

STATE OF SOUTH CAROLINA ANDERS RESPONSE BRIEF

In The Court of Appeals

No Respondent's Brief Filed

APPEAL FROM KERSHAW COUNTY

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEORGE BRANHAM,

APPELLANT

Appellate Case No. 2011-203389

RECORD ON APPEAL

BREEN RICHARD STEVENS
Appellate Defender

ALAN WILSON
Attorney General

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

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorney for Appellant

Attorneys for Respondent

RECEIVED

OCT 26 2012

SC Court of Appeals

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
VERDICT	472
SENTENCING	488
INDICTMENT AND SENTENCE SHEET	490
MOTION FOR NEW TRIAL	493
MOTION FOR RECONSIDERATION	497
ORDER DENYING DEFENDANT'S MOTION FOR A NEW TRIAL	499
ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION	500
CERTIFICATE OF COUNSEL	501

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

COURT OF GENERAL SESSIONS
2010-GS-28-00448

STATE OF SOUTH CAROLINA :
:
-vs- :
:
GEORGE STANLEY BRANHAM, II:

TRANSCRIPT OF RECORD

AUGUST 22 - 25, 2011
CAMDEN, SOUTH CAROLINA

B E F O R E:

HONORABLE CLIFTON NEWMAN, JUDGE, AND A JURY.

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

RON MOAK, ASSISTANT SOLICITOR
DEBRA BARRY, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

JASON KIRINCICH, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

1		<u>I N D E X</u>			
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	Alma Dent (In camera)				
4	Ms. Barry	29		39	
5	Mr. Kirincich		34		43
6	Debbie Elliott (In camera)				
7	Ms. Barry	46/51		66	
8	Mr. Kirincich		48/63		67
9	Debra Scott (In camera)				
10	Ms. Barry	68			
11	Michael Lyons (In camera)				
12	Mr. Moak	89		95	
13	Mr. Kirincich		91		
14	Opening statements				
15	Mr. Moak	106			
16	Mr. Kirincich	113			
17	Jessica Scott				
18	Mr. Moak	120		159	
19	Mr. Kirincich		142		165
20	Child				
21	Ms. Barry	167		182	
22	Mr. Kirincich		175		
23	Jessica Scott (In camera)				
24	Mr. Kirincich		185		
25	Mr. Moak			188	

	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
2	Dr. Foy Connell				
3	Mr. Moak	192		213	
4	Mr. Kirincich		202		217
5	Debbie Elliott				
6	Ms. Barry	218		254	
7	Mr. Kirincich		242		
8	Rebecca Scheffer				
9	Mr. Moak	260		281	
10	Mr. Kirincich		276		
11	Amanda Webb				
12	Mr. Moak	282			
13	Mr. Kirincich		287		
14	Michael Lyons				
15	Mr. Moak	288			
16	Mr. Kirincich		296		
17	Dr. Kathy Saunders				
18	Ms. Barry	304		336	
19	Mr. Kirincich		330		342
20	Dr. Kathy Saunders (In camera)				
21	Mr. Kirincich	347			
22	George Stanley Branham, II				
23	Mr. Kirincich	365		399	
24	Ms. Barry		388		401
25					

1	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
2	George Stanley Branham, Sr.				
3	Mr. Kirincich	406			
4	Mr. Moak		411		
5	Closing Arguments				
6	Mr. Moak		418		
7	Mr. Kirincich		434		
8	Ms. Barry		448		
9	Charge of the Court		455		
10	Verdict of the Jury		472		
11	Sentence of the Court		488		
12	Certificate of Court Reporter		489		
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

1	<u>E X H I B I T S</u>		
2	NO.	ID.	IN EV.
3	S-1 Photo	42	
4	S-2 Photo	42	
5	S-3 Photo	42	
6	S-4 Photo	42	
7	S-5 C.D.	61	119/236
8			237
9	S-6 C.D. of 911 Call	116	129
10	S-7 Small photo		118/133
11	S-8 Lexington Medical Center Medication		
12	Reconciliation	160	
13	S-9 Sexual Assault Examination Protocol,		
14	SLED, 4 pages	190	264
15	S-10 Picture of female body	190	233
16	S-11 Picture of male body	190	233
17	S-12 Emergency Room Records	190	191
18	S-13 SLED Lab Report	281	286
19	S-14 SLED Evidence Bag		285
20	S-15 Small color photo	321	321
21	S-16 Small color photo	321	321
22	C-1 Note from jury	468	
23	C-2 Note from jury	471	
24			
25			

1 (Monday, August 22, 2011.)

2 THE COURT: Ladies and gentlemen, welcome back. The
3 state, if you will call your case please.

4 MR. MOAK: Your Honor, at this time the state calls
5 the State of South Carolina versus George Branham,
6 indictment no. 2010-GS-28-448. The indictment is for
7 criminal sexual conduct with a minor first degree.

8 THE COURT: All right. Ladies and gentlemen, the
9 state has called for trial the case of The State versus
10 George Stanley Branham, II. This case comes in to court as
11 a result of an indictment returned by the grand jury of
12 Kershaw County, charging Mr. Branham with the offense of
13 criminal sexual conduct with a minor first degree.

14 He has pled not guilty to this charge. He is presumed
15 to be not guilty of this charge. He cannot be found guilty
16 of this charge unless the state presents evidence which
17 convinces a jury of his guilt beyond a reasonable doubt.
18 And that is the purpose of a trial.

19 Mr. George Stanley Branham, II, if you will stand
20 please and face the jury panel along with counsel.

21 (Complied.)

22 THE COURT: Counsel, if you will introduce yourself to
23 the jury panel.

24 MR. KIRINCICH: My name is Jason Kirincich. I
25 represent George Branham.

1 THE COURT: All right. Thank you very much. And the
2 state is represented by counsel as well. Counsel, if you
3 will introduce yourself to the jury as well -- for the
4 state.

5 MR. MOAK: My name is Ron Moak, assistant solicitor
6 for Kershaw County Solicitor's Office. My co-counsel is
7 Debra Barry. She's outside of the courtroom. She will be
8 in here in a few minutes. But I will be prosecuting this
9 case.

10 THE COURT: Is any member of the jury panel related by
11 blood or connected by marriage with Mr. Moak or anyone in
12 the fifth circuit solicitor's office or Mr. Kirincich or if
13 you know the defendant, Mr. Branham, or if you are a
14 friend, relative, or associate of his -- as it relates to
15 all of those questions or any of those questions, please
16 stand.

17 Yes, ma'am, tell us who are please.

18 JUROR: Sherry Fosky. I went to high school with him
19 and I know him -- I don't know him as George. I know him
20 as a nickname.

21 THE COURT: All right. And, ma'am, would that fact
22 affect your ability to be a fair and impartial juror?

23 JUROR: No, sir, it don't.

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

25 MR. KIRINCICH: Your Honor, for clarification, he may

1 be better known as Bubba Branham.

2 THE COURT: All right. Also known as Bubba Branham,
3 the defendant. If you know him, please stand.

4 (No response.)

5 THE COURT: All right. Ladies and gentlemen, the
6 incidents alleged in this indictment alleged to have
7 occurred on or between the dates of November 1, 2009 and
8 December 8, 2009. In what area of this county, Mr.
9 Solicitor?

10 MR. MOAK: [REDACTED] Road, Elgin, South Carolina.

11 THE COURT: [REDACTED] Road, Elgin, South Carolina.

12 Additionally, ladies and gentlemen -- additionally,
13 there has been some media coverage concerning this case,
14 both at the time of the alleged incident and subsequent to
15 it, including most recently this past weekend. Does any
16 member of the jury panel remember reading, hearing, or
17 seeing any such media coverage concerning this case or if
18 you know or have heard anything concerning this case,
19 please stand.

20 All right. As to each juror who has stood, if you
21 will come forward please.

22 Ladies and gentlemen, I want to say to you in
23 connection with any question that you are asked during the
24 juror qualifications process, under your oath as jurors
25 it's not optional for you to stand or not stand or respond

1 or not respond. If any question applies to you, you must
2 stand. You must respond. And you must do so at this time.
3 It's totally improper for any juror to wait until you are
4 selected on a case and says, oh, yeah, I know something or
5 I heard something about this case.

6 The process of jury selection is a process in which
7 The Court, state, and the defense -- we're all entitled to
8 know the truthful responses to each and every question that
9 you're being asked.

10 So if you have heard anything about this case, seen
11 anything about this case, or read anything about this case,
12 please come forward at this time so that we can discuss it.

13 BAILIFF: No. 64.

14 (The Court, counsel, and juror confer at the bench in
15 the presence of the jury panel, but out of the hearing of
16 the jury panel.)

17 BAILIFF: 137.

18 (The Court, counsel, and juror confer at the bench in
19 the presence of the jury panel, but out of the hearing of
20 the jury panel.)

21 THE COURT: Ms. Outen will not serve in this case.

22 BAILIFF: 83.

23 (The Court, counsel, and juror confer at the bench in
24 the presence of the jury panel, but out of the hearing of
25 the jury panel.)

1 BAILIFF: 128.

2 (The Court, counsel, and juror confer at the bench in
3 the presence of the jury panel, but out of the hearing of
4 the jury panel.)

5 BAILIFF: 132.

6 (The Court, counsel, and juror confer at the bench in
7 the presence of the jury panel, but out of the hearing of
8 the jury panel.)

9 (A bench conference was held between The Court and
10 counsel in the presence of the jury panel, out of the
11 hearing of the jury panel.)

12 THE COURT: All right.

13 BAILIFF: 139.

14 (The Court, counsel, and juror confer at the bench in
15 the presence of the jury panel, but out of the hearing of
16 the jury panel.)

17 (A bench conference was held between The Court and
18 counsel in the presence of the jury panel, out of the
19 hearing of the jury panel.)

20 THE COURT: Ladies and gentlemen of the jury panel,
21 has any member of the jury panel, any juror, been accused
22 of or charged with child neglect, unlawful conduct towards
23 a child, contributing to the delinquency of a minor,
24 criminal sexual conduct with a minor, disseminating obscene
25 materials to a minor, or sexual exploitation of a minor?

1 If any juror has been accused of or charged with any of
2 those offense, please stand.

3 (No response.)

4 THE COURT: If any juror has been a victim or have had
5 a child who has been a victim of any of those offenses,
6 please stand.

7 (No response.)

8 THE COURT: There's no one standing.

9 Does any juror have a family member or close, personal
10 friend or acquaintance who has been accused or charged with
11 child neglect, unlawful conduct towards a child,
12 contributing to the delinquency of a minor, criminal sexual
13 conduct toward a minor, disseminating of obscene materials
14 to a minor, or sexual exploitation of a minor? If you have
15 any close friends or acquaintances who have been accused of
16 any such crime, please stand.

17 Tell us your juror number please?

18 JUROR: 197.

19 THE COURT: And generally what are the general
20 circumstances?

21 JUROR: There is a nephew that I have never even met
22 that is in jail right now for child molestation.

23 THE COURT: And would that fact affect your ability to
24 be a fair and impartial juror?

25 JUROR: No, sir.

1 THE COURT: Thank you for bringing that to our
2 attention.

3 Yes, sir.

4 JUROR: No. 23. My brother-in-law -- my sister's
5 husband, was accused of criminal sexual conduct.

6 THE COURT: And would that fact affect your ability to
7 be fair and impartial?

8 JUROR: No, sir.

9 THE COURT: Thank you, sir.

10 And next to him, yes, ma'am.

11 JUROR: No. 3. My brother-in-law is in prison right
12 now.

13 THE COURT: And would that fact affect your ability to
14 be fair and impartial?

15 JUROR: Yes, sir.

16 THE COURT: All right. Juror no. 3 will not be
17 considered for selection. Thank you, ma'am.

18 Yes, ma'am.

19 JUROR: 17.

20 THE COURT: Ms. 17. Yes, ma'am.

21 JUROR: A friend of mine was accused but nothing ever
22 happened to it.

23 THE COURT: Would that fact affect your ability to be
24 fair and impartial?

25 JUROR: No.

1 THE COURT: All right. Thank you.

2 And no. 139, I believe you will not in the jury pool,
3 so we don't need to hear from you again. No, sir.

4 Yes.

5 JUROR: 108.

6 THE COURT: 108. Yes, ma'am.

7 JUROR: I have an acquaintance that was accused, I
8 think it was last year.

9 THE COURT: And would that fact affect your ability to
10 be fair and impartial?

11 JUROR: No, sir.

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

13 Has any juror been the victim -- and I think I've
14 asked that question already. If you have a close, personal
15 friend, a family member, or acquaintance who has been a
16 victim and you have not already responded, please stand.

17 Yes, sir.

18 JUROR: 122. My God-daughter was sexually molested
19 about 4 years ago.

20 THE COURT: And would that fact affect your ability to
21 be fair and impartial?

22 JUROR: Yes, sir.

23 THE COURT: It would. It would affect your ability to
24 be fair and impartial?

25 JUROR: Yes, sir.

1 THE COURT: All right. No. 122 will not be
2 considered. Thank you very much.

3 Yes, sir.

4 JUROR: Juror no. 2.

5 THE COURT: No. 2.

6 JUROR: My sister when she was a teenager was molested
7 as a child.

8 THE COURT: And would that fact affect your ability to
9 be fair and impartial in this case?

10 JUROR: Yes, sir.

11 THE COURT: All right. Juror no. 2 will not be
12 considered.

13 Yes, ma'am.

14 JUROR: 164. My cousin accused her father of
15 molesting her when they were kids.

16 THE COURT: And would that fact affect your ability to
17 be fair and impartial in this case?

18 JUROR: No, sir.

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

20 Yes, ma'am.

21 JUROR: 89. My cousin was molested by her step-
22 father.

23 THE COURT: And would that fact affect your ability to
24 be fair and impartial in this case?

25 JUROR: No.

1 THE COURT: Thank you, ma'am.

2 Yes, sir.

3 JUROR: 127. There was a boy that was employed with
4 us that was sentenced for child molestation.

5 THE COURT: And would that fact affect your ability to
6 fair and impartial in this case?

7 JUROR: No.

8 THE COURT: All right. Thank you for bringing that to
9 our attention.

10 Has any juror been the victim of a violent crime? And
11 a violent crime is generally classified in the law as being
12 an assault with intent to kill or high and aggravated
13 nature, a burglary, a robbery, or criminal sexual conduct
14 or kidnaping. If any juror has been a victim of any of
15 those -- of a violent crime or if you have a family member
16 or a close, personal friend who has been a victim of a
17 violent crime, please stand.

18 Yes, ma'am.

19 JUROR: Juror no. 98. I was a victim of criminal
20 domestic violence of a high and aggravated nature about 9
21 years ago.

22 THE COURT: And would that fact affect your ability to
23 be fair and impartial in this case?

24 JUROR: It may. Yes, sir.

25 THE COURT: All right. Thank you for bringing that to

1 our attention. Anyone else?

2 (No response.)

3 THE COURT: No one else has stood.

4 If any juror has been accused of committing a violent
5 crime or if you have a close friend or a close, personal
6 acquaintance who has been accused of committing a violent
7 crime, please stand.

8 (No response.)

9 THE COURT: No one is standing.

10 Yes, sir.

11 JUROR: Juror no. 173. My daughter was assaulted by
12 her then husband, and he was convicted of criminal domestic
13 violence.

14 THE COURT: And would that fact affect your ability to
15 be fair and impartial in this case?

16 JUROR: No, Your Honor.

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

18 Anyone else? Yes, ma'am.

19 JUROR: No. 89. My daughter was assaulted by her
20 husband recently.

21 THE COURT: And ---

22 JUROR: She's separated right now.

23 THE COURT: And would that fact affect your ability to
24 be fair and impartial in this case?

25 JUROR: No.

1 THE COURT: All right.. Thank you.

2 Yes, sir.

3 JUROR: Go back to a previous incident. I have 2
4 nephews who live in New York City ---

5 THE COURT: Your juror number?

6 JUROR: 35.

7 THE COURT: 35. Would that fact affect your ability
8 to be fair and impartial in this case?

9 JUROR: It might.

10 THE COURT: All right. Would you be able to decide
11 this case based on the evidence in this case and the law
12 that applies to this case?

13 JUROR: I'd try my best.

14 THE COURT: Sir, if you were to serve as a juror in
15 this case, would you give both the state and the defense a
16 fair and impartial trial and decide this case based on the
17 evidence related to this case and this case only?

18 JUROR: Yes.

19 THE COURT: All right. Juror no. 35 is qualified.

20 Ladies and gentlemen, the following people may testify
21 in this case as witnesses. And if you are here, I would
22 like for you to stand so the jury can see you.

23 Dr. Foy Connell or Connell, C-o-n-n-e-l-l of the
24 Kershaw County Medical Center.

25 Rebecca Sheffer, a registered nurse there.

1 Alma Dent.
2 Debbie Elliott, Cathy Saunders. They're from a place
3 called Carehouse.
4 Jessica Scott.
5 Child [REDACTED] Standing there in the black.
6 Deputy Lyons. I don't know the first name.
7 MR. MOAK: Michael, Your Honor.
8 THE COURT: Deputy Michael Lyons.
9 Bonnie Shiah, S-h-i-a-h.
10 Debra Scott. Standing there.
11 Debbie McCurdy.
12 Debbie Goodwin.
13 Amanda Webb at SLED.
14 Linda Kirkland at Sandhills Intermediate School.
15 Rebecca Branham.
16 Rachael Eddings.
17 And George Branham, Sr. Right here.
18 All right. Thank you all.
19 If any member of the jury panel is a friend, a
20 relative, or associate of any of the prospective witnesses
21 in this case, please stand. Friend, relative,
22 acquaintance, associate of any of the prospective
23 witnesses, please stand.
24 Yes, ma'am.
25 JUROR: Dr. Foy Connell is the bishop of our church.

1 THE COURT: All right. And you are juror number?

2 JUROR: 64.

3 THE COURT: I think we've agreed that juror 64 will
4 not serve.

5 MR. MOAK: Yes, Your Honor.

6 THE COURT: All right. Thank you very much. Stay
7 with us, however.

8 Yes.

9 JUROR: 146. I write the insurance for Mr. Connell.

10 THE COURT: And the fact that he might be a witness in
11 this case, would that fact affect your ability to be fair
12 and impartial?

13 JUROR: Yes, sir.

14 THE COURT: All right.

15 Next to you. Yes, sir.

16 JUROR: Juror no. 8. I'm an acquaintance to one of
17 the witnesses.

18 THE COURT: You're an acquaintance of which witness?

19 JUROR: Debra Scott.

20 THE COURT: Would that fact affect your ability to be
21 fair and impartial?

22 JUROR: No, sir.

23 THE COURT: Thank you.

24 Yes, ma'am.

25 JUROR: Juror 48. We are acquaintances with Deputy

1 Lyons.

2 THE COURT: And would that fact affect your ability to
3 be fair and impartial?

4 JUROR: No, Your Honor.

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

6 MR. KIRINCICH: Your Honor, we discussed no. 48.
7 earlier. I think we agreed ---

8 THE COURT: All right. Juror no. 148 will not be
9 considered -- 48. No. 48. And also 146 will not be
10 considered.

11 Ladies and gentlemen, as I stated to you at the
12 outset, the defendant has been indicted by the grand jury
13 of this county and accused of the criminal offense of
14 criminal sexual conduct with a minor. He is presumed to be
15 not guilty of this charge. The burden is on the state to
16 prove the defendant guilty.

17 Should the state fail to present evidence which
18 convinces a jury of his guilt beyond a reasonable doubt,
19 the law requires the jury to find him not guilty.

20 If there is any juror who cannot follow that
21 requirement of the law, please stand. If there's any juror
22 who would not find the defendant not guilty should the
23 state fail to prove guilt beyond a reasonable doubt.
24 Please stand.

25 (No response.)

1 THE COURT: If there is any juror who has determined
2 at this point in time the guilt or innocence of this
3 defendant, if you formed an opinion at this moment in time
4 concerning the guilt or the innocence of the defendant,
5 please stand.

6 (No response.)

7 THE COURT: If you know of any reason why you should
8 not be selected to be a juror in this case, please stand.

9 (No response.)

10 THE COURT: Ladies and gentlemen, we went through a
11 number of questions. Some of them I might have asked so
12 quickly that you might have hesitated to stand and the next
13 thing I've moved on to the next question. Reflecting back,
14 if you did not respond to any question that you think that
15 your oath requires you to respond to, please stand at this
16 time and give me those responses.

17 (No response.)

18 THE COURT: Any additional voir dire questions
19 proposed by the state or the defense?

20 MR. MOAK: Not from the state, Your Honor.

21 MR. KIRINCICH: No, Your Honor.

22 THE COURT: All right. Ladies and gentlemen, we will
23 proceed with jury selection. Strikes are 5 and 10. Please
24 give the clerk your attention.

25 All right. Ladies and gentlemen, the manner in which

1 juries are selected is that the computer will randomly
2 select 35 names out of those who are qualified. And the
3 clerk will call the names of each juror as they are
4 selected by the computer.

5 The state will have an opportunity to present the
6 juror or excuse the juror.

7 Then the defense will have the opportunity to seat the
8 juror or to excuse the juror.

9 And we will go through that process until we have
10 selected 14 of you to serve as the jury in the trial of
11 this case.

12 It is anticipated that this case will likely take most
13 of this week to try.

14 (Pause.)

15 (The jury was selected and empaneled at 12:52 p.m.)

16 THE COURT: Are there any matters of law regarding the
17 jury selection?

18 MR. MOAK: Not from the state, Your Honor.

19 MR. KIRINCICH: Nothing from the defense, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, you have
21 been selected to be the jury in the trial of this case.

22 I'm going to have you to follow the bailiffs to the jury
23 room for a few minutes while I talk with the lawyers and
24 the rest of the jury panel, and we'll have you come back
25 real soon. Please do not discuss this case while you're in

1 the jury room.

2 (The jury retires to the jury room at 12:53 p.m.)

3 (The jury panel was excused.)

4 THE COURT: My plan is to do pretrial matters this
5 afternoon and start with the jury at 9:30 tomorrow morning;
6 is that right?

7 MR. MOAK: Yes, Your Honor. We kind of anticipated.
8 So we agree.

9 THE COURT: Is that right, Mr. Kirincich?

10 MR. KIRINCICH: Yes, Your Honor.

11 THE COURT: All right. If we can have the jury panel
12 come back in.

13 (The jury returns to the courtroom at 12:58 p.m.)

14 THE COURT: All right. Ladies and gentlemen, you have
15 been selected to be the jury in the trial of this case. We
16 have some preliminary matters that we have to deal with
17 that will take us the rest of the afternoon. So we will
18 not need you all until 9:30 tomorrow morning.

19 It's important that you understand that once you are
20 selected on a jury, that you must decide the case solely
21 based on the evidence presented in the courtroom, from this
22 witness stand, along with exhibits that may be offered into
23 evidence. And you will find the facts based on the
24 evidence that's offered. And you will apply the law as I
25 will give it to you to apply to the facts as you find the

1 facts to be.

2 In order for that process -- this process to work as
3 it is designed to work, it is especially important that you
4 understand that you're not to consider anything other than
5 what you learn about the case in the courtroom; that means
6 that you're not to engage in any form of independent
7 research through Google and Facebook and other websites to
8 try to find out any additional information about the case.

9 It's also important that the people who decide the
10 case be the ones who have heard the same evidence. That
11 means that you're not to leave the courtroom and discuss
12 the case with people who are not on the jury, because you
13 must decide the case based on what you hear in the
14 courtroom and deliberate and decide it with the same people
15 who heard the same thing as you have heard. And that is
16 not someone else who is not on the jury.

17 So it would be a violation of your oath as a juror to,
18 number one, expose yourself to other information through
19 the media, social networking, or other means. Also, it
20 would be improper for you to discuss the case with anyone
21 not connected with this case.

22 And we take that a step further, and that is that
23 you're not to discuss the case with each other until you
24 have heard the entire case, after you have sat quietly
25 throughout the trial, absorbed everything that you are to

1 consider. Then after hearing the entire case and hearing
2 the law and the arguments of the lawyers, then you discuss
3 the case amongst each other; that's called jury
4 deliberations. Then reach a verdict, which is a true and
5 just verdict according to the law and according to the
6 evidence. And that will be consistent with the oath that
7 you took -- or the oath that you will take.

8 So I trust that each of you will follow those
9 instructions. I look forward to working with you all on
10 this case. We look forward to seeing you all tomorrow
11 morning at 9:30. Have a good day.

12 When you come back, let's see, now. From this point
13 forward you're to not come through the courtroom or into
14 the courtroom. What is the direction, Ms. McDonald?

15 CLERK: Come down the right hall.

16 THE COURT: They come through the same doors as they
17 came in this morning?

18 CLERK: Yes, sir.

19 THE COURT: Turn to the right, come to the right
20 hallway, directly into the jury room. We'll see you all
21 tomorrow morning.

22 (The jury exits the courtroom at 1:03 p.m.)

23 THE COURT: All right. I plan to break for lunch
24 until 2:30. Is there anything before we break for
25 lunch?

1 MR. KIRINCICH: No, Your Honor, just as long as we
2 can have our motions heard after lunch, I'm okay.

3 THE COURT: All right. We'll see you all at 2:30.

4 (Court is in recess for lunch.)

5 MR. MOAK: Actually, our witness situation right now,
6 if you wouldn't mind, I would like to go -- I guess have
7 the Lyle hearing first, because our witness -- let's just
8 say -- is being highly emotional right now. It would
9 probably be best to get her done sooner than later; that's
10 the wife of the defendant.

11 THE COURT: All right.

12 MR. KIRINCICH: Your Honor, I have 3 motions that
13 aren't going to require a witness. Mr. Moak is aware of
14 them. One is sequester the witnesses, which I think he's
15 already taken care of that from his side.

16 Your Honor, this is Ms. Elliott from the Carehouse. I
17 don't care if she sits in here when Ms. Branham testifies.
18 They're not in any way related.

19 I'd ask for the criminal records for all the witnesses
20 that are going to be testifying for the state. Mr. Moak is
21 in the process of giving me that.

22 Your Honor, there is also a request for a continuing
23 discovery. I notice that there are pictures that are in
24 the possession of Dr. Saunders at the Carehouse. I've
25 asked Mr. Moak about those pictures. He says that they

1 have attempted to obtain those pictures as well.

2 I think it is very important that both the state and
3 the defense have an opportunity to review those pictures
4 before Ms. Saunders testifies.

5 MR. MOAK: And I think that's on Wednesday morning.

6 MR. KIRINCICH: Your Honor, those pictures she took
7 when she did the physical exam of the victim in this case.
8 So we would ask for those.

9 THE COURT: All right.

10 MR. MOAK: And we've requested them repeatedly, just
11 haven't gotten them yet. I think we have Ms. Elliott
12 checking on them again today. We asked her if she knew
13 what the status of that was.

14 THE COURT: Pictures taken at the time of the
15 interview of the child 2 or 3 years ago?

16 MR. MOAK: Your Honor, I think they're pictures of her
17 vagina, which I'm not sure they would be admissible any
18 way.

19 MR. KIRINCICH: Your Honor, our purpose is not to
20 introduce these to the jury. There are certain things in
21 Ms. Saunders' report that could be contradictory. I think
22 they may be cleared up if we had an opportunity to view the
23 pictures beforehand, or at least give me a better idea of
24 how to question this doctor.

25 THE COURT: All right. Is she -- this is not a

1 witness who will testify today?

2 MR. MOAK: She is going to be here Wednesday.

3 THE COURT: All right.

4 MR. MOAK: This is the physical examination that was
5 done after the forensic interview. I mean, this is not a
6 hearsay-type situation. It's not a -- I mean ---

7 THE COURT: Anything else?

8 MR. KIRINCICH: Your Honor, those are the only things
9 I see besides the motions that either Mr. Moak or myself
10 have filed to be heard before Your Honor.

11 THE COURT: Well, all lay witnesses will be
12 sequestered.

13 MR. KIRINCICH: Thank you.

14 MR. MOAK: Your Honor, I would like to have ---

15 (Pause.)

16 MS. BARRY: Judge, our witness had to use the rest
17 room. If we could have a moment, she will be in here.

18 THE COURT: Okay.

19 MS. BARRY: Thank you.

20 MR. MOAK: Your Honor, may we approach?

21 (A bench conference was held off the record.)

22 THE COURT: Call your witness.

23 MS. BARRY: The state calls Alma Dent.

24 ALMA DENT, being first duly
25 sworn, testified as follows:

Ms. Dent - Direct by Ms. Barry

29

1 DIRECT EXAMINATION BY MS. BARRY:

2 Q Ms. Dent, how old are you?

3 A 30.

4 Q Are you married?

5 A Legally, yes.

6 Q Who are you married to?

7 A George Branham.

8 Q Do you see Mr. Branham in the courtroom today?

9 A Yes, I do.

10 Q Will you point him out for the judge?

11 (Complied.)

12 Q How long were you and Mr. Branham married?

13 A We lived together married for 3 years.. I left him in
14 2006.

15 Q So you married him in 2003?

16 A Yes, ma'am.

17 Q You lived with him for 3 years?

18 A (Nods head.)

19 Q Where did you live at that time?

20 A [REDACTED] Street.

21 Q And where is that?

22 A In Camden.

23 Q When you lived on [REDACTED] Street in Camden, who lived
24 with you?

25 A Just me and him, his -- his sister and her son stayed

1 there for a while, and his father was there briefly, but it
2 was just me and him until I had to move out to the country.

3 Q Do you know Jessica Scott?

4 A Yes, I do.

5 Q How do you know Jessica Scott?

6 A We've been friends since sixth grade.

7 Q Does she have any children?

8 A Yes, ma'am.

9 Q How many children does she have?

10 A 7 children.

11 Q How many girls does she have?

12 A 3.

13 Q What is her oldest daughter's name?

14 A Child [REDACTED]

15 Q And has Child [REDACTED] ever had occasion to stay with you on
16 [REDACTED] Street?

17 A It was after her mother moved into the house while I
18 was gone. I used to take her down in the room that I
19 stayed in and let her sleep down there with me.

20 Q Did you ever see anything unusual between your husband
21 and Child [REDACTED]

22 A Yes, ma'am.

23 Q What did you see that was unusual to you?

24 A He had put her in the bathtub and he was standing up
25 against the counter in the bathroom in front of the bathtub

Ms. Dent - Direct by Ms. Barry

31

1 with his penis out telling her to lick his penis like a
2 lollipop.

3 Q Did you actually witness that?

4 A I heard him say it while the bathroom door was closed.
5 And then when I opened the door, he was standing there with
6 his penis out.

7 Q And what was Child [REDACTED] doing at that time?

8 A She was looking up at him, crying.

9 Q How old was Child [REDACTED] at that time?

10 A 3.

11 Q So she was 3 years old. And this was where, now?

12 A On [REDACTED] Street.

13 Q What if anything did you say to the defendant when you
14 walked into the bathroom?

15 A I made him stop and got him out of the bathroom.

16 Q After that did Child [REDACTED] have an occasion to stay with
17 you at your house -- at your home on [REDACTED] Street?

18 A She lived there at the time with her mother.

19 Q So at that time she lived there with her mother?

20 A Yes.

21 Q And who else?

22 A Her brother and sisters and George and myself.

23 Q And what were the sleeping arrangement?

24 A I slept in the garage that had been converted into an
25 apartment, and everyone else slept in the house.

- 1 Q Where did Child stay?
- 2 A She slept on the floor in the living room.
- 3 Q Did you ever see anything else unusual while they
- 4 lived with you?
- 5 A Yes, ma'am.
- 6 Q What did you see?
- 7 A I saw him tell Sibling to lay on top of Child while
- 8 they were in the bathtub.
- 9 Q Who is Sibling
- 10 A Child brother.
- 11 Q Is he younger or ---
- 12 A Older.
- 13 Q --- older?
- 14 A He's older.
- 15 Q And what did the children do?
- 16 A They were sitting there, crying.
- 17 Q Did they have their clothes on?
- 18 A No, ma'am, they were in the bathtub.
- 19 Q Over the years between 2003 and when you finally left
- 20 and moved away from the defendant, did you ever see or hear
- 21 anything else that made you concerned for Child well-
- 22 being?
- 23 A Just those 2 incidents.
- 24 Q Did anything else happen that caused you to be more
- 25 vigilant towards Child

Ms. Dent - Direct by Ms. Barry

33

1 A (Shakes head.) No, ma'am.

2 Q Did you ever stay at their house on Pritzker?

3 A Yes, ma'am.

4 Q And when was that time frame?

5 A For a week or 2, maybe 3 in 2008.

6 Q Did you notice anything unusual then?

7 A He would get up in the middle of the night, and I'd

8 hear him go into the bedroom and get Child [REDACTED] And when I

9 realized that he was trying to take her into another room,

10 I would cough, get up, go in and out of the door. I would

11 make a noise to where he would know I was up.

12 Q And what would happen?

13 A I would hear him put -- tell Child [REDACTED] to go back to the

14 room, and she would go. And he would go back to his

15 bedroom.

16 Q Did you ever tell anyone about this?

17 A I told Jessica right after I saw the incident in the

18 bathroom.

19 Q Which one? Which incident?

20 A The incident where Child [REDACTED] was in the bathtub alone.

21 Q And what did he tell her?

22 A Told her that she was supposed to lick this like a

23 lollipop, and he was holding his penis in his hand.

24 Q And you actually saw that?

25 A I saw him holding his penis in front of her.

1 MS. BARRY: That's all I have, Your Honor.

2 THE COURT: Mr. Kirincich.

3 CROSS EXAMINATION BY MR. KIRINCICH:

4 Q Ms. Dent, were you around Child [REDACTED] Jessica

5 Scott, George Branham, or any of the children that Ms.

6 Scott has with Mark Scott or the children she has with Mr.

7 Branham between November 2009 and December 2009?

8 A I think that may have been when they stayed with us
9 briefly.

10 Q Did you ever visit their home on [REDACTED] Road in
11 Elgin?

12 A After George had been arrested.

13 Q So you were never around them whenever Mr. Branham was
14 in the home?

15 A Not when they moved back to Elgin, no.

16 Q How did you feel when your husband separated from you
17 and moved his girl friend, your former best friend, into
18 his home?

19 A If that's what made him happy, then it didn't bother
20 me.

21 Q Have you been writing to Mr. Branham while he's been
22 in the jail?

23 A I wrote him maybe 1 or 2 letters, yes.

24 Q Would you agree with me that those letters had an
25 angry tone?

Ms. Dent - Cross by Mr. Kirincich

35

1 A Of course, they do.

2 Q And you were mad at him for leaving you and getting
3 together with Jessica, weren't you?

4 A No.

5 Q What were you angry about then?

6 A I was angry because I don't understand how one person
7 can beat another person as badly as he beat me.

8 Q Do you remember writing a letter where you
9 continuously asked him if it was worth it to leave you and
10 the perfect life you had for Jessica Scott?

11 A In the very beginning we did have a very good life
12 together. And I wanted to know if it was worth it. All
13 the things that he done to me, I wanted to know if he was
14 happy with the things he done.

15 Q In that letter don't you also tell Mr. Branham that
16 you love Jessica's children just as if they were your own?

17 A Yes, I do.

18 Q Why is this the first time that we're hearing about
19 you witnessing sexual abuse of Child [REDACTED] by George Branham?

20 A I told the mother and the father before any of this
21 ever happened, and I had also called D.S.S. several times.

22 Q Now you're saying that you also told Mark Scott and
23 D.S.S.?

24 A Yes, I have.

25 Q Do you know who you spoke with at D.S.S.?

1 A I don't know. I did it anonymously.

2 Q Did Jessica ever say anything to you about these
3 charges being investigated by D.S.S.?

4 A No.

5 Q What proof do you have to offer that you actually told
6 Mr. Scott?

7 A I wrote it down for Mark and signed my name to it. He
8 should have the paper.

9 Q What proof do you have you told Jessica Scott?

10 A Just my word.

11 Q What proof do you have that you called D.S.S.?

12 A Just my word. But, of course, you could probably go
13 back and look at their records on complaints against George
14 and Jessica. I'm sure you would find something.

15 Q Why didn't you call law enforcement when you were
16 living at [REDACTED] Street if you knew that Jessica Scott was
17 not going to do anything about what you saw?

18 A Because I was afraid for my life.

19 Q Don't you believe that law enforcement is there to
20 protect you?

21 A They never did before when I called them. Why should
22 they then?

23 Q You didn't feel that it was worth it -- to your
24 personal benefit, you didn't feel it was worth it to call
25 law enforcement to let them know that a 3 year old was

Ms. Dent - Cross by Mr. Kirincich

37

1 being abused?

2 A I told her mother and father. Her mother should have
3 taken care of it.

4 Q And that's just your word that you told them?

5 A Yes.

6 Q And you don't have any other evidence other than what
7 you've given the solicitor's office ---

8 A I did not. ---

9 Q --- through a typed Facebook chat?

10 A I did not give that to the solicitor's office.

11 Q Do you remember talking with them about a Facebook
12 chat you had with somebody?

13 A Yes.

14 Q What proof do you have to back up any of these
15 allegations that you're making now?

16 A Just my word, sir.

17 MR. KIRINCICH: Your Honor, if I can have a moment.

18 (Pause.)

19 Q Ms. Dent, did you seek any counseling after -- let me
20 start over. Once Ms. Scott moved into Mr. Branham's home,
21 how were you removed from the home? Were you told to leave
22 or did you leave voluntarily?

23 A I was taken somewhere. I was forced to leave and
24 forced to stay where I was put.

25 Q So you were forced to leave. And you allege that Mr.

1 Branham was physically cruel and mentally cruel to during
2 that time?

3 A Yes, sir, he was.

4 Q But you chose to come back and stay with him again?

5 A Because I was afraid for my life and the life of my
6 father. He had told me that if I don't do what he says, he
7 would kill my father.

8 Q Have you sought any counseling?

9 A Yes, I have.

10 Q Mental health counseling?

11 A I went to Sistercare, which is a group that is
12 supposed to help battered women.

13 Q Have you been to mental health counseling?

14 A Yes.

15 Q Who do you see at mental health?

16 A No one now.

17 Q Do you have any diagnosis for mental health?

18 A No.

19 Q Were you prescribed medicine that you were supposed to
20 take?

21 A No.

22 Q Never prescribed any medicine?

23 A Not through mental health, no, sir.

24 Q Does your family doctor, or general practitioner,
25 emergency room physician ever prescribed medicine for your

Ms. Dent - Redirect by Ms. Barry

39

1 mental health?

2 A No.

3 MR. KIRINCICH: Your Honor, I don't have any further
4 questions right now.

5 THE COURT: Redirect?

6 MS. BARRY: Just a couple questions.

7 REDIRECT EXAMINATION BY MS. BARRY:

8 Q Did he write any letters to you while he was in jail?

9 A Yes, ma'am.

10 Q And what did he -- what did he say in his letters?

11 A It was mostly just random chit-chat. But he has asked
12 me to come to court on his behalf.

13 Q On his behalf. Did he go into specifics?

14 A No, ma'am. He just asked if I would come to court and
15 speak in his behalf.

16 Q You testified on cross that you were afraid for your
17 life?

18 A Yes, ma'am.

19 Q Why is that?

20 A Because the beatings from George were so severe, that
21 I've actually passed out from them. I've been choked until
22 I passed out. I didn't know what he would do if I actually
23 called the cops on him again.

24 Q Has he left any permanent injuries on you?

25 A I have a lot of aches and pains. And I can't hear

1 straight from being hit in the ears so much. I have a lot
2 of migraines since I've left him.

3 Q You also said that you were forced to leave the home?

4 A Yes, ma'am.

5 Q Where did you go?

6 A I went to Georgetown Road, which was a piece of land
7 his father owned.

8 Q And where did you live there?

9 A Inside of a dog kennel that had gardener's plastic
10 around the sides and the top.

11 Q Do you remember when that was?

12 A February 2006 -- February to June 2006.

13 Q How was it that you came back? Well, in this dog
14 kennel, how -- how was it that you ate when you ---

15 A He -- he would bring me food every other day or so,
16 every 2 days. He'd bring me a bowl of spaghetti or a
17 bologna sandwich.

18 Q Were you locked inside of there?

19 A No, ma'am. The cage was not locked. I could, you
20 know, be around on the property. But if he would have come
21 out there and found me gone, there's no telling -- you
22 know, for what he could have done to me out there.

23 Q Were you afraid of him?

24 A Yes, ma'am.

25 Q Did he make threats to you?

Ms. Dent - Redirect by Ms. Barry

41

1 A Yes, ma'am.

2 Q That he would do what?

3 A If I didn't do the things that he said to do or ask me
4 to do, he would always tell me that he was going to kill my
5 father.

6 Q How old is your father?

7 A He's in his 60s now.

8 MS. BARRY: Beg The Court's indulgence.

9 (Pause.)

10 MR. KIRINCICH: Your Honor, could we approach?

11 (A bench conference was held off the record.)

12 Q I am going to show you 4 photographs and ask if you
13 recognize these 4 photographs?

14 A Yes, ma'am, these are the dog pen that he had me out
15 -- had me at on Georgetown Road.

16 Q Who took these photographs?

17 A My sister did about a month after I left him.

18 Q Do they fairly and accurately depict your living
19 conditions ---

20 A Yes, ma'am.

21 Q --- at the time that you moved out of the home?

22 A Yes, ma'am.

23 Q And that was [REDACTED] Street?

24 A I moved from [REDACTED] Street to there in February of
25 2006.

1 MS. BARRY: Your Honor, we would move these State's
2 Exhibit 1, 2, 3, 4 for I.D.

3 THE COURT: Any objection?

4 MR. KIRINCICH: No objection for the purpose of this
5 hearing at this time, Your Honor.

6 THE COURT: They are offered for I.D. purposes.

7 (4 photographs marked as State's Exhibit Nos. 1, 2, 3,
8 and 4 for identification.)

9 THE COURT: Let me see what you have.

10 (Pause.)

11 THE COURT: All right.

12 MS. BARRY: Thank you, Your Honor.

13 THE COURT: Do you have more questions?

14 MS. BARRY: Just a couple more.

15 Q Those were the living conditions that you lived in, in
16 a dog pen?

17 A Yes, ma'am.

18 Q And why did you go back to the home?

19 A Because I was scared, and he told me that's what I
20 needed to do.

21 Q What was your purpose when you went back to the home?

22 A He said I needed to take care of the children.

23 Q Did you notice anything else unusual in regards to
24 Child after you moved back into the home?

25 A Just those incidents. And after that I tried to keep

Ms. Dent - Recross by Mr. Kirincich

43

1 [Child] and [Siblin] both right up under me all the time.

2 Q Where did you live when you moved back in with them?

3 A I lived in the garage that had been converted into an
4 apartment.

5 Q What was that address or the street?

6 A [Redacted] Street.

7 Q When did you ultimately leave Mr. Branham?

8 A August 19, 2006.

9 MS. BARRY: Your Honor, that's all I have for the
10 purpose of this hearing for this witness.

11 RECROSS EXAMINATION BY MR. KIRINCICH:

12 Q Ms. Dent, who was Susan Logan?

13 A She was a friend of mine.

14 Q Didn't you move in with Ms. Logan after you and Mr.
15 Branham split up?

16 A I spent the night a few nights at her house while I
17 was sick when I was in the dog pen, but I did not move in
18 with her.

19 Q So you got to leave the dog pen to go to Ms. Logan's
20 house?

21 A I asked George if it was okay, and he said, yes.

22 Q Ms. Dent, this seems incredible that you would stay in
23 a dog pen that was unlocked during the day, that you say
24 that you were allowed to go to somebody's home when you
25 were sick. You didn't tell Ms. Logan about what was going

1 on?

2 A She knew, but she also knew what he had told me.

3 Because if I left and did not do what he said to do, he
4 told me he would kill my father.

5 Q Did you tell your father that his life was in danger?

6 A No, sir. If I just stayed and did what I was supposed
7 to do, my father was okay.

8 Q Ms. Logan didn't think it was necessary to call law
9 enforcement and tell them that a friend was living in a dog
10 kennel in Cassatt?

11 A No, sir.

12 Q And you said you left Mr. Branham in August?

13 A Yes, sir.

14 Q And I believe those pictures ---

15 A Those were taken about a month after I left him.

16 MR. KIRINCICH: Your Honor, could I have the pictures.

17 Q And did you provide the solicitor's office with these
18 pictures?

19 A Yes, sir, I did.

20 Q And you had never shown them to anyone before?

21 A No, sir.

22 Q You'd never taken them to law enforcement?

23 A No, sir.

24 Q It's -- it's no secret to anybody in here that Mr.
25 Branham has been in the Kershaw County Detention Center

1 since December 2009. You didn't think it was important to
2 provide this information before this past month?

3 A I didn't want to have anything to do with this,
4 because I'm scared of him.

5 Q You were scared of somebody that was locked up?

6 A Yes, sir.

7 Q You were so scared of this man that you moved back
8 into his house?

9 A I had no choice.

10 Q So you knew about Sistercare?

11 A When I went to Sistercare and I told them my story and
12 told them what all he had done to me, they said that they
13 couldn't adequately help me.

14 MR. KIRINCICH: No further questions, Your Honor.

15 THE COURT: Thank you. You may step down.

16 (The witness leaves the witness stand.)

17 THE COURT: Next witness.

18 MR. MOAK: Your Honor, the next witness as to this
19 would actually also be the same witness for the forensic
20 interview, Your Honor.

21 THE COURT: All right. We'll take about a 3-minute
22 break.

23 (A recess was taken.)

24 MR. MOAK: Your Honor, could we approach?

25 (A bench conference was held off the record.)

1 MS. BARRY: The state calls Debbie Elliott.

2 Debbie Elliott, being first
3 duly sworn, testified as follows:

4 CLERK: Please state your name.

5 WITNESS: I'm Debbie Elliott.

6 DIRECT EXAMINATION BY MS. BARRY:

7 Q Ms. Elliott, where are you employed?

8 A At the Carehouse of the Pee Dee in Florence.

9 Q And how long have you been employed at the Carehouse?

10 A For 6 years.

11 Q Can you tell The Court what the Carehouse is?

12 A We are a non-profit child advocacy center. We take
13 referrals from law enforcement, D.S.S. agencies, and
14 physicians throughout 9 counties where forensic interviews
15 are conducted when there have been allegations of sexual
16 abuse, physical abuse, any sort of child mal-treatment,
17 witness to domestic violence or homicide. And medical
18 assessments are completed and the recommendations are
19 given.

20 Q Okay. And in what capacity at the Carehouse are you
21 employed?

22 A I'm a forensic interviewer.

23 Q Tell The Court your educational background, beginning
24 with your undergraduate degree?

25 A I graduated from Clemson University in 1978. And

Ms. Elliott - Direct by Ms. Barry

47

1 since that time worked at 3 different Department of Social
2 Service agencies, most recently at the Florence County
3 Department of Social Services for 10 years in the sexual
4 abuse unit dealing exclusively with sexual abuse and severe
5 physical abuse cases.

6 I also co-facilitated a sex offender group while I was
7 there for a year and a half.

8 Then I worked at the Durant Children's Center for 2 ½
9 years as a forensic interviewer, and then at the Carehouse
10 for 6 years as a forensic interviewer.

11 Q What types of courses, seminars, or other training
12 have you attended and completed in forensic interviewing or
13 child abuse assessment?

14 A I completed the finding words training, which is a
15 nationally-recognized protocol for forensic interviewers at
16 the Assessment Resource Center in Columbia in 2002. And
17 since that time have completed advanced finding words
18 several times, 2006 and 9 -- I'm sorry, 2003 -- twice in
19 2003, 2006, 2007, and advanced finding words at the
20 National Children's Advocacy Center in Huntsville, Alabama
21 in 2009.

22 Q How many years have you been conducting forensic
23 interviews with children?

24 A 8 ½ years.

25 Q Will you estimate the number of interviews that you've

1 conducted?

2 A Over 5,000.

3 Q What percentage of your interviews have involved the
4 assessment of possible child abuse?

5 A They all have -- all of our referrals are coming from
6 law enforcement and D.S.S. and physicians when there's
7 suspected sexual abuse or physical abuse.

8 Q Have you previously been qualified as an expert in the
9 field of forensic interview and testified in courts of
10 record in South Carolina?

11 A I have.

12 Q How many occasions?

13 A Over 50.

14 MS. BARRY: Your Honor, at this time I would move to
15 qualify Ms. Elliott as an expert in forensic interviewing
16 and child abuse assessment.

17 THE COURT: Any voir dire or objection?

18 MR. KIRINCICH: Your Honor, may I ask her a couple
19 questions, voir dire?

20 THE COURT: Yes.

21 MR. KIRINCICH: Thank you.

22 CROSS EXAMINATION BY MR. KIRINCICH:

23 Q Ms. Elliott, do you have a C.V. with you? You have
24 prepared?

25 A I do.

1 Q May I see it?

2 (Pause.)

3 Q This finding words training, I see you've done 1, 2,
4 3, 4, 5, 6 -- 6 different times for that. Are those
5 refresher courses or is that new training you've done from
6 the initial time?

7 A The initial -- the training was the one in 2002, where
8 I actually became a forensic interviewer, a week-long
9 training for it. 40 hour training. And since that time
10 it's been advanced. In order to go to advanced, you need
11 to be able to have interviewed over -- I think it's 200
12 children the first time I went. The rest of the times I
13 went were just for advanced and additional information.

14 Q In the subsequent conferences or trainings that you've
15 been to, have they been in a different style of child
16 interviewing or they have been just building upon what you
17 were initially trained?

18 A Just the finding words.

19 Q Just that training?

20 A Additional information, that's correct.

21 Q And what was -- I'm sorry, I didn't hear you say. You
22 have a sociology degree from Clemson?

23 A Yes, sir.

24 Q You've done over 5,000 interviews. What percentage of
25 those interviews -- what number of those interviews have

1 you found the child not to be credible?

2 A I don't know what the percentage would be. More times
3 than not I find that they are.

4 Q Out of 5,000 interviews, have there been 100 children
5 that you've found not to be credible?

6 A I really don't know.

7 Q Less than 100?

8 A I don't know. I don't keep the statistics. I don't
9 know.

10 Q If you don't know, that's fine. And where does the
11 funding for the Carehouse come from?

12 A We're non-profit. The billing source is the state
13 office for victim's assistance for forensic interviewing.
14 That's South Carolina funds for victims. The medical
15 providers can bill some under Medicaid. And then there are
16 private donations. We're non-profit.

17 Q And have you been -- is there a state board that
18 license you as an forensic interviewer of children?

19 A No, sir. I just -- I went through the finding words,
20 and I am now a forensic interviewer since 2002. We have a
21 board that governs us at the Carehouse.

22 Q But you say you've been qualified as an expert --
23 you've been qualified as an expert in general sessions
24 court in South Carolina more than 50 times?

25 A Yes, sir. Also in North Carolina and in Maryland.

Ms. Elliott - Direct continued by Ms. Barry

51

1 MR. KIRINCICH: Your Honor, at this time I don't
2 object to her being an expert.

3 THE COURT: All right. You've probably been qualified
4 as an expert with me presiding about how many times?

5 MS. ELLIOTT: Several.

6 THE COURT: Many times. All right. She is qualified
7 as an expert in the field of forensic interviewing.

8 MS. BARRY: And child abuse assessment.

9 THE COURT: And child abuse assessment.

10 MS. BARRY: Thank you, Your Honor.

11 THE COURT: No objection from the defense?

12 MR. KIRINCICH: That's correct, Your Honor.

13 DIRECT EXAMINATION CONTINUED BY MS. BARRY:

14 Q Ms. Elliott, we're going to go in kind of reverse
15 order. As far as the child abuse assessment, what is meant
16 by the term Child Abuse Accommodation Syndrome? What does
17 that mean?

18 A Ronald Summit (phonetic) talked about that in an
19 article that he wrote in 1983 talking about how children
20 when they are living in the midst of sexual abuse,
21 especially chronic sexual abuse, it's a means of coping, of
22 accommodating to what's going on around them. He talks
23 about the secrecy of sexual abuse, the way that
24 perpetrators talk to children to keep them quiet, keep it a
25 secret, about how they're helpless little creatures.

1 They're not adults. They're not miniature adults, they're
2 just little -- developmentally little tiny people that
3 cannot take care of themselves and have to accommodate to
4 what's going on around them, and the helplessness of it.
5 When maybe they try to tell somebody or they think that
6 they've told somebody or disclosed to somebody about what's
7 going on, and maybe they did that clearly but probably they
8 didn't, and what happens to the child at that point when
9 they then have to continue to live in that environment and
10 to continue to be sexually abused with no one protecting
11 them.

12 He talks about how small animals do the same thing
13 when they're asleep in the woods and a bigger animal comes
14 to try to hurt them and what happens. And what children do
15 is exactly what small animals do sometimes. They'll play
16 possum or pretend to be asleep or pull their covers up or
17 be still and they think that things are going to go away.
18 It is just their way of accommodating what's going on
19 around them, to help professionals in the field understand
20 why children don't disclose initially, usually. It could
21 be years and years and years before they do if ever.

22 Q In your training and education and experience, how
23 common is delayed reporting among children of sexual
24 assault?

25 A It is very common. And -- and I know this from

Ms. Elliott - Direct continued by Ms. Barry

53

1 experience as well as the literature. At the Carehouse we
2 do a social history with parents. It's usually -- well, it
3 is the non-offending parent. And I can't tell you how many
4 times the mothers come in -- or the mothers of the victims
5 of sexually abused children -- alleged to have been
6 sexually abused children. When we ask about their sexual
7 abuse history, whether they have any -- and that's for 2
8 reasons, to see if they've gotten any help for that, any
9 therapy, and also to see if that same perpetrator may still
10 be in the picture and may be re-offending this victim.

11 And many, many times those mothers say to us: You
12 know, oh, my gosh, I've never told anybody about this and
13 it's been 20 years. They've never told a soul.

14 So I know from experience that people have a really,
15 really hard time. Adults have a really hard time of
16 disclosing. And children in particular do. So it's very
17 common.

18 Q What types of disclosure do you find in your work?

19 A Some times children will just disclose a tiny little
20 bit, just a very little bit, just to sort of see. They
21 want the abuse to stop, but because of what perpetrators
22 have told them will happen if they tell anybody, they don't
23 always tell everything. So ---

24 Q Do you have a term for that?

25 A I do. And right now I can't think of it. I'm sorry.

1 My mind just went blank. It's not delayed.

2 Q Are you familiar with the term minimizing?

3 A Yes, I'm sorry.

4 Q Are there other disclosures?

5 A Sometimes children are just -- when they are ready to
6 disclose, they will sit there and just say -- we can go
7 into the forensic interview room and say -- after you go
8 through all the rules, tell me what -- can you tell me what
9 happened or tell me what happened? And if they're ready to
10 disclose, they will tell. And even when you think you may
11 have everything or they say to you that they've told you
12 everything there is to tell, there could still be more.

13 So children have to be ready to disclose. It's not a
14 one-time thing. It is a process. It's not an incident.
15 It is a one -- it is -- it is a process, disclosure is.

16 Q In your expert opinion, what if anything have you
17 learned about an escalation of abuse?

18 A From experience and from talking to children all these
19 years when it is chronic sexual abuse, children talk about,
20 I'll ask them: Can you tell me about the last time that
21 anything happened or tell me about the very last thing that
22 happened? And they can do that usually.

23 And then I'll say: Can you remember the very first
24 time something happened? And a lot of times they can't
25 really remember exactly when that was, but they can

Ms. Elliott - Direct continued by Ms. Barry

55

1 remember kind of what it might have been around, like their
2 [REDACTED] or Christmas, or what kind of clothing they had on
3 if they had on boots or if they had on sweaters or bathing
4 suits, just kind of depending on the time of year. But
5 they can't always remember exactly when.

6 And perpetrators tend to start out kind of small, sort
7 of grooming children to see, I guess, what they can get
8 away with, you know, how -- how much the child can kind of
9 take without telling, and grooming them. Especially with
10 older children or pre-adolescent children, we see
11 perpetrators starting to give children gifts or showing
12 extra attention or promising to give a teenager a car, all
13 kinds of things that they know that children want.

14 Q And when you say start out small, can you expand a
15 little on what small is, what is medium?

16 A Yeah, and that's probably not a good term to use
17 because I think even the smallest thing is horrendous. But
18 perpetrators will do things like maybe just walk out of a
19 bathroom accident -- accidentally they say with no clothes
20 on, or the towel dropped. So they are exposing themselves to
21 that child, exposing private parts. Or having the bedroom
22 door open so that they can, you know, see mom and dad and
23 what mom and dad do. And they use that later by saying,
24 this is what mommies and daddies do and let's play the
25 mommy and daddy game.

1 Or they'll do things like massaging their backs and
2 shoulders and doing things that actually feel good to
3 children, just like they do adults, and continuing on, kind
4 of up the totem pole to possibly penetration.

5 Q Did you have occasion to do a forensic interview on a
6 young girl by the name of Child [REDACTED]

7 A I did.

8 Q What date did you do that?

9 A That was on December the 11th, 2009.

10 Q Can you describe for The Court what a forensic
11 interview is?

12 A A forensic interview is a child-friendly, fact-finding
13 interview designed to gather information from a child about
14 a suspected -- about suspected abuse in a child-friendly
15 manner; that gives the child tools to use. Even if -- of
16 course, they're verbal when we're interviewing. But to
17 give them tools to use when it may be very difficult to
18 talk about. There's times that we use anatomical drawings
19 or anatomically correct dolls. It's giving the child tools
20 to use.

21 Q Do you follow a certain protocol when conducting these
22 interviews?

23 A We do. At the Carehouse we use the RATAC protocol
24 through finding words.

25 Q And what does that stand for?

Ms. Elliott - Direct continued by Ms. Barry

57

1 A That's an acronym. It just stands for -- the R stands
2 for rapport. The interview is also conducted in a room
3 with just the child and the interviewer, and it's video
4 taped. There are no parents or anybody in the family back
5 -- nobody's in the interview room except the interviewer
6 and the child. And it's recorded. There is an observation
7 room for investigators with law enforcement or D.S.S. --
8 the referring agencies to sit and observe.

9 But the R in RATAC stands for rapport. When I bring
10 the child into the room, in a child-friendly -- pretty
11 boring room, actually. There's not anything distracting to
12 the child. It's just kind of the interviewer and the
13 child, and we're talking about -- and I'm setting the rules
14 of the room, where I'm talking about the most important
15 thing is to tell the truth.

16 The other rules are if you don't understand something,
17 then tell me that.

18 If I ask you something and you don't know the answer,
19 tell me you don't know. Don't make up anything.

20 And if someone is observing, I usually tell the child
21 that someone is observing, out of respect for the child.

22 The A stands for anatomy identification, where if it's
23 a smaller child, usually I will show the child a drawing of
24 an anatomically correct -- the gender correct drawing of
25 the anatomical drawing of the sex and the race -- or

1 whatever sex the child is.

2 Sometimes that leads straight in to the abuse
3 scenario. But if that doesn't, the T, the touching --
4 where I talk to smaller children about touches, touches
5 that are okay to get and touches that are not okay to get.
6 I usually get the child to tell me what those are -- the
7 okay touches if they can like hugs and kisses and tickling,
8 stuff like that that's okay usually.

9 And then the abuse scenario, sometimes that leads
10 right in to can you tell me why you're here? Or when we're
11 doing the drawing, the child may say when we get to the
12 vaginal area and I ask them what they call that part of
13 their body, you know, they may say at that point, yeah,
14 Uncle Bobby did that to me there. It just gives them a
15 tool to use.

16 And then the -- I gather as many facts as I can about
17 that. When they're talking about the abuse scenario, I
18 gather as many facts, the who, what, where, when. And if
19 anybody else ever did anything like that to their body,
20 because many times there are other perpetrators, not just
21 the one that we know about or that we're alleged to know
22 about.

23 And then closure, where I talk to the child in a
24 respectful manner about what to do in the event of any
25 other kind of sexual mal-treatment, who to tell, what to

1 do, and just ending the interview in a respectful manner
2 with the child, thanking them for talking to me.

3 Q And what types of questions do you ask children?

4 A Non-leading and non-suggestive. I try to start in a
5 very narrative, to get them to be as narrative as possible.
6 I want them to do most of the talking, not me. But I will
7 start out very generally. You know, tell me about -- to
8 get them to talk in a very narrative way.

9 Q And in this case, Child [REDACTED] did you do that in
10 this case?

11 A I did.

12 Q And you also testified that there's a video recording?

13 A There is.

14 Q Was there one in this case?

15 A There is.

16 Q Was Child [REDACTED] able to give you a detailed account
17 of what happened to her?

18 A She did.

19 Q And when did she say the abuse had started?

20 A The way I framed the question to her -- because I
21 wasn't sure that she would even be able to answer that
22 because she was only 7 at the time. So I framed it, I
23 don't know whether you'll be able to answer this. But if
24 you can, can you remember when this started? Because she
25 had already said it had happened more than once. Can you

1 tell me when you think this may have started?

2 And she said she couldn't remember when she was 1.

3 She couldn't remember when she was 2. But she said it

4 started at 3.

5 Q At 3 years old?

6 A Age 3.

7 Q And was her account of what happened, did it have

8 coherence? Did it make sense to you?

9 A It did.

10 Q How old was she at the time?

11 A She was 7.

12 Q I'm going to show you a C.D. and ask you if you

13 recognize this?

14 A That's mine.

15 Q And how do you know that's yours?

16 A It's my handwriting, and that's the C.D.R. that I

17 made.

18 Q Of?

19 A The forensic interview of Child [REDACTED] on December

20 the 11th, 2009.

21 MS. BARRY: Your Honor, at this time we would move

22 this as State's Exhibit No. 5 for I.D.

23 THE COURT: What say the defense?

24 MR. KIRINCICH: Your Honor, I assume that's the same

25 thing I got. I've never seen the actual C.D., but we'll

Ms. Elliott - Direct continued by Ms. Barry

61

1 see when they pop it in. There's no problem right now.

2 THE COURT: All right. It's admitted for I.D.

3 purposes.

4 (C.D. marked as State's Exhibit No. 5 for
5 identification.)

6 MS. BARRY: Your Honor, at this time we would like to
7 publish it pursuant to Section 17-23-175, admissibility of
8 out-of-court statements of a child under the age of 12.

9 THE COURT: Your understanding of the statute is that
10 the entire video must be published ---

11 MS. BARRY: Yes, sir.

12 THE COURT: --- in the hearing out of court?

13 MS. BARRY: Yes, sir.

14 THE COURT: All right.

15 MS. BARRY: Your Honor, we can do that now or if you
16 would rather ---

17 THE COURT: Well, I don't know we have to view it in
18 order for me to determine that it's admissible.

19 Play it in court. What do you think, Mr. Kirincich?

20 MR. KIRINCICH: Your Honor, it's my understanding or
21 position from reading the statute that The Court actually
22 has to view the video to make sure that what Ms. Elliott
23 has testified to, that there are no leading questions that
24 the video has coherence, that the conversation ---

25 THE COURT: All right.

1 MR. KIRINCICH: It's my understanding and my position
2 that The Court would have to hear it. Whether you want to
3 do it in chambers or if you want to do it here in open
4 court.

5 THE COURT: I've been provided a copy, that's why I'm
6 asking the question. And the length of the video is what?
7 How long?

8 MS. BARRY: Your Honor, I think it's 45 minutes.

9 THE COURT: All right.

10 MS. BARRY: Your Honor, it's been my experience that
11 we can play the video. Of course, I'd rather you just
12 ruled on it now, but ...

13 THE COURT: Play it -- I would have to either view it
14 now or view it later, so we'll view it now. Push to play.

15 (State's Exhibit No. 5 was viewed in the courtroom.)

16 MS. BARRY: Your Honor, that's all we have, questions
17 of Ms. Elliott.

18 THE COURT: Yes, sir.

19 MR. KIRINCICH: Yes, sir, I do, Your Honor. I think
20 the state began this hearing as a 404, just for the purpose
21 of trying to introduce Ms. Branham's testimony; is that
22 correct? That's why Ms. Elliott was testifying in addition
23 to the requirement.

24 THE COURT: Yes.

25 MR. KIRINCICH: Okay. Thank you, Your Honor. I just

1 wanted to make sure I went in to that.

2 CROSS EXAMINATION CONTINUED BY MR. KIRINCICH:

3 Q Ms. Elliott, you've had the benefit of being in here
4 whenever Ms. Branham testified. And you heard her say that
5 she saw or heard something between Mr. Branham and Child
6 at the age of 3, correct?

7 A That's correct.

8 Q You heard Ms. Alma Dent -- excuse me, Alma Dent say
9 that Mr. Branham was exposing his penis to Ms. Child
10 and tell her to lick it like a lollipop. Is this the
11 first time you had heard that accusation?

12 A Yes, sir.

13 Q Okay. Now, you specifically asked Child if Mr.
14 Branham had ever tried to stick anything in her mouth,
15 right?

16 A I asked if he ever put any -- if he ever tried to put
17 anything inside her mouth she didn't like.

18 Q And she said what?

19 A She said, no.

20 Q She said, no. You asked her specifically if she ever
21 had to touch it, and what did she say?

22 A She said, no.

23 Q Did you only have one opportunity to interview

24 Child

25 A Yes, sir.

1 Q You don't have anything to confirm or corroborate what
2 you heard Ms. Dent testify to?

3 A I don't have any way to know that.

4 Q Did you have an opportunity to interview Sibling 2
5 when he was brought to the Carehouse in January of 2009?

6 A I did.

7 Q You did. And Sibling 2 did not disclose any kind of
8 abuse at the hands of George Branham, did he?

9 A I don't have my forensic interview notes.

10 MS. BARRY: Your Honor, I object to the relevancy of
11 this, of Sibling 2 I don't think he was mentioned.

12 MR. KIRINCICH: Your Honor, Ms. Branham -- excuse me,
13 Ms. Dent mentioned that she saw or heard Mr. George Branham
14 tell Sibling to lay on top of Child in the bathtub while the
15 kids were naked and crying.

