 called Corporal Monica Johnson because she has moved up in
4 ranks. He's flunked out. That's just the truth of the
5 matter. He got it wrong. Corporal Monica Johnson
6 responded to the scene. She talked to Child [REDACTED] who this
7 case is about. Child [REDACTED] not Kathy. She talked to
8 Child [REDACTED] She made the decision that Child [REDACTED] needed to be
9 removed.

10 They asked about these reports, these incident
11 reports. They threw around a bunch of terms: Responding
12 officer, reporting officer, it doesn't matter. It's an
13 incident report. It's to gather the basic facts. Incident
14 location, victim, complainant's name, time, place. That is
15 what an incident report is. It's not an investigative
16 report. It's a document. To relay the necessary
17 information to the investigators who can do the
18 investigation. They also asked, Why wouldn't you arrest
19 him? Why wasn't he arrested then? Well, ladies and
20 gentlemen, let's think about it. If this was an armed
21 robbery and the police arrive on the scene, the responding
22 officers arrive on the scene, and one of the witnesses
23 says, Joe Smith did it and he lives over there. Can they
24 go arrest Joe Smith at that point? No. There has to be
25 more. They have to do an investigation and that is what

1 happened in this case.

2 It's just not that simple. You can't just arrest
3 somebody just because somebody said they did it. There's
4 more to the process. Thank goodness. That is why we live
5 in the United States. That is why we have a constitution.
6 That is why we have laws. The case was turned over to
7 Investigator Martin. He's been with the department for ten
8 years, just like Deputy Hatfield, ten years, but
9 Investigator Martin has moved through the ranks just like
10 Corporal Johnson. He started out as a road deputy. He
11 moved up to an investigator. He's been through several
12 different divisions, still within the criminal
13 investigation division. And they made a big deal about
14 what he didn't do. Well, ladies and gentlemen, just like
15 Ms. Simpson said, these crimes are done behind closed doors
16 because they're shameful. No person, no father is going
17 to put his finger up a girl's -- in someone's vagina and
18 leave behind any evidence because that is shameful. And
19 that is why the legislature enacted that statute about how
20 the victim's statement need not be corroborated. The
21 legislature of South Carolina recognized that. They
22 recognize this issue, in all these cases, criminal sexual
23 conduct cases.

24 So this is not an armed robbery where Investigator
25 Martin can decide to send out -- to call crime scene and

1 bring out these officers so where, you know, like with an
2 armed robbery of a convenience store, somebody doesn't wear
3 gloves, they're going to put their hands on the cash
4 register. Well, they can take swabs of that cash register,
5 and possibly get DNA because the DNA doesn't belong on that
6 cash register. Well, this case is different because this
7 is this man's home. He admits himself that he goes into
8 that bedroom sometimes. So, yes, his DNA will be in there.
9 That is not helpful to this case. This is not a seminal
10 DNA case where there was any kind of evidence of
11 ejaculation. So he can't go collect those bed covers
12 because that would not be helpful to this case. And he has
13 to go in front of -- he can't just go into a defendant's
14 home or anyone's home. He has to go in front of a judge
15 and get a search warrant and articulate, specifically -- to
16 specific things about what he could gather to help him in
17 this investigation. And unfortunately because these crimes
18 are done behind closed doors, because they're secret, there
19 is no forensic evidence to collect. So in these types of
20 cases, his role is limited.

21 What he did, what he does in all criminal sexual
22 conduct with a minor, he refers the children -- he refers
23 Child [REDACTED] to the ARC where there are trained professionals
24 to conduct an open-ended interview to elicit answers to the
25 questions without putting words in her mouth to get what

1 happened that night because unfortunately sometimes that is
2 all there is. Most cases that is all there is. So it is
3 Child [REDACTED] versus Charles Deveaux.

4 She was referred to the Assessment Resource Center,
5 a nationally accredited agency who follows the best
6 practice for the Richland County Sheriff's Department who
7 does have this case. You heard from Ronnette Sumler with
8 the Department of Social Services. She testified that she
9 was involved with this case after another caseworker. But
10 shortly after it happened, she met with Child [REDACTED] and her
11 mother for almost a year on a regular basis, on a monthly
12 basis. DaShawna's mother was nothing but supportive.

13 Child [REDACTED] started doing better as time went on, and she was
14 in a supportive environment, she was away from her abuser,
15 and she didn't have to think about it anymore because her
16 mom did what she should have done to protect her.

17 You heard from Ms. Phipps. She was called as an
18 expert in behavioral sciences. She was able to examine
19 Child [REDACTED] talk to Child [REDACTED] and determine that Child [REDACTED] met
20 the criteria for sexual abuse of a child. She made a
21 treatment plan based on that assessment and they met for
22 about a year, ending in 2009. So don't let them think that
23 this therapy and this court preparation has gone on since
24 2010 and 2011. No. Amy testified it ended in 2009.

25 So -- and the court preparation, don't be confused

1 about that. Think -- look at this courtroom. Look at how
2 big it is. Think about how a fourteen-year-old girl -- at
3 the time she was ten, eleven, twelve, has to come into this
4 room, get in this huge room, face a judge, face fourteen
5 strangers she's never met before to talk to lawyers to be
6 cross-examined. Think about how that would feel. So the
7 court preparation is necessary to prepare her for the
8 feelings associated with telling her story in this huge
9 courtroom. It's not about what to say. It's about
10 teaching her the language, what objection means. That
11 doesn't mean that the lawyers are yelling at her. That
12 means that she just needs to stop talking for a second for
13 the judge to make a decision. She's told what being under
14 oath means. For a ten-year-old, that might mean tell the
15 truth. She's never been under oath. She teaches her how
16 to deal with the nervousness feelings, about telling
17 strangers what happened to her. That is what courtroom
18 preparation is. It's not about what to say. It's not
19 about practicing her story. No, it's about dealing with
20 feelings associated with telling a dramatic event that
21 happened to this little girl.

22 You heard Dr. Luberoff. She's very respected in
23 her field. She founded the Assessment Resource Center.
24 She said she's examined other five thousand individuals and
25 she never expects to find evidence of physical assault.

1 You remember she said even when someone is pregnant, where
2 there's clear evidence of a penetration, that she
3 doesn't -- she doesn't expect to find any proof of that
4 because the body is an amazing thing. It heals itself.
5 The hymen's intact. And a finger. If that won't cause --
6 if that won't cause physical injury, then a finger will not
7 either, and she was able to explain that.

8 You heard from Ray. We've already discussed his
9 video and his interview. And I want you to watch that
10 video. I want you to please look at that video carefully
11 and see again how when she first has to tell a total
12 stranger about what happened so they can begin the process
13 of breaking that down. She's scared. She has her head
14 down. But because he's trained in these interviews, he
15 gets her to open up. He gets her to slow down, he gets her
16 to look at him, and tell the whole story, and she does
17 that. And that's why they're sent to the ARC, because this
18 is a dramatic event for a ten-year-old to talk about to a
19 total stranger. And it's important that they don't put
20 words in her mouth. And he's trained not to suggest any --
21 not to put words in her mouth for her to tell the story and
22 he does exactly that.

23 Defense Counsel picked up one of these training
24 manuals and I don't know where it is, but it's about this
25 thick. This thick. And they had to go through this huge

1 training manual to pick out one slot. I don't know if you
2 remember, but it took them forever to pick out that page
3 that they referred to from their notes. And the one thing
4 that they wanted to ask him about was, doesn't it say that
5 forensic interviewers are not supposed to argue with the
6 solicitor. And as we had to point out, that is one of
7 forty-five slides in a huge book. And that's the one thing
8 that they were able to pick out because he mischaracterized
9 what that book is about. And then when I asked Ray to read
10 that slide, it says don't argue with the judge, don't argue
11 with the defense counsel and don't argue with the
12 solicitor. The solicitor is the last one on that slide.
13 But that's the first one he wants to point out because just
14 like they're trying to do with Deputy Hatfield, just like
15 they're trying to do with Kathy Myers, they want you to
16 pick out one or two inaccurate things or what they want you
17 to think is inaccurate and make that a big huge deal.

18 Make it what this case is about. Just like they
19 did with this book, they're going to pick out one little
20 slide in this huge book to muddy up the waters. And they
21 talk about a team. What the team he's referring to is the
22 multidisciplinary team. Ray testified that not only do
23 they talk about founded cases, but the team also talks
24 about unfounded cases. They're not there to build a case.
25 They're there to determine the best course of action in

1 each individual case. So don't let them mischaracterize
2 what is really happening.

3 And finally, with Ray, he was able to tell you that
4 significant details that Child [REDACTED] was able to give about
5 before and after this defendant put his finger in her
6 vagina are significant to him because he would expect that
7 from a ten-year-old because if this was a story, if she was
8 improperly influenced, she would get up there and say he
9 put my finger -- his finger in my vagina and I can't
10 remember much else. No. She's able to give the
11 description of what happened before and she's able to give
12 a description about what happened after. And he would
13 expect that from a child of her age. And after this
14 interview is over, he determines she needed therapy and he
15 referred her to therapy and he also referred that she not
16 have contact with this man again.

17 And finally, finally, you heard from the defendant
18 himself. When he first started talking, it was easy. He
19 was talking about himself. His military experience, his
20 work experience; and the second that DaShawna's name was
21 mentioned, the first time his daughter that he supposedly
22 loves, name was mentioned, do you know what word he used?
23 Do you remember what word he used? Unfortunately. The
24 first name DaShawna's -- the first time DaShawna's name is
25 mentioned, unfortunately. And then once he realized his

1 mistake, oh, he tried to justify it. Oh, yeah, he caught
2 that one quick. Well, I mean unfortunately because it was
3 out of wedlock.

4 When Ms. Simpson was asking him questions about how
5 Kathy, you know, how his version is that Kathy put it
6 all -- Kathy put Child up to it. This is all Kathy.
7 This is all Kathy. And then when she presses him a little
8 bit more, he clearly said, Well, she must have had a
9 nightmare. Child must have had a nightmare and that is
10 why she's telling this. Because what happened to her is
11 really in her head. So is it Kathy made her do it or is it
12 she must have had a nightmare? Which one? And then she
13 went through the multiple lies that -- if you were to
14 believe his story, the multiple lies that Child would
15 have to say, the multiple people that she would have to lie
16 to, when he realized how ludicrous that would be, he said,
17 Yeah, whatever. Yeah, whatever 's on your list. Because
18 he couldn't take listening to the truth. He couldn't take
19 listening to what Child would have to go through for the
20 past three years in order for you to believe his story.

21 And then when she points out the hypocrisy of his
22 statement related to how, yeah, he noticed that something
23 was weird that day or that week. Child was withdrawn.
24 She wouldn't talk to me. She seemed really quiet. But
25 yet, she also goes into his room to sleep in his bed when

1 she has a nightmare. When Ms. Simpson pointed that out,
2 you remember that was when he looked at you. That's when
3 he started with change. Well, people change. You're
4 different in the morning than you are at night.

5 Ladies and gentlemen, the State submits that the
6 man that you see here today, the man that shows his face
7 during the day at work, at church, changes. He changed
8 that night just like he said he does change. He went into
9 the bedroom and violated his daughter. He changed.

10 Child [REDACTED] didn't change. He changed. Child [REDACTED] has never
11 changed. She's gotten older, she's gotten stronger, but
12 she's still that soft, sweet, timid little girl. She
13 didn't change like he wants you to believe. He changed.
14 And when he took her outside, when he heard that, No that
15 didn't feel good, he took her outside, and he asked her, Do
16 you trust me. He wanted her to forget about that change.
17 He wanted her to forget that he's not the person that she
18 thought he was. He said, Do you trust me. He tried to
19 cover that up. Do you trust me. She said, no, and he
20 said, You promise that you won't tell anyone. She said
21 okay, because she's a sweet little girl and she said okay.
22 But she said she knew that she was going to because she
23 knew it was wrong. She's not going to forget about that
24 change she saw in her dad that night. She felt in her
25 vagina that night.

1 Ladies and gentlemen, I will wrap up, but what I
2 want you to do is take that box, shake the mud out of it,
3 shake the dirt out of it. Take out your common sense. Ask
4 yourself if Child and her mom -- if her protector would
5 make her daughter go through this for three years, go
6 through this horrible experience, tell strangers what
7 happened to her, tell her father put his finger up her
8 vagina for three years. Are Ms. Myers and her ten-year-old
9 daughter able to fool law enforcement agencies, DSS,
10 Assessment Resource Center, doctors, and you for three
11 years? Use your common sense. Why would anyone go through
12 that? Please examine the evidence carefully. Think about
13 this case carefully. Think about this carefully. When you
14 come back in this room, find the defendant guilty. Help
15 Child move on. Thank you.

16 THE COURT: All right. I'm going to allow the
17 jurors to take a short break. Just a short break and then
18 we'll conclude with my final instructions.

19 (WHEREUPON the jury left the courtroom at 11:05
20 a.m.)

21 MR. BAILEY: Judge, I just wanted to renew our
22 previous objections to the prosecution repeated over and
23 over and over again the victim's story doesn't need to be
24 corroborated and we said statute. I just wanted to renew
25 that previous objection. I didn't want to interrupt

1 Ms. Ashton during her closing. And also I wanted to renew
2 our objection to a mistrial argument based on them talking
3 about Ray Olszewski, voracity to the truth of what the
4 child said based on violation of time and place. I just
5 wanted to renew those, Judge.

6 THE COURT: Respectfully denied.

7 (WHEREUPON a recess was observed.)

8 MS. DELANY: Our client is in the restroom.

9 THE COURT: They're ready to go. The jury is
10 ready.

11 All right. Is the State ready to proceed?

12 MS. ASHTON: Yes, Your Honor.

13 THE COURT: Is the defense ready to proceed?

14 MR. BAILEY: Yes, Judge.

15 THE COURT: All right. Where is the bailiff? Is
16 there a bailiff on the back door? We're going to lock the
17 door.

18 Mr. Tolbert, come on in and lock the door.

19 Well, all right. Bring the jury, please.

20 (WHEREUPON the jury entered the courtroom at 11:17
21 a.m.)

22 THE BAILIFF: Your Honor, the jury is present.

23 THE COURT: All right. Thank you very much, ladies
24 and gentlemen.

25 ///

JURY CHARGE

THE COURT: All right. Mr. Foreman and ladies and gentlemen of the jury, you've now heard all the arguments -- I mean the testimony in this case. You've heard the arguments from both the State and the defendant, and you'll take with you to the jury room all the evidence in this case that's been introduced.

Now, from time to time the jury's sent me a message and asked me to send them a copy of what I'm about to go over. I'm really not able to do that. In some states it is done, but it's not done in South Carolina. So I ask you to listen carefully as I explain to you the law as it applies to this case.

Now, under our constitution and Code of Laws, only the jury can make findings of fact. I'm not permitted to indicate to you how I might feel about the case. If I've said or done anything in this case which indicated to you that I have an opinion concerning the facts of this case, then you should disregard that. You must independently weigh the evidence presented in this trial and render a verdict based solely on that evidence.

Now, the same constitution and laws which designate and make you the finders of the fact, also make me the instructor of the law. If you have some idea as to what the law is or what the law ought to be and it does not

1 agree with what I now tell you the law is, you're obligated
2 under the oath which you have taken to abandon this
3 preconception on your part and to accept and apply the law
4 precisely as I now state it to you.

5 The defendant in this case has been charged with
6 criminal sexual conduct with a minor in the first-degree.
7 I remind you again, the fact that the defendant was
8 arrested, charged, and indicted in this case is not
9 evidence in this case. It cannot be considered by you as
10 evidence in this case, nor does it create any presumption
11 or inference of guilt. This document is simply the formal
12 written instrument which contains the charge made against
13 the defendant. It's the formal document by which the case
14 is brought into court and the indictment alleges that
15 Charles M. Deveaux did in Richland County, on or about June
16 22nd 2008 and June 29th, 2008 willfully, feloniously, and
17 unlawfully commit a sexual battery against a minor, who was
18 at the time, was less than eleven years of age, to wit,
19 Child [REDACTED] Child [REDACTED] all in violation of the Code of Laws of
20 the State of South Carolina.

21 Now, Mr. Deveaux has pled not guilty to this
22 indictment, and that plea puts the burden on the State to
23 prove the defendant guilty. A person charged with
24 committing a criminal offense in South Carolina is never
25 required to prove himself or herself innocent. I charge

1 you again, this is an important rule of law that a
2 defendant in a criminal case, no matter how serious the
3 charge may be will always be presumed to be innocent of the
4 crime for which the indictment was issued unless guilt has
5 been proven by evidence satisfying you of that guilt beyond
6 a reasonable doubt. This presumption of innocence does not
7 end when you begin your deliberations, but it accompanies
8 the defendant throughout the trial until you reach a
9 verdict of guilt based on evidence satisfying you of that
10 guilt beyond a reasonable doubt.

11 In other words, presumption of innocence is not a
12 mere legal theory, it's not just a legal phrase, it's a
13 substantial right to which every defendant is entitled,
14 unless you, the jury, are satisfied with the evidence of
15 the defendant's guilt beyond a reasonable doubt. The State
16 is not required to prove the guilt of the defendant beyond
17 all doubt or beyond every doubt, but beyond a reasonable
18 doubt.

19 Well, what is a reasonable doubt in the law? A
20 reasonable doubt is the kind of doubt that would cause a
21 reasonable person to hesitate to act. Let me repeat that.
22 A reasonable doubt is the kind of doubt that would cause a
23 reasonable person to hesitate so do something, to act. The
24 State has the burden of proving the defendant guilty beyond
25 a reasonable doubt.

1 Now, some of you may have served as jurors in civil
2 cases where you were told, it's only necessary to prove
3 that a fact the more likely true than not true, such as by
4 the greater weight or the preponderance of the evidence.
5 In criminal cases, however, the State's proof must be more
6 powerful than that. It must be beyond a reasonable doubt.
7 To think that a defendant is probably guilty or the
8 circumstances are suspicious is not enough. Proof beyond a
9 reasonable doubt is proof that leaves you firmly convinced
10 of the defendant's guilt.

11 Now, there are very few things in this world we
12 know with absolute certainty, and in criminal cases, the
13 law does not require proof that overcomes every possible
14 doubt. If based on your consideration of the evidence, you
15 are firmly convinced that the defendant is guilty of the
16 crime charged, you must find the defendant guilty. If, on
17 the other hand, you think there's a real possibility that
18 the defendant is not guilty, then you must give the
19 defendant the benefit of the doubt and find him not guilty.

20 Now, generally in any trial there are two types of
21 evidence which are generally presented, direct evidence,
22 and circumstantial evidence. Direct evidence is the
23 testimony of a person who claims to have actual knowledge
24 of a fact such as an eyewitness. It's evidence which
25 immediately establishes the main fact to be proven.

1 Circumstantial evidence on the other hand is proof of a
2 series, a chain of facts indicating the existence of some
3 fact. It's evidence which immediately establishes
4 collateral facts from which the main fact may be inferred.
5 Circumstantial evidence is based on inference and not on
6 personal knowledge or observation, but the law makes no
7 distinction between weight or value to be given to either
8 direct or circumstantial evidence. Nor is a greater degree
9 of certainty required of circumstantial evidence than of
10 direct evidence. You should weigh all the evidence in this
11 case. After weighing all the evidence, if you're not
12 convinced of the guilt of the defendant beyond a reasonable
13 doubt, you must find the defendant not guilty.

14 Now, necessarily, in any case, you must determine
15 the credibility of witnesses who have testified in this
16 case. Credibility simply means believability. It becomes
17 your duty as jurors to analyze and evaluate the evidence
18 and determine which evidence convinces you of its truth.

19 In determining the believability of a witnesses who
20 have testified in this case, you may believe one witness
21 over several witnesses or several witnesses over one. You
22 may believe a part of the testimony of a witness and reject
23 the remaining part of the same witness. You may believe
24 the testimony of a witness in its entirety or reject the
25 witnesses testimony in its entirety. You may consider

1 whether any witness has exhibited to you any interest,
2 bias, prejudice, or other motive in this case. You may
3 also consider the appearance and manner of the witness
4 while on the witness stand.

5 These considerations you do not exercise
6 arbitrarily. Your objective, ladies and gentlemen, is to
7 seek the truth regardless of its source. In exercising
8 your mental processes and determining what you determine to
9 be true, the law simply requires that you exercise your
10 good judgment, your common sense, your sense of logic and
11 reason, and your experiences in life. You then apply these
12 attributes to the evidence and determine what you, the
13 jury, consider to be the truthful evidence. You will then
14 take and apply the law as it is now stated to you and thus
15 arrive at a true verdict in this case.

16 Now, the rules of evidence that govern our court
17 proceedings ordinarily do not permit witnesses to testify
18 about their opinions or conclusions. An exception to this
19 rule exists for witnesses we call expert witnesses, a
20 witness who by education and experience has become expert
21 in some art or science or profession or calling may state
22 an opinion as to relevant material matter in which the
23 witness claims to be an expert and may also state the
24 reasons for that opinion.

25 You should consider any expert opinion received

1 into evidence in this case like any other evidence. Give
2 it the weight you think it deserves. If you decide the
3 opinion of an expert witness is not based on sufficient
4 education and experience or if you conclude that the
5 reasons given in support of the opinion are not sound or
6 that the opinion is outweighed by other evidence, you may
7 disregard the opinion entirely. In other words, an expert
8 witness's testimony is to be given no greater weight than
9 that of other witnesses simply because the witness is an
10 expert. Further, you're not even required to accept an
11 expert's opinion even though it's not contradicted.

12 Now, in order to establish criminal liability,
13 criminal intent is required. Criminal intent must be
14 proven by the State beyond a reasonable doubt. Criminal
15 intent is always a matter that must be determined by the
16 jury from the circumstances surrounding the situation.
17 There's no way to prove intent to a mathematical certainty.
18 There's no way medical science can dissect a person's brain
19 and determine what the person had in mind. So the law says
20 criminal intent may be inferred from the circumstances
21 shown to have existed at the time and place. This is how
22 you make a determination of whether or not the element
23 requiring the intent was present. Criminal intent, in
24 other words, is a mental state, a conscious wrongdoing.
25 It's up to you to determine what the defendant intended to

1 do based on the circumstances shown to have existed at the
2 time and place.

3 Now, as you know, the defendant is charged with
4 first-degree criminal sexual conduct with a minor. The
5 State must prove beyond a reasonable doubt that the
6 defendant engaged in a sexual battery with the victim. A
7 sexual battery is sexual intercourse, cunnilingus,
8 fellatio, anal intercourse, or any intrusion, however
9 slight, of any part of a person's body or of an object into
10 the genital or anal openings of another person's body
11 except when the intrusion is accomplished for medically
12 recognized treatment or diagnostic purposes.

13 The State must then prove beyond a reasonable doubt
14 that the defendant -- I'm sorry that the victim was less
15 than eleven years old at the time of the sexual battery.
16 Now, consent or willingness or indifference or ignorance on
17 the part of the minor, if any, as to what was taking place,
18 does not in any way affect the charge of criminal sexual
19 conduct with a minor because an unmarried woman under the
20 age of fourteen cannot legally consent to sexual
21 intercourse.

22 If you find the State has not proven beyond a
23 reasonable doubt that the sexual battery occurred, you must
24 then find the defendant not guilty of this charge.

25 Now, an additional statute in our law says that the

1 testimony of a victim in a criminal sexual conduct case
2 need not be corroborated by other testimony or evidence.

3 Now, ladies and gentlemen, I further charge you
4 that punishment provided by law for the offense or offenses
5 charged in this indictment is a matter exclusively within
6 the province of the Court and should never be considered by
7 the jury in any manner whatsoever in arriving at a fair and
8 impartial verdict as to the guilt or the innocence of the
9 defendant.

10 Now I'm required to declare the law as I've done
11 through these instructions to help guide you to a just and
12 lawful verdict. Whether some of these instructions will
13 apply will depend on what you find to be the facts. The
14 fact that I've instructed on various subjects in this case
15 must not be taken by you as indicating an opinion of this
16 Court as to what you should find to be the facts or as to
17 which party is entitled to your verdict. Your verdict must
18 represent the considered judgment of each juror.

19 In order to return a verdict, it's necessary that
20 each juror agree. Your verdict must be unanimous. In
21 other words, all twelve of you must agree on the verdict.
22 Your verdict cannot be based on sympathy or passion or
23 prejudice or emotion or any other consideration that's not
24 in evidence in this case. Remember at all times that you
25 are not partisans favoring one party over the other. You

1 are judges, judges of the facts. Your sole interest is to
2 seek the truth from the evidence in this case.

3 Now, Mr. Foreman, I have prepared a verdict form
4 for the jury once the jury has reached a unanimous verdict.
5 It's a very simple verdict form. It says on the charge of
6 criminal sexual conduct with a minor, in the first-degree,
7 We the jury, by unanimous consent find the defendant,
8 Charles Deveaux guilty or not guilty, and there's no -- I
9 put one in front of the other. It's no importance to the
10 manner in which these terms are placed on the verdict form,
11 not guilty or guilty. If you will date it, sign it, knock
12 on the jury room door, we will accept your verdict.

13 Now, I'm going to ask you to retire to the jury
14 room for just a minute -- in just a minute. But as Counsel
15 told you and you probably already know, all the evidence is
16 going to come to the jury room with you, including the
17 video. Now, I know that counsel, both counsel asked you to
18 watch the video. That's up to you. We will bring you the
19 video equipment, set it up for you, probably have somebody
20 to operate it for you. I don't know how to do it. If you
21 wish to see the video, just let me know. All you have to
22 do is just send a note by the bailiff.

23 In addition, you ordered lunch. We already got it.
24 How about that. Right on time. Your lunch is here. It's
25 up to you how you choose to proceed with your

1 deliberations. If you want to just take a break, and eat
2 and then start your deliberations, or start your
3 deliberations immediately and eat while you deliberate,
4 that's fine. It's all in your hands.

5 Now the two alternates are not going to be with
6 you. Fortunately, all of you made it this far and the
7 alternates will not be in the jury room deliberating. But
8 we do have your lunch. That's about all we can offer you
9 today. So if the alternates will sit in the hallway until
10 we get a place for them to eat and the jury begins -- until
11 the jury begins deliberations I'll ask you to do that.

12 If you have any questions as a result of your
13 deliberations, please let the bailiff know. He will ask
14 you to put them in writing and send them to me and I'll do
15 the best I can to answer them as promptly as I can.

