

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable Debra R. McCaslin, Circuit Court Judge

RECEIVED

Mar 18 2024

S.C. SUPREME COURT

VANCE ROSS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000024

APPENDIX

WANDA H. CARTER
Deputy Chief 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

D. RUSSELL BARLOW
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2016-GS-21-00122

State of South Carolina,	)	
	)	
Plaintiff,	)	

-vs-

Transcript of Record

Vance Ross,

Defendant.

April 17-19, 2017
Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge; and a jury

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

David Richardson, Esquire
Attorney for the Plaintiff

Thurmond Brooker, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

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COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption
	or change in thought
ellipses . . .	trailing off
[ph]	denotes phonetically written
[sic]	written as said

1 APRIL 17, 2017

2 (WHEREUPON, the proceedings began at 11:38 a.m. The
3 defendant was present, along with his counsel of record.)

4 THE COURT: Good morning, ladies and gentlemen. I hope
5 you all are doing well this morning. You all have had the
6 pleasure of being qualified by Judge Russo this morning to
7 serve here this week.

8 What we're going to do -- my name is Craig Brown. I'm a
9 circuit judge out of Florence, just like Judge Russo is.
10 There's three of us in this building: myself, Judge Nettles,
11 and Judge Russo.

12 You all have been summoned for a one-week term of General
13 Sessions court, which is also known as criminal court in this
14 state. What we are going to do this morning is we're going to
15 pick a jury in a case, in the first case that's going to be
16 tried in front of me this week.

17 Is the State ready to proceed?

18 MR. RICHARDSON: Yes, sir, Your Honor. We'd call State
19 versus Vance Ross. It's Indictment 2016-GS-21-122.

20 THE COURT: Is defense counsel ready to proceed?

21 MR. BROOKER: Yes, sir, Your Honor.

22 THE COURT: All right. Ladies and gentlemen, the State
23 has called the case of the State of South Carolina versus Mr.
24 Vance Ross. Mr. Vance Ross is charged with seven counts of
25 criminal sexual conduct with a minor, and the indictment

1 alleges that such offenses occurred between the dates of
2 February 1, 2013, and July 31, 2014.

3 The indictment that I hold in my hand, ladies and
4 gentlemen, is not evidence in this case. I will charge you on
5 what the law is as it relates to the offense or the crime of
6 criminal sexual conduct with a minor at a later time.

7 Now, before we move forward in selecting a jury in this
8 case, there are certain questions that I must ask of you.

9 Can everybody in the back hear me okay? All right. If
10 you can't hear, those of you that are seated on the back row,
11 during this process, if at any point in time you can't hear,
12 just give me a thumbs up giving me the indication to raise my
13 voice a little bit more.

14 I don't -- I don't usually speak very loud. So when I'm
15 talking to a jury, I have to raise my voice intentionally and
16 sometimes it'll go back down. So please, if I'm not talking
17 loud enough for those of you in the back, I don't have a
18 microphone up here like Judge Russo does on -- on the 11th
19 floor. So if I'm not talking loud enough for you, just let me
20 know by giving me a hand signal in the back and I will raise
21 my voice.

22 All right. Ladies and gentlemen, in this case, as I told
23 you a minute ago, the defendant is charged with the offense of
24 seven counts of criminal sexual conduct with a minor. To
25 these charges -- to these charges, the defendant has pled not

1 guilty. Therefore, the State of South Carolina bears the
2 burden of proving his guilt beyond a reasonable doubt.

3 Now, before we go forward with selecting a jury, there
4 are certain questions that I must ask of you.

5 Is there any member of the jury panel that has ever been
6 related by blood, connected by marriage, had a close personal,
7 business or social relationship with Mr. Vance Ross? If so,
8 please stand.

9 (WHEREUPON, no one stood.)

10 THE COURT: All right. The following, ladies and
11 gentlemen, is a list of potential witnesses in this case.
12 Please listen very carefully.

13 They include: Joshua Dean of the Florence County
14 Sheriff's Office; Jennifer Floyd Lee, Florence County
15 Sheriff's Office; Farrah Turner, Florence County Sheriff's
16 Office; Dr. Anne Abel, Medical University of South Carolina;
17 Sally Williamson, the Care House; Margaret Nash, Pee Dee
18 Community Action Partnership; Sheila Brown; Esther Lewis;
19 Minor2 ; Minor1 ; and Larry Norris.

20 Is there any member of the jury panel that has ever been
21 related by blood, connected by marriage, had a close personal,
22 business or social relationship with any of those potential
23 witnesses? If so, please stand.

24 (WHEREUPON, two people stood.)

25 THE COURT: All right. Tell me your name and number,

1 please, ma'am.

2 JUROR NUMBER 2: Kayla Adkins, Number 2.

3 THE COURT: All right. Whom off of that list do you
4 know, ma'am?

5 JUROR NUMBER 2: Jennifer Floyd Lee.

6 THE COURT: All right. In what capacity do you know Ms.
7 Lee?

8 JUROR NUMBER 2: We're friends.

9 THE COURT: All right. Do you engage in social
10 activities together?

11 JUROR NUMBER 2: Just church.

12 THE COURT: All right.

13 JUROR NUMBER 2: That's about it.

14 THE COURT: Anything outside of church?

15 JUROR NUMBER 2: No.

16 THE COURT: All right. If you were selected as a juror
17 in this case, do you believe that you could be fair and
18 impartial to both the State and the defense?

19 JUROR NUMBER 2: Yes, sir.

20 THE COURT: All right. Thank you. You may be seated.
21 Yes, ma'am? Tell me your name and number, please?

22 JUROR NUMBER 81: Michelle Huggins, 81.

23 THE COURT: All right. And who do you know off of that
24 list, Ms. Huggins?

25 JUROR NUMBER 81: I know Floyd, Dean, and Turner.

1 THE COURT: Where did my list go? In what capacity do
2 you know Mr. Dean?

3 JUROR NUMBER 81: All three are through business. I work
4 for the Sheriff's Office in dispatch.

5 THE COURT: All right. I'm going to set you aside for
6 the trial of this case. All right? You may be seated.

7 All right. If, at this time, the attorneys involved in
8 this case would stand and introduce themselves to the jury?
9 The State followed by defense counsel, please.

10 MR. RICHARDSON: Thank you, Your Honor. David
11 Richardson. I'm assistant solicitor here in the Twelfth
12 Judicial Circuit. We cover Florence and Marion County.
13 Seated next to me here is John Jepertinger, who is a deputy
14 solicitor, and our elected solicitor is Ed Clements.

15 THE COURT: Mr. Brooker?

16 MR. BROOKER: Thank you, Your Honor. I'm Thurmond
17 Brooker. I practice here in Florence, South Carolina.

18 THE COURT: All right. Is there any member of the jury
19 panel that's ever been related by blood, connected by
20 marriage, had a close personal, business or social
21 relationship or ever been represented by any of the attorneys
22 involved in this case? If so, please stand.

23 (WHEREUPON, no one stood.)

24 THE COURT: All right. Has any member of the jury panel
25 formed or expressed an opinion about any issue or matter

1 involved in this case? If so, please stand.

2 (WHEREUPON, no one stood.)

3 THE COURT: All right. Is any member of the jury panel
4 aware of any bias or prejudice toward either the State or the
5 defendant in this case? If so, please stand.

6 (WHEREUPON, no one stood.)

7 THE COURT: All right. Does any member of the jury panel
8 know of any reason, any reason whatsoever, why he or she
9 should not serve as a juror in this case, with particular
10 emphasis being placed upon your ability to be fair and
11 impartial to both the State and the defense? If so, please
12 stand.

13 (WHEREUPON, no one stood.)

14 THE COURT: All right. Does the State have any
15 additional voir dire?

16 MR. RICHARDSON: No, Your Honor.

17 THE COURT: Defense counsel?

18 MR. BROOKER: Yes, Your Honor. For you to consider.

19 THE COURT: Can the lawyer's approach, please?

20 MR. BROOKER: Certainly.

21 (WHEREUPON, a bench conference was held in the presence
22 of the jury but out of the hearing of the jury panel as
23 follows.)

24 THE COURT: Thank you.

25 MR. BROOKER: Sure.

1 MR. RICHARDSON: I think Number 1 is usually asked as has
2 any member of the jury panel been a victim of a violent crime
3 or, you know, something of that nature. I think that would
4 cover that.

5 I think Number 2 would be covered in the same question
6 because it's usually as a member -- the victim or a member of
7 the victim's family been a victim of a violent crime.

8 Number 3. I don't think -- I don't know about that one.
9 The same with Number 4.

10 THE COURT: Well, let me ask you this. Any -- any
11 others?

12 MR. RICHARDSON: That are to avoid or --

13 THE COURT: Well, I'm going to ask a few here. I'm not
14 going to ask all of these by any -- certainly, if you'd like
15 to make a copy part of the record?

16 MR. BROOKER: Sure.

17 THE COURT: Okay. I'll ask a few -- a few of these.
18 Okay? I'll go into it.

19 MR. RICHARDSON: Sure.

20 (WHEREUPON, the bench conference ended and the
21 proceedings resumed as follows.)

22 THE COURT: All right. Is there any member of the jury
23 panel or their immediate family ever been the victim of a
24 violent crime? If so, please stand.

25 (WHEREUPON, no one stood.)

1 THE COURT: All right. All right. Ladies and gentlemen,
2 I'm going to ask this question and, if it applies to you, I'm
3 going to ask that you stand. And if you do stand, I'm going
4 to, at that point, have you come forward and speak to me at
5 sidebar here with the attorneys that are involved in this
6 case. So please listen very carefully to this question.

7 Has any member of the jury panel or their immediate
8 family or close personal friend ever been the victim of any
9 type of sexual offense? If so, please stand.

10 (WHEREUPON, no one stood.)

11 THE COURT: All right. All right. Anything further from
12 the State?

13 MR. RICHARDSON: No, sir.

14 THE COURT: Defense counsel?

15 MR. BROOKER: No, sir, Your Honor.

16 THE COURT: All right.

17 MR. BROOKER: Your Honor, we just simply ask at least
18 that the -- that the defendant's requested voir dire be at
19 least made a part of the record.

20 THE COURT: Will do, if you'll provide a clean copy to my
21 court reporter.

22 MR. BROOKER: Certainly.

23 THE COURT: The copy that was given to me by yourself --
24 I've marked on it and made some notes on it. So please give
25 her a clean copy of it.

1 (WHEREUPON, the proposed voir dire was marked as Court's
2 Exhibit Number 1.)
3 THE COURT: Thank you, sir.
4 MR. BROOKER: Thank you, Your Honor.
5 THE COURT: All right. Anything further from the State?
6 MR. RICHARDSON: No, sir.
7 THE COURT: Defense counsel?
8 MR. BROOKER: No, sir, Your Honor.
9 THE COURT: All right. Is one alternate sufficient, Mr.
10 Richardson?
11 MR. RICHARDSON: Yes, sir.
12 THE COURT: Mr. Brooker?
13 MR. BROOKER: Yes, sir.
14 THE COURT: All right. Madam Clerk, if you'll generate
15 me a list, please, ma'am? Five and ten on the strikes. All
16 right.
17 THE CLERK: Judge, do you want to give them copies?
18 THE COURT: That's fine.
19 (WHEREUPON, there was a pause in the proceedings, after
20 which the proceedings resumed as follows.)
21 THE CLERK: Are you ready, Judge?
22 THE COURT: Yes, ma'am.
23 THE CLERK: Okay. When I call your name, if you'll bring
24 all of your belongings and just come up to the middle of the
25 courtroom and just face the back of the courtroom. That's all

1 you've got to do. Number 72, Robert Hamilton.

2 (WHEREUPON, a white male came forward.)

3 THE COURT: Just right here, sir.

4 THE CLERK: What say the State?

5 MR. RICHARDSON: Please present Mr. Hamilton.

6 THE CLERK: What say the defendant?

7 MR. BROOKER: If you'd indulge me for just a second,
8 please, Your Honor.

9 THE COURT: Yes, sir.

10 MR. BROOKER: Please excuse this juror for the purposes
11 of this trial only.

12 THE CLERK: You've been excused from this trial only,
13 sir. You may return to your seat. 119, Michael Purvis.

14 (WHEREUPON, a white male came forward.)

15 THE CLERK: What say the State?

16 MR. RICHARDSON: Please present Mr. Purvis.

17 THE CLERK: What say the defendant?

18 MR. BROOKER: Please present the juror.

19 THE CLERK: Please have a seat in the jury box, sir.
20 121, Jaketta Ray.

21 (WHEREUPON, a black female came forward.)

22 THE CLERK: What say the State?

23 MR. RICHARDSON: Please present Ms. Ray.

24 THE CLERK: What say the defendant?

25 MR. BROOKER: Please present the juror.

1 THE CLERK: Please have a seat in the jury box, ma'am.
2 142, Bruce Wagner.
3 (WHEREUPON, a white male came forward.)
4 THE CLERK: What say the State?
5 MR. RICHARDSON: Please present Mr. Wagner.
6 THE CLERK: What say the defendant?
7 MR. BROOKER: Please present the juror.
8 THE CLERK: Please have a seat in the jury box, sir. 44,
9 David Culp.
10 (WHEREUPON, a white male came forward.)
11 THE CLERK: What say the State?
12 MR. RICHARDSON: Please present Mr. Culp.
13 THE CLERK: What say the defendant?
14 MR. BROOKER: Please excuse the juror.
15 THE CLERK: You've been excused from this trial only,
16 sir. You may return to your seat. 136, John Taylor.
17 (WHEREUPON, a white male came forward.)
18 THE CLERK: What say the State?
19 MR. RICHARDSON: Please present Mr. Taylor.
20 THE CLERK: What say the defendant?
21 MR. BROOKER: Please present the juror.
22 THE CLERK: Please have a seat in the jury box, sir.
23 101, Carol Matthews.
24 (WHEREUPON, a white female came forward.)
25 MR. BROOKER: I apologize. What's that number again?

1 THE CLERK: 101.
2 MR. BROOKER: Thank you.
3 THE CLERK: What say the State?
4 MR. RICHARDSON: Please present Ms. Matthews.
5 THE CLERK: What say the defendant?
6 MR. BROOKER: Please -- please excuse Ms. Matthews.
7 THE CLERK: You've been excused from this trial only,
8 ma'am. You may return to your seat. Number 5, Tumeka
9 Alexander.
10 (WHEREUPON, a black female came forward.)
11 THE CLERK: What say the State?
12 MR. RICHARDSON: Please present Ms. Alexander.
13 THE CLERK: What say the defendant?
14 MR. BROOKER: Please present the juror.
15 THE CLERK: Please have a seat in the jury box, ma'am.
16 108, Melanie Miles.
17 (WHEREUPON, a white female came forward.)
18 THE CLERK: What say the State?
19 MR. RICHARDSON: Please present Ms. Miles.
20 THE CLERK: What say the defendant?
21 MR. BROOKER: Please present the juror.
22 THE CLERK: Please have a seat in the jury box, ma'am.
23 120, Brooke Rabon.
24 (WHEREUPON, a white female came forward.)
25 THE CLERK: What say the State?

1 MR. RICHARDSON: Please present Ms. Rabon.
2 THE CLERK: What say the defendant?
3 MR. BROOKER: Please present the juror.
4 THE CLERK: Please have a seat in the jury box, ma'am.
5 Number 2, Kayla Adkins.
6 (WHEREUPON, a white female came forward.)
7 THE CLERK: What say the State?
8 MR. RICHARDSON: Please present Ms. Adkins.
9 THE CLERK: What say the defendant?
10 MR. BROOKER: Your Honor, we'd strike for cause.
11 THE CLERK: You've been excused from this trial only,
12 ma'am. You may return to your seat.
13 MR. BROOKER: No. For cause.
14 THE COURT: Hold on a minute. Can you approach at
15 sidebar?
16 MR. BROOKER: Sure.
17 THE COURT: Ma'am, if you'd stand right over here,
18 please?
19 THE CLERK: Sorry.
20 THE COURT: You're fine. Y'all come over here, please.
21 (WHEREUPON, a bench conference was held off the record,
22 after which the proceedings resumed as follows.)
23 THE COURT: Okay.
24 MR. BROOKER: Thank you, Your Honor.
25 THE COURT: All right. Defense counsel's request is

1 denied.

2 MR. BROOKER: Then we'd strike for cause, Your Honor.

3 THE COURT: Sir?

4 MR. BROOKER: Excuse me. I meant a peremptory strike.

5 THE COURT: All right. Ma'am, now you may return to your
6 seat. Thank you. All of that to say that.

7 THE CLERK: 65, Margarita Gioldasis.

8 (WHEREUPON, a white female came forward.)

9 THE CLERK: What say the State?

10 MR. RICHARDSON: Please present Ms. Gioldasis.

11 THE CLERK: What say the defendant?

12 MR. BROOKER: Present the juror.

13 THE COURT: What did he say? I'm sorry.

14 MR. BROOKER: I said please present the juror.

15 THE CLERK: Please have a seat in the jury box. 36,
16 Maria Campbell.

17 (WHEREUPON, a black female came forward.)

18 THE CLERK: What say the State?

19 MR. RICHARDSON: Please present Ms. Campbell.

20 THE CLERK: What say the defendant?

21 MR. BROOKER: Please excuse this juror.

22 THE CLERK: You've been excused from this trial only,
23 ma'am. You may return to your seat. 130, Ashley Simmonds.

24 (WHEREUPON, a white female came forward.)

25 THE CLERK: What say the State?

1 MR. RICHARDSON: Please present Ms. Simmonds.
2 THE CLERK: What say the defendant?
3 MR. BROOKER: If you could indulge me for just a second,
4 Your Honor?
5 THE COURT: Yes, sir.
6 MR. BROOKER: Present the juror.
7 THE CLERK: Please have a seat in the jury box. 59,
8 Marlisa Frieson.
9 (WHEREUPON, a black female came forward.)
10 THE CLERK: What say the State?
11 MR. RICHARDSON: Please present Ms. Frieson.
12 THE CLERK: What say the defendant?
13 MR. BROOKER: Present the juror, please.
14 THE CLERK: Please have a seat in the jury box, ma'am.
15 106, Timothy McNeil.
16 (WHEREUPON, a black male came forward.)
17 THE CLERK: What say the State?
18 MR. RICHARDSON: Please present Mr. McNeil.
19 THE CLERK: What say the defendant?
20 MR. BROOKER: Present the juror.
21 THE CLERK: Please have a seat in the jury box, sir.
22 146, Calvin Whitfield.
23 (WHEREUPON, a black male came forward.)
24 THE CLERK: What say the State?
25 MR. RICHARDSON: Please present Mr. Whitfield.

1 THE CLERK: What say the defendant?

2 MR. BROOKER: Please excuse the juror.

3 THE CLERK: You've been excused from this trial only,
4 sir. You may return to your seat. 68, Anita Grant.

5 (WHEREUPON, a black female came forward.)

6 THE CLERK: What say the State?

7 MR. RICHARDSON: Please present Ms. Grant.

8 THE CLERK: What say the defendant?

9 MR. BROOKER: Please excuse the juror.

10 THE CLERK: You've been excused from this trial only,
11 ma'am. You may return to your seat. 91, Melissa Jordan.

12 (WHEREUPON, a white female came forward.)

13 THE CLERK: What say the State?

14 MR. RICHARDSON: Please present Ms. Jordan.

15 THE CLERK: What say the defendant?

16 MR. BROOKER: Please present the juror.

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

18 THE COURT: All right. One and -- one and -- one and two
19 on the strikes for an alternate, please.

20 THE CLERK: 64, Stephanie Gerrald.

21 (WHEREUPON, a black female came forward.)

22 THE CLERK: What say the State?

23 MR. RICHARDSON: Please excuse the juror for the purposes
24 of this trial only.

25 THE CLERK: You've been excused from this trial only,

1 ma'am. You may return to your seat. 42, Ebonee Cooper.
2 (WHEREUPON, a black female came forward.)
3 MR. BROOKER: I apologize. What's that number again?
4 THE CLERK: 42.
5 MR. BROOKER: Thank you.
6 THE CLERK: What say the State?
7 MR. RICHARDSON: Please present Ms. Cooper.
8 THE CLERK: I'm sorry. Does the State wish to challenge
9 this juror for cause?
10 MR. RICHARDSON: No, ma'am.
11 THE CLERK: What say the defendant?
12 MR. BROOKER: Please excuse the juror.
13 THE CLERK: You've been excused from this trial only,
14 ma'am. You may return to your seat. 49, Steven Dennis.
15 (WHEREUPON, a white male came forward.)
16 THE CLERK: Does the State wish to challenge this juror
17 for cause?
18 MR. RICHARDSON: No, ma'am.
19 THE CLERK: What say the defendant?
20 MR. BROOKER: Present the juror.
21 THE CLERK: Please have a seat in the jury box, sir.
22 THE COURT: All right. Are there any matters of law that
23 we need to take up with regards to jury selection by the
24 State?
25 MR. RICHARDSON: No, sir.

1 THE COURT: Defense counsel?

2 MR. BROOKER: No, sir, Your Honor.

3 THE COURT: All right. Can the attorneys, including you,
4 Mr. Jepertinger --

5 MR. JEPERTINGER: Yes, sir.

6 THE COURT: -- please approach at side bar for just a
7 second?

8 (WHEREUPON, a bench conference was held in the presence
9 of the jury but out of the hearing of the jury off the
10 record, after which the proceedings resumed as follows.)

11 THE COURT: All right. Ladies and gentlemen, those of
12 you who are seated over here to my left in the jury box, you
13 all have been selected as fair and impartial jurors in this
14 case. I'm going to ask that you step to the jury room for
15 just a minute. Do not discuss the case. I'll get you back
16 out here in just a second. Okay? I'll get you back out here
17 in just a second.

18 (WHEREUPON, the jury exited the courtroom at 12:16 p.m.)

19 THE COURT: All right. Those of you who are seated out
20 in the audience, you weren't selected on this case, but that
21 doesn't mean you're not going to get selected. I hate to do
22 this, but you've got to go back upstairs to the 11th floor
23 courtroom with Judge Russo.

24 Now, I know it's 12:15. Some of you probably are ready
25 to go to lunch. Typically, we run -- and I'd tell you this if

1 you were sitting on a jury with me. We typically break for
2 lunch around 1:00. Most judges do try to go until 1:00.

3 We're going to run you back upstairs. They've got a jury
4 they want to pick in a case up there. It went fairly quick
5 down here in this jury selection process and it will go fairly
6 quick up there. They'll probably have you out of here by one.

7 But if you'll go back up to 11 so they can pick a jury up
8 there and then they'll tell you what to do from there.

9 (WHEREUPON, the jury panel was released and exited the
10 courtroom at 12:17 p.m.)

11 THE COURT: All right. If you'll close those doors,
12 please, ma'am?

13 THE BAILIFF: Yes, sir.

14 THE COURT: All right. During the jury selection
15 process, Juror Number 2, Ms. Kayla Adkins, was called up as a
16 potential juror and, at such time, the State indicated present
17 this particular juror for service in this case. The defendant
18 then moved to strike this juror for cause.

19 A sidebar conference was held with the attorneys and
20 defense counsel, Mr. Brooker, specified several reasons as to
21 why he wanted to strike this juror for cause, which I denied
22 his request, but certainly told him I would give him an
23 opportunity to put on the record once the jury was completed
24 -- jury selection was completed as to why he believed he was
25 entitled to strike Ms. Adkins for cause. Mr. Brooker?

1 MR. BROOKER: Thank you, Your Honor. Your Honor, at
2 least during juror voir dire I think when you asked, you know,
3 the jury panel whether or not they knew any one of the
4 potential jurors [sic] that were -- that were identified and,
5 of course, is is that Juror Number 2 identified that she knew
6 Jennifer Floyd Lee, which is an investigator with the
7 Sheriff's Department, a testifying witness.

8 The reason why I made the objection for cause, Your
9 Honor, is is that when she first stood up and you asked her
10 how did you -- how did she know Investigator Lee, she says
11 we're friends and, of course, is that she further stated is
12 that we go to church together, and I believe suggested that
13 their relationship did extend -- extend beyond church and, of
14 course, I'm making that assumption.

15 The reason why I think that she should have been struck
16 [sic] for cause is is that, because of her relationship with
17 Ms. Lee, the question then becomes is is that whether or not
18 because she is friends with Ms. Lee or whether or not because
19 she attends church with Ms. Lee and, of course, is that she's
20 going to put greater credibility and veracity in Ms. Lee's
21 testimony than any other person because of that relationship.

22 If there is any possibility that Ms. Lee is going to have
23 at least some sort of greater credibility with respect to this
24 witness because of the relationship, specifically the church
25 relationship that she has with Ms. Lee, then, of course, the

1 question then becomes is is that she is I guess by definition
2 of itself prejudiced because Ms. Lee already has an advantage
3 with respect to credibility when it comes to that particular
4 witness. Thank you, Your Honor.

5 THE COURT: All right. Anything in response from the
6 State?

7 MR. RICHARDSON: Your Honor, I think it was an
8 appropriate peremptory strike based on the juror's willingness
9 to be fair and impartial and I also note that, at the
10 conclusion of the selection of the jury, defense counsel had
11 three strikes remaining, which would sort of render this issue
12 moot.

13 THE COURT: Hold on a minute. He had seven strikes
14 remaining. Oh, at the conclusion, he only -- he still had
15 three left?

16 MR. RICHARDSON: Yes, sir.

17 THE COURT: All right. At the time the Court denied his
18 request to strike for cause, he had seven strikes left at that
19 point. And for the record, Ms. Adkins certainly stood when I
20 read -- after I read the witness list indicating that she went
21 to church with Ms. Lee. I don't recall, but don't --
22 certainly don't deny she said they were friends that went to
23 church together.

24 But upon saying that, my next question of her was whether
25 or not they attended any -- any functions outside the church

1 together, to which she said they did not. And furthermore, I
2 inquired even further about whether or not in light of the
3 fact of that relationship they could be fair and impartial --
4 she could be fair and impartial to both the State and the
5 defense, of which she said she certainly could without
6 hesitation.

7 The Court is tasked with I guess not only listening to
8 the answers to the questions that are posed to potential
9 jurors, but certainly observing the mannerisms, the -- the
10 response that they give, whether there was any hesitation at
11 all, of which there was none, about their ability to be fair
12 and impartial.

13 I certainly believe that it was a fair and reasonable
14 peremptory strike by defense counsel, but do not believe he
15 was entitled to strike this particular potential juror for
16 cause. But it is so noted for the record.

17 At this time, I'm going to bring the jury back out and
18 cut them loose for lunch. I'm going to have them be back here
19 at 2:30 -- at 2:30. All right. Bring me the jury, please,
20 sir, Mr. Sammy.

21 THE BAILIFF: Yes, sir.

22 (WHEREUPON, the jury entered the courtroom at 12:23 p.m.)

23 THE COURT: All right. I have all the jurors present.
24 Ladies and gentlemen, what I am going to do or what we are
25 going to do at this time is I'm going to let you all go to

1 lunch right now, but before I let you go to lunch, I want to
2 go over a few things with you.

3 I sent you back in the jury room because the jury panel
4 that was seated out there -- I had to send them back up to 11
5 to be selected in another jury. I wanted to get them on the
6 elevators before I put you on the elevators to leave the
7 courthouse. Okay?

8 I'm going to let you go to lunch right now. I'm going to
9 ask you to be back at 2:30 -- at 2:30. There's some matters
10 that we need to take up outside of your presence and certainly
11 the lawyers or court personnel has to go to lunch too and then
12 we have to come back and deal with some matters before you all
13 -- before we start the trial of this case.

14 Now, as I told you from the outset, I've told you a
15 minute ago you all the been selected as fair and impartial
16 jurors in this case. You are to decide this case based solely
17 -- based solely upon the testimony and evidence as presented
18 in this courtroom and nowhere else.

19 Having said that, you are not -- and I'm instructing you
20 you are not to do any independent investigation on your own.
21 You're not to talk to anyone about this case, including your
22 fellow jurors. You're not to even talk to your fellow jurors
23 about this case at all until you're instructed to do so by the
24 Court.

25 Now, as you serve with me during the course of this

1 trial, I want to just give you some -- kind of how we work,
2 how I run the courtroom, so to speak. We will typically start
3 at 9:00 or 9:30 in the mornings. We'll run an hour and a
4 half, maybe two hours between breaks, have a midmorning break.
5 We'll go to about 1:00. We usually don't stop for lunch until
6 around 1:00. So there'll be snacks provided to you in the
7 jury room I think. Won't it, Mr. Sammy?

8 THE BAILIFF: Yes, sir.

9 THE COURT: So if you take that midmorning break, if you
10 feel like you need a pack of crackers or something, there will
11 certainly be some snacks back there that you can -- you can
12 eat.

13 We'll typically resume at 2:15 or 2:30 in the afternoon
14 to give everybody sufficient time. I'm sure you had a little
15 difficulty maybe parking out there this morning with all the
16 construction that's going on down here, but give you about an
17 hour and 15 minutes to an hour and a half for lunch; so you're
18 not rushed so much to get back up here. We'll typically start
19 back around 2:15 or 2:30, run an hour and a half, maybe two,
20 depending on where we are, have an afternoon break, and go
21 sometime between five and six. Okay? Under very, very rare
22 circumstances will I keep you up here beyond 6:00.

23 Now, I'm not sitting up here looking at the clock and as
24 soon as it strikes five saying, all right, it's time to go
25 home. If there's a witness on this stand at 5:00, it will be

1 my intention to finish that witness for the day. Okay?

2 Now, having said that, if -- say it's 4:30 in the
3 afternoon and I'm advised by the attorneys that the next
4 witness may be lengthy, rather than take the chance of running
5 past 6:00, I may let you go home at 4:30 or somewhere in that
6 timeframe rather than run the risk of keeping you for an
7 extended period of time beyond five and possibly 6:00.

8 During your service this week as jurors, I will tell you
9 not to have any interaction with any of the attorneys or
10 potential litigants that are involved in cases up here. My
11 instruction to you is to either stay to yourself or with your
12 fellow jurors. Innocent conversations -- innocent
13 conversations can be misconstrued. Okay?

14 During your service in here this week, I want you to be
15 comfortable and I say that -- if I have anything to do with
16 the thermostat, it's going to be cool in here. Okay? I sit
17 up here with an undershirt on, a shirt buttoned up around my
18 neck with a tie on, and this robe, which is part of my
19 uniform, so to speak. I get kind of warm in here. It's
20 almost like a blanket wrapped around me.

21 Some are cold natured; some are hot natured. I'm hot
22 natured and so I want you to be comfortable. So if you're
23 cold natured, you might need to bring a jacket up here as you
24 serve this week.

25 Anything else from the State before I release the panel

1 for lunch?

2 MR. RICHARDSON: No, sir.

3 THE COURT: Defense counsel?

4 MR. BROOKER: No, sir, Your Honor.

5 THE COURT: All right. I'm going to let you go to lunch.

6 Please be back in your jury room at 2:30 -- at 2:30. We'll

7 start the trial as promptly at the time as possible. Again,

8 do not discuss the case. I'll see you back at 2:30.

9 (WHEREUPON, the jury exited the courtroom at 12:29 p.m.)

10 THE COURT: All right. If the lawyers will be back at

11 2:00, that will give y'all a chance to read these two cases

12 that I gave each of you, the Wade case and the Tumbleston --

13 Tumbleton -- Tumbleston. Okay? And we'll address these

14 matters when we come back at 2:00. Okay?

15 MR. BROOKER: Thank you, Your Honor.

16 THE COURT: Thank you.

17 (WHEREUPON, there was a break in the proceedings from

18 12:32 p.m. until 2:01 p.m., after which the proceedings

19 resumed as follows.)

20 THE COURT: All right. I appreciate you all being back

21 when you -- when I asked you to be back.

22 It's my understanding -- then I'm going to turn it over

23 to you, Mr. Brooker, in just a minute. It's my understanding

24 defense counsel had a motion to quash the indictment in this

25 case. I know that based upon discussions myself, Mr. Brooker,

1 and Mr. Richardson had in chambers prior to selecting a jury
2 in this case.

3 The defense counsel presented me with the case of State
4 v. Baker this morning. State v. Baker is cited at 411 S.C.
5 583, 769 S.E.2d 860, which is a 2015 South Carolina Supreme
6 Court case. Mr. Brooker?

7 MR. BROOKER: If you could indulge me for just a second,
8 Your Honor? I'm looking for my copy of Baker.

9 THE COURT: And you may have given me your copy this
10 morning in chambers.

11 MR. BROOKER: I think I had three.

12 THE COURT: Give him one. My law clerk has got an extra
13 copy he said he --

14 MR. BROOKER: Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. BROOKER: That's all right. I apologize.

17 THE COURT: Baker is a 2015 Supreme Court case which is
18 the basis for what defense counsel relies upon in making his
19 motion to quash. At this time, I'm going to turn it over to
20 defense counsel for argument and then I'll hear from the State
21 and we'll go from there. Mr. Brooker, you're so recognized.

22 MR. BROOKER: Thank you, Your Honor. Your Honor, we make
23 a motion to quash the indictment primarily based upon State v.
24 Baker. I think you've just given the citation to it.

25 THE COURT: Yes.

1 MR. BROOKER: And, of course, specifically, also in
2 reference to or pursuant to 17-19-20 of the South Carolina
3 Codes of Law, which reads in pertinent part that every
4 indictment shall be deemed and judged sufficient and good in
5 law which, in addition to allegations as to time and place as
6 required by law, charges for the crime substantially in the
7 language of the common law or of the statute prohibiting a
8 crime or so plainly that the nature of the offenses charged
9 may be easily understood. And if the offense that -- the
10 statutory offense that the offense be alleged to be contrary
11 to the statute and in such case made and provided.

12 Baker obviously is a 2015 case and, of course, Your
13 Honor, we've discussed Baker, but Baker was a situation in
14 which there was two alleged -- alleged victims in that case
15 and then, of course, is is that the State came forth with an
16 initial indictment and, in that initial indictment, it
17 identified time periods. I think three separate time periods
18 I think extending roughly 4 months in each time period where
19 the victim alleged between this particular -- between this
20 four-month particular period of time there was allegations of
21 lewd act and then, of course, alleged a separate period of
22 time spanning four months in which there were allegations of
23 lewd act, and then, of course, is is that I think there was
24 also an allegation that was based upon the second victim that
25 alleged that the incident occurred within a one-year period --

1 occurred I think in 2002.

2 Subsequent to that, the victims' memories were further I
3 guess enhanced and then, of course, the victims came back and
4 said that they believed, you know, that the -- that the
5 conduct started in 1998 and then, of course, the indictments
6 were amended to reflect conduct from 1998 to 2004. Okay?

7 And that was the basis of it and, of course, is is in --
8 in -- in Baker, Your Honor, the Court was left with a
9 determination with respect to whether or not an allegation
10 alleging that -- I think a subsequent allegation to the second
11 -- the amended allegations I think alleged a time period that
12 expanded -- expanded six-and-a-half years. And, of course, is
13 is that obviously the defendant -- the defendant was convicted
14 on -- I think on at least some of the indictments, but may
15 have not have been on all -- on some of the indictments. And
16 then, of course, is is he subsequently appealed.

17 And, of course, the Court was left with the issue with
18 respect to, you know, whether or not the indictment was
19 sufficiently specific in order to inform the defendant with
20 respect to what he was called to defend against. And then, of
21 course, is that there was some language that's contained
22 within Baker that I think sums it up and then, of course, I'm
23 going to quote at least some of that language to the Court.

24 In reviewing -- in making the finding that the indictment
25 was insufficient, the Court says -- says that -- and indulge

1 me for just a second, Your Honor. I had my copy highlighted.

2 THE COURT: What page are you looking at, Mr. Brooker?

3 MR. BROOKER: I think I am looking at, Your Honor, page

4 4.

5 THE COURT: Okay.

6 MR. BROOKER: Give me just a second.

7 THE COURT: First or second column?

8 MR. BROOKER: I apologize. I'm sorry.

9 THE COURT: That's okay.

10 MR. BROOKER: I didn't hear you.

11 THE COURT: First or second column?

12 MR. BROOKER: I think the second column, Your Honor. It
13 says -- it says specifically -- and, of course, is is that on
14 that second column, Your Honor, this would be the second
15 paragraph that begins with in reviewing Baker. It says in
16 reviewing -- the Court says in reviewing Baker appeal, we
17 focus on the attention on Gentry.

18 THE COURT: It's page 3. Page 3, the last --

19 MR. BROOKER: Page 3?

20 THE COURT: Yes, sir.

21 MR. BROOKER: Okay.

22 THE COURT: Maybe the pages are misnumbered on the copy
23 that you have.

24 MR. BROOKER: I think they are.

25 THE COURT: Or different -- differently numbered from the

1 page I have.

2 MR. BROOKER: I apologize. Yeah, I have 4.

3 THE COURT: Okay.

4 MR. BROOKER: Page 4.

5 THE COURT: That's okay.

6 MR. BROOKER: It says in reviewing Baker's appeal, we
7 focus on our attention on Gentry, as it is the seminal case in
8 analyzing the sufficiency of an indictment. Specifically,
9 Gentry sets forth two requirements that all -- that are
10 relevant and dispositive in the instant case.

11 The first being the defendant's right to question the
12 manner in which the accused has been -- in which the
13 accusations have been presented, which Baker has done. And
14 second, that the most -- and most important is the Court's
15 determination as to whether the offense is stated with
16 sufficient certainty and particularity to enable the defendant
17 to know what he is called upon to answer and whether he may
18 plead an acquittal. Okay? And I think that language and,
19 specifically, the last part of that last sentence is
20 important, which says is is that whether he may plead an
21 acquittal.

22 And, of course, is when I first read this case, I was a
23 little bit confused by the Court's language and was trying to
24 figure out what the Court was intending -- what the Baker
25 Court was intending to convey, and I think I understand what

1 they were intending to convey when it says as to whether or
2 not -- when the Court says whether he may plead an acquittal.

3 And I think what the Court is trying to say is -- and, of
4 course, is I think this is important for -- you know, for the
5 purposes of double jeopardy and I think it's also important
6 for purposes of the jury understanding what the charges are.

7 And I think what the Court is trying to say is is that,
8 specifically in a situation like you have in this particular
9 case, if you look at the indictment in this case, I understand
10 is is that the Count 1 and Count 2 we're not proceeding on,
11 but, of course, if you look at Count 3 through -- and I think
12 it goes on to 9. And Count 3 says -- and I'll just be very
13 quick, Your Honor.

14 It says that Vance Ross did in Florence County, State of
15 South Carolina, between the dates of February 1, 2013, to July
16 31st, 2014, willfully and unlawfully commit the crime of
17 criminal sexual conduct with a minor in the first degree by
18 engaging in sexual battery with a minor who is under the age
19 of 11.

20 Count 4, almost the identical language. That Vance Ross
21 did in Florence County -- and it's dated between the dates of
22 February 1, 2013, and July 31st, 2014, willfully and unlawfully
23 commit the crime of criminal sexual conduct in the first
24 degree by engaging in sexual battery with a minor who was less
25 than 11 age -- 11 years old.

1 Count 5, the -- the identical language says between
2 February 2001 -- 2013, and July 31st, 2014, willfully and
3 unlawfully commit the crime of criminal sexual conduct in the
4 first degree by engaging in criminal sexual battery with a
5 minor.

6 Count 6, the same language. Count 7, the identical
7 language I believe. Yes. Count 8, the identical language,
8 and Count 9, the identical language.

9 And so what the -- what the indictment is alleging is is
10 that between February -- between February 1, 2013, and July
11 31st, 2014, which is roughly a year and a half, that between
12 that time, there was seven instances -- seven instances of CSC
13 first degree with a minor.

14 And I think when the Court is saying is that whether or
15 not -- is when the Court is -- is using the language whether
16 -- whether he may plead an acquittal, the Court is asking is
17 is that whether or not you can make a distinction or whether
18 the jury can -- had to make a distinction between these
19 particular offenses, whether or not there was sufficient
20 enough information where they can make a distinction.

21 So is that if Your -- if that Your Honor says, well,
22 okay, we're going to -- we're going to dismiss -- an example
23 would be if Your Honor says, well, we're going to dismiss
24 Count 5, we're going to dismiss Count 6, and dismiss Count 7,
25 we're going to find him not guilty, he's been found not guilty

1 in that, and then, of course, the remaining counts that he has
2 been found guilty, well, then how can you distinguish between
3 which particular offenses he had been found guilty of and
4 which he has not? There's no -- there's no distinguishing
5 language between those last seven -- seven counts that allows
6 him to distinguish between any of it. It just blanketly says
7 that there was seven instances of CSC within this period of
8 time.

9 Now, I imagine is is that there's no language of saying,
10 well, one of them I think -- and, of course, is is that -- and
11 I'm understand Your Honor is talking about in Baker -- you
12 know, in Baker and obviously, Your Honor, I think it cites to
13 some of the cases and case law that existed before Baker, you
14 know, that basically says that you don't have to cite specific
15 dates, that you can cite at least broad ranges of dates and
16 we've seen dates that expand, you know, of two-year lengths of
17 time and I understand that and, of course, is is that I think
18 when Your -- when Your Honor was referring to -- and I think
19 in -- and specifically in Wade and, of course, that's State v.
20 Wade, 306 -- citation 306 S.C. 79, is that -- and this -- this
21 is a 1991 case. In Wade, we're talking about a two-year
22 period in which there was one instance, one instance or one
23 allegation of sexual conduct.

24 In that particular situation where you don't have
25 multiple allegations of sexual conduct within this kind of

1 defined period, you can easily make a distinction with respect
2 to -- if the jury says we're going to -- we find him innocent,
3 we know what he's being found innocent of.

4 In this particular case where you have seven indictments
5 in which there is no distinguishing language that identifies,
6 you know, Count 1 -- excuse me -- Count 2 from Count 7 or
7 Count 4 from Count 9, absolutely no distinguishing language
8 whatsoever. I mean how do we know what conduct is alleged in
9 Count -- in Count 3 versus what conduct is alleged in Count 7
10 versus what conduct is alleged in Count 5 versus Count 9. No
11 distinguishing language whatsoever.

12 I imagine when the jury goes back and, of course, is is
13 that if the jury says we find him guilty and if Your Honor had
14 to say, well, what did you find him guilty of, well, we find
15 him guilty of Count 7, Count 8, and Count 9. Well, what is
16 Count 7 and Count 8 and Count 9 comprised of? What is the
17 conduct? What is the conduct?

18 In the forensic examinations -- and then, of course, I've
19 read them and also Mr. Richardson has read them and, in the
20 forensic interview, you know, the children do talk in broad
21 languages. They talk in having multiple accounts of --
22 multiple counts of criminal sexual conduct over an expanded --
23 expanded period of time and, of course, some of the language
24 is confusing and convoluted and you can't specifically
25 identify exactly how many times the -- the conduct took place

1 and then, of course, distinguish -- distinguishing factors
2 between, you know, different alleged conducts.

3 And then, of course, is is that if he is acquitted -- if
4 he is equally acquitted of two or four of these offenses,
5 then, of course, the question then becomes is is that if he's
6 acquitted of Count 5, Count 6, Count 7, Count 8, you know,
7 then is there sufficient enough information where he can
8 recognize what he has been acquitted of or the Court can make
9 a determination with what he has been acquitted of?
10 Absolutely none whatsoever.

11 And then, of course, the Court goes on in Baker to use I
12 think even more significant language where the Court says --
13 the Court says -- says is is that given the expanded timeframe
14 and lack of specificity as to the timeframe, we cannot
15 conclude Baker was -- we cannot conclude that Baker -- we can
16 only conclude that Baker was prejudiced by the defects in the
17 indictment. Although that we recognize the difficulty the
18 prosecution faces in identifying exact dates in child sexual
19 abuse cases, the class of criminal cases should not translate
20 into an exception that operates to circumvent constitutional
21 and statutory principles.

22 And I think what they're saying there is is that in every
23 other case -- in every other case -- and I've been practicing
24 law I think -- criminal law now for about 16 -- 17 years and
25 in every other case, there is specific information or as

1 specific as possible information that identifies the date of
2 an offense or the date in which an offense took place, whether
3 it be a murder, whether it be a drug offense or even any other
4 type, because that sort of information is crucial to a
5 defendant in defending himself.

6 THE COURT: Well, let me ask you this.

7 MR. BROOKER: Sure.

8 THE COURT: Go ahead and finish and then I'll ask you the
9 questions that I have.

10 MR. BROOKER: When I -- when I am in my office, Your
11 Honor, and when a defendant walks in -- walks in, there are
12 two things that I want to know immediately. I want to know
13 what happened and then, of course, once I know what happened,
14 I need to know when it happened. And the reason why I need to
15 know when it happened is is that there is a crucial defense
16 that might be available to that defendant, you know, if I can
17 establish the timeline of the offense.

18 And I have had multiple of cases in which we have
19 narrowed down the timeline and that defendant says I was
20 someplace else and I'm able to say to that defendant, well,
21 was there someone else with you? You know, was there someone
22 else with you that can verify where you were? And then, of
23 course, we were able to establish an alibi.

24 And in the Baker case, that Court also touched upon --
25 touched upon that particular issue and touched upon why these

1 broad expansive periods creates, you know, a -- just I think a
2 substantial and constitutional disadvantage --
3 unconstitutional disadvantage to defendants that are -- that
4 are defending these sorts of cases because an alibi defense is
5 available to every other defendant in every other criminal
6 case except in CSC cases involving these expansive periods of
7 time because it is impossible to cover that period of time.
8 And the Court recognized that and touched on that
9 specifically.

10 And I understand that this is a departure and I think a
11 conflict with -- with the Wade case, which is a 1991 case, and
12 also the Tumbleston case, State v. Tumbleston, 376 S.C. 90,
13 and that's a -- 19 -- that's a 2007 case. And these cases are
14 in conflict. I mean they are in conflict.

15 And then, of course, it's my understanding of judicial
16 construction is is that when you have cases that are in
17 conflict, then, of course, is is that -- and specifically when
18 you're talking about -- and specifically if the cases are in
19 conflict and the conflict involves -- involves parallel courts
20 and in this case is is that all of these courts, all of these
21 decisions, you know, the Wade case in 2000 -- in 1991, the
22 Tumbleston case in 2007, and the Baker case in 2015 were all
23 rendered by the South Carolina Supreme Court.

24 And it's my understanding is is that when cases are in
25 conflict -- when cases are in conflict, that it is the most

1 recent case that -- that is the -- establishes the law at that
2 existing -- at that existing period of time. And so actually,
3 Baker is the law that -- that guides us today.

4 And then, of course, is is that -- and Baker is in direct
5 conflict with Wade. It's in direct conflict with Tumbleston,
6 and it's not as if the Court didn't understand that because in
7 the defense -- I think it was in Justice Toal's defense -- she
8 specifically mentioned Wade and mentioned their ruling in
9 Wade.

10 So the Court was not unconscious -- unconscious of what
11 it had said in Wade. You know, the majority was not
12 unconscious of that, but the majority made a determination and
13 I think that -- that the language said that the Court said I
14 think is just absolutely important. The Court said that we
15 understand that this is going to create a tremendous amount of
16 difficulty on prosecutors, but the Court says the reason why
17 we must do this is is that we no longer can create an
18 exception for these sorts of cases, you know, that there is
19 nothing that we can think of that would allow us to create an
20 exception for CSC cases that allows us to deviate from
21 constitutional and statutory norms, regardless of that
22 hardship.

23 And I understand it's difficult. It is. Practicing law
24 is difficult. Often time, defenses and prosecutions are
25 difficult, but I think the Court has recognized that we've

1 gotten to the point at this particular point in time in which
2 we've strayed so far that -- you know, that it is just
3 tremendously -- we've strayed so far I think in these sorts of
4 cases that we have handicapped the defense to the extent in
5 which the only defense that a defendant has in these cases is
6 to say I didn't do it.

7 It's a general denial, but they're deprived of the
8 ability to be able to look at the specific facts of the case,
9 to be able to go back and try to establish a timeline, to be
10 able to avail themselves of the offense of alibis and similar
11 other cases -- you know, that similar other defenses that
12 would be disrupted by them not knowing the specific -- the
13 specific time or at least a narrower time. And it's gotten to
14 the point and I will say that it's particularly prejudiced in
15 this case and, of course, it would have to be and I'll
16 conclude very shortly, Your Honor, so you can ask your
17 questions.

18 THE COURT: You've been talking for 25 minutes.

19 MR. BROOKER: I understand, Your Honor.

20 THE COURT: And I've got to give him a chance to talk and
21 I've got a jury --

22 MR. BROOKER: I understand, Your Honor.

23 THE COURT: -- that's here and ready to go.

24 MR. BROOKER: Yeah. In -- in -- in -- in this particular
25 case, Your Honor, and I think, of course, is is that I don't

1 believe Mr. Richardson's going to dis -- disagree with me.
2 When we went through the forensic interviews, we went through
3 the investigator's notes. I know that one defense is that,
4 well, children cannot remember. Children may not always
5 remember, but in this particular situation is not one question
6 was asked of those kids do you remember what time it happened
7 or when it happened.

8 We've gotten to the point in which the law enforcement
9 community and the investigative community has reached the
10 point in which they believe that we don't even have to try to
11 identify dates. And in this particular case, not one question
12 throughout the entire case, whether it be from the law
13 enforcement officers investigating it or whether it be the
14 forensic interviewer at Care House, whether it be the medical
15 examiner, the forensic medical examiner, not one question with
16 respect to do you have any recollection with respect to the
17 times in which these things take place.

18 And I think that's where the Court is saying is is that
19 we have to make an effort to narrow it down. We have to look
20 at the specific circumstances of each particular case to
21 determine whether or not there is prejudice.

22 I would even ask you is that when -- when -- when -- when
23 Mr. Richardson gets up is is to ask him to distinguish between
24 -- factually between Count 3 and Count 9.

25 THE COURT: Well, let me ask you this.

1 MR. BROOKER: Sure.

2 THE COURT: Are you -- is it defense's position at this
3 point, based upon Baker, that there is now a per se rule, so
4 to speak, as to -- as to what an indictment must allege as far
5 as time periods are concerned?

6 MR. BROOKER: No. And I don't think the Baker Court says
7 that.

8 THE COURT: Well --

9 MR. BROOKER: The Baker Court uses the language of speci
10 -- specificity and particularity, and they said the indictment
11 has to contain language of speci -- specificity and
12 particularity.

13 Now, sometimes that may not always mean that you said it
14 occurred on December 7, 2007, at 4 p.m. Sometimes it may be
15 -- it may require them to at least allege a sufficient enough
16 factual information, you know, where -- where it makes it
17 possible or at least more likely, you know, that -- that the
18 defendant is able to distinguish between, you know, the
19 different offenses and, of course, try to at least identify
20 when it happened.

21 If you look in -- in -- in -- in the Wade case, actually
22 my reading of the Wade case was is that the Court thought that
23 because it was a two-year period and there was only one -- and
24 there was only one allegation and the fact that the alleged
25 perpetrator did not live in the home with the child and only

1 visited the child very sparingly that it narrowed down the
2 scope where the defendant could use that sort of information
3 to narrow down the scope. I think it says that the defendant
4 only visited maybe a couple of times a year.

5 And if the defendant, you know, visited a couple times of
6 the year, then, of course, is is that he may be able to
7 factually narrow things down because it's that one specific
8 instance. You're talking about one specific instance over a
9 two-year period of time over a perpetrator that does not live
10 in the home that rarely visits the home. He rarely visits the
11 home and then factually you can narrow things down and it at
12 least gives the defendant a chance to be able to -- to be able
13 to get closer to a timeline and to help defend himself.

14 But when it just simply says over a year and a half,
15 seven times -- it occurred seven times over a year and a half,
16 and specifically when you're talking about a father that
17 probably saw his kids a thousand times, you know, over that
18 period of time, it makes it difficult to make a distinction.
19 It makes it tremendously difficult and it distinguishes this
20 case from Wade because we're not talking about a single
21 circumstance. We're not talking about an alleged defendant,
22 you know, that maybe saw the child a couple of times, which
23 helps the defendant to narrow down the scope of things, but
24 we're talking about over the course of a year and a half
25 because he was regularly in the life of these kids.

1 That he probably saw them a thousand times over that
2 period of time. He probably went with them and picked them
3 up. I think in one allegation within the -- in the forensic
4 interview it says, well, one time it happens in the car in
5 front of grandmom's house. Well, he's probably been at
6 grandmom's house in his car hundreds of times. Hundreds of
7 times. It provides him no way of narrowing it down.

8 I don't think Baker stands for the proposition that you
9 have to give a specific date. I think what Baker says is is
10 that -- is is that it has to be -- there has to be specificity
11 and particularity, you know, in the facts and, of course, is
12 is that sometimes without alleging a specific date, if you can
13 be specific enough with respect to the facts, then, of course,
14 you provide the defense with clues that allows him to narrow
15 the scope, and that's absent here.

16 THE COURT: Okay.

17 MR. BROOKER: I mean he's -- his defense is going to be I
18 didn't do it.

19 THE COURT: All right.

20 MR. BROOKER: There's no other way for him to defend
21 himself.

22 THE COURT: Okay.

23 MR. BROOKER: Thank you, Your Honor.

24 THE COURT: Thank you. Mr. Richardson?

25 MR. RICHARDSON: Yes, sir. First, as to the individual

1 counts in the indictment, Counts 3 through 9, towards the
2 bottom of each paragraph on each count, I identify the
3 particular victim by ^{Minor2} is for Minor2 and ^{Minor1} is for
4 Minor1 , and each of the counts lists the specific allegation
5 as to sexual battery.

6 So, for instance, he mentioned Count 3 versus 9. Count 3
7 is Minor2 and the allegation is oral penetration. Count 9 is
8 Minor2 and the allegation is vaginal penetration. So towards
9 the bottom of each count is where we have the differences in
10 each count.

11 With respect to the Baker argument, obviously on -- well,
12 the copy I have is page 3, second column, where it cites
13 Tumbleston and Wade. Nowhere in this case does it say those
14 cases are overruled or overturned.

15 They -- there is some difficulty with the language that
16 Mr. Brooker mentioned at the top of page 4, beginning -- the
17 sentence beginning with aside from this concrete example of
18 prejudice, and I think we can agree that in the -- in the
19 actual Baker case, the facts are clearly prejudicial toward
20 the defendant. I mean they expand the timeframe of the
21 indictment to a six-year period two weeks before trial giving
22 little to no time for the defense to prepare.

23 In our case, this indictment was true billed on January
24 7th, 2016, so a year and four months ago.

25 THE COURT: January what?

1 MR. RICHARDSON: January 7th, 2016, and Baker references
2 the Wade case where it says one is to look at the surrounding
3 circumstances that exist at pretrial in order to determine
4 whether a given defendant has been prejudiced, i.e. taken by
5 surprise and hence unable to combat the charges against him.

6 This was true billed almost a year and a half ago. I
7 don't think there's any surprise here. This isn't a two-week
8 deal like the defendant faced in the Baker case.

9 And, you know, as far as the time frames, you know, the
10 thing that concerns me about the Baker case is it makes a
11 general statement that six years is too much, that, you know,
12 six years with no specificity as to, you know, what type of
13 thing happened where, when or whatever, wasn't enough, which
14 is fine. I just wish it would have provided some guidance on
15 what the Court now deemed was enough or what didn't violate.

16 THE COURT: I mean aren't you asking that the Court
17 provide some per se rule?

18 MR. RICHARDSON: Well, no. I'm just saying it doesn't.
19 It just says in this particular case six years is --

20 THE COURT: Too much.

21 MR. RICHARDSON: -- too much. And the previous cases
22 before the Court had to -- had to do with two-year timeframes.

23 THE COURT: And a three-year timeframe.

24 MR. RICHARDSON: Yes, sir. And both of those were upheld
25 as not being too much. So, you know, it's -- I don't know

1 where the line is. I think that's something that the Supreme
2 Court has not answered yet, but I would argue that our case
3 here falls under the line that's been set in previous cases.
4 Certainly, we're dealing with an 18-month period here instead
5 of a six-year period. And we have seven counts that are
6 distinguishable by the initials of the girls and also the
7 particular conduct alleged.

8 So based upon all of that, you know, the Wade and
9 Tumbleston cases sort of speak for themselves when compared to
10 our case. I would ask that the Court find that the indictment
11 is sufficient.

12 MR. BROOKER: Your Honor, can I take 10 seconds to make
13 one rebuttal?

14 THE COURT: Ten.

15 MR. BROOKER: Ten seconds, I promise.

16 THE COURT: Yes, sir.

17 MR. BROOKER: I think he argues is is that -- that --
18 that Baker stands for the proposition that we don't know where
19 the line is, but it's not. In the last paragraph, it says --
20 and I'll read this and I'll sit down. And the last paragraph
21 -- and, of course, it's on my page 5, but this is at the end
22 of the case.

23 It says we hold that the judge erred in refusing to
24 squash -- to quash the indictment as the nonspecific six-year
25 period covered in the indictment was unconstitutionally

1 overbroad because -- and this is the reason why it says it was
2 overbroad. Not because it was six years. Because it lacked
3 --

4 THE COURT: Specificity.

5 MR. BROOKER: -- specificity as to when the alleged acts
6 occurred.

7 So you can have a six -- six-year long indictment, but
8 you have to have that specificity and particularity, and I
9 think that's what the Court is saying. It's not the length --
10 length of the period of time that you're talking about, but
11 the specificity with respect to the allegations -- allegations
12 -- specificity when the alleged acts occurred.

13 THE COURT: Okay.

14 MR. BROOKER: And so that's what it's saying, not the
15 timeframe. I think we're getting caught up on the timeframe.

16 MR. RICHARDSON: I would just add that absent a pregnancy
17 or a victim that writes a diary, prosecuting a CSC with a
18 minor case is going to be next to impossible if what he
19 mentions is the -- the rule, so to speak. I think, you know,
20 most -- most cases we deal with, especially with young
21 children. You know, the Tumbleston case cites, you know,
22 you've got an eight-year-old child. It's very difficult for
23 kids to remember specific dates or date ranges.

24 So then that would be my argument with respect to that.
25 I mean it would just render these prosecutions nearly

1 impossible.

2 THE COURT: Okay. All right. I'm going to stand down
3 for just a minute. Mr. Sammy, if you'll get my jurors and put
4 them in here for me?

5 THE BAILIFF: Yes, sir.

6 THE COURT: And then let me know when you've got them in
7 there, please, sir.

8 THE BAILIFF: Yes, sir.

9 (WHEREUPON, there was a break in the proceedings from
10 2:38 p.m. until 2:43 p.m., after which the proceedings
11 resumed as follows.)

12 THE COURT: All right. Now, the Court has read State v.
13 Wade, as well as State v. Tumbleston and then State v. Baker.
14 I'm going to go through these cases.

15 State v. Wade was a 1991 case and the sole issue -- the
16 sole issue in that case presented on appeal is whether the
17 indictment should be quashed as unconstitutionally vague or
18 overbroad if it alleges that a criminal offense occurred at
19 some point within a two-year time period. In that case, the
20 trial court refused to quash the indictment.

21 In that case, as accurately stated by defense counsel,
22 the allegation occurred one time, one time during that entire
23 two-year time period. At the time of the alleged offense in
24 that case, the victim was eight years old -- excuse me --
25 eight years old at the time of the trial.

1 As part of the defendant's argument on appeal, he alleged
2 or argued that it was impossible to establish an alibi defense
3 in that case. The victim in that case was unable to pinpoint
4 an exact date on which the offense took place.

5 The Court in Wade said it is -- the Supreme Court says
6 that one is to look at the surrounding circumstances that
7 existed pretrial in order to determine whether a given
8 defendant has been prejudiced, taken -- i.e. taken by surprise
9 and hence unable to combat the charges against him. In that
10 case also, defendant asked the Court in essence to create a
11 per se rule of insufficiency based on a two-year time limit.
12 The Supreme Court refused to do so.

13 Now, moving on to Tumbleston, 376 S.C. 90, which is a
14 2007 case. In that case, it was a three-year indictment
15 period. The victim was 10 at the time of the trial. The
16 victim in that case says that the defendant repeatedly
17 molested her over several years, of which began in
18 kindergarten and continued through the second grade, more than
19 once -- more than once over the three-year period.

20 And in that case, which separates -- and I would kind of
21 classify the defendant in that case as giving somewhat of a
22 vague confession, stating to law enforcement, quote, there was
23 a possibility that he might've touched the victim between her
24 legs while he was asleep, closed quote. Additionally, quote,
25 it was possible Tumbleston's penis came out of his pants and

1 touched the victim.

2 The Court in Tumbleston goes back through the fact that
3 an indictment is a notice document as set forth in State v.
4 Gentry, 363 S.C. 93. The Court in Tumbleston further said in
5 determining whether an indictment meets the sufficiency
6 standard, the trial court must look at the indictment with a
7 practical eye in view of all the surrounding circumstances,
8 citing numerous cases for that proposition.

9 Furthermore, in Tumbleston, the Court cites or says, as
10 repeatedly noted by your appellate courts, an indictment is
11 sufficient if the offense stated -- is stated with enough
12 certainty and particularity to enable the Court to know what
13 judgment to pronounce and defendant to know what he is called
14 upon to answer and whether he may plead an acquittal or
15 conviction thereon. The true test of the sufficiency of an
16 indictment is not whether it could be made more definite and
17 certain, but whether it contains the necessary elements of the
18 offense intended to be charged and sufficiently apprises the
19 defendant of what he must be prepared to meet.

20 The Tumbleston Court also, citing State v. Nicholson --
21 of which the Baker Court did not from my recollection. I may
22 be wrong on that, but I do not remember specifically seeing
23 this.

24 It says while our Supreme Court has not created a new
25 rule or standard for addressing this issue, this Court has

1 adopted a two-pronged test for determining the sufficiency of
2 an indictment involving a purportedly overbroad time period.
3 One, whether time is a material element of the offense, of
4 which it is not in this case and, two, whether the time period
5 covered by the indictment occurred prior to the return of the
6 indictment, of which, in the case against Mr. Ross, it
7 certainly does.

8 Now, on to Baker. In State v. Baker, two victims.
9 Victim number one alleged -- excuse me. Victim number one --
10 or the defendant in Baker was indicted in January of 2005 for
11 allegedly committing a sex offense against victim number one
12 between the dates of May 1, 2002, and September 1, 2002, a
13 four-month period. The second time, May 1, '03 -- between May
14 1, '03, and September 1, '03, again four months, and finally
15 on June 1, '04 and June 20, '04, approximately a 20-day time
16 period.

17 As to victim number two, in June of 2006, victim number
18 two comes forward, 18 months after the original indictment,
19 alleging that they were abused by the defendant in 2002.
20 Defendant was then indicted in July of 2006 for the alleged
21 abuse in 2002.

22 Subsequently, a second set of indictments came down or
23 the defendant was indicted in a second set of indictments on
24 October 26th of 2006 for offenses that allegedly occurred
25 between June 1 of '98 and September 1 of 2004 as to each

1 victim. On November 13, 2006, the case was called for trial
2 in Baker.

3 In reading from Baker -- and Mr. Brooker pointed this out
4 -- the second and most important here, being here in Baker, is
5 the Court's determination as to whether the offense is stated
6 with sufficient certainty and particularity to enable the
7 defendant to know what he's called upon to answer and whether
8 he may plead an acquittal.

9 Now, certainly, Wade, Tumbleston, and Baker, none of
10 which changed the requirements of Gentry -- State v. Gentry.
11 And Gentry is cited throughout Baker. Furthermore, in looking
12 at Wade and Tumbleston, there is no negative treatment
13 referred to in Tumbleston or Wade pursuant to the decision in
14 Baker, as routinely noted in subsequent opinions that either
15 negatively impact prior cases or, in fact, overturn prior
16 cases.

17 The Court goes on in Baker to say due to the State's
18 belated presentation of the new indictments, Baker was given a
19 mere two weeks to complete such an arduous task. In addition
20 to the time constraints, Baker's counsel noted the defense was
21 hampered as Baker's employment records prior to July 2000 had
22 been destroyed and thus he could not adequately establish his
23 whereabouts during the timeframe identified in the
24 indictments. Furthermore, we are unable to discern -- let me
25 back up.

1 Aside from this concrete example of prejudice, being the
2 employment records, I'm assuming based upon my reading of this
3 opinion, we are unable to discern how any defendant could
4 effectively defend himself against a six-year timeframe. And
5 it goes on to talk about the alibi of defense, of which was
6 raised in Wade as well.

7 On page 5 of the Baker opinion, it says given the
8 expansive timeframe, six years, and the lack of specificity as
9 to this timeframe, I'm assuming within the six years, we can
10 only conclude Baker was prejudiced by the defects in the
11 indictment. It does create some difficulty on the prosecution
12 in identifying exact dates in child abuse sex cases. The
13 Court does not say you've got to provide exact dates, but it
14 certainly is recognizing the difficulty prosecution faces in
15 prosecuting these cases.

16 Going back to page 4, the first column, second full
17 paragraph that starts approximately two weeks before trial,
18 the State presented Baker's counsel with new indictments,
19 notifying Baker that he was being charged with offenses that
20 allegedly occurred between June 1, '98, and September 1, 2004.
21 However, no temporal limitations identified in the
22 indictments. Prior to that day, Baker had prepared a defense
23 over the course of a year based on the original indictments
24 that alleged the criminal offenses were committed during the
25 summers of '02, '03, and '04.

1 Thus, as a result of the new indictments, Baker was
2 required to research and defend against events that occurred
3 over a continuous six-year period as opposed to three
4 identifiable summers. Despite the significantly expanded
5 timeframe, the new indictments were no more specific than the
6 original indictments.

7 In this particular case before the Court, State v. Ross,
8 there are Counts 1 and 2, which the State is not pursuing
9 pursuant to State v. Baker. In Counts 1 and 2, it alleges
10 offenses that occurred between December 1, 2009, and February
11 28, 2013, approximately four years there as to Count 1 and
12 five years, December 1, 2009, to July 31, 2014, as to that
13 count. The State is not going forward as to those two counts
14 based upon the expansive timeframe.

15 As to Counts 3 through 9, each of those counts as it
16 relates to the victim designated as NGL, Count 3 -- Count --
17 Count 3 alleges that the defendant placed his penis in the
18 mouth of the victim, Count 8 and Count 9 allege that the
19 defendant placed his penis in the victim's vagina.

20 As to victim ^{Minor 1}, Counts 4, 5, 6, and 7, Counts 4 and 5
21 allege that defendant placed his penis in the mouth of the
22 victim on Counts 4 and 5, and Count 6 that the defendant
23 placed his penis in the vagina and mouth of the victim, and
24 Count 7 that the defendant placed his penis in the vagina,
25 anus, and mouth of the defendant -- excuse me -- of the victim

1 -- of the victim. That each of these alleged seven offenses
2 occurred over a -- over an approximately 18-month period of
3 time.

4 While the Court in Baker certainly drew the line on a
5 six-year time limit, the Court did not overrule -- and I won't
6 say a per se two-year or per se three-year timeline. The
7 Court did say that these cases are to be looked at by looking
8 at the entire surrounding circumstances existing pretrial to
9 determine whether or not the defendant has been prejudiced,
10 whether or not he's been taken by surprise, and hence unable
11 to combat the charges against him.

12 The defendant was indicted for each of these charges and
13 offenses back in January of 2016, and I do not believe that it
14 would be appropriate for this Court to quash those indictments
15 in light of the fact that State v. Wade, State v. Tumbleston
16 -- I believe those are still good law and the Court drew a
17 hard and fast line, so to speak, on a six-year limit.

18 But your objection is so noted.

19 MR. BROOKER: Thank you.

20 THE COURT: And maybe this Court and other trial courts
21 may need some more clarification on that. But if it were
22 possibly outside the two-year or three-year range -- but your
23 objection and your argument is so noted, Mr. Brooker.
24 Anything further?

25 MR. RICHARDSON: Judge, just for scheduling purposes for

1 tomorrow, I have I think five potential witnesses here today,
2 which I don't imagine we'd get through all of them, but
3 tomorrow I have two specifically that we'll need to -- to work
4 with.

5 One is Sally Williamson. She took the -- did the
6 forensic interview of each child. She now works in Horry
7 County and what we'll need to do with her -- we'll need to
8 have an in-camera hearing with respect to the trustworthiness
9 of the video pursuant to the statute, which is 17-23-175.

10 So I want to do that in-camera and allow the Court to
11 observe the videos and I think each one is approximately half
12 an hour or so. I can't remember exactly, but then she would
13 need to testify before the jury as well.

14 Also, we'll have Dr. Anne Abel coming from Charleston
15 tomorrow afternoon. She'll be here tomorrow afternoon and
16 we'll need to get her in in the afternoon, if we can.

17 Other than that, I think we're pretty flexible. I just
18 wanted to make the Court aware of those two.

19 THE COURT: Okay. Mr. Brooker?

20 MR. BROOKER: Nothing, Your Honor.

21 THE COURT: All right. Anything else before I bring the
22 jury out?

23 MR. RICHARDSON: No, sir.

24 THE COURT: Mr. Brooker?

25 MR. BROOKER: No, sir.

1 THE COURT: All right. If you'll bring me the jury,
2 please.

3 THE BAILIFF: Yes, sir.

4 (WHEREUPON, the jury entered the courtroom at 3:02 p.m.)

5 THE COURT: All right. Ladies and gentlemen of the jury,
6 I hope you all had a nice lunch. I apologize for making you
7 all wait. While you all -- some of you were in a separate
8 assembly room, so to speak. You were out there because we
9 were in here handling some matters outside of your presence.
10 I stepped off the bench for them to bring you all into the
11 jury room, those of you that were in the other room.

12 I apologize for making you wait. I know your time is
13 precious, but I promise you we were not out here twiddling our
14 thumbs, so to speak. Okay? We were out here handling some
15 matters that we needed to handle outside of your presence.

16 We are now getting ready to begin the trial of this case,
17 but before I do so, Madam Clerk, would you swear the jury,
18 please?

19 THE CLERK: If all of you will please stand and raise
20 your right hands?

21 (WHEREUPON, the jurors complied.)

22 THE CLERK: You shall well and truly try and a true
23 deliverance make between the State of South Carolina and the
24 defendant at the bar, whom you shall have in your charge, and
25 a true verdict render according to the law and evidence, so

1 help you God. Please be seated.

2 THE COURT: All right. Ladies and gentlemen, we are
3 about to try the case of the State of South Carolina versus
4 Mr. Vance Ross.

5 Now, before we begin the trial of this case, I want to
6 tell you that this trial will probably be different from what
7 you might expect. Many people do not have the chance to
8 attend actual court sessions as you're doing now and may think
9 from watching television or movies or reading books that
10 trials are always full of high drama, intense action, and
11 riveting circumstances.

12 Now, while all of these things may be true at times, this
13 trial, ladies and gentlemen, is not for entertainment. It is
14 a fundamental part of our democracy, an effort to make sure
15 that justice is done between the parties before the Court.

16 Now, in making sure that justice is done, it is often
17 slow and deliberate and repetitive, the opposite of what you
18 may have seen on TV, in movies or read in books. This
19 courtroom is a place of honor dedicated to the protection and
20 preservation of citizens' rights through what many have called
21 the greatest justice system ever created.

22 The attorneys appearing before you, ladies and gentlemen,
23 are advocates for the parties that they represent, but first
24 and foremost, they are officers of the Court sworn to uphold
25 the integrity and fairness of our judicial system. You should

1 expect them to be professional, competent, and ethical in the
2 representation of their clients' interest.

3 Now, what I will now say, ladies and gentlemen, is
4 intended to serve as an introduction to the trial of this
5 case. These remarks are not a charge on the law in this case.
6 I will instruct you on the applicable law at the end of the
7 trial before you retire to consider your verdict. This, what
8 I'm telling you all now, is merely an explanation of the
9 procedure that we will follow in the trial of this case so
10 that you may better understand what may be happening.

11 The defendant in this case, ladies and gentlemen, is
12 charged by an indictment filed in this court with seven counts
13 of criminal sexual conduct first degree, seven counts of
14 criminal sexual conduct first degree, the elements of which
15 will be explained to you later. The indictment, ladies and
16 gentlemen, is simply the charging document by which this case
17 is brought into this court and it is not in any sense evidence
18 of any of the allegations that it contains.

19 The defendant has pled not guilty to the indictment. The
20 State, therefore, has the burden of proving each of the
21 elements of the indictment beyond a reasonable doubt.

22 It will be your duty, ladies and gentlemen, to decide
23 whether the State has met that burden. Your purpose as jurors
24 is to find and determine the facts. You are the sole judge of
25 the facts.

1 If, at any time, I make any comment regarding the facts,
2 you must disregard it. You are to determine the facts from
3 the testimony you hear and other evidence presented or
4 introduced in court during the progress of this trial. It is
5 up to you to determine the inferences which you feel may
6 properly be drawn from the evidence. It is especially
7 important that you perform your duty of determining the facts
8 diligently and conscientiously because ordinarily there is no
9 way to correct an erroneous determination of the facts by a
10 jury.

11 Now, on the other hand and with equal emphasis, the same
12 law that makes you the judge of the facts makes me the judge
13 of the law. The law as given by the Court is the only law
14 that you may consider. You must accept and follow it even
15 though you may disagree with it. I cannot tell you what the
16 facts are and you cannot disagree with me about what the law
17 is or should be. Your job is to take the law as I give it to
18 you and apply it to the facts as you find them from the
19 testimony of the witnesses and any other evidence that is
20 introduced. After doing that, you will render your verdict, a
21 verdict under the solemn oath that you just took as jurors.

22 Now, until I tell you to begin your deliberations, you
23 must not discuss this case with anyone, including your fellow
24 jurors, friends, family members, or anyone involved in this
25 case. The attorneys and parties in this case have been

1 advised that they are not talk to you at all. So if you see
2 anyone involved in the case and they do not speak to you, they
3 are not being unfriendly. They are simply following this
4 Court's instructions.

5 Now, during your deliberations, you may only discuss the
6 case in the jury room with your fellow jurors because they
7 have seen and heard the same evidence that you have. You must
8 not discuss the case with anyone other than your fellow jurors
9 until you have returned a verdict and the case is at an end.

10 I remind you that you must decide this case based solely
11 on the evidence presented here in this courtroom. This means
12 that during the trial you must not conduct any independent
13 research about the case, the facts of the case, the evidence
14 presented in the case or the people or organizations involved
15 in any way in the case.

16 Please do not try to find out information from any source
17 outside of this courtroom. In other words, you must not look
18 at dictionaries or other reference materials, search the
19 Internet, websites or blogs, or use any other electronic tools
20 to get information about the case to help you decide the case.

21 You may not use computers, telephones, cell phones, smart
22 phones, smart watches, tablets, the Internet or other tools of
23 technology with communication capabilities at any time while
24 you are in the courtroom or during your deliberations. Now,
25 during your breaks for meals or overnight, if necessary, you

1 may use these devices. However, you must not use those
2 devices to communicate with anyone about the case until the
3 case is over.

4 This means you must not use phone calls, emails, text
5 messages, instant messages, Twitter or any blog, chat room or
6 website, including Facebook, Google+, MySpace, Linked,
7 YouTube, or any social media websites to send or receive
8 information about this case. This includes information about
9 a party, a witness, an attorney or a court officer, news
10 accounts about the case, research on topics raised, any topics
11 you may think would be helpful in deciding the case or any
12 testimony presented by any witness.

13 During the trial, do not read, listen to or watch any
14 news reports about the case, if there are any. This includes
15 anything that may be in the newspapers or on the Internet,
16 radio or television. You must not, ladies and gentlemen,
17 consider anything that you may read or hear about the case
18 outside of this courtroom, whether before or during the trial.
19 Information on television, radio, the Internet or from other
20 sources might be wrong or incomplete.

21 In our judicial system, it is important that you are not
22 influenced by anything or anyone outside of this courtroom.
23 If you become aware of another juror's violation of these
24 instructions, please inform the Court immediately.

25 It is important, ladies and gentlemen, that you keep an

1 open mind and not decide any issue in the case until all of
2 the evidence has been presented, the parties have made their
3 closing arguments, and I have instructed you on the law
4 applicable to this case. It is your solemn responsibility to
5 determine the guilt or innocence of the defendant and your
6 verdict must be based solely on the evidence as it is
7 presented to you in this trial and on the law as I instruct
8 you during and at the close of the trial.

9 Now, in just a moment, the solicitor or prosecutor will
10 make what is called an opening statement in which he will
11 explain to you the issues in this case or at least what he
12 thinks the issues are in this case. The attorney for the
13 defendant may also make an opening statement, although he is
14 not required to do so.

15 What the attorneys tell you during their opening
16 statements is not evidence in this case. It is only their
17 contention as to what the issues are.

18 The evidence in this case, ladies and gentlemen, will be
19 presented to you by the testimony of sworn witnesses from the
20 witness stand and/or by exhibits that may be introduced into
21 evidence during the course of the trial.

22 Now, from time to time during the trial, you may hear one
23 of the attorney say something like, Your Honor, I believe that
24 we have a question of law or a matter of law to discuss with
25 you or, Your Honor, may we approach the bench or sometimes I

1 myself might find it necessary to excuse you from the
2 courtroom for a short while so the attorneys and I can discuss
3 a matter of law.

4 The reason for this is because you, ladies and gentlemen,
5 are the judge of the facts in the case and, sometimes when I
6 am discussing matters of law with the attorneys, it may be
7 necessary for me to make some comment as to the facts in
8 connection with ruling whether or not a particular law
9 applies. I am not -- I am not supposed to tell you all what I
10 think the facts are; so I will excuse you from the courtroom
11 while these discussions take place so that in no way -- so
12 that in no way will you be influenced by anything that I might
13 say or do in connection with the facts.

14 Now, in determining what the facts are in this case, you
15 must decide, ladies and gentlemen, whether or not the
16 testimony of the witnesses is believable. It will be my
17 responsibility to rule as a matter of law as to whether
18 certain testimony is admissible or not, but once the testimony
19 is admitted, whether or not you believe it is solely for you
20 to determine.

21 Now, in deciding whether to believe a witness, you have
22 the right to consider the interest of any witness, the bias of
23 any witness, the prejudice of any witness, the opportunity for
24 the witness to have seen the matters and things about which
25 the witness may testify and the way the witness acts on the

1 witness stand. You have the right to consider anything that
2 is in the record that will help you evaluate the testimony of
3 the witnesses.

4 That means, ladies and gentlemen, that it is your duty to
5 pay close attention to these witnesses, to observe the
6 witnesses, to listen to the witnesses, and to pay close
7 attention to the attorneys and to the Court. Please do not
8 let your thoughts wander, but give strict attention to the
9 testimony in this case so that at the end of all the
10 testimony, after the arguments of counsel and the charge on
11 the law by the Court, you will then be in a position to
12 determine what the facts are and to apply the law to those
13 facts and thus render a verdict.

14 Now, later in this case, a foreperson will be selected to
15 preside over deliberations in the jury room. It will be the
16 foreperson's added duty to be the jury's spokesperson here in
17 court. It will also be the foreperson's duty to write the
18 verdict, but I will give the foreperson further instructions
19 about that at the conclusion of the case.

20 Now, in order to preserve everyone's rights, I will give
21 the parties an opportunity to object to anything that I have
22 said. Any exception or objection to anything that I have said
23 to the jury by the State?

24 MR. RICHARDSON: No, sir.

25 THE COURT: Defense counsel?

1 MR. BROOKER: No objection, Your Honor.

2 THE COURT: All right. We will now begin the trial of
3 this case. Mr. Richardson, you're so recognized.

4 OPENING STATEMENT ON BEHALF OF THE STATE

5 MR. RICHARDSON: Thank you, Your Honor. Mr. Brooker.

6 I hope that I look a little too young to have been doing
7 this kind of work for over a decade now, but in my time doing
8 this kind of work, we see all kinds of cases come into these
9 courtrooms and the vast majority of them, while they're, you
10 know, wrong, you know, or the allegations are wrong, you can
11 sort of wrap your head around and rationalize to some degree
12 why somebody might do some of these things.

13 I mean some of the thefts or, you know, burglaries or,
14 you know, the property crimes, maybe somebody's horribly
15 addicted to drugs or something, you know, that says, well, you
16 know, I see kind of what's going on. Even in a lot of more
17 serious cases, homicides, you know, which I think a lot of
18 folks will say, you know, murder is maybe the worst crime
19 there is.

20 Oftentimes, two sides to a coin. Maybe, you know, the
21 defendant had been wronged by the victim. I mean there's all
22 kind of ways where you can at least attempt to justify some
23 sort of violent action on somebody.

24 And those kind of cases are easier to get up here and
25 talk to you about, but this is not one of those cases. This

1 is one of those cases that's very difficult to wrap your mind
2 around because at least I cannot think of a single viable
3 justification for sexually abusing a child, period. There's
4 not one.

5 And the subject matter, you know, is unpleasant, as
6 unpleasant as any kind of thing we can talk about, and, you
7 know, I hate to stand up here and have to drag you through it
8 and to have you listen to the testimony about it, but this is
9 what must be done because in a case like this, it's so
10 important that twelve of you hear what happened from this
11 witness stand because this case goes just a hair further, at
12 least in my mind, than child sexual abuse.

13 Oftentimes, you'll have those kind of cases where, you
14 know, maybe it's a neighbor or a, you know, family friend or a
15 -- or a babysitter or somebody who's trusted, you know, that
16 the parents put faith in to care for a child or to protect
17 them in their behalf or on their behalf, and that trust is
18 betrayed.

19 That's not one of these cases either. In this case, the
20 father of two little girls had sex with them every which way
21 you can. They were eight when they told, younger when it
22 happened.

23 These two little girls are twins, identical twins born in
24 [REDACTED] of 2005, and one of the two individuals on this
25 planet who by default is charged with the duty of protecting

1 them, not only failed to protect them, but perpetrated these
2 god-awful things on them.

3 There are 11 as we sit here today, still very young, and
4 I imagine public speaking may not be most of your favorite
5 things to do. If you think back to when you were in school
6 when you were about 11 or 12 or whatever, having to give a
7 book report or some kind of report in class, I remember I'd
8 just -- I'd be as nervous as I could be, shaking and carrying
9 on.

10 Think about what they're up against in this setting.
11 You've got now 13 of you seated a few feet from where they're
12 going to be sitting and they have to come up here and talk
13 about all the horrific details of the things that their own
14 father did to them.

15 He's charged with multiple counts of criminal sexual
16 conduct with a minor in the first degree. Let me tell you a
17 little bit about what that is.

18 To have the first-degree CSC, what we call it, with a
19 minor, the victims in the case have to be under the age of 11
20 when the incidents occur. We've got that. They were at the
21 most eight when it stopped. And also, there has to be what's
22 called a sexual battery, meaning some form of penetration,
23 however slight. This can be vaginal penetration, anal
24 penetration, oral penetration, and in this case, I think
25 you'll hear about all three of those things.

1 So understanding the unpleasantness of all of this, I
2 hope the importance of this is impressed upon you because how
3 do you wrap your mind around it? You can't. So this is the
4 forum where we are able to do something. This is civilized
5 society right here where we can somehow try to make a
6 situation as right as we can make it. And at the conclusion
7 of the evidence, that's what I'm going to ask you to do.

8 Now, these girls, when they get up here, I anticipate
9 they're going to be very shy, probably soft-spoken. I may
10 have to remind them to speak up. I may have to remind them
11 not to nod their heads and I just ask you to take that into
12 consideration. Take their ages into consideration and, you
13 know, what they must be going through being in front of a room
14 full of strangers and the person who did this stuff to them.

15 So thank you for your time and attention, and I'll speak
16 with you at the conclusion of the evidence.

17 THE COURT: All right. Mr. Brooker?

18 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

19 MR. BROOKER: Thank you, Your Honor. I've been sitting
20 there and listening to Mr. Richardson's opening statement and
21 trying to figure out how I'm going to respond to that. One of
22 the things that Mr. Richardson said during the opening
23 statement was is is that he can't imagine, you know, how
24 horrific these events were. He can't imagine how horrible
25 this alleged crime was.

1 And, of course, one of the things I notice is is that he
2 spoke to you in the sense that this was already a reality,
3 that this had already taken [sic] place. He argued to you
4 that these -- that these events, these allegations of sexual
5 assault, are factual and true. It's a done deal. We don't
6 need a trial.

7 That's not how it works. There's a couple of things that
8 I want you to remember. I want you to remember logic, I want
9 you to remember reason, and understand that trials are driven
10 by logic and reason and evidence and the existence and
11 nonexistence of evidence. They're not driven by passion.
12 They're not driven by emotion.

13 If you're guided by passion and emotion at the conclusion
14 of this trial, I submit to you that you will have failed in
15 your responsibilities and obligations as a juror. Although we
16 are dealing with allegations involving kids, you can't be
17 guided by emotion. You have to be guided by the existence of
18 evidence, the nonexistence of evidence, common sense. You've
19 got to be driven by logic and reason. You have to be.

20 Now, let's talk at least a little bit about criminal
21 cases. I don't know whether or not anyone -- any one of you
22 have ever been involved in a criminal case before, but our
23 judicial system, although it's not perfect, it's one of the
24 best in the world. And the reason why it's one of the best
25 judicial systems in the world is because we have some

1 significantly important principles that guides our criminal
2 judicial system.

3 One of the most important principles that we have in our
4 judicial system, of course, is is that -- I'm pretty sure all
5 of you have heard this before on television or read it
6 someplace, and that is the presumption of innocence. As Vance
7 Ross sits in that chair right there, he -- he is as innocent
8 as any one of us in this courtroom. He carries that
9 presumption. Our law says that each and every one of us are
10 innocent, absolutely, and you have to carry that presumption
11 of innocence throughout the entire trial. You have to presume
12 that he's innocent throughout the entire trial.

13 That presumption starts from the beginning of criminal
14 charges against him and until the very end of deliberation,
15 and there's some important reasons behind that. There are
16 some important reasons behind that presumption that ensures or
17 at least makes an attempt to ensure that when someone is found
18 guilty that justice has been served.

19 Now, how is that presumption? Now, of course, is is
20 that, like I said, all of us are innocent. Vance is innocent
21 as he sits there. Well, how does someone go from being
22 innocent to being guilty? What's the process of that? And
23 the judge, Judge Brown, explained it to you and it bears
24 repeating because it is vitally important. It's vitally
25 important and you have to remember it in order to successfully

1 perform your service.

2 And that is is that the State carries the burden of
3 proving him guilty. As Mr. Ross sits there -- and I often
4 tell jurors he is cloaked with a robe of innocence. We all
5 wear that robe. I'm wearing mine and I've worn -- I've worn
6 mine every day and y'all do too, and so does Vance Ross. And
7 the only way the State can remove that robe of innocence is by
8 proof beyond a reasonable doubt. They have to prove to you
9 beyond a reasonable doubt that each and every element of the
10 offense that he's charged that he's guilty of it.

11 And, of course, is is that I'm not going to go into great
12 detail in explaining what proof beyond a reasonable doubt is.
13 At the conclusion of the trial, the judge will give you
14 detailed instructions with respect to that, but I can tell you
15 this. It is not a frivolous burden. It is the highest burden
16 that we have, the highest burden that we have in our judicial
17 system.

18 And the reason why is, again, to protect against passion
19 and emotion, to protect against jurors making decisions based
20 upon passion or emotion or making decisions based upon what I
21 think and what I believe. It has to be proof beyond a
22 reasonable doubt.

23 And now, how does a jury get from proving beyond a
24 reasonable doubt that a particular defendant is guilty? Well,
25 that's through evidence. That's through evidence. It's going

1 to come through testimony or not, and that's just important is
2 that it's going to come through the existence of testimony or
3 even the absence of testimony. You can't just look at
4 specifically what is being testified to. You have to also
5 look at the absence of evidence and the absence of testimony.

6 But it's going to come from witnesses getting on the
7 stand and talking with you, and there's a list of witnesses.
8 During the jury qualification, if you can remember, Judge
9 Brown read to you a list of people that are potentially
10 witnesses. Well, they're going to get on that stand and
11 they're going to testify.

12 Listen to it very carefully. Listen to the logic in the
13 testimony. Listen to the absence of logic in the testimony.
14 Listen to see whether or not the testimony and the evidence,
15 you know, is complete. Look to see whether or not the
16 testimony or at least the evidence is not. Look to see
17 whether or not the investigation -- the investigation was
18 completely performed, that it was performed to its fullest or
19 whether it was not.

20 Because all of it creates what's called reasonable doubt.
21 Reasonable doubt. You have to be sure beyond a -- beyond a
22 reasonable doubt at the conclusion of this case before you can
23 pull the guilty lever. It's not what I think or what I
24 believe. It's what's been proven beyond a reasonable doubt.

25 And in addition to hearing testimony from -- from

1 witnesses, you'll hear medical testimony. Okay? Medical
2 testimony, and that's where the logic and reason come out.

3 In our own personal lives and experiences, sometimes we
4 talk to people and, for whatever reason, the things that they
5 say to us are not accurate. Sometimes it's because it is
6 intentional. It's an intentional falsehood. Sometimes it's
7 out of mistake. Sometimes it's out of misunderstanding and
8 confusion.

9 Testimony is not ironclad. Testimony can be manipulated.
10 Testimony can be deceptive. It can be misleading. It can be
11 false.

12 But in this case, we not only have testimony, we have
13 something I think that's better than just simply testimony
14 itself. We have science. We have medicine. Science is not
15 prejudiced. Science is not confused. Science don't care
16 about the age of a particular victim or the age or the
17 circumstances of the defendant. It's nonbiased.

18 And you'll hear that these two young ladies -- they were
19 sent to have medical examination. They went for forensic
20 medical examination and you'll hear the findings of that
21 forensic medical examination and you'll hear at least what we
22 believe will be contradictions in human testimony versus
23 science.

24 Now, what are the allegations in this particular case?
25 And I promise you I'm almost finished. What are the

1 allegations in this particular situation?

2 Like Mr. Richardson alleged, there are multiple counts of
3 CSC with a minor in which two young ladies allege that their
4 father, Vance Ross, sexually assaulted them over a period of
5 four years from the age of 4 to 8. You'll hear allegations
6 that there was vaginal penetration. There was full-blown sex.
7 That there was anal penetration. That there was oral
8 penetration in the mouth.

9 None of us like to hear these things. It is
10 uncomfortable, like Mr. Richardson says. It's uncomfortable
11 for everybody and I'm sure if we could all choose to be
12 someplace else, we would, but you can't look away. Justice
13 commands and demands that we confront the allegations in front
14 of us, that we look it square in the eyes, that we look at the
15 evidence and, for those of us who are baseball fans, is is
16 that we call the pitches as we see them.

17 But please don't get caught up in emotion. Don't get
18 caught up in emotion and don't allow emotion -- don't allow
19 emotion to interfere with logic and reason and science.
20 That's what justice demands.

21 Thank you very much.

22 THE COURT: Call your first -- call your first witness.

23 MR. RICHARDSON: Thank you, Your Honor. We'd call Joshua
24 Dean.

25 THE COURT: All right.

JOSHUA DEAN - DIRECT BY MR. RICHARDSON

1 THE CLERK: Sir, if you will, please place your left hand
2 on the Bible and raise your right hand. Do you swear to tell
3 the truth, the whole truth, and nothing but the truth, so help
4 you God?

5 THE WITNESS: I do.

6 THE CLERK: Please be seated and state your full name for
7 the record.

8 THE WITNESS: Joshua David Dean.

9 JOSHUA DEAN, being first duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. RICHARDSON:

13 Q: Where do you work, sir?

14 A: I'm a patrol deputy with the Florence County Sheriff's
15 Office.

16 Q: And how long have you worked for the Sheriff's Office?

17 A: Approximately four years now.

18 Q: Okay. And have you been a patrol deputy for that full
19 period of time?

20 A: Yes, sir.

21 Q: What are the job responsibilities of a patrol deputy?

22 A: We respond to emergency situations, 9-1-1 calls reporting
23 crimes, both happening now and in the past.

24 Q: And back on September 8th, 2014, did you have an
25 opportunity to respond to [REDACTED] Middleton Avenue in Florence in

JOSHUA DEAN - DIRECT BY MR. RICHARDSON

1 response to a call?

2 A: I believe so. Yes, sir.

3 Q: And what was the nature of that call that you received?

4 A: It was very vaguely -- it's been about -- what -- a
5 little bit of time has passed since I took that report and
6 I've done hundreds probably since then, but from reviewing
7 this case, Ms. Esther Lewis had discovered -- she'd been told
8 by her daughters that --

9 MR. BROOKER: Objection to -- to hearsay, Your Honor.

10 THE COURT: Objection sustained.

11 MR. RICHARDSON: Just eliciting the nature of the call he
12 received.

13 THE COURT: Objection sustained.

14 BY MR. RICHARDSON:

15 Q: Without saying what --

16 A: Okay.

17 Q: -- anybody else told you, what was the nature of the
18 call?

19 A: It was a criminal sexual conduct incident being reported.

20 Q: And with whom did you meet when you arrived at the
21 Middleton Street address?

22 A: I believe a Ms. Esther Lewis.

23 Q: Okay. And did you have a conversation with her about the
24 allegations?

25 A: Yes, sir.

JOSHUA DEAN - DIRECT BY MR. RICHARDSON

1 Q: Okay. Did you meet with anybody else there at the scene?

2 A: I don't believe so.

3 Q: Do you remember who all may have been present? I know

4 this was about almost 3 years ago.

5 A: I'm not sure if her -- the daughters in question were

6 present. I know I didn't speak to them directly.

7 Q: As a patrol deputy, when you get a call related to sexual

8 misconduct, especially with kids, what do you -- what is --

9 what is the standard?

10 A: You try to get as much information as you can. There's a

11 lot of specialized training in talking with juvenile victims.

12 So you try to paint a picture in a report so that, you know,

13 an investigator can have a general idea about what type of

14 situation they're about to start investigating. So you try to

15 get as much facts as you can and -- and relay those in a

16 report.

17 Q: So you interviewed Ms. Lewis on the scene to gather as

18 much as you could to turn over to an investigator?

19 A: That's correct.

20 Q: Very good. Once you completed your talk with Ms. Lewis,

21 what did you do next?

22 A: I believe I notified the -- the criminal sexual conduct

23 investigator. I believe that was Investigator Floyd.

24 Q: All right. And after that, did you have any further work

25 in this case?

JOSHUA DEAN - DIRECT BY MR. RICHARDSON

1 A: After clearing the scene and filing the report, I have
2 not until this day.

3 MR. RICHARDSON: Very good. Thank you. Please answer
4 any questions Mr. Brooker may have.

5 THE COURT: Cross-examination.

6 MR. BROOKER: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. BROOKER:

9 Q: Deputy Dean, I'll be very quick. I think you testified
10 to the fact that you were a patrol deputy with the Florence
11 County Sheriff's Department?

12 A: Yes, sir.

13 Q: Is that correct?

14 A: Yes, sir.

15 Q: Let me ask you at least this question to start off with.
16 Are you a fact witness of any -- are you a fact witness of any
17 allegations, you know, of sexual assault in this case? And --
18 and -- and let me explain that. And what I mean by a fact
19 witness is is is that did you actually witness sexual assault
20 in this case?

21 A: I did not. No, sir.

22 Q: Okay. And so you're simply here to testify to the fact
23 that you came out to the scene once you were called, but other
24 than that, you have absolutely no evidentiary testimony and I
25 mean fact -- personal fact evidentiary testimony with respect

JOSHUA DEAN - CROSS BY MR. BROOKER

1 to the existence or nonexistence of these allegations?

2 A: That would be correct, sir.

3 Q: Okay. Now, I'm almost finished. And because you're not
4 a fact witness and you have no evidence, I'll be very quick
5 with this line of questioning. Is it that I think you said
6 you were a patrolman? A patrolman? Are you trained in
7 investigating CSC cases or were you trained in the
8 investigation of CSC cases at that particular period?

9 A: I do have minimal training. A -- very basic, I would
10 describe it as.

11 Q: Very basic training? Were you an investigator at that
12 time?

13 A: No, sir.

14 Q: Just a patrolman?

15 A: Yes, sir.

16 Q: Okay.

17 MR. BROOKER: Okay. If you can indulge me for just a
18 second, Your Honor?

19 THE COURT: Yes, sir.

20 MR. BROOKER: No further questions, Your Honor.

21 MR. RICHARDSON: No redirect, Judge.

22 THE COURT: Sir, you may step down. Thank you.

23 THE WITNESS: Yes, sir.

24 MR. RICHARDSON: May we approach briefly?

25 THE COURT: Yes.

1 (WHEREUPON, a bench conference was held in the presence
2 of the jury but out of the hearing of the jury as
3 follows.)

4 MR. RICHARDSON: My next -- my next witness is going to
5 be one of the kids and I know in certain circumstances you put
6 a kid up in camera to kind of evaluate their competency and
7 ability to tell the truth. That's typical with very young
8 children. These are 11. I don't know if we think that's
9 necessary in this case. You know, basically just if they
10 understand the difference --

11 MR. BROOKER: I think out of an abundance of precaution
12 we may have to, and I say that because of some things that
13 I've seen in the -- in at least the DSS file during the
14 investigation and I think in the DSS file I think the mother
15 persistently in notifications asked that -- and I think she
16 asked at the Durant Center that the children be
17 psychologically examined because she thought that they may
18 have schizophrenic behavioral tendencies. So out of --

19 THE COURT: So minimal questions by the -- by the Court
20 if you want me to as a precautionary matter, pretty basic
21 questions.

22 MR. BROOKER: Yeah.

23 THE COURT: Do you want to do that?

24 MR. BROOKER: I think out of precaution we might.

25 (WHEREUPON, the bench conference ended and the

1 proceedings resumed as follows.)

2 THE COURT: All right. Ladies and gentlemen, I'll have
3 to ask you to step to the jury room for just a few minutes.
4 Do not discuss the case. I'll get you back out here as
5 quickly as possible.

6 (WHEREUPON, the jury exited the courtroom at 3:48 p.m.)

7 MR. BROOKER: Your Honor?

8 THE COURT: Yes.

9 MR. BROOKER: My client, Mr. Ross, has been holding it
10 for quite some time.

11 THE COURT: Go ahead. Let him go.

12 MR. BROOKER: Thank you, Your Honor.

13 THE COURT: Yes. We're not going to say anything. We'll
14 just -- until he gets back. I just want to look at something.

15 (WHEREUPON, there was a pause in the proceedings until
16 the defendant returned to the courtroom, after which the
17 proceedings resumed as follows.)

18 THE COURT: All right. The defendant is back in the
19 courtroom now.

20 The State advised me before I sent the jury out that the
21 next witness that they were going to call was going to be one
22 of the minor children. The issue of whether or not competent
23 to testify came up, competent being whether or not they
24 understood the importance of and recognized the -- had the
25 ability to know the difference between right and wrong, tell

1 the truth. There are certain findings that the Court has to
2 make.

3 Therefore, the Court would ask that the State call its
4 witness to the stand.

5 MR. RICHARDSON: Yes, Your Honor. Would you like to do
6 -- because both children will testify, would you like to
7 handle both of these now?

8 THE COURT: Well, I mean we need to do them I think
9 separate and independently because each of them have to
10 testify on their own.

11 MR. RICHARDSON: Yes, sir.

12 THE COURT: Call the one that you intend to call --

13 MR. RICHARDSON: Yes, sir.

14 THE COURT: -- first and let's --

15 MR. RICHARDSON: It would be Minor 1

16 THE COURT: All right. It's the State's burden to lay
17 the proper foundation for their ability to testify. That they
18 have the capacity to observe, remember, and relate and
19 recognize the duty of telling the truth. That burden is on
20 you.

21 MR. RICHARDSON: Yes, sir.

22 THE COURT: Mr. Brooker at sidebar here requested and
23 certainly raised his objection at sideboard here and that's
24 why we're going through this process, which he certainly has a
25 right to do.

Minor 1 - IN CAMERA DIRECT BY MR. RICHARDSON

1 MR. RICHARDSON: Yes, sir.

2 THE COURT: If you'll swear the witness.

3 THE CLERK: If you will, place your -- put your left hand
4 on the Bible. Left hand on the Bible. Raise your right hand.
5 Do you swear to tell the truth, the whole truth, and nothing
6 but the truth, so help you God?

7 THE WITNESS: So help you God.

8 THE CLERK: Okay. Have a seat and just tell us your full
9 name.

10 THE WITNESS: Minor 1

11 Minor 1 , being first duly
12 sworn, testified as follows:

13 IN-CAMERA DIRECT EXAMINATION

14 BY MR. RICHARDSON:

15 A: All right. ^{Minor 1} -- or Minor 1 -- I won't call you

16 Minor 1 . Minor 1 , how old are you?

17 A: Eleven.

18 Q: Okay. And do you go to school?

19 A: Yes, ma'am. I mean, yes, sir.

20 Q: And where do you go to school?

21 A: North Vista Elementary School.

22 Q: And what grade are you in?

23 A: Fifth grade.

24 Q: Okay. Who do you live with?

25 A: My mom.

Minor 1 - IN CAMERA DIRECT BY MR. RICHARDSON

1 Q: Okay. Do you have any brothers and sisters in the house
2 with you?
3 A: Yes.
4 Q: Who are they?
5 A: Devon and Devonte and Minor2 .
6 Q: Okay. And which one is your brothers, which one is your
7 sister?
8 A: Minor2 , Devon, and Devonte.
9 Q: Which one of those is your sister?
10 A: That one right there.
11 Q: Now, who is that?
12 A: The one with the -- the black dress.
13 Q: What's her name?
14 A: Minor2 .
15 Q: Okay. And you have two brothers?
16 A: Yes, sir.
17 Q: And what are their names?
18 A: Devon and Devonte.
19 Q: Okay.
20 THE COURT: What's the other kid's name? The son's name?
21 MR. RICHARDSON: Devon.
22 THE COURT: Devon and what?
23 THE WITNESS: Devonte.
24 THE COURT: Devonte? Okay. Thank you, ma'am.
25 MR. RICHARDSON: Okay.

Minor 1 - IN CAMERA DIRECT BY MR. RICHARDSON

1 BY MR. RICHARDSON:

2 Q: Minor 1 , do you have chores and stuff you have to do
3 around the house?

4 A: Yes.

5 Q: Okay. And what happens to you if you say you did them,
6 but you really didn't?

7 A: Sometimes get in trouble.

8 Q: Okay. Do you understand what telling the truth is?

9 A: Yes.

10 Q: Okay. If you don't tell the truth, what are you doing?
11 What's the opposite of truth?

12 A: Lying.

13 Q: Okay. What happens when you lie?

14 A: You get in trouble.

15 Q: Do you understand that, you know, getting in trouble with
16 your mom for telling a lie is one thing, but in this room do
17 you understand how important it is to tell the truth?

18 A: Yes.

19 Q: And when that lady stood up over there and asked you if
20 you swore to tell the truth, do you understand what that
21 meant?

22 A: Yes, sir.

23 Q: Okay. And will you tell the truth in this courtroom?

24 A: Yes.

25 MR. RICHARDSON: Your Honor, I'd ask if the defense has

1 any questions or if the Court has any questions.

2 THE COURT: Mr. Brooker, do you have any questions, sir?

3 MR. BROOKER: I have no questions, Your Honor.

4 THE COURT: All right. Any objection to her testifying,
5 Mr. Brooker, based upon her testimony here today?

6 MR. BROOKER: None that I can see, Your Honor.

7 THE COURT: All right. Based upon what I've heard here
8 today and based upon the testimony of the child, I do find
9 that she is competent to testify and that the State has laid
10 the proper foundation and I will allow her to testify.

11 It will certainly be up to this jury to determine whether
12 or not she's telling the truth based upon their observations
13 and listening to the witness, et cetera, but I'll allow her to
14 testify.

15 MR. RICHARDSON: May she remain seated?

16 THE COURT: No. I'm going to have her step down.

17 MR. RICHARDSON: Okay.

18 THE COURT: Ms. Lewis, I'm going to let you step down
19 from the witness stand and they're going to call you back up
20 here. Okay? And they're going to swear you again in front of
21 this jury. Okay?

22 So, if you will at this point, step down and have a seat
23 until I get the jury back out here.

24 (WHEREUPON, the witness complied.)

25 THE COURT: I know that Mr. Ross took a break while we --

1 after I sent the jury out. Do any of the attorneys need a
2 break? Anybody?

3 MR. RICHARDSON: I can make it if he can make it.

4 THE COURT: All right.

5 MR. BROOKER: I'm fine, Judge.

6 THE COURT: I'm not so sure I can make it. So I'm going
7 to stand down.

8 (WHEREUPON, there was a break in the proceedings from
9 3:57 p.m. until 4:01 p.m., after which the proceedings
10 resumed as follows.)

11 THE COURT: All right. Bring me the jury, please, sir.

12 THE BAILIFF: Yes, sir.

13 (WHEREUPON, the jury entered the courtroom at 4:02 p.m.)

14 THE COURT: All right. I've got all the jurors present.
15 Ladies and gentlemen, as you all come in and out of the
16 courtroom, you do not have assigned seating. The only person
17 -- the only person that has an assigned seat, so to speak,
18 right now is Mr. Dennis. Mr. Dennis, that's your seat. Okay?

19 THE ALTERNATE JUROR: Yes, sir.

20 THE COURT: Later, you all will select a foreperson and
21 the foreperson will sit where this young lady in the orange --
22 peach-colored blouse is seated. But other than that, you all
23 can sit wherever you so desire as you come in and out of the
24 courtroom. Okay?

25 At this time, we're going to continue the trial of the

Minor 1 - DIRECT BY MR. RICHARDSON

1 case. Mr. Richardson, you're so recognized.

2 MR. RICHARDSON: Thank you, Your Honor. We'd call

3 Minor 1

4 THE CLERK: Will you please step right up there and place
5 your left hand on the Bible and raise your right hand? Do you
6 swear to tell the truth, the whole truth, and nothing but the
7 truth, so help you God?

8 THE WITNESS: So help you God.

9 THE CLERK: Please have a seat in that chair and tell us
10 your full name.

11 THE WITNESS: Minor 1

12 MR. RICHARDSON: All right.

13 Minor 1 , being first duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. RICHARDSON:

17 Q: Minor 1 , how about spell your -- your first name for us?

18 A: Minor 1 .

19 Q: How about that middle name? Can you spell that one?

20 A: Minor 1 . Minor 1 .

21 Q: And last name is Lewis? Can you spell that one for us?

22 A: Minor 1 .

23 Q: Okay. And how old are you now, Minor 1 .?

24 A: Eleven.

25 Q: Okay. And what's your birthday?

Minor 1 - DIRECT BY MR. RICHARDSON

- 1 A: [REDACTED].
- 2 Q: Okay. And what year were you born?
- 3 A: 2005.
- 4 Q: Okay. And are you in school now?
- 5 A: Yes, sir.
- 6 Q: And what school do you attend?
- 7 A: North Vista Elementary School.
- 8 Q: And what grade are you in?
- 9 A: The fifth grade.
- 10 Q: Okay. Do you have a favorite subject in school?
- 11 A: Science.
- 12 Q: Very good. Who all lives in your house with you?
- 13 A: My mom, brothers and sisters.
- 14 Q: Okay. And how many brothers and sisters do you have?
- 15 A: One sister and two brothers.
- 16 Q: Okay. What your sister's name?
- 17 A: Minor 2 .
- 18 Q: Okay. And how old is she?
- 19 A: Eleven.
- 20 Q: Okay. She's got the same birthdate as you?
- 21 A: Yes, sir.
- 22 Q: Are you guys twins?
- 23 A: Yes.
- 24 Q: And how about your little brothers? How old are they?
- 25 A: Five years old.

Minor 1 - DIRECT BY MR. RICHARDSON

- 1 Q: And what are their names?
- 2 A: Devon and Devonte.
- 3 Q: Okay. And they're both five years old?
- 4 A: Yes.
- 5 Q: Are they twins too?
- 6 A: Yes, sir.
- 7 Q: Okay. So the four of y'all and your mom?
- 8 A: Yes.
- 9 Q: And what's her name?
- 10 A: Esther Lewis.
- 11 Q: Okay. Who is your father?
- 12 A: Vance.
- 13 Q: Okay. What's his last name?
- 14 A: Ross.
- 15 Q: And is he in the courtroom here today?
- 16 A: Yes, sir.
- 17 Q: Okay. And he does not live with you?
- 18 A: No.
- 19 Q: Okay. Do you remember a few years ago going to a place
- 20 in Florence called the Care House?
- 21 A: Yes.
- 22 Q: And do you remember talking to a lady there?
- 23 A: Yes.
- 24 Q: And when you spoke with a lady there at the Care House,
- 25 did she have a video recorder on?

Minor 1

- DIRECT BY MR. RICHARDSON

1 A: Yeah.

2 Q: What kind of things did you talk with her about?

3 A: Sexual abuse.

4 Q: Okay. Did she show you drawings of body parts on boys

5 and girls?

6 A: Yes.

7 Q: Okay. And did she -- were you asked to identify

8 different kinds of different body parts on boys and girls?

9 A: Yes, sir.

10 Q: Okay. And did she ask you about the private parts --

11 MR. BROOKER: Your Honor, I'm just going to make --

12 A: Yeah.

13 THE COURT: Hold on a minute.

14 MR. BROOKER: -- an objection.

15 THE COURT: Hold on a minute.

16 MR. BROOKER: An objection to hearsay.

17 THE COURT: Hold on. State your objection. State the

18 grounds for your objection.

19 MR. BROOKER: Grounds for the objection with respect to

20 hearsay. I think he is asking her to testify to some things

21 that --

22 THE COURT: The grounds for your objection is hearsay.

23 Overruled at this point. You may continue.

24 MR. RICHARDSON: Thank you, Your Honor.

25 BY MR. RICHARDSON:

Minor 1 - DIRECT BY MR. RICHARDSON

- 1 Q: Did you give the lady at the Care House names for
2 different body parts, including private parts, on boys and
3 girls?
4 A: Yes.
5 Q: Okay. Let's go over what you call the private parts on
6 girls. Okay? Could you tell me what private parts there are
7 on girls?
8 A: Vaginas.
9 Q: Okay. What else?
10 A: I don't know.
11 Q: So you refer to the vagina as a private part? Is that
12 what you call it? How about the butt or bottom?
13 A: (Nonverbal response.)
14 Q: Do you refer -- do you think that's a private part?
15 A: Yes.
16 Q: Okay. And how about your chest?
17 A: Yes, sir.
18 Q: Okay. Do you know of any other private parts on a girl?
19 A: The mouth.
20 Q: I see why you might say that. How about on a boy? What
21 are the private parts on a boy?
22 A: The top, bottom, mouth, and penis.
23 Q: Okay. And so the penis -- what do you refer to that as?
24 Is that a private part as well?
25 A: Yes.

Minor 1

- DIRECT BY MR. RICHARDSON

- 1 Q: Is that what you call it?
- 2 A: (Nonverbal response.)
- 3 Q: Is that a yes?
- 4 A: Yes.
- 5 Q: Okay. When you were asked about --, you said sexual abuse
- 6 and you went over the private parts of the body. Were you
- 7 asked who may have touched your private parts when they
- 8 weren't supposed to?
- 9 A: Yes.
- 10 Q: Okay. And who touched your private parts?
- 11 A: My dad.
- 12 Q: Okay. You mentioned different private parts here. Which
- 13 ones did he touch?
- 14 A: Vagina.
- 15 Q: Okay. Were there any others?
- 16 A: Top and bottom.
- 17 Q: Okay. Do you know about how many times he touched your
- 18 private parts?
- 19 A: No, sir.
- 20 Q: Was it more than once?
- 21 A: Yes.
- 22 Q: Do you think it's more than five times?
- 23 A: Yes.
- 24 Q: Do you think it's more than ten?
- 25 A: No.

Minor 1 - DIRECT BY MR. RICHARDSON

1 Q: So some time -- some -- between five and ten? Someplace
2 between there?

3 A: (Nonverbal response.)

4 Q: Is that the yes?

5 A: (Nonverbal response.)

6 THE COURT: I need a verbal response, please.

7 A: Yes.

8 Q: Okay. How old were you when he would touch your private
9 parts?

10 A: 7 to 8.

11 Q: Okay. Where did this all take place or how many places?

12 A: My grandmother's house and at the park and at a hotel
13 room.

14 Q: Okay. At one -- one hotel? Or were there more than one
15 hotel?

16 A: Two hotels.

17 Q: Okay. So you mentioned at your -- your grandma's house.
18 I'm going to show you an item here.

19 MR. RICHARDSON: If I could mark this as State's 1 for
20 ID?

21 THE COURT: All right.

22 BY MR. RICHARDSON:

23 Q: Minor 1 , I'm going to show you this. Do you recognize
24 this?

25 A: Yes.

Minor 1 -DIRECT BY MR. RICHARDSON

- 1 Q: What is this a picture of?
- 2 A: My grandma's house.
- 3 Q: Okay. And is this the -- your grandma's house that
- 4 you're referring to that you're talking about where your
- 5 private parts got touched?
- 6 A: Yes.
- 7 Q: Okay. And is this in Florence?
- 8 A: Yes.
- 9 Q: Okay. And what's the -- do you know the address there?
- 10 A: No.
- 11 Q: You don't know her address? Okay. Does this picture
- 12 look like your grandma's house as it did when your dad touched
- 13 your private parts there?
- 14 A: Yes, sir.
- 15 Q: Okay.
- 16 MR. RICHARDSON: Your Honor, I'd ask that State's 1 be
- 17 entered into evidence.
- 18 THE COURT: Any objection?
- 19 MR. BROOKER: No objection, Your Honor.
- 20 THE COURT: Without objection, so admitted.
- 21 (WHEREUPON, State's Exhibit Number 1, a photograph, was
- 22 admitted into evidence.)
- 23 MR. RICHARDSON: Okay.
- 24 BY MR. RICHARDSON:
- 25 Q: Minor 1 , let's talk about grandma's house. Now, you said

Minor 1 - DIRECT BY MR. RICHARDSON

- 1 when you were 7 and 8 that things happened there; is that
2 right?
- 3 A: Yes, sir.
- 4 Q: Okay. Where at grandma's house did something happen?
- 5 A: He did it in the car at night.
- 6 Q: And where was the car?
- 7 A: In the parking space.
- 8 Q: Can you see that in this picture?
- 9 A: Yes, sir.
- 10 Q: So is it a driveway? Is that what you mean by parking
11 space?
- 12 A: Yes.
- 13 Q: Okay. So you were in a car?
- 14 A: Yes.
- 15 Q: Who all was in the car?
- 16 A: My sister and my daddy.
- 17 Q: Okay. So three of you?
- 18 A: Yes, sir.
- 19 Q: And you said this took place at night?
- 20 A: Yes.
- 21 Q: Where was your grandma?
- 22 A: She was at home.
- 23 Q: So she was inside the house?
- 24 A: Yes.
- 25 Q: And where was your mom?

Minor 1

- DIRECT BY MR. RICHARDSON

- 1 A: She was in the house too.
- 2 Q: Okay. Do you know why you were in -- out in the car with
- 3 your dad?
- 4 A: No.
- 5 Q: Had he taken you somewhere or was he about to take you
- 6 somewhere?
- 7 A: He was going to.
- 8 Q: Okay. Did he?
- 9 A: No.
- 10 Q: Where was -- do you know -- do you remember where he was
- 11 going to take you?
- 12 A: To the park.
- 13 Q: Okay. So you got in the car thinking you were going to
- 14 the park?
- 15 A: Yes, sir.
- 16 Q: And tell us as best you can remember what happened when
- 17 you got in the car or what happened in the car?
- 18 A: He was touching me.
- 19 Q: Now, where were you in the -- in the car?
- 20 A: The front seat.
- 21 Q: The front? And what kind of car did he have?
- 22 A: A Chevy.
- 23 Q: All right. Was it like a -- a small car or like a truck
- 24 or what kind of vehicle was it?
- 25 A: A truck.

Minor 1 - DIRECT BY MR. RICHARDSON

- 1 Q: Okay. Did it have, like, a covered back on it or was it
2 just an open bed? Was it, like, a pickup truck or, like, an
3 SUV?
- 4 A: An SUV.
- 5 Q: Okay. Was it kind of a small one or was it a bigger one?
- 6 A: A bigger one.
- 7 Q: All right. So -- so you -- you remember being in the
8 front seat?
- 9 A: Yes.
- 10 Q: Okay. Where was your sister?
- 11 A: She was in the backseat.
- 12 Q: Okay. And where was your dad?
- 13 A: The front seat.
- 14 Q: Okay. Was he in the driver's seat?
- 15 A: Yes, sir.
- 16 Q: Okay. And what happened in the -- when you were in the
17 front seat?
- 18 A: I was playing on my mom's phone.
- 19 Q: Okay. And what happened next?
- 20 A: Then -- then I give -- after I finished, I give the phone
21 to my sister and that's when he started to touch me and my
22 sister at the same time.
- 23 Q: Where did he touch you?
- 24 A: My bottom part.
- 25 Q: Now, by bottom part, what do you mean?

Minor 1

- DIRECT BY MR. RICHARDSON

- 1 A: Like, my lower body part.
- 2 Q: Okay. Do you mean your bottom or your vagina?
- 3 A: Vagina. Both.
- 4 Q: Both of them? All right. Were you wearing clothes?
- 5 A: Yes, sir.
- 6 Q: Did -- did either he take them off or did you take them
- 7 off or did they stay on?
- 8 A: They stayed on.
- 9 Q: Okay. And how about your dad? Was he wearing clothes?
- 10 A: Yes.
- 11 Q: Okay. At any point, did he take them off?
- 12 A: No.
- 13 Q: Okay. Did you stay in the seat the whole time, in the
- 14 front seat?
- 15 A: No.
- 16 Q: Where did you move?
- 17 A: I went inside the house to tell my mom.
- 18 Q: So was this the last time something happened?
- 19 A: Yes, sir.
- 20 Q: So right after this one happened is when you told your
- 21 mom?
- 22 A: (Nonverbal response.)
- 23 Q: Before this happened in the driveway the night you told
- 24 your mom, did he do anything to you or your sister that you
- 25 saw in the driveway or inside grandma's house?

Minor 1 - DIRECT BY MR. RICHARDSON

1 A: In the driveway.

2 Q: Okay. So a time before this?

3 A: (Nonverbal response.)

4 Q: Okay. What happened in the time in the driveway before
5 this?

6 A: He took us -- like, we spent the night at the hotel room
7 and then we had -- he had took us back to grandma's house and
8 then I had told my mom that he was having -- he was touching
9 all over us in the hotel room.

10 Q: Right. But before -- I'm talking about stuff that
11 actually happened in the driveway of your grandma's house.
12 Did he ever do anything in that driveway other than what you
13 just described when you were in the front seat and your sister
14 was in the backseat?

15 A: Yes.

16 Q: Did he ever place his -- any of his private parts or his
17 private part in any of yours in the driveway?

18 A: Yes.

19 Q: Okay. Tell us about that time. What -- who was where in
20 the car and what happened?

21 A: He was sitting on the left side. I was sitting on the
22 right side. Then he leaned over and he told me to come here
23 and I had to push him away from me.

24 Q: Okay. Were y'all in the backseat this time or the front
25 seat?

Minor 1 - DIRECT BY MR. RICHARDSON

- 1 A: We was in the front seat.
- 2 Q: Okay. And this was a different time from the night you
- 3 told your mom?
- 4 A: Yes, sir.
- 5 Q: Okay. And what did he do then after you told him no or
- 6 pushed him away?
- 7 A: I went back in the house.
- 8 Q: So at no point did he put his private part in any of
- 9 yours?
- 10 A: Yes.
- 11 Q: Describe what did he do?
- 12 A: He had put it inside of mine. He told me not to tell.
- 13 Q: Is that why you're having a hard time talking about it
- 14 now?
- 15 A: Yes.
- 16 Q: So which of your private parts did he put his in, in the
- 17 car?
- 18 A: The front.
- 19 Q: In your vagina?
- 20 A: Yes, sir.
- 21 Q: Who was in the car when that happened?
- 22 A: My sister.
- 23 Q: So was she watching this happen?
- 24 A: No.
- 25 Q: What was she --

Minor 1 - DIRECT BY MR. RICHARDSON

- 1 A: She -- she went in the house to go hurry up and get mom.
- 2 Q: So the -- is this still the night your mom found out?
- 3 A: Yes.
- 4 Q: Okay. So your sister didn't see your dad put his private
- 5 part in yours?
- 6 A: No, sir.
- 7 Q: Okay. Were you in the front seat or backseat when he put
- 8 his private part in yours?
- 9 A: Backseat.
- 10 Q: And your sister wasn't in the car at all during this?
- 11 A: No.
- 12 Q: Okay. Where were your -- what kind of -- you said he was
- 13 on the left side, you were on the right side? Is that how you
- 14 -- what you said?
- 15 A: Yeah.
- 16 Q: And where were your clothes?
- 17 A: I still had them on.
- 18 Q: Okay. You had them completely on?
- 19 A: Yes, sir.
- 20 Q: Were his clothes completely on?
- 21 A: Yes.
- 22 Q: So at no point did he remove your clothes or did you
- 23 remove your clothes?
- 24 A: He tried to remove it and I told him not to.
- 25 Q: Okay. So was he -- did he do anything to you in the car?

Minor 1 -DIRECT BY MR. RICHARDSON

- 1 A: Yes, sir.
- 2 Q: What did he do?
- 3 A: He tried -- he told me to take my shirt off and I didn't
- 4 take it off and then he tried to take it off for me.
- 5 Q: Okay. Did you let him?
- 6 A: No.
- 7 Q: Okay. And is that when you got out of the car?
- 8 A: Yes, sir.
- 9 Q: Okay. Let me show you State's --
- 10 MR. RICHARDSON: I'm going to have this marked as State's
- 11 Number 2.
- 12 BY MR. RICHARDSON:
- 13 Q: Minor 1 , I'm going to show you this picture here that's
- 14 marked as State's Number 2. Can you tell me what that is?
- 15 A: The park.
- 16 Q: Okay. And do you remember which park that might be?
- 17 A: No, sir.
- 18 Q: You don't remember the name? Do you remember going to
- 19 this park?
- 20 A: Yes.
- 21 Q: And who would take you to it?
- 22 A: My dad and sometimes my mom.
- 23 Q: Okay. And does this picture look like the way you
- 24 remember the park looking?
- 25 A: Yes, sir.

Minor 1 - DIRECT BY MR. RICHARDSON

1 Q: Okay.

2 MR. RICHARDSON: Your Honor, I'd ask State's Number 2 to

3 be moved into evidence.

4 MR. BROOKER: Without objection, Your Honor.

5 THE COURT: Without objection, so admitted.

6 (WHEREUPON, State's Exhibit Number 2, a photograph, was

7 admitted into evidence.)

8 MR. RICHARDSON: Thanks.

9 BY MR. RICHARDSON:

10 Q: Minor 1 , did -- did anybody touch your private parts at

11 the park or around the park?

12 A: It happened during night again.

13 Q: At the park?

14 A: Yes, sir.

15 Q: Okay. Who all was there?

16 A: Just me and my sister and my dad and my brothers.

17 Q: So your brothers were there?

18 A: (Nonverbal response.)

19 Q: How -- how old were they at the time? Because they're

20 five now; right?

21 A: They were four.

22 Q: You said they're five now?

23 A: Yes, sir.

24 Q: Okay. How old were you -- were you when this happened at

25 the park?

Minor 1

-DIRECT BY MR. RICHARDSON

- 1 A: I was seven.
- 2 Q: Okay. And how old are you now?
- 3 A: Eleven.
- 4 Q: All right. So that's four years ago?
- 5 A: Yes, sir.
- 6 Q: All right. Were your brothers babies at the time or were
- 7 they the size they are now?
- 8 A: They were babies at the time.
- 9 Q: They were?
- 10 A: (Nonverbal response.)
- 11 Q: Okay. So it was your dad and the four of you?
- 12 A: Yes, sir.
- 13 Q: Your mom was not there?
- 14 A: No.
- 15 Q: Okay. And this was at nighttime?
- 16 A: Yes.
- 17 Q: What -- what happened? Were y'all in the same car?
- 18 A: Yes, sir.
- 19 Q: Okay. And who was where in the car?
- 20 A: My brothers was in the backseat -- backseat asleep and my
- 21 sister was in the front seat. I was in the middle seat.
- 22 Q: Okay. So this SUV has three rows of seats?
- 23 A: Yes.
- 24 Q: Okay. So you were in the middle seat?
- 25 A: (Nonverbal response.)

Minor 1 - DIRECT BY MR. RICHARDSON

- 1 Q: And was your sister awake?
- 2 A: Yes, sir.
- 3 Q: Okay. And where was your dad?
- 4 A: He was in the front seat.
- 5 Q: Okay. And what did he do to you in the car that night?
- 6 A: He started -- he started to tell my sister to take -- to
- 7 tell both of us to take off our clothes and then we both had
- 8 told him not to do that because that was wrong.
- 9 Q: Okay. And what happened then? What happened after that?
- 10 A: We started to get mad at him and then I had took the
- 11 phone from my sister. I told her to call mom, but then his
- 12 phone was dead. Then we was sitting there and I thought he
- 13 was -- and then I thought he was going to do something to me
- 14 and my sister because my mom wouldn't pick up the phone.
- 15 Q: Okay. So that night at the park, did -- did anything
- 16 happen to you? Did he touch you in any way?
- 17 A: No.
- 18 Q: Not that night?
- 19 A: (Nonverbal response.)
- 20 Q: Okay. So nobody touched your private parts in the park?
- 21 He just asked you to do -- asked you to take your clothes off?
- 22 A: Yes, sir.
- 23 Q: Okay. I want to show you two pictures.
- 24 MR. RICHARDSON: These will be marked as 3 and 4.
- 25 BY MR. RICHARDSON:

Minor 1 - DIRECT BY MR. RICHARDSON

- 1 Q: Let me show you this one first. This is Number 4. Do
2 you recognize this place?
- 3 A: No.
- 4 Q: You don't recognize it? Okay. This is Number 3. Do you
5 recognize that?
- 6 A: Yes.
- 7 Q: What is that?
- 8 A: That's a room number for the hotel door.
- 9 Q: Okay. So this is at a hotel?
- 10 A: Yes, sir.
- 11 Q: Do you remember the name of the hotel?
- 12 A: No.
- 13 Q: Do you remember this room number though?
- 14 A: Yes, sir.
- 15 Q: Okay. And what number is on the door?
- 16 A: 221.
- 17 Q: Okay. And did you stay in that room some?
- 18 A: Yes.
- 19 Q: Okay. And does this picture look like what it looked
20 like to you when you were staying there?
- 21 A: Yes, sir.
- 22 MR. RICHARDSON: Your Honor, I'd ask for State's 3 to be
23 entered into evidence at this time.
- 24 THE COURT: Mr. Brooker, any objection?
- 25 MR. BROOKER: If you could indulge me for just a second?

Minor 1 - DIRECT BY MR. RICHARDSON

1 THE COURT: Yes, sir.

2 MR. BROOKER: No objection, Your Honor.

3 THE COURT: Without objection, so admitted.

4 (WHEREUPON, State's Exhibit Number 3, a photograph, was
5 admitted into evidence.)

6 MR. RICHARDSON: All right.

7 BY MR. RICHARDSON:

8 Q: Minor 1 , you stayed in this room at a hotel. Who would
9 -- who was in the hotel room with you?

10 A: My sister.

11 Q: And what adult was there with you?

12 A: My brothers and my mom and dad.

13 Q: Okay. So all of you stayed in this hotel at various
14 times?

15 A: Yes.

16 Q: Okay. How old were you when you stayed there?

17 A: I was still seven.

18 Q: Okay. And did anybody, while you were in this hotel
19 room, touch you on your private parts?

20 A: My dad.

21 Q: Okay. And when this happened, who was in the room?

22 A: Me and my -- and my -- my brothers and dad and my sister,
23 and my mom went to go get something to eat for us.

24 Q: Okay. And what did he do?

25 A: He tried to try something on us after my mama left the

Minor 1
room.

- DIRECT BY MR. RICHARDSON

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Q: Did you let him? Did he --did he do it?

A: He tried to and then I had moved away from him and then I had went to go get mom. Then mom had said what are you doing and that's when she started yelling at him.

Q: So at no point there in that place at any time did he try to put his private part in yours?

A: No.

Q: He never did? Did you see him do anything to your sister in there?

A: No, sir.

Q: Okay. I'm going to show you --

MR. RICHARDSON: This would be State's 5 I think.

THE COURT: Did you enter 4 into evidence or just 3?

MR. RICHARDSON: I entered just 3. I did not enter 4.

THE COURT: Okay.

MR. RICHARDSON: All right.

BY MR. RICHARDSON:

Q: Minor 1 , this is State's Number 5. Can you take a look at this and do you recognize this place?

A: Thunderbird.

Q: The Thunderbird? Is that a hotel you stayed in?

A: Yes.

Q: Okay. And does this picture look like the Thunderbird as you remember it?

Minor 1 - DIRECT BY MR. RICHARDSON

1 A: Yes, sir.

2 Q: Okay. And how old were you when you stayed there?

3 A: I was eight.

4 Q: Okay.

5 MR. RICHARDSON: I'm going to ask for this picture to be
6 entered into evidence as State's 5.

7 THE COURT: Any objection?

8 MR. BROOKER: No objection, Your Honor.

9 THE COURT: So admitted.

10 (WHEREUPON, State's Exhibit Number 5, a photograph, was
11 admitted into evidence.)

12 MR. RICHARDSON: All right.

13 BY MR. RICHARDSON:

14 Q: Minor 1 , when you stayed at the Thunderbird, who was
15 staying in the room with you?

16 A: Me and my mom, and my dad had went somewhere else.

17 Q: So your dad never stayed in the Thunderbird with you?

18 A: Sometimes, but not all the time.

19 Q: Okay. At any point in time in the Thunderbird, did your
20 dad or anybody else try to touch your private parts with
21 theirs?

22 A: No.

23 Q: Never did? So earlier in your -- in our conversation,
24 you told me that your dad had actually touched your private
25 parts?

Minor 1

- DIRECT BY MR. RICHARDSON

- 1 A: Yes.
- 2 Q: Is that right?
- 3 A: (Nonverbal response.)
- 4 Q: Where were you located? Where were you when he touched
- 5 your private parts?
- 6 A: In the hotel room.
- 7 Q: In the ones I've shown you?
- 8 A: Yes.
- 9 Q: But you just told me that he didn't do anything to you in
- 10 the hotel room. Do you remember telling me that?
- 11 A: The Thunderbird one.
- 12 Q: Okay.
- 13 A: He didn't do anything to you in that one?
- 14 A: No, sir.
- 15 Q: Which one did he do something to you in?
- 16 A: This one right here.
- 17 Q: Which one?
- 18 A: That one.
- 19 Q: The Thunderbird?
- 20 A: (Nonverbal response.)
- 21 THE COURT: State's 5?
- 22 MR. RICHARDSON: Yes, sir. State's 5.
- 23 BY MR. RICHARDSON:
- 24 Q: Okay. What happened in the Thunderbird?
- 25 A: He -- he assaulted me and he was on top of me. He was

Minor 1 - DIRECT BY MR. RICHARDSON

1 trying to kiss me on the mouth. He said -- he said not to say
2 anything, not to tell mom, because he was afraid that she
3 would get upset and then tell someone.
4 Q: Okay. At any time in the Thunderbird, did he put his
5 private part in your mouth?
6 A: Yes, sir.
7 Q: Okay. Tell us about that. Who was -- who saw that
8 happen? Who was there when that happened?
9 A: My sister.
10 Q: Okay. How did he -- did he ask you to do that or did he
11 force you? How did it happen?
12 A: He had forced me.
13 Q: Okay. Can you describe it to us? Like, what he actually
14 did?
15 A: He -- he had -- he had tried -- he had grabbed me. Then
16 he had told me to get down on my knees and then he had tried
17 to put it in my mouth and I had moved it away from my face.
18 Q: Did -- did -- did he ever actually get it into your
19 mouth?
20 A: No.
21 Q: Never?
22 A: (Nonverbal response.)
23 Q: Okay. Did you ever see anything come out of his private
24 part?
25 A: No.

Minor 1 -DIRECT BY MR. RICHARDSON

1 Q: Okay. Did he ever try to put his private part in your
2 vagina?
3 A: Yes.
4 Q: Did he ever succeed in doing that? Did he ever actually
5 put his private part in your vagina?
6 A: Yes, sir.
7 Q: Where were you when that happened?
8 A: I was on the bed watching TV.
9 Q: On what bed?
10 A: Hotel room bed.
11 Q: Okay. Was it the Thunderbird or the other hotel?
12 A: The Thunderbird.
13 Q: And you said he actually put his private part in yours?
14 A: Yes, sir.
15 Q: When you were watching TV on the bed?
16 A: (Nonverbal response.)
17 Q: Okay.
18 THE COURT: Is that a yes or a no?
19 THE WITNESS: Yes, sir.
20 BY MR. RICHARDSON:
21 Q: Did you say yes?
22 A: Yes, sir.
23 Q: Okay. And how -- what did he do to remove your clothes?
24 A: He had told me to take it off and then I tried to -- I
25 tried to get off the bed when he had left, but then he had

Minor 1 - DIRECT BY MR. RICHARDSON

- 1 came back and then he had pushed me back on it.
- 2 Q: He pushed you back onto the bed?
- 3 A: (Nonverbal response.)
- 4 Q: And were your clothes off when he pushed you back onto
- 5 the bed?
- 6 A: Then I had put it back on.
- 7 Q: You had put them back on?
- 8 A: (Nonverbal response.)
- 9 Q: Did he take them back off?
- 10 A: No.
- 11 Q: Or had it -- had he already done something to you?
- 12 A: Yes, sir.
- 13 Q: Okay. And when your clothes were off and you were on the
- 14 bed, what did he do?
- 15 A: He tried to sexually assault me.
- 16 Q: What do you mean by that?
- 17 A: Like, he tried to force me to have sex with him.
- 18 Q: Okay. And were his clothes off as well?
- 19 A: Well, his shirt was off except for the rest.
- 20 Q: So his pants were on?
- 21 A: (Nonverbal response.)
- 22 Q: Did you ever see him do anything to your sister as far as
- 23 touching her private parts?
- 24 A: Well, he was trying to kiss her though.
- 25 Q: He was trying to kiss her?

Minor 1

- DIRECT BY MR. RICHARDSON

- 1 A: (Nonverbal response.)
- 2 Q: How about trying to put his private parts in her private
- 3 parts or her mouth? Did you ever see him do that to her?
- 4 A: Yes. And I told him to get off of her.
- 5 Q: Okay. And what did you see him do to her?
- 6 A: He tried to put his penis in her mouth.
- 7 Q: Okay. And did he actually do it?
- 8 A: Yes.
- 9 Q: And where -- where were you when this happened?
- 10 A: I was in the shower.
- 11 Q: But at what place? Was it a hotel?
- 12 A: Yes, sir.
- 13 Q: All right. And you were in the shower?
- 14 A: Yes.
- 15 Q: And where were they?
- 16 A: They were out -- they was outside the shower near the
- 17 bathroom.
- 18 Q: In the bathroom?
- 19 A: No, sir.
- 20 Q: Near the bathroom?
- 21 A: Yes.
- 22 Q: Okay. Were you actually taking a shower? I mean was the
- 23 water on?
- 24 A: Yes.
- 25 Q: Then how could you see what he was doing to your sister?

Minor 1 - DIRECT BY MR. RICHARDSON

1 A: When I came out the shower, I saw him on top of her.

2 Q: Okay. And what was he doing?

3 A: She was on the bed and then he had his penis in her -- in
4 her mouth.

5 Q: Okay. Did you see anything come out of his penis that
6 time?

7 A: No.

8 Q: Okay. Were her clothes on or off?

9 A: Her clothes was on.

10 Q: Okay. Did you ever see him do anything else to your
11 sister?

12 A: No, sir.

13 Q: How old were you guys when you saw him with his penis in
14 your sister's mouth?

15 A: Eight.

16 Q: Okay. And this was in -- you said this was in the
17 Thunderbird hotel?

18 A: Yes, sir.

19 Q: Okay. When he would ask you and your sister to do these
20 things, you know, whether it was to put it in your private
21 part or put his private part in your mouth, how did he tell
22 you or show you what to do?

23 A: He had told us to come here.

24 Q: Okay. Did he ever show you anything like pictures or
25 videos or anything like that?

Minor 1 - DIRECT BY MR. RICHARDSON

- 1 A: Videos.
- 2 Q: Okay. How did he show you videos? Were they on a TV or
- 3 phone or what?
- 4 A: Cell phone.
- 5 Q: Okay. And what was in the video?
- 6 A: Sex. Dads -- dads having sex with their daughters.
- 7 Q: How did you know that's what it was?
- 8 A: Because he had showed it to me.
- 9 Q: Okay. And what did he tell you to do once he showed it
- 10 to you?
- 11 A: He had told us -- he had -- he had told me to put my
- 12 mouth on his penis and then I had backed away from him.
- 13 Q: Is that what was happening in the video?
- 14 A: Yes.
- 15 Q: I think you already mentioned this. When these type of
- 16 things would happen, did -- what would he tell you about
- 17 telling somebody?
- 18 A: He would tell me not to tell nobody because he don't want
- 19 to get in trouble. He don't want nobody to know.
- 20 Q: Okay. Did he ever -- I think we've covered most things.
- 21 Did he ever put his private part in your butt?
- 22 A: No.
- 23 Q: No? Okay. So from what you said here now, he never
- 24 actually was able to put his penis in your vagina or your
- 25 mouth? Is that right or did -- or did he actually do it?

Minor 1 - DIRECT BY MR. RICHARDSON

1 A: He actually did it.

2 Q: To you?

3 A: Yes, sir.

4 Q: Okay. And you said this occurred or this happened
5 between five and ten times?

6 A: Yes.

7 Q: Okay. Now, do you understand the difference between him
8 asking you to do it or trying to do it and actually doing it?

9 A: Yes, sir.

10 Q: Do you understand what I mean?

11 A: Yes.

12 Q: Okay. Can you please tell us about a time where he
13 actually did it to you?

14 A: I don't know.

15 Q: Are you nervous?

16 A: No.

17 Q: No? So you don't know or you can't think of a time where
18 he actually did it?

19 A: No.

20 Q: Okay. Hang on for me one second?

21 MR. RICHARDSON: Thank you, Minor 1 . Please answer any
22 questions Mr. Brooker may have for you.

23 THE COURT: Mr. Brooker, cross-examination.

24 CROSS-EXAMINATION

25 BY MR. BROOKER:

Minor 1 -CROSS BY MR. BROOKER

- 1 Q: How are you doing, Minor 1 .?
- 2 A: Good.
- 3 Q: Okay. If for any reason if I ask you a question and you
- 4 don't understand it, just let me know and I'll be more than
- 5 happy to repeat it. Okay?
- 6 A: Yeah.
- 7 Q: Okay. And if you get tired, just let me know. All
- 8 right? How old are you again?
- 9 A: Eleven.
- 10 Q: Okay. Eleven years old. Now, I know that you testified
- 11 -- well, first of all, let me make sure I understand
- 12 something. Could you name to me all the places where your dad
- 13 had sex with you -- allegedly had sex with you at? Name them
- 14 all?
- 15 A: The Thunderbird, my grandma's house --
- 16 Q: I'm sorry?
- 17 A: The Thunderbird, my grandma's house, the park, and the
- 18 other hotels.
- 19 Q: And the other hotels?
- 20 A: Yes, sir.
- 21 Q: Okay. Now -- and the reason why I ask you that is is
- 22 that do you remember telling Mr. Richardson just a minute ago
- 23 that the only place it happened was at the Thunderbird, but
- 24 not the other hotels?
- 25 A: Yes.

Minor 1 - CROSS BY MR. BROOKER

1 Q: Okay. And see, that's what we're trying to understand is
2 is that I think you just told me it happened -- now you're
3 telling me it happened at the Thunderbird and also at other
4 hotels, when you told Mr. Richardson it just happened at the
5 Thunderbird. Do you know for certain where it happened at?

6 A: No.

7 Q: Okay. All right. And before I ask you any question --
8 any further questions, let me ask you this. Were you a little
9 bit frightened about coming in here today to testify?

10 A: Yes, sir.

11 Q: It's a little bit intimidating?

12 A: Yes.

13 Q: Okay. Did you prepare? Did you prepare or study to
14 testify here today?

15 A: Yes.

16 Q: Okay. How did you prepare and study to testify here
17 today?

18 A: Nicole gave me a special book about the courthouse about
19 what they do and what they say. It asks you a few questions
20 --

21 Q: Okay.

22 A: -- about what happened.

23 Q: Okay. Good. Good. Did you talk with anybody about, you
24 know, what you were going to testify to today and about the
25 allegations?

Minor 1

- CROSS BY MR. BROOKER

- 1 A: Yes.
- 2 Q: Who did you talk with about that?
- 3 A: Nicole and Megan.
- 4 Q: Okay. Did you talk with anybody else?
- 5 A: No, sir.
- 6 Q: Okay. Did you talk with Mr. Richardson there?
- 7 A: Yes.
- 8 Q: Okay. Did you talk with your mom?
- 9 A: Yes.
- 10 Q: Did you talk with your sister?
- 11 A: No.
- 12 Q: Okay. Now, tell me what was your conversations with your
- 13 mom? What did y'all talk about?
- 14 A: About telling the truth in court.
- 15 Q: Okay. What did you talk about with Mr. Richardson?
- 16 A: About things that is going to happen in court, like, you
- 17 have to tell where -- where -- where it happened at and how
- 18 did it happen.
- 19 Q: Okay. Okay. Okay. All right. And the reason why I
- 20 asked you that is is that, again, is is that about the hotels.
- 21 Now -- and, like I said, let me try and ask you this the right
- 22 way. When you said that the first time I think with Mr.
- 23 Richardson that it only happened at the Thunderbird and then
- 24 you told me that it happened at the Thunderbird and other
- 25 hotels, do you understand that both of those can't be true?

Minor 1

- CROSS BY MR. BROOKER

1 A: No.

2 Q: Okay. Okay. So you don't understand that both of those
3 statements can't be true?

4 A: No.

5 Q: Okay. All right. Okay. Let's talk about -- you also
6 said something else to Mr. Richardson is that you told Mr.
7 Richardson when he asked you is is that -- and I don't know
8 what term you prefer to use, but, you know, butt or rear end.
9 Is any one of those terms more comfortable for you?

10 A: No.

11 Q: Okay. Okay. Now, you told Mr. Richardson that your dad
12 had never put his -- put his penis in your butt. Do you
13 remember telling Mr. Richardson that when he asked you?

14 A: Yes.

15 Q: Okay. Now, do you remember testifying -- do you remember
16 talking with the lady at the Care House?

17 A: Yes.

18 Q: Okay. Okay. And give me just a second. Do you remember
19 telling her --

20 MR. BROOKER: And indulge me for just a second. Excuse
21 me, Your Honor.

22 THE COURT: Yes, sir.

23 BY MR. BROOKER:

24 Q: Do you remember telling her that -- that your dad had put
25 his private parts in your butt at least three times?

Minor 1

- CROSS BY MR. BROOKER

1 A: Yes.

2 Q: Okay. And the reason why I ask you that is is that do
3 you understand that both of those statements can't be true?

4 A: Yes.

5 Q: Okay. All right. Now, if both of those statements can't
6 be true -- and I'll try to put it as -- as -- you know, as
7 non-complicated as I can, but when you told Mr. Richardson
8 that your dad had never put his -- his private part in your
9 butt, but you told the lady at the Care House who interviewed
10 you that he did it three times -- okay? Is one of those true
11 and one of them not true?

12 A: One of them are true.

13 Q: Which one of them are true?

14 A: That he did it.

15 Q: Okay. Well, if that's the -- and how many times did he
16 do it?

17 A: Three times.

18 Q: Okay. Now -- and see, that's the thing is is that if he
19 did it three times, then do you know why you told Mr.
20 Richardson here on the stand that he never did it?

21 A: Because I didn't want him to know.

22 Q: Okay. Okay. Now, you also -- I'm going to try to ask
23 you this again. Well, a different question. I think you said
24 it happened at your grandmom's house and where is that? Your
25 grandmom's house. You said at the --

Minor 1

- CROSS BY MR. BROOKER

- 1 A: Park.
- 2 Q: At the park?
- 3 A: And the Thunderbird hotel.
- 4 Q: Okay. And the Thunderbird hotel. And I think you told
- 5 me the other time other hotels. Okay? Do you want to just
- 6 leave out other hotels this time or the park, your grandmom's
- 7 house, and the Thunderbird hotel?
- 8 A: My grandma's house and the hotel.
- 9 Q: Okay. Can you tell me about the time at your grandmom's
- 10 house? Tell me what happened?
- 11 A: He -- he started to do bad things to me and my sister.
- 12 Q: Okay. And where were you and your sister at your
- 13 grandmom's house?
- 14 A: We were in the car at the time.
- 15 Q: You were in the car? Okay. And do you know when this
- 16 was? Well, let me -- let me ask a better question than that.
- 17 I apologize. I'm going to retract that question and ask it a
- 18 better way. Do you know how old you were at the time?
- 19 A: I was seven years old.
- 20 Q: You were seven years old at the time? Do you know about
- 21 what time of day it was?
- 22 A: No.
- 23 Q: Okay. Was the sun up or the sun not up or do you have
- 24 any idea?
- 25 A: The sun was up.

Minor 1 - CROSS BY MR. BROOKER

- 1 Q: The sun was up? Okay. So you're saying the sun was up.
2 So daylight time?
3 A: Yes.
4 Q: Okay. Where was your grandma?
5 A: She was in the house.
6 Q: Okay. And where was your mom?
7 A: She was in the living room.
8 Q: In the house?
9 A: Yes, sir.
10 Q: Okay. And so how long were you outside in the car with
11 dad?
12 A: I think a few minutes.
13 Q: Okay. A few minutes?
14 A: Yes, sir.
15 Q: Okay. Now, I'm going to ask you about this because you
16 testified to something with Mr. Richardson that confused me
17 and I want you to clarify it for me. I don't want to confuse
18 you or anything. And you correct me if my recollection or --
19 if I remember something that you said to Mr. Richardson that's
20 wrong, just, you know, let me know. Okay?
21 But my understanding was is that you told Mr. Richardson
22 that when it happened outside when you were in your car at
23 your grandmom's house that your sister at some point ran in
24 the house and told your mom?
25 A: Yes, sir.

Minor I - CROSS BY MR. BROOKER

1 Q: What happened when your sister ran in the house and told
2 your mom?

3 A: She -- she had told her mom -- she had told mom and then
4 mom had asked what he was doing and how that happened.

5 Q: Okay. Is that when your mom found out about, you know,
6 what was allegedly going on with you and your dad and your
7 sister?

8 A: Yes.

9 Q: Okay. All right. Now, did it happen at your mom's house
10 or your grandmom's house once or twice or how many times?

11 A: Twice, I think.

12 Q: Twice, you think? Okay.

13 MR. BROOKER: If you can indulge me for just a second,
14 Your Honor?

15 THE COURT: Yes, sir.

16 BY MR. BROOKER:

17 Q: So grandmom's house, the Thunderbird, and where else? It
18 happened at grandmom's house, the Thunderbird, and where was
19 the other place again?

20 A: The park.

21 Q: The park? Okay. All right. And you're sure about those
22 places?

23 A: Yes, sir.

24 Q: Okay. Do you -- now, I know that you told me you
25 remember talking with a lady at the Care House who interviewed

Minor I - CROSS BY MR. BROOKER

1 you; right?

2 A: Yes, sir.

3 Q: Do you remember telling her that it happened at the
4 school bus stop?

5 A: No.

6 Q: Okay. And so did it ever happen at the school bus stop?

7 A: Yes.

8 Q: So it did happen at the school bus stop?

9 A: Yes, sir.

10 Q: Okay. And the reason why I ask you that is is that when
11 I asked you before the places that it happened, you mentioned
12 the park, you mentioned grandmom's house, and you mentioned
13 the hotels, but you didn't mention the school bus stop and so
14 -- and that's where I'm a little bit confused. Why didn't you
15 mention the school bus stop before when Mr. Richardson asked
16 you that question and when I just asked you that question?
17 Why didn't you mention the school bus stop then?

18 A: Because my cousin -- my cousin was in it too.

19 Q: Okay. Your cousin was in it too?

20 A: Yes, sir.

21 Q: All right. Okay. Did he touch you anyplace else besides
22 those places? I want to make sure and I want to ask you from
23 your recollection. Okay? Do you recollect him touching you
24 any other place?

25 A: Yes. In my mouth.

Minor 1 - CROSS BY MR. BROOKER

1 Q: Okay. Okay. And what I mean by that -- and I'm sorry.
2 I asked a stupid question. So your answer was fine.
3 Sometimes we don't ask clear enough questions and so let me
4 ask the question clearer. Did it happen at any other place?
5 Not location on your body. Did it happen any other place that
6 you can think of from your recollection?
7 A: Near the bus stop.
8 Q: Okay. All right. Okay. And the reason why I ask you
9 that is is that do you remember telling the -- this is the
10 Care House lady. I'm referring back to that again. I think
11 you said you remember when you went to the Care House and --
12 and talked with the lady about, you know, these allegations;
13 is that correct?
14 A: Yes, sir.
15 Q: Okay. Do you remember telling her that -- that your dad
16 touched you at the shelter?
17 A: No.
18 Q: Okay. Okay. So did he touch you at the shelter?
19 A: Yes.
20 Q: Okay. And see, again, that's where, you know, I'm
21 confused there. Okay? Okay. Before when you -- when I asked
22 you all the places that it happened and you didn't mention the
23 shelter and then now I just asked you about the shelter and
24 you said, yes, it happened at the shelter. And let me find
25 some more understandable words. Do you -- are those two

Minor 1 - CROSS BY MR. BROOKER

1 statements different to you? Do you see the difference in
2 those two statements?

3 A: Yes.

4 Q: Okay. Okay. All right. So when you testified to Mr.
5 Richardson that it just happened at those three places -- I
6 think you told him it happened at your mom's house, it
7 happened at the park, and I think you told him it happened at
8 the Thunderbird motel. And then I asked you a question and
9 you -- you -- it reminded you of -- I think when I asked you
10 the same question, you told me it happened at the Thunderbird
11 hotel and other hotels and I thought that was the complete
12 list. Okay? And since then, you've added the bus stop and
13 you've added the shelter. Okay? Do you see -- do you see the
14 confusion in those statements?

15 A: Yes.

16 Q: Okay. Okay. Now, I don't want to be rough with you. I
17 want to make sure we get everything right. Okay? Now, I'm
18 going to ask you a couple of questions and they're going to be
19 difficult questions. Okay? But I have to ask them, you know,
20 because of this is a trial.

21 And you correct me if I'm wrong. The first time that you
22 remember your daddy having sex with you was at where? The
23 first time you remember?

24 A: At the house.

25 Q: At whose house?

Minor 1 - CROSS BY MR. BROOKER

- 1 A: My mom's house.
- 2 Q: Okay. At your mom's. Okay. So it happened at your
- 3 mom's house too?
- 4 A: Yes, sir.
- 5 Q: Okay. So the first place was not in the car at your
- 6 grandmom's house -- at your -- in the car outside of your
- 7 grandmom's house?
- 8 A: Yes, sir.
- 9 Q: Okay. Well, just tell me about what you remember at your
- 10 mother's house?
- 11 A: When I was seven years old, he told me to come here and
- 12 he -- he would -- then he told me to first kiss him and then
- 13 to touch his vagina -- I mean his penis.
- 14 Q: Okay. Okay. And this was at your mom's house? How old
- 15 were you then?
- 16 A: I was -- I think I was about six before I turned seven.
- 17 Q: Okay. Okay. Okay. You believe it was six? Okay. All
- 18 right. Do you remember telling the lady at the Care House
- 19 that the first time it ever happened to you, you were seven
- 20 years old -- seven and eight?
- 21 A: Yes, sir.
- 22 Q: Okay. Now, again, I'm going to ask you some tough
- 23 questions and, like I said, I don't mean to be tough on you.
- 24 I have to ask them to you. At your mom's house -- and I'll
- 25 use the terms that you told Mr. Richardson. Did he put his

Minor 1 - CROSS BY MR. BROOKER

1 private part inside of your private part?

2 A: No.

3 Q: Okay. He didn't? Okay. Tell me what he did at mom's
4 house again so we can all understand? Okay. So you said he
5 didn't put his private part inside of your private part; is
6 that correct?

7 A: Yes, sir.

8 Q: Okay.

9 A: Because my mom came in the room. She -- she asked what
10 are you doing. I said he told me to come here and then he had
11 got in trouble. He got caught by my mom.

12 Q: Okay. So the first time he ever did it, he got caught by
13 your mom?

14 A: Yes, sir.

15 Q: Okay. Okay. So that's the first time it ever happened?

16 A: Yes.

17 Q: And your mom caught him? Okay. Don't tell me what your
18 mom said, but do you know whether your mom did anything or did
19 they get into an argument? But don't tell me no words or
20 nothing like that. Did they get in an argument? Do you know
21 what happened when your mom caught him?

22 A: No.

23 Q: Okay. Okay. All right. So that was the first time?

24 A: Yes.

25 Q: Okay. When was the second time that you can remember?

Minor 1 - CROSS BY MR. BROOKER

- 1 A: It was just the first time.
- 2 Q: It was just the first time?
- 3 A: Yes, sir.
- 4 Q: Okay. Did he ever do it any other times?
- 5 A: No, sir.
- 6 Q: Okay. But do you remember telling Mr. Richardson that --
- 7 that -- and you also told me that it happened at the park,
- 8 that had happened in the car at grandmom's house, that it
- 9 happened at the Thunderbird hotel?
- 10 A: Yes.
- 11 Q: Okay. All right. Can you tell me where did it happen
- 12 the second time?
- 13 A: The second time that it happened, it happened at my
- 14 grandma's house.
- 15 Q: Okay. And was that the incident you were telling me
- 16 about the car?
- 17 A: Yes.
- 18 Q: Okay. All right. Okay. That's the one you told me the
- 19 first time about it happening in your grandmom's house at the
- 20 car and I think you said that -- that the sun was still up or
- 21 it was -- it was still sunlight; is that correct?
- 22 A: Yes.
- 23 Q: Okay. And -- and you correct me if I'm wrong. My
- 24 understanding is that you told me that -- that y'all were in
- 25 the car with him and mom was in the house and grandmom was in

Minor 1 - CROSS BY MR. BROOKER

1 the house; is that correct?

2 A: Yes.

3 Q: And that your sister -- that y'all were in the car with
4 him a couple minutes and that your sister got out and ran in
5 the house and told mom?

6 A: Yes.

7 Q: Okay. And you told me mom found out then; is that
8 correct?

9 A: Yes, sir.

10 Q: All right. Now, during that time -- and, like I said,
11 I'm going to use your words. On that occasion, did -- did he
12 put his private parts in your private parts?

13 A: Yes.

14 Q: Okay. So did he pull your pants down? Or you just tell
15 me in your own words what happened. How did he put his
16 private parts in your private parts?

17 A: He had -- he had forced me to pull my pants down.

18 Q: Okay. Okay. And what happened next?

19 A: And then he had -- he had get me to the -- to the -- to
20 the other side and then he was trying -- he was trying to put
21 his penis inside of mine.

22 Q: Okay. Did he ever put his penis inside of your private
23 parts, inside of your private area?

24 A: Yes.

25 Q: Okay. Okay. And, like I said, is is that -- I don't

Minor 1 - CROSS BY MR. BROOKER

1 mean to ask you this question, but I've got to. I've got to
2 ask it to you. What happened when he put his private parts
3 inside of your private parts? Can you describe to us what
4 happened next?

5 A: And then -- then I had told him to stop and then he had
6 moved away from me and then I had went back in the house and
7 then I told my mom that he was trying -- he was trying to
8 touch me.

9 Q: Okay. So you left out of the car too and went back in
10 and told your mom?

11 A: Yes.

12 Q: And that's what I'm trying to figure out is. I know that
13 you -- at one point, you said he tried to put his private
14 parts in your private parts. Did he actually -- did his
15 private parts actually go inside your private parts?

16 A: Yes.

17 Q: Okay. In the car?

18 A: Yes.

19 Q: Okay. Did -- now, I'm going to ask you something else
20 because I was a little bit confused when Mr. Richardson asked
21 you this on -- on direct examination. Well, let me skip that.
22 Okay. I want to stay in sequence. Okay? Okay. That's the
23 second time. For the third time, tell me about the third
24 time?

25 A: There was -- there was only but the first time and the

Minor 1 - CROSS BY MR. BROOKER

1 second time.

2 Q: So those were the only two times?

3 A: Yes.

4 Q: Okay. What about the hotel room and the park and I think
5 you later added the shelter and -- and the -- the school bus
6 stop?

7 A: It happened more than two times.

8 Q: Okay. So it happened more than two times?

9 A: Yes, sir.

10 Q: Okay. And that's what I'm trying to figure out. I know
11 you told me about mom's house and you told me about grandmom's
12 house. Can you tell me the next time? If it happened more
13 than two times, tell me about the next time?

14 A: It happened three times.

15 Q: It happened three times. Did it happen more than three
16 times?

17 A: No.

18 Q: Okay. All right. Well, let's just stop there. Just
19 tell me about the third time. Where -- where -- where was
20 that?

21 A: The third time was at the park.

22 Q: Okay. All right. Tell me -- tell me about that.

23 A: At the park at night, he -- I had gotten in front with
24 the game and then he had took it out my hand and then he said
25 he had to charge me up and then he had told me to go in the

Minor 1 - CROSS BY MR. BROOKER

1 bathroom with him.

2 Q: At the park?

3 A: Yes.

4 Q: Okay. So let me make sure I understand. Do you know
5 which park it was?

6 A: I think it was the Oakland Park.

7 Q: Okay. Oakland Park? Okay. And you said it was at
8 night?

9 A: Yes.

10 Q: And who was -- was anybody with you?

11 A: No.

12 Q: So it was just you and him?

13 A: Yes.

14 Q: Okay. What about your sister?

15 A: She was at home with our mom.

16 Q: She was at home? Okay. And -- and I want to just make
17 -- you know, try to make this clear for the jury. Did his
18 private parts ever went inside of your private parts at the
19 park?

20 A: Yes.

21 Q: Okay. It did? Okay. And tell me how that happened?
22 Just in your own words.

23 A: He had told me -- he had -- he had pulled my pants down
24 and then he took his out and then he had tried to put his
25 inside of mine. And then he told me -- then he told me that

Minor 1 - CROSS BY MR. BROOKER

- 1 he was going to do it more than one time.
- 2 Q: Okay. You said he tried to put his inside of yours. Did
- 3 he actually put his private parts inside of your private
- 4 parts?
- 5 A: Yes.
- 6 Q: Okay. All right. Let me try to find a kind of a
- 7 delicate way to ask this. Were you laying down or standing up
- 8 or tell me what positions were y'all in inside the car or
- 9 outside the car at the park?
- 10 A: Standing up.
- 11 Q: Okay. And where were y'all standing up at?
- 12 A: Inside the bathroom.
- 13 Q: Okay. At the park?
- 14 A: Yes, sir.
- 15 Q: Okay. All right. Now, do you -- do you remember telling
- 16 Mr. Richardson it happened in the bathroom at -- I think if I
- 17 -- and you correct me if I'm wrong. You said it happened in
- 18 the bathroom at the hotel?
- 19 A: No.
- 20 Q: It didn't happen in the bathroom at the hotel?
- 21 A: No.
- 22 Q: Okay. Okay. So at the park. Okay. You said he put his
- 23 private parts in your private parts. How long did he have his
- 24 private parts in your private parts?
- 25 A: I don't know.

Minor 1 - CROSS BY MR. BROOKER

1 Q: Okay. Did he move or anything like that or make any
2 motions when he had his private parts in your private parts?

3 A: No.

4 Q: Okay. He just stood there?

5 A: Yes.

6 Q: Okay. Did any -- and I think Mr. Richardson asked you
7 this, but I want to be sure. Did anything ever come out of
8 his private parts?

9 A: Huh-uh. No, sir.

10 Q: Okay. And did you ever see anything come out of his
11 private parts? I think you testified to Mr. Richardson. I
12 want to be certain about that. When he asked you a similar
13 question, have you ever seen anything come out of his private
14 parts, and I think you testified to him, no. Do you remember
15 telling Mr. Richardson that?

16 A: Yes.

17 Q: Okay. And the reason why I'm asking you that is because
18 I want to at least clarify.

19 MR. BROOKER: If you can indulge me for just a second,
20 Your Honor? I'll try to move through this as quickly as I
21 can.

22 THE COURT: All right.

23 BY MR. BROOKER:

24 Q: Now, do you remember talking again with the -- with the
25 -- the lady at the Care House who -- who -- who asked you a

Minor 1 - CROSS BY MR. BROOKER

1 bunch of questions or interviewed you?

2 A: Ms. Sally.

3 Q: Yes, ma'am. That's it. Ms. Sally. Do you remember
4 telling Ms. Sally that -- that -- that -- that you did see
5 stuff coming out of his -- his private part? Do you remember
6 telling Ms. Sally that?

7 A: No.

8 Q: Okay. Do you remember Ms. Sally asking -- asking you --
9 well, no, you said you don't remember. Okay. But you don't
10 remember telling Ms. Sally that -- that you did witness
11 something come out of his private area?

12 A: No, sir.

13 Q: You don't remember Ms. Sally telling you that -- or --
14 excuse me. You don't remember you telling Ms. Sally that you
15 did see something coming out of your father's private --
16 private parts?

17 A: No.

18 Q: Okay. Okay.

19 MR. BROOKER: If you can indulge me for just a second,
20 Your Honor, I'm almost finished.

21 THE COURT: All right.

22 MR. BROOKER: I promise.

23 BY MR. BROOKER:

24 Q: Okay. Now, I know you said -- I know it's a little bit
25 confusing and I'm sorry. It's a little bit confusing for us

Minor 1 - CROSS BY MR. BROOKER

1 too. I'm going to take you back to the shelter. Has anybody
2 ever touched you at the shelter?

3 A: Yes.

4 Q: Anybody else other than your dad?

5 A: Like, when we had left, somebody had touched behind me.
6 It was a -- it was a white guy.

7 Q: Okay. All right. Did the police come out there as a
8 result of that?

9 A: Yes.

10 Q: Okay. Now, did you talk to the police? I don't know if
11 you did, but I just need to ask you. You don't have too --
12 I'm not going to ask you what you said, but did you talk with
13 the police when they come out?

14 A: Yes.

15 Q: Okay. Now, I'm going to ask you another kind of
16 difficult question, but I know you told us -- and I'm a little
17 bit confused. I know you told us a number of places that it
18 happened. I know you mentioned -- I'm a little bit confused
19 too. I know at least at your -- at your -- at your grandmom's
20 house, I think you said your -- your daddy had put his private
21 parts -- and you've got your grandmom's house and you said he
22 also did it at the park in the bathroom. To the best of your
23 memory, about how many times have -- have your dad ever put
24 his private parts in your private parts?

25 A: I think ten.

Minor 1

- CROSS BY MR. BROOKER

1 Q: About ten times? Okay. All right. And the reason why I
2 ask you that is is that I thought when Mr. Richard asked --
3 Mr. Richardson asked you that question that you said something
4 different. I think -- I think you said -- you may have said
5 that right. I think you said somewhere between -- I think he
6 asked you more than five and you said yeah and he asked you
7 more than ten and you said no; so I think your testimony was
8 somewhere between five and ten. Do you remember that?

9 A: Yes.

10 Q: Okay. And the reason why I asked you that is is that do
11 you remember -- yeah. And this is a little bit confusing. Do
12 you remember when -- when you were asked that or you discussed
13 that with Ms. -- with Ms. Sally at the Durant Center when you
14 were asked that question of how many times had your dad put
15 his private parts in your private parts, and I'm a little bit
16 confused, and you told her -- you said, like, 15 days. Could
17 you explain what you meant by that when you said -- you know,
18 when you were asked how many times your -- your daddy put his
19 private parts in your private parts and you told her, like, 15
20 days? Do you remember that?

21 A: No.

22 Q: Okay.

23 MR. BROOKER: If you could indulge me, Your Honor?

24 THE COURT: Yes, sir.

25 MR. BROOKER: I'm struggling with the question I need to

Minor 1 - CROSS BY MR. BROOKER

1 ask and I know I need to ask it.

2 BY MR. BROOKER:

3 Q: If you -- if you in any way get uncomfortable about the
4 question I'm going to ask you, just let me know. Okay? Now,
5 let me see the best way to ask this -- ask the question. I
6 think during the times in which you said that your father put
7 his private parts in your private parts, was your -- was your
8 father's private part inflated?

9 A: No.

10 Q: It wasn't? Now, you tell me if you can't, because I
11 think you've testified that you've seen his private part a few
12 times. Can you describe his private parts to me? And -- and
13 yeah, can you -- can you describe his private parts, I mean
14 what you saw?

15 A: Like, he had -- he had took it out and it was brown.

16 Q: Okay. Was it large or small or --

17 A: Medium.

18 Q: It was medium? Okay. Now, when he put his private part
19 in your private part, did it hurt?

20 A: A little.

21 Q: Okay. All right. And each time that he did it -- I know
22 that -- and I'm not going to get into the confusion of how
23 many times. Each time that he allegedly did it, did it hurt
24 each time?

25 A: Yes.

Minor 1

- CROSS BY MR. BROOKER

1 Q: Okay. All right.

2 MR. BROOKER: If you can indulge me for just a second,
3 Your Honor, I might be finished with my questions.

4 THE COURT: Yes, sir.

5 BY MR. BROOKER:

6 Q: I'm going to ask you this -- this one last question and
7 then -- and then I'm going to sit down. I'm going to sit
8 down. Okay? And -- and let you have a break, but it's a
9 sensitive question and it's a private one. Okay? And I want
10 you to just tell me to the best of your recollection at any
11 time when -- when -- the times in which your dad put his
12 private parts in your private parts -- okay? Did you have any
13 spotting or bleeding or anything like that?

14 A: No.

15 Q: Okay. All right.

16 MR. BROOKER: No further questions, Your Honor.

17 THE COURT: Mr. Richardson?

18 MR. RICHARDSON: Briefly. Brief redirect.

19 REDIRECT EXAMINATION

20 BY MR. RICHARDSON:

21 Q: Minor 1, when Mr. Brooker asked you what your father's
22 private parts looked like, I couldn't -- I don't think I heard
23 you or misunderstood. Did you say something about a scar?

24 A: I said it was brown.

25 Q: Oh, brown. You said it was brown. Okay. He also asked

Minor 1 - REDIRECT BY MR. RICHARDSON

1 you about a time in a shower at a hotel room. Do you remember
2 him asking you about that?

3 A: Yes.

4 Q: And is that what we talked about when you came out of
5 that shower or the bathroom and saw your dad and your sister
6 on the bed?

7 A: Yes.

8 Q: Okay. So he didn't mess with you in the shower? You
9 came out of the shower and saw your sister?

10 A: Yes.

11 Q: Okay. And you mentioned when he first started talking to
12 you that you didn't tell me I guess all the stuff you had said
13 at the Care House because you didn't want me to know. Do you
14 remember him asking you or you saying that?

15 A: Yes.

16 Q: Why didn't you want me to know?

17 A: Shy.

18 Q: You're shy? Okay. When you talked to Sally -- Ms. Sally
19 at the Care House back in 2014, was everything you told her
20 true?

21 A: Yes.

22 MR. RICHARDSON: All right. That's all the questions I
23 have for you. Thank you.

24 MR. BROOKER: No, sir, Your Honor. Nothing further.

25 THE COURT: All right. Ma'am, you may step down. Thank

1 you.

2 All right. Ladies and gentlemen, it's about 5:20. We're
3 not -- I'm going to stop here for the day. I'm going to let
4 you go home. Do not -- do not discuss the case at all with
5 anyone. I'm going to ask you to be back here tomorrow morning
6 at 9:30 -- at 9:30 and we will resume the trial of this case
7 at that time.

8 I hope you all have a nice restful evening and I'll see
9 you tomorrow. All right.

10 (WHEREUPON, the jury exited the courtroom at 5:19 p.m.)

11 THE COURT: All right. Anything from the State before we
12 break?

13 MR. RICHARDSON: No, sir.

14 THE COURT: Defense counsel?

15 MR. BROOKER: No, sir, Your Honor.

16 THE COURT: All right. 9:30 in the morning.

17 MR. BROOKER: Yes, sir.

18 (WHEREUPON, the proceedings adjourned for the day at 5:20
19 p.m.)

20 APRIL 18, 2017

21 (WHEREUPON, the proceedings resumed at 9:34 a.m.)

22 THE COURT: All right. Is the State ready to proceed?

23 MR. RICHARDSON: Yes, sir.

24 THE COURT: Defense counsel?

25 MR. BROOKER: Yes, sir.

Minor 2 - DIRECT BY MR. RICHARDSON

1 THE COURT: All right. Have we got all the jurors here?

2 THE BAILIFF: Yes, sir.

3 THE COURT: If you'll bring them in, please, sir?

4 THE BAILIFF: Yes, sir.

5 (WHEREUPON, the jury entered the courtroom at 9:35 a.m.)

6 THE COURT: Good morning, ladies and gentlemen. Hope you
7 all had a nice evening last night and are ready to proceed
8 here today. At this time, we are going to continue the trial
9 of this case. The State is so recognized. Call your next
10 witness, please.

11 MR. RICHARDSON: Thank you, Your Honor. We'd call

12	Minor 2

13 THE CLERK: Please step up there and place your left hand
14 on the Bible and raise your right hand. Do you swear to tell
15 the truth, the whole truth, and nothing but the truth, so help
16 you God?

17 THE WITNESS: Yes.

18 THE CLERK: Please sit down in that seat and tell us your
19 full name.

20 MR. RICHARDSON: All right.

21 Minor 2 , being first duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. RICHARDSON:

25 Q: What's your name?

Minor 2 - DIRECT BY MR. RICHARDSON

- 1 A: Minor 2 .
- 2 Q: All right. Can you spell that first name for us?
- 3 A: Minor 2 .
- 4 Q: Okay. And can you spell the middle name?
- 5 A: Minor 2
- 6 Q: Okay. And your last name?
- 7 A: Minor 2 .
- 8 Q: Okay.
- 9 THE COURT: Ma'am, I need you to speak up a little bit.
- 10 Okay? Can y'all hear her on the far corner over here, sir?
- 11 A JUROR: Yeah, I can hear her.
- 12 THE COURT: Okay.
- 13 BY MR. RICHARDSON:
- 14 Q: If you could talk up a little louder for me? Okay?
- 15 A: (Nonverbal response.)
- 16 Q: And how old are you now?
- 17 A: Eleven.
- 18 Q: Okay. And are you in school?
- 19 A: Yes.
- 20 Q: And what school do you attend?
- 21 A: North Vista.
- 22 Q: And what grade are you in?
- 23 A: Fifth.
- 24 Q: We heard from your sister yesterday; is that right?
- 25 A: (Nonverbal response.)

Minor 2 - DIRECT BY MR. RICHARDSON

- 1 Q: Okay. And you guys are twins?
- 2 A: (Nonverbal response.)
- 3 Q: Is that right?
- 4 A: Yes.
- 5 Q: Okay. And how do you like having a twin?
- 6 A: Great.
- 7 Q: It's great?
- 8 A: (Nonverbal response.)
- 9 Q: Who all lives in your house with you?
- 10 A: My mom and my brothers and my sister.
- 11 Q: Okay. And how many brothers do you have?
- 12 A: Two.
- 13 Q: And they're twins as well; right?
- 14 A: You.
- 15 Q: And how old are they?
- 16 A: Five.
- 17 Q: Okay. Do you remember -- just like your sister, do you
- 18 remember going to a place called the Care House and speaking
- 19 with a lady?
- 20 A: Yes.
- 21 Q: Some years ago?
- 22 A: (Nonverbal response.)
- 23 Q: Is that a yes?
- 24 A: Yes, sir.
- 25 Q: Okay. And do you remember what all you talked about with

Minor 2

- DIRECT BY MR. RICHARDSON

1 her?

2 A: Yes.

3 Q: And did she show you -- well, first, when she took you in
4 a room, were you aware that what you were saying was being
5 recorded?

6 A: Yes.

7 Q: Okay. And when she took you in the room to speak with
8 you, did she go over some drawings of body parts and that sort
9 of things with you?

10 A: Yes.

11 Q: And did you go over private parts of girls and boys?

12 A: Yes.

13 Q: And what did you call the private parts on a girl or what
14 do you call them now?

15 A: Breasts, butt, and vagina.

16 Q: Okay. And how about on boys?

17 A: Penis and the butt.

18 Q: Okay. And do you remember -- I think it was Ms. Sally
19 that you talked to with the Care House and do you remember
20 talking to her about whether or not anybody has ever touched
21 your private parts when they're not supposed to?

22 A: Yes.

23 Q: Okay. And has anybody ever touched your private parts
24 when they're not supposed to?

25 A: Yes.

Minor 2 - DIRECT BY MR. RICHARDSON

1 Q: Who was that?

2 A: My father.

3 Q: Your father? What's his name?

4 A: Vance Ross.

5 Q: Okay. And is he in here today?

6 A: Yes.

7 Q: Okay. Can you give us the different places, locations

8 around town, where he touched you on your private parts?

9 A: Hotels, grandma's house, the park.

10 Q: Okay. Do you remember about how many different hotels?

11 A: Two.

12 Q: Two that you remember?

13 A: (Nonverbal response.)

14 Q: Okay. Do you remember the names of any of the hotels?

15 A: Yes.

16 Q: What are they? .

17 A: Thunderbird and Howard Johnson.

18 Q: Okay. And you -- well, let's talk about the hotels while

19 we're on there. The Thunderbird. Did you -- you and your

20 sister stay there with your father sometimes?

21 A: Yes.

22 Q: What types of things happened at the Thunderbird in terms

23 of him touching your private parts or doing anything to your

24 private parts?

25 A: He'll --

Minor 2

- DIRECT BY MR. RICHARDSON

- 1 Q: And speak up for us. Okay?
- 2 A: He'll ask us to have sex with him in the bed.
- 3 Q: Okay. And what would then -- what would happen next?
- 4 A: (No response.)
- 5 Q: Would he have clothes on?
- 6 A: No.
- 7 Q: Okay. So he would be -- he would have all his clothes
- 8 off or would he have some clothes on or --
- 9 A: All of them off.
- 10 Q: All of them off? How about you and your sister?
- 11 A: We had our -- we had ours off.
- 12 Q: Okay. And did he remove your clothes or did he ask you
- 13 to do it or how did that work?
- 14 A: He asked us to do it.
- 15 Q: Okay. And when the clothes were off, what happened next?
- 16 A: He would put his private parts in my private part.
- 17 Q: Okay. Did he -- do you ever remember a time -- you were
- 18 in here when your sister testified yesterday; right?
- 19 A: Yes.
- 20 Q: Do you remember her talking about a time where she came
- 21 out of the bathroom and saw your dad on top of you with his
- 22 penis in your mouth?
- 23 A: Yes.
- 24 Q: Do you remember her talking about that?
- 25 A: Yes.

Minor 2 - DIRECT BY MR. RICHARDSON

1 Q: Was that true?

2 A: Yes.

3 Q: Tell us about that situation. How -- how did that happen
4 or what happened?

5 A: While she was in the shower, he'll ask me to come over to
6 put -- and he'll put his penis in my mouth.

7 Q: Okay. Where were you located?

8 A: In the room.

9 Q: Was there -- how many beds were in the room?

10 A: Two.

11 Q: Okay. Were you on I guess one of the beds?

12 A: (Nonverbal response.)

13 Q: And when that happened, who was wearing what kind of
14 clothes? Anybody got shirts on or any sort of clothing?

15 A: No.

16 Q: So both of you had your clothes off?

17 A: Yes.

18 Q: All right. Did he ask you if he could put in your mouth
19 or was there any sort of force involved or how did it -- how
20 did it take place?

21 A: He told me.

22 Q: He told you that he was going to do it?

23 A: (Nonverbal response.)

24 Q: Did he have it in there -- was it in there in your mouth
25 for a long time or just a short time?

Minor 2

- DIRECT BY MR. RICHARDSON

- 1 A: Short time.
- 2 Q: Do you remember seeing anything come out of his penis
- 3 when this happened?
- 4 A: Yes.
- 5 Q: Was that a yes? Did you say yes?
- 6 A: Uh-huh.
- 7 Q: What do you remember seeing?
- 8 A: White stuff.
- 9 Q: Okay. And when that came out of him, where did it go?
- 10 A: In my private parts or in my mouth.
- 11 Q: Okay. At that particular time, on the bed when your
- 12 sister came out of the shower, was that one of the times it
- 13 went in your mouth?
- 14 A: Yes.
- 15 Q: Okay. In the Thunderbird, did he -- so he put it in your
- 16 mouth at least one time in the Thunderbird?
- 17 A: Yes.
- 18 Q: Was it just once or more than once?
- 19 A: Once.
- 20 Q: Just the one time? How about in your vagina? Was it --
- 21 A: More than once.
- 22 Q: More than once in the vagina? About how many times do
- 23 you think he put his penis in your vagina in the Thunderbird?
- 24 More than five times?
- 25 A: Less than five.

Minor 2

- DIRECT BY MR. RICHARDSON

1 Q: Less than five? So more than one, but less than five?

2 A: (Nonverbal response.)

3 Q: How about in your butt? Did he do that to you at the

4 Thunderbird?

5 A: Yes.

6 Q: Okay. Was that just one time or more than one time?

7 A: One time.

8 Q: Just one time there?

9 A: (Nonverbal response.)

10 Q: When he would put his private part in yours, do you

11 remember seeing or feeling anything come out of his private

12 part?

13 A: Yes.

14 Q: Did you see it or feel it or what?

15 A: Feel it.

16 Q: You felt it? What did it feel like?

17 A: Squishy stuff.

18 Q: Squishy?

19 A: (Nonverbal response.)

20 Q: Was he -- would he be on top of you or would you be on

21 top of him or how would you be placed?

22 A: Him on top of me.

23 Q: Okay. When he got off of you, did you ever look and see

24 what -- the squishy stuff or did you ever --

25 A: I saw it.

Minor 2 - DIRECT BY MR. RICHARDSON

- 1 Q: You did see it? What did it look like?
- 2 A: It was white.
- 3 Q: Okay. And was it just -- did you notice it on you or was
- 4 it coming out of you or what did you see?
- 5 A: It was on me.
- 6 Q: Okay. At the Thunderbird, did you see him do anything to
- 7 your sister?
- 8 A: Yes.
- 9 Q: What did he do to her?
- 10 A: He tried to put his penis in -- in her mouth and in her
- 11 private parts.
- 12 Q: Now, you said he tried to. So she didn't let him do it?
- 13 A: Huh-uh.
- 14 Q: Okay. That was a no?
- 15 A: No.
- 16 Q: Okay. All right. You said -- you mentioned another
- 17 hotel that -- let me see. I'll show you a picture. This is
- 18 State's 4. Do you recognize this place?
- 19 A: Howard Johnson.
- 20 Q: That's the Howard Johnson? And you stayed in the hotel
- 21 there with your dad?
- 22 A: Yes.
- 23 Q: All right. Does this like the way the Howard Johnson
- 24 looked when you stayed there?
- 25 A: Yes.

Minor 2

- DIRECT BY MR. RICHARDSON

1 Q: Okay.

2 MR. RICHARDSON: Your Honor, I'd ask State's 4 to be
3 entered into evidence.

4 THE COURT: Any objection?

5 MR. BROOKER: No objection, Your Honor.

6 THE COURT: State's 4 admitted into evidence without
7 objection.

8 (WHEREUPON, State's Exhibit Number 4, a photograph, was
9 admitted into evidence.)

10 BY MR. RICHARDSON:

11 Q: What -- tell us what happened at the Howard Johnson.
12 What was the room like? Same kind of setup or did it look
13 different?

14 A: It looked different.

15 Q: How would it look like that was different?

16 A: The walls were different.

17 Q: Okay. Did it still have two beds?

18 A: Yes.

19 Q: Okay. Did you spend more than one night there with him
20 or was it just spending the days with him or what did you do?

21 A: Spent the days with him.

22 Q: Just the days? So y'all never slept overnight?

23 A: Sometimes.

24 Q: Sometimes? When you would sleep overnight, would your
25 mom be there with you?

Minor 2

- DIRECT BY MR. RICHARDSON

- 1 A: No.
- 2 Q: So just y'all and your dad? Okay. What kinds of things
- 3 happened to you in the Howard Johnson?
- 4 A: He'll put his penis inside me, me and my sister.
- 5 Q: So in that one, he actually did have sex with your
- 6 sister?
- 7 A: Uh-huh.
- 8 Q: And you saw that?
- 9 A: Yes.
- 10 Q: Did you -- you see him -- was it in her vagina or her
- 11 butt or mouth? What did you see?
- 12 A: Her butt.
- 13 Q: Her butt?
- 14 Q: And how many times did you see that happen to her?
- 15 A: Once.
- 16 Q: Just one time there at the Howard Johnson?
- 17 A: (Nonverbal response.)
- 18 Q: How about with you? What happened to you there?
- 19 A: Same thing.
- 20 Q: He put it in your butt there?
- 21 A: (Nonverbal response.)
- 22 Q: How many times?
- 23 A: Once.
- 24 Q: Was it the same day or was it -- did it happen on
- 25 difference days?

Minor 2 - DIRECT BY MR. RICHARDSON

- 1 A: Same day.
- 2 Q: On the same day?
- 3 A: (Nonverbal response.)
- 4 Q: So no -- at no time at the Howard Johnson did he put it
- 5 in your mouth or your vagina?
- 6 A: No.
- 7 Q: So it was just the butt at the Howard Johnson?
- 8 A: (Nonverbal response.)
- 9 Q: Okay. At that time at the Howard Johnson, you said there
- 10 were two beds in the room; right?
- 11 A: Yes.
- 12 Q: Did he have -- were both you and your sister on the same
- 13 bed or were y'all on different beds or how was it like?
- 14 A: Same bed.
- 15 Q: He had -- oh, you were on the same bed?
- 16 A: (Nonverbal response.)
- 17 Q: And did he -- do you remember who he did it to first or
- 18 was it --
- 19 A: It was my sister first.
- 20 Q: She went first?
- 21 A: (Nonverbal response.)
- 22 Q: Was anybody saying anything?
- 23 A: No.
- 24 A: So he wasn't talking to you?
- 25 A: No.

Minor 2

- DIRECT BY MR. RICHARDSON

1 Q: Did you all cry or say anything to him?

2 A: No.

3 Q: Okay. At the -- you said at the park?

4 A: (Nonverbal response.)

5 Q: What -- was it daytime or nighttime at the park?

6 A: Nighttime.

7 Q: Okay. I want to show you a picture. I think it's

8 already in evidence. This is State's 2. Was this the park?

9 A: Yes.

10 Q: Okay.

11 THE COURT: State's 2?

12 MR. RICHARDSON: Yes, sir.

13 BY MR. RICHARDSON:

14 Q: So would y'all be in a -- in a car or truck or outside or
15 where were you?

16 A: Truck.

17 Q: Okay. Was it a -- what kind of truck was it? Do you
18 remember the --

19 A: Trailblazer.

20 Q: A Trailblazer? And is that like a -- is that a pickup
21 truck or an SUV or do you know?

22 A: No.

23 Q: Okay. And who all was there when things happened in the
24 park?

25 A: Me and my sister.

Minor 2 - DIRECT BY MR. RICHARDSON

- 1 Q: Okay. Were your brothers ever with you?
- 2 A: They was on the park on the playground.
- 3 Q: They were on the playground in the park? So what
- 4 happened in the -- in the car?
- 5 A: He'll come back in the backseat with us.
- 6 Q: And what did he do?
- 7 A: Tried to stick his private part in both of our private
- 8 parts.
- 9 Q: You said he tried to. Was he ever able to?
- 10 A: No.
- 11 Q: He wasn't able to do it in the backseat?
- 12 A: (Nonverbal response.)
- 13 Q: Was -- were your clothes on or off?
- 14 A: Off.
- 15 Q: Okay. Why do you think he wasn't able to? Was it just
- 16 -- was it just tight space back there?
- 17 A: Yes.
- 18 Q: Okay. Did he get angry or anything because he couldn't
- 19 get it done or did he say anything to you?
- 20 A: Yes.
- 21 Q: What did he say?
- 22 A: He said if you don't do it, he'll hit me.
- 23 MR. BROOKER: Your Honor?
- 24 MR. RICHARDSON: Could you speak up?
- 25 THE COURT: Hold on a minute. Yes?

Minor 2

- DIRECT BY MR. RICHARDSON

1 MR. BROOKER: Could we approach?

2 THE COURT: Yes.

3 (WHEREUPON, a bench conference was held in the presence
4 of the jury but out of the hearing of the jury off the
5 record.)

6 THE COURT: All right. Mr. Richardson, you may continue.

7 MR. RICHARDSON: Thank you.

8 BY MR. RICHARDSON:

9 Q: All right. What did he say to you in the back of the
10 car?

11 A: He said if I don't do it, he'll hit me.

12 Q: If you don't do it, he would hit you? Is that what you
13 said?

14 A: Yes.

15 Q: And did he hit you?

16 A: No.

17 Q: So at the park, he never actually put his private part in
18 yours?

19 A: No.

20 Q: Okay. At -- you mentioned grandma's house. Where were
21 you in grandma's house?

22 A: In the truck.

23 Q: In the truck? Okay. So were you parked on -- in the
24 driveway or the street or where were you?

25 A: Driveway.

Minor 2 - DIRECT BY MR. RICHARDSON

- 1 Q: Okay. Who all was there?
- 2 A: Me and my sister.
- 3 Q: Was it daytime or nighttime?
- 4 A: Sometimes daytime.
- 5 Q: So did it happen more than once?
- 6 A: Yes.
- 7 Q: What happened in the driveway?
- 8 A: He put his private part in our mouth and in our private
- 9 parts.
- 10 Q: So in the driveway, he actually did it?
- 11 A: Yes.
- 12 Q: How many times did he put it in your mouth that you can
- 13 remember in the driveway? Was at one time or more than one
- 14 time?
- 15 A: More than one time.
- 16 Q: Did you see anything come out of his private part those
- 17 times?
- 18 A: No.
- 19 Q: Not those times?
- 20 A: (Nonverbal response.)
- 21 Q: How about your sister?
- 22 A: No.
- 23 Q: Did he -- did he put it in her mouth in the car in the
- 24 driveway?
- 25 A: Yes.

Minor 2

- DIRECT BY MR. RICHARDSON

- 1 Q: How many times?
- 2 A: One time.
- 3 Q: One that you remember?
- 4 A: (Nonverbal response.)
- 5 Q: Where were y'all located in the car?
- 6 A: In the back.
- 7 Q: So both you and your sister and your dad were in the back
- 8 of this -- was it the Trailblazer still?
- 9 A: Yes.
- 10 Q: Did he put his private part in your vagina in the
- 11 driveway in the car?
- 12 A: Yes.
- 13 Q: How many times do you recall that happening?
- 14 A: More than one.
- 15 Q: More than one time? Would you say it was more than five
- 16 times?
- 17 A: Less than five.
- 18 Q: Less than that? What about your sister? Did you see him
- 19 put his private part in her vagina in the car?
- 20 A: Yes.
- 21 Q: How about in your butt? Did that happen in the car in
- 22 the driveway?
- 23 A: No.
- 24 Q: Okay. How about to your sister?
- 25 A: No.

Minor 2

- DIRECT BY MR. RICHARDSON

1 Q: Were all these places that he took you to in Florence?

2 A: Yes.

3 Q: How would he show you or tell you what he wanted you to

4 do?

5 A: He would just tell me.

6 Q: Okay. At any time, did he show you any pictures or

7 videos or any kind of --

8 A: Yes.

9 Q: What did he show you those on?

10 A: A phone.

11 Q: Were they pictures or videos?

12 A: Video.

13 Q: And what were the videos about?

14 A: Sex.

15 Q: Could you describe what you saw?

16 A: Women and men having sex together.

17 Q: Okay. How many times did he show you stuff like that?

18 A: Two.

19 Q: Two times? Do you remember where you were when he showed

20 you that stuff?

21 A: In the hotel room.

22 Q: In a hotel room? Do you remember which hotel?

23 A: Thunderbird.

24 Q: Okay. How old were you when all of these things were

25 happening?

Minor 2 - DIRECT BY MR. RICHARDSON

- 1 A: Seven or eight.
- 2 Q: So just when you were seven or eight?
- 3 A: (Nonverbal response.)
- 4 Q: And you were born in 2005?
- 5 A: Yes.
- 6 Q: So if you were seven or eight, that would have been
- 7 around 2013, somewhere in there?
- 8 A: Yes.
- 9 Q: Okay. Do you remember during these times if it was hot
- 10 outside in the car or cold?
- 11 A: No.
- 12 Q: You don't remember that? Okay. And you -- what's your
- 13 birthday?
- 14 A: [REDACTED].
- 15 Q: Okay. So [REDACTED], 2005?
- 16 A: Yes.
- 17 Q: Okay. Now, tell us about when you decided to tell. Who
- 18 did -- who did you first tell this was happening to you?
- 19 A: My mom.
- 20 Q: What made you decide to tell?
- 21 A: So this could stop happening.
- 22 Q: Okay. Do you remember the day or night where you told?
- 23 A: It was daytime.
- 24 Q: It was daytime? What led up to you telling? Like, what
- 25 made you tell? I mean did you and your sister have a

Minor 2 - DIRECT BY MR. RICHARDSON

1 conversation or --

2 A: Yes.

3 Q: What happened that made you decide this is it, I'm going

4 to tell mom?

5 A: We both wanted to tell her.

6 Q: Okay. So you -- did you and your sister have a talk

7 about it?

8 A: Yes.

9 Q: Do you remember where you were when you had that talk?

10 A: In the house.

11 Q: In what house?

12 A: Grandma's house?

13 Q: Inside grandma's house?

14 A: (Nonverbal response.)

15 Q: So did -- did anything happen to you that day that made

16 you want to tell or y'all just had a talk about it?

17 A: We just had a talk about it.

18 Q: Which one of you actually told your mom?

19 A: Me.

20 Q: You did?

21 A: (Nonverbal response.)

22 Q: And do you remember what your mom did when you told?

23 A: Yes.

24 Q: What did she do?

25 A: She called the police.

Minor 2

- DIRECT BY MR. RICHARDSON

1 Q: Okay. And did you -- do you remember the police coming
2 out?

3 A: Yes.

4 Q: Okay. When all this was happening, where was your mom
5 living?

6 A: At grandma's house.

7 Q: At your grandma's? That's her mom's house?

8 A: Yes.

9 Q: So when you would go to these different places with your
10 dad, where was he staying? Was he staying at these places he
11 was taking you to?

12 A: No. He was staying in hotel rooms.

13 Q: So he was staying in the hotel rooms?

14 A: (Nonverbal response.)

15 Q: So sometimes he would take you there?

16 A: Yes.

17 Q: He would stay at the Thunderbird or Howard Johnson?

18 A: Yes.

19 Q: Okay. And -- okay. Very good.

20 MR. RICHARDSON: Hold on one second. All right.

21 Minor 2, thank you. Please answer any questions Mr. Brooker
22 may have for you.

23 THE COURT: Cross-examination, Mr. Brooker.

24 MR. BROOKER: Thank you, Judge.

25 CROSS-EXAMINATION

Minor 2 - CROSS BY MR. BROOKER

1 BY MR. BROOKER:

2 Q: Minor 2 , is that right?

3 A: Yes.

4 Q: Okay. I'm going to ask you a couple of questions. I
5 just want you to agree is if I ask you any questions, if you
6 don't understand it, you'll let me know, won't you?

7 A: Yes.

8 Q: Okay. Now, I know that when Mr. Richardson just asked
9 you a question about -- I think -- I don't know exactly when
10 it was, but how old you were when it first happened and I
11 think you testified that you were seven or eight; is that
12 correct?

13 A: Yes.

14 Q: Okay. Were you in the courtroom when your sister
15 testified to that age yesterday?

16 A: Yes.

17 Q: Okay. Do you think you might be wrong about that or are
18 you right about that?

19 A: Right about it.

20 Q: And the reason why I asked you that is is that do you
21 remember giving your forensic interview to Ms. Sally? I think
22 Ms. Sally Williamson I believe?

23 A: Yes.

24 Q: So you remember going to see her and sitting down and
25 talking with her?

Minor 2

- CROSS BY MR. BROOKER

- 1 A: Yes.
- 2 Q: Okay. Do you remember telling her that the first time
3 that it happened you were the age of four?
- 4 A: Yes.
- 5 Q: Okay. And again, see, that's where I'm a little bit
6 confused. Okay? You told Ms. Williamson that you were four
7 when it first happened and I think you just said to me that
8 you told Mr. Richardson that the first time you were seven or
9 eight. Okay. Now, both of those statements can't be right.
10 Am I correct?
- 11 A: Yeah.
- 12 Q: Okay. Well, do you know why you told Ms. Williamson
13 four, but you told Mr. Richardson seven or eight?
- 14 A: I was four when it all started.
- 15 Q: Okay. So -- so you were four when it all started. Okay.
16 Not seven or eight like you said with Mr. Richardson; is that
17 correct?
- 18 A: It happened at the -- at the hotel when I was seven or
19 eight.
- 20 Q: Okay. Okay. Tell me about when you were four. Okay?
21 Tell me about when it happened when you were four? Do you
22 know where it happened?
- 23 A: Yes.
- 24 Q: Okay. Can you tell me where it happened?
- 25 A: At mom's house.

Minor 2 - CROSS BY MR. BROOKER

- 1 Q: Okay. All right. Tell me about that. What happened at
2 mom's house?
- 3 A: We was in the room.
- 4 Q: Okay?
- 5 A: And he tried to put his private part in my -- in my
6 private part.
- 7 Q: Okay. Okay. He was in the room. What room was that?
- 8 A: My room.
- 9 Q: Okay. All right. And how many times did it happen?
- 10 A: Once.
- 11 Q: Okay. So once at mom's house or once all together? Once
12 at mom's house?
- 13 A: Yes.
- 14 Q: Okay. And, like I said, I'm not trying to confuse you.
15 I'm just trying to understand you. Okay? Okay. Did he have
16 his clothes off?
- 17 A: Yes.
- 18 Q: Did you have your clothes off?
- 19 A: Yes.
- 20 Q: Did he put his private parts in your private parts?
- 21 A: Yes.
- 22 Q: Did he put his private part in your mouth?
- 23 A: Yes.
- 24 Q: Okay. All right. And the reason why I'm asking you that
25 question is is that -- do you remember speaking with Ms. Sally

Minor 2

- CROSS BY MR. BROOKER

1 Williamson?

2 A: Yes.

3 Q: And do you remember telling her that at mom's house that
4 he had his clothes off, but you had his -- but you had your
5 clothes on and that he touched you on the top of your clothes?
6 Okay? But that he never -- that you never had your clothes
7 off? Do you remember telling Ms. Williamson that?

8 A: Yes.

9 Q: Okay. And see again, both of those statements can't be
10 right; is that correct?

11 A: Yeah.

12 Q: Okay. So I'm going to ask you the same question I asked
13 you before is I think you just told me that when it happened
14 at mom's house and you were four that you had your clothes off
15 and dad had his clothes off and that dad put his private parts
16 in your private parts and dad put his private parts in your
17 mouth.

18 So that's what you told me the first time, but when you
19 told Ms. Williamson, you said that -- that dad had his clothes
20 off, you never had your clothes off, and there was never any
21 -- and he never put his private parts in your private part or
22 either in your mouth. Now, those are two different
23 statements; right?

24 A: Yes.

25 Q: Okay. And do you know why you just gave me two different

Minor 2 - CROSS BY MR. BROOKER

1 statements? Both of them -- well, let me ask this. Would you
2 agree with me that both of them can't be true? Is that
3 correct?
4 A: Yes.
5 Q: Okay. So one of them is true, then one of them can't be
6 true. Is that correct?
7 A: Yes.
8 Q: Okay. Okay. And so do you understand why -- if both of
9 them can't be true, do you -- can you tell me why you said one
10 -- the one that's not the truth, can you understand why you
11 said that to me?
12 A: No.
13 Q: And if I didn't answer clear enough, just say I didn't
14 understand your question and I'll try to ask it in a different
15 way. Do you want me to ask it in a different way or try to?
16 A: Yes.
17 Q: Okay. I'm sorry. The statement that you just made here
18 in the courtroom and the statement that you made to Sally
19 Williams [sic], those two statements are not the same
20 statements. Do you understand that?
21 A: Yes.
22 Q: And my question is is can you explain to me -- if they're
23 not the same statements, that means both of them can't be
24 true. Do you agree with me on that?
25 A: Yes.

Minor 2 - CROSS BY MR. BROOKER

- 1 Q: Okay. So the one that is not the truth, do you
2 understand or can you explain why you said the one that was
3 not the truth? Why did you make that statement that was not
4 the truth?
- 5 A: Um --
- 6 Q: You know, if you don't have an answer, it's okay to tell
7 me you don't know something too.
- 8 A: I don't know.
- 9 Q: Okay. That's all right. That's all right. Okay. Now,
10 when Mr. Richardson also asked you --
- 11 MR. BROOKER: Indulge me for just a second, Your Honor.
- 12 THE COURT: Yes, sir.
- 13 BY MR. BROOKER:
- 14 Q: Mr. Richardson also asked you where the places that --
15 you know, that the -- that your father allegedly did these
16 things to you and your sister, and you wrote hotels,
17 grandmom's house, and the park?
- 18 A: (Nonverbal response.)
- 19 Q: Okay. Do you remember that?
- 20 A: Yes.
- 21 Q: And when he asked you what hotels, you told him two
22 hotels; right?
- 23 A: (Nonverbal response.)
- 24 Q: Do you remember what two hotels you told him?
- 25 A: Thunderbird and Howard Johnson.

Minor 2 - CROSS BY MR. BROOKER

- 1 Q: Okay. Okay. Now, when you talked to Ms. Richardson --
2 excuse me. Not -- not Ms. Richardson. I apologize. Ms.
3 Williamson. Do you remember Sally Williamson at the Care
4 House and you had your interview with her?
5 A: Yes.
6 Q: Okay. Now, when you talked with her, do you remember
7 telling her that it was the Thunderbird and it was the
8 Suburban?
9 A: No.
10 Q: I'm sorry?
11 A: No.
12 Q: Okay. All right. And I think you also told Ms.
13 Richardson -- Mr. Richardson -- I think at the Thunderbird --
14 and you correct me if I'm wrong. I don't want to misquote you
15 or say something that you didn't say, but I believe you told
16 Mr. Richardson at the Thunderbird that your dad had his
17 clothes off and that both of you girls -- you and your sister,
18 y'all had y'all's clothes off and that he put his private
19 parts in your private parts. Okay. Do you remember telling
20 Mr. Richardson that?
21 A: Yes.
22 Q: Okay. And do you remember also telling Mr. Richardson
23 that -- that dad was on top of you? Your father was on top of
24 you and that he put his private parts in your -- in your mouth
25 while you were on the bed? Do you remember telling Mr.

Minor 2 - CROSS BY MR. BROOKER

1 Richardson that?

2 A: Yes.

3 Q: Okay. Now, do you remember telling Ms. Williamson a
4 different story about what happened at the Thunderbird?

5 A: No.

6 Q: Okay. Do you remember telling Ms. Williamson that at the
7 Thunderbird that your dad and your sister was in the shower
8 taking a bath? Let's see.

9 MR. BROOKER: And give me just a second.

10 BY MR. BROOKER:

11 Q: That your dad was in the bath with your sister taking a
12 shower and -- together and that your dad was washing your
13 sister's hair and also that your dad put his private parts in
14 your sister's mouth while they were in the shower? Do you
15 remember telling her that?

16 A: Yes.

17 MR. BROOKER: If you can indulge me for just a second,
18 Your Honor?

19 THE COURT: Yes, sir.

20 BY MR. BROOKER:

21 Q: Now, do you also remember when Ms. Sally Williamson asked
22 you whether or not your dad ever put his private parts inside
23 your private parts at the Thunderbird? Do you remember
24 telling your -- telling Ms. Sally Williamson, who interviewed
25 you, that he never put his private parts inside of you at the

Minor 2 - CROSS BY MR. BROOKER

1 Thunderbird?

2 A: No.

3 Q: Okay. Okay. Now, if you did tell Ms. Williamson that --
4 if you did tell Ms. Sally Williamson when she interviewed you
5 that your dad never put his private parts inside your private
6 parts at the Thunderbird hotel -- and I think today you said
7 that -- that your dad had his clothes off and you and your
8 girls had y'all's clothes off and I think you told Mr.

9 Richardson that he did put his private parts in your private
10 parts. Okay. Both of those two statements -- do you
11 understand that both of those two statements can't be
12 accurate? Let me not use the word accurate. Both of those
13 two statements can't be true; is that correct?

14 A: They're both true.

15 Q: They're both true? Okay. All right. Now -- and I'm
16 kind of jumping around a little bit. Now, Mr. Richardson also
17 asked you about I think whether or not your dad -- whether or
18 not you had seen any -- any I think adult videos and I think
19 you told Mr. Richardson -- you correct me if I'm wrong -- that
20 your dad did showed [sic] you some adult videos with people
21 having sex?

22 A: Yes.

23 Q: Okay. And I think he asked you where did that happen at
24 and I think you told him -- and you correct me if I'm wrong.
25 You said it happened in the Thunderbird hotel and that he

Minor 2 - CROSS BY MR. BROOKER

1 showed you the videos, these adult videos, on his cell phone.
2 Do you remember telling Mr. Richardson that a few minutes ago?

3 A: Yes.

4 Q: Okay. Now, do you remember Ms. Richardson [sic] -- Sally
5 Richardson asking you the same or similar question and you
6 told her that he showed you adult videos, but it was at your
7 mom's house on your mom's television? Do you remember telling

8 Ms. Richardson that? That that's where he showed you adult
9 video was at your mom's house and on your mom's television?

10 A: No.

11 Q: Okay. Do you remember in response to that question with
12 Ms. Richardson that you --

13 THE COURT: It's Williamson, for the record.

14 MR. BROOKER: I'm sorry.

15 THE COURT: Williamson.

16 MR. BROOKER: I apologize.

17 THE COURT: That's okay. That's okay. I just wanted the
18 record clear on it.

19 MR. BROOKER: It's Williamson.

20 BY MR. BROOKER:

21 Q: Ms. Sally Williamson. Did you remember in response to
22 that question with Ms. Sally Williamson that you never
23 mentioned him showing you videos at the hotel or on his cell
24 phone? Do you remember never telling Ms. Richardson [sic]
25 that?

Minor 2

- CROSS BY MR. BROOKER

1 A: No.

2 Q: Okay. All right. Now --

3 MR. BROOKER: If you can indulge me for just a second,
4 Your Honor?

5 BY MR. BROOKER:

6 Q: Now, do -- now, I want to ask you another question and
7 you just tell me whether or not you remember. Do you remember
8 telling Ms. Richardson [sic] in response to -- I think -- do
9 you remember Ms. Richardson asking you how did your dad get
10 his hand down your pants to touch your private area?

11 A: Yes.

12 Q: Okay. Do you remember her ever asking you that during
13 that interview?

14 A: Yes.

15 Q: And -- and I want to ask you something that you said that
16 was a little bit strange and ask you to see if you can explain
17 to me because I didn't understand it. And -- and you said you
18 didn't know. Do you remember telling her you didn't know how
19 he got his hands down to -- down to your private area?

20 A: Yes.

21 Q: Okay. Do you also remember telling her when she asked
22 you, well, then how -- if you don't remember, how did he --
23 how did he touch you if you had your clothes on and do you
24 remember telling her he told me in my sleep that he was doing
25 this? And I didn't understand that. Do you know what you

Minor 2

- CROSS BY MR. BROOKER

1 meant by that when you told Ms. Richardson [sic] that your dad
2 told you in your sleep that he was touching you underneath
3 your -- under your clothes with his hand? Do you -- do you
4 understand? Do you know what you meant by that?

5 A: Yes.

6 Q: What did you meant [sic] by that?

7 A: That I was asleep and I woke up and he told me he was
8 touching my private parts.

9 Q: Okay. So you're saying that -- so -- okay. So -- so he
10 didn't actually tell you in your sleep, but you're saying that
11 you were asleep and then you woke up and then he told you
12 after you woke up that -- that he had put his hands in your
13 private -- down your pants?

14 A: Yes.

15 Q: Okay. All right. Now, let me make sure that -- now, I
16 don't want to say anything that's wrong, but the first time I
17 asked you about your mom's house and I think you remembered
18 after you testified that it happened when you were four. And
19 my memory -- and my memory in response to that question, you
20 told me it happened once at your mom's house when you were
21 four years old?

22 A: Yes.

23 Q: Okay. Do you ever remember telling your -- telling Ms.
24 Richardson [sic] when she asked you that question -- do you
25 ever remember telling Ms. Richardson that it happened more

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1 than one time?

