

2012-206346

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. Supreme Court

Certiorari to Sumter County
R. Ferrell Cothran, Jr., Circuit Court Judge

Opinion No. 2011-UP-503 (S.C. Ct. App. filed 11/10/2011)
08-GS-43-3332

THE STATE,

RESPONDENT,

V.

WILLIAM RICKY WELCH,

PETITIONER

APPENDIX

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

William Ricky Welch,

Appellant.

Appeal From Sumter County
R. Ferrell Cothran, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-503
Submitted November 1, 2011 – Filed November 10, 2011

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia,
for Appellant.

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and

Assistant Attorney General William M. Blitch, all of Columbia; and Solicitor Ernest A. Finney, III, of Sumter, for Respondent.

PER CURIAM: William Ricky Welch appeals his conviction for first-degree criminal sexual conduct (CSC) with a minor and lewd act upon a minor. He argues the circuit court erred in allowing the State to proceed under section 16-3-655(A)(2) of the South Carolina Code (Supp. 2010) because doing so violated the South Carolina Rules of Evidence and his right to a fair trial guaranteed by the Due Process Clause. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) (holding that the abuse of discretion standard of review limits reversal unless "the conclusions of the [circuit] court either lack evidentiary support or are controlled by an error of law"); Spencer v. Texas, 385 U.S. 554, 568-69 (1967) (holding that state statutes requiring juries to make findings of prior convictions in single trials do not violate due process); State v. Benton, 338 S.C. 151, 154-55, 526 S.E.2d 228, 230 (2000) (recognizing Spencer and noting that "evidence of other crimes is admissible to establish a material fact or element of the crime"); S.C. Code Ann. § 16-3-655(A)(2) (Supp. 2010) (providing that a prior conviction of first-degree CSC with a minor is an element of first-degree CSC with a minor).

AFFIRMED.

FEW, C.J., THOMAS and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

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V.

WILLIAM RICKY WELCH,

APPELLANT

Appeal from Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

Opinion No. 2011-UP-503

PETITION FOR REHEARING

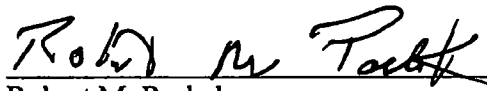
Pursuant to Rule 221 (a), SCACR appellant petitions for rehearing of this Court's opinion number 2011-UP-503 filed on November 10, 2011, as the Court may have overlooked or misapprehended the following points:

1. This Court relies on Spencer v. Texas, 385 U.S. 554, 568-69 (1967), which was decided over 44 years ago for the proposition "that state statutes requiring juries to make findings of prior convictions in single trials do not violate due process."
2. Estelle v. McGuire, 502 U.S. 62, 75, 112 S. Ct. 475, 484 (1991) decided just 20 years ago, however, leaves open "whether a state law would violate the Due Process

Clause if it permitted the use of 'prior crimes' evidence to show propensity to commit a charged crime."

3. In many instances a jury can not help but look at prior conviction as showing propensity to commit the charged crime. The "naïve assumption that prejudicial effects can be overcome by instructions to the jury *** all practicing lawyers know to be unmitigated fiction." C.J. Warren's dissenting opinion in Spencer v. Texas, 385 U.S. 554, 575 87 S. Ct. 648, 659-660 quoting Justice Jackson in Krulewich v. United States, 336 U.S. 440, 453, 69 S. Ct. 716, 723 (concurring opinion)(1949).
4. The legislature should not be able to legislate away a fair trial when there are other means to punish one for being a repeat offender.
5. State evidentiary rules should not deprive one of a fair trial. Chambers v. Mississippi, 410 U.S. 284, 93 S. Ct. 1038 (1973).
6. Appellant respectfully asks that rehearing be granted.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

This 22nd day of November, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM RICKY WELCH,

APPELLANT

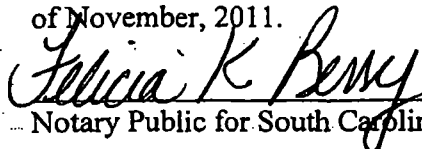
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon William M. Blich, Jr., Esquire, this 22nd day of November, 2011.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 22nd day
of November, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020.

The South Carolina Court of Appeals

The State,

Respondent,

v.

William Ricky Welch,

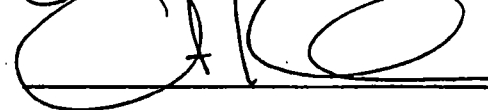
Appellant.

The Honorable R. Ferrell Cothran, Jr.
Sumter County
Trial Court Case No. 2008-GS-43-00361

ORDER

After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.


C.J.

J.

J.

Columbia, South Carolina

FILED

Dec. 20, 2011

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SC OFFICE OF
APPELLATE DEFENSE

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

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SUPPLEMENTAL RECORD ON APPEAL

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INDEX

INDEX	i
CLOSING ARGUMENT BY MR. FINNEY	1
CLOSING ARGUMENT BY MS. MAYES	22
CERTIFICATE OF COUNSEL	35

1 THE COURT: All right. If you will get us the
2 jury.

3 (Jury entered the courtroom at 1:50 pm.)

4 THE COURT: Mr. Snyder, I understand you're
5 going to be the foreperson?

6 FOREPERSON: Yes, sir.

7 THE COURT: And your job as foreperson is simply
8 to preside over the deliberation. And I will explain
9 that to you in detail when I give you the charge.

10 Your vote is not any greater than anybody
11 else's. Somebody's got to be in charge. And you
12 will ultimately write the verdict down on the verdict
13 form and sign your name to it and knock on the door
14 and tell them -- the bailiff you have reached the
15 verdict.

16 Now if y'all will pay close attention to the
17 closing arguments of the attorneys. Are you waiving
18 opening on the law?

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

20 THE COURT: Mr. Finney?

21 MR. FINNEY: Thank you, Your Honor. Ms. Mayes.

22 CLOSING STATEMENT

23 MR. FINNEY: Ladies and gentlemen, in June of
24 2006 the people who make the laws in this state
25 passed a law. They call it Jessie's law. And it was

1 a law that we hadn't had before. And I think it's
2 one of the worst laws that I have ever seen as a
3 lawyer.

4 It's a law that says that even though we have
5 constitutions, state and federal, we have rules and
6 regulations, we have all of these protections for a
7 person who is accused of a crime -- under this
8 particular law that was passed by the legislature in
9 this state and in other states, the jury in a case
10 where a man is charged with criminal sexual conduct
11 from June 2006 going forward, the State has the right
12 to bring in a prior conviction.

13 Now, how can it help you to determine what
14 happened in the past as to what happened today? Why
15 is it that on all kinds of other cases in South
16 Carolina, stealing a car, killing a person, whatever
17 else, that rule doesn't apply?

18 On this case it applies because we had a lot of
19 people upset about the way our children were being
20 treated, and they thought this was a good way of
21 doing it. It's not. It's a poor law. But it is the
22 law.

23 And the Judge is going to charge you that law in
24 a few minutes. 16 3 655. You have to decide whether
25 this man has been proved guilty by the State of South

1 Carolina with their evidence and their witnesses, and
2 you get to know, oh, by the way, he had a conviction.

3 There's no way in the world that the human mind
4 can separate that fact. They don't want you to
5 separate it. They want you to know about it. It's
6 part of the the law. It's a poor law.

7 In the mean time, that's the law we have got in
8 this case. But we have also got something else. We
9 have got the burden of proof and we have got
10 something called reasonable doubt.

11 It's a standard that the Judge is going to tell
12 you you have to use to together when you go back in
13 that jury room and talk.

14 Now ladies and gentlemen, this wasn't an easy
15 case when I took it, and I know it wasn't going to be
16 an easy case to present because it's got issues
17 involving an eight year old girl just as cute as a
18 button. And did a great job.

19 But there's a problem. The State of South
20 Carolina wants you to believe said it, the lady
21 who went to see three days later -- went
22 to see her three days after the report was made, saw
23 her, Ricky's got a prior record. That's it. Let's
24 go home. Ain't nothing else to talk about.

25 That's what they want you to believe. That

1 what's they want you to do, A, B, C, we're out of
2 here.

3 So I have to do some things to show you that
4 it's not like that because there are some rules and
5 regulations which we have to test this evidence.

6 If you took statement and looked at it,
7 every time she made the statement, it changed. Every
8 time. First of all, she didn't tell her mom and dad.
9 All right.

10 Gwen Herod, expert witness number one, says that
11 usually kids who get bothered, touched, assaulted by
12 people they know don't tell for a long time. That is
13 the general rule. That's what she told us. She's
14 supposed to be an expert.

15 tells a friend, Hannah, her cousin, within
16 an hour. We don't know what she said happened. She
17 said Uncle Ricky touched me.

18 Well, ladies and gentlemen, when an eight year
19 old says, Uncle Ricky touched me, does that mean he
20 reached around on the back of the bike to check to
21 see if baby was all right?

22 Does it mean he reached around there and grabbed
23 her to see if she was all right? I don't know.
24 because the State of South Carolina didn't prove it
25 in this case.

1 What we need is clear and convincing proof
2 beyond a reasonable doubt. That is the standard.
3 That is the job they accepted by bringing these
4 charges against my client in 2007, eleven days after
5 the little girl reported.

6 What did she tell happened? What did Hannah
7 understand it? Hannah wasn't an adult. Here's an
8 eight year old talking to a 10 year old. How do we
9 know what Hannah understood the touch meant, Uncle
10 Ricky touched me. What does that mean?

11 How did Hannah understand it? She probably
12 didn't. She told her mama on the way home. All
13 right. That's how the ball got rolling. We still
14 dealing with here what happened.

15 Hannah's mama told mama. All right.
16 Now, the -- still rolling. So now we had tell
17 Hannah, Hannah tell Aunt May, Aunt May told mama.
18 What do we know? Don't know much. Uncle Ricky did
19 something.

20 What did he do? Not sure. So what's the first
21 thing we do? We go get Hannah -- put her in a
22 room, just me and mom talking.

23 Now ladies and gentlemen, I tried to pick the
24 smartest jury I could. So did the State. I hope
25 that you all have experience with kids because two

1 things came out in this trial that you can bet are
2 sure about every kid in every place in this country.

3 Number one, kids like to make their parents
4 happy. Gwen Herod, our expert, told you children try
5 to please their parents. What is a little eight year
6 old going to do when mama calls her in the bedroom
7 all by herself at seven or 8:00 that night and closes
8 the door and says, I just got a call from Aunt May
9 and she said.

10 What's an eight year old going to do? I don't
11 know. This eight year old told mama something. And
12 what did mom and dad do? They went to sleep. They
13 said goodnight.

14 They didn't call in the EMS. They didn't call
15 any officers. They didn't go to the hospital. They
16 didn't call Uncle Ricky. They didn't call Aunt Lisa.
17 They went to sleep. That is a very strong indication
18 as to what told them that night. It wasn't
19 anything.

20 If had told these people -- these are
21 people you met, and those are good people. That
22 man's been in the military. She's an EMS tech.
23 These are good people doing a good job raising their
24 family, having a great life with the whole family up
25 until these two little girls start something that

1 they don't know what they have started, messing with
2 fire I guess what we like to say.

3 They go to bed. All right. The next day
4 gets up early. Mama, I don't feel good, can't pee.
5 Hurts to pee. All right. Mama's an EMS tech. Let's
6 take her to the doctor, see what's going on.

7 Something was told by Aunt May the night before.
8 Now she wakes up to pee -- automatic going to the
9 hospital. 100 percent.

10 What do they find at the hospital? The doctor
11 says no tears. No bleeding. Nothing. No discharge.
12 No trauma.

13 Now, the State of South Carolina wants you to
14 believe that this little girl was sexually assaulted
15 and that evidence of that would have been available
16 the night in question, but nobody called the night in
17 question.

18 The next day at the emergency room. But the
19 next day at the emergency room the doctor treated her
20 for vaginitis. For some discomfort. Gave her some
21 Monistat. Sent her home.

22 The Police Department of Sumter County sent her
23 to a doctor three days later. The lady advocate that
24 came to you, Kathy Saunders, was not a doctor. She's
25 supposed to have a very fancy scope with a camera on

1 it that she brought you two pictures.

2 Ladies and gentlemen, I'm not a doctor, you're
3 not a doctor. Look at the pictures. You're not
4 going to see anything. This lady gave you an opinion
5 of somebody she saw two times, once on the 27th and
6 once a week later.

7 I asked her, how deep was the scratch? Don't
8 know. How long had it been there? Not sure. Did it
9 get caused by a sexual assault? Could be, could not
10 be. That's not proof.

11 That's an advocate coming in here saying, yeah,
12 we see this, could be, we don't know. We don't know
13 because we didn't do anything on the 24th when it was
14 reported, not a thing.

15 Hospitals in Florence, Charleston, Richland
16 county, all over the State. This little girl wasn't
17 worth going to those troubles because it was
18 Christmas Eve? Fine. That's what we got.

19 The case they brought you is the proof that you
20 have to decide. It's not your fault that it was
21 handled this way. Is not Ricky's fault. This is the
22 evidence. You have to decide the evidence. I want
23 you to decide it fairly.

24 I wasn't there. You weren't there. The only
25 thing you can do is weigh the evidence that was

1 brought to you. And if the evidence does not meet
2 the standard, you have a job.

3 I'm sorry, not guilty. What will that do the
4 next time an eight year old is in the emergency room
5 in Sumter County? Do you think she might get treated
6 better? Do you think she might see an expert
7 quicker?

8 Do you think that the case might be a little
9 better than having a six month old video and a three
10 day old forensic exam? Do you think that if you're
11 sent a verdict that we want better evidence, you'll
12 get better evidence? I guarantee you you will.

13 But you go back in that jury room and you
14 convict my client because he did something in 1993,
15 you'll get the same old stuff all over the time every
16 time they bring a case into this court.

17 That's how you make changes. You tell them to
18 do their job. Everybody here has got a job. The
19 Judge, you, me, Ms. Mayes.

20 What about the videotape of six months
21 later? Ms. Haze -- Ms. Mayes goes through the RATAC
22 with Gwen Herod, our state expert. They got this
23 procedure.

24 They want you to go through certain things with
25 the child, get the child comfortable, go on to the

1 next level, get the child comfortable. That wasn't
2 done.

3 You got -- it may be in evidence. I am not
4 sure. She wrote it on the board, the response, the
5 repore, the abuse scenario you're supposed to go
6 through, the parts of the body.

7 Look at the tape. Everything that I asked you
8 to consider, you go back in that jury room, you don't
9 agree on it, ask the Judge to play the tape for you.
10 Ask the Judge to show you the pictures. Ask the
11 Judge -- everything that's in the record you can hear
12 again.

13 Five minutes after getting in that room she
14 asked the girl about, how you been, what you -- where
15 did you get the blueberry stuff? And then the little
16 girl said, do we have to talk about Uncle Ricky? And
17 yes, we do.

18 What did that little girl do? She did the same
19 thing she did in the emergency room when she was by
20 herself with Gwen Herod. She gave the responses that
21 she thought were appropriate that they were -- these
22 adults were looking for.

23 Doesn't matter that there wasn't anything on the
24 medical report that same day. Forget about what the
25 doctor did. He didn't have the equipment. He's not

1 trained. He's a medical doctor, and he's not as
2 trained at least as good?

3 Ladies and gentlemen, they keep talking about
4 timeframe. The acute rape kit which would have
5 happened if they had semen, if they had body fluid,
6 they would have done an acute kit.

7 They didn't do any more to that little girl in
8 the medical exam when they put a catheter up her
9 bladder, when they checked her out, when they
10 examined her and took her labs and blood pressure and
11 all of that, they didn't do anything more than they
12 would have done with the rape kit.

13 All they had to do was do the rape kit and we
14 would have known some more things. They didn't do
15 that. One of the things in the rape kit would have
16 been that they would have got her panties.

17 How can you do an investigation on a little
18 girl's sexual assault and you don't get the panties,
19 not the day of the party, not the day that she's in
20 the emergency room the next day, two days in a row.

21 This is an expert witness case. They need to
22 look at the evidence. They didn't get it. It's not
23 in evidence.

24 Gwen Herod gets the call from the dispatch, go
25 to the hospital, we got a eight year old signal

1 three. That's police code for sexual assault. No
2 camera, no tape recording, nothing.

3 She runs the parents out the room and says, I've
4 got to talk to this little girl right now, I've got
5 to find out what's going on. Goes back to her office
6 and types up a statement.

7 The statement said that Uncle Ricky pulled my
8 pants down and put his finger in it. That's the
9 statement she gave on Saturday or Sunday morning
10 after this -- the first time she talked to Gwen
11 Herod.

12 That's not the statement she gave on the video.
13 By the time six months had gone by, the story had
14 changed that she was sitting on the back of the bike
15 and Uncle Ricky reached back there and moved her
16 panties aside and touched her like that. If they had
17 interviewed her again, it probably would have changed
18 again.

19 What we got here is You have to look
20 into whether her story is convincing and whether it's
21 consistent. It isn't consistent because it changes.
22 Whether it's convincing, I don't know, because here
23 is what says.

24 says, me and Uncle Ricky went out on the
25 bike, we had baby and one time I was driving,

1 one time he was driving. . She never told Gwen Herod
2 that in the statement at the emergency room.

3 That was a new part of the story that she said
4 on the video, which she said again in court today or
5 yesterday.

6 What about riding the bike? Yeah, she was
7 out there riding the bike. And she said that the
8 bike never stopped on the trail. If you don't
9 believe me, ask the Judge to let you listen to the
10 testimony. It's on the record.

11 The way she remembered it in court was that the
12 bike never stopped on the trail. You have seen the
13 trail. You know how big the bike is and you know
14 that the baby was back there.

15 But the worst part is that her other statement
16 that she gave said that the bike stopped, and she --
17 and she was stopped. She was lifted up or her pants
18 were -- panties lifted down. That's what Gwen Herod
19 was talking about her doing on the video. Gwen had
20 to stop her.

21 And let me say this while I'm thinking about it.
22 Gwen Herod said two things that are absolutely true.
23 Children try to please their parents. She also said
24 you cannot ask leading questions on these kind of
25 interviews, you got to let the child lead.

1 Ladies and gentlemen, if you don't believe me,
2 look at the video. Gwen Herod led this child
3 throughout that interview. She led the child to the
4 parts that she wanted to have on the record so they
5 could come to court and get this man who had done
6 this before. It's easy for them to do that.

7 And so the child -- they asked leading
8 questions. She said to the baby, when did he pull
9 down your pants? The baby hadn't said nothing about
10 pulling the pants down.

11 Gwen put that on the table. And guess what the
12 baby said. No, I was sitting on the back of the
13 bike. He moved my underwear and put his fingers in.

14 Time after time after time after time this case
15 doesn't come together. It doesn't make sense.
16 What's the most important thing about this case that
17 doesn't make sense? All of these people were getting
18 along.

19 They had known Ricky for years, not weeks, not
20 months. This is an '05 picture. February of '05
21 picture of Ricky with the babies at his house.
22 Having a great time.

23 This is an '02 picture, going out showing the
24 girls, how the geese looked, what's going on in the
25 world. Doing nice things with them. Taking them

1 presents.

2 That's the most inconsistent thing that the
3 State has to not -- don't think about that -- because
4 he's got a prior record, ladies and gentlemen, you
5 don't have to worry about what kind of person he has
6 become, what he was trying to do with his life.

7 Maybe he made a mistake in the past. They don't
8 believe that people can change? This man is going to
9 come an hour in the minivan with his family. He's
10 going to come to a party bearing gifts.

11 They are going to have a great time. They're
12 going to eat together, laugh together, open presents
13 together. Then they're going to ride on the
14 four-wheelers with the kids and he's going to go out
15 on the trail all of a sudden and pull somebody's
16 pants down and put his fingers in there, and he's a
17 convicted person?

18 And within five minutes this little girl is
19 going to be going back to her mama, and he doesn't
20 know if she's going to cry, bleed, scream, throw up?
21 He's just going to do this, ladies and gentlemen?

22 It doesn't make any sense, ladies and gentlemen.
23 I'm asking you, get past the sympathy for Get
24 past the shock of my client having a prior record and
25 look at the facts.

1 There are no facts here that this man did this.
2 There's just suspicion, and that's not enough to
3 convict him. Please go back and talk about this in
4 your jury room, but don't get bogged down on the
5 sticky stuff.

6 She's cute. She wouldn't lie. He's -- a prior
7 record -- don't get bogged -- the facts are in the
8 middle of this case, and they don't make sense
9 because he wouldn't have done this.

10 Why didn't they try to talk to Ricky for 11 days
11 after this incident? They had already made up their
12 mind. They were coming to get him.

13 How long did it take them to find out he had a
14 prior record? I don't know. Probably that day that
15 she was in the hospital. Certainly by the day -- by
16 the time she went to -- to see the doctor that's --
17 the nurse at the Children's Health Center, Kathy
18 Saunders. Certainly by then they knew. They were
19 coming to get him.

20 Don't get bogged down because got
21 different versions. Kids give different versions.
22 Doesn't mean that she's telling the truth about it.
23 Doesn't mean that she understood what she was saying.

24 Kids often say something that means one thing to
25 them, means something totally different to the

1 adults, especially police.

2 Let me make this point before I sit down. We
3 have heard from Gwen Herod, Kathy Saunders, and other
4 witnesses. These are police officers. Excuse me.
5 Gwen Herod works for the police officers.

6 Kathy Saunders is a advocate for children who
7 does nothing, nothing but child abuse cases. She's
8 done 5000 of them, and she's a young woman. That
9 will tell you the perception that they bring to their
10 job. You have to be aware of that.

11 You don't bring that perception because you're
12 not a law enforcement person. If you were, I
13 wouldn't have put you on the jury because I know
14 perceptions matter.

15 I'm a defense lawyer. I have a different
16 perception of things than the Solicitor does. We all
17 have perceptions. That's why we've got 12 people on
18 the jury and not one, because y'all get to talk about
19 it and explain to each other how it could have
20 happened other than what the jury heard from these
21 witnesses.

22 That is why we have a system of juries who weigh
23 the evidence and decide together. It's a great
24 system and it works fine. But you have to do your
25 job.

1 Final thing I need to talk to you about is the
2 law. The Judge in this case is going to charge you
3 the law after Ms. Mayes. He's going to tell you
4 things about reasonable doubt and how you weigh
5 things like in a scale, and if you have a doubt about
6 whether something occurred the way it's supposed to,
7 you have to resolve that doubt in favor of the
8 defendant, my client, Mr. Welch.

9 That means you give him the benefit of the
10 doubt. If you have a -- a doubt about something, if
11 you have something that doesn't make sense, you can't
12 make it fit, that is a reason for you to stop and
13 write on that paper, we the jury find the defendant
14 not guilty.

15 That's what the system says. That's what your
16 job says. You have to do your job. You have to do
17 that. Give him the benefit of the doubt.

18 One of the things the Judge is going to talk
19 about is mental intent. It's called criminal intent.
20 In order for you to find my client guilty of this
21 charge -- he's charged with two crimes.

22 You don't have to find him guilty of both. You
23 don't have to find him guilty of anything. You can
24 find him guilty of one and not guilty of one.

25 But in this case the dividing line is the

1 criminal sexual conduct requires that you find that
2 he touched in her private area with the intent
3 to violate the law, that he -- he knew what he was
4 doing was wrong.

5 The other side of the line is called lewd act.
6 It means he touched her on her shirt or on her bottom
7 or something like that, they don't know. They just
8 put that one in because if they can't get him on the
9 big one, they got a little hook out there that you
10 might want to compromise and say, well, we're not
11 just going to send him home, we're going to put this
12 little charge on him. No.

13 The burden of proof is the same. As a matter of
14 fact, it's -- facts are the same. They just don't
15 know which one you might want to consider. So they
16 gave you both to consider.

17 But it's the same evidence on both except that
18 on one you have to prove from touching on the inside.
19 The other one you don't have to prove that.

20 Listen to the Judge. He's going to explain this
21 to you. Two charges. You have got to weigh them
22 both.

23 Mental intent -- what I was talking about --
24 also known as criminal intent. The State has to
25 prove that.

1 Now, the State's going to tell you they're going
2 to prove the mental intent was he did it before.
3 That's bad. That has nothing to do with this.

4 He was at the party. He was riding on the bike
5 with They were having a great time. What
6 happened after he left the party and for the next 11
7 days he doesn't know anything about.

8 But I wanted to call him and let him testify to
9 tell you what he knew because all he knew was what he
10 told you. We had a great relationship. We were
11 looking forward to a great Christmas. And 11 days
12 after this party was over, he was on his way to jail.

13 And all he knows is what we have been able to
14 show you in court for the last two days. This little
15 girl says something happened.

16 The last thing I'm going to say to you is that
17 you have to return a unanimous verdict. All 12 of
18 you have to agree. This is not a time for being
19 Mr. Nice Guy or Mrs. Nice Person.

20 This is not a time for saying, well, there's
21 seven people who say this and five people, I'll just
22 go with the majority.

23 Each one of you is a judge. Each one of you has
24 got on a badge that could very well be a black robe.
25 You judge the facts of this case. You judge the

1 credibility of the witnesses. You judge the
2 believability of the witnesses.

3 You judge everything about this case and come up
4 with a decision that you can live with. And if your
5 verdict is different -- if your decision is different
6 than somebody else, that's why you talk. That's why
7 you discuss.

8 But you stick by what you believe because this
9 is far too important. This case is much bigger than
10 the people in this courtroom.

11 is already riding her new bike. People
12 have already gone to graduations and getting ready
13 for the next school year, and life has gone on for
14 everybody for the last two years.

15 But this is very important. You have to decide
16 now whether this job has been proven to you, this
17 case has been proven to you beyond a reasonable
18 doubt.

19 And if it has not, after you talk and after you
20 look and after you discuss, if it doesn't fit
21 together, give my client his life back. Thank you.

22 THE COURT: Okay. Can y'all approach just a
23 minute?

24 (Whereupon a bench conference was held.)

25 MS. MAYES: May it please the Court.

CLOSING STATEMENT

1
2 MS. MAYES: Ladies and gentlemen of the jury,
3 first I want to thank each of you for the careful
4 attention that you have paid throughout this trial on
5 behalf of the State, and I'm sure on behalf of all
6 the different parties involved in this case.

7 Throughout the last two days I have watched each
8 of you and noticed how carefully you have listened to
9 each witness and evaluated the testimony, the
10 evidence before you.

11 Mr. Finney is an excellent attorney. And I'm
12 sure that there are many different ways to look at
13 this case. But I listened carefully to his argument,
14 and I took from it one central thing.

15 That the voice of a child means nothing or so he
16 would have you believe. But that's not the law of
17 the State of South Carolina nor will it ever be,
18 because the voice of a child matters especially when
19 it comes from here.

20 And you heard in this case the testimony of
21 someone who was there on
22 December 23rd, somebody who felt it, somebody who saw
23 it, and somebody who experienced it.

24 And ladies and gentlemen, I submit to you that
25 testimony alone, even if she had been the

1 only witness offered by the State, her testimony
2 alone is sufficient evidence in this case to find
3 William Welch guilty beyond a reasonable doubt.

4 But in this case there is so much more. In this
5 case there is undisputed, uncontroverted medical
6 evidence that was consistent with a digital
7 penetration, penetrating injury. And we know how
8 that happened to

9 You know, the thing about sexual assault crimes,
10 especially sexual assault crimes against children I
11 submit, thing that makes it so difficult within the
12 criminal justice system and even outside of the
13 criminal justice system is that these are secret
14 crimes.

15 These are not crimes that are like the burglary
16 cases and the armed robbery cases and things like
17 that that are often on criminal dockets.

18 You know, in a burglary case a lot of times you
19 come into court and you have fingerprints that were
20 left behind at the crime scene. Or in an armed
21 robbery case sometimes you have the videotape that
22 was rolling in the convenience store when the robber
23 was in there, and it's a matter of providing the
24 fingerprints or the videotape to the jury.

25 But these child abuse crimes are not like that,

1 almost never. Because an offender such as William
2 Welch finds an opportunity when he has a child alone
3 or without witnesses. And when he has an
4 opportunity, he takes it. And that is exactly what
5 happened in this case.

6 And it's also a situation that's often shrouded
7 in secrecy and lies. And you heard his testimony
8 that everybody knew about his record, and that is
9 absolutely not the case as you heard from the
10 testimony of parents.

11 Think about when you evaluate the credibility of
12 the witnesses, who had something to gain and who had
13 something to lose.

14 And ladies and gentlemen, has
15 absolutely nothing to gain by coming in this
16 courtroom and saying that about him. Absolutely
17 nothing to gain.

18 In fact, she has so much to lose even by telling
19 about what happened to her. She had to go through
20 how many medical exams, not just the doctor's
21 check-up where he comes in and listens to her
22 heartbeat.

23 These are medical exams which result in
24 discomfort and embarrassment, especially for a child
25 that age. And then on top of that to have to deal

1 with the -- what the people in her family know, how
2 many people around her know, how many people at
3 school know, and how did she have to suspend her
4 Christmas? Her Christmas Eve was in an emergency
5 room.

6 And then to come into this courtroom before you
7 12, 14 strangers and talk about the most shameful and
8 embarrassing of experiences. And why would she do
9 that? Because it's the truth.

10 And no matter what, it would have been the
11 easiest thing in the world to say, you know what,
12 let's -- let's just forget it, I'm not going to talk
13 about what Ricky did.

14 Even when he told her not to tell, she knew she
15 needed to tell because throughout it all, one thing
16 stands like stone, he did it. He did it. And
17 there's no other reasonable explanation for why we
18 are here.

19 When we talk about the law -- and the Judge is
20 going to charge you on that momentarily -- it's
21 actually very simple. All of these counts before you
22 are actually quite simple in -- as far as proving of
23 the elements go.

24 But one of the things that he's going to charge
25 you on is about evaluating the credibility of

1 witness.

2 In addition to testimony, which I submit
3 has been -- she has been consistent throughout. She
4 has always maintained what happened, who did it, and
5 where it happened.

6 And if there's any question at all about any of
7 the testimony, you can certainly ask to re-hear
8 testimony. You can certainly ask to view any of the
9 evidence that's already in the record, which includes
10 videotaped view.

11 One of the -- one of the things that you have
12 heard is the testimony of Gwen Herod who talked about
13 when she was at the emergency room and interviewed
14 for the first time.

15 And I noted a discrepancy in Mr. Finney's
16 argument to you when he said that somewhere on that
17 date had stated that he pulled her pants down.
18 That is absolutely nowhere in Mrs. Herod's testimony
19 about what was said at the emergency room.

20 has always maintained that his hand was in
21 her underpants, and that on the videotape where she
22 explained exactly how he got into her underpants, and
23 things like pulling underpants down or moving them
24 aside, however it is is interchangeable for an eight
25 year old, and I ask you to look at this through the

1 eyes of an eight year old who is explaining it in
2 their own language and their own words.

3 Pulling down, moving aside, it's all the same
4 thing in the mind of an eight year old. All she
5 knows is she was on the four-wheeler and the next
6 thing that happened is Ricky has his hand in her
7 underpants. That's the thing that the child
8 remembers.

9 Do they get pulled down while he's putting his
10 hand in there? Do they get pushed aside? Does any
11 of that really matter when you're eight years old and
12 it's happening to you?

13 What she has always known is his hand was in her
14 underpants, and she's always been consistent about
15 that. And she showed you from the witness stand how
16 that happened as well.

17 When we talk about the medical evidence, I ask
18 you to consider that both Dr. Clanton from the
19 emergency room and also Kathy Saunders who did her
20 follow-up exam confirmed that she had healing tissue
21 located in this area just at the vaginal opening.

22 And the testimony, which again is
23 uncontroverted, is that that healing tissue is
24 consistent with trauma. And as Kathy Saunders
25 explained, this isn't the kind of trauma that a child

1 gets from playing outside or riding a four-wheeler or
2 any of those things.

3 She had been riding that four-wheeler most of
4 her life. As Kathy Saunders explained, this is a
5 penetrating injury. It's an internal injury
6 consistent with digital penetration and him putting
7 his finger inside of her vagina. That's what caused
8 this injury.

9 And ladies and gentlemen, there's no other
10 reasonable explanation for how the injuries were
11 received. And the fact that Kathy Saunders' exam
12 actually occurred approximately four days after the
13 injury is a good thing because, as Dr. Clanton
14 explained, when he saw her, she was feeling --
15 feeling the pain of the trauma, especially upon
16 urination when the acid that's in the urine would hit
17 the part of the body that had been traumatized.

18 And he tested her to see if she had a urinary
19 tract infection, and she was negative for infection.
20 She didn't have one. And so what was causing the
21 pain was the combination of urinating in addition to
22 the traumatized area.

23 But the injury was still so fresh that he was
24 not yet able to see the healing tissue which usually
25 occurs within the next two to eight days.

1 And so on the fourth day she sees Dr. Kathy
2 Saunders -- or excuse me -- she sees Kathy Saunders
3 who does her medical exam, and that's when Kathy
4 Saunders was able to visualize with the aid of the
5 culposcope -- which has the magnifying glass and the
6 camera -- she was able to view the internal injury
7 here within what's called the posterior fourchette,
8 the entrance of the vagina.

9 And ladies and gentlemen, that healing tissue
10 there is conclusive evidence of the injury that
11 occurred as a result of Mr. Welch's actions.

12 I'm going to talk to you just briefly about the
13 law. And one of the charges that you will get is
14 going to be a charge on reasonable doubt. And I
15 submit to you that reasonable doubt is not just any
16 doubt. It's not just a fanciful doubt.

17 And in this case there isn't reasonable doubt
18 because the evidence is more than sufficient to leave
19 you firmly convinced. The first offense is what we
20 call criminal sexual conduct with a minor in the
21 first degree.

22 And the elements of this particular offense are;
23 one, that an act of sexual battery occurred. And
24 sexual battery includes the act of digital
25 penetration or insertion of a finger into the vaginal

1 opening, however slight.

2 So it's not upon the State to prove that there
3 was full penetration or how -- to what degree there
4 was partial penetration, only that there was some
5 intrusion however slight.

6 And as previously stated, the injury that
7 received was clearly within the interior portion of
8 the vaginal opening. I submit to you that's -- that
9 element has been proven beyond a reasonable doubt.

10 Secondly, that it occurred to a child under 16,
11 which without question we know that was eight
12 years old when this particular offense happened.

13 And the final element is that the offense was
14 committed by a convicted sex offender. And you heard
15 the testimony again, undisputed, that Mr. Welch is in
16 fact a convicted sex offender pursuant to Title 23
17 which the Judge will charge you on momentarily.

18 The next charge before you is what we call lewd
19 act upon a child. And lewd act basically means
20 improper touching or fondling.

21 It does not require any degree of penetration.
22 It does not have to be inside the clothing. It can
23 be outside the clothing. And it can occur almost
24 under any circumstances.

25 An additional element is that the child was

1 under 14, which is, that the perpetrator is
2 over 14, which he is, and that it was done with lewd
3 intent.

4 And ladies and gentlemen, there is no question
5 that for an adult male to stick his hands inside the
6 underpants of the child and repeatedly commit the act
7 of penetration, that that would be beyond a
8 reasonable doubt with lewd intent.

9 Some of the testimony you heard I submit is
10 exactly what is to be expected in a case like this, a
11 child sexual assault case. You know, first
12 disclosed to her cousin, who is Hannah.

13 And one of the things she said to Hannah was
14 that she wanted her to keep it a secret. And just
15 how it all flowed with -- beginning with Mr. Welch
16 telling not to tell anybody. And you heard
17 what she said to that.

18 I shook my head that I wouldn't tell, but deep
19 down she was going to tell, and she knew that she
20 needed to tell. But because of what he said to her,
21 there's still that little doubt about, should I keep
22 it a secret. He's telling me to keep it a secret.

23 And so she tries to go on about her day as
24 normal. She ends up on the four-wheeler with her
25 cousin Hannah, and then Hannah says, she got dead

1 serious, dead serious, which was unusual for
2 and she -- that's when she told her about what Ricky
3 had done.

4 And as Hannah said, she knew that she had to
5 tell a grown-up. She knew that was the right thing
6 to do and that that needed to be done.

7 And then when it came out to the parents -- and
8 you heard the testimony from mom about how
9 scared she was and how timid she was in having to
10 relay what had happened to her.

11 There was no malicious intent even by the
12 parent. There was no rush to judgment by them in
13 terms of wanting to pain him or go confront him
14 angrily -- like I submit I'm sure many many a parent
15 would want to do, and perhaps even rightfully do in
16 that situation.

17 But they waited and let the police do their job.
18 And there was no rush to judgment by the police. The
19 testimony is that after interview on
20 Christmas Eve in which she identified him as the
21 perpetrator, the police still waited until she had
22 her medical exam and evidence was found consistent
23 with the penetrating injury.

24 And even after that is when a warrant was
25 obtained for Mr. Welch. Nobody ran out the hospital

1 emergency room waiting doors to go get a warrant on
2 Mr. Welch.

3 They waited and let law enforcement do their
4 job. The family put their trust in law enforcement,
5 and there has never been any malicious intent where
6 Mr. Welch is concerned, no ax to grind, no reason,
7 absolutely no reason to make this up.

8 And everybody agrees that trusted him and
9 thought of him as an uncle. Absolutely no reason to
10 say this except that he did it.

11 You have before you the most noble of
12 opportunity, the chance to strike back against
13 injustice and deliver a verdict which speaks the
14 truth.

15 You are the conscience here now as to what crime
16 will be tolerated in Sumter County. And I ask you to
17 send a message to this defendant, William Welch, that
18 this crime will not and cannot be tolerated in Sumter
19 County.

20 William Welch is guilty as charged of criminal
21 sexual conduct with a minor in the first degree and
22 guilty of lewd act upon a child.

23 You do not have to pick between the charges.
24 Both charges are before you. He can be convicted of
25 both charges. And I submit he is beyond a reasonable

1 doubt guilty of both charges. Thank you.

2 *THE COURT:* Ladies and gentlemen, my charge on
3 the law is going to take about 20 minutes. Do y'all
4 need a break before I charge? Everybody all right?
5 Okay.

6 JURY CHARGE

7 *THE COURT:* And I've observed you throughout
8 this trial and you paid close attention to the
9 evidence that came in from this witness stand as well
10 as you heard the arguments of both attorneys now.

11 And it's now my duty under constitution of this
12 state to charge you upon the law that applies in this
13 case. And under our constitution the jury is the
14 only people that can make the finding of fact in this
15 case.

16 I am not permitted to indicate to you how I
17 might feel about the facts in this case. So if I
18 have done anything in this trial that you may have an
19 idea as to what I think, disregard that.

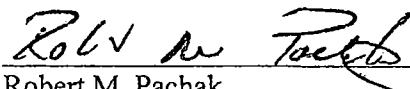
20 I don't have an opinion. The law doesn't allow
21 me to have an opinion. It is solely your
22 responsibility to make the determination of what the
23 true facts are in this case based on the evidence
24 that's come before you in this courtroom.

25 The same constitution and code of laws which

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Supplemental 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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 22, 2010

A handwritten signature in dark ink, appearing to read "Robert M. Pachak", is written over a horizontal line.

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM RICKY WELCH,

APPELLANT

RECORD ON APPEAL

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
REDACTED RECORD.....	428
INDICTMENT	429
CERTIFICATE OF COUNSEL	431

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF SUMTER) 2008-GS-43-361,362

The State of SC,)
) PLAINTIFF)
vs.) TRANSCRIPT OF RECORD)
)
William Ricky Welch,)
) DEFENDANT)

May 29, 2008
Sumter, South Carolina

B E F O R E:

THE HONORABLE R FERRELL COTHRAN, JR., PRESIDING
JUDGE.

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

SUZANNE MAYES, SPECIAL PROSECUTOR
Attorney for the Plaintiff

ERNEST FINNEY, ESQUIRE
Attorney for the Defendant

Kathleen Richardson, RPR, CRR
Official Court Reporter

EXHIBITS

(No exhibits were marked.)

1 MS. MAYES: May it please the Court.

2 THE COURT: Yes, ma'am.

3 MS. MAYES: Your Honor, before you is the case
4 of State versus William Ricky Welch. Mr. Welch is
5 represented by attorney Chip Finney. And he is
6 currently indicted and pending trial on charges of
7 criminal sexual conduct with a minor in the first
8 degree and lewd act upon a child.

9 And that is actually the issues that we are
10 requesting and moving before the Court on today
11 because there is an issue here concerning the State's
12 motion to admit evidence of his prior conviction as a
13 required element of this particular offense which is
14 South Carolina code section 16-3-655 section A
15 subsection two.

16 And this particular statute was enacted in 2006,
17 quite recently, as a provision of the sex offender
18 accountability and protection of minors act of 2006.
19 And the intent of the statute was that it would be
20 analogous to the current burglary statute which is
21 16-11-311 section A subsection two which does allow
22 the State to prove two or more prior burglary
23 convictions as a required element of burglary in the
24 first degree.

25 And just like this burglary statute, the State

1 in this particular case has set forth the information
2 concerning the defendant's prior conviction as an
3 element in this indictment for you, which is count
4 one of indictment 2008-GS-43-361.

5 This current statute that was recently enacted
6 allows for the State to allege as an aggravating
7 circumstance or an aggravating element a prior
8 conviction when the actor engages in sexual battery
9 with a victim who is less than 16 years of age -- and
10 in this case the victim, V, was less than
11 11 -- and the actor has previously been convicted of,
12 pled guilty to a sex offender registry-type offense
13 as defined in section 23-3-430C and or 430D.

14 His prior conviction, William Ricky Welch, prior
15 conviction is a 1993 offense for criminal sexual
16 conduct in the first degree, so it certainly would
17 fall under the provision of that particular statute.

18 It clearly applies to Mr. Welch. And the State
19 set forth the particular date and type of conviction
20 involved. We have provided copies of that sentencing
21 sheet to counsel.

22 And we wanted to go ahead and make the Court
23 aware of this issue prior to jury selection next week
24 because we knew we would need to know where we stand
25 before the jury is qualified actually on that

1 particular indictment since it is set forth in the
2 indictment.

3 *THE COURT:* Okay. Mr. Finney?

4 *MR. FINNEY:* Good morning, Your Honor.

5 *THE COURT:* Good morning.

6 *MR. FINNEY:* Your Honor, first of all, the --
7 the State has handed me a memorandum in support of
8 evidence, and I also believe they have handed me some
9 case law which I have not had a chance to review, so
10 I would ask the Court to be as lenient as possible on
11 maybe my offering further discussion on this issue,
12 maybe as late as Monday morning.

13 But obviously I was aware of the general
14 ramifications of the motion this morning. Your
15 Honor, Mr. Welch is charged with committing a
16 criminal sexual conduct on or about December 23rd,
17 2006.

18 And that's very relevant because the -- I
19 believe the case law in this -- in this state would
20 say that first of all that there would be no reason
21 to bring about the information about a prior
22 conviction that dated back to 1993.

23 This man pled guilty before Judge Shuler.
24 Believe he was sentenced to 10 years. Served his
25 time. Got out. Was put through the process of the

1 State's new sexually violent predator act. Had to
2 have a hearing.

3 During that process he was found not to be a
4 sexually violent predator and was released to the
5 community. He maintained the status in the community
6 until being charged with this offense in January of
7 2007.

8 So my first argument would be that there's no
9 reason in the world to bring this old charge into
10 this courtroom when it is older than 10 years of age.

11 Secondly, Your Honor, there is a rule 403 and
12 also rule 404 of South Carolina rules of evidence
13 which would state that even with the allowance by the
14 legislature of this type of information through the
15 statute, that there is a -- a solid rule of evidence
16 which requires that the Court find that this may be
17 relevant evidence, which we don't believe it is
18 relevant, and that even relevant evidence may be
19 excluded if the danger of unfair prejudice
20 substantially outweighs the probative value.

21 I would ask the Court pursuant to rule 403 and
22 also 404 which enumerates the exceptions, that there
23 is no reason in the world for a 10 year old prior --
24 or maybe older than 10 year old -- prior charge that
25 had nothing to do with this proposed victim to be

1 brought into the courtroom to be tried in this case.

2 In this case, Your Honor, the indictment carries
3 three charges. Two of the charges are -- are
4 criminal sexual conduct with a minor first degree, so
5 the State is going to have a full opportunity to
6 present its case on the charge of whether or not a
7 criminal violation of the statute occurred based on
8 his conduct in December of 2006.

9 Failing that, they -- failing that proof, they
10 have also included in the indictment a statute for
11 lewd act upon a child. Well, if the first charge
12 doesn't get it and the second charge doesn't get it,
13 then he gets to go home.

14 What they're asking you to do is allow a third
15 charge to be brought into this court which is the
16 same factual scenario except that they get to prove
17 to some extent that he had a prior offense for a
18 similar charge over 10 years ago.

19 We feel like that is a violation of
20 constitutional provisions of a fair trial that this
21 young man is entitled to, it violates the rules of
22 evidence 403 and 404, and doesn't fall within the
23 exception that would be allowable since the -- the
24 prejudicial effect of this prior conviction, which
25 has nothing -- no relevancy to the present charge,

1 would -- would outweigh any probative value, if there
2 was any.

3 Your Honor, I have not had a chance to read the
4 Benton case which has been handed to me this morning.
5 It is a case which I think talks about the burglary.

6 I think that there should be a different
7 analysis done on a burglary case where a person under
8 statute has committed one or two burglaries in his
9 past, is now charged with another burglary, and
10 therefore the legislature has deemed it proper to go
11 into his prior record to see if those prior conducts
12 would be relevant toward this.

13 In this case, Your Honor, that would not be the
14 case. In a sexual assault case, I would commend to
15 the Court the language that -- that was found in
16 State versus Mathis, a case found at 597 southeast
17 second 872 which says that in these types of cases it
18 is very, very important for the Court to not
19 generalize but to find specific acts which are
20 relevant and closely connected and meet the test that
21 is set forth in Lyle and other cases.

22 The Mathis case is a Lyle-based case which --
23 which held in that case that there was an indicia of
24 reliability because the same victim was involved from
25 one year to the next, and when they went to court on

1 the last charges, they were able to go back and talk
2 about other things that happened to the same victim.

3 This case is totally different in that the 10
4 year old charge involves some other child, not the
5 child that's in -- at -- in question as the victim in
6 this 2006 case.

7 Your Honor, we feel strongly that the
8 Constitutional provisions, the statutory provisions,
9 and the case law would afford this man an opportunity
10 to have this case tried based on the facts that can
11 be put into the record by the -- by the witnesses
12 from -- involving 2006 and that it would be improper
13 to input into the record any information about
14 something that happened back in 1993. Thank you.

15 *THE COURT:* Let me ask y'all this. Is there any
16 question that the alleged date that I have -- I
17 assume a copy of the indictment -- that alleges that
18 the criminal sexual conduct with a minor occurred on
19 or about December 23rd, 2006?

20 My understanding of 16 3 655, it was amended and
21 became effective July the first of 2006. Is there
22 any question from either side that the new amended
23 655 is the law that applies in this case? Is that a
24 question on either side?

25 *MS. MAYES:* No, sir, Your Honor. We have

1 indicted under both statutes -- which technically
2 both statutes apply, the A1 and A2 -- but our
3 position is that we would need to elect prior to
4 starting the case, which is another reason we wanted
5 a pretrial ruling.

6 We would elect to call subsection A2 foreseeing
7 that we could use the prior conviction as an element
8 of the offense.

9 And we do have a copy of the sentencing sheet
10 which we reflects the date. It's a stamped date of
11 the actual sentencing sheet from the Clerk's Office
12 here, and the stamp date is December 1st, 1993.

13 *THE COURT:* Okay.

14 *MR. FINNEY:* Your Honor, for the record, we
15 would feel that the statute that went into effect --
16 I believe the Court is saying July 1st, 2006?

17 *THE COURT:* That's my -- that's my
18 understanding. This law went into effect July 1st,
19 2006. Either side disagree with that?

20 *MR. FINNEY:* Yes, sir. I don't disagree that
21 the law went into effect. I agree that it does not
22 apply to this situation since that was not the law at
23 the time that the alleged offense occurred in
24 December of 2006 -- excuse me, Your Honor -- it is
25 the law because it happened in December, 2006.

1 THE COURT: That was my question, that it's
2 no -- that this alleged crime occurred in December of
3 2006, you know, five months, four and a half months,
4 whatever, after the law went into effect. So 655 as
5 now written applies to this case.

6 And I'll certainly give you an opportunity to
7 review these cases, but under A2, it is -- the
8 legislature has made a prior conviction part of the
9 element that the jury would have to find, just like
10 they do in a burglary first.

11 You know, it's a number of criteria that create
12 a burglary first, one of which is having two prior
13 burglary convictions.

14 The legislature has created an element that the
15 jury must find. And two, that they must find he had
16 a prior conviction unlike -- this is not necessarily
17 a Lyle case where the State's trying to introduce
18 some common scheme or plan or intent, and I'm not
19 real sure that what I have heard that 1993 conviction
20 of a different person will come in under Lyle, but I
21 certainly feel that the legislature has made it an
22 element that the State must prove before the jury can
23 convict him of criminal sexual conduct first degree
24 with a minor.

25 Now, the -- I don't know what the age of the

1 victim is. But two is dealing with a victim less
2 than 16 years of age. Section one is dealing with a
3 victim less than 11 years of age.

4 So if the victim is less than 11 years of age,
5 it doesn't matter whether he had a prior conviction
6 for this. If the jury finds that the victim is less
7 than 11, then -- then they could find him guilty of
8 criminal sexual conduct first degree.

9 If the victim is older than 11, the only way
10 they can find him guilty of first degree is find that
11 he had a prior conviction. Is that not the law? And
12 that's what the legislature seems to have added this
13 element to this crime which the State has to prove.

14 So I don't know any other way they can prove it
15 except submit that to the jury because the jury has
16 to make that finding.

17 MR. FINNEY: Well...

18 THE COURT: Unlike, you know...

19 MR. FINNEY: It's going to be clear, Your Honor,
20 I think from the record, we would both agree that the
21 victim at the time of the incident was roughly seven.

22 THE COURT: Okay. So we have got a victim that
23 is under 11.

24 MR. FINNEY: That's correct, Your Honor.

25 MS. MAYES: Yes, sir, Your Honor. She is eight

1 years of age. She was eight years of age at the time
2 of the offense. However, we did a separate
3 indictment alleging subsection A1.

4 Our position is that in all likelihood we would
5 need to elect, and we would elect to pursue the
6 offender statute, which is subsection A2.

7 *THE COURT:* Okay. Now you have added a whole
8 different wrinkle to this problem. You have a victim
9 that qualifies under section one, but you want to go
10 under two.

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

12 *THE COURT:* Okay. I will have to think about
13 that because that...

14 *MR. FINNEY:* Of course, if they're going to...

15 *THE COURT:* And the Supreme Court has not spoken
16 on this issue.

17 *MS. MAYES:* That is correct, Your Honor.
18 Actually, when we thought the case was coming up in
19 March, I spoke with a number of other prosecutors
20 about this state-wide to see if anyone was aware of
21 any rulings on this or if anybody had actually called
22 a case yet pursuant to subsection A2, and no one is
23 aware of a ruling.

24 So this may be -- may be the first that we have
25 on this particular subject.

1 However, I did take part in the legislative
2 hearings that went into the passage of this
3 particular provision, and it was clear from the
4 hearing that took place and listening to various
5 portions of testimony during the committee hearings,
6 that it was the intent to create a repeat offender
7 statute and that it was intended to be analogous to
8 the burglary statute.

9 The issue of prejudice has been raised.
10 However, I would just state that the burglary statute
11 has been repeatedly upheld by the Supreme Court and
12 that they have found that the probative value does
13 outweigh its prejudicial effect.

14 I would submit that a person having multiple
15 burglary convictions or someone is conceivably coming
16 into a home, your home at night time where the victim
17 may even be present in the home, it is certainly as
18 prejudicial as the jury knowing that someone has a
19 1993 conviction for criminal sexual conduct with a
20 minor first degree.

21 And I do want to state that that would be the
22 limit of what the State would intend to offer.
23 Testimony most likely to a member of the Clerk of
24 Court's office that William Ricky Welch has a
25 conviction and the date of that conviction and that

1 is the criminal sexual conduct with a minor in the
2 first degree.

3 We would not intend to get into the specifics of
4 that particular offense unless there were some other
5 reason for it or the door were opened through some
6 other alternative legal avenue. But we would intend
7 to limit it to what the statute set forth as a
8 required element.

9 And the final thing I want to mention is that
10 another issue addressed in both Benton and Hamilton
11 was that the State is not required to accept an offer
12 to stipulate from the defense as to priors. And
13 certainly they recognize that that's an option.

14 However, the Supreme Court felt that the State
15 had the right to inform the jury that they have a
16 prior conviction. And in this particular statute,
17 also the repeat offender statute, it should apply
18 regardless of the victim's age even when they are
19 under age 11.

20 Even if there is another statute that the State
21 could proceed under, it's the repeat offender statute
22 which is created for people like William Welch who
23 are repeat offenders.

24 If he weren't, then we could certainly go under
25 A1. But we feel like when there is a repeat

1 offender, that is the necessary purpose of the repeat
2 offender statute, that that one would then dictate.

3 *THE COURT:* You also understand that A1 carries
4 a different -- different punishment than A2.

5 *MR. FINNEY:* That's correct.

6 *THE COURT:* A1 is the mandatory minimum of 25
7 years. Okay. So let me ask you this: If the
8 prosecution wants to proceed under A2, is it -- is
9 your position that the age of the victim is also
10 going to be presented to the jury? And what would
11 the charge be? Am I charging A1 and A2?

12 *MS. MAYES:* No, sir, Your Honor. The charge to
13 the jury concerning the age of the victim pursuant to
14 subsection A2 would be that they must find that the
15 victim was under age 16. And we would submit
16 evidence that she is.

17 And then secondly, that the defendant had a
18 prior conviction as enumerated in title 23, and then
19 the jury would hear what the conviction is, be
20 charged on the enumerated offenses, specific -- make
21 a finding on that matter as well.

22 *THE COURT:* Well, so if I allow the State to
23 proceed under A2, then the jury would never have to
24 make a finding as to the type of sexual battery that
25 occurred as required under A1? Is that your

1 understanding?

2 MS. MAYES: No, sir. I believe they would still
3 have to make a finding that sexual battery occurred,
4 and the words or phrase, sexual battery, is also set
5 forth in subsection--

6 THE COURT: No, I -- they would have to find
7 sexual battery occurred, but they would have to find
8 specific -- A1 requires specific sexual battery of
9 intercourse, anal, or object, because under section
10 C...

11 MS. MAYES: May it please the Court, Your Honor.
12 I believe the indictment I submitted to you is the
13 one where the State alleged subsection A2. We have
14 the other indictment which is 08-362 which I would
15 submit to the Court at this time, and it also alleges
16 an act of sexual battery.

17 However, it is not specific. It would include
18 those numerous types that you mentioned. However, in
19 this particular case, the only allegation of sexual
20 battery is an allegation of digital penetration.

21 THE COURT: All right. Is there anything else?

22 MR. FINNEY: Your Honor, I would just simply
23 argue that the reason we have advocates for each side
24 and a Judge to hear these matters is that there are
25 rights and constitutional rights afforded to the

1 defendant.

2 The State has certain powers. Obviously the
3 legislature has given them the power to move under A1
4 or A2. They have elected. But your power, Your
5 Honor, is to enforce the rules.

6 And the rules do not get suspended because the
7 legislature passes a specific act. The legislature
8 has the ability to pass law, but they don't get to
9 determine the rules.

10 And this Court has to interpret 402 and 403 --
11 excuse me -- 403 and 404 as setting forth limitations
12 when they have the power to jump from A1, A2,
13 depending upon how they want to handle their case.
14 That's fine.

15 But these rules do not get suspended for that
16 reason. My colleague's argument that the burglary is
17 analogous, only in a technical sense is it analogous.
18 That's a property crime. This is a much different
19 situation.

20 And that -- in this situation, the rules would
21 require the Court to have a more sensitive test to
22 whether or not this information given to a jury would
23 be probative.

24 We feel that based on the age of the case, the
25 fact that there is no similar conduct, the fact that

1 there's no similar victim, it wouldn't be relevant,
2 it wouldn't be probative, and it certainly, because
3 of the nature of the case, much more sensitive than a
4 burglary issue.

5 *THE COURT:* But that's why under two, the
6 legislature made it an element that the jury must
7 find. They -- that's analogous to the burglary
8 statute.

9 The legislature made the burglary statute one of
10 the criteria of the element. The legislature has
11 made this an element that the jury must find before
12 they can find him guilty of first degree criminal
13 sexual conduct with a minor.

14 *MR. FINNEY:* And again, Your Honor, for the
15 record we would argue that these rules don't get
16 suspended because the legislature passes something
17 that may be in effect at the time that the crime is
18 supposed to have occurred.

19 I understand that the legislature has -- under
20 certain limited circumstances, a situation might have
21 occurred where a prior record might be able to come
22 in, and because of a connection, a strong connection,
23 these cases like the Mathis case require a very
24 strong connection, especially in these sexual cases,
25 between the actions that are complained of in the

1 indictment and the prior convictions.

2 What I'm saying to the Court is this case
3 doesn't meet that test because you're already at the
4 standpoint of saying, does the legislature have the
5 power. I'm not arguing that point.

6 I'm arguing the point that the rules require
7 that before you open the door, they have to prove the
8 probative value, and that's not going to be possible
9 in this case because the nature of the two crimes,
10 the time period, all of that works against it.

11 They are -- they are arguing the legislative
12 intent because that gets them to the door. But your
13 job is to guard that door and hold that this
14 probative value test and prejudicial effect has to be
15 met.

16 *THE COURT:* Well, it's probative in that they
17 have to prove it. Now, the prejudice -- obviously
18 it's prejudicial. They usually don't introduce
19 anything that's not.

20 But the legislature, if -- if it -- this case
21 goes on, and let's say the victim was 14 years old,
22 they have to prove the prior record before they can
23 find him -- before a jury can find him guilty
24 according to the way the statute reads.

25 *MR. FINNEY:* Well, first of all, Your Honor,

1 they don't have to do that. If the victim was 14--

2 *THE COURT:* They would have to do that. Don't
3 you agree with that? The problem they -- the problem
4 in this case is the victim is under 11, and they're
5 electing to go under two, and it puts you in an
6 unusual situation in that A1 carries 25 to life. A2
7 carries 10 to 30.

8 So if you argue that they can't elect to go
9 under two and your client's convicted, he's looking
10 at 25 to life. If you let them go under two, he's
11 looking at 10 to 30 if he's convicted.

12 So -- and I -- now, from the trial strategy's
13 standpoint, and I don't know whether they can make
14 that election or not since it was clear that if the
15 child is over 11 and he has a prior record, then --
16 then according to the statute, it appears it comes
17 in.

18 I guess somebody will have to challenge the
19 constitutionality of the statute. But there's no
20 case law at this point.

21 *MR. FINNEY:* And so, Your Honor--

22 *THE COURT:* And I'm in a situation that now I
23 have -- they can go either way. They want to go
24 under two, which puts your client -- less exposure.

25 *MR. FINNEY:* But it almost ensures a victory

1 because they get to talk about something that
2 happened 10 years ago that doesn't have anything to
3 do with the present facts and circumstances.

4 Now here's my point, Your Honor. Under the
5 discussion we are having this morning, if the victim
6 was 10, he couldn't be charged with criminal sexual
7 conduct in the first degree if he didn't have a prior
8 record?

9 *THE COURT:* Yes. If the victim is under 11 and
10 he can be charged with criminal sexual conduct in the
11 first degree, and he's looking at 25 to life.

12 *MR. FINNEY:* Let me--

13 *THE COURT:* If the victim is over 11, he can't
14 be unless he has a prior record.

15 *MR. FINNEY:* Okay. So you're saying that
16 there's a class of people who if they don't have
17 prior records but they hurt little girls who are
18 between 11 and 16, they're not exposed to the first
19 degree law.

20 *THE COURT:* That's my understanding. That's the
21 second.

22 *MR. FINNEY:* All right. And that's what I'm
23 saying is the problem with assuming that the
24 legislature has its wisdom -- they have left out a
25 class of people who are not protected under this law

1 supposedly if you don't have a prior record.

2 THE COURT: But the legislature for whatever
3 reason decided that those with prior records, if they
4 repeat again, then they should be guilty just like
5 the burglary situation.

6 The higher, you know, they are looking at more
7 time because they have it. And so they have tied the
8 Judges' hands and it's a mandatory minimum of 25
9 years to life. The -- so the -- that's the quandry
10 that we're in.

11 And there have been no cases that I can tell
12 dealing with this, and especially now that the State
13 has both potential scenarios and they want to elect
14 to go on the second.

15 And you're in a situation that if from a trial
16 strategy standpoint, if you fight them on the second
17 and make them go on the first and your client is
18 convicted, he's looking at 25 to life.

19 If they are allowed to go on the second and your
20 client is convicted, he's looking at 10 to 30. So
21 it's a trial strategy.

22 And I don't know at this point. I either -- try
23 to figure out whether they have the option to elect
24 when in fact they fit both, which is an unusual
25 quandry to be in.

1 MR. FINNEY: Well, Your Honor, I would ask that
2 you take the matter under advisement. Let me spend
3 the weekend doing a little bit more research. I may
4 have some more information to offer the Court on
5 Monday morning.

6 THE COURT: And I'd love that insight because
7 it's not -- it looks like I have got the first case I
8 have -- it's not even a charge in my book on this law
9 yet.

10 So that will be fine. And I will give you till
11 Monday morning understanding that this case is going
12 to be called Monday morning. I don't know outside of
13 proving the record -- and the record happened here?
14 So it's not an out-of-state record; right?

15 MR. FINNEY: Correct.

16 MS. MAYES: Correct, Your Honor. I was actually
17 the prosecutor in that particular case. It occurred
18 here in Sumter County.

19 THE COURT: Okay. So the official records are
20 in this Clerk's office, so get them here.

21 MR. FINNEY: It was a guilty plea in front of
22 Judge Shuler. It's not a trial or anything.

23 THE COURT: Okay. So there's no question that
24 the records are valid. You don't question the
25 validity of the records that the Clerk of Court has?

1 MR. FINNEY: No, sir.

2 THE COURT: Okay. So that's not an issue you're
3 having to bring them here from somewhere else.

4 MR. FINNEY: Right.

5 THE COURT: So whichever way I allow you to go
6 on the second, you have the records available. If I
7 don't, you have to go on the first.

8 And then you need to have a long conversation
9 with your client as to what your position is going to
10 be from a trial strategy standpoint because if they
11 go under first, he's looking at more time.

12 If they go under second, he's looking at less
13 time, but then you've got whether they are going to
14 obtain a conviction. And I don't have any idea what
15 the evidence is and how strong the case is or
16 whatever, but -- okay.

17 MR. FINNEY: Your Honor, just for the record,
18 counsel and I have spoken. There are two witnesses
19 on counsel's list that I will propose to call and
20 subpoena.

21 She has informed me they will be here Monday for
22 me to subpoena them. I just wanted to have it on the
23 record that we have talked and that that is the
24 procedure we are going to follow.

25 In case she doesn't call them, I would need to

1 MS. MAYES: Your Honor, from the State, in
2 response to the previous hearing that was held in
3 this matter last week concerning the State's
4 intention to go forward on section 16-3-655,
5 subsection A, subsection two, the State is prepared
6 to do so and has notified counsel for the defendant
7 that we do intend to proceed forward with evidence
8 concerning the defendant's prior criminal history,
9 prior criminal conviction pursuant to Title 23 for a
10 sex related offense.

11 And the State has provided notice to counsel
12 first by means of discovery which was provided prior
13 to the date that the case was first called which was
14 March, 2008, this past Spring. It was continued at
15 this point in time due to a request by counsel for
16 the defendant.

17 But prior to that hearing, all of the previous
18 conviction records had been supplied to Mr. Finney
19 concerning that previous conviction from 1993, and
20 furthermore the State has provided formal notice at
21 this point that we do intend to proceed with that
22 particular charge and that it will include as an
23 element of the offense the prior conviction.

24 THE COURT: Okay. What says the defense?

25 MR. FINNEY: Your Honor, we would at this time

1 renew our objections to the Court allowing the
2 history of the defendant from 1993 being offered into
3 evidence for all of the reasons stated in the prior
4 hearing which was held before you on last week.

5 We have read the case law which has been
6 introduced and -- by the State, and we feel that even
7 though the legislature has made some exceptions --
8 and is funny, Your Honor, they have only made the
9 exceptions in the burglary apparently and in the
10 criminal sexual conduct. They didn't make the
11 exception for murder, so committed a murder, this
12 wouldn't apply in South Carolina.

13 But we think that in light of the legislative
14 enactment, we still have a duty as court officers to
15 address the probative value of this information and
16 the prejudicial effect.

17 And we think, Your Honor, that it is -- is no
18 way in the world that the probative value of this
19 prior conviction outweighs the prejudicial effect.

20 We also would account or recount for the record
21 that the State has elected not to go forward on a
22 companion section under 16 3 655 which would allow
23 them to go forward, present their case, and not have
24 to bring up the prior record of the defendant, and
25 that they would -- they have elected not to do that.

1 We think it is a bolstering move to allow them
2 to bolster the prior record into this case when it is
3 not necessary, it is not probative, it causes a great
4 deal of prejudicial effect, and we would ask the
5 Court to -- under rule 403 and 404 to exclude the
6 prior record and let them go forward to prove the
7 case on its merits feeling that this is a sentencing
8 issue and not a issue as to the relevant conduct of
9 the defendant at the time in December of 2006 when he
10 is alleged to have committed this offense.

11 *THE COURT:* Okay. And my understanding of the
12 statute, the way the legislature has written the
13 statute, under section A2, it is -- the legislature
14 has made it a part of the statute that someone who
15 has been convicted of a crime that's listed as the
16 registry requires a crime, prior sexual crime is
17 listed under the code section.

18 Therefore, that is a element the State must
19 prove. The State -- the way the statute is also
20 written, I think that the State has that option to
21 elect whether they want to proceed under A1 or A2
22 understanding that A1 carries a substantially higher
23 potential penalty in that it's 25 to life. A2 is a
24 minimum of 10 to 30.

25 So the State has chosen as far as punishment is

1 concerned the lesser of the two.

2 And the -- as in burglary, one of the elements
3 of a burglary first is that the person who committed
4 the burglary had two -- at least two prior burglary
5 convictions which may -- made it a first degree.

6 This alleged sexual assault is committed by
7 someone who has a prior record for such offenses, is
8 one of the elements the legislature put in there that
9 the State must prove before they can -- before he can
10 be convicted of criminal sexual conduct in the first
11 degree with a minor. I think the State has that
12 option to make that election.

13 As far as the proof, I will not allow them to go
14 into any details of the prior conviction whatsoever,
15 but simply that they must prove to the jury that in
16 fact a prior conviction occurred.

17 It's my understanding that they have the
18 sentence sheet -- and I don't know whether they
19 have -- that they wanted to redact Judge Shuler's
20 comments on the bottom.

21 It is an official record of the Clerk of Court's
22 Office, and I assume some time during this trial they
23 will want to put it in as an official record that the
24 jury may find, and the jury has to find that he has a
25 prior conviction before they can convict him of first

1 degree.

2 MR. FINNEY: Your Honor, I would just ask in
3 that -- subject to your ruling, and of course we
4 would continue subject to your ruling -- the case
5 that the State relied on last week was State versus
6 James Benton, Supreme Court of South Carolina decided
7 in 2000.

8 I want to hand it up, Your Honor, because one of
9 the last things that the Court in that case decided
10 was that particular information regarding the prior
11 crimes should not be admitted.

12 Additionally, the trial court, as it did here,
13 should on request instruct the jury on the limited
14 purpose for which the prior crime evidence can be
15 considered.

16 So I'm going to ask the Court not to admit the
17 prior sentence sheet from 1993 even though it may
18 have been redacted to the -- to the Judge's comments
19 because it seems to -- to me it carries particular
20 information regarding the prior crime, and that that
21 instruction from the Court in the Benton case said
22 that that's not proper.

23 THE COURT: And -- but understanding the ruling
24 in the Benton case, what particular information on
25 this sentence sheet you think violates Benton in that

1 what would -- what particular information other than
2 he was convicted of -- I don't have that sheet, code
3 section--

4 *MR. FINNEY:* My understanding was the Clerk of
5 Court was going to be called as a witness to testify
6 before the jury that there is a record of a
7 conviction against this man from -- I guess they were
8 going to put the date in -- from 1993.

9 *THE COURT:* Right.

10 *MR. FINNEY:* That was my understanding as to all
11 that they have. Now they are trying to put in a
12 physical evidence for the jury to review. I don't
13 think it's necessary and that -- it goes beyond what
14 I think the Benton Court calls for as far as
15 particular information regarding the prior crimes.

16 *THE COURT:* And I understand that. And -- but
17 what particular information does the -- and I can't
18 tell the State how to try their case just as I can't
19 tell you.

20 What particular information that's on this sheet
21 that you think violates Benton? What -- is there any
22 particular aspects of the prior crime on that
23 sentencing sheet other than simply stating what he
24 was convicted of that would violate the terms in
25 Benton?

1 MR. FINNEY: Well, first of all let me say --
2 let me ask the question, is the State's position that
3 there will be redaction to the 10 year sentence that
4 was given?

5 MS. MAYES: Correct. The State would propose a
6 redaction of the area below the defendant's signature
7 with an -- some type of affirmation in the -- at the
8 top of the document showing that it is in fact a
9 certified true and original copy.

10 I will say, however, that for purposes of the
11 case in chief, the State certainly has no objection
12 to these limitations.

13 It may become a separate matter, however, if the
14 defendant chooses to testify in the case not in that
15 the State would get into the details of the offense,
16 because that's ordinarily something that we wouldn't
17 do even under those circumstances. But in that
18 particular situation we normally do ask what the
19 sentence was.

20 From my recollection I think that's -- that's
21 normally asked any time a witness is impeached on a
22 prior conviction. Of course, that's a separate issue
23 that we're--

24 THE COURT: Right. And I don't know whether the
25 defendant's going to take the stand. But if he takes

1 the stand, and I will instruct him, you understand
2 the terms of impeachment and what the State can and
3 can't use. And you know, he subjects himself to
4 cross-examination and potential impeachment.

5 So -- but I don't -- you know, I don't know what
6 I'd allow at that point. It depends on what doors
7 you open, you know. Understanding that...

8 MR. FINNEY: Well, it's already opened under
9 your ruling that they -- convictions coming in, so
10 I'm not going to ask him what happened in '93.

11 THE COURT: Right. You know, as long as you
12 don't ask him what happened in 1994 and he doesn't
13 try to, you know, other than --

14 MR. FINNEY: I'm not going to ask him.

15 THE COURT: -- than I think based on the way the
16 statute is written and it's -- we have a similar
17 statute dealing with burglary where it's an element
18 the State must prove, and--

19 MR. FINNEY: And all I'm saying by my motion now
20 is subject to your ruling, which we have objected to,
21 you're going to allow the prior record. Apparently
22 they're going to call the Clerk to let in the
23 information.

24 And I'm just objecting to any other information
25 in the form of this written document that supports

1 what's already going to be in the record.

2 *THE COURT:* Well, and I understand your -- but I
3 can't tell -- as long as they provide evidence that's
4 admissible under the rules, I can't tell them what
5 they can and can't admit.

6 If she wants to just put the Clerk's testimony
7 in, that's their option. If she wants to put a
8 document in, and if it's admissible under the rules,
9 I cannot necessarily stop that.

10 And your objection was that the document they
11 want to put in may violate -- violate Benton or the
12 other cases, my question to you was what -- because I
13 don't know there's anything on that sentencing sheet
14 that would get into the facts of the prior crime.

15 Only that he was in fact convicted of a prior
16 crime in that there's some certified stamp on it that
17 is in fact a true and accurate record of the Clerk of
18 Court of Sumter County.

19 *MR. FINNEY:* Well, and here's my objection. By
20 introducing this document, the jury will find out
21 that according to the words on the document, that he
22 pled guilty as charged to a certain violation of the
23 law rather than having been found guilty or having
24 some judgment entered against him.

25 These words are going to be different, I think,

1 than the words that the Clerk of Court would use
2 because the Clerk of Court would be asked, was he
3 convicted of a crime on a certain date, yes or no,
4 and that would be that.

5 This document goes further to say how the
6 conviction came to be because it says, pleads
7 guilty -- excuse me -- pleads guilty as charged to
8 criminal sexual conduct with a minor first degree.

9 *THE COURT:* But how does that give any facts
10 other than -- many times most -- a guilty plea
11 benefits are -- most defense lawyers say, you know,
12 at that time he pled guilty because he was guilty,
13 this time he's -- execution of constitutional rights
14 and plead not guilty.

15 *MR. FINNEY:* Well, obviously you anticipated
16 what -- the only thing I'm going to have to do. But
17 I'm just saying, I would think that the Benton case
18 goes for the -- the language of, if we're going to
19 allow you to let in this prior conviction, which by
20 legislature we have to, we're not going to let you
21 talk about it and introduce evidence of it.

22 And this is evidence of it which goes beyond the
23 Clerk of Court's testimony.

24 *THE COURT:* And I understand. I don't think
25 this is evidence of the crime other -- it's evidence

1 of official documents in the Clerk's office and not
2 any of the -- any of the facts or evidence in that
3 prior trial or any of the details of that prior
4 trial.

5 It's simply official record from the Clerk of
6 Court where he pled guilty on a particular date to a
7 particular offense and none of the facts were coming
8 in and that they were going to redact the remaining
9 part of that.

10 And certainly hopefully before it comes in, I
11 would like to see a redacted copy -- and you as
12 well -- and we can deal with that any further, but
13 I -- and if you can show me any particular language
14 in the Benton case which excludes that, I'll be
15 glad -- but I didn't think the Benton case said that.

16 And it's -- and that's the ruling most cases, by
17 not getting into details of prior convictions, simply
18 that they occurred.

19 MR. FINNEY: I thank the Court for allowing me
20 to put that on the record.

21 THE COURT: All right. Anything else?

22 MS. MAYES: Nothing further on this matter, Your
23 Honor.

24 THE COURT: Okay. Now, what about any other
25 matters?

1 when I have to go, we're going to stop. So if you
2 have to go, we are going to stop.

3 So just simply raise your hand. We'll take a
4 break, come back and continue with the evidence,
5 because your job is very important.

6 If you make a mistake, it's very hard to correct
7 that mistake. If I make a mistake, some time in the
8 future in some other place, it may get corrected.
9 But it's important for you to reach a verdict that
10 speaks the truth in this case. Madam Solicitor?

11 MS. MAYES: Yes, sir, Your Honor. May it please
12 the Court.

13 THE COURT: Yes, ma'am.

14 OPENING STATEMENT

15 MS. MAYES: Good afternoon, ladies and
16 gentlemen. My name is Suzanne Mayes, and I'm a
17 prosecuting attorney on behalf of the State. And I'm
18 here in conjunction with the Third Circuit
19 Solicitor's Office which includes Sumter County.

20 As the Judge previously instructed you, your job
21 as jurors is to listen carefully to all of the
22 testimony that you hear from the witness stand, right
23 here.

24 And as you listen to their testimony, we ask
25 that you evaluate the credibility of each one of

1 these witnesses, and that is something that really
2 only you as a juror can do.

3 No one can tell you how to evaluate the
4 credibility of a witness. It's something that you
5 know and feel inside of your heart, from your own
6 eyes and from your own ears as you hear the
7 testimony.

8 Now, we are here today because this defendant,
9 William Ricky Welch, has been arrested, charged with
10 and indicted by a grand jury for the crimes of
11 criminal sexual conduct with a minor in the first
12 degree and committing or attempting a lewd act upon a
13 child.

14 And you're going to hear some testimony in this
15 case that at times may be difficult to listen to. I
16 submit it may make you uncomfortable. It may make
17 everyone here uncomfortable.

18 But we are bringing forward this evidence and
19 what you hear because it's absolutely necessary and
20 material to the trial of this case.

21 You'll hear that who was eight
22 years old at the time, was attending a family cookout
23 at the property of her own home, and that her family
24 had invited various other family members to attend
25 the cookout. And this occurred just a few days

1 before Christmas back in 2006.

2 You will hear testimony that William Ricky Welch
3 attended the cookout at home because he had
4 been a long-term boyfriend, fiancée, a partner of
5 Aunt Lisa.

6 And Lisa is related to because Lisa is the
7 sister of daddy. So when Lisa came to the
8 cookout, she brought Mr. Welch with her.

9 You'll hear testimony that during the day some
10 of the kids went off riding four-wheelers and that on
11 one occasion Mr. Welch was with on the
12 four-wheeler.

13 And after they went off into a secluded area of
14 the woods, you will hear testimony from about
15 what happened once they were in the woods.

16 Now, the law in this case is actually quite
17 simple. And the Judge will charge you after all has
18 been heard, after all the witnesses have completed
19 their testimony, the Judge will charge you on exactly
20 what the law is as to each particular charge.

21 But when we talk about criminal sexual conduct
22 with a minor in the first degree we're talking about
23 an act of sexual battery that's committed against a
24 child.

25 And sexual battery can include several different

1 things. But it also includes any intrusion, however
2 slight, into the vaginal opening.

3 And I submit that is the crime that is alleged
4 here. We're talking about digital penetration, or
5 penetration by a finger, into the vaginal opening.
6 And that would be against a child who was under the
7 age of 16, which you will also hear testimony that
8 was. She was eight years old at the time.

9 And then finally the last element is that the
10 crime was committed by a convicted sex offender. And
11 you will also hear testimony that William Ricky Welch
12 was on that date and time already a convicted sex
13 offender.

14 The second charge before you is lewd act upon a
15 child. And that can include any kind of touching
16 with lewd intent, committed by someone over the age
17 of 14 against a child under the age of 14, and I
18 submit that that charge will be proven in all of its
19 elements beyond a reasonable doubt at the close of
20 this case.

21 We thank you for your time and attention here
22 today as I'm sure the defense counsel does as well.
23 All of us in the judicial system are grateful for
24 your time and your effort and your willingness to
25 hear testimony from witnesses in this case today.

24 In 2006 William Ricky Welch was the quote
25 unquote uncle of He was known as

1 Uncle Ricky. And you will find from the evidence
2 that he had lots of occasions to be around

3 spent the night at his house more than
4 once, more than twice, on a regular occasion. He was
5 well known because daddy and my client's
6 girlfriend, Lisa, were brother and sister. There was
7 a lot of contact.

8 What you're going to find through this evidence,
9 if you will keep your mind open and listen closely,
10 is that somebody put something in this little girl's
11 head, we believe.

12 Somebody put it there, ladies and gentlemen,
13 because on the day this supposedly happened while
14 they were riding the four-wheeler, which was I think
15 a Friday or a Saturday, the 23rd of December, two
16 days before Christmas in 2006, you will hear from the
17 evidence that even though mom and dad had
18 heard that something happened, they went to bed
19 Friday night, Saturday night. went to bed.
20 Nobody was upset. Nobody knew anything had gone out
21 of the ordinary.

22 Then something interesting happens. The next
23 day when they wake up, is reportedly having
24 problems peeing. She says that to her mom.

25 Now, the mom has already been told something's

1 going on. You will find out they went to the
2 hospital. They got checked out.

3 The only thing the doctor at the hospital did
4 the next day was to give this little girl some
5 Monistat for a yeast infection the next day.

6 Ladies and gentlemen, I am not a rookie at this.
7 I have examined this case. I have brought to your --
8 for you to hear over the next two days every piece of
9 evidence that I can bring to you to show you that
10 that man did not touch that little girl with his
11 finger riding a four-wheeler at the family reunion.

12 I don't know where the story came from. That's
13 not why we're here. We are here to see if there is
14 evidence beyond a reasonable doubt that says that
15 this story is supported by this evidence and
16 therefore you can come together, the 12 of you, and
17 use your common sense and say, yes, we believe he did
18 something wrong.

19 Because ladies and gentlemen, at the end of this
20 trial, if you have this little girl's story and you
21 have these police officers, and you're going to see
22 what they did and you're going to see what they
23 didn't do, to help us figure out why this has been
24 brought, this charge has been brought.

25 You're going to find, ladies and gentlemen, as I

1 have found, and I think the evidence is going to show
2 you, the reason we're here today is because this man
3 has a prior record. It's going to be brought to your
4 attention. It's already been brought to your
5 attention in opening argument.

6 They charged him because he has a prior record
7 and he supposedly put his finger in this little girl.
8 That is the State's case.

9 And the more you see about the lack of the
10 investigation, about what they did to rush to
11 judgment, you're going to see that that's why they
12 picked on Ricky.

13 He was there. He had the prior record. She
14 says something happened. This is what we're going to
15 do is charge him first degree criminal sexual
16 conduct.

17 Ladies and gentlemen, wait till you hear all of
18 the evidence. Wait till you hear what the record
19 actually shows, and you're going to see that in
20 this -- in the conclusion of this case, not only are
21 you going to have a reasonable doubt, which the Judge
22 is going to charge you a reasonable doubt goes in
23 favor of the defendant.

24 You cannot convict him if you have a reasonable
25 doubt in your heart or in your mind at the end of

1 this case.

2 You're going to have more than a reasonable
3 doubt. You're going to have some problems connecting
4 A to B to C in this case.

5 But they have decided that if they can get to
6 you and make you believe that because something
7 happened 10, 13, 15 years ago that it more than
8 likely happened this time, they don't have to prove
9 their case.

10 And I am going to do everything I can over the
11 next two days to make them prove their case. Not
12 from 13 years ago, but from December, 2006. It's
13 important to Ricky just like it's important to Kayla
14 to be here and to have the truth come out.

15 This is not going to be a hard case. I know
16 when you get called on the jury it's a scary feeling
17 and then the Judge tells you what kind of case you're
18 going to have, that makes it even more scared.

19 Sit back, let the lawyers do what they do, and
20 listen carefully. What you're going to hear is going
21 to prove to you that this man has been brought here
22 on suspicion, not evidence.

23 At the end of this case I'm going to ask you to
24 show, to -- to use together your common sense to show
25 that the system works when people are brave enough to

25 | A (Nodded.)

1 Q All right. And the other thing, is that if I
2 ask you a question or Mr. Finney asks you a question, and
3 we're going to need you to actually give an answer with
4 your mouth, a speaking answer, so that she can write
5 everything down because when you shake your head like that
6 or go like that, it's something that she can't hear. Is
7 that okay?

8 A Yes.

9 Q Okay. how old are you?

10 A Nine years old.

11 Q All right. And where do you go to school?

12 A Manchester Elementary School.

13 Q All right. And what grade are you in and about to
14 finish up?

15 A Third grade.

16 Q All right. And who was your teacher this past year?

17 A Ms. Barrett.

18 Q Okay. Tell me a little bit about yourself,
19 Who all do you live with in your house?

20 A I live with my dad, my mom, my sister and myself.

21 Q Okay. And you mentioned that you have a sister. Is
22 this sister older than you or younger than you?

23 A Older.

24 Q And what is her name?

25 A Nicole Hickman.

1 Q Okay. And how old is she?

2 A Fifteen.

3 Q All right. And you said that you are how old right
4 now?

5 A Nine.

6 Q Do you know the date that you were born, meaning the
7 actual year that you were born?

8 A Yes, ma'am.

9 Q Can you state what that is?

10 A .

11 Q All right. And what is your birthday?

12 A .

13 Q Okay. And what is your address here in Sumter
14 County,

15 A Pinewood, South Carolina.

16 Q Okay. Now, we talked a little bit earlier about the
17 fact that you're in third grade. I'm going to ask you
18 these questions any way, okay, even though you're already
19 finishing up the third grade. Is it good or bad to tell
20 the truth?

21 A That's good.

22 Q Okay. Is it good or bad to tell a lie?

23 A That's bad.

24 Q All right. And what happens when people tell lies
25 about something?

1 A They will get in trouble.

2 Q Okay. And if somebody comes into court and tells a
3 lie, how might they get in trouble, if you know?

4 A I'm not sure.

5 Q Okay. Who controls the courtroom, do you know that?

6 A The Judge.

7 Q Okay. And do you think the Judge would be okay or
8 not okay if somebody told a lie in the courtroom?

9 A Not okay.

10 Q Okay. And understanding those rules, can you tell
11 the truth today in the courtroom?

12 A Yes, ma'am.

13 Q Okay. And I'm going to ask you, can you testify and
14 tell the truth, and that means sit there in the witness
15 chair and answer questions truthfully?

16 A Yes, ma'am.

17 Q Okay. you mentioned before that, you know,
18 you live with your family here in Sumter County. And was
19 there ever a time that you remember your family getting
20 together for an event that was close to Christmas?

21 A Yes, ma'am.

22 Q Okay. Was it this past Christmas or another
23 Christmas? In other words, what do you remember about
24 that?

25 A I'm not sure.

1 Q Okay.

2 A Remember...

3 Q Okay. Let me ask you this. Was it this past year
4 when you were in third grade or was it before then?

5 A Probably before then.

6 Q Okay. And let me ask you who you remember being at
7 the cookout.

8 A My mom, my dad, me, my sister, Hanna, Aunt May, my
9 grandma, my grandpa, Ricky, Lisa, Alesha, and some other
10 people I can't remember.

11 Q Okay. Well, you named a whole bunch of people, so
12 I'm going to write some of those names down. Is that
13 okay?

14 A Uh-huh.

15 Q All right. All right. And the first I'm
16 going to write down is yours, okay? And you told us
17 before your sister was there. What's her name?

18 A Nicole Hickman.

19 Q All right. And your mama's name?

20 A Margaret.

21 Q Okay. And your dad's name?

22 A John.

23 Q All right. And do you have any pets at the house?

24 A Yes, ma'am.

25 Q What kind of pets do you have there?

- 1 A I have a dog and a cat.
- 2 Q Okay. And other than the people in your family, who
3 else do you remember being there?
- 4 A Alesha.
- 5 Q Okay. Let's give me time to write that down. And
6 Alesha, how are you kin to her?
- 7 A Cousins.
- 8 Q Okay. All right. Cousins. And who else?
- 9 A Lisa.
- 10 Q Okay. And Lisa, how are you kin to her?
- 11 A Aunt.
- 12 Q Okay.
- 13 A And Ricky.
- 14 Q All right. And how is it that you knew Ricky?
- 15 A Uncle.
- 16 Q Okay. And how did he get to be an uncle? How --
17 how -- who is he connected to or close to in your family?
- 18 A My -- my sister -- was my daddy's sister.
- 19 Q All right. So Lisa is your daddy's sister?
- 20 A (Nodded.)
- 21 Q Okay. And Ricky -- do you know where Ricky lived or
22 who Ricky lived with?
- 23 A He lived with Alesha and Lisa.
- 24 Q Okay. And in addition to Ricky, who else do you
25 remember being there?

- 1 A I don't remember.
- 2 Q Okay. So that's your family, your cousin Alesha,
3 Lisa, Ricky. Any other kids your age?
- 4 A No.
- 5 Q Okay.
- 6 A Well, there's Hannah.
- 7 Q Okay. Let me -- let me write that down. How is
8 Hannah related to you?
- 9 A Cousins.
- 10 Q All right. And did -- was anybody in Hannah's family
11 there?
- 12 A My Aunt May.
- 13 Q Okay. Did you say May like the month of May?
- 14 A (Shook head) Melody.
- 15 Q Okay. Melody. All right.
- 16 A There's my grandpa and my grandma.
- 17 Q Okay. Grandpa and grandma. All right. And what
18 kind of things did y'all do there at the cookout,
- 19 A We played games, rode four-wheelers.
- 20 Q Okay. And what kind of food did y'all eat?
- 21 A I can't remember.
- 22 Q Okay. I know you mentioned before that you rode a
23 four-wheeler. How many four-wheelers do you have at your
24 house?
- 25 A Two.

1 Q All right. And was that the first time you rode a
2 four-wheeler or had you ever known how to ride one before
3 then?

4 A I knew.

5 Q Okay. And about how long would you say you had been
6 riding four-wheelers? About how old were you when you
7 started riding?

8 A Probably like six.

9 Q Okay. And can you drive one yourself?

10 A Yes, ma'am.

11 Q Okay. And who taught you how to do that?

12 A My daddy.

13 Q Okay. And had you driven one yourself before that
14 day?

15 A Yes, ma'am.

16 Q Okay. I'm going to show you a picture and ask you if
17 you recognize what's shown in the picture.

18 A Yes, ma'am.

19 Q And how do you recognize that?

20 A Because we have that.

21 Q Okay. When you say, we had that, you mean it's at
22 your house?

23 A Yes, ma'am.

24 Q Okay. I'm going to take a little minute for this
25 lady to put a sticker on it, okay?

1 MS. MAYES: And this would be State's Exhibit
2 one for identification, Your Honor.

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

5 BY MS. MAYES:

6 Q you said on that day that y'all had the party
7 that you rode four-wheelers. Who do you remember riding
8 with?

9 A and Ricky.

10 Q Okay. And his name isn't on here, so I'm
11 going to add him, okay? And is older than you or
12 younger than you?

13 A Younger.

14 Q Okay. And when we say he's younger than you, how
15 would you describe him back on that -- on that day in
16 2006?

17 A Probably a friend.

18 Q Okay. So he was a friend. Is he somebody who is kin
19 to y'all or did he come with somebody?

20 A He came with somebody.

21 Q Okay. And who brought him over there?

22 A Lisa.

23 Q Okay. And another thing I want to ask you about
24 is about how old was he? Was he old enough to go to
25 school or younger than that?

1 A Younger.

2 Q Okay. Was he old enough to walk?

3 A Yes, ma'am.

4 Q Okay. You said that you went riding the four-wheeler
5 with Ricky and with Where was it that y'all went
6 riding the four-wheeler at,

7 A It's in the woods.

8 Q Okay. I'm going to show you some more pictures,
9 okay, and ask you whether or not you can tell us what's in
10 the picture. I'm going to show you that picture and ask
11 if you know what that place is.

12 A Yes, ma'am.

13 Q What is that place?

14 A That's where we were heading out going to the woods.

15 Q Okay. Going to show you this photograph and ask you
16 if you recognize it.

17 A Yes, ma'am.

18 Q Where is that place?

19 A That's still heading out going to the woods.

20 Q Okay. What about in this picture here?

21 A That's farther where we're in the woods.

22 Q Okay. And when you say farther, you mean -- do
23 you -- can you see your house in the picture?

24 A No.

25 Q Okay. All right.

1 MS. MAYES: Your Honor, this would be State's
2 Exhibits two, three and four for identification.

3 THE COURT: Okay.

4 (WHEREUPON, State's Exhibits Nos. 2, 3, 4 were
5 marked for identification only.)

6 BY MS. MAYES:

7 Q you said that y'all went out in the woods.
8 Tell me about that. And I know you've looked at some
9 pictures, too, that show the woods. Kind of describe the
10 area around the house where y'all would ride
11 four-wheelers.

12 A Well, we -- sometimes we ride in our yard and we go
13 in the woods, but mostly we go in our yard.

14 Q Okay. And if you leave the yard and go in the woods,
15 what kind of area -- how is it that you were able to drive
16 around in the woods?

17 A We -- my dad and me and my sister made paths.

18 Q Okay. So when you're talking about making a path, is
19 that a path that a four-wheeler can drive on?

20 A Yes, ma'am.

21 Q All right. And that day that you were riding with
22 Ricky and with who is younger than you, did y'all
23 stay in the yard or did you go somewhere else?

24 A Go somewhere else.

25 Q Okay. And where did y'all go to?

1 A We went in the woods.

2 Q Okay. And how -- what did you take to get into the
3 woods?

4 A He took the four-wheeler.

5 Q Okay. And the path that you talked about a little
6 while ago, did y'all go on the path?

7 A Yes, ma'am.

8 Q Okay. When you got in the woods, did you stay close
9 to the house or did you leave farther away than the house?

10 A We left farther away.

11 Q Okay. Now, when you were on the four-wheeler, did
12 anything happen? Can you tell us whether or not anything
13 happened that made you feel uncomfortable?

14 A Yes, ma'am.

15 Q Okay. And what was that?

16 A What Ricky was doing to me.

17 Q Okay. And what do you mean by that?

18 A He was touching me.

19 Q All right. Where on your body did he touch you?

20 A My lucy (phonetic).

21 Q Okay. What do you mean by that word? Where is that
22 word at on your body?

23 A My pee pee.

24 Q All right. I'm going to show you a picture, okay,
25 just to make sure we know the part that you're talking

1 about. I'm going to show you the front of a little girl
2 from the top of her head down to the bottom of her feet
3 and then the back of the little girl, the top of the head
4 down to the bottom of her feet, and ask you whether or not
5 you see on this board that I'm holding, the place on your
6 body that you're talking about when you call it your loo
7 loo (sic). Do you see that part of the body?

8 A Yes, ma'am.

9 Q Okay. I'm going to give you this marker and ask you
10 if you can draw an X or a circle or however you need to to
11 show us the part of your -- of the body that you're
12 talking about.

13 A (Complied).

14 Q Okay. And what part of his body did he use to touch
15 you there,

16 A His finger.

17 Q Okay. I'm going to show you a man from the top of
18 the head down to the bottom of the feet and the back, top
19 of the head down to the bottom of the feet, and ask you if
20 you can show us on here the place or part that you're
21 talking about that he touched you with.

22 A (Complied).

23 Q I have to ask you a few more questions about
24 that, okay? When you say that he touched that part, did
25 he touch on the outside of your clothes or the inside of

1 your clothes?

2 A The inside.

3 Q Okay. And were you wearing underpants that day?

4 A Yes, ma'am.

5 Q Okay. And what else were you wearing, if you recall?

6 A I was wearing a skirt.

7 Q Okay. And how was it or how was it that he touched
8 you there?

9 A He went into my skirt and in my underwear.

10 Q Okay. When he went into your underwear that you just
11 told us about, do you know whether he touched only on the
12 outside or on the inside of your private?

13 A The inside.

14 Q And how do you know that he touched you on the
15 inside?

16 A Because I felt it.

17 Q Okay. I'm going to ask you a few more questions
18 about that. You said you felt it touch on the inside.
19 What did that feel like if you recall?

20 A Pain.

21 Q Okay. Were y'all on the four-wheeler or were you
22 somewhere else when it happened?

23 A We were on the four-wheeler.

24 Q Okay. And I know you mentioned that had been
25 with y'all. Was with you when that happened, too?

1 A Yes, ma'am.

2 Q Okay. I'm going to show you this picture of the
3 four-wheeler. Okay. I'm going to ask you what you
4 remember about who was sitting where.

5 A First Ricky was sitting there and -- was
6 right there and I was right there, and then -- then we
7 switched and I was right there and was right there
8 and Ricky was right there.

9 Q Okay. I need you to keep your voice up just a little
10 bit so that the Court Reporter can write it down. But if
11 I understood you correctly, there was a time when y'all
12 switched?

13 A Yes, ma'am.

14 Q Okay. And when y'all switched, did you go back to
15 the house to switch or were you still out in the woods?

16 A We were still out in the woods.

17 Q Okay. And you said that when you switched, you were
18 where?

19 A Well, first we went to the woods and then Ricky was
20 in the front, and then we came back and I was -- sat -- I
21 sat in the front.

22 Q Okay. So at first Ricky was in the front, and then
23 later you were in the front. Is that right?

24 A Yes, ma'am.

25 Q Okay. When Ricky was in the front, who was driving?

1 A He was.

2 Q Okay. And what about when you were in the front?

3 A I was.

4 Q Okay. And had you ever driven one of those
5 four-wheelers before that day?

6 A Yes, ma'am.

7 Q Okay. What did you think about what happened,
8 Did you think that it was an okay touch or not an okay
9 touch?

10 A Not an okay touch.

11 Q Okay. Did Ricky say anything to you about whether or
12 not it was okay to tell?

13 A (Nodded.)

14 MR. FINNEY: Objection. Leading.

15 THE WITNESS: Yes, ma'am.

16 MS. MAYES: Whether or not. I can rephrase
17 that.

18 THE COURT: Okay.

19 BY MS. MAYES:

20 Q Did he say anything to you?

21 A Yes, ma'am.

22 Q What did he say?

23 A He said, you promise not to tell. But I didn't. I
24 said, yes, but I didn't.

25 Q Okay. So let me back up a little bit to make sure I

1 understand. He asked you to promise not to tell?

2 A Yes, ma'am.

3 Q Okay. And what did you say to him?

4 A I said, yes, but I didn't.

5 Q Okay. So you told him, yes, that you would promise
6 not to tell, but --

7 A Yes, ma'am.

8 Q -- did you mean that promise?

9 A No, ma'am.

10 Q Okay. And did you think that you should or shouldn't
11 tell somebody?

12 A I shouldn't.

13 Q Okay.

14 A Well, I should.

15 Q Okay. All right. And who is the first person that
16 you remember telling?

17 A Hannah.

18 Q Okay. And I think we wrote her name down because
19 she's your cousin?

20 A Yes, ma'am.

21 Q And how old is she,

22 A Ten.

23 Q She's a little bit older than you?

24 A Yes, ma'am.

25 Q And when was it -- maybe not exactly, but

1 approximately when was it that you had the chance to tell
2 Hannah?

3 A When Ricky went back up to the house and I went with
4 Hannah.

5 Q Okay. I'm going to ask you about that also. After
6 that happened in the woods, where did y'all go next?

7 A When we were heading home, then they came out, and I
8 went in with Hannah.

9 Q Okay. So you said that y'all were heading home. And
10 by that you mean coming on the path back to your house?

11 A Yes, ma'am.

12 Q So you were coming like through the woods like back
13 to the house?

14 A Yes, ma'am.

15 Q And then when you got back to the house you said you
16 and Hannah went where?

17 A We were -- we -- she was about to go in the woods,
18 but then I told her, and we went back.

19 Q Okay. All right. Do you remember where it was you
20 think you were when you told Hannah?

21 A Yes, ma'am.

22 Q Where?

23 A We were where -- we were like at -- about to go
24 and -- to the back house, back to the house, but we were
25 almost over, but we weren't really there.

1 Q Okay. So you were outside somewhere when you told
2 Hannah?

3 A Yeah.

4 Q Okay. And what was it that made you decide to tell
5 your cousin Hannah?

6 A Because she was the only one that was coming out.

7 Q Okay. And how did you feel about telling her about
8 what happened?

9 A I was kind of nervous but I was kind of not.

10 Q Okay. And when you told Hannah, was anybody else
11 around or just her?

12 A Just her.

13 Q And where was it y'all were next you think?

14 A We went -- we went home, but -- but when Ricky left,
15 she told her mom, and her mama told my mama and my mama
16 told my daddy.

17 Q Okay. And that was a whole lot of information, so
18 I'm going to have to back you up if you don't mind so we
19 can talk a little bit more about some of that. Okay? You
20 said that when Ricky left, that's when Hannah told
21 somebody. Is that right?

22 A Yes, ma'am.

23 Q Okay. So when you got back to the house and told
24 Hannah, was Ricky still on the -- like at your house on
25 the property or had he left already?

- 1 A I think he left.
- 2 Q Okay. What about when you finally told your mom that
3 you just told us about, was Ricky there or not there?
- 4 A Not there.
- 5 Q Okay. And how did you feel about telling somebody
6 while Ricky was there?
- 7 A I was kind of -- I was kind of nervous.
- 8 Q Okay. And why is that?
- 9 A Because I didn't want them to get in a fight.
- 10 Q Okay. So after Ricky left, you talked to your mom
11 about it?
- 12 A Yes, ma'am.
- 13 Q Now, did you tell your mom on your own or did your
14 mom ask you?
- 15 A My mom asked me because she knew about it, and then I
16 told her the story.
- 17 Q Okay. And you said your mom knew about it. When she
18 found out from somebody that Hannah told?
- 19 A Yes, ma'am.
- 20 Q All right. How did you feel about telling your mom,
21 Kayla?
- 22 A I felt kind of nervous but I really wasn't.
- 23 Q Okay. Did you think it was right or not right to
24 tell?
- 25 A I thought it was right.

1 Q Okay. And after you told your mom, did y'all go to
2 the hospital or see a doctor that day or did you wait a
3 little?

4 A The same day she got a doctor -- the doctor's excuse
5 for schedule, and then the next day we went.

6 Q Okay. And when you say, the next day we went, where
7 was it y'all went?

8 A To the hospital.

9 Q Okay. And when you say, the hospital, do you mean
10 like the big hospital over here on -- Tuomey?

11 A Yes, ma'am.

12 Q Okay. And with you only being eight, is that a trip
13 that you remember, having to go to the hospital?

14 A Yes, ma'am.

15 Q Okay. What -- what if anything, do you
16 remember about why you -- you needed to go to the
17 hospital?

18 A Because when I found out what -- how -- I had to
19 because -- well, because when Ricky--

20 Q Let me ask you -- let me ask you like this. When
21 y'all got back to the house and then you had that night on
22 into the next morning, was there anything that didn't feel
23 right about your body or about...

24 A Yes, ma'am.

25 Q What is that that you remember?

1 A It started hurting.

2 Q Okay. Since that time, has Ricky been back over to
3 your house and visited or was that the last time?

4 A That was the last time.

5 Q Okay. And before that happened, were you --
6 did you and Ricky get along okay or not okay or what?

7 A Until then, no.

8 Q Okay. And what do you mean by that?

9 A Because what he did to me, I don't like it, so, no.

10 Q Okay. So did that change how you felt about him?

11 A Uh-huh.

12 Q I also have to ask you, do you see Ricky in
13 the courtroom?

14 A Yes, ma'am.

15 Q Okay. And where is he at in the courtroom?

16 A He's on the left.

17 Q Okay. Okay. And do you know what color shirt he's
18 wearing?

19 A White.

20 Q Okay.

21 MS. MAYES: Your Honor, at this time the State
22 would offer exhibits -- we would offer both of these
23 into evidence at this time having been identified by
24

25 THE COURT: Okay. What says the defense?

1 MR. FINNEY: No objection.

2 THE COURT: Okay.

3 (WHEREUPON, State's Exhibits 5, 6 were admitted
4 into evidence.)

5 THE COURT: That will be five and six without
6 objection.

7 MS. MAYES: Beg the Court's indulgence.

8 (Whereupon there was a pause.)

9 BY MS. MAYES:

10 Q I'm going to also show you another picture,
11 and ask you if you recognize what's in that picture.

12 A Yes, ma'am.

13 Q What is shown in that picture?

14 A That's when we were in the woods.

15 Q Okay.

16 MS. MAYES: This would be State's Exhibit seven
17 I believe for identification at this time.

18 THE COURT: Okay.

19 (WHEREUPON, State's Exhibit No. 7 was marked for
20 identification only.)

21 MS. MAYES: Nothing further from the witness at
22 this time, Your Honor.

23 THE COURT: Okay. Mr. Finney?

24 MR. FINNEY: Thank you. May it please the
25 Court.

CROSS-EXAMINATION

BY MR. FINNEY:

Q my name is Chip Finney, and I'm a lawyer for
Ricky Welch. Have I ever met you before?

A No. No, sir.

Q No. Can I get you some water? Would you like a cup
of water?

A No, sir.

Q All right. I want to ask you some questions, please
ma'am, because I'm Uncle Ricky's lawyer and I'm here to
try to get the jury to understand what's going on in this
case. Have you ever been to this courtroom before?

A Yes, sir.

Q When were you here last?

A I think it was like Friday.

Q Friday you came up here? And did you meet with Ms.
Mayes?

A Yes, sir.

Q And Mrs. Gwen?

A Yes, sir.

Q And did you sit in the witness chair like that?

A Yes, sir.

Q And they told you how it was going to be when we got
here today and the jury was here, and they kind of showed
you how it felt to be in court?

1 A Yes, sir.

2 Q Okay. That's good. And that was Friday?

3 A Yes, sir.

4 Q All right. Now, you told the ladies and gentlemen of

5 the jury that Uncle Ricky and Lisa lived together with

6 Alesha?

7 A Yes, sir.

8 Q And did you see Alesha today?

9 A Yes, sir.

10 Q About how old is she, if you -- if you know?

11 A I think 17.

12 Q Seventeen. So she's a teenager?

13 A Yes, sir.

14 Q All right. And Alesha is your Aunt Lisa's daughter;

15 is that right?

16 A Yes, sir.

17 Q Okay. Now, Aunt Lisa was at the party, right, and

18 Ricky was at the party?

19 A Yes.

20 Q And Alesha was at the party?

21 A Yes.

22 Q And Hannah was at the party?

23 A Uh-huh.

24 Q And was at the party?

25 A Yes, sir.

1 Q And a lot of other people?

2 A Yes, sir.

3 Q Okay. Now, had Ricky and Lisa, his girlfriend, had

4 they been to your house before in Pinewood?

5 A Yes, sir.

6 Q Have you ever ridden on the four-wheelers before with

7 Ricky?

8 A Yeah, I think. I'm not sure.

9 Q You're not sure? Okay. You think so?

10 A Yes, sir.

11 Q Well, give it a thought. Maybe nobody ever asked you

12 that question. I know we have to talk about things that

13 happened two years ago. So just think a minute and think

14 about it. Have you ever been on the four-wheeler with

15 Uncle Ricky or Lisa?

16 A I have been on the four-wheeler with Ricky.

17 Q With Ricky? This Ricky right here?

18 A Yes, sir.

19 Q Okay. Now, isn't it true that you have been to Uncle

20 Ricky and Lisa's house --

21 A Yes, sir.

22 Q -- and spent the weekend?

23 A Yes, sir.

24 Q And did Nicole, your sister, go with you?

25 A I believe so.

1 Q And did you all do fun things over there on the
2 weekend like play games or watch video games?

3 A Yes, sir.

4 Q Okay. And did you like going to Uncle Ricky's?

5 A Yes, sir, at that time.

6 Q And your mom and dad, they -- they thought it was
7 okay for you to go, too; right?

8 A Yes, sir.

9 Q How many times would you say you have been to Ricky
10 and Lisa's house before you went to this -- they had this
11 Christmas party?

12 A Roughly twice.

13 Q Twice? Okay. Could it have been more?

14 A Probably.

15 Q Okay. And you would go and Nicole would go?

16 A Yes, sir.

17 Q And Alesha would be there; right?

18 A Yes, sir.

19 Q It was fun to go and visit Alesha at her house?

20 A Yes, sir.

21 Q What room would you sleep in when you went to
22 Alesha's house?

23 A Probably hers.

24 Q Do you remember?

25 A Yes, sir.

1 Q Which room would you sleep in?

2 A I would probably sleeping in hers --

3 Q Uh-huh.

4 A -- or go in the visitor's room.

5 Q The visitor's room? So they had a visitor's room and
6 then they had Alesha's room, and you could sleep in either
7 one?

8 A Yes, sir.

9 Q Okay. Now, did you have fun when you went over
10 there?

11 A Yes.

12 Q Okay. And you looked forward to going back some
13 time, I guess?

14 A Yes.

15 Q Now, Uncle Ricky and Lisa, they came to your house a
16 good bit also.

17 A Yes, sir.

18 Q They would come over and visit?

19 A Yes, sir.

20 Q Now, this was a Christmas party, wasn't it, when all
21 these people were out at your house eating and riding the
22 four-wheelers, this was right before Christmas?

23 A Yes.

24 Q Okay. Did you also have other kinds of parties? Did
25 you have a birthday party at your house?

1 A Yes, sir.

2 Q Did Uncle Ricky and Alesha and Lisa come to the
3 party?

4 A I think.

5 Q Okay. So you had a lot of -- did Uncle Ricky ever --
6 and Aunt Lisa ever buy you birthday presents?

7 A I believe so.

8 Q Okay. Can you remember what kinds? What they got
9 you for your birthday?

10 A No.

11 Q Can't remember that. Can you tell me what you had on
12 the day of this party?

13 A A skirt.

14 Q What kind of skirt?

15 A It's a blue skirt. It's a skirt that goes down to
16 your knees.

17 Q Down to your knees? Can you stand up and let the
18 jury see what you have on today? You have on a pretty
19 brown dress today with flowers on it. The skirt that you
20 had on that day, was it that long or longer?

21 A It was probably the same length as this.

22 Q About the same length? Okay. So you had on a skirt.
23 What kind of top did you have on?

24 A I can't remember that.

25 Q All right. And did you have on shoes or boots or

1 sandals, flip flops?

2 A I think I probably had on sandals.

3 Q Sandals? And did you have on a jacket? I mean, it
4 was December 23rd. Did you -- was it cool or warm?

5 A I think it's in the middle.

6 Q In the middle? Okay. So you were riding the
7 four-wheelers that day.

8 A Yes, sir.

9 Q And you told everybody here that you knew how to ride
10 it -- that four-wheeler by yourself.

11 A Yes, sir.

12 Q Did you know how to crank it up or did your dad have
13 to come and crank it up?

14 A Sometimes he had to.

15 Q This -- this one right here. Did you have to put a
16 key in it?

17 A Yes, sir.

18 Q Now, you said to the ladies and gentlemen of the jury
19 that you all had two four-wheelers.

20 A Yes, sir.

21 Q Is this the biggest one?

22 A Yes, sir.

23 Q What does the other one look like?

24 A It -- it was yellow and black, but now I got a new
25 one.

- 1 Q Got a new one now? What color is it?
- 2 A Red.
- 3 Q Red. And is that yours?
- 4 A Yes, sir.
- 5 Q Okay. So now, whose four-wheeler was that one?
- 6 A My dad's.
- 7 Q Okay. So when you all went riding that day of the
- 8 party where everybody was at your house, how many times
- 9 did you and Uncle Ricky get on the four-wheeler and go
- 10 around the trail?
- 11 A Probably twice.
- 12 Q You think it was twice? Okay. And did he drive from
- 13 the house out into the field both times?
- 14 A No.
- 15 Q No? How did it work?
- 16 A He -- he drove first and then I drove the second
- 17 time.
- 18 Q Okay. So when he drove first, did you ask him could
- 19 you ride?
- 20 A No.
- 21 Q How did you get on the bike?
- 22 A We -- we were at home. We were about to go ride.
- 23 And then we -- we did. And then when we came back out, I
- 24 hopped on because we ate then and then I got on.
- 25 Q That was the second time, wasn't it, after you ate?

- 1 A Yes, sir.
- 2 Q But how about the first time?
- 3 A He got on first.
- 4 Q And then who got on after that?
- 5 A I did.
- 6 Q And who else was on the bike?
- 7 A
- 8 Q Baby Now, did baby have on a -- was he
- 9 a baby that you could put a diaper on or was he like a big
- 10 boy that just...
- 11 A He could walk.
- 12 Q He could walk, but he was a baby. Could he talk?
- 13 A I think.
- 14 Q Not sure?
- 15 A No.
- 16 Q Okay. So Uncle Ricky was riding; right?
- 17 A Yes, sir.
- 18 Q And he was driving. He had his hands on the handle
- 19 bars?
- 20 A Yes, sir.
- 21 Q So he was in the front?
- 22 A Yes, sir.
- 23 Q And then where was baby
- 24 A He was in the middle.
- 25 Q In the middle?

- 1 A Yes, sir.
- 2 Q Behind Uncle Ricky?
- 3 A Yes, sir.
- 4 Q What was baby holding on to?
- 5 A I think he was holding on to Ricky.
- 6 Q To Ricky. And then you were on the very back behind
- 7 baby
- 8 A Yes, sir.
- 9 Q What were you holding on to?
- 10 A I was holding on to the bars.
- 11 Q What bars?
- 12 A The bars right there.
- 13 Q So you had your hands behind you like that?
- 14 A Yes, sir.
- 15 Q Okay. And that's how you rode the four-wheeler
- 16 through the woods like that?
- 17 A Yes, sir.
- 18 Q Okay. Now, on the other four-wheeler that you had,
- 19 which was -- you told me it was yellow?
- 20 A And black.
- 21 Q And black. Who was riding on the yellow and black
- 22 one?
- 23 A I can't remember.
- 24 Q Wasn't Alesha riding on the yellow and black
- 25 four-wheeler?

1 A I think.

2 Q And wasn't Hannah on the back of that four-wheeler?

3 A There's only supposed to be one, but sometimes we
4 ride two.

5 Q Okay. Well, have you ever told -- did anybody --
6 when they started asking you questions about what happened
7 that day, did anybody ever ask you about the other
8 four-wheeler and who was on it?

9 A No.

10 Q But wasn't Alesha and Hannah riding on the trail with
11 you and Uncle Ricky?

12 A I think. I'm not sure.

13 Q But you've never told anybody that; have you?

14 A (Shook head.)

15 Q Have you?

16 A I never knew who was on the -- that four-wheeler.

17 Q Well, it was your four-wheeler; right? Got to talk.

18 A Yes.

19 Q Okay. Now just think. I want you to remember back.
20 Everybody was at your house. Everybody was having a good
21 time. You and Uncle Ricky and baby were on the big
22 four-wheeler.

23 A Yes.

24 Q Isn't it true that Hannah and Alesha were on the
25 other four-wheeler going down the trail with you and Uncle

1 Ricky?

2 A Probably, yes.

3 Q All right. And every time you went out on the trail
4 and took the trail ride with Uncle Ricky -- two times you
5 say -- Hannah and Alesha were on the other four-wheeler
6 and they were right with you guys, weren't they, either in
7 front of you or behind you or beside you?

8 A Yes.

9 Q Tell these ladies -- these ladies and gentlemen have
10 never been to Pinewood to your house. Is that trail a
11 wide trail through the woods where you can have two
12 four-wheelers --

13 A Yes.

14 Q -- going side by side?

15 A Yes.

16 Q Okay.

17 A You can go like in different ways.

18 Q Different ways. Is it like two trails?

19 A Yeah.

20 Q It's like a short trail and then you have a long
21 trail?

22 A Yes.

23 Q All right. Can you go fast on the trail?

24 A You're not supposed to, but you can.

25 Q Why aren't you supposed to go fast?

1 A Because if you don't know how to ride the
2 four-wheeler, at -- you can wreck.

3 Q Okay. It's kind of bumpy out there; isn't it?

4 A Yes.

5 Q And if you go too fast, you can turn over or you can
6 fall off; can't you?

7 A Yes.

8 Q Now, did you have on a helmet?

9 A I think probably, yes.

10 Q You think so?

11 A Yeah.

12 Q All right. How about baby

13 A No.

14 Q How about Uncle Ricky?

15 A No.

16 Q How about Alesha?

17 A I don't know.

18 Q How about Hannah?

19 A No.

20 Q Okay. Now, you never told anybody that asked you
21 about this case that you put on a helmet; did you?

22 A No.

23 Q Okay. Can you remember whether you had on one or
24 not?

25 A No, probably not.

1 Q Probably not. So you were just out there riding?

2 A Yeah.

3 Q Was Uncle Ricky driving fast and reckless out there?

4 A No.

5 Q He was being careful?

6 A I think he -- sometimes he was.

7 Q Sometimes he was? What about other times? Did he
8 drive too fast sometimes?

9 A I think.

10 Q So did you feel scared?

11 A Not really.

12 Q Okay. Did you like to go fast?

13 A No.

14 Q Okay. Now, after you went out on the trail, did you
15 ever stop on the trail?

16 A In case something happened, yeah.

17 Q Did -- what I'm asking you is, do you remember the
18 day of the party when everybody was at your house and you
19 all were riding the four-wheelers. You said it was Ricky
20 and baby and you on one and maybe Alesha and Hannah
21 on the other.

22 A Yes.

23 Q Did you and Uncle Ricky, while you were taking your
24 drive, did you ever stop out there on the trail?

25 A Probably not.

1 Q Well, I need for you to know because this is real
2 important. If you didn't stop, that means you drove out
3 from the house, went around the trail and came back to the
4 house and stopped.

5 A Yeah.

6 Q Is that what happened?

7 A Yes, sir.

8 Q Did you ever stop on the bike?

9 A No.

10 Q Did you ever tell anybody that you stopped on the
11 bike so that Uncle Ricky could move baby from the
12 front to the back?

13 A No.

14 Q You never said that?

15 A We stopped at the house.

16 Q Okay. So you stopped at the house --

17 A Yeah.

18 Q -- at the end of the ride.

19 A Yes.

20 Q But while you were out there in the field, you kept
21 riding. You didn't stop?

22 A No. We stopped when -- when I switched off with
23 Hannah.

24 Q So Hannah was on the bike?

25 A Yeah.

1 Q And you switched with Hannah?

2 A Yes.

3 Q So did you get off the little bike and get on the big
4 bike?

5 A I got off the big bike and got on the little one.

6 Q And was -- who was driving the big bike when you got
7 off?

8 A I think I was.

9 Q Okay. Well, if you got off, who drove the bike?

10 A Ricky.

11 Q So how did -- was this at the house or was this out
12 in the woods?

13 A It was -- this was like almost to the house.

14 Q Almost to the house. So Ricky got on the big bike?

15 A Yes.

16 Q Where was he before he got on the big bike?

17 A He was -- he was on the big bike, but I was driving
18 and baby was on the -- in the middle, and he was on
19 the back. And then I -- when I got off to get Hannah, he
20 drove in front.