16 THE COURT: Well, you can ask about that if you wish.
17 But I think that is clearly not a part of this case.

18 MR. KIRINCICH: I'm still allowed to ask the witness
19 if ---

20 THE COURT: If you want to.

21 MR. KIRINCICH: Okay.

22 Q Did Mr. Sibling 2 disclose any kind of abuse or
23 anything at the hands of Mr. George Branham?

24 A I don't have my forensic interview report with me. I
25 would need to look at that before I could answer that.

Ms. Elliott — Cross continued by Mr. Kirincich

65

1 Q Did you prepare a similar forensic interview summary
2 as you did for Ms. Child [REDACTED]

3 A I do the same. I prepare my reports the same for each
4 child.

5 Q Where you type of a summary of the video and then the
6 conclusions and recommendations?

7 A That's correct.

8 Q So there would be one for all of the children you've
9 interviewed in connection with this case?

10 A I don't remember when I interviewed Sibling [REDACTED] I don't
11 remember.

12 Q Would it have been the same time that Dr. Saunders did
13 her evaluation?

14 A I would have to look at my report. We usually try to
15 do them on the same day. Sometimes that's not possible.
16 But it may be. I don't remember. I've interviewed about
17 600 this year, so I don't recall.

18 THE COURT: Let me -- can you all hear the witness?

19 MS. BARRY: No, sir.

20 THE COURT: Okay. Either something is wrong with the
21 mike or you're not speaking in it.

22 (Pause.)

23 MR. MOAK: That's better.

24 THE COURT: Because when the jury comes tomorrow,
25 everyone has got to hear.

1 (Pause.)

2 THE COURT: Okay. All right.

3 MR. KIRINCICH: Your Honor, I don't have any further
4 questions for Ms. Elliott.

5 THE COURT: Anything further from the state?

6 MS. BARRY: Your Honor, on the issue of -- I do have a
7 couple questions.

8 THE COURT: All right.

9 REDIRECT EXAMINATION BY MS. BARRY:

10 Q Ms. Elliott, in your experience, training, and
11 education is it common for children to disclose everything
12 at one time?

13 A It would be very uncommon for children to disclose
14 everything at one time.

15 Q Do you have a term that you use in your practice for
16 that?

17 A Delayed disclosure.

18 Q So it's not common for children to disclose every
19 detail at one time?

20 A That's correct.

21 Q And how many times did you interview her?

22 A One time.

23 Q But she is clear that the abuse started when she was
24 how old?

25 A She said she was 3.

1 MS. BARRY: Your Honor, that's all we have on that.

2 THE COURT: Anything further?

3 MR. KIRINCICH: Yes, Your Honor.

4 RE CROSS EXAMINATION BY MR. KIRINCICH:

5 Q Did Ms. Child give you any other information
6 to corroborate this happened when she was 3 years old?

7 A Just that she couldn't remember when she was 1 or 2,
8 no.

9 Q There's something you said earlier. I think you
10 testified that children aren't very good with time. Is
11 that what you said?

12 A I don't recall saying that.

13 Q Did you say that children are better at remembering
14 holidays or seasons or what they were wearing, but they're
15 not very good with time?

16 A Some children are not very good with time; that's
17 correct.

18 MR. KIRINCICH: Thank you. No further questions.

19 THE COURT: All right. You may step down.

20 (The witness leaves the witness stand.)

21 THE COURT: Any additional witnesses?

22 MS. BARRY: For the admissibility or?

23 THE COURT: For anything.

24 MR. MOAK: As far as the admissibility of the forensic
25 video, that's all we have.

1 MS. BARRY: I believe we have one more on the Lyle
2 issue.

3 THE COURT: Regarding Lyle?

4 MS. BARRY: Yes.

5 THE COURT: We're doing both hearings. We're hearing
6 evidence on both issues?

7 MS. BARRY: Yes, sir.

8 THE COURT: All right. Next witness then.

9 (Pause.)

10 THE COURT: All right. We'll take a 2-minute stretch
11 while you all are figuring out who this person might be.

12 (A recess was taken.)

13 THE COURT: Okay.

14 MS. BARRY: The state calls Debra Scott.

15 DEBRA SCOTT, being first duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION BY MS. BARRY:

18 Q Ms. Scott, where do you live?

19 A I live in Elgin on Pinestraw Lane.

20 Q Do you know the victim in this case, Child

21 A Yes, I do. It's my granddaughter.

22 Q How many grand children do you have?

23 A I have 5.

24 Q How old is Child now?

25 A She's 8.

Debra Scott - Direct by Ms. Barry

69

- 1 Q Where does she live?
- 2 A She lives with her father, up in Elgin.
- 3 Q Who is her father?
- 4 A Mark Scott.
- 5 Q He is related to you?
- 6 A He's my son.
- 7 Q Has she always lived with her father?
- 8 A No.
- 9 Q When did she come to live with her father?
- 10 A When the incident happened out on [REDACTED] that's
- 11 when it became permanent for her to stay with him.
- 12 Q Prior to that, did she live with her father?
- 13 A Yes, he had every other weekend visits.
- 14 Q And where did he live during that time?
- 15 A When it first occurred -- when they first separated,
- 16 Jessica and Mark separated, he stayed with us for a while.
- 17 Then he eventually moved out. He had an apartment I think
- 18 in Dentsville at one time. And I'm trying to think --
- 19 there's a place -- he ended up moving out there close to
- 20 us. He stayed out there for a while there. He was living
- 21 -- let's see, [REDACTED] I think it's right around
- 22 the block from where we're at. He'd been there when this
- 23 incident occurred.
- 24 Q Do you live close by?
- 25 A Yes, still live close by. He's up in Elgin now.

1 Q Were there occasions after Jessica and your son
2 separated when you were around your granddaughter Child

3 A Often. On the weekends a lot of times I would be the
4 one to go pick them up if he had to work late or stuff like
5 that. I picked them up on the weekends and would bring
6 them back, you know, after visitation. Would drop them
7 back off.

8 Q Did you notice anything unusual about Child

9 A Yeah, she -- picking her up and bringing her back -- I
10 mean, the crying when we had to drop her back off. I mean,
11 she would scream she didn't want to go back. I mean, she'd
12 say that he was mean to her. Bubba was mean to her. She
13 didn't want to go back. She would scream.

14 Her -- you know, the deal with her hurting, that meant
15 she would go to the bathroom and she said it would burn.
16 It would hurt.

17 Q Let me stop you. Her saying that she was hurting down
18 there?

19 A (Nods head.) Yeah. She -- she would go to the
20 bathroom and say it would burn. Just for no reason we're
21 going, you know, what's going on? Are you okay? You know,
22 and she would tell us it would hurt, it would hurt. You
23 know, it wasn't just the burning, that it would hurt even
24 though she wasn't going to the bathroom.

25 And on several occasions Mark had taken her to the

Debra Scott - Direct by Ms. Barry

71

1 doctor. Now, I know Jessica had taken her to the doctor
2 prior to that -- I think 2 times that I can remember. And
3 from what Jessica herself had told me personally, the
4 doctor said she had a yeast infection.

5 But I do know Mark took her to the doctor at least
6 twice that I know of. I remember coming down to the house
7 one time that he called me. He said she was crying because
8 she had to go to the bathroom. She said she was bleeding.
9 So I went down there and personally checked her myself
10 because Mark didn't want to, you know, being her daddy.

11 So he told me to come look at her and see if she was
12 okay. So I came down there and checked her. And she was
13 very, very red down there and blood was there. So that was
14 one of the times that he did take her to the doctor. And
15 they checked her. The doctor seemed to think -- you know,
16 I guess -- I'm not really sure exactly what the diagnosis
17 was. I read the paper so they said maybe she had had a
18 kidney infection or something, bladder infection or
19 something.

20 But she was very red down there. Like I said, when I
21 looked down there, she was very red and she was bleeding.

22 Q And she was bleeding?

23 A Yes.

24 Q Did you ever tell anyone about that?

25 A Yes.

1 Q Who did you tell?

2 A Well, I had discussed that with my mother and I had
3 told Mark. You know, me and him talking about it. I had
4 mentioned it to Jessica before about things going on with
5 her. You know, her being upset about -- about going home.
6 I'd ask her, you know, what's going on? What's wrong with
7 her? Why is she so upset?

8 Even with the redness down there and her complaining
9 of it hurting, Jessica said, well, I took her to the
10 doctor, you know.

11 So, I -- I -- you know, I kept pushing her to the
12 point, something's going on with her. You need to sit down
13 with her and talk with her and find out what's going on
14 with her -- by herself, you know, sit down and discuss with
15 her and see if she's okay, you know. Because I was very
16 concerned about her.

17 Q Did she ever disclose any abuse to you?

18 A No, other than saying he was mean to her. She'd
19 always cry and say he was mean to her. She did not want to
20 go home. Every time I went to drop them off, she would
21 scream. And her mother -- she fell asleep like a baby.
22 She fell asleep in the car with me. And we were -- I was
23 taking her back. And when she woke up, she was in the yard
24 and her mother had to pull her out of the car. She was
25 screaming when she woke up and realized where she was at.

Debra Scott - Direct by Ms. Barry

73

1 She had to pull her out of the car; that's when Mark -- he
2 couldn't take her home. He said, I can't take it. He
3 said, something's going on with her.

4 And, you know, Jessica would never do anything. She
5 wouldn't -- you know. She just wouldn't check in behind
6 her and find out what was going on.

7 Something was wrong. One time the child's hair was
8 falling out of her head. Hunks of hair were falling out of
9 her head.

10 Q So you know all this?

11 A Yes. She was losing her hair.

12 Q How old was she?

13 A About 4. Maybe 5 at the most. She just -- I mean, it
14 was just hunks of hair coming out of her head, like
15 somebody yanked it and pulled it out. You know, it didn't
16 look right. I mean -- Jessica even said that the D.S.S.
17 worker insisted that she take her to the doctor and have it
18 checked. I never heard anything about that either. I
19 don't know if she was taken or not.

20 Q Did you ever notice anything about the clothing when
21 she ---

22 A Yeah. Every time we would pick her up -- I say every
23 time. Let me back up. Almost every time we picked her up,
24 the child had no under clothes on, none whatsoever. She
25 went to wearing dresses. Little girls should wear frilly

1 dresses. And she would have no under clothes on. And we
2 would take her -- either Mark would or I would, we'd buy
3 her underwear and send her back with underwear, you know,
4 to make sure the child had underwear. You know, maybe it
5 was just she had outgrown them or something. Never come
6 back with a pair. Never.

7 MS. BARRY: Your Honor, that's all I have of this
8 witness. Answer any questions defense has.

9 THE COURT: Any questions, Mr. Kirincich?

10 MR. KIRINCICH: Yes, Your Honor. May we approach
11 first?

12 THE COURT: All right.

13 (A bench conference was held off the record.)

14 MR. KIRINCICH: Your Honor, I'll put that on the
15 record.

16 THE COURT: All right.

17 MR. KIRINCICH: At this time, I don't have any
18 questions for Ms. Scott, because I don't feel it's
19 necessary to the 404 motion, the evidence they are trying
20 to get in.

21 THE COURT: Okay. You may step down.

22 (The witness leaves the witness stand.)

23 THE COURT: What else do you have?

24 MR. MOAK: Your Honor, that's all we have by way of
25 testimony on this issue.

1 THE COURT: All right.

2 MR. MOAK: And, Your Honor, I've got copies of
3 relevant case law, specifically State v. Curtain
4 (phonetic), State v. Tutton (phonetic), State v. Whitner
5 (phonetic).

6 MR. KIRINCICH: Your Honor, if the witness can step
7 out of the courtroom. She's still sequestered through
8 trial.

9 THE COURT: And her relationship to the victim again
10 is grand ---

11 MR. KIRINCICH: The victim's grandmother, Your Honor.

12 THE COURT: Grandmother.

13 MR. KIRINCICH: She's on the witness list to testify.

14 THE COURT: All right. And who would be in the
15 courtroom for the child?

16 MS. BARRY: The grandmother. It's okay if she leaves
17 for the day, as long as she is allowed to be present.

18 THE COURT: Well, let me -- I think as a victim,
19 someone can be at the state's table.

20 MR. MOAK: Your Honor, essentially, the grandmother.
21 It's a de-facto mother of this child.

22 MS. BARRY: Yes.

23 THE COURT: Based on that, the grandmother can stay in
24 the courtroom as a representative of the victim. But she's
25 gone for the day, but tomorrow she can be here. All right.

1 MR. MOAK: Thank you, Your Honor.

2 THE COURT: Let me ask you this before -- are there
3 any witnesses by the defense on any of these issues?

4 MR. KIRINCICH: Not on any of the issues we've heard
5 today, Your Honor.

6 THE COURT: All right. Yes, sir.

7 MR. MOAK: Your Honor, the issue on the admissibility
8 of the video, I think we've laid the requisite foundation
9 of the video. I think the witness has testified that she's
10 properly trained ---

11 THE COURT: Well, let me find out if there's any --
12 the defense's position on that before I hear arguments by
13 the state.

14 MR. KIRINCICH: Your Honor, we leave this solely up to
15 you. We're not arguing against the admissibility of the
16 video. We just ask that you review the statute and make a
17 finding on the record. Probably the appropriate time would
18 be once the state actually opens their case, once they make
19 sure all their witnesses are available per the statute.

20 I don't need a ruling tonight at this time.

21 THE COURT: Based on what I've heard to this point,
22 and assuming all other foundation is established, I think
23 the statement was taken in accordance with the requirements
24 of the statute and the prerequisite of the statute has been
25 satisfied.

1 All right. So that settles that issue.

2 What's the other one?

3 MR. MOAK: Your Honor, in accordance with the
4 requisite case law, I believe most of these cases were
5 cited in the memorandum that I filed in support of the
6 admission of this evidence. I've got specifically Clasby
7 (phonetic) and Curtain (phonetic), Your Honor.

8 This type of evidence has been admitted previously in
9 other C.S.C. with a minor cases, Your Honor. Specifically
10 in Curtain, I believe it was the same victim, the same
11 perpetrator. I think Curtain was the same type of -- the
12 same type of sex act, Your Honor.

13 THE COURT: All right. Well, to cut you off. Just
14 from what I'm looking at under Curtain, it says victim's
15 testimony regarding 4 prior incidents of uncharged
16 testimony was admissible. What are you trying to admit in
17 this case?

18 MR. MOAK: Your Honor, basically Curtain and Clasby --
19 Curtain actually is the same victim, same perpetrator,
20 different prior sexual act, Your Honor, but it was common
21 scheme or plan is what the exception was allowed in. And
22 the acts that were admitted that were challenged in Curtain
23 were outside the time frame of the indictment, which is
24 similar to here. We have an indictment that covers
25 November 1, 2008 to December 9, 2008 -- I mean, 2009.

1 THE COURT: All right. I understand all that. But
2 where's the clear and convincing evidence?

3 MR. MOAK: Clear and convincing evidence, we have Alma
4 Branham's testimony that she caught Mr. Branham in the
5 bathroom with Child at age 3.

6 THE COURT: But the child told the interviewer that it
7 had not occurred prior, that he never attempted to get her
8 to touch anything, to suck anything. So if the victim
9 (sic) says, I heard this through a door and I opened the
10 door and he was holding his penis and she was crying, and
11 the child says that there is no prior incidents -- and the
12 child is a very clear, good witness as far as satisfying
13 the ability to recall details and all those things. It
14 appears that you have contradictory testimony.

15 The witness who testified versus the child's testimony
16 on the statement -- so how do you reconcile those two and
17 get clear and convincing evidence?

18 MR. MOAK: Your Honor, if I may. Debbie Elliott, who
19 is -- was submitted as an expert forensic interviewer in
20 child abuse assessment, also testified that it is uncommon
21 for a child-victim to fully disclose. And she also
22 testified that it is common on a crime of sexual abuse for
23 it to escalate over time.

24 I believe the testimony of Alma Branham or Alma Dent
25 is that -- we would -- we would posit he was actually

1 telling her what to do. He was telling her, hold it, lick
2 it like a lollipop, actually was instructing her on how to
3 perform a sex act, Your Honor. So we would put that in the
4 spectrum of beginning -- the beginning of the spectrum.
5 The end is where we ended up on December 8, 2009.

6 THE COURT: I know your argument. I'm saying, how do
7 I find that that is admissible evidence by clear and
8 convincing evidence?

9 MR. MOAK: Well, the totality of the circumstances
10 when you add the expert testimony of Debbie Elliott about
11 the common spectrum of how it starts and how -- what it
12 escalates to, how it is uncommon for a victim to fully
13 disclose; that would explain her lack of disclosure for the
14 oral sex.

15 Also, put in Alma Dent, her testimony in 2006 when the
16 victim was age 3, which is consistent with the forensic
17 interview, the victim says it began in 2003, and the
18 continuing over to 2006 to 2009.

19 THE COURT: She said the penetration began in 2003;
20 that he had been putting ---

21 MR. MOAK: 2006.

22 THE COURT: Pardon me?

23 MR. MOAK: 2006. I mis-spoke. 2006.

24 THE COURT: Well, when she was 3 she said the
25 penetration began during that time; that's when he was

1 putting his thing in her hole -- that's what I thought she
2 said.

3 MR. MOAK: Which is the same year -- the same year
4 that Alma Dent hears Mr. Branham instructing her how to
5 perform a sex act.

6 THE COURT: All right.

7 MR. MOAK: And then we have Debbie Scott -- Debra
8 Scott during the entire time observing the behavior of the
9 victim, of going crazy or very upset when she has to go
10 return to the same home, of the redness, bleeding, frequent
11 infections, and the fact that they keep giving her
12 underwear. When they drop her off at their house, she
13 comes back with ---

14 THE COURT: But you don't get redness and bleeding and
15 all of that from her doing what the witness, Ms. Dent --
16 what Ms. Dent said, how do you get redness and bleeding and
17 anything to corroborate what Ms. Scott said?

18 MR. MOAK: Your Honor, these sex abuse started at some
19 point. We don't believe that it started -- he started
20 initially penetrated. We believe it started with something
21 lesser, which is what Debbie Elliott testifies is the
22 common scenario, it starts with some type of lesser abuse,
23 like as she testified like, walk out of the bathroom and
24 seeing what the child does.

25 THE COURT: I know that that's what you believe. But

1 I'm trying to get the basis for me to make a ruling on that
2 point based on clear and convincing evidence as is required
3 by our law.

4 MR. MOAK: Your Honor, I think Alma Branham's
5 testimony is consistent with the victim's testimony, that
6 her sexual abuse started at age 3. I think it's consistent
7 with the expert testimony of Debbie Elliott about how this
8 started.

9 THE COURT: All right. Let me hear what Mr. Kirincich
10 says about all that.

11 MR. KIRINCICH: Thank you, Your Honor. Your Honor,
12 you saw the child in the video, and I don't want to
13 handicap my case. But she comes across pretty well in the
14 video, and she discloses not only what she alleged happened
15 on the night that her mother called the police, but she
16 also alleges a separate sexual act, Your Honor, where she
17 says that Mr. Branham at some point tried to penetrate her
18 or did penetrate her anally, Your Honor. She's asked
19 specifically, did he try to stick it anywhere else? Did he
20 try to put that or anything in your mouth?

21 And she says, no.

22 I understand the state's position that she may be
23 delaying, Your Honor. She might be minimizing. She might
24 not disclose everything fully.

25 But as Your Honor has questioned the state on, that to

1 me does not meet the clear and convincing standard, Your
2 Honor.

3 Ms. Dent testified that she told no one else about
4 this until she was questioned -- I want to say -- some time
5 post June of 2011, Your Honor, is when she first came
6 forward with this. She has nothing to corroborate her
7 story. She has -- at least nothing has been presented to
8 corroborate her story. She just kept saying, it's my word.
9 It's my word.

10 The child's mother, Your Honor, who at this point I
11 would -- I would say is completely against Mr. Branham.
12 She has never confirmed Ms. Dent's story.

13 Your Honor, outside of the sexual allegation that Ms.
14 Dent makes, she also made some pretty outrageous claims for
15 physical, mental abuse, and cruelty. Your Honor, I don't
16 see how those are relevant to this case. And if they were,
17 I don't see how that would pass the 403 balancing test that
18 Your Honor would have to take once you find ---

19 THE COURT: I think that the Supreme Court has
20 reversed more convictions on improper -- the improper
21 admission of Lyle testimony than any other -- than in any
22 other area of the law. And The Court has given stern
23 warnings to The Court to be very careful and leery of
24 reaching out in left field and admitting evidence where The
25 Court -- where there is no clear and convincing evidence of

1 the existence of this Lyle testimony and Lyle evidence and
2 also where the prejudicial effect of admitting it exceeds
3 the probative value.

4 Now, to listen to Ms. Dent's testimony, it's almost
5 testimony out of left field that has no bearing on why this
6 defendant is on trial other than her bringing in what she
7 heard through the door and what she saw when she opened the
8 door, all of which could very well be true.

9 But at this point I'm not convinced about it. I'm not
10 convinced that the state can offer contradictory testimony
11 on a point and have The Court find that I am to ignore that
12 it is contradictory testimony because of the syndrome of a
13 child that -- that where the child tend to delay disclosing
14 things.

15 Of course, where there's a delay in disclosure, I
16 think typically the child comes around and confirms. At
17 this point there is no evidence that the child has ever
18 confirmed the disputed fact. The child has never said,
19 yes, he asked me to do this -- to lick it like a lollipop.

20 I don't -- what we're left with is the allegation of
21 Ms. Dent on that point.

22 Now, solely on the issue of this -- let's see -- the
23 Lopez case.

24 (Pause.)

25 THE COURT: State v. Lopez says The Court has held

1 that testimony relating to the behavioral characteristics
2 of abused children is not admissible to bolster a child's
3 testimony that a crime actually occurred.

4 So the state's argument is in effect that because of
5 the syndrome -- the Child Abuse Accommodation Syndrome, or
6 the fact of the delayed reporting, that the existence of
7 that fact can be used to bolster the state's evidence
8 regarding Lyle. You know, that takes us into some
9 uncharted territory to say that, well, the child does not
10 corroborate but the child does not corroborate based on a
11 tendency of a child to not only delay reporting or
12 disclosure, or to on something that The Court can assume to
13 be true though the child has never reported it because of
14 this tendency of late reporting.

15 I'm not convinced on the Lyle. I think that the prior
16 bad acts as contemplated by Lyle is contained within the
17 child's statement to the forensic investigator, where the
18 child has indicated that there are prior bad acts and
19 perhaps the prior bad acts as referenced by the child can
20 be corroborated by testimony, prior treatment, and prior
21 problems, prior bleeding and all those things, that's prior
22 bad acts that the -- that is contemplated by the law, but I
23 don't know about what was heard through the door and
24 observed when the door was opened.

25 And, certainly, this unrelated contention by the

1 witness, Ms. Dent, that he ask to make the children to get
2 on top -- one to get on top of the other, you're not
3 arguing that that is also a Lyle -- admissible through
4 Lyle, are you?

5 MR. MOAK: No, Your Honor. That would actually
6 probably be held by the Rape Shield Statute, strangely
7 enough.

8 THE COURT: Prior conduct of some other children?

9 MR. KIRINCICH: Your Honor, it's my understanding from
10 the Rape Shield Statute that was enacted so you don't
11 attack somebody's morality, where you don't try to --
12 excuse me, you don't try to label someone as loose or, god
13 forbid, a whore.

14 THE COURT: The Rape Shield is sort of the chastity of
15 a woman is irrelevant as to whether or not they can be a
16 victim of a rape.

17 MR. KIRINCICH: Right, Your Honor. But I don't think
18 that sexual abuse or sexual battery of a child necessarily
19 fits into the Rape Shield Statute. I don't know if that's
20 what it's protecting.

21 THE COURT: I agree with you on that.

22 MR. MOAK: Your Honor, I think the Rape Shield Statute
23 generally protects the victim from unwarranted attacks.
24 And, Your Honor, our -- basically, what we're arguing
25 about, the Child Abuse Accommodation Syndrome, that's

1 pretty much what puts the piece of the puzzle together.
2 We've got Alma Branham, who is one piece of the puzzle.
3 We've got the forensic interview. We've got Debra Scott.
4 Tying it all together, all the Child Abuse Accommodation
5 Syndrome testimony does it puts them together so it tells
6 what the picture looks like.

7 THE COURT: Yeah. And that's a good theory. I mean,
8 if the state is trying to convince a jury on these things,
9 assuming that it is all admissible. But the first part of
10 it must be established by clear and convincing evidence.
11 And that's the part that I have a problem with at this
12 point.

13 But it's 5:35 at this point. And I'm not going to
14 rule today. I'm going to sleep on it and review the entire
15 area of the law.

16 As I said to you all earlier today, it's very
17 difficult for a judge to roll into town and for the first
18 time hear about a case that you all have been dealing with
19 for 3 years, and then instantly make important rulings
20 concerning the case.

21 But I'm going to review it tonight and give you all a
22 chance to come with your best tomorrow morning if you think
23 of something else I should know about it. But I'm letting
24 you know at this time it does not appear that you have
25 established through clear and convincing evidence that this

1 prior incident should be admitted.

2 I think it leads the jury off into a tangent involving
3 dog kennels and other things.

4 MR. MOAK: Your Honor, all that was in response to his
5 cross examination. That wasn't stuff that we presented.

6 THE COURT: I understand. But it sort of -- the whole
7 -- I understand. But that's inevitably, seemingly, it will
8 take us, particularly on the issue of the motive of why
9 this person would come in to give this testimony, because
10 he has to have a right to cross examine. But, you know,
11 that's my story on that for the day.

12 I'll read over these cases in more detail that you've
13 brought in as well. And I'll hear anything else you all
14 have to say prior to officially ruling on this tomorrow.

15 Anything else?

16 MR. KIRINCICH: Your Honor, I think we still have an
17 outstanding crossing motions for the Rape Shield Statute.
18 The state has their idea of what they would like me to
19 cross examine on. Your Honor, there are certain things I
20 would like to cross examine their witnesses on that Your
21 Honor may find to be protected by the Rape Shield Statute,
22 but I say that they're not.

23 THE COURT: Well, just reading the brief, I agree with
24 the defense.

25 MR. KIRINCICH: Yes, Your Honor. These things, they

1 go towards credibility and basis of knowledge. I'm not
2 trying to say that -- and these were provided by the state.
3 They are medical records provided by the state. These are
4 not things that we dug up to try to present a red herring.

5 THE COURT: Do you have evidence that the child has
6 had prior treatment, if the defense can explain it away
7 through, well, she didn't have a yeast infection. It
8 wasn't caused by abuse. It was caused by using the wrong
9 type of soap. It was caused by this, caused by that. I
10 mean, caused by whatever. I think the defense has to have
11 the opportunity to put on a complete defense.

12 MR. KIRINCICH: Thank you, Your Honor.

13 THE COURT: But I don't know that that is something
14 that needs to be reviewed in advanced, as to every
15 question. You can ask them every question you can ask.

16 MR. KIRINCICH: And the other one is -- I think out of
17 an abundance of caution, we would like a Jackson v. Denno
18 hearing. It should be very short. There was a statement
19 that was given to law enforcement. They said they
20 mirandized Mr. Branham and he gave a statement. He, I
21 think, denies giving the statement or at least denies the
22 contents of the statement. We just want to make sure that
23 he was properly mirandized and not in custody and being
24 questioned at the time.

25 THE COURT: All right.

Mike Lyons - Direct by Mr. Moak

89

1 MR. MOAK: Is Mike Lyons still out there?

2 THE COURT: Jackson v. Denno. All right, we'll do it.

3 Say again what you just said about the Jackson v. Denno,
4 why you need it.

5 MR. KIRINCICH: Your Honor, Mr. Branham is alleged to
6 have given a statement after the sheriff's office,
7 specifically, Corporal Rick Bailey, said he mirandized Mr.
8 Branham, then Mr. Branham gave a statement.

9 I probably just need some clarification that he was
10 mirandized, because he was already in custody.

11 According to testimony, he was cuffed as soon as the
12 officers got there, that he was detained and separated.

13 MR. MOAK: Your Honor, the state calls Mike Lyons,
14 Kershaw County Sheriff's Department.

15 Michael Lyons, being first
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. MOAK:

18 Q Deputy Lyons, were you called to respond to [REDACTED]

19 [REDACTED] Road in Elgin on December 8, 2009?

20 A Yes.

21 Q Is that the residence of George Branham and Jessica
22 Scott?

23 A Yes.

24 Q While you were there, was Mr. Branham handcuffed?

25 A Yes, he was.

- 1 Q Was he mirandized?
- 2 A Later on he was.
- 3 Q Okay. Who actually did the miranda warning?
- 4 A Corporal Bailey.
- 5 Q But you were there and you heard it?
- 6 A Yes.
- 7 Q Okay. After he was mirandized, was he questioned?
- 8 A He asked if he could say something.
- 9 Q He asked if he could say something?
- 10 A Yes.
- 11 Q And what did he say?
- 12 A He stated that the young lady involved in this, the
- 13 victim, had an issue with cleaning herself after she went
- 14 to the bathroom, and he was checking to make sure that she
- 15 did a good job.
- 16 Q That's what he said?
- 17 A Something similar to that, yes.
- 18 Q Was that in response to any question by law
- 19 enforcement?
- 20 A Not by me, no.
- 21 Q Did you hear any law enforcement officer ask him about
- 22 that?
- 23 A No, sir, I didn't.
- 24 Q He asked law enforcement if he could say something?
- 25 A Yes.

1 Q And that's what he said?

2 A Yes.

3 MR. MOAK: No further questions.

4 THE COURT: All right. Mr. Kirincich.

5 CROSS EXAMINATION BY MR. KIRINCICH:

6 Q What's your official title?

7 A Investigator.

8 Q Investigator Lyons, was Mr. Branham's statement
9 memorialized in writing by Mr. Branham?

10 A Excuse me?

11 Q Did Mr. Branham write his statement?

12 A No, he did not.

13 Q Did anybody give him a written copy of his miranda
14 warnings?

15 A I don't know.

16 Q Do you know how Corporal Bailey went over the miranda
17 warnings with him?

18 A I believe it was verbally.

19 Q Did he have a card that he read from whenever he gave
20 him the miranda warnings?

21 A I don't know.

22 Q Were you present -- I mean, you say you know that
23 Corporal ---

24 A I heard him, but I wasn't paying attention to what
25 Corporal Bailey was doing. I had heard it. I had the

1 mother and the other children in the house.

2 Q So you didn't hear if Corporal Bailey was asking any
3 questions of the defendant?

4 A No.

5 Q How do you know that Mr. Branham then said that

6 Child was having trouble cleaning herself? Is that what
7 you were told by Corporal Bailey?

8 A No. I heard him say that. I listened to that. I'm
9 confused here.

10 Q That's all right. We'll get it straight. You were
11 inside the trailer at the time?

12 A Yes.

13 Q Now, didn't you detain Mr. Branham on the outside of
14 the trailer as soon as you got there because he approached
15 you with his hands behind his back?

16 A He came out of the house. The front door was open.
17 He turned around and put his hands behind his back, so I
18 handcuffed him.

19 Q Okay. And was Mr. Branham brought back inside close
20 to you where you could hear him over Ms. Scott and the
21 children?

22 A He didn't say anything.

23 Q When did he talk to Corporal Bailey?

24 A It was after -- after Corporal Bailey mirandized him.
25 I think we were going to transport him to the jail and he

1 asked if he could say something.

2 Q You never heard Mr. Branham say, I didn't do anything?

3 A I don't remember his exact words.

4 Q Did you hear him say something along those lines?

5 A No, I don't recall. I just remember the part about

6 him saying that he was checking on the child with the

7 cleaning herself problem.

8 Q And in physical relation -- because I'm still unclear.

9 You say you were inside the trailer?

10 A Yes.

11 Q Mr. Branham was detained on the front porch of the

12 trailer and outside. Where was Mr. Branham when he made

13 the statement and where were you when he made the

14 statement?

15 A We brought him back inside the trailer. I didn't know

16 who he was. So I wasn't going to let him go anywhere, nor

17 leave him with another deputy outside out of my eyesight,

18 so we brought him back in. And then when I spoke to the

19 complainant, I had him via another deputy take Mr. Branham

20 to a side bedroom. And then Corporal Bailey arrived some

21 time later.

22 Q Nobody attempted to speak with Mr. Branham while he

23 was being detained in this bedroom?

24 A Not at first.

25 Q How long after you arrived did Corporal Bailey arrive?

1 A I don't know.

2 Q And I apologize. It's been a long day for everybody
3 here. I'm still unclear, where were you in relation to Mr.
4 Branham when he made the statement?

5 A Within ear shot. It was a -- I believe it was a
6 single-wide trailer. It wasn't that big. I was in -- most
7 of the time I was in the living room, which is right in the
8 middle of the trailer. I believe he may have been in the
9 hallway.

10 Q You can't say whether anybody questioned him if he was
11 in another bedroom?

12 A I wouldn't know.

13 Q How long had Corporal Bailey been with Mr. Branham
14 before he made the statement?

15 A I don't remember.

16 Q You were at the house a long time that night, right?
17 You were there from 3:00 in the morning until about 4:30 in
18 the morning?

19 A If that's what the report says, yes, approximately.

20 Q Yes, sir, I've got your report here if you'd like
21 to ---

22 A I don't.

23 Q Okay.

24 A I'm taking your word for it. I arrived at 3:05 and
25 departed at 4:28.

1 Q You don't remember how long Corporal Bailey was
2 talking to Mr. Branham or if they were talking?

3 A No, sir.

4 Q You can't say one way or the other? I'm sorry, I keep
5 asking the same thing.

6 A I don't know how long he was with Mr. Branham, and I
7 don't know what they said. But I did hear the part about
8 him reading his rights, and then he told Deputy DeBruhl to
9 take him to jail, which is when Mr. Branham asked if he
10 could say something.

11 MR. KIRINCICH: Thank you.

12 REDIRECT EXAMINATION BY MR. MOAK:

13 Q You heard Deputy Bailly mirandize him and then you
14 heard him ask if he could say anything?

15 A Yes.

16 Q And then he made that statement?

17 A Yes.

18 Q And you clearly heard those -- heard the miranda and
19 that statement?

20 A Yes.

21 Q You heard no questions?

22 A No.

23 Q Was he mirandized when the decision was made to
24 actually take him to the jail?

25 A I believe he did that before that decision was made.

1 Q So you mirandized before he was actually decided to go
2 to the jail?

3 A Yes.

4 MR. MOAK: Okay. No further questions.

5 THE COURT: Anything further?

6 MR. KIRINCICH: No, Your Honor.

7 THE COURT: Thank you, sir. You can step down.

8 (The witness leaves the witness stand.)

9 THE COURT: Any further witnesses by the state?

10 MR. MOAK: Not from the state, Your Honor.

11 THE COURT: Any witnesses by the defense?

12 MR. KIRINCICH: No, Your Honor.

13 MR. MOAK: Your Honor, we would submit the witness has
14 testified he was mirandized and he also actually was not
15 interrogated. He actually volunteered the statement, so we
16 would submit that miranda doesn't even really apply in this
17 case because he was in interrogation.

18 THE COURT: You all seem to like to really argue the
19 issues. But the one thing that's on the sheet that I think
20 I sent you from Richland is that we only argue an issue
21 when requested by The Court. The state has argued
22 unsolicited argument. Defense's turn for a solicited
23 argument in response to the state's unsolicited arguments.

24 Go ahead.

25 MR. KIRINCICH: Thank you, Your Honor. The only thing

1 that troubles me about Deputy Lyons' testimony is his
2 inability how long Corporal Bailey was in there with Mr.
3 Branham. He doesn't know if Mr. Branham was questioned.
4 He only heard the statement in the hallway.

5 Your Honor, I understand that he says that he heard
6 miranda given and he heard the statement come after Mr.
7 Branham said, may I say something? I understand that the
8 state has the light most favorable in this case and the
9 defense did not present any evidence. But I just again
10 state that that troubles me that he was unsure if there's
11 any questioning.

12 He also -- and I understand it was a confusing
13 situation. He kind of hedged on whether Mr. Branham was in
14 custody. He said at one point that he was detained, and
15 then he said that -- he said the statement after they said
16 he was arrested, they were taking him to jail. Mr. Moak
17 questioned him again on that. He said, well, he was -- he
18 was detained.

19 That's the only thing that troubled me, Your Honor.

20 THE COURT: All right. The fifth amendment protection
21 inuring miranda and all relates to compelled statements.
22 It encompasses, protects against compelled statements by a
23 defendant, not voluntary statements by the defendant.

24 The officer has established, however, that the
25 defendant was given his miranda rights. He requested to

1 make a statement. Wasn't pursuant to any interrogation by
2 the officer.

3 So this is not a compelled statement that would
4 otherwise afford him the protections and The Court to have
5 to go through the miranda analysis. But I find that it is
6 a voluntary statement made by the defendant, wasn't
7 pursuant to any interrogation by the police officer, and
8 that though it wasn't pursuant to any interrogation and was
9 a voluntary statement; nevertheless, his miranda warnings
10 had been given and that the state has established by a
11 preponderance of the evidence the admissibility of this
12 statement.

13 All right. What else you got?

14 MR. KIRINCICH: Your Honor, I believe that is -- that
15 covers everything that I filed or brought before The Court
16 through an oral motion.

17 THE COURT: All right. What else do you have, Mr.
18 Moak? What else do you have today?

19 MR. MOAK: That is all we have, Your Honor.

20 THE COURT: All right. Well, the jury is coming in at
21 9:30, and we all will assemble, hopefully, about 9:15 and
22 be ready to go when they get here at 9:30.

23 I will review these cases. Again, if you all have
24 anything else you want me to consider, feel free to email
25 it to me overnight, and I'll look at it before coming.

1 (Court is in recess.)

2 (Tuesday, August 23, 2011.)

3 THE COURT: Anything else before we bring the jury?

4 MR. MOAK: Assuming your ruling was against us
5 yesterday?

6 THE COURT: Is there anything else on that issue?

7 MR. MOAK: We would like that to come in, but I don't
8 think we have anything else from our side.

9 THE COURT: All right. Anything else?

10 MR. KIRINCICH: We don't have anything else, Your
11 Honor.

12 THE COURT: All right. I find that the state has
13 failed to establish through clear and convincing evidence
14 that this testimony should be admitted, and that further
15 that Lyle is a rule of exclusion -- of excluding other
16 acts, other crimes so as to not prejudice the defendant's
17 right to a fair trial on the crime charged. And I find
18 that this testimony will not be admitted pursuant to State
19 v. Lyle.

20 All right. Ready for opening statements?

21 MR. MOAK: Yes, Your Honor.

22 THE COURT: All right. Let's bring them in.

23 (The jury returns to the courtroom at 9:52 a.m.)

24 THE COURT: All right. All jurors are here. Good
25 morning. Now, ladies and gentlemen, good morning.

1 JURORS: Good morning.

2 THE COURT: Well, thank you. If you all will stand to
3 be sworn.

4 (The jury was first duly sworn at 9:53 a.m.)

5 THE COURT: Ladies and gentlemen, you've now been
6 selected and now sworn to well and duly try this case and
7 render a true verdict according to the evidence and
8 according to the law, so help you, God.

9 And before we begin, I would want to say a few things
10 to you. I want to tell you that this trial probably will
11 be different from what you might expect. Many people do
12 not have a chance to attend actual court sessions as you
13 are now doing. And many think and perceive of what court
14 is all about from watching television or movies or reading
15 books. And many perceive that the trials are always full
16 of high drama, intense action, and riveting circumstances.

17 And while all of these things may be true at some
18 time, this trial is not for the purpose of entertainment
19 like the shows and the movies are. This trial is a
20 fundamental part of our system of democracy. It is a
21 search for the truth in an effort to make sure that justice
22 is done between the parties before The Court.

23 In searching for the truth and making sure that
24 justice is done is often slow, deliberate. Sometimes
25 repetitive, the opposite of what you may have seen on T.V.

1 or read in a book.

2 This courtroom is a place of honor, dedicated to
3 protecting and preserving citizen's rights through what
4 many have called the greatest legal system ever created.

5 The attorneys appearing before you, the solicitor and
6 defense attorney, they're advocates for the parties that
7 they represent. But first and foremost, they are officers
8 of The Court and they are sworn to uphold the integrity and
9 fairness of our judicial system. And their role is to help
10 you in your search for the truth of this case. And you
11 should expect them to be professional, competent, and
12 ethical in the representation of the respective interest
13 that they represent.

14 Remember that you have taken an oath to try this case
15 and reach a fair and just verdict. And, therefore, you are
16 also expected to be professional, reasonable, and ethical.

17 I want to thank you for accepting the important
18 responsibility of jury service and for your contribution
19 today to our criminal system.

20 Now, we are about to begin the trial of this case.
21 And at this time and during the trial and then in more
22 complete detail at the end of the trial, I will instruct
23 you as to the law that you are to apply to this case.

24 The defendant, George Stanley Branham, II, is charged
25 with criminal sexual conduct with a minor in the first

1 degree. The elements of this indictment will be explained
2 to you later.

3 The indictment is simply a charge by which the case is
4 brought in to court. It is not in any sense evidence of
5 the truth of the allegations it contains.

6 The defendant has pled not guilty to this indictment.
7 The state therefore has the burden of proving each and
8 every element of the indictment beyond a reasonable doubt.
9 And it will be your duty as jurors to decide whether the
10 state has met that burden.

11 Your purpose as jurors is to find and to determine the
12 facts of this case. You are the sole judge of the facts of
13 this case. Out of all the other folks who are summoned for
14 jury duty, out of all the people who live in Kershaw
15 County, out of all the other people who live in this state,
16 this country, or this world for that matter, only the 12 of
17 you who deliberate can decide the facts of this case.

18 You are to decide the facts from the testimony you
19 hear from this witness stand or from other evidence
20 introduced here in court. And it is up to you to determine
21 the inferences you feel that may be properly drawn from the
22 evidence that is presented.

23 It is especially important that you perform your
24 duties diligently in determining the facts of this case,
25 because ordinarily there is no way to correct an erroneous

1 determination of the facts by a jury.

2 Now, on the other hand and with equal emphasis, the
3 same law that makes you the judges of the facts -- that
4 same law makes me the judge of the law. And the law is
5 given to you by me is the only law that you may consider.
6 You must accept as correct the law as I state it to you
7 though you may disagree with it.

8 I cannot tell you what the facts are. And you cannot
9 disagree with me about what the law is or should be.

10 Your job is to take the law as I give it to you and
11 apply it to the facts as you find them from the testimony
12 of the witnesses and from the other evidence. And after
13 doing that, you will render your verdict, a true and just
14 verdict according to the solemn oath that you just took as
15 jurors.

16 Until I advise you to do so, you may not discuss this
17 case with anyone. You may not engage in any form of
18 premature deliberations, including your fellow jurors,
19 friends, family members, and anyone involved in this case.
20 You should be especially careful to not be in close
21 proximity so as to overhear conversations with anyone
22 connected with this case, be it lawyers, witnesses,
23 officers, or anyone connected with this case because you
24 are to decide the case solely based on what is presented
25 here in the courtroom. This includes discussions face to

1 face and by telephone, email, text, blogs, or other methods
2 of communication.

3 You may not use a computer, cell phone, or other
4 electronic device at any time while in the courtroom or
5 during deliberations.

6 You're not to listen, watch, or read any news reports
7 about this case. This includes anything that might be in
8 the newspapers, on the internet, radio, or television.

9 You must not consider anything that you may have read
10 or heard about this case outside the courtroom, whether
11 before or during the trial.

12 And after the case is submitted to you, you must
13 discuss it only in the jury room with your fellow jurors.

14 The attorneys and parties in this case have been
15 advised that they are not to talk to you at all. So that
16 if anyone involved in this case attempt to say anything
17 other than hello, you must understand they're not being
18 unfriendly, but simply they are under restrictions not to
19 attempt to discuss the case with you.

20 It's important that you keep an open mind and not
21 decide any issues in this case until all of the evidence
22 has been presented. It is important that you keep an open
23 mind and not decide any issue in the case until all the
24 evidence has been presented, the parties have made their
25 closing arguments and I've instructed you as to the law in

1 this case.

2 It is your solemn responsibility to determine the
3 guilt or innocence of the defendant. And your verdict must
4 be based solely on the evidence as it is presented to you
5 in this trial and on the law as I instruct you during and
6 at the close of the trial.

7 In just a moment the solicitor will make an opening
8 statement in which -- who's going to do the opening, Mr.
9 Moak -- in which he will explain to you what he thinks the
10 issues are and what he thinks the evidence will be.

11 Defense counsel, Mr. Kirincich, will also have that
12 same opportunity to do so, but he's not required to do so,
13 as the burden of proof is on the state and not on the
14 defense.

15 The evidence will then be presented to you through
16 testimony of witnesses. And we will hopefully move the
17 case along as quickly and expeditiously as we can.

18 Please understand that -- or please let me know if at
19 any point in time you're uncomfortable and you need a
20 break. We don't want to unduly wear you out or tire you
21 out by having to have you sit for long periods of time. So
22 from time to time we may just stand and stretch or just
23 take a break. We want to keep everyone fresh and focused.

24 In determining what the true facts are in this case
25 you must decide whether or not the testimony of witnesses

1 -- whether testimony is believable.

2 It's my responsibility to rule as a matter of law
3 whether certain testimony should be admitted. But once
4 testimony is admitted, whether or not you believe the
5 testimony is solely for you the jury to determine.

6 In weighing testimony, you may consider any bias or
7 prejudice that a witness may have, whether a witness has an
8 opportunity to see and to know the things about which the
9 witness testifies. You may consider anything, applying
10 your common sense to evaluating credibility of testimony
11 and of witnesses.

12 Later in the process I will appoint one of you to
13 serve as the foreperson of the jury. That person will have
14 the responsibility of serving as the spokesperson for the
15 jury. That person will have the responsibility of
16 presiding over the jury deliberations. And that person,
17 the foreperson, will have the responsibility of completing
18 the verdict form, representing the unanimous verdict of the
19 jury at the conclusion of the case.

20 We will now move in to opening statements by the
21 state.

22 OPENING STATEMENTS BY MR. MOAK ON BEHALF OF THE STATE:

23 Good morning. This case is captioned the state versus
24 George Branham. What this case is really about the
25 protection of Child [REDACTED] a little girl; that's what

1 this case is about.

2 Things may go through your mind, questions you may
3 have during this case could include: Who did protect

4 Child [REDACTED] Who didn't protect Child [REDACTED]

5 Some of the witnesses you may not like. You may
6 wonder why they didn't do certain things, why they did
7 others. But, again, that's who did or who did not protect

8 Child [REDACTED] That's not the big question here.

9 The big question here, what this case is about, is who
10 did Child [REDACTED] need protection from and what did she
11 need to be protected from? That's why it's the state
12 versus George Stanley Branham, because this is the who.
13 And you're going to hear about the what that he was doing
14 that she needed to be protected from.

15 On December the 8th, 2009 Child [REDACTED] was just 7 years
16 old. Her date of [REDACTED] is November 21, 2002. Roughly 7
17 years old. 2 ½ weeks.

18 That night George Branham, the defendant, you're going
19 to hear how he went out drinking, how he came home, how
20 Jessica Scott, who is Child [REDACTED] mother, woke up when George
21 came in -- Bubba Branham is his nickname. They had a
22 conversation. Bubba was drunk. Jessica goes back to sleep
23 in her bed. Bubba's in the living room. When Jessica goes
24 back to bed, she's got several of her children in the
25 bedroom. One of those children is Child [REDACTED]

1 Somewhere between 2:00 and 2:50 that night -- this was
2 actually the morning of the 8th, Jessica rolls over,
3 realizes that Child is not in the bed any more. She gets
4 up, looks for Child. And this is a single-wide trailer.
5 It's not a very big area to look. Goes out the bedroom,
6 into the kitchen area. And the kitchen/living room is one
7 big room. At end of the living room is like a hallway to
8 the other bedroom.

9 She looks down the hallway, and what she sees there is
10 what caused this to become a law enforcement issue. She
11 sees what George Branham was doing with 7-year-old Child
12 Scott that she needed to be protected from.

13 What did she see? She saw George Branham with his
14 pants down. She saw 7-year-old Child with her pants
15 down. She saw Child on the bottom. She saw George on
16 the top.

17 When George saw Jessica, George gets up -- she
18 describes like trying to cover it up, and tells her
19 initially some story about Child has been having a
20 problem using the bathroom or wetting the bed, he was
21 making her go to the bathroom.

22 Then it switches to, I was picking trash up off the
23 floor is why I was I bent over.

24 Then it switches to, Child has been having problem
25 when she goes to the bathroom wiping. I was checking her

1 for that; that's why her pants were down.

2 At 2:50 that morning Jessica Scott calls 911. She
3 called law enforcement. She does the right thing.

4 They come out and George Branham is arrested. When
5 he's arrested, as part of the arrest, he asked the
6 officers, can I say anything?

7 They didn't ask him any questions.

8 He says, can I say anything? He tells them that he
9 was checking Child because she had been having problems
10 wiping.

11 Officers checked the bathroom. They didn't see any
12 feces or anything in either one of the bathrooms. And then
13 from that point forward -- that -- that's what happened
14 that night.

15 From that point forward, Child goes to the hospital.
16 They do a rape kit. You're going to hear from Dr. Connell.
17 And some of the testimony from Dr. Connell and Kathy
18 Saunders, the forensic nurse examiner, it's going to be
19 very uncomfortable. But this is a case we have to prove
20 the elements. You're going to hear it.

21 You'll hear Dr. Connell describe how Child had a
22 widened introitus, which essentially is the middle hole --
23 a widened introitus on a 7-year old. This is the night of.

24 3 days later there was a forensic exam done by Kathy
25 Saunders. You're going to hear her testimony of what she

1 saw, what her findings were, and what that was consistent
2 with.

3 You're going to see the forensic interview, because
4 again at the Carehouse in Florence, Child was taken and
5 actually interviewed by a trained interviewer. There's a
6 video of that that you all will see. You all will hear her
7 -- you will see her on the stand as well. But you all will
8 hear her story that this has been going on since she was 3
9 -- since she was 3. And it happened all the time. She
10 cannot count how many times it happened. You're going to
11 hear her talk about having wet stuff on her bottom. I
12 mean, it's very disturbing testimony, especially coming out
13 of an 8-year old.

14 Okay. That is what you all are going to hear this
15 week. And the reason you all are hearing it this week is
16 because this is what happened.

17 The defendant is indicted for criminal sexual conduct
18 with a minor first degree. What that means is that he had
19 sexual intercourse or committed a sexual battery upon a
20 victim who is under the age of 11 years old.

21 Child was 7 when this got caught. Okay. Sexual
22 battery includes any penetration. Okay. Whether or not
23 there was ejaculation or not, as long as there's
24 penetration, that is the sexual battery; that's what he's
25 charged with, that's what we have to prove.

1 You're going to hear from -- probably from Jessica
2 Scott, the mother, about how many times this family moved
3 between when Child was 3 and when this was caught.
4 You're going to hear how they lived in Kershaw County,
5 Orangeburg County -- I think in Elloree, Lexington County,
6 and they were back and forth between those counties and
7 Kershaw County between 2006 and December 2009.

8 The indictment is for November 1, 2009 to December 8,
9 2009, because that's when we know they're at [REDACTED]
10 Road in Elgin, so we know for sure that part happened in
11 Kershaw County.

12 Okay. How are we going to prove this? You're going
13 to hear from Jessica Scott, the mother. She was there that
14 night. You're going to hear her story of what -- her
15 description of what happened that night, how long she'd
16 been with Bubba Branham, where they were at, and what she
17 saw that night.

18 You'll hear from Child. She's going to tell you
19 what happened. She's going -- you're going to hear from
20 her.

21 You're going to hear from Debbie Elliott, who was the
22 trained interviewer that interviewed Child. You're going
23 to watch the video. It's about an hour long.

24 You're going to hear from Rebecca Sheffer, she is the
25 nurse -- or the -- I guess the sexual assault nurse

1 examiner at the hospital. She was part of a rape kit that
2 was done that night.

3 You're going to hear from Dr. Foy Connell, who is also
4 a part of the rape kit conducted that night.

5 You're hear from Kathy Saunders, who was the forensic
6 nurse examiner, who actually did the forensic exam of
7 Child 3 days later.

8 You're going to hear from Amanda Webb. Again, this
9 was caught before ejaculation. You're going to hear her,
10 try for DNA. You're going to hear what her report is and
11 what she expected and what did expect based on the facts
12 and how it was consistent or inconsistent with that.

13 That's how we're going to show this. You're going to
14 be able to hear these witnesses. And you're going to
15 decide for yourself who's telling the truth, who's not
16 telling the truth.

17 Each one of you all are regular people. You know, how
18 you -- you may think, okay, I'm just a normal citizen. I'm
19 not specially trained to be a juror. But I'll submit to
20 you, that your life experiences just being normal citizens
21 is the training you need.

22 You grow up. You know, people tell you something.
23 You kind of like feel their credibility. This guy might
24 not be telling the whole story. Every day in your
25 interaction you decide who's telling the truth, who's not

1 telling the truth. You know, that's a major skill that
2 your life has trained you all in to be a juror.

3 I would ask you to use your life experiences, your
4 common sense, listening to the testimony, watching the
5 video, listen to the evidence, decide what you believe
6 happened.

7 And what's going to happen is you're going to ask the
8 question: Who did Child need to be protected from?

9 You're going to answer it: George Branham.

10 And you're going to answer the question yourself, what
11 she needed to be protected from?

12 And that's the sexual battery.

13 And you're going to come back after this case is over,
14 after deliberations, and you're going to deliver a verdict,
15 guilty, against George Branham for the offense of criminal
16 sexual conduct with a minor first degree.

17 THE COURT: Mr. Kirincich.

18 MR. KIRINCICH: Thank you, Your Honor.

19 OPENING STATEMENTS BY MR. KIRINCICH ON BEHALF OF THE
20 DEFENDANT:

21 Ladies and gentlemen of the jury, with all due respect
22 to Mr. Moak and especially to Child in this case,
23 Mr. Moak told you the case is the state versus George
24 Branham. But then he tells you it's about the protection
25 of Child

1 Ladies and gentlemen, we can't do anything to protect
2 Child [REDACTED] She doesn't go home with you at night. She
3 doesn't live with you. This case is the state versus
4 George Branham.

5 Mr. Moak has told you -- the judge has told you that
6 you need to listen to the evidence. I know in a case like
7 this we all have biases. We're human. You're probably
8 thinking, why did he do it? You're not thinking, did he do
9 it? You're thinking, why did he do it?

10 But that's not what you need to think. The judge has
11 instructed you at this point, George Stanley Branham, II,
12 is innocent. He's innocent after the first witness
13 testifies. He's innocent after the state puts all their
14 witnesses up and closes their case.

15 You don't get to decide if he's guilty until the state
16 has proved their case beyond a reasonable doubt, all the
17 evidence has come in, the judge has charged you, and sent
18 you back to the jury room. We don't expect that to happen
19 until Thursday at the earliest.

20 What we're asking you to do is listen. Listen to the
21 witnesses.

22 Mr. Moak says there's 3 different stories from Mr.
23 Branham. You're going to hear law enforcement say that he
24 made one statement. The other statements come from Jessica
25 Scott, Child [REDACTED] mother, and Mr. Branham's girl friend.

1 You're going to hear about what happened that night
2 before Ms. Scott called law enforcement. You're going to
3 hear about an argument that occurred between Mr. Branham
4 and Ms. Scott before she called law enforcement.

5 You're going to see evidence -- I submit to you the
6 evidence is going to be shown to you that Ms. Scott is not
7 a reliable person. This case is not about Jessica Scott.

8 This case is about Child [REDACTED] She was 7 when this
9 happened. I don't know your demographics. I don't know if
10 you have children. We were all children once though.
11 Children don't always tell the truth. Children can be
12 coached.

13 I want you to listen to the medical experts. I want
14 you to listen to Child [REDACTED] when she comes up here.
15 Determine for yourself whether you think she's telling the
16 truth.

17 Don't listen to me. Don't listen to Mr. Moak. What
18 we say is not evidence.

19 Evidence comes from that chair right there. When
20 you've heard all the evidence, listen to the judge because
21 he's going to tell you what the law is.

22 Mr. Moak, what he says is not the law. What I say is
23 not the law. What the judge tells you, that's what you
24 need to listen to.

25 So we just ask you to go in to this trial with an open

1 mind. Don't ask why did Mr. Branham do it? Wait until you
2 hear the evidence to see if the state proves beyond a
3 reasonable doubt that Mr. Branham committed that.

4 And then when the judge tells you it's time to
5 deliberate, then you can start forming your opinions.
6 You'll have an opportunity to congregate and the 12 of you
7 will decide whether Mr. Branham is guilty or not. Don't
8 listen to these opening statements and make up your mind.
9 Please listen to the evidence.

10 Thank you.

11 THE COURT: First witness.

12 MR. MOAK: We call Jessica Scott.

13 (C.D. marked as State's Exhibit No. 6 for
14 identification.)

15 (Pause.)

16 THE COURT: Ladies and gentlemen, I'll have you step
17 to the jury room for a few moments. Please go to the jury
18 room. Please do not discuss the case.

19 (The jury retires to the jury room at 10:21 a.m.)

20 THE COURT: All right. You've called a witness. I
21 don't see anyone. Where did they go? Generally, when you
22 call a witness, the person comes this way as opposed to
23 going that way.

24 Have you seen the person, the first witness?

25 MR. MOAK: She was here earlier.

1 (Pause.)

2 THE COURT: Mr. Moak, what happened to your witness?

3 MR. MOAK: Apparently, she's outside smoking, Your
4 Honor.

5 THE COURT: Outside smoking. As we prepare for this
6 first witness, if she is coming, are there any exhibits
7 that you all have looked at that you have agreed to be
8 admitted?

9 MR. MOAK: The exhibit I've got is the audio.

10 MR. KIRINCICH: Your Honor, what troubles me about the
11 911 call, I don't believe the 911 operator is here to
12 authenticate it.

13 MR. MOAK: Ms. Scott will be able to authenticate it.
14 She is the one that actually is on the audio.

15 MR. KIRINCICH: Your Honor, I've heard it. It's a
16 standard 911 call.

17 THE COURT: Do you object to the admission? What
18 exhibit number is that?

19 MR. MOAK: 6.

20 THE COURT: You object to exhibit no. 6 coming in?

21 MR. KIRINCICH: Your Honor, I object to the fact that
22 we don't have the 911 operator to authenticate it. But I
23 understand if Ms. Scott authenticates it, then he can
24 introduce it over my objection.

25 THE COURT: I can't rule in a vacuum unless there's an

1 agreement. Do you have any other exhibits that you all
2 agree comes in?

3 MR. MOAK: Ms. Scott, I guess, is the only exhibit --
4 out of her, it's the only exhibit.

5 THE COURT: That's the only exhibit?

6 MR. MOAK: With her, yes.

7 THE COURT: Any other exhibits as far as the trial is
8 concerned?

9 MR. KIRINCICH: Your Honor, I don't have an objection
10 to a picture. I mean, the child is here.

11 MR. MOAK: This will be exhibit 7, I guess.

12 After that, the next one, I think, is going to be the
13 forensic interview video.

14 THE COURT: So exhibit no. 7 is in without objection.

15 (Small photo marked in evidence as State's Exhibit No.
16 7.)

17 THE COURT: The forensic interview exhibit, what
18 exhibit number is that?

19 (Pause.)

20 MR. MOAK: The video is marked no. 5.

21 THE COURT: All right. Do you object to exhibit no.
22 5, Mr. Kirincich?

23 MR. KIRINCICH: Your Honor, we had a hearing about
24 exhibit no. 5 yesterday. If Your Honor feels that it met
25 the statutory requirements of 17-23-175, I don't have

1 anything else to add.

2 THE COURT: All right. Exhibit no. 5 is admitted.

3 (State's Exhibit No. 5 received in evidence.)

4 THE COURT: Any other exhibits?

5 MR. MOAK: Nothing I can think of right now, Your
6 Honor.

7 THE COURT: So if we start at 5, we don't have a 1, 2,
8 3, 4?

9 MR. MOAK: 1, 2, 3, 4 are those pictures that were
10 admitted in the pretrial hearing. Those aren't coming in,
11 but that's what took the numbers.

12 THE COURT: All right. We're going to take a 2-minute
13 stretch, then we'll press on.

14 (A recess was taken.)

15 THE COURT: The state ready to proceed?

16 MR. MOAK: Yes, Your Honor. We call Jessica Scott.

17 THE COURT: All right. We'll wait until the jury
18 comes in, and then you can call her.

19 All right. If you will come and have a seat up here,
20 Ms. Scott.

21 Bring the jury please.

22 MS. BARRY: Your Honor, a housekeeping matter. Our
23 next witness is the victim. She's 8 years old. I would
24 ask The Court leeway on that. She is in the office.
25 She'll be coming around the back.

1 THE COURT: I understand. Sure.

2 (The jury returns to the courtroom at 10:31 a.m.)

3 JESSICA SCOTT, being first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. MOAK:

6 Q State your name for The Court.

7 A Jessica Shannon Scott.

8 Q Jessica, how many children do you have?

9 A I'm currently pregnant with number 8.

10 Q Can you tell us the names of the other ones?

11 A Sibling 1 Sibling Child Sibling 3 Sibling 4 Sibling 5 Sibling 6

12 THE COURT: Just a moment. Adjust the mike some so we
13 can hear a little better.

14 (Pause.)

15 THE COURT: Repeat those names for us please.

16 A Sibling 1 Sibling Child Sibling 3 Sibling 4 Sibling 5 and
17 Sibling 6

18 Q Is that the kind of oldest to youngest?

19 A Yes.

20 Q Okay. Your ex-husband's name is Mark Scott?

21 A Yes.

22 Q Is he the father of Child

23 A He is.

24 Q Which children are his?

25 A Sibling 1 Sibling and Child

Jessica Scott - Direct by Mr. Moak

121

- 1 Q Okay. And who is the father of the other children?
- 2 A George Branham.
- 3 Q Okay. And is George the father of the one you're
- 4 pregnant with now?
- 5 A No.
- 6 Q Okay. Can you tell us how long you've known George
- 7 Branham?
- 8 A 8 years.
- 9 Q And are you from Kershaw County?
- 10 A I am -- well, I was originally from West Virginia, but
- 11 I've lived in Kershaw County most of my life.
- 12 Q In Lugoff/Elgin?
- 13 A Yes.
- 14 Q Are you from the Elgin area or the Lugoff area?
- 15 A Lugoff area.
- 16 Q Okay. And you are 31?
- 17 A 30.
- 18 Q 30. Okay. So you've known George for 8 years?
- 19 A Yes, sir.
- 20 Q Does he have a nickname?
- 21 A Bubba.
- 22 Q Bubba. Okay. At some point did you move into a house
- 23 with Bubba Branham?
- 24 A I did.
- 25 Q Do you remember about when that was?

- 1 A About 6 years ago.
- 2 Q 2005?
- 3 A Yes, sir.
- 4 Q Okay. And did you have your children with you when
- 5 you moved in the home with him?
- 6 A I did every one of them except for Sibling 1
- 7 Q Okay. All the ones that were at that point?
- 8 A Yes.
- 9 Q Okay. Did you have any children with him before you
- 10 moved in with him?
- 11 A I had Sibling 1 Sibling Child And me and him had
- 12 Sibling 3 together.
- 13 Q Okay. Do you remember what the address was when you
- 14 moved in with George Branham?
- 15 A It was Street.
- 16 Q That's in Camden?
- 17 A Yes.
- 18 Q Kershaw County?
- 19 A Yes.
- 20 Q Between that time and December 2009, did you all stay
- 21 in the same home?
- 22 A No. We moved several times.
- 23 Q Do you remember how many times you all moved?
- 24 A I think we added up about 8 times in 3 years.
- 25 Q And where did you move -- when you first moved from

Jessica Scott - Direct by Mr. Moak

123

1 Kershaw County, where did you move?

2 A We've lived in Orangeburg, we've lived in Lexington,
3 we've lived in Gaston. But I don't remember which one we
4 moved to first.

5 Q Did you all move back to Kershaw County in between
6 there?

7 A Yes, we did between each one.

8 Q Okay. And some time in October/November of 2009 did
9 you move back to Kershaw County?

10 A Yes.

11 Q And where did you all move to?

12 A [REDACTED] Road in Elgin.

13 Q Do you remember what the address was?

14 A Not right off, I don't.

15 Q Okay. [REDACTED] Road?

16 A Yes.

17 Q And that was in Kershaw County?

18 A Yes.

19 Q Now, the address you moved to in October and November
20 of 2009, was that the same address that you were at on
21 December 8, 2009?

22 A Yes.

23 Q Can you tell us what happened that night?

24 A George had been to the neighbor's house drinking. And
25 for whatever reason, Child [REDACTED] Sibling [REDACTED] Sibling 5 [REDACTED] and Sibling [REDACTED] had a

1 play pen at the end of the bed. All of them came and
2 climbed in the bed with me. I guess it was about 2:00
3 o'clock in the morning George came home. And he came in
4 the bedroom and woke me up.

5 And I got up and talked to him for a few minutes. I
6 went back to bed. In the process, I guess it woke up some
7 of the kids. Child woke up. And I laid back down with
8 them. And I rolled over to curl up with Child and
9 realized she wasn't there. So I got up to look for her.

10 When I walked into the kitchen, I could see down the
11 hallway and George was laying on top of her with his pants
12 around his ankles. And he had her pants down.

13 So I walked down to the hallway and asked him what he
14 was doing.

15 And he jumped up, pulled his pants up, and told me he
16 was trying to make her go to the bathroom.

17 So I walked down the hallway. I got her and I took
18 her to the rest room. And she peed.

19 And George stood at the doorway the whole time. So
20 whenever we walked back through the living room, I was
21 taking Child back to my room with me to ask her what
22 happened, and George stopped me. He says, are you taking
23 her back to the bedroom with you?

24 And I said, no. I'm going to go get her pillow and
25 get Sibling off the bed, and I'm going to put them in their

1 room.

2 And when I took Child into the bedroom and asked her
3 what he was doing to her.

4 And she told me he was trying to stick his private in
5 her hole.

6 Q Did you call 911?

7 A I did. I walked -- I walked out the bedroom and
8 confronted him in the living room where he was sitting in a
9 chair and told him I knew what he was doing and I wanted
10 him to get out of my house.

11 Q Okay.

12 A Whenever -- I stood there for a minute and I realized,
13 this isn't just about him leaving, that the cops needed to
14 be called. I went back to my bedroom. And my son Sibling
15 handed me the phone and I called 911.

16 Q And did the cops come?

17 A They did.

18 Q Okay. And did you speak to the police?

19 A I did.

20 Q Did you give a written statement?

21 A I did.

22 Q Okay. Before we get further, I'll have you stand up
23 and try to draw.

24 (The witness steps down from the witness stand.)

25 Q Use the chalkboard and kind of like draw the layout of

1 the residence?

2 A I'm not a very good at artist, but this is the master
3 bathroom. This is the bedroom. The kitchen.

4 Q Can you turn the other way so she can hear you?

5 A The living room is here. And the hallway is
6 connected. But when you walk in the kitchen, you can see
7 down the hallway. And there was a bedroom right there and
8 the hallway was right in front of the bathroom where he had
9 her laying in the hallway.

10 Q Now, is this actually divided between the kitchen and
11 the living room?

12 A There's a little bar area.

13 Q You can see over it?

14 A (Nods head.)

15 Q And this is where you were asleep at?

16 A Yes.

17 Q And where did you go from there looking for Child

18 A Probably right there, so I went out the doorway. And
19 when you walk out the doorway, you're kind of in the
20 kitchen. And I walked around the corner there. And I
21 could see him straight down the hallway.

22 Q Okay. And Child room is over here somewhere, is
23 it not?

24 A Here.

25 Q And which bathroom did Child go to?

Jessica Scott - Direct by Mr. Moak

127

1 A The one in the hallway there.

2 Q Okay. Her bathroom?

3 A It was the one she normally went to unless somebody
4 was in there.

5 Q Is there a door outside this room?

6 A There's a door here. And outside my master bedroom,
7 there was the washer and dryer area. A door right there.

8 Q So the police came in that door over there?

9 A Yes.

10 Q Okay. And that's where you caught George Branham?

11 A Yes.

12 Q Okay. Before you sit down, can you describe how

13 George stood up? Did you actually see his privates?

14 A It's kind of hard for me to get down and up. But he
15 was down on his knees like this so that he could see down
16 the hallway so if I walked down, he could see me. And
17 George also has a problem with his hip, so he had a pillow
18 down on the floor to support his leg. And whenever I said,
19 what are you doing?

20 He jumped up real quick and pulled his pants up,
21 stepped around in front of Child so that I couldn't see
22 that she was at the floor, trying to pull her pants up.

23 (The witness returns to the witness stand.)

24 Q Now, let me show you what's been marked as State's

25 Exhibit 6. See if you recognize this? Is that a C.D. of

1 the 911 call?

2 A Yes, sir.

3 Q And you've listened to this, haven't you?

4 A Yes, sir.

5 Q Does it fairly ---

6 THE COURT: Counsel, you can't ask questions and
7 answer them. Ask her if you recognize it?

8 A Yes, I recognize it.

9 Q Have you listened to the audio on this?

10 A Yes, sir.

11 Q Is this the 911 call?

12 A Yes, sir.

13 Q Does it fairly and accurately depict what you told
14 911?

15 A I'm sorry, I didn't hear you.

16 Q Does it have what you told 911?

17 A Yes, sir.

18 MR. MOAK: Your Honor, I would move State's 6 into
19 evidence.

20 THE COURT: What says the defense?

21 MR. KIRINCICH: Your Honor, we object to the admission
22 of this. Ms. Scott is not custodian of the records. I
23 don't know how she authenticates that this is the call from
24 December 7, December 8 of 2009.

25 THE COURT: All right. Counselor?

1 MR. MOAK: She just said that she's listened. This is
2 the call.

3 THE COURT: All right. Admitted over objection.

4 (State's Exhibit No. 6 received in evidence.)

5 MR. MOAK: Your Honor, at this time I would like to
6 publish State's 6.

7 (State's Exhibit No. 6 was played in open court.)

8 Q That's the conversation you had with 911?

9 A Yes, sir.

10 Q Now, you have 7 children, but on the audio -- on the
11 audio you talk about only 6 are there?

12 A Yes.

13 Q Was there a child that was not in the home at that
14 time?

15 A Yes, my oldest son stays with my mom.

16 Q Okay. And you were in your bedroom?

17 A Yes.

18 Q And Bubba was out somewhere else?

19 A In the living room.

20 Q Did you have all your children in the room with you?

21 A Sibling 3 and Sibling was laying in the living room on a
22 mat sleeping.

23 Q So while you're on the phone with 911, 2 of them are
24 out there with him?

25 A Yes, that's when the 911 operator told me to get the

1 other 2 in the bedroom with me.

2 Q Okay. Now, on the audio, did you recognize your
3 voice?

4 A Yes.

5 Q Did you recognize somebody else's voice on there?

6 A Yes.

7 Q Whose was that?

8 A George Branham's.

9 Q And did you hear him say something like let me speak
10 to her?

11 A Yes.

12 Q What was he trying to do?

13 A He said that he didn't want me to throw our family
14 away, and he wanted me to let him in the bedroom so that he
15 could talk to me and Child

16 Q So he was trying to get you to allow him to speak to
17 Child

18 A Yes.

19 Q Now, what -- before you called 911, what did Bubba
20 tell you was going on?

21 A His first story was -- well, he told me one time that
22 he was trying to make her go to the bathroom.

23 Then he told me that she had went to the bathroom, and
24 he was checking to see if she had wiped good. But when I
25 took her to the bathroom, she peed like she had just got up

1 first thing in the morning and went to the bathroom. She
2 peed for a long time. So she hadn't been to the bathroom
3 yet.

4 And then he told me there was a piece of paper in the
5 floor, and he said he was picking trash up out of the
6 floor. And I just couldn't imagine how him picking up
7 trash in the floor between my daughter's legs made any
8 sense.

9 Q So he told you that she needed to go to the bathroom.
10 He told you that?

11 A He said that he was trying to make her go to the
12 bathroom and that he said that she did go to the bathroom.
13 He was making sure she'd wiped good.

14 Q And then something about trash?

15 A Yes.

16 Q Okay. Now, did any of those explanations have
17 anything to do with his pants?

18 A No.

19 Q And you said something about his hip. Does he have a
20 leg shorter than the other one?

21 A Yes, he does.

22 Q And why does he need a pillow?

23 A To support his hip, because he had hip surgery. And
24 if not, it hurts his hip. So any time he got down on the
25 ground like that, he needed the support.

1 Q And there was a pillow in the hallway?

2 A Yes.

3 Q And tell us about the door to your bedroom. Was there
4 something wrong with that door?

5 A Yes, the hinges on it -- something -- I don't know if
6 one of screws had fallen out, or they were loose, but the
7 door would not shut all the way. So to keep him out of the
8 bedroom, I had to put my hand and my foot up against the
9 door so he couldn't shove it open.

10 Q So you're up against the door on the phone with 911?

11 A Yes.

12 Q And is he on the other side of the door?

13 A Yes, pushing.

14 Q Trying to talk to you?

15 A Yes. At one point he did push the door open, and I
16 shoved it back on him.

17 Q Okay.

18 A When I told him to go sit down.

19 Q So he could actually hear what you're telling 911 as
20 well, could he not?

21 A Yes.

22 Q Let me show you what's been marked as State's 7. See
23 if you can identify this?

24 A That's my daughter Child

25 Q Was that what she looked like around the time that

1 this happened?

2 A Uh-huh.

3 MR. MOAK: Your Honor, at this time I move State's 7
4 into evidence.

5 MR. KIRINCICH: No objection.

6 THE COURT: 7 is in evidence.

7 (State's Exhibit No. 7 received in evidence.)

8 MR. MOAK: Your Honor, may I publish it to the jury?

9 THE COURT: Yes.

10 Q That's what she looked like when this happened?

11 That's what she looked like?

12 A Yes.

13 Q Now, was Child taken to the hospital that night?

14 A This had taken place about 3:00 o'clock in the
15 morning. And my mother came and got her I guess somewhere
16 -- I called her around 5:00. So somewhere that morning she
17 did go to the hospital with my mother.

18 Q Did you go to the hospital?

19 A No, because my mom didn't have a vehicle big enough to
20 carry me and all the kids.

21 Q So you stayed with the kids?

22 A I did.

23 Q And Child went to Florence to be interviewed, did
24 you take her there, or did somebody else take her up there?

25 A No. She went with her dad.

1 Q And Child -- can you tell us what the custody
2 situation was before this happened?

3 A Me and my ex-husband was going through a custody
4 battle, and I had full custody of the children and he had
5 visitation.

6 Q Okay. So he had every other weekend?

7 A Yes.

8 Q So Child was with you primarily?

9 A Yes.

10 Q So was this the case the entire time you were with
11 George?

12 A Yes.

13 Q Did you notice anything in the time that you were
14 living with George that in retrospect you find strange?

15 A At the time nothing seemed strange. I mean, she acted
16 like that was her dad. She would crawl up in his lap and
17 watch T.V. with him.

18 Q Talking about Bubba?

19 A Yes.

20 Q Okay.

21 A There were times where we didn't have a vehicle, and
22 people had to take us to the store. And I would say I was
23 going to take Sibling or Child with me. And if I said that
24 I was going to take one of the other children, he would
25 say, why don't you take one of the younger ones because

Jessica Scott - Direct by Mr. Moak

135

1 they don't ever get to go anywhere. And he seemed like he
2 never wanted me to take Child out of the house.

3 Q At some point while you were living with Bubba
4 Branham, were you working?

5 A Yes.

6 Q When you went to work, who kept the kids?

7 A At one point they were in day care, but day care got
8 so expensive, I couldn't afford it. He wasn't working, so
9 he stayed home with the children.

10 Q Did you ever have a job and worked around 16 hours a
11 day?

12 A Yes, I worked deposits at express teller.

13 Q And where were you living when that happened?

14 A We lived in Camden on Street.

15 Q And did Child have something going on with her hair
16 around that time?

17 A Yes, her hair was falling out.

18 Q What did the doctor tell you?

19 A That it was stress.

20 Q And you were working 16 hours a day?

21 A A lot of times, yes.

22 Q Who was taking care of the kids?

23 A George or Bubba.

24 MR. KIRINCICH: Your Honor, I'm going to object. I'd
25 like to approach if I can.

1 (A bench conference was held off the record in the
2 presence of the jury, but out of the hearing of the jury.)

3 THE COURT: The question has already been answered.
4 You may proceed.

5 Q Did Child have an issue with her privates?

6 A Yes.

7 Q Tell us about that?

8 A We took her to the doctor a lot. She kept urinary
9 tract infections. The doctor would give her an antibiotic.
10 Whenever we would ask him to let us know what was going on,
11 they would just say she's red and irritated and that they
12 didn't want to mess with it because they didn't want to
13 make it worse.

14 Q And this was a common occurrence?

15 A Yes.

16 Q She ever have any yeast infections?

17 A Yes.

18 Q And you took her to the doctor?

19 A I'd taken her to the doctor. My mother took her to
20 the doctor. Her father took her to the doctor.

21 Q Did you ever notice Child bleeding?

22 A I never seen any blood in her underwear or anything.

23 But she had told me that she had fallen riding her bike and
24 had hit her pelvic area because she had just gotten, I
25 guess, like a 10-speed bike.

1 Q And when was that?

2 A Maybe a year or so before that incident happened.

3 There was also a time where she said she had gotten hit in
4 the stomach by her brother.

5 Q That's the only 2 instances you can think of?

6 A Yes.

7 Q When she got hit -- allegedly got hit in the stomach
8 by her brother, was she bleeding out of her vagina?

9 A I never seen it. I -- I'm not sure. She just said
10 she'd gotten hit in her stomach by her brother.

11 MR. MOAK: Beg The Court's indulgence.

12 (Pause.)

13 Q When you were living with Bubba Branham, did you all
14 make any tapes?

15 A Yes.

16 Q Did the children see any of those tapes?

17 A No, not that I'm aware of.

18 Q What were those tapes of?

19 A They were sex tapes.

20 Q You and Bubba Branham?

21 A Yes.

22 Q And also, since this incident date, did you get
23 arrested and charged with obtaining goods by false
24 pretenses?

25 A Obtaining money under false pretenses, yes, sir.

1 Q What was that?

2 A There was an incident where my food stamp card came up
3 missing and I had to report it stolen. Come to find out it
4 was traded for drugs to a drug dealer. And I filed a
5 police report. And got the \$520 they had tracked down
6 where it went to.

7 Q And were you charged with that?

8 A I was.

9 Q Did you plead guilty to that?

10 A I did.

11 Q Is that the only thing you were charged with?

12 A I was charged with obtaining money under false
13 pretenses a second time. It was an incident where a girl
14 got a hold of my checkbook and she wrote like \$4,000 worth
15 of checks out of my checking account.

16 Q And you were charged with that as well?

17 A I was. I pled guilty to it.

18 Q Okay. Did you get any jail time or anything more than
19 30 days on either one of them?

20 A No. The first one I done 15 days for. And the second
21 one I had to pay a fine for.

22 Q Have you talked to Bubba Branham since this incident
23 happened about that night?

24 A We haven't spoke about that night. But I have spoke
25 with him. Because when I was in the detention center, we

1 was transported together to Richland County.

2 Q That was for a child support or D.S.S. hearing?

3 A It was for a D.S.S. hearing. Our now 6 year old and 5
4 year old, Sibling 3 and Sibling 4 was taken from his dad and
5 step-mom and put back into D.S.S. care and they had an
6 emergency hearing. And since they didn't have Family Court
7 in Kershaw County, we went to Richland.

8 Q And they put you in the same area he was at?

9 A They did. We was in 2 different cells, but it was
10 like a cage that connected where we could see each other.

11 Q Did you discuss this case with him?

12 A No, we did not.

13 Q Did he try to discuss it with you?

14 A He did.

15 Q Did you respond to him?

16 A I told him we weren't talking about it. And in the
17 vehicle on the way there, when he would try to talk to me,
18 the officers that was transporting us told -- told us to
19 stop talking.

20 Q Did you go visit Bubba Branham in jail?

21 A No, I have not.

22 Q So you've never discussed this case with him at all?

23 A No, I haven't.

24 Q Has he written you letters?

25 A Yes.

1 Q What did he write in the letters?

2 A He told me in the letters that there -- there was jobs
3 in Charleston and that he wanted me to help him get out of
4 jail and get everything taken care, the case thrown out, to
5 get our kids back, and for us to move to Charleston, and
6 that he would take care of us -- like nothing ever
7 happened, and that way we wouldn't have to worry about what
8 anybody thought of us. We would be out of town.

9 Q So he wanted you to help him with his case?

10 A Yes.

11 Q And his plan was to move to Charleston?

12 A Yes.

13 Q Did you ever tell Child [REDACTED] to make this up?

14 A No.

15 Q After December 8, 2009 did Child [REDACTED] move somewhere out
16 -- is she still with you or did she move somewhere else?

17 A She lives with her father.

18 Q And when did she move in with him?

19 A In March.

20 Q Of 2010?

21 A 10, yes.

22 Q Okay. So she's been primarily with her father since
23 March 2010 until today's date?

24 A Yes.

25 Q And you have any visitation with her?

Jessica Scott -- Direct by Mr. Moak

141

1 A I do.

2 Q Is it every other weekend?

3 A I -- I get supervised visitation with D.S.S. twice a
4 month. The first -- second and fourth Wednesday of every
5 month. And between me and her father, I can go see the
6 children any time I want to.

7 Q Have you talked to Child [REDACTED] about this case?

8 A No, I have not.

9 Q So for the past -- it's now August. For the past, I
10 guess, 18 months, Child [REDACTED] has been primarily outside of
11 your home?

12 A Right.

13 Q And you've had supervised visitation?

14 A Pretty much, yes.

15 Q You haven't talked to her about this?

16 A No, we -- we don't discuss that. She has stayed the
17 night with me, but we don't discuss anything about the
18 case.

19 Q And you no longer have primary custody of her?

20 A No, I do not.

21 MR. MOAK: At this time I have no further questions.
22 Please answer any questions Mr. Kirincich may have.

23 THE COURT: Mr. Kirincich.

24 MR. KIRINCICH: Thank you, Your Honor.

25 THE COURT: Get her some water please.

1 (Pause.)

2 CROSS EXAMINATION BY MR. KIRINCICH:

3 Q Ms. Scott, when did you begin using drugs?

4 MR. MOAK: Your Honor, may we approach?

5 THE COURT: Yes, sir.

6 (A bench conference was held off the record in the
7 presence of the jury, but out of the hearing of the jury.)

8 MR. MOAK: Your Honor, I would object to relevance to
9 this line of questioning.

10 THE COURT: Objection is overruled.

11 Q Ms. Scott, I asked when you began using drugs, illegal
12 narcotics?

13 A After I met George Branham.

14 Q And you and Mr. Branham used cocaine together, didn't
15 you?

16 A Yes.

17 Q And at some point you began smoking crack cocaine?

18 A Yes, sir.

19 Q And Mr. Branham had a problem with you using crack
20 cocaine, didn't he?

21 A No, he did not.

22 Q Didn't Mr. Branham and you argue about your crack
23 cocaine use on December 7, 2009?

24 A No, sir, we did not.

25 Q Did you ever use drugs in front of your children?

1 A No, sir.

2 Q Besides crack cocaine and powder cocaine, were you
3 smoking marijuana in front of the children?

4 A No, sir, I -- I tried marijuana twice in my life.
5 Never liked it. And I was younger.

6 Q So you actually started using drugs before you met Mr.
7 Branham then?

8 A No, sir. It was with his sister that I had the
9 marijuana use.

10 Q And you're saying that you never used drugs in front
11 of your children?

12 A No, sir. I'm never where my children could see me,
13 no.

14 Q Okay. All right. Mr. Moak asked you a couple times
15 about your kids. You've got Sibling 1 Sibling and Child
16 with Mr. Scott?

17 A Yes.

18 Q And you've got Sibling 3 Sibling 5 Sibling 4 and Sibling ---

19 A Yes, sir.

20 Q With Mr. Branham. He neglected to ask you, who's the
21 father of the child you're with now?

22 A Not George Branham.

23 Q Do you know who the father is?

24 A Yes, I do.

25 Q Is there a reason you don't want to say who his name

1 is?

2 A I think it's irrelevant to the case to put his name
3 out there.

4 Q You said you had custody of the children that you
5 shared with Mark Scott?

6 A No, I do not have custody now.

7 Q You did have custody?

8 A I did have custody, yes, sir.

9 Q Why was Sibling 1 not living with you?

10 A My oldest son Sibling 1 is I say slightly autistic. He
11 has some special needs. He needed stability in his life,
12 so that he could go to school. And he had an I.E.P.
13 meeting, he had speech therapy, he had resource classes.
14 And it was better at the time for him to stay with my
15 mother than to stay with me and George because we moved so
16 much.

17 Q Ms. Scott, you drew this diagram for the state?

18 A Yes.

19 Q You can stay there if you can. If you can't, I'm
20 going to ask you to get up so I can ask you a couple
21 questions.

22 (The witness steps down from the witness stand.)

23 Q You probably can't see there. You said this is your
24 master bedroom. And which kids were in there with you?

25 A Child Sibling Sibling 5 and Sibling 6

1 Q Okay. And Sibling 3 and Sibling were actually out here
2 in the living room. And is that open to the hallway?

3 A Yes. But the entertainment center is there. The
4 hallway is there. The door was kind of down a little bit,
5 but not very far. Our entertainment center sat there, that
6 came out. The T.V. was there. And they were right in
7 here. And there was chairs.

8 Q But there was no physical block for the hallway.
9 There was no door from the hallway?

10 A No. They were far enough back, they could see down
11 the hallway.

12 Q And Sibling was the baby?

13 A Yes.

14 Q And Sibling slept in your room, the master bedroom?

15 A Right.

16 Q And Sibling and Sibling 3 usually shared a bedroom and
17 Child and Sibling shared another bedroom?

18 A Pretty much, we didn't have sleeping arrangements. It
19 was just kind of ---

20 Q Kids were everywhere?

21 A I mean, most of the time Sibling 3 and Sibling 4 they
22 would fall in bed with us. Sibling would fall in bed some
23 nights. It just depended. There were bedrooms set up.
24 And we were just moving in the house, and we moved some
25 things into this room, kind of make it a junk room. That

1 was the only bedroom.

2 Q Okay. And on the night and early morning going from
3 December 7 to December 8, 2 kids are in the living room.

4 The rest of the kids are in the bedroom with you?

5 A Yes.

6 Q So actually what we have is we have 2 empty bedrooms?

7 A Yes.

8 Q All right. Thank you.

9 (The witness returns to the witness stand.)

10 Q And you've testified that Mr. Branham came in and woke
11 you up around 2:00 in the morning?

12 A Yes.

13 Q And that you didn't wake up?

14 A He came in ---

15 Q You didn't want to wake up?

16 A I was in the bedroom asleep when he came in. I did
17 get up out of the bedroom, went in the kitchen and talked
18 to him for a moment, and went back to bed.

19 Q And wasn't that conversation in regards to Mr. Branham
20 talking to you about your crack cocaine use?

21 A No, sir, it wasn't. The discussion was over we had 5
22 packs of cigarettes in the cabinet. When I went to go get
23 a pack of cigarettes, there was 2 packs left.

24 Q At some point didn't Mr. Branham tell you that he was
25 going to take the kids that were his biologically and leave

1 you?

2 A No, sir, he never told me that.

3 Q So at 2:00 o'clock in the morning he goes into the

4 master bedroom and wakes you up to have a conversation

5 about cigarettes?

6 A He came in from the neighbor's house drunk. And to be

7 honest, when he came in, I was having some female problems.

8 He jumps on my stomach trying to wake me up because he was

9 drunk and acting silly. And I guess he just wanted me to

10 get up and talk to him, which because it was my time of the

11 month, I was a little grumpy. So I got up and I walked out

12 of the bedroom so that way my children would not hear me

13 and him talking. But it still woke up some of the kids.

14 Q And then what you've testified to is that some time

15 later Child [REDACTED] got out of the bed?

16 A Yes.

17 Q And you caught Child [REDACTED] and Bubba in the hallway?

18 A Yes.

19 Q In the hallway that's connected to the living room

20 where 2 of your other children were laying down?

21 A Right.

22 Q In the hallway that was connected to 2 empty bedrooms?

23 A Yes.

24 Q You're saying you caught Mr. Branham violating your 7-

25 year-old daughter?

1 A Yes, I did. And the one bedroom had storage things in
2 it. You couldn't even really get in the bedroom.

3 Q Child [REDACTED] had actually gotten up whenever you and Mr.
4 Branham were arguing ---

5 A Yes, she did wake up.

6 Q --- in the kitchen?

7 A Yes.

8 Q You've testified that when you went out to the
9 hallway, you saw Mr. Branham on top of Child [REDACTED] and he had
10 his pants down. But I think you said he stepped around
11 Child [REDACTED] ---

12 A Yes.

13 Q --- so you couldn't see what she was doing?

14 A Uh-huh.

15 Q Your boy friend is in the house in the hallway with
16 his pants down on top of your daughter and you don't
17 immediately go call 911?

18 A I went to go check on my daughter, to make sure that
19 she was okay.

20 Q You called -- excuse me. You take her into the
21 bathroom. She uses the bathroom. And then you take her
22 into the bedroom. And at that point you call 911?

23 A Yes.

24 Q You don't ---

25 A I was making sure my daughter got away from him safely

1 before I called anybody.

2 Q How many times on the 911 call did Mr. Branham say, I

3 didn't do anything and you're throwing our life away?

4 A I'm not exactly sure how many times, but he said it

5 more than once.

6 Q And although it was hard to hear exactly what he says

7 -- because he's not talking into the receiver -- doesn't he

8 say, we need to talk about this?

9 A Yes. And I told him that there's nothing to talk

10 about.

11 Q Mr. Moak asked you about Child having urinary tract

12 infections or yeast infections or injuries in her vaginal

13 area?

14 A Yes.

15 Q And you said that she had been diagnosed with multiple

16 urinary tract infections. She'd been diagnosed with a

17 yeast infection. And she indicated at some point she had

18 trauma from falling off of her bicycle?

19 A Yes, she told me that she had -- I mean, I don't think

20 that she was taken to the doctor that day. But she had

21 fell onto -- on a 10-speed bike there's a bar there, and

22 that she had fell into the bar and had hit her private

23 area.

24 Q Didn't you also take Child to the hospital in

25 Lexington County after she told you about abuse that

1 happened at school?

2 A Yes.

3 Q And what did she allege happen at school?

4 A There was nap time in her kindergarten class. And she
5 said the little boy laying next to her stuck his hand down
6 his pants and inserted her finger.

7 Q And the school investigated that and did something
8 about it, didn't they?

9 A They would not tell me what the punishment was, but
10 just told me that the little boy was removed from her
11 classroom and she would not see him at recess or at lunch.

12 Q So Child [REDACTED] didn't have any problem divulging that
13 information, did she?

14 A No, she did not.

15 Q And she went to the doctor on several occasions and
16 you never mentioned that Mr. Branham took her. She was at
17 the doctor with her grandmother, paternal grandmother; is
18 that correct?

19 A Yes.

20 Q Debra Scott. She was there with her father, Mark
21 Scott?

22 A Uh-huh.

23 Q And she was taken there by you?

24 A Yeah, and my mother has taken her to the doctor
25 before.

1 Q Ruth Ganty?

2 A Yes.

3 Q Is that what it is?

4 A Uh-huh.

5 Q And she never divulged any kind of abuse to those
6 medical professionals?

7 A No.

8 Q And they examined her and she often had swollen, red,
9 irritated genitalia?

10 A They said that she had a urinary tract infection,
11 yeast infection.

12 Q Was this almost a chronic problem?

13 A I mean, she went several times. I wouldn't -- I don't
14 know it would be a chronic problem.

15 Q And what did Child describe as the symptoms of this
16 urinary tract infection or yeast infection?

17 A She would say it would burn when she peed. And until
18 I could get her to the doctor, I would give her desitin or
19 diaper cream or vaseline or something. And I'd make her
20 put it on her finger and put it on herself.

21 Q She itched, didn't she?

22 A Yes, sometimes when you have a yeast infection, it
23 itches.

24 Q She had physical discomfort?

25 A Yes.

1 Q Most people would, especially children. Didn't she
2 stick her hands in her pants to either scratch or relieve
3 the discomfort she was feeling?

4 A Sometimes she did, yes.

5 Q And you said that you instructed her to put medicine
6 on her fingers and apply it herself?

7 A Yes, I would take her in the bathroom and put the
8 medicine on her finger. And I would have her put it on
9 herself.

10 Q Ms. Scott, you seem to have a problem accepting your
11 guilt for the convictions that you discussed with Mr. Moak.
12 You said you pled guilty but you explained it was always
13 somebody else's fault. Why did you plead guilty?

14 A The first time with the food stamp card, the officer
15 -- which I don't know if I'm allowed to say his name.
16 Officer Burris told me that D.S.S. was standing on the
17 other side of the mirror, and they were going to take my
18 children from me right then and put them into D.S.S.
19 custody if I did not write what he wanted me to write at
20 the time.

21 Q When was that?

22 A It was last year.

23 Q Was it before or after D.S.S. had taken your children
24 in March?

25 A It was before D.S.S. took my children in March,

1 because the food stamp card was taken and given to a drug
2 dealer before the children had -- before any of the
3 situation had happened.

4 Q And then you pled guilty because somebody took your
5 checkbook and wrote \$4,000 worth of checks, so you just
6 pled guilty to it because somebody stole your checkbook?

7 A No. There was a -- the girl that took my checkbook,
8 they had -- they was trying to get me for \$875 check that
9 had been written, and it was wrote out to me. I did
10 deposit the check. And it was from a starter checkbook.
11 So the girl wrote all her information down on it like that
12 was her checkbook. And she gave me the check and I went
13 deposited it.

14 Q Whose account was that from?

15 A It was from an old account of mine.

16 Q So this girl stole your checkbook, wrote her
17 information on there, you cashed the check, later pled
18 guilty to it, but you think it's her fault?

19 A I would not say it was her fault. But she did get
20 some other checks of mine and wrote over \$4,000 on a
21 account that I currently had open. She stole that. And
22 actually, the FBI is looking for her now. She's wanted in
23 several counties, I worked with several counties to help
24 them catch her, and they haven't.

25 MR. KIRINCICH: Your Honor, if I could have a moment.

1 THE COURT: All right. Ladies and gentlemen, we'll

2 take a few minutes break. Please go to the jury room.

3 Please do not discuss the case.

4 (The jury retires to the jury room at 11:36 a.m.)

5 (The witness steps down from the witness stand.)

6 THE COURT: She needed a rest room break. We'll be at

7 ease for a few minutes.

8 (A recess was taken.)

9 (The witness returns to the witness stand.)

10 MR. KIRINCICH: Your Honor, before the jury comes

11 back. My line of questioning is going to go in to what

12 Mr. Moak has already asked her about, that is the sex

13 tape she's admitted that she made with Mr. Branham. The

14 video ---

15 THE COURT: I don't need to screen anything in

16 advance. Just roll with it. If there's an objection, I'll

17 rule.

18 MR. KIRINCICH: Okay.

19 THE COURT: Let's bring them on.

20 (The jury returns to the courtroom at 11:52 a.m.)

21 THE COURT: You may proceed.

22 MR. KIRINCICH: Thank you, Your Honor.

23 Q Ms. Scott, Mr. Moak asked you about a sex tape that

24 involved you and Bubba.

25 A Yes.

1 Q Do you remember when he asked about that?

2 A Yes..

3 Q Was there just one sex tape?

4 A There was several throughout the years. But they were
5 -- most of them had been destroyed.

6 Q I'm sorry for asking this. But do you know what was
7 depicted on those sex tapes?

8 A What do you mean? I mean, it was just ---

9 Q Were there various sexual acts depicted on that sex
10 tape -- or those sex tapes?

11 A I mean, it was different occasions.

12 Q Do you remember various positions or different things
13 that were depicted on those tapes?

14 A I don't remember the tapes. I mean, I don't -- I've
15 not seen them in forever. Several of them was destroyed
16 over 5 years ago. I've not seen them in years. I do know
17 in several of them I was pregnant.

18 Q If I asked you about particular sex acts, could you
19 confirm or deny that they were performed on that video?

20 A I'm not sure. Like I said, I have not seen the video
21 tapes in years, so I don't know what -- it was only me and
22 him if that's what you're asking.

23 Q And you're saying -- or you told Mr. Moak that the
24 kids never saw those tapes?

25 A I've never played them for them as far as I know.

1 I've never played them for them, nor has anybody else.

2 Q Are you aware of your children ever viewing any type
3 of pornography in your home?

4 A No.

5 Q Did **Child** ever come into your bedroom while you were
6 watching pornography?

7 A I mean, if there was something on T.V. -- if you're
8 watching HBO or something like that, there might be a scene
9 where, you know, a naked person or something like that, the
10 kids may have walked in the room. We try to change the
11 channel real quick. But, I mean, we never really sat
12 around and watched porn.

13 Q Are you aware of any occasions when your children
14 viewed you having sexual relations with Mr. Branham?

15 A When you have that many children and like I said
16 before, the hinges on my bedroom door were broken. The
17 children may get up in the middle of the night and go to
18 come in the bedroom and, you know, we yell for them to get
19 out. I mean, we might accidentally have one to walk in, but
20 that was it. Our door didn't lock or shut.

21 Q Ms. Scott, when did **Sibling 1** begin living with your
22 mother?

23 A When I was 16 I had **Sibling 1** and we lived with my
24 parents.

25 MR. MOAK: I'd ask what the relevance of this question

1 is. I mean, it's a different child.

2 THE COURT: Do you have an objection?

3 MR. MOAK: I object to relevance of this.

4 THE COURT: All right. Your response?

5 MR. KIRINCICH: Your Honor, it may be best if we

6 approach. I apologize.

7 (A bench conference was held off the record in the
8 presence of the jury, but out of the hearing of the jury.)

9 THE COURT: Replay the last question. Tell me what
10 the last question is.

11 (The last question was played in open court.)

12 THE COURT: All right. The question has been
13 answered. Next question.

14 Q Ms. Scott, at some point did Sibling 1 alleged that he
15 had been abused?

16 MR. MOAK: Your Honor, this is not -- this is what my
17 objection was.

18 THE COURT: Objection is sustained.

19 (Pause.)

20 Q Ms. Scott, has anybody ever made a false allegation
21 against Mr. Branham in your family?

22 A As in?

23 Q A false allegation of sexual abuse?

24 MR. MOAK: Your Honor, this is the same objection.

25 THE COURT: Objection is sustained. I sustain the

1 objection. No comment necessary. Next question.

2 MR. MOAK: Your Honor, I ask that we strike those from
3 the record. I mean, that's total improper questions.

4 THE COURT: The jury is to disregard the question.

5 Q Ms. Scott, were you present whenever Mr. Branham was
6 approached by law enforcement on the early morning hours of
7 December 8?

8 A You mean was I in the room with him?

9 Q Yeah, were you present for any of the conversations?
10 Did you hear anything that he said?

11 A They took him straight back to the back bedroom.

12 Q Why did you not call your mother after you were
13 advised to have Child taken to the hospital? Why didn't
14 you call your mother to take her right away?

15 A After the police officers left, it was almost 5:00
16 o'clock in the morning. I called my mother then.

17 Q How long did it take her to get Child to the
18 hospital?

19 A She had to get up and get Sibling 1 ready for school.
20 I'm not sure exactly what time it was when she came and got
21 him. But she took Sibling 1 onto school, and then she got
22 ready and came and got Child. So I mean it was, I'm
23 guessing, maybe 9:00. I'm not really sure. 9:00, 10:00
24 o'clock.

25 Q When was the last time you had taken Child to the

Jessica Scott - Redirect by Mr. Moak

159

1 doctor before that?

2 A I'm not sure.

3 Q Did she have regular health care?

4 A We did not have a vehicle. No, she did not. When she
5 needed to go to the doctor for something, I would find a
6 way to get her there, but she didn't go like every year and
7 have a regular checkup, no.

8 MR. KIRINCICH: Your Honor, I have no further
9 questions at this time.

10 THE COURT: Any redirect?

11 REDIRECT EXAMINATION BY MR. MOAK:

12 Q Mr. Kirincich asked about drug use?

13 A Yes.

14 Q And he asked about crack cocaine?

15 A Yes.

16 Q Okay. Who gave it to you?

17 A George is the one that started the drug use.

18 Q Did you get it from him?

19 A Drug dealers, him.

20 Q Was he involved in that?

21 A Yes, he was. He was the one that introduced me to it.

22 Q Okay. 3 weeks after this incident happened, did you
23 submit to a drug test?

24 A I did. I have random drug screens all the time for
25 D.S.S.

1 Q And was it positive or negative?

2 A It was negative. They done a hair follicle, which
3 goes back 90 days.

4 Q Okay. And that was collected on January the 4th,
5 2010?

6 A Yes.

7 Q So 90 days before that would have been, October?

8 A Something like that, yes. October, November.

9 Q So you were negative?

10 A For everything, yes, sir.

11 Q Mr. Kirincich asked you about George tried to talk to
12 you about the situation?

13 A Yes.

14 Q What would you have talked to Mr. Branham about that
15 night?

16 A What would I have or what did I?

17 Q Yes.

18 A There was nothing to talk about. I seen what I seen.

19 There was nothing else that needed to be said. He needed
20 to leave.

21 Q Okay. Now, this is marked for identification.

22 (Lexington Medical Center Medication Reconciliation
23 marked as State's Exhibit No. 8 for identification.)

24 MR. MOAK: I'm going to show it to Mr. Kirincich.

25 (Pause.)

1 Q I show you -- you took Child to Lexington Medical
2 Center in December of 2008?

3 A Yes.

4 Q And this is when the school allegation happened?

5 A Yes.

6 Q I show you. Do you recognize this? It's marked for
7 identification State's 8.

8 A I didn't see the hospital records. They don't give
9 the parents records of -- but it's got the date on it, and
10 it's got her name, so.

11 Q So you didn't get a copy of the records?

12 A No, sir.

13 Q Who did you tell the hospital lives in the home of
14 December of 2008?

15 A I probably just listed myself and the children.

16 Q Did you list Bubba Branham?

17 A No, I did not.

18 Q Was he living in the home with you?

19 A He was, yes.

20 Q Why didn't you list him?

21 A He had a bench warrant for child support, and he told
22 me to not ---

23 MR. KIRINCICH: Objection, Your Honor, 404.

24 THE COURT: The objection is sustained.

25 Q You didn't list him?

1 A No.

2 Q Were you told to take Child to the Dickerson Center
3 for additional follow-ups?

4 A I don't recall them asking me to.

5 Q Did you take Child ---

6 A I did not take her, no.

7 Q Did you remember agreeing to the plan to take Child
8 to the Dickerson Center for follow-ups?

9 A I don't recall. That was a while back and I don't
10 remember everything from that visit.

11 Q So you don't recall that?

12 A I don't -- I don't recall.

13 Q But you know you left George off of the history?

14 A Yes, because the same day it happened, Sibling 3 fell
15 out of the chair and busted his chin open in the hospital.

16 Q And this is December 2008, correct?

17 A Yes.

18 Q Are you aware that a Lexington County deputy tried to
19 speak with you in February 2009 in reference to this?

20 A No.

21 Q Were you still at that residence in February 2009?

22 A We moved from Gaston or Lexington to Kershaw County.

23 Q And why did you move?

24 A George had lost his job and we were be evicted from
25 the house.

1 Q So you're saying you got evicted from the house?

2 A Yes.

3 Q Was it because you got a letter from the school dated
4 February 5, 2009 from a teacher about Child ---

5 MR. KIRINCICH: Objection, Your Honor. I don't know
6 if this has been identified. He's going to be reading from
7 the letter. He's testifying is what I'm saying, Your
8 Honor.

9 THE COURT: Objection is sustained.

10 Q It's not because you got a letter from the school?

11 A No, sir, I didn't receive the letter from the school.

12 Q You just happened to have moved that same month?

13 A Yes, sir, because we were evicted and I was waiting on
14 my income tax money, and we decided to move back to Kershaw
15 County and get us a place there, so the kids could go to
16 school there and we could be around friends and family.

17 Q The 911 audio that we listened to, one of the things
18 you told the dispatcher was you had asked her before if
19 anybody touched her, and she always said, no?

20 A Yes.

21 Q Is there a reason you kept asking Child if anybody
22 touched her?

23 A Because she kept urinary tract infections, yeast
24 infections, and she kept having problems.

25 Q Did you suspect something was going on?

1 A Me and George had discussed -- he tried to always say
2 that every time she come back from her dad's house, she had
3 a yeast infection or a urinary tract infection, and he
4 always tried to tell me that he thought something was going
5 on at her father's house.

6 Q So he tried to blame it on somebody else?

7 A Yes.

8 Q Who did you catch or who did you catch having sex with
9 your daughter?

10 A Bubba Branham.

11 Q Is he in the courtroom?

12 A Yes.

13 Q Can you point him out?

14 A The defendant.

15 Q You didn't catch Mark Scott, did you?

16 A No.

17 Q You didn't catch some kindergartner in Lexington
18 County, did you?

19 A No.

20 Q Caught him?

21 A Right.

22 Q And you're saying that you're sure that you didn't
23 know that this was going on?

24 A I did not.

25 MR. MOAK: No further questions.

1 THE COURT: Anything further?

2 MR. KIRINCICH: Yes, Your Honor, a couple follow-up
3 questions from that.

4 RECROSS EXAMINATION BY MR. KIRINCICH:

5 Q Ms. Scott, why was it concerning or memorable to you
6 that Child was coming back from the Scott household with
7 a urinary tract infection or vaginal irritation?

8 A Because every time that she would come back from her
9 father's house, me and -- there were several times he had
10 to take her to the doctor to get the antibiotics to give
11 her for her yeast infections and her urinary tract
12 infections because he was the main person who took her to
13 the doctor because we didn't have a car.

14 Q And Mr. Moak began his redirect by asking you about
15 this drug test you took in January of 2010?

16 A Yes.

17 Q You took drug tests throughout 2010, didn't you?

18 A Yes, I did.

19 Q And within 90 day periods you failed some and you
20 passed some; is that correct?

21 A Correct, yes.

22 Q How is that explained if you said the test goes back
23 90 days? You pass them ---

24 A Some of them are urine tests and some of them were
25 hair follicle tests.

1 Q And you failed those drug tests for cocaine
2 metabolites in your system, correct?

3 A Some of them, yes.

4 Q And you also failed some but told them you were on
5 prescription medication as well, right?

6 A Yes, because I had the prescriptions with me when they
7 were -- I went to do the drug tests. They made you write
8 down all the medications that you're on and show the
9 bottles to D.S.S. to prove that's what you're taking.

10 Q And do you know how many drug tests you failed for
11 cocaine metabolites in your system?

12 A I haven't counted them, but I've seen every drug test
13 that I've taken in the past year -- about a year and a
14 half. They're all clean.

15 Q Would you say you've failed at least 3 drug tests for
16 cocaine in your system in the last year or since December
17 of 2009?

18 A 2, 3, I guess.

19 MR. KIRINCICH: No further questions, Your Honor.

20 THE COURT: You may step down.

21 (The witness leaves the witness stand.)

22 MS. BARRY: The state calls Child [REDACTED]

23 MR. KIRINCICH: Your Honor, I'm sorry. I have a
24 matter of law I can ask briefly at the bench.

25 THE COURT: All right.

Child [REDACTED] - Direct by Ms. Barry

167

1 (A bench conference was held off the record in the
2 presence of the jury, but out of the hearing of the jury.)

3 Child [REDACTED] being first
4 duly sworn, testified as follows:

5 CLERK: Have a seat and state your full name for the
6 record.

7 (No response.)

8 DIRECT EXAMINATION BY MS. BARRY:

9 Q Child [REDACTED] what is your name?

10 A Child [REDACTED]

11 Q And how old are you?

12 A 8.

13 Q When is your [REDACTED]

14 A November the 21st.

15 Q Do you know what year?

16 A No.

17 Q But you're 8?

18 A Yes.

19 Q And what grade are you in?

20 A Second.

21 Q What school do you go to now?

22 A [REDACTED]

23 Q Who is your teacher?

24 A [REDACTED] (phonetic).

25 Q When did you start school?

- 1 A When I was 5.
- 2 Q When did you start second grade?
- 3 A I don't know.
- 4 Q Do you like school?
- 5 A No.
- 6 Q No. If you had to pick, what would be your favorite
- 7 subject?
- 8 A Math.
- 9 Q Math. What types of things make you happy?
- 10 A Going swimming.
- 11 Q Who do you live with right now?
- 12 A My dad.
- 13 Q And who is your dad?
- 14 A Mark.
- 15 Q Who lives there with you?
- 16 A My dad and my brother and me.
- 17 Q What's your brother's name?
- 18 A Sibling
- 19 Q Is those are the only people that live there?
- 20 A Yes.
- 21 Q Before you went to live with your dad, where did you
- 22 live?
- 23 A I don't know.
- 24 Q Who did you live with?
- 25 A It was only me and my brother and my -- and -- and my

Child [REDACTED] - Direct by Ms. Barry

169

- 1 dad, that's it.
- 2 Q Who is your mom?
- 3 A Jessica.
- 4 Q Did you ever live with your mom?
- 5 A Yes.
- 6 Q And when you lived with your mom, do you know where
- 7 you lived?
- 8 A No.
- 9 Q No. What color was the house?
- 10 A Orange.
- 11 Q What school did you go to then, when you lived with
- 12 your mom, do you remember?
- 13 A [REDACTED]
- 14 Q When you lived with your mom, who else lived with you
- 15 there?
- 16 A Me and my brother.
- 17 Q Anyone else?
- 18 A And Bubba.
- 19 Q Who is Bubba?
- 20 A He is my mom's step -- no..
- 21 Q Is he a grown-up or a kid or ---
- 22 A Grown-up.
- 23 Q Do you see Bubba today?
- 24 A Yes.
- 25 Q Can you point him out to the jury?

- 1 A (Complied.)
- 2 Q What color shirt does he have on?
- 3 A White.
- 4 Q How long have you known Bubba?
- 5 A For almost a year.
- 6 Q Almost a year. When was the first -- how old were you
- 7 when you first met Bubba?
- 8 A When I was -- I don't remember when I was.
- 9 Q Were you in school when you met Bubba or was it before
- 10 that?
- 11 A Before.
- 12 Q Before that. So before you went to kindergarten you
- 13 knew Bubba?
- 14 A Yes.
- 15 Q Do you have any other brothers and sisters?
- 16 A Yes.
- 17 Q Who are your brothers and sisters?
- 18 A Sibling Nick, Sibling 4 Sibling 5 Sibling 6 and Zach.
- 19 Q How long did you live with Bubba and your mom?
- 20 A I lived with my mom 7 years, and I lived with -- and I
- 21 lived with Bubba for 7 years.
- 22 Q For 7 years. And you're how old now?
- 23 A 8.
- 24 Q 8. Before you moved out of your home with your mom
- 25 and Bubba, did Bubba do anything you didn't like?

Child: [REDACTED] -- Direct by Ms. Barry

171

- 1 A Yes.
- 2 Q What did Bubba do?
- 3 A He -- he messed with me.
- 4 Q He messed with you?
- 5 A Yes.
- 6 Q What part of your body did he mess with?
- 7 A My privates.
- 8 Q Your privates. And what did he -- what part of his
- 9 body did he mess with your privates with?
- 10 A His private.
- 11 Q Do you remember a time when your mother caught him?
- 12 A Yes.
- 13 Q What happened that night?
- 14 A He -- my mama was yelling at Bubba.
- 15 Q Were you awake? Was it daytime or was it nighttime?
- 16 A It was night.
- 17 Q Were you asleep or awake or something else?
- 18 A I was awake.
- 19 Q How did you get awake?
- 20 A I had to go to the bathroom.
- 21 Q Where did you go?
- 22 A I went down the hall.
- 23 Q Where had you been sleeping?
- 24 A In my mama's room.
- 25 Q And when you went down the hall, tell us what

1 happened?

2 A Bubba started mess -- messing with me.

3 Q When you say messing with you, what does that mean?

4 A I mean messing with my privates.

5 Q Where did that happen at in the hallway?

6 A Outside the bathroom.

7 Q And did you have clothes on?

8 A I had my shirt on and ...

9 Q Did you have on pants?

10 A When it happened, I didn't.

11 Q How did your pants get off?

12 A He pulled them down.

13 Q What did he do with his pants or did he have pants on?

14 A He -- he just pulled down his pants.

15 Q What did he do again?

16 A He -- he pulled down his pants and he started messing
17 with my private.

18 Q When that happened, where were you? Were you standing
19 up or something else?

20 A Something else.

21 Q Where were you?

22 A I was on the ground.

23 Q Where was Bubba?

24 A He -- he was -- he was on me.

25 Q He was on you?

Child [REDACTED] - Direct by Ms. Barry

173

- 1 A Yes.
- 2 Q Did he put something on you?
- 3 A Yes.
- 4 Q What did he put on you?
- 5 A His private.
- 6 Q Where did he put that?
- 7 A In -- in my private.
- 8 Q What did that feel like?
- 9 A It didn't feel good.
- 10 Q Was it on top of your private or something else?
- 11 A It was something else.
- 12 Q Where was it?
- 13 A It was the bottom of my private.
- 14 Q Was it on the outside or the inside?
- 15 A Inside.
- 16 Q Did anyone see this?
- 17 A Yes.
- 18 Q Who saw that?
- 19 A It was only my mom that seen it.
- 20 Q What did he tell you? Did he tell you anything?
- 21 A I don't know.
- 22 Q Did you say anything to him?
- 23 A No. When he was doing that, I said, stop.
- 24 Q You told him to stop?
- 25 A Yes..

- 1 Q [REDACTED] is this the first time that happened?
- 2 A No.
- 3 Q How many other times has that happened?
- 4 A It happened a lot of times. And I don't know how
- 5 much.
- 6 Q Did you ever tell anyone?
- 7 A I was trying to tell mama.
- 8 Q Why didn't you tell anyone else?
- 9 A Because my mom was the only adult I can tell.
- 10 MS. BARRY: Beg The Court's indulgence.
- 11 (Pause.)
- 12 Q [REDACTED] you and I have met a couple of times, haven't
- 13 we?
- 14 A Yes.
- 15 Q What was the only rule that I had for you?
- 16 A Don't lie.
- 17 Q What did I tell you to do?
- 18 A You told me do not lie when I get up here.
- 19 Q Do you know the difference between the truth and a
- 20 lie?
- 21 A Yes.
- 22 Q If I told you I have on a white dress, is that the
- 23 truth or is that a lie?
- 24 A That's a lie.
- 25 Q If I told you that I'm bigger than Mr. Moak, is that

1 the truth or is that a lie?

2 A A lie.

3 Q If I tell you that Mr. Moak has on a tan suit, is that
4 the truth or is that a lie?

5 A Truth.

6 Q The man that put his private in your private, who was
7 that again?

8 A Bubba.

9 Q And do you see Bubba today?

10 A Yes.

11 MS. BARRY: Your Honor, that's all I have.

12 THE COURT: Mr. Kirincich.

13 CROSS EXAMINATION BY MR. KIRINCICH:

14 Q Good afternoon, Child ██████████ ██████████ you said you had
15 tried to tell your mommie what was going on. How did you
16 try to tell her?

17 A I was -- I was talking to her.

18 Q Had you tried to tell her before?

19 A Yes.

20 Q What happened when you tried to tell her before?

21 A Bubba was always around her.

22 Q Didn't you go to your dad's house sometimes and Bubba
23 wasn't there?

24 A Yes.

25 Q Why didn't you tell your dad?

1 A He wasn't in the house -- in my mama's house when it
2 happened.

3 Q Did you go see your grandma Ruthie without Bubba
4 there?

5 A I don't know.

6 Q Did you go see your grandma, Ms. Barbara (sic) Scott
7 without Bubba there?

8 A I don't -- I don't know.

9 Q When you went to [REDACTED] Elementary for kindergarten,
10 first grade, was Bubba there?

11 A No.

12 Q Did you ever talk to your teachers, or guidance
13 counselor, adult at your school about what happened?

14 A Yes.

15 Q Who did you talk to at your school?

16 A I don't know. I don't know.

17 Q Do you remember when you talked to them?

18 A No.

19 Q Have you been talking to Mr. Kellin (phonetic) about
20 what happened?

21 A I don't remember.

22 Q You don't remember. Did somebody help you practice
23 what you were going to say when Ms. Barry asked you
24 questions?

25 A I don't know.

- 1 Q Has anybody been helping you with your story?
- 2 A I think it's no.
- 3 Q Who's been helping you with your story?
- 4 A I don't know. I don't know his name.
- 5 Q You don't know his name, but somebody's been helping
- 6 you?
- 7 A Yes.
- 8 Q Okay. And where did you meet this somebody?
- 9 A Here.
- 10 Q Here at the courthouse you met this somebody?
- 11 A Yes.
- 12 Q He's been helping you with your story?
- 13 A Yes, I think.
- 14 Q Child ██████████ do you remember what grade you were in when
- 15 this happened?
- 16 A No.
- 17 Q Do you remember where you lived?
- 18 A No.
- 19 Q Do you remember what color the couch was?
- 20 A No.
- 21 Q You didn't have a couch in the house, did you?
- 22 A Yes.
- 23 Q You did have a couch?
- 24 A Yes.
- 25 Q And where was that couch?

- 1 A It was in the living room.
- 2 Q Okay. Before your mom saw you and Bubba in the
- 3 hallway, do you remember getting up before that when your
- 4 mom and Bubba were having an argument?
- 5 A Yes.
- 6 Q Do you know what they were arguing about?
- 7 A No. Oh, yes.
- 8 Q What were they arguing about?
- 9 A Arguing about when I was on the floor and he was on
- 10 me.
- 11 Q Do you remember before all of that happened, do you
- 12 remember waking up and your mom and Bubba were having an
- 13 argument?
- 14 A I don't know.
- 15 Q Did you ever watch any -- did you ever see any movies
- 16 at your mom's house or anybody's house that had naked
- 17 people in it?
- 18 A Yes.
- 19 Q How long do you think you saw that video with the
- 20 naked people in it?
- 21 A Probably a minute.
- 22 Q Did you only watch it one time or did you see more
- 23 than one?
- 24 A One.
- 25 Q Did you ever see your mom and Bubba doing any adult

Child [REDACTED] - Cross by Mr. Kirincich

179

- 1 stuff in their bedroom?
- 2 A No.
- 3 Q Never saw them?
- 4 A No.
- 5 Q You never tried to peek in while they were in their
- 6 bedroom?
- 7 A No.
- 8 Q Do you remember telling your mom that a little boy at
- 9 your school messed with you one time?
- 10 A I don't remember.
- 11 Q What did you do after your mama came up to the hallway
- 12 and saw you and Bubba?
- 13 A She started yelling at Bubba.
- 14 Q What was she yelling at him about?
- 15 A About him on me.
- 16 Q She started yelling at him in the hallway?
- 17 A Yes.
- 18 Q Do you remember where your brothers and sisters were
- 19 when this happened?
- 20 A Yes.
- 21 Q Where were they?
- 22 A They was on the floor sleeping.
- 23 Q Who was?
- 24 A My brothers and sisters.
- 25 Q Child [REDACTED] do you remember how many people you've talked

- 1 to about this?
- 2 A No.
- 3 Q When's the last time you talked to somebody about it?
- 4 A I don't know.
- 5 Q Was it during the summertime?
- 6 A I don't remember.
- 7 Q Do you remember what you had for dinner last night?
- 8 A No.
- 9 Q No. Do you remember what happened back in 2009?
- 10 A I don't know, what is 2009 means?
- 11 Q Do you know what this year is? Do you know what
- 12 today's date is?
- 13 A No.
- 14 Q Do you know how long you have been in second grade?
- 15 A Yes.
- 16 Q How long have you been in second grade?
- 17 A 3 days.
- 18 Q 3 days. Do you remember when you were 3?
- 19 A No.
- 20 Q Do you remember going to any other schools besides
- 21 [REDACTED]
- 22 A Yes.
- 23 Q What school did you go to?
- 24 A I don't remember the name of it.
- 25 Q Do you remember where it was?

Child [REDACTED] - Cross by Mr. Kirincich

181

1 A No.

2 MR. KIRINCICH: Your Honor, if I could have a moment.

3 (Pause.)

4 MR. KIRINCICH: Your Honor, may we approach?

5 (A bench conference was held off the record in the
6 presence of the jury, but out of the hearing of the jury.)

7 Q Child [REDACTED] have you ever told your mom about anybody
8 else touching you in a bad way?

9 MS. BARRY: Objection, Your Honor.

10 THE COURT: Objection is overruled.

11 A I don't remember.

12 Q You don't remember. Have you ever told your dad about
13 anybody else touching you in a bad way?

14 A No.

15 Q Do you remember that you didn't tell your dad?

16 A I don't remember.

17 Q Have you ever told anybody else that someone besides
18 Bubba touched you in a bad way?

19 MS. BARRY: Your Honor, I would object. Asked and
20 answered.

21 THE COURT: Overruled.

22 A Yes.

23 Q Who did you tell?

24 A I told my teacher.

25 Q What did you tell your teacher?

1 A I told my teacher that this little boy is messing with
2 me.

3 Q Is that what we've already talked about?

4 A Yes.

5 Q Or a different time?

6 A Different.

7 Q When was that?

8 A It was when I was 6.

9 Q When you were 6, you said another little boy was
10 touching you?

11 A Yes.

12 Q And you told your teacher?

13 A Yes.

14 Q Do you remember telling your teacher what that little
15 boy did to you?

16 A No.

17 MR. KIRINCICH: Thank you for answering my questions,

18 Child [REDACTED]

19 THE COURT: Redirect.

20 MS. BARRY: Thank you, Your Honor.

21 REDIRECT EXAMINATION BY MS. BARRY:

22 Q Child [REDACTED] is this easy for you to be here today?

23 A No.

24 Q How many times -- do you know how many times you've
25 been here to talk with me?

Child ████████ - Redirect by Ms. Barry

183

- 1 A No.
- 2 Q Have I ever told you what to say?
- 3 A I don't know.
- 4 Q Did Mr. Moak ever tell you what to say?
- 5 A I don't know.
- 6 Q What was the one thing I told you about coming here
- 7 today?
- 8 A Do not lie.
- 9 Q Are you lying about Mr. Branham putting his private
- 10 part in your private part?
- 11 A No.
- 12 Q When you didn't tell your dad, you didn't tell grandma
- 13 Ruthie, why didn't you tell them?
- 14 A I don't know.
- 15 Q Is it easy for you to talk about this?
- 16 A No.
- 17 Q What does it make you feel like?
- 18 A Icky.
- 19 MS. BARRY: That's all I have.
- 20 THE COURT: Recross?
- 21 (Pause.)
- 22 MR. KIRINCICH: Nothing. I'm sorry.
- 23 THE COURT: Okay. You may step down.
- 24 (The witness leaves the witness stand.)
- 25 THE COURT: Ladies and gentlemen, I think it's a good

1 time to break for lunch. We'll start back at 2:00 o'clock.
2 2:00 o'clock. Have a good lunch. Please do not discuss
3 the case.

4 (The jury exits the courtroom at 12:47 p.m.)

5 THE COURT: All right. After the mother stepped down,
6 Mr. Kirincich said he wanted to proffer something.

7 Who will be the next witness?

8 MS. BARRY: The forensic interviewer.

9 THE COURT: All right.

10 (Pause.)

11 MS. BARRY: Judge, Ms. Scott is outside smoking.

12 THE COURT: Doesn't smoking affect -- you want to
13 proffer the testimony by asking her questions?

14 MR. KIRINCICH: Yes, Your Honor, there was a specific
15 line of questioning that I wanted to go in to that involved
16 fabrication by another one of her children. And I wanted
17 to ask who coached that child to ---

18 THE COURT: Who coached the child?

19 MR. KIRINCICH: Who coached -- if she knows who
20 coached the child to make that false allegation.

21 MR. MOAK: Your Honor, if she's the one that did it.
22 I don't know how she would know.

23 THE COURT: It's pretty easy to see why that's an
24 improper line of questioning if that's what you were trying
25 to do. If we can find her, we can ask her about that. If

1 we can't find her, then I don't know. She might be at the
2 hospital.

3 (Pause.)

4 MR. MOAK: Your Honor, I guess we re-call Jessica
5 Scott.

6 THE COURT: Ms. Scott, if you'll come back for a
7 little bit.

8 CLERK: Still under oath, Your Honor?

9 THE COURT: You're still under oath.

10 JESSICA SCOTT, having been
11 previously duly sworn, testified as follows:

12 THE COURT: You may proceed.

13 CROSS EXAMINATION BY MR. KIRINCICH:

14 Q Ms. Scott, did Sibling 1 ever make a false allegation
15 for sexual abuse against Mr. Branham?

16 A There was an accusation that he made towards Bubba,
17 yes.

18 Q And who ended up being the perpetrator of that sexual
19 abuse?

20 A The case was never closed. There was never anybody
21 found guilty of anything.

22 Q Who was the alleged perpetrator of that abuse?

23 A My ex-husband's brother, John Scott.

24 Q And do you know why that case was not investigated?

25 A It was investigated.

1 Q By who?

2 A Zack Atkinson was the solicitor at the time.

3 Q Did you talk to law enforcement?

4 A Yes.

5 Q And law enforcement ---

6 A They done a polygraph test on George and it came back
7 inconclusive.

8 Q How did the focus turn to John Scott?

9 A **Sibling 1** made a comment that -- that he said that it
10 was George or Bubba so that way me and his daddy would get
11 back together. And **Sibling 1** told me that John Scott.

12 Q At some point didn't **Siblin** admit that he witnessed the
13 abuse?

14 A I don't remember the whole case. I mean, everything
15 was kind of determined between talking with the children,
16 with the solicitor's office, but I was never allowed up
17 there whenever they were talking to him, so I don't know if
18 they said that -- I mean, that was like 7 or 8 years ago.

19 Q Do you have any personal knowledge if Zach was coached
20 into making the accusation against Mr. Branham?

21 A I was never around if he was coached.

22 Q Do you have any knowledge that he was coached?

23 A I never heard anybody coach him, so I can't say -- I
24 mean, if they said, you know, maybe his dad said something.
25 But I never heard his father say anything to him in front

1 of me that he was coached to say that.

2 Q So somehow you heard that the father of your child
3 coached your child to say that your new boy friend ---

4 MR. MOAK: Your Honor, I think that we -- I would
5 object. I mean, she's done said that she wasn't there.
6 She didn't hear it happen.

7 THE COURT: Well, you know, counsel, when there's an
8 objection, there must be a legal basis for the objection
9 and not an argument unless The Court requests an argument.

10 MR. MOAK: Anything she says is hearsay is what my
11 objection would be.

12 THE COURT: Your response to hearsay being based on --
13 the objection being based on hearsay. Your response if
14 any?

15 MR. KIRINCICH: I'm trying to get that in my mind.
16 Your Honor, I don't know if that's an excited utterance, or
17 how she heard it. If you would allow me to go into that
18 line of questioning.

19 THE COURT: I sustain the objection, not that it's
20 hearsay but based on the form of the question.

21 Q Ms. Scott, how did you find out that Mr. Mark Scott --
22 or where did you get that information from?

23 A My son **Sibling 1** has talked to several different people.
24 I was not allowed to talk to **Sibling 1** about the case; that's
25 what the police department told me. They said, do not talk

1 to him about it, because if you talk to the child about it,
2 it confuses them with times and dates. So he went to Donna
3 Rudd, I think is her name, and they done a video tape and
4 talked to her. So I don't recall if Sibling 1 told me or if
5 it was something that was said when he had a interview with
6 Donna Rudd.

7 Q You had custody of Zach at the time?

8 A Yes.

9 Q As a parent, you were not filled in on the outcome of
10 the investigation or ---

11 A There was never an outcome of the investigation. John
12 Scott was an under-age child at the time. And because he
13 was not 18 years old, they was unable to do anything with
14 him. And they wanted Sibling 1 to testify. And as I stated
15 earlier, Sibling 1 is slightly autistic and it would not have
16 been healthy for him 4 or 5 years later -- the child's
17 blocked it out of his mind. It would not have been healthy
18 for him to even try to remember or recall what happened.
19 Because we -- because he would not testify, they was unable
20 to continue with the -- with the trial.

21 MR. KIRINCICH: Your Honor, I don't have anything
22 further of Ms. Scott.

23 THE COURT: Anything from the state?

24 REDIRECT EXAMINATION BY MR. MOAK:

25 Q When this allegation came out originally, it was

1 against George Branham?

2 A Yes.

3 Q And you're saying at some point it got switched to

4 John Scott?

5 A Yes.

6 Q Between the initial allegation and it getting focused

7 on John Scott, you had custody of Sibling 1

8 A I did.

9 Q In your home?

10 A Yes, I was living with my parents at the time.

11 Q And Bubba Branham was at your house during that time

12 frame?

13 A No. He was -- my parents forbid him, and he wasn't

14 allowed to come there.

15 Q Okay. So you're saying that you know of no coaching

16 of Sibling 1 from either side?

17 A Sibling 1 was hardly ever around George. A couple of

18 times he would leave and come -- go with me to George's

19 house. So he did see him, but he was never really alone

20 with him.

21 Q Okay. And Sibling 1 right now is where?

22 A He lives with my parents.

23 Q With your parents?

24 A Uh-huh.

25 MR. MOAK: Nothing else.

1 THE COURT: Anything else?

2 MR. KIRINCICH: No, Your Honor.

3 THE COURT: All right. You may step down, ma'am.

4 (The witness leaves the witness stand.)

5 THE COURT: Our hands are full of handling the case
6 that is the subject of this indictment while chasing
7 rabbits about what happened to another child some place
8 else with someone else or with this defendant. That has
9 nothing to do with this case. It will not lead to anything
10 probative regarding this case. It is totally irrelevant as
11 it relates to this case. And that's my ruling.

12 All right. 2:00 o'clock.

13 (Court is in recess for lunch.)

14 (Sexual assault examination protocol, SLED, 4 pages
15 marked State's Exhibit No. 9 for identification.)

16 (Picture of female body marked State's Exhibit No. 10
17 for identification.)

18 (Picture of male body marked State's Exhibit No. 11
19 for identification.)

20 (Emergency room records marked State's Exhibit No. 12
21 for identification.)

22 MR. MOAK: Your Honor, our next witness is Dr. Connell
23 from the hospital. I already talked to Mr. Kirincich.
24 We're going to move some medical records from the hospital
25 in through Dr. Connell. I believe those are without

1 objection.

2 MR. KIRINCICH: Yes, Your Honor. He is correct.

3 THE COURT: All right. They're admitted without
4 objection.

5 (State's Exhibit No. 12 received in evidence.)

6 MR. MOAK: And we also have the rape exam -- that's
7 State's 12.

8 And we have State's 9, which is the sexual assault
9 examination protocol which was also done at the hospital.
10 Dr. Connell did like the last half of the last page. This
11 is for I.D. and examine Dr. Connell in regards to this.
12 But we are moving it in to evidence with another witness
13 later on, actually a nurse filled the rest of it out.

14 THE COURT: All right.

15 MR. KIRINCICH: Your Honor, as long as they keep to
16 that path, that's fine with me.

17 THE COURT: All right. Let's bring the jury.

18 (The jury returns to the courtroom at 2:14 p.m.)

19 THE COURT: All right. The jury is back. Ms. Kramer,
20 I'm going to appoint you to serve as the foreperson of the
21 jury. If you will take the foreperson's seat, which is --
22 which seat? All right. If you will exchange seats with
23 him.

24 And that will be your assigned seat. As the
25 foreperson, it will be your responsibility to serve as a

1 spokesperson for the jury, to preside over the jury
2 deliberations, and to complete the verdict form,
3 representing the unanimous verdict of the jury. Got it?

4 FOREPERSON: Yes, sir.

5 THE COURT: All right. Your next witness please.

6 MR. MOAK: We call Dr. Foy Connell. We're waiting on
7 the clerk so we can swear him.

8 THE COURT: I'll swear the witness.

9 FOY CONNELL, MD, being first
10 duly sworn, testified as follows:

11 THE COURT: Thank you. If you will come up here, be
12 seated, and tell us your full name and spell your last
13 name.

14 DR. CONNELL: Foy Douglas Connell, C-o-n-n-e-l-l.

15 DIRECT EXAMINATION BY MR. MOAK:

16 Q Dr. Connell, you are currently employed at least in a
17 partial status at the Kershaw County Medical Center?

18 A Yes, sir.

19 Q And you're also employed at a hospital in Cheraw?

20 A Yes, sir.

21 Q And what is that hospital?

22 A Chesterfield General Hospital.

23 Q And to be a doctor, didn't you have to have some kind
24 of training and education ---

25 A Yes, sir.

1 Q --- to be a doctor? Can you tell us about that?

2 A 4 years of education at the University of South

3 Carolina, graduated in 1987, and 4 years of education in

4 medical school at the University of South Carolina,

5 graduating in 1992. And ---

6 Q In what area of practice do you primarily practice in?

7 A I primarily practice in emergency medicine.

8 Q And are you also like board certified in any

9 particular field?

10 A Yes, sir. I'm board certified in family medicine.

11 Q Okay. And how long have you been a doctor?

12 A 19 years.

13 Q Okay. And during those past 19 years have you been

14 involved in the --- I guess --- examination of sexual assault

15 victims?

16 A Yes, sir.

17 Q Approximately how many times?

18 A Approximately 100 times.

19 Q And of those 100 times, approximately how many of

20 those have been actual minors, like kids?

21 A Three-quarters. Probably 75 or so.

22 Q Okay. And have you testified in a circuit court in

23 South Carolina previously?

24 A Circuit court?

25 Q General sessions or common pleas?

1 A I don't think so. I mean -- well, I was in Lee County
2 one time. Testified once.

3 Q Was that a criminal trial?

4 A Yes, sir.

5 Q And were you presented and accepted as an expert?

6 A Yes.

7 MR. MOAK: Your Honor, at this time I would move Dr.
8 Connell as an expert in, I guess, family practice or sexual
9 assault examinations. Family practice would be better.

10 THE COURT: What say the defense?

11 MR. KIRINCICH: Your Honor, we don't contest that Dr.
12 Connell is well trained as a doctor, but I don't know what
13 evidence they are eliciting from him in his expert opinion.

14 THE COURT: All right. You're offering him as an
15 expert, again, in what field, fields?

16 MR. MOAK: In emergency medicine and family practice,
17 Your Honor.

18 THE COURT: Emergency medicine and family practice.
19 Any objection?

20 MR. KIRINCICH: Your Honor, that's different than what
21 he just said. I don't have any objection to that.

22 THE COURT: All right. Ladies and gentlemen, this
23 witness is qualified as an expert witness in the fields of
24 emergency medicine and family practice.

25 Ordinarily the rules of evidence do not permit

1 witnesses to testify as to opinions or conclusions. An
2 exception to this rule exists with witnesses who are
3 classified and categorized by The Court as being expert
4 witnesses. An expert witness is a witness who by virtue of
5 their education, experience become an expert in some art,
6 science, profession, or calling. And those witnesses may
7 state opinions as to relevant matters in the case in which
8 the witness has been accepted as an expert. He may also
9 state the reasons for the opinions. Certainly, as to
10 credibility of any and all witnesses, that is a matter for
11 you, the jury, to assess.

12 You may proceed.

13 Q Dr. Connell, on December 9, 2009 did you have an
14 opportunity to examine one Child

15 A Yes.

16 Q I'll show you what's been marked as State's 9 for I.D.
17 Do you recognize that?

18 A Yes.

19 Q Is that the sexual assault examination protocol that
20 was done in this case?

21 A Yes.

22 Q And most of that document was actually filled out by
23 Rebecca Scheffer, the nurse?

24 A That's correct.

25 Q On the last page -- is part of the last page the part

1 that you filled out?

2 A Yes, sir.

3 Q And can you go to that page and tell us what that is
4 and explain what that means?

5 A The last page of this document allows me or anyone
6 that's examining the person to document locations where
7 injuries or any findings that could be there, and then an
8 area to document -- write at least your findings.

9 Q And the other pages of that document have to do with
10 like the history of how the case presented itself and also
11 has -- also the collection of evidence?

12 A That's correct.

13 Q And you didn't collect any evidence, did you?

14 A No, sir.

15 Q That was actually Rebecca Scheffer?

16 A That's correct.

17 Q Now, you actually examined Child

18 A Yes, I did.

19 Q And can you tell us how that examination took place
20 and kind of walk us through it and tell us what it means?

21 A Well, do you want how she was positioned? How would
22 you like that?

23 Q I guess how she was positioned if that helps. Then
24 kind of work ---

25 A Lithotomy position. Actually, she was sitting --

1 laying on the bed with her feet in a frog leg position.

2 Feet together, up close to the buttox with the genitalia

3 exposed. And basically just appeared -- looked at the

4 genitalia.

5 Q Okay. And what were you looking for?

6 A Looking to see if there was any signs of injuries or

7 distortions of anatomy.

8 Q And did you find any?

9 A Yes, I believe I did.

10 Q Can you tell the jury what you found?

11 A The examination of the introitus to the vagina, or

12 where the opening of the vagina appeared to be dilated or

13 -- or widened posteriorly, which is indicative of abuse or

14 trauma or anything like that that's been going on for a

15 long time.

16 Q And the introitus, is it normally like an oblong -- or

17 how would you describe the actual -- what a normal opening

18 is?

19 A Typically the introitus is a V-shaped opening. On the

20 introitus with this young lady, the opening to her vagina

21 was U-shaped, wide.

22 Also, you may have heard of the hymen. The hymen in

23 this position appeared to me to be attenuated, which means

24 that instead of being tall and, you know, normal appearing,

25 it appeared to be shortened. That was ---

1 Q Did you ---

2 A --- the findings.

3 Q Did you notice any like actual tearing or anything?

4 A No signs of tearing, no signs of bruising, no signs of
5 bleeding, nothing of that sort.

6 Q And yet the -- I don't know how to pronounce it --
7 introitus -- do I pronounce that correctly?

8 A Introitus, yes.

9 Q What could cause it to be widened?

10 A A number of things. I mean, anything that penetrates
11 the vagina would -- could possibly cause it to be widened.
12 You know, fingers, foreign objects of, you know, anything
13 like that. Some people might say a handle bar from a
14 bicycle accident or something like that could possibly do
15 that.

16 Q But a bicycle ---

17 A A flat -- a flat bar could not do that. It might cut
18 the hymen or cut the vaginal opening, but it wouldn't --
19 wouldn't make it dilated.

20 Q So basically the object would have to penetrate inside
21 to do that, is what you're saying?

22 A Yes.

23 Q So on a bicycle, like say, the handle bars and sitting
24 on that bar that goes this way, would that be able to cause
25 that if she fell on it?

1 A No.

2 Q Okay. Is it common or uncommon to see a widened
3 introitus on a 7-year-old girl?

4 A Very uncommon.

5 Q And why is that?

6 A Because the -- the area is not used.

7 Q And is a 7-year-old girl, are they normally what you
8 would call estrogenized?

9 A No.

10 Q And what's the difference between this in an
11 estrogenized and a non-estrogenized female?

12 A In a non-estrogenized female, one before the age of
13 puberty, the area is very sensitive and, frankly, painful
14 to touch. It's not a comfortable place to go. And then
15 after estrogen begins to influence the anatomy, it becomes
16 pliable, stretchable, and not nearly as sensitive and not
17 painful.

18 Q So It's actually -- not only does it not feel good to
19 insert something, it would hurt?

20 A Yes, that's correct.

21 Q Okay. Now, in this area, is it common to see bleeding
22 from a yeast infection?

23 A Not common, but possible.

24 Q And how would you get bleeding from a yeast infection?

25 A The yeast infection would have to irritate the mucus

1 membrane enough and cause enough redness or hyperemia to
2 cause the blood vessels to actually start leaking to the
3 surface.

4 Q So that would be like a real bad one?

5 A Absolutely.

6 Q That was possibly untreated?

7 A Yes.

8 Q Did you see any evidence of that on this?

9 A No.

10 Q How about a urinary tract infection, would you see
11 bleeding from the vaginal area on that?

12 A No. Usually with urinary tract infections, bleeding
13 is only visible when the urine flows or the blood would
14 only be visible as the urine flows out of the urethra.

15 And, of course, after urination, there might be one drop of
16 urine still left at the urethral opening. And, yeah, you
17 might see that on a piece of toilet paper, but you wouldn't
18 see it continuously.

19 Q The bleeding is not like oozing or scabbing?

20 A No, no scabbing.

21 Q And I'm going to show you what's been marked as
22 State's 12. I think this has already been admitted. See
23 if you recognize this?

24 A Yes, I recognize this.

25 Q Is that the medical records from this visit where

- 1 [Child] went to the hospital?
- 2 A Yes, sir.
- 3 Q And that's the medical records from the hospital?
- 4 A Yes, sir.
- 5 MR. MOAK: Your Honor, I think these have already been
- 6 admitted as State's 12 in evidence.
- 7 Q Those records, do they have the results of any tests
- 8 that were run on [Child]
- 9 A Yes, sir.
- 10 Q Do those test results indicate whether or not there
- 11 was a urinary tract infection or a yeast infection present
- 12 on [Child]
- 13 A No signs of urinary tract infection. No signs of
- 14 yeast infection.
- 15 Q Okay. Now, on the yeast infection or urinary tract
- 16 infection, would you expect to find a widening introitus on
- 17 a child with a yeast infection?
- 18 A No.
- 19 Q How about the yeast infection?
- 20 A No.
- 21 Q And the urinary tract infection, those actually come
- 22 out of the urethra, not the actual vagina?
- 23 A The urinary tract infection or the opening to the
- 24 urethra is anterior to the vagina.
- 25 Q So it's a separate opening?

1 A Separate opening.

2 Q Okay. And did you make any referrals for Child

3 A Yes, I recommended that Child follow up with Dr.

4 Luberof (phonetic).

5 Q And what was that for?

6 A That was for the extensive examination.

7 Q Extensive examination?

8 A Yes.

9 Q Do you know what is involved with an extensive -- the
10 more extensive examination?

11 A I usually -- I usually don't deal with that particular
12 part of it. They would -- they would take pictures, look
13 at everything, compare, you know, to the normals around.

14 MR. MOAK: No further questions.

15 THE COURT: Cross examination.

16 CROSS EXAMINATION BY MR. KIRINCICH:

17 Q Dr. Connell, do you have copies of what Mr. Moak gave
18 to you?

19 A Yes, sir.

20 Q And on this page, I think it's the last page of your
21 yellow packet.

22 A Yes.

23 Q What did you fill out on that? I want to make sure I
24 question you about what you know about this.

25 A The only part that I filled out were the 3 lines:

1 Describe all signs of physical trauma, which basically are
2 none.

3 Q What did you say? I'm sorry, again?

4 A There are no signs of physical injuries at the time of
5 the examination, but the -- you know, actually what I have
6 -- what I have written there is mildly widened introitus
7 posteriorly, probably chronic abuse.

8 Q What's the -- I guess, tell me the difference between
9 no signs of physical injury and the mildly widened
10 introitus?

11 A No signs of physical injuries today. Mildly widened
12 introitus, probable chronic abuse; that's -- so there were
13 no signs of an acute laceration or acute bruising or acute
14 anything at the time of examination.

15 Q But you notice that there had been -- in your opinion
16 -- some prior penetration to create the U-shape ---

17 A Yes.

18 Q --- of her introitus?

19 A That's what I believe.

20 Q But when you examined this 7-year old, you didn't see
21 any signs of physical trauma presenting at that time?

22 A At that time. No signs of physical trauma at that
23 time.

24 Q And you examined -- did you examine Child in just
25 one position?

1 A Yes.

2 Q Can the hymen or the introitus appear differently if
3 she's examined on her back or if she's examined in the
4 prone position?

5 A Yes, it could.

6 Q Is there a reason why you didn't examine her in the
7 prone position?

8 A No.

9 Q What is the difference? How can the shape change?

10 A Actually, the prone position is very, very difficult
11 to see anything, and so you really have a very difficult
12 time looking at anything in the prone position because of
13 that. So it's a very difficult position to look at
14 anything at.

15 Q Is that for a child or for any adult?

16 A Any adult. Any person.

17 Q Any person. Thank you.

18 A Just because of the anatomy.

19 Q Was Child [REDACTED] screened for any communicable diseases
20 while she was there, STDs?

21 A Yes, sir.

22 Q Was she screened for HPV?

23 A I -- I do not believe -- I do not believe HPV was
24 ordered.

25 Q Is that a typical test to screen for or ---

- 1 A It's not a -- not one of the common ones to order;
2 that's correct.
- 3 Q And on the other -- Mr. Moak handed you 2 packets.
- 4 A Yes, sir.
- 5 Q The yellow copy is from -- which I assume are carbon
6 copies.
- 7 A Yes.
- 8 Q And the white packet.
- 9 A The white packet are the laboratory results.
- 10 Q Are any of your notes included in the white packet?
- 11 A Yes, sir.
- 12 Q And would your notes have been entered in by somebody,
13 whether yourself or somebody else?
- 14 A By myself, yes.
- 15 Q Typed into a computer so they're not handwritten?
- 16 A That's correct.
- 17 Q Now, were you involved with the actual sexual assault
18 nurse examiner, while she was doing the exam?
- 19 A No.
- 20 Q Did you come in before or after?
- 21 A After.
- 22 Q So you weren't present when the woods lamp was used?
- 23 A No.
- 24 Q Are you familiar with the woods lamp?
- 25 A Absolutely, use it almost every day.

1 Q The woods lamp is kind of a medical version of a black
2 light, right?

3 A Yes, sir, it is a black light.

4 Q And it shows -- certain substances will show up under
5 the woods lamp; is that correct?

6 A That's correct.

7 Q Are you familiar with the study done where it's shown
8 that the woods lamp does not accurately reflect semen on
9 the body?

10 A No.

11 Q Have you heard of the -- I think it's the blue max
12 5,000 or 500?

13 A No.

14 Q Do you know how a woods lamp works as far as wave
15 length?

16 A I know it has ultraviolet light and that's the
17 frequency that is reflected by certain objects.

18 Q And will other things besides semen, such as
19 toothpaste, soap, lotion -- will those also glow under this
20 black light?

21 A Absolutely.

22 Q Okay. And with the naked eye, are you able to
23 determine the difference between those substances?

24 A No. That's why we swab all over.

25 Q Did you talk to Child [REDACTED] that night -- or excuse me

1 that afternoon when you examined her, or did you talk with
2 her grandmother to get a patient history or did you review
3 a chart before you went in?

4 A I talked to Child

5 Q Okay. And so the episode description -- those would
6 be your notes that you took?

7 A Those are mine. And some of those would be reviewed
8 from the nurse's notes too. But I review all of those
9 notes, so.

10 Q And you wrote in there that Child had no apparent
11 distress and she appears well?

12 A That's correct.

13 Q But you said she was quiet and nervous?

14 A Yes.

15 Q And, again, just going through here, everything
16 appeared to be normal with Child except for the widened
17 at the posterior opening to the introitus?

18 A As far as I could tell, that's correct.

19 Q And there was no obvious trauma. Do you remember what
20 the -- why there's an entry for odor -- there was an odor
21 during the pelvic exam? Do you know what that odor was?

22 A Are you talking -- you talking about my notes?

23 Q Yes, sir. I believe under -- if I could show you
24 here. The sexual exam.

25 A Yeah, that -- that is a -- that is one of the items

1 that -- it's -- it's one of the things that presents on the
2 computer. And it's -- I don't know exactly why that's
3 there. It might have been a mis-click with my finger. I
4 did not notice an odor on exam.

5 Q Do you remember examining this child?

6 A Yes, I do.

7 Q Okay. So that's your independent memory and not from
8 your notes, that you don't remember an odor?

9 A Right. Typically, if I would notice an odor, I would
10 -- I would describe it more than just write an odor. I
11 would describe it as fishy, accurate, or others.

12 Q Would that be because certain kinds of bacteria can
13 cause an odor?

14 A Correct.

15 Q It would help you determine what to test for?

16 A Exactly.

17 Q And how many different strains of bacteria are there?

18 A I don't know. Billions, I believe.

19 Q Billions, right. So she was strained for some
20 bacteria, but it's sufficient she's not strained for every
21 bacteria?

22 A Obviously.

23 Q And bacteria can cause things like yeast infections
24 and urinary tract infections, like Mr. Moak asked you
25 about?

1 A Yes. Bacteria don't cause yeast infections.

2 Q Yeast ---

3 A Yeast and fungus cause yeast infections.

4 Q All right. And if a child presents to you with a
5 yeast infection or a urinary tract infection, is that child
6 likely to keep their hands away from their genitalia?

7 A For urinary tract infections, they most of the time
8 don't -- don't touch the area until they start to urinate,
9 then they might touch the area.

10 For yeast infections, yeah, they could scratch, so
11 forth.

12 Q And it's not uncommon to see even a healthy child
13 present with some redness or slight swelling of the
14 genitalia, is it?

15 A No. It's pretty uncommon to see redness and swelling
16 in the genitalia on most children.

17 Q You said there was -- I believe in your report, there
18 was mild redness. Is that uncommon to see mild redness?

19 A No, not uncommon to see mild redness. You
20 particularly don't see a lot of swelling though. I mean,
21 usually it's just ---

22 Q And also, I didn't mean to imply we had swelling in
23 here, because I think you just said there was mild -- the
24 medical term is?

25 A Erythema.

1 Q Erythema. Thank you. Did you notice anything about

2 Ms. Scott's hymen? You said there was some attenuation?

3 Is that what you said?

4 A Yeah.

5 Q Did you take any pictures?

6 A I did not take any pictures. That was -- that was my

7 understanding that that was going to be done by Dr. Luberoof

8 at the detailed examination.

9 Q And attenuation would mean that some of the tissue had
10 been deteriorated or smoothed out?

11 A Yes, it had been shortened or decreased in its normal
12 height.

13 Q And had you examined this child before for any other
14 reason?

15 A No.

16 Q So you didn't notice any difference between anything
17 that might have happened in the past?

18 A No.

19 Q Did you notice any scarring?

20 A I did not notice any scarring.

21 Q Any -- any other blood or any stains, anything that
22 had not been cleaned from the child's genitalia before she
23 came in?

24 A No.

25 Q Dr. Connell, is it common for a sexual assault victim

1 of 7 years old to come in without any obvious signs of
2 trauma less than 24 hours after the assault?

3 A Most of time sexual assault victims come in without
4 any signs of trauma.

5 Q There would not be any bruising for a 7 year old who
6 has been battered by an adult male?

7 A I don't know if she was battered.

8 Q A sexual battery, which would include penetration?

9 A Most of the time there are no signs of sexual -- I
10 mean, no signs of acute injuries. But there are times when
11 there are acute injuries.

12 Q When you examined Child on that day, the final thing
13 that you wrote was probable chronic abuse. Is this because
14 your findings were not consistent with actual chronic
15 abuse, that you could just give a guess that there had
16 been?

17 A Well, comparing to what I normally see with most of
18 the children that I see, her vagina appeared dramatically
19 different than what I normally see. And I'm not just
20 talking about sexual assault victims. I'm talking about
21 the thousands of kids that I've seen that are normal, that
22 have no sexual -- you know, normal exams that I see
23 on ---

24 Q I'm sorry. I couldn't hear you.

25 A I'm comparing her exam to the thousands of 7 year olds

1 that I see, hers looked dramatically different.

2 Q And is that based mainly on the widening of the
3 introitus?

4 A That's correct.

5 Q Is there any natural cause for that? Is everybody
6 built the same way in that area for 7 years old?

7 A No. They're all not built the same way.

8 Q Okay. And you've not examined Child before, and
9 you've examined her afterwards to see if there's any
10 change?

11 A Haven't seen her since.

12 Q Have you ever seen a widened introitus on another
13 child between 6 and 10?

14 A No.

15 Q Never?

16 A No.

17 Q But you've examined 75 criminal sexual conduct cases
18 or sexual assault cases that have come in?

19 A Alleged sexual assault cases that came to see me.

20 Q And how many of those would have been female of tender
21 years?

22 A All of the 75. Yeah, I've examined probably 100 for
23 sexual assaults. And about 75 of them would have been
24 children.

25 Q And out of those 75, how many would have been female?

Dr. Connell -- Redirect by Mr. Moak

213

1 A All of them.

2 Q All of them.

3 A I haven't seen any males.

4 Q You've never examined a male child?

5 A Haven't seen any males for -- for sexual assault.

6 Q And you've heard other allegations of the same sort
7 when you've examined these children, that they've been
8 penetrated by an adult male?

9 A Yes. Or suspicious of -- suspected of.

10 Q This is the first time you've seen a widened
11 introitus?

12 A That's correct.

13 MR. KIRINCICH: No further questions, Your Honor.

14 THE COURT: Redirect.

15 REDIRECT EXAMINATION BY MR. MOAK:

16 Q This area we're talking about, does it heal quickly?

17 A Yes, sir.

18 Q And a widened introitus, because it actually -- if
19 it's widened, could it actually revert back to its original
20 shape?

21 A Yes.

22 Q Over time?

23 A Yes, sir.

24 Q So the fact it was still widened, does that tell you
25 anything about how close in time to your examination the

1 penetration could have took place?

2 A Yeah, it could have been hours to days.

3 Q Hours to days. Could it have been a year?

4 A Probably not.

5 Q Okay. And the position that Child was placed in, I

6 think you testified that that position is a better angle to

7 observe ---

8 A Yes.

9 Q --- what you're looking for?

10 A Yes.

11 Q Even taking in account any distortion from the

12 position, is it still your opinion it was a widened

13 introitus?

14 A Yes.

15 Q And also the questions about whether or not on a

16 sexual assault victim as you saw injuries, isn't this area

17 even in -- isn't the purpose of this area to accept a

18 penis? Biologically, that's what it's there for?

19 A Yes.

20 Q And it heals quickly?

21 A Yes.

22 Q And the screens -- talking about the bacteria. Did

23 you screen her for what was considered the normal causes of

24 yeast infections or urinary tract infections?

25 A We screen for multiple different bacteria because of

1 their problematic nature in our society. We screen for
2 syphilis and hepatitis and gonorrhea and chlamydia and HIV.
3 And then we do a urinalysis to look for signs of infection
4 there. And we typically don't look for yeast on a sexual
5 assault, because it's not one of the things that's
6 typically communicated in a sexual assault.

7 Q So a yeast infection is not normally communicated in a
8 sexual assault?

9 A Correct.

10 Q Okay. And looking at Child [REDACTED] vaginal area on
11 December the 9th, 2009, you visually saw no evidence of a
12 yeast infection or urinary tract infection, did you?

13 A No.

14 Q And also on the paperwork, I think on the State's 12,
15 I think it says they've got -- what time were they in the
16 hospital?

17 A The time they presented to the emergency room was
18 10:51.

19 Q And then on the sexual assault protocol, does it
20 indicate on it what time that was conducted?

21 A That was started at 13:00 hours, which would be 1:00
22 o'clock in the afternoon.

23 Q And if you go back to State's 12, I think the last
24 page in your notes right before the lab results, does it
25 have a time there in your notes?

1 A That would be 15:13.

2 Q The same day?

3 A Yes. That would be December the 8th.

4 Q So basically, they get to the hospital at 10:51 in the
5 morning. The sexual assault kit is conducted at 1:00

6 o'clock in the afternoon. And at 3:13 that same afternoon
7 your notes are entered?

8 A Correct.

9 Q So there's no laps in time or anything?

10 A No.

11 Q And I think Mr. Kirincich was going through your
12 notes, asking about the different things that were on
13 there?

14 A Correct.

15 Q And I think he asked if you got this from the
16 grandmother or from the child?

17 A I got most of my information from the -- from the
18 child, and I spoke with the nurse.

19 Q Could you read your notes from episode description?

20 A Yeah. Episode description. (Reading.) Mother caught
21 boy friend with his pants down and daughter with pants down
22 at about zero-200 this a.m. Child reports, quote, Bubba
23 repeatedly touching her in her private parts and nuts. And
24 putting his private parts inside her private area. Patient
25 reports one episode of bleeding that ran down her leg. She

1 denies any bad injuries. Reports threats from Bubba to
2 spank her or put hot sauce in her mouth.

3 Q And that was from Child

4 A Yes.

5 MR. MOAK: No further questions.

6 THE COURT: Anything further?

7 RE CROSS EXAMINATION BY MR. KIRINCICH:

8 Q Dr. Connell, Mr. Moak asked you about the time, and
9 you stated that Child came in at 10:51 a.m. according to
10 the admission paperwork?

11 A That's correct.

12 Q And what time did Nurse Scheffer's assessment begin?

13 A Her assessment began at 1:00 o'clock, 13:00 hours.

14 Q Okay. And your assessment began at 2:14?

15 A Let's see: 2:19 actually.

16 Q 2:19. Excuse me. Do you know what kind of
17 examination Ms. Scheffer did before you arrived?

18 A She did the sexual assault examination, that's
19 cataloging clothing and all kinds of things that they do on
20 that exam.

21 Q Do you know anything else that happened to Child
22 while she was at the hospital?

23 A No.

24 Q Do you know if she saw anybody else?

25 A I believe she saw some police officers and there was a

1 -- you know, a support person that came in from the county.

2 Q No other physicians?

3 A No, she wouldn't have seen another physician.

4 MR. KIRINCICH: That's all. Thank you, Dr. Connell.

5 THE COURT: Thank you, sir. You may step down.

6 (The witness leaves the witness stand.)

7 MS. BARRY: The state calls Debbie Elliott.

8 DEBBIE ELLIOTT, being first

9 duly sworn, testified as follows:

10 WITNESS: Debbie Elliott.

11 DIRECT EXAMINATION BY MS. BARRY:

12 Q Ms. Elliott, where are you employed?

13 A I'm employed at the Carehouse of the Pee Dee in
14 Florence.

15 Q Please explain to the jury what the Carehouse is?

16 A We are a non-profit child advocacy center. We accept
17 referrals from physicians, Department of Social Service
18 agencies, and law enforcement from 9 counties. We conduct
19 forensic interviews and medical assessments on children and
20 make recommendations and referrals, testify in criminal
21 court and family court when asked.

22 Q In what capacity are you employed at the Carehouse?

23 A I'm a forensic interviewer.

24 Q So as a forensic interviewer, what services do you
25 provide at the Carehouse?

Ms. Elliott - Direct by Ms. Barry

219

1 A I interview the children forensically when there are
2 referrals made by law enforcement, D.S.S., and physicians.

3 Q What's your educational background beginning with your
4 undergraduate degree?

5 A I graduated from Clemson University with a major in
6 sociology in 1978. Since that time I have worked in the
7 field for about 25 years. I was a social worker for 10
8 years at the Florence County Department of Social Services
9 dealing exclusively with sexual abuse cases and severe
10 physical abuse cases, and at the same time co-facilitated
11 a sex offenders treatment group after hours for about a
12 year and a half, and at 2 other D.S.S. agencies in
13 Virginia.

14 I also worked at the Durant Children's Center for 2 ½
15 years as a forensic interviewer. And for the last 6 years
16 at the Carehouse of the Pee Dee as a forensic interviewer.

17 I conduct completed finding words, which is the
18 national protocol that we use at the Carehouse to conduct
19 forensic interviews, and have been to advanced finding
20 words several times, and continue to go to seminars that
21 deal with forensic interviewing and advancing my skills as
22 a forensic interviewer.

23 Q So you have attended different courses, seminars, and
24 trainings to advance your certification?

25 A I have.

1 Q How many years do you have experience in conducting
2 forensic interviews?

3 A 8 ½ years.

4 Q Can you estimate the number of forensic interviews
5 that you've done over those 8 ½ years?

6 A Approximately 5,000.

7 Q What percentage of your interviews have involved the
8 assessment of possible child abuse?

9 A They all have. Our referrals are coming from law
10 enforcement, D.S.S., and physicians when there are
11 allegations of sexual assault, physical abuse, any type of
12 child mal-treatment like witness to domestic violence, or
13 witness to homicide. The majority are of allegations of
14 sexual abuse and physical abuse, however.

15 Q Have you previously been qualified as an expert in the
16 field of forensic interviewing and of child abuse
17 assessment?

18 A I have.

19 Q On how many occasions?

20 A Approximately 50.

21 MS. BARRY: Your Honor, at this time I move to qualify
22 Debbie Elliott as an expert in forensic interviewing and
23 child abuse assessment.

24 THE COURT: What say the defense?

25 MR. KIRINCICH: Without objection, Your Honor.

Ms. Elliott - Direct by Ms. Barry

221

1 THE COURT: She is admitted as an expert.

2 MS. BARRY: Thank you, Your Honor.

3 Q Can you explain what a forensic interview is for the
4 jury?

5 A A forensic interview is a child-friendly interview
6 that's conducted in a child-friendly setting. The non-
7 offending parent usually brings the child in. It may be
8 D.S.S. if the child has been taken into custody. But it's
9 usually the non-offending parent or the parent who is not
10 accused of having done anything to the child. They bring
11 the child in, and we gather social history.

12 And then the child goes back with me, the forensic
13 interviewer, to a child-friendly room, just the 2 of us,
14 where the interview is recorded. And the interview is
15 geared towards gathering information, getting that --
16 giving -- giving the child the tools that are
17 developmentally appropriate in order for the child to
18 disclose or tell what's happened to them if anything has
19 happened to them in a -- in a way that's safe for them so
20 that they know that they're in a -- in a setting that's
21 safe, away from the alleged perpetrator, where it's
22 stressed to them that they need to tell the truth.

23 And the rules of the room are explained to them.
24 Like, if you don't know an answer, just tell me you don't
25 know. Don't make up something.

1 If you are unclear about a question or you don't know
2 what I mean, just tell me that.

3 But it's basically a information-gathering interview
4 that's part of an investigation.

5 Q And if you could expand on developmentally appropriate
6 tools. What do you mean by that term?

7 A Some of the tools that we use would be anatomical
8 drawings for a child, and they're just drawings of a little
9 boy figure or a little girl figure that are gender
10 specific. If I'm interviewing a little boy, I would show
11 them a little boy drawing of a little boy with no clothes
12 on, so that we can just go over body parts, and they can
13 tell me what they call parts of their body without making a
14 big deal about any part of their body: Eyes, nose, ears,
15 genitalia -- just whatever they call those parts of their
16 body so that we have a label to discuss about what's going
17 on. And it's also race specific.

18 Another tool that we use as forensic interviewers are
19 anatomical drawing -- I mean, anatomically correct dolls.
20 Where children can some times show me when it's hard or
21 difficult to verbalize what's happened, they can show me
22 what's happened using the dolls that are gender specific.

23 Q Are the parents present in the room when you conduct
24 these interviews?

25 A No.

Ms. Elliott - Direct by Ms. Barry

223

1 Q Why not?

2 A I want as clean and unbiased an interview as possible.

3 If a child -- the offending parent or alleged offender is
4 not allowed to come into our setting. But even as a non-
5 offending parent, you know, if any of you are parents, you
6 know, that sometimes you can just raise an eyebrow and
7 children know whether to be quiet or talk. There are just
8 non-verbal ques, there are all kinds of verbal ques.

9 In children we want a setting that is safe for the
10 child to disclose and talk about what's happened to them.
11 So that wouldn't be -- that wouldn't be clean to have
12 anybody else in the room other than the interviewer and the
13 child.

14 Q So where are these interviews conducted?

15 A They're in a child-friendly room away from the lobby,
16 away from the medical setting, kind of towards the back of
17 the house in just a small room with just the 2 of us. We
18 do record all of the interviews so that -- we have another
19 little room with a monitor where law enforcement and D.S.S.
20 can sit and watch the interview as it's being conducted.
21 The child doesn't see a mirror or anything like that.
22 There's a little camera. But it's conducted away from
23 everybody else so that they're in a safe environment.
24 Sometimes children want their moms to walk back with
25 them so that they know where they are. And that's fine.

1 But they always go back to the lobby. So it's just the
2 child and me.

3 Q So then the interviews are preserved by electronic
4 means?

5 A That's correct.

6 Q What if any measures do you use to assess the child's
7 level of competency?

8 A To assess the child's competency, in the -- initially
9 when I'm gathering the social history or information from
10 the non-offending parent, we're gathering information about
11 the child's development, whether they're on any kind of
12 medications, what grade they're in, who lives in the
13 family, that sort of thing, so that when I'm in the
14 interview with the child, the first part of the interview
15 which is just called the rapport, I can kind of file that
16 in the back of my mind while I'm asking the child
17 questions. And if the child's pretty much telling me what
18 that non-offending parent has told me, then I'm kind of
19 checking it off that the child knows, you know, her age and
20 where she lives, what grade she's in, things that children
21 at a -- at a certain age would usually know.

22 And also about the truth and lie. I'm talking --
23 asking children to tell me the truth, but then I also have
24 to elicit from the child whether they understand what that
25 means, if they understand what truth means and the

1 difference between truth and lie and what those
2 consequences are. And we have a truth-lie competency
3 exercise that we do with children to assess that.

4 Q Is the child's social and family history obtained?

5 A That's obtained prior to the interview with the child.

6 Q From the?

7 A From the non-offending parent or D.S.S. -- whoever
8 brought the child in that knows some history about the
9 child.

10 Q In your expert opinion, why is that information
11 important to this forensic interview process?

12 A It's important to know -- well, if the child is ADHD
13 and if the child is on any kind of medications. Has the
14 child taken that medication today? It's important to know
15 if the child's developed mentally on target, or whether the
16 child is delayed somewhat. I gear the interview towards
17 that -- with that information in mind.

18 If the child's delayed, I would be much more concrete.
19 If the child's ADHD, we would -- if the child hasn't had
20 the medication that day, we may reschedule the interview
21 for another day unless it's an emergency, so that that
22 setting is the best setting for the child.

23 The child is our number one priority, we're not.

24 Q What type of questioning format do you use during the
25 forensic interviews?

1 A I try to use non-leading and non-suggestive questions,
2 starting out with the most narrative kinds of questions
3 like: Tell me about your family, tell me about school so
4 that it starts out very broad and getting the child to talk
5 as narratively as possible without it being yes, no, or
6 multiple choice. You want it to start out as narratively
7 as possible, so non-suggestive and non-leading.

8 Q And why is that important?

9 A Because I want that information to come from the
10 child, clean information from the child.

11 Q Is there a -- is there a name for that protocol that
12 you use?

13 A Yes, we use the RATAC protocol, it's a national --
14 nationally-recognized protocol. And that's just an
15 acronym. The "R" stands for rapport -- what I just talked
16 about, where I talk to the child in the room. And this is
17 once I get the child into the interview room, and hopefully
18 getting the child to feel as comfortable as possible,
19 telling them my name, what to call me, just getting to know
20 the child like you would anybody, just helping the child to
21 feel comfortable.

22 The next part of the acronym is "A" and that could be
23 the -- that is the anatomy identification or using the
24 drawings with the child, getting them to tell me their body
25 parts or tell me what you call a part of their body. If

Ms. Elliott - Direct by Ms. Barry

227

1 they don't want to say or they don't know a body part, it's
2 okay. I don't make a big deal about that.

3 The "T" in RATAC stands for touch inquiry. And that's
4 just where you're talking about touches that are okay and
5 touches that are not okay. And I'll ask the child what
6 kind of touches are okay. And they may know, they may not.
7 I'll say, who -- does anybody give you hugs? Does anybody
8 give you kisses? Does anybody tickle you?

9 And then we talk about touches that are not okay to
10 get. And sometimes that leads directly in to the abuse
11 scenario, which is the next part of the acronym. And that
12 part deals with specifically gathering information about
13 the incident or incidents. Sometimes it's more than one.
14 And that would be the who -- who did it? Where did this
15 happen? What happened? And as much detail as possible
16 what happened -- depending on the child's age and
17 development.

18 And then the last part would be the "C" in RATAC. And
19 that's the closure where I'm talking to the child about
20 safety issues, anything like this ever happens again, who
21 to tell and safe people to talk to about what's happened.
22 And closing the interview in a respectful manner, so that
23 the child's just not left feeling like they've divulged all
24 this information and you're just ending it. So it's sort
25 of a respectful ending for the child.

1 Q Are you familiar with the term Child Abuse

2 Accommodation Syndrome?

3 A I am.

4 Q Can you explain for the jury what that means?

5 A It was written by Ronald Summit in 1983. And he was
6 explaining why children delay or put off disclosing sexual
7 abuse, things that have happened to them, chronic cases,
8 which is through a period of time.

9 He talks about the things that happen with -- with --
10 with perpetrator and children, the authority level, because
11 perpetrators are usually somebody that the child respects
12 or loves or somebody that's in authority position over
13 them. We teach our children to obey and respect our
14 elders, obey and respect people who live in the home that
15 tell you what to do, your parents, your grand parents.

16 He talks about the secrecy involved in sexual abuse,
17 how perpetrators tell children all the time, you know, this
18 is our little secret. You're not to tell anybody. The
19 shamefulness of it. And if you do tell somebody, what will
20 happen.

21 Perpetrators tell children all the time things will
22 happen, like, I'll kill your mother or, you know, if we get
23 caught -- they bring the child in to it. It's not about
24 them. They bring the child or the victim in to what
25 they're doing to them. If somebody finds out about us,

1 I'll go to prison and how will I support the family? They
2 tell children all the time things that will happen, and
3 children believe them.

4 So children -- what they end up having to do is -- is
5 have a way to cope or to accommodate to what's happening in
6 their -- in their lives. They are not autonomous. They
7 depend on adults and they depend on the people that they
8 live with that are supposed to love and protect them to
9 take care of them. So they accommodate what's happening to
10 them.

11 Q Is that a coping mechanism?

12 A It is.

13 Q In your training and experience, how common is delayed
14 reporting among victims of child sexual assault when
15 there's a familial situation?

16 A It is very common, extremely common.

17 Q And why is that?

18 A Well, because children cannot go out and just live on
19 their own. They're dependent on the people that protect
20 them and love them. They're not sure what will happen if
21 they do tell because of what they've been told. And
22 they're not sure they'll be believed. So sometimes they'll
23 just tell a little bit about what's happened, which is
24 called partial disclosure or piecemeal, where you may just
25 tell a little bit of what's happened. And later on down

1 the road, even after forensic interview and while children
2 get in to -- once children get in to therapy, hopefully,
3 sometimes more comes out.

4 I can't tell you the number of times that I've done
5 the social history with the mothers who bring children --
6 victims -- alleged victims in to see us, and we'll ask
7 about their social -- their sexual abuse history if there
8 is any history of anybody that abused them as children, and
9 they, you know, will say, I've never told a soul and it
10 happened 20 years ago.

11 So to expect children, young victims, to just tell it
12 just because it just happened is pretty unrealistic when
13 adults have a hard time talking about it.

14 Q Is it fair to say children aren't equipped emotionally
15 or developmentally to deal with that type of abuse?

16 A That's true.

17 Q Did you conduct a forensic interview with Child [REDACTED]
18 Scott?

19 A I did.

20 Q Do you recall the date that you did that?

21 A It was December the 11th, 2009.

22 Q And how old was Child [REDACTED] when you conducted this
23 interview?

24 A She was 7.

25 Q She was 7?

1 A She was 7, had just turned 7.

2 Q Did you go through the competency assessment prior to
3 your interview with Child [REDACTED]

4 A That was part of the interview, in the rapport
5 section. When I brought her in, I went over the rules of
6 the room and most importantly stressed her need to tell me
7 the truth about everything. And I conducted the truth-lie
8 competency exercise with her. And she completed it,
9 answered every question correctly.

10 Q So you determined that she was ---

11 A That she understands the difference between truth and
12 lie and the consequences of lying.

13 Q In your opinion, was Child [REDACTED] competent?

14 A Yes.

15 Q What if any safeguards were used when you interviewed
16 Child [REDACTED] to prevent any type of influence?

17 A By having her in a room, just the 2 of us, and going
18 over the rules with her, using the RATAC protocol, which is
19 designed to use an approach so that children can tell or
20 disclose information when things have happened to them in a
21 non-suggestive and a non-leading way.

22 Q What if anything did Child [REDACTED] relate to you concerning
23 the time frame of the assault by the defendant, George
24 Branham?

25 A She talked about the -- the incident where mama caught

1 them; those were her words, where mama caught them in the
2 hall where she was -- she was laid down in the hall. She
3 was going to the bathroom and never made it to the
4 bathroom. And that was the time -- the time that she
5 talked about most of all.

6 Q Did she give you any indication that it happened
7 previous?

8 A She did. I asked her -- I think I said, so he -- she
9 had said something about when he -- I thought she said or
10 she said at one point, he tried to do it. And he said, he
11 -- he did do it. He done it a lot of times were her words.
12 He done it a lot of times.

13 Q You testified about anatomy, how you determine their
14 words for parts of their body. I'm going to show you
15 what's been marked as State's Exhibit 10 and State's
16 Exhibit 11. Do you recognize those?

17 A I do. Those were the drawings that we used in the
18 interview. This is the female anatomy and the male
19 anatomy.

20 Q Are these actually the drawings that you used?

21 A They are.

22 MS. BARRY: Your Honor, I move these in to evidence at
23 this time, 10 and 11.

24 THE COURT: Any objection?

25 MR. KIRINCICH: No objection, Your Honor.

1 THE COURT: They are admitted without objection.
2 (State's Exhibit Nos. 10 and 11 received in evidence.)
3 Q And what did she call her genitalia?
4 A She called it her private. And later she called it a
5 tee-tee too, and her -- and her butt and her bottom.
6 Q And that is on which drawing?
7 A On the female drawing, I'm sorry.
8 Q What is State's Exhibit No. 11?
9 A That's a drawing of a male. And after she had talked
10 about what had happened, I introduced the male drawing and
11 asked her what part she was talking about. And she said
12 the private. And she was talking about the penis.
13 Q And so you go over that to get her what?
14 A Her label of what she calls parts of her body.
15 MS. BARRY: Your Honor, may I publish these?
16 THE COURT: You may.
17 MS. BARRY: Thank you.
18 Q Did you document the child's disclosure in some form?
19 A I did. It's electronic. It's on a C.D.R. as well as
20 a typed summary, a written, typed summary that I typed.
21 After interviewing the child, I sit down and review the
22 entire interview and type at the same time I'm watching it.
23 Q Was there anything about Child that -- Child
24 disclosure that would cause you to believe that it was the
25 result of third-party influence?

1 A No.

2 Q In your expert opinion, was her disclosure affected by
3 suggestibility or coaching in any way?

4 A No.

5 Q And how are you able to make that assessment?

6 A Child -- well, when -- when children are coached --
7 and I have interviewed some children that have been
8 coached. Many, many more have not been. But usually they
9 -- they cannot provide details. I'll ask them about what
10 happened. They may say a little bit. I'll go to something
11 else and come back to that. And they kind of go back to
12 the exact same thing that they said before. It's almost
13 like a rote statement. It's sort of like somebody told you
14 to say that.

15 With Child her's was extremely spontaneous. She
16 had a lot of detail -- much more detail than a -- than an
17 un-abused 7-year old would know about, non-abused 7-year
18 old.

19 Q So types of sensory details are what you're looking
20 for; is that correct?

21 A That's correct.

22 Q A 7-year old, do they have -- well, what if any
23 concept of time do they have?

24 A Well, their concept is not nearly as good as ours.
25 They -- they tend to kind of remember things that are

1 important to them, like things that happened around
2 [REDACTED] or maybe around Christmas, just things that are
3 important to them and their lives. So when you ask
4 children how many times or when it happened, those are --
5 those are very difficult questions to ask a child unless
6 something's just happened and it's fresh in their memory.

7 Q Is it more or less typical to find that in chronic
8 abuse cases their memory of the time frame?

9 A Oh, it's much more difficult for children to talk
10 about times when it's been chronic, because what children
11 tend to do sometimes is some times blend incidents
12 together. They'll blend what happened last time with this
13 time. When it's chronic, it's been going on. It could
14 have been going on for years. So to ask a child about
15 their very first time something happened, they can usually
16 tell you more -- sometimes I just start with what happened
17 last, especially with younger children because that's
18 easier to remember.

19 Q Now, was she able to give you details about what
20 happened last?

21 A She was.

22 Q And you said that you recorded by electronic means.
23 I'm going to show you a C.D.R. and ask you if you recognize
24 this?

25 MS. BARRY: State's Exhibit 5 for I.D., Your Honor.

1 A I do. That's the interview from December the 11th,
2 2009 with Child [REDACTED] at the Carehouse.

3 MS. BARRY: Your Honor, at this time I would move this
4 in to evidence and publish to the jury.

5 THE COURT: All right. What say the defense?

6 MR. KIRINCICH: Your Honor, I understand 17-23-175 and
7 what it says. But I think we would still object as it
8 being inadmissible hearsay and be used to bolster the
9 testimony of these witnesses.

10 THE COURT: All right. It is admitted over objection.

11 MR. KIRINCICH: Thank you, Your Honor.

12 (State's Exhibit No. 5 received in evidence.)

13 THE COURT: Ladies and gentlemen, we're going to take
14 a recess at this time, if you will go to the jury room.
15 Please do not discuss the case.

16 (The jury retires to the jury room at 3:21 p.m.)

17 THE COURT: We'll take about 10 minutes.

18 (The witness steps down from the witness stand.)

19 (A recess was taken.)

20 (The witness returns to the witness stand.)

21 THE COURT: All right.

22 MS. BARRY: Your Honor, I know that you've already had
23 the interview admitted. But I failed to -- these things:
24 Have you had a chance to review it? Does it fairly and
25 accurately depict the interview that you conducted on

1 Child ██████████ Would you like me to go back over that? I
2 mean, I know he didn't object, so.

3 THE COURT: It's up to you.

4 MS. BARRY: I think for the record I'd like to do
5 that, Your Honor.

6 THE COURT: All right.

7 MS. BARRY: Okay. Thank you.

8 THE COURT: All right. Bring the jury.

9 MS. BARRY: I apologize, Your Honor.

10 (The jury returns to the courtroom at 3:43 p.m.)

11 THE COURT: You may proceed.

12 MS. BARRY: Thank you, Your Honor.

13 Q Before we publish this to the jury. Have you had a
14 chance to review this?

15 A I have.

16 Q Does it fairly and accurately depict the forensic
17 interview that you conducted with Child ██████████ on December
18 11, 2009?

19 A It does.

20 MS. BARRY: Thank you, Your Honor, at this time we
21 move this into evidence, State's Exhibit No. 5.

22 THE COURT: Okay.

23 MS. BARRY: I believe without objection.

24 (State's Exhibit No. 5 received in evidence.)

25 (State's Exhibit No. 5 was played in open court.)

1 THE COURT: Ladies and gentlemen, I'll give you a
2 break for a few minutes. Go to the jury room. Do not
3 discuss the case.

4 (The jury retires to the jury room at 4:46 p.m.)

5 THE COURT: All right. We'll take a few.

6 (The witness steps down from the witness stand.)

7 (A recess was taken.)

8 (The witness returns to the witness stand.)

9 THE COURT: All right. Bring the jury back.

10 (The jury returns to the courtroom at 5:01 p.m.)

11 THE COURT: All right. The jury is back. Ms. Barry.

12 MS. BARRY: Thank you, Your Honor.

13 Q Ms. Elliott, in your expert opinion based on that
14 video and based on your actual interview with Child was
15 she able to give you a detailed account of what happened?

16 A She was.

17 Q Was it age appropriate?

18 A It was.

19 Q Was it a logical -- did it follow a logical path?

20 A I think that it did.

21 Q The chronological order of the event, did that make
22 sense in your opinion?

23 A It did.

24 Q Was there anything about her interview that gave you
25 any concern?

1 A No.

2 Q At 7 years old, are children typically in tune with
3 their body, meaning are they aware of the anatomy and which
4 hole might be used in your experience?

5 A Only children that have some knowledge of that from
6 sexual abuse or -- from sexual abuse mostly.

7 Q In your opinion can they accurately describe events
8 like an adult would?

9 A No. Children typically can tell you the most detail
10 about the last event that's happened, because it's the most
11 fresh in their memory. Sometimes other things get kind of
12 muddled through the years.

13 Q In your expert opinion was she -- did she give you
14 details that were not age appropriate?

15 A Some of the -- some of the terms that she used
16 certainly were words that typically a 7 year old wouldn't
17 use. Like when she said -- when she talked about Bubba
18 massaging his wiener until he finished. No 7 year olds
19 aren't going to know about finishing until he's done in
20 that context. And that she said until he's finished or
21 until he's done. That's not something that a child who has
22 not been abused would typically know about or have
23 knowledge of.

24 Q What was your conclusion following this interview?

25 A My conclusion was that Child [REDACTED] had been

1 chronically sexually abused by Bubba, George Branham.

2 Q You have conducted over ---

3 A Over 5,000 interviews.

4 Q And that was your conclusion?

5 A Yes, ma'am.

6 Q What recommendations did you have for Child [REDACTED]

7 A I had several recommendations. Most importantly, that
8 she enter therapy so that she can begin to process the
9 sexual abuse; that she have no contact with George Branham;
10 that he have no direct or indirect contact with her. Do
11 you want all the recommendations?

12 Q No.

13 A Okay.

14 Q In your opinion -- and you were present when she
15 testified?

16 A Yes.

17 Q Is it easier or more difficult for a child to talk to
18 an adult one-on-one or in a group setting?

19 A Definitely I think one-on-one; that's why child
20 advocacy centers were developed, so that there would be a
21 place for children to disclose in a safe and child-friendly
22 environment, where there were no distractions and the non-
23 offending -- I mean, the offending -- alleged offender was
24 not present.

25 Q And in your expert opinion what effect if any does

Ms. Elliott -- Direct by Ms. Barry

241

1 time play on a child's ability to talk about sexual abuse?

2 A Usually the most recent event children can talk about.

3 They don't always know -- and that's one of the reasons why

4 I said to her in the interview, you may not be able to

5 answer this question. But do you remember when this first

6 started? And she said 3.

7 And when she said 3, I asked her how she knew that or

8 how she could remember she was 3 when it first started.

9 And she said because I can't remember when I was 1 and I

10 can't remember when I was 2.

11 So that leads me to think that maybe those were just

12 some of her memories -- first memories is when she was 3.

13 Q And as time goes on, what effect does memory have on a

14 child's ability to remember events?

15 A They usually -- not -- not as able or capable to talk

16 about things in such detail as the most current event.

17 Q And in your expert opinion is it more common for

18 younger children to talk about -- or give spontaneous

19 disclosures in forensic interviews as opposed to older

20 children, does that time -- is anything lost during that

21 time?

22 A Oh, certainly things can be lost.

23 Q What other factors might play in to that as children

24 get older?

25 A Well, they're more sophisticated. They know that more

1 things can happen -- more things can happen to their
2 family, negative things can happen to them. More and more
3 people have talked to them about what's happened. So the
4 sooner the disclosure to somebody -- whether it's
5 accidental or purposeful -- the better it is to have the
6 interview conducted.

7 MS. BARRY: Your Honor, that's all I have of this
8 witness. Please answer any questions Mr. Kirincich may
9 have.

10 THE COURT: Mr. Kirincich.

11 MR. KIRINCICH: Thank you, Your Honor.

12 CROSS EXAMINATION BY MR. KIRINCICH:

13 Q Ms. Elliott, where does the funding for the Carehouse
14 come from?

15 A We're a non-profit child advocacy center. Billing is
16 through the state office of victim's assistance, through
17 grants, and private donations.

18 Q So billing through the state office of victim's
19 assistance -- do you have anything to do with that?

20 A I write -- I write the bills after I complete the
21 interviews I bill SOVA if law enforcement is involved.

22 Q And state office of victim's assistance is often
23 referred to as SOVA, correct?

24 A That's correct.

25 Q And that's a governmental agency?

Ms. Elliott - Cross by Mr. Kirincich

243

1 A Yes, sir.

2 Q And where do your referrals come from?

3 A They come from physicians, through law enforcement,
4 and through Department of Social Services through 9
5 counties.

6 Q Okay. And I'm not sure if it's exactly called a
7 board. But who sits on the board of advisors for the
8 Carehouse?

9 A We have a board of 5. We have Major Carlos Raines
10 (phonetic), he's a major with the Florence Police
11 Department, Tom Sharon (phonetic), who is a city planner in
12 the City of Florence, Elizabeth Poston (phonetic), Kelly
13 Lockadoo (phonetic), and I left out 1. There's 5.

14 Q Do you still have somebody from the solicitor's
15 office?

16 A No, not on our board. No, sir. Not on our board. We
17 have 5.

18 Q There's no longer an advisor from the solicitor's
19 office with the Carehouse?

20 A An advisor? Not that I'm aware of, sir.

21 Oh, Dwayne Brockington, he's a banker. He's the other
22 one. I'm sorry.

23 Q I'm going to try to keep it in line with the video
24 here. If I jump around, I apologize. One of the first
25 things you started with in the video was the truth-lie

1 test. Do you remember doing that with Child

2 A That's not the first thing I did. I built some
3 rapport with her, I did do that.

4 Q I'm sorry. One of the first things?

5 A Yes, sir.

6 Q And what do you use to do the truth-lie test? I don't
7 think it was visible on the video.

8 A I use this little exercise, it's the truth-lie
9 consequence exercise.

10 Q And you have that book with you. And on the video I
11 notice that Child was pointing to the answers before you
12 asked the questions, and you had to tell her, wait until I
13 ask the question. Is that normal for a child to be able to
14 pick out the answer before you ask the question?

15 A Sometimes they want to jump ahead. But when I ask her
16 to wait until I was finished answering (sic) the -- asking
17 the question, she did.

18 Q And then you asked her why she was brought in today,
19 and she said it was person stuff. And you corrected her
20 and said, personal stuff. And you went in to what happened
21 in the hallway. Right?

22 A She went in to what happened in the hallway.

23 Q Okay. Did you ask her at any other time any questions
24 about what happened in the hallway before you went in the
25 interview room or after you went in the interview room?

1 A No, sir. Every -- all of my questioning was done in
2 the interview room being taped.

3 Q Have you had any other opportunity to interview
4 Child or review anything else from this case?

5 A I have not interviewed her again, no, sir.

6 Q Ms. Barry was asking you if anything gave you concern.
7 You said, no, that you weren't concerned that she was
8 telling the truth or that she inaccurately described
9 anything?

10 A I felt that she was telling me the truth. Of course,
11 I was concerned about what she was telling me; that's very
12 concerning.

13 Q What about confused. Did you feel confused at any
14 point?

15 A No, sir.

16 Q Didn't you tell her that when she was describing Bubba
17 trying to put his private in her bottom, that you didn't
18 understand what she was talking about?

19 A I felt like she understood what she was talking about,
20 but she couldn't convey it to me verbally, that's why I
21 went and introduced the anatomically -- anatomical dolls.

22 Q We'll go to that. So you actually -- in your report
23 you said you went out to confer with Dana Collins, who's
24 another forensic interviewer?

25 A That's correct, she was in the observation room.

1 Q And did you discuss with her your confusion or the
2 confusion about Child description of this sexual act,
3 how it's accomplished?

4 A No.

5 Q What did you discuss with her?

6 A I went to see what Dana -- what she felt. She was new
7 with us at the time and had just completed finding words.

8 So she was peer reviewing me. We did that with each other.

9 I think I just did that for clarification, just to
10 understand better what she was trying to verbally convey to
11 me.

12 Q And one of the things that you wanted her to
13 demonstrate with the dolls is how this act of anal
14 penetration occurred; is that correct?

15 A Yes, sir.

16 Q And when you give her the dolls, she seems to be
17 having a hard time lining things up. Would you agree with
18 that?

19 A No. No, sir.

20 Q Was she having a hard time getting the head of the
21 doll through her -- through the female doll's legs like she
22 described happen?

23 A She was. And then she said that her panties were
24 actually dangling off of one ankle than together.

25 Q Okay. So even though she said multiple times ankles,

1 my underwear and my pants were down at my ankles, and she
2 attempted to put the doll's head through the legs several
3 times with the panties around the ankles, when it became
4 easier with the panties dangled around one, and actually it
5 fell off completely, you didn't try to ask her about that
6 to say, Child I thought you said the ankles? You said
7 they were down?

8 A This is a 7-year-old child. I think when a child says
9 ankles, she means ankles.

10 Q Okay. And you actually at that point grabbed one of
11 the dolls and helped her line the dolls up, didn't you?

12 A I did not line the dolls up, no, sir. I helped her.
13 She was having trouble I think getting the panties off.
14 And I think I helped her with that. I did not line the
15 dolls up for her.

16 Q And these are referred to as anatomically correct
17 dolls?

18 A Correct.

19 Q And they're anatomically correct only because they
20 have genitalia, right?

21 A That's correct.

22 Q These dolls are not an accurate representation of the
23 size difference between an adult male and a 7-year-old
24 female, are they?

25 A One was a male -- one was a male adult and the other

1 was a little girl.

2 Q Were they accurate depictions of the size difference

3 between Mr. Branham, who you've seen today, and Child

4 A We don't have actual sized dolls. It was the best

5 anatomical doll we could purchase. We don't have actual

6 size.

7 Q And so whenever Child was saying that Mr. Branham

8 put her knees on his shoulder -- and you were having

9 trouble with the dolls that were the same size, that didn't

10 give you any concern or confusion about what she meant

11 whenever she said that he did this to her?

12 A No, sir. Because when she demonstrated it, her -- her

13 knees -- her legs were on his shoulders.

14 Q These dolls have the rigidity of a human skeleton

15 holding them in or positioning them or are they just floppy

16 foam or batting-filled dolls?

17 A They're -- I'm not sure what they're filled with.

18 Q Is there any rigidity to them?

19 A No, sir.

20 Q Okay. Were you concerned at all by the statements

21 that Child made about the number of times that she viewed

22 George and Jessica having sexual relations?

23 A I was concerned about that. It's very concerning when

24 children are witnessing sexual acts.

25 Q She used words that are not necessarily numerical, but

1 she said last time and always. And I think she said one
2 time she and her brothers and sisters were peeking, but
3 they didn't get caught.

4 A Correct.

5 Q And then she said one time she pretended to be asleep
6 and she watched?

7 A Correct.

8 Q And she said, mommie always says huh, that's how I
9 know they're doing it?

10 A That's correct.

11 Q Was she ever questioned if she had any knowledge of
12 these sexual positions or act based on what she saw her
13 mother and her mother's boy friend doing?

14 A I didn't ask about positions, no.

15 Q She also says that -- it's a confusing thing. She
16 said there was stuff that stings kept in the dresser
17 drawer. Did you ever ascertain what that was?

18 A I'm not law enforcement. This information went to law
19 enforcement and to D.S.S. That's not my role to go out and
20 collect evidence.

21 Q And what about the thing she describes, white and
22 black tape on the bottom? Did you have any further
23 questions about how she knew about that device?

24 A She said she saw Bubba doing that to mama, but he
25 never did it to her.

1 Q I'm sorry. I thought she denied seeing Bubba using
2 that?

3 A No. She said Bubba did it to her -- to mama, but not
4 to her.

5 Q And do you have a copy of your summary that you
6 prepared?

7 A I do.

8 Q I'm sorry. I don't know if yours is marked the same
9 way as mine. Mine is page 7.

10 A Okay.

11 Q In the last paragraph I'm going to read, you said, she
12 said that thingie, it got a white top and he taped the
13 bottom of it, and it was black and white. You put it in
14 your hole, in your private. He didn't done it to me. He
15 just done it to mama. Do you see where I'm reading from?

16 A Yes, sir.

17 Q And what is the next line that you have there?

18 A She denied seeing mama and Bubba using that.

19 Q And then you questioned her about it. What did she
20 say?

21 A She said she just knew that.

22 Q How would a child just know that?

23 A I'm wondering if that's a typo, because I thought I
24 just heard her say that she -- in the interview that she
25 saw mama and Bubba doing that -- using that.

Ms. Elliott - Cross by Mr. Kirincich

251

1 Q Ms. Elliott, out of the 5,000 children you've
2 interviewed, how many were for sexual assault or
3 allegations of sexual assault or battery?

4 A They all are coming in for sexual abuse or physical
5 abuse, witness to domestic violence or witness to
6 homicides. I don't know the exact percentage. Probably
7 more than 50 percent are sexual abuse.

8 Q So more than 2500 of these children were for sexual
9 abuse. Out of those 2500 how many children have you found
10 not to be credible?

11 A I don't know exactly. We don't -- we don't keep
12 statistics on that. There have been some.

13 Q How many children have you interviewed that are not
14 coming in as the victim of sexual battery about the basis
15 of their knowledge of sexual acts?

16 A Every child that comes in to the Carehouse, we use the
17 RATAC protocol. And I go through basically the same
18 questioning I did with Child depending on what the child
19 says. I usually will ask a child if they've seen grown ups
20 without their clothes on.

21 Q In every case?

22 A Maybe not in every case. In cases where the social
23 workers or law enforcement may be concerned about that, I
24 do.

25 Q You answered a question that this was -- I'm sorry,

1 I'm paraphrasing. I don't have your exact words.

2 Basically, that a child of 7 would be this knowledgeable

3 about sex -- or sexual vocabulary or certain acts. Have

4 you interviewed children or read any studies for children

5 that are not alleged to have been abused and their basis of

6 sexual knowledge, acts or vocabulary?

7 A Have I interviewed children who have not been sexually

8 abused that know about sexual -- having sexual knowledge?

9 Q Yes.

10 A Yes.

11 Q And in what type of case was that? Was it a case

12 study or just somebody that ---

13 A It would be any child that comes into the Carehouse,

14 say, they were coming in for physical abuse, they'd just

15 been beaten by someone. I would, of course, get the

16 information concerning that incident and whether had ever

17 happened before. And then depending on the child's age, do

18 the anatomical drawing with them and ask about any kind of

19 sexual abuse.

20 Q And if they deny any, do you keep on with that line of

21 questioning?

22 A No. No. The medical examination is done. It's a

23 two-fold process.

24 Q Why was Child not asked about any other abuse that

25 she had suffered?

1 A I felt like at that time she was -- that was a pretty
2 long interview for a 7-year old. And at that point I just
3 wanted to make sure -- wanted to make sure that I'd gotten
4 information that she had provided about this incident, and
5 to find out if she was okay and safe with her daddy, and
6 recommended that she enter therapy as soon as possible,
7 knowing that that would also be covered in therapy. At
8 that point I just didn't feel -- I didn't feel like she had
9 the energy left to talk about anything else.

10 Q If she had the energy left, if you felt the interview
11 was going well, would you have asked her if she had ever
12 been abused by anybody else?

13 A In retrospect I probably should have. I didn't do it.

14 Q You've testified about delay, certain reasons why
15 children would not come forward with information. But
16 because Child [REDACTED] says she remembers when she's 3, you feel
17 the abuse started when she was 3 or at least when she was
18 3?

19 A I think what she said was that it just happened -- it
20 happens all the time. And she's only 7.

21 Q Was she able to give you any other corroborating
22 evidence that anything happened when she was 3?

23 A Not exactly at age 3. But she talked about when it
24 would happen, when mama would be on the phone, when she'd
25 be in the bed asleep, when she'd be gone to the store.

1 Q You didn't have anything to do with the physical exam
2 of Child did you?

3 A No, sir. Dr. Saunders completed that.

4 MR. KIRINCICH: Your Honor, if I could just have a
5 moment to confer with Mr. Branham.

6 THE COURT: Yes.

7 (Pause.)

8 MR. KIRINCICH: Thank you. That's all the questions I
9 have.

10 THE COURT: Redirect.

11 REDIRECT EXAMINATION BY MS. BARRY:

12 Q Ms. Elliott, she couldn't convey verbally what
13 position she was in, so you got the anatomical dolls?

14 A That's correct.

15 Q Is that common for a child her age, 7?

16 A That's very common.

17 Q Why is that?

18 A Well, she doesn't have the knowledge as an adult
19 would, be able to describe these kinds of acts that are
20 abnormal -- not something that a 7-year old should ever
21 have to endure.

22 Q But she clearly was able to tell you that he put his
23 private in her private?

24 A That's correct, in her hole.

25 Q And she showed you, correct?

Ms. Elliott - Redirect by Ms. Barry

255

1 A She did.

2 Q And Mr. Kirincich showed you your summary. If you
3 could look at page 8 of your summary -- to refresh your
4 memory -- 3 paragraphs after what he read out to the jury.
5 Can you read that sentence starting with, She said her,
6 quote?

7 A I'm sorry. On page 8, where?

8 Q 8. I'm sorry. She said she was, quote?

9 A Is this after exited interview room and came back in
10 with the dolls, is that where you're talking about?

11 (Pause.)

12 A Okay. I'm sorry. She said she was, quote, sleeping
13 in the bedroom peeking, and Bubba was on the ground. And
14 so Bubba was standing and mama was on the ground on her
15 knees like a dog. And Bubba got on her and -- bottom, and
16 mama said stuff.

17 I asked what mama said.

18 Child said, she always says, huh. I always know
19 when they are doing it because mama always says that.

20 Q Now, was that the same position that she described to
21 you with the anatomical dolls?

22 A No.

23 Q Did she show you that position?

24 A No.

25 Q In your expert opinion after interviewing over 5,000

1 children, did you find her disclosure credible?

2 A I did.

3 Q How often did she say that the abuse happened?

4 A Child said it happened all the time. He done it all
5 the time.

6 MS. BARRY: Thank you.

7 THE COURT: Anything further?

8 MR. KIRINCICH: No, Your Honor. I have no questions.

9 THE COURT: All right. Thank you. You may step down.

10 (The witness leaves the witness stand.)

11 THE COURT: Madam forelady and members of the jury, we
12 made it through this day. We will stop now and start back
13 at 9:30 tomorrow morning. You all have a good evening.
14 We'll see you back at that time. Please do not discuss the
15 case with anyone.

16 (The jury exits the courtroom at 5:33 p.m.)

17 THE COURT: Any other matters that we need to take up
18 today?

19 MS. BARRY: Nothing today, Your Honor.

20 MR. KIRINCICH: And nothing from the defense, Your
21 Honor.

22 THE COURT: All right. Be back at 9:30 in the morning
23 then.

24 (Court is in recess.)

25 (Wednesday, August 24, 2011.)

1 THE COURT: I understand from the clerk that Juror no.
2 108 indicates that she now realizes that she knows one of
3 the state's witnesses, Ms. Saunders or she thinks that she
4 does. How would you like for me to address the juror, Mr.
5 Solicitor?

6 MR. MOAK: I would guess if you bring her out, you
7 could ask her the question: What was your relationship?
8 Can you be fair and impartial? Would it affect your
9 judgment, see what she says.

10 THE COURT: Mr. Kirincich?

11 MR. KIRINCICH: Your Honor, I agree with that line of
12 questioning. Whatever The Court feels is fair and
13 necessary to Mr. Branham's rights.

14 THE COURT: All right. If you will have her step in
15 please, no. 108.

16 MR. MOAK: It's my understanding she's an alternate
17 any way.

18 THE COURT: She is an alternate.

19 (Juror 108 enters the courtroom at 10:19 a.m.)

20 THE COURT: Hi there. I understand through the clerk
21 that you believe that you know one of the witnesses?

22 JUROR: Yes, sir.

23 THE COURT: And which witness do you know?

24 JUROR: The lady that was here, Dr. Saunders. She was
25 my neighbor 10 years ago. I just wanted to bring it to

1 your attention. I didn't recognize that. When you went
2 through the witness list, I didn't realize that some people
3 are out of the Florence area.

4 THE COURT: Over the past 10 years have you maintained
5 contact with her?

6 JUROR: No, sir.

7 THE COURT: And do you consider her a close, personal
8 friend?

9 JUROR: No, sir.

10 THE COURT: And the fact that she might be a witness
11 in the -- that she is supposed to be a witness, going to be
12 a witness, would that fact affect your ability to continue
13 serving as a fair and impartial juror?

14 JUROR: No, sir.

15 THE COURT: And that would not affect your ability to
16 be fair and impartial in any way?

17 JUROR: No, sir.

18 THE COURT: All right. Thank you very much. Anything
19 else the state or the defense would like for me to ask?

20 MR. MOAK: Not from the state.

21 MR. KIRINCICH: Nothing, Your Honor.

22 THE COURT: All right. Thank you very much. If you
23 will go to the jury room and if you will not discuss with
24 other jurors the fact that you were neighbors of hers 10
25 years ago.

1 JUROR: Yes, sir.

2 (The juror returns to the jury room at 10:20 a.m.)

3 THE COURT: What says the state?

4 MR. MOAK: Your Honor, our position is she said that
5 she can be fair and impartial, it wouldn't affect her
6 judgment. But, again, she is the alternate. I mean, it's
7 in your discretion is our position.

8 THE COURT: What says the defense?

9 MR. KIRINCICH: Your Honor, I don't have a motion to
10 strike the alternate.

11 THE COURT: All right. I think she can continue to
12 serve based on what she said.

13 All right. Are we ready for the jury?

14 MR. MOAK: Yes, Your Honor.

15 MR. KIRINCICH: Yes, Your Honor. I just ask that you
16 ask the jury if they have continued to avoid all media
17 coverage and not done any independent research on this
18 case, Your Honor.

19 THE COURT: All right. I'll be happy to do that.

20 MR. KIRINCICH: Thank you.

21 THE COURT: If you will bring the jury please.

22 (The jury returns to the courtroom at 10:22 a.m.)

23 THE COURT: Madam Forelady, how's your jury doing?

24 FORELADY: Doing well.

25 THE COURT: Doing well. Very good. Welcome back to

1 day no. 3.

2 Ladies and gentlemen, as you may recall prior to us
3 starting the trial and throughout the trial I have
4 admonished all jurors to not read anything, not discuss the
5 case outside of the presence of the jury, outside of the
6 courthouse, nor to discuss the case with fellow jurors, to
7 avoid any type of media accounts of this case by not
8 reading any local, state newspapers, or anything on the
9 web.

10 If any of you have read anything, seen anything, or
11 discussed this case with anyone, please stand.

12 (No response.)

13 THE COURT: Okay. If each of you have continued to
14 abide by my instructions, please raise your right hand.

15 (All right hands were raised.)

16 THE COURT: All hands are raised. Thank you very
17 much.

18 We will continue. The next witness please.

19 MR. MOAK: The state calls Rebecca Scheffer.

20 REBECCA SCHEFFER, being first
21 duly sworn, testified as follows:

22 CLERK: Have a seat and state your name for the record.

23 MS. SCHEFFER: It's Rebecca V. Scheffer,
24 S-c-h-e-f-f-e-r.

25 DIRECT EXAMINATION BY MR. MOAK:

Ms. Scheffer - Direct by Mr. Moak

261

1 Q Ms. Scheffer, where are you employed?

2 A Kershaw Health.

3 Q And what is your position there?

4 A Presently, I'm the nurse manager at Elgin Urgent Care.

5 Q Were you a sexual assault nurse examiner for Kershaw
6 County Medical Center?

7 A Yes.

8 Q Are you still qualified for that?

9 A I am.

10 Q What particular training or education do you have that
11 qualifies you to do sexual assault nurse examinations?

12 A In the state of South Carolina we have a 40-hour class
13 that we have to attend. And then we do ride-a-longs with
14 law enforcement. We have to do -- I think at that time it
15 100 pelvic exams that were guided by a doctor. We had to
16 do a class with SLED. We had to do court time, had to
17 follow expert witness testimony -- a lot of things that
18 will often take 6 to 8 months to get completed.

19 Q And this is in addition to you being a nurse?

20 A Yes, sir.

21 Q And what education, training, experience do you have
22 as a nurse?

23 A I'm a registered nurse. I received my associate's
24 degree in 1996. And worked full-time as a registered
25 nurse. I got my bachelor's degree in nursing in 2010.

1 Q And so you've got a bachelor's in that as well?

2 A Yes, sir, I do.

3 Q And you completed all this training and experience
4 successfully?

5 A Yes, sir.

6 Q And you've had at least 100 pelvic examinations pre-
7 qualification?

8 A Yes, sir.

9 Q Since then how many have you performed?

10 A I don't know. Probably more than another 500.

11 Q And how long have you been doing this?

12 A Since 1998. 13 years.

13 Q So another 500. And were those rape kits?

14 A They would be sexual assault kits.

15 Q Okay. Sexual assault kits. And what is a sexual
16 assault kit?

17 A That is an evidence collection kit that is
18 standardized by The State of South Carolina for evidence
19 collection on folks coming in with that complaint to the
20 hospital.

21 Q It has some paperwork requirement?

22 A It does.

23 Q Does it have swabs?

24 A It does. It has swabs and blood samples, and -- about
25 6 pages of paperwork.

Ms. Scheffer - Direct by Mr. Moak

263

1 Q Okay. And have you been offered or accepted as an
2 expert in sexual assault nurse examination in the past?

3 A I have.

4 Q Approximately how many times?

5 A Probably 5 times, as early as 2001.

6 Q And you have been accepted every time?

7 A Yes, sir.

8 MR. MOAK: Your Honor, at this time we would offer
9 Rebecca Scheffer as an expert in sexual assault nurse
10 examination.

11 MR. KIRINCICH: No objection.

12 THE COURT: All right. She is so admitted.

13 Q In December 2009 were you working still at the
14 hospital?

15 A Yes, sir.

16 Q And I forgot to ask. How long did you work at the
17 hospital?

18 A Since 1996.

19 Q Okay. And on December 8th of 2009 you were at the
20 hospital?

21 A I think I was called in to the hospital on that date.

22 Q Okay. Where do you primarily work at Kershaw County
23 Medical Center right now?

24 A Well, I'm the nurse manager at Elgin Urgent Care. But
25 I'm a certified emergency nurse. So up until the Urgent

1 Care opened at Elgin, I was an ER nurse at Kershaw Health.

2 Q When did the Urgent Care open?

3 A October of 2009.

4 Q Okay. So October 2009 you were primarily at Elgin?

5 A Yes, sir.

6 Q And a case -- sexual assault case comes in, do they

7 call you? How do you end up ---

8 A They've always called me. They call me in the

9 afternoons, the mornings, 3:00 o'clock in the morning. For

10 all those years they would call me and I would get up and

11 go to the hospital and take care of these cases.

12 Q Okay. Let me show you what's been marked for

13 identification as State's 9. Tell me if you recognize

14 this?

15 A I do. This looks like the original paperwork from the

16 sexual assault kit that we do for the state of South

17 Carolina.

18 Q Is that the one you conducted -- or you filled out for

19 Child

20 A I did. And it is.

21 MR. MOAK: Your Honor, at this time State's 9 in to

22 evidence.

23 MR. KIRINCICH: Without objection, Your Honor.

24 THE COURT: Admitted without objection.

25 (State's Exhibit No. 9 received in evidence.)

Ms. Scheffer -- Direct by Mr. Moak

265

1 Q Now, looking at State's 9, on the top line is there a
2 mis-transcription on there?

3 A There sure is.

4 Q And can you explain that?

5 A You know, my anniversary was 12/9. And I'm certain
6 that's probably why I wrote that. But it should have
7 reflected the date that she was here, and that would have
8 been December 8, I believe.

9 Q December 8?

10 A Yes, sir.

11 Q Okay. And this first page has date of [REDACTED] and some
12 information about Child [REDACTED] Where did you get that
13 information from?

14 A I would have asked her.

15 Q Asked her.

16 A She had -- she had a family member. I believe the
17 grandmother was in the room with her.

18 Q Okay. And brief summary of assault. That has got 5
19 lines that are filled in?

20 A Yes, sir.

21 Q Where did you get that from?

22 A That came directly from the child.

23 Q And did you have to ask her to say that or did she
24 just blurt it out? How did that take place?

25 A Well, I know that they have forensic examinations --

1 those experts that ask these questions.

2 Q Okay.

3 A So all that I do when I do the sexual assault exams
4 is, what happened?

5 And when I asked, what happened, this is what that
6 little girl said.

7 Q And can you ---

8 A And I actually turned it around to ask the adults in
9 the room, did I write this correctly?

10 Q And why did you do that?

11 A Because I was so surprised of what this child said.

12 Q And could you read what she said?

13 A Uh-huh. She said -- after I asked her what happened.

14 She said, Mom caught Bubba trying to touch me in the

15 hallway. Bubba has touched me with his nuts a lot of

16 times. I bled one time -- not last night. Mom saw him

17 with his pants down and my pants down as usual.

18 Q That's what Child told you?

19 A Yes, sir, it is.

20 Q And you confirmed that with everybody else in the
21 room?

22 A I did.

23 Q Okay. Now, the rest of this page, it's got a sexual
24 assault victim -- sexual -- since alleged assault, has
25 victim? You have some "Xs". What are those?

Ms. Scheffer - Direct by Mr. Moak

267

1 A When we get to this part of the question, I usually
2 ask. And some times I have to say in different words --
3 words that they would understand or words that, you know,
4 did you pee? Because, you know, a lot of folks don't know
5 what urinated is. They all know what pee means. I don't
6 know the exact wordage I used. But, you know, did you eat?
7 Did you change clothes? I asked each one of these things
8 on this sheet. And she would answer yes or no.

9 And if she answered yes, it got an "X" mark in that
10 area.

11 Q And what did she say?

12 A According to this sheet since the alleged assault has
13 victim? Do you want me just to tell you what the yeses
14 were?

15 Q Yes.

16 A The yeses were that she had urinated, that she had
17 eaten, that she had changed clothes, and she had drank
18 something.

19 Q Now, changed clothes. Did she bring the clothes that
20 she had -- the clothes that she had with her at the
21 assault?

22 A No, sir.

23 Q Did you ever get those?

24 A If I got them, they were given to law enforcement.
25 They don't fit in the box. The box is very, very small.

1 Q Okay.

2 A And won't hold clothes. Do you want me -- and let me
3 tell you. I can look right here and see.

4 (Pause.)

5 A The outer clothing I did not have. But the underwear
6 I did have. And they were sent in the collection box.

7 Q And was that the underwear she would have had on
8 during the assault or what she was wearing?

9 A It would have been what she had on at that moment.

10 Q Okay. So you don't know if that was the same
11 underwear?

12 A No, sir, I don't.

13 Q And then during the alleged assault, there are a bunch
14 of questions there?

15 A Yes, sir.

16 Q And was that from Child [REDACTED] as well?

17 A They are.

18 Q And could you tell us what is checked there?

19 A The question is: Did penis penetrate? And I have
20 checked that her vagina was attempted.

21 The other questions are: Did a foreign object
22 penetrate -- penetrate? And it was a not known. Either
23 she didn't understand the question or I didn't give it to
24 her correctly.

25 But did assailant experience ejaculation? Not known.

Ms. Scheffer - Direct by Mr. Moak

269

1 Did assailant use a condom? Not known.

2 And was there hand or digital penetration? Not known.

3 Q And then ---

4 A Was there oral copulation? No.

5 Was there masturbation? No.

6 Did assailant bite, lick, or kiss the victim? No.

7 Did the assailant fondle -- there's a genitals
8 checked, like that would have been a yes.

9 Was lubricant used? No.

10 Had he have any sexually transmitted diseases? Of
11 course, no. I mean, she wouldn't have known that, I
12 imagine.

13 Had a vasectomy? She wouldn't have known that, so,
14 no.

15 Sterile or couldn't have children? No.

16 And did anyone else see the assault, was yes. And if
17 it was yes, who was it? And it was Jessica, her mother.

18 Q Now, asking all these questions, did you -- at length
19 or was this -- I mean, how did you ask the questions?

20 A These are basically to try to get a picture of what
21 happened, to try to figure out the injuries. If there's
22 any injuries that we need to be attentive to. You know,
23 just -- it's -- it's not a long conversation. These are --
24 these are quick questions to kind of get this done and get
25 it moved along. It's not -- it's not an in-depth interview

1 kind of question at all.

2 Q So you didn't go in to what actually really happened,
3 just asked the questions?

4 A This first page is the extent of most of that
5 conversation.

6 Q Okay. And then on the second page is more questions
7 similar to that?

8 A On the first line it talks about: Was there any
9 medication, social drugs, or alcohol taken before or after
10 the assault? And she said yes -- and this is by the
11 assailant. Of course, it was not her. And when the
12 question was, what type? She said, beer and liquor, and a
13 lot was the answer after amount.

14 Q And then ---

15 A There's another area. Should I keep going?

16 Q Yeah. I don't want you to go to -- on the medical
17 history. Was it pre ---

18 A Pre-puberty?

19 Q Yes. What does that mean?

20 A She's 7 years old. She does not have periods.

21 Q And the victim was not known to be pregnant. And the
22 victim has not had past pelvic surgical proceeders?

23 A No, sir.

24 Q And on the -- was any coercion used? What was in that
25 one?

1 A She answered -- because we have options, binding, did
2 they tie you up, did they bribe you with drugs or alcohol?

3 She said, yes, to the parental authority. And I put
4 in quotations that he had -- she also said yes to verbal
5 threats. And she said that he told her he would have put
6 hot sauce in her mouth or spanked her or put her in a
7 corner.

8 Q And assailant's relation to the victim? What do you
9 have down as that?

10 A The assailant is 1. She didn't know his age. He was
11 white. Identifying characteristics, she called him Bubba.

12 Q Okay.

13 A And the relationship to the victim, I checked
14 relative, because he's mother's boy friend.

15 Q Okay.

16 A And mother's co-habiting boy friend, because he does
17 live in the home.

18 Q Okay. And then on the physical exam, what was the
19 emotional assessment?

20 A She was quiet initially, appeared nervous, but was
21 cooperative.

22 Q Okay. And by the way, back on page 1, what time did
23 you start this, the exam?

24 A 1:00 o'clock.

25 Q 1:00 o'clock. And the pelvic examination, did you

1 write that note?

2 A No, sir. Dr. Connell wrote that.

3 Q Okay. Now on page 3. That has the -- the top half
4 has, I guess, medications?

5 A Treatment record, yes, sir,

6 Q Was there any of that?

7 A We didn't have to do any surgical procedures to
8 correct an injury.

9 Q And then the bottom half is evidence check list?

10 A Yes, sir.

11 Q Can you tell us what you collected?

12 A We did collect the underwear that she had on.

13 Q Okay.

14 A In this kit there is probably 10 little envelopes, and
15 each envelope is marked with what they want you to collect
16 on it. And -- and -- and they're all listed here. The
17 underwear was collected.

18 Miscellaneous materials -- that's a blank envelope
19 that we usually write on it what we've collected, something
20 that's different.

21 Q Okay.

22 A Oral swabs and smear; that's a little Q-tip we run
23 along the inside of the mouth.

24 Q Okay.

25 A Vaginal swabs and smears; that was collected.

Ms. Scheffer -- Direct by Mr. Moak

273

1 Rectal swabs and smear; that was collected.

2 And then on the -- on the other side of this is a list
3 of what's not collected.

4 Q Okay.

5 A And that would have been -- those outer clothing,
6 didn't take that.

7 There was no bite mark swabs.

8 Fingernail scrapings.

9 No pubic hair combings.

10 Down here at the bottom there was no pubic hair to
11 collect.

12 I did not collect head hair, but we did collect a
13 blood sample on her.

14 Q Did she even have any pubic hair?

15 A I wrote none.

16 Q Okay. You couldn't collect because there wasn't any?

17 A Pardon me?

18 Q You couldn't collect, because there wasn't any?

19 A Correct.

20 Q Now, on page 4 -- looks like it's the last page of
21 that. The upper half of it, does it have like a body
22 diagram?

23 A Yes, sir, it does.

24 Q Does that have -- the second picture from the left,
25 what is that note?

1 A That is a positive reaction to a woods lamp.

2 Q What is a woods lamp?

3 A A woods lamp is a -- we usually use it in the
4 emergency department to look in an eye in case there was a
5 corneal abrasion or something wrong with your eye.

6 But we use it in sexual assault because it's got
7 little tubes that are like black lights. And when you turn
8 it on and you turn the lights off in the room, it looks for
9 a positive reaction on these kits -- anything that would
10 glow.

11 Q And does it react to semen?

12 A It does.

13 Q Does it react to other chemicals, other things?

14 A It does.

15 Q And what does the woods lamp essentially do?

16 A It just -- it -- it makes semen and other materials --
17 it makes some things glow. And what we do when you see it,
18 you have the lights out in the room. And it's got a
19 magnifying glass on one end of it, so we kind of watch --
20 you know, you go down the body and you look for anything
21 that glows or anything. If you see something that glows,
22 we take a dry swab and a -- and a wet sterile water swab,
23 and we swab it with the wet swab, and then we swab it with
24 the dry swab. So if you've gotten anything on it that's
25 positive to woods lamp, they'll check it at SLED to see

- 1 that it's one material or another.
- 2 Q You could conceivably swab every inch of a person's
- 3 body, could you not?
- 4 A You could.
- 5 Q And the woods lamp just shows you where to swab,
- 6 right?
- 7 A It does.
- 8 Q So you don't have to do the whole body?
- 9 A You don't have to do the whole body.
- 10 Q Okay. Now, and you did a swab on that mark?
- 11 A I did. There was a little swab to her upper -- in her
- 12 right knee, right lower thigh area.
- 13 Q And would that be something that would fall in the
- 14 category of miscellaneous materials?
- 15 A It would have been in a miscellaneous envelope.
- 16 Q And back on the second page -- the second page of the
- 17 document, there's a box, skin examination to look for semen
- 18 with woods light?
- 19 A Yes.
- 20 Q Is that -- you checked that?
- 21 A It was marked. It was a positive. It has an option
- 22 of a positive or a negative, whether the woods lamp --
- 23 well, the woods light had a positive reaction or not. And
- 24 it did.
- 25 Q That means you saw something?

1 A Saw something worth swabbing, it glowed.

2 Q And the woods lamp would also react to stuff other
3 than semen as well?

4 A It does.

5 MR. MOAK: I have no further questions.

6 THE COURT: Cross examination.

7 CROSS EXAMINATION BY MR. KIRINCICH:

8 Q Good morning, Ms. Scheffer.

9 A Good morning.

10 Q It is Scheffer?

11 A It is, sir.

12 Q Thank you. How long was your examination of Child

13 Scott?

14 A Actually, let me see if I have more of her note here.

15 This would tell what time it ended here.

16 Q Dr. Connell came in after you were done or was there
17 some wait?

18 A He came in at the same time. He comes in -- because

19 we don't -- the doctors generally don't do any kind of

20 pelvic exam without a nurse present. And I would have been

21 in the room when he did that.

22 Q Okay. And, Ms. Scheffer, Mr. Moak went through the --

23 I think it was 4 pages; is that correct?

24 A Yes, sir.

25 Q 4 pages with you. I'm going to go through them with

1 you as well. And the summary of the assault, you said you
2 got that directly from Child

3 A Yes, sir.

4 Q And then you confirmed that with her grandmother who
5 brought her in?

6 A I wanted to see that I wrote it right.

7 Q Okay. And what she told you was mom caught Bubba
8 trying to touch me in the hallway?

9 A Yes, sir.

10 Q Did you question her about that any further or did you
11 write it down and then question the adult?

12 A I wrote down what she said.

13 Q Okay. And then under during the alleged assault you
14 wrote that there was attempted penis penetration?

15 A Yes, sir.

16 Q Is there a reason why you checked attempted?

17 A Well ---

18 Q Would it have been based on her verbiage that he was
19 trying?

20 A Yes.

21 Q Okay. All right. And on the second page you said
22 that you were still asking Child questions. Did you ever
23 ask her what time that this occurred?

24 A I have a date marked down there, but I don't have a
25 time.

1 Q Okay. And are you sure that Child indicated that
2 Mr. Branham was drinking a lot of beer and liquor?

3 A I put it in quotations.

4 Q And that's from the child?

5 A Yes, sir.

6 Q But nobody told you what time of night this was or
7 what time the assault occurred?

8 A I may not have asked. I'm sorry.

9 Q You didn't ask if the child was awake or sleeping
10 before the assault occurred?

11 A No, sir. I really try to go down these and ask them
12 as they are.

13 Q Sure. You try to keep to the form, you don't ask any
14 additional questions?

15 A I try not to.

16 Q Okay. All right. And then keeping with the form, my
17 next question is about the woods light. And if you read
18 the form -- you didn't make this form, did you?

19 A No, sir, I did not.

20 Q This is a standard form that hospital make or is
21 it ---

22 A No. It's a state form. It's a state form that -- I
23 think since this happened, they have a new form now.

24 Q Okay. And it says, skin examination to look for
25 semen; that's the way the yes/no, positive/negative ---

Ms. Scheffer - Cross by Mr. Kirincich

279

- 1 A Yes, sir, it does read that way.
- 2 Q Okay. Just because it's positive doesn't mean that
- 3 that's semen that was recovered?
- 4 A That's right.
- 5 Q And you don't actually test it to -- once you did the
- 6 swab of her, her right leg, upper thigh -- lower thigh,
- 7 lower knee area ---
- 8 A Right.
- 9 Q You didn't test it to see if it was semen?
- 10 A No, sir.
- 11 Q That goes in the rape kit and that's sent to SLED?
- 12 A Yes, sir.
- 13 Q And during the pelvic examination, you didn't do a
- 14 pelvic examination, that was done by Dr. Connell?
- 15 A Dr. Connell, yes, sir.
- 16 Q So those notes are not yours. And then going on to
- 17 page 3, you have the list of things that were collected and
- 18 not collected. And you said the underwear was collected.
- 19 Did you collect the underwear that she was wearing at that
- 20 time?
- 21 A Yes, sir.
- 22 Q Okay. But on page 1 you also checked that she had
- 23 changed clothes since the incident?
- 24 A Okay.
- 25 Q Did you ask her if she'd changed underwear?

1 A I probably -- whether or not I would have asked her --
2 the only underwear I had available to me was the underwear
3 she had on at that time.

4 Q Did you ask her what she did in between the time the
5 assault is alleged to have occurred and the time you
6 examined her?

7 A I did. That's on page 1.

8 Q Okay. I'm sorry. I skipped over that. And you said
9 she had urinated, eaten, changed clothes, and drank ---

10 A Yes, sir.

11 Q --- in that time? Did she divulge any other
12 information about who she had talked with?

13 A I don't have anything on here about that, sir.

14 Q And you wouldn't have asked because it's not part of
15 your ---

16 A I really try to stay very close to what's on here.

17 Q Okay. And on page -- we're closing here -- the only
18 thing that you did was in regards to the anatomical
19 drawings, you put the positive reaction to the woods lamp?

20 A On that page, Yes, sir.

21 Q Did you do any kind of physical exam? There's a
22 drawing of a female laying on her back that have an exam
23 done. I believe that's a speculum being used in that
24 middle picture. Did you do any exams?

25 A I did not do that.

Ms. Scheffer — Redirect by Mr. Moak

281

1 Q Okay. Again, just because there's a positive reaction
2 to the woods lamp, that doesn't mean that what has
3 fluoresced or glowed is actually semen?

4 A That's correct, sir.

5 Q Other things such as soap, creams, lotions, all those
6 will glow under a black light, which the woods lamp is?

7 A Some do, Yes, sir.

8 MR. KIRINCICH: Thank you, Ms. Scheffer.

9 REDIRECT EXAMINATION BY MR. MOAK:

10 Q You're familiar with what a forensic interview is?

11 A Yes, sir.

12 Q And you don't do that?

13 A No, sir, I don't.

14 Q You just ask the questions to fill the form out?

15 A I am, sir.

16 MR. MOAK: Nothing further.

17 THE COURT: Anything further?

18 MR. KIRINCICH: No, Your Honor.

19 THE COURT: Thank you. Please step down.

20 (The witness leaves the witness stand.)

21 MR. MOAK: Amanda Webb.

22 (SLED lab report marked State's Exhibit No. 13 for
23 identification.)

24 (Pause.)

25 AMANDA WEBB, being first duly

1 sworn, testified as follows:

2 CLERK: Please state your name.

3 MS. WEBB: My name is Amanda Webb.

4 DIRECT EXAMINATION BY MR. MOAK:

5 Q Agent Webb, you're employed at South Carolina Law
6 Enforcement Division?

7 A Yes, that's correct.

8 Q And you are a DNA analyst?

9 A Yes, that's correct.

10 Q Okay. What special education, training, experience do
11 you have that qualifies you in the field of DNA analysis?

12 A I received a bachelor's of science degree in forensic
13 chemistry from Marshall University, and I also have a
14 master's degree in forensic science from Marshall
15 University. And once I completed my graduation there, I
16 was hired on at SLED and trained for a year and a half
17 under a court-qualified DNA analyst. And then passed many
18 tests and qualifications to become an independent DNA
19 analyst. And I've been an independent DNA analyst for
20 approximately 2 ½ years.

21 Q And do you all continue in-house continuing education
22 or any continuing education in this field?

23 A Yes, that's correct. We attend conferences, have
24 meetings in-house, read lots of literature. And also there
25 are tests given to us from outside laboratories twice a

Ms. Webb - Direct by Mr. Moak

283

1 year to make sure that we are still competent and can
2 complete the work correctly.

3 Q And the outside lab, of course, also check the
4 procedures and make sure your procedures are proper too?

5 A Yes, that's correct.

6 Q And the lab is certified, is it not?

7 A Yes, it is, correct.

8 Q And your work as well as the work of the other
9 analysts is subject to peer-review?

10 A Yes, each one of our reports is reviewed by the
11 analysts themselves and also 2 other analysts review the
12 reports as well before they're sent out.

13 Q And a report is not sent out unless it passes the
14 peer-review?

15 A Yes, that's correct.

16 MR. MOAK: Your Honor, at this time I would submit
17 Agent Webb as an expert in the field of DNA analysis.

18 MR. KIRINCICH: Your Honor, I don't object to her
19 being an expert in DNA analysis.

20 THE COURT: She's an expert in DNA analysis.

21 Q Agent Webb, were you asked to conduct an analysis from
22 swabs and materials that were collected from a Child
23 Scott?

24 A Yes, that's correct.

25 Q And you actually have the actual kit here?

1 A Yes, I do.

2 Q And this kit was still at SLED?

3 A Yes, it was still at SLED. Commonly, the -- the
4 procedure is when we're finished with the analysis, the
5 evidence that the local agents seized will come and pick up
6 evidence. But this was just recently analyzed so it was
7 still in my custody, so I brought it with me today.

8 Q And this is sealed?

9 A Yes, correct.

10 Q This is in the condition it was in when you got done
11 with it?

12 A Yes, that's correct.

13 Q And I notice right here, this is how you opened it?

14 A Yes. When it's brought into the agency, it's sealed
15 in that plastic bag. And then each time an analyst at SLED
16 opens it, we cut open the bag, and then we heat seal it
17 back and initial and date, and that lets us know who was in
18 it and at what time.

19 Q Okay. So right there, 6/8/11 and your initials, is
20 when you opened it?

21 A Yes, that's the first time I opened it.

22 Q And 6/24/11 is when you sealed it back up?

23 A Yes, correct. I did an analysis on both those dates.

24 Q Okay. Outside is how you got it?

25 A Oh, yes.

Ms. Webb - Direct by Mr. Moak

285

1 Q And this is the kit?

2 A Yes, that's the kit.

3 MR. MOAK: Your Honor, I move this in to evidence as
4 State's 14.

5 MR. KIRINCICH: Your Honor, no objection.

6 THE COURT: Admitted without objection.

7 (SLED evidence bag marked State's Exhibit No. 14 in
8 evidence.)

9 Q Now, upon receiving that kit, what was actually in
10 there?

11 A If I may refer to my notes please. In the kit was a
12 blood standard from Child [REDACTED] A blood standard is --
13 they will take a tube of blood from the victim and that --
14 we use that as DNA as a known standard. And a known
15 standard is you know that DNA is from that individual. And
16 so if you develop profiles from the evidence items, you can
17 compare it to that known individual to see if it came from
18 that individual or not, if it matches or doesn't match.

19 So I received a blood standard from Child [REDACTED]

20 There were also smears, which are microscopic slides.
21 And what is done is the nurse collects a cotton swab of
22 different areas of the body. In this instance it was from
23 the vaginal area, the oral area, and the rectal area. And
24 then they rub the swab on the slide, and that is a way for
25 me to look in the microscope to try to find sperm.

1 There was also a vaginal swab collected, an oral swab,
2 a rectal swab, and a miscellaneous materials swab. And all
3 of those were requested for me to try to find semen.

4 Q And were you able to find semen on any of this?

5 A No, I didn't find semen on any of these swabs. And I
6 didn't find any sperm on the slides.

7 Q Let me show you what's been marked as State's 13. Is
8 this a copy of your report?

9 A Yes, that's my report.

10 MR. MOAK: Your Honor, I move State's 13 in to
11 evidence.

12 MR. KIRINCICH: No objection, Your Honor.

13 THE COURT: Admitted.

14 (State's Exhibit No. 13 received in evidence.)

15 Q Now, would you expect to find semen in a case where
16 there's no allegation that the assailant ejaculated?

17 A No. If there's no ejaculation, I wouldn't expect to
18 find semen at all. It happens commonly in many of the
19 cases I've tested.

20 Q And you don't know anything about the facts of the
21 case. All you have is the kit. Right?

22 A I received a kit. But I also received a police
23 report.

24 Q Okay. So you did ---

25 A Giving a synopsis, yes.

Ms. Webb - Cross by Mr. Kirincich

287

1 Q Did you look for skin sells or anything else?

2 A No. It's not standard protocol for us to look for
3 skin cells on rape kits. And the reason being is, the swab
4 is taken from the victim's body. So if there's just a
5 touch or contact from a perpetrator, it's usually not
6 enough skin cells transferred. Because with the swabs
7 taken from the person's body, the victim themselves have so
8 much skin cells that are transferred to the swab, that it
9 covers up and mask the few skin cells that might be
10 transferred from the perpetrator.

11 Q And if the victim has urinated since the assault,
12 would that factor in to that as well?

13 A Sure, any common hygienic routines would definitely
14 factor in. Going to the rest room, bathing, showering,
15 wiping that area would definitely remove some of the DNA.

16 Q So a 10-hour delay in presenting at the hospital,
17 would that also possibly factor in as well?

18 A Yes, if the victim might have used the rest room
19 multiple times or wiped or washed.

20 Q Is it uncommon to find no semen on a rape kit or
21 common?

22 A It's common.

23 MR. MOAK: No further questions.

24 THE COURT: Cross examination.

25 CROSS EXAMINATION BY MR. KIRINCICH:

1 Q Ms. Webb, just to make it clear, this wasn't an
2 inconclusive test, was it?

3 A No, not inconclusive.

4 Q This was a true negative test, nothing was found?

5 A Yes, correct. No semen or sporozoan was found.

6 MR. KIRINCICH: Thank you.

7 THE COURT: Anything further?

8 MR. MOAK: Nothing further from the state.

9 THE COURT: Thank you. You may step down.

10 (The witness leaves the witness stand.)

11 MR. MOAK: The state calls Mike Lyons.

12 MICHAEL LYONS, being first
13 duly sworn, testified as follows:

14 CLERK: Please state your name.

15 INVESTIGATOR LYONS: Michael Lyons.

16 DIRECT EXAMINATION BY MR. MOAK:

17 Q Is it Investigator Lyons now or is it Deputy Lyons?

18 A Investigator.

19 Q Back in December 2009, were you an investigator or, I
20 guess what we call road deputy? What was your title?

21 A Road deputy.

22 Q Okay. How long have you been in law enforcement?

23 A Civilian, just under 25 years.

24 Q Military?

25 A 4 years.

Mike Lyons - Direct by Mr. Moak

289

1 Q Okay. So you've been in law enforcement for quite a
2 while?

3 A Yes, sir.

4 Q And what are you currently doing?

5 A I'm an investigator with the Kershaw County Sheriff's
6 Office.

7 Q Which area are you in?

8 A Narcotics.

9 Q Okay. On December 8 of 2009 you were employed with
10 the Kershaw County Sheriff's Department?

11 A Yes, sir.

12 Q You were a road deputy?

13 A Yes, sir.

14 Q Did you have an occasion to respond to [REDACTED]
15 Road in Elgin?

16 A Yes, I did.

17 Q Can you tell us about that?

18 A I was dispatched. That was the area that I was
19 assigned at the time. A female had called in, and the call
20 was something to the effect of a lady caught her boy friend
21 having sexual relations with her 7-year-old daughter.

22 Q So you probably went there pretty quickly?

23 A Yes, sir.

24 Q Were you the only deputy responding?

25 A No, sir.

- 1 Q Who else was there?
- 2 A Deputy DeBruhl and later on my supervisor, Corporal
- 3 Bailey.
- 4 Q Okay. So there was 3 of you all there?
- 5 A Yes.
- 6 Q And you did the actual incident report, correct?
- 7 A Yes, I did.
- 8 Q And have you seen that?
- 9 A Yes.
- 10 Q Okay. And you wrote it?
- 11 A Yes, sir.
- 12 Q When you got to the scene, do you go to the front door
- 13 or the back door of the house?
- 14 A It was a long dirt road and went back into the woods.
- 15 And the home was located to the left. I pulled up where
- 16 the front door was.
- 17 Q Single-wide trailer?
- 18 A I believe so.
- 19 Q Okay. And this is in Kershaw County?
- 20 A Yes, sir.
- 21 Q And just -- I think we haven't done this yet. Can you
- 22 tell the jury like where [REDACTED] Road is at?
- 23 A It runs between Smyrna and Sessions Road.
- 24 Q In Elgin?
- 25 A I believe it's Elgin, yes, sir.

Mike Lyons - Direct by Mr. Moak

291

1 Q Okay. And did you go to the front door of the
2 trailer?

3 A Yes.

4 Q Did you encounter the defendant?

5 A When I pulled in, a male came out of the front door.

6 And upon seeing me, turned around, put his hands behind his
7 back as if he was to be handcuffed.

8 Q And what did you do?

9 A I handcuffed him.

10 Q Why?

11 A Based on my training and experience, something's not
12 right. Either police dealings or someone's expected to be
13 arrested or something like that.

14 Q So if they volunteer, you handcuff them?

15 A If someone volunteers to be handcuffed, I will put
16 them on until I figure out exactly what's going on.

17 Q Okay. And that's what happened?

18 A Yes, sir.

19 Q Is this the guy you handcuffed?

20 A Yes, sir.

21 Q That's him. Now, I'm going to show you -- the
22 previous witness drew this up here. It's a rough -- would
23 you stand here.

24 (The witness steps down from the witness stand.)

25 Q Just a rough diagram of a layout of the trailer. I

1 think that will be the door you came in?

2 A Yes.

3 Q Were -- can you tell us who you talked to or were they
4 separated? Tell us what happened?

5 A When I got there, Mr. Branham was on this little front
6 porch here. And I handcuffed him. I told him he was being
7 detained. I had Deputy DeBruhl to bring him inside and see
8 what's going on. And we brought him inside. We stood by
9 him, around this area here. And the female, Ms. Scott, was
10 off here someplace, I believe, in one of the bedrooms. And
11 when she initially came out, there was a little bit of --
12 you know, she was upset, obviously. I told Deputy DeBruhl
13 to bring Mr. Branham over here. I believe it was to this
14 bedroom, just to get him out of the way until I could
15 figure out what was going on.

16 Q Okay. And was Ms. Scott talked to separate from Mr.
17 Branham?

18 A Yes.

19 Q And did you talk to Ms. Scott?

20 A Yes, I did.

21 Q And she told you why the call was made?

22 A Yes.

23 Q Now, at some point was the decision made to arrest Mr.
24 Branham?

25 A Yes, it was.

Mike Lyons — Direct by Mr. Moak

293

1 Q And he was already handcuffed?

2 A Yes.

3 Q And was he mirandized?

4 A Yes, he was.

5 Q Do you know who did that?

6 A Corporal Bailey.

7 Q Where was he when he got mirandized and where were
8 you?

9 A I was somewhere in this area here. And Corporal
10 Bailey and Deputy DeBruhl and Mr. Branham were in this
11 hallway area here.

12 Q So you could see and hear what was going on?

13 A Yes.

14 Q Did you hear Mr. Branham being asked any questions?

15 A No, I did not.

16 Q Did you hear Mr. Branham say anything?

17 A He asked if he could say something.

18 Q And did -- I guess, did somebody say, yes, you can say
19 something?

20 A Yes, it was either myself or Corporal Bailey, I don't
21 remember.

22 Q And what did he say?

23 A He said that the little girl had had an issue with
24 going to the bathroom and cleaning herself, and that he was
25 checking to make sure that she did a good job.

1 Q That's what he said?

2 A Something similar to that, yes.

3 Q And then he was taken to the detention center?

4 A Deputy DeBruhl then removed him and logged him to the
5 detention center.

6 Q And you're sure that's what he said?

7 A Yes.

8 Q Beyond a shadow of a doubt?

9 A Yes, sir.

10 Q Now, when you went in this trailer, did you noticed a
11 smell of any alcohol or contraband or anything?

12 A On Mr. Branham's person.

13 Q What was his demeanor?

14 A He was highly intoxicated. His eyes were red, glassy.
15 He smelled strongly of alcohol beverage.

16 Q Alcohol?

17 A Yes.

18 Q And Ms. Scott, did she appear to be under the
19 influence of anything or inebriated or how did she appear?

20 A Tired. Other than that, nothing out of the ordinary.

21 Q She excited?

22 A Upset.

23 Q Okay. You didn't notice anything strange from her?

24 A No, sir.

25 Q Now, did you smell anything about the trailer?

Mike Lyons - Direct by Mr. Moak

295

- 1 A No.
- 2 Q And you're in narcotics, like marijuana or crack ---
- 3 MR. KIRINCICH: Objection, Your Honor. He wasn't in
- 4 narcotics at the time.
- 5 THE COURT: Objection to the form of the question.
- 6 Your objection is sustained as to the form of the question.
- 7 Q Did you notice a smell of anything?
- 8 A No, sir.
- 9 Q No. Did you notice any paraphernalia?
- 10 A No, sir.
- 11 Q Was that something you probably would have looked for?
- 12 A Yes.
- 13 Q Did you look for it?
- 14 A Glancing, but in particular. I wasn't there for that.
- 15 Q Okay. After Mr. Branham said what he said about the
- 16 bathroom, what did you do?
- 17 A He said to check the toilet. And I went into the
- 18 bathroom. I checked the toilet. There was toilet paper in
- 19 the toilet bowl that I saw, but there was nothing else.
- 20 Q Any feces?
- 21 A No, sir.
- 22 Q And you took pictures of this, right?
- 23 A Yes.
- 24 Q And what did you do with the pictures?
- 25 A They were submitted to the victim's advocate at the

1 time.

2 Q Do you know if anybody knows where those pictures went
3 from that point?

4 A Once they leave my custody, I don't have that any
5 more.

6 Q So you don't know where they're at?

7 A No.

8 MR. MOAK: Okay. No further questions of this
9 witness, Your Honor.

10 THE COURT: All right. If you would take the witness
11 stand.

12 (The witness returns to the witness stand.)

13 THE COURT: Cross examination.

14 MR. KIRINCICH: Thank you, Your Honor.

15 CROSS EXAMINATION BY MR. KIRINCICH:

16 Q Investigator Lyons, are you familiar with the way the
17 911 operator system works, with their training in law
18 enforcement?

19 A Not the specifics, but dial 911 and it goes through a
20 dispatcher.

21 Q Do you know how many people work in the dispatch
22 office at one time?

23 A No, sir. It changes.

24 Q Okay. Do you remember being told about this call from
25 Ms. Scott at 2:51 in the morning?

1 A If that's what time -- that's what the time would have
2 logged, I assume.

3 Q And in your report, which you said you filled out, it
4 says you arrived at 3:05 in the morning?

5 A If that's what it says, yes.

6 Q Was someone giving you updates on what was going on
7 and the conversation with Ms. Scott?

8 A Dispatch was.

9 Q Dispatch was. So somebody was on the phone with Ms.
10 Scott the whole time, would that have been the person that
11 was giving you updates while she was on the phone with Ms.
12 Scott?

13 A I don't know.

14 Q You don't know. Were you aware that Mr. Branham was
15 at the house when Ms. Scott was making the call?

16 A I assumed based on the dispatch.

17 Q Okay. And were you then made aware that Mr. Branham
18 was exiting the trailer upon the arrival of the sheriff
19 deputies?

20 A I saw him exit when I arrived.

21 Q Okay. And were you aware that Mr. Branham knew that
22 law enforcement was coming and on their way?

23 A I wouldn't know that.

24 Q Okay. So when he came outside to greet you, you
25 didn't know that he already knew that law enforcement was

1 being called and was heard that you were pulling into the
2 yard at that time?

3 A I didn't even know who he was.

4 Q Okay. Did Mr. Branham resist?

5 A No.

6 Q Did he try to run away?

7 A No.

8 Q Did you have to search for Mr. Branham?

9 A No.

10 Q He came directly towards you, didn't he, and submitted
11 to your authority?

12 A He stood on the porch.

13 Q Okay. Do you remember telling him to stay right
14 there?

15 A No. I handcuffed him and told him he was being
16 detained until I could figure out what was going on.

17 Q Yes, sir. But whenever he came out of the house,
18 would you want somebody approaching you? You said you've
19 been doing this for 25 years. Or would you have told him
20 to stay where he was and you would approach him?

21 A I'm going to approach him because I can see more at a
22 distance than when I'm close to someone.

23 Q Right. I believe you said Mr. Branham appeared
24 intoxicated. Was he belligerent at all?

25 A No.

Mike Lyons - Cross by Mr. Kirincich

299

- 1 Q And Mr. Branham actually asked if he could say
2 something, didn't he?
- 3 A After he was mirandized, yes.
- 4 Q He didn't blurt anything out?
- 5 A No, he didn't say a word.
- 6 Q And, Investigator Lyons, I understand that you took
7 photos that night, correct?
- 8 A Yes.
- 9 Q Do you know how many photos you took?
- 10 A I don't know. Maybe 5.
- 11 Q And at this point no one in the Kershaw County
12 Sheriff's Office knows where those photos are?
- 13 A I don't know that.
- 14 Q Did you have any involvement with this case after the
15 early morning hours of December 8, 2009?
- 16 A I don't believe so.
- 17 Q Did you have any involvement with the rape kit?
- 18 A No, sir.
- 19 Q Do you know who collected that?
- 20 A No, sir, I don't.
- 21 Q And, Deputy Lyons, you indicated from the drawing up
22 there that once you took Mr. Branham in from the porch, you
23 had Deputy DeBruhl take him to the bedroom, which is
24 indicated there at the end of the hallway?
- 25 A I believe that was the bedroom.

1 Q And Corporal Bailey arrived some time later?

2 A Yes.

3 Q And did Corporal Bailey talk to Mr. Branham in that
4 bedroom?

5 A He went down the hallway. I don't know what happened
6 once he went down there to the bedroom.

7 Q How close were you whenever Corporal Bailey mirandized
8 Mr. Branham?

9 A Closer than you and I.

10 Q Closer than you and I right now?

11 A Yes, sir.

12 Q So you could hear him well?

13 A Yes.

14 Q Okay. And you were -- I'm sorry. If you will stand
15 up.

16 A Sure.

17 (The witness steps down from the witness stand.)

18 Q You indicated you were in this area where?

19 A Somewhere around here.

20 Q And that's kind of the corner of the kitchen and the
21 living room leading into the hallway?

22 A Yes, but this hallway is too long.

23 Q That hallway is too long?

24 A Yes.

25 Q It was a short hallway from what you remember?

Mike Lyons - Cross by Mr. Kirincich

301

1 A I believe so.

2 Q And it opened directly into the kitchen/living room
3 area?

4 A Yes.

5 Q And you could clearly hear what was going on in the
6 hallway?

7 A Yes.

8 Q Did you know -- I'm sorry. You can sit down. Thank
9 you.

10 (The witness returns to the witness stand.)

11 Q Did you notice the layout of the living room?

12 A It was small. I think there was a couch, maybe a
13 chair in there. I'm not positive.

14 Q Did you take pictures of the living room, hallway,
15 bedroom?

16 A I took pictures of the hallway.

17 Q Okay. But we don't have those today because somewhere
18 in the process those have been lost?

19 A If that's what you've been told, I have to assume so.

20 Q You don't have them today?

21 A No, sir.

22 Q And at some point were you asked to recover those
23 pictures?

24 A No, sir.

25 Q Who would be in charge of those pictures at this

1 point?

2 A That would have been the victim's rights advocate at
3 the time.

4 Q But you went back into the bathroom, and I think you
5 said you took a picture of the toilet?

6 A Yes.

7 Q And you remember doing that and you memorialized it in
8 your report. And you said there was toilet paper in the
9 commode, the actual toilet?

10 A Yes.

11 Q Okay. And Mr. Branham -- you heard him make a
12 statement that Child [REDACTED] had been having trouble cleaning
13 herself, so he directed her to go back in there -- or was
14 making sure that she had properly wiped herself?

15 A Yes.

16 Q So actually when he told you about that, there was
17 toilet paper, that almost corroborated the story, didn't
18 it?

19 A All it meant was check the toilet.

20 Q And when you did, there was toilet paper in there?

21 A Yes.

22 Q And I believe you've already said you didn't do any
23 kind of follow-up investigation with this?

24 A I was the initial officer. The follow-ups weren't my
25 responsibility.

Mike Lyons - Cross by Mr. Kirincich

303

1 Q And, Deputy Lyons, I've said it before, and I commend
2 you. You write good reports. Would your report be fairly
3 detailed about what you observed that night?

4 A Yes.

5 Q If you saw anything else unusual, you would have
6 listed it in your report?

7 A Yes.

8 MR. KIRINCICH: Your Honor, if I could have just a
9 moment to confer with Mr. Branham.

10 (Pause.)

11 MR. KIRINCICH: Thank you, Your Honor. Thank you,
12 Investigator Lyons.

13 THE COURT: Anything further?

14 MR. MOAK: Nothing from this witness, Your Honor.

15 THE COURT: Thank you. You may step down.

16 (The witness leaves the witness stand.)

17 THE COURT: Ladies and gentlemen, we'll take a break
18 now. Please go to the jury room. Please do not discuss
19 the case.

20 (The jury retires to the jury room at 11:20 a.m.)

21 THE COURT: All right. We'll take about 10 minutes.

22 (A recess was taken.)

23 THE COURT: Anything before the jury comes in?

24 MS. BARRY: Nothing from the state.

25 MR. KIRINCICH: No, Your Honor.

Dr. Saunders - Direct by Ms. Barry

304

1 THE COURT: All right. Let's bring them on.

2 (The jury returns to the courtroom at 11:42 a.m.)

3 THE COURT: All right. The jury's back. Your next
4 witness please.

5 MS. BARRY: Thank you, Your Honor. The state calls
6 Dr. Kathy Saunders.

7 KATHY SAUNDERS, being first
8 duly sworn, testified as follows:

9 CLERK: Please state your name.

10 DR. SAUNDERS: Kathy Saunders.

11 DIRECT EXAMINATION BY MS. BARRY:

12 Q Dr. Saunders, where are you employed?

13 A I am currently employed at the Sumter Family Health
14 Center in Sumter, South Carolina.

15 Q And prior to your employment at the Sumter Family
16 Health Care Center, where were you employed?

17 A At the Carehouse with the Pee Dee in Florence.

18 Q And how long were you employed there?

19 A 2005 until early August of 2011.

20 Q Prior to your employment at the Carehouse, where did
21 you work?

22 A I worked at another child advocacy center in Florence,
23 the Durant Children's Center.

24 Q And at the Carehouse and at the Durant Center, in what
25 capacity were you employed?

Dr. Saunders - Direct by Ms. Barry

305

1 A I was the nurse practitioner and functioned in the
2 role as the forensic medical examiner.

3 Q What were your duties and responsibilities?

4 A At the Durant Children's Center, I basically
5 functioned just as the medical examiner. And I would
6 evaluate children when there was a concern, a report, or a
7 disclosure by the child of both sexual and/or physical
8 abuse. I also did some children's medical screenings that
9 are required by the state when children enter in to the
10 foster care system, the D.S.S. system as some people call
11 it. I did their medical screenings as well.

12 At the Carehouse, I did those functions but I also did
13 some administrative functions as well, probably about 10 or
14 20 percent of my time in writing grants, policies, and
15 procedures, working with the state level on legislative
16 issues and funding issues for the children and child abuse.

17 Q So you are a nurse practitioner?

18 A That is correct.

19 Q You have a sub-specialty?

20 A In child abuse.

21 Q How many years have you dealt with child abuse
22 medicine?

23 A Specifically, I began my practice in 1995. And prior
24 to that in 1993 when I graduated as a nurse practitioner, I
25 worked in ambulatory pediatrics, which simply means just a

1 pediatrician's office, seeing well children and sick
2 children. So I have occasion of identifying children that
3 I had concerns about abuse or neglect, but did not formally
4 begin my practice until 1995.

5 Q Can you give the jury your educational background
6 beginning with your undergraduate degree?

7 A Sure. I hold a degree as a registered nurse. My
8 initial degree was an associate degree in nursing. And I
9 obtained that in 1987. I continued my education and
10 graduated with my bachelor's degree from the Medical
11 University of Charleston -- excuse me -- in 1991.
12 Continued my education and graduated from the University of
13 South Carolina College of Nursing with my master's degree
14 in nursing, specific to the field of pediatrics. Entered
15 back in to my educational career and graduated in 2008 with
16 my doctorate of nursing practice, with a focus in family
17 practice.

18 Q What specific medical training do you have in sexual
19 assault examination?

20 A Prior to me beginning the sub-specialty practice in
21 1995, I was able to go to San Diego, California and train
22 in their child abuse medical academy with physicians and
23 nurse practitioners who were recognized both nationally and
24 internationally as experts in the field of child
25 maltreatment. So I spent initially 3 weeks in California.

Dr. Saunders - Direct by Ms. Barry

307

1 I would take call with the on-call doctor and nurse
2 practitioner. We would respond to the ER. We would see
3 patients during the day for non-acute or non-emergent cases
4 of child sexual and physical abuse.

5 So it was an engaged curriculum. It was a medical
6 academy that I attended. The minimum requirement was 40
7 hours. But because this was a new field for me personally,
8 I was given the opportunity through some special grant
9 funding to extend my stay for 2 more weeks and be able to
10 spend some time.

11 In addition, the first year of my practice, every case
12 that I did was peer reviewed by the folks in San Diego,
13 California, by tele-medicine. So I really had a golden
14 opportunity that not very many folks have in being able to
15 refine my practice in child abuse as I had national and
16 international mentors in that field.

17 As a nurse practitioner, the state of South Carolina
18 has requirements that nurse practitioners have to fulfill.
19 One of them is being at a minimum master's level prepared
20 nurse. And as I stated earlier, I hold my doctorate
21 degree.

22 I am dual-certified, meaning I hold 2 certifications
23 at the national level, one in pediatrics, one in family
24 practice.

25 With each of those requirements, comes practice

1 requirements of actually physically performing in a
2 clinical setting, seeing patients as well as continuing
3 education hours. And that's for the national certification
4 and for the state board of nursing licensure that we hold.

5 In addition to a state national license that I hold, I
6 also hold a license from the board of pharmacy, to be able
7 to prescribe medications for patients that I see. And
8 through the exam, diagnosis, I can render treatment with
9 prescription medicines.

10 In addition to that, we also have to hold -- we are
11 held to a level in the sub-specialty area of child abuse
12 through the South Carolina medical response system as to a
13 minimum requirement of 150 exams that you have to complete
14 yearly on child abuse or alleged or reported child abuse
15 cases. You also have to have continuing education
16 requirements, the minimum of 20 continuing education
17 requirements a year, conduct 2 workshops, 2 professional
18 groups on the issues of medical and/or child abuse related
19 issues.

20 There are about 6 pages of requirements that we have
21 to complete, just as the South Carolina medical response
22 component, being recognized as a sub-specialty in both the
23 field of medicine and the field of nursing.

24 So it's a challenge to meet those requirements, not
25 physically, but just kind of keeping all the paperwork

Dr. Saunders - Direct by Ms. Barry

309

1 together and make sure all that's kind of in line.

2 Q You have completed the pediatric child sexual assault
3 examination requirements for the state of South Carolina?

4 A I have.

5 Q Can you estimate the number of exams -- sexual assault
6 exams that you have performed in your career?

7 A In excess of 8,000 children have been seen.

8 Q Have you previously been qualified as an expert in the
9 field of forensic child sexual assault examination?

10 A I have.

11 Q Approximately how many times?

12 A To include both family or civil court and criminal
13 courts in South Carolina and in other states, over a
14 thousand times.

15 MS. BARRY: Your Honor, at this time I would offer Dr.
16 Kathy Saunders as an expert in the field of forensic child
17 sexual assault examination.

18 THE COURT: What say the defense?

19 MR. KIRINCICH: Without objection, Your Honor.

20 THE COURT: She's admitted without objection.

21 Q Dr. Saunders, please describe for the jury what a
22 child sexual assault examination is?

23 A Okay.

24 Q And includes?

25 A There's actually 2 types of exams that you can do.

Dr. Saunders - Direct by Ms. Barry

309

1 together and make sure all that's kind of in line.

2 Q You have completed the pediatric child sexual assault
3 examination requirements for the state of South Carolina?

4 A I have.

5 Q Can you estimate the number of exams -- sexual assault
6 exams that you have performed in your career?

7 A In excess of 8,000 children have been seen.

8 Q Have you previously been qualified as an expert in the
9 field of forensic child sexual assault examination?

10 A I have.

11 Q Approximately how many times?

12 A To include both family or civil court and criminal
13 courts in South Carolina and in other states, over a
14 thousand times.

15 MS. BARRY: Your Honor, at this time I would offer Dr.
16 Kathy Saunders as an expert in the field of forensic child
17 sexual assault examination.

18 THE COURT: What say the defense?

19 MR. KIRINCICH: Without objection, Your Honor.

20 THE COURT: She's admitted without objection.

21 Q Dr. Saunders, please describe for the jury what a
22 child sexual assault examination is?

23 A Okay.

24 Q And includes?

25 A There's actually 2 types of exams that you can do.

1 allows for magnification of the genital area, or really any
2 part of the child's body that you want to inspect under
3 magnification.

4 I've looked at children that have had maybe a bad
5 tooth or maybe something lodged in their nose, I've used
6 that as well, because it will magnify any part of the body
7 that you're looking at.

8 Attached to that magnifier is a very bright light
9 source, so it allows you to see with good light source
10 under magnification with a camera attached, where you can
11 actually photo document -- and I use a digital camera. In
12 the earlier days we used to use the kind that you have to
13 have developed. But I use the digital camera. I actually
14 can photo document any injuries or any normal findings on
15 the child's body that I want to be able to remember,
16 document, and look at again.

17 Q What other information are you provided prior to your
18 exam of the child?

19 A Well, it varies from time to time, depending on if the
20 child comes in under the protective custody of law
21 enforcement or D.S.S. I may only have the information they
22 share. If a biological guardian -- whether it be mom, dad,
23 or both -- come in -- maybe even a grandparent, whatever
24 extended family -- they may be able to provide me with some
25 history. So it just kind of depends on whose present at

1 the time with the child.

2 Q Are there any other medical records that you collect
3 in making your findings?

4 A I may use them as a guide to see what's happened to
5 the child in the past, any significance to what I may
6 observe on the exam that day that I'm examining that child.
7 If they come in with a complaint of something in their
8 genital area, then I will know that certain lab tests may
9 or may not have been done or they may or may not have been
10 treated in the past or present for certain diseases or
11 infections. So I use it as a guide, but it does not define
12 my specific findings that day on the exam.

13 Q And specifically in this case, did you examine Child
14 Scott?

15 A I did.

16 Q What date did you examine Child on?

17 A I have to refer to my notes. It was December the
18 11th, 2009.

19 Q What if any information were you provided prior to
20 beginning the examination?

21 A Prior to seeing her the only information that I would
22 have had accessible to me would have been what we use as an
23 intake form. This child was actually referred to our
24 office by the Department of Social Services in Kershaw
25 County, Mrs. Chestnut. At that time the only information

Dr. Saunders - Direct by Ms. Barry

313

1 that I had before I saw her was her date of [REDACTED] and that
2 Kershaw County Sheriff's Department was actually
3 investigating the case as well as D.S.S. involvement. And
4 then just a brief history of why the child was presenting.

5 Q And who provided that brief history while the child
6 was that present that day for the exam?

7 A Mrs. Chestnut, I'm sorry, from D.S.S.

8 Q Do you recall who brought her to your office?

9 A It was her father, her biological father.

10 Q Were you provided details of the assault prior to your
11 examination of her?

12 A Prior to the examination I was.

13 Q You were?

14 A Yes, ma'am.

15 Q By who?

16 A That I have documented as Mark Scott, and have
17 documented that that is her father.

18 Q Did you speak with him personally?

19 A Yes, ma'am.

20 Q What details were you given prior to your examination?

21 A The history that was provided was, again, provided by
22 her father. And the statement that I have written is that
23 dad's girl friend, Lisa, had worked at the school where

24 Child [REDACTED] was going. And Lisa told Mr. Scott that the child

25 had not been at school on Monday, which would have been

1 December the 7th, and that around 2:00 to 3:00 a.m., Bubba,
2 who is mom's boy friend, George Branham, had come in drunk
3 from a neighbor's house. Bubba wanted to have sex with
4 Jessica, who was the child's mother, but she didn't want
5 to. Child had gotten out of the bed and was going to the
6 bathroom and Bubba came -- had got up behind her and went
7 in the hallway and pulled the child's pants down and pulled
8 his pants down and was having sex with the child, Child
9 Child was taken to the hospital by the maternal
10 grandmother because she was complaining of vaginal pain.
11 The child was then referred to the Carehouse for follow-up
12 evaluation.

13 Q What is the next step in your process after you
14 receive this intake and the background information?

15 A Our general protocol is that myself and our forensic
16 interviewer -- and in this case it was Debbie Elliott, who
17 was going to be forensically interviewing the child, would
18 ask questions of -- in this case, Mr. Scott, the father,
19 concerning past social history, past medical history. And
20 then we gathered the history of the event, what had
21 happened to his daughter.

22 After that point the child would have had her forensic
23 interview with Debbie Elliott, and I would have had the
24 opportunity to either observe the interview or Debbie would
25 have shared specific interview -- interview information

Dr. Saunders - Direct by Ms. Barry

315

1 with me that Child had disclosed about the concerns or
2 the event of sexual assault or any concerning information
3 or disclosure that she would have stated during the
4 interview process.

5 After the interview occurs, then the medical
6 evaluation occurred.

7 Q And can you describe for the jury what that evaluation
8 entails?

9 A Sure. The typical fashion for a child to be examined
10 is that my assistant, my medical assistant, will take the
11 child in, help the child if necessary disrobe and put on a
12 privacy gown. It's a little paper gown. She will obtain
13 things like the height, weight, blood pressure, any
14 information that I instruct her to obtain from the child as
15 far as baseline screenings for me, maybe a urine, maybe a
16 pregnancy test, whatever.

17 And then she speaks to the child about what's going to
18 happen. Then I go into the room and speak to the child
19 about what's going to happen, and ask the child if age
20 appropriate, do they know why they're there?

21 Sometimes if a child is a little nervous, I may just
22 talk to them and, you know, just try to ease them and
23 console them.

24 I always give the child the opportunity to have one
25 person in the room with them if they choose. And Child

1 on this day did ask that her dad be present with her during
2 the physical evaluation. So she -- it was myself, my
3 medical assistant, and her father present for this exam.

4 Q And specifically, your examination of her genital
5 area, what were your findings?

6 A Usually before I do the genital evaluation, I do my
7 general inspection of the body. And I did note that she
8 was age appropriate in her general development, but had a
9 speech delay. Her eyes were normal -- of normal reflex and
10 light response.

11 She did need some dental care on the inspection of her
12 nose. Her lungs were clear. Her heart had regular rate.
13 No murmur noted. Her abdomen was soft. She had full range
14 in motion of her skeletal-muscular system.

15 And looking specifically at the genital area, the
16 vaginal exam, she was found to be of tanor stage 1 in her
17 pubic hair and her breast development, which simply means
18 that she had no influence of hormones to her secondary sex
19 characteristic development. In laymen's terms, there is a
20 scale of 1 to 5 that we use with tabor staging. 1 being
21 the most infant like, the most non-maturing pre-pubital
22 stage that a female or male child can be in. 5 being the
23 most, fully adult-like developed that a child can be in
24 both male and/or female. She was found to be in tanor
25 stage 1.

1 The presentation or the shape of her hymenal tissue
2 was found to be annular. And there are several different
3 shapes that that tissue can present in, just as if we all
4 have eyes, but they may be blue, green, brown in color.
5 She had the annular presentation which simply means that
6 the opening to her vagina had a complete collar of skin all
7 the way around the opening of the vaginal introitus or the
8 vaginal opening.

9 Other significant findings were that the tissue was
10 smooth, it was very thin to the posterior rim, and that
11 simply, again, reestablishes that she had no hormonal
12 effects or that she was not even nearing the pubital
13 development. With attenuation of the hymenal tissue from
14 5:00 to 7:00 o'clock position, which means a loss of or
15 absence of tissue in the 5:00 to 7:00 o'clock area. And
16 with a medical examiner, we use this opening -- this little
17 circle opening like we do a face off a clock, with 12:00 at
18 the top, 6:00 at the bottom, and 3:00 and 9:00 to the left
19 and right of either side. So the absence or the loss of
20 that tissue would have been from 5:00 to 7:00 o'clock on
21 the lower half of the vaginal rim.

22 There was generalized vulvar erythema, which just
23 means that the whole vaginal area -- both the inside and to
24 the outer layers of the vaginal opening were red and
25 irritated. And also noted urethral tissue -- and the

1 urethra is where we secrete our urine through -- was also
2 found to be red or with erythema.

3 There was a small amount of clear discharge present.
4 And the conclusion and impression of these medical findings
5 were that it was consistent with past penetration.

6 Q And why is that your conclusion?

7 A Any time we see a loss of hymenal tissue, it does not
8 occur by accident. It doesn't occur as a [REDACTED] defect.
9 All girls are [REDACTED] -- if they are truly girls, they are all
10 [REDACTED] with hymenal tissue or a cherry or a vagina. People
11 in the lay community call it different things. We call it
12 hymenal tissue. But every female is [REDACTED] with tissue.
13 When there is an absence of tissue, it is because there has
14 either been a surgical procedure to remove it for some
15 reason, like maybe cancer or whatever. Or that there has
16 been an injury like a penetrating injury, an object has
17 been inserted into the vagina to cause a loss of that
18 tissue present.

19 Q And in your findings, you found that there was a loss
20 of tissue present?

21 A That is correct.

22 Q Were you provided information that Child [REDACTED] had
23 had any vaginal surgery to remove the hymenal tissue?

24 A I had not.

25 Q So in a tanor stage 1, female -- a hymen that was

1 tanor stage 1, can you explain to the jury if this is
2 painful to touch?

3 A If you're talking about a child that has -- for lack
4 of better words -- a normal hymen, never been sexually
5 abused, never had a traumatic injury like surgery to that
6 tissue, it would be extremely painful to touch any part of
7 the vagina, the hymen inside or below the outer lips or
8 folds of skin, because what happens when we have hormones
9 enter our body with puberty, it desensitize that tissue so
10 that our body can prepare for reproduction, for sexual
11 intercourse and gratification. Prior to that, that's not a
12 normal act and our body knows that because of our PH
13 balance, because of our mucus, because of our lack of
14 hormones that nothing really is supposed to be there.
15 Nothing is supposed to go inside of our body. And with the
16 absence of hormones, the absence of a specific PH and
17 mucus, it is extremely painful.

18 I don't even touch it during the medical evaluation of
19 a child; that's why it's very important to use the
20 colposcope so that I can separate the outer folds of skin
21 and be able to look inside of the vaginal area, never
22 touching anything, to make sure that the inside of the body
23 is okay, because I don't want to hurt a child.

24 If I ever have to examine the inside of a little girl
25 that has not started her periods, that does not have

1 appropriate hormone protection, that child goes to the
2 hospital and is sedated under anesthesia for the exam.

3 Q And you found there was discharge present?

4 A That is correct.

5 Q And is that normal for a child this age?

6 A Sometimes you can see a little scant -- meaning, very
7 small amount of clear discharge because as we -- if you
8 have children -- know that sometimes little girls can have
9 improper cleaning techniques where maybe they wipe the
10 wrong way or maybe just a little piece of fuzz off of their
11 panties or a little piece of the toilet tissue makes its
12 way inside of the vaginal area. The body will produce a
13 clear fluid or clear discharge as a protective mechanism to
14 try to clear that vaginal area of the foreign body or the
15 piece of material that should not be there.

16 So sometimes you will see it as a normal variant or a
17 response of the body because something's not there -- that
18 is there that shouldn't be there and it's trying to get rid
19 of it. But generally we do not see discharge of any color,
20 odor, or thick consistency in pre-pubital children.

21 Q Is it normal to find the attenuation of the hymenal
22 tissue?

23 A No, it is not.

24 Q I'm going to show you 2 photographs and ask you if you
25 recognize these?

Dr. Saunders - Direct by Ms. Barry

321

1 A I do.

2 Q Do they fairly and accurately depict your findings in
3 this case?

4 A They do.

5 Q And are these the photographs that were contained in
6 Child [REDACTED] file?

7 A Yes, ma'am.

8 Q Who took these photographs?

9 A I did.

10 MS. BARRY: Your Honor, at this time we would move
11 these 2 into evidence.

12 THE COURT: What says the defense?

13 MR. KIRINCICH: Your Honor, I was given a number of
14 photos. I would like an opportunity to review those before
15 I give you my answer.

16 (Pause.)

17 (2 small color photos marked as State's Exhibit Nos.
18 15 and 16 for identification.)

19 MR. KIRINCICH: Your Honor, if the state wants to move
20 those pictures in, it's going to be without objection.

21 THE COURT: They're admitted without objection.

22 (State's Exhibit Nos. 15 and 16 received in evidence.)

23 Q Dr. Saunders, I'm going to place these photographs on
24 this wall over here. Show the jury and describe for them
25 what you mean by attenuation?

1 A What was the question?

2 Q Where is the attenuation that you're referring to?

3 A Specifically, it would be in the area starting right
4 about here, all the way around to this area. And what you
5 would really expect to see on a child of her development
6 and her age would be a mound of skin that would come more
7 like this and kind of hide or occlude some of the vaginal
8 area.

9 What you're seeing here is the protrusion or the fall-
10 down, if you will, of the bladder of this child. This is
11 the entire vaginal floor. And if I separated the external
12 tissue just a little bit more, you would actually be able
13 to see the cervix of this child. That's not normal. You
14 should not be able to see that far into the vaginal vault,
15 because the skin or the tissue that would have been mounded
16 or present in this area right here would preclude you from
17 seeing parts of the vaginal floor in the bladder of this
18 child.

19 The other thing that's of significance to me, just in
20 my clinical experience of examining the numbers of children
21 that I have, is there's some a-vascularity, meaning absence
22 of blood tissue or blood vessels, excuse me, in this area
23 along the posterior rim. Which the significance of that to
24 me and in my medical report I put consistent with past
25 penetration.

1. Any time you have a significant injury to the body --
2 and Child father reported that on at least 2 occasions
3 she had presented to the emergency room with vaginal
4 bleeding, painful urination. So we know something is going
5 on. It was thought to be a urinary tract infection. But
6 indeed when they cultured the urine -- which is the most
7 definitive and specific test for urinary tract infections
8 -- indeed, there was no infection present.

9 So when I see these findings, and then I see this a-
10 vascular pattern right here, the concern for me is does
11 that represent scar tissue that has formed as a result of
12 the penetrating injury? And the significance to me, again,
13 is that there are at least 2 reports of vaginal bleeding of
14 this child that was presumptive urinary tract infections
15 that was never clinically documented to be urinary tract
16 infections.

17 Q So back up to your background information, you were
18 provided with the information that she had been taken to
19 the doctor 2 times that her dad reported for urinary tract
20 -- for bleeding and urinary tract infections?

21 A That is correct.

22 Q Did you in fact get those records and review them
23 yourself?

24 A I did.

25 Q And the lab report showed what?

1 A No growth on the urine cultures that were completed,
2 and they were done 2 separate dates. I believe it was one
3 in September and one in December or it may have been
4 October and December, at 2 separate hospital facilities.
5 So it wasn't even done at the same hospital facilities.

6 Q And you mentioned scar tissue. Why is that
7 significant if at all?

8 A We've all injured our skin before. Sometimes it heals
9 with no residual or no scar present. Sometimes we've
10 injured ourself and it heals with a scar. Two things that
11 are significant to me when you see scar tissue, it
12 represents past injury for sure. There's no question that
13 there's been an injury.

14 Secondly, it desensitizes the skin, meaning that the
15 strong sensation of pain or discomfort that a female would
16 experience originally -- I don't know how to do this --
17 during intercourse because of the lack of hormones present,
18 because the scar tissue is present, the repeated
19 penetration or attempts of penetration or just touching in
20 that general area would allow some desensitization of the
21 skin and would not be painful to her during the contact or
22 during the events that may occur to her.

23 Q So in 2009 -- December 2009 when you saw her, she had
24 developed scar tissue, the area was desensitized?

25 A That is correct.

1 Q In your expert opinion, would that be as painful as an
2 initial sexual assault?

3 A It depends on the object that's being inserted.

4 Certainly, if the object is larger than this opening here
5 can accommodate and it stretches and rips and tears, that's
6 going to be painful. If the object that's being inserted
7 into this area can accommodate this opening, it would not
8 be painful to the child.

9 Q I'm going to show you what's been marked as State's
10 Exhibit No. 15. What is that white thing on the left side?

11 A That goes almost top to bottom on the edge?

12 Q Yes, ma'am.

13 A That's the glove, my glove on my hand.

14 Q So that's the size of opening of this child's vagina?

15 A That is correct, by the use of the colposcope.

16 Q With your thumb?

17 A Present on the side, yes.

18 Q And do you see more evidence on that photograph of
19 attenuation?

20 A I think you just see it again -- and I was focusing
21 more on the lower area, just inspecting it more in detail
22 as opposed to the first picture that was up, that I was
23 looking at the entire vaginal opening. I was just looking
24 -- because of the a-vascular or the widening that you see
25 here, I was just inspecting it with more detail.

1 Q What if any tools do you use to assist you in that
2 exam other than the colposcope that you've already
3 testified to?

4 A In a pre-pubital child I just use my hands. If the
5 child has started her periods and the condition warrants it
6 or the inspection warrants it, I may use a speculum, which
7 is a plastic object that you actually insert into the
8 vagina and you see more deeply into and around the cervix.
9 But for the purpose of this exam, it was just my hands.

10 Q Why is that?

11 A Because, number one, I was able to see everything I
12 needed to see on her exam. Number two, inserting an object
13 into her vagina very likely could be painful to her. Even
14 though some scar tissue was there, I had really no need to
15 do any further inspection than what I had done at this
16 point.

17 Q You saw her on the 11th, which would have been several
18 days after the assault occurred. Are you aware that she
19 went and saw Dr. Connell at the Kershaw County Hospital?

20 A I did know that she had had the evidence kit
21 collected. I was not aware that he was the provider that
22 did it. I did not have his name.

23 Q What in your expert opinion does the term widening
24 introitus mean?

25 A Usually when providers -- whether it be a physician

1 from any walk of practice, whether it be private practice,
2 emergency room, pediatrics, calls and wants to make a
3 referral to me, they're not experts in the field of child
4 abuse. So they are using their best tools to describe what
5 they see. And usually in my clinical experience when
6 somebody refers to the child's vaginal opening as being
7 wide open, widening, or thin, or narrow, it's because there
8 has been a loss of tissue present that does allow this
9 opening if you will right here, this entire opening, to
10 appear big or large or more open than it should be. So
11 that would be my interpretation of what he's saying, and
12 it's because there's a loss of this tissue.

13 Now, if the tissue would have been more normally
14 present in this entire area, the opening would have been
15 considerably smaller, and then I wouldn't have fully
16 understood what was being described as a widening or wider
17 opening.

18 But typically, that's the reasoning that they use
19 those terms.

20 Q So in an 8-year old or 7-year old you would expect to
21 find a hymen -- more tissue present?

22 A That is correct.

23 Q But not ---

24 A That is correct.

25 Q In your expert opinion, Dr. Saunders, what were your

1 conclusions based on your examination?

2 A That the findings were consistent with past
3 penetration.

4 Q What are you basing that on?

5 A Basically, just my physical findings. Certainly, the
6 history that was given supported what I was finding. The
7 information that the child disclosed in the forensic
8 interview supported my findings on the medical evaluation
9 as well.

10 MS. BARRY: Beg The Court's indulgence.

11 (Pause.)

12 Q Could a child have done this with her finger?

13 A Could that happen? Absolutely, it could. Does it
14 make sense and is it likely that the child did that? Not
15 at all, because initially it would have been a very painful
16 act. People don't inflict pain and discomfort on
17 themselves. So could she have done it? Absolutely. Is it
18 likely that anybody would inflict pain on themselves? I
19 would say, no.

20 Q What about a punch to the stomach, would that have
21 caused these types of injuries?

22 A Absolutely not.

23 Q What about a bicycle injury, the child fell off a
24 bicycle and hit the handle bars with her genital area?

25 A I think it's important -- and I don't think I've said

1 this -- is to understand that this collar of skin that
2 we're calling the hymenal tissue, people call the cherry,
3 the virginal ring. People have a lot of lay terms for it.
4 It's a very protected structure. And the best way I can
5 probably help you understand how protected it is, is if you
6 think about that little thing that hangs down in the back
7 of your throat called your uvula or people call it their
8 tonsils. You have to go past your lips, past and down,
9 your tongue, before you get to that little uvula spot. And
10 what happens when you hit it? There's nerve intervention.
11 You feel pain. You gag. You cough.

12 Well, this little collar of skin right here is very
13 protected. There's an outer fold of skin. There's an
14 inner fold of skin. Then there's a little cup-like
15 structure that sits behind these folds of skin before you
16 get to this collar of vaginal tissue. And usually that's
17 at least 1 to 2 inches inside the body. So if something
18 injures this tissue, it's not because the child fell
19 against it and it injured it, because what it would injure
20 or bruise, cut, tear are the outer folds and maybe that top
21 layer of the inner fold of skin, but not inside the body.

22 Something injures that? Think about tickling the back
23 of your throat. It has to pass through structures to get
24 to this collar of skin to cause injury.

25 So do we see accidental injuries of this skin right

1 here where Child injury was at? Absolutely, we do, but
2 it's significant. They show up to ER profusely bleeding,
3 extreme pain, with a very validated reason and panic as to
4 what happened to this child.

5 Q 1 to 2 inches you saw injury -- past injury?

6 A That's correct.

7 Q Evidence of past injury?

8 A That's correct.

9 Q And the injuries that we are looking at right now, in
10 your expert opinion would you classify that as chronic
11 sexual assault or ---

12 A Knowing the disclosure of the child during the
13 forensic interview, that it was not a single event, does
14 this finding support that? Absolutely, it does.
15 Absolutely..

16 MS. BARRY: Thank you. That's all I have. Answer any
17 questions defense might have.

18 CROSS EXAMINATION BY MR. KIRINCICH:

19 Q Good afternoon, Dr. Saunders. How are you?

20 A Fine, thank you.

21 Q Did you ever have an opportunity to do a medical exam
22 on Child before December 11, 2009?

23 A No, sir. This was the first time I had seen her.

24 Q And have you done an exam on her since December 11,
25 2009?

1 a male on the bus stuck his hands in her pants and in her
2 vaginal area?

3 A I was later made aware of that, not the day that I had
4 seen her.

5 Q And were you made aware of a bicycle accident where
6 Child was riding a 10-speed bicycle and she had a bicycle
7 accident and she did respond or was taken to the emergency
8 room with vaginal bleeding?

9 A I have no knowledge of that, sir. No knowledge.

10 Q Okay. I'm sorry. I'm looking for something else that
11 I wanted to question you about. Now, you've classified
12 this as chronic abuse. Did you notice any acute injuries,
13 any tearing when she presented to you on December 11?

14 A No, sir, I did not.

15 Q Did you notice any bruising, anything that was
16 consistent with her being abused immediately before coming
17 to see you?

18 A I don't think that you can equate abuse with the
19 presence of bruising or bleeding to formulate if it did or
20 did not occur.

21 Q Were any calipers used or any kind of measuring device
22 to measure the size of her hymen?

23 A We do not specifically measure hymenal in millimeters
24 any more. We do not do that. As medical experts we don't.

25 Q The solicitor's office asked if that was your -- or

1 A No, sir, I don't recall that I have.

2 Q Okay. So this was a one-time interaction with the
3 patient?

4 A That is correct.

5 Q And her father was in the room with you during the
6 entire exam?

7 A He was.

8 Q And do you have a copy of your report?

9 A I do.

10 Q On page 5 of 13, would you go there. There's a box
11 that's checked that says, no history of prior injuries.

12 A That is correct.

13 Q So no one told you about a prior incident of abuse
14 that occurred at Child █████ school when she was in
15 kindergarten?

16 A Not on the day that I saw her, that information I was
17 not aware of that.

18 Q Have you learned about that prior to coming to court
19 today?

20 A I believe there was a report from one of the hospitals
21 when she went in for vaginal -- not vaginal bleeding,
22 excuse me, pain on urination, that a classmate, like same
23 age classmate may have touched her vaginal area.

24 Q Okay. And were you told about another incident that
25 occurred in 2009 when Ms. Scott said she was on the bus and

1 what that was on the picture. And you indicated it was a
2 gloved finger. Was it a finger or a thumb?

3 A It most likely was my thumb, just because of the way I
4 hold the tissue.

5 Q Do you have any idea how far away that was from her
6 hymen at the time the picture was taken?

7 A The general magnification I use is 3.5.

8 Q Do you have any idea how far away your thumb was for
9 perspective purposes?

10 A From the camera?

11 Q From the camera and from her hymen?

12 A I would say probably 6 to 8 inches.

13 Q Okay. So with that perspective, can you tell how big
14 her hymen opening is from your thumb?

15 A How big as in?

16 Q How big? How wide? What it could accommodate?

17 A I don't think I understand your question.

18 Q I believe Ms. Barry was asking you about your thumb in
19 relation to the size of her hymen's opening. From that
20 picture and your expert opinion, can you tell how big her
21 hymen opening is?

22 A Based on my thumb?

23 Q Yes, ma'am.

24 A No, I can't.

25 Q If you don't mind, look on page 2 of your report. On

1 the right-hand side there is a box that's marked, vaginal
2 and penile penetration?

3 A That is correct.

4 Q And it has several time periods listed under it.

5 There's less than 72 hours, between 72 hours and 10 days,
6 greater than 10 days, and undetermined. How long after the
7 alleged abuse did Ms. Child come in to see you?

8 A It was 2 -- 2 days. Well, going into the third day.

9 Q You couldn't place any kind of penetration occurring
10 less than 72 hours, could you?

11 A I can't answer that with yes or no because penetration
12 could occur with the absence of clinical findings. So
13 that's not a yes or no question.

14 Q Yes or no, did you check that she had penetration
15 within a 72-hour time period?

16 A I did not. I put undetermined.

17 Q Undetermined. So it's not 72 hours, between 72 hours
18 and 10 days, or greater than 10 days. Undetermined is
19 checked?

20 A That is correct.

21 Q One of the questions you were asked was about the
22 erythema and her vulva and your urethral tissue. And did
23 you get an explanation about a girl could have trouble
24 wiping and may wipe the wrong direction?

25 A That is true. They could also use bubble baths,

1 lotions, sprays to the area that causes redness or
2 reaction. Allergies to soaps, new detergents, new
3 underwear, cotton panty fibers. I mean, the list -- as
4 well as sexual abuse.

5 Q All those things can cause redness or irritation?

6 A As well as sexual abuse, yes, sir.

7 Q And you said that the discharge could be to work
8 something out of the body, basically, that's not supposed
9 to be there?

10 A It could be. It could be. But because of the
11 findings on her exam and the report by Child of chronic
12 sexual abuse, I did screen her to rule out any infection
13 that was present and in relation to sexually-transmitted
14 diseases.

15 Q And what would cause the erythema of the urethral
16 tissue?

17 A The same causes.

18 Q Same causes?

19 A Absolutely.

20 Q And she was screened for sexually-transmitted
21 diseases?

22 A That is correct.

23 Q Do you know which diseases she was screened for?

24 A Yes, sir, I completed those tests. It was gonorrhea,
25 chlamydia, and Trichomonas. I also drew blood for HIV and

1 hepatitis screening. And those cultures were collected of
2 the vaginal area.

3 Q Was she tested for HPV?

4 A HPV?

5 Q Yes, ma'am.

6 A No, sir.

7 Q You're not trained in forensic interviewing of
8 children, are you?

9 A No, sir, I am not.

10 Q You approach this strictly from a medical viewpoint?

11 A Medical history gathering, that is correct.

12 Q And based on your report here, your medical opinion

13 was **Child** was a victim of chronic abuse with an

14 undetermined period of penetration?

15 A Undetermined period of penetration?

16 Q Yes, ma'am.

17 A Yes, sir, that would be correct.

18 MR. KIRINCICH: Thank you very much, Dr. Saunders.

19 THE COURT: Redirect?

20 MS. BARRY: Thank you, Your Honor.

21 REDIRECT EXAMINATION BY MS. BARRY:

22 Q Dr. Saunders, based on your training and experience in
23 your expert opinion, would you always find evidence of
24 trauma following a sexual assault?

25 A No, ma'am.

1 Q Why is that?

2 A Sometimes when children are not sexualized -- meaning,
3 they've never had a sexual experience before and given
4 their age and their development, the way things happen may
5 not be exactly how they happen. But with their cognitive
6 development, their ability to describe what happened --
7 that's the best way they can describe it, like, he put it
8 in me when instead of going through the vaginal opening, he
9 may have gone against the vaginal opening with his penis or
10 his finger or whatever object is being used. So that's one
11 thought as to why sometimes we don't see injury when
12 children are very clear, very descriptive about what they
13 see, what they feel, and what happened.

14 The other thought is that -- and we know this
15 scientifically and I've witnessed this in my clinical
16 practice is that children do not usually tell immediately
17 when something happens, because people that abuse children,
18 specifically sexual abuse are people that that child love,
19 trust, honor. And society teaches them honor and obey your
20 elders. You do what your mommy and daddy tells you to do,
21 those kind of things. So for their own set of reasons,
22 children usually do not tell what has happened to them
23 until a period of time has passed.

24 But think about you, sometimes you've gotten cut with
25 a knife before when you were peeling a potato or peeling an

1 orange or whatever. And you may have just barely nicked
2 your finger. And before you go to bed that night it
3 doesn't hurt and sting any more when you take a bath. It's
4 healed. You look at your finger the next day and you go,
5 gosh, I know I cut my finger, but it doesn't feel bad any
6 more and you go about your business. You never knew that
7 cut was there because the body healed and repaired itself.

8 With vaginal tissue and the rectum or the anal tissue
9 can do the very same thing. And if the object going into
10 or around the vagina does not stretch that opening beyond
11 its ability to allow the object in, there may be no injury
12 there at all. So we may not see injury, because of how it
13 really happened, because there was injury that healed
14 without a scar, or maybe there was never any injury.

15 And a prime example is you've pulled our hair up in a
16 ponytail before with a rubber band. I twist my hair
17 around, it holds my hair all day. I take that same rubber
18 band and try to put it over my head, it's going to pop. So
19 there's your injury.

20 If the object going into the vagina or the rectum is
21 small and that tissue stretches just enough to allow the
22 object in, there may be no injury at all. So given the
23 time factor of when the incident occurred to when the child
24 discloses to the time of the exam, there may have been
25 complete healing with no evidence of prior injury or maybe

1 there was no injury prior.

2 Q How quickly does the hymen heal?

3 A If it's a very small or very superficial -- meaning
4 just like a scratch or an abrasion-kind of injury, it may
5 heal in 12 to 24 hours.

6 Now, deep lacerations that cut through that opening of
7 the vaginal area, if it goes into the muscle, it could take
8 weeks to heal and may have to be surgically repaired.

9 But typically if there's an injury and I follow that
10 child up the next 24, 48, and 72 hours, most of those
11 injuries have almost completely healed within 72 hours that
12 I see in my clinical practice.

13 Q How many children have you examined?

14 A Over 8,000 children through my clinical practice,
15 specific to child abuse.

16 Q And you testified on direct that there was scar tissue
17 present, correct?

18 A Yes, ma'am, in the lower area of the hymenal opening.

19 Q And in your expert opinion that was consistent with
20 past penetration?

21 A Yes, ma'am.

22 Q So would it be uncommon to not find an acute injury
23 where that same penis penetrated that same vagina?

24 A I wouldn't expect to find acute injury. I would not
25 expect to.

1 Q Is it fair to say that the issue has been expanded and
2 accommodated for that already?

3 A With the presence of scar tissue there, yes.

4 Q When you reviewed the medical records of the urinary
5 tract infection, you found no evidence based on the lab
6 reports you testified on direct of that?

7 A That is correct.

8 Q Can you describe for the jury what the purpose of
9 mucus in a female vagina -- what's the purpose of the
10 discharge?

11 A In an adult female it allows for maintaining normal
12 bacteria or a certain group of normal bacteria in the
13 vagina as a protective mechanism to allow for intercourse
14 when there's ejaculation to preserve the sperm, if you
15 will, for implantation of pregnancy; that would be one
16 function.

17 The other function would be to kind of wash away or
18 cleanse or keep the vaginal canal clean and free of debris
19 and particles that may cause bacteria or infection to grow
20 in the vaginal canal itself.

21 The absence of that in the child -- the absence of the
22 mucus in the child, the protective mechanism is, is that
23 the body receives it as a foreign object and then develops
24 -- it's not even mucus. It's almost like water -- a watery
25 discharge, very thin watery-like to clear any foreign body

1 that may be in that vaginal area.

2 Q And he asked you about HPV. What is that?

3 A That is a virus commonly known as genital warts to the
4 lay people. We call it the HPV or the human papoloma
5 virus. The significance to it in children -- we've kind of
6 learned through research over the years, if it's a child
7 under the age of about 4 or 5 that presents with these
8 warts in the genital or the peri-anal, in the rectal butt
9 area, we really don't know the significance of it because
10 they can be transmitted either intrauterine -- meaning,
11 while the baby is still inside of the mother, or through
12 the extra uterine or the delivery process from the mother
13 if the mother has that virus present in her body. So we
14 are concerned that they could be sexually transmitted in a
15 child under the age of 4 or 5 if the child's reporting
16 abuse or if we examine the child as child abuse experts and
17 see a very concerning exam.

18 In children over the age of 5, we always question, was
19 there child abuse? We still look at the maternal history.
20 Does she have a history of abnormal pap smears, HPV, those
21 kind of things. But what we know about treating HPV in the
22 older child is if they have an intact, normal immune
23 system, we leave them alone because they will clear
24 themselves.

25 It is a virus. We have viruses in our body all the

1 time, stomach virus, head colds, chest colds, ear
2 infections, nose infections that are viruses and we don't
3 always go to the doctor and get medicine for them. But
4 this is one of those things that if the child is healthy,
5 will clear itself.

6 The other thing that we know is that the virus usually
7 lays dormant, meaning silent inside the body of these pre-
8 pubital girls for a period of time before they express
9 themselves or they become visible to the naked eye.

10 And in pre-pubital children -- meaning children that
11 have not started their periods -- there is no reliable
12 screening method to see if they have been exposed or have
13 the infection unless you see a lesion.

14 So we don't randomly screen for HPV unless we see a
15 lesion that we can actually screen for.

16 Q Did you see that in this case?

17 A I did not.

18 Q So you didn't screen for it?

19 A I did not.

20 MS. BARRY: That's all I have, Your Honor.

21 THE COURT: Anything further?

22 MR. KIRINCICH: Thank you, Your Honor.

23 RE CROSS EXAMINATION BY MR. KIRINCICH:

24 Q Dr. Saunders, Ms. Barry asked you again about the
25 review you did of paperwork that was probably from

1 Lexington Hospital and Providence Hospital where Child
2 was presented to the emergency room with what was believed
3 to be a urinary tract infection?

4 A That is correct.

5 Q And you got that history from whom?

6 A The history of the 2 hospital visits, was given to me
7 from her father.

8 Q And her father told you that Child was in his
9 custody whenever those visits occurred, didn't he?

10 A The information that I was given was that dad has
11 taken the child to the hospital on several occasions due to
12 vaginal pain and bleeding and reports of sexual abuse. Law
13 enforcement and D.S.S. were involved with no resolution of
14 those cases.

15 So I don't know if it was specific to the ones at
16 Providence and Lexington, because I since have found out
17 that she had also been to Kershaw, and I believe the
18 evidence kit had been collected there. But some other
19 information had come out.

20 Q And if you'll tell me again, what is the magnification
21 of the colposcope?

22 A You could use different settings. But the one I use
23 for best clarification is 3.5.

24 Q 3.5?

25 A That is correct.

1 Q And although you've testified that it wouldn't be
2 uncommon not to see anything, you didn't see any scar --
3 excuse me, you didn't see any cuts, abrasions, bruising
4 when you examined Child [REDACTED] did you?

5 A I did not.

6 Q And you saw only what you believed or maybe you know
7 it to be old scar tissue?

8 A And absence of tissue in that area.

9 Q Correct. But you've not done a prior examination nor
10 a follow-up examination?

11 A That is correct. I referred her back to her primary
12 care provider in the Kershaw area under my recommendations
13 was to establish that for her on-going health care due to
14 the distance from the Carehouse.

15 Q And have you reviewed any follow-up medical
16 examinations with Child [REDACTED]

17 A I have not.

18 MR. KIRINCICH: No further questions, but I do have a
19 matter of law I would like to discuss with The Court.

20 THE COURT: All right. You may step down.

21 (The witness leaves the witness stand.)

22 MR. KIRINCICH: Your Honor, I ask this witness not to
23 be excused from the courtroom.

24 THE COURT: All right. Ladies and gentlemen, we'll
25 break for lunch now. We'll start back at 2:15. Please do

1 not discuss the case.

2 (The jury exits the courtroom at 12:55 p.m.)

3 THE COURT: Yes, sir.

4 MR. KIRINCICH: Your Honor, I would respectfully ask

5 The Court's permission to be allowed to question Dr.

6 Saunders about some exams that she did on Child

7 brothers, Sibling 1 and Sibling 2 Your Honor ruled

8 yesterday that I shouldn't go into that with the mother

9 Jessica Scott. But it goes towards clarification of

10 possible coaching. I understand, Your Honor, that this is

11 on a different child. But they are full siblings and they

12 live together, Your Honor.

13 THE COURT: All right. Ms. Barry?

14 MS. BARRY: Your Honor, I would object to that. I

15 mean, Your Honor made his ruling yesterday and it's not

16 relevant. We're not trying that case here. To add that

17 testimony, I don't know what we would gain from that. I

18 don't even think she has the records of Sibling 1 and Sibling

19 THE COURT: Why does that matter?

20 MS. BARRY: Well ---

21 THE COURT: Whether or not she has the records, what's

22 the significance of that comment or point?

23 MS. BARRY: If she -- I guess I don't know what he's

24 hoping to gain by trying to present to the jury she's been

25 coached in some way.

1 THE COURT: What's the -- you said she doesn't even
2 have the record. So what significance is that?

3 MS. BARRY: I doubt she's prepared for that testimony,
4 if she's reviewed it. She obviously would need a chance to
5 review them.

6 THE COURT: Yes, sir.

7 MR. KIRINCICH: Your Honor, these records have been
8 provided to the defense in response to a Rule 5 and Brady
9 request. Your Honor, if you would like to have me tell you
10 what the contents or if you would like to see Dr. Saunders'
11 notes from her report ---

12 THE COURT: No. I'm just dealing with what you're
13 arguing and I'm going to rule. I don't need to review her
14 records that I know of. Do you want to ask her some
15 questions?

16 MR. KIRINCICH: Yes, Your Honor, at minimum. And I
17 understand your ruling from yesterday. I don't mean to
18 challenge that ruling, Your Honor. But I think it would be
19 important at minimum we be allowed to proffer this
20 testimony.

21 THE COURT: All right. Is Dr. Saunders still here?

22 All right. Dr. Saunders, if you'll come back to the
23 witness stand.

24 (Pause.)

25 THE COURT: Yes, sir.

Dr. Saunders - Direct by Mr. Kirincich

347

1 MR. KIRINCICH: Your Honor, Ms. Barry has something
2 she would like to say.

3 THE COURT: Yes, ma'am.

4 MS. BARRY: Your Honor, I thought it was because I
5 worked in Columbia and not in Kershaw. But I have not seen
6 these records. Mr. Moak has indicated that we do not have
7 copies of these records, never received ---

8 THE COURT: Well, he wants to make a proffer and an
9 argument, and the witness is on the stand. So I can't
10 presuppose what records she has, what questions he's going
11 to ask, or what you have.

12 You may proceed.

13 KATHY SAUNDERS, having been
14 previous duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. KIRINCICH:

16 Q Dr. Saunders, do you remember doing an evaluation or
17 assessment of Sibling 1 and Sibling 2 the siblings of
18 Child

19 A I do not.

20 Q If I showed you a -- what was basically the same type
21 of paperwork you went over with Child would you be
22 able to look at it and identify it if you were the one that
23 filled it out?

24 A Yes, sir.

25 Q This is Sibling 2 This is Sibling 1

1 MR. KIRINCICH: Your Honor, if she could look at
2 those.

3 THE COURT: All right. We'll be at ease for a couple
4 minutes.

5 (A recess was taken.)

6 THE COURT: All right. Counselor, you may proceed.

7 MR. KIRINCICH: Your Honor, could we have just a
8 moment so Ms. Barry could see.

9 THE COURT: Proceed.

10 Q Dr. Saunders, did you have an opportunity to review
11 the 2 packets I've handed up to you?

12 A I did.

13 Q And did those appear to be completed by you?

14 A Yes, sir, they do.

15 Q And who were those packets for? Can I hand them back
16 up to you?

17 A Sibling 1 and Sibling 2

18 Q And when did you do an examination, evaluation,
19 assessment or whatever it was on these 2 individuals?

20 A It was January 8, 2010.

21 Q And if I could see one of them. Who did you get the
22 history from in that case?

23 A Without having the complete chart here, the only
24 information I can tell you it was one of the grandmothers,
25 and I'm not sure which grandmother it was.

1 Q And that's on page 4 under clinical history?

2 A That is correct.

3 Q And will you read what it says under history?

4 A Mark had the children for visitation. At 7 years old

5 Sibling 1 disclosed molestation -- excuse me, disclosed

6 molested by Mr. Branham. Turned out not to be true. It

7 turned out that it was Mark Scott's brother, a 12-year old

8 that molested Zach. Sibling had witnessed this incident.

9 Grandma is reporting that dad was to bring the boys here --

10 meaning, I guess, to the Carehouse -- on 2 occasions and

11 didn't do so, that D.S.S. would take the children. I guess

12 there was a concern that they may take the kids.

13 Alleged perpetrator is Bubba George Branham. He uses

14 alcohol. Unemployed. Mom's boy friend. They'd been

15 together since 2004.

16 So this was history by the grandmother. And, again,

17 I'm not sure which grandmother it was without having my

18 complete chart.

19 Q And why would a child in a sexual abuse make a false

20 allegation?

21 A The reasons why they may recant or change their story.

22 I don't know the validity of it being a true or false

23 allegation. This was just what was given to me by report.

24 So for me to determine if any of this had happened, I mean,

25 that's not something I can do based on the history of

1 somebody else, I don't believe.

2 Q Have you ever examined a child where the allegation
3 has been perpetuated by parental coaching?

4 A I'm sure I have.

5 Q Have you ever had a guardian such as a grandparent do
6 any coaching of a child to allege a sexual abuse?

7 A I'm sure it has occurred. I mean, I know it does.

8 Q And even in a case where there's actual sexual abuse
9 with coaching can a child then blame that abuse on someone
10 else?

11 A They can also blame them. They can also deny the
12 abuse.

13 Q The history that you have here, do you have any reason
14 to question the grandmother's history?

15 A It's just information that she was giving to me.

16 Q Would you have talked to the boys about that?

17 A Actually, they would have had their forensic interview
18 -- and I'm assuming -- by Ms. Debbie Elliott. Not having
19 the record here, we have 2 forensic interviewers at the
20 time and I'm not sure who actually did it. That
21 information would have -- she would have made an attempt to
22 address those issues with the boys, I'm sure.

23 MR. KIRINCICH: Thank you, Dr. Saunders.

24 If we could mark these as I.D. I would need to make a
25 copy of them first.

1 THE COURT: If you're offering them into evidence,
2 they will need to be marked.

3 MR. KIRINCICH: Not at this time I don't. I don't
4 know if the state would like to use these copies.

5 MS. BARRY: I don't.

6 THE COURT: All right. Any further questions by the
7 defense?

8 MR. KIRINCICH: Not with this witness, Your Honor, but
9 I would ask The Court's permission to be allowed to explore
10 this topic with Dr. Saunders in front of the jury.

11 THE COURT: You said no further questions. I assume
12 you're through questioning her?

13 MR. KIRINCICH: Yes, Your Honor, I am.

14 THE COURT: All right. Any questions by the state?

15 MS. BARRY: I don't have any questions, Your Honor.

16 THE COURT: All right. You may step down.

17 (The witness leaves the witness stand.)

18 MR. MOAK: Your Honor, I believe Dr. Saunders is under
19 subpoena for Marion County.

20 DR. SAUNDERS: Yes, sir.

21 THE COURT: Anything further, any other comments?

22 MS. BARRY: Would you like to hear argument?

23 THE COURT: Comments, arguments, anything that anyone
24 wants to say.

25 MS. BARRY: Your Honor, we would -- I know your ruling

1 yesterday was that the prior incident wouldn't come in.
2 The state agrees that under State v. Sprouse 478 SE 2nd
3 871, The Court of Appeals upheld the trial court's ruling
4 that the Boyer test had not been met; that is to determine
5 that the prior report was in fact false. These reports
6 need to be made -- these allegations need to be made by the
7 victim in the case.

8 THE COURT: How do you spell Sprouse?

9 MS. BARRY: S-p-r-o-u-s-e, Your Honor.

10 The Court properly excluded testimony concerning a
11 prior false allegation because there was no evidence that
12 the child herself had ever made the allegation.

13 This has nothing to do with our victim. These are her
14 brothers. The first prong is was it false? If so, is the
15 prior report too remote? And the factual similarity -- the
16 third prong, The Court must consider the factual
17 similarities between the prior and present allegations to
18 determine the relevancy; that's the Boyer -- Boyer 396 SE
19 2nd 364.

20 And Kathy Saunders can only say that abuse had
21 occurred, not who did it.

22 THE COURT: All right. Mr. Kirincich?

23 MR. KIRINCICH: Your Honor, I'll admit, I am not
24 intimately familiar with State v. Sprouse or what the
25 holding is in that case.

1 Your Honor, my argument would be more of a
2 constitutional issue under the federal and the state
3 constitutions, Mr. Branham's right to a fair trial, his
4 right to present a complete defense, his right to due
5 process. And I think as part of the due process, that's
6 what the right to present a complete defense comes in, Your
7 Honor.

8 THE COURT: To just tell the jury anything about any
9 random anything that might convince the jury that -- that
10 he's not guilty regardless of whether it complies with the
11 case authority, the rules of evidence?

12 MR. KIRINCICH: No, Your Honor. I don't suggest
13 throwing anything out. But this is a situation where these
14 are the full-blood siblings of Child [REDACTED] the victim in
15 this case.

16 THE COURT: Well, what are you trying to -- I'm
17 missing your point as to what it is that you're trying to
18 get through this witness?

19 MR. KIRINCICH: Your Honor, I'm trying to show a
20 history, starting with Jessica Scott. Your Honor, if it
21 was necessary for me to call one of the Scott children to
22 establish it, that might be what it is. But if we could
23 establish a history that at some point Mark Scott or Mark
24 Scott's family -- the father of these 3 children had
25 perpetuated a false allegation against Mr. Branham, then I

1 think that would be relevant and the jury should hear that.

2 THE COURT: The father of the children accused Mr.
3 Branham of abusing one of his other children?

4 MR. KIRINCICH: That he or someone in his family
5 coached his son to accuse Mr. Branham, when it turns out
6 where at least as far as we can tell, because it was never
7 fully investigated that it was John Scott, Mark Scott's
8 teenage brother that abused Sibling 1

9 THE COURT: And how would that have any probative
10 value as it relates to this case?

11 MR. KIRINCICH: Your Honor, as it relates to this
12 case, when the juvenile testified, she had the ability to
13 answer the state's questions as if it had been rehearsed.
14 Every other question, Your Honor, she said, I don't
15 remember -- or nearly every other question. When I asked
16 her if anybody helped her with her story, she said, yes,
17 but she couldn't remember his name. So she admitted that
18 somebody had helped her with her story.

19 THE COURT: That's your conclusion concerning her
20 testimony. The forensic interviewer thought that the
21 manner in which she answered the questions was -- was the
22 opposite of being coached; that it was credible based on
23 the amount of details that she could give and the manner in
24 which she responded to the question and the manner in which
25 the questioning was done by the forensic interviewer.

1 So that's your argument that she is coaching -- do you
2 want me to accept that as a fact?

3 MR. KIRINCICH: No, Your Honor. I'm not here to judge
4 the facts. What I would like to do is just put it out to
5 the jury, Your Honor, to have them ---

6 THE COURT: To put out to the jury that another child
7 -- that another sibling alleged that someone else --
8 another sibling alleged that the defendant abused them and
9 that allegation turned out to be false. So, therefore, the
10 allegation of this sibling that this defendant abused her
11 and the observation of this sibling's mother that this
12 defendant abused her is not credible?

13 MR. KIRINCICH: Yes, Your Honor, the jury could decide
14 that.

15 THE COURT: Now, in the case of State versus Boyer The
16 Court held that evidence of prior false accusations by a
17 complainant may be probative on the issue of credibility.
18 So not even this State versus Boyer, but on the -- what's
19 the case.

20 (Pause.)

21 THE COURT: Dominick Strauss Kahn, that alleged
22 victim's prior false accusations, including on her
23 transport, prior -- false allegations are false --
24 according to the news media. And the state threw that case
25 out because of that victim, the state found the victim not

1 to be credible based on the victim's prior false
2 allegations.

3 You want to expand that rule to -- to beyond the
4 victim to include anyone in the victim's family. The
5 victim's father in this instance you are saying because he
6 falsely accused the defendant on some other occasion, that
7 this victim is falsely accusing him now.

8 The case that the solicitor handed up was a case in
9 which the issue involved the grandmother. And Judge Ralph
10 King Anderson held and the Court of Appeals held that prior
11 alleged false accusation of sexual abuse made by the
12 victim's grandmother was not prior false allegation by the
13 victim.

14 So that is directly on point to this issue. And in
15 that case it cited the Boyer case, which says if the victim
16 had made some prior false allegation, then you could get in
17 to that. But for us to explore any other lie told by any
18 other family member concerning any other abuse case, that
19 would not -- that may give the defendant some type of an
20 advantage but it would not comply with our rules of court
21 and rules of procedure and our law.

22 His protection -- constitutional protection and giving
23 him a fair trial has been put on full display, where I
24 excluded the testimony of his wife who was going to talk
25 about -- and the Lyle evidence of another act. And we

1 followed the constitution on that case where the -- his
2 wife is accusing him of molesting this same victim; and
3 that was excluded.

4 Then evidence is in the record of the boy at school
5 bothering the victim. The child falling off the bicycle --
6 all of that's in the record, so that he has a fair trial on
7 the issue.

8 But on the one hand you want the evidence by his wife
9 that he was observed abusing this child excluded, but then
10 you want The Court to allow in evidence involving another
11 sibling and an allegation of a person -- all of those
12 things being totally unrelated to this case; that -- to
13 allow that would render the entire trial meaningless from
14 my point of view, would not -- it would prevent the state
15 from having a fair and impartial trial to grant that
16 motion.

17 So my ruling remains the same on the issue. I
18 certainly appreciate it and understand what you represent.

19 MR. KIRINCICH: And, thank you, Your Honor, for
20 allowing me to do that.

21 THE COURT: All right. Okay. We're off until -- do
22 you have something else?

23 MS. BARRY: May she be excused?

24 THE COURT: Aside from that issue, do you have any
25 additional questions for ---

1 MR. KIRINCICH: No, Your Honor. She may be excused
2 now.

3 THE COURT: The witness is excused.

4 How many additional witnesses does the state have?

5 MS. BARRY: Your Honor, that's all the state will
6 present.

7 THE COURT: All right. The state will then rest in
8 the presence of the jury. Do you wish me to question Mr.
9 Branham about his constitutional right to testify or not to
10 testify?

11 MR. KIRINCICH: Yes, Your Honor, if you would like to
12 do it at this time.

13 THE COURT: Okay. We can do it at this time so that
14 he can consider what we talk about.

15 Mr. Branham, if you will come and stand right in front
16 of me and we'll swear you in.

17 GEORGE STANLEY BRANHAM, II,
18 being first duly sworn, testified as follows:

19 THE COURT: All right. Mr. Branham, at this time I am
20 going to explain to you certain of your constitutional
21 rights. If you do not understand anything that I say,
22 please let me know and I will be happy to explain it in
23 more detail.

24 We have now reached the stage of the trial where the
25 state has indicated that they are resting. That means it

1 is now time -- will be time when we resume for you to
2 present your defense. You have a right to claim the
3 protections given to you by the fifth amendment to the
4 constitution of the United States. This amendment says in
5 part that -- it states in part that no person shall be
6 compelled in any criminal case to be a witness against
7 himself.

8 This means that you cannot be required to testify in
9 this case. You do, however, have the right to testify on
10 your own behalf if you would like to. However, no one can
11 make you testify. And this is a personal right and no one
12 can waive this right except you.

13 Now, if you decide to testify, you will be subject to
14 the same rules that govern other witnesses, and you may be
15 examined and cross examined on any relevant issue in this
16 case.

17 In addition, if you have any convictions involving
18 dishonesty or false statement or if you have been convicted
19 of crimes punishable by more than 1 year in prison and I
20 determine that the probative value of admitting this
21 evidence outweighs its prejudicial effect to you, the
22 solicitor in that instance then will be able to introduce
23 your record to attack your credibility.

24 Do you understand that?

25 MR. BRANHAM: Yes, sir.

1 THE COURT: Now, if you decide to testify, this
2 decision on your part must be a free, voluntary, and
3 intelligent decision. It must be made with knowledge of
4 the protections given to you by the fifth amendment, as
5 well as the consequences of your decision to testify.

6 If you decide not to testify, I will instruct the
7 jurors that they cannot give the fact that you did not
8 testify any consideration whatsoever, and that there is to
9 be absolutely no prejudice to you, because you did not
10 testify.

11 It is left entirely up to you whether or not you
12 testify. You may talk with your lawyer, Mr. Kirincich, any
13 family or friends you have available to talk to, or anyone
14 else that you would like to talk to. But in the final
15 analysis, the final decision will be left entirely up to
16 you.

17 Do you understand what I've explained?

18 MR. BRANHAM: Yes, I do.

19 THE COURT: Do you have any questions about what I
20 have explained to you?

21 MR. BRANHAM: No, Your Honor.

22 THE COURT: You've talked with Mr. Kirincich about
23 whether or not you should testify?

24 MR. BRANHAM: Not yet.

25 THE COURT: Not yet. Do you want to talk to him about

1 that?

2 MR. BRANHAM: Yes, sir.

3 THE COURT: All right. You certainly can do so. And
4 we'll get back to you later as to whether or not you choose
5 to testify.

6 MR. BRANHAM: Yes, sir.

7 THE COURT: All right. So that's it then. So we'll
8 be back at 2:15 where you'll be ready to present your
9 defense.

10 MR. KIRINCICH: Thank you, Your Honor.

11 THE COURT: All right.

12 (Court is in recess for lunch.)

13 MR. KIRINCICH: Your Honor, may we approach?

14 THE COURT: All right.

15 (A bench conference was held off the record.)

16 THE COURT: All right. As I understand, the state
17 intends to rest. And you're ready with your defense?

18 MR. KIRINCICH: Yes, Your Honor. We just need to --
19 was telling Mr. Branham who was here to testify. We just
20 need to confirm if we're going to call those individuals
21 and which order. But we do have Mr. Branham ready if he
22 chooses to testify.

23 THE COURT: Mr. Branham, have you thought about it?
24 Please stand for me for a moment.

25 (Complied.)

1 MR. BRANHAM: Yes, sir.

2 THE COURT: You thought about whether or not you
3 should testify?

4 MR. BRANHAM: I will.

5 THE COURT: You plan to testify?

6 MR. BRANHAM: Yes, sir.

7 THE COURT: All right. And will he be the first
8 witness or do you have someone else to be first?

9 MR. KIRINCICH: Your Honor, I just need to figure that
10 scheduling out with Mr. Branham.

11 THE COURT: How much time do you need to figure that
12 scheduling out?

13 MR. KIRINCICH: 5 minutes, Your Honor. I apologize.
14 Maybe at the same time we can go into his record and see
15 what the state plans to impeach him with and bring up.

16 THE COURT: All right.

17 MR. MOAK: He doesn't have any impeachable conviction
18 -- prior convictions that we know about, Your Honor.

19 THE COURT: All right.

20 MR. KIRINCICH: That sounds good, Your Honor. If I
21 could just a couple minutes to talk with him to confirm
22 scheduling.

23 THE COURT: All right.

24 (Pause.)

25 MR. KIRINCICH: Your Honor, we will begin with Mr.

1 Branham.

2 THE COURT: All right. If you will bring the jury
3 please.

4 (The jury returns to the courtroom at 2:43 p.m.)

5 THE COURT: All right. The jury is back. From the
6 state, your next witness.

7 MR. MOAK: Your Honor, at this time the state rests.

8 THE COURT: All right. Ladies and gentlemen, the
9 state has rested. That means that you have heard the
10 state's case. It's now the defense's turn. Mr. Kirincich.

11 MR. KIRINCICH: Your Honor, I apologize. I know we
12 just came from break, but may we approach again?

13 THE COURT: Yes, sir.

14 (A bench conference was held off the record in the
15 presence of the jury, but out of the hearing of the jury.)

16 THE COURT: Ladies and gentlemen, I'm going to have
17 you step to the jury room for just a few minutes -- just a
18 few minutes. Please do not discuss the case.

19 (The jury retires to the jury room at 2:45 p.m.)

20 THE COURT: Yes, sir, Mr. Kirincich.

21 MR. KIRINCICH: Your Honor, now that the state has
22 rested, the defense would make a motion for a directed
23 verdict. I believe it's been stressed recently that the
24 standard is not whether they've produced any evidence, but
25 that they've produced more than a hint of evidence, Your

1 Honor. And we would ask The Court to direct a verdict in
2 favor of Mr. Branham by saying that the state has not
3 produced more than a hint of evidence that he committed
4 this crime between November 2009 and December 8, 2009, Your
5 Honor.

6 THE COURT: All right. What says the state?

7 MR. MOAK: Your Honor, I believe this motion is taken
8 in the light most favorable to the state. We've got an
9 eyewitness to this -- to one of these incidents. We have a
10 victim who has testified that these incidents happened and
11 they occurred on an on-going basis, including the time
12 frame.

13 And I believe 16-3-657, the statute says the victim's
14 testimony need not be corroborated during the prosecution
15 of this type of offense.

16 We've got corroboration by at least an eyewitness, and
17 also physical evidence to back it up as well. So we do
18 believe we've met our burden for the purpose of directed
19 verdict.

20 THE COURT: All right. I deny the motion. I find
21 that there is evidence if believed by the jury will result
22 -- could easily result in a guilty verdict, so I deny the
23 motion.

24 MR. KIRINCICH: Thank you, Your Honor.

25 THE COURT: All right. Bring the jury back now.

Bubba George Branham - Direct by Mr. Kirincich

365

1 (The jury returns to the courtroom at 2:48 p.m.)

2 THE COURT: All right. The jury is back. You may
3 proceed.

4 MR. KIRINCICH: Your Honor, the defense will begin by
5 calling the defendant, George Stanley Branham, II, to the
6 stand.

7 GEORGE STANLEY BRANHAM, II,
8 being first duly sworn, testified as follows:

9 CLERK: Please state your name.

10 MR. BRANHAM: My name is George Stanley Branham, II.

11 DIRECT EXAMINATION BY MR. KIRINCICH:

12 Q Mr. Branham, you're well aware of why we're here
13 today. Will you tell The Court and the jury about your
14 relationship with Jessica Scott in November and December of
15 2009? Where were you living at the time?

16 A [REDACTED] Road in Elgin.

17 Q And how long had you been living on [REDACTED] Road in
18 Elgin?

19 A We moved in on November the 20th.

20 Q And do you remember the house in which you lived on
21 [REDACTED] Road?

22 A Yes, I do.

23 Q Have you seen the drawing that Jessica Scott did for
24 the jury?

25 A I couldn't see it well from where I was sitting.

1 Q If we could pull it forward.

2 (Pause.)

3 Q Can you see it any better now?

4 A I can't. May I stand?

5 Q If I could get you to step down.

6 (The witness steps down from the witness stand.)

7 Q Is that an accurate depiction of the trailer in which
8 you were living?

9 A I believe so. It's upside down, but I believe so.

10 Q Okay. And so the hallway was in what direction of the
11 kitchen?

12 A Directly from the kitchen.

13 Q It was open?

14 A Yes, sir, it was.

15 Q What is this room?

16 A The living room.

17 Q And what was that open to?

18 A The kitchen.

19 Q And what kind of furniture did you have in the living
20 room?

21 A We had 2 chairs, 1 in the corner here and 1 in the
22 corner here, and an entertainment -- a small entertainment
23 center up against the wall here.

24 Q If you want to sit back down.

25 (The witness returns to the witness stand.)

- 1 Q On the night in question or the afternoon before the
2 night in question, on December 7, did you and Jessica talk?
3 A We did.
4 Q Did you have an argument?
5 A Yes, sir.
6 Q Will you tell the jury what that argument was about?
7 A Her drug use.
8 Q Can you be more specific?
9 A Crack cocaine.
10 Q And what kind of argument did you have?
11 A Arguing over the -- her drug use.
12 Q Did you want her to stop?
13 A I did.
14 Q Did you she make any kind of indication to you what
15 her plans were?
16 A She didn't.
17 Q How did the argument end?
18 A We argued for a while. Things eventually calmed down.
19 I had threatened to leave and take the children, but hadn't
20 been decided yet. After things quieted down, she went back
21 to bed. I went and sat in the living room.
22 Q Why didn't you leave right away?
23 A We didn't have a vehicle.
24 Q Where did you plan on taking your children?
25 A To my dad's.

1 Q And does your dad live close by?

2 A No, sir.

3 Q Where does your dad live?

4 A In Gaston.

5 Q How were you going to get to your dad's house in

6 Gaston?

7 A I was going to have him come and get us.

8 Q What happened later that night, in the early morning

9 hours of December 8, 2009?

10 A Child [REDACTED] got up to go to the bathroom.

11 Q And did you have a conversation with Child [REDACTED] at that

12 time?

13 A Brief.

14 Q And ---

15 A She wanted me to get up with her. I told her to get

16 her mom. She said she had asked her mom to go with her,

17 and her mom wouldn't get up.

18 Q And why did you tell her to get her mom?

19 A I was tired.

20 Q And did Child [REDACTED] go to the bathroom after that?

21 A She did.

22 Q And did Jessica come out?

23 A Not then. She came out while Child [REDACTED] was coming out

24 of the bathroom.

25 Q Do you remember what happened between you and Jessica

- 1 at that time?
- 2 A We argued for another minute or 2.
- 3 Q Do you remember her making any threats at that time?
- 4 A Not exactly, no, sir.
- 5 Q Did she go back to bed?
- 6 A No, sir.
- 7 Q What did she do?
- 8 A She walked Child back to the bathroom. They stayed
- 9 in there for a few minutes. She came back out, went to the
- 10 bedroom. And I believe that's when she picked up the phone
- 11 and called 911.
- 12 Q And you were aware of what she was doing?
- 13 A Not at the time, no, sir.
- 14 Q When did you become aware of what she was doing?
- 15 A When I heard her on the phone talking to the 911
- 16 operator.
- 17 Q And you heard what she was saying?
- 18 A I did.
- 19 Q And what was your response?
- 20 A Shock.
- 21 Q Where did she make this phone call from?
- 22 A From the bedroom.
- 23 Q Why were you not sleeping in the bedroom with her at
- 24 the time?
- 25 A We had been arguing.

- 1 Q And so where were you sleeping?
- 2 A I fell asleep in the chair with the ottoman in front
- 3 of it.
- 4 Q And was anybody in the living room with you while you
- 5 were sleeping in the chair?
- 6 A Yes, sir.
- 7 Q And who was out there?
- 8 A My son Sibling 3 and my daughter Sibling 4
- 9 Q And how old are Sibling 3 and Sibling 4
- 10 A Now?
- 11 Q At the time.
- 12 A At the time Sibling 3 was 5 and Sibling was 4.
- 13 Q Did Sibling 3 or Sibling wake up and go to the master
- 14 bedroom?
- 15 A They did.
- 16 Q When did ---
- 17 A When Jessica -- go ahead.
- 18 Q When did they do that?
- 19 A When Jessica called them into the bedroom.
- 20 Q Did they wake up when Child went to the bathroom?
- 21 A No, sir.
- 22 Q Were they asleep when Child went back into the
- 23 master bedroom with Jessica?
- 24 A Yes, sir.
- 25 Q Were you upset with Jessica while she was on the phone

- 1 with law enforcement?
- 2 A Absolutely.
- 3 Q Did you get loud?
- 4 A I did.
- 5 Q Did you yell?
- 6 A Yes, sir.
- 7 Q Did you attempt at any time to leave your residence?
- 8 A No, sir.
- 9 Q Did you wait at the kitchen table?
- 10 A I was back and forth.
- 11 Q Were you aware that law enforcement was on the way?
- 12 A I was.
- 13 Q What did you do during that time?
- 14 A Just stood around in the kitchen, back and forth from
- 15 the kitchen to the living room, anticipating their arrival.
- 16 Q Again for the jury, which children are yours that were
- 17 living in the house?
- 18 A Sibling 3 Sibling 4 Sibling 5 Sibling 6
- 19 Q And which other children were not yours living in the
- 20 house?
- 21 A Sibling and Child
- 22 Q And how old were Sibling and Child when you first began
- 23 to care for them?
- 24 A I believe Child was 3. I believe Sibling was 5.
- 25 Q So you had lived with them roughly how many years?

- 1 A 4.
- 2 Q What did you do to take care of Ms. Scott's children
- 3 with Mr. Scott and the children that you had with her?
- 4 A Could you repeat the question?
- 5 Q How did you take care of them?
- 6 A I worked and provided for them.
- 7 Q Did you always have steady work?
- 8 A It was up and down, construction work. If I was laid
- 9 off, I would draw unemployment benefits briefly, until I
- 10 could find work.
- 11 Q And would you be home with the children at that time?
- 12 A Yes, I would.
- 13 Q What did you do during the day to care for the
- 14 children?
- 15 A Mainly took them outside, played with them. Watch
- 16 movies with them.
- 17 Q Did you do things that a parent would do like cook,
- 18 clean, bathe, clothe?
- 19 A I did.
- 20 Q Did you do all of those things?
- 21 A Yes, sir.
- 22 Q Did Ms. Scott help with the kids?
- 23 A She did.
- 24 Q Did you all begin having problems with Ms. Scott about
- 25 her drug use?

- 1 A Sir?
- 2 Q Did you only have problems with Ms. Scott about her
- 3 drug use?
- 4 A I did.
- 5 Q At some point in your relationship you and Ms. Scott
- 6 engaged in drug use together, didn't you?
- 7 A We did.
- 8 Q What kind of drugs did you use with Ms. Scott?
- 9 A Cocaine.
- 10 Q Did you ever use crack cocaine?
- 11 A No, sir.
- 12 Q Why did you have a problem with Ms. Scott using crack
- 13 cocaine?
- 14 A Money.
- 15 Q Can you explain?
- 16 A She couldn't get enough.
- 17 Q She couldn't get enough money?
- 18 A Crack cocaine.
- 19 Q And so what would that do to your finances?
- 20 A Deplete them.
- 21 Q What kind of things would she do to get money for
- 22 crack cocaine?
- 23 A Anything she could.
- 24 Q Now, on December 7 didn't you go to your neighbor's
- 25 house?

1 A I did.

2 Q Did you know this neighbor?

3 A Not very well.

4 Q Why did you go there that night?

5 A She was talking with his wife, and he had wanted me to
6 come over and hang out with him on his deck and have a
7 couple of beers.

8 Q And you went over there and drank with him?

9 A I did.

10 Q Do you remember how much you drank that night?

11 A Probably 3 beers.

12 Q Were you intoxicated when you walked back to your
13 trailer?

14 A Not extremely.

15 Q Did this neighbor tell you anything that bothered you?

16 A He did.

17 Q What did he tell you?

18 A That Jessica had bought ---

19 THE COURT: Just a moment. You're asking this witness
20 to testify to what a neighbor said?

21 MR. KIRINCICH: Yes, Your Honor.

22 THE COURT: All right.

23 MS. BARRY: Objection, hearsay.

24 THE COURT: Any response to the request for hearsay
25 testimony?

- 1 MR. KIRINCICH: Your Honor, it's probably hearsay.
- 2 THE COURT: All right. The objection is sustained.
- 3 Q After you came back from this neighbor's house, what
- 4 time was it?
- 5 A It was before the 11:00 o'clock news.
- 6 Q Do you normally watch the 11:00 o'clock news?
- 7 A I do.
- 8 Q Do you remember watching it this night?
- 9 A No.
- 10 Q You don't remember watching it this night?
- 11 A Sir?
- 12 Q I'm sorry. You said you don't remember watching it
- 13 this night?
- 14 A No, I didn't watch it that night.
- 15 Q Okay. Would Jessica pawn stuff that belonged to the
- 16 kids?
- 17 A Yes, sir.
- 18 Q Would she steal from within the family?
- 19 A Within our family?
- 20 Q Yes, from you or from the kids?
- 21 A She wouldn't steal from the kids, not exactly. She
- 22 would pawn stuff and, I believe with the intentions of
- 23 going back to get it.
- 24 Q At any point did you catch her deceiving you about
- 25 paying bills?

- 1 A Yes, sir.
- 2 Q And what bills were those?
- 3 A Truck payment, rent.
- 4 Q And did that add to the argument you had that night?
- 5 A The truck had already been repossessed.
- 6 Q You had just moved into [REDACTED] Road?
- 7 A Yes.
- 8 Q Were you concerned about making rent payment?
- 9 A The rent had already been paid for that month.
- 10 Q Did you have ongoing concerns about where you were
- 11 going to live?
- 12 A I did.
- 13 Q Mr. Branham, do you believe that Child [REDACTED] has been
- 14 abused?
- 15 A I do.
- 16 Q Did she disclose abuse to you and to Jessica?
- 17 A She has.
- 18 Q Did you take her to the hospital?
- 19 A I didn't.
- 20 Q What were you doing when she went to the hospital?
- 21 A Working.
- 22 Q Did you ever watch the kids while the other kids --
- 23 while they went to the hospital?
- 24 A I did.
- 25 Q Do you know how many times Child [REDACTED] was taken to the

1 hospital for problems with her genitalia?

2 A I don't. There were times when I was at work. There
3 were times when I was home with the kids.

4 Q Do you remember the time where she wrecked her
5 bicycle?

6 A Not exactly. I was made known about it.

7 Q Were you with Ms. Scott at the time that happened --
8 in a relationship with Ms. Scott?

9 A Yes, sir.

10 Q But you were not present or home when it happened?

11 A I was home but I wasn't present to the incident.

12 Q Okay. In the late night hours of December 7, 2009 and
13 early morning hours of December 8, 2009, did you touch
14 Child [REDACTED] in an inappropriate way?

15 A No, sir.

16 Q Did you pull her pants down in the hallway of the
17 trailer on [REDACTED] Road?

18 A No, sir.

19 Q Did you pull out your penis in front of Child [REDACTED]

20 A No, sir.

21 Q Had you ever touched Child [REDACTED] in an inappropriate way?

22 A No, sir.

23 Q Did you say that you wanted to talk to Child [REDACTED] while
24 Jessica was on the phone with 911?

25 A I did not.

1 Q Did you want to talk to Jessica while she was on the
2 phone?

3 A I wanted Jessica to talk to her daughter.

4 Q Why did you want her to talk to her daughter?

5 A Because she was making accusations against me that I
6 thought Child would clear up.

7 Q You thought Child would what?

8 A Clear up.

9 Q Clear up?

10 A Right.

11 Q Do you love Child

12 A Absolutely.

13 Q Do you love all the children that lived in your home?

14 A Yes, sir, I did.

15 Q You would ---

16 A Sir ---

17 Q --- discipline them on occasion, wouldn't you?

18 A Sir?

19 Q You would discipline them on occasion, wouldn't you?

20 A I would.

21 Q All the children?

22 A Yes, sir.

23 Q You also cared for the children?

24 A Yes, sir.

25 Q And you worked and you supported the children?

1 A Yes, sir.

2 Q When Child [REDACTED] disclosed abuse, was that after she had
3 been talked to about abuse?

4 A I don't understand.

5 Q Had Child [REDACTED] been educated about disclosing abuse?

6 A She had.

7 Q Did you educate her?

8 A Me and her mom both did.

9 Q Was she educated at school?

10 A I believe so.

11 Q And how many times has she come forward with
12 allegations of abuse before?

13 A Twice.

14 Q And did you make sure those were reported to the
15 proper authorities, whether it be the school or medical
16 personnel?

17 A Her mother did.

18 Q Did you ever take Child [REDACTED] or was Child [REDACTED] ever in your
19 custody and care whenever she had a problem, whether it be
20 a suspected urinary tract infection or some discomfort in
21 her vaginal region?

22 A I don't believe so.

23 Q Did she ever come back from being away from your
24 custody and care expressing discomfort in her vaginal
25 region?

- 1 A She did.
- 2 Q And what would you do in that instance?
- 3 A Talk with her mother about it, told her what I
- 4 thought.
- 5 Q And did Jessica take her to the doctor?
- 6 A Sometimes.
- 7 Q Did you ever try to prevent Jessica from taking her to
- 8 the doctor?
- 9 A Never.
- 10 Q Did you ever ---
- 11 A I encouraged it.
- 12 Q I'm sorry.
- 13 A I encouraged it.
- 14 Q Did you ever do anything to keep Child close to you,
- 15 to not let her go out with other people?
- 16 A No, sir.
- 17 Q Did you ever try to keep any of the children away from
- 18 any of the other family members?
- 19 A Certain family members.
- 20 Q Did you ever try to prevent the kids from disclosing
- 21 anything?
- 22 A No, sir.
- 23 Q Did you send your kids to public school?
- 24 A Yes, sir.
- 25 Q Were you around Child 24 hours a day when she was in

- 1 school?
- 2 A No, sir.
- 3 Q Did you ever threaten Child [REDACTED]
- 4 A With discipline?
- 5 Q Sure.
- 6 A I have.
- 7 Q Did you ever threaten her to keep her from disclosing
- 8 abuse?
- 9 A No, sir.
- 10 Q Do you specifically remember telling law enforcement
- 11 when they arrived that Child [REDACTED] was having trouble wiping?
- 12 A I believe I might have said something about that. She
- 13 was usually told to make sure she wiped good after coming
- 14 from the bathroom before leaving.
- 15 Q And why were you concerned about that?
- 16 A One of her teachers had sent home a note one day from
- 17 school informing us that she wasn't wiping herself
- 18 properly.
- 19 Q Is that why she attempted to get you up and you told
- 20 her to get her mother that night when she said she had to
- 21 use the bathroom?
- 22 A No, sir, I don't believe so.
- 23 Q Did you know what she had to do in the bathroom?
- 24 A I didn't know at the time.
- 25 Q Did Jessica get up with her?

1 A No.

2 Q Were your kids taught to flush the toilet?

3 A Yes, sir, they were.

4 Q If Child was to use the bathroom, she was to
5 defecate, would she flush it?

6 A Yes, sir.

7 Q Would she be reminded upon exiting the bathroom to
8 check herself to make sure she wiped completely?

9 A Yes, sir.

10 Q You didn't make 3 different statements to law
11 enforcement that night, did you?

12 A No, sir.

13 Q Wasn't it Jessica that made 3 different statements to
14 law enforcement?

15 A Yes, sir.

16 Q What did you do when law enforcement arrived?

17 A I stepped outside onto the deck.

18 Q And did you resist when they came up?

19 A No, sir.

20 Q Did you begin by blurting things out?

21 A No, sir.

22 Q Did you understand what the situation was when law
23 enforcement arrived?

24 A I was approached and told to put my hands behind my
25 back, that I was going to be detained for my safety and

1 their safety as well until they could sort out what was
2 going on.

3 Q And at what point did you ask if you could say
4 something?

5 A While I was being detained outside.

6 Q It wasn't right away, was it?

7 A No, sir.

8 Q You didn't try to make up excuses?

9 A No, sir.

10 Q Were you told that you were being taken to jail when
11 you asked to say something?

12 A No, sir.

13 Q This is before you were told?

14 A Right.

15 Q And you made that statement and that was it?

16 A Yes, sir.

17 Q Were you ever aware that Child viewed you and
18 Jessica having sex?

19 A No, sir.

20 Q Did you ever invite any of the children into the
21 bedroom while you were having sex?

22 A Never.

23 Q Did you ever purposefully expose yourself to the
24 children while you were and Jessica were having sex?

25 A No, sir, never.

1 Q Were there sex tapes in your house in December of
2 2009?

3 A Yes, sir.

4 Q Do you know if the children ever saw those tapes?

5 A In our home?

6 Q Do you know if they ever saw the tapes?

7 A I believe they saw one.

8 Q Did Jessica know about that?

9 A She did.

10 Q And do you know how long they viewed the tape?

11 A No, sir, I don't.

12 Q You're embarrassed about what's on those tapes, aren't
13 you?

14 A Who wouldn't be?

15 Q I'm sorry to ask this. But can you describe some of
16 the things that were on the tape -- some of the sexual
17 positions, acts that were done?

18 A We would watch pornographic movies and then we began
19 trying to make our own movies. And so there were various
20 positions.

21 Q As far as you know, the kids only saw a tape one time?

22 A Yes, sir.

23 Q Did you ever expose the kids to those video tapes?

24 A Never.

25 Q Mr. Branham, was this a big place that you all were

1 living in?

2 A Sir?

3 Q The trailer that you were living in, was it a big
4 place?

5 A 14 by 70.

6 Q 14 by 70, single-wide trailer?

7 A Yes, sir. It wasn't exactly small.

8 Q If somebody was in the living room, could they hear
9 what was going on in the hallway?

10 A I don't see how.

11 Q You don't see how anybody could hear what was going on
12 in the hallway?

13 A It depends on what end of the hallway you're at.

14 Q Okay.

15 A If you're in the living room, yes.

16 Q If they were in the living room?

17 A If -- if the -- if they were in the hallway near the
18 living room, yes, I believe they could hear.

19 Q And where were **Sibling 3** and **Sibling** sleeping on the
20 night of December 7?

21 A In the living room.

22 Q Why were they sleeping in the living room?

23 A They had fell asleep watching a movie.

24 Q Do you remember what movie they were watching?

25 A Yes, sir.

- 1 Q What movie was that?
- 2 A Little Rascals.
- 3 Q And wasn't the entertainment center close to the
- 4 hallway?
- 5 A Yes, sir.
- 6 Q Do you know how far back from the entertainment center
- 7 the kids were?
- 8 A Maybe 3 feet.
- 9 Q They were pretty close to the T.V.?
- 10 A Yes, sir.
- 11 Q Were they lying on the floor?
- 12 A They were, on mats.
- 13 Q But they didn't wake up whenever Child went to the
- 14 bathroom or when Jessica came out?
- 15 A No, sir.
- 16 Q Jessica wasn't yelling when she came out?
- 17 A No, sir.
- 18 Q She wasn't overly animated?
- 19 A No, sir.
- 20 Q Has Jessica talked with you about this -- this
- 21 incident since it's alleged to have happened?
- 22 A She has.
- 23 Q Did she talk to you while you all were being taken to
- 24 a family court proceeding in Richland County?
- 25 A She did.

1 Q Did she apologize to you?

2 A She had apologized to me on a telephone at the
3 detention center where the phone call was to be recorded.

4 Q Did Child have some developmental delays?

5 A She -- she may have had some problems with her speech.

6 Q Did she have to repeat kindergarten?

7 A I believe she did.

8 Q Do you know why she would make this allegation up?

9 A Not exactly.

10 Q With her developmental delays, is she susceptible to
11 influence?

12 A I believe she would be.

13 Q And you said that Jessica was mad at you that night?

14 A Yes, sir.

15 Q Again, why was she mad at you?

16 A Because I was threatening to leave.

17 Q Did she have one conversation or more than one
18 conversation with you about that -- that topic, that night?

19 A 2.

20 Q And what did she -- what did you talk about in the
21 second conversation?

22 A She asked me if I was still planning on leaving that
23 morning?

24 Q What did you say?

25 A I said, yes.

1 Q And now we're here?

2 A Yes, sir.

3 MR. KIRINCICH: Thank you, Mr. Branham. Please answer
4 any questions that the state has.

5 THE COURT: Ladies and gentlemen, we'll take a few
6 minutes break. If you would go to the jury room for just a
7 few minutes.

8 (The jury retires to the jury room at 3:23 p.m.)

9 THE COURT: All right. We'll take a few minutes.

10 (A recess was taken.)

11 THE COURT: Everyone is here. We can bring the jury
12 in.

13 (The jury returns to the courtroom at 3:35 p.m.)

14 THE COURT: All right. The jury is back. Cross
15 examination.

16 MS. BARRY: Thank you, Your Honor.

17 CROSS EXAMINATION BY MS. BARRY:

18 Q How long have you been married?

19 A About 8 years.

20 Q 8 years. When did Jessica move in with you?

21 A In 2006.

22 Q How long did you all live together?

23 A Until 2009.

24 Q You have 4 kids, right?

25 A Right.

- 1 Q With Jessica?
- 2 A Yes, ma'am.
- 3 Q Sibling 3 how old is he?
- 4 A He is 6.
- 5 Q Sibling 4 how old is she?
- 6 A 5.
- 7 Q Sibling 5
- 8 A 4.
- 9 Q And Sibling 6
- 10 A 2.
- 11 Q And she had 2 kids of her own that moved in with her,
- 12 right?
- 13 A Yes, ma'am.
- 14 Q Who were they?
- 15 A Sibling and Child
- 16 Q When they moved in, how old were they?
- 17 A Child was 3. I believe Sibling was 5.
- 18 Q In that 4 years you guys moved around a lot, isn't
- 19 that true?
- 20 A We did.
- 21 Q You lived in Kershaw County?
- 22 A Yes, ma'am.
- 23 Q You lived in Orangeburg County?
- 24 A Yes, ma'am.
- 25 Q Lexington County?

- 1 A Yes, ma'am.
- 2 Q And back to Kershaw?
- 3 A That's right.
- 4 Q You didn't work, did you?
- 5 A Ma'am?
- 6 Q You didn't work, did you?
- 7 A Yes, ma'am, I did work.
- 8 Q But you were the primary care giver for these kids;
- 9 isn't that true?
- 10 A That's right, and I moved around to keep a job. When
- 11 I was laid ---
- 12 Q It was hard ---
- 13 A --- off on job, I moved.
- 14 Q It was hard to keep a job, wasn't it in your line of
- 15 work?
- 16 A In my line of work, it was construction. When the job
- 17 is finished, we move on to another job. It wasn't hard to
- 18 keep a job, no, ma'am. I'm a welder. It was in high
- 19 demand at that time.
- 20 Q As a welder in construction work?
- 21 A Yes, ma'am.
- 22 Q But you were the primary care giver for the kids?
- 23 A That's right.
- 24 Q 6 kids. That's a tough job, isn't it?
- 25 A It is.

- 1 Q Stressful, isn't it?
- 2 A Stressful, providing for the kids?
- 3 Q Yes.
- 4 A No, ma'am.
- 5 Q Keeping the children while Jessica worked, that's
- 6 stressful, isn't it?
- 7 A Keeping the children while Jessica worked? While
- 8 Jessica worked, the kids were in day care. She quit her
- 9 job in 2006 after she moved in with me.
- 10 Q But you said that on direct that you played with them,
- 11 watched movies while they were in your care when you kept
- 12 them?
- 13 A That's right. But she wasn't working at the time.
- 14 Q You loved these kids, didn't you?
- 15 A Absolutely.
- 16 Q Even Jessica's children?
- 17 A Yes, ma'am.
- 18 Q Right. You loved Sibling
- 19 A Yes, ma'am.
- 20 Q And you loved Child didn't you?
- 21 A Still do.
- 22 Q Because you basically raised her, didn't you?
- 23 A Had some help in it.
- 24 Q Did she primarily live with you?
- 25 A Yes, ma'am.

- 1 Q Since she was 3?
- 2 A Yes, ma'am.
- 3 Q You provided for her, correct?
- 4 A Yes, ma'am.
- 5 Q You felt comfortable being with her, didn't you?
- 6 A Yes, ma'am.
- 7 Q And she was comfortable with you, wasn't she?
- 8 A Yes, ma'am.
- 9 Q In fact, she sat on your lap, watched T.V. with you,
- 10 didn't she?
- 11 A She did.
- 12 Q You kept the kids when Jessica wasn't around, right?
- 13 A I did.
- 14 Q And that was a lot, wasn't it, because Jessica wasn't
- 15 there all the time?
- 16 A A lot? I wouldn't say it was a lot, no, ma'am. She
- 17 would leave briefly to go to a store or run an errand.
- 18 It's not like she took off and stayed gone.
- 19 Q But you kept the kids for her, didn't you?
- 20 A That's right.
- 21 Q You loved Jessica, didn't you?
- 22 A I did.
- 23 Q So much that you had 4 kids with her, right?
- 24 A Yes, ma'am.
- 25 Q December 7, 2009 you lived on [REDACTED] Road?

- 1 A Yes, ma'am.
- 2 Q Is that here in Kershaw County?
- 3 A It is.
- 4 Q You were at the neighbor's house drinking?
- 5 A Yes, ma'am.
- 6 Q And you came home and had an argument with Jessica?
- 7 A That's right.
- 8 Q About cigarettes, isn't it true?
- 9 A Cigarettes?
- 10 Q Cigarettes.
- 11 A Why would we argue about cigarettes?
- 12 Q You had an argument that was so heated she called the
- 13 cops you testified to; is that right?
- 14 A When I came in, it was shortly before 11:00. We had
- 15 an argument. No, ma'am, she did not call the cops at that
- 16 time.
- 17 Q She called the cops after she found you in the hallway
- 18 on top of Child [REDACTED] right?
- 19 A That's alleged.
- 20 Q Child [REDACTED] got up to use the rest room. And you were
- 21 helping her wipe while she was on the floor in the hallway,
- 22 right?
- 23 A No, ma'am, that's wrong.
- 24 Q You told Jessica that you were helping her go to the
- 25 bathroom; isn't that correct?

1 A No, ma'am, I did not tell Jessica that.

2 Q Then you told Child and Jessica that you were
3 picking up trash in the hallway; isn't that right?

4 A No, ma'am.

5 Q Yet you told the police and Jessica that you went to
6 the bathroom and was helping her wipe?

7 A No, ma'am, I don't recall telling them that.

8 Q You don't recall telling them that?

9 A No, ma'am. That I went to the bathroom with Child
10 and I was helping her wipe?

11 Q Yes.

12 A No, ma'am.

13 Q You were tired of it, and that's why you threatened to
14 leave?

15 A That's what ---

16 Q That's what you told us on direct?

17 A I was tired of what?

18 Q You said you were tired of it and you were
19 threatening. You were tired of her drug use and you
20 threatened to leave the house, right?

21 A That's right.

22 Q Yet when she called 911 -- you heard it, you were in
23 here when we played that tape. You said, you didn't want
24 her to break the family up?

25 A That's right.

1 Q You were trying to break the family up, isn't that
2 true?

3 A No, ma'am, I was not.

4 Q You were trying to leave?

5 A She was breaking the family up with her drug abuse.

6 Q The truth is you were too drunk to leave; isn't that
7 true?

8 A Too drunk to leave? We didn't have a vehicle.

9 Q Well, when the cops came, you were highly intoxicated,
10 right?

11 A I believe that's hearsay, ma'am. No, ma'am, I was not
12 highly intoxicated, not on 3 beers.

13 Q You heard the officer say that. He observed you?

14 A Observed. Was I given a sobriety test? No, ma'am.

15 Breathalyzer test? No, ma'am. That's hearsay.

16 Q When you were arrested and you told the cops you were
17 helping her wipe because she didn't wipe good. You were in
18 the hallway, correct?

19 A Did I write a statement saying that I was helping her
20 wipe?

21 Q Is it true or not?

22 A It's not true.

23 Q And the officer that testified earlier was in the
24 living room, correct?

25 A I don't know where they were at. I was being detained

1 outside.

2 Q How big is that trailer?

3 A 14 by 70.

4 Q Is it a double-wide?

5 A No, ma'am. It's a single-wide.

6 Q So a single-wide trailer -- how far away was that

7 officer when he heard you say that?

8 A The officer was inside.

9 Q Where were you?

10 A Outside.

11 Q When Jessica saw you in the hallway and started

12 yelling at you, how far away she? Stop me when I get close

13 enough?

14 A Jessica did not yell at me.

15 Q When she saw you on top of Child [REDACTED]

16 A She did not see me on top of Child [REDACTED]

17 Q But you were just helping Child [REDACTED] go to the rest room;

18 is that true?

19 A I did not help her go to the rest room. No, ma'am.

20 Q You were just picking up trash in the hallway?

21 A No, ma'am. I got up with her while she went to the

22 bathroom. I did not help her go to the bathroom.

23 Q So you got up with her and you were standing in the

24 hallway while she was using the rest room?

25 A Yes, ma'am.

1 Q But the teacher who sent home the note, she didn't
2 wipe good, and you all needed to help her wipe?

3 A No, ma'am. She did not tell us that we needed to help
4 her wipe. She instructed us that Child was not wiping
5 good. We would instruct Child to make sure she would
6 wipe.

7 Q Were you instructing her to wipe?

8 A That night?

9 Q When you were in the hallway and she was in the
10 bathroom using the rest room?

11 A She was about to come out, I asked her if she wiped
12 good.

13 Q Did you make sure she did?

14 A No, ma'am, I did not.

15 Q What grade was she in?

16 A First.

17 Q She was in the first grade. Yet, every first grader
18 -- you taught her about what sexual abuse was. You wanted
19 to make sure she knew about that, didn't you?

20 A I didn't teach her, no, ma'am.

21 Q You educated her about abuse because you wanted her to
22 know what sexual abuse was; isn't that what you said?

23 A No, ma'am, I didn't educate her. We instructed her
24 after the incidents that had happened to her at school that
25 she should tell someone.

1 Q But you taught her about it, you specifically?

2 A No, ma'am.

3 Q Because you did this? You showed her about sexual
4 abuse, didn't you?

5 A No, ma'am.

6 Q You told her not to tell anyone, didn't you?

7 A No, ma'am.

8 Q Tell us when you called the police?

9 A When I called the police?

10 Q When you called the police, you thought that she had
11 been abused. When did you do that?

12 A I didn't call the police.

13 Q But you testified you thought she had been molested.
14 But you didn't call the police, did you?

15 A I couldn't prove it. When I made allegations like
16 that, she was taken to the hospital.

17 Q By her father?

18 A And her mother.

19 Q Do you remember making a statement in 2011 that --

20 I'll withdraw that. You sent Jessica a letter, didn't you,
21 while you were in the jail?

22 A I did.

23 Q Saying that you wanted the family back together, that
24 there are jobs in Charleston, and you wanted her to get you
25 out of jail so you could all be a family again, didn't you?

1 A I told her that she needed to tell the truth, and that
2 maybe we could work things out.

3 Q So you all could be together again, didn't you?

4 A Yes, ma'am.

5 MS. BARRY: Beg The Court's indulgence.

6 (Pause.)

7 Q Since she was 3 years old, you've been molesting her,
8 haven't you?

9 A No, ma'am.

10 MS. BARRY: That's all I have.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION BY MR. KIRINCICH:

13 Q Do you remember the statement that you made to law
14 enforcement after you asked to speak? Do you remember the
15 exact contents of that statement?

16 A Not exactly. I know specifically remember I did not
17 ask them to go and check the toilet for feces. My kids
18 were taught to flush the toilet.

19 Q Do you remember telling them that Child had trouble
20 wiping herself?

21 A I believe so.

22 Q Do you remember telling them that you checked to make
23 sure she wiped herself?

24 A No, sir.

25 Q Is that something you would normally do?

- 1 A No, sir.
- 2 Q Why is that?
- 3 A I wouldn't have felt comfortable doing it.
- 4 Q And how old was she at the time?
- 5 A 7.
- 6 Q Did you think she was capable of wiping herself?
- 7 A Yes, sir, absolutely.
- 8 Q Did she need reminding sometimes?
- 9 A Sometimes.
- 10 Q When she was reminded, did she handle it herself?
- 11 A Yes, sir, absolutely.
- 12 Q She woke up in the middle of the night and had to use
- 13 the bathroom, would that be a time to remind her?
- 14 A Yes, sir, especially when she's half asleep.
- 15 Q How many beers did you drink that night?
- 16 A I believe it was 3.
- 17 Q And were you intoxicated at 3:00 o'clock in the
- 18 morning?
- 19 A No, sir.
- 20 Q Had you been sleeping before that?
- 21 A Yes, sir.
- 22 Q Were you fully and completely rested?
- 23 A I wouldn't say that.
- 24 Q Were you agitated?
- 25 A Yes, sir.

1 Q Again, why were you agitated?

2 A Argument.

3 Q You said it, but did you do anything to Child of a
4 sexual nature on December 7th or December 8th of 2009?

5 A No, sir, never.

6 MR. KIRINCICH: No further questions, Your Honor.

7 THE COURT: The state?

8 MS. BARRY: Just a couple.

9 RECROSS EXAMINATION BY MS. BARRY:

10 Q But you didn't tell anyone she went to the bathroom?

11 A I didn't tell anyone that she went to the bathroom?

12 Q You were trying to help her go to the bathroom -- I'm
13 sorry. You didn't tell Jessica that she got up and you
14 were helping her try to get in the bathroom? You deny
15 saying that?

16 A Jessica knew that she was going to the bathroom.
17 Jessica refused to get up with her, so I did.

18 Q And you deny telling Jessica and Child in the
19 hallway that you were picking up trash? You deny that,
20 correct?

21 A I don't recall picking up trash, no, ma'am.

22 Q You deny telling them that?

23 A I'm not going to deny it. I don't remember it.

24 Q You don't remember it because you were drinking?

25 A I had been drinking. I don't deny that either.

1 Q And you deny telling Jessica and the police that you
2 were helping her wipe?

3 A Yeah, I deny that.

4 Q You deny that?

5 A Absolutely.

6 Q So all these people, Jessica, Child Investigator
7 Lyons, they're all lying?

8 A Apparently.

9 Q Apparently?

10 A Yes, ma'am.

11 MS. BARRY: That's all I have, Your Honor.

12 THE COURT: You may step down, sir.

13 (The witness leaves the witness stand.)

14 THE COURT: The next witness.

15 MR. KIRINCICH: Your Honor, the defense has 2 more
16 proposed witnesses. We would respectfully request that we
17 be able to call those witnesses tomorrow morning. They are
18 Mr. Branham's parents. They have been sequestered this
19 whole time. Mr. Branham's step-mother indicated that she
20 could not be here this afternoon because of a doctor's
21 appointment.

22 THE COURT: All right. Ladies and gentlemen, we will
23 quit for the day and start back at 9:30 tomorrow morning.
24 Please remember, do not discuss the case with anyone.
25 We'll see you all tomorrow at 9:30.

1 (The jury exits the courtroom at 3:57 p.m.)

2 THE COURT: Anything else today?

3 MR. KIRINCICH: No, Your Honor. I apologize again for
4 not having the witnesses here this afternoon.

5 THE COURT: Any request to charge?

6 MR. MOAK: I think I passed mine up Monday, I think.

7 MR. KIRINCICH: And, Your Honor, we would just request
8 a charge on C.S.C. with a minor first degree, just an up or
9 down answer from the jury is all we're requesting, Your
10 Honor.

11 THE COURT: All right. See you back at 9:30 in the
12 morning.

13 (Court is in recess.)

14 (Thursday, August 25, 2011.)

15 THE COURT: All right. Is there anything before the
16 jury comes in?

17 MR. MOAK: Your Honor, the only thing is Mr. Kirincich
18 indicated there was an issue about one of the jurors was
19 excluded may have gotten a letter from the defendant. So
20 we would ask that when the jury comes out if you could just
21 inquire like you've done before about anything the juror
22 may have heard or been contacted about this case.

23 THE COURT: Is this similar to if a brother told a
24 lie, then the witness is lying? So if he wrote a juror who
25 is not on the case, that means he wrote a juror that's also

1 on the case?

2 MR. MOAK: We'll just say in an abundance of caution.

3 You're the judge.

4 THE COURT: All right. Who all did he write letters
5 to, Mr. Kirincich?

6 MR. KIRINCICH: Your Honor, I think it was juror no.
7 64, which is Ms. Fosky. She's actually in the courtroom
8 today. She indicated that she was possibly related to Mr.
9 Branham, but she did know him from school. For that reason
10 she was excluded from the jury. Mr. Branham was aware that
11 she was excluded from the jury and she was not going to
12 even be considered for his jury selection, Your Honor.

13 I was unaware until I was told that he had written her
14 a letter.

15 THE COURT: All right. Ma'am, why did he write you a
16 letter?

17 JUROR: I'm sorry?

18 THE COURT: Why did he write you and what did he tell
19 you?

20 JUROR: Sir, I think he was reaching out and just
21 wanted to talk. It was nothing in the letter that would be
22 -- would put me in any sorts, you know, to testify for him.
23 Like I said, I knew Bubba from school. It turns out that
24 we are distantly kin. And I don't feel like he has wrote
25 anybody else. I mean, I don't know that to be a fact. But

1 I don't feel he's wrote anybody else a letter, and I came
2 here for support to Bubba; that's all. You know, there was
3 no problem with it on my end. I just felt like that his
4 attorney needed to know that I did get a letter. I'm only
5 trying to be honest and come forward with information.

6 THE COURT: All right. Thank you. Mr. Branham, if
7 you will stand for a moment.

8 (Complied.)

9 THE COURT: Did you write anyone else?

10 MR. BRANHAM: No, sir, absolutely not.

11 THE COURT: Have you attempted to contact anyone on
12 the jury?

13 MR. BRANHAM: No, sir.

14 THE COURT: All right. Anything else before the jury
15 comes in?

16 MR. KIRINCICH: Your Honor, I don't have anything at
17 this time.

18 THE COURT: All right.

19 (The jury returns to the courtroom at 9:47 a.m.)

20 THE COURT: All right. Good morning..

21 JURORS: Good morning.

22 THE COURT: Day no. 4. Your next witness please.

23 MR. KIRINCICH: Your Honor, at this time the defense
24 would call George Stanley Branham, Sr.

25 GEORGE STANLEY BRANHAM, SR.,

1 being first duly sworn, testified as follows:

2 CLERK: Please be seated in the witness chair, and
3 state your full name.

4 DIRECT EXAMINATION BY MR. KIRINCICH:

5 Q Mr. Branham, if you would, state your name for the
6 record.

7 A George Stanley Branham, Sr.

8 Q And, Mr. Branham, will you tell the jury how you're
9 related to the defendant?

10 A How am I related to him?

11 Q Yes, sir.

12 A I'm his father.

13 Q And how old are you, Mr. Branham?

14 A 73.

15 Q And will you tell the jury a little about your
16 personal history, where you grew up, what kind of work
17 you've done?

18 A Well, I grew up in Camden. We lived in Charleston
19 until -- when I was first [REDACTED] And we moved to Camden
20 when I was about 7. And I guess since then I've -- we
21 lived here since until 2006. And I married my -- after my
22 wife passed away in 2004, I met this young lady when I had
23 worked. And we got married in 2009. And since then we've
24 been living in -- well, since 2006 we've been living in
25 Gaston, South Carolina.

George Branham, Sr. -- Direct by Mr. Kirincich

407

1 Q And what kind of work did you do? What was your
2 career?

3 A I was pipe fitter for Fluor Daniel for 27 years.
4 Superintendent, project manager. And when I retired, I was
5 project control engineer.

6 Q And are you working now?

7 A I'm working now for a gentleman where we go to church
8 -- go to church together. And he's 83 years old and he's
9 got a real bad leg on his right leg. And we -- I do little
10 stuff around -- to keep him around his house. He's got a
11 pretty good sized little farm and we work on his tractor
12 and that kind of stuff.

13 Q And Mr. Branham, do you love your son?

14 A Sir?

15 Q Do you love your son?

16 A Yes, sir.

17 Q Do you care for him?

18 A Yes, sir.

19 Q Would you lie for him today?

20 A No, sir.

21 Q Why would you not lie for him?

22 A I just -- in my Christian life, I'm not going to lie
23 for nobody.

24 Q And, Mr. Branham, were you around your son -- I think
25 you refer to him as Bubba -- and Jessica Scott between

1 November 2009 and December 8th of 2009?

2 A When I -- yeah, they were living in Columbia. And
3 then when they lived over there, we moved -- back in 2009
4 we moved them back to Kershaw County.

5 Q Did you have an opportunity to observe Bubba around
6 Ms. Scott and the children during that time period?

7 A Yes, sir.

8 Q During that time period were any of the children
9 afraid? Did any of the children hide from Mr. Branham?

10 A No, sir, not that I know of.

11 Q And during that time period did Mr. Branham tell you
12 about his relationship with Jessica Scott?

13 A Some he did.

14 MR. MOAK: Your Honor, I would object to hearsay.

15 THE COURT: All right. You can answer yes or no.

16 Otherwise I sustain the objection regarding any hearsay.

17 Q Do you know what kind of problems they were having?

18 MR. MOAK: Your Honor, again, I would object to
19 hearsay unless he has some independent basis of it.

20 THE COURT: The answer is yes or no.

21 A Yeah.

22 Q Did you know about problems that Jessica Scott was
23 having with drugs?

24 A Yeah.

25 MR. MOAK: Again, Your Honor.

George Branham, Sr. - Direct by Mr. Kirincich

409

- 1 THE COURT: Objection is overruled.
- 2 MR. KIRINCICH: Thank you, Your Honor.
- 3 Q Was it concerning to you about drug problems at the
- 4 house?
- 5 A Yeah.
- 6 Q And do you have another daughter that was living in
- 7 Elgin?
- 8 A Yeah.
- 9 Q And who's that daughter?
- 10 A Her name is Mitzi. It's Christine Mitzi Branham.
- 11 Q And where does she live?
- 12 A She lives in Elgin, right -- well, live on [REDACTED]
- 13 Road now.
- 14 Q And that's the same place that you helped Bubba and
- 15 Jessica move in to?
- 16 A Next door.
- 17 Q Next door. Did you know anything about the neighbors
- 18 in that area?
- 19 A Some of them.
- 20 Q In particular was there any neighbor you were
- 21 concerned about?
- 22 A Yeah.
- 23 Q And why were you concerned about that neighbor?
- 24 A The one that I was concerned about was a drug dealer.
- 25 Q How many grand children do you have living in that

1 home?

2 A 4. When -- when -- I think it was 3 when they moved
3 over there and 4 after they moved in. They moved back to
4 Columbia -- before they moved to Columbia it was 4.

5 Q Were you concerned about your grand children?

6 A Yes, sir.

7 Q And why were you concerned about your grand children?

8 A I love them, every one of them.

9 Q What were you concerned would happen to them at that
10 house?

11 A I was scared -- if nothing else, somebody would have
12 come take them away from them and then we wouldn't know
13 where ever they went.

14 Q Why would somebody come take them away?

15 A Drugs.

16 Q If Bubba needed to leave [REDACTED] Road, did he have
17 any other family members he could go live with?

18 A He could live with -- he could live with his sister.
19 They live next door. Or he could -- he could come live
20 with us.

21 Q Were there any discussions about him coming to live
22 with you?

23 A When he was over there?

24 Q Yes, sir.

25 A He came over there and stayed with us some.

George Branham, Sr. - Cross by Mr. Moak

411

1 MR. KIRINCICH: Thank you, Mr. Branham. No further
2 questions.

3 CROSS EXAMINATION BY MR. MOAK:

4 Q How far away do you live from [REDACTED] Road?

5 A Probably about 45, 50 -- about 45 miles.

6 Q How long does it take you to drive there?

7 A Takes about -- takes about 50 or 60 minutes.

8 Q So it's a ways?

9 A Sir?

10 Q It's a ways?

11 A Yeah.

12 Q And when they were living in West Columbia, how far
13 were you away from them then?

14 A When they -- about -- probably about -- about half
15 mile, three-quarters of a mile.

16 Q So it wasn't that far?

17 A No, sir.

18 Q Okay. And that's when they were in West Columbia or
19 when they were living in Gaston?

20 A That's when they lived in Gaston.

21 Q How about when they living in West Columbia?

22 A It was about -- about 4 miles.

23 Q So it was further?

24 A Yes, sir.

25 Q Between 2006 and 2009 how often were you in their

1 home?

2 A I don't know really. Just about once or two -- once a
3 week.

4 Q You weren't there in Elgin?

5 A No, not when he was in Elgin.

6 Q Not when they were in Elgin?

7 A No, sir.

8 Q Did you ever watch the children for them?

9 A When they come -- once in a while, 1 or 2 of them come
10 stay with us just for a while. They didn't stay no length
11 of time.

12 Q So essentially when they were living in Gaston or West
13 Columbia, you'd see them like once a week?

14 A We see them about once a week, yeah.

15 Q Okay. When they're in Kershaw County, it was not that
16 often?

17 A Not that often.

18 Q How about when they were living in Elloree?

19 A We didn't -- well, when they lived in the brick house,
20 we came down there once or twice.

21 Q Once or twice?

22 A Yes, sir.

23 Q That was in Elloree?

24 A That was in Elloree -- over there in Lugoff.

25 Q In Lugoff?

George Branham, Sr. - Cross by Mr. Moak

413

- 1 A Yes, sir.
- 2 Q Is that Pritzer Drive?
- 3 A Yes, sir.
- 4 Q Did you ever go to Elloree to see them?
- 5 A Elloree?
- 6 Q Elloree.
- 7 A I went down there one time, yes, sir.
- 8 Q One time. It's down there on the way to Santee?
- 9 A Yeah.
- 10 Q So you haven't really spent a whole of time in the
- 11 past 4 years in their home?
- 12 A No.
- 13 Q Okay. Now, you said that his sister -- I think you
- 14 said her name was Mitzi?
- 15 A Yeah.
- 16 Q Lives next door?
- 17 A Yes, sir.
- 18 Q And [REDACTED] Road is kind of like a dirt road that
- 19 comes off of [REDACTED]
- 20 A Yes, sir.
- 21 Q And the end [REDACTED] is it like to the left?
- 22 A When you -- when you come around the curve, Mitzi
- 23 lives in the last trailer on the end. And they stayed in
- 24 the trailer right on the end of the road when you drive in.
- 25 Q So we're talking about, what, maybe a hundred yards

1 away?

2 A About a hundred yards.

3 Q Okay. So you're saying that if Bubba had needed to
4 leave [REDACTED] Road, all he had to do was walk next
5 door to his sister?

6 A Yeah.

7 Q Okay. And you're saying it's almost an hour drive
8 from where you live to here?

9 A Yes, sir.

10 Q Have you been sitting in that area the whole week or
11 how long have you been here this week?

12 A I couldn't understand you.

13 Q Have you been here for this trial the whole week?

14 A Not all week, no, sir. We came Monday. And then we
15 came back today.

16 Q Okay. You love -- you love your son, right?

17 A Yes, sir, I sure do.

18 THE COURT: Anything further?

19 MR. KIRINCICH: Nothing further, Your Honor.

20 THE COURT: You may step down, sir.

21 (The witness leaves the witness stand.)

22 THE COURT: Next witness.

23 MR. KIRINCICH: Your Honor, at this time the defense
24 rests.

25 THE COURT: Ladies and gentlemen, the defense has

1 rested.. Any reply by the state?

2 MR. MOAK: No, Your Honor.

3 THE COURT: Ladies and gentlemen, that means that you
4 have heard all of the testimony in this case. You have
5 received all of the evidence in this case. I'm going to
6 have you go to the jury room and we'll talk with the
7 lawyers for a little bit. I'll have you come back to hear
8 closing statements, the jury charge, then you will
9 deliberate.

10 Please go to the jury room.

11 (The jury retires to the jury room at 10:00 a.m.)

12 MR. KIRINCICH: Your Honor.

13 THE COURT: Yes, sir.

14 MR. KIRINCICH: If I may. I didn't want to object in
15 front of the jury to Mr. Moak's last question for Mr.
16 Branham. He asked if he had been here all week, Your
17 Honor. Mr. Branham was sequestered based on a defense
18 request. I think it's a pretty standard request for during
19 a trial to sequester witnesses, Your Honor. He did not
20 come back until today. He made other plans during the week
21 because on the prosecution's scheduling on Monday, they
22 said Dr. Connell was going to have to testify today. They
23 were not prepared to come back yesterday on short notice,
24 Your Honor. Mrs. Branham had a doctor's appointment.
25 At minimum, Your Honor, I would ask for a curing

1 instruction to the jury or some instruction that this is
2 not a contest of who has the most witnesses testifying or
3 in the courtroom. I think it's improper to imply that Mr.
4 Branham doesn't love his son, because he was not sitting in
5 the courtroom during the trial, Your Honor.

6 THE COURT: All right. Yes, sir.

7 MR. MOAK: Your Honor, we had several witnesses that
8 were sequestered, and they were here ever since Monday
9 morning up until they testified. They were sitting outside
10 the courtroom the whole time. They've been waiting
11 patiently until it was their time to testify.

12 I asked him if he was here. I didn't say -- I didn't
13 ask him in the courtroom. I said were you here? Were you
14 here could be outside. I didn't ask him to say where he
15 was at. He said he was not here.

16 THE COURT: All right. Well, I don't make it a
17 practice of commenting on the facts of the case. The
18 witness was asked a question, and had an opportunity to
19 answer the question and whatever way the witness saw fit in
20 answering the question. Then the defense had an
21 opportunity to redirect, to ask any additional questions if
22 the defense sought to make any other clarification in
23 response to the state's question.

24 I'm not going to comment on the facts by explaining to
25 the jury whether a witness should be here or should not

1 have been here or was interested enough to be here. I'll
2 make no comment on that.

3 Of course, you told the jury yesterday that you had 2
4 additional witnesses that were not here and that would be
5 here this morning. And you had 1 witness who testified
6 briefly. You know, we easily could have finished the
7 testimony yesterday.

8 You know, it's not worth me explaining anything on
9 that issue. I will tell the jury that they do not
10 determine credibility of the evidence or credibility of
11 witnesses by counting the number of witnesses for one side
12 versus the other.

13 MR. KIRINCICH: Thank you, Your Honor.

14 THE COURT: All right. And that won't be part of any
15 curative instruction, as part of the charge to the jury.

16 MR. KIRINCICH: And at this time, Your Honor, I would
17 renew my directed verdict motion. Again, I feel the state
18 has failed to meet their burden. I understand that I'm
19 making this motion and it's viewed in the light most
20 favorable to the state, where they have to present more
21 than a hint of evidence that the defendant is guilty,
22 otherwise it would be dangerous to pass this case onto the
23 jury, Your Honor.

24 THE COURT: The state has presented far more than a
25 hint of evidence. The state has presented an abundance of

1 evidence. Whether the evidence is believed is up to the
2 jury. So it's a jury issue.

3 All right. Regarding arguments.

4 (Pause.)

5 THE COURT: Who's arguing for the state?

6 MR. MOAK: I'm arguing, doing the law, Your Honor.

7 Ms. Barry will do the second argument.

8 THE COURT: All right. How long are you all going to
9 argue? Half an hour? An hour? 2 hours? 3?

10 MR. MOAK: I shouldn't be that long.

11 MS. BARRY: 20, 30 minutes.

12 MR. KIRINCICH: And I would imagine about the same,
13 about 30 minutes or so, Your Honor.

14 THE COURT: All right. Well, we'll take a few minutes
15 and let you all gather your thoughts, collect your
16 thoughts, organize your thoughts. And we will be back and
17 press on.

18 (A recess was taken.)

19 THE COURT: All right. Are we ready for the jury?

20 MR. MOAK: Yes, Your Honor.

21 THE COURT: All right. Bring them on.

22 (The jury returns to the courtroom at 10:23 a.m.)

23 THE COURT: Yes, sir.

24 CLOSING ARGUMENTS BY MR. MOAK ON BEHALF OF THE STATE:

25 Good morning, again. Right now we're at the part of

1 the trial where you've heard all the testimony, you know
2 what evidence is in. You kind of know everything that's
3 coming in.

4 At this point I'm going to kind of talk to you about
5 what the law is, because you have the piece of the puzzle,
6 and the law is kind of like when you're putting a puzzle
7 together, you look at the box so you kind of know what the
8 picture is supposed to look like.

9 So once you put the puzzle pieces together and you
10 kind of look at the box, and it matches up, you know, you
11 know if your puzzle is the one in that box or not.

12 And to do that, we have to call what he's charged
13 with. He's charged with criminal sexual conduct with a
14 minor in the first degree.

15 What that means, a person is guilty of criminal sexual
16 conduct with a minor first degree if -- and there's 2
17 paragraphs -- 2 ways you can be convicted of this. One of
18 them is: The actor engages in a sexual battery with a
19 victim who is less than 11 years of age. Having sex with a
20 child that is less than 11 years of age; that's what that
21 means.

22 The other paragraph that -- another way you can be
23 convicted of this has really no bearing with this case.
24 What that says -- and I'm not sure the judge will tell you
25 about the other paragraph or not, but I'm just going to

1 tell you now. The other paragraph says that if you are
2 already a sex offender and you get convicted of criminal
3 sexual conduct with a minor, that's the other way you can
4 be convicted of criminal sexual conduct with a minor first
5 degree.

6 There's no allegation that the defendant is a sex
7 offender, so that's not here.

8 Here the allegation is that George Branham -- that man
9 over there -- had sex -- had sexual intercourse with
10 Child [REDACTED] who you saw Monday during jury selection,
11 you saw Tuesday when she testified, and you saw the video
12 of her testimony on Tuesday afternoon. I believe there's
13 also a picture of Child [REDACTED] as well.

14 That's who he had sex with.

15 Now, with the law, there's a lot of big words. Okay?
16 What is a sexual battery? What is an actor? And what is a
17 victim?

18 There's another statute that defines these words. An
19 actor means a person accused of criminal sexual conduct.
20 Here the actor who is accused is George Branham.

21 Sexual -- the actor engaged in a sexual battery. A
22 sexual battery is sexual intercourse. Intercourse.
23 cunnilingus, fellatio -- that's oral sex -- anal
24 intercourse, or any intrusion however slight of any part of
25 a person's body or any object into the genital or anal

1 openings of another person's body except when such
2 intrusion is accomplished for medically-recognized
3 treatment for diagnostic purposes.

4 What that means -- the most plainest way to put it is,
5 you had actual sex or you penetrate however slight. And
6 the best way to describe however slight is, if you watch a
7 football game and you had a touchdown that might have been
8 questionable and had the replay about whether or not the
9 running back broke the plane with the ball. You break the
10 plane of that vagina however slight -- just a little bit,
11 it's sexual battery.

12 You're not even really supposed to be anywhere near it
13 in the first place. But if you get all the way to it and
14 break the plane, that's a sexual battery.

15 And the victim, obviously, is the person that's being
16 victimized.

17 Okay? That's what he's charged with.

18 The judge, I believe, is going to give you the actual
19 indictment as a verdict form. The indictment says that on
20 or between the dates of November 1, 2009 and I believe
21 December 8, 2009 -- okay. That's the time frame we're
22 talking about.

23 You don't have to find that he did this every day.
24 You don't have to find he did this every other day. All
25 you have to find is he did it one time in that time frame

1 to find him guilty.

2 I submit you can certainly find him guilty of him
3 doing it more than once. But to find him guilty, all you
4 have to do is find one time. Okay?

5 Now, there's another couple things that have popped
6 up. There was testimony from Deputy Lyons that the
7 defendant was extremely intoxicated. He was drunk. The
8 defendant himself actually said he wasn't that drunk. But
9 the judge may charge you with this: Voluntary intoxication
10 is not a defense to the commission of a crime in South
11 Carolina.

12 What that means, as you sit here today, if he was
13 sober he wouldn't have done it, but he was just so drunk he
14 did it like it was the alcohol that made him do it. In
15 South Carolina the voluntary act of drinking that alcohol
16 and getting that drunk to do something as crazy as this,
17 the fact that he got himself drunk is not a defense to the
18 act. Okay?

19 And I'm going back to the second thing here in a
20 second. Okay? How are we going to prove this? We put the
21 witnesses up. Like I said yesterday morning, in your daily
22 interactions, let's say you go buy a car. The salesman
23 says, this is the best car for you. He's telling you all
24 this stuff. You know he's got an interest in selling you a
25 car. So some things you believe and some things you're not

1 so sure about.

2 Or you've got kids. You're in the other room. You
3 hear a crash. Come back in. The lamp's broke. You've got
4 2 kids like, he did it, no, he did it. You know, you've
5 got to make the decision on which one did it, which one
6 didn't, which one's telling the truth.

7 There's all kinds of things that people in their
8 normal course of life in interaction with other people, you
9 have to make credibility decisions. Okay.

10 Now, there's been some case law and things have come
11 up. And typically on witness credibility, a lot of things
12 that people tend to look at is: The demeanor of the
13 witness on the stand, was the witness forthright or
14 hesitant? Was testimony of the witness consistent? Was
15 the testimony corroborated? And did the witness have a
16 reason to be biased or prejudiced?

17 Now, just as an example -- okay -- about demeanor.
18 Let's just use Child [REDACTED] Okay. 8 years old. You saw her
19 here in the courtroom. She's 8 years old. She's in the
20 courtroom with a bunch of people that she doesn't know.
21 She's in the courtroom with the man that raped her. She
22 can see him.

23 Is her -- was her demeanor consist with an 8-year old
24 having to talk to a bunch of strangers in the presence of
25 the man that did it about all this grown-up stuff that an 8

1 year old should not even have to know about, much less go
2 through? Was that demeanor consistent with her telling the
3 truth? Okay.

4 Contrast that with the defendant. You saw him
5 yesterday. He appeared to be fairly flat. As a matter of
6 fact, one of the only 2 times he really got excited was
7 when he was asked about whether or not he had told Deputy
8 Lyons that he was helping Child wipe. He got mad and
9 said, did I give a written statement? That's what he got
10 upset with. That's what he got upset with.

11 When he was here, Tuesday and Child was on the
12 stand, when the video was being played, he had a grin on
13 his face ---

14 MR. KIRINCICH: Objection, Your Honor, that's not in
15 evidence.

16 THE COURT: Stay within the record. You may proceed.

17 MR. MOAK: You all saw him sitting here. You all saw
18 him in here. When those pictures got projected on the wall
19 yesterday morning, you all saw what was going on.

20 But when he gets on the stand, he's asked about the
21 videos that he helped produce. I'm embarrassed. I don't
22 want to talk about it. I'm embarrassed. Okay. Is that
23 credible or not? That's what the demeanor of a witness
24 means.

25 Was the defendant being forthright or hesitant? Okay.

1 Child when she testified, she'd met Ms. Barry
2 before. She was asking her questions. She didn't know Mr.
3 Kirincich. A lot of her answers to him were, I don't know
4 -- because she's a little kid. She deals better with
5 people that she knows. She feels better in a safe
6 environment.

7 Mr. Branham on direct his lawyer asked him, did you
8 tell Deputy Lyons that Child had had problems wiping or
9 helped her with that?

10 He said, I think I said something like that.

11 When Ms. Barry asked him, no I didn't say it. No, I
12 didn't say it. Did I give a written statement? Is that
13 forthright or hesitant?

14 Three. Was the testimony consistent? Child told
15 her mother, her mother caught it. This is what happened.
16 She told the nurse at the hospital what happened. She told
17 the doctor what happened. She told Debbie Elliott what
18 happened. You saw the video. And she told you all what
19 happened. The same story. That man was repeatedly having
20 sex with her and mama caught him.

21 George Branham, Jessica catches you. She went to bed.
22 I wanted to make her go to the bathroom.

23 Second, I was picking trash up off the floor.

24 Third, she was having problems wiping, I was going to
25 make sure she wiped.

1 Four, can I talk to her -- that's on the 911 tape.

2 Can I talk to your daughter?

3 Five, Deputy Lyons, he's back to she's having problems
4 wiping and I was making sure she wiped.

5 MR. KIRINCICH: Objection, Your Honor, he's using
6 other witness' statements to comment on the defendant's
7 consistency.

8 THE COURT: Objection is overruled.

9 MR. MOAK: And why this is important, is what did he
10 say yesterday? I didn't say -- he told Mr. Kirincich,
11 yeah, I think I said she was having problems wiping. Then
12 he denies saying I was picking up trash. He denied saying
13 she was having problems wetting the bed. He even denied
14 asking if he could talk to Child [REDACTED] You can hear that on
15 the 911 audio. You can hear that. Okay.

16 Now he's saying that Jessica made this up.

17 But when asked why would Child [REDACTED] make this up? He
18 says, I don't know. He says that he loved Child [REDACTED] and
19 still loved Child [REDACTED] He said Child [REDACTED] loved him. I don't
20 know why she would make this up. He didn't even throw out
21 anybody -- he didn't even throw anything out ---

22 MR. KIRINCICH: Objection, Your Honor.

23 MR. MOAK: --- as to that. Okay.

24 THE COURT: Objection is overruled.

25 MR. MOAK: Which goes us to no. 5. Okay. Did the

1 witness have any reason to be biased or prejudiced?

2 Child -- she's not even living with her mother.

3 She's living with her father. She's not even in -- she's
4 not in the home of anybody that's really involved in this
5 case. She's in another home. The outcome of this case
6 really doesn't affect her one way or another. She's in
7 another home.

8 The defendant himself said she has no reason to make
9 this up. Whereas, the defendant, he's the one on trial.
10 Who has a bigger dog in this fight?

11 Now, that's an example on both sides of credible and
12 incredible. A credible witness and an incredible witness.
13 Okay. You can apply the same law to Jessica, to Dr.
14 Connell, to Deputy Lyons, Debbie Elliott, Kathy Saunders,
15 and Amanda Webb.

16 Now back to here. On the fourth one. Was the
17 testimony of the witness corroborated?

18 We have a special statute here in South Carolina. And
19 what it says in a sexual assault prosecution, the testimony
20 of the victim need not be corroborated. Why that is, is
21 you don't have a lot of sexual assaults that happen with
22 witnesses. It's rare to have a third party that saw it,
23 witnessed it, interrupted it. Usually, it is a he said,
24 she said, especially with small children. They are the
25 most vulnerable population we have.

1 The normal adult reaction is to protect the children.
2 Normal adult reaction is not to prey among children.
3 Because of that, the law in South Carolina you can find the
4 defendant guilty based on Child word alone.

5 But kick that back to the fourth thing on credibility.
6 Was she corroborated? Does she have scar tissue on her
7 vagina? Is she missing part of her hymen? Is that
8 corroboration? We would submit it is. She is
9 corroborated.

10 Do we have an independent witness? We got the mother.
11 She saw it. She saw it happening.

12 You can find him guilty based upon the girl alone
13 without the mother, without the doctors, the girl alone.
14 But we have all of this other evidence that corroborates
15 her.

16 And the judge is also going to tell you that there's 2
17 types of evidence. There's direct evidence, there's
18 circumstantial evidence.

19 Direct evidence is I saw it. I saw him shoot
20 somebody. I saw him get stabbed. Direct evidence.

21 Circumstantial evidence -- this is a long paragraph.
22 I didn't realize it was that small a board. This is
23 essentially what the judge will tell you. There are 2
24 types of evidence which are generally presented during a
25 trial. Direct evidence and circumstantial evidence.

1 Direct evidence is the testimony of the person who
2 asserts or claims to have actual knowledge of a fact, such
3 as an eyewitness. I saw somebody. I saw the guy shoot.

4 Circumstantial evidence is proof of a chain of facts
5 and circumstances that indicate the existence of facts.

6 So if somebody comes in the door of the courthouse
7 soaking wet, you might think it's raining. The fact they
8 are wet is circumstantial evidence that it's raining;
9 that's what that means.

10 Okay. And the rest of that paragraph is, the law
11 makes absolutely no distinction between the weight or value
12 given to either direct or circumstantial evidence, nor is a
13 greater degree of certainty required for circumstantial
14 evidence than of direct evidence.

15 You should weigh all the evidence in the case. After
16 weighing all the evidence if you are not convinced of the
17 guilt of the defendant beyond a reasonable doubt, you must
18 find the defendant not guilty.

19 If on the other hand you're convinced of the
20 defendant's guilt beyond a reasonable doubt, then you must
21 find him guilty.

22 I saved you all a paragraph. But what that means is
23 this, an example. Okay. You got some facts. Okay. Like
24 one of them is the child had brown crumbs on his face. The
25 cookie jar was full a minute before. Cookies are missing.

1 The lid's off. The child wants some milk. And no one saw
2 the child take the cookies.

3 Now, your inference -- inference is what does it tend
4 to show? Okay. This child had brown crumbs on his face.
5 The inference, the child got the cookies.

6 It's got some inferences for all these things. One
7 inference possible of all this, the child took the cookies
8 from the jar. Another one is maybe the dog did it?
9 Another one, did this invisible man do it? Or did the
10 cookies just disappear? Okay.

11 Now, what are the -- what's reasonable? A reasonable
12 interpretation is the child took the cookies. Okay. A dog
13 took the cookies is unreasonable. They just disappeared is
14 unreasonable. The invisible man did it, unreasonable.

15 And we've got some circumstantial evidence in this
16 case that actually corroborates Child There's some
17 testimony that at one point the mother was working 16 hours
18 a day. The defendant is the primary, I guess, baby sitter
19 for the kids. What happened? Child hair starts
20 falling out because of stress. I think we can put that on
21 there on the left side as a fact.

22 Then you have multiple evidence for all these yeast
23 infections and urinary tract infections where apparently
24 the test results showed -- after they came in after the
25 visit, there really wasn't an infection. There was no

1 infection. That will be another one.

2 The third one, the scar tissue. The scar tissue on
3 the vagina of a 7-year-old child. I think the term is an
4 attenuated hymen where it's kind of rubbed out -- has been
5 rubbed out on a 7-year-old vagina.

6 All of that, I would submit, would be on the present
7 facts side. And the inference that we submit is reasonable
8 is that George Branham -- that it tends to prove that
9 George Branham did this, that it's not just one time, it's
10 multiple times. It's ongoing.

11 And an example of unreasonable inference would be the
12 bicycle caused the injuries. I believe the testimony was
13 -- one of the explanations is -- one of the explanations
14 proffered is, she fell off the bicycle. But I think
15 they're talking about -- the wheel, that bar there, there's
16 -- it was the wrong direction. That -- you heard Dr.
17 Connell. You heard Dr. Saunders. Both of them testified
18 that that could not have done that. And if it was handle
19 bar, I guess that could be reasonable if it aimed her with
20 the handle, hit in the right spot to go in, I guess is what
21 it sounds like. That -- that is a ridiculous inference.

22 Now, what standard do we have to prove the elements of
23 the crime by? Another one of these long paragraphs.

24 Beyond a reasonable doubt is a -- proof beyond a
25 reasonable doubt is proof that leaves you firmly convinced

1 of the defendant's guilt. Firmly convinced of the
2 defendant's guilt.

3 There are very few things in this world we know with
4 absolute certainty. And in criminal cases the law does not
5 require proof that overcomes every possible doubt. You
6 have to be firmly convinced that he's guilty. And just
7 because you have a doubt, does not mean it's a reasonable
8 doubt. The law does not require proof that overcomes every
9 possible doubt.

10 Now, if based upon your consideration of the evidence
11 you are firmly convinced that the defendant is guilty of
12 the crime charged, you must find him guilty.

13 If on the other hand you think there is a real -- a
14 real possibility he is not guilty, you must give him the
15 benefit of the doubt and find him not guilty.

16 And that paragraph -- what I just read and what the
17 judge tells you, pay attention. Because over the years
18 jurors have come back, Your Honor, can we have some help
19 about what beyond a reasonable doubt is? That's all you're
20 going to hear. All you're going to hear about what
21 reasonable doubt is, is right now, really, what the judge
22 tells you because what a reasonable doubt is is in your
23 eyes; that's what you're here for.

24 If we could to a certainty this is what a reasonable
25 doubt is, this is what it's not, we wouldn't need a jury

1 here; that is what you are here for. And that is what the
2 jury's role is to decide whether or not we met the burden
3 of proof. Okay.

4 And what -- another I can explain reasonable. You
5 have to have a reason to be reasonable. If a doubt -- with
6 a reason that you could attach to it -- okay. Like for
7 example, we've got this hurricane coming. It gets real
8 cloudy. You don't see the sun. You might doubt that the
9 sun's not up there. Is that reasonable? No, because you
10 know it's there. Just because you can't see it, you know
11 it's there. You might have a doubt, but it's not a
12 reasonable doubt. And that reason is one that you can
13 explain to your fellow jurors. Okay. That's what
14 reasonable doubt means.

15 Now, what are we asking in this trial? We're asking
16 for a verdict. Ultimately, the purpose of the whole trial
17 is to have a verdict. And the word verdict comes from a
18 Latin word veredicto which means true saying. And that's
19 what a trial is, it's a search for truth. It's not a
20 search for doubt.

21 What this whole trial has been about is figuring out
22 what happened between George Branham and Child
23 That's what all the witnesses have testified about. That's
24 what all the evidence has been about. I think we've come
25 fairly far. I think we're at the end of that road.

1 And once you get the final jury charge and get the
2 case, you're going to deliberate. You're going to ask
3 yourselves what truly happened. You're going to render a
4 true saying. And that true saying is going to be that
5 George Branham, the defendant, is guilty of criminal sexual
6 conduct with a minor first degree.

7 Thank you.

8 THE COURT: Mr. Kirincich.

9 MR. KIRINCICH: Thank you, Your Honor.

10 CLOSING ARGUMENTS BY MR. KIRINCICH ON BEHALF OF THE
11 DEFENDANT:

12 Ladies and gentlemen of the jury, I really do want to
13 thank you. I hope you took the words from my opening
14 statement to heart and really came into this case with an
15 open mind and evaluated the evidence from the stand for
16 yourself.

17 Again, I told you what the prosecution says, what Mr.
18 Moak or Ms. Barry, what they say is not evidence. What I
19 say is not evidence. What comes from the witness stand;
20 that's the evidence.

21 At this time in the closing arguments, counsel for
22 both sides has an opportunity to summarize the evidence for
23 you. What I would like to do is I would like to go over
24 some of the things that you've heard this week and just
25 remind you about what you heard.

1 The state has already gone over the law with you, and
2 they have explained reasonable doubt and the burden of
3 proof.

4 The burden of proof is on the state, and they must
5 prove Mr. Branham guilty beyond a reasonable doubt.

6 And when I go over this evidence with you, I hope
7 you'll take this back to the jury room and really think, is
8 there a reasonable doubt in this case?

9 The state began by calling Jessica Scott. And they,
10 talk about credibility. Do you believe Jessica Scott? Do
11 you believe everything she said? Do you believe one thing
12 she said? Do you believe some? That's up to you to
13 decide. But I point out to you that she couldn't tell the
14 truth about things she actually pled guilty to.

15 She indicated that she had pled guilty to obtaining
16 money under false pretenses. But she blamed it on the
17 officer. The officer made her write the statement. She
18 couldn't accept responsibility for it from the witness
19 stand, even though she told a judge she was guilty.

20 She again pled guilty to obtaining money under false
21 pretenses, but she couldn't accept responsibility for it.
22 Somebody else did it. Somebody stole her checkbook, wrote
23 her a check, which she cashed. She wasn't really guilty of
24 it, she just pled guilty to it.

25 She tried to present a passed drug test from January

1 2010 as a badge of honor, like Mr. Branham's got to be
2 lying. I passed a drug test in 2010. She tried to gloss
3 over all the other failed drug tests.

4 She got upset when I asked her about her drug use.

5 Do you remember when she made a big deal about Mr.
6 Branham needing a pillow to lie down in the hallway because
7 he's got a bad hip? So she wants you to believe that
8 there's an empty bedroom at the end of the hallway and Mr.
9 Branham had to go get a pillow out of the empty bedroom to
10 take it to the hallway to rape a 7-year-old girl; that's
11 Ms. Scott's story. That's what she wants you to believe.

12 Then she confirmed that she had 2 small children
13 sleeping close to the entertainment center, and she wants
14 you to believe that Mr. Branham raped their 7-year-old
15 sister, what 10 feet at most, from where 2 other children
16 were sleeping when there's an empty bedroom at the end of
17 the hallway? That's what she wants you to believe.

18 I'm not sure that Ms. Scott is deceptive about
19 everything. I think there's some stuff that other
20 witnesses have testified to that Ms. Scott also found, that
21 Child [REDACTED] had chronic problems with her vaginal region. She
22 was taken to the hospital several times over the years.
23 They were suspected urinary tract infections, yeast
24 infection. 2 prior occasions of sexual abuse, one on a bus
25 and one in her classroom with a school mate.

1 Once she said her brother hit her and somehow she was
2 bleeding from her vaginal region.

3 And then one time she wrecked a bicycle -- a 10-speed
4 bicycle that was too big for her, and she crashed, and
5 somehow she injured her vagina, she was bleeding.

6 Jessica even said that George suggested she take
7 Child [REDACTED] to the doctor on several occasions, that Child [REDACTED]
8 would come home from her father's house, and they were
9 concerned because when she would come home from there, she
10 had vaginal irritation. And George would say, you should
11 take her to the hospital.

12 Are we to believe that George Branham is raping a 7-
13 year-old girl and is suggesting to her mother that they
14 take her to the hospital to get checked out? Is that what
15 Jessica Scott wants you to believe?

16 Next, the state called Child [REDACTED]. No doubt about
17 it. It is hard to listen to a 7-year old and 8-year old
18 child get up there and say they were raped. It is
19 horrible.

20 We saw pictures later when Dr. Saunders testified,
21 pictures that are hard to look at. These are hard things.
22 But when Child [REDACTED] got up there and testified, I hope you
23 noticed that when Ms. Barry was talking to her, she
24 answered all the questions. Maybe she was familiar with
25 Ms. Barry, but she answered all the questions.

1 When I talked with her, most of the answers were, I
2 don't know. I don't remember. Finally, when I got her
3 around to admitting something, she said somebody did help
4 her with her story. She'd been meeting with somebody and
5 they helped her with her story, but she couldn't remember
6 who it was.

7 Was she coached? Did somebody help her? She said
8 somebody helped her with her story.

9 Next we had Dr. Connell. And I'm going to add Ms.
10 Rebecca Scheffer, the sexual assault nurse examiner,
11 because they did their reports at the same time, even
12 though they testified at different times. One of the
13 things that Dr. Connell was testify -- testified to, was
14 there were no signs of physical injury. He didn't observe
15 anything on that day that made him to believe that she had
16 been physically injured. He did see a widened introitus
17 and noted probable signs of chronic abuse.

18 But Dr. Saunders testified upon examination of Ms.
19 Barry that a wide introitus -- what she believed that to
20 mean was just that the hymen was widened, the opening to
21 the vagina, and that that was not uncommon to her when
22 she'd examined over 8,000 patients.

23 Dr. Connell, in retrospect, comparatively had only
24 examined 75, and he found that to be uncommon.

25 When Ms. Scheffer was doing her report with Child

1 if you remember me asking about her, it was actually
2 slightly different than the story that Child has given at
3 other times. And I asked Ms. Scheffer about it. And she
4 said, I asked Child. This is what she told me. And I
5 confirmed it with the adults in the room.

6 Do you remember what that said? In her report she
7 said, Bubba was trying to touch me in the hallway.

8 Nurse Scheffer, again, confirmed this with the adults
9 in the room and checked the box for attempted penetration.
10 At that time Child statement was not consistent. She
11 did not say -- Child -- put his private in my hole, as
12 she did 3 days later. She said he was trying to touch me
13 in the hallway.

14 Nurse Scheffer said she got the history from Child
15 about George. I asked her about that, she said, yes, I got
16 it from her. I put it in quotations.

17 This is alleged to have happened late at night.
18 Police were called at 3:00 o'clock in the morning. This
19 was a school night. The family -- the paternal family
20 found out about it because Child didn't go to school the
21 next day; that's how they found out about it.

22 Jessica Scott alleges that Mr. Branham was at a
23 neighbor's house drinking and that he came home late, and
24 that's when everything happened.

25 But Child is able to tell her that Mr. Branham has

1 been drinking beer and liquor and he had a lot to drink.
2 How would Child know that if she's sleeping unless
3 somebody told her to say that?

4 In the report from Dr. Connell and Nurse Scheffer,
5 they did part of a rape kit -- I think that was the
6 layman's term. It's a sexual assault kit. They did
7 several swabs. They collected evidence from her body. And
8 they sent it to SLED.

9 Amanda Webb came in. And she testified there was no
10 semen found.

11 I understand at that point the state asked: Was that
12 common? Yes, that's common. It's common for us not to
13 find any evidence. It's not common not to find any
14 evidence of physical abuse. It's common not to find any
15 evidence of semen, and we don't check for skin cells.

16 Ladies and gentlemen, I submit to you that this is
17 becoming a presentation of no evidence. There's no
18 physical evidence.

19 Debbie Elliott and Kathy Saunders came next. They
20 interviewed and examined Child 3 days later. And they
21 are well trained and well practiced. Ms. Elliott said she
22 had interviewed over 5,000 children. And Dr. Saunders said
23 she had examined over 8,000 children.

24 I have a question. Are they biased? I asked Ms.
25 Elliott if she was familiar with the billing and the

1 practices of the Carehouse? And she said she was somewhat,
2 and that they're a government agency, and their clients are
3 referred by law enforcement or sent through the solicitor's
4 office.

5 I believe that they are there to truly help children.
6 But I think when your referrals and your business is coming
7 from a particular agency or a particular side of the law,
8 that you might be more inclined to give them an opinion
9 that would be helpful to them. You don't want your
10 referrals and in turn your government funds to stop coming
11 in.

12 We watched the video, and I asked Ms. Elliott several
13 questions about it because it had been a few days from the
14 incident.

15 Ms. Elliott asked Child about Bubba trying to stick
16 it in. Shortly after she talked to Nurse Scheffer, she
17 said Bubba tried to stick it in. But when Ms. Elliott said
18 that, she said, no. He done it. He done it all the time.
19 Why her story changed in those couple of days that it took
20 her to get to the Carehouse?

21 Who was she with? She was with Jessica Scott.

22 The state would like you to believe that Ms. Scott has
23 had no contact with her children since this incident, but
24 that's not true. Ms. Scott said although she lost custody
25 of her children, she's begun to have visitation with them.

1 She didn't lose custody until, I think she said February or
2 March of 2010. Child was with her that whole time.

3 And, again recently, Child has been visiting with
4 Ms. Scott. Ms. Scott says she has supervised visitation
5 and Mark Scott, the father of Child will allow her to
6 come over whenever she wants and take the children, that
7 she can have unsupervised visitation.

8 Is she coaching Child Again, that's a question for
9 you to decide.

10 And do you remember what I asked Ms. Elliott about the
11 black and white object that Child said she found in the
12 drawer, the one Child said you stick in your private?
13 And Ms. Elliott said, Child said she saw it being used.
14 But when I questioned Ms. Elliott about it in her report,
15 she said, Child denied seeing it being used, that she --
16 she just knew about it.

17 Then Ms. Elliott explained, oh, that must be a typo.
18 Must be a typo in my report. So I had her read it to you,
19 and it was a 2-line typo apparently, because in the report
20 she stated that Child said she had never seen it used.
21 She had never -- it had never attempted to be used on her.
22 And Mr. Branham and her mother had never talked to her
23 about it.

24 So Child just knew about it. Was she telling the
25 truth then? And why wasn't she questioned about it?

1 Because she was questioned about her ability to tell the
2 truth at beginning.. You saw on the beginning the little
3 flip book that gauges her ability to tell the truth. I
4 would submit to you that Child was pretty good at it,
5 because she was able to point out the correct answers
6 before she was asked the questions.

7 Ms. Elliott, I think, explained that that children are
8 eager to please and they're eager to do that, so they go
9 ahead and point to what they believe to be the right
10 answer.

11 These are things that I want you to think about,
12 things that I want you to take back to the jury room and
13 discuss, things about the anatomical dolls. Do you
14 remember when Child used those on the video? Do you
15 remember I asked Ms. Elliott certain things about them,
16 what they were filled with, if they had any rigidity, why
17 they didn't use dolls of varying sizes? Those 2 dolls were
18 the same size. This was not the size of an adult male and
19 a juvenile female.

20 Child had trouble lining up dolls of the same size.
21 Her story would not allow the physical aspect of the dolls
22 to line up. She couldn't take the legs of the dolls that
23 were being restricted by the panties and position the adult
24 male between her like she said.

25 At one point Ms. Elliott grabs the dolls and helps her

1 arrange them. And they both agree that it's easier to do
2 what Child describes once the panties are off the doll or
3 at least hanging on one ankle.

4 I asked Ms. Elliott about that, why she didn't ask
5 Child more about that when Child had previously said at
6 least twice that her panties were around her ankles -- in
7 the plural sense. She just explained, she's a child. That
8 was her excuse as to why she didn't ask any more.

9 I believe Child in the video says that Bubba tried
10 to penetrate her by putting her knees on the shoulders --
11 on his shoulders as she was facing the wall. That was the
12 thing that Ms. Elliott was confused about, that's what she
13 asked her to explain when she went and got the dolls.

14 Do you think that that's physically possible with what
15 Child was showing or do you think that she was just
16 accommodated by Ms. Elliott?

17 Dr. Saunders examined Child after that. And she's
18 done over 8,000 exams. She used a magnified colposcope. I
19 think she explained it as a -- as a magnification system
20 with a bright light and a camera. Again, she noted no
21 acute injuries, no tearing, no bleeding, no bruising.

22 What she did say she saw was scar tissue. Scar tissue
23 would indicate that there was a prior injury, a previous
24 injury. She noted attenuation of the hymen. It had been
25 worn down previously.

1 When I asked her about the abuse and what she had on
2 the form, we talked about certain time lines. Those are
3 from her form. I didn't ask her if she could say when it
4 happened, but I asked her if she checked the box for abuse
5 less than 72 hours? She said, no.

6 I asked if she had checked the box between 72 hours
7 and 10 days? She said, no.

8 I asked if it was greater than 10 days? No. She
9 explained that it was undetermined. She could only say
10 there had been abuse previously.

11 Ladies and gentlemen, I remind you that the indictment
12 that charged Mr. Branham with this crime only covers
13 November 2009 up until December 8, 2009. Did you hear any
14 evidence that there was abuse? Have you seen physical
15 evidence of abuse that you can believe to convict him of
16 criminal sexual conduct?

17 And I believe Investigator Lyons testified. He said,
18 Mr. Branham while intoxicated was compliant. He didn't try
19 to run.

20 We heard the 911 tape. We know that Mr. Branham knew
21 the cops were on their way. We heard his sister lived
22 close by. We heard that he lived in a wooded area. He did
23 not try to evade the police. He did not try to leave. He
24 knew the cops were coming, and yet he stayed.

25 He was there. He was peaceful. He asked if he could

1 say something.

2 Now, I understand that the state wants to point out
3 that Mr. Branham gave 3 different statements; that's not
4 correct. Jessica Scott gave different statements that she
5 said Mr. Branham said. Does that mean Mr. Branham's
6 inconsistent because Jessica Scott gives different stories?
7 I submit to you that it does not mean that he is
8 inconsistent. It means she is inconsistent.

9 When we're talking about the statement to Deputy Lyons
10 -- and I hate to say it comes down to semantics. But there
11 was a statement about Child [REDACTED] having trouble using the
12 bathroom. I think we can agree on that. Deputy Lyons
13 wrote his report that George said he helped her wipe.

14 What George maintains to this day is he told her to go
15 wipe herself because she had been having trouble wiping.

16 Deputy Lyons took pictures, pictures that could have
17 helped the state. It could have helped the defense. Could
18 have shown a pillow in the hallway. At no point did Deputy
19 Lyons testify about a pillow in the hallway. At no point
20 did he say he took a picture of a pillow in the hallway.
21 But he did say he found toilet paper in the toilet, just as
22 Mr. Branham had instructed him to do, look in the toilet
23 and see that I'm telling the truth.

24 Then Mr. Branham came up and testified. And it was
25 hard for Mr. Branham to testify. He's been thinking about

1 this charge. He's been mentally beaten down about this
2 charge since 2009. He got up there. He testified. He
3 testified about the argument with Jessica. Jessica tried
4 to say they were arguing about cigarettes. Mr. Branham
5 said, no. Why would we argue about cigarettes? We were
6 arguing about her drug use and my threat to take our 4
7 children and leave.

8 Mr. Branham, Sr., was questioned about why he didn't
9 just go to his sister's house? But Mr. Branham -- Bubba
10 Branham had already talked with his dad about possibly
11 coming back to stay with them.

12 Bubba Branham got up there and testified -- he
13 testified that he told Jessica to take Child [REDACTED] to the
14 doctor when she came home with vaginal problems. Again,
15 why is Bubba Branham telling the mother of Child [REDACTED] to
16 take her to the hospital if he has chronically abusing her?

17 And then Bubba's father, George Branham, Sr., got up
18 to testify. He testified that he was there when they moved
19 in to [REDACTED] Road, that he didn't notice any problems.
20 But because his daughter lived there and he was familiar
21 with the area, he was concerned about a drug house in the
22 area, and he was concerned about Jessica's prior drug
23 abuse.

24 Ladies and gentlemen, we'll say it today, Child [REDACTED]
25 Scott has been abused. She is the victim of sexual abuse,

1 past chronic sexual abuse. But the state has to prove
2 beyond a reasonable doubt that George Bubba Branham
3 committed sexual battery on Child [REDACTED] They have to
4 show beyond a reasonable doubt that it happened between
5 November 2009 and December of 2009.

6 And I submit to you now if you believe he did it
7 before November of 2009, you must find him not guilty.
8 You're bound by the law to try him on the indictment as it
9 reads from November 2009 until December 2009.

10 If you have reasonable doubt that he did it, if there
11 has been any questions about what the witnesses have
12 testified to, their inconsistencies, their demeanor, their
13 bias, the reason for lie -- if you believe that Child [REDACTED] has
14 been coached, you must find him not guilty.

15 In closing, I strongly ask you to consider this when
16 you go to the jury room: What if he really didn't do it?

17 Thank you.

18 THE COURT: Ladies and gentlemen, let's stand for a
19 moment or two and stretch.

20 (Pause.)

21 THE COURT: All right. Ms. Barry.

22 MS. BARRY: Thank you, Your Honor.

23 CLOSING ARGUMENTS BY MS. BARRY ON BEHALF OF THE STATE:

24 Child [REDACTED] was the perfect victim. Several weeks
25 after she turned 7 this little first grader finally got her

1 break. She finally was able to tell about the horrible
2 acts that this man did, George Bubba Branham, a man that
3 had been in her life since she was 3 years old, a man that
4 had sexually abused her for as long as she could remember.

5 Children are easy prey. They are helpless little
6 creatures, some of the most vulnerable members of our
7 society. And as adults we are charged with protecting
8 them. Not this man. He took advantage of her and had sex
9 with a 7-year-old girl in the hallway of her home.

10 His attorney told you children are easy to please.
11 They're eager to please. They are. Especially when they
12 feel helpless. They have nowhere to go. And she did that.
13 The state submits she submitted to his acts without telling
14 anyone. Lucky for her, her big break came when her mother
15 caught him on top of her daughter with his pants down in
16 the hallway. She caught him the early morning hours of
17 December 8, 2009 pulling his pants up.

18 What was the first thing he said? She was having
19 trouble going to the bathroom so I was helping her.

20 She knew what he was doing. She saw him pulling his
21 pants up. She gathered the kids. She goes to the bedroom
22 and calls 911. And you heard that tape.

23 I ask you to think about this. When did he say he
24 didn't do this? You're making this up. Hang up the phone.
25 He says, don't break the family up. Yet, he testified

1 yesterday that he threatened to leave her, he was going to
2 take the kids because he was tired of her smoking crack.

3 He didn't say it that night. He said it yesterday.

4 You may not like Jessica Scott. You may not like the
5 choices that she's made in her life. She's not on trial.

6 She's the victim's mother. She came in here. She admitted
7 to using drugs. She also told you that on January 4, 2011

8 she did a hair follicle test, and it was clean -- a hair

9 follicle test that would test for drugs back 90 days. And

10 she passed. So we know on December the 7th, December the

11 8th she wasn't doing drugs. But he wants you to believe

12 that's why they're making this up. And somehow she has

13 convinced her little girl to conspire with her and bring

14 him and accuse him of sexually molesting her.

15 Jessica told you she worked a lot. George even told

16 you he kept the kids a lot. Now, there was some dispute as

17 to who was the primary bread winner in that house. It

18 doesn't matter. How long does it take to molest a child?

19 How long?

20 Somebody goes out to the store, take about 5 minutes.

21 He had the opportunity and the time to do it.

22 Jessica is not the only one that told you that he did

23 it. Child came clean as soon as she got away from him,

24 as soon as she got away from this predator, she came clean

25 to her mother and said, yes, mama. He done it to me.

1 Regardless of what you think of her, Jessica Scott,
2 December the 8th she did the right thing. She stood up for
3 her daughter and she called the police and removed him from
4 her life.

5 The most telling testimony is that of an 8-year-old
6 little girl who had the courage to come in here, in front
7 of a room full of strangers and describe acts that a child
8 that age should not even know about. She described adult
9 activities, things that were done to her that she shouldn't
10 know about. You think she was nervous? How scared do you
11 think she was?

12 I submit to you, it's easy to talk to me, it's not
13 easy to talk in front of the perpetrator, the man who
14 violated you for years and 14 people she's never seen in
15 her life. But she did it. And she was consistent. She
16 was consistent Tuesday, just as she was December 11th when
17 she had her forensic interview.

18 December 11 she went to the Carehouse in Florence and
19 talked to Debbie Elliott. And Debbie's easy to talk to
20 too. She's interviewed 5,000 children. She is well-
21 qualified, trained professional with children. One-on-one,
22 in a room. You saw it. She had a great rapport with her
23 and she tells details that a 7-year old, a first grader
24 should have no idea about.

25 Yet, he wants you to believe she was coached by her

1 mother. Can a child that age maintain a story of that
2 length of time? Can a child that age maintain that story
3 this week? No. The state submits absolutely not.

4 She was able to give details that were logical,
5 chronologically correct. She said that Bubba sexually
6 assaulted her since she can remember. And she couldn't
7 remember when she was 1 or 2. She started to remember when
8 she was 3.

9 Mr. Kirincich is correct. We're not trying him for
10 that. He's on trial for what he did when her mother, the
11 eyewitness saw him, December the 8th, 2009.

12 Child tells you this is not the first time. She's
13 able to tell you that he wasn't finished. She knew that.
14 How does a 7-year old know a man is not finished unless
15 that man told her? How did they know that? Finished with
16 what?

17 But when he was finished, he would massage his wiener
18 to get all the wet stuff out. She's in the first grade.

19 She said she saw her parents doing -- having sex once.
20 Bubba denied that. Denied ever letting them see that.

21 But Child said she saw it one time. Remember, it
22 wasn't the same way that she described in the hallway. She
23 wasn't on her back. Jessica was on all fours. Bubba was
24 behind her. If she's making that up from what she saw,
25 wouldn't she describe the same way? Think about that.

1 But before she gives her disclosure, the very next day
2 she goes to see Dr. Connell and Rebecca Scheffer. And she
3 tells Rebecca Scheffer, Bubba touched me with his nuts a
4 lot of times. She bled one time, but not last night. The
5 next day she said that.

6 But in addition to what she says, her injuries
7 matches. You saw the photographs. Dr. Connell didn't take
8 any photographs. Yet, he sees her the next day, it's a
9 widened introitus, a penetrating injury, very, very
10 uncommon. He's never seen in 19 years. He said this
11 widened introitus heals quickly and can revert back to its
12 same shape. He says it was chronic abuse; and that's
13 exactly what Dr. Saunders says. She's seen over 8,000
14 children. 8,000 children, and she says there's evidence of
15 scar tissue, chronic abuse. She didn't bleed that night.
16 She was used to it. This wasn't the first time.

17 She also saw an injury 1 to 2 inches -- evidence of 1
18 to 2 inches inside the body, an attenuated hymen that has
19 been rubbed away by past penetration. You'll have the
20 pictures in the jury room to refresh your memory.

21 She was tanor stage 1, her hymen, which means infant
22 like. This is a child. Children should not have these
23 injuries. This didn't -- this wasn't self-inflicted. This
24 didn't come from a one-time event at the school, some kid
25 put his fingers down her pants. This came from a grown

1 man. You would not expect to find those injuries in a 7-
2 year old with an infant-like hymen.

3 Mr. Branham, Bubba, he admits he loved her. He loved
4 her all right. He loved to have her around. Yet he wants
5 you to believe that all these other folks are making stuff
6 up. Making up the fact that he's in the hallway. Doesn't
7 want to admit that he said he was helping her use the
8 bathroom. Doesn't want to admit that he told her -- told
9 Jessica he was picking up trash. He doesn't want to admit
10 that he told the officers in front of Investigator Lyons
11 that she didn't wipe good and he was just checking her. He
12 was checking her all right. But not to see if she wiped
13 good.

14 You didn't hear Investigator Lyons say anything about
15 he threatened to leave the family. He could have left that
16 night. His sister lived right next door, 2 doors down or
17 somewhere right close by. He could have left if he wanted
18 to. But he didn't, because he didn't say it. He said it
19 yesterday.

20 Is it reasonable to believe that all these people have
21 conspired to frame poor Bubba of doing this, that Jessica
22 who had everything to lose -- she lost her kids. She lost
23 her kids by telling.

24 Poor little Child had to come in here in front of a
25 room full of adults and talk about things that children

1 shouldn't even know about. Icky things. Remember that
2 word? Made her feel icky. Didn't feel good.

3 Investigator Lyons, he's in law enforcement nearly 30
4 years. What motive does he have to make up something about
5 Bubba? None.

6 Who has a reason to lie? Not Jessica. Not Child
7 She doesn't even live with her any more. Investigator
8 Lyons, he's doing his job. But Bubba. Bubba does.

9 Children are taught to love, honor, and obey their
10 elders. I think Dr. Saunders testified to that. That's
11 what makes them perfect victims. That's why they don't
12 tell. She may have never told. It may have been years
13 before she told. Thankfully for her, her mama caught it
14 and called the police and stopped this abuse.

15 I believe Mr. Kirincich said, we're not here to
16 protect Child But your verdict can protect her. Your
17 verdict of guilt of criminal sexual conduct in the first
18 degree can protect Child

19 Thank you.

20 CHARGE OF THE COURT:

21 Madam forelady, and members of the jury, you've heard
22 the testimony, the evidence, and arguments of the state and
23 the defendant. I will now explain to you the law that
24 applies to this case.

25 Under the constitution and laws of South Carolina, you

1 are the finders of the facts in this case. I do not have
2 the right to pass upon the facts or even to express any
3 opinion that I might have as to them because this is a
4 matter solely for you, the jury, to determine.

5 As jurors then, it is your duty to determine the
6 effect, the value, the weight, and the truth of the
7 evidence presented during this trial. You are also the
8 judges, the sole judges of the credibility, that is the
9 believability of the witnesses who have testified and the
10 evidence which has been presented in this case.

11 In passing upon credibility, you may take into
12 consideration many things, such as the demeanor or manner
13 of testifying, whether the witness had reason to be biased
14 or prejudiced, whether a witness' testimony was
15 contradicted on the one hand or supported and corroborated
16 on the other hand.

17 However, the testimony of an alleged victim in a
18 criminal sexual conduct case need not be corroborated.

19 You may believe a small portion of a witness'
20 testimony and disregard the larger or vice versa.

21 However, you do not determine credibility by counting
22 the number of witnesses.

23 All these things you will consider bearing in mind
24 that you should give the defendant the benefit of any
25 reasonable doubt.

1 It becomes your duty as jurors to analyze and to
2 evaluate the evidence and determine that evidence which
3 convinces you of its truth.

4 There are 2 types of evidence which are generally
5 presented during a trial, direct evidence and
6 circumstantial evidence.

7 Direct evidence is the testimony of a person who
8 claims to have actual knowledge of a fact, such as an
9 eyewitness. It is evidence which immediately establishes
10 the main fact to be proved.

11 Circumstantial evidence is proof of a chain of facts
12 and circumstances indicating the existence of a fact. It
13 is evidence which immediately establishes collateral facts
14 from which the main fact may be inferred. Circumstantial
15 evidence is based on inference and not on personal
16 knowledge or observation.

17 The law makes absolutely no distinction between the
18 weight or value to be given either direct evidence or
19 circumstantial evidence, nor is a greater degree of
20 certainty required of circumstantial evidence than of
21 direct evidence.

22 You should weigh all of the evidence in the case.
23 After weighing all of the evidence, if you are not
24 convinced of the guilt of the defendant beyond a reasonable
25 doubt, you must find the defendant not guilty.

1 During this trial you've heard testimony from a child.
2 Where a child is a witness, you must determine as with any
3 witness whether that testimony is believable. In deciding
4 believability, you may consider not only the matters that I
5 have already discussed with you, but you may also consider
6 the age of the child, the child's ability to observe and
7 remember facts, and the child's ability to understand and
8 answer questions.

9 Because young children may not fully understand what
10 is happening here, it is up to you to decide whether the
11 child understood the seriousness of appearing as a witness
12 at this trial, whether the child understood the questions,
13 whether the child has a good memory, and whether the child
14 understands the difference between lying and telling the
15 truth.

16 In addition, young children may be influenced by the
17 way that questions are asked. It is up to you to decide
18 whether the child understood the questions asked.

19 As the trial judge, it is my responsibility to preside
20 over the trial of this case and to rule upon or pass upon
21 the admissibility of the evidence offered during this
22 trial.

23 You are to consider only the testimony which has been
24 presented from this witness stand, together with any
25 exhibits which have been made part of the record in this

1 case.

2 I have the additional duty to charge you the law
3 applicable to this case. And as the presiding judge, I am
4 the sole judge of the law of this case. It is your duty as
5 jurors to accept and apply the law as I now state it to
6 you, and then reach your verdict.

7 And finally, I charge you in this regard, that you
8 should not be concerned with what you think the law ought
9 to be, but what I charge you the law is.

10 The fact that the defendant was arrested, charged, and
11 indicted is not evidence in this case and cannot be
12 considered by you as evidence of guilt in this case, nor
13 does it create any presumption or inference of guilt.

14 The indictment is simply the formal written instrument
15 which contains the charge made against the defendant. An
16 indictment is the formal document by which this case is
17 brought into court.

18 The defendant has pled not guilty to the charge in the
19 indictment. And that plea places the burden on the state
20 to prove the defendant guilty.

21 A person charged with committing a criminal offense in
22 South Carolina is never required to prove himself innocent.
23 I charge you that it is an important rule of the law that
24 the defendant in a criminal trial, no matter what the
25 seriousness of the charge may be, will always be presumed

1 to be not guilty of the crime for which the indictment was
2 issued unless guilt has been proven by evidence satisfying
3 you of that guilt beyond a reasonable doubt.

4 This presumption of innocence does not end when you
5 begin your deliberations, but it accompanies the defendant
6 throughout the trial, until you reach a verdict of guilt
7 based on evidence satisfying you of that guilt beyond a
8 reasonable doubt.

9 The presumption of innocence is not a mere legal
10 theory, it's not just a legal phrase. It is a substantial
11 right to which every defendant is entitled unless you the
12 jury are satisfied from the evidence of the defendant's
13 guilt beyond a reasonable doubt.

14 The state must prove the defendant guilty beyond a
15 reasonable doubt. So what is a reasonable doubt in the
16 law? A reasonable doubt is a doubt which makes an honest,
17 sincere, conscientious juror in search of the truth in the
18 case to hesitate to act.

19 Proof beyond a reasonable doubt must therefore be
20 proof of such a convincing character that a reasonable
21 person would not hesitate to rely and act upon it in the
22 most important of his or her own affairs. Proof beyond a
23 reasonable doubt can also be described as proof that leaves
24 you firmly convinced of the defendant's guilt.

25 Now, there are very few things in this world that we

1. know with absolute certainty. And in criminal cases the
2 law does not require proof that overcomes every possible
3 doubt. If based on your consideration of the evidence you
4 are firmly convinced that the defendant is guilty of the
5 crime charged, then you must find him guilty.

6 If on the other hand you think that there is a real
7 possibility that he is not guilty, you must then give him
8 the benefit of the doubt and find him not guilty.

9 Now, a statement alleged to have been made by the
10 defendant has been admitted into evidence in this case.
11 While The Court has determined that the statement is
12 admissible, I instruct you that you make the ultimate
13 decision of whether or not the defendant made the
14 statement.

15 If the defendant did make the statement, you must
16 determine whether the statement was made by the defendant
17 voluntarily and of his own free will. This means that the
18 statement was not caused by pressure, force, fear, threats,
19 coercion, or intimidation, or by hope or a promise of
20 leniency or a reward of any kind.

21 In determining whether the statement was voluntary,
22 you should consider both the characteristics of the
23 defendant and the details of the questioning. Some of the
24 factors that you must consider are the age of the
25 defendant, the defendant's education or lack of education,

1 the defendant's mental ability or capacity, the defendant's
2 I.Q. or intelligence, the defendant's background and
3 environment, the place and length of detention, the nature
4 of the questioning, and the advice or lack thereof to the
5 defendant of his constitutional rights, including but not
6 limited to the right to remain silent; that any statement
7 could be used against him in a court of law; the right to
8 have a lawyer present; that if he could not afford a
9 lawyer, a lawyer would be appointed to represent him
10 without any cost; and that he could stop making the
11 statement at any time.

12 You must carefully consider all of the surrounding
13 circumstances before you give any weight to an alleged
14 statement.

15 The state has the burden of proving beyond a
16 reasonable doubt that the alleged statement was voluntary.

17 If you determine that it was, you may give the
18 statement any further consideration that you deem proper.
19 You must decide what weight if any should be given to the
20 alleged statement.

21 If you determine the alleged statement was not the
22 free and voluntary statement of the defendant, you should
23 not consider it the statement at all.

24 The defendant is charged with first degree criminal
25 sexual conduct with a minor. The state must prove beyond a

1 reasonable doubt that the defendant engaged in a sexual
2 battery with the victim.

3 A sexual battery is sexual intercourse, cunnilingus,
4 fellatio, anal intercourse, or any intrusion however slight
5 of any part of a person's body or of any object into the
6 genital or anal openings of another person's body, except
7 when the intrusion is accomplished for medically-recognized
8 treatment or diagnostic purposes.

9 The state must then prove beyond a reasonable doubt
10 that the victim was less than 11 years old at the time of
11 the sexual battery.

12 Consent, willingness, indifference, or ignorance on
13 the part of the minor if any as to what was taking place
14 does not in any way affect the charge of criminal sexual
15 conduct with a minor, because an unmarried woman under the
16 age of 14 cannot legally consent to sexual intercourse.

17 Now, when voluntary intoxication has not produced
18 permanent insanity, it is not a defense to a crime. A
19 person who voluntarily becomes intoxicated is just as
20 responsible for the acts committed while intoxicated as
21 when the person is not intoxicated.

22 Madam forelady, and members of the jury, you have been
23 selected by both the state and the defendant to be fair and
24 impartial jurors. It is your duty then in your joint
25 deliberations to determine the truth in this case, giving

1 the defendant the benefit of every reasonable doubt on each
2 and every issue.

3 And from the facts which you determine to be true, you
4 take and apply the law which I have just given you and thus
5 arrive at a verdict which speaks the truth of this case.

6 I've told you the standards you have to apply to the
7 charge of first degree criminal sexual conduct with a
8 minor.

9 I will give you a copy of these instructions in
10 written form. During your deliberations you may refer to
11 the instructions to guide your decision making.

12 You must consider the instructions as a whole and not
13 follow some and ignore others.

14 Please return the instructions to The Court at the
15 time your verdict is rendered.

16 You have heard the evidence and now you have heard the
17 law. Whatever your verdict as to the charge, madam
18 forelady, you will indicate it by writing the word guilty
19 or not guilty on the back of the indictment. You will then
20 sign and date it. It's this portion of the indictment
21 right here that says, verdict. You write guilty or not
22 guilty, whichever the jury's verdict is. Sign and date it.

23 Remember that although the foreperson is the only
24 juror who writes the verdict, it is not hers alone. The
25 verdict has to be a unanimous verdict.

1 Madam forelady, you re not authorized to write the
2 verdict until all of you have agreed as to what the verdict
3 should be.

4 Ladies and gentlemen, I'm going to send you to your
5 jury room, all of you except for the 2 alternates. But do
6 not begin to discuss the case until you have received a
7 copy of this jury charge, the indictment, and the exhibits.
8 Once you receive these things, that will be your signal to
9 begin your deliberations.

10 Once you begin your deliberations, you will deliberate
11 until you have reached a verdict, at which time you will
12 knock on the door, advise the bailiff, and we will bring
13 you out to receive your verdict.

14 So I ask that all of you go to the jury room. First
15 I'll check from the first 12 jurors selected if there is
16 any reason why any one of you cannot continue with the
17 deliberations, please let me know at this time before I
18 discharge the alternates.

19 (No response.)

20 THE COURT: All right. All jurors seem to be in good
21 shape. So therefore when the first 12 go back, you all
22 will stay put, and the first 12 will be the deliberating
23 jury in this case.

24 Please go to the jury room.

25 (The jury retires to the jury room at 11:52 a.m.)

1 THE COURT: All right. Ladies and gentlemen, I'll
2 speak with you all in just a moment.

3 Are there any additions or exceptions to the charge?

4 MR. MOAK: Not from the state, Your Honor.

5 MR. KIRINCICH: Nothing from the defense, Your Honor.

6 THE COURT: All right. With regard to the video, the
7 interview of the child, the C.D. is in evidence. You
8 haven't put anything else in evidence to play it on. What
9 do you propose to do with regard to that?

10 MR. MOAK: I think what we've done in the past with a
11 video, if the jury requests it, I think the clerk of court
12 has a laptop that they have that they can send back there
13 if they wanted to watch it; that's what we've done in the
14 past.

15 THE COURT: All right. What say the defense?

16 MR. KIRINCICH: Your Honor, that's acceptable. The
17 C.D. has got a proprietary program to play it, so it has to
18 be played on a computer. So the clerk's laptop is
19 acceptable.

20 THE COURT: All right. Then if you all will review
21 the exhibits, whatever they may be, and this is the jury
22 charge.

23 (Pause.)

24 (The alternate jurors were excused.)

25 THE COURT: Where are the exhibits. You've got them

1 all set. There are no pads in evidence. We don't like to
2 encourage questions by sending pads back. When you take
3 pads in there, they think they have to write something on
4 it. They don't need any pads. If they do, they'll ask for
5 one.

6 All right. The jury is out. 11:55. We'll be at
7 ease.

8 (The indictment, exhibits, and charge were sent to the
9 jury at 11:55 a.m. to begin deliberations.)

10 (The court is at ease awaiting a verdict of the jury.)

11 THE COURT: The jury wants to -- sent a note, said,
12 can we view the forensic interview again please? That's
13 the jury's note. What says the state?

14 MR. MOAK: I think all we need to do with that is give
15 them a laptop. I think that's what we talked about before.

16 THE COURT: All right. What says the defense?

17 MR. KIRINCICH: Your Honor, it's in evidence. Let's
18 give them a laptop.

19 THE COURT: All right. Can you get it ready for them
20 to see it?

21 MR. MOAK: They went to get the clerk to use their
22 laptop.

23 THE COURT: She's coming in. Can you get it ready for
24 the clerk to take it in for them to see it?

25 MR. MOAK: Yes, sir.

1 THE COURT: Okay.

2 (Note from jury marked Court's Exhibit No. 1 for
3 identification.)

4 (Pause.)

5 THE COURT: Take in there the forensic interview.

6 CLERK: Okay.

7 MR. MOAK: Your Honor, it might be helpful if we got
8 the foreperson out, we explained to her how that thing
9 plays, because it doesn't have a pause button, it does not
10 have a stop button.

11 THE COURT: Well, you know, these -- you put it in
12 evidence, so I would assume you've anticipated in advance
13 how they're going to use it once you put it in evidence.
14 So it's not something we're figuring out for the first
15 time, is it?

16 MR. MOAK: The thing is that particular program has
17 some security features we attempted to copy to different
18 programs, easier for other people to use. And it was not
19 possible to do that. We have had a computer guy from
20 Columbia go look at it. They could not do it, so.

21 THE COURT: Whatever issues -- you put it in evidence.
22 You must anticipate some means for them to see it once it's
23 in evidence. So what do you want to do? The state?

24 MR. MOAK: I can get it set up so all they can do is
25 press play. If they want to like stop it or whatever,

1 they're going to have a problem with that. That's what I'm
2 saying.

3 THE COURT: All right. Why don't you do what you just
4 said.

5 MR. MOAK: Okay.

6 (Pause.)

7 THE COURT: If you get the disk so it can be set up.

8 (Pause.)

9 THE COURT: Here's another note by the way.

10 Do we have access to the nurse practitioner's medical
11 notes?

12 MR. MOAK: Her notes? I don't think we have that.

13 THE COURT: Do we have access to the nurse
14 practitioner's medical notes, Carehouse? What says the
15 state?

16 MR. MOAK: Number one, I don't think we have all the
17 notes. Plus, it's not in evidence, so.

18 THE COURT: What say the defense?

19 MR. KIRINCICH: Your Honor, those were not moved into
20 evidence by either party.

21 THE COURT: The jury has all the evidence, that's the
22 answer to that question.

23 (Pause.)

24 THE COURT: Do you have it quered to that part, to that
25 position?

1 MR. MOAK: Your Honor, if they press start, now it's
2 at the beginning of the video.

3 THE COURT: When the clerk is in the jury room, she
4 won't stay during the entire playing of it. The only thing
5 she could do is put it in and press start so they can start
6 listening to it, so they'll know how to work the computer
7 as well as she will.

8 Before we do that, however, I'm going to bring the
9 jury out to answer the question that they asked.

10 If you'll bring the jury in please.

11 (The jury returns to the courtroom at 1:51 p.m.)

12 THE COURT: Madam forelady, and members of the jury,
13 you sent out 2 notes. The first request to view the
14 forensic interview. And the clerk will take a computer
15 back there and set it up and push play so you all can view
16 that.

17 Secondly, you've posed the question: Do we have
18 access to the nurse practitioner's medical notes,
19 Carehouse?

20 You have received all of the evidence and the evidence
21 that you have is the evidence that you are to deliberate
22 based on. We don't have any additional witnesses to bring
23 in additional evidence or anything other than what you
24 already have.

25 So the answer to that question is, no. If it hasn't

1 been introduced into evidence, then you do not have access
2 to it.

3 So if you will return to the jury room and you may
4 resume deliberations after the clerk starts the video and
5 leaves the jury room. All right. Thank you all.

6 (The jury retires to the jury room at 1:54 p.m.)

7 THE COURT: All right. Any additions, corrections, or
8 exceptions to the charge?

9 MR. MOAK: Nothing from the state, Your Honor.

10 MR. KIRINCICH: No, Your Honor.

11 THE COURT: All right. We'll be back at ease then on
12 this case as the jury continues their deliberations.

13 (The court is at ease awaiting a verdict of the jury.)

14 (Note from jury marked Court's Exhibit No. 2 for
15 identification.)

16 THE COURT: All right. I understand that there is a
17 verdict. I want to caution everyone that there are to be
18 no outbursts in the court. I know that it is an important
19 matter to all concerned. But anyone who is in contempt of
20 court may be sentenced to 6 months in jail without a jury.
21 I'm sure that you all will abide by that.

22 Bring them in.

23 (The jury returns to the courtroom at 2:38 p.m.)

24 THE COURT: All right. Madam forelady, if you will
25 stand for me please.

1 (Complied.)

2 THE COURT: Have you reached a verdict?

3 JUROR: Yes, we have.

4 THE COURT: Is it a unanimous verdict?

5 JUROR: Yes, sir, it is.

6 THE COURT: All right. Thank you. If you'll pass it
7 to the bailiff, and you may be seated.

8 (Complied.)

9 THE COURT: The defendant will stand.

10 (Complied.)

11 THE COURT: You may publish the verdict.

12 VERDICT OF THE JURY:

13 CLERK: Thank you, Your Honor. The state of South
14 Carolina county of Kershaw, the state versus George Stanley
15 Branham, II. Indictment 2010-GS-28-448. The verdict is
16 guilty, signed by Rachel E. Kramer, foreperson.

17 Madam forelady, and ladies and gentlemen of the jury,
18 if this is your verdict, please signify by raising your
19 right hand.

20 (All hands were raised.)

21 CLERK: Thank you.

22 THE COURT: Any additional polling requested?

23 MR. KIRINCICH: Yes, Your Honor. I request polling.

24 THE COURT: Madam clerk, if you will poll the jurors
25 individually.

1 CLERK: Thank you, Your Honor.
2 Juror no. 8, Lawrence E. Ansley, was this your
3 verdict?
4 JUROR: Yes.
5 CLERK: Is it still your verdict?
6 JUROR: Yes.
7 CLERK: Thank you. Juror No. 19, Tony W. Bowers?
8 JUROR: He was an alternate.
9 CLERK: Excuse me. Thank you.
10 No. 20, Joseph E. Bradley, was this your verdict?
11 JUROR: Yes.
12 CLERK: Is it still your verdict?
13 JUROR: Yes, ma'am.
14 CLERK: Thank you. No. 23, Paul E. Branham.
15 JUROR: Yes, ma'am.
16 CLERK: Was this your verdict?
17 JUROR: Yes, ma'am.
18 CLERK: Is it still your verdict?
19 JUROR: Yes, ma'am.
20 CLERK: Thank you. No. 51, Tierra D. Dixon, was this
21 your verdict?
22 JUROR: Yes.
23 CLERK: Is it still your verdict?
24 JUROR: Yes.
25 CLERK: Thank you. No. 110, Rachel E. Kramer, was

1 this your verdict?
2 JUROR: Yes, ma'am.
3 CLERK: Is it still your verdict?
4 JUROR: Yes, ma'am.
5 CLERK: Thank you. No. 114, Leroy Love.
6 JUROR: Yes.
7 CLERK: Was this your verdict?
8 JUROR: Yes.
9 CLERK: Is it still your verdict?
10 JUROR: Yes.
11 CLERK: Thank you. No. 121, Jessica A. McCracken.
12 JUROR: Yes.
13 CLERK: Was this your verdict?
14 JUROR: Yes, ma'am.
15 CLERK: Is it still your verdict?
16 JUROR: Yes, ma'am.
17 THE COURT: Thank you. No. 151, Melissa A. Rice.
18 JUROR: Yes, ma'am.
19 CLERK: Was this your verdict?
20 JUROR: Yes, ma'am.
21 CLERK: Is it still your verdict?
22 JUROR: Yes, ma'am.
23 CLERK: Thank you. No. 161, Timothy R. Sharpe.
24 JUROR: Yes, ma'am.
25 CLERK: Was this your verdict?

1 JUROR: Yes, ma'am.

2 CLERK: Is it still your verdict?

3 JUROR: Yes, ma'am.

4 CLERK: Thank you. No. 169, Yancy D. Stephens, Jr.,
5 was this your verdict?

6 JUROR: Yes.

7 CLERK: Is it still your verdict?

8 JUROR: Yes.

9 CLERK: Thank you. No. 181, Tammy L. Tollison.

10 JUROR: Yes, ma'am.

11 CLERK: Was this your verdict?

12 JUROR: Yes, ma'am.

13 CLERK: Is it still your verdict?

14 JUROR: Yes, ma'am.

15 CLERK: Thank you. No. 188, Michael A. Weaver.

16 JUROR: Yes, ma'am.

17 CLERK: Is it still your verdict?

18 JUROR: Yes, ma'am.

19 CLERK: Is it still your verdict?

20 JUROR: Yes, ma'am.

21 CLERK: Thank you. Your Honor, the jury has been
22 polled.

23 THE COURT: All right. The verdict is the unanimous
24 verdict of the jury and the defendant is guilty based on
25 the jury's verdict.

1 Any post-trial motions?

2 MR. KIRINCICH: Your Honor, I just ask for the 10 days
3 that were provided to filing post-trial motions.

4 THE COURT: Well, what's the state's position
5 concerning that?

6 MR. MOAK: Your Honor, we're happy with the jury
7 verdict. I'm assuming he's going to make a motion for a
8 new trial. I don't know what he's asking for.

9 THE COURT: All right. The Court denies 10 days to
10 file a post-trial motion. If you have a post-trial motion,
11 you can make it at this time.

12 MR. KIRINCICH: Not at this time, Your Honor.

13 THE COURT: And, of course, if no post-trial motion is
14 made, then the right to make a post-trial -- right to make
15 a post-trial motion would then be waived. So I'll give you
16 a few moments to think about what post-trial motion you
17 might want to make, to discuss it with your client as well.

18 (Pause.)

19 THE COURT: Mr. Kirincich, per rule 29, you can
20 reserve the right to make the post-trial motion, but it
21 will not affect the imposition of sentencing here today.
22 You're not seeking to have me delay sentencing, are you?

23 MR. KIRINCICH: No, Your Honor. I was just asking for
24 the right to either make a motion for a new trial or any
25 other post-trial motions per rule 29 within 10 days. And,

1 Your Honor, we're okay with moving into sentencing today.

2 THE COURT: All right. Under that -- or with that
3 understanding, you will have the 10 days per rule 29.

4 MR. KIRINCICH: Thank you.

5 THE COURT: Ladies and gentlemen, whenever you have
6 found someone guilty, then it becomes my responsibility to
7 impose a sentence. You have no role in the sentencing
8 process. Your role is to determine guilt or innocence,
9 which you have done. Of course, you've invested a good bit
10 of time out of your life in this process. You didn't
11 volunteer for the role that you have had to take in these
12 proceedings, but you responded to the call of duty, and I
13 want to thank you on behalf of the citizens of this county
14 and this state.

15 You're welcome to stay. And we're going to move in to
16 the sentencing phase of these proceedings at this time.

17 If the defendant would come forward for sentencing.

18 (Complied.)

19 MR. MOAK: Your Honor, we do have a sentencing sheet
20 prepared.

21 THE COURT: All right. Anything further from the
22 state?

23 MR. MOAK: Your Honor, all the prior record is Mr.
24 Branham has several prior arrests, but there are no
25 convictions on his rap sheet. However, you have heard what

1 he's been convicted of. You heard in the pretrial hearing
2 on Monday, you heard the allegations from the ex --
3 actually the wife, Your Honor, about that situation. I
4 don't know if you will take that into account or not.

5 But we also have some of the family members. I think
6 the grandfather at least wishes to address The Court.

7 The sentencing -- with a sentencing range for this
8 offense, I think we're asking for the maximum sentence,
9 which is life, Your Honor.

10 I think the grandfather wishes to address The Court.

11 THE COURT: I'd be happy to hear from anyone who has
12 something to say.

13 (Pause.)

14 MICHAEL SCOTT: Michael Scott, S-c-o-t-t. Your Honor,

15 I thank you for this trial today. I just want to say this

16 man is despicable in my eyes. He hurt my grand daughter.

17 And I thank you for this judicial system that works,

18 because he done this thing so many times and we seen a

19 different kid come out of it, who didn't understand. We

20 knew something was wrong. And we pushed and pushed and

21 every time we take them to the doctor and find out -- we

22 didn't know what was going on until this when it's caught.

23 And I'm glad we caught it in time where she can have

24 time to recover. And I want you to take into consideration

25 this young one has got to come up and live with this as the

1 rest of this family does, and what this family has done
2 went through and my family. And I do to the best of my
3 ability to take care of them, the grandkids, of what their
4 needs are and what they do, and protect them at the best of
5 my ability.

6 But anybody to hurt a kid is a despicable in my eyes.

7 I just want to thank you for it today.

8 THE COURT: Thank you.

9 MR. MOAK: I believe that's all from the victim's
10 family, Your Honor. But, again, we'd ask you to take into
11 account the heinous nature of this offense, the fact that
12 it happened more than once and the fact that Child [REDACTED] who is
13 now 8 years old, will be dealing with this for the rest of
14 her life. We would actually ask for the life sentence,
15 Your Honor.

16 THE COURT: I'll give the victim's mother an
17 opportunity to address The Court if she would like to.

18 (Pause.)

19 MR. MOAK: She's shaking her head.

20 (Pause.)

21 JESSICA SCOTT: My name is Jessica Scott, obviously.
22 That night that everything happened, I just couldn't
23 believe what I seen. All I could think of was my daughter,
24 and how bad he hurt her. I just want The Court to take
25 that into consideration, that because of what I did when I

1 seen him doing that to my daughter, I took a lot on me and
2 lost all my children. And I just want justice to be served
3 and him to get what he deserves, and for my daughter to be
4 able to heal. That's it.

5 THE COURT: All right. Thank you.

6 MR. MOAK: Your Honor, that's all from the state.

7 THE COURT: All right. The law says that a person
8 convicted of violation of -- violation of this law is
9 guilty of a felony, and upon conviction must be imprisoned
10 for a mandatory minimum of 25 years, no part of which may
11 be suspended or probation granted or must be imprisoned for
12 life. And the sentence possibilities are dependent upon
13 the jury's finding as to whether a sexual battery has taken
14 place involving penetration, and that allegation was
15 contained in the indictment. And the jury has found that
16 Mr. Branham committed a sexual battery on this child under
17 the age of 11.

18 So you're facing a mandatory minimum of 20 (sic) years
19 or a sentence up to life. This same law has a death
20 penalty provision for repeat offenders. Of course, here
21 there are prior allegations of chronic abuse and continuous
22 abuse, but at this moment, this is -- there's no prior
23 conviction. So no prior offense would apply. Mr.
24 Kirincich.

25 MR. KIRINCICH: Your Honor, while we appreciate the

1 jury system, I know Mr. Branham is disappointed with their
2 verdict today. You've heard about Mr. Branham throughout
3 the trial, so I have nothing to add, more for biographic
4 reasons.

5 We do ask that you sentence him to the minimum
6 sentence that you can, Your Honor. He has no prior
7 convictions, no prior record that Mr. Moak has made us
8 aware of.

9 I've advised Mr. Branham it's probably in his best
10 interest not to speak.

11 And I thank you, Your Honor, for allowing me the 10
12 days to make any post-trial motions. I do anticipate
13 making one if not several motions, Your Honor, in writing.

14 We just ask that you sentence him to the minimum.

15 THE COURT: All right.

16 MR. BRANHAM: Will I be allowed to speak?

17 THE COURT: Mr. Branham, is there anything you would
18 like to say?

19 MR. BRANHAM: Yes, sir, it is. Everybody that
20 participated here -- I would like for you all to remember
21 this day.

22 THE COURT: Is there anything you would like to say to
23 me? I'm the one that's going to sentence you.

24 MR. BRANHAM: Yes, sir.

25 THE COURT: Go ahead.

1 MR. BRANHAM: There was a lot of evidence that I
2 believe pointed toward my innocence that you would not let
3 in. I believe that ---

4 THE COURT: Such as?

5 MR. BRANHAM: Such as?

6 THE COURT: Yes, sir.

7 MR. BRANHAM: Such as the fact that we have
8 documentation where the kids were abused before by their
9 uncle while in their father's care. The allegation was ---

10 THE COURT: When you say the kids, who are you
11 referring to?

12 MR. BRANHAM: I'm referring to Sibling 1 and Sibling
13 Scott was a witness of it. But they were sexually abused
14 while in their father's care; that's a fact. And the
15 finger was pointed toward me. The jury was not allowed to
16 hear that or be made known of that incident.

17 Now, the fact that Child -- I do not disagree with
18 the fact that she's been abused, because I believe she has.
19 I think that if I had been the perpetrator and I'm the one
20 that's asking for her to be checked out, you know, with the
21 doctor, I mean, that's -- that's playing with fire. And
22 it's not a matter if the truth will come out. It's when.
23 Because what happens to a little girl, especially something
24 like she's been through, it's etched on her -- on her mind.
25 She'll never forget it. And she'll never forget who done

1 it to her," so it's not a matter of when the truth will come
2 out -- or I mean, not a matter of if, it's when.

3 And for the family, for them to -- they know what
4 happened. They absolutely, positively know what happened.
5 And for them to want to protect one of their own after a
6 little girl that I cared for had been through, what she had
7 to go through, for them to recommend therapy and sit among
8 us today and for me to be convicted of it ---

9 THE COURT: Mr. Branham, if you want to address The
10 Court concerning sentencing, I'll be happy to hear from
11 you. The jury has spoken. Do not address the jury.
12 Address The Court. Address me.

13 MR. BRANHAM: Yes, sir. Just about everything we had
14 that would point toward my innocence, it was objected to
15 and it was sustained by you. I do not -- I don't feel that
16 I had a fair trial, not at all.

17 The hearsay on my defense was objected to and
18 sustained.

19 The hearsay from the solicitors was not -- I mean, it
20 was objected to but it was not sustained.

21 I understand that anyone charged with a crime like
22 this or even an allegation made towards someone -- you
23 know, people are going to be prejudiced. I mean, I would
24 be. And you know when I seen something like this on
25 television, you know, I didn't give the person the benefit

1 of the doubt. You know, I was like, burn him.

2 But I just want everybody to remember this day and
3 remember this -- that the truth will come out. It's not
4 over. That's all I have to say.

5 THE COURT: All right. Thank you. Anything further,
6 Mr. Kirincich?

7 MR. KIRINCICH: No, Your Honor. I would like to point
8 out that Mr. Branham's father is here in the courtroom and
9 his step-mother as well. There was a comment made whether
10 they love their child. I just want to clarify that they do
11 love Mr. Branham here, Bubba. The only reason they haven't
12 been here, Your Honor, is because I told them not to come
13 back until today.

14 THE COURT: All right. Mr. Moak.

15 MR. MOAK: Your Honor, the only thing I have is I
16 probably shouldn't even respond to it. But I would remind
17 The Court that the bulk of the testimony Monday afternoon
18 in pretrial was from Mr. Branham's wife who testified in
19 this courtroom that she caught Mr. Branham in the bathroom
20 with the 3 year old Child [REDACTED] attempting to force her
21 to perform oral sex on him. And when she interrupted, she
22 suffered a severe beating, and she did not go forward to
23 law enforcement until he was caught.

24 And I believe Your Honor did exclude that evidence.
25 So I don't think it's fair to say that Your Honor has not

1 ruled on the defendant's behalf. And we feel that that
2 evidence should have been included and we feel that it was
3 a fair trial.

4 THE COURT: Yes, sir.

5 MR. BRANHAM: Once again, if I may. What Mr. Moak is
6 claiming here is hearsay. What I claim is a fact that's on
7 paper and documents. Part of the Carehouse reports that
8 were not allowed to be heard in this courtroom. Fact. Not
9 hearsay.

10 THE COURT: All right. Anything else, sir?

11 MR. BRANHAM: That's it.

12 THE COURT: All right. Regarding the sentencing, the
13 state wants the maximum sentence, which is life
14 imprisonment. The defense wants the minimum sentence,
15 which is 25 years.

16 I'll hear from the state and the defense.

17 MR. MOAK: We want life, Your Honor. We want -- the
18 girl, it's going to affect her entire life. This was not
19 one incident. This was multiple incidents. He was
20 actually caught twice, one of which was excluded from this
21 trial, Your Honor. We feel that this is a life sentence
22 case; that's our position.

23 THE COURT: All right.

24 MR. KIRINCICH: Your Honor, Mr. Branham was 39 years
25 old when he entered into the detention center. Based on

1 the minimum sentence, he will be no younger than 61 when he
2 would be released. Your Honor is familiar with this type
3 of sentence. It's a no-parole crime. He will be evaluated
4 while he's in the Department of Corrections for further
5 incarceration through the sexually violent predator act,
6 Your Honor. And if he is released from prison in his early
7 60s, he will be on community supervision as the law stands
8 right now, and he will be supervised by the state when he
9 is released. We just ask that you consider after hearing
10 everything, Your Honor, after hearing the disputed
11 testimony, giving Mr. Branham some benefit of the doubt at
12 this point and allowing him to have some sort of life
13 outside of the Department of Corrections.

14 THE COURT: Anything else, Mr. Moak?

15 MR. MOAK: Nothing from the state, Your Honor, other
16 than I think you should also take into account the fact
17 that Mr. Branham apparently still has not accepted the
18 responsibility for what he did.

19 THE COURT: It is amazing. As I listen to you, Mr.
20 Branham, your ability to attempt to shift the blame
21 everywhere you can possibly find an opportunity to shift
22 the blame. When I came over here a few months ago for a
23 bond hearing, you had your arrows pointed out towards Mr.
24 Moak. You were blaming him for your predicament. And I
25 ordered that your case be tried within 100 days.

1 Now you've had your trial and you're blaming me for
2 your perdicerment. You're blaming the child's family,
3 you're blaming the father, the uncle. You have an uncanny
4 ability to blame everyone for your perdicerment other than
5 yourself.

6 We've been here a full week. I've listened to the
7 entire case, as has the jury. I am 100 percent in support
8 of the jury's verdict finding you guilty.

9 And as far as this court is concerned, the truth has
10 been established in this case. And you will be sentenced
11 based on that fact.

12 If there are any errors made during this trial, that's
13 why we have appellate courts. The same appellate courts
14 that determine the fact that another child claimed that
15 someone abused them has no bearing on this trial and in
16 relation to this victim, the same as I excluded the
17 evidence wherein your wife wanted to testify about her
18 finding you abusing this child, because I determined that
19 because no charges were brought as a result of that, then
20 that should not be a part of this trial, that every tub
21 should sit on its own bottom. And the evidence regarding
22 your guilt or innocence in this case should be based on the
23 evidence in this case; and that's what the jury has
24 determined.

25 No, sir. You can put your fingers down. I've heard

1 from you all that I intend to hear from you concerning this
2 matter.

3 SENTENCE OF THE COURT:

4 The sentence of The Court is that you be committed to
5 the State Department of Corrections for a period of 50
6 years.

7 MR. MOAK: Thank you, Your Honor.

8 (The jury was excused.)

9 --- End of transcript of record ---

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I, the undersigned Dianne A. Rutledge, official court
2 reporter for the Fifth Judicial Circuit of The State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of the record of
5 the proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Circuit
7 Court for Kershaw County, South Carolina on the 22nd, 23rd,
8 24th, and 25th days of August 2011.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11

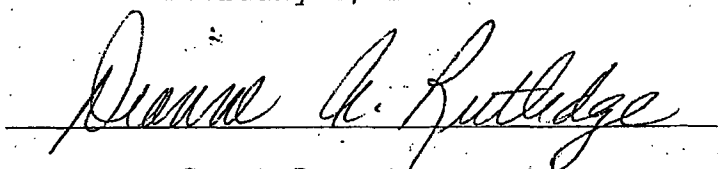
12

February 6, 2012

13

14

15


Court Reporter

16

17

18

19

20

21

22

23

24

25

WITNESSES

(S) G Marthers - Kershaw County Sheriff

ARREST WARRANT NUMBER

M097127

ACTION OF GRAND JURY

TRUE BILL

person of Grand Jury

JUL 13 2011

VERDICT

GUILTY

Rachel E. Kramor

person of Petit Jury

le:

8/25/11

DOCKET NO. 2010-GS-28-0448

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

JULY TERM 2011

K98

THE STATE

vs.

George Stanley Branham II

**Amended Indictment for
CSC WITH MINOR, 1ST DEG**

SC Code: 16-03-0655(A)(1)

CDR Code: 0385

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

hereby appear in my own proper person and ple guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

JOYCE
CLERK
KERSHAW COUNTY
2011 JUL 13 PM 3:45

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

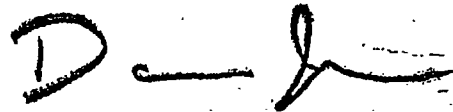
INDICTMENT

At a Court of General Sessions, convened on JULY 13, 2011, the Jurors of Kershaw County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

That George Stanley Branham II did in Kershaw County, State of South Carolina, on or between the dates of November 1, 2009 and December 8, 2009, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who is less than eleven (11) years of age, to wit: Child █████ SCOTT, whose date of █████ is 11/21/2002, in violation of Section 16-3-655(A)(1), [formerly Section 16-3-655(1)], S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Dan Johnson, SOLICITOR

492

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Kershaw

VS.

George Stanley Branham II

AKA:

Race:

Sex: M

Age: 41

07-18-1970 SS#: 249-67-7463

Address: RD.

City, State, Zip: ELGIN, SC 29045

DL#: 007051483 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Sex / Criminal sexual conduct with or Attempt- victim under 11 yrs of age - First degree

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Jana Barry Moore 69810
Meak, Ren SC Bar#

Defendant

Jana Barry Moore 76892
Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 50 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-28-0448

A/W#: M097127

Date of Offense: 12/8/2009

S.C. Code § : 16-03-0655(A)(1)

CDR Code #: 0385

SENTENCE SHEET

Presiding Judge

Judge Code:

Sentence Date:

C.O.C.

STATE OF SOUTH CAROLINA)
 COUNTY OF KERSHAW)
)

IN THE COURT OF GENERAL SESSIONS
 FOR THE
 FIFTH JUDICIAL CIRCUIT

State of South Carolina)
)
)

2010-GS-28-448

v.)
)
)

MOTION FOR NEW TRIAL

George S. Branham, II,)
 Defendant)
)
)

Judge:
 Court Reporter:
 Solicitor:
 Public Defender:
 Date:

Hon. Clifton Newman
 Dianne Rutledge
 Ronald W. Moak
 Jason D. Kirincich
 August 25, 2011

Pursuant to the South Carolina Rules of Criminal Procedure: Rule 29, SCRCrimP and *State v. Miller*, 287 S.C. 280, 337 S.E.2d 883 (1985), Defendant moves for a new trial based on the improper exclusion of evidence related to prior false allegations by the victim's sibling. The exclusion of this testimony precluded the defendant from presenting a full defense to a jury of his peers and thereby deprived him of the due process rights granted to him by S.C. Const. art. I §§ 3 & 6 and U.S. Const. amend. V & XIV, § 1. The defendant also moves for a new trial based on the improper introduction of the forensic interview video. The defendant objected to the introduction of the video under S.C. Code § 17-23-175 based on a general hearsay objection in that the out-of-court statement was being offered to prove the truth of the matter asserted (South Carolina Rules of Evidence: Rule 801, SCRE) and on the grounds that the introduction of the video was only being used to bolster the victim's testimony (which became especially troubling to the defendant after the victim had trouble testifying on cross-examination).

EXCLUSION OF PRIOR FALSE ALLEGATION:

The State requested that the evidence of the prior allegation be excluded pursuant to *State v. Sprouse*, 325 S.C. 275, 478 S.E.2d 871 (S.C.App.1996) but the defendant submits that *Sprouse* is not dispositive of the issue at hand. In *Sprouse*, the defendant sought to introduce evidence of a prior false allegations made by the victim's grandmother to medical personnel. In the defendant's case, the prior allegations were made by the victim's sibling. Although both allegations are from a third party not directly associated with the accusation being prosecuted, the difference in the maturity of the parties should be noted. A common problem in the prosecution of child sexual abuse cases is the possibility of victim coaching. See *State v. Smith*, 642 S.E.2d 627 (S.C. Ct. App. 2007) *vacated on other grounds*, 679 S.E.2d 176 (S.C. 2009). The defendant could have introduced evidence through the testimony of State witnesses Jessica Scott, Debbie Elliott and Dr. Kathy Saunders that ZS, the older brother of the victim, BS, had previously made an allegation of sexual abuse against the defendant. That testimony would have opened the door to allow the defendant to personally testify to these matters and Jessica Scott could have been questioned regarding the coaching of ZS to make the prior false allegation.

In *Sprouse*, the allegation was not investigated by law enforcement but in the defendant's case, the prior allegation was investigated by the Kershaw County Sheriff's Office. Investigator Phil Crawford, formerly of the Kershaw County Sheriff's Office, investigated the prior allegation and ultimately decided not to charge Mr. Branham after it was disclosed that Mark Scott, the father of ZS and BS, coached ZS to say that Mr. Branham molested him. Defendant submits that these two main differences would make this a novel issue not addressed by *Sprouse*. By not allowing the defendant to introduce this evidence, the presentation of a complete defense was

barred and the jury was deprived of the evidence that this family had a history of coaching alleged sexual assault or sexual battery victims.

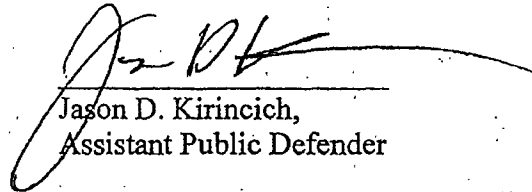
INTRODUCTION OF FORENSIC INTERVIEW VIDEO:

Although S.C. Code § 17-23-175 allows for the introduction of an out of court video-taped statement of a child under twelve, the video must be reviewed by the Court to determine its admissibility. The defendant objected to the introduction of the video as being hearsay that bolstered the victim's testimony. The Court in *State v. Russell*, 383 S.C. 447, 679 S.E.2d 542 (S.C.App. 2009) found that absent the statute, the video would be inadmissible hearsay, but Rule 101 of the South Carolina Rules of Evidence allows for a statute to govern proceedings for the admissibility of evidence in the courts of South Carolina. The defendant again objects to the introduction of the video along the more narrow grounds that S.C. Code §17-23-175(A)(3) was not met and without that provision, the statute as a whole would not apply and would render the statement inadmissible hearsay. S.C. Code §17-23-175(A)(3) deals with the testimony of the child at trial under both direct and cross-examination. Defendant submits that while the BS was physically available to testify and she did an admirable job answering questions posed by the State, she was otherwise unavailable for cross-examination. During cross-examination, BS admitted that someone helped her with her testimony that she gave during direct examination and nearly all of her other answers during cross-examination consisted of either "I don't know" or "I don't remember." At some point it became fruitless for defendant's counsel to continue to ask BS any questions in regard to the allegation or the video because she routinely had no answer. When BS could not actively participate in cross-examination, she in effect became unavailable

and the video-taped forensic interview became hearsay that only bolstered the testimony (testimony that she admitted she had help with) she gave during her direct examination.

For the above stated reasons, the defendant requests a new trial.

Respectfully submitted,



Jason D. Kirincich,
Assistant Public Defender

Fifth Judicial Circuit
Kershaw Co. Public Defender's Office
1121 Broad Street
Camden, SC 29020

Camden, SC
September 2, 2011

IN THE COURT OF GENERAL SESSIONS
FOR THE
FIFTH JUDICIAL CIRCUIT

2010-GS-28-448

V.

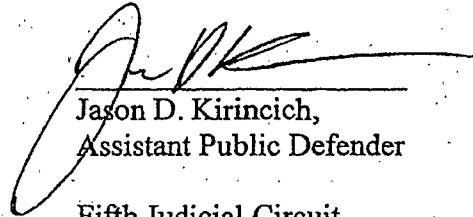
MOTION FOR RECONSIDERATION

Hon. Clifton Newman
Dianne Rutledge
Ronald W. Moak
Jason D. Kirincich
August 25, 2011

On August 25, 2011, the defendant was convicted at trial of Criminal Sexual Conduct with a Minor, First Degree. The defendant entered into trial proclaiming his innocence and he was deeply disappointed in the jury's finding of guilty. He was particularly upset about the exclusion of some potential evidence he believed that the jury should have heard. Although the defendant was advised not to say anything during sentencing as he still maintained his innocence and he was understandably upset, he chose to speak when asked by the Court if he had anything to say, his emotions got the better of him and he improperly directed his anger at the Court. Defendant's counsel should have done a better job explaining to him the correct process for resolving any grievances that should arise during and after a trial. Defendant had no prior record,

he has the support of his family and he has several small children. These are the things that should have been stressed to the Court, not his emotional reaction to the fact that he was convicted of a crime that carries a mandatory minimum of twenty-five years along with a number of collateral consequences. As some time has passed and the defendant has had time to reflect on the realities he now must face, the defendant now moves for a hearing for a sentence reconsideration.

Respectfully submitted,



Jason D. Kirincich,
Assistant Public Defender

Fifth Judicial Circuit
Kershaw Co. Public Defender's Office
1121 Broad Street
Camden, SC 29020

Camden, SC
September 2, 2011

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF KERSHAW) FIFTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA) INDICTMENT NO.: 2010-GS-28-0448
JOYCE MEDDALE
CLERK OF COURT
KERSHAW COUNTY, S.C.

vs.)

GEORGE S. BRANHAM, II,)

Defendant.)

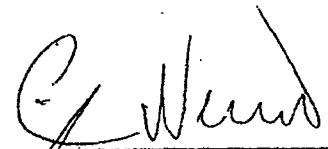
ORDER DENYING DEFENDANT'S
MOTION FOR A NEW TRIAL

This matter comes before the Court on Defendant's Motion for a New Trial. This case was tried before a jury in Kershaw County during August 2011. On August 25, 2011, the defendant was convicted at trial of Criminal Sexual Conduct with a Minor, First Degree. Defendant subsequently filed this motion.

After fully considering the arguments contained in the motion, the Defendant's Motion for a New Trial is DENIED.

IT SO ORDERED.

November 2, 2011
Columbia, South Carolina



Clifton Newman,
Presiding Judge

STATE OF SOUTH CAROLINA
 COUNTY OF KERSHAW

STATE OF SOUTH CAROLINA
 COUNTY OF KERSHAW

vs.

GEORGE S. BRANHAM, II,

Defendant.

THE COURT OF GENERAL SESSIONS
 FIFTH JUDICIAL CIRCUIT

INDICTMENT NO.: 2010-GS-28-0448

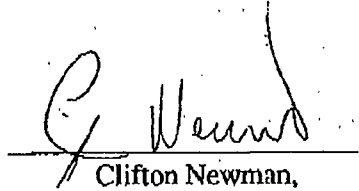
ORDER DENYING DEFENDANT'S
 MOTION FOR RECONSIDERATION

This matter comes before the Court on Defendant's Motion for Reconsideration of Defendant's fifty year sentence. This case was tried before a jury in Kershaw County during August 2011. On August 25, 2011, the defendant was convicted at trial of Criminal Sexual Conduct with a Minor, First Degree, and sentenced to fifty years. Defendant subsequently filed this motion.

After fully considering the arguments contained in the motion, the Defendant's Motion for Reconsideration is DENIED.

IT SO ORDERED.

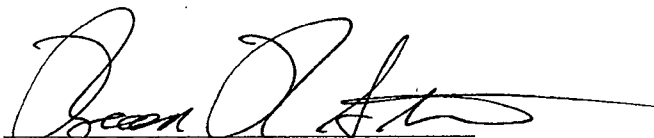
November 2, 2011
 Columbia, South Carolina


 Clifton Newman,
 Presiding Judge

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."

This 26th day of October, 2012



Breen Richard Stevens
Appellate Defender

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

ATTORNEY FOR APPELLANT