2 A: No.

3 Q: Now, you also testified here I think to two new places.

4 I think you testified to Ms. Richardson [sic] that it happened

5 --

6 THE COURT: Mr. Brooker, Mr. Richardson, can y'all
7 approach a minute, please?

8 MR. BROOKER: Sure.

9 (WHEREUPON, a bench conference was held in the presence
10 of the jury but out of the hearing of the jury as
11 follows.)

12 THE COURT: I don't want to have to keep correcting you,
13 but it's Williamson.

14 MR. BROOKER: I apologize.

15 THE COURT: You keep saying Ms. Richardson.

16 MR. BROOKER: I'll correct it. I'll correct it. I
17 apologize.

18 MR. RICHARDSON: I told Sally I feel like I needed to go
19 take her on a date or buy her dinner or something.

20 THE COURT: Correct it. Very well.

21 (WHEREUPON, the bench conference ended and the
22 proceedings resumed as follows.)

23 BY MR. BROOKER:

24 Q: I apologize. I -- sometimes I keep saying -- saying Mr.
25 or Mrs. Richardson when I mean Ms. Williamson. Okay? And

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1 this is Ms. Williamson. So in response to that last question,
2 Ms. Williamson is the -- is the lady that talked with you at
3 the Care House; is that correct?

4 A: Yes.

5 Q: Okay. And just to make sure we have a clear record is is
6 that do you remember telling Ms. Richardson [sic] that it
7 happened multiple times at your mom's house?

8 A: No.

9 Q: Okay. Now -- I'm sorry -- Ms. Williamson. Ms.
10 Williamson. Okay.

11 Now -- and I was also going to ask you is that when you
12 testified here today that you mentioned I think a couple of
13 places that you didn't mention to Mrs. Williamson. Okay? I
14 think when Mr. Richardson asked you, you said that it also
15 happened at the park. Okay. When Mr. Richardson asked you
16 that question, you said that one of the places it happened was
17 at the park; is that correct?

18 A: Yes.

19 Q: Okay. And I want to make sure I don't misquote you, but
20 to my understanding -- or do you remember during that
21 interview -- during your interview with Ms. Williamson of
22 never telling Ms. Williamson that it happened at the park?

23 A: Yes.

24 Q: Okay. Assuming that I'm accurate -- and, like I said, I
25 don't want to misquote you; so that's why I'm looking through

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1 this carefully. Assuming that I'm accurate and that you never
2 told Ms. Richardson [sic] that it happened -- excuse me -- Ms.
3 Williamson that it never happened at the park, then I guess or
4 I understand is that when Ms. Williamson asked you the places
5 that it happened, why didn't you tell her that it happened at
6 the park and only told Mr. Richardson that today? Do you know
7 whether or not it happened at the park?

8 A: It did happen at the park.

9 Q: Okay. Can you explain why you didn't tell that Ms.
10 Richardson [sic] that when she interviewed you about this?

11 A: No.

12 Q: Okay. Excuse me. Ms. Williamson. I apologize. Do you
13 know why you didn't tell Ms. Williamson about the park if it
14 happened at the park?

15 A: (No response.)

16 Q: Okay. Now, you also told Ms. -- Mr. Richardson that it
17 happened at grandmom's house today; is that correct?

18 A: Yes.

19 Q: And I think you explained to -- I think you said when it
20 happened at grandmom's house -- I think you told Mr.
21 Richardson that it was in the daytime and that it happened
22 more than once; is that correct?

23 A: Yes.

24 Q: And you told Mr. Richardson that -- that -- that he put
25 his private parts in both your mouth and then also your

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1 private parts?

2 A: Yes.

3 Q: Do you know why you didn't mention the park to Ms. Sally
4 Williamson?

5 A: No.

6 Q: I'm sorry. At the park -- and let me do a correction.
7 That was at your grandmother's house. You said it happened in

8 the car at your grandmother's house when he put his private
9 parts in both your mouth and your private parts. I think you
10 said that happened at the grandmother's house. Let me just
11 ask that because I don't want to misrepresent you, but do you
12 know why you never mentioned that to Ms. Sally Williamson?

13 A: No.

14 Q: That -- what you just explained to Mr. Richardson of what
15 happened at your grandmom's house in the car?

16 A: No.

17 Q: Okay. And I think it was at the park that you said that
18 you were in the truck and that your brothers were on the
19 playground and that -- that he tried to put his private parts
20 -- that y'all had y'all's clothes off and that he tried to put
21 your -- his private parts in -- into your private parts at the
22 park? Do you remember whether or not you ever told Ms. Sally
23 Richardson -- Sally Williamson that?

24 A: No.

25 Q: Okay. About -- and this is going to be a little bit

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1 difficult question, but, you know, we've got to ask these
2 sorts of questions for the jury. A total of about how many
3 times did your dad -- and I'm talking about all the times.
4 I'm now talking about all the places together, whether it be
5 at the park or whether it be at grandmom's house or the
6 motels, all of those places. Could you tell us approximately
7 how many times did your father allegedly put his private parts
8 into your -- into your private parts? Not that he attempted
9 to, but he actually put his private parts in your private
10 parts. Do you know about how many times?

11 A: Five.

12 Q: About five times altogether?

13 A: Yes.

14 Q: Okay. And again, this is going to be a little bit more
15 difficult question too, but we -- I need to ask it. Each time
16 when he did this, when he put his private part in your private
17 part, about how long did it lasted [sic]?

18 A: Not that very long.

19 Q: Okay. So it lasted more than five minutes?

20 A: No.

21 Q: Or less?

22 A: Less.

23 Q: Less than five minutes? Did it happen more than two
24 minutes?

25 A: Yes.

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1 Q: Okay. So somewhere between two and five minutes?

2 A: (Nonverbal response.)

3 Q: Okay. Again, this is going to be another slightly
4 difficult question, but I have to ask it. Now, when he put
5 his private parts in your private parts, did he ever move or
6 make any motion or do anything like that?

7 A: No.

8 Q: Okay. Okay. So he moved and made no motion or anything
9 like that?

10 A: No.

11 Q: Okay. Again, another difficult question. When he put
12 his private parts in your private parts, was his private part
13 ever inflated? If you don't understand the question, I'll try
14 to ask in a better way. Do you understand what I'm asking
15 you?

16 A: No.

17 Q: Okay. I'm sorry. Well, I'll tell you what. I'll ask
18 you and you just tell me in your own words. When he put his
19 private parts in your private parts, can you describe his
20 private parts?

21 A: It had a scar on it.

22 Q: I'm sorry?

23 A: It had a scar on it.

24 Q: Okay. It had a scar on it? And I guess for lack of a
25 better way to put this, was his private part extended? Maybe

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- CROSS BY MR. BROOKER

1 that's not a better way to put it. Let me ask that again.

2 Was his private part hard or solid?

3 A: Yes.

4 Q: Okay. All right. And again, another difficult question.

5 All the times that he -- you saw his private part -- and I'm

6 talking about all the times together, whether or not the times

7 in which you allege that he put his private part in your

8 private part or the times in which you allege that he put his

9 private part in your mouth, all of them together, is that did

10 you ever have your hands on his private part?

11 A: Yes.

12 Q: Okay. Now, I'm going to ask you a very difficult

13 question again. I'm sorry, but I've got to do it. But about

14 what was -- can you give us an idea about the size of what his

15 private part was?

16 A: I don't know.

17 Q: Okay. Okay. Okay. Did you ever have both hands on your

18 -- on his private part?

19 A: No.

20 Q: Okay. Just one hand?

21 A: Yes.

22 Q: Okay. Okay. When -- when you had his private part in

23 your hand, were you able to wrap your fingers around his

24 private parts or not?

25 A: Yes.

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1 Q: Okay. All right. And then I'll ask you one last
2 question and then I'll move away from the subject. Okay? I
3 know it's an uncomfortable subject. It is for me. And, you
4 know, you can use your hands if you like. I think when you
5 said when his private parts was -- was hard or extended, can
6 you give me an idea of what the length of his private parts
7 was?

8 A: No.

9 Q: Was it that long (indicating) or that long or do you have
10 any idea?

11 A: Long.

12 Q: I'm sorry?

13 A: Real long.

14 Q: Okay. All right. All right. Okay. I'm not going to
15 ask any more questions. All right.

16 MR. BROOKER: Indulge me for just a second, Your Honor.
17 I want to make sure I don't have any other follow-up
18 questions.

19 THE COURT: Yes.

20 MR. BROOKER: Okay.

21 BY MR. BROOKER:

22 Q: Now, I think you -- you said that it happened -- to Mr.
23 Richardson when he asked, that these -- these things happened
24 in the car and I think you mentioned two times that I can
25 remember. I think you said it happened -- and you correct me

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1 if I'm wrong. It happened in the car at the park and I think
2 you said it happened in the car at grandmom's house; is that
3 right?

4 A: Yes.

5 Q: Okay. How many times did this ever -- did it happen in
6 the car? Do you remember?

7 A: No.

8 Q: Okay. Did it happen more than those two times in the
9 car?

10 A: No.

11 Q: Okay. Do you remember telling Ms. Richardson [sic] it
12 happened four times in the car? Excuse me. Ms. Williamson,
13 Ms. Sally Williamson at the Care House. Do you remember
14 telling her it happened four times in the car?

15 A: No.

16 Q: Okay. That's all right. What age were you -- well, let
17 me ask it this way. Maybe this is a better way to ask this
18 question. I know you said it happened in the car at the park
19 and in the car at grandmom's house. Do you know what your age
20 was when it happened at grandmom's house in the car?

21 A: Seven.

22 Q: Okay. What about at the park in the car?

23 A: Eight.

24 Q: Okay. Now, when it happened in the car at grandmom's
25 house, who was in the car with you at grandmom's house?

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- CROSS BY MR. BROOKER

1 A: My sister.

2 Q: Okay. Where was grandma?

3 A: In the house.

4 Q: Okay. Where was mom?

5 A: In the house.

6 Q: Okay. How long were you and your sister in the car?

7 A: I don't know.

8 Q: Okay. Okay.

9 MR. BROOKER: If you could indulge me, Your Honor, I may
10 be finished with my questions. Let me check to be absolutely
11 certain.

12 THE COURT: All right.

13 MR. BROOKER: I don't have any further questions, Your
14 Honor. Thank you.

15 THE COURT: All right.

16 MR. RICHARDSON: No redirect, Judge.

17 THE COURT: Ma'am, you may step down. Thank you.

18 MR. RICHARDSON: May we approach briefly?

19 THE COURT: Yes.

20 (WHEREUPON, a bench conference was held in the presence
21 of the jury but out of the hearing of the jury off the
22 record, after which the proceedings resumed as follows.)

23 THE COURT: Call your next witness, please.

24 MR. RICHARDSON: I would call Jennifer Floyd Lee.

25 THE CLERK: Please place your left hand on the Bible and

JENNIFER FLOYD LEE - DIRECT BY MR. RICHARDSON

1 raise your right hand. Do you swear the testimony you give in
2 this case to be the truth, the whole truth, and nothing but
3 the truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Please be seated and state your full name for
6 the record.

7 THE WITNESS: My legal name is Jennifer Floyd. However,
8 I've been married; so I do go by Jennifer Floyd Lee as well.

9 MR. RICHARDSON: Okay. We'll go by Ms. Floyd.

10 THE WITNESS: Okay.

11 JENNIFER FLOYD LEE, being first
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. RICHARDSON:

15 Q: Ms. Floyd, where do you work?

16 A: I work for the Florence County Sheriff's Office.

17 Q: Okay. And how long have you been there?

18 A: Since January 2006.

19 Q: Okay. And what -- what have been your job duties
20 throughout your career with the Sheriff's Office?

21 A: When I first started with the Sheriff's Office, I was
22 employed in the jail, and I worked in the jail until about
23 April, maybe February to April of 2007, and then went on the
24 road as a deputy, a patrol officer, for about a year. And
25 then I was moved and promoted to investigations in about 2009

JENNIFER FLOYD LEE - DIRECT BY MR. RICHARDSON

1 and I held that position until July 2015, where I moved back
2 to the school to be a school resource officer at West Florence
3 High School.

4 Q: Okay. So during the time period that this case was going
5 on, were you in investigations?

6 A: I was.

7 Q: Okay. And were you the primary investigator on this
8 case?

9 A: I was.

10 Q: Do you recall how you first became aware of this case?

11 A: I was notified by the deputy who arrived on scene to take
12 the initial report.

13 Q: So Deputy Dean?

14 A: That's correct.

15 Q: Okay. And what did you do once you were notified?

16 A: Once I was notified, then I contacted the Care House the
17 following business day and -- and requested a forensic
18 interview to be completed on the two children.

19 Q: Okay. And why do you -- is that a common practice?

20 A: That is.

21 Q: For child witness cases?

22 A: That's correct.

23 Q: And what's the point of that? Why do you refer them to
24 the Care House or a similar place?

25 A: It's a type interview they use, a one-on-one, nonleading,

JENNIFER FLOYD LEE - DIRECT BY MR. RICHARDSON

1 child friendly, recorded, so it can be used later. They are
2 trained through the ARC in Columbia. We are also trained, but
3 we prefer to use the Care House to do that.

4 Q: The Sheriff's Office isn't that kid friendly, is it?
5 A: Not really.

6 Q: So did you get a report back I guess --
7 A: I did.

8 Q: -- from the Care House?
9 A: I did.

10 Q: Okay. What else did you do with respect to this case
11 based on the information you received in that report?

12 A: After I received the report, I reviewed it. I also
13 scheduled appointments to meet with the defendant. I also
14 scheduled more appointments with the victim to go out to each
15 place that they described things happening. Referred for a
16 medical exam, therapy, and so forth.

17 Q: Okay. So you made the referral for a -- the medical
18 exam?

19 A: That's correct.

20 Q: All right. And did you -- I'm going to show you these
21 items that are already in evidence here. I think it's 1
22 through 5. Did you take all these?

23 A: I did. Yes.

24 Q: Okay. So you photographed each of the locations that the
25 girls described?

JENNIFER FLOYD LEE - DIRECT BY MR. RICHARDSON

- 1 A: That's correct. They were actually in the vehicle with
2 me and we went out to those locations.
- 3 Q: Okay. And -- oh, so you took them out and they showed it
4 to you?
- 5 A: That's correct.
- 6 Q: Did you -- so you got the report back on the forensic
7 interview. Did you also get the medical reports back from --
8 where did you send them?
- 9 A: I --
- 10 Q: If you recall.
- 11 A: I don't. I don't recall right offhand, but that was just
12 a well-being medical exam because it was a delayed disclosure.
- 13 Q: Okay.
- 14 A: So that's just a primary head-to-toe check just to make
15 sure that they are okay generally.
- 16 Q: Okay. Once you -- so did you do anything else with the
17 kids? You said you took them around and they showed you where
18 all these things took place. Was there anything else?
- 19 A: I met with them a few times to try to clarify the
20 incidents, the time frames. Again, exactly about how old they
21 would have been at what place that each place occurred.
- 22 Q: Okay. All these places that they took you to, were all
23 those places in Florence County?
- 24 A: That's correct.
- 25 Q: All right. And how were you able to establish the

JENNIFER FLOYD LEE - DIRECT BY MR. RICHARDSON

1 timeframes I guess?

2 A: Anything they described that happened at mom's house
3 would have been between the dates that dad moved in in
4 December of -- the exact year is in my report. I'm sorry.
5 Until February of 2013 because they moved out of the home
6 February 2013 and moved into grandmother's house. And during
7 the time they moved into grandmother's house until July of
8 2014, the last time they had contact with dad, they would stay
9 at grandmother's.

10 Also, when dad would come and pick them up, sometimes
11 Mom, they would go and stay at different hotels. He would
12 take him to the park. But I knew that that was during that
13 timeframe that they described when they were living at
14 grandmother's house during that time.

15 Q: Okay. So it was based on where they lived and kind of
16 how old they were?

17 A: That's correct.

18 Q: Okay. And after collecting all of this information,
19 timeframes, photographs, interviews, all this, you made the
20 decision to charge Mr. Ross?

21 A: That is correct.

22 Q: Very good. Please answer any questions Mr. Brooker may
23 have for you?

24 A: Yes, sir.

25 MR. BROOKER: Just very briefly.

JENNIFER FLOYD LEE - CROSS BY MR. BROOKERCROSS-EXAMINATION

1 BY MR. BROOKER:

2 Q: Ms. Floyd, I know that you said that -- that you were an
3 investigator. I think you said that you started off at the
4 Florence County Sheriff's -- excuse me. The Florence County
5 Detention Center; is that correct? Is where you first started
6 working with the Sheriff's Department?

7 A: That's correct. Straight out of college.

8 Q: Okay. Straight out of college?

9 A: Uh-huh.

10 Q: And then, of course, is is that you stayed there a short
11 time and then, of course, you then became I think a patrol
12 officer?

13 A: Promoted to patrol.

14 Q: Patrol officer?

15 A: Yes.

16 Q: For one year?

17 A: That's correct.

18 Q: And then, of course, you moved there I think in 2009 to
19 2015 and you were an investigator?

20 A: Well, I was at the school between patrol and
21 investigations. I was there for a little over a year.

22 Q: All right.

23 A: I was promoted to the West Florence High School at that
24 time as a school resource officer.
25

JENNIFER FLOYD LEE - CROSS BY MR. BROOKER

1 Q: Okay. And I want to make sure I got it right. You
2 became an investigator in 2009; is that right?

3 A: It was around June 2009. Yes, sir.

4 Q: Okay. And then how long did you stay in the position as
5 an investigator?

6 A: To July 2015.

7 Q: Okay. Until 2015. Okay. I got it. I got it now.
8 Okay.

9 Now, just for the jury -- understands, I'm going to ask
10 you a couple of questions about transitioning from I guess a
11 patrol officer into an investigator, and specifically, an
12 investigator in these sorts of cases. I think -- what
13 training did you receive in -- in I guess investigating
14 allegations of child sexual assault cases?

15 A: If I had to list all of the trainings for over that six-
16 year period, we would be here for a while, but there were
17 many.

18 Q: So it's a lot?

19 A: Yes. Almost on a monthly basis, again, as well as being
20 certified through the ARC in Columbia, the child forensic
21 interviewing. We received a lot of training.

22 Q: Okay. And my next question within that line of
23 questioning is -- and I don't know whether or not Florence
24 County Sheriff's Department has -- do y'all have a -- at that
25 particular period of time that you were with the Florence

JENNIFER FLOYD LEE - CROSS BY MR. BROOKER

1 County Sheriff's Department, did the Florence County Sheriff's
2 Department have a -- a -- I guess a child abuse -- I guess the
3 best way to put it is is that did they have a -- a -- a -- a
4 child sexual assault protocol that was in place?

5 A: Basically, what -- what you're -- I'm assuming what
6 you're referring to is when we receive a report, what's the
7 first thing that we do, and normally we make sure that the

8 child is safe. We notify Department of Social Services if the
9 allegation is against the parent. Make sure the child is safe
10 and then we do refer to a forensic interview. It all depends
11 on if it's a delayed disclosure or an immediate abuse case.

12 Q: Sure. But do y'all have -- do y'all have a written
13 protocol that you follow?

14 A: Not necessarily a written protocol, but we do have set in
15 stone a type policy, a verbal policy that we -- we use. Yes.

16 Q: Okay. All right. And do you have a verbal policy that
17 explains at least what referral services you'll send the child
18 to? I know that you said is is that she was referred for a
19 forensic interview. I'm assuming that's part of the policy?

20 A: That's correct.

21 Q: Y'all ask for a forensic interview -- protocol
22 forensically interviewed. She was also -- the children were
23 also sent for a forensic medical examination. Is that a part
24 of the protocol?

25 A: That's correct.

JENNIFER FLOYD LEE - CROSS BY MR. BROOKER

1 Q: Okay. Is it part of the pro -- is it part of the
2 protocol, specifically when you're dealing with very young
3 kids, to also send the kids -- and you tell me because I don't
4 know -- for, you know, a forensic psychological examination?

5 A: No, we do not.

6 Q: Okay. You don't refer for forensic psychological
7 examinations?

8 A: No. We refer for therapy.

9 Q: Okay. Okay. For therapy. All right. All right. And I
10 think I'm almost finished. Just one question.

11 As far as the allegations that have been contained within
12 -- the allegations that have been made, you were -- you are
13 not a fact witness to any of those allegations; is that
14 correct? So you didn't see or hear or was present during any
15 of these alleged conduct; is that correct?

16 A: Not during the actual --

17 Q: Okay.

18 A: No. Instance.

19 Q: Okay. So basically, as an investigator, what you're
20 doing is is you're gathering -- you're gathering information?

21 A: That's correct.

22 Q: Okay. Okay. But no personal knowledge of anything?

23 A: No.

24 Q: Okay.

25 MR. BROOKER: Indulge me for just a second, Your Honor?

1 No further questions, Your Honor.

2 MR. RICHARDSON: No redirect, Judge.

3 THE COURT: You may step down.

4 THE WITNESS: Thank you.

5 THE COURT: Can y'all approach a minute, please?

6 MR. RICHARDSON: Sure.

7 (WHEREUPON, a bench conference was held in the presence
8 of the jury but out of the hearing of the jury off the
9 record, after which the proceedings resumed as follows.)

10 THE COURT: All right. Ladies and gentlemen, we've been
11 going about an hour and a half. I'm going to let you step to
12 the jury room. You can go to the restroom. I'll get you back
13 out here as quickly as possible and we'll resume the trial of
14 the case at that time.

15 Thank you. Please step to the jury room. Do not discuss
16 the case. Do not discuss the case at all.

17 (WHEREUPON, the jury exited the courtroom at 10:53 a.m.)

18 THE COURT: All right. We'll stand down for just a few
19 minutes.

20 (WHEREUPON, there was a break in the proceedings from
21 10:53 a.m. until 11:14 a.m., after which the proceedings
22 resumed as follows.)

23 THE COURT: All right. Is the State ready to proceed?

24 MR. RICHARDSON: Yes, sir.

25 THE COURT: Defense counsel?

ESTHER LEWIS - DIRECT BY MR. RICHARDSON

1 MR. BROOKER: Yes, sir.

2 THE COURT: If you would, bring me the jury, please, sir.

3 THE BAILIFF: Yes, sir.

4 (WHEREUPON, the jury entered the courtroom at 11:15 a.m.)

5 THE COURT: We've got all the jurors present. Mr.

6 Richardson, call your next witness, please.

7 MR. RICHARDSON: Yes, sir, Your Honor. We'd call Esther
8 Lewis.

9 THE CLERK: Ma'am, if you will, please place your left
10 hand on the Bible and raise your right hand. Do you swear the
11 testimony you give in this case to be the truth, the whole
12 truth, and nothing but the truth, so help you God?

13 THE WITNESS: Yes, sir.

14 THE CLERK: Please be seated and state your full name for
15 the record.

16 THE WITNESS: Esther Ruth Lewis.

17 THE CLERK: Thank you.

18 ESTHER LEWIS, being first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. RICHARDSON:

22 Q: Ms. Lewis, how old are you, ma'am?

23 A: I'm 36.

24 Q: And do you live here in Florence?

25 A: Yes.

ESTHER LEWIS - DIRECT BY MR. RICHARDSON

- 1 Q: How many children do you have?
- 2 A: Four.
- 3 Q: And what are their names?
- 4 A: Minor2 , Minor1 -- Minor2 , Minor1 , Devonte R.
- 5 , and Devon R. .
- 6 Q: And what are their ages?
- 7 A: Minor1 and Minor2 are eleven, Devon and Devonte are six
- 8 -- are five.
- 9 Q: And are they two sets of twins?
- 10 A: Yes.
- 11 Q: Okay. And do they have the same father?
- 12 A: Yes.
- 13 Q: And who is that?
- 14 A: Vance Ross.
- 15 Q: It's kind of odd to have two sets of twins. Do you have
- 16 a twin or your family or --
- 17 A: Yes.
- 18 Q: -- his family?
- 19 A: My side of the family too and his.
- 20 Q: So he has a twin as well?
- 21 A: Yes.
- 22 Q: Okay. I want to take you back to -- 2013 I think was the
- 23 testimony where you moved in with your mother. Okay? Had you
- 24 previously lived in a house?
- 25 A: Yes.

ESTHER LEWIS - DIRECT BY MR. RICHARDSON

- 1 Q: With Mr. Ross?
- 2 A: Yes.
- 3 Q: And what happened that made you end up having to move in
4 with your mother?
- 5 A: I lost my house in 2013. [REDACTED] South Oliver Drive.
6 That's where we used to reside.
- 7 Q: Okay. And so you and Mr. Ross and the children lived
8 there?
- 9 A: Yes.
- 10 Q: All right. And when you moved in with your mother, what
11 address was that?
- 12 A: That's [REDACTED] Middleton Street.
- 13 Q: Okay. And who all stayed in that house with you and your
14 kids?
- 15 A: It was my mom, my dad, my sister and her three kids, plus
16 myself and my four kids.
- 17 Q: Okay. So it was --
- 18 A: Packed.
- 19 Q: -- crowded?
- 20 A: Yes.
- 21 Q: All right. So Mr. Ross did not stay there with you?
- 22 A: No, he didn't.
- 23 Q: Okay. Where did he stay over those period of a couple of
24 years?
- 25 A: Well, he stayed at the shelter on Jarrett Street, various

ESTHER LEWIS - DIRECT BY MR. RICHARDSON

1 hotels in the Florence area.

2 Q: Okay. And did you ever visit any of these places?

3 A: I never visited the shelter. I never lived there. I

4 visited the hotels.

5 Q: Okay. Did you stay there with him with the kids?

6 A: On occasions.

7 Q: Okay. Were you working during this time?

8 A: Yes.

9 Q: Okay. And was it a day shift? Night shift?

10 A: Night shift.

11 Q: So when you were working, who would have the kids?

12 A: Their dad, Vance Ross.

13 Q: Okay. How would you make the exchange with him? Would

14 he -- would you go drop them off or would he come pick them up

15 or --

16 A: No. I can't drive; so he'll come pick them up.

17 Q: Okay. So he would come to your mom's house?

18 A: Yes.

19 Q: All right. And about what time -- you say you worked

20 night shift. So would he come in the evenings to pick them

21 up?

22 A: He'll come during the day. Sometimes he'll be -- if he

23 didn't have a hotel at that time, he'll park his car outside

24 the gate of our -- of the house or he'll come in through the

25 driveway. He'll stay there practically all day long. If he's

ESTHER LEWIS - DIRECT BY MR. RICHARDSON

1 got to the bathroom, he'll go to a filling station and then
2 he'll come back.

3 Q: So he would just sit outside in the car for long periods?

4 A: Yes.

5 Q: And watch the kids?

6 A: Yes.

7 Q: Okay. Are you aware of him taking them out for
8 activities like going to the park or anything like that?

9 A: Oh, yeah. He kept activities going on with them. They
10 went to the movies. They went to the park. Their favorite
11 park was Brookgreen Park. It's more clean, more pleasant,
12 more quiet; so they prefer that park to go to to play.

13 Q: I'm going to show you State's 2. It's already in
14 evidence.

15 A: Oh, yeah.

16 Q: Is that Brookgreen Park?

17 A: Yes.

18 Q: Okay.

19 THE COURT: What's the exhibit number?

20 MR. RICHARDSON: 2.

21 THE COURT: 2? I'm sorry.

22 MR. RICHARDSON: Yes, sir.

23 BY MR. RICHARDSON:

24 Q: Let me ask you this. You have four kids with Mr. Ross.

25 Are you aware of any scar or injury to his private area?

ESTHER LEWIS - DIRECT BY MR. RICHARDSON

1 A: Yes. On occasions, the underneath the head of his penis
2 will be a scar and then he had surgery, testicle surgery. He
3 had it on his scrotum. It's a downward scar.

4 Q: Okay. Have the kids always been in North Vista?

5 A: No. They went to Dewey L. Carter. That was their first
6 school over in the south area. And then when I transferred to
7 my mom and dad's house, they went to North Vista.

8 Q: Okay. Are they in regular class there or what sort of
9 classes do they take?

10 A: Well, Minor2 -- she's in regular classes. Minor1 --
11 she's in resource.

12 Q: Okay. Do you recall when you first learned of these
13 allegations?

14 A: Yes.

15 Q: Okay. Where were you and how did you find out?

16 A: Well, me and their dad -- we had the boys. We'd just
17 came from an outing. Me and him got in an argument, an
18 altercation inside the vehicle. He refused to let me go out
19 of the vehicle.

20 MR. BROOKER: Objection, Your Honor.

21 THE COURT: Objection overruled at this point. Go ahead.
22 You may continue.

23 MR. RICHARDSON: Okay.

24 BY MR. RICHARDSON:

25 Q: So how did you learn that -- what had been going on with

ESTHER LEWIS - DIRECT BY MR. RICHARDSON

1 your daughters?

2 A: Well, after that, I got the boys out the car and I got
3 myself out of the car. Along as I was doing that, I was
4 fussing. I was upset and I was -- he was mad at me because I
5 wouldn't spend time with him or engage in sexual activities
6 with him and --

7 MR. BROOKER: Objection, Your Honor. Calls for
8 speculation.

9 THE COURT: Overruled at this point.

10 BY MR. RICHARDSON:

11 Q: Go ahead.

12 A: He was made because I wouldn't spend time with him or
13 have sexual activities with them. So I was ranting and raving
14 and going to and from and out the house. I was explaining to
15 my mom that -- she was standing in the kitchen -- that all he
16 wanted to do is have sex, oral sex. He loves his -- his penis
17 to be sucked. So that's what I was upset about that.

18 Q: So you were talking to your mom about this?

19 A: Yeah.

20 Q: Was this the same day?

21 A: Yeah.

22 Q: This was after you had the altercation with him?

23 A: It -- the altercation and that same day that I reported
24 the incidents, that it happened with my girls. It was the
25 same day.

ESTHER LEWIS - DIRECT BY MR. RICHARDSON

1 Q: Okay. So let's be clear. You had the argument or
2 whatever with him?

3 A: Right.

4 Q: And then you went to your mom's house or went inside your
5 mom's house?

6 A: Yes. And that's when I was talking about how he -- the
7 things he would like to do and what he was mad at me about.

8 Q: Okay. And who was in the room when you were talking with
9 your mom?

10 A: Nobody. We was in the kitchen.

11 Q: Just the two of you?

12 A: Uh-huh.

13 Q: Okay. So then what happened?

14 A: Well, I said all he like to do is oral sex. All he like
15 to do is lick my -- in between my legs. That's when Minor
16 came from the dining room area and said, mama, that's what
17 daddy like to do to me too. I said what you mean what daddy
18 likes to do to you too? She said that's what daddy likes to
19 do to me. I said hold up. I said, oh, hold up. I got my
20 phone and I called 9-1-1 immediately.

21 Q: So were you aware that your kids could hear you talking
22 to --

23 A: Yes.

24 Q: -- your mom?

25 A: Yes, I was.

ESTHER LEWIS - DIRECT BY MR. RICHARDSON

1 Q: You knew they could overhear what you were saying?

2 A: Yes.

3 Q: All right. So they were that close by?

4 A: Yes.

5 Q: Just not in the same room?

6 A: It's not -- it's not a big house. It's a small house.

7 Q: Okay. And which -- which child?

8 A: Minor 1 .

9 Q: Okay. And did you talk to Minor 2 after that?

10 A: Minor 2 talked to me after the police left.

11 Q: Okay. So she came forward after they left?

12 A: Yes.

13 Q: Which police department originally responded?

14 A: The county. City police.

15 Q: The city police?

16 A: Yes.

17 Q: Okay. And later did the County Sheriff's Office take

18 over?

19 A: Yes.

20 Q: All right. I guess that was based on where these things

21 happened?

22 A: Jurisdiction, yes.

23 Q: Okay. So do you remember what month you -- or month and

24 year you initially reported it or is that --

25 A: I know it was hot.

ESTHER LEWIS - DIRECT BY MR. RICHARDSON

- 1 Q: It was hot outside?
- 2 A: Yeah. It was summertime.
- 3 Q: Okay. It was a few years ago?
- 4 A: Yeah.
- 5 Q: Wasn't it?
- 6 A: It was a long time ago.
- 7 Q: Okay. Have you noticed any changes -- or while this was
- 8 allegedly happening to your children and you didn't know about
- 9 it and the time since you've known about it, have you noticed
- 10 any behavioral or emotional or, you know, discipline problems
- 11 in school, any changes in them?
- 12 A: Oh, yeah, especially Minor2 . She have a hard time
- 13 sleeping at night. She'll wake up in the middle of the --
- 14 asleep and start screaming and -- and hollering and crying and
- 15 it takes about me myself, myself and my mom, sometimes my dad
- 16 to calm her down.
- 17 Q: Okay. So you're still living -- or do you live in a
- 18 different place now?
- 19 A: Yes. I live in my own apartment now.
- 20 Q: You've moved out on your own again?
- 21 A: Uh-huh.
- 22 Q: Okay. So Minor2 has night -- night terrors? Nightmares
- 23 and stuff?
- 24 A: Yes. And she wets the bed.
- 25 Q: Okay. And she's eleven now?

ESTHER LEWIS - DIRECT BY MR. RICHARDSON

1 A: She's eleven now, yes.

2 Q: Is this still happening?

3 A: Yes.

4 Q: And how about Minor1 .? Have you noticed any issues with

5 her?

6 A: Minor1 got more aggressive. She's usually a bubbly type

7 person, laughter, but she got aggressive in school now. She's

8 getting in fights and arguments with children.

9 Q: Okay. Are there any -- have there been any -- or when's

10 the last time they saw their dad prior to this trial?

11 A: Probably about 3 to 4 years.

12 Q: It's been a while?

13 A: Yeah.

14 Q: Do they ever ask to see him?

15 A: Yeah. They do.

16 Q: Okay. How about your boys? They're what? Five years

17 old?

18 A: Yeah. They're five years old now. Yes, sir.

19 Q: Are there any visits or anything with them?

20 A: No.

21 Q: Okay. So has Minor2 had any issues in school or most of

22 hers have just been sort of emotional?

23 A: Yeah. She got in an altercation with mostly male

24 students. They're trying to get advantage of her and she'll

25 hit them or try to slam them down in school, try to get the

ESTHER LEWIS - DIRECT BY MR. RICHARDSON

1 best of them.

2 Q: All right. How long have you been noticing these changes

3 in your girls?

4 A: About as long as they have been moved to my mom's house.

5 Q: That's when you first started noticing changes?

6 A: Yeah.

7 Q: Did you have any idea -- this just showed -- Minor2 was

8 having problems waking up in the middle of the night

9 screaming?

10 A: Yes.

11 Q: While Mr. Ross was still in the picture?

12 A: Yes.

13 Q: Okay. And Minor1 -- you said she had problems with

14 aggression at school?

15 A: Yes.

16 Q: This was happening --

17 A: Uh-huh.

18 Q: -- before you found out about the abuse?

19 A: Yes.

20 Q: Okay. Have you had them in any sort of therapy or

21 counseling?

22 A: Since they were referred by the Sheriff's Office, they've

23 been in counseling, except for the last past year.

24 Q: Okay. Very good. Have the girls -- have the girls had

25 any sort of health issues, you know, problems?

ESTHER LEWIS - DIRECT BY MR. RICHARDSON

1 A: Minor2 -- she has asthma and eczema.

2 Q: Okay.

3 A: Which is -- eczema is a stress-related illness. It's

4 increased by stress or frustration.

5 Q: Okay. How about Minor1 .? Has she had any sort of --

6 A: Yes.

7 Q: -- medical issues?

8 A: She's got asthma and eczema too.

9 Q: Okay. All right.

10 MR. RICHARDSON: I beg the Court's indulgence one moment.

11 BY MR. RICHARDSON:

12 Q: Ms. Lewis, you mentioned that Mr. Ross had a -- some type

13 of injury to his private area?

14 A: Right.

15 Q: That he had a little surgery or something?

16 A: Yes.

17 Q: Was that before your twin boys or after? Or do you

18 recall?

19 A: He had surgery after -- after I got pregnant with the

20 boys.

21 Q: Okay.

22 A: I was already pregnant.

23 Q: Were you sexually active with him after his surgery?

24 A: Yes.

25 Q: Okay. Were there any issues with him being able to

ESTHER LEWIS - DIRECT BY MR. RICHARDSON

1 perform sexually?

2 A: No.

3 Q: Okay. Thank you.

4 MR. RICHARDSON: Please answer any questions Mr. Brooker
5 may have.

6 THE COURT: Mr. Brooker?

7 MR. BROOKER: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. BROOKER:

10 Q: Ms. Lewis, let me ask you, please, a couple of questions.
11 I need to ask them in a way that's not pitting. Did -- were
12 you in the room when -- I think it was Minor1 testified?

13 A: Yes.

14 Q: And were you in the room when she testified that -- that
15 allegedly the first time that her father assaulted her was at
16 the house and that you caught them and you got angry with him?

17 A: Yes. I heard her testify that.

18 Q: Okay. Is that when you learned -- allegedly learned of
19 this?

20 A: No.

21 Q: Okay. Were you in the courtroom when she testified that
22 during an incident in the car -- and I think the testimony was
23 -- and, of course, you go from your recollection -- was is is
24 that her father either assaulted or attempted to assault her
25 and, while her father was attempting to assault her, that

ESTHER LEWIS - CROSS BY MR. BROOKER

1 Minor2 ran in the house and told you. Were you in here and
2 heard that testimony?

3 A: Yes, I heard it.

4 Q: Okay. Did Minor2 run in the house and tell you that,
5 hey, dad's out in the car sexually assaulting Minor1 .?

6 A: No. She did not ran [sic] in the house.

7 Q: All right. Now, you also testified that you left Mr. --
8 you left Vance Ross -- Mr. Ross because he said that I guess
9 -- what's the best way to put it? That you were tired of at
10 least his -- his sexual demands of you?

11 A: Right.

12 Q: Okay. Is it also true that part of y'all breaking up
13 that the relationship ended because you had a relationship
14 with someone else?

15 A: No.

16 Q: You never had a relationship with another guy?

17 A: I did, but --

18 Q: That specifically --

19 A: I did.

20 Q: I didn't mean to interrupt you. Go ahead.

21 A: I did and so has he.

22 Q: Okay. So it was actually that that precipitated the
23 breakup of the relationship?

24 A: It's a number of things.

25 Q: Okay. And not this being dissatisfied with -- with his

ESTHER LEWIS - CROSS BY MR. BROOKER

- 1 sexual demands? That wasn't true, was it?
- 2 A: Yes, it is.
- 3 Q: Okay. Now, you testified to the fact that -- and I think
- 4 Mr. Ross used to keep the kids while you worked?
- 5 A: Yes.
- 6 Q: Where were you working at at that time?
- 7 A: At Jean's Residential.
- 8 Q: I'm sorry?
- 9 A: Jean's Residential.
- 10 A: Okay. Thank you, ma'am. And, of course, is I think you
- 11 testified that he would sometimes sit out in the -- in the
- 12 yard and watch the kids from his car in the yard.
- 13 A: Yes.
- 14 Q: Okay. Does he do that when you were home?
- 15 A: Yes.
- 16 Q: Okay. And how long would he do that?
- 17 A: He would stay out there practically almost every day all
- 18 day.
- 19 Q: Okay. Was it --
- 20 A: When he's not working at Georgia-Pacific or he'll stay
- 21 there in her driveway or outside the gate.
- 22 Q: Okay. Now -- and you tell me if I'm wrong. Was there
- 23 ever a restraining order that was -- I can't remember whether
- 24 or not it was obtained by Mr. Lewis or either by you
- 25 preventing y'all from -- from being around each other?

ESTHER LEWIS - CROSS BY MR. BROOKER

- 1 A: No. It was a restraining order against the house of [REDACTED]
2 Middleton Street that my mom had put on the house.
- 3 Q: Okay. For Mr. Lewis not to come to the house; is that
4 correct?
- 5 A: His name is Vance Ross.
- 6 Q: I'm sorry.
- 7 A: That's my father, David Lewis.
- 8 Q: I apologize. I get my names mixed up sometimes. I don't
9 know why. But Mr. Vance Ross?
- 10 A: Uh-huh.
- 11 Q: That restraining order was for him not to come to the
12 house; is that correct?
- 13 A: Yes.
- 14 Q: You also testified to the -- to the fact that these kids
15 were -- I think -- I think you said that they were having some
16 disciplinary problems at school. Was it -- was it Minor1 ?
17 Was it -- I think -- and I might be wrong. Was it -- was it
18 Minor1 or Minor2 that you said that sometimes have
19 nightmares or one of them wets the bed; is that correct?
- 20 A: That was Minor2 .
- 21 Q: That was Minor2 .? Okay. I'm sorry. Have you ever taken
22 them for a psychological examination?
- 23 A: No.
- 24 Q: Okay. Have you ever thought -- or do you remember at
25 least when the Department of Social Services became involved

ESTHER LEWIS - CROSS BY MR. BROOKER

1 in this case that you were requesting the Department of Social
2 Services to have them psychologically examined?

3 A: I probably did. Probably not. I don't remember.

4 Q: And isn't it true that both of the kids have been having
5 problems at school a long time before these allegations
6 occurred and primarily because they were -- have a history of
7 being picked on by other students because of the eczema

8 problem that they suffer from?

9 A: That they suffer from? Yes. They -- Minor2 , yes.

10 Q: She's been having -- my understanding is is that --

11 A: From her eczema, not from, like, what she experienced at
12 school, like fighting or nothing like that. This was picking,
13 nit picking.

14 Q: Okay. But that's my understanding is that -- my
15 understanding is is that she's been having a lot of -- have
16 had -- has a history of having a lot of problems with other
17 students, both of them, because of the eczema?

18 A: No, not both. Just Minor2 .

19 Q: Okay. Just Minor2 because of the eczema? Okay. Now, I
20 want to ask one more question and then I'm going to sit down
21 because I think this was raised by Mr. Richardson on direct
22 examination. You said that when these allegations first
23 surfaced, however they did -- when they first surfaced, what
24 your testimony was -- is is that you reported this to the
25 Florence County City Police Department; is that correct?

ESTHER LEWIS - CROSS BY MR. BROOKER

1 A: Correct.

2 Q: Okay. And isn't it true that the Florence County City --
3 Florence City, not Florence County. Florence City Police
4 Department closed their file without making any referrals of
5 the kids in this case?

6 A: They closed the case because it wasn't their
7 jurisdiction.

8 Q: Okay. And, of course, I don't want to step out of line,
9 but is that -- my understanding is -- and I might be wrong.
10 Is the Thunderbird -- is that within the city limits? That's
11 in the -- that's within the city limits of Florence?

12 A: I don't know. I'm not a -- I don't work for the city. I
13 wouldn't know.

14 Q: Isn't the Suburban within the city limits of Florence?
15 In fact, they closed their file without even referring you to
16 the Sheriff's Department, that you had to call the Sheriff's
17 Department on your own and then make a second allegation to
18 the Sheriff's Department; is that correct?

19 A: Actually, I called the city police and they answered my
20 question that I would have to -- I followed up myself and I
21 followed up with the sheriff county. That's when the sheriff
22 county came out and I had to make a report to them of what had
23 happened and that's when the Sheriff's Department took on the
24 investigation.

25 Q: My understanding -- and you correct me if I'm wrong --

ESTHER LEWIS - CROSS BY MR. BROOKER

1 that there was roughly six months between the time in which --
2 it may have been five or six months between the time in which
3 you reported -- when you first made contact with the City
4 Police Department and the time in which you then made contact
5 with the Sheriff's Department; is that correct?

6 A: I don't know the time length.

7 MR. BROOKER: If you could indulge me, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. BROOKER:

10 Q: Now, let me ask you just one more question and you can
11 answer this any way you like. Did you ever remember telling
12 the Department of Social Services when they got involved in
13 this case that you reported this allegation of sexual assault
14 after Vance Ross sought to obtain custody for the kids?

15 A: No. I don't remember that.

16 Q: At some point in time back in 2014, after y'all break up,
17 was he seeking to take you to court or did you thought he was
18 seeking to take you to court to try and -- and have custody of
19 the kids?

20 A: During that time, we was going through our typical
21 problems. We were arguing and he was hitting on me.

22 Q: Okay.

23 A: That's when I -- that's when --

24 Q: Okay.

25 A: That's when -- that's when I went to the battered women's

ESTHER LEWIS - CROSS BY MR. BROOKER

1 shelter.

2 Q: Okay.

3 A: And that's when he came up with the --

4 MR. BROOKER: Your Honor?

5 A: That's when both of us had --

6 THE COURT: Hold on a minute. Yes?

7 MR. BROOKER: It's nonresponsive to my question. It --

8 THE COURT: Can the lawyers approach a minute, please?

9 MR. BROOKER: Sure.

10 (WHEREUPON, a bench conference was held in the presence
11 of the jury but out of the hearing of the jury as
12 follows.)

13 THE COURT: You're asking her a question about when she
14 went, when he was seeking custody of the girls.

15 MR. BROOKER: Yeah.

16 THE COURT: And she said he wasn't and she's explaining
17 to you I guess what her reasoning.

18 MR. RICHARDSON: Yeah. I think he was about to say
19 that's when she came up with it.

20 THE COURT: She's answering the question and explaining
21 how she did it.

22 MR. BROOKER: All right. I understand, Your Honor. Can
23 we --

24 THE COURT: What's your question?

25 MR. BROOKER: No. I'll go ahead.

ESTHER LEWIS - CROSS BY MR. BROOKER

1 (WHEREUPON, the bench conference ended and the
2 proceedings resumed as follows.)

3 BY MR. BROOKER:

4 Q: I'm sorry. I didn't mean to -- I didn't mean to
5 interrupt you. Go ahead and finish your question -- your --
6 your statement or your response.

7 A: Me and him was arguing and -- and going back and forth
8 and fighting. During that particular time, it was November
9 around Thanksgiving. That's when he -- it wasn't before that
10 really. We both had -- I went to the Durant Center to see
11 whether or not I can get protection from him and that's when
12 he went and got the same papers drawn up like I did, but in
13 his papers he verified that he wanted full custody of the
14 children when we went to court.

15 Q: Okay. And that was right around the time that these
16 allegations came up and when this investigation started; is
17 that correct?

18 A: Yes, it is, but it don't have any reference.

19 MR. BROOKER: If you could indulge me for just a second,
20 Your Honor?

21 THE COURT: Yes.

22 MR. BROOKER: No further questions, Your Honor.

23 MR. RICHARDSON: I don't have any redirect, Judge.

24 THE COURT: Ma'am, you may step down. Ma'am, you may
25 step down.

1 THE WITNESS: Okay. I'm sorry.

2 THE COURT: That's okay. All right. Ladies and
3 gentlemen -- well, can y'all approach a minute?

4 (WHEREUPON, a bench conference was held in the presence
5 of the jury but out of the hearing of the jury as
6 follows.)

7 THE COURT: How long is it going to be?

8 MR. RICHARDSON: It's not that long. It would take about
9 an hour total I think or thereabout.

10 MR. BROOKER: Yes.

11 THE COURT: Am I going to have to put her on the stand?

12 MR. BROOKER: I think just to authenticate it.

13 THE COURT: What time do you want me to tell them to be
14 back? 2:30?

15 MR. RICHARDSON: That would be fine.

16 THE COURT: All right.

17 (WHEREUPON, the bench conference ended and the
18 proceedings resumed as follows.)

19 THE COURT: All right. Ladies and gentlemen, I'm going
20 to at this time let you go to -- take an early lunch. I told
21 you we typically go to about 1 o'clock. I'm going to let you
22 all go. There are some matters that we need to take care of
23 and deal with that are probably going to take us until about 1
24 o'clock. Okay?

25 So what I'm going to do is I'm going to let you all go to

1 lunch. I'm going to ask you to be back here about 2:30 --
2 about 2:30. Do not -- do not discuss the case at all, but
3 please be back at 2:30 and we will resume the trial of this
4 case as promptly at that time as possible. Okay? Thank you.

5 Everybody else remain seated while they exit the
6 courtroom.

7 (WHEREUPON, the jury exited the courtroom at 11:46 a.m.)

8 THE COURT: All right. Mr. Richardson?

9 MR. RICHARDSON: Thank you, Your Honor. We'd call Sally
10 Williamson.

11 Your Honor, we need to take up the matter pursuant to
12 17-23-175 of the South Carolina Code with respect to
13 admissibility of the out-of-court statement of children under
14 twelve. I think, as the Court's been made aware, the children
15 in this case gave interviews or had interviews done at the
16 Care House. They were under the age of twelve at the time and
17 the State is seeking to introduce those into evidence.

18 THE COURT: All right.

19 MR. RICHARDSON: We have Ms. Williamson here to testify
20 about the issues pursuant to that statute.

21 THE COURT: Madam Clerk, would you swear her, please?

22 THE CLERK: Do you swear the testimony you give in this
23 case to be the truth, the whole truth, and nothing but the
24 truth, so help you God?

25 THE WITNESS: Yes, I do.

SALLY WILLIAMSON - IN CAMERA DIRECT BY MR. RICHARDSON

1 THE CLERK: Please be seated and state your full name for
2 the record.

3 THE WITNESS: Sally Williamson.

4 SALLY WILLIAMSON, being first
5 duly sworn, testified as follows:

6 IN-CAMERA DIRECT EXAMINATION

7 BY MR. RICHARDSON:

8 Q: Ms. Williamson, back in -- you used to work at the Care
9 House; correct?

10 A: I did, yes.

11 Q: And how long were you there?

12 A: I was there nearly 5 years.

13 Q: And were you there on September 30th, 2014?

14 A: Yes, I was.

15 Q: And did you have an opportunity to do forensic interviews
16 that day on Minor2 and Minor1 ?

17 A: Yes, I did.

18 Q: Okay. And could you just briefly explain to us what a
19 forensic interview is and then what you do in those?

20 A: A forensic interview is an interview conducted typically
21 with a child under the age of 18 in relation to an
22 investigation of some sort, whether it be by law enforcement
23 or Social Services, investigation of allegations of possible
24 child abuse.

25 Q: And in this particular case with the Lewis twins, was it

SALLY WILLIAMSON - IN CAMERA DIRECT BY MR. RICHARDSON

1 in reference to an investigation that was ongoing?

2 A: It was, by Florence County Sheriff's Office.

3 Q: Okay. And they -- did they request you to interview the
4 children pursuant to their investigation?

5 A: Yes, they did.

6 Q: What sort of memorialization do you do of these
7 interviews? Do you just make notes or are there recordings or
8 what do you do?

9 A: We actually record it on video; so we have a digital
10 recording of the entire interview.

11 Q: Okay. Did that happen on both of these interviews?

12 A: Yes, it did.

13 MR. RICHARDSON: Your Honor, at this time, I'd like to --
14 I don't have the disk marked. I guess I need to mark it. I
15 think this would be State's 6.

16 BY MR. RICHARDSON:

17 Q: Ms. Williamson, I'm going to show you what's been marked
18 State's 6 for identification at this time. Do you recognize
19 that?

20 A: I do.

21 Q: Okay. And what is it?

22 A: That is the recorded forensic interviews of Minor2 and
23 Minor1 .

24 Q: Okay. And you've reviewed the contents of this disk?

25 A: Yes, I have, today.

SALLY WILLIAMSON - IN CAMERA DIRECT BY MR. RICHARDSON

1 Q: And is it a true and accurate representation of the
2 interviews you did?

3 A: Yes, it is.

4 Q: With the girls?

5 A: Yes.

6 Q: Okay.

7 MR. RICHARDSON: Your Honor, if I could publish this to
8 you now or would you rather hear from Mr. Brooker?

9 THE COURT: Well, go -- well, Mr. Brooker, do you have
10 any questions on cross-examination at this point?

11 MR. BROOKER: None at this point.

12 THE COURT: All right. What exhibit is it again?

13 MR. RICHARDSON: 6.

14 THE COURT: 6? I'm sorry.

15 MR. RICHARDSON: Your Honor, while he's getting that
16 loaded up, if I could ask an additional question?

17 BY MR. RICHARDSON:

18 Q: Ms. Williamson, do you recall the age of the girls at the
19 time you did the interview?

20 A: I believe they were eight years old at the time.

21 Q: Okay.

22 (WHEREUPON, Plaintiff's Exhibit Number 6, the forensic
23 interviews of the victims, was played in court and then
24 stopped, after which the proceedings resumed as follows.)

25 MR. RICHARDSON: Your Honor, if we could, I think the

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1 video starts with just a view of the empty room and that lasts
2 for a number of minutes and, then once the first interview is
3 over, we have the same situation. We could save the time and
4 skip to the part where the interview starts unless there's any
5 objection.

6 MR. BROOKER: And it may -- it may have to start like
7 that, Your Honor, because I think the cases in Kumar and I
8 think Taylor would suggest that at least the forensic
9 interviewer is not allowed to present anything to the jury
10 that would suggest that the forensic interviewer believes that
11 the children's testimony is trustworthy or either anything
12 that would bolster the testimony. So it might be appropriate
13 based upon those cases that when it goes to the jury that it
14 starts directly at the point of the interview itself.

15 THE COURT: I mean I don't know that the video is going
16 to go. They're not going to take possession of the video back
17 there if I allow it in.

18 MR. RICHARDSON: Right. I always --

19 THE COURT: I mean all he's asking at this point for
20 purposes of this hearing is to -- unless I misunderstood
21 something, is to forward the video beyond the time that the --
22 where it shows just the room being empty --

23 MR. BROOKER: Sure.

24 THE COURT: -- to where the actual interview begins.

25 MR. BROOKER: Sure.

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1 THE COURT: Any objection to that?

2 MR. BROOKER: No objection to that, Your Honor.

3 THE COURT: We're just trying to -- for time purposes.

4 MR. BROOKER: I know. And maybe I'm jumping ahead of
5 myself.

6 THE COURT: That's okay. And what will happen -- I mean
7 the video wouldn't go back with them anyway. They don't have
8 any method or means to view it if they wanted to view it back
9 in the jury room. I would bring them back out here if that
10 were the case. Okay?

11 All right. I need some more volume on this. Back it up,
12 please.

13 (WHEREUPON, Plaintiff's Exhibit Number 6, the forensic
14 interviews of the victims, was played in court and then
15 stopped with technical difficulties, after which the
16 proceedings resumed as follows.)

17 THE COURT: Is there any more interview of this child?

18 MR. RICHARDSON: I don't think so. I think --

19 THE COURT: I mean you told me it was 30 minutes. We
20 started at about 11:50.

21 MR. RICHARDSON: That should -- that should be it. Can
22 you fast forward a little bit?

23 THE COURT: I mean it's now about 21 'til one.

24 MR. RICHARDSON: They're wearing the same thing. They're
25 wearing the same outfits when the next one starts at the same

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1 time.

2 THE COURT: Mr. Godbolt, can you tell how long this next

3 one is?

4 MR. GODBOLT: Give me a second. One second.

5 THE COURT: Okay.

6 MR. GODBOLT: It's the same one.

7 THE COURT: Sir?

8 MR. RICHARDSON: Can we look at the second one? No.

9 Start at the later --

10 MR. GODBOLT: You mean this one?

11 MR. RICHARDSON: Yeah. Yeah. They're wearing the exact

12 same thing.

13 MR. GODBOLT: Oh, okay.

14 MR. RICHARDSON: Yeah.

15 THE LAW CLERK: That's the second child.

16 (WHEREUPON, Plaintiff's Exhibit Number 6, the forensic

17 interviews of the victims, resumed playing in court and

18 then stopped with technical difficulties, after which the

19 proceedings resumed as follows.)

20 THE COURT: All right. This is what we're going to do.

21 Ms. Williamson, you can step down.

22 THE WITNESS: Thank you.

23 THE COURT: Do not discuss your testimony at all.

24 THE WITNESS: Yes, sir.

25 THE COURT: We'll reconvene at 1:45. Y'all work on it

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1 and see if you can't get it figured out between now and then.

2 All right?

3 MR. RICHARDSON: Yes, sir.

4 THE COURT: 1:45.

5 MR. RICHARDSON: All right.

6 (WHEREUPON, there was a break in the proceedings from
7 12:46 p.m. until 1:47 p.m., after which the proceedings
8 resumed as follows.)

9 THE COURT: Ms. Williamson, if you'd come back around,
10 please?

11 MR. RICHARDSON: So we think we have the technical
12 difficulties resolved.

13 THE COURT: All right.

14 MR. RICHARDSON: We did look -- when the -- when Ms.
15 Williamson comes back in the room at the end of the first
16 interview, she does talk to Minor2 for a few more minutes I
17 think. It's not super long, but we have it queued up at that
18 point, and then we can go into the next one.

19 I think the total duration of the clip is an hour and 35
20 minutes, but that includes all the dead time when the room is
21 empty and all. So it was a little over an hour. I just -- so
22 not -- not too bad. That's where we are.

23 THE COURT: Okay. All right. Ma'am, you can have a
24 seat. All right. Are y'all ready?

25 MR. BROOKER: Yes, sir.

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1 THE COURT: Make sure -- Mr. Sammy, is -- who's outside?

2 I want -- I want to --

3 THE DEPUTY: Maurice is out there. I'll tell him not to
4 let anybody in.

5 THE COURT: Send jurors down to the other -- okay. All
6 right. Go ahead.

7 (WHEREUPON, Plaintiff's Exhibit Number 6, the forensic
8 interviews of the victims, resumed playing in court until
9 it ended, after which the proceedings resumed as
10 follows.)

11 MR. RICHARDSON: All right. Ms. Williamson, I think I
12 forgot to ask you this.

13 BY MR. RICHARDSON:

14 Q: What kind of training did you have to have to be able to
15 do these forensic interviews?

16 A: Initially, before I began conducting them, I had a 40-
17 hour training in forensic interviewing, basic techniques of
18 forensic interviewing. In addition to that, over the five
19 years that I was there, I had approximately another 40 or so
20 hours in advanced forensic interviewing, interviewing children
21 with disabilities. So I would say close to -- somewhere close
22 to 90 hours of training.

23 Q: Okay.

24 MR. RICHARDSON: Okay. Please answer any questions Mr.
25 Brooker or the Court may have.

1 THE WITNESS: Yes, sir.

2 THE COURT: Mr. Brooker, any follow up?

3 MR. BROOKER: Your Honor, I don't have any questions
4 about her qualifications as a forensic interviewer.
5 Obviously, is is that, you know, I have some other issues with
6 the videotape and, of course, we'll take that up when Your
7 Honor is ready.

8 THE COURT: Ms. Williamson, tell me again when this
9 interview took place? Was it September of 2014?

10 THE WITNESS: Yes, sir.

11 THE COURT: Is that right? September 30th, I think?

12 THE WITNESS: Yes, sir.

13 THE COURT: I couldn't quite read it on that screen.

14 THE WITNESS: That's correct, yes.

15 THE COURT: All right. Ma'am, you may step down. Thank
16 you.

17 THE WITNESS: Thank you.

18 MR. RICHARDSON: Your Honor, that's all we'd have with
19 respect to the video pursuant to the statute on 17-23-175, and
20 I would just ask that the different portions -- I believe
21 we've satisfied the children were under the age of twelve at
22 the time the interview was done. It was an investigative
23 interview of the children. There was an audiovisual recording
24 preserved, which we've seen. Both children have testified in
25 this proceeding and have been subject to cross-examination on

1 both the elements of the offenses and the recording of the
2 video.

3 I would ask the Court to find the totality of the
4 circumstances surrounding the making of the statement provides
5 particular -- particularized guarantees of trustworthiness.
6 Some of the sections of the statute wherein the Court can look
7 as far as trustworthiness is whether the statement was

8 elicited by leading questions. I don't believe that the
9 statement was elicited by leading questions.

10 Whether the interviewer had been trained in conducting
11 investigative interviews. She just went over her training,
12 the number of hours, 40 to begin with and many more after
13 that.

14 Whether the statements represented a detailed account of
15 the alleged offense. They talked about the various locations,
16 I think an additional location that we've heard about, and
17 also discussed the penetration and, you know, the various
18 other details, including, you know, the white cum comments and
19 various other things of a sexual nature.

20 Whether the statements have internal coherence. I know
21 given the age of the kids, they're going to have the
22 appearance of kind of being here, there, and yonder at times,
23 but I think overall, if you look at the totality of it, they
24 did -- or that they did have consistency in terms of locations
25 of abuse and the specific types of abuse and who was present

1 and who the perpetrator was.

2 I think that pretty much covers the statute.

3 THE COURT: All right. Mr. Brooker?

4 MR. BROOKER: Your Honor, normally, I really don't have
5 any -- any problems with jurors seeing the -- the videotape of
6 the forensic interview, but I think there's at least a couple
7 problems at least with these interviews and, of course, is is
8 that one is with respect to the -- whether or not the
9 statements are internal -- has internal coherence.

10 The tapes are just flat out particularly confusing at
11 times. I mean, specifically, I think the last one that --
12 that deals -- that was given by -- I think that is Minor1 or
13 was it Minor2 .? Minor1 , who gave the last one.

14 And then, of course, is is that there are at least -- the
15 one that was given by Minor2 is -- and, of course, I've been
16 trying to keep track of them, but there is just glaring
17 examples of inconsistencies and contradictions with respect to
18 -- and some of them it's just flat out -- just I guess
19 inexplicable.

20 For an example -- and I won't go through all of them.
21 Like, on page 10 of the forensic interview, I was following at
22 least in this narrative where she was asked what happened at
23 the Suburban -- at the Suburban hotel and whether or not it
24 happened to her or her sister or just one of them and she says
25 one of them and then, of course, a couple lines down she

1 changed and says it happened to both of them. He had sex with
2 her. He had sex with her sister.

3 And then, of course, further down in that paragraph,
4 pretty much the same thing that was asked if he touched any of
5 her other parts at that time. She shook her head, yes, and
6 then, of course, is I asked which ones and she -- she shook
7 her head, private parts. She said her private parts.

8 And, of course, further down there when you ask her, you
9 know, did he ever touch any -- anything inside of her private
10 at the Thunderbird and, of course, this was all at the
11 Thunderbird and then, of course, she makes a contradictory
12 statement and says, no, he never touched her. She shook her
13 head, no, when she was asked whether or not he ever put
14 anything inside of her private parts at the Thunderbird. Or
15 you have in one paragraph she says it happens at the
16 Thunderbird and the next paragraph she says it happens -- it
17 didn't happen at the Thunderbird.

18 Now, that's thoroughly confused and sometimes I don't
19 mind if a jury hears that. You know, it could go both ways,
20 but, of course, is that some of the other issues that I have
21 at least, Your Honor, and I think if Your Honor is inclined to
22 allow the video to be published to the -- to the jury, you
23 know, then so be it, but specifically is is that some of the
24 statements that were made during the video cannot be admitted
25 to the jury and will have to be redacted out or skipped over.

1 Specifically, there's a number of references that are
2 made I think in both of the videos regarding the fact that he
3 was in jail, that Mr. Ross was in jail, he was arrested and
4 put in jail because he was having sex with them at the
5 mission, that he's a rapist and then, of course, another time
6 where the forensic interviewer explained to her that what
7 happened -- I reminded her that she is not in any trouble and
8 that she didn't break the rules and then, of course, it says
9 in the video that daddy broke the rules and that's wrong.

10 That is flat out against what's contained in State v.
11 Taylor, which is the newest case and, of course, it started
12 off with --

13 THE COURT: Give my court reporter that cite.

14 MR. BROOKER: Yes.

15 THE COURT: Please.

16 MR. BROOKER: Yes, sir. That's -- let me give you a copy
17 of it, Your Honor. My part -- I don't see a citation on this
18 and I may have gotten it before they actually put a citation
19 on it. State v. Taylor. Can I hand it up, Your Honor?

20 THE COURT: Yes, please.

21 MR. BROOKER: Of course, it's nothing new, but basically
22 says is is that any information -- and I think it starts on --
23 on page 4 of the text, I think the paragraph on the -- on the
24 right-hand side.

25 And it basically says that any information or any -- any

1 statement or information that's given by the forensic
2 interviewer that suggests the truthfulness or trustworthiness
3 of the statements is just flat out impermissible. You can't
4 give it.

5 And, of course, is is that, in that particular case, they
6 even talk about at least some of the testimony that was given
7 by the forensic interviewer and went in great detail about
8 some of the testimony that was -- quite a bit of the testimony
9 that was given and, of course, is is that, you know,
10 specifically states it's not permissible, and it's very
11 similar and some of it is almost the same as the testimony
12 that's given sometimes in here.

13 And then, of course, at the end where, again, the
14 forensic interviewer suggests that -- that if -- if -- if
15 these things ever happen to them again that they should run
16 and scream and yell and give them tactics of what to do if
17 these things happen to them again. Again, suggesting the --
18 the trustworthiness and believability or suggesting that these
19 events actually happened and, of course, is is that Taylor
20 says you can't do anything to bolster the testimony of the
21 kids.

22 And I'm more concerned about that, that some of that
23 stuff that's kind of scattered throughout the videotape, than
24 I am anything else.

25 THE COURT: All right.

1 MR. BROOKER: Than the actual testimony of the children
2 itself.

3 THE COURT: All right. Pursuant to Section 17-23-175,
4 Subsection (A), the Court does find that, Subsection (1), the
5 statement was given in response to questioning conducted
6 during an investigative interview of the child.

7 That an audio and visual -- visual recording was
8 preserved on videotape.

9 The child has testified at the proceeding here and was
10 subject to cross-examination on the elements of the offense
11 and the making of the applicable statement.

12 That the totality of the circumstances surrounding the
13 making of the statement provides particularized guarantees of
14 trustworthiness.

15 With regard to Subsection (B), various factors the Court
16 takes into consideration in determining particularized
17 guarantees of trustworthiness:

18 Whether the statement was elicited by leading questions.
19 I do not find for the most part that the statements were
20 elicited by leading questions. There probably were some here
21 and there.

22 But Subsection (2), whether the interviewer has been
23 trained in conducting investigative interviews of children.
24 Certainly, Ms. Williamson testified as to her training without
25 objection or without any questioning by defense counsel. He

1 had no qualms whatsoever with her qualification and training
2 to conduct such interview.

3 Whether the statement represents a detailed account of
4 the alleged offense. It does contain some detailed accounts
5 as to the offenses for which this defendant was charged.

6 Whether the statement has internal coherence. It did
7 have some -- some scattered -- and, in fact, Ms. Williamson
8 said on more than one occasion that she was confused.

9 And when looking at internal coherence, looking at also
10 whether the whole or the parts, so to speak, fit together in
11 determining whether internal coherence in the statements
12 exists, I don't necessarily -- I guess I do disagree with you
13 to an extent, Mr. Brooker, that it was completely incoherent.
14 I think there was some internal -- internal coherence. It
15 wasn't completely incoherent and I think that that probably
16 goes to the weight as opposed to what would be considered
17 admissibility.

18 Now, having said all of that, Ms. Williamson at the time
19 -- or Dr. -- is it Dr. Williamson or Ms. Williamson?

20 THE WITNESS: No, sir. Ms. Williamson.

21 THE COURT: All right. Ms. Williamson, at the time that
22 she conducted this interview -- and I specifically asked her
23 just to make sure that I was not incorrect in what I saw and
24 my recollection of when these interviews took place. The
25 interviews took place in September, on or about September 30th

1 of 2014.

2 At the time such interviews took place, Ms. Williamson
3 nor Mr. Richardson nor Mr. Brooker nor myself had the
4 privilege at the time of knowing what our Supreme Court would
5 do in State v. Brown, 411 S.C. 332, 413 -- excuse me. State
6 v. Anderson, 413 S.C. 212.

7 State v. Brown is a January 7, 2015, case. State v.
8 Anderson is a September -- excuse me -- August 5, 2015, case.
9 Then you had the case of State v. Jones, which was 417 S.C.
10 319, a Supreme Court case. In those cases, the Supreme Court
11 in large part significantly limited that which could be
12 elicited from children during these interviews -- during these
13 forensic interviews.

14 In State v. Anderson, the Court says there is to be no
15 testimony to such things as techniques of the instruction to
16 the interview subject to the importance of telling the truth,
17 of which, in each of these kids' interviews, Ms. Williamson
18 went through the importance of telling the truth in these
19 interviews, and I don't necessarily disagree with her going
20 through that for purposes of conducting her interview, but
21 prior to each of these kids taking the stand, the Court allows
22 these kids to be questioned at that time as well to determine
23 whether or not they recognize and realize the difference
24 between telling the truth and a lie and the importance of
25 such.

1 And the Supreme Court, according to my reading of
2 Anderson, does not allow that in these interviews. It said it
3 is error to do that.

4 And it goes on to say this type of testimony which
5 establishes the particularized guarantees of trustworthiness
6 necessarily conveys to the jury that the interviewer and law
7 enforcement believe the victim and that their beliefs led to
8 the defendant's arrest, these charges, and this trial, thus
9 impermissibly bolstering the minor's credibility. Again,
10 that's from State v. Anderson, 413 S.C. 212.

11 When I listen to these interviews and certainly as Ms.
12 Williamson -- and again, Ms. Williamson or no one else in this
13 courtroom had the benefit of these cases when these interviews
14 took place. So I do not fault you at all, Ms. Williamson,
15 what you did. You were doing your job. I understand that.
16 Okay?

17 THE WITNESS: Yes, sir.

18 THE COURT: But as my job as a judge in this case, I
19 believe that State v. Anderson says that that's prohibited.
20 It's prohibited.

21 Furthermore -- and I did not specifically mark down the
22 time at which time in the interview according to the video
23 that these statements took place, but statements near the
24 conclusion of Minor2 's interview, Ms. Williamson indicates
25 that she's proud of her, brave girl for telling, proud of you,

1 make sure you and your sister -- I'm not -- I may have written
2 that wrong -- down wrong; so I'm not going to say what I
3 thought there.

4 And again, if it ever happens again, which I believe in
5 essence is bolstering of their testimony. That they believe
6 -- Ms. Williamson believes what they're saying here, and
7 that's for this jury to make that determination and that's in
8 light of, again, these cases that I've already laid out there
9 from the Supreme Court since this interview took place.

10 Now, when you got into the second interview of Minor1 , I
11 did write those very issues down that Mr. Brooker raised about
12 him being in jail and being in jail for having sex with them.

13 Furthermore, Ms. Williamson again goes through the
14 importance of telling the truth, as she did with Minor2 .
15 Again, it wasn't exactly said the same way to Minor2 , but it
16 was said to the child, Minor1 , at 11 -- approximately at
17 11:11:46 that daddy broke the rules, referring to the
18 defendant, and that he knows better.

19 In addition, there was some questioning of this child
20 pertaining to whether or not she knew of her dad doing
21 anything to anyone else when there was some discussion about
22 the cousin and him trying to do -- or making certain comments.
23 I think that falls outside of the potential other bad acts.
24 None of that has anything to do with this case, which from my
25 recollection were things that allegedly took place at a bus

1 stop.

2 And again, at the conclusion of that interview, the
3 second interview, just talking about if they were ever -- if
4 she was ever touched again what to do. What dad did was
5 wrong; he broke the rules, which I believe goes to bolstering
6 the testimony of these kids.

7 Now, having said all of that -- and I don't know if y'all
8 looked at it beforehand, if there's any potential of carving
9 out that stuff, those issues that I raised here. There may
10 not be. If it's not, they're not going to be played. If they
11 possibly can, I'll leave it up to you to try to get it done
12 and go from there.

13 But I think they're -- these interviews and those --
14 specifically, those parts that I pointed out run afoul of this
15 State v. Anderson, State v. Brown, State v. Jones. They run
16 afoul of all of that. That's my ruling. All right.

17 All right. Anything else?

18 MR. RICHARDSON: May I talk with my IT wizard briefly
19 about the prospect of --

20 THE COURT: You may. Yes. We've got a jury out there.
21 Ms. Williamson, I understand you came from Charleston today;
22 is that right?

23 THE WITNESS: From Horry County.

24 THE COURT: Horry County. Okay. Well, you can talk with
25 him and see, but we need to move forward with the case. Who

1 was your next witness going to be? Obviously, it was Ms.
2 Williamson I'm sure.

3 MR. RICHARDSON: If not her, Dr. Anne Abel, who is
4 present.

5 THE COURT: All right. Well, you can talk with Mr.
6 Godbolt, your IT guy, if you need to for a minute. We'll
7 stand down. While we stand down, Mr. Sammy, if you'll get all
8 the jurors in the court -- in the -- in the jury room and
9 we'll --

10 THE BAILIFF: Yes, sir.

11 THE COURT: -- go from there. Okay.

12 (WHEREUPON, there was a break in the proceedings from
13 2:54 p.m. until 3:08 p.m., after which the proceedings
14 resumed as follows.)

15 THE COURT: All right. Bring me the jury, please.

16 MR. RICHARDSON: Judge, I just want to put on the -- on
17 the record with regard to the Court's ruling with respect to
18 the forensic interviews, I've talked to our IT person. He
19 said there's no way to carve those things out of the video, I
20 guess based on the way it's recorded in the program and all
21 that.

22 He said it's possible to do some sort of screen capture
23 thing that would take a fair amount of time. It couldn't be
24 done today, but it would still look chopped where it would be
25 obvious that -- obvious that things have been cut and I have

1 concern putting that in front of the jury lest they think
2 we're trying to hide something from them.

3 The same with the pause and play method. I don't think
4 that would go over too well, plus I'd be concerned that we
5 would miss something and lead to a mistrial, and I don't want
6 to risk that. I've talked about that with Ms. Williamson and
7 she obviously understands that and she knew about these cases
8 that you talked about that came out after these interviews
9 took place.

10 So I think just out of an abundance of caution, we're
11 going to skip that part and I just ask that she be excused
12 from her subpoena to get back to Horry County.

13 THE COURT: All right. Any objections, Mr. Brooker?

14 MR. BROOKER: No objection, Your Honor.

15 THE COURT: All right. Ms. Williamson, thank you for
16 being here. You're free to go. You have no further
17 responsibilities under your subpoena. Have a nice day.

18 THE WITNESS: Thank you.

19 THE COURT: All right. You ready to proceed now?

20 MR. RICHARDSON: Yes, sir.

21 THE COURT: Mr. Brooker?

22 MR. BROOKER: Yes, sir.

23 THE COURT: Bring me the jury, please, sir.

24 THE BAILIFF: Yes, sir.

25 (WHEREUPON, the jury entered the courtroom at 3:10 p.m.)

DR. ANNE ABEL - DIRECT BY MR. RICHARDSON

1 THE COURT: All right. Ladies and gentlemen, thank you
2 for being back when I asked you to be back. I'm sorry that
3 you've had to wait for a period of time while we were out here
4 dealing and continuing to deal with some matters that I needed
5 to take care of.

6 At this time, we are going to continue the trial of the
7 case. The State is so recognized. Call your next witness,
8 please.

9 MR. RICHARDSON: Thank you, Your Honor. We'd call Dr.
10 Anne Abel.

11 THE CLERK: Yes, ma'am. If you'll step up to the stand?
12 Place your left hand on the Bible and raise your right hand.
13 Do you swear the testimony you give in this case to be the
14 truth, the whole truth, and nothing but the truth, so help you
15 God?

16 THE WITNESS: Yes.

17 THE CLERK: Please be seated and state your full name for
18 the record.

19 THE WITNESS: My name is Dr. Anne Abel.

20 DR. ANNE ABEL, being first duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. RICHARDSON:

24 Q: Dr. Abel, where do you currently work?

25 A: Medical University of South Carolina.

DR. ANNE ABEL - DIRECT BY MR. RICHARDSON

1 Q: And how long have you been there?

2 A: Since 2006.

3 Q: And what do you do there?

4 A: I'm retired, but right now I'm working on a part-time
5 basis, 20 hours a week.

6 Q: And in what area are you working?

7 A: I correct myself. Twenty hours a month.

8 Q: That's better.

9 A: Yeah. Yeah. I'm -- I'm a child-abuse pediatrician and I
10 work in the child-abuse pediatrics division of the Department
11 of Pediatrics.

12 Q: Okay. And how long have you been in that line of work?

13 A: I've been doing this kind of work since the late 1990s.

14 Q: Okay. What type of educational background do you have
15 that allows you to do that kind of work?

16 A: Well, first of all, I am a medical doctor. I'm a trained
17 pediatrician with a regular residency training in pediatrics.
18 I did general pediatrics for four years. Then I did a
19 fellowship in adolescent and child psychiatry and then I did a
20 private practice consulting in various agencies and in a -- in
21 a private office for behavior issues with children.

22 And then I got trained to do the medical evaluation for
23 child abuse. I did a fellowship in forensic pediatrics in
24 Rhode Island at the Hasbro Children's Hospital. Then I worked
25 as a director at the child-abuse unit at the Children's

DR. ANNE ABEL - DIRECT BY MR. RICHARDSON

1 Hospital in Washington DC and then, due to my husband's
2 illness, I returned to South Carolina and worked for the
3 University of South Carolina School of Medicine, Department of
4 Pediatrics, and I worked in Florence for a while. Then I took
5 the job as a full-time child-abuse pediatrician at MUSC in
6 Charleston, South Carolina.

7 Q: Okay. You've been there ever since?

8 A: Yes.

9 Q: Okay. Have you ever testified in court before?

10 A: Yes.

11 Q: About how many times?

12 A: I don't keep a written record, but my best estimate is
13 more than 300 times.

14 Q: Okay. And have you been qualified as an expert during
15 those times testifying?

16 A: Yes. I'm usually qualified as an expert in child abuse.

17 Q: Okay.

18 MR. RICHARDSON: Your Honor, at this time, I'd ask that
19 she be qualified as an expert in the area of child abuse. I'd
20 ask if defense counsel has any follow-up questions with
21 respect to that issue.

22 THE COURT: Mr. Brooker?

23 MR. BROOKER: I have no objections, Your Honor.

24 THE COURT: All right. Ladies and gentlemen, I'm going
25 to give you a brief charge here before we go any further.

DR. ANNE ABEL - DIRECT BY MR. RICHARDSON

1 Normally, a person cannot give opinion testimony.

2 Normally, when a person testifies, they must testify as to
3 what they either saw, heard or sensed by smell or something of
4 that nature.

5 However, there is an exception when someone is qualified
6 because of education or experience. They are permitted to
7 give their opinion in certain areas.

8 This witness is being qualified or has been qualified as
9 an expert in the area of child abuse to give opinion testimony
10 in that area. That does not -- that does not mean that you
11 must accept the opinion, but it is evidence for you to use in
12 any way that you see fit and give it the weight and
13 credibility that you deem appropriate.

14 Mr. Richardson?

15 MR. RICHARDSON: Thank you, Your Honor.

16 BY MR. RICHARDSON:

17 Q: Dr. Abel, are you aware of the -- of a referral to MUSC
18 regarding children, Minor1 and Minor2 , back in
19 November of 2014?

20 A: Yes.

21 Q: And do you have the -- or have you reviewed the MUSC
22 records pertaining to that visit?

23 A: Yes, I have.

24 Q: Okay. And were you the one who actually did a physical
25 examination of them or what was your role?

DR. ANNE ABEL - DIRECT BY MR. RICHARDSON

1 A: No. I did not do the physical examination. That was
2 done by our physician's assistant, Natalie. I reviewed the
3 record and the images and signed the chart --

4 Q: Okay.

5 A: -- after she had done her work.

6 Q: All right. And let's start with Minor 2 . What
7 tests were performed on her and what sort of findings were
8 made?

9 A: Well, she had a full medical evaluation and that includes
10 the referral reason, the demographics, the reason for the
11 referral, the social information, the medical background, all
12 the illnesses she had had and that kind of thing, a physical
13 examination. Lab work was done, swabs of the genital and oral
14 area and the rectal area and also -- let's see what else.
15 Swabs.

16 And then a medical conclusion was made putting all that
17 information together and that was recorded in the record of
18 what the diagnoses were and then recommendations were made in
19 writing. And then a copy of that report was sent to the
20 investigators, as well as the primary care pediatrician.

21 Q: Okay. And as far as the findings with respect to her
22 physical exam, do you have those results with you?

23 A: Yes, I do. Just a second. All right. As far as the
24 general, like, height, weight, that kind of thing, she was
25 noted to be overweight with a BMI of 27.6. She had a history

DR. ANNE ABEL - DIRECT BY MR. RICHARDSON

1 of asthma. She had eczema, by both the history given or the
2 information from the parent and also by exam.

3 She had a history of exposure to domestic violence and
4 that was by history. In other words, that was information
5 given, not specifically by the child to our physician's
6 assistant, but in the referral information and from the
7 mother. And then she had a diagnosis of sexual abuse, and
8 that's a medical diagnosis, not a court conclusion.

9 Q: Okay. And what date was this physical exam performed on?

10 A: The 24th of November, 2014.

11 Q: Okay. On page 6 of the report with respect to Minor2 ,
12 the top paragraph with respect to sexual abuse --

13 A: I'm looking at -- I'm looking on a page 6 on the Epic
14 medical records, the electronic version. Does it look like
15 this?

16 Q: No, ma'am. We have a different page 6. I'll show you my
17 page 6 and see if you recognize it.

18 A: Oh, all right.

19 Q: Is that maybe a different page number?

20 A: All right. Oh, I see. Okay. I'm looking at the copy
21 from our medical records department and it -- this says it was
22 printed by Natalie Dixon. So when she made her copy, the
23 pages were different.

24 Q: Okay.

25 A: But it's the same information.

DR. ANNE ABEL - DIRECT BY MR. RICHARDSON

1 Q: Same information?

2 A: Yeah.

3 Q: Well, if you could, just read over this top paragraph
4 here about the findings with respect to --

5 A: All right. Under the diagnosis or impression, it says,
6 number one, sexual abuse. Discussion. Child disclosed oral,
7 anal, and vaginal penetration by the natural father during her
8 forensic interview at the Care House. On physical exam today,
9 child was very guarded and had difficulty completing the
10 anal/genital exam. Examiner was able to view the hymen
11 briefly and saw no signs of acute or chronic injury. However,
12 a normal exam today does not discount child's disclosure of
13 ongoing sexual abuse by natural father.

14 Q: Okay. How would it be possible -- if a child disclosed
15 multiple acts of sexual abuse, including vaginal penetration,
16 anal penetration, over a period of, you know, months or years,
17 you know, it happened on, you know, more than one occasion,
18 sometimes up to five or ten occasions, how can that happen,
19 yet when this exam is completed in November of 2014, there's
20 no signs of acute or chronic injury if we're dealing with a
21 full-grown adult male and a, at the time, eight-year-old?

22 A: All right. The oral -- the mouth -- if there's
23 penetration of the mouth by an erect penis -- and I'm going
24 answer because I help do, and supervise others who do it,
25 exams of rape victims, children and teenagers.

DR. ANNE ABEL - DIRECT BY MR. RICHARDSON

1 The evidence in the mouth, if you see them within three
2 days, you can occasionally get a few blood spots at the top of
3 the roof of the mouth they call petechiae and occasionally you
4 can swab and get sexually transmitted infections from the
5 abuser, but if the abuser doesn't have a sexually transmitted
6 infection, you wouldn't get it.

7 Now, if you examine a child's mouth weeks to months
8 later, those little spots go away within hours. So you'd be
9 highly unlikely to see any little petechiae or red spots in
10 the top of the mouth. And infection -- we did test the
11 children for infection, including swabbing their mouth for
12 gonorrhea, and it was not found.

13 Now, as far as the anus goes, I believe you have a
14 diagram and I can use that and talk about the anus and the
15 normal way the anus is made and help answer that question.

16 Q: I'm showing you -- do you want me to hold it there or
17 just --

18 A: All right.

19 Q: -- set it down? Either way. Whatever makes you
20 comfortable.

21 A: All right. This -- all right. This is a diagram of the
22 end of the rectum and the anus is out here and they've split
23 it so that you can see the layers. You can see the inside
24 lining of the gut, the rectum, and so this is the anus out
25 here.

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1 Now, in children and adults, the anus doesn't stay the
2 same size. It opens to have a bowel movement and it's
3 sometimes rather large, half-inch, inch and a half, even three
4 or four inches occasionally if someone gets very constipated.
5 So this is very stretchable. This does not stay the same size
6 all the time. So that's for stool or feces coming down from
7 above. It's also equally stretchable if someone comes in from
8 below.

9 Now, occasionally you can get an injury here from anal
10 penetration of the anus. It'll cause little fissuring or
11 little cuts in the anus and be uncomfortable for a few days,
12 but it heals very fast.

13 And as a pediatrician, we know that because we get babies
14 that get a little bit constipated and they may get a little
15 blood spot on their stool in their diaper, but it heals
16 quickly. But it causes families to get very, very worried.
17 So we know that it can happen, but again, it heals very
18 quickly.

19 So if you're examining a child weeks to months after an
20 alleged contact with someone who's anally penetrating them in
21 a sexual manner, we're very unlikely to see anything there.
22 We can -- when we examine the children and there's an
23 allegation of sexual abuse, we'll often have our gloved hand
24 and we won't penetrate their anus, but we'll just touch the
25 area and see if there's any firm scar on the outside tissue,

DR. ANNE ABEL - DIRECT BY MR. RICHARDSON

1 but there's no note of anything like that being noted in this
2 child's case.

3 Q: Would that be something you would expect to find in a
4 victim of child sexual abuse?

5 A: No. We very rarely find any anal findings in a case of
6 sexual abuse, even when it's been videotaped and we know what
7 happened, because usually it just stretches, accommodating the
8 size of the erect penis, and then it goes down to normal size
9 afterward and doesn't have any sign of injury, but it is
10 possible to have injury. I'm not saying you don't often --
11 you don't ever have injury, but usually you don't.

12 Q: And how about with respect to vaginal penetration? And I
13 have an easel here if you --

14 A: All right.

15 (WHEREUPON, there was a pause in the proceedings as the
16 witness left the stand and drew on a pad of paper on an
17 easel, after which the proceedings resumed as follows.)

18 A: Okay. This is a scheme drawing of a child, a female
19 child. This would be the right leg and that would be the left
20 leg and the child is horizontal on the table and the examiner
21 is standing right here looking at the genital area.

22 And here's the anus right here and you can see all those
23 little folds that come out from it. They're normal and, if
24 you change a baby's diaper, you know what I'm talking about.
25 There's a lot of little folds in here and that's an area that

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1 can hide any injury from the -- you know, acutely or in the
2 past.

3 And then up here is the opening to the vagina and it can
4 be different shapes and it can be normal different shapes.
5 There's a little area called the hymen, which is different
6 shapes, and let's just say for this age child it's usually
7 crescent or circular shaped or annular shaped. The part of
8 the hymen that the doctors, like myself, look for for sign of
9 sexual abuse, a physical finding of sexual abuse, is this
10 posterior half. The reason is that the differences in the
11 shape above this horizontal line are attributed just to
12 congenital differences.

13 So this is the part that we're particularly looking at
14 and we took images of these children, and we're talking about
15 Minor2 first. She was, according to the record, difficult to
16 examine because she was anxious, but she did have pictures. I
17 did see the pictures and I agree with the physician's
18 assistant that there was no sign of a scar or an acute injury.
19 A few of the pictures were blurry because she was moving, but
20 she caught some clear pictures.

21 Now, this is the clitoris and usually you don't see any
22 damage there. So that's the anatomy and I'd be happy to
23 answer any questions about that.

24 Q: Sure. You can have a seat back.

25 A: All right.

DR. ANNE ABEL - DIRECT BY MR. RICHARDSON

1 Q: Now, you mentioned with respect to anal penetration very
2 quick healing within a couple of days?

3 A: Yes.

4 Q: How about healing with respect to vaginal penetration?
5 What do you expect to find there?

6 A: Equally very fast. There's published literature on how
7 fast the injuries usually heal. There are rare exceptions
8 with deep, deep cuts that may take weeks, but if there were
9 injury, it's usually something like bruising or a tiny little
10 tearing and the tissue has such a good blood supply it heals
11 back together very quickly and very symmetrically. And that's
12 in our literature in the last 20 years. There's been lots of
13 study on this.

14 Q: Would that same principle hold true in situations of
15 prolonged abuse?

16 A: Yes. Every episode is a separate episode. Now, if you
17 had one episode that was particularly violent causing great
18 damage and great scarring, that scar could persist.

19 Q: Okay. Are there any differences in the healing rate
20 between children and adult victims?

21 A: I would say no.

22 Q: So both equally fast?

23 A: Very fast. Very good blood supply.

24 Q: In your experience doing these kind of cases or seeing
25 these types of patients, do you -- can you put a percentage

DR. ANNE ABEL - DIRECT BY MR. RICHARDSON

1 around about on about how many you have seen that do present
2 with some kind of injury?

3 A: It's less than five percent. Now, of the children we see
4 in the emergency room --

5 THE COURT: Hold on a minute, ma'am. What was that?

6 THE DEPUTY: Test of the emergency system.

7 THE COURT: Okay. Making sure they weren't telling us to
8 get out of here. I'm sorry, Doctor. You may continue. If
9 you need to restate your question, Mr. Richardson, please do
10 so.

11 BY MR. RICHARDSON:

12 Q: I asked about a percentage of patients that come in that
13 actually do show injury from sexual assault?

14 A: Minor injuries, such as bruising and, like, superficial
15 tearing, in acute sexual assault, like within 72 hours, maybe
16 up to 20 percent in children and that might be on the high
17 side. For adults, the literature says maybe 30 to 40 percent.
18 For exams that are weeks to months later, it's less than five
19 percent of -- and that applies to children where there's
20 strong evidence, court findings of sexual abuse.

21 Q: So in a situation where, say, a disclosure is made in
22 July --

23 A: Uh-huh.

24 Q: -- and a physical exam is done at the end of November --

25 A: Uh-huh.

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1 Q: -- would it be reasonable to expect little to no injury?

2 A: That would be the usual.

3 Q: Okay. Let's move on to Minor1 and she went through the
4 exact same protocol; correct?

5 A: Yes.

6 Q: And do you have the similar section I had you look at
7 with respect to Minor2 ?

8 A: Yes.

9 Q: And if you could go over that with us with respect to
10 sexual abuse?

11 A: All right. The impression -- the first impression or
12 diagnosis number one is sexual abuse. Discussion. Child
13 disclosed oral, anal, and vaginal penetration by natural
14 father during her forensic interview at the Care House.
15 Child's sibling also disclosed witnessing sexual abuse to this
16 child by natural father.

17 On physical exam, child has two mounds to her hymen, one
18 at 4 o'clock and one at 7 o'clock. These findings are
19 nonspecific and are not diagnostic of sexual abuse. However,
20 they do not discount child's disclosure of ongoing sexual
21 abuse by natural father.

22 Q: What is a hymen mound?

23 A: All right. The hymen, like I mentioned earlier, has
24 various shapes. Sometimes it has mounds. In this particular
25 case, the mound at 4 o'clock was attached to a vaginal ridge.

DR. ANNE ABEL - DIRECT BY MR. RICHARDSON

1 Inside the vagina, females often have ridges that run long-
2 wise through the vagina and some of them end up right on the
3 edge of the hymen and, when that happens, it makes the hymen
4 have a little bump. In this case, she definitely had a hymen
5 mound at 4 o'clock and she definitely has a vaginal ridge.
6 Those are normal findings.

7 I had more difficulty appreciating the mound at 4 o'clock
8 described by the physician's assistant, but sometimes the
9 examiner sees something that's hard for them to capture on the
10 picture. So I didn't disagree that she might've seen that,
11 but I couldn't see that on the picture. But I did see the one
12 at 7.

13 Q: Is it possible --

14 A: Excuse me. I correct myself. I saw the one at 4. I did
15 not see the one at 7.

16 Q: Is it possible for hymen mounds to be a result of sexual
17 abuse or are they just strictly natural occurrence?

18 A: It is possible, but like is stated here, you can't use
19 that to say that you've proved sexual abuse.

20 Q: Okay. So it can be a symptom or sign of it?

21 A: Sign.

22 Q: But not necessarily?

23 A: Correct.

24 Q: Okay.

25 MR. RICHARDSON: Thank you very much, Doctor. Please

DR. ANNE ABEL - CROSS BY MR. BROOKER

1 answer any questions Mr. Brooker may have for you.

2 THE WITNESS: All right.

3 THE COURT: Cross-examination.

4 MR. BROOKER: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. BROOKER:

7 Q: Dr. Abel, I'm going to just go over some of the things
8 that we -- you just discussed on direct examination.

9 (Moving the easel) I might use that a little bit later.

10 Of course, on direct examination -- and I think Mr.
11 Richardson used I think a copy of what was presented to us and
12 I think he showed it to you?

13 A: Yes.

14 Q: Okay. And I want to ask you some questions in reference
15 to the examinations performed to make sure I understand them
16 and make sure the jury understands.

17 A: All right.

18 Q: Is is that whenever you -- of course, I'm asking this
19 because I don't know. Whenever a minor child comes in with
20 allegations of sexual abuse is is that does the Medical
21 University of South Carolina, where you worked at that
22 particular period of time or I think still work part-time --
23 do they have some sort of sexual assault medical examination
24 protocol where there are certain examinations that has to be
25 performed?

DR. ANNE ABEL - CROSS BY MR. BROOKER

1 A: Yes.

2 Q: Okay. What are the examinations that are normally
3 performed?

4 A: Say that again?

5 Q: What examinations are normally performed?

6 A: Are you talking strictly about the physical exam or the
7 total medical evaluation?

8 Q: The physical exam because I think she simply had the
9 physical exam here that we have.

10 A: All right.

11 Q: And I'm specifically referring to the examination that
12 was performed on her. Let's -- let's just stick to that.

13 What -- what medical examinations or examinations --

14 A: All right.

15 Q: -- were performed on -- and I'm looking at Minor2 is
16 what I have in my hand.

17 A: Well, they start with just looking at the child as they
18 walk in the room to get the height and the weight. At some --
19 some of the children get their blood pressure and their pulse
20 rate done. In this case -- oh, that's Minor1's. Excuse me.

21 Anyway, I don't know if they did that for Minor2, but
22 they did the height and the weight. Then they do a head-to-
23 toe physical. They start with the head and they look at the
24 scalp and they look at the nose, ears, mouth, throat, feel the
25 neck, listen to the breathing, listen to the heart rate,

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1 examine the chest, examine the abdomen by feeling it and
2 looking at it, look at the outside of the genitals with the
3 child in a laying down position.

4 They have the child turn over and they look at the skin
5 all over on the back from the head to the feet. They look at
6 the skin on the front from the head to the feet. They have
7 the child in some kind of position where they can see the
8 genital exam and usually it's with the child laying on their
9 back with their feet in a frog-leg position so that they're
10 looking -- the examiner can look straight at the genital area.

11 They have the child bring their knees up toward their
12 chest so they can get a good look at the anus, and then the
13 examination also included, in this case, lab tests. So they
14 swab parts of the body. I believe they did a urine test for
15 gonorrhea and chlamydia and trichomonas.

16 Q: Okay.

17 A: Yeah.

18 Q: All right. And I'm looking at, of course, is is that the
19 copy that I have is page 5 of 9 and I'm looking at the lab
20 results and, of course, is I think you indicated is is that
21 they did a -- a -- a -- a urine test?

22 A: Uh-huh.

23 Q: For -- is it gonorrhea?

24 A: Gonorrhea.

25 Q: And chlamydia?

DR. ANNE ABEL - CROSS BY MR. BROOKER

1 A: And chlamydia and trichomonas.

2 Q: Okay. And then, of course, with respect to Minor2 , what

3 -- what were the results of that?

4 A: Negative.

5 Q: Okay. They did a rectal examination or at least a rectal

6 -- the rectal --

7 A: Swab.

8 Q: -- test or swab?

9 A: Yeah.

10 Q: Looking for the same gonorrhea and chlamydia?

11 A: Yes.

12 Q: And what were -- what were the results of that?

13 A: Negative.

14 Q: They did an oral swab for gonorrhea?

15 A: Yes.

16 Q: And what were the results of that?

17 A: Negative.

18 Q: Okay. All right. Now, also is is that I'm looking at

19 page 6, at least of my copy, and, of course, I think you also

20 talked about where they actually do the -- do the physical or

21 either visual examination where the children are laying on

22 their -- on their backs and, of course, their legs are kind of

23 in the frog-leg position and, of course, is is that I want to

24 make sure that I understand at least that examination and I'll

25 read it for the jury and I'll ask you some questions about

DR. ANNE ABEL - CROSS BY MR. BROOKER

1 that.

2 And, of course, is is that this is under the -- under the
3 umbrella of sex -- sex abuse underneath the category of sex
4 abuse.

5 It says child disclosed oral, anal, and vaginal
6 penetration by NF, which I believe is natural father, during
7 the forensic interview at the Care House. On examination
8 today, child was very guarded and had difficulty completing
9 the anal/genital exam. Examiner was able to view -- to view
10 the hymen briefly and saw no signs of acute or chronic injury.

11 Okay. And so that examination was negative with respect
12 to any either short-term or either long-term injury that was
13 discovered?

14 A: Correct.

15 Q: Okay. All right. So nothing there that suggests --
16 nothing there that -- that proves sexual assault; is that
17 correct?

18 A: Yeah.

19 Q: In that examination?

20 A: There's no physical finding that proves it.

21 Q: That's correct?

22 A: That's right.

23 Q: All right. And, of course, is is that nothing in the lab
24 results that proves sexual assault; is that correct?

25 A: Correct.

DR. ANNE ABEL - CROSS BY MR. BROOKER

1 Q: Okay. And then, of course, is is that I know you -- you
2 indicated that there was a rectal -- that there was a rectal
3 swab done for purposes of lab testing, but were there also a
4 visual examination of the rectum -- of the rectum because I
5 think the allegations were also rectal penetration?

6 A: Yes. And in the physical exam -- and I don't know if you
7 have that, but I have it.

8 Q: I may not.

9 A: The anus exam was normal.

10 Q: The anus exam was normal?

11 A: Yes.

12 Q: Okay. And normal means is is that there is no evidence
13 -- there was no findings nor evidence to suggest that there
14 was a trauma or injury to the anus?

15 A: Not at the time of that exam.

16 Q: Not at the time of the exam?

17 A: Right.

18 Q: Okay. Now, just to ask you at least a couple more
19 questions and at least for -- for my understanding or at least
20 from my research -- I'm not an expert so I'm asking these
21 questions and you tell me. But I always try and do some
22 research and at least from a research -- some research I did
23 -- and you correct me if I'm wrong because I could be, and
24 that is is that -- and, of course, is is that -- and I'll tell
25 you -- I'll tell you what I looked at.

DR. ANNE ABEL - CROSS BY MR. BROOKER

1 I looked at a -- a -- a -- some research that was done by
2 the -- an article that was done by the pediatric department at
3 Yale University I think in 1989 where the pediatric department
4 at Yale had actually saw -- I think it was 274 or 275 of their
5 patients to try and measure the vaginal opening of
6 prepubertal, I think, girls to try to determine what was the
7 -- I guess you might say is the average maximum opening of --
8 you know, of young girls.

9 At least in -- in -- in your profession, are there -- are
10 there articles or treatises or journals that talks about what
11 the average opening of maybe a young girl between the ages of
12 -- or either I'd say a young -- young child less than the age
13 of 10 might be?

14 A: Thirty years ago, it was thought that the examiner could
15 make a determination on the basis of the width or the
16 diameter, the measured size of the vaginal opening. That's
17 been subsequently studied and disproven.

18 Q: Uh-huh.

19 A: And it's no longer done in clinics, such as where I work.

20 Q: Yeah.

21 A: So that -- that was an initial thought. I mean in the
22 past there were mistakes made, but that's why research is done
23 to see if this is true or not and that -- they found that
24 measuring -- it was not valid.

25 Q: Okay. Yeah. And that's not the reason why I'm asking,

DR. ANNE ABEL - CROSS BY MR. BROOKER

1 but are you able to measure it? Are you able to measure the
2 genital opening?

3 A: Not really. And the reason is it depends on the degree
4 of relaxation of the child.

5 Q: Uh-huh.

6 A: And that's part of the reason that early research was
7 flawed.

8 Q: Uh-huh. Okay. And my question is is that is it possible
9 or you don't do it anymore because the research is flawed?

10 A: Yes. We don't do it anymore. It's considered improper.

11 Q: Okay. Because it provides you with -- with no valid
12 information with respect to whether or not sexual assault had
13 occurred or not?

14 A: That's right.

15 Q: Okay. I gotcha. Now, so something like that would not
16 have been performed on her?

17 A: No.

18 Q: Okay. Now, let me ask you another question with respect
19 to the hymen itself and, of course, you've done this diagram
20 here. Could you explain at least to us what the hymen is and
21 -- let me -- let me -- let me stop there. Could you explain
22 to us what the hymen is?

23 A: Yes. The hymen is tissue at the end of the vagina and it
24 forms a little rim and it can be different shapes. When
25 babies -- when girls -- female girls, when they're born,

DR. ANNE ABEL - CROSS BY MR. BROOKER

1 usually their hymen has a lot of estrogen. It's very fluffy
2 and it's usually in a round shape with a hole in the middle.

3 As they get older, the shape can take different shapes.
4 It can take a half moon shape we call crescent shape. It can
5 take a stellate pattern where it comes down to little points.
6 It can remain concentric or circular shaped.

7 Very, very rarely, there's an imperforate hymen, where
8 the hymen is like a wall and nothing can come and go from
9 there and that's a disaster when a young girl gets to puberty
10 and has a period, and something has to be done about it
11 because blood backs up, but that is extremely rare. These
12 girls did not have that. These girls had normal hymens.

13 Q: Uh-huh. Yeah. And I understand that.

14 A: Yeah.

15 Q: Does the hymen -- does it -- does the hymen -- does that
16 tissue relaxes and, of course, is is that the opening becomes
17 -- becomes larger as -- as girls or females get older and
18 older?

19 A: Well, the physical dimensions get larger in general
20 terms.

21 Q: Uh-huh.

22 A: Adolescents' opening to their vagina becomes larger
23 because they're bigger people.

24 Q: Yeah. Uh-huh.

25 A: Yeah.

DR. ANNE ABEL - CROSS BY MR. BROOKER

1 Q: Okay. So as -- as you age and, of course, is it becomes
2 bigger and bigger as a person gets larger and larger?

3 A: Right.

4 Q: And, of course, is is that it starts off, you know,
5 smaller and gets larger as you get older?

6 A: That's right.

7 Q: Okay. Now, the hymen tissue -- is that permanent tissue?

8 A: Yes. Children are born with hymens. They're all born
9 with hymens, and it's stretchable, elastic tissue. No one
10 really knows why it's there.

11 Q: Uh-huh.

12 A: But it's there.

13 Q: Okay. And then, of course, is it capable of -- is that
14 tissue capable of tearing?

15 A: It is.

16 Q: Okay. Okay. And what -- what are things that might
17 cause the hymen tissue to tear?

18 A: I know of one published case where a girl was waterskiing
19 and failed to let go of the rope and she was getting dragged
20 with her feet first and the water pressure was going right
21 against her hymen and she got an injury right there on her
22 hymen. That would be rare.

23 Q: Okay.

24 A: You can get injury to the hymen from forceful vaginal
25 penetration. You can get injury to the hymen with childbirth.

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1 Q: Okay. And I guess what I'm asking is is that -- is is
2 that the -- and, of course, I'm speaking at least in the sense
3 of at least sexual penetration.

4 A: Uh-huh.

5 Q: Is it possible for the hymen to be injured or either that
6 tissue to be torn during sexual penetration?

7 A: It is possible.

8 Q: Okay. Does that -- does the likelihood of tearing that
9 hymen increases based upon -- let's say, for instance, in a --
10 does -- does the possibility or likelihood of damaging or
11 tearing of the hymen increases when you have a younger child
12 and, of course, is is that -- and also the -- the anatomy
13 that's being inserted is quite large? Does the size of the
14 anatomy have an effect on -- on the damage and the injury or
15 the tearing of the hymen?

16 A: Intuitively, you would think yes, but the literature says
17 no. We actually get a higher rate of injury to the hymen with
18 adult rape than you do with sexual abuse of children.

19 Q: Uh-huh.

20 A: And it could be that the nature of the sexual action is
21 different with small children. That's speculation. Why? Why
22 is it like this? And I don't know the answers. I know
23 potential thoughts on it, but I don't know proven scientific
24 answers of why it's this way.

25 Q: But her hymen was intact?

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- 1 A: These -- we don't even use that term anymore.
- 2 Q: Uh-huh.
- 3 A: But both girls had normal hymens.
- 4 Q: Normal hymens?
- 5 A: Yes.
- 6 Q: Okay. That's the language. Okay. And, of course, is is
- 7 that now I'm going to turn to at least I think Minor1 .
- 8 A: All right.
- 9 Q: And her examination. And, of course, is is that I think
- 10 that you may have testified and I might be wrong that -- that
- 11 the examinations that you performed on her was very similar to
- 12 the ones that you performed on Minor2 , maybe with the
- 13 exception of some weight and that sort of thing?
- 14 A: The exam -- the exam procedure was the same.
- 15 Q: Okay. Okay. All right. Did she also have lab work
- 16 done?
- 17 A: Yes, she did.
- 18 Q: Okay. And do you know what the -- and, of course, what
- 19 was the lab work for? What -- what swabs or testing that you
- 20 did?
- 21 A: Well, sexually transmitted diseases, and the ones we
- 22 usually test for are on the urine: chlamydia, gonorrhea, and
- 23 trichomonas. And she had that and it was negative in her
- 24 urine. She had a rectal swab for chlamydia and gonorrhea.
- 25 Excuse me. Gonorrhea. That was negative. She had an oral

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1 swab for gonorrhea and that was negative.

2 Q: Okay. And so all the lab tests were negative?

3 A: Correct.

4 Q: For any sort of, you know, diseases or bacteria?

5 A: Uh-huh.

6 Q: And, of course, is is that -- again, is is that you did a
7 similar type of examination where -- where she was placed to
8 lie down on the table with her legs up in a frog position and,
9 of course, is is that the examiner says -- and, of course,
10 I'll read that.

11 Is that child discloses -- disclosed oral and anal and
12 vaginal penetration by NF, which is natural father, during her
13 forensic interview at the Care House. Child's sibling also
14 disclosed -- also disclosed witnessing sexual abuse to this
15 child by NF.

16 On physical examination, child has two mounds to her
17 hymen at 4 and one at 7 o'clock. The findings are nonspecific
18 and are not diagnostic of sexual abuse.

19 And so -- and I think you testified to this to Mr.
20 Richardson on direct examination, but the mounds that you are
21 looking at that you described is is that those mounds can be
22 normal and cannot be used to diagnose the cause of sexual
23 abuse?

24 A: Yes. You could not use that physical finding to prove
25 sexual abuse.

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- 1 Q: Okay. Because those mounds occur -- can occur naturally?
- 2 A: Yes.
- 3 Q: Okay. Okay. All right. And I want to make sure because
- 4 I looked at this -- is that so -- so on the -- at least the --
- 5 the lab examinations that you performed, they were all
- 6 negative; so nothing that indicate sexual -- sexual abuse.
- 7 And, of course, is on the physical examination on -- at least
- 8 to the -- to the vagina is is that there was no nothing that
- 9 indicated sexual abuse?
- 10 A: The physical?
- 11 Q: The physical examination.
- 12 A: The physical findings were normal.
- 13 Q: They were normal?
- 14 A: Yes.
- 15 Q: Okay. Now -- and it's not in the report that was given
- 16 to us is is that were there also a rectal examination done on
- 17 her? So you may have that.
- 18 A: Yes.
- 19 Q: It's not on -- you had one on -- on Minor2 .
- 20 A: Yes. We have it on Minor1 also.
- 21 Q: Okay.
- 22 A: The anus, normal tone, no noticeable sign of injury or
- 23 abnormal pigmentation.
- 24 Q: So everything was normal?
- 25 A: Yes.

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1 Q: Okay. All right.

2 MR. BROOKER: I don't have any further questions, Your
3 Honor.

4 THE COURT: Any redirect?

5 MR. RICHARDSON: Briefly, Judge.

6 REDIRECT EXAMINATION

7 BY MR. RICHARDSON:

8 Q: Doctor, on cross-examination, you were asked about the
9 hymen and I guess injury to that. Is the hymen tissue what
10 you're referring to that can heal so quickly or does it -- if
11 it's damaged, it's permanent?

12 A: No. It usually heals perfectly and it does heal very
13 quickly. Occasionally, you can get a scar that doesn't go
14 away, but that's rare.

15 Q: So when you mentioned I think 95 percent of the child
16 sexual abuse cases that you all see have no signs of injury --

17 A: Correct.

18 Q: That would include to the hymen?

19 A: Correct.

20 Q: Also, with respect to the question of penetration, there
21 was some testimony or questions earlier in the trial with
22 respect to the penis fully penetrating the vagina or just
23 barely. Could you explain to us -- I know penetration seems
24 like a simple enough word, but what exactly from medical
25 perspective do you consider to be penetration?

DR. ANNE ABEL - REDIRECT BY MR. RICHARDSON

1 A: Well, there is a legal definition of penetration and
2 there's a medical definition of penetration, and this gets
3 complicated for children who are sexually inexperienced. A
4 sexually experienced female recognizes when she's had vaginal
5 penetration and ejaculation. She's experienced it. She knows
6 what it feels like.

7 A young child shouldn't know that and so when they say
8 they've had penetration, the penetration may have been between
9 the labial folds. It may have been close to the vaginal
10 opening, but not through it. So the child -- so the child has
11 difficulty differentiating that. They -- they don't know the
12 language. They don't know the experience.

13 Q: Okay.

14 MR. RICHARDSON: Thank you. I believe that's all the
15 questions I have for you.

16 THE COURT: Mr. Brooker?

17 MR. BROOKER: Very briefly, Your Honor. I should be less
18 than a minute or two.

19 RE CROSS-EXAMINATION

20 BY MR. BROOKER:

21 Q: I wanted to ask you something in line of the questions
22 that Mr. Richardson just asked I think in reference to the
23 hymen. And, of course, is is that -- you know, I don't know
24 about these things. I'm not smart, but sometimes during --
25 during -- during sexual intercourse based upon the age and

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1 based upon, you know, whether or not it's the first time, does
2 sometimes some women experience bleeding or spotting as a
3 result of that?

4 A: Yes.

5 Q: Okay. Okay. And what normally causes that?

6 A: Usually, it would be a small tear in the hymen.

7 Q: Okay. Okay. And one more question in reference to what
8 Mr. Richardson asked you. That I understand when the -- when
9 the hymen tissue tears, I understand and I think your
10 testimony is that the hymen tissue can heal the same way a
11 scar would heal if you were to cut your skin on your arm, but
12 can the hymen tissue I guess reposition itself or -- I'm not
13 asking this in an intelligent way, but can the hymen tissue
14 regenerate itself? I understand it can heal, but can it
15 regenerate itself?

16 A: Okay. There is a perfect study that was done of
17 sexually-assaulted young girls that did have damage and the
18 examiner published this and they took pictures every few days.
19 And in most cases, if the hymen had a little fissure in it or
20 cut in it, it just went back together.

21 Q: Uh-huh.

22 A: And you honestly couldn't have looked at that -- you
23 know, trained examiners looking at those pictures that are two
24 months out wouldn't have even recognized that it had been an
25 injury. It doesn't look like a scar. It doesn't feel like a

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1 scar. It's perfect.

2 Q: And I --

3 A: I wouldn't say regenerated. It's more like the edges
4 just come back together.

5 Q: They reform?

6 A: They join each other back again.

7 Q: Okay.

8 A: Occasionally, that doesn't happen. Occasionally, you're
9 left with a pretty permanent divot.

10 Q: I gotcha.

11 A: But that's not the majority.

12 Q: I gotcha. And then, of course, is this is definitely my
13 last question. You may have already answered it.

14 Q: Okay?

15 Q: And that is is that sometimes when there is a tear, is it
16 -- based upon the size of the tear -- but I know that you said
17 sometimes is is that there -- is there sometimes scar tissue
18 or sometimes it's unrecognizable scar tissue?

19 A: Sometimes it's unrecognizable.

20 Q: Okay. But sometimes there is scar tissue?

21 A: Sometimes there is, yes.

22 Q: So similar to -- like I said, is is that I guess to put
23 it in layman's terms is that if you were to put a cut on your
24 arm and, of course -- or on your skin and the skin reforms
25 together, it leaves a small scar?

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1 A: Yeah. You can feel a bump, yes.

2 Q: Okay. Okay. All right.

3 MR. BROOKER: No further questions, Your Honor.

4 THE COURT: Doctor, you may step down. Thank you.

5 THE WITNESS: Thank you.

6 MR. RICHARDSON: I would ask that she be excused.

7 THE COURT: Any objection?

8 MR. BROOKER: No, sir, Your Honor.

9 THE COURT: Ma'am, you are excused. You're free to go.

10 You have no further responsibility under your subpoena. Thank

11 you for being here.

12 THE WITNESS: Thank you.

13 MR. RICHARDSON: The State rests, Judge.

14 THE COURT: All right, ladies and gentlemen, the State

15 has rested its case. What I am going to do at this time --

16 there are some legal matters that we have to take up outside

17 of your presence. Rather than keep you here, I'm going to ask

18 that you be back tomorrow morning. I'm going to ask that you

19 be here at 10 o'clock in the morning. Be here at 10 o'clock

20 in the morning and we will resume the trial of this case at

21 that time.

22 Do not -- do not discuss this case at all. Don't do any

23 independent investigation on your own. You're to decide it

24 based solely on the testimony and evidence that's presented in

25 this courtroom and nowhere else.

1 When you return in the morning, if you would for me, when
2 you all get in the jury room, if you all would select a
3 foreperson. All right?

4 I will tell you the foreperson cannot be Mr. Dennis. Mr.
5 Dennis cannot be the foreperson. All right? But if you all
6 would select a foreperson, put it on a piece -- write it down
7 on a piece of paper, hand it to Mr. Sammy, and he will give it
8 to me.

9 And whoever -- whom you select as your foreperson will
10 sit where this young lady is seated closest to me and closest
11 to the witness stand on the front row, and that will be their
12 assigned seat. All right? When you come back out.

13 You all have a nice evening and I will see you tomorrow
14 morning at 10 o'clock. All right.

15 (WHEREUPON, the jury exited the courtroom at 4:01 p.m.)

16 THE COURT: Mr. Richardson, as they're exiting, could you
17 move this? He can't -- Mr. Brooker can't see me. He may not
18 not want to see me though, but I can't see him either though.

19 MR. BROOKER: I'm fine with seeing you, Judge.

20 THE COURT: All right. Mr. Brooker, anything from you at
21 this time?

22 MR. BROOKER: Yes, Your Honor. Just for the record, I
23 want to make a motion for directed verdict on, I think, the
24 remaining counts of the indictment, which would be Counts 2
25 through 9.

1 THE COURT: 3 through 9.

2 MR. BROOKER: I'm sorry. 3 through 9. I apologize. The
3 first two were -- were withdrawn. 3 to 9.

4 And, of course, is is that I think every last one of them
5 are criminal sexual conduct, I think, first degree with a
6 minor, I think dealing with both of the two kids. I think the
7 third one alleges CSC with a minor by penis inserted --
8 inserted in the mouth as to Minor2 .

9 The fourth one is CSC first degree with respect to
10 Minor1 Lewis alleging penis inside of the mouth. And, of
11 course, is is that the fifth one with respect to Minor1
12 alleging again penis inside of the mouth.

13 And let me at least just stop there and address at least
14 those two. Some of these counts, Your Honor, specifically is
15 is that Count -- Count -- Count 3 alleging penis inside of the
16 mouth with respect to Minor2 and then, of course, is is that
17 you have Count 4, penis inside of the mouth with Minor1 ,
18 Count 5, penis inside of the mouth with Minor1 .

19 I think, Your Honor, it's going to be impossible for both
20 Counts 4 and 5 to survive and the reason why I think it's
21 impossible for Count 4 and 5 to survive and, of course, is is
22 that Your Honor may been keeping better notes than I have with
23 all of my talking is is that there was an issue with respect
24 to -- with respect to Minor1 is with respect to whether or
25 not there was sexual assault in the mouth by penetration by

1 the penis and then, of course, is is that even if Your Honor
2 accepts the proposition that there was sexual assault --
3 assault by -- by penetration in the mouth, then, of course, is
4 is that I think that there is no testimony that alleges that
5 it occurred on more than one occasion. Okay?

6 I think that there was testimony I think and I believe it
7 was Minor 1 that says that it happened to her at least once
8 and then, of course, is is that there are two counts of CSC
9 with a minor by penetration of the mouth and, of course, is is
10 that if it did only happen once, if you believe that, then, of
11 course, it would negate the fact that you can have two
12 separate and distinct charges based upon that.

13 I think another justification at least as to why it would
14 have to be at least narrowed to one at least is because the
15 testimony is so convoluted that it is tremendously difficult
16 to determine, you know, whether or not when -- when Minor 1
17 testified in reference to that conduct is that whether or not
18 she is testifying with respect to the same conduct or either
19 whether or not she's testifying with respect to separate
20 occurrences or separate incidents completely. Her testimony
21 was just absolutely, at least in my opinion, completely
22 confusing. I think it was hard for me to follow. It was
23 tremendously hard for the jury to follow it.

24 I think a third ground would be is is that whether or not
25 there is any reasonable evidence or any evidence in which the

1 jury could possibly reach the conclusion, you know, of guilt
2 beyond a reasonable doubt in the absence of speculation, and I
3 think there is case law out there that says that if a jury
4 would have to speculate with respect to the existence, you
5 know, of an element of a particular crime, then, of course, is
6 is that the judge is -- is within his power and duty to -- to
7 grant direct -- direct verdict and, of course, not submit that
8 count to the jury on the grounds that the only possible way in
9 which they could reach a verdict would be by speculation.

10 I think with respect to Count 6 and Count 7, again
11 Minor1 , I think alleging vaginal penetration, CSC by vaginal
12 penetration and, of course, is, again, CSC by vaginal
13 penetration and, again, I think the testimony is so
14 convoluted, Your Honor, that it is impossible to make
15 distinctions with respect to whether or not she's alleging a
16 single occurrence or either multiple occurrence -- multiple
17 occurrences.

18 And I think as a result of that because the testimony is
19 so convoluted is is that I think it's difficult for the jury
20 to make a determination as to whether or not we're talking
21 about two separate instances and, if you are talking about two
22 separate instances, then it's going to be almost impossible to
23 make a distinction or at least provide distinctive information
24 that would positively distinguish one incident from a second
25 incident.

1 I also think that the jury is going to be caused to
2 speculate about, you know, at least the existence of those two
3 counts because the evidence was so convoluted and speculative
4 and so contradictory, you know, of -- so much contradicted
5 itself that it's going to put the jury in a position where the
6 jury simply is going to have to speculate with respect to the
7 existence of the conduct.

8 I think for Count 8 and Count 9 -- and again this is
9 Minor2 . Minor2 . Both alleging CSC by vaginal penetration,
10 again two counts. I think the rationale is the same. It is
11 that I think it's tremendously difficult to establish exactly
12 or distinguish between alleged conduct. It is difficult to --
13 to -- difficult to -- to determine whether or not the alleged
14 conduct occurred without speculation.

15 A lot of the testimony was convoluted. It was
16 contradictory of itself and I think in order for a jury to go
17 back there and reach a verdict with respect to guilt, I think
18 the jury is going to have to speculate with respect to the
19 existence of these events. Okay.

20 THE COURT: All right.

21 MR. BROOKER: Based upon that, Your Honor, is is that we
22 respectfully request that you grant the verdict -- directed
23 verdict on those counts.

24 THE COURT: Mr. Richardson?

25 MR. RICHARDSON: Your Honor, with respect to Count 3,

1 what little direct or clear testimony there was from Minor1
2 yesterday --

3 THE COURT: Hold on a minute now. Count 3 pertained to
4 Minor2 , right.

5 MR. RICHARDSON: Yes, sir.

6 THE COURT: Okay. Go ahead. I'm sorry.

7 MR. RICHARDSON: Minor1 testified yesterday that she
8 came out of the bathroom at the hotel and saw her father
9 putting his penis in Minor2 's mouth. Minor2 also testified
10 about that this morning. So I think Count 3 is covered.

11 Minor1 yesterday was quite reserved when it came to
12 talking about anything that had to do with things that
13 happened to her and I don't know that -- I wasn't really able
14 to get a whole lot out of her with respect to something that
15 happened to her. I'm not really sure on cross-examination,
16 but Minor2 today did testify that she witnessed multiple
17 occasions where she saw her father put his penis in Minor1 's
18 mouth, vagina, and anus.

19 The issue I think we have to discern is I can't remember
20 exactly how many times she said she observed that. I know we
21 have Count 4 and Count 5, which are strictly oral penetration
22 allegations. Count 6 is -- is vaginal and oral, and Count 7
23 is vaginal, anal, and oral.

24 I'm not sure what the Court's notes reflect with respect
25 to Minor2 's testimony this morning about what she observed

1 happened to Minor1 , but I recall at least one event of each
2 that she saw that she said she personally observed happened to
3 Minor1 . So at the very least I would ask the Court to hang
4 on to Count 7 with respect to Minor1 .

5 Then we have Count 8 and Count 9, which are both
6 allegations of vaginal penetration with respect to Minor2 .
7 She testified clearly this morning on direct that it happened
8 to her more than once. So we have two here and I think that
9 would -- they would be covered.

10 I do think ample evidence exists to get the case to the
11 jury. Obviously, they'll have to weigh the credibility of the
12 children based on the totality of the circumstances in front
13 of them, but I think there is enough to get the case there.

14 THE COURT: All right. Anything further, Mr. Brooker?

15 MR. BROOKER: Nothing further, Your Honor.

16 THE COURT: All right. I'm going to go back through my
17 notes overnight and take a look at them. I've taken a lot of
18 notes over the course of the last day; so I will reserve
19 ruling on defendant's directed verdict motion until in the
20 morning. I'll ask that you all be back here tomorrow morning
21 at 9:30 and we'll -- I'll rule on them at that time. Okay?

22 ME. BROOKER: Yes, sir.

23 THE COURT: Now, what -- Mr. Richardson, were you going
24 to say something?

25 MR. RICHARDSON: Oh, I just -- you were I think about to

1 do it. I was going to talk about you giving the defendant his
2 --

3 THE COURT: I'm getting ready to. Yes, sir. Mr. Ross,
4 if you would stand, please, sir? Raise your right hand. Do
5 you swear to tell the truth, the whole truth, and nothing but
6 the truth, so help you God?

7 THE DEFENDANT: So help me God.

8 THE COURT: You can put your hand down. You are Vance
9 Ross?

10 THE DEFENDANT: Yes, I am.

11 THE COURT: All right. At this time, I'm going to
12 explain to you certain of your rights. If you do not
13 understand anything that I say, please let me know. If you
14 want me to explain anything in more detail, please let me
15 know. Do you understand?

16 THE DEFENDANT: Yes, I understand.

17 THE COURT: We have now reached the stage of the trial
18 where you may present your defense. You have the right to
19 claim the protections given to you by the Fifth Amendment to
20 the Constitution of the United States. This amendment states
21 in part that no person -- no person shall be compelled in any
22 criminal case to be a witness against himself. This means
23 that you cannot be required to testify in this case.

24 You have the right to testify on your own behalf.
25 However, no one can make you testify. This is a personal

1 right and no one can waive this right except you.

2 If you decide to testify, you will be subject to the same
3 rules that govern other witnesses and you may be examined and
4 cross-examined on any relevant issue in this case. In
5 addition, if you have any convictions involving dishonesty or
6 false statement or for crimes punishable by more than -- by
7 imprisonment for more than a year and this Court determines
8 that the probative value of admitting this evidence outweighs
9 its prejudicial effect to you, the solicitor will be able to
10 introduce your record to attack your credibility.

11 If you decide to testify, this decision on your part must
12 be freely, voluntarily, and intelligently made with knowledge
13 of the protections given to you by the Fifth Amendment to the
14 Constitution and the consequences of your decision to testify.

15 If you decide not to testify, I will instruct the jurors
16 that they cannot -- that they cannot give the fact that you
17 did not testify any consideration whatsoever and that there is
18 to be absolutely no prejudice to you because you did not
19 testify.

20 It is left entirely up to you whether or not you testify.
21 You may talk to your family, your friends, your attorney, or
22 anyone else, but the final decision as to whether or not you
23 testify is left entirely up to you. Do you understand what
24 I've explained to you, sir?

25 THE DEFENDANT: Yes, I understand it.

1 THE COURT: Do you have any questions about what I have
2 explained to you?

3 THE DEFENDANT: No, sir.

4 THE COURT: Have you discussed with your attorney whether
5 you should or should not testify?

6 THE DEFENDANT: I haven't discussed it yet.

7 THE COURT: Okay. Well, what I am going to do is we're
8 going to break today for the balance of the day. It is
9 approximately 4:20. I'm going to give you the rest of today
10 and overnight to discuss with your lawyer whether or not you
11 wish to testify and will expect an answer from you tomorrow
12 morning. Okay?

13 THE DEFENDANT: Okay.

14 THE COURT: All right. Anything further? Yes, sir, Mr.
15 Ross? I'm sorry.

16 THE DEFENDANT: You said family too; right?

17 THE COURT: You can talk to your family if you want to.

18 THE DEFENDANT: Can you make a note that I'm able to call
19 my family to talk to them from the jailhouse?

20 THE COURT: I don't know what kind of situation is at the
21 jail.

22 THE DEFENDANT: Because they think my fiancé is the
23 victim. She's not the victim. I'm saying they've got it
24 backwards --

25 THE COURT: I don't know what --

1 THE DEFENDANT: -- at the jailhouse.

2 THE COURT: Maybe the lawyers can shed some light on me
3 with regards to --

4 MR. RICHARDSON: I'm not sure what he's talking about.

5 THE DEFENDANT: They think that Janice King is the -- is
6 the -- is the victim. She's not. Esther Lewis is the victim.
7 At the jailhouse, they got it confused and they won't let me
8 call her -- call my family.

9 MR. BROOKER: Your Honor, I think -- I think what he's
10 trying to say, Your Honor, is, Your Honor, is that his -- his
11 current significant other is -- they're conflating her or
12 confusing her with the -- with the mother of the children and
13 so, you know, as a result of his bond, there's no contact or
14 contact with the -- with the victims or either the victims'
15 family. And so he is not able to contact her and she -- and,
16 of course, she has no relationships to the -- to the alleged
17 victims or either the alleged victims' family.

18 THE COURT: Can y'all check on that for me?

19 THE DEPUTY: Yes, sir. We'll check on it.

20 THE COURT: All right. And, you know, I would ask that
21 you let him talk to his family. He's certainly not allowed to
22 talk to Ms. --

23 MR. BROOKER: Yes, sir.

24 THE COURT: The victims' mother.

25 MR. BROOKER: Yes, sir.

1 THE DEFENDANT: I agree. I haven't talked to her in 22
2 months. I just want to talk to my family.

3 THE COURT: Okay. Check on that for me, please. Tell --
4 get her name or if you will, Mr. Brooker, provide the young
5 lady's name to law enforcement.

6 MR. BROOKER: Yes. It's Ms. Janice King.

7 THE COURT: And a number so when they get back out there,
8 he can call her. Can y'all handle that for me?

9 THE DEPUTY: Yes, sir. I'll give them a call right now.

10 THE COURT: Okay. All right. Very well, Mr. Ross.

11 THE DEFENDANT: Thank you.

12 MR. RICHARDSON: Judge, just briefly, you mentioned if he
13 has any qualifying criminal record. The NCIC that I have and
14 provided to Mr. Brooker -- I think the only things that would
15 qualify potentially -- he was received into the Department of
16 Corrections on February 6th, 2006, for an 18-month sentence for
17 criminal domestic violence, high and aggravated nature, and
18 then received January 29th, 2007, for strong-armed robbery on a
19 7-year sentence.

20 THE COURT: What was -- when was the criminal domestic
21 violence?

22 MR. RICHARDSON: He was received in on 2/6 of '06 for an
23 18-month sentence. Of course, the nature of that offense, as
24 I recall, is you have to do a full year, like 365, or had to
25 at the time. I think you still may. But I'm not sure when he

1 would've been considered released because he was received in
2 January 29th of '07 on a common-law robbery for 7 years. He
3 wouldn't have gotten --

4 THE COURT: Mr. Ross, you can have a seat, please, sir.

5 MR. RICHARDSON: He wouldn't have gotten --

6 THE COURT: I'll let you -- I'll -- you need to talk to
7 your lawyer. Okay? And I'll give you a chance to talk to
8 him.

9 MR. RICHARDSON: So I think the robbery clearly is within
10 purview.

11 THE COURT: It's within the purview, but there's some
12 case law out there that's come out within the last couple
13 years about the admissibility of such for impeachment
14 purposes. How about take a look at that case law?

15 MR. RICHARDSON: Okay.

16 THE COURT: All right. Mr. Brooker?

17 MR. BROOKER: Your Honor, that's exactly what I was going
18 to raise with respect to that robbery is is that whether or
19 not it would qualify.

20 THE COURT: And I believe that opinion was written by
21 Justice Toal. No, not Justice Toal. Hearn. Excuse me.

22 MR. RICHARDSON: Okay.

23 THE COURT: Hearn, if I recall correctly. Take a look at
24 that and we'll reconvene on that issue in the morning.

25 MR. RICHARDSON: Yes, sir.

1 THE COURT: Okay. Anything further from the State at
2 this time?

3 MR. RICHARDSON: No, sir.

4 THE COURT: Defense counsel?

5 MR. BROOKER: No, sir, Your Honor.

6 THE COURT: All right. Mr. Brooker, make sure you
7 provide her name and a number to the --

8 MR. BROOKER: I'm going to do that right now.

9 THE COURT: Now, listen. If he's got some other
10 disciplinary issues out there that I'm not aware of, you know,
11 that's the jail.

12 THE DEPUTY: There's no reason why he wouldn't be able to
13 call her because she comes and visits him twice a week. So
14 there's no reason why he wouldn't be able to call her.

15 THE DEFENDANT: They won't let me.

16 THE COURT: In the pod, they won't let you?

17 THE DEFENDANT: No. I went yesterday when I came to
18 trial and I said can I make a phone call to call my family.
19 Sgt. Miles called Lt. Baxter. No, you cannot call the victim.
20 I said she's not a victim. She's seen me twice a week for 22
21 months now.

22 THE COURT: Just make sure --

23 THE DEPUTY: They got her information because she comes
24 and visits him twice a week like clockwork. So there's no
25 reason for him not to be able to call her because I just

1 talked to one of the ladies at the front desk who do
2 visitation.

3 THE COURT: I don't think he'd be making that up to call
4 her. You know? Not at this stage.

5 THE DEPUTY: Now, unless he's asking for a phone call
6 that -- a regular phone call from a desk phone. Now, they
7 don't allow that. He'd have to call when he comes out on rec.
8 That's the only thing I can think of.

9 THE COURT: All right. Make sure he can call her tonight
10 somehow.

11 THE DEPUTY: Yes, sir.

12 THE COURT: Anything else?

13 MR. BROOKER: No, sir.

14 THE COURT: All right. If you all will be back at 9:30
15 in the morning, okay?

16 (WHEREUPON, the proceedings adjourned for the day at 4:24
17 p.m.)

18 APRIL 19, 2017

19 (WHEREUPON, the proceedings resumed at 9:59 a.m.)

20 THE COURT: Are we still waiting on some jurors?

21 THE BAILIFF: Two more.

22 THE COURT: Two more? Okay. How about hold them on the
23 outside, please?

24 THE BAILIFF: Yes, sir.

25 THE COURT: All right. I'm going to go ahead and rule on

1 the defendant's directed verdict motions.

2 All right. Yesterday, the State rested its case. The
3 defendant, at the conclusion of such, made a motion for a
4 directed verdict as to each of the seven counts of criminal
5 sexual conduct first degree. The Court certainly under the
6 law is concerned with the existence or nonexistence of
7 evidence, not its weight. The defendant is entitled to a
8 directed verdict if the State fails to produce evidence of the
9 offense charged.

10 I have meticulously -- myself and my law clerk have gone
11 through my notes pertaining to the charges as it relates to
12 this case. As to the defendant -- excuse me -- the victim,
13 Minor1 , there were four alleged counts against the defendant
14 as it relates to Minor1 , Count 4, 5, 6, and 7.

15 There was testimony elicited over the last couple days as
16 it relates to Minor1 that the defendant engaged in sexual
17 intercourse with her by placing his penis into her butt on
18 three separate occasions. There was testimony that the
19 defendant placed his private part in her private part at the
20 grandmother's house, as well as at the park.

21 Furthermore, there was testimony from Minor2 as it
22 relates to Minor1 and that Minor2 witnessed the defendant
23 place his private part in his -- in her sister's vagina one
24 time at grandmother's house. Furthermore, there was testimony
25 that the defendant placed his private in Minor1 's mouth once

1 at the Thunderbird. In addition, Minor2 testified on direct
2 that the defendant placed his private in Minor1 's mouth one
3 time at grandmom's.

4 As it relates to Minor2 , there was testimony -- well,
5 Count 3, Count 8, and Count 9 relate to Minor2 being the
6 victim.

7 There was testimony as it relates to Minor2 that the
8 defendant placed his private part in her private part at the
9 Thunderbird. That the defendant placed his private in her
10 mouth at mom's house and at the Thunderbird, and that the
11 defendant placed his private part in the victim at the
12 Thunderbird and at grandmom's house, and that the defendant
13 put his private in her private at least five times.

14 Therefore, in light of all the testimony the Court has
15 heard over the last couple days, the Court finds that there is
16 evidence that would warrant each of these charges or each of
17 these counts going to the jury and, therefore, the Court
18 respectfully denies defendant's motion for directed verdict.

19 Now, having ruled on defendant's motions for directed
20 verdict, I will now come back to Mr. Ross concerning his
21 desire to testify. Mr. Ross, if you would stand, please, sir?

22 (WHEREUPON, the defendant complied.)

23 THE COURT: Yesterday, at the conclusion -- at the
24 conclusion of the day, I advised Mr. Ross of his
25 constitutional rights and his right to testify or not testify.

1 I gave him the overnight break to discuss such with his
2 attorney.

3 Mr. Ross, have you had an opportunity to talk with your
4 -- well, let me advise you you are still under oath. Do you
5 understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand -- or have you had an
8 opportunity to talk with your lawyer concerning your right to
9 testify?

10 THE DEFENDANT: Yes, I have.

11 THE COURT: Do you need any more time to talk to him?

12 THE DEFENDANT: No.

13 THE COURT: All right. At the conclusion yesterday, Mr.
14 Ross inquired of the Court as to his ability to talk with
15 family. I asked the jail to check on that. I was advised
16 this morning by the jail, Mr. Ross, that the entire pod -- not
17 just you, but the entire pod was on lockdown and that was why
18 there was some issues pertaining to the use of phones in that
19 pod. But do you need any additional time to talk to your
20 lawyer?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you wish to testify in the trial of your
23 case?

24 THE DEFENDANT: No.

25 THE COURT: Okay. All right. You may have a seat, sir.

1 THE DEFENDANT: Thank you.

2 THE COURT: Anything further, Mr. Brooker?

3 MR. BROOKER: Your Honor, we plan to call or recall
4 Investigator Floyd and that's going to be about two minutes.

5 THE COURT: Okay. Mr. Richardson, anything?

6 MR. RICHARDSON: No, sir.

7 THE COURT: All right. Mr. Sammy, if you would, check
8 and see if our other two jurors are here.

9 THE BAILIFF: Yes, sir.

10 THE COURT: If so, let's go ahead and bring them in. Let
11 me talk to the lawyers. I'm going to talk to the lawyers in
12 chambers about the charge. Okay? And verdict form.

13 We'll stand down while they bring in, hopefully, these
14 two jurors. We were advised that there was a pretty bad
15 accident on Highway 52 and that that may be some holdup. I
16 know it was an issue coming from Effingham.

17 (WHEREUPON, there was a break in the proceedings from
18 10:07 a.m. until 10:54 a.m., after which the proceedings
19 resumed as follows.)

20 THE COURT: Have we got all the jurors?

21 THE BAILIFF: Yes, sir.

22 THE COURT: All right.

23 THE BAILIFF: All right. Foreperson.

24 THE COURT: All right. Thank you. All right. Anything
25 from the State before I bring the jury out?

1 MR. RICHARDSON: No, sir.

2 THE COURT: Defense counsel? Mr. Brooker, anything
3 before I bring the jury out?

4 MR. BROOKER: No, sir, Your Honor.

5 THE COURT: All right. Bring me the jury, please.

6 THE BAILIFF: Yes, sir.

7 (WHEREUPON, the jury entered the courtroom at 10:55 a.m.)

8 THE COURT: Good morning, ladies and gentlemen. I
9 apologize for you all having to wait back there a while. I
10 appreciate you being here when I asked you to be here. I had
11 a look at the clock to make sure I was going to say good
12 morning instead of good afternoon. So I apologize for that.

13 I'm going to note for the record that Ms. Alexander,
14 Juror Number 5, is our -- is your forelady. All right. She's
15 your forelady, will be the forelady of this jury. The court
16 reporter --

17 (WHEREUPON, the jury note regarding the foreperson was
18 marked as Court's Exhibit Number 2.)