21 Q So Hannah was with you when you got off the big bike?

22 A Yeah.

23 Q And do you ever remember going out into the woods on
24 the trail with Uncle Ricky when Hannah wasn't there?

25 A Yes. She -- we were -- me and -- were on

- 1 the four-wheeler about to go home, but--
- 2 Q Hold on, now. I just want to make sure. You and
- 3 baby were on the four-wheelers?
- 4 A Yes.
- 5 Q Was anybody else on it?
- 6 A Yes.
- 7 Q Who?
- 8 A Ricky.
- 9 Q Okay. So the three of you were on the four-wheeler?
- 10 A Yes.
- 11 Q Okay. And you were going to tell me...
- 12 A And then Hannah and -- Hannah came out, and I think
- 13 she was trying to look for us. And so when she got there,
- 14 I -- I hopped on with her and told her because she -- she
- 15 was about to go in the bike ride, but then she turned
- 16 around.
- 17 Q Okay. She was about to go on the bike -- on the
- 18 little bike?
- 19 A Yes.
- 20 Q Out on the trail?
- 21 A Yes.
- 22 Q And you and Uncle Ricky and had just come off
- 23 the trail. Y'all were back at the house?
- 24 A Yes.
- 25 Q So you got off the bike with Uncle Ricky, the big

- 1 bike there --
- 2 A Yes.
- 3 Q -- you got on the little bike with Hannah?
- 4 A Yes.
- 5 Q And then you and Hannah rode?
- 6 A Yes.
- 7 Q Now, when you and Hannah went riding...
- 8 A We rode back home.
- 9 Q Is this after you say Uncle Ricky touched you?
- 10 A Yes.
- 11 Q Well now, you say you were out on the road on the
- 12 trail.
- 13 A Yes.
- 14 Q Uncle Ricky touched you.
- 15 A Yes.
- 16 Q And baby was on the bike when this happened.
- 17 A Yes.
- 18 Q Where was baby
- 19 A He was in the middle.
- 20 Q So Uncle Ricky was in the front, like I am, baby
- 21 was behind him, and you were on the back?
- 22 A Yes.
- 23 Q And Uncle Ricky touched you and it hurt?
- 24 A Yes.
- 25 Q Then you rode with Uncle Ricky home and you got off

1 the bike?

2 A Yes.

3 Q Then you got on the bike with Hannah.

4 A No. We -- when we were -- when he was riding, we --
5 we were going home and then -- we were riding home, and
6 then while we got home, we got off and ate. And then we
7 came back and I was driving first. And then we came home,
8 I was still driving first. And then Hannah came out and I
9 hopped on with her.

10 Q So you're saying that you went out for one ride with
11 Uncle Ricky and he touched you.

12 A Yes.

13 Q Then you came home and you sat down and ate.

14 A Yes.

15 Q When everybody ate together, Margaret, John,
16 Alesha -- everybody ate together; didn't they?

17 A Yes.

18 Q Because nobody was riding the four-wheelers; is that
19 right?

20 A No.

21 Q Then everybody ate. And then after everybody ate,
22 some of the kids wanted to ride some more.

23 A Yes.

24 Q Did you go back out with Uncle Ricky again?

25 A Yes. And then he touched me and then I got off and

1 got on with Hannah.

2 Q Okay. How many times did he touch you?

3 A Twice.

4 Q He touched you the first time you went out.

5 A Yes.

6 Q And the second time you went out?

7 A Yes.

8 Q And then you -- even though you were hurting, you got
9 on the bike with Hannah and rode with her?

10 A Yeah --

11 Q And then--

12 A -- we rode back home.

13 Q Pardon me?

14 A We rode back home.

15 Q Rode back home. Well, you started off at home;
16 didn't you?

17 A Yeah, she started off at home and then I told her and
18 then we turned around to go back home.

19 Q Okay. So you told Hannah after you rode two times
20 with Uncle Ricky?

21 A Yes.

22 Q You got back on the bike with her and y'all rode out?

23 A Yes.

24 Q And on the way back in from the ride is when you told
25 Hannah --

1 A Yeah.

2 Q -- that Uncle Ricky had touched you?

3 A Uh-huh.

4 Q Okay. Now, do you remember whether Uncle Ricky was
5 home at your house, still at the party, when you told
6 Hannah?

7 A No.

8 Q He was gone?

9 A Well, when I told Hannah, Ricky left and went -- when
10 he left, she told her Aunt May, and then her -- my Aunt
11 May told my mama.

12 Q So Hannah didn't tell your mama. Hannah told her
13 mother.

14 A Uh-huh.

15 Q And her mother, who is Aunt May, told your mother?

16 A Yes.

17 Q Okay. Now, listen to me carefully because I need to
18 know this. When you told Hannah you were coming back in
19 from a ride on the bike --

20 A Yes.

21 Q -- were you on the big bike or the little bike?

22 A Well, when I told Hannah, I was on the little bike.

23 Q Okay. And you got off the bike?

24 A Yes.

25 Q She got off the bike?

1 A Yes.

2 Q Did she go and tell her mom then or did she wait a
3 while?

4 A Well, she -- I think she wait a while until Ricky
5 left.

6 Q Okay. Do you remember saying goodbye to Ricky and
7 Lisa and Alesha that day?

8 A No.

9 Q You don't remember saying goodbye to them?

10 A No.

11 Q What were you doing?

12 A I think I was playing.

13 Q Okay. So you were playing. You don't remember
14 saying goodbye to them and seeing them leave, but you
15 think you found out they left?

16 A Yeah.

17 Q And then at some point did Hannah's mom, Aunt May,
18 come and talk to you about what you told Hannah --

19 A No.

20 Q -- or did your mom come talk to you?

21 A Hannah told her mom and then -- when I found out her
22 mom told my mom, and my mama, I was going -- and she was
23 cooking for supper because that's when we had lunch. But
24 my mom said, what happened, and I told her the story --

25 Q Okay.

- 1 A -- and she already knew.
- 2 Q And you told her that Uncle Ricky had touched you
- 3 twice?
- 4 A Yes.
- 5 Q Okay. And what did your mom do?
- 6 A She told my daddy and then made a doctor's
- 7 appointment.
- 8 Q Made a doctor's appointment?
- 9 A (Nodded.)
- 10 Q And did you go to the doctor that night?
- 11 A Not that night.
- 12 Q You didn't go to the hospital?
- 13 A The next morning I went to the hospital.
- 14 Q Okay. Did anybody come to your house that night like
- 15 Ms. Gwen or a police officer or anything like that?
- 16 A No, sir.
- 17 Q So you went on to bed that night?
- 18 A Yes.
- 19 Q And when you woke up the next morning, they got you
- 20 dressed and took you to the hospital?
- 21 A Yes.
- 22 Q Okay. Now, what were you -- how were you feeling
- 23 that night when you went to bed -- and you slept at your
- 24 house that night?
- 25 A Yes.

1 Q Slept in your bed?

2 A Yes.

3 Q Do you and Nicole have a room together?

4 A No.

5 Q Okay. So how did you -- you went to sleep and slept
6 okay?

7 A Yes.

8 Q Okay. And then the next morning you got up and went
9 to the hospital.

10 A Yes.

11 Q Okay. When you got to the hospital, you talked to
12 Ms. Gwen?

13 A I think, yeah.

14 Q You remember Ms. Gwen?

15 A Yes.

16 Q She's not in court right now. But after you talked
17 to Ms. Gwen, you had to -- to --

18 JUROR: Can I be excused for a minute?

19 THE COURT: Yes, sir.

20 JUROR: Appreciate it.

21 THE COURT: Go right ahead. Anybody else need
22 to take a break?

23 (Juror left the courtroom.)

24 (Whereupon there was a pause.)

25 (Juror entered the courtroom.)

1 BY MR. FINNEY:

2 Q Hannah, did you go to the hospital the next day?

3 A Yes.

4 Q And the doctor checked you out?

5 A Yes.

6 Q Okay. And did the doctor do -- what did the doctor
7 give you or tell you to do?

8 A Well, they took pictures and they saw the scratch and
9 then they took me to a medical center and they gave me
10 some medicine.

11 Q Okay. Did they give you medicine the day that you
12 went to the hospital?

13 A I think probably, yes.

14 Q Okay. And did you use the medicine?

15 A Well, they put it on me.

16 Q So did you use it, made -- made you feel better?

17 A Yes, but it --

18 Q Okay.

19 A -- but it really burned.

20 Q Okay. And then you went -- did you have to go see a
21 lady? Do you remember a lady named Kathy Saunders?

22 A No.

23 Q Don't remember her?

24 A Huh-uh.

25 Q Okay. And then later on, long time, six months later

1 in June, six months after you went to the hospital you had
2 to go to Ms. Gwen's office and sit down and talk with her
3 about the case again. Do you remember that?

4 A Yes.

5 Q And at that time I think she showed you some dolls.
6 Do you remember playing with the dolls one day?

7 A Yes.

8 Q And during that talk she told you that you were on
9 camera?

10 A Yes.

11 Q And you talked with her about what happened?

12 A Yes.

13 Q Did you ever tell Ms. Gwen or your mom or anybody
14 what happened to baby while you were on the bike and
15 while Uncle Ricky -- you say he was touching you? Tell
16 the ladies and gentlemen of the jury what happened to baby
17 while Uncle Ricky was supposedly touching you.

18 A I don't remember.

19 Q Do you ever remember telling somebody that Uncle
20 Ricky put baby on the ground?

21 A No.

22 Q Don't remember that? Okay. It's important for me to
23 know whether or not you remember everything that you say
24 or whether or not somebody suggested it to you. Do you
25 know what suggested means?

1 Suggested means if I tell you something I think it's
2 a good idea and you go along with it because you want to
3 make me happy or you want to make me feel good, so you go
4 along with what I suggest.

5 What happened to baby while Uncle Ricky was
6 supposedly touching you on the bike?

7 A Well, when we were still going when he touched me,
8 and he -- he was still riding. But baby was about
9 to go to sleep.

10 Q Okay. So Uncle Ricky was holding the handlebars
11 driving the bike. Baby was behind him --

12 A Uh-huh.

13 Q -- going to sleep?

14 A Yes.

15 Q And you were behind baby

16 A Yes.

17 Q And you say Uncle Ricky reached back around baby
18 and touched you?

19 A Yes.

20 Q While the bike was going?

21 A Yes.

22 Q And then he kept on driving and drove on back home?

23 A Yes.

24 Q What happened when you got home that -- that time?

25 Did Uncle Ricky take baby off the bike or did you

1 take baby off the bike?

2 A I didn't -- I don't remember.

3 Q You don't remember what happened to baby

4 After you ate dinner and everybody ate, you said you went

5 and got back on the bike with Uncle Ricky again.

6 A Yeah.

7 Q And he was driving.

8 A Yes.

9 Q Was baby on the bike the second time?

10 A I don't think, probably not.

11 Q You're not sure?

12 A No.

13 Q Do you remember ever telling anybody -- anybody that

14 baby was on the bike?

15 A Yes.

16 Q So it's hard for you to remember?

17 A It is hard for me to remember who took baby

18 off.

19 Q But every time you and Uncle Ricky were on the bike

20 riding in the trail, baby was on the bike?

21 A Yes.

22 Q Sometimes he was in the front, sometimes he was in

23 the back?

24 A I think the second time he -- he was on -- I think

25 that was his second time.

1 Q And the bike was always moving; wasn't it?

2 A Yes.

3 Q And the bike never stopped out there in the field for
4 him to take you and pull your pants down and put his
5 finger in you.

6 A No.

7 Q But you told Ms. Gwen that one time; didn't you?

8 A Yes, but he didn't stop.

9 Q But it didn't happen like that; did it?

10 A No.

11 Q Sometimes you have said things because you thought
12 the adults wanted to hear that and so you told them what
13 they wanted to hear? Yes?

14 A I guess.

15 Q Okay. When you got back to the house after you went
16 out on your ride the first time, was that the first time
17 you went out on the bike, was that the time that baby
18 was going to sleep?

19 A No.

20 Q That was the second time?

21 A Yes.

22 Q All right. So the first time you went out on the
23 bike Uncle Ricky was driving, baby was on, and you
24 were on the back, and y'all didn't stop on the trail and
25 you came back, but you say that Uncle Ricky reached back

1 there and touched you while the bike was moving.

2 A Yes.

3 Q When you got off the bike you told this lady that
4 you -- it felt like pain. Remember saying that a few
5 minutes ago?

6 A Yes.

7 Q Did you ever describe it as feeling like glass?

8 A No.

9 Q You never said that?

10 A No.

11 Q Okay. Now listen, if it hurt so much what Uncle
12 Ricky did, why did you get back on the bike again and ride
13 with him?

14 A I don't know.

15 Q Do you know why you got back on the bike with Hannah
16 and rode with her?

17 A Yes.

18 Q Why?

19 A So I could tell her what he did.

20 Q Okay. When you got off the bike the first time
21 before you ate, why didn't you go and tell your mom and
22 dad?

23 A I'm not sure.

24 Q Okay. After you woke up the next morning, you went
25 to the hospital?

1 A Yes.

2 Q You had to tell people that you never met before what
3 you had told your mom and dad; isn't that right?

4 A Yes.

5 Q And they asked you questions?

6 A Yes.

7 Q And you did your best to answer those questions?

8 A Yes.

9 Q And then couple of days later you had to go see a
10 lady doctor and have a medical exam.

11 A Yes.

12 Q And she asked you more questions.

13 A Yes.

14 Q About the same thing, about riding the bike and baby
15 and everything; right?

16 A Yes.

17 Q And then six months went by and you had to go answer
18 more questions with Ms. Gwen in her office when she had
19 the camera and the dolls.

20 A Yes.

21 MR. FINNEY: One moment, Your Honor.

22 THE COURT: Yes.

23 (Mr. Finney conferring with defendant.)

24 MR. FINNEY: Thank you for answering my
25 questions. That's all I have.

1 THE COURT: Anything from the State?

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

3 THE COURT: Okay.

4 REDIRECT EXAMINATION

5 BY MS. MAYES:

6 Q just a few questions real quick. I know that
7 Mr. Finney asked you if you had been in the courtroom
8 before. Who is the person who showed you the courtroom?

9 A You and Britton.

10 Q Okay. And when you say Britton, who are you talking
11 about? Do you see her in the courtroom today?

12 A Yes.

13 Q Okay. And where is she at?

14 A She's right beside you.

15 Q Okay. And how did you feel about seeing the
16 courtroom?

17 A I was okay.

18 Q Okay. And how did you feel about coming to court
19 before you saw the courtroom?

20 A I was a little nervous.

21 Q Okay. And how did seeing the courtroom make you
22 feel?

23 A A little nervous but not really.

24 Q Okay. And I know you have been asking questions or
25 answering questions all day, okay, but I still need you to

1 pay attention if you can, okay? Pay as much attention as
2 you can because I want to get right in my mind what
3 happened.

4 And if I ask you something that isn't how it was, I
5 need you to tell me that it's -- it happened a different
6 way or explain it a little bit better, okay? And also
7 need you to keep answering the questions with a word,
8 okay?

9 A Okay.

10 Q All right. Mr. Finney was asking you about when
11 y'all were on the four-wheeler. And just to get straight,
12 how many times did you ride the four-wheeler with Ricky on
13 the day of the cookout?

14 A Twice.

15 Q Okay. And when you talked about him touching your
16 private part, did that happen one time or more than one
17 time that day?

18 A More than one time.

19 Q Okay. How many times did that happen?

20 A Twice.

21 Q All right. Well, I'm going to ask you about whether
22 was with y'all both times that you just told us that
23 you were riding. Do you know what I mean by that or you
24 need me to ask it a different way?

25 A I need to ask it again.

1 Q Okay. Any time I ask you a question that you don't
2 understand, just -- or Mr. Finney, you can say to ask it
3 another way, okay, to make sure you understand.

4 The first time that you and Ricky were on the
5 four-wheeler, who was with you?

6 A Baby me, Ricky.

7 Q Okay. And then the second time, who was with you?

8 A The same, me, Ricky and

9 Q Okay. And so just to get straight, both times y'all
10 were on it, it was you and Ricky and baby correct?

11 A Yes.

12 Q And were y'all always in the same positions or did
13 it -- was -- was it different the second time than it was
14 the first time?

15 A It was different the second time.

16 Q Okay. I'm going to ask you about the first time and
17 then I'm going to ask about the second time. Is that
18 okay?

19 A Yes.

20 Q All right. The first time, what do you remember the
21 positions being? And you can use this picture here and
22 point and show me.

23 A Ricky was in the front, baby was in the middle,
24 and I was in the back.

25 Q Okay. And when you say he was in the front, could

1 you point and show me what you're talking about?

2 A Right there.

3 Q Okay. And was in the middle and you were
4 where?

5 A In the back.

6 Q Okay. And I know that Mr. Finney was asking about
7 you wearing a skirt that day. When you are riding the
8 four-wheeler like this, what do you do with your skirt?

9 A I put it down, make sure it doesn't pop up.

10 Q And what do you mean by that? In other words, if
11 you're going to get on the four-wheeler with what you're
12 wearing right now, how do you do that? Where do your legs
13 go?

14 A I cross them so they won't go...

15 Q Okay. And what about on that day? How was it that
16 Ricky touched you?

17 A Like he went -- he went up my skirt and he went in my
18 underwear.

19 Q Okay. And I understand your answer, but I need you
20 to show me on here where you're talking about.

21 A Like I was -- he was right there and was right
22 there and I was right there, he reached his hand and
23 touched me.

24 Q Okay. And when you say he touched you, I know you
25 told us before that it was on your private part. How was

1 he able to reach your private part from there?

2 A By putting his hand back and put it in my skirt.

3 Q Okay. And so his hand was able to go in your skirt?

4 A Yes.

5 Q All right. And the next time that y'all rode -- when
6 y'all switched positions, did you switch positions while
7 it was moving or did you stop at some point?

8 A We stopped at a -- home.

9 Q Okay. And then once y'all switched positions, who
10 was sitting where?

11 A I was sitting right there, was sitting right
12 there, and he was right there.

13 Q Okay. And this time you were in the front. And
14 where were your hands?

15 A On the steering wheel.

16 Q Okay. And how was Ricky able to touch your private
17 parts that time?

18 A By reaching over and touching them.

19 Q Okay. And when you say, by reaching over and
20 touching, was that on the outside of your clothes or the
21 inside of your clothes?

22 A The inside.

23 Q All right. Need you to explain, if you can, what you
24 mean by the inside.

25 A Like he went in my skirt and then he went in my

1 underwear.

2 Q Okay. And you're wearing a skirt right now. When
3 you're on the four-wheeler and wearing a skirt, how is he
4 able to reach in there?

5 A By crossing over

6 Q Okay. And when he touched -- when you were on the
7 front, did his hand go -- stay outside your underwear or
8 did it go in your underwear?

9 A It went in my underwear.

10 Q And how was he able to do that?

11 A He's going in my skirt and he goes, and he goes in my
12 underwear.

13 Q Okay. So at some point had your skirt come up enough
14 or did it stay down the whole time, or explain that.

15 A Well, when he did that, it came up.

16 Q Okay. And do you remember how it got up?

17 A No.

18 Q Okay. And do you remember how your underwear got
19 down?

20 A No.

21 Q Okay. And do you remember -- were y'all always going
22 the same speed or did you go different speeds? Can you
23 explain that?

24 A We went different speeds.

25 Q All right. And you say went different speeds. Were

1 you always going fast or did you slow down?

2 A Sometimes we slowed down.

3 Q Okay. And do you remember when he was -- when he
4 touched you whether y'all were going real fast or was that
5 when y'all slowed down?

6 A We slowed down.

7 Q Okay. He was asking you about the other people being
8 around. I think Hannah's name was mentioned and also your
9 other cousin Alesha because there was a second
10 four-wheeler?

11 A Yes, ma'am.

12 Q Okay. When y'all were on the four-wheeler and Ricky
13 actually touched your private part that you have already
14 told us about, not just one time, but both of the times --

15 A Yes.

16 Q -- was Hannah or Alesha close enough to see you?

17 A No.

18 Q Okay. Was anybody close enough to see you?

19 A No.

20 Q Okay. Were y'all able to see the house from where
21 y'all were?

22 A No.

23 Q All right. And Mr. Finney asked you about
24 coming to see the courtroom and talking to different
25 people. Has anybody told you what to say?

1 A No.

2 Q And what is your job as a witness?

3 A To always tell the truth.

4 Q Thank you. Nothing further.

5 THE COURT: Okay. You can come down.

6 (Witness left the stand.)

7 THE COURT: Now, your next witness, how lengthy
8 do you anticipate the next witness to be?

9 MS. MAYES: Approximately 30 to 45 minutes, Your
10 Honor.

11 THE COURT: Okay. Is that Mrs. Herod?

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

13 THE COURT: Okay. Because I anticipated that
14 she'd be a good bit longer than that. But you think
15 you can get one up by five, 5:30?

16 MS. MAYES: Yes, Your Honor.

17 THE COURT: Do y'all -- we will probably have
18 one more witness and break for the day. Do you need
19 a break at this time or you want to go with this last
20 witness? Anybody need a break?

21 If you need one, we can take one. I promised
22 you one in an hour and a half, and you've been
23 sitting an hour and a half. If you need to go
24 stretch your legs, we will take a five or 10 minute
25 break. Okay. All right.

1 We'll take a five or 10 minute break. Y'all go
2 stretch your legs and come back and we'll -- don't
3 discuss this case as I told you.

4 (Jury left the courtroom at 4:32 pm.)

5 (Whereupon a brief recess was had.)

6 THE COURT: Anything before I bring in the jury?

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

8 THE COURT: Sorry it took so long. Get us the
9 jury.

10 (Jury entered the courtroom at 4:49 p.m.)

11 THE COURT: Madam Solicitor, you may call your
12 next witness.

13 MS. MAYES: The State calls Margaret Hickman.

14 MARGARET HICKMAN, after being
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. MAYES:

18 Q And Mrs. Hickman, where are you employed?

19 A With Carolina Medcare Ambulance Service.

20 Q All right. And what is your job responsibility
21 there?

22 A I'm the emergency medical technician. I'm in the
23 back of the ambulance taking care of patient until we get
24 them to the hospital.

25 Q All right. And what kind of training or background

1 do you have in order to work in that particular medical
2 field?

3 A I went to school, got my state board certification
4 and national registry under emergency medical technician.

5 Q Okay. And that's commonly known as an EMT?

6 A Yes.

7 Q All right. And what is -- your family, Mrs. Hickman?

8 A It is , Pinewood, South Carolina,
9 29125.

10 Q And how long have you been living at that address?

11 A About 11 years.

12 Q Okay. Now, previously it's been mentioned that your
13 family had a cookout in preparation for Christmas. And
14 can you tell us what year that was?

15 A It was in '96 or -- it was in 2006.

16 Q Okay.

17 A Yes, ma'am.

18 Q So we're talking about not this past Christmas, but
19 the Christmas before; is that correct?

20 A Correct.

21 Q All right. And can you tell us who all you recall
22 being at the family cookout?

23 A It was my family, my mother, my father, myself, my
24 husband, Nicole, our children, my Aunt Betty, my
25 Uncle Bobby Jenkinson, my Aunt Cookie Jenkinson, their son

1 Robert Jenkinson.

2 On my husband's side there was his mother, Mattie
3 Bryant, his sister Lisa and her boyfriend Ricky, their --
4 or his -- her daughter Alesha, and they had brought a
5 friend, baby and -- oh, my sister Melody Moore, her
6 daughter Hannah.

7 Q Okay. So it was a fairly large family event; is that
8 fair to say?

9 A Yes.

10 Q All right. And where were the kids throughout the
11 day?

12 A They were in and out.

13 Q And what are some of the outside activities that you
14 recall?

15 A Well, we have a swimming pool, but it was winter so
16 nobody was swimming. But we do have a trampoline, so they
17 were outside, they were playing some kickball because we
18 have a fairly large back yard, and then we had the
19 four-wheelers, and they were riding those throughout the
20 trails in the back.

21 Q Okay. And how many four-wheelers did your family
22 have on that particular day?

23 A Two.

24 Q Okay. And are they the same size or were they
25 different?

1 A No, different sizes.

2 Q Okay. And did you have an occasion to see your
3 daughter outdoors at any point on that particular day?

4 A Yes.

5 Q And how close was this to Christmas?

6 A This was on the 23rd. Christmas was the 25th. Two
7 days.

8 Q So the day before Christmas Eve?

9 A Yes.

10 Q All right. And when you saw your daughter outside,
11 what activities do you remember seeing her being involved
12 in?

13 A Well, she was riding the four-wheelers, of course. I
14 saw her on the trampoline. I saw her playing kickball.
15 She was just being active.

16 Q Okay. And what about the defendant in this case,
17 William Ricky Welch, what--

18 A He was interacting with the children, playing,
19 just -- we were all just having a good time just
20 socializing and...

21 Q Okay. And was there any particular time that day or
22 any particular event you recall seeing Mr. Welch with your
23 daughter?

24 A Well, I remember when they took off for the -- I only
25 saw them one time leave on the four-wheeler headed out for

1 a ride.

2 Q Okay.

3 A They just, you know, went for a ride, so whatever.

4 Q Okay. And you saw them actually leaving out to go?

5 A Uh-huh.

6 Q And were you present when they returned?

7 A No, I think I had gone inside.

8 Q Okay. And what were some of the things you were busy
9 doing inside?

10 A I was -- or I was fixing food, making sure it was hot
11 like it was supposed to be, making sure we made up plates
12 if anybody wanted to take any home, and then we had like
13 the family opening of gifts and such.

14 Q Okay. And I'm going to show you what is State's
15 Exhibit one for identification and ask you whether or not
16 you recognize this.

17 A Yes, that's the larger of the two four-wheelers.

18 Q All right. And also you mentioned trails. I'm going
19 to show you what is State's Exhibit seven, four, three and
20 two for identification and ask you if you recognize what
21 is shown in those photographs.

22 A In the photograph have here -- I think you have this
23 marked as two -- it shows the entrance through our
24 neighbor's yard that goes to the trails in the back. And
25 then the one is showing the entranceway into one of the

1 trails, which we have got two entranceways into the
2 trails.

3 One goes to the short trail as I call it, and one
4 goes to the long trail. And this one is a picture of
5 the -- coming out of the short trail showing towards the
6 exit of the trail.

7 And then -- let's see. I think you gave me number
8 seven, State's Exhibit number seven, that shows just what
9 the trails looked like, the width of the trails and such.
10 They were wide enough to fit one four-wheeler through but
11 not two.

12 Q Okay. And in looking at those photographs can you
13 tell us whether they are a fair and accurate
14 representation of the trails as they were back in December
15 of 2006?

16 A Yes, they are.

17 Q And what about the four-wheeler; is that a fair and
18 accurate representation as it appears today?

19 A Yes.

20 MS. MAYES: Your Honor, at this time we would
21 offer those previously known exhibits for evidence.

22 MR. FINNEY: No objection.

23 THE COURT: Okay. That's exhibits two, three,
24 four and -- well, five is in without objection. So
25 it's two, three, four and seven?

1 MS. MAYES: And one, Your Honor.

2 THE COURT: Okay. That's correct. All right.

3 They are in without objection.

4 (WHEREUPON, State's Exhibits 1, 2, 3, 4 and 7
5 were admitted into evidence.)

6 BY MS. MAYES:

7 Q Now, how long approximately would you say that the
8 people stayed around your family's home for the cookout
9 that day?

10 A I'd say it started around 1:00 that afternoon, and
11 people didn't start to leave until about 5:30, six.

12 Q Okay. And after people left, what if anything do you
13 recall happening?

14 A Well, I recall I'd say it was -- it was later that
15 evening after everybody had left, I say around seven,
16 7:30 when my sister called and told me what her daughter
17 had told her.

18 And that's when I was in the midst of heating and
19 preparing supper. I stopped and had come to the
20 bedroom, just me and her, and I asked her what had
21 happened, that I knew.

22 And she was scared. She was frightened, afraid
23 that -- she said, mama, if I tell you, will you get mad at
24 Uncle Ricky? And I said, no, tell me. And so she told
25 me. And that's when I went and spoke with my husband.

1 Q All right. And how was it that you became aware of
2 this?

3 A When I -- my sister --

4 Q Okay.

5 A -- told me.

6 Q And your sister is related to Hannah how?

7 A It's her mother.

8 Q Okay. And so if we had the sequence of events right,
9 Hannah told her mother after learning this from

10 A That's correct.

11 Q And were they at the home, at your home when she
12 mentioned this to you or had they already left?

13 A No, they had left.

14 Q All right. And so you learned from your sister by
15 telephone and then --

16 A Yes.

17 Q -- speak with your daughter in another room; is that
18 correct?

19 A Yes.

20 Q All right. What do you recall, Mrs. Hickman, about
21 demeanor or behavior when she was discussing this
22 with you?

23 A She was almost -- well, I can't really say she was
24 about to cry, but she was -- she was definitely scared. I
25 could tell something wasn't right. I wasn't really sure

1 exactly what at the time.

2 Q Okay. And was that a normal reaction or --

3 A No.

4 Q -- not normal?

5 A No, it was -- it was abnormal for That's what
6 sent up the red flags. I wasn't sure what was going on at
7 the time.

8 Q Okay. And after speaking with your daughter, did you
9 learn in fact -- you can't say exactly what she told you
10 because that's hearsay, so please don't repeat it --
11 exactly what she told you -- but did you learn whether or
12 not something had happened?

13 A Yes.

14 Q Okay. And in response to learning this, what did you
15 do next?

16 A I went to my husband.

17 Q Okay.

18 A And spoke with him.

19 Q And this was on the night before Christmas Eve?

20 A Yes.

21 Q And did you call the police that night?

22 A No.

23 Q And why or why not?

24 A Because this was a family friend. This was someone
25 we knew for four years, and we weren't really sure how to

1 take any of this. We wanted to believe our daughter, but
2 we also couldn't believe what she was telling us. I mean,
3 it was just... it was a lot to process.

4 Q Okay. And so what happened after that?

5 A My husband and I, we talked about it. And then by
6 that time was already getting ready for bed, so we
7 put her on to the bed. We went on to bed ourselves.

8 Then that next morning was when started
9 complaining of pain. And I was thinking, well, maybe
10 there was more to it than we were thinking, so I took her
11 over to the emergency room thinking, well, maybe she's got
12 a bladder infection.

13 And that's when the nurse and staff at the hospital
14 went ahead and contacted the authorities.

15 Q Okay. And were you present in the room when your
16 daughter was seen by a physician or by a doctor for an
17 examination?

18 A Yes.

19 Q All right. When -- do you remember if it was a male
20 doctor or a female doctor?

21 A It was a male.

22 Q Okay. Do you remember if he used a speculum on your
23 daughter?

24 A Oh, no. No.

25 Q Okay. And did he have a piece of equipment that's

1 called a colposcope? Do you know what I'm talking about?

2 A piece of equipment?

3 A For photographs and such? No.

4 Q Okay. So he was -- he was doing the examination
5 with -- by what method?

6 A He was just using his -- he had gloved hands and he
7 was basically going in and by what I was telling him that
8 it was burning on -- she said it was burning whenever she
9 urinated, so he was going in and just doing a simple in
10 and out cath where he goes into the urethra, goes into the
11 bladder and takes out a sample of urine, clean catch, and
12 test it for any white cells or...

13 Q Okay. And are you familiar with that procedure in
14 your line of work?

15 A Yes.

16 Q Is there anything about that particular procedure
17 that would cause an injury or an -- aggravate the
18 situation?

19 A No. No.

20 Q Now after her exam, when did you have contact with
21 police, if you know, when you first would have met with
22 the police officers?

23 A Well, we waited at the hospital a long time. I -- I
24 am not exactly sure how long, but all I know is everything
25 started happening all at once. We had different police

1 investigators. And then we met Gwen for the first time
2 and she came in and everything just kind of went from
3 there.

4 Q Okay. And did -- when you say Gwen, are you
5 referring to Mrs. Herod?

6 A Yes.

7 Q And she is employed by the Sumter County Sheriff's
8 Department?

9 A Uh-huh.

10 Q Okay. And can you tell us whether or not she was
11 involved in interviewing your daughter at the hospital?

12 A Yes, she was.

13 Q And then do you know whether your daughter
14 participated in any later or subsequent investigative
15 interviews at the request of the Sheriff's Department?
16 Did they meet with her again after that to interview her,
17 if you know?

18 A I'm not sure. We had so much going on. I'm not
19 sure.

20 Q Now, at any point in time did you yourself have any
21 type of confrontation with Mr. Welch following these
22 allegations?

23 A No.

24 Q Did you ever speak to him by phone or in person after
25 that particular day in which had reported this to

1 you?

2 A No.

3 Q Thank you.

4 MS. MAYES: Nothing further at this time, Your
5 Honor.

6 THE COURT: Okay. Mr. Finney?

7 CROSS-EXAMINATION

8 BY MR. FINNEY:

9 Q Mrs. Hickman, I'm Chip Finney, and I'm sorry to have
10 to meet you under these circumstances, but I need to ask
11 you some questions.

12 A Uh-huh.

13 Q Your relationship with your husband, how -- how many
14 years y'all been married?

15 A This November will make 18 years.

16 Q All right. And your oldest child is a daughter named
17 Nicole?

18 A Yes.

19 Q How old is she?

20 A Fifteen.

21 Q Okay. And then the baby is nine now?

22 A Yes.

23 Q Okay. Just the two girls?

24 A Yes.

25 Q You had two four-wheelers.

- 1 A Yes.
- 2 Q The big green one and you had a yellow one.
- 3 A Yes.
- 4 Q The yellow one was smaller?
- 5 A Yes.
- 6 Q Was it operating that day on -- during the party?
- 7 A Yes.
- 8 Q And when you saw your child out there riding the
- 9 bike, was Ricky driving the bike?
- 10 A When they first left, which was the only time I saw
- 11 them, yes, he was driving.
- 12 Q Okay. And it's -- it's a big bike that he was on,
- 13 the big green one.
- 14 A Yeah.
- 15 Q Did you notice the little yellow bike?
- 16 A I didn't. I think it was behind it, but I --
- 17 Q Okay.
- 18 A -- I'm not sure.
- 19 Q Can you remember kids riding the yellow bike as well
- 20 as Ricky driving the big bike that time?
- 21 A I remember both of the bikes, but --
- 22 Q People were operating the bikes --
- 23 A -- yes.
- 24 Q -- having fun with them?
- 25 A Uh-huh.

1 Q Okay. And it wouldn't have been unusual for the
2 bikes to go out down the trail together.

3 A That's right.

4 Q And come back.

5 A That's correct.

6 Q In December it gets dark early.

7 A Yes.

8 Q About six? You say everyone had left the house by
9 seven when you got the call from -- from your--

10 A No. I said the party started breaking up around
11 5:30.

12 Q About dark?

13 A Yes.

14 Q And so by the time it was dark, everybody was gone?

15 A Yes.

16 Q Okay. The one time that you say you saw and
17 Ricky on the bike, would that have been before y'all ate
18 and opened the presents or after?

19 A It was -- I want to say it was mid-afternoon. And
20 the party started about one, and of course everybody was
21 hungry, so we started eating. And I want to say it was
22 around three, the middle of the party.

23 Q All right. All right. And so had you seen Ricky and
24 on the bike on previous occasions? Had they been to
25 your -- has Ricky and Lisa and Alesha been to your house

1 on previous occasions?

2 A They have been to our house, but to my recollection
3 they have not been on the four-wheelers.

4 Q Okay. And on the previous occasions that they had
5 been there, had they been there -- do you all normally
6 have a party in November for a birthday party?

7 A Yes.

8 Q Had they been there for that?

9 A Yes.

10 Q All right. Had your kids, Nicole and been to
11 Lisa's house --

12 A Yes.

13 Q -- to spend the weekend?

14 A Oh, yes.

15 Q How many--

16 A They have been over during the summer and spent the
17 week with them.

18 Q All right. Okay. They had a long-standing
19 relationship?

20 A Yes.

21 Q Okay. Between your family and Ricky's family and
22 Lisa?

23 A Yes.

24 Q All right. And on occasion, my information is that
25 you may have -- you and your husband may have gone to the

1 beach to relax for the weekend and left the kids with
2 Lisa --

3 A Right.

4 Q -- and Ricky.

5 A That's correct.

6 Q When -- when you first got the call about 7:00, your
7 sister called to tell what Hannah had told her. That was
8 the first time you had any indication from or that
9 there might be something wrong with

10 A That's right.

11 Q So between 5:30 that evening when the party started
12 breaking up --

13 A Uh-huh.

14 Q -- and you all had already eaten and opened the gifts
15 and the bikes were put up --

16 A Right.

17 Q -- did you remember saying goodbye to Lisa and Ricky
18 that day?

19 A Yes, I did.

20 Q Okay. And baby was a baby that came with Lisa
21 and Ricky. Would you describe baby

22 A Baby at the time I want to say was about six
23 months old. He was a baby.

24 Q He wouldn't walk?

25 A No.

1 Q Okay.

2 A He would not walk.

3 Q So he's a little arm baby. And he was brought to the
4 party by Lisa --

5 A Yes.

6 Q -- which is Ricky's girlfriend?

7 A Right.

8 Q And she was just babysitting him for the day?

9 A Right.

10 Q Okay. And had you ever met him before, baby

11 A Yes.

12 Q So you knew this baby, had seen him before.

13 A Uh-huh.

14 Q And he was out on the four-wheeler.

15 A Yes.

16 Q Do you remember him being on the four-wheeler when
17 you saw your child on the four-wheeler?

18 A Right.

19 Q All right. You didn't have any reservations about
20 that?

21 A Well, the way the baby was positioned in between
22 them, no, and they were going slow. I just told them to
23 hurry up, you know --

24 Q Okay.

25 A -- no -- no reckless.

1 Q Okay. Now, when you got the call from your sister
2 May -- is that right?

3 A That's right.

4 Q Her name is Melody. It's Aunt May --

5 A Yes.

6 Q -- Melody called you to say that Hannah had told her
7 something --

8 A Yes.

9 Q -- and that you needed to know.

10 A Right.

11 Q Then you went and got

12 A Right.

13 Q And you and had a private talk in the bedroom.

14 A That's correct.

15 Q Now, was eight at the time.

16 A That's correct.

17 Q All right. And you had called her in, just the two
18 of you, to talk.

19 A Right.

20 Q All right. And as a result of that conversation,
21 then you told your husband what you had learned from

22

23 A That's correct.

24 Q But you didn't call the police.

25 A No, we didn't.

1 Q And you didn't go to the hospital that night. Did
2 you check your baby that night?

3 A No, I didn't.

4 Q Okay.

5 A I did check her underwear.

6 Q Okay.

7 A And--

8 Q Did you see anything in the underwear?

9 A No. No.

10 Q Okay. Now, between 5:30 in the evening that evening
11 when everybody left and 7:00 in the evening when you had
12 this meeting with her --

13 A Right.

14 Q -- you were able to be around your child and know
15 what your child was doing? Was your child acting in any
16 way out of sorts?

17 A No.

18 Q So the first thing you knew about this thing was when
19 your sister Melody called you.

20 A Right.

21 Q All right. So you and your husband talked and you
22 sent the child on to bed.

23 A That's correct.

24 Q The next morning y'all get up, the child is
25 uncomfortable, so you decide to go to the hospital to have

1 her checked out.

2 A Right.

3 Q And you meet with the doctor..

4 A That's correct.

5 Q And somebody at the hospital calls the police.

6 A Yes.

7 Q So you end up having to stay at the hospital,

8 has to talk to the police and the investigators and all of

9 that.

10 A That's correct.

11 Q All right. Did they keep her at the hospital?

12 A Until all of the--

13 Q I know. Did they keep her overnight?

14 A Oh, no. No.

15 Q So you stayed most of the next day which I think was

16 a Sunday.

17 A It was Christmas Eve.

18 Q Was it -- you think it was a Sunday?

19 A I think.

20 Q Okay. All Christmas Eve basically at the hospital.

21 A Right.

22 Q Then you went home.

23 A That's correct.

24 Q Okay. And then a couple of days later you had to go

25 back to see a lady named Kathy Saunders.

1 A That's correct.

2 Q And she did an exam.

3 A That's correct.

4 Q All right. And that was on the 27th, two days after
5 Christmas.

6 A Yes.

7 Q Now, during this period of time from the 24th when
8 you found -- excuse me, 23rd -- 23rd, the night of the
9 23rd, all the way through the 27th, two days after
10 Christmas, four days, did you ever call Lisa or Ricky to
11 say, hey, something is going on, we need to talk?

12 A No.

13 Q Did you know that Ricky had a prior record?

14 A I knew what Lisa had spoken to me before--

15 Q Before the party?

16 A Well, this was when I first met Ricky four years
17 ago--

18 Q This was years before.

19 A Yes.

20 Q All right.

21 A Four years before that.

22 Q All right.

23 A That he--

24 Q Did you tell Gwen Herod at the Police Department that
25 Ricky had a prior record?

1 A That I didn't know all about it. I mean, it was --
2 it was out of sorts. The way she told me, he had--
3 Q Hold on, now. You talking about Gwen?
4 A No, Lisa.
5 Q Lisa told you some things about Ricky?
6 A Yes.
7 Q Okay. That would be--
8 A But she said that it was all thrown out, that he
9 didn't have a record.
10 Q All right. Okay. And--
11 A So that's why we were okay with it.
12 Q All right. And then did you find out from Gwen
13 Herod -- did you talk to Gwen Herod --
14 A Yes.
15 Q -- about Ricky's past?
16 A No.
17 Q Okay. You didn't tell her that Ricky--
18 A I didn't know that there was a past--
19 Q Did she tell you?
20 A Yes.
21 Q Gwen told you?
22 A I think.
23 Q That's what I'm--
24 A I'm not sure.
25 Q All right. still ride the bikes now?

1 A Yes, she does.

2 Q Okay. And you -- you all haven't seen Ricky in two
3 years, but have you had any contact with Alesha?

4 A Yes, we have.

5 Q Does she come to your house?

6 A Yes, she does.

7 Q And Hannah, the little girl that is your sister's
8 child, that's your niece, she still comes to the house?

9 A Yes, she does.

10 Q She still ride?

11 A Yes, she does.

12 Q And said this afternoon she's got a new red
13 bike; doesn't she?

14 A Yes, she does.

15 Q Okay.

16 MR. FINNEY: One minute, Your Honor.

17 (Mr. Finney conferring with defendant.)

18 BY MR. FINNEY:

19 Q Let me ask you this, please ma'am. When you went to
20 Tuomey Hospital on the 24th and they examined your child,
21 your testified a minute ago that they cathed her.

22 A Yes, they did.

23 Q What is it -- tell the jury what that means.

24 A An in and out cath is where they take a tube that's
25 attached to a bag, they insert it into her urethra. It

1 goes into her bladder and it pulls out what they call a
2 clean catch.

3 It's free -- it's sterile. It is free of any germs.
4 And that way they can examine it for a bladder infection,
5 which is what I thought she had.

6 Q All right. And that was based on what was
7 presented --

8 A Her complaint.

9 Q -- her complaint to you?

10 A Yes.

11 Q Now, as a result -- were you there when they did the
12 cath?

13 A Yes, I was.

14 Q And who did the cath, doctor or nurse?

15 A The doctor. The doctor.

16 Q Okay. And the doctor was a male doctor.

17 A Yes, sir.

18 Q Okay. And in order to do that, the patient had to be
19 put on a table --

20 A Down--

21 Q -- and a plastic tube had to be inserted into her?

22 A Yes.

23 Q Okay. Now, had she ever had a cath before to your
24 knowledge?

25 A No, she has not.

1 Q Okay. And did she tolerate that whole procedure
2 well?

3 A She was reserved.

4 Q Okay. And did she make any comment to you about the
5 fact that she had to go through this procedure?

6 A She didn't like it.

7 Q Okay. It would have been something she would have
8 remembered?

9 A Yes.

10 Q Okay. Thank you ma'am. Nothing further.

11 THE COURT: Okay. Madam Solicitor?

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

13 REDIRECT EXAMINATION

14 BY MS. MAYES:

15 Q Just to clarify. When you say that the cath or
16 catheter was put in, what part of the body was that put
17 in?

18 A It was put in her -- how -- only way I know is
19 urethra. It's actually a hole that is -- it's a different
20 area from--

21 Q Okay. To urinate; correct?

22 A Yes.

23 Q All right.

24 A It's where the urine stream is.

25 Q All right. And based on your medical background,

1 did -- can you just clarify, is that the -- also the
2 vaginal opening or a separate opening?

3 A It's a separate opening.

4 Q All right. Now, Mr. Finney was asking you about
5 whether you knew Mr. Welch was a convicted sex offender,
6 and please don't repeat what anybody else said to you, but
7 did you have knowledge that he had actually been convicted
8 of a sex offense --

9 A No.

10 Q -- against a minor?

11 A No, I didn't know about the conviction.

12 Q Okay. And you were later I think you testified
13 informed of that by someone in law enforcement; is that
14 correct?

15 A Yes. I was told that anyone could go to the website
16 and pull it up. So I was curious. I went to the website,
17 pulled it up.

18 Q Okay.

19 A And it was there.

20 Q Okay. And knowing that, that at that point in time
21 after the fact, can you tell us whether you would or
22 wouldn't have let him around had you known that
23 then?

24 A Had I known that then, no.

25 Q Thank you. Nothing further.

1 MR. FINNEY: No -- no other questions.

2 THE COURT: Okay. Is this a good time to stop
3 for the evening?

4 MS. MAYES: Yes, sir.

5 THE COURT: Ladies and gentlemen, we're going to
6 -- you can step down, Mrs. Hickman. We are going to
7 stop for the day and ask you to be back at 9:30 in
8 the morning.

9 Now, I remind you, you have got to decide this
10 case based on what you hear in this courtroom. So
11 when you go home at night, you can't discuss the
12 facts of this case yet.

13 Don't read anything about it or -- in the
14 newspaper, TV, don't get on the internet, don't look
15 up anything. I need you to decide this based on what
16 you hear from this witness stand. I'll see you at
17 9:30 in the morning. Have a good evening.

18 (Jury left the courtroom at 5:20 p.m.)

19 THE COURT: Any matters from the State before we
20 recess for the evening?

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

22 THE COURT: From the defense?

23 MR. FINNEY: No, Your Honor.

24 THE COURT: All right. We'll see y'all at 9:30
25 in the morning.

1 MR. FINNEY: Thank you, Your Honor.

2 (Court in recess for the evening.)

3 ***** June 3, 2008 *****

4 THE COURT: State ready?

5 MS. MAYES: Yes, sir. May we approach?

6 THE COURT: Yes, ma'am.

7 (Whereupon a bench conference was held.)

8 (Mr. Finney conferring with defendant, Ms. Mayes
9 conferring with victim's mother.)

10 (Whereupon a bench conference was held.)

11 THE COURT: Ready now?

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

13 MR. FINNEY: Could I just ask who is first?

14 MS. MAYES: Pam.

15 THE COURT: Okay. Bring in the jury.

16 (Jury entered the courtroom at 10:03 am.)

17 THE COURT: Good morning, ladies and gentlemen.
18 We are ready to proceed with the testimony. Madam
19 Solicitor, you may call your next witness.

20 MS. MAYES: The State calls Hannah Moore.

21 HANNAH MOORE, after being duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. MAYES:

25 Q Okay. And just to make sure we can hear you okay,

1 how old are you, Hannah?

2 A Ten.

3 Q Okay. And where do you currently go to school,
4 Hannah?

5 A Pocalla Springs Elementary.

6 Q All right. And what grade are you just now
7 finishing?

8 A Fourth.

9 Q All right. And how is it, Hannah, that you know
10

11 A She's my cousin.

12 Q All right. And about how long would you say you have
13 known her? Would it be your whole life or a shorter time
14 than that?

15 A My whole life.

16 Q Okay. And have you ever had the occasion to go over
17 to house?

18 A Lots of times.

19 Q Okay. And I got to ask you just a few questions
20 about what we call telling the truth and telling a lie,
21 okay? Is it good or bad to tell the truth in court?

22 A It's -- it's a great thing to tell the truth.

23 Q Okay. Is it good or bad to tell a lie?

24 A It's bad.

25 Q Okay. And what about when people come into court and

1 they sit in the witness chair, like you're in right now,
2 is it good or bad to tell the truth in court?

3 A It's good to tell the truth.

4 Q Okay. And if somebody was to not tell the truth in
5 court about something, what are some of the things that
6 might happen you think? Would that be good or bad?

7 A That would be bad.

8 Q Okay. And who might they get in trouble with?

9 A The law.

10 Q Okay. So understanding those rules, can you tell the
11 truth in court?

12 A Yes, ma'am.

13 Q I want to ask you about some names that are on here,
14 okay? Somebody is on here named Melody. Who is Melody?

15 A My mom.

16 Q Okay. And I think you said before that your
17 cousin. How is your cousin?

18 A Well, my mom is her mom's sister.

19 Q Okay. So that would be on -- Melody is sisters with
20 Margaret; right?

21 A Yes, ma'am.

22 Q Okay. And ask you whether or not you also had the
23 opportunity or the chance to be over at house not
24 this past Christmas but the Christmas before around the
25 time near Christmas for a cookout?

1 A Yes, ma'am.

2 Q Okay. And what all do you remember going on at the
3 cookout? What are some of the things that people did?

4 A Well, some of us were riding the four-wheeler,
5 jumping on the trampoline, doing lots of stuff, grilling
6 out and everything.

7 Q Okay. And what are some of the things that has
8 at her house to do that grown-ups can do and kids can do
9 and stuff like that?

10 A Well, the grown-ups can just sit back and just watch
11 the children play and everything.

12 Q Okay. And now, you mentioned the trampoline. Do you
13 know whether or not has any four-wheelers at her
14 house?

15 A She had two at the time.

16 Q Okay. And have you ever ridden on the four-wheelers
17 at house?

18 A Yes, ma'am.

19 Q Okay. And do you know whether people were riding --
20 whether or not people were riding on four-wheelers the day
21 that the cookout was going on?

22 A They were.

23 Q Okay. Who are some of the people, Hannah, that you
24 remember riding on four-wheelers?

25 A me, Ricky, and all of them were just riding

1 them.

2 Q Okay. So it was more than -- more than just you and
3 more than just

4 A Uh-huh.

5 Q Okay.

6 A Yes, ma'am.

7 Q All right. Now, if you're at the house and people go
8 off riding on the four-wheelers, can you see them the
9 whole time from where you are at the house?

10 A Well, there's trees blocking your view if they go
11 deep into the woods.

12 Q Okay. Were you able to see -- were you always on a
13 four-wheeler with or were there times that she was
14 on the four-wheeler with someone else?

15 A There were times when she was on it with someone
16 else.

17 Q Okay. And were you able to see her the whole time
18 she was on the four-wheeler with someone else?

19 A I wasn't really paying attention to that.

20 Q Okay. Was there a time on the day of the cookout
21 that you and rode a four-wheeler together?

22 A Yes, ma'am.

23 Q Okay. Where did you and go? When I say rode
24 together, I mean on one, the same?

25 A Yes, ma'am. We rode the same one.

1 Q Okay. And where did y'all go on it?

2 A We were in front of the woods, not in it yet -- well,
3 we had just went over the little hill and we had stopped,
4 and that's where we were.

5 Q Okay. And tell me about that. When you went over
6 the hill and you were on the four-wheeler with did
7 something happen?

8 A Well, we had just been playing a lot and she was all
9 happy, and then she got serious and --

10 Q Okay.

11 A -- she told me.

12 Q Okay. That's what I'm going to ask you about. When
13 you said, she got serious, was that usual or unusual for
14 Kayla?

15 A That's unusual.

16 Q Okay. And you said that she had been playing before.
17 That was on the four-wheeler?

18 A Four-wheeler, trampoline, everything.

19 Q And then when you said she got serious and that that
20 was unusual for her, I need to ask you now what exactly
21 she told you.

22 A Well, she told me that Ricky and her and them went
23 riding on the four-wheeler before and they went into the
24 woods, and then she told me what he did, that he touched
25 her --

- 1 Q Okay.
- 2 A -- in the wrong place.
- 3 Q And when she told you that, did she say anything
- 4 about whether it was okay for you to tell somebody or...
- 5 A She told me to promise not to tell anybody.
- 6 Q Okay. And how was she acting or behaving when she
- 7 told you that?
- 8 A She was dead serious.
- 9 Q Okay. And when she told you not to tell anybody,
- 10 what did you think you should do?
- 11 A Well, at first I didn't have no one to tell, so
- 12 whenever my mom picked me up, I wanted to tell her.
- 13 Q Okay. And so when you and got back to -- back
- 14 to the house where the cookout was going on, do you
- 15 remember were grown-ups still there?
- 16 A Yeah, grown-ups were still there.
- 17 Q Okay. And was parents there?
- 18 A Yes, ma'am.
- 19 Q Okay. And do you remember if the defendant in this
- 20 case, Ricky, was there?
- 21 A He was.
- 22 Q Okay. And think you said when your mom picked you up
- 23 you told her. Was your mom at the cookout as soon as you
- 24 got back or was she somewhere else?
- 25 A She was at our house wrapping presents.

1 Q When you say, at our house, what do you mean by that?

2 A At my house.

3 Q Okay. And that's a different house than
4 house?

5 A Yes, ma'am.

6 Q Okay. And she came and picked you up at the cookout
7 I believe you said?

8 A Yeah, much later, yes.

9 Q Okay. And tell me what happened when your mom came
10 to pick you up. Where were you at when you told your mom?

11 A Well, we were on our way home and -- and I told her
12 what had happened. She didn't have a cellphone, so she
13 couldn't call Margaret.

14 Q Okay. And you're referring to your Aunt Margaret?

15 A Yes, ma'am.

16 Q So after you told your mom, then your mom called Aunt
17 Margaret, is that correct?

18 A Once I told her, she didn't have a cellphone, so we
19 had -- once we got home, she told -- she called up my Aunt
20 Margaret and told her.

21 Q Okay. On the house telephone?

22 A Yes, ma'am.

23 Q All right. And what made you decide to tell your
24 mom?

25 A It was bad, and she had told me not to keep a secret

1 especially when it's something bad, so I had to tell her.

2 Q All right. Had your mom been at the cookout at some
3 point that day as well?

4 A Yes, ma'am.

5 Q Okay. And I think you said she had left the cookout
6 to go wrap presents?

7 A Yes, ma'am.

8 Q Okay. Wanted to -- to clear that up. Thank you,
9 Hannah. Nothing further at this time.

10 THE COURT: Mr. Finney?

11 MR. FINNEY: Thank you.

12 CROSS-EXAMINATION

13 BY MR. FINNEY:

14 Q Good morning.

15 A Morning.

16 Q My name is Chip Finney and I'm the lawyer for Ricky
17 Welch, and I'd like to ask you some questions also. Have
18 you ever been to this court before today?

19 A I have been here for the witness.

20 Q You were here yesterday, right?

21 A Yes, sir.

22 Q Was yesterday your first day in the Court or had you
23 been here before yesterday?

24 A Well, yesterday was my first time in this courtroom.

25 Q Where were you the first time you came to the

1 courthouse, in the other courtroom?

2 A I was in the witness room.

3 Q In the witness room? When was that, last week?

4 A Well, yesterday I was in the witness room, and a few
5 weeks or months ago I was in the witness room again.

6 Q Okay. So you were at the courthouse a few weeks ago.

7 A Like month -- like one or two months ago.

8 Q One or two months ago. Was Ms. Mayes here then? Did
9 she show you the courtroom one or two months ago when you
10 were here?

11 A No, sir.

12 Q Who was it showing you the courtroom?

13 A Well, I hadn't seen the courtroom at that time.

14 Q Okay. But you said you were here in the Court a
15 month or two ago. And who was with you showing you the
16 Court?

17 A Mrs...

18 MS. MAYES: May it please the Court.

19 THE COURT: Yes, ma'am.

20 BY MR. FINNEY:

21 Q Ms. Suzanne? Okay. This lady right here?

22 A (Nodded head.)

23 MS. MAYES: May we approach?

24 THE COURT: Yes, ma'am.

25 (Whereupon a bench conference was held.)

1 BY MR. FINNEY:

2 Q Now Miss Hannah --

3 A Yes, sir.

4 Q -- you are -- have been to the house with lots
5 of times.

6 A Yes, sir.

7 Q And you all have ridden four-wheelers lots of times.

8 A Yes, sir.

9 Q What was the difference between the four-wheeler you
10 were on and this four-wheeler that's in the picture shown
11 as State's Exhibit number one? Do you remember that one?

12 A Yes, sir.

13 Q Is this -- what -- how is this different than the
14 other four-wheeler that was there?

15 A That one is bigger.

16 Q Okay. How much bigger, a little bit bigger or lots
17 bigger?

18 A It's hard to say.

19 Q Well, did you ever ride on this one?

20 A Yes. I rode on both of them.

21 Q You rode on the big one?

22 A Uh-huh.

23 Q Did you ride on the big one at the cookout?

24 A Yes, sir.

25 Q All right. And did you ride on the little one?

- 1 A I don't recall riding on the little one.
- 2 Q You don't? Okay. What color was the little one?
- 3 A Orange and black.
- 4 Q Okay. And did you know how to drive one of these by
5 yourself?
- 6 A Yes, sir.
- 7 Q So you can crank this up and drive by yourself?
- 8 A Yes, sir.
- 9 Q All right. And at the cookout did you drive it by
10 yourself?
- 11 A Well, actually was riding with me.
- 12 Q Okay. How many times did you ride the four-wheeler?
- 13 A I can't remember.
- 14 Q How many times did Kayla ride with you?
- 15 A Well, I only remember riding with her one time.
- 16 Q That's the only time you remember.
- 17 A Yes, sir.
- 18 Q Okay. So do you remember -- you said -- you said
19 when Ms. Mayes asked you a question just now you said --
20 she asked you who was riding the four-wheelers, and I
21 believe you said, me and Ricky.
- 22 A Yes, sir.
- 23 Q Is that the only people you saw riding the
24 four-wheelers that day?
- 25 A Well, there was also a little baby riding the

1 four-wheeler.

2 Q Okay. Do you remember his name being

3 A Yes, sir.

4 Q Okay. And he was riding the four-wheeler with who?

5 A He was riding it with Ricky and

6 Q Okay. And then -- so were you riding out in the
7 trail when and and Ricky were riding?

8 A No, sir.

9 Q Where were you?

10 A I was playing with other kids there.

11 Q Okay. What about Alesha? Do you know who Alesha is?

12 A She's cousin.

13 Q Okay. Do you know -- so she's your cousin?

14 A No, sir.

15 Q Okay. She's cousin. She was there at the
16 cookout?

17 A No, I can't remember if she was there.

18 Q You don't remember if Alesha was there?

19 A I wasn't paying attention to that.

20 Q Okay. You never rode on the four-wheeler with
21 Alesha?

22 A I don't think so.

23 Q Could you have forgotten?

24 A Maybe.

25 Q Maybe. Okay. Did you ever ride on the four-wheeler

1 with

2 A No, sir.

3 Q Did you ever ride on the four-wheeler with Ricky?

4 A No, sir.

5 Q Okay. Now, you say that you and only rode one
6 time. You and only rode one time.

7 A Well, at that cookout, yeah.

8 Q At that cookout.

9 A Yeah.

10 Q Okay. And so you rode out one time. And while you
11 were out on the trail, went from very happy, playing
12 and having a good time, to sad.

13 A Sad and serious.

14 Q And she told you Uncle Ricky had touched her, and you
15 said, in the wrong place; right? Did you ask her any
16 questions about what Uncle Ricky had done? What did you
17 mean? What place was that?

18 A I was like, oh my gosh, and everything.

19 Q But you didn't ask her any questions?

20 A I can't remember.

21 Q She didn't explain to you whether she got touched in
22 the front or in the back, in the top or the bottom?

23 A In the bottom she said.

24 Q You asked her that?

25 A Well, she had told me.

1 Q She had told you. Okay. So after you got in the car
2 with your mom, you were riding home.

3 A Yes, sir.

4 Q You had already eaten?

5 A (Nodded.)

6 Q Were you there when Uncle Ricky and Lisa left with
7 Alesha and baby

8 A I'm not sure.

9 Q You don't remember that?

10 A No, sir.

11 Q Okay. But all the time you knew that this -- this --
12 had already told you something had gone on.

13 A Yes, sir.

14 Q Okay. So your mom came to the house to pick you up;
15 right?

16 A Yes, sir.

17 Q But you didn't tell her then?

18 A It was on our way home--

19 Q Why didn't you tell mom?

20 A Because I want -- be uncomfortable about that. I
21 want to tell my mom first.

22 Q Okay. So you got home or you're on the way home in
23 the car, you told your mom, and then she called
24 mom?

25 A Yes, sir.

1 Q Do you know what time that would have been?

2 A No, sir.

3 Q Okay. And then you went on to bed?

4 A Well, I stayed up a little bit watching TV and then--

5 Q So it wasn't too late when you -- when your mom
6 called mom. It was before you went to bed.

7 A Yes, sir.

8 Q You stayed up for a while before you went to bed;
9 right?

10 A Yes, sir.

11 Q Okay. And let me ask you this. After this happened
12 at your house when your mom called mom, did
13 anybody from the police station or the investigators
14 station or the hospital station, anybody come and talk to
15 you and get what they call a statement from you?

16 A No, sir.

17 Q Okay. When was the first time you ever had to talk
18 with -- to anybody about this case about what you heard
19 from When was the first time?

20 A It was whenever I told my mom and everything.

21 Q And after that, who was the first person you had to
22 talk to about this case that you didn't know, somebody
23 that wasn't in the family?

24 A Ms. Suzanne.

25 Q When was the first time you talked to Ms. Suzanne

1 about the case?

2 A I don't recall the time or day.

3 Q Can you remember whether it was close by the cookout
4 or was it close by this week when we had the trial?

5 A It was close by the cookout and somewhere between
6 this time, somewhere between.

7 Q Do you know how long ago the cookout was?

8 A It was right before Christmas.

9 Q Was it almost two years ago?

10 A In 2006.

11 Q So that would be a year and a half ago?

12 A Yes, sir.

13 Q So in the year and a half between the cookout and
14 today, can you remember when you talked to Ms. Suzanne for
15 the first time?

16 A No, sir.

17 Q Okay. But nobody came to your house the week after
18 the cookout. Can you remember that? The seven days after
19 the cookout, did you talk to anybody from the police
20 station or the hospital or any investigator that was
21 trying to find out exactly what you heard from and
22 what you told your mom?

23 A No, sir.

24 Q All right. Thank you, ma'am. Nothing further.

25 MS. MAYES: Nothing further from the witness at

1 this time.

2 THE COURT: Thank you, ma'am. You can step
3 down.

4 (Witness left the stand.)

5 MS. MAYES: And may the witness be released?

6 THE COURT: Any objection?

7 MR. FINNEY: No objection.

8 THE COURT: Yes, ma'am.

9 MS. MAYES: The State calls John Hickman.

10 JOHN HICKMAN, after being duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. MAYES:

14 Q All right. And Mr. Hickman, can you tell us where
15 you currently reside?

16 A At North, Pinewood, South Carolina.

17 Q I'm going to ask you about the members of your
18 family. If you could just give us a little information
19 about that.

20 A I'm married to Margaret. She works at Carolina
21 Medcare here in Sumter. Have two daughters, one is 15,
22 Nicole, and one that's nine,

23 Q Okay. And what -- can you give us a little
24 information about your current employment and background.

25 A I work at Lube Industries. I start there three weeks

1 ago. Work on pressure washers. I'm retired from the
2 military with 22 years.

3 Q All right. And how long have you resided here in
4 Sumter County?

5 A We have lived in Pinewood for nine years.

6 Q Okay. And the home that you live in now, is that the
7 same home that your family was residing at when you had
8 the cookout in 2006?

9 A Yes, ma'am.

10 Q Okay. Can you tell us a little bit about that
11 particular day, what you recall as far as the events of
12 what was transpiring?

13 A We had a cookout, barbeque, had a family
14 get-together, friends, family. We had probably about 30
15 people there. It was a nice day. It was warm. We got
16 out and played, rode four-wheelers, you know, had fun and,
17 you know, regular outing, you know.

18 Q Okay. And does that include members of your family
19 as well as your wife Margaret's family?

20 A Yes, sir, both families.

21 Q Okay. All right. And I think you mentioned the
22 four-wheelers. Your daughter had she ever ridden
23 four-wheelers prior to that day?

24 A Yes, she has.

25 Q And how did she learn to drive the four-wheeler?

1 A Me teaching her how to ride.

2 Q All right. And how many four-wheelers did your
3 family own on that particular day?

4 A Two.

5 Q Okay. And what do you recall, Mr. Hickman, about
6 your daughter being on a four-wheeler at any point during
7 the day of the cookout?

8 A I know that she was riding. She was riding with
9 several other people. And she was riding her little
10 four-wheeler which was a '90 Viper, and she was riding the
11 big -- the green Honda four-wheeler.

12 Q Okay. I'm going to show you a picture which is
13 State's Exhibit one and ask you if you recognize that
14 photograph.

15 A Yes, ma'am.

16 Q Okay. And which -- which four-wheeler is this of the
17 two that you just described?

18 A That's the Honda.

19 Q Okay. And so this would be the big one?

20 A Yes, that's the big one.

21 Q All right. And who do you recall seeing on
22 that particular four-wheeler with?

23 A She was riding with Ricky, baby at the time.
24 She rode it with Hannah. There was several people riding.
25 They switched back and forth. But when I was coming out

1 the house and going back in, I saw -- at a time it was her
2 and Ricky and the baby on it.

3 Q Okay. And what do you recall about the baby in terms
4 of approximately how old he is or what developmental level
5 he was at?

6 A I'm going to say about 18 months, you know, he had --
7 someone said it was -- he was not an infant, but you know,
8 young, real small.

9 Q Okay. And when you saw on the four-wheeler, do
10 you recall who was driving when you saw them on it?

11 A Ricky was driving when I seen them on it as they were
12 going out.

13 Q Okay. And can you tell us a little bit about the
14 trailways or paths that are in your immediate vicinity
15 there on your property?

16 A Yes, ma'am. On my property we have to go through
17 the -- my neighbor's yard to go out the gate to go to the
18 back where the trails are. When you leave out the gate,
19 you go to the little tree farm which is owned by Joey
20 Smoak.

21 And the path goes on and then goes into the woods.
22 There's two sections. It's a short trail to the right.
23 And you come back out and go back further and you'll go
24 into the long trail, which is like a maze, sort of
25 circles, you know.

1 Q And have you ridden those trails yourself on a
2 four-wheeler?

3 A Yes, ma'am.

4 Q Okay. And are you familiar with them?

5 A Yes, ma'am. I made the trails.

6 Q Okay. I'm going to show you some additional
7 photographs and ask you whether or not you identified
8 the -- can identify the area depicted in these
9 photographs.

10 A Yes, ma'am.

11 Q Okay. And what is this location that you're looking
12 at in the photographs?

13 A This is the gate you go out of my back yard to my
14 neighbor's yard. As you go out this -- it's behind the
15 neighbor's yard going into where the tree farm is. That's
16 the same -- that's palm trees.

17 Go around the palm trees and cut across and go -- run
18 up to a little -- right beside the tree farm. This run --
19 this little path here takes you on to the trails. This
20 right here is -- it's the front -- this small trails we
21 got, it circles around and come back out into the big
22 trail.

23 Q Okay. And would you or can you say whether these
24 photographs are a fair and accurate representation of the
25 scene as you recall it in December of 2006?

1 A Yes, ma'am.

2 MS. MAYES: Your Honor, this will be State's
3 Exhibits for evidence I believe eight, nine, 10 and
4 11?

5 THE COURT: Okay. What says the defense?

6 MR. FINNEY: No objection.

7 (WHEREUPON, State's Exhibits 8-11 were admitted
8 into evidence.)

9 MS. MAYES: May we publish to the jury, Your
10 Honor?

11 THE COURT: Yes, ma'am.

12 BY MS. MAYES:

13 Q Now Mr. Hickman, when you're on the trails, are you
14 able to see the house at all times or the yard area?

15 A No, ma'am.

16 Q And why or why not?

17 A Once you leave out the gate, you go into my
18 neighbor's yard out past the tree farm, it's as -- it's a
19 short distance, about 500 feet. And once you actually hit
20 the trail, you're in the woods. You can't look back.

21 And as you're riding down the little short road, you
22 look back, you see the tree farms, and that -- and the
23 little tree there, the trees, it blocks the view of the
24 house.

25 But then once you get past that and actually into --

1 on to the trail, you don't see nothing but woods.

2 You're...

3 Q Okay. And then let me also ask you if you are at the
4 house, are you able to see someone at all times that they
5 are riding on the trails?

6 A No, sir. No, ma'am.

7 Q Okay. And I'm going to ask you if you could to
8 depict for us the pattern of the trails. I'm going to ask
9 you whether or not two people riding on different
10 four-wheelers are necessarily able to see each other at
11 all times that they are on the trailways.

12 A No, ma'am.

13 Q And why or why not?

14 A Because the trails -- unless you're following behind
15 each four-wheeler -- believe that's the only way. Because
16 the trail goes in circles and it also branches off.

17 If one person decided to take a left on the trail,
18 the other one take a right, you can't see it. There's --
19 there's pine trees, there's brush and everything. You
20 cannot see unless you're directly behind that person.

21 Q Are you familiar with the pattern of the trails --

22 A Yes, ma'am.

23 Q -- and the layouts? Okay. I'm going to ask you
24 briefly if you could step down and depict for us in the
25 diagram that pattern of the trails.

1 A Okay. (complied.) Right at the house -- you got the
2 house here. You got a fence that runs across here. Next
3 door neighbor's house. You leave out. You come this way,
4 you come out.

5 You're looking at the picture, here's those palm
6 trees you see in the picture. Here's the tree farm. Go
7 around here, comes up about 500 feet. You got woods all
8 out in here that branches off, and you got the trail that
9 comes around us here.

10 It comes back around, the trail comes out here. You
11 got the ditch that runs across here, ridge here. You got
12 the trail that runs across here and into here. You come
13 out of here, the trail goes on this way, enters into the
14 woods. It comes around.

15 It's a big circle, big circle trail with the trail
16 that comes across where this bridge here, hits here. You
17 could branch off and go this way or go this way. The
18 trail that comes right here across here and ones that go
19 up and out into the field. This trail runs here.

20 You riding this way, a person takes -- go here, you
21 can't see nothing here because the trees and brush grown
22 up. Somebody cuts across this trail, you can't see nobody
23 over here.

24 Q Okay.

25 A It's about a total of 2 acres that's in there.

1 Q So just to clarify, we're talking about separate
2 pathways that interconnect?

3 A Yes, ma'am.

4 Q Thank you.

5 MS. MAYES: And at this time, Your Honor,
6 State's Exhibit 13 for evidence -- 12 for evidence.

7 THE COURT: What says the defense?.

8 MR. FINNEY: I don't know what it is.

9 THE COURT: I assume it's that diagram.

10 THE WITNESS: It's a layout of the trails. The
11 four-wheeler trail -- the path in the woods.

12 MR. FINNEY: No objection.

13 THE COURT: Okay, sir.

14 (WHEREUPON, State's Exhibit 12 was admitted into
15 evidence.)

16 BY MS. MAYES:

17 Q Now Mr. Hickman, after people left the cookout, did
18 you become aware of a situation at home?

19 A People started leaving, I -- I moved a lot. I -- I
20 posted, you know, kept hearing -- everything going, you
21 know, pretty much like the host, and I kept going back and
22 forth. And people started leaving, they -- and Ricky,
23 Lisa, and Alesha and them left, Hannah and everybody left.

24 Pretty much everybody was gone by 7:00. And then
25 that's when we got the phonecall from Melody.

1 Q Okay. And let me get a little bit of information
2 from you about a family history. How is it that you know
3 the defendant in this case, William Ricky Welch?

4 A Through my sister as her live-in boyfriend, fiancée.

5 Q Okay. And if you had to estimate, how long do you
6 think she had been involved with him prior to that
7 cookout?

8 A Three -- about four years, somewhere in there.
9 Might be a little bit longer.

10 Q All right. And who else resided with them? I think
11 you mentioned he and your sister Lisa.

12 A My -- my sister's daughter, Alesha.

13 Q Okay. And that would be the Alesha who was
14 previously mentioned --

15 A Yes.

16 Q -- as also being present at the cookout?

17 A Yes, ma'am.

18 Q All right. And then I think a baby was mentioned.

19 A Yes.

20 Q How did come to the party?

21 A They brought with them.

22 Q And is he a relative to your knowledge of them or...

23 A I don't -- no, ma'am.

24 Q And was that the first time that you had seen that
25 child?

1 A No, ma'am, I have seen him before.

2 Q Okay. And with who?

3 A With Lisa and Ricky at their house.

4 Q Okay. And you mentioned that Melody, your wife's
5 sister, made a phonecall. And what if anything did you
6 and your wife do in response to that phonecall that night?

7 A My wife went to my daughter and tried to, you know,
8 talking with her to find out what all happened and to get
9 information, see what happened.

10 Q Okay. And then where did you go the next morning?

11 A The next morning about 7:00 we was at the ER,
12 emergency room.

13 Q Okay. And so was that the first thing you did the
14 following morning?

15 A Yes, ma'am.

16 Q And for what reason did you go to the emergency room?

17 A My daughter was complaining.

18 Q Okay. And without going into detail--

19 A And when I--

20 Q Without going into details, what type of physical
21 symptom was your concern?

22 A She was having trouble urinating.

23 Q Okay. And upon arriving at the hospital, do you know
24 whether or not law enforcement was notified?

25 A They was notified once we -- we checked into the ER,

1 that's when we, you know, had the nurse notify them
2 because we thought our -- at that time our daughter was
3 having problems and...

4 Q Okay. And as a result, did members of law
5 enforcement respond to the Tuomey emergency room?

6 A Yes, ma'am.

7 Q Okay. And do you know whether or not your daughter
8 was interviewed at some point on that day on -- by I think
9 Gwen Herod with the Sumter County Sheriff's Office?

10 A Yes, ma'am.

11 MS. MAYES: Beg the Court's indulgence.

12 THE COURT: Yes, ma'am.

13 (Whereupon there was a pause).

14 BY MS. MAYES:

15 Q Have you also had the opportunity to review a
16 videotape of the scene that was prepared by Investigator
17 Jamie Turner with the Sumter County Sheriff's Office?

18 A Yes, ma'am.

19 Q Okay. And having reviewed that, can you say whether
20 or not that is also -- or is a fair and accurate depiction
21 of the scene as it was in December 2006?

22 A Yes, ma'am.

23 Q Did you have any type of confrontation or involvement
24 or communication with Mr. Welch following that disclosure
25 by your daughter?

1 A No, ma'am.

2 Q Did you ever have the opportunity to speak with
3 anyone in the family about it?

4 A My immediate family or to...

5 Q Correct.

6 A Me and my wife talked, but no -- nobody else.

7 Q Okay. And do you know whether or not there is ever a
8 time that you spoke with your sister Lisa?

9 A The only -- the only time I talked with her was the
10 day she called me saying that--

11 Q You can't say what somebody else said. But did you
12 have an opportunity--

13 A Yes, I had.

14 Q Okay. But as far as Mr. Welch goes?

15 A Yes.

16 Q Okay.

17 MS. MAYES: Nothing further at this time, Your
18 Honor.

19 THE COURT: Mr. Finney?

20 CROSS-EXAMINATION

21 BY MR. FINNEY:

22 Q Mr. Hickman, good morning.

23 A Morning.

24 Q Mr. Hickman, you never called Ricky Welch to ask him
25 did he have a problem with that day.

1 A No.

2 Q And you were busy around the house that day. You
3 were cooking and making sure everybody was having a good
4 time. And everybody was having a good time.

5 A Yes, they was.

6 Q All right. And there was no indication there was any
7 problems from your daughter or anybody until the call came
8 from Margaret --

9 A Yes.

10 Q -- right? And that was seven or 8:00 that night?

11 A 7:30 to eight.

12 Q What time do you think Ricky and Lisa left with the
13 baby and Alesha that day?

14 A It was approximately about 6:30, between 6:30 and
15 seven some time.

16 Q So it was dark when they left?

17 A Yes.

18 Q Was it--

19 A Daylight savings time it gets dark about 5:30.

20 Q Right. It was December, December 23rd?

21 A Right.

22 Q Gets dark 5:30, 6.

23 A That early, yes.

24 Q And it was dark when they left?

25 A Yes.

1 Q All right. Now, how many times did you go out on the
2 trail that day?

3 A I probably rode once.

4 Q All right. Which bike did you ride?

5 A I rode the Honda, the big--

6 Q The big green one?

7 A Yes.

8 Q All right. And there was another one?

9 A Yes.

10 Q All right. Were they both being used that day?

11 A Yes, they was.

12 Q Which means you had to gas them up and get them
13 ready.

14 A Yes.

15 Q All right. Do you remember going out after you all
16 ate that day and cranking up the bike so Ricky could get
17 on it and take the kids out?

18 A Everybody knew how to start them up.

19 Q Okay. You don't remember going out and having to
20 crank it up for Ricky?

21 A (Shook head.)

22 Q All right. You think Ricky could come out and he
23 knew how to operate and everything.

24 A Yes, sir.

25 Q He had been on that bike before?

1 A He has before.

2 Q Okay. And your daughter knows how to crank it up and
3 start it by herself?

4 A Yes, sir.

5 Q Both bikes?

6 A Yes, sir.

7 Q All right. Now, what about Alesha? Did Alesha ride
8 that day?

9 A Yes, sir.

10 Q All right. And Hannah?

11 A Yes, sir.

12 Q All right. Do you -- did you -- when you went out on
13 the trail that day, you said you rode it once.

14 A Yes.

15 Q It was December.

16 A Yes.

17 Q What kind of day was it?

18 A It was a nice day. The weather -- it was nice, but I
19 was in shorts and T-shirt.

20 Q All right. Good. So the other -- the kids didn't
21 have on coats and jackets and things--

22 A Some of them had light jackets on, long sleeve shirt,
23 but it was -- it was in the 80's that day.

24 Q How many people besides the ones we have kind of been
25 talking about, Alesha, Hannah, Ricky, baby

1 any other people at the -- you rode that day. That's six.

2 A Yes, sir.

3 Q Anybody else ride that you know of?

4 A Yes, sir.

5 Q Okay. Other people rode, too?

6 A Yes, sir.

7 Q Now, on the trail, as you're riding the trail, do you
8 remember whether or not the bikes were going out together
9 when they went out?

10 A Yes, sir. There's times that both bikes went out the
11 same time.

12 Q All right. And so there would be times when Ricky
13 would be riding the bike, there'd be another bike either
14 in front of him or behind him?

15 A Not all the time bikes went out together. There was
16 times where they was changed or we'd gas them up or
17 some -- you know, somebody was doing something different.

18 Q So there was a lot people riding. You had to gas
19 them up during the day.

20 A I gassed them up one time during the middle. That
21 was a small -- the small four-wheeler.

22 Q Right.

23 A Uses more gas than the big one.

24 Q Okay. And so there wouldn't have been -- I mean, you
25 don't know, you weren't out on the trail. You don't know

1 if Ricky was riding one of the bikes when somebody on --
2 the other kids could have been riding right behind him or
3 right in front of him.

4 A I know the time Ricky was riding with baby and
5 Also knew the time and Hannah was on the
6 bike. I also knew the time my brother Charles and his son
7 was on the bike.

8 Q Okay. What I'm saying to you is, if Ricky went out
9 on the big bike and Alesha or Hannah or somebody else was
10 on the little bike behind them, they could have gone down
11 the trail together following each other.

12 A Yes, sir, they could have.

13 Q And they would have been able to see each other on
14 the trail.

15 A Yes, sir.

16 Q Is it a wooded area.

17 A Yes, sir.

18 Q But it is -- and you have got the pictures here.
19 Thank you. When you get on the trail -- let me just show
20 you State's Exhibit number 11 -- down here. Is that part
21 of the trail down here in the bottom right-hand corner --

22 A Yes, sir.

23 Q -- left-hand corner?

24 A Yes, sir, that's the trail that goes around.

25 Q And this is the trail here --

1 A Yes, sir.

2 Q -- right through the woods part here. Let me step
3 over here. So if there had been two bikes out there, they
4 could have seen each other on the bikes.

5 A Yes, sir.

6 Q All right. Now, in December are -- the trees got a
7 lot of leaves on them?

8 A No, sir, they don't.

9 Q These pictures taken in December?

10 A No, sir, not -- not December.

11 Q All right. Now, the trail itself, you have to go
12 carefully on the trail. Did you teach your children when
13 they ride they have to be careful --

14 A Yes, sir.

15 Q -- they're not speeding out there?

16 A They are not speeding.

17 Q Do they have helmets on?

18 A No, did not have helmets on that day.

19 Q All right. And so they're riding carefully through
20 the trail. Did you at any time notice Ricky riding the
21 bike or -- in a improper manner, too fast, doing anything
22 wrong?

23 A You can't see the trails from the house.

24 Q Okay.

25 A Once they leave out the gate and go down past the

1 tree farm, before you hit the tree farm, once you pass the
2 palm trees in the picture, you can't see them.

3 Q Okay. And to your knowledge, Ricky had the baby
4 on the bike.

5 A Yes, sir.

6 Q And

7 A Yes, sir.

8 Q And you didn't have any problem with that?

9 A I didn't have -- no, sir.

10 Q All right. Now, you have known this man three or
11 four years; is that correct?

12 A Yes, sir.

13 Q He's been to your house before, come to the parties.

14 A Yes, sir.

15 Q And you had your kids go over and spend the weekend
16 with him.

17 A Yes, sir.

18 Q You and your wife had gone out of town for the
19 weekend and left the kids with him.

20 A Yes, sir.

21 Q Nicole and have a good relationship with Ricky
22 and Lisa, and they have a teen-aged daughter named Alesha
23 that played with the girls.

24 A Yes, sir.

25 Q They all had a good time. All right. When you got

1 the call from Margaret, your wife went and talked to
2 this particular night, which is a Saturday night.

3 A Yes, sir.

4 Q And y'all went to bed.

5 A Yes, sir.

6 Q You didn't call the police.

7 A No, sir.

8 Q Didn't call Ricky.

9 A No, sir.

10 Q Didn't call EMS.

11 A No, sir.

12 Q Where do you live, sir?

13 A Live in Pinewood.

14 Q How far is it to the hospital in -- Tuomey?

15 A Thirteen, 14 miles.

16 Q All right, sir. The next morning gets up and
17 says she's complaining about urinating, and y'all take her
18 to be checked out.

19 A Yes, sir.

20 Q Do you know what the doctor -- if the doctor gave her
21 any medicine that day -- that day, the 24th of December at
22 the emergency room, did he give her any medicine?

23 A Nothing was give to her until after the deputy
24 sheriff and when Ms. Gwen was there.

25 Q Okay.

1 A Nothing was administrated (sic) to her.

2 Q All right. Do you know if she was given some
3 prescriptions by the doctor on the 24th?

4 A She was.

5 Q And do you know what it was?

6 A I can't remember exactly what it was.

7 Q Was it a pill or a cream?

8 A I cannot -- like I said, I cannot remember what type
9 medicine it was, but she was given medicine.

10 Q All right. Do you know what the medicine was for?

11 A I'm not sure. I'm not sure.

12 Q That's right. Thank you, sir. Nothing further.

13 REDIRECT EXAMINATION

14 BY MS. MAYES:

15 Q I believe you said previously that your wife is -- or
16 I believe there's been previous testimony that your wife
17 is an EMT?

18 A Yes, ma'am.

19 Q Okay. And being an emergency medical technician,
20 whose job was it to help with any medication that
21 she may have been--

22 A My wife. My -- my wife was.

23 Q Okay. And can you also tell us whether your wife was
24 present when was actually physically examined in the
25 emergency room?

1 A Yes, ma'am.

2 Q Now, you were questioned about the trails and the
3 position of people. Did you ever see anyone directly on
4 another four-wheeler directly behind your daughter and Mr.
5 Welch when they went off?

6 A No, ma'am, not at that time.

7 Q Okay. And hypothetically, if people are riding on
8 the trail, how close together would they have to be in
9 order to see each other at all times?

10 A You can be within -- at that time you could have been
11 15, 20-foot, you know, behind that person --

12 Q Okay.

13 A -- and still see them.

14 Q Okay. And getting outside that range of 20-foot
15 range and let's say a 50-yard range, half a football
16 field, would you be able to see everything that occurred?

17 A At some points in the trails you could. There's one
18 place that maybe is a stretch of about 80-foot long,
19 that's straight. The rest of the part is -- curves, you
20 know, it's sharp turns. You couldn't see.

21 Q Okay. And once people venture out on to the trails,
22 can you tell us how many separate pathways -- pathways
23 there are if you had to estimate that could be taken?

24 A Probably 20, 25. If you branch off to the right, the
25 first part there, the other four-wheeler goes straight,

1 you ain't going to see them.

2 Q Thank you. Nothing further.

3 THE COURT: You...

4 MR. FINNEY: Nothing further, Your Honor.

5 THE COURT: Thank you, sir.

6 (Witness left the stand.)

7 MS. MAYES: State calls Gwen Herod.

8 THE COURT: We are going to take our morning
9 break before you get her on the stand. Ladies and
10 gentlemen, we are going to take about a 10 minute
11 break because this next witness is probably going to
12 take us all the way into lunch.

13 So we're going to take -- give you a chance to
14 stretch your legs, and we'll be back in about 10
15 minutes. Remind you, don't discuss the case yet.

16 (Jury left the courtroom at 10:51 am.)

17 (Whereupon a brief recess was had.)

18 THE COURT: Is the State ready?

19 MS. MAYES: Yes, sir.

20 THE COURT: Defense ready?

21 MR. FINNEY: Yes, sir.

22 THE COURT: Bring us the jury.

23 (Jury entered the courtroom at 11:09 am.)

24 THE COURT: Madam Solicitor, you may call your
25 next witness.

1 MS. MAYES: May it please the Court. The State
2 calls Gwendolyn Herod.

3 GWEN HEROD, after being duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. MAYES:

7 Q And Mrs. Herod, where are you employed and in what
8 capacity?

9 A I am currently employed at the Sumter County
10 Sheriff's Office as the victim assistance officer.

11 Q All right. Can you give us a little bit of
12 information about that, exactly what is meant by the term
13 victim assistance officer?

14 A Yes, ma'am. My role as a victim assistance officer
15 is simply to serve victims of crime. And myself and my
16 partner, Pam Shields, are responsible for responding to
17 scenes where someone has become a victim of a crime and
18 working with that person throughout the criminal justice
19 process.

20 Also as part of my duties I'm responsible for
21 conducting and overseeing in investigations concerning
22 child victims, the forensic interviewing of those child
23 victims.

24 Q All right. I'm going to ask you a little bit more
25 about that at a later point. Can you give us some

1 information concerning your background and training
2 specific to interviewing child victims of alleged sexual
3 assault, alleged physical abuse, things of that nature..

4 A Yes, ma'am. As part of my duties -- actually I began
5 working in the Sheriff's Office in 1981 as the
6 investigator's secretary, and at that very early stage of
7 my career I was responsible for taking statements from all
8 victims, and certainly there were child victims at that
9 time, too.

10 When I went to work with the Solicitor's Office in
11 1985, I was hired and started the position of Victim
12 Advocate for the Third Circuit Solicitor's Office. And
13 during that time -- and I worked in that position till
14 1996 -- became aware of the field of forensic
15 interviewing, and as part of trial preparation in cases
16 where children were victims, was responsible for
17 interviewing and talking to child victims before their
18 testimony.

19 Upon returning to the Sheriff's Office in 1998, part
20 of my responsibility was to conduct the interviews of
21 child victims. And in March of 2001 I was selected and
22 accepted into a course called Finding Words that was
23 teaching a recognized accepted standardized forensic
24 interviewing technique that's known as RATAC.

25 Upon completing that course and returning back to my

1 work duties, the Sheriff's Office accepted that procedure
2 as policy and procedure. And since that time in 2001 we
3 have had that as part of our procedure, the RATAC method
4 of forensically interviewing children.

5 And since working at the Sheriff's Office, I have
6 attended numerous refresher courses and training sessions
7 of that specific form of forensic interviewing and have
8 been doing so since.

9 Q All right. And let me ask you this. Along with
10 Sheriff Dennis, what type of atmosphere has been created
11 within the Sheriff's Department in order for you to
12 conduct interviews with a child victim?

13 A We have secured office space that myself and my
14 partner are housed at separate from the Sheriff's Office.
15 And as part of that office space we actually have a
16 interview room with the -- now the equipment set up to
17 videotape interviews within that room and also an
18 observation room for other professionals to observe
19 interviews and that type of stuff.

20 That was created as part of our office to be able to
21 do that with child victims.

22 Q All right. And you -- so -- I think you kind of
23 mentioned several previous categories of job experience.
24 But since you have been an off -- or affiliated with the
25 Sheriff's Office --

1 A Yes, ma'am.

2 Q -- how many years would you estimate you have been --
3 conducted forensic interviews with child victims?

4 A I have been conducting forensic interviews of child
5 victims since 1998. Specifically the RATAC method is
6 the -- is what I have been using since 2001.

7 Q All right. And is it possible for you to give an
8 estimation of how many such forensic interviews you have
9 conducted with children?

10 A Since 2001, using the RATAC method, I would -- I
11 would estimate probably between 250 or 500 forensic
12 interviews. I'm not sure of the exact number.

13 Q All right. And when the Sheriff's Department is
14 involved in a case where there are allegations of child
15 abuse, specifically child sexual assault, is it common or
16 uncommon for you to be involved with the forensic
17 interviews of those child victims?

18 A That's common. That's our procedure. And also I
19 would add that -- just so I will be clear -- it's not only
20 limited. Sheriff Dennis allows me to conduct forensic
21 interviews for other agencies, we work hand in hand with
22 DSS, sometimes are requested by them, sometimes the
23 guardian ad litem, a private attorney who has been
24 appointed on a case will contact me, sometimes other law
25 enforcement agencies in the area who don't have someone on

1 board to do those interviews, so I will conduct the
2 interviews at the request of another agency.

3 Q All right. And have you testified previously in a
4 South Carolina court of law concerning the findings or
5 results of a forensic interview that you conducted with a
6 child -- alleged child victim?

7 A I have, yes, ma'am.

8 Q And has that been on one occasion or more than one
9 occasion?

10 A More than one occasion.

11 Q And does that include the Court of General Sessions
12 that we're in today which would be criminal court?

13 A Yes, ma'am. That would include that court.

14 MS. MAYES: Your Honor, at this time the State
15 does offer Gwen Herod as an expert in the field of
16 forensic interviewing of children.

17 MR. FINNEY: Subject to our earlier objections,
18 Your Honor.

19 THE COURT: Okay. Then subject to your
20 objection, I find that she is an expert in the field
21 of forensic interviewing.

22 BY MS. MAYES:

23 Q All right. Now Mrs. Herod, I'm going to go back to
24 the beginning of where you first mentioned the term
25 forensic interview and ask if you can explain to us

1 exactly what is meant by the term forensic interview.

2 A Yes, ma'am. A forensic interview basically means
3 that it's an -- an interview where the child is not asked
4 any leading or suggestive questions, and that you go into
5 the interview open-minded and not making or showing the
6 child any assumptions that you may have made.

7 It's a non-threatening interview where the child is
8 made to feel as comfortable as possible under that
9 situation. And then you let the child lead you through
10 the process.

11 And your role as the interviewer is really to ask the
12 right questions in the right way in order to give that
13 child an opportunity to tell you what has happened in
14 their life.

15 Q Okay. And what is the environment like in the place
16 that you most normally conduct your forensic interview?

17 A Our interview room is very plain. We have a -- a
18 smaller-sized office-type couch, more of the size of a
19 love seat that I sit on next to the child. And the only
20 thing in that room besides the camera that's mounted on
21 the wall is a table behind me where I keep some supplies
22 that I might need, some anatomical drawings or the dolls
23 are underneath that.

24 There's no pictures on the wall. It's a clean room
25 so that the child is not distracted. I'm -- behind us

1 where we are doing the interview is what appears to be a
2 mirror to us, but actually on the other side of it is my
3 office where other officials can observe the interview.

4 Q Okay. And is it normal or not normal for a member --
5 any other members of law enforcement to be present and
6 observe?

7 A It's common practice to have people observe the
8 interview. It would not be acceptable to have anybody
9 else in the room except the -- the person conducting the
10 interview and the child.

11 Q Okay. And who might observe an interview, for
12 example?

13 A A co-worker or someone within the office, someone
14 from the agency that requested it. If it's a situation
15 that we think might go over into a DSS jurisdictional
16 matter, we might have somebody from DSS.

17 The point of the interview -- one of the main things
18 we try to do is to not have to have the child interviewed
19 by a lot of different people.

20 So in a case that there's cross-jurisdictional
21 interests like if say maybe the person is military, we
22 might have somebody from the Air Force observe. So
23 anybody on a professional level we might have in there
24 observing the interview.

25 Q All right. And then what about the parents? Are

1 they involved in the interview? Did they observe the
2 interview?

3 A They're involved in the interview. Their involvement
4 in the interview is to -- lots of times to bring the child
5 to the interview, and I will always speak to them before
6 the interview. But they would never be allowed to observe
7 the interview or to be in the room during the interview.

8 Q And why or why not?

9 A Well, in the first place it's not really fair to the
10 child because again we go into it not making any
11 assumptions and I -- I'm not going to assume if there's
12 any involvement of the parents, if they knew about it, if
13 they were involved, so I would never put the child in the
14 situation of asking them about that when a -- you know,
15 when somebody that I don't -- I can't assume that type of
16 thing.

17 The other thing is you wouldn't have the parents in
18 the room because children tend to either try to please
19 their parents, or if a parent started crying when a child
20 started telling something, the child might shut down and
21 not finish telling you because they made their mama cry or
22 something like that, so it's just bad practice.

23 Q All right. Now, what about the doll that you
24 mentioned before, what training have you received about
25 the dolls and when they are used and things of that

1 nature?

2 A The dolls are used -- the -- the use of anatomical
3 dolls -- I began to use them on a limited basis after
4 going through the initial RATAC training. And the role of
5 the dolls is simply to give the child another tool to be
6 able to tell you what happened to them.

7 But you have to be real careful and you have to be
8 able to see that the child can make what we call that
9 transitional shift into the use of the dolls.

10 The dolls could be something that was easily misused.
11 If you had a real young child -- it's not like play
12 therapy that you sit dolls in front of a child and see
13 what they do with them.

14 It's specific for the task -- and I'm always very
15 careful to say, these dolls are not like dolls you play
16 with, and -- and I have to feel comfortable as the
17 interviewer that the child understands what the dolls are
18 there for, that they're not a play toy.

19 And so on some interviews I use dolls and on some
20 interviews I don't use dolls depending on if the child
21 needs that. If I'm having trouble understanding exactly
22 what the child is trying to tell me, the use of the dolls
23 is a tool for me that I'm able to understand what the
24 child is explaining, and then later on other people that
25 need to know are able to understand what the child is

1 saying.

2 Q All right. And what about competency? And by that I
3 mean that a child understands or can differentiate between
4 truth and telling a lie?

5 A I -- that's something that during -- and the -- when
6 I mentioned the RATAC method, RATAC is actually an acronym
7 of the different stages of the interview.

8 And the first stage is repore. And during the repore
9 building stage where I'm talking to that child about where
10 they go to school and that type of stuff, I'm also doing a
11 lot of other things.

12 And part of what I'm doing is observing the child,
13 understanding if the child is able to understand what's
14 going on. I -- sometimes I'll ask questions about, what's
15 your name, can you spell your name? And if it's a real
16 young child, sometimes I will ask colors. But it gives me
17 an opportunity to see where that child is.

18 It also gives me an opportunity to make sure the
19 child understands that telling the truth is an important
20 part of what we're doing there today and the child
21 understands that and is willing to tell the truth.

22 I have had children sometimes say, do you understand
23 what it means to tell the truth, and they do, and I say,
24 we are going to talk about some things, can you promise me
25 that you're going to tell me the truth? No, I'm not going

1 to tell you the truth about what happened.

2 So it gives me an opportunity to kind of see where
3 that child is. Number one, that they understand the truth
4 and a lie. And number two, that they're willing to tell
5 me the truth.

6 And I'll usually make the same promise to them, that
7 I promise to tell them the truth if they have any
8 questions. It's sometimes kind of difficult for me to
9 keep -- I have had some strange questions asked of
10 children -- I have asked me, but it's a promise we make to
11 each other.

12 Q All right. I'm going to ask you if you could step
13 down because you have mentioned the RATAC method --

14 A Yes, ma'am.

15 Q -- in which you have been trained. Have you maybe go
16 into further detail with that.

17 A Yes, ma'am.

18 (Witness left the stand.)

19 Q If you could briefly give us an overview of what is
20 meant by the acronym RATAC in the field of forensic
21 interviewing.

22 A Okay. As I said, RATAC is simply an acronym that
23 lists the different stages of the interview process. The
24 R is the repore stage that I mentioned earlier where
25 you're doing a lot of different things, but you're also

1 trying to make the child feel comfortable, as comfortable
2 as they can about where they're at and what's going to go
3 on.

4 So I'll ask a lot of questions about school and what
5 do you like to do, and we'll kind of discuss some things
6 then.

7 The A -- the first A of RATAC is what I call the
8 anatomy ID, the anatomy identification. And that's where
9 I give the child an opportunity to explain to me their
10 names for different body parts.

11 And the way I do that is I get age-appropriate
12 pictures of little girl, little boy, and we name different
13 body parts. It's not an opportunity for me to teach the
14 child. I don't tell them the names of the body parts.

15 And whatever they call different names of body
16 parts -- and we include everything, eyes, ears, you know,
17 whatever, but whatever they call body parts is what we
18 call it during the interview. So it's a learning process
19 for me.

20 From that stage of the interview we transition into
21 the touch inquiry where after we have identified body
22 parts and then that -- the -- the anatomical drawings are
23 there, and we're referring to those.

24 And I'll ask children a question like, are there
25 touches that you like to get, you know, like hugs, kisses,

1 and children will tell me about -- some children tell me
2 about back rubs or tickles or I like when people play with
3 my hair, I like hugs, kisses.

4 We'll transition from that to, are there any places
5 on your body that it would not be okay to touch. And
6 usually the child has already told me that they have all
7 the same places that are on that drawing. And the child
8 will either point to or take the marker and show me parts
9 of his or her body that it would not be okay to touch.

10 From that we transition right into the abuse scenario
11 where once they tell me the parts that it's not okay to
12 touch, I'll ask the question like, has there ever been a
13 time anyone has ever touched you on one of those parts of
14 your body, and that opens up the door for the meat of the
15 interview, for the child to explain to me what happened,
16 when it happened, how it happened, if anybody saw it
17 happen. That's when you get into the meat of the
18 interview.

19 After that we simply go into the closure where we'll
20 talk about, you know, if they have any questions and talk
21 about -- maybe go back to their repore stage, if they like
22 school, are you -- what are you looking forward to doing
23 in school.

24 And we close out the interview at that point.
25 understanding this is just a guide for the interviewer --

1 because you'll jump from these different parts, and it
2 would not be -- I would not be doing my job as an
3 interviewer if I didn't let the child lead the interview.

4 So sometimes actually in the repore stage the child
5 will say -- I said, do you have any questions? Yeah, do
6 you think it's bad what so and so did to me? So we'll go
7 right into the abuse scenario from that stage.

8 So this is a guide, not that we're -- you know, I
9 would never say, well, we're not going to talk about that
10 right now because we are still in repore. You know, we go
11 and let the child lead the interview. But this is to --
12 to give some guidance to the interviewer.

13 Q All right. And based upon your training and
14 education, can you tell us whether or not the RATAC method
15 is recognized and accepted among persons in the field of
16 forensic interviewing with children?

17 A It is.

18 Q All right. Now for example, or hypothetically, if
19 during the touch inquiry stage a child does not disclose
20 any act of prior abuse or sexual contact, would you go any
21 further into an abuse scenario?

22 A If the child -- if I would ask a question, has there
23 ever -- if they name some places that it's not okay to
24 touch, and I said, has there ever been a time that anyone
25 touched you there, and they say, no, I may ask a question

1 like, would it be okay to tell if something like that.

2 But if -- the child is leading the interview. If
3 they say, no, I'm not going to cram it down their throat
4 because, you know, they're leading the interview.

5 If there's something, you know -- if for instance a
6 child says, no, but we have a report that there's an eye
7 witness who walked in and saw it happening, I might say,
8 do you remember a time that so-and-so walked in your room
9 and -- you know, so we'll -- I'll explore everything, but
10 the child is leading the interview.

11 And so once they say that it didn't happen, then
12 that, you know, will close out the interview.

13 Q Okay. And have you conducted interviews in the past
14 where children did not make a disclosure of abuse?

15 A Many, many interviews.

16 Q Thank you. You may be seated.

17 A Yes, ma'am.

18 (Witness resumed the stand.)

19 BY MS. MAYES:

20 Q Mrs. Herod, when did you first become involved in
21 this case for the purpose of conducting an initial
22 investigative interview with

23 A I was called to respond to Tuomey Hospital, and it
24 was Christmas Eve, December 24th, and I think it was 2006.

25 Q All right. And when you say Christmas Eve, was it

1 actually the night of Christmas Eve or you mean--

2 A Christmas Eve day.

3 Q Okay. And your first contact with her occurred at
4 the hospital?

5 A Correct.

6 Q And can you tell us whether or not you actually
7 interviewed her on-site?

8 A I did. I conducted an interview in the hospital room
9 with -- with

10 Q And can you tell us why the interview was conducted
11 there under those circumstances as opposed to the
12 environment that you previously described to us that is --
13 that you're affiliated with at your own office?

14 A Yes, ma'am. Normally what happens upon a report of a
15 possible sexual assault of a child, we will interview the
16 child and then make a determination as to what the next
17 step needs to be.

18 In this case the parents of the child actually took
19 the child to the hospital. The child had already gone
20 through the triage and was in the -- a hospital room
21 waiting to be examined when the deputy called me to
22 respond.

23 So at that point I didn't have the freedom to take
24 the child back to my office. And it was important to
25 know -- you know, I had officers wanting to know what

1 the -- what the allegations were then, so it became
2 important to find out what I could at that point.

3 Q Okay. And who else was involved with law enforcement
4 who may have been there at the hospital?

5 A I was contacted by Sergeant Lee. She's a uniformed
6 deputy. And she had responded to the call at the
7 hospital. She had requested my assistance, so I was
8 briefed by her.

9 And it -- it was -- it was after I talked with her
10 that I went in and began my intervention with the Hickman
11 family and then interviewing

12 Q Okay. And is it your understanding that that was the
13 first contact law enforcement had with the Hickman family?

14 A Yes, ma'am.

15 Q All right. Now, going back to that event at the
16 hospital, did you have a video camera with you there?

17 A No, ma'am.

18 Q Okay.

19 A No, ma'am.

20 Q And how was your interview conducted?

21 A I introduced myself to -- there was various family
22 members in the room with and she was on the bed
23 waiting to be examined. So I walked into the room and
24 introduced myself and asked to speak to the parents
25 outside of the room.

1 And once outside of the room, I explained to them the
2 importance of allowing me to talk to the child alone and
3 why that was important. Asked them to step -- to stay
4 outside, and then I went back into the room with and
5 conducted the interview, was just and I in the room.

6 Q Okay. And at that point in time did you know
7 necessarily what the type of sexual contact or alleged
8 sexual contact was?

9 A No, ma'am, I did not.

10 Q Okay. And why or why not may that be important to
11 determine in the context of certain requests that need to
12 be made by law enforcement?

13 A It would be important number one because the type of
14 assault that happened would guide our decision as to the
15 type of medical exam that she needed.

16 Q What do you mean by that?

17 A If she had -- if a victim alleges sexual intercourse
18 is the assault with ejaculation, we would certainly want
19 to do a rape kit at that point.

20 Q And by the -- sorry to interrupt. By the term rape
21 kit, you're referring to a different type of medical
22 examination?

23 A Yes, ma'am. A rape kit is a kit that the hospitals
24 have that's processed by SLED. And the purpose of those
25 kits are to retrieve any evidence on a victim's body,

1 adult or child, pubic hair, semen, to process DNA and that
2 type of thing.

3 Q Now, what recommendations, if any, are made by law
4 enforcement for medical examinations if it does not
5 involve alleged sexual intercourse or alleged exposure to
6 bodily fluids such as semen that you previously described?

7 A Then it is our recommendation as law enforcement that
8 certainly if there's other complaints, that the -- a --
9 the doctor do an external examination and see if there's
10 anything that needs treating right away, but to refer the
11 child to a forensic medical examiner to conduct an exam
12 using tools specific for child abuse, sexual assault
13 examination.

14 Q And who does the Sumter County Sheriff's Office most
15 commonly refer victims to for that type of forensic
16 medical evaluation that you described?

17 A In Sumter we are very fortunate to have in the last
18 few years established our own sexual assault center that's
19 right on Lafayette, part of the Lafayette Family Health
20 Center, and we have Kathy Saunders from Florence who comes
21 one or two days a week and conducts those examinations for
22 us.

23 Q Okay.

24 A We used her in the past, but see, she was associated.
25 We used to have to transport kids every time. Now that

1 she comes here, it's -- it's been a great benefit that
2 families can go to her here.

3 Q Can you tell us whether or not that person is trained
4 in conducting child medical examinations --

5 A Yes, ma'am.

6 Q -- when sexual assault is alleged?

7 A Yes, ma'am.

8 Q And what if any tools do they have for those
9 particular types of medical examinations that may be
10 different than an emergency room hospital?

11 A An emergency room setting would not have what we --
12 what's called a colposcope which is a tool that allows a
13 non-intrusive internal examination and actually to
14 document medical examinations that the medical examiner
15 sees during her examination.

16 Q And do you know whether or not the colposcope also
17 contains a magnifying glass?

18 A It was.

19 Q Now, do you know whether or not was seen by one
20 of the physicians at the emergency room?

21 A It -- if I'm remembering correctly, we did have the
22 doctor who was on duty check on her and see her, but not
23 to conduct a sexual assault examination.

24 Q Okay. And that was -- her sexual assault examination
25 was conducted where and by who?

1 A That was a couple of days after Christmas if I'm
2 remembering correctly, and it happened here in Sumter by
3 Kathy Saunders, the lady I was telling you about.

4 Q Okay. Now, you conducted an interview with
5 actually on-site at the hospital. Can you tell us whether
6 or not made a disclosure of abuse or improper sexual
7 contact?

8 A She did.

9 Q All right. And how did you document that interview?

10 A After the -- the interview, I went to my office and
11 made what I call notes to the file of -- documenting the
12 conversation and the disclosures between and myself.

13 Q All right. And do you have with you that summary or
14 documentation today?

15 A I think it's in the courtroom. I don't have it with
16 me.

17 Q Okay. I'm going to show you what is Court's
18 Exhibit 1 and ask you whether or not you recognize this
19 document, and if so, how.

20 A Yes, ma'am. This is the document that I prepared
21 after my interview with

22 Q Okay. And has that been altered in any way?

23 A No, ma'am, other than the -- the Court identification
24 sticker, it's -- it's like it was.

25 Q Okay. And does it contain a signature from you?

1 A It does not.

2 Q Okay. And can you tell us whether you did document
3 specifically anything that said to you concerning
4 the allegations of sexual abuse?

5 A I did document that.

6 Q If you could relate directly from your original
7 notation exactly what stated to you or your -- your
8 recall concerning that conversation with during the
9 initial investigative interview at the hospital.

10 A Okay. After talking with about other things --
11 we talked about school and her teacher being Mrs. Lucas
12 and that she loved recess, and we talked about Christmas
13 and how she liked to look at the lights, I asked her if
14 she could tell me why she was at the hospital.

15 She told me she couldn't tell me why she was there.
16 I asked her why she couldn't tell me, and she told me
17 because Uncle Ricky told me not to tell. We spent some
18 time talking about secrets, and I explained to her that
19 she was safe and was not in any trouble.

20 At this point I asked her if there were any parts of
21 her body that it was not okay for anyone to touch, and she
22 told me her private spot. I asked her what her private
23 spot was for, and she told me it was to go pee pee.

24 I asked her if there was ever a time that anyone had
25 touched her on her private spot, and she told me yes. I

1 asked her if she was able to tell me about that, and she
2 told me she could tell me now what happened.

3 She told me that Uncle Ricky had touched her there.
4 I asked her to tell me if that happened today or another
5 day. She told me it happened yesterday after the party
6 had started at her house.

7 She told me that Uncle Ricky had taken her and baby
8 to ride on the four-wheeler. She told me Uncle
9 Ricky was driving, baby was in the middle, and she
10 was behind baby

11 Uncle Ricky stopped the four-wheeler and pulled her
12 underwear down and put his fingers inside her private
13 spot. She told me she thought his finger went inside of
14 her private spot four times and it felt like glass when
15 his fingernail touched her inside.

16 She told me that Uncle Ricky told her not to tell
17 anyone, and she didn't until he left later on, and then
18 she told her mom.

19 Q And after you received this information from
20 what was the next step in the law enforcement
21 investigation?

22 A I briefed the investigator and the officers as to
23 what she had told me. The next step was to ascertain who
24 Uncle Ricky was and then to make sure that had a
25 medical examination scheduled, and then the investigators

1 took over the, you know, the investigating Uncle Ricky and
2 who was he and that type of stuff.

3 My role was to make sure that I had given them the
4 information that had given me.

5 Q All right. And you mentioned previously that
6 sometimes the type of alleged contact can dictate what
7 type of medical examination the child receives. Was it
8 necessary to do what's known as a rape kit or a search for
9 bodily fluids in this particular case?

10 A No, ma'am.

11 Q And why or why not?

12 A Because the allegation she had made was digital
13 penetration, penetration with a finger. And the -- what
14 we could gather with that needed to be gathered with a
15 colposcope to see if there were any injuries consistent
16 with that.

17 And there was -- there was no allegation of sexual
18 intercourse or ejaculation, so there was no need to put
19 the child through that to turn around and have her go
20 through the examination of child sexual assault
21 examination.

22 Q All right. And who ultimately from the Sheriff's
23 Department were involved in the investigative aspect of
24 this particular case?

25 A There were several people involved. Investigator at

1 the time Bradley, now Addison, she was involved, Captain
2 Turner, I think Investigator Brown was on call during that
3 time, and several people were involved. Even the sheriff
4 was -- was involved with different parts of the
5 investigation. It was a team effort at that point.

6 Q Okay. And can you tell us whether or not to your
7 knowledge Mr. Welch was arrested at any point following
8 the initial investigative interview of

9 A He was arrested, yes, ma'am.

10 Q And following his arrest, can you tell us whether or
11 not you had the opportunity to conduct a second
12 investigative interview?

13 A Yes, ma'am, after his arrest and once the case was
14 assigned for prosecution, to have an indictment prepared
15 and prosecute the case where we are at today, several
16 questions had arisen about different aspects of the
17 four-wheeler, the scene, clarification needing to be made
18 on that.

19 And so based on that need for more information, an
20 interview was scheduled later, an investigative interview
21 by myself with to get some additional
22 information that we needed.

23 Q Okay. And can you tell us whether that's common or
24 uncommon for additional information to be sometimes needed
25 in a case involving a child victim or witness?

1 A That is very, very common always.

2 Q Okay.

3 A You're always going to have something you need to tie
4 up or a question come up that you need to -- to ask the
5 child.

6 And really the best practice for that -- and I know
7 different people do it different ways, but the -- the best
8 practice for that is to still ask the questions not
9 assuming anything.

10 And so we call those, you know, investigative
11 forensic interviews. Even though it's not the first time
12 I have talked with a child, I'm still going to maintain
13 the -- the credibility of a forensic interview and the
14 integrity of that interview so that I'm not assuming or
15 suggesting anything to the victim.

16 Q All right. And considering that this was after the
17 initial hospital visit and the child is no longer being
18 treated at the hospital, can you tell us whether or not
19 your normal protocol of conducting the interview at the
20 child center with the videotape was followed?

21 A Yes. Certainly there was not the -- the barrier that
22 I had before of not being able to -- to videotape the
23 child or to schedule it for my office.

24 And so that second interview was scheduled to have
25 the parents bring to my office and then for me to

1 conduct the interview in the room that -- that's created
2 for that, and to have it preserved on videotape.

3 Q All right. And have you had an opportunity to review
4 the videotape that was made following your second
5 interview with

6 A I have.

7 Q All right. And can you tell us whether it's a fair
8 and accurate representation of the original interview?

9 A It is.

10 Q And what was the date of the second interview?

11 A I believe the date was June the 19th, 2007.

12 Q And were the recognized standards for conducting
13 forensic interviews followed?

14 A Yes, ma'am, they were.

15 Q All right.

16 MS. MAYES: At this time, Your Honor, the State
17 would offer into evidence what is Court's Exhibit 2,
18 the DVD recording, multimedia recording, of the
19 forensic interview of conducted in
20 2006 --

21 THE COURT: What says the defense?

22 MS. MAYES: -- I'm sorry, 2007.

23 MR. FINNEY: Subject to our prior motions, Your
24 Honor.

25 THE COURT: It -- it will -- it needs a new

1 number. It's Court's Exhibit 2 now. We have a
2 State's Exhibit two, so... Kathy, what number are
3 you going to give it?

4 COURT REPORTER: 13.

5 THE COURT: State's Exhibit 13 is in over
6 objection of defense counsel.

7 (WHEREUPON, State's Exhibit 13 was admitted into
8 evidence.)

9 MS. MAYES: At this time, Your Honor, we would
10 request to publish to the jury.

11 THE COURT: Okay. You have any kind of external
12 speakers to plug into that thing or you think they'll
13 be able to hear it?

14 OFFICER: I think they'll be able to hear it.
15 I'm going to get past that one part you can't hear,
16 but I think they'll be able to hear it. I will turn
17 it up loud enough to be able to hear it.

18 MS. MAYES: Your Honor, I believe we may need
19 just a few short minutes for the set-up on this.

20 THE COURT: Outside the presence of the jury?

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

22 THE COURT: Okay. Ladies and gentlemen, if you
23 can go to your jury room for just a few minutes and
24 let them get this set up, I'll bring you back out. I
25 remind you, don't discuss this case yet.

1 (Jury left the courtroom at 11:47 am.)

2 MS. MAYES: Your Honor, the alternate is a
3 little bit of a concern. We -- he may need to be
4 slightly repositioned.

5 THE COURT: Okay. And where would you like to
6 position him -- any objection to that? The beginning
7 of this tape is where she's setting the room up and
8 he was going to simply run it by that. It doesn't
9 really have any--

10 MR. FINNEY: I don't--

11 THE COURT: Get to the actual interview itself.

12 MR. FINNEY: I don't have any problem with that.

13 (Off-the-record discussion was had about sound
14 and positioning of television.)

15 (Jury entered the courtroom at 12:08 p.m.)

16 THE COURT: Ready to go? Mr. Alternate, can you
17 see that TV? Okay. Then you can play the tape for
18 the jury. If any of y'all can't see or hear it, you
19 need to raise your hand. One of the things took so
20 long was we had to get some speakers, so...

21 (State's Exhibit 13 was played for the jury.)

22 THE COURT: You have any further questions of
23 Mrs. Herod?

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

25 THE COURT: Okay.

1 BY MS. MAYES:

2 Q And Mrs. Herod, during the interview I believe the
3 anatomical dolls that you previously mentioned were
4 utilized; is that correct?

5 A Yes, ma'am.

6 Q All right. And can you tell us a little bit about
7 the anatomical dolls in terms of how they are dressed and
8 what type of qualities they have?

9 A The reason they're called anatomical dolls is because
10 they're anatomically correct. They have all the body
11 parts that we have. And they're dressed in appropriate
12 clothes. They are different races and genders and ages of
13 the dolls that I have.

14 And so when making the decision to utilize the dolls
15 to give an opportunity to show me what she was
16 talking about, I picked out a doll that was the closest to
17 and an adult male doll.

18 Q Okay. And how was that doll dressed that you picked
19 up?

20 A The little girl doll was wearing a little dress and
21 underpants.

22 Q Okay. And when you were questioning in
23 reference to pants, what were you referring to?

24 A Talking about her underpants.

25 Q Now, is it always the case, based upon your training

1 and experience, during these forensic interviews, is it
2 always the case that the child has reported a sexual
3 assault immediately thereafter?

4 A That's rarely the case.

5 Q What do you mean by that?

6 A The -- children disclose in a lot of different ways.
7 If a child is assaulted one time by a stranger, which is
8 very rare that those -- that we get those reports in
9 comparison to the reports of someone the child knew or
10 trusted or was a family member, but there's a real shot
11 that the child will tell immediately after getting away
12 from the -- from the offender.

13 When it's someone that is part of the family or a
14 friend or someone that the child trusts, there's usually a
15 delay. And we use the term delayed disclosure meaning
16 that the child does not feel comfortable in telling right
17 away.

18 And sometimes -- in this case it -- the perpetrator,
19 the alleged perpetrator left the home and she was able to
20 tell somebody. Lots of times the perpetrator is in the
21 home, months, years go by.

22 We deal with even with adult victims who wait till
23 they're adults and then tell about what happened to them
24 as children.

25 Q All right. And based upon your training and

1 experience, would children always necessarily recall the
2 chronological order of events during--

3 A No. Children remember things by different events.
4 In this case the marker that we had was Christmas because
5 children will remember Christmas.

6 But as far as remembering times and how many times --
7 and sometimes children will say millions or -- children
8 don't remember exact numbers of times. There's sometimes
9 what came first.

10 And so you have to -- to put it in a way that the
11 child can understand it and let the child explain it to
12 you.

13 MS. MAYES: Nothing further at this time, Your
14 Honor.

15 THE COURT: Okay.

16 MR. FINNEY: Your Honor, it's going to take a
17 while.

18 THE COURT: So you -- you--

19 MR. FINNEY: It's up to you, Your Honor, if you
20 want to be here until 1:30.

21 THE COURT: No, I don't want to be here till
22 1:30. I'm hungry. All right. So you think this is
23 a good time to break and come back say at two?

24 MR. FINNEY: It's going to be a while.

25 THE COURT: Okay. Well, most of the time

1 lawyers tell me it's not going to take long and it
2 does. So one tells me it's going to take long, I
3 believe him.

4 So ladies and gentlemen, we'll probably break
5 for lunch then at this time. If you will be back at
6 2:00. I remind you please do not discuss this case
7 or read anything about it.

8 You have got to decide this case based on what
9 you hear in this courtroom. Have a nice lunch. I
10 will see you at 2:00. Come to the jury room.

11 (Jury left the courtroom at 12:36 pm.)

12 THE COURT: Thank you. Anything before we break
13 for lunch on behalf of the State?

14 MS. MAYES: Nothing from the State at this time,
15 Your Honor.

16 THE COURT: Defense?

17 MR. FINNEY: Just remind the witness that she's
18 under -- on the stand, not to talk about her
19 testimony.

20 THE COURT: All right. She -- she understands
21 that and I'm sure she won't. I'll see y'all at 2:00.

22 MR. FINNEY: Thank you.

23 (Witness left the stand.)

24 (Court in recess for lunch.)

25 THE COURT: Is the State ready to bring the jury

1 in?

2 MS. MAYES: Yes, Your Honor.

3 THE COURT: Defense ready?

4 MR. FINNEY: Yes, sir.

5 THE COURT: Okay. Jury ready? Okay.

6 (Jury entered the courtroom at 2:12 pm.)

7 THE COURT: Thank you, sir. Mr. Finney, you may
8 proceed at cross-examination.

9 MR. FINNEY: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. FINNEY:

12 Q Mrs. Herod?

13 A Yes, sir.

14 Q You have been qualified as an expert witness in this
15 court to testify about forensic interviews. Is that
16 right?

17 A Yes, sir.

18 Q And you have testified that you have been working for
19 the Sheriff's Department in Sumter County for over 20
20 years?

21 A No, sir. I have been working at the Sheriff's Office
22 presently since '96.

23 Q All right.

24 A Prior to that from '81 to '84.

25 Q You have a gap in there? Is that what you're saying?

1 A I went to the Solicitor's Office. If you're counting
2 that time, that wasn't with the Sheriff.

3 Q All right. I understand. So since '94?

4 A I have been -- '96 -- I was hired in '96 to return as
5 the Victims Assistance Officer.

6 Q So since '96 you have been a Victim Assistance
7 Officer with the Sheriff's Department?

8 A Yes, sir.

9 Q And you are -- do you have a degree in criminal
10 justice?

11 A No, sir.

12 Q Do you have a degree in psychology?

13 A No, sir.

14 Q Do you have a degree in child adolescent behavior?

15 A Not a -- not a college degree, no, sir.

16 Q All right. Now, and I know you've got a PHD because
17 you're a mom yourself.

18 A I have experience being a mother, yes, sir.

19 Q All right. And in that regard one of the things you
20 said when you first got on the stand was that children try
21 to please their parents.

22 A Some children.

23 Q Well, that's not what you said when you testified.

24 A I said children have a tendency -- and when I was
25 explaining why I wouldn't let parents in the room, I would

1 say, one of the reasons is that sometimes children would
2 try to please their parents or shut down if a parent got
3 upset.

4 Q All right. But you didn't say some children. You
5 said children.

6 A I -- I don't know what I said--

7 Q But in your expert opinion, isn't it a fact that
8 children, when they get in a unusual or unknown situation,
9 they will try to do whatever is pleasing to the person who
10 is in charge there.

11 A Sometimes.

12 Q All right.

13 A Not all children. It's hard to say that every
14 child--

15 Q Okay. Every child is different.

16 A Yes, sir.

17 Q But, I mean, we have to -- you went to this course
18 and you learned how to be an expert Ratac forensic
19 interviewer. Is that right?

20 A Yes, sir--

21 Q And that was in March of 2001.

22 A It was in March of 2001, yes, sir.

23 Q And how long did that course last?

24 A The original course was either one or two weeks, and
25 I'm not sure.

1 Q All right. So you don't remember back in 2001
2 whether it was one or two weeks, but you passed a course,
3 you became certified, and you began doing the RATAAC
4 forensic interview process --

5 A Yes, sir.

6 Q -- for all of the kids that came through your -- your
7 office in Sumter County?

8 A For children who were reported as being suspected
9 victims of sexual assault, I was responsible for doing
10 those interviews, yes, sir.

11 Q Okay. Now, is there another interview process that's
12 widely used throughout the United States?

13 A There are lots of other interview techniques,
14 forensic interview techniques. The purpose of this was --
15 the reason that -- that RATAAC came to be is that it was --
16 studied the different types, and this was determined to be
17 the best practice by the -- the different agencies
18 involved.

19 And so the movement was to try to standardize the way
20 that victims of -- child victims were responded to across
21 the nation. And so they went from state to state, and I
22 think they are now probably on like state number 32
23 probably, somewhere in there, of training different people
24 from different states so that one day the dream is across
25 the nation children are responded to in the same way.

1 Q Okay. But there are other widely accepted ways of
2 doing forensic interviews.

3 A Well, there's other names for it. A forensic
4 interview, a true forensic interview, there's certain
5 things that would be present in any forensic interview.

6 Q All right.

7 A But there's people that -- that do forensic
8 interviewing that don't use RATAC.

9 Q Okay. Have you ever heard of the on-call process?

10 A Of forensic interviewing?

11 Q Yes.

12 A No, sir.

13 Q Okay. Have you ever heard of an on-call system for
14 evaluating kids who have been identified as victims of
15 sexual assault?

16 A Not off the top of my head. That's not ringing a
17 bell--

18 Q Okay. So tell the jury why it is that even though
19 you had this little girl in the emergency room and it was
20 December the 24th, it was a Sunday I believe, she didn't
21 get to see the forensic examiner, Kathy Saunders, until
22 the 27th of December.

23 A That's correct, because that is the next time --
24 because of the Christmas holidays, that was the next time
25 that Kathy Saunders was available to see a patient. We

1 got her the next appointment we could.

2 Q You don't have an on-call system in Sumter County in
3 that time period of December, 2006 where you could have
4 had this child seen by somebody like a Kathy Saunders or a
5 baby doctor -- they call them...

6 A Pediatrician.

7 Q Pediatricians at the Tuomey Hospital?

8 A I could have had her -- we could have -- she could
9 have seen a doctor, yes, sir.

10 Q She did see a doctor --

11 A She did see a doctor --

12 Q -- in the emergency room?

13 A -- and she could have seen a doctor, and there is a
14 doctor available through the emergency room 24/7 to
15 perform what we call rape kits.

16 Q Right.

17 A But as far as having a specialist examine her, there
18 was -- we didn't feel it was a need to have it done right
19 then.

20 Q Didn't feel there was a need. Now, if there had been
21 some indication in your mind as an investigating officer
22 or an investigating examiner, you could have asked the
23 people at the hospital to do a rape kit.

24 A Yes, sir, we could have.

25 Q And in fact, you said to the jury a little while ago

1 that you didn't want to put through that because it
2 would have been an extensive examination.

3 A I think what I said -- what I meant to say was that
4 she was going to -- because of the allegations that were
5 made, because of the disclosure that was made, she was
6 going to have to see a medical examiner with the
7 capability of a colposcope and that type of stuff any way.

8 Now, if there had been any type of allegation or
9 disclosure that -- that we felt like there was going to be
10 bodily fluid on her or inside of her, then we would have
11 still gone ahead with the sexual assault exam. But her
12 disclosure was then digital penetration.

13 Q Well, how do you know that she was telling you the
14 whole story?

15 A I didn't know, but I -- I made an evaluation based on
16 her disclosure to me.

17 Q But she had told you and you told the jury that
18 children very often don't tell the whole story.

19 A Correct. But--

20 Q You told the jury that children very often don't tell
21 on people that they are aware of.

22 A That's -- that's correct.

23 Q So was going against the norm when that evening
24 within an hour after Uncle Ricky left telling on Uncle
25 Ricky?

1 A Well, Uncle Ricky didn't live in the home.

2 Q Uncle Ricky was in the home on many occasions.

3 A Well --

4 Q And she --

5 A -- Uncle Ricky--

6 Q -- he was was well known to Isn't that true?

7 A I don't know. She knew who Uncle Ricky was.

8 Q You didn't know...

9 A But I didn't have the history --

10 Q Okay --

11 A -- but what I did have.

12 Q -- but you know now?

13 A Yes, sir.

14 Q And as an expert you have testified that children

15 very often, on people that they know very well, they're

16 confused, they're guilty, they -- they don't tell for a

17 while.

18 A And if during the medical examination it would have

19 showed something that -- that would have made us suspect

20 that there was more than the -- than the disclosure she

21 made, I would have gone back and talked to her about that.

22 Q But you told the doctor not to do the rape kit, so we

23 don't have the medical information that this jury and that

24 doctor could test to see whether she told the whole story

25 or not. You saw Kayla before the doctor saw .

1 A I'm not sure whether I saw her before the doctor saw
2 her or not initially. But the decision was made not to do
3 the rape kit, that there was no need.

4 Q Okay. And that decision was not the doctor's?

5 A I mean, he could have overruled me. She's a patient
6 in the hospital--

7 Q But it wasn't the doctor's -- as far as the initial
8 request, there is a chronic form and an acute form; is
9 that not correct?

10 A Correct.

11 Q And the acute form is the one that gets the rape kit.

12 A The rape kit, if it would have happened within a
13 certain timeframe.

14 Q Well, we're only talking one day, Mrs. Herod. This
15 happened on the 23rd according to your--

16 A No, sir. I'm trying to explain to you what the
17 criteria--

18 Q Well, isn't the criteria on both tests within 24
19 hours?

20 A Yes, sir.

21 Q So you were within the timeframe.

22 A If there would have been any need to do it. If there
23 would have been any allegation or any of symptoms or, you
24 know, stained underwear or anything like that we see
25 sometime--

1 Q All right. That's what I want to ask you about.
2 Where where the underwear that had on at the
3 Christmas party?

4 A Sir, I don't know where her underwear are.

5 Q Do you know of anybody with the Sumter County
6 Sheriff's Department that made any effort to get those
7 underwear so they could be looked at?

8 A You would have to speak to the investigator about
9 that. I don't know the answer to that.

10 Q As the child victim advocate for Sumter County, did
11 you ask any investigator to go to the house and get the
12 underwear that she had on at the cookout?

13 A I did not do that, no, sir.

14 Q Did you ask anybody at the hospital to take the
15 underwear that had on on the 24th when she was at
16 the emergency room to have them checked out?

17 A I did not do that, no, sir.

18 Q Wouldn't it have made a lot of sense to check the
19 underwear to see if there was any evidence of blood or
20 fluid or anything in the underwear from this little girl
21 who says that her Uncle Ricky pulled down her underwear
22 and touched her enough to make it feel painful?

23 A And I'm sure that if there would have been blood or
24 stains in the underwear, that the parents would have
25 mentioned that to the medical professional there because

1 they -- the -- she was seen for the complaints that she
2 had. So I -- I hesitate to answer the question because I
3 don't know what they did medically--

4 Q You don't know because it wasn't looked at.

5 A I don't know that it was looked at.

6 Q All right.

7 A I can't answer that.

8 Q Did you hear or read the report from Kathy Saunders?

9 A I did not.

10 Q Okay. And--

11 A I say I did not. I haven't recently. I may have
12 then, I don't know.

13 Q Okay. So you're not aware of any complaints or
14 evidence of injury to the little girl that Kathy Saunders
15 found three days later after she was in the hospital?

16 A I have viewed the photographs and -- and I know her
17 finding, what her finding was, but I have not read the
18 report.

19 Q All right. Are you aware of anything that would have
20 led you to be able to get evidence consistent with the
21 findings that Kathy Saunders saw on the 27th if you had
22 examined the little girl's underwear on the 23rd or the
23 24th?

24 A I'm not aware of anything like that, no, sir.

25 Q Okay. You told us that one of the things about the

1 RATAC method that's important --

2 A Yes, sir.

3 Q -- is for you to go through the five steps in a -- I
4 mean, they got it RATAC-A-T-A-C, so are you supposed to go
5 with the repore first and finish with the closing last?

6 A I tried to make it clear that that is a standard of
7 boundaries that you have to go by that leads you from one
8 step to another. But there are many times that you bounce
9 from one step to the other depending on where the child
10 goes with it.

11 Q So it really just matters that you get it done. You
12 don't have to do it in any kind of order.

13 A Well, I mean, you want to do it right. But I was--

14 Q Well, what is the right way to do it?

15 A The right way to do it is to let the child lead the
16 interview.

17 Q Okay.

18 A And I -- from watching this tape, if you notice
19 during the repore stage I think she mentions something
20 about Uncle Ricky. And so what I tried to explain -- I'm
21 sorry if I wasn't clear, but what I tried to explain is
22 that you don't stop a child and say, let's go back, we're
23 still in repore, we are not there yet.

24 And what you watched in this courtroom was actually a
25 second interview where I had already met prior.

1 Q Right.

2 A So it was an investigative interview to try to
3 determine certain things that were needed by the -- by the
4 prosecution to proceed. But when I talked with her, she
5 didn't acknowledge that she remembered what we talked
6 about.

7 Q Right.

8 A And so that's when we went back because, Mr. Finney,
9 to be honest with you, I wanted to give her every
10 opportunity that if -- if the story was different than the
11 initial disclosure that she made, I didn't want to assume
12 and go into it and say, no, we don't need to talk about
13 what happened because if something had changed or she told
14 me something different, that would have been important.

15 Q Mrs. Herod.

16 A Yes, sir.

17 Q Every time the child asked -- got to a point where
18 she shook her head and said she didn't remember, you would
19 follow up with a question that would take her to the point
20 that you wanted her to re-play the story; isn't that true?

21 A Take her to the point by asking questions.

22 Q Okay.

23 A I never took her to the point by telling her what
24 happened--

25 Q What kind of questions? You told us in your first

1 testimony that there should be no leading or suggestive
2 questions.

3 A And that's correct.

4 Q Did you ask her on the tape, did something happen to
5 you?

6 A After she told me that -- when I asked her who Uncle
7 Ricky was and she said, he's a -- he does bad things or
8 whatever she was -- and I said, who does he do bad things
9 to? And she told me, he did something bad to me.

10 Then I followed up and asked her. Once a child tells
11 me something, it's not leading to go from that point --

12 Q Okay.

13 A -- after she's made a disclosure.

14 Q But was it leading for you to say, did it come a time
15 when you were in the woods with -- when something
16 happened?

17 A No, sir, not that--

18 Q The child hadn't said anything about being in the
19 woods.

20 A Yes, she had.

21 Q Okay. So that's on the tape?

22 A Yes, sir.

23 Q All right. What about the question, when Ricky
24 touched you that day --

25 A She had already told.

- 1 Q -- was that not --
- 2 A No, sir --
- 3 Q -- suggesting an answer?
- 4 A -- leading or suggestive because she had already told
- 5 me that he touched her.
- 6 Q Okay. And what about this, his hand was touching the
- 7 skin of your pee pee.
- 8 A After she had showed me --
- 9 Q Did she ever say to you --
- 10 A -- she had the dolls--
- 11 Q -- that he touched the skin of her pee pee?
- 12 A She showed me. So yes, she did tell me by showing me
- 13 with the dolls, and she had told me before -- I think I
- 14 said, did it touch the outside of your clothes or the
- 15 inside of your clothes.
- 16 Q Well, that's not a leading question. And she said,
- 17 he touched the inside.
- 18 A Right.
- 19 Q And then your question was, his hand was touching,
- 20 not, did his hand. You said on the question -- on the
- 21 tape, his hand was touching the skin of your pee pee?
- 22 A And I think if you -- if you watch that, Mr. Finney,
- 23 I -- I think if you watch it you'll see that the hand of
- 24 the doll was on the skin of the little girl --
- 25 Q Well...

1 A -- the little girl doll.

2 Q All you had to do was ask the question in such a way
3 that she would have told you that, his hand was on my
4 skin. But you referred the answer to her, did you not,
5 Mrs. Herod --

6 A I don't think I did.

7 Q -- again and again on the video?

8 A I -- I disagree with you on that. I'm sorry.

9 Q How about, who pulled your pants down?

10 A If she had told me that her pants were down --

11 Q But she didn't.

12 A -- I think I said -- yes, sir. I think I said, were
13 your pants up or down --

14 Q Didn't she--

15 A -- she said her pants were down.

16 Q He moved -- he moved my underwear?

17 A You -- I -- my questions to her were in response to
18 either what she told me or what she showed me.

19 Q Okay. And so nobody -- she didn't show you --
20 remember when you had the girl doll --

21 A Yes, sir.

22 Q -- and you had her touch the boy doll's hand to the
23 girl doll? And don't you remember telling now,
24 this girl's got on panties, were your panties like that?
25 And then you asked her, who pulled your pants down?

1 A Because she had already told me. I wouldn't have
2 said that if she had not told me.

3 Q Mrs. Herod, you led her all the way through the
4 interview, isn't that true, because you knew what you
5 needed to get on the tape and that was the way for you to
6 get it because she wasn't being cooperative.

7 A Mr. Finney, honestly I disagree with you that I led
8 her --

9 Q All right.

10 A -- and my whole purpose of this interview, of this
11 investigative interview, was to answer certain questions
12 that we had. I had already gotten the disclosure from
13 her.

14 Q All right.

15 A My point was not to get the disclosure, but I wanted
16 to make sure that the disclosure had remained the same and
17 it was the same basis that we were going forward on.

18 Q All right. You saw this young lady in the emergency
19 room on December the 24th.

20 A I did.

21 Q You don't know right now talking to this jury whether
22 you saw her before the doctor or after the doctor.

23 A I'm sure that the doctor came in after I left --

24 Q All right.

25 A -- but I'm not -- I'm just real funny about making

1 sure I'm telling the exact truth. I can't say that the
2 doctor hadn't come into the room before I got in there,
3 and I'm not going to box myself in.

4 Q Do you have any notes from that interview that
5 morning?

6 A From the December the 24th? Just my notes to the
7 file that I prepared.

8 Q You prepared those written notes on a typewriter
9 later on that day.

10 A I think I left the hospital and went to my office,
11 yes, sir.

12 Q You didn't take any notes at the hospital?

13 A If I did, I don't have them. I--

14 Q Well, where are they?

15 A I don't know that I did. I don't know that I did.

16 Q Did you take a vide recording to the hospital?

17 A Did I take a video recorder to the hospital?

18 Q Yeah.

19 A No, sir. I--

20 Q You got called by a law enforcement officer and they
21 said there was a signal three at the hospital.

22 A Possible signal three at the hospital--

23 Q What does signal three mean?

24 A A sexual assault case.

25 Q So you knew you were going to see somebody in regard

1 to a sexual assault.

2 A Yes, sir.

3 Q Did you know it was a juvenile?

4 A Let me see what -- put in my notes. I don't remember
5 what I knew. I knew it was a possible signal three of an
6 eight year old.

7 Q So you knew it was a sexual assault of a eight year
8 old.

9 A Yes, sir.

10 Q Didn't take a camera?

11 A I have never responded with a camera.

12 Q To take a little Sony pocket tape recorder so you
13 could talk to the victim?

14 A No, sir. I have never done that either.

15 Q You don't have one of those?

16 A I don't have one of those, no, sir.

17 Q But you could have put that on, talked to and
18 had everything taped for the jury, for the supervisor, for
19 the doctor, for anybody who wanted to know what she first
20 said to you that day, it would have been on tape.

21 A If I'd have recorded it, it would have been, but it
22 wouldn't be procedure. And I didn't know that she was
23 already going to be a patient in the hospital as far as I
24 know.

25 Q But they didn't put her in the hospital; did they?

1 A But I'm saying she was already admitted into the
2 emergency room.

3 Q Okay.

4 A She was already in the examining room. What
5 sometimes happens is we respond and they're out in the
6 lobby and I say, well, you know what, let's give it a few
7 minutes and let me talk with her.

8 That would have been something that I would have
9 done. But when I got there, she was already in the
10 examining room.

11 Q All right. So you take her mom and dad out of the
12 room.

13 A I did.

14 Q You go into the room.

15 A I did.

16 Q You close the door. And you and this girl, who has
17 never seen you before, talked for a few minutes so that
18 you can get an investigative forensic interview done with
19 her.

20 A I -- I needed to ascertain what had happened and who
21 had done it for the investigators who were responding.

22 Q All right. And when you came out of that interview,
23 you went back to your office and you made some notes. And
24 part of that notes was that Uncle Ricky stopped the
25 four-wheeler and pulled her underwear down and put his

1 fingers inside, and that happened four times maybe, and it
2 says here, she thought his finger went inside.

3 A She told me she thought his finger went inside her
4 private spot four times --

5 Q But she wasn't sure.

6 A -- and felt like glass when his fingernail touched
7 her.

8 Q And she told you that it felt like glass?

9 A She did, yes, sir.

10 Q Okay. And then you handed the case over to the
11 investigators and the doctor.

12 A Yes, sir.

13 Q And when was the next time you saw

14 A I believe -- I think that I stopped by -- because I
15 knew her appointment was on the 27th I think --

16 Q All right.

17 A -- couple days after Christmas --

18 Q All right.

19 A -- and I think I stopped in there just, hey, are you
20 okay?

21 Q So you didn't see her Christmas day, the 25th.

22 A Did not--

23 Q Didn't see her on the 26th.

24 A Did not.

25 Q And on the 27th you saw her for a few minutes?

- 1 A I think I did.
- 2 Q Did you go to the Children's Center where she was
3 being seen by Kathy Saunders?
- 4 A That's when I think I remember--
- 5 Q Where is the Children's Center? Is it in Sumter?
- 6 A On Lafayette, the old A&P--
- 7 Q So you drove out there, made sure she was there for
8 her appointment.
- 9 A I was just stopping by to be nice.
- 10 Q Yeah. You didn't stay for the interview.
- 11 A I was not in there when --
- 12 Q Okay.
- 13 A -- not -- and she didn't have an interview there.
14 She had a medical--
- 15 Q Medical exam.
- 16 A Yes, sir. And I was not present for her medical
17 exam.
- 18 Q Okay. And then after the 27th of December, when is
19 the next time you saw
- 20 A The next time I have any record of seeing her was
21 in -- was in June.
- 22 Q June the 19th.
- 23 A Yeah, but I -- I'm not--
- 24 Q That's when you did the video that we saw in court
25 today?

1 A Right, because there were some answers that needed to
2 be ascertained as far as -- as different aspects about the
3 case.

4 Q Okay. And in the original interview that you did
5 with in December --

6 A Yes, sir.

7 Q -- she didn't say anything about being on the
8 four-wheeler on two occasions with Uncle Ricky.

9 A She told me about being on the four-wheeler on the --

10 Q She didn't say that she was on --

11 A -- yesterday.

12 Q -- two occasions. Didn't you hear her say on this
13 second tape here in June that -- that there were two trips
14 and that he touched her on both trips?

15 A I think -- I don't know that she told me about two
16 different trips. I know she told me that he was driving
17 some and she was driving some. I don't know that that
18 would to -- be like if me and you went for a ride and I
19 got out and let you drive --

20 Q Okay.

21 A -- I wouldn't say that would be two trips.

22 Q But the first time you knew about there being a time
23 for her to drive and a time for Uncle Ricky to drive was
24 not in December, the day after the incident, it was in
25 June, six months after the incident.

1 A Yes, sir, that's correct.

2 Q Okay. Now, did tell you six months after the
3 incident when you asked her how it felt that it hurt like
4 glass?

5 A I don't know without watching--

6 Q It was on the tape. Did you hear her say that this
7 morning on the tape?

8 A I wasn't -- I don't remember hearing her say that.

9 Q Okay. And...

10 A I remember her saying, I -- now I remember, I think
11 she said it felt like it was his fingernail which--

12 Q That was on the tape.

13 A Yeah, which would be consistent with --

14 Q Okay. Okay.

15 A -- kind--

16 Q And the consistency was that the tip of his finger
17 touched her private part.

18 A Went in her private part.

19 Q She said that on the tape?

20 A She was clear that it went inside her --

21 Q Okay. After your --

22 A -- pee pee on the tape.

23 Q -- you and the dolls -- asked the questions, when you
24 showed her the dolls and all, that's when she was sure
25 that it went inside?

1 A Mr. Finney, I was trying -- as you know, it would be
2 very important whether it went inside or not, so I wanted
3 to make sure that she was clear, and I think she was very
4 clear in showing --

5 Q Wanted to make sure.

6 A -- that it went inside.

7 Q All right. Now, you wanted to make sure because you
8 hadn't seen her since December and this man had already
9 been arrested a week after the charges had been made.

10 A I'm not sure when he was arrested. I wouldn't argue
11 that point, but I'm not sure.

12 Q All right. Now, you would agree with me that the
13 standard RATAC-A-T-A-C procedure was not followed in that
14 interview.

15 A No, sir, I would not agree with--

16 Q You would not agree with that? So you would agree
17 that if we looked at the tape again, you talked about
18 anatomy before you talked about Uncle Ricky.

19 A She brought up Uncle Ricky at the very, very
20 beginning. I'm not going to stop her from talking about
21 something. And it's not fair to say that an interviewer
22 didn't follow a procedure when the child brings something
23 up.

24 I -- it would have been wrong for me to bring her in
25 and say, you know what, we're going to talk today

1 about when Uncle Ricky put his finger inside you.

2 Q Okay.

3 A I would have never done that.

4 Q But the question that you asked her was, do you
5 want -- aren't -- we going to talk about some things
6 today, and then said, Uncle Ricky.

7 A She brought up Uncle Ricky.

8 Q She wanted to know it was that subject that you all
9 were going to talk about.

10 A And when I tried to go into talk about other things
11 instead, but I wasn't going to not let her tell me what
12 Uncle Ricky did to her.

13 Q I understand. And because the children always try to
14 please the adult, she had to start that story, although
15 she hadn't been through the anatomy or the touch inquiry,
16 you went right to the abuse scenario.

17 A No, sir.

18 Q Because she knew what you wanted to talk about then.

19 A She -- she -- she thought that's what we were going
20 to talk about which is a fair assumption because she had
21 already talked to me one time and had already been through
22 what she had been through, a medical exam and that type of
23 stuff. I wasn't going to say, oh no, we don't want to
24 talk about that today.

25 Q She hadn't seen you since the 27th of December.

1 A She remembered me. She remembered my name.

2 Q And she never been to your office.

3 A She had never been to my office, but I wasn't going
4 to act like I didn't know her. That would have been--

5 Q I understand that. I understand that. That's your
6 job to make her feel comfortable. That's the first thing
7 you did, which was the repore.

8 A Yes, sir.

9 Q All right.

10 A I always try to do that with children.

11 Q I understand. I understand that. You told her in
12 the beginning of the interview that there were two things
13 we were going to do today. One was we were going to
14 promise to tell the truth.

15 And you made a point of saying on the video that you
16 were going to need her to tell the truth.

17 A We did talk about that, and I do think that's
18 important.

19 Q Okay. And don't you think that re-established for
20 this child that she had to tell you what she had told at
21 the hospital, what she had said or somebody had said that
22 she said before, that this was the same thing and that
23 everybody was saying, now you got to be a good
24 girl, you got to tell the story again like you said it
25 before.

1 A I think it's a complete opposite of that, Mr. Finney,
2 because if I'd have brought her in and said, now
3 your job today is to tell me exactly what you told me at
4 the hospital, exactly about Uncle -- then that would have
5 been what you're suggesting.

6 The point about wanting you to promise to tell me the
7 truth, wanted to make sure that she understood she was
8 under no pressure to tell the same story or to tell the
9 same thing but rather to tell me the truth.

10 And there's some times that kids on a subsequent
11 interview will say that didn't really happen, somebody
12 told me to say that. I wasn't going to rule that out at
13 this point. I wanted to keep everything open.

14 Q You told that you were aware that there were
15 two trails out at her house.

16 A I -- I don't--

17 Q On the video.

18 A If you say I said that, if that's on the video, I
19 don't remember.

20 Q And you said that you might want to come out and look
21 at the trails.

22 A I think after she described that there were two
23 paths, I think is the word she used.

24 Q Okay. Did you or any investigator take this little
25 girl out on the paths so she could show you exactly what

1 happened and exactly where it happened behind her house?

2 A After she told me that and described the four-wheeler
3 and that type of stuff, I got with Captain Turner of our
4 office and told him that we had gotten some information
5 which described what I thought was the crime scene and the
6 four-wheeler, and I did tell him and asked him if he would
7 photograph that stuff. I did.

8 Q You nor anybody else went with after the June
9 interview to see the trail with her and let her walk you
10 through exactly what happened that day.

11 A I never went out there at all. You have to ask
12 Captain Turner--

13 Q To your knowledge no other officer did either.

14 A I know that he took pictures --

15 Q I know that.

16 A -- I don't know who went with him. I don't know, I'm
17 sorry.

18 MR. FINNEY: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 (Mr. Finney conferring with defendant.)

21 BY MR. FINNEY:

22 Q Mrs. Herod.

23 A Yes, sir.

24 Q When you saw the child in June --

25 A In June, okay.

1 Q -- of -- six months after the report.

2 A Okay.

3 Q You asked her on the videotape had anybody ever
4 touched you on your pee pee before.

5 A I think my question was, has there ever been a time
6 anyone else had ever touched -- has ever touched you
7 there.

8 Q When you say, anyone else, you mean somebody besides
9 Uncle Ricky.

10 A She had already disclosed what Uncle Ricky had done.

11 Q I'm asking.

12 A So as part of my practice, I don't want to rule out
13 that there might have been another offender.

14 Q All right.

15 A I wanted to give her that opportunity. I always ask
16 that question of children.

17 Q All right. Did ever tell you or anybody that
18 you know of connected with your case, the investigation,
19 that the next day at the emergency room the doctor
20 examined her and put a cath in her to get urine out?

21 A Did --

22 Q Did ever say that?

23 A -- tell me that? You know, I -- I think that when I
24 went to see her, when I mentioned going to see her at the
25 Family Health Center when she was going to have her

1 examination --

2 Q Uh-huh.

3 A -- I think one of the things I talked to her about,
4 she was upset because she said, I wanted to know if they
5 were going to put -- I think she was describing the
6 catheter to me at that point, and I said, no, honey,
7 they're not going to do that to you now, they're just
8 going to look --

9 Q Okay.

10 A -- and make sure everything is okay.

11 Q In June when you had the interview, you put it on
12 videotape.

13 A Uh-huh.

14 Q You asked her, has anybody ever touched your pee pee
15 before other than what you described?

16 A I don't think I actually said, touched your pee pee.
17 I think, has anyone else ever touched you in that way.

18 Q All right. And she did not say anything about the
19 doctor that saw her the next day; correct?

20 A She didn't say anything like anybody else, yeah--

21 Q Okay. So she didn't say anything about the doctor?

22 A No, she didn't.

23 Q And she didn't say anything about Kathy Saunders who
24 gave her a medical exam with a scope up her private parts
25 three days later?

1 A She never told me about anybody else ever touching
2 her. But in -- what we had talked about was -- was
3 touching in the way Uncle Ricky touched her on a
4 four-wheeler in the woods, it -- if I would have said --
5 if I could -- if I would have gone back and said, no, I'm
6 talking about anybody, anybody who has ever touched you in
7 any kind of way --

8 Q You asked the question.

9 A -- you know, maybe she would have told me about her
10 mama bathing her when she was little or something like
11 that. But she didn't tell me about anyone touching her
12 other than Uncle Ricky.

13 Q That's all I have.

14 THE COURT: Anything further from the State?

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

16 REDIRECT EXAMINATION

17 BY MS. MAYES:

18 Q Not to beat a dead horse, Mrs. Herod, but I do want
19 to ask you a few questions about something that I think I
20 have asked you about and also Mr. Finney was asking you
21 about. Now I'm going to ask you again.

22 A Okay.

23 Q To clarify, if you could, what we mean by the term
24 rape kit. And I'm going to kind of put this in a position
25 where everyone can see it. Okay.

1 When we talk about a rape kit, also known as acute
2 sexual assault collection exam, when are those normally
3 done?

4 A At the hospital immediately following a report of an
5 incident that had just taken place.

6 Q Okay.

7 A Before a shower had been taken, before a bath had
8 been taken. It's -- those are for when people make the
9 report, either an adult or a child, that -- that there's
10 been a sexual assault and there's a possibility of
11 obtaining body fluid or pubic hairs off of the body of a
12 victim.

13 Q Okay. And can you tell us whether or not there is a
14 kit that goes along with this particular -- I know the
15 word kit is in there. Is there a kit that goes along with
16 this particular type of examination?

17 A The sexual assault kit.

18 Q Okay. And is that something that you're also
19 familiar with and have seen before?

20 A Have I seen the sexual assault kit?

21 Q Correct.

22 A Yes, ma'am.

23 Q Okay. And when we talk about fluid and potentially
24 in relation to sexual assault cases, can you tell us
25 whether or not you had any reason to suspect that semen or

1 seminal fluid would be found on body or clothing?

2 A I had no reason to think that.

3 Q And why or why not?

4 A Because there was no disclosure of that at all and
5 there was nothing to suggest that that had happened.

6 Q Okay. And hypothetically, if you had gone to the
7 hospital and met with an eight year old, and an eight year
8 old tells you that an alleged perpetrator has had
9 intercourse with them, meaning actual exposure -- exposure
10 through intercourse or that the suspect ejaculated on them
11 or on their clothing, how might your -- how might you have
12 reacted differently?

13 A I would have definitely seen that the hospital
14 performed that sexual assault exam and collect that
15 evidence.

16 Q Have you had the opportunity to make a referral in
17 the past for a sexual assault kit for a child when they
18 have alleged actual intercourse or exposure to semen?

19 A Yes, ma'am.

20 Q And I think the second thing you mentioned was pubic
21 hair. Was there anything about Kayla's disclosure to you
22 that caused you to believe that the suspect Ricky Welch
23 had left pubic hair on her?

24 A No, there was nothing to indicate that he had his
25 clothes off during the assault. The disclosure was

1 digital penetration with his fingers inside of her vagina.

2 Q Okay. And when you have a disclosure like that that
3 does not involve exposure to semen or pubic hair or things
4 of that nature that may be left on the body of the victim
5 or on their clothing by the suspect, what if any other
6 type of exams are used as an alternative?

7 A At that point what we like to do is refer them for a
8 child sexual assault forensic exam which allows the
9 examiner to see the child and examine the child with a
10 colposcope.

11 Q And I think you mentioned that a colposcope is used
12 in this particular exam?

13 A Yes, ma'am.

14 Q Okay. And can you tell us whether you had the
15 opportunity to make references prior to case for a
16 child sexual assault exam by the use of a colposcope?

17 A Yes, ma'am, many, many times.

18 Q Okay. All right. And can you tell us was this
19 procedure followed in case?

20 A Yes, ma'am, it was.

21 Q All right. And I think the testimony is that her
22 exam with the medical expert with the colposcope occurred
23 on what date?

24 A I saw her on December the 24th, and that exam would
25 have taken place on the 27th.

1 Q Okay. So in between then, her hospital visit on
2 Christmas Eve, there was Christmas day and then the day
3 after Christmas and then an appointment--

4 A Then her appointment.

5 Q On the 27th. Okay. What, if anything, might have
6 caused a potential delay of a day so-to-speak
7 hypothetically before her exam on the 27th?

8 A Christmas, and the facility, and Kathy Saunders not
9 being present at the facility.

10 Q Okay. And can you tell us from your training and
11 experience whether that necessarily would effect the
12 results of the examination?

13 A Not of that type of examination, no, ma'am.

14 Q And why or why not?

15 A Because the injuries that would have been sustained
16 from digital penetration would have remained until the
17 27th.

18 Q And can you tell us whether or not you would normally
19 conduct both of these or request that both of these exams
20 be done when a child is not alleging intercourse or
21 exposure to fluids or hair?

22 A The only time I can think of is if you had a child
23 reporting with bleeding, still not talking, and I can't
24 tell you what's happened to me. We would still probably
25 go ahead and do the rape kit at that point just to ensure

1 that there was nothing there, we had no idea what had
2 happened, unlike this case where we were able to ascertain
3 from the child exactly what had happened.

4 Q And given your knowledge of the circumstances that
5 day with multiple people present, did you -- can you tell
6 us whether or not you had reason to doubt
7 disclosure that it was limited to an act of digital
8 penetration?

9 A I had -- I had no reason to disbelieve what she told
10 me, no, ma'am.

11 Q Now, I think Mr. Finney was asking you about your
12 qualifications to testify. And you are employed by the
13 Sheriff's Department; correct?

14 A I am.

15 Q All right. Do you receive a payment for coming here
16 to testify?

17 A No, ma'am.

18 Q Okay. Any kind of expert consultation fee?

19 A No, ma'am.

20 Q Thank you. Nothing further.

21 MR. FINNEY: I have a couple follow-ups.

22 RE CROSS-EXAMINATION

23 BY MR. FINNEY:

24 Q Mrs. Herod, is it your testimony nothing changed
25 between this -- in this young lady's condition between the

1 24th and the 27th?

2 A No, sir, that's not -- that's not what I said. I
3 said that if there was injuries sustained through digital
4 penetration that it's my belief that they would still been
5 visible by the colposcope on the 27th.

6 Q But you don't know that.

7 A I'm -- you can talk to the medical examiner about
8 that --

9 Q Okay.

10 A -- she'd be better--

11 Q But you don't know that. That's just your opinion.

12 A That's my opinion--

13 Q Do you know whether or not had to take medicine
14 after she left the hospital on the 27th?

15 A I do not know that.

16 Q But if she had to take medicine on the 24th and the
17 25th and the 26th, that could have had a lot to do with
18 what the lady saw on the colposcope on the 27th. Isn't
19 that true?

20 A No, sir, I would--

21 Q That's not true, ma'am?

22 A I would disagree with that --

23 Q Okay.

24 A -- because what she was looking for would be tears
25 and notches and that type of stuff that I don't think

1 you're going to get from taking medicine.

2 Q Well, you don't know though because you don't know
3 what the medicine would have been given to her for. You
4 don't know right here now as whether -- what the doctor
5 gave her on the 24th.

6 A I don't know what the doctor gave her.

7 Q Okay. And you don't know what he gave it to her for?

8 A No, sir, I don't.

9 Q All right. But if she had a condition that caused
10 the doctor to give her some medicine and she was taking
11 the medicine on the 24th, the 25th, the 26th and the 27th,
12 then when she got examined on the 27th it might make a
13 difference.

14 A You would have to speak to the doctor --

15 Q All right.

16 A -- if you're referring to some special kind of way --

17 Q That's fine. Now let me ask you this--

18 A -- they administer the medicine or something, I don't
19 know.

20 Q If she was injured on the 23rd, wouldn't a colposcope
21 exam on the 24th be the best evidence? Better than a
22 colposcope exam on the 27th?

23 A We do medical examinations, forensic medical
24 examinations sometimes weeks or months after an allegation
25 has been made. So you would have to talk to the medical

1 professionals about the timeframe.

2 It's my understanding -- I certainly wouldn't have
3 compromised the case or the victim's well-being by waiting
4 if I would have thought it would have made a difference,
5 no, sir.

6 Q Well, is there a colposcope at the Tuomey Hospital?

7 A No, sir.

8 Q Okay. So the only colposcope on December the 24th
9 would have been at Kathy Saunders' building which was
10 locked up for the holidays.

11 A She was not going to be back in Sumter until the
12 27th.

13 Q And this little girl couldn't have been taken to
14 Florence, Richland in Columbia, or somewhere in Charleston
15 to do a colposcope on the 24th?

16 A If I would have thought there was a need to do that,
17 I would have done that. I would have found that for her,
18 yes, sir.

19 Q And so you made the decision not to send this girl to
20 a colposcope -- to a pediatrician, to somebody who could
21 have done the exam that day?

22 A I didn't make the decision. I -- I had input into
23 the decision. I don't know --

24 Q Very good.

25 A -- sound like I was...

1 Q That's all I have.

2 THE COURT: Okay. You can come down.

3 WITNESS: Thank you, sir.

4 (Witness left the stand.)

5 MS. MAYES: State calls Dr. Clanton, Garrett
6 Clanton.

7 DR. GARRETT CLANTON, after being
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. MAYES:

11 Q Good afternoon, Dr. Clanton.

12 A Hello.

13 Q And I'm going to ask you first of all where you're
14 employed and in what capacity.

15 A I'm employed by Midlands Emergency Physicians. We
16 provide the emergency care at Tuomey Hospital.

17 Q Okay. And how long have you been employed at Tuomey?

18 A 11 years.

19 Q All right. And can you give me a little bit of
20 information about your background, training, and
21 experience starting with your college education and then
22 your medical school education.

23 A I graduated from the University of Illinois with a
24 degree in bioelectrical engineering in 1990. Medical
25 school at the University of Illinois in 1994. Completed

1 my residency in specialist training in emergency medicine
2 in 1997 and have been practicing at Tuomey since then.

3 Q And how exactly do you become employed in the
4 emergency room and play a role in emergency medicine?

5 A Well, by virtue of being a physician and having
6 training or certification in emergency medicine, you
7 become certified or eligible I guess would be the answer
8 to that.

9 Q Okay. And when we talk about emergency medicine, how
10 is that a specialty field? If you could elaborate a
11 little bit more.

12 A Upon completing medical school you're granted a MD or
13 a DO degree, and then depending on what specialty you want
14 to go into, you will do additional training in that field
15 of specialty. My additional training was in the field of
16 emergency medicine.

17 Q Okay.

18 MS. MAYES: Your Honor, at this time we would
19 offer Dr. Clanton as an expert in the field of
20 emergency medicine.

21 MR. FINNEY: No objection.

22 THE COURT: Okay. I so find.

23 BY MS. MAYES:

24 Q Now Dr. Clanton, I'm going to say that it is probably
25 all kinds of cases you see come into the emergency room to

1 be treated; is that correct?

2 A That's right.

3 Q Could you give us just a rough example of the kind of
4 cases you might see during the course of a week?

5 A Virtually any type of injury or medical illness in
6 all age groups, children to -- to elderly.

7 Q Okay. And have -- have you had the occasion while
8 you have been at the Tuomey Emergency Room and also dating
9 back to when you were previously being trained in
10 emergency medicine to tell us whether or not you have been
11 involved in examining patients with suspected sexual
12 assault?

13 A I have.

14 Q Okay. And does that include both children and
15 adults?

16 A It does.

17 Q Can you tell us whether or not you were working at
18 the emergency room at Tuomey on or about Christmas Eve of
19 2006 which would be the early morning hours of
20 December 24th, 2006?

21 A I don't recall that independently, but I believe my
22 chart would be somewhere that would indicate that.

23 Q Okay. And would reviewing your chart or your records
24 from that particular date be of benefit?

25 A Yes.

1 MS. MAYES: Your Honor, may I approach the
2 witness?

3 THE COURT: Yes, ma'am.

4 BY MS. MAYES:

5 Q Going to ask you to take your time, Dr. Clanton, and
6 review the records before you.

7 A (complied.) That is my chart from the 24th.

8 Q Okay. And having reviewed that, Dr. Clanton, can you
9 tell us whether or not you were working on that particular
10 day?

11 A I was.

12 Q All right. And do the notes reflect whether or not a
13 minor child came into the emergency room for treatment by
14 the name of

15 A She did.

16 Q And what do your notes reflect about the approximate
17 time that the child was being treated there in the
18 emergency room?

19 A It indicates that she arrived about 8:14 in the
20 morning.

21 Q Okay. And does it -- do the notes indicate at any
22 point whether or not law enforcement was also present to
23 assist with in talking with the victim and things of that
24 nature?

25 A They do.

1 Q Okay. And Dr. Clanton, what was the chief complaint
2 for which the young child had been brought in?

3 A The mother brought her in to be evaluated for
4 possible sexual abuse.

5 Q All right.

6 A Also she was having pain when she urinated.

7 Q All right. And when we talk about pain when
8 urinating, what is the I guess medical term for that?

9 A Dysuria.

10 Q Okay. And how do you treat that when a child comes
11 into the emergency room with that situation?

12 A It would depend on the cause of the dysuria.
13 Frequently there's an infection that would be treated. If
14 there's some trauma or irritation causing it, you would
15 have -- that may need to be addressed. Can be different
16 kinds of irritation, fungal infections, infections of the
17 urine, all sorts of things.

18 Q And you mentioned trauma may be a cause. Why is
19 that?

20 A Because when the skin and the perineum area around
21 the urethra is irritated or broken and contact with urine
22 will cause pain on the broken skin.

23 Q Going to ask you to take a look at this diagram if
24 you would, Dr. Clanton, and tell us whether or not you
25 recognize what is depicted in this particular type of

1 diagram.

2 A I do. It's a diagram of the female perineum.

3 Q Okay. And you mentioned previously that the urethra
4 may be involved with painful urination. Could you tell us
5 where that part is and -- part of the body is?

6 A Urethra is located right here where indicated on the
7 chart.

8 Q All right. And you mentioned that if there is injury
9 to -- you'll have to say it again -- if there is injury to
10 another part of the body caused by trauma that it can
11 result in pain when urinating.

12 Could you please describe -- let me get a magic
13 marker. One moment. Can you please elaborate more about
14 exactly what part or parts of the anatomical area that
15 you're referring to?

16 A Well, would be anywhere could come in contact with
17 urine that the skin was broken. Urine again comes out of
18 the urethra here and typically will flow down around over
19 tissues anywhere kind of in this area --

20 Q Okay.

21 A -- to some degree with urination.

22 Q Okay. And if there is an injury to this particular
23 area near the perineum, which is the lower vaginal
24 opening, could that cause pain when urinating for the
25 child?

1 A It could.

2 Q Now, how is -- how is the body tested for a urinary
3 tract infection or painful urination, things of that
4 nature?

5 A A urine sample would be obtained and sent to the lab
6 for analysis.

7 Q Okay. And looking here once again, if a urine sample
8 is obtained, how is that done?

9 A There are different ways to do it. Patient can be
10 asked to provide the sample into a cup, would be -- the
11 preferred way for the best results is with a urinary
12 catheter, you get the cleanest, most ejected results.

13 Q Okay. There's been some discussion about that, so I
14 will need you to elaborate further if you can when you use
15 the term catheter. Can you review records and --
16 or have you reviewed her records and can you tell us
17 whether or not an in and out catheter was done on
18 December 24th for the purposes of testing her urinary
19 sample?

20 A It was.

21 Q Okay. And where was that catheter placed?

22 A Into the urethra.

23 Q Okay. And if you could again show us exactly what
24 part you're talking about.

25 A (complied).

1 Q Okay. And how is the urethra a different location
2 than the actual vaginal opening?

3 A The actual vaginal opening is here and it's separated
4 by a band of tissue here between. It's represented in the
5 diagram.

6 Q Okay. Would a procedure such as a -- testing a
7 urinary sample with an in and out catheter cause a vaginal
8 injury to a child?

9 A No.

10 Q And have you had the opportunity to review
11 photographs in this case which were actually collected by
12 a second medical examiner who is Kathy Saunders affiliated
13 with the Care House or Sumter Family Healthcare Center on
14 or about December 27th of 2006?

15 A I have reviewed some photos from my understanding
16 was -- they were from the Durant Center.

17 Q Okay. And just to clarify, are you familiar with
18 Kathy Saunders who has been affiliated with both the
19 Durant Center and the Care House?

20 A I know of her.

21 Q Okay. I'm going to show you some photographs now for
22 purposes of identification. Want to ask you whether or
23 not you have previously viewed these photographs.

24 A I have.

25 Q Okay. And having reviewed those photographs, Dr.

1 Clanton, do they differ in any way from what you were able
2 to observe when you did your exam on December 24th?

3 A They do.

4 Q Okay. And how so?

5 A There is evidence of healing tissue on the
6 photographs that was not there when I saw her.

7 Q Okay. And when we talk about evidence of healing
8 tissue, can you explain to us why you -- why the healing
9 tissue may not have been present when you examined her on
10 the morning of the 24th with an alleged assault occurring
11 less than 24 hours beforehand?

12 A Certainly. It takes time for a wound to heal.
13 Anybody who has had a scratch or a cut knows that
14 initially when you see it there's a -- an injury that you
15 see, and over time it takes on a different appearance as
16 it heals, it will develop a scab, and later the scab will
17 come off and you would see the healing tissue underneath
18 that -- repairs and ultimately the scar which results.

19 Q Okay. And so in your expertise, would you normally
20 expect the findings that were seen on the 27th to be
21 present within the first 24 hours?

22 A No.

23 Q Okay. And when you -- when you did your examination
24 on the morning of December 24th, did you have an
25 instrument that's referred to as a colposcope?

1 A I did not.

2 Q And so you were doing your exam through what means?

3 A Through visual examination, naked eye.

4 Q Okay. And would you have at any point used a
5 speculum or a tool like that on the eight year old?

6 A I did not in this case.

7 Q Okay. Thank you. Nothing further, Dr. Clanton, at
8 this time.

9 MR. FINNEY: May it please the Court.

10 CROSS-EXAMINATION

11 BY MR. FINNEY:

12 Q Dr. Clanton, good afternoon, sir.

13 A Good afternoon.

14 Q Have we ever met, sir?

15 A I don't believe so.

16 Q All right. So you and I have never spoken about this
17 case before?

18 A That's correct.

19 Q And I have never sent you any pictures to look at.

20 A That's right.

21 Q All right. When was the last time you saw the
22 pictures that you -- Ms. Mayes just gave you?

23 A This morning.

24 Q And you talked with Ms. Mayes this morning?

25 A I spoke with someone from her office. I don't

1 believe it was Ms. Mayes.

2 Q All right. You don't remember who you spoke with
3 this morning?

4 A I don't remember the name.

5 Q Was it over the phone or...

6 A It was over the phone.

7 Q All right. And it was about this case?

8 A Yes, about coming to testify.

9 Q All right. Now let's go to the beginning. You're
10 the emergency room doctor, you're on duty at Tuomey
11 Hospital, and you get called in to see this little eight
12 year old girl.

13 The report from the people who do the triage is that
14 she has been what? Why is she there?

15 A Triage notes it says that the mother reports that she
16 was sexually assaulted by her uncle on the last evening,
17 and she reports that she was fondled, but unsure if there
18 was any penetration.

19 Q The mother reports she was fondled but unsure if
20 there was any penetration. All right? So you're here to
21 see this little girl. And also there's a complaint of
22 some pain in her urinary -- urination.

23 A That's right.

24 Q And that's called dysuria?

25 A That's right.

1 Q Does your -- does your record reflect that the
2 dysuria is apparent just today, just on the 24th?

3 A It does.

4 Q All right. So isn't it true, doctor, that if this
5 little girl had been assaulted on the 23rd, the day
6 before, before 7:00 in the evening, every time she had
7 gone to the bathroom from 7:00 on the 23rd to the time she
8 was in your emergency room, she would have been hurting?

9 A If urine came in contact with the abraded areas.

10 Q Well, is it fair to assume this little girl probably
11 urinated between 7:00 on the evening of the night before
12 and being in your emergency room on 8:30 on the next
13 morning?

14 A That would be speculation.

15 Q All right.

16 A But I would presume so.

17 Q But there was no complaint by the parent or the child
18 of pain in urination except on the morning she was in your
19 emergency room.

20 A My note indicates that she said the dysuria was just
21 apparently today.

22 Q All right. Good. Now, you did a laboratory report.
23 You received a laboratory report from the lab on her
24 urine.

25 A That's correct..

1 Q The urine was collected by placing a plastic tube
2 inside of her urethra and running it up to the bladder.

3 A That's right.

4 Q All right. Who did that procedure?

5 A The nurse.

6 Q Not you.

7 A That's right.

8 Q You don't know whether the -- who the nurse was? Do
9 you know who the nurse was that did it?

10 A Julie Hancock.

11 Q All right. Have you talked with Mrs. Hancock about
12 what she did that day on that little girl?

13 A I have not.

14 Q All right. So you don't know if Mrs. Hancock had an
15 easy time getting the catheter in or a hard time?

16 A I do not.

17 Q And because you didn't have any special machines
18 there, somebody had to hold this little girl's private
19 parts open and try to insert this plastic tube up in her.
20 Is that correct?

21 A That is the way it would typically be done, yes.

22 Q All right. And that could have led to some injury in
23 the process of getting the cath in if it wasn't done
24 properly.

25 A It wasn't done properly it could result in some

1 injury.

2 Q All right, sir. Now, let me ask you this. You say
3 you didn't have a colposcope and you didn't use any of
4 these other tools that you normally might use if it was a
5 different type of exam.

6 You saw the child. You examined the child. Did you
7 find any bleeding?

8 A I did not.

9 Q Did you find any vaginal discharge?

10 A I did not.

11 Q Did you find any scratches?

12 A I did not.

13 Q Did you find any tears?

14 A No.

15 Q All right. Now, as a result of your examination of
16 the child, you prescribed a medication for the child.
17 What was the medication?

18 A Monistat Cream.

19 Q And what does Monistat Cream do when you apply it to
20 this child?

21 A Monistat Cream is an anti-fungal cream that is used
22 to treat fungal infections, but it can also function as a
23 barrier when you have an abrasion to keep urine secretions
24 and things off of broken skin.

25 Q All right. Did you say anywhere in your medical

1 report that you listed that one of her problems was like
2 a -- I guess you'd call it a -- you prescribed the
3 Monistat because she had vaginitis.

4 A That's correct.

5 Q All right. Vaginitis is another word that is related
6 to or somewhat complementary of dysuria?

7 A It means irritation of the vaginal area.

8 Q All right. So she could have had vaginitis, which
9 was an irritation of the vaginal area. Are there a number
10 of different ways that a child like this could have gotten
11 the vaginitis?

12 A Yes.

13 Q Are some of these ways different from having been
14 touched by somebody improperly?

15 A Yes.

16 Q All right. Now, did you notice on your medical
17 report that this child had what you consider -- I believe
18 you wrote, moderate -- the symptoms are moderate? In
19 other words, the redness or irritation that you found in
20 her that day was moderate?

21 A That's right.

22 Q Did you -- did that lead you to believe that it had
23 been there for some time, this condition --

24 A No.

25 Q -- that she appeared with?

1 A No. Moderate describes the degree of inflammation or
2 erythema that you're seeing there. It does not have any
3 correlation to time.

4 Q But you're not sure how long. I mean, it could have
5 been there three days. Could have been there a week.
6 You're not sure.

7 A That's right.

8 Q All right. Now, did you ask or did you get
9 information about whether the patient was in any pain?
10 Did you ask a question or did somebody under your guidance
11 ask a question about pain, pain scale?

12 A There was a pain assessment done at triage.

13 Q And that was before she saw you?

14 A That's right.

15 Q And what was the pain assessment?

16 A Zero.

17 Q What was it?

18 A Zero.

19 Q No pain was -- was being complained of by this
20 patient; is that correct?

21 A That's what the chart indicates.

22 Q All right. Now, you have testified that you have
23 reviewed some pictures that were taken three days after
24 you saw this child in the emergency room.

25 A That's right.

1 Q And these pictures were taken -- I'm not familiar
2 with the process, sir, but do you take pictures like this
3 using a colposcope?

4 A They can be taken with a colposcope, yes.

5 Q All right, sir. Have you ever heard of staph
6 cellulitis?

7 A I have.

8 Q Would you look at that picture and tell me did you --
9 did you test that young lady for staph cellulitis?

10 A No, I did not.

11 Q Would that have been something you could have tested
12 for?

13 A Not really. You can do a culture of the skin with a
14 swab and see if it grows staph, but staph is endemic on
15 everyone's skin.

16 Q Right.

17 A You just do a skin surface, so that wouldn't tell you
18 whether or not staph was causing that.

19 Q Well, based on your -- based on the appearance of
20 this little lady three days later when those pictures were
21 taken, would you say that the outside portion of her
22 private parts was red and inflamed or infected?

23 A I would.

24 Q All right. And did you note that on your report on
25 the 24th when you saw her?

1 A I noted that there was moderate erythema of the
2 entroital area.

3 Q All right, sir. Now, is that the same thing that
4 we're looking at in that picture right here?

5 A No, it's not the same as this picture.

6 Q All right. So on this picture, did you notice any
7 redness, swelling or effection (sic) to the outside
8 portion of the vagina area on the little girl on the 24th?

9 A I did not.

10 Q How could it be there on the 27th if it wasn't there
11 on the 24th?

12 A Something has continued to irritate the skin in the
13 interim period.

14 Q All right. Now, are you aware of the fact that a
15 forensic examination by Kathy Saunders revealed some
16 granulated tissue?

17 A I am.

18 Q Tell the ladies and gentlemen what granulated tissue
19 means.

20 A Granulated tissue is healing tissue.

21 Q Okay. And Kathy Saunders reports that she saw
22 healing tissue on the 27th?

23 A That's my understanding.

24 Q But you didn't see any scrapes or scars or tears or
25 blood on the 24th?

1 A That's right.

2 Q Now, doctor, would you have wanted to see the panties
3 that the little girl had on at the time of the alleged
4 assault or the panties that she had on the day when she
5 came in the emergency room to see if there was anything
6 there that would help you with her treatment?

7 A I really can't think of anything that would be
8 specific on the panties that would help my assessment.

9 Q Well, if she had been assaulted, couldn't there be
10 blood on the panties?

11 A There could, but that wouldn't change my assessment.

12 Q All right. Well, did you assess this little girl
13 with having suffered a sexual assault?

14 A I did not.

15 Q You -- did you assess her for having a yeast
16 infection?

17 A I did not.

18 Q Did you assess her for having vaginitis and dysuria?

19 A I did.

20 Q And you gave her Monistat.

21 A That's right.

22 Q All right. And you knew before you left her case
23 that she was going to be seen with the Durant Center or
24 somebody for a comprehensive exam for sexual trauma.

25 A That's right.

1 Q If you had seen blood on the panties, would that have
2 led you to want to do something else that day to treat
3 this young lady or get some more information about her
4 case?

5 A No, I don't believe so.

6 Q You would have just said, go home with mama and wait
7 for your exam.

8 A If my exam turned out the way it did, yes.

9 Q All right. Did you take the labs in the hospital
10 that day to rule out a urinary tract infection?

11 A I did.

12 Q And did you rule it out?

13 A I did.

14 Q All right. So if there wasn't a urinary tract
15 infection and she was having dysuria, then you assumed
16 that there was -- I'm saying -- I apologize, you didn't
17 assume. What did you then do to accomplish treatment for
18 this little girl?

19 A I treated the evidence of the vaginal irritation that
20 was there with the barrier cream.

21 Q With the barrier cream which is Monistat?

22 A That's right.

23 Q Is Monistat used for yeast infections?

24 A It is.

25 Q Could you have tested for a yeast infection?

1 A You can.

2 Q Did you do that?

3 A I did not do a swab for it. There was no yeast in
4 the urine.

5 Q All right. And so the Monistat was not to -- it
6 would have helped the yeast infection if she had had one?

7 A That's correct.

8 Q But we don't know if she had one.

9 A I didn't see any evidence of one.

10 Q All right. Thank you, sir.

11 MS. MAYES: Yes, sir.

12 MR. FINNEY: I'm sorry. May I ask one more
13 question? I had a note here that I needed to ask.

14 THE COURT: Okay.

15 BY MR. FINNEY:

16 Q Are you familiar with Toluidine Blue Dye?

17 A No.

18 Q You're not familiar with Toluidine Blue Dye? Thank
19 you, sir.

20 THE COURT: Yes, ma'am.

21 REDIRECT EXAMINATION

22 BY MS. MAYES:

23 Q Dr. Clanton, I'm going to have to ask you to clarify
24 a few more things. When you talk about a term -- I think
25 you called it erythema?

1 A Yes.

2 Q And can you tell us what I would know that to be?

3 A Redness.

4 Q Okay. And when you did your exam on did you
5 note anywhere in the chart that she had erythema or
6 redness?

7 A I did.

8 Q Okay. And where was that noted to be on her body?

9 A At the introitus in the vaginal area.

10 Q All right. I'm going to show you the diagram again
11 and ask you if you could specify which area would be the
12 introitus that you referred to.

13 A The area in this region right here around the vaginal
14 opening.

15 Q Okay. So the redness was around the vaginal opening;
16 is that correct?

17 A That's correct.

18 Q And I believe on cross-examination you stated that
19 you tested the urinary sample that had been collected and
20 ruled out an infection.

21 A I did not see evidence of urine infection. That's
22 right.

23 Q Okay. And what does that suggest to you then about
24 the pain that the child may or may not be feeling upon
25 urination if she doesn't have an actual infection?

1 A It suggests that the pain is from something other
2 than the infection.

3 Q Okay. And can you tell us whether or not that would
4 include trauma to the surrounding area.

5 A It would.

6 Q What is the staph cellulitis that was referred to
7 previously?

8 A Cellulitis is an infection of the skin. Staph is a
9 particular organism that would cause that particular
10 cellulitis.

11 Q Okay. Did you have any reason to suspect -- given
12 the child's history upon arriving at the hospital, do you
13 have any reason to suspect that that was involved in
14 case?

15 A No.

16 Q And I think you were questioned about the
17 prescription Monistat. What is Monistat?

18 A Monistat is an anti-fungal cream.

19 Q Okay. And for what reason was that prescribed to
20 ?

21 A To serve as a barrier to any skin abrasion or
22 irritation.

23 Q Okay. And the photographs that you referred to
24 previously, you mentioned that there was healing tissue
25 seen. Can you tell us whether or not the Monistat would

1 have caused the healing tissue that you referred to?

2 A It would not.

3 Q Okay. And I believe you were also questioned about
4 the use of the catheter. Could you show us specifically
5 on the diagram where the healing tissue was in relation to
6 where the catheter would have been utilized?

7 A The healing tissue is in the posterior fourchette --
8 fossa navicularis area back here behind --

9 COURT REPORTER: Can you say that again? I'm
10 sorry.

11 THE WITNESS: Posterior fourchette or fossa
12 navicularis. Area here. This is inferior of --
13 actually on this diagram to the vaginal opening. The
14 urethra is up here where the catheterization is done.
15 The vaginal opening. And then the tissue is down
16 here.

17 BY MS. MAYES:

18 Q When you say, the tissue is down here, you're
19 referring to the healing tissue?

20 A The healing tissue.

21 Q And if there had been any kind of problem with the
22 use of the catheter on can you tell us
23 whether or not you would expect that to be reflected in
24 the chart?

25 A I would expect it to be.

1 Q Okay. Is there anything in the chart indicating that
2 there were any type of problematic situations with the use
3 of the catheter on ?

4 A There is none.

5 Q Thank you. Nothing further.

6 MR. FINNEY: Two questions, your honor, for the
7 follow-up for the doctor.

8 RECROSS-EXAMINATION

9 BY MR. FINNEY:

10 Q Doctor, why didn't you prescribe some medication
11 that would numb and give this girl some pain, you know,
12 relief from the pain? Instead of Monistat, why didn't you
13 give her anti-pain medicine something. I'm -- I don't
14 know if it's called antiseptic or anti-something.

15 A There's not really a good topical medicine that would
16 be very beneficial for that. There are some lidocaine
17 preparations. Lidocaine is a medicine like you use when
18 you numb a wound.

19 Q Uh-huh.

20 A But that has a -- a relatively slow onset, relatively
21 short duration, so you would be putting it on.

22 Q So the Monistat wouldn't help with the pain
23 necessarily. It's just a topical that helps cover up the
24 skin.

25 A If the pain is coming from urine contacting broken

1 skin and you cover the skin with the ointment, then the
2 urine doesn't contact the skin break and relieves the
3 discomfort.

4 Q Okay. Now, your testimony about the presence of
5 healing tissue is based on your review of some
6 photographs.

7 A That's right.

8 Q And your review of what Kathy Saunders says she saw.

9 A That's right.

10 Q You didn't see any broken skin.

11 A I did not.

12 Q You didn't see any healing skin.

13 A I did not.

14 Q So everything you're testifying about the presence of
15 is based on what somebody else saw three days later.

16 A Basing my testimony on the photos that I see here.

17 Q You didn't take those.

18 A No, I did not.

19 Q All right. And based on those photographs, you see
20 healing tissue three days later.

21 A That's right.

22 Q All right. Based on the healing tissue that you see
23 three days later, would you have expected to bleed?

24 A I don't think that she can say yes or no to that.

25 You can have abrasions that don't bleed. You can have a

1 deeper laceration --

2 Q Well, did--

3 A -- then you would expect to see something of that
4 nature.

5 Q Well, based on the pictures you see --

6 A Every--

7 Q -- would you have expected to bleed?

8 A Not necessarily, no, sir.

9 Q All right. You didn't see any bleeding.

10 A I did not.

11 Q You didn't see any evidence of bleeding.

12 A I did not.

13 Q And you didn't hear that there was any blood in the
14 panties from the day before.

15 A I didn't document anything to that effect, no.

16 Q Thank you, sir.

17 MS. MAYES: Your Honor, we would ask that Dr.
18 Clanton be released.

19 THE COURT: Any objection?

20 MR. FINNEY: No objection.

21 THE COURT: Thank you, doctor. You're free to
22 go. Appreciate you coming.

23 (Witness left the stand.)

24 MS. MAYES: The state calls Kathy Saunders.

25 THE COURT: Okay. Since it's been an hour and a

1 half, we're going to take a break. Y'all go to the
2 jury room, stretch your legs, take a break and be
3 back in ten minutes. Don't discuss the case yet.

4 (Jury left the courtroom at 3:30 pm.)

5 *THE COURT:* Court will be in recess 10 minutes.

6 (Whereupon a recess was had.)

7 *MS. MAYES:* Yes. May we approach, Your Honor?

8 *THE COURT:* Hold on a minute. Don't want them
9 to bring the jury?

10 *MS. MAYES:* Just want to advise the Court of
11 something concerning...

12 *THE COURT:* Okay.

13 (Whereupon a bench conference was held.)

14 *MS. MAYES:* We are ready to proceed, Your Honor.

15 *THE COURT:* Okay. So now we're ready for the
16 jury? So that bench conference with y'all talking,
17 me not deciding anything; right? You didn't ask me a
18 question. Y'all's decision -- you didn't need me to
19 rule on anything?

20 *MS. MAYES:* I think, Your Honor, that the State
21 and the defense have come to an agreement concerning
22 the photographs.

23 *THE COURT:* Okay. All right. Bring us the
24 jury.

25 (Jury entered the courtroom at 3:53 pm.)

1 THE COURT: You may call your next witness.

2 KATHY SAUNDERS, after being duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MAYES:

6 Q And where are you employed?

7 A I'm currently employed at the Care House of the Pee
8 Dee in Florence, South Carolina four days a week, and I
9 work at the Sumter Family Health Center one day a week.

10 Q Okay. And can you give us some information
11 concerning your educational background and training?

12 A I am a registered nurse and hold a master's degree in
13 nursing. I also hold a degree as a pediatric nurse
14 practitioner.

15 Q Okay. What is meant by the term, nurse practitioner?

16 A Nurse practitioners are recognized in our state as
17 advanced practice nurses which simply means that we can
18 practice on -- collaboratively in a practice with a
19 physician where we can see children, render a diagnosis
20 and opinion, prescribe medications, order lab testing, we
21 have hospital privileges, some of us do, and I do hold
22 hospital privileges, and operate to the extent that if we
23 see a patient that exceeds our ability to care for that
24 patient or our scope of practice, then we make that
25 referral back to the physician that we work with.

1 Q All right. And so did that require additional
2 training beyond your registered nurse degree?

3 A It did. In the State of South Carolina we are
4 mandated to hold a master's degree in nursing.

5 Q And where did you obtain that degree?

6 A The University of South Carolina.

7 Q All right. And during your experience as a nurse
8 practitioner and your RN training, can you tell us whether
9 or not you have had the opportunity to do child sexual
10 assault examinations?

11 A Actually I graduated in 1993 as a pediatric nurse
12 practitioner, and for about a year and a half or so I
13 practiced in a general pediatric office. In October of
14 1995 I began my practice and dedicated my practice solely
15 to child abuse or child maltreatment.

16 Q All right. Is it possible for you to give an
17 estimation as to how many child sexual assault
18 examinations you have done since going into that specialty
19 field?

20 A Since 1995 I have seen over 5000 children.

21 Q All right. And have you worked here in the area that
22 includes Sumter County, Florence County and surrounding
23 counties?

24 A Yes, ma'am, I have.

25 Q Have you testified previously as an expert in the

1 field of child sexual assault examination concerning your
2 findings?

3 A Yes, ma'am, I have.

4 Q And does that include the Court of General Sessions
5 that -- such as we're in today?

6 A Yes, ma'am, it does.

7 Q Is it possible for you to estimate how many times you
8 have previously given expert testimony in court?

9 A In over 500 cases.

10 MS. MAYES: Your Honor, at this time the State
11 would offer Kathy Saunders as an expert in the field
12 of child sexual assault examinations.

13 THE COURT: Any objection?

14 MR. FINNEY: No objection.

15 THE COURT: Okay. I so find.

16 BY MS. MAYES:

17 Q I'm going to begin by asking you some basic questions
18 concerning the anatomy. When a child sexual assault
19 examination is done on a female child, what are some of
20 the things that you may look for in your initial
21 examination?

22 A Well, it depends if it's an acute case or a chronic
23 case. And the difference with that is in an acute case
24 you're actually looking for things like fibers, semen,
25 blood, any article that may be left in the genital area or

1 on any part of the child's body that may be retrieved as
2 evidence.

3 And that's generally recognized within 72 hours of
4 the assault or less than 72 hours. If it's been greater
5 than 72 hours, we don't per say do an evidence kit, but we
6 look for any residual evidence that may be present like
7 bruising, a scar, a healing injury, any kind of like
8 discharge or abnormal findings or normal findings on the
9 body.

10 Q All right. And just to clarify, you mentioned
11 previously an acute sexual assault exam. Is that the
12 same -- can you tell us whether or not that's also known
13 as a rape kit exam?

14 A It is.

15 Q All right. And the type of exam you did is known as
16 what -- in the case of

17 A That was the chronic exam.

18 Q All right. And does that always have to be done
19 within the first 72 hours?

20 A The chronic exam?

21 Q Uh-huh.

22 A No, it does not.

23 Q And why or why not?

24 A Because you're not looking for the same pieces of
25 evidence as I said before, like semen or hair fibers or

1 those kind of things.

2 Q Okay. And what type of evidence might you find in
3 the type of exam that you did, which is the forensic child
4 sexual assault examination?

5 A Well, you may identify a sexually transmitted disease
6 through any discharge that may be present and culturing
7 that for sexually transmitted infections, healing
8 injuries, maybe some residual or lasting bruises that may
9 be present in the genital area.

10 Q Okay. Did you have the opportunity to conduct an
11 examination concerning

12 A I did.

13 Q And on what date was your examination done?

14 A On December the 27th, 2006.

15 Q All right. And what are the specific areas of the
16 anatomy that you examined on

17 A Basically what I do when I examine a child, whether
18 it be for sexual or physical abuse, is I look at their
19 entire body. So I did a complete evaluation looking at
20 her eyes, ears, nose, throat, inspecting her heart and
21 lungs, her abdomen, and those were found to be normal.

22 And then I looked more specifically at the genital
23 area by the use of a colposcope which is basically a piece
24 of equipment that has a magnifier. It looks like a pair
25 of binoculars attached to a stand that has a bright light

1 source so that you can see the details of a very small
2 area of the genital area in more detail.

3 Q All right. And why is having a culposcope with the
4 magnifying glass and the light source important in an exam
5 such as a child sexual assault examination?

6 A Because sometimes the injuries may be very small or
7 they just may be very pinpoint areas of bruising around a
8 very small area, and to look inside the body, if you will,
9 beyond the outer lips or the outer layers of skin just
10 with the naked eye does not give you the detail that you
11 need to be able to thoroughly evaluate that area.

12 Q Okay. Can you tell us whether or not a culposcope is
13 also equipped with a camera?

14 A It is.

15 Q And for what purpose?

16 A To photodocument any injuries or maybe there is no
17 injury, but you want to photograph what you see in the
18 exam.

19 Q All right. Now, were your finding during
20 exam -- tell us about your findings. What if anything did
21 you observe?

22 A Looking kind of from the outside in, if you will, the
23 labia majora and minora, which are the outer folds and
24 protective foldings of the skin to the vaginal area, were
25 found to be normal. The clitoris, which is at the top of

1 the vaginal area, was found to be normal.

2 The periurethral tissue, where you excrete your urine
3 through, was found to be normal. The hymenal introitus,
4 was most people are -- you see here in the vaginal
5 opening -- was found to be angular in shape with thick,
6 smooth hymenal tissue present.

7 To the left lateral vestibular area there was a
8 linear line with regranulation of tissue present. There
9 was also a diffuse area of tissue noted in the posterior
10 fourchette area that was regranulating or healing.

11 The findings of this exam were consistent with an
12 acute injury to the vestibular and the fossa area.

13 Q Okay. And you've used a lot of words that I really
14 don't understand, so I'm going to need you to explain them
15 in a little bit more detail in layperson's terms if you
16 don't mind.

17 Going to ask you about this diagram and ask you if
18 you recognize what is being depicted in this particular
19 diagram.

20 A Yes, ma'am. That's on prepubertal vaginal diagram.

21 Q Okay. And I'm also going to ask you now if you could
22 step down, please, and I'll need you to keep your voice
23 up. And using this black marker, if you could note the
24 area in which you -- you have described seeing healing
25 tissue for

1 A (Complied).

2 Q All right. And you used a medical term for that
3 area, and what was the medical term that you used?

4 A That's the posterior fourchette more to this area
5 here on the left side and more to the fossa area on the
6 right side.

7 Q All right. And you also used a term called
8 regranulation. What did you mean by that?

9 A That's just how the tissue actually heals, when we
10 get an injury, whether it's on our arm or our leg, the
11 tissue grows back together. And sometimes, depending on
12 how deep or how shallow that injury is, it lays down
13 surfaces of new tissue as it heals.

14 So that's just laying down a new surface of tissue as
15 it was healing.

16 Q And what in your expert opinion are some causes or
17 possible causes for regranulation or the collection of
18 healing tissue?

19 A Anything that causes injury to any part of the body.
20 Specifically to this area what I think is important to
21 understand is that you have an outer layer of skin, which
22 is the labia majora, then you have a thinner layer of
23 skin, which is the labia minora.

24 This structure -- in this structure right here is
25 recessed back into the body. It doesn't sit on the

1 outside of the body like our lips do. If you think about
2 this skin, it -- it acts as a little cup-like structure
3 before you get back to this hymenal opening which may be
4 an inch, 2 inches, 3 inches depending on the size of the
5 child and how developed they are back inside of the body.
6 So it's actually a protected structure.

7 So when you see injury to this area of the body,
8 anywhere below, if you will, these outer folds of skin, it
9 has to be a penetrating object that causes the injury to
10 that part of the body.

11 Just like you don't get to your tonsils without going
12 through your mouth, past your tongue, you don't get to
13 this part of the body without penetrating through the
14 outer folds of skin.

15 Q Can you tell us in your expert opinion whether or not
16 the type of penetrating injury resulting in this finding
17 would include a digital penetration of the vagina?

18 A It very likely could.

19 Q Now, going to ask you if you're familiar with
20 something known as a catheter.

21 A There's different kinds of catheters, but I am.

22 Q Okay. For example, an in and out catheter that's
23 used to collect a small portion of urine for testing.

24 A I am familiar.

25 Q Okay. And where is a catheter utilized on the

1 anatomical area in order to collect the urine sample?

2 A It would go into the urethra, this opening at the
3 very top under these folds of skin.

4 Q Okay. And what is the purpose of the urethra to the
5 female anatomy?

6 A It's to excrete your urine.

7 Q All right. And how does that differ from the
8 location of the vaginal opening or more specifically the
9 location of the healing tissue that was seen in this area
10 below the vaginal opening?

11 A Well, certainly there's a distance. One is anterior.
12 One is inferior. One's on top. One's on bottom. So the
13 locations would be top to bottom of each other, exact
14 polar opposites of each other.

15 Q All right.

16 MS. MAYES: Your Honor, this would be State's
17 Exhibit 14 I believe for evidence.

18 THE COURT: What says the defense?

19 MR. FINNEY: No objection.

20 THE COURT: Okay. State's Exhibit 14 without
21 objection.

22 (WHEREUPON, State's Exhibit 14 was admitted into
23 evidence.)

24 BY MS. MAYES:

25 Q Do you have with you the photographs which were done

1 in case by use of the culposcope on
2 December 27th?

3 A I do.

4 Q And I'm going to show you two photographs and ask you
5 whether or not you can identify what is shown in the
6 photographs.

7 A That's the actual picture that I took.

8 Q Okay. I need you to keep your voice up just a little
9 bit.

10 A Okay. That's the picture that I actually took.

11 Q All right. And can you take a look at the second
12 photograph and tell us whether or not it is a crop or
13 close-up version of a photograph in your collection from
14 the exam?

15 A It's one of the photographs, it is.

16 Q Okay. And what if anything is actually shown in
17 those -- the two photographs which you have before you?

18 A In -- actually shows the regranulation of the tissue
19 that I just described on the diagram.

20 Q Okay. And so once again we're talking about on the
21 photograph which depict the area that you noted here in
22 black which you referred to as regranulation or healing
23 tissue?

24 A That's correct.

25 Q All right.

1 MS. MAYES: Your Honor, at this time we would
2 offer the photographs as State's Exhibit 15 and 16
3 for evidence.

4 THE COURT: What says the defense?

5 MR. FINNEY: No objection.

6 THE COURT: Okay. 15 and 16 are in without
7 objection.

8 (WHEREUPON, State's Exhibits 15, 16 were
9 admitted into evidence.)

10 BY MS. MAYES:

11 Q In looking at the photographs, is the injury area
12 visible? And if you could from where you are note where
13 in the photograph that healing tissue was noted.

14 A Yes, ma'am, it is apparent.

15 Q And if you could hold it up and -- for the jury to
16 see.

17 A This is on State's Exhibit number 15. Do I need
18 to...

19 Q Yes.

20 A Okay. This is the area -- this is the area right in
21 here, that yellow, creamy looking area of regranulation
22 right just above my finger. And this is State's Exhibit
23 number 16 and it's just above my finger to the left and to
24 the right.

25 MS. MAYES: Your Honor, at this time we would

1 ask to publish State's Exhibit 15.

2 THE COURT: Okay.

3 BY MS. MAYES:

4 Q And do you know whether or not was also
5 seen at the emergency room preceding your exam?

6 A Yes, ma'am, she was.

7 Q All right. And if the child had been prescribed
8 Monistat, can you tell us whether or not that would
9 produce any of the findings that you saw there in your
10 exam?

11 A Well, Monistat is a cream that we use sometimes in
12 children even as early in the very newborn period for
13 yeast or diaper rash type infections. Certainly I in my
14 clinical practice have never seen a reaction to Monistat
15 or any such cream for a diaper rash.

16 And had it caused any kind of reaction or side
17 effect, it would have been generalized to the entire
18 genital area and not to one specific spot that is inside
19 the body as opposed to outside the body.

20 Q So what is your opinion in that regard as to the
21 healing tissue that you observed being related to the
22 Monistat?

23 A There should be no direct correlation to the use of
24 the Monistat and the injury that I observed.

25 Q All right. And can you explain why the injury may or

1 may not have been present at the date of the initial
2 examination which was less than 24 hours from the date of
3 the alleged assault?

4 A Well, a couple of things happened. When you see
5 children in an acute event, from my experience if there is
6 an injury that is present, it's very painful to touch
7 around that genital area.

8 Especially in females where they have not -- they're
9 not into puberty, if you will, or do not have the estrogen
10 hormone there to help desensitize some of that tissue.
11 That's one thing is that maybe it was extremely
12 uncomfortable to her to perform an in-depth or more
13 in-depth exam.

14 Secondly, as skin is abraded or torn in that area, it
15 may just appear to be red when you first see it.

16 And that's why it's important that we see children
17 over a period of time, not just in one event, when there
18 is an acute assault that happens because as tissue begins
19 to heal, it takes on different patterns, and sometimes
20 it's easier to recognize the regranulation of tissue as
21 opposed to just red, irritated tissue in the area.

22 Q All right. And the results that you saw coming
23 approximately three and a half to four days later, would
24 you expect to have those results within the first 24 hours
25 or with that degree of healing tissue?

1 A No. Typically you see that like 48 hours up to six,
2 maybe even 10 days, those injuries do heal. Usually, and
3 what the research supports as well as my clinical
4 practice, that type of injury usually heals within at
5 least six to 10 or so days.

6 So you would not see that within the first 24, maybe
7 even 48 hours after the injury occurs.

8 Q All right. And you mentioned previously that an
9 injury to this particular area is a penetrating injury or
10 consistent with a penetrating injury. What if anything in
11 both clinical experience and the literature supports
12 that -- supports that, if you could explain.

13 A When children are penetrated, most of the injury
14 occurs either in the area from which you have just seen in
15 the pictures of this child in the fossa or the fourchette
16 area or to the lower rim of the hymenal tissue, which is
17 that collar of skin around the opening to the vagina
18 itself.

19 It's not common at all to see other parts of the
20 genital structures, meaning the urethra or that anterior
21 portions, in a penetrating injury injured in these
22 children.

23 Q Okay. And do you necessary -- would you necessarily
24 expect to find a hymenal injury?

25 A Not necessarily, no.

1 Q And in this particular situation, can you tell us
2 whether or not the regranulation or healing tissue that
3 you described, where exactly that would be located in
4 relation to the labia minora, would that be external to
5 the labia minora or internal to the labia minora?

6 A It would be internal. It would be behind the labia
7 minora.

8 MS. MAYES: Beg the Court's indulgence.

9 THE COURT: Yes, ma'am.

10 MS. MAYES: Nothing further at this time.

11 CROSS-EXAMINATION

12 BY MR. FINNEY:

13 Q Mrs. Saunders, my name is Chip Finney, and I'm just
14 as confused as I can be. You saw this young lady three
15 days after she left the emergency room; did you not?

16 A That's correct.

17 Q And you took a history of what they said happened to
18 her. Did you know that, what had happened to her?

19 A I obtained a history from the mother.

20 Q All right. And did you learn that she had been
21 riding a four-wheeler on a trail through the woods with
22 her Uncle Ricky and with other friends all day on the 23rd
23 of December?

24 A That's not the exact history that I was given.

25 Q Well, would that made any difference to your

1 evaluation of the child if you knew that she was riding a
2 big Honda four-wheeler shown in this exhibit, State's
3 Exhibit number one, all day on the 23rd?

4 A No, sir, it would not have.

5 Q And why not? Why wouldn't it have made a difference
6 that this little girl was bouncing on this four-wheeler
7 through the forest for 20 minutes, 30 minutes, an hour,
8 two hours?

9 A Because the injury that she had was not external to
10 her body. When children bounce around on objects and
11 injure their genital area, especially in girls, usually --
12 well 99.9 percent of the time, and it's even supported in
13 literature, that you see external injury as well as maybe
14 injury more evading into the inside of the genital area.

15 This child had no external injuries. It was all
16 internal injury that resulted in a pretty substantial
17 injury to the fossa area of the vaginal opening.

18 Q Mrs. Saunders, you were the only person to take
19 pictures of Kayla, is that true, to your knowledge?

20 A I'm not sure if they took pictures in the emergency
21 room or not.

22 Q You didn't talk to the doctor about it?

23 A No, sir, I did not.

24 Q Well, if I told you your pictures were the only
25 pictures and that the doctor from the emergency room

1 reviewed your pictures, would you agree that you may have
2 had the only pictures taken?

3 A That could be possible.

4 Q And do -- would you agree that on the occasion when
5 she presented herself to you on the 27th, she was red as
6 could be on the outside part of her private parts?

7 A I did not note that in my exam.

8 Q You took a picture of it, Mrs. Saunders. You didn't
9 note that?

10 A Let me... No, sir, I don't see the redness on the
11 outside. This is the outside.

12 Q No, ma'am. That's not the picture. Are those all
13 the pictures that you took of

14 A This right here that you're referring to--

15 Q Yes, ma'am, that's the one I'm talking about.

16 A This right here is the printing mechanism. If you
17 look beyond this--

18 Q That's not your picture, is it? That's a copy of the
19 picture.

20 A That's a copy of my--

21 Q Do you have your picture?

22 A It's on the computer system.

23 Q You didn't bring it?

24 A This is the printed copy.

25 Q You didn't bring the one that you made and put on the

1 digital -- you didn't make a digital -- you made a digital
2 print of all these pictures; right?

3 A That's correct.

4 Q Is that a digital print there?

5 A It is.

6 Q Okay. And that's State's Exhibit number 16.

7 A That's correct.

8 Q And on that picture that you have in your hand right
9 there of her outside private parts, isn't she just as red
10 as she can be?

11 A This is a flaw in the printing system.

12 Q Okay. So that's--

13 A You look beyond this one spot, the other parts are
14 completely normal.

15 Q All right. And the doctor who saw her three days
16 before, whatever he saw, that would be in his examination.
17 You wouldn't contend that he didn't see any redness on the
18 outside of her three days before you saw her?

19 A I'm not sure what he saw, sir.

20 Q All right. How many times did you see after
21 you saw her on the 27th?

22 A Believe it was just the one follow-up.

23 Q When was that?

24 A On January the second, 2007.

25 Q You saw her in December the 27th, 2007.

- 1 A That's correct.
- 2 Q And you saw her in January of 2007; is that right?
- 3 A Yes, sir, one week later.
- 4 Q Did you take any pictures of her then?
- 5 A No, sir, I did not.
- 6 Q Tell the ladies and gentlemen of the jury what else
- 7 could have caused this type of injury to this little girl
- 8 besides a sexual assault.
- 9 A Anything that penetrates the vaginal area.
- 10 Q And so there are other reasons that could have
- 11 occurred to cause what you say you saw on the 27th besides
- 12 the sexual assault.
- 13 A That was not given in the history, but there are
- 14 other objects that could penetrate that cause injury to
- 15 the vagina.
- 16 Q All right. And it's your testimony that in State's
- 17 Exhibit 15 and 16, two color photographs of the little
- 18 girl's vaginal area --
- 19 A Uh-huh.
- 20 Q -- that there is a granulation tissue present.
- 21 A That is correct.
- 22 Q And it's present at about the 6:00 position in both
- 23 photographs.
- 24 A Starts about four or 5:00 down to 6:00.
- 25 Q Right.

- 1 A That is correct.
- 2 Q And is that also in the area of what appears to be
- 3 some white milky mucus? Is that the area you are talking
- 4 about is granulating tissue?
- 5 A Sir, that is not mucus. You can see where the skin
- 6 is concave or kind of scooped out, and that is not mucus.
- 7 Q Okay. Well, how do you know it's not Monistat?
- 8 A There's no Monistat anywhere else on her body.
- 9 Q Did you test?
- 10 A It would be visible.
- 11 Q Monistat would be visible on the body?
- 12 A It's kind of a creamy white color.
- 13 Q Well, if it had been on her all morning when she came
- 14 to see you and took these pictures, did you ask her if she
- 15 used her Monistat that day?
- 16 A I don't recall if I did or not.
- 17 Q All right. You know what vaginitis is?
- 18 A Yes, sir, I do.
- 19 Q Do you know what dysuria is?
- 20 A What what is?
- 21 Q I think it's dysuria. Maybe I'm pronouncing it
- 22 wrong.
- 23 A I'm not familiar with that term.
- 24 Q Let me look at it. I can tell you what I'm --
- 25 D-Y-S-U-R-I-A.

1 A Dysuria.

2 Q Dysuria. You know what that is?

3 A Yes, sir, I do.

4 Q All right. If a young lady presented herself to the
5 emergency room with -- and the doctor found vaginitis and
6 dysuria, would that normally require a medication to be
7 given?

8 A Dysuria is usually seen when -- it means there's
9 pain, pain on urination.

10 Q All right.

11 A And that could be from a urinary tract infection, it
12 could be from irritation in the vaginal area. And in
13 case it could be pain because she had raw skin
14 from this injury and the urine was hitting it, and when
15 acidic urine hits an open sore or an open area, it will
16 cause pain.

17 Q Well, what about the fact that there was no complaint
18 of pain before the morning of the exam? Were you aware
19 that there was no complaint of pain by the little girl on
20 the 23rd, which is the day she was allegedly assaulted?

21 A I'm not sure if I had that information or not.

22 Q Would it have made a difference for you --

23 A Certainly it would have.

24 Q -- to know that? So if the little girl didn't
25 complain of pain on Saturday night, she only complained of

1 pain Sunday in the -- you know, I guess to her mom, and
2 they took her to the emergency room and the doctor found
3 that she had dysuria from that day, not from a previous
4 day, that would make a difference in your evaluation of
5 the case; wouldn't it?

6 A Certainly it would.

7 Q All right. And if the doctor described -- prescribed
8 Monistat for this little girl for vaginitis, it could have
9 been caused by a bad yeast infection; isn't that true?

10 A That could be true.

11 Q Have you ever heard of Toluidine Blue Dye?

12 A Toluidine Blue Dye?

13 Q Yes, ma'am, Toluidine Blue Dye. Tell the ladies and
14 gentlemen of the jury what we use that for in the medical
15 profession.

16 A We use it on acute injuries to the body, and it has
17 to be within say like 10, 12 hours of the injury. It's a
18 blue purple dye that we apply to any part of the body
19 where there has been an injury.

20 And if it is a fresh injury within those 10 or 12
21 hours or so, the blue purple dye will absorb in the injury
22 and kind of demarcate or outline the area of injury in the
23 body.

24 Q Have you ever used that kind of dye in child sexual
25 abuse cases?

1 A I certainly have.

2 Q And does it indicate that there has been a scratch or
3 a tear on the inside of a female vagina like the case we
4 have here?

5 A I don't know that I would insert it that far into the
6 vagina because it would be extremely uncomfortable to a
7 prepubertal child.

8 Q We are not in the vagina, are we, in this case?

9 A Yes, sir, it's in the vestibule.

10 Q We're on the vestibule which is on the outside; are
11 we not?

12 A But it's to the area that is sensitive because this
13 area directly lies into the hymenal tissue.

14 Q All right.

15 A So it would not be a good practice to apply Toluidine
16 Blue Dye to this area. Secondly, I would not have used it
17 because there was regranulation of the tissue, and the
18 event occurred days prior to me seeing her. There would
19 be no use for me personally to have used it in this case.

20 Q It would have been able to show you in the
21 photographs exactly where those tears or scratches or what
22 you saw on your exam were. Wouldn't it have been helpful?

23 A No, sir, because the tissue had began to resurface.
24 It only shows in a fresh, acute injury.

25 Q All right. And what you have was an injury that

1 occurred, according to your history, three or four days
2 before?

3 A That is correct.

4 Q And so your expert opinion would be that a little
5 girl who had been scratched bad enough for there to be
6 healing tissue three days later, she wouldn't have been
7 able to have the dye applied to show whether or not there
8 was still open tears although she was complaining of pain
9 when she urinated?

10 A That is correct.

11 Q All right. And you tell us, please ma'am, how much
12 damage was done to this area such that would it have
13 occasioned blood, all this granulation you saw three days
14 later that was not quite healed, I guess, is that correct?
15 It wasn't quite healed when you saw her?

16 A No, sir, it was not healed.

17 Q And how long would it take for it to be fully healed?

18 A I saw her one week later, and the injury was healed
19 at that point with no residual scarring noted.

20 Q So residual scarring. So the injury itself, if it
21 had taken place and had caused this injury which three
22 days later was not healed but was granulated, would you
23 have expected it to bleed?

24 A It may or may not have.

25 Q You don't know.

1 A That's correct. Some injuries may bleed, some may
2 not depending on the depth of the injury itself.

3 Q Well, you were looking at the granulating tissue.
4 You have an idea of the depth; don't you?

5 A No, sir, I did not see it when the injury was acute
6 or when it had occurred.

7 Q And so you don't know whether or not there would have
8 been blood on this occasion.

9 A The mother did not report any vaginal bleeding in the
10 history that I gathered from her.

11 Q Did you ask for anybody from the Sheriff's Department
12 to assist you by getting the panties that she had on on
13 either the occasion of the alleged assault or on the
14 occasion of her presentation to the emergency room?

15 A That would have occurred on the initial exam at the
16 emergency room.

17 Q So you didn't have anything to do with that?

18 A That is correct.

19 Q Would that have been helpful to the investigator who
20 was looking into this case to see if there was anything in
21 those panties?

22 A Well, if she would have presented for an acute rape
23 kit at my office, I would have collected her underwear.
24 But that's certainly the discretion of the provider seeing
25 the child at that time.

1 Had she changed clothes, had she bathed, all of those
2 elements figure into, and really that's law enforcement's
3 discretion ultimately because I can't go to that home and
4 retrieve articles.

5 Q Thank you, Mrs. Saunders.

6 REDIRECT EXAMINATION

7 BY MS. MAYES:

8 Q And would you always expect immediate pain upon
9 urination following some type of trauma to the lower
10 vaginal opening?

11 A Usually when the acidic urine hits an open sore at
12 any point or any part of the vaginal area, it will cause
13 pain or discomfort.

14 Q Okay. And how might that progress or worsen if
15 untreated over the course of 24 hours?

16 A The pain? It would continue until the regranulation
17 of the tissue begins to set in and kind of cover the wall
18 area of skin.

19 Q All right. And you mentioned previously that the --
20 her history of dysuria could affect your opinion. What do
21 you mean by that?

22 A Certainly with a history that was given of digital
23 penetration, that can certainly explain why she had the
24 sudden onset of pain or discomfort. And then visualizing
25 the injuries, it all kind of makes sense why she didn't

1 have it that morning, then at some time during the day the
2 event occurred and then she began to disclose to her
3 family the pain in her genital area.

4 Q Okay. And is it any source of concern for you if she
5 didn't disclose the pain in the genital area until
6 approximately seven am the following morning?

7 A Not necessarily. It doesn't mean she didn't have the
8 pain kind of all along. But children tell us about events
9 when they feel safe or when they feel like they can talk
10 about the event.

11 You never know why they tell later different things
12 that happened to their body or how their body feels. But
13 certainly we know that children disclose when they feel
14 like they can tell someone the information about what has
15 happened.

16 Q All right. And I'm going to refer you to the two
17 photographs before you which you have -- you took by use
18 of the culposcope during your exam of Hickman and
19 ask you to a reasonable degree of medical certainty do you
20 have an opinion as to whether or not what you're looking
21 at is healing skin tissue or a topical ointment such as
22 Monistat?

23 A It is a healing injury.

24 Q Thank you. Nothing further.

25 MR. FINNEY: No questions.

1 THE COURT: Thank you, ma'am. You can step
2 down.

3 (Witness left the stand.)

4 MS. MAYES: The State calls Investigator Jamie
5 Turner.

6 JAMES TURNER, after being duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MS. MAYES:

10 Q And Investigator Turner, where are you employed and
11 in what capacity?

12 A Sumter County Sheriff's Office. I'm the commander of
13 the Criminal Investigation Division.

14 Q All right. And what do your -- what does that mean
15 when you say you're commander of the Criminal
16 Investigation Division? What all does that include?

17 A I oversee all investigation functions of the Sumter
18 County Sheriff's Office.

19 Q All right. And can you tell us whether or not you
20 were working in that capacity on or about December of 2006
21 in the investigation of a case involving the defendant,
22 William Ricky Welch, and minor child victim,

23

24 A I was.

25 Q All right. And going to ask you whether or not you

1 had the chance to review any documents in this case which
2 were prepared by law enforcement such as an incident
3 report.

4 A Yes, ma'am, I did.

5 Q All right. And can you tell us whether or not you
6 were also present when an arrest warrant was served?

7 A I was.

8 Q All right. I'm going to show you this particular
9 document and ask you whether or not you recognize it.

10 A I do.

11 Q All right. And during the course of the
12 investigation and the preparation of an arrest warrant,
13 were you able to obtain a correct date of birth for the
14 defendant in this case, William Welch?

15 A I did not, but the other investigator that was
16 assigned this case did.

17 Q All right. And based upon your knowledge as an
18 investigator, what is Mr. Welch's dates of birth?

19 A

20 Q All right. And do you have personal knowledge as to
21 the location or address in which this particular event
22 occurred?

23 A Yes, ma'am, I do.

24 Q Have you been to that location?

25 A I have.

1 Q Can you tell us whether or not it is within the
2 confines of Sumter County?

3 A It is.

4 Q And what were the circumstances and -- Captain
5 Turner, in which Mr. Welch was arrested? Were you present
6 for that?

7 A I was.

8 Q All right. And on what date did that occur?

9 A I believe it was on January the third, 2007.

10 Q All right. And who, if anyone, were you accompanied
11 by?

12 A Investigator Melissa Bradley or Addison now.

13 Q And can you tell us whether that arrest was before or
14 after initial investigative interview at the
15 hospital with your victim assistance officer, Gwen Herod?

16 A The arrest was on January the third, it would have
17 been afterwards.

18 Q And can you tell us whether or not -- or whether it
19 was before or after the -- her medical examination was
20 conducted by Kathy Saunders who has testified previously?

21 A It was after.

22 Q And was there an occasion in which received a
23 second investigative interview also done with Gwen Herod
24 of the Sumter County Sheriff's Office?

25 A There was.

1 Q And following that investigative interview, what if
2 any action did you take in furtherance of the
3 investigation?

4 A Well, during the normal course of any case, you know,
5 it's always -- the case is never completed until actually
6 the trial is done. So there's -- that's times where even
7 during the course of a trial we may go out and do
8 something else or go talk to somebody else because we find
9 out some information.

10 In this particular instance on -- I was asked to go
11 out to the -- and videotape the actual -- the area we're
12 talking about, these trails, to do a videotape of that,
13 that area out in Pinewood.

14 Q All right. And did you go out there during the
15 daytime or the nighttime?

16 A I went out -- it was February the 12th of 2008 around
17 2:00 in the afternoon.

18 Q All right. And what specifically were you looking
19 for or attempting to document when you went to the scene?

20 A I was asked to document actually two things. One was
21 the four-wheeler, which is the large four-wheeler we were
22 talking about, and the trails that were actually used that
23 this four-wheeler was ridden on.

24 Q Okay. I'm going to show you some photographs which
25 are State's Exhibits one -- actually a collection of

1 photographs of the scene which are now in evidence and ask
2 you whether or not you recognize these photos and how they
3 were developed.

4 A I do. These photographs are photographs taken from
5 the video. We have a computer program out at our
6 technology center which allows us to take a video or a
7 tape, a digital CD and actually capture still photographs
8 from it.

9 So all these -- all these pictures here are actually
10 on this video. It's just all it is is they stop at a
11 point and take the still picture off of it.

12 Q Okay. And who actually did that, converting the
13 photographs from video into still photographs?

14 A That was Sergeant Lee Monahan.

15 Q And I think you mentioned that a videotape was done
16 of the scene. Who prepared the videotape?

17 A I shot the video. The video was downloaded to a
18 computer and captured on a CD.

19 Q All right. And can you describe exactly what you did
20 in the course of taking the videotape, what areas of the
21 scene were covered?

22 A What I did is I -- I spoke to Mrs. Hickman, Myrtle
23 (sic) Hickman, prior to going out there and I asked her to
24 get the large four-wheeler out so I could videotape that.
25 I was actually -- take still photographs and then danned

1 on me, well, I can just take the stills right off the
2 video.'

3 So she had just basically preparation. When I
4 arrived at the scene, I videotaped the large four-wheeler,
5 another 360-degree video of that. We then proceeded to
6 get on the golf cart, Mrs. Hickman driving, and she drove
7 through the gate that they normally drive through to gain
8 access and you actually going in to Joey Smoke or Smoke's
9 Irrigation's Nursery.

10 It's a large field and it's got all kind of trees and
11 plants. You go around the edge of it, and then you veer
12 off into the woods and it's trails that go all through the
13 woods.

14 You can obviously tell that four-wheelers -- and they
15 also rides golf cart on it. And she had a slow pace. I
16 mean, not very fast, but it is kind of like bumpy. And
17 you're on a golf cart, which four-wheelers have a little
18 bit more springy action than a golf cart. They're pretty
19 stiff.

20 She drove me down the trails. I videotaped it from
21 the videotape going out and coming all the way back up to
22 the house.

23 Q All right. And I'm going to show you this particular
24 item and ask you whether or not you recognize the case
25 name and the case number.

1 A I do.

2 Q All right. And what is -- that particular case
3 number is assigned to which case?

4 A The case against Mr. Welch.

5 Q All right. And can you tell us whether or not the
6 videotape -- have you had a chance to review the videotape
7 or see the videotape since it was originally prepared that
8 day at the scene?

9 A Yes, ma'am. I'm the one that made these, these CDs.

10 Q Okay. Can you tell us whether or not it's a fair and
11 accurate representation of what you observed that day at
12 the scene?

13 A It is.

14 MS. MAYES: Your Honor, at this time we would
15 offer State's Exhibit 17.

16 THE COURT: What says the defense?

17 MR. FINNEY: No objection, Your Honor.

18 THE COURT: State's Exhibit 17 is in without
19 objection.

20 (WHEREUPON, State's Exhibit 17 was admitted into
21 evidence.)

22 MS. MAYES: And we would ask to publish. And I
23 believe, Your Honor, this time we will not have
24 sound.

25 THE WITNESS: There's very little -- it's just

1 maybe -- I think there's only one part where she
2 actually tells me there's a bridge which I explain
3 that to you.

4 There's a bridge that's there now that allows
5 you to go out to a field that was not there at the
6 time of the incident, but that's -- there's very
7 little talking between me and her.

8 MS. MAYES: Okay.

9 THE COURT: How long does this take?

10 THE WITNESS: Ten minutes.

11 THE COURT: Okay. It's 4:45. I didn't want to
12 get into an hour video.

13 (Whereupon videotape began playing, State's 17.)

14 THE WITNESS: This is the four-wheeler.

15 (Videotape continued to play.)

16 THE WITNESS: This is the gate, keep talking
17 about going out, goes out to the neighbor's yard.
18 This is how they enter and exit the... see the trail,
19 coming down and out into the nursery, out into the
20 Smoak's Nursery. You see the tree slanted, think
21 either 25-gallon bucket, palm trees.

22 (Videotape continued to play.)

23 THE WITNESS: Looking back at the house -- the
24 house, you barely see it up there.

25 (Videotape continued to play.)

1 *THE WITNESS:* The bridge...

2 (Videotape continued to play.)

3 *THE WITNESS:* What they call short trail. I
4 guess it's just a little root runs around in the
5 woods. Come back out again, actually go across the
6 back side of the corner.

7 (Videotape continued to play.)

8 *THE WITNESS:* Path to the right. Back up is
9 where the house...

10 (Videotape continued to play until conclusion.)

11 *MS. MAYES:* Nothing further from Captain Turner
12 at this time, Your Honor.

13 *THE COURT:* Mr. Finney?

14 *MR. FINNEY:* Your Honor, I don't have any
15 questions for the Captain.

16 *THE COURT:* All right, sir. You can step down.

17 (Witness left the stand.)

18 *THE COURT:* You got a witness you can do in four
19 minutes?

20 *MS. MAYES:* Yes, sir, Your Honor, Angela
21 Haynesworth. May we approach?

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

23 (Whereupon a bench conference was held.)

24 ANGELA HAYNESWORTH, after being
25 duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MAYES:

Q Good afternoon, Mrs. Haynesworth. Where are you employed and in what capacity?

A The Sumter County Clerk of Court's Office.

Q All right. And what are your job responsibilities with the Clerk of Court's Office?

A Keep records for the General Sessions department.

Q All right. And when we refer to General Sessions Court, such as the type of court we're in now, what are we talking about now?

A Criminal court.

Q All right. And this level of criminal court is I believe different than something such as Magistrate's court; correct?

A Right, it's a Circuit Court.

Q All right. And do your job responsibilities include access to and the ability to review records of prior Circuit Court criminal convictions?

A Yes.

Q And does that include felony convictions?

A Yes.

Q And does that include particular sex offenses? And by that I mean crimes that are classified as a -- sex offenses.

1 A Yes.

2 Q Have you had the opportunity to review any records on
3 this particular case concerning the defendant, William
4 Ricky Welch?

5 A Yes.

6 Q I'm going to show you a docket sheet and ask you
7 first of all if you can tell us what a docket sheet is and
8 why a docket sheet is maintained by the Clerk of Court's
9 Office.

10 A Okay. It's a printout of the offense and the
11 indictment numbers, warrant numbers, names, and the
12 personal information, and what the offense was.

13 Q All right. And when you have a docket sheet that is
14 part of someone's record, can you tell us whether or not
15 that means they have been convicted of an offense?

16 A Yes.

17 Q And do you have a docket sheet before you that is a
18 record of the Sumter County Clerk of Court's office in
19 regards to William R Welch?

20 A Yes.

21 Q Okay. And what is the date of birth reflected on
22 that particular document?

23 A .

24 Q All right. And race and gender if that is also
25 noted?

1 A Male and white.

2 Q All right. And what is the name on that particular
3 document?

4 A William R Welch.

5 Q All right. And can you tell us whether or not that
6 particular document reflects a conviction date?

7 A Yes, it does.

8 Q And what is the date of that conviction?

9 A December 1, '93.

10 Q All right. And for what offense was Mr. Welch
11 convicted in December of 1993?

12 A Criminal sexual conduct with a minor first degree.

13 Q All right.

14 MS. MAYES: Your Honor, we would offer the
15 docket sheet into evidence at this time subject to
16 the previous side bar.

17 THE COURT: Okay. Subject to Mr. Finney's
18 objection. Is that right, Mr. Finney?

19 MR. FINNEY: All of this is subject to my
20 objection, Your Honor.

21 THE COURT: That's correct. All right.

22 (WHEREUPON, State's Exhibit 18 was admitted into
23 evidence.)

24 MS. MAYES: Nothing further..

25 THE COURT: Okay. Mr. Finney?

1 MR. FINNEY: No questions.

2 THE COURT: Okay. Thank you, ma'am. You can
3 can step down.

4 (Witness left the stand.)

5 MS. MAYES: Beg the Court's indulgence.

6 THE COURT: Yes, ma'am.

7 MS. MAYES: Your Honor, at this time the State
8 rests.

9 THE COURT: Okay. This is a good time to quit
10 for the day. Ladies and gentlemen, we are going to
11 recess and come back in the morning at 9:30. I
12 remind you, you can't discuss this case yet.

13 You can't -- when you get home, you can't talk
14 about with it your families, and I'm sure they are
15 going to want to know what you have been doing the
16 last two days, but you can't tell them yet.

17 When this case is over with, you can discuss
18 this with them as much as you want to, but it's
19 important that you decide this based on what you hear
20 from this courtroom and ot any outside influences.

21 Don't read anything in the newspaper. I don't
22 think anything is going to be on TV. But if it is,
23 you can't watch it. Don't get on the internet.

24 Don't talk to anybody yet. Don't discuss it among
25 yourselves yet, and I will see you at 9:30 in the

1 morning.

2 (Jury left the courtroom at 5:03 pm.)

3 THE COURT: Anything further before we break for
4 the day from either side?

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

6 MR. FINNEY: No, Your Honor. Just would you
7 remind me to do my motions in the morning?

8 THE COURT: I will try to remember. All right,
9 sir.

10 MR. FINNEY: I will try to remember, too.

11 THE COURT: See y'all at 9:30 in the morning.

12 MR. FINNEY: Thank you, Your Honor.

13 (Court in recess for the evening.)

14 ***** June 4, 2008 *****

15 THE COURT: Is the State ready to proceed?

16 MS. MAYES: Yes, Your Honor.

17 THE COURT: Defense ready?

18 MR. FINNEY: Yes, sir. First I guess we're
19 going to put some motions on the record.

20 THE COURT: Yes, sir. I was just fixing to
21 remind you.

22 MR. FINNEY: Thank you. Your Honor, please, on
23 behalf of the defendant Ricky Welch I would move for
24 a directed verdict of not guilty on the two counts in
25 the indictment feeling that in the light most

1 favorable to the State the evidence has failed to
2 show that this young man committed the crime of
3 criminal sexual conduct first degree or the crime of
4 lewd act against a minor.

5 Your Honor, we have held two days of testimony,
6 all from the State's witnesses, and it is apparent
7 that they have no proof that this young man did
8 anything to violate this young lady.

9 The statements of the young lady have changed on
10 almost every occasion that she has talked to the
11 officials as to the -- where things happened, how
12 things happened, what happened to her, all these
13 things have changed as she has been interviewed by
14 different people.

15 The medical testimony is speculative at best,
16 Your Honor. It is not clear and convincing evidence
17 that this young lady suffered a sexual assault
18 injury. It could have been trauma associated to that
19 area.

20 According to the expert, Mrs. Saunders, anything
21 that would have caused this injury could have left
22 these types of indications which weren't seen by the
23 emergency room doctor and which were testified as
24 some type of healing injury by this lady who couldn't
25 testify how deep they were, how old they were, or as

1 a matter of certainty how they got there.

2 And so feeling that there is a paucity of
3 evidence in this regard, we ask the Court to grant
4 the motion.

5 *THE COURT:* Okay. Thank you, sir. As you know,
6 at this stage of the game it's the existence of
7 credible evidence. And what weight the jury gives
8 that evidence, I don't know, but I think the record
9 bears sufficient evidence in this record that a jury
10 could reach a verdict of guilty in this case, and I
11 respectfully deny your motion.

12 *MR. FINNEY:* Thank you, Your Honor. Your Honor,
13 please, let me renew all of the pretrial motions made
14 regarding the indictment and the charges in the
15 indictment, all of the other matters that were made
16 on behalf of this defendant, let me renew them at
17 this time and ask the Court to -- in light of the
18 testimony that you have heard rule in favor of the
19 defendant's position on those motions.

20 *THE COURT:* Okay. And I respectfully deny that
21 motion as well. You know, the record is preserved
22 and complete as far as your objection is concerned.
23 But I will stand by my previous ruling.

24 *MR. FINNEY:* Thank you, Your Honor. Your Honor,
25 at this time we intend to call Lisa Bryant, who is

1 the defendant's fiancée, and we intend to call the
2 defendant.

3 I would ask you to question him at this time
4 about his rights and -- you stand up? The Judge
5 wants to talk to you.

6 THE COURT: All right, sir. If you could raise
7 your right hand, please, sir.

8 RICKY WELCH, after being duly
9 sworn, testified as follows:

10 THE COURT: Mr. Welch, you understand that we
11 have reached this point in the trial where you have
12 the right to put up a defense and to put up witnesses
13 and testify yourself.

14 You -- the law -- you're not required to do so,
15 and I will instruct the jury that you don't have to
16 do so.

17 But if you choose to take the stand in your own
18 defense, you will be treated like any other witness
19 and you will be subject to cross-examination by the
20 State, any prior record within 10 years fits the
21 criteria may come out against you.

22 So you need to understand that you have a right
23 to remain silent, and I will instruct the jury that
24 if you do not testify, they cannot hold that against
25 you. But if you do decide to testify, that you will

1 be treated like any other witness. Do you understand
2 that?

3 *THE DEFENDANT:* Yes, sir.

4 *THE COURT:* Have you had enough time to talk to
5 your lawyer about this decision?

6 *THE DEFENDANT:* Yes, sir, I -- this morning.

7 *THE COURT:* Okay. And so understanding that he
8 can simply advise you, but ultimately it is your
9 decision whether you testify or not.

10 *THE DEFENDANT:* Yes, sir.

11 *THE COURT:* You understand that?

12 *THE DEFENDANT:* Yes, sir.

13 *THE COURT:* And he tells me you want to testify.
14 Is that correct, sir?

15 *THE DEFENDANT:* Yes, sir.

16 *THE COURT:* All right. You got any questions
17 you want to ask me about your rights?

18 *THE DEFENDANT:* No, sir.

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

20 *MR. FINNEY:* Judge, in this regard we have
21 advised Mr. Welch that he can be questioned in a
22 limited basis about the 1993 conviction, which is
23 already on the record.

24 There was a prior assault and battery in the
25 80's, I believe, that we have advised him he cannot

1 be questioned about, not going to talk about that. I
2 just wanted to know if that's...

3 THE COURT: Did the State file, you know --
4 notice on you that they intended to go back prior to
5 the record --

6 MR. FINNEY: No, sir.

7 THE COURT: -- over 10 years old?

8 MS. MAYES: Not as to that charge, Your Honor,
9 and we -- we only intend to ask about the criminal
10 sexual conduct with a minor conviction.

11 However, normally hearing impeachment in the
12 past, I have inquired as to a sentence and the date
13 of the sentence and would intend to do so as to Mr.
14 Welch.

15 MR. FINNEY: The date of the sentence of the '93
16 conviction?

17 MS. MAYES: And the type of sentence.

18 MR. FINNEY: In other words, you want him to say
19 it was a criminal sexual conduct in the first degree.

20 MS. MAYES: Actually that he was sentenced to 10
21 years. That would be that he received a sentence of
22 10 years as a result of that conviction.

23 MR. FINNEY: I would object to that line of --
24 that -- that type of information. That puts us right
25 back in Benton in the particular information about

1 the prior record.

2 And while I'm thinking about it, I would like
3 the Court and I to review the form that was put in if
4 the form was put in, we want -- we were going to have
5 it whited out, that part about the plea.

6 Your Honor, I have no -- I'm covered under my
7 objection that this -- we don't think this is proper.
8 But if you are going to ask the man did he get
9 convicted of a certain crime in 1993 and he was
10 convicted of it and he says, yes, I don't think he
11 should be made to answer as to how much time a Judge
12 gave him on a guilty plea.

13 *THE COURT:* And what's the State's position on
14 that? How is that time relevant to this?

15 *MS. MAYES:* Your Honor, actually I can rephrase
16 that to the fact that he was sentenced to more than
17 one year.

18 *THE COURT:* Okay.

19 *MS. MAYES:* Which I believe is how it's actually
20 provided under rule 609.

21 *THE COURT:* But 609 deals with prior criminal
22 records coming in, and it has to be -- he hasn't been
23 convicted of a crime that carries more than one year
24 before it's even admissible or, you know, a crime of
25 a -- dishonesty.

1 So -- but this is an element that's already in
2 the record, and this is part of the -- what you have
3 to prove under section A2, that this record is
4 already in and therefore unlike normal criminal
5 record, it's already admissible.

6 MS. MAYES: Your Honor, I will -- I will limit
7 my inquiry beyond the sentence. Now, it may be that
8 testimony somehow gets into that any way in --
9 concerning the history of the parties, but I can
10 limit my inquiry without inclusion of the sentence.

11 THE COURT: Okay. Because I don't know that the
12 fact that he got 10 years is relevant unless there's
13 some time issue in this -- in this case, that the
14 fact that, you know -- if Mr. Finney asks him, well,
15 isn't it true in 1993 to 2000, assume he served -- he
16 didn't get in any trouble.

17 Well, if he was in prison the whole time, then
18 that may become relevant. But if he doesn't open
19 that door, I don't know that a 10 year sentence is
20 necessarily relevant unless he's -- he says that, you
21 know, that he had not gotten in trouble in the -- if
22 he served -- I don't know how much time he served,
23 but during that time and that he had been a perfect
24 citizen and led the bible study.

25 But if he had done all that in prison, then that

1 may be relevant.

2 MR. FINNEY: Yes, sir. I agree.

3 THE COURT: Do you understand?

4 MR. FINNEY: Yes, sir.

5 THE COURT: Okay. Anything else? Any other
6 issue we need to deal with?

7 MR. FINNEY: I don't think so, Your Honor.

8 THE COURT: Okay. From a time standpoint, when
9 do you -- and I'm not trying to get a best
10 guesstimate of both of y'all when we think we are
11 going to do closing arguments and charge and get this
12 to this jury.

13 Will it be before dinner or lunch today, this
14 afternoon? And understanding -- are you intending to
15 recall any reply testimony? And you may not know at
16 this point because you may not know what you're
17 facing.

18 MS. MAYES: That's correct, Your Honor. It's
19 possible.

20 THE COURT: Okay. Well, we'll just see where it
21 falls. Okay. Y'all ready for the jury?

22 MR. FINNEY: Yes, sir.

23 THE COURT: All right. Bring us the jury,
24 please sir.

25 (Jury entered the courtroom at 10:14 am.)

1 THE COURT: Mr. Finney?

2 MR. FINNEY: Thank you, Your Honor. Good
3 morning. Let -- I call Ms. Lisa Bryant to the stand.

4 THE COURT: Okay.

5 LISA BRYANT, after being duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. FINNEY:

9 Q Ms. Bryant, have you ever testified in court before?

10 A No, sir.

11 Q How do you feel right now?

12 A Little nervous.

13 Q All right. Tell the ladies and gentlemen where you
14 live.

15 A I live in Timmonsville, South Carolina.

16 Q How long have you lived there?

17 A Three years.

18 Q All right. Do you know Ricky Welch?

19 A Yes, sir.

20 Q And how do you know him?

21 A He's my fiancée and has been for eight and a half
22 years.

23 Q All right. So eight and a half years takes us back
24 before 2000, about '99 I guess?

25 A Yes, sir.

- 1 Q All right. Is that when you all met?
- 2 A Yes, sir.
- 3 Q All right. And you all have been going together ever
- 4 since?
- 5 A Yes, sir.
- 6 Q All right. You all don't have any kids together?
- 7 A No, sir.
- 8 Q Do you have any children?
- 9 A I have two.
- 10 Q And what are their names?
- 11 A Alesha K Bryant and Robert Mitchell Bryant.
- 12 Q And how old is Alesha?
- 13 A Eighteen.
- 14 Q All right. And did she have occasion to live with
- 15 you during the last eight years, Alesha?
- 16 A Yes, sir.
- 17 Q How about your other son?
- 18 A He--
- 19 Q Robert.
- 20 A He's married and has his own life.
- 21 Q Where does he live?
- 22 A In Olanta.
- 23 Q Okay. Now, what do you do for a living?
- 24 A I work at the Hot Spot on 52 going next to Florence.
- 25 Q What kind of job is that?

- 1 A It's a cashier.
- 2 Q All right. How long have you done that?
- 3 A Since September of last year.
- 4 Q All right. And do you have a brother that's in the
5 courtroom today?
- 6 A Yes, sir.
- 7 Q Is this the gentleman on the front row with the red
8 shirt?
- 9 A Yes, sir.
- 10 Q What's his name?
- 11 A John Hickman.
- 12 Q Is that your older brother or younger brother?
- 13 A Younger.
- 14 Q Okay. And how over the last eight years have you and
15 John gotten along?
- 16 A We got along well.
- 17 Q Okay. Did you see him often?
- 18 A Yes, sir.
- 19 Q And how often would you say you saw him?
- 20 A Sometimes every week, every weekend, every other
21 week.
- 22 Q Tell the ladies and gentlemen of the jury where does
23 John live?
- 24 A He lives in Pinewood, South Carolina.
- 25 Q And is that outside of Sumter County?

1 A Yes, sir.

2 Q About how far outside of the City of Sumter?

3 A I couldn't estimate.

4 Q All right. More than 5 miles?

5 A Yeah.

6 Q All right. And we have met John's family this week.

7 You know his wife?

8 A Yes, sir.

9 Q And his daughters?

10 A Yes, sir.

11 Q All right. How -- what kind of relationship have you

12 had with John's wife and his daughters over the last eight

13 years?

14 A We get along well, just fine.

15 Q All right. And when did you introduce your friend

16 Ricky to John and Margaret and and Nicole?

17 A About two years after I met him.

18 Q Okay. And that would have been about 2001?

19 A Yes, sir.

20 Q Okay. So in 2001 what kind of arrangement -- what

21 kind of things would you all do together as family?

22 A We'd have cookouts, holidays together, family

23 get-togethers, little odds and ends.

24 Q All right. And on those occasions would you -- how

25 long before -- how long after you started dating Ricky did

1 you all move in together?

2 A About three months.

3 Q Okay. So by 2000 y'all were living together?

4 A Yes, sir.

5 Q And you lived together all the way up to the time he
6 got arrested?

7 A Yes.

8 Q All right. Now, tell me about the cookout in
9 December of 2006. Do you remember that cookout?

10 A Yes, sir.

11 Q Was it normal for John to have a cookout at his house
12 around that time?

13 A Yes, sir.

14 Q All right. And was it normal for your family members
15 and his wife's family members to be there?

16 A Yes, sir.

17 Q How about children? How many children would be
18 there?

19 A There were a lot of them.

20 Q All right. And how did you -- how did you arrive --
21 how did you get to the cookout that day?

22 A We drove my van.

23 Q All right. You and who?

24 A Me and William Welch and my daughter, Alesha.

25 Q All right.

- 1 A And little boy we was keeping,
- 2 Q Okay.
- 3 A And a friend of my daughter's, Whitney.
- 4 Q All right. Now, tell us how old Alesha is right now.
- 5 A Eighteen.
- 6 Q So two years ago she'd have been about 16.
- 7 A Yes.
- 8 Q All right. And how old was baby
- 9 A About 15 months old.
- 10 Q Okay. And how did you know baby
- 11 A We had been friends with them for a little while and
- 12 we keep his baby on the weekends.
- 13 Q All right. Has he been to your house on a regular
- 14 basis?
- 15 A Yes, sir.
- 16 Q And you all keep him overnight sometimes?
- 17 A Yes, sir.
- 18 Q All right. So on this particular Saturday when you
- 19 went to the cookout, you had baby
- 20 A Yes, sir.
- 21 Q You took him to the cookout.
- 22 A Yes, sir.
- 23 Q Alesha went. And you say there was maybe one more
- 24 little girl in the -- another friend?
- 25 A Whitney.

1 Q Whitney is a friend of Alesha's?

2 A Yes, sir.

3 Q All right. So all of y'all drive down there in the
4 van. Where do you leave from that morning?

5 A We left from my house in Timmons ville.

6 Q All right. And you all drove -- how long did it take
7 you to get to Pinewood to John's house?

8 A About 45 minutes.

9 Q All right. And what time would you say, give or
10 take -- estimate what time you arrived at John's house.

11 A Around 12 --

12 Q Okay.

13 A -- before.

14 Q And when you got there, what was the schedule of the
15 day? What did you all normally do at these kind of
16 functions?

17 A Well, we usually -- we ate dinner, opened presents,
18 and then we all went outside and let the kids play and
19 ride the four-wheelers.

20 Q All right. Did you take presents with you?

21 A Yes, sir, I did.

22 Q Who did you take the present for?

23 A I took for John and Margaret and the two girls,
24 and Nicole, and my other family.

25 Q All right. So you had some other family members

1 there that were meeting at John's house.

2 A Yes, sir.

3 Q All right. Did you get presents from other family
4 members that day?

5 A Yes, sir.

6 Q And you brought those presents home to put under the
7 tree so you could open them --

8 A Yes, sir.

9 Q -- on Christmas day?

10 A Yes, sir.

11 Q All right. Now, did you eat dinner as a -- was there
12 a large group of people there that day?

13 A Yes, sir.

14 Q And y'all ate together?

15 A Yes, sir.

16 Q And did you notice that day?

17 A Yes, sir.

18 Q was about six years old at that time.

19 A Yes, sir.

20 Q Would you describe her to the jury? What kind of
21 relationship did you have with

22 A She's a -- she's hyper, but she was real good.

23 Q All right. And did you all have fun that day?

24 A Yes, we did.

25 Q Can you tell the ladies and gentlemen of the jury

1 some of the things you did after you ate, like for example
2 during opening the presents, do you remember anything
3 about the presents being opened that day?

4 A We had a lot of fun and we all enjoyed it, watching
5 the kids open their presents and just, you know, sitting
6 around having a ball.

7 Q All right. Afterwards you say that there was some
8 riding of the four-wheelers.

9 A Yes, sir.

10 Q You haven't been in court this week because we have
11 had the witnesses outside. Does -- do you know --
12 recognize the bike, four-wheeler that's in State's Exhibit
13 number one?

14 A Yes, sir, I do.

15 Q And is that one of the bikes that was being ridden
16 that day?

17 A Yes, sir.

18 Q Who did you see riding on that bike?

19 A William Welch, and

20 Q Okay. And do you know how many times they rode the
21 bike?

22 A Far as I know twice, maybe more, maybe less.

23 Q Okay. And was -- was -- were there other people
24 riding the bikes that day?

25 A Yes, there were.

1 Q All right. Did you see your brother John ride the
2 bike?

3 A Probably a couple of times.

4 Q Okay. How about you, did you ride?

5 A No, sir.

6 Q Okay. At any time during that day did you have any
7 occasion to see a change in attitude, personality,
8 demeanor? Did she act any different from the beginning of
9 the time you got there till the end of the time?

10 A No, sir. She was full of joy, happy, playing, having
11 a ball with the other kids.

12 Q All right. What time would you say you left the
13 party that day?

14 A Between four and five.

15 Q All right. And when you left, can you describe the
16 events that happened to the jury to -- as to what happened
17 when you were getting ready to leave?

18 A When we was leaving, and Nicole, we were all in
19 the van, me, William, and Alesha and Whitney,
20 and Nicole come and got in the van. She gave us all a
21 kiss and a hug and left.

22 Q Now, is the younger of the two children?

23 A The baby.

24 Q And Nicole is the older of the two children?

25 A Yes, sir.

1 Q How old was Nicole about that time?

2 A Nine or 10, somewhere, probably a little bit older.

3 Q Okay. Did you hang out much with the kids that day?

4 A We had out there running around playing, so I
5 kind of kept a check on him.

6 Q All right. Let me ask you a question about

7 You say that at the time of the cookout he was about 15
8 months old?

9 A Yes, he was.

10 Q Could he walk?

11 A Yes, he was.

12 Q Did he have on pampers or underwear?

13 A Pampers.

14 Q Okay. And so did you have to change his diaper that
15 day?

16 A Yes, I did.

17 Q Okay. But he -- he was able -- he was able to get
18 around on his own.

19 A He loved running.

20 Q All right. Did he have any -- did you have any
21 concern about baby being on the four-wheeler?

22 A No, sir because I trust William Welch with him with
23 all my heart because I know he would be well taken care
24 of.

25 Q All right. And did -- was there any problem that day

1 with the baby so far as you saw?

2 A We had to get on about picking him up. We let
3 him go, run around and play, but she wanted to kept
4 picking him up.

5 Q Who was that?

6 A

7 Q liked playing with the baby?

8 A Yes, sir.

9 Q Okay. And she spent most of the day with the baby?

10 A Besides playing with the other kids.

11 Q Okay. And so you say that upon your leaving around
12 four or five in the afternoon, everybody kissed goodbye,
13 everybody said, we'll see you later, have a good
14 Christmas, and y'all left.

15 A Yes, sir.

16 Q Okay. Now, let me just go back a little bit. Prior
17 to this cookout you say had been to your house?

18 A Quite a few times.

19 Q All right. And would usually come with Nicole?

20 A Sometimes.

21 Q All right. And you had a teen-aged daughter,

22 Alesha --

23 A Yes, sir.

24 Q -- at your house?

25 A Yes, sir.

1 Q Okay. Do you remember Alesha riding the
2 four-wheelers that day?

3 A Yes, I do.

4 Q All right. And what -- was she on that four-wheeler
5 that I showed you a picture of?

6 A She was on the smaller one.

7 Q All right. And other people were riding the smaller
8 one as well?

9 A Yes, sir.

10 Q All right. How long would you say the riding went on
11 of the -- of the four-wheelers?

12 A Just about all afternoon till about maybe an hour
13 before we left.

14 Q All right. Now, when you have had and Nicole
15 over to your house before, have you taken pictures of them
16 before?

17 A Yes, I have.

18 Q Did you bring any pictures to court with you?

19 A I did.

20 Q All right. I want to show you a couple of
21 photographs here and ask if you can identify those.

22 A That is William with Nicole and and another
23 niece of mine.

24 Q All right. And where was that taken at?

25 A That was in the house that we were living in before

1 we moved to where we at now.

2 Q All right. And look at the back of the pictures and
3 see if there's a date on them.

4 A It's got February 23rd, 2005.

5 Q All right. And that would be before the cookout?

6 A Yes, sir.

7 Q And these are pictures that you found at my request
8 to bring to court?

9 A Yes, sir.

10 Q All right. And is the other picture taken the same
11 day?

12 A Yes, sir.

13 Q All right.

14 MS. MAYES: Your Honor, the State does object on
15 the grounds of relevancy. I believe the pictures
16 are -- precede the incident date by several years.

17 THE COURT: And how do you propose that these
18 are relevant to this time?

19 MR. FINNEY: It supports the testimony of the
20 witness that there was a longstanding relationship
21 between the family members that are involved, and it
22 shows the contact and fellowship between the young
23 child, and the defendant, Mr. Ricky Welch.

24 THE COURT: Okay. Then I will let them in
25 over -- let them in evidence over State's objection.

1 (WHEREUPON, Defendant's Exhibits 1, 2 were
2 admitted into evidence.)

3 MR. FINNEY: It would be State's -- Defendant's
4 number one and two, Your Honor.

5 THE COURT: Okay.

6 BY MR. FINNEY:

7 Q Also, Ms. Bryant, did you also have occasion to bring
8 me two other pictures?

9 A Yes, I did.

10 Q And what do you see in those pictures?

11 A These pictures where we took and went to Swan's (sic)
12 Lake. It was my daughter, me, and Nicole, and
13 William Welch.

14 Q All right. And do you know when those pictures were
15 taken?

16 A We have got a -- November the 19th, 2002.

17 Q All right. And those pictures were taken in Sumter
18 County?

19 A Yes, sir.

20 Q All right.

21 MR. FINNEY: And Your Honor, we would move these
22 into -- also, Defendant's Exhibits three and four.

23 MS. MAYES: Same objection from the State, Your
24 Honor.

25 THE COURT: Let me see them. I will allow them

1 subject to the State's objection.

2 (WHEREUPON, Defendant's Exhibits 3, 4 were
3 admitted into evidence.)

4 MR. FINNEY: Can I publish them to the jury?

5 THE COURT: Yes, sir.

6 BY MR. FINNEY:

7 Q Ms. Bryant.

8 A Yes, sir.

9 Q After you all left the party on December the 23rd,
10 all of you who rode together in the van to Pinewood rode
11 back to your house?

12 A We went when -- we left there, we took home.

13 Q To his home?

14 A To his home.

15 Q All right. And so you dropped him off and then you
16 went on to your house.

17 A Yes, sir.

18 Q Now, the next day was Christmas Eve. I believe it
19 was a Sunday.

20 A Yes, sir.

21 Q Did you get any calls from any of your family members
22 saying that there had been any problem with the
23 night before?

24 A No, sir.

25 Q All right. Did you get any calls Christmas day?

1 A No, sir.

2 Q How about the week after Christmas between December

3 the 25th and January the first --

4 A No, sir.

5 Q -- nobody called your house, no investigators came,

6 nobody --

7 A No, sir.

8 Q -- said anything that was wrong with

9 A No, sir.

10 Q All right. What was the first time you knew

11 something was different, was wrong?

12 A Whenever they come out on January the third, I was at

13 work that night, and they come and locked William Welch

14 up.

15 Q That's the first time you knew that there was any

16 problem with this --

17 A Yes.

18 Q -- eleven days after the cookout.

19 A Yes, sir.

20 Q All right. Ms. Bryant, when you met Mr. Welch, when

21 did you find out he had a prior record?

22 A He told me right after I met him, maybe a week after

23 I met him. We sit down and talked. He told me all about

24 his past. He was straight up with me --

25 Q All right.

1 A -- and he was honest.

2 Q Let me ask you this. When did -- did you ever have
3 occasion to tell the people in your family about the fact
4 that he had a record?

5 A They knew about it because you could pull it up on
6 the computer.

7 Q Okay.

8 A They asked questions, I gave them a straight answer.

9 Q All right. And over the years from let's say 2000,
10 2001 all the way to this incident, cookout in 2006, he was
11 a member of your family?

12 A Yes, sir.

13 Q And he was around you and your family and other
14 members of your family, outside members like your brother
15 and your sister-in-law.

16 A Yes, sir.

17 Q Every -- every time they had a party, he was invited?

18 A Yes, sir.

19 Q And he was invited to this cookout in December. That
20 was the normal procedure?

21 A Yes, sir.

22 Q All right. Ms. Bryant, thank you for answering my
23 questions. Please answer any questions the Solicitor may
24 have.

25 CROSS-EXAMINATION

1 BY MS. MAYES:

2 Q Ms. Bryant, based on your responses that you just
3 gave, you said that your brother and sister-in-law knew
4 that William Welch was a convicted sex offender because
5 you could pull it up on the computer.

6 A Yes.

7 Q You're saying that they knew that he was a convicted
8 sex offender.

9 A Yes, ma'am.

10 Q And you said that, I gave straight -- they asked
11 questions and I gave straight answers.

12 A Yes, ma'am.

13 Q And what were the straight answers that you gave?

14 MR. FINNEY: Objection.

15 A Because--

16 MR. FINNEY: Objection.

17 THE COURT: Y'all approach the bench.

18 (Whereupon a bench conference was held.)

19 THE COURT: Ladies and gentlemen, I have got
20 some matters of law I have got to deal with, so I'm
21 going to ask y'all to go to the jury room for a few
22 minutes.

23 I don't know how long it's going to take. It
24 may be 10 minutes or it may be an hour. But as soon
25 as I finish with it, I'll get you back. If you will

1 go to the jury room, I will remind you, don't discuss
2 this case yet.

3 (Jury left the courtroom at 10:34 am.)

4 THE COURT: Madam Solicitor?

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

6 BY MS. MAYES:

7 Q Ms. Bryant, I believe your response was, they asked
8 questions and I gave straight answers.

9 A Yes, it was.

10 Q What were the answers that you gave?

11 A Because I told them that he didn't do it in the past
12 and he didn't do it now.

13 Q So that's the straight answer is that you told them
14 that he didn't do it?

15 A I know for a fact he didn't do it.

16 Q Ms. Bryant, are you aware that he had sex with a 22
17 month old baby, confessed to it, and then pled guilty?

18 Are you aware of that?

19 A Not a 22 month old baby, no.

20 Q Okay. So what did he tell -- who did he tell you the
21 victim was?

22 A In '93?

23 Q Correct.

24 A He got blamed for something that he didn't do, but he
25 was at the wrong -- at the spot at the wrong time.

1 outside of those questions, I mean, and say something
2 that's going to end us in a mistrial. Do you
3 understand?

4 They ask you a question -- now, they object,
5 don't answer the question until I rule on the
6 objection; okay?

7 THE WITNESS: Okay.

8 THE COURT: Anything further before I bring the
9 jury back?

10 MS. MAYES: Nothing from the State.

11 MR. FINNEY: Nothing.

12 THE COURT: All right. If you will bring us the
13 jury, please.

14 (Jury entered the courtroom at 10:57 am.)

15 THE COURT: Madam Solicitor?

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

17 BY MS. MAYES:

18 Q Isn't it a fact, Ms. Bryant, that you told Margaret
19 Hickman, mother, that William Welch had not been
20 convicted of a sex offense?

21 A No.

22 Q And isn't it a fact that they only learned he was a
23 convicted sex offender after this incident with

24 A No.

25 Q You deny that?

1 A They knew about it.

2 COURT REPORTER: I'm sorry?

3 THE WITNESS: They knew about it.

4 BY MS. MAYES:

5 Q And in addition, you now remain the fiancée I think
6 were your words of Mr. Welch.

7 A Yes.

8 Q Even after he has been charged and indicted with
9 this -- this incident with correct?

10 A Yes.

11 Q So it's safe to say that you would stand beside him
12 or behind him, or however you want to put it, no matter
13 what he's done; correct?

14 A Yes.

15 Q Okay. I just want to make sure that you were in
16 agreement with that. Now, the pictures that you provided
17 to Mr. Finney that show those were taken, what,
18 when she was three or four at Swan Lake?

19 A I don't know how old she was, but it was taken 2005.

20 Q Okay. And then another picture I think that was
21 taken in your home. In fact, had been raised to
22 think of Ricky as someone she could trust; hadn't she?

23 A As an uncle.

24 Q As an uncle.

25 A Because she called him Uncle Ricky.

1 Q And you wanted her to see him that way and you wanted
2 her to trust him; didn't you?

3 A No, that was her -- her decision, not mine.

4 Q And she did trust him; didn't she?

5 A She did.

6 Q Now, back when he was living in your home, I think
7 approximately 2001 on forward, you have lived in various
8 places together, correct? I believe Williamsburg County,
9 Florence county, and where else have you lived?

10 A I lived in Clarendon, and me and him got our own
11 place in Timmons ville.

12 Q Okay. And during that time, he was working, he had a
13 job; correct?

14 A Yes, he did.

15 Q All right. And what about you?

16 A I was working, too.

17 Q And where were you working?

18 A At the Markette in Lake City.

19 Q Okay. Now, throughout the relationship when he had
20 been residing in the home, you haven't always worked; have
21 you?

22 A No.

23 Q Okay. So it's also fair to say that he's been the
24 primary financial provider for you?

25 A Yes.

1 Q And you testified about the cookout that day, but you
2 weren't on a four-wheeler at any point; were you?

3 A No.

4 Q And you weren't back on the trails; were you?

5 A No.

6 Q So all you know is that you saw Ricky Welch and
7 and on this four-wheeler according to your testimony
8 at least two times; correct?

9 A Yes.

10 Q And your daughter Alesha, who is 18 now, she was also
11 at the cookout that day; correct?

12 A Yes, she was.

13 Q And Alesha was not behind them --

14 A Yes, she was.

15 Q -- when you saw them. Your testimony --

16 A She was.

17 Q -- your testimony is that she was behind them when?

18 A She was right behind them the first, second round
19 they went out.

20 Q Okay. So your testimony is that Alesha was right
21 behind them for a second when they went out?

22 A She was right behind them when they started riding --

23 Q And--

24 A -- on the second four-wheeler.

25 Q Okay. So your testimony is that Alesha, when they

1 were at the house, was behind them on a four-wheeler?

2 A Yes.

3 Q And then what happened?

4 A They went out, they come back maybe five or 10
5 minutes, less than that.

6 Q Who came back?

7 A Both of the four-wheelers.

8 Q Okay. So your testimony in this courtroom then is
9 that Alesha was behind them on a four-wheeler, you saw
10 them leaving on a four-wheeler and then arriving on a
11 four-wheeler, and your testimony is that Alesha was near
12 them or around them?

13 A Yes, because William, and was on the
14 front one, on the big four-wheeler. The small
15 four-wheeler, Alesha and one of -- one of the other kids
16 there were on the second one.

17 Q And you had no idea what happened when they were on
18 the trails, the multiple trails or which path they took or
19 anything of that nature; correct?

20 A No.

21 Q And just to clarify, your -- you remained in a
22 relationship with him right up until today; correct?

23 A I'm still in a relationship with him.

24 Q Okay. Nothing further.

25 MR. FINNEY: No questions. Thank you. May the

1 witness be -- could the witness be excused from...

2 THE COURT: Any objection?

3 MS. MAYES: No objection, Your Honor.

4 MR. FINNEY: You can remain in court if you'd
5 like or you can be excused if you like. Call Ricky
6 Welch.

7 RICKY WELCH, after being duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. FINNEY:

11 Q Mr. Welch?

12 A Yes, sir.

13 Q How old are you, sir?

14 A Forty-eight.

15 Q And what do you do for a living?

16 A My own business, Western Mobile Home Service.

17 Q And what do you do at the mobile home service?

18 A I repair mobile homes or set them up.

19 Q All right. If you'll pull that microphone down, you
20 may be able to sit back a little bit. Yes, sir.

21 A Okay.

22 Q You lived in what county most of your life? Where
23 were you born?

24 A In Sumter County.

25 Q All right. And do you have family here still in

1 Sumter County?

2 A Yes, sir.

3 Q Who do you have here living now?

4 A I got my uncles on my mama's side of the family.

5 Q Has your mom and dad passed on?

6 A Yes, sir.

7 Q All right. And you been doing mobile home service
8 for most of the last 10 years?

9 A Yes, sir.

10 Q All right. Now, when you -- did you go to high
11 school around here? Did you finish school?

12 A No. I hadn't finished school. I dropped out in
13 tenth grade.

14 Q All right. And did you work for the family business
15 then or you went out on your own and learned the mobile
16 home work?

17 A No, I got into mobile home there on Broad Street
18 Extension.

19 Q All right. What was -- what kind of work did you do?
20 Did you pick up mobile homes and move them or did you
21 mostly set them up and fix them up after they got there?

22 A Work on Manufactured Housing on Broad Street, just
23 pulled them out there and set them up.

24 Q Okay. Do you have children?

25 A Yes, sir.

1 Q How many children?

2 A I got three.

3 Q All right. What's their names and ages?

4 A I got Marcus, he's 28, Angel is 22, then I got a son,
5 he be 18 in November.

6 Q All right. Do they live in Sumter?

7 A No, sir. I got -- the baby does.

8 Q The others are out of state?

9 A Yes, sir.

10 Q All right. Let me ask you this. You have heard
11 testimony from Lisa Bryant that you all met around 1999.

12 A Yes, sir.

13 Q All right. There's been testimony over objection
14 that you have been convicted of a prior crime. Was that
15 in 1993?

16 A Yes, sir.

17 Q Was that in Sumter County?

18 A Yes, sir.

19 Q All right. And then after you finished the sentence,
20 you came back to Sumter?

21 A Yes, sir.

22 Q All right. And did you know Lisa before you went --
23 in 1993 did you know Lisa Bryant then?

24 A No, sir.

25 Q All right.

- 1 A Sure didn't.
- 2 Q When did y'all meet?
- 3 A We met about 2000 I believe, somewhere along in
- 4 there.
- 5 Q All right. Did you all meet in Sumter or...
- 6 A No, sir.
- 7 Q Where at?
- 8 A In Williamsburg County where I lived at.
- 9 Q You lived in Williamsburg?
- 10 A Yes, sir.
- 11 Q All right.
- 12 A I moved there.
- 13 Q All right. And did you have any family down there?
- 14 A Yes, sir. I got my oldest brother Frankie.
- 15 Q All right. Is he still living?
- 16 A Yes, sir.
- 17 Q All right. So you met Lisa. Y'all started dating
- 18 and then you moved in together?
- 19 A Yes, sir. She moved in with me.
- 20 Q Where was that, in Williamsburg?
- 21 A In Williamsburg County.
- 22 Q And Alesha, her --
- 23 A Daughter.
- 24 Q -- daughter moved in?
- 25 A Yes, sir.

1 Q So it was just the three of you?

2 A Yes, sir.

3 Q All right. How long after the -- you all got
4 together and moved in together, started living together,
5 how long after that did you start meeting her family?

6 A About two or three years later.

7 Q All right. And did you all -- how did you meet the
8 family? Was it like a -- did they come to your house, you
9 went to their house?

10 A No, I went to their house.

11 Q All right. And everybody treat you all right?

12 A Yes, sir.

13 Q All right. Did you ever have any discussions with
14 family members, Lisa's family members about your record?

15 A Yes, sir, I sure did.

16 Q All right. Did they ask you questions about it?

17 A Yes, sir.

18 Q And you told them what had happened to you?

19 A Yes, sir.

20 Q All right. Now, how -- did this continue for a
21 while, you all would talk and then you all would get
22 together and have birthday parties --

23 A Yes, sir.

24 Q -- Christmas parties? How many times have you been
25 down to John's house for a party?

- 1 A Quite a few times.
- 2 Q All right. And you would get along good with John?
- 3 A Yes, sir.
- 4 Q All right. Now, when you say, quite a few times,
5 would you say once a month y'all would get together, once
6 every other month, more in the summer? How did y'all--
- 7 A Probably more in the summer and special -- when his
8 kids' birthday parties.
- 9 Q And John worked full-time job; is that right?
- 10 A Yes, sir.
- 11 Q And so did Margaret?
- 12 A Yes, sir.
- 13 Q You worked a full-time job?
- 14 A Yes, sir.
- 15 Q And so did Lisa?
- 16 A Yes.
- 17 Q All right. Now, John has two daughters, and
18 Nicole.
- 19 A Yes, sir.
- 20 Q We have seen pictures of your relationship, some
21 things you have done. Do you remember taking the girls to
22 Swan Lake in State's Exhibit -- excuse me -- Defendant's
23 exhibit three and four?
- 24 A Yes, sir.
- 25 Q Was bigger in that picture at Swan Lake or

1 bigger in the picture at your house?

2 A At my house.

3 Q All right. Let me look at this. The Swan Lake
4 pictures that are Defendant's Exhibits three and four have
5 a date on the back, November '02. Think the others are
6 '05.

7 So apparently these are pictures when she was younger
8 at Swan Lake. Do you remember taking them out that day?

9 A Yes, sir.

10 Q All right. How many times -- y'all have done things
11 like that before, go, go -- to --

12 A Yes, sir.

13 Q -- go out to places, take the girl? Now, who -- can
14 you tell me who is in this picture, State's Exhibit number
15 three, or maybe you have to look at number four. Taken
16 the same day. Who is in those pictures?

17 A That's and Ricky, me, Lisa.

18 Q All right. Do you know if you had Nicole or Alesha
19 out there with the Swans that day?

20 A Yes, sir, they been out there.

21 Q All right. Somebody had to take the picture, I
22 guess?

23 A Yes.

24 Q All right. Now, how about in this other picture,
25 State's Exhibit two and one. Look at those and tell me

1 who are the people in those pictures and where is that
2 picture taken.

3 A This was taken at Williamsburg County, the house I
4 used to live in.

5 Q That's the first house y'all lived in?

6 A Yes, me and Lisa--

7 Q That was in '05. Those pictures say '05.

8 A Yes, sir.

9 Q Now, who -- is that in your lap?

10 A That's in my lap, Nicole, and a friend.

11 Q All right. And who is that on the floor?

12 A I can't hardly see without my glasses.

13 Q Okay. All right. Let me ask you this. Is that your
14 house?

15 A Yes, sir.

16 Q That's your easy chair?

17 A Yes, sir.

18 Q All right.. And they'd come and spend the weekend
19 with you?

20 A Yes, sir.

21 Q All right. Now, let's move forward. You had good
22 relations with the family all the while, right?

23 A Yes, sir.

24 Q And you got invited to the Christmas cookout in 2006.

25 A Yes, sir.

- 1 Q And did you drive your car down there?
- 2 A We got a customized van that I drive.
- 3 Q All right. How long had you had the van?
- 4 A I had the van probably about three years.
- 5 Q All right. And you all took family trips in it?
- 6 A Yes, sir.
- 7 Q All right. Tell me who left that morning from your
- 8 house going towards the cookout.
- 9 A All right. When we left the cookout, Lisa was
- 10 driving, I was on the passenger's seat, little baby
- 11 -- we had him in the carseat there, and our
- 12 daughter, Alesha, then a gal named Whitney.
- 13 Q Okay. Whitney is a friend of Alesha's?
- 14 A Alesha's.
- 15 Q All right. And she was riding with you that day
- 16 also?
- 17 A Yes, sir.
- 18 Q All right. Did you know baby was going with
- 19 you all to the cookout?
- 20 A Yes, sir.
- 21 Q And had he been staying at the house for a day or--
- 22 A Yes, sir, like a grandparents.
- 23 Q All right. So y'all babysat him regularly?
- 24 A Yes, sir.
- 25 Q How old was baby

1 A Fifteen months old.

2 Q Okay. Did he wear a diaper or underwear?

3 A Diaper.

4 Q All right. And could he walk on his own?

5 A Yes, sir.

6 Q How about talk?

7 A Little bit.

8 Q All right.

9 A Not, you know...

10 Q Had he ever been -- baby ever been to John's

11 house in Pinewood with you?

12 A Yes, sir.

13 Q All right. Now, how long does it take to get from

14 your house where you lived then over to John's house?

15 A It takes a little bit -- little bit over an hour --

16 Q All right.

17 A -- from my house to his.

18 Q And can you tell the ladies and gentlemen where you

19 were living then?

20 A I was living here in Florence County.

21 Q What section?

22 A Where -- close to Effingham.

23 Q All right. And so you would drive from Effingham?

24 Would you -- how would you travel on the highway?

25 A I would get on 301, go to Timmons ville -- I mean

1 Turbeville -- excuse me -- then from Turbeville to Manning
2 then from Manning to where they lived out in Pinewood.

3 Q All right. And you had done this before?

4 A Yes, sir.

5 Q Several times?

6 A Several times.

7 Q Did you all shop together for gifts? Did you all
8 take gifts over there?

9 A Yes, sir.

10 Q Did you shop for them?

11 A No, Lisa did.

12 Q All right. And once you got to the party, about what
13 time would you say you got to the party, the cookout that
14 day?

15 A We probably got there about around 10:30, 11:00.
16 Somewhere along in there.

17 Q All right. And what did you do when you got there?

18 A When we got there, I helped Lisa get all the food out
19 the back of the van, the presents out the back of the van
20 to take them in the house there.

21 Q You speak to everybody?

22 A Speak to everybody at the party and everything.

23 Q How many people would you say were there?

24 A From about 25 to 30 --

25 Q All right.

- 1 A -- somewhere along in there.
- 2 Q Was the -- most of the activities outside or inside?
- 3 A Most all the activities were on the outside.
- 4 Q All right. And did you eat first?
- 5 A Yes, sir.
- 6 Q Did you -- then what did you do?
- 7 A We then would give presents out, then went outside
- 8 and started.
- 9 Q Did you receive presents?
- 10 A Yes, sir.
- 11 Q Who gave you presents?
- 12 A The Hickman family.
- 13 Q All right. And did you take presents to them?
- 14 A Yes, sir.
- 15 Q All right. After the presents had been opened, y'all
- 16 went to riding the four-wheeler?
- 17 A Yes, sir.
- 18 Q Had you ridden four-wheelers before at John's house?
- 19 A I rode out there probably the November when had
- 20 her birthday that--
- 21 Q Which would have been a month -- was that a month
- 22 before this cookout?
- 23 A Yes, sir. Yes, sir.
- 24 Q Was that the first time you rode it in November?
- 25 A Yes, sir, because they just got them not too long ago

1 after that -- before that, excuse me.

2 Q Okay. All right. So in November when had her
3 birthday, it was at the Pinewood house?

4 A Yes.

5 Q Was it a inside party or outside party?

6 A It was a outside party.

7 Q It had lots of kids there?

8 A Yes, sir.

9 Q Did you ride four-wheelers then?

10 A Yes, sir.

11 Q Was that your first time on this four-wheeler?

12 A That's the first time on her birthday party.

13 Q Okay. What I'm saying is, before the birthday party
14 in November, did they have this bike -- this--

15 A Yes, sir.

16 Q They did?

17 A Yes, sir.

18 Q All right. Had you ever ridden it before?

19 A No, until that day.

20 Q Until the birthday party?

21 A Yes, sir.

22 Q So the second time you rode it was in December when
23 you came for the cookout.

24 A Yes, sir.

25 Q All right. Did you know how to operate it and do

1 everything to it?

2 A No. John had to show me the first time because

3 it's -- you got to change it like the motorcycle.

4 Q Change what?

5 A The gears.

6 Q All right. So it's not an automatic?

7 A No, sir.

8 Q All right. And when you rode it the first time, did

9 anybody have to ride it with you to show you how to change

10 the gears or you got--

11 A No, John--

12 Q You worked it out?

13 A Yeah, John showed me --

14 Q All right.

15 A -- before I took it out.

16 Q All right. Now, on the occasion of the cookout in

17 December when you got on the bike, did anybody ride with

18 you?

19 A Yes, sir.

20 Q Who?

21 A That was and little baby

22 Q All right. And how did that come about? Did you ask

23 to get on the bike with you?

24 A No, sir, I sure didn't.

25 Q How did it work out?

1 A It worked out that they -- somebody else been out
2 riding first and they came in, then they got off the
3 four-wheeler -- there's two of them -- and the kids
4 started getting on the little ones, so baby started
5 walking to the big one, so I put him on the gas tank.

6 Q All right. So now, tell me. When you got on the
7 bike the first time that day, who was driving the bike?

8 A Me.

9 Q And where was baby

10 A On the gas tank.

11 Q All right. And is that in front of you or behind
12 you?

13 A Yes, sir, in front of me.

14 Q All right. And this was the bike -- the four-wheeler
15 you were riding that day?

16 A Yes, sir.

17 Q All right. So you were -- you were up front --
18 excuse me. Baby was in front of you?

19 A Yes, sir.

20 Q What was he holding on to?

21 A He was just kind of holding on to the handlebars a
22 little bit.

23 Q All right. And I -- then you would be coming on
24 next?

25 A Yeah. I been holding on the gas throttle and the

1 other handlebar.

2 Q All right. And you had to -- did you have to -- in
3 order to shift gears, do you have to hold the handle?

4 A Clutch, yeah. The clutch there. You have to hold
5 the clutch --

6 Q All right.

7 A -- and shift gears.

8 Q And then behind you was who?

9 A

10 Q All right. Now, do you remember going out on the
11 trail?

12 A Yes, sir.

13 Q I have shown you the videotape that the police
14 officer showed the jury yesterday of the trail.

15 A Yes, sir.

16 Q Did that videotape accurately look like the area --

17 A Yes, sir.

18 Q -- where you went out?

19 A Yes, sir.

20 Q And had you been on the trail before?

21 A That month before this here.

22 Q November was the first time?

23 A Yes.

24 Q All right. Now, did you go -- you remember what
25 route you took when you had the children on and you were

1 out there on the trail, what route did you take?

2 A We took the big route.

3 Q Was anybody with you?

4 A Yes, sir.

5 Q Who else?

6 A My daughter Alesha on the little four-wheeler and a
7 friend on the back of it.

8 Q All right. So there was another four-wheeler out
9 there on the trail with you?

10 A Yes, sir.

11 Q All right. Did you ever take the four-wheeler out
12 that day by yourself with just you and and little

13

14 A No, sir. Every time they went out, both of them went
15 out together.

16 Q All right. And you all would leave from the back
17 yard.

18 A Yes, sir.

19 Q Go around the tree farm, down the path and out into
20 the wooded trail.

21 A Yes, sir.

22 Q How long does it take to ride this wooded trail
23 around?

24 A I say no more than 10 minutes from there to get back.

25 Q All right. And so did you stop anywhere on the trail

1 during this occasion?

2 A We stopped one time because the baby was laying
3 on my arm real tight, and I asked my daughter -- he looked
4 like he was asleep, and she said yes. I said, hold up.
5 We been side-by-side. And I got off, put baby in
6 between us--

7 Q Between you and who?

8 A Me and

9 Q All right.

10 A And told to hold on tight because then -- I
11 told my daughter, I said, I'm not going fast because the
12 baby going to sleep. And she said, okay. So she got
13 behind me and came on back out.

14 Q All right. And was that the first time you rode?

15 A First time.

16 Q All right. How many times did you ride that day?

17 A I rode it twice.

18 Q All right. So the first time you rode, baby is
19 in front, is behind.

20 A Yes, sir.

21 Q And there's another bike out there with you.

22 A Yes, sir.

23 Q Both of y'all were riding the trail.

24 A Yes, sir.

25 Q And at some point on the trail you stopped and put

1 baby behind you because you think he's --

2 A Sleeping.

3 Q -- getting sleepy.

4 A Yes, sir.

5 Q Once you stopped the bike, got -- did you have to get
6 off the bike to move the baby?

7 A Yes.

8 Q All right. And you gave the baby to

9 A Yes.

10 Q All right. Once you did that, did you get back on
11 the bike?

12 A Yes, sir.

13 Q And then what did you do then?

14 A Told to put her arms around me, hold on to the
15 baby because he act like he was going to sleep, and then
16 we left.

17 Q All right. Did you continue on down the trail?

18 A We continued on the path of the trail, and then come
19 on back out.

20 Q All right. After you came on back out, did you get
21 off the bike?

22 A Yes, sir.

23 Q Did you take baby off the bike?

24 A Took baby off the bike and took him in the
25 house to lay him down.

1 Q All right. Now, at some point did you get back on
2 the bike?

3 A That's when -- a little bit later on that afternoon.

4 Q All right. And can you tell us who was on the bike
5 that time?

6 A That time there was baby wanted to ride again,
7 so I put him on the handlebars on the gas tank, then Kayla
8 jumped on the back of it.

9 Q All right. Did you ask to ride the second
10 time?

11 A No, sir.

12 Q All right. And were there other people out in the
13 yard during this time when you all were riding?

14 A Yes, sir.

15 Q Was the other little bike still being used for
16 riding?

17 A Yes, sir.

18 Q All right. Did you go back down the trail again?

19 A Yes, sir.

20 Q Baby is in the front, is behind you.

21 A Yes, sir. Yes, sir.

22 Q And you all are riding on the big four-wheeler?

23 A The big four-wheeler.

24 Q Did you ride around five or 10 minutes?

25 A Yes, sir.

1 Q And then you -- what happened?

2 A Then we just came back.

3 Q All right. Did you ride the bike again that day?

4 A No, sir.

5 Q All right. And was there any other activities or
6 anything going on after you rode the last time that day
7 that kept you busy?

8 A Well, what I did, kept an eye on baby and
9 watching him run around in the yard and stuff.

10 Q All right. And how much longer after the last time
11 you rode do you think you stayed until you got, you know,
12 packed up and ready to go?

13 A I say between 3:30 and four.

14 Q All right. That's about the time you left?

15 A Yes, sir.

16 Q All right. So how long after the last time you rode
17 till the time you started packing up to leave?

18 A Rephrase that again.

19 Q The last time you rode the bike.

20 A Yes, sir.

21 Q You got off.

22 A Uh-huh.

23 Q You didn't get back on any more.

24 A No, sir.

25 Q How much time went by before you packed up to leave?

1 A I want to say about an hour and a half, somewhere
2 along there.

3 Q And so during that time you were mostly watching baby
4

5 A Baby

6 Q All right. And did you do anything else that you can
7 think of, play volleyball, jump on the trampoline,
8 anything like that?

9 A No, sir, walk around talking to John Hickman and the
10 family.

11 Q All right. Now, you noticed that day. She
12 rode on the bike with you.

13 A Yes, sir.

14 Q All right. Did you ever have any conversations with
15 her about how she was doing or anything like that?

16 A No, sir.

17 Q All right. Did she ever tell you that there was
18 anything bothering her or that she--

19 A No, sir.

20 Q Did she ever appear to you to be one minute happy,
21 one minute sad or serious?

22 A No, sir, because she always jumping on the
23 trampolines and riding the golf cart, and we got a golf
24 cart, too. Having a good time out there.

25 Q And all that was going on this same day, the cookout

1 day?

2 A Yes.

3 Q Okay. When you got packed up to leave, who made the

4 decision that it was time to go?

5 A Lisa did.

6 Q All right. And about what time do you think you

7 left?

8 A Like I said, between 3:30 and 4:00.

9 Q All right. And is there a reason why y'all left at

10 that time?

11 A Yes, because we had to take baby by his house

12 because this had been on Sunday.

13 Q All right.

14 A We had to drop him off, then we going to, you know,

15 on to the house.

16 Q So this was Sunday afternoon?

17 A Yes.

18 Q 3:30, 4:00?

19 A Yes.

20 Q Y'all were going to drop baby off.

21 A Yes, sir.

22 Q And then go on to your house.

23 A Yes, sir.

24 Q All right. Did you pack up? Did you have to --

25 A Yes, sir.

1 Q -- pack up your van?

2 A Pack up and left old food and Christmas presents,
3 stuff like that.

4 Q Okay. And who drove when you left?

5 A Lisa.

6 Q All right. And did anything happen between you and
7 and Nicole and Alesha and Lisa at the point where
8 y'all were leaving?

9 A Yes. When we got in the van, they came up, and
10 Nicole came in the van, they were giving everybody hugs
11 and kisses and tell us goodbye, and we did the same thing.

12 Q All right. Now, after you left that afternoon, did
13 you drop baby off?

14 A Yes, sir. We dropped him off at his house.

15 Q Went on to your house.

16 A Yes, sir.

17 Q Sunday evening.

18 A Yes, sir.

19 Q Now, the next day was Christmas Eve. It was a --
20 excuse me -- I think it was Saturday evening. The next
21 day was Sunday?

22 A I think so.

23 Q All right. Did you have to work the next day?

24 A No, sir.

25 Q All right. Did you have to work Christmas day?

1 A No, sir.

2 Q All right. So did you get any calls, you or Lisa get
3 any calls from any of the family members saying that
4 had had a problem, had said anything to anybody?

5 A Not that I know of.

6 Q Did any investigators call you or anybody --

7 A No.

8 Q -- anybody call you to say that there was a problem
9 with on Saturday night, Sunday, Christmas day, any
10 of those days?

11 A No, sir.

12 Q All right. When was the first time you knew that
13 there was a problem?

14 A January the third when they came and arrested me.

15 Q And where did they arrest you at?

16 A Right there in Timmons ville.

17 Q At your house?

18 A At my house.

19 Q Okay. What had you -- what were you doing at the
20 time of your arrest?

21 A We just come from the store where Lisa worked at and
22 got something to eat, and me and my daughter Alesha
23 helping--

24 Q Y'all were pulling in the yard?

25 A Pulling in the yard, and we seen the cops all over

1 the yard.

2 Q All right.

3 A Then seen no -- cop car out there because they were
4 across the street.

5 Q And that's the first time you knew anything was
6 wrong?

7 A Yes, sir.

8 Q All right. Did you hurt on the trail, bike--

9 MS. MAYES: Object to leading, Your Honor.

10 BY MR. FINNEY:

11 Q Did you--

12 THE COURT: Let him testify, Mr. Finney.

13 BY MR. FINNEY:

14 Q Did you do anything wrong to hurt -- to hurt

15 A No, sir.

16 Q Did you ever put your fingers in her private area
17 while you were riding that motorcycle?

18 A No, sir, I sure didn't.

19 Q Did you ever attempt to move her underwear or take
20 her underwear off on the four-wheeler that afternoon?

21 A No, sir. Never did cross my mind to act like that.

22 Q When you left that afternoon, was a happy
23 child?

24 A Yes, sir.

25 Q Just as happy as you had seen her when you got there?

1 A Yes, sir.

2 Q And did she treat you any different at any time?

3 A No, sir.

4 Q Did she ever say that she didn't want to ride the
5 bike with you and that you made her or somebody at the
6 house made her ride the bike with you?

7 A No, sir.

8 Q Did you ever have a opportunity where you were alone
9 with for half a minute or a minute where you had an
10 opportunity to do something to her that she didn't want
11 done?

12 A No, sir, because too much activity going on there.

13 Q All right. Did you -- you read the charges that were
14 placed against you.

15 A Yes.

16 Q How did you plead to these charges?

17 A Not guilty.

18 Q Why is that?

19 A Because I didn't do nothing what they say I did.

20 Q Answer any questions this lawyer may have for you.

21 CROSS-EXAMINATION

22 BY MS. MAYES:

23 Q Mr. Welch, first of all I want to ask you about your
24 testimony on direct examination when I believe you
25 testified that you had talked to the Hickmans and they

1 knew about your history; correct?

2 A Yes, sir.

3 Q I believe the question was, and you told them what
4 happened? And your answer was, yes, sir. Correct?

5 A Yes, sir. Yes, ma'am.

6 Q All right. And just to clarify, are you testifying
7 under oath that you told Margaret and John Hickman that
8 you had been convicted and sentenced for criminal sexual
9 conduct with a minor?

10 A No, not with them. I said the family.

11 Q Well, the family. The family means who? It didn't
12 mean--

13 A Their brothers, that John, Mark brothers I talked to.
14 There are two of them I talked to.

15 Q Well, that's an important point to clarify; isn't it?
16 Weren't you trying to imply under your previous testimony
17 that you had informed John and Margaret Hickman of that?

18 A I didn't say I informed them about it. I said I
19 informed the Hickman family about it.

20 Q All right.

21 A I didn't mention no names.

22 Q Okay. Just to be clear, at no time did you make John
23 or Margaret Hickman aware that you had been convicted of
24 criminal sexual conduct with a minor.

25 A No, ma'am, not me.

1 Q Now, I want to talk about the events of that day.
2 Think you have seen the photographs before that is State's
3 Exhibit one, and you recognize this as the four-wheeler
4 that you --

5 A Yes, ma'am.

6 Q -- were on with and little correct?

7 A Uh-huh.

8 Q You recognize this as the skirt that was
9 wearing that day; correct?

10 A She had on a longer one than that one.

11 Q So you -- you're saying that you remember what she
12 was wearing and you dispute that it was this?

13 A Yes, ma'am.

14 Q And I believe you testified that you were with
15 on the four-wheeler on more than one occasion; correct?

16 A Yes, ma'am.

17 Q At least two occasions; correct?

18 A Two.

19 Q And when you were on it with her, you were driving on
20 one occasion; correct?

21 A I been driving both of them.

22 Q Okay. And wasn't there another occasion when
23 was driving in front of you?

24 A No, ma'am.

25 Q You dispute that?

1 A I dispute that.

2 Q Okay.

3 A She wasn't driving none.

4 Q Okay. Just wanted to be clear about what your
5 testimony is, Mr. Welch. And I believe you testified
6 previously under direct examination that there was one
7 point where, according to your testimony, you were in the
8 woods and Alesha was nearby; correct?

9 A Yes, ma'am.

10 Q And I believe you called Alesha your daughter. And
11 Alesha is not your daughter; is she?

12 A By common law marriage.

13 Q Okay. So your testimony is that you're actually
14 common law married to Lisa Bryant?

15 A Yes, ma'am.

16 Q So in other words, then she wouldn't be your fiancée,
17 correct, she would be your common law wife?

18 A Yes, ma'am, by the law situations.

19 Q Okay. And just wanted to be sure about the
20 terminology that you're using. Alesha is the daughter of
21 Lisa Bryant; correct?

22 A Yes, ma'am.

23 Q And so she was, what, 11 or 12 years old when you
24 moved -- when you started the relationship with her mom --

25 A Yes, ma'am.

1 Q -- and moved in with her? So that's how you came to
2 know her; correct?

3 A Yes, ma'am.

4 Q And the second time you were on the four-wheeler,
5 where did you go?

6 A Went back through the woods.

7 Q With Kayla and little

8 A Yes, ma'am. With Alesha--

9 Q I'm sorry?

10 A With Alesha on the other one.

11 Q So your testimony under oath is that Alesha was again
12 nearby on a four-wheeler?

13 A Yes, ma'am.

14 Q And it's your testimony that that happened while
15 was on the four-wheeler with you?

16 A Yes, ma'am.

17 Q Isn't it a -- safe to say, Mr. Welch, that
18 trusted you?

19 A Yes, ma'am.

20 Q And she thought of you as an uncle until that day;
21 didn't she?

22 A Yes, ma'am.

23 Q Thank you. Nothing further.

24 MR. FINNEY: I don't have anything further.

25 Thank you, Your Honor.

1 THE COURT: You can step down.

2 (Witness left the stand.)

3 MR. FINNEY: The defense rests, Your Honor.

4 THE COURT: Okay. State have any reply?

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

6 THE COURT: Okay. Are you ready to go forward
7 with reply then? Are you ready to call your next
8 witness or you need...

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

10 THE COURT: Okay. Do y'all need a break? Okay.
11 All right. You all right, Kathy?

12 MS. MAYES: State calls Alesha Hickman -- Alesha
13 Bryant.

14 MR. FINNEY: Can we approach, Your Honor?

15 THE COURT: Yes, sir.

16 (Whereupon a bench conference was held.)

17 THE COURT: I'm sorry.

18 MS. MAYES: Your Honor, the witness was
19 sequestered -- in route.

20 THE COURT: Okay. She's coming?

21 MR. FINNEY: Could I ask the Court for a break
22 outside the jury for a few minutes?

23 THE COURT: That means you want us to leave or
24 want me to send the jury?

25 MR. FINNEY: The jury.

1 THE COURT: So we're going to put something on
2 the record?

3 MR. FINNEY: Yes, sir.

4 THE COURT: All right. Ladies and gentlemen, if
5 you'll go to the jury room for a few minutes, I will
6 get you back out just as quick as I can.

7 (Jury left the courtroom at 11:34 am.)

8 THE COURT: Yes, sir.

9 MR. FINNEY: Judge, just as we were waiting on
10 the witness, I thought it might be all right for me
11 to go ahead and renew my motions since I rested.

12 THE COURT: Okay.

13 MR. FINNEY: And if the Court would allow me
14 please for the record to renew my motions for
15 directed verdict on both counts in the indictment
16 feeling that now that the State has -- now that the
17 Court has heard all of the testimony from all of the
18 witnesses, that the Court would be in a position now
19 to grant the relief sought by the directed verdict
20 motions made earlier and the other pretrial motions
21 that were renewed at that time.

22 THE COURT: All right, sir. And I think that
23 there is sufficient evidence in this record that a
24 jury may reach the verdict that -- and what weight
25 they give that evidence will be up to them, but I

1 THE COURT: Well, I mean, the scope of reply
2 testimony is to cover the things that came out on
3 cross. So I assume what she's going to cover is what
4 came out on -- I mean, on the defense side of the
5 case.

6 MR. FINNEY: All right, sir.

7 THE COURT: So I assume she's going to -- I
8 don't know, but...

9 MR. FINNEY: All right, sir.

10 THE COURT: You know. You can... anything else?

11 MR. FINNEY: No, sir.

12 THE COURT: Okay. Bring us the jury.

13 (Jury entered the courtroom at 11:45 am.)

14 THE COURT: All right. Madam Solicitor?

15 MS. MAYES: Your Honor, the State calls Alesha
16 Bryant.

17 ALESHA BRYANT, after being duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. MAYES:

21 Q Okay. And Alesha, can you tell us a little bit about
22 yourself? How old are you?

23 A I'm 18 years old.

24 Q And where do you currently reside?

25 A I live in Coward, in Florence County.

1 Q All right. And where do you go to school?

2 A I went to South Florence High School.

3 Q All right. And what's your current situation as far
4 as like the jobs you had and jobs you're currently -- you
5 most recently had?

6 A I worked at Food Lion for a year ago -- a year last
7 year, and currently I don't have none.

8 Q Okay. And what's your situation with school?

9 A I'm finishing up in Adult Ed right now.

10 Q Okay. And how is it that you know the defendant in
11 this case, William Ricky Welch?

12 A He is my mother's boyfriend.

13 Q And your mom is who?

14 A Lisa K Bryant.

15 Q Okay. And approximately how many years do you think
16 he has been involved with your mom?

17 A Eight to nine years.

18 Q Now Alesha, do you recall a cookout that was at your
19 aunt and uncle's house who are Margaret and John Hickman?

20 A Yes, ma'am.

21 Q And that cookout was close to what holiday, if you
22 know?

23 A Christmas.

24 Q All right. And can you tell us whether or not you
25 recall your cousin being there?

1 A Yes, ma'am, she was.

2 Q All right. And what are some of the things that you
3 recall people doing that day in terms of activity?

4 A We sat down, ate lunch or dinner, opened Christmas
5 presents, and rode four-wheelers.

6 Q Okay. And when you say rode four-wheelers, I'm going
7 to show you a photograph and ask you if you recognize
8 what's in the photograph.

9 A That's Uncle John's four-wheeler.

10 Q Okay. And where would people normally ride the
11 four-wheelers, Alesha?

12 A There's two wood trails in the back.

13 Q Okay. And can you maybe sort of describe the trails?
14 Have you ever ridden on them before?

15 A Yes, ma'am, I have. It's like nature trails, but
16 enough for a four-wheeler to go through.,

17 Q Okay. And how many times in the past do you think
18 you had been to your aunt and uncle's home and rode
19 four-wheelers there?

20 A I don't recall because we rarely get to go over
21 there.

22 Q Okay. More than one occasion?

23 A Yes, ma'am.

24 Q I'm going to take you back specifically to the date
25 of the cookout which preceded the Christmas holiday in

1 2006. I think you have testified previously that your
2 cousin was there.

3 A Yes, ma'am.

4 Q On that particular day, Alesha, did you ever see
5 on a four-wheeler?

6 A Yes, ma'am.

7 Q Okay. And when you saw who was she on the
8 four-wheeler with?

9 A Ricky and baby

10 Q Okay. And when you saw -- how many times do you
11 think you saw on a four-wheeler with the defendant,
12 Ricky Welch?

13 A As I remember, at least twice.

14 Q Okay. The first time you saw them, where were you,
15 Alesha?

16 A In the back yard just standing around with everyone
17 else.

18 Q Okay. And you saw them while you were in the back
19 yard. Were you on a four-wheeler yourself at the time?

20 A Not at the time.

21 Q And where were you the second time you saw them?

22 A Basically in the same area around the yard.

23 Q And were you on a four-wheeler that time?

24 A No, ma'am.

25 Q When you saw on the four-wheeler with Ricky,

1 what are the positions that you remember them being in?

2 A First whenever I saw them leave out to go on the
3 trail, I saw him driving. And then another occasion
4 whenever I saw them again, I saw her driving.

5 Q Okay. And when you say, her driving, you're
6 referring to who?

7 A

8 Q Do you still live with your mom, Alesha?

9 A No, ma'am.

10 Q And you consider yourself Ricky Welch's daughter?

11 A No, ma'am.

12 MS. MAYES: Beg the Court's unindulgence.

13 Nothing further.

14 CROSS-EXAMINATION

15 BY MR. FINNEY:

16 Q Ms. Alesha, when is the first time I spoke with you?

17 A I believe this morning.

18 Q You believe this morning.

19 A Because I don't have a good memory, I don't remember.

20 Q Oh, you don't have a good memory. Well, you told me
21 this morning you didn't remember how many times that you
22 saw them on the trail; didn't you?

23 A I told you approximately twice.

24 Q You didn't tell me that you remembered -- didn't you
25 say this morning to me when you talked to me that you

1 Q But you were at times.

2 A I don't remember seeing them on the trail at the same
3 time as I was. Everybody was riding the four-wheelers.

4 Q Okay. So you could have been on the trail with Ricky
5 and and baby You don't remember.

6 A I guess because I wouldn't know. Everybody was
7 riding at different times.

8 Q Okay. And do you remember calling Ricky, daddy,
9 during that time in 2006?

10 A Not at that time. I do not recall that.

11 Q You didn't write him letters when he went to jail and
12 you called him daddy in the letters?

13 A May I explain myself?

14 Q No. You can answer the question.

15 A Yes, I did.

16 Q But he's not your daddy any more; is he?

17 A No, sir.

18 Q All right. Thank you, ma'am.

19 MR. FINNEY: Nothing further from this witness.

20 THE COURT: Anything? You ask more questions

21 REDIRECT EXAMINATION

22 BY MS. MAYES:

23 Q Just to clarify. Can you explain, Alesha, what you
24 recall the conversation being this morning with Mr.

25 Finney, was anyone else present for that conversation?

1 A Yes, there was somebody else present.

2 Q Who was that?

3 A I don't know his name. He's tall black man that was
4 there.

5 Q Okay. And was that in the courtroom or outside the
6 courtroom?

7 A Inside the courtroom at the right corner of the back.

8 Q Okay. And what do you remember -- what do you
9 remember relating about who was on the trails and when?

10 A What do you mean by that?

11 Q Okay. Well, what do you remember stating to Mr.
12 Finney about who was on the trails and when?

13 A I remember telling him that I did see them on the
14 four-wheeler, but I don't remember how many times, but I
15 wasn't always behind them on the four-wheelers in the
16 trail and I was there that day.

17 Q All right. And just to clarify, were you or were you
18 not behind and Ricky throughout the different trails
19 that they rode on various occasions that day?

20 A I did not follow them, so I would -- I was not behind
21 them all the time.

22 Q Thank you. Nothing further.

23 MR. FINNEY: Nothing from this witness.

24 THE COURT: Thank you. You can step down.

25 (Witness left the stand.)

1 MS. MAYES: The State calls Margaret Hickman.

2 MARGARET HICKMAN, after being
3 duly reminded of oath, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MAYES:

6 Q Mrs. Hickman, I'm going to take you back once again
7 to the date of the cookout. Do you remember when the time
8 came when people were leaving the party?

9 A Yes.

10 Q Okay. And do you ever recall seeing your daughter,
11 approach Mr. Welch in a van on that occasion?

12 A When they arrived, yes.

13 Q Okay. Do you ever recall seeing your daughter
14 approach Mr. Welch in the van or give him a kiss goodbye
15 as they left the party?

16 A No, she was in her room when they left.

17 Q I'm also going to ask you about what if any knowledge
18 you had prior to the date of the cookout that Mr. Welch
19 had been convicted for the crime criminal sexual conduct
20 with a minor?

21 A We had heard that there was a -- a incident where
22 he --

23 Q Okay.

24 A -- had been--

25 Q I can't, you can't --

1 A Oh, I'm sorry.

2 Q -- get into the details of it. Just let me phrase it
3 this way. Had you been advised by him or Lisa Bryant that
4 he had been convicted of that crime?

5 A No.

6 Q Thank you. Nothing further.

7 CROSS-EXAMINATION

8 BY MR. FINNEY:

9 Q Mrs. Hickman, who is Charles Hickman?

10 A My brother-in-law.

11 Q Was he at the cookout?

12 A Yes, he was.

13 Q And was his wife with him?

14 A Yes, she was.

15 Q And how about Joey Hickman?

16 A No, he wasn't there.

17 Q Okay. Do you know who Joey Hickman is?

18 A That's my husband's brother.

19 Q Charles and Joey --

20 A Yes.

21 Q -- brothers to your husband?

22 A Yes.

23 Q All right. Did you ever hear or have a conversation
24 with them about Mr. Welch's prior record before the
25 cookout?

1 A No.

2 Q You don't know if Charles or Joey knew about his
3 record?

4 A I'm not sure.

5 Q Okay. And you and Charles and your husband don't
6 talk like family members talk? If you knew that -- if
7 Charles knew that this man had a record, wouldn't your
8 brother have talked to Charles and known about it?

9 A I assume.

10 Q Okay. But you don't know?

11 A I don't know.

12 Q Okay.

13 A No.

14 Q Now, how are you so sure that was in her room
15 when my client left?

16 A Because I remember putting her into bed, getting her
17 ready for bed. It was late.

18 Q It was dark?

19 A It was dark, yes--

20 Q And my client was still at your house?

21 A They were sitting around the kitchen table getting
22 ready to leave. We were...

23 Q And it was dark?

24 A The sun was down, yes.

25 Q Yes, ma'am. It was dark. They were still at your

1 house.

2 A Yes.

3 Q And you put to bed first.

4 A Yes.

5 Q And when they left, they just went and got in their
6 van. Nobody said, you know, nobody -- the kids didn't
7 kiss them goodbye?

8 A Well, the kids, no. We did. I mean, we said
9 goodbye--

10 Q And you remember that?

11 A Yes, sir.

12 Q Did you ever give a statement to anybody in this --
13 in this case? Did you ever get a statement -- have a
14 chance to sit down with an investigator and tell the
15 investigator what happened at your house that day, who was
16 doing what and what was going on?

17 A I'm not sure.

18 Q Okay. Well, if I was a police investigator and I
19 came to your house and I said your little girl has gone to
20 the hospital, she's made a charge against Uncle Ricky, and
21 I'm coming to your house to ask you what went on to the --
22 at the cookout that day, what -- who was with who, did
23 Uncle Ricky ever go out on the bike, did anybody ever come
24 and do that to you?

25 A I'm -- I'm sure. I mean, either --

1 Q You would have--

2 A -- they did or we did or we went up there --

3 Q Okay.

4 A -- or I'm not sure. Everything was happening so fast
5 back then.

6 Q All right. And to your knowledge have you ever
7 signed a statement saying, this is my statement of what
8 happened at the cookout that day?

9 A I may have. I'm not sure.

10 Q You don't know? Okay. So you're not sure about
11 that. But you're sure that your babies were in bed when
12 my client left your house that day.

13 A Yes, I mean, I... yes, I was, yes.

14 Q Okay. And what I'm asking you is, is there anywhere
15 I can go back in the file and look and say that you said
16 that before today, that you said that your babies were in
17 the bed when he left and got in his car and left the house
18 that day? Did somebody ask you that before today?

19 A I'm not sure.

20 Q Okay.

21 A I'm not sure.

22 Q Would it have been important to know that you said to
23 somebody before today, just now on your stand, that Ricky
24 left your house at dark --

25 A Uh-huh.

1 Q -- after you had put and the baby to bed?

2 A I'm not sure.

3 Q Okay. Let me ask you one more question and I'm going
4 to sit down. You testified under oath that you had a
5 one-on-one talk with your child about what Margaret had
6 called you about.

7 A My sister Melody.

8 Q Melody.

9 A Yes.

10 Q Okay. Was Ricky still at your house when that call
11 came in?

12 A No. No, he wasn't.

13 Q Well, you are telling me that you put to bed,
14 then you saw Ricky leave, then you got a call from your
15 sister saying something was up, so you had to go get your
16 baby out of bed to talk to her. Is that what happened
17 that night?

18 A When I said I was putting her to bed, I meant getting
19 her ready, nightgown and such, getting her ready for bed.

20 Q Nothing further.

21 MS. MAYES: Nothing further, Your Honor. The
22 State calls John Hickman.

23 THE COURT: Thank you, ma'am. You can step
24 down.

25 (Witness left the stand.)

1 JOHN HICKMAN, after being duly
2 reminded of oath, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. MAYES:

5 Q Mr. Hickman, wanted to ask you if prior to the date
6 of the incident with Kayla here, December 23rd, 2006, had
7 you been advised by either the defendant William Ricky
8 Welch or Lisa Bryant that Mr. Welch had been convicted of
9 criminal sexual conduct with a minor in the first degree?

10 A No, ma'am.

11 Q And how did you first learn that he had been
12 convicted as a sex offender?

13 A When me and my family returned from the ER that --
14 that afternoon, from the hospital, my wife went online,
15 and I walked in the computer room, she was on the computer
16 and we was pulling it up, and seen his spreadsheet where
17 he was convicted.

18 Q Thank you. Nothing further.

19 MR. FINNEY: No questions.

20 THE COURT: Thank you, sir. You can step down.

21 (Witness left the stand.)

22 MS. MAYES: The State rests, Your Honor.

23 THE COURT: Okay. Ladies and gentlemen, you
24 have heard all of the testimony you're going to hear
25 in this case. And now it's time for the closing

1 arguments of the lawyers and for me to charge you on
2 the law.

3 And that's probably going to run into the dinner
4 hour. So you are probably better off just stopping
5 now and going to lunch and we'll come back at 1:30 I
6 guess. That gives us an hour and half. That's what
7 we normally take.

8 Then at 1:30 you'll hear the closing arguments
9 of the attorneys and I will charge you on the law and
10 give you this case to deliberate. Have a nice lunch.
11 Don't discuss the case yet. And if you'll be back in
12 the jury room at 1:30, I will get you out and we'll
13 finish this case.

14 (Jury left the courtroom at 12:05 pm.)

15 *THE COURT:* Anything before we break for lunch?

16 *MR. FINNEY:* No, Your Honor.

17 *MS. MAYES:* No, sir, Your Honor.

18 *THE COURT:* All right. We'll be back at 1:30.

19 Can you give me an idea about how long y'all are
20 going to argue?

21 *MS. MAYES:* Your Honor, I never go over 30, at
22 least if I can help it.

23 *MR. FINNEY:* I'm going to hold her to that, Your
24 Honor. I'd like 45.

25 *THE COURT:* Okay. You've got up to two hours,

1 but normal adult's attention span used to be 19
2 minutes. Now it's eight now. Whatever you want to
3 do. I'll see y'all at 1:30.

4 MR. FINNEY: Thank you, sir.

5 (Court was in recess for lunch.)

6 THE COURT: Okay. State ready to proceed?

7 MS. MAYES: Yes, sir, Your Honor. I do wish to
8 inquire about the Court's charge concerning criminal
9 sexual conduct with a minor.

10 THE COURT: Okay.

11 MS. MAYES: It may be part of the Court's charge
12 already. But if not, the State would request a
13 charge pursuant to the statute providing that
14 corroboration not needed, and that is also under
15 Title 16.

16 THE COURT: All right. Then it's not in there.
17 Now, tell me what -- because basically the charge
18 that is in our charge book is basically the statute
19 because basically -- and I'll be glad to show y'all
20 what I was going to charge on, what's in our charge
21 book. If you have got something different...

22 MS. MAYES: Your Honor, it would be...

23 THE COURT: Because they have not really
24 developed a charge for us, at least from Court
25 Administration, the Supreme Court, because it's --

1 the law is so new, especially when you're dealing
2 with A1 where the jury has to find penetration -- you
3 know intercourse, anal intercourse or the
4 penetration.

5 MR. FINNEY: Judge, just for the record, the
6 second part of your charge talking about consent,
7 willingness, indifference, or ignorance is not part
8 of the factual basis of this case, and I would object
9 to the charge being given to the jury because there's
10 not any allegations this little girl did something
11 because she just wanted to.

12 And it -- this part of the law is not part of
13 the statute I don't believe, and I don't believe that
14 it follows the factual presentation that the jury has
15 heard.

16 THE COURT: And that's the charge that's in our
17 charge book. Now, let me see what you're objecting
18 to.

19 MR. FINNEY: The second paragraph -- second page
20 where it starts with the word consent.

21 THE COURT: Consent with... Okay. what is the
22 State's position on that?

23 MS. MAYES: We believe that would be
24 appropriate, Your Honor, as a part of the charge to
25 eliminate any speculation by the jury about exactly

1 whether force is required or not required. And it's
2 not required under the criminal sexual conduct with a
3 minor statute.

4 *THE COURT:* Right. And the only thing I
5 question about this -- which does apply here -- that
6 in our book it says, woman under the age of 14 cannot
7 legally consent to sexual intercourse. I always was
8 under the impression it was 16.

9 *MR. FINNEY:* That's my understanding.

10 *THE COURT:* But I don't know where they came up
11 with 14. It's in all our charge books. And so I
12 have been trying to figure out what law allows the 15
13 year old to make that, but I can't find it. I think
14 it should be 16 not 14.

15 But I think that's part of the law. And even
16 though -- and I can't comment on the facts, but the
17 jury needs to know in every case -- and that as far
18 as the minor is concerned that consent doesn't play
19 into it at all.

20 *MR. FINNEY:* I want the record to reflect our
21 objection, Your Honor.

22 *THE COURT:* I understand. Now, in addition to
23 this, what is the State's position? You...

24 *MS. MAYES:* Yes, sir, Your Honor. The State's
25 position is to request a charge for South Carolina

1 code section 16-3-657 which provides that testimony
2 of the victim need not be corroborated for
3 prosecution pursuant to South Carolina code section
4 16-3-652 through 656 which includes criminal sexual
5 conduct with a minor.

6 The charging of this particular provision has
7 been upheld in State versus Shumpert, a 1993 case,
8 and also more recently.

9 THE COURT: Okay. What -- what says the defense
10 about that? What's your position on that, Mr.
11 Finney?

12 MR. FINNEY: Judge, I don't think it applies in
13 this case.

14 THE COURT: Why don't you?

15 MR. FINNEY: Corroboration of the victim's
16 testimony? I mean--

17 THE COURT: That's what the law -- that's what
18 section 16 3 657 says. Now...

19 MR. FINNEY: In a case, Your Honor, where the
20 victim, let's say, was in an alley, nobody was with
21 her, she got thrown down, didn't know the fellow and
22 she testified, yes, that's the fellow and yes, this
23 is what happened, I could understand that happening.

24 In this case they have got everybody that was
25 with the girl and all of that that's already

1 corroborated and testified about what happened, what
2 she said, what she looked like, and all of that.

3 So I don't think it's a correct statement and I
4 don't think it's relevant to the -- to the jury's
5 decision as to whether or not they believe her or not
6 or believe the testimony of the State or not.

7 *THE COURT:* I understand. You know, this is the
8 code section the legislature passed. Now, the
9 testimony of the victim need not be corroborated in
10 the prosecution under sections 16 3 652 through 658.

11 *MR. FINNEY:* And look at the history, Judge.
12 The history is that it was passed in 1997 before
13 the -- the law that we're talking about here today
14 was even enacted.

15 *THE COURT:* I understand that. But you are
16 telling me that's not still good law?

17 *MR. FINNEY:* Don't think it applies in this
18 case, Your Honor.

19 *THE COURT:* How does it not apply to any case?

20 *MR. FINNEY:* I said it would apply to the lady
21 in the alley, Your Honor, because she was by
22 herself --

23 *THE COURT:* I know, but I can't--

24 *MR. FINNEY:* -- and you would want to tell the
25 jury that she doesn't have to have anybody second to

1 her opinion.

2 THE COURT: Well, the lady in the alley who may
3 have been sexually assaulted and then they had DNA
4 evidence, that that corroborates her story that in
5 fact she was -- that...

6 I understand your position, but it is the law.
7 Now, the weight the jury gives that and whether they
8 even understand corroboration, I don't know. But if
9 the State -- if that's part of the statute and the
10 State asks me to charge it, how does that -- or
11 shouldn't be charged in this case?

12 MR. FINNEY: I just simply would not argue with
13 the Court. I don't believe it meets the test in this
14 case because there was testimony from State witnesses
15 which sought to corroborate her testimony, so you
16 would be basically making a comment on the facts, I
17 think by testifying or stating this.

18 The other thing I would say is that this
19 apparently was enacted in 1997 a long time before
20 Jessie's law went into effect, which is the code
21 section 17 -- 16 3 655 which we're acting under
22 today. And because they have enacted a special--

23 THE COURT: They just amended -- 655 has been on
24 the books a long time. They just amended it with
25 Jessie's law; didn't they?

1 MR. FINNEY: Well, I agree that they changed it
2 substantially. From our point of view it is
3 substantially a new law.

4 THE COURT: I understand that. But they also
5 could have changed the other section that -- the
6 corroboration section, and they chose not to do that.

7 MS. MAYES: For the record, Your Honor, State
8 versus Shumpert, the 1993 case, one of the cases in
9 which this particular statute was charged and has
10 been upheld did involve criminal sexual conduct with
11 a minor pursuant to 16 3 655.

12 I understand that it has been amended by the
13 addition of the subsection which we are currently
14 proceeding under. However, State's position is it
15 would not change the scope or the effect of the law
16 at all.

17 THE COURT: Okay. All right. I'll -- I don't
18 see whether it's commenting on the facts at all in
19 this case. I think it's part of the law and I will
20 charge it.

21 MR. FINNEY: Subject to our objection. Thank
22 you, Your Honor.

23 THE COURT: Subject to your objection. Anything
24 else? Anything else before we bring the jury in?

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

1 THE COURT: All right. If you will get us the
2 jury.

3 (Jury entered the courtroom at 1:50 pm.)

4 THE COURT: Mr. Snyder, I understand you're
5 going to be the foreperson?

6 FOREPERSON: Yes, sir.

7 THE COURT: And your job as foreperson is simply
8 to preside over the deliberation. And I will explain
9 that to you in detail when I give you the charge.

10 Your vote is not any greater than anybody
11 else's. Somebody's got to be in charge. And you
12 will ultimately write the verdict down on the verdict
13 form and sign your name to it and knock on the door
14 and tell them -- the bailiff you have reached the
15 verdict.

16 Now if y'all will pay close attention to the
17 closing arguments of the attorneys. Are you waiving
18 opening on the law?

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

20 THE COURT: Mr. Finney?

21 MR. FINNEY: Thank you, Your Honor. Ms. Mayes.

22 CLOSING STATEMENT

23 MR. FINNEY: Ladies and gentlemen, in June of
24 2006 the people who make the laws in this state
25 passed a law. They call it Jessie's law. And it was

1 a law that we hadn't had before. And I think it's
2 one of the worst laws that I have ever seen as a
3 lawyer.

4 It's a law that says that even though we have
5 constitutions, state and federal, we have rules and
6 regulations, we have all of these protections for a
7 person who is accused of a crime -- under this
8 particular law that was passed by the legislature in
9 this state and in other states, the jury in a case
10 where a man is charged with criminal sexual conduct
11 from June 2006 going forward, the State has the right
12 to bring in a prior conviction.

13 Now, how can it help you to determine what
14 happened in the past as to what happened today? Why
15 is it that on all kinds of other cases in South
16 Carolina, stealing a car, killing a person, whatever
17 else, that rule doesn't apply?

18 On this case it applies because we had a lot of
19 people upset about the way our children were being
20 treated, and they thought this was a good way of
21 doing it. It's not. It's a poor law. But it is the
22 law.

23 And the Judge is going to charge you that law in
24 a few minutes. 16 3 655. You have to decide whether
25 this man has been proved guilty by the State of South

1 Carolina with their evidence and their witnesses, and
2 you get to know, oh, by the way, he had a conviction.

3 There's no way in the world that the human mind
4 can separate that fact. They don't want you to
5 separate it. They want you to know about it. It's
6 part of the the law. It's a poor law.

7 In the mean time, that's the law we have got in
8 this case. But we have also got something else. We
9 have got the burden of proof and we have got
10 something called reasonable doubt.

11 It's a standard that the Judge is going to tell
12 you you have to use to together when you go back in
13 that jury room and talk.

14 Now ladies and gentlemen, this wasn't an easy
15 case when I took it, and I know it wasn't going to be
16 an easy case to present because it's got issues
17 involving an eight year old girl just as cute as a
18 button. And did a great job.

19 But there's a problem. The State of South
20 Carolina wants you to believe said it, the lady
21 who went to see three days later -- went
22 to see her three days after the report was made, saw
23 her, Ricky's got a prior record. That's it. Let's
24 go home. Ain't nothing else to talk about.

25 That's what they want you to believe. That

1 doubt guilty of both charges. Thank you.

2 *THE COURT:* Ladies and gentlemen, my charge on
3 the law is going to take about 20 minutes. Do y'all
4 need a break before I charge? Everybody all right?
5 Okay.

6 JURY CHARGE

7 *THE COURT:* And I've observed you throughout
8 this trial and you paid close attention to the
9 evidence that came in from this witness stand as well
10 as you heard the arguments of both attorneys now.

11 And it's now my duty under constitution of this
12 state to charge you upon the law that applies in this
13 case. And under our constitution the jury is the
14 only people that can make the finding of fact in this
15 case.

16 I am not permitted to indicate to you how I
17 might feel about the facts in this case. So if I
18 have done anything in this trial that you may have an
19 idea as to what I think, disregard that.

20 I don't have an opinion. The law doesn't allow
21 me to have an opinion. It is solely your
22 responsibility to make the determination of what the
23 true facts are in this case based on the evidence
24 that's come before you in this courtroom.

25 The same constitution and code of laws which

1 indicates or designates you the exclusive judge of
2 the facts in this case makes me the exclusive judge
3 of the law in this case.

4 Therefore, if you have an opinion as to what you
5 think the law is or what you think the law ought to
6 be and it differs from what I now tell you the law
7 is, you must disregard that opinion and apply the law
8 exactly as I give it to you.

9 The fact that this defendant was arrested,
10 charged, and indicted in this case is not evidence in
11 this case and cannot be considered by you as evidence
12 of guilt in this case nor does it create any
13 presumption or inference of guilt.

14 The indictment is simply the formal written
15 instrument which contains the charges made against
16 this defendant that serves as the formal document to
17 bring those charges in this courtroom.

18 To this indictment the defendant has entered a
19 plea of not guilty. And this plea casts the burden
20 upon the State of South Carolina to prove each and
21 every element of this offense beyond a reasonable
22 doubt.

23 A person charged with a criminal offense in
24 South Carolina is never required to prove himself or
25 herself innocent. It's an important rule of law in

1 this country that the defendant in a criminal trial
2 will always be presumed innocent of the crime for
3 which he is indicted unless and until his guilt has
4 been proven by evidence that satisfies you of that
5 guilt beyond a reasonable doubt.

6 The presumption of innocence is not a mere legal
7 theory. It is not just a legal phrase. It is a
8 substantial constitutional right to which every
9 defendant is entitled.

10 This presumption of innocence accompanies this
11 defendant from the time he's charged throughout the
12 trial and until you reach a verdict of guilt based on
13 the evidence that satisfies you of his guilt beyond a
14 reasonable doubt.

15 Now, a reasonable doubt is a doubt which makes
16 an honest, sincere, conscientious juror in search of
17 the truth to hesitate to act.

18 Proof beyond a reasonable doubt must therefore
19 be proof of such convincing character that a
20 person -- that a reasonable person would not hesitate
21 to rely and act upon it in the most important of his
22 or her own affairs.

23 Proof beyond a reasonable doubt can also be
24 described as proof that leaves you firmly convinced
25 of the defendant's guilt.

1 There are very few things in this world that we
2 know with absolute certainty. And in a criminal
3 case, the law does not require proof that overcomes
4 every possible doubt.

5 If based on your consideration of the evidence
6 you are firmly convinced that the defendant is guilty
7 of the crime charged, you must find him guilty.

8 If on the other hand you think there's a real
9 possibility that he's not guilty, you must give him
10 the benefit of that doubt and find him not guilty.

11 In determining the facts in the case, you must
12 necessarily pass upon the credibility, which simply
13 means the believability of the witnesses and the
14 value or weight to be given to their testimony.

15 You alone must decide the force and effect, the
16 truth of their testimony. In making this decision,
17 there are many things that you may consider.

18 One, the appearance and manner of the witness on
19 the stand, sometimes referred to as the demeanor of
20 the witness. Was the witness forthright or hesitant.
21 Was the witness's testimony consistent or did it
22 contain discrepancies.

23 What was the ability of the witness to know the
24 facts about which he or she testified. Did the
25 witness have cause or reason to be biased or

1 prejudiced in favor of the testimony he or she gave.

2 Was the witness's testimony corroborated or made
3 stronger by other evidence or was it made weaker or
4 impeached by other evidence.

5 Now, the rules of evidence don't ordinarily
6 permit a witness to testify to opinions or
7 conclusions. An exception to this rule exists for
8 witnesses we call expert witnesses.

9 A witness who by education and experience has
10 become an expert in some art, science, profession or
11 calling may state an opinion as to relevant material
12 matters in which the witness claims to be an expert
13 and may also give reasons for that opinion.

14 You should consider any expert opinion received
15 in evidence in this case like any other evidence,
16 give it the weight you think it deserves.

17 If you decide an opinion of an expert is not
18 based on sufficient education and experience or if
19 you conclude that the reasons given in support of
20 that opinion are not sound or that opinion is
21 outweighed by other evidence, you may disregard the
22 opinion in its entirety.

23 An expert's testimony is to be given no greater
24 weight than any other witness simply because that
25 person is an expert. Further, you are not required

1 to accept an expert's opinions even though it was
2 uncontradicted.

3 As jurors, you have the right to believe a small
4 portion of the witness's testimony and disregard the
5 larger or vice versa.

6 You are able to believe all of the witness's
7 testimony or none. You may believe the testimony of
8 a single witness against that of many or the other
9 way around.

10 Now, there are two types of evidence which
11 generally are presented during a trial, direct and
12 circumstantial.

13 Direct evidence is the testimony of a person who
14 asserts or claims to have actual knowledge of a fact
15 such as an eye witness.

16 Circumstantial evidence is proof of a chain of
17 facts and circumstances indicating to the existence
18 of a fact.

19 The law makes absolutely no distinction between
20 the weight or value to be given either direct or
21 circumstantial evidence. There is not necessarily a
22 greater degree of certainty.

23 Let me explain to you a little bit about
24 circumstantial and direct evidence. If I go to bed
25 tonight, look out my front lawn, it's clear. I wake

1 up in the morning and it's covered in snow.

2 I didn't see it snow. But I can derive that
3 sometime during the night while I was asleep it
4 snowed outside because the circumstances the next
5 morning, there was snow everywhere.

6 Now, if I'd have seen it snow, that's direct
7 evidence. I saw it snow. And circumstantial
8 evidence, I didn't see it snow, but based on the
9 circumstances, I can make certain presumptions or
10 conclusions that it must have snowed while I was
11 asleep that night.

12 That's the difference between direct and
13 circumstantial evidence. And after weighing all of
14 the evidence if you're not convinced of the
15 defendant's guilt beyond a reasonable doubt, you must
16 find him not guilty.

17 Now, criminal intent is a necessary element of
18 each crime that must be proven by the State beyond a
19 reasonable doubt. Criminal intent is always a matter
20 that must be determined by the jury from the
21 circumstances surrounding the situation.

22 There is no way to prove intent to a
23 mathematical certainty. There is no way medical
24 science can dissect a person's brain and determine
25 what he or she had in mind.

1 So the law states criminal intent may be
2 inferred from the circumstances shown to have existed
3 both before and after the fact. This is how you the
4 jury make a determination of whether or not the
5 element requiring intent was present.

6 Criminal intent is a state of mind that operates
7 jointly with an act or omission in the commission of
8 a crime. Criminal intent is a mental state of
9 conscious wrongdoing.

10 So it's up to you, the jury, to determine what
11 the defendant intended to do based on the
12 circumstances shown to have existed.

13 I tell you that the State must prove criminal
14 intent beyond a reasonable doubt just like the State
15 must prove every element beyond a reasonable doubt.

16 Now, the defendant is charged with first degree
17 criminal sexual conduct with a minor. The State must
18 prove beyond a reasonable doubt that the defendant
19 engaged in a sexual battery with the victim.

20 A sexual battery is sexual intercourse,
21 cunnilingus, fellatio, anal intercourse, or any
22 intrusion, however slight, of any part of the
23 person's body or any object into the genital or anal
24 openings of another person except that in -- the
25 intrusion is -- when the intrusion is accomplished

1 for medically diagnostic reasons.

2 The State must then prove beyond a reasonable
3 doubt that the victim was less than 16 years of age
4 and that the actor had been previously convicted or
5 pled guilty or nolo contendere to or adjudicated
6 delinquent for an offense listed in section 23 3
7 40 -- 30 of the South Carolina code of laws.

8 And I instruct you that that particular code of
9 law deals with sexual register crimes and that
10 criminal sexual conduct with a minor in the first
11 degree is listed under section 23 34 40 -- I mean
12 430C of South Carolina code.

13 Consent, willingness, indifference or ignorance
14 on the part of the minor, if any, as to what was
15 taking place does not in any way effect the charge of
16 criminal sexual conduct with a minor because an
17 unmarried woman under the age of 16 cannot legally
18 consent to sexual intercourse.

19 The defendant's also charged with lewd act upon
20 a minor. The State must prove beyond a reasonable
21 doubt that the defendant was over the age of 14.

22 Next the State must prove that the defendant
23 willfully and lewdly committed or attempted a lewd
24 and lascivious act on or with the body or the parts
25 of a child -- or its parts of a child that's under

1 the age of 16 years with the intent to arouse, appeal
2 to, or ratify the lust, passion, or sexual desires of
3 the defendant or the child.

4 Willfully means voluntarily and intentionally.

5 Specific intent to do something the law forbids.

6 Lewd means obscene, lustful, indecent, or lascivious.

7 Lascivious means intent to incite lust, lewd,
8 innocent -- I am sorry -- lust, lewd, indecent,
9 obscene or intending to deprive the morals and
10 respect of the sexual relations.

11 Now ladies and gentlemen, you're not partisans
12 or advocates for the State of South Carolina or this
13 defendant. Clearly you're not here to reward your
14 friends or punish your enemies. That system of
15 justice would not be tolerated.

16 You have been selected by both the State and
17 this defendant to be -- as fair and impartial jurors.
18 It is your duty then by your joint deliberations to
19 determine the truth in this case giving to this
20 defendant the benefit of every reasonable doubt on
21 each and every issue.

22 Then to the facts which you determine to be true
23 apply the law that I have now given to you and arrive
24 at a verdict which speaks the truth.

25 When you have accomplished these

1 responsibilities, you will have satisfied your oath
2 as jurors and you will have discharged your duty to
3 this court.

4 Now, I'm going to instruct you about the verdict
5 form. And this is -- this form I had my Law Clerk
6 type up, it's simply the caption of the case and
7 the -- the two -- or the possible verdicts that you
8 may reach.

9 Number one, we the jury unanimously find the
10 defendant, William Ricky Welch, guilty of criminal
11 sexual conduct with a minor in the first degree or
12 not guilty of criminal sexual conduct with a minor
13 first degree.

14 Number two, we the jury unanimously find the
15 defendant, William Ricky Welch, guilty of committing
16 or attempting to commit a lewd act on a minor or not
17 guilty of committing a -- or attempting to commit a
18 lewd act on a minor.

19 Then the bottom says, I certify this is a
20 unanimous verdict or a unanimous decision of the
21 jury, and you will sign it as foreperson and date it.

22 Now, the order that I have put this in you're to
23 draw no inference from at all. I had to put it in
24 some order.

25 You simply -- once you have reached a unanimous

1 verdict, the foreperson will check the appropriate
2 box, sign his name, which means it is a unanimous
3 verdict, date it, and knock on the door, and we will
4 bring you out and receive your verdict.

5 Now, while y'all are deliberating, if one of you
6 have to be excused, one of you have to get up and go
7 to the restroom, whatever, you must stop your
8 deliberation.

9 All twelve of you must be present the entire
10 time you're deliberating. So if somebody has to step
11 out, just stop talking about the case till they come
12 back and then resume your deliberations till you have
13 reached a verdict.

14 And then -- it's very important that you knock
15 on the door. I had a case one time that -- I was not
16 the Judge, but the Judge forgot to tell the jury
17 that.

18 They sat back there 10 hours waiting on the
19 Judge to get them out. They didn't tell them to
20 knock on the door. When you have reached a verdict,
21 please knock on the door because we don't know until
22 you let us know.

23 Now, the law also requires now that I consult
24 with these attorneys to be sure that I have not left
25 anything out. So what I'm going to do is send you to

1 the jury room, consult with the attorneys.

2 If I have left something out, I will bring you
3 back out and charge you further on the law. If I
4 have not, then I will send the evidence in along with
5 this plea sheet -- I mean -- I'm sorry -- along this
6 sentence sheet, and when you get -- I still messed
7 that up -- along with the verdict form.

8 When you get this verdict form, that means you
9 can start your deliberation. And so now -- the
10 original 12 of you can go. Everybody seems to be
11 healthy, so the two alternates, I know y'all sat here
12 all week, but you won't get to go in the jury room at
13 this point.

14 But if you go to the jury room, I will either
15 bring you back out or I will send the verdict form in
16 with the evidence and you can start your
17 deliberations.

18 *JUROR:* Your Honor, if we have a question, what
19 is the form...

20 *THE COURT:* If you have a question, you will
21 write that question down on a piece of paper, give it
22 to the bailiff, and he will bring you back into the
23 court and we will deal with that question.

24 Understanding if you want to hear evidence or
25 have something played back, you have a right to do

1 that. I cannot answer a question of fact.

2 You have heard all of the evidence you're going
3 to hear in this case. I can only answer questions of
4 law. So if you need a clarity of the law, I can
5 answer that question.

6 If you want me to -- ask me a question about the
7 facts of this case, I can't answer that question, and
8 nobody else can because you have heard the evidence
9 in this case.

10 Don't -- we can re-play evidence for you, but I
11 can't answer any questions of evidence. You
12 understand? Okay?

13 (Jury left the courtroom at 2:51 pm.)

14 THE COURT: Are there any exceptions or
15 additions on behalf of the State?

16 MS. MAYES: No, sir, not as to the charge. I do
17 believe we have a redaction that's going to need to
18 be done as to one exhibit.

19 THE COURT: Okay. And that's that -- the
20 sentencing sheet or the... okay.

21 MS. MAYES: Correct, Your Honor.

22 THE COURT: What about the defense? Any
23 exception?

24 MR. FINNEY: No, Your Honor. A fine charge.

25 THE COURT: Okay. If y'all will get together on

1 FOREPERSON: Yes, it is, Your Honor.

2 THE COURT: All right, sir. If you would pass
3 it up, please sir.

4 (Passed to bailiff who passed to the Court.)

5 THE COURT: Okay. You may publish the verdict.

6 BAILIFF: Yes, sir. For the State of South
7 Carolina, County of Sumter, in the Court of General
8 Sessions, docket number 2008-GS-43-361, State of
9 South Carolina versus William Ricky Welch.

10 As to count one, we the jury unanimously find
11 the defendant, William Ricky Welch, guilty of
12 criminal sexual conduct with a minor in the first
13 degree.

14 As to count two, we the jury unanimously find
15 the defendant, William Ricky Welch, guilty of
16 committing or attempting to commit a lewd act on a
17 minor. Signed Scott Snyder, dated June the fourth of
18 '08.

19 Ladies and gentlemen, if this is your verdict,
20 so signify by raising your right hand, please. Thank
21 you.

22 THE COURT: Anything further from the State?

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

24 THE COURT: From the defense?

25 MR. FINNEY: We request polling, Your Honor.

1 You want to say anything?

2 *THE COURT:* Okay.

3 *MR. FINNEY:* Thank you, Your Honor. That's all
4 we have.

5 *THE COURT:* Yes, sir. All right. Sentence of
6 the Court is the defendant is committed to the State
7 Department of Corrections for a term of 20 years.
8 That's on criminal sexual conduct with a minor in the
9 first degree.

10 He's given credit for whatever time he served
11 toward that 20 years.

12 On lewd act upon a minor, the Sentence of the
13 Court he's committed to the Department of Corrections
14 for a term of 15 years. That's to run concurrent
15 with count one. He's also given credit for any time
16 served.

17 *MR. FINNEY:* Thank you, Your Honor.

18 *MS. MAYES:* Thank you, Your Honor.

19 *** End of requested transcript of record ***
20
21
22
23
24
25

GENERAL SESSIONS DOCKET REPORT FOR SUMTER COUNTY

REPORT RUN DATE - 092793

INDICTMENT NUMBER:00GS43

93- 1308

DEFENDANT NAME:WELCH, WILLIAM R

AKA:

ADDRESS

STREET

CITY:SUMTER

STATE:SC ZIP:29150

SOCIAL SECURITY NUMBER:

SEX:M MALE

RACE:W WHITE

DATE OF BIRTH:

DRIVERS LICENSE STATE / NO.: /

WARRANT OR TICKET NUMBER:D899157

COUNTS:01

OFFENSE CODE:0160

X 159

NO WARRANT ? N

NAME OF OFFENSE:CRIMINAL SEXUAL CONDUCT 1ST DEGREE

csc w/ minor, 1st degree

DATE OF ARREST:092193

DATE REC'D BY CLERK:092793

SUMMARY JUDGE:491

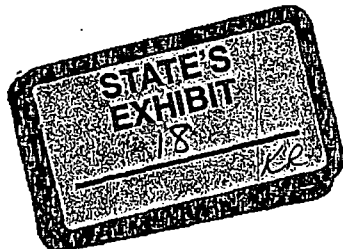
DISP DATE:12-1-93

DISP TYPE EXPLANATION:

JUDGE CODE/NAME: 33 M D. Shuler

COURT REPORTER: M. Sullivan

CONVICTION: CTS: 01 OFFENSE: 159 csc w/ minor, 1st degree



WITNESSES

SCSO

Bradley

ARREST WARRANT NUMBER

J288353

D/A: 01/03/07

ACTION OF GRAND JURY

True Bill

William Darden

Foreperson of Grand Jury

Date: 2/21/08

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-43- 361

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

THE STATE

vs.

WILLIAM RICKY WELCH

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR (First Degree), COMMITTING OR
ATTEMPTING A LEWD ACT UPON A
CHILD

C. KELLY JACKSON, SOLICITOR

CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) CRIMINAL SEXUAL CONDUCT WITH A MINOR
(First Degree), COMMITTING OR ATTEMPTING A
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on February 21, 2008, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – CRIMINAL SEXUAL CONDUCT WITH A MINOR (First Degree)

That William Ricky Welch did in Sumter County, on or about December 23, 2006, willfully and unlawfully commit criminal sexual conduct with a minor in the first degree by engaging in sexual battery with a minor who was less than sixteen years of age, to wit: _____, date of Birth _____, and the actor has previously been convicted of a criminal offense listed in S.C. Code Section 23-3-430(C) and/or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430(D), to wit: William R. Welch was convicted of criminal sexual conduct with a minor in the first degree in violation of the Code of Laws of South Carolina Section 16-3-655(1) on or about December 1, 1993; in violation of Section 16-3-655(A)(2) of the current Code of Laws of South Carolina, 1976, as amended.

COUNT TWO – COMMITTING OR ATTEMPTING A LEWD ACT UPON A CHILD

That William Ricky Welch, a person over the age of fourteen (14) years, did in Sumter County, on or about December 23, 2006, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body or any part or member thereof, of a child under the age of sixteen (16) years, to wit: _____, date of birth _____, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, in violation of Section 16-15-140 of the Code of Laws of the State of South Carolina, 1976, as amended.

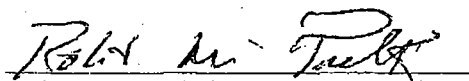
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

P. Kelly Jackson
SOLICITOR

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 17th, 2009



Robert M. Pachak
Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM RICKY WELCH,

APPELLANT

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT.....	5
CONCLUSION.....	9
CERTIFICATE OF COUNSEL.....	10

TABLE OF AUTHORITIES

Cases

<u>Chambers v. Mississippi</u> ; 410 U.S. 284, 93 S.Ct. 1038 (1973).....	6
<u>Delaware v. Van Arsdall</u> , 475 U.S. 673, 106 S.Ct. 1431 (1986).....	6
<u>Duncan v. Louisiana</u> , 391 U.S. 145, 88 S.Ct. 1444 (1968).....	6
<u>Estelle v. McGuire</u> , 502 U.S. 62, 75, 112 S.Ct. 475, 484 (1991)	7
<u>Estelle v. Williams</u> , 425 U.S. 501, 96 S.Ct. 1691 (1976).....	6
<u>State v. Alexander</u> , 303 S.C. 377, 401 S.E.2d 146 (1991)	6
<u>State v. Gore</u> , 283 S.C. 118, 322 S.E.2d 12 (1984)	6, 7
<u>State v. Kennedy</u> , 272 S.C. 231, 250 S.E.2d 338 (1978)	6
<u>State v. Lyle</u> , 125 S.C. 406, 118 S.E. 803 (1923).....	6, 7

Statutes

S.C. Code § 16-11-311 (A) (2)	7
S.C. Code §16-3-655 (A)(2)	5, 7

Rules

Rule 403 SCRE	6

Constitutional Provisions

Article I, §3	6

STATEMENT OF ISSUES ON APPEAL

Whether the application of S.C. Code §16-3-655 (A)(2) deprived appellant of a fair trial under the due process clauses of the State and Federal Constitutions by allowing evidence of a prior criminal sexual conduct conviction as an element to prove first degree criminal sexual conduct with a minor?

STATEMENT OF THE CASE

Appellant was convicted of criminal sexual conduct with a minor in the first degree and lewd act on a minor after a jury trial held on June 2-4, 2008, before the Honorable R. Ferrell Cothran, Jr. in Sumter County. Respective sentences of twenty (20) years and fifteen (15) years were imposed.

This appeal follows.

ARGUMENT

The application of S.C. Code §16-3-655 (A)(2) deprived appellant of a fair trial under the due process clauses of the State and Federal Constitutions by allowing evidence of a prior criminal sexual conduct conviction as an element to prove first degree criminal sexual conduct with a minor.

Appellant was charged with criminal sexual conduct with a minor in the first degree. S.C. Code §16-3-655, which was amended in 2005, provides (A) A person is guilty of criminal sexual conduct with a minor in the first degree if:

- (1) the actor engages in sexual battery with a victim who is less than eleven years of age; or
- (2) the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or nolo contendere to... an offense listed in Section 23-3-430 (c)...

While the victim in this case was eight (8) years old at the time of the incident and the State could have charged the victim under subsection (1) above it instead wanted to prosecute appellant under subsection (2), because appellant had a prior conviction for criminal sexual conduct with a minor in the first degree. This prior conviction went back to 1993. (5/29/08 ROA p. 3, line 3 – p. 4, line 17; p. 10, lines 6-8)

Defense counsel argued letting in the prior conviction would violate Rules 403 and 404 SCRE as well as the constitutional right to a fair trial. (5/29/08 ROA p. 6, line 8 – p. 8, line 2)

The trial court allowed the State to proceed under S.C. Code §16-3-655 (A) (2). (ROA p. 10, line 11 – p. 11, line 12) That ruling was in error.

Due process under the Fourteenth Amendment to the United States Constitution guarantees a defendant the fundamental right to a fair trial. Estelle v. Williams, 425 U.S. 501, 96 S.Ct. 1691 (1976); Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444 (1968); Chambers v. Mississippi; 410 U.S. 284, 93 S.Ct. 1038 (1973); Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431 (1986). South Carolina's counterpart to the due process clause is found in Article I, §3 of the South Carolina Constitution. This court has likewise recognized the fundamental right to a fair trial. State v. Kennedy, 272 S.C. 231, 250 S.E.2d 338 (1978). What defines the parameters of a fair trial is generally understood to be our rules of evidence and case law precedent.

Rule 402 SCRE provides that "all relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible."(emphasis supplied)

Rule 403, SCRE provides where evidence is relevant it "may still be excluded if its probative value is substantially outweighed by the danger of unfair prejudice..." Unfair prejudice "means an undue tendency to suggest decision on an improper basis..." State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). Appellant's remote 1993 conviction for criminal sexual conduct with a minor in the first degree is not relevant to his current CSC charge except to unduly prejudice the jury in their determination of appellant's guilt.

Evidence of the prior 1993 conviction is also not admissible under Rule 404 (b), SCRE. That rule provides that evidence of other crimes "is not admissible to prove the character of a person in order to show action in conformity therewith." Evidence of a prior crime is limited by State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). In State v. Gore, 283

S.C. 118, 322 S.E.2d 12 (1984) this Court held that convictions are supposed to be based upon the evidence for which one is on trial not prior criminal acts. This Court went on to note that when the previous conviction is strikingly similar to the one a defendant is being tried the danger of prejudice is enhanced.

The special prosecutor noted that the legislature intended to create a repeat offender statute like the burglary statute, S.C. Code § 16-11-311 (A) (2).¹ (5/29/08 ROA p. 14, lines 1-8) She also elected to proceed under subsection (A) (2) when she did not have to so she could get the prior CSC conviction into evidence. (5/29/08 ROA p. 10, lines 6-8). The undeviating intent of §16-3-655 (A) (2) is to do an end run around State v. Lyle and the rules of evidence. This was clearly done to prejudice appellant and deprive him of the right to a fair trial. Because the prior conviction was treated as an element of the offence, the special prosecutor brought it up in her opening statement. (ROA p. 40, lines 10-13) The whole trial started out with the jury knowing appellant had a prior CSC conviction. The legislature should not have the power to legislate away the right to a fair trial. As an alternative it could have used prior CSC crimes to enhance the penalty of a subsequent CSC conviction rather than as an element of proving CSC.²

In Estelle v. McGuire, 502 U.S. 62, 75, 112 S.Ct. 475, 484 (1991) the United States Supreme Court specifically reserved judgment on “whether a state law would violate the

¹ The Court of Appeals upheld the burglary statute in so far as allowing evidence of prior burglaries to prove first degree burglary. The Court of Appeals specifically noted that appellant had not challenged the constitutionality of the statute. State v. Hamilton, 327 S.C. 440, 486 S.E.2d 512, 515 (1998).

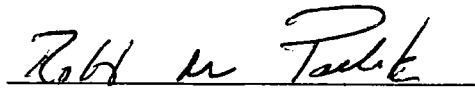
² In United States v. Poore, 594 F.2d 39, 40-43 (4th Cir. 1979) it was held that a defendant’s offer to stipulate to a prior conviction triggers an obligation on the court to eliminate the name and nature of the offense. That could have been done here.

Due Process Clause if it permitted the use of “prior crimes” evidence to show propensity to commit a charged crime.” Our own rules of evidence and state case law already show us that appellant’s trial was not fair and a violation of due process because of the strikingly similar prior CSC conviction.

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robt M Pachak", is written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT.

This 7th day of July, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 7, 2009


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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

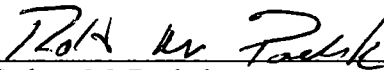
V.

WILLIAM RICKY WELCH,

APPELLANT

CERTIFICATE OF SERVICE

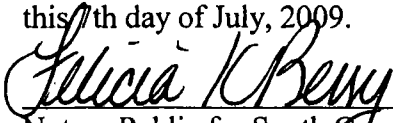
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of July, 2009.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 7th day of July, 2009.



(L.S.)
Notary Public for South Carolina
My Commission Expires August 15, 2010.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Sumter County
Hon. R. Ferrell Cothran, Jr., Circuit Court Judge

The State,

Respondent,

v.

William Ricky Welch,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
ARGUMENT	5
I. The trial court properly allowed the State to proceed under section 16-3-655(A)(2) of the South Carolina Code (Supp. 2007). As in cases involving section 16-11-311(A)(2) of the South. Carolina Code (Supp. 2007), the introduction of Appellant's prior conviction to prove an element of the offense was proper and did not violate either Rule 403 or 404 of the South Carolina Rules of Evidence.	5
CONCLUSION	11

TABLE OF AUTHORITIES

Cases:

<u>Guinyard v. State</u> , 260 S.C. 220, 195 S.E.2d 392 (1973)	6
<u>Spencer v. Texas</u> , 385 U.S. 554, 87 S.Ct. 648, 17 L.Ed.2d 606 (1967)	6
<u>State v. Benton</u> , 338 S.C. 151, 526 S.E.2d 228 (2000)	6, 7
<u>State v. Byram</u> , 326 S.C. 107, 485 S.E.2d 360 (1997)	8
<u>State v. Cheatham</u> , 349 S.C. 101, 561 S.E.2d 618 (Ct. App. 2002)	7-9
<u>State v. Hamilton</u> , 327 S.C. 440, 486 S.E.2d 512 (Ct. App. 1997)	9
<u>State v. Haselden</u> , 353 S.C. 190, 577 S.E.2d 445 (2003)	10
<u>State v. Hornsby</u> , 326 S.C. 121, 484 S.E.2d 869 (1997)	6
<u>State v. James</u> , 355 S.C. 25, 583 S.E.2d 745 (2003)	7
<u>State v. Johnson</u> , 293 S.C. 321, 360 S.E.2d 317 (1987)	6
<u>State v. Kelley</u> , 319 S.C. 173, 460 S.E.2d 368 (1995)	10
<u>State v. Lyle</u> , 125 S.C. 406, 118 S.E.803 (1923)	5, 8
<u>State v. Moore</u> , 357 S.C. 458, 593 S.E.2d 608 (2004)	8
<u>State v. Schumpert</u> , 312 S.C. 502, 435 S.E.2d 859 (1993)	10
<u>State v. Tillman</u> , 304 S.C. 512, 405 S.E.2d 607 (Ct. App. 1991)	8

Other Authorities:

S.C. Code Ann. § 16-11-311 (Supp.2007)	1, 5, 6, 9
S.C. Code Ann. § 16-3-655 (Supp. 2007)	1, 4-9
S.C. Code Ann. § 23-3-430 (Supp. 2007)	6

Rule 403, SCORE	1, 5, 7
Rule 404, SCORE	1,5, 7, 8

STATEMENT OF ISSUES ON APPEAL

The trial court properly allowed the State to proceed under section 16-3-655(A)(2) of the South Carolina Code (Supp. 2007). As in cases involving section 16-11-311(A)(2) of the South Carolina Code (Supp. 2007), the introduction of Appellant's prior conviction to prove an element of the offense was proper and did not violate either Rule 403 or 404 of the South Carolina Rules of Evidence.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

The minor victim, eight years old at the time of the sexual battery, considered Appellant her uncle, though he was actually her aunt's longtime boyfriend. (T.88; 92; R.47; 51). On December 23, 2006, Appellant was invited with other family members to a cookout at the minor victim's house. (T.90-93; R.49-52). Appellant and the minor victim rode off into the woods on a four-wheeler that the minor victim's parents owned. (T.95-96; R.54-55).

While in the woods and away from all the other family members, Appellant reached his hand up the minor victim's skirt and inside her underwear. (T.98-100; 145; R.57-59; 104). He used his finger to digitally penetrate her vagina on more than one occasion. (T.99-100; 142; R.58-59; 101). Appellant then asked her to promise not to tell anyone. The minor victim promised she would not tell. (T.102; R.61).

Upon returning to the house, however, the minor victim told her older cousin. (T.103; 182-183; R. 62; 141-142). The cousin told her mother, who told the minor victim's mother about what had happened. (T.105-106; 184-185; R.64-65; 143-144). After the guests left, the minor victim's mother asked her about what had happened with Appellant. (T.106; R. 65). The minor victim, frightened and not wanting her mother to get mad at Appellant, ultimately told her what Appellant had done to her. (T.106; 155-157; R. 65; 114-116).

The next day, the minor victim was taken to the hospital to be evaluated for possible sexual assault and because she had pain and burning whenever she urinated. (T.107-108; 158-159; R. 66-67; 117-118). Dr. Clanton noted some redness of the vaginal opening, and the child was given ointment to prevent the urine from coming in contact with broken skin

to prevent the burning. (T.294-296; 304-305; 312-313; R. 253-255; 263-264; 271-272). A couple of days later, Kathy Saunders, a registered nurse and pediatric nurse practitioner for the Care House, conducted a forensic child sexual assault examination of the minor victim. (T.322-323; R. 281-282). Ms. Saunders noted healing tissue in portions of the vaginal area of the minor child which were consistent with a penetrating injury. (T.325-327; 333; R.284-286; 292). She further indicated the injury could not be caused by bouncing or riding the four-wheeler because there would be external trauma and not just internal trauma to the vagina. (T.334-335; R.293-294).

Appellant was arrested and indicted on charges of criminal sexual conduct with a minor in the first degree and committing a lewd act upon a minor. (Indictments; R. 429-430). Appellant has a previous conviction for criminal sexual conduct with a minor, so the State elected to proceed under Section 16-3-655(A)(2) of the South Carolina Code (Supp. 2007). (T.358; R.317). The jury found Appellant guilty of both charges, and the trial court sentenced him to a total of twenty years incarceration. (T.519; 528; R.362; 427).

ARGUMENT

- I. The trial court properly allowed the State to proceed under section 16-3-655(A)(2) of the South Carolina Code (Supp. 2007). As in cases involving section 16-11-311(A)(2) of the South Carolina Code (Supp. 2007), the introduction of Appellant's prior conviction to prove an element of the offense was proper and did not violate either Rule 403 or 404 of the South Carolina Rules of Evidence.**

Appellant contends the trial court erred in allowing the State to put forth evidence of Appellant's prior conviction for criminal sexual conduct with a minor. Application of section 16-3-655(A)(2) of the South Carolina Code (Supp. 2007) is analogous to the application of 16-11-311(A)(2) of the South Carolina Code (Supp. 2007), which has been expressly approved on numerous occasions by both this Court and the South Carolina Supreme Court. Allowing Appellant's prior conviction into evidence in order to prove an element of the crime of criminal sexual conduct (CSC) with a minor in the first degree does not violate Rules 403 or 404, SCRE, nor does it violate the tenets of State v. Lyle, 125 S.C. 406, 118 S.E.803 (1923).

Section 16-3-655(A) provides:

A person is guilty of criminal sexual conduct with a minor in the first degree if:

- (1) the actor engages in sexual battery with a victim who is less than eleven years of age; or
- (2) the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23-3-430(C) or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430(D).

Section 16-3-655(A)(2) is clearly intended by the legislature as a means of deterring possible repeat offenders. The United States Supreme Court and the South Carolina Supreme Court have upheld analogous statutes, finding deterrence of repeat offenders is a valid state purpose which survives scrutiny and does not violate due process. See Spencer v. Texas, 385 U.S. 554, 87 S.Ct. 648, 17 L.Ed.2d 606 (1967) (upholding several Texas habitual offender statutes); State v. Benton, 338 S.C. 151, 154-155, 526 S.E.2d 228, 230 (2000) (upholding recidivist burglary statute in section 16-11-311(A)(2)).

“The Legislature has the power, within constitutional limits, to define and punish crimes.” Guinyard v. State, 260 S.C. 220, 226, 195 S.E.2d 392, 395 (1973). The Legislature has chosen to punish recidivist criminal activity by allowing a prior record of a sex offense under section 23-3-430(C) of the South Carolina Code (Supp. 2007) to constitute one element of CSC with a minor in the first degree. Accordingly, the statute is constitutional and does not offend Appellant’s due process rights.

Further, the probative value of Appellant’s prior conviction for CSC with a minor in the first degree is not outweighed by its prejudicial effect. “[D]ue process does not bar the admission of prior crimes simply because there is an accompanying prejudicial effect.” Benton, 338 S.C. at 155, 526 S.E.2d at 230 (citing Spencer, 385 U.S. 554; State v. Hornsby, 326 S.C. 121, 484 S.E.2d 869 (1997)). Additionally, the Supreme Court noted “evidence of other crimes is admissible to establish a material fact or element of the crime charged.” Id. (citing State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987)). For the purpose of establishing one of the elements of first degree burglary, the Supreme Court in Benton found

“the probative value of admitting the defendant’s prior burglary and/or housebreaking convictions is not outweighed by its prejudicial effect.” Id.

The South Carolina Supreme Court has not eliminated the requirement that admission of the prior crimes be more probative than prejudicial under the traditional Rule 403, SCRE, analysis. See State v. James, 355 S.C. 25, 34, 583 S.E.2d 745, 749-50 (2003). James, however, is clearly distinguishable from the case at hand due to the number of prior crimes admitted in James. In that case, the trial court admitted evidence of seven crimes when two was all that was necessary to establish the required prior conviction element of first degree burglary. This case is much more analogous to Benton, in that the State only elicited evidence of the minimum number of prior convictions necessary to establish the recidivist element of CSC with a minor in the first degree found in section 16-3-655(A)(2).

Further, the State limited the presented evidence to a recitation of the fact Appellant was convicted in 1993 for criminal solicitation of a minor in the first degree. (T.358; R.317). The State did not elicit any of the underlying facts of the offense. Thus, the admission of Appellant’s prior CSC with a minor conviction as an element of CSC with a minor in the first degree does not constitute unfair prejudice in this case. The trial court properly found the evidence should not be excluded under Rule 403, SCRE.

In addition, the trial court properly refused to exclude the evidence under Lyle or Rule 404(b), SCRE. “[W]hile generally inadmissible, propensity evidence is not prohibited. Propensity evidence is admissible if offered for some purpose other than to show the accused is a bad person or he acted in conformity with his prior convictions.” Benton, 338 S.C. at 156, 526 S.E.2d at 230 (citing Rule 404, SCRE). In State v. Cheatham, this Court also

addressed the issue of whether evidence of prior convictions used to prove an element of a crime should be excluded pursuant to Lyle or Rule 404. This Court found evidence of a prior conviction, when used to satisfy the element of a crime, was not being admitted pursuant to an exception established in Lyle, but was instead being offered “solely to prove an element of the crime for which he was charged.” State v. Cheatham, 349 S.C. 101, 108, 561 S.E.2d 618, 622 (Ct. App. 2002), *cert. denied*, (Oct. 23, 2002). This Court continued: “Evidence which is logically relevant to a material element of the offense charged should not be excluded merely because it may also show guilt of another crime.” Id. (citing State v. Tillman, 304 S.C. 512, 518, 405 S.E.2d 607, 611 (Ct. App. 1991), *cert. denied*, (Sept. 5, 1991)).

The evidence in this case of Appellant’s prior conviction for CSC with a minor in the first degree was not being admitted to show propensity to commit the crime. It was being admitted solely for the reason of establishing an element of the crime for which he was charged. Accordingly, the trial court properly refused to exclude the relevant evidence under either Rule 404 or Lyle.

Additionally, Appellant seems to argue the trial court should have required the State to proceed under section 16-3-655(A)(1) to prove Appellant was guilty of CSC with a minor in the first degree. This issue is not properly preserved because the argument was not made at trial. See State v. Moore, 357 S.C. 458, 593 S.E.2d 608 (2004) (to be preserved for appeal, issue must be raised to and ruled on by trial court); State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997) (party cannot argue one ground below and then argue different ground on appeal).

Further, this Court addressed a similar argument in Cheatham related to whether the State should have been required to proceed under section 16-11-311(A)(3) of the South Carolina Code because the burglary occurred in the nighttime. This Court found the trial court did not err in allowing the State to proceed under the first degree burglary statute requiring proof of two or more prior convictions. This Court concluded the State bore the burden of proof of each and every element of the offense for which the defendant is charged, and the State should not be required to accept the defendant's stipulation to an element of the crime. Cheatham, 349 S.C. at 110, 561 S.E.2d at 623.

In the instant case, the State was not required to proceed under section 16-3-655(A)(1) just because the minor victim was under the age of eleven. The State elected to proceed under section 16-3-655(A)(2), which required proof of the prior conviction. The trial court properly allowed the State to proceed under section 16-3-655(A)(2) because Appellant's offense met the elements delineated in that section. Further, the State was properly not required to accept any stipulation by Appellant regarding his prior conviction or the age of the minor victim. See State v. Hamilton, 327 S.C. 440, 486 S.E.2d 512 (Ct. App. 1997). Accordingly, the trial court properly allowed the State to proceed under section 16-3-655(A)(2) and properly admitted evidence of Appellant's 1993 conviction for CSC with a minor in the first degree solely to prove a required element under the statute.

Finally, Appellant cannot demonstrate how he was prejudiced by reference to his prior conviction. Appellant's counsel brought out his prior record in cross-examination of the victim's mother. (T.170-171; R.170-171). He also did not object when on redirect of the victim's mother, the State asked: "Now Mr. Finney was asking you about whether you

knew [Appellant] was a convicted sex offender, . . . , but did you have knowledge that he had actually been convicted of a sex offense . . . against a minor?” (T.175; R. 134). The colloquy continued with the victim’s mother indicating she was told about his conviction by law enforcement and then she went to a website to look it up. (T.175; R. 134). Appellant never objected during this line of questioning about his prior record.

Appellant’s counsel also asked Appellant about his prior record and whether he told the minor victim’s family about his record. (T.412-414; R. 355-357). On cross-examination, Appellant was asked without objection whether he had ever made the minor victim’s parents aware that he had been convicted of CSC with a minor. (T.436-437; R.379-380). Not only did Appellant raise the issue of his prior conviction, but there are several instances in the Record on Appeal where he failed to object to testimony regarding his prior conviction for CSC with a minor in the first degree. (T.453-455; 459; R.394-396; 400). As a result, Appellant cannot complain of any prejudice from the conviction’s admission into evidence and any error would be entirely harmless. See State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003) (finding the admission of improper evidence is harmless where the evidence is merely cumulative to other evidence); State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995) (noting that when guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached, this Court will not set aside conviction for insubstantial errors not affecting result); State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) (explaining that any error in admission of evidence cumulative to other unobjected-to evidence is harmless). Therefore, the trial court did not commit reversible error in admitting evidence of Appellant’s prior conviction for CSC with a minor in the first degree.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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June 8, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Sumter County
Hon. R. Ferrell Cothran, Jr., Circuit Court Judge

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Respondent,

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William Ricky Welch,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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June 8, 2009

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The State,

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Appellant.

PROOF OF SERVICE

I, ELLEN DuBOIS, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
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