16 All right. Ladies and gentlemen, you may now
17 retire to the jury room. Do not begin your
18 deliberations --

19 THE BAILIFF: How about the notes, Your Honor?

20 THE COURT: They can take their notes with them.

21 Yeah, take your notes with you. Again, do not
22 begin your deliberations until the evidence comes to you,
23 which will be the ARC video -- I'm not going to send the
24 equipment in until you tell me you want it. But other than
25 that, whatever evidence it was -- there wasn't much

1 evidence in this case, much physical evidence. Just wait
2 until you get that and the verdict form. Once you get this
3 verdict form, you may begin your deliberations.

4 All right. Thank you very much, ladies and
5 gentlemen.

6 (WHEREUPON the jury left the courtroom at 11:24
7 a.m.)

8 THE COURT: Any exceptions to the charge from the
9 State?

10 MS. SIMPSON: No, Your Honor.

11 THE COURT: From the defense?

12 MS. DELANY: No, Your Honor.

13 THE COURT: Thank you very much. That's a first.

14 All right. We'll stand at ease until we hear from
15 the jury.

16 Counsel, if you'll please check the evidence.

17 (WHEREUPON the attorneys were conferring over the
18 evidence.)

19 THE COURT: Any objection to releasing the
20 alternates?

21 MR. BAILEY: We would like to get their numbers for
22 contact information.

23 THE COURT: Any objection from the State to
24 dismissing the alternates?

25 MS. ASHTON: No, Your Honor.

1 THE COURT: All right. I'm going to wait until
2 deliberations begin, and then I'll release them. I'll let
3 them eat.

4 (Jury deliberations began at 11:37 a.m.)

5 (WHEREUPON the alternate jurors were brought back
6 into the courtroom.)

7 THE COURT: Ms. Ashton, the jury wants the video.
8 So...

9 MS. ASHTON: Okay. They agreed that that computer
10 is fine. It's right there.

11 THE COURT: I'm not going to take it.

12 MS. ASHTON: Well, I'm not either.

13 THE COURT: You got somebody that --

14 MS. ASHTON: I thought the bailiffs normally take
15 it.

16 THE COURT: You're just going to play it on the
17 computer?

18 MS. ASHTON: Yes, sir.

19 THE COURT: Whose computer is it?

20 MS. ASHTON: It's the solicitor's office computer
21 that doesn't have access to any kind of --

22 THE COURT: Hello folks. Just have a seat right
23 there.

24 Mr. Two sixty-two, and Ms. One, twenty-seven,
25 obviously, you knew all along you sat as alternates in this

1 case. And I'll tell you, we have a need for alternates.
2 We don't do it just to have two other people sitting in the
3 box. It is very usual, I will say, that somebody has a
4 problem, somebody's car breaks down, somebody's grandmother
5 gets sick. Any number of things. I've heard many, many
6 reasons why jurors could not come during the course of a
7 trial, so we frequently use alternates. Fortunately in
8 this case, everybody came through okay and they're now
9 deliberating. So I'm going to release you at this time.
10 Ms. Pendergrass has your work excuses. I will tell you
11 that we appreciate your service. I think you heard me tell
12 the entire panel that left that was not selected that we
13 can't operate without y'all. And we cannot operate without
14 citizens who are willing to come and sit and hear these
15 cases and decide these cases. These are difficult cases
16 and they obviously can't be solved by the parties, so
17 that's why we have jurors, and that's why our forefathers
18 realized that this was workable and really a great system
19 when they devised it some 250 years ago and wrote your role
20 into the Constitution of the United States.

21 So I hope you appreciate -- I hope you've learned
22 something this week. As I said at the beginning, it's not
23 like TV. It doesn't get done in thirty minutes. And
24 it's -- it's a serious process. So I do want to thank you
25 on behalf of myself and these litigants and the parties

1 involved.

2 Now, when I release you, you're welcome to stay
3 here. This is a public courtroom. You can sit --
4 probably -- you may want to sit up in the balcony up there
5 if you wish to stay because I've seen the families of both
6 sides sitting down here and you may not want to have any
7 contact with them. And the attorneys may have something
8 they want to ask you.

9 Now, it's up to you to talk to an attorney or not
10 to talk to an attorney or talk to anybody about the case.
11 If you say, No, I'd rather not, then they've been
12 instructed, they know just to leave you alone, not to try
13 to bug you about it. But if anybody does say anything that
14 gets you upset or doesn't do what you want, you let me
15 know, and I'll take care of it. They know I can take care
16 of it. So good luck to both of you. I want to thank you
17 very much.

18 If you wish to stick around, you're welcome to do
19 so. It may be some time because we never know what jurors
20 are thinking. Sometimes it takes days, sometimes it takes
21 hours. And occasionally it takes a few minutes, not too
22 long. So you're welcome to stay as long as you wish to do
23 so. As I say, the courtroom is open and good luck to both
24 of you. Thank you very much.

25 And Ms. Pendergrass is going to take care of you,

1 get your badges, and give you a work excuse. And you'll --
2 the bailiff is going to show you how to get back around
3 into the courtroom from the back door.

4 (WHEREUPON the alternate jurors were released at
5 12:10 p.m.)

6 THE COURT: Get Mr. Dye.

7 Will you show him how to operate it?

8 MR. BAILEY: We just need to make sure --

9 THE COURT: Mr. Dye, they want you to take a
10 computer into the jury room and let them play with it.

11 THE BAILIFF: All right, sir. This it right here?

12 (WHEREUPON the attorneys were conferring about the
13 computer and what information is available for the jurors.)

14 THE COURT: You want to take the screen and --

15 MS. ASHTON: I'll boot it up and try to delete
16 whatever this -- I thought -- that's why I asked earlier
17 whether y'all had an issue with it, but we can deal with it
18 now.

19 MR. BAILEY: I just want to make sure it's clean.

20 MS. ASHTON: I asked specifically about this
21 earlier. It is totally clean.

22 MR. BAILEY: I'm just checking as a precaution.

23 (WHEREUPON the attorneys were looking at the
24 computer again.)

25 THE COURT: Mr. Dye, tell them if they have any

1 trouble operating it, let me know. Tell them they're
2 not -- that computer may contain cartoons, and tell them
3 they're not to be playing with the cartoons and all. All
4 they can do is watch the video that we gave them.

5 (WHEREUPON the bailiff took the computer back to
6 the jury room.)

7 THE COURT: We'll stand at ease.

8
9 (WHEREUPON it was reported to the Court that the
10 jury had a question.)

11 **NOTE FROM THE JURY**

12 (WHEREUPON there was a bench conference with the
13 attorneys to discuss the answer to be sent back.)

14 THE COURT: Counsel, want to see what I wrote?
15 State says okay. Defense says okay.

16 (WHEREUPON court was at ease while the jury
17 continued deliberations.)

18 (WHEREUPON it was reported to the Court that the
19 jury had reached a verdict at 4:10 p.m.)

20 THE COURT: All right. Counsel, the bailiff
21 informs the Court that the jury has reached a verdict. You
22 ready to receive the verdict?

23 MS. ASHTON: Yes, Your Honor.

24 THE COURT: Defense ready?

25 MR. BAILEY: Yes, Your Honor.

1 THE COURT: Bring the jury, please.

2 THE BAILIFF: Yes, sir.

3 (WHEREUPON the jury entered the courtroom at 4:14
4 p.m.)

5 THE COURT: Mr. Foreman, has the jury reached a
6 verdict?

7 THE FOREMAN: Yes, Your Honor.

8 THE COURT: Could you hand it to the bailiff,
9 please.

10 Madame Clerk, would you publish the verdict,
11 please.

12 **VERDICT**

13 THE CLERK: Indictment No. 2009-GS-40-7097, State
14 of South Carolina versus Charles M. Deveaux, on the charge
15 of criminal sexual conduct with a minor in the
16 first-degree, we the jury by unanimous consent find the
17 defendant, Charles M. Deveaux guilty. Signed foreperson,
18 Juror No. 83, October 13, 2011.

19 Mr. Foreman, is this your verdict and the verdict
20 of the entire jury?

21 THE FOREMAN: Yes, it is.

22 THE COURT: You desire to poll the jury?

23 MR. BAILEY: Yes, Your Honor.

24 THE COURT: Madame Clerk, poll the jury.

25 ///

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Richland	)	2009-GS-40-07097
	)	
	)	
State,	)	
	)	
Plaintiff	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Charles Deveaux,	)	
	)	
Defendant	)	

November 7, 2011
Columbia, South Carolina

BEFORE:

The Honorable G. Thomas Cooper

APPEARANCES:

Kathryn Ashton, Solicitor
Attorney for the State

Rhodes Bailey, Esq.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T SWITNESSES:

(There were no witnesses called.)

EXHIBITS:

(There were no State's exhibits introduced.)

(There were no Defendant's exhibits introduced.)

COURT'S EXHIBITS:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Motion	3	

CERTIFICATE OF REPORTER

13

1 (WHEREUPON, Court's Exhibit No. 1 was marked for
2 identification only.)

3 THE COURT: Ms. Ashton, is the State ready to
4 proceed?

5 MS. ASHTON: Yes, Your Honor. We would like to
6 call Charles Deveaux.

7 MR. BAILEY: Your Honor, we'd like to discuss our
8 motion for a new trial that was filed October 21st.

9 THE COURT: Well, it's my --- my recollection
10 that I had signed an order denying those post-trial
11 motions a week or ten days ago. That does not appear
12 to be in the file.

13 MR. BAILEY: Yes, sir.

14 THE COURT: There's a draft of it in my file.

15 I do not have a signed copy or a stamped copy,
16 so I will --- for lack of any other record, those
17 motions are denied.

18 MR. BAILEY: Thank you, Judge. I just would
19 like to --- I had put into --- or I put into the
20 court --- I gave a court reporter a copy of our
21 seven-prong motion for a new trial. I don't need to
22 read through those.

23 I think the record is pretty well preserved, but
24 it's on the basis of these that we moved for a
25 mistrial and a new trial. We still would renew all

1 previous objections and motions. We do not waive any
2 of them, Judge. I want to make sure that it's part
3 of record.

4 THE COURT: I think you're protected on the
5 record. If I don't locate my signed order that was
6 done previous to today, there will be a signed order
7 in the file today.

8 MR. BAILEY: All right. Thank you, Judge. So
9 we can take that as a ruling now ---

10 THE COURT: Yes.

11 MR. BAILEY: --- for purposes of filing, judge?

12 THE COURT: Yes, sir. No new trial as far as
13 this Court is concerned.

14 MR. BAILEY: All right. Thank you, Judge.

15 THE COURT: We may --- I don't know. Is this
16 going to be lengthy?

17 MS. ASHTON: Your Honor, not from the State.

18 THE COURT: I mean, he may want to remain ---
19 would it be better if he remain seated?

20 MR. BAILEY: It's --- it's up to you, judge.

21 THE COURT: I don't know what all these people
22 are doing here.

23 MR. BAILEY: Judge, this is --- a lot of these
24 are his family members. We're only going to have one,
25 his sister speak very small. They're going to be

1 MR. BAILEY: Oh, the first seven days plus...

2 THE COURT: I want to make sure he gets credit
3 for everything.

4 MR. BAILEY: Three days. It looks like it's
5 three days short of three months in 2010.

6 THE COURT: Three days short of three months.

7 MR. BAILEY: Yes, sir.

8 THE COURT: Eighty-seven days?

9 MR. BAILEY: Yes, sir. And then this last from
10 October 13th to today, which I guess would be...

11 THE COURT: A little less than 30 days.
12 Twenty-four days, thereabouts?

13 MR. BAILEY: That sounds fine with me, Judge.

14 (Pause)

15 THE COURT: All right. Mr. Deveaux, you were
16 convicted in this courtroom twice by a jury. I
17 realize the first jury had problems, but at least 11
18 members of that jury felt it was --- there should
19 have been a conviction. You were convicted
20 unanimously by the second jury in October of this
21 year.

22 This sentence carries a mandatory minimum
23 sentence, as you're aware, of 25 years in jail, but
24 the sentence of the Court is you be committed to the
25 State Department of Corrections for a period of 30

1 years. I'll give you credit for 118 days time served.

2 Good luck to you, sir.

3 MR. BAILEY: Thank you, Your Honor.

4 MS. ASHTON: Thank you, Your Honor.

5 UNIDENTIFIED MAN: I love you. Stay strong.

6 UNIDENTIFIED WOMAN: Love you. Oh no, no.

7 (Whereupon, the proceedings were concluded.)

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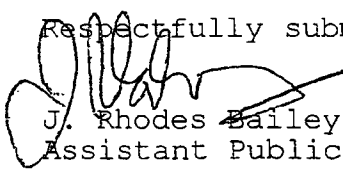
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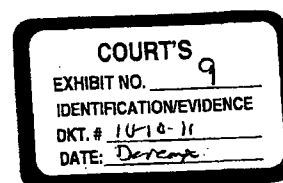
STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	OF THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Indictment # 09-GS-40-07097
	)	
THE STATE OF SOUTH CAROLINA	)	PRE-TRIAL MOTIONS
	)	
VS.	)	
	)	
Charles Deveau	)	
<u>Defendant</u>	)	

Defense counsel will make the following motions pre-trial:

1. Renew Discovery (Rule 5)
2. Riddle Motion
3. Motion to Exclude Prior Bad Acts
4. Motion to Sequester Witnesses in Accordance with Rule 615 SCRE
5. Motion to Prevent State's Witnesses from Giving an Opinion on the Veracity of the Victim's Allegation
6. Motion to Prevent reference to S.C. Code 16-3-657
7. Motion to Prevent State's Witnesses from Inadmissibly Bolstering (Restrict Testimony to Time and Place Rules)
8. Motion to Exclude Prejudicial Terms
9. Motion to Redact 911 Tape
10. Motion in Opposition to State's Motion In Limine in Regards to Officer Hatfield
11. Motion to Redact defendant's Statement regarding any references made to Caitlyn Gray or other allegations under 402, 403, 404b
12. Motion to Redact ARC Interview of Alleged Victim

Respectfully submitted,


 J. Rhodes Bailey
 Assistant Public Defender
 Attorney for the Defendant
 Date:



STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF
 GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

2009-GS-40-7097

VS.)

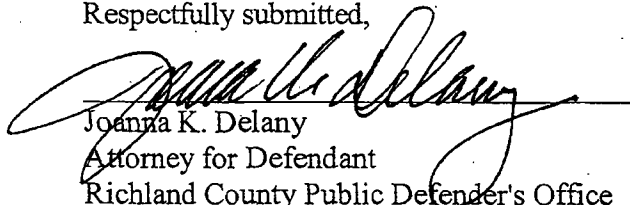
CHARLES DEVEAUX,
 DEFENDANT.)

MOTION IN LIMINE
 TO LIMIT CORROBORATION
 TESTIMONY TO TIME AND PLACE

The Defendant, by and through his attorney, hereby moves this Honorable Court for an Order prohibiting the State's witnesses from offering testimony that inadmissibly bolsters the victim's testimony. Corroborating testimony is limited to the time and place of the assault and cannot include details, particulars, or identity of the perpetrator in a criminal sexual conduct case where the victim testifies.

Counsel submits a memorandum in support of its Motion to Limit Corroboration Testimony to Time and Place, herein attached.

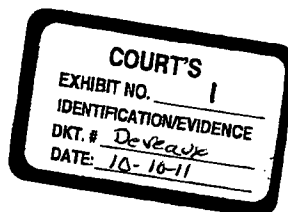
Respectfully submitted,



Joanna K. Delany
 Attorney for Defendant
 Richland County Public Defender's Office
 P.O. Box 192
 Columbia, South Carolina 29202
 (803) 765-2592

Columbia, South Carolina

This 10 day of October, 2011



STATE OF SOUTH CAROLINA	)	IN THE COURT OF
COUNTY OF RICHLAND	)	GENERAL SESSIONS
	)	
STATE OF SOUTH CAROLINA	)	2009-GS-40-7097
	)	
VS.	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANT'S MOTION IN LIMINE
CHARLES DEVEAUX,	)	TO LIMIT CORROBORATION
DEFENDANT.	)	TESTIMONY TO TIME AND PLACE
	)	

The Defendant, by and through his attorney, hereby moves this Honorable Court for an Order prohibiting the State's witnesses from offering testimony that inadmissibly bolsters the victim's testimony. Corroborating testimony is limited to the time and place of the assault and cannot include details, particulars, or identity of the perpetrator in a criminal sexual conduct case where the victim testifies.

LEGAL ARGUMENT

In *Jolly v. State*, the victim testified that Jolly repeatedly engaged in sexual intercourse with her. 314 S.C. 17, 443 S.E.2d 566 (1994). The State then "attempted to bolster the victim's claim that Jolly was the perpetrator by eliciting from a social worker that the child had made a prior statement that Jolly abused her." *Id.* at 568. The State also introduced testimony from the victim's uncle "that the child previously told him and her mother that Jolly abused her." *Id.* In reversing Jolly's conviction, the Court discussed hearsay and addressed the hearsay exception that "in criminal sexual conduct cases, when the victim testifies, evidence from other witnesses that she complained of the sexual assault is admissible in corroboration, limited to the time and place of the assault and excluding details or particulars." *Id.* The Court noted that the testimony at trial was not limited to the time and place of the assault, and held that such corroboration testimony must be limited to the time and place of the assault, and its admission cannot be harmless

“because it is precisely this cumulative effect which enhances the devastating impact of improper corroboration.” *Id.* at 568.

In *Dawkins v. State*, the victim testified in detail about sexual abuse perpetrated by Dawkins. 346 S.C. 151, 551 S.E.2d 260 (2001). Her church counselor, her psychiatrist, a mental health counselor, and the sheriff’s investigator testified about conversations they had with the victim regarding the alleged abuse. *Id.* at 261. Those witnesses named Dawkins as the perpetrator, thereby bolstering victim’s testimony. *Id.* The Court repeated the holding in *Jolly*, stating that “improper corroboration testimony that is merely cumulative to the victim’s testimony cannot be harmless.” *Id.* at 262. It is “precisely this cumulative effect which enhances the devastating impact of improper corroboration.” *Id.* When the victim testifies, evidence from other witnesses that the victim complained of the sexual assault is admissible in corroboration, but must be limited to the time and place of the assault and cannot include details or particulars. *Id.* “Testimony from other witnesses regarding the victim’s identification of the perpetrator does not fall within this hearsay exception.” *Id.*

The Court reiterated these holdings in *Sanchez v. State*, 351 S.C. 270, 569 S.E.2d 363 (2002). In *Sanchez*, the six-year-old victim testified that Sanchez “touched her on her bottom with his dingle”, touched her with “his fingers, not dingle”, and “peed in [her] mouth”. *Sanchez* at 364. The victim’s mother testified as to details the victim had told her about the sexual abuse. *Id.* An officer who had interviewed the victim about the abuse using anatomically correct dolls testified as to how the victim demonstrated the abuse using the dolls. *Id.* The Court reversed, noting that while there is an exception to the hearsay rule allowing limited corroborative testimony in a criminal sexual conduct case

when the victim testifies, evidence from other witnesses that the victim complained of the sexual assault “is limited to the time and place of the assault and cannot include details or particulars or the identity of the perpetrator”. *Id.* at 365 (quoting *Jolly* and *Dawkins*).

In *Smith*, the forensic interviewer’s hearsay testimony improperly corroborated the victim’s testimony because the outcome of the case hinged on the victim’s credibility regarding the identification of the perpetrator. *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010). The forensic interviewer testified that the victim told her that Smith had

sexually assaulted her, and that she found the victim’s statement “believable” and stated the victim had no reason “not to be truthful.” *Id.* at 631. The Court stated that this was improper corroboration testimony as it was not limited to time and place; found that this was improper bolstering which prejudiced the outcome of Smith’s trial, and reversed. *Id.* at 632-633.

Again last month in *State v. Jennings*, Op. No. 27043, the Court echoed these holdings. *Jennings* involved allegations of sexual misconduct towards three minor victims. During Jennings’ trial the State called a forensic interviewer who gave a summary of what each child told her during the her interviews with them regarding the abuse, over objection. *Id.* The State also moved the forensic interviewer’s written reports into evidence over objection. *Id.* The reports outlined what the children had told interviewer, and what the children’s mother told interviewer that the children had told mother. *Id.*

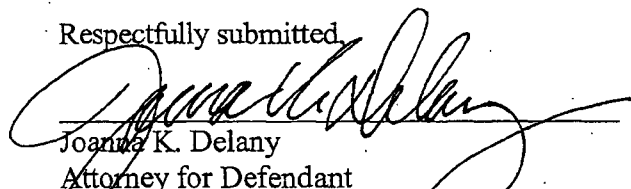
Jennings argued that this was inadmissible hearsay and improperly bolstered the children’s testimony. The court reversed, finding such error was not harmless. The Court cited *Jolly*, *Dawkins*, and *Smith* noting that “where credibility is the

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
COUNTY OF RICHLAND	)	GENERAL SESSIONS
	)	
STATE OF SOUTH CAROLINA	)	2009-GS-40-7097
	)	
VS.	)	
	)	MOTION IN LIMINE
CHARLES DEVEAUX,	)	TO PREVENT REFERENCE TO
DEFENDANT.	)	S.C. CODE § 16-3-657

Pursuant to Rule 20 of the South Carolina Rules of Criminal Procedure, the Defendant, by and through his attorney, objects to this Court instructing the Jury as to South Carolina Code §16-3-657, and would request a ruling on this issue pre-trial so that the State is prohibited from using the statute in their opening or closing statement.

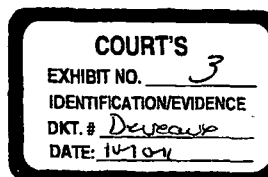
Counsel submits a memorandum in support of its Motion to Prevent Reference to S.C. Code §16-3-657, herein attached.

Respectfully submitted,


 Joanna K. Delany
 Attorney for Defendant
 Richland County Public Defender's Office
 P.O. Box 192
 Columbia, South Carolina 29202
 (803) 765-2592

Columbia, South Carolina

This 10 day of October, 2011



STATE OF SOUTH CAROLINA	)	IN THE COURT OF
COUNTY OF RICHLAND	)	GENERAL SESSIONS
	)	
STATE OF SOUTH CAROLINA	)	2009-GS-40-7097
	)	
VS.	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANT'S MOTION IN LIMINE
CHARLES DEVEAUX,	)	TO PREVENT REFERENCE TO
DEFENDANT.	)	S.C. CODE § 16-3-657
	)	

Pursuant to Rule 20 of the South Carolina Rules of Criminal Procedure, the Defendant, by and through his attorney, objects to this Court instructing the Jury as to South Carolina Code §16-3-657, and would request a ruling on this issue pre-trial so that the State is prohibited from using the statute in their opening or closing statement.

LEGAL ARGUMENT

South Carolina Statute §16-3-657 states: "The testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." A charge pursuant to this section that the testimony of the alleged victim need not be corroborated would constitute an impermissible charge on the facts. Such a charge would highlight the testimony of the alleged victim and give the jury the impression that they do not need to evaluate the victim's credibility.

A trial judge has discretion in determining how to instruct the jury regarding the law and what to include in the charges. However, a trial judge must not indicate an opinion or express a view reasonably calculated to influence the jury in deciding a material factual issue. Article V, § 21 of the South Carolina Constitution specifically provides, "Judges shall not charge juries in respect to matters of fact, but shall declare the law." Therefore, a trial judge cannot convey to the jury, either expressly or impliedly, his opinion of the force and effect of testimony upon any question of fact at issue. *State v. Campbell*, 297 S.C. 24, 374 S.E.2d 668 (1998), *State v. Pruitt*,

187 S.C. 58, 196 S.E. 371 (1938). A trial judge may not issue a charge that has the tendency to indicate his opinion as to weight or sufficiency of evidence, credibility of witnesses, guilt of accused, or any fact in controversy. *State v. Brisbon*, 323 S.C. 323, 474 S.E.2d 433 (1996), *State v. Jackson*, 297 S.C. 523, 377 S.E.2d 570 (1989). A trial judge may not inject into trial his opinion as to truth and veracity of any witness. *State v. Hardee*, 279 S.C. 409, 308 S.E.2d 521 (1983).

In *State v. Grant*, which involved a robbery, the trial judge instructed the jury that they may consider flight as evidence of a guilty knowledge or intent. 275 S.C. 404 (1980). The Supreme Court found that by specifically charging the law of flight, the trial court placed undue emphasis on such evidence. Therefore, the South Carolina Supreme Court found the charge improper. Likewise, in the case at bar, a charge specifically addressing § 16-3-657 will place undue emphasis on the victim's credibility.

In *State v. Rayfield*, the trial court used the statutory language in instructing the Jury as to the law they should consider during deliberations. 631 S.E.2d 244 (2006). The South Carolina Supreme Court stated that, "a trial judge is not required to charge §16-3-657, but when the judge chooses to do so, giving the charge does not constitute reversible error when this single instruction is not unduly emphasized and the charge as a whole comports with the law." *Id.* at 250. The Defendant objects to a jury instruction based on § 16-3-657 and would request that the Court, in its discretion, rule that this statute not be presented to the jury.

Section 16-3-657 is intended to "prevent courts, either on a dispositive motion at the trial level or on appellate review, from finding a lack of sufficient evidence to support a conviction because the alleged victim's testimony is uncorroborated." *Id.* at 251 (Pleicones, J., dissenting).

It is simply a standard for the Court to use in determining whether the case should proceed and be given to the jury. A contrary interpretation of this statute would serve no purpose other than to place undue emphasis on the victim's testimony, because corroboration is never required for a witness to testify. Corroboration may or may not assist the juror in assessing credibility, but it is never required. "By specifically charging that the alleged victim's testimony need not be corroborated, the trial judge singles out the alleged victim and appears to express an opinion on her credibility." *Id.* at 251 (Pleicones, J., dissenting).

Placing this emphasis on the victim's testimony through jury instructions is highly prejudicial to the Defendant and would confuse the jurors as to their duty in weighing the evidence. Furthermore, the Court will instruct the jury as to credibility of all witnesses, in general, and that instruction will convey the same information without singling out the victim's testimony.

The State's specific reference to and use of this statute in their opening or closing statement would also cause the jury to believe that the State of South Carolina holds the credibility of a victim in Criminal Sexual Conduct cases in a higher regard than victims in other cases. The Defendant would not argue that the Solicitor cannot state the proposition that any witness's testimony need not be corroborated, including the victim, but reference directly to the statute directly would unfairly enhance the victim's credibility. This may allow the jury to believe that they may not need to judge the credibility of the victim themselves, as the State has already deemed it to be trustworthy. Because the juror is encouraged to believe the victim's testimony and not demand more, the effect would be that the State's burden to prove the Defendant's guilt would actually be shifted to the Defense to prove his innocence. This burden-

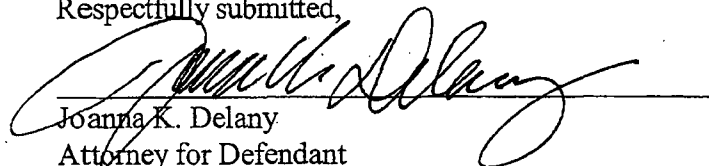
shifting would violate the Defendant's due process rights under the Federal and State constitution.

Additionally, the Defense would assert that improper use of this statute violates the Defendant's right to Equal Protection under Article I Section 3 of the South Carolina State Constitution. The introduction of this statute as a jury instruction would put the Defendant at a greater disadvantage than defendants charged with other crimes where all witness testimony is viewed equally. If allowed, Criminal Sexual Conduct crimes would be the only crimes in South Carolina where the Jury is specifically instructed that they may find the Defendant guilty based on the victim's testimony alone. Conversely, the Equal Protection rights of victims may be affected as the victims in non-Sexual Conduct cases are not afforded this statutory assurance that their testimony does not need corroboration for a conviction to occur.

CONCLUSION

The Court, in exercise of its discretion, should rule that introduction of §16-3-657 to the jury would unfairly enhance the credibility of the victim, and, therefore, the Court should not charge the jury on the statute and the State should not be allowed to reference the statute.

Respectfully submitted,



Joanna K. Delany
Attorney for Defendant
Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina

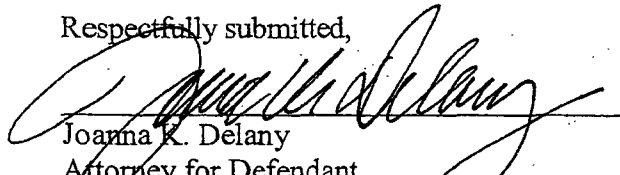
This 10 day of October, 2011

ultimate issue in a case, improper corroboration evidence that is merely cumulative to the victim's testimony is not harmless." *Id.*

CONCLUSION

The Defense hereby moves that this Court order that any corroboration testimony the State seeks to introduce shall be limited to time and place; in accordance with *Jolly*, *Dawkins*, *Sanchez*, *Smith* and *Jennings*.

Respectfully submitted,


Joanna K. Delany
Attorney for Defendant
Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina

This 10 day of October, 2011

COURT'SEXHIBIT NO. 12

IDENTIFICATION/EVIDENCE

DXT. # 10-12-11DATE: Deputy

Welcome to the ARC:**Check - In Log****Date:** 7-23-08**Child's Name:****Age:****DOB:**CHILD10**Name of person(s) who came with child today.****Relation to child:**1. Kathy MyersMother

2. _____

3. _____

4. _____

5. _____

6. _____

**ASSESSMENT & RESOURCE CENTER
CAREGIVER QUESTIONNAIRE
FOR THE FORENSIC INTERVIEW**

X CHILD'S NAME: MINOR SEX: F
 X DATE OF BIRTH: _____ AGE: 10
 X RACE: BLK

Who is filling out this form? Name (Please print): Kathy Myers

Your signature and date: Kathy Myers 7-23-08

Relationship to child:

- ☒ Legal Parent ☐ GAL/CASA ☐ CPS Caseworker
☐ Foster Parent ☐ Therapist ☐ DSS Treatment Worker
☐ Other legal guardian ☐ Law Enforcement ☐ DSS Foster Care Worker

X 1. Who lives with the child now?

Name	Age	Gender (Male or Female)	Relationship
ERIC T.	15	M F	brother
John Myers	36	M F	stepfather
Kathy Myers	35	M F	Mother
		M F	
		M F	
		M F	
		M F	

X Has the child recently moved? ☐ Yes ☒ No If YES, Who lived with the child before?

Name	Age	Gender (Male or Female)	Relationship
		M F	
		M F	
		M F	
		M F	
		M F	
		M F	
		M F	

Does the child have any medical, developmental or learning problems? If YES, please check the appropriate boxes below and explain.

☐ YES
☒ NO
☐ I DON'T KNOW

- ☐ Medical disorder:
- ☐ Mental health disorder:
- ☐ Speech / Language problem:
- ☐ Other:

X3. Has the child experienced any difficulties at school?
 If YES, describe:

☐ YES
☒ NO
☐ I DON'T KNOW

X4. Name of child's school: *Southeast Middle*

Current grade: *6th*

X5. Has there ever been a child abuse investigation involving this child or family before?
 If YES, describe: *Dashanna was about 1 or 2 yrs old when she was first abused*

☒ YES
☐ NO
☐ I DON'T KNOW

X6. Who is suspected of harming the child? (Give name, age) *Queen De Veaux & Charles De Veaux - step father*

X7. How does the child know this person or persons? *She's her step mother*

X8. How often did the child see this person or persons, and when was the last contact? *every other weekend*

X9. Tell us how you came to know there might be a problem. If the child said something to you, tell us what the child said, as close to the exact words as you can remember. *Dashanna told me in June of 11th of 2008 and said that her father sexual abuse her and I ask her how she told me that he put his fingers in her vagina.*

9. (Continued, if needed):

X 10. What does the child know about coming to the ARC today? What was the child told? I told her that she's going to get a full physical, and she have to tell the doctors the same thing she told me.

X 11. Have previous interviews been conducted?

If YES, describe: DSS

☒ YES
☐ NO
☐ I DON'T KNOW

X 12. Do you have concerns about how the child is doing?

If YES, describe:

☐ YES
☐ NO
☐ I DON'T KNOW

X 13. Is the child receiving counseling or mental health services right now?

If YES, describe with whom and for what.

☐ YES
☒ NO
☐ I DON'T KNOW

X 14. What else would you like us to know about the child or the situation?

I would like you to know that both step parents drinks and the wife smokes.

Thank you for answering this questionnaire. The professional who interviews the child will use this information to further guide the process. Do you have questions? Please write them below.

Medical Questionnaire Ages 13 and Above

Teenager Name MINOR Date of Birth _____
 Questionnaire filled out by MOTHER KATHY MURIS
 Your relationship to the teenager MOTHER
 Date of visit 7-23-08

1. Has your teenager been diagnosed with any of these illnesses or medical conditions?
 (check all that apply)

- ☐ Anemia
☐ Asthma
☐ Attention Deficit Disorder w/Hyperactivity (ADHD)
☐ Diabetes
☐ Head injury
☐ Heart murmur
☐ Nasal allergies/sinusitis
☐ Psychiatric or mental illness
☐ Seizures
☐ Urine/bladder infection
☐ Other specify _____

☒ My teenager does not have any of these illnesses.

2. Has your teenager ever been admitted to a hospital? ☒ Yes ☐ No

If yes

- a. What was the admission for? Boto Virus
 b. How old was your child? 1 yr or 2 yr.
 c. Name of hospital and city Baptist Medical

3. Has your teenager ever had any surgeries? ☐ Yes ☒ No

If yes

- a. What was the surgery for? _____
 b. How old was your child? _____
 c. Name of hospital and city _____

4. Does your teenager have any allergies to food or medications? ☐ Yes ☒ No

If yes, please list _____

5. Are your teenager's immunizations up to date? ☒ Yes ☐ No

If no, which are pending? _____

Teenager's Name _____ Date of Birth _____

6. Please check all that apply to your teenager's health at this time

- ☐ Loss of energy
- ☐ Weight loss
- ☐ Weight gain
- ☐ Gums bleed easily
- ☐ Bleeds for a long time after a cut
- ☐ Difficulty hearing
- ☐ Teeth are discolored and break easily
- ☐ Hives
- ☐ Eczema
- ☐ Muscle aches
- ☐ Joint pain or swelling
- ☐ Trouble with eyesight
- ☐ Wears glasses
- ☐ Wheezing

☒ My teenager does not have any of these problems.

7. Is your teenager taking any medications or vitamins now? ☒ Yes ☐ No

If yes, what is he/she taking? _____

What illness/condition is he/she taking this for? _____

Has your teenager ever used birth control that was prescribed by a doctor?

☐ Yes ☒ No

If yes, what kind? _____ For how long? _____

8. Who is your teenager's doctor? Fau Claire Pals

In what town/city does the doctor have his/her practice? _____

Family Medical History

Do any of your teenager's siblings, parents or grandparents suffer any of the following medical conditions? (check all that apply and identify the family member affected by each illness)

- ☐ Anemia _____
- ☐ Asthma _____
- ☐ Delayed in talking, moving around or understanding things _____
- ☒ Diabetes Grandma
- ☐ Had a lot of broken bones _____
- ☐ Had a lot of discolored, broken or chipped teeth _____
- ☒ Heart disease Grandma
- ☐ HIV/AIDS _____
- ☐ Loss of hearing _____
- ☐ Mental retardation _____
- ☐ Nasal allergies _____

Teenager's Name _____ Date of Birth _____

- ☐ Nosebleeds; bruises easily _____
☐ Problems with drugs/alcohol _____
☐ Psychiatric or mental illness _____
☐ Seizures _____
☐ Other (please list) _____
☐ No one in my family has any of these illnesses _____

School Attendance

- a. Please give the name and location of the school your teenager attends: Southeast Middle Horrell Hill
- b. Which grade is your teenager in? 6th
- c. How is your teenager doing in school?
- ☒ Excellent
 ☐ Good
 ☐ Average
 ☐ Failing
- d. If your teenager is failing at school, what is the problem? _____
- _____
- _____
- _____
- _____

Social History

- a. Please list all adults and children currently living in same home as your teenager and their relationship to your teenager:
- Mary M. Myers - Mother
Eric H. - Brother
John Myers - Stepfather
- b. Has your family had any previous involvement with DSS? ☒ Yes ☐ No
- If yes, please list the year and reason for involvement: 2000 Child Abuse
- c. Has there been any domestic violence in your household? ☐ Yes ☒ No

Additional Comments by Healthcare Provider:

Questionnaire reviewed by: _____

Healthcare Provider

Review Date 7-23-08

Medical Response System

Adolescent Medical History

Your Name: [REDACTED]

Your Date of Birth: _____

Date of Visit: 5/77/23/08

Please fill out this questionnaire. Your answers are confidential and will only be available to the physician who will examine you. We will appreciate your honest answers so we can serve you better.

1. Do you smoke cigarettes? ☐ Yes ☒ No
If yes, how many cigarettes a day? _____
2. Have you ever tried alcoholic beverages? ☐ Yes ☒ No
If yes, what kind have you tried? _____
3. Are you currently drinking any alcoholic beverages? ☐ Yes ☒ No
If yes, what kind are you drinking? _____
How many days a week do you drink? _____ How many drinks during those days? _____
4. Have you ever tried drugs? ☐ Yes ☒ No
If yes, which drugs have you tried? _____
5. Are you currently using drugs? ☐ Yes ☒ No
If yes, what drug(s) are you using? _____
How often? _____
6. Have you ever had thoughts of hurting yourself? ☐ Yes ☒ No
If yes, when was the last time you had those thoughts? _____
Did you have a plan of how to hurt yourself? ☐ Yes ☐ No
If yes, please describe your plan. _____
7. Have you ever tried to hurt yourself? ☐ Yes ☒ No
If yes, how did you try to hurt yourself? _____
How many times have you tried to hurt yourself? _____
Have you ever been admitted to a hospital for these attempts? ☐ Yes ☒ No
Have you received any treatment or medications? ☐ Yes ☒ No
If yes, what medications? _____
For how long? _____ Are you still taking the medications? ☐ Yes ☐ No

Your Name: MINOR

Your Date of Birth: _____

8. Have you ever willingly had sex? ☐ Yes ☒ No

If yes, how many different partners have you had sex with? _____

When was the last time you had sex? _____

9. Have you ever had sex without a condom? ☐ Yes ☒ No

If yes, how many partners have you had sex with and not used condoms? _____

10. For females only:

How old were you when you had your first period? 10What was the date of your last period? JuneHave you ever used birth control that was prescribed by a doctor? ☐ Yes ☒ No

If yes, what kind? _____

Additional comments by medical provider:Questionnaire reviewed by: Shirley

Medical Provider

Date: 7-23-08



ASSESSMENT & RESOURCE CENTER FORENSIC INTERVIEW REPORT

CHILD'S NAME: MINOR SEX: Female

DATE OF INITIAL INTERVIEW: 7/23/2008 RACE: Black

DATE OF BIRTH: _____ AGE: 10

REFERRAL SOURCE/AGENCY/PHONE: Jewel Taylor/Richland County DSS/714-7352

INVOLVED AGENCIES: Enter specific personnel and agency name.

☒ Law Enforcement Rob Martin, Richland County Sheriff's Dept., 576-3070

☒ DSS Jewel Taylor, Richland County

☐ Other _____

TYPE OF ABUSE / EVENT SUSPECTED (Check):

☒ Sexual Abuse ☐ Physical Abuse ☐ Neglect

☐ Psychological Abuse ☐ Witness ☐ Other _____

Identity of alleged perpetrator (include full name, age, race): Charles Deveau, 54, B

Relation to child: Father

CHILD INTERVIEW and SUMMARY OF DATA:

Records reviewed / Available in chart:

Collateral Information:

- ☒ LE Records
☐ DSS Records
☒ ARC Intake
☒ Caregiver Questionnaire
☒ Other Records (specify): Letter written by child.

Symptom Assessment:

- ☒ TSCC
☐ TSCYC
☐ CBCL
☐ CSBI
☐ CAPI
☐ Other Symptom Measure: _____

Was interview observed?

☐ Y ☒ N

If yes, by whom?

Was competency assessed?

☐ Y ☒ N

(option for children 4-7 or those with cognitive delays)

Comments:

☐ N/A

Any identified concerns re: allegation distortion?

If yes, describe:

☐ Y ☒ N

- ☐ Fantastic / implausible elements
☐ Concerning for fabricated or contaminated statement
☐ Concerning for false denial / minimization / recantation
☐ Other:

Comments:

Given all available data, this forensic interview is considered:

☒ **Compelling for:**

- ☐ No abuse
☒ Sexual Abuse
☐ Physical Abuse
☐ Psychological Abuse
☐ Neglect
☐ Witness
☐ Other:

Comments:

☐ **Problematic for:**

- ☐ No abuse
☐ Sexual Abuse
☐ Physical Abuse
☐ Psychological Abuse
☐ Neglect
☐ Witness
☐ Other:

Comments:

Summary of abuse / event disclosure (See video for child's complete statement)

☐ No disclosure

Comments:

☒ Disclosure of event(s): Include who / what / when / where / time-frame / contextual details synopsis

Summary: **Minor** discloses one incident of digital penetration by her father. This took place during a week-long visitation with her father near the end of June at his house. **Minor** says that he came into her bedroom, got into bed with her and after squeezing and touching her butt, he put his finger inside of her vagina. She says this was a one time incident. She says she thinks it might have been the Tuesday of the week she was at her dad's that the incident took place. **Minor** states that she was in her room "half asleep" on her bed when her father came in the room. She believes her step-mother was home but asleep. **Minor** states that she was sleeping on her side facing the wall. She states her father got in the bed with her. She says he then got up and put a fan in the window and then got back in the bed with her. She states that he first squeezed her "butt" over her clothes and then touched her butt under her nightclothes and underwear. She says she was wearing a long shirt/nightgown type of thing. She says he then moved her underwear to the side and put his finger in her vagina. She says it felt weird and he was moving it in and out. She says he asked her if it felt good and when she said no, he stopped. She says he then told her to put her shoes on and go outside so he could talk to her. She says she went outside in her night clothes and he asked her if she trusted him and he told her not to tell anyone about it. **Minor** says she did tell her mother prior to being dropped off for her next visit with her father.

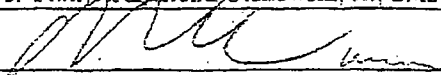
Minor also says that she has memories from when she was three years old of her father and step-mother beating her and locking her in a closet and in her room.

Continuation Section for Disclosure Summary:

RECOMMENDATIONS TO TEAM AND / OR FAMILY:

1. Referred for therapy, Heather Smith from the ARC will contact the family with referral information.
2. Cooperate with DSS and LE investigations.
3. No contact with the father at this time.

Evaluator Name (Type or Print): Raymond Olszewski, Jr., LMSW, AFSW

Evaluator Signature: 

Date: July 23, 2008



ASSESSMENT & RESOURCE CENTER
The Children's Advocacy Center of Richland County

FAX TRANSMITTAL COVER SHEET

TO: Investigator Rob Martin
ORGANIZATION: Richland Co. Sheriff's Dept.
FAX: 576-3162
FROM: Barbara Wymer, Adm. Spec. II
DATE: 7-24-08 TOTAL # OF PAGES (including cover sheet): 4
COMMENTS: Report on D. Anderson. DUD copy of
interview will be mailed out today

PLEASE NOTIFY US IF ALL PAGES ARE NOT RECEIVED:

PHONE: (803) 898-1470

FAX#: (803) 898-1471

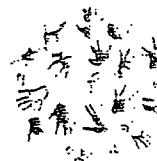
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The ARC is a combined effort of
Children's Hospital of Palmetto Richland, William S. Hall Psychiatric Institute & U.S.C. School of Medicine

Ph (803) 898-1470
Fx (803) 898-1471

PO BOX 179
THE WILSON BUILDING
COLUMBIA, SC 29207



NATIONAL
CHILDREN'S
ALLIANCE
NATIONAL CENTER FOR CHILD ABUSE AND NEGLECT