19 THE COURT: When we broke yesterday, the State had rested
20 its case. The State had presented its case. At this time, we
21 are going to proceed with the trial of this case and I'm going
22 to recognize defense counsel. Mr. Brooker, call your first
23 witness.

24 MR. BROOKER: Thank you, Your Honor. We'd like to recall
25 Ms. Jennifer Floyd to the stand.

JENNIFER FLOYD LEE - DIRECT BY MR. BROOKER

1 THE COURT: All right. Ma'am, if you'll come -- come
2 around to be re-sworn, please.

3 THE CLERK: Do you swear the testimony you give in this
4 case to be the truth, the whole truth, and nothing but the
5 truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Please be seated and state your name again
8 for the record.

9 THE WITNESS: Jennifer Floyd, also known as Lee.

10 JENNIFER FLOYD LEE, being first
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BROOKER:

14 Q: Which do you prefer? Lee or Floyd?

15 A: Is my husband present? Floyd. I'll go by Floyd.

16 Q: I'm going to call you Ms. Lee. Okay? Ms. Lee, you
17 testified -- if you remember, you testified previously during
18 the State's case in chief; is that correct?

19 A: I'm sorry?

20 Q: You testified previously during the State's case in
21 chief; is that correct?

22 A: Yes.

23 Q: And, of course, is is that, if my memory serves me
24 correctly, what was your -- what was your role in this
25 investigation? Were you the investigator at that time?

JENNIFER FLOYD LEE - DIRECT BY MR. BROOKER

- 1 A: That's correct.
- 2 Q: Okay. And, of course, there's just a couple of questions
3 that we neglected to ask you is is that were you in the -- in
4 the courtroom when -- and I believe it was Minor1 testified
5 that she was shown some pornography on a -- on a cell phone?
- 6 A: That's correct. I've been in the courtroom.
- 7 Q: Okay. During the course of your investigation, did you
8 obtain any warrants?
- 9 A: I did.
- 10 Q: Okay. And what did you obtain warrants for?
- 11 A: Cell phones.
- 12 Q: Okay. Was those warrants served?
- 13 A: Those warrants were.
- 14 Q: Were cell phones collected?
- 15 A: They were.
- 16 Q: Okay. And then, of course, this is what I don't know and
17 can you explain to me is is that -- so how many cell phones
18 were collected?
- 19 A: You would have to pull the search warrant for me to be
20 very accurate.
- 21 Q: Okay.
- 22 A: I'm sorry.
- 23 Q: Okay. And I can let you take a look at it if you need to
24 refresh your memory?
- 25 A: I do.

JENNIFER FLOYD LEE - DIRECT BY MR. BROOKER

1 Q: Okay.

2 A: On this search warrant, it appears -- I'm assuming that's
3 two cell phones, one Samsung, one Verizon. And then -- let me
4 make sure this is not the same one. Another Samsung.

5 Q: Okay.

6 A: So three cell phones.

7 Q: Okay. Okay. Three cell phones?

8 A: That's correct.

9 Q: Okay. And then, of course, is is that -- and you
10 collected those cell phones to -- to try to -- or explain to
11 me why did you collect the cell phones?

12 A: Due to the children saying they were shown videos on the
13 cell phones.

14 Q: Okay. Were any videos found on those cell phones?

15 A: I turned those cell phones over to another forensic
16 investigator, who is qualified to review those cell phones,
17 and a warrant was completed, but there is not a status in the
18 case file, if he reviewed those or what his findings were.

19 Q: Okay. Okay. So -- so what you're saying is that you
20 have no idea whether or not those cell phones was examined or
21 not?

22 A: That's correct.

23 Q: Okay. And so you don't know what -- and let me ask you
24 this is is that have you reviewed the case file in preparation
25 for this case?

JENNIFER FLOYD LEE - DIRECT BY MR. BROOKER

1 A: Not completely. I'm sorry. I was out of -- out of state
2 last week.

3 Q: Okay. Did you -- you said you didn't complete it --
4 review it completely?

5 A: No, sir.

6 Q: From the portions of the file that you reviewed, was
7 there any indication that any pornography was found on the
8 cell phones?

9 A: Not from that investigator. He did not do a narrative.
10 I'm sorry.

11 Q: Okay.

12 MR. BROOKER: No further questions, Your Honor.

13 THE COURT: Mr. Richardson?

14 MR. RICHARDSON: Nothing, Judge.

15 THE COURT: You may step down. Mr. Brooker?

16 MR. BROOKER: Nothing further, Your Honor.

17 THE COURT: All right. Does defense counsel rest?

18 MR. BROOKER: Yes, sir.

19 THE COURT: All right. Ladies and gentlemen, you have
20 now heard all the testimony and evidence that's going to be
21 presented in this trial. At this time -- or that which
22 remains is closing arguments by counsel and then my charge on
23 the law as it relates to this case and then the case will be
24 given to you all to -- to determine a verdict.

25 I will remind you that the -- well, I'll tell you that

1 the order in which we will proceed from here will be the State
2 will open its closing argument, defense counsel will follow
3 with his closing argument, and then the State will have an
4 opportunity to reply. After that is concluded, then I'm going
5 to give you a charge on the law as it relates to this case and
6 then the case will be given to you all to deliberate and reach
7 a verdict.

8 Before we go forward, Mr. Brooker --

9 MR. BROOKER: Your Honor, we just would simply like to
10 renew the motions that we made previously at the conclusion of
11 the State's case.

12 THE COURT: All right. Well, for the record, all prior
13 objections and motions are hereby recognized, defense counsel
14 having renewed such motions and objections. The Court's
15 rulings remain the same as to each ruling and, therefore, we
16 are now going to proceed. The State is so recognized for
17 closing argument.

18 MR. RICHARDSON: Thank you, Judge.

19 THE COURT: Yes, sir.

20 CLOSING ARGUMENT ON BEHALF OF THE STATE

21 MR. RICHARDSON: Folks, you've heard a lot of difficult
22 stuff over the last couple of days, difficult in more ways
23 than one, and I can imagine as you sit there listening to what
24 you've heard from this witness stand that -- you know,
25 especially when we started on Monday.

1 Minor1 , the first twin to testify -- she was kind
2 of all over the place in her testimony from the stand. This
3 happened. You know, he put his private part in my private
4 part. Okay. Well, tell me about it. Well, he -- he tried,
5 but I told him no and I run and told mom. You know? That's
6 kind of how it went over and over again.

7 Then Mr. Brooker confronted her with previous statements
8 that she had made where she, you know, gave these full
9 disclosures about what happened to her and, you know, she
10 would -- well, yes, that happened and then, when pressed for
11 details, she was reticent to give them.

12 She did not have a problem giving you details about what
13 she saw happened to her sister. She clearly stated that she
14 came out of a bathroom at a hotel and saw her father on top of
15 her sister, Minor2 , with his penis in her mouth. She came
16 off of that quick, probably because it didn't happen to her.
17 In fact, she was asked or she made mention on cross-
18 examination that she didn't tell me the details about what
19 happened to her because she didn't want me to find out. Then
20 when I asked her why she didn't want me to know, she says I'm
21 shy.

22 It's got to be -- it's got to be difficult for anybody to
23 sit in that chair and talk about this kind of stuff, but for
24 an 11-year-old little girl, who is probably not quite -- not
25 very experienced in court and how all this stuff works, it's

1 got to be just petrifying.

2 So, you know, she -- that was a difficult afternoon.

3 I'll give you that. Yesterday morning went a little bit

4 differently. Minor2 -- now, I will say you heard from the

5 mother that Minor1 is in resource classes at school and you

6 take that, you know, for -- for what it's worth to you.

7 Minor2 , on the other hand, is in regular classes and I

8 think her testimony was better put together. It seemed like

9 her memory was a bit more intact because you remember this

10 stuff happened years ago. I mean they disclosed this stuff

11 when they were eight and we've gone through the process of,

12 you know, how these things work and they've gone through all

13 these examinations and interviews and all this stuff and

14 finally we end up before you guys some three years later.

15 So now they're eleven. And I don't know what experience

16 you guys have with young kids and asking them when something

17 happened and the time something happened, the day something

18 happened. I know my -- my kid. Everything that happened in

19 the past happened yesterday. Do you remember yesterday when

20 we did this? And it's something that happened six months ago.

21 So it's very difficult with -- with kids when we're dealing

22 with concrete times and all this kind of stuff.

23 But Minor2 was able to put things together quite a bit

24 better I think than Minor1 was able to, although they listed

25 the same exact locations that these events took place, various

1 hotel rooms, in the car at various places, outside of
2 grandma's house, outside at a park, but we have multiple
3 instances and I'll go through with you testimony from Minor1 .

4 Either through when I asked her questions or Mr. Brooker
5 asked her questions, she stated at some point that her
6 father's penis was put in her butt three times, his penis in
7 her vagina two times, and then she saw Minor2 have her father
8 put his penis in Minor2 's mouth in a hotel room on the bed.

9 Then Minor2 testified she saw what happened to Minor1 .
10 She saw her father put his penis in Minor1 's vagina once
11 outside at grandma's, saw her father put his penis in
12 Minor1 's mouth once at the Thunderbird, and saw him put his
13 penis in Minor1 's mouth once outside of grandma's house.

14 Then Minor2 , testifying about herself, said that her
15 father put his penis in her vagina at the Thunderbird, put his
16 penis in her mouth at the Thunderbird and at mom's house, put
17 his penis in her vagina at the Thunderbird and at grandma's
18 house and, as a total, she estimated he put his penis in her
19 vagina about five times total over a period of time.

20 Testimony was this stuff happened when they were seven
21 and eight. That fits in the timeframe alleged in the
22 indictment, the years 2013 and early 2014, that area and, when
23 you're dealing with kids testifying, it's a bit different, as
24 I mentioned. You know, the memories are tough for them, times
25 are tough for them; so you have to look at little details that

1 a kid can offer, something that a kid ought not know about.
2 Words that they use. Scenarios that they discuss in the only
3 way a kid would discuss, and there were a few things that
4 stuck out to me that -- that give some light to what they were
5 talking about.

6 The first thing and probably the biggest was when Minor2
7 was on the stand yesterday and she was being cross-examined by
8 Mr. Brooker. She was asked a question something along the
9 lines of what did her father's private parts look like and she
10 gave a very strange answer that I don't know anybody was
11 expecting. She said he had a scar on it and I don't know if
12 y'all picked up on that or remember that, but she said he had
13 a scar and that wasn't something I asked her about. That was
14 something that came out on cross-examination.

15 So then when mama testified, I asked her if she was aware
16 of any sort of scar or injuries or something to Mr. Ross's
17 genitalia. Sure enough, she said he had some sort of
18 procedure or surgery that left a long scar on his private
19 parts. How is Minor2 going to know that his genitalia is
20 scarred if she's making all this up?

21 She testified about seeing the white stuff come out of
22 his private parts and, of course, she's a kid. She doesn't
23 know the proper term for it I guess, but she just knows it was
24 white. And not only did she testify about what it looked like
25 when he had his penis in her mouth, she testified about when

1 he would insert himself into her vagina and butt what it felt
2 like and she used a particular word: squishy. That's a kid
3 word, but think about that in the context of sexual
4 intercourse, you know. How must that -- you know, to have
5 this new sensation years too early of this substance on her
6 body and all she knows to describe it is squishy, and she
7 said, you know, she looked down and it was just all over her.

8 How would she make that up?

9 She described her father's penis as being hard. Again,
10 how would she know that, when this is happening at eight years
11 old, the difference, being soft, hard? How would she know
12 that that's a thing?

13 She mentioned that -- or both kids mentioned that their
14 father showed them videos of people having sex, I suppose as a
15 tutorial. Who knows? Giving them examples of what to do, how
16 to do it, maybe make them think it was okay. But it's -- it's
17 awful.

18 And I want you to discuss or consider this when you go
19 back in the jury room. If they made this up, why carry it
20 this far? It's simple for a kid to, you know, on the
21 playground or at the house in the backyard to come in and say,
22 you know, so-and-so hit me or, you know, come up with some
23 tall tale, but what eight-year-old kid goes through the
24 following things? Okay? You tell your mom that your dad has
25 been doing things to you between your legs. You know, they

1 overheard mom's conversation with her mom about, you know, her
2 complaints about his sexual demands. They come in. He's been
3 doing that to me too.

4 So you tell your mom. Okay. You know, first, why would
5 they do that? What do they have against dad? Okay? Is it
6 some conspiracy? Is mom in on this? Is she pumping them full
7 of this stuff trying to get them to turn on dad for some
8 revenge or something? So maybe it's -- well, what if it
9 started that way? Okay. How long could a kid go before they
10 break? And look at all the stuff these kids have been through
11 carrying on these details and these events.

12 We start off they tell mom. That's got to be tough. You
13 know, she -- even mom mentioned it. They still ask about
14 their dad and want to, you know, see him. There's got to be
15 some love there. I mean he's their -- their real father.

16 So they tell mom. Then the police come out and they've
17 got to tell the police. Then they ride around to various
18 locations in town. Yeah, here's the hotel, the Thunderbird,
19 this and this and this happened here. Here's the park he used
20 to take us to. This and this and this happened there. Here's
21 grandma's house. This and this and this happened there.
22 Here's the Howard Johnson. This, this and this happened
23 there. Okay. So they told the police.

24 The next thing they've got to do is go to the Care House,
25 the place in Florence where they get interviewed about this

1 stuff and go through all these details with a complete
2 stranger again. Then they've got to go get a physical exam,
3 get poked and prodded, and you heard from the doctor yesterday
4 about how apprehensive and nervous they were or at least
5 Minor2 with people looking at her and running all these tests
6 on her.

7 Why maintain a lie? Why not just half out? Hey, you
8 know, look, this has gone far enough. I made this stuff up,
9 you know, and I don't want to go through no more. No. They
10 went through all that stuff with it.

11 Then they go through this years' long process. They are
12 eleven now. They've got to come in here and not only sit in
13 front of a box full of strangers, strangers, strangers, and
14 say this stuff, but they've got to sit in front of their dad,
15 who they're accusing, and call him out in person. Why? For
16 what? What would they gain by doing this to their dad if he's
17 just a complete victim here, you know?

18 This has gone on for years. This isn't a little kid in
19 the backyard saying Johnny hit me, well, no, he didn't. This
20 is years. This is trauma. This is multiple processes in
21 front of strangers, getting their bodies examined, all this
22 stuff. For what? What's their motivation to come up with all
23 these fanciful things about scars and white stuff and squishy
24 feeling all over them and seeing all these things happen to
25 each other, talking about these things happening to

1 themselves?

2 Discuss that. Come up with a reason why they would make
3 that up and go through what they have been through in an
4 effort to tell you. They have done all they can do to let
5 somebody know. They have done everything they can do to help
6 themselves get past this, get through this.

7 It's no longer up to them what happens with their dad.
8 They can do no more about it. The only people who can do
9 anything now? You guys.

10 Esther Lewis calls the police immediately, gets the
11 runaround. Well, you're not in the right jurisdiction. You
12 know, we'll send you to the Sheriff's Office.

13 So she follows up with the Sheriff's Office. She
14 cooperates in the investigation. She's riding her kids around
15 with law enforcement, going to these places where it happened.
16 She takes them to the Care House, making sure they get the
17 interviews done. She takes them to the physical exams,
18 putting them through that because she wants to make sure she
19 covers it.

20 How does a mom respond when they hear that from their
21 kid? It would be bad enough if they heard their kids say,
22 well, my neighbor did this to me or my babysitter did this to
23 me, but she had her faith in this guy. He's the dad. She's
24 off at work thinking they're okay because she's leaving them
25 with dad. Imagine how she feels having this go on for the

1 period of time that it went on and she just had no idea.

2 But she didn't rest on her laurels. She found out and
3 went into action immediately and has stayed. She didn't have
4 to be here today. She's sitting right there. She's done.
5 She's already testified.

6 But she's done all she can do. She stood up for her
7 kids. She's trying to protect her kids. She got up here in
8 front of a group of strangers and in front of the guy she used
9 to love and told you my kids are different. I noticed it
10 before I knew about this. I didn't know why. Minor1 has
11 become aggressive at school. Minor2 wakes up screaming. It
12 takes me, my mom, and dad to calm her down and this has been
13 going on and on and on. I didn't know why. Now, she knows
14 why.

15 You heard from Dr. Abel, who did an excellent job
16 explaining how injuries result, when they result from sexual
17 assaults, you know, where there's force involved, not force
18 involved. She said, as I recall, in typical -- what she
19 called acute cases where reports are made within 72 hours
20 after an assault takes place, you still -- even when it's
21 close like that, you only have about 20 to 30 percent rate of
22 discovering any sort of injury.

23 Well, these kids disclosed to their mom. She couldn't
24 remember the exact time. She said it was hot outside. Well,
25 they end up going to the Care House, like, in September and

1 then they don't have their physical exams until the end of
2 November of 2014. So months went by, months and months went
3 by.

4 So by the time they get seen in Charleston, one child has
5 no signs of anything, the other has these hymen mounds, which
6 may or may not be from sexual assault. They can't say because
7 they can occur naturally. You know, maybe it is, maybe it
8 isn't, but it's not specific as to a finding. But they heal
9 and she talked about how quickly the vagina heals and the
10 hymen just comes together as if nothing ever happened and the
11 anus just heals nearly immediately within days.

12 The body heals; the mind may be a different story. But I
13 ask you to take into consideration the totality of these
14 things. Think outside of the box. Why would these kids say
15 this stuff? Why would they go through all this stuff?

16 And the charge -- the seven counts with the same offense,
17 criminal sexual conduct with a minor in the first degree, it's
18 rough. The allegations are rough. I mean you've got to --
19 you've got to have a child under the age of eleven, which they
20 were eight when they came -- when they came forward. You've
21 got to have a sexual battery, which is penetration of the
22 vagina or anus or oral sex, and the penetration doesn't have
23 to be full. I mean it doesn't have to be complete. It can be
24 however slight. That's the legalese in this law.
25 Penetration, however slight.

1 So, you know, a little child who has no sexual
2 experience, when somebody tries to put a penis inside of them,
3 do they know if it goes all the way in or if it's just a
4 little bit of the way in? And the law takes that into
5 consideration because that doesn't matter. The penetration
6 only has to be however slight.

7 So seven counts of this, separate and distinct, that
8 you'll be considering and I went over them with you and I
9 don't need to go over them again. I mean there are multiple
10 acts of oral, anal, and vaginal penetration, things that 8-
11 year-olds should not know about and should not be on their
12 minds.

13 So I ask you to take all that in the jury room, see what
14 makes sense. I know some of the testimony was all over the
15 place. I know it may have gotten confusing at times. It was
16 confusing at times for me sitting there when I wasn't asking
17 the questions.

18 But look at the witnesses for who they are and figure out
19 why. Ask yourselves these questions. And I ask you when you
20 get back in that jury room -- some of you may feel like he's
21 guilty beyond a reasonable doubt right off the bat. I hope
22 so. But that's the burden we have to show, proof beyond a
23 reasonable doubt of his guilt, and what that means is, based
24 on what you have learned in this case, are you firmly
25 convinced that he did it?

1 So some of you may feel that way right off the bat.
2 Others may have some questions and may need to take some time
3 to talk it out. Do that because this case -- the result is
4 impactful.

5 I'll turn things over to Mr. Brooker at this point and
6 I'll be back with you.

7 THE COURT: Mr. Brooker?

8 MR. BROOKER: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

11 MR. BROOKER: Let me start off at least by addressing one
12 thing that Mr. Richardson said at the conclusion of his case
13 when he sat down and he said the results of this case is
14 impactful and I almost stood up at that particular point in
15 time because that's not appropriate. And the reason why is
16 one of the things I explained or one of the things I said to
17 you at the beginning of this case and that was is is that
18 emotion has no place in the jury room and, of course, that was
19 an attempt to evoke emotion and passion. That's not your job.
20 You can't have that in order for the judicial system to work.

21 The judge is going to instruct you -- Judge Brown is
22 going to instruct you on the law in just a minute and after we
23 conclude these closing arguments, and he's going to say some
24 things to you that, one, he said to you at the -- at the
25 outset of this case. I think the initial instructions before

1 we got up here and did our remarks and, again, some of this
2 stuff because it's so important, so important, you know, to
3 our criminal justice system that it bears repeating.

4 One of the most important things he said to you was is,
5 if my memory serves me correctly, the functions of lawyers.
6 What's our role here? Closing and opening remarks. Lawyers
7 are not witnesses. Lawyers do not give testimony in
8 connection with any case. Anything that we say to you is not
9 evidence.

10 And generally, what I like to tell jurors is is that
11 lawyers are facilitators. Our job is -- is to take what
12 evidence that's been presented in connection with the case or
13 lack thereof and try and present it to the jury in some sort
14 of orderly recognizable way so that you can process it. But
15 we're not witnesses. We're not witnesses. We can't testify.
16 Okay?

17 Without being said -- with that being said, let's go on
18 and talk a little bit more about this case. You heard me at
19 the beginning of the case as I talked about -- talked about
20 the concept -- and it's not just a concept. I'm sorry I even
21 used that word concept. It is a living, breathing thing, and
22 that is -- and that is guilt -- innocence until proven guilty.
23 That's not some theoretical concept. That is an actually
24 living, breathing thing. It has to be alive in order for us
25 to have a function in the judicial system. It has to be alive

1 in order for us to have a function in the judicial system.

2 As Vance Ross sits there, he is innocent. He wears the
3 same robe or cloak of innocence that each and every one of us
4 wears, and he still has it on now. Although you can't see it,
5 we all wear it. And although you can't see it, we all wear it
6 every day. It's on you right now. It's on me. It's on every
7 person in this room. It's on Mr. Ross. It's on everybody.

8 And I hate when I call that a concept. It's not. It's a
9 living thing. It's alive.

10 In order for the State to deprive someone, you know, of
11 their rights and their freedom, they have to remove that
12 cloak. They have to remove that robe of innocence. They have
13 to strip it off one's body, and the way they do that is by
14 proof beyond a reasonable doubt.

15 And what I also explained to you and the judge is going
16 to explain to you, that's the highest burden that we have in
17 our judicial system and it should be high. It should be high
18 because we're dealing with the most important right of an
19 individual. It is a very high burden and it's been expressed
20 in many different ways or defined in many different ways.

21 Mr. Richardson said -- explained to you in one way. He
22 says, well, in order for you to reach that burden, you have to
23 be firmly convinced of guilt. It's also been expressed as in
24 terms is is that a reasonable doubt is the type of doubt that
25 causes a person to hesitate. That is another definition.

1 Causes a person to hesitate.

2 And it simply means is is that when you're thinking about
3 or contemplating the evidence or the lack of evidence in
4 connection with this case, do you have reasonable doubt? Do
5 you have hesitation to act? Well, you should.

6 If you were sitting in the same courtroom as I was and
7 heard the same evidence or lack thereof that I heard, you
8 would have reason to hesitate. That's what -- that's what
9 reasonable doubt means. A reasonable person hesitating to
10 act. It's uncertainty. All uncertainty has -- has not --
11 doesn't have to be eliminated, but it's reasonable
12 uncertainty. That's what we're dealing with here.

13 Now, let's talk a little bit about the evidence and why
14 there is reasonable uncertainty, why there is reasonable
15 doubt. And, of course, is is that Mr. Richardson I think
16 explained to you, well -- or I think Mr. Richardson said to
17 you, well, there was a lot of problems with the testimony. It
18 was inconsistent. It didn't match up.

19 There was events that allegedly took place where -- where
20 either Minor1 or Minor2 's testified that, hey, it took place
21 and then, of course, sometimes even before they even left the
22 stand on a similar or exact question saying, no, it didn't
23 take place. And so there was a tremendous amount of
24 contradiction and that contradiction was based upon the
25 testimony that they gave from the stand, the testimony that

1 they gave in front of Mr. Richardson first, the testimony that
2 they gave to me.

3 If you could remember is that sometimes I would say to
4 them -- well, not sometimes. It was quite often, you know.
5 Well, you know, you testified to this to Mr. Richardson and
6 you testified to this to me, and they're not the same. You
7 know, they're not consistent statements. Both of them can't
8 be true.

9 And I did that over and over again and then, of course,
10 you heard me also making references to Sally Williamson and
11 sometimes, if you can remember, I screwed up her name a lot.
12 I called her Sally Richardson, but Sally Williamson. And you
13 heard me testifying, well, do you remember being interviewed
14 by Sally Richardson [sic]? Do you remember going for a
15 forensic interview and do you remember saying this to Sally
16 Richardson and then you said this -- excuse me -- Sally
17 Williamson and then you said this to Mr. Richardson and then
18 you said something completely different to me? And we did
19 that over and over and over and over and over again.

20 I'm going to give you some examples of that, but I can't
21 go through all of it because I can't remember all of the --
22 all of the inconsistencies because they were too voluminous.
23 There was so much of it.

24 Now, Mr. Richardson says, well, they were young girls and
25 they were scared and they're frightened. Absolutely. It's

1 okay to be nervous. And I think even one time he asked her,
2 you know, whether or not she was nervous and I think that was
3 Minor1 . She said, no, she's fine. But even though she said
4 that, that's normal for young people to be nervous. It's
5 normal for adults to be nervous.

6 But one thing about being nervous is is that nervousness
7 never changes the truth. I'm nervous when I speak the truth
8 sometimes, but it never changes. The facts never changes
9 [sic]. Nervousness doesn't change the facts. It never does.

10 And some of the facts were is is that I think Mr.
11 Richardson said they testified that they were -- that it
12 happened when they were seven and eight and, of course, is is
13 that I said, well, don't you remember when you talked with Ms.
14 Williamson and you said it started when you were four? And
15 then she said, that's right.

16 And then, of course, is is that one of them said -- I
17 think it was -- it may have been Minor1 who says, well, the
18 first time it happened -- is is that I think she testified to
19 the fact that when it happened outside of grandmom's house and
20 grandmom and mom was in the house and that while dad was
21 trying to molest her that -- that her sister, Minor2 , ran in
22 the house and told mom. Mom says, no, that never happened.

23 She testified that one time when I heard dad try to
24 molest her at the house and mom caught dad and mom told -- mom
25 got mad at dad and told dad not to do that. And mom says no,

1 that didn't happen.

2 And then, of course, is is that she testified on direct
3 examination when she was asked about rectal penetration and
4 she told Mr. Richardson, no, it didn't happen. And then, of
5 course, I said, well, do you remember telling Ms. Richardson
6 -- Sally Richardson -- excuse me -- Sally Williamson -- I will
7 get this right eventually -- Sally Williamson that it happened
8 three times?

9 And then, of course, is is that we asked her, well, where
10 were all the places that it took place and she said grandmom's
11 house, the park, and then the hotel. And then, of course, is
12 remember I said -- well, I said, well, do you remember talking
13 to Sally Richardson when you told -- Sally Williamson that it
14 didn't just happen at grandmom's house and the park and the
15 motel, but it happened at mom's house, it happened at -- I
16 think she said the bus stop. And they would say, oh, well,
17 you're right and I would say, well, can you understand how
18 these two statements are not accurate?

19 And there was tons and tons and tons of that. And, of
20 course, I'm going to rely -- I'm going to ask you to rely on
21 your memory about those instances because they were numerous.
22 They were numerous.

23 Well, does children sometimes say things that are not
24 true? And I think common sense is yes, but the question then
25 becomes is why and you're probably asking yourself if these

1 things are not factual, then why? Then why?

2 And then, of course, is is that Mr. Richardson would have
3 you speculate. He would say to you, well, maybe it's because
4 of this reason or maybe it's because of that reason. Go back
5 and speculate. Forget about proof beyond a reasonable doubt.
6 Go back and speculate.

7 Forget the fact that this is a 200-piece puzzle and you
8 have only 89 pieces. Well, speculate about the rest. Fill in
9 the rest with your speculation.

10 That is absolutely something that you can't do. That is
11 against our entire and complete system of justice of proof
12 beyond a reasonable doubt. Speculation is not the place.
13 Speculation has no place in the jury room. None whatsoever.

14 And I even asked Investigator Floyd or Lee, who was the
15 investigator in that case, is that what is your child sex --
16 what is your -- your -- your -- your child sexual harassment
17 investigation protocol? Do you have a written one when you
18 were at the Sheriff's Department? She says, no, we had a
19 verbal one. We had stuff that we do.

20 I says, well, did you send the kids for a psychological
21 examination? No, we didn't do that. I asked mom the same
22 question. I said, mom, well, isn't it true that you were
23 asking to have these kids psychologically examined? She said,
24 yeah, she may have done that, asked for a psychological
25 examination.

1 But Mr. Richardson says just go in and speculate. Just
2 go back and speculate. I can't explain it, so let's
3 speculate. I don't know why, so let's speculate. That's what
4 he says. Our system of justice does not allow that.
5 Speculation has no place in the jury room.

6 Now, the children also said other inconsistencies too.
7 Like I said, I'm not going to go into all of that that the
8 investigator -- the children said that dad showed them --
9 showed them porno -- pornographic videos on a cell phone and,
10 of course, you heard Investigator Lee, that I brought her up
11 and recalled her so I could ask her that very question.

12 Did you obtain search warrants? Yes. Did you acquire
13 cell phones from Vance Ross? Yes. I think she testified she
14 got at least three cell phones, maybe four cell phones, from
15 him.

16 And what's the purpose of that? So you can go through
17 those cell phones and look and see whether or not there was
18 any pornography on there.

19 And I asked her, you know, did she review the file.
20 Although she had left, did you review the file, you know, in
21 preparation for this case and did you see anything in that
22 file that suggests that those -- that evidence of pornography
23 was found on the cell phones? She says no.

24 Well, it may not have done any good anyway is because
25 when the kids came here, I think -- I think Minor 1 said --

1 she testified on the stand that dad showed her pornography at
2 the Thunderbird hotel room on his cell phone and, if you can
3 remember, I asked her, well, do you remember talking with Ms.
4 Sally Williamson and you told Ms. Sally Williamson that dad
5 showed you pornography at mom's house in the bedroom on mom's
6 TV?

7 And then, of course, Minor2 testified to the same thing.

8 Dad showed me pornography on the cell phone. And I asked her
9 the same thing. Well, do you remember talking to Ms. Sally
10 Williamson and telling her, you know, that dad showed you
11 pornography and I believe it was on a computer?

12 I can't explain everything in connection with this case
13 and I don't think the State can either. There's so much that
14 they can't explain because there wasn't a complete and
15 thorough investigation. Those children should have been sent
16 for a psychological examination. They should have. No
17 explanation as to why.

18 Now, there's some other problems too. So mom gets up and
19 mom testifies that as soon as the kids told me, even though
20 the kids said that they told her when it first happened -- I
21 think it was Minor1 who said that the first time it happened
22 that mom caught dad and mom fussed at dad and then Minor1
23 said that when -- when -- when dad was trying to molest me in
24 the car outside of grandmom's house and -- and -- and -- and
25 my sister ran in and told mom and then mom knew then.

1 Well, mom says the first time she heard it is when she
2 was talking on the phone with her mother and she was talking
3 about she wanting to break up with Mr. Ross, with Vance,
4 because Vance wanted her to engage in this -- he had this, you
5 know, sexual appetite that she felt she couldn't fill.

6 And she says then one of the -- one of the girls
7 overheard and says, yeah, well, dad asked me to do that stuff
8 too and she said she instantly went and called law enforcement
9 and then we learned later when I got on cross-examination she
10 said she instantly went and called the Sheriff's Department.
11 That wasn't true. That she had reported this to the city
12 police department months earlier. Months earlier. And that
13 the city police department had closed their files without any
14 referral.

15 And then she said, well, oh, yeah, I talked with them at
16 the city police department and they just says this is outside
17 of their jurisdiction. Well, logic speaks is is that if the
18 city police department is called out to a murder and it's
19 outside of their jurisdiction, do you think it's logical for
20 the city police department to say, well, call the Sheriff's
21 Department about the murder and take no action and then you
22 take months later to call the Sheriff's Department about the
23 murder?

24 First of all, I think logically the city police
25 department would pick up the phone and call the sheriff itself

1 and report such a serious crime. I even think logically the
2 city police department -- and that's why I asked her. Well,
3 the allegations was that this occurred, you know, at the
4 Thunderbird and at the Suburban. That's in the -- I think
5 that's in the city limits. And why would there be months
6 between -- months between reporting?

7 And then mom says, well, I broke up with him because,
8 yeah, you know, his sexual -- you know, his sexual appetite
9 was too great. And then, of course, I said, well, mom, isn't
10 -- that's not true, mom, is it? The reason why y'all broke up
11 and he left you is because you were cheating and then she
12 says, well, yeah, but we both was cheating. We both did it.
13 He was creeping out too. That's what her explanation was.

14 Now, at this point, we don't have reasonable doubt. I
15 mean we don't have proof beyond a reasonable doubt, not even
16 close, and remember when I talked about science at the
17 beginning in my opening remarks? I said you can't be driven
18 by compassion. I said courtrooms is about science and
19 evidence and proof. That's what our justice system is about.
20 We are not like some countries, you know, where you can be
21 convicted on speculation, innuendo. No. Our system is built
22 on science and proof. Okay?

23 Where's the science that comes in here? Well, they get
24 sent to -- and I think we've already talked about they had the
25 forensic interview with Ms. Sally Williamson and, of course,

1 that was the source of a lot of the inconsistencies that was
2 pointed out. I mean just broad inconsistencies. I mean very
3 broad.

4 Well, they also went and saw the Medical University of
5 South Carolina for a forensic examination and, of course, Mr.
6 Richardson mentioned that. Both girls did and, of course,
7 that was Dr. Abel that was on the stand, if you can remember.

8 And, of course, is is that -- and, of course, those
9 reports were sent to us and, of course, is, if you remember, I
10 asked Dr. Abel with respect to Minor 1, tell me about the
11 examinations, you know, the -- the protocol of the
12 examinations that the kids go through when there is a report
13 of sexual assault. If you can remember, she went through all
14 of these list of things that, you know, MUSC goes through, the
15 science of it to try to identify sexual assault.

16 And, of course, she remembered specifically talking about
17 the lab exams or at least talked about the lab -- the lab
18 examinations that they've done or the lab swabs that they do
19 and, of course, both testing for urinary -- urine testings for
20 chlamydia and gonorrhea and trichomonas, negative. Rectal
21 examination, negative. Oral examination, negative. Says it's
22 all normal. She said, yeah, it's all normal.

23 Says, well, let's talk about the physical examination.
24 Of course, you remember her. Dr. Abel talked about normally
25 the way the physical examination is performed is is that they

1 take the kids and lay them on their backs and, of course, have
2 their legs up in a -- in a frog position so -- so that they
3 could have a, you know, full view of the vaginal -- the
4 vaginal region and anal region and, of course, is that she
5 testified is is that although she did not perform the
6 examinations, that they take film and they -- although she did
7 not perform the examinations, but she looked at the -- looked
8 at the film and the results that was performed by her
9 assistant and agreed with them.

10 And, of course, is I -- if you can remember, I read her
11 what was on her report with respect to -- and I think this was
12 -- this was -- the child was -- this was Minor2 and, of
13 course, is I said, well, Doctor, let me read you this and it
14 says the child disclosed oral, anal, and vaginal penetration
15 by NF, meaning natural father, during her forensic interview
16 at the Care House. On examination today, child was very
17 guarded and had difficulty completing the -- the anal/genital
18 examination. Examiner was able to view the hymen briefly and
19 saw no signs of acute or chronic injury.

20 Saw no signs of acute or chronic injury. None
21 whatsoever. And she said that's correct. So all the tests
22 that she performed in this protocol, all of them were
23 negative. All of them were normal. And, of course, is is
24 that, in my opinion, she reluctantly said yes.

25 And, of course, we also -- if you can remember, we had

1 some conversations about the hymen. However, before we get
2 into that is is that the same -- same report done on Minor1
3 and, of course, she had one report that we didn't have I think
4 for Minor2 and, of course, we asked because that was -- that
5 wasn't included within our report.

6 We asked, well, did you do a rectal examination as well
7 too because we didn't have the rectal report and she pulled
8 that out and says, yes, we did the rectal examination. What
9 was the finding? Normal. No evidence of acute, which means
10 recent, or chronic, which means long-lasting, injuries or
11 long-term injuries. No evidence of that.

12 Same thing for Minor1 . The lab results. And, of
13 course, the same exams, same lab -- lab exams. The -- the
14 urine swab, negative. Rectal swab, negative. Oral swab,
15 negative. Well, what about the physical examination? And, of
16 course, is is that -- and I read the same thing that's
17 contained within their report to us.

18 Doctor, your report says the child disclosed oral, anal,
19 and vaginal penetration by NF, natural father, during her
20 forensic interview at the Care House. Child's sibling also
21 discloses witnessing sexual abuse to this child by NF, natural
22 father. On exam -- on physical examination, child has two
23 mounds to her hymen at 4 o'clock and one at 7 o'clock. These
24 findings are nonspecific and are not -- I repeat are not
25 diagnostic of sexual abuse. I says what that means? And she

1 says these mounds on the hymen are normal, something that
2 naturally happens.

3 And again, we were not provided the rectal examination,
4 but she says, yes, we did perform a rectal examination. I
5 have the results here. Well, what -- what were the results on
6 that? She said they were normal. No findings of acute or
7 chronic injury.

8 And, of course, that's when we talked a little bit about
9 the hymen and about -- and, of course, you remember the
10 diagram that she did on direct examination and, of course, is
11 is that I asked her questions in reference to it -- is is
12 that, you know, whether or not penetration or injury, you
13 know, can cause damage to the hymen and she said yes. It
14 doesn't have to be from sex and I think she gave the example,
15 if you can remember, of a rare instance where she had one
16 client who was -- who was waterskiing and I think is is that
17 -- I think that when she fell, the pressure from the water
18 caused injury to the child's hymen. I don't remember whether
19 or not she said it was a child or adult, but caused injury to
20 the hymen.

21 And I asked her whether or not this -- whether or not the
22 hymen is permanent and whether or not the hymen can be
23 altered, whether or not it can be torn, and she said, yes.
24 She said, yes, it can be torn. And I asked her is is that is
25 it something similar to -- and, of course, is is that it can

1 heal. And I says, well, is it similar to the way in which if
2 you cut -- if you can remember, if you cut the top of your
3 hand and then, of course, the skin grows back together and
4 sometimes leaves a scar.

5 She says the hymen functions the same way. It's tissue.
6 It can grow back together the same way, when the skin is
7 separated, it reconnects itself and leaves a scar and she
8 says, well, sometimes that's right, it can. That's pretty
9 much the same thing that happens on the interior and then she
10 says, well, sometimes scars can be hard to see.

11 That's the purpose of these examinations and that's the
12 purpose of taking these microscopic pictures is to see. No
13 evidence whatsoever. So the science doesn't support it.

14 So the science doesn't support it. And then, of course,
15 is, if you can remember, I asked the mom, well, isn't the
16 first time that these allegations arose right about the time
17 in which dad started seeking custody of the kids, and then we
18 had a little disagreement about the exact date or something
19 like that and then, of course, she finally admitted it was
20 right around that time. The point in time is that dad was
21 trying to seek these kids from her. That's when the
22 allegations arose. That's when the allegations arose.

23 Now, I am not going to do what Mr. Richardson asked you
24 to do. I'm not going to ask you to speculate about that
25 because, again, speculation has no place in the jury room.

1 But what I'm going to ask you to do -- I'm going to ask
2 you is has the State proven -- before they seek to disrobe
3 Vance Ross from that cloth of innocence, I'm going to ask you
4 and it's probably the most serious question that you will have
5 back in there. Has the State -- has the State met its burden
6 and proven Vance Ross' guilt beyond a reasonable doubt? And I
7 think the answer to that is going to be no. I think the
8 answer to that is no.

9 These kids know more -- they know more than what they
10 should know. I can't tell you where they've gotten it from.
11 I can't. I can't tell you whether or not mom told these kids
12 this or planted these theories in these kids' heads because of
13 their breakup and because he was seeking custody. I can't
14 tell you that at all.

15 The only thing I can tell you is is that these statements
16 don't appear to be natural. They don't appear to be natural
17 memories and that's why you have such a problem with the
18 inconsistencies. Not just small inconsistencies. I can
19 understand small inconsistencies. Huge ones. I mean major
20 inconsistencies. Major inconsistencies.

21 The burden has not been satisfied. I won't have a chance
22 to speak with you any longer. Mr. Richardson will get a
23 chance to come up and follow me, and he'll have the last word.
24 And I'm assuming is is that he'll get up and say they're
25 little kids. They are. They are cute and they're precious

1 and in my opinion victims, but they're not victims of a sexual
2 assault by Vance Ross. They're pawns and they're pawns in
3 something. There's something going on here and these kids are
4 pawns in it and it may be interplay between mom and dad, a
5 power struggle over these kids, and they're pawns in this. I
6 don't blame the kids. They're not to be blamed. They're just
7 pawns. They're just pawns.

8 And again, I won't ask you to speculate about that. Your
9 only focus in this case is has this been proven beyond a
10 reasonable doubt. And when you ask yourself, it has to be
11 proven to each and every element of the offense.

12 Each and every element of each and every count of the
13 offenses has to be proven and, ladies and gentlemen, it's not
14 there by a longshot. It's not there by a longshot. Reason,
15 logic, proof beyond a reasonable doubt, those are your guiding
16 principles back there. Not speculation, not compassion, even
17 though it's kids.

18 I thank you very much.

19 THE COURT: Mr. Richardson?

20 REPLY CLOSING ON BEHALF OF THE STATE

21 MR. RICHARDSON: Thank you, Your Honor. Mr. Brooker
22 focused a lot of his talk with you on the credibility of mom.
23 He told you that the kids are pawns, sort of, you know, an
24 insinuation that mom is behind this in some way. These kids
25 are just innocent victims in this tug-of-war between mom and

1 dad. Dad wants custody, which is interesting because dad was
2 living out of hotels and spending the day in his car. What
3 would he want unfettered access and control of those girls
4 for? Answer that. I mean I don't know the answer to that
5 question. You must speculate. I would normally have to
6 speculate.

7 But he sort of shot his own theory about mom's
8 credibility in the foot a little bit when he talks about two
9 concrete examples from the testimony of the mother to the
10 questions he asked her. You know, did the girl, Minor1 on
11 this occasion, come running in and tell you that she just got
12 molested or that he's molesting my sister in the car? If this
13 is a conspiracy, why didn't she just back them up? How would
14 we know the differences? She might've said, yeah, yeah, she
15 did that. How would we know otherwise? They were the only
16 ones there.

17 No, she sat up here and said, no, that's not how it
18 happened at all, you know. My kid got that wrong on the
19 witness stand. What's the motivation? Why not back them up?
20 I wouldn't know the difference. You wouldn't know the
21 difference.

22 But she didn't. She called it for what it was. She said
23 exactly how she found out. She explained to you in detail.
24 It's not how -- you know, there was no running in the house
25 from outside. None of that. She gave you the details on how

1 she found out. She could have just sat up here and fed you a
2 line about, yeah, yeah, what they said was true about that.
3 You never would have known the difference.

4 Are these hotels in the city limits? Who knows? I mean
5 the police know I guess. How's mom supposed to know what law
6 enforcement agency she's supposed to call? I mean when you
7 dial 9-1-1, you give who you get, and, you know, she tells who
8 comes out there.

9 Now, we heard from -- when the Sheriff's Office gets
10 involved, we heard from the first responding officer. His job
11 is to come out there, gather some information, so that he can
12 then turn that over to the investigations unit and let them do
13 what they will with it.

14 So if she -- if the city police respond out there and a
15 city police officer comes out and takes a report, goes and
16 turns it in, somebody ends up figuring out that the incident
17 -- the locations of these events aren't in the city, it's not
18 mom's fault that we have these jurisdictional issues between
19 departments. She did what she had to do.

20 She did what she knew to do. She called the police. You
21 know, what Joe Public out there really knows that much
22 difference, you know? When you call the police, you call the
23 police. You don't call the city. You don't call the county.
24 You know, who knows all these, you know, jurisdictional
25 nonsense for most folks, but she did what she could do. She

1 wasn't trying to hide the ball or delay things or just wait,
2 you know, and follow up months later.

3 He had a talk about science. Mr. Brooker told you the
4 science does not support at all what these girls say happened.
5 Science a hundred percent supports what these girls say
6 happened. Dr. Abel could not have been any more clear. In
7 her years of experience, she says about five percent of the
8 kids who come in front of her or come in front of doctors,
9 period, with sexual assault show anything; so 95 percent of
10 kids have no physical findings.

11 And we've established that months went by before they
12 were seen. Dr. Abel said even within 72 hours you're only
13 going to get about 20 or 30 percent to show anything in three
14 days. Is that three days? Yeah, three days.

15 So throw a couple of months out and she's going through
16 this diagram with you talking about everything just, whoop,
17 comes together. Science a hundred percent supports what they
18 said. Doctors don't expect to find these symptoms. They are
19 rare to find scars and tears and all this kind of stuff. So I
20 don't think she could have been much more clear about that.

21 There was a puzzle analogy that he brought up that was
22 interesting, you know. It inferred that we have less than
23 half the pieces of the puzzle that you would need to put this
24 whole thing together.

25 You know, if you've got a puzzle board out in front of

1 you and you've got a rectangular thing and you see George
2 Washington's face in the middle and some ones in the corners
3 and the pieces are green, you know what you're looking at.
4 You don't need absolute completion. That's not the burden of
5 proof. We don't have to prove absolute. We have to prove
6 beyond a reasonable doubt. What is reasonable in this case?

7 It would be nearly impossible to ever convict anybody if
8 we had to prove absolute guilt. You prove beyond a reasonable
9 doubt and, to do that, you've got to look at the pieces you
10 have, as well as what you don't.

11 And in this case, you have plenty of pieces. You have
12 the details these girls came out with that little girls ought
13 not know about. Keywords that I mentioned to you: scar,
14 squishy, hard. Those are George Washington's face. Those are
15 ones in the corner.

16 And lastly, I'm not going to -- I know you've been
17 sitting here listening to us beat you to death with words for
18 a while now, but I found a sad little twist of irony in the
19 language, you know, in the law Mr. Brooker was talking about
20 how everybody has the robe of innocence around them. The only
21 thing that can strip that off is you finding him guilty back
22 there and feeling that there's proof beyond a reasonable
23 doubt.

24 When he said that, I thought, you know, these kids
25 offered up their innocence to a parent, somebody who is

1 supposed to be a protector, and what did he do with it? How
2 did he pay them back for offering up that trust and that
3 innocence?

4 I submit to you there must be accountability. So I ask
5 you to go back there and find a verdict that is correct and
6 strip his innocence. Thank you.

7 THE COURT: All right. Can the lawyers approach just a
8 minute, please?

9 MR. BROOKER: Sure.

10 (WHEREUPON, a bench conference was held in the presence
11 of the jury but out of the hearing of the jury off the
12 record, after which the proceedings resumed as follows.)

13 THE COURT: Ladies and gentlemen, what we are going to do
14 before I give you the charge on the law -- it's about 12:15.
15 I'm going to send you back to the jury room. My deputy clerk
16 over here is going to come back and take your lunch order, go
17 ahead and get lunch ordered for you. Once that's completed,
18 I'm going to -- and it'll take about an hour. That's why I'm
19 going ahead and doing that now.

20 But I'm going to send you back there and let her get your
21 lunch order and, as soon as she gets your lunch order, I'm
22 going to bring you right back out here and I'm going to charge
23 you on the law and I'm going to give you the case at that
24 time. Okay?

25 Please step to the jury room. Do not discuss the case.

1 Do not discuss the case. I'll get you back out here as
2 quickly as possible.

3 (WHEREUPON, the jury exited the courtroom at 12:16 p.m.)

4 THE COURT: All right. We'll stand down for just a
5 minute. Okay? If y'all will look at the verdict form? I
6 handed you all a copy the verdict form.

7 MR. BROOKER: Sure.

8 THE COURT: One thing I did -- and we're still on the
9 record -- is I made a change to -- I didn't make a change to
10 it. I added to the charge on the offense of first-degree
11 criminal sexual conduct and just added the definition of a
12 victim as stated in the statute.

13 It's victim means a person alleging to have been
14 subjected to criminal sexual conduct because the charge says
15 statements proved beyond a reasonable doubt the defendant
16 engaged in sexual -- in a sexual battery with the victim. As
17 I showed you back in chambers, it defined sexual battery as
18 defined by the statute and then added the definition of a
19 victim. All right? As stated in the statute as well.

20 All right. All right. We'll stand down for just a
21 minute. As soon as I'm notified that she has their lunch
22 order, please let me know and I'll get them back out here and
23 we'll proceed with the charge.

24 MR. RICHARDSON: Okay.

25 THE COURT: Okay.

1 (WHEREUPON, there was a break in the proceedings from
2 12:17 p.m. until 12:32 p.m., after which the proceedings
3 resumed as follows.)

4 THE COURT: All right. Have you all had an opportunity
5 to look at the verdict form, Mr. Richardson?

6 MR. RICHARDSON: Yes, sir. It looks good to me.

7 THE COURT: Mr. Brooker?

8 MR. BROOKER: It's fine, Your Honor.

9 THE COURT: All right. Anything before I bring the jury
10 back out, Mr. Richardson?

11 MR. RICHARDSON: No, sir.

12 THE COURT: Mr. Brooker?

13 MR. BROOKER: No, sir, Your Honor.

14 THE COURT: Bring me the jury, please, sir.

15 (WHEREUPON, the jury entered the courtroom at 12:32 p.m.)

16 THE COURT: All right. All the jurors are present. It's
17 my understanding you all have placed your lunch order with my
18 deputy clerk and she is in the process of getting that order
19 for you right now.

20 CHARGE ON THE LAW

21 THE COURT: Ladies and gentlemen, it is now my duty as
22 the trial judge under the Constitution of this state to charge
23 and instruct you on the law applicable to this case. It is
24 your duty as jurors to accept and apply the law as I will now
25 state it to you. Furthermore, it is your exclusive duty to

1 decide all the issues of fact in this case and to determine
2 the effect, value, and weight of the evidence.

3 Both the State and the defendant have a right to expect
4 that you will carefully consider and evaluate the evidence and
5 apply the law of this case to it so that in the end both the
6 State of South Carolina and the defendant will receive a fair
7 and impartial trial.

8 I want you to understand that when I use the word
9 defendant, I refer to Mr. Vance Ross. The defendant in this
10 case, ladies and gentlemen, is charged by indictment with
11 seven counts of first-degree criminal sexual conduct with a
12 minor, four counts as it relates to Minor1 and three counts
13 as it relates to Minor2 .

14 To these charges, ladies and gentlemen, the defendant has
15 entered a plea of not guilty. This plea of not guilty places
16 the burden of proof on the State to prove the guilt of the
17 defendant to you, the jury, beyond a reasonable doubt.

18 I remind you, ladies and gentlemen, that the fact that
19 the defendant was arrested, charged, and indicted in this case
20 is not evidence in this case and cannot be considered by you
21 as evidence of guilt in this case, nor does it create any
22 presumption or inference of guilt. The indictment is simply
23 the formal written instrument which contains the charge or
24 charges made against the defendant. It is the formal document
25 by which this case is brought into this court.

1 It is vital to understand, ladies and gentlemen, that the
2 defendant is presumed under the law to be innocent of these
3 charges. The defendant has no obligation to prove his
4 innocence. It is a fundamental rule of our law that a
5 defendant, irrespective of the seriousness of the charges
6 against him, is always presumed innocent of the crimes for
7 which he is charged unless and until his guilt has been proven
8 by evidence that satisfies you, the jury, beyond a reasonable
9 doubt.

10 The presumption of innocence is not a mere legal theory
11 or a legal phrase. The presumption of innocence is very
12 important and you need to understand that this presumption
13 accompanies the defendant from the time of his arrest and
14 appearance in this court and continues with the defendant even
15 after you retire to the jury room to deliberate.

16 In other words, the defendant receives the benefit of the
17 presumption of innocence until the very end of this trial when
18 you, the jury, will deliberate upon the evidence and decide
19 whether the State has proven his guilt beyond a reasonable
20 doubt.

21 Now, proof beyond a reasonable doubt, ladies and
22 gentlemen, is proof that leaves you firmly convinced of the
23 defendant's guilt. Now, there are very few things in this
24 world that we know with absolute certainty; so even in
25 criminal cases the law does not require proof that overcomes

1 every possible doubt.

2 However, if, based on your consideration of the evidence,
3 you are firmly convinced the defendant is guilty of the crimes
4 charged, you must find him guilty. If, on the other hand, you
5 think there is a real possibility that he is not guilty, you
6 must give him the benefit of the doubt and find him not
7 guilty.

8 Jurors, please understand that reasonable doubt may arise
9 from evidence which has been presented in the case or from the
10 lack of evidence in the case. It is your responsibility to
11 determine whether or not reasonable doubt exists as to the
12 guilt of this defendant.

13 I charge you that the defendant is entitled to every
14 reasonable doubt arising in the whole case. If, upon any
15 issues of fact essential to conviction and a verdict of
16 guilty, you have a reasonable doubt as to how that issue
17 should be resolved, it would be your duty to resolve that
18 reasonable doubt in favor of the defendant.

19 Thus, in summary, it is important to understand that a
20 defendant is not required to prove his innocence. As I said
21 previously, the State -- the State is required by law to prove
22 every essential element of the offense charged against the
23 defendant by evidence which satisfies you of his guilt beyond
24 a reasonable doubt. Only then can you convict the defendant
25 and find him guilty.

1 There are two types of evidence, ladies and gentlemen,
2 which are generally presented during a trial: direct evidence
3 and circumstantial evidence.

4 Direct evidence is the testimony of a person who claims
5 to have actual knowledge of a fact, such as an eyewitness. It
6 is evidence which immediately establishes the main fact to be
7 proved.

8 Circumstantial evidence is proof of a chain of facts and
9 circumstances indicating the existence of a fact. It is
10 evidence which immediately establishes collateral facts from
11 which the main fact may be inferred. Circumstantial evidence
12 is based on inference and not on personal knowledge or
13 observation.

14 The law makes absolutely no distinction between the
15 weight or value to be given to either direct or circumstantial
16 evidence, nor is a greater degree of certainty required of
17 circumstantial evidence than of direct evidence. You should
18 weigh all of the evidence in the case. If, after weighing all
19 of the evidence, you are not convinced of the guilt of the
20 defendant beyond a reasonable doubt, you must find the
21 defendant not guilty.

22 Now, during this trial, ladies and gentlemen, you and I
23 have had separate duties to perform. As the trial judge, it
24 is my responsibility to preside over this trial and I also
25 have the duty to rule upon the admissibility of the evidence

1 offered during the process of this trial.

2 In that regard, you are to consider only the competent
3 evidence before you and you are to disregard from your mind
4 any testimony ordered stricken from the record of this case
5 during the progress of the trial, if there was any. And you
6 are to consider only the testimony which has been presented
7 from this witness stand, together with any exhibits admitted
8 into the record of this case and any stipulations of counsel
9 made into the record, if there were any.

10 Furthermore, I have the additional duty to charge you on
11 the applicable law of this case and, in that regard, I am the
12 sole judge of the law in this case. It is your duty, ladies
13 and gentlemen, to accept and apply the law as I state it to
14 you.

15 If you have any preconceived ideas as to what the law is
16 or what the law ought to be and it does not agree with what I
17 tell you the law is, you are obligated under your oath to
18 abandon these preconceptions because you are sworn to accept
19 the law precisely as I state it to you.

20 In this trial, ladies and gentlemen, you -- you are the
21 sole and exclusive judge of the facts and I am the judge of
22 the law. Do not infer that I have any opinion about the facts
23 in this case from anything I have said during the course of
24 this trial in ruling upon the admissibility of evidence or
25 otherwise or from anything that I say during the course of

1 this charge to you.

2 In this regard, the law simply does not permit me to have
3 an opinion about the facts. As jurors, it is your duty alone
4 to determine the effect, value, and weight of the evidence
5 presented during the course of this trial.

6 In determining what the facts of this case are, you must
7 judge the credibility, which simply means the believability of
8 the witnesses and the value of weight to be given to their
9 testimony. You alone must decide the force and effect of the
10 testimony.

11 In making this decision, there are many things that you
12 may and should take into consideration, such as the appearance
13 and manner of the witness on the stand, a characteristic often
14 referred to as the demeanor of the witness. Was the witness
15 forthright or hesitant? Was the witness' testimony consistent
16 or did it contain discrepancies? What was the ability of the
17 witness to know the facts about which he or she testified?

18 Did the witness have a cause or reason to be biased and
19 prejudiced in favor of the testimony that he or she gave? Was
20 the testimony of the witness corroborated or made stronger by
21 other testimony and evidence or was it made weaker or
22 impeached by such other testimony and evidence?

23 As jurors, please understand that you have the right to
24 believe a small portion of a witness' testimony and discard
25 the larger portion or vice versa. You may believe all of a

1 witness' testimony or none. You may believe the testimony of
2 a single witness against that of many witnesses or the other
3 way around.

4 In exercising your mental processes and attempting to
5 reach a verdict, the law simply requires that you exercise
6 your good judgment, your common sense, your sense of logic and
7 reason, and your experiences in life. You then apply these
8 attributes to the evidence and apply the law as I state it to
9 you and thus arrive at a verdict.

10 Now, during the course of this trial, ladies and
11 gentlemen, you heard the testimony from children. Where a
12 witness is a child, you must determine, as with any witness,
13 whether that testimony is believable.

14 In deciding believability, you may consider not only
15 matters that I have already discussed with you, but you may
16 also consider the age of the child, the child's ability to
17 observe and remember facts, and the child's ability to
18 understand and answer questions. It is up to you to decide
19 whether the child understood the seriousness of appearing as a
20 witness at this criminal trial, whether the child understood
21 the questions, whether the child had a good memory, and
22 whether the child understands the difference between lying and
23 telling the truth.

24 In addition, young children may be influenced by the way
25 that questions are asked. It is up to you to decide whether

1 the child understood the questions asked.

2 You also heard the testimony, ladies and gentlemen, from
3 an individual that was qualified as an expert witness.

4 Similarly to what I previously charged you, I want to instruct
5 you again that the rules of evidence ordinarily do not permit
6 witnesses to testify to opinions or conclusions. An exception
7 to this rule exists for witnesses that we call expert

8 witnesses, a witness who by education, experience -- or
9 experience has become expert in some art, science, profession
10 or calling may state an opinion as to relevant and material
11 matter in which the witness claims to be an expert and may
12 also state the reasons for the opinion.

13 You should consider any expert opinion received in
14 evidence in this case and, like any other evidence, give it
15 the weight that you think it deserves. If you think that the
16 opinion of an expert witness is not based on sufficient
17 education and experience or if you conclude that the reasons
18 given in support of the opinion are not sound or that the
19 opinion is outweighed by other evidence, you may disregard the
20 opinion entirely.

21 An expert witness's testimony is to be given no greater
22 weight than that of other witnesses simply because the witness
23 is an expert. Further, you are not required to accept an
24 expert's opinion, even though it is not contradicted.

25 Now, during the course of this case, there has been

1 evidence presented that a witness or witnesses made prior
2 statements, which is not consistent with what the witness'
3 testimony was in court. You may use this evidence to decide
4 whether to believe the witness. You may also use evidence of
5 the earlier contradictory statements to determine the truth of
6 those statements. It is up to you to decide whether to
7 believe the earlier statements or the testimony given at
8 trial.

9 If a witness is shown to have knowingly testified
10 untruthfully concerning any material matter, you may consider
11 this in determining whether to trust the witness' testimony as
12 to other matters. You may reject all the testimony of that
13 witness or give all or part of the testimony the weight that
14 you think it deserves.

15 Now, ladies and gentlemen, I want to instruct you and
16 emphasize to you that the fact that the defendant did not
17 testify is not -- is not a factor to be considered by you in
18 any way in your deliberation and in your consideration on the
19 question of guilt or innocence of the defendant. It must not
20 be considered by you in any manner whatsoever.

21 A defendant has the constitutional right to remain silent
22 and the assertion of this right must not be considered by you
23 in your deliberations. I repeat under your oath you are to
24 draw no conclusion whatsoever from the fact that the defendant
25 in this case did not testify. The fact that the defendant did

1 not testify should not even be discussed in the jury room.

2 The burden of proof, as I have stated to you, is on the
3 State. The defendant is not required to prove his innocence.
4 The burden of proof remains on the State to prove guilt beyond
5 a reasonable doubt.

6 Now, in order to establish criminal liability, ladies and
7 gentlemen, criminal intent is required. For example, the
8 mental state required to be proven by the State for a
9 particular crime might be purpose, intent, knowledge,
10 recklessness or criminal negligence. Criminal negligence --
11 excuse me. Criminal intent must be proven by the State beyond
12 a reasonable doubt. Criminal intent is always a matter that
13 must be determined by the jury from the circumstances
14 surrounding the situation.

15 There is no way, ladies and gentlemen, to prove intent to
16 a mathematical certainty. There is no way that medical
17 science can dissect a person's brain and determine what the
18 person had in mind; so the law says that criminal intent may
19 be inferred from the circumstances shown to have existed.
20 This is how you make a determination of whether or not the
21 element requiring intent was present.

22 It is not necessary to establish intent by direct and
23 positive evidence, but intent may be established by inference
24 in the same way as any other fact by taking into consideration
25 the acts of the parties and all the facts and circumstances of

1 the case.

2 Criminal intent is a mental state, a conscious
3 wrongdoing. It is up to you to determine what the defendant
4 intended to do based on the circumstances shown to have
5 existed.

6 Criminal intent can arise from action or a failure to
7 act. It may arise from negligence, reckless -- recklessness
8 or an indifference to duty or to consequences that is
9 considered by the law to be the equivalent of criminal intent.

10 Now, the defendant, ladies and gentlemen, as I've told
11 you, is charged with first-degree criminal sexual conduct with
12 a minor. The State must prove beyond a reasonable doubt that
13 the defendant engaged in a sexual battery with the victim who
14 is less than eleven years of age.

15 A sexual battery, ladies and gentlemen, is sexual
16 intercourse, cunnilingus, fellatio, anal intercourse, or any
17 intrusion, however slight, of any part of a person's body or
18 of any object into the genital or anal openings of another
19 person's body except when the intrusion is accomplished for
20 medically recognized treatment or diagnostic purposes.

21 The State must then prove beyond a reasonable doubt that
22 the victim was less than eleven years old at the time of the
23 sexual battery. Victim means the person alleging to have been
24 subject to criminal sexual conduct.

25 Consent, willingness, indifference or ignorance on the

1 part of the minor, if any, as to what was taking place does
2 not in any way affect the charge of criminal sexual conduct
3 with a minor because an unmarried woman under the age of 14
4 cannot legally consent to sexual intercourse.

5 Now, as previously stated, ladies and gentlemen, the
6 defendant is charged by indictment with seven counts of first-
7 degree criminal sexual conduct with a minor.

8 Mr. Richardson, Mr. Brooker, can you all approach a
9 minute?

10 (WHEREUPON, a bench conference was held in the presence
11 of the jury but out of the hearing of the jury off the
12 record, after which the proceedings resumed as follows.)

13 THE COURT: All right. Ladies and gentlemen, as
14 previously stated, the defendant is charged by indictment with
15 seven counts of first-degree criminal sexual conduct with a
16 minor.

17 As to Minor1 , one count of first-degree criminal
18 sexual conduct with a minor involving oral penetration, one
19 count of first-degree criminal sexual conduct with a minor
20 involving oral penetration, one count of first-degree criminal
21 sexual conduct with a minor involving oral or vaginal
22 penetration, one count of first-degree criminal sexual with a
23 minor involving oral, anal or vaginal penetration.

24 As to Minor2 , one count of first-degree criminal
25 sexual conduct with a minor involving oral penetration, one

1 count of first-degree criminal sexual conduct with a minor
2 involving vaginal penetration, and one count of first-degree.
3 criminal sexual conduct with a minor involving vaginal
4 penetration.

5 Now, ladies and gentlemen, there is one -- there is one
6 indictment in this case, but this indictment contains multiple
7 charges. Each charge is a separate crime. You must consider
8 each charge separately. That is, you must decide separately
9 what the evidence in the case shows about each crime charged.

10 Your decision on one charge should not affect your
11 decision on another charge. You take each charge on its own
12 merit.

13 Now, ladies and gentlemen, I am drawing near the end of
14 my charge and I want you to clearly understand that you are
15 not partisans or advocates for the State of South Carolina or
16 for the defendant. You do not serve as jurors to reward your
17 friends or punish your enemies.

18 In this regard, you have been selected by both the State
19 and this defendant to be fair and impartial jurors. It is
20 your duty by your joint deliberation to determine the facts in
21 this case, giving to this defendant the benefit of every
22 reasonable doubt on each and every issue. Then to the facts
23 which you determine, you should take and apply the law which
24 has been given to you by this Court and thus arrive at a
25 verdict. Thus, when you have accomplished these

1 responsibilities, you will have satisfied your oath as jurors
2 and you will have discharged your duty to this Court.

3 Now, Madam Forelady, I am going to send the verdict form
4 back with you to the jury room. When you, the jury, arrive at
5 a verdict as to the charges in this case, you, Madam Forelady,
6 will write your verdict on the form, on the verdict form.

7 If the State has failed to prove the guilt of this
8 defendant beyond a reasonable doubt, your verdict will be two
9 words: not guilty. Likewise, if the State has proven the
10 guilt of this defendant beyond a reasonable doubt, your
11 verdict will be one word: guilty.

12 Madam Forelady, once a decision has been made, check
13 whichever choice is the verdict of the jury. The verdict,
14 ladies and gentlemen, that you render in this case must be the
15 verdict of each and every juror. It must be your unanimous
16 verdict. All twelve jurors must agree on the verdict which
17 you authorize the foreman -- forelady to write for the jury.

18 Madam Forelady and members of the jury, I want you to
19 further understand that the order in which the choices of
20 verdict appear on the verdict form are not suggestive of any
21 verdict on the part of the Court. The verdict in this case is
22 to be determined by you, the jury, not the Court.

23 Furthermore, please understand that even though I will be
24 given -- or giving the verdict form to the forelady, it is not
25 her verdict alone. It is the verdict of all twelve of you and

1 I emphasize again that it must be unanimous.

2 Now, ladies and gentlemen, I'm also going to give you a
3 copy of these instructions in written form. During your
4 deliberations, you may refer to the instructions to guide your
5 decision-making. You must consider the instruction as a whole
6 and not follow some and ignore others. Please, Madam
7 Forelady, return the instructions to the Court at the time
8 that your verdict is rendered.

9 Just a second here.

10 Now, ladies and gentlemen, I previously -- let's see --
11 gave you a charge or in my charge talked to you about the fact
12 that there are several counts, seven separate counts, in the
13 indictment. Okay? Let me tell you this also.

14 Each of these charges in the indictment are separate and
15 distinct. Okay? Each of them are separate and distinct. You
16 must decide on each charge separately on the evidence and the
17 law applicable to it, uninfluenced by your decision as to any
18 other charge.

19 The defendant may be convicted or acquitted on any or all
20 of the offenses charged. You will be asked -- you will be
21 asked to write a separate verdict of guilty or not guilty for
22 each charge. Okay?

23 Now, I am going to, at this time, ask you to step to the
24 jury room or retire to the jury room, but do not -- do not
25 discuss the case yet. Okay? Do not discuss the case as of

1 yet.

2 The law requires -- the law requires that I consult with
3 the attorneys to make sure that I've not left everything out
4 of this charge. Once I have done so, the items of evidence
5 will be gathered, a copy of this charge will be given to you
6 all, along with the verdict form and with instructions to
7 begin your deliberations.

8 Everyone on the jury feeling okay? Anyone not feeling
9 well?

10 (WHEREUPON, there was no response.)

11 THE COURT: All right. I'm going to ask that you step to
12 the jury room, but do not begin your deliberations until
13 you're instructed to do so. All right.

14 (WHEREUPON, the jury exited the courtroom at 1:02 p.m.)

15 THE COURT: Any exception or objection to the charge by
16 the State?

17 MR. RICHARDSON: No, sir.

18 THE COURT: Defense counsel?

19 MR. BROOKER: No, sir, Your Honor.

20 THE COURT: All right. When I got through and I was
21 reading through this multiple charges portion of the charge,
22 it did not include that language that I subsequently told
23 them. I felt like that that needed to be charged to them and
24 that's why I did that.

25 I'm going to have my clerk add that language in there

1 before sending it back. Also, add the last name of these two
2 minors, Minor2 and Minor1 . Okay? To the charge.

3 Also, on page 14, you know, there was just a typo that said
4 foreman instead of forelady, which will be changed. Okay?

5 If you all will, come up here and look at the items of
6 evidence. It's not many, I think.

7 (WHEREUPON, there was a pause in the proceedings, after
8 which the proceedings resumed as follows.)

9 THE COURT: All right. I've got all the changes to the
10 jury charge. One thing I did not tell the jury, obviously, if
11 they have some questions, they need to reduce it to writing,
12 knock on the door, and let Mr. Sammy know.

13 You still didn't put their last name on here.

14 THE LAW CLERK: I didn't?

15 THE COURT: You did on page 1, but you didn't on 12 and
16 13 right here.

17 THE LAW CLERK: I thought I had it in there. I'll print
18 it again.

19 THE COURT: Just those two pages.

20 THE LAW CLERK: Okay.

21 (WHEREUPON, there was a pause in the proceedings, after
22 which the proceedings resumed as follows.)

23 THE COURT: All right. While I'm waiting on that --
24 well, this won't take but a second.

25 All right. Bring me the jury back out here, please.

1 THE BAILIFF: Okay, sir.

2 (WHEREUPON, the jury entered the courtroom at 1:13 p.m.)

3 THE COURT: All right. Ladies and gentlemen, I've been
4 advised that your lunch is on the way. So I didn't bring you
5 back out here just to tell you that, but I did bring you back
6 out here. But since I brought you back out here, I wanted to
7 tell you that. Okay? Your lunch is on the way. It should be
8 here in a few minutes.

9 One additional thing I wanted to tell you before you
10 begin your deliberations. During your deliberations, Madam
11 Forelady, if the jury has a question, you will be provided
12 with pencil and paper back there. You need to reduce your
13 question to writing, knock on the door, let Mr. Sammy, the
14 bailiff, know that you have a question, give it to him, and he
15 will in turn provide it to me and I will answer it however I
16 deem appropriate. Okay?

17 Furthermore, once you've reached a verdict -- once you've
18 reached a verdict and you have filled out the verdict form,
19 signed and dated the verdict form, the same process. Knock on
20 the door, let Mr. Sammy know that you all have reached a
21 verdict, and we'll get you back in here as quickly as possible
22 at that time. Okay?

23 Anything further from the State?

24 MR. RICHARDSON: No, sir.

25 THE COURT: Defense counsel?

1 MR. BROOKER: No, sir, Your Honor.

2 THE COURT: Now, I'm going to instruct all of you except
3 for Mr. Dennis -- for all of you except Mr. Dennis to return
4 to the jury room. Mr. Sammy, if you'll come forward and get
5 the verdict form, along with these items of evidence and the
6 jury charge? And once all of you except for Mr. Dennis get
7 into the jury room, you can begin your deliberations.

8 All right? Please step to the jury room and begin your
9 deliberations.

10 (WHEREUPON, the jury exited the courtroom at 1:15 p.m.
11 and jury deliberations began at 1:16 p.m.)

12 THE COURT: Mr. Dennis, if you will approach, please,
13 sir? I want to thank you for your service.

14 THE ALTERNATE JUROR: Okay. Thank you.

15 THE COURT: The law does not allow you to go back there
16 once they start deliberations.

17 THE ALTERNATE JUROR: That's what I was going to ask.

18 THE COURT: So that's why I asked does everybody's feel
19 okay on the jury before I send them back. Okay?

20 Now, when I release you here today, you are done for the
21 week. All right? A couple other cases that were up for trial
22 -- they ended up getting disposed of in some way, shape or
23 form. So when I release you here, you're done for the week.

24 Now, I've told you throughout this week and while you've
25 served on jury duty with me this week not to discuss the case.

1 THE ALTERNATE JUROR: Yes, sir.

2 THE COURT: When you leave here, if you want to talk
3 about it, you're certainly free to talk about it, but nobody
4 can make you talk about it.

5 THE ALTERNATE JUROR: That's right.

6 THE COURT: If somebody tries to talk to you about it and
7 you tell them you don't want to talk about it and they don't
8 leave you alone, you let the clerk's office know and they'll
9 in turn let me or one of the other judges up here know and I
10 promise you it'll be taken care of. Okay?

11 THE ALTERNATE JUROR: That's good.

12 THE COURT: If you need a work excuse --

13 THE ALTERNATE JUROR: Yes, sir.

14 THE COURT: If you need to do that, they -- you can go
15 down to the second floor now. I don't know. They may have
16 the ability to print that out up here.

17 THE CLERK: I can do it up here.

18 THE COURT: Okay. She can give you a work excuse. Also,
19 there will be a check mailed to you for your service this
20 week, only in no way, shape or form can compensation -- can
21 compensate you for what your services are worth. Just a small
22 token.

23 THE ALTERNATE JUROR: That's all right. I understand.

24 THE COURT: We can't --

25 THE ALTERNATE JUROR: What about the lunch order?

1 THE COURT: Well, you can wait on your lunch order and
2 you can wait right in here and as soon as your lunch gets
3 here, which it should be here --

4 THE CLERK: Shortly.

5 THE COURT: -- momentarily.

6 THE ALTERNATE JUROR: That's fine.

7 THE COURT: Okay. But thank you again for your service.

8 THE ALTERNATE JUROR: Yes, sir. Thank you.

9 THE COURT: Thank you.

10 (WHEREUPON, the alternate juror was released and exited
11 the courtroom at 1:16 p.m.)

12 THE COURT: All right. We will stand at ease. We'll
13 stand at ease.

14 (WHEREUPON, there was a break in the proceedings from
15 1:18 p.m. until 2:18 p.m., after which the proceedings
16 resumed as follows.)

17 THE COURT: All right. Excuse me. There was a note
18 passed out by the jury with a few questions on them. I met
19 with the lawyers back in chambers concerning the note. The
20 note passed out by the jury will be made a Court's exhibit
21 after I address the note with the jury.

22 The note contained three questions. Three questions,
23 which will be addressed with the jury pursuant to my
24 discussions with the attorneys in my chambers.

25 Anything before I bring the jury out, Mr. Richardson?

1 MR. RICHARDSON: No, sir.

2 THE COURT: Mr. Brooker?

3 MR. BROOKER: No, sir.

4 THE COURT: All right. If you'll bring me the jury,
5 please.

6 (WHEREUPON, the jury entered the courtroom at 2:19 p.m.)

7 THE COURT: Ms. Alexander? Madam Forelady, Ms.

8 Alexander, I received the note that you passed out. I am
9 going to ask my bailiff here to hand you this note with a pen
10 for you to sign and date that note for me.

11 THE FORELADY: My apologies, Your Honor.

12 THE COURT: That's okay. That's okay. Today is the 19th.

13 (WHEREUPON, the forelady complied.)

14 THE COURT: All right. I'm going to address your
15 questions in order how the Court deems appropriate here.

16 The first question is are the hotels in question within
17 the city limits without question. What you are asking here
18 are for facts which are not in evidence and, therefore, I
19 cannot answer that question. Okay?

20 The same is applicable to question number two. Were all
21 the phones the property of Mr. Ross? Again, you're asking for
22 a fact which is not in evidence and I can't answer that
23 question for you. Okay?

24 With regards to question number three, what was the name
25 of the child from yesterday, I can answer that question for

1 you and the name of the child from yesterday was Minor2

2 . Minor2 . All right?

3 At this time, I'm going to ask you to return to your jury
4 room and continue your deliberations. Thank you very much.

5 THE FORELADY: Thank you.

6 (WHEREUPON, the jury exited the courtroom at 2:21 p.m.)

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

8 (WHEREUPON, the jury note was marked as Court's Exhibit
9 Number 3.)

10 (WHEREUPON, there was a break in the proceedings from
11 2:22 p.m. until 4:44 p.m., after which the proceedings
12 resumed as follows.)

13 THE COURT: All right. It's my understanding that the
14 jury has reached a verdict in this case. I will remind
15 everyone in this courtroom that, whatever the verdict is, keep
16 your emotions in check. Failure to do so could result in you
17 being held in contempt of court by virtue of a fine and/or
18 incarceration.

19 Anything from the State before I bring the jury out?

20 MR. RICHARDSON: No, sir.

21 THE COURT: Defense counsel?

22 MR. BROOKER: No, sir.

23 THE COURT: All right. Bring me the jury, please, sir.

24 THE BAILIFF: Yes, sir.

25 (WHEREUPON, the jury entered the courtroom at 4:45 p.m.)

1 THE COURT: Come in and have a seat, please. All the
2 jurors, come back in and have a seat.

3 All right. Madam Clerk?

4 THE CLERK: Madam Forelady, have you all agreed upon a
5 verdict?

6 THE FORELADY: We have.

7 (WHEREUPON, the clerk retrieved the verdict form from the
8 forelady and passed it to the Court.)

9 THE COURT: All right. The verdict appears to be in
10 order. Madam Clerk, you may publish the verdict.

11 VERDICT

12 THE CLERK: State of South Carolina, County of Florence,
13 in the Court of General Sessions, Indictment Number 2016-GS-
14 21-0122, State of South Carolina versus Vance Ross.

15 As to the charge of first-degree criminal sexual conduct
16 with a minor involving oral penetration pertaining to Minor1
17 , we, the jury, unanimously find the defendant, Vance
18 Ross, guilty.

19 As to the charge of first-degree criminal sexual conduct
20 with a minor involving oral penetration pertaining to Minor1
21 , we, the jury, unanimously find the defendant, Vance
22 Ross, guilty.

23 As to the charge of first-degree criminal sexual conduct
24 with a minor involving vaginal or oral penetration pertaining
25 to Minor1 , we, the jury, unanimously find the

1 defendant, Vance Ross, guilty.

2 As to the charge of first-degree criminal sexual conduct
3 with a minor involving vaginal, anal or oral penetration
4 pertaining to Minor1 , we, the jury, unanimously find
5 the defendant, Vance Ross, not guilty.

6 As to the charge of first-degree criminal sexual conduct
7 with a minor involving oral penetration pertaining to Minor2
8 , we, the jury, unanimously find the defendant, Vance
9 Ross, guilty.

10 As to the charge of first-degree criminal sexual conduct
11 with a minor involving vaginal penetration pertaining to
12 Minor2 , we, the jury, unanimously find the defendant.
13 Vance Ross, guilty.

14 As to the charge of first-degree criminal sexual conduct
15 with a minor involving vaginal penetration pertaining to
16 Minor2 , we, the jury, unanimously find the defendant,
17 Vance Ross, guilty.

18 Dated April 19th, 2017, signed Tumeka Alexander,
19 foreperson.

20 Members of the jury, if this is your verdict, please
21 raise your right hands.

22 (WHEREUPON, all jurors complied.)

23 THE COURT: All right.

24 THE CLERK: That's everyone.

25 THE COURT: All right. Anything from the -- from defense

1 counsel at this time, Mr. Brooker?

2 MR. BROOKER: Nothing from the defense counsel, Your
3 Honor. Are you talking about respect to post-trial motions?
4 Are you speaking with respect to post-trial motions?

5 THE COURT: Anything.

6 MR. BROOKER: No. Nothing. Nothing at this point, Your
7 Honor.

8 THE COURT: All right. Anything from the State?

9 MR. RICHARDSON: No, sir, Your Honor.

10 THE COURT: All right. Ladies and gentlemen of the jury,
11 I want you to thank you for your service. I've told you
12 throughout the trial of this case not to talk about this case
13 at all until you were instructed to do so.

14 When you leave here today, you may talk about the case.
15 However, you cannot be required to talk about the case. When
16 you leave here, if someone tries to talk to you about this
17 case and you tell them that you don't want to talk about it
18 and they -- and if they do not leave you alone, you let the
19 Court know, let the clerk's office know, and somebody -- it'll
20 be dealt with. I promise you.

21 I know that jury service never comes at a convenient
22 time, but I hope that you realize how important your service
23 is to this county, to this state, and to this country. When I
24 release you here today, you're done for the week up here. All
25 right? You're done for the week.

1 When I release you here today, you can't be summoned to
2 serve back here on jury duty at least over the next three
3 years. Now, if you get summoned for federal court, city court
4 or magistrate's court jury duty, there's not a thing I can do
5 to help you with regards to that.

6 Now, you all have performed your service or your duty and
7 responsibility. What will take place at this point is
8 sentencing by the Court. You, ladies and gentlemen, are free
9 to remain here to observe sentencing, if you so desire, but if
10 you wish to leave, you may do that as well.

11 Does the State have sentencing sheets prepared?

12 MR. RICHARDSON: Yes, sir.

13 THE COURT: All right.

14 MR. RICHARDSON: Although --

15 THE COURT: Sir?

16 MR. RICHARDSON: I have -- I have seven printed just in
17 case, but there was one -- I need to know which one was the --

18 THE COURT: Let me see the verdict form, Madam Clerk.
19 Let me see the indictment, please.

20 The charge for which the defendant was found not guilty
21 is Count 7 of the indictment as it pertained to vaginal, anal
22 or oral penetration.

23 MR. RICHARDSON: Count 7?

24 THE COURT: Count 7. Does that help?

25 MR. RICHARDSON: I think so.

1 THE COURT: Now, as the solicitor is going through these
2 sentence sheets, if you wish to leave, now is your time to
3 leave. Okay? If you wish to stay, you certainly may stay.

4 (WHEREUPON, the jury was released at 4:52 p.m., with some
5 jurors leaving and some jurors staying.)

6 THE COURT: I would -- before you all leave, I mean I
7 would encourage you to stay, but if you want to leave, you're
8 certainly free to leave. Okay?

9 Madam Clerk, here is the verdict form.

10 Madam Forelady, did you bring out the items of evidence?
11 Were they provided? Mr. Sammy, did you bring out the items?

12 THE FORELADY: Mr. Sammy said he would collect them, sir.

13 THE COURT: Okay. I just wanted to make sure the items
14 of evidence, as well as my jury charge.

15 MR. RICHARDSON: Judge, the only thing that really
16 distinguishes these sheets is the warrant number, which I know
17 is --

18 THE COURT: Well, that's not set forth in the indictment.

19 MR. RICHARDSON: Right. So I guess I'll just take one
20 off and hand up six.

21 THE COURT: All right. Okay.

22 MR. RICHARDSON: And I believe these are correct as far
23 as the statute and code.

24 THE COURT: Okay. All right. Before we go forward with
25 sentencing, Mr. Richardson, each of these offenses carries a

1 minimum of 25 years up to life imprisonment; is that correct?

2 MR. RICHARDSON: My reading of it is 25 or life.

3 THE COURT: Okay. If you would, tell me the defendant's
4 record, please.

5 MR. RICHARDSON: Yes, sir. His record begins -- I think
6 it's in New Jersey back in the '90s. He had a receiving
7 stolen property, burglar's tools. Then in South Carolina in
8 1989, he had a malicious injury to property. He got a YOA
9 probation sentence on that. Burglary second-degree, escape in
10 '89. Grand larceny in '90.

11 He was received in on criminal conspiracy to commit grand
12 larceny on a YOA sentence and the escape, which he got
13 consecutive time. Unlawful weapon in '91. YOA parole
14 revocation in '94. Criminal domestic violence first offense
15 in '99.

16 Simple assault and battery in '03. Criminal domestic
17 violence in '03. It looks like a criminal domestic violence,
18 high and aggravated nature. He had a -- I believe he was
19 received into the Department of Corrections on criminal
20 domestic violence, high and aggravated nature, in 2006 on an
21 18-month sentence, which looks to me like probably a probation
22 or some kind of revocation.

23 He had a common-law robbery in 2007, for which he
24 received a 7-year sentence. And that appears to be it until
25 he got these charges back in 2015.

1 THE COURT: All right. Now, does anyone on behalf of the
2 victims wish to say anything to the Court?

3 MR. RICHARDSON: No, sir, Judge.

4 THE COURT: All right. Anything else from the State?

5 MR. RICHARDSON: A lawyer in my office mentioned the
6 other day on cases such as these that he thought there was a
7 new case or something about a conviction such as this that
8 something in particular had to be put on the sentencing sheet
9 with respect to what kind of penetration was found, whether it
10 be oral, vaginal, anal.

11 I'm not sure what case he was talking about, but I didn't
12 know if the Court was aware of anything like that, but just in
13 case.

14 THE COURT: The indictment? Let me look at the
15 indictment. Okay. All right. Anything further from the
16 State?

17 MR. RICHARDSON: No, sir.

18 THE COURT: All right. Mr. Brooker, I'd be happy to hear
19 from you, sir.

20 MR. BROOKER: Thank you, Your Honor. Your Honor,
21 obviously, Vance Ross is 45 years of age. Vance is here
22 today, Your Honor, with Janice King, which is his significant
23 other. He is unmarried. Obviously, I think you are aware of
24 the fact that he has four children, and that's Minor2 ,
25 Minor1 , Devon, and Devonte, the four with Ms. Esther. I

1 think he advised me he has four more children now.

2 And, of course, is is that he was educated here in South
3 -- in South Carolina, specifically Florence. He graduated
4 from -- or at least attending South Florence High School,
5 where he ended school in the 10th grade, but later on went for
6 a GED.

7 He attended Fayetteville State in Fayetteville, North
8 Carolina, where he earned a -- it looks as if it says an
9 associate's degree in energy fabrication. He also attended
10 Florence-Darlington Tech, where he obtained a mid-welder's
11 certification. No military service except serving at ROTC in
12 high school, Your Honor.

13 His employment -- last employment we have with him is for
14 Roper in Sumter, South Carolina, where he worked two-and-a-
15 half years. And, of course, is is that shipping and receiving
16 and logistics.

17 He has a -- at least some history, Your Honor, of -- of
18 medical illnesses. He suffers from diabetes, hypertension,
19 and sickle cell, I believe is what I have.

20 And obviously, Your Honor, is is that I think this was a
21 very, very difficult case and I think it was difficult on
22 everybody. I think the evidence in the case was certainly
23 difficult.

24 I understand he has been charged with some very serious
25 charges and has been found guilty of those charges. I think

1 Mr. Richardson cited his criminal record and, of course, he
2 does have a criminal history. Obviously, when he -- when Mr.
3 Richardson recited his criminal history, I think he was
4 advising me that there was at least some charges that he
5 didn't believe that were -- that were related -- that were
6 unrelated to him.

7 THE DEFENDANT: I can't be two places at one time.

8 MR. BROOKER: Is is that, obviously, the last being or at
9 least the most serious of his charges being I think was in the
10 '90s and 2007, which was the last charge which was the strong-
11 armed robbery.

12 The only thing I can say to the Court -- and I don't know
13 whether or not it makes a difference, is is that I don't
14 believe that at least what his history is is a complete
15 reflection of who he is. I've spent a lot of time with Vance
16 and, of course, is is that Vance has a twin brother and I also
17 knew him through his -- through his twin brother, Victor.

18 And I say this to say is is that, obviously, he is
19 looking at a maximum sentence, you know, of life imprisonment
20 and I think that's the maximum that the Court can give him,
21 but I'm asking the Court to consider something less than that.
22 And the reason why I'm asking the Court to consider less than
23 -- something less than that is is that I guess when I look at
24 -- at least in any sort of criminal situation, I think one of
25 the things that the Court considers in trying to decide what's

1 the appropriate sentence within the range that is available is
2 to try and figure out a sentence that, yes, in this particular
3 situation because he's been found guilty, that is an
4 appropriate sentence that -- that I guess in some way -- in
5 some way speaks to the seriousness of the charges, but on the
6 other hand I think -- I think a life sentence obviously would
7 be an overly harsh sentence.

8 I think he does have redeeming qualities. He would
9 probably be one of the first ones to tell you that in his life
10 that he's made mistakes. He'll admit that, but, of course, is
11 is that I think just like the rest of us, you know, he has a
12 family, you know, that loves him. He has children that he
13 loves.

14 And I think that a life sentence I think doesn't serve --
15 at least serves -- at least, in my opinion, I don't think it
16 serves anyone. I don't think it serves within the best
17 interest of the State of South Carolina. I don't think it's
18 within the best interest, you know, of Vance and the children
19 that he has and, of course, he has -- he has children in
20 addition to Minor2 and Minor1 .

21 But it's pretty difficult in specifically this type of
22 case and -- and at least with I think how difficult the
23 verdict may have been for the jury to reach, to arrive at a
24 conclusion, at least in my opinion, in my estimate that life
25 is the appropriate sentence. You know, I think it's stunning

1 to him. It certainly is to me.

2 THE DEFENDANT: I'm shocked.

3 MR. BROOKER: So we just ask the Court to take those
4 factors into consideration and at least render a verdict -- or
5 at least a sentence that Your Honor thinks is a -- is a
6 balance between -- between punishment, but also recognizes at
7 least, in my opinion, the balance of his life, at least the
8 good things in his life, recognizes the fact that he is a
9 human being and as a fact that his life is not all that bad.

10 He's not a monster, at least in my opinion. I think it
11 benefits everybody at least if he has a chance at least. It
12 might be a long time. It may be at the age of 60, 70 or 80,
13 but he has a possibility of at least getting out at some point
14 in time. And I don't know if he'll ever have a relationship
15 with Minor1 and Minor2 , but I think with his other kids
16 he'll maintain a relationship with them. Thank you, Your
17 Honor.

18 THE COURT: All right. Mr. Ross, is there -- is there
19 anything that you wish to say, sir? You don't have to.

20 THE DEFENDANT: Yes.

21 THE COURT: And I certainly don't want you to say
22 anything that could affect any appellate rights of yours, but
23 certainly would be happy to hear from you if you so desire.

24 MR. BROOKER: If you can indulge me for just a moment?

25 THE COURT: Yes, sir.

1 (WHEREUPON, there was a pause in the proceedings, after
2 which the proceedings resumed as follows.)

3 MR. BROOKER: I'm sorry, Your Honor.

4 THE DEFENDANT: Do I stand here or go there?

5 THE COURT: You can stand right there, sir. Yes, sir?

6 THE DEFENDANT: I just want to say -- do I say it to my

7 --

8 THE COURT: No, sir. You address any comments to me.

9 THE DEFENDANT: Okay. Well, I don't blame my kids for
10 anything, my children. I love my kids, you know.

11 I'm shocked at the verdict, especially with my health
12 problems after I had my surgery down there and I ain't well
13 down there. I'm shocked. And that wasn't -- but I don't --
14 you know, the jury had to do what they had to do. I ain't mad
15 with the jury and I especially appreciate my lawyer because he
16 went back for me. He's a good lawyer.

17 And I appreciate you dropping -- it was nine counts --
18 the two counts that dropped off earlier on Monday. I
19 appreciate -- and I ain't angry with the solicitor because he
20 had to do his job. You know what I mean? But there's been
21 some things that were brought to their attention and they're
22 just following their job. They don't know what's what. You
23 know what I mean?

24 But I had to come in and defend myself to the best of my
25 ability. You know what I mean? Which they have a verdict and

1 there's nothing I can do about the verdict. The only thing I
2 can do is appeal and keep on praying and reading my word and
3 continuing on with my family, the ones that want to deal with
4 me. I appreciate my other family here and the officer,
5 Sergeant Emmanual, for being nice to me while I was here also.
6 That's it.

7 THE COURT: All right. Well, I --

8 THE DEFENDANT: And --

9 THE COURT: Go ahead. Yes, sir?

10 THE DEFENDANT: And Ms. Janice King come and support me
11 for 22 months. You know what I mean? Unfavoring [sic] love
12 and true support through letters and writings. Thank you,
13 Your Honor.

14 THE COURT: How much time, Mr. Brooker, is he entitled to
15 as far as credit? How long has he been in jail?

16 MR. BROOKER: Let me see, Your Honor.

17 THE COURT: Did somebody tell me 22 months?

18 MR. RICHARDSON: His date of arrest was July 8th, 2015,
19 according to my file.

20 MR. BROOKER: I think that's correct, Your Honor.

21 THE COURT: July 18th?

22 MR. RICHARDSON: 8th.

23 MR. BROOKER: 8th. 2015; right?

24 MR. RICHARDSON: Judge, I come up with 650.

25 THE COURT: All right.

1 MR. RICHARDSON: But I didn't do well in math.

2 THE CLERK: I've got 651.

3 THE COURT: 651?

4 THE CLERK: Yes, sir.

5 THE COURT: All right. Anything further from the State?

6 MR. RICHARDSON: No, sir.

7 THE COURT: From defense counsel?

8 MR. BROOKER: No, sir.

9 SENTENCE

10 THE COURT: All right. On 2016-GS-21-00122, as it
11 pertains to each of the seven counts for which the defendant
12 has been convicted, the defendant is hereby sentenced to the
13 State Department of Corrections for the balance of his natural
14 life, given credit for 651 days.

15 Mr. Ross, you have 10 days to appeal the jury's verdict
16 of guilty, your conviction, and sentence. Thank you.

17 Six counts. I'm sorry. It's six counts. Thank you,
18 Madam Court Reporter.

19 He was convicted of six counts. He was given life
20 sentences to each of those counts. They are to run
21 concurrent. All right? Six counts.

22 They can take him out. Take the defendant out, please.

23 All right. Ladies and gentlemen, those of you who are
24 still seated on the jury, if you'll step to the jury room for
25 just a minute? Just step to the jury room for just a minute.

1 Okay?

2 (WHEREUPON, the jurors exited the courtroom at 5:13 p.m.)

3 THE COURT: All right. Any post-trial motions? If you
4 want ten days to make any post-trial motions, I'll give you
5 those -- that time.

6 MR. BROOKER: Yes, Your Honor. That's what I was going
7 to ask for is is that give us the ten days so we can have a
8 chance to --

9 THE COURT: All right. The rules certainly permit that
10 and I'll allow you to do that.

11 MR. BROOKER: Thank you, Your Honor.

12 THE COURT: All right. I'm going to step back to the
13 jury room and release them. I want to say a couple of things
14 to them.

15 MR. BROOKER: Sure.

16 THE COURT: All right.

17 (WHEREUPON, the proceedings ended at 5:16 p.m.)

18

19 --- END REQUESTED TRANSCRIPT ---

20

21

22

23

24

25

FORM 5

20 20 CP 21 3015

STATE OF SOUTH CAROLINA)

County of Florence)Vance Ross #297223)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEFDORIS FOLLOS
CCCP & JEFF
FLORENCE COUNTY, SC

2020 DEC 29 PM 1:08

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Florence County
2. Name and location of Court which imposed sentence In the Court of General Sessions / 180 N. Inby Street
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) I/c 2016-GS-21-00122 / AW# 2015A2110200549
 - (b) AW# 2015A2110200550 AW# 2015A2110200551
AW# 2015A2110200552

(c) AW#2015A2110200553 AW# 2015A2110200554

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 4-19-17

(b) Life

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. The South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Denied

ii. Denying Rehearing Petition

iii. Remain Affirmed

(c) the date of each such result:

i. March 27, 2020

ii. Nov. 25, 2020

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results: After careful Consideration of Petition Rehearing, The Court

i. is unable to discover that any material fact or

ii. principle of the law has been overlooked or disregarded, and

iii. hence, there is no basis for granting a rehearing.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: The Court Should grant the petition for Writ of
- (a) Certiorari Because the Question presents a Substantial
- (b) Constitutional issue dealing with an Overboard and vague
- (c) Indictment time frame that was not narrowed as much as possible
11. State concisely and in the same order the facts which support each of the grounds set out in (10): and lack of specificity within the time frame that failed to provide sufficient notice depriving me of procedural due process
- (a) Did the Court of Appeals err in finding no error in the
- (b) trial judge refusing to quash an unconstitutionally Overboard
- (c) and vague indictment alleging seven counts of Criminal Sexual
- (d) conduct with a minor between Feb 1, 2014 and July 31, 2014, because
- (e) the lack of specificity within the time frame failed to provide
12. Prior to this application have you filed with respect to this conviction: Sufficient Notice of the time frame was not narrowed as much as possible
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. The state Failed to present any evidence that there was
- ii. More than one Instance of oral sex involving MENO OR ONE
- iii. Failed to provide sufficient Notice and the time frame not
Narrowed as much as possible

(b) the proceedings in which each ground was raised:

- i. In January 2016, the Florence County grand jury indicted appellant
- ii. Vance Ross, for eight counts of Criminal Sexual Conduct with Minor
- iii. First degree Indictment # 2016-GS-21-00122. On April 17, 2017, Appellant
Proceeded to jury Trial on Counts three thru Nine of the Indictment
Before Honorable D. Craig Brown. Thermanel Brother Represented
Appellant at trial David Richardson Prosecuted the Case. The jury
Found Appellant Not guilty on Count Seven But guilty on the
Remaining Six Counts. Judge Brown Sentence Appellant to
Life Sentences on each Count. Appeal Filed April 27, 2017

Revised 3/2003

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) trial judge err in refusing to grant a directed verdict of acquittal
 (b) Judge err refusing to grant a constitutionally Overbroad Warrant against
 (c) Issue Overruled Twice on agreement should be reversed and Remand for directed
verdict of acquittal

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

Appeal April 27, 2017

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. Thurmond Braker Trial lawyer
 - ii. IN the Court of General Sessions
180 - M. Tinsley street
 - iii. Braker law Firm 238 Waverly St.
Florence SC. 29501
- (b) the proceedings at which each such attorney represented you:
- i. Katherine H. Hudgens Appellate Defender
 - ii. SOUTH CAROLINE COURT of Appeals
 - iii. Division of Appellate Defense
1330 Lady Street Suite 401
Columbia, South Carolina 29201-3332

19. State clearly the relief you seek in filing this application:

Based on the above argument the Court presented
In issue one, this Court should Reverse the Convictions and
Sentences. Based on the argument in issue two, this Court should
Reverse and Remand for retrial on either Count Four or Five
of the indictment

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Florence)

VERIFICATION

I, Vance Ross, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true:

Vance Ross

SWORN to and subscribed before me this 23rd
 day of December, 2001.

Y. M. Maggitt (L.S.)
 Notary Public

My Commission Expires: 7-27-2004

FILED
 2001 DEC 29 PM 1:08
 DENIS POLIOS CHAIRA
 CCOP & GS
 FLORENCE COUNTY, SC

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Vance Ross, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) ☒ Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Vance Ross
Applicant

SWORN or affirmed to and subscribed before me this
23rd day of December, 2020.

C. H. Mossell
Notary Public

My Commission Expires: 7-27-2026

2020 DEC 29 PM 1:08
DORIS FOULKS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Vance Ross, #297223,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2020-CP-21-3015

RETURN,
PARTIAL MOTION TO DISMISS &
MOTION FOR A MORE DEFINITE
STATEMENT
(Counsel Appointed)

FILED

2021 APR 21 AM 11:39

In response to Vance Ross's (Applicant) action for post-conviction relief (PCR) commenced December 29, 2020, the State makes this return, partial motion to dismiss, and motion for a more definite statement.

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Florence County Clerk of Court. In July of 2015, Applicant Vance Ross was arrested following an investigation into allegations he sexually abused his two minor daughters over an extended period of time and at a variety of different locations in Florence, South Carolina. In January of 2016, the Florence County Grand Jury issued a nine-count indictment charging Ross with eight counts of first-degree criminal sexual conduct with a minor and one count of third-degree criminal sexual conduct with a minor. Applicant was represented by Thurmond Brooker, Esquire. Assistant Solicitor David Richardson prosecuted the case.

On April 17, 2017, a jury trial was commenced on seven of the counts of first-degree criminal sexual conduct with a minor in the Florence County Court of General Sessions with the Honorable D. Craig Brown, circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Ross of six counts of first-degree criminal sexual conduct with a minor and acquitted him of the remaining count. Following the verdict, the trial judge sentenced Ross to

concurrent terms of imprisonment of life without parole for each of the convictions. Appellate Defender Katherine Hudgins perfected Applicant's appeal arguing the following:

1. The trial judge erred in refusing to quash as unconstitutionally overbroad and vague an indictment alleging seven counts of criminal sexual conduct with a minor between February 1, 2013, and July 31, 2014, because the lack of specificity within the time frame failed to provide sufficient notice and the time frame was not narrowed as much as possible.
2. The trial judge erred in refusing to grant a directed verdict of acquittal on one of the two counts of criminal sexual conduct involving oral sex with Minor #1 when the State failed to present any evidence that there was more than one instance of oral sex involving Minor #1

The court of appeals dismissed the appeal in an unpublished decision. *State v. Ross*, Op. No. 2020-UP-038 (S.C. Ct. App. filed Feb. 12, 2020). Thereafter, Ross petitioned the Court of Appeals for rehearing, and the petition was denied. Ross then filed a petition for a writ of certiorari in the Supreme Court. On November 25, 2020, the Supreme Court, by written order, denied certiorari. The remittitur was returned to the circuit court on December 1, 2020.

II. Facts

One day in the summer of 2014, Esther Lewis ("Mother") got into an argument with Ross, who was the father of her two daughters and two sons, after he accused her of not wanting to spend time or engage in "sexual activities" with him. (Tr. pp. 58-59; p. 184; pp. 188-189; pp. 191-192; pp. 201-203). Following the argument, Mother returned to her parents' home in Florence, South Carolina.¹ (Tr. p. 176; p. 183; p. 185; p. 190). Upon arriving, Mother spoke with her mother, who

¹ At that time, Mother was residing at her parents' home along with her mother, her father, her children, her sister, and her sister's children. (Tr. p. 185). Prior to doing so, Mother had lived in her own house with Ross and their children. (Tr. pp. 184-185). However, in 2013, Mother lost the house and was forced to move in with her parents. (Tr. p. 185). Meanwhile, during that time period, Ross alternated between staying at a shelter and various hotels. (Tr. pp. 185-186).

was the children's grandmother, in the kitchen, informed her of the nature of the argument with Ross, and remarked Ross was fixated on oral sex. (Tr. pp. 189-190). During that discussion, Mother's eight-year-old daughter ("Victim 1") overheard what Mother was saying, came into the kitchen, and revealed Ross liked to perform oral sex on her, too. (Tr. p. 72; p. 190). Shocked by the revelation, Mother immediately called the police to notify them of the sexual abuse, and officers quickly responded to the home to take a report. (Tr. pp. 190-191). Thereafter, Victim 1's eight-year-old twin sister ("Victim 2") also disclosed she had been sexually abused to Mother. (Tr. p. 130; p. 191).

A few weeks later, the Florence County Sheriff's County assumed responsibility for the investigation into the sexual abuse, and Investigator Jennifer Floyd was assigned to handle the matter. (Tr. pp. 58-60; pp. 173-174). Upon taking over the case, Investigator Floyd referred the victims for medical examinations and forensic interviews, and, during the interviews, both Victim 1 and Victim 2 disclosed Ross sexually abused them by committing acts of oral, anal, and vaginal penetration at a number of different locations throughout Florence County.² (Tr. pp. 174-176; pp. 207-208; p. 229; pp. 232-234; p. 235; p. 242). Ultimately, through her investigative work, Investigator Floyd was able to develop a general time frame of when the abuse occurred based on where the victims were living at different times and based on their reported ages during the incidents of abuse. (Tr. p. 177).

² Although both victims disclosed a number of different instances of sexual abuse committed by Ross during the forensic interviews, the eight-year-old girls' statements were occasionally contradictory, inconsistent, or lacking in detail in regard to when and where the different assaults occurred, how many times the assaults took place, and what specifically took place during each of the incidents. (State's Ex. # 6 (Recording of Forensic Interviews)).

At the conclusion of the investigation, Ross was arrested and indicted for a number of different offenses through a nine-count indictment. (Tr. pp. 6-7; pp. 364-367). Specifically, amongst the counts in the indictment, Ross was charged with four counts of first-degree criminal sexual conduct with a minor involving Victim 1 that were alleged to have occurred in Florence County between the dates of February 1, 2013, and July 31, 2014, with two different counts alleging Ross put his penis inside her mouth, one count alleging he put his penis inside both her vagina and mouth, and one count alleging he put his penis inside her vagina, anus, and mouth. (Tr. pp. 364-367). Similarly, Ross was charged with three counts of first-degree criminal sexual conduct with a minor involving Victim 2 that were alleged to have occurred in Florence County between the dates of February 1, 2013, and July 31, 2014, with one count alleging Ross put his penis inside her mouth and two different counts alleging he put his penis inside her vagina. (Tr. pp. 364-367).

Subsequently, Ross proceeded to trial on the seven counts of first-degree criminal sexual conduct with a minor alleged to have been committed between February of 2013 and July of 2014, and, at the outset of trial, defense counsel moved to quash the multi-count indictment based on the decision in *State v. Baker*, 411 S.C. 583, 769 S.E.2d 860 (2015).³ (Tr. pp. 6-7; p. 9). In support of that motion, defense counsel asserted the counts all involved a one-and-a-half-year time span but contained “absolutely no distinguishing language whatsoever.” (Tr. pp. 15-17). Additionally, defense counsel asserted the counts were not adequate because they did not contain sufficient information for the court to ascertain what Ross had been acquitted of in the event he was found

³ Although Ross was indicted for two additional charges through the multi-count indictment, the solicitor elected not to proceed forward on those charges based on the fact they alleged significantly broader time spans for the abuse. (Tr. p. 37; pp. 364-367).

not guilty of some of them. (Tr. p. 18). Furthermore, defense counsel asserted the time span alleged in the counts was overly broad, unspecific, and unparticular since Ross was the victims' father and, therefore, "was regularly in the life of" the victims and "probably saw them a thousand times over that period of time." (Tr. pp. 25-26; pp. 29-30). However, defense counsel acknowledged he had reviewed the victims' forensic interviews in preparation for trial and conceded the victims used "broad" and "confusing" language during the interviews that would effectively prevent anyone from being able to specifically determine how many times the abuse occurred or to clearly distinguish between the different instances of abuse. (Tr. pp. 17-18). Nonetheless, defense counsel maintained the multi-count indictment was improper because Ross purportedly could not narrow the scope of the charges or raise any defense other than a denial based on the information contained in the different counts. (Tr. pp. 25-26).

In rebuttal, the solicitor contended each of the counts was sufficiently distinguished from the others by identifying the particular victim involved and the particular type of sexual battery involved in the individual counts. (Tr. pp. 26-27). Additionally, the solicitor asserted Ross had been on notice of the counts in the indictment for well over a year and, thus, was not surprised by the charges he was facing like the defendant in *Baker* had been. (Tr. pp. 27-28). Furthermore, the solicitor noted the eighteen-month time span involved in Ross's case was shorter than either the six-year time span involved in *Baker* or the two-year and three-year time spans involved in other cases in which the indictments were found not to be overly broad. (Tr. pp. 28-29). For those reasons, the solicitor argued the counts in the indictment were sufficiently specific, distinguishable, and not overly broad such that the motion to quash should be denied. (Tr. p. 29).

After considering the matter and reviewing the relevant appellate decisions, the trial judge denied the motion to quash. (Tr. pp. 31-38). In denying the motion, the trial judge noted each of

the counts in the indictment specifically identified the particular minor victim involved and identified the specific type of sexual battery that was alleged to have been committed while the time span identified in each of the counts covered a period of only eighteen months. (Tr. pp. 37-38). The trial judge further noted Ross had a long period of notice in regard to the charged offenses in light of the fact he had been indicted over fifteen months earlier. (Tr. p. 38). Based on those factors, the trial judge concluded the time span alleged in the indictment was not overbroad and there was no proper basis upon which to quash the indictment. (Tr. p. 38).

Following the trial judge's ruling, the trial proceeded forward, and Victim 1, who was eleven years old at the time of trial and was "frightened" about testifying, testified Ross sexually abused her and her sister multiple times at a variety of different locations when she was around seven or eight years old.⁴ (Tr. pp. 71-127). Similarly, Victim 2, who was also eleven years old at

⁴ More specifically, Victim 1 indicated Ross touched her and her sister's buttocks and vagina on one occasion while inside a parked vehicle at their grandmother's house, put his penis in her vagina on at least one occasion while inside a parked vehicle at the same location, put his penis in her vagina at the Thunderbird Inn hotel, touched her "[i]n [her] mouth" on yet another occasion near a bus stop, and put his penis in her vagina at a park once. (Tr. pp. 79-84; p. 96; pp. 110-111; pp. 115-120). Additionally, Victim 1 revealed Ross put his penis in her mouth at the Thunderbird Inn hotel on one occasion, but she then quickly offered inconsistent testimony and asserted Ross did not actually get "it" into her mouth during that incident. (Tr. p. 95). Likewise, Victim 1 alternately claimed Ross did and did not put his penis in her anus on multiple occasions, and she asserted he did put his penis inside her mouth and vagina between five and ten times in total. (Tr. pp. 100-101; pp. 105-106). Furthermore, Victim 1 stated she saw Ross put his penis inside Victim 2's mouth on one occasion. (Tr. pp. 98-99).

the time of trial, testified about the numerous instances of sexual abuse involving her and her sister that occurred around the time she was seven or eight years old.^{5 6} (Tr. pp. 130-171).

In addition to the victims' testimony, Mother offered testimony confirming Ross regularly was with the victims for long periods of time at hotels, at the park, and in a vehicle parked outside of her parents' house while she was working during the time period of the abuse. (Tr. pp. 185-187; p. 198). Moreover, she discussed Victim 1's initial disclosure of the abuse, and she noted the victims began exhibiting behavioral changes, such as bed-wetting and issues in school, that began to manifest during the period of time in which the abuse was alleged to have occurred. (Tr. pp. 188-194).

Beyond that testimony, the officers involved in the investigation into the allegations discussed the steps in the investigation that culminated in Ross being charged for numerous instances of sexual abuse.⁷ (Tr. pp. 58-61; pp. 173-177). Likewise, Dr. Anne Abel, a pediatrician

⁵ Specifically, during her testimony, Victim 2 recounted Ross put his penis in her mouth at the Thunderbird Inn hotel on one occasion, put his penis in her vagina between one and five times at that location, put his penis in her anus one time at that location, put his penis in her anus one time at a different hotel, and put his penis in her mouth and vagina on multiple occasions while inside a vehicle parked at her grandmother's house. (Tr. pp. 134-138; pp. 140-141; pp. 144-146). Likewise, Victim 2 indicated she observed Ross put his penis in her sister's anus at one of the hotels and saw Ross put his penis in her sister's mouth once and vagina on multiple occasions while they were inside a vehicle parked outside their grandmother's house. (Tr. pp. 140-141; pp. 144-146). Moreover, Victim 2 stated she saw Ross unsuccessfully attempt to put his penis in Victim 1's vagina and mouth at the Thunderbird Inn motel, but she acknowledged she had previously indicated during the forensic interview she observed Ross put his penis in Victim 1's mouth while the two were showering together at that location. (Tr. p. 138; p. 158).

⁶ In recounting the sexual abuse, Victim 2 indicated Ross's penis had a scar on it. (Tr. p. 168). Notably, Mother later testified Ross's penis was, in fact, scarred as the result of a surgical procedure. (Tr. p. 188).

⁷ Sally Williamson, the forensic interviewer who conducted the interviews of the victims, also testified during trial in a hearing conducted outside the presence of the jury in order to establish the admissibility of the recording of the forensic interviews. (Tr. pp. 207-226). Ultimately though, the recording was not admitted into evidence because the solicitor was unable to effectively redact certain inadmissible portions of the interviews. (Tr. pp. 227-228).

and expert in child abuse who participated in the medical examinations of the victims, discussed the results of the examinations, noted Victim 2 had no signs of injury, and indicated Victim 1 had two mounds on her hymen that could potentially have been caused naturally or by sexual abuse. (Tr. p. 235; pp. 242-243; p. 257). However, Dr. Abel's specifically noted an absence of injuries did not rule out the possibility of sexual abuse due to the fact injuries resulting from acts such as vaginal or anal penetration tended to heal very rapidly. (Tr. pp. 235-238; pp. 240-242).

Subsequently, at the conclusion of trial, the jury convicted Ross of three counts of first-degree criminal sexual conduct with a minor involving Victim 1 and three counts of first-degree criminal sexual conduct with a minor involving Victim 2. (Tr. pp. 348-349). Meanwhile, the jury acquitted Ross of the single count of first-degree criminal sexual conduct with a minor alleging oral, vaginal, and anal penetration of Victim 1. (Tr. pp. 348-349). Following the verdict, the trial judge imposed an aggregate sentence of life without parole upon Ross. (Tr. p. 361).

III. Current Application

Applicant timely commenced this PCR action on December 29, 2020. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
 - a. The Court should grant the petition for writ of certiorari because the question presents a substantial constitutional issue dealing with an overbroad and vague indictment time frame that was not narrowed as much as possible and lacks specificity within the time frame that filed to provide sufficient notice depriving me of procedural due process.

Applicant requests his conviction be reversed and remanded as relief.

Attached herewith and incorporated herein are the Florence County Clerk of Court records regarding the subject conviction, Applicant's SCDC records, the trial transcript, the appellate

records (including the record on appeal), and the records of this PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

IV. Partial Motion to Dismiss

Applicant raises issues that are proper for direct appeal, but not proper for PCR. Therefore, these allegations should be summarily dismissed. An application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. S.C. Code Ann. § 17-27-20(b); *Drayton v. Evatt*, 312 S.C. 4, 8-9, 430 S.E.2d 517, 520 (1993) (citing *Hyman v. State*, 278 S.C. 501, 299 S.E.2d 330 (1983)); *Humbert v. State*, 345 S.C. 332, 338, 548 S.E.2d 862, 866 (2001). Trial court error is not a cognizable claim for PCR. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001); *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997); *Ashley v. State*, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant's allegations could have been raised at trial and thereafter on appeal. Therefore, Applicant's allegations should be dismissed as not cognizable under the Uniform Post-Conviction Procedure Act.

V. Motion for a More Definite Statement

Alternatively, if summary dismissal is not appropriate, the State moves for a more definite statement regarding Applicant's allegations. Applicant fails properly frame any of his allegations in a way in which are cognizable under the Uniform Post Conviction Procedure Act. The Uniform Post-Conviction Procedure Act requires that applicants must "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1976). In an application for post-conviction relief, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d

784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.”

The State moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his claims. The State moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Any Future Amendments and Invocation of Discovery

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VII. Any and All other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VIII. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held once Applicant provides a more definite statement.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MICHAEL D. DAVIDSON
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

April 20, 2021

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Vance Ross, #297223

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

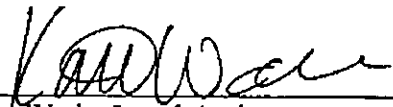
Case No.: 2020-CP-21-3015

Certificate of Service by Mail

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return, Partial Motion To Dismiss, & Motion For A More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Steven Willard Fowler, Esquire
730 Main Street Unit # 237
North Myrtle Beach, SC 29582

DATED this 20th day of April, 2021.


Katie Wade, Legal Assistant
For Respondent

2021 APR 21 AM 11:40
DEPT. OF CLERK
COURT OF COMMON PLEAS
FLORENCE COUNTY, SC

FILED

1 State of South Carolina) **TRANSCRIPT OF RECORD**
2 COUNTY OF FLORENCE) **CASE NO. : 2020-CP-21-3015**

3 -----

4 June 13, 2023

5 **BEFORE:** The Honorable Debra McCaslin

6 -----

7

8 Vance Ross,)

9 Applicant,)

10 vs.)

11 State of South Carolina,)

12 -----

13 **APPEARANCES:**

14 Russell Barlow, Esquire
15 Attorney for the State of South Carolina

16 Steven W. Fowler, Esquire
17 Attorney for the Defendant.

18

19 Julie A. Kevish
20 Official Court Reporter

21

22

23

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1		I-N-D-E-X	
2	<u>APPLICANT WITNESS</u>		PAGE
3	Corey N. Allen		
4	Direct by Mr. Fowler		6
5	Cross by Mr. Barlow		20
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7			
8	<u>STATE'S WITNESS</u>		
9	Thurmond Brooker		
10	Direct by Mr. Barlow		28
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1 June 13, 2023

2 P-R-O-C-E-E-D-I-N-G-S

3 MR. BARLOW: Thank you, Your Honor, may it please the
4 Court?

5 THE COURT: Yes.

6 MR. BARLOW: Russ Barlow on behalf of the State of
7 South Carolina. This is the post-conviction relief matter of
8 Vance Ross versus the State, Case Number 2020-CP-21-3015 out of
9 Florence County. In July of 2015 Applicant, Vance Ross, was
10 arrested following an investigation into allegations he
11 sexually abused his two minor daughters over an extended period
12 and at various locations in Florence, South Carolina. In
13 January of 2016 the Florence County Grand Jury issued a nine
14 count indictment charging Mr. Ross with eight counts of first
15 degree criminal sexual conduct with a minor and one count of
16 third degree criminal sexual criminal conduct with a minor.
17 Applicant was represented by Thurmond Brooker, Esquire and
18 Assistant Solicitor David Richardson prosecuted the case. On
19 April 17, 2017 a jury trial was commenced on seven of the
20 counts of first degree criminal sexual conduct with a minor in
21 Florence County Court General Sessions with the Honorable D.
22 Craig Brown presiding. At the conclusion of the three-day
23 trial the jury convicted Mr. Ross of six counts of six counts
24 of first degree criminal sexual conduct with a minor and
25 acquitted him of the remaining count. Following the verdict

1 the trial judge sentenced Mr. Ross to concurrent terms of
2 imprisonment for life without parole for each conviction.
3 Applicant filed a timely notice of appeal and Appellate
4 Defender Katherine Hudgins perfected Applicant's appeal arguing
5 two issues with the Court of Appeals. The Court of Appeals
6 dismissed the appeal in an unpublished decision, State v. Ross,
7 Opinion Number 2020-UP-038 filed February 12, 2020.
8 Thereafter, Mr. Ross petitioned the Court of Appeals for
9 rehearing and the petition was denied. Mr. Ross then filed a
10 Petition for a Writ of Certiorari in the Supreme Court. On
11 November 25, 2020 the Supreme Court by written order denied
12 cert. The Remittitur was returned to the Circuit Court on
13 December 1, 2020. Applicant timely commenced this PCR action
14 on December 29, 2020 and Applicant asserts he is being held in
15 custody unlawfully alleging, Your Honor, the exact arguments
16 that were presented on direct appeal. The State did move to
17 dismiss those allegations and that motion was granted on
18 September 23, 2020 by the Honorable H. Steven DeBerry, IV, and
19 at this time I'll turn it over to Mr. Fowler.

20 THE COURT: First, let me address you, Mr. Ross.
21 This is your post-conviction relief hearing. The only thing
22 this Court can do is I can listen to your claims and either I
23 can send it back or reinstate all of your charges and you'll be
24 tried again. It's not that I can reduce your sentence at this
25 hearing or dismiss your charges. Do you understand that?

1 THE APPLICANT: Yes, ma'am.

2 THE COURT: And knowing that do you still wish to
3 proceed and go forward?

4 THE APPLICANT: Yes.

5 THE COURT: Thank you. Mr. Fowler, because I am
6 looking at this partial Motion to Dismiss, and this is a
7 partial Motion to Dismiss. The Court -- did you read that
8 order?

9 MR. FOWLER: Yes, Your Honor.

10 THE COURT: And I know that I've spoke to both
11 lawyers. The Court ordered that you filed an amended
12 application setting forth any claims, and you to tell me that
13 your client does have claims that he wishes to tell the Court
14 about?

15 MR. FOWLER: Yes, Your Honor, and we will go into
16 those today.

17 THE COURT: Okay. Alright. Not the claims that he
18 went through on appeal?

19 MR. FOWLER: That's correct, Your Honor.

20 THE COURT: Okay. Are you ready to go forward with
21 that, Mr. Barlow?

22 MR. BARLOW: Yes, ma'am.

23 THE COURT: Okay. Alright then, Mr. Fowler, you can
24 call your first witness.

25 MR. FOWLER: I'd like to call Mr. Vance Ross to the

1 stand, Your Honor.

2 THE COURT: Okay. You can come forward and be sworn.

3 VANCE ROSS WAS DULY SWORN AT THIS TIME AND TESTIFIED
4 AS FOLLOWS:

5 THE COURT: Thank you. You can proceed.

6 DIRECT EXAMINATION

7 BY MR. FOWLER:

8 Q. Mr. Ross, please say and spell your name for the court
9 reporter, please.

10 A. Yes, Vance Ross. First name, V-a-n-c-e. Last name,
11 Ross, R-o-s-s.

12 Q. And you are contending that there is an ineffective
13 assistance of counsel issue with your attorney of record, Mr.
14 Thurmond Brooker; is that correct?

15 A. That is correct.

16 Q. And you wish to bring that to the Court's attention
17 today, correct?

18 A. Yeah, that's correct.

19 Q. And you and I have spoken about this previously,
20 correct?

21 A. Correct.

22 Q. And we also spoke this morning, correct?

23 A. Correct.

24 Q. And one of the issues that you brought up, ineffective
25 assistance of counsel is a fairly broad term; isn't it?

1 A. Yes, sir.

2 Q. But there's some specifics that you'd like to bring to
3 the Court's attention about his representation; is that
4 correct?

5 A. Yes, sir.

6 Q. You and I in our telephone, or what have you, recently,
7 you indicated that there was a lack of calling of witnesses?

8 A. Yes, sir.

9 Q. Is that correct?

10 A. Correct, sir.

11 Q. Tell me about that. Tell me what happened in terms of
12 you feeling that he should have called witnesses on your
13 behalf.

14 A. On the point of hiring them, me and my wife Janice told
15 him that we needed to get the school counselors to come and my
16 Doctor, Peter O'Kelly, knows about my surgery on my, um --
17 where I had an accident on my, um, testes and hydroceles done
18 on the left and the right, which they already knew about,
19 investigators.

20 Q. So your testimony is that one school counselor should
21 have appeared?

22 A. Well, they -- I was supposed to go to a trial two weeks
23 later but I was taken by surprise and taken up two weeks
24 earlier. My attorney said that he didn't know the same judge
25 that denied me bond was going to be there.

1 Q. Let's take it piecemeal bite size type testimony here,
2 please. Okay. You said the first thing that you and I spoke
3 about that you would like to bring to the Court's attention is
4 that he did not call witnesses, correct?

5 A. Correct.

6 Q. Once of the witnesses was a school counselor; is that
7 correct?

8 A. Yes, sir, school staff.

9 Q. School staff. Okay. Do you know who that school staff
10 was?

11 A. Not offhand now because it's been a while, eight years
12 and a half.

13 Q. Well, what would have been the purpose of bringing that
14 school staff to court to testify on your behalf?

15 A. Because they knew about the situation with my baby's
16 mother, her ways of acting around the children, because I spent
17 more time with them eating with them, going to school, which
18 she didn't, and one time they had to get her off the premises.

19 Q. Did you talk with your attorney about that?

20 A. Yes, I did.

21 Q. Did he subpoena that witness to court?

22 A. No.

23 Q. In your estimation why did he not do that?

24 A. Well, he told me that he was going to get the witnesses
25 and he was doing everything, but there were lies being told to

1 me and my wife. One, I found out that he represented my twin
2 brother Victor, identical, Victor Ross, and every time my wife
3 talked to him he called me by the name of Victor Ross. Now,
4 him and my brother having a money issue is what I believe that
5 affected me for being lied to and done wrong by my counsel,
6 because I look just like him.

7 Q. Well, let's kind of go back to the school counselor and
8 finish that up and then we'll talk about that.

9 A. Okay.

10 Q. So you're saying that there was a witness you feel would
11 have been helpful?

12 A. Yes, sir.

13 Q. And you talked with your attorney about it?

14 A. Yes, sir.

15 Q. And your attorney did not subpoena them to court?

16 A. No, sir.

17 Q. And you feel like that's a basis for ineffective
18 assistance of counsel?

19 A. Yes, sir.

20 Q. Secondly, you said there was a medical doctor, correct?

21 A. Yes, sir.

22 Q. Do you remember the name of the medical doctor?

23 A. Peter O'Kelly, Urologist, Carolina Hospital System.

24 Q. Alright. At least at the time who was Peter O'Kelly
25 Urologist, how would he have helped you out in this case?

1 A. Because at the time the allegation said I'd done these
2 sexual acts I couldn't have done them because I was in an
3 accident at Blue Beacon Truck Wash while I had got snatched
4 where the cord wrapped around my ankle and it ripped my testes
5 and I had to -- and they waited too long, I had it infected on
6 the other one and he had to go in and do surgery on the
7 hydrocele, and I was out for about two to three years not doing
8 anything.

9 Q. So you feel like his testimony, and I'll refer to him as
10 the medical doctor, you feel like the medical doctor could have
11 assisted you in your case, correct?

12 A. Correct.

13 Q. Did you talk with Mr. Brooker about that?

14 A. Yes, sir.

15 Q. What did he say to you?

16 A. That he was going to get all these witnesses, I never
17 seen them.

18 Q. Do you feel like the medical doctor not being there hurt
19 your case?

20 A. Yes, sir, indeed.

21 Q. Why is that?

22 A. Because he could have proved by my injuries to my
23 testes I could not have done these sexual acts.

24 Q. Do you feel like him not calling the medical doctor is a
25 basis for ineffective assistance of counsel?

1 A. Correct, sir.

2 Q. Are there any other witnesses that you feel like might
3 have been helpful to you in terms of that you brought to Mr.
4 Brookers' attention but it was not followed through with?

5 A. Yes, Janice King.

6 Q. Now, I think, Ms. King is your wife, correct?

7 A. Correct, to be.

8 Q. And let me finish my sentence before you answer --

9 A. Yes, sir.

10 Q. -- if you don't mind, just for the court reporter and
11 the Court. And Ms. King is in the courtroom today, correct?

12 A. Correct.

13 Q. And how could she have helped in terms of being the
14 witness at your initial hearing?

15 A. Because on the third day of my trial I was -- there was
16 an accident, the sheriff -- you know on the transporting me to
17 come into the jailhouse and so they delayed traffic like 15, 20
18 minutes. She was in the courtroom and the judge said I would
19 like to proceed with the case, is it all right? And she was in
20 their witness, my attorney didn't object and I was supposed
21 to -- I was not even present for 15, 20 minutes, and I should
22 have been there because this is my life on the line.

23 Q. So you're saying that -- well, Ms. King was there to see
24 what was going on?

25 A. Yes, sir.

1 Q. And you were delayed on, what, the third day of your
2 trial?

3 A. Yes, sir, sentencing day.

4 Q. Okay. So did the Court begin without you?

5 A. Yes, sir.

6 Q. In your estimation, why did they do that?

7 A. Because of my attorney. He didn't object.

8 Q. To the best of your knowledge -- well, you answered my
9 question, he didn't object, did he?

10 A. No, sir.

11 Q. So to the best of your knowledge did he explain to the
12 Court that there was a traffic accident or something going on?

13 A. I wouldn't know, I wasn't there, only the witness would.

14 Q. Very good. Well, let's go to that. So there was a
15 sentencing day of the trial, correct?

16 A. Yes, sir.

17 Q. And you weren't there?

18 A. No, sir.

19 Q. And it was not your fault, was it?

20 A. No, sir.

21 Q. And yet, the attorney allowed the Court proceeding to go
22 on?

23 A. Yes, sir.

24 Q. And to your knowledge there's no record of him objecting
25 to that?

1 A. No, sir.

2 Q. Any other witnesses you feel might have been helpful in
3 terms of your trial? We've gone over the school staff, the
4 medical director and Ms. King.

5 A. My brother, Victor, my twin brother, identical.

6 Q. How could he have helped?

7 A. Because he represented my twin brother, Victor, in a
8 previous case, it was a conflict of interest. If him and my
9 brother had a conflict with funds it you shouldn't reflect on
10 me, but I look just like him and every time my wife talked to
11 him he referred to me as Victor. That is my twin brother, I'm
12 Vance.

13 Q. Okay. So we're through with the witnesses that could
14 have been helpful that weren't called and you feel like that
15 was ineffective assistance of counsel?

16 A. Yes, sir.

17 Q. Alright. Let's talk about that. Did Mr. Brooker --
18 just to reiterate, how did Mr. Brooker represent your brother?

19 A. In the case? When he came to see me, he said, when he
20 first came to see me, you don't know me? I said, no, I don't
21 know you. He said, well, I represented your brother, Victor
22 Ross in a case.

23 Q. Was Mr. Brooker appointed to you or did you pay him?

24 A. I paid him. I called a different law firm they
25 appointed and they said that he would be a good lawyer so I

1 paid him.

2 Q. But now did you get the impression that there was an
3 issue with funds with him representing your brother?

4 A. Yes, sir.

5 Q. Tell me about that. I believe you touched on it
6 earlier, but go into it in a little more detail here.

7 A. By talking to my brother later he said that he
8 represented him in a case and he said, oh, you shouldn't have
9 got that lawyer. He said I represented and we had issues.

10 Q. Do you feel like Mr. Brooker had used that against you
11 that he represented your brother?

12 A. Absolutely.

13 Q. Anything else about that topic, him representing your
14 brother that you feel needs to be brought to the Court's
15 attention?

16 A. Yes. On the first day of my trial there was a
17 proceeding, they was playing a hearing of a tape which my
18 daughter's was and I was sitting on the left of him and he had
19 his eyes closed and I heard like a snoring sound. I said, are
20 you snoring on me? And then after he said, no, I just got my
21 eyes closed, I wanted to be able to hear everything on the
22 tape, and the judge looked at me when I made my outburst. I
23 said, are you snoring?

24 Q. So is it your testimony to the Court that you feel like
25 Mr. Brooker slept during your trial?

1 A. On the -- on the -- on that first day the man was
2 snoring, I know what a snore sounds like.

3 Q. Do you feel like he was being inattentive? He wasn't
4 paying attention, according to your testimony; is that right?

5 A. That's right.

6 Q. Do you feel that served as an ineffective assistance of
7 counsel?

8 A. Yes, sir.

9 Q. In terms of, you mentioned early that the trial was two
10 weeks earlier than expected; is that correct?

11 A. Yes, sir.

12 Q. Tell me about that.

13 A. Alright. Well, Officer Parrett he came to see me, he
14 said, we're going up in front of a judge, different judge, not
15 Brown, he said, this judge, this particular judge took an
16 interest in your case because of your situation. He said we'll
17 be with going to see him. So afterwards that, he came to me
18 and said, oh, your trial has been shot up two weeks, next time
19 I heard from him two weeks earlier. I was taken by surprise.
20 How am I gonna prepare for that? Everybody done took off from
21 work, the school and everybody to come for the two weeks later.
22 They can't just readjust. He said he didn't know what judge,
23 he didn't know the judge that denied me bond twice and
24 sentenced me was gonna be there. Him being my attorney, how
25 would you not know, you're a lawyer?

1 Q. Okay. Did he ask for a continuance or from that day
2 that it was apparently brought up to you to a later day?

3 A. No. He said the judge won't give me a continuance --
4 wouldn't give us a continuance.

5 Q. Did he put anything on the record?

6 A. No. He just kept on, he said, the judge wants to go
7 forward because he will not give us a continuance.

8 Q. Alright. Now, who was the judge?

9 A. Judge Craig D. Brown.

10 Q. Now, you had appeared before Mr. Judge Brown before; is
11 that correct?

12 A. Correct.

13 Q. Tell me what times you had appeared before him.

14 A. I appeared before him in a bond hearing, he denied me
15 the first time. I had to wait eight months later, and I went
16 up the second time, and my lawyer, Thurmond Brooker, this is a
17 bond hearing, they offered me 25 years during a bond hearing.
18 Me and my wife were shocked.

19 Q. So the same judge who, he denied you bond not once but
20 twice?

21 A. Yes, sir, correct.

22 Q. And he also tried you, correct?

23 A. Correct.

24 Q. Did you go over that with your attorney, Mr. Brooker?

25 A. Yes.

1 Q. And what did you say to him?

2 A. I said me and my wife do not want to go in front of
3 Judge Craig D. Brown because we feel I'd be prejudiced. I said
4 we need a continuance. He said he's not going to grant a
5 continuance.

6 Q. Do you feel like that served as ineffective assistance
7 of counsel for you?

8 A. Yes, sir.

9 Q. And why was that, because of potential prejudice by
10 Judge Brown, possibly?

11 A. Yes, sir.

12 Q. Anything else on that that you wish to bring to the
13 Court's attention?

14 A. No, sir.

15 Q. In our discussions recently you indicated that there
16 were, at one of those bond hearings, apparently, there was a
17 plea offer or something along those lines?

18 A. Yes, sir, a plea offer of 25 years during a bond
19 hearing.

20 Q. So tell me how that was brought up, the plea offer was
21 brought up on the record or just --

22 A. No. When we went to -- when we proceeded with my wife
23 to the hearing we thought it was to get me a bond so I could
24 bond out to try to help me fight my case. When I got there it
25 turned from a bond to a plea, which everybody in the box, the

1 guy said, wow, you're getting set up.

2 Q. When you say everything turned into a plea, what do you
3 mean? Was there something put on the record about you being
4 asked to accept a plea?

5 A. Yeah, Judge Brown said to him, he said we're offering a
6 plea of 25 years if you take that, and they had me under the
7 microphone with my wife standing there, I said absolutely not,
8 I'm not taking that.

9 Q. Anything else about the bond hearings that you wish to
10 bring to the Court's attention?

11 A. No, sir.

12 Q. In our discussion recently you said that there was an
13 issue with evidence; is that correct?

14 A. Yes, sir.

15 Q. What issue or issues do you feel like need to be brought
16 to the Court's attention today about that?

17 A. There was -- the victim that accused me of this crime
18 wrote a letter, my wife is a witness, that saying if I leave
19 her she would drop the charges. We gave the letter to Brooker.
20 Later on my wife called him and said we need that letter for
21 evidence. He said, well, I have to find it, whatever, it's in
22 my storage. We never even heard from him.

23 Q. So just to be clear, you're saying there was a letter
24 out there that could have been helpful?

25 A. Yes, sir.

1 Q. And your attorney never brought it to the Court's
2 attention?

3 A. Yes, sir.

4 Q. How helpful do you think that that letter could have
5 been, possibly?

6 A. That letter was the second main fact that could have
7 proved my innocence that the baby mother was going after me
8 just because I'm with who I am with now.

9 Q. Did Mr. Brooker subpoena that person who wrote the
10 letter?

11 A. No. She was in the courtroom.

12 Q. She was in the courtroom?

13 A. Yes, Ester.

14 Q. So did he ask her to testify in terms of the contents of
15 that letter?

16 A. Never mentioned the letter, never even gave it the
17 judge.

18 Q. So you're saying that there was a letter out there --

19 A. Yes, sir.

20 Q. -- that could have been helpful?

21 A. Yes, sir.

22 Q. And Mr. Brooker never brought that to the Court's
23 attention?

24 A. No, sir.

25 Q. And he didn't question the witness -- well, he didn't

1 question the person who was in the courtroom who wrote the
2 letter, right?

3 A. No, sir.

4 Q. Do you feel like that could serve as a basis of
5 ineffective assistance of counsel?

6 A. Yes, sir, indeed.

7 Q. Mr. Ross, you and I have gone over what you and I
8 discussed previously. Is there any other issues about Mr.
9 Brooker's representation that you wish to bring to the Court's
10 attention at this time?

11 A. Yeah, during the representation, you know how you -- I
12 felt that, you know how somebody is there present but their
13 mind is not there with you, their heart and soul is not into
14 the case? I felt that through the whole case.

15 Q. Anything else?

16 A. No, sir.

17 MR. FOWLER: That's it, Your Honor.

18 THE COURT: Thank you. Alright, Mr. Barlow?

19 MR. BARLOW: Your Honor, very briefly, may it please
20 the Court?

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. BARLOW:

24 Q. Good morning, Mr. Ross. How are you doing today?

25 A. Good morning, Mr. Barlow. How are you doing today, sir?

1 Q. I'm doing fine. Thank you.

2 A. You're welcome.

3 Q. Very briefly. You hired Mr. Brooker?

4 A. Yes, sir.

5 Q. And you said, you just testified that you did not feel
6 that his heart and soul was in this the entire time that he
7 represented you, correct?

8 A. Yes.

9 Q. Why didn't you relieve him and hire someone else?

10 A. Well, it was too late, I was already in trial and we
11 couldn't just afford to drop everything we're doing and get
12 anybody else.

13 Q. How long did Mr. Brooker represent you before trial?

14 A. I was in -- I was locked up for 18 months, I didn't get
15 indicted until almost before trial, like a month before trial,
16 which was a violation of my process. I didn't have time to do
17 anything. I can't remember exact dates, but I know he said,
18 you know, it was a violation of your process for not being
19 indicted until later, you know, being locked up and being
20 indicted later, that's what he told me.

21 MR. BARLOW: Thank you. Nothing further, Your Honor.

22 THE COURT: Any redirect?

23 MR. FOWLER: Yes, Your Honor.

24 REDIRECT EXAMINATION

25

1 BY MR. FOWLER:

2 Q. You said that the trial was moved up two weeks early,
3 correct?

4 A. Yes, sir.

5 Q. And a lot of these issues were at trial, correct?

6 A. Yes, sir.

7 Q. So you didn't really know during the 18 months
8 previously about some of these issues that we're talking about
9 today, did you?

10 A. No, sir.

11 MR. FOWLER: No further questions, Your Honor.

12 THE COURT: I just want to make sure that I've got
13 all these allegations straight in my head. The first
14 allegation is not calling witnesses? That would be school
15 staff, that would be the doctor?

16 THE APPLICANT: Yes, ma'am.

17 THE COURT: And that would be Janice King?

18 THE APPLICANT: Yes, ma'am.

19 THE COURT: Then Victor, your twin brother?

20 THE APPLICANT: Identical, yes, ma'am.

21 THE COURT: You felt that because your attorney
22 represented him previously in another case, you -- and your
23 brother was behind on paying the lawyer that you felt that he
24 used that against you?

25 THE APPLICANT: Yes, ma'am.

1 THE COURT: So that's the second reason. The third
2 reason, the trial was two weeks earlier and your lawyer failed
3 to ask for a continuance?

4 THE APPLICANT: Yes, ma'am.

5 THE COURT: And then I would assume with that is
6 because of Judge Brown, also, you felt like you were prejudiced
7 because he denied two of your previous bond hearings?

8 THE APPLICANT: Yes, ma'am.

9 THE COURT: And you certainly didn't want to go in
10 trial in front of him?

11 THE APPLICANT: No, ma'am.

12 THE COURT: And also it looks to me like you rejected
13 a plea offer --

14 THE APPLICANT: Yes, ma'am.

15 THE COURT: -- on the record?

16 THE APPLICANT: Yes, ma'am.

17 THE COURT: -- is what it sounds like to me. That
18 was brought up at the bond hearing, and based on all of those
19 reasons he should have asked for a continuance?

20 THE APPLICANT: Yes, ma'am.

21 THE COURT: And then there was for the fourth reason
22 the issue with evidence which is a letter that could have been
23 helpful to you where it appears like maybe your child's mother
24 was jealous?

25 THE APPLICANT: Yes, ma'am.

1 THE COURT: And this was a vindictive --

2 THE APPLICANT: It was a vendetta, yes, ma'am.

3 THE COURT: A vendetta. And that letter would have
4 been helpful but your lawyer did not question her?

5 THE APPLICANT: No, ma'am.

6 THE COURT: So those are my four reasons. Am I
7 missing something?

8 MR. FOWLER: If I may, Your Honor?

9 THE COURT: Sure.

10 MR. FOWLER: Apparently, on the third day of the
11 trial there was a traffic issue while he was incarcerated --

12 THE COURT: Yes.

13 MR. FOWLER: -- and court went on without him.

14 THE COURT: That's right. Wait a minute. Let me
15 find my note on that. I'm telling you, I've looked at the
16 record, I don't see any indication of that, whatsoever. It
17 appears to me that you were present. Does it say anything
18 about you not being present? Let me ask the lawyers. Have you
19 reviewed the transcript, and can you tell me where it is that
20 he wasn't present?

21 MR. BARLOW: Your Honor, I reviewed it, and as he
22 said, it was the third day and it was during sentencing, and I
23 do not see anywhere where it indicates that the defendant was
24 not present.

25 THE COURT: Well, that's what the record states for

1 me, too. Yeah, I'd be glad to hear from you.

2 THE APPLICANT: It was -- I said -- I was present
3 later. I didn't come -- during the beginning I was not present
4 for 15, 20 minutes because there was an accident. I later came
5 to trial because I got sentenced so I had to be there, but the
6 beginning of the trial I was not present, that's when they
7 started without me. That's what we argued, me and my lawyer.

8 MR. FOWLER: If I may?

9 THE COURT: You may.

10 MR. FOWLER: Are you saying it was on the third day
11 of trial during sentencing or at the beginning?

12 THE APPLICANT: The beginning, not during sentencing,
13 the beginning, for the record.

14 MR. FOWLER: The first day?

15 THE APPLICANT: No, the third day, the sentencing
16 day, 15 minutes late. I didn't get there until late because
17 there was an auto accident.

18 THE COURT: Well, maybe -- is Mr. Brooker here?

19 MR. FOWLER: Yes.

20 THE COURT: Then maybe he can clarify that for me, I
21 just don't see it in the record anywhere.

22 MR. BARLOW: And Your Honor, I think that was the
23 late the third day, and then I have also the allegation that
24 counsel was sleeping.

25 THE COURT: Oh, snoring?

1 MR. BARLOW: Yes, ma'am.

2 THE APPLICANT: No, that's the first day.

3 THE COURT: Oh, okay, five and six, counsel's
4 snoring. So I think I've got all this down. Okay. Mr.
5 Barlow, any questions?

6 MR. BARLOW: None, Your Honor.

7 MR. FOWLER: Nothing else, Your Honor.

8 THE COURT: Alright. You can step down, Mr. Ross.

9 THE APPLICANT: Thank you, Your Honor.

10 THE COURT: Thank you.

11 MR. FOWLER: If I could have just a moment, please,
12 with my client, Your Honor?

13 THE COURT: You can.

14 MR. FOWLER: Thank you. Your Honor, I've consulted
15 with my client. No further questions.

16 THE COURT: Okay.

17 MR. FOWLER: And that's our case.

18 THE COURT: That's your case?

19 MR. FOWLER: Yes, Your Honor. Mr. Barlow?

20 MR. BARLOW: Thank you, Your Honor. We would call
21 Mr. Thurmond Brooker.

22 THE COURT: Good morning, Mr. Brooker.

23 MR. BROOKER: Good morning, Your Honor.

24 THURMOND BROOKER WAS DULY SWORN AT THIS TIME AND
25 TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

1

2 BY MR. BARLOW:

3 Q. Good morning, Mr. Brooker.

4 A. Good morning.

5 Q. How are you doing?

6 A. I'm fine and yourself?

7 Q. Good.. Thank you very much. How long have you been
8 practicing law?

9 A. Right now, almost 23 years.

10 Q. And how much of that has been in criminal law?

11 A. Nearly all of it. I think maybe, probably, a year, a
12 year of it that was not criminal law. I think roughly just
13 about all of it except a year.

14 Q. Were you retained in this case?

15 A. I was.

16 Q. And roughly, how long before trial were you retained?

17 A. To the best of my recollection, I was retained at least,
18 the great bulk of this, but at least over a year prior to the
19 trial.

20 Q. And you received discovery during that time?

21 A. Yes.

22 Q. Could you give us a brief overview of what the State's
23 evidence was in this case?24 A. The State's evidence in this case primarily based upon
25 the testimony of the children, and specifically, Mr. Ross had

1 two daughters, had made allegations of sexual assault against
2 him. Those two daughters were sent to, I think the CARE House
3 or the Durant Center and they had been forensically interviewed
4 and they made statements, but they also, I think, had a
5 forensic medical examination, and that was the bulk of the
6 evidence, was the testimony of the children, the forensic
7 interview, and then a forensic medical examination.

8 Q. And based off of that were you able to craft a defense
9 strategy?

10 A. Yes.

11 Q. And did you discuss your defense strategy with
12 Applicant?

13 A. Yes, on multiple occasions.

14 Q. I'm going to go jump right into the allegations. So
15 there is an allegation of not calling certain witnesses, and
16 the first one would be not calling school witnesses. Do you
17 recall him asking you to subpoena school witnesses?

18 A. No. We talked about, I think specifically had mentioned
19 his physician, and then, also, I think he mentioned the school
20 official, and normally what we do is at the time in which he
21 mentioned these witnesses, and I'll start off with the school
22 physician, we talked about whether or not the school physician,
23 whether or not the physician could provide any information that
24 would be assistance in connection with his defense. I think it
25 was his position that, hey, I couldn't have sex, so

1 therefore -- and that's what I believe he had told me: Well, I
2 can't have sex, therefore, that would be a complete bar to
3 these particular charges, which it would not, because it was my
4 understanding is is that, and of course, we talked about this,
5 that there was nothing in his records in which his physician
6 said, or at least that he was aware of where his physician said
7 that he could not have sex. In addition to that, if you would
8 look in the transcript during the testimony of his trial, I
9 think the mother of his kids saying that they had sex
10 regularly, and I think she even said that one of the reasons
11 why she broke up with him is because his incessant demand for
12 sex, specifically oral sex.

13 MR. FOWLER: Objection, Your Honor. Hearsay.

14 MR. BARLOW: Your Honor, if it's in the record, it's
15 in the record.

16 THE WITNESS: It's in the transcript.

17 THE COURT: If it's in the transcript, I'm going to
18 allow it.

19 A. And so we talked about whether or not that physician
20 could offer anything, because unless the physician can get up
21 there and say medically that it is impossible for you to have
22 sex, that physician is not going to be, you know, basically, a
23 defense to him allegedly committing these offenses. So we had
24 a conversation around about the physician and what the
25 physician could offer and what the physician could not offer

1 and whether or not that would be beneficial to them because if
2 we put the physician on the stand, and of course, there is
3 testimony that he is having sex and there is no testimony
4 coming from the physician that he is incapable of doing that,
5 then of course, it would probably injure him more than it would
6 help him. With respect to the school officials, and I'm a
7 little bit confused about the school officials, the thing about
8 the school officials, and I think I was keeping notes while he
9 was testifying, I think he said something like that the school
10 officials could testify to the fact that his -- the mother of
11 his girlfriend came up and was erratic and had to be removed
12 from the school, but again, that has absolutely nothing to do
13 whether or not he had committed these offenses. I don't know
14 whether or not he thought that we could somehow say that the
15 mother of his children was a bad mother, therefore, somehow
16 that was a defense to the allegations that is he was accused of
17 by his daughters, and it was not, and that is one of the things
18 that we talked with him about is, is that if you are going to
19 bring witnesses there you have to have witnesses that's going
20 to offer something to his defense, and of course the only thing
21 that we were aware of is maybe she could say, you know, that
22 these children's mother was a bad mother, which again doesn't
23 help him in the allegation that he sexually assaulted these
24 kids.

25 Q. How about with regard to Ms. Janice King, his wife?

1 A. And I'm a little bit confused by that, and I'm not quite
2 sure what he was saying that Ms. King would offer, but Mr. Ross
3 was in jail, I think, to my memory, just about the entire time.
4 So I met Ms. King on numerous occasions, she would come to my
5 office often, and mostly would just talk about the case, but
6 I'm not quite -- and I'm a little bit confused by that, I'm not
7 quite sure what he thinks that Ms. King could have offered,
8 because certainly if she had information that the jury might
9 find useful in trying to determine whether or not he had
10 committed these offenses, we would have called Ms. King. I
11 think when he was testifying he said something like, Ms. King
12 said that we started the trial on the third day without them,
13 and that's not true, and I don't know if you probably know
14 anything about Judge Brown, but Judge Brown is probably one of
15 the most procedural regimented judges there is and is a
16 stickler to the rules. We never start a trial and stop that
17 trial at any point in time without him being present in the
18 courtroom.

19 Q. How about the allegations of the brother being a
20 conflict?

21 A. And I'm confused by that, too, but I don't know of any
22 conflict with the brother. Vance Ross, I know him and his
23 brother, and I knew his brother before him, and I think I
24 represented his brother I think in connection with, I don't
25 want to specifically say what it was, I know I represented his

1 brother prior in the past, and I think Vance knew me because of
2 his brother. I've never had a bad relationship with his
3 brother, and certainly my relationship with his brother has
4 absolutely nothing to do with my relationship and
5 representation of him, so most of the stuff that I heard him
6 testify to on the stand, I'm hearing this for the first time,
7 so I was never aware of the fact that he thought that there was
8 a conflict because I represented his brother in unrelated
9 matters. It was my understanding that he was aware of the fact
10 that I represented his brother, and of course I even asked him
11 about his brother and he talked about his brother on occasions
12 in which I met with him, so I'm a little bit confused by that.

13 Q. Let me ask you, was this trial moved up two weeks?

14 A. Not to my knowledge, and again, that's an allegation,
15 again, that I'm hearing for the first time. I was not aware of
16 that at all. Prior to this trial taking place I went down to
17 the detention center and met with him, and I think I met with
18 him prior the date of trial and advised him of when this trial
19 would be taking place because the State had made an offer to
20 him. David Richardson was the Solicitor in connection to this
21 case and David sometimes has a practice of making an offer
22 around trial, and I always tell David, well, let me go down and
23 see my client, I'll talk with him about it again to make sure
24 that he's not going to accept that offer. I met with him prior
25 to trial to discuss, again, whether or not he intended to plea

1 or either whether or not he intended to go to trial, so I'm a
2 little bit confused by that, I don't think that's accurate.

3 Q. Let me ask you, there was some testimony about an offer
4 made at a bond hearing. Do you recall that?

5 A. And I'm a little bit confused by that because I think
6 from the way that he testified it created the appearance as if
7 what was a scheduled bond hearing turned into a scheduled plea
8 hearing, and that's not the case. I think we had a bond
9 hearing, and sometimes at a bond hearing, David Richardson has
10 done this on more than one occasion. Sometimes if he has an
11 offer, after the bond hearing he will come to me and say, well,
12 will your client take this offer, and if he says that to me,
13 I'll say, well, I don't know, I'll talk with him and I'll get
14 back in touch with you. It's not the first time where I have
15 been given an offer after the bond hearing or even prior to the
16 bond hearing, but not during the bond hearing, and usually my
17 response is, I'll take it to my client, I'll discuss it with
18 him and I'll get back in touch with you.

19 Q. Okay. On allegation number four, do you recall there
20 being any evidence of a letter from his baby's mother?

21 A. No. The mother of his child testified at the trial of
22 this case, and if there had been a letter from his baby's
23 mother saying that I will drop the charges if you get back with
24 me, that would have been the first thing that I would have used
25 to impeach her with. There is no letter where his mother says

1 that I'm aware of, that I will drop all charges if you re-enter
2 a relationship with me. Like I said, when I was sitting back
3 there listening to this stuff, and it's very serious stuff, but
4 I had to chuckle at some of it, because I'm hearing this for
5 the first time.

6 Q. And you answered allegation number five regarding being
7 late to court on the third day, we've got your testimony on
8 that so I'm going to move to the last one, and importantly, Mr.
9 Brooker, were you sleeping and snoring during his trial?

10 A. That's another one that I had to chuckle after.
11 Absolutely not. This is the first day of court. I don't know
12 how to respond to that because it's blatantly false, and
13 there's no way for me to prove it other than to say that it's
14 absolutely false. In the 23 something, 23 years that I have
15 been practicing law and in all of the trials that I've done
16 this is the first time that I've been accused of falling asleep
17 on the first day of trial. I mean, it's just nonsense.

18 MR. BARLOW: Thank you, Mr. Brooker. Please answer
19 any questions Mr. Fowler has.

20 MR. FOWLER: If I may have just a moment?

21 THE COURT: Absolutely.

22 CROSS-EXAMINATION

23 BY MR. FOWLER:

24 Q. Mr. Brooker, once again, you represented him for quite a
25 number of months; is that correct?

1 A. Yes.

2 Q. How many months would you say you represented him?

3 A. I'm guessing, but I think it would have been at least 12
4 months.

5 Q. In terms of the trial did you two discuss any kind of
6 medical doctor appearing at the trial on behalf of Mr. Ross?

7 A. We discussed his doctor when he told me -- we didn't
8 discuss subpoenaing his doctor and having his doctor present.
9 We did discuss his doctor and discussed, and this would have
10 been, I think well in advance of trial. This would have been
11 during the course in which we received discovery, and of course
12 once I got the State's discovery I would come down to the jail,
13 and of course, discuss with him the discovery, and of course,
14 he would advise me of what about this or what about that, and
15 of course, we talked about this doctor and he told me that he
16 had a medical procedure, and of course we talked about whether
17 or not that doctor could conclusively say he could not have
18 sex. So we discussed that doctor but there was no plan by me
19 or I never told him that we were going to bring that doctor
20 there, because unless that doctor can conclusively say it is
21 impossible for him to have sex, that would have been the only
22 benefit for that doctor, and it was my understanding was that
23 that was not the case, and I think, like I said, and I'm not --
24 this is not hearsay, I'm talking about what's in the trial
25 transcript, and I can direct you to the trial transcript of his

1 mother, she testified at trial that one of the reasons why they
2 broke up was because his incessant demand for sex, and
3 specifically, oral sex.

4 Q. Well, let me ask you this question. You and he did
5 discuss a medical provider that -- well, you were in the
6 courtroom the entire time of Mr. Ross' testimony; is that
7 correct?

8 A. Yes, sir.

9 Q. So you heard that he was in an accident before all of
10 this happened; is that correct?

11 A. I'm not quite sure. I don't want to say that. I know
12 had was in an accident, and the reason why I can't say that is
13 is that if you take a look at the transcript there was a robust
14 argument in reference to, I think, the expansive period of time
15 in which the kids alleged that this took place. I think one of
16 the children alleged at some point in time --

17 MR. FOWLER: Let me ask you this question. Okay.
18 You were familiar that he had a medical condition in his
19 genital areas; is that correct?

20 A. That's correct.

21 Q. Okay. So how did you incorporate that into your trial
22 prep?

23 A. I did --

24 Q. He had an issue with his genital area?

25 A. Uh-huh.

1 Q. How did you use that as a defense, potentially, in this
2 case?

3 A. No, we did not use that as a defense potentially in this
4 case, and the reason why we did not use that as a defense in
5 this case is because there was no evidence that he could not
6 have sex, and specifically, there was no evidence that he could
7 not have sex during the periods of times in which these kids
8 were claiming that he sexually assaulted them. We had this
9 conversation about his doctor, so this is not a situation where
10 we didn't discuss this. The question would be is that whether
11 or not this sort of evidence advances his defense or either
12 whether or not this evidence -- whether or not you put the
13 doctor on the stand and the doctor says, you know, no, during
14 the period of time in which these kids are alleging the sexual
15 assault there is no evidence that he couldn't have sex during
16 this period of time. So that's the issue. Just simply because
17 he has a medical condition, and of course, he was being treated
18 by a doctor down in his genital area, that doesn't necessarily
19 is an exoneration, or equates to exoneration as to whether or
20 not these things took place, and it's not even an effective
21 defense unless the doctor can say the magic words.

22 Q. Did you discuss with his doctor about that potential
23 defense?

24 A. No. I discussed that with him.

25 Q. But you did not speak with a medical provider about how

1 his accident or issues with his genitals could not -- could
2 help him in a defense? Let me rephrase the question. You
3 never spoke with a medical provider about how his accident
4 injuring that part of his body could help him in a defense?

5 A. No, I didn't speak with a doctor. I made that decision
6 based upon our conversations.

7 Q. In terms of school staff did you speak with anybody at
8 the school where the children attended about this case?

9 A. No.

10 Q. Why not?

11 A. Well, again, the question would be is, is that whether
12 or not there would be any staff member that could effectively
13 provide a defense to him, a defense against these allegations.
14 Now, if there was a staff member at the school that had
15 information related to this sexual assault then that would have
16 been a reason to call the staff member, but to call the staff
17 member simply because, I think he said that the staff member
18 may have witnessed an incident in which the mother of his child
19 may have gotten rowdy and that would somehow present some sort
20 of evidence to the jury that the baby -- that the mother of
21 these kids were somehow, you know, a bad person, that wouldn't
22 advance his defense.

23 Q. Did you speak with Ms. Janice King about this case?

24 A. Many occasions. She's the one who would -- she was
25 basically, when I wasn't speaking with him I was speaking with

1 her on the phone, and of course she would come by my office
2 many times.

3 Q. Did you speak with her about your possible discussions
4 with a medical doctor about this issue, about how it could been
5 helpful?

6 A. I don't recall whether or not I spoke with her about
7 that. I know I spoke with him about that, but I don't recall
8 whether or not we discussed -- I discussed that with her.

9 Q. So on his testimony Mr. Ross mentioned a medical doctor,
10 school staff and Ms. King as potential helpful witnesses and
11 you didn't call any of those on the trial, did you?

12 A. No. Because, again, you call witnesses if you have
13 reason to believe that those witnesses will advance your
14 defense. With respect -- I've already explained with respect
15 to the school counselor. I asked him whether or not Mrs. King
16 has any evidence with respect to whether or not these kids were
17 lying. Was she a witness to any of this? You know, like I
18 said, and I understand, you know, sometimes clients think,
19 well, you call witnesses, but a witness has to have information
20 that's going to advance your defense. If they don't have
21 information that's going to help set up your defense there is
22 no basis for calling them and you just can't put them on the
23 stand, and I think with the expectation from the jury, that
24 they are going to offer something that's going to be important
25 to your defense and they offer nothing, that could have a

1 counter-effect. So I've talked with Ms. King on a number of
2 occasions and Ms. King never told me that she had evidence that
3 was directly related to whether or not those kids were lying.
4 If she had that evidence I would have put her on the stand.

5 Q. Thank you. Let me ask you this question, moving on.
6 There was some discussion when Mr. Ross was on the stand about
7 this case being brought two weeks early. Why did that happen?
8 Why was there a calendar of it two weeks earlier than it was
9 initially scheduled?

10 A. And see, that's the thing, this is the first time I'm
11 hearing of this, so a lot of what he testified on the stand is
12 the first time I am hearing this, whatsoever. I don't have any
13 recollection of this being brought two weeks early. I have no
14 recollection of him ever having a problem with Judge Brown. I
15 think the most problem that he may have had with Judge Brown
16 was is that Judge Brown has a reputation of really being a, you
17 know, some people would say a tough or conservative judge, but
18 that's not a basis for accusing him.

19 Q. But Judge Brown did deny him bond once, correct?

20 A. That's correct.

21 Q. And he also denied him bond a second time; is that
22 correct?

23 A. And I'll have to rely on your recollection. I know he
24 went before Judge Brown at least once, it may have been twice.
25 I'm not going to refute that because I don't specifically

1 remember that, but I know he had been in front of Judge Brown
2 at least once for bond.

3 Q. So a judge that, based on testimony today, rejected his
4 bond twice, Mr. Ross was going before with this trial; is that
5 correct, based on the testimony of Mr. Ross?

6 A. At least once that I'm aware of.

7 Q. Did you and Mr. Ross ever discuss having a judge other
8 than Judge Brown on this case?

9 A. I know we talked about Judge Brown, we did, and I don't
10 want to say, and I'm relying on my recollection, I don't know
11 whether or not we ever talked about recusal of him, but we did
12 talk about Judge Brown being a tough judge, and what I mean by
13 "tough judge" is, is Judge Brown has a reputation of being very
14 conservative when it comes to bond.

15 Q. Well, he did deny bond once on this case, maybe twice.
16 With that being said, do you feel like you should have asked
17 for another judge since Judge Brown apparently made a -- a
18 problematic decision for my client?

19 A. No, and the reason why is when you go before a judge for
20 a bond hearing, judge is concerned with flight risk and danger
21 to the community. We don't try the case before the judge, and
22 if I felt that Judge Brown was prejudice I certainly would have
23 asked Judge Brown to recuse himself, and I don't mind saying, I
24 was very comfortable with Judge Brown because I know Judge
25 Brown, and again, Judge Brown, at least in my opinion, has a

1 reputation of a judge that is very, very conscious of the law
2 and is a stickler for the law and procedure.

3 Q. Very good. In terms of the bond hearing, Mr. Ross on
4 direct said that there was a plea offer, apparently brought in
5 on the record at a bond hearing. Do you have a recollection of
6 that?

7 A. I don't have a recollection of a plea offer being
8 brought in at the bond hearing, but I know that sometimes --
9 the Solicitor in this case is David Richardson, and I know
10 sometimes David Richardson will sometimes at bond hearings say,
11 well, you know, would your client be willing to entertain this,
12 but usually we never entertain any sort of plea at a bond
13 hearing because usually that is not the appropriate time and
14 usually my response is always, I'll take whatever offer that
15 you have, and of course me and my client will discuss it and
16 I'll get back in touch with you later.

17 Q. Was that on the record at the bond hearing?

18 A. And I can't recall that, I don't know that.

19 Q. If it was on the record at the bond hearing do you think
20 that that would be a problem in your client's case, Mr. Ross'
21 case?

22 A. What do you mean, a problem with his case?

23 Q. Well, do you think that if there was something showing
24 on the record that he denied a plea or didn't accept a plea on
25 the record that that would be somehow prejudicial at his trial?

1 A. No. And I can explain that if you would like me to.

2 Q. No, no need. Let me ask you another question. There
3 was discussion on Mr. Ross', in his direct examination about a
4 letter from a female that's related to this case in some
5 fashion, I think the baby's mother, or what have you. Did you
6 ever speak with Mr. Ross about a letter?

7 A. I don't recall, and I'm almost absolutely positive there
8 was no letter that he gave to me where the mother of his
9 children says I will drop the charges if you're willing to get
10 back in touch with me. I'm not aware of that at all. That is
11 the first time I am hearing that, and I don't want to say that
12 it's made up because I don't like to say that someone is being
13 flat out dishonest, but I don't know of any letter. If that
14 had been I would have had an obligation to turn that over to
15 the prosecution as a part of reciprocal discovery, and that
16 would have been my first -- that would have been my first line
17 of attack on that witness when she testified at trial.

18 Q. Well, Mr. Ross indicated that you said that it was in
19 storage. Do you remember telling him that it was in some kind
20 of storage?

21 A. No.

22 Q. Did you tell Ms. Janice King that?

23 A. No. His file was in storage, but a letter saying -- no,
24 there was no letter saying that she would drop these charges if
25 he were to get -- if Mr. Ross was willing to re-engage in a

1 relationship with her.

2 Q. Well, I think earlier you said you didn't recall if
3 there was a letter, so was there a letter, or do you just not
4 recall there being a letter?

5 A. No. There is no letter that I have, period, let me make
6 that clear.

7 Q. In terms of the apparently being late on the third day
8 at sentencing, do you recall the situation around that?

9 A. No, because there was no situation. I would have never
10 allowed the Court to start a trial without my client, and even
11 if I was stupid enough to do so, Judge Brown would never allow
12 court to be started without the client being present.

13 Q. Do you recall that on the first day that you appeared to
14 be napping to him in that situation?

15 A. Again, I have to laugh at that because, you know, a
16 client can testify to anything that they want up here, there
17 are no tapes in the courtroom, I never napped during his case,
18 period.

19 Q. Well, do you recall Mr. Ross' impression -- excuse me.
20 Do you recall Mr. Ross asking you if you were sleeping or
21 napping in the courtroom?

22 A. No. Period.

23 Q. In terms of the representation of his brother what was
24 your representation of his brother?

25 A. I don't know what it was, but this would have been

1 something prior to Vance Ross, prior to Vance. I think I had
2 represented his brother at least on one occasions, maybe more
3 than one occasions, and of course, I talked with him, I think
4 on many more occasions. I knew his brother quite well, and
5 even when I did not represent his brother there would be times
6 he would come by my office, but I did represent his brother, he
7 was aware of the fact that I represented his brother prior to
8 him, I think, retaining me.

9 Q. At the time of the trial did his brother -- was he fully
10 paid up for paying for your services?

11 A. I have no idea whether or not his brother owed me money
12 or not. I don't even recall what I was representing his
13 brother in connection with, but my representation with his
14 brother has absolutely nothing to do with his representation of
15 him, and I think if you would take a look at the trial
16 transcript it is that every, I think, conceivable argument,
17 pretrial argument that we should have made was made at the
18 trial.

19 MR. FOWLER: May I have a moment?

20 THE COURT: Sure.

21 MR. FOWLER: Your Honor, after discussion with my
22 client, no further questions.

23 MR. BARLOW: Nothing from the State, Your Honor.

24 THE COURT: May I let Mr. Brooker step down then?

25 MR. BARLOW: Yes, ma'am.

1 MR. FOWLER: Yes, Your Honor.

2 THE WITNESS: Thank you, Your Honor.

3 MR. BARLOW: And Your Honor, just for clarification,
4 I stated earlier to you that I did not see anywhere in the
5 record where the Applicant, or Mr. Ross, was not present while
6 proceedings happened. On the third day at the start it shows
7 that Mr. Ross was present, and it's page 301 of the record.

8 THE COURT: I saw that. As a matter of fact, there
9 was a motion for directed verdict and then he went straight
10 into reading him his right to testify or not. I've read it.

11 MR. BARLOW: Thank you.

12 THE COURT: It's apparent he was there. Alright.
13 I'll take this matter under advisement.

14 MR. BARLOW: Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Ross. I'm taking it under
16 advisement, I'll issue an order in a couple of weeks.

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1 CERTIFICATE

2 STATE OF SOUTH CAROLINA

3 COUNTY OF FLORENCE

4 I, Julie A. Kevish, Official Court Reporter for the
5 State of South Carolina, do hereby certify that the foregoing
6 is a true, accurate and complete Transcript of Record of the
7 proceedings had and evidence introduced in the Court of Common
8 Pleas for Florence County, South Carolina, on the 13th of June,
9 2023.

10 I do further certify that I am neither of kin,
11 counsel, nor interest to any party hereto.

12 June 13, 2023

13

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Julie Kevish

15

JULIE A. KEVISH
OFFICIAL COURT REPORTER

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FILEDSTATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) TWELFTH JUDICIAL CIRCUIT

2023 NOV 13 PM 3:15

Vance Ross, #297223, DORIS FOULOS CHARRA CASE NO. 2020-CP-21-3015

FLORENCE COUNTY, SC
Applicant,

v.

**ORDER OF DISMISSAL
WITH PREJUDICE**

State of South Carolina,

Respondent.

Presiding Judge:	Hon. Debra R. McCaslin
Applicant's Attorney:	Steven W. Fowler, Esq.
Respondent's Attorney:	D. Russell Barlow, II, Esq.
Trial Counsel:	Thurmond Brooker, Esq.
Date of Hearing:	June 12, 2023
Court Reporter:	Julie A. Kevish

This matter comes before the Court by way of Vance Ross' (Applicant) application for post-conviction relief (PCR) filed on December 29, 2020. Respondent, the State of South Carolina, filed its Return on April 20, 2021, requesting an evidentiary hearing to resolve the claims as set forth in the application.

On June 12, 2023, an evidentiary hearing was held at the Florence County Courthouse before the Honorable Debra R. McCaslin. Applicant was present and represented by Steven W. Fowler, Esquire. Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant proceeded forward on the claims set forth in his original PCR application. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Thurmond Booker, Esquire (Trial Counsel).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish

any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). In January 2016, the Florence County Grand Jury indicted Applicant and issued a nine-count indictment charging Applicant with eight counts of first-degree criminal sexual conduct with a minor and one count of third-degree criminal sexual conduct with a minor. Applicant was represented by Thurmond Brooker, Esquire. Twelfth Circuit Assistant Solicitor David Richardson prosecuted the case.

On April 17, 2017, a jury trial was commenced on seven counts of first-degree criminal sexual conduct with a minor in the Florence County Court of General Sessions, with the Honorable D. Craig Brown presiding. At the conclusion of the three-day trial, the jury convicted Applicant of six counts of first-degree criminal sexual conduct with a minor and acquitted him of the remaining count. Following the verdict, the trial judge sentenced Applicant to concurrent terms of imprisonment of life without parole for each of the convictions.

Applicant filed a timely notice of appeal. Appellate Defender Katherine Hudgins perfected Applicant's appeal, arguing the following:

1. The trial judge erred in refusing to quash as unconstitutionally overbroad and vague an indictment alleging seven counts of criminal sexual conduct with a minor between February 1, 2013, and July 31, 2014, because the lack of specificity within the time frame failed to provide sufficient notice and the time frame was not narrowed as much as possible.
2. The trial judge erred in refusing to grant a directed verdict of acquittal on one of the two counts of criminal sexual conduct involving oral sex with Minor #1 when the State failed to present any evidence that there was more than one instance of oral sex involving Minor #1

The South Carolina Court of Appeals dismissed the appeal in an unpublished decision. State v. Ross, Op. No. 2020-UP-038 (S.C. Ct. App. filed Feb. 12, 2020). Thereafter, Ross petitioned the Court of Appeals for rehearing, and the petition was denied. Ross then filed a petition for a writ of certiorari in the South Carolina Supreme Court. On November 25, 2020, the Supreme Court, by written order, denied certiorari. The Remittitur was returned to the lower court on December 1, 2020.

FACTS GIVING RISE TO THE CONVICTION

One day in the summer of 2014, Esther Lewis ("Mother") got into an argument with Applicant, who was the father of her two daughters and two sons, after he accused her of not wanting to spend time or engage in "sexual activities" with him. (R. pp. 58-59; p. 184; pp. 188-189; pp. 191-192; pp. 201-203). Following the argument, Mother returned to her parents' home in Florence, South Carolina.¹ (R. p. 176; p. 183; p. 185; p. 190). Upon arriving, Mother spoke with her mother, who was the children's grandmother, in the kitchen, informed her of the nature of the argument with Applicant, and remarked Applicant was fixated on oral sex. (R. pp. 189-190). During that discussion, Mother's eight-year-old daughter ("Victim 1") overheard what Mother was saying, came into the kitchen, and revealed Applicant liked to perform oral sex on her, too. (R. p. 72; p. 190). Shocked by the revelation, Mother immediately called the police to notify them of the sexual abuse, and officers quickly responded to the home to take a report. (R. pp. 190-191).

¹ At that time, Mother was residing at her parents' home along with her mother, her father, her children, her sister, and her sister's children. (R. p. 185). Before doing so, Mother lived in her own house with Applicant and their children. (R. pp. 184-185). However, in 2013, Mother lost the house and was forced to move in with her parents. (R. p. 185). Meanwhile, during that time period, Applicant alternated between staying at a shelter and various hotels. (R. pp. 185-186).

Thereafter, Victim 1's eight-year-old twin sister ("Victim 2") also disclosed she had been sexually abused to Mother. (R. p. 130; p. 191).

A few weeks later, the Florence County Sheriff's County assumed responsibility for the investigation into the sexual abuse, and Investigator Jennifer Floyd was assigned to handle the matter.² (R. pp. 58-60; pp. 173-174). Upon taking over the case, Investigator Floyd referred the victims for medical examinations and forensic interviews. During the interviews, both Victim 1 and Victim 2 disclosed Applicant sexually abused them by committing acts of oral, anal, and vaginal penetration at several different locations throughout Florence County.³ (R. pp. 174-176; pp. 207-208; p. 229; pp. 232-234; p. 235; p. 242). Ultimately, through her investigative work, Investigator Floyd was able to develop a general time frame of when the abuse occurred based on where the victims lived at different times and their reported ages during the incidents of abuse. (R. p. 177).

At the conclusion of the investigation, Applicant was arrested and indicted for a number of different offenses through a nine-count indictment. (R. pp. 6-7; pp. 364-367). Specifically, amongst the counts in the indictment, Applicant was charged with four counts of first-degree criminal sexual conduct with a minor involving Victim 1 that were alleged to have occurred in Florence County between the dates of February 1, 2013, and July 31, 2014, with two different counts alleging Applicant put his penis inside her mouth, one count alleging he put his penis inside

² Based on the testimony presented during trial, it appears the Florence County Sheriff's Office became involved in the investigation due to potential jurisdictional issues for the Florence Police Department. (R. pp. 200-202).

³ Although both victims disclosed a number of different instances of sexual abuse committed by Applicant during the forensic interviews, the eight-year-old girls' statements were occasionally contradictory, inconsistent, or lacking in detail in regard to when and where the different assaults occurred, how many times the assaults took place, and what specifically took place during each of the incidents. (State's Ex. # 6 (Recording of Forensic Interviews)).

both her vagina and mouth, and one count alleging he put his penis inside her vagina, anus, and mouth. (R. pp. 364-367). Similarly, Applicant was charged with three counts of first degree criminal sexual conduct with a minor involving Victim 2 that were alleged to have occurred in Florence County between the dates of February 1, 2013, and July 31, 2014, with one count alleging Applicant put his penis inside her mouth and two different counts alleging he put his penis inside her vagina. (R. pp. 364-367).

Subsequently, Applicant proceeded to trial on the seven counts of first-degree criminal sexual conduct with a minor alleged to have been committed between February of 2013 and July of 2014, and, at the outset of the trial, Trial Counsel moved to quash the multi-count indictment based on the South Carolina Supreme Court's decision in State v. Baker, 411 S.C. 583, 769 S.E.2d 860 (2015).⁴ (R. pp. 6-7; p. 9). In support of that motion, Trial Counsel asserted the counts all involved a one-and-a-half-year time span but contained "absolutely no distinguishing language whatsoever." (R. pp. 15-17). Additionally, Trial Counsel asserted the counts were inadequate because they did not contain sufficient information for the court to ascertain what Applicant had been acquitted of if he was found not guilty of some of them. (R. p. 18).

Furthermore, Trial Counsel asserted the time span alleged in the counts was overly broad, unspecific, and unparticular since Applicant was the victims' father and, therefore, "was regularly in the life of" the victims and "probably saw them a thousand times over that period of time." (R. pp. 25-26; pp. 29-30). However, Trial Counsel acknowledged he had reviewed the victims' forensic interviews in preparation for trial and conceded the victims used "broad" and "confusing" language during the interviews that would effectively prevent anyone from being able to determine

⁴ Although Applicant was indicted for two additional charges through the multi-count indictment, the solicitor elected not to proceed forward on those charges based on the fact they alleged significantly broader time spans for the abuse. (R. p. 37; pp. 364-367).

how many times the abuse occurred precisely or to distinguish between the different instances of abuse clearly. (R. pp. 17-18). Nonetheless, Trial Counsel maintained the multi-count indictment was improper because Applicant purportedly could not narrow the scope of the charges or raise any defense other than a denial based on the information contained in the different counts. (R. pp. 25-26).

In rebuttal, the Solicitor contended that each count was sufficiently distinguished from the others by identifying the particular victim involved and the specific type of sexual battery involved in the individual counts. (R. pp. 26-27). Additionally, the Solicitor asserted Applicant had been on notice of the counts in the indictment for well over a year and, thus, was not surprised by the charges he was facing as the defendant in Baker had been. (R. pp. 27-28). Furthermore, the Solicitor noted that the eighteen-month time span involved in Applicant's case was shorter than either the six-year time span involved in Baker or the two-year and three-year time spans involved in other cases in which the indictments were found not to be overly broad. (R. pp. 28-29). For those reasons, the Solicitor argued the counts in the indictment were sufficiently specific, distinguishable, and not overly broad such that the motion to quash should be denied. (R. p. 29).

After considering the matter and reviewing the relevant appellate decisions, the trial judge denied the motion to quash. (R. pp. 31-38). In denying the motion, the trial judge noted each of the counts in the indictment specifically identified the particular minor victim involved and identified the specific type of sexual battery that was alleged to have been committed while the time span identified in each of the counts covered a period of only eighteen months. (R. pp. 37-38). The trial judge further noted Applicant had a long period of notice regarding the charged offenses in light of the fact that he had been indicted over fifteen months earlier. (R. p. 38). Based

on those factors, the trial judge concluded that the time span alleged in the indictment was not overbroad, and there was no proper basis for quashing the indictment. (R. p. 38).

Following the trial judge's ruling, the trial proceeded forward, and Victim 1, who was eleven years old at the time of trial, testified Applicant sexually abused her and her sister multiple times at various locations when she was around seven or eight years old. (R. pp. 71-127). More specifically, Victim 1 indicated Applicant touched her and her sister's buttocks and vagina on one occasion while inside a parked vehicle at their grandmother's house, put his penis in her vagina on at least one occasion while inside a parked vehicle at the same location, put his penis in her vagina at the Thunderbird Inn hotel, touched her "[i]n [her] mouth" on yet another occasion near a bus stop, and put his penis in her vagina at a park once. (R. pp. 79-84; p. 96; pp. 110-111; pp. 115-120). Additionally, Victim 1 revealed Applicant put his penis in her mouth at the Thunderbird Inn hotel on one occasion, but she then quickly offered inconsistent testimony and asserted Applicant did not actually get "it" into her mouth during that incident. (R. p. 95). Likewise, Victim 1 alternately claimed Applicant did and did not put his penis in her anus on multiple occasions, and she asserted he did put his penis inside her mouth and vagina between five and ten times in total.⁵ (R. pp. 100-101; pp. 105-106). Furthermore, Victim 1 stated she saw Applicant put his penis inside Victim 2's mouth on one occasion. (R. pp. 98-99).

Similarly, Victim 2, who was also eleven years old at the time of trial, testified about the numerous instances of sexual abuse involving her and her sister that occurred around the time she was seven or eight years old. (R. pp. 130-171). Specifically, during her testimony, Victim 2

⁵ Regarding a potential cause of or contributing factor to the inconsistencies in Victim 1's testimony, Victim 1 revealed she was "frightened" and "intimidated" about testifying and was "shy." (R. p. 103; p. 106; p. 127). Furthermore, according to Mother, Victim 1 was assigned to "resource" classes in school while her sister was assigned to "regular" classes. (R. p. 188).

recounted Applicant put his penis in her mouth at the Thunderbird Inn hotel on one occasion, put his penis in her vagina between one and five times at that location, put his penis in her anus one time at that location, put his penis in her anus one time at a different hotel, and put his penis in her mouth and vagina on multiple occasions while inside a vehicle parked at her grandmother's house.⁶ (R. pp. 134-138; pp. 140-141; pp. 144-146). Likewise, Victim 2 indicated she observed Applicant put his penis in her sister's anus at one of the hotels and saw Applicant put his penis in her sister's mouth once and vagina on multiple occasions while they were inside a vehicle parked outside their grandmother's house. (R. pp. 140-141; pp. 144-146). Moreover, Victim 2 stated she saw Applicant unsuccessfully attempt to put his penis in Victim 1's vagina and mouth at the Thunderbird Inn motel, but she acknowledged she had previously indicated during the forensic interview she observed Applicant put his penis in Victim 1's mouth while the two were showering together at that location. (R. p. 138; p. 158).

Furthermore, in addition to the victim's testimony, Mother offered testimony confirming Applicant regularly was with the victims for long periods of time at hotels, at the park, and in a vehicle parked outside of her parent's house while she was working during the time period of the abuse. (R. pp. 185-187; p. 198). Moreover, she discussed Victim 1's initial disclosure of the abuse, and she noted the victims began exhibiting behavioral changes, such as bed-wetting and issues in school, that began to manifest during the period of time in which the abuse was alleged to have occurred.⁷ (R. pp. 188-194).

⁶ In recounting the sexual abuse, Victim 2 indicated Applicant's penis had a scar on it. (R. p. 168). Notably, Mother later testified Applicant's penis was, in fact, scarred as the result of a surgical procedure. (R. p. 188).

⁷ Specifically, regarding the initial disclosure, Mother indicated Victim 1 revealed the abuse to her while she was speaking with her own mother about Applicant's sexual preferences she called the police in response, and then Victim 2 revealed the abuse to her after the police had taken a report. (R. pp. 189-191). However, during the victims' testimony, Victim 1 alternately stated she revealed

Beyond that testimony, the officers involved in the investigation into the allegations discussed the steps in the investigation that culminated in Applicant being charged with numerous instances of sexual abuse.⁸ (R. pp. 58-61; pp. 173-177). Likewise, Dr. Anne Abel, a pediatrician and expert in child abuse who participated in the medical examinations of the victims, discussed the results of the examinations, noted Victim 2 had no signs of injury, and indicated Victim 1 had two mounds on her hymen that could potentially have been caused naturally or by sexual abuse. (R. p. 235; pp. 242-243; p. 257). However, Dr. Abel's specifically noted an absence of injuries did not rule out the possibility of sexual abuse due to the fact injuries resulting from acts such as vaginal or anal penetration tended to heal very rapidly. (R. pp. 235-238; pp. 240-242).

Thereafter, at the conclusion of the evidentiary phase of the trial, Trial Counsel moved for a directed verdict on all seven counts of first-degree criminal sexual conduct with a minor. (R. pp. 262-263; pp. 286-287). In support of that motion, Trial Counsel argued no testimony had been presented to establish more than one count of oral penetration occurred involving Victim 1, while two of the counts solely alleged acts of oral penetration involving that particular victim. (R. pp. 264-265). Furthermore, regarding the remainder of the counts, Trial Counsel contended the testimony was so contradictory and convoluted that the jury would be forced to speculate to reach a verdict. (R. pp. 265-267). In rebuttal, the Solicitor argued sufficient evidence had been presented for the case to be submitted to the jury while noting it would be up to the jury to resolve the

the abuse to Mother, and her sister revealed the abuse to Mother, and Victim 2 indicated she revealed the abuse to Mother before the police were contacted. (R. pp. 82-83; p. 109; pp. 148-150).

⁸ Sally Williamson, the forensic interviewer who conducted the interviews of the victims, also testified during the trial in a hearing conducted outside the presence of the jury in order to establish the admissibility of the recording of the forensic interviews. (R. pp. 207-226). Ultimately, though, the recording was not admitted into evidence because the solicitor was unable to effectively redact certain inadmissible portions of the interviews. (R. pp. 227-228).

credibility issues raised by the evidence. (R. p. 269). Moreover, the Solicitor noted the testimony left some confusion as to the exact number of incidents of sexual abuse, but contended testimony had been presented from both girls regarding a variety of different incidents such that the directed verdict motion should be denied. (R. pp. 267-269).

After considering the matter overnight and meticulously reviewing his trial notes, the trial judge denied the directed verdict motion. (R. p. 269; pp. 277-279; p. 287). In denying the motion, the trial judge found the testimony presented by both victims established Applicant anally penetrated Victim 1 three times in total, vaginally penetrated her one time at her grandmother's house, and orally penetrated her once at her grandmother's house and once at the Thunderbird Inn hotel. (R. pp. 278-279). Likewise, the trial judge found that the testimony presented established Applicant vaginally penetrated Victim 2 at both her grandmother's house and the Thunderbird Inn hotel, orally penetrated her at the same hotel, and put his penis in her "private part" at least five times. (R. p. 279). Based on that evidence, the trial judge concluded all of the charges should be submitted to the jury. (R. p. 279; p. 287).

Following the trial judge's ruling, the parties presented their closing arguments to the jury. (R. pp. 287-322). During Trial Counsel's closing argument, Trial Counsel focused on inconsistencies in the victim's testimony he characterized as "voluminous," "huge," and "major" in arguing the State failed to prove Applicant's guilt beyond a reasonable doubt. (R. pp. 302-305; pp. 307-311; pp. 316-317).

After the parties finished their closing arguments, the trial judge instructed the jury on the applicable law. (R. pp. 324-340). As part of his jury instructions, the trial judge explained the State had the burden of proving Applicant's guilt beyond a reasonable doubt for each of the charges, thoroughly explained reasonable doubt to the jury, instructed the jury on assessing witness

credibility, identified the elements of first-degree criminal sexual conduct with a minor, indicated each of the counts had to be considered separately, and specifically advised the jurors their verdict must be unanimous. (R. pp. 325-327; pp. 330-332; pp. 335-338).

Subsequently, at the conclusion of trial, the jury convicted Applicant of three counts of first-degree criminal sexual conduct with a minor involving Victim 1 and three counts of first-degree criminal sexual conduct with a minor involving Victim 2. (R. pp. 348-349). Meanwhile, the jury acquitted Applicant of the single count of first-degree criminal sexual conduct with a minor alleging oral, vaginal, and anal penetration of Victim 1. (R. pp. 348-349). Following the verdict, the trial judge imposed an aggregate sentence of life without parole upon Applicant. (R. p. 361).

CURRENT ACTION BEFORE THIS COURT

Applicant timely commenced this PCR action on December 29, 2020. Applicant asserted he was being held in custody unlawfully, alleging:

1. "The Court should grant the petition for writ of certiorari because the question presents a substantial constitutional issue dealing with an overbroad and vague indictment time frame that was not narrowed as much as possible and lacks specificity within the time frame that failed to provide sufficient notice depriving me of procedural due process."
2. "Did the Court of Appeals err in finding no err in the trial judge refusing to quash as unconstitutionally overbroad and vague indictment alleging seven counts of criminal sexual conduct with a minor between Feb. 1, 2014 and July 31, 2014, because the lack of specificity within the time frame failed to provide sufficient notice of the time frame was not narrowed as much as possible."

Applicant requests relief in the form of "based on the above argument the Court presented in issue one, this Court should reverse the convictions and sentences. Based on the argument in issue two, this Court should reverse and remand for acquittal on either count [sic] of the indictment."

Before this Court are the Florence County Clerk of Court records regarding the subject's convictions and sentences, Applicant's SCDC records, the trial transcript, the appellate records (including the record on appeal), and the records of this PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act⁹ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a

⁹ S.C. Code Ann. §§ 17-27-10 to -160.

question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord, Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384

(1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be

substantial, not just conceivable." Richter, 562 U.S. at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW¹⁰

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary

¹⁰ This Court notes that Applicant was court ordered to amend his application with allegations cognizable under the PCR Act. As of the date of the evidentiary hearing, Applicant had failed to amend his PCR application. Thus, this Court addresses each allegation as it was presented for the first time at the evidentiary hearing.

hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(c), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

As a matter of general impression, this Court finds Trial Counsel's testimony at the evidentiary hearing **credible** and **persuasive**, where he presented well-recalled testimony of relevant background, facts, and discussions leading up to and during the trial. This Court finds Applicant's testimony at the evidentiary hearing generally **not credible**. This Court further finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made.

Strickland, 466 U.S. at 689, 104 S.Ct. 2052; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ON THE MERITS

Applicant did not allege any cognizable claims of ineffective assistance of counsel in his PCR application. At the call of the case, PCR Counsel indicated they had allegations of ineffective assistance of counsel, and Respondent indicated they were ready to proceed. (PCR Tr. p. 5). At the hearing, Applicant proceeded on the following allegations:

Allegation 1: Failure To Call Certain Witnesses

Applicant alleges Trial Counsel was constitutionally ineffective for failing to call certain witnesses. Specifically, Applicant averred Trial Counsel failed to call a school staff member and a urologist who would have allegedly testified in Applicant's favor. This Court finds this allegation is without merit.

At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing, or their testimony must otherwise be presented, consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

"In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks." Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018).

Counsel's performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. See e.g. Smith v. State, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); Edwards v. State, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was in deficient by failing to call all alibi witnesses when two witnesses who testified did not establish the alibi).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. See e.g. Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may corroborated with the defendant or bolstered his credibility so that the findings at trial could have been favorable to the defendant); Thomas v. State, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

At the evidentiary hearing on direct examination, Applicant testified that Trial Counsel should have called school staff, but Applicant could not remember the name of the school staff. Applicant testified that the school staff "knew about the situation with [his] baby's mother, her ways of acting around the children, because [he] spent more time with them eating with them,

going to school, which she didn't, and one time they had to get her off the premises." (PCR Tr. p. 8).

Applicant testified that Trial Counsel should have called Dr. Peter O'Kelly, Urologist, Carolina Hospital System, because he could have testified that his scrotum was injured and he would not have been able to perform sexual acts during the times alleged.¹¹ (PCR Tr. pp. 9-10).

Applicant testified that Trial Counsel should have called Janice King, his fiancé, because there was a delay on the third day of trial, where the trial court began proceedings without Applicant present. (PCR Tr. pp. 10-12).

Applicant testified that Trial Counsel should have called his twin brother, Victor Ross, because his representation of Applicant was a conflict of interest. (PCR Tr. p. 13).

On direct examination, Trial Counsel testified to the following regarding witnesses:

- Q. I'm going to go jump right into the allegations. So there is an allegation of not calling certain witnesses, and the first one would be not calling school witnesses. Do you recall him asking you to subpoena school witnesses?
- A. No. We talked about, I think specifically had mentioned his physician, and then, also, I think he mentioned the school official, and normally what we do is at the time in which he mentioned these witnesses, and I'll start off with the school physician, we talked about whether or not the school physician, whether or not the physician could provide any information that would be assistance in connection with his defense. I think it was his position that, hey, I couldn't have sex, so therefore -- and that's what I believe he had told me: Well, I can't have sex, therefore, that would be a complete bar to these particular charges, which it would not, because it was my understanding is is that, and of course, we talked about this, that there was nothing in his records in which his physician said, or at least that he was aware of where his physician said that he could not have sex. In addition to that, if you would look in the transcript during the testimony of his trial, I think the mother of his kids saying that they had

¹¹ At trial, Esther Lewis, the mother of Applicant's children, testified that Applicant had surgery on his scrotum, but he was still able to sexually perform. (Trial Tr. p. 219-220).

sex regularly, and I think she even said that one of the reasons why she broke up with him is because his incessant demand for sex, specifically oral sex.

....

A. And so we talked about whether or not that physician could offer anything, because unless the physician can get up there and say medically that it is impossible for you to have sex, that physician is not going to be, you know, basically, a defense to him allegedly committing these offenses. So we had a conversation around about the physician and what the physician could offer and what the physician could not offer and whether or not that would be beneficial to them because if we put the physician on the stand, and of course, there is testimony that he is having sex and there is no testimony coming from the physician that he is incapable of doing that, then of course, it would probably injure him more than it would help him. With respect to the school officials, and I'm a little bit confused about the school officials, the thing about the school officials, and I think I was keeping notes while he was testifying, I think he said something like that the school officials could testify to the fact that his -- the mother of his girlfriend came up and was erratic and had to be removed from the school, but again, that has absolutely nothing to do whether or not he had committed these offenses. I don't know whether or not he thought that we could somehow say that the mother of his children was a bad mother, therefore, somehow that was a defense to the allegations that is he was accused of by his daughters, and it was not, and that is one of the things that we talked with him about is, is that if you are going to bring witnesses there you have to have witnesses that's going to offer something to his defense, and of course the only thing that we were aware of is maybe she could say, you know, that these children's mother was a bad mother, which again doesn't help him in the allegation that he sexually assaulted these kids.

Q. How about with regard to Ms. Janice King, his wife?

A. And I'm a little bit confused by that, and I'm not quite sure what he was saying that Ms. King would offer, but Mr. Ross was in jail, I think, to my memory, just about the entire time. So I met Ms. King on numerous occasions, she would come to my office often, and mostly would just talk about the case, but I'm not quite -- and I'm a little bit confused by that, I'm not quite sure what he thinks that Ms. King could have offered, because certainly if she had information that the jury

might find useful in trying to determine whether or not he had committed these offenses, we would have called Ms. King. I think when he was testifying he said something like, Ms. King said that we started the trial on the third day without them, and that's not true, and I don't know if you probably know anything about Judge Brown, but Judge Brown is probably one of the most procedural regimented judges there is and is a stickler to the rules. We never start a trial and stop that trial at any point in time without him being present in the courtroom.

(PCR Tr. pp. 28-31).

This Court finds Applicant failed to meet his burden under Strickland because he did not present any evidence or testimony from any of these witnesses at the PCR hearing. Our Supreme Court has "repeatedly held a PCR applicant *must produce the testimony* of a favorable witness *or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing" in order to prevail on this type of claim. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998); see e.g., Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (holding that "pure conjecture" as to what a witness' testimony would have been is not sufficient to show a reasonable probability the result at trial would have been different); Glover v. State, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (mere speculation as to un-presented witness' testimony does not satisfy PCR applicant's burden).

Based on the foregoing, this Court finds no deficiency in Trial Counsel's failure to call certain witnesses, nor any resulting prejudice. Accordingly, Applicant's request for relief by way of these allegations is **DENIED** and **DISMISSED**.

Allegation 2: Conflict Of Interest

Applicant alleges Trial Counsel's representation was constitutionally ineffective because Trial Counsel had a conflict of interest from representing Applicant's brother in the past. This Court finds this allegation is without merit.

The Sixth Amendment guarantees criminal defendants the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland, 466 U.S. at 685. "Representation of a criminal defendant entails certain basic duties[, including] a duty of loyalty [and] a duty to avoid conflicts of interest." Id. at 688 (citing Cuyler v. Sullivan, 446 U.S. 335, 346 (1980)). In Cuyler v. Sullivan, the United States Supreme Court held that "[i]n order to demonstrate a violation of his Sixth Amendment rights, a defendant must establish that an actual conflict of interest adversely affected his lawyer's performance." 446 U.S. at 350; accord Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007).

The Court later clarified in Mickens v. Taylor, that an "actual conflict," for Sixth Amendment purposes, is a "conflict that [adversely] affected counsel's performance—as opposed to a mere theoretical division of loyalties." 535 U.S. 162, 171 (2002); see United States v. Gantt, 140 F.3d 249, 254 (D.C. Cir. 1998) (internal quotations marks and citations omitted) (explaining that the "adverse effect" element of the Cuyler test requires the defendant "to demonstrate that the conflict had some negative effect upon his defense (defined as an actual lapse in representation)"). "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction," State v. Gregory, 364 S.C. 150, 152–53, 612 S.E.2d 449, 450 (2005), and an actual conflict of interest does not arise from an irrelevant or "hypothetical conflict having no effect on trial counsel's representation . . ." United States v. Taylor, 139 F.3d 924, 931 (D.C. Cir. 1998). The two requirements—an *actual conflict* of interest resulting in an *adverse effect* on counsel's performance—"are often intertwined, making the factual analyses of them overlap." United States v. Tatum, 943 F.2d 370, 375–76 (4th Cir. 1991).

Here, this Court finds that Applicant failed to demonstrate—"as a threshold matter"—that Trial Counsel was ever "required to make a choice advancing his own or [Applicant's brother's] interests to the detriment of [Applicant's] interests." United States v. Bruce, 89 F.3d 886, 893 (D.C. Cir. 1996) (citation omitted); see id. ("It is the competition between these interests, rather than some independent failure of the attorney, that gives rise to the 'conflict.'"). There is no evidence of any apparent diverging interests that could have prejudiced Applicant.

Accordingly, Applicant's claim that there was a conflict of interest in Trial Counsel's representation of him is **DENIED** and **DISMISSED**.

Allegation 3: Failure to Ask for a Continuance

Applicant alleges Trial Counsel was constitutionally ineffective for failing to request a continuance when the trial was scheduled two weeks earlier than expected. Applicant also asserts that Trial Counsel should have requested a continuance because he felt Judge Brown was biased because he denied his bond, and Applicant rejected a plea offer in front of Judge Brown. This Court finds these allegations are without merit.

On direct examination, Trial Counsel credibly testified that he had no knowledge of the trial being moved up two weeks earlier than the date he provided Applicant. (PCR Tr. p. 32). Trial Counsel credibly testified that he met with him the prior day to trial because the Solicitor made an offer, and he wanted to convey the offer to Applicant. (PCR Tr. pp. 32-33).

Applicant testified that a plea offer was brought in on the record at his bond hearing. (PCR Tr. p. 16).

On cross-examination, Trial Counsel credibly testified that he had no recollection of the trial being placed on the docket two weeks earlier than planned. (PCR Tr. p. 40). Trial Counsel credibly testified that he had no concerns about Judge Brown presiding over Applicant's case and

did not think Judge Brown needed to recuse himself. (PCR Tr. pp. 40-42). Trial Counsel credibly testified that he discussed Judge Brown with Applicant regarding his conservative position on bonds, but that Judge Brown was a "stickler for the law and procedure," which made Trial Counsel comfortable with him presiding over the case. Id.

Trial counsel credibly testified that he did not recall a plea offer being made on the record before Judge Brown during Applicant's bond hearing. (PCR Tr. p. 42). Trial Counsel testified that it is his common practice to always consult with his client when given a plea offer, and that it is common for him to receive plea offers around the date of the trial and after bond hearings. (PCR Tr. pp. 33, 42). Trial Counsel credibly testified that he did not think the presence of a plea offer on the record at the bond hearing would be prejudicial at trial. (PCR Tr. p. 42).

This Court finds Applicant has failed to prove Trial Counsel was deficient or failed to render reasonably effective assistance under prevailing professional norms in regards to requesting a continuance. This Court finds credible Trial Counsel's explanation that the trial was not moved up two weeks earlier than planned and that he had no basis to ask Judge Brown to recuse himself. "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. There is a strong presumption that counsel's decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500 (2003)). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). See also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel

articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy).

This Court finds Applicant has failed to establish any deficiency by Trial Counsel for failing to request a continuance and Applicant has failed to establish any prejudice flowing therefrom. Accordingly, Applicant's request for relief by way of these allegations is **DENIED** and **DISMISSED**.

Allegation 4: Failure To Utilize Exculpatory Evidence

Applicant alleges Trial Counsel was constitutionally ineffective for failing to investigate and utilize the alleged letter written by the victim. This Court finds this allegation is without merit.

On direct examination, Applicant testified that he and his fiancé¹² gave Trial Counsel a letter written by the victim that stated she would drop the charges if Applicant ended his relationship with his fiancé. (PCR Tr. p. 18). Applicant testified that this letter could have proven his innocence that the victim's mother was going after him because of his relationship with his fiancé. (PCR Tr. p. 19).

In a colloquy with the Court, Applicant testified that the letter was because of a vendetta and that his lawyer should have presented it to the trial court.

On cross-examination, Trial Counsel credibly testified that there was no letter provided to him written by the victim that discussed her willingness to drop the charges if Applicant would start dating her mother again. (PCR Tr. p. 43). Trial Counsel credibly testified that if given such evidence, he would have used it as his first line of attack at Applicant's trial. Id. Trial Counsel

¹² Applicant referred to his fiancé as his wife throughout the hearing.

credibly testified that had such a letter existed, he would have been obligated to turn it over to the prosecution. Id.

This Court finds Applicant's testimony not credible and not persuasive. Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). Additionally, this Court finds Applicant has failed to meet his burden proving Trial Counsel's alleged deficiency prejudiced him. Whether the evidence Applicant contends should have been more readily presented would have changed the outcome of Applicant's trial is mere speculation. Consequently, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 5: Court Proceeded Without Applicant Present

Applicant alleges Trial Counsel permitted proceedings to occur on the third day of the jury trial without Applicant present. This Court finds that this allegation is without merit.

As an initial matter, the record wholly refutes Applicant's allegation that the third day of court began without him present. The record reflects Applicant was physically present on the third day of the trial, April 19, 2017, when the proceedings began at 9:59 in the morning. (Trial Tr. pp. 301-303). The trial court began with a ruling on the motion for a directed verdict and directly went into a colloquy with Applicant about his right to testify with no interruptions noted in the record. Id.

This Court finds Applicant's testimony on this matter not credible. Further, this Court finds Trial Counsel's testimony credible, and Applicant has failed to prove any deficiency in Trial Counsel's performance nor any prejudice flowing therefrom.

Accordingly, Applicant's allegation that Trial Counsel permitted proceedings to occur without Applicant present is **DENIED** and **DISMISSED**.

Allegation 6: Trial Counsel Was Sleeping During Applicant's Trial

Applicant alleges Trial Counsel was constitutionally ineffective for sleeping and snoring during the first day of the jury trial. The Court finds that this allegation is without merit.

Trial Counsel credibly testified that not only did he not fall asleep at trial but that Applicant had never mentioned anything to him or asked him about that alleged occurrence before. (PCR Tr. p. 44). Furthermore, the record is devoid of any evidence that Trial Counsel was sleeping during the trial.

This Court finds Applicant has failed to prove Trial Counsel was deficient or failed to render reasonably effective assistance under prevailing professional norms in his representation of Applicant. This Court finds credible Trial Counsel's testimony that he did not sleep or snore during Applicant's trial. Applicant has failed to prove any deficiency in Trial Counsel's performance nor any prejudice flowing therefrom.

Accordingly, Applicant's allegation that Trial Counsel was sleeping during the first day of the jury trial is **DENIED** and **DISMISSED**.

|CONCLUSION PAGE FOLLOWS|

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED**.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking a review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this

day of

Nov

Debra McCaslin
THE HONORABLE DEBRA MCCASLIN
Presiding Judge
Twelfth Judicial Circuit

Gloucester, South Carolina

FILED
 2023 NOV 13 PM 3:20
 DORIS F. BULLOCK
 CLERK OF COURT
 FLORENCE COUNTY, SC

WITNESSES

Jennifer Floyd

Florence County Sheriff

DOCKET NO. 2016-GS-21-00122

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY

TERM

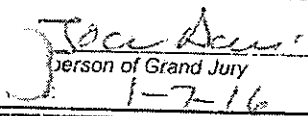
2016

David A Richardson

BEST WARRANT NUMBER

2015A2110200547	2015A2110200548
2015A2110200549	2015A2110200553
2015A2110200550	2015A2110200551
2015A2110200552	2015A2110200554
2015A2110200555	

ACTION OF GRAND JURY

TRUE BILL

 person of Grand Jury
 1-7-16

VERDICT

Foreperson of Petit Jury

Date:

THE STATE

vs.

VANCE ROSS

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
 MINOR FIRST DEGREE (8 COUNTS), &
 CRIMINAL SEXUAL CONDUCT WITH A
 MINOR THIRD DEGREE

FILED

2016 JAN -7 PM 3:34

 CONNIE REEL-SHEARIN
 CCRP & GS
 FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF FLORENCE)

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE (8 COUNTS) &
CRIMINAL SEXUAL CONDUCT WITH A MINOR
THIRD DEGREE

At a Court of General Sessions, convened on JANUARY 7, 2016 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That Vance Ross did in Florence County, State of South Carolina, between the dates of December 1, 2009, and February 28, 2013, 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: Minor 1 whose date of birth is [REDACTED] 2005, but putting his penis inside of her mouth, in violation of Section 16-3-655(A)(1). S. C. Code of Laws, 1976, as amended.

COUNT TWO- CRIMINAL SEXUAL CONDUCT WITH A MINOR THIRD DEGREE

CDR: 3661 16-03-0655(C)

That Vance Ross, being over fourteen years of age, did in Florence County between the dates of December 1, 2009 and July 31, 2014 willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, to wit: Minor 2 and Minor 1 whose date of birth is [REDACTED] 2005, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, including but not limited to: having simulated sex with clothes on, and touching the victims' vaginas and breasts, in violation of Section 16-03-0655(C), S. C. Code of Laws, 1976, as amended.

COUNT THREE - CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That Vance Ross did in Florence County, State of South Carolina, between the dates of February 1, 2013, and July 31, 2014, 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: Minor 2 whose date of birth is [REDACTED] 2005, by putting his penis inside of her mouth, in violation of Section 16-3-655(A)(1). S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE (8 COUNTS), & CRIMINAL SEXUAL CONDUCT WITH A MINOR THIRD DEGREE, WITH THE AFORESAID NAME OF VANCE ROSS SHOWN THEREON:

COUNT FOUR- CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That Vance Ross did in Florence County, State of South Carolina, between the dates of February 1, 2013, and July 31, 2014, 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: Minor 1, whose date of birth is [REDACTED] 2005, by putting his penis inside of her mouth, in violation of Section 16-3-655(A)(1), S. C. Code of Laws, 1976, as amended.

COUNT FIVE- CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That Vance Ross did in Florence County, State of South Carolina, between the dates of February 1, 2013, and July 31, 2014, 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: Minor 1, whose date of birth is [REDACTED] 2005, by putting his penis inside of her mouth, in violation of Section 16-3-655(A)(1), S. C. Code of Laws, 1976, as amended.

COUNT SIX- CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That Vance Ross did in Florence County, State of South Carolina, between the dates of February 1, 2013, and July 31, 2014, 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: Minor 1, whose date of birth is [REDACTED] 2005, by putting his penis inside of her vagina and mouth, in violation of Section 16-3-655(A)(1), S. C. Code of Laws, 1976, as amended.

COUNT SEVEN- CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That Vance Ross did in Florence County, State of South Carolina, between the dates of February 1, 2013, and July 31, 2014, 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: Minor 1, whose date of birth is [REDACTED] 2005, by putting his penis inside of her vagina, anus and mouth, in violation of Section 16-3-655(A)(1), [formerly Section 16-3-655(1)], S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE (8 COUNTS), & CRIMINAL SEXUAL CONDUCT WITH A MINOR THIRD DEGREE, WITH THE AFORESAID NAME OF VANCE ROSS SHOWN THEREON:

COUNT EIGHT- CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That Vance Ross did in Florence County, State of South Carolina, between the dates of February 1, 2013, and July 31, 2014, 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: Minor 2, whose date of birth is [REDACTED] 2005, by putting his penis in her vagina, in violation of Section 16-3-655(A)(1), S. C. Code of Laws, 1976, as amended.

COUNT NINE- CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That Vance Ross did in Florence County, State of South Carolina, between the dates of February 1, 2013, and July 31, 2014, 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: Minor 2, whose date of birth is [REDACTED] 2005, by putting his penis in her vagina, in violation of Section 16-3-655(A)(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.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR