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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FREDERICK ROBERT CHAPPELL,

APPELLANT.

APPELLATE CASE NO. 2022-000446

RECORD ON APPEAL

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) COURT OF GENERAL SESSIONS
 COUNTY OF GREENVILLE) 2010-GS-23-07901; 07902
)
) **ORIGINAL**
)
 THE STATE)
) PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD
)
 FREDERICK ROBERT CHAPPELL)
) DEFENDANT)

April 4-7, 2022
 Greenville, South Carolina

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, Judge; and a
 jury.

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

JEFF PHILLIPS, ESQ.
 Attorney for the State

RACHEL KEPLEY, ESQ.
 Attorney for the Defendant

APRIL HERRON
 Official Court Reporter

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5 1 State's request to charge 301

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1 April 4, 2022

2 THE COURT: First of all, what motions -- did
3 The State have any motions?

4 MR. PHILLIPS: Got two, Your Honor.

5 THE COURT: All right. I'm not asking to do
6 them right now, just kind of getting planning.

7 MR. PHILLIPS: Right. The first one is
8 regarding the video of the minor. It's a motion for
9 admission to a out-of-court statement of the child.
10 The other one is a motion in limine to -- for
11 compliance with the Rape Shield Law, motion to
12 exclude third party guilt testimony. And I think
13 that's it.

14 THE COURT: All right, how long is the video?

15 MR. PHILLIPS: I think it's about, if I
16 remember, about 45 minutes, somewhere in there.

17 THE COURT: All right.

18 MR. PHILLIPS: I will tell The Court of the
19 original video, I redacted one minute and about 20
20 seconds regarding questioning by the interviewer,
21 does she know the difference between a truth and a
22 lie? Because that is -- has been deemed since that
23 time not proper questioning. So I redacted it and
24 told Defense counsel.

25 THE COURT: I know that stuff changed. What's

1 the most recent case on all this?

2 MR. PHILLIPS: I don't know that there's a case
3 that says you can't question--

4 THE COURT: No, I know, it seems they changed --

5 MR. PHILLIPS: They just simply changed their
6 practices.

7 THE COURT: All right.

8 Ms. Kepley, are you in agreement with the
9 redactions or are there other issues, other than with
10 that video?

11 MS. KEPLEY: I object to the admissibility of
12 it. I haven't looked at the redaction but if they're
13 as described, I think that's appropriate.

14 THE COURT: All right. So what motions for The
15 Defense side?

16 MS. KEPLEY: Your Honor, we have a couple
17 motions. I got a motion to quash the indictment. We
18 have another motion in limine as regards to
19 referencing Ms. Minor who is a complaining
20 witness in this case, as a victim. I have a motion
21 to exclude our reference to her as a victim. And I
22 may be bringing to The Court's attention that, I
23 think, there may be a Lyle issue in this case. I
24 think we will have issues, I think, very much
25 specific to this case, expert testimony. I don't

1 want to -- if we want to go into the admissibility as
2 to that prior to opening, it might have bearing on
3 opening statements, Your Honor.

4 THE COURT: Okay. All right. So how about voir
5 dire? Y'all have any voir dire?

6 MS. KEPLEY: Yes, Your Honor.

7 THE COURT: Did you have voir dire as well?

8 MR. PHILLIPS: I don't, Your Honor. The
9 standard voir dire is fine.

10 THE COURT: What if I don't have standard? What
11 does standard mean?

12 MR. PHILLIPS: I trust Your Honor to figure that
13 out.

14 THE COURT: Oh, wow, I'll try.

15 MR. PHILLIPS: Just having received hers
16 obviously, there's going to be a few things that we.
17 . .

18 THE COURT: All right, let me look.

19 All right, you want to talk about their voir
20 dire? This is what my plan is right now. I'm
21 thinking of -- since we've got some fairly
22 significant motions and some of them would apply, you
23 want to know them before opening statements. I'm
24 thinking that we have motions this afternoon and
25 start with opening statements first thing in the

1 morning. If we do that, do y'all think we can still
2 finish this by Wednesday or possibly Thursday morning
3 or?

4 MR. PHILLIPS: I don't know what The Defense has
5 planned. I'm sure we'll be finished by tomorrow.

6 THE COURT: Okay.

7 MR. PHILLIPS: I don't think The State's case is
8 going to take that long.

9 THE COURT: All right. That's fine. I'm just
10 kind of looking -- I want to make sure y'all have
11 sufficient time so we can hear all these motions.

12 All right. So you have some questions with The
13 Defendant's voir dire?

14 MR. PHILLIPS: Yes, Your Honor, number three. I
15 don't believe it would be a disqualification. Four,
16 five and gets into very specific questions that I
17 just don't think are proper in normal voir dire in
18 our courts.

19 THE COURT: If they work for a law enforcement
20 agency? I think I probably ask that every time.

21 MR. PHILLIPS: Which one was that?

22 THE COURT: You said number three.

23 MR. PHILLIPS: Oh no, three is fine. Four and
24 five.

25 THE COURT: Oh, I thought you said -- what's

1 your objection to four?

2 MR. PHILLIPS: Why would it be -- a jury be
3 disqualified for having any kind of formal legal
4 training--

5 THE COURT: Voir dire does not mean -- it's not
6 a basis for disqualification, it's so that she can
7 have information, or you can have information that
8 may give them -- whether they want to strike or not.

9 MR. PHILLIPS: If you like the question, Your
10 Honor, I'm not going to die on that hill.

11 THE COURT: Well, thank you for giving me that
12 permission.

13 MR. PHILLIPS: Well, I'm not giving you
14 permission, I'm saying I won't die there.

15 THE COURT: Okay. Like I said, I probably ask
16 that in every case, so. Number five.

17 MR. PHILLIPS: Having dealings with, that's
18 pretty broad. I mean, I don't know how we would, you
19 know, then he asked them, what was that interaction?
20 That's getting pretty personal. Then the last
21 question, would it affect being a fair and impartial
22 juror? That's okay. But asking them what kind of
23 interactions they've had with law enforcement.

24 THE COURT: Well, I'll allow it. You're on the
25 record for protection. Anything else?

1 MR. PHILLIPS: All right. I don't have any
2 objection to the rest of it.

3 THE COURT: All right. There's some numbering
4 issues.

5 MR. PHILLIPS: Goes 10 to 15 to 11.

6 THE COURT: Yeah.

7 MS. KEPLEY: Pardon, Your Honor.

8 THE COURT: No, it's like my grandson. All
9 right. I think the -- probably the jury panel is
10 ready to come up. We'll have -- let's see here. Get
11 my little cheat sheet. This is a ten and five. How
12 many people can sit back there?

13 THE BAILIFF: Forty.

14 THE COURT: Forty?

15 THE BAILIFF: Usually.

16 THE COURT: And this is a -- Defense gets ten,
17 State gets five on this one, correct?

18 MS. KEPLEY: That's my understanding, Your
19 Honor.

20 MR. PHILLIPS: I'm sorry?

21 THE COURT: Ten and five on the strikes.

22 MR. PHILLIPS: Yes, Your Honor.

23 THE COURT: And then we'll have two alternates.
24 Let's tell her to bring 45.

25 You're going to have to --

1 THE BAILIFF: We'll get them in. We'll bring
2 some chairs in if we have to. I think I can get 45
3 back there.

4 THE COURT: All right. Mary, call her and tell
5 her we need 45.

6 THE CLERK: Forty-five, yes, sir.

7 MR. PHILLIPS: Did you get a copy of the Rape
8 Shield Law motion, Your Honor?

9 THE COURT: I have not.

10 MR. PHILLIPS: You have not?

11 THE COURT: I haven't got any motions yet. But
12 we're going to strike this jury, we'll tell them to
13 come back in the morning, we'll go to lunch and come
14 back in here about 1:30 and do all our motions at
15 that time. Does that work for everyone?

16 MS. KEPLEY: Yes, sir.

17 THE COURT: That work for you?

18 MR. PHILLIPS: That works, Your Honor.

19 THE COURT: She said it would be just a few
20 minutes. Because I had told her 40. But with these
21 kind of cases you always have those people that
22 you'll have a long line of when you talk about
23 somebody being involved in sexual history and so
24 forth. All right, I'm going to step out for just a
25 second.

1 (WHEREUPON, a short break was taken.)

2 THE COURT: All right, The State ready for the
3 jury?

4 MR. PHILLIPS: Yes, Your Honor.

5 THE COURT: Defense ready for the jury?

6 MS. KEPLEY: Yes, Your Honor.

7 THE COURT: All right. And so we're going to
8 use all the seats so you may. . .

9 All right, well bring them in.

10 (WHEREUPON, the jury venire entered the
11 courtroom at approximately 11:40 a.m.)

12 THE COURT: All right, ladies and gentlemen,
13 good to see you again. This is a different process,
14 as I told you, this is a different process than what
15 we had earlier. I have a series of questions that I
16 will ask you and these questions relate more,
17 specifically, to the case that we are going to --
18 that's up for trial. And the purpose for this case
19 is a couple of things. One, is to determine whether
20 you can be unbiased and impartial in a trial of a
21 case. And some of the questions really are more so
22 that the attorneys can get some more information
23 about you. So when they make a decision on whether
24 to accept or strike you from the jury panel for this
25 case. And that's kind of the purpose for that. So

1 these questions are along those lines.

2 First of all, I will read to you what has
3 been -- I'll read you the indictment. First of all,
4 anything, indictments or arrests or any charges, are
5 things that are not to be considered by the jury when
6 they deliberate. These are merely the papers, the
7 formal papers that brings this matter to court. And
8 is what The State plans to -- anticipates the
9 allegations to prove. But again, these are not
10 things that will be considered by you during the
11 deliberations.

12 And that is that on -- that Frederick Robert
13 Chappell, did in Greenville County between January 1,
14 2006 and March 10th, 2010, commit a sexual battery on
15 a minor, ^{Minor} is her initials, who was less than 11
16 years old. That's one indictment. The second
17 indictment, the allegations are that Frederick Robert
18 Chappell, did in Greenville County between the dates
19 of January 1, 2006 and March 10th, 2010, being over
20 the age of 14, willfully and lewdly, commit or
21 attempt a lewd and lascivious act upon or with the
22 body or its parts of a minor with the initials ^{Minor} a
23 child under the age of 16 years with the intent of
24 arousing, appealing to or gratifying the lust,
25 passions or sexual desires of himself or such child.

1 All right. First of all, I will ask again, The
2 Defendant in this matter is Robert -- I'm sorry,
3 Frederick Robert Chappell.

4 Mr. Chappell, if you'd stand at this time and
5 just face the jury. Thank you.

6 Is anybody related by --

7 I'll get to y'all in a minute, I'll let
8 y'all introduce yourselves in a minute.

9 Is anybody related by blood or marriage,
10 have any close personal, social or business relationship
11 with Frederick Robert Chappell? If so, please stand.

12 (There was no response.)

13 All right. Now, at this time, I will ask that
14 the attorneys stand and introduce themselves. Then
15 I'll ask a question about that.

16 Mr. Phillips, we'll start with you.

17 MR. PHILLIPS: Thank you, Your Honor, may it
18 please the Court.

19 I'm Jeff Phillips, I'm a prosecutor with the
20 13th Circuit Solicitor's Office. And seated with me
21 is Andrea Phillips. Interestingly, she's no
22 relation, she is my investigator, assists me in this
23 case.

24 THE COURT: All right, Ms. Kepley.

25 MS. KEPLEY: Thank you, Your Honor.

1 My name is Rachel Kepley and my cocounsel,
2 Mr. Stewart Sarratt, we're the attorneys representing
3 Mr. Chappell.

4 And I will mention, Your Honor, I do recognize
5 someone.

6 THE COURT: Okay.

7 MS. KEPLEY: My neighbor, Justin is here. I
8 just want to let the court know.

9 THE COURT: All right. That's one of the
10 questions. All right, thank you.

11 Now, have these questions, does -- anybody
12 related by blood or marriage, have a close business
13 or personal relationship with the attorneys in this
14 matter? If so, please stand.

15 Yes, your name.

16 PROSPECTIVE JUROR: I'm Justin Cazel.

17 THE COURT: What's your number?

18 PROSPECTIVE JUROR: Thirty-six.

19 THE COURT: All right. And what is your
20 connection?

21 PROSPECTIVE JUROR: I am neighbors with Attorney
22 Kepley.

23 THE COURT: All right. Do you think that you
24 can still be fair and impartial in the trial of this
25 case?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: All right, thank you.

3 All right, anyone else?

4 (There was no response.)

5 All right. Now, has anybody ever been
6 represented by these attorneys or have you ever been
7 involved in a matter where these attorneys were on
8 the other side of a matter that you were involved
9 with? If so, please stand. Okay and no response.

10 Now, here are -- I'm going to read you a list of
11 witnesses that may be testifying in this case. And
12 again, it's going to be that same question that I'm
13 going to ask you. Is anybody related by blood or
14 marriage, have a close personal, business or social
15 relationship? Basically, do you know these people?

16 So it's Minor Sister Sister

17 Tasha Carter, Christine Carlberg, Erica Van
18 Wagner, Shauna Galloway-Williams, Dr. Nancy
19 Henderson, Cheryl Cromartie, with the Greenville
20 County Sheriff's Office, Jim Perry, with the
21 Greenville County Sheriff's Office, Michael Robertson
22 and Kimberly Cooper. All right, is anybody related
23 by blood or marriage or have a close social, personal
24 or business relationship with any of these
25 individuals? If so, please stand. All right and no

1 response.

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

5 (There was no response.)

6 Okay. Is any member of the jury panel or member
7 of their immediate family related by blood or
8 marriage to anyone who's employed with the Greenville
9 County Sheriff's Office? If so, please stand. Okay
10 and no response.

11 I'm sorry, yes, your name and number?

12 PROSPECTIVE JUROR: Brian Rogers, 187.

13 THE COURT: All right. And how do you respond
14 to that question?

15 PROSPECTIVE JUROR: I have a first cousin that's
16 with the Greenville County Sheriff's Department.

17 THE COURT: All right. It's who?

18 PROSPECTIVE JUROR: Seth Mills.

19 THE COURT: All right. Do you think you could
20 still be fair and impartial in the trial of this
21 case?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: All right, thank you.

24 Is there any member of the jury panel a member
25 of any -- or contributor to any group or organization

1 that promotes alleged victims rights or law
2 enforcement such as MADD, SADD or any other advocacy
3 group which promotes the interest of law enforcement
4 or victims rights? If so, please stand. Okay and no
5 response.

6 Has any member of the jury panel read any
7 newspaper articles or postings, internet sites,
8 social media or any information about this Defendant
9 or any issues relating to this case? If so, please
10 stand. All right and no response.

11 Has any member of the jury panel or member of
12 your immediate family member been a member of a law
13 enforcement agency or worked for a law enforcement
14 agency? If so, please stand.

15 (There was no response.)

16 Okay and no one's worked or has immediate family
17 in law enforcement? All right and no response.

18 Has any member of the jury panel or member of
19 their immediate family related by blood or marriage
20 to anyone who is employed with the solicitor's office
21 for the 13th judicial circuit? Which is Greenville
22 County. If so, please stand. All right and no
23 response.

24 Is there any member of the jury panel a member
25 of any political, religious, social, industrial,

1 internal, law enforcement or other organization whose
2 beliefs or teachings would prejudice him or her
3 against either The State or The Defendant in this
4 matter? If so, please stand. Okay, no response.

5 Is any member of the jury panel aware of any
6 physical, mental or emotional condition which would
7 prevent him or from giving The State and The
8 Defendant a fair and impartial trial? If so, please
9 stand. Okay and no response.

10 Does any member of the jury panel or member of
11 their immediate family now or in the past ever worked
12 for any organization, agency or business which
13 investigated and/or counseled victims or victims
14 families who have been -- have had allegations of
15 sexual assault or molestation? If so, please stand.
16 That's if you're connected with an agency that
17 handles those types of cases. Anybody? All right,
18 no response.

19 Is any member of the jury panel -- and this -- a
20 couple of these next questions may be very -- well
21 they are very personal. And may be the types of
22 questions that you do not want to broadcast. So
23 these types of questions I'm going to stand up here
24 because the court reporter has to take them down and
25 the lawyers have to hear them as well. So is any

1 member of the jury panel or member of their immediate
2 family or close friend been the victim of a sexual
3 assault or abuse? If so, please stand and I'll call
4 you up one at a time.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR: I'm Sylvia Hodge --

7 THE COURT: Oh, wait, hold on.

8 PROSPECTIVE JUROR: Yeah, sorry.

9 THE COURT: That's all right.

10 PROSPECTIVE JUROR: Sylvia Hodge, number 97.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR: I was assaulted by a cousin
13 when I was, like, five years old. I've been a
14 teacher my whole adult career and I'm going to have a
15 real hard time being fair.

16 THE COURT: Okay. So you think you could be
17 fair and impartial?

18 PROSPECTIVE JUROR: I could be but yeah.

19 THE COURT: You think you could?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Well, I think if you can be fair and
22 impartial, in light of that, I'm going to ask you to
23 stay with us.

24 PROSPECTIVE JUROR: Okay, thank you.

25 THE COURT: Yes, your name and number?

1 PROSPECTIVE JUROR: Hannah Godfrey, number 78.

2 THE COURT: Okay. How do you respond to that
3 question?

4 PROSPECTIVE JUROR: My brother rapped me when I
5 was three.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR: But that was it.

8 THE COURT: Okay. Do you believe you can be
9 fair and impartial in the trial of this case?

10 PROSPECTIVE JUROR: Yes, sir, of course.

11 THE COURT: All right, thank you.

12 PROSPECTIVE JUROR: Steven Helms, 94.

13 THE COURT: All right.

14 PROSPECTIVE JUROR: My sister's husband raped
15 and molested my niece and they're going through sex
16 trafficking right now with her.

17 THE COURT: And you're Steven Helms, right?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: Do you think you can be fair and
20 impartial in the trial of this case?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: All right, thank you.

23 Yes, your name and number?

24 PROSPECTIVE JUROR: Aasron Campbell, 29.

25 THE COURT: Okay. Yes.

1 PROSPECTIVE JUROR: My wife was molested by her
2 stepfather when she was a kid.

3 THE COURT: Okay. Could you be fair and
4 impartial in the trial of this case--

5 PROSPECTIVE JUROR: Absolutely.

6 THE COURT: -- and listen to the evidence? And
7 give both sides a fair and impartial trial?

8 PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: All right, thank you.

10 MS. KEPLEY: Number 49 said that sister's
11 husband raped his niece?

12 MR. PHILLIPS: They're part of some sex
13 trafficking thing.

14 THE COURT: Yeah, they were involved, evidently,
15 some -- sex traffic.

16 MR. PHILLIPS: Thanks.

17 THE COURT: Let me see if they're other
18 questions while we're all standing up here.

19 THE CLERK: Your Honor, did you excuse
20 Ms. Hodge?

21 THE COURT: No.

22 THE CLERK: Okay. All right.

23 THE COURT: All right. Next question, is any
24 member of the jury panel or anyone related to you
25 ever sought assistance from, being employed by or

1 perform volunteer work for any center or program
2 whose primary purpose is treating the victims of
3 sexual assault? Again, anybody? All right and no
4 response.

5 Is any member of the jury panel or family member
6 or close friend been the victim of a child
7 molestation? And this is for anybody who had not
8 already come up. Okay, no response.

9 Is any member of the jury panel or family member
10 or close friend been the victim of a sexual assault
11 that hadn't already come forward? Okay, no response.

12 Does any member of the jury panel have any
13 strong feelings for or against the allegations in
14 this case that prevent him or her from giving The
15 Defendant and The State a fair and impartial trial?
16 If so, please stand and come forward to discuss that.
17 All right.

18 (There was no response.)

19 MS. KEPLEY: Your Honor, may we approach?

20 THE COURT: I still got some more questions.

21 MS. KEPLEY: I'm so sorry, I apologize.

22 THE COURT: Okay. I was asking ones that need
23 to come up. Let me get back to where we were here.

24 All right, is any member of the jury panel had
25 any formal or informal legal training that would

1 include law school, college business law courses,
2 paralegal training, law enforcement training or
3 training in the course of their employment? If so,
4 please stand. Anyone had any type of law related
5 formal or informal?

6 Okay, your name and number?

7 PROSPECTIVE JUROR: Pamela Murphy, 153.

8 THE COURT: All right, what kind of training
9 have you had?

10 PROSPECTIVE JUROR: Business law type courses
11 [indiscernible].

12 THE COURT: Okay. Do you think because of that
13 you could still be fair and impartial in the trial of
14 this case?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: All right, thank you.

17 Yes, your name and number?

18 PROSPECTIVE JUROR: James Wiginton, 234.

19 THE COURT: All right. And how do you respond
20 to that question?

21 PROSPECTIVE JUROR: I've also had business law
22 courses in a MBA program.

23 THE COURT: Okay. And because of that training
24 do you think you could still be fair and impartial in
25 the trial of this case?

1 PROSPECTIVE JUROR: Yes, Your Honor.

2 THE COURT: All right, thank you.

3 Gentleman over here.

4 PROSPECTIVE JUROR: I've had business law, MBA.

5 THE COURT: And your name and number.

6 PROSPECTIVE JUROR: Arthur Leonard, 124.

7 THE COURT: All right. And do you think because
8 of that training you can still be fair and impartial
9 in the trial of this case?

10 PROSPECTIVE JUROR: I can.

11 THE COURT: All right. Anyone else?

12 (There was no response.)

13 All right, have you or any member of your
14 immediate family ever had dealings with state,
15 federal or local law enforcement agencies? And I
16 need to know the interaction and whether you could
17 still be fair and impartial in the trial of the case.
18 So has anybody had any dealings with state, federal
19 or local law enforcement agencies? Unless there's
20 something -- I tell you what, I'll have y'all come up
21 on this one, just to be safe.

22 Unless you want to -- do you want to stay there
23 or would you rather come up?

24 PROSPECTIVE JUROR: It don't matter.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR: I have multiple relatives
2 who have been in and out multiple times. Too many
3 things to list.

4 THE COURT: Okay. Do you think you can still be
5 fair and impartial in the trial of this case?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: And your name and number, again?

8 PROSPECTIVE JUROR: Hannah Godfrey, 78.

9 THE COURT: All right, thank you.
10 Anyone else?

11 Yes, your name and number?

12 PROSPECTIVE JUROR: Austin Oliver, 160. My
13 uncle was in prison for a long time. My dad never
14 let me meet him.

15 THE COURT: Okay. And could you still be fair
16 and impartial in the trial of this case?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: You want to come up here?

19 All right, attorneys.

20 Your name and number?

21 PROSPECTIVE JUROR: [indiscernible].

22 THE COURT REPORTER: Judge, I can't hear.

23 THE COURT: All right, let's get over here so
24 she can hear us. Okay.

25 PROSPECTIVE JUROR: Carrie Hanna, 89.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR: My brother was convicted
3 about three years ago -- or it's, actually, 2012 of
4 sexual internet usage. But he's been doing better
5 now so.

6 THE COURT: All right. And because of that
7 could you still be fair and impartial in the trial of
8 this case?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Give both The State and The
11 Defendant a fair trial?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Okay, thank you.

14 All right. Has any juror or member -- no, has
15 any juror been a witness in a criminal case? If so,
16 please stand I have some questions for you. Anybody?

17 (There was no response.)

18 Okay. Has any member of the jury panel served
19 on a prior jury in either state, federal or a local
20 court? If so, please stand. And what I'm going to
21 do is I'm going to ask you what the nature of your --
22 what kind of court and what kind of case it was and
23 whether you could still be fair and impartial in the
24 trial of this case.

25 All right, start with you, your name and number.

1 PROSPECTIVE JUROR: Pamela Murphy, 153. I just
2 served in North Greenville County Summary Court. It
3 was a -- it was a DNR case and graffiti on public
4 property.

5 THE COURT: All right. Could you still be fair
6 and impartial in trial of this case?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: All right, thank you.

9 Your name and number?

10 PROSPECTIVE JUROR: Arthur Leonard, 124. I
11 served on a federal case in Columbia years ago.

12 THE COURT: What kind of case was it?

13 PROSPECTIVE JUROR: Felon in possession of a
14 firearm.

15 THE COURT: All right. Could you still be fair
16 and impartial in the trial of this case?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: All right, thank you.

19 Gentleman in the back.

20 PROSPECTIVE JUROR: Brian Rogers, 187. This was
21 probably 15 years ago, a civil case in this court.

22 THE COURT: All right. Could you still be fair
23 and impartial in the trial of this case?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: All right, thank you.

1 Your name and number?

2 PROSPECTIVE JUROR: Sharleen Rinella, 184.

3 Probably, I think, it's 10 to 12 years ago in
4 Spartanburg County over eminent domain.

5 THE COURT: Okay. And could you still be fair
6 and impartial in the trial of this case?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: All right, thank you.

9 Your name and number?

10 PROSPECTIVE JUROR: James Wiginton, 234.

11 THE COURT: Okay. And what is your response?

12 PROSPECTIVE JUROR: I served in this court, I
13 think, around ten years ago and was a drug related
14 felony case.

15 THE COURT: Okay. And could you be fair and
16 impartial in the trial of this case?

17 PROSPECTIVE JUROR: Yes, Your Honor.

18 THE COURT: All right, thank you.

19 Yes.

20 PROSPECTIVE JUROR: Sylvia Hodge, number 97.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR: I served here probably 15
23 years ago, it was a drunk driver.

24 THE COURT: Okay. And could you still be fair
25 and impartial in the trial of this case?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: All right, thank you.

3 Has any member of the jury panel served on the
4 grand jury in any state or federal court? If so,
5 please stand. And if you were on grand jury, you'll
6 know what that means. I can promise you. All right,
7 no response.

8 Has any member of the jury panel ever worked for
9 the Department of Social Services or commonly known
10 as DSS, child protective services, the Julie
11 Valentine Center or any organization that deals with
12 the welfare of children? If so, please stand. All
13 right and no response.

14 Has any member of the jury panel ever
15 volunteered or donated to an organization whose
16 primary purpose is to advocate for victims of
17 domestic abuse and sexual assault, such as the Julie
18 Valentine Center? If so, please stand.

19 Okay, we'll start with you, your name and
20 number?

21 PROSPECTIVE JUROR: I'm Mary Huber, 102. I
22 have--

23 THE COURT: Hold on, 102?

24 PROSPECTIVE JUROR: Yeah.

25 THE COURT: Okay. Yes.

1 PROSPECTIVE JUROR: I donate to the Julie
2 Valentine Center.

3 THE COURT: Okay. And because of that, could
4 you still be fair and impartial in the trial of this
5 case?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: All right, thank you.

8 PROSPECTIVE JUROR: Katherine Clinkscales, 43.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR: I also donate to the Julie
11 Valentine Center.

12 THE COURT: All right. Could you still be fair
13 and impartial in the trial of this case?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: All right, thank you.

16 PROSPECTIVE JUROR: Jerry Quidort, 175. I
17 donated my past wife's personal items and household
18 items to a women's victims center.

19 THE COURT: Okay. And because of that, could
20 you still be fair and impartial in the trial of this
21 case?

22 PROSPECTIVE JUROR: Oh, sure.

23 THE COURT: Okay, thank you.

24 PROSPECTIVE JUROR: Charles Steven Brown, juror
25 23. Donate several times a year to the Julie

1 Valentine Center.

2 THE COURT: All right. And could you still be
3 fair and impartial in the trial of this case?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: All right, thank you.

6 All right, is any member of the jury panel aware
7 of any bias or prejudice that they would have towards
8 either The State or The Defendant in this matter? If
9 so, please stand. Okay, no response.

10 Any member of the jury panel know of any reason
11 whatsoever that he or she could not serve as a juror
12 in this case and be fair to both The State and The
13 Defendant? If so, please stand.

14 (There was no response.)

15 THE COURT: All right, any additional questions
16 from The State?

17 MR. PHILLIPS: None from The State, Your Honor.

18 THE COURT: Any additional questions from The
19 Defendant?

20 MS. KEPLEY: None, Your Honor.

21 THE COURT: All right. All right, like I said,
22 ten and two, we'll have two alternates. Ten and
23 five, I'm sorry.

24 MS. KEPLEY: Your Honor, I did want to approach,
25 briefly, on one issue.

1 THE COURT: Okay.

2 (WHEREUPON, an off-the-record bench conference
3 was held in the presence of the jury venire but
4 out of the hearing of the jury venire.)

5 THE COURT: All right, The State ready?

6 MR. PHILLIPS: Yes, Your Honor.

7 THE COURT: The Defense ready?

8 MS. KEPLEY: Yes, Your Honor.

9 THE COURT: Okay.

10 THE CLERK: When I call your name, if you'd
11 please stand in place and wait for further
12 instructions.

13 Juror 78, Hanna Godfrey.

14 (Hanna Godfrey, a white female, stood.)

15 What says The State?

16 MR. PHILLIPS: Please present the trial -- for
17 the trial of this case.

18 THE CLERK: Thank you.

19 What says The Defendant?

20 MS. KEPLEY: Please excuse this juror.

21 THE CLERK: All right. Ma'am, you may be
22 seated, you have been excused from this case.

23 Juror No. 29, Aaron Campbell.

24 (Aaron Campbell, a white male, stood.)

25 What says The State?

1 MR. PHILLIPS: Give me one second. I'm sorry.
2 Please present the juror for the trial of this case.

3 THE CLERK: What says The Defendant?

4 MS. KEPLEY: Please excuse the juror.

5 THE CLERK: You may be seated, sir, you've been
6 excused from this case.

7 Juror No. 175, Jerry Quidort.

8 (Jerry Quidort, a white male, stood.)

9 What says The State?

10 MR. PHILLIPS: Please present the juror for the
11 trial of this case.

12 THE CLERK: What says The Defendant?

13 MS. KEPLEY: Beg the Court's indulgence.

14 THE CLERK: Yes.

15 MS. KEPLEY: Please seat the juror.

16 THE CLERK: Sir, if you'll please bring your
17 things, come have a seat in the jury box.

18 Juror 168, Ashley Polk.

19 (Ashley Polk, a white female, stood.)

20 What says The State?

21 MR. PHILLIPS: Please present the juror in the
22 trial of this case.

23 THE CLERK: What says The Defendant?

24 MS. KEPLEY: Please seat the juror.

25 THE CLERK: All right, Ms. Polk, please bring

1 your things, have a seat in the jury box.

2 Juror No. 99, Chandler Holmes.

3 (Chandler Holmes, a white male, stood.)

4 What says The State?

5 MR. PHILLIPS: Please present this juror.

6 THE CLERK: Thank you.

7 What says The Defendant?

8 MS. KEPLEY: Please seat the juror.

9 THE CLERK: Mr. Holmes, please come have a seat
10 in the jury box.

11 Juror 140, Phyllis McCall.

12 (Phyllis McCall, a white female, stood.)

13 What says The State?

14 MR. PHILLIPS: Please present Mr. . . .

15 THE CLERK: What says The Defendant?

16 MS. KEPLEY: Please excuse the juror.

17 THE CLERK: All right, you may be seated, ma'am,
18 you have been excused from this case.

19 Juror 86, Sherra Guess.

20 (Sherra Guess, a black female, stood.)

21 What says The State?

22 MR. PHILLIPS: What was the number?

23 THE CLERK: 86.

24 MR. PHILLIPS: Please present this juror.

25 THE CLERK: What says The Defendant?

1 MS. KEPLEY: Please seat the juror.

2 THE CLERK: Ma'am, please bring your things come
3 have a seat in the jury box.

4 Juror No. 97, Sylvia Hodge.

5 (Sylvia Hodge, a white female, stood.)

6 What says The State?

7 MR. PHILLIPS: Please present this juror for the
8 trial of this case.

9 THE CLERK: What says The Defendant?

10 MS. KEPLEY: Please excuse this juror.

11 THE CLERK: You may be seated, ma'am, you've
12 been excused from this case.

13 Juror 43, Katherine Clinkscates.

14 (Katherine Clinkscates, a white female, stood.)

15 What says The State?

16 MR. PHILLIPS: Please present this juror.

17 THE CLERK: What says The Defendant?

18 MS. KEPLEY: Please excuse the juror.

19 THE CLERK: You may be seated, you've been
20 excused from this case.

21 Juror No. 200, Dakota Sherrill.

22 (Dakota Sherrill, a white male, stood.)

23 What says The State?

24 MR. PHILLIPS: Please excuse this juror from the
25 trial of this case.

1 THE CLERK: You may be seated, you've been
2 excused from this case.

3 Juror No. 108, Charles Jennings.

4 (Charles Jennings, a white male, stood.)

5 What says The State?

6 MR. PHILLIPS: Please excuse this juror from the
7 trial of this case.

8 THE CLERK: All right, you may be seated, sir.

9 Juror 180, Terri Reynoso.

10 (Terri Reynoso, a white female, stood.)

11 What says The State?

12 MR. PHILLIPS: Please excuse this juror from the
13 trial of this case.

14 THE CLERK: You may be seated, you've been
15 excused from this case.

16 Juror 187, Brian Rogers.

17 (Brian Rogers, a white male, stood.)

18 What says The State?

19 MR. PHILLIPS: Please present this juror.

20 THE CLERK: What says The Defendant?

21 MS. KEPLEY: Please excuse this juror.

22 THE CLERK: You may be seated, sir, you've been
23 excused from this case.

24 Juror 236, Angel Williams.

25 (Angel Williams, a black female, stood.)

1 What says The State?

2 MR. PHILLIPS: Please present this juror.

3 THE CLERK: What says The Defendant?

4 MS. KEPLEY: Please seat the juror.

5 THE CLERK: Please, ma'am, have a seat in the
6 jury box.

7 Juror 152, James Murphy.

8 (Xames Murphy, a white male, stood.)

9 What says The State?

10 MR. PHILLIPS: Please present this juror.

11 THE CLERK: What says The Defendant?

12 MS. KEPLEY: Please excuse this juror.

13 THE CLERK: You may be seated, sir, you've been
14 excused from this case.

15 Juror 184, Sharleen Rinella.

16 (Sharleen Rinella, a white female, stood.)

17 What says The State?

18 MR. PHILLIPS: Please present this juror.

19 THE CLERK: What says the Defendant?

20 MS. KEPLEY: Please seat this juror.

21 THE CLERK: All right, ma'am, please come have a
22 seat in the jury box.

23 Juror 124, Arthur Leonard.

24 (Arthur Leonard, a white male, stood.)

25 What say The State?

1 THE COURT: Please present this juror.

2 THE CLERK: What says The Defendant?

3 MS. KEPLEY: Please seat the juror.

4 THE CLERK: Sir, please come have a seat in the
5 jury box.

6 Juror 96, Raymond Herr.

7 (Raymond Herr, a white male, stood.)

8 What says The State?

9 MR. PHILLIPS: Please excuse this juror from the
10 trial of this case.

11 THE CLERK: All right, sir, you may be seated.

12 THE COURT: That's four, I got four.

13 MR. PHILLIPS: Yes, Your Honor.

14 THE COURT: Okay.

15 THE CLERK: Juror 192, Matthew Rushing.

16 (Matthew Rushing, a white male, stood.)

17 What says The State?

18 MR. PHILLIPS: Please present this juror.

19 THE CLERK: What says The Defendant?

20 MS. KEPLEY: Please seat the juror.

21 THE CLERK: Sir, please come have a seat in the
22 jury box.

23 Juror 36, Justin Cazel.

24 (Justin Cazel, a white male, stood.)

25 What says The State?

1 MR. PHILLIPS: What's that number, I'm sorry?

2 THE CLERK: Number is 36.

3 MR. PHILLIPS: The neighbor. I think I have to
4 excuse him.

5 THE CLERK: All right.

6 Juror 100, Heng Hong.

7 (Heng Hong, a Asian male, stood.)

8 MR. PHILLIPS: Please present this juror.

9 THE CLERK: Thank you.

10 What says The Defendant?

11 MS. KEPLEY: Please seat the juror.

12 THE CLERK: All right, sir, please take a seat
13 in the jury box.

14 Juror 87, Ronald Hagood.

15 (Ronald Hagood, a white male, stood.)

16 What says The State?

17 MR. PHILLIPS: Please present this juror.

18 THE CLERK: What says The Defendant?

19 MS. KEPLEY: Please seat the juror.

20 THE CLERK: Sir, please come have seat in the
21 jury box.

22 Juror 68, Nikeisha Gamble.

23 (Nikeisha Gamble, a black female, stood.)

24 What says The State?

25 MR. PHILLIPS: Please present this juror.

1 THE CLERK: What says The defendant?

2 MS. KEPLEY: Please seat the juror.

3 THE CLERK: Ma'am, please come have a seat in
4 the jury box.

5 Juror 207, Deborah Smith.

6 (Deborah Smith, a white female, stood.)

7 What says The State?

8 MR. PHILLIPS: Please present this juror.

9 THE CLERK: Thank you.

10 What says The Defendant?

11 MS. KEPLEY: Please excuse this juror.

12 THE CLERK: All right, you may be seated, ma'am.

13 Juror 14, Elizabeth Bell.

14 (Elizabeth Bell, a white female, stood.)

15 What says The State?

16 MR. PHILLIPS: Please present this juror.

17 THE CLERK: What says The Defendant?

18 MR. PHILLIPS: Please excuse this juror.

19 THE CLERK: You may be seated, ma'am, you have
20 been excused from this case.

21 Juror 89, Carrie Hanna.

22 (Carrie Hanna, a white female, stood.)

23 What says The State?

24 MR. PHILLIPS: Please present this juror.

25 THE CLERK: What says The Defendant?

1 MS. KEPLEY: Please excuse this juror.

2 THE CLERK: You may be seated, you have been
3 excused from this case.

4 THE COURT: All right that's ten, okay.

5 THE CLERK: Juror 210, William Smith.

6 (William Smith, a black male, stood.)

7 What says The State?

8 MR. PHILLIPS: Please present this juror.

9 THE CLERK: What says The Defendant?

10 MS. KEPLEY: Please seat the juror.

11 THE CLERK: All right, sir, please have a seat
12 in the jury box.

13 THE COURT: All right, that's 12. And now for
14 our alternates.

15 MR. PHILLIPS: Two and one, Your Honor?

16 THE COURT: Yes.

17 THE CLERK: Okay, juror 153, Pamela Murphy.

18 (Pamela Murphy, a white female, stood.)

19 What says The State?

20 MR. PHILLIPS: Please present this juror.

21 THE CLERK: What says The Defendant?

22 MS. KEPLEY: Please seat the juror.

23 THE CLERK: All right, please have a seat in the
24 jury box.

25 THE COURT: All right, the next alternate.

1 THE CLERK: Juror six, Emily Artus.

2 (Emily Artus, a white female, stood.)

3 What says The State?

4 MR. PHILLIPS: Please present the juror.

5 THE CLERK: What says The Defendant?

6 MS. KEPLEY: Please seat the juror.

7 THE CLERK: All right, ma'am, please have a seat
8 in the jury box.

9 THE COURT: All right, any objection to jury
10 selection process from The State?

11 MR. PHILLIPS: None from The State, Your Honor.

12 THE COURT: Anything from The Defense, other
13 than what's previously noted on the record?

14 MS. KEPLEY: Yes, Your Honor, nothing other than
15 that.

16 THE COURT: All right, okay. We'll talk to this
17 crowd first and then I'm going to talk to this crowd,
18 all right. Ladies and gentlemen, y'all have been
19 selected for the jury of this case. Now, we have
20 some other matters to go over involving a case, some
21 matters involving other cases that we have to deal
22 with this afternoon. Since it's lunchtime and it
23 will be, you know, well into the afternoon before we
24 could, actually, start the case, we just decided that
25 you will -- just have y'all come back first thing in

1 the morning to start the case, okay. And then we'll
2 shoot for 9:30, does that work for everybody? Okay.
3 And the bailiff will tell you where you need to be.

4 Now, it's very, very important that you follow a
5 couple of rules, okay. And that is that you not
6 discuss the case. I realize you don't have any
7 information about the case but still it's improper
8 and prohibited for you discussing the case among
9 yourself or with family members or friends. And I
10 know that's difficult to do but that's something you
11 have to do when you take your oath tomorrow, that's
12 what you're taking your oath saying you're going to
13 do. Second thing is, you're not to do any type of
14 research. You're not to Google the law, the parties,
15 anything about this case. Because, ultimately, what
16 you're going to do is everything that you need to
17 make a decision, you'll get in this courtroom by
18 evidence that's presented in this courtroom and under
19 our rules of evidence. And our rules that apply in
20 the courtroom. And that's very important too.

21 Also, I'm not aware of any media coverage
22 regarding this case but if there should be any media
23 coverage, please disregard it, do not pay any
24 attention to it or watch any media coverage. That
25 includes any kind of social media or anything like

1 that. Again, it's important that all the information
2 that you get, you get in this courtroom and not from
3 any other source. And the final thing, and I've
4 never had this happen but I just always throw this
5 out too. If anybody should contact you about this
6 case, other than somebody from the clerk's office,
7 then please let the bailiff know that in the morning.

8 Like I said, we should start this case and I
9 expect that the case will last tomorrow and
10 Wednesday. We kind of, as a caveat, said that it
11 could go into Thursday morning. So that's for your
12 planning purpose. I'm just kind of letting you know
13 that. Sometimes, though, it's difficult for the
14 attorneys to figure out exactly where a case is going
15 and how long it's going to be. So that's why I want
16 to make sure that everybody is aware of how long it
17 could last. So other than that, y'all have a good
18 rest of your afternoon. And we'll see you back at
19 9:30 in the morning. Thank you. At this time, if
20 you will follow the bailiff.

21 (WHEREUPON, the jury left open court and was
22 excused for the day at approximately 12:22 p.m.)

23 THE COURT: All right, ladies and gentlemen, at
24 this time, I'm going to send you back downstairs but
25 only for -- just instructions. We're not going to

1 hold you in and try to starve you out for the day.
2 And I anticipate that she'll tell you -- whatever she
3 tells you, don't, you know, conflicts with what I'm
4 telling you, you pay attention to her. And that is
5 we expect there to be possibly another trial starting
6 in the morning. So probably what she will do is tell
7 you to call back after six o'clock tonight on the
8 number. And that way you will have instructions of
9 what you need to do. So I expect that I will see
10 some of you, maybe, as the week progresses, I may
11 not. And I do want to, again, take this time, in
12 case I don't see you, to thank you so much for your
13 coming in. With that, like I say, go back
14 downstairs. And like I said, she's just got some
15 additional instructions to give you before she lets
16 you go for the day. So all right. Y'all have a good
17 afternoon, thanks again.

18 (WHEREUPON, the jury venire was excused at
19 approximately 12:23 p.m.)

20 THE COURT: All right, if y'all have any of
21 those actual written motions y'all could present. I
22 would like to start back -- I've got some things I
23 got to deal with here at lunch. Let's start back at
24 1:45. Does that work for y'all?

25 MR. PHILLIPS: That works for me, Your Honor.

1 MS. KEPLEY: That's fine, Your Honor.

2 THE COURT: Y'all have any written motions I can
3 be looking at?

4 MS. KEPLEY: I do. I've given Mr. Phillips a
5 copy.

6 THE COURT: All right.

7 MR. PHILLIPS: Do you want -- you're probably
8 going to want to wait for requests to charge but
9 there's one issue that I didn't know if you wanted to
10 address in your first instructions to the jury. And
11 The Defense may or may not want this instruction as
12 well. But because this case is so old, a 2010 case,
13 I didn't want them to hold that against either The
14 State or The Defendant and start trying to guess is
15 this case back on appeal or whatever.

16 THE COURT: We'll address all motions this
17 afternoon.

18 MR. PHILLIPS: All right. That was in a request
19 to charge.

20 THE COURT: Okay, yeah, we can figure out how
21 to. . . All right, we'll see you back at 1:45.

22 (WHEREUPON, a lunch break was taken.)

23 (WHEREUPON, State's Exhibit No. 1 was marked for
24 identification only.)

25 THE COURT: Before we forget, Ms. Kepley,

1 anything you want to put on the record for our jury?

2 MS. KEPLEY: Yes, sir, Your Honor. I believe I
3 have the juror number with me.

4 THE COURT: It was Ms. Hodge, I believe.

5 MS. KEPLEY: Yes, it was Ms. Hodge. You are
6 correct, Your Honor. She was number 97, I'm told.
7 We just want to put an objection to her on the record
8 that some of that may have been stricken for cause.
9 We, The Defense, argue that during her talk to The
10 Court she did indicate that she would have some
11 difficulty, I think was her word, with being
12 impartial in a case of this nature. And we would
13 just like to place that objection on the record, Your
14 Honor.

15 THE COURT: All right. I think that you're
16 referencing juror number 97. And as I told you and
17 you objected to that prior to the jury selection on
18 the sidebar. And as I told you at that time, it's my
19 understanding, my recollection was at first she did
20 go into, like, I was -- I can't remember which, she
21 had some sexual abuse in the past and that she did
22 kind of waffle a little bit at first. But then when
23 I, specifically, asked her, can you be fair and
24 impartial in the trial of this case? And she said,
25 Yes, I can. And I think based on that, that's why I

1 denied your motion for cause. But I understand your
2 concern there. And, I believe, you did use one of
3 your strikes for her.

4 All right. Okay. We will start -- let's just
5 start with The State's motions.

6 MR. PHILLIPS: Your Honor, regarding The State's
7 motions, we got a question on how you want to handle
8 things. We have the video that we talked about. We
9 didn't know if you wanted to review in-camera or in
10 court with everybody watching. Or in conjunction
11 with that question, we have the original video from
12 the first trial 10 years ago. And it is properly
13 initialed by the interviewer. The one minute we
14 redacted out of the original video regarding the
15 questions about truth, knowing the truth and lies,
16 she hasn't viewed this video. And so we don't know
17 if you want to save this for last to give her a
18 chance to look at it or if you want her to review it
19 while everybody looks at it in the courtroom,
20 however, you want to handle it.

21 THE COURT: What's your -- do you have a
22 preference?

23 MS. KEPLEY: I don't certainly have a preference
24 one way or the other, Your Honor.

25 THE COURT: All right, let's -- because we don't

1 have -- you know, sometimes we have issues in trying
2 to play back anything in the office. So we may want
3 to make sure we can do it in here. And also, that
4 gives us a test run to make sure we can do it in here
5 when the time comes.

6 MR. PHILLIPS: Yeah, we got the DVD player
7 hooked up but whether it works or not--

8 THE COURT: Yeah, hold that then for -- let's
9 hear the rest of the motions then address that one.

10 MR. PHILLIPS: Okay.

11 THE COURT: Let's do that.

12 MR. PHILLIPS: She has a copy, right? And she's
13 able to watch it? Okay, she's watching it now, so.

14 THE COURT: Who is she?

15 MR. PHILLIPS: The forensic interviewer.

16 THE COURT: Oh, okay.

17 MR. PHILLIPS: The -- other than that, the
18 motions were just -- let me get them here. The
19 motion in limine for compliance with the Rape Shield
20 Law.

21 THE COURT: All right.

22 MS. KEPLEY: There's no objection to that, Your
23 Honor.

24 THE COURT: I was fixing to say. Usually, it's
25 the other way around, isn't it?

1 MR. PHILLIPS: It's just--

2 THE COURT: All right, so you consent to that
3 that you complied with the Rape Shield Law?

4 MS. KEPLEY: Yes, sir.

5 MR. PHILLIPS: Motion to exclude third party
6 guilt testimony. Obviously, try to blame it on
7 somebody else. The only reason this came up is--

8 THE COURT: Do you have a written motion or is
9 that just?

10 MR. PHILLIPS: I thought --

11 THE WITNESS: Well, I got a couple of papers
12 here. But I've got a motion in limine for the rape
13 shield and a motion for out-of-court statement. But
14 I don't think I have that.

15 MR. PHILLIPS: Okay.

16 THE COURT: Okay.

17 MR. PHILLIPS: And it wasn't an issue in the
18 first trial but while he was in the Department of
19 Corrections, The Defendant contacted the victim. And
20 had a conversation with her online. And in that
21 conversation he alluded to the fact that somebody
22 else may have done this to her. And with, obviously,
23 no basis for that whatsoever. And so with -- out of
24 an abundance of caution, we wanted to make this a
25 motion but, again, if he's not going to try to say

1 somebody else did anything to her, then it shouldn't
2 be an issue.

3 MS. KEPLEY: No, objection, Your Honor. I don't
4 expect that will be an issue at all.

5 MR. PHILLIPS: Okay, well these are going
6 quickly. I think the only other motion we have,
7 other than that, was that motion regarding the video.

8 THE COURT: Okay, which we'll need to review,
9 okay. And we'll let you hold that one in abeyance at
10 the conclusion. So. All right.

11 Ms. Kepley, anything?

12 MS. KEPLEY: Yes, Your Honor, I make a motion to
13 sequester all the witnesses in this case.
14 Especially, given the time that elapsed
15 [indiscernible] would certainly help to ensure a fair
16 trial.

17 THE COURT: All right.

18 MR. PHILLIPS: No objection to that. Need to
19 figure out who we are allowed to have in. Obviously,
20 the victim. The lead investigator can be in here.
21 And this is where it gets kind of weird. The
22 victim's parents are allowed to be in the courtroom
23 as well. But that's kind of assuming that the victim
24 is the age of minority. She is now the age of
25 majority. So I don't know how that works, quite

1 frankly.

2 THE COURT: Are they a witness?

3 MR. PHILLIPS: Only her mom is a witness.

4 THE COURT: But the father is not?

5 MR. PHILLIPS: The father is not.

6 THE COURT: All right.

7 Ms. Kepley, your position on that?

8 MS. KEPLEY: I think the motion to sequester
9 should certainly apply to the mother if she's going
10 to be testifying.

11 THE COURT: And I'm going to -- I know your
12 concern is maybe moral support, stuff like that. But
13 I think that she is the age of majority. I think her
14 father -- her father, since her father's not going to
15 be a witness, then we will allow her father.

16 MR. PHILLIPS: I understand, Your Honor. I just
17 thought of another one, I didn't think of it being a
18 motion per se, but we need to address it. We need to
19 address the fact that The Defendant, where he is
20 sitting, he has been constantly making eye contact
21 with the -- with the area back here where the
22 witnesses have been. Even when the witnesses weren't
23 in with our victim advocate. He needs to be sitting
24 facing the front, instead of facing that way.

25 THE COURT: Well, I'm not going to tell him

1 where to sit but I am going to tell you, like I tell
2 any defendant or party, that they are to, you know,
3 conduct themselves in a manner that is appropriate in
4 court. And not to do anything to try to intimidate
5 witnesses. And if that becomes an issue, then we'll
6 address that at that time.

7 MR. PHILLIPS: Okay, Your Honor, thank you.

8 THE COURT: All right, so motion to sequester is
9 granted. The victim and lead investigator will be
10 allowed to be here and no other witnesses will be.

11 MR. PHILLIPS: In addition to that, once a
12 witness testifies, they can stay in; is that correct?

13 THE COURT: Well, it depends. I mean, I don't
14 know if they're through testifying or not.

15 MR. PHILLIPS: Okay.

16 THE COURT: You know, I mean, they can always be
17 recalled or something like that.

18 MR. PHILLIPS: They could. They could. I
19 understand your position.

20 THE COURT: Okay.

21 Yes, all right.

22 MS. KEPLEY: Thank you, Your Honor. As to one
23 of the other ones of our motions, I passed up there a
24 motion in limine to exclude all references to
25 referring to her as the victim. And as I sought in

1 my motion, the victim is currently a term that
2 presupposes that a crime has happened. That's a fact
3 for the jury here to decide. I'm sure there's case
4 law on that. But I would ask that anyone who is
5 referring to her through the course of this trial,
6 they refer to her by name or as a complaining
7 witness. So it's not to presuppose any crime or
8 criminal act that would certainly influence,
9 naturally, the jury, Your Honor.

10 THE COURT: Let me find that. I even got the
11 written motion in here I saw, somewhere.

12 Mr. Phillips?

13 MR. PHILLIPS: I have never had that motion to
14 ever seen or be granted in trial. I don't think
15 there's anything prejudicial about calling the victim
16 what she is, what she's alleged to be. And even if
17 it's not proven beyond a reasonable doubt, she is
18 still alleged to be the victim. Just as The
19 Defendant is The Defendant. There's no reason that
20 we can't call the victim a victim. Because she was
21 the victim, at least, allegedly, of a criminal sexual
22 crime.

23 MS. KEPLEY: I would say, Your Honor, whether or
24 not she's a victim is a fact for the jury to decide.
25 It's not what she is. At this point, she's a

1 witness, a complaining witness. And whether or not
2 she's a victim is going to be the sole purview of the
3 jury. I think any terms, especially, loaded terms
4 used throughout this trial, could certainly influence
5 the jury. I think it's also very easy to not use it.
6 She has a name, call her witness. So I think the
7 presumption of innocence is a powerful one. I think,
8 that Mr. Chappell has a right to a fair and impartial
9 trial. And I think excluding that term, would
10 certainly assure that, Your Honor --

11 THE COURT: Did the cases that you have cited in
12 your motion, Caughman vs. U.S. and Taylor vs.
13 Kentucky, do they address the victim or they just
14 address the presumption of innocence?

15 MS. KEPLEY: They address the presumption of
16 innocence, Your Honor.

17 THE COURT: I mean, do you have any authority to
18 say that that?

19 MS. KEPLEY: Not in this jurisdiction. There
20 are certainly federal courts and other circuits that
21 have established that certainly victim is not a term
22 that should be allowed. But that is a question for
23 the jury. But there is not any case law exactly on
24 point in this jurisdiction, Your Honor.

25 THE COURT: All right. I'm going to take a look

1 at those cases and I'll let you know what I come up
2 with on that.

3 MS. KEPLEY: Okay, thank you, Your Honor.

4 THE COURT: All right.

5 MS. KEPLEY: All right, the other motion The
6 Defense would have, Your Honor, is a motion to quash
7 the indictment. The basis for that would -- is
8 primarily under the State v. Baker case. It's a 2015
9 case that says, essentially, when an indictment is so
10 large, without any sort of specificity, that, you
11 know, that it really takes away the ability of a
12 defendant to present a complete defense, which is a
13 right they have. Part of a complete defense would be
14 an alibi defense. We're talking about a period of
15 four years. That's what the indictment states.
16 State v. Baker is a period of six years. And the
17 courts have said just because the charge is of a
18 certain nature, doesn't mean that the defendant can't
19 have any sort of specificity.

20 And I think the issue, too, is going to be
21 Mr. Chappell was certainly in and out of this
22 residency, he was a truck driver by trade. So if
23 there were some sort of specific window, you know, we
24 could have, potentially, presented some sort of alibi
25 defense. We absolutely cannot do at this point

1 because the video is so completely broad to deprive
2 him of that right. So for that reason, we'd ask to
3 quash the indictment, essentially, constitutionally
4 overbroad.

5 THE COURT: Mr. Phillips.

6 MR. PHILLIPS: Your Honor, to be honest, I had
7 not read State vs. Baker before today. I started
8 reading it and I only got through Page 5. But Page
9 5, I think, is good enough. This case is so
10 distinguishable, it's not even to be on the same
11 playing field. In State v. Baker, the prosecution,
12 initially, indicted him for periods covering three
13 different summers, over three different years. Two
14 weeks before trial, they all of a sudden expanded
15 that to make it six continuous years. And The Court
16 said because he didn't have time in two weeks to
17 cover that six years, then it was -- it was too much
18 for them to have to cover.

19 It was a time problem, as far as what they had
20 to prepare for trial. It wasn't a timeframe for the
21 indictment. The indictment, in this case, only
22 covers four years and he's had 12 years to prepare
23 for it. So if he can't prepare for the coverage of
24 the indictment in that length of time, then I think
25 there's a big problem.

1 The additional thing that I would like to tell
2 The Court, and, I believe -- again, I didn't try this
3 case the first time, Mr. Moyer did. Mr. Moyer is a
4 fine attorney, this was never raised as an issue,
5 even in the first trial or in the appeal. And the
6 issue in the appeal -- the only reason this case got
7 overturned was that the -- the -- the blind expert
8 said one line too many. She said children don't lie
9 in these circumstances. She says children lie,
10 adults lie, but when they've been the subject of
11 sexual abuse, they don't lie.

12 THE COURT: I'm vaguely familiar with that case.

13 MR. PHILLIPS: Okay.

14 THE COURT: I think Judge Short is a smarter,
15 much wiser jurist than some of the others.

16 MR. PHILLIPS: Which case are we talking about?

17 THE COURT: The one he overturned me. Yeah,
18 that's my PCR.

19 MR. PHILLIPS: Well, he, obviously--

20 THE COURT: No, just kidding.

21 MR. PHILLIPS: He was, obviously, in error. But
22 so anyway, there's -- what I was going to say about
23 the timeframe, I believe, and it's just conjecture,
24 but I think it makes sense. It covers January 2006
25 to March 10 of 2010. The March 10, 2010, is a

1 definite date because that's when they found out
2 about the abuse and it didn't happen after that. I
3 think -- she has consistently told interviewers, and
4 you'll see it in the -- in the forensic interview
5 when she was seven. And any statement she made. It
6 covered two years, when she was six and seven. Since
7 it started when she was six, I think they put
8 January 1, 2006. It should have been 2008. And
9 we'll be glad to amend the indictment to say 2008.
10 Because we're not alleging anything prior to 2008.

11 THE COURT: Okay.

12 Well, Ms. Kepley?

13 MS. KEPLEY: Well, I mean, I think the point
14 that State v. Baker isn't on point is different, Your
15 Honor. The issue in State v. Baker is that we have a
16 continuous window of years, the idea that you can
17 gather a alibi as a complete defense is functionally
18 impossible. And the idea that you could narrow it
19 down to a week, a month, a period of months, you
20 certainly could. And I think just because of this
21 nature of this case, State v. Baker is clear, it
22 doesn't mean you get an exception to what the law
23 requires for an indictment. Which is why we'd ask
24 The Court to consider quashing the indictments in
25 this case. And certainly, if they want to get a

1 different indictment, that would be a different
2 issue. But the indictment, as it stands, I think the
3 law is clear that's constitutionally overbroad.

4 THE COURT: Well, I think that -- they've also
5 said the nature of these type cases, though, also
6 allows kind of a broader brush, kind of, about the
7 dates because you're dealing with children and
8 children's memories. And they don't quite hold them
9 to the stricter standard that I think they do in like
10 indictments for burglary or something like that. I
11 know Baker was, I believe, a six year period. I'm
12 not aware of anywhere they have overturned four
13 years. And like I said, I think in light of the time
14 that has passed here, in addition to that, that I'm
15 going to deny your motion. I believe that the
16 indictments are proper as they're written. So I'm
17 going to deny your motion on that.

18 MS. KEPLEY: Thank you, Your Honor.

19 THE COURT: Anything else?

20 MS. KEPLEY: Well, Your Honor, I did mention
21 that there were going to be some issues about
22 inadmissibility in this trial. I imagine that we
23 could have some [indiscernible]. I don't know if
24 this is the appropriate time to get into that.

25 THE COURT: Well, I guess the problem is, it's

1 very difficult, usually, for The Court to address
2 those -- a lot of those admissibility issues until
3 they actually come up.

4 MS. KEPLEY: Yes, Your Honor.

5 THE COURT: So, I mean, I'll be glad to hear you
6 if you feel like I am able to address them. But,
7 usually, it's been my experience, that you just got
8 to wait until that point and then you just got to,
9 you know, you got to adjust your opening statement
10 accordingly. I mean, if it's something you want me
11 to hear, I'll be glad to hear it.

12 MS. KEPLEY: Well, I think as far as the expert
13 testimony, Your Honor, they put on their witness
14 list, I think, at least, two child abuse dynamics
15 experts. In addition, to, you know, the normal 703
16 analysis for experts, I don't have objections to them
17 being qualified as experts. I think, in this case,
18 there's going to be some very specific issues. As
19 The State has said, this is a return based on
20 Galloway-Williams testimony already. She is
21 certainly, I imagine, read the Supreme Court opinion
22 that was overturned based on her testimony.

23 And if you read that opinion, Your Honor, now
24 you're familiar with the facts of the case. So we're
25 dealing with a non-blind expert's testimony at this

1 point. And I think, even to expand it beyond
2 Ms. Galloway-Williams, you know, this is, I think,
3 one of the similar cases on improper bolstering of
4 child abuse dynamics expert. If you practice in this
5 county and you're a child abuse dynamics expert, you
6 are most certainly aware of this opinion. And if
7 you're aware of this opinion, then I think you're
8 aware of these facts in a very basic way. So
9 whatever witness they're certainly going to call, if
10 they're, you know, a South Carolina child abuse
11 dynamics expert, I don't think any of them are going
12 to be [indiscernible]. And I think the court has
13 narrowed over time from Corolla [ph], State v. Jones,
14 State v. Smith, has very much narrowed these sorts
15 of, what has been acknowledged as unscientific
16 experts, are only admissible in a very narrow window.
17 Where they really have no knowledge of the case at
18 issue. And I don't think that's going to be
19 something that The State's going to be able to offer.

20 THE COURT: Interesting.

21 Mr. Phillips.

22 MR. PHILLIPS: Your Honor, under her analysis,
23 any case that comes back on appeal from a CSC will
24 never be able to have an expert. The question is did
25 the expert -- not did she have any vague knowledge of

1 what's going on in the case but did she review the
2 documents? Did she interview the child? Did she
3 interview any other witnesses? Was she involved in
4 the analysis of the case? If she was not involved in
5 any of that, then she should be, certainly, be
6 allowed to testify. In fact, I'll just tell you the
7 conversation I had with Ms. Galloway-Williams and she
8 asked me a couple of days ago, is there a forensic
9 interview? She doesn't know -- she's interested in
10 the holding that pertains to her. I can't say this
11 line anymore. She's not familiar with the facts of
12 this case. And I don't believe that just because the
13 opinion is out there, that that should preclude every
14 single expert from ever being able to testify as an
15 expert in a retrial of the case.

16 MS. KEPLEY: Your Honor, to address that, that
17 certainly isn't what I'm saying. I think you can
18 certainly have an expert on child abuse dynamics
19 expert. But I think they would need to be outside of
20 South Carolina. I think if you're in that field and
21 you're in South Carolina, you're very much aware of
22 this opinion. You should be if you're doing your job
23 correctly. And Ms. Galloway-Williams, if she's read
24 that opinion, she has read the facts of this case.
25 And part of the reason the courts over time, from

1 Corolla, have narrowed that sort of scientific
2 testimony down, is because when your testimony is
3 based just on your experiences as a expert, as a
4 professional, there's a lot of concern that there is
5 bolstering. Whether or not it's improper is a
6 question for The Court.

7 But when you're bolstering, you can certainly
8 tailor those answers to what you know about the case.
9 When the nature of the testimony is unscientific,
10 that risk is very high. Not only that, when we have
11 a case like this where credibility will be the only
12 issue, I think that risk is extremely high, Your
13 Honor. They can certainly call an expert on child
14 abuse dynamics. But if it's an expert from South
15 Carolina, they will have knowledge of this case. And
16 I think that excludes them from being a blind expert.
17 And I think that excludes them from testifying here,
18 Your Honor.

19 MR. PHILLIPS: Briefly, in response, Your Honor.
20 The -- I think this should be a very fact specific
21 inquiry. If a -- it's very possible that a person
22 from out-of-state could have read our in state
23 opinion. So just being out-of-state doesn't preclude
24 them from knowing the facts of the case. I think we
25 should ask the person who's about to give the

1 opinion, what they know about the case. What is your
2 knowledge of the case? And if the knowledge of the
3 case is minimal, they would qualify. If they know
4 the incident details of the case, they wouldn't. I
5 would agree to that.

6 But the -- we, actually, have another -- just so
7 there won't be an appealable, well, hopefully, an
8 appealable issue in this regard, we have a different
9 expert that is willing to testify. She was not
10 involved in the first case in anyway. Now, I'm sure
11 Ms. Kepley is going to say she's in South Carolina,
12 she must read the opinion, she knows about the case.
13 But there are 100's of cases out there where I might
14 know the holding of it but I don't know the details
15 of the facts. And I think that should be a question
16 for the witness, when they take the stand is, do you
17 know the facts of this case?

18 THE COURT: And I think -- first of all, I think
19 if that's where we go, we have to be very careful of
20 that because we, obviously, do not want this jury to
21 know that this -- that she read this based on a Court
22 of Appeals opinion. I mean, that's not something we
23 need to get into or that the jury should know.

24 MR. PHILLIPS: Well, I would suggest we handle
25 that in limine when it comes up in the trial.

1 THE COURT: Yeah. Let me look at that. I think
2 that's a interesting point. I'm not going to make a
3 ruling at this time. I lean toward -- well, I'm not
4 going to tell you which way I'm leaning. Let me look
5 at it. Y'all can just guess. But I think it's a
6 very interesting point, I want to look at that case
7 and, actually, in light of his argument, kind of
8 analysis it from that standpoint.

9 MR. PHILLIPS: We do have, of course, the cases
10 in South Carolina that do say blind experts--

11 THE COURT: No, no, I realize that. Her whole
12 point is, how could she be blind when she, obviously,
13 has read this opinion.

14 MR. PHILLIPS: What if we call a different
15 expert?

16 THE COURT: I mean, yeah, but, again, there's
17 probably a good chance of how can she rely on because
18 she's probably read the opinion too. Again, because
19 they all read that. I mean, like I said, they keep
20 abreast of exactly -- because it seems like in the
21 last, I don't know 10 years, it seems to me like what
22 they can testify to changes ever so slightly. So, I
23 mean, they -- for them to be -- I'm sure they go to
24 seminars and have seminars exactly, this is what
25 South Carolina Supreme Court has said. I mean, you

1 know, they all know what the Supreme Court does use
2 it changes, they have to keep abreast of that.

3 MR. PHILLIPS: But even in those seminars, they,
4 generally, don't get into the weeds of the facts of
5 the case.

6 THE COURT: Well, they know what the Supreme
7 Court has, you know -- again, that may be something
8 we need to address with those people. I'll look at
9 that and I'll let y'all know what I come up with
10 before you do your opening statements.

11 MS. KEPLEY: Thank you, Your Honor.

12 THE COURT: Anything else?

13 MS. KEPLEY: I guess the only other issue I have
14 is looking at this witness list, I suspect there may
15 be some 404(b) Lyle issue. I don't know if we want
16 to do a proffer on that. To give you some context of
17 the case. But the first time this case was called
18 up, The State proffered a former stepdaughter, who
19 had been a victim in a case with Mr. Chappell. Judge
20 Hill did not let that in as it was [indiscernible]
21 evidence. I think [indiscernible] can do that. I
22 think in this case they have listed, I think the
23 sister of the victim. I'm not going to presuppose
24 exactly what she's going to testify to but if what
25 she's going to testify to is prior bad acts, you

1 know, Lyle territory, then I think we should
2 certainly do a proffer on that as well, Your Honor.

3 THE COURT: Okay.

4 MR. PHILLIPS: We, of course, did not call the
5 witness from the previous abuse because it was
6 disallowed the first time. It's a interesting
7 question, the second -- the second abuse because they
8 were sisters. And when you talk about the Lyle and
9 404(b) stuff, I mean, there were a lot of
10 similarities in the fact they were sisters, nearly
11 the same age, one was five, one was seven. It was in
12 the same timeframe. So we're not talking about
13 something 20 years before. It was the same act that
14 he did the same thing to the second sister, he did
15 the first sister.

16 And also this is kind of one of those signature
17 things, he did it while they were playing
18 hide-and-seek. That was part of his ammo is that he
19 would say, want to play a game of hide-and-seek, this
20 is where you're going to hide. And he went to find
21 that person first and committed the act. So I say
22 all that just to say, it would be a really -- I think
23 it would be admissible, but I don't want an issue on
24 appeal. I want this to be it.

25 THE COURT: So you're saying you're not going to

1 call her?

2 MR. PHILLIPS: I'm not going to call her.

3 THE COURT: All right.

4 MS. KEPLEY: That solves that, Your Honor.

5 THE COURT: All right. Anything else from The
6 Defendant?

7 MS. KEPLEY: Nothing, Your Honor. |

8 THE COURT: All right, what do y'all want to do
9 about the video? Y'all want to watch it? You want
10 to do that, that way you can -- the redacted version
11 and that way you can see them at the same time?

12 MS. KEPLEY: Yes, Your Honor, that would work
13 for me.

14 MR. PHILLIPS: Your Honor, whenever you tell us
15 we'll play it.

16 THE COURT: All right. Give me some background.
17 What we're watching, who and when, all that stuff.

18 MR. PHILLIPS: Your Honor, the victim in this
19 case, Minor was taken to -- she was -- this
20 was a accidental reporting. She was taken to the
21 emergency room. The emergency room referred her to
22 both Cheryl Cromartie and the Julie Valentine Center
23 for a forensic interview. And this is the forensic
24 interview, probably, I think, it's about three weeks
25 after the initial reporting and maybe one week after

1 the hospital visit.

2 THE COURT: Who is the forensic interviewer?

3 MR. PHILLIPS: Forensic interviewer is Christine
4 Carlberg.

5 THE COURT: Cromartie?

6 MS. KEPLEY: Christine Carlberg.

7 MR. PHILLIPS: Cromartie is the officer.

8 THE COURT: All right. And, I guess, it's my
9 understanding, as far as the authenticity and all
10 that, you don't have any objection to that?

11 MS. KEPLEY: No, Your Honor.

12 THE COURT: Okay.

13 All right. Go ahead -- and this is the redacted
14 version or is this the original?

15 MR. PHILLIPS: This is the one with the minute
16 and 20 redacted.

17 THE COURT: Okay.

18 MR. PHILLIPS: Your Honor, would it be outside
19 the court if I took off my jacket? I'm kind of hot.

20 THE COURT: I guess. Frank Eppes.

21 (WHEREUPON, State's Exhibit No. 1 was
22 published.)

23 THE COURT: I do have one question,
24 Mr. Phillips, what clock did you use?

25 MR. PHILLIPS: It was, obviously, a internal

CHRISTINE CARLBERG-DIRECT BY MR. PHILLIPS (IC)

1 clock that was not working.

2 THE COURT: About 15 minutes longer than you
3 said. All right.

4 I've looked at the -- what is that section?
5 17-23-17-15 -- I mean, 17 -- 17-23-175. And, I
6 think, you still have some hoops to jump through.

7 MR. PHILLIPS: I can call the interviewer if
8 you'd like?

9 THE COURT: All right.

10 MR. PHILLIPS: The State would call Christine
11 Carlberg.

12 THE CLERK: Ma'am, if you'd please pause at the
13 end of the bench, raise your right hand.

14 CHRISTINE CARLBERG, after being duly
15 sworn{,} testified as follows:{F}

16 THE CLERK: Thank you, please be seated. Please
17 state your name for the record.

18 THE WITNESS: Christine Carlberg.

19 DIRECT EXAMINATION

20 BY MR. PHILLIPS:

21 Q Christine, was that you asking the questions on
22 that video?

23 A Yes, sir.

24 Q That's been a while since that video was done?

25 A Yes, sir.

CHRISTINE CARLBERG-DIRECT BY MR. PHILLIPS (IC)

1 Q Can you tell me a little bit about your
2 education and your background training?

3 A I have a Bachelor's of Science in Rehabilitation
4 Services Education with a Minor in Psychology at the
5 Pennsylvania State University. And I have Master's of
6 Arts in Marriage and Family Therapy from Reformed
7 Theological Seminary in Jackson, Mississippi.

8 As far as forensic interview training, I've
9 been trained at CornerHouse; which is a national
10 recognized training facility. And I've been through Child
11 First. Both in Mississippi and in South Carolina. Which
12 are also recclone [ph] trainings for forensic interviewers.
13 And then I've just been through various conferences and
14 trainings throughout the years.

15 Q How many years have you been doing it?

16 A Next month it will be 22 years.

17 Q Do you know how many interviews you've done?

18 A I've conducted 3954 interviews.

19 Q Where are you employed?

20 A I'm employed by the Greater Greenville
21 Department of Mental Health and contracted to work at the
22 Julie Valentine Center.

23 Q What services do you provide for them?

24 A Forensic interviews.

25 Q Is that all you do?

CHRISTINE CARLBERG-DIRECT BY MR. PHILLIPS (IC)

1 A Yes, sir.

2 Q Can you kind of just explain for The Court,
3 although, His Honor's heard but this will be for the jury,
4 eventually, as well, what is a forensic interview?

5 A A forensic interview is a non-leading,
6 non-suggestive manner of gathering information for
7 purposes of an investigation.

8 Q And are anybody -- is anybody but the child
9 present for that interview?

10 A Not in the room.

11 Q Why?

12 A So the child is able to tell his or her story
13 without influence from anyone else who could be in the
14 room.

15 Q And I notice it was conducted -- the room it was
16 conducted, I'm assuming that's where you work?

17 A Yes, that was the Julie Valentine Center.

18 Q Why do you do it there in that room?

19 A In that room? It's a child friendly room that
20 doesn't have -- it's a kind of bare room so there's no
21 distractions or anything that could cause fantasy for a
22 child in the room. So it's conducted in a room that's
23 child friendly and pretty plain.

24 Q And you also have audio and video recording in
25 that room?

CHRISTINE CARLBERG-DIRECT BY MR. PHILLIPS (IC)

1 A Yes.

2 Q Can you kind of explain a little bit about the
3 format that you use when talking with a child?

4 A So, we use, again, just a non-leading,
5 non-suggestive manner to question a child. Asking
6 open-ended questions to allow the child to tell their
7 story.

8 Q Is there a term that somebody that they use for
9 that or it use to be RTAC [ph] but now it's something
10 else?

11 A So we use a protocol, RTAC and -- and we
12 currently use a protocol called the South Carolina Child
13 First Protocol.

14 Q Child First Protocol, that's it. It's basically
15 the same format as RTAC, right?

16 A Yes, the elements are the same.

17 Q Do you remember the date that you conducted that
18 interview?

19 A I interviewed her on April the 20th, 2010.

20 Q And do you know who referred her to you?

21 A She was referred by the Greenville Hospital
22 System.

23 Q Did she disclose in that interview the time,
24 general time and place, of her abuse?

25 A Yes, she said she was not sure how old she was

CHRISTINE CARLBERG-DIRECT BY MR. PHILLIPS (IC)

1 when it started. But it ended when she was seven.

2 Q Okay. And if I remember correctly, she
3 identified the primary place of the assault as the
4 grandmother's trailer.

5 A Yeah, she said it was the grandmother's old
6 place and also at her house.

7 Q At her house, was that just once; do you
8 remember?

9 A I don't remember.

10 Q Okay. Do you remember how old she was at the
11 time of that interview?

12 A She was -- she was seven.

13 Q The video you watched just now with the rest of
14 us, it is a fair and accurate depiction of the interview
15 that you conducted?

16 A Yes, sir.

17 Q I did tell you, initially, that I did cut out
18 about a minute or a minute and 20 seconds of questions
19 regarding whether she knows the difference between a truth
20 and a lie?

21 A Yes, sir.

22 Q And that's because y'all changed your protocol
23 in asking those questions like that; is that correct?

24 A Yeah, we no longer do that.

25 Q Other than that one alteration, did you see any

CHRISTINE CARLBERG-CROSS BY MS. KEPLEY (IC)

1 way that the tape had been altered or deleted in any
2 manner?

3 A No, sir.

4 MR. PHILLIPS: That's all the questions I have,
5 Your Honor.

6 THE COURT: Ms. Kepley, do you have any
7 questions as to her--

8 MS. KEPLEY: Just a couple, Your Honor.

9 THE COURT: -- certification or?

10 CROSS-EXAMINATION

11 BY MS. KEPLEY:

12 Q You describe that the protocol you used then is
13 different from the protocol you use now; is that correct?

14 A The basic elements are the same but yeah,
15 they're some things that are different.

16 Q What are the main differences?

17 A So what was redacted was we use a truth/lie, it
18 looks like a picture book. Where we asked if they knew
19 the difference between a truth and a lie using various
20 scenarios. We no longer use that. We now go over some,
21 what you might call rules, or just some information about
22 the interview.

23 Q Why did you change that, you think?

24 A Well, there -- just ongoing -- there's just been
25 ongoing research and ongoing development with forensic

CHRISTINE CARLBERG-CROSS BY MS. KEPLEY (IC)

1 interviewing. And they found that, although, it wasn't
2 harmful to the interview, it wasn't necessarily beneficial
3 for the interview. And they found that it was better use
4 what it was intended to be used for, which was competency
5 in court. And so we just involved more into using the
6 rules. Beforehand now.

7 MS. KEPLEY: No other questions, Your Honor.

8 THE COURT: All right, thank you, you may step
9 down.

10 THE WITNESS: Thank you.

11 THE COURT: All right, Mr. Phillips.

12 MR. PHILLIPS: I would at this time move for the
13 video tape of the interview to be admitted into
14 evidence.

15 THE COURT: Okay.

16 MS. KEPLEY: Your Honor, I have a couple of
17 issues with 17-23-175. Before getting into the
18 trustworthiness in that application, I think that I
19 should, at least, put on the record, that I'm not
20 sure 17-23-175 should apply in this situation. I
21 don't think the statute contemplates, which I think
22 is a very unique situation we're in. Where you have
23 an adult who will be testifying with a recorded
24 forensic interview. I think the statute's intention
25 is certainly to allow something that would normally

1 be admissible when you have, you know, a child
2 witness who may struggle in a courtroom setting.

3 I think the statute understands that in doing so
4 is going to be certainly bolstering that person's
5 credibility. I know that for purposes of this
6 section, a child wouldn't certainly fit in this
7 category. I don't know that it was contemplated,
8 this situation, where you would have an adult
9 testifying. She will be here, she will be able to
10 testify, you know, in detail to these allegations.
11 And I'm not sure that this video is going to add
12 anything, other than to bolster her credibility at
13 this point. I think there's a real danger there.
14 So, I think, as the statute applying, generally, I
15 would certainly object to that, Your Honor. Object
16 to the admission.

17 As far as the trustworthiness analysis, I think
18 there were more than a few leading questions in
19 there. As you saw, the interview starts with
20 open-ended questions. Don't get a whole lot of
21 response, goes into leading questions. And even the
22 questions aren't, you know, what we would define as
23 leading, they are questions that are designed to go
24 in a certain direction. For example, I think 15
25 minutes in when she says, I don't remember. She

1 shrugs or says, I don't remember on several
2 occasions. The interviewer will continue to press
3 her on the same question. And she does change her
4 answer in response to that.

5 And I think if we're going into the forth
6 element, internal coherence, I think there's, at,
7 least, a couple of points where she's internally
8 inconsistent. I think at some point, I am
9 remembering the parts. I marked it as about 39
10 minutes in where she described something happening at
11 her house.

12 And the interviewer stops her and she says,
13 wait, wait, wait. That's not what you just told me,
14 you told me something else. The interviewer,
15 actually, points out a inconsistency to Minor. And
16 she says, yeah. And then switches her story again.
17 So, I think, if we're going to internal consistency,
18 I think there's real problems here. I think if we're
19 going with leading questions, I think there's some
20 problems here. I would say the most leading portion
21 of the interview would be the use of the dolls. The
22 dolls are, essentially, brought out and the
23 interviewer says, you know, describe to me this that
24 act. Describe to me this act. No part of that is
25 really open-ended. So I would certainly have a lot

1 of objection to that portion, in particular, and the
2 video as a whole on those grounds.

3 THE COURT: So that's, you know, one, in
4 watching it and looking at -- let's first address
5 your --

6 You want to say anything in response?

7 MR. PHILLIPS: I mean, I can. It's just that I
8 don't recall what she said about the dolls at all.
9 What I recall was her bringing out the dolls and
10 saying, show me what happened. She wasn't -- didn't
11 say ask, show me a specific act, she said, show me
12 what happened between you and Robbie. And regarding
13 all the rest of her issues, it would, certainly, if
14 anything goes to the weight of the evidence, not the
15 admissibility of the evidence. The admissibility is
16 governed by a statute and we meet all the
17 qualifications of that statute.

18 THE COURT: I think you bring up an interesting
19 point of the fact that the alleged victim is not a
20 child anymore. But I think that under the -- I mean,
21 I think the statute, they could have carved out
22 something if it turned out to be later. But, I mean,
23 I think it falls within the -- all the elements of
24 17-23-175. I felt like that if any leading it was
25 only after the child had said certain things. And

1 therefore, it was just kind of repeating what she had
2 already said. You know, meets the requirement that
3 all the statement was a response to questions,
4 audio/video had been made. And I think that just
5 overall there's a guarantee of trustworthiness,
6 coherence, that I find is. And they've established
7 the interviewer is qualified.

8 So I find that the video is admissible, as long
9 as they meet the other requirement. And that is that
10 the child testifies at the proceedings and subject to
11 cross-examination on the elements of the offense in
12 making the actual statement. So they would have to
13 lay that foundation before it would be admissible.
14 But other than that, I think that The State has
15 established all the elements required by that
16 statute.

17 Anything else?

18 MR. PHILLIPS: I think that's it from The State,
19 Your Honor.

20 THE COURT: All right. And I have, actually,
21 looked at -- let me pull something here. Some of the
22 case law. The cases, when you look at Anderson and
23 you look at this case here, they talk about
24 independent -- and I'm going back to your motion that
25 the use of a blind expert cannot be proper. But if

1 you look at the cases, though, they talk a lot
2 about -- they say independent expert but the whole
3 basis of their analysis all goes to bolstering. I
4 mean, that's their key thing. The elements of -- I
5 don't know if it's the Anderson case but they said
6 the elements is that the court was not improper
7 bolstering and independent expert did not testify.
8 The forensic interviewer never interviewed the
9 victims, did not prepare a report for her testimony
10 and did not express an opinion or belief regarding
11 the credibility of the child. And did not express an
12 opinion regarding the credibility of the minor
13 victims in the case.

14 I mean, everything goes to all this -- I mean,
15 that's the thing they've been going back and forth
16 is, is what constitutes bolstering? And I think out
17 of an abundance of causation, the other side always
18 had this person come in that knows nothing about the
19 case. But I don't -- I didn't see any case law that
20 said that was an actual requirement. And, I think,
21 based on that, unless that -- I don't think that
22 reviewing an opinion and we don't know that she's
23 reviewed an opinion. I mean, I'm kind of like you, I
24 feel like, I'm sure if you ask her that question on
25 the stand and she's probably going to say, yes, I

1 reviewed that opinion, I don't know that. But I
2 don't believe that that disqualifies her as an expert
3 witness under the analysis that our Supreme Court has
4 made. So I'm going to -- again, I'm going to deny
5 your motion. But, again, that doesn't mean that
6 that -- that the -- the, you know, that it is
7 admissible without them laying the proper foundation
8 and so forth.

9 Also, as to the victim, in looking in a couple
10 of cases outside our jurisdiction, they did not find
11 that that was specifically prejudicial to a
12 defendant. Also I think the one that had been
13 overturned, the Judge did not properly charge on the
14 presumption of innocence. And I think that's what
15 the distinction was. I think that the use of the
16 word victim, I think, you know, with the proper
17 charge, that the jury is still going to have to make
18 a decision and that's not going to be prejudicial.
19 So that motion has been denied as well.

20 So I think that covers all motions that are
21 outstanding. So anything else then?

22 MR. PHILLIPS: Nothing from The State.

23 THE COURT: All right. Ready to start at 9:30
24 in the morning.

25 MS. KEPLEY: Will do, Your Honor.

1 MR. PHILLIPS: 9:41 okay, Your Honor?

2 THE COURT: Obviously, from your clock. Why
3 don't y'all be here at 9:15 in case. Because I'm
4 sure when y'all look at this tonight, something is
5 going to come up and we may need to address. And I'd
6 rather do that at that time, than let the jury wait
7 after we told them to be ready at 9:30. I mean,
8 y'all anticipate we may have something, y'all be here
9 at 9:00. I tell you what, let's be here at 9:00 just
10 to be sure, okay. No, 8:30. I know, I'm just
11 kidding. All right, see y'all in the morning.

12 (WHEREUPON, State's Exhibit No. 2 was marked for
13 identification only.)

14 (WHEREUPON, the proceedings were concluded for
15 the day to be reconvened on April 5, 2022.)
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1 April 5, 2020

2 THE COURT: All right, we're ready to get
3 rolling here?

4 MR. PHILLIPS: The State's ready, Your Honor.

5 MS. KEPLEY: Defense is ready, Your Honor.

6 THE COURT: And just for timing purposes,
7 because I'd like to be able to tell the jury, it
8 looks like we're probably going to be -- if you call
9 your expert in the morning, does it look like we'll
10 probably be ending a little bit early today? Or
11 maybe take a longer lunch or?

12 MR. PHILLIPS: We're having one other issue that
13 just popped up, we don't have an answer to. We
14 have--

15 THE COURT: I'll just tell them there could be a
16 possibility of -- we'll leave it open-ended.

17 MR. PHILLIPS: That's fine.

18 MS. SUSTAKOVITCH: Your Honor, I just interject,
19 I apologize. Dr. Henderson is who Mr. Phillips was
20 asking about and she just called me. She's not
21 available until tomorrow morning. So that's a little
22 kink.

23 THE COURT: Well, that's why we're --

24 MR. PHILLIPS: Yeah, that's the second witness.

25 THE COURT: Yeah, that's the first--

1 MS. SUSTAKOVITCH: That's the second. I
2 apologize, she just called me and she's in
3 Spartanburg on a trial today and can't get here. So
4 she would have to come in the morning.

5 THE COURT: Right and that's what we talked
6 about that one. But what was the--

7 MS. SUSTAKOVITCH: It was a separate witness he
8 talked to you about.

9 THE COURT: Oh, it's a different one?

10 MS. SUSTAKOVITCH: Yeah.

11 MR. PHILLIPS: We had Dr. Henderson under
12 subpoena and she didn't tell us anything about this
13 other trial in Spartanburg.

14 THE COURT: Well, we got to be flexible.

15 MS. SUSTAKOVITCH: Right. Erica Van Wagner was
16 the other expert I think he was talking about.

17 THE COURT: Okay. All right.

18 MS. SUSTAKOVITCH: Yes, sir.

19 THE COURT: All right, jury ready?

20 THE BAILIFF: Yes, sir.

21 THE COURT: I'll just tell them that they have
22 to be flexible too.

23 (WHEREUPON, the jury entered open court at
24 approximately 9:48 a.m.)

25 THE COURT: All right. Ladies and gentlemen,

1 good morning, sorry for the little delay, there were
2 some things I had to do on another matter and some
3 other things we had to go over in here, so.
4 Normally, when I say 9:30, I try to start at 9:30.
5 But the start of a trial, sometimes there's some
6 other things we have got to work on. So I do
7 apologize, it's totally my fault on that. But we'll
8 make sure that doesn't happen again so I appreciate
9 your patience there.

10 All right, at this time, I'm going to have the
11 clerk administer the oath and then I've got some
12 things I want to tell you before I turn it over to
13 the lawyers.

14 Ms. Troup.

15 THE CLERK: All right, if you would, please
16 stand, raise your right hand. The proper response to
17 the oath is, I will.

18 (WHEREUPON, the jury was sworn.)

19
20 THE COURT: All right, now I got some
21 information. I know -- the bailiff has already
22 indicated, I think you had a question about taking
23 notes. You're going to have all the evidence and the
24 facts and it's not going to be a very long case. So
25 I'm going to ask that you not take notes. And you'll

1 have all the evidence and everything you'll need back
2 there. And it's not going to be -- it will be going
3 to you either tomorrow afternoon or first thing
4 Thursday morning. So it's not going to be a long
5 period of time before -- between you hearing the
6 evidence and actually making a decision, so.

7 All right, I'm going to first -- I always like
8 to introduce you to everybody that's in the
9 courtroom. You already met the attorneys and people
10 that's going to be involved in the trial. But I just
11 want to let you know some of the other people so you
12 will know what's going on. We have a court reporter
13 who takes down all of the record and the testimony.
14 And then we have the clerk who administers the oath,
15 she's in charge of the record. Sitting to my right
16 is my law clerk, she's a graduate of law school and
17 assisting me with anything I need in the trial, any
18 type of research and those kinds of things. The most
19 important for you are the bailiffs. And in
20 Greenville we have wonderful bailiffs. Their job is
21 to look after you. And if you have any questions or
22 comments, direct those to the bailiffs. And if it's
23 something the court needs to be involved with, they
24 will come and let me know. So that's your main
25 contact person. So if you have any questions or

1 comments, please direct those to the bailiffs.

2 Your expectations and responsibility of the
3 jury. Now you and I have separate jobs here. My job
4 is to preside over the trial, to rule on evidence
5 and, occasionally, you will hear objections. And
6 those objections are -- we have very specific rules
7 of evidence that's to be followed in a courtroom.
8 And that's my decision to determine what sometimes
9 evidence that can be introduced under our rules. And
10 also at the end of the case, I will charge you on the
11 law. But your job is to determine what the facts of
12 the case are. You will hear -- and how you will
13 determine that will be you will listen to the
14 evidence. And evidence may be way of testimony from
15 the witness stand. May be stipulations that counsel
16 have. May be exhibits and those kinds of things.
17 Those are -- and statements and videos, you know, we
18 have -- those are the kind of things, evidence, that
19 you may hear. And then I will tell you what the law
20 is and then you will make a determination. And you
21 determine what the facts are. And what that means is
22 that you're going to, ultimately, you will have a
23 verdict form that will say guilty or not guilty. And
24 that's what you will have to determine what the facts
25 are.

1 And in this case, The State has the burden. The
2 State has the burden to prove the defendant guilty
3 beyond a reasonable doubt. The Defendant comes in
4 this case innocent until proven guilty beyond a
5 reasonable doubt. The State has the burden. The
6 Defendant has no burden whatsoever to prove anything
7 here. Not to prove his innocence or anything. And
8 that's why I said, when I was talking about the
9 indictments, the indictments, any kind of arrest or
10 charges, those are merely allegations. Those are the
11 papers that bring this matter to court and determine
12 what the burden that The State has. So again, The
13 Defendant has no burden whatsoever.

14 And again, if there's anything that I say or do
15 that makes you think I have an opinion on the facts,
16 you're to disregard that. Because my duty is not to
17 determine what the facts of this case are. And I
18 don't know if anybody has ever been involved in a
19 civil matter before. The only reason I bring that
20 up, civil is when there's a lawsuit between two
21 parties. The reason I bring that up is the burden in
22 a civil case is much less. That's by preponderance
23 of the evidence or greater weight of the evidence.
24 That does not apply here. This beyond a reasonable
25 doubt. It's a much higher standard in a criminal

1 situation.

2 Procedure for trial, basically, we'll start with
3 opening statements, which you'll have in just a
4 minute. Now, the opening statements and closing
5 statements is not evidence. This is a summary, this
6 is the arguments by the attorneys of what the case is
7 going to be about. The evidence, like I said,
8 testimony and exhibits and stipulations and stuff
9 like that. So we'll have opening statements, then
10 we'll have the evidentiary stage. Is where the
11 evidence is presented. At the conclusion of all of
12 the evidence, then we will have closing arguments by
13 the attorneys. Then I will charge you on the law.
14 Then at that point, you will go back to your jury
15 room and you will deliberate. And that is determine
16 the facts of the case.

17 And that's why I said yesterday and while I will
18 remind you every time we take a break, it's so
19 important to not discuss the case. Because once you
20 start discussing the case, you're starting to make up
21 your mind and you're being influenced by that.
22 Especially, if you talk to people, you know, discuss
23 this case with others. Because then you're getting
24 outside influence. It's only proper to discuss the
25 case after you've heard all of the evidence. And

1 after you've heard the law which you're going to have
2 to apply. And that's when you discuss the case.
3 It's also, as to any -- I ask you not to Google, do
4 any type of research because, again, that is
5 information that you're getting that is not
6 controlled by our rules of evidence and or rules that
7 we have in court. So that's why it's very important
8 not to get any of those outside influences or your
9 own type of research. And again, any media coverage.
10 I'm not aware of any media coverage but, again,
11 that's something that you do not need to look at.

12 Normally, what our breaks -- we will take -- we
13 try to take a break about every hour, maybe a little
14 bit -- sometimes it may be sooner than that and
15 sometimes it may be a little longer than that because
16 of where witnesses may be. We will try to break,
17 again, we're not sure how long witnesses may last
18 sometimes. So lunchtime, we'll plan -- and you'll be
19 on your own for lunch but we'll give you sufficient
20 time to do whatever you need to do for lunch. And
21 we'll try to take a break somewhere about 12:30,
22 1:00, at the latest. Again, we have to kind of
23 figure out where witnesses are. We break at the end
24 of the day, as close to 5:00, as possible.

25 I know sometimes and I know that I've been made

1 aware here that maybe some witnesses that will not be
2 able to make it today. Sometimes witnesses, in these
3 type cases, may be involved in another matter
4 somewhere and they're not able to make it until in
5 the morning. Because of that, sometimes, we get to
6 the point where, okay, we may have to break a little
7 earlier than we expected. So we got to be flexible
8 here. So that's because, you know, there's a lot of
9 moving parts and we try to get them all going so that
10 everybody is, you know, able to present their cases
11 that's needed. But also to provide as least
12 inconvenience to you, as possible.

13 If anybody does need to take a break before we
14 take one, then please kind of indicate to the bailiff
15 so we'll try to break as soon as possible on that.
16 So with that being said, I'm going to turn it over to
17 the attorneys for opening statements at this time.

18 At this time, Mr. Phillips.

19 OPENING STATEMENT

20 MR. PHILLIPS: Thank you, Your Honor, may it
21 please the Court.

22 Ms. Kepley.

23 Ladies and gentlemen of the jury, again, my name
24 is Jeff Phillips. I'm a prosecutor here in the 13th
25 circuit. I don't know if any of y'all are familiar

1 with the format of our justice system but The State
2 is divided into 16 circuits. We are the 13th and
3 comprised of Greenville and Pickens County. The head
4 solicitor is a elected position, that is Walt
5 Wilkins. And I'm one of about, I think, 50 assistant
6 solicitors that work for him. I am, what they would
7 consider on American Picker's, as new/old stuff, if
8 you've ever watched that show. They like going into
9 old garages and stuff and finding a 1955 hood
10 ornament for something and it's still new in the box.
11 It's new in the box but it's old.

12 When I first started practicing law, I did what
13 the Judge's clerk up there, I clerked for a judge my
14 first year, then I went to the solicitor's office for
15 three years. Then I went out on my own for 25. So
16 now I've just recently moved back to the solicitor's
17 office to try cases. And so that's why -- this is
18 the first case in, actually, those 28 years, that I
19 can remember bringing notes up for in opening
20 statement. It's, generally, kind of considered poor
21 forum for attorneys to have various headnotes and not
22 making eye contact with the jury. But this is one of
23 those cases that I just would rather you, maybe,
24 consider me not having proper forum than forgetting
25 anything I want to tell you, then sit down having

1 forgot something that I thought was important. I'll
2 be fine with whatever you want to think, as long as
3 you try to listen to what I have to say.

4 The Judge told you about the different segments
5 of the trial, I won't go over them again. Only to
6 talk about the fifth and final phase when you retire
7 to the jury room and you're to render a verdict at
8 that time. And the term verdict comes from Latin
9 term veredicto, which literally means to speak the
10 truth. And that's what I'm going to ask you to do in
11 this case is to speak the truth by your verdict.
12 When you come into a courtroom you're supposed to
13 leave all of your passions or any of your prejudices
14 outside. And you come in here as sort of a sterile
15 environment. Except for this possible one thing.
16 And that is to bring every bit, every bit of your
17 common sense that you have been given to and apply it
18 to this case. Common sense is not only appreciated
19 but it's necessary and the system doesn't work
20 without people using their common sense.

21 You may have noticed, maybe from the
22 announcement of the case, if not you will notice
23 quickly, that this case is about 12 years old. Which
24 is older than most cases that normally go to trial.
25 It is old because of procedural reasons through no

1 fault of The State and no fault of The Defense. And
2 you shouldn't hold that against either one of us.
3 Just judge the case fairly on its merits and by the
4 evidence presented and nothing more. As I'm sure
5 that you will.

6 I'd like to dispel the myths that you have been
7 bombarded with, we all have been bombarded with, by
8 TV. This is, you know, not Law and Order, it's not
9 CSI. Complicated cases aren't solved in an hour with
10 intricate evidence, a surprise witness. It's not
11 Perry Mason where somebody is going to break down on
12 the stand and confess. Trials can be messy.
13 There -- there -- you will hear evidence, you'll hear
14 challenges of evidence on both sides, maybe. Like
15 the Judge says, The Defendant doesn't have to put up
16 any evidence. And so we may not get to that point
17 but that's fine.

18 I'm sure The Defense isn't going to accept all
19 the evidence we say as true. Well, that's where you
20 have to come in and you have to use your common sense
21 and weigh the evidence in the light of each other.
22 Does the evidence make sense? Whatever makes sense
23 is what you have to go with. We're going to be
24 talking about things in this trial that no decent
25 person should ever have to discuss in a public

1 setting. I'm sorry for that. But we have to discuss
2 those things that we are going to discuss because we
3 have no alternative if we're going to reach a just
4 decision on a verdict. And justice will be served.

5 Now, I'm going to tell you what I believe the
6 evidence is going to show in this case. And again,
7 some of it is graphic. And I apologize for that.
8 But that's kind of where we are. What will the
9 evidence show? The evidence will show that the
10 victim, in this case, was a seven a year old little
11 girl. And that The Defendant lived with her
12 grandmother. The little girl's grandmother. The
13 evidence will show that the mom of the victim, in
14 this case, found out that her seven and five year old
15 were engaged in some activity regarding each other
16 that was extremely inappropriate and shocking to the
17 mother. The evidence will show that the mom didn't,
18 initially, know what to make of that conduct. Until
19 the little girl was more forthcoming and opened up to
20 her in the days ahead.

21 The evidence will show that the mom then took
22 the little girl to the hospital for an exam. There
23 was some -- a little delay in the time she found out
24 about what happened until the time she took her to
25 the hospital. And I'll let the mom explain to you

1 why that delayed happened. The evidence will show
2 that there was no indication from the exam of any
3 physical trauma. But there will be expert testimony
4 that this is not only not surprising, it is exactly
5 what you would expect under these circumstances. The
6 evidence will show that the hospital and law
7 enforcement referred the little girl to the Julie
8 Valentine Center for a forensic interview with a
9 trained interviewer. And that little seven year-old
10 girl told the interviewer exactly what The Defendant
11 did to her.

12 How he would wait until nobody was around or her
13 grandmother was asleep. He would pull up her shirt
14 and pull her panties down and how he would use his
15 fingers, his tongue and his penis to touch and to
16 penetrate the vagina. How he made her touch his
17 penis until, as the seven year-old little girl
18 described it, wet stuff would come out. The evidence
19 will show that this little girl said he did this
20 multiple times to her. On the floor, at the foot of
21 her grandmother's bed when she was asleep. And when
22 they would go play hide-and-seek. He would always be
23 the one to do the seeking. And he would tell the
24 little girl where to hide and he would go find her
25 first, immediately, and do his despicable acts at

1 that time.

2 The evidence would show that he would take
3 pictures of the little and send them to his friend.
4 And his friend in return, would send pictures back to
5 him. Of a different girl. I will freely admit that
6 while you will hear testimony from the victim that he
7 was taking pictures, that we don't have any proof of
8 that. The Defendant may be deviant but he isn't
9 dumb. The evidence will show that he knew these
10 allegations weeks ahead of, actually, turning his
11 phone over to the police. And the evidence will also
12 show that this was a flip phone. Most of y'all
13 aren't old enough to remember when the first cell
14 phones first came out. First phone I had was a bag
15 phone. Leave it in your car and plug it in. Then
16 they came out with ones that you can carry with you.
17 Most of them were flip phones. The flip phones, had
18 very little storage and it had a little chip that you
19 would put in. And the chip is what you would save
20 video and pictures on.

21 The evidence is going to show that when the
22 phone was turned over to law enforcement, not only
23 was there not a chip with other pictures and video,
24 not only was there no chip or a chip that was wiped
25 clean, had nothing on it. There was no chip in this

1 phone at all. Even though this phone came, when he
2 bought it, with a memory chip. I'll also tell you
3 why I suspect The Defense is going to attempt to use
4 that phone is a red herring. Why is it a red
5 herring? Well, The Defendant is not on trial for
6 transmitting or receiving any child pornography on
7 that phone. He's not charged with anything related
8 to that phone. So it's really a fairly irrelevant
9 point of this case. But it's going to be part of the
10 evidence.

11 The evidence will show that the interviewer and
12 the victim talk a lot about private touching. This
13 term not only applies to the actions that I have
14 previously mentioned, the fondling, the penetration,
15 the oral and the sex that he did with Minor Minor
16 is the name of the victim. I don't want that to
17 get lost. Many times we refer to that person
18 interchangeably. Minor is sitting on the front row.
19 The second person in. And she was the victim in this
20 case.

21 But private touching refers not only to the
22 place of the touching but it refers to the fact that
23 the touching occurred, obviously, in private.
24 Wouldn't you expect that of case of this nature?
25 It's not the kind of activity that's done in the

1 open. It is done in secret. With nobody watching.
2 This private touching is also indicative of the kind
3 of evidence that these cases typically produce. It's
4 not like any other crime. It's not like shoplifting.
5 Where you made find the stolen goods from a
6 shoplifting. It's not like a robbery where you might
7 have an eye witness or security video. It's not even
8 like an adult rape what you might have a rape kit and
9 DNA from that. This is crimes that are done, of this
10 sort, are done in secret and hiding with care that
11 nobody else finds out about it. It's done carefully
12 so it's not to leave behind any evidence of the lewd
13 activity.

14 The evidence will show about how being
15 victimized by a person of trust and authority, how
16 that affects a child. The evidence will show how a
17 child would have such a difficult time telling others
18 about the abuse. About how that child may often hold
19 it inside for years before telling anyone. Or how a
20 child might turn into a adolescent, who turns into a
21 teenager, who turns into adult and still never tells
22 anybody. The evidence will also show that how even
23 once an child discloses the abuse, how difficult it
24 is for the child to talk about it. A seven year old.
25 About how they just don't have the vocabulary and the

1 words to describe conduct that they don't even
2 understand. About how it's almost impossible for a
3 child that age to sort through details and explain it
4 in any kind of chronological way.

5 As the Judge told you earlier, I don't know if
6 he used this exact phrase or not, but you are the
7 judges, in this case, of the facts. And you, alone,
8 are the judges of the facts. I don't get to tell you
9 what the facts are. The Defense doesn't get to tell
10 you what the facts are. The Judge doesn't get to
11 tell you that. You decide that, you and you alone.
12 But I'd like to give you a brief overview, before you
13 hear the evidence from the stand, about the elements
14 of the crime for which The Defendant has been
15 charged.

16 First, is a lewd act on a child. There are
17 three elements to lewd act on a child. Fairly
18 simple, actually, it's not a complicated analysis.
19 The victim must be under 16. And the defendant --
20 yeah, the victim must be under 16, the defendant must
21 be over 14. Number two, the defendant must commit or
22 attempt to commit some lewd or lascivious act. Such
23 as sexually indecent touching. And this act must be
24 done for the purpose of appealing to either the
25 defendant's lust or passion or the child's lust or

1 passion. This last element, of course, is to protect
2 people that do this for health related reasons. And
3 are touching for valid reasons. Or people that
4 mistakenly, inadvertently touch somebody, that's not
5 really covered by this.

6 The CSC with a minor, there are two elements to
7 that crime. There has to be a sexual battery. And
8 this covers a fairly wide range of conduct. That
9 could be sexual intercourse, it doesn't have to be.
10 It could be oral sex. Or it can be any intrusion,
11 however slight, of the part of one person's body into
12 the genital opening of another. So it covers not
13 oral sex but digital penetration as well. The other
14 element is simply the age of the victim. Since we
15 are dealing with a CSC first degree, the child must
16 be under the age of 11. Those are the two charges
17 and those are all the elements there are to them.

18 The last thing I will mention is The State's
19 burden of proof. As the Judge has told you, we have
20 to prove the case beyond a reasonable doubt. We
21 accept that burden. But we do not have to prove, we
22 do not have to prove this case beyond all doubt. We
23 do not have to prove this case beyond every doubt.
24 We don't have to prove this case beyond a shadow of a
25 doubt. It only has to be beyond a reasonable doubt.

1 And that is why I ask you to bring all of your common
2 sense that you can muster into this courtroom.
3 Because it is your common sense that will tell you if
4 there is any reasonable doubt here or not. At the
5 close of this case I will ask you to return a verdict
6 that speaks the truth and find The Defendant guilty
7 on both counts for which he is charged. Thank you.

8 THE COURT: Ms. Kepley.

9 OPENING STATEMENT

10 MS. KEPLEY: Thank you, Your Honor, may it
11 please the Court?

12 THE COURT: Yes.

13 MS. KEPLEY: Any charges that involve sexual
14 conduct with a minor of a child, should stoke some
15 very negative feelings. I know it does with me. But
16 I'm going to causation you against any sort of quick,
17 emotional reaction to the charges. . . The truth is
18 you will be required to listen to all the evidence
19 presented by The State before making any
20 determinations. Okay. And the reality is, if you
21 call on the evidence, you're going to see that this
22 case is. . . As to that allegation, you're going to
23 hear about a young adult, Ms. Minor She's
24 going to tell you that her grandmother's boyfriend,
25 Frederick Chappell, sexually abused her for years.

1 But there's going to be some problems with her story,
2 okay. Some pretty big problems.

3 I like to think of a criminal case as a big
4 puzzle. Okay. Where The State's goal is to give you
5 a clear and complete picture of what that picture is,
6 what that puzzle is. My challenge to you is as you
7 listen, constantly ask yourself, what evidence do you
8 need to see to prove this case beyond a reasonable
9 doubt? Because as you just heard, that's the burden
10 The State has. Every puzzle piece that's missing,
11 that's reasonable doubt. Every piece that doesn't
12 fit, that's reasonable doubt. You're going to hear
13 there's nothing. There's absolutely no physical
14 evidence that support their story.

15 Now, don't let The State sell you this
16 preposterous notion that there just isn't any
17 physical evidence in these types of cases. This
18 isn't CSI, this isn't Law and Order. You know, there
19 most certainly is. When we talk about the kind of
20 physical evidence you might see in these cases, we're
21 talking about DNA, blood, hair, bruises, injuries,
22 all of it measurable, all of it collectible, none of
23 that's going to be here. It doesn't exist. And
24 you're going to hear about a medical exam on Minor
25 that found no trace of any sexual contact having ever

1 occurred. Not once. Not ever.

2 And more to that point, we certainly live in a
3 world filled with forensic technology, okay. Filled
4 with camera phones, filled with devices, filled with
5 potential proof, okay. You won't see any of it here.
6 The allegation, story, just isn't enough. I know
7 what you're already thinking, it sounds like there
8 might be more to this story. Why on earth would
9 someone make this up? There's going to be a lot of
10 little pieces, okay. There's a lot of potential
11 answers for that question. And I'm going to
12 encourage you at all times, please keep an open,
13 critical mind.

14 If you keep a eye on these issues and not just
15 the evidence presented but the evidence that's
16 missing, you will find that at the end of the road,
17 that Frederick Chappell is innocent of these charges.
18 That The State will not be able to prove their burden
19 beyond a reasonable doubt. And that the only fair
20 thing to do, the only right thing to do, will be to
21 come back and ensure a verdict of not guilty. Thank
22 you.

23 THE COURT: All right, Mr. Phillips, you can
24 call your first witness.

25 MR. PHILLIPS: State calls Tasha Carter.

1 THE CLERK: Ms. Carter, please come forward and
2 please pause at the end of the bench. Place your
3 left hand on the Bible, raise your right hand.

4 TASHA CARTER, after being duly sworn{,}testified
5 as follows:{F}

6 THE CLERK: Thank you, please be seated. Will
7 you please state your name for the record.

8 THE WITNESS: Tasha Carter.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MR. PHILLIPS:

12 Q Ms. Carter, would you, please, tell the jury how
13 old you are?

14 A I'm 40 years old.

15 Q And how -- how are you related to Minor

16 A She is my daughter.

17 Q At the time of this incident happened, were you
18 married?

19 A Yes.

20 Q To whom were you married?

21 A George Carter.

22 Q How many kids do you have?

23 A Five.

24 Q You don't have to go over all of them but kind
25 of, generally, tell us where Minor falls. And I know you

TASHA CARTER-DIRECT BY MR. PHILLIPS

1 have triplets, I think, right?

2 A Yes.

3 Q That counts for three of them?

4 A Yes.

5 Q Who are the other two?

6 A Brother is my oldest and Minor is the second
7 child.

8 Q When is Minor's birthday?

9 A [REDACTED]?

10 Q Of year?

11 A 2002.

12 Q So at the time this incident happened, she was
13 about seven years old?

14 A Yes.

15 Q Why don't we go to the time that you first
16 learned about the possible abuse to your child. Tell me
17 how that came about.

18 A I had went to check on the kids, they had went
19 to bed. I go check on them every night. When I walked
20 in, Minor was on her back, Sister was at Minor's
21 private with her panties pulled to the side performing
22 oral sex.

23 Q And you said this was -- what's the other
24 child's name, Sister ?

25 A Sister .

TASHA CARTER-DIRECT BY MR. PHILLIPS

1 Q Sister . And how is Sister ?

2 A She would have been five.

3 Q And then what do you do as a result of having
4 talked to them about what was going on?

5 A I asked them had anyone touched them? Within
6 our house, Grandma's house, Nana's house. And when they
7 told me who, I called my mother right away.

8 Q You called your mother?

9 A Yes.

10 Q Was anybody else listening to that conversation?

11 A Robbie was.

12 Q Who is Robbie?

13 A Robbie was my mother's boyfriend at the time.

14 Q And is Robbie who you're referring to as The
15 Defendant?

16 A Yes.

17 Q I think his full name is Frederick Robert
18 Chappell but he goes by Robbie; is that correct?

19 A Yes.

20 Q And in the days after that phone call, did
21 Minor open up and relay more information to you?

22 A Yes. She had been to church that night and
23 wrote me a note telling me that she wanted to tell me what
24 had been done.

25 Q And after you got that note, did you talk to

TASHA CARTER-DIRECT BY MR. PHILLIPS

1 her?

2 A Yes.

3 Q And when you talked to her, without saying --
4 without saying what she said, what did you do after you
5 had that conversation with her?

6 A I took her to the emergency room.

7 Q So she provided you with a lot more detail than
8 she did the first time?

9 A Yes.

10 Q Would there be any reason for, possibly, you not
11 wanting Minor to get involved in this type of
12 prosecution?

13 A Yes.

14 Q What is that?

15 A My past.

16 Q Tell us what has happened in your past.

17 A I was molested by my aunt and my father.

18 Q And did you report that?

19 A I did.

20 Q Was your father convicted?

21 A No. Well, yes, he was ordered counseling.

22 Q And then did your father abuse somebody else?

23 A Yes.

24 Q Who was that?

25 A My sister.

TASHA CARTER-DIRECT BY MR. PHILLIPS

1 Q And did he go to jail for a pretty long time for
2 that?

3 A He did.

4 Q That process for you, describe how that affected
5 you?

6 A It was mentally exhausting. I was a child.

7 Q How old were you?

8 A I was eight with my aunt and ten with my dad.

9 Q So you were two or three years older than--

10 A Yes.

11 Q -- Minor When you say mentally exhausting,
12 did you want -- did you have reservations about having
13 Minor go through that?

14 A Yes, I did not want her to have to go through
15 this.

16 Q What changed your mind?

17 A After more detail came out.

18 Q What was your mother's name?

19 A Deborah Cooper.

20 Q Is she alive or deceased now?

21 A She's deceased.

22 Q And is that the same person that Robbie lived
23 with at the time?

24 A Yes.

25 Q What kind of residence did she live in?

TASHA CARTER-DIRECT BY MR. PHILLIPS

1 A A mobile home.

2 Q Is that the location that you understood that
3 most of the abuse took place?

4 A Yes.

5 Q And then the very end of this segment, she ended
6 up moving; didn't she?

7 A Yes.

8 Q Where did she move to?

9 A Hill Top Avenue.

10 Q And was Robbie living with her at that time?

11 A Yes.

12 Q Did your sister at some point live with your
13 mom?

14 A Yes, briefly. Six months, I believe.

15 Q Okay. Do you remember which six months those
16 were?

17 A The first six months that she lived on Security
18 Drive.

19 Q Which would have been when, do you know?

20 A I believe, maybe, 2005?

21 Q 2005?

22 A Yes.

23 Q Okay. Did your sister have any kids?

24 A Yes.

25 Q How old?

TASHA CARTER-DIRECT BY MR. PHILLIPS

1 A At the time or now?

2 Q At the time.

3 A At the time, he would have been five months old,
4 I believe.

5 Q So still a baby?

6 A Yes.

7 Q Did you fairly, regularly take your kids to your
8 mom's house?

9 A Yes.

10 Q And would it be just one of them, two of them,
11 five of them?

12 A Sometimes there were two, sometimes there would
13 be all five.

14 Q And did you do that regularly up until
15 March 10th?

16 A Yes.

17 Q And did you stop taking them over there
18 March 10th?

19 A Yes.

20 Q And that was because you found out about these
21 allegations?

22 A Yes.

23 Q Do you remember how often you would take them?

24 A Sometimes once a week, sometimes it would be
25 more.

TASHA CARTER-DIRECT BY MR. PHILLIPS

1 Q And give an example of how you'd take them or
2 why you'd take them?

3 A To run errands. Just to spend time with my
4 husband. Just different reasons.

5 Q Would it be fair to say you wanted them to spend
6 time with their grandma?

7 A Yes.

8 Q It is fair to say you wanted a break?

9 A Yes.

10 Q Okay. When you would take them over, how long
11 would they stay?

12 A Sometimes a couple of hours, sometimes
13 overnight.

14 Q Would your mom and Robbie ever come to your
15 house?

16 A Yes.

17 Q How often would that happen?

18 A Not often. Occasionally. Maybe once a week,
19 sometimes. Sometimes it would be longer than that.

20 Q Okay. And this residence where your mom lived,
21 was that in Greenville County?

22 A Yes.

23 Q And did you also live in Greenville County?

24 A Yes.

25 Q And to be clear, when you talked to your

TASHA CARTER-DIRECT BY MR. PHILLIPS

1 daughter, did she tell you a place that this inappropriate
2 touching or abuse occurred?

3 A Yes.

4 Q Where was that?

5 A Grandma's house.

6 Q All right. Let's go over a little bit of a
7 timeframe. So the first time that you found out anything
8 about this was March the?

9 A Tenth.

10 Q Of 2010?

11 A Yes.

12 Q And then when did she send you the note?

13 A March 24th of the same year.

14 Q And when did you take her to the emergency room?

15 A That same date, March 24th.

16 Q You mentioned one reason you didn't want to make
17 an immediate move to take it to the authorities before you
18 found out greater details and that's because of your past?

19 A Uh-huh.

20 Q Were you also -- was there anything else?

21 A I was afraid of what my husband may do.

22 Q And after the allegation, did your kids ever go
23 to the house when Robbie was around?

24 A No.

25 Q So when you went to the hospital, was there a

TASHA CARTER-DIRECT BY MR. PHILLIPS

1 report filed?

2 A Yes.

3 Q Were you later contacted by somebody from the
4 sheriff's office?

5 A Yes.

6 Q Do you remember her name?

7 A Cheryl Cromartie.

8 Q Were you present when Cromartie spoke -- or did
9 Cromartie speak to your daughter?

10 A Yes.

11 Q Were you present for that?

12 A Yes.

13 Q Did you do a follow up medical exam from that
14 visit to the hospital?

15 A Yes.

16 Q Do you remember when that was?

17 A I'm not sure of the date but we went to the
18 Julie Valentine Center.

19 Q Was there a follow up medical exam before you
20 went to the Julie Valentine Center?

21 A I don't recall.

22 Q Who suggested that you go to the Julie Valentine
23 Center?

24 A The emergency room.

25 Q The who?

TASHA CARTER-CROSS BY MS. KEPLEY

1 A The emergency room.

2 Q Okay. Did law enforcement have any part in
3 that?

4 A I don't recall.

5 Q Okay. After she did her interview, did you get
6 her into counseling?

7 A Yes.

8 Q Tell me a little bit about that.

9 A She gets sex abuse counseling through Greenville
10 Mental Health.

11 Q Do you remember her counselor's name?

12 A Melissa Epping.

13 Q Does that help?

14 A I believe so.

15 MR. PHILLIPS: Ms. Carter, I think that's all
16 the questions I have for you right now. Would you,
17 please, answer anything that The Defense may have.

18 THE WITNESS: Okay.

19 CROSS-EXAMINATION

20 BY MS. KEPLEY:

21 Q Good morning. I want to start by going back to
22 the trailer where this alleged to have happened. Can you
23 just describe the layout of the trailer for me?

24 A Which one are you referring to, Security Drive
25 or Hill Top Avenue?

TASHA CARTER-CROSS BY MS. KEPLEY

1 Q The Security Drive.

2 A It was a two bedroom mobile home. Bedrooms were
3 on each end.

4 Q The living room, was it opened to the kitchen or
5 was it closed off?

6 A It was opened.

7 Q And you say it had two bedrooms, correct?

8 A Yes.

9 Q How many bathrooms did it have?

10 A Two.

11 Q And you mentioned your sister, Kim Cooper;
12 correct?

13 A Yes.

14 Q All right. You said she lived there during this
15 time period; correct?

16 A Yes.

17 Q Did John Cooper, did he also live there during
18 this time period?

19 A Briefly, but not during the time that it
20 occurred.

21 Q Was anyone else living there?

22 A No.

23 Q When Minor would visit the trailer, who would
24 go with her?

25 A Her brothers and sister.

TASHA CARTER-CROSS BY MS. KEPLEY

1 Q Did they share a room while they were there?

2 A Usually, they would make a pallet either in the
3 extra bedroom or in the living room.

4 Q Did she share a room when she was at your house?

5 A Yes, with her siblings.

6 Q How many siblings in there?

7 A She had four siblings all together.

8 Q In one bedroom?

9 A Not at that time, no.

10 Q How many were in her bedroom at that time?

11 A Her and her sister, Sister .

12 Q Was Minor's biological father ever involved in
13 her life?

14 A No.

15 Q Was he ever involved in Brother's life?

16 A No.

17 Q How long was your relationship with him?

18 A Three years.

19 Q When did you -- what age would she have been
20 when you separated?

21 A I actually left him when I was pregnant with
22 Minor .

23 Q Okay. And you said you were the victim of
24 sexual abuse as a child; is that correct?

25 A Yes.

TASHA CARTER-CROSS BY MS. KEPLEY

1 Q As part of the process leading up to that
2 conviction, did you meet with police?

3 A Yes.

4 Q Did you meet with a interviewer, some sort of
5 victim advocate too?

6 A Yes.

7 Q And you probably met with the prosecutor as
8 well, right?

9 A Yes.

10 Q Given that history, did you ever have any sort
11 of age appropriate discussions with your children about
12 what good touches and bad touches are?

13 A Not until after I caught them in the act.

14 Q Okay. Did you -- if -- maybe you didn't discuss
15 touches, did you ever have any discussions with them
16 about, you know, they should certainly tell an adult if
17 something strange is going on?

18 A I don't recall -- they were so young, I don't
19 think I would have said that to them.

20 Q Now, you said your daughter disclosed first to
21 you; is that correct?

22 A Yes.

23 Q And she disclosed to you after you expressed
24 some concerns about the behavior that was going on with
25 her and Sister right?

TASHA CARTER-CROSS BY MS. KEPLEY

1 A Yes.

2 Q And you waited a month before taking her to the
3 hospital; is that correct?

4 A I waited two weeks.

5 Q Okay. Was she in school during this time
6 period?

7 A Yes.

8 Q Did teachers or school staff ever disclose to
9 you any kind of issues with her behavior?

10 A No.

11 Q Any school nurse staff ever approach you with
12 any sort of medical or physical issue with her?

13 A No.

14 Q Was she seen regularly, you know, by a
15 pediatrician during this time?

16 A Yes.

17 Q Was anything unusual found, you know, during her
18 regular exam with her pediatrician?

19 A No.

20 Q Were you the one in charge of doing your
21 daughter's laundry?

22 A Yes.

23 Q Did you ever notice something, you know, really
24 off when you were doing laundry?

25 A No.

TASHA CARTER-REDIRECT BY MR. PHILLIPS

1 Q And your husband at the time, his name was
2 George; is that correct?

3 A Yes.

4 Q Are you still together with George?

5 A We are separated.

6 Q Did you ever go back to your mom's house after
7 the disclosure?

8 A Yes.

9 MS. KEPLEY: Beg the Court's indulgence. That's
10 all the questions I have, Your Honor.

11 THE COURT: Any redirect?

12 MR. PHILLIPS: Just one.

13 REDIRECT EXAMINATION

14 BY MR. PHILLIPS:

15 Q Going back to your momma's house, why did you go
16 back?

17 A Our washer had quit working, she said that we
18 could have one. We went and picked it up. Just me and my
19 husband.

20 Q That was it?

21 A Yes.

22 Q And regarding the person that Defense counsel
23 said lived there during this timeframe, you referred to
24 the timeframe that they lived there as 2005; is that
25 right?

TASHA CARTER-REDIRECT BY MR. PHILLIPS

1 A Yes, Security Drive, yes, 2005.

2 MR. PHILLIPS: Nothing further.

3 THE COURT: All right, you may step down, thank
4 you.

5 All right, ladies and gentlemen, I'm going to
6 give you a break a little bit earlier because we've
7 got some things that we need to go over.

8 Mr. Holmes, I'm going to appoint you as
9 foreperson. That just means, I always tell
10 everybody, that doesn't mean you get any higher pay
11 than the rest of them but it means that you will lead
12 any discussions when y'all begin deliberations and
13 any communications that need to be had with the
14 court, then that would be kind of your job at that
15 point. Other than that, everything will be the same,
16 Mr. Holmes.

17 All right, at this time, do not discuss the
18 case, we'll bring you out in just a few minutes.

19 (WHEREUPON, the jury left open courtroom at
20 approximately 10:40 a.m.)

21 THE COURT: All right, be at ease for 10
22 minutes.

23 (WHEREUPON, a short break was taken.)

24 THE COURT: Mr. Phillips, what was your issue
25 that you?

TASHA CARTER-REDIRECT BY MR. PHILLIPS

1 MR. PHILLIPS: We have some communication
2 between somebody on Facebook, the name is Robert
3 Bannister, with the victim. And then on Instagram,
4 simultaneous conversations. On Instagram he
5 identified himself as Robert Chappell. And the -- I
6 can put the victim up to talk about and describe,
7 explain these.

8 THE COURT: I mean, when were they done?

9 MR. PHILLIPS: In May of 2018.

10 THE COURT: What do they relate to?

11 MR. PHILLIPS: Well, they relate to him
12 commenting on her backdoor, wanted to know if it was
13 still opened. And likes that backdoor action. He
14 asked who she is -- she asked who he was. And he's
15 talked about a photograph and he said, yeah, I'll
16 delete it. I promise this conversation stays private
17 and I'll blow your mind with who this is. I got a
18 feeling Tasha and George don't know about this
19 account.

20 Tasha and George are her parents.

21 And he said, Who are you -- she said, Who are
22 you?

23 He still didn't identify himself. He said, I
24 took the picture down. I miss you so much. Everyone
25 I had has passed away. I remember the tears in your

TASHA CARTER-REDIRECT BY MR. PHILLIPS

1 eyes, you loved me too. Calls her by name, Minor
2 I'll leave you alone. And yeah, I loved you from the
3 beginning. Meet someone nice and have your own
4 family, one day you'll understand.

5 She still presses in asking who she [verbatim]
6 was.

7 THE COURT: What verification do you have that
8 that came from The Defendant?

9 MR. PHILLIPS: Well, first of all, he identifies
10 himself as Robbie Chappell.

11 THE COURT: Okay, anybody can do that.

12 MR. PHILLIPS: Sure but not everybody is going
13 to know who her parents name, Tasha and George.
14 That's a pretty identifying factor.

15 And he said, You put me in prison for the rest
16 of my life, you damn well know me.

17 There was also, I believe, there was one other
18 thing. What was it he said? Hang on, I'll find it
19 because it was relevant. Well, there was one other
20 page that's not on here but the fact that he
21 identified his first name Robert on the Facebook.
22 Then when he switched over to Instagram, he talked
23 about -- he identified himself as Robert Chappell and
24 he identified Tasha and George.

25 And he says, Do you ever -- you ever wonder why

TASHA CARTER-REDIRECT BY MR. PHILLIPS

1 there was never any physical evidence?

2 I think that's pretty relevant, Your Honor.

3 THE COURT: All right, Ms. Kepley.

4 MS. KEPLEY: Your Honor, I'm going to disagree,
5 I don't think -- I didn't hear anything that was
6 relevant in there as to the facts at issue. And I
7 think if The State's going to try to get this in on
8 direct, it is most certainly hearsay. I expect the
9 exception to that would be that it's a prior
10 admission of Mr. Chappell. Obviously, Mr. Chappell
11 denies this. I haven't seen anything to verify what
12 sort of ID address, what sort of Facebook records.
13 Nothing to verify that this is from Mr. Chappell or
14 anywhere near him. Certainly have an IP address that
15 might, we know exactly where he was during this time
16 period, it would probably be fairly easy to verify
17 exactly where this account originated. But we
18 certainly don't have any of that. So I don't think
19 there's any think sort of authentication for this to
20 be a prior statement that would be admissible hearsay
21 under those grounds. And I don't think there's any
22 other hearsay exception that would apply here, Your
23 Honor.

24 THE COURT: Okay.

25 MR. PHILLIPS: Your Honor, it's certainly not

TASHA CARTER-REDIRECT BY MR. PHILLIPS

1 easy -- this was done from prison, from--

2 THE COURT: Where do you show that from?

3 MR. PHILLIPS: What's that?

4 THE COURT: I said, where do you have that that
5 was done from prison?

6 MR. PHILLIPS: Well, it was May 7th of 2018. He
7 was in prison.

8 THE COURT: Well, how do you know that was from
9 him and that was from prison?

10 MR. PHILLIPS: I'm saying, assuming--

11 THE COURT: Assuming? That's a big assumption.

12 MR. PHILLIPS: Well, the fact that you're never
13 going to get an IP address from the phones they pass
14 around in prison. And who else -- it's strange to
15 think somebody, random person on the outside, would
16 identify themselves as Robert Chappell and start
17 talking to her about this.

18 THE COURT: Well, I mean, I think you have some
19 serious issue as to authentication. You have some
20 hearsay. And I think just prejudice over probative.
21 And so I'm going to -- I'm going to not allow that to
22 be published to the jury. But you're welcome to
23 proffer it.

24 MR. PHILLIPS: Not at this time, Your Honor.

25 THE COURT: Well, I mean, if you want to proffer

TASHA CARTER-REDIRECT BY MR. PHILLIPS

1 it or whatever I'll be glad to -- I mean, that's. . .

2 MR. PHILLIPS: Maybe before the end of the case.

3 THE COURT: Okay.

4 MR. PHILLIPS: I want to have -- if I'm going to
5 do it, I want to have the missing pages.

6 THE COURT: Oh, okay. All right, anything else?

7 MR. PHILLIPS: No, we're ready the call our next
8 witness.

9 THE COURT: All right.

10 If the jury is ready, bring them in.

11 (WHEREUPON, the jury entered open court at
12 approximately 11:06 a.m.)

13 THE COURT: Ladies and gentlemen, as you recall,
14 The State is in their case.

15 And, Mr. Phillips, you can call your next
16 witness.

17 MR. PHILLIPS: Thank you, Your Honor.

18 The State calls Minor

19 THE CLERK: Ma'am, please come forward. If
20 you'd please pause at the end of the bench. Place
21 your left hand on the Bible and raise your right
22 hand.

23 Minor after being duly sworn{,}testified
24 as follows:{F}

25 THE CLERK: Thank you, please be seated. Will

Minor

DIRECT BY MR. PHILLIPS

1 you, please, state your name for the record.

2 THE WITNESS: Minor

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MR. PHILLIPS:

6 Q Minor how old are you today?

7 A Nineteen.

8 Q What do you do?

9 A I'm a pre-school teacher.

10 Q How long have you been doing that?

11 A Almost two years.

12 Q The -- you heard the testimony of your mom, do
13 you recall the events back when you were seven years old?

14 A Yes.

15 Q Where were you living at the time?

16 A Eighteen Westview Avenue.

17 Q And who were you living with?

18 A My mommy, my step dad and my siblings.

19 Q And did you -- was your grandmother alive at
20 that time?

21 A Yes.

22 Q Where did she live?

23 A I don't know the address but she lived in a
24 trailer.

25 Q Okay. Did you often visit her?

Minor

DIRECT BY MR. PHILLIPS

1 A Yes.

2 Q And who would be with you when you would visit
3 her?

4 A Sometimes it was just me and my sister,
5 sometimes it was all five of us.

6 Q And was that on a regular basis?

7 A Yes.

8 Q And what were your ages, approximately, when you
9 were visiting her?

10 A Like six, seven.

11 Q Okay. Was anybody living with her during that
12 time?

13 A Yes.

14 Q Who?

15 A Robert.

16 Q Robert who?

17 A Chappell.

18 Q Talking about The Defendant here today?

19 A Yes.

20 Q Okay. Is that the man sitting at the table over
21 there?

22 A Yes.

23 Q When you were going over to your grandmother's,
24 did Robbie ever do anything, touch you in a inappropriate
25 way?

Minor

DIRECT BY MR. PHILLIPS

1 A Yes.

2 Q Would you, please, describe to the jury what he
3 did to you?

4 A It was something different every time.
5 Sometimes it was oral, sometimes it was just with his
6 fingers, sometimes it was with his penis. But, yeah.

7 Q Well, you're going to have to lay a little
8 better foundation. When did this happen?

9 A Usually, at nighttime when my grandma was
10 asleep.

11 Q And where would you be?

12 A I would be either be in the bedroom or asleep in
13 the living room.

14 Q And how would you -- how would you get to --
15 what would happen?

16 A He would come in the living and sometimes he
17 would carry me to my grandma's room, to the foot of her
18 bed and that's when he do the things.

19 Q I know it's not easy but we have to know exactly
20 what it was that -- what the things were that he did to
21 you.

22 A He would pull my pants down and my underwear
23 down and he would orally or he would put his fingers
24 inside of me or his penis inside of me.

25 Q How many times do you think that happened?

Minor

DIRECT BY MR. PHILLIPS

1 A I don't know the exact number but it was
2 numerous times.

3 Q Did it ever happen anywhere other than beside
4 the foot of your grandmother's bed at night?

5 A Also at my house once.

6 Q What happened at your house?

7 A We were playing hide-and-seek and he came into
8 my bedroom -- or he told me where to hide. And he
9 performed oral.

10 Q And I'm sorry, we have to be specific for the
11 record. Did he put his mouth and tongue on your private
12 parts?

13 A Yes.

14 Q And did it ever happen anywhere else at your
15 grandmother's house?

16 A Yes.

17 Q Tell me about that.

18 A Sometimes it was the living room. Also,
19 sometimes I would be taking a bath and he would just take
20 pictures, watch me bathe and stuff like that.

21 Q What would -- what would he do with those
22 pictures?

23 A He would send them to his friend.

24 Q How would you know that?

25 A Because he would tell me and he would also make

Minor

DIRECT BY MR. PHILLIPS

1 me watch the videos that his friend was sending back to
2 him.

3 Q What kind of videos did his friend send back to
4 him?

5 A He was performing the same acts that Robbie
6 would do to me on a older lady.

7 Q And when you say older lady, how old do you
8 think?

9 A Maybe like a teenager.

10 Q So an older lady to a seven year old?

11 A Yeah.

12 Q Okay. And did he do that on more than one
13 occasion?

14 A Did he do what?

15 Q Take pictures or filming you?

16 A Yes.

17 Q And sometimes did he make you hold the camera?

18 A Yes.

19 Q And this is while he was doing what?

20 MS. KEPLEY: Objection, Your Honor. Leading.

21 THE COURT: Overruled. I think it's
22 appropriate.

23 THE WITNESS: While he was either doing oral or
24 putting his finger or just different times, different
25 things.

Minor

DIRECT BY MR. PHILLIPS

1 BY MR. PHILLIPS:

2 Q So what would he do with the camera?

3 A He would just make me hold it like this. And I
4 would be laying down.

5 Q Okay. Did he ever ask or make you touch him?

6 A Yes.

7 Q In what manner would that happen?

8 A He would, basically, make me give him a hand
9 job.

10 Q When you say, basically, did he or did he not?

11 A He did.

12 Q And did he complete?

13 A Yes.

14 Q What would happen after that happened?

15 A He would tell me to go wash my hands.

16 Q And did it ever get on you other than your
17 hands?

18 A Yes.

19 Q Where would that go?

20 A On my stomach or on my butt.

21 Q And what would you do after that?

22 A I would just go clean it like he told me to.

23 Q Did he ever play hide-and-seek other than the
24 time at your house?

25 A No. I mean, yes, at my grandma's house. It

Minor

DIRECT BY MR. PHILLIPS

1 wasn't just at my house.

2 Q Okay. So where would he tell you to hide?

3 A It was in a closet.

4 Q Let me back up from that. Did he tell you to
5 hide?

6 A Yes.

7 Q And where was that?

8 A Usually, tell me to hide in my grandma's closet.

9 Q And what would happen when you hid?

10 A He would tell me that he was coming to find me
11 first and he would come in there. And he would do the
12 same things. And he would record it also.

13 Q Was there a camera in there?

14 A Yes.

15 Q So other than at the foot of your grandmother's
16 bed, and what you said was numerous times, but one time at
17 your house on your bed. How many times did you play
18 hide-and-seek at your grandmother's house?

19 A Numerous.

20 Q And that would happen often?

21 A Yes.

22 Q Has anybody else ever done that sort of activity
23 with you?

24 A No.

25 Q Why didn't you say anything?

Minor

DIRECT BY MR. PHILLIPS

1 A Because he told me not to.

2 Q Other than these acts, was he nice to you?

3 A Yes.

4 Q He talked nice to you?

5 A Yes.

6 Q Did he treat you nicely?

7 A Yes.

8 Q And when you were at the foot of your
9 grandmother's bed or in the closet, what position would
10 you be in?

11 A Either on my back or on my stomach.

12 Q What position would he be in?

13 A On his knees.

14 Q Do you remember going to the Julie Valentine
15 Center and them doing a interview of you?

16 A Yes.

17 Q To the best of your ability, as a seven year
18 old, did you tell the interviewer the truth?

19 A Yes.

20 Q Was his -- was his hand on or in you?

21 A In.

22 Q What about his mouth or tongue?

23 A In and on.

24 Q In and on? And what about his penis?

25 A In and on.

Minor

DIRECT BY MR. PHILLIPS

1 Q Do you remember what the phone looked like?

2 A A flip phone.

3 Q Did he -- do you remember anything about the
4 flip phone that he would do to it before or after?

5 A He would take the chip out and he would also
6 show me where he would hide the chip.

7 Q So he had a chip that was in the phone?

8 A Yes.

9 Q And then he would -- you said that he took it
10 out?

11 A Yes.

12 Q And he would hide it somewhere?

13 A Yes.

14 Q Where did you see him hide it?

15 A In vent of his car. Like he would just sit it
16 on the vent.

17 Q One second, please. Do you remember about what
18 age you were when this started?

19 A Six.

20 Q And what date was it when it ended?

21 A The day that my mom caught us?

22 Q Yes.

23 A March 10th.

24 Q What did she catch you doing?

25 A She caught me in the act with my little sister.

Minor

DIRECT BY MR. PHILLIPS

1 Q What were y'all doing?

2 A I had my pants down and my sister was doing
3 oral.

4 Q How old was your sister at the time?

5 A Five.

6 Q How old were you at the time?

7 A Seven.

8 Q And then, did you tell her, at that time, where
9 it happened?

10 A No.

11 Q After she pressed you, did you tell her?

12 A Yes.

13 Q Where did you tell her that it happened?

14 A My grandma's house.

15 Q Who did you tell her who did it to you?

16 A Robbie.

17 Q And did you tell her everything that first
18 night?

19 A No.

20 Q When was the next time that you talked to your
21 mom about this?

22 A I wrote her a note and told her that I wanted to
23 tell her. And it was probably a few weeks later.

24 Q What did the note say?

25 A I don't exactly remember what it said.

Minor

DIRECT BY MR. PHILLIPS

1 Q But the gist of it is you wanted to talk to her?

2 A Yes.

3 Q Did you talk to her?

4 A Yes.

5 Q Did you tell her what had happened?

6 A Yes.

7 Q And do you remember what happened after you told
8 her that?

9 A Yes.

10 Q What?

11 A We went to the emergency room.

12 Q Would your grandmother ever wake up when you
13 were in the room?

14 A No.

15 Q So y'all both, obviously, would be quiet, I
16 guess.

17 A Yes.

18 Q What were you wearing, do you remember what you
19 were wearing?

20 A I would wear one of my grandma's big t-shirts to
21 sleep in over my underwear.

22 Q Why were you wearing one of her t-shirts?

23 A She would wash our clothes at nighttime.

24 Q Would she give you and your sister a t-shirt to
25 sleep in?

Minor

DIRECT BY MR. PHILLIPS

1 A Yes.

2 Q When he would lay you down, what would he do
3 with your t-shirt?

4 A He would pull it up.

5 Q Obviously, he would pull your panties down, I
6 believe, you said earlier?

7 A Yes.

8 MR. PHILLIPS: That might be all, Your Honor.

9 Give me one second, please.

10 BY MR. PHILLIPS:

11 Q Did you go to counseling after that?

12 A Yes.

13 Q Who did you go to counseling with?

14 A A school counselor.

15 Q Did that help you?

16 A Yes.

17 Q Have you had any -- how did it affect you after
18 it all stopped? How did the activities affect you?

19 A It makes it really hard for me to look a grown
20 man in the eyes. I feel very uncomfortable being around a
21 grown man by myself.

22 Q That's any grown man?

23 A Yes.

24 Q As a seven year old, can you think of any reason
25 you would have to lie about that?

Minor

CROSS BY MS. KEPLEY

1 A No.

2 Q As a 19 year old, is there any reason for you to
3 lie about it today?

4 A No.

5 Q Did you have anything against Robbie other than
6 this act?

7 A No.

8 MR. PHILLIPS: Nothing further.

9 THE COURT: Cross-examination?

10 MS. KEPLEY: Thank you, Your Honor. May it
11 please the Court.

12 CROSS-EXAMINATION

13 BY MS. KEPLEY:

14 Q Minor , let me say, I'm going to have to ask
15 you some hard questions. Just because I'm asking the
16 questions, you're in control. If at any point you need a
17 break, you let me know and I'll let the Judge know, okay?
18 I want to start by talking about your family a little bit.
19 Can you tell me all of your siblings and kind of how old
20 they are?

21 A Now or at the time?

22 Q At the time.

23 A At the time, my brother was six, I was -- no, my
24 brother was seven, I was six and then the triplets would
25 have been two years. And my younger sister, she would

Minor

CROSS BY MS. KEPLEY

1 have been, like, five.

2 Q And some of those are half siblings and some of
3 those are full siblings, right?

4 A Yes.

5 Q Who is your full sibling?

6 A Brother is my full sibling. And would have been
7 the seven year old.

8 Q He's the oldest one, right?

9 A Yes.

10 Q Do you have any sort of relationship with your
11 biological father?

12 A No.

13 Q Were you close to your step dad?

14 A Yes.

15 Q Did you feel safe with him?

16 A Yes.

17 Q Did you have any relationship with him now?

18 A Yes.

19 Q I want to go back to the trailer. Can you kind
20 of describe the layout for me?

21 A You would walk in and you would walk right into
22 the living room. And the kitchen was right here and my
23 grandma's and Robbie's room was down the hall this way.
24 And the other bedroom was on this end.

25 Q So there were two bedrooms, right?

Minor

CROSS BY MS. KEPLEY

1 A Yes.

2 Q How many bathrooms were there?

3 A Two.

4 Q And there were some other people living there
5 around this time, right?

6 A I don't remember that.

7 Q You have an Aunt, Kim Cooper; correct?

8 A Yes.

9 Q Was she in and out around this time?

10 A I don't remember her living there.

11 Q What about your Uncle Jim?

12 A John.

13 Q John Cooper?

14 A Yeah, I don't remember him living there either.

15 Q Did you ever see him around this time in the
16 trailer?

17 A Not that I remember.

18 Q Okay. And while you were over there, is it true
19 that your grandma would be in charge of watching you?

20 A Yes.

21 Q Okay. And when you went over there, you almost
22 always went with one or more of your siblings; right?

23 A Yes.

24 Q You never went alone; is that correct?

25 A Yes.

Minor

CROSS BY MS. KEPLEY

1 Q Can you describe the sleeping arrangements while
2 you were over there?

3 A Sometimes we would sleep in the spare bedroom or
4 sometimes we would just sleep in the living room.

5 Q But when you slept in the spare bedroom, did you
6 sleep alone?

7 A With my siblings.

8 Q And when you slept in the living room you would
9 be next to your siblings too?

10 A Yes.

11 Q Okay. And you say that -- is it your testimony
12 that most of this happened in your grandmother's bedroom
13 at night; is that correct?

14 A Yes.

15 Q And is it correct that -- it is your testimony
16 that you would be right next to the bed?

17 A At the end of the bed.

18 Q At the end of the bed?

19 A Uh-huh.

20 Q That your grandmother would be in, correct?

21 A Yes.

22 Q Did you ever call out to your grandmother while
23 this was happening?

24 A No.

25 Q Okay. Did your grandmother ever wake up, ask

Minor

CROSS BY MS. KEPLEY

1 what's going on?

2 A No.

3 Q You described that you would touch his penis
4 with your hand, correct?

5 A Yes.

6 Q Was it circumcised or uncircumcised?

7 A I don't remember.

8 Q Okay. Did grandma ever see it happen?

9 A No.

10 Q Did you ever try to wake your brothers or
11 sisters up?

12 A No.

13 Q After this happened, did you ever try to wake
14 your brothers and sisters up?

15 A No.

16 Q You also described times when you would play
17 hide-and-seek; isn't that true?

18 A Yes.

19 Q When you were playing hide-and-seek, was it just
20 you or were there other kids playing too?

21 A Other kids also.

22 Q What do you think your parents would have done,
23 you know, if you told them right away what was going on?

24 A I'm not sure.

25 Q Did you ever have any bleeding after he put his

Minor

CROSS BY MS. KEPLEY

1 hands or penis inside you?

2 A I don't remember.

3 Q Okay. Let's talk about the pictures and the
4 phone, okay. Is it true that -- it is your testimony that
5 there was pictures taken?

6 A Yes.

7 Q How often would these pictures be taken?

8 A Most of the time when were playing hide-and-seek
9 and he would make me hide in the closet.

10 Q Were any videos taken?

11 A Yes.

12 Q Were both the pictures and the videos were taken
13 with the flip phone?

14 A No, with a camera.

15 Q With a camera? Okay. So all the pictures and
16 the videos were taken with a camera?

17 A Yes.

18 Q Okay. Were they ever taken with any other
19 device?

20 A I don't remember.

21 Q Okay. And how -- you said there was some
22 messages sent back and forth, correct?

23 A To me?

24 Q No --

25 A To his friend, yes.

Minor

CROSS BY MS. KEPLEY

1 Q How would he send those messages?

2 A On his phone.

3 Q And how would the pictures get from the camera
4 to the phone?

5 A The chip.

6 Q The chip. And you said the chip was where?

7 A He would take it out of his phone and put it in
8 the camera, then put it back in his phone.

9 Q Did you actually see--

10 A Yes.

11 Q -- the text messages being sent back and forth?

12 A He made me watch the videos that the man would
13 send back.

14 Q Did you know who this man was?

15 A His name was Smiley.

16 Q Okay. And you said Smiley, you would see him
17 send pictures back too?

18 A Yes.

19 Q And the pictures were also of someone engaged in
20 some sort of sexual act, correct?

21 A Yes.

22 Q Do you know about the age of that person that
23 was involved?

24 A Maybe a teenager. She was older than me, that's
25 all I know.

Minor

CROSS BY MS. KEPLEY

1 Q Did that happen more than once?

2 A Yes.

3 Q Did you and your mother always have a close
4 relationship around this time?

5 A Yes.

6 Q Did you feel comfortable talking with her?

7 A Yep.

8 Q You've talked about this case with The State
9 before today, correct?

10 A Yes.

11 Q And you also talked about the details of what's
12 happened with a interviewer, correct?

13 A Yes.

14 Q And you also talked about details of what
15 happened with a doctor; is that correct?

16 A Yes.

17 Q And you also talked about the details of what
18 happened with various investigators in this case; is that
19 correct?

20 A Yes.

21 Q And everyone's been supportive of you thus far,
22 correct?

23 A Yes.

24 Q In fact, every person you've talked to before
25 today has been very supportive?

Minor

REDIRECT BY MR. PHILLIPS

1 A Yes.

2 MS. KEPLEY: Beg the Court's indulgence one
3 moment. No more questions, Your Honor.

4 THE COURT: All right, any redirect?

5 MR. PHILLIPS: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. PHILLIPS:

8 Q I was a little confused myself on the cell phone
9 and phone -- camera. So there was a cell phone and a
10 camera?

11 A Yes.

12 Q And the chip would go back and forth between the
13 two?

14 A Yes.

15 Q Okay. So when you -- when there was video being
16 taken, was that with the cell phone or the camera?

17 A The camera.

18 Q Okay. When you said that he was exchanging
19 these videos and you saw the video with a guy named
20 Smiley, how did you know it was Smiley?

21 A Because he told me.

22 Q Who told you?

23 A Robbie.

24 Q Okay. So other than Robbie telling you it's
25 Smiley, you don't know who it was?

Minor

REDIRECT BY MR. PHILLIPS

1 A I also went to Smiley's house one time.

2 Q Went to Smiley's house?

3 A Yes.

4 Q What happened then?

5 A We just went to hang out. Robbie took me there
6 one time.

7 Q How did that make you feel?

8 A I was scared.

9 Q Why?

10 A Because I didn't know if they were going to try
11 to do something together.

12 Q Did you ever know Smiley's real name?

13 A No.

14 Q Do you know the difference between a circumcised
15 and uncircumcised penis?

16 A Yes.

17 Q Now, when you say you were at the foot of the
18 bed, I just want to make sure I understand, you were not
19 at the foot on the bed, you were --

20 A On the floor.

21 Q On the floor at the end of the bed?

22 A Yes.

23 Q Okay. At age seven, did you understand what it
24 was that was coming out of his penis?

25 A No.

Minor

REDIRECT BY MR. PHILLIPS

1 Q You, obviously, at age 19, know what that is
2 now?

3 A Yes.

4 Q And again, I don't -- I hate to make you say it
5 but when you said you gave him a hand job, what does that
6 mean?

7 A I would just go up and down.

8 Q With your hand on his?

9 A Yes.

10 Q Okay. Did you understand what was happening to
11 you at the time?

12 A No.

13 Q How long do you think it took for you to
14 understand what's really been going on?

15 A Until my mom caught me, then I knew that was
16 something we weren't supposed to be doing.

17 Q Did you even understand it then?

18 A Not really.

19 Q One moment, please. This is for the court
20 record so I apologize. You said you went up and down, up
21 and down on what?

22 A On his penis.

23 Q Okay. Until he came?

24 A Yes.

25 MR. PHILLIPS: I have nothing further.

CHERYL CROMARTIE-DIRECT BY MR. PHILLIPS

1 THE COURT: Recross?

2 All right, you may step down, thank you.

3 Mr. Phillips, call your next witness.

4 MR. PHILLIPS: The State would call Cheryl
5 Cromartie.

6 THE CLERK: Ma'am, would you please come
7 forward. Please pause at the end of the bench, place
8 your left hand on the Bible and raise your right
9 hand.

10 CHERYL CROMARTIE, after being duly
11 sworn{,} testified as follows:{F}

12 THE CLERK: Thank you, please be seated. State
13 your name for the record.

14 THE WITNESS: Cheryl Cromartie.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MR. PHILLIPS:

18 Q Ms. Cromartie, where do you work?

19 A Greenville County Sheriff's Office.

20 Q How long have you been in law enforcement?

21 A Twenty-nine years.

22 Q Has it all been with Greenville County?

23 A Yes.

24 Q What is your position now?

25 A My position now is a captain over community

CHERYL CROMARTIE-DIRECT BY MR. PHILLIPS

1 services division.

2 Q What was your position back in -- when the
3 events of this happened back in 2010?

4 A I was an investigator within the sexual assault
5 division. The sex crimes division.

6 Q How long were you in that division?

7 A Probably around six and a half to seven years.

8 Q What kind of training did you have for that
9 position?

10 A I've had a variety of trainings. Child sexual
11 assaults, sex assaults, Mahfe [ph], what they call Defined
12 in Words. Now it's called Child First, it's for forensic
13 interviewers. And just a numerous amount of
14 investigations.

15 Q When you say forensic interview, are you talking
16 about how to question victims of child abuse?

17 A Yes.

18 Q How long were you in that position?

19 A The sex crimes position?

20 Q Yes.

21 A For about six and a half, seven years.

22 Q And I know you might have been asked this in
23 other cases that you've been a witness, but do you know
24 how many cases you had?

25 A Whoa.

CHERYL CROMARTIE-DIRECT BY MR. PHILLIPS

1 Q I know you can't sit there and add them up but
2 approximately?

3 A Maybe 600 or more.

4 Q In that six and a half years?

5 A In the six and a half to seven years.

6 Q Wow. Were you assigned to this case?

7 A Yes.

8 Q And how did it come to you?

9 A The case was referred to my unit by a uniform
10 patrol officer. It's forwarded to our unit, my
11 supervisor, at that time, assigned the case to me as the
12 investigator to follow up.

13 Q So the -- you didn't -- you didn't show up at
14 the hospital when the victim went to the hospital, did
15 you?

16 A No.

17 Q Is that who the uniform patrol was?

18 A Uniform patrol officer. The initial officer to
19 respond to the hospital.

20 Q And that's who referred to you?

21 A Not uniform patrol officer. It comes from
22 uniform patrol but the case was referred to me by my
23 supervisor -- or my supervisor.

24 Q Okay. Do you remember the approximate date you
25 were assigned to this case?

CHERYL CROMARTIE-DIRECT BY MR. PHILLIPS

1 A Maybe, March the 25th of 2010.

2 Q Okay. It would have been pretty much
3 simultaneously close to the time that she went to the
4 hospital?

5 A Yes. Generally, a report is referred, maybe, a
6 day after the initial report is written.

7 Q The officer that went to the hospital, is he
8 trained in the manner that you were trained to question
9 children?

10 A No.

11 Q What, generally, happens in a case once you get
12 it?

13 A So what, generally, happens when the case is
14 referred to my unit for further investigation, we will
15 review the case. And what I would normally do is make
16 contact with the victims. The victim's mother. I would
17 just make general contact with anyone that's involved in
18 that case.

19 Q After you contact them, what do you do?

20 A I schedule, usually, schedule in-person
21 interview.

22 Q And did you do that?

23 A Yes.

24 Q Do you remember, approximately, when it was that
25 you met with her?

CHERYL CROMARTIE-DIRECT BY MR. PHILLIPS

1 A I contacted mother and I met with her March the
2 30th, I want to say, of 2010.

3 Q Okay. Did the victim's mother attend the
4 interview as well?

5 A The victim's mother attended, however the
6 victim's mother, she was not in the interview with me.

7 Q But she brought her to you?

8 A Yes, she brought the child to me.

9 Q But she wasn't in the interview?

10 A No.

11 Q Where did you interview her?

12 A I'm sorry?

13 Q Where did you interview the child?

14 A Oh, at the time, my office, located at 301
15 University Ridge, County Square.

16 Q And do you have a protocol that you would follow
17 when interviewing a child?

18 A We pretty much have a protocol when we're
19 interviewing children.

20 Q And what is that? How can you describe it?

21 A So I would describe it as that, you know, we
22 talk to the kids. And depending on the age, we establish
23 a rapport. We just, basically, talk to them about, you
24 know, anything that may interest that child. Just to get
25 them comfortable with speaking to an investigator. And

CHERYL CROMARTIE-DIRECT BY MR. PHILLIPS

1 then we would go from there with a series of child-like
2 questions.

3 Q Is it -- is your interview anything like the
4 in-depth interview they do at Julie Valentine?

5 A My interview is similar to that. But not as
6 in-depth as the Julie Valentine Center.

7 Q Okay. And what did you do after -- well, let's
8 just ask you, what did the child tell you?

9 A She, basically, told me that The Defendant,
10 which is Robert Chappell--

11 MS. KEPLEY: Your Honor, objection.

12 THE COURT: I think -- basis of?

13 MS. KEPLEY: Hearsay, Your Honor.

14 MR. PHILLIPS: Even though the victim's
15 testified?

16 THE COURT: It is limited to time and place.

17 MR. PHILLIPS: Okay.

18 THE COURT: Hold on, sustain the objection but.

19 MR. PHILLIPS: Yes, Your Honor.

20 BY MR. PHILLIPS:

21 Q Based on your interview with the child, what did
22 you -- what -- did she tell you the time and place this
23 incident occurred?

24 A Yes.

25 Q When did it occur?

CHERYL CROMARTIE-DIRECT BY MR. PHILLIPS

1 A She, basically, told me that it occurred six to
2 seven years of age.

3 Q And where did it occur?

4 A At her grandmother's residence.

5 Q After that meeting that you had with her, did
6 you schedule a forensic examination?

7 A Yes.

8 Q All right. Was there a medical examination as
9 well?

10 A I also scheduled her for a medical examination.

11 Q So you scheduled both?

12 A I scheduled both, yes.

13 Q Okay. Did you ever meet with The Defendant,
14 Robert Chappell?

15 A Yes.

16 Q And did you ask him for his phone?

17 A I did.

18 Q Did you search the phone yourself?

19 A No, I didn't search the phone myself. I turned
20 that phone over to investigator Jim Perry.

21 Q He is also with the Greenville County Sheriff's
22 Office?

23 A Yes.

24 Q Do you remember the date that phone was turned
25 over to you?

CHERYL CROMARTIE-DIRECT BY MR. PHILLIPS

1 A That I can recall, that date's June 30th, 2010.

2 Q So that would have been several months after the
3 discovery of the interviews?

4 A Yes.

5 Q Do you remember the kind of phone that was used?

6 A I can remember that it was a flip phone, black
7 in color. But that's about all I can remember about that
8 phone.

9 Q Okay. After Investigator Perry got through with
10 the search of the phone, did he give it back to The
11 Defendant?

12 A Yes.

13 Q Then what happened to the case?

14 A So during that timeframe, I was promoted to
15 sergeant, to go back to the uniform patrol division. And
16 so the cases that were assigned to me, all of my cases
17 that were assigned to me, were, actually, assigned to
18 Investigator Mike Robertson.

19 Q So he carried on the case from there?

20 A Yes.

21 Q Is he the one that got the warrants for The
22 Defendant's arrest?

23 A Yes.

24 MR. PHILLIPS: I have nothing further, Your
25 Honor.

CHERYL CROMARTIE-CROSS BY MS. KEPLEY

1 THE COURT: Cross-examination.

2 MS. KEPLEY: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. KEPLEY:

5 Q Good morning.

6 A Good morning.

7 Q How many years of experience do you have in
8 investigation?

9 A Total, I've investigated more crimes than sexual
10 assaults. So I started out in burglaries and that was
11 probably four years experience there in burglary
12 investigations. I worked gang investigations, probably
13 three years experience there. I've worked family violence
14 investigations, probably another two and a half years,
15 maybe. And then sexual assaults.

16 Q Would you agree that one of the important
17 characteristics of an investigation is that it be full,
18 complete and accurate?

19 A One of the characteristics.

20 Q Of a good investigation?

21 A Yes.

22 Q That's full, complete and accurate?

23 A Yes.

24 Q Have you reviewed your notes of this
25 investigation before today?

CHERYL CROMARTIE-CROSS BY MS. KEPLEY

1 A I've reviewed my notes.

2 Q Okay. You spoke to the Mother, Tasha, first; is
3 that correct?

4 A Yes.

5 Q And were you able to figure out when exactly it
6 was that Minor first disclosed?

7 A Pretty much, I figured out after speaking with
8 Minor. She, basically, disclosed to me that -- are you
9 asking about the incident that occurred?

10 Q I'm just trying to figure out the timeline for
11 disclosure.

12 A The disclosure. That I can recall, she
13 disclosed to her mother. And if I'm thinking of the date,
14 it was, maybe, the same date that the incident was
15 reported to the sheriff's office. Which was March 24th.

16 Q And you said you spoke to Minor yourself; is
17 that true?

18 A Yes.

19 Q And weren't the first officer to speak with her,
20 correct?

21 A I'm not -- no, I'm not the first officer to
22 speak with her.

23 Q As someone trained in child sexual abuse cases,
24 would you agree that the questions you asked, certainly
25 matter a great deal?

CHERYL CROMARTIE-CROSS BY MS. KEPLEY

1 A I'm sorry, can you repeat that?

2 Q The questions you ask, the specific questions
3 you ask, does it matter what those questions are?

4 A It does matter.

5 Q And how you ask those questions, does that also
6 matter a great deal?

7 A It matters.

8 Q And how many times a child is asked the same
9 questions, is something you should, generally, avoid;
10 would you agree with that?

11 A I would say, yes.

12 Q And would you agree you certainly interview
13 children differently than you do adults?

14 A Yes.

15 Q And would you agree that part of the reason you
16 do that is because children can be suggestible to say
17 certain things, even unintentionally?

18 A I wouldn't say suggestible but, you know,
19 children are children, depending on the age and their
20 answers or the way that they perceive things are totally
21 different than adults.

22 Q By the time -- so by the time you speak to
23 Minor it sounds like she had already disclosed something
24 to her mother. It's been a few weeks, at least?

25 A I'm not sure, a few weeks. I got from Minor's

CHERYL CROMARTIE-CROSS BY MS. KEPLEY

1 mother that there was a disclosure. The incident report
2 was taken March 24th and then it came over to me.

3 Q And she was seven years old at the time you
4 spoke to her, correct?

5 A Seven years old, yes.

6 Q Were you able to also speak to her Grandmother,
7 Deborah?

8 A Yes.

9 Q Were you able to determine if she witnessed
10 anything in this case?

11 A Deborah advised she was -- she was limited, with
12 limited information. I'm not sure if she witnessed
13 anything. I didn't get that from her. But she just,
14 basically, said she had limited information.

15 Q Were you able to speak to any other adults who
16 may have been at the trailer during this time period?

17 A At the -- where the incident occurred?

18 Q Yeah, the time period of the allegations.

19 A No other adults besides Mr. Chappell.

20 Q Did you -- so you never spoke to Kimberly
21 Cooper; is that correct?

22 A I'm not sure who Kimberly Cooper is. I spoke to
23 the grandmother. But Kimberly Cooper, I'm not familiar
24 with.

25 Q Did you ever speak to anyone named John Cooper,

CHERYL CROMARTIE-CROSS BY MS. KEPLEY

1 as part of this case?

2 A No.

3 Q And you said that you did speak to Mr. Chappell;
4 is that correct?

5 A Yes, yes.

6 Q He came in voluntarily; is that correct?

7 A He did.

8 Q He came in without a lawyer, on his own; is that
9 correct?

10 A I don't recall a lawyer being with him.

11 Q Is it true that he denied any sort of
12 inappropriate touching?

13 A He did.

14 Q Let's talk about the phone. Did he provide
15 consent to search his phone?

16 A He did.

17 Q And was anything inappropriate found on that
18 phone?

19 A I didn't check the phone, Investigator Jim Perry
20 checked that phone.

21 Q Did you speak to Investigator Perry about his
22 findings?

23 A I did.

24 Q Was anything inappropriate found?

25 A He advised, no.

CHERYL CROMARTIE-CROSS BY MS. KEPLEY

1 Q All right. To be clear, there were no
2 inappropriate pictures on that phone to your knowledge,
3 correct?

4 A Not to my knowledge.

5 Q There were no inappropriate videos on that phone
6 to your knowledge; is that correct?

7 A Not to my knowledge.

8 Q And there was no inappropriate texts with
9 someone else to your knowledge, correct?

10 A Not to my knowledge.

11 Q Did you ever obtain a warrant to search the
12 trailer?

13 A I didn't obtain a warrant to search the trailer.

14 Q Okay. Did you ever attempt to collect any
15 forensic data from that trailer or from the grandmother's
16 bedroom?

17 A I didn't collect anything because I got promoted
18 and my entire case file was turned over to Investigator
19 Robertson. So I'm not sure what occurred after that case
20 file was turned over to Investigator Robertson.

21 Q Well, I'm certainly not asking about anything he
22 did, I'm just asking about what you did?

23 A No, I didn't.

24 Q Okay. Did you ever get a search warrant for his
25 car?

CHERYL CROMARTIE-REDIRECT BY MR. PHILLIPS

1 A No.

2 Q Did you ever attempt to collect any forensic
3 evidence from the mother's address?

4 A No.

5 Q Did you ever find any sort of camera device as
6 part of this case?

7 A I didn't find -- I never -- I never responded to
8 the residence so I didn't find anything, a camera or
9 anything.

10 Q Okay. To be clear, you never found any sort of
11 chip that certainly might contain something on it,
12 correct?

13 A No.

14 Q Were you able -- ever able to locate any
15 picture, any text message device that would have backed up
16 something in her story?

17 A I never located any of that.

18 Q Okay.

19 No questions, Your Honor.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MR. PHILLIPS:

23 Q To your knowledge, you was The Defendant ever
24 charged with anything related to pictures on a camera or
25 phone?

CHERYL CROMARTIE-REDIRECT BY MR. PHILLIPS

1 A To my knowledge, I'm not sure if he was charged
2 with anything related to anything on a phone. However, he
3 was charged.

4 Q However what?

5 A However, he was charged.

6 Q For what he did to the victim?

7 A Yes.

8 MR. PHILLIPS: I have nothing further.

9 THE COURT: All right, you may step down.

10 Counsel, will y'all approach just for scheduling
11 discussion.

12

13 (WHEREUPON, an off-the-record bench conference
14 was held in the presence of the jury but out of
15 the hearing of the jury.)

16 THE COURT: All right, ladies and gentlemen,
17 it's 12:00 or close enough to 12:00. So we're going
18 to go ahead and break for lunch. I'll have y'all
19 come back a 1:30, okay? You probably say, Wow, I
20 wish I had that job and get an hour and a half for
21 lunch. But, unfortunately, we have lots of other
22 things to do unrelated to this case during lunch.
23 And so that's why. It will also give y'all plenty of
24 time, make sure you do whatever you need to do. So
25 be back in your jury room at 1:30. So here's my

CHERYL CROMARTIE-REDIRECT BY MR. PHILLIPS

1 little rules. Do not discuss the case, don't do any
2 type of research, don't pay attention to any media,
3 if there is any out there. And also, anybody
4 contacts you other than somebody from the clerk's
5 office, please let the bailiffs know when you get
6 back. Otherwise, y'all have a good lunch and
7 hopefully it's not raining out there yet. But I know
8 a bunch of rain is coming. So, you know, be prepared
9 for that. Thank you, have a good lunch.

10 (WHEREUPON, the jury left open court at
11 approximately 11:55 a.m.)

12 THE COURT: I would remind both parties that we
13 do have a sequestration order. So make sure you keep
14 that in mind. So, all right.

15 MR. PHILLIPS: One small housekeeping matter.

16 THE COURT: Yes, sir.

17 MR. PHILLIPS: I -- unless we can stipulate, I
18 needed -- was going to recall Minor to identify
19 these as being her at the ages that--

20 THE COURT: All right, talk to her about that
21 and if we need to address it we can. I don't want to
22 get involved unless I have to.

23 MR. PHILLIPS: Understand.

24 THE COURT: All right, see y'all at 1:30.

25 (WHEREUPON, a lunch break was taken.)

MICHAEL ROBERTSON-DIRECT BY MR. PHILLIPS

1 (WHEREUPON, State's Exhibits Nos. 3 & 4 were
2 marked for identification only.)

3 THE COURT: Everybody ready for the jury?

4 MR. PHILLIPS: Yes, Your Honor.

5 MS. KEPLEY: Yes, Your Honor.

6 THE COURT: All right, whenever they're ready,
7 tell them to come on down.

8 (WHEREUPON, the jury came into open court at
9 approximately 1:40 p.m.)

10 THE COURT: All right, ladies and gentlemen,
11 we're now ready to proceed with The State's case.

12 So, Mr. Phillips, call your next witness.

13 MR. PHILLIPS: Thank you, Your Honor, The State
14 calls Michael Robertson.

15 THE CLERK: Sir, if you'd please come forward.
16 Please pause at the end of the bench, place your left
17 hand on the Bible and raise your right hand.

18 MICHAEL ROBERTSON, after being duly
19 sworn{,}testified as follows:{F}

20 THE CLERK: Thank you, please be seated. State
21 your name for the record.

22 THE WITNESS: Michael Robertson.

23 THE CLERK: Thank you.

24 DIRECT EXAMINATION

25 BY MR. PHILLIPS:

MICHAEL ROBERTSON-DIRECT BY MR. PHILLIPS

1 Q Mr. Robertson, can you please tell the jury
2 where are you employed?

3 A Greenville County Sheriff's Office.

4 Q How long have you been there?

5 A Thirty-two years.

6 Q How -- what position did you hold back in 2010?

7 A I was an investigator in the sex crimes
8 division.

9 Q And did -- with the -- with the promotion of
10 Cheryl Cromartie, did you take over some of her cases?

11 A I did.

12 Q And was one of those cases one with Robert
13 Chappell?

14 A It was.

15 Q What did you do for the case?

16 A I went over the case file, the documentation
17 that Captain Cromartie had done involving the case. And
18 saw that really the only thing left to do was talk to a
19 gentleman named, I think nicknamed, Smiley. I found out
20 who he was, I called him in and interviewed him.

21 Q Okay. Did you -- pursuant to your interview
22 with him, did you ask to check his phone?

23 A I did.

24 Q Okay. And was there anything of value on that
25 phone?

MICHAEL ROBERTSON-CROSS BY MS. KEPLEY

1 A There was not.

2 Q And then did you proceed -- are you the one that
3 got the arrest warrants?

4 A I did.

5 Q Is that pretty much your involvement in this
6 case?

7 A Yes, sir.

8 MR. PHILLIPS: I have nothing further, Your
9 Honor.

10 THE COURT: Cross-examination?

11 MS. KEPLEY: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. KEPLEY:

14 Q Good afternoon, how many years experience do you
15 have investigating criminal cases?

16 A I believe I transferred over to investigations
17 in 2010, stayed there between sex crimes investigator,
18 crimes against children investigator, juvenile
19 investigation, about ten years.

20 Q Do you have any training in cases of child
21 sexual assaults, specifically?

22 A Yes.

23 Q What sort of training?

24 A I went to the academy -- I'm sorry, I went to
25 Columbia and took the forensic interviewing class for a

MICHAEL ROBERTSON-CROSS BY MS. KEPLEY

1 week down there. I've attended several seminars and
2 several day or week long classes for sex crimes.

3 Q And would you agree with me that it's important
4 for an investigation to be thorough, accurate and
5 complete?

6 A Yes.

7 Q And do you remember when you took over this
8 investigation?

9 A I'm going to say, because my first supplement
10 was August, August the 9th of 2010.

11 Q And is that when you met Smiley?

12 A Correct.

13 Q Were you able to determine -- who is Smiley?

14 A We were told that he was friends with The
15 Defendant. And there were certain things that The
16 Defendant has done that sent stuff to Smiley's phone. And
17 Smiley would send stuff back to The Defendant.

18 Q And were you able to determine that Smiley, his
19 real name is Sam Houston, as part of your investigation?

20 A Correct.

21 Q And you met with Sam Houston, correct?

22 A Shawn Ray Houston.

23 Q Shawn Houston?

24 A Yes.

25 Q Did I call him Sam? Shawn Houston, excuse me.

MICHAEL ROBERTSON-CROSS BY MS. KEPLEY

1 Did you meet with him before or after you signed the
2 warrants on this case?

3 A Before.

4 Q Are you sure about that?

5 A No, I'm not. I'm sorry, after.

6 Q So after you'd already signed the warrants,
7 that's when you meet Smiley; correct?

8 A Correct.

9 Q And Shawn Houston, he came in voluntarily,
10 correct?

11 A Correct.

12 Q He came without a lawyer, on his own; is that
13 correct?

14 A Correct.

15 Q And he gave you his phone with consent; is that
16 correct?

17 A Correct.

18 Q Did you find anything on that phone that would
19 have backed up this story?

20 A No.

21 Q Did he deny any sort of inappropriate text
22 exchange with Mr. Chappell?

23 A He did.

24 Q And again, talking about that phone that he gave
25 consent to search, there were no appropriate pictures

MICHAEL ROBERTSON-CROSS BY MS. KEPLEY

1 found, correct?

2 A Correct.

3 Q No inappropriate videos found, correct?

4 A Correct.

5 Q No text exchange that would have caused you
6 concern, correct?

7 A Correct.

8 Q Were you able to speak to anyone else who may
9 have been present, an adult, around the time at the
10 trailer?

11 A No.

12 Q Okay. So you never spoke to Kim Cooper,
13 correct?

14 A No.

15 Q And you never spoke to John Cooper, correct?

16 A No.

17 Q Did you ever obtain any sort of search warrant
18 or consent to search the trailer?

19 A I did not.

20 Q Okay. So you never attempted to collect any
21 sort of forensic data from the grandmother's bedroom,
22 correct?

23 A No.

24 Q And for -- or anybody in the trailer for that
25 matter, correct?

MICHAEL ROBERTSON-REDIRECT BY MR. PHILLIPS

1 A No.

2 Q Did you ever get a search warrant or consent to
3 search Minor's home?

4 A No.

5 Q So you were never able to collect any sort of
6 forensic data from her bedroom, correct?

7 A Correct.

8 Q Never found any sort of dirty laundry that might
9 be able to be tested, correct?

10 A Correct.

11 Q Did you ever find a camera?

12 A No.

13 Q Did you ever find any sort of storage,
14 electronic storage device card? Ever find anything like
15 that?

16 A No.

17 Q Was there anything, any device, any pictures,
18 any sort of evidence that you were able to collect that
19 would have backed her story up?

20 A No.

21 MS. KEPLEY: Thank you, Your Honor.

22 THE COURT: Any redirect?

23 MR. PHILLIPS: Yes, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. PHILLIPS:

MICHAEL ROBERTSON-REDIRECT BY MR. PHILLIPS

1 Q A couple of things. One is, you got on this
2 case August 9th?

3 A Correct.

4 Q And the allegations of this came out March 10th,
5 I believe; is that correct?

6 A I believe so, yes, sir.

7 Q Would you have expected to find anything of
8 value by executing a search warrant based on the -- the
9 interviews and video that you saw?

10 A No.

11 Q Number two, isn't it true that they didn't live
12 in the same location that they did when this event
13 occurred?

14 A That's true.

15 Q And number three, did Smiley know why he was
16 coming in?

17 A I believe so. Smiley told me some facts that he
18 had already spoken with some family members earlier, about
19 three or four days earlier. So he was familiar with what
20 was going on.

21 Q He was familiar with what was going on?

22 A Yes.

23 Q And then -- then he voluntarily came in to you?

24 A Yes.

25 MR. PHILLIPS: Nothing further, Your Honor.

JIM PERRY-DIRECT BY MR. PHILLIPS

1 THE COURT: All right, thank you, you may step
2 down.

3 MR. PHILLIPS: The State calls Jim Perry.
4 Can Mr. Robertson be excused?

5 THE COURT: Any objection?

6 MS. KEPLEY: No objection, Your Honor.

7 THE COURT: All right, he maybe excused.

8 THE CLERK: Sir, if you'd please come forward,
9 pause at the end of the bench. Please place your
10 left hand on the Bible and raise your right hand.

11 JIM PERRY, after being duly sworn{,}testified as
12 follows:{F}

13 THE CLERK: Thank you, please be seated. Please
14 state your name for the record.

15 THE WITNESS: James Phillip Perry.

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MR. PHILLIPS:

19 Q Mr. Perry, where are you employed?

20 A The Greenville County Sheriff's Office.

21 Q How long have you been there?

22 A I've got 40 years total law enforcement. About
23 27, 28 years with the sheriff's office.

24 Q Do you have a retirement coming up?

25 A I'm looking at it.

JIM PERRY-DIRECT BY MR. PHILLIPS

1 Q Okay. What is your position with GSO?

2 A I work with the computer crimes investigations
3 unit with the sheriff's office.

4 Q And what does that mean? What do you do in that
5 position?

6 A We handle all types of forensics, cell phone,
7 computer forensics, GPS forensics. We handle the ICAT,
8 which is Internet Crimes Against Children Task Force out
9 of the attorney general's office. We handle the child
10 pornography cases that come through. Cyber tips, we do
11 the online predator type things. Then we also do several
12 forensics for the other, you know, homicide, armed
13 robbery, sex crimes, those type things.

14 Q And pursuant to that, your position there, did
15 you have the occasion to exam a phone that was given to
16 you that belonged to The Defendant, Robert Chappell?

17 A I was.

18 Q How did you get that?

19 A At that time, Investigator Cheryl Cromartie
20 brought it to me. In my office. Had a, what we call a
21 image, of it done so we can investigate the phone.

22 Q And were you aware that phone was given
23 voluntarily by Mr. Chappell?

24 A That's what I was informed.

25 Q And that -- tell me about that phone. What was

JIM PERRY-DIRECT BY MR. PHILLIPS

1 the model and what was it like?

2 A It was a Sanyo SCP 8400. And it's just a little
3 flip phone. Going back 2010, compared to today,
4 obviously, the smart phones weren't near as prevalent as
5 they are today. So back then we didn't get a lot of
6 information off of flip phones like we do today with the
7 smart phones.

8 Q And so what was -- what was the way that a flip
9 phone could store information?

10 A Well, it was two ways it can store it. It can
11 store it internally or if it has a Micro SD card that put
12 in the spot, it can be saved to the Micro SD card.

13 Q And if it's saved to the Micro SD card and that
14 card is taken out, you can no longer view that on that
15 phone; is that correct?

16 A That is correct.

17 Q The phone that you got to exam, did it have a SD
18 the card?

19 A When it was purchased originally it came with
20 the Micro SD card. When I examined it, it did not have
21 one.

22 Q About how big are one of those cards on that
23 phone?

24 A About -- they're about the size of the end of my
25 thumbnail.

JIM PERRY-CROSS BY MS. KEPLEY

1 Q And back then, were you able to take those cards
2 out and transfer that data to other devices?

3 A Yeah, just like even today you can still do
4 that, even back then.

5 Q Okay. So you could have put it on a camera, for
6 instance?

7 A Put it in a camera, put it in a computer.

8 Q Okay. So examining this phone without having a
9 SD card, there's no way you could tell what videos or
10 pictures had been taken with it?

11 A That's correct.

12 MR. PHILLIPS: Nothing further.

13 THE COURT: Cross-examination?

14 MS. KEPLEY: Yes, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. KEPLEY:

17 Q You mentioned that when this phone was
18 purchased, that it had a SD card in it; is that correct?

19 A That's right.

20 Q But to be clear, you don't know the
21 circumstances of how Mr. Chappell purchased this phone, do
22 you?

23 A No, I do not.

24 Q So you have no idea if this phone was purchased
25 second hand or whether or not it had a SD card or not when

JIM PERRY-CROSS BY MS. KEPLEY

1 he got it?

2 A Not when he got it, no. Just when it was
3 originally purchased.

4 Q Okay. If someone were to delete something off
5 the internal memory, do you have ways of seeing that?

6 A No. Not on a flip phone.

7 Q Okay. Let's talk about text messages. Were you
8 able to search the text messages on the phone?

9 A On that particular phone, I do not recall if
10 we -- if Cheryl looked at the text messages on that phone.

11 Q Did you look at them?

12 A No, I did not. What we do is we do a phone
13 analysis. We put in it a report, if we get a report on
14 evidentiary value and then we give it to the investigator
15 to go through that report. So I would say, probably,
16 since 2010 I've probably done close to 2500 phones. So we
17 just don't have the luxury to be able to sit down and go
18 through these phones.

19 Q So to be clear, you didn't find anything of
20 evidentiary value?

21 A Correct.

22 Q On that phone. Did you also search Shawn
23 Houston's phone?

24 A I did a phone dump on it or image of it and gave
25 that to Investigator Robertson.

JIM PERRY-CROSS BY MS. KEPLEY

1 Q Was there anything of evidentiary value found in
2 that cell phone dump?

3 A I have no idea. I gave that to him to go
4 through, so I can't say one way or the other on that.
5 Personal knowledge, I didn't go through that phone.

6 Q You didn't go through it, okay. Did you see
7 anything of value, evidentiary wise, on any phone or any
8 device you searched as part of this case?

9 A No, I did not.

10 MS. KEPLEY: Okay, thank you.

11 THE COURT: Any redirect?

12 MR. PHILLIPS: No redirect, Your Honor.

13 THE COURT: All right, thank you, you may step
14 down.

15 MR. PHILLIPS: May Mr. Perry be excused?

16 THE COURT: Any objection?

17 MS. KEPLEY: No objection, Your Honor.

18 THE COURT: All right, he can be excused.

19 MR. PHILLIPS: May we approach?

20 THE COURT: Yes, sir.

21 (WHEREUPON, an off-the-record bench conference
22 was held in the presences of the jury but out of
23 the hearing of the jury.)

24 THE COURT: The State calls Christine Carlberg.

25 THE CLERK: Ma'am, if you'd please come forward.

CHRISTINE CARLBERG-DIRECT BY MR. PHILLIPS

1 THE COURT: Hold on.

2 THE CLERK: Please place your left hand on the
3 Bible --

4 Excuse me?

5 THE COURT: Before you start, let's make sure --
6 make sure the video wasn't distracting.

7 Is there anything up there?

8 All right, I didn't want y'all to be distracted
9 until we need it.

10 All right, go ahead.

11 THE CLERK: All right. If you'd -- okay.

12 CHRISTINE CARLBERG, after being duly
13 sworn{,}testified as follows:{F}

14 THE CLERK: Thank you, please be seated. Please
15 state your name for the record.

16 THE WITNESS: Christine Carlberg.

17 THE CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MR. PHILLIPS:

20 Q Ms. Carlberg, tell the jury where you work.

21 A I'm employed by the Greater Greenville
22 Department of Mental Health and I'm contracted to work at
23 the Julie Valentine Center.

24 Q And what do you do at the Julie Valentine
25 Center?

CHRISTINE CARLBERG-DIRECT BY MR. PHILLIPS

1 A I'm a forensic interviewer.

2 Q What is your educational background?

3 A I have Bachelor's of Science degree in
4 Rehabilitation Services Education with a Minor in
5 Psychology at the Pennsylvania State University. And I
6 have Master's of Arts in Marriage and Family Therapy from
7 Reformed Theological Seminary in Jackson, Mississippi.

8 Q What kind of services do you provide for the
9 Julie Valentine Center?

10 A I conduct forensic interviews.

11 Q Are most of them with children?

12 A Yes, sir.

13 Q Are all of them with children?

14 A Sometimes we see developmentally delayed adults.

15 Q Okay. What is your experience in questioning
16 forensically children?

17 A My experience, I've been conducting forensic
18 interviews for almost 22 years. And I've done 3956
19 interviews in those years.

20 Q That's a pretty specific number. Do you have
21 something that you keep up with?

22 A Yes, sir.

23 Q Three thousand nine hundred fifty-six?

24 A Yes.

25 Q What is a forensic interview?

CHRISTINE CARLBERG-DIRECT BY MR. PHILLIPS

1 A A forensic interview is a non-leading,
2 non-suggestive manner of gathering information for
3 purposes of an investigation.

4 Q And do you have a particular method that you
5 follow, protocols that you follow when you ask these
6 questions?

7 A Yes. We use a protocol called the Child First
8 Protocol of South Carolina.

9 Q Okay. And, basically, can you explain what that
10 is?

11 A It's a semi-structured protocol. The acronym is
12 RTEC [oh]. So it stands for Rapport, which is the stage
13 where we gather rapport and just introduce the child to
14 the room and what's going to be the expectations of the
15 interview. And then the Transition, where we're
16 transitioning over to, like, the topic of what the
17 interview would be about. And then Exploration, where
18 we're just exploring what the allegations are and trying
19 to get as many details about that as the child is able to
20 give. And then there's a Closure stage where we're giving
21 a respectful end to the interview and having some safety
22 discussions.

23 Q Were the -- is the parent normally present for
24 the interview?

25 A The parent is not in the interview room.

CHRISTINE CARLBERG-DIRECT BY MR. PHILLIPS

1 Q Why is that?

2 A Well, sometimes the parent can be influential as
3 to what the child might say or influential as to what the
4 child might not say. So we want the child to be able to
5 tell their own story in their own words.

6 Q And where was this interview conducted?

7 A This interview was conducted at the Julie
8 Valentine Center.

9 Q Do you have a specific room set up for that?

10 A We have a interview room, yes.

11 Q What is unique or special about this interview
12 room?

13 A The room is pretty plain. So there's a chair
14 for myself and for the child. There's easel paper to draw
15 on and there's recording equipment.

16 Q Do you remember who referred you this child for
17 interview?

18 A She was referred by the Greenville Hospital
19 System.

20 Q And do you remember what date you did the
21 interview?

22 A The interview took place on April 20th, 2010.

23 Q Did -- during the interview, did the -- the name
24 of the victim was Minor correct?

25 A Yes, sir.

CHRISTINE CARLBERG-DIRECT BY MR. PHILLIPS

1 Q And did she disclose to you any time and place
2 of any sexual assault?

3 A She said she was not sure when it started but
4 said the last time happened when she was seven. And she
5 said that it took place at her grandmother's old house and
6 at her house.

7 Q Do you know how old she was at the time of the
8 interview?

9 A She was seven.

10 Q And this room that you're talking about, did you
11 mention about the audio and video?

12 A Yes, sir.

13 Q So there is a constant audio and video stream
14 and recording?

15 A Yes, sir.

16 Q Handing you what's been marked as State's
17 Exhibit No. 2, do you recognize that?

18 A That is a copy of the interview.

19 Q Have you watched it recently?

20 A Yes, sir.

21 Q Is that -- is that -- what you watched, is that
22 a accurate depiction of what happened on that day?

23 A Yes, sir.

24 Q Do you know if what you watched had been
25 tampered with or altered in any way?

CHRISTINE CARLBERG-DIRECT BY MR. PHILLIPS

1 A I know that there was a part that was redacted,
2 yes.

3 Q About a minute or so?

4 A I would guess so.

5 Q And that is, as His Honor and Defense counsel
6 knows, that was done by stipulation. So other than that
7 minute that was redacted, is this a true and accurate
8 representation of that interview?

9 A Yes, sir.

10 MR. PHILLIPS: Your Honor, at this time, I move
11 to admit the interview into evidence.

12 THE COURT: All right, anything else other than
13 previously?

14 MS. KEPLEY: I just renew my prior objections.

15 THE COURT: All right, subject to Defendant's
16 objection, it's entered into evidence. State's
17 Exhibit?

18 MR. PHILLIPS: Two.

19 THE COURT: Two?

20 MR. PHILLIPS: Yes, Your Honor. And at this
21 time, I'd like to publish it to the jury.

22 THE COURT: And I always like to tell jurors how
23 long they are -- it's my understanding it's about 55,
24 57 minutes. So that's what we're going to be looking
25 at, so.

CHRISTINE CARLBERG-DIRECT BY MR. PHILLIPS

1 (WHEREUPON, State's Exhibit No. 2 was admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 2 was
4 published.)

5 THE COURT: Can everybody hear? If not, raise
6 your hand.

7 (WHEREUPON, State's Exhibits Nos. 5 & 6 were
8 marked for identification only.)

9 BY MR. PHILLIPS:

10 Q I'm showing you what's been marked as State's
11 Exhibit 5 and 6. Are those the drawings that you had
12 Minor identify?

13 A Those are copies of the drawings, yes.

14 Q Copies of the drawings.

15 MR. PHILLIPS: Your Honor, at this time, I'd
16 like to introduce Exhibits 3, 4, 5 and 6 into
17 evidence.

18 THE COURT: What was three?

19 MR. PHILLIPS: The pictures that we stipulated
20 to.

21 THE COURT: Okay, y'all stipulated.

22 All right, any objection to 5 and 6?

23 MS. KEPLEY: What exactly is 5 and 6?

24 THE COURT: Three and four are pictures, 5 and 6
25 are diagrams.

CHRISTINE CARLBERG-CROSS BY MS. KEPLEY

1 MS. KEPLEY: No objection, Your Honor.

2 THE COURT: All right, in without objection.

3 (WHEREUPON, State's Exhibits Nos. 3-6 were
4 admitted into evidence.)

5 THE COURT: You want to publish them?

6 MR. PHILLIPS: I'm sorry? Yeah, I want these
7 but there's no need to publish these.

8 THE COURT: Okay.

9 MR. PHILLIPS: Your Honor, I don't have any
10 further questions for Ms. Carlberg.

11 THE COURT: All right, cross-examination.

12 CROSS-EXAMINATION

13 BY MS. KEPLEY:

14 Q Ms. Carlberg, do you currently work at the Julie
15 Valentine Center?

16 A I currently work for the Greater Greenville
17 Department of Mental Health and still conduct forensic
18 interviews at the Julie Valentine Center.

19 Q Okay. Is it safe to say that when you're doing
20 a forensic interview, you're what we call a part of the
21 multidisciplinary team?

22 A I am.

23 Q Okay. Can you explain what that means?

24 A A multidisciplinary team is all the agencies or
25 disciplines who are investigating a case. So it can

CHRISTINE CARLBERG-CROSS BY MS. KEPLEY

1 include law enforcement, DSS, guardian ad litem, medical
2 personnel, a therapist might be involved if there's a
3 therapist in a case. So anybody involved in a child's
4 care or case. And the case is staffed amongst those
5 people.

6 Q So you work as part of a team with the police;
7 is that correct?

8 A I'm part of a multidisciplinary team with them,
9 yes.

10 Q And prosecutors are also part of that team,
11 correct?

12 A They can be.

13 Q And the goal of that team is to prosecute cases,
14 correct?

15 A I wouldn't say it's to prosecute cases. The
16 goal is to -- well, just to make sure that all the
17 investigative parties have all the information they need
18 to complete their investigation. And might end up in
19 prosecution, it might not.

20 Q But the goal of your forensic interview is,
21 certainly, to gather evidence?

22 A To gather a child's statement for investigative
23 parties.

24 Q To be used in prosecution of cases?

25 A It can be. Not all case are prosecuted.

CHRISTINE CARLBERG-CROSS BY MS. KEPLEY

1 Q Did you speak to the Mother, Tasha Carter, prior
2 to the interview?

3 A Yes, ma'am.

4 Q Did she tell you the nature of the allegations
5 prior to the interview?

6 A She did.

7 Q So you knew what the allegations were from Tasha
8 before you asked a single question, right?

9 A I knew her history of the allegations.

10 Q And you weren't the first person she had talk to
11 about, you know, the details, right?

12 A The mother or the child?

13 Q The child.

14 A I don't know, I was not.

15 Q Is it true that she had spoken, by the time you
16 talked to her, she had already spoken to two officers; is
17 that correct?

18 A I'd have to go back and look. I think she
19 already talked to law enforcement by the time I saw her.

20 Q And she also had already spoken to a doctor; is
21 that correct?

22 A Yes, ma'am.

23 Q And she also, obviously, had spoken to her mom;
24 is that correct?

25 A Yes, ma'am.

CHRISTINE CARLBERG-CROSS BY MS. KEPLEY

1 Q I take it -- you sound very well versed in a lot
2 of the research into forensic interviewing; is that
3 correct?

4 A I think so.

5 Q Okay. You mentioned, I think, was it RATEC,
6 RTEC, am I saying that right? Protocol.

7 A The RTEC protocol.

8 Q When was that protocol developed, do you know?

9 A I think it was developed in CornerHouse in the,
10 I think, the late 90's.

11 Q Okay. Is that a protocol you were using in the
12 interview we just watched?

13 A At the time I used RTEC, yes.

14 Q But there's newer protocols now, right?

15 A Yes, there are new protocols.

16 Q Are you familiar with the NICHD protocol?

17 A A little bit, yes.

18 Q It's a newer protocol, correct?

19 A I don't think it's newer, I think it's been a
20 around for a while.

21 Q Do you know the differences between that
22 protocol and the one you used?

23 A The main difference that I know of the NICHD is
24 structured. So the interviewer -- every question that the
25 interviewer asked is -- there's, basically, like, a

CHRISTINE CARLBERG-CROSS BY MS. KEPLEY

1 scenario. Like, they follow that structure for
2 questioning.

3 Q Is it true that this NICHD protocol, that
4 discourages the use of anatomy drawing and dolls; is that
5 correct?

6 A I don't -- yes, I don't believe they use media
7 like that.

8 Q And one of the reasons they discourage use of it
9 is because it's been shown to produce false disclosures,
10 right?

11 A Not if it's used correctly.

12 Q But in other protocols it's discouraged; is that
13 true?

14 A No, it's not discouraged. Not if your -- the
15 protocol that we are using now, The South Carolina Child
16 First protocol is not discouraged.

17 Q Is it true that children can be suggestible?

18 A Yes.

19 Q Would you say children are more suggestible than
20 adults, say?

21 A Yes. There's research that shows that younger
22 children are more suggestible than older.

23 Q And also would you say that children have some
24 natural biases, some natural response bias in the way they
25 respond to questions?

CHRISTINE CARLBERG-CROSS BY MS. KEPLEY

1 A Can you clarify that?

2 Q Sure. For example, are you familiar with the
3 concept of a yes bias? That some children have when they
4 answer questions in these settings? Meaning that when I
5 say yes bias, I'll clarify that. A yes bias meaning that
6 if you ask, you know, a yes or no question, there's a
7 biased answer, yes, even if that may not be the case?

8 A I don't believe that to be the case. Not in my
9 experience.

10 Q Is it important to be very careful in how you
11 word questions in these interviews?

12 A Yes, ma'am.

13 Q And one of the reasons it's important to be very
14 careful in how you word your questions, is because you
15 could encourage a false response, a false yes; is that
16 true?

17 A Yes, ma'am.

18 Q Is it true that kids want to figure out how to
19 answer correctly? Would you agree that that's a response
20 bias that they have?

21 A Do they want to answer correctly? I -- I guess
22 it depends on what the question is.

23 Q Okay. Well, I say answer correctly, let me
24 clarify that. Meaning that if they're not sure what the
25 answer is they might guess because they want to be

CHRISTINE CARLBERG-CROSS BY MS. KEPLEY

1 helpful, they want to get the answer right. Would you
2 agree that's something to worry about in these sorts of
3 interviews?

4 A I believe that it's something that you have to
5 worry about but I think that they also might answer I
6 don't know or no or answer the correct -- correctly even
7 if it's a negative.

8 Q And would you -- would you think that effects --
9 all these effects the suggestibility kind of response bias
10 we talked about, would you agree that effect increases the
11 younger a child is?

12 A Well, that's -- I'm sorry can you repeat that?

13 Q Sure. We talked a little bit about
14 suggestibility, we talked a lit about bias, some response
15 bias children may have in these settings. Would you agree
16 that those of effects, the suggestibility effect, is
17 bigger the younger a child is.

18 A I think that you have -- an interviewer has to
19 be aware that, yes, a younger child might be more
20 suggestible. And that's where the training comes in and
21 how you properly ask the questions.

22 Q Is it important to acknowledge, as part of your
23 forensic interview, when a child says, I don't know or I
24 don't remember, that they may, actually, not know or be
25 able to remember?

CHRISTINE CARLBERG-CROSS BY MS. KEPLEY

1 A They might not know or might not remember.

2 Q Is there a risk when you press a child who says,
3 I don't know or I don't remember, that they may guess an
4 answer?

5 A If they guess -- well, I guess, it depends what
6 the guess answer is. And depending on the age and
7 development of a child, I would want them to further
8 elaborate and see if they can or cannot.

9 Q In the interview we just watched, did Minor
10 ever say, you know, I don't know, I don't remember.

11 A She did.

12 Q Did you continue to ask her pointed questions
13 about potential abuse after she already said, you know, I
14 don't know, I don't remember?

15 A I asked her other questions about it to see if
16 she was able to talk about it that way. Sometimes when
17 kids say, I don't know or I don't remember, it's not that
18 they don't know or that they don't remember. They might
19 not be wanting to talk about it at that point or not
20 wanting to share that detail at that point. So sometimes
21 you can ask other questions and then that can help them to
22 talk.

23 Q Are you familiar with the term forced answered
24 questions in the context of forensic interviewing?

25 A Forced answers, like a leading question or

CHRISTINE CARLBERG-CROSS BY MS. KEPLEY

1 multiple choice question?

2 Q Like, I would -- are you familiar with forced
3 answering in the context of it gives you a couple of
4 choices you throw out as part of the question. You know,
5 is it A, B or C? I would say that -- I would classify
6 that as a forced answer question, would you agree with
7 that?

8 A So when we do forensic interviews, if we ask
9 multiple choice question or, I guess, you can call it a
10 forced answer, we always ask is there something else?
11 Like, is it A, B or something else? So you open it up and
12 they have the option to say if it's something other than
13 the options that you've given.

14 Q All right. Is it -- is it a fair assessment of
15 the [indiscernible] you used a fair amount, I would say a
16 lot, of forced answered questions.

17 A I did use some.

18 Q And is it fair to say, in your opinion, that a
19 lot of those forced answered questions came in response to
20 I don't know or I don't remember?

21 A Some did.

22 MS. KEPLEY: Beg the Court's indulgence. No
23 further questions, Your Honor.

24 THE COURT: Any redirect?

25 MR. PHILLIPS: Just one, Your Honor.

CHRISTINE CARLBERG-REDIRECT BY MR. PHILLIPS

REDIRECT EXAMINATION

BY MR. PHILLIPS:

Q She asked about the forced answer questions, if I remember correctly, if I understand her forced answer, the A, B or C; did you most all the time give the choice for the child to give a different answer than what you had asked A, B or something else?

A Yes. So when you ask a forced or multiple choice question and you say it's A, B or something else. Usually, I know when I followed up with that, if they gave an answer, you would open it back up, well, tell me more about that or tell me about that. So even though they're giving you one of those options, if they can, then you give them the option to expand upon that answer.

MR. PHILLIPS: I have nothing further, Your Honor.

THE COURT: All right, thank you. You may step down.

All right, I believe, based on previous sidebar discussions, that the next two witnesses that you have, you only have two more witnesses, and they will not be available until in the morning?

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

THE COURT: All right, this is what I told you that flexibility has to come in. Two more witnesses

1 for The State's side. And they're just not going to
2 be available until in the morning. So therefore, I
3 get to let you out in the rain a little earlier.
4 It's going to be raining until six o'clock, just like
5 it is now, apparently. So no advantage to waiting.
6 So if y'all will -- I'm going to go ahead and let you
7 go for day. Does 9:30 still work everybody?
8 Tomorrow we'll start at 9:30, we should be in good
9 shape there.

10 So again, my four rules. Don't discuss the case
11 among yourselves or anyone else. Do not do any type
12 of research about the case. Do not pay any attention
13 to any media coverage. And finally, if anybody
14 contacts you, other than somebody from the clerk's
15 office, please let the bailiffs know. And I want to
16 reiterate, it is very, very important that you not do
17 any research. You know, that's one, that violates
18 your oath but it can also jeopardize the trial
19 because that's just totally improper. Only reason I
20 say that is because it happened a while back and it
21 really created some issues. So I'm just kind of
22 reiterating that. Not in this case but another
23 matter. So anyway, with that being said, you know,
24 try to stay dry and we'll see you in the morning at
25 9:30. Have a good evening.

1 (WHEREUPON, the jury left open court at
2 approximately 3:17 p.m.)

3 THE COURT: All right. Anything else from The
4 State today?

5 MR. PHILLIPS: Nothing from The State, Your
6 Honor.

7 THE COURT: From The Defense?

8 MS. KEPLEY: No, Your Honor.

9 THE COURT: All right. And, again, there's a
10 possibility that we will be going to the jury, you
11 know, after lunch tomorrow. I know it could be later
12 than that but any charges, I want you to make sure
13 you email them to my law clerk this afternoon so we
14 can start to kind of -- she's already got a good
15 start on it but we need to make sure we have a chance
16 to look at it.

17 MR. PHILLIPS: I only have two. Can I hand them
18 up?

19 THE COURT: You had two that you gave me.

20 MR. PHILLIPS: Oh, I already give them to you,
21 okay. That's it.

22 MS. KEPLEY: I only saw one.

23 MR. PHILLIPS: I'll email it to you.

24 MS. KEPLEY: Okay.

25 THE COURT: All right. All right, see everybody

1 back in the morning.

2 (WHEREUPON, the proceedings were concluded for
3 the day to be reconvened on April 6, 2022.)
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1 April 6, 2022

2 MR. PHILLIPS: Your Honor, I don't believe our
3 first witness is not here yet.

4 THE COURT: Okay. We're waiting on a juror, so.

5 MR. PHILLIPS: Our first witness is going to be
6 Dr. Henderson.

7 THE COURT: Okay, is that the one?

8 MS. KEPLEY: Your Honor, I don't have any
9 objection to Dr. Henderson.

10 THE COURT: Okay. What's the other one on?

11 MR. PHILLIPS: The other one is -- basically,
12 does what Shauna Galloway-Williams does.

13 THE COURT: Oh, okay. And what's Dr. Henderson?

14 MR. PHILLIPS: She is the physician that
15 examined--

16 THE COURT: Oh, okay. That's right. Okay.
17 Well, then we're ready with Dr. Henderson then when
18 the jury comes in. All right. Just let me know when
19 she shows up.

20 (WHEREUPON, a short break was taken.)

21 THE COURT: We do have our juror here now. The
22 State ready to proceed?

23 MR. PHILLIPS: Yes, Your Honor.

24 THE COURT: Defense ready to proceed?

25 MS. KEPLEY: Yes, Your Honor.

1 THE COURT: All right, then we will proceed.

2 (WHEREUPON, the jury entered open court at
3 approximately 9:44 a.m.)

4 THE COURT: All right, good morning, ladies and
5 gentlemen. I hope everybody had a good evening. As
6 you will recall, The State is still in their case.
7 And, at this time, we will proceed with the next
8 witness.

9 Mr. Phillips, call your next witness.

10 MR. PHILLIPS: Thank you, Your Honor, The State
11 calls Dr. Henderson.

12 THE CLERK: Dr. Henderson, please come forward.
13 Please pause at the end of the bench. Place your
14 left hand on the Bible and raise your right hand.

15 NANCY HENDERSON, after being duly sworn,
16 testified as follows:

17 THE CLERK: Thank you, please be seated. State
18 your name for the record.

19 THE WITNESS: Nancy Ann Henderson.

20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MR. PHILLIPS:

23 Q Dr. Henderson, could you please tell the jury
24 what your occupation is?

25 A I'm a child abuse pediatrician.

NANCY HENDERSON-DIRECT BY MR. PHILLIPS

1 Q How long have you been one of those?

2 A I became board certified in -- as a child abuse
3 pediatrician in 2009. And have been a pediatrician since
4 I finished my residency in 1987.

5 Q So a pediatrician since '87, child sex abuse
6 pediatrician since '09?

7 A Correct.

8 Q You're licensed?

9 A Yes.

10 Q Where?

11 A Here in South Carolina.

12 Q Tell us a little bit about your education.

13 A I attended college at Rutgers College of
14 Pharmacy, which is in New Brunswick, New Jersey. And that
15 was from 1975 to 1980. I then went to Bowman Gray School
16 of Medicine, which is now Wake Forrest School of Medicine,
17 in Winston Salem, North Carolina and graduated in 1984.
18 And then did my pediatric residency at TC Thompson
19 Children's Hospital in Chattanooga, Tennessee.

20 Q And in your practice of child abuse pediatrics,
21 approximately, how many patients have you seen?

22 A I see about between two and 300 a year.

23 Q Since '09?

24 A Pretty much, yeah. I've been with Greenville
25 hospital since 1992. And, initially, doing general

NANCY HENDERSON-DIRECT BY MR. PHILLIPS

1 pediatrics and then child abuse pediatrics for the
2 hospital. And then a couple years prior to a board
3 certification in 2009, I've have been doing exclusively
4 child abuse pediatrics for the hospital.

5 Q So if my math is correct, that's somewhere
6 between two and 300?

7 A I don't have an exact number but.

8 Q But two to 300 a year.

9 Your Honor, I'd like, at this time, to
10 qualify her as an expert in the field of child abuse
11 pediatrics.

12 THE COURT: Any objection or voir dire?

13 MS. KEPLEY: No objection, Your Honor.

14 THE COURT: All right, ladies and gentlemen --
15 In the field of?

16 MR. PHILLIPS: Child abuse pediatrics.

17 THE COURT: Ladies and gentlemen, normally, a
18 person cannot testify about their opinions or
19 conclusions. A layperson, normally, can only testify
20 about what they observed, heard, smell, just using
21 their senses. An exception of that is when somebody
22 has been qualified as a expert. In this case,
23 Dr. Henderson has been qualified as a child abuse
24 pediatric. And therefore, she can give her opinion,
25 which is based on her experience, her training, her

NANCY HENDERSON-DIRECT BY MR. PHILLIPS

1 education. But as I will tell you in your charge,
2 you are to consider her testimony the same as all
3 evidence and that's to give it the weight and value
4 that you feel is appropriate.

5 So with that being said, Mr. Phillips, you may
6 proceed.

7 MR. PHILLIPS: Thank you.

8 BY MR. PHILLIPS:

9 Q Could you please tell the jury what child abuse
10 pediatrics is and what you do in your job?

11 A Sure. So I am employed by Prisma Health. And
12 I'm head of the division of child abuse pediatrics, part
13 of the general pediatric division. And my team evaluates
14 children that come into the hospital for concerns of abuse
15 so we do pediatric consults. A lot of that is involving
16 children that come in with bruising, fractures, head
17 injuries and things like that. And then, the majority of
18 the outpatient evaluations take place in children's
19 advocacy centers are a part of them. So the one here,
20 which is the Julie Valentine Center. We also staff the
21 Children's Advocacy Center up in Spartanburg, see
22 patients, actually, at a healthcare facility up there.
23 We're also involved in evaluating children at Foothills
24 Alliance, which is in Anderson, South Carolina. In
25 Greenwood, which is Beyond Abuse. And in Clinton as well

NANCY HENDERSON-DIRECT BY MR. PHILLIPS

1 for these types of exams. And we're also involved at the
2 Assessment Center at Pendleton Place here in Greenville,
3 evaluating children coming into foster care for their
4 initial medical evaluations.

5 Q And what do these -- what do you do with one of
6 these evaluations?

7 A For the outpatient evaluations, with the
8 connection to the advocacy center, I spend time talking to
9 the caretaker and the patient coming in to try to
10 understand what brings them there. What kind of systems
11 or problems they may be having. In general, with regard
12 to pediatrics. And more specially, for the concerns of
13 what's bringing them there. I do a complete head-to-toe
14 physical exam. Then part of this exam involves using a
15 piece of equipment called a colposcope. Which is a device
16 that allows for magnification of the genital area as well
17 as, again, good light to be able to see anything that may
18 have occurred in that area. It's not evasive, it doesn't
19 touch the child at all. And then depending on what the
20 concerns are, I may do testing for sexually transmitted
21 infections, blood work for that as well. And then decide
22 based on all that, sort of what the next steps are for the
23 child and for the family in moving forward.

24 Q Do you also teach in this area?

25 A That is another hat that I do wear. I am on

NANCY HENDERSON-DIRECT BY MR. PHILLIPS

1 staff at the University of South Carolina School of
2 Medicine in Greenville. I teach the first and second year
3 class related to child abuse and neglect. We also have
4 medical students rotating with us in their fourth year, as
5 an elective rotation. And we also have the pediatric
6 residence and those residence rotate with us. As well to
7 gain experience in regard to child abuse.

8 Q Approximately what percentage of your cases
9 involve sexual abuse?

10 A I see about, approximately, four children a week
11 with regard to outpatient evaluation in concern of child
12 sexual abuse.

13 Q What percentage is that, approximately?

14 A It really depends on I can be on call and that
15 just varies. So I might not be seeing patients that week.
16 I'm just available for what's happening in the hospital.
17 And I'm teaching. So I, really, all the patients that I
18 see now are related to abuse and neglect. So 100 percent
19 of the patients that I see are related to abuse and
20 neglect.

21 Q Would that include abuse and neglect other than
22 sexual abuse, correct?

23 A It could be all different types of abuse and
24 neglect.

25 Q Do you have any idea on what percentage of those

NANCY HENDERSON-DIRECT BY MR. PHILLIPS

1 are sexual abuse?

2 A Maybe 60 percent.

3 Q Sixty percent, okay. Have you been certified as
4 a expert in court before?

5 A Yes, sir.

6 Q About how many times?

7 A Honestly, I don't keep track of that. Either
8 I'm found to be an expert in the area of pediatrics for
9 sex abuse, pediatrics both in family court and general
10 sessions.

11 Q Can you give me a guess?

12 A Prior to COVID, probably went to court about
13 eight to 12 times a year. Things got really quite until
14 more recently. So I'm in court, maybe, two times a month.

15 Q So prior to COVID, we're looking at about over
16 100 times?

17 A Yeah. Again, I don't have a number in my head.

18 Q Okay. And when you testified in court, what
19 courts does that generally happen in?

20 A A lot of the times it's either, again, in family
21 court or general sessions court.

22 Q Did you have the opportunity to examine the
23 victim, in this case, Minor

24 A Yes, I did.

25 Q Do you know when that took place?

NANCY HENDERSON-DIRECT BY MR. PHILLIPS

1 A April 5th of 2010.

2 Q How was she referred to you?

3 A She was referred from the emergency room to me.

4 Q And where did this exam take place?

5 A It took place at the Julie Valentine Center.

6 Q And is that where you do a lot of your
7 examinations?

8 A Here in Greenville in the outpatient arena, that
9 is where we do the outpatient exams.

10 Q Are there different kinds of exams that you do
11 in a sexual abuse case?

12 A All the exams that I do take place at the -- as
13 I mentioned, the outpatient setting at the Julie Valentine
14 Center. So the children that -- children or adolescents
15 that there is a concern of an acute situation, which could
16 be anywhere from within the 24/72 hours after an event has
17 happened to them. Those children, adolescents will,
18 initially, go to the emergency room to have a forensic
19 assault kit done. That's not something we do in the
20 outpatient setting.

21 Q So that is an acute -- you mentioned that's
22 called an acute exam?

23 A Yes, sir.

24 Q Okay. And that is within 24 to 72 hours of the
25 abuse?

NANCY HENDERSON-DIRECT BY MR. PHILLIPS

1 A Correct.

2 Q And if it's not within 24 to 72 hours, what kind
3 of exam is it?

4 A Well, I think, by the literature, it often is
5 referred to as a more chronic sexual assault protocol that
6 we follow, yeah.

7 Q Okay. And what -- just looking at the chronic
8 versus acute, how many of them are chronic and how many of
9 them are acute? Percentage wise?

10 A Well, the majority of children that I see -- a
11 hundred percent of the children I see are this chronic
12 exam. So the children coming into the emergency room,
13 again, are -- they disclose right away, the incident
14 happened right away. That often doesn't happen for
15 children. There often is a delay from when the incident
16 happens to when they disclose. So the majority of
17 children often do have what we call a chronic exam. And
18 the reasons for this distinction is that? When there is
19 for the initial exam, there is the availability, increased
20 likelihood, of being able to collect DNA and information.
21 And that's where these forensic assault kits are sort of
22 focused in on. And for young children, you know, they'll
23 bathe a lot, they'll change their clothes so often in 24
24 to 48 hours, the yield from that is pretty small. And
25 that's based on those things. And because of whether the

NANCY HENDERSON-DIRECT BY MR. PHILLIPS

1 actual incident -- might have been. And so for my exams,
2 there often is a delay from the time that the incident has
3 occurred until the time that we see them. And that often
4 is based on the way that the child disclosed.

5 Q So just to be clear, the type of exam you did
6 for Minor was a chronic exam?

7 A Yes, sir.

8 Q What goes on in that type of exam?

9 A Sure. So we will -- we, it's myself and I work
10 with a child life specialist who actually goes out and
11 meets the child and the caretaker that comes with them.
12 They'll bring them back. She will get the child familiar
13 with the equipment that we're going to use, with the room.
14 She helps to decide what they're calling their body part
15 names so that we make sure we're all talking about the
16 same thing as they share information. And then I will
17 spend just a little bit of time talking to both the child
18 and the parent together. Just understand what questions,
19 concerns they are, getting general medical information.
20 And then they're often sort of three parts to the exam.
21 And that this taking a history from the child, a physical
22 exam of the child, which includes the colposcope that I
23 mentioned. And then the evaluation for sexually
24 transmitted infections, if needed. And we decided on that
25 sort of based on this information that we have.

NANCY HENDERSON-DIRECT BY MR. PHILLIPS

1 Q Okay. So a part of your job is talking with the
2 mother and child to get a history of what brings them
3 there that day?

4 A Yes. So I talk to the caretaker and the child,
5 initially. And that's really more to get sort of a
6 general medical information. Then if the child is able to
7 separate, I will get a history directly from the child.
8 With the child life specialist with me.

9 Q And did you speak with the child by herself?

10 A Yes, I did.

11 Q When you spoke with her, were you able to get
12 some sort of timeframe of when this abuse occurred?

13 A Yes, I did.

14 Q What was that?

15 A She said that the abuse happened then when she
16 was six and seven.

17 Q And did she tell you where the abuse occurred?

18 A Yes, she did.

19 Q Where did she say it occurred?

20 A She said it happened at her house and her
21 grandmother's home.

22 Q So once you spoke with her and got this
23 information, did you then do a physical examination?

24 A Yes, I did.

25 Q What were the results of that?

NANCY HENDERSON-DIRECT BY MR. PHILLIPS

1 A She had a normal exam.

2 Q What does normal mean?

3 A Normal means that everything, in looking at her
4 from head to toe, including the genital exam, I did not
5 see any abnormalities. Specifically, in the genital area.
6 I didn't see any tears, scars, vaginal discharge, redness
7 or anything that caused me concern from the examination
8 itself.

9 Q Now, considering these allegations and then your
10 findings of that, do you believe that the results are
11 consistent with your findings?

12 A In my practice and in the literature, a normal
13 exam is incredibly common. About 97 percent of children
14 with these kinds of allegations have normal exams. And
15 that is what happened in this situation, as well. She had
16 a normal exam.

17 Q Can you explain why?

18 A Well, there's lots of reasons that that can
19 happen. We talked about, just a little bit earlier, that
20 there's a certain delay from the time of the incident
21 until the time that they had the medical exam. So that if
22 there are small tears, trauma to the skin, it has
23 incredibly good blood supply so it heals very, very
24 quickly. And something within days. So even with the
25 colposcope, would not pick that up. Some of the abuse

NANCY HENDERSON-DIRECT BY MR. PHILLIPS

1 that occurs with children never causes any actual trauma,
2 tears or scars. So that even when there are history of
3 penetration, we might not see any findings on the exam.
4 For adolescents, once they have estrogen, the hormone,
5 around puberty, that allows that tissue to become very
6 elastic and stretchable. And so in adolescents we often
7 don't see abnormal exams on them as well when there's
8 history of penetration.

9 Q So it's possible to have penetration and leave
10 no physical evidence behind whatsoever?

11 A That's true.

12 Q And, of course, the same, if it's true, the
13 penetration would be true with oral as well?

14 A Excuse me?

15 Q Be true or oral sex as well?

16 A Yes, sir.

17 Q And what about a partial penetration with a
18 penis? What kind of trauma would you expect to see from
19 that?

20 A Yeah, I think when -- when anyone, but
21 especially with children, they make a disclosure about
22 sexual abuse. You know, it really is hard for them to
23 fully understand their anatomy. Even when we ask them the
24 name of what they call it, you know, they usually just
25 give one name for the entire genital area. It's much --

NANCY HENDERSON-CROSS BY MS. KEPLEY

1 obviously, much more complex than that. So when they give
2 disclosures about any kind of penetration, it is hard to
3 sometimes determine it is just partially into the, what we
4 call the vulva area, actually through the hymen into the
5 vagina. That sometimes is difficult for them to know or
6 to share about. And that -- therefore, when there's
7 history of penetration, whether it's partial or full
8 penetration, normal exams can be quite common.

9 Q So when a child says that there's penetration,
10 that could, actually, just mean going into the vulva?

11 A It could.

12 Q So to reiterate, it is not at all uncommon for a
13 child that has sexual abuse to exhibit no symptoms of sex
14 abuse? Physical symptoms?

15 A That is true, they may have a normal exam.

16 MR. PHILLIPS: I have nothing further, Your
17 Honor.

18 THE COURT: Cross-examination.

19 MS. KEPLEY: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. KEPLEY:

22 Q Dr. Henderson, it is my understanding that you
23 work, at least, partially, directly with the Julie
24 Valentine Center?

25 A I work for the hospital full time.

NANCY HENDERSON-CROSS BY MS. KEPLEY

1 Q Full time. Do you do any sort of contract work
2 or anything with the Julie Valentine Center?

3 A I do not.

4 Q How did you end up at the Julie Valentine
5 Center?

6 A The -- these types of exams were done,
7 initially -- been doing them for a long time, they were
8 done, initially, in a hospital setting, in a clinic. It
9 really wasn't a very comfortable place for children,
10 families to come. It's difficult to spend more time with
11 the child in a busy sort of general pediatric practice.
12 So advocacy centers began being set up all across the
13 country. And so the partnership happened that we do the
14 medical exams at the Julie Valentine Center. Just to
15 offer a child friendly place for children to come and have
16 these types of evaluations done.

17 Q And it sounds like from the direct questions,
18 that you testify a lot in these sorts of cases; is that
19 correct?

20 A I'm asked to come to court a lot.

21 Q And you typically testify for The State; is that
22 correct?

23 A I testify on behalf of my patients. So whenever
24 I get called I do come to court because I am subpoenaed to
25 do that.

NANCY HENDERSON-CROSS BY MS. KEPLEY

1 Q Is that typically for The State?

2 A It often is.

3 Q Okay. Now, would you agree with me that there's
4 a lot of different ways that sexual abuse can occur?

5 A Correct.

6 Q And there's a lot, would you also agree, there's
7 a lot of different ways sort of physical abuse could
8 manifest on a body?

9 A Yes.

10 Q And what types -- what are the physical signs
11 you're looking for when you're dealing with one of these
12 exams?

13 A For child sexual abuse exams?

14 Q Yes.

15 A Okay. So as a pediatrician I'm looking at
16 everything. I'm looking at behavioral problems, problems
17 with appetite, problems with sleeping, just more general
18 problems that children have when exposed to any kind of
19 trauma. From headaches, from stomachaches, those kinds of
20 things. On physical exam I see a lot of children that are
21 doing self harm. So we're looking for that as well to
22 connect them to mental health services. When looking at
23 the genital area, I'm looking at anything that might need
24 treatment. Do they have concerns of a urinary tract
25 infection? Do they have any signs, as mentioned,

NANCY HENDERSON-CROSS BY MS. KEPLEY

1 discharge, tears, scars. Anything that may concern me to
2 do additional testing in that regard. And also looking at
3 the rectal area. Again, for concerns of any kind of
4 trauma, tears and things like that.

5 Q And you talked a little bit about chronic versus
6 an acute exam, correct?

7 A I did talk about that, yes.

8 Q Would you agree that the more frequent the more
9 chronic the abuse is, the more likely you might be able to
10 see some sort of physical allegation or physical
11 manifestation, excuse me?

12 A Not necessarily.

13 Q What do you mean by that?

14 A Because when something happens acutely, the
15 reason that you can find -- you have findings is you can
16 collect DNA and that can be helpful. Or the incident just
17 happened and you can sometimes see that acute trauma
18 whether it's a tear, bleeding. But for a lot of child
19 abuse, child sexual abuse, thereby often is never any sort
20 or scars. Even if it's happening over time. So it's not
21 the time that causes more trauma, at least, more physical
22 trauma can cause more mental health trauma. But so the
23 more something happens doesn't mean the more likely I will
24 be able to find something on an exam. Literature doesn't
25 support that.

NANCY HENDERSON-CROSS BY MS. KEPLEY

1 Q Well, I guess, my question would be, if we're
2 talking about the same kind of abuse. Say we're talking
3 about penetration on a child. Say that happens once
4 versus that happening repeatedly over the course of years.
5 Would you agree with me that you're more likely to see
6 some physical manifestation when we're talking about
7 repeated abuse versus once?

8 A Really, my answer is still exactly the same. If
9 there is a particular -- I mean, depending on what kind of
10 trauma we're talking about, we'll just use oral trauma as
11 an example. Meaning, it could happened one time or it
12 could happen 30 times. That's not going to change the
13 exam unless that person doing it is doing something more
14 forceful, using some other instrument, perhaps. Or there
15 is a concern of a STI that is being passed, then we might
16 see it. So the actual number, one to 30, isn't going to
17 change what I see on the exam.

18 Q Well, you said if there was something more
19 forceful than oral. What if there was? What if we're
20 talking about penetration, would that change your answer?

21 A I think it is certainly based on sort of the
22 disclosure that we just talked about. As the solicitor,
23 as far as if it was partial penetration into the vulva
24 area. That can happen, it can happen again and again and
25 again and that's still may not cause any tears. Or if it

NANCY HENDERSON-CROSS BY MS. KEPLEY

1 does cause a small amount of trauma, not seeing them like
2 within the first 24 hours, again, their exams can be very,
3 very normal. It heals in microtrauma and sort of a
4 redness trauma to the skin that will heal very, very
5 quickly and will not be picked up over time.

6 Q Again, I'm not talking about partial
7 penetration, my question was about full penetration.
8 Which would that chronically over time be something that
9 you might be more likely to see a physical sign of abuse
10 than once?

11 A Yeah, it just depends on the anatomy of the
12 child, exactly what's happening, the amount of penetration
13 that occurs, it's just so hard to, actually, quantitate so
14 it could, it could show more but not necessarily.

15 Q Okay. Now, your exam found that Minor had
16 a fully intact hymen; is that correct?

17 A That's correct.

18 Q Can you just explain one more time for us what a
19 hymen is?

20 A Sure. So the vaginal area -- I think it might
21 be easier if I just sort of take just from the -- okay.
22 So just so you understand, it's just so hard. So when
23 you -- what we'll do when we look at a child is we either
24 have them sit sort of in frog leg, like, sort of like
25 Kermit. Or have their feet on the feet holders. And

NANCY HENDERSON-CROSS BY MS. KEPLEY

1 child life is there to help do a lot of distractions, iPad
2 and things like that. Just sort of help the child sort of
3 be able to be comfortable during the exam.

4 And so with -- with the colposcope and just
5 with what we call just really minor, sort of traction on
6 the labia, which is the outer sort of lips over the
7 genital area, we can really see very, very well. The
8 genital area of children and adolescents. So once we sort
9 of do that, we're able to see the urethra, where girls
10 void or go to the bathroom from. And then below that is
11 the vagina. And then in answering the question, there is
12 a partial covering in the majority of children that is
13 over the vagina.

14 And just like every other part of our body,
15 there's lots of variations of normal. So it could be just
16 what we call angular, there's a area of tissue at the
17 adventitial, tissue that sort of surrounds the vagina with
18 an opening in the center. Or it could be what we call
19 crescent, kind of like the shape of a half moon, just on
20 the lower half of the vagina. Both of those are normal.
21 There is an opening that exists just by the way that
22 females are born and that allows when they start having
23 there periods, for the blood to come through. The
24 majority there can be some general findings. But in most
25 children there is an opening that allows for that. So the

NANCY HENDERSON-CROSS BY MS. KEPLEY

1 hymen is the partial covering over this vaginal area.

2 Q And you mentioned there's some change that
3 happens in the hymen when a girl hits puberty. Can you
4 explain that a little bit?

5 A Yeah. So, usually, around eight or nine,
6 hormones start changing, estrogen is the primary one.
7 Even before they start getting any breast development or
8 pubic hair, they start -- their estrogen level increases
9 so they may develop what's called a psychologic discharge.
10 And then the hymen, which is, initially, a very sort of
11 thin, translucent, becomes more thicker and stretchable
12 with the presence of estrogen.

13 Q So I just want to talk about the unestrogenized
14 hymen for a minute.

15 A Yes.

16 Q Would you agree with me that it's both thin?
17 Would you agree with that?

18 A Yes.

19 Q Would you agree it's also very sensitive?
20 Probably more so than a estrogenized hymen?

21 A Yes.

22 Q Would you agree that it maybe also more prone to
23 trauma? Than a estrogenized hymen?

24 A It could be, yes.

25 Q And when you did this exam on Minor she

NANCY HENDERSON-CROSS BY MS. KEPLEY

1 was seven years old; is that correct?

2 A Yeah, seven. Over seven but not eight yet.

3 Q And her hymen was estrogenized; is that correct.

4 A That's correct.

5 Q Is it true that a hymen could be injured and
6 repair itself?

7 A Yes.

8 Q If a hymen is injured, is that something that's
9 going to cause some sort of bleeding?

10 A If there is a tear it does cause some bleeding.

11 Q And if there's, you know, a tear, you know,
12 would you see that sort of scar tissue, potentially?

13 A If there's like a complete transection in the
14 hymen which goes from the top to sort of the hymeneal
15 floor. Those often don't repair fully so we often will
16 see some findings on the exam. If there is a small amount
17 of trauma to it, it can repair and we may not pick it up.
18 Weeks to months after an injury.

19 Q You mentioned a hymen transection, what about a
20 hymen disruption? Where there's maybe a smaller amount of
21 scar tissue? Is that something you're looking for during
22 one of these exams?

23 A I'm not exactly sure what you're referring to.

24 Q Well, you mentioned a transection, can you
25 explain what that is?

NANCY HENDERSON-CROSS BY MS. KEPLEY

1 A Yeah, a transection is sort of like a cut in the
2 hymen, a tear that heals. And so you see sort of
3 disruption in the hymen at one particular place where
4 there was a tear and now it's healed. Like, if you got a
5 cut on your arm and then you see a scar on the hymen from
6 where it happened.

7 Q And would you agree with me most adult women
8 don't have a hymen who have been sexually active?

9 A I am not a internal medicine doctor to report on
10 that but after something like child birth, a lot of times
11 the hymen becomes very, very small from a baby being born
12 through that. And can tear as well.

13 Q Okay. And to reiterate, you found no tears
14 during the exam of Minor is that correct?

15 A That's correct.

16 Q You found no healed injuries to the hymen; is
17 that correct?

18 A That's correct.

19 Q And you found no healed injures, no sign of any
20 sort of sexual trauma; is that correct?

21 A That is correct.

22 Q Would you agree with me that her exam was
23 completely consistent with a girl of her age who had never
24 been sexually abused?

25 A As per her exam, yes.

NANCY HENDERSON-REDIRECT BY MR. PHILLIPS

1 MS. KEPLEY: Thank you.

2 THE COURT: Any redirect?

3 MR. PHILLIPS: One, yes, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. PHILLIPS:

6 Q Would you also agree that her exam would be
7 consistent with somebody who had been physically, sexually
8 abused and left behind no trace of it?

9 A That's correct.

10 THE COURT: All right, thank you, you may step
11 down.

12 MR. PHILLIPS: May Dr. Henderson be excused?

13 THE COURT: Any objection?

14 MS. KEPLEY: No objection, Your Honor.

15 THE COURT: All right, she may be excused.

16 I believe there's a matter we need to take up
17 outside the presence of the jury; is that correct?

18 MS. KEPLEY: Yes, Your Honor.

19 THE COURT: All right, ladies and gentlemen of
20 the jury, I'm going to go ahead and give you a break.
21 There's some things we have to take up outside your
22 presence. Do not discuss the case, we'll bring you
23 back out as soon as we get through with this.

24 (WHEREUPON, the jury left open court at
25 approximately 10:19 a.m.)

ERICA VAN WAGNER-DIRECT BY MR. PHILLIPS (IC)

1 THE COURT: All right.

2 MR. PHILLIPS: Your Honor, The State calls Erica
3 Van Wagner.

4 THE CLERK: Please pause at the end of the
5 bench. Place your left hand on the Bible and raise
6 your right hand.

7 ERICA VAN WAGNER, after being duly
8 sworn{,}testified as follows:{F}

9 THE CLERK: Thank you. Please be seated.

10 THE COURT: Just for the record, too, this is
11 The State's proffer, based on The Defense's request,
12 to make sure that we're -- everything fits within the
13 guidelines of the current case law.

14 MS. KEPLEY: That's correct, Your Honor.

15 THE COURT: All right.

16 DIRECT EXAMINATION (IC)

17 BY MR. PHILLIPS:

18 Q Ms. Van Wagner, what is your occupation?

19 A I'm a mental health therapist.

20 Q What does your practice focus on?

21 A I specialize in trauma therapy. I work for the
22 Department of Mental Health, where I've been employed for
23 22 years. I supervise our DSS program. So I work
24 primarily with kids and adolescents that are involved in
25 the DSS system.

ERICA VAN WAGNER-DIRECT BY MR. PHILLIPS (IC)

1 Q What's your educational background?

2 A I have a Bachelor's Degree that I earned in 1999
3 from Winthrop University. I have a Master's Degree that I
4 earned in 2002 from the University of South Carolina. I'm
5 also a licensed independent social worker with a clinical
6 practice focus. Which is licensed here in the State of
7 South Carolina.

8 Q How long have you been treating children who
9 have been sexually abused?

10 A For 22 years.

11 Q Do you know, approximately, how many clients
12 you've had in your career?

13 A I think it's about 1500 clients at this point.

14 Q Do you have occasion to consult with other
15 professionals in your field related to the child sexual
16 abuse dynamic treatment?

17 A I do. I am part of a multidisciplinary team
18 that involves other professionals in the field where we
19 staff cases. In addition to that, I participate in a
20 weekly treatment team staffing, with a psychiatrist who
21 staffs cases. And I also provide clinical supervision to
22 other social workers related to clinical practice.

23 Q You attend trainings and seminars as well?

24 A I do. As part of my independent license, I'm
25 required to get, at least, 40 hours of training relevant

ERICA VAN WAGNER-DIRECT BY MR. PHILLIPS (IC)

1 to my practice every two years.

2 Q So included with that, I'm assuming, that you
3 have to obtain a continuing education as it relates to the
4 treatment of sexual abuse of children?

5 A Correct. The CEU's that I'm required to get
6 aren't specific to sexual abuse, but those are the ones
7 that I tend to choose because it is the thing I specialize
8 in.

9 Q What is the preferred method of treatment for
10 children who have been sexually abused?

11 A I primarily use something called TFCBT or Trauma
12 Focused Cognitive Behavioral Therapy. It's a evidence
13 based treatment, which is empirically supported. And
14 evidence based for children through 17.

15 Q And what is your training in that type of
16 therapy?

17 A I was trained, originally, back in 2005, I
18 believe. And then went through a state rostering process
19 in 2007. I was part of a learning collaborative. That
20 was, actually, in 2012. But part of a learning
21 collaborative where I went through ongoing consultations
22 with the developers of TFCBT and became established as a
23 roster clinician. It's something I've provided training
24 to other therapists in. I've trained approximately 150
25 therapists in providing TFCBT to others.

ERICA VAN WAGNER-DIRECT BY MR. PHILLIPS (IC)

1 Q So you have not only gone through this training
2 but you now provide training for others?

3 A Correct.

4 Q This method?

5 A Correct. It's part of through the Department of
6 Mental Health I provide that training to other therapists
7 that work for DMH.

8 Q Do you also read journal articles, case studies,
9 materials of that nature?

10 A I do.

11 Q Have you ever been qualified in a court of law?

12 A I have.

13 Q And was it with regard to the treatment of
14 children who have been sexually abused and/or sexual abuse
15 dynamics?

16 A Yes.

17 Q How many times?

18 A Approximately ten times between general sessions
19 court, as well as family court.

20 MR. PHILLIPS: Your Honor, at this time, I would
21 move to qualify Ms. Van Wagner as a expert in the
22 treatment of children with trauma and sexual abuse
23 dynamics.

24 THE COURT: All right, any objection or voir
25 dire?

ERICA VAN WAGNER-VOIR DIRE BY MS. KEPLEY (IC)

1 MS. KEPLEY: They're some questions I have, Your
2 Honor.

3 THE COURT: Okay.

4 VOIR DIRE EXAMINATION (IC)

5 BY MS. KEPLEY:

6 Q To be clear, you don't engage in any sort of
7 research in the field child abuse dynamics; is that
8 correct?

9 A That is correct.

10 Q You've never published any sort of articles in
11 this field either, correct?

12 A Correct.

13 Q Is it -- would you agree with me that the bulk
14 of your knowledge is based on personal experience as a
15 treatment provider?

16 A And the training that I've taken--

17 Q Yes.

18 A -- to the form of the practice, yes.

19 Q And the focus of those trainings are on the
20 clinical side?

21 A Correct.

22 Q And private treatment?

23 A Part of being a clinician in treating this is
24 having a good understanding of those dynamics in child
25 sexual abuse. And so, you know, the training includes

ERICA VAN WAGNER-VOIR DIRE BY MS. KEPLEY (IC)

1 becoming informed about these dynamics to be able to
2 provide psycho education or treating those dynamics.

3 MS. KEPLEY: I think that's all the questions I
4 have, Your Honor.

5 THE COURT: Okay.

6 MS. KEPLEY: I do have some objections.

7 THE COURT: All right. And, I guess, this is
8 proffer now, so. I'm not sure that it makes any
9 deference whether I qualify her or not. I mean, I
10 find that -- I do find that she's qualified based on
11 her experience. And I don't think, unless -- you
12 have any specific objections that you want to raise
13 at this point?

14 MS. KEPLEY: I do have some specific objections,
15 if may, Your Honor?

16 THE COURT: I mean, you can tell me them now or
17 you want to wait until later. Totally up to you.

18 MS. KEPLEY: We can wait, Your Honor.

19 THE COURT: My decision now does not necessarily
20 prejudice you.

21 MS. KEPLEY: We can wait, Your Honor, for that.

22 THE COURT: Okay.

23 MS. KEPLEY: I don't certainly have any
24 preference.

25 THE COURT: All right.

ERICA VAN WAGNER-CON'T DIRECT BY MR. PHILLIPS (IC)

1 Mr. Phillips, you may proceed.

2 MR. PHILLIPS: Nothing further at this time.
3 Other than to qualify her as an expert and you said
4 that she qualifies, so.

5 THE COURT: Right. Okay.

6 MR. PHILLIPS: Do you want me to go ahead--

7 THE COURT: Yeah, yeah, right. I think that was
8 the whole purpose.

9 MR. PHILLIPS: Okay, okay, be glad to do that.

10 CONTINUED DIRECT EXAMINATION (IC)

11 BY MR. PHILLIPS:

12 Q Obviously, since we've been talking about your
13 education and experience, you are familiar with the
14 dynamics of sexual abuse?

15 A Correct.

16 Q How common is it for the abuser to be a known
17 person to the child?

18 A In cases of child sexual abuse, it's most common
19 that the offender of the sexual abuse has a relationship
20 or knowledge of the child. A relationship with the child.

21 Q What about the child's family?

22 A They likely know the child's family. In order
23 for the offender to have access to a child, then there's,
24 typically, some level of established trust between the
25 victim and the offender, as well as the caregivers or any

ERICA VAN WAGNER-CON'T DIRECT BY MR. PHILLIPS (IC)

1 family members of that offender.

2 Q Why is that?

3 A It allows access to the child. That increased
4 level of trust. Again, kind of alls those actions to take
5 place. And gives that offender the ability to carry out
6 those acts of abuse.

7 Q Is there -- is there -- would you describe this
8 type of crime as a secretive one?

9 A Yes.

10 Q Is there sometimes a coaxing involved?

11 A Yeah, in the field we use the term grooming.
12 Or, you know, their concept of the process that an
13 offender goes through to establish trust with the victim.
14 To be able to gain access and carry out the abuse. So
15 there's the engagement phase of getting able -- to be able
16 to do the hands-on abuse.

17 Q And many times there's already a relationship of
18 trust between the child and the abuser?

19 A Correct.

20 Q How common it is for a child to be groomed for
21 sexual abuse?

22 A Very common, I would say.

23 Q Could you describe some of the grooming
24 techniques that maybe used?

25 A Flattery would be a form of grooming. Buying

ERICA VAN WAGNER-CON'T DIRECT BY MR. PHILLIPS (IC)

1 gifts, treating a kid differently. Sometimes grooming
2 might involve kind of the escalation of hands-on things.
3 You know, maybe, touching or tickling and, you know, kind
4 of gaging a child's response to those things. So
5 oftentimes the types of abuse that occur escalate as well.

6 Q What would be the escalation past the point of
7 tickling and touching?

8 A You know, touching in different places may
9 occur. Or, you know, again, more direct abusive
10 behaviors. Touching other private parts. You know, all
11 the way on up to full penetration or intercourse.

12 Q Would it be common for the escalation to go,
13 maybe, to touch the genital area over the clothes and then
14 before going under the clothes?

15 A Sure, yes.

16 Q What does the term disclosure mean?

17 A Disclosure is the term that describes the
18 process of telling about the abuse incident that occurred
19 or incidents that occurred.

20 Q And are there different types of disclosures?

21 A Yes. Disclosure itself is a process. So
22 throughout kind of the process of disclosing, there could
23 be different types of disclosures. Sometimes there's what
24 we call a accidental disclosure. Where a child wasn't
25 intentionally making a disclosure but had a behavior, made

ERICA VAN WAGNER-CON'T DIRECT BY MR. PHILLIPS (IC)

1 a statement, someone responding to something of concern;
2 and then that disclosure came out accidental. But then
3 there can be a purposeful disclosure, which would be
4 someone intentionally providing the details of abuse.

5 Q And let me ask you at this point, have you
6 reviewed the case file for Minor

7 A I have not.

8 Q Have you talked to Minor at all?

9 A I have not.

10 Q Interviewed her on the phone?

11 A No.

12 Q Not done any type of examination?

13 A I don't know the person that you're speaking of.

14 Q Okay. Do you know anything about the facts of
15 this case?

16 A I do not.

17 Q Why do kids delay in disclosing?

18 A Oftentimes, it's a matter of fear. It could be
19 issues related to trust. If the offender is someone who's
20 closely connected to the family or in the family, then
21 questions or concerns about how this could, potentially,
22 impact the family could lead to a delay in disclosure.
23 Sometimes kids don't have the words to use to make a
24 disclosure. That they may not have language or vocabulary
25 for things that occurred or what's going on. So they may

ERICA VAN WAGNER-CON'T DIRECT BY MR. PHILLIPS (IC)

1 not know that it needs to be disclosed or they may not
2 know how to disclose that. If it's happened before, you
3 know, knowledge of sexual behavior. Again, they may not
4 even know that it's a wrong thing to be able to disclose.

5 Q Could they also feel some guilt or shame because
6 of the--

7 A Absolutely. Absolutely. Sometimes kids are
8 made to feel culpable or responsible for things that are
9 going on. And, you know, so guilt might be a part of
10 that. Again, shame, embarrassment, these are all these
11 reasons.

12 Q I think you mentioned in that list that
13 sometimes children might not disclose it because they
14 don't actually know that it's something that's really
15 wrong?

16 A Correct.

17 Q That they trust the person that's doing it, so
18 therefore, they think it must be okay.

19 A Possibly so, yes.

20 Q What age do you think a child, generally, will
21 know the difference between a good touch and a bad touch?

22 A I think a lot of that depends on education.
23 And, you know, is the parent talking to the kid about
24 that? You know, I think relatively early on, or even
25 older, could understand the difference between those

ERICA VAN WAGNER-CON'T DIRECT BY MR. PHILLIPS (IC)

1 things. But if a kid has not received information, you
2 know, then they may not know that until a later point in
3 development.

4 Q Can the disclosure of a sexual abuse be almost
5 as traumatic as abuse itself?

6 A It can certainly be significantly impactful.
7 Based on the response to that disclosure. The kid is
8 making a disclosure and they supported and believed and,
9 you know, cared for and it's responded to in a way that is
10 helpful to the child, it may not be. If a disclosure is
11 made and they're not believed or not supported or it
12 impacts their family significantly. They could go into
13 foster care. There's lots of things that might lead to
14 that being traumatic or significantly impactful for the
15 child.

16 Q How may a child's willingness to disclose be
17 affected by the perpetrator being a family member?

18 A So if the offender is a family member, then it
19 decreases the likelihood or the, you know, the quickness
20 that a child might disclose. It could increase the delay
21 of the disclosure based on that relationship that they
22 have with the offender. The less close relationship -- if
23 it's a stranger, for example, they're more likely to
24 disclose right away. As opposed to someone that they know
25 or love or care about.

ERICA VAN WAGNER-CON'T DIRECT BY MR. PHILLIPS (IC)

1 Q Based on your experience, I think you said 22
2 years?

3 A Correct.

4 Q Can you give us some examples of the different
5 time spans that you've seen this delay disclosure?

6 A Yeah. In my experience, I've seen kids delay a
7 couple hours. I seen them delay weeks, months. I once
8 had a grandmother of a client who was 86 years old and
9 disclosed childhood sexual abuse for the first time in her
10 granddaughter's session because no one had ever asked her
11 before. And so she was at about a 79 year delay. So the
12 delay can be very, very long or not very long.

13 Q Sometimes there's no disclosure at all?

14 A Lots of times there's no disclosures at all,
15 correct.

16 Q Are you familiar with the term piecemeal
17 disclosure?

18 A Yes.

19 Q What does that mean?

20 A Piecemeal disclosure is when a child is giving
21 bits and pieces of information, maybe with different
22 people at different times. But sharing parts of the story
23 and may not be giving a full disclosure of the full
24 experience of abuse.

25 Q So a child may take a while to get to the full

ERICA VAN WAGNER-CON'T DIRECT BY MR. PHILLIPS (IC)

1 disclosure of what happened?

2 A Correct. As I mentioned earlier, that, you
3 know, disclosing is a process, it's not an event. It's
4 not something that just takes place at one time.
5 Oftentimes, kids start out with -- it can be a denial or a
6 nondisclosure. The next stage would be attentive
7 disclosure. So kids are giving maybe parts of the story
8 or putting fillers out there to get information and seeing
9 what the response is going to be. And based on that
10 response, they may move into active stage of disclosure
11 where they give a full account of what happened at that
12 point. But kids may tentatively be disclosing and giving
13 some information about what happened out of fear, shame,
14 guilt, all those things I mentioned earlier. But maybe
15 more into the active stage based on the response they got.

16 Q And move into the active stage, what do you mean
17 by that?

18 A The active stage of disclosure where they're
19 giving the full account of what happened.

20 Q Full account. Do you have a definition for
21 trauma?

22 A Trauma is an event whether either your life is
23 in danger or someone else's life is in danger, someone
24 close to you, either in proximity or relationship. But an
25 experience where you felt like your life might be in

ERICA VAN WAGNER-CON'T DIRECT BY MR. PHILLIPS (IC)

1 danger. And then you have lasting impact as a result of
2 that.

3 Q Is sexual abuse a type of trauma?

4 A It is, yes.

5 Q In your experience, does every child of sexual
6 abuse have the same trauma symptoms?

7 A No.

8 Q Describe the different ways that children may
9 cope with the trauma they experienced.

10 A You know, as far as, like, Posttraumatic Stress
11 Disorder, which is, you know, something that kids get
12 after they've experienced trauma. You know, some kids
13 might have avoidance, where they don't want to think about
14 it, talk about it, have feelings about it. Some kids
15 might have flashbacks or frequent reminders or
16 reexperiencing of that. Some kids have anger, sadness.
17 Some kids have trouble sleeping or trouble eating. Some
18 kids have elimination concerns, like bed wetting or having
19 elimination accidents. There are, what we would call
20 externalized symptoms, where things that we can see on the
21 outside. You know, misbehaving in school, attitude
22 problems. There are internalized symptoms that kids may
23 feel. Like depression or anxiety or things that they're
24 feeling on the inside. So there's just a wide variety of
25 reactions or responses that kids might have to trauma.

ERICA VAN WAGNER-CON'T DIRECT BY MR. PHILLIPS (IC)

1 Q Would you consider acting out oral sex with a
2 sibling possible symptom of this?

3 A Yeah, that would be a sexually reactive
4 behavior. A behavior that is, you know, kind of in
5 reaction to their sexual abuse experience.

6 Q Are there positive ways to deal with the trauma
7 and the heals from those wounds?

8 A Yes, very.

9 Q Tell me about them.

10 A So, I mean, in therapy we work on coping skills,
11 we process the trauma. So, you know, in TFCBT, which is I
12 specialize in, we do narrative work. So we go through the
13 experience of trauma. Kind of reflecting on what you
14 believe about that experience, what you told yourself
15 about that experience. And kind of reintegrating that
16 memory with new beliefs.

17 Q So it would be your recommendation for a child
18 that has experienced this type of trauma to get some sort
19 of therapy or treatment?

20 A For sure, yes.

21 MR. PHILLIPS: Nothing further.

22 THE COURT: Any cross-examination?

23 MS. KEPLEY: I don't have any questions, Your
24 Honor.

25 THE COURT: All right, you may step down for now

ERICA VAN WAGNER-CON'T DIRECT BY MR. PHILLIPS (IC)

1 then.

2 MS. KEPLEY: Your Honor, I do have a couple of
3 points I'd certainly like to put on the record. I'll
4 start with [indiscernible]. The bulk of what she
5 talked about was delayed disclosure, piecemeal
6 disclosure. Those sorts of things aren't here.
7 We're talking about a disclosure that was, I would,
8 contemporaneous ongoing abuse. So the idea that
9 we're, you know, going to have a expert come in and
10 talk about, for some time it sounds like, delay
11 disclosure, piecemeal disclosure, is absolutely not
12 relevant.

13 I would say the things she talked about outside
14 of that that were relevant. We're talking about
15 accidental disclosure versus a delayed disclosure. I
16 mean, there's only two ways to disclose something.
17 On purpose or on accident. That being outside of
18 knowledge of the jury. I think it's a stretch. I
19 think a jury knows you can only disclose something on
20 accident or you can disclose it on purpose. And I
21 think the jury is going to be well aware of the other
22 thing she talked about. Like, certainly, an offender
23 might know the victim. Those are certainly things
24 that's within the knowledge of the jury. And we're
25 getting into the 702 analysis.

1 The other thing she talked about, I think,
2 grooming techniques, you know, there's been nothing
3 on the record to suggest any of those things. I
4 don't think that's relevant either, Your Honor. So I
5 think the bulk of the testimony we just heard is not
6 relevant to this case, I think it should be excluded
7 on background.

8 Getting into the 702 analysis, I think, every
9 prong -- all three prongs are not met here. As I
10 just discussed, I think a lot of this is going to be
11 with in the knowledge of the jury, certainly. And, I
12 think, secondly, you know, there's no requirement
13 that, you know, she has to be some sort of scientific
14 expert. But I think there is a requirement that when
15 she's saying things like, this is very common or this
16 is very rare, that it's based on something other than
17 just her personal experience. Which it sounds like
18 it is. This is unscientific testimony based, you
19 know, almost entirely on just her experiences. It
20 isn't based on data. It isn't based on any sort of
21 research. And when we're having a expert who
22 certainly is going to be bolstering the credibility
23 of another witness, I think that's a big risk as far
24 as reliability.

25 You know, when she's saying things like this is

1 common or this is rare, I don't think those are
2 reliable statements based on, you know, the
3 experience she has, Your Honor. And with a case like
4 this when their sole issue is going to be
5 credibility, this is most certainly going to be
6 bolstering the witness' testimony. Whether or not
7 it's improbable strength, I think is a very important
8 question. Giving the context of this case, that it
9 was already overturned for improbable strength. I
10 think when we're getting to this very narrow window
11 of, you know, what they can and what they cannot say,
12 I think this is going to be tipping the scales in the
13 direction of being more prejudicial than probative,
14 Your Honor. So for those reasons, I would ask The
15 Court to consider excluding her testimony.

16 THE COURT: All right, Mr. Phillips.

17 MR. PHILLIPS: The only thing that I would
18 respond with is, basically, a -- I don't have the
19 same view of the facts as Ms. Kepley does. She said
20 there was no delayed disclosure, when, in fact, this
21 behavior went on between the ages of six and seven.
22 And then it wasn't disclosed until weeks, months or
23 years later from the first event, certainly. From
24 the last event, at least, it was a couple of months.

25 And also, it was -- it was an accidental

1 disclosure. She didn't disclose this to her mom.
2 Walk up to her and tell her what happened. She was
3 caught in the act with her sister and that was the
4 disclosure. And that's considered a accidental
5 disclosure. And with regard to the piecemeal, just
6 watching the interview, you can see that it was
7 piecemeal. The -- even within that 55 minute span,
8 she, the child, was very reluctant to talk about it.
9 She sat there for a minute of silence between her and
10 the forensic interviewer. And then she told a little
11 bit about what happened. And then she told a little
12 bit more. And then she finally got talking towards
13 the end and disclosed all of it. So it was a
14 piecemeal disclosure, even in that interview. And so
15 for all of those reasons and because she does qualify
16 under the rule, I would move that she be allowed to
17 testify as to exactly what she just did.

18 THE COURT: All right, anything additional?

19 MS. KEPLEY: No, Your Honor.

20 THE COURT: I mean, I think that -- I think that
21 the comments that Mr. Phillips indicated are those
22 particular items are beyond the ordinary knowledge of
23 a jury. I believe that the expert has showed her
24 knowledge and skill to qualify her as an expert. I
25 think a lot of it, from the thing that you're saying,

1 maybe go more to the weight of it. And, I think,
2 that the substance of the testimony must be reliable.
3 And I realize you're walking a very, very fine line.
4 You know, anytime you deal with these types of cases
5 and you deal with experts, just, you know, wait for
6 the appellate courts to make some change in it. But,
7 I believe, that, again -- you didn't raise this but,
8 I mean, the treatment -- what relevant is all the
9 additional treatment and stuff have to do with this,
10 though?

11 MR. PHILLIPS: Well, to me, the relevance is she
12 doesn't know anything about this case. And if there
13 was no trauma, there would be no need for treatment.
14 So the fact that she got the treatment after -- after
15 all this was disclosed and she testified that that
16 treatment helped her, then she followed the protocol
17 of what would happen with a normal child who has been
18 sexually abused.

19 THE COURT: I mean, does that not sound like
20 bolstering?

21 MR. PHILLIPS: Your Honor, I don't know what
22 bolstering is. I honestly--

23 THE COURT: And I'm not sure we even -- when we
24 see it we don't even know if we know it. All right,
25 I'm going to allow it in. I mean, it's your. . .

1 MR. PHILLIPS: Would you allow me to speak with
2 a colleague for just a minute before we go forward?

3 THE COURT: Yeah, I'm going to take a break.

4 MR. PHILLIPS: Oh, okay.

5 THE COURT: Yeah, let's all take about a five
6 minute break before we bring the jury in anyway.

7 (WHEREUPON, a short break was taken.)

8 THE COURT: All right, we're back on the record.
9 Anything further from The State?

10 MR. PHILLIPS: Other than the one witness we
11 have, I was just going to ask, so I understand, we're
12 going to try to finish up all the testimony prior to
13 lunch and argue and charge after?

14 THE COURT: Yeah, that's what I'd like to do.

15 MR. PHILLIPS: Okay.

16 THE COURT: Are you ready to proceed?

17 MR. PHILLIPS: Yes, Your Honor.

18 THE COURT: Are you ready?

19 MS. KEPLEY: Yes.

20 THE COURT: I think I ruled on -- I mean, quite
21 frankly, I think, the arguments you made, Ms. Kepley,
22 is a very close call. I believe they just get past
23 the relevance stage. And so therefore, that's their
24 risk and not yours. You're protected.

25 MS. KEPLEY: Thank you, Your Honor.

1 THE COURT: Boy, that really made you nervous,
2 didn't it?

3 MR. PHILLIPS: Well, at least, it won't be a PCR
4 though, right?

5 THE COURT: Right, first go around.

6 MS. KEPLEY: Your Honor, I am trying to get this
7 witness here. Are we trying to do all witnesses
8 before lunch?

9 THE COURT: I mean, sounds like your witness --
10 I mean, I'd like to argue and charge today, however
11 we need to do that.

12 MS. KEPLEY: Okay.

13 THE COURT: So this witness isn't going to be
14 long?

15 MS. KEPLEY: No, not at all.

16 THE COURT: You know, we have to break and your
17 witness is not here. Then nothing else, we can, at
18 least, get the charge and everything so we don't have
19 to do that. So all right.

20 All right, if the jury's ready, bring them in.

21 Do you think your witness would be here before
22 lunch?

23 MS. KEPLEY: Yes, sir, Your Honor.

24 THE COURT: Okay. And we'll take a break,
25 obviously, hear any motions and discuss with

1 Mr. Chappell all his rights and that sort of thing.

2 (WHEREUPON, the jury entered open court at

3 approximately 10:57 a.m.)

4 THE COURT: All right, ladies and gentlemen,

5 thank for your patience. Now The State will call

6 their next witness.

7 MR. PHILLIPS: The State calls Erica Van Wagner.

8 THE CLERK: Please come forward. Please place

9 your left hand on the Bible and raise your right

10 hand.

11 ERICA VAN WAGNER, after being duly

12 sworn{,}testified as follows:{F}

13 THE CLERK: Thank you, please be seated. State

14 your name for the record.

15 THE WITNESS: Erica Van Wagner.

16 DIRECT EXAMINATION

17 BY MR. PHILLIPS:

18 Q Ms. Van Wagner, what is your occupation?

19 A I'm a mental health therapist.

20 Q What does your practice focus on?

21 A I specialize in trauma. I work for the
22 Department of Mental Health and I've been employed for 22
23 years. I supervise our DSS program. So I work,
24 primarily, with kids involved with Department of Social
25 Services.

ERICA VAN WAGNER-DIRECT BY MR. PHILLIPS

1 Q What is your educational background?

2 A I have a Bachelor's of Social Work that I got
3 from Winthrop in 1999. I also have a Master's Degree in
4 Social Work which I got from USC in 2002.

5 Q Do you hold any licenses in this state?

6 A I am a licensed independent social worker with a
7 clinical practice focus. I got that license in 2016.

8 Q What is your employment experience?

9 A I've been employed through the Department of
10 Mental Health since June of 2000. Where I've worked as a
11 therapist and have been a supervisor since about 2008.
12 Additionally, I have a private practice in Easley. And I
13 provide clinical supervision through another agency as
14 well.

15 Q And how long have you been treating children who
16 are sexually abused?

17 A Twenty-two years.

18 Q Do you have any idea how many clients you've
19 seen in that time?

20 A Approximately, 1500 between my private practice
21 and DMH.

22 Q Do you have occasion to consult with other
23 professionals in your field of child abuse dynamics?

24 A I do. I am part of a multidisciplinary team
25 that meets weekly to -- that has other professionals that

ERICA VAN WAGNER-DIRECT BY MR. PHILLIPS

1 are in the field. I also meet weekly with a psychiatrist
2 at work to staff cases and address concern with cases.

3 Q Do you attend training and seminars in this
4 field?

5 A I do. I often attend trainings as part of my
6 clinical license, I'm required to attend, at least, 40
7 hours of continuing education credits every two years.

8 Q Do you have a preferred method of treatment for
9 children who have been sexually abused?

10 A I use a evidence based treatment for trauma.
11 That, basically, means that it's been empirically
12 supported and researched. And it's based on evidence
13 that's efficient. I use trauma focus cognitive behavioral
14 therapy or TFCBT to treat children.

15 Q And how have you been trained in that type of
16 therapy?

17 A I was originally trained in around 2005. And
18 then in 2012 I participated in a statewide learning
19 collaborative where we were trained. And then it was a
20 yearlong process where we participated in group
21 consultation calls and individual consultation calls with
22 the developers and the treatment. At this point, I'm now
23 a trainer of TFCBT, so I train DMH, Department of Mental
24 Health, therapists in that intervention.

25 Q And do you regularly read journal articles and

ERICA VAN WAGNER-DIRECT BY MR. PHILLIPS

1 reviews and case studies in your practice?

2 A I do. I like to stay up-to-date on information
3 about dynamics and child sexual abuse, yes.

4 Q Have you ever been qualified as a expert in the
5 court law for the treatment of children who have been
6 sexually abused and/or sexual abuse dynamics?

7 A I have.

8 Q How many times?

9 A Approximately, 10 times.

10 MR. PHILLIPS: Your Honor, at this time, I would
11 move to admit Ms. Van Wagner as a expert in the
12 treatment of children with trauma to include sexual
13 dynamics.

14 THE COURT: Okay any objection or voir dire?

15 MS. KEPLEY: Your Honor, I just renew my
16 previous objections.

17 THE COURT: So noted.

18 Then she if so qualified. I'm going to qualify
19 her as a expert in the field of, I believe, treatment
20 of sexual abuse and sexual abuse dynamics; is that
21 correct?

22 MR. PHILLIPS: Yes, Your Honor.

23 THE COURT: All right.

24 And, Ladies and gentlemen, as I told you before,
25 you know, lay witnesses are limited to what they can

ERICA VAN WAGNER-DIRECT BY MR. PHILLIPS

1 testify to. But an expert can testify about their
2 opinion and conclusions. Based on their experience,
3 their training and their education. But it's to be
4 given the weight and value which you feel is
5 appropriate, so.

6 You may proceed.

7 MR. PHILLIPS: Thank you, Your Honor.

8 BY MR. PHILLIPS:

9 Q Before we get into the questioning for you, I
10 would like to know, do you know anything about this case
11 here today?

12 A I do not.

13 Q You've never read any of the reports?

14 A I haven't.

15 Q Never seen any interviews?

16 A Correct.

17 Q Never spoken with the victim?

18 A I have not.

19 Q Okay. And through your work, are you familiar
20 with the dynamics of family or just any kind of sexual
21 abuse?

22 A Yes, sir.

23 Q How common it is for a person to be a known
24 person to the child?

25 A Most commonly in cases of child sexual abuse,

ERICA VAN WAGNER-DIRECT BY MR. PHILLIPS

1 there is a relationship between the offender and the
2 victim. Including a family relationship.

3 Q Why is that?

4 A The closer the relationship the more access a
5 offender would have. In order to gain access or the
6 ability to carry out sexual abuse, the offender has to be
7 able to have access and a level of trust with the child.

8 Q Would you consider this type of crime to be
9 secretive?

10 A Yes.

11 Q Talk about a little bit about the coaxing -- or
12 the terms coaxing and grooming?

13 A Grooming is a term in the field used to
14 described a process by which an offender establishes that
15 relationship, builds trust and is able to carry out the
16 acts of sex abuse. So it's creating an environment or a
17 relationship with the child that allows the offender to be
18 able to, as I said, gain the access and carry out the
19 abuse.

20 Q What are some of the grooming techniques that a
21 child may experience?

22 A These can vary in different cases. But
23 sometimes it's a offender that might treat that victim
24 differently. Shower them with attention, maybe buy them
25 gifts. You know, kind of, again, establishing a positive

ERICA VAN WAGNER-DIRECT BY MR. PHILLIPS

1 relationship. Sometimes that can start out as, you know,
2 simple touching or tickling that can escalate into more
3 inappropriate touching. The offender in that example is
4 kind of gaging a child's response to those behaviors and
5 determining what they're able to carry out.

6 Q Would you consider it to be a typical pattern of
7 the tickling, turning into touching in inappropriate areas
8 on top of clothes and maybe touching underneath clothes to
9 be a process --

10 MS. KEPLEY: Objection, Your Honor. Very
11 leading questions.

12 THE COURT: Sustained.

13 BY MR. PHILLIPS:

14 Q Well, you just mentioned that there would be
15 different ways that a person would groom and tickling you
16 mentioned. Are there anything else, other than tickling?

17 A Yes. Tickling, touching. Ultimately, it's
18 about, again, the grooming is that -- creating that
19 opportunity for the offender to carry out the abuse. And
20 so, it typically escalates. An offender doesn't,
21 necessarily, come in and start with the most egregious
22 acts of sexual abuse. That those behaviors tend to
23 escalate over time. They start out with things that seem
24 maybe a little -- maybe the kid could have been confused
25 or whatever. But they lead up to those more hands-on acts

ERICA VAN WAGNER-DIRECT BY MR. PHILLIPS

1 or aggressive acts of abuse.

2 Q Can you describe for the jury what delayed
3 disclosure means?

4 A Disclosure itself is a term that we use to
5 describe the process before a child tells about the
6 details of their abuse. So delayed disclosure would be
7 one in which there was some level of delay between the
8 time that the abuse occurred and the disclosure that was
9 being made.

10 Q Are there different types of disclosure?

11 A Yeah, there are different types of disclosures.
12 That they're -- in the process to disclosure there's a
13 stage we call tentative disclosure. That might be where a
14 kid is giving some information about what happened.
15 They're also, you know, intentional disclosures whether
16 kids are giving information on purpose to tell what
17 happened. There's sometimes what we would call, like, a
18 accidental disclosure. And that would be where a child
19 might engage in a behavior, make a statement, ask a
20 question, give some sort of something that a caregiver
21 would respond to or maybe ask a question about that that
22 would lead to a disclosure. So it's not an intentional
23 disclosing.

24 Q Are there children who are sexually abused who
25 never disclose?

ERICA VAN WAGNER-DIRECT BY MR. PHILLIPS

1 A Yes.

2 Q And what, in your experience, what's the range
3 of delayed disclosure?

4 A In my practice, I've seen, you know, kids wait
5 hours to disclose. They, you know, weeks, months. I once
6 had a client whose grandmother was present in a session,
7 the grandmother was 86 years old and disclosed childhood
8 sexual abuse for the first time at 86 years old. So she
9 had about a 79 year delay in her disclosures.

10 Q So this 86 year old would have been abused when
11 she was seven?

12 A Correct.

13 Q Why do kids delay the disclosure?

14 A There's a lot of reasons that a child might
15 delay. Sometimes they're afraid to tell. Sometimes
16 they're embarrassed. Sometimes they might feel guilt or
17 shame. Kids might worry about the impact this could have
18 on their family. They might worry if they're going to be
19 believed or not. They may worry that they could up end up
20 in foster care. Sometimes kids have been threatened not
21 to tell, so they worry about their own safety and whether
22 or not, you know, their safety is going to be at risk if
23 they were to share that information.

24 Q It is possible for young children to not have a
25 understanding or much socialization or knowledge to know

ERICA VAN WAGNER-DIRECT BY MR. PHILLIPS

1 that the abuse is wrong?

2 A Yes. That would be another reason that kids
3 don't tell is that they don't have the vocabulary needed
4 to share that information. It may have happened in a
5 developmental stage where they weren't able to understand
6 exactly what was happening. So they might not even have
7 known that there was a need to share that information.

8 Q How may a child's willing to disclose be
9 affecting this perpetrator as a family member?

10 A Generally, the closer the relationship that the
11 offender and the victim have, the more likely there is
12 going to be a delay or the length of the delay might be
13 longer. Again, in cases where it's a stranger that, you
14 know, might abuse a child, those tend of have a much more
15 early disclosure. That relationship with the offender,
16 sometimes the victim has a positive relationship with
17 their offender. And they don't like what's happening but
18 they want to -- they like the person that's doing it or
19 they have had a good relationship. So there's lots of
20 factors. But generally, the closer their relationship,
21 the harder it is for that disclosure to take place.

22 Q What is meant by the term piecemeal disclosure?

23 A A piecemeal disclosure is one in which a child
24 might be giving different bits of the story at different
25 times. They may be sharing it, it might not be

ERICA VAN WAGNER-CROSS BY MS. KEPLEY

1 sequential, as they're sharing the story about what
2 happened. But they're giving bits and pieces of their
3 story at different times.

4 Q So it might take a little while for the story to
5 come out?

6 A Yeah. The -- as I mentioned, the disclosure is
7 a process. It's something that's generally done over
8 time. It's not often an event that takes place. And so,
9 you know, kids start out where they haven't shared. As I
10 said, that delay and that disclosure so there might be a
11 denial or no disclosure. Then they move into like a
12 tentative stage of disclosure where they're giving bits
13 and pieces, they're gaging the reaction of the response.
14 And based the response they get, they may move into a more
15 active stage of disclosure. Which is where they're giving
16 a full account of what happened. Where they're giving all
17 the details of what happened.

18 MR. PHILLIPS: Thank you, please answer any
19 questions The Defense may have.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 BY MS. KEPLEY:

23 Q All right. You said you primarily work as a
24 therapist, one-on-one with children; is that correct?

25 A Children and families, yes.

ERICA VAN WAGNER-CROSS BY MS. KEPLEY

1 Q Children's and families. Is it true that you do
2 not perform any sort of studies on children in a research
3 setting?

4 A Correct.

5 Q Is it true that you do not publish any research
6 on child behavior?

7 A Correct.

8 Q Is it true that you do not collect any sort of
9 data about child behavior?

10 A Correct.

11 Q Is it true that you do not collect any sort of
12 data about true or false disclosures?

13 A Correct.

14 Q Is it true that you do not analyze any data
15 collected by anyone else about child behavior?

16 A Yes.

17 Q Is it true that the current state of research on
18 child abuse dynamics, says that there are no symptoms, no
19 syndromes or behaviors that could prove a child has been
20 sexually abused. Would you agree with that?

21 A That it is not diagnostic, the symptoms are not
22 diagnostic to sexual abuse, yes.

23 Q Would you agree that whatever behaviors a child
24 displays, it cannot prove the presence of abuse?

25 A Correct.

ERICA VAN WAGNER-CROSS BY MS. KEPLEY

1 Q And when a delayed disclosure happens, that that
2 delay, in and of itself, it can't prove they're telling
3 the truth; is that true?

4 A These things don't prove the case. But when
5 symptoms can be consist with these reports and there is
6 consistency shown across cases. So it does not prove or
7 diagnose abuse, you're right. But consistencies can be
8 noted.

9 Q It is true that you can't, certainly, look at a
10 video tape interview, treatment records or interview, you
11 know, a child yourself and determine, based on that alone,
12 that this child has been sexually abused with any sort of
13 scientific accuracy?

14 A I'm not a lie detector test. Yes, that's true.

15 Q Do false disclosures happen?

16 A They do.

17 Q Are you aware of any cases in your practice or
18 any cases in the research that have found that a delayed
19 disclosure to be unreliable?

20 A Yes. I don't necessarily believe that the
21 disclosure was unreliable based on delay but the
22 disclosure itself was unreliable.

23 Q Do you, as a expert in this field, do you track
24 the number of instances of delayed disclosures that turn
25 out to be false?

ERICA VAN WAGNER-CROSS BY MS. KEPLEY

1 A I very rarely encounter that in my experience.
2 And so I don't track them, specifically. But it isn't a
3 common occurrence.

4 Q In fact, is it true that when you're working as
5 a clinician with a child or a family, and they report, you
6 know, I've been the victim of sexual abuse; isn't it
7 important that you behave as though you believe that
8 disclosure? You know, no matter how outlandish it may
9 seem?

10 A It is important for me to be supportive of the
11 client. Part of the treatment that I provide involves
12 narrative work around their traumatic experience. So if
13 it's, you know, a fabricated story, then it's hard to
14 provide a narrative around that. And so, yes, I do
15 present and I do believe. Are there times where, you
16 know, there's evidence to support that it isn't a true
17 story, yes. And that one case in particular, the child
18 was charged with filing a false police report. So through
19 the investigative process, that was determined.

20 Q Just to be clear, it's not your role as a
21 clinician to ever determine what's true and what's false;
22 right?

23 A Correct.

24 Q And you don't know if the case we're here for
25 involves a truthful or a false disclosure, correct?

ERICA VAN WAGNER-CROSS BY MS. KEPLEY

1 A I don't know the details of today's case.

2 MS. KEPLEY: Thank you.

3 THE COURT: Any redirect?

4 MR. PHILLIPS: No redirect, Your Honor.

5 THE COURT: All right, you may step down.

6 MR. PHILLIPS: May Ms. Van Wagner be excused?

7 THE COURT: Any objection?

8 MS. KEPLEY: No, objection, Your Honor.

9 THE COURT: All right.

10 MR. PHILLIPS: That's The State's case, Your
11 Honor, we rest.

12 THE COURT: All right, ladies and gentlemen, The
13 State has rested their case in chief. So now, I'm
14 sorry, I have to send you back to your jury room
15 because there's things we have to discuss, at this
16 point, once The State has rested. So that's all the
17 evidence they're going to put in that you would
18 consider from The State's side. So, at this point,
19 if you'll step back in your jury room and do not
20 discuss the case and we'll bring you back out with
21 further information and instruction, so.

22 (WHEREUPON, the jury left open court at
23 approximately 11:18 a.m.)

24 THE COURT: Okay, anything from The State?

25 MR. PHILLIPS: Nothing from The State, Your

1 Honor.

2 THE COURT: All right, from The Defense?

3 MS. KEPLEY: At this time, Your Honor, we would
4 move for a motion for a directed verdict based on the
5 lack of evidence in this case. It seems to be based
6 entirely on testimony that had some inconsistencies
7 in it. At this time, we would just move for a
8 directed verdict.

9 THE COURT: And I believe that based on that
10 testimony, it's clearly a factual issue for the jury
11 to decide so I'm going to deny your motion.

12 MS. KEPLEY: Thank you, Your Honor.

13 THE COURT: Okay, y'all want to take a minute
14 and then I'll discuss with your client about his
15 Fifth Amendment rights, at this point or?

16 MS. KEPLEY: Yes, Your Honor, I think there is
17 some question when we're talking about Mr. Chappell
18 testifying about what, as far as his record coming in
19 as impeachment evidence. I don't know if we want to
20 do--

21 THE COURT: Yeah, you want to discuss that now?
22 Then I can explain to him, then y'all can have a
23 discussion, then come back and tell me at that point.

24 MS. KEPLEY: That would be best.

25 THE COURT: All right, Mr. Phillips, for the

1 record what do you anticipate, if Mr. Chappell
2 testifies, what is the record that you have?

3 MR. PHILLIPS: Your Honor, the only things that
4 I think are admissible at this point, at this date,
5 it will be five sexual exploitation of a minor third
6 degree charges that he was found guilty on March 6th
7 of '12. So, obviously, his release date is going to
8 be within that ten years.

9 THE COURT: All right. So he's got -- you say
10 five?

11 MR. PHILLIPS: Five of them, yes, Your Honor.

12 THE COURT: Were they all tried at the same
13 time, did he plead or?

14 MR. PHILLIPS: They -- no, he didn't plea. It
15 was a trial and it was at the same time.

16 THE COURT: All right. The sexual exploitation
17 of a minor?

18 MR. PHILLIPS: Yes, Your Honor.

19 THE COURT: All right, Ms. Kepley.

20 MS. KEPLEY: Your Honor, I think on 403
21 analysis, I mean, this goes directly to propensity
22 evidence. I think it would be as highly prejudicial
23 as it could be in a case of this nature. And I don't
24 know what probative value it would certainly offer as
25 to his credibility, just based on the nature of the

1 charges.

2 THE COURT: Let me look at that a little bit
3 before I make a decision whether it's admissible.

4 MR. PHILLIPS: I would only argue, I mean, she
5 made a point that it's as prejudicial as it can be.
6 And that's not true, Your Honor. As prejudicial as
7 it could be would be if I tried to get in his
8 previous conviction for molesting a child that was
9 his girlfriend's. So that would be -- that would be
10 right on point.

11 THE COURT: Yeah, I just want to look at some of
12 the case law on that.

13 MR. PHILLIPS: I believe this resulted, if I'm
14 not mistaken, from child pornography.

15 THE COURT: All right.

16 And, Mr. Chappell, at this time I'm going to go
17 over -- go through your rights. If you'd stand and
18 raise your right hand.

19 FREDERICK CHAPPELL, after being duly
20 sworn{,}testified as follows:{F}

21 EXAMINATION

22 BY THE COURT:

23 Q All right, we're kind of at a stage, I'm going
24 to go through these rights with you, then I'm going to
25 give you all the opportunity that you need to discuss with

FREDERICK CHAPPELL-EXAMINATION BY THE COURT (IC)

1 your attorneys this. As you as know, you have a right to
2 present evidence. And as a part of that you can present
3 evidence. I think your attorney has indicated that she
4 may call additional witnesses. But the main thing that I
5 need to talk about is you have the right to testify. And
6 that's totally in your discretion. And what that means is
7 if you decided to testify, then you would be on the stand,
8 you would be subject to all of the cross-examination, just
9 like any other witness. And any qualifying convictions.
10 Anything that is admissible, cross-examination can be --
11 you're subject to that. You also have the absolute right
12 not to testify. And that cannot be used against you. And
13 if you decided not to testify, I would instruct the jury,
14 very strongly, that they're not even to consider that or
15 even discuss that in their deliberations because the
16 burden is clearly on The State to make a -- to have the
17 burden in this and that you have no burden whatsoever. So
18 they'll be instructed on those lines that they cannot
19 consider, that is your Constitutional right.

20 Now, ultimately, in making this decision,
21 you can consult with your attorneys or anybody that you
22 feel is appropriate that you need to consult with. But,
23 ultimately, that decision is yours. It's not your
24 attorneys decision, of course, they will give you the
25 advice that they feel is appropriate. But it's totally up

FREDERICK CHAPPELL-EXAMINATION BY THE COURT (IC)

1 to you. And you're the person I'm going to ask, after
2 you've had a chance to discuss this with your attorneys,
3 of whether you want to testify. Also, as your attorneys
4 will tell you, the presentation of any evidence is -- can
5 be a strategic decision because if your side does not put
6 up any evidence then your attorney gets the last argument.
7 By putting up any evidence, then you would -- whether it's
8 your testimony or any evidence, then The State would give
9 their opening and they would close in full. Your attorney
10 would then have closing argument and The State would have
11 rebuttable after that.

12 So first of all, let me ask you some
13 preliminary questions. Are you under the influence of any
14 alcohol or drugs or medication today?

15 A No, Your Honor.

16 Q Do you have any health or mental issues which
17 would keep you from what's going on?

18 A No, Your Honor.

19 Q All right. So you understand everything that I
20 told you about your right to testify?

21 A Yes.

22 Q All right. And at this time, I'm going to give
23 you a chance to consult with your attorneys. And then
24 when you come out I'm going to ask you what your decision
25 is as far as your testimony.

FREDERICK CHAPPELL-EXAMINATION BY THE COURT (IC)

1 A Yes, sir.

2 THE COURT: And then when we do come back in,
3 are you ready to proceed with your case?

4 MS. KEPLEY: Yes, Your Honor.

5 THE COURT: Okay. How long do you think you'll
6 need? Just let me know when you're ready.

7 MS. KEPLEY: Not too long.

8 THE COURT: Just let me know. Give you whatever
9 time you feel is appropriate.

10 (WHEREUPON, a short break was taken.)

11 THE COURT: All right, first of all, does it
12 make any difference my ruling on the criminal record?

13 MS. KEPLEY: Yes, Your Honor.

14 THE COURT: Okay. I thought about that,
15 Mr. Phillips, and I just think that's just too
16 prejudicial and too much of a basis to send it back.

17 MR. PHILLIPS: Well, we're willing to take that
18 chance.

19 THE COURT: Well, I'm not. I'm the one that
20 looks, bad not you. They don't have your name in the
21 appellate -- no, I just don't think that -- I'm not
22 going to allow that criminal record to. . .

23 MR. PHILLIPS: I understand. Certainly, we
24 would be allowed to impeach him by saying that he has
25 a felony that carries more than one year. Without

1 mentioning what it is. That's not -- that's not --
2 that certainly isn't prejudicial.

3 THE COURT: I think you have to be specific as
4 to what the charge is though.

5 MR. PHILLIPS: Right. Isn't it true that you've
6 been convicted of a felony that carries more than one
7 year.

8 THE COURT: Ms. Kepley?

9 MS. KEPLEY: I'm going to object to that, Your
10 Honor. I think if we're going to let out what it is,
11 that comes out too. I don't think we get to break it
12 up into pieces.

13 MR. PHILLIPS: I think that's reversible the
14 other way, if you don't let that in. I would only
15 add that that's how other courts have handled it.

16 THE COURT: All right, the Court's opinion I'm
17 looking at is 33 pages. I've been looking at the
18 case of The State v. Robinson, actually, have very
19 similar -- I think the reference to the felony
20 conviction, punishable of more than one year, limited
21 to that only. Not the actual charge, so.

22 All right, are y'all ready for me to talk to
23 Mr. Chappell?

24 MS. KEPLEY: Your Honor, I have one other issue.

25 THE COURT: Yes.

1 MS. KEPLEY: Mr. Phillips indicates he has
2 another piece of impeachment evidence that they would
3 intend to introduce. I certainly don't intend to
4 speak for him but maybe we should have a hearing on
5 that --

6 THE COURT: Okay.

7 MS. KEPLEY: -- outside the jury as well.

8 THE COURT: Okay.

9 MR. PHILLIPS: I don't believe The State is
10 required to hand over every piece of --

11 THE COURT: Okay.

12 MR. PHILLIPS: --impeachable evidence.

13 THE COURT: Okay. All right. All right. I
14 guess we'll address it when it gets there.

15 MS. KEPLEY: Okay.

16 EXAMINATION

17 BY THE COURT:

18 Q Mr. Chappell, stand up this time. All right.
19 You've had -- have you had sufficient -- going back to the
20 question of your testifying and whether you wish to
21 testify or not. All right. I've discussed your rights
22 with you, do you understand all your rights?

23 A Yes, sir.

24 Q About being able to testify and the right not to
25 testify. Do you have any questions whatsoever about any

FREDERICK CHAPPELL-EXAMINATION BY THE COURT

1 of your rights?

2 A No, sir.

3 Q All right. You have had 20 minutes or so to
4 talk with your attorney, do you need anymore time to
5 discuss this with your attorneys?

6 A Maybe five more minutes.

7 Q Okay. All right, I'll give you five minutes,
8 then let me know when you're ready.

9 (WHEREUPON, a short break was taken.)

10 BY THE COURT:

11 Q All right, Mr. Chappell.

12 A Yes, sir.

13 Q All right, based on everything, again, you
14 understand your rights, you've had sufficient time to talk
15 with your attorneys about whether you're going to testify
16 or not. So based on your discussions and knowing your
17 rights, what's your decision?

18 A I have decided to testify.

19 Q You are going to testify?

20 A Yes, sir.

21 THE COURT: All right. And I would, at this
22 point --

23 You can sit down then.

24 At this point, I would note that, in looking at
25 that, the prior record, I believe that the facts is a

1 felony does have a proper basis for
2 cross-examination. The charge, I understand, would
3 not be too remote. Any prejudice because of the
4 similarity, I think, has been kind of avoided by
5 limiting it to the felony. So based on that and I'm
6 going to -- it does go against his credibility but it
7 doesn't unduly prejudice him by -- because of the
8 similarity. I know they're different charges but
9 they are similar in nature. I think based on that, I
10 will allow The State to say felony only. Limit it to
11 that.

12 MR. PHILLIPS: Yes, Your Honor.

13 THE COURT: All right.

14 So The Defense, y'all ready?

15 MS. KEPLEY: Yes, Your Honor.

16 THE COURT: Okay. Let me look at timing factor
17 here. It's 10 after 12. What are you -- I'm trying
18 to figure out when we should release the jury for
19 lunch.

20 MR. PHILLIPS: I can say -- I don't know about
21 their case in chief but when we get to the -- to
22 the -- to the area that she's talking about, it's
23 probably going to take a little while to flesh out as
24 far as the impeachment testimony. So we're going to
25 go well beyond into lunch if we get there.

1 MS. KEPLEY: I do have just one witness, Your
2 Honor, she'd probably be pretty quick.

3 MR. PHILLIPS: Oh, we can do one --

4 THE COURT: That's what I'm thinking, one
5 witness and then break for lunch. Because otherwise,
6 I see us going to 1:30 or so.

7 MR. PHILLIPS: I believe that's correct.

8 THE COURT: Yeah. Okay. Maybe long. So let's
9 put this one witness up, then I'll release them, then
10 we'll come back, finish up and we can have any
11 discussions about charge during lunch, even though it
12 won't be final because the case won't be through.

13 All right, The State ready for the jury?

14 MR. PHILLIPS: Yes, Your Honor.

15 THE COURT: Defense ready for the jury?

16 MS. KEPLEY: Yes, Your Honor.

17 THE COURT: All right, bring the jury in.

18 (WHEREUPON, the jury entered open court at
19 approximately 12:09 p.m.)

20 THE COURT: All right, ladies and gentlemen of
21 the jury, thank you for your patience there. Like I
22 said, there's certain things we have to go over once
23 one of the sides has rested. At this time, just kind
24 of letting you know what the schedule is going to be.
25 The Defense, at this time, will put up any kind of

1 evidence that they feel is appropriate. And then, I
2 think that it's 12:10 so we have a witness that's not
3 going to be very lengthy, we're going to go through
4 this witness and then we're going to break for lunch.
5 And then come back. I fully expect that we will be
6 able to present this case for you this afternoon for
7 deliberations, is what it's looking like now. That
8 could change but that's kind of what our goal is at
9 this point so stay tuned.

10 So, at this time, Ms. Kepley.

11 MS. KEPLEY: Defense would call Ms. Kimberly
12 Cooper.

13 THE CLERK: Ms. Cooper, please come forward. If
14 you'd please pause at the end of the bench, place
15 your left hand on the Bible and raise your right
16 hand.

17 KIMBERLY COOPER, after being duly
18 sworn{,}testified as follows:{F}

19 THE CLERK: Thank you, please be seated. State
20 your name for the record.

21 THE WITNESS: Kimberly Dawn Cooper Emmerson.

22 THE CLERK: Thank you.

23 MS. KEPLEY: May it please the Court.

24 DIRECT EXAMINATION

25 BY MS. KEPLEY:

KIMBERLY COOPER-DIRECT BY MS. KEPLEY

1 Q Ms. Cooper, how do you know Minor and Tasha?

2 A Minor 's my niece, Tasha is my sister.

3 Q And who is your grandmother?

4 A My grandmother?

5 Q Yes.

6 A It's Louise.

7 Q Louise. Okay, who is Deborah to you?

8 A Is my mother.

9 Q Is your mother. Are you aware of the timeframe
10 of the allegations in this case?

11 A Somewhat.

12 Q Okay. Let me ask you this, when did you move in
13 with your mother, Deborah?

14 A I was living with my mother in 2005 with my son.
15 We got a place on Security Drive. I stayed with her,
16 approximately, I would say anywhere between six months to
17 a year and I got my own place.

18 Q And who all was living there while you were
19 living there?

20 A Me and her at first. And then Robbie and then
21 my brother moved in for a short period of time.

22 Q And where were you staying when you lived there?

23 A You go in the front door, my bedroom was to the
24 right.

25 Q How many bedrooms were there?

KIMBERLY COOPER-DIRECT BY MS. KEPLEY

1 A Two.

2 Q Who was in the other bedroom?

3 A My mother and Robbie.

4 Q Were you present during this time period when
5 Minor and her siblings would visit?

6 A Yes.

7 Q How often would that happen?

8 A Sometimes once a week, sometimes it was, like,
9 once every other week.

10 Q Would they ever spend the night?

11 A Yes.

12 Q How many of them would come at once?

13 A It varied.

14 Q Would anyone ever come alone?

15 A Not to my memories.

16 Q Did you -- let me say this. Who was in charge
17 of watching the children when they would come over?

18 A My mother.

19 Q And what sorts of things did your mother do with
20 the children?

21 A She fed them, bathed them and got them to bed.

22 Q Did you ever see Robbie bathe the children?

23 A No, ma'am.

24 Q Did you ever see any interaction between Robbie
25 and the children that, to you, seemed concerning or

KIMBERLY COOPER-DIRECT BY MS. KEPLEY

1 suspicious?

2 A No, ma'am.

3 Q What was his interactions like with the
4 children?

5 A Around the time that I was there, good. I mean,
6 he bought them Christmas. He was good to them.

7 Q And when you lived there, you said your child
8 also lived there?

9 A Yes.

10 Q Did Robbie have any interaction with your child?

11 A Yeah, he spent every day with my child after
12 work.

13 Q And what were those interactions like?

14 A My son would watch races with him, listen to
15 music with him, Christmas time. And it was like a bond.

16 Q Did you trust Robbie with your child?

17 A Yeah.

18 Q Did you ever see any interaction between Robbie
19 and your child that was concerning?

20 A No.

21 Q Did your child ever disclose anything to you
22 that was concerning?

23 A No.

24 Q Did you ever see any sort of digital camera that
25 Robbie had while he was living there?

KIMBERLY COOPER-CROSS BY MR. PHILLIPS

1 A No. My mother had one.

2 Q Did you ever see Robbie holding one?

3 A No.

4 MS. KEPLEY: That's all the question I have,
5 Your Honor.

6 THE COURT: Cross-examination?

7 MR. PHILLIPS: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. PHILLIPS:

10 Q To be clear about these timeframes, you said you
11 were there were in 2005 for maybe six months to a year?

12 A Yes. Then I got my own place in the trailer
13 park across the street.

14 Q Do you know if it was six months or a year.

15 A I can't be exact.

16 Q Okay.

17 A It was like in between.

18 Q Do you know when Minor was born?

19 A [REDACTED]?

20 Q Of what year?

21 A Of '02.

22 Q Of '02. So how old would she have been in 2005?

23 A Three.

24 Q Three?

25 A If she was born in '02, yeah.

KIMBERLY COOPER-CROSS BY MR. PHILLIPS

1 Q So three and you go to the outside of maximum
2 time that you were there, she would have been four?

3 A Yeah.

4 Q Okay. You said Robbie also moved in 2005 or
5 shortly after.

6 A It was shortly after.

7 Q Maybe 2006?

8 A Yeah, it was around 2006.

9 Q Okay. Now, when you moved, did you come over
10 there every time the kids -- the siblings came over?
11 Minor and her siblings?

12 A When I stayed there?

13 Q No. No. After you moved?

14 A No, I wasn't there every time they was there.

15 Q How many times were you there when they were
16 there?

17 A Numerous. Like, I don't know how to answer that
18 question. After I left.

19 Q Well, let me ask you this, after you left, did
20 you -- were you there overnight when the siblings were
21 there?

22 A No.

23 Q So you were never there overnight?

24 A After I moved out, no.

25 Q Okay. So you were -- you were never there when

KIMBERLY COOPER-CROSS BY MR. PHILLIPS

1 Minor was there, when she was six years old?

2 A No.

3 Q Or seven years old?

4 A No.

5 Q Let me get the timeframe again. You said the
6 brother came in for a little while?

7 A Yes.

8 Q Whose brother?

9 A Mine.

10 Q How long was he there?

11 A It was just a short period of time before my
12 brother was in and out of places, so.

13 Q A couple weeks? Couple of months?

14 A Maybe the first time he was there, like, a week.
15 Then he came back later on and he was there for months.

16 Q Okay. When was later on?

17 A A year or so, maybe.

18 Q So talking about 2006?

19 A 2006, 2007, somewhere in there.

20 Q Well, a year from 2005, when you were there,
21 would be 2006?

22 A So it would be 2006.

23 Q Okay. So neither you nor your brother were
24 there when Minor was seven -- six or seven years old?

25 A I wasn't. I can't vouch for my brother.

KIMBERLY COOPER-CROSS BY MR. PHILLIPS

1 Q You lived across the street, right?

2 A I lived across the street into another trailer
3 park.

4 Q So you didn't really know what was going on over
5 there at that house?

6 A Correct.

7 MR. PHILLIPS: Nothing further.

8 THE COURT: All right, redirect?

9 MS. KEPLEY: No, Your Honor.

10 THE COURT: All, right you may step down.

11 MS. KEPLEY: May the witness be excused, Your
12 Honor?

13 THE COURT: Any objection?

14 MR. PHILLIPS: No objection.

15 THE COURT: All right, you may be excused.

16 All right, time to break for lunch.

17 All right, ladies and gentlemen, just kind of
18 keep this ball rolling, 1:30, would that be
19 sufficient time for everybody? All right, so 1:30 be
20 back in your jury room. Do not discuss the case.
21 Don't do any type of research. Don't pay any
22 attention to media coverage. And if anybody talks to
23 you other than the clerk's office, then let the
24 bailiffs know. Otherwise, we'll see you back 1:30.

25 MR. PHILLIPS: Your Honor, before they go, may

1 we approach real quick?

2 THE COURT: Yes.

3 (WHEREUPON, an off-the-record bench conference
4 was held in the presence of the jury but out of
5 the hearing of the jury.)

6 THE COURT: All right, we may have something,
7 1:45, so see you back at 1:45. Gives you a little
8 bit longer lunch, so. See you back at 1:45.

9 (WHEREUPON, the jury left open court at
10 approximately 12:20 p.m.)

11 THE COURT: All right, when do y'all want to
12 discuss -- y'all want to discuss charges now, then
13 y'all can be thinking over lunch.

14 MR. PHILLIPS: Sure.

15 MS. KEPLEY: Sure.

16 THE COURT: It shouldn't take long, so.

17 (WHEREUPON, a lunch break was taken.)

18 THE COURT: All right, it is my understanding in
19 talking with the deputy, that The Defendant fell and
20 hit his head and he is now in the hospital getting
21 checked out. I think he's okay, from what I
22 understand, but he is being checked out in the
23 hospital. And I will say that, just what I've been
24 told, that this was not a -- it was kind of like a
25 passout type thing and not some kind of strategic,

1 bang my head on the side -- what I've been told. So
2 I don't think there's anything we can do except
3 postpone today and start back in the morning. And
4 I'm going to bring the jury in just and say more
5 issues have arisen that we will not be able to
6 continue this afternoon and we'll have to start back
7 in the morning.

8 So anything from The State before I bring the
9 jury in?

10 MR. PHILLIPS: Nothing, Your Honor.

11 THE COURT: From The Defense?

12 MS. KEPLEY: Nothing, Your Honor.

13 THE COURT: All right, bring the jury.

14 (WHEREUPON, the jury came into open court at
15 approximately 1:55 p.m.)

16 THE COURT: All right, ladies and gentlemen,
17 remember I told y'all sometimes we get started on
18 these things you got to be flexible, this is one of
19 those moments. There's some issues that have arisen
20 that we're not going to be able to continue this
21 afternoon. So we will have to start back in the
22 morning. So I apologize for any inconvenience and
23 appreciate your patience. So we will start back at
24 9:30 in the morning. In the meantime, don't forget
25 the four rules. Do not discuss the case among

1 yourselves or any family members or anything like
2 that. Do no do any type of research. That is so
3 important, as I stressed to you. Do not pay any
4 attention to any media coverage. Although, I'm not
5 aware of any. But any social media or anything like
6 that. And if anybody should contact you, other than
7 somebody from the clerk's office, please let the
8 bailiffs know. Otherwise, like I said, we should be
9 able to put this -- y'all should have this -- and
10 probably, just so you can make arrangements, I
11 anticipate that we will bring lunch in. Because I
12 hope that we will have it to you before lunch so we
13 will -- just let y'all know for your lunch plans. So
14 we'll have lunch brought in so that you can make any
15 arrangements you need to in that regard. All right.
16 Otherwise, y'all have a good evening and we'll see
17 you in the morning.

18 (WHEREUPON, the jury left open court at
19 approximately 1:57 p.m.)

20 THE COURT: All right, anything from The State?

21 MR. PHILLIPS: Nothing from The State, Your
22 Honor.

23 THE COURT: Anything from The Defense?

24 MS. KEPLEY: Nothing from The Defense, Your
25 Honor.

1 THE COURT: All right, we'll see everybody in
2 the morning. Good Lord willing and the creek don't
3 rise.

4 (WHEREUPON, the proceedings were concluded for
5 the day to be reconvened on April 7, 2022.)
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1 April 7, 2022

2 THE COURT: Well, Mr. Chappell, you doing okay?
3 I know you had a bit of a spill yesterday.

4 MR. CHAPPELL: I'm hurting pretty good, yeah.

5 THE COURT: Sorry that happened to you.

6 All right. I believe in chambers we
7 discussed -- I think y'all wanted to go back on the
8 record about whether your client wanted to testify or
9 not?

10 MS. KEPLEY: Yes, Your Honor.

11 THE COURT: You can sit down, if you'd like to.
12 If that'd be more comfortable to you, Mr. Chappell.

13 MR. CHAPPELL: Thank you, Your Honor.

14 THE COURT: All right, I just wanted to -- let
15 me swear you in again. If you'd raise your right
16 hand.

17 FREDERICK CHAPPELL, after being duly
18 sworn{,}testified as follows:{F}

19 EXAMINATION

20 BY THE COURT:

21 Q All right, we had a discussion yesterday about
22 your Fifth Amendment right. And, as I told you, your
23 Fifth Amendment right means you're -- one, you have the
24 right to testify. And you would be subject to any
25 cross-examination as any witness. You also have a right

FREDERICK CHAPPELL-EXAMINATION BY THE COURT (IC)

1 not to testify. And if you do not testify that cannot be
2 used against you. All that stuff that we talked about
3 yesterday. So -- well, first of all, are you on any kind
4 of medication this morning?

5 A Yes, sir.

6 Q What kind of medication?

7 A Whatever they gave me for pain this morning, I
8 don't know exactly what it is.

9 Q All right. I mean, are you able to -- you
10 understand what I'm asking you?

11 A Yes, sir.

12 Q All right. Do you understand your rights?

13 A Yes, sir.

14 Q Same as yesterday. Do you want to have more
15 time to discuss with your attorneys whether you should
16 testify or not?

17 A I believe we've had enough time.

18 Q All right. What do you wish to do?

19 A I'm not going to testify.

20 Q All right. Is that your decision?

21 A Yes.

22 Q Nobody's coerced you or forced you or anything
23 to make that decision?

24 A We've decided together it's the best decision.

25 Q Okay. And you realize that you do have the

FREDERICK CHAPPELL-EXAMINATION BY THE COURT (IC)

1 right but I will instruct the jury the fact that you don't
2 testify, that cannot be used against you. So that's what
3 you want to do?

4 A Yes, sir.

5 Q Okay. You don't need any time to discuss it
6 further with your attorneys?

7 A No, sir. Can I ask you something?

8 Q Yes.

9 A Is there a way to get on the record about my
10 accident and why I'm sitting crooked.

11 THE COURT: Okay. I'll be glad to --

12 Yeah, you want to -- y'all want to put something
13 on the record there, Ms. Kepley?

14 MS. KEPLEY: Sure. I mean, if you want to put
15 on the record the fact that we can acknowledge that
16 he had a accident yesterday. And I think he's
17 experiencing some pain from that. I think he means
18 as far as getting it in front of the jury?

19 MR. CHAPPELL: I just don't want them to wonder
20 why I'm sitting over here looking crooked.

21 THE COURT: Yeah.

22 MR. CHAPPELL: Because I can't straighten up my
23 shoulders, my neck. And yesterday they had like a
24 collar on me. And they took it off and then whenever
25 I went to sleep, whatever medicine it was they give

1 me, I woke up this morning and it was, like, really
2 stiff. And that was the whole reason. They just had
3 gotten me back on my other medicine too so it hadn't
4 really had time to get back in my system. That was
5 the whole reason for what they had brought to you
6 earlier.

7 THE COURT: Right. Well --

8 MR. CHAPPELL: I don't know what's the best way
9 to go about doing that, I don't know.

10 THE COURT: You know, my inclination, just --
11 especially, since you're not testifying. And, I
12 think, I'm going -- I mean, I don't think that you're
13 being prejudiced by sitting there with what looks
14 like a crick in your neck, basically.

15 MR. CHAPPELL: All right.

16 THE COURT: I mean, that's just my opinion.

17 I mean, what's The State's?

18 MR. PHILLIPS: The State would, obviously, agree
19 with you on that.

20 THE COURT: All right. Make that point, though.

21 All right, anything else from The State then?

22 Well, I guess, do you want to rest on the
23 record?

24 MS. KEPLEY: Your Honor, yes, I want to rest on
25 the record. And also, I'll probably be using some

1 technology during my closing.

2 THE COURT: All right, that will be good you
3 rest on the record. That way I can explain to the
4 jury, without having to sit back there, I can bring
5 them in and say you've rested.

6 You're not going to have any rebuttable?

7 MR. PHILLIPS: No, Your Honor.

8 THE COURT: Okay.

9 MR. PHILLIPS: I also wanted to -- probably need
10 this thing.

11 THE COURT: That way I can tell the jury that
12 we're at the final stage and then there will be a few
13 minutes to set up the stuff and kind of finalize
14 the -- well, I'll go ahead give you this. This is
15 just a very short statement of my charge. And I talk
16 about the statement of a child. It's pretty bland
17 but I wanted y'all to see what we came up with. We
18 can discuss that when we get ready in a few minutes.
19 All right. So we're going to bring the jury in.

20 Is The State ready?

21 MR. PHILLIPS: Yes, Your Honor.

22 THE COURT: And The Defense is ready?

23 MS. KEPLEY: Yes, Your Honor.

24 THE COURT: Have they gotten all theirs?

25 THE BAILIFF: No, I haven't given it to them

1 yet. When you send them back out, I'll give it to
2 them.

3 THE COURT: All right, that will give them
4 something to do.

5 Ready for them? Okay.

6 MR. PHILLIPS: May I release the witness that I
7 had here?

8 THE COURT: Oh, yeah.

9 Bring them in.

10 (WHEREUPON, the jury entered open court at
11 approximately 9:50 a.m.)

12 THE COURT: All right, good morning, again.
13 Because I think I said good morning when I briefly
14 passed you in the hall. All right, if you will
15 recall, The Defense was in their case.

16 And, I believe, that The Defense would like to
17 say something.

18 MS. KEPLEY: Your Honor, the Defense rests.

19 THE COURT: All right, ladies and gentlemen, The
20 Defense rests.

21 Does the State plan on calling any additional
22 rebuttal witnesses?

23 MR. PHILLIPS: No, Your Honor.

24 THE COURT: Okay, ladies and gentlemen, that is
25 all of the evidence that's going to be presented to

1 you. So we're now to the point where y'all can't
2 discuss the case yet because there's a couple of
3 things we have to do. I've got to meet with the
4 attorneys and go over the charge which I'm going to
5 present to you. So what we have left is the closing
6 arguments by the attorneys, The State will present --
7 will open first. The Defense will then respond. And
8 then The State will have a brief rebuttal. After
9 they have closing arguments, then I will charge you
10 on the law. And at that time, you will go back to
11 your jury room and begin your deliberations. You can
12 finally discuss the case.

13 So there's a couple things we need to go over
14 and, I think, they may want to set up some of the
15 technology. So may be a few minutes before we bring
16 you back out to start all that process. But The
17 Bailiffs will have the menus for you to select what
18 you want for lunch. So, at this time then, go back
19 in your jury room, again, do not discuss the case.
20 All right, see y'all back in just a few minutes.

21 (WHEREUPON, the jury left open court at
22 approximately 9:58 a.m.)

23 THE COURT: All right, anything from The State?

24 MR. PHILLIPS: Nothing from The State.

25 THE COURT: Anything from The Defense?

1 MS. KEPLEY: At this time, the Defense would
2 renew the motion for directed verdict and all prior
3 motions, in this case, Your Honor.

4 THE COURT: Okay. And, I think, it's a factual
5 issue to be presented to the jury so I'll deny it. I
6 will also note on the record, that after discussing
7 with The Defendant his Fifth Amendment rights, I find
8 that it was knowingly and intelligently made with the
9 advice of counsel and without being involuntarily
10 made. So just for the record on that.

11 All right. I think I gave -- both sides got a
12 copy of the verdict form yesterday. Any objections
13 from The State?

14 MR. PHILLIPS: No objection, Your Honor.

15 THE COURT: Is there any objection from The
16 Defense?

17 MS. KEPLEY: No objection.

18 THE COURT: All right. And also, usually what I
19 do, is -- and I don't know if you're going to use any
20 technology, Jeff, it would surprise me if you did
21 but -- I'm sorry.

22 MR. PHILLIPS: No, Your Honor.

23 THE COURT: But I would use your elbow, not your
24 personal, but that thing on your table to -- I always
25 like to let the entire jury see the verdict form when

1 I go over it. So just keep your papers away from
2 there when I get ready to do my. . .

3 MR. PHILLIPS: Yes, Your Honor, I will do that.

4 THE COURT: Also, jury charges, anybody -- I
5 think we went over those. Anything anybody want to
6 put on the record? I gave you the statement from the
7 child, any issues with that?

8 MR. PHILLIPS: None from The State, Your Honor.

9 MS. KEPLEY: None from The Defense, Your Honor.

10 THE COURT: All right. And -- all right. Well,
11 then everything else will be as indicated.

12 MR. PHILLIPS: I only want to put my objection
13 on the record that we had in chambers regarding the
14 one jury charge that I submitted that you have
15 declined to--

16 THE COURT: Right. You have which one that is?

17 MR. PHILLIPS: It's jury charge number one.

18 THE COURT: All right.

19 MR. PHILLIPS: Basically, asking the jury not to
20 hold the span of time against either The State or The
21 Defense.

22 THE COURT: Let me see if I got that one right
23 here.

24 MR. PHILLIPS: I hope you do because I did not
25 bring one with me.

1 THE COURT: I had it some place. Let me see.
2 All right. And that was your number one and you --
3 okay.

4 MR. PHILLIPS: Yes, Your Honor.

5 THE COURT: And I just felt like that that
6 was -- I just felt like that might be a comment on
7 the facts a little bit from my standpoint. And you
8 said that in your opening, so sufficient, I think.

9 Yes, from The Defense?

10 MS. KEPLEY: Nothing from The Defense, Your
11 Honor.

12 THE COURT: All right. We did not have any --
13 there's no introduction of any statements made by The
14 Defendant, was there?

15 MS. KEPLEY: No, Your Honor.

16 THE COURT: Okay. Then I'll take that part out
17 too. All right. Anything else before we take a
18 short break?

19 MR. PHILLIPS: No, I don't believe there is,
20 Your Honor. I think we're ready to go.

21 THE COURT: All right. Let's take five minutes
22 then.

23 What do you need as far as technology?

24 MS. KEPLEY: I have a PowerPoint, just one slide
25 I'd like to use at some point.

1 THE COURT: Okay. All right.

2 MS. KEPLEY: It's in here.

3 THE COURT: Okay. Let her. . .

4 MR. PHILLIPS: Believe it or not, Your Honor, I
5 might have one as well. Can we test them at the same
6 time?

7 THE COURT: Yeah.

8 MR. PHILLIPS: Or do we need to do them
9 individually?

10 THE COURT: No, y'all can do it, that's fine.

11 MR. PHILLIPS: Okay.

12 THE COURT: But she's on her computer.

13 Are you going to be on your computer or you
14 going to use that?

15 MR. PHILLIPS: No, the -- the --

16 THE COURT: Okay.

17 MR. PHILLIPS: That's fine.

18 THE COURT: Okay.

19 (WHEREUPON, Court's Exhibit No. 1 was marked for
20 identification only.)

21 THE COURT: All right, ready to proceed? The
22 State ready?

23 MR. PHILLIPS: Yes, Your Honor.

24 THE COURT: The Defense ready?

25 MS. KEPLEY: Yes, Your Honor.

1 THE COURT: All right, we'll proceed with
2 opening statements as indicated.

3 And if the jury is ready, bring them in.

4 Mr. Phillips, I couldn't find the charge you
5 presented but we had that typed in already so we just
6 printed that and see if that's the one. Make sure
7 that's marked for Court's Exhibit. Is that the
8 charge that you wanted?

9 MR. PHILLIPS: Yes, Your Honor.

10 THE COURT: All right. So that's Court's
11 Exhibit 1. And so that's in for your purposes.

12 All right, anything?

13 MR. PHILLIPS: Nothing further.

14 MS. KEPLEY: The Defense is ready.

15 THE COURT: Okay.

16 (WHEREUPON, the jury entered open court at
17 approximately 10:00 a.m.)

18 THE COURT: All right, ladies and gentlemen, as
19 I told you, we're now to the closing arguments stage.
20 If you will give your attention to the attorneys.

21 Mr. Phillips, you may proceed.

22 CLOSING STATEMENT

23 MR. PHILLIPS: Thank you, Your Honor, may it
24 please the Court.

25 Ms. Kepley.

1 Mr. Foreman and ladies and gentlemen of the
2 jury, we're finally at the point that I know y'all
3 have been waiting for. I do appreciate your
4 attention and your service today. I know that that
5 seems a little bit silly on the one hand because you
6 didn't volunteer to get that card in the mail to come
7 to the courthouse and you didn't volunteer to be
8 picked for this jury. But nevertheless, it has been
9 said that the highest service that a citizen can do
10 during peace time is jury duty. And I believe that.
11 And wartime. Similarly to you getting that card in
12 the mail, sometimes they have a draft, you got
13 drafted. And even though a soldier gets drafted, he
14 still gets thanks for his service. So I do thank
15 you.

16 The Judge and The Defense attorney and I have
17 all discussed the term reasonable doubt. Many people
18 over many years have tried to define that term. And
19 shockingly The Defense wants you to believe that this
20 is a burden of proof at the ceiling and it's hardly
21 ever met. And prosecutors may want to tell you that
22 it's a lesser burden. There is going to be a charge
23 from His Honor about that term. Some defense
24 attorneys might try to use grafts or charts in an
25 effort to demonstrate that reasonable doubt is some

1 unattainable burden and prosecutors -- or that it's
2 mystical. And that you can ever rarely reach it.
3 This is where I told you at the beginning that you
4 need to bring in all of your common sense into this
5 jury box. All of your common sense.

6 And remember this, every criminal defendant who
7 was ever convicted by a jury, started his trial
8 presumed to be innocent. But if he was convicted by
9 a jury, a group of citizens, just like yourself,
10 found him guilty beyond a reasonable doubt. If the
11 government can never overcome this burden, there
12 would never be any convictions. There would be no
13 consequences for criminal wrongdoing because no one
14 would ever be convicted. For our society to
15 function, it is necessary that lawful conduct --
16 unlawful conduct be recognized for what it is. Only
17 then can it be corrected and deterred.

18 One definition that the Supreme Court has
19 approved for reasonable doubt is proof that leaves
20 you firmly convinced of The Defendant's guilt.
21 Firmly convinced. That doesn't seem so unattainable,
22 does it? If the facts of this case are not firmly
23 convincing, then what hope is there for the next
24 Minor s out there? Who is going to want their
25 child to come forward and compound the trauma and

1 relive what they've already gone through? A seven
2 year old little Minor had a secret bottled up inside
3 her that finally came out when her mom caught her and
4 her sister. When the secret came to light, she told
5 her mom part of the story at that time. Later on,
6 she sent a note to her mom saying she wanted to tell
7 her more. And she had a conversation and she did.
8 And based on that conversation, mom took her to the
9 hospital. Then she told law enforcement, the people
10 at the hospital what had happened to her. Then she
11 told the forensic interviewer at the Julie Valentine
12 Center what had happened to her. She told her story
13 again, 12 years later, this past Tuesday.

14 The hallmark of truthfulness is basic
15 consistency. At least one of the hallmarks. Lying
16 might be in our human nature as children and adults.
17 But let's face it, it is a learned activity. Young
18 children are horrible at it. It's almost comical
19 when they're little and their mouth is full of cookie
20 and you ask them, did you take that cookie? They
21 tell you no while the crumbs are still falling out
22 of their mouth. This is far from any laughing matter
23 but it's still obvious that Minor at seven years
24 old, was not lying. Again, please use your common
25 sense.

1 It has been said that if the facts are not on
2 your side, argue the law. If the law is not on your
3 side, try to muddy the water, confuse the jury. The
4 Defense can argue all day long, she didn't think law
5 enforcement did enough to investigate this case.
6 They do it nearly every case. I have never yet met
7 an attorney, defense attorney, that has said that law
8 enforcement did enough investigation when they
9 arrested my client. Did law enforcement do enough
10 investigating is not a question that you need to
11 answer in this case. The only question, the only
12 question that you have to answer is is The Defendant
13 guilty of what he has been charged? No matter what
14 law enforcement may or may not have done, this was
15 not a huge who done it type of criminal case. It's
16 not a mystery.

17 The Judge has already told you in his opening
18 instructions that you are the sole judges of the
19 facts in this case. And I expect that he might
20 remind you of that in his instructions later on. I
21 expect him to tell you that in order to find the
22 facts, you are the sole judges of the credibility of
23 each of the witnesses. Were the witnesses credible?
24 Were they believable? Did you hear a single question
25 that caused the victim's believability, whether or

1 not she was telling the truth in the question?

2 The Defense might try to make weak and spurious
3 claim that if a SD card was found -- wasn't found,
4 then, of course, no pictures must have been taken.
5 That's not logical. You can analogize that to if a
6 tree falls in the forest and there's no one to hear
7 it, does it make a sound? Of course, it made a sound
8 even though there was nobody there to hear it. It's
9 like science, it's physics. And just because no
10 pictures were found, doesn't mean no pictures were
11 taken. All it means is that The Defendant had the
12 brains to ditch the SD card before he voluntarily
13 went in for his statement. Should you let him go
14 because he is crafty and hid his vile pictures? I
15 sure hope not. You're going to have to use your
16 common sense.

17 And she'll probably want to bring up this Smiley
18 character as well. So, first of all, do we really
19 know or do we have any idea if Shawn Houston is
20 really Smiley? Do we? Let's assume that he is.
21 Does anyone honestly believe that he is going to walk
22 into the law enforcement center and hand over a phone
23 that most certainly is going to get him arrested? We
24 know he had advance warning of his pal already being
25 arrested for this activity. You can bet he would do

1 everything he could to cover his tracks before he
2 voluntarily walked in to talk to them. Please use
3 your common sense.

4 I'm going to briefly go through the witnesses
5 testimony. Because the witnesses testimony is what
6 you have to decide this case. I'm going to first
7 refer to The Defendant's sole witness. You can
8 believe everything she said. That's fine with me.
9 In fact, I believe it helps our case. What did she
10 say? She said I was there from 2005 for,
11 approximately, six months to a year. We know that in
12 2005 the victim was three. If she stayed there for
13 the whole year, she would have only be four. So this
14 was before the alleged activity ever took place. So
15 what value is her testimony? The value of her
16 testimony for the prosecution is she testified that
17 Robbie, The Defendant, was nice to Minor He
18 treated her well. He was kind, bought her stuff.
19 That is what we call grooming. That is what the
20 expert at the end of The State's case said. So let's
21 believe everything she said, that's fine with me.

22 Regarding The State's witnesses, most of them
23 were simply needed to tell you the story of how this
24 case got started and how we got here today. The
25 exception of that is the expert testimony. The

1 expert's testified that every single outcome of what
2 happened to Minor was not only normal, you would
3 expect to find that in a child abuse victim. First
4 witness was the mom, Tasha. She provided some very
5 important corroborating testimony about finding the
6 girls engage in oral sex. A seven year old and a
7 five year old simply don't do that unless it's been
8 done to them. That is what the experts called an
9 accidental disclosure. They didn't mean to tell what
10 had happened but that got the ball rolling.

11 The next person that testified was the victim.
12 And, of course, she is the only -- not the only
13 testimony that matters but by far the most important
14 that matters. We're going to circle back to her.
15 Next was the Investigator Captain Cromartie. She was
16 trained in interviewing minors that were the subject
17 of sexual abuse. Minor told her the awful details
18 of what happened. So so far we have Minor telling
19 her mom, Minor telling law enforcement and hospital
20 personal and Minor telling Investigator Cromartie.

21 Next was Investigator Robertson. That's who the
22 case was handed over to after Investigator Cromartie
23 was promoted. There really wasn't a lot that he
24 could or needed to do. The victim had already been
25 examined by credible, experienced experts. The last

1 instance of abuse had happened months before. The
2 grandmother had already moved from her trailer and
3 had no longer lived there. If you remember, in the
4 forensic interview, way back then, she had already
5 moved. There was no bedroom to even look at, even if
6 you could. Clothes over the months and months had
7 been washed. Genitalia had healed, if there was ever
8 any harm or damage to it. And SD cards had been
9 disposed of.

10 That is where you have to dispel yourself of the
11 myth of the CSI case where the prosecutor pulls a
12 microscopic piece of DNA off of some tiny fabric in
13 the bottom of the drain. That's what happens on TV.
14 I'm not saying it never happens in real life but it's
15 rare. That's not your typical case. The vast
16 majority of cases are not like that. And it's also
17 is not like the case where you see on the show FBI
18 where you have 20 people, all hands on deck, pursuing
19 one case. And they have 20 people pursue this guy
20 for two weeks and they're looking for everything they
21 can. Let's face it, I don't know what happens on the
22 federal level but on the state level, our law
23 enforcement are overworked and underpaid. They do
24 the best they can with what they've got. And, in
25 this case, there really wasn't much else they could

1 do.

2 The next witness was Investigator Perry. He was
3 the phone guy. He told you how many phones he
4 examines every year. I'm not saying this is a exact
5 number because I don't remember. I just remember it
6 was a astronomical number. He said like 2500. I
7 don't know if that was per year or what but he went
8 through a lot of phones. He told you the model of
9 the phone that The Defendant had. He told you that
10 The Defendant had weeks of notice before he came in.
11 He told you about the specific model of that flip
12 phone. About how it came with a SD card and that SD
13 card wasn't in it. By the way, since the defense
14 attorney brought it up, if he bought it second hand
15 and it didn't have a SD card, he would have gotten an
16 SD card.

17 I remember having those flip phones. I remember
18 the SD cards filling up. I remember not only
19 having -- they're, basically, useless without a SD
20 card. And I had to replace mine with one that had
21 more memory. That's just having a phone like that
22 with no SD card is highly unlikely. And again, it's
23 the size of a thumbnail. It takes, approximately,
24 1.5 seconds to dispose of it. It's -- it's flip it
25 out the window and you're never going to find it

1 again.

2 The next expert -- well, excuse me, expert
3 witness, was Christine Carlberg. She was the
4 forensic interviewer. Her main job was to provide
5 experience, credible expert questioning of Minor. I
6 don't know about you but I found her testimony of her
7 actions and questioning of Minor to be
8 extraordinary. She was composed, she was humble on
9 cross-examination, she was extremely professional and
10 believable in what she said in her testimony. And I
11 thought she did a -- my personal view of the facts,
12 y'all, obviously, can have your own, she did a
13 wonderful job of peeling back the layers like an
14 onion of Minor's testimony and getting her to come
15 forward with what was in her little brain.

16 Yesterday morning Dr. Henderson took the stand
17 and testified that victims of chronic sexual abuse
18 most often do not show signs of trauma. That was her
19 testimony. And she explained her testimony logically
20 and scientifically why that was so. And despite of
21 the Defense attorney trying 11 different ways from
22 Sunday to get her to say what she wanted her to say,
23 Dr. Henderson was steadfast in her testimony. She
24 didn't waiver in what she told you. And that's the
25 evidence that you have to decide this case on. Was

1 Dr. Henderson credible? Of course, she was.

2 The last witness that The State had was Erica
3 Van Wagner. She took the stand having absolutely no
4 knowledge about this case. But man, was the
5 knowledge that she had on this subject applicable to
6 this case. She testified about The Defendant --
7 well, not The Defendant, but abusers having access to
8 children. How most likely or -- most likely, comes
9 with somebody they know. It's not some stranger,
10 especially with chronic abuse. It's going to be
11 somebody they know. If it's a stranger it's going to
12 be acute abuse and a child is probably going to tell
13 right away if it's somebody they don't know. She
14 also explained to you delayed disclosure, accidental
15 disclosure and piecemeal disclosure. And the reasons
16 for those disclosures. And again, they were spot on
17 with this case. It was a accidental disclosure, it
18 was delayed and it came out in pieces.

19 The Judge will instruct you that it is up to you
20 to determine the credibility or believability of the
21 witnesses. I didn't hear any questions from the
22 Defense that would call into credibility any of The
23 State's witnesses into question. I heard nothing to
24 indicate that any of these witnesses were lying. Or
25 not qualified to testify to what they testified to.

1 What I saw was Ms. Kepley putting on the best case
2 she could for her guilty client by trying to muddy
3 the waters with questions that really don't have much
4 bearing on this case. So please, do not follow the
5 tired old red herring. Of the police not doing
6 enough investigation or the fact that there were no
7 pictures found is somehow important to this case.

8 Keep your eyes on the ball here. And the eye --
9 and the ball is the victim. Minor 's testimony.
10 If you believe Minor you must find The Defendant
11 guilty. It's as simple as that. Listen carefully to
12 the Judge's instructions. What he won't say is that
13 in order to convict this Defendant of this crime, you
14 have to have some evidence other than the victim's
15 testimony. Her testimony is enough to convict.

16 Now, let's go through seven year old Minor's
17 testimony. She was the last witness that I want to
18 talk about. I want to say one thing before I go
19 through her testimony. I had seen the video,
20 obviously, several times. So during the video
21 whether than watching it, obviously, not obviously, I
22 was trying to look at y'all to gauge your reaction to
23 it. That's just something good attorneys do. I'm
24 not saying I'm a good attorney, I'm just saying
25 that's what good attorneys do and I'm trying to

1 immolate them. One of you, about 30 minutes in, had
2 your eyes closed. I hope that it was from disgust by
3 what you were seeing and not because you were
4 sleeping. But if you missed any of that testimony,
5 there are two ways for you to catch up.

6 First of all, I'm going to hit the highlights.
7 Second of all, if you question anything that I tell
8 you, that video is in evidence. You can watch it
9 again. And you can watch it again. You can watch it
10 as many times as you want. So when the video first
11 started you saw Minor bounce into the room, happy,
12 talking about her brothers and her sister. But as
13 soon as the conversation turned to private touching,
14 she shut down. Didn't want to talk about it. In
15 fact, even her whole body -- she went from being open
16 to -- she literally was sitting in the chair with her
17 knees pulled up to her chest and her face covered.
18 She was very -- word is traumatized, just to talk
19 about this.

20 But let's talk about what was actually said.
21 And I'm going to give you time stamps and I'm going
22 to give you quotes. Again, I told you at the
23 beginning, it's not something that I find any
24 pleasure or want to talk about. But it's the facts
25 of the case and it's what we have to talk about. At

1 6:05 in the interview Ms. Carlberg said, Has anyone
2 done private touching?

3 Minor nodded yes.

4 Ms. Carlberg, it's hard to say,

5 Ms. Carlberg asked, Who has done private touching?

6 Minor said, My grandma's boyfriend,
7 Robbie.

8 There is detail in her testimony that you
9 just cannot ignore. And it isn't something that a seven
10 year old can possibly make up. For instance, at 12:45 she
11 said, He brought me and my covers and carried me like a
12 baby.

13 That's a detail that she remembers about
14 what happened to her. At 16:50 she said, He would touch
15 me with his hands and with his mouth.

16 Ms. Carlberg asked at 17:40, When he
17 touched your privates, did he touch on your private or in
18 your private or something else?

19 Minor answered, Both.

20 17:50, How did it feel when he touched your
21 private?

22 Minor shrugs.

23 The question was on your private.

24 And she shrugged.

25 I mean, obviously, a seven year old is not

1 going to get any pleasure from that. And, obviously, it.
2 didn't hurt her. So that's why she shrugged.

3 The next question was, How did it feel when
4 he touched in your private?

5 Her answer was, It hurt.

6 Several times over the next ten minutes of
7 the interview. Where did he touch you? Where did he put
8 his tongue? Her response on different occasions for all
9 those questions was simply, Both. The interviewer asked
10 what did she mean by both?

11 And she said, In my private and in my butt.

12 25:29: Did his hand touch in your bottom
13 on our bottom or something else?

14 She said, On.

15 26:02: Did he touch you anywhere else?

16 And again, hallmark of authenticity, she's
17 not trying to make up this abuse story, she pointed to her
18 stomach. And the interviewer said, What did he do there?

19 She said, He kissed it.

20 28:55: Did he tell you to do anything when
21 he took pictures in the bathtub?

22 Again, incredible detail. She described
23 how she was facing -- she's in the bathtub facing Robbie.
24 Her sister's in the bathtub facing her. And answer is,
25 No, he didn't tell me to do anything because he didn't

1 want my sister to know.

2 33:20: Did something happen to you every
3 time you went over there?

4 Not every time.

5 Again, if she's trying to lie or something,
6 she would probably say, oh, yeah, it happened every time.

7 She's not lying, she's telling the truth. This whole
8 thing. This is a little girl's version of the truth.

9 33:55, How did his private feel?

10 Minor : Hard.

11 Five minutes later, six minutes later,
12 41:55, what did his private part feel like then?

13 Minor : Hard.

14 Was anything on it or around it?

15 No.

16 Did anything come out of it?

17 Yes.

18 What?

19 Wet stuff.

20 Did it get on you?

21 Yeah, my hand and on him. And he would
22 take toilet paper and try to rub it off. I ran to the
23 bathroom to get it off.

24 Did wet stuff come out one time or more
25 than one time?

1 More than one time.

2 44:45: Did his private touch any part of
3 your private?

4 Yes.

5 When she said that, again, it was getting
6 hard for her. She suddenly said, I can't remember it was
7 a long time ago. She just kind of blurted it out. But
8 she said yes.

9 Then 45 -- a minute 45, Did his private
10 touch your private more than one time or one time or
11 something else?

12 She said, More than one time. And then
13 after he said, More than one time, is there a trash can?

14 Her interview was not the product of
15 someone lying. It, obviously, happened that way. Did
16 anyone tell you to tell these things about Robbie?

17 No.

18 Has anyone else ever touched or licked you
19 or made you touch their private?

20 No.

21 48:50 she brings the dolls in to
22 demonstrate or ask Minor to demonstrate. Will you show
23 me what happened with the dolls with you and Robbie?

24 Her answer, to me was a gut punch. The
25 first thing she asked was, Does his tongue come out?

1 52:25: And did his private touch the skin
2 of your private?

3 Minor : Yes. And inside.

4 She volunteers without even being asked.

5 How did that feel?

6 It hurt.

7 Did the wet stuff come out when he did
8 that?

9 Yes.

10 Where did it go?

11 On my private. Every time he would do it
12 something wet would come out.

13 Now, the 19 year old Minor . 12 years
14 later, takes the stand on Tuesday. What's the primary
15 difference? Or what's mainly the only difference? She's
16 more matured. She can understand and describe what
17 happened to her better. She's not as afraid to tell her
18 story about what The Defendant did to her. But she did
19 not waiver from what she told that interviewer in the room
20 when she was seven years old. She wasn't lying in that
21 forensic interview. And she told you the truth Tuesday as
22 well. No seven year old could make up those facts. No
23 seven year old could give that testimony unless she
24 experienced it.

25 But if she was lying at seven, why in the

1 world would she keep up the facade 12 years later? What's
2 in it for her? Honestly, there's only two things I can
3 think of that's in it for her. One is pain. And the
4 second thing that's in it for her is abiding hope that
5 something like justice will finally be done in her case.
6 That little girl in the video is either believable or
7 she's not. The young woman sitting here in the courtroom
8 today is either credible or she's not. Minor is
9 either telling the truth or she's not. She is not only
10 believable, credible and telling the truth, her testimony
11 was compelling. When we recognize women for their bravery
12 and accomplishments, Minor should be added to that
13 list. She has patiently waited for her day in court. She
14 was believable in the video. She's still believable today
15 and she deserves for you to believe her.

16 Using your conscious and your common sense
17 that God gave you, it is now your obligations, as
18 citizens, to fulfill your oath in this case. The oath you
19 took says that you will speak the truth. And the truth in
20 this case is that The Defendant is absolutely guilty.
21 Again, I thank you for your attention and for your
22 service.

23 THE COURT: Ms. Kepley.

24 CLOSING STATEMENT

25 MS. KEPLEY: Thank you, Your Honor.

1 What this case boils down to is an allegation
2 and story of an investigation. All we have here is
3 competing stories. Right. We have an allegation, we
4 have -- of multiple people. Credibility is going to
5 be a core issue, okay. Who you believe matters. But
6 we cannot overlook the real physical evidence in this
7 case. The circumstances surrounding these
8 allegations and the role all that plays in
9 determining not just what happened but whom you
10 believe.

11 You heard Minor tell you that she was
12 assaulted for somewhere around two years, in a small
13 trailer where her grandmother lived. This happened
14 when her siblings were present in the home. When her
15 grandmother and other relatives who may have been
16 visiting were present. But she never spoke to anyone
17 about it for, essentially, two years. That many
18 pictures and videos were taken almost every time, she
19 says. That these pictures were shared with Smiley.
20 Who the investigator did determine was Shawn Houston.
21 That she saw pictures and videos that Smiley sent
22 to -- what she claims was sent to Mr. Chappell's
23 phone.

24 Here's what The State has for you, okay. That
25 Robbie was regularly sneaking around this small

1 trailer to sexually assault Minor , with no concern
2 of the multiple people there. Or visiting or living
3 there, catching on. That the grandmother, I guess,
4 must be a heavy sleeper. The State would also have
5 you to believe that a six or seven year old girl can
6 withstand multiple sexual assaults over the course of
7 years and come out with absolutely no medical trace
8 of it. A fully intact hymen is what you heard on the
9 [indiscernible].

10 The biological reality is that if a little girl
11 has this level of trauma, there's no way there's
12 [indiscernible] physical manifestation of it. A
13 little girl's body is very different from a teenagers
14 body, very different from an adult's body, you know.
15 And we're talking about an allegation of full
16 penetration, multiple times. That's a physically
17 traumatic event that can and does cause physical
18 injury. We're talking about -- again, we spent a lot
19 of time talking about a unestrogenized hymen. You
20 know, it's thinner. It's more [indiscernible] more
21 stretchable, more prone to, as Dr. Henderson told
22 you, bleeding, okay.

23 The truth is, if this happened exactly has
24 Minor said it did, there would be some medical
25 evidence of it, okay. How big or big that

1 [indiscernible] could be, I can't tell you, I don't
2 know. Not only that, but there would most certainly
3 be some sort of outward physical indication of this
4 assault that any parent [indiscernible] would,
5 eventually, have noticed. You know, blood in the
6 underwear, bruises, semen stains. The medical
7 evidence we have contradicts Minor 's story very
8 significantly. If your first [indiscernible] that
9 it's just a story. Your second biggest indication
10 that she's not telling the truth is the
11 inconsistencies, okay. The story moves around a
12 little bit. It moved around in the video from 12
13 years ago and it moved around on the stand yesterday.
14 Where exactly things happened, how many times they
15 happened. Those answers kind of shifted over time.

16 I marked it, there's a great moment 39 minutes
17 into the video. And you will have the video, like
18 Mr. Phillips, I urge you to view it because you can
19 see what I'm talking about. You can watch the whole
20 thing, you can watch parts of it. So give you a
21 timestamp, 39 minutes, there's this moment where
22 Minor is describing a detail about touching his
23 penis over the clothes in her bedroom. And
24 Ms. Carlberg, to her credit, she stops her. She
25 stops her and says, Wait, wait, wait. You know, you

1 just said something completely different. You know,
2 you said something opposite just a little bit ago.
3 And there's this long pause. There's this very long
4 pause in the video and you hear Minor go, Yeah. You
5 know, it's in that moment that she's been caught
6 moving the details around. And it really sounds like
7 a little girl telling a story. That inconsistently,
8 that moving and changing the details, that tells you
9 the story is not true.

10 You know, the truth doesn't change over time.
11 It doesn't change, stories do. When I was talking to
12 Minor on the stand, she remembered some things, she
13 had some problems with some of the specific details
14 but there was one detail she was very crystal clear
15 on. She said that the pictures, any pictures or
16 videos, any of them, they were all taken with a
17 camera. A camera. Not on a phone. Not a phone, she
18 said. The phone was only ever used to send texts.
19 Was never used to record anything. That was her
20 testimony. And that is a direct contradiction to,
21 really, the entire video. The camera is not
22 mentioned once, not ever in that entire video. In
23 the video you hear her repeatedly describe the flip
24 phone. She claimed was used to record every single
25 video and pictures. She says he used a phone every

1 time in that video. She describes holding the phone.
2 You know, that's a huge shift, contradiction in her
3 story. It's another big signal something is being
4 made up, it's not based on facts.

5 Your third big indication that this is a story.
6 You know, there is a huge lack of any digital
7 evidence that would back up her investigation -- or
8 her allegations. When I think it's very clear it
9 should be there if she's telling the truth. It also
10 should be extremely easy to find, right? Smiley, the
11 phones, all right. Minor says he took videos and
12 pictures every time, there's an exchange with Smiley.
13 It's really one of the biggest details she can give
14 us, right. So Robert comes in, on his own, without a
15 lawyer, says, I didn't do this. Of course, you can
16 search my phone. Didn't find nothing. They find
17 Shawn Houston, they figure out who Smiley is. He
18 says, I don't know what you're talking about. Of
19 course, you can search my phone. They didn't find
20 nothing.

21 They want you to think that, maybe, it was on
22 this phantom SD card, okay. Now, if that was true,
23 if the government fully believed that there was an SD
24 card out there that contained what would be actual
25 child pornography, okay. That's the allegation.

1 That they, you know, I just -- don't you think could
2 have gotten a search warrant for that, you know? I
3 think they didn't get a search warrant because they
4 knew they wouldn't find anything. The story already
5 didn't check out, okay.

6 Here's your forth big indicator she's not
7 telling the truth, the lack of physical evidence.
8 Again, The State wants you to believe this prosperous
9 notion that DNA, physical evidence, we just don't
10 have that sort of thing. You know, if a sexual
11 assault like this happens, there is physical evidence
12 collected. Swabs of semen testing for the presence
13 of blood, saliva, pubic hair collection. You know,
14 we don't have a scrap of DNA for you to consider to
15 make your decision. Because they didn't bother to
16 collect it.

17 When this is disclosed, it's only been a couple
18 of weeks, maybe a couple of months since she says
19 that this last happened. It if occurred at all.
20 There, potentially, could have been dirty laundry and
21 stains in certain areas of the bedroom or living room
22 or in her bedroom. You know, we don't know what they
23 would have found, we have no idea. And that lack of
24 evidence is something you have to hold against The
25 State, okay. Not Mr. Chappell. They have the burden

1 of proof. Which means any missing evidence should
2 count against them when you're weighing this
3 evidence. That missing evidence is reasonable doubt.
4 And the timing is also suspicious, right. You heard
5 Tasha tell you, I didn't bother to report the sexual
6 assault of my minor daughter to the police for a few
7 weeks. That's another red flag that you're missing
8 some large pieces to this story. Because I have a
9 hard time imagining any parent would, actually, wait
10 that long if they truly believed their daughter had
11 been sexually molested. That doesn't make sense.
12 And that's because it's not true or it's
13 [indiscernible] story.

14 Which brings us to the why, the big why? Why
15 would a young girl make this up? Now, to be clear,
16 The Defense doesn't have the answer to that question,
17 okay. The fact that you may be asking yourself this
18 why is a indication there's probably some reasonable
19 doubt here. But I [indiscernible] I think there's a
20 few possibilities as to that why. You know, we don't
21 really have enough information to know which one it
22 is but, I think, there's some possibilities that I
23 would ask you to consider as being likely here. I
24 think there's one possibility, imagine this for me.
25 Imagine this likely scenario. The mom catches her

1 young daughters doing something disgusting. Mom has
2 a history of child molestation, remember. So her
3 mind, naturally, goes to a certain place. But not
4 enough to call the police right away. She hasn't
5 seen anything, there's no bloody underwear, there's
6 no semen stains. So, likely, she takes the next
7 couple of weeks to ask questions, okay.

8 And there's only so many adult men in Minor's
9 life. There's her step-dad, there's her
10 grandmother's boyfriend. You heard that
11 [indiscernible] children [indiscernible], okay.
12 Which is why it's important to phrase questions in
13 ways that are not leading because you can very easily
14 lead a child into a certain [indiscernible].
15 Children want to do well, they want to answer
16 questions correctly, even when it's not the truth,
17 okay. So over that month, perhaps, mom directs those
18 questions to a certain place. Maybe, eventually,
19 finds the answers she's looking for. Only then does
20 she interact with the police.

21 So by the time the forensic interview that you
22 say is done, you know, she spent weeks talking to her
23 mother, getting to this story. Spoken to two
24 different police officers, who supported her story.
25 And in the end she's spoken to a doctor. No one thus

1 far has had a critical eye. By the time the forensic
2 interview finally rolls around, it's a product, okay.
3 Of adults taking a very young, very suggestible child
4 in a certain direction. Years later this thing, you
5 know, Minor's very much tied to the story, okay.
6 It's too late to turn around now so her testimony
7 remains what it is.

8 Perhaps, her memory may have been changed or
9 altered by reinforcing the same story over time, I
10 don't know. Which is when you consider -- and this
11 is alleged to have happened in a small home, in the
12 presence of other family, is a huge indicator it's
13 not true. Doesn't make sense. Remember, she's never
14 really alone with him, right? She only goes to
15 grandma's house with, at least, one sibling.

16 [indiscernible] tell you, grandma took care of them,
17 she did the baths. Robert didn't really hands on in
18 that way. And the idea this occurring inches from
19 her sleeping grandmother. That's the story you
20 heard, inches from the sleeping grandmother, without
21 waking her up, without Minor calling out to her, you
22 know, doesn't make sense from a really fundamental
23 healthy. . .

24 I think there's some other possibilities you
25 should consider too. You know, kids do strange

1 things, I'm a parent myself. But troubled kids, they
2 tend to do trouble things, okay. You got a little
3 girl, biological father long out of the picture,
4 she's got triplet little siblings. Probably a very
5 emotional and complicated place to be as a child.
6 Sometimes kids tell stories to get out of trouble,
7 sometimes to get attention, sometimes for no reason
8 at all, okay. There's really [indiscernible] answers
9 to that why question here [indiscernible] enough
10 information to make your decision. I don't think
11 Minor or any member of her family at all are bad
12 people. You know, I think she [indiscernible]
13 terrible situation [indiscernible]. You know, now is
14 the time [indiscernible]. [indiscernible] we do not
15 convict people on allegations, okay. That the law
16 requires proof [indiscernible].

17 I want to talk for a minute about the
18 investigation. How an investigation should work is
19 that the police receive an allegation, they receive a
20 report, okay. They speak to witnesses, they collect
21 evidence and they analyze the case as a whole before
22 deciding to charge someone with a crime. That didn't
23 happen here, okay. They received an allegation, they
24 can't find any evidence to back it up. To the
25 contrary, medical exam normal. Roberts says it isn't

1 true. Grandmother Deborah says, didn't see anything.
2 They signed the warrant for arrest before they even
3 bother to talk to Smiley, remember? I think I would
4 put it to you, the only reason they didn't drop the
5 case at that point, is because of the nature of these
6 allegations.

7 I would put to you a hypothetical. Had she
8 said, every time I went to my grandma's house he
9 would steal money from me. She had a different
10 story. Once a week, for years. The State would
11 investigate that claim. There's no real evidence to
12 back it up, none. I don't think we would be here
13 today. The nature of the allegations, the nature of
14 the charge, should not change the justice.

15 Now, the Judge is going to talk to you a lot
16 about reasonable doubt and Mr. Phillips talked to you
17 a lot about reasonable doubt. And I encourage you
18 all to listen carefully, okay. But I want you to
19 know that reasonable doubt is the highest standard of
20 proof in any court in this country. If you are not
21 firmly convinced beyond all reasonable doubt that
22 this crime occurred based solely on the evidence that
23 The State has shown you today, you must find him not
24 guilty. And Mr. Phillips is right, I do have a
25 chart. I like a chart. I think it's a good

1 physical -- I like good visual representation.
2 Because these are kind of complicated legal concepts,
3 okay. So I like a good visual representation of how
4 you should be thinking about what to [indiscernible].
5 When you're analyzing this case, you should be
6 starting at the bottom of the stairs, okay. That's
7 where you start your analysis. There's no evidence
8 in this case, none whatsoever, you got to find he's
9 not guilty.

10 Then you go to the next step. That scintilla,
11 that's a fun word. If there's any evidence at all,
12 just a little bit, there's a little bit of evidence
13 here and you think that's the case, you got to find
14 him not guilty, okay. Then we go to the next step,
15 which is reasonable suspicion, right. It's based on
16 specific, particular facts. That's the level of
17 proof if you're walking down the street, police
18 officer wants to stop you and search you, frisk you,
19 right. That's what the police officer would need.
20 They would need reasonable suspicion. If you think
21 there's some suspicion here, some reasonable
22 suspicion, you got find him not guilty.

23 Let's talk about probable cause, okay. Probably
24 cause, reasonable, trustworthy information.
25 Probably, did this probably happen? If the police

1 want to get a search warrant, they want to arrest
2 you, okay. They would need probable cause to do
3 that, okay. You think this probably happened, you
4 got to find him not guilty. The next step we got
5 preponderance of the evidence. That's a greater
6 weight. Some people like to think of that as over 50
7 percent, right. If you're over 50 percent, think
8 this might have happened, then you got to find him
9 not guilty. That's the level of proof if someone
10 steals from you and takes your money. They have to
11 prove their case by a preponderance of the evidence.
12 If you think that's been met here, you got to find
13 him not guilty.

14 The next step is clear and convincing, okay. A
15 firm belief, a firm belief. That's the standard of
16 proof that if the government tries to take your kids
17 from you when you're in family court. That's the
18 burden they would have to use to prove their case.
19 Clear and convincing, okay. If you think there's
20 clear and convincing evidence in this case, you got
21 to find him not guilty. The only way you get to
22 guilty is if you get to that top, that very top step,
23 reasonable doubt. That is the very important
24 standard because we're talking about very important
25 things. I just wanted to lay that out for you so you

1 can understand what's happening here.

2 You know, to me, that flag, the flags in the
3 room, they mean something. It means that the
4 protections of the law apply equally to everyone. No
5 matter what the accusation is, the law demands that
6 you do your duty to find him not guilty if that
7 burden is not met. And that -- those flags mean that
8 doing the right thing is sometimes doing the hard
9 thing. Robert sits here today a innocent man, okay.
10 Waiting for you, a jury, the most powerful group of
11 people in this building, to do the right thing. You
12 hold immense power where you sit. Power to lock
13 Robert away. Power to set him free.

14 People tell stories, physical evidence does not,
15 okay. The physical evidence shows that Minor had a
16 [indiscernible] with no signs of trauma or abuse.
17 That can't be twisted away, okay. There is no DNA
18 evidence, there's no pictures or videos to suggest
19 that this happened. Not so much a scratch. Not so
20 much as a [indiscernible]. When there's absolutely
21 [indiscernible] should this be true. Without
22 credible witnesses, without any mystery pictures or
23 videos, without DNA, without any physical sign of
24 trauma, can you be firmly convinced that Robert did
25 this? Now, is the time for you to make it right.

1 The power is in your hands.

2 I'm going to ask you go to back there, take a
3 look at the evidence carefully and send a message to
4 The State that doing the right thing matters. No
5 matter what type of allegation is made. Find
6 Frederick Robert Chappell not guilty.

7 THE COURT: Mr. Phillips.

8 CLOSING STATEMENT

9 MR. PHILLIPS: Thank you, Your Honor.

10 Wow, I don't even know where to start.
11 Ms. Kepley referenced things that were supposedly
12 said by people who are not here. She said that --
13 she attributed something that her grandmother said.
14 No, she didn't. She said that The Defendant said.
15 No, he didn't. She all of a sudden became a expert
16 in her own right telling you what should have been
17 found. When there's no evidence of what she said.
18 In fact, all of the evidence is the opposite. The
19 expert that took the stand told you that it is a
20 normal exam, it is what is normally found in these
21 cases. Children don't know if the penetration was
22 past the vulva or into the hymen or whatever.

23 The -- and even if it went into the hymen, she
24 said the hymen may not be damaged. And even if the
25 hymen is damaged, over time, weeks or months that can

1 be repaired. That's what the expert testimony is.
2 That's what she said. There was no evidence to rebut
3 that. And you can't all of a sudden, make Ms. Kepley
4 an expert. She stated that when her siblings were
5 present and there was no concern for other people in
6 the home. Well no, that's not what was said. There
7 was concern for other people. The testimony is that
8 he did it two times, basically. At night, either he
9 went to where she was in the living room, at night.
10 Or took her to the grandmother's bedroom, at night.
11 Or he did it in the closet during hide-and-seek. He
12 was careful not to do it when other people were
13 around.

14 He also -- also said -- or the victim also said
15 that the grandmother would leave. She would go run
16 errands, she may be cooking, she may be sleeping. He
17 didn't do this in a room full of people watching.
18 That's not what child abusers do. They do it in
19 secret. They do it to get by with it. Again, she
20 said the biological reality is. Well no, she can't
21 tell you what the biological reality is. She has no
22 expert evidence -- expertise to tell you what the
23 biological reality is. The biological reality is
24 what the expert witness said the biological reality
25 was.

1 She went so far as to say full penetration
2 multiple times can and does cause injury. There's no
3 evidence that there was full penetration. We don't
4 know what the penetration was, okay. And there is
5 also evidence that it cannot cause injury. She
6 mentioned the part about Ms. Carlberg asking her
7 about something she said that was inconsistent with
8 what she had said earlier. And that's true. I mean,
9 this is a seven year old. This is a seven year old.
10 This is a seven year old. Her story is not going to
11 be perfect. Her recall is not going to be perfect.
12 Her recall is not going to be perfect. That also was
13 the evidence that you have from the expert. That is
14 the only evidence that you have from the expert. She
15 said they didn't get a search warrant because they
16 knew it wasn't true. That's preposterous. They
17 didn't get a search warrant for all the reasons I
18 stated earlier. I'm not going to go through them
19 again.

20 She said the timing was suspicious. Tasha
21 waited. That's simply an argument from no evidence.
22 She's making it up. Tasha said that she did receive
23 some information, it was concerning to her but she
24 didn't want to over react. Because yes, she had been
25 the victim of sexual abuse. And yes, she knew what

1 the road was that once you start making -- making the
2 charges and allegations. And she was careful not
3 wanting her child to go down that road unless we
4 really had to. And then her child sent her a note.
5 And that note told her she wanted to talk more about
6 what Robbie did to her. And when she found out from
7 her child what Robbie really did to her, she
8 immediately reacted. Took her to the emergency room
9 that night. There's just simply zero evidence that
10 momma directed this story.

11 In fact, the evidence that you have is just the
12 opposite. She's trying to say momma, somehow
13 directed her child's story? What did momma have
14 against Robbie? What did momma want her child to say
15 this for? Her momma wanted just the opposite,
16 remember? Just the opposite. She didn't want to
17 dredge through her story, she wanted just to let it
18 go, it wasn't that bad. But it was that bad. And
19 she had to do something. She said that now it's too
20 late for her to turn around? No, it's not. If it
21 didn't happen, she can say it didn't happen at any
22 point in the last 12 years. She said that even her
23 memory could have changed so she now actually
24 believes that it happened. That's hogwash. And
25 there's no evidence of it, again.

1 You have to -- you have to -- what I say isn't
2 evidence. And certainly what Ms. Kepley says is not
3 evidence. All the evidence you have comes from that
4 stand. And that's the only thing that you can decide
5 this case on. She said she was a troubled kid doing
6 troubling things. What evidence is there that this
7 was a troubled kid? Other than she was being abused
8 by The Defendant. There's no evidence of that
9 whatsoever. Again, one of the last things she said,
10 it's kind of a reiteration from the first. She said
11 an exam -- she had a normal exam when Ms. Expert,
12 Defense attorney, said, there absolutely should be
13 evidence. No, that's what the witness said. That's
14 not what the expert said. She's not an expert, she's
15 not a witness.

16 Then she talked to you about reasonable doubt.
17 She did those stairs. Some of what she said in there
18 had some merit. But it's not -- it's not -- a graph
19 isn't a definition of reasonable doubt. It's not
20 evidence. I can make up my own graph. In fact, I
21 did. I had a feeling Ms. Kepley might, actually, put
22 that up here.

23 How do you focus? There we go.

24 I used some of the same levels of proof that she
25 did. Now, there's a difference in levels of proof

1 and burdens of proof, okay. There is a burden of
2 proof as a scintilla evidence. Just a little bit.
3 It's a spark of evidence. There is a level of
4 preponderance of the evidence, that's the 51 percent.
5 The weighing of the scales, the tilting of the
6 scales. The next level we have is clear and
7 convincing. That's a little higher than
8 preponderance but not quite to be beyond a reasonable
9 doubt.

10 The next thing is beyond a reasonable doubt.
11 But beyond a reasonable doubt, there's a key word in
12 there, ladies and gentlemen. And that word is
13 reasonable. There has to be a real reason. Because
14 beyond a reasonable doubt, you can, actually, there's
15 something such as beyond a unreasonable doubt. You
16 may have a doubt that's unreasonable. You're
17 allowed, in fact, to have a doubt. It can't be an
18 unreasonable doubt. And then, of course, there's
19 moral certainty. That's the 100 percent. That's the
20 top level. This is how the graph should look, in my
21 opinion. But I'm not -- that's not evidence, that's
22 just my demonstrative. To counter her demonstrative.

23 Moral certainty, of course, has been described
24 only two things in life that are certain and that is
25 death and taxes. That's moral certainty.

1 Unreasonable doubt, you find him guilty. If there's
2 a reasonable doubt, you do find him not guilty. But
3 based on what you have to go on, what you have to go
4 on is the evidence that was presented from that stand
5 from all the witnesses. That's what you base your
6 decision on. And based on that evidence, The
7 Defendant is clearly guilty beyond any reasonable
8 doubt. Thank you.

9 JURY CHARGE

10 THE COURT: All right. All right, ladies and
11 gentlemen, everybody good to go for just a few more
12 minutes? I always ask everybody on the jury to take
13 a stand, stand at this moment, just to take a seventh
14 inning stretch, kind of. I'm going to come down
15 here. All right. All right, have a seat. What I'm
16 going to do now is tell you what the law of this case
17 is. And also, I told you at the very beginning that
18 if -- that you are the sole judges of the facts of
19 the case. I am the judge of the law. I'm going to
20 charge you what the law is here that you're to apply.
21 I'm to rule on the evidence that's been presented.
22 And I am to preside over the trial. If there is
23 anything that I said or did that makes you think that
24 I have an opinion of the facts, then you're to
25 disregard that because that is your sole prerogative

1 as the jury. On the other hand, if you feel like you
2 thought you knew what the law was before you came in
3 here or you think the law should be something
4 different, then you've taken an oath that you will
5 apply the law that I'm giving you at this point.

6 Now, if there was any evidence that was stricken
7 from the record, then you're to disregard that. I
8 don't remember anything but if there is something
9 that was stricken, then that's something that you're
10 not to consider. What are you to consider? You're
11 to consider the evidence and only the evidence that
12 was that presented here in court. And the evidence
13 could be by way of exhibits, the evidence could be
14 testimony or exhibits that were presented during the
15 trial. That's what you're to consider, nothing else.
16 You're to consider that evidence along with the law
17 which I'm giving you at this point. Now, there are
18 multiple charges -- oh, and go back. You're to --
19 there's no real equation to consider that. You're to
20 give that, each piece of evidence, the weight and the
21 value which you feel is appropriate.

22 They're multiple charges in this case. We have
23 a charge -- the indictment alleges two different
24 offenses. I say alleges. Because an indictment
25 is -- the fact that somebody was charged, the fact

1 that somebody was arrested or indicted is not
2 evidence. That's merely the formal paperwork that
3 presents this case to the court. It's up to The
4 State, who has the burden in this case, to prove
5 those allegations to a reasonable doubt. So you're
6 not even to consider the fact that there's those
7 indictments or charges. Again, that's just what the
8 formal mechanism to bring this matter to court.

9 But there are two separate charges. Criminal
10 sexual conduct, first degree and a lewd act upon a
11 child. Now in a few minutes I will discuss with you
12 the actual elements of those charges. But I want to
13 tell you that these are two separate and distinct
14 offenses. And you're to consider each of these
15 offenses separately. And consider the burden of
16 proof as to each of these separately by The State.
17 And on the jury [verbatim] form that I will go over
18 with you in just a minute, then it will kind of help
19 you with some direction in how to do that. But
20 you're to consider each of these, the elements of
21 each of these separately. And you will be asked to
22 write a separate verdict as to each of these charges.
23 And the fact that you make a decision guilty or not
24 guilty on one, should not influence your decision on
25 whether you find the other one guilty or not guilty.

1 They're two distinct charges and you're to consider
2 them separately. Even though there may be some
3 similar elements to them or facts may apply to both
4 of them. So you would write a separate verdict for
5 each.

6 Now, let's talk about the presumption of
7 innocence. Every defendant, regardless of how
8 serious the charges of what level of criminal court,
9 magistrate's court up to circuit court here, has the
10 presumption of innocence. And that's a very
11 important foundation of our criminal system. Is that
12 a person comes into a court with a presumption of
13 innocence. In this case, The Defendant has pled not
14 guilty. The Defendant has absolutely no burden in
15 this case. I repeat, The Defendant has no burden in
16 this case to prove anything. They don't -- he does
17 not have the burden to prove he's innocent. The
18 burden in this matter lies squarely on the shoulders
19 of The State to prove the elements of each of these
20 charges.

21 The Defendant will be presumed innocent from the
22 time he walks into this court until the time that you
23 begin your deliberations. And the presumption of
24 innocence is only removed when you, the jury, has
25 found that The State has met its burden beyond a

1 reasonable doubt that The Defendant is guilty. Up
2 until that point, the presumption remains. You know,
3 the presumption of innocence is not just merely a
4 legal theory we throw out. It's, again, it's a very
5 important part of our criminal system. Kind of like
6 one of the basis of our constitutional rights that
7 everybody that is charged with a crime.

8 Now, let me talk to you about reasonable doubt.
9 Again, The State has that burden of proving each of
10 the elements of each of these charges beyond a
11 reasonable doubt. And again, you saw a chart here
12 but some people may have been involved in a civil
13 matter, you may have been on a jury in a civil
14 matter. And I only bring that out because that's a
15 much lesser standard. That is what we call the
16 preponderance of the evidence. Or more likely than
17 not. That does not have anything -- again, the
18 burden here that The State has is beyond a reasonable
19 doubt.

20 Now, what is reasonable doubt? Reasonable doubt
21 is the kind of doubt that would make a reasonable
22 person to hesitate to act. Prove beyond a reasonable
23 doubt is proof that leaves you firmly convinced of
24 The Defendant's guilt. They're very few things in
25 life that we know with absolute certainty. In this

1 case, criminal law does not require that proof
2 overcomes every possible doubt. If based upon your
3 consideration of the evidence, you're firmly
4 convinced that The Defendant is guilty of the crime
5 charged, you must find The Defendant guilty. On the
6 other hand, if you think there's a real possibility
7 that The Defendant is not guilty, you must give The
8 Defendant the benefit of the doubt and find him not
9 guilty. Facts and circumstances that merely place
10 upon The Defendant a grave suspicion of the crime
11 charged or merely raises a speculation or conjecture
12 of his guilt is not sufficient, must be beyond a
13 reasonable doubt.

14 Now, let's talk about the two types of evidence
15 that The State can rely on in this matter. What I'm
16 talking about here is the difference between direct
17 and circumstantial evidence. Direct evidence is when
18 a specific piece of evidence proves a particular
19 fact. Circumstantial evidence is the type of
20 evidence when you have to prove a series of facts to
21 establish a particular fact. And The State can rely
22 on direct evidence, The State can rely on
23 circumstantial evidence or a combination of both.
24 The weight that you give it is the same weight. It's
25 the weight and value you feel is appropriate. The

1 burden on The State is the same, beyond a reasonable
2 doubt. And if The State relies on circumstantial
3 evidence, then The State must be -- then each of the
4 elements or all the circumstances must be consistent
5 with each other and when taken together point
6 conclusively to the guilt of the accused beyond a
7 reasonable doubt.

8 These circumstances merely portray The
9 Defendant's behavior as suspicious, the prove has
10 failed. And I always like to give a little
11 illustration about direct evidence and
12 circumstantial. Direct evidence is if you go out to
13 your car and just before you get into your car it
14 starts pouring down rain. You look up and you see it
15 pouring down rain. Well, that's direct evidence that
16 it's raining. Circumstantial evidence of it's
17 raining would be more like when you get out of your
18 car, the pavement is dry, your car is dry. You go
19 into the building, come back out, the car is wet,
20 there's clouds in sky, there's a puddle of water.
21 You don't have direct evidence that it's rained, you
22 have a series of facts that show that it was raining.
23 That's just kind of a simple illustration to show you
24 the difference between them.

25 But again, The State can rely on both direct and

1 circumstantial but they also point -- the
2 circumstances must be consistent with each other and
3 point conclusively to the guilt of The Defendant. If
4 they do and you feel The State has met its burden,
5 then you would find The Defendant guilty. On the
6 other hand, if you find that The State has not met
7 its burden, then you would find The Defendant not
8 guilty.

9 Now, let me talk about one other thing that you
10 kind of have in your tool box. And what you're
11 having to -- when you value, you know, give the
12 weight and value that you feel is appropriate. The
13 evidence is the witnesses testimony. Credibility.
14 That's what you're going to be considering is the
15 credibility of witnesses. Credibility merely means
16 believability. You know, in making that
17 determination you can consider the way a person acted
18 on the stand. Did they have a particular interest or
19 motive in the case? How they presented themselves.
20 You may accept a portion of person's testimony and
21 reject the remaining portion. You may accept all of
22 a person's testimony and reject several others. Or
23 you may accept all of several witnesses testimony and
24 reject one. Again, it's the weight and value which
25 you feel is appropriate.

1 I also told you there were several individuals
2 that were qualified as an expert. Normally, as I
3 told you at that time, normally a layperson, that
4 means not an expert, they can't testify about
5 conclusions or opinions and those types of things.
6 They can only testify about what they directly
7 observed or what they directly heard, those types of
8 things. But an expert, based on their experience,
9 education and training can testify about opinions or
10 conclusions. But do not have to accept those
11 opinions, even though there's no contradiction from
12 the other side. You are to give those expert
13 opinions -- you can weigh their training and their
14 background. You can look at their opinions and you
15 can give -- just because it's an expert does not mean
16 it's absolutely accepted by you. You're still to
17 treat that testimony or that evidence the same as you
18 do anything else. And that is you give it the weight
19 and value that you feel is appropriate.

20 There's also been in the case a statement made
21 by a child. I'm going to tell you just some general
22 rules on that. A statement made by a child has been
23 admitted as evidence in this case. As with any
24 statement, you must decide whether the statement is
25 believable. In deciding believability you may

1 consider not only matters that I've already discussed
2 with you but you may also consider the age of the
3 child, the child's ability to observe and remember
4 facts and the child's ability to understand and
5 answer questions.

6 But now I want to also tell you a very
7 important, another very important foundation block of
8 our criminal system. And that is the fact that The
9 Defendant is -- did not testify and that is not to be
10 considered by you at all. As I told you, The State
11 has the burden, The Defendant has no burden
12 whatsoever. The fact that The Defendant did not take
13 the stand is not even to be considered by you. He
14 has -- he has exercised his Constitutional right of
15 not to testify. And the reason is he has no burden.
16 The State has the burden. So the fact that The
17 Defendant did not testify is not to be considered by
18 you, not even to be discussed by you. Because that
19 is his absolute Constitutional right. And you must
20 honor that. Because again, the burden still remains
21 on The State.

22 Now, in this case, time is not an essential
23 element. What I mean by that is where time is not an
24 essential element of the offense is in a case for
25 criminal sexual conduct with a minor, the charge and

1 indictment may not specifically charge the precise
2 time of the offense allegedly occurred. The
3 sufficiency of the charge must be judged from a
4 factual standpoint with all the circumstances of the
5 particular case in mind.

6 Now, let me talk to you a little bit about
7 criminal intent. In order, to establish criminal
8 liability, criminal intent is required. For example,
9 the mental state required to be proven by The State
10 for a particular crime, must be purpose, intent,
11 knowledge, recklessness or criminal negligence.
12 Criminal intent must be proven by The State like
13 everything else beyond a reasonable doubt. Criminal
14 intent is always a matter that must be determined by
15 the jury from the circumstances surrounding the
16 situation. Again, there's no way to prove intent by
17 mathematical certainty. There's no way to look into
18 the brain of somebody to determine what their intent
19 was.

20 So therefore, you must look at the facts and
21 circumstances. Criminal intent may be inferred from
22 the circumstances shown to have existed at the time.
23 And this is how you make a determination of whether
24 the element requiring intent was present. It's not
25 necessary to establish intent by direct and positive

1 evidence but intent may be established by inference,
2 the same way as any other act, by direct or
3 circumstantial evidence. Criminal intent is a mental
4 state, a conscious wrongdoing. And it's up to you to
5 determine what The Defendant intended to do based on
6 the circumstances shown to have existed at the time.
7 Criminal intent can arise from action or failure to
8 act. It may arise from negligence, recklessness or
9 indifference to duty or to consequences that is
10 considered by the law to be the equivalent of
11 criminal intent. Now, those are the general rules
12 that you will have to make your determination.

13 Now, what I want to discuss with you is the
14 actual elements of the charges which you will be
15 considering. The first one is first degree criminal
16 sexual conduct with a minor. The first element that
17 The State must prove beyond a reasonable doubt is
18 that The Defendant engaged in a sexual battery with
19 the victim. Defining a sexual battery is sexual
20 intercourse, cunnilingus, fellatio, anal intercourse
21 or any intrusion, however slight, on any part -- of
22 any part of a person's body or any object into the
23 genital and anal openings of another person's body.
24 The State must then prove beyond a reasonable doubt
25 that the victim was less than 11 years old at the

1 time of the sexual battery. Consent, willingness,
2 indifference or ignorance on the part of a minor, if
3 any, as to what was taking place does not in any way
4 effect the charge of criminal sexual conduct with a
5 minor. So therefore, just the elements is that The
6 Defendant engaged in a sexual battery with the
7 victim, who would have been 11 years old -- under 11
8 years old at the time of the sexual battery. Okay,
9 that's the elements of that charge.

10 Lewd act on minor. Now, we're going to talk
11 about the second charge. Again, you're to be
12 considering these each separately. A lewd act on a
13 minor -- and again, a minor, in this case, a minor is
14 a person under the age of 18. The State must prove
15 beyond a reasonable doubt that The Defendant -- The
16 Defendant was over the age of 14. So the minor --
17 the victim -- the minor must be under 18, The
18 Defendant must be over 14.

19 Next, The State must prove The Defendant
20 willfully and lewdly committed or attempted a lewd or
21 lascivious act, I'm going to define this, or on with
22 the body or it parts of a child under the age of 16
23 years with the intent to arouse, appeal to or gratify
24 the lust, passions or sexual desires of The Defendant
25 or the child. Willfully means voluntarily and

1 intentionally with a specific intent to do something
2 the law forbids. Lewd means obscene, lustful,
3 indecent or lecherous. Lascivious means tending to
4 insight lust, lewd, indecent, obscene or tending to
5 deprave the morals in respect to sexual relations.
6 So those are the elements of the two charges.

7 At this time, I'm going to go with you over the
8 verdict form, okay. The top part of this -- and this
9 is the actual verdict form that I'll be giving to
10 you, Mr. Foreman. The top part of it is just merely
11 the caption and shows the indictment numbers. And
12 that's just the caption there, okay. The first
13 question that you're going to answer, that you have
14 to ask.

15 Says, Please answer each of the following
16 questions. Each answer must be the unanimous
17 decision of the jury. We, the jury, unanimously find
18 the following. And as to the first charge, as to the
19 charge of criminal sexual conduct first degree, we,
20 the jury, unanimously find for The Defendant. We
21 unanimously find The Defendant, Frederick Robert
22 Chappell -- and you're going to check one. If you
23 find that The State has met its burden beyond a
24 reasonable doubt on this charge, then you would check
25 guilty. If you find that The State did not meet its

1 burden beyond a reasonable doubt on this charge, then
2 you would check not guilty.

3 Once you finish that analysis, you would then go
4 to the second question. And that is to the charge of
5 lewd act upon a child. We, the jury, unanimously
6 find The Defendant, Frederick Robert Chappell, and
7 you check one, again, the same analysis. And that is
8 if you find The State has met their burden, then you
9 would check guilty. If you find they did not meet
10 their burden, then you would check not guilty. Once
11 you've reached a verdict on both of these questions,
12 then Mr. Foreman, then you will sign, date and you
13 will let the bailiff know that you have reached a
14 verdict.

15 Now, let me kind of give you a couple of other
16 things. Your verdict must be unanimous on each of
17 these charges. That means all 12 of you must decide,
18 agree on what that verdict is. You cannot -- your
19 decision must be made on the evidence that was
20 presented in this courtroom and the law which I have
21 now given you. It cannot be based on sympathy,
22 passion, prejudice, emotion, anything else outside of
23 what's been presented in this courtroom. I would
24 also add, you know, you cannot ask for any additional
25 evidence. Regardless of what questions you may have

1 about the facts, the only evidence that you will be
2 able to consider will be what has been presented.

3 Mr. Foreman, if you get back there, you may have
4 some questions, all right. Any questions you have
5 you'll write on a piece of paper and you'll sign and
6 date it and you'll give it to the bailiff. The
7 bailiff will bring me the questions. And there's two
8 ways I can respond to that. I can either write a
9 response. Sometimes it makes sense just to write a
10 response on that, after consultation with the
11 attorneys, of course, I'll write a response on the
12 same piece of paper and send it back to you. It may
13 be that I need to bring you back in for additional
14 instructions on that. But I will tell you, The Court
15 cannot answer questions of fact. You know, that's
16 something, again, for y'all to determine.

17 My alternates, this is my time where I pat you
18 on the back for your important role in this matter.
19 Although, you will not be able to deliberate with the
20 jury. Even though you worked just as hard, you've
21 heard the evidence and you've been here throughout.
22 Our law does not allow you to stay in the room when
23 they deliberate. But the reason I say I want to pat
24 you on the back because your role is just as
25 important in this trial as all the other jurors too.

1 Because if one of the jurors would not have been able
2 to go forward -- and let me tell you why. During
3 this time of COVID, this has been more likely than
4 not. Then we would have to -- one of y'all would
5 have had to step in. And that's so important. So I
6 don't want you to think that just because we're
7 asking you to step out at this time that your role
8 wasn't important. Because we do appreciate your role
9 in this matter.

10 Now, at this time, what I'm going to do is --
11 I've completed my charge but before I can let y'all
12 discuss the case, yes, I'm going to have to say you
13 can't discuss it yet. I need to check with the
14 lawyers. I need to make sure that I haven't left
15 something out or that I have stated something
16 incorrectly. And if I have, then I'll bring you back
17 out. I'm not going to repeat the whole thing, I'll
18 just tell you whatever I need to add or correct
19 whatever I stated. But the signal for you to begin
20 your deliberations will be when the bailiff brings
21 the verdict form that I went over with you, with the
22 evidence and ask the alternates to step out. At that
23 point, you can deliberate.

24 I think that your lunch may be here. And it's
25 up to you. If you feel like -- and y'all just make

1 this decision, there's no guidance from us. If you
2 feel like, hey, let's eat our lunch and then discuss
3 it or if you want to discuss it while you're eating
4 your lunch; it's totally up to you. I mean, you
5 don't have to get permission from us either way. So
6 whatever you decide to do on that, you can do it.
7 But again, don't start discussing the case and don't
8 start eating your lunch in case I do have to bring
9 you back out. So but wait for the signal from the
10 bailiffs before you begin to deliberate. All right,
11 at this time, I ask that you step back in your jury
12 room.

13 (WHEREUPON, the jury left open court at
14 approximately 11:41 a.m.)

15 THE COURT: Any exception to the charge from The
16 State?

17 MR. PHILLIPS: None from The State, Your Honor.

18 THE COURT: Any exception from The Defense?

19 MS. KEPLEY: No, Your Honor.

20 THE COURT: All right. Make sure your
21 exhibits--

22 MR. PHILLIPS: I missed that. I believe on the
23 verdict form should say CS -- criminal sexual conduct
24 first degree with a minor.

25 THE COURT: Oh, okay. Let's make that change

1 right quick. Yeah, we didn't -- we didn't catch that
2 so thank you. Anything else?

3 MS. KEPLEY: Nothing from The Defense, Your
4 Honor.

5 THE COURT: All right, make sure -- now if
6 we're -- do you have something that they can play the
7 video on? That you so graciously told them they can
8 keep listening. I mean, do you have your sanitized
9 version?

10 THE CLERK: I have the jury laptop.

11 THE COURT: You have a jury laptop?

12 THE CLERK: It's in four, I'll go get it, yes.

13 THE COURT: Okay. See, we don't even have it in
14 here so.

15 THE CLERK: No, I'll go get it.

16 MR. PHILLIPS: Also, just to make sure we're
17 clear. There were two videos that were marked for
18 evidence. But this one is the unredacted so that
19 doesn't go back.

20 THE COURT: Right. I don't think that was ever
21 introduced.

22 MR. PHILLIPS: Okay.

23 THE COURT: I don't think so.

24 THE CLERK: Should I go get it now?

25 THE COURT: I guess, we'll see if they want or

1 they need it.

2 THE CLERK: Okay.

3 THE COURT: If they look like they need it, then
4 we'll present it at that time.

5 Okay, their lunch was here, wasn't it?

6 THE BAILIFF: Yes, sir, it's back there.

7 THE COURT: All right, you want to look at the
8 verdict forms? Glad y'all caught that. So all I
9 added was with a minor first degree.

10 MR. PHILLIPS: That's good with me, Your Honor.

11 THE COURT: All right.

12 Take that with the exhibits and ask the
13 alternates to step out.

14 All right, if y'all go very far, then make sure
15 she has -- if you go down to visit Ronnie for lunch,
16 make sure Mary has your number.

17 (WHEREUPON, deliberations began at approximately
18 11:47 a.m.)

19 (WHEREUPON, court was in recess awaiting a
20 verdict.)

21 THE COURT: All right, back on the record.

22 And we just have a question, Mr. Chappell, I
23 just want to make sure that you're in here when I
24 discussed it.

25 We have a question says, from the Foreman, says,

1 Definition of each statute for both charges. Age
2 requirements, etcetera. Then it has signed.

3 What I have done is I have printed out a copy of
4 the elements that I charged for -- I just copied it
5 right off of my charge and paste on a separate sheet
6 of paper for first degree criminal sexual conduct
7 with a minor and lewd act on a minor. And I was
8 going to send this back, see attached and put that on
9 there. Any objection?

10 Any objection from The State on that?

11 MR. PHILLIPS: No objection.

12 MS. KEPLEY: None from The Defendant.

13 THE COURT: All right, see attached. All right
14 I'm going to send that back then.

15 (WHEREUPON, Court's Exhibit No. 2 was marked for
16 identification only.)

17 (WHEREUPON, deliberations continued and court
18 was in recess awaiting a verdict.)

19 THE COURT: All right, it's my understanding
20 that we -- the bailiff informs me that the jury has
21 indicated they have a verdict. I would caution
22 everybody involved that --

23 And, Mr. Chappell, I want to make sure you hear
24 me and then I'll let you talk to your lawyers.

25 I know it's been a long ordeal for everybody but

1 I demand that everybody keep their composure.
2 Anything other than that, then I will have these
3 officers take anybody out.

4 So with that being said, anything from The State
5 before I bring the jury in?

6 MR. PHILLIPS: Nothing from the State.

7 THE COURT: Anything from the Defense?

8 MS. KEPLEY: Nothing, Your Honor.

9 THE COURT: All right, bring the jury in.

10 (WHEREUPON, the jury entered open court at
11 approximately 12:49 p.m.)

12 VERDICT

13 THE COURT: All right, Mr. Foreman, I understand
14 you've reached a verdict?

15 MR. FOREMAN: Yes, Your Honor.

16 THE COURT: If you can hand the verdict to the
17 bailiff. All right, look likes it's in proper form.

18 Madam Clerk, if you could publish verdict.

19 THE CLERK: Your Honor, in the case of
20 2010-GS-23-7901 and 7902, The State of South Carolina
21 vs. Frederick Robert Chappell. Number one, as to the
22 charge of criminal sexual conduct with a minor first
23 degree, we, the jury, unanimously find The Defendant,
24 Frederick Robert Chappell, guilty.

25 Number two, as to the charge of lewd act upon a

1 child, we, the jury, unanimously find The Defendant,
2 Frederick Robert Chappell, guilty. This is signed by
3 our foreperson.

4 Ladies and gentlemen, if you agree these are the
5 verdicts you reached in your deliberations room,
6 would please raise your right hand.

7 (WHEREUPON, all members of the jury raised their
8 right hand.)

9 THE CLERK: All right, thank you.

10 THE COURT: All right, anything for the jury
11 form The State before I release them?

12 MR. PHILLIPS: Nothing from the State, Your
13 Honor.

14 THE COURT: Anything from The Defense?

15 MS. KEPLEY: No, Your Honor.

16 THE COURT: All right, ladies and gentlemen,
17 thank you for your service. At this time, you will
18 be released for the week. If you'll step back in
19 your jury room, I'll step back there in a minute and
20 talk to you for just a second before you can head
21 out. So thank you, again, and at this time you're
22 going to go back to your jury room.

23 (WHEREUPON, the jury left open court at
24 approximately 12:50 p.m.)

25 THE COURT: Now, I'm not talking about

1 sentencing but as far as the verdict?

2 MR. PHILLIPS: No, Your Honor.

3 THE COURT: Anything from The Defense?

4 MS. KEPLEY: No, Your Honor.

5 THE COURT: All right, I'll let you gather your
6 thoughts together, gather all your stuff and I'll
7 step back there and be back in just a minute.

8 (WHEREUPON, a short break was taken.)

9 SENTENCING

10 THE COURT: All right, what I will do first is
11 I'll hear from The State and then I will hear from
12 The State, any victims. Then I'll hear whatever The
13 Defense wants to tell me.

14 MS. KEPLEY: I do have one motion to make, Your
15 Honor.

16 THE COURT: Yes, okay.

17 MS. KEPLEY: I would just, at this time, make a
18 motion for a new trial based on the denial of my
19 previous motions.

20 THE COURT: All right, I'm going to deny your
21 motion. I think that it was properly before the
22 jury.

23 All right, Mr. Phillips.

24 MR. PHILLIPS: Your Honor, The Defendant has a
25 fairly extensive criminal history. But the key --

1 the key previous charges or the previous convictions
2 also are CSC with a minor first back in the 90's. My
3 investigator is pulling up that copy, might have it
4 right now. We'll have our hands on a copy, if we
5 need it. It might be in the original record. But,
6 anyway, based on that conviction, we -- back in 2010
7 or '12, he was served with a life without parole
8 notice if he was convicted again. Out of an
9 abundance of caution, I went ahead, I don't think it
10 was necessary to serve him a second time but we did,
11 just to make sure. So we would just ask for The
12 Court to follow the sentencing sheet, sentence him to
13 life without parole. And the victim does not care to
14 make any statements.

15 THE COURT: All right, Ms. Kepley.

16 MS. KEPLEY: Your Honor, I don't think I have
17 anything to add other than I don't think he had been
18 served with any notice. I have but he's not been
19 personally served. I'm not sure that matters one way
20 or the other, I just want to clarify that. I do
21 believe Mr. Chappell wants to address The Court.

22 THE COURT: All right, Mr. Chappell, I'll be
23 glad to hear from you.

24 MR. CHAPPELL: Where can I stand?

25 MS. KEPLEY: Turn that way.

1 MR. CHAPPELL: Which way?

2 MS. KEPLEY: Turn towards the Judge.

3 MR. CHAPPELL: I've done a lot of bad things in
4 my life that I'm not proud of. I make no excuses for
5 it. Something in my brain just geared to do those
6 kinds of things that I don't really know why. When I
7 was in prison this past time, I tried to get help for
8 that thought process that makes me think like that.
9 And my mental health counselor didn't really want to
10 talk about it, it's disgusting, you know. And it's
11 kind of hard to talk about things like that anyway.
12 I'm sure it's just hard to listen to them. But you
13 would think that when you're in that kind of field,
14 that you should know that's something you may have to
15 do.

16 I want to say that I'm sorry, truly sorry, for
17 any harm that I caused anybody relating to any of
18 this. And I know the victim doesn't care to hear
19 anything from me but I'm sorry that I took the trust
20 that I had. Because there was feelings there that
21 was wrong, those feelings did come. I can't deny
22 that. I know that what's going to happen now, I'm
23 going to be sent to a place where I still won't get
24 any help. And I'm sure that even though I want it,
25 it's not coming. So I just want to say, though, I'm

1 sorry to everybody for the court situation, for the
2 jury having to be here when they could have been
3 somewhere else. I'm sorry, to the victim. I'm sorry
4 to the victim's mother and everybody. I'm sorry to
5 you, Judge, for anything that -- that I've done, you
6 know. And I just really wish that I didn't have
7 these thoughts in my head. I never wanted them. I
8 don't know where they come from. I've been told that
9 you can't do anything about it. I don't know if
10 that's true or not. But I think [indiscernible].
11 That's all I have to say.

12 THE COURT: Thank you, Mr. Chappell.
13 Anything else?

14 MS. KEPLEY: Nothing, Your Honor.

15 THE COURT: All right. On criminal sexual
16 conduct with a minor, the sentence of The Court is 45
17 years, lewd act on a minor 15 years. And these are
18 to be consecutive. Good luck to you, Mr. Chappell.

19 MR. PHILLIPS: Your Honor.

20 THE COURT: Yes.

21 MR. PHILLIPS: Does the statute not require life
22 without parole?

23 THE COURT: I mean, I don't have anything to
24 show about his prior conviction.

25 MR. PHILLIPS: Can we ask--

1 THE COURT: I mean, we're here for sentencing.
2 I gave y'all time to provide me with whatever you had
3 and you said, Oh, we couldn't get it. So I sentenced
4 him to 45 years and 15.

5 MR. PHILLIPS: May I ask for a 10 minute
6 continuance to try to get -- we attempted to get it,
7 for some reason or another, I don't know why one's
8 not available.

9 THE COURT: I don't know why you wouldn't have
10 had it when you started the trial.

11 MR. PHILLIPS: I thought it would be in the
12 book, it wasn't, Your Honor.

13 THE COURT: Well, I've sentenced him. If you
14 need to make an amendment, then you can file a
15 motion.

16 (WHEREUPON, the proceedings were concluded.)

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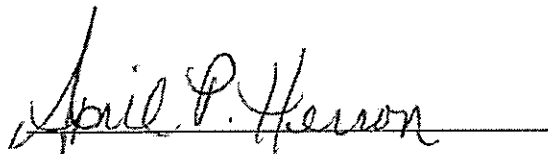
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
General Sessions for Greenville County, South Carolina, on
the 4-7 day of April, 2022.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

July 18, 2022

A handwritten signature in cursive script, reading "April P. Herron", is written over a horizontal line.

APRIL P. HERRON, Court Reporter

WITNESSES

Michael Robertson

Greenville County Sheriffs Office

8/4/2010

DOCKET NO. 2010-GS-23-

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2010

THE STATE

vs.

FREDERICK ROBERT CHAPPELL

ARREST WARRANT NUMBER

1481856

ACTION OF GRAND JURY

TRUE BILL

Ann Sporella

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(1)

Foreperson of Petit Jury

Date:

ENTERED
ACCT.
[Signature]

RECEIVED
APR 11 2022
SC Court of Appeals

A. Certified Copy
Paul B. Williams
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 4-1-22

RECEIVED

OCT - 8 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on

DEC 14 2010

the Grand Jurors of Greenville.

County present upon their oath:

That FREDERICK ROBERT CHAPPELL did in Greenville County, between the dates of January 1, 2006, and March 10, 2010, commit a sexual battery on Minor., who was less than eleven years of age. This is in violation of §16-3-655(1) of the South Carolina Code of Laws (1976) as amended.

RECEIVED
CLERK
TODD

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville

STATE

VS.

INDICTMENT/CASE#: 2010GS2307902

Frederick Robert Chappell

A/W#: 1481856Date of Offense: 1/1/2006S.C. Code § : 16-03-0655(A)(1)CDR Code #: 0385

AKA:

Race: WHITE Sex: M Age: 54DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

RECEIVED

APR 11 2022

SC Court of Appeals

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degreein violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☒ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

 The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

 The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST:

66518

101957

Phillips, Jeff

SC Bar#

Defendant

KEPLEY, RACHEL
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center,for a determinate term of 45 days/months/years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$ provided that upon the service of days/months/years/Time Served and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or☒ CONSECUTIVE to sentence on: 4/7/22☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS Frederick Robert Chappell INDICTMENT/CASE#: 2010GS2307902

SPECIAL CONDITIONS: A/W#: 1481856

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling
- ☐ Completion of GED
- ☐ Random Drug/Alcohol testing
- ☐ Attend Voc. Rehab. or Job Corp
- ☐ No Contact with
- ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling
- ☐ May serve W/E beginning : _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430
- ☐ Public Service Employment 0 _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Term _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____	\$ _____
§14-1-206 (Assessments 107.5 %)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§56-1-286 (DUI Breath Test)	\$25 \$ _____
§14-1-212 (Law Enforce. Funding)	\$25 \$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150 \$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41 \$ _____
§50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	TBD \$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500 \$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD \$ _____
	TOTAL \$ 120.75

Clerk of Court/ Deputy Clerk: Paul B. Wickham
Court Reporter: Henson

Presiding Judge: [Signature]
Judge Code: 2755
Sentence Date: 4-7-22

CERTIFICATE OF COUNSEL FOR APPELLANT

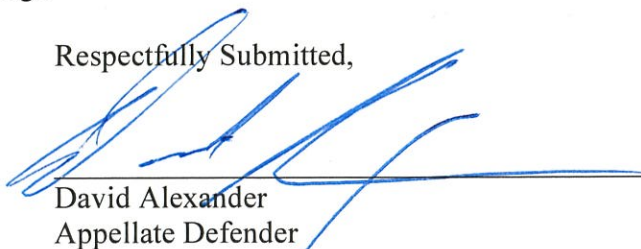
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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Jan 20 2023

SC Court of Appeals

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 20th day of January, 2023.

RECEIVED

Jan 20 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

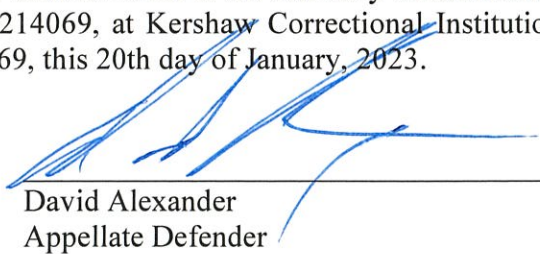
FREDERICK ROBERT CHAPPELL,

APPELLANT.

APPELLATE CASE NO. 2022-000446

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Frederick Robert Chappell, #214069, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 20th day of January, 2023.